

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

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Elizabeth A. Brown  
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**STATE OF NEVADA,**

**Plaintiff,**

**vs.**

**STEVEN FLOYD VOSS,**

**Defendant.**

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**Sup. Ct. Case No. 77505**

**Case No. CR96-1581**

**Dept. 1**

**RECORD ON APPEAL**

**VOLUME 11 OF 15**

**POST DOCUMENTS**

**APPELLANT**

**Steven Floyd Voss #52094  
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**RESPONDENT**

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1 recess.

2 (Break.)

3 THE COURT: You may be seated.

4 Mr. Hatlestad, you may proceed.

5 MR. HATLESTAD: Thanks, your Honor.

6 BY MR. HATLESTAD:

7 Q Okay. At the -- The incident at the  
8 bank, that was on June 14th, correct?

9 A Yes. I believe it was.

10 Q Okay. And the only officers you dealt  
11 with at that time were Pappas, Gazes, and who else,  
12 Stacy Hill?

13 A Stacy Hill.

14 Q Okay. And you were not handcuffed when  
15 you were there, right?

16 A No. I wasn't.

17 Q Now, you said that when the police  
18 officers arrived, Hill came up to you and said, what?  
19 "We're police officers"?

20 A He identified himself as a law  
21 enforcement officer, and then ordered me, set down.

22 Q Was it sit down, or was it more like,  
23 "Have a seat. Be right with you"?

24 A No. It was -- It was --

1 Q Emphatic?

2 A It was a demand.

3 Q And that was his exact words, "Sit down"?

4 A "Sit down, Mr. Voss."

5 Q Okay. Now the tactics they used --

6 Were you seated when this was happening?

7 A Yes, I was.

8 Q So they were standing above you?

9 A They were standing above me and separate,  
10 10 feet or so.

11 Q So you're 5 feet away from each one.  
12 You're equal distance between the two officers?

13 A No. Stacy Hill was to my left and no  
14 more than 2 feet away from me, so I had to look up at  
15 him like this.

16 Q Uh-huh.

17 A And then Detective Pappas was over to my  
18 left, near the corner of the desk --

19 Q Uh-huh.

20 A -- so there was about 10 feet between the  
21 two of them.

22 Q Okay. So there's 10 feet between the two  
23 policemen?

24 A And you're at a desk.

1 Q I'm seated at the desk?

2 A There's a --

3 Q There's a bank employee at the desk?

4 A No. Is, it -- Is, as soon as Stacy Hill  
5 ordered me to sit down, is the -- Ms. Kline asked if  
6 she was needed. They said, no, and she dismissed  
7 herself.

8 Q Were there other public citizens about  
9 the bank that morning?

10 A There were numerous people in and out of  
11 the lobby.

12 Q And the entire incident between you and  
13 the police were in full view of anybody who wanted to  
14 look at it, right?

15 A That's correct.

16 Q Did the officers ever physically put  
17 their hand on your shoulder as if to say to you, you're  
18 not getting up? I mean, they never touched you while  
19 you were there, right?

20 A Not that I can recall.

21 Q Okay. Did you ask for a lawyer at any  
22 time during this confrontation or encounter?

23 A No, I didn't.

24 Q Did you know that you could?

1 A Is -- Just from what I've seen on TV.

2 Q Okay. Well, I was wondering because you  
3 said, at the final incident with the policeman, you  
4 said you wanted a lawyer. I was wondering why you  
5 asked for a lawyer this time but didn't at that time?

6 A Well, even then I wasn't sure how much of  
7 what I'd seen on TV was real and how much was drama.

8 Q You'd never heard your rights read to you  
9 before?

10 A Yes, I had.

11 Q So you knew you had those rights?

12 A Until I was in prison and studied  
13 Miranda, I had no idea what it involved, the scope of  
14 it.

15 Q My question is real simple. You had had  
16 your rights read to you before, right? You've got kind  
17 of a wrap sheet, don't you?

18 A Yeah. I had read before.

19 Q Okay. I just wanted to be sure you knew  
20 you had these rights at least in some form, right?

21 A (Witness nods.)

22 Q Okay. Now, when you talked to the police  
23 at the bank, did you lie to the police?

24 A Excuse me?

1 Q Did you lie to the police at the bank?

2 A No. I did not.

3 Q Okay. Now you said -- You asked them if  
4 you could leave; is that correct?

5 Let me back up.

6 A On several occasions.

7 Q Okay. Let me be specific. My fault.

8 When you were at the bank, did you ask  
9 whether or not you could leave at some point in time  
10 during the encounter with the officers?

11 A Yes. While I was still inside the bank.

12 Q We will go through it a little bit, but  
13 just tell me, did you do that or not?

14 A Yes. I asked to leave.

15 Q And that happened when you were inside  
16 the bank?

17 A Correct.

18 Q Was that before or after you were  
19 presented with a blank piece of paper to write a  
20 statement?

21 A It was after I had completed that  
22 statement.

23 Q All right. Okay. So the officers engage  
24 in these shifting questions. You answer their

1 questions, but not completely, right?

2 A I'm attempting to, but they cut me off  
3 with the next question.

4 Q And then they put a piece of paper in  
5 front of you and said, prepare to give us a written  
6 statement, in effect?

7 A It was more like he slammed the statement  
8 down on the desk in front of me and demanded that  
9 I fill it out.

10 Q When he slammed this down, did that cause  
11 a stir in the bank? Did all of the people look around  
12 and say, "What in the heck is going on here"?

13 A The people in the bank were at my back.  
14 I don't know how they responded to that.

15 Q If he slammed the paper down, it had to  
16 make a little noise, didn't it?

17 A It certainly did.

18 Q Banks kind of reverberate, in effect?

19 A Possibly.

20 Q So he slams this paper down, and then you  
21 fill it in, right?

22 A Well, there was more to it than that;  
23 but, yes.

24 Q Okay. Now when they said, fill in this

1 statement, what was the request, you're going to fill  
2 this out or you're not leaving? You're going to fill  
3 this out, sir. Would you mind filling this out, sir?

4 A Okay. Is -- Is, it immediately upon  
5 being instructed to sit down, I felt I was being  
6 detained.

7 Q Just answer my question, okay. We got a  
8 limited amount of time.

9 A Okay. Is -- Could you repeat the  
10 question?

11 Q Yeah. How were you told to fill out this  
12 statement. Fill in this statement. Sir, would you  
13 mind filling out this statement? We need a report from  
14 you, sir. What was --

15 A Nothing so gracious as that. It was a  
16 demand. I don't recall the exact phrasing.

17 Q Was someone watching you as you filled it  
18 out?

19 A Yes.

20 Q Did they provide you with a pen or  
21 pencil?

22 A Yes, they did.

23 Q Did you ever tell them, I don't want to  
24 fill in this statement?



1 A No, I didn't.

2 Q Okay. After you finished filling out the  
3 statement, you signed it, right, signed it and dated it  
4 and that sort of stuff?

5 A I believe so.

6 Q And was it then that you said, "Can  
7 I leave?"

8 A That's correct.

9 Q Was it right after you put the pencil  
10 down, or a couple of minutes --

11 A Well, basically, as soon as --

12 Q "I'm done. I want to leave," right?

13 A (Witness nods affirmatively.)

14 Q Who did you tell that to?

15 A Deputy Gazes.

16 Q And he basically said, "I got to go check  
17 with the detectives"?

18 A No.

19 Q Or did he just say, "Forget it"?

20 A No. He told me that I would have to wait  
21 for the detectives to return.

22 Q And you said, "Okay," right?

23 A No. What I said is, well, can I at least  
24 step outside and have a cigarette.

1           Q     Okay. Yeah. "I'll wait. I'll have a  
2 cigarette." Right?

3           A     No. It is -- I had to ask permission,  
4 and it wasn't, I'm going to do anything. I was subject  
5 to their control.

6           Q     So you had to wait for a detective before  
7 you could leave. You had to wait for a detective to  
8 have a cigarette?

9           A     Deputy Gazes had to obtain permission  
10 from Detectives Yaran and Canfield in order for me to  
11 go to get -- to retrieve a cigarette and to smoke it,  
12 that's correct.

13          Q     After you asked Detective Gazes, "Why do  
14 I have to do that," what did he say?

15          A     I'm sorry?

16          Q     "I don't have to do that. I'm not going  
17 to do that. I gave you my statement. I'm leaving."  
18 So obviously, you had to say, "Why?" So what did he  
19 say when you said, "Why?"

20          A     I'm not following your question.

21          Q     Let me ask you this: When he said, "I've  
22 got to wait for a detective," your response is, "Okay.  
23 I'll wait", or, "No, I'm leaving," or, "Why do I have  
24 to wait, sir?" Which of those three did you do?

1           A       I may have made some statement to that  
2 effect. I don't know.

3           Q       Isn't what happened, he said, "Stay  
4 seated until the detective arrives."

5                    You said, "Yeah. No problem. Can I have  
6 a cigarette?"

7                    "No. You gotta wait for the detective."

8                    "Well, why?"

9           A       No. That's not correct. When he did go  
10 and ask the detectives if I could go, he instructed,  
11 no, remain seated in the chair until he returned.

12           Q       Is there anything -- You didn't mention  
13 that in your direct. You didn't say that the first  
14 time around.

15           A       I'm --

16           Q       Why didn't you mention it in the first --

17           A       It's in my Petition.

18           Q       I know that. But you're under oath. You  
19 didn't mention it the first time.

20           A       You didn't ask me.

21           Q       Are you going to keep making things up,  
22 or filling things out --

23                    THE COURT: I don't know if --

24                    MR. EDWARDS: Objection.

1 THE COURT: The objection is sustained.  
2 I think that's argumentative.

3 BY MR. HATLESTAD:

4 Q Okay. Well, as I understand your direct  
5 testimony, you said, "How long must I wait?" Is that  
6 what happened, or what not have happened?

7 A I may have stated that.

8 Q You may not have stated it?

9 A That's correct.

10 Q You're under oath. What happened?

11 A At some point, I did state that.

12 Q Okay. Then we have, search your vehicle.  
13 And by the way, was anything seized from your vehicle?

14 A No. Nothing was. Not to my knowledge.

15 Q Did you ask them, "Why do you want to  
16 look in my vehicle?"

17 A Yeah. I probably did.

18 Q Do you have -- Do you remember what they  
19 said at all?

20 A No, not really.

21 Q Didn't they say, "Well, we want to detain  
22 you here all day. We want to look in your truck.  
23 You're not free to leave, sir. You're under arrest."  
24 Is that what they said?

1           A       What they did was avoided answering my  
2 requests if I may leave by continually walking back  
3 over to Detective Pappas and asking him, and then he  
4 would relay additional requests from Detective Pappas  
5 to me.

6           Q       Okay.

7           A       So his -- No. They never really  
8 answered my request to leave. "Well, let me go ask  
9 him."

10          Q       Okay. We understand that. When you  
11 said -- When they said, "Can we search your truck,"  
12 didn't you say, "Why do you want to search my truck?"  
13 Did you say that? Or was it, "Yeah, go ahead."

14          A       There was some comment. I don't recall  
15 the exact comment, but probably something to that  
16 effect.

17          Q       Okay. Now, when they finished searching  
18 your car -- or "your vehicle," I should say, at that  
19 time did you ask to leave? "Now that I've given you a  
20 statement, now that you've searched my truck, can  
21 I please go home?"

22          A       Yes. I requested to leave again.

23          Q       Then what happened?

24          A       Is, then Detective Stacy Hill walked back

1 over to Detective Pappas, and they engaged in some  
2 conversation. He returned and he stated that,  
3 "Detective Pappas would also like to search your  
4 residence located at 565 Sparks Boulevard."

5 Q Okay. And you said, "Why would you want  
6 to do that, Officer?"

7 A No. I informed him that I no longer  
8 resided at that address due to a fire at that address.  
9 I was currently residing in Room 135, Western Village  
10 Inn.

11 Q So now they want to know your new  
12 address, which is Western Village, and they want to go  
13 search there, right?

14 A That's correct.

15 Q And you say, "Why do you want to search  
16 there?" Or did you say, "Forget it"?

17 A I believe I asked him, "Why would you  
18 possibly want to search my motel room? What does that  
19 have anything to do with anything?"

20 Q You didn't say that on your direct  
21 examination, did you, right, when you were just asked,  
22 "What happened next?"

23 A Well, no.

24 Q Well, they went to search your place.

1 Did you let them? "Yeah," or "No"? See what I mean?

2 A He didn't ask that specific question.

3 Q I wasn't questioning you. What happened  
4 next? "They wanted to search my place at the Western  
5 Village, and I said, 'No'?"

6 A That's right.

7 Q No further comment, no further  
8 conversation, and now we find out there's conversation  
9 all of a sudden?

10 A Is -- Is, I denied them permission to  
11 search that room.

12 Q Obviously, they said, "Why? You got  
13 incriminating evidence in there, sir?"

14 A No. They didn't even argue anything like  
15 that.

16 Q They just accepted it, right?

17 A Right.

18 Q "You don't want us to go in there, we're  
19 not going to." Right?

20 A Pretty much.

21 Q No strong-arm tactics like the second,  
22 third, and fourth incidents we're talking about?

23 A No.

24 Q "You don't want us going in. We're not

1 going to." Right?

2 A No. Is, at that point is -- is  
3 Stacy Hill returned after I denied them permission to  
4 search the hotel room, Stacy Hill returned to where  
5 Detective Pappas was standing again, and then Detective  
6 Pappas walked over and he answered my question. He  
7 stated words to the effect that, "You can leave.  
8 You've always been free to leave at any time" or  
9 something to that effect.

10 Q What did you say to that? "Why didn't  
11 you tell me before?" Is that what you said?

12 A My words were, "Yeah, right."

13 Q Oh, okay. And what did they say?

14 A Is, nothing. They turned and walked  
15 away.

16 Q They didn't say anything like, "You  
17 didn't think you were free to leave? You were always  
18 free to leave. We told you that when we got started"?

19 A No. It was -- It was intended as some  
20 form of humor, I believe, by Detective Pappas. He had  
21 a big smile on his face.

22 Q You detected that to be sarcasm?

23 A Exactly.

24 Q I assume Detective Hill was present when



1 this happened, and he was giggling as well?

2 A Is -- To tell you the truth, I didn't  
3 see the look on his face. I was looking at Detective  
4 Pappas during this comment.

5 Q And then after that, you had this  
6 altercation with Pappas, and he blows up or something?

7 A No. That was before. Inside the bank.

8 Q Oh, all right. Okay. Okay. Let's move  
9 into the second incident. It's at 8:00 p.m. that  
10 evening, right?

11 A Approximately.

12 Q Approximately. All right. There's a  
13 knock on your door. Your mom answers the door?

14 A Correct.

15 Q The door opens in, correct?

16 A That's right.

17 Q Was there a chain lock on the door?

18 A No. There was not.

19 Q Or did she just open -- just --

20 A Right.

21 Q Did the officers identify themselves to  
22 you within?

23 A I'm sorry?

24 Q Knock, knock, knock. "We're police

1 officers. May we come in?"

2 A No, they didn't.

3 Q Just knock, knock?

4 A Right.

5 Q Opens the door. They're coming in?

6 A Right.

7 Q Barging in?

8 A Exactly.

9 Q Okay. Canfield and Yaran, right?

10 A That's correct.

11 Q Burst through the door. Did they brush,  
12 touch, or do something to your mom as they come on in?

13 A They -- Is, she had her hand on the  
14 door. Is -- Her right hand is extended out and  
15 holding the door. They literally pushed the door out  
16 of her hand, opened it to its fullest extent, and  
17 actually did brush up against her entering the doorway.

18 Q What did she say?

19 A Is -- I don't know if she said anything.  
20 It's because the detectives immediately began speaking  
21 when they entered.

22 Q So they knock on the door, the door is  
23 open, they come on in. "We're police officers,  
24 Detectives Canfield and Yaran. We want to talk to

1 Mr. Voss," or, "We want to talk to you." Something  
2 like that?

3 A Yeah.

4 Q Were you sitting down or standing up?

5 A I was sitting down.

6 Q Did you stand up?

7 A Yes, I did.

8 Q Did you know these people from anywhere?

9 A No.

10 Q Did you believe they were policemen?

11 A Yeah. I took them at their -- at  
12 their --

13 Q Okay. And they say, "We want to ask you  
14 some questions"?

15 A Well, they first asked me if I was Steven  
16 Floyd Voss.

17 Q "Are you Steven Floyd Voss? We'd like to  
18 ask you questions," or did they say, "Are you Steven  
19 Floyd Voss? We're asking you questions"?

20 A I believe the terminology was, "We would  
21 like to ask you some questions."

22 Q Right, okay. And you don't remember  
23 exactly what you said to them, but the interview went  
24 on, as I have your direct here?

1 A Is -- Is -- Or is --

2 Q "Yeah. Come on in"?

3 A No, no. I didn't say, "Come on in." Is,  
4 they in fact occupied the room.

5 Q Yes. They're big fellows. Go ahead.

6 A Okay. Is -- He asked -- He started  
7 with general questions, reiterating questions that had  
8 been previously asked by Detective Hill and Detective  
9 Pappas.

10 Q Okay. Now --

11 A Then --

12 Q Hang on just a second. We'll go through  
13 it. I want to get the chronology right because the  
14 police are going to testify.

15 They come in and they say words to the  
16 effect like, "We would like to ask you some questions."

17 Now, did you say, "Fine," or did they  
18 just start rifling the questions?

19 A Oh, they went right to the questions as  
20 soon as I said, "Yes."

21 Q You said, "Yes."

22 "All right. Good. That's good. We'd  
23 like to ask you some questions"?

24 A Yes. No. Yes. Yes, to my name. When

1 they stated, "Are you Steven Floyd Voss," I stated --  
2 stated, "Yes."

3 They said, "We'd like to ask you some  
4 questions," and immediately began asking those  
5 questions.

6 Q So there's no chance essentially for you  
7 to say, "I don't want to," or, "Go ahead"?

8 A Not without interrupting what they're  
9 saying.

10 Q Okay. Now, right after the first  
11 question you did not say, "I don't want to talk to you.  
12 I've already talked to these other guys." Did you say  
13 that?

14 A As a matter of fact is -- is probably  
15 sometime during that I did.

16 Q First question. You don't know these  
17 guys. They're going to start rifling questions at you  
18 left, right, and center, and instead of saying,  
19 "I don't know you guys. I don't want to talk to you  
20 guys. I want a lawyer," you just answer the questions,  
21 right?

22 A I did not challenge their authority.

23 Q All right. So the question is, "No.  
24 I didn't do any of those things"?

1 A No.

2 Q Okay. Now during the -- Well, let me  
3 back up just a second for details. How long did this  
4 interview last with the policemen in the motel room?

5 A Again, I would say approximately from  
6 8:00 until approximately 11:30.

7 Q Three hours. Were the policemen  
8 recording this at all? Did they have a tape recorder  
9 out or anything like that?

10 A If they were recording it, they -- It  
11 wasn't noticeable to me.

12 Q They obviously didn't tell you, "We're  
13 recording this"?

14 A No, they didn't.

15 Q So you don't know if they recorded it or  
16 not?

17 A That's right.

18 Q But you're certain it was three hours?

19 A Again, these are approximate times. It  
20 was a lengthy period of time.

21 Q Okay. Was your mom present when this  
22 happened?

23 A That's correct.

24 Q Is this just a standard motel room, one

1 room, a bathroom?

2 A Yeah. It's a -- It's a --

3 Q Just standard --

4 A I guess you can call it standard.

5 Q Oh, not that we have an idea. I just  
6 want to try to get the geographic locations here.

7 All right. So they talk to you for three  
8 hours, and you refer to that as, "Drilling me." Did  
9 you tell them the truth?

10 A Yes, I did.

11 Q Now, when is it that Mr. Yaran says "It  
12 doesn't look good for you because we're investigating a  
13 missing person"?

14 A Is immediately following his questioning  
15 as to the type of vehicle that Beverly drove.

16 Q Now, if the interview lasted three hours,  
17 whereabouts did this happen?

18 A Pretty close to the front of it.

19 Q At the beginning, did Mr. Canfield say  
20 anything like that to you, anything similar like that?

21 A Is, you mean -- Not that I can recall at  
22 this time.

23 Q Okay. All right. Do you know -- Well,  
24 was either of the two detectives blocking the door, or

1 were they sitting down, standing up? How were they  
2 situated?

3 A Is -- You mean, initially, when they  
4 entered, there was a uniformed officer who was standing  
5 at the door.

6 Q Okay.

7 A I didn't see exactly when he left, but  
8 Detective Canfield, who had been setting on the bed  
9 directly across from me questioning me, he got up and  
10 closed the door of the hotel.

11 Q The door was wide open previously?

12 A While the other officer was standing  
13 there, yes.

14 Q So at some point in time, the uniformed  
15 officer leaves?

16 A Correct.

17 Q And the door is now shut?

18 A Right.

19 Q But none of these officers, aside from  
20 the plain clothes officer blocked the -- left -- or  
21 locked the door, right? Is that correct?

22 A Well, is -- I don't know if they  
23 intended to block the door. Is, by their size, and  
24 they entered and were standing side-by-side, they



1 effectively blocked egress.

2 Q And they sat down in the bed?

3 A Right.

4 Q So if you want to get up from where you  
5 were and they didn't get up to stop you, you could have  
6 walked right out?

7 A I don't believe that is the point. They  
8 came into my home.

9 Q Just let me ask the questions. We'll get  
10 to facts later. The truth here, the bottom line is,  
11 you didn't get up from your very case. Three hours go  
12 by, no bathroom breaks, no water breaks, just sat there  
13 three hours back and forth?

14 A Correct.

15 Q Did these guys get up, use the bathroom,  
16 walk around, do anything?

17 A Not during the course of most of the  
18 questioning. The entire three hours was not spent --

19 Q Okay.

20 A At that point in questioning, some of  
21 that three hours, you know, was spent searching the  
22 room and trying to coax me down to the --

23 Q Oh, okay. All right. Let's back up.  
24 How long did the interview last?

1           A       I would say probably until approximately  
2 11:00.

3           Q       Two and a half hours. Two and a half  
4 hours of interview?

5           A       Uh-huh.

6           Q       Nobody got up and moved around that room  
7 for two and a half hours. Is that what your testimony  
8 is here today?

9           A       I believe so.

10          Q       No bathroom breaks, no water breaks?

11          A       No.

12          Q       Nothing?

13          A       No.

14          Q       Are you sitting on the outside edge of  
15 the bed, or sitting on the headstand --

16          A       I'm sitting on the the -- the end of the  
17 bed.

18          Q       So your mother is between you and the --

19          A       No. She's on the other bed at the  
20 headboard end.

21          Q       Who is sitting next to you, if anyone?

22          A       No one is sitting --

23          Q       You're sitting by yourself?

24          A       Right.

1 Q The policemen and your mother are sitting  
2 on the other bed, correct?

3 A Yes.

4 Q Are they between you and the door?

5 A Yes.

6 Q Okay. Just for completeness, they never  
7 threatened you, did they?

8 A You mean, threat of physical harm?

9 Q In any way. Did they verbally threaten  
10 you in any way? "If you don't give a statement, we're  
11 going to hit you over the head with a rubber hose"?

12 A No.

13 Q They never touched you?

14 A No.

15 Q Did they ever promise you anything? "If  
16 you give us this testimony, the State will give you a  
17 Twinkie"? Something like that?

18 A No.

19 Q At the time that this is going on,  
20 you're, again -- Just for the record, how old were  
21 you?

22 A Sir?

23 Q What was your age?

24 A Let's see. Thirty-six, thirty-seven.

1 Q Okay. Did you have a high school  
2 education?

3 A Yes.

4 Q Okay. With English?

5 A Yes.

6 Q Okay. No problem understanding any of  
7 the questions asked by the officers?

8 A No.

9 Q Right. Was it -- It was in your place,  
10 right? It was your place that this interview happened,  
11 right?

12 A Yeah. I was in -- I was in --

13 Q Okay.

14 A -- control of the hotel room, yes.

15 Q Okay. All right. The interview  
16 essentially comes to a close after the search of the  
17 room, or before the search of the room?

18 A I'm sorry. Could you repeat that?

19 Q Yeah. The interview on the second  
20 occasion is at 8:00 p.m. and before the search was  
21 conducted, or after the search was conducted, we have  
22 two and a half hours of interview and, I gather, 30  
23 minutes of searching and they leave, or is there some  
24 more conversations?

1           A       Yes. It is after the questioning they --  
2 they asked if they could search the room. They search  
3 the room, and then they, again, ask some questions,  
4 primarily, if I would -- if I would come down and  
5 submit to a tape statement. I believe something like  
6 that.

7           Q       Okay. And at that point you said you're  
8 tired and you don't want to do it?

9           A       I believe I said, "Not at this late  
10 hour."

11          Q       Okay. Did the officers find anything and  
12 seize anything when they searched your room?

13          A       Is -- They didn't seize anything.  
14 I don't know if they -- what you mean by finding  
15 anything.

16          Q       Well, did they find something in your  
17 room and take it at that time?

18          A       They didn't seize anything.

19          Q       Okay. When they asked to search your  
20 room, you said, "Go ahead. It's okay. Why?" Anything  
21 like that?

22          A       Is -- Is, I believe I -- I stated,  
23 "You're already here."

24          Q       Oh, okay. Okay. So they go ahead and

1     conduct their little search. They don't find anything  
2     or seize anything?

3             A       Not at that time.

4             Q       All right. Now, your position, as  
5     I understand it, is, you do not feel free to leave your  
6     own room that night?

7             A       Is -- Is, not only did I feel that  
8     I didn't have freedom to come or go from that room as  
9     I please, is, I didn't have control over them being in  
10    that room against my wishes.

11            Q       Well, to what extent, if any, did you  
12    express those wishes?

13            A       Is -- I don't know if I expressed them  
14    to any degree.

15            Q       Did you manifest any behavior that would  
16    indicate to these men you didn't -- want them out of  
17    here, like point your finger at the door?

18            A       Well, is -- I believe the only way  
19    that -- that I expressed any displeasure to them at all  
20    was -- I believe I stated to -- I believe it was John  
21    Yaran, is about my previous contact with Detective  
22    Pappas, and --

23            Q       Okay. So bottom line then is, you did  
24    not verbally or physically indicate to these officers

1 that you did not want them in that room, ever. Is that  
2 right?

3 A Not that I recall.

4 Q All right. Very good. All right. Next  
5 incident is the Sheriff's Department. And you came  
6 down there, right? I guess there was some exchange.  
7 "Would you come down tomorrow?"

8 "Oh, I'll come down tomorrow"?

9 A Well, is -- It was repeated request.  
10 Is, he didn't want to settle for the fact that the hour  
11 was late and that I was tired. He continually -- Both  
12 detectives actually continually prodded both myself and  
13 my mother to come down to 911 Parr and make a taped  
14 statement. At that point, I believe I addressed the  
15 officers and -- stating that "I don't see any  
16 significance for me doing that." Even -- You know, it  
17 wasn't -- I didn't understand the significance of a  
18 taped statement.

19 Q All right. All right. Well, let's talk  
20 about the third incident then.

21 Did you give any thought to not going  
22 down there? "I've talked to them enough. I'm not  
23 going"?

24 A Not that I --

1 Q "I'll check with a lawyer before I go  
2 down"?

3 A No.

4 Q Nothing? "I've got nothing to hide. I'm  
5 going down there," right?

6 A That's correct.

7 Q Okay.

8 A There was reason for that, though.

9 Q Well, I understand, but we'll get to  
10 that.

11 You get down there. Do they come down  
12 and get you when you got there? The Sheriff's  
13 officers, did they come get you and take you up to a  
14 room and start talking, or did you go in with your mom  
15 and stay together?

16 A My mother and I were waiting in the lobby  
17 when the detectives arrived at 91 Parr Boulevard. They  
18 escorted both of us upstairs into the sheriff's  
19 division lobby area.

20 Q Okay. Let me jump ahead a little bit.  
21 This taped interview with the sheriffs on the -- This  
22 would have been the 15th, now?

23 A The first one?

24 Q Yeah. The third incident we're talking



1 about, the afternoon of the 15th?

2 A Yes.

3 Q Okay. You said this was offered and  
4 admitted by the State. Wasn't this statement also  
5 stipulated in by your attorney? Did he stipulate? "Go  
6 ahead. No objection"?

7 A Not to my knowledge.

8 Q Let me ask you this: I mean, did you  
9 want these statements admitted in your trial? You've  
10 already said you told the truth. It keeps you off the  
11 stand?

12 A Is --

13 Q I mean, did you really want these  
14 statements suppressed?

15 A Is -- I wasn't -- I'm not an attorney.

16 Q That's not my question. My question is,  
17 did you want the jury to hear your statements to the  
18 police.

19 A In hindsight --

20 Q No. I'm not talking hindsight. At that  
21 point in time, did you want those statements given to  
22 the jury?

23 A Is, at that time I didn't even know.

24 Q Just answer the question. You don't have

1 to dance around it. Just, "No, I didn't. Yes, I did.  
2 I didn't care."

3 A I can't imagine wanting those statements  
4 admitted, no.

5 Q Your answer is, "I did not want those  
6 statements in this courtroom." That's your position,  
7 right?

8 A No.

9 Q You discussed this with Conway. "Conway,  
10 I don't want my statements in this case. They hurt me.  
11 Do something about it"?

12 Or did he say this? "You made  
13 statements. They're going to hurt. I'm going to move  
14 them to be suppressed"?

15 Did any conversation like that happen?

16 A At some point.

17 Q Just yes or no. It's a simple question.  
18 Don't dance with me. Did you have a conversation about  
19 keeping that stuff in, or not?

20 A Yes, I did.

21 Q And what did he say? "Can't do? "It  
22 doesn't matter"?

23 A In regard to that, he stated that he and  
24 Deputy District Attorney Egan walker were going to get

1 together and they were going to come up with a redacted  
2 version of the -- of the tapes.

3 Q All right. That's because the word  
4 "polygraph" and some other stuff was in there, right?

5 A I believe that's part of it.

6 Q You and Cotter talked about that, right?

7 A To some degree, I think we may have.

8 Q When you talked to the cops, you said,  
9 "I don't want a polygraph. They don't work." You knew  
10 that wasn't going to come into court. You certainly  
11 didn't want it in the court?

12 A Well, I don't even see any relevancy in  
13 that.

14 Q Okay. Now, the conversation you had with  
15 Conway about these statements you made happened before  
16 the trial, didn't it?

17 A Could you repeat that? I didn't get --

18 Q Sure. The conversation you and Conway  
19 had about these statements you made to the police  
20 happened before the trial started, right?

21 A That's correct.

22 Q Now, what was his position? I mean, did  
23 he say, "You made these statements. I'm going to have  
24 them suppressed, or would you rather we put them in so

1 you don't have to take the witness stand and be  
2 subjected to cross by the State?"

3 A He never got involved with his responses.  
4 Basically what he did is, when I asked him a question,  
5 he'd say, "Well, I'll come up and talk to you about  
6 it," and never did. Any response I did from him was  
7 just a few words.

8 Q Were the words intelligible, or was he  
9 just mumbling?

10 A Very often they were, "It doesn't  
11 matter."

12 Q Did he say anything to you like, "I'll  
13 come talk to you about your statements later, but as  
14 far as I'm concerned, they're probably going to be  
15 admitted, so I'm not going to fight it too hard"? Did  
16 he say anything about that?

17 A He never discussed this strategy in this  
18 case with me.

19 Q Now, strategy. How did he come up with a  
20 strategy if you guys didn't talk about it? He  
21 obviously had one?

22 A Not really.

23 Q Well, he had one whether you liked it or  
24 not. Where do you think he got it?

1 MR. EDWARDS: Objection, calls for --  
2 BY MR. HATLESTAD:

3 Q Did you talk about --

4 THE COURT: Sustained.

5 MR. HATLESTAD: I'm withdrawing the  
6 question.

7 BY MR. HATLESTAD:

8 Q Did you ask Conway to talk about your  
9 version of the events; such as, "Beverly gave me the  
10 key. It's not a breaking in, unlawful entry. No  
11 burglary"? Did you guys talk about that?

12 A Yes.

13 Q And you talked about the check cases as  
14 well, right?

15 A Yes.

16 Q So his version of the case is argued to  
17 the jury, and it seems to me that at least as far as  
18 sentencing was, you were happy with the way everything  
19 was going. "He said everything I need to say. I don't  
20 need to say anything else," right?

21 A In my relative ignorance of the legal  
22 system, is -- I didn't know what to expect. I didn't  
23 know what was right and what was wrong.

24 Q When Cotter Conway made the closing

1 argument in the case, he stated you had permission to  
2 be in the building, permission to write these checks,  
3 permission to have these checks in your possession?

4 A You don't have any problem with that  
5 strategy, do you, because you're innocent?

6 A Right.

7 Q So you had no problem with his strategy?

8 A Right.

9 Q And the strategy came from him to you?

10 A Right.

11 Q So don't tell me you guys had no  
12 strategy. You guys had a strategy because you talked  
13 about this case, didn't you?

14 A No, not in regard to what he was going to  
15 present at trial.

16 Q You had no idea what witnesses he was  
17 going to call?

18 A No.

19 Q Okay. So these people show up, and it's  
20 like, "Hey, who is this? I don't know this person from  
21 Adam"?

22 A Some of them I had never seen before in  
23 my life.

24 Q How much time would you say Mr. Conway

1 spent with you either on the phone or in person talking  
2 about your case? This case, not the murder case. This  
3 one.

4 A Very little. Is -- Is --

5 Q Okay. Very little time. How many  
6 get-togethers; did you have?

7 A Is, I believe he showed up at the jail.

8 Q Well, just give me a number.

9 A On two occasions.

10 Q Two times, okay. Very little time. Two  
11 times, okay.

12 A But on one of those occasions is -- is,  
13 I was -- I was really asked questions by the  
14 investigator, Larry Carlson, and didn't discuss the  
15 case with Conway.

16 Q Okay. Did you tell Carlson the truth?

17 A Yes, I did.

18 Q Were -- Do you recall whether or not any  
19 of the specimens you provided pursuant to these search  
20 and seizure orders were admitted in court?

21 A To my knowledge, they weren't even  
22 examined, let alone admitted.

23 Q Okay. Now everything that you've told us  
24 today here, under oath, did you relate that to

1 Mr. Conway in any way, shape, or form with respect to  
2 the statements that you made to the police?

3 A Is -- I related the incident to him.  
4 I -- I had no idea of the scope of those incidents,  
5 so --

6 Q Okay. Now, you will concede that Cotter  
7 Conway discussed the fact that you gave pretrial  
8 statements to the police without a Miranda warning,  
9 correct? That was absolutely correct? It was not --

10 A Very briefly.

11 Q Okay. What was the conversation?  
12 Something like, "Steven, did the police give you a  
13 Miranda warning when they talked to you?"

14 A No. They didn't.

15 Q "Did you feel like you were free to leave  
16 during this conversation?"

17 A No.

18 Q Was that kind of exchange happening?

19 A I don't think he took it that far.

20 Q Can you give us a flavor of what he said  
21 about the statements and why he may or may not be  
22 interested in them?

23 A Is, I can't recall his exact words, but  
24 is, whenever I would try relating anything to him



1 regarding this case, he was relatively dismissive of my  
2 point of view, or --

3 Q Okay. So, "Steve, you made statements.  
4 Doesn't matter. They're coming in," basically.

5 A He may have said that. I don't recall.

6 Q Okay. Did you recall discussing --  
7 I think I may have asked this. Forgive me if I did.

8 Did you guys discuss the fact that if  
9 these statements come in, you don't have to testify?

10 A Is -- Again, we discussed that briefly  
11 the day of the trial, just prior to the trial.

12 Q Okay. So you did talk about that?

13 A Very briefly in the lockup.

14 Q Okay. Briefly, but you talked about it,  
15 okay. What was your position, or what options, if any,  
16 did Cotter give you?

17 A As far as testifying or not testifying,  
18 you mean?

19 Q Yeah, testifying in lieu of these  
20 statements.

21 A Is, is -- Is, he stated to me he didn't  
22 know if he would -- would put me on the stand or not,  
23 in the lockup. Is, later when -- when I was seated at  
24 the defense table is -- I asked him -- Well, actually

1 I told him that I would like to testify in these  
2 proceedings and get my point across, because he didn't  
3 seem to be doing it. His response was, "With a jury  
4 seated here -- " He raised his voice, and he stated,  
5 "You testifying would be suicide," and --

6 Q He said that in front of the jury?

7 A He raised his voice and said it.

8 Q When did that happen?

9 A Well, I was -- Is -- Is towards the end  
10 of the trial. I believe the last day of the trial.

11 Q Okay. Obviously, at that point you  
12 addressed the Court and said, "I don't want this man as  
13 my lawyer," right? He's obviously a dump truck, and  
14 he's going to be pulling this buffoonery in front of  
15 the jury, so obviously you took action. So what did  
16 you do?

17 A There was nothing I could do.

18 Q And it's your testimony here, under oath,  
19 "It would be suicide," and the jury right there?

20 A That's what he stated.

21 Q Includes the woman who saw you in the  
22 prison garb?

23 A I don't know what they heard. All I said  
24 is he raised his voice. I certainly noticed that he

1 raised his voice. He was sitting right next to me.

2 Q Okay. All right.

3 MR. HATLESTAD: Okay. That's all for  
4 now.

5 MR. EDWARDS: I have just a couple of  
6 followup questions, your Honor.

7 THE COURT: Mr. Edwards?

8

9 REDIRECT EXAMINATION

10

11 BY MR. EDWARDS:

12 Q Mr. Voss, at the time that you were at  
13 the bank and the police officers made contact with you,  
14 did they have weapons on their person?

15 A Yes, they did.

16 Q Did they display them to you? Did they  
17 ever take them out of their holster?

18 A No.

19 Q When they came into your hotel room at  
20 the Western Village, did they have weapons, too?

21 A Yes, they did. In both instances they  
22 were in plain view.

23 Q And how about at the police station?

24 A I don't recall if they were still

1 carrying them inside the station or not.

2 Q In that two-and-a-half-hour interrogation  
3 in the hotel room, did they take their weapons off  
4 their person, lay them down, or --

5 A No, they didn't. Not to my knowledge.

6 Q Okay.

7 MR. EDWARDS: No further questions.

8 THE COURT: Okay.

9 MR. HATLESTAD: No. Thank you.

10 THE COURT: Does that conclude the  
11 witness?

12 MR. HATLESTAD: Yes.

13 THE COURT: Then, Mr. Voss, you may be  
14 excused.

15 THE WITNESS: Thank you.

16 MR. EDWARDS: Your Honor, I have a  
17 witness that I believe I can complete her testimony  
18 prior to noon, if that would be okay.

19 THE COURT: Go ahead then.

20 Ms. Duplin, if you'd please step right  
21 into this area, Ms. Lopez will swear you in.

22 THE CLERK: Please raise your right hand.

23 THE WITNESS: I'm sorry. Oh, okay.

24 (The clerk administered the oath.)

1 THE WITNESS: I do.

2 THE COURT: Please have a seat in the  
3 witness chair.

4

5

MARY DUPLIN,

6

called as a witness on behalf of the Plaintiff,  
7 first being duly sworn, testified as follows:

8

9

DIRECT EXAMINATION

10

11

BY MR. EDWARDS:

12

13

Q Could you please state your name and  
spell your last name.

14

A Mary Duplin D-u-p-l-i-n.

15

16

Q Ms. Duplin, do you know Steven Voss  
seated next to me?

17

A I'm sorry. My hearing is not very good.

18

Q Do you know Steven Voss?

19

A Yes.

20

Q How do you know Steven Voss?

21

A He is my son.

22

23

Q Do you recall the evening of June 14,  
1996?

24

A Yes.

1 Q Do you know where you were at that time?

2 A What point of the day? In the evening --

3 Q In the evening at approximately 8:00 p.m,  
4 do you know where you were?

5 A Yes.

6 Q Where were you?

7 A I was in my room at Western Village.

8 Q Were you alone, or was there anyone with  
9 you?

10 A No. Steve was there, also.

11 Q Did there come a time that somebody came  
12 to the room that you were in?

13 A Yes, sir.

14 Q Who came to the -- to the room?

15 A Detectives, and I'm not good with names,  
16 but I think one of them was -- Canfield, I think the  
17 name was, but they're outside.

18 Q Did they knock on your door?

19 A Yes. They knock on the door, and there  
20 may have been a third person behind them, possibly an  
21 officer.

22 Q Did you go to the door to answer it?

23 A Yes, I did.

24 Q What happened when you opened the door?

1           A     Okay. Well, they were standing  
2 side-by-side covering the entire door space, and they  
3 told me their names and that they were with homicide.

4           Q     What happened next?

5           A     I said, "Homicide?"

6                     And they said, "Yes," and -- and they  
7 asked for Steve.

8                     I turned around to Steve, who was seated  
9 on the bed. And at which point, while I was turned,  
10 they entered the room, apparently pushing the door  
11 open.

12          Q     You said they asked for Steve. What did  
13 they say to you?

14          A     Well, they asked me if Steve was there.

15          Q     Did you say yes or no?

16          A     I don't believe so. I just believe  
17 I turned to Steve at that point to answer for himself.

18          Q     And at that point they just walked in?

19          A     Yes.

20          Q     Did you invite them in?

21          A     No. I was -- I was not really there.  
22 I was sort of in shock.

23          Q     Why were you in shock?

24          A     Because it just was so ridiculous, and

1 I just turned towards Steve to see what his response  
2 was.

3 Q Did they ask you if they could come in?

4 A No.

5 Q What happened when they came into the  
6 room? What happened next?

7 A Well, they headed over, straight over  
8 towards Steve and set on the side of the bed and talked  
9 to us.

10 Q For how long?

11 A Very long time. I believe it was almost  
12 midnight before they left.

13 Q What did they ask you about?

14 A They really didn't ask me too much of  
15 anything. There was a lot of things that they said  
16 that really were just conversation. Personally, not  
17 much of anything. I don't even remember exactly what.

18 Q Did you ever ask them to leave?

19 A No. I did tell them, when they asked me  
20 a couple of things, that I did have fibromyalgia, and  
21 it also gave me chronic fatigue and I was very tired.  
22 But actually asking them to leave, no, sir.

23 Q Did you ever have anything to drink or go  
24 to the rest room while --



1 A No.

2 Q -- the officers were there?

3 A No.

4 Q Did anybody else in the room go to the  
5 rest room or have anything to drink?

6 A I don't believe so. I don't recall  
7 anybody doing so.

8 Q Was Steve -- Steven Voss smoking  
9 cigarettes during this three-hour time?

10 A Most likely.

11 Q You don't remember?

12 A Well, I'm sure he was. I mean, we both  
13 sat there and smoked a great deal during the time we  
14 were in the motel room.

15 Q Do you know what the Miranda warnings  
16 are?

17 A Yes, sir.

18 Q Did you ever hear any of the officers  
19 mention the Miranda warnings?

20 A No, sir.

21 Q Did you feel that you were free to go if  
22 you wanted to leave that room while they were in there?

23 A Well, of course, it was our room, so that  
24 thought never came to my mind. It just seemed they

1       were staying an awful long time for what little they  
2       wanted to know.

3               Q       Did you ever ask them to leave?

4               A       I, personally, did not.

5               Q       When did they leave?

6               A       As I said, I believe it was almost  
7       midnight by the time they left.

8               Q       Did they say why they were leaving?

9               A       I don't believe so. I just believe they  
10      indicated that they had nothing more to say, but --

11              Q       Did they shove you when they came in  
12      through the door?

13              A       No, huh-uh.

14              Q       Just walked by you?

15              A       Yes. As I said, I was turned towards  
16      Steve, and apparently the door was further opened and  
17      then they entered.

18                   MR. EDWARDS: I have no further  
19      questions, your Honor.

20                   THE COURT: Mr. Hatlestad, do you have  
21      questions?

22                   MR. HATLESTAD: Just a couple.

23                   THE WITNESS: Oh, okay.

24      ///

## CROSS-EXAMINATION

BY MR. HATLESTAD:

Q When the policemen were outside the door -- I don't think --

MR. HATLESTAD: She didn't hear me.

THE WITNESS: I heard that.

MR. HATLESTAD: Did you? Okay. Sometimes people, when you approach them, they're intimidated.

THE COURT: If you would like to step a little closer, perhaps in front of counsel table, you may make yourself --

MR. HATLESTAD: I've been accused of low talking.

THE COURT: Well, I'm very soft-spoken, so I have a lot of that problem, as well.

BY MR. HATLESTAD:

Q When you opened the doors and the officers are at the threshold of that door, are they just coming in, or did they say, "We're homicide detectives. We want to talk to Steve Voss"?

A They asked if Steve Voss was there.

Q And you said, "Yes, he was"?

A I just turned toward Steve to let him

1 answer for himself. He could see them, and -- He  
2 could see them.

3 Q And they come on in?

4 A Yes.

5 Q No comments like, "Can we come in and  
6 talk to you?" No idle chitchat, things like that?

7 A I do not recall anything of that nature.

8 Q But you're certain they never said  
9 anything from outside the door?

10 A Well, they said who they were, yes.

11 Q Knock, knock. "We're police officers"?

12 A "We're Detectives So and So."

13 Q And you opened the door?

14 A "So and So from Homicide," so probably  
15 stated also, "The Sheriff's Department."

16 Q Is that when you opened the door?

17 A The door was opened before they made  
18 these statements.

19 Q I want to make -- get the scenario  
20 correct, because your son testified.

21 A Okay.

22 Q Knock knock. Open the door?

23 A Right.

24 Q "We're detectives. We want to talk to

1 Steve Voss," and they come --

2 A They first introduced themselves and  
3 asked if Steven was there, and as I was turned around,  
4 they came in.

5 Q No comment from you, like, "Get out of  
6 here"?

7 A Oh, no.

8 Q Okay. Did they show identification?

9 A Now that you mentioned it, I never saw  
10 any.

11 Q Okay. All right. Where were you seated  
12 in the room during the interview with the police?

13 A Oh, well, I had the bed furthest to the  
14 window.

15 Q Right.

16 A And I was setting on the side towards the  
17 door. And, of course, I went and answered the door.  
18 We were watching something on television.

19 Q Okay.

20 A And when they came in, and Steven  
21 responded to them at that point, I went back over and  
22 set down on the side of the bed, again, closest to the  
23 door.

24 Q Okay. The two policemen sat on the same

1 bed together?

2 A I'm sorry?

3 Q Were the two policeman sitting on the  
4 same bed together?

5 A I know one of them was directly across  
6 from me. I won't swear to the other one.

7 Q Okay. Were the three of you sitting  
8 abreast?

9 A The three of them?

10 Q Yeah. Were you, you --

11 A No one was on the bed I was sitting on  
12 other than myself.

13 Q Oh, okay. Okay. Okay. So three  
14 policeman -- Three policeman enter the room, is that  
15 right?

16 A No.

17 Q Just two?

18 A Just the two detectives came in. If  
19 there was a third one outside the door, it was so fast  
20 I don't even remember.

21 Q No policeman in plain uniform, in a cop  
22 suit, entered that room?

23 A No. Just their suits.

24 Q All right. Very good. Okay. So Yaran

1 and Canfield come on in?

2 A Yes.

3 Q And they sit on one of the two beds?

4 A Yes.

5 Q Mr. Voss, your son, is sitting on another  
6 bed?

7 A No. Mr. Voss, my son --

8 Q Okay.

9 A -- is sitting on the bed closest to the  
10 door.

11 Q Okay.

12 A And on the side of the bed closest to the  
13 door, and at least one of them was setting facing me  
14 towards the end of the bed. I'm not sure about the  
15 other one. I think I know, but I'm not positive.

16 Q So two beds in the room, right?

17 A Yes, sir.

18 Q Is the door up here?

19 A Yes, sir.

20 Q You're here?

21 A No. I'm --

22 Q Okay. This one?

23 A Yes, sir.

24 Q Okay. You're --

1           A       Close to top of the bed near the  
2       nightstand.

3           Q       Not -- The top of the bed is the other  
4       side; yes, sir.

5                   I'm going to put "Mom" here, okay?

6           A       Okay.

7           Q       Where is Mr. Voss?

8           A       He was setting, as I recall, on the other  
9       side of the bed about halfway in the middle.

10          Q       Up here?

11          A       Yes.

12          Q       Where were the policemen?

13          A       Pardon me?

14          Q       Where's the policemen?

15          A       One, I believe is setting at the end of  
16       the first bed. Well, no. On the side, but --

17          Q       This end?

18          A       Yes.

19          Q       Which one, do you think, Canfield or  
20       Yaran?

21          A       I'm sorry?

22          Q       Glasses? No glasses?

23          A       I don't even remember that.

24          Q       Okay. Cop. Cop One. Where's the other



1 cop?

2 A I'm not positive. I think he was setting  
3 at the same place on the other side of the bed, but I'm  
4 not sure of that.

5 Q All right.

6 A No. On the other side of the first bed.

7 Q Here?

8 A Yes.

9 Q All right.

10 A I believe so.

11 Q Okay. Very good. Okay. Door here,  
12 right? Windows?

13 A No. The windows are on the side of the  
14 bed furthest down.

15 Q Down here?

16 A Yes.

17 Q And then it's just a wall?

18 A Yes.

19 Q Okay. Wall here?

20 A Yes.

21 Q All right. Great. Okay. Nobody got up  
22 for two-and-a-half hours during this conversation?

23 A Only at which point they had asked to  
24 search the room.

1 Q Okay.

2 A We had kind of shrugged our shoulders,  
3 and they started looking through things. There was a  
4 large box there with my shoes and stuff in --

5 Q Uh-huh.

6 A And when he came to wanting to look in  
7 the dresser drawers, of which there were four, he did  
8 ask me to come over there.

9 Q Okay. They also, by the way, went over  
10 to the closet, which is near the front door, and looked  
11 through Steven's dirty clothes.

12 Oh, okay. Okay. Thank you very much.

13 MR. EDWARDS: I have no further  
14 questions, your Honor.

15 THE COURT: Ms. Duplin, you may be  
16 excused.

17 We will stand in recess then until --  
18 I'll say, 1:15. If you all could be ready about 1:15,  
19 that would be best. I am going to the law clerk/judges  
20 lunch over at Harrah's, and I'm not sure how long this  
21 is going to last; but, hopefully, we get out just a  
22 little after 1:00.

23 (Lunch Recess.)

24

1 RENO, NEVADA; FRIDAY, JUNE 8TH, 2001; 1:30 P.M.

2 --o0o--

3  
4 THE COURT: Good afternoon. You may be  
5 seated.

6 Mr. Edwards, you may call your next  
7 witness.

8 MR. EDWARDS: Your Honor, I'll call  
9 Deputy Clifford to the stand.

10 And, your Honor, I've spoken to  
11 Mr. Hatlestad, and he has no objection. May Mr. Voss  
12 have his hands released so he can take notes during  
13 this proceeding?

14 THE COURT: Any objection from law  
15 enforcement?

16 PRISON GUARD: No.

17 THE COURT: All right. I'd authorize you  
18 do that then.

19 MR. EDWARDS: Thank you.

20 THE COURT: Deputy Clifford, if you'll  
21 please step right up here, Ms. Lopez will swear you in.

22 (The clerk administered the oath.)

23 THE WITNESS: Yes, I do.

24

1 THE COURT: Please have a seat in the  
2 witness chair.

3  
4  
5 GARY CLIFFORD,  
6 called as a witness on behalf of the Plaintiff,  
7 first being duly sworn, testified as follows:  
8

9 DIRECT EXAMINATION

10  
11 BY MR. EDWARDS:

12 Q Would you state your name and spell your  
13 last name for the record.

14 A Gary Clifford, C-l-i-f-f-o-r-d.

15 Q Mr. Clifford, what's your occupation?

16 A Deputy sheriff.

17 Q And how long have you been a deputy  
18 sheriff?

19 A Twelve years.

20 Q Did there come a time that you served as  
21 a bailiff for Department 10 of the Second Judicial  
22 District Court?

23 A Yes, there was.

24 Q When was that?

1 A Approximately five, six years ago.

2 Q And how long did you serve in that role?

3 A Two years. No. I stand corrected on  
4 that. It was less than one year in Department 10.

5 Q And Judge Stone was the judge in that  
6 department at the time?

7 A Yes, he was.

8 Q Do you recall a trial in October of 1996  
9 involving this man, Steven Floyd Voss?

10 A Yeah. I vaguely recall his trial, yes.

11 Q What was your responsibility as bailiff  
12 with respect to Mr. Voss in terms of transporting him  
13 around the courthouse?

14 A He was -- Make sure he got to and from  
15 the custody, in-custody room, and basically just  
16 maintain security during the trial.

17 Q Now, do you have procedures and rules in  
18 place that you follow that aim to prevent members of  
19 the jury seeing a defendant in a custodial situation?

20 A Yes, we do.

21 Q What things do you do to safeguard that?

22 A Usually the Defendant is dressed out  
23 outside the presence of the jury, and he is -- He's  
24 escorted from that area to the courtroom outside the

1 presence of the jury.

2 Q Have you had an opportunity to review the  
3 two pages of the Petition in this case that I provided  
4 to you earlier today?

5 A Yes, sir. I did.

6 Q In there Mr. Voss makes certain  
7 allegations regarding being seen by members of his  
8 jury, or at least his jury pool during his trial while  
9 in either handcuffs or leg irons. Do you have any  
10 recollection of that?

11 A No, I don't.

12 Q If a defendant in your custody is seen by  
13 a juror while in jail garb, do you have some procedure  
14 that you employ to notify the court or district  
15 attorney or defense counsel?

16 A If it were to happen, a supervisor would  
17 be notified. The judge would be notified.

18 Q Do you recall making any such  
19 notification in this case?

20 A No, I don't.

21 Q Do you have any recollection of a jury  
22 seeing Mr. Voss while he was in custody?

23 A No, I don't.

24 Q Do you have any recollection about where

1 jurors would be standing outside the courtroom in  
2 Department 10 while the case was in recess?

3 A They would usually be inside the jury  
4 room, if the case was in recess.

5 Q What about those members of the jury that  
6 smoked?

7 A They were, at times, allowed to leave to  
8 certain areas in front of the building to -- to smoke  
9 cigarettes, but they were escorted out there.

10 Q How about if they wished to make a  
11 telephone call?

12 A That was a case-by-case basis. If it was  
13 an emergency -- Usually the Judge would have to  
14 approve that.

15 Q Was there a telephone located outside the  
16 courtroom, Department 10?

17 A There's pay phones down by the elevators,  
18 yes.

19 Q Was that pay phone near where you would  
20 be walking Mr. Voss to and from court?

21 A It's down by the elevators in the area  
22 which, if I'm remembering correctly, that he would have  
23 been escorted to -- would be in a room that would be  
24 just shortly -- just a short ways down the hall from

1 there, which is a little ways from that area where the  
2 telephones are.

3 Q When do you place a defendant who is in  
4 custody in restraints? Is it done in the courtroom, or  
5 is it done outside the courtroom?

6 A During a trial, if the defendant isn't in  
7 restraints, the restraints are removed inside the  
8 security room, and he'd be allowed to change, and then  
9 he would just be -- He would be escorted from that  
10 area to the courtroom.

11 Q Is there ever any time when he would be,  
12 the defendant would be in the hallway with the  
13 restraints on him?

14 A The only time that that would occur would  
15 be when he would be -- if he was being brought into the  
16 courthouse from -- from the jail in the morning. They  
17 all come in restraints, and then they would be taken to  
18 the security room. At that point, they would be  
19 changed out.

20 Q And how do you bring them up from  
21 downstairs? In the elevator?

22 A The transportation officers bring them  
23 up, and generally it's -- At that time, I believe it  
24 was -- They were brought into the garage area, and



1 they were taken up the elevator. There was an area  
2 down in the garage area, and they were brought up that  
3 way.

4 Q Is that the same elevator used by members  
5 of the public, and --

6 A Yes, it is.

7 MR. EDWARDS: I have no further  
8 questions, your Honor.

9 THE COURT: Mr. Hatlestad?

10 MR. HATLESTAD: Thanks, your Honor.

11

12

CROSS-EXAMINATION

13

14 BY MR. HATLESTAD:

15 Q Deputy Clifford, were you involved in the  
16 transports of Mr. Voss from the jail to the courthouse?

17 A No, sir; not from the jail to the  
18 courthouse.

19 Q When Mr. Voss is in the courtroom, are  
20 you present in the courtroom with him?

21 A If I was the bailiff at that time, yes,  
22 I would have been.

23 Q Do you remember anything about -- Well,  
24 do you remember being the bailiff in this courtroom

1 during this trial?

2 A Yes, I do.

3 Q Okay. So you're probably sitting over at  
4 the bailiff station to the left here?

5 A Yes.

6 Q Okay. So during a recess then, the  
7 jurors would be excused and brought into a room, and  
8 then you'd escort the defendant back to the holding  
9 cells. That is the usual protocol?

10 A Yes.

11 Q And then I guess when you're satisfied  
12 that the jurors are present in the jury room, you can  
13 bring them back, right?

14 A Yes.

15 Q And when you're transferring him back and  
16 forth, he's not in shackles or chain or handcuffs, is  
17 he?

18 A Yes.

19 Q You're essentially escorting him?

20 A Correct.

21 Q Are you holding onto him by the arm or  
22 anything like that?

23 A No.

24 Q Now when court is adjourned for the day

1 and Mr. Voss or a similarly situated prisoner is taken  
2 out of court, out of the courthouse, they go back to  
3 the jail, correct?

4 A Correct.

5 Q In the old days we had the jail over here  
6 in this building and it didn't create these problems,  
7 but did you take him down the stairway, or did you take  
8 him down the elevator?

9 A If it was a regular trial day, I wouldn't  
10 have taken him back to the jail. He would have been  
11 taken to the security room; and from that point, the  
12 transportation officers would have taken him.

13 Q So your responsibility ends at the  
14 holding cell, essentially?

15 A Correct.

16 Q Okay. Do you recall who provided  
17 clothing for Mr. Voss?

18 A No, I don't.

19 Q Did you ever escort him in this building  
20 to the courtroom in front of the jury in jail garb, or  
21 was he in plain clothes, every-day clothes?

22 A If there was a jury present, he would  
23 have always been dressed down in plain clothes.

24 Q Do you recall any time Mr. Voss directing

1 your attention that a prospective juror or juror had  
2 seen him outside the courtroom with you or in jail  
3 garb?

4 A Honestly, I don't recall.

5 Q Okay. And the protocol would be, had  
6 that event occurred, it would be brought to the  
7 attention of the trial judge?

8 A Correct.

9 Q Has that ever happened before?

10 A I couldn't say that it did.

11 Q Has it ever happened to you in your own  
12 experience?

13 A I can say that it did.

14 MR. HATLESTAD: Okay. Very good. Thank  
15 you.

16 THE COURT: Mr. Edwards, do you have  
17 additional questions?

18 MR. EDWARDS: No, your Honor. I do not.

19 THE COURT: Then, Deputy Clifford, you  
20 may be excused.

21 THE WITNESS: Thank you.

22 MR. EDWARDS: Your Honor, that concludes  
23 my presentation of witnesses at this time.

24 (Plaintiff rests.)

1 THE COURT: Then we'll turn it over to  
2 Mr. Hatlestad to proceed.

3 MR. HATLESTAD: Thanks, your Honor. I'll  
4 start with Deputy Hill.

5 THE COURT: Deputy, if you'll just stand  
6 right in this area, Ms. Lopez will swear you in.

7 THE WITNESS: Yes, your Honor.

8 (The clerk administered the oath.)

9 THE WITNESS: I do.

10 THE COURT: Please have a seat in the  
11 witness chair.

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STACY HILL,

called as a witness on behalf of the Plaintiff,  
first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HATLESTAD:

Q Would you please state your name and  
spell your last name.

A Stacy Hill, H-i-l-l.

Q And what's your occupation or profession?

A Deputy sheriff.

1 Q Were you working for the Washoe County  
2 Sheriff's Department in June 1996?

3 A Yes, I was.

4 Q What position were you holding at that  
5 time?

6 A I was a detective.

7 Q What department?

8 A In the property crimes section.

9 Q Okay. Did you have occasion to go out to  
10 the Cal Federal Bank with respect to someone trying to  
11 pass a check outside there or allegedly suspicious  
12 circumstances?

13 A Yes, I did.

14 Q What did you do?

15 A I was working on some other case filings  
16 in property crimes when Sergeant Pappas asked me to  
17 accompany him to the bank with some urgency to leave  
18 right at that moment, so I did, and on the way he  
19 explained that there was a subject trying to cash a  
20 check at that location under suspicious circumstances,  
21 and the fraud investigator wasn't available to assist.

22 Q Okay. Now, is Mr. Pappas your typical  
23 ride-along partner, or is he your superior?

24 A He was the sergeant in charge of property

1 crimes unit.

2 Q What were the suspicious circumstances  
3 that you had been told about?

4 A He explained that the person who the  
5 check had been made out to -- originally, the recipient  
6 of that had not been in contact with her coworkers, and  
7 that information had been related to him, and the check  
8 was being cashed without her being present.

9 Q Okay. Was the check for a sizable amount  
10 of money?

11 A Yes. I believe it was for \$5,000.

12 Q Okay. Do you recall about what time you  
13 got to the bank?

14 A I recall it was in the afternoon.  
15 I don't recall the time.

16 Q And when you got there, did you make the  
17 acquaintance of Mr. Voss?

18 A Yes, I did.

19 Q Is he here today?

20 A Yes, he is.

21 Q I guess, for the record, would you  
22 identify him so we're all clear.

23 A Mr. Voss is seated at the Defendant's  
24 table wearing the blue shirt.

1           Q     When you came into the bank, did you go  
2 in alone or with Sergeant Pappas?

3           A     I went in with Sergeant Pappas.

4           Q     Did you have to look around for Mr. Voss,  
5 or could you figure out where he was located?

6           A     I had no idea who he would be. One of  
7 the bank tellers pointed out who Mr. Voss was.

8           Q     Why don't you briefly explain how that  
9 came about. You came in the bank?

10          A     We entered the bank. Sergeant Pappas  
11 made contact with the person at the counter and  
12 identified himself, and that teller pointed us to  
13 Mr. Voss, who was, at that time, still in the bank  
14 discussing issues and waiting.

15          Q     Was someone seated at the table with him,  
16 a bank employee?

17          A     At that time, yes. He was in  
18 conversation with an employee.

19          Q     Did you and/or Sergeant Pappas engage  
20 Mr. Voss in some conversation?

21          A     Yes, we did.

22          Q     How did that happen?

23          A     We were in the bank for a couple of  
24 minutes before we actually made contact with him as



1 they were discussing their issues, and as there was a  
2 break, Sergeant Pappas introduced himself, and  
3 I introduced myself.

4 Q How did you do that?

5 A I told him that I was a detective with  
6 the Washoe County Sheriff's Office and asked if I could  
7 speak with him.

8 Q What did he say?

9 A He was agreeable. He was well-mannered,  
10 easy to get along with, and quite talkative.

11 Q What was the first type of questions you  
12 asked him?

13 A We asked him about the nature of the  
14 check, why he had it, where he had obtained it from.

15 Q Okay. Did he answer these questions?

16 A Yes, he did.

17 Q Did he at any time indicate to you that  
18 he wanted a lawyer or anything like that to talk to  
19 you?

20 A No. He did not.

21 Q How long did this conversation, this  
22 initial conversation with him last, would you say?

23 A The initial conversation without any  
24 break probably lasted 10 to 15 minutes. At that time,

1 he was wearing a military honored style jacket --

2 Q Uh-huh.

3 A -- with military markings, I believe,  
4 from the Fallon Naval Air Station. Sergeant Pappas is  
5 now a retired Marine Corp. officer and had a great deal  
6 of interest, so they did a lot of chatting of no  
7 consequence.

8 Q Did you sense any reluctance on Mr. Voss'  
9 part to talk to you about anything?

10 A No.

11 Q Did he ever -- Well, excuse me. During  
12 this initial 10-, 15-minute conversation ever ask if he  
13 could leave?

14 A No, he didn't.

15 Q All right. After this 10- to 15-minute  
16 conversation occurs, what is the next significant  
17 event, in your mind?

18 A The next significant event would have  
19 been Deputy Gazes' arrival.

20 Q Is he also a patrolman or investigator?

21 A No. He was a parole deputy at that time,  
22 and he responded to Pappas request for a uniformed  
23 officer to respond.

24 Q So Pappas wants a uniformed officer

1       there?

2               A       Yes.

3               Q       Do you know why?

4               A       Probably just to make the police presence  
5       known, that there's no question that we're law  
6       enforcement officials, detectives in the service of  
7       Sheriff's Office.

8               Q       This guy was not under arrest, was he?

9               A       No.

10              Q       What was the need to have this sort of  
11       showing?

12              A       That would have been simply for  
13       identification purposes at that time.

14              Q       Okay. All right. Now, after -- How do  
15       you spell Mr. Gazes' name, by the way?

16              A       G-a-z-e-s I believe is the correct  
17       spelling.

18              Q       Okay. After he arrived, what happened?

19              A       We ask him to get a statement form for  
20       Mr. Voss to fill out.

21              Q       Okay. You ask the other deputy,  
22       Mr. Gazes, to get a statement or ask for a statement  
23       from Mr. Voss; is that right?

24              A       Correct, correct.

1           Q     Were you present when the request was  
2     made?

3           A     Yes.

4           Q     How did he ask Mr. Voss for the  
5     statement? I mean, did you --

6           A     I don't have a direct recollection of  
7     exact wording.

8           Q     Let me put it this way. He's not going  
9     to give an oral statement. He's going to write one,  
10    correct?

11          A     Correct.

12          Q     Do you put a piece of paper in front of  
13    him and say, "Please fill that out," or words to that  
14    effect?

15          A     That would have been similar to what he  
16    would have said, yes.

17          Q     Do you remember at any time Mr. Gazes  
18    slapping a piece of paper down in front of Mr. Voss and  
19    telling him in no uncertain terms, or shall we say,  
20    "emphatically", to fill this out?

21          A     No.

22          Q     How do you think the request occurred, as  
23    you recall?

24          A     It would have occurred along the lines

1 of, "Would you fill out a statement for us?" This is  
2 the statement form. The top of the form is your  
3 information. The narrative portion would be your  
4 explanation of the situation.

5 Q Now, before it was actually filled out by  
6 Mr. Voss, did there come a time when you and Mr. Pappas  
7 were questioning Mr. Voss as he sat at the table in the  
8 bank?

9 A Yes, yes. We talked to him in the bank  
10 for some time, as we said.

11 Q Okay. Now, was he seated and you  
12 standing, or were all three of you seated, or do you  
13 remember?

14 A To my recollection, he would have  
15 probably been seated, and we would have been standing.

16 Q Okay. Do you recall not allowing  
17 Mr. Voss to answer your questions as they were  
18 completely asked?

19 A No.

20 Q Were you cutting him off, as you recall  
21 it?

22 A No.

23 Q Was Mr. Pappas cutting him off?

24 A No.

1           Q     During this 10- to 15-minute  
2 conversation, did you or Mr. Pappas threaten or promise  
3 Mr. Voss anything at all?

4           A     No.

5           Q     In the acquisition of the written  
6 statement, was he promised or threatened in any way  
7 prior to writing that statement out?

8           A     No.

9           Q     Based on what you could see and tell, was  
10 he doing this completely voluntarily?

11          A     Yes, he was.

12          Q     Okay. Now, did there come a time while  
13 you were present that Mr. Voss was requested to give  
14 his consent to search his car or his truck?

15          A     Yes.

16          Q     Who did that?

17          A     I believe I asked him for permission to  
18 search his truck.

19          Q     How did you do that?

20          A     I asked him if we could look through his  
21 truck for any property or belongings that might have  
22 belonged to Ms. Baxter.

23          Q     Okay.

24          A     And he gave us permission to do that.

1 Q Okay.

2 A And best as I can recollect, we found  
3 nothing that specifically belonged to Ms. Baxter, and  
4 there were some female makeup-type items, which he  
5 explained belonged to his mother.

6 Q Did you have Mr. Voss fill out a Consent  
7 To Search form or anything like that?

8 A I don't recall if a form was used or not.

9 Q But at least some oral request was made  
10 that he granted --

11 A Yes.

12 Q Okay. Did you note any reluctance on his  
13 part to grant that consent?

14 A No, no. He was very cooperative with us.

15 Q All right. After the search occurred,  
16 what happened?

17 A Well, we, during the course of this  
18 conversation, asked him at least twice if he'd come up  
19 to the station and give us a taped statement in a more  
20 lengthy format, and he declined to do that on each of  
21 at least two occasions. That's why we asked him if  
22 he'd do that for us.

23 Q Okay. The two occasions happened at the  
24 bank?

1 A Yes.

2 Q How much time separated the two?

3 A I would say one was during the initial  
4 contact, and another one probably 20, 30 minutes later.

5 Q Okay. And he basically declined, or was  
6 it more emphatic than that?

7 A No. He simply stated that he had other  
8 business to do that afternoon. He didn't want to go up  
9 to the station.

10 Q Okay. Just -- Just so I have this clear  
11 in my mind, did he give -- Did he say, "No," plus an  
12 explanation, or did you just discern that from other  
13 comments that he made?

14 A No. He gave an explanation.

15 Q He said, "No. I don't have time right  
16 now. Maybe another time"?

17 A Correct.

18 Q Was that the end of your encounter with  
19 Mr. Voss, or was there a further involvement at the Cal  
20 Fed Bank?

21 A No. The encounter we had ended after  
22 obtaining a statement and searching his vehicle. He  
23 declined to come to the station, and Sergeant Pappas,  
24 having completed other checks, advised Mr. Voss that he



1 didn't have a valid driver's license, and Mr. Voss  
2 chose to walk away from the area.

3 Q Okay. Now, is this the -- Is this the  
4 Cal Fed in Sparks or Reno?

5 A In Sparks. I believe it's on Prater.

6 Q Very good. Now, was there a point in  
7 time while you were at the Cal Fed Bank when Mr. Gazes  
8 was with Mr. Voss alone, or were you with Mr. Voss --

9 A No. There would have been times when he  
10 would have been alone with any one of us as we were  
11 discussing issues as we understood them with each  
12 other.

13 Q Okay. Now, had you given Mr. Gazes a  
14 directive that Mr. Voss cannot leave until we okay it?

15 A I did not, no.

16 Q Can you think of any reason that  
17 Mr. Gazes would tell Mr. Voss he can't leave until he  
18 has spoken with you and Mr. Pappas?

19 A I don't know of a specific reason other  
20 than speculation at this point that I could come up  
21 with.

22 Q Okay. But you did not give Mr. Gazes a  
23 directive --

24 A No.

1           Q       -- saying, "We will let Mr. Voss go, but  
2 not right now. We need more data. We want to hang  
3 onto him a little bit to finish up what we're doing  
4 here"?

5           A       That would not have been my position to  
6 do at that time, no.

7           Q       Was that Mr. Pappas, as you remember the  
8 matter?

9           A       Sergeant Pappas would have been the  
10 supervisor in charge of the scene, and that would be a  
11 decision for him to make.

12          Q       Do you know whether or not he made that  
13 decision?

14          A       No, I don't.

15          Q       Do you know whether or not Mr. Voss ever  
16 wanted to go outside and smoke a cigarette?

17          A       Oh, I know for a fact he was outside and  
18 smoked a cigarette while we were searching his truck.

19          Q       So your recollection is that he was  
20 outside. He was never -- He was not inside the bank  
21 the entire time seated with Mr. Gazes watching over him  
22 like a bird dog?

23          A       Oh, no.

24          Q       He actually came outside?

1 A Yes.

2 Q Smoked a cigarette out there?

3 A (Nodding.)

4 Q Okay. Do you recall -- Did you ever  
5 recall Mr. Voss indicating to you something along the  
6 lines of, "How long must I wait here?"

7 A I recall that he did explain he had other  
8 chores to take care of that afternoon. I don't recall  
9 the specific time question of that nature, no.

10 Q Do you recall what your response was to  
11 this sort of request? It sounds to me like, "We want  
12 to search your car," or, "We want to talk to you."

13 And his response is, "How long do I have  
14 to stay here? I have other things to do." What would  
15 be the response from the department, either you or  
16 something you heard?

17 A At that point, it would have been, "Just  
18 as soon as we can sort out the issues at hand and get  
19 you going, we'll do that."

20 Q Okay. Had Mr. Voss at all been placed in  
21 any physical restraints or under arrest, quote,  
22 unquote?

23 A No. He was not.

24 Q He was free to leave, in your mind?

1           A       Yes.

2           Q       Did you ever tell Mr. Voss words to the  
3 effect that he cannot leave until you talk to a  
4 detective?

5           A       No. I would have been one of the  
6 detectives on scene, and Sergeant Pappas would have  
7 been the other -- only other authority on scene.

8           Q       Did you or Mr. Pappas or did Mr. Pappas,  
9 in your presence, make a request to search 565, an  
10 address at 565 in Sparks, some residence that Mr. Voss  
11 had?

12          A       I do recall he asked Mr. Voss if we can  
13 accompany him home and search his residence, and  
14 Mr. Voss also declined the request.

15          Q       Was that before or after the search of  
16 his vehicle?

17          A       I believe that happened after the vehicle  
18 was searched.

19          Q       Okay. Okay. And his response was, "No.  
20 I don't live there anymore, right?

21          A       I don't recall the addresses. I know he  
22 had an apartment address that he had been moved out of  
23 and was staying in another address. I believe, in the  
24 Western Village.

1 Q Okay. When you were -- When you were  
2 having your discussions with Mr. Voss, were you going  
3 back and forth from Voss to Sergeant Pappas to relate  
4 information back and forth?

5 A Yes.

6 Q Okay.

7 A There were times when that would have  
8 been occurring on a regular basis between myself and  
9 Sergeant Pappas and Deputy Gazes.

10 Q What are these guys doing while you're  
11 doing all the work?

12 A Well, they were contacting records and  
13 CCIC and doing other miscellaneous functions.

14 Q I just wanted to make sure you were doing  
15 everything while these guys were just hanging out. So  
16 Mr. Voss provides a new address, it's Western Village,  
17 and you asked to search that?

18 A Yes. And that might have been the actual  
19 address Sergeant Pappas asked permission to look.

20 Q And Mr. Voss declined that, right?

21 A Yes.

22 Q Okay. Was Mr. Voss outside when the  
23 search of his vehicle occurred?

24 A Yes.

1 Q Was he being guarded by anyone?

2 A Deputy Gazes would have been outside with  
3 us, I'm sure.

4 Q Well, I mean, is he being guarded in a  
5 sense that if he tries to walk off, he's going to be  
6 stopped?

7 A No, no. He wasn't under any kind of  
8 restraint at that time.

9 Q Did you state or did you hear someone  
10 state that "You're free to leave. You've always been  
11 free to leave"?

12 A Sergeant Pappas may have made a comment  
13 to that nature.

14 Q Do you recall Mr. Voss saying something  
15 to the effect of, "Yeah, right"?

16 A No. I don't recall that.

17 Q Okay. Did Mr. Voss at any time try to  
18 interrupt the search saying "Hey, you guys, that's  
19 enough. I'm leaving." Something like that?

20 A No.

21 Q Okay.

22 A No. He did not.

23 Q Do you recall an event occurring between  
24 Mr. Pappas and Mr. Voss in which Mr. Pappas essentially

1       blew up or got angry, irritated?

2               A       No.

3               Q       Okay. Do you recall -- Did you or  
4       Mr. Pappas ever order Mr. Voss to sit down inside the  
5       bank?

6               A       No.

7               MR. HATLESTAD: Okay. Thank you.

8               THE COURT: Mr. Edwards?

9

10                               CROSS-EXAMINATION

11

12       BY MR. EDWARDS:

13               Q       Detective Hill, when you first arrived at  
14       the bank, were you in uniform?

15               A       No.

16               Q       Did you have a firearm on you?

17               A       Yes.

18               Q       Was it visible to those standing there?

19               A       It would have been concealed under a  
20       jacket.

21               Q       Did you have a badge?

22               A       Yes.

23               Q       Did you show your badge to Mr. Voss?

24               A       Yes. I'm sure both Sergeant Pappas and

1 myself would have shown him identification including a  
2 badge.

3 Q And at that point you, I think, testified  
4 that you asked him if you could speak with him?

5 A Yes.

6 Q And why did you want to speak with him?

7 A To clarify the situation surrounding this  
8 check.

9 Q Was he a suspect in some kind of  
10 wrongdoing at that point?

11 A No. At that point, we had a suspicious  
12 set of circumstances.

13 Q When did Mr. Voss, if any time, become a  
14 suspect during this time at the bank?

15 A During that time at the bank, we did not  
16 establish any crime had been committed, so he would not  
17 have been a suspect.

18 Q Did you determine that it was important  
19 to search his vehicle because he wasn't a suspect,  
20 or -- Why did you search his vehicle if he wasn't a  
21 suspect?

22 A Mostly to look for any additional items  
23 or evidence that would lead us to believe that he was a  
24 suspect or that the story he was giving us was in fact



1 accurate and true.

2 Q Is that why you wanted to search his  
3 residence, as well?

4 A Yes.

5 Q And all of that was to determine whether  
6 or not he had any involvement in wrongdoing relative to  
7 this check?

8 A Yes.

9 Q Was there any consideration of any other  
10 criminal wrongdoing that you suspected him on?

11 A At that time, Sergeant Pappas simply had  
12 the information concerning Ms. Baxter not being in  
13 contact with her family and friends and that this  
14 check, allegedly, was being passed without her  
15 authority.

16 Q So was Mr. Voss detained when you arrived  
17 there? Did you consider him detained?

18 A No. He was perfectly cooperative and  
19 willing to explain that situation to us.

20 Q Did anyone ever tell him that he was free  
21 to go?

22 A I'm sure Sergeant Pappas told him that at  
23 least on one occasion.

24 Q When was that, at the conclusion of the

1 interview and the search of the car?

2 A I couldn't guarantee at what point, but  
3 that would probably be accurate.

4 Q So at the conclusion of searching and  
5 talking to him, he was told he was free to leave?

6 A Oh, absolutely at that time.

7 Q Okay. Did you tell him when you first  
8 arrived at the bank to sit down?

9 A No. I wouldn't have told him to sit  
10 down. I may have asked him.

11 Q How would you have said that? Would you  
12 say, "Please sit down"? Is that --

13 A I would have probably said something  
14 of -- in the nature of, "Would you please have a seat  
15 over here and we'll discuss this with you, and we'll  
16 start sorting this out."

17 Q Did you tell him that he didn't have to  
18 say anything to you if he didn't want to?

19 A I don't recall.

20 Q That's not a common practice, I imagine,  
21 in investigative work you initially tell a suspect that  
22 he doesn't have to talk to you; is that right?

23 A It's not a common practice, but it does  
24 happen, also.

1           Q       Do you recall if it happened in this  
2 case?

3           A       I don't recall.

4           Q       Did anyone, yourself included, from the  
5 police department or -- excuse me, the sheriff ever  
6 touch Mr. Voss during this encounter?

7           A       Not that I recall, no.

8           Q       Why, again, was a uniformed officer  
9 brought to the scene?

10          A       Well, like I said, that wasn't my  
11 decision, but Sergeant Pappas did ask for the presence  
12 of a uniformed officer.

13          Q       What could the uniformed officer perform  
14 that you weren't already doing?

15          A       Well, simply the presence of a uniform  
16 and further identification.

17          Q       So, authority. Is that --

18          A       You could assume that. However, I don't  
19 think that was the purpose of it. It's quite possible  
20 Sergeant Pappas was hoping a uniformed officer would  
21 beat us to the bank, since we were responding from Parr  
22 Boulevard.

23          Q       Was the conversation Mr. Voss had with  
24 both you and Detective Pappas calm at all times?

1 A Yeah. It was a very calm.

2 Q Were there ever any raised voices by  
3 anyone?

4 A I don't recall that, no.

5 Q Tell me about the execution of this  
6 statement that Mr. Voss gave to you. Did you place the  
7 paper in front of him?

8 A I believe Deputy Gazes did.

9 Q And where were you standing relative to  
10 Mr. Voss at that time?

11 A As I recall, he was seated near a small  
12 coffee table, and I was in that main bank lobby area.  
13 I don't recall exactly where.

14 Q And did someone sit with Mr. Voss through  
15 the execution of that statement?

16 A Deputy Gazes was probably present with  
17 him throughout the entire writing of that statement.

18 Q Was there ever a time when Mr. Voss was  
19 not accompanied by a police officer?

20 A I believe one of us would have probably  
21 been either with him or engaged in a conversation with  
22 him during the time we were there.

23 Q Detective Pappas, I believe you  
24 testified, mentioned that -- found that Mr. Voss had no

1 driver's license --

2 A Correct.

3 Q -- is that right?

4 Did he state, "This is the only favor I'm  
5 going to do for you," to Mr. Voss?

6 A I don't recall that being said.

7 Q Do you recall any discussion of favors?

8 A No.

9 Q Did you explain to Mr. Voss why you  
10 wanted to search his house?

11 A I'm sure that was explained in the same  
12 manner as his truck, to look for any other items that  
13 would show a connection to this check one way or the  
14 other.

15 Q Was there ever a need to admonish  
16 Mr. Voss of his Constitutional rights before you spoke  
17 to him, in your mind?

18 A None whatsoever. He was never in  
19 custody.

20 Q He was free to go at all times?

21 A Yes.

22 Q But no one told him that until the end of  
23 the interview?

24 A Possibly before that, but certainly at

1 that time.

2 MR. EDWARDS: No further questions.

3 THE COURT: Anything else, Mr. Hatlestad?

4 MR. HATLESTAD: Just very briefly.

5

6

REDIRECT EXAMINATION

7

8 BY MR. HATLESTAD:

9 Q When you were in the bank with Mr. Voss,  
10 were there patrons in the presence --

11 A Yes.

12 Q -- public --

13 A Yes.

14 Q -- including bank employees?

15 A Bank employees, other people doing  
16 business.

17 Q Was the show of authority for Mr. Voss'  
18 control, or was that for crowd control?

19 A That could have been for assistance with  
20 the people in the bank, as well.

21 Q Let me put it bluntly. Was the person of  
22 a uniformed officer to keep Mr. Voss on the scene?

23 A No.

24 MR. HATLESTAD: All right. Thank you.

## 1 RE CROSS-EXAMINATION

2 BY MR. EDWARDS:

3 Q Why would there be a need for crowd  
4 control?5 A Well, again, you're asking me to  
6 speculate to a decision I didn't make, but in a public  
7 environment that's close, like a bank, quite often you  
8 get bodanskies, people that want to know what's going  
9 on, people that want to come over and help, so on and  
10 so forth. That would be the nature of the crowd  
11 control, I believe, that is referred to here.12 Q Well, the bank had security officers,  
13 correct?

14 A I don't recall bank security.

15 MR. EDWARDS: No further questions.

16 THE COURT: All right. Deputy Hill, you  
17 may be excused.

18 THE WITNESS: Thank you, your Honor.

19 MR. HATLESTAD: Detective Canfield.

20 THE COURT: Sir, if you'll please step  
21 right into this area, Ms. Lopez will swear you in.

22 (The clerk administered the oath.)

23 THE WITNESS: I do.

24 THE COURT: Please have a seat in the

1 witness chair.

2

3

LARRY CANFIELD,

4

called as a witness on behalf of the Defendant,

5

first being duly sworn, testified as follows:

6

7

DIRECT EXAMINATION

8

9

BY MR. HATLESTAD:

10

Q Sir, would you please state your name.

11

A Larry Canfield, C-a-n-f-i-e-l-d.

12

Q What do you do for a living?

13

A I'm a detective for the Washoe County

14

Sheriff.

15

Q How long have you been a detective? How

16

long have you been a sheriff?

17

A Twenty-three years.

18

Q How long have you been a detective?

19

A For approximately 15 years.

20

Q Do you achieve that position on the basis

21

of merit and promotion?

22

A Pretty much.

23

Q Very good. Were you working as a

24

detective in the late spring, early summer of 1996?



1 A Yes, I was.

2 Q Did you get involved in the investigation  
3 of Mr. Voss?

4 A Yes, I did.

5 Q Did you ever meet Mr. Voss?

6 A Several times.

7 Q Okay. When was the first time you met  
8 him?

9 A I believe it was on the night of  
10 June 14th, 1996, at his motel room at Western Village.

11 Q Do you remember about what time of day it  
12 was?

13 A I believe it was between 9:00 and  
14 10:00 p.m.

15 Q Why did you go there?

16 A I went there. I was investigating a  
17 missing person by the name of Beverly Baxter, and he  
18 was -- had been known as a friend of hers, and also  
19 because earlier in the day detectives had investigated  
20 a call from a bank about a check --

21 Q Uh-huh.

22 A -- that Mr. Voss was trying to cash, and  
23 so we basically went there to talk to him and try to  
24 get information about Beverly Baxter.

1 Q All right. Did you go there alone?

2 A No. I didn't.

3 Q Who did you go with?

4 A John Yaran.

5 Q He's a detective, too, isn't he?

6 A That's correct.

7 Q How was it you made contact with the  
8 occupant of the residence of Western Village?

9 A We knocked on the motel room door and  
10 identified ourselves, showed identification, and asked  
11 to talk to Steve.

12 Q Did you identify yourselves sort of like  
13 Knock, knock. "We're police officers," and then the  
14 door opens, or is it, knock, knock, door's open, "We're  
15 police officers"?

16 A I think we knocked on the door and they  
17 opened it up, and we showed I.D. and told them who we  
18 were.

19 Q Did you identify yourself as homicide  
20 detectives?

21 A No. Probably just as detectives with the  
22 Washoe County Sheriff.

23 Q Okay. Next in this context were police  
24 officers. We'd like -- or "Sheriffs deputies. We'd

1 like to talk to Steven Voss," right?

2 A Yes.

3 Q How many occupants in the room?

4 A Steven Voss and his mother, Mary Duplin.

5 Q Who answered the door?

6 A I believe Steven did.

7 Q You sure she didn't answer the door?

8 A I'm not positive.

9 Q Okay. Is it possible that she answered  
10 the door and Mr. Voss was seated on the bed?

11 A That's possible.

12 Q Would you please characterize the way you  
13 came into the room. Let me give you an example. Did  
14 you barge in, stroll in?

15 A Walked in.

16 Q Okay. Did you walk in shoulder to  
17 shoulder with Mr. Yaryan?

18 A No. Wouldn't have been room. One behind  
19 the other.

20 Q That is no possibility?

21 A No.

22 Q So you enter essentially single file?

23 A Yes.

24 Q Who goes in first?

1           A       I believe I did.

2           Q       And then you guys take a seat. Mr. Voss  
3 is seated, and his mother is seated, right?

4           A       That's correct.

5           Q       And then you basically interview him, or  
6 for lack of a better term, interrogate him?

7           A       To me, because of where we were at, in  
8 the motel room, it was more or less just talk to him.

9           Q       Would you characterize it as  
10 conversational?

11          A       Yes.

12          Q       To my right we have a very primitive  
13 drawing of the motel room. I'll tell you, this is the  
14 door.

15          A       Yes.

16          Q       This is Ms. Voss, Steven Voss. This  
17 could be you. This could be you or Mr. Yaryan. Can  
18 you tell us where you were seated during this  
19 interview, or if that's inaccurate, let me know that,  
20 too.

21                   THE COURT: Maybe we ought to just let  
22 the rectangles represent the beds.

23                   THE WITNESS: Beds.

24                   MR. HATLESTAD: I said it was primitive.

1 BY MR. HATLESTAD:

2 Q These are beds. This is a room.

3 A I don't believe I was the closest one to  
4 him just because I walked in first and would have  
5 walked further into the room.

6 Q Okay. Is the seating arrangement right,  
7 and you, Steven Voss, and Yaryan are on the same bed  
8 there?

9 A Yeah. I really don't recall.

10 Q I want to put a question mark there then.  
11 Do you think Mr. Voss was seated in the other bed?

12 A No. I believe that was where he was  
13 seated.

14 Q Was he kind of seated on the bed in a  
15 side-saddle sort of way?

16 A Yes.

17 Q Kind of like that?

18 A Yes. I believe so.

19 Q And you would have been -- If this is  
20 you, then your legs would probably be sitting out here.  
21 You're not really a facial -- you're not in his face  
22 speaking. You're basically to his side?

23 A Yes.

24 Q Okay. How long does this

1 question-and-answer incident take?

2 A I believe for at least thirty minutes.

3 Q Okay. What kind of questions were you  
4 asking?

5 A We asked the last time he had seen  
6 Beverly Baxter, the last time he was with her. We  
7 asked him to talk to us about this -- about the check.  
8 We talked about how, at the apartment they'd been at,  
9 there had been a fire and they were being put up there  
10 by the Red Cross. They talked about they put an offer  
11 on a mobile home in Sun Valley.

12 We asked where would -- about Beverly  
13 Baxter, where did she like to go to. In other words,  
14 apparently, he knew of bars and other locations that  
15 she may have frequented, so we were trying to get any  
16 idea where she would be at.

17 Q Okay. And then in the course of this  
18 discussion, did you ever give Mr. Voss a Miranda  
19 warning?

20 A No.

21 Q Was he, in your mind, under arrest or  
22 detained against his will?

23 A No.

24 Q Had there been any indicia or

1       manifestations consistent with being under arrest?

2               A       No.

3               Q       No handcuffs, shackles --

4               A       No.

5               Q       No gun holding?

6               A       No.

7               Q       None of that stuff, right?

8               A       No.

9               Q       Did you ever promise him or threaten him  
10       in any way?

11              A       No.

12              Q       Did you ever block the door?

13              A       No.

14              Q       Did you come to the scene with a  
15       uniformed officer, or by yourselves?

16              A       By ourselves.

17              Q       And after you -- You think it took about  
18       thirty minutes?

19              A       Yes.

20              Q       After the thirty minutes were up, did you  
21       request permission to search the room?

22              A       Yes.

23              Q       Did anything happen between the end of  
24       the interview and request to search the room that would

1 be important here? Sorry. Is that --

2 A It was all in the same context.

3 Q Mr. Voss says, what? He gives consent,  
4 but how did he phrase it?

5 A You know, I'm not really sure how he  
6 phrased it. We also asked permission from Mary Duplin,  
7 too, because she was on the registration.

8 Q Okay. And essentially both agreed or  
9 allowed you to go forward?

10 A Yes.

11 Q Now, during the questioning of Mr. Voss,  
12 did he interrupt you and invoke any of his rights?

13 A No.

14 Q How about Ms. Duplin, did she interrupt  
15 and say, "Quit badgering my boy" or anything like that?

16 A No.

17 Q There wasn't any reason to do that, was  
18 there?

19 A No.

20 Q Okay. You conduct your search of the  
21 room. You don't find anything that seizeworthy, if you  
22 will, right?

23 A Correct.

24 Q What happens next?



1           A       We asked him if he'd be willing to come  
2 to the Washoe County Sheriff's Office to talk with us.

3           Q       Okay.

4           A       He said he was tired and didn't feel it  
5 was that important to do it tonight.

6                   We said, "Oh, how about sometime  
7 tomorrow? We'll make ourselves available any time you  
8 want."

9                   And his mother spoke up and said that  
10 they had some things to do and said, "How about  
11 12:00 noon,"

12                   And we said, "That's fine," and we left.

13           Q       Now, would you characterize your request  
14 for this interview as being repeatedly requested, or it  
15 was a one-time sort of thing?

16           A       He might have said, "Why," and we would  
17 have said, "Well, because we'd like to, you know, sit  
18 down and do a tape recording of it. We want to  
19 investigate this disappearance of Beverly Baxter, and  
20 this is normally how we do our interviews."

21           Q       Did you tell him that he didn't have to  
22 come down to the station the next day?

23           A       No. We asked him if at any time it would  
24 be -- you know, if they would be willing to come.

1 Q You were just interested in talking to  
2 him. "How's tomorrow?"

3 And his mother says, "Noon"?

4 A Yes.

5 Q How did he respond to that? "Okay with  
6 me"?

7 A Yes.

8 Q And then you guys leave?

9 A That's correct.

10 Q Okay. So Mr. Voss comes to the Sheriff's  
11 Department, Sheriff's Office, the following day around  
12 noon, right?

13 A That's correct.

14 Q Where were you when he arrived, or were  
15 you summoned to him and then brought in someplace?

16 A I was on my way to the office and parked  
17 in the parking lot; and as I was walking to the front  
18 doors, they were walking across the parking lot to come  
19 to the front doors, so we actually just kind of timed  
20 it -- came at the same time.

21 Q You weren't summoned at all. You just  
22 happened to be there?

23 A Right.

24 Q Were you coming down to meet them on the

1 off-chance they might be there?

2 A No.

3 Q You were going other places?

4 A No. I was coming in to work.

5 Q So Yaryan and you go in?

6 A Yes.

7 Q Was Yaryan present for this interview at  
8 the Sheriff's Department?

9 A Yes.

10 Q He was already present at the detectives'  
11 office?

12 A He was already upstairs.

13 Q And then you conduct the interview?

14 A Yes.

15 Q Was his mother with him the entire time,  
16 the interview?

17 A Yes, she was.

18 Q All right. Now, before this interview  
19 started, did you give him a Miranda warning?

20 A No.

21 Q Did you indicate in any way that he was  
22 not free to leave or indicate on the contrary that he  
23 was free leave? One or two, what was the initial type  
24 of exchange?

1           A       I believe we advised him that he was free  
2 to leave at any time.

3           Q       Was this tape-recorded?

4           A       Yes, it was.

5           Q       Including this part you just mentioned?

6           A       That part would probably have been  
7 video-taped, but not specific audio tape.

8           Q       And I think the tape is in evidence.

9           A       Yes.

10          Q       I think. All right. Just for  
11 completeness, Detective Canfield, did he execute any  
12 kind of a waiver form, or did you present him with any  
13 kind of a waiver form to fill out?

14          A       No.

15          Q       How long did this interview last?

16          A       Well, we interviewed his mother with him  
17 there, first.

18          Q       Started with Mrs. --

19          A       With Mary Duplin, and that probably was  
20 thirty minutes, maybe forty minutes; and then with him  
21 there, we -- or with her still there, we interviewed  
22 Steven.

23          Q       Okay. How long do you think that lasted?

24          A       I'd have to say probably another forty

1 minutes or so.

2 Q Okay. At any time did Mrs. Duplin say,  
3 "Do we have -- " anything to the effect of, "Do we have  
4 to stay here? Why are you asking these questions," any  
5 sort of objection, anything that would manifest a lack  
6 of willingness to remain?

7 A No.

8 Q Anything from Mr. Voss on that score?

9 A No.

10 Q Did Mr. Voss ever ask you whether he was  
11 free to go at any time?

12 A I don't recall if he did or not.

13 Q Again, for completeness, did you promise  
14 or threaten him with anything while he was up with you  
15 and Mr. Yaryan during this interview?

16 A No. I did not.

17 Q Okay. Did you ever refer to him as a  
18 suspect?

19 A No.

20 Q Now, you characterized the interview at  
21 the motel room as "conversational." How would you  
22 characterize this?

23 A More than as an interview, more than  
24 conversation, but it's really fact-finding. They're

1     trying to get at as much information surrounding the  
2     disappearance of Beverly Baxter as we could.

3             Q     Did it take on a tone of being  
4     confrontational?

5             A     No.

6             Q     Of getting in one's face? Did that  
7     happen?

8             A     No.

9             Q     All right. After the interview with  
10    Mrs. Duplin occurs, then Mr. Voss' interview is  
11    conducted. What happened at the conclusion of the  
12    Voss' interview?

13            A     I believe we probably gave him our  
14    business cards, and they left.

15            Q     Did you request that they appear anywhere  
16    else --

17            A     No.

18            Q     -- as you had done with this instance?

19            A     No.

20            Q     All right. Now, what was the next  
21    contact you had with Mr. Voss? The evidence suggested  
22    that it was at the Western Village when Mr. Voss was  
23    about to eat dinner. Is that correct?

24            A     Yes. That would have been about --

1 I believe it was -- I believe it was on the 17th, and  
2 we had search warrants for the cars and the motel room.

3 Q All right. When you came to the Western  
4 Village, was Mr. Voss actually in a restaurant at that  
5 time? Where did you meet him?

6 A I believe he was coming out of the  
7 restaurant.

8 Q Coming out, so you didn't interrupt his  
9 meal?

10 A No.

11 Q Did you tell him words to the effect,  
12 "Sir, we have search warrants for your place. You're  
13 coming with us to go to execute these warrants,"  
14 something like that?

15 A I would have advised him we had the  
16 search warrants for his room and so forth and, also, a  
17 seizure order for him.

18 Q Okay. And that's why he came, or  
19 essentially -- Is that why he came? We'll put that  
20 directly. Is that why he came?

21 A I believe so.

22 Q You did not need him to execute the  
23 search warrants, did you?

24 A No.

1 Q Okay. Did you escort Mr. Voss out in  
2 handcuffs, restraints, or anything like that?

3 A No.

4 Q Did you grab him above the elbow like you  
5 might escort someone out?

6 A No.

7 Q Did you touch him?

8 A I don't believe so.

9 Q How about Yaryan, did he touch him?

10 A I don't think so.

11 Q Did you show him any search warrant or  
12 seizure orders at that time?

13 A I believe I would have shown him. We  
14 like to advise people what we have is a search warrant  
15 and what it's for. And then, of course, the seizure  
16 order, he gets copies of everything, and we would show  
17 that to him to show that we have the legal right to do  
18 that.

19 Q Now, did you take Mr. Voss to the --

20 A I think you walk him by, because his  
21 mother stayed, and he went with us.

22 Q Okay. Okay. So while the search warrant  
23 is being executed, Mrs. Duplin is not present?

24 A Right.



1 Q You're taking him to Parr?

2 A Yes.

3 Q And they're executing the seizure order;  
4 is that right?

5 A That's correct.

6 Q Did he demand to be left with his mother  
7 at that time? "I want to stay with my mom"?

8 A I don't think so. I don't recall that.

9 Q How about Mrs. Duplin, did she say,  
10 "You're not going without me" or anything like that?

11 A No.

12 Q Was Yaryan in the car, patrol car or  
13 sheriff's vehicle, waiting for you to take Mr. Voss  
14 away, or did he come with you to the restaurant?

15 A He had stayed at the room, and it was me  
16 and somebody else that had met with Mr. Voss and Mary  
17 Duplin at the restaurant.

18 Q Okay. Did Mr. -- Did Mr. Yaryan go with  
19 you and Mr. Voss to the Sheriff's Department?

20 A Yes.

21 Q At any time did Mr. Yaryan say anything  
22 to the effect of, "We got you now"?

23 A No.

24 Q Did you say that?

1 A No.

2 Q Okay. So the three of you head on up to  
3 Parr Boulevard and execute the seizure order?

4 A That's correct.

5 Q And you explain to him why you're going  
6 there, and where you're going, right?

7 A Yes.

8 Q Now, on this ride, was there any  
9 discussion between the three of you with respect to  
10 this case that might be considered incriminating type  
11 of evidence? Were you asking questions designed to  
12 elicit a response during this ride?

13 A No.

14 Q Did you ask him any questions at all, or  
15 just chitchat?

16 A I think it was just chitchat.

17 Q How long were you -- Do you recall  
18 approximately how long it took to execute the seizure  
19 order?

20 A It was less than half an hour; but  
21 without reviewing my reports, I'm not really sure.

22 Q Did Mr. Walker, Egan walker, the trial  
23 prosecutor in this case, arrive, or was he at the  
24 station at some point during this encounter?

1 A Yes, he was.

2 Q About where, in the chronology, would you  
3 say that happened?

4 A Actually, I think -- I think he  
5 accompanied us in the detective car up to Parr  
6 Boulevard.

7 Q Okay. I thought it was just you, Yaryan,  
8 and Voss?

9 A I think Mr. Walker was with us.

10 Q He was there?

11 A Yes.

12 Q All right. Did Mr. Walker say anything  
13 to Mr. Voss about Mr. Voss during this ride?

14 A I don't believe so.

15 Q Okay. All right. After the blood draws  
16 were accomplished, and I guess there was hair taken and  
17 the like --

18 A Yes.

19 Q During this period of time, was Mr. Voss  
20 in restraints?

21 A No.

22 Q Was he guarded by anybody?

23 A No.

24 Q Okay. What happened next?

1           A       As we walked out of the blood room, you  
2       come upstairs and walk through the value control area  
3       coming to the main lobby of the sheriff's office, and  
4       we asked him if he would be willing to come upstairs  
5       and answer a few other questions that we had.

6                       And he said he was worried about his  
7       mother.

8                       We said, there were detectives with her  
9       at that time still at the motel.

10                      And he said, "Okay. I'll come up and  
11       talk with you."

12           Q       Did he invoke his right to counsel at  
13       that time?

14           A       No.

15           Q       What happened next?

16           A       As soon as we got to the interview room,  
17       Detective Yaryan read him his rights per Miranda. He  
18       signed his IA form saying he understood his rights and  
19       that his rights were read to him and he agreed to speak  
20       with us.

21           Q       And he gave a statement at that time?

22           A       Yes.

23           Q       Did he invoke his right to counsel or  
24       right to remain silent during that portion of your

1 contact with him?

2 A No.

3 Q Did he ever invoke his right to counsel  
4 on this encounter --

5 A No.

6 Q -- that evening?

7 A No. He did not.

8 Q Okay. Did you witness an altercation  
9 between Mr. Voss and Mr. Yaryan?

10 A No.

11 Q Was there occasion when Mr. Yaryan became  
12 upset because he wanted Mr. Voss to answer questions  
13 and Mr. Voss was essentially done answering questions?

14 A No.

15 Q Did Mr. Yaryan in your presence indicate  
16 to Mr. Voss that, "We have problems with your  
17 statements"?

18 A I don't recall, but that's something that  
19 may have been said.

20 Q Perhaps within your earshot?

21 A Yes.

22 Q At the conclusion of this interview, was  
23 Mr. Voss released?

24 A We took him back to his -- to the Western

1 Village.

2 Q Okay. Did something happen before you  
3 took him back to Western Village?

4 A During the -- I want to say the  
5 interview was -- You know, he stated he was tired and  
6 didn't want to talk to us anymore and wanted to go  
7 home, and we said, "Okay. And we took him home."

8 Q Mr. Yaryan didn't get upset at that time?  
9 That is how you recall --

10 A I don't recall him being upset, no.

11 MR. HATLESTAD: All right. Thank you.

12 THE COURT: Mr. Edwards, if you'd like to  
13 ask questions?

14 MR. EDWARDS: Yes, please, your Honor.

15

16 CROSS-EXAMINATION

17

18 BY MR. EDWARDS:

19 Q Mr. Canfield, you were the lead detective  
20 on this case; is that correct?

21 A That's correct.

22 Q And when you showed up at Mr. Voss' room  
23 at the Western Village, what were you there to  
24 investigate?

1           A       The disappearance of Beverly Baxter.

2           Q       Was Mr. Voss suspected in some wrongdoing  
3       at that point?

4           A       No.

5           Q       When you knocked on the door, were you  
6       invited in by Ms. Duplin or Mr. Voss?

7           A       Yes.

8           Q       What did they say to you, specifically?  
9       "Please come in", or, "Welcome -- "

10          A       I think we said, "We'd like to come in  
11       and talk to you."

12                   They said, "Sure, come on in," and let us  
13       in.

14          Q       And you sat on Mr. Voss' bed at that  
15       point?

16          A       Yes. I don't remember which position as  
17       far as, you know, the drawing there, but --

18          Q       Did you have a firearm on you at that  
19       time?

20          A       Yes.

21          Q       How about your partner, did he have a  
22       firearm?

23          A       Yes.

24          Q       Were those visible to Mr. Voss and

1 Ms. Duplin?

2 A No. Those wouldn't have been.

3 Q How about your badge? Would that have  
4 been visible?

5 A The badge, it usually is in front to  
6 where you would have that visible, but it may have been  
7 covered with a coat.

8 Q Did you show your badge to any one of  
9 these people?

10 A I usually show my identification.

11 Q Does that have a badge with it?

12 A It's got a picture with a badge on it.

13 Q Okay.

14 A It's this exact one right here.

15 Q Okay. All right. Did you bring a  
16 uniformed officer from Sparks Police Department with  
17 you to the door?

18 A No.

19 Q Was there a marked car -- Not marked  
20 car, a vehicle with police identification parked  
21 outside the door?

22 A No.

23 Q Did you tell Mr. Voss when you sat down  
24 in his bed that he didn't have to talk to you if he



1 didn't want to?

2 A That's something I normally say. I don't  
3 know if I said that to him or not.

4 Q Okay. And you wanted him to give you a  
5 formal interview at some point during conversation,  
6 correct, down at the station on video tape?

7 A Yes, yes.

8 Q Did you consider him a suspect at any  
9 time that you had this conversation with him?

10 A No.

11 Q When did you consider Mr. Voss a suspect  
12 in any criminal wrongdoing?

13 A I believe a couple -- At least two days  
14 later, after we'd been interviewing several people  
15 involved in the case and obtaining information, which  
16 would have been the information I used to obtain the  
17 search warrants and the seizure order.

18 Q Now, when was the search warrant and  
19 seizure order relative to the interview you conducted  
20 in his bedroom?

21 A The interview conducted in his bedroom  
22 was on the 14th. The search warrants and seizure  
23 orders was done on the -- late on the 17th.

24 Q So on the night that you were in his

1 bedroom interviewing him, did you not consider him a  
2 suspect?

3 A No. I did not.

4 Q Why did you want to search the bedroom?

5 A To see if there was anything that  
6 belonged to Beverly Baxter.

7 Q Did you conduct a search of his car as  
8 well that day, his vehicle, his truck?

9 A No.

10 Q What's your interview strategy, when  
11 you're dealing with somebody who you don't consider a  
12 suspect? Are attempting to elicit information of an  
13 inculpatory nature? Are you looking for incriminating  
14 information? Are you searching for it?

15 A No. We're just searching for as much  
16 general information as we can obtain.

17 Q And when you conducted the consent search  
18 of their room, is that what you were doing?

19 A Yes.

20 Q Searching for general information?

21 A Yes.

22 Q So what changed between the time you  
23 conducted the search of their room pursuant to their  
24 consent and you went to get a search warrant to do it

1 all over again two days later?

2 A Information that we gained from other  
3 witnesses involved in the case, bank tellers in the  
4 case, friends of Beverly Baxter's, her landlord, things  
5 like that that gave us information.

6 Q So at the time you executed the search  
7 warrant and the seizure order, Mr. Voss was considered  
8 a suspect; is that correct?

9 A That's correct.

10 Q That's when you took him down to the  
11 station to conduct a seizure order?

12 A Yes.

13 Q And when you transported him, did you  
14 place him this custody?

15 A No.

16 Q It's not policy to transport suspects  
17 with handcuffs on?

18 A No. Only if they were in custody; in  
19 other words, under arrest.

20 Q Okay. Did you tell him he had any choice  
21 to not go with you if he so chose?

22 A If he'd -- I'm not sure if I explained  
23 it to him or not, but if he'd ask, I would have told  
24 him, "This is a seizure order, and you don't have a

1 choice."

2 Q So you were going to take his person to  
3 the jail, regardless of whether he agreed to come  
4 quietly or not?

5 A That's correct.

6 Q Why did you not give him Miranda  
7 admonishment at the jail interview, when you conducted  
8 the interview at the jail?

9 A Which?

10 MR. HATLESTAD: Which one?

11 MR. EDWARDS: Okay. Fair question.

12 BY MR. EDWARDS:

13 Q After you interviewed him on his bed --

14 A Right.

15 Q -- you requested that he come down and  
16 give another interview to you, right?

17 A That's correct.

18 Q And apparently you had not received  
19 enough information at that point to determine whether  
20 or not he was a suspect?

21 A That's correct.

22 Q Okay. So you wanted further information  
23 from him to determine whether or not he would be  
24 considered a suspect?

1           A       Not just that, but to the whereabouts and  
2 the information, background, history about Beverly  
3 Baxter, the missing person.

4           Q       And you asked him to come down to the  
5 jail to provide that information to you, correct?

6           A       To the sheriff's office.

7           Q       To the sheriff's office?

8           A       Yes.

9           Q       Is that at the jail?

10          A       It's attached to the administration  
11 office, and that's where the detective division is, the  
12 administration side of it, so it's the whole sheriff's  
13 office.

14          Q       When you walk into the sheriff's office,  
15 are you walking into the same place that the jail is  
16 located?

17          A       You go through that main lobby to the  
18 rear corridor into a lobby called central control and  
19 contact somebody if you're going to go to the jail.

20          Q       But the jail and your office have the  
21 same address, 911 Parr Boulevard?

22          A       That's correct, yes.

23          Q       So I'm referring to the interview  
24 conducted at your office, which, I'm saying, is part of

1 the jail, okay?

2 A Okay.

3 Q Why did you not give him the Miranda  
4 warning prior to conducting that video-taped interview?

5 A The one with him and his mother?

6 Q Yes.

7 A Because it was wholly voluntary. He was  
8 not in custody. He was not a suspect.

9 Q Did you ask him to take a polygraph  
10 examination in the course of that?

11 A We asked him, if we requested at a later  
12 date, would he be willing to take one.

13 Q Why did you ask him that?

14 A Actually, it's a pretty common statement  
15 that we ask a lot of people that are giving us  
16 information. He told us he had seen her the morning of  
17 her disappearance, that he'd slept with her the night  
18 before, had sex with her, so there would be a lot of  
19 reasons there as far as our interview and information  
20 obtained by him that at a later date we might ask him  
21 to clarify, which a polygraph examination just is a  
22 tool we use to assist us as far as somebody is telling  
23 us the truth.

24 Q You rely on the reliability of polygraph

1 examinations in your investigations?

2 A We don't completely rely on them, no.  
3 It's used as just a tool to assist us.

4 Q Did you tell Mr. Voss that that interview  
5 was being video taped?

6 A I don't remember if I told him or not.

7 Q Did you tell him that the video tape  
8 might be used in later proceedings in court?

9 A No.

10 Q How long was that interview in terms of  
11 minutes?

12 A As I said, we interviewed his mother  
13 first, but he was there, so if you're asking -- And  
14 then we interviewed him. Without looking at the  
15 reports to give me an exact time, I mean, the mother  
16 was probably about forty minutes, and he was forty  
17 minutes to maybe an hour, so we're talking possibly an  
18 hour and a half, total, that he was there.

19 Q Did you give him anything to drink during  
20 that interview?

21 A I don't recall.

22 Q Was he allowed to smoke during the  
23 interview?

24 A It's a nonsmoking facility.

1           Q       Why did you execute a search warrant for  
2 his room when you'd already searched it two days  
3 before?

4           A       Because, at this time -- At the time for  
5 the search warrant, we knew the -- a check supposedly  
6 written by Beverly Baxter was in there, and that, now,  
7 was evidence, and there might be other checks or other  
8 evidence about Beverly Baxter in there.

9           Q       As part of the search warrants, you also  
10 searched his truck; is that correct?

11          A       That's correct.

12          Q       And it was towed?

13          A       Yes.

14          Q       And you were aware that the truck had  
15 been searched at the bank upon initial contact with  
16 Mr. Voss by your agency?

17          A       That's correct.

18          Q       Is that right?

19          A       That's correct.

20          Q       So, again, the reason for executing a  
21 search warrant on the truck that you'd searched a few  
22 days before was what?

23          A       Because, when you do a cursory search,  
24 which was done at the bank by the earlier detectives,



1 they cannot observe small things such as hair, fibers,  
2 possible blood or semen stains, and that can be  
3 processed better in our garage by forensic  
4 investigation section that does a more thorough search  
5 and even does vacuum sweeps of inside the vehicle.

6 Q Was Mr. Walker with you at this time when  
7 the search warrant was executed?

8 A At the apartment?

9 Q I mean at the motel.

10 A He was there. I don't know who he rode  
11 with, but he was there.

12 Q Why was he there? Was that at your  
13 request?

14 A No. It was the Assistant DA assigned to  
15 the case.

16 Q On-call district attorney?

17 A I don't know if originally he was on call  
18 or not, but he was the one that was assigned to it and  
19 working it.

20 Q Did you or Mr. Walker tell Mr. Voss that  
21 he wasn't going to get his car back?

22 A If he asked us at the time we were towing  
23 it, we would have said, "You're not going to get it  
24 back until we process it." But once it was processed

1 and we were done with it, although I do recall that he  
2 couldn't get the truck back right away because we  
3 couldn't find the VIN number to verify what the truck  
4 was. We had to get a Department of Motor Vehicle  
5 specialist inspector to come and locate the VIN on the  
6 truck. Once that was done, it was confirmed to be the  
7 VIN belonging to the vehicle and to the registration,  
8 the license plates, then it was released back to  
9 Mr. Voss.

10 Q Was released back to Mr. Voss?

11 A Yes.

12 Q Okay. Did you or Mr. Walker ever say to  
13 Mr. Voss, "We've got you now"?

14 A No.

15 Q Who actually arrested Mr. Voss on the  
16 Complaint in this case?

17 A I did.

18 Q When did that take place?

19 A I believe it was on the 26th of June, but  
20 I'd really have to see the probable cause form.

21 Q Fair enough.

22 A I'm not positive of the date, but it  
23 was --

24 Q Several days after these?

1           A       Yes. Several days later.

2           Q       These incidents that we're talking  
3 about --

4           A       Yes.

5           Q       -- in any of the interviews that you  
6 conducted, was there ever any mention of an attorney?  
7 Not any specific attorney, just the word "attorney"?

8           A       Well, when we read him his rights, it --  
9 it's right there several times asking him about having  
10 an attorney present, and one will be appointed for you  
11 if you don't have the funds, and you can always stop  
12 and have an attorney appointed to continue questioning  
13 if you wish, so several times in that Miranda warning.

14          Q       And did Mr. Voss ever say in your  
15 presence that he requested an attorney?

16          A       No.

17          Q       Now, when this seizure order was  
18 executed, Mr. Voss was taken in custody and transported  
19 to the jail, correct?

20          A       Well, he was taken with us. He was not  
21 in handcuffs. He was not under arrest. He had to go  
22 with us, but he was not under arrest at the time.

23          Q       But if he didn't want to go with you, he  
24 was going with you anyway?

1 A Yes.

2 Q So he was brought to the jail, and the  
3 tests were performed?

4 A That's correct.

5 Q The specimens were retrieved?

6 A Yes.

7 Q And then what happened? Was he told  
8 "You're free to leave"?

9 A Well, he had rode with us. We had given  
10 him a ride, naturally --

11 Q Right.

12 A -- so as we were walking out through the  
13 front, we asked if he would mind coming upstairs and  
14 answering a few more questions.

15 Q And he was a suspect there at that time,  
16 right?

17 A Yes.

18 Q So what did he say to you in response to  
19 that? Did he say, "Sure"?

20 A He said he was worried about his mother,  
21 and we advised him that his mother was with other  
22 detectives at his room where they were searching the  
23 motel room, and then he said, "Okay. I'll talk to  
24 you."

1 Q And at that point in time, you advised  
2 him of his Miranda rights?

3 A Once we got up to an interview room, then  
4 that was the first thing we did.

5 Q And he didn't, in your opinion, say,  
6 "I want to talk to an attorney, first"?

7 A No.

8 Q Was Egan walker there at the time of that  
9 interrogation?

10 A Yes.

11 Q Did Mr. Walker say anything to Mr. Voss?

12 A I don't recall if he did or not.

13 Q Did he ask any questions of Mr. Voss?

14 A I don't recall if he did.

15 Q Okay. Do you remember Mr. Voss inquiring  
16 of Mr. Walker regarding his right to an attorney?

17 A No.

18 Q Were voices ever raised during that  
19 interview by anyone?

20 A I don't believe so.

21 Q Had you reviewed Mr. Voss' handwritten  
22 statement given to Detective Stacy Hill and Detective  
23 Pappas prior to conducting an interview with him?

24 A I believe so.

1           Q     And you were aware that the -- his  
2     vehicle had been searched, consensually?

3           A     Yes.

4           Q     Were there any reports made that you  
5     were -- that you had reviewed prior to that interview,  
6     or was the timing too quick?

7           A     Which interview?

8           Q     The interview at the motel room, the  
9     first one.

10          A     At that point, the timing was too quick,  
11     and I hadn't reviewed anything at all.

12          Q     Just talked to Detective Hill?

13          A     No. Actually, it was my sergeant,  
14     Detective/Sergeant Butko called me, because it was  
15     later in the evening, as a matter of fact, it was  
16     around 8:00 p.m., and asked me -- just talked to me  
17     over the phone. "We have a missing person. Mr. Voss  
18     was attempting to cash a check belonging to Beverly  
19     Baxter, and he's somewhere at the Western Village and  
20     we'd like you to go talk to him." That's basically the  
21     information I had.

22          Q     Okay.

23                 MR. EDWARDS: I have no further  
24     questions, your Honor.

1 THE COURT: Mr. Hatlestad, anything else?

2 MR. HATLESTAD: Just one or two, your  
3 Honor, real briefly.

4

5 REDIRECT EXAMINATION

6

7 BY MR. HATLESTAD:

8 Q When you receive consent to search in a  
9 case like this where you searched the Western Village  
10 room and then subsequently get a seizure -- or excuse  
11 me, a search warrant, how would you compare and  
12 contrast the scope and intensity of the one compared to  
13 the other?

14 A One would be such as if I came into this  
15 room, I would walk around and look, look under things,  
16 maybe open a drawer or -- or two. It would be more of  
17 a cursory search. When you have a search warrant, you  
18 look in everything, you open up everything, you move  
19 things, such as lifting up a mattress. You do a very  
20 thorough search, and you have usually a forensic  
21 personnel to process for fingerprints, if that's what  
22 you're looking for. If you're looking for hair fibers  
23 or if you're looking for body fluids, then they process  
24 that; so it's a much more thorough search.

1 Q Okay.

2 MR. HATLESTAD: I think that's all, your  
3 Honor. Thank you.

4 MR. EDWARDS: Did -- I beg your pardon.

5 THE COURT: Okay.

6

7

RECROSS EXAMINATION

8

9 BY MR. EDWARDS:

10 Q Did you leave a copy of the search  
11 warrant at the motel room?

12 MR. HATLESTAD: Objection, relevance.

13 MR. EDWARDS: We're talking about him  
14 following procedure.

15 THE COURT: I think this was gone over  
16 during the course of the direct examination, and I'm  
17 going to authorize the question to be asked, so the  
18 objection is overruled.

19 BY MR. EDWARDS:

20 Q Did you leave a copy of the search  
21 warrant?

22 A Well, I didn't do the search at the motel  
23 room. Normally, we have extra copies and we either  
24 leave it in the room, or if the person that belongs to



1 the room is somewhere else, we give one to him. So I'm  
2 not sure, because I didn't search the room.

3 Q And you mentioned in your earlier  
4 testimony to me that the purpose of the search warrant  
5 was to, among other things, get the check, seize the  
6 check; is that correct?

7 A That's correct, yes.

8 Q Now, when you performed the interview  
9 on -- in the motel room a few days before then, had you  
10 requested to see the check?

11 A I don't know if we requested or he  
12 volunteered to show it to us, but Mr. Voss showed us  
13 the check.

14 Q So Mr. Voss showed you the check at that  
15 time?

16 A Yes.

17 Q And you elected not to take it or seize  
18 it?

19 A That's correct.

20 MR. EDWARDS: Thank you. No further  
21 questions.

22 MR. HATLESTAD: Nothing else, your Honor.  
23 Thank you.

24 THE COURT: Okay. Then, Detective

1 Canfield, you may be excused.

2 THE WITNESS: Thank you.

3 MR. HATLESTAD: Mr. Yaryan.

4 THE COURT: Well, with regard to the  
5 previous case, I feel obligated to meet with these  
6 folks who are to be here at 3:00 for a settlement  
7 conference. I have a feeling that that business could  
8 be taken care of in probably no more than an hour.  
9 I don't think they have huge issues. We could then  
10 resume this case at 4:00. Otherwise, we just about  
11 have to conclude this case and come back another day,  
12 but I recognize the taxpayers have a strong interest in  
13 concluding the case, since so many people are here  
14 today, and, you know it would be nice conclude it.

15 MR. HATLESTAD: I've got Mr. Yaryan, and  
16 Mr. Conway, of course, will take a few minutes, but  
17 given the scope of Mr. Canfield's testimony, there's  
18 only one area I want to talk about with Yaryan.  
19 I don't know how extensive the cross might be, but  
20 I don't think it will take much time to dispose of  
21 Mr. Yaryan. Cotter Conway is going to take at least an  
22 hour.

23 THE COURT: Do you suppose we might take  
24 Yaryan and either conclude for the day and come back

1 another time --

2 MR. HATLESTAD: Yeah.

3 THE COURT: -- or try to come back later  
4 today?

5 MR. HATLESTAD: I'm up for coming back  
6 today, if you want, your Honor.

7 MR. EDWARDS:: I'd like to finish it as  
8 well, but you've been very indulgent.

9 THE COURT: If Yaryan can be short, let's  
10 go ahead and take Yaryan now, and then he can go.  
11 Well, it's unfortunate, that I -- You know, you're up  
12 against other things in the afternoon, and these  
13 people, I simply could not cancel that 3:00 coming in.

14 (The clerk administered the oath.)

15 THE WITNESS: I do.

16 THE COURT: Please have a seat in the  
17 witness chair.

18 THE WITNESS: Thank you, your Honor.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

1 JOHN YARYAN,  
2 called as a witness on behalf of the Plaintiff,  
3 first being duly sworn, testified as follows:  
4

5 DIRECT EXAMINATION  
6

7 BY MR. HATLESTAD:

8 Q Would you please state your name for us,  
9 and spell your last name.

10 A John Yaryan, Y-a-r-y-a-n.

11 Q You're a Washoe County Sherriff's  
12 detective?

13 A I'm a detective sergeant.

14 Q Okay. How long?

15 A I've been with the sheriff's office for  
16 20 years.

17 Q Obviously, you were employed in the  
18 summer, late spring of 1996?

19 A Yes, sir.

20 Q And you became involved in the  
21 investigation of Mr. Voss, right?

22 A Yes, I did.

23 Q Okay. I want to narrow the confines of  
24 your testimony. Mr. Canfield has testified at great

1 length. I want to direct your attention to the evening  
2 a search warrant was executed. Do you remember that?

3 A The 17th?

4 Q Yes.

5 A Yes, sir. I do.

6 Q Did you accompany Mr. Canfield to Western  
7 Village that evening?

8 A Yes, I did.

9 Q Did you go inside the Western Village, or  
10 were you inside a patrol car or another sheriff's  
11 department vehicle?

12 A Actually, I was over in the hotel part.

13 Q Why don't you go through what you did  
14 that evening, and we'll take it apart when it becomes  
15 relevant.

16 A We arrived at the Western Village. We  
17 went to the hotel room, and Steven Voss and/or Mary  
18 Duplin were not in the room, so we sent someone into  
19 the casino area to try to find them while we stayed at  
20 the hotel room. I don't remember who it was that went  
21 over to the actual casino to look for them, but  
22 I stayed where the room was, and once they got back  
23 there, we left to go to Parr Boulevard for the seizure  
24 order.

1           Q       It was you, Mr. Canfield, Mr. Voss. And  
2 was Egan Walker in the vehicle, too?

3           A       I don't remember if Egan Walker in the  
4 vehicle.

5           Q       But, in a sense you transported Mr. Voss  
6 pursuant to the seizure order at Parr Boulevard, right?

7           A       Yes, sir.

8           Q       And the seizure order was executed. Were  
9 you present when the seizure order was executed?

10          A       Yes, sir.

11          Q       Did you question Mr. Voss at any time  
12 during the ride over or while the seizure order was  
13 being executed?

14          A       No, sir. Nothing was stated to him or  
15 asked of him.

16          Q       Now, did it take about 35 to 40 minutes  
17 to take care of the seizure order?

18          A       That's about how long they usually take,  
19 yes, sir.

20          Q       And the next event was supposed to be  
21 taking Mr. Voss back to the Western Village?

22          A       That's correct.

23          Q       What happened right after that?

24          A       As we were leaving the breath area and

1 walking out of the Parr Boulevard, I asked Steven if he  
2 would like to come on upstairs and talk to me a little  
3 further about some areas we're not quite clear on this  
4 case.

5 Q Okay. Now, he has said that you said to  
6 him, "We have problems with your statements." Would  
7 that be the sort of terminology?

8 A I might have even said that, yes.

9 Q Okay. What happened next?

10 A We went up to the detective division  
11 office, and under the circumstances of the seizure  
12 order, I didn't want to have any issues of  
13 involuntariness, so I Mirandised him.

14 Q Did he invoke his right to remain silent  
15 or right to attorney at any time there?

16 A No.

17 Q Did you make a statement to the effect  
18 of, "You are going to answer my questions"?

19 A No, sir. I did not.

20 Q Okay. So you take him up to the  
21 interview room, give him the Miranda warning, and then  
22 the conversation begins, correct?

23 A Yes, sir.

24 Q And just for completeness, did you

1     promise or threaten him in any way to get his  
2     statement?

3             A     No, sir.

4             Q     Did he waive his rights under Miranda?

5             A     Yes, he did.

6             Q     As far as knowing and intelligent?

7             A     Yes, sir.

8             Q     And after the interview was concluded,  
9     was he taken back to Western Village?

10            A     Yes, sir. He was.

11            Q     During the time that you were with  
12     Mr. Voss, did Mr. Walker in your presence say anything  
13     to the effect of, "You're not under arrest yet"?

14            A     I don't recall anything like that.

15            Q     Just so we're clear, never invoked his  
16     right to counsel, right?

17            A     No, sir. Never did.

18                   MR. HATLESTAD: Very good. That's all.

19                   THE COURT: Mr. Edwards?

20

21                                 CROSS-EXAMINATION

22

23     BY MR. EDWARDS:

24            Q     Detective Yaryan, after the seizure order



1 was fulfilled, did you escort Mr. Voss out to the  
2 vehicle?

3 A No, sir. We walked upstairs right past  
4 the elevators where our office is on the second floor.  
5 That's where I invited him to come up to the detective  
6 division.

7 Q So was there ever a time after the  
8 seizure order before you actually took Mr. Voss home or  
9 to the Western Village that you went out to a car?

10 A No. I don't remember going out to a car,  
11 no.

12 Q So the request for Mr. Voss to conduct an  
13 interview with you took place inside 911 Parr  
14 Boulevard?

15 A Yes, sir. It did.

16 Q Was -- Where was Mr. Walker during this  
17 time, during the request?

18 A I don't remember Egan walker being with  
19 us when we were in the blood draw room and then up to  
20 our office. I don't remember him being there.

21 Q Do you remember him being at the  
22 interview, itself?

23 A No. I don't think Egan was in our  
24 interview.

1 Q Did you see him at all that night?

2 A Oh, we would have seen Egan that night,  
3 but I don't think it was in the interview at all.

4 Q Where did you see him?

5 A Well, I know that he was there at Western  
6 Village.

7 Q Did he drive with you in the vehicle to  
8 complete the seizure order?

9 A I don't recall Egan being there.

10 Q Who was in the vehicle -- Were you in  
11 the vehicle with Detective Canfield that transported  
12 Mr. Voss to the jail?

13 A I believe I was.

14 Q Was there anybody else in there with you?

15 A It seems to me there was three persons,  
16 but I don't remember who that was.

17 Q You don't recall if it was Mr. Walker?

18 A No, I don't.

19 Q Was Mr. Voss placed in restraints or  
20 handcuffs of any kind?

21 A I don't recall handcuffs at all.

22 Q You considered him a suspect at the time  
23 that the seizure order was --

24 A Yes, sir. We did.

1 Q -- served on him?

2 A Yes, we did.

3 Q And that's why you admonished him of his  
4 Constitutional rights?

5 A Once we -- Since we were there under the  
6 seizure order, I felt that it would appear that he  
7 wasn't there voluntarily; and even though he  
8 volunteered to come up and speak with us, I didn't want  
9 to have that issue raised; so at that time, I did  
10 Mirandise him.

11 Q Did he voluntarily agree to have these  
12 items seized? The subject of the seizure order,  
13 saliva, blood, hairs, had there been a request of him  
14 to provide that?

15 A I don't recall that.

16 Q Did you slam your book down during the  
17 interview with him?

18 A I don't remember, but I might have.

19 Q Did you ever raise your voice during the  
20 interview?

21 A I don't remember, but I might have.

22 Q Is that something that you've been known  
23 to do in an interview?

24 A Yes, it is.

1           Q       Were you present at the interview in the  
2 hotel room that was done consensually with Detective  
3 Canfield?

4           A       The interview in the hotel room?

5           Q       Yes.

6           A       Oh, on the Friday night?

7           Q       Yes.

8           A       Yes, I was.

9           Q       Did you raise your voice in that  
10 interview?

11          A       I really doubt I would have.

12          Q       Why do you say that?

13          A       Because at that time you're walking on  
14 eggshells. You do not want that person to invoke on  
15 you. You want them to talk as much as possible. The  
16 only time I would raise my voice is -- at that time,  
17 I either obtained all the information I wanted from the  
18 person, or all else has failed in trying to get them to  
19 tell the truth or be more forthcoming.

20          Q       You don't want them to invoke. Did you  
21 consider him a suspect at that time?

22          A       Yes, we did.

23          Q       And was there -- So if you don't want  
24 him to invoke, you obviously don't want to advise him

1 of his Constitutional rights unless you think you have  
2 a custodial situation, right?

3 A Yeah, custodial interrogation, and we  
4 want to keep you as out of custody as possible, or the  
5 appearance of in-custody. That would include the  
6 number of policemen standing there when we're asking  
7 these questions.

8 Q So how many people were there?

9 A Just Canfield and I on Friday night.

10 Q Was there a uniformed Sparks police  
11 officer that came with you and may have left later on?

12 A I don't remember that.

13 Q How big --

14 A It's possible, since we were in their  
15 jurisdiction, we may have asked. I don't remember  
16 that.

17 Q How long did this consensual interview  
18 last?

19 A Friday night?

20 Q Yes.

21 A Maybe an hour. Hour and a half, it could  
22 have been.

23 Q And there was a consensual search that  
24 was conducted with that, as well?

1           A       Yes, there was.

2           Q       Seems like both you and Detective  
3 Canfield are pretty good-sized fellows. How big is  
4 this room that you interviewed?

5           A       It's the normal size hotel room. It  
6 looked like two twin beds.

7           Q       Was it pretty crowded in there?

8           A       I wouldn't say it's crowded. Four people  
9 in a hotel room isn't crowded unless you're sleeping  
10 together.

11          Q       Was Mr. Voss within arm's reach of you,  
12 or Detective Canfield in this interview?

13          A       No, sir. Not throughout. I wouldn't  
14 call it an interview. It was very informal. He was  
15 telling us that he had had enough inconvenience and he  
16 was tired, and I remember him seated on his bed quite a  
17 bit where his mother was seated on the bed to the  
18 right.

19          Q       Did he tell you to leave?

20          A       No.

21          Q       Did anybody just say, "Well, just one  
22 more question, just one more question"?

23          A       Probably.

24          Q       Is that the way it went?

1 A Probably.

2 Q Try to get him to continue talking to  
3 you?

4 A That's correct.

5 Q And it was getting late at night, wasn't  
6 it?

7 A I believe it was like 10:30.

8 MR. EDWARDS: Okay. Thank you.

9 THE WITNESS: Thank you.

10 MR. EDWARDS: No further questions.

11 THE COURT: Anything else?

12 MR. HATLESTAD: Just one, your Honor.

13

14 REDIRECT EXAMINATION

15

16 BY MR. HATLESTAD:

17 Q Did you ever say to Mr. Voss, "We've got  
18 you now"?

19 A I don't recall that, sir.

20 MR. HATLESTAD: Okay. That's all. No  
21 further.

22 THE COURT: Sergeant Yaryan may be  
23 excused, and we will be in recess for approximately an  
24 hour. I'll try to take care of the other matter in

1 that period of time.

2 (Break.)

3 THE COURT: You may be seated.

4 Would you like to call another witness?

5 MR. HATLESTAD: Yes, I would. Thank you,  
6 your Honor. We'll call Cotter Conway.

7 (The clerk administered the oath.)

8 THE WITNESS: I do.

9 THE COURT: All right. Please have a  
10 seat in the witness chair.

11  
12 COTTER CONWAY,  
13 called as a witness on behalf of the Plaintiff,  
14 first being duly sworn, testified as follows:

15  
16 DIRECT EXAMINATION

17  
18 BY MR. HATLESTAD:

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

21 A Cotter Conway, C-o-n-w-a-y.

22 Q What is your occupation?

23 A I'm an attorney.

24 Q Are you licensed to practice law in



1 Nevada?

2 A Yes, I am.

3 Q For how long?

4 A Since 1992.

5 Q Where are you working today?

6 A With the Washoe County Public Defender's  
7 Office.

8 Q And how long have you worked with the  
9 Public Defender?

10 A Since September of 1995.

11 Q What did you do before that?

12 A I was in private practice up at the lake.

13 Q Did you do any criminal cases at the  
14 lake?

15 A Some. It was maybe 30 -- 30 percent,  
16 I would say, of my practice.

17 Q Did you do any felony trials up there?

18 A None that proceeded to trial.

19 Q Okay. Obviously, you did a few felony  
20 trials with the Washoe County Public Defender's Office,  
21 right?

22 A Yes, I have.

23 Q Let's go prior to October of 1996. How  
24 many jury trials do you think you had?

1 A Five.

2 Q Okay. Any murder trials?

3 A Before October of '96?

4 Q Yes, sir.

5 A I don't believe so.

6 Q What kind of trials did you do?

7 A I did a Lewdness With a Minor in,  
8 I believe, July '96. I did -- There was a Battery  
9 With a Deadly Weapon in early part of '96, Felony  
10 Eluding a Police Officer in '96, in the first part of  
11 '96. I should have brought my roster. I didn't even  
12 think of it.

13 Q That's all right. Just do your best.

14 A There was a gross misdemeanor which was  
15 actually my first trial in January of '96. There's one  
16 I'm forgetting, and I can't place it.

17 Q Now, aside from the jury trials you've  
18 had, I won't ask you how many clients you've had, but  
19 is it safe to say hundreds, maybe more than that?

20 A Prior to '96?

21 Q Yes.

22 A There would be at least a little over a  
23 hundred by then, probably more. We carry a running  
24 caseload of between 90 and 110 at any one time.

1           Q       Now, in the course and scope of your  
2 experience as a Public Defender prior to October of  
3 1996 when Mr. Voss' trial occurred, have you ever had  
4 occasion to litigate motions to suppress evidence?

5           A       Prior to this trial?

6           Q       Right.

7           A       Certainly.

8           Q       Statements and physical evidence as well,  
9 right?

10          A       Whether it be statements or physical  
11 evidence, that's correct.

12          Q       Now, had you ever had any experience with  
13 cases involving burglary?

14          A       Prior to this case?

15          Q       Yeah. Let's keep it -- Let's just --

16          A       I believe so. I don't think -- I don't  
17 remember any of them proceeding to trial.

18          Q       How about bad check cases, or excuse me,  
19 altering forged instrument cases?

20          A       None that ever proceeded to trial. I've  
21 handled them, but not to trial.

22          Q       You represented Mr. Voss, right?

23          A       I did represent Mr. Voss.

24          Q       How did that come to pass?

1           A       His case was assigned to me; and at the  
2 time, he was charged with six counts of Burglary,  
3 I believe two counts of Uttering, two counts --  
4 counts -- two counts of Forgery, and I believe one  
5 other count. I can't remember all the counts, but  
6 there were six counts, total.

7           Q       Was there a preliminary hearing?

8           A       There was a preliminary hearing, yes.

9           Q       Prior to the preliminary hearing, how  
10 many times would you say you and Mr. Voss discussed  
11 this case?

12          A       I don't believe before the preliminary  
13 hearing that we would have discussed the case because  
14 I would have only received the file maybe a week, two  
15 weeks prior.

16          Q       And the prelim happens within two weeks  
17 of the arrest, right?

18          A       Usually. Unless there's a continuance,  
19 but, usually; and I don't think there was a continuance  
20 in this case.

21          Q       Do you think you discussed this case with  
22 him in some length, however short, prior to the prelim?

23          A       I'm sure we did discuss it, you know,  
24 before we went into the preliminary hearing to discuss

1     what options were available. I don't believe there  
2     were any options available at that time. The State was  
3     ready to proceed.

4             Q       Now, after the prelim, your trial is  
5     bound over for trial, right?

6             A       That's correct.

7             Q       Did you discuss the nature of his case or  
8     his version of the facts with him before his first  
9     appearance in the district court?

10            A       Before the Arraignment?

11            Q       Yes.

12            A       Probably not, because that's only about  
13     two weeks after that. I would have discussed it with  
14     him during or after the preliminary hearing briefly to  
15     know what his position was.

16            Q       So you think right after the bindover?

17            A       It would have been very brief, so it  
18     would not have been in detail.

19            Q       All right. Let's jump ahead then. When  
20     did you get the first full account of Mr. Voss about  
21     his investigation of the circumstances here?

22            A       It would have been after the Arraignment.  
23     After the trial date would have been set, I think  
24     I visited him. This has been a long time. I don't

1 remember exactly what dates I would have gone up to the  
2 jail, but I did go a number of times to discuss the  
3 case with him.

4 Q How many times would be a number of  
5 times?

6 A Specifically at the jail, maybe four or  
7 five times.

8 Q How long did these meetings last?

9 A Probably no longer than about an hour, or  
10 thereabout.

11 Q And what would be the shortest length of  
12 time that you were talking?

13 A Probably 30 minutes.

14 Q Okay. Now, did you conduct some  
15 discovery with the State in this case?

16 A Yes. Yes, we did.

17 Q Did you read the statements?

18 A His statements to the police?

19 Q Yes, sir.

20 A Yes, I did.

21 Q Did you talk about the statements that he  
22 gave to the police with Mr. Voss?

23 A I believe we did. I reviewed them, and  
24 I'm sure I talked to him about them, about what he had

1     said to the police.

2             Q       Did your review of these documents, these  
3     statements, these tape recordings, if any, give you a  
4     reason to make a Motion To Suppress?

5             A       Not on my review of the police reports or  
6     the statements, themselves.

7             Q       In discussing these statements with  
8     Mr. Voss, did Mr. Voss give you a reason to make a  
9     Motion To Suppress?

10            A       Not that I recall that was apart from  
11    what we discussed in the police reports, but there  
12    wasn't anything in the police reports, so he gave me  
13    nothing beyond that.

14            Q       Did you come to a conclusion after this  
15    investigation that you would not make a Motion To  
16    Suppress?

17            A       Yes, I did.

18            Q       Okay. Did Mr. Voss at any time express  
19    some dissatisfaction with you insofar as your failure  
20    to make a Motion To Suppress as far as the statements  
21    are concerned?

22            A       No. He did not.

23            Q       Okay. Let's jump ahead to the trial.  
24    Did Mr. Voss at any time -- in particular, on the first

1 day of trial, did Mr. Voss ever express to you that he  
2 thought he had been seen by a prospective juror?

3 A In what capacity?

4 Q In being outside the courthouse in jail  
5 garb, shackled, handcuffs, and like standing up against  
6 the wall?

7 A Not that I recall.

8 Q How about during the trial?

9 A I don't recall any -- any of that type of  
10 discussion, no.

11 Q Do you recall whether or not Mr. Voss  
12 indicated to you that one of the members of the jury  
13 was in the phone booth and had seen him being escorted  
14 by the police?

15 A I do not recall that at all.

16 Q Have you ever had that come up?

17 A In trials?

18 Q Yeah.

19 A Certainly.

20 Q What do you do?

21 A I would notify the judge immediately, and  
22 I did recently in a trial, so it's not unusual.

23 Q Okay. At any time during the trial, did  
24 Mr. Voss happen to point to, say, "This chair right



1     there," and say, "That one right there is the one that  
2     saw me outside the building in my jail garb"?

3             A       I recall a conversation with Mr. Voss.  
4     I don't know if it was the trial involving that --  
5     these fraud charges or the murder trial that happened  
6     subsequently that he pointed out a juror that he knew  
7     or that had known him or knew of Beverly Baxter or one  
8     that was looking at him strangely. I remember a  
9     conversation about that during the voir dire process.  
10    I don't remember which one it was or what happened, and  
11    that was addressed, but I don't remember any  
12    conversation about him being seen by a juror outside  
13    the courtroom in jail garb.

14            Q       All right.

15                   MR. HATLESTAD: Just one minute, your  
16    Honor. Just real quickly.

17                   THE COURT: Okay.

18    BY MR. HATLESTAD:

19            Q       In your conversations with Mr. Voss,  
20    would you have arrived at a mutually agreed strategy on  
21    how to defend this case?

22            A       I believe we did. I don't recall exactly  
23    what our belief strategy was going to be. It was  
24    basically that he hadn't done anything wrong. The

1 check had been given to him voluntarily, and he had  
2 every right to cash the check.

3 Q He had permission to go into her  
4 residence?

5 A That's correct.

6 Q Now, during the trial, did you and  
7 Mr. Voss discuss him testifying?

8 A Probably not during the trial. We did  
9 discuss it before trial.

10 Q Okay. Did you say in the presence of the  
11 jury that it would be suicide for him to testify in  
12 this case?

13 A Absolutely not.

14 Q When the -- If you can recall, when the  
15 State offered the statements from Mr. Voss into  
16 evidence, did you stipulate those in? Do you remember?

17 A I believe we did not object to them, or  
18 may have stipulated to an investigation of those and a  
19 redacted version, a redacted version that kept out  
20 certain prejudicial information.

21 MR. HATLESTAD: All right. Okay. That's  
22 all for now.

23 THE COURT: All right. Mr. Edwards?  
24

## CROSS-EXAMINATION

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BY MR. EDWARDS:

Q Mr. Conway, have you ever defended a felony fraud case prior to 1996? What is the your testimony?

A I'm trying to remember what my trials were prior to Mr. Voss. They were felonies. I don't recall whether any of them were to specifically frauds, fraud-type cases.

Q So it's conceivable this could have been your first trial on a charge of Forgery, or Uttering a Forged Instrument?

A That's a distinct possibility.

Q I'd like to ask you about this statement made to secret witness by an individual named Edward Anthony Villardi. Do you recall what I'm talking about?

A I do.

Q When did you first become aware of the existence of this secret witness statement of Mr. Vallardi?

A It was well after the trial in this fraud case. It was in the midst of the preparation for the murder trial, and I would say that we actually had to

1 continue the murder trial because we wanted to address  
2 it after we found out. I can't give you any specific  
3 date or time.

4 Q But it was well after the trial and the  
5 Sentencing that occurred relative to the charges in  
6 Department 10?

7 A Oh, definitely.

8 Q And how did you decide to address it?

9 A Well, we started with an investigation by  
10 Larry Carlson of my office. He was the investigator  
11 assigned to both cases, actually. He went and spoke  
12 with Mr. Villardi and verified who he did feel that he  
13 had seen, whether he had seen a truck, and what the  
14 description of that truck, and we determined that it  
15 did not match Mr. Voss' truck, his distinctive truck  
16 that he was driving; that the female that Mr. Villardi  
17 had seen did match the description of Beverly Baxter.  
18 We decided this was fairly important, since it happened  
19 approximately 12 hours after she was allegedly last  
20 seen in Mr. Voss' presence.

21 Once we knew it was important, our  
22 approach was sort of twofold. One, we certainly didn't  
23 want the State to be able to use the conviction that  
24 they had obtained in this case, the fraud case, given

1 that they had not provided this evidence prior to the  
2 fraud case going to trial. At the murder trial, we  
3 didn't want them to be able to use that conviction.  
4 Certainly we also wanted to seek to overturn that prior  
5 conviction. That's what we did. We filed a motion to  
6 set aside.

7 Q And how did you -- on what basis did you  
8 seek to set aside the verdicts in this case because of  
9 the Villardi statement?

10 A I don't recall offhand. I think it was  
11 basically that we had been denied exculpatory evidence  
12 because -- because of the way the trial proceeded.  
13 They had introduced the testimony of an Ed Woodard,  
14 I believe, this is from memory. He was an archer who  
15 was at a gas station 12 hours prior to Ed Vallardi's  
16 sighting, and he had testified that he had seen Beverly  
17 Baxter in the presence of Mr. Voss at this gas station,  
18 or at least in the truck that matched the description  
19 of Mr. Voss' truck.

20 I objected to that testimony coming in at  
21 all. I did not believe it was relevant to the fraud  
22 issue. Judge Stone allowed it in; therefore, I believe  
23 that the Villardi testimony therefor became very  
24 important because they were using the last appearance

1 as the opportunity for him to commit the crimes that he  
2 was alleged, and, also, I think gave an inference to  
3 the jury that he was responsible for her disappearance.  
4 So I believe that the later sighting would become very  
5 relevant and could become exculpatory to that issue.

6 Q Did you have any success upon that motion  
7 to set aside the verdict?

8 A Yes, we did. Judge Agosti heard the  
9 motion because she was going to hear the murder trial.  
10 She ordered that the State would not be able to use the  
11 convictions. They would have to basically prove up the  
12 alleged crimes again as a motive for the alleged  
13 murder, and she ruled that she would wait to -- to make  
14 the final decision as to whether to set aside the  
15 verdicts until she had heard the testimony of Ed  
16 Villardi at the trial because he had not yet testified  
17 and did not testify until the trial, and he did testify  
18 at the trial.

19 Q Help us out here, since we weren't there.  
20 My review of the record does not indicate that a  
21 decision was ever made regarding that motion to set  
22 aside verdict?

23 A I don't believe one was, no. I've never  
24 seen it. It was never addressed after the trial was

1 concluded.

2 Q And in your opinion, having devised the  
3 strategy for the defense of the fraud charges that are  
4 the subject of this Petition today, how would your  
5 strategy have been different if you had been aware of  
6 the Villardi statement to secret witness?

7 A Given the Court's allowance of the  
8 archer's testimony, Mr. Woodard's testimony, I would  
9 have used the Ed Villardi testimony to, one, refute  
10 that being the last physical sighting of Beverly Baxter  
11 and, therefore, that opportunity that they are arguing  
12 that he therefor had the opportunity because that was  
13 around the time that the checks were taken that the  
14 checks may have been forged, according to the State,  
15 that, therefore, that refutes that opportunity in that  
16 she was actually alive and well and therefore she had  
17 consented to or had agreed to his possession of the  
18 checks, and that's what that testimony would have  
19 allowed. It would have refuted Woodard's testimony.

20 As I said before, if Woodard had not  
21 testified, I probably would not have used the Villardi  
22 testimony.

23 Q How did the State use this Woodard  
24 testimony against Mr. Voss?

1           A       I don't recall specifically. My  
2 understanding was, from what I remember, was that --  
3 Mr. Walker used that to show that the last time she was  
4 seen alive was with him, and therefore he had the  
5 opportunity to commit these. As I said before, I also  
6 believe that that evidence hinted to the jury that he  
7 was responsible for her disappearance, and that's why  
8 she wasn't testifying at the fraud trial.

9           Q       Now, you've mentioned hinting about her  
10 disappearance. There came a time when Mr. Voss was  
11 sentenced upon these fraud charges. Do you recall  
12 that?

13          A       I do.

14          Q       And in the record it reflects a comment  
15 by Judge Stone. I'll quote it for you. "All of us are  
16 human beings, and there is just no way in the world  
17 that we can pretend this Ms. Baxter was here and that  
18 she testified. We know that's not true. The last  
19 person she was seen with was Mr. Voss, and he says, it  
20 says in his letter and his comments, that when she  
21 shows up alive, she'll say that all of these things are  
22 not true. But to be very honest with you, I don't  
23 think she's ever going to show up alive?

24                   Do you recall that comment?



1           A       Yes. I do recall that. Not  
2 specifically, but I recall that comment, yes, I do.

3           Q       If you had had this Ed Villardi secret  
4 witness report, would you have been able to contradict  
5 that conclusion of the Judge?

6           A       Absolutely.

7           Q       Now, do you feel that this conclusion of  
8 Judge Stone had any impact on the sentence that was  
9 rendered?

10          A       Absolutely.

11                 MR. HATLESTAD: I'm going to object to  
12 that because it's speculation.

13                 THE COURT: Sustained.

14 BY MR. EDWARDS:

15          Q       Are you aware of any other basis in the  
16 record for the sentence that was rendered in this case?

17                 MR. HATLESTAD: Well -- Oh, go ahead.

18                 THE WITNESS: From the Presentence  
19 Investigation Report, I don't believe so. I believe,  
20 as I recall, and I haven't seen it since the  
21 Sentencing, but he did not have a significant record.  
22 I think in fact this was his first group of felonies  
23 that he had been convicted of. He had a number of  
24 misdemeanors, but nothing substantial, and other

1     than -- you know, and given the fact that he wasn't  
2     even successful with getting any money from Ms. Baxter,  
3     there wasn't really any aggravating factors, and there  
4     wasn't a large amount of money he was trying to get.  
5     And, again, no significant criminal history.

6             Q       Now, you, in your practice and as a  
7     public defender, have represented many, many, many,  
8     people, correct?

9             A       Yeah.

10            Q       And would it be fair to say that you have  
11     some feeling about where in the sentencing range  
12     someone is likely to wind up in light of their criminal  
13     history and the charges that they're convicted of?

14            A       I do have some idea of that, yes.

15            Q       Were you surprised about the sentence  
16     that was rendered in this case?

17            A       Yes, I was.

18            Q       And why were you surprised?

19            A       I felt it was excessive in light of what  
20     he was convicted of. I also think -- I also brought  
21     motions to merge some of the charges because they were  
22     the same. You know, they were similar, or they should  
23     have been merged and they should not have been separate  
24     offenses.

1           Q       You mean part of one transaction; is  
2     that --

3           A       I'm trying to think of the right wording.

4           Q       Lesser-included offenses?

5           A       He was convicted of the Forgery for  
6     writing, I think, his name in the check and then  
7     passing it. And from my reading of the statute,  
8     forgery and uttering end up merely being the same  
9     crime, so my feeling was, they should have merged  
10    together as to one offense. In light of that, I found  
11    it excessive that all of those charges were run  
12    consecutive, and I think all of them -- If not all of  
13    them, but most of them were almost the maximum sentence  
14    imposed; so, yes, I did find it excessive in light of  
15    the facts of that case.

16          Q       If you had had this Villardi report,  
17    would you have brought it up at Sentencing regarding  
18    this issue of Mr. Voss being the last person to be seen  
19    with Beverly Baxter?

20          A       Absolutely.

21          Q       You've testified regarding Mr. Voss being  
22    seen by the jury in a custodial situation, prison garb  
23    or handcuffs, and you don't recall him ever reporting  
24    that to you.

1           A       I do not recall any conversation  
2 concerning that.

3           Q       Did you have any discussions with him  
4 regarding jury misconduct in this case?

5           A       Yes. There was because I think one of  
6 the other motions that I filed after the trial,  
7 I think -- I'm maybe thinking of a different case, but  
8 I believe there was a motion that was brought because  
9 the jurors were allowed to sort of separate during a  
10 deliberation process.

11          Q       Well, is this the motion that has to do  
12 with the fact that some of the jurors were permitted to  
13 go outside and smoke?

14          A       I believe so.

15          Q       And you became aware of that?

16          A       I became aware of that pretty soon after  
17 the verdict, and that is the reason I filed a motion.

18          Q       And how was that received by Judge Stone?

19          A       Well, he denied the motion.

20          Q       And you don't have any recollection of  
21 Mr. Voss informing you that the jurors had seen him in  
22 handcuffs or jail attire?

23          A       I have no recollection of that.

24          Q       You've testified to Mr. Hatlestad that

1 you told Mr. Voss about your conclusion to not pursue a  
2 Motion To Suppress. Do you recall when you told him  
3 about that?

4 A I don't recall when that was --  
5 specifically happened. I know it was -- I know  
6 I talked to him about his statements. Whether the  
7 actual words came up, "Oh, I'm not going to file a  
8 Motion To Suppress," I don't know. I wasn't going to  
9 file a Motion To Suppress, so I probably didn't discuss  
10 it at all. About that point, we discussed his  
11 statements, whether we discussed -- whether we were  
12 going to file a motion or not file a motion. We  
13 discussed his statements, and I did not see a reason to  
14 file a Motion To Suppress.

15 Q In those discussions, did you tell him  
16 that his statements were going to come in at trial?

17 A Yes.

18 Q And what was his response to you?

19 A I don't recall.

20 Q Did he ever complain to you about the  
21 treatment he received from the police officers in the  
22 interrogation process?

23 A I don't recall anything specific. I'm  
24 sure that he commented on how they -- Actually, he

1 commented on how they handled the case. He made a  
2 number of comments he felt that they treated him  
3 unfairly. For example, not returning he and his  
4 mother's car in a timely manner and it required him to  
5 go down there and get the keys, things like that. So  
6 he talked about, in general, a number of things. Not  
7 just about the interview, but, in general, he felt he  
8 was not treated fairly by the investigating officers.

9 Q Did you have any role in selecting the  
10 appellate issues that were presented in this case?

11 A I did.

12 Q You did. What role did you have?

13 A I -- Whenever we complete trial and once  
14 the Sentencing has occurred, I draft a memo, and I --  
15 I'm very specific. I'm sure it's in my file, but  
16 I don't, personally, have my file here, but I draft a  
17 very specific memo of all of the issues I believe are  
18 appellate issues.

19 Q Now, at the time that you did that, you  
20 didn't have any inkling about the Villardi issue.  
21 Would that be correct?

22 A That would be correct.

23 Q How about the Sentencing issue regarding  
24 Judge Stone's comments?

1           A       Yes, I did, and I believe that's in my  
2       memo.

3           Q       Okay. And the jury misconduct issue, the  
4       only issue you had before you at that time was this  
5       issue of smoking during deliberations, right?

6           A       It's not the smoking. It's the fact that  
7       they were allowed to separate after they began  
8       deliberations for whatever reason, whether it's smoking  
9       or anything else.

10          Q       Okay. And you weren't aware of any other  
11       jury misconduct issues at the time?

12          A       That was the only one that I knew about,  
13       and the only one that I raised in the -- in a motion.

14          Q       And with respect to the statements that  
15       were admitted by Mr. -- against Mr. Voss at trial,  
16       you'd already made a determination that there was no  
17       grounds to pursue a motion to suppress them?

18          A       That's correct.

19          Q       So in your memorandum, I suspect we  
20       wouldn't see any allegation that there is appellate  
21       error regarding those statements?

22          A       It would not be in my memo to my  
23       appellate department, no.

24          Q       Did you raise any other issues in there

1 that you requested be brought up on appeal?

2 A I'm sure I did. I'm sure I brought up  
3 the merger issue. I brought up the Sentencing that  
4 I felt was based on improper information. Without it  
5 in front of me, it's been four, five years, I can't  
6 remember exactly.

7 Q In your assessment of the evidence, did  
8 you consider this case a close one with respect to the  
9 fraud charges?

10 A I believe it was a close one, yes.

11 Q Did you inform Mr. Voss of that fact?

12 A I'm sure in our discussions we discussed  
13 what were the strong points for the State and what were  
14 the weak points. I don't know the exact language that  
15 I used with him.

16 Q Were you disappointed in the verdict?

17 A I was surprised by the verdict. I would  
18 have thought that either we would have had at least  
19 some of the counts acquitted on, because they weren't  
20 all proven, in my mind.

21 Q And then Sentencing came along and you  
22 had the surprise in terms of the sentence rendered?

23 A An even bigger surprise.

24 Q Did that upset you, the sentence that was



1 imposed?

2 A I was disappointed. I felt that it  
3 wasn't proper. And like I said before, I felt it was  
4 excessive.

5 MR. EDWARDS: If I could just have a  
6 minute, your Honor.

7 Thank you. No further questions.

8 THE COURT: Mr. Hatlestad, anything else?

9 MR. HATLESTAD: Yes. Thank you, your  
10 Honor.

11

12 REDIRECT EXAMINATION

13

14 BY MR. HATLESTAD:

15 Q After the verdict came down in the murder  
16 case, what action did you take to have Judge Agosti to  
17 act on your Motion To Set Aside the Verdict?

18 A I believe I took no action.

19 Q Why not?

20 A To be honest, one, I don't think I  
21 thought about it. Second of all, after he was given  
22 two life sentences without parole, I don't think it was  
23 a top priority.

24 Q Okay. Did you go over to the Sheriff's

1 Department and look through their file to do a file  
2 comparison between what you had received through  
3 discovery and what they had?

4 A My office did not do that, but we did  
5 request discovery through the normal patterns.

6 Q I understand that. My question is, since  
7 this is a Brady issue, why you didn't go over there?

8 A I don't think we've ever done that in any  
9 case. We make our request through the normal channels,  
10 and we expect that we will be given all discovery.  
11 I believe I did go over and compare at some point my  
12 file with Mr. Walker's before both trials, what he  
13 showed me. He showed me his file. I've done that on  
14 almost every case.

15 Q Did you do that this time?

16 A I believe so.

17 Q You didn't find the Villardi report in  
18 Walker's file?

19 A Not in Walker's file he showed me, no.

20 Q Do you have any reason to believe he had  
21 a secret file?

22 A No.

23 Q There's one file you look at?

24 A One file that he showed me, yes.

1           Q       Did you ask him if there was any other  
2       file?

3           A       I asked him, "Can I look through your  
4       file and make sure there's nothing else I don't have."

5           Q       Okay. Let me jump ahead, and we'll come  
6       back to the Villardi stuff.

7                    When you made your motion respecting the  
8       merger of sentences, what happened on that?

9           A       That was denied.

10          Q       What happened on appeal?

11          A       I don't know. I'm not the appellate  
12       attorney, and I haven't looked at the file since.  
13       I don't know what appellate issues the appellate  
14       counsel went with.

15          Q       Okay. Did you say you prepared a memo of  
16       appellate issues?

17          A       Yes, I did.

18          Q       What -- The Sentencing comment was one  
19       of the ones you listed?

20          A       Yes, it was. I would say it was the  
21       sentence, itself. I probably did not specifically  
22       recall what the judge said, but I knew that I did  
23       not -- I was disappointed with the sentence and did  
24       not believe it was proper.

1 Q I want to pin you down a little bit.

2 A All right.

3 Q Was the nature of the memo, "Hey,  
4 appellate lawyer, this sentence is excessive," or,  
5 "Appeal on the grounds that it is excessive"?

6 A I believe I said that I believe that the  
7 sentence given was based upon the disappearance and the  
8 possible death of Beverly Baxter, and that was  
9 inappropriate.

10 Q Okay. And you reached that conclusion  
11 because of the comment that Judge Stone made there?

12 A And I also believe there was a comment  
13 made --

14 Q Hang on a second. Was that part of it?

15 A Yes, yes.

16 Q Don't get ahead of me.

17 Okay. Now, when he announced his  
18 sentence, he did not say, "Because Ms. Baxter  
19 disappeared, I therefore hammer you," did he? What he  
20 did is, he went through the PSI with the known  
21 convictions, the fact that he had warrants out for  
22 arrests in three other states, and all these other  
23 problems, didn't he? Isn't that what he expressly  
24 relied on?

1           A       I don't know what he expressly --

2           Q       I can show it to you.

3           A       -- relied on. It was four years ago.

4       The record will speak for itself.

5           Q       Did you set any authority for the  
6       proposition that this is an excessive sentence, or is  
7       this just your feeling?

8           A       That is what I told appellate counsel?

9           Q       Did you direct counsel to statute that  
10      says as a matter of laws, this is excessive?

11          A       I, personally, did not. I believe they  
12      could probably find it.

13          Q       Do you know what the law around the  
14      nature of excessive sentence might be?

15          A       I do know that there are some areas that  
16      discuss relying on improper evidence or improper  
17      information.

18          Q       And what was the improper evidence that  
19      was explicitly relied upon by Judge Stone?

20          A       The issue concerning her disappearance  
21      and whether or not Mr. Voss was responsible. That  
22      would be the improper evidence.

23          Q       Okay. Now, did he say, "responsible"?

24          A       I believe it was certainly inferred or

1       hinted at.

2               Q       Okay. Well we have go from the record.  
3       Did he say the word "irresponsible" or not?

4               A       I don't recall.

5               Q       Let me help you. You've given your final  
6       argument, and the Court says, "I've reviewed the  
7       Presentence Report, and I have thought about this case  
8       a great deal. All of us are human beings. There's  
9       just no way in the world that we can pretend Ms. Baxter  
10      was here and that she testified. We know that's not  
11      true. The last person she was seen with was Mr. Voss.  
12      It says in his letter and his comments that when -- "  
13      This is his letter, okay, offered with the statement at  
14      the Presentence Report. "It says in his letter and his  
15      comments that when she shows up alive, he will say that  
16      all of these things are not true, but to be very honest  
17      with you, I don't believe she's ever going to show up  
18      alive."

19                      Now, is it your opinion that that is what  
20      we'd call highly suspect, or improbable evidence --

21              A       Those are the comments of the Judge?

22              Q       Yes.

23              A       I believe there was comment by the  
24      District Attorney that was present at that time. It

1 was not Mr. Walker. I believe it was Mr. Stanton.

2 Q Uh-huh.

3 A And he made some comments, and I know  
4 about that, and that certainly indicates that the judge  
5 took that into account.

6 Q Okay. Did you object to that? I don't  
7 see an objection here. Did you?

8 A I think I argued against it, but I did  
9 not object.

10 Q You didn't say, "Judge, that's highly  
11 impalpable evidence"?

12 A That's correct. I did not.

13 Q Did you make a motion to set aside the  
14 sentence in this case based on Silkes and Progeny?

15 A I did not.

16 Q Okay. All right. Let's go back to  
17 Mr. Villardi.

18 Now, Mr. Vallardi's report will not  
19 contradict Mr. Woodard, would it?

20 A No. It would not contribute, what  
21 Mr. Woodard said, no.

22 Q It would not indicate that Mr. Voss did  
23 or did not have permission to have the key that he used  
24 to enter Mrs. Baxter's residence; is that correct?

1           A       Mr. Vallardi's testimony, no, it would  
2     not.

3           Q       Mr. Villardi would not contradict  
4     evidence suggesting that Mr. Voss uttered a forged  
5     instrument, would it?

6           A       Not specifically, no.

7           Q       Well, not specifically. What other  
8     ways --

9           A       Well, the opportunity to do so was what  
10    the state argued, so --

11          Q       I understand that. We'll get to that in  
12    just a minute. Mr. Vallardi's testimony would not in  
13    any way change the circumstances surrounding the  
14    voluntary nature of his statements, would it?

15          A       Mr. Voss' statements?

16          Q       Right.

17          A       No, it wouldn't.

18          Q       Now, tell me about this opportunity.

19          A       This is what the state argued, that he  
20    had the opportunity, given that he was the last to be  
21    seen with Beverly Baxter alive, based on the testimony  
22    of Mr. Woodard.

23          Q       Can you tell me on the record where  
24    somebody said that? Tell me --



1           A       I believe it was said during -- during  
2 closing argument by Mr. -- Mr. Walker.

3           Q       Can you show me that?

4           A       I cannot. I'm quoting from my  
5 recollection.

6           Q       What he said was, "None of his friends  
7 and family have seen her since this time." Isn't that  
8 what he said?

9           A       Again, I don't remember.

10          Q       Now, again, explain this: How does  
11 someone seeing Mrs. Baxter at 10:30 that night create a  
12 reasonable probability that this man did not have the  
13 opportunity to commit these crimes this day?

14          A       It was the -- based on what the State  
15 used, the Woodard testimony was the concern. They were  
16 using that to say he was the last one to see her alive,  
17 and therefore he had the opportunity and therefore it  
18 was not consensual, his use of the checks.

19          Q       How so?

20          A       I don't know. That's what the State  
21 argued. I would have liked to prove the opposite.

22          Q       Why isn't that true? Why is that not the  
23 case?

24          A       Because of Mr. Vallardi's testimony that

1 she was actually seen alive well after that time.

2 Q Okay. So the fact that she is alive,  
3 allegedly, between 10:30 in the morning and 10:30 at  
4 night does not give him the opportunity to commit the  
5 crimes?

6 A No, but it takes away where the State  
7 believes he had the opportunity.

8 Q Well, he did have the opportunity because  
9 he did these acts. The acts occurred are not in  
10 dispute, are they? I mean, he entered the building,  
11 right?

12 A He uttered the checks with the specific  
13 intent to commit a crime.

14 Q I agree, but the issue is not the  
15 opportunity to formulate intent. The opportunity is to  
16 commit the act, right? "Opportunity" equals "act,"  
17 doesn't it?

18 A Well, I think it was the opportunity to  
19 commit the entire criminal enterprise he is alleged to  
20 have committed.

21 Q Right. Okay. We're talking a matter of  
22 hours now.

23 A Twelve hours, yes.

24 Q Took a matter of hours to enter the

1 building, take the check allegedly and try to pass the  
2 check, right?

3 A I believe it happened over a couple of  
4 periods of time; but, yes.

5 Q Now, again, it's your opinion that  
6 Mr. Vallardi's testimony throws a monkey in the wrench  
7 here?

8 A Based on the way Mr. Walker argued his  
9 case, yes, it did.

10 Q Do you know the level and extent of  
11 investigation the Sheriff's Department used to take a  
12 look at Mr. Villardi?

13 A At the time of the trial, I didn't know  
14 anything about Mr. Villardi.

15 Q Well, do you know to this day?

16 A I believe in the reports that we got,  
17 Villardi was spoken to briefly by one officer, but  
18 there was no further followup beyond that.

19 Q Based on the verdict in the murder case,  
20 what do you think the jury thought of Mr. Vallardi's  
21 testimony?

22 A I don't know. I didn't talk to the jury  
23 afterwards.

24 Q Well, they didn't believe it, did they?

1 "Come on."

2 A I don't know that.

3 Q "Come on."

4 A I don't know.

5 MR. EDWARDS: Your Honor, that's not a  
6 proper question.

7 THE COURT: You can't argue with the  
8 witness.

9 BY MR. HATLESTAD:

10 Q Do you think they believed him?

11 A I don't know. I don't know what they  
12 relied on to convict Mr. Voss of murder.

13 Q Was MaryLou Wilson the appellate lawyer?

14 A She was, certainly, for the case that  
15 we're here on now.

16 Q Okay. Did you ever talk to her,  
17 personally, about any appellate issues?

18 A I don't know if I talked personally to  
19 her. I think we just talked about the case sort of in  
20 passing.

21 Q As you sit here today, recollecting and  
22 thinking about the effect of Mr. Vallardi's report, how  
23 comfortable do you feel introducing evidence of the  
24 murder in the burglary case?

1           A       I don't understand your question.

2           Q       Well, isn't the relevance of  
3 Mr. Vallardi's testimony to suggest that he wasn't the  
4 last person to see her alive, and, therefore, the  
5 person who may have murdered her was not Mr. Voss? How  
6 comfortable would you feel now, even in retrospect to  
7 present that, even in a Burglary trial?

8           A       Well, I clearly wasn't comfortable with  
9 Ed Woodard's testimony, which is the only reason I  
10 would want to use Vallardi's.

11          Q       Well, that would draw clear inference of  
12 murder. Is that what you're saying?

13          A       It would draw a clear inference that  
14 Mr. Voss is not responsible for this murder.

15          Q       But you would definitely be bringing  
16 evidence of murder in this burglary case, wouldn't you?

17          A       By someone else. To refute Woodard's  
18 testimony.

19          Q       Nevertheless, but the jury might not  
20 believe either one of them?

21          A       That's true.

22          Q       So do you feel comfortable introducing  
23 evidence of a possible murder versus a missing person  
24 in his trial?

1           A       No. That's not what I was introducing.  
2       I was introducing the fact that someone else was seen  
3       with Ms. Baxter 12 hours after she was allegedly last  
4       seen with Mr. Voss.

5           Q       Did Villardi have any knowledge of any  
6       bad checks and of the Burglary?

7           A       No. He did not.

8           Q       And the only relevance that he really has  
9       in this case, as I understand your testimony, is he  
10      provides Mr. -- Excuse me, Mrs. Baxter with an  
11      opportunity to give consent, or had consent already  
12      been given?

13          A       He provides a different version than the  
14      State was indicating through Mr. Woodard; and that is,  
15      that she was actually seen alive 12 hours later and  
16      didn't disappear with Mr. Woodard's sight.

17          Q       Now, is it your belief that in this  
18      12 hours something exculpatory about the fraud and the  
19      burglary occurred?

20          A       Yeah. I believe it impacts on the  
21      inference that he somehow is responsible for her  
22      disappearance, which was what the State introduced.

23          Q       And the disappearance, of course, is  
24      nefarious, and you want to introduce that in the

1 burglary case. Now that's what I'm asking you.

2 A I want to introduce that they have  
3 someone else responsible for her disappearance.

4 Q And maybe not?

5 A And maybe not, but --

6 Q Take your chances. Is that what you  
7 wanted to do?

8 A I wanted to refute the testimony of  
9 Mr. Woodard.

10 MR. HATLESTAD: Okay. We've asked  
11 enough. We've asked enough. Thanks a lot.

12 THE COURT: Mr. Edwards, do you have any  
13 more questions?

14 MR. EDWARDS: I have just a couple, your  
15 Honor.

16  
17 RECROSS-EXAMINATION

18  
19 BY MR. EDWARDS:

20 Q Mr. Conway, if I could have you review  
21 page 3 and 4 of the Motion To Set Aside the Jury  
22 Verdict on May 21, 1998, in front of the Honorable  
23 Judge Agosti and see if that refreshes your  
24 recollection regarding your perspective on how

1 Mr. Vallardi's testimony impacted this case by not  
2 being --

3 A Okay.

4 Q -- provided.

5 MR. HATLESTAD: Where are we?

6 MR. EDWARDS: Page 3 and 4.

7 MR. HATLESTAD: Of the motion, or the  
8 transcript?

9 MR. EDWARDS: The transcript of the  
10 Motion To Set Aside the Jury Verdict.

11 THE WITNESS: Just on page 3, or keep  
12 going?

13 MR. EDWARDS: Page 3 and 4. Just those  
14 two pages.

15 THE WITNESS: Yes, okay.

16 BY MR. EDWARDS:

17 Q Was an additional part of your argument  
18 to Judge Agosti that you would have used the Villardi  
19 statement to discredit the investigation conducted by  
20 the police?

21 A From what I read in here, I believe that  
22 was one of my points.

23 Q And how would you have employed it to  
24 discredit the investigation?



1           A       Well, I think they believed Mr. Woodard  
2 was the last person to see her alive, and that's why  
3 they focused on Mr. Voss and on the fact that he must  
4 be defrauding her, and that's the fraud charges, and  
5 that to point out that, actually, had they followed up  
6 on this lead, that she may have seen alive 12 hours  
7 after.

8                   MR. HATLESTAD: I object. Speculation.  
9 He doesn't know if they did it or not.

10                  THE COURT: Well, the objection will be  
11 overruled since all we're talking about is how he was  
12 presenting the case to Judge Agosti.

13                  MR. HATLESTAD: Well, I agree, your  
14 Honor, but hear me out. He has to show that this  
15 investigation was botched to a reasonable probability  
16 of a different result. The policemen have been here,  
17 and the questions weren't asked. It's not my burden.  
18 It's his. What he's going to offer is speculation.  
19 Now, if he wants to bring the officers in here to talk  
20 about the depth of the investigation of Villardi and  
21 what they thought of it, that's fine, but this man is  
22 not qualified to answer that. He has no foundation.  
23 He's never talked to them. At least, I don't think we  
24 have. Maybe he was. We can find out, but --

1 THE COURT: But doesn't the question just  
2 go to the issue of Mr. Conway's thought process and how  
3 he felt going into Judge Agosti of how the Villardi,  
4 you know, lack of having that at trial impacted the  
5 result in this case?

6 MR. HATLESTAD: I'll give you part of  
7 that. If he wants to formulate a theory about how he  
8 might do it, that's fine, but to create a reasonable  
9 probability, we need facts. That's my objection. He  
10 doesn't have the facts. He has a theory. "I would  
11 have done leniency if I had this." Would it have born  
12 fruit? Who knows. That's what he has got to show. He  
13 can't show it.

14 MR. EDWARDS: I don't know if you want to  
15 hear argument now, Judge, or --

16 MR. HATLESTAD: Well, this is the key to  
17 this case. This case is going to rise and fall right  
18 here on that jail garb issue. Now I want a clear  
19 record on this because one of us is going to appeal,  
20 and if this man is not qualified to answer that  
21 question, then I object.

22 MR. EDWARDS: Well --

23 THE COURT: Well, if I still understand  
24 the question, I would overrule the question because

1 I understood the question to be, as far as refreshing  
2 your recollection from reading the transcripts of his  
3 argument before Judge Agosti, what were the impacts  
4 that Mr. Conway felt were the result of the lack of the  
5 Vellerdi testimony. That, as far as I know, was the  
6 question. Am I mistaken on that?

7 MR. EDWARDS: No, your Honor. I mean,  
8 Mr. Hatlestad is right about one thing. It's not an  
9 issue of whether it was improperly withheld. I don't  
10 think he's going to stand up here and say that this was  
11 somehow disclosed. So the question, in the Brady case,  
12 becomes whether or not it's material, and that question  
13 is: "Mr. Conway, can you give me your perspective on  
14 the materiality of this?"

15 MR. HATLESTAD: His perspective is not  
16 what counts, your Honor.

17 MR. EDWARDS: Well, it is what counts,  
18 your Honor. He's the one that was to formulate the  
19 defense strategy.

20 MR. HATLESTAD: He can formulate a  
21 theory.

22 THE COURT: I don't really care about his  
23 perspective, but I'm willing to have him testify if  
24 this document refreshes his recollection as to how --

1 How Villardi would have impacted this case, because up  
2 to this point in time, he's -- Mr. Conway has simply  
3 stated that he felt Villardi had some impact in this  
4 case because it refutes the opportunity, in essence, to  
5 steal the checks and commit these crimes that are  
6 involved in this case of Mr. Voss, and I take it that,  
7 in reading this, Mr. Conway's memory is refreshed as to  
8 other positions that he took as to why, you know, the  
9 Villardi might have some impact.

10 Is that correct?

11 MR. EDWARDS: Yes. He made an argument  
12 to Judge Agosti, and I was just asking what additional  
13 grounds he cited to her.

14 THE COURT: Okay. You may.

15 MR. HATLESTAD: I have no objection to  
16 that question.

17 THE COURT: You may take that as the  
18 question, and you may answer that question.

19 THE WITNESS: From my refreshed  
20 recollection, I did argue to Judge Agosti that another  
21 ground for the use of the Villardi testimony was that  
22 it could impact on the investigation done by the  
23 investigating officers because it would question why  
24 they did not --

1 MR. HATLESTAD: Again, that's my point,  
2 Judge. He doesn't have the slightest idea what they  
3 did. He's already admitted it. Might be, could be,  
4 if.

5 THE COURT: The objection is overruled.  
6 Let Mr. Conway finish as to what his argument was  
7 before Judge Agosti as to the impact.

8 THE WITNESS: I believe I have. That was  
9 part of my argument.

10 BY MR. EDWARDS:

11 Q Okay. You were essentially telling Judge  
12 Agosti you would have used this material in a turnway.

13 A Yeah. There were a number of things  
14 I wanted to use it for, yes.

15 MR. EDWARDS: Okay. That's all I have.

16 THE COURT: Any other questions, then,  
17 Mr. Hatelstad?

18 MR. HATLESTAD: Can I have just one  
19 second, your Honor?

20

21 FURTHER RECROSS EXAMINATION

22

23 BY MR. HATLESTAD:

24 Q It was your point that you thought you

1 were going to develop other suspects of a burglary  
2 and fraud?

3 A With regard to this case?

4 Q Yes, sir.

5 A The fraud case, that would not have been  
6 the purpose of the Villardi testimony.

7 Q All right. The Villardi testimony is  
8 going to basically show that the victim was or could  
9 have been alive 12 hours after, particularly the  
10 uttering charged, right? Right?

11 A I misunderstood. I apologize.  
12 I didn't --

13 Q The idea behind Valladi was a couple of  
14 things. Number One, Baxter is alive 12 hours after  
15 she's last seen with Mr. Voss, right?

16 A Yes.

17 Q Okay. Now, as I understand your written  
18 arguments, you're going to impeach something in the  
19 police investigation?

20 A I would question why they did not  
21 investigate further the testimony of Mr. Villardi, the  
22 statements of Mr. Villardi that he gave.

23 Q And you will concede you have no idea  
24 what he did, right?

1           A       Other than what I was given during the  
2 murder trial, and that was just a very brief statement  
3 that they did talk to him, and that was it.

4 Q You have no idea whether they interviewed  
5 him?

6           A       I know they interviewed. It was brief,  
7   and that was the investigation.

8 Q Do you have these writings that you're  
9 talking about? Can you get them? You're talking about  
10 the contents of a writing that we don't have.

11           A       I believe that the -- Mr. Villardi  
12       was -- I remember -- Oh, I'm not sure. I believe  
13       there was a statement by the police that they did talk  
14       to Mr. Villardi. It was a very brief statement, and  
15       that was also connected to the secret witness  
16       paperwork. Now, it may be the same thing. It may be  
17       only notes on secret witness, but that was it. I know  
18       that someone spoke with Mr. Villardi.

19 MR. HATLESTAD: Okay. That's good.

20 THE COURT: Anything else?

21 MR. EDWARDS: Just one followup question,  
22 if I might recross-examination?

23 |||

24 |||





1           The next issue is the exposure of the  
2 Defendant, Mr. Voss, to jurors in prison clothing and  
3 then later, during the course of the trial, presumably  
4 at a lunch break, a juror allegedly seeing Mr. Voss  
5 being transported by the arm by Deputy Clifford and  
6 perhaps some talk by Deputy Clifford that would lead  
7 the juror to believe that Mr. Voss is in custody.

8           I don't find creditability to Mr. Voss'  
9 testimony in this regard. It's not supported by  
10 anybody else. We don't have a juror in here to testify  
11 that they saw Mr. Voss in prison garb and otherwise had  
12 direct evidence to the effect that he was in custody.  
13 I find quite incredible his testimony that he in  
14 essence was led out from the transportation vehicle  
15 directly in front of the courthouse, I guess on Court  
16 Street, then led directly up the stairs past the metal  
17 detectors and to the regular public waiting room to  
18 enter the elevators, since that is not the method used  
19 for prisoner transport in this courthouse.

20           I just find his testimony incredible.  
21 It's not supported by anybody else, and I find against  
22 Mr. Voss in that regard entirely with regard to this  
23 prison clothing and any evidence that would lead  
24 anybody or a juror, at least, to believe that he was in

1 custody.

2 We then have the issue of ineffective  
3 assistance of counsel by Mr. Conway, and there is  
4 certainly a burden upon the Petitioner, Mr. Voss, to  
5 show that the actions of Mr. Conway violated the  
6 Strickland standard in that counsel's performance fell  
7 below an objective standard of reasonableness and that  
8 he was prejudiced as a result of counsel's performance,  
9 and nothing -- Nothing I've seen in this case gives me  
10 that impression at all. You know, I mean, you can talk  
11 about these issues of should there have been a motion  
12 to suppress these conversations with sheriffs deputies,  
13 and it doesn't appear to me that any violation of the  
14 right against self-incrimination of legal counsel,  
15 Miranda have anything to do with this. They were  
16 voluntary conversations with sheriffs deputies in a  
17 noncustodial setting, entirely voluntary, and there  
18 certainly is nothing in there that violated any rights  
19 or that Mr. Conway could reasonably have brought a  
20 motion to suppress, so he certainly was not ineffective  
21 in that regard. And basically there's just nothing  
22 there. You know, going down whatever -- whatever facts  
23 are alleged as far as ineffective assistance of  
24 counsel, I don't find it to be the case.

1                   Now, I find in the State's favor on all  
2 of the issues except this one, this issue of the  
3 Villardi testimony or whatever documentary evidence  
4 apparently was in a police file, and I gathered from  
5 all of this testimony that a police person or sheriff  
6 talked to Mr. Edward A. Villardi, and there was some  
7 document of that conversation that was placed in a  
8 police file, and the -- that document was not then  
9 transferred over to the District Attorney's Office so  
10 that Mr. Walker would have had it in his file, so  
11 I don't think Egan Walker did anything to fail to  
12 disclose exculpatory evidence, since he didn't have any  
13 knowledge of it. But, nevertheless, I believe what is  
14 in the police file is attributed to the State, and so I  
15 have to look at whether or not the failure to disclose  
16 this really is exculpatory evidence and, really, would  
17 it have had any impact on this case.

18                   And coupled in there is this issue of the  
19 Agosti apparently failing to rule on the Motion To Set  
20 Aside. Frankly, I don't find that the Villardi  
21 testimony would have had any impact of any relevant  
22 subject matter in this particular issue as to the issue  
23 of guilty on these charges, because whether or not  
24 Mr. Voss was the last person seen with Ms. Baxter or

1 somebody else was the last person seen with Ms. Baxter  
2 really is irrelevant to the issue of guilt. This case  
3 is not hinged on who murdered Ms. Baxter. It's hinged  
4 on the issue of going into her residence, burglarizing  
5 it, taking this check, and attempting to forge a check  
6 from her accounts to get \$5,000.

7 But then I -- I'm really stuck on this  
8 issue of the Sentencing because we have in the  
9 Sentencing transcript, and it's been stated several  
10 times. Let me get right down to it, here.

11 Judge Stone states at page 20 of the  
12 Sentencing transcript, "The last person she was seen  
13 with was Mr. Voss." And he also states, "But to be  
14 very honest with you, I don't think she's ever going to  
15 show up alive."

16 It concerns me that this statement is  
17 made just before we ultimately have a sentencing, and  
18 the sentence is laid out and the sentence is a very  
19 harsh sentence, and I've even compared the sentence to  
20 the recommendation from the Division of Parole and  
21 Probation, and the sentence the judge handed out is in  
22 fact more severe with regard to the issues really  
23 raised by Mr. Conway, that he expected some of these  
24 uttering and forgery charges to somewhat be merged by

1 way of concurrent sentencing, and that is what was  
2 recommended in the Presentence Investigation but not  
3 what was actually the sentence in the case.

4           It gives me discomfort when I see that  
5 Judge Stone is looking at this issue of the last person  
6 she was seen with was Mr. Voss, and this issue of  
7 whether or not it was Mr. Voss who was last seen with  
8 her or somebody else that may have impacted Judge Stone  
9 to render the sentence that he did, and I think the  
10 fairest thing to do in the case is to hold that, by not  
11 properly disclosing the issue of the Villardi  
12 testimony, which, while it had no bearing, really, on  
13 the guilty verdict, in my opinion, it may have impacted  
14 the Judge to render a more severe sentence than he  
15 otherwise would have, and I think that this sentence is  
16 based on a highly suspect issue. Frankly, it's not an  
17 issue that should have even, you know, gotten into the  
18 sentencing on the case because, clearly, Judge Stone  
19 did not know at that time that Mr. Voss would  
20 ultimately be convicted of the murder, but I'm worried  
21 when I see this in the transcript that this issue is  
22 really found against Mr. Voss, and Mr. Voss did not  
23 have the opportunity to rebut it in any way, perhaps,  
24 with this Villardi testimony.

1 I guess I also know that subsequently the  
2 Villardi testimony didn't really amount to a heck of a  
3 lot, because Mr. Voss was convicted of the murder, but  
4 I think we have to go back to what is known, what has  
5 been considered at the time of the Sentencing, and  
6 I believe that this particular piece of evidence should  
7 have been brought forward so that the attorneys could  
8 have brought this, at least, to the attention of the  
9 Judge so that the Judge could weigh that and give the  
10 proper sentence.

11 So I am going to hold that the Petition  
12 for Writ of Habeas Corpus will be granted insofar as  
13 this piece of evidence. The Villardi evidence creates  
14 a highly suspect condition at the Sentencing, and  
15 I believe that Mr. Voss should receive a new sentence,  
16 so that will be my order in the case.

17 And I will direct you, Mr. Hatlestad, to  
18 prepare an appropriate Findings of Fact and Order,  
19 since on all of the issues except for this Villardi  
20 situation, I find in favor of the State.

21 MR. HATLESTAD: I know it's late, Judge,  
22 but could I engage you in a dialogue about your ruling?

23 THE COURT: Well --

24 MR. HATLESTAD: Because I have concerns

1 procedurally speaking about reaching the merits of this  
2 claim. Under these circumstances, you have to make  
3 other findings to get there.

4 First of all, you have to make a finding  
5 that, number one, that statement by itself without  
6 Villardi is improper or proper, number one. Another,  
7 one, to which you're going to have to discuss is  
8 whether or not it was ineffective assistance of  
9 appellate counsel not to raise that in the direct  
10 appeal.

11 THE COURT: How can the appellate counsel  
12 have raised it, because the appeal went forward before  
13 the information was found?

14 MR. HATLESTAD: I don't want to play with  
15 this. I know everybody wants to get out, including  
16 myself. There's two claims involved in this. Number  
17 one, it's impalpable evidence by itself. If that's  
18 your ruling, we have to discuss related issues. Brady  
19 talks about an evidence of a reasonable probability of  
20 affecting guilt and punishment. I get the impression  
21 you're going that way, not Silkes analysis. This is  
22 impalpable evidence and should not have been considered  
23 by the court in imposing sentence. If you're going  
24 that way, we're going to have to talk about other

1 issues. I want to pin you down on the rational here.

2 THE COURT: Okay. I appreciate the help.

3 MR. HATLESTAD: I'm not going to try lay  
4 a landmind, but you're going to have to make some  
5 findings to make this ruling hold, and I want to make  
6 sure we're on the same wave length as far as this is  
7 your intention.

8 Judge Agosti said, this evidence was  
9 suppressed, whatever you want to call that. That's a  
10 finding and in the evidence already, and she said, that  
11 is correct. The question you have to decide as a  
12 matter of law is whether or not Judge Stone's reasons  
13 on that created a reasonable probability of a different  
14 sentence, a more harsh sentence.

15 THE COURT: I think I did.

16 MR. HATLESTAD: Okay. Well, if that's  
17 the case, that's the case, but I want you to consider,  
18 in weighing that, and you may have already. I don't  
19 mean to insult you. If you haven't, you've got to read  
20 Vallardi's testimony at the murder trial, and then you  
21 cannot ignore his PSI. None of that is impeached.

22 THE COURT: Well, I think at such time as  
23 this would come back here for Sentencing, the Villardi  
24 testimony from the murder trial should be brought



1 forward so that I or whoever is the sentencing judge  
2 would at least have had an opportunity to have seen  
3 that to determine if what Judge Stone said versus, you  
4 know, other evidence should have any impact, you know,  
5 should it have been something that --

6 MR. HATLESTAD: Well --

7 THE COURT: -- would have impacted this  
8 Sentencing, and I'm not saying I wouldn't come up with  
9 the same sentence as Judge Stone.

10 MR. HATLESTAD: That's a question you  
11 have to decide.

12 THE COURT: But at least Mr. Voss should  
13 have the opportunity to bring forward that other view,  
14 the other evidence, make sure that there's not a  
15 sentence which is based on highly suspect.

16 MR. HATLESTAD: Well, I think what will  
17 happen is this: Villardi is not going to appear in  
18 this room again. This thing is not going to be  
19 mentioned again. He's going to be mentioned on the  
20 facts of the case and his record, but Mr. Villardi is  
21 not going to be mentioned in this room again. I think  
22 that's going to happen. If you're going to factor an  
23 exhibit, Villardi -- the Villardi report, if he's going  
24 to get in the present case, he's going to be destroyed

1 just like he was in the murder case, and you're going  
2 to be left with the inference that that guy right there  
3 murdered somebody just like that jury was, so I don't  
4 want to be sour grapes or a poor loser, and it may  
5 sound that way. I don't see where you can reach, with  
6 the presence of Villardi, the outcome is different. If  
7 you want to take it out of the equation, then we might  
8 be onto something we can talk about. But, if you put  
9 it into the equation, that opens up an enormous can of  
10 worms. I don't think this fellow wants to open. The  
11 issue has to be, take Villardi out of the case, and  
12 looking at what I've got, can I say to a reasonable  
13 probability that his sentence would not be the same.

14 That's how I see it. That ruling,  
15 I probably would not appeal. I can't say for sure.  
16 I have to discuss it with my colleagues for some sort  
17 of wiggle room, but I'm comfortable with that, and  
18 Judge Stone shouldn't have said that. It's foolish.  
19 But that is not the only thing he relied on, and if  
20 suspect evidence is the only thing he relied on, new  
21 sentence; if it's not, and there's other evidence in  
22 there to support the verdict, it will not be disturbed  
23 on appeal. And, in a sense, you have to act in an  
24 appellate capacity, sort of.

1                   Just to sum it up, Villardi should not be  
2     in this case. Stone put him in this, and it should not  
3     have happened, and the question is, what do we do with  
4     him out of the case? I think that's what you need to  
5     look at, get to the facts of the record. Did Judge  
6     Stone's comments create a reasonable probability of a  
7     very severe sentence? If the answer is, yes, that's  
8     probably on appeal; but if you bring him into this  
9     room, I don't think so. I don't think that's a big  
10    mistake on his part.

11                   THE COURT: I guess my answer to your  
12    question is yes.

13                   MR. HATLESTAD: Okay.

14                   THE COURT: Okay. I think that based on  
15    what Judge Stone said, it sounds like this=issue of who  
16    was the last person to see Ms. Baxter seems to have  
17    played some role in the sentence in that, you know, it  
18    might have, and I don't think it should have. I mean,  
19    if I were Sentencing the case, personally, I think it  
20    would be best to ignore Woodard --

21                   MR. HATLESTAD: Absolutely.

22                   THE COURT: -- who says Voss was the last  
23    person seen with Baxter alive, and then I would also  
24    ignore Villardi. But if I have to consider that

1 Woodard says he was the last person seen with her,  
2 I think I'd also have to consider Villardi says  
3 something else and move on.

4 MR. HATLESTAD: Uh-huh.

5 THE COURT: But it will certainly be  
6 best, I agree with you, that there would be a  
7 Sentencing at which it's clear that the Sentencing  
8 judge either considers both of these guys, I assume  
9 they're men, testifying as to who was the last person  
10 seen with Ms. Baxter, or we completely take those  
11 issues out and only base the sentence on, you know, the  
12 facts of the case, the background of Mr. Voss, and look  
13 at the PSI. You know, that would be the fairest thing  
14 to do, but it just looks like there's an inherent  
15 unfairness in the failure to disclose this information  
16 at the time of the trial and how it may have had a  
17 twisting effect to the Sentencing.

18 MR. HATLESTAD: Well, I think everybody  
19 is ready to go home. I've got more comment on that,  
20 but I think we've all had enough.

21 THE COURT: Well, I assume that you can  
22 prepare it --

23 MR. HATLESTAD: I can do that.

24 THE COURT: -- together with the

1 assistance of Mr. Edwards, and we'll get to, hopefully,  
2 a defensible place.

3 All right. Thank you all very much.

4 MR. EDWARDS: Your Honor, thank you for  
5 your indulgence today. I know we took a lot more on  
6 the calendar than we were entitled to.

7 (Proceedings Concluded.)

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

4 I, DEBBIE P. VIEIRA, official reporter of  
5 the Second Judicial District Court of the State of  
6 Nevada, in and for the County of Washoe, do hereby  
7 certify:

8 That as such reporter I was present in  
9 Department No. 10 of the above court on JUNE 8TH, 2001,  
10 at the hour of 9:00 a.m. of said day and I then and  
11 there took verbatim stenotype notes of the proceedings  
12 had and testimony given therein upon the case of STEVEN  
13 FLOYD VOSS vs. THE STATE OF NEVADA, Defendant, of the  
14 above-entitled action to the best of my skill,  
15 knowledge, and ability.

16 Dated: At Reno, Nevada, this 31st day of  
17 July, 2001.  
18

19 \_\_\_\_\_  
20 Debbie P. Vieira, CCR #351  
21  
22  
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ORIGINAL

FILED

2001 AUG -9 AM 10:09

AMY HARVEY, CLERK

BY: DEPUTY

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. CR96P1581

THE STATE OF NEVADA,

Dept. No. 10

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

This matter came before the court on Voss's Petition for Writ of Habeas Corpus (Post-Conviction). An evidentiary hearing on the petition has been held. The court, now being fully advised of the premises, denies the relief requested in part and grants the relief requested in part.

FINDINGS OF FACT

1. On or about June 28, 1996, Voss was arrested and charged with one count of burglary, two counts of forgery and two counts of uttering a forged instrument.

2. Following Voss's arrest, the Washoe County Public Defender's

CR96P1581A DC-9900026664-049  
POST: STEVEN FLOYD VOSS (D1 B Pages  
District Court 08/09/2001 10:09 AM  
Washoe County 1750

1 Office was appointed to represent him.

2 a. Voss's defense was assigned to Deputy Public  
3 Defender Cotter Conway, who represented Voss at all  
4 relevant times.

5 b. Owing to his training and experience, Conway was  
6 well qualified to represent Voss in this case.

7 3. After pleading not guilty to all charges, Voss's case was set  
8 for trial in October of 1996.

9 4. Prior to trial, Conway conducted a reasonably complete  
10 investigation of Voss's case.

11 a. Conway discussed the case with Voss in sufficient  
12 depth and detail to formulate a defense consistent with  
13 Voss's version of the events. Voss's testimony to the  
14 contrary is not credible.

15 b. Conway received all requested and authorized  
16 discovery from the prosecution, including Voss's  
17 statements to the police, and discussed this matter  
18 with Voss. Voss's testimony to the contrary is not  
19 credible.

20 c. One item of information the defense did not receive  
21 from the State was a secret witness report submitted by  
22 Edward Villardi.

23 i. Villardi's report suggested that he had  
24 seen the victim, Beverly Ann Baxter, with  
25 another man, nearly 12 hours after Voss was  
26 caught allegedly uttering forged instruments.



1 (It is undisputed that Ms. Baxter's body was  
2 found many months later. Voss was charged  
3 and convicted of her murder. Villardi  
4 testified for the defense in the murder  
5 trial. Given the guilty verdict in the murder  
6 trial, it seems very clear that the jury did  
7 not believe Villardi in any particular).

8 ii. No credible evidence was presented in  
9 habeas proceeding proving that the prosecutor  
10 was in possession of or withheld the secret  
11 witness report, but it is clear that the  
12 Washoe County Sheriff's Office did possess  
13 it.

14 iii. Neither Conway nor any member of the  
15 Washoe County Public Defender's Office  
16 received this secret witness report until  
17 Voss's murder trial was underway  
18 approximately 18 months later.

19 iv. Villardi's secret witness report,  
20 insofar as the guilt phase of Voss's case is  
21 concerned, was neither material or  
22 exculpatory.

23 v. Despite Conway's testimony with respect  
24 to the perceived importance of Villardi's  
25 secret witness report in the burglary,  
26 forgery and uttering trial, the court is

1           confident that no reasonably competent trial  
2           attorney would have had, at least, serious  
3           reservations about premising Voss's defense  
4           in this case on evidence that would clearly  
5           open the door to a consideration of evidence  
6           implicating his or her client in the Baxter  
7           murder.

8   5. Prior to trial, Conway did not file and/or litigate a motion  
9   to suppress Voss's statements to the investigating detective, but  
10 this omission was reasonable under prevailing professional norms.

11       a. The record of the trial reveals that defense  
12       counsel stipulated to admission of redacted versions of  
13       Voss's pretrial statements. At the habeas proceeding,  
14       Conway testified credibly that he perceived no  
15       legitimate legal basis upon which to have the  
16       statements suppressed. Neither the evidence presented  
17       in the habeas proceeding or the applicable legal  
18       standard draw Conway's conclusion into question.

19       b. At no relevant time was Voss subjected to custodial  
20       interrogation without a Miranda warning, or where  
21       applicable, did not knowingly, voluntarily or  
22       intelligently waive his constitutional rights. Voss's  
23       testimony to the contrary is not credible.

24       c. None of Voss's statements were obtained by duress  
25       or coercion, nor can they be considered, as a matter of  
26       law, involuntary. Voss's testimony to the contrary is

not credible.

6. At various times, both before and during trial, Voss was dressed in jail garb and/or escorted while in plain clothes, by uniformed court personnel employed by the Washoe County Sheriff's Department.

a. Voss testified credibly that he arrived at the courthouse on the morning of his trial in a jail van along with several other prisoners, and that he was, at that time, dressed in jail garb issued to him at the jail.

i. His claim that he was seen by members of his jury venire is not credible.

ii. Voss's testimony that he mentioned to Conway that he had been seen by potential juror members or actual seated jurors in jail garb is not credible.

b. Voss testified credibly that he was routinely escorted between the courthouse to the holding cell and/or the elevator by a uniformed Sheriff's Deputy.

i. Voss's claim that he was seen by one of the seated jurors while being escorted as the juror was using a pay phone and/or that the juror or potential juror had heard an exchange between he and the deputy is not credible.

ii. In the habeas proceeding, Voss called

1 Deputy Gary Clifford, but Clifford could not  
2 remember any such incident(s) occurring  
3 during his watch, and it is undisputed that  
4 Clifford never reported the alleged incident.

5 iii. Voss did not report this incident to  
6 counsel.

7 c. Neither of the jurors involved in the alleged  
8 instances testified in the habeas proceeding.

9 7. Voss's claim that his sentence was based, at least in part,  
10 on Judge Stone's belief that Voss caused the murder or  
11 disappearance of Beverly Baxter, has merit. It is supported by  
12 the record. Even though Voss has not been charged for the murder  
13 of Ms. Baxter, Judge Stone made reference in his rendition of  
14 sentence, to his belief that she would not be found alive. He  
15 then imposed the maximum sentence on Voss, a sentence clearly  
16 outside the heartland of sentences for a person with Voss's  
17 criminal record being sentenced for forgery offenses.

18 CONCLUSIONS OF LAW

- 19 1. Voss was not deprived of the effective assistance of counsel.  
20 2. The State did not withhold exculpatory evidence within the  
21 contemplation of either Brady or Kyles and their progeny.  
22 3. Voss's right to due process as construed in Grooms v. State,  
23 96 Nev. 142, 605 P.2d 1145 (1980), and similar cases condemning  
24 convictions in which the accused was observed by potential jurors  
25 or seated jurors in jail garb was not violated.  
26 4. Because Judge Stone based Voss's onerous sentence, at least

1 in part, on the suspect and impalpable ground that Voss had  
2 murdered Ms. Baxter, Voss is entitled to a new sentencing  
3 hearing.

4 JUDGMENT

5 It is hereby the judgment and order of this court that  
6 Voss's Petition for Writ of Habeas Corpus (Post-Conviction) is  
7 granted, but only insofar as allowing for a new sentencing  
8 proceeding. In all other respects, the Petition is denied.

9 DATED this 6 day of August, 2001.

10  
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12 DISTRICT JUDGE  
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Scott W. Edwards, Esq.  
1030 Holcomb Avenue  
Reno, Nevada 89502

DATED: August 9, 2001.

Linda Jackling

CODE 2535

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FILED

2001 AUG 14 PM 4:04

AMY HARVEY, CLERK

BY                       
DEPUTY

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

STEVEN FLOYD VOSS,

Petitioner,

vs.

Case No. CR96P1581

STATE OF NEVADA,

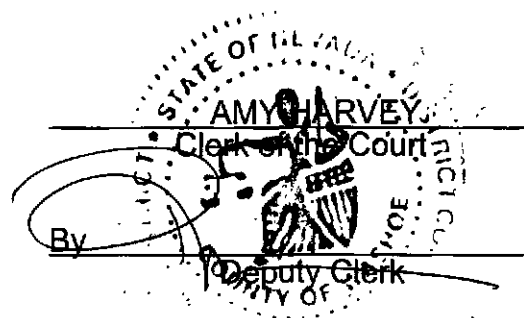
Dept. No. 10

Respondent.

## NOTICE OF ENTRY OF DECISION OR ORDER

PLEASE TAKE NOTICE that on August 9, 2001, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 14, 2001.



ORIGINAL

FILED

2001 AUG -9 AM 10:09

AMY HARVEY, CLERK

BY                       
DEPUTY

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

\* \* \*

8  
9 STEVEN FLOYD VOSS,

10 Petitioner,

11 v.

Case No. CR96P1581

12 THE STATE OF NEVADA,

Dept. No. 10

13 Respondent.  
14 \_\_\_\_\_ /

15 FINDINGS OF FACT, CONCLUSIONS OF LAW  
16 AND JUDGMENT

17 This matter came before the court on Voss's Petition  
18 for Writ of Habeas Corpus (Post-Conviction). An evidentiary  
19 hearing on the petition has been held. The court, now being  
20 fully advised of the premises, denies the relief requested in  
21 part and grants the relief requested in part.

22 FINDINGS OF FACT

23 1. On or about June 28, 1996, Voss was arrested and charged with  
24 one count of burglary, two counts of forgery and two counts of  
25 uttering a forged instrument.

26 2. Following Voss's arrest, the Washoe County Public Defender's



1 Office was appointed to represent him.

2 a. Voss's defense was assigned to Deputy Public  
3 Defender Cotter Conway, who represented Voss at all  
4 relevant times.

5 b. Owing to his training and experience, Conway was  
6 well qualified to represent Voss in this case.

7 3. After pleading not guilty to all charges, Voss's case was set  
8 for trial in October of 1996.

9 4. Prior to trial, Conway conducted a reasonably complete  
10 investigation of Voss's case.

11 a. Conway discussed the case with Voss in sufficient  
12 depth and detail to formulate a defense consistent with  
13 Voss's version of the events. Voss's testimony to the  
14 contrary is not credible.

15 b. Conway received all requested and authorized  
16 discovery from the prosecution, including Voss's  
17 statements to the police, and discussed this matter  
18 with Voss. Voss's testimony to the contrary is not  
19 credible.

20 c. One item of information the defense did not receive  
21 from the State was a secret witness report submitted by  
22 Edward Villardi.

23 i. Villardi's report suggested that he had  
24 seen the victim, Beverly Ann Baxter, with  
25 another man, nearly 12 hours after Voss was  
26 caught allegedly uttering forged instruments.

1 (It is undisputed that Ms. Baxter's body was  
2 found many months later. Voss was charged  
3 and convicted of her murder. Villardi  
4 testified for the defense in the murder  
5 trial. Given the guilty verdict in the murder  
6 trial, it seems very clear that the jury did  
7 not believe Villardi in any particular).

8 ii. No credible evidence was presented in  
9 habeas proceeding proving that the prosecutor  
10 was in possession of or withheld the secret  
11 witness report, but it is clear that the  
12 Washoe County Sheriff's Office did possess  
13 it.

14 iii. Neither Conway nor any member of the  
15 Washoe County Public Defender's Office  
16 received this secret witness report until  
17 Voss's murder trial was underway  
18 approximately 18 months later.

19 iv. Villardi's secret witness report,  
20 insofar as the guilt phase of Voss's case is  
21 concerned, was neither material or  
22 exculpatory.

23 v. Despite Conway's testimony with respect  
24 to the perceived importance of Villardi's  
25 secret witness report in the burglary,  
26 forgery and uttering trial, the court is

1           confident that no reasonably competent trial  
2           attorney would have had, at least, serious  
3           reservations about premising Voss's defense  
4           in this case on evidence that would clearly  
5           open the door to a consideration of evidence  
6           implicating his or her client in the Baxter  
7           murder.

8   5. Prior to trial, Conway did not file and/or litigate a motion  
9   to suppress Voss's statements to the investigating detective, but  
10 this omission was reasonable under prevailing professional norms.

11       a. The record of the trial reveals that defense  
12       counsel stipulated to admission of redacted versions of  
13       Voss's pretrial statements. At the habeas proceeding,  
14       Conway testified credibly that he perceived no  
15       legitimate legal basis upon which to have the  
16       statements suppressed. Neither the evidence presented  
17       in the habeas proceeding or the applicable legal  
18       standard draw Conway's conclusion into question.

19       b. At no relevant time was Voss subjected to custodial  
20       interrogation without a Miranda warning, or where  
21       applicable, did not knowingly, voluntarily or  
22       intelligently waive his constitutional rights. Voss's  
23       testimony to the contrary is not credible.

24       c. None of Voss's statements were obtained by duress  
25       or coercion, nor can they be considered, as a matter of  
26       law, involuntary. Voss's testimony to the contrary is

1 not credible.

2 6. At various times, both before and during trial, Voss was  
3 dressed in jail garb and/or escorted while in plain clothes, by  
4 uniformed court personnel employed by the Washoe County Sheriff's  
5 Department.

6 a. Voss testified credibly that he arrived at the  
7 courthouse on the morning of his trial in a jail van  
8 along with several other prisoners, and that he was, at  
9 that time, dressed in jail garb issued to him at the  
10 jail.

11 i. His claim that he was seen by members of  
12 his jury venire is not credible.

13 ii. Voss's testimony that he mentioned to  
14 Conway that he had been seen by potential  
15 juror members or actual seated jurors in jail  
16 garb is not credible.

17 b. Voss testified credibly that he was routinely  
18 escorted between the courthouse to the holding cell  
19 and/or the elevator by a uniformed Sheriff's Deputy.

20 i. Voss's claim that he was seen by one of  
21 the seated jurors while being escorted as the  
22 juror was using a pay phone and/or that the  
23 juror or potential juror had heard an  
24 exchange between he and the deputy is not  
25 credible.

26 ii. In the habeas proceeding, Voss called

1 Deputy Gary Clifford, but Clifford could not  
2 remember any such incident(s) occurring  
3 during his watch, and it is undisputed that  
4 Clifford never reported the alleged incident.

5 iii. Voss did not report this incident to  
6 counsel.

7 c. Neither of the jurors involved in the alleged  
8 instances testified in the habeas proceeding.

9 7. Voss's claim that his sentence was based, at least in part,  
10 on Judge Stone's belief that Voss caused the murder or  
11 disappearance of Beverly Baxter, has merit. It is supported by  
12 the record. Even though Voss has not been charged for the murder  
13 of Ms. Baxter, Judge Stone made reference in his rendition of  
14 sentence, to his belief that she would not be found alive. He  
15 then imposed the maximum sentence on Voss, a sentence clearly  
16 outside the heartland of sentences for a person with Voss's  
17 criminal record being sentenced for forgery offenses.

18 CONCLUSIONS OF LAW

19 1. Voss was not deprived of the effective assistance of counsel.

20 2. The State did not withhold exculpatory evidence within the  
21 contemplation of either Brady or Kyles and their progeny.

22 3. Voss's right to due process as construed in Grooms v. State,  
23 96 Nev. 142, 605 P.2d 1145 (1980), and similar cases condemning  
24 convictions in which the accused was observed by potential jurors  
25 or seated jurors in jail garb was not violated.

26 4. Because Judge Stone based Voss's onerous sentence, at least

1 in part, on the suspect and impalpable ground that Voss had  
2 murdered Ms. Baxter, Voss is entitled to a new sentencing  
3 hearing.

4 JUDGMENT

5 It is hereby the judgment and order of this court that  
6 Voss's Petition for Writ of Habeas Corpus (Post-Conviction) is  
7 granted, but only insofar as allowing for a new sentencing  
8 proceeding. In all other respects, the Petition is denied.

9 DATED this 6 day of August, 2001.

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12 DISTRICT JUDGE  
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Scott W. Edwards, Esq.  
1030 Holcomb Avenue  
Reno, Nevada 89502

DATED: August 9, 2001.

Linda Jackling

**CERTIFICATE OF MAILING**

THE UNDERSIGNED HEREBY CERTIFIES THAT ON AUGUST 14, 2001, SHE  
DEPOSITED FOR MAILING A COPY OF THE ATTACHED ORDER TO THE FOLLOWING:

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE  
APPELLATE DIVISION  
(INTEROFFICE MAIL)

ATTORNEY GENERAL'S OFFICE  
100 N. CARSON STREET  
CARSON CITY, NV 89701-4717

SCOTT W. EDWARDS, ESQ  
1030 HOLCOMB AVE  
RENO, NV 89502

STEVEN FLOYD VOSS #52094  
P O BOX 359  
LOVELOCK, NV 89419

A handwritten signature in black ink, appearing to be 'Pat Meacham', written over a horizontal line.

PAT MEACHAM  
CRIMINAL CLERK



ORIGINAL

FILED

2001 AUG 20 PM 1:27

AMY HARVEY, CLERK

BY *[Signature]*  
DEPUTY

CODE: 4100  
 Scott W. Edwards  
 Bar Number 3400  
 1030 Holcomb Ave., Reno, NV 89502  
 (775)786-4300  
 Attorney for Petitioner

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

STEVEN FLOYD VOSS,  
 Petitioner,

VS.

Case No. CR96P-1581

THE STATE OF NEVADA,  
 Respondent

Dept. No. 10

## CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Steven Floyd Voss.
2. Identify the judge issuing the decision, judgment, or order appealed from: Honorable Steven Elliot.
3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited): Steven Floyd Voss, Petitioner, vs. The State of Nevada, Respondent, represented by Washoe County District Attorney.
4. Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited): Steven Foyd Voss, Petitioner, vs. The State of Nevada, Respondent.
5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent: Scott W. Edwards, 1030 Holcomb Avenue, Reno, NV 89502, (775)786-4300, represents Appellant. District Attorney of Washoe County, P.O. Box 30083, Reno, NV 89520-3083, (775)328-3200, represents Respondent.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appellant was represented by appointed counsel in the district court.

1 7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appellant is  
2 represented by appointed counsel on appeal.

3 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of  
4 the district court order granting such leave: Appellant was granted leave to proceed in forma pauperis at  
5 the time counsel was appointed on May 11, 2000.

6 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment,  
7 information, or petition was filed): Original Petition for Writ of Habeas Corpus (Post-Conviction) filed  
8 March 9, 2000.

9  
10 Dated this ..20<sup>th</sup>..... day of August, 2001.

11  
12   
13 .....

14 Scott W. Edwards

15 Attorney for Appellant

16 Nevada Bar Identification No. 3400

17 1030 Holcomb Avenue

18 Reno, NV 89502

19 (775) 786-4300  
20  
21  
22  
23  
24  
25  
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28

## CERTIFICATE OF SERVICE

I, SCOTT EDWARDS, hereby certify pursuant to N.R.A.P. 25(1)(d), that on this  
5 20th day of August, 2001, I caused to be delivered via Reno Carson Messenger Service a true and  
6 correct copy of the foregoing CASE APPEAL STATEMENT addressed to:

Washoe County District Attorney

Appellate Division

P.O. Box 11130

Reno, NV 89520

ORIGINAL

FILED

CODE: 4100

Scott W. Edwards

Bar Number 3400

1030 Holcomb Ave., Reno, NV 89502

(775)786-4300

Attorney for Petitioner

2001 AUG 20 PM 1:27

AMY HARVEY, CLERK

BY *A. Sullivan*  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

VS.

Case No. CR96P-1581A

THE STATE OF NEVADA,

Dept. No. 10

Respondent

NOTICE OF APPEAL TO SUPREME COURT

COMES NOW, Petitioner, STEVEN FLOYD VOSS, by and through appointed counsel, SCOTT W. EDWARDS, and hereby appeals the district court denial of his petition for writ of habeas corpus (post-conviction) to the Nevada Supreme Court. Notice of Entry of the Order denying relief was mailed August <sup>14th</sup> ~~30th~~, 2001.

DATED this <sup>20th</sup> day of August, 2001.*Scott Edwards*  
SCOTT EDWARDS, ESQ.

Nevada Bar No. 3400

Attorney for Petitioner

1030 Holcomb Avenue

Reno, Nevada 89502

Telephone: (775) 786-4300

## CERTIFICATE OF SERVICE BY MAIL

I, SCOTT EDWARDS, hereby certify pursuant to N.R.C.P. 5, that on this 20<sup>th</sup> day  
of August, 2001, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL TO  
SUPREME COURT addressed to:

STEVEN FLOYD VOSS #52094

NSP

P.O. Box 607

Carson City, NV 89702

Washoe County District Attorney

Appellate Division

P.O. Box 11130

Reno, NV 89520

CODE 1350

FILED

01 AUG 20 P4:16

AMY HARVEY, CLERK

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

STEVEN FLOYD VOSS,

Petitioner,

CASE NO. CR96P1581

Vs.

DEPT. NO. 10

THE STATE OF NEVADA,

Respondent.

## CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in Accordance with the Revised Rules of Appellate Procedure Rule D(1).

Dated, August 20, 2001.

AMY HARVEY, County Clerk

By Morgan  
Ruth Morgan, Deputy

FILED

CODE 1365

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AMY HARVEY, CLERK

BY *Morgan*

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

Vs.

CASE NO. CR96P1581

THE STATE OF NEVADA,

DEPT. NO. 10

Respondent.

## CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents (certified copies) were delivered to the Second Judicial District Court mail-room system for transmittal to the Nevada State Supreme Court.

Dated, August 20, 2001.

AMY HARVEY, County Clerk

By *Morgan*  
Ruth Morgan, Deputy

CR96P1581A DC-990026702-012  
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 District Court 02/14/2002 12:12 PM  
 Washoe County 4134  
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## IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

No. 38373

Appellant,

**FILED**  
*February 14 2002*  
 RONALD A. LONGSTIN, JR., Clerk

vs.

By

*[Signature]*  
 Deputy Clerk

THE STATE OF NEVADA,

**FILED**

JAN 17 2002

JANETTE M. BLOOM  
 CLERK OF SUPREME COURT  
 BY *[Signature]*  
 CHIEF DEPUTY CLERK

Respondent.

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Steven Floyd Voss' post-conviction petition for a writ of habeas corpus.

On November 27, 1996, Voss was convicted, 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 Voss to serve a prison term of 48 to 120 months for the burglary count and to five consecutive prison terms of 16 to 48 months for the remaining counts. Voss filed a direct appeal, arguing that: (1) there was insufficient evidence to support his convictions; and (2) the district court erred in denying his motion to dismiss the attempted theft count.



This court concluded that Voss' contentions lacked merit and affirmed his conviction.<sup>1</sup>

Thereafter, Voss filed a post-conviction petition for a writ of habeas corpus. After conducting an evidentiary hearing, the district court denied the petition. Voss filed the instant appeal.

Voss contends that the district court erred in denying his petition because his trial counsel was ineffective. Specifically, Voss claims that his counsel was ineffective for failing to: (1) adequately investigate his case; (2) object when the jury saw him in jail attire; and (3) file a motion to suppress. We conclude that Voss' contentions lack merit.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>2</sup>

Voss first contends that his trial counsel was ineffective for failing to investigate his case. Particularly, Voss contends that had his counsel conducted an adequate investigation, he would have discovered Anthony Villardi's secret witness report. Villardi reported to the police that he had seen the victim alive twelve hours after she was observed with Voss. We conclude that counsel was not ineffective for failing to uncover

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<sup>1</sup>Voss v. State, Docket No. 29783 (Order Dismissing Appeal, March 11, 1999).

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

the Villardi report. The Villardi report was not material to Voss' trial on the theft counts<sup>3</sup> because the pivotal issue in that proceeding was whether the victim had consented to Voss cashing a check in her name, and whether she had also written a check to Voss for \$5,000.00. Accordingly, even if counsel had discovered the Villardi report, we conclude that its discovery and Villardi's testimony would not have changed the outcome of the proceeding.

Voss next contends that both his trial and appellate counsel were ineffective for failing to raise the issue of whether his conviction should be reversed because the jurors saw him in jail attire and overheard conversations between court personnel about Voss' "in custody" status. We conclude that Voss' contention lacks merit.

There is sufficient evidence in support of the district court's finding that Voss was not seen by the jury while wearing jail attire. In particular, Deputy Sheriff Gary Clifford testified that Voss was always dressed in plain clothes while the jury was present. Likewise, Voss' trial counsel testified that Voss never told him that he had been seen by the jurors wearing jail attire. Finally, prior to trial, the district court granted Voss' motion in limine, ordering that Voss was not to be seen by the jury in jail attire. Accordingly, we conclude that trial and appellate counsel were

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<sup>3</sup>Defense counsel used the Villardi report in Voss' subsequent murder trial involving the same victim. The Villardi report was highly relevant to the issues involved in that trial because it rebutted the State's theory that Voss was the last person with whom the victim was seen with before her demise. Despite Villardi's testimony at the murder trial, Voss was convicted of murdering the victim.

not ineffective for failing to raise this issue because the district court found that that the jurors had not seen Voss in jail attire.

Voss next contends that his counsel was ineffective for failing to file a motion to suppress statements made in violation of his Miranda<sup>4</sup> rights. We disagree.

The district court's finding that counsel was not ineffective for failing to file a motion to suppress is supported by substantial evidence. Specifically, Deputy Sheriff Stacy Hill testified that, before Voss was arrested, Hill interviewed Voss for ten to fifteen minutes and that he voluntarily cooperated. Hill also testified that Voss gave him permission to search his truck and that he was "very cooperative."

Likewise, Washoe County Sheriff's Detective Larry Canfield testified that Voss consented to a thirty minute interview regarding the disappearance of the victim in this case. Canfield further testified that Voss was not under arrest, fully cooperative, and that both Voss and his mother consented to the officer's subsequent search of their motel room. Moreover, Canfield testified that he interviewed both Voss and his mother the following day at the Sheriff's station for approximately forty minutes and that it was scheduled in advance, voluntary, and conversational in nature.

Finally, defense counsel Conway testified that he reviewed Voss' police statements and discussed them with Voss and had no basis to file a motion to suppress. Conway further stated that Voss expressed "no

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<sup>4</sup>Miranda v. Arizona, 384 U.S. 436 (1966).


dissatisfaction" with Conway's decision not to file a suppression motion. Because the record reveals that Voss' statements to police were consensual and voluntary in nature, we conclude that counsel was not ineffective in failing to file a motion to suppress.

Even assuming counsel's performance fell below an objective standard of reasonableness, we note that the alleged deficiency would not have changed the outcome of the proceeding. Indeed, Voss was essentially caught in the midst of the commission of the crime at a Reno bank as he attempted to cash the victim's forged personal check. Although Voss alleged that he had consent from the victim, there was sufficient evidence to support the jury's finding to the contrary.

Having considered Voss' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 C. J.  
Maupin

 J.  
Young

 J.  
Leavitt

cc: Hon. Steven P. Elliott, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Scott W. Edwards  
Washoe County Clerk

**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: February 12, 2002  
Supreme Court Clerk, State of Nevada

By J. Richards Chief Deputy

## IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. 38373

District Court Case No. CR96P1581

STEVEN FLOYD VOSS,

Plaintiff,

vs. STATE OF NEVADA,

Defendant.

RONALD A. LONGTIN, JR., Clerk

By

Deputy Clerk

REMITTITUR

Ronald A. Longtin Jr., Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.

Receipt for Remittitur.

DATE: February 12, 2002

Janette M. Bloom, Clerk of Court

By:

J. Richards  
Chief Deputy Clerkcc: Hon. Steven P. Elliott, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Scott W. Edwards

## 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

February 14, 2002  
Ronald Longtin Jr. by Morgan  
District Court Clerk

## IN THE SUPREME COURT OF THE STATE OF NEVADA

**FILED**

STEVEN FLOYD VOSS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Supreme Court No. 38373

District Court Case No. CR96P1581

RONALD A. LONGTIN, JR., Clerk

By [Signature]  
Deputy Clerk**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 the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 17th day of January, 2002.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 12th day of February, 2002.

Janette M. Bloom, Supreme Court Clerk

By: [Signature]  
Chief Deputy Clerk

CR96P1581A DC-9900026702-014  
POST: STEVEN FLOYD VOSS (D16) Page  
District Court 02/14/2002 02:08 PM  
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Washoe County