

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

Electronically Filed
Jan 25 2019 11:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE OF NEVADA,

Plaintiff,

vs.

STEVEN FLOYD VOSS,

Defendant.

Sup. Ct. Case No. 77505

Case No. CR96-1581

Dept. 1

RECORD ON APPEAL

VOLUME 13 OF 15

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APPELLANT

**Steven Floyd Voss #52094
N.N.C.C.
P.O. Box 7000
Carson City, Nevada 89702**

RESPONDENT

**Washoe County District
Attorney's Office
Jennfer P. Noble, Esq. #9446
P.O. Box 30083
Reno, Nevada 89502-3083**

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RONALD A. LONGTIN, JR.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEPUTY

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42307*

FILED

JUL 27 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On November 27, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, two counts of uttering a forged instrument, two counts of forgery, and one count of attempted theft. The district court sentenced appellant to serve consecutive terms totaling 128 months to 360 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹

¹Voss v. State, Docket No. 29783 (Order Dismissing Appeal, March 11, 1999).

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On March 9, 2000, appellant filed a post-conviction petition for a writ of habeas corpus. On August 9, 2001, after conducting an evidentiary hearing, the district court denied appellant's petition in part and granted appellant's petition in part.² This court affirmed the order of the district court on appeal.³

On April 14, 2003, appellant filed a proper person motion for leave to file a successive habeas corpus petition and a second post-conviction petition for a writ of habeas corpus. The district court denied appellant's motion and petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and that petition was decided on the merits.⁴ Therefore, appellant's petition was

²The district court determined that a new sentencing hearing was appropriate. The record on appeal before this court does not contain any documents relating to the new sentencing hearing.

³Voss v. State, Docket No. 38373 (Order of Affirmance, January 17, 2002).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

procedurally barred absent a demonstration of good cause and actual prejudice.⁵

Appellant claimed that he had good cause because he only learned of new claims for relief when he filed a federal petition for a writ of habeas corpus and received a copy of the exhibits used during the trial—particularly the transcript for the preliminary hearing. He claimed that his review of the preliminary hearing transcript revealed a chain of evidence problem. He claimed that he could not have known about this claim with the exercise of reasonable diligence prior to the filing of the instant petition.


Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his successive petition. The claims raised in the instant petition relate to the preliminary hearing, and thus, could have been raised in the prior habeas corpus petition. Appellant was present at the preliminary hearing when the alleged error occurred. Thus, his claim that he could not have known about the claim prior to receiving the transcript is without merit. Appellant failed to otherwise demonstrate


⁵See NRS 34.810(1)(b); NRS 34.810(3).


that he was unable to raise the claims earlier. Therefore, we affirm the order of the district court denying appellant's petition.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steven P. Elliott, District Judge
Steven Floyd Voss
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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FILED

AUG 30 2004

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

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District Court 08/30/2004 09:31 AM
Washoe County 3035

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

STEVEN FLOYD VOSS,

Petitioner,

Case No. CR96P1581A

vs.

Dept. No. 10

E.K. MCDANIEL, Warden, Ely State Prison,
Respondent.

ORDER TO PROCEED IN FORMA PAUPERIS

Having read the Affidavit in Support of STEVEN FLOYD VOSS' Request to Proceed in Forma Pauperis, declaring that Affiant has insufficient income, property or resources to pay Court costs to proceed in the above-entitled action and good cause appearing therefore, pursuant to NRS 12.015,

IT IS HEREBY ORDERED that the Court allow said STEVEN FLOYD VOSS to bring such action without costs and file or issue any necessary writ, process, pleading or paper without charge.

IT IS FURTHER ORDERED that the Sheriff or any other appropriate officer

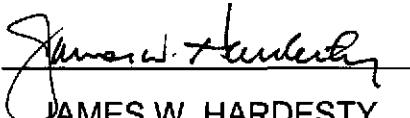
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1 within the state make personal service of any necessary writ, process, pleading or paper
2 without charge for STEVEN FLOYD VOSS.

3 Dated this 21 day of August, 2004.

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6 
7 JAMES W. HARDESTY
8 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 30th day of August, 2004, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Steven Floyd Voss, #52094
Ely State Prison
P. O. Box 1989
Ely, Nevada 89301

Deputy Appellate District Attorney
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)


Michele M. Shull
Administrative Assistant

ORIGINAL

FILED

CODE: 2827

SEP 13 2004

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

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

STEVEN FLOYD VOSS,

Petitioner,

CASE NO: CR96-01581

vs.

DEPT. NO.: 10

STATE OF NEVADA,

Respondent.

**ORDER DENYING MOTION FOR LEAVE OF COURT TO FILE A SUCCESSIVE
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

The Court has read and considered Petitioner's Motion for Leave of Court to File A Successive Petition for Writ of Habeas Corpus (Post-Conviction) And Alternative, Pre-Sentence Motion To Set Aside Jury Verdict, filed July 29, 2004, as well as all other relevant documents in the record.

The Court finds that Petitioner has not complied with Nevada's limitations on time to file a petition for post-conviction writ of habeas corpus. In particular, NRS 34.726 (1) requires that a post-conviction petition for writ of habeas corpus be filed within one year after the entry of the judgment of conviction. Here, Petitioner first directly appealed his 1996 conviction in 1999; however, the Nevada Supreme Court dismissed the appeal on March 11, 1999. Thereafter, Petitioner filed a post-conviction Petition for Writ of Habeas

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Washoe County
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1 Corpus on March 9, 2000, which was denied by this Court after an evidentiary hearing on
2 June 8, 2001. Subsequently, Petitioner appealed this Court's ruling on said petition to the
3 Nevada Supreme Court, which issued an Order of Affirmance on January 17, 2002. The
4 Petitioner then requested leave of the Court to file a Successive Petition For Writ Of Habeas
5 Corpus on April 14, 2003. In an Order filed October 13, 2003, this Court denied that
6 request since the Petitioner had not complied with Nevada's limitations on time to file a
7 petition for a post-conviction writ of habeas corpus (NRS 34.726(1)). In an Order Of
8 Affirmance, dated August 2, 2004, the Nevada Supreme Court upheld this Court's denial of
9 the request for leave to file a subsequent petition, stating that the Petitioner had not
10 shown good cause why his claims were not raised in the original post-conviction Petition
11 for Writ of Habeas Corpus.

12 As of this date, it is nearly eight years since the Petitioner's conviction at a jury trial,
13 more than five years since the Nevada Supreme Court dismissed the appeal of that
14 conviction, more than two years since the Nevada Supreme Court affirmed the denial of his
15 first post-conviction Petition, and almost a year since this Court considered and denied a
16 second post-conviction Petition for Writ of Habeas Corpus. The Court, pursuant to NRS
17 34.726 (1)(a-b), finds once again that there is no good cause in the record for Petitioner's
18 delay in presenting the current issues he wishes to unveil during his 1999 direct appeal
19 from the 1996 conviction, or in his March 2000, Petition for Writ of Habeas Corpus. Thus,
20 the Court denies Petitioner's Motion to Seek Leave of Court to File A Successive Petition for
21 Writ of Habeas Corpus And Alternative, Pre-Sentence Motion To Set Aside Jury Verdict.

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DATED this 12 day of September, 2004.

er, 2004.


STEVEN P. ELLIOTT

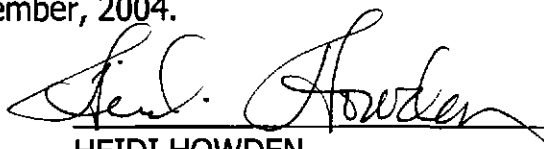
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 13 day of September, 2004, I deposited for mailing a copy of the foregoing document addressed to:

STEVEN FLOYD VOSS, #52094
Ely State Prison
P.O. Box 1989
Ely, NV 89301

GARY HATLESTAD, Esq.
Washoe County District Attorney's Office
Appellate Division
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

DATED this 13 day of September, 2004.



HEIDI HOWDEN
Administrative Assistant

ORIGINAL

CR96P1581A

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

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STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42307

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

FILED

SEP 17 2004

JANE E M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied.¹ NRAP 40(c).

It is so ORDERED.

[Signature] J.
Rose

[Signature] J.
Maupin

[Signature] J.
Douglas

¹In Sullivan v. State, 120 Nev. ___, ___ P.3d ___ (2004), this court recently held that claims that could have been previously presented in a timely post-conviction petition could not be considered timely under NRS 34.726 merely because they were filed within one year of the entry of an amended judgment of conviction. Thus, appellant's petition below was not only successive, but under our holding in Sullivan, appellant failed to demonstrate good cause to overcome the time bar set forth in NRS 34.726.

cc: Hon. Steven P. Elliott, District Judge
Steven Floyd Voss
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

ORIGINAL

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box 1989
Ely, Nevada 89301-9999

FILED

2004 SEP 29 AM 9:30

RONALD A. LONGSTIN, JR.

BY 

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

STEVEN FLOYD VOSS,

Petitioner,

VS.

E.K.McDANIEL, et al.,

Respondent's.

CASE NO. CR96-P-1581-A
DEPT.NO. 9 (Chief Judge)

MOTION REQUESTING RECONCIDERATION OF MOTION FOR LEAVE OF COURT
TO FILE SUCCESSIVE POST-CONVICTION PETITION FOR WRIT OF HABEAS
CORPUS, OR ALTERNATIVE, PR-RESENTENCING MOTION TO SET ASIDE
VERDICT. UPON THE MERITS OF PETITIONER'S JURISDICTIONAL CLAIMS.

and,

REQUEST FOR REASSIGNMENT OF MOTION FOR LEAVE OF COURT TO FILE
SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS, OR ALTERNATIVE
PRE-RESENTENCING MOTION TO SET ASIDE VERDICT TO CHIEF JUDGE
FOR RE-HEARING UPON THE MERITS OF THE PETITION/MOTION.

COMES NOW, Petitioner, STEVEN FLOYD VOSS, in proper person,
and hereby moves this Honorable Court for reconsideration of his
Motion requesting leave to file Successive Post-Conviction
Petition upon the merits of his Jurisdiction based challenges, or
that the Court in alternative reconsider his Pre-Resentencing
Motion to set aside Jury Verdict based upon the same Jurisdiction
based challenges. Petitioner, further requests that the matter
be reassigned to the Chief Judge of the Second Judicial District
Court for decision on the instant motion and for the requested

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District Court 09/29/2004 09:30 AM
Washoe County 2175
JWC

1 re-hearing of petition or alternative motion.

2 This motion is made and predicated upon the attached Points
3 and Authorities and all papers and pleadings presently on file
4 herein, aswell as any matter the Court may concider at a hearing
5 on the matter.

6 PROCEDURAL HISTORY

7
8 On July 27,2004, Petitioner filed with the Court a Successive
9 (Post-Conviction) Petition For Writ Of Habeas Corpus, raising
10 Jurisdictional Claims; a Motion requesting leave to proceede in
11 Forma Pauperis; and a Motion requesting leave to file his
12 successive petition raising Jurisdictional Claims.

13 On August 30,2004 an Order To Proceede In Forma Pauperis, was
14 entered by the Honorable Judge,James W.Hardesty, District Judge.

15 On September 13,2004 an Order Denying Motion For Leave To
16 File A Successive Petition For Writ Of Habeas Corpus (Post-
17 Conviction) was entered by the Honorable District Judge, Steven P.
18 Elliott, Said Order effectively dismissed petition and Petitioner'
19 alternative Motion to set aside Jury Verdict without any
20 concideration of the Petitioner's Jurisdictional Challenges
21 enumerated therein, upon the merits of said Jurisdictional Claims.

22
23 CAUSE AND PREJUDICE

24
25 District Court Judge, Steven P. Elliot, erred and abused his
26 discretion when the Court failed to consider upon the merits of
27 Petitioner's Jurisdictionally based claims Petitioner's single
28 ground Petition For Writ of Habeas Corpus (Post-Conviction) or his

1 alternative, Pre-Resentencing Motion to set aside verdict which
2 were predicated SOLELY upon Jurisdictional Grounds, and when the
3 Court dismissed Petitioner's Jurisdictional Challenges upon
4 procedural grounds. Which violated Petitioner's independent State
5 and federal Constitutional Guarantees as enumerated within Artical
6 1, Section 8, of the Constitution of the State Of Nevada; and
7 within the 14th Amendment to the United States Constitution.
8

9 JURISDICTIONAL CLAIM RAISED IN PETITION/MOTION TO SET ASIDE

10

11 The Trial Court lacked jurisdiction to trie Petitioner, where
12 the Trial Judge entertained either an actual personal bias, or an
13 implied personal bias toward the accused.
14

15

16 POINTS AND AUTHORITIES.

17

18

19 Distict Court Judge, Steven P.Elliott, erred and abused his
20 discretion when he denied Petitioner's Motion for leave to file a
21 Successive Post-Conviction Petition For Writ of Habeas Corpus, and
22 Petitioner's alternative Pre-Resentencing Motion To Set Aside
23 Verdict, which were based solely upon jurisdictional grounds,
24 upon impalpable procedural grounds enumerated within NRS 34.726(1).

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The Court mistakenly assumed that the time limitations for
filing Petitions For Writs Of Habeas Corpus enumerated within
NRS 34.726, which generally require that such post-conviction
petitions be filed within one (1) year after the entry of a
judgment of conviction or decission on direct appeal, can be
applied to a Post-Conviction Petition or Motion To Set Aside

1 verdict. Thus, the Courts finding that pursuant to NRS 34.726(1)
2 (a-b), that there is no good cause in the record for petitioner's
3 delay in presenting the current issues, or for Petitioner's
4 failure to raise the current claims in prior proceedings (Direct
5 Appeal) is not only flawed but also moot. The Court has simply
6 missed the point completely. There is absolutely no requirement
7 what so ever that Petitioner demonstrate good cause for either his
8 filing of an (out of time) Post-Conviction or Motion To Set Aside
9 Verdict, or his failure to raise his current claims in prior
10 proceedings, due to the Jurisdictional Nature of Petitioner's
11 Challenge.

12 The fact is, procedural defaults, such as time bars or a
13 petitioners failure to raise a claim in previous proceedings are
14 not applicable to Post-Conviction Petitions or Motions To Set
15 Aside Verdict, which raise questions concerning a Courts "Personal
16 Jurisdiction" or "Subject Matter Jurisdiction".

17 In short, Jurisdiction Challenges may be raised at any time,
18 and may not be procedurally barred from consideration by a Court.

19 Further, a Court is not only empowered to, but also has an
20 affirmative duty to inquire into jurisdictional claims whenever
21 there is even the possibility that jurisdiction does not exist.
22 Therefore, when a petition or motion raising jurisdictional
23 challenges is tendered upon a Court a Court must necessarily
24 consider the pleading upon it's merits, and in it's findings the
25 Court must determine whether the Jurisdictional Challenge has
26 merit or if the Jurisdictional Challenge is without merit. If the
27 Court fails in this obligation the Court has erred and abused it's
28 discretion.

1 In the case of United states v. Barragan-Mendoza, 174 F.3d 1024
2 (9th Cir.1999), the court visited the issues of jurisdiction,
3 procedural time bars, waivers of jurisdiction and preservation of
4 issues for appeal. The Court found in pertinent part, the
5 following: "Moreover, even if Barragan did not preserve the
6 issue, a party can challenge the courts jurisdiction at any time."
7 citing, Sanchez v. Pacific Powder Co., 147 F.3d 1097 (9th Cir.1998).
8 also see, Conforte v. United States, 979 F.2d 1375 (9th Cir.1992),
9 "The question was not addressed by the district court, but
10 jurisdiction is open to challenge at any time." Id at 1377.

11 In the case of Harris v. United States, 149 F.3d 1309 (1998),
12 the Court visited the issues of jurisdictional defects and
13 procedural defaults, and found in pertinent part the following:
14 (1) "Jurisdictional defects, cannot be procedurally defaulted."
15 (2) "Furthermore, we are bound to assure ourselves of jurisdiction
16 even if the parties fail to raise the issue." Citing,
17 Ins. Corp. of Ireland v. Compagnie Des Bauxities, 456 U.S. at 702
18 (3) "A Court not only has the power but also the obligation at any
19 time to inquire into jurisdiction whenever the possibility that
20 jurisdiction does not exist arises." Citing, Philbrook v. Glodgett,
21 421 U.S. 707, 95 S.Ct. 1893, and City of Kenosha v. Bruno, 412 U.S.
22 507, S.Ct. 2222 (1973).
23 (4) "In short, because jurisdictional claims may not be defaulted
24 a defendant need not show 'cause' to justify his failure
25 to raise such a claim."

CONCLUSION

The District Court erred and abused it's discretion by dismissing Post-Conviction Petition/Motion To Set Aside Verdict (Jurisdictional Challenge), under precept of procedural default pursuant to NRS 34.726 (1)(a-b).

The Petitioner is entitled by the 14th Amendment of the United States Constitution to bring forth his present Jurisdictional Challenge at this time, and to have his Jurisdictional Challenge heard by the Court upon the full merits of his claims.

Given the fact that the Petitioner has tendered to the Court his Successive Post-Conviction Petition For writ Of Habeas Corpus; his Motion For Leave To File said Successive Petition; and his Alternative, Pre-Sentencing Motion To Set Aside Verdict. The Court has two (2) clear options available to rectify the matter. As the Court may either choose to hear Petitioner's Post-conviction Petition upon it's merits; or choose to hear Petitioner's Pre-Sentencing motion upon those identical merits, and then enter it's findings and Order.

The Petitioner further submits that an evidentiary hearing regarding the particular merits of his Jurisdictional Claims will not necessarily be required in the matter. As Petitioner believes that his Jurisdictional Claims are supported by the District Court Record and by Law of the Case. Said District Court Record includes the Trial Transcripts of Case No. CR96-1581, for October 7, 8 and 9, 1986; the Transcript of Sentencing Proceedings of Case No. CR96-P-1581-A, from June 8, 2001; and District Court's Findings Of Fact, Conclusions Of Law, and Judgment, Filed on August 9, 2001.

1 Therefore, the Petitioner respectfully requests that the
2 Court enter an Order effecting a rehearing of the Petitioner's
3 Motion For Leave To File His Successive Post-Conviction Petition,
4 and Alternative Pre-Sentencing Motion To Set Aside Verdict, and
5 mandate that the Court Consider either the Petitioner's Post-
6 Conviction Petition upon it's merits, or Alternatively mandate
7 that the Court Consider the Petitioner's Pre-Sentencing Motion
8 To set Aside Verdict upon it's merits.

9
10 RESPECTFULLY SUBMITTED this 20th day of September 2004.

11
12 By: Steven F Voss
13 STEVEN FLOYD VOSS,
14 Petitioner, pro per.
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CERTIFICATE OF SERVICE BY U.S.MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P. 5(b) that on this 20th day of September 2004, I, mailed a true and correct copy of the foregoing, Motion For Reconsideration Of Motion For Leave To File Successive Petition, or alternative Motion To Set Aside Verdict; and Motion For Reassignment To Chief Judge, addressed to:

RICHARD GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. Box 11130
Reno, Nevada 89520-0027

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4714

JAMES W. HARDESTY
Chief District Court Judge
Second Judicial District Court,
For Washoe County
P.O. Box 30083
Reno, Nevada 89520-3083

By: Steven F Voss
STEVEN FLOYD VOSS, #52094
ELY STATE PRISON
P.O. Box 1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box 1989
Ely, Nevada 89301-9999

September 20, 2004.

To; JAMES W. HARDESTY
Chief District Court Judge
Second Judicial District Court
Washoe County, Nevada

Re: Successive Post-Conviction Petition, Case #CR96-P-1581

Dear Judge, Hardesty, enclosed with this letter you will find a copy of my proper person Motion requesting reconsideration of my previously filed Motion For Leave Of Court To File A Successive Petition For Writ Of Habeas Corpus (Post-Conviction).

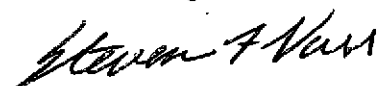
Please be advised that contemporaneously with the mailing of this letter and enclosed motion to you, I also mailed copies of the motion to the Clerk of Court for filing and to Respondent Counsel, RICHARD GAMICK, Washoe County District Attorney; and to BRIAN SANDOVOL, Attorney General of the State of Nevada.

The reason I am sending you the present communication is because included within my Motion For Reconsideration is also a request for reassignment to Chief Judge. Therefore, as I have requested your assignment in the matter I recognized that to serve you a copy of my pleading would be the most expedient method of informing you of my request and thereby resolving the matter in the District Court.

Please be further advised that this communication need not be treated as an ex-parte communication as a copy of this communication has been attached to each copy of the aforementioned Motion For Reconsideration and thereby same has been filed with the Clerk of Court and Served upon the Respondent's Counsel one and all.

Your immediate attention to this matter will be greatly appreciated. THANK YOU!.....

Sincerely, Steven Floyd Voss.



1 STEVEN FLOYD VOSS #52094
 2 ELY STATE PRISON
 3 P.O. Box 1989
 Ely, Nevada 89301-9999

ORIGINAL

FILED

2004 OCT 15 AM 9:30

RONALD A. LOUIS, JR.

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

STEVEN FLOYD VOSS,

) CASE NO. CR96-P-1581-A

Petitioner,

) DEPT.NO. 10

VS.

E.K. McDANIEL, et al.,

Respondent's.

11
 12 INDEX OF EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS
 13 (Post-Conviction) and, MOTION FOR LEAVE OF COURT TO FILE A
 14 SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS.

15 COMES NOW, Petitioner, STEVEN FLOYD VOSS, in proper person
 16 and hereby submits his Index Of Exhibits In Support Of His
 17 Petition For Writ Of Habeas Corpus, and his Motion requesting
 18 leave of Court to file same. Filed contemporaneously with the
 19 Petitioner's instant Index Of Exhibits, in the above entitled case.

20 RESPECTFULLY SUBMITTED, this 11th day of October 2004.

By: STEVEN FLOYD VOSS

STEVEN FLOYD VOSS,
 Petitioner, pro per.

PETITIONER'S INDEX OF EXHIBITS

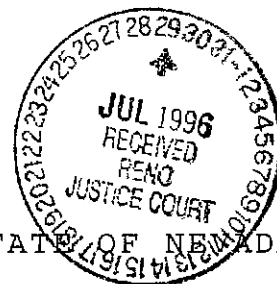
- 1
2 EXHIBIT #1: Transcript of Preliminary Examination, Reno
3 Justice Court, July 15, 2004..... Page 1-147
4 EXHIBIT #2: Letter from Post-Conviction Counsel, Scott W.
5 Edwards to Steven Voss, Dated August 22, 2000... Page 148
6 EXHIBIT #3: Nevada Department Of Corrections, Notice Of
7 Attorney Visit, dated October 30, 2000..... Page 149
8 EXHIBIT #4: Letter from Steven Voss to Appellant Counsel,
9 Mary Lou Wilson, dated March 22, 1997..... Page 150
10 EXHIBIT #5: Letter from Steven Voss to Appellant Counsel,
11 Mary Lou Wilson, dated March 25, 1997..... Page 151
12 EXHIBIT #6: Letter from Appellant Counsel, Mary Lou Wilson
13 to Steven Voss, dated April 1, 1997..... Page 152
14 EXHIBIT #7: Letter from Appellant Counsel, Jennifer Lunt
15 to Steven Voss, dated July 3, 1997..... Page 153 -154
16 EXHIBIT #8: Letter to Trial Counsel, Cotter C. Conway from
17 Steven Voss, dated January 8, 1998..... Page 155-156
18 EXHIBIT #9: Letter from Chief Deputy Public Defender,
19 and Trial Counsel, Mazie Pusich to Steven
20 Voss, dated January 14, 1998..... Page 157-159
21 EXHIBIT #10: Letter from Steven Voss to Chief Deputy
22 Public Defender/trial Counsel, Mazie Pusich,
23 dated January 16, 1998..... Page 160-163
24 EXHIBIT #11: Letter from Chief Deputy Public Defender/
25 Trial Counsel, Mazie Pusich to Steven Voss,
26 dated January 26, 1998..... Page 164-165
27
28

- 1 EXHIBIT #12: Letter from Appellant Counsel, Cheryl Bond
2 to Steven Voss, dated July 16, 1999..... Page -166
3 EXHIBIT #13: Order For Evidentiary Hearing, Appointment
4 of Counsel.(Order to Supplement Petition)
5 dated May 10, 2000.....Page 167-169

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Case No. MC 79,046

Department No. 1



IN THE JUSTICE'S COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE FIDEL SALCEDO, JUSTICE OF THE PEACE

--oOo--

STATE OF NEVADA,

Plaintiff,

vs.

STEVEN VOSS,

Defendant.

PRELIMINARY EXAMINATION

July 15, 1996

Reno, Nevada

APPEARANCES:

For the Plaintiff:

EGAN WALKER
District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

COTTER CONWAY
Deputy Public Defender
One South Sierra Street
Reno, Nevada

COPY

Reported by:

LYNDA CLARK, CSR #73

MERIT REPORTING (702) 323-4715

I N D E X

STATE'S WITNESSES	DR	CR	REDR	RECR	VOIR DIRE
Duc Hamilton	6	11			
Andrea Butters	13	18			
Tanya Campanile	20	30	36	36	
Yvonne J. Kline	37	43	47	49	
Sandra C. Crumb	51	60			
Claudette Andrews	65	69			
Linda Weeks	75	83			
Ed Park	88	93			
Dale A. Pappas	96	102			
Larry Canfield	109	125	137	138	

STATE'S EXHIBITS	IDENTIFICATION	EVIDENCE
A, Check	7	21
B, Check	7	22
C, Check	108	122
D, Photograph	112	

1 RENO, NEVADA; MONDAY, JULY 15, 1996; 10:00 A.M.

2 --o0o--

3
4 THE COURT: Good morning, everyone. Court is in
5 session. Please be seated.

6 Case number 79,046, State versus Steven Floyd
7 Voss. The defendant is present, represented by Mr.
8 Conway. The State is represented by Mr. Walker.

9 Today is scheduled for preliminary examination.
10 All parties now prepared to proceed?

11 MR. WALKER: I am prepared on behalf of the
12 State, Your Honor.

13 MR. CONWAY: Defense is ready, Your Honor.

14 THE COURT: How many witnesses do we have here
15 toto?

16 MR. WALKER: Nine, Your Honor.

17 MR. CONWAY: Rule of exclusion.

18 THE COURT: Will the nine witnesses please
19 stand.

20 Well, I see a lot more than nine people
21 standing.

22 MR. WALKER: My math is a bit off today. There
23 are actually 11 by my count here, Your Honor. I
24 intend to call certainly at least nine of those
25 people.

1 THE COURT: That is fine. I'll put it this
2 way: All potential witnesses please stand.

3 At this time the rule of exclusion has been
4 requested by the defense. I will grant that rule of
5 exclusion. And that rule means that only one witness
6 may remain in the courtroom to give testimony at any
7 given time.

8 While that witness is here to my left giving
9 testimony I am going to excuse all the other witnesses
10 to the outer corridor.

11 While you are there awaiting your turn to
12 testify I order you not to discuss this case in any
13 way amongst yourselves.

14 In the course of the morning we may be taking a
15 break. However, during that break if you wish to talk
16 to the attorneys, you may talk to the attorneys, if
17 you wish. You are not required to. However, again
18 I'm going to order that you talk to the attorneys out
19 of the presence of any other witness.

20 Is there any question about that?

21 All right. At this time then, Mr. Walker, do
22 you want to call your first witness.

23 MR. WALKER: Mr. Hamilton, Your Honor.

24 THE COURT: The other witnesses are now excused
25 to the outer corridor.

1 MR. WALKER: Your Honor, I would simply indicate
2 for the record that Mrs. Voss, Steven Voss's mother,
3 is here in the courtroom. She has not been subpoenaed
4 by the State in this case, but she is a potential
5 witness in the future.

6 MR. CONWAY: Excuse me, Your Honor.

7 THE COURT: One moment.

8 (A discussion was held off the record.)

9 THE COURT: Mr. Walker, or rather, Mr. Conway,
10 is she potentially a witness?

11 MR. CONWAY: She is potentially a witness at the
12 trial level, so I think in order to preserve the
13 record we will ask her to stand outside just in case.

14 THE COURT: That will be satisfactory. She is
15 certainly not excluded by the exclusionary rule at
16 this level, but if you feel more comfortable, that is
17 satisfactory with me.

18 MR. CONWAY: I do, Your Honor.

19 THE COURT: All right. Sir, if you would please
20 enter the witness box there. Watch your step. Please
21 face me, raise your right hand.

22 (The Court administered the oath
23 to the prospective witness.)

24 THE COURT: Please be seated.

25 ///

DUC HAMILTON

produced as a witness herein, having
been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q If you would, sir, please state your full
name, spell your last name for the record.

A Duc N. Hamilton, H-a-m-i-l-t-o-n.

Q How do you spell your first name?

A D-u-c.

Q Mr. Hamilton, do you have a current
occupation or profession? How are you employed?

A Through California Federal Bank.

Q What is your current position with
California Fed?

A Customer Service Represent.

Q Which branch do you work at?

A At the Sparks branch.

Q And what is the address of the Sparks
branch?

A 593 East Prater Way, Sparks, Nevada, 89431.

MR. WALKER: Your Honor, may I approach and ask
that two items be marked for identification.

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1 THE COURT: State's A and B are now both marked
2 for identification purposes.

3 MR. WALKER: Thank you, Your Honor.

4 (State's Exhibits A and B were marked.)

5 MR. WALKER: I'm going to hand the witness what
6 has been marked as State's B for identification.

7 BY MR. WALKER:

8 Q Mr. Hamilton, do you recognize what I'm
9 handing you, State's Exhibit B for identification?

10 A Yes, I do.

11 Q How do you recognize that?

12 A It was presented to me, and I made a
13 deposit of this item.

14 Q All right. When was that presented to you?

15 A On June 12th.

16 Q And what time of day?

17 A It was in the afternoon, around 3:00 or so.

18 Q What part of the bank were you working in?

19 A I normally work up at the drive-up teller,
20 but I move back and forth to help in the lobby as
21 well.

22 Q Was this presented at the drive-up teller?

23 A No, it was presented in the Lobby.

24 Q Who presented it?

25 A Steven Voss.

1 Q Is Mr. Voss here in the courtroom?

2 A Yes, he is.

3 Q Would you identify him and an item of
4 clothing he's wearing today, please.

5 A Blue jumper.

6 Q Is that the gentleman here to my left next
7 to counsel in the charcoal suit, Mr. Conway?

8 A Yes.

9 MR. WALKER: For the record, he's identified Mr.
10 Voss, the defendant.

11 THE COURT: So reflected.

12 BY MR. WALKER:

13 Q Mr. Hamilton, what account did Mr. Voss try
14 to or actually deposit that check into?

15 A Beverly Baxter's account.

16 Q Do you know Ms. Baxter?

17 A No, I don't.

18 Q What specifically did Mr. Voss tell you
19 when he deposited that into the account at your
20 window?

21 A That he needed immediate credit to her
22 account, because she had-- was applying for a loan,
23 and the loan company would be calling in order to
24 verify that the funds were available.

25 Q What did you tell Mr. Voss when he told you

1 that?

2 A That due to the amount of the check that
3 the item would be held for two days.

4 Q What does being held mean?

5 A It means that the funds aren't actually
6 available. It's deposited to your account, and you
7 get a current balance, but the funds aren't actually
8 available for withdrawal until the item clears.

9 Q Why was that done in this case?

10 A Because of the amount of the check. It's
11 our normal-- It was more than what she normally
12 deposits to her account. And any time we have an item
13 presented over \$5,000 we are required to place a hold
14 and possibly an extended hold depending on the nature
15 of the check.

16 Q What was Mr. Voss's attitude and demeanor
17 when you told him there would be this hold placed on
18 the check?

19 A He stated that Beverly would be very upset
20 if the item wasn't credited to her account because she
21 needed that verification for the loan.

22 Q What happened after you provided him with
23 this information?

24 A I told him that the best I could do was try
25 to contact the company, verify that the check will

1 clear, but until then I wouldn't be able to release
2 the funds. And I gave him my card, and I also
3 explained to have Beverly call me regarding the item,
4 because he's actually doing the deposit for somebody
5 else.

6 Q When you asked him to have Beverly call
7 you, what did he say?

8 A He just said that she would be upset about
9 not having the funds available.

10 Q Did he indicate to you that he would have
11 her call or anything of that nature?

12 A No, but I gave him my card and specified to
13 call me in the morning, and I would do the best I
14 could.

15 Q Did you speak with Mr. Voss at any time
16 after the afternoon hours of June 12th, 1996?

17 A No, I didn't.

18 Q Did you speak with anyone else about this
19 particular deposit?

20 A I spoke to Tanya the following day, because
21 somebody had called to see what the status was on the
22 check.

23 Q Tanya's last name is?

24 A Campanile.

25 Q Ms. Campanile also works at the bank I take

1 it?

2 A Yes, that is correct.

3 Q Do you recall what time of day it was that
4 you had this conversation?

5 A It was in the afternoon the following day I
6 believe.

7 Q How do you know someone had called
8 inquiring about the deposit?

9 A She was on the phone with the gentleman or
10 person at the time. I didn't know who it was.

11 Q To your knowledge was it the account owner,
12 Ms. Baxter, who was on the phone the next day?

13 A I don't know.

14 MR. WALKER: I have no further questions.

15 THE COURT: Mr. Conway, cross-examination.

16

17 CROSS-EXAMINATION

18 BY MR. CONWAY:

19 Q Do you know if Ms. Baxter has an account
20 with your bank?

21 A Yes, I do.

22 Q And you were able to check that when the
23 individual made the deposit?

24 A Yes.

25 Q Do you also have signature cards at the

1 bank for [REDACTED]'s account?

2 A Yes, we do.

3 Q Did you check that signature account on
4 this day?

5 A It wasn't required for the deposit of the
6 check.

7 Q So the only thing that was required is you
8 hold it because it was over \$5,000?

9 A That is correct.

10 Q Was that money to go into Ms. Baxter's
11 account?

12 A Yes, it was.

13 Q Now, you stated that you had contact with
14 Mr. Voss on the afternoon of June 12th, 1996?

15 A That is correct.

16 Q That is when he brought the check in?

17 A Yes. He presented the item for deposit.

18 Q You have had no contact with him since that
19 date, is that correct?

20 A That is correct.

21 Q Now, granted, you can't identify the
22 signatures, but has everything else been signed on
23 this? Is this how you recall the check looking when
24 you received it on June 12th?

25 A That is correct, except the only thing is

1 the endorsement steps, because it's gone through
2 clearing. But I wrote the account number on the
3 check.

4 Q Okay.

5 A And the item-- It was already endorsed
6 when it was presented.

7 MR. CONWAY: I have nothing further.

8 MR. WALKER: Nothing further, your Honor.

9 THE COURT: Mr. Hamilton, you may step down,
10 please.

11 MR. WALKER: My next witness will be Andrea
12 Butters, and I will retrieve her from the lobby.

13 THE COURT: Please face, me raise your right
14 hand.

15 (The Court administered the oath
16 to the prospective witness.)

17 THE COURT: Please be seated.

18
19 ANDREA E. BUTTERS,
20 produced as a witness herein, having
21 been first duly sworn, was examined
22 and testified as follows:

23 ///

24 ///

25 ///

A. Butters

1 the endorsement steps, because it has gone through
2 clearing. But I wrote the account number on the
3 check.

4 Q Okay.

5 A And the item-- It was already endorsed
6 when it was presented.

7 MR. CONWAY: I have nothing further.

8 MR. WALKER: Nothing further, your Honor.

9 THE COURT: Mr. Hamilton, you may step down,
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16 to the prospective witness.)

17 THE COURT: Please be seated.

18
19 ANDREA E. BUTTERS,
20 produced as a witness herein, having
21 been first duly sworn, was examined
22 and testified as follows:

23 ///

24 ///

25 ///

DIRECT EXAMINATION

BY MR. WALKER:

Q If you would, ma'am, please state your full name, spell your last name for the record.

A Andrea Elizabeth Butters, B-u-t-t-e-r-s.

Q How are you employed, ma'am?

A I work at California Federal Bank.

Q Which branch do you work at?

A The Reno branch.

Q All right. What is the address of the Reno branch?

A I believe 3490 South Virginia.

Q All right. How long have you worked there?

A About a year-- between a year and a year and a half.

Q Were you working there on Friday, June 14th, 1996?

A Yes, I was.

Q What position were you working that day there?

A Teller, working at a window.

Q Did you have occasion to speak with a gentleman identified to you as Steven Voss?

A Yes, I did.

Q Is that person here in the courtroom?

1 A Yes, he is.

2 Q Would you identify him and an item of
3 clothing he's wearing.

4 A He's wearing a blue shirt.

5 Q Is that the gentleman here to my left to
6 counsel wearing the --

7 A Yes, he is.

8 MR. WALKER: For the record, he's identified Mr.
9 Voss.

10 THE COURT: So reflected.

11 MR. WALKER: If I may approach, Your Honor.

12 THE COURT: You may.

13 BY MR. WALKER:

14 Q Ms. Butters, I'm handing you what has been
15 marked State's Exhibit A for identification. Do you
16 recognize that?

17 A Yes, I do.

18 Q How do you recognize it?

19 A It's the check that Mr. Voss presented me
20 to cash for him.

21 Q All right. What time did he present that
22 check to you?

23 A Between about 11:00 a.m. and-- 11 and 12:00
24 a.m.

25 Q Are you familiar with the account that

1 check is written on?

2 A As far as?

3 Q Owner of the account, for example.

4 A Oh, yes.

5 Q Do you know Ms. Baxter?

6 A Not personally.

7 Q Have you ever helped Ms. Baxter?

8 A I may have in the past, but I don't

9 remember.

10 Q For lack of a better term what was the home
11 of that account? Where was that account located at?

12 A It was-- It's a Sparks branch account.

13 Q All right. What happened when Mr. Voss
14 presented that check?

15 A I told him I wasn't able to cash it for him
16 because the funds were still on hold.

17 Q What was his response?

18 A He didn't really like it.

19 Q What did he say?

20 A He told me that he knew that the funds were
21 available.

22 Q And what was his attitude and demeanor when
23 he was telling you this?

24 A Persistent.

25 Q When you were unable to cash the check for

1 him, what d he say or do?

2 A He tried to find out information on the
3 account, why I wasn't able to cash it for him.

4 Q Did you speak with anyone at the Sparks
5 branch while this was going on?

6 A No, I didn't.

7 Q Did Mr. Voss indicate to you that he had
8 already been to the Sparks branch to talk to people
9 about this?

10 A Not directly, but I knew that he had been
11 to the Sparks branch, because I looked up on my
12 computer where the check had been deposited. So I
13 knew that.

14 Q You knew that, though, from your own
15 information, not from anything he had told you?

16 A Correct.

17 Q All right. What happened ultimately? How
18 did the interaction, if you will, end?

19 A Basically he kept trying to get-- trying to
20 ask me questions on the account. I kept saying I
21 couldn't release any information to him because he
22 wasn't on the account. And I told him if he didn't
23 like the situation the way I was handling it, he could
24 go speak to someone at the Sparks branch since her
25 account was at the Sparks branch.

MERIT REPORTING (702) 323-4715

1 Q How was this happening inside the bank or
2 at a drive-up window?

3 A Inside the bank.

4 Q Were there other people present when this
5 was happening?

6 A Yes, there was a teller next to me.

7 Q And that teller's name was?

8 A Shawna Sissel.

9 MR. WALKER: No further questions.

10 THE COURT: Cross-examination, Mr. Conway.

11 MR. CONWAY: Thank, Your Honor. A moment
12 please.

13 (A discussion was held off the record.)

14

15 CROSS-EXAMINATION

16 BY MR. CONWAY:

17 Q With respect to Exhibit A, does this appear
18 exactly as you saw it on the day?

19 A Yes, it does.

20 Q Was the sole reason you were unable to cash
21 it was because the funds had not cleared on an earlier
22 deposit?

23 A Correct.

24 Q Do you know how long it normally takes for
25 funds to clear?

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1 A It really depends if it was the type of
2 hold -- if it was a regular or extended hold. It
3 looks like an extended hold, which is usually seven to
4 eleven days.

5 Q An extended hold was probably due to the
6 fact that check was over \$5,000 that was deposited?

7 A Correct.

8 Q There were no other reasons for the hold on
9 that-- on the account? It was just because there was
10 not \$5,000 available in order for you to process this
11 check?

12 A You mean me not being able to cash it?

13 Q Correct.

14 A Correct.

15 MR. CONWAY: Nothing further, Your Honor.

16 MR. WALKER: Nothing further, Your Honor.

17 THE COURT: You may step down, Ms. Butters.

18 MR. WALKER: The next witness I will call, Your
19 Honor, is Tanya Campanile.

20 THE COURT: Please face me, raise your right
21 hand.

22 (The Court administered the oath
23 to the prospective witness.)

24 THE COURT: Please be seated.

25 ///

T. Campanile

TANYA CAMPANILE,

produced as a witness herein, having
been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q If you would, ma'am, please state your full
name and spell your last name for the record.

A Tanya Campanile, C-a-m-p-a-n-i-l-e.

Q Ms. Campanile, how are you employed?

A I work for California Federal Bank.

Q Which branch do you work at?

A The Sparks office.

Q What is the address there?

A 593 East Prater Way.

Q Do you have a position or assignment there?

A Yes, my title is Operations Supervisor.

Q What are some of your duties as Operation
Supervisor?

A I supervise the teller line, make sure that
we comply with federal regulations. I work a drawer
myself, so I help customers all day long also.

Q I'm going to hand you two items that have
been marked as State's Exhibits A and B for

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1 identification and ask if you recognize each of those
2 items.

3 Please go ahead, refer to them by the exhibit
4 sticker numbers.

5 A Okay. Yes, I do recognize them. The
6 Exhibit B -- I only saw the copy. I did not see the
7 original item.

8 Q With respect to Exhibit A, is that a fair
9 and accurate duplicate original or copy, if you will,
10 of the original item that you personally observed?

11 A Yes, it is.

12 MR. WALKER: Move A into evidence.

13 THE COURT: Any objection?

14 MR. CONWAY: No objection to A.

15 THE COURT: A is moved into evidence without
16 objection.

17 (State's Exhibit A was admitted.)

18 BY MR. WALKER:

19 Q What do you know about the whereabouts of
20 the original of B?

21 A The original of B was processed by our
22 branch I believe.

23 Q Are you, for lack of a better term, a
24 custodian of records at your branch? Are you
25 responsible to maintain and understand how the records

1 systems work?

2 A I do understand how the records work.

3 Q All right. Is there an indication on the
4 copy that we see marked as State's Exhibit B there
5 that that document was processed through California
6 Federal Bank?

7 A Yes, by the stamps on the back.

8 Q To your knowledge then is that a fair and
9 accurate copy of the original as it exists in the
10 archives, if you will, of the bank?

11 A Yes, it is.

12 MR. WALKER: Move B into evidence.

13 THE COURT: Any objection?

14 MR. CONWAY: No objection, Your Honor.

15 THE COURT: B is moved into evidence without
16 objection.

17 (State's Exhibit B was admitted.)

18 BY MR. WALKER:

19 Q When did you first see Exhibit A, the
20 5,000-dollar check, for ease of reference?

21 A On Friday, June 14th, I believe it is.

22 Q All right. When was it during the day?

23 A Oh, it was in the morning, probably 10:00
24 or so.

25 Q Who had possession of the check?

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1 A Mr. Voss.

2 Q Is Mr. Voss here in the courtroom?

3 A Yes, he is.

4 Q Please identify him.

5 A In the blue shirt there.

6 Q All right. Where was Mr. Voss at when you
7 saw him with that check?

8 A He was at my window inside the lobby.

9 Q What was he doing there?

10 A He was attempting to cash the check.

11 Q Who was waiting on him?

12 A I was waiting on him.

13 Q Did you personally wait on him?

14 A Yes. I was the first one to speak with him
15 regarding this.

16 Q What happened when he presented the check?

17 A Well, we follow normal procedures. We
18 checked to make sure that the funds were available in
19 the account. And anything over \$250 we have to check
20 the maker's signature by comparing it to a signature
21 card.

22 And that happened to be at our branch, so I
23 pulled the signature card and checked the signatures
24 of the maker, and they did not match the check.

25 Q Was there anything else unusual about the

1 check that kind of stuck in your mind based on your
2 training and experience?

3 A Yes.

4 Q What?

5 A The handwriting styles were different for
6 the payee compared to the rest of the check. The name
7 Steven Voss was written in blue ink, and it was
8 printed. And the rest of the writing was in black
9 ink, and it was in cursive.

10 Q Did you confront Mr. Voss with this
11 information?

12 A Yes, I did.

13 Q What was his response?

14 A I guess just objectionable to my inquiries
15 about the difference in the handwriting. I asked if
16 the payee had been written in by himself because of
17 the different handwriting styles. And he said, Yes,
18 it had. I said, Was the check blank on the payee
19 line? He said, Yes, it was. I wrote my name in
20 there.

21 Q Did he tell you why he had written his own
22 name in on the payee line?

23 A No.

24 Q What other conversation did you have with
25 Mr. Voss at that time?

1 A Well, I explained to him that we would not
2 be able to cash the check because the signature line
3 did not match the maker's signature. And I said that
4 I would need to call the customer to verify that
5 indeed she had intended to write the check to this
6 person -- to Steven Voss.

7 And I called the number that was on the check
8 and left a message. There was no-- There was an
9 answering machine with no message on it, so I left my
10 message.

11 And then I checked a phone number that we had on
12 the system, which was different from what was on the
13 check, and I called that number also. And that number
14 also was an unknown business who had no knowledge of
15 Mrs. Baxter.

16 And I explained to him that I could not cash the
17 check, because I could not reach the customer. And I
18 asked if he happened to know where she might work, and
19 he said, No.

20 Q All right. When you called and left a
21 message on an answering machine you said with no
22 message, what did you mean by that?

23 A There was no person on the recorder
24 stating, you know, whose message machine it was. It
25 was just a ring and then a beep, and so I left a

1 message. And I was not even sure that was her
2 number.

3 Q All right. When you asked Mr. Voss if he
4 knew where Ms. Baxter worked, why were you asking him
5 that?

6 A I was going to attempt to call her at her
7 place of employment. We did not have that on our
8 signature card. We usually request that information,
9 but it was not on the card. And I asked if he would
10 know where she worked, and he said, No.

11 Q Did he indicate to you what the purpose was
12 for the check which he was trying to cash?

13 A Yes, he did. He stated that it was a loan
14 that he had made to her and that was repayment of that
15 loan.

16 Q That the \$5,000 on her account was
17 repayment of a loan he had already given her?

18 A Correct.

19 Q Were you aware that Mr. Voss had been to
20 the Reno branch already?

21 A No, I was not aware of that.

22 Q Did he ever indicate that to you in his
23 conversation?

24 A No.

25 Q What happened next in the sequence of

1 events?

2 A I also asked Mr. Voss if he happened to
3 know any of her friends so that maybe I could contact
4 Mrs. Baxter through a friend. He said, No.

5 I told him that we would not be able to cash it.
6 He was-- He objected to that and said, I don't
7 understand why not. I have plenty of ID. And I again
8 explained to him it wasn't the fact that he did or did
9 not have ID, it was that the maker's signature did not
10 match what we had on the signature card.

11 And I referred him to-- well, actually went over
12 and spoke to my manager --

13 Q Who is?

14 A Yvonne Kline.

15 Q All right.

16 A --and went back to him at the teller window
17 and stated that she agreed with my decision and that
18 we were not able to cash the check. And at which time
19 he requested to speak with her.

20 Q Had you spoken with Mr. Voss at any time
21 prior to Friday, the 14th?

22 A Yes, on a phone call.

23 Q When was that?

24 A That was the day prior.

25 Q That would be June 13th?

1 A Yes, Thursday, and it was in the afternoon,
2 approximately two, 2:30.

3 Q How do you know that it was Mr. Voss?

4 A Well, he had -- He did not state his name,
5 but he did state that he had deposited a check for a
6 customer that we had placed on hold through the drive-
7 up window.

8 And he wanted to see if the funds were available
9 on that check. And he stated that the person who
10 helped him was going to try and get the funds
11 available sooner on the check by calling the issuing
12 bank to make sure that the funds were available, et
13 cetera. And he wanted to see if he could cash a check
14 that he had in his possession against that account.

15 Q And were you present Wednesday when Mr.
16 Voss spoke with Mr. Hamilton at the bank?

17 A No, I was not. I was there at work, but I
18 was not aware of that transaction.

19 Q All right. How did your meeting or
20 conversation, if you will, with Mr. Voss on Friday
21 end?

22 A Basically I had referred it to Yvonne
23 Kline, and I introduced him to her. And he sat down
24 at her desk, and that really was all that was said at
25 the end of the conversation.

1 Q Did you see him leave the bank after he had
2 whatever conversation he had with Ms. Kline?

3 A Yes, I did.

4 Q What time was it that he left, do you
5 recall?

6 A It probably would have been a half hour
7 after he entered the branch at the most. He probably
8 spoke with Yvonne for five, ten minutes at the most,
9 and was agitated with her and was speaking very loudly
10 and stood up and said something to her, which I'm not
11 sure what, and exited the building.

12 Q Did you see Mr. Voss at any time
13 thereafter?

14 A Yes, he came back in the branch a couple
15 times that day that I saw.

16 Q When, and be as specific as you can, did he
17 come back into the branch that day?

18 A Okay. He came into the branch and stood at
19 the front door. He caught Yvonne Kline as she was
20 leaving for lunch, which would have been about 1:30,
21 and spoke with her at the front door and was calm and
22 seemed to have a much different disposition.

23 He was smiling, and they were smiling, and they
24 were talking. And she left for lunch, and he left as
25 far as I know also at that time and then also came in

1 later that afternoon, approximately 4:00 or so.

2 And I was in the break room. I did not see him
3 come into the building. I was in the break room and
4 came out. He was sitting at Yvonne's desk at that
5 time.

6 Q What was his attitude and demeanor at that
7 time?

8 A Also calm and pleasant. They seemed to be
9 talking in conversational tones and were-- They sat
10 there at her desk for sometime as I was back on the
11 teller line, and it seemed that it was very calm and
12 normal.

13 MR. WALKER: No further questions.

14 THE COURT: Mr. Conway, cross-examination.

15 MR. CONWAY: Thank you, Your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. CONWAY:

19 Q You stated that the first time you ever
20 spoke with Mr. Voss was on June 13th?

21 A On Thursday on the phone, correct.

22 Q And did you at that time tell him that you
23 couldn't give him information over the phone, and he
24 would have to come down and talk to you personally?

25 A Not regarding that. He was inquiring about

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1 the specific hold on the check, and I had not helped
2 him, so I wasn't really sure about the situation at
3 that time.

4 And before our conversation was finished I
5 referred the call to Doug Hamilton, who had taken the
6 transaction. He spoke-- Mr. Voss--

7 Q Did you at any time during the conversation
8 advise him to come down personally to the bank?

9 A If I did say that, I would have said, You
10 would need to bring the check down to us. But I don't
11 remember specifically saying that that day.

12 Q Okay. But then on June 14th he did
13 personally come to the bank?

14 A Correct, with the check.

15 Q Referring your attention to State's Exhibit
16 A--

17 A Yes.

18 Q --you stated that is the check that you saw
19 at about ten a.m.

20 A Yes, Friday morning.

21 Q Now, that particular exhibit doesn't have
22 the back of the check?

23 A No.

24 Q He hadn't endorsed this check, had he?

25 A I believe he endorsed it in my presence on

1 the back.

2 Q But it's not present here so we have no way
3 of knowing whether it was endorsed, is that correct?

4 A On the back of the check.

5 Q Is the back of the check present on Exhibit
6 A?

7 A No.

8 Q Now you stated that he asked-- He was
9 there to cash the check, is that correct?

10 A Yes, he was.

11 Q So he wasn't there just to verify whether
12 the funds had finally been deposited?

13 A No, he was there to cash the check.

14 Q Okay. But you stated that the day before
15 he had already called to see if the funds had been
16 deposited, correct?

17 A He knew they had been deposited, but they
18 were still on hold at that time.

19 Q I misspoke. I apologize.

20 He knew they were on hold, and he had checked on
21 June 13th pursuant to your testimony to determine
22 whether or not they had cleared?

23 A Correct.

24 Q And you, of course, advised him at that
25 time they had not cleared?

1 A Correct.

2 Q So he already knew that when he came in on
3 June 14th, correct?

4 A On Friday-- We told him the funds would be
5 available on Friday. That was the end of the two-day
6 hold that we had placed on the deposited check.

7 Q Okay. So you then checked the signature on
8 this Exhibit A check with the signature card that you
9 had in your branch?

10 A At our branch, uh-huh.

11 Q Is that the normal procedure?

12 A Yes, it is.

13 Q For any check?

14 A Anything over 250.

15 Q Okay. Now, in your opinion at that time --
16 Do you have that signature card?

17 A No, I don't have it here.

18 Q Did you turn that into the police or a copy
19 of that into the police?

20 A I'm sure a copy was turned in, yes.

21 Q Now, based on your opinion when you
22 compared the two signatures you felt that they were
23 different, is that correct?

24 A Yes, they were.

25 Q Okay. You also noted on this exhibit, on

1 this check that there were two different
2 handwritings?

3 A Yes.

4 Q All right. And when you questioned
5 Mr. Voss concerning those, he admitted that he wrote
6 on the payee line, isn't that correct?

7 A Yes.

8 Q But the handwriting on the payee line is
9 different from the writing on the rest of the check,
10 isn't that correct?

11 A Yes, it is. It's a different style.

12 Q Because of your concern about the signature
13 line you then tried to contact Ms. Baxter, isn't that
14 correct?

15 A Correct.

16 Q And you were unable to reach her at her
17 home number?

18 A Yes, I was not able to speak with her at
19 her home.

20 Q And then you asked Mr. Voss pursuant to
21 your testimony whether he knew where she worked,
22 correct?

23 A Correct.

24 Q All right. Didn't you actually ask him for
25 her phone number at her place of work? I mean you

1 weren't going to go down to her place of work to ask
2 her. You were going the try to call her?

3 A Right. I said, Do you know where she
4 works? And then I was going to get the phone number
5 out of the phone book or whatever.

6 Q But did you ask him for the phone number
7 first of her place of business?

8 A I believe I asked him first; Do you know
9 where she works.

10 Q But either way he was unable to give you
11 the information you requested, is that correct?

12 A Correct.

13 Q Now you also testified that he gave you a
14 reason why those funds were being given to him?

15 A Yes.

16 Q All right. And did he say to you at that
17 time that that was a loan to him to pay for a mobile
18 home or to purchase a residence, do you recall?

19 A I do not recall that. I recall that this
20 was a loan that he had made to Mrs. Baxter, and this
21 was repayment of that loan.

22 Q But it did concern a loan, correct?

23 A Correct.

24 Q And so you are positive that it was a loan
25 that he was being repaid and not a loan to him?

1 A According to what he said, yes.

2 MR. CONWAY: Nothing further, Your Honor.

3 THE COURT: Any redirect?

4

5 REDIRECT EXAMINATION

6 BY MR. WALKER:

7 Q As I understood, there were also different
8 colored inks on the checks?

9 A Yes, there was. The payee line was blue,
10 and the rest of the check was written in black ink.

11 THE COURT: Anything further?

12 MR. WALKER: Nothing further.

13 THE COURT: Any recross?

14

15 RECROSS-EXAMINATION

16 BY MR. CONWAY:

17 Q Again he did inform you that he was the one
18 that filled in the payee line, and that would have
19 been blue?

20 A Yes.

21 Q The rest of the check was all -- The check
22 was all in black ink all in the same handwriting?

23 A Yes.

24 MR. CONWAY: Nothing further.

25 THE COURT: Anything further?

X Kline

1 MR. WALKER: No.

2 THE COURT: Ms. Campanile, you may step down.

3 Please face me and raise your right hand.

4 (The Court administered the oath
5 to the prospective witness.)

6 THE COURT: Please be seated.

7

8 YVONNE J. KLINE, .

9 produced as a witness herein, having
10 been first duly sworn, was examined
11 and testified as follows:

12

13 DIRECT EXAMINATION

14 BY MR. WALKER:

15 Q If you would, ma'am, please state your full
16 name, spell your last name for the record.

17 A Yvonne J. Kline, K-l-i-n-e.

18 Q Ma'am, are you employed?

19 A I work at California Federal Bank.

20 Q Which branch?

21 A Sparks branch on Prater Way in Sparks,
22 Nevada.

23 Q Thank you. What is your position there?

24 A Operations Manager.

25 Q On Friday, June 14th, 1996 did you have

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1 occasion to deal with a person identified to you as
2 Steven Voss as he attempted to cash a 5,000-dollar
3 check?

4 A Yes, I did.

5 Q What time of day was it that you first
6 became aware of this sequence of events?

7 A It was before noon. I'm not exactly sure
8 what time it was the first time.

9 Q What happened to your recollection?

10 A He had brought a check into the branch to
11 cash, and Tanya waited on him. And she felt that --
12 She didn't feel comfortable cashing the check because
13 the signature didn't match what we had on file and --

14 Q How did you get involved?

15 A After Tanya refused the transaction Mr.
16 Voss was pretty insistent, so Tanya came over to
17 review the transaction with me, and I agreed with
18 Tanya's decision that we shouldn't cash the check at
19 that time.

20 Q What did you do?

21 A Suggested that we try to call Beverly
22 Baxter and see if she had issued the check and see if
23 it was okay to go ahead and cash it.

24 Q Were you able to reach Ms. Baxter?

25 A No, we were not.

1 Q What happened next?

2 A Then Steven Voss came over to my desk, and
3 he was a little bit agitated. And he was kind of
4 loud, and his attitude was that we were denying him
5 money that he was entitled to and that we had no right
6 to refuse to give him the money.

7 Q All right. What did you do?

8 A I told him I was making my decision based
9 on the information I had in front of me. I had the
10 signature card and the check, and the signature card
11 didn't match the signature on the check, and the payee
12 line was filled in with different ink.

13 And so I told him, Based on the evidence I have
14 in front of me I will be unable to cash the check at
15 this time, and we really need to wait to hear from Ms.
16 Baxter before we can proceed.

17 Q Did you attempt to pursue alternative ways
18 to contact Ms. Baxter with Mr. Voss?

19 A Yes, I did. I asked if he knew of any way
20 that he could get a hold of her or if he could tell us
21 a work number where she could be reached, that we
22 would be happy to try to contact her.

23 Q What was his response?

24 A He said he didn't know where she worked.

25 Q All right.

1 A also asked him if he ght know some of
2 her friends that might know where she worked, and he
3 said he didn't know where any of them could be reached
4 either.

5 Q How long did this first interaction with
6 Mr. Voss last?

7 A Oh, probably about 10 or 15 minutes.

8 Q Did you see him later that day?

9 A Yes, I did.

10 Q When was that?

11 A The first time after that was just a few
12 minutes after he left. He came back in quite soon.

13 Q And what happened then?

14 A He was asking me if we couldn't order
15 copies of checks that had been written on her account,
16 because he said he knew that she often changed her
17 signature. Sometimes she spelled her name all the way
18 out. Sometimes she used initials only.

19 And he thought it might be helpful if we could
20 have check -- signatures on checks that had already
21 cleared her account.

22 Q How long did this second conversation last?

23 A Just a few minutes.

24 Q How did it end?

25 A More quietly than the other time. The

1 first time when he left, he was quite angry, and he
2 was yelling at me that Ms. Baxter would be really mad
3 at us because we didn't cash the check. The second
4 time he was much calmer.

5 Q Did you see him thereafter?

6 A Yes, I did.

7 Q When was that?

8 A As I was leaving the building on my lunch
9 break. I would guess it was probably about 2:00. He
10 was entering the building, and he approached me and
11 asked me some questions. And I told him that I was on
12 my lunch break and that I would be back a little
13 later.

14 Q What did he ask you when he approached you?

15 A He asked me if we had gotten copies of the
16 checks that-- the other checks that she had written.
17 He also asked me if he might be able to transact that
18 check at a different bank, that he might be having and
19 account at another bank.

20 Q If he had an account or if she did?

21 A If he did.

22 Q How long was that conversation?

23 A Oh, it was very brief, because I was
24 leaving the building, and I didn't want to be
25 interrupted on my lunch break.

1 Q Did you see him thereafter?

2 A Yes, I did. He came back in about 4:00.

3 Q All right. And what happened that time?

4 A He came to my desk and sat down, and he
5 asked me if we were able to get copies of any of the
6 checks that Ms. Baxter had written. And he was asking
7 me if the funds would be available on the check that
8 had been deposited a few days earlier..

9 There was a lot of interest in that deposited
10 check. As a matter of fact, I had ordered a copy of
11 it from our Research Department, thinking that if Ms.
12 Baxter ever called us to say that the check was-- it
13 was okay to cash the check drawn on her account, I
14 wanted to double check on the deposit to make sure
15 that it was a valid check and wasn't going to be
16 returned to us unpaid.

17 Q All right. What was Mr. Voss's attitude
18 and demeanor the fourth time you talked with him on
19 June 14th?

20 A Well, he was anxious, and he was really
21 determined to get the money. He said that he had some
22 kind of a deal on a place to live and the deadline was
23 5:00. He needed the money by five. He was real
24 anxious to get the money.

25 Q All right. Incidentally is the same Mr.

1 Voss that you saw four times on June 14th here in the
2 courtroom today?

3 A Yes, he is.

4 Q Would you identify him and an item of
5 clothing he's wearing right now today, please.

6 A He's wearing a blue shirt, and I can see
7 red sneakers on his feet.

8 Q All right. The gentleman to my left here
9 next to counsel in the charcoal gray suit?

10 A Yes.

11 MR. WALKER: For the record, Your Honor, she has
12 identified the defendant, Mr. Voss.

13 THE COURT: The record will so reflect.

14 MR. WALKER: No further questions.

15 THE COURT: Cross-examination, Mr. Conway.

16 MR. CONWAY: Thank you, Your Honor.

17

18 CROSS-EXAMINATION

19 BY MR. CONWAY:

20 Q You stated that the first time you saw Mr.
21 Voss was on June 14th. Is that the day you saw him?

22 A Yes, I did.

23 Q All right. When he left at that time, he
24 took the check with him, is that correct?

25 A Yes, he did.

1 Q And he was quite agitated that he was
2 unable to conduct the transaction at that time?

3 A Yes.

4 Q Now that is not the first person you have
5 ever had in your bank that was a little agitated by a
6 bank transaction?

7 A That is correct.

8 Q So there are a lot of people who probably
9 get upset about a transaction they are unable to
10 complete?

11 A They do.

12 Q Okay. That is probably one of your jobs,
13 is to deal with those situations where there is a
14 problem with a transaction?

15 A Yes.

16 Q Now, did you also look at the signature
17 card of Ms. Baxter on the account she had at your
18 bank?

19 A Yes, I did.

20 Q So you compared those signatures to them?

21 A Yes, I did.

22 Q Did you ever pull those other checks of Ms.
23 Baxter's as requested by Mr. Voss?

24 A Not before he was-- Not before he left,
25 no.

1 Q Not before the end of June 14th?

2 A Right.

3 Q And did you have an opportunity to compare
4 those?

5 A Yes.

6 Q Now, Mr. Voss left -- he left with the
7 check. You stated that the next time you saw him was
8 a few minutes later when he came back in, and that is
9 when he made the suggestion that you get the other
10 checks?

11 A Correct.

12 Q And he was much more calmer at this point,
13 trying to cooperate with you?

14 A Yes, he was.

15 Q Now, prior to him leaving that first time
16 you had informed him, had you not, that you felt that
17 this signature was different than the signature card
18 signature?

19 A I did, yes.

20 Q He was aware of that?

21 A Yes, he was.

22 Q And he was trying to I guess assist the
23 bank or show that-- make sure that signature was in
24 fact different and not Ms. Baxter's, isn't that
25 correct?

1 A I'm sorry.

2 Q He was trying to show in fact that was Ms.
3 Baxter's signature, and that is why he had asked you
4 to pull other checks?

5 A I'm not sure what his intent was.

6 Q Okay. But then he left after that second
7 brief conversation. You saw him again just before
8 your lunch hour?

9 A Right.

10 Q And again at that time he was just asking
11 you again whether you had made any progress toward
12 finding the other checks?

13 A He was also asking other ways to get the
14 money off of that check.

15 Q Right. He was still interested in trying
16 to cash this check --

17 A Yes, he was.

18 Q --and do the transaction, which is why he
19 came to the bank, correct?

20 A That is right.

21 Q And in fact he returned a fourth time,
22 sometime you stated around 4:00 p.m. in the afternoon?

23 A Uh-huh.

24 Q And at that point he told you what he
25 needed the money for, isn't that correct?

1 A He said that he was relating, that the
2 apartment where he had been living had burned, and --

3 Q That he needed this money?

4 A He needed the money to settle, yes, his
5 deal on wherever he was trying to live.

6 Q And that seems like an adequate reason to
7 be a little agitated about trying to complete this
8 transaction, isn't that correct?

9 MR. WALKER: Objection, speculation.

10 THE COURT: Sustained.

11 MR. CONWAY: Nothing further.

12 THE COURT: Any redirect?

13

14 REDIRECT EXAMINATION

15 BY MR. WALKER:

16 Q Mrs. Kline, he left with the check every
17 time, didn't he?

18 A Yes, he did.

19 Q In fact the fourth time he left with the
20 check?

21 A Yes, he did.

22 Q Did he ever try and come back and cash that
23 check ever again?

24 A Not after that.

25 Q After that Friday?

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1 A o.

2 Q Did the police respond that Friday?

3 A Yes, they did.

4 Q When did they respond?

5 A The last time he was in the bank shortly
6 after four there was a call from the Washoe County
7 Sheriff's Department.

8 A different employee had answered the phone, and
9 they told him, This is the Washoe County Sheriff's
10 Department. We have reason to believe that a person
11 by the name of Steven Voss may be attempting to
12 negotiate--

13 Q I'm going to interrupt you there. The
14 police called, said what they said, and they came?

15 A Yes.

16 Q Was Mr. Voss there?

17 A They asked us to detain him and that they
18 would be over. Yes, he was there.

19 Q All right. He never came back and tried to
20 cash the check?

21 A He did not.

22 Q Mr. Conway asked you a question about, Is
23 it unusual for somebody to try and cash a check like
24 this basically. Do you recall that?

25 A Yes.

1 Q In your experience is it unusual for
2 someone to attempt to cash a 5,000-dollar, two-party
3 check with two different types of handwriting and two
4 different types of ink on it?

5 A Yes, that is unusual.

6 Q And is that in fact why you balked at
7 cashing it?

8 A That is part of the reason, yes.

9 MR. WALKER: No further questions.

10 THE COURT: Any recross?

11

12 RECROSS-EXAMINATION

13 BY MR. CONWAY:

14 Q How long have you worked as a bank
15 employee?

16 A I've been with California Federal Bank for
17 ten years.

18 Q And in your career as a bank employee I'm
19 sure you have seen a number of odd or strange checks
20 trying to be cashed, isn't that correct?

21 A Yes, I have.

22 Q And, as you testified earlier, that is part
23 of your job, to deal with those checks and determine
24 whether or not they are valid?

25 A That is right.

1 Q And some of them probab were valid,
2 correct, even though they were strange?

3 A Some of them may have been, yes.

4 Q Now, you stated that Mr. Voss did not
5 attempt to cash that check after June 14th?

6 A Not to my knowledge.

7 Q However, the police arrived at the bank on
8 June 14th, did they not?

9 A They did.

10 Q And Mr. Voss was there?

11 A He was there.

12 Q They had a conversation with Mr. Voss?

13 A They did.

14 MR. CONWAY: Thank you. Nothing further.

15 THE COURT: Any redirect?

16 MR. WALKER: No, thank you.

17 THE COURT: Ms. Kline, you may step down.

18 Please face me and raise your right hand.

19 (The Court administered the oath
20 to the prospective witness.)

21 THE COURT: Please be seated.

22 ///

23 ///

24 ///

25 ///

1 SANDRA C. CRUMB,
2 produced as a witness herein, having
3 been first duly sworn, was examined
4 and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. WALKER:

8 Q If you would, ma'am, please state your full
9 name and spell your last name for the record.

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

11 Q Ms. Crumb, where do you reside?

12 A At 5501 West Fourth Street, Jack Pine
13 Motel.

14 Q Do you in fact own that business, if you
15 will?

16 A Yes, I do.

17 Q What kind of business is it?

18 A It's a weekly motel. We rent by the week,
19 by the month.

20 Q How many units are there at the Jack Pine?

21 A Seven.

22 Q And did a person known to you as Beverly
23 Baxter rent one of those units in the recent past?

24 A Yes, she did.

25 Q When did she first rent the unit?

1 A December 1st, 1995.

2 Q And how long did she rent the unit?

3 A She rented it up until one month ago just
4 about -- paid the rent up through June 20th.

5 Q All right. Describe Ms. Baxter. How old
6 is she to your knowledge?

7 A Beverly? I believe she had a birthday in
8 May. She just turned 50 in May.

9 Q All right. And did anyone live with
10 Beverly at the Jack Pine Motel during the term of her
11 tenancy there?

12 A No.

13 Q Did you know a person by the name of Steven
14 Voss who had occasion to visit with Beverly at the
15 Jack Pine Motel?

16 A Yes.

17 Q When was the last time you saw him at the
18 Jack Pine Motel?

19 A It would have been on June 13th. I believe
20 that was a Thursday. Well, no, that was the day
21 before, June 12th, on Wednesday. Okay. I saw him on
22 that day.

23 Q All right. What was Mr. Voss doing the
24 last time you saw him?

25 A Well, the last time I saw him was on this

1 particular day. He had a key, and he was going into
2 Beverly's apartment.

3 Q On Wednesday?

4 A On Wednesday while she was at work.

5 Q All right. How do you know she was at
6 work?

7 A I had seen her leave that morning. And
8 Beverly without fail would leave at a certain time
9 every morning, and I knew that is where she was. I
10 don't know. She just left everyday at the same time,
11 and she was at work that day.

12 Q How do you know that it was Mr. Voss that
13 returned and entered Beverly's apartment on Wednesday,
14 the 12th?

15 A I know him by sight if I see him.

16 Q Does he have a vehicle?

17 A Yes.

18 Q What kind of vehicle is it?

19 A Big blue and white truck with a tow, you
20 know, like a tow truck.

21 Q Is this a distinctive truck?

22 A Oh, yeah. Yeah, he always parked it like
23 right out front.

24 Q How are you able to see the comings and
25 goings from your apartment?

1 A My residence is right next to Beverly's.
2 It was right there on the corner. I have big windows
3 that face the street, and the other side faced the
4 driveway. So anybody coming and going -- I see that,
5 and especially somebody coming and going out of number
6 one, because number one is right next to the motel
7 office.

8 Q Was Beverly with Mr. Voss when he entered
9 her apartment?

10 A No, not on Wednesday.

11 Q How do you know that he had a key?

12 A I was sitting right there at my desk. You
13 can look right through the doorway of the office. And
14 he was standing right there by the Pepsi machine, and
15 he held up the big key ring with keys on it, took out
16 one key and unlocked the door and went in.

17 Q Did you recognize this key ring?

18 A No, unh-unh.

19 Q All right. How long was he inside the
20 apartment?

21 A Oh, I would say maybe half an hour.

22 Q All right. And how did he leave?

23 A He left the apartment--I don't know--closed
24 the door and went out and got in his truck and left.

25 Q When was the next time you saw Mr. Voss?

1 A The next time I saw him was when he left
2 the next morning at about 9:00, and he pulled out of
3 the driveway in the truck or out of the-- in front of
4 the motel. He was parked in front of the motel. He
5 pulled out and left, and it was the next morning,
6 Thursday, at 9:00.

7 Q Did you see Ms. Baxter at any time
8 thereafter?

9 A About 9:15 she pulled out in her car.

10 Q Have you seen Ms. Baxter since?

11 A No. That was the last time I saw Beverly.

12 Q I think you indicated that her rent was
13 paid through the 20th?

14 A Yes, it was. She paid by the month.

15 Q On the 20th?

16 A Right.

17 Q Where are her belongings?

18 A In her room still.

19 Q Have you had occasion to enter her room and
20 observe the belongings there?

21 A Oh, since they put the evidence tag on
22 there and everything?

23 Q Since the last time you saw her.

24 A Oh, since the last time I saw her, yeah. I
25 went in there the first day on Friday when they came

1 by from her work and were concerned, wanted to know if
2 I could check the room to see if she was all right.

3 And I got my key and unlocked the room, went in,
4 and she wasn't there. The dog was there, so we took
5 the dog outside and all that. But I was in there
6 then.

7 Q What is her dog's name?

8 A Chips.

9 Q What kind of dog is it?

10 A Little black cocker spaniel.

11 Q Did you have occasion to observe her
12 attachment to her dog?

13 A Oh, boy. Oh, yeah. I don't allow dogs out
14 there.

15 MR. CONWAY: Objection, Your Honor. What is the
16 relevance of this questioning concerning the charges
17 that he is facing currently?

18 THE COURT: Mr. Walker, do you want to give an
19 offer?

20 MR. WALKER: Count I charges Burglary, Your
21 Honor. I have to show an intent to enter and thief
22 from therein.

23 I intend to call other witnesses in addition to
24 this witness who will talk about the victim's declared
25 intent with regard to this sequence of events

1 involving the checks. And this testimony about where
2 she is at or isn't at goes directly to what her intent
3 was with regard to these checks. Certainly it's
4 relevant to other things.

5 And I know what counsel's complaint is, but it's
6 specifically relevant to her intent or lack thereof,
7 if you will, with regard to the dealings about the
8 checks.

9 THE COURT: The objection is overruled. You may
10 proceed.

11 BY MR. WALKER:

12 Q Go ahead. If you would describe the
13 attachment to the dog.

14 A When Beverly first rented the unit, I told
15 her I didn't allow dogs, and we had a little
16 conversation about how she would conduct herself with
17 the dog.

18 I said, Please walk the dog. Don't ever leave
19 the dog in the room. Make sure it doesn't bark. In
20 the process of that conversation I got to know her a
21 little bit as far as this dog had been with her for
22 six years, ever since it was a puppy.

23 And she-- I could tell by looking at the dog it
24 was well-groomed. It was well-taken care of. I told
25 her, I said, Please walk the dog regularly. Don't

1 leave it the room unattended ever.

2 And once we got through that then I said, Okay,
3 we can have the dog here.

4 Q Had you ever seen anyone other than Ms.
5 Baxter enter her room with a key prior to this date?

6 A Never.

7 Q Had you ever seen any of her other male
8 acquaintances enter the room in this manner?

9 A No.

10 Q Had you ever seen Mr. Voss enter her room
11 prior to this date when she wasn't there?

12 A No.

13 Q Describe the belongings that remain inside
14 her room.

15 A Her clothes, small pieces of furniture.

16 Q Are you familiar with her wardrobe to any
17 extent?

18 A I used to see her everyday. I remember
19 that she, you know, wore pierced earrings every day of
20 her life for one thing. So a lot of earrings.

21 Q Do those remain?

22 A Yeah, those still remain.

23 Q Was she taking any medication to your
24 knowledge?

25 A Not that I know of.

1 Q After Thursday, June 13th, at about 9:00
2 did you ever see Steven Voss or his truck at the Jack
3 Pine Motel again?

4 A No.

5 Q Have you ever seen Beverly Baxter or her
6 vehicle at the Jack Pine Motel ever again?

7 A No.

8 Q Did you talk with Mr. Voss the 12th, the
9 day he went into her apartment? Did you acknowledge
10 or say anything to him?

11 A No.

12 Q Why not?

13 A I wanted to go say something to him, and
14 I-- He had been there on Monday and Tuesday and had
15 talked to Beverly while she was there, and I thought
16 it was unusual. I didn't like it that, you know--

17 I don't like it when other people besides
18 tenants have keys, because I have microwaves
19 refrigerators, motel property, in those rooms. And I
20 kind of-- I didn't like it, but I knew that, you
21 know, I could speak to Beverly about it later.

22 Q Do you know when he came back? Because you
23 indicate he left kind of in the middle of the day on
24 Wednesday, and then you saw him leaving in the
25 morning. Do you know when he came back?

1 A I didn't see him when he came back later,
2 but I saw his truck parked out in front of the motel.
3 I didn't see him.

4 Q All right. When did you see his truck
5 parked out in front of the motel later, Wednesday?

6 A Oh, it was probably later that night, like
7 around maybe 10:00 at night maybe, something like
8 that, 10 or 11.

9 MR. WALKER: No further questions.

10 THE COURT: Cross-examination, Mr. Conway.

11 MR. CONWAY: Thank you, Your Honor.

12

13 CROSS-EXAMINATION

14 BY MR. CONWAY:

15 Q When someone rents a room from you at the
16 Jack Pine Motel, I assume you give them a key?

17 A Uh-huh.

18 Q Can you describe that key.

19 A Oh, yeah. They are a little-- just little
20 gold keys, you know, and they have-- Some of them
21 have the numbers engraved on them. Hers didn't. When
22 I gave them to her, hers didn't. They weren't
23 engraved.

24 Q And you gave her just one key, is that
25 correct?

1 A h-huh.

2 Q You had seen Mr. Voss prior to June 12th,
3 is that correct?

4 A Yes.

5 Q And that would have been on June 10th and
6 11th you stated you saw him at the motel?

7 A Yeah, he was outside, talking to Beverly on
8 the porch.

9 Q So when you saw him on June 12th, which I
10 guess was a Wednesday, he had obviously had the keys
11 to the hotel? I mean to the room.

12 A He had a key to let himself in, yeah.

13 Q And as you stated you didn't give him that
14 key, correct?

15 A No.

16 Q The only key you had for that particular
17 room was the key you gave to Beverly Baxter when she
18 first rented it?

19 A Yes.

20 Q And you saw him enter the room because as
21 you stated you were right there in your office, which
22 is right across from the room?

23 A Yes, and I was watching because it was
24 unusual for that to happen.

25 Q Okay. And you stated he was in there about

1 half an hour?

2 A I believe so.

3 Q So you saw him leave then?

4 A Uh-huh.

5 Q All right. Was he carrying anything when
6 he left?

7 A I saw him get in his truck when his truck
8 pulled out. Okay. I didn't see him walk out.

9 Q So you didn't see whether he had anything
10 in his hand when he left?

11 A No.

12 Q And all he had when he entered was the
13 keys. Is that what you recall? Or did he have
14 something else in his possession?

15 A He had the keys. That is all I saw.

16 Q And the next time you saw him then actually
17 was him getting in his truck and driving away?

18 A Yeah.

19 Q But you never spoke to him about that
20 incident that he had the keys, and you never spoke to
21 Ms. Baxter?

22 A No. I really try and stay out of people's
23 business as far as that goes, but I stood there, and I
24 watched this, and I didn't like it, but I would speak
25 to Beverly later about it.

1 Q Okay. But you didn't, did you?

2 A I never saw her again to talk to her.

3 Q Well, you testified earlier that you
4 actually saw her the next morning on the 13th leaving?

5 A I saw her pulling out in her car, yeah, but
6 I couldn't--

7 Q So on the night of the 12th you didn't go
8 over to her room and try to inform her that you were
9 not happy with the idea that someone else had her
10 keys?

11 A No, unh-unh.

12 Q Okay. So as you testified you saw Ms.
13 Baxter leave the next morning at what time?

14 A 9:15.

15 Q And that was after you had seen Mr. Voss
16 leave that same morning?

17 A Yes.

18 Q Okay. He left prior to Ms. Baxter, did he
19 not?

20 A Uh-huh.

21 Q All right. Now we had a little discussion
22 about the dog. You said she never left the dog?

23 A No. She would leave for work in the
24 morning, and every morning before she left for work
25 she would walk the dog. She would go to work. She

1 would come home for lunch between 11 and 12 everyday.

2 Q Hold on. That means in fact she was a
3 allowed to leave the dog in the hotel room?

4 A Yeah, but not for long periods of time.

5 Q But you had testified earlier that she was
6 not to leave the dog unattended, but in fact she did
7 or was leaving the dog unattended while she was at
8 work?

9 A While she was at work, yeah.

10 Q So in fact it wasn't unusual for the dog to
11 be there on its own at certain times during the day?

12 A While she was at work like three or four
13 hours. Then she would come home after three or four
14 hours -- Then she would come home.

15 Q So she wouldn't go out at night?

16 A She would go out at night once in a while
17 but not for all night or something like that.

18 Q But at that time she probably left the dog
19 at home also, correct?

20 A Yeah. She left the dog in there if she
21 would go out at night, uh-huh.

22 MR. CONWAY: I have nothing further.

23 THE COURT: Any redirect?

24 MR. WALKER: No.

25 THE COURT: Ms. Crumb, you may step down. Thank

C. Andrews

1 you.

2 Please face me, raise your right hand.

3 (The Court administered the oath
4 to the prospective witness.)

5 THE COURT: Please be seated.

6

7 CLAUDETTE ANDREWS,

8 produced as a witness herein, having

9 been first duly sworn, was examined

10 and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MR. WALKER:

14 Q If you would, ma'am, please state your full
15 name, spell your last name for the record.

16 A My name is Claudette Andrews,

17 A-n-d-r-e-w-s.

18 Q Where are you currently employed, ma'am?

19 A At Microflex Medical Corporation.

20 Q What is Microflex?

21 A We are-- We sell gloves.

22 Q How long have you worked at Microflex?

23 A Oh, about six months.

24 Q When did you start?

25 A In the first of February.

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1 Q How did you come to work at Microflex?

2 A I bothered them quite a lot.

3 Q Do you know a person by the name of Beverly
4 Baxter?

5 A Yes, I do.

6 Q How do you know Ms. Baxter?

7 A We took breaks together. She was one of
8 the first people I met when I started at Microflex.
9 She is -- was a very friendly person.

10 Q How long did Beverly work at Microflex?

11 A From quite awhile I understand. She was
12 there before I was.

13 Q Do you recollect seeing Beverly the day
14 before she last was seen at work?

15 A Yes, I do.

16 Q Do you recall what date that was?

17 A No, sir, I don't. I know it was on a
18 Wednesday, though.

19 Q Does June 12th, 1996 refresh your
20 recollection? That is a Wednesday.

21 A Yes, sir.

22 Q When did you last see Beverly that day?

23 A The last time I saw Beverly was between 11
24 and 11:30, because that is when I come back from my
25 break. And I was going towards the back door, and she

1 was standi there.

2 Q What was she doing?

3 A She was talking with this gentleman over
4 here.

5 Q Now when you say "this gentleman over
6 here", go ahead, point out the man you are talking
7 about and identify an item of clothing he's wearing
8 right now.

9 A The gentleman in the blue outfit.

10 Q To my left here next to counsel in the
11 charcoal suit?

12 A No, sir.

13 Q To my left next to this gentleman?

14 A Yes. Sorry about that.

15 Q That is all right. My left and your right
16 are on opposite sides, aren't they?

17 Actually they are on the same side as we face --

18 MR. WALKER: At any rate, for the record, Your
19 Honor, she has identified Mr. Voss.

20 THE COURT: The record will so reflect.

21 BY MR. WALKER:

22 Q What was Mr. Voss doing?

23 A Him and Beverly were standing there
24 talking.

25 Q Could you tell what they were talking

1 about?

2 A No, sir, I couldn't tell what they were
3 talking about. I turned around, and I was walking
4 away, and I heard them arguing.

5 Q All right. Did you hear raised voices?

6 A Yes, I did.

7 Q Whose voices were raised?

8 A I heard his voice.

9 Q Could you hear what he was saying?

10 A No, sir, I couldn't.

11 Q All right. What happened next?

12 A At that point I just-- You know, I was
13 walking away, and I thought that I might tell one of
14 her friends. But, you know, I just was minding my own
15 business.

16 Q Did you talk with Beverly at any time
17 thereafter?

18 A No. After that I didn't see Bev, because I
19 went upstairs to work.

20 Q All right. Had you ever talked with
21 Beverly about an insurance refund check?

22 A No, sir, I hadn't.

23 MR. WALKER: No further questions.

24 THE COURT: Mr. Conway, any cross-examination?

25 MR. CONWAY: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MR. CONWAY:

Q You stated-- What exactly do you do at Microflex?

A I'm a Clerk/Runner. I run papers, give the girls their orders, take orders to DP, which was Beverly's job.

Q Okay. So you don't work with Beverly Baxter then?

A I do-- You know, we do intercounter things and things like that, but, no, we didn't work like side to side.

Q Okay. But did you see her everyday when she was at work?

A Yes, I did.

Q And that was on breaks?

A Yeah, I did see her on breaks also.

Q So when you saw her during work, it would just be in passing. You would go hand her papers, or she would hand papers?

A Yeah, and sometimes we would talk for a few minutes, you know.

Q So on Wednesday, June 12th, you stated that you saw her at approximately 11 to 11:30 a.m.

A It was between that time, yes, sir.

1 Q What was during one of your breaks?

2 A Yes, sir. It was like during the end of my
3 break, so it must have been around 11:15 or so.

4 Q But you hadn't gone on break with her that
5 particular --

6 A No, sir.

7 Q And when you first saw her, she was
8 speaking with Mr. Voss?

9 A Yes, sir.

10 Q All right. Now you stated that you thought
11 they were arguing?

12 A Well, yes, I did, because it was like their
13 voices were raised at each other.

14 Q Their voices?

15 A Yes.

16 Q So her voice was also raised, was it not?

17 A Yes, but his was more of a tone.

18 Q All right. So in these raised voices you
19 walked right by them, and you heard nothing?

20 A Yeah, because I was like walking away from
21 them, because they were standing at the back door.

22 Q You heard nothing, correct?

23 A No, sir, I didn't.

24 Q Did you stop and speak to them at any time?

25 A No, sir, I didn't.

1 Q And were they doing anything else other
2 than the fact that their voices were raised that you
3 didn't hear?

4 A No, sir.

5 Q So he wasn't going like this?

6 A No, sir.

7 Q Or threatening her in any way?

8 A No, sir.

9 Q Do you know how long they had been talking
10 there?

11 A No, sir. Because like I said I walked
12 away, and after that I just kind of basically, you
13 know, minded my own business, you know.

14 Q Okay. Where were they standing exactly
15 when you first saw them?

16 A Like I said, they were standing at the back
17 door. Bev was standing like in the doorway, and he
18 was standing on the side of the door.

19 Q All right. So you had to walk right by
20 them to get to the door, correct?

21 A I didn't go outside. What happened was I
22 was standing by the door, and when they were standing
23 there talking, I turned around and came back, because,
24 you know --

25 Q Let me try to understand. Where exactly

1 were you when you first saw them standing at the
2 doorway?

3 A I was standing like behind Bev, and they
4 were just standing there talking, but --

5 Q How close to Beverly?

6 A Oh, maybe from a little bit-- about from
7 here to you.

8 Q Okay.

9 A Yeah. Then I saw just --

10 Q They were talking at that time?

11 A Yeah.

12 Q What were you doing exactly when you were
13 standing there?

14 A I was waiting for my husband to come,
15 because they was coming to look at my truck. And then
16 he wasn't out there, so I was just kind of keeping an
17 eye waiting for him to come.

18 Q How long had you been standing there
19 waiting for your husband?

20 A Oh, just a few minutes. Maybe a few
21 seconds, if that.

22 Q And when you came up there to wait for your
23 husband, Beverly was already there?

24 A No, sir. I was standing there. And she
25 came to the door, and then I was standing behind her.

1 And then, you know, I just turned around, walked away.
2 So, you know, she could have some privacy or whatever.

3 Q Was she standing there when you came up?

4 A No, sir.

5 Q You came up and said you were standing
6 there a few seconds?

7 A Uh-huh.

8 Q Then Beverly came up?

9 A Uh-huh.

10 Q Did Mr. Voss come up with her?

11 A No. She-- He was out there waiting for
12 her.

13 Q Okay. So she came up, because he was there
14 waiting. So you saw him before she even showed up,
15 correct?

16 A Yeah.

17 Q When she came up, you immediately turned
18 around and left?

19 A Uh-huh.

20 Q All right. And right away their voices
21 were raised?

22 A As I got further back I'd say before maybe
23 15, 15 feet back, then their voices started to raise.
24 I kind of looked, but I just kept walking.

25 Q Okay. In that area-- What is in that area

1 of the back door?

2 A At that time there was nothing back there.
3 There was just like an open area with some windows.

4 Q And what normally goes on in that open
5 area?

6 A Nothing basically. People just stand back
7 there and talk, you know, for like a break or
8 whatever, because -- you know, just to look outside,
9 you know, to see what is going on or whatever.

10 Q So it's like a break room?

11 A Not really a break room, but it's an opened
12 area back there.

13 Q Very quiet?

14 A Yes, very quiet.

15 Q So you left that area, but you didn't see
16 Ms. Baxter leave that area?

17 A No, I did not.

18 Q Okay. And you didn't see her again--

19 A Oh, as a matter of fact, as I was walking
20 back, I think I went back to talk to Ed Parks. And
21 when I was coming back, I was standing there. And Bev
22 came around the side there, and she kind of threw up
23 her hands like that. And she seemed upset, but I
24 didn't confer with her or anything at that time.

25 MR. CONWAY: Nothing further.

1 THE COURT: Any redirect?
2 MR. WALKER: No, thank you, Your Honor.
3 THE COURT: Ms. Andrews, you may step down.
4 Thank you.

5 Please face me and raise your right hand.

6 (The Court administered the oath
7 to the prospective witness.)

8 THE COURT: Please be seated.

9
10 LINDA WEEKS,
11 produced as a witness herein, having
12 been first duly sworn, was examined
13 and testified as follows:

14
15 DIRECT EXAMINATION

16 BY MR. WALKER:

17 Q If you would, ma'am, please state your full
18 name and spell your last name for the record.

19 A Linda Weeks, W-e-e-k-s.

20 Q Where are you employed, ma'am?

21 A Microflex Medical Corporation.

22 Q How long have you worked at Microflex?

23 A Since October 23rd of '95.

24 Q How did you come to work at Microflex?

25 A I answered an add that was in the

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1 newspaper and they called me.

2 Q Do you know a person by the name of Beverly
3 Baxter?

4 A Yes, I do.

5 Q How do you know Beverly Baxter?

6 A I worked with her for the past eight
7 months.

8 Q All right. When did you first meet
9 Beverly?

10 A I met Beverly on a Wednesday night in San
11 Francisco when she joined Microflex.

12 Q Describe your relationship with Beverly
13 over time.

14 A We were kind of like best friends. We did
15 a lot of things together. We went out to dinner. We
16 went shopping. We talked on the phone a lot.

17 Q You were talking to Beverly on Wednesday,
18 June 12th, 1996, roughly about two or 2:30 during a
19 break?

20 A Yeah, I took a break with her at 2:30.

21 Q What was the subject matter of your
22 conversation?

23 A I couldn't tell you, because we talked
24 about a lot of things.

25 Q Were you aware that Beverly had received a

1 month previously an insurance refund check or a
settlement check, if you will, for a storage unit?

3 A Yes, I did.

4 Q What did you know about this storage unit?

5 A I knew that she had been paying on a
6 storage unit for three years, and then on April 3rd
7 she found out that they had sold all of her stuff.
8 And she never received the check, and she had received
9 a check for \$5,000 for a settlement.

10 Q We have a copy of a check in evidence here
11 as State's Exhibit B. Do you recognize that check?

12 A No, I've never seen the check.

13 Q Did she ever show you the check that she
14 had received?

15 A No.

16 Q This check is dated May 8th, 1996. Would
17 that comport with your recollection about when she
18 received this refund check?

19 A Yes.

20 Q What was Beverly's intention that she
21 expressed to you about--

22 MR. CONWAY: Objection. That is inferring--
23 They are trying to mind read what Ms. Baxter thought
24 about the check. I don't think that is appropriate.

25 MR. WALKER: May I make an offer of proof, Your

1 Honor?

2 THE COURT: What was the question again?

3 MR. WALKER: I was going to ask -- The whole
4 question was going to be, What was Beverly's expressed
5 intent to you about what she was going to do with the
6 check? What did she tell you she was going to do?

7 MR. CONWAY: I will object. That is hearsay.

8 THE COURT: Then it would be hearsay. She is
9 expressing it to her. She is not going to testify
10 today. That would be hearsay.

11 MR. WALKER: Your Honor, NRS 51.105, Then
12 existing mental, emotional or physical condition.
13 Statement of the declarant's then existing state of
14 mind, emotion, sensation, or physical condition, such
15 as intent, plan, motive, design, mental feeling. This
16 fits squarely within that exception, and that is why
17 I'm offering it.

18 THE COURT: It isn't often we get to hear that
19 particular offer, but you are right. It is in there
20 as an exception as to the hearsay rule.

21 MR. CONWAY: I believe there needs to be more
22 foundation as to the time, date, conditions under
23 which she made the statement to determine that is then
24 existing.

25 THE COURT: I think this is fair, Mr. Walker.

1 It isn't t often we get to use t exception, so
2 lay a little foundation. I agree.

3 MR. WALKER: All right. I thought I had, but I
4 will certainly drive at it.

5 BY MR. WALKER:

6 Q Did you speak with her on Wednesday about
7 that check and what she was going to do with it?

8 A Maybe not on that Wednesday, but we have
9 talked about that check.

10 Q All right. Let's plumb your mind.
11 Specifically when is the last specific recollection
12 you have?

13 A Maybe over that -- the weekend before we
14 had discussed it.

15 Q All right. What was the circumstances of
16 your conversation? Where were you at? What were you
17 doing?

18 A Well, I called her at home.

19 Q All right. And what was the purpose for
20 your call?

21 A Just to say, Hi, and, What are you doing.

22 Q All right. How did the check come up?

23 A We were talking about how had she been able
24 to get ahold of an attorney -- has she been able to
25 get ahold of the storage people. Because I know that

1 she had been in contact with an attorney, and I know
2 that she was going to -- The attorney told her what
3 to do, and she was supposed to get back to the storage
4 people and ask them a lot of questions.

5 Q If I could interrupt for just a moment.

6 That last weekend, the last time you
7 specifically talked with Beverly about what her intent
8 was, what did she tell you she was going to do with
9 that check?

10 A She was going to keep the check and not
11 cash it.

12 Q Why?

13 A Because she was going to hire an attorney
14 and see if they did, how would you say, her wrong, and
15 she was going to see if she was eligible for more
16 money.

17 Q Now, do you recall giving a taped interview
18 to detectives in this case on June 17th, 1996?

19 A Yes, I do.

20 Q Do you recall talking with them about the
21 conversation you had Wednesday at 2:30 and something
22 about Steve was supposed to get an attorney?

23 A Yes.

24 Q All right. What was that conversation?
25 What did she tell you about her intent in that

1 conversati on Wednesday, June 12?

2 A She said that she was-- Steve said he had
3 an attorney for her that was in California, and that
4 she was supposed to get all her paperwork from the
5 storage together and give it to him, so he could fax
6 it to this attorney. And also she was supposed to
7 give him a check for a dollar for a retainer.

8 Q Now, who was she going to give the check to
9 for a dollar for a retainer?

10 A Steve.

11 Q Did she indicate whether she had written
12 this check out or not?

13 A No, she didn't indicate that.

14 Q Did she offer you any information on what
15 bank account the check was going to be written on?

16 A No, she did not.

17 Q Did you ever see a check for a dollar?

18 A No, I did not.

19 Q Now, did you know who Steve was when you
20 were talking with Beverly on Wednesday, June 12th?

21 A I knew of him, but I didn't -- I have
22 never seen him before.

23 Q Did you know that he had been at Microflex
24 that day?

25 A Yeah, I heard that he had been there.

1 Q Did you talk with Beverly about it, though?

2 A No, I did not.

3 Q All right. How long was your conversation
4 with Beverly over lunch about her plan for what to use
5 this check for?

6 A Oh, about 15 minutes.

7 Q How did the conversation end?

8 A Talk to you later.

9 Q When was the last time you saw her?

10 A I'm not positive if she left before me, or
11 I left after her, but I usually say bye to her at
12 four. I go home at four, and I will just usually look
13 over the fall and say, See you tomorrow, Bev.

14 Q What was Beverly's work pattern, her habit
15 about going to work?

16 A She was there everyday.

17 Q To your knowledge did she miss days like
18 for sick leave and that sort of thing?

19 A I think she missed one day the whole time
20 she was there.

21 Q What period of time are you describing when
22 you say --

23 A From October-- I think she started on
24 October 24th-- 25th til June 12th.

25 Q Did you have plans with Beverly for any

1 time in the future to do anything?

2 A Sure, we do things together a lot.

3 Q What I'm getting at is did you have a
4 specific plan with her after the 12th for any day to
5 do something?

6 A She was supposed to come over to my house
7 because she was going to buy a day bed from me she
8 wanted to put in her apartment or motel room, because
9 she wanted to get rid of the bed.

10 Q When did you plan on that?

11 A She was supposed to come over one weekend.

12 Q All right. Just sometime in the future?

13 A Uh-huh.

14 MR. WALKER: Nothing further.

15 THE COURT: Any cross-examination, Mr. Conway?

16 MR. CONWAY: Thank you, Your Honor.

17

18 CROSS-EXAMINATION

19 BY MR. CONWAY:

20 Q You stated that the last time you spoke
21 with Ms. Baxter was on June 12th at about
22 approximately 2:30 p.m.?

23 A Uh-huh.

24 Q Do you recall what her demeanor was at that
25 time?

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1 A He was in a good mood.

2 Q Now, we have gone into talking about the
3 settlement check she had received from where she had
4 stored her goods.

5 A Uh-huh.

6 Q You stated you spoke to her about that
7 check the weekend before June 12th?

8 A Uh-huh.

9 Q So that would have been June 9th or June
10 8th and 9th. Does that sound about right?

11 A Yes.

12 Q And you didn't speak to her on -- Do you
13 know if it was a Saturday or Sunday you spoke with
14 her?

15 A Usually I call her on Sunday nights.

16 Q And you didn't call her for the express
17 purpose of discussing this check, is that correct?

18 A No, we discussed a lot of other things.

19 Q Okay. And she -- When did you first know
20 that she had received this check?

21 A I'm not sure when she received the check.
22 I'm not positive.

23 Q Was that weekend conversation with her the
24 first time that you had ever discussed the check?

25 A No, we have discussed the check a lot.

1 Q So do you know exactly when she first
2 mentioned that she was still seeking a greater
3 settlement?

4 A From the time she received the check until
5 the time-- We discussed the check a lot, many times.

6 Q So you know that on -- particularly on the
7 weekend I guess, Sunday, June 9th, since that is when
8 you normally called her, that she discussed her
9 intention with the check, or was it all the time? She
10 had numerous different times she told you what her
11 intentions were with the check?

12 A I know I discussed that check on the 9th.

13 Q So you are recalling the conversation
14 exactly?

15 A Well, I can't say exactly what we said, but
16 I know we discussed the check, because I also asked
17 her if she had heard from the storage-- if she got any
18 more information.

19 Q Okay. Now, on June 9th you were talking to
20 her on the telephone about the check. That is when
21 she told you she was going to continue to hold onto
22 the check and contact an attorney?

23 A Yes.

24 Q The next time she discussed the check was
25 when she had already spoken with Steve Voss, okay, and

1 he had found an attorney for her, correct?

2 A Yeah, I think that was on Wednesday we
3 discussed that.

4 Q Do you know if she had already sent the
5 attorney the paperwork?

6 A The attorney that she had?

7 Q Any attorney.

8 A No. She hadn't sent anything yet.

9 Q Did you discuss other things at 2:30 on
10 June 12th?

11 A Sure. How work was going.

12 Q And as you testified earlier she was in a
13 good mood. She wasn't upset about anything?

14 A Not that I know of.

15 Q Then after your break at 12:30 she went
16 back to her place of work, you went back to your place
17 of work?

18 A Yeah, because we sat on opposite sides of
19 the room.

20 Q You haven't seen her since?

21 A No, I haven't.

22 Q You didn't see her that afternoon when you
23 all went home?

24 A I probably waved good-bye to her. She said
25 good-bye to me. I can't remember that day if she left

1 before me after me.

2 Q But the normal procedure is that you guys
3 sort of wave to each other as you leave?

4 A Yeah, because she leaves at 4:30. I leave
5 at four. I usually wave over the wall, See you later,
6 Bev.

7 MR. CONWAY: Nothing further.

8 THE COURT: Any redirect?

9 MR. WALKER: Nothing, Your Honor.

10 THE COURT: You may step down, Ms. Weeks.

11 At this time, Mr. Walker, let's not bring in
12 another witness.

13 MR. WALKER: Okay.

14 THE COURT: We are going to be in recess until
15 1:30 this afternoon. It is now about six minutes to
16 12, so we might as well start with a new witness after
17 lunch.

18 We will reconvene at 1:30. Court will be in
19 recess.

20 (A break was taken.)

21

22

23

24

25 ///

E. PARK

1 RENO, NEVADA; MONDAY, JULY 12, 196; 1:30 P.M.

2 --o0o--

3
4 THE COURT: Court is in session. Please be
5 seated.

6 We are back on case 79,046, State versus Steven
7 Floyd Voss.

8 I see all parties are present. Are we now all
9 prepared to proceed?

10 MR. WALKER: Yes, Your Honor. I call Ed Park to
11 the stand.

12 Detective Yaryan has entered the courtroom.
13 Your Honor, I do not intend to call him as a witness.
14 He was under subpoena, and I released him.

15 THE COURT: Okay. Please face me and raise your
16 right hand.

17 (The Court administered the oath
18 to the prospective witness.)

19 THE COURT: Please be seated.

20
21 ED PARK,
22 produced as a witness herein, having
23 been first duly sworn, was examined
24 and testified as follows:

25 ///

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DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Park, if you would please state your full name, spell your last name for the record.

A My full name is Ed Park. My last name is P-a-r-k.

Q For the record, Mr. Park, do you have a middle name?

A No, I do not.

Q How are you employed, sir?

A I am employed by Microflex Medical Corporation.

Q What is your capacity with Microflex?

A My position is Assistant Data Processing Manager.

Q As Assistant Data Processing Manager were you responsible on an employee/employer basis for Beverly Baxter?

A Yes, I was.

Q Could you detail, if you would, for the Court Ms. Baxter's work history and work habits, if you will, in terms of coming to work and regularity and that sort of thing for the period of time you knew.

A On approximately two to three days she

1 called in [REDACTED]ck and did not show up [REDACTED]or work, but she
2 called ahead of time. And she also called on the day
3 to make sure that everybody knew that she was coming
4 back the next day.

5 And up until June 14th on Friday she had not had
6 any record of not going to work and not calling anyone
7 in advance or during the day that she was not showing
8 up.

9 Q To drive to the heart of it did she have
10 what is commonly called a no call/no show on Friday,
11 the 14th?

12 A On Friday the 14th she called in-- She
13 called in on Thursday telling us that she would
14 definitely be in on Friday, and on Friday we did not
15 hear from her.

16 Q What did you do when she did not show up on
17 Friday?

18 A She was due in at 8:00 I believe, and I
19 talked with Linda Weeks, one of the -- another worker
20 that I supervise. Linda Weeks expressed her concern.
21 I told her to wait for about half an hour.

22 And then at about 8:30 a.m. I decided to take it
23 upon myself based on the fact that I knew Baxter
24 relatively closely and that I knew her excellent work
25 history -- Because of the proximity of where she

1 lived I to it upon myself to drive down to her
2 residence at the Jack Pine Hotel or Motel.

3 Q How far is the Jack Pine from Microflex?

4 A Approximately one mile.

5 Q Is the Jack Pine here in Reno --

6 A Yes, it is.

7 Q --out on West Fourth Street?

8 What time did you get to the Jack Pine?

9 A I arrived approximately at 8:35 a.m. --
10 between 8:35 and 8:40 a.m.

11 Q What did you do when you got there?

12 A I knocked on the landlady's door. I talked
13 with Sandy, the landlady. I discussed with her my
14 concern that Beverly Baxter was a very reliable,
15 dependable worker, that she would never not show up to
16 work without calling.

17 And based on this I relayed to her my concern of
18 the possibility that Beverly Baxter might be in some
19 sort of danger or some sort of situation where she
20 cannot reach her phone, either that, or she might be
21 lying in bed sick. So I asked Sandy if she could open
22 Beverly Baxter's door, look inside and see if she was
23 there.

24 Q Did that in fact happen?

25 A Yes, it did. She opened the door, went

1 inside. I stayed on the outside, and she went through
2 the room, looked for Beverly Baxter, and she was not
3 there, but her dog was there.

4 Q Mr. Park, did you ever personally have a
5 conversation with Ms. Baxter about her possession or
6 alleged possession of a 5,000-dollar, I will call it,
7 settlement check?

8 A On about four occasions I discussed with
9 her the initial-- She initially told everyone that
10 she received a 5,000-dollar check from the storage
11 company.

12 And in sort of a group we had discussed this
13 with her and told her that the best thing to do with
14 that 5,000-dollar check is to hold onto it and not to
15 cash it, because if she cashed it, we told her that
16 would be in effect a settlement with the storage
17 company.

18 And she fully acknowledged this. She told us
19 her intentions of not cashing it, of hanging onto it.
20 And up until June 14th she had held onto it.

21 Q When was the last time you specifically
22 spoke with Ms. Baxter and she expressed to you this
23 intent to hold onto this check so that she wouldn't
24 settle her claim, if you will?

25 A The last time would be approximately a

1 month ago, but about one week before she was
2 missing -- The thing is if she had made a decision to
3 cash the check-- We were very close in the office.
4 She would also discuss with us problems and how to
5 solve them.

6 And based upon her history of informing us about
7 the major things in her life, even the medium things
8 in her life, I believe that she would have told us if
9 at any point in time she had decided to cash the check
10 or if she decided to do anything with the check.

11 But about a week before she was missing it was
12 my understanding with her that she still was in
13 possession of the check, and she was still talking
14 about hiring a lawyer to take care of this situation.

15 And by telling me that she was still interested
16 in hiring a lawyer I assumed from that information
17 that she still had possession of the check.

18 MR. WALKER: No further questions.

19 THE COURT: Cross-examination, Mr. Conway.

20 MR. CONWAY: Thank you, Your Honor.

21

22 CROSS-EXAMINATION

23 BY MR. CONWAY:

24 Q Mr. Park, when was the last time you saw
25 Ms. Baxter?

1 A The last time I saw her was on Wednesday,
2 approximately between 3 and 4:00 p.m.

3 Q And Wednesday would have been the--

4 A June the 12th.

5 Q In between what hours?

6 A Between three and four p.m.

7 Q And that is close to the time that she gets
8 off from work, is that correct?

9 A That is correct.

10 Q Where did you see her at that time?

11 A In the office. She was in the office.

12 Q And do you know what her demeanor was at
13 the time?

14 A I do not recollect clearly. I didn't see
15 anything out of the ordinary, but there have been
16 times where she has been extremely upset in the past
17 where I have not noticed that.

18 Q Do you know Steve Voss?

19 A I have heard of him. I have heard of
20 people talk about him.

21 Q Through Ms. Baxter? Was she one of the
22 people?

23 A No, through Linda Weeks and a couple other
24 co workers.

25 Q Let me ask you this: Did you hear about

1 that after her disappearance or before her
2 disappearance?

3 A I heard about that after her disappearance.

4 Q So you did not know anything about Steve
5 Voss prior to this incident?

6 A I knew that she was going out with an
7 acquaintance, a male individual, and that is pretty
8 much after the event that she disappeared. I presumed
9 that she was talking about him.

10 Q You had no information about him before the
11 incident. Is that what you are--

12 A I had no information that it was Steve Voss
13 that she was talking about.

14 Q So you knew that she was dating someone?

15 A That is correct.

16 Q And you believe it was Steve Voss at this
17 time?

18 A After she disappeared we concluded that it
19 was Steven Voss.

20 MR. CONWAY: Nothing further, Your Honor.

21 THE COURT: Any redirect?

22 MR. WALKER: No, thank you, Your Honor.

23 THE COURT: You may step down, Mr. Park.

24 MR. WALKER: Thank you, Mr. Park.

25 THE COURT: Go ahead. Have a seat. Please face

1 me, raise ur right hand.

2 (The Court administered the oath
3 to the prospective witness.)

4 THE COURT: Please be seated.

5

6 DALE ALLEN PAPPAS,
7 produced as a witness herein, having
8 been first duly sworn, was examined
9 and testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. WALKER:

13 Q Sir, if you would please state your full
14 name, spell your last name for the record.

15 A My name is Dale Allen Pappas, P-a-p-p-a-s.

16 Q How are you employed, sir?

17 A I'm employed by the Washoe County Sheriff's
18 Office.

19 Q What is your current position?

20 A I'm assigned to the Detective Bureau,
21 Sergeant Supervisor.

22 Q Were you on duty as a sergeant in the
23 Detective Division on June 14th, 1996 at about 16:00
24 hours?

25 A I was.

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1 Q Did have occasion to re•nd to a bank in
2 Sparks, specifically the California Federal Bank on
3 Prater Way?

4 A Yes, I did.

5 Q What did you do when you got to that
6 location?

7 A I had requested that the person who had the
8 check that was trying to be passed be delayed until I
9 get there to talk to him about a missing person.

10 Q Did you make contact ultimately with a
11 person identified to you as Steven Voss?

12 A Yes, I did.

13 Q Where did you make contact with him at?

14 A At the desk on the north wall, east end of
15 the building.

16 Q What was the first thing that you did when
17 you made contact with Mr. Voss?

18 A Introduced myself to him as Sgt. Pappas.

19 Q What happened next?

20 A Detective Hill was also with me. He
21 introduced himself. Then we told him that we were
22 there to ask him a few questions about a missing
23 person.

24 Q What did you talk with him next about?

25 A We talked to him about the check that he

1 was trying to cash.

2 Q What details did he provide to you about
3 that check?

4 A He indicated that the check had been
5 provided to him by Beverly Baxter and that it was to
6 be used to purchase a mobile home.

7 Q What was the purchase price of the mobile
8 home according to Mr. Voss?

9 A At the time he told me the down payment on
10 it was going to be about \$5,000.

11 Q Did you ultimately ask him for a point of
12 contact in order to confirm the down payment amount?

13 A Yes, I did.

14 Q Did you make contact with that person?

15 A Yes, I did. And Mr. Voss gave me a real
16 estate agent's card, a lady by the name of Carolyn. I
17 forget her last name. I then went and called Carolyn.

18 Q After you spoke with Carolyn did you come
19 back and speak with Mr. Voss again?

20 A Yes, I did.

21 Q Did you confront Mr. Voss with the
22 information?

23 A Yes, I did.

24 Q What was his response?

25 A I told him that there seemed to be some

1 difference here in the amount of down payment, that
2 Carol had indicated to me that the down payment would
3 be about \$2,400. And when I had spoken to him on the
4 phone, I said, Is that everything? She said, Yeah. I
5 said, Points, the rest of that? And she said, Yes,
6 that is what it was.

7 Q All right. What was Mr. Voss's response
8 when you confronted him with the fact that he said it
9 was going to be \$5,000, and she said it was going to
10 be much less?

11 A He said, Well, that has changed now.

12 Q Did he offer any explanation for why it had
13 changed?

14 A No, just that it had changed.

15 Q What was his attitude and demeanor when you
16 made contact with him?

17 A His attitude was that we were imposing-- I
18 don't know. I kind of felt like I was imposing on him
19 and that he was-- I got the impression he was being
20 evasive, not out and out, Get-away-from-me, evasive,
21 but still evasive because of some of his answers.

22 Q Did you ask Mr. Voss for the check at that
23 time?

24 A I asked to see it, and I also did not take
25 it from him. What I did was got a copy of it,

1 photostatic copy of it made for our records just in
2 case, you know, if there were some irregularities, we
3 would still have something to go on. I didn't know
4 what I had at this time.

5 Q Did you return the check ultimately to Mr.
6 Voss?

7 A Yes, I did.

8 Q How did your conversation with Mr. Voss
9 end?

10 A We went out to his vehicle, and Detective
11 Hill asked if he could take a look through the
12 vehicle. And Mr. Voss said, Of course, you know, go
13 ahead-- Not "go ahead", but he said, Yes, you can.

14 After everything was said and done we had
15 checked to make sure that Mr. Voss was not wanted
16 anywhere that we could be certain about right at that
17 moment.

18 We had previously told him he was free to leave
19 any time he wanted to. I knew that he didn't have a
20 driver's license. So as he started to get in his
21 truck and drive away, I went out to him, and I said,
22 Steve, I said, This will be the only break you will
23 probably be able to get from me. I said, I know you
24 don't have a license.

25 Not a word was said. He pulled back into the

1 parking lot locked the vehicle, started walking to
2 where he told us he was living.

3 Q Did you come to learn at some point in your
4 conversation with Mr. Voss there had actually been a
5 5,026-dollar check deposited previously?

6 A He told me he had deposited a check for her
7 on Wednesday I believe it was.

8 Q Did he tell you-- Do you recall, did he
9 tell you where he got that check from her?

10 A He said he met her at work, and she gave
11 him the check to go deposit it for her, that he did
12 that, I got the impression, on a regular basis.

13 Q Now did you have any information to the
14 contrary at that time?

15 A No, I didn't.

16 Q Had you talked with any of her co workers,
17 any of those folks, at that point in time?

18 A I had-- At that time? Let me think. I
19 don't believe I had.

20 MR. WALKER: No further questions.

21 THE COURT: Cross-examination, Mr. Conway.

22 MR. CONWAY: Thank you, Your Honor. Just a
23 moment.

24 (A discussion was held off the record.)

25 ///

CROSS-EXAMINATION

BY MR. CONWAY:

Q Sergeant, was your last name again?

A Pappas, P-a-p-p-a-s.

Q Okay. Sgt. Pappas, your first involvement in this case was that you were directed to the California Federal Bank?

A I wasn't directed, no, sir.. I made that decision on my own.

Q How did you come about being involved in this case?

A I had received a call earlier in the day from a patrol deputy and a trainee, who had taken a missing person's report.

They also indicated to me on the phone, and I didn't make any decisions about it until after I had read the record, that the missing person had a check that was trying to be cashed, a 5,000-dollar check, at the California Federal Bank. Because as I understood it the deputies had gone that far to check on it.

Q Okay. So based on that information then you contacted the California Federal Bank and asked that they detain the individual who was trying to cash the check, correct?

A My initial intent was to call the bank and

1 see if the had a picture of this rson who was
2 trying to cash that check, because we still didn't
3 know who we had at that point.

4 And while I'm on the phone with the assistant
5 manager he said, Oh, he's here now trying to cash the
6 check. And at that point I asked that he be delayed
7 until we could get there and speak with him.

8 Q So you went down to the Sparks bank?

9 A With Detective Hill, yes.

10 Q You made contact with Steve Voss?

11 A Yes, I did.

12 Q And you began to question him about the
13 check that he was attempting to cash?

14 A About the missing person first.

15 Q All right. But since we are not here on
16 the missing person issue today I want to get onto the
17 check.

18 At that point you started questioning him about
19 the check that he was attempting to cash?

20 A Correct.

21 Q And you asked him for that check?

22 A I did.

23 Q And he gave it to you?

24 A Yes.

25 Q Okay. Did you ask him other questions

1 about his entity, like-- I guess you found out he
2 didn't have a driver's license. You must have asked
3 him some questions?

4 A Detective Hill did that.

5 Q Were you present during that time?

6 A No, I wasn't.

7 Q During your investigation, though, you then
8 asked Mr. Voss what the check was for or what he was
9 going to use the money for --

10 A Correct.

11 Q --that he was trying to get on the check?

12 A Yes.

13 Q And he informed you that he was going to
14 use it as a down payment on a trailer?

15 A Mobile home, yes.

16 Q And he volunteered a number for you to
17 call, is that correct?

18 A Gave me the card.

19 Q Of the person where he purchased it from?

20 A Correct.

21 Q All right. And you responded by calling
22 that individual, and you thought it was a Carolyn?

23 A I thought it was Carol or Carolyn, but I
24 think it was Carol.

25 Q And you spoke to her, and she informed you

1 that he did indeed have a down payment to make, but it
2 was only 2400?

3 A Correct.

4 Q And did she indicate when that down payment
5 was to be made?

6 A No, I don't believe she did.

7 Q Did you even ask her about that, that there
8 was a deadline?

9 A No.

10 Q You then returned the check to him after
11 you had made a copy, correct?

12 A Correct.

13 Q Did you advise him to do something with the
14 check, to not attempt to cash it or --

15 A No.

16 Q You then followed him outside, and I guess
17 Detective Hill asked if he could search his vehicle?

18 A Correct.

19 Q And he consented?

20 A Correct.

21 Q Was anything found during the search of the
22 vehicle that relates to this case?

23 A Not to my knowledge.

24 Q Then at some point the defendant was going
25 to leave. You informed him, you know, You don't have

1 a driver's license. I wouldn't do that. He pulled
2 the car back -- He complied, pulled the car back in
3 and walked away.

4 Did you see where he went?

5 A He went towards Western Village, and later
6 we saw him walking I believe it was on Nichols Avenue
7 towards Western Village.

8 Q Was there not a-- Just a minute. So you
9 guys did not follow Mr. Voss?

10 A No.

11 Q So you did not see him make a telephone
12 call and was picked up by his mother?

13 A No.

14 Q There was reference made to the
15 5,026-dollar check that had been deposited I guess two
16 days prior?

17 A Correct.

18 Q And you confirmed all that?

19 A I didn't confirm that. I didn't know.

20 Q So you never saw that check?

21 A No, I never saw that check at all.

22 MR. CONWAY: Can I see Exhibit-- I think it's
23 Exhibit B?

24 THE COURT: I think the State took possession of
25 the two items.

1 MR. WALKER: I don't believe I have them, Your
2 Honor.

3 THE COURT: I believe one of the last witnesses
4 handed them to you as I recall. I meant to ask you
5 back for them, because they were admitted. Unless
6 they are still in the other courtroom --

7 MR. WALKER: I don't have them in my paperwork,
8 Your Honor.

9 MR. CONWAY: I can go about this another way,
10 Your Honor.

11 THE COURT: Well, that concerns me.

12 MR. CONWAY: Well, it concerns me, too, but I
13 can proceed with this cross-examination for now --

14 Why don't I have this marked-- If we could have
15 it marked as a State's Exhibit, because they are
16 planning on admitting it.

17 MR. WALKER: I will stipulate to the admission
18 of it, Your Honor.

19 MR. CONWAY: Let me have it identified first.

20 THE COURT: We will make that a defendant's
21 exhibit --

22 MR. CONWAY: No, I prefer to make it a State's
23 exhibit, because it is a State's exhibit. They have
24 shown it to me with the intent to introduce it.

25 THE COURT: Okay. We will make it State's

1 Exhibit C for identification at the time. Okay.

2 MR. CONWAY: Thank you.

3 (State's Exhibits C was marked.)

4 BY MR. CONWAY:

5 Q I will show you what has now been marked
6 State's Exhibit C. This is a picture that was in the
7 custody of the district attorney. Could you identify
8 anything in there that you recognize? .

9 A This is a check for \$5,000 made out to
10 Steven Voss. I'm not sure that it's the same one or
11 anything like that, if that is what you are asking.

12 Q So you cannot identify that as the check
13 that you saw on the 14th of June?

14 A I can tell you what that check looked like,
15 and it basically had the same signature, B.A. Baxter,
16 Steven Voss was written in blue ink. The rest of the
17 check is made out in either dark blue or black and --

18 Q So you cannot identify this?

19 A That particular check, no, I cannot.

20 Q But as you recall the check that you saw
21 and photocopied was similar to this check? It was a
22 B.A. Baxter check? It had two different types of ink?

23 A Uh-huh. Yes.

24 Q You don't remember the date or the number
25 of the check?

1 A o.

2 MR. CONWAY: All right. Your Honor, I have
3 nothing further.

4 THE COURT: Any redirect?

5 MR. WALKER: No, nothing further, Your Honor.

6 THE COURT: You may step down, Officer Pappas.

7 MR. WALKER: Your Honor, with your permission
8 how about if I step over to C.

9 THE COURT: If we are ready for that,
10 absolutely. In fact I need to take a recess and
11 see -- find out if I left it on the bench.

12 (A break was taken.)

13 (A discussion was held off the record.)

14 THE COURT: Face me and raise your right hand.

15 (The Court administered the oath
16 to the prospective witness.)

17 THE COURT: Please be seated.

18

19 LARRY CANFIELD,

20 produced as a witness herein, having
21 been first duly sworn, was examined
22 and testified as follows:

23 ///

24 ///

25 ///

DIRECT EXAMINATION

BY MR. WALKER:

Q If you would, sir, please state your full name--

MR. WALKER: Excuse me, Your Honor. Let me put something else on the record.

I would indicate for the record at the last break I walked over to courtroom C from courtroom E, where I saw through the window that the Exhibits A and B were sitting on the counter, if you will, in front of the witness stand where they had been left by the last witness at the last proceeding.

I would ask at this time if there is any question as to the authenticity of those exhibits?

THE COURT: No. Here is A and B. I retrieved them myself.

MR. CONWAY: I am sure there is no problem.

(Looking.) Thank you.

MR. WALKER: Thank you, counsel.

THE COURT: They are acceptable with defense. Proceed.

BY MR. WALKER:

Q If you, sir, would please state your name and spell your last name.

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

1 Q What is your occupation?

2 A I'm a detective for the Washoe County
3 Sheriff's Office.

4 Q How long have you been a detective in
5 Washoe County?

6 A Approximately 11 years.

7 Q Did you have occasion to respond to the
8 general area of Keystone and West Fifth Street, the
9 parking lot in the area of the Coffee Grinder in the
10 Albertson's Supermarket in the early morning hours of
11 June 15th, 1996?

12 A Yes, I did.

13 Q Did you find any vehicle at that location?

14 A Yes, I did.

15 Q What vehicle were you looking for?

16 A I was looking for a 1985 Buick Regal
17 Somerset, a gray two-door, that belonged to a Beverly
18 Baxter, a missing person's case.

19 Q Did you find that vehicle at that location?

20 A Yes, I did.

21 MR. CONWAY: Again I must object to the
22 relevance of the current charges being prosecuted in
23 this case.

24 MR. WALKER: I will make an offer of proof, Your
25 Honor, and that is as follows: I'm going to ask the

1 detective detail a series of interviews conducted
2 with the defendant over a period of time in which he
3 indicated when confronted with the information, like
4 the location of this vehicle, that he had seen a
5 person at a location, and he hadn't seen a person at a
6 location, that he had deposited a check on a
7 particular date, and that he had not deposited that
8 check on another date.

9 I'm not going to get into the suspicions
10 surrounding her disappearance. That is generally not
11 why I'm asking this, but it is relevant to show what
12 was her intent in so far as this check goes and the
13 sleight, if you will, on the defendant's statements
14 over time.

15 THE COURT: Limited to that, do you want to
16 withdraw your objection?

17 MR. CONWAY: I will still put in my objection.
18 I think they are going too far into what this
19 detective saw when it has nothing to do with the
20 actual charges that we are facing here today. That is
21 the only concern I have.

22 THE COURT: With the offer given, the objection
23 is overruled. Exhibit D is now marked for
24 identification.

25 (State's Exhibit D was marked.)

1 MR. WALKER: Thank you.

2 BY MR. WALKER:

3 Q Ultimately in the context of your
4 investigation involving the alleged disappearance of
5 the owner of that vehicle did you have occasion to
6 speak with a Steven Voss earlier that evening before
7 you had found this car?

8 A Yes, I did.

9 Q Where did you make contact with Mr. Voss?

10 A I made contact with him at the Western
11 Village Motel portion at room 135.

12 Q All right. When you made contact with Mr.
13 Voss, who was with you?

14 A Detective John Yaryan was with me at the
15 time.

16 Q What time was it again?

17 A It was approximately ten p.m.

18 Q What was your purpose for going to that
19 location?

20 A Mr. Voss had been identified as a friend or
21 past boyfriend/acquaintance of Beverly Baxter.

22 Q How did you know that he was at Western
23 Village?

24 A I had been advised by Sgt. Pappas that that
25 is where he had come in contact with Mr. Voss earlier

1 that day, at that is the location that Mr. Voss was
2 living at.

3 Q Did you confirm ultimately with Mr. Voss
4 how he got from the last location where Detective
5 Pappas saw him to the Western Village?

6 A Yes.

7 Q What did Mr. Voss indicate?

8 A He indicated that he walked away from the
9 bank across the street, which was McCarran Boulevard,
10 and to the Outer Limits Bar, where he made a telephone
11 call to his mother at the Western Village to come pick
12 him up at the Outer Limits Bar.

13 Q What is the proximity, if you will, of the
14 Outer Limits Bar to the Western Village?

15 A Approximately two blocks away.

16 Q Did he indicate to you why he would call
17 his mother for a two-block ride?

18 A He told me he didn't want to walk that far.
19 He was tired of walking.

20 Q When you made contact with Mr. Voss, were
21 you invited into the home?

22 A Yes.

23 Q All right. Did you attempt to interview
24 Mr. Voss about any information he might have involving
25 Ms. Baxter and the cashing of the check?

1 A Yes, I did.

2 Q What was the first avenue of questioning
3 you conducted with him?

4 A The first avenue was just asking him how he
5 knew Beverly Baxter, how long he had known her, and
6 how he came in possession of this check.

7 Q How did he tell you he had come in
8 possession of the check?

9 A He had advised us that he was making an
10 offer and had made an offer on a mobile home in Sun
11 Valley and that Beverly Baxter on the prior Thursday
12 morning had asked him if he needed money, how much he
13 thought he might need, and that she then wrote out a
14 check, leaving the payee line blank, as he stated he
15 didn't know if it would go to the mobile home company
16 or an escrow company.

17 Q Now, have you spoken with Mr. Voss on more
18 than one occasion since that time?

19 A Several occasions.

20 Q How many times approximately have you
21 spoken with him?

22 A At the very least four times.

23 Q Has Mr. Voss ever been inconsistent in that
24 particular detail about when the check was given to
25 him?

1 A No, he has not.

2 Q Did you have occasion to question Mr. Voss
3 about the circumstances of him depositing a check
4 earlier?

5 A Yes.

6 Q When did you first talk with him about
7 that?

8 A We talked with him that night, and the
9 following Saturday at noon.

10 Q What did he tell you about the first, we
11 will call it, 5,000-dollar check?

12 A He stated that he had met with Beverly
13 Baxter at her work shortly after lunch time and that
14 he was making copies for her for-- from some
15 paperwork, and that she had given him that check,
16 which was from a moving and storage company to deposit
17 in the bank in Sparks for her as she preferred going
18 to that California Federal Bank.

19 Q Did he offer any explanation as to why she
20 was unable to deposit that check herself?

21 A Other than that she was at work at the
22 time.

23 Q All right. What day did he tell you he had
24 deposited the check?

25 A He told me that he deposited it on the

1 Monday, which would have been around the 10th, I
2 believe prior to Thursday and Friday.

3 Q What was your understanding of his
4 certainty, if you will, of the date on which he had
5 deposited this check?

6 A He seemed pretty certain.

7 Q All right. Was he consistent with that
8 detail through the series of interviews?

9 A No.

10 Q When did that detail change or at least
11 when was he inconsistent about it?

12 A On the third interview, which I believe was
13 Tuesday, the following Tuesday, we had found out from
14 the bank that in fact that check had been deposited on
15 Wednesday, the 12th.

16 And so when we asked him about those details, we
17 asked him, Well, could it have been Wednesday, the
18 12th? We have information from the bank. He said,
19 Well, then, it was Wednesday, the 12th.

20 Q Did you ever ask him who endorsed the
21 check?

22 A I asked him when Beverly had given him the
23 check, if she had endorsed the check. He stated, No.
24 I said, Did she write "for deposit only". He stated,
25 No, I did.

1 Q Did he indicate why he had written those
2 things?

3 A He stated he had made deposits for her in
4 the past, so he wrote that on for her.

5 Q Was he able to specify when exactly he had
6 made deposits for her in the past?

7 A No.

8 Q What was the next, if you will, avenue of
9 inquiry that you conducted with Mr. Voss, do you
10 recall?

11 A On which --

12 Q On the very first interview. I realize we
13 have kind of jumped back and forth, but the very first
14 time you talked to him.

15 A Well, actually we asked him about the
16 checks, and why he filled his name out on the check.
17 And he originally said he wasn't sure, that he
18 needed -- since he had deposited it he now needed to
19 cash that check and obtain a certified check for the
20 mobile home company.

21 We asked him about if he had seen Beverly Voss,
22 when was the last time he saw her, which he stated was
23 about nine a.m. Thursday morning, the 13th, when he
24 left her at her motel room on Fourth Street at the
25 Jack Pine Motel that--

1 Q I'm sorry. Go ahead.

2 A --he traveled back to the Sparks area, the
3 Western Village. I asked him if he saw her again
4 after that, and he stated he had not seen or heard
5 from her since that time.

6 Q Did you ever confront him with the fact
7 that her vehicle had been found in the area of
8 Keystone and West Fifth Street?

9 A Yes, that was on the interview of the
10 following Tuesday, which I believe is the 18th, and I
11 advised him then that we had found her vehicle at the
12 Keystone Shopping Center near the Albertson's at Fifth
13 and Keystone.

14 And we also advised him that -- We asked him if
15 he had returned to Reno for any reason that day, that
16 Thursday, the 13th.

17 Q And what was his response?

18 A At first he stated, No, not for any reason.
19 I advised him, Well, you have a very distinctive
20 truck, and that people would remember that.

21 Detective Yaryan again advised him that, you
22 know, ATM machines take photographs every eight
23 seconds. He said, Well, yeah, I did stop at the ATM
24 machine in that shopping center on Thursday, maybe
25 close to ten a.m. and withdrew maybe \$40 for gas.

1 Q The first time you spoke with Mr. Voss what
2 was his attitude and demeanor?

3 A He was very upset with the Sheriff's Office
4 and Sgt. Pappas in particular. And he really didn't--
5 He allowed us to come in, and he didn't want to answer
6 too many questions, said he didn't want to come to the
7 station and give us a taped statement, and he was
8 hesitant to talk to with us.

9 Q The first time you met with Mr. Voss did
10 you ask him to see the check?

11 A Yes, we did.

12 Q Where was it?

13 A It was-- I didn't see exactly where he
14 pulled it out of. He had it with him, and it was in
15 the motel room.

16 Q All right. Did his mother ever have
17 possession of the check, or did you learn that his
18 mother ever had possession of the check from him?

19 A No.

20 Q Do you recollect making a statement to me
21 at one time that his mother had the check in her
22 pocket?

23 A He at one point-- When they came to the
24 first interview that Saturday at noon, she actually--
25 she stated she had the check in her purse.

1 Q Ultimately did you conduct a search of the
2 residence of Mr. Voss and his mother at the Western
3 Village Motel?

4 A That first night on Friday, the 14th, we
5 asked if we could have permission to look around, and
6 he actually assisted us in looking around. It was
7 shortly thereafter that he brought out the check and
8 showed it to us.

9 Q Ultimately did you serve a search warrant
10 at that residence?

11 A Yes, the following Tuesday Detectives Rich
12 Hill and Terry Lowry actually conducted the search
13 with the service of the search warrant.

14 Q Was the check again discovered at that
15 time?

16 A Yes, it was found inside an envelope in a
17 drawer inside the-- in the motel room 135.

18 Q Is that in fact the check that is depicted
19 in Exhibit C?

20 A Yes, it is.

21 Q Does that photograph fairly and accurately
22 depict the check as you observed it on the following
23 Tuesday?

24 A Yes.

25 MR. WALKER: I move C into evidence.

1 THE COURT: Any objection?

2 MR. CONWAY: No objection, Your Honor.

3 THE COURT: C is moved into evidence without
4 objection.

5 (State's Exhibit C was admitted.)

6 BY MR. WALKER:

7 Q Did you-- Well, strike that.

8 In the first interview did Mr. Voss make any
9 mention to you that he had contacted the bank on
10 Wednesday, Thursday and Friday in an attempt to get
11 this money?

12 A He advised at one point that he had called
13 them to check to see if it had cleared.

14 Q Did you ask him if he had written the name
15 Steven Voss on the 5,000-dollar check, which came from
16 Beverly's personal account?

17 A I'm not sure if I asked him, but he told me
18 that he did.

19 Q And again what was the reason that he wrote
20 his own name on that portion of the check?

21 A He stated at that point as I said that it
22 was left blank because he was not sure who the payee
23 was going to be. Then he realized he felt he needed a
24 certified check. And so that is when he wrote his
25 name on it and was attempting to cash it to gain a

1 certified check for \$5,000.

2 Q Did you come upon information that there
3 was an allegation that the victim had expected that
4 Mr. Voss was going to hire an attorney? Whether that
5 is true or not, did you receive that information?

6 A Yes, I did.

7 Q Did you confront Mr. Voss with that
8 information?

9 A Yes.

10 Q What was his response?

11 A He stated he knew that she had been trying
12 to locate or come in contact with an attorney over the
13 storage company in Southern California selling off her
14 property, but he really didn't know any details about
15 it, if she had an attorney or not, and that she was
16 attempting to get more funds.

17 Q Did you confront him with the discrepancy
18 in your understanding of her intent about how the
19 check was going to be used?

20 A Yes.

21 Q What was his response?

22 A He stated he didn't know anything about
23 that.

24 Q He didn't know anything about what in
25 particular?

1 A The information I had was that she was not
2 going to deposit, cash or do anything with that check
3 because she felt that would be the acceptance of that
4 amount, and she could not get any further funds.

5 When I asked him about that, he stated he really
6 didn't know any of the particular dealings of her case
7 and what she was doing with it. He only knew that she
8 was loaning him the money.

9 Q When you first spoke with Mr. Voss, did you
10 ask him if he had ever been in her apartment alone? I
11 mean unescorted by her.

12 A I asked him if he had been in her
13 apartment, but I didn't particularly say unescorted by
14 her.

15 Q Did you ask him particularly if he entered
16 her apartment on Wednesday during the day while she
17 was at work?

18 A Yes.

19 Q What was his response?

20 A During the first interviews that he had not
21 gone over there.

22 Q When did he change the story that he had
23 gone there?

24 A On the following Tuesday in his interview
25 when we advised him that the manager had seen him go

1 in the room. Then he stated, well, he had to pick up
2 some of the paperwork, that he was making copies for
3 her.

4 Q Did you confront him about the change in
5 his story?

6 A That was the-- how I confronted him with
7 it.

8 Q What was his attitude and demeanor? When
9 he offered this explanation in the subsequent
10 interviews, then how did he act?

11 A He was a little like a-- like it bothered
12 him a little bit, but, you know, he was at that point
13 saying, Well, I just forgot that I had to go in there
14 and pick that up.

15 MR. WALKER: I have no further questions at this
16 time, Your Honor.

17 THE COURT: Cross-examination, Mr. Conway.

18 MR. CONWAY: Thank you, Your Honor.

19

20 CROSS-EXAMINATION

21 BY MR. CONWAY:

22 Q What was the date and time of your first
23 contact with Mr. Voss?

24 A I believe it was Friday, the 14th, at 10:00
25 p.m.

1 Q And it was you and who else?

2 A Detective John Yaryan.

3 Q The other people who were present beside
4 Mr. Voss?

5 A Was his mother, Mary Duplene (phonetic).

6 Q Was that interview recorded?

7 A No, it was not.

8 Q When was your next contact with Mr. Voss?

9 A That was the very next day, Saturday, the
10 15th, at 12 noon.

11 Q Where was that?

12 A That was at the Washoe County Sheriff's
13 Office, Detective Division.

14 Q And who was present at that meeting or
15 interview?

16 A Myself, Detective Yaryan, Mr. Voss and Mary
17 Duplene (phonetic).

18 Q Was that interview or meeting tape
19 recorded?

20 A Yes, it was. I took taped statements both
21 from Ms. Mary Duplene (phonetic) and from Mr. Voss.

22 Q When was the next contact with Mr. Voss?

23 A After Saturday? I know I talked to him on
24 the phone in between Saturday and Tuesday.

25 Q Was there any relevant information from

1 those conversations, or was it setting up meetings or
2 verifying information?

3 A It was just verifying information.

4 Q Okay. When was the next actual meeting or
5 contact with Mr. Voss, let's say, face to face?

6 A The next meeting was when we served the
7 search warrants, and we met with him-- actually went
8 to his motel room. He was not there, and we went and
9 located him at the Western Village. He was in front
10 of the coffee shop.

11 Q And was the sole purpose of that meeting to
12 conduct the search, or was there an interview?

13 A We were apprising him we had a search
14 warrant for the motel room. I advised him that we had
15 served search warrants on his storage units. Then we
16 walked down to the motel room.

17 He observed that his vehicle and his mother's
18 vehicle were being served with search warrants and
19 were being towed to the Washoe County Sheriff's Office
20 forensic garage.

21 And also at that time is when we advised him we
22 also had a seizure order for his blood, hair and trace
23 evidence.

24 Q All right. Any other discussion with him
25 other than advising him of what was going on? Was

1 there another full scale interview at that time, or
2 was this solely for the purpose of conducting these
3 various searches, and you were just advising him that
4 you had these warrants?

5 A At that point, yes. I mean we transported
6 him up to our blood draw room where that was taken
7 care of.

8 Q All right. Anything else on that day?

9 A Yes. Then as we were leaving we told him
10 we had some other questions and would he be willing to
11 talk with us in the detective's office again.

12 Q Was he?

13 A Yes.

14 Q All right. Was that recorded?

15 A Yes, it was.

16 Q All right. Did you have any contact--
17 What day was that that you served the warrants?

18 A I believe that was the 17th. I haven't
19 checked my reports.

20 Q That would be Monday then?

21 A That would be Monday.

22 Q Did you have contact with Mr. Voss after
23 Monday, the 17th?

24 A I stopped by the next afternoon to make
25 sure I had some copies of search warrants, and I

1 wanted to make sure he had his copies. We had left
2 one at one of the storage units. They didn't give it
3 to him, so I wanted to make sure he had all his copies
4 of the search warrants.

5 Q Was that the extent of that contact?

6 A Yes.

7 Q Did you have any contact -- That would be
8 the 18th I guess?

9 A Right.

10 Q Did you have any contact with Mr. Voss
11 after the 18th?

12 A Well, on the 18th I talked to him in the
13 morning on the phone and --

14 Q What was the purpose of that telephone
15 call?

16 A He actually called me to ask me information
17 on the search warrants, why certain things were taken
18 in the search and so forth.

19 Q Okay. All right. After the 18th did you
20 have some more contact with Mr. Voss?

21 A I believe I did talk to him by phone again.
22 As a matter of fact, at one point his mother called me
23 actually to give me their new address when they moved.
24 And then I went out there -- went to that address to
25 have them review their statements.

1 Mr. Voss was not there at the time, and then it
2 was that Friday that I came back and talked to him and
3 placed him under arrest.

4 There was also-- Him and his mother actually
5 came to our office, trying to get her car. And they
6 went to our forensic-- our lab, because that is where
7 the keys were. And I briefly-- I was going in there
8 for something else, saw them and made sure they got
9 their keys and got their car.

10 Q Did you deliver those to them on the 19th,
11 the keys?

12 A I may have.

13 Q Okay. Any other contact after the 19th
14 with Mr. Voss?

15 A The next personal contact would have been
16 the Friday-- that following Friday from the 19th --

17 Q 21st?

18 A --in which case that is when I arrested
19 him.

20 Q You had no contact before the 21st after he
21 was taken into custody?

22 A No.

23 Q So it appears during this time that he was
24 cooperative to some extent in the investigation, was
25 he not?

1 A Yes.

2 Q In fact, whenever you were there at one
3 point he actually produced the check that is shown in
4 State's Exhibit C?

5 A That is correct.

6 Q And in fact he told you that he had written
7 the name in on the payee line?

8 A That is correct.

9 Q Were you involved in any confirmation that
10 he was using that money to purchase a mobile home or
11 was that just Sgt. Pappas?

12 A Sgt. Pappas had actually confirmed it. I
13 stopped at the mobile home realty. The actual realtor
14 wasn't there. Other people in the office did state
15 that they knew that he had been in negotiations in
16 trying to buy a trailer.

17 Q Was his new residence that you finally went
18 to that you testified to I guess to show him the
19 statements -- was that a mobile home?

20 A No, it was not.

21 Q Where was that?

22 A That was at 269 Wonder Street in Reno.

23 Q And the reason that you knew that was
24 because his mother had contacted you and advised you
25 where they had moved?

1 A That is correct.

2 Q Now, with respect to the earlier check, had
3 you ever seen that earlier check? This is the one
4 that is for 5,026.

5 A No.

6 Q But you didn't ask him when he believed he
7 had deposited that, isn't that correct?

8 A That is correct.

9 Q And he thought it had been Monday?

10 A Yes. Originally he told me it was Monday.

11 Q Okay. But he was mistaken. And when you
12 told him that it was actually on the 12th, he said,
13 Okay. I guess it was on the 12th?

14 A Yes.

15 Q But he never denied that he deposited the
16 check, did he?

17 A No.

18 Q Now, you testified that he told you that he
19 had written the "for deposit only"?

20 A That is correct.

21 Q And also endorsed her name. Didn't you say
22 that?

23 A No. He told me he wrote "for deposit
24 only".

25 Q So he denied that he had endorsed her name?

1 A He didn't tell me he di

2 Q All right. Did you-- Had you asked him
3 that?

4 A I asked him if Beverly Baxter had signed
5 the back of the check. He stated, No. I asked if she
6 fill -- I said, Did she fill out "for deposit only"?
7 He stated, No, I did that.

8 Q So he's assuming that Beverly Baxter did it
9 because he didn't admit that he did, is that correct?
10 I guess I'm trying to figure out did he say he put
11 Beverly Baxter's name on the back?

12 A No. He said "for deposit only", but at the
13 time I didn't know her name was on it.

14 Q Now, you also testified that he advised you
15 that he saw Beverly Baxter for -- the last time that
16 he saw her was on June 13th at nine a.m.?

17 A That is correct.

18 Q During your investigations had you spoken
19 to Ms. Crumb?

20 A Yes.

21 Q I think you saw her earlier. She had
22 testified --

23 A Uh-huh.

24 Q And so were you aware that that was also
25 the time that she had last seen him, Mr. Voss?

1 A Yes.

2 Q So that actually confirmed out to be true?

3 A We confirmed that, yes.

4 Q And, in fact, back to the check that he was
5 attempting to cash on the 14th of June, he volunteered
6 that he had written in his name on the payee line?

7 A Yes.

8 Q Now, you stated that during the search of
9 the hotel room I guess the first time before you did
10 the warrants that Mr. Voss and his mother actually
11 assisted in that search and pointed out where things
12 were and where to look, isn't that correct?

13 A Right.

14 Q I want to refer I guess to State's Exhibit
15 D concerning the vehicle, a picture of the vehicle
16 that you had found --

17 MR. CONWAY: It has not been admitted?

18 THE COURT: D has not been admitted.

19 MR. WALKER: If you seek to move it in, counsel,
20 that is fine. I will stipulate.

21 BY MR. CONWAY:

22 Q Just look at State's Exhibit D for
23 identification.

24 A Okay.

25 Q Do you know who took that picture?

1 A Yes. Investigator Will Stevenson from our
2 Forensic Investigation Section of our crime lab.

3 Q Were you present at about the time this
4 picture was taken?

5 A Yes.

6 Q That is the vehicle then as you had found
7 it on which day?

8 A That was now Saturday morning, the 15th.

9 Q Of June?

10 A Right.

11 Q And you told Mr. Voss that you had found
12 Beverly Baxter's vehicle, is that correct?

13 A Yes.

14 Q And you asked him certain questions
15 concerning whether he knew where it had been located?

16 A Yes.

17 Q And what did he say at that time?

18 A He stated he didn't know.

19 Q So then you informed him where you had
20 found it?

21 A Yes.

22 Q And what was the reason for that?

23 A The reason for informing him of where I
24 found it?

25 Q Yes.

1 A Because we also had ATM photos of him
2 probably 50 yards away from this vehicle at 10 a.m.,
3 Thursday morning, the 12th. And so I asked him if he
4 saw Beverly Baxter at that location where her car was
5 found.

6 Q Okay. So we now based on the testimony of
7 Ms. Crumb or actually the investigation or interview
8 with Ms. Crumb that the last time she saw Mr. Voss was
9 at nine a.m. --

10 A That is correct.

11 Q --Mr. Voss confirms that -- volunteered
12 that information to you, that that was the last time
13 he saw Ms. Baxter, because that is when he left the
14 hotel.

15 How far from the hotel to the Keystone Plaza
16 parking lot?

17 A That is approximately two and a half miles.

18 Q Okay. Did you also confirm when Ms. Baxter
19 was last seen at the Jack Pine Motel?

20 A Yes. Ms. Crumb advised me it was about ten
21 minutes after Mr. Voss left that she left.

22 Q Okay. Now, you stated that you have
23 pictures, and I guess they are time dated pictures?

24 A That is correct.

25 Q And obviously dated pictures?

1 A Yes.

2 Q Of Mr. Voss using the ATM?

3 A At that location.

4 Q What bank is that?

5 A It's the Versateller machine.

6 Q For Bank of America?

7 A Yes.

8 Q And in that picture can you see the car?

9 A No.

10 Q So all that does is place Mr. Voss in that
11 area two and a half miles from where he just left at
12 10 a.m.?

13 A That is correct.

14 MR. CONWAY: Nothing further.

15 THE COURT: Any redirect?

16

17 REDIRECT EXAMINATION

18 BY MR. WALKER:

19 Q Detective Canfield, before he acknowledged
20 that he had been at the ATM machine he denied being
21 there?

22 A Denied being back in the Reno area or
23 anywhere around there.

24 Q In fact, when you confronted him, you had
25 information that the two of them had been seen

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1 together after that, didn't you, his truck?

2 A Yes.

3 Q And that was part of the reason that you
4 confronted him about that, isn't it?

5 A That is correct.

6 MR. WALKER: No further questions.

7 THE COURT: Any recross?

8 MR. CONWAY: Yes, Your Honor.

9

10 RECROSS EXAMINATION

11 BY MR. CONWAY:

12 Q When you asked him had he been back in the
13 Reno area, how did you ask that question?

14 A I stated, Once you left the Jack Pine Motel
15 at nine a.m., I stated, where did you go? He stated,
16 I drove back to Western Village. I stated, Did you
17 ever return back to the Reno area? Did you ever
18 return back to Reno for any reason?

19 That is when I advised him that, Your truck is
20 very noticeable, and people would remember seeing
21 that.

22 Q Where is the Western Village? It's not in
23 Reno?

24 A It's in Sparks.

25 Q In Sparks. And if you leave the Jack Pine

1 Motel and drive to the Western Village, which is in
2 Sparks, how would you go?

3 A Normally I would go eastbound on Fourth
4 Street, which-- West Fourth Street in Reno to McCarran
5 Boulevard, north on McCarran Boulevard to the freeway.

6 Q So you would come up Keystone, would you
7 not --

8 A No.

9 Q --to get to the highway?

10 A No.

11 Q To get to McCarran?

12 A No. McCarran Boulevard west is very
13 close-- is within a mile of the Jack Pine Motel. You
14 come --

15 Q The Jack Pine Motel is on what street?
16 Let's start there.

17 A West Fourth Street.

18 Q Which is on which side of Keystone?

19 A Which is about two and a half miles west of
20 Keystone.

21 Q West of Keystone?

22 A Right. But if you leave the Jack Pine and
23 go eastbound, you within a mile come to McCarran
24 Boulevard. On McCarran you go north to Interstate 80,
25 if you did not take McCarran Boulevard, continued east

1 probably another mile and a half until you get to
2 Keystone.

3 Q If you did not go east?

4 A If you continued east and did not go up
5 McCarran to get onto Interstate 80.

6 Q Okay. If Mr. Voss went east on Fourth
7 Street to Keystone, went up, did a bank transaction
8 and then got on Route 80 towards Sparks, that would be
9 another appropriate way to go, would it not?

10 A Yes, it would.

11 Q He could still get to the Western Village?

12 A That is correct.

13 Q And given the fact that the last time he
14 was seen anywhere near Ms. Baxter was at nine a.m. and
15 the pictures, at least from your testimony, state that
16 it was 10 a.m. when he was at the ATM Versateller
17 machine, that would suggest that is probably what he
18 did or not?

19 A Well, it was probably about a five-minute
20 drive, so what happened for the rest of that time.

21 Q Would he have time to leave there, go to
22 Western Village, come all the way back and use it by
23 ten?

24 A Yes, you could.

25 Q How far apart are those?

1 A hat is probably 10 to miles, but you're
2 right on the freeway straight to Western Village, get
3 off the freeway, and you get back on the freeway right
4 there.

5 MR. CONWAY: Nothing further.

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

7 THE COURT: You may step down, Officer Canfield.

8 MR. WALKER: Your Honor, that is the State's
9 case.

10 THE COURT: Mr. Conway.

11 MR. CONWAY: One moment, Your Honor.

12 (A discussion was held off the record.)

13 MR. CONWAY: Your Honor, I have advised my
14 client of his right to testify at the preliminary
15 hearing and present evidence on his behalf.

16 Pursuant to my advice he is not going to present
17 his testimony or the testimony of any other witnesses.

18 THE COURT: Very well. Thank you.

19 Counselor, do you want to hand me Exhibit C. I
20 will make sure that the Court has possession of it.

21 D was not admitted at this time.

22 All right. We will start with final arguments
23 by the State.

24 MR. WALKER: Your Honor, I will submit it
25 subject to any response to any argument offered by Mr.

1 Conway.

2 THE COURT: Mr. Conway, final arguments.

3 SKWRAO: Thank you, Your Honor.

4 We are going to submit for purposes of the
5 preliminary hearing to Counts II, III, IV and V.

6 I'm going to submit a brief argument concerning
7 Counts I and Count VI.

8 With respect to Count I, which has been charged
9 as Burglary, I don't believe that there has been any
10 evidence to satisfy the elements of burglary, but the
11 most important being that some crime was committed at
12 any time that Mr. Voss was on the property.

13 It is quite clear that he had been on the
14 property numerous times. It was quite clear that he
15 entered the property with the use of the keys that had
16 been given to Ms. Baxter on June 13th-- I mean on June
17 12th--I apologize--and that Ms. Baxter had been seen
18 since and obviously raised no objection that something
19 had happened in her residence without her permission.

20 She had obviously not complained about the loss
21 of her keys, because she was seen leaving the property
22 on the morning of June 13th after he had been seen in
23 the residence.

24 So there is absolutely no evidence that anything
25 happened in the residence. And, therefore, there can

1 be no intent that he was going to commit a crime while
2 in that residence.

3 For that reason I don't believe that there has
4 been any evidence that a burglary was committed and
5 would ask that be dismissed.

6 With respect to Count VI, my only concern is I
7 believe that it is certainly a double charge in this
8 case. The State has charged him with both forgery and
9 uttering. They are two separate crimes. You can
10 forge, and then you can utter.

11 Obviously when someone utters a check, and in
12 this case I think they are referring to the
13 5,000-dollar check that was attempted to be cashed on
14 June 14th, that they-- that he was attempting to get
15 money fraudulently through the use of a forged check.

16 The attempted theft relates to that, and there
17 are no different elements in any of those charges. He
18 is doing the same or at least he's being alleged to do
19 the same act as in--

20 I don't know which count relates to which check,
21 so I'm not going to confuse the Court in that way, but
22 I believe that certainly Count VI doubles the exact
23 same thing as the uttering charge and would ask that
24 be dismissed. Thank you.

25 THE COURT: Mr. Walker.

1 MR. WALKER: Thank you.

2 With regard to Count VI, Your Honor, Mr. Conway
3 I submit is wrong. The elements of attempted theft
4 are literally having the specific intent to willfully,
5 unlawfully attempt to control the property of another
6 with the intent to permanently deprive her of that
7 property, in this case cash derived from the check.
8 There is no intent to deprive required for either
9 uttering a forged instrument.

10 So prima facie they are different offenses, and
11 they aren't lesser included offenses, because all of
12 the other elements of attempted larceny or attempted
13 theft are not included in either uttering or forgery.

14 With respect to the burglary, Your Honor, I
15 submit this is clearly a circumstantial case, but the
16 strong inference, which is all that is necessary for
17 here, is that what he stole when he went in was the
18 5,026-dollar check, which Ms. Baxter had clearly in
19 fact after-- later on that afternoon even said to a
20 friend, I'm going to hold onto this check. We are
21 getting an attorney. We are going to fight this.

22 So that is what he stole when he went into her
23 apartment. Thank you.

24 THE COURT: Based on the evidence presented here
25 today, I find there is probable cause to believe that

1 the crimes stated in this complaint were committed and
2 that the defendant committed the crimes.

3 I am therefore ordering that Steven Floyd Voss
4 appear before the Second Judicial District Court to
5 answer to this complaint.

6 Any objection to Exhibits A, B, and C being
7 returned to the State at this time, Mr. Conway?

8 MR. CONWAY: None, Your Honor.

9 THE COURT: All right. I'm going to return A, B
10 and C to the possession of the State.

11 MR. WALKER: Thank you, Your Honor.

12 THE COURT: This Court will be in recess.

13 (The proceedings were concluded.)

14 --oOo--

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1 I, FIDEL SALCEDO, Justice of the
2 Peace of Reno Township, sitting as Committing
3 Magistrate in Reno, Washoe County, Nevada do hereby
4 certify;

5 That LYNDA CLARK, CSR #73, a Certified
6 Shorthand Reporter, was duly appointed and sworn by me
7 to report the proceedings had in the Preliminary
8 examination in the case of the STATE OF NEVADA,
9 Plaintiff, versus STEVEN FLOYD VOSS, Defendant;
10 that the witnesses were first duly sworn and their
11 testimony taken in stenotype notes and thereafter
12 transcribed into typewriting as herein appears;

13 That when the examination of the witnesses
14 and the presentation of evidence was closed, it
15 appearing from the evidence adduced at said Preliminary
16 Examination that there was probable cause and
17 sufficient evidence to believe that the said
18 STEVEN FLOYD VOSS, defendant, committed the said
19 crimes as charged; that said defendant,
20 STEVEN FLOYD VOSS, was therefore bound over to the
21 Second Judicial District Court for trial.

22
23

24 -----
25 Justice of the Peace of Reno
Township, sitting as Committing
Magistrate in Reno, Washoe County,
Nevada.

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

3
4 I, LYNDA CLARK , a Certified Shorthand
5 Reporter, do hereby certify that I was duly appointed
6 and sworn by the Magistrate Reno, Washoe County,
7 Nevada to report the proceedings in the within-
8 entitled cause, that I was present on the 15th day of
9 July, 1996, at the hour of 10:00 a.m. of the said
10 day and reported the proceedings had in said cause
11 in stenotype notes, which were thereafter
12 transcribed under my direction.

13 That the foregoing transcript, consisting of
14 pages 1 through 146, both inclusive, contains a full,
15 true and complete transcript of my said stenotype
16 notes and is a full, true and correct record of the
17 proceedings had at said time and place.

18 DATED: At Reno, Nevada, this 25th day of
19 July 1996. .

20
21
22
23 -----
24 LYNDA CLARK, CSR #73
25

SCOTT W. EDWARDS
ATTORNEY AT LAW

1030 Holcomb Avenue
Reno, NV 89502

Phone: (775) 786-4300
Fax: (775) 786-1361
NVlaw@aol.com

August 22, 2000

Steven Voss #52094
L.C.C.
P.O. Box 359
Lovelock, NV 89419

RE: Your undated letter received today

Dear Mr. Voss:

Perhaps you did not listen closely in our conversation June 13, 2000. I asked you whether you wanted me to wait to hear from you relative to what you wanted to do on your murder case, rather than proceeding with the petition in this case. You agreed for me to wait until I heard from you further.

I must now assume that you have changed your mind. Accordingly, I will now decide what if any issues to supplement and do any reasonable preparation for the hearing. You will have to secure other counsel to represent you relative to your murder conviction and any post-conviction remedies you desire there. My preparation will include one meeting with you in prison. Be prepared to discuss the charges you have in Judge Elliot's courtroom. You needn't worry about Judge Elliot not being elected. The elections are 2 years away that involve him. Moreover, he will be a formidable and worthy candidate for reelection.


As I tell all my prisoner/clients, you may attempt a collect call to me, but will only get through to me if I am available to talk to you personally. Otherwise you will receive a voice message. Apparently, you are very unlucky in your calling pattern. I have other clients who happen to get me whenever they try. If you have something you need to communicate to me, the best way is in writing.

Very truly yours,



Scott W. Edwards
Attorney at Law

NOTICE OF ATTORNEY VISIT

TO: ALL CONCERNED
FROM: ROBERT LEGRAND, CCSIII 
LOVELOCK CORRECTIONAL CENTER
DATE: October 30, 2000

INMATE: VOSS, STEVEN NDOP #52094 2B36A
ATTORNEY: SCOTT EDWARDS
DATE/TIME: MONDAY, NOVEMBER 6, 2000, 10:00 A.M.
LOCATION: ATTORNEY VISITING BOOTH
COORDINATOR: J. THOMSON, CCSII
COMMENTS: Visitor will bring proper identification and wear
the proper attire.

RL:ms

pc:	Warden	Control	AWP
	Operations	CCSII Thomson	Visiting
	Gatehouse	Unit 2B Floor	Inmate
	I-File	File	

ATTVISIT\52094.RL

STEVEN F. VOSS

• #52094, LOVELOCK CORRECTIONAL CENTER, P.O. BOX 859, LOVELOCK, NEVADA 89419 •

March 22, 1997

Ms. Mary Lou Wilson
Attn: Public Defender
P.O. Box 11130
Reno, Nevada 89520

Dear Dear Ms. Wilson:

I would like to find out what is going on with my case, i.e., the status of the Appeal. I have not received any information as of yet. Please contact me regarding the above.

I wish to have copies or certified transcripts of all discovery information and/or court documents relating to my case.

Thanking you in advance,

Sincerely,



Steven F. Voss
#52094

STEVEN F. VOSS

* #52094, I. OVERLOOK CREDITORS MGMT. CO., P.O. Box 359, LAUREL, MD 20646

March 25, 1997

Ms. Mary Lou Wilson
Attn: Public Defender
P.O. Box 11130
Reno, Nevada 89520

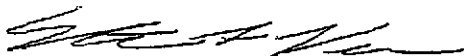
Dear Ms. Wilson:

I would like to find out what is going on with my case, i.e., the status of the Appeal. I have not received any information as of yet. Please contact me regarding the above.

I wish to have copies of court/trial transcripts and any other court documents relating to my case. Since I did not receive all discovery would also like to have those documents.

Thanking you in advance,

Sincerely,



Steven F. Voss
#52094



Washoe County Public Defender

Michael R. Specchio / Public Defender

Standard of Excellence Since 1969

April 1, 1997

Mr. Steven F. Voss, #52094
Lovelock Correctional Center
PO Box 359
Lovelock, NV 89419

Dear Mr. Voss:

Thank you for your letter dated March 25, 1997.

Your Opening Brief is due on April 30, 1997. You will receive a copy.

Unfortunately, our policy is not to send you any documents until we are done with the appeal. This policy is in place for us to do the best job for you. If you have any complaints about this policy, please refer your letter to John Petty, Chief Appellate Deputy.

Sincerely,

MICHAEL R. SPECCHIO
Washoe County Public Defender

By Mary Lou Wilson
MARY LOU WILSON WL
Deputy Public Defender

MLW:wkl



Washoe County Public Defender

Michael R. Specchio / Public Defender

Standard of Excellence Since 1969

July 3, 1997

Steven F. Voss, #52094
Lovelock Correctional Center
P.O. Box 359
Lovelock, Nevada 89419

Dear Mr. Voss,

I was glad to hear from you, and learn of your location. I had tried to send you the enclosed information twice, but it was returned to me both times. I'm glad you're back in the state again.

Mary Lou Wilson, who had been handling your appeal, has transferred to another division of the public defender's office. I will be handling the case from this point forward.

The filed does not reflect whether or not you received a copy of the opening brief prepared by Ms. Wilson, and so I have enclosed one. I've also enclosed the state's reply brief, and a copy of the joint appendix, which both briefs refer to.

I have not enclosed a copy of the trial transcript. I'd like to keep that here, in case the Supreme Court orders oral arguments. I would need to read the transcript in order to prepare.

The Supreme Court now has all of the documents before it to make a decision. The court could request oral arguments, or it could rule on the briefs before it. If the court rules on the briefs, your appeal could either be granted, in which case you would have a new trial, or it could be denied, in which case it would be dismissed.

There is no way to predict the time frame in which the court will make a decision. It could be a year or more, which I know would be very frustrating to you. As soon as I hear anything, I will let you know. Please make sure I have your address, so I can get in touch with you.

Mr. Steven Voss
July 3, 1997
Page Two

If you have any questions, please feel free to call. I will accept collect calls when I'm at my desk; my number is (702) 328-3486.

Very truly yours,

MICHAEL R. SPECCHIO
Washoe County Public Defender

By:



JENNIFER LUNT
Appellate Deputy



COTTER CONWAY

WASHOE COUNTY PUBLIC DEFENDER
1 SOUTH SIERRA ST. PO. BOX 1130
RENO NV. 89520.

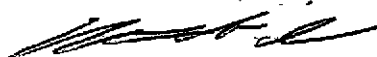
COTTER CONWAY:

LISTEN UP SPORT! I HAVE
HAD IT WITH YOU. YOU KNOW IT ALL
ATTITUDE, AND I AM ~~COMPLETELY~~ COMPLETELY FURNISHED
WITH YOU EXCLUDING ME FROM THE PROCESS OF
MY LEGAL DEFENCE, IF YOU CAN NOT COME TO
GRIP THE FACT THAT YOU WORK FOR ME. THEN
YOU WILL NOT HAVE TO WORRIE ABOUT IT
MUCH LONGER. WHO IN THE HELL DO YOU
THINK YOU ARE, MAKING COMMENTS TO THE
PRESS, WITHOUT MY AUTHORIZATION OR CONSULTATION
DOES THE PHRASE (NO COMMENT) MEAN ANYTHING TO
YOU. I AM TELLING YOU NOW THAT YOU ARE NOT
TO SPEEK TO THE PRESS REGARDING MY CASE
UNLESS I APPROVE IT, AND IN REGARDS TO THE
PAPERWORK I HAVE REQUESTED: I DON'T CARE IF
YOU HAVE TO HIRE A TEMP, YOU BEST GET IT
TO ME, AND I MEAN NOW! IN THE EVENT YOU
HAVE FORGOTEN EXACTLY WHAT MATERIALS I WISH, I
WILL MAKE IT EASY, EVERY SINGLE PEICE OF PAPER
THAT HAS COME INTO YOUR POSECTION REGARDING
MY CASE, THIS INCLUDES PRELIMINARY HEARING TRANSCRIPTS,
TRIAL TRANSCRIPTS, ALL DISCOVERY DOCUMENTS, INCLUDING A
WRITTEN TRANSCRIPT OF BEVERLYS ANSWERING MACHINE TAPE
OR TAPES, AND WRITTEN TRANSCRIPT OF ANY AUDIO TAPES
OF ANY INCUSTODY CONVERSATIONS I MAY HAVE MADE,
TELEPHONE
THAT THE STATE MIGHT TRY TO ADMIT AS EVIDENCE.
I ALSO WANT A COPY OF THE STATES REVISED
WITNESS LIST, BE ADVISED I INTEND TO HAVE
THE PART IN MY DEFENCE, TO MAKE ALL DECISIONS
REGARDING DEFENCE WITNESSES, AND IN DETERMINING THE
EXACT LINE OF QUESTIONING OF ALL STATE WITNESSES
AND THIS TIME YOU WILL BE PREPARED FOR THE
POSSIBILITY THAT I MAY CHOOSE TO TESTIFIE.

IN ORDER TO ACCOMPLISH THIS, IT WILL REQUIRE
 NUMEROUS AND INTRIGATE MEETINGS BETWEEN
 MYSELF AND ALL PARTIES INVOLVED IN MY DEFENCE.
 AT THIS SHORT DATE I WOULD THINK ATLEAST WEEKLY
 MEETINGS OF SEVERAL HOURS DURATION EACH. ~~THE~~
 COTTER YOU IGNORED MY REQUEST LAST TIME
 AND I ENDED UP WITH 30 YEARS. AS FAR
 AS I AM CONCERNED, YOU WILL CONDUCT THIS CASE
 AS I REQUEST OR APPROVE, NO MORE NO LESS
 IF THE TERMS I HAVE OUTLINED ARE NOT
 ACCEPTABLE TO YOU, I SUGGEST THAT YOU WITHDRAW
 FROM THIS CASE, I ALSO SUGGEST YOU SHOW
 THIS LETTER TO COCOUNCIL AS ALL THIS
 GOES FOR HER TO. I EXPECT AN IMMEDIATE
 RESPONSE TO THIS LETTER AND THAT THE
 RESPONSE LETTER TO ~~BE~~ BE SHOWN TO
 COCOUNCIL AND BE SIGNED BY BOTH OF
 YOU. IN THE FUTURE I WILL EXPECT THAT
 IF THERE IS TO BE ~~ANY~~ ANY CHANGE IN
 A COURT APPEARANCE THAT YOU WILL ~~S~~
 SCHEDULE IT ATLEAST ONE WEEK LATER AND
 THAT YOU NOTIFY MY MOTHER POSTHASTE
 OF THE CHANGE, IN ORDER THAT I KNOW
 OF AN APPEARANCE BEFORE THEY YANK ME
 FROM MY CELL.

STEVEN VOSS

JAN, 8, 1998



RECEIVED JAN 13 1998

PIE + S

ARE YOU AWARE THAT ALL STATES WITNESS'S
 WERE GIVEN SCRIPTS OF THEIR TESTIMONY. DID
 YOU KNOW THAT COTTER PUT A WITNESS ON THE
 STAND, THAT GAVE FALSE TESTIMONY EVEN THOUGH
 I TOLD HIM THE TESTIMONY WAS INCORRECT, AND
 THAT TESTIMONY SHOULD NOT BE USED. COTTER
 DOES HAVE HIS GOOD POINTS, AND I DO LIKE
 HIM. I JUST DO NOT TRUST HIS JUDGMENT IN
 ALL THINGS OR IN HIS OVERALL ABILITIES AT
 THIS TIME. I FEEL HE LACKS EXPERIENCE. YOU
 I DO NOT KNOW AT ALL. BUT IF YOU THINK
 I WILL JUST SIT DOWN SHUT UP AND LET
 YOU REPRESENT MY INTEREST UNCHECKED THEN
 YOU ARE MISTAKEN. I TRUSTED MR CONWAY AND
 CONWAY NOW HAVE TO SERVE THIS PRISON SENTENCE.
 REGARDING YOUR COMMENT ABOUT NOT BEING A
 JO PERSONAL ISSUE. I HAVE NOT ASKED YOU
 TO WASH MY LAUNDRY OR MOP MY FLOOR.
 I CAN DO FOR MYSELF. I CAN DO FOR MYSELF.
 I PREFER TO DO MYSELF. YOU SHOULD NOT
 BE SURPRISED WITH MY LAST LETTER AS YOU
 HAD RECEIVED A PHONE CALL FROM MY MOTHER
 WHERE SHE INFORMED YOU OF MY HESITANCY TO
 BE REPRESENTED BY COTTER AND REQUESTED WE
 MEET TO DISCUSS THIS ISSUE, YOU DECLINED.
 YOU HAVE POINTED OUT THAT YOU WILL DEFEND
 COTTER. AND IT APPEARS TO ME YOU DONT SEEM
 TO CARE WHAT I THINK OR WHAT I WANT
 CONCERNING THIS CASE. AGAIN YOU WILL
 SEND ME THE DOCUMENTS I HAVE REQUESTED.
 AND END THIS ADVERSARY RELATIONSHIP OR
 I WILL REQUEST THE COURT ORDER YOU
 TO DO SO.

1-16-98

STEVEN VOSS 52094

N.S.P. PO. BOX #607

CARSON CITY NV 89702

MS. PUSICH:

BE ADVISED I HAVE MORE
 OPTIONS AVAILABLE TO ME THAN WHAT YOU
 ALLOW ME IN YOUR LETTER. THE FACTS
 YOU USED IN YOUR LETTER TO JUSTIFY
 MY CONVICTION ARE JUST NOT VALID
 MR. CONWAY WAS SIMPLY NOT AGGRESSIVE
 IN PERSUADING MY DEFENCE. HE DID NOT
 ADEQUATELY CROSS EXAMINE THE WITNESSES.
 HE JUST SET UP HIS CHAIR AS MR. ~~CONWAY~~
 PRESENTED HIS CASE OF LIES AS YOU MENTIONED
 I DO HAVE OTHER DEFENCE OPTIONS AVAILABLE
 TO ME AND REGARDLESS IF YOU SUGGEST IT OR
 NOT YOU WILL HAVE TO PROVIDE ME WITH THE
 DOCUMENTS I HAVE REQUESTED. I AM INTERESTED
 TO KNOW OF ALL THE EVIDENCE IN THIS CASE
 I HAVE ALSO CONSIDERED REPRESENTING MYSELF
 FURTHERMORE I BELIEVE THE PROOF OF MISJUDGMENT
 IS CONTAINED IN LAW ENFORCEMENT DOCUMENTS, ALSO
 I AM SURE THAT THERE WERE VIDEO TAPES THAT
 SHOWED MY TRUCK AT THE BANK AND AT THE
 GAS STATION. I ASKED COTTER TO OBTAIN THE
 VIDEO TAPES FOR THAT WEEK SO THEY COULD BE
 USED AS EVIDENCE. HE MADE NO ATTEMPT TO PRESERVE
 THIS OR OTHER KEY EVIDENCE. I REQUESTED THANKS
COTTER AS TO YOUR CLAIM THAT I MADE CONFLICTING
 STATEMENTS THAT IS ALSO NOT TRUE. AND IF YOU
 WOULD SEND ME THE PAPER WORK THAT I HAVE REQUESTED
 I WILL SHOW YOU THE ONLY PEOPLE WHO CHANGE
 THEIR STATEMENTS ARE THE STATE WITNESSES.



Washoe County Public Defender

Michael R. Specchio / Public Defender

Standard of Excellence Since 1969

January 14, 1998

Mr. Steven Voss, 52094
NSP P.O. Box 607
Carson City, NV 89702

Re: Correspondence received Jan. 13, 1998

Dear Mr. Voss:

Please be advised Mr. Conway has forwarded your recent letter for my response.

It appears you misunderstand the nature of the Court's order appointing counsel in your case. The Court has ordered the Office of the Washoe County Public Defender to provide you with legal services, and to assist in preparing and presenting your defense at trial. She has not appointed a personal slave for you.

The law gives you the exclusive discretion in three areas of your case (1) whether to request the assistance of counsel, or to represent yourself; (2) whether to testify at trial or remain silent; and (3) whether to plead not guilty or guilty. To this date, you have exercised your options to request counsel, which you have been appointed, and to plead not guilty. I understand you continue to consider whether or not you will testify at trial, and that is a decision which you do not have to make until trial.

The law does not give you the authority to make all strategic decisions regarding your case, including which witnesses to call, and how they will be questioned. Nor are you given the authority to dictate the calendars of your attorneys. The Court orders us when to appear on your case, and dozens of others.

We continue to investigate our options for your defense, and to prepare for trial. At this point Mr. Conway has been ordered to appear regarding a homicide defense commencing on Tuesday, January 20, 1998. I am under court order to appear and defend another criminal case, before Judge Agosti, also commencing January 20, 1998. I anticipate requesting additional time to

Mr. Steven Voss
January 14, 1998
Page Two

prepare your defense. I am advised by the State of Nevada they do not expect to contest that request.

Your letter appears to be complaining because you have nothing better to do. Suggesting that Mr. Conway acted improperly by mentioning to the newspaper that he was continuing to prepare for your trial is ridiculous. He is SUPPOSED to be preparing for trial.

You also mention in your letter that you are in custody because Mr. Conway did not do exactly as you instructed him in the last trial. You are in custody because the jury believed the State's evidence. Your defense was weakened by the fact that you gave different explanations to various witnesses about the source of the check, and indicated to bank employees that you did not know how to contact Ms. Baxter, when evidence showed you had been at her residence and place of employment within a brief period of time before being asked if you knew how to reach her. Blaming your counsel for your incarceration is an exercise in futility at this point.

You have asked that we withdraw from your defense if your "terms" are unacceptable. They are. We continue to investigate and prepare your defense. As counsel appointed by court order, we are not permitted to simply withdraw. If you choose to retain another attorney, that person would have to prepare a written substitution of counsel, which we would sign. If you do not retain other counsel, you may apply to the Court to represent yourself, or you may cooperate with us. Those are your only options.

I am preparing a package of relevant documents regarding your defense, for your review. I will send them separately, so that you get this information immediately.

Make no mistake, we are prepared to assist you, and fully expect to do so. But we are not going to violate the law or our oaths in presenting your case. Your memory of events, your knowledge

Mr. Steven Voss
January 14, 1998
Page Three

of witnesses, and your ability to devote your time and attention to only one case, your own, will be invaluable tools to us. We intend to use all available resources, including you, to help you. We will provide you with the best advice and representation that we know how. In return we expect you to spend your energies writing things like the time-line we requested over a month ago, not the petulant letter that prompted this response.

Sincerely,

MICHAEL R. SPECCHIO
Washoe County Public Defender

By Maizie W. Pusich
MAIZIE W. PUSICH
Chief Deputy Public Defender

Cc: Cotter C. Conway
Michael R. Specchio

1-16-88

AT THIS TIME I WOULD LIKE TO POINT OUT THAT SEVERAL WITNESSES HAVE GIVEN INCORRECT TESTIMONY. AND THAT ONLY I CAN POINT OUT THIS TESTIMONY. I BELIEVE THAT EVENTHOUGH THESE WITNESS HAVE ~~BEEN~~ BEEN PREJUDICED THAT IF THEY WERE CONFRONTED ~~BY~~ WITH THE ACTUAL EVENTS THEY WOULD CONCEDE. I DO ~~BE~~ BELIEVE THAT ATLEAST MOST OF THESE WITNESSES ARE REALY HONEST BUT HAVE GIVEN THE TESTIMONY THAT THEY DID. BECAUSE THEY EITHER DID NOT REMEMBER THE EXACT EVENTS OR WERE LED INTO THEIR TESTIMONY. BY POLICE TACTICS. WERE DETECTIVES TELL A STORY SUGESTING CERTAIN EVENTS THEN HAVE THE WITNESS MAKE A STATEMENT TO THAT EFFECT. I DONT KNOW HOW FAMILIAR YOU ARE WITH THIS CASE BUT. THE POLICE HAVE DOCUMENTED THERE LEADING TACTICS AND EVEN THERE DISHONESTY. DETECTIVES CONTINUALLY LIED AND MISREPRESENTED THE ISSUES IN THERE REPORTS THEY FILED TO SUPERIORS.

IF YOU WOULD PREFER NOT TO CONTINUE WITH THIS CASE, YOU JUST NEED TO INFORM ME AND I WILL MAKE OTHER ARRANGMENTS. AS IT IS IMPARTITIVE TO ME, THAT I HAVE REPRESENTATION BY COUNSEL I CAN RELIE ON. TO BE KNOWLEDGEABLE OF ALL ASPECTS OF THE CASE AND TO BE SYMPATHETIC TO MY SPECIFIC CONCERNS REGARDING MY DEFENCE. PLEASE RESPOND TO THIS LETTER AS SOON AS POSSIBLE IN WRITING AND OR IN PERSON. IF YOU WISH TO RESOLVE ANY POSSIBLE CONFLICT.

THANK YOU
STEVEN VOSS

V13. 906



Washoe County Public Defender

Michael R. Specchio / Public Defender

Standard of Excellence Since 1969

January 26, 1998

Mr. Steven Voss, 52094
NSP P.O. Box 607
Carson City, NV 89702

Re: Letter Received January 21, 1998

Dear Mr. Voss:

I have received your letter of January 16, 1998. I agree you are entitled to copies of the paperwork in your file. Copies have been made for you, and will be provided to you at our hearing on January 29, 1998. The prison has told Larry Carlson that while you are in administrative segregation you will be limited to possession of fourteen pounds of paperwork. We are weighing the paperwork we have, to make sure you will be able to keep all of it. If it weighs more than fourteen pounds, we will have to give you some, then when you have reviewed that, trade you for other documents.

I have reviewed the file of the case for which you are presently serving a sentence. I do not perceive any legal errors in your representation. However, this is not the time, nor the place, to debate what is past. We are assigned to prepare your defense to the very serious charge of murder.

You correctly detail my refusal to discuss your case or your representation with your mother. As a courtesy Mr. Conway and I will try to keep your mother apprised of the progress of your case, because you have asked us to do so. However, we represent you regarding this case, and no one else.

As I noted in my last letter to you, and I hope this will be for the last time, what you remember, what you know about witnesses who may testify, and your knowledge of your own actions at relevant times in this case, comprise information which is invaluable to the defense of your case. Mr. Conway and I will utilize that resource and all others to the utmost to prepare your defense. Conversely, your opinion of what the law is or ought to be is not particularly useful. Only the Legislature can change the law. And even if they do so, it might not inure to your benefit in this case. Further, your personal opinion regarding the veracity of witnesses with

Mr. Steven Voss
January 26, 1998
Page Two

whom you disagree is also not particularly useful, unless there is independent evidence showing them to be less than honest. Unfortunately, the opinion of a convicted person (even a wrongfully convicted person, if that is later shown), usually carries little weight with juries, unless other witnesses corroborate the testimony.

I have no objection to continuing to represent you in this matter, or any other to which we might be appointed. I am frustrated that I must spend valuable time, which I could be using to prepare your case for trial, writing this type of letter to you. But that is your choice. If you want me to spend my time preparing your defense, I will gladly do so. If you would rather I spend my time writing you letters, I will do that. I would strongly suggest you limit the letter-writing campaign, and help us review your file and prepare your case for trial.

I do not consider our relationship adversarial. All of us want you to have the best defense possible. We may disagree on how that can best be achieved. But, I am sure those differences can be resolved to everyone's mutual satisfaction. I trust future correspondence will address how to defend the homicide charge. I think that would be the best use of our time and efforts.

Sincerely,

MICHAEL R. SPECCHIO
Washoe County Public Defender

By Maizie W. Pusich
MAIZIE W. PUSICH
Chief Deputy Public Defender

CC: Cotter C. Conway



Washoe County Public Defender

Michael R. Specchio / Public Defender

Standard of Excellence Since 1969

July 16, 1999

Steven Voss # 52094
Nevada State Prison
P.O. Box 607
Carson City, NV 89702


Mr. Voss,

I received your letter stating that you received the Opening Brief but have not received anything else. I have also seen the letter that you wrote to Ms. Lunt regarding your earlier appeal. At this point, I am not sure what you do, and do not, have as far as documents from your files. I am sorry, but would you please write to me, or call me, and let me know if there are still documents which you have not received. We have completed briefing and you should have the opening brief, the opposition from the State, and the reply brief, as well as the joint appendix.

I was unable to find any written order from Judge Agosti regarding Mr. Vilardi as it relates to the first trial. I did not work on either the trial or the appeal of that matter, so I am not as familiar with it as I am with the murder trial. Judge Agosti had no specific time frame by which she had to make the ruling, but since she let the sentence stand when she made the murder sentence concurrent to the first sentence, it is, in essence, a ruling that she was not going to set aside the first verdict.

If you have any questions, please call me at (775)328-3840. I will accept collect phone calls when I am at my desk.

Sincerely,
MICHAEL R. SPECCHIO
Washoe County Public Defender

By: 
CHERYL BOND
Appellate Deputy

FILED

MAY 11 2000

8:35 a.m.

AMY HARVEY, CLERK

S. Bartlett 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

Dept. No. 10

STATE OF NEVADA,

Respondent.

ORDER FOR EVIDENTIARY HEARING, APPOINTMENT OF COUNSEL

On March 9, 2000, petitioner filed a Petition for Writ of Habeas Corpus. A response was ordered on March 21, 2000, and the respondent filed an Answer to petition for Writ of Habeas Corpus on May 5, 2000. Upon review of all pleadings and papers on file herein, this court determines that an evidentiary hearing is required. See NRS 37.440.

ACCORDINGLY, IT IS HEREBY ORDERED that petitioner's request for appointment of counsel is GRANTED.

IT IS FURTHER ORDERED that Scott Edwards, Esq. is appointed to represent petitioner.

IT IS FURTHER ORDERED that the parties shall appear within thirty (30) days of the date of this order to set this matter for hearing.

1 IT IS FURTHER ORDERED that petitioner shall have forty-five (45) days from
2 the date of this order to supplement his petition.

3 IT IS FURTHER ORDERED that respondent shall have sixty (60) days after the
4 date of receiving petitioner's supplement, answer or otherwise respond to the petition and file a
5 response or answer to the petition and a return in accordance with NRS 34.360 - 34.830.

6 DATED this 10 day of May 2000.

7
8 
9 STEVEN P. ELLIOTT
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the 11 day of May, 2000, I deposited for mailing at Reno, Nevada, a true copy of the attached document to:

Gary Hatlestad,
Chief Deputy District Attorney
District Attorney's Office
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

Scott Edwards, Esq.
1030 Holcomb
Reno, NV 89502

Steven Floyd Voss, #52094
Lovelock Correctional Center
P.O. Box 359
Lovelock, NV 89419

Dated this 11 day of May, 2000.

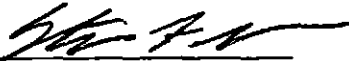
Stephenie Bantlett

CERTIFICATE OF SERVICE BY U.S. MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P. 5(b),
that on this 11th day of October 2004, I, mailed a true and
correct copy of the forgeing: Petitioner's Index Of Exhibits In
Support of Successive Petition and Motion For Leave To File Petition,
addressed to:

BRIAN SANDOVOL
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4714

RICHARD A. GAMICK
Washoe County District Attorney
P.O.Box 11130
Reno, Nevada 89520-0027

BY: 
STEVEN FLOYD VOSS,
Petitioner, pro per.

ORIGINAL

FILED

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box 1989
Ely, Nevada 89301-9999

2004 OCT 15 AM 9:34

RONALD A. LONGTIN JR.

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

STEVEN FLOYD VOSS,

CASE NO. CR96-P-1581-A

Petitioner,

DEPT. NO. 10

VS.

E.K. McDANIEL, et al.,

Respondent's,

MOTION FOR LEAVE OF COURT TO FILE (AMENDED) SUCCESSIVE
POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, STEVEN FLOYD VOSS in proper person and hereby moves this Honorable Court for an Order granting Petitioner leave of Court to file his Amended Post-Conviction Petition For Writ Of Habeas Corpus.

This motion is made and predicated upon the attached points and authorities, Petitioner's Index of Exhibits in support of the instant motion and Amended Post-Conviction Petition For Writ Of Habeas Corpus, aswell as all papers and pleadings presently on file and any matter the Court may consider at a hearing on the matter.

PROCEDURAL HISTORY

Petitioner, STEVEN FLOYD VOSS, was found guilty after a Jury Trial and punished by imprisonment in the Nevada Department Of Corrections for a maximum term of one hundred twenty (120) months

CR96P1581A
DC-5900026740-005
POST: STEVEN FLOYD VOSS (D 28 Pages)
District Court 10/15/2004 09:34 AM
Washoe County 2490
JONES

1 with a minimum term of forty eight (48) months on Count I,
2 Burglary; on Count II, Uttering A Forged Instrument to a maximum
3 term of forty eight (48) months with a minimum term of sixteen (16)
4 months, consecutive to Count I; on Count III, Uttering A Forged
5 Instrument, to a maximum term of forty eight (48) months with a
6 minimum term of sixteen (16) months, consecutive to Counts I and
7 II; on Count IV, Forgery, to a maximum term of forty eight (48)
8 months with a minimum term of sixteen months, consecutive to
9 Counts I,II and III; on Count V, Forgery, to a maximum term of
10 forty eight (48) months with a minimum term of sixteen (16) months
11 consecutive to Counts I,II,III and IV; on Count VI, to a maximum
12 term of forty eight (48) months with a minimum term of sixteen
13 (16) months, consecutive to all prior Counts.

14 Mr.Voss filed a timely Notice Of Appeal, and pursued Direct
15 Appeal, Nevada Suprem Court Case #29783.

16 On March 11,1999 an Order Dismissing Appeal was filed in the
17 Nevada Supreme Court.

18 On March 9,2000 Petitioner filed a proper person Post-
19 Conviction Petition For Writ Of Habeas Corpus. An Evidentiary
20 Hearing was Ordered and was conducted in Department 10, of the
21 Second Judicial District Court on June 8,2001. The Court Granted
22 the Writ, but only so far as allowing for a re-sentencing
23 proceeding. After determining that the sentencing Court had erred
24 when the Court had relied upon suspect and impalpable information
25 or belief in determining sentence.

26 A timely Notice Of Appeal, and Direct Appeal from the Partial
27 Denial of Petition were filed. On January 17,2002 the Nevada
28 Supreme Court entered an Order Of Affirmance.

1 On November 19, 2002 Petitioner filed a Federal Post-Conviction
2 Petition For Writ Of Habeas Corpus, in the United States District
3 Court, District Of Nevada. That Petition is presently still
4 pending.

5 On April 14, 2003 Petitioner filed his (first) Successive
6 Post-Conviction Petition For Writ Of Habeas Corpus #CR96-P-1581-B.
7 Which alleged three (3) grounds for relief: (1) Prosecutorial
8 Misconduct, for the State's inclusion of evidence tainted by a
9 break in the chain of official evidence custody at trial. where
10 the State had prior express knowledge of said break in the chain
11 of official evidence custody; (2) Ineffective Assistance Of Trial
12 Counsel, for failure to move Court to suppress evidence tainted by
13 break in chain of official evidence custody at trial, and for
14 counsel's failure to object to the state's admission of said
15 tainted exhibits at trial. Where Trial Counsel had prior express
16 knowledge of break in the official chain of evidence custody prior
17 to trial and prior to the State's admission of said exhibits at
18 trial; Ineffective Assistance Of Appellant Counsel, for failure
19 to raise allegations of Prosecutorial Misconduct regarding the
20 State's admission of exhibits at trial which had been tainted by a
21 break in the official chain of evidence custody, within Direct
22 Appeal to the Nevada Supreme Court.

23 On October 13, 2003 the District Court entered an Order
24 Denying Petitioner Leave To File A Successive Petition, based upon
25 procedural time bars enumerated within Nevada Revised Statutes,
26 NRS 34.726 (1).

27 Petitioner filed a timely Notice of Appeal, And Appeal to the
28 denial of his (first) Successive Petition.

1 On July 27, 2004 the Nevada Supreme Court entered an Order Of
2 Affirmance, in case #42307. Finding that based upon the record
3 on appeal that the District Court did not err in determining that
4 petitioner had failed to demonstrate "good cause" to excuse his
5 successive petition. However, the Court did not barr future
6 litigation of the issue should Petitioner refile a petition
7 alleging the grounds if Petitioner can demonstrate "good cause"
8 for delay in filing his (out of time) successive petition and for
9 not raising his current claims in prior proceedings for post-
10 conviction relief.

11 On July 27, 2004 the Petitioner filed a (second) Successive
12 Post-Conviction Petition For Writ Of habeas corpus. Which alleged
13 a single ground: that the Trial Court lacked the requisite
14 jurisdiction to try the Petitioner or to impose sentence upon
15 Petitioner, where the Court entertained either an Actual Personal
16 Bias, or an Implied Personal Bias toward Petitioner.

17 On August 1, 2004 Petitioner filed a Motion Requesting a
18 Re-Hearing of his Appeal in case #42307.

19 On September 13, 2004 the District Court entered an Order
20 denying Petitioner leave to file his (second) Successive Petition.
21 Based upon procedural barr, enumerated within Nevada Revised
22 Statutes, NRS 34.726 (1).

23 on September 17, 2004 the Nevada Supreme Court entered an
24 Order Denying Re-Hearing of Petitioner's Appeal in case #42307.

25 On September 21, 2004 Petitioner filed a Motion in the
26 District Court requesting reconsideration of his Motion Requesting
27 Leave Of Court To File his (second) Successive petition, and a
28 Request For Reassignment of the motion to Chief District Judge.

1 Now comes, Petitioner's AMENDED (first) Successive Post-
2 Conviction Petition For Writ Of Habeas Corpus; and the instant
3 AMENDED Motion For Leave Of Court To File Successive Petition For
4 Writ Of Habeas Corpus. Which Petitioner presumes will correct the
5 deficiencies in his prior version of petition identified by the
6 District Court and by the Nevada Supreme Court.

7
8 LEGAL ISSUES PRESENTED

9
10 Ground one: The State committed Prosecutorial Misconduct and
11 denied Petitioner a Fair Trial in violation of his 14th Amendment
12 Constitutional Guarantees, when the State knowingly and intention-
13 ally introduced evidentiary exhibits at trial, when the State had
14 specific knowledge that said exhibits had been tainted by a prior
15 break in the chain of official evidence custody prior to the
16 admission of said exhibits at trial.

17
18 Ground two: Appointed Trial Counsel committed Ineffective
19 Assistance Of Counsel and denied Petitioner his 6th and 14th
20 Amendment rights to Effective Assistance Of Counsel and to Fair
21 Trial, when Counsel failed to file a Defense motion to suppress
22 State's Exhibits #1 and #29, and when Counsel failed to object to
23 the admission of said exhibits at trial, eventhough Counsel had
24 express knowledge that said exhibits had previously been tainted
25 by a break in the official chain of evidence custody prior to the
26 admission of said State's exhibits at trial.

1 Ground three: Appointed Appellant Counsel committed
2 Ineffective Assistance Of Counsel and denied Petitioner his 6th
3 and 14th Amendment rights to Effective Assistance of Counsel and
4 to Appeal his conviction and sentence, when Counsel failed to
5 raise on Direct Appeal to the Nevada Supreme Court a claim of
6 Prosecutorial Misconduct and violation of Petitioner's Substantial
7 Trial rights relative to the States utilization of evidence at
8 trial which had previously been tainted by a break in the official
9 chain of evidence custody prior to trial and prior to the
10 admission of said tainted exhibits at trial.

11
12 Ground four: Appointed Post-Conviction Counsel Committed
13 Ineffective Assistance Of counsel and denied Petitioner his 6th
14 and 14th Amendment rights to Effective Assistance Of Counsel and
15 Due Process of Law, when Counsel failed to supplement Petitioner's
16 Post-Conviction Petition For Writ Of Habeas Corpus as Ordered by
17 the District Court, and thereby Counsel failed to raise claims of
18 Ineffective Assistance Of Trial Counsel and Ineffective Assistance
19 Of Appellant Counsel aswell as Prosecutorial Misconduct and
20 deprivation of Petitioner's Substantial Trial rights by the State.

21
22 POINTS AND AUTHORITIES

23
24 Statement of facts.

25 On July 15, 1996 a Preliminary Examination was conducted in
26 the Reno Justice Court relative to Case No. DA#138461. In the
27 course of these proceedings it became clearly apparent that certain
28 evidentiary exhibits had been misplaced and that the official chain

1 of evidence custody had been broken in regard to State's Exhibits
2 #A and #B. Eventually, the misplaced exhibits were prsumably
3 relocated, unattended in an unsecured courtroom. However, once
4 the missing State's Exhibits had presumably been relocated, Trial
5 Counsel Cotter C.Conway did not conduct any in depth examination
6 of the presumably relocated exhibits beyond a momentary and
7 cursory examination. in order to determine the physical condition
8 and authenticity of the exhibits. Further, Counsel did not object
9 to the readmission of the exhibits. In fact Counsel actually
10 stipulated to the readmission of the exhibits. (See, Petitioner's
11 Index Of Exhibits In Support Of Motion For Leave To File A
12 Successive Petition and Post-Conviction Petition For Writ Of
13 Habeas Corpus, hereafter P.I.E., Exhibit #1, Transcript Of
14 Preliminary Examination, page 106, line 22-25) the following
15 exchanges occured:

16 MR.CONWAY: Can I see Exhibit -- I think it's Exhibit B ?

17 THE COURT: I think the State took possession of the two items.

18 On page 107, line 1-14, the following:

19 MR.WALKER: I don't believe I have them, Your Honor.

20 THE COURT: I believe one of the last witnesses handed them to you
21 as I recall. I meant to ask you back for them, because
22 they were admitted. Unless they are in the other
23 courtroom --

24 MR.WALKER: I don't have them in my paperwork, Your Honor.

25 MR.CONWAY: I can go about this another way, Your Honor.

26 THE COURT: Well, that concerns me.

27 MR.CONWAY: Well, it concerns me , too but I can procede with this
28 cross-examination for now --

1 On page 109, line 7-12, the following:

2 MR.WALKER: Your Honor, with your permission how about if I step
3 over to C.

4 THE COURT: If we are ready for that, absolutely. In fact I need to
5 take a recess and see -- find out if I left it on the
6 bench. (a break was taken)

7 On page 110, line 5-20, the following:

8 MR.WALKER: Excuse me, Your Honor. let me put something else on the
9 record. I would indicate for the record at the last
10 break I walked over to courtroom C from courtroom E,
11 where I saw through the window that the Exhibits A and
12 B were sitting on the counter if you will, in front of
13 the witness stand where they had been left by the last
14 witness at the last proceeding. I would ask at this
15 time if there is any question as to the authenticity of
16 those exhibits ?

17 THE COURT: No. Here is A and B. I retrieved them myself.

18 MR.CONWAY: I am sure there is no problem. (looking) Thank you.

19 THE COURT: They are acceptable to the defense, procede.
20

21 Though, Petitioner was present during preliminary examination
22 in the Reno Justice Court, and Petitioner was within earshot of
23 the Court's comments and those of Defense Counsel and the
24 Prosecution. Petitioner was not afforded any opportunity to engage
25 in any of those discussions. Further, eventhough the missing and
26 presumably relocated State's exhibits were refered to by exhibit
27 #A and #B there was no open discussion regarding exactly what
28 evidentiary items were misplaced and presumably relocated and then

1 readmitted by the Court. Additionally, at no time, including in
2 the course of the preliminary examination was petitioner ever
3 provided an index of exhibits referencing exactly what exhibit
4 number applied to exactly what exhibit, and none of the exhibits
5 admitted during the preliminary examination were published to the
6 Petitioner for his viewing. Therefore, Petitioner was not made
7 aware of what evidence had been effected (or misplaced) thus he
8 was absolutly unaware that the misplaced exhibits were in fact
9 the \$5,000.00 Settlement Check and A \$5,000.00 Personal Check
10 drawn on the account belonging to Beverly Ann Baxter, and
11 Petitioner was not made aware of any posible significance regarding
12 Rules of Evidence, Chain of Evidence Custody, Admisibility of
13 Evidence, or of his right to challenge the validity of the
14 evidence, based upon a break in the chain of official evidence
15 custody either by the Court or by Defense Counsel.

16 Furthermore, prior to trial Counsel failed to move the Court
17 to suppress any evidence what so ever at trial. This includes
18 the State's previously admitted Exhibit #A, (Which was admitted
19 at trial as: State's Exhibit #1) and the State's previously
20 admitted Exhibit #B, (Which was admitted at trial as: State's
21 Exhibit #29). In fact Trial Counsel, Cotter C.Conway did not even
22 object to the State's admission of these exhibits at trial. In fact
23 Counsel actually stipulated to the admission of this highly
24 prejudicial evidence at trial. Additionally, Counsel did not move
25 the Court to inform the State's witnesses be informed of the
26 break in the Chain of evidence custody before the witnesses were
27 called upon to examine and to identify State's Exhibits #1 and
28 #29. In order that said witnesses could make informed determinat-

1 ions regarding the condition and authenticity of the exhibits.
2 That is, had the witnesses been apprised of the break in the chain
3 of evidence custody those witnesses could have made thorough
4 examinations of State's exhibits #1 and #29, insted of making mere
5 cursory examinations, and thereby the witnesses could have made
6 reasoned and objective conclusions regarding the condition and
7 authenticity of the misplaced exhibits, insted of mere cursory
8 and subjective conclusions based upon the general appearence of
9 the misplaced exhibits.

10 Additionally, Trial counsel did not prepare or submit to the
11 Court any special jury instructions regarding the break in the
12 chain of official evidence custody, such as:

13 (1) If the jury concludes that the chain of evidence custody had
14 been broken prior to trial, that the jury was not required to
15 consider State's exhibits #1 and #29, to be valid or authentic.

16 (2) that a break in the official chain of evidence custody
17 regarding State's exhibits admitted and/or published to the jury
18 at trial, can under certain circumstances establish a reasonable
19 doubt sufficient to acquit.

20 Appointed Appellant Counsel, Mary Lou Wilson and Jennifer
21 Lunt failed to raise within Direct Appeal to the Nevada Supreme
22 Court claims of Proecutorial Misconduct and Deprivation Of
23 Petitioner's Substantial Trial Rights stemming from the State's
24 inclusion at trial of evidentiary exhibits #1 and #29, which had
25 been tainted by a break in the chain of official evidence custody.
26 Eventhough, Appellant Counsel had moved for and been provided with
27 at public expense copies of All relevant Court Transcripts.
28 Including a certified copy of the Preliminary Examination Trans-

1 -cript.

2 On May 11,2000, the District Court Determined that good
3 cause appearing, that an evidentiary hearing would be required in
4 the matter of the Petitioner's Post-Conviction Petition For Writ
5 Of Habeas Corpus. The Court further Ordered that Scott w.Edwards
6 be appointed as Post-Conviction Counsel to represent Petitioner
7 in regard to his Petition. Additionally, the Court Ordered
8 Counsel to file a supplement to Petitioner's proper person
9 petition. However, Counsel never filed any supplement.
10 Eventhough, Counsel had met with Petitioner on several occassions
11 and Counsel had related his intention to file such a supplement
12 to the petition, and eventhough Counsel had been provided with a
13 certified copy of the Transcript of the Preliminary Examination,
14 Counsel completely neglected his obligation and failed to file
15 a supplement to the petition.

16 In the course of intitial communications between Petitioner
17 and Appointed Counsel, Scott W.Edwards conducted at the Lovelock
18 Correctional Center on June 13,2000, Petitioner and Counsel
19 discussed the initial pleading and several issues which would
20 need to be supplemented. Counsel further advised Petitioner that
21 he was at that time reviewing the transcripts of court proceedings
22 Counsel specifically related that he percieved errors in the
23 preliminary proceeding which he would raise in his supplement
24 but did not further elaborate. On or about August 17,2000,
25 Petitioner wrote a letter to Counsel requesting information
26 concerning Counsel's progress in completing his supplement to
27 the petition. On August 22,2000, Counsel responded to Petitioner
28 letter of August 17,2000 (PIE #2) within the letter Counsel

1 immediately becomes defensive and attempts to put off his lack of
2 effort in the case off on Petitioner falsely implying that the
3 Petitioner had asked that Counsel wait to hear from Petitioner
4 regarding Petitioner's intentions regarding his petition in the
5 related case CR97-P-2077, and falsely asserting that Petitioner
6 had agreed to put off action in regard to the Petition in the
7 present case. Counsel states that, "I must now assume that you
8 changed your mind. Accordingly, I will now decide what if any
9 issues to supplement and do any reasonable preparation for the
10 hearing."

11 Through the months of September and October 2000, Petitioner
12 continued to stay in contact with Counsel by telephone and by
13 letter, and Counsel continued to relate to petitioner that he was
14 diligently preparing a supplement to the petition at that time.

15 On November 6, 2000 Counsel arrived at the Lovelock
16 Correctional Center to consult with Petitioner. Once again
17 Petitioner inquired into Counsel's supplement to the petition
18 and Counsel reiterated his previous claims that he was at that
19 time still working on the supplement and that as soon as he had
20 completed the supplement he would provide Petitioner with a copy
21 of the supplement. (See, Notice of Attorney visit PIE #3)

22 Petitioner has made numerous requests of Trial Counsel and
23 Appellant Counsel to be provided with copies of ALL Case Files,
24 Preliminary Hearing Transcripts, and Trial Transcripts. These
25 requests were made both in regard to the instant Case #CR96-1581
26 and the related Case #CR97-2077. However, with each request,
27 Petitioner's requests were met with much resistance from Counsel.
28 Thus, Petitioner was not provided with a copy of the Transcript

1 of the Preliminary Hearing, prior to the filing of his initial
2 proper person Post-Conviction Petition For Writ Of Habeas Corpus,
3 on March 9,2000. However, Petitioner can document his written
4 requests to Counsel requesting these Transcripts for a period
5 only days short of three (3) years prior to the filing of his
6 initial Petition, (See, letters to Appellant Counsel,Mary lou
7 Wilson dated March 22, and March 25,1997, PIE #4 and #5) These
8 letters were respoded by Counsel on April 1,1997, wherein Counsel
9 refused to provide the requested Court/Trial Transcripts and All
10 other Documents. (See, letter to petitioner, from Counsel, Mary
11 Lou Wilson, PIE #6) Shortly after the above communications
12 Counsel, Mary Lou Wilson transfered to a different division of
13 the Public Defenders Office and the case was turned over to new
14 Appellant Counsel, Jennifer Lunt. On or about June 7, 1997
15 Petitioner wrote Counsel Jennifer Lunt once again requesting to
16 be provided copies of ALL Court/Trial Transcripts and ALL
17 Documents relevant to the case. On July 3,1997 Counsel responded
18 to Petitioner's letter once again Petitioner's requests were
19 denied by Counsel. (See Letter to Petitioner, from Counsel,
20 Jennifer Lunt, PIE #7)

21 In the months following Counsel, Jennifer Lunt's refusal
22 Petitioner made numerous verbal requests of his Counsel, Cotter
23 C.Conway for the same. As Counsel Cotter C.Conway was then
24 representing Petitioner in regard to the related Case #CR97-2077,
25 and Counsel had previously represented Petitioner in regard to
26 the instant case aswell. Though Counsel had agreed to provide
27 Petitioner with the requested Files and Transcripts by January
28 of 1998 Petitioner still had not been provided with same.

1 Therefore, on January 8, 1998 Petitioner wrote a letter to
2 Counsel, Cotter C. Conway, in which petitioner DEMANDED that
3 Counsel immediately provide him with, "EVERY SINGLE PIECE OF
4 PAPER THAT HAS COME INTO YOUR POSSESSION REGARDING MY CASE."

5 "This includes PRELIMINARY HEARING TRANSCRIPTS, TRIAL TRANSCRIPTS,
6 ALL DISCOVERY DOCUMENTS, --" (See, letter to Counsel, Conway,
7 PIE #8) On January 14, 1998 the Petitioner's letter of
8 January 8, 1998 was responded by Chief Deputy Public defender,
9 Mazie Pusich, who was acting in the role of Co-Trial Counsel in
10 the related case #CR97-2077. Wherein, Counsel, Mazie Pusich
11 asserted that she was at that time preparing a package of
12 "relevant documents" for petitioner's review, and that she would
13 send them separately from her response letter. (See, Letter to
14 Petitioner from Counsel, Pusich, PIE #9) Upon receiving Counsel's
15 response to his letter of January 8, 1998 and not being fully
16 satisfied with Counsel's responses therein, Petitioner then
17 wrote a reply on January 16, 1998, reiterating to Counsel
18 his DEMAND to be provided with ALL Files and Transcripts that in
19 any way apply to the instant case including The Preliminary
20 Hearing Transcripts of CR96-1581. (See, (See, Letter to Counsel,
21 Pusich, PIE #10) On January 26, 1998 Counsel, Mazie Pusich
22 responded to Petitioner's letter of January 16, 1998 wherein
23 Counsel stated the following:

24 "I have received your letter of January 16, 1998. I agree
25 you are entitled to copies of the paperwork in your file. Copies
26 have been made for you, and will be provided to you at our
27 hearing on January 29, 1998. The prison has told Larry Carlson
28 that while you are in administrative segregation you will be

1 limited to possession of fourteen pounds of paperwork. We are
2 weighing the paperwork we have, to make sure you will be able to
3 keep all of it. If it weighs more than fourteen pounds, we will
4 have to give you some, then when you have reviewed that, trade
5 you for other documents." (See, letter to Petitioner from
6 Counsel, Pusich, PIE #11)

7 On January 29, 1998 Petitioner was transported to the
8 Washoe County Court house for a hearing. Upon completion of the
9 hearing Counsel attempted to provide a petitioner with a box of
10 legal Documets for petitioner to cary with him back to the Nevada
11 State Prison. However, Correctional Transport Officers refused
12 to allow Petitioner to take possession of the documents, and
13 instructed Counsel to mail same to Petitioner. Some days latter
14 a box of documents were mailed to Petitioner by Counsel. However,
15 due to Counsel's mistaken belief that Petitioner was limited to
16 possession of only fourteen pounds of legal paperwork, Counsel
17 did not provide Petitioner with ALL of his requested Case Files,
18 Court/Trial Transcripts and Discovery Documents. When Petitioner
19 pointed out to Counsel the deficiencies and that if Counsel sent
20 the balance of the requested material that he would in fact be
21 allowed possession of same. Counsel, Mazie Pusich and Counsel,
22 Cotter Conway agreed to send Petitioner the ballance of the
23 requested materials however same were never provided to Petitioner
24 by Counsel at any time.

25 Immediately following the Nevada Supreme Court's entry of
26 an ORDER Dismissing Direct Appeal in the instant case on March 11,
27 1999 Petitioner once again wrote a letter to Appellant Counsel,
28 Jennifer lunt requesting Copies of ALL Court/Trial Transcripts

1 and case Files. At that very same time Petitioner also addressed
2 an identical request to Appellant Counsel, Cheryl Bond. Petitioner
3 received no response from Counsel, Jennifer Lunt regarding his
4 request and to date has received no further communications from
5 Counsel, Lunt. However, on July 16, 1999 Petitioner received a
6 response letter from Counsel, Cheryl bond apparently responding
7 to both the letter Petitioner had written Counsel, Cheryl Bond
8 some four months earlier aswell as the letter Petitioner had
9 addressed to Counsel, Jennifer Lunt at that same time. Werein,
10 Counsel expressed her confusion as to exactly which documents had
11 and had not been provided to Petitioner previously. Counsel
12 requested that Petitioner write or call to advise Counsel which
13 documents had not been received by Petitioner. (See, Letter to
14 Petitioner from Counsel, Bond, PIE #12) Shortly after receiving
15 the above mentioned letter from Counsel, Cheryl Bond, Petitioner
16 contacted Counsel. Cheryl bond by telephone and advised Counsel
17 of exactly which documents he still had not received. These
18 documents included a copy of the Transcript of the Preliminary
19 Examination, Case #CR96-1581. However, at no time did Counsel,
20 Cheryl Bond provide any of the requested materials to Petitioner.
21 It was during this period in time that Petitioner was begining to
22 prepare and to perfect his initial proper person Post-Conviction
23 Petition For Writ Of Habeas Corpus. Throughout the preparation
24 of said petition and right up to the submission of said petition
25 for filing in the District Court, and even subsequent to the
26 filing of said petition, Petitioner continued to make writen and
27 verbal requests of Trial and Appellant Counsel to be provided the
28 requested Court/Trial Transcripts and Case Files, to no avail.

1 The fact is, that Petitioner was not afforded any opportunity
2 what so ever to review the Preliminary Examination Transcript
3 untill on or about March 14,2003 over three years after the filing
4 of his initial proper person Post-Conviction petition For Writ Of
5 habeas Corpus, and just days short of six years from Petitioner's
6 first request of Counsel to be provided same.

7 After Petitioner filed his Federal Post-Conviction Petition
8 For Writ Of Habeas Corpus on February 21,2002. The State of Nevada
9 through Deputy Attorney General, Joseph W.Long, filed a Motion To
10 Dismiss Petitioner's Federal Petition, on March 14,2003. At that
11 same time the State filed and served upon Petitioner an Index Of
12 Exhibits In Support Of Motion To Dissmiss, accomanieied by
13 seventy seven (77) Exhibits referenced therein.

14 Upon inspection of the exhibits Petitioner became aware of
15 the inclusion within said exhibits, a copy of the Preliminary
16 Examination Transcript. Upon closer inspection of the Preliminary
17 Examination Transcript aswell as upon an inspection of ALL Case
18 Files, Court/Trial Transcripts which had been previously provided
19 to Petitioner. Petitioner realized that he had been provided with
20 a transcript of the Preliminary Examination which he had not
21 previously received from counsel or otherwise been afforded an
22 opportunity to review. Upon Petitioner's review of the trans-
23 cript of Preliminary Examination as well as upon his additional
24 review of Trial Transcripts, Petitioner was finally able to
25 disimilate exactly what pysical items State's Exhibits #A and #B,
26 applied to and that those items had been admitted at trial as
27 State's Exhibits #1 and #29 (Exibit #A,aka Exhibit #1, Burgess
28 North American Check: Exhibit #B,aka Exhibit #29, Personal Check)

1 Thus, prior to Petitioner receiving the copy of the Transcript of
2 the Preliminary Examination, which was provided to Petitioner by
3 Deputy Attorney General, Joseph W. Long in March of 2003, it was
4 in fact, imposible for Petitioner to prepare and perfect his
5 current claims for post-conviction relief. Therefore, Petitioner's
6 present claims could not have been included within his proper
7 person Post-Conviction Petition For Writ Of Habeas Corpus, filed
8 three years earlier, on March 9, 2000.

9 However, within aproximately thirty (30) days of having been
10 provied with a copy of the Preliminary Examination Transcript,
11 Petitioner was able to identify the present issues and to prepare
12 and to perfect a Post-Conviction Petition For Writ Of Habeas
13 Corpus which set forth Petitioner's present Constitutionally
14 based claims for relief.

15
16 Argument.

17 Pursuant to NRS 34.724, a Post-Conviction Petition For Writ
18 Of Habeas Corpus is the approapriate vehicle for challenging a
19 conviction or sentence by a person under sentence of imprisonment,
20 who claims that his sentence has been imposed in violation of the
21 Laws or Constitution's of the State Of Nevada or of the United
22 States.

23 Pursuant to NRS 34.726 (1)(a-b), Unless there is "good cause"
24 shown for delay, a petition that challenges a conviction or
25 sentence must be filed within one (1) year of the entry of the
26 Judgment of Conviction, or if an appeal is taken from the judgment,
27 within one (1) year of the issuance of Remittiture by the Nevada
28 Supreme Court, and that "good cause" exists if Petitioner

1 demonstrates to the satisfaction of the Court: that the delay is
2 not the fault of Petitioner; and that the dismissal of the
3 petition will unduly prejudice the petitioner.

4 Petitioner asserts that the "facts of the Case" demonstrate
5 that Petitioner's out of time filing of the instant petition has
6 resulted from circumstances beyond the control of Petitioner.
7 As the "Facts of the Case" demonstrate that petitioner excersized
8 more than mere "Due Diligence" in his repeated attempts to obtain
9 a copy of the Preliminary Examination Transcript from his Trial
10 and Appealant Counsel prior to his filing of his first Post-
11 Conviction Petition For Writ Of Habeas Corpus on March 9, 2000, and
12 that such claim is more than a bald and unsupported assertion.
13 As such assertion is factually demonstrated through exhibits
14 contained within Petitioner's Index Of Exhibits In Support Of The
15 Instant Motion and Petition For Writ Of Habeas Corpus, filed
16 contemporaneously with the instant motion, and in particular by
17 Petitioner's Exhibits #4-#12, contained therein.

18 The "Facts of the case" demonstrate that a copy of the
19 Preliminary Examination Transcript was an absolute necessity for
20 Petitioner to prepare and to perfect his present post-conviction
21 claims. because said transcript was required for petitioner to
22 determine exactly which evidentiary items had been misplaced.
23 Thereby, breaking the official chain of evidence custody. It is
24 not even reasonable to consider that at the time that Petitioner
25 had filed his initial Post-conviction Petition For Writ of Habeas
26 Corpus (on March 9, 2000) nearly some four (4) years after the
27 Preliminary Proceedings in Reno Justice Court, that Petitioner
28 would be able to acurately recall the State's Exhibit numbers.

1 (State's Exhibits #A and #B) Especially, when said exhibits had
2 not been referred to during the course of the Preliminary
3 Examination by their respective physical descriptions in open
4 Court or in Petitioner's presence. (State's Exhibit #A: one (1),
5 Settlement Check #4842, drawn on the Checking Account of Burgess
6 North American Moving and Storage Company; and State's Exhibit #B;
7 one (1), Personal Check #563, drawn on the Cheking Account of
8 Beverly Ann Baxter) Further, absent a copy of the Preliminary
9 Examination Transcript, it was imposible for Petitioner to set
10 forth the exact terms and order of the events as they had played
11 out on July 15, 1996. in order that Petitioner could sufficiently
12 set forth the Who's, Where's, When's and Why's of his claims.

13 it is a well-settled principle that, "conclusory allegations"
14 which are not supported by a statement of specific facts do not
15 warrant habeas relief. James v. Gomez, 66 F.3d 199, 205 (9th Cir,
16 1995); James v Borg, 24 F.3d 20, 26 (9th Cir. 1994); Boehme v.
17 Maxwell, 423 F.2d 1056, 1058 (9th Cir. 1970).

18 Allegations of fact, rather than conclusions, are required.
19 Brown v. Allen, 344 U.S. 443, 458, n.6, 73 S.Ct.397, 97 L.Ed. 469
20 (1953); Schette v. California, 284 F.2d 827, 833-834 (9th Cir. 1960);
21 Dunn v. California Dept. of Corrections, etc., 401 F.2d 340, 342 (9th
22 Cir. 1968).

23 A Petitioner is expected to state facts that point to a real
24 possibility of constitutional error. Wacht v. Cardwell, 604 F.2d 1245
25 -1247 n.2 (9th Cir. 1979)

26
27 It is an absolute fact that the only place in the record in
28 which the State's Exhibits #A and #B are identified is within the

1 index of Preliminary Examination Transcript. (See, Preliminary
2 Examination Transcript, PIE #1)

3 Additionally, the **Facts** of the case demonstrate, that at the
4 time that Post-Conviction Counsel, Scott W. Edwards was appointed
5 as Post-Conviction Counsel by the District Court Counsel was at
6 that time ordered by the Court to supplement Petitioner's proper
7 person Post-Conviction Petition For Writ Of Habeas Corpus. (See,
8 Order For Evidentiary Hearing, Appointment Of Counsel, PIE #13)

9 Counsel was certainly aware of his obligation to supplement
10 Petitioner's proper person petition. (See, letter from Counsel,
11 Scott W. Edwards to Petitioner, and Notice of Attorney Visit, PIE
12 #2 and #3)

13 however the record clearly reflects that Counsel did not
14 supplement the petition as Ordered by the Court, and thereby
15 Counsel failed to raise Petitioner's current claims of Ineffective
16 Assistance of Trial And Appellant Counsel, or issues of
17 Prosecutorial Misconduct and deprivation of Petitioner's
18 Substantial Trial Rights by the State. Counsel's failure to raise
19 Petitioner's present claims in a supplement to Petitioner's
20 proper person petition amount to Ineffective Assistance on the
21 part of Post-Conviction Counsel, Scott W. Edwards. Especially, in
22 consideration of the District Courts Order that Counsel supplement
23 Petitioner's proper person petition, and Counsel's complete failure
24 to comply with the Courts order, aswell as Counsel's failure to
25 comply with Petitioner's requests and expectations that Counsel
26 would honor his assertions to Petitioner that he would file such
27 supplement to petition. At no time did Counsel ask petitioner to
28 waive Counsel's filing of a supplemental petition, and therefore

1 no such waiver was ever attained by Counsel. under no circumstances
2 can such a waiver be implied, as such waiver must be an affirmative
3 waiver. Similarly, Counsel did not attain leave of the Court to
4 withhold his Court Ordered supplemental petition.

5 Petitioner, recognizes that a claim of Ineffective Assistance
6 of Post-Conviction Counsel is often precluded. Except in cases
7 where the representation of Counsel is a matter of right or is
8 required by statute. However, in the instant case the Court has
9 made a determination that pursuant to NRS 37.440, that an
10 evidentiary hearing was required in regard to petitioner's initial
11 petition, and that accordingly petitioner's request for Counsel
12 would be granted. Thus, where Petitioner is statutorally entitled
13 to representation by Counsel, a right to effective representation
14 by said Counsel is implied, and pursuant to Nevada Revised
15 Statutes, Petitioner is not precluded from raising a claim of
16 ineffective assistance of Post-conviction Counsel.

17 It is well establised that questions regarding the effective-
18 ness of Counsel must be raised in the forum of a Post-Conviction.
19 Petition For Writ Of Habeas Corpus. Franklin v.State, 110 Nev.750,
20 877 P.2d 1058 (1994). The question of ineffective assistance of
21 counsel should not be considered on appeal from a judgment. Insted,
22 the issues should be raised, in the first instance, in the
23 District Court in a petition for post-conviction relief so that
24 an evidentiary record regarding Counsel's performance can be
25 created. Wallach v.State, 106 Nev. 470, 796 P.2d 224 (1990).

26 Once again the dictates of NRS 34.726 (1)(a-b) do not
27 preclude Petitioner from raising the present claim of Ineffective
28 Assistance of Post-Conviction Counsel in an out of time or

1 successive petition, because Petitioner's present claim has
2 resulted from circumstances occurring after the filing of his
3 initial proper person Post-conviction Petition For Writ Of habeas
4 Corpus and which logically would not have been raised on Direct
5 Appeal to the Partial Denial of the Petitioner's initial petition
6 because Post-Conviction and Post-Conviction Appellant Counsel were
7 one in the same, Counsel Scott W. Edwards. It would be impalpable
8 to consider that Counsel would implicate himself of such deficiency
9 Additionally, such claim was not cognizable in such direct appeal
10 for numerous reasons.

11
12 Because of the aforementioned petitioner asserts that he has
13 demonstrated a very significant excersize of Due Diligence on his
14 part by his numerous and frequent attempts to obtain the necessary
15 "Preliminary Examination Transcript" which was an absolute
16 prerequisite for Petitioner to adequately investigate all issues
17 relevant to the successfull preparation and perfection of his
18 present post-conviction claims. These facts establish "good cause"
19 sufficient to excuse not only Petitioner's out of time filing of
20 of the present petition, as required by NRS 34.726 (1)(a), but
21 also establish "good cause" for Petitioner's failure to raise his
22 present claims in his prior Post-conviction petition For Writ of
23 habeas Corpus, or within his Direct Appeal from his Judgment of
24 Conviction and Sentence to the Nevada Supreme Court, as required
25 by NRS 34.810 (2),(3)(a).

26 Further, Petitioner asserts that pursuant to the requirements
27 of NRS 34.726 (1)(b), and NRS 34.810 (2) and (3)(b), that the
28 dismissal of the instant petition will unduly prejudice Petitioner

1 and that Petitioner will in fact suffer an actual prejudice. As
2 the facts of the Case demonstrate that a fundamental miscarage
3 of justice has occurred in the proceeding resulting in petitioner's
4 conviction and sentence: Due to Trial Counsel's failure to
5 move to suppress State's Exhibits #1 and #29 at trial or to
6 object to the admission of same at trial, to move the Trial Court
7 to instruct State's Witnesses of the break in the chain of
8 evidence custody concerning State's Exhibits #1 and #29 prior to
9 State's witnesses identification of said exhibits at trial and
10 witnesses testimony thereto. Aswell as Counsel's failure to put
11 forth a request for Special Jury Instructions regarding the break
12 in the chain of official evidence custody, validity or the
13 Authenticity of State's Exhibits #1 and #29, or to resonable
14 doubt respective to deficiencies or the validity and authenticity
15 of State's Exhibits #1 and #29.

16 Petitioner, further asserts that eventhough not every break
17 in the chain of evidence custody necessarily entitles a criminal
18 defendant to a Court Order suppressing the effected evidence.
19 However, Petitioner furter asserts that since the break in the
20 chain of evidence custody was known to both Defense counsel and
21 State Counsel that both Counsel had an affirmative duty to bring
22 the break in the chain of evidence custody to the attention of
23 the Trial Judge. In order that the Trial Judge could explore
24 potential issues concerning the codition, authenticity and
25 validity of State's Exhibits #1 and #29, consider the impact that
26 the admission of said exhibits may have upon the defendant's
27 substantial trial rights, and to determine the admissibility of
28 said exhibits and determine what special witness and jury

1 instructions might be necessary and appropriate under the
2 circumstances.

3 The Petitioner further asserts with reasonable certainty that
4 had the State's witnesses been apprised of the fact that the chain
5 of official evidence custody had in fact been broken prior to
6 trial and that there were atleast some concerns regarding the
7 condition and authenticity of said exhibits, prior to the State's
8 witnesses identification of said evidentiary exhibits in open
9 court. That the witnesses could have, and likely would have
10 conducted a more thorough analysis of the exhibits and would have
11 been more inclined to be more objective in reaching their
12 conclusions relative to the identification of the effected State's
13 exhibits at trial.

14 Petitioner further submitts the possibility that had the
15 State's witnesses been made aware that State's Exhibits #1 and
16 #29 had in fact been misplaced and that thereby the official chain
17 of evidence custody had in fact been broken, thereby raising some
18 questions as to the condition and authenticity of said exhibits,
19 and that under the srutiny of an objective analysis based on the
20 above stated facts which would have required the State's witnesses
21 to make a determination regarding the the authenticity of said
22 exhibits. That there is a distict possibility that said State's
23 Witnesses could not have positively identified the exhibits to be
24 valid and authentic. Further, such advisements to the State's
25 witnesses would have opened up an intire line of rebuttal
26 examination and could have conceivably raised reasonable doubts
27 in the minds of jurors sufficient to aquit the petitioner.
28

1 Furthermore, Petitioner submits that the Jury was entitled
2 to be apprised of questions regarding the authenticity and validity
3 of State's Exhibits #1 and #29. As knowledge of all evidentiary
4 facts are relevant and necessary to a Jury's determination of
5 guilt or innocence. Therefore, the Jury should have not only been
6 apprised of the break in the official chain of evidence custody
7 prior to trial, but the jury should have also been advised of the
8 potential probability that the State's Exhibits had been
9 compromised and were possibly invalid or un-authentic. Thus, the
10 Jury should have received very specific Jury Instructions regarding
11 the Jury's right to determine the validity of the State's Exhibit
12 #1 and #29, given the obvious break in the chain of official
13 evidence custody through the negligent acts of the State; as well
14 as to the Jury's obligation to acquit the Petitioner should the
15 jury find the State's Exhibits #1 and #29 to be unreliable due to
16 questions of reasonable doubt concerning the validity of said
17 exhibits.

18 It is an absolute certainty that had the Court been apprised
19 of the break in the chain of evidence custody and then chose to
20 suppress State's Exhibits #1 and #29 at trial, that the State
21 would not have been able to pursue its prosecution of the
22 Petitioner to any degree. Thus, the State would have been forced
23 to move for a dismissal of all counts.

24 Petitioner, submits that due to the fact that there were in
25 fact viable questions concerning the validity of State's Exhibits
26 #1 and #29, that a determination by the Jury that said exhibits
27 were in fact not authentic or valid, or if the jury was unable to
28 to make a determination that said exhibits were in fact valid or

1 authentic would necessarily raise serious questions of reasonable
2 doubt and thereby require aquittal.

3 Furthermore, leaving questions of authenticity or validity of
4 the State's Exhibits #1 and #29, unexplored by the Court; by the
5 State's witnesses making identification of said exhibits; and by
6 the Jury deprived the Petitioner of his substantial trial rights
7 and resulted in a fundamental miscarage of justice.

8 Because of the collective sum of the aforementioned, the
9 Petitioner submits that he has satisfied all the necessary
10 requirements of NRS 34.726 (1)(a-b) and NRS 34.810(2) and (3)(a-b)
11 regarding the showing of "good cause" for delay in filing of
12 petition, and for failure to raise the present claims in prior
13 proceedings, aswell as his requirement to demonstrate undue and
14 actual prejudice which would be effected by the dismissal of the
15 instant petition.

16
17 Conclusion.

18 Petitioner is entitled to bring his out of time successive
19 Post-Conviction petition For Writ Of Habeas Corpus at this time,
20 pursuant to the dictates of NRS 34.724 NRS 34.726 and NRS 34.810
21 and Petitioner reserves the right to argue any claim the State
22 may raise in opposition to the instant petition made pursuant to
23 NRS 34.800 regarding "Presumed Prejudice" and arguements based
24 upon the "Equitable Doctrine Of Laches" required by NRS 34.800(2).

25 Additionally, Petitioner submits that he is further entitled
26 to an Evidentiary Hearing, and to the Appointment of Post-
27 Conviction Counsel, pursuant to the dictates of NRS 37.440.

1 RESPECTFULLY SUBMITTED this 11th day of October 2004.

2
3 By: Steven F. Voss
4 STEVEN FLOYD VOSS,
Petitioner, pro per.

5
6 CERTIFICATE OF SERVICE BY U.S.MAIL

7
8 I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
9 5(b), that on this 11th day of October 2004, I, mailed a true
10 and correct copy of the foregoing, Motion For Leave Of Court To
11 File A Successive Post-Conviction Petition For Writ Of Habeas
12 Corpus, addressed to:

13 BRIAN SANDOVOL
14 Nevada Attorney General
100 north Carson Street
Carson City, Nevada 89701-4714

15
16 Richard A. GAMICK
Wasoe County District Attorney
17 P.O. Box 11130
Reno, Nevada 89502-0027

18 By: Steven F. Voss
19 STEVEN FLOYD VOSS,
20
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