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

THE STATE OF NEVADA,
Plaintiff,
vs.

FERRILL JOSEPH VOLPICELLI,
Defendant.
_____/

Sup. Ct. Case No. 61142
Case No. CR03-1263
Dept. 10

RECORD ON APPEAL

VOLUME 5 OF 6

EXHIBITS

APPELLANT
Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

RESPONDENT
Washoe County District Attorney's Office
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P.O. Box 30083
Reno, Nevada 89520-3083

11-9-07

Exhibits

Title: **POST: FERRILL J. VOLPICELLI**
PLAINTIFF: **STATE OF NEVADA** DDA: **TERRENCE MCCARTHY, ESQ.**
PETITIONER: **FERRILL J. VOLPICELLI** DATY: **KAY ARMSTRONG, ESQ.**
Case No: **CR03P1263** Dept. No: **10** Clerk: **M. MERKOURIS** Date: **09/20/07**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	STATE	Reno Police Department Transcripts	09/20/07	No obj.	09/20/07

Print Date: 10/9/2007

V5.1

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brent BOWMAN
SEX/RACE/DOB: ------1958
AGE: 43 Years

RESIDENCE ADDRESS: 695 W. 3rd St., Apt. #332, Reno, Nevada
HOME PHONE: 284-2280

EMPLOYMENT: Sand's Hotel - Cabana Deli - Lead Supervisor

TAKEN BY: Detective Mike BROWN - Sparks P.D. and
Detective Larry LODGE - W.C. Sheriff's Office

ON: 10-17-01 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

LODGE. Okay. Up until, who's your P.O.?

BOWMAN. Myers.

LODGE. Myers?

BOWMAN.. Um hmm (affirmative)

LODGE. And August two thousand two (2002)?

BOWMAN. Um hmm (affirmative)

LODGE. How much a tail you got hanging over you?

BOWMAN. That's, what do you mean by tail?

LODGE. If you get violated?

BOWMAN. Ah, that's my expiration date.

LODGE. Yeah I know, but I mean how long have you been on parole? They can turn around and take all your time out away from you.

BOWMAN. I've been on parole since June.

LODGE. Okay. So you been out for a couple months?

BOWMAN. Yeah. I did nineteen (19) on a forty eight (48).

LODGE. Anything else that's hanging with you?

BOWMAN. No.

LODGE. No other, you ever been arrested before?

BOWMAN. Not since I've been out, no.

LODGE. How about prior to?

BOWMAN. Yeah.

LODGE. For?

BOWMAN. Ah, major drug offenses, drug related offenses.

LODGE. You got a drug problem?

BOWMAN. No, I've been clean for two (2) years now.

LODGE. Have you? What were you?

BOWMAN. I was a "coke" freak.

LODGE. Really? That's a nasty problem.

BOWMAN. Yeah.

LODGE. Is that what the forgery is all about? Cause I mean one usually leads into the other.

BOWMAN. Yeah.

LODGE. Alright. You working?

BOWMAN. Yes I am.

LODGE. Where you working now?

BOWMAN. (Inaudible)

LODGE. You said you were working at the Sand's.

BOWMAN. The Sand's.

LODGE. And what do you do there?

BOWMAN. I'm a lead ah, supervisor, on the graveyard and ah, in the Cabana.

LODGE. Cabana?

BOWMAN. Um hmm (affirmative)

LODGE. C-A-B-A-N-A?

BOWMAN. Ah huh (affirmative)

LODGE. What's that a lounge?

BOWMAN. It's a deli basically. They serve coffee.

LODGE. Okay.

BOWMAN. Pizza. You know? And deli sandwiches.

LODGE. What are your days off?

BOWMAN. Today and tomorrow. Or actually yesterday and today. What's today Tuesday or Wednesday?

LODGE. Today's Wednesday.

BOWMAN. It was yesterday and today.

LODGE. So you're off Tuesday, Wednesday?

BOWMAN. Basically. Actually Wednesday, Thursday, but Tuesday and Wednesday. Depending how you look at it. (Inaudible) shift (Inaudible)

LODGE. Okay. Do you have to be back to work today?

BOWMAN. Tomorrow.

LODGE. Okay, so you're off Wednesday, Thursday.

BOWMAN. Um hmm (affirmative)

LODGE. Alright.

BOWMAN. But like for instance the ten (10:00) to six (6:00) shift is the first shift of the day so..

LODGE. Right.

BOWMAN. I slip out there (Inaudible)

LODGE. Okay. Married?

BOWMAN. I'm single.

LODGE. Okay.

BOWMAN. I'm divorced.

LODGE. Anybody expecting you home tonight or anyplace you're supposed to be, any commitments that you've got?

BOWMAN. No.

LODGE. So you're all good?

BOWMAN. Um hmm (affirmative)

LODGE. Well one of the people who was out there today was..

(Sound of door opening)

LODGE. You in?

BROWN. (Inaudible)

(Sound of door closing)

LODGE. Is a federal probation officer that (Inaudible) is familiar with. So she's gonna contact you. And I'm sure he's probably gonna be down here tonight.

BOWMAN. She?

LODGE. She. What is it?

BROWN. Myer?

LODGE. I didn't know it was Elizabeth.

BOWMAN. Um hmm.

LODGE. And I've never dealt with her. Okay. Which leads us to tonight's or today's activities. Okay? And I'll be honest with you. I'll tell you what you're looking at. Okay? As everything stands right now. I'm not saying you're gonna be charged with this. Alright? But I'm telling you right now what you can be charged with. And that's gonna be burglary. Trust me. Okay? I'm just telling you. Burglary, Conspiracy, and Larceny. Okay? If we were gonna charge you. Alright? Those would be the three charges that would be filed against you. Alright? You got two (2) felonies and one (1) misdemeanor. Okay?

BOWMAN. For buying a bike?

LODGE. We'll get into that. Okay? And there's a lot of things that we need to talk about. Alright? That I want to talk to you about and I'm hoping that you will want to talk to me about.

BOWMAN. Sure. I don't want to go back.

LODGE. Okay.

BOWMAN. Right now I don't want to go back.

LODGE. Okay. Then, with all that in mind, what we have to do naturally, and you're (Inaudible) We have to go over (Inaudible) okay, is your rights. Alright?

BOWMAN. Um hmm (affirmative)

LODGE. And we can get into the whole content of this conversation.

BOWMAN. Okay.

LODGE. Alright? I'm telling you right now Brent and I'll be up front with you alright. If you ask me a question, if I can tell you the answer without getting into part of our investigation, which obviously some parts are not, I'm not available to get into right now, I will give you an honest answer. Okay? What's gonna happen to you is gonna be based upon what happens here with us tonight.

BOWMAN. Okay.

LODGE. Alright? I'm gonna tell you one more time, this investigation, alright, is not about you. You just picked a real shitty day to tie up with Ferrill. Okay?

BOWMAN. Yeah.

LODGE. Alright. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to talk with a lawyer and have him present while you are being questioned. If you cannot afford a lawyer one will be appointed to represent you before any questioning if you wish. Okay? Do you understand that?

BOWMAN. Yeah.

LODGE. Alright. You understand these rights I've explained to you. Having these rights in mind do you wish to talk to us now?

BOWMAN. Sure, I'll talk.

LODGE. Okay.

BOWMAN. I got nothing to hide.

LODGE. Okay. What I need you to do is on each one of these, each questions I asked you, is I just need you to initial here, here and here, that you understand it. Same thing on the next line down here.

(Pause)

BOWMAN. And sign?

LODGE. Initial these two lines right there for me please. And then sign next to the X down further. Okay. Brent some new things. You've never met any of us before, we've never met you. Okay? And we're gonna develop some kind of rapport here and that rapport is gonna be based on honesty and trust with each other. Alright? Some of these questions we're gonna ask you, that we're gonna ask you about tonight, they may seem stupid but we already know the answers to em.

BOWMAN. Um hmm.

LODGE. And that's how we kind of figure out if you're gonna be up front and honest with us. I mean if we ask you some questions that we already know, you know, the answer is yes and you keep telling us no, that's gonna indicate to us that you're not being forthright and honest with us. Okay?

BOWMAN. Alright.

LODGE. So if a question seems stupid to you...

BOWMAN. No problem.

LODGE. Alright. Where did you ah, actually how do you know Ferrill?

BOWMAN. I met him in Warm Springs.

LODGE. You did? How long ago?

BOWMAN. Um... (pause) I met him...actually around November of last year.

LODGE. November of last year?

BOWMAN. I think, (Inaudible) not too long ago.

LODGE. How would you classify your relationship with him?

BOWMAN. Um, some (Inaudible) acquaintance and friend.

LODGE. I mean not a best buddy, not a super good friend, just an acquaintance and friends?

BOWMAN. Um hmm (affirmative)

LODGE. And you told me you've been out of Warm Springs in..

BOWMAN. I got out of Warm Springs in June.

LODGE. In June?

BOWMAN. Um hmm (affirmative)

LODGE. When was the last time you saw Ferrill, in prison?

BOWMAN. In prison? (Inaudible)

LODGE. Do you remember when that was?

BOWMAN. Honestly I don't remember when (Inaudible) I had a lot going on at the time, I really did.

LODGE. Alright. When's the last time, I mean other than today, have you been staying in contact with him?

BOWMAN. Yeah, I have.

LODGE. On how frequent or regular of a basis?

BOWMAN. (Inaudible)

LODGE. How long?

BOWMAN. Around once a week.

LODGE. Once a week?

BOWMAN. Um hmm (affirmative)

LODGE. How do you stay in contact with him?

BOWMAN. Phone.

LODGE. Home phone, cell phone?

BOWMAN. My home phone.

LODGE. Your home phone? How about him?

BOWMAN. Ah, he mainly, all I have is his cell phone number.

LODGE. Do you know what that number is?

BOWMAN. Yeah. Five four four four eight one three (655-4813).

LODGE. And other than today, when's the last time you saw him?

BOWMAN. Last week.

LODGE. You remember what day?

BOWMAN. Tuesday I think.

LODGE. And what was, what was you guys contact then?

BOWMAN. Phone, we talked on the phone.

LODGE. Did you meet with him?

BOWMAN. I did.

LODGE. And what was the meeting about?

BOWMAN. He'd been busting items from the stores.

LODGE. What kind of items and what stores?

BOWMAN. Ah, I went and bought a rug for him at Lowe's and ah...

LODGE. You bought a rug for him?

BOWMAN. Um hmm (affirmative)

LODGE. Why did you buy a rug for him?

BOWMAN. Well he gave me a hundred (100) bucks that day.

LODGE. To go buy a rug?

BOWMAN. A rug and a couple of other items. Ah a home video system at Walmart.

LODGE. Which Walmart?

BOWMAN. The one ah..

LODGE. The one down south down here? It was a home theater system?

BOWMAN. Um hmm (affirmative)

LODGE. And he has been paying you to buy items for him?

BOWMAN. Um hmm (affirmative)

LODGE. Why would he do that?

BOWMAN. I don't know, (Inaudible)go buy it and I go and buy it for him.

LODGE. And how do you buy it for him?

BOWMAN. Cash. He gives me the cash.

LODGE. Does he give you anything else?

BOWMAN. No, just cash.

LODGE. You sure?

BOWMAN. Yeah.

LODGE. Okay. How about the time before that?

BOWMAN. The week before?

LODGE. Um hmm.

BOWMAN. The same scenario.

LODGE. Same scenario?

BOWMAN. Um hmm (affirmative) In fact I returned (Inaudible) where I was gonna get credit for him (Inaudible)

LODGE. You think that's kind of strange?

BOWMAN. Yeah.

LODGE. Why?

BOWMAN. Cause I needed the money (Inaudible)

LODGE. Okay.

BOWMAN. To be honest with you.

LODGE. And that's, I'm not gonna hold that against you. Okay?

BOWMAN. And (Inaudible) I should have and give him a hand.

LODGE. Why do you say you knew it was wrong?

BOWMAN. I knew it was wrong or I wouldn't be sitting here.

LODGE. So he would contact you or you would contact him?

BOWMAN. He'd contact me.

LODGE. He'd call you?

BOWMAN. Yeah, yes he would. Or he'd say, "Give me a call back later on in the day or give me a date," to call him back on.

LODGE. And you'd go with him, you'd go to the different stores.

BOWMAN. Um hmm (affirmative)

LODGE. And he would tell you specifically what to buy?

BOWMAN. Yeah.

LODGE. And he would provide you with cash to buy it?

BOWMAN. Um hmm (affirmative)

LODGE. He'd always provide you with cash?

BOWMAN. Um hmm (affirmative)

LODGE. Okay. And that was it?

BOWMAN. That was it.

LODGE. Did he ever give you any credit cards?

BOWMAN. No, never.

LODGE. Have you ever seen him with a credit card?

BOWMAN. No, I have not.

LODGE. Did he ever give you any receipts to use?

BOWMAN. Once, at a Home Depot.

LODGE. And was that on a purchase or a return?

BOWMAN. A return.

LODGE. What did he ask you to do?

BOWMAN. Ah, I think it was a garbage disposal. I really don't remember what the item was He asked me to go in and return the item and I did.

LODGE. Okay. So tonight, and you know we're gonna kind of walk through ah, this afternoon. I mean not everything this afternoon but we'll focus specifically on when you guys got down to Walmart. Okay? What happened?

BOWMAN. He went into Walmart, came out and said there's a bike he wanted. I went in and got it.

LODGE. Okay. And.... he told you a specific bike?

BOWMAN. Um hmm (affirmative)

LODGE. How did he, I mean how did you know which specific bike to go get?

BOWMAN. He told me the name and everything right, and I went in and got it. And there was only one (Inaudible) in there.

LODGE. Ah huh. And you took the bike?

BOWMAN. Went up to the cash register, paid for it and walked out with it.

LODGE. How did the transaction go at the cash register?

BOWMAN. I paid cash for it and headed out.

LODGE. Did you give the clerk anything else?

BOWMAN. No, just the cash.

BROWN. Did you have any conversation with the clerk?

BOWMAN. No conversation, just ah, "Howdy. How's the night going?" Things like that. Basic patron/clerk conversation. Nothing special or specific.

BROWN. Okay. You remember what we were talking of before we started the interview here, about us already knowing the answers to some questions?

BOWMAN. Hm umm (affirmative)

BROWN. Okay, keep that in mind as you're talking to us. Okay?

BOWMAN. Um hmm (affirmative)

BROWN. Or asking you questions.

BOWMAN. Alright.

BROWN. Okay? Now remember what I just told you again. Just go back and describe the transaction with this bicycle, at the counter with the clerk.

BOWMAN. Okay. The transaction went, I walked up, I tore off the bar code that was on the bike. Right? I handed it to her. Right? She scanned it. I paid for it. We talked about, she asked me would the Security need to come up and ah, clear this bike and she asked to (Inaudible) right and I said no.

BROWN. Okay.

BOWMAN. As long as I had the receipt I didn't (Inaudible)

BROWN. Go back to where did you get the bar code from.

BOWMAN. I tore it off the, it was already on the bike.

BROWN. Where was it on the bike?

BOWMAN. On the step of the bike, right front step.

BROWN. Why did you tear it off?

BOWMAN. To hand her the receipt, to hand to the clerk to scan it.

BROWN. Is that something you normally do on all those things you buy?

BOWMAN. No.

BROWN. Why did you do it this time?

BOWMAN. Because it was, you couldn't put it up on the deal to scan it so I didn't, to make it easy.

LODGE. Well correct me if I'm wrong, okay, but the last time I went into Walmart, and for bigger items, they have a...., pretty much one of each item on display, like bikes and things like that.

BOWMAN. Yeah, (Inaudible)

LODGE. Okay and then there's normally a little pouch sitting right out above it. Okay? And in that pouch there's store tags that say, "If you want this item you take that store tag instead of the bike and you bring it to the front clerk and you give her that store tag."

BOWMAN. Well I went in to get the bike, right? And I asked the clerk, "Can I have this bike, this specific bike?" She said, "Yeah."

LODGE. Why...

BOWMAN. She even helped me...

LODGE. Okay. Why did you want that specific bike?

BOWMAN. Cause that's the one Ferrill wanted.

LODGE. Why?

BOWMAN. I don't know why he wanted that one, exactly why (Inaudible)

BROWN. Did he tell you, "Take the one off of display."

BOWMAN. Yeah.

BROWN. He told you to take the one off of display?

BOWMAN. Um hmm (affirmative)

BROWN. That's yes?

BOWMAN. Yes.

BROWN. Has he told you to do that with other items before?

BOWMAN. He did.

LODGE. Okay. And why do you think he's doing that?

BOWMAN. I feel he's probably changing the bar code.

LODGE. Okay. Do you, and we'll get into, this is a very important question Brent, do you feel that he's probably doing this or do you know that he's doing it?

BOWMAN. I know he's doing it.

LODGE. Okay.

BOWMAN. And to be honest with you, I do know.

LODGE. Okay. And this is what we need to get at. Alright? This is the point that is extremely important. Okay? We know who's doing it. Alright? And I appreciate your honesty. Alright? And then we know why he took that specific bike and why you brought the bar code up and everything else. That slides into the issue of the conspiracy. Okay? As far as you and he doing this. Alright? I'm not gonna get into the technical aspect of what a burglary is okay? But trust me. If we wanted to file these charges against you we could. Alright?

BOWMAN. Okay.

LODGE. Okay. We don't want to do that.

BROWN. And it would be a court (Inaudible)

LODGE. Okay.

BROWN. You know?

LODGE. And you know what, we're doing great. Okay? We're doing really good. But let's keep on going, now that we've crossed that little hurdle. Alright? So you pay for the item?

BOWMAN. Yeah.

LODGE. You paid cash for it and you brought it back out to the car.

BOWMAN. Um hmm (affirmative)

LODGE. That's when things kind of went to shit.

BOWMAN. That's when we went to the parking lot and....

LODGE. (Coughs)

BOWMAN. He said, "Well brother we're going down." And I go, "What do you mean we're going down? (Inaudible) " That's when he explained to me (Inaudible) I said, "Great, that means I'm going back (Inaudible) "

LODGE. Who was he calling on his cell phone?

BOWMAN. He was calling his boy. That's the honest to God's truth, he was calling his boy.

LODGE. Okay.

BOWMAN. His teenage son (Inaudible) at home to go pick up his ah...

LODGE. So he called his teenage son?

BOWMAN. Um hmm, to go pick up his younger son at the skate park.

LODGE. Okay. Is his teenage son in on this?

BOWMAN. Not that I know of. I have, I have no information on that.

LODGE. Alright.

BOWMAN. I don't believe so. I don't believe he is.

LODGE. Okay.

BOWMAN. And that's just my (Inaudible)

LODGE. Okay. On the conversation that you heard with him with his teenage son tonight, what was that conversation?

BOWMAN. Ah, Ferrill was basically almost in tears, saying, apologizing, saying, "I'm sorry, I'm going back ROP's on me. I'm going down. You go get Logan and explain to him I'm sorry."

LODGE. Okay. Did he give you any indication that he was being followed earlier today?

BOWMAN. No.

LODGE. Did he give you any indication over the past couple of weeks. He had no idea he was being followed?

BOWMAN. No.

LODGE. How many times can you think, have you done purchases or returns with Ferrill, since you were released from prison?

BOWMAN. (Inaudible)

LODGE. You remember the stores?

BOWMAN. I mean the Walmart, Shopko, K-Mart, Target, Home Depot and Office Max.

LODGE. Okay. Home Depot.

BOWMAN. And Office Depot (Inaudible)

LODGE. Okay. Which Home Depot? Cause there's several of em.

BOWMAN. Every one of em.

LODGE. Really? Carson City included?

BOWMAN. No, we never did no Carson City. Not that I remember anyway.

LODGE. Okay.

BOWMAN. I know we did a Lowe's in Carson City and maybe a Walmart, but I don't remember (Inaudible)

LODGE. Okay. Now how did he, let's get to the returns. He goes to return an item, or you go to return an item with him. Okay? Tell me how that worked.

BOWMAN. I just take the item back in, exchange it and opt for cash. Usually I go to exchange it for a couple other items.

BROWN. Right.

BOWMAN. And pay cash on top of it. I, returning right then, purchasing more than my return.

LODGE. Okay well, and let's just break this down in the simplest terms. Tonight you purchased the bike for seventy nine dollars ($79.00) I believe it was, or something roughly around there.

BOWMAN. Um hmm (affirmative)

LODGE. But it's a two hundred and forty dollar ($240.00) bike.

BOWMAN. I don't know, we got a price (Inaudible) didn't pay much attention.

LODGE. It's a two hundred and fifty (250)..

BROWN. Two hundred forty nine dollars and sixty six cents ($249.66).

LODGE. Okay. So...

BOWMAN. Eighty (80) bucks.

LODGE. Right.

BOWMAN. Cause when I paid him I honestly I really did not pay (Inaudible) I just noticed the name of the bike, right, and what he wants.

LODGE. And that's all good, but what you do to returns, okay, you go back and return..

BOWMAN. For instance, the last return I did (Inaudible)

LODGE. If you were gonna return this bike.

BOWMAN. Like for instance I mean, let me explain something to you.

LODGE. Okay.

BOWMAN. Like for the last return I did for him, right?

LODGE. Um hmm.

BOWMAN. It was a Simplicity serger. Okay? I went in to return the item and I picked up a futon for him and..... (Pause) (Inaudible) What was it? Anyway, I think the futon and the price difference for the hardware. I don't know how much.

LODGE. So the serger was returned for how much?

BOWMAN. Hundred dollars ($100.00).

LODGE. For a hundred dollars ($100.00).

BOWMAN. Um hmm (affirmative)

LODGE. And the serger, what was the serger really worth?

BOWMAN. I don't know.

LODGE. Okay.

BOWMAN. I don't know the price.

LODGE. Okay.

BOWMAN. I know it came up as a hundred dollars ($100.00).

LODGE. Okay.

BOWMAN. On the return.

LODGE. On the return.

BOWMAN. Um hmm. And the futon right, came up as a hundred and ninety nine (199), as the price and I paid a hundred (Inaudible)

LODGE. Okay. For the futon?

BOWMAN. Um hmm (affirmative)

LODGE. So you really wouldn't have paid, I mean if the serger technically was only worth twenty (20) bucks, but you got a hundred dollars ($100.00) on the return for it. You pretty much got the futon for...

BOWMAN. Half off, pretty much.

LODGE. Okay. What does he, okay you got the bike tonight. Where is the bike gonna go?

BOWMAN. I have no idea. I swear to God. I don't have a fucking idea.

LODGE. Okay. I mean what was he gonna do?

BOWMAN. He said he was gonna take it back man. He said he wanted a bike and he was gonna take it back, I think he was talking about using it or something.

LODGE. Um hmm.

BOWMAN. And that much is hearsay. When we're done with the merchandise, after him I (Inaudible)

LODGE. Well I just wanted to say, where were you guys going?

BOWMAN. We were taking the bike back to his place.

LODGE. Okay. And then were you guys done for tonight?

BOWMAN. No, he said we were gonna go to Lowe's and ah..... (Inaudible) I haven't got a clue and he said we would probably try it at Shopko.

LODGE. Okay.

BOWMAN. But he didn't mention what we were gonna purchase though. He usually doesn't until we're there.

LODGE. He goes in first, always?

BOWMAN. Not always. Sometimes yes, sometimes no. Sometimes he just sends me in.

LODGE. Did you go in first today?

BOWMAN. Yes I did.

LODGE. And what did he do when he was in there?

BOWMAN. He said he was gonna go look at a bike because the bike that he wanted was there.

LODGE. Okay.

BOWMAN. When he came out he said, "Go buy the bike."

BROWN. Okay. And (Inaudible) switching bar codes.

BOWMAN. Um hmm (affirmative)

BROWN. Did he have a bar code to switch it with him when he went in there today?

BOWMAN. Yeah.

BROWN. Did you see it?

BOWMAN. Yeah.

BROWN. Is that the one you tore off the bike?

BOWMAN. (Inaudible)

BROWN. And that's why, cause you knew that it had been switched.

BOWMAN. Um hmm. Like I said, I knew (Inaudible) You know? And ah, it was part of the scam.

BROWN. So tell me what your conversation was when he went into the store today at Walmart.

BOWMAN. When he went today right, he goes, he said, "I'm gonna look and see if the bike I want's there."

BROWN. Okay.

BOWMAN. And he went in. He said, "Kick back, have a cigarette." I smoked a cigarette, came back out. He said, "Go buy the bike."

BROWN. Okay.

BOWMAN. That's exactly...

BROWN. And he had the bar code with him when you entered into the store. Did you see it?

BOWMAN. Yes I did.

BROWN. Describe it. How was it?

BOWMAN. Ah, it was a printed bar code. And he pulled it out of a, like ah, I guess like a recipe or receipt divider, and went in with it.

BROWN. Okay. How's he making the bar codes?

BOWMAN. With a label maker. It's right there in the van.

LODGE. Just explain it to me.

BOWMAN. I've watched him make em.

BROWN. You have?

BOWMAN. Yes.

BROWN. He makes em in the van?

BOWMAN. Um hmm; sometimes yes and sometimes (Inaudible) and sometimes right ah, they're already on the merchandise while you wait.

BROWN. Cause he goes in before you do?

BOWMAN. Um hmm. And sometimes he'll go in a day or two ahead of me.

BROWN. Ah huh, and switch the bar code?

BOWMAN. Yeah.

BROWN. Okay.

(Pause)

BOWMAN.. I mean all of his equipment's right there in the van. You (Inaudible) I got (Inaudible) I go, "Well (Inaudible) are nothing. Just pull the fuck over and just accept it."

BROWN. Did he think about running?

BOWMAN. Ah, (Inaudible) again.

BROWN. Okay.

BOWMAN. He (Inaudible) his son (Inaudible)

BROWN. Okay.

BOWMAN. Cause (Inaudible)

BROWN. Was he acting like he was gonna do that?

BOWMAN. Yeah. And I was screaming in his ear, "Pull the fuck over! And you pull the fuck over now!"

BROWN. Okay.

(Pause)

LODGE. You called Ed?

BROWN. Yeah, I got a few more questions.

LODGE. Okay.

BROWN. Do you know if he's been doing this with anybody else?

LODGE. See you (Inaudible)

BROWN. (Inaudible)

BOWMAN. Not that I know of. That's the truth, I don't.

BROWN. Okay. So we were talking for about how you go in to return something and actually pay more money to go back out.

BOWMAN. Um hmm.

BROWN. Like with the futon.

BOWMAN. Um hmm (affirmative).

BROWN. That's not the end of the money making deal, cause you're not making any money there. Right?

BOWMAN. Right.

BROWN. Do you agree with me there?

BOWMAN. Yeah.

BROWN. Where's the money making part? I mean you're not doing this to get (Inaudible) shit.

BOWMAN. (Inaudible) That's the end of it for me. Where it went from there I don't know.

BROWN. Okay. You know what he's doing to you, right?

BOWMAN. I'm getting fucked.

BROWN. In the ass and breaking it off.

BOWMAN. Um hmm.

BROWN. You know what I mean? He's fucking the shit out of you by doing this. Cause you could be in as much or even more trouble than him, by doing this. Okay? I'm not saying that you are I'm just, we're being honest with you and you're being honest with us. Alright? And we appreciate it but we're not gonna lie to you because of that. Okay? It's, we didn't come upon you by accident today.

BOWMAN. I didn't think so.

BROWN. You know? Like we said before, it's been mixed into the investigation and you're helping us out a lot and that'll go a long way. What kind of stuff would you take from say ah, like the Home Depot? Was it always different stuff?

BOWMAN. Always different stuff.

BROWN. How?

BOWMAN. Like one time we took (Inaudible) shelf, a garbage disposal, faucets, shower heads.

BROWN. Ah huh.

BOWMAN. He would never take the same thing twice.

BROWN. What about the office stores?

BOWMAN. Um, cartridges.

BROWN. What kind of cartridges?

BOWMAN. Ah, printer cartridges.

BROWN. Like the ink cartridges?

BOWMAN. Um hmm (affirmative) Ah, (Inaudible) viewer, a slide projector. Shit like that.

BROWN. Have you ever gone into the store with Ferrill and seen him just switch the codes?

BOWMAN. (Inaudible)

BROWN. You seen him put a sticker on it, put a label on the thing.

BOWMAN. I've been with him but I've never seen him physically (Inaudible)

BROWN. Have you gone in the stores and picked up the item he asked you to? He told you what it is.

BOWMAN. Um hmm (affirmative)

BROWN. Is that right?

BOWMAN. Um hmm (affirmative)

BROWN. Did he tell you which one?

BOWMAN. Yeah.

BROWN. Like how? Describe to me how that would go.

BOWMAN. He would then explain to me how he (Inaudible) He'd explain to me that he... he'd describe the item and exactly where it was at on the shelf.

BROWN. Would they be in odd places or anything like that or where they're supposed to be?

BOWMAN. Right where they're supposed to be.

BROWN. But a certain one that had the label?

BOWMAN. Usually it was very similar to the one (Inaudible) use the second one.

BROWN. The second one back?

BOWMAN. Um hmm (affirmative)

BROWN. Okay.

BOWMAN. Unless it was the only one on the shelf. (Inaudible)

BROWN. How many times did that happen?

BOWMAN. (Inaudible)

BROWN. The bike?

BOWMAN. Quite a few times. Several times in fact.

BROWN. But that was the only thing there.

BOWMAN. Well that was the only bike (Inaudible)

BROWN. Have you ever picked up any other bikes?

BOWMAN. (Inaudible)

BROWN. You've never picked up a bike for him?

BOWMAN. That was the first one.

BROWN. This is the first one. What other kinds of items. So we know it's like faucets and stuff at Home Depot.

BOWMAN. Um hmm (affirmative)

BROWN. Cartridges and things at Office Depot and Office Max.

BOWMAN. Lowe's would be ah, an organizer or ah.... ah... some bathroom things a while back. That's pretty much it.

BROWN. What about like Walmart and K-Mart and Shopko, those general stores?

BOWMAN. Vacuums, steamers, carpet steamers. Ah, a theater system last week.

BROWN. That was at Walmart?

BOWMAN. Um hmm (affirmative) A Theater system.

BROWN. How much you pay for the theater system?

BOWMAN. Eighty (80) bucks.

BROWN. Eighty (80) bucks? How much was it on the shelf?

BOWMAN. I think four seventy nine (479).

BROWN. Really?

BOWMAN. Um hmm (affirmative)

BROWN. And (Inaudible) in stock, right?

BOWMAN. (Inaudible) though.

BROWN. Yeah, cause that's a pretty expensive item for eighty (80) bucks.

BOWMAN. I know.

BROWN. So, okay and he told you, "Hey I, this is where it is. It's in a box."

BOWMAN. Um hmm (affirmative)

BROWN. Did you look at the box?

BOWMAN. Yeah.

BROWN. Did you notice that it had a sticker put on it was out of place?

BOWMAN. Yeah.

BROWN. Cause usually it's, and agree with me if I'm right, the box usually has the card or the bar code printed right on the box, right? There's no sticker there on the cardboard, right?

BOWMAN. I just made sure that part was facing in on the bottom of the card.

BROWN. Right. So you see a sticker over that and you, that's how you knew that that's the one, right?

BOWMAN. Um hmm, yeah.

(END OF SIDE ONE - TAPE ONE)

(SIDE TWO OF TAPE ONE IS INAUDIBLE)

(TAPE TWO - SIDE ONE)

BROWN. Now you say you've done this maybe a dozen times?

BOWMAN. Um hmm, with him, yeah.

BROWN. With him? You ever do it with anybody else?

BOWMAN. No, he was the first.

BROWN. Okay. Does he ever talk about anybody else that helps him with this?

BOWMAN. No. (Inaudible)

BROWN. Okay.

BOWMAN. If he did I'd give you the names, I'd give you everything. I'm giving you everything.

BROWN. I know you are. Alright you know I can be kind of a jerk and I'd be all over you, but I'm not, cause there's no need to be. Okay? Does he tell you to tear off the sticker when you get past the check out or whatever?

BOWMAN. (Inaudible)

BROWN. Cause sometimes you just take it all the way back to the car.

BOWMAN. Um hmm (affirmative)

BROWN. And what's he do when you get there?

BOWMAN. I just load em in the back of the car and...

BROWN. Does he ever, you ever see him get rid of the stickers?

BOWMAN. A couple times, yeah. But for the most part he just leaves em in the back, drops me off and goes on his way.

BROWN. Okay. You ever been to where he lives?

BOWMAN. I've just been out in the parking lot is all.

BROWN. Where is that? Describe it for me?

BOWMAN. It's right behind the Peppermill. It's a brown, like a little brown apartment complex or condominium complex.

BROWN. You ever been in his condo?

BOWMAN. No.

BROWN. You ever been any other places with him besides these stores?

BOWMAN. No, I haven't.

Lives by Peppermill

BROWN. Like maybe to his storage unit?

BOWMAN. No.

BROWN. No?

BOWMAN. I've never been to a storage unit, no. He's dropped me off at a casino while he's gone to one.

BROWN. Where did he drop you off?

BOWMAN. Ah, the Sierra Sid's.

BROWN. Sierra Sid's in Sparks?

BOWMAN. It's off of (Inaudible)

BROWN. In Sparks?

BOWMAN. I believe that's where it's at. I don't know.

BROWN. Is it right by the freeway?

BOWMAN. Yeah. I'm new to this area.

BROWN. Okay.

BOWMAN. I've only been here since June (Inaudible)

BROWN. But it's right next to a freeway.

BOWMAN. That's all I know is...

BROWN. There's a truck stop.

BOWMAN. It's a truck stop and casino and ah, (Inaudible)

BROWN. Do you know if the storage unit is close to there or far away?

BOWMAN. I know it doesn't take very long.

BROWN. It doesn't take him very long?

BOWMAN. No.

BROWN. How many times did he do that?

BOWMAN. Three (3) times.

BROWN. Dropped you off at Sierra Sid's. And what did he say he was gonna go do?

BOWMAN. Unload the car.

BROWN. Where?

BOWMAN. At the storage unit.

BROWN. Okay. So he told you he was gonna go to a storage unit and unload the car?

BOWMAN. But I don't know physically know right where it's at.

BROWN. Okay. That's okay. What's "unload the car" mean?

BOWMAN. Take the merchandise we bought out of the car.

BROWN. And put it at the storage unit?

BOWMAN. Um hmm (affirmative), so his son's wouldn't see it, is what he told me anyway.

BROWN. So his son's wouldn't see it?

BOWMAN. Um hmm (affirmative)

BROWN. You don't know if he ever kept anything at his house?

BOWMAN. I don't.

BROWN. Okay. Was it always Sierra Sid's?

BOWMAN. Yeah.

BROWN. What are you on parole or, are you on parole?

BOWMAN. Yes.

BROWN. What for, for forgery?

BOWMAN. (Inaudible)

BROWN. What was that about?

BOWMAN. Forging checks.

BROWN. Okay.

BOWMAN. I was on paper.

BROWN. For somebody else?

BOWMAN. Yeah. I was part of a major forgery ring by the Salt Lake.

BROWN. By the Salt Lake?

BOWMAN. Um hmm (affirmative)

BROWN. In Nevada?

BOWMAN. We'd run into Nevada once a month.

BROWN. Las Vegas?

BOWMAN. Reno and Elko. Or not Elko but Elko County, it was Wendover.

BROWN. Wendover?

BOWMAN. Um hmm (affirmative)

BROWN. The Peppermill?

BOWMAN. Ah...

BROWN. There's a Peppermill in Wendover.

BOWMAN. And there was a state line and ah Red Garter, Peppermill, all of em.

BROWN. Okay.

BOWMAN. (Inaudible)

BROWN. That's what you're on paper for.

BOWMAN. Um hmm (affirmative)

BROWN. When do you get off?

BOWMAN. August of next year.

BROWN. Is there anything else you can think of concerning Mr. ah, how do you , what do you know his as?

BOWMAN. I call him "Poe."

BROWN. "Poe?"

BOWMAN. Yeah. I know it's Ferrill Volpicelli.

BROWN. Okay. But you call him "Poe?"

BOWMAN. Um hmm (affirmative), for short.

BROWN. Okay. Do you ever know him to use any other names?

BOWMAN. No.

BROWN. No? When you went to Home Depot you went to the ones in Reno, right? The Northtowne Lane, the one..

BOWMAN. Went to all of em, Yeah.

BROWN. All three (3)? There's three (3). They're triangle.

BOWMAN. Um hmm (affirmative)

BROWN. Did you have to sign anything on the returns?

BOWMAN. Yeah.

BROWN. Did you use your real name?

BOWMAN. No.

BROWN. What name did you use?

BOWMAN. Brent Kemp.

Joseph Vinz

BROWN. Brent Kemp?

BOWMAN. Um hmm (affirmative)

BROWN. Did you have to sign your name to anything at other places?

BOWMAN. One at a Office Max, or Office Depot, one of the two.

BROWN. Which one of those was it?

BOWMAN. Ah... I don't remember which one it was.

BROWN. There's an Office Depot next to a Home Depot.

BOWMAN. Um hmm (affirmative)

BROWN. Up on the hill, this part of town.

BOWMAN. I really don't remember which one it was.

BROWN. Okay, but you signed your name Brent Kemp there too?

BOWMAN. Um hmm (affirmative)

BROWN. Who's Brent Kemp?

BOWMAN. Nobody.

BROWN. Nobody?

BOWMAN. Nobody.

BROWN. A name you made up?

BOWMAN. Um hmm (affirmative)

BROWN. Okay, did you have to show I.D..

BOWMAN. No. He told me, "If you ever sign anything use a fictitious name." So I did.

BROWN. Ferrill did?

BOWMAN. Um hmm (affirmative)

BROWN. How many times did you use Brent Kemp at Home Depot?

BOWMAN. Once.

BROWN. Once? Do you remember which store?

BOWMAN. I think it was the one up on (Inaudible) in Sparks here.

BROWN. The one by the Walmart, where the Walmart's across the street?

BOWMAN. Um hmm, yeah.

BROWN. Northtowne Lane? Does that (Inaudible)

BOWMAN. Um hmm (affirmative) I think that's where it is.

BROWN. When was that?

BOWMAN. Last month.

BROWN. Last month? What was it, do you remember what you returned?

BOWMAN. I think it was a shelf.

BROWN. A shelf?

BOWMAN. Um hmm (affirmative), a shelving unit.

BROWN. Big box, little box?

BOWMAN. Yeah, a big box, 24 inches by 18 inches, something like that.

BROWN. Okay. Shelving.

BOWMAN. Um hmm (affirmative)

BROWN. How much did you return it for?

BOWMAN. Ah, I think they're sixty dollars ($60.00) a piece.

BROWN. Okay.

BOWMAN. There was two (2) of em.

(Pause)

BROWN. And you got paid how much?

BOWMAN. Anywhere from a hundred (100) to two hundred (200) a night.

BROWN. A hundred to two hundred a night.

BOWMAN. (Inaudible) about a hundred (100) bucks (Inaudible)

BROWN. How much you think he's making on this whole deal?

BOWMAN. Quite a bit.

BROWN. Quite a bit, meaning, give me something ball park.

BOWMAN. If he's probably what, he's knocking it down to what, about fifteen (15) cents on the dollar? I'm sitting here thinking, you know, four hundred and fifty (450) bucks free.

BROWN. Right.

BOWMAN. Right. He's probably getting nothing less than fifty (50) cents on the dollar for re-selling it too. If it's anything like the forgery game.

BROWN. Have you heard of his scam before?

BOWMAN. No.

BROWN. No? You think it was pretty ingenious?

BOWMAN. No.

BROWN. No? Pretty simple?

BOWMAN. Pretty simple. Too simple in fact.

BROWN. Did you think you were gonna get caught?

BOWMAN. I wasn't thinking about it.

BROWN. You didn't care?

BOWMAN. It's not that I didn't care, I just didn't think about it. I really didn't want to get caught.

BROWN. You knew you were doing something wrong, right?

BOWMAN. Yeah.

BROWN. And you were doing something (Inaudible)

BOWMAN. Well I knew I was doing something wrong but I figured that I'll probably get (Inaudible) em and I'm fucked. I guess it was just in the last little while you know, that I started putting two and two together. You know? It's like well, pssh, I'm getting (Inaudible) if I walk in there. I mean, I was ready to disappear on him it's gonna look funky. You know? And people he knows (Inaudible) has.

BROWN. Yeah. Does he know some people that would do that?

BOWMAN. I don't know, I'm willing to take a chance.

BROWN. Okay. That's understandable.

BOWMAN. I mean ah, being (Inaudible) the forgery (Inaudible) There's some real weird mother fucker's out there.

BROWN. Okay.

BOWMAN. You know? And they'll hurt you just for kicks.

BROWN. Tell me how you two came together today.

BOWMAN. We already pre-set it up. We pre-set it up.

BROWN. So you guys had planned to be together today? (Inaudible)

LODGE. Ah, yeah, he's gonna (Inaudible) next door.

BROWN. Okay.

BOWMAN. We planned on being together. Right. I called him this morning. I said, he goes, he said he was gonna drop my son off at four (4:00) o'clock at the skate park and he'd probably pick me up.

BROWN. Okay.

BOWMAN. (Inaudible) give me a call and I rang him up.

BROWN. But he did?

BOWMAN. Um hmm (affirmative)

BROWN. And where did he go? Did he come up to your house?

BOWMAN. No I just met him outside.

BROWN. Outside where?

BOWMAN. Outside of my apartment unit.

BROWN. On the street?

BOWMAN. Um hmm (affirmative)

BROWN. Okay. And then you went and did.... what you got caught at today? Tell me about your conversation again. I didn't quite understand when you figured you guys were gonna get caught. When he said, "We're going down."

BOWMAN. Well when he was pulling out a white Jimmy pulled out in front of us. Flashing red and blues. He turned right and he says, "Well that's ROP and we're going down." I said, "What do you mean we're going down?" He told me, I basically told him,"Well you told me you wouldn't take me down."

BROWN. He said, "That's ROP?"

BOWMAN. Um hmm (affirmative)

BROWN. What's that mean?

BOWMAN. A Repeat, what I just found out today, Repeater Offender's Program, something like that man. And ah...

BROWN. Did you ask him how you know that?

BOWMAN. No I didn't.

BROWN. Okay. You just kind of accepted that.. it's the police.

BOWMAN. When I seen the red and blues flashing then I was sure it was the police.

BROWN. Right.

BOWMAN. And also (Inaudible) He called em ROP and I go, "Who the hell's ROP? Don't matter to me, red and blue's, red and blue."

BROWN. It's the police.

BOWMAN. Um hmm. And ah, he started driving down the road, starting freaking out about trying to get rid of his ah, his panic. "(Inaudible) ain't gonna get rid of it." You know? And if you're going down you're going down. You know? And that's when ah, the Sheriff's Department, right, pulled behind him and turned on the red and blues and that's when I started telling him, I go, "Pull the fuck over and pull over now. You know? I'm not gonna take on the fucking charge of fucking fleeing, a fleeing charge.

BROWN. Okay.

BOWMAN. "Cause if you want to run...." I told him, "Man if you're gonna, if you're thinking about running man, drop me off. You let me the fuck out of the car and do what you're gonna do. You want to run, run, but I'm not gonna run. "

BROWN. Okay. You said he had like a recipe file. What's that, like a little expandable thing?

BOWMAN. Yeah, a expandable thing with file folders.

BROWN. Did he have other bar codes in there?

BOWMAN. (Inaudible)

BROWN. A lot of em today? Did you see em?

BOWMAN. Um hmm. There's quite a few.

BROWN. And that was gonna be for ah, where did you say you were going?

BOWMAN. We were gonna go to Lowe's and ah, well he's always had several of em on em. He's never used em all.

BROWN. Um hmm. He always keeps a bunch of em?

BOWMAN. Um hmm (affirmative)

BROWN. Okay. But he had other stops that you were gonna make today.

BOWMAN. Just a couple more.

BROWN. If you hadn't been pulled over by the police.

BOWMAN. Yeah.

BROWN. Okay. You ever seen him with any rifles?

BOWMAN. No.

BROWN. No? Ever have any drugs, buying drugs?

BOWMAN. No.

BROWN. Okay.

BOWMAN. And myself, I'm not in the drug scene. I've been clean two (2) years and I plan on staying that way.

BROWN. Yeah. You're a little old to be doing that kind of stuff.

BOWMAN. And after three (3) years of use I can't take any more.

BROWN. Right. Cause forty three (43) is.... well you're not forty three (43) yet, you're gonna be..

BOWMAN. Yeah I have forty three (43), I'll be turning forty four (44). Born in fifty eight (58).

BROWN. That means you'll be forty three (43) on December eighth of this year.

BOWMAN. No, forty four (44).

BROWN. Well this is two thousand one (2001).

BOWMAN. Oh I see what you're saying.

BROWN. You'll be forty three (43).

BOWMAN. I thought it was forty (40) (Inaudible)

BROWN. You might feel like it but you're not.

BOWMAN. No I feel like I'm about fifty (50).

BROWN. And you're forty two (42) years old. (Inaudible) Cause you look older than forty

three (43). Is there anything else you need to tell me?

BOWMAN. You know it all. You know what I know.

BROWN. Okay. Where you living at now? What's the name of...

BOWMAN. Courtyard Center Apartments. Six ninety five (695) West Third (3rd) Street.

BROWN. Apartment number?

BOWMAN. Three three two (332).

BROWN. You have a phone number?

BOWMAN. Two eight four two two eight zero (284-2280).

BROWN. And this is your employment? You're a lead supervisor?

BOWMAN. Um hmm (affirmative)

BROWN. The Deli?

BOWMAN. Yeah, the Cabana Deli.

BROWN. Is that a good job?

BOWMAN. Yeah, it's okay.

BROWN. A okay?

BOWMAN. It pays nine (9) bucks an hour. I was just promoted. I just got, I was making seven forty (7.40).

BROWN. Well why did you need more money?

BOWMAN. Cause at the time I was only making seven forty (7.40) and I'm being garnished for child support.

BROWN. Okay.

BOWMAN. Five hundred (500) bucks a week.

BROWN. You have any habits you're trying to support, just trying to get the kids paid for?

BOWMAN. No. I'm just trying to get the kids paid for and keep a fucking roof over my head. I try to make, I (Inaudible) start paying my ah, restitution and fines.

BROWN. Okay.

BOWMAN. Actually, that's the honest to God's truth. I have no desire for drugs or any (Inaudible) I was just basically trying to keep a roof over my head and make ends meet. Cause I just barely got that promotion.

BROWN. What time did you get picked up today by...

BOWMAN. About a quarter after four (4:00).

BROWN. Okay. How long did it take you to get from where you got picked up to the Walmart?

BOWMAN. I had to run by P & P, drop off a check stub and rent receipt. And I had to pick me up a hamburger and a Coke in the process.

BROWN. Okay.

BOWMAN. So about an hour.

BROWN. An hour? Tell me about your conversation in the hour between picking you up and going to the Walmart.

BOWMAN. He was telling me about the bad day he was having.

BROWN. Okay.

BOWMAN. Ah, that I guess his P.O.'s were both at his house this afternoon.

BROWN. Ah huh.

BOWMAN. And ah, that was basically it really. Pretty much (Inaudible) I have though, (Inaudible) piss you off. So (Inaudible) and you all later.

BROWN. Right on.

LODGE. How we doing?

BROWN. Good.

LODGE. Okay. You done?

BROWN. I think so.

LODGE. Okay.

BROWN. Okay. Well I don't really have any more questions for you. If I do I'll come back in and ask.

LODGE. You got any questions of us?

BOWMAN. I think it's pretty much cut and dry. I'm going to jail.

LODGE. Okay. Here's the deal on what's gonna happen. Okay? You're gonna get booked tonight on a probation violation, parole violation. Okay? That's it. Alright? The other charges, we've already, we've already talked with the District Attorney tonight. Okay? And as far as with the other issues that I've brought up to begin with, okay, there is a possibility like I said, that those could still come into play but if they do, alright, there are issues as far as, you know, how the substantial assistance and things along those lines work.

BOWMAN. The work?

LODGE. Substantial assistance. In layman's terms, you help us, we help you. Okay? And you've taken the first major step in helping yourself tonight. And that is why you're only gonna get put a hold on for the probation violation, until your P.O. can come and talk to you. Okay? That's gonna be it.

BOWMAN. Okay.

BROWN. It doesn't mean the other things that happened today are going away. Okay? Cause we have four (4) years to deal with burglary.

LODGE. But we continue the road that we've, down the road we started here tonight. Okay? I think you can lessen any chance of...

BOWMAN. (Inaudible) cooperation too?

LODGE. We appreciate that. Do you need to use the bathroom or anything like that?

BOWMAN. No.

LODGE. You want another Pepsi?

BOWMAN. No I'm still drinking this one.

LODGE. You sure?

BOWMAN. Um hmm (affirmative)

BROWN. We'll be back.

LODGE. We'll be back.

(Sound of door opening and closing)

(Pause)

BOWMAN. (Sighs)

(Continued Lengthy Pause)

BOWMAN. (Sighs)

(Continued Lengthy Pause)

(END OF SIDE ONE - TAPE TWO)

(SIDE TWO - TAPE TWO)

(Side two is all blank)

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 12-03-01 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

BOWMAN. ...he asked him.

THOMAS. Okay.

BOWMAN. And I was promised (Inaudible) never find that out, till we got to court.

THOMAS. Who were you promised that by?

BOWMAN. The detective.

THOMAS. Okay. I watched that interview tape and never once heard that mentioned. Okay? I never once heard that mentioned.

BOWMAN. It was said out in the corridor.

THOMAS. Well..

BOWMAN. That Ferrill would never find out (Inaudible)

THOMAS. Well, that's water under the bridge now.

BOWMAN. Yeah.

V5.45

THOMAS. And even if we hadn't told Ferrill, or it hadn't come to his attention, he was gonna find out.

BOWMAN. Oh yeah.

THOMAS. Just based on the evidence in this thing and the video tape and that kind of thing, he was gonna assume that you were talking. Okay? Did you ride with him to the jail, to the courthouse?

BOWMAN. No.

THOMAS. Did you ride back together?

BOWMAN. No.

THOMAS. They kept you guys in separate vehicles?

BOWMAN. Oh to the courthouse and that, no, we were in the same vehicle together.

THOMAS. Were you sitting anywhere near him?

BOWMAN. Yeah.

THOMAS. Did you talk to him?

BOWMAN. Yeah I talked to him.

THOMAS. And what did he say?

BOWMAN. That ah, it sounds like I'm talking. I told him, "No, I'm not talking, cause ah, just keep away from me Ferrill."

THOMAS. Yeah.

BOWMAN. (Inaudible) he's got to stay away from me. You know? I just, I had all them days to listen to him whine, you know.

THOMAS. Are you afraid of him?

BOWMAN. No.

THOMAS. Okay, so you're not afraid of anything he might do to you or retribution or anything?

BOWMAN. No.

THOMAS. Not that kind of guy?

BOWMAN. He's more, he's whining about, you know, about his family, more or less. Talking about his family and that.

THOMAS. Okay.

BOWMAN. No I'm not worried about him, I'm not scared of him.

THOMAS. Okay. Well I got a lot of questions to ask. Like I say, it's gonna seem redundant on some of em, because they're questions you probably already answered with the other detective but I want to be clear in my mind. I need to go into some of these things a little bit farther than you did. Okay? Whatever you do, do not embellish anything here today. Okay?

BOWMAN. What do you mean embellish?

THOMAS. Embellish? What I mean is don't exaggerate. Okay? If something happened, fine. Tell me that it happened and tell me exactly how it happened and those types of things. But trust me, Volpicelli, you don't need to exaggerate anything to give Volpicelli in any sort of, any more trouble than he's already in. Okay?

BOWMAN. (Inaudible)

THOMAS. In other words, you don't need to make it sound good. Okay? You just need to tell me the truth.

BOWMAN. I wasn't planning on it. I'm not a liar, you (Inaudible) to be a liar, so.

THOMAS. Okay. Okay. Where did you first meet Ferrill?

BOWMAN. At Warm Springs.

THOMAS. When you guys were both incarcerated down there?

BOWMAN. (Inaudible)

THOMAS. What were you in for?

BOWMAN. I was in there for Uttering. Paper.

THOMAS. Okay. How much longer did you have to go?

BOWMAN. When I first met him?

THOMAS. Yeah.

BOWMAN. Umm.

THOMAS. When did you first meet him, whenever...

BOWMAN. When I first met him, right, was ah, in that (Inaudible) line. I'm hypoglycemic.

THOMAS. Um hmm.

BOWMAN. Alright. So I was getting diabetic trays, right? He was ah, ah, vegetarian.

THOMAS. Okay.

BOWMAN. I didn't actually eat chow and...

THOMAS. Okay.

BOWMAN. Right shortly after I got (Inaudible) Well actually when I hit the yard.

THOMAS. Approximately when was that?

BOWMAN. Ah, March, April or March.

THOMAS. March of this year?

BOWMAN. Of two thousand (2000)

THOMAS. Of two thousand (2000)? Okay. So you've known him for a little over a year.

BOWMAN. Right.

THOMAS. Okay. When do expire your parole?

BOWMAN. Ah, the way it is right now, August thirty (30).

THOMAS. Of this year?

BOWMAN. Next year.

THOMAS. Or next year.

BOWMAN. Next year.

THOMAS. Okay.

BOWMAN. August thirty, two thousand two (08-30-02).

THOMAS. Okay. Did you guys ever hang out in prison?

BOWMAN. Yes we did.

THOMAS. Did Volpicelli ever tell you about ah, his little scam with the bar codes?

BOWMAN. Yes he did, yeah.

THOMAS. While he was in prison?

BOWMAN. Yeah.

THOMAS. And what did he tell you?

BOWMAN. That it's a sweet deal.

THOMAS. Did he go into detail about how he does it?

BOWMAN. Yeah.

THOMAS. What did he tell you, just for example?

BOWMAN. Ah, for example I just make a label and switch it right in the (Inaudible) Pretty simple and we did it.

THOMAS. Did he say how many times he done it or how much money he made?

BOWMAN. Yeah.

THOMAS. What did he say?

BOWMAN. Ah, two hundred thou, easy.

THOMAS. Was that prior to when, so that was, so this is when you're talking in prison?

BOWMAN. Ah huh (affirmative)

THOMAS. He said that he made a couple hundred thousand dollars?

BOWMAN. Easy.

THOMAS. Doing it before, before he got popped.

BOWMAN. Yeah.

THOMAS. Okay. What else did he say?

BOWMAN. He asked me, he said that ah, "Do you plan on doing it again when he got off this time? As a way of revenge. If I wanted to ah...

THOMAS. Revenge against who?

BOWMAN. The system, to get re-set up (Inaudible) things like that.

THOMAS. Did he solicit your help when he was in prison, and say, "Listen I want to hook up with you when you get out and we can do this?"

BOWMAN. Yes he did.

THOMAS. And you were agreeable to that?

BOWMAN. Not at first.

THOMAS. Not at first?

BOWMAN. I had to think about it. Cause I was coming out of prison with my back against the wall.

THOMAS. Okay. Meaning what?

BOWMAN. Meaning financial (Inaudible) I was (Inaudible) to my back.

THOMAS. Okay.

BOWMAN. And deep in debt.

THOMAS. Okay. How much in debt are you?

BOWMAN. Well actually I owe forty thousand (40,000) in arrears to the child support and three thousand (3,000) to the state for fines and restitution.

THOMAS. Okay. What month do you think it was that he told you about his scam? Was it shortly after you first met him or was it toward the end or..

BOWMAN. Towards the end, about a month before he got out.

THOMAS. Cause you guys got out almost the same time.

BOWMAN. But he got out three (3) weeks before me.

THOMAS. Okay, he got out June first (1st) I believe.

BOWMAN. I got out June twentieth (20th)..

THOMAS. June twentieth (20th), so three (3) weeks.

BOWMAN. What's the month before June?

THOMAS. May.

BOWMAN. May. They gave him a (Inaudible) sort of hinting around about it.

THOMAS. Okay. So what else did he tell you when he was inside about his little scam? Probably, see what I'm getting at here is what kind of detail did he go into? Did...

BOWMAN. He went into (Inaudible) detail, he told me the whole operation on what he did.

THOMAS. Okay.

BOWMAN. He'd go from store to store.

THOMAS. Okay.

BOWMAN. You know? Like first he'd go, he'd crowd, he'd do it traveling? He'd go to the first store, at the time...

THOMAS. Traveling? Meaning traveling from state to state?

BOWMAN. State to state.

THOMAS. Okay.

BOWMAN. Store to store.

THOMAS. Okay.

BOWMAN. He'd hit a chain of stores, alright, and then he'd buy it at reduced the price, right? He'd buy the actual item, right?

THOMAS. Okay.

BOWMAN. For the actual cost. Ah, photograph or Zerox copy the actual receipt, and yes, that was how he made his money.

THOMAS. Okay.

BOWMAN. Go out and Zerox a copy.

THOMAS. Okay.

BOWMAN. But this time around none of the money was in town.

THOMAS. What do you mean?

BOWMAN. The copy part of it didn't work.

THOMAS. Did he say why?

BOWMAN. Ah..

THOMAS. Did you....

BOWMAN. Because (Inaudible) track (Inaudible)

THOMAS. Okay. So he, did you guys try to do the receipt thing when you first got out?

BOWMAN. Yes we did.

THOMAS. How long was it after you got out that you first hooked up with him?

BOWMAN. Ah, I called him about a week after I got out. He told me to call him when I first got out.

THOMAS. Okay.

BOWMAN. I called him about a week after I had gotten out.

THOMAS. Okay.

BOWMAN. I went over to the Ridge House, right? And it was about a month later. Okay? That we actually hooked up. It was towards ah.... um, the middle of July. Maybe it was a few weeks, a week to a month. It was shortly after I had gotten back from ah, burying my father.

THOMAS. Okay.

BOWMAN. I had to go to Salt Lake to bury my father some time in July.

THOMAS. Okay. So you hooked up with him in July?

BOWMAN. Um hmm (affirmative)

THOMAS. Did you guys go out right away?

BOWMAN. No, we discussed what we were gonna do He said he had to get the funds together to get a label maker and do some scouting.

THOMAS. Okay. Now what did he mean by scouting?

BOWMAN. Scouting stores. He said (Inaudible)

THOMAS.. What did that entail?

BOWMAN. He said he wanted to get set up on what he wanted to buy I guess.

THOMAS. Okay. Did you ever go scouting with him?

BOWMAN. No.

THOMAS. So he never showed you what he was looking for when he went scouting?

BOWMAN. No.

THOMAS. He didn't say?

BOWMAN. (Inaudible) no.

THOMAS. Huh?

BOWMAN. In the beginning no, he didn't.

THOMAS. But later on he did?

BOWMAN. Later on, yeah.

THOMAS. He showed you what the scouting was all about? And what was he looking for?

BOWMAN. Specific items, high end items.

THOMAS. Okay. Anything else?

BOWMAN. No. It got to the point where it didn't matter, right? As long as it was a high end item.

THOMAS. Did he care what kind of return policy the store had?

BOWMAN. No.

THOMAS. That didn't seem to affect him?

BOWMAN. No.

THOMAS. Did he care if a store had video?

BOWMAN. Towards the end he was off the deep end.

THOMAS. Okay.

BOWMAN. He was off the deep end. You know? Like where it originally started right, was supposed to be right, it wasn't at the end. (Inaudible) I'm sure it was bothering him. Because what we agreed to do, right, and what was happening was two different things. He was just out buying whatever was high and like if something was a high end, right? He'd buy it, as cheap as he could get it.

THOMAS. Okay. By switching the bar code?

BOWMAN. Um hmm (affirmative)

THOMAS. He'd make the bar code?

BOWMAN. He'd make the bar code.

THOMAS. Did you watch him make these bar codes?

BOWMAN. Yes I did.

THOMAS. Where did he make em?

BOWMAN. Right in the...

THOMAS. Did he have em pre-made?

BOWMAN. Um hmm (affirmative) Or a lot of times he'd make em right there in the car.

THOMAS. And he'd show you how to do it?

BOWMAN. Um hmm (affirmative)

THOMAS. Could you do it yourself if you had to?

BOWMAN. Yeah, I could.

THOMAS. You could? If you were provided with the label maker and the material and the information?

BOWMAN. It's actually simpler than it looks.

THOMAS. Well I'm sure it's very simple.

BOWMAN. It's very simple.

THOMAS. And all he is really is a sophisticated shoplifter.

BOWMAN. Ah huh.

THOMAS. When you think about it.

BOWMAN. Yeah.

THOMAS. Okay. So he went off the deep end. What do you mean he went off the deep end exactly?

BOWMAN. We were only supposed to do this right, to get situated and set up.

THOMAS. Okay.

BOWMAN. (Inaudible) whatever he could get it, right?

THOMAS. Okay.

BOWMAN. And call it quits.

THOMAS. Um hmm.

BOWMAN. Then towards the end there, right, he was just buying whatever, just whatever, it didn't matter. (Inaudible) straight up.

THOMAS. Did he say who he was buying it for? Was he buying it for himself, was he buying it for somebody else?

BOWMAN. Ah, I couldn't tell you that, I really couldn't

THOMAS. No idea?

BOWMAN. I know he was putting a lot of it in storage.

THOMAS. Okay.

BOWMAN. From what he says, right, you guys got it all.

THOMAS. Do you know where the storage unit is?

BOWMAN. No, I have no idea. He'd ah, a couple times he dropped me off at ah, Sierra Sid's.

THOMAS. Um hmm.

BOWMAN. I didn't go to the storage unit.

THOMAS. Okay. So you have no idea where his storage unit is?

BOWMAN. No.

THOMAS. Did you ever ask him to store anything for you?

BOWMAN. No.

THOMAS. No? Do you have a storage unit?

BOWMAN. No. I don't.

THOMAS. So when you guys went out and did these purchases and you had all this merchandise

in the back of the car that you guys had bought, what would he do, drop you off and then go over to the storage unit or something?

BOWMAN. Exactly.

THOMAS. When did you guys normally do this, was it during the day, at night or..

BOWMAN. At night, it was always at night.

THOMAS. Always at night?

BOWMAN. In the afternoon, but after he dropped his son at the skating.

THOMAS. Um hmm.

BOWMAN. Usually between four (4:00) and night.

THOMAS. Okay.

BOWMAN. Four (4:00) in the afternoon to nine (9:00) at night.

THOMAS. You told detectives that you probably did this a dozen times or so.

BOWMAN. Well I did it about a dozen times with him.

THOMAS. Yeah, okay. So you weren't storing any of your stuff in his storage unit?

BOWMAN. No, no.

THOMAS. And you didn't know where his storage unit was?

BOWMAN. I had no clue. I (Inaudible) I don't want to know where it's at.

THOMAS. Okay.

BOWMAN. Just to protect him in a way. You know?

THOMAS. Okay. You mentioned something about him dropping you off somewhere. He needed to go to the storage unit. Do you recall that?

BOWMAN. Yeah.

THOMAS. Okay.

BOWMAN. It was always at Sierra Sid's.

THOMAS. So he would just drop you off there and kind of leave you standing around?

BOWMAN. I'd go play nickels, play ah, I'd go play a nickel machine.

THOMAS. He'd come back and look for you?

BOWMAN. Um hmm (affirmative)

THOMAS. Would you have a set time that you'd meet with him?

BOWMAN. No, I just told him, "This is where I'll be. I'll be there playing nickels right when you get back."

THOMAS. Okay. So he'd come back and he'd have what, merchandise with him or what?

BOWMAN. No, he'd come back and the van would be empty.

THOMAS. So you're saying he'd drop you off and he was going to drop off the merchandise. And then what would he do, come back and pick you up and then what?

BOWMAN. He'd drop me off and go pick up his son.

THOMAS. Okay, so it was always, you were always doing the buying, right?

BOWMAN. I was doing the buying, yeah.

THOMAS. How much ah... you were doing returns as well though, right?

BOWMAN. Store returns, yeah. There was a couple returns, yeah.

THOMAS. Certain returns you said?

BOWMAN. There was a couple returns, yes.

THOMAS. But it was mostly buying?

BOWMAN. (Inaudible) yeah.

THOMAS. Okay. Did you ever buy anything that didn't have a fictitious bar code or just a straight up legitimate buy?

BOWMAN. (Inaudible)

THOMAS. For him?

BOWMAN. (Inaudible)

THOMAS. And why would he want you to buy things (Inaudible)

BOWMAN. I couldn't, I have no answer for that. I think what it was, was so that ah, to set up a return.

THOMAS. Okay.

BOWMAN. There were several times where, there was a couple times I would do returns for him, right, but there was several, you know, he did most of his own returns.

THOMAS. Okay. Were you guys cell mates when you were in prison or just ...

BOWMAN. No.

THOMAS. No? Do you know if he was doing any sort of scamming while he was in prison?

BOWMAN. No.

THOMAS. I mean obviously he couldn't do the type of things that he's doing but you guys have access to phones and companies, where you can send away for things and buy things on the Internet and return things on the Internet. Was he doing things like that?

BOWMAN. Not that I know of.

THOMAS. Okay.

BOWMAN. He was in one cell I was in another.

THOMAS. Okay. How much did, you allude to the fact that he paid you to do these purchases. How much did he pay you?

BOWMAN. Anywhere from one (1) to two hundred (200) a night.

THOMAS. So he'd pay you two hundred (200) a night to go out with him several times and there was a flat one hundred (100) or two hundred (200) dollars or was it per transaction?

BOWMAN. No, it was just about one or two hundred (200).

THOMAS. One to two hundred (200)? So..

BOWMAN. We'd hit ten (10) stores, he paid me like two hundred (200) bucks.

THOMAS. He'd pay two hundred (200) bucks if you hit ten (10) stores?

BOWMAN. Ah hun (affirmative) Anywhere from eight (8) to ten (10) stores.

THOMAS. What was the most number of, biggest number of stores you hit in any one night?

BOWMAN. Ten (10).

THOMAS. You hit ten (10) stores in one night? Do you recall when that was?

BOWMAN. Pssh.

THOMAS. Approximately. Couldn't even give me a month?

BOWMAN. Well during the course of, from July to the time you got us. There was only about twelve (12) times I went out with him. You know?

THOMAS. Okay.

BOWMAN. And it was usually on Wednesday night. Cause that was my night off.

THOMAS. Do you remember the stores you went to?

BOWMAN. Yeah. It's easy. Walmart, K-Mart, ShopKo, Target.

THOMAS. Okay, I'm talking specifically now about the night you did ten (10). You happen to remember what stores you went to that night?

BOWMAN. (Inaudible) K-Mart, Walmart, Shopko, Target.

THOMAS. And you were doing purchases the whole time.

BOWMAN. Yeah. (Inaudible) Home Depot, Lowe's.

THOMAS. What else?

BOWMAN. (Inaudible) Two (2), a couple Walmart's, or three (3) Walmart's.

THOMAS. Okay. Can you tell me any specific transactions that you recall where you specifically

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bought something? I mean I know, based on the receipts and what not, that we found in this vehicle and the merchandise we found in the storage unit, I mean I know he was buying. But rather than spoon feed you, I'd rather align your memory to see if you can recall specifically what items you bought or returned, that you'd know were fraudulent, what kind of items?

BOWMAN. (Inaudible) There was (Inaudible)

THOMAS. Um hmm.

BOWMAN. That was all me. That was when I went in I put the label on it and ah....

THOMAS. Which store?

BOWMAN. Ah, Walmart.

THOMAS. Which one?

BOWMAN. The one ah, up by here (Inaudible)

THOMAS. (Inaudible) line?

BOWMAN. Yeah. For a camcorder, I believe that's what we got.

THOMAS. What was the name of the home entertainment center, do you know, the brand name?

BOWMAN. Panasonic. Cause we specifically asked for one.

THOMAS. Okay. So did he go inside and do the bar code switch?

BOWMAN. No.

THOMAS. Huh? You did?

BOWMAN. I did.

THOMAS. What did he do?

BOWMAN. He just made, designed the label and said, "This is what I want and go in and get it. I'm gonna go get gas for the vehicle."

THOMAS. So he handed you the label and what was this label like? Was it sticky on the back or something, so you could stick it onto the box?

BOWMAN. Yeah.

THOMAS. Is that how it was?

(Pause)

THOMAS. And he told you what home entertainment center to get?

BOWMAN. Um hmm (affirmative)

THOMAS. And he told you to put this label on it and buy it.

BOWMAN. Yeah.

THOMAS. And the whole time he was waiting out in his car?

BOWMAN. The whole, not the whole time. That time no. He was ah, he told me he had to go get gas and he was gonna wash the car while I was inside.

THOMAS. Okay. And you can do all that right there I think, in that shopping center there.

BOWMAN. He went over to the Shell

THOMAS. Yeah.

BOWMAN. (Inaudible)

THOMAS. Okay. Do you recall what month this might have been?

BOWMAN. October.

THOMAS. And probably on a Wednesday? Okay. What else?

BOWMAN. Ah..

THOMAS. Again, I'm looking for specific merchandise here, that you recall specifically. You know, replacing a bar code. Which reminds me, I got some pictures here. Does that, is that the home entertainment center you're talking about?

BOWMAN. Ah huh (affirmative)

THOMAS. That's the same one huh?

BOWMAN. Yeah. (Inaudible)

THOMAS. Yeah. Okay. Do you recall any other, what other merchandise?

BOWMAN. Ah... A rug, a hose ah...

THOMAS. And that's what you've already been booked for.

BOWMAN. Um hmm (affirmative)

THOMAS. What happened there?

BOWMAN. He told me whatever he wanted, right? I went and got it. I put this bar code to it.

THOMAS. So you had the bar code when you went into the store?

BOWMAN. Ah huh (affirmative)

THOMAS. And he told you which one he wanted, so (Inaudible)

BOWMAN. He said (Inaudible)

THOMAS. And the bin?

BOWMAN. When he went in the store he told me what bin it was it. I went and got it out of the bin, on the way up to the deal I put the bar code over the old, the original bar code, right? And paid for it.

THOMAS. Were you guys ever inside the store at the same time?

BOWMAN. Yeah.

THOMAS. And

BOWMAN. For several times.

THOMAS. Why was that?

BOWMAN. There'd be times when he'd have the bar code himself.

THOMAS. Okay.

BOWMAN. He'd set it up, leave it in the basket or on floor for me to pick up and I'd buy it.

THOMAS. He'd leave it in a basket on the floor?

BOWMAN. In a basket or on the floor. Depending on what size the item was.

THOMAS. Okay.

BOWMAN. It was ah, vacuum cleaners, a couple vacuum cleaners, a couple steam cleaners.

THOMAS. Where did you buy the vacuum cleaners? I'll tell you what, let's back up here and talk about the work some more. So from the, which Lowe's was it?

BOWMAN. I don't remember.

THOMAS. Ah...

BOWMAN. I really don't.

THOMAS. Did he go in the store before you did or you guys went in together? Did you go in...

BOWMAN. He'd go in before. If we were ever in the same store together, right, he always went in first.

THOMAS. He always wanted to be first I guess.

BOWMAN. Yes.

THOMAS. Did he say why?

BOWMAN. He wanted to see if the item was there. Right? And to set it up. If we both went in the store together he'd set it up.

THOMAS. Okay, but you had the bar code with you.

BOWMAN. No. If we'd go, we're both in the store at the same time, right, he always had the bar code.

THOMAS. Okay. Well at the Lowe's, did he have the bar code or did you?

BOWMAN. The one where I bought the rug?

THOMAS. Yeah.

BOWMAN. Where I actually bought the rug, right? No, I had the bar code.

THOMAS. You had the bar code. When did he give you the bar code?

BOWMAN. Right before we walked in.

THOMAS. Right before you walked in the store? Out in the parking lot?

BOWMAN. Out in the parking lot.

THOMAS. In his car or where?

BOWMAN. When bought rug I went in by myself. Alright? This time I went in by myself. Right? He said he had been in the day before, he scouted it out and the rug that he wanted right, was in Bin number one (1).

THOMAS. Okay. You just told me a few minutes ago that you guys were both in the store at the same time.

BOWMAN. We were both in the store together at the same time, right?

THOMAS. Okay.

BOWMAN. On that particular night, right, it was close to closing.

THOMAS. Okay?

BOWMAN. Ah, I walked in, right, found the rug, put it in the basket, right, and wheeled it to the front.

THOMAS. Okay.

BOWMAN. (Inaudible) wheeled it to the front. I just took the bar code to it, right, and walked out with it. The other times I ever walked into Lowe's, I bought a rug for him twice, two (2) different Lowe's. The first time, right, the first time I walked in, right. He already had it scouted out and we were both in the store at the same time. He scouted it out. He said, "It's in Bin number...." I think it was bin number five (5).

THOMAS. Okay.

BOWMAN. And he walked out. But there was several times when we walked in the store, like at Home Depot or something, right, where he'd ah, or in Walmart. He told me, "This is where we're going after. I'm gonna set it up and just come in after me, a couple minutes after me.

THOMAS. Okay. How much did you pay for the rugs? You said there were two (2) rugs?

BOWMAN. Eighty (80) bucks a piece, eighty (80) bucks each time.

THOMAS. Do you know how much they were worth?

BOWMAN. No. I never paid attention to how much they was worth, right, I just walked in, grabbed it from the bin and didn't pay any attention. I looked for the bar code, where the bar code was at and stuck the bar code on it, right, and walked out with it.

THOMAS. Okay.

BOWMAN. (Inaudible) for it.

THOMAS. Okay. And you don't recall which Lowe's he was in the store with you and which Lowe's that he wasn't?

BOWMAN. There were a couple of times when I did ah, he was in both Lowe's with me, right? But there was a couple of times when we didn't do anything.

THOMAS. That's what I mean. The time you purchased carpet.

BOWMAN. The time (Inaudible)

THOMAS. You purchased carpet two (2) times.

BOWMAN. Two (2) times. The first time right, he was in the store with me. The second time (Inaudible)

THOMAS. And you don't, which store was that, where he was in the store with you?

BOWMAN. (Sighs)

THOMAS. Do you recall?

BOWMAN. (Inaudible)

THOMAS. If you don't know, you don't know.

BOWMAN. I don't remember.

THOMAS. Okay. One of the rug purchases he was in the store with you.

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. And he handed you the bar code, you did the switch inside the store?

BOWMAN. No, it was outside the store.

THOMAS. But you guys both went in the store approximately the same time?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay, then the other time you bought a rug you said he wasn't in the store with you. How did that go? He handed you the bar code outside the store, then you went inside and did the purchase?

BOWMAN. (Inaudible)

THOMAS. And both times about eighty (80) bucks?

BOWMAN. About eighty (80) bucks, yeah.

THOMAS. Okay. Ah, what else? Let's move on to ah, how about Walmart's? What else we got going at Walmart, anything? Store merchandise, what do you recall?

BOWMAN. Ah, a couple of entertainment centers.

THOMAS. The same kind as these?

BOWMAN. Yeah, Panasonic. But there were several times we walked in to buy the Panasonic, right, and it wasn't available.

THOMAS. Okay.

BOWMAN. Ah.. a vacuum cleaner I believe.

THOMAS. What kind of vacuum cleaner?

BOWMAN. (Inaudible) brand.

THOMAS. Hoover.

BOWMAN. Hoover or Dirt Devil. Hoover (Inaudible) vacuum cleaners, right? And ah, the steam cleaner I believe Hoover or Dirt Devil. Well it was Hoover or Dirt Devil. Whatever high end it was, whatever the highest end was. You know, whichever the most

expensive one was at.

THOMAS. And you always bought those at Walmart?

BOWMAN. Ah, Walmart, I think there was a time at Shopko too.

THOMAS. Okay. I need to know, I need you to try and narrow it down and get specific, as far as, you know, when I went to this Walmart I bought this vacuum cleaner. I don't know if it's a Hoover or a Dirt Devil but I know I bought a vacuum cleaner there. Do you recall those?

BOWMAN. And also at Walmart we went out and bought ah, sergers.

THOMAS. Okay, well let's back up to the vacuum cleaner.

BOWMAN. (Inaudible)

THOMAS. When you did the vacuum cleaner how much did you pay for it. Do you recall?

BOWMAN. I don't know.

THOMAS. A hundred dollars ($100.00)? Any idea how much it was worth?

BOWMAN. Um, around two sixty nine (269), two sixty five (265), three hundred (300). Depending on if it was a vacuum cleaner or a steam cleaner. Whichever the most expensive one was.

THOMAS. It was two sixty nine (269)?

BOWMAN. Ah huh (Affirmative)

THOMAS. Okay, so you paid a hundred (100) bucks for a two hundred and sixty nine dollar ($269.00) vacuum cleaner or steam cleaner, whatever it was. But you're not sure which. Right?

BOWMAN. It was always a hundred dollars. I mean the bar code was always, it always came up the same, irregardless whether it was a steamer or a vacuum. You know?

(Pause and movement noises)

THOMAS. You ever bought computer equipment?

BOWMAN. Yes. That was at Walmart.

THOMAS. What was the brand name?

BOWMAN. Compac Presario. And also Liquid Digital Screen.

THOMAS. What kind of liquid digital screen?

BOWMAN. I think it was a Koss.

THOMAS. Koss? Okay.

BOWMAN. I think that was the name.

(Pause)

THOMAS. Okay, so a Compac computer at Walmart.

BOWMAN. Compac Presario, it wasn't a Compac, the name of it was Compac Presario.

THOMAS. Did he ever tell you what he did with these things once you guys got em?

BOWMAN. No.

THOMAS. He never mentioned anything about selling em for a profit? Did he say they were gifts for anybody?

BOWMAN. No. He never said they were gifts.

THOMAS. So he never told you why he wanted to do this or why he was doing this?

BOWMAN. Not really, no. I mean we discussed it a little bit but nothing specific.

THOMAS. What did you discuss?

BOWMAN. We discussed that he was, a couple times he told me (Inaudible) And I go, "Well why we doing it?" He would just, "Just do it." He usually said that. You know?

THOMAS. So he didn't have a good reason for doing it?

BOWMAN. Actually no. To be honest with you, no he didn't. He told me there was no money in it, the money end of it was gone.

THOMAS. Hmm. Come on. I have to wonder why he was doing it. If they weren't gifts for anybody, if he wasn't selling it for a profit, why was he doing it? You know?

BOWMAN. Right. I mean I'm not trying to bullshit you here, I'm telling you just what I know.

THOMAS. Okay.

BOWMAN. He told me, or he's been telling me, right, is that almost everything he bought...

THOMAS. Have you talked with him since you been in here?

BOWMAN. Yeah. I've talked to him every time we've gone to court.

THOMAS. Okay. But I mean have you talked to him when you've been up here? Have you talked to him up here?

BOWMAN. No.

THOMAS. While you've been up here?

BOWMAN. No.

THOMAS. So you guys aren't in the same housing unit or anything like that?

BOWMAN. No.

THOMAS. Okay. So the only times you've talked to him since you were arrested, was the time you went to court.

BOWMAN. The times we went to court, yeah.

THOMAS. How many times?

BOWMAN. Every time we go to court, right? We're in the, we're together.

THOMAS. How many times you been to court?

BOWMAN. Ah, we've been arraigned, about four (4) or five (5) times.

THOMAS. Cause you don't go anywhere to get arraigned, you just do it here. Right?

BOWMAN. Right. And ah, the two (2) times that we've been to pre-trail.

THOMAS. For?

BOWMAN. Preliminary.

THOMAS. Okay. So you talked to him each time you've been here?

BOWMAN. Ah huh (affirmative)

THOMAS. And what has he said?

BOWMAN. He says ah, the first one time he said, "Well they raided my storage unit and the police got everything."

THOMAS. Um hmm.

BOWMAN. You know? "Most everything that we bought." And ah, he's always said that ah, he mainly talks about his kids, about how he can't get ahold of his kids. The kids won't come talk to him and what his wife is doing.

THOMAS. Um hmm.

BOWMAN. (Inaudible) quit the damn whining. I don't want to hear it.

THOMAS. Um hmm.

BOWMAN. You know. We did what we did.

THOMAS. Okay. Did he ever have you use credit cards?

BOWMAN. No. Always cash.

THOMAS. Always cash?

BOWMAN. Always cash.

THOMAS. Do you know if ever used credit cards to do fraudulent transactions?

BOWMAN. Not that I know of. He was telling me that he couldn't use his credit cards.

THOMAS. Did he say why?

BOWMAN. Because conditions on his parole (Inaudible) parole.

THOMAS. So he told you he wasn't allowed to have credit cards cause of his condition of his federal parole?

BOWMAN. He said he wasn't allowed to use em.

THOMAS. Okay. And you never saw him use a credit card?

BOWMAN. No. Never watched him use a credit card.

(Pause)

THOMAS. You ever see this before?

BOWMAN. Yeah, it's his master sheet.

THOMAS. You know what that's for?

BOWMAN. Yeah.

THOMAS. What is it for?

BOWMAN. That's what he used to buy (Inaudible) up to Walmart, right, he'd pull up Walmart and go down to the Walmart item, right there, and find what he wanted at that particular time, right? And that's what he'd send me in for.

THOMAS. So he'd go down this list with you and he'd say, "I want that right there or that, or I'd like a vacuum here."

BOWMAN. Yeah, right. Then he'd go over to the bar code with the number. "Is the number there, right? This is the bar code number."

THOMAS. Um hmm.

BOWMAN. That's the bar code number right there.

THOMAS. Okay.

BOWMAN. He'd punch that into the machine, right? The bar code would come up, right I'd go in and buy it.

THOMAS. So he'd give you the bar code and you'd go inside and buy it.

BOWMAN. But towards the end, yes.

THOMAS. Where (Inaudible)

BOWMAN. At first right, he was setting em up himself. And then towards the end, right, he'd give me the bar code, right, and I'd go in and buy it.

THOMAS. Okay. Did he ever say why he wasn't doing it himself?

BOWMAN. No.

THOMAS. I mean it's obvious to me why he's not doing it himself. He doesn't want to get caught. So he's willing to pay you to do it, right? Is that the feeling you got?

BOWMAN. That's the feeling I got.

THOMAS. Okay.

BOWMAN. That's why I was getting so highly upset, cause of (Inaudible) he's supposed to go in and set it up, right, I was just supposed to go in and buy it.

THOMAS. Okay.

BOWMAN. After that, I was getting ready to say something to him that night. When we was getting ready to leave ah, right there, as we was leaving Walmart with the bike, right, he wouldn't even set that up.

THOMAS. Um hmm.

BOWMAN. Right? I was gonna tell him, "Look buddy, you know, (Inaudible) you're supposed to set it up, right?" I was gonna tell him right flat out that I was gonna, I was done running the bar code.

THOMAS. Um hmm.

BOWMAN. If he wanted any more, right, then he had to set up his own bar code.

THOMAS. Okay. How many other stops you planning on making that night before you were arrested? Because you only made the one (1) right?

BOWMAN. Three (3) He gave me three (3) stops.

THOMAS. You were gonna do three (3)? Do you know where the other two (2) were gonna be?

BOWMAN. I have no idea.

THOMAS. So he hadn't told you yet?

BOWMAN. No.

THOMAS. He just said basically the first stop was Walmart huh?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay.

BOWMAN. (Sighs) It was probably gonna be, he was probably gonna do either Shopko or Target probably, or Lowe's.

THOMAS. Okay.

BOWMAN. Whichever was the closest one back where we were at.

THOMAS. Okay. What other kind of vacuum cleaners did you buy at ah, or I mean how many times did you do the vacuum cleaners at Walmart?

BOWMAN. Three (3) or four (4) times.

THOMAS. Three or four times? Three or four different occasions?

BOWMAN. (Inaudible)

THOMAS. Then you went to any Walmart, it didn't matter, north, south?

BOWMAN. It didn't matter. Wherever the vacuum was that he wanted at the time.

THOMAS. Okay. Did you ever wonder why he was buying so many vacuum cleaners?

BOWMAN. No. It didn't matter. He was paying me, right, to do what I was doing.

THOMAS. Okay.

BOWMAN. That's why I didn't ask a whole lot of questions. It didn't make any sense but (Inaudible) told me there was no money in it. You know? So..

THOMAS. Did he ever tell you how much money he'd made since he'd been out of prison, doing it before you (Inaudible) him?

BOWMAN. No.

THOMAS. I mean this time, did he ever say how much money he had made this time, since he left prison?

BOWMAN. He was telling me he didn't make a dime (Inaudible) told me this time.

THOMAS. Did you believe him?

BOWMAN. Not really.

THOMAS. Why, I'm just wondering why he wouldn't have said he was making money. I mean why, maybe he wasn't making the kind of money he wanted to make.

BOWMAN. Probably.

THOMAS. Okay.

BOWMAN. My suspicion was, right, but it was on paper. Right. My suspicion was that I would go in and buy it, basically fifteen cents on the dollar, right, he'd probably turn around and sell it to somebody for fifty cents on the dollar.

THOMAS. Um hmm.

BOWMAN. That was my suspicion. So. But it was neither here nor there.

THOMAS. Okay. Let's talk about this serger thing. What's a serger?

BOWMAN. It's a sewing machine that cuts. Just like for instance, you're T-shirt there.

THOMAS. Um hmm.

BOWMAN. It cuts and sews this T-shirt.

THOMAS. Okay.

BOWMAN. It's a special stitch, (Inaudible) and cut. (Inaudible) why he was on my case to get a serger. So.

THOMAS. Okay. What, where did he buy those from?

BOWMAN. Walmart. Walmart and K-mart.

THOMAS. How many did you buy for him?

BOWMAN. Two (2).

THOMAS. At Walmart, one at Walmart and one at K-Mart?

BOWMAN. One at Walmart, one K-Mart.

THOMAS. Do you recall which K-Mart?

BOWMAN. No, I don't recall.

THOMAS. Had you ever seen a document like this that was longer or lengthier than this? Was it always just two (2) pages and just basically..

BOWMAN. I only seen one (1) page.

THOMAS. Just one (1) page?

(END OF SIDE ONE - TAPE ONE)

(SIDE TWO - TAPE ONE)

THOMAS. How much did you pay for the serger?

BOWMAN. Ninety nine dollars ($99.00) (Inaudible), ninety nine (99) or a hundred dollars ($100.00)

THOMAS. Ninety nine (99) or a hundred dollars ($100.00)?

BOWMAN. Yeah, ninety nine dollars ($99.00). It came out to about a hundred dollars ($100.00).

THOMAS. Okay.

(Pause)

BOWMAN. The thing that shocked me the most, right, was that he always kept all the receipts.

THOMAS. Did he say why?

BOWMAN. To keep track of what he was spending, is what he told me. It didn't make any sense to me but it was his gig, or his thing.

THOMAS. How much did the serger cost?

BOWMAN. I think they were two sixty nine (269), two ninety nine (299), something like that.

THOMAS. Okay, and you bought em for a hundred (100) bucks?

BOWMAN. Ah huh (affirmative)

THOMAS. Approximately when do you think you were buying these sewing machines, what month. Do you have any idea?

BOWMAN. No.

THOMAS. No? How many times you did it you say, twice?

BOWMAN. A couple times.

THOMAS. Once at Walmart, once at K-Mart?

BOWMAN. Yeah.

THOMAS. Do they have a machine at Walmart that was ninety nine dollars ($99.00), a sewing machine, that you recall?

BOWMAN. Yes.

THOMAS. They did?

BOWMAN. Yeah, so there was, the sewing machines were both the same, it was both Brothers Simplicity. One was Simplicity, right? Brothers Simplicity is the serger, right, and just plain Brother is ah, the (Inaudible) sewing machine.

THOMAS. So they had only two (2) different kinds of sewing machines?

BOWMAN. (Inaudible) they were like three (3), it's all Brothers, the name brand was Brothers, and they have a sewing machine (Inaudible) Brother. The Simplicity was the serger, right, and then they had a Brother, right, which was ninety nine dollars ($99.00) and they had a Brothers that was a hundred and seventy (178).

THOMAS. Now you said there was another one that was two sixty nine (269) or something.

BOWMAN. Yeah, but the serger was two sixty nine (269). That's the three (3) types. The serger's a serger, I know this. It has more functions to it.

(Pause)

THOMAS. Did he ever buy a serger for a full price?

BOWMAN. I don't know, not when he was with me.

THOMAS. Not with you? You mentioned something in your last interview about futons.

BOWMAN. To get a serger, right?

THOMAS. What's that?

BOWMAN. I said I took a serger in, right.

THOMAS. You took a serger in?

BOWMAN. Um hmm (affirmative)

THOMAS. What, to do a return?

BOWMAN. To do a return.

THOMAS. So what did he provide you when you did the return? What did he provide you to do the return with, a receipt, did he give you a piece of paper?

BOWMAN. He gave me the actual serger, the sewing machine, to take in.

THOMAS. Right.

BOWMAN. And just trade it for ah, no cash, and get a futon.

THOMAS. So he gave you the serger to take in, in exchange?

BOWMAN. Um hmm (affirmative)

THOMAS. But he didn't give you a receipt for it?

BOWMAN. No.

THOMAS. Walmart would let him do that?

BOWMAN. Yeah. There was no trans, cash transaction.

THOMAS. Futon's cost more than the serger?

BOWMAN. Well I only did it because (Inaudible) the original bar code off of it. I didn't see it. (Inaudible)

THOMAS. Off the serger?

BOWMAN. Yeah. Cause (Inaudible) come up with a hundred (100) bucks and I go, "Okay. Whatever." Then he said he wanted a futon so I bought him a futon. The futon actually ended up costing him.

THOMAS. And he knew the serger was more money than a hundred (100) bucks.

BOWMAN. Yeah. (Inaudible) going down so there was nothing I could do about it. (Inaudible) follow the course.

THOMAS. Okay.

(Pause)

THOMAS. What (Inaudible) ?

BOWMAN. (Inaudible) if you want me to I'll tell you the whole story about that serger.

THOMAS. Yeah, I'd like to know.

BOWMAN. And ah, he goes, "Well I'm gonna keep an eye on it, right, keep an eye for it," right. And it ended up back on the shelf, right. The same bar code still on it, right. And I just bought it again.

THOMAS. Really?

BOWMAN. Um hmm (affirmative)

THOMAS. How long after you returned it?

BOWMAN. Oh, about a week.

THOMAS. And it was still on the floor?

BOWMAN. Well it came back on the floor with the same bar code on it.

THOMAS. With the same fictitious bar code on it?

BOWMAN. Um hmm (affirmative)

THOMAS. So you guys bought it again.

BOWMAN. Yeah.

THOMAS. Are you the one that did the transaction that time?

BOWMAN. Yeah I did.. At the same time I bought a digital glass (Inaudible) for a computer, at the same time.

THOMAS. What was the brand name, do you recall?

BOWMAN. Koss?

THOMAS. Koss?

BOWMAN. It was the only glass frame they had.

THOMAS. It's just an LCD monitor?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay. And how much did you pay for that?

BOWMAN. One seventy seven (177).

THOMAS. Okay. And how much was it worth?

BOWMAN. Three forty nine (349). That one I did see.

THOMAS. Huh?

BOWMAN. That one I did see, cause (Inaudible) with (Inaudible) was twelve hundred (1200) bucks. I paid four fifty (450) for it.

THOMAS. Is that the monitor there?

BOWMAN. Yes it is. (Inaudible)

THOMAS. And you paid a hundred and seventy seven dollars ($177.00) for that?

BOWMAN. Right.

THOMAS. And how much was it worth?

BOWMAN. Three forty nine (349).

THOMAS. Did he make the bar code for that one?

BOWMAN. Yes he did.

THOMAS. Did he give it to you?

BOWMAN. No, he put it on that one. He put the bar code himself on that one.

THOMAS. He went in and did that?

BOWMAN. Um hmm (affirmative) At the same time I was looking for an entertainment center. (Inaudible) the entertainment center.

THOMAS. Um hmm.

BOWMAN. And they didn't have one available. While I was looking for that, right, he set the bar code up on the (Inaudible)

THOMAS. Okay.

BOWMAN. And ah, the sewing machine was back on the shelf, right?

THOMAS. Um hmm.

BOWMAN. So I went around and got the sewing machine, came back and picked up the monitor, right and went and paid for it.

THOMAS. And you don't recall when you bought the seventeen inch monitor?

BOWMAN. No, I don't remember what day it was.

THOMAS. Do you remember what month it was?

BOWMAN. (Sighs) The end of ah, August.

THOMAS. Um hmm.

BOWMAN. (Inaudible)

THOMAS. What's that?

BOWMAN. It just, what month is before October, August?

THOMAS. Ah..

BOWMAN. September?

THOMAS. August, September, October, November.

BOWMAN. It had to have been probably, I think September.

THOMAS. How many times did you buy those, did you buy an LCD monitor?

BOWMAN. Three (3).

THOMAS. Three (3) different occasions, two (2) different dates?

BOWMAN. (Inaudible) No, two (2) different dates, three (3) different stores.

THOMAS. Two (2) different dates, three (3) different stores.

BOWMAN. I bought two (2) monitors in one (1) day.

THOMAS. Where was the other one bought besides Walmart?

BOWMAN. Walmart, they were all bought at Walmart.

THOMAS. Oh okay, they were all bought at Walmart. There's two different Walmart's.

BOWMAN. They're the ones that had em.

THOMAS. So you thought that was approximately the last part of September?

BOWMAN. Yeah, somewhere in there. Yeah, I believe. I could be wrong. I'm not too good with dates.

THOMAS. Okay. Do you recall which store exactly, the north or the south Walmart?

BOWMAN. It wasn't north.

THOMAS. Cause you said two (2) stores, three (3) different purchases.

BOWMAN. Um hmm.

THOMAS. So..

BOWMAN. Two (2) on the south and .. two(2) of em up here, right, and one (1) down.

THOMAS. Two (2) in the north, one (1) on the south.

BOWMAN. Um hmm.

(Pause)

THOMAS. Have you ever had a drug or alcohol problem at all?

BOWMAN. Yeah. (Inaudible) cocaine. I've been clean for over two (2) years now.

THOMAS. Have you? Cause I got to tell you, there's a noticeable difference in your speech tonight, from when you initially gave the interview to detectives.

BOWMAN. I was high that night (Inaudible)

THOMAS. I know. You were talking very slow and muffled and what not and you're talking ninety miles an hour tonight. Ah, I'm just wondering, you getting any dope inside here? And trust me, I'm not gonna arrest you for it or anything like that. I know there's dope in this jail. I know there is. Okay? Because I've booked people for it. And I've talked to people. Are you getting any dope inside here?

BOWMAN. You can drug test me till the cows come home.

THOMAS. Okay.

BOWMAN. You can piss test me. No, I'm not.

THOMAS. Okay. Cause you're talking ninety miles an hour tonight and in the last interview you were pretty slow and deliberate and I'm just wondering why. You know?

BOWMAN. I have an anxiety problem.

THOMAS. You on any medication at all?

BOWMAN. I'm not on any. I'm supposed to be but I'm not.

THOMAS. What are you supposed to be on?

BOWMAN. Zanex and Paxol. Cause they can't give me the combination, right? And then I have anxiety. (Inaudible) since we sat down. So.

THOMAS. Okay.

BOWMAN. And that other interview I was on some heavy duty, probably had a total of ah... I had taken one (1) milligram about an hour and a half after eating.

THOMAS. Of what?

BOWMAN. Zanex.

THOMAS. Okay. Do you know where he lives?

BOWMAN. Ah, I've been by there a few times, it's right by the Peppermill.

THOMAS. Okay. Have you ever been inside his place?

BOWMAN. No, I've never been inside.

THOMAS. Did he say he was renting or did he own that place or...

BOWMAN. No. He said he owned it.

THOMAS. He said he owned it? He told you he owned it?

BOWMAN. Um hmm (affirmative)

THOMAS. Did he say when he bought it?

BOWMAN. About twenty (20) years ago. So he's had it for quite awhile, about twenty (20) years he said.

THOMAS. Okay. But he specifically said, "That's my condo, I own it." What were his words, do you recall?

BOWMAN. He said it was his condo.

THOMAS. And when did he say this? Were you guys in the car, were you driving, were you walking through the parking lot there, what were you doing?

BOWMAN. Well he said originally, he said that he owned a condominium. And there was ah, the first time we went by there was to, what was it now, I forgot just what it was. Oh to give the boys some money.

THOMAS. Okay.

BOWMAN. (Inaudible) He said, "We got to go by my condo.

THOMAS. Okay.

BOWMAN. It was on several different occasions, right, he referred to the place as being his.

THOMAS. How would he say that, I mean...

BOWMAN. "I got to go by my condo," right in, while we were in prison, he said he owned a condominium.

THOMAS. While you were in prison he told you he owned a condo?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. (Pause) You guys did returns from time to time, right? He had you do returns?

BOWMAN. (Inaudible)

THOMAS. How many returns do you think you did?

BOWMAN. Did, or attempt to do? (Inaudible)

THOMAS. Attempt?

BOWMAN. Several times.

THOMAS. Okay. What would he do, provide you with the merchandise?

BOWMAN. Yeah, he told me to go in and return it and return it for other, different merchandise.

THOMAS. So he wanted you to exchange it for something?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. Did he have receipts that he gave you?

BOWMAN. There were a couple times right, that I had receipts.

THOMAS. Um hmm. Did he say the receipts were legitimate or they were not?

BOWMAN. He said that actually, he said the receipts were actually legitimate.

THOMAS. So you were doing a legitimate return?

BOWMAN. Um hmm (affirmative)

THOMAS. It wasn't a problem.

BOWMAN. Um hmm (affirmative)

THOMAS. So you didn't wonder why he was having you do that return, if it was legitimate, why he couldn't do it himself?

BOWMAN. Um, no, cause a couple times he went off to do something else. Over in another store, a different store.

THOMAS. Okay.

BOWMAN. (Inaudible) went by Office Max or Office Depot, or the one that's up here, right?

THOMAS. Um hmm.

BOWMAN. Was it Office Max up here by Walmart?

THOMAS. Um hmm.

BOWMAN. He would go into Walmart.

THOMAS. Um hmm.

BOWMAN. Or he went to Walmart. Most of em were Office Max. And another reason why is because he was not allowed in ah, he wasn't supposed to be in Office Max.

THOMAS. He got 86'd out of there?

BOWMAN. Well there was something to the fact that ah, not 86'd out of there. He wasn't supposed to be able to go in due to the conditions of his parole.

THOMAS. Um hmm.

BOWMAN. And he (Inaudible) chance to go in and buy the items, right, and ah, (Inaudible) do the return (Inaudible)

THOMAS. Okay. There was some mention about a check, (sighs) Where was it from? Where you had gone in, attempted to return something, they asked for ID and you didn't have it so you gave em a bogus name and they said they would the mail the check?

BOWMAN. Um hmm (affirmative)

THOMAS. What store was that?

BOWMAN. It would be Office Max or Office Depot, one of the two, I forget which store it was. They all, you know, Office Max, Office Depot is both the same to me. So.

THOMAS. Okay. So what exactly happened there?

BOWMAN. Ah, they said they...

THOMAS. Did you do a legitimate return?

BOWMAN. Ah, I had the actual receipt, an actual receipt for the actual item. You know? And they said, No they'd be able to do a check, and I said, "Well whatever." You know? I gave em a bogus name and said, you know, told Ferrill that they just wouldn't deal with us, right. I mean, you know? I wasn't gonna give my real name. So.

THOMAS. Okay. Let's go over that again. What, you went to an office supply store to do a return.

BOWMAN. Right.

THOMAS. You didn't have a receipt.

BOWMAN. Ah, we had a, yes I had a receipt.

THOMAS. But they still wanted I.D.

BOWMAN. They still wanted ID. I didn't have no ID, right. And I didn't feel like giving em my real name.

THOMAS. Did you have ID or you just didn't have it with you?

BOWMAN. I had it with me, I just didn't give it to em.

THOMAS. Just didn't give it to em. And why was that?

BOWMAN. I didn't want to. I didn't want to.

THOMAS. But why? It was a legitimate return, right?

BOWMAN. I didn't want my name in a computer.

THOMAS. Okay. So you gave a bogus name?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay.

BOWMAN. (Inaudible)

THOMAS. What name did you use, do you know?

BOWMAN. Brent Kemp.

THOMAS. Brent Kemp?

BOWMAN. Um hmm (affirmative)

THOMAS. You don't recall whether it was Office Max or Office Depot?

BOWMAN. It was either Office Max or Office Depot.

THOMAS. Which one, where?

BOWMAN. The one up here by ah, Walmart.

THOMAS. Okay, so they agreed to do the exchange, or you were doing a return or an exchange?

BOWMAN. A return.

THOMAS. A return? And they were gonna mail you a check?

BOWMAN. Ah huh (affirmative)

THOMAS. Where were they gonna mail it to?

BOWMAN. A fictitious, I gave em a bogus name, a bogus name and a bogus address.

THOMAS. Okay.

BOWMAN. And the Ferrill said, "Well I can't live with that." So he actually had it mailed to my apartment.

THOMAS. What did you do, go back inside the store and tell em....

BOWMAN. I didn't tell em, no I did not.

THOMAS. Well how did they (Inaudible)

BOWMAN. Ferrill called the main office.

THOMAS. And said what?

BOWMAN. To mail it to this new address, which was my office, my new apartment.

THOMAS. They were able to keep that straight from who came in and tried to do this return and..

BOWMAN. Well he told em, he gave em my actual ah, my bogus name. He called em, right, told em, "This is Mr. Kemp, right, Mr. Brent Kemp."

THOMAS. Um hmm.

BOWMAN. "I've moved. Please mail the check to here."

THOMAS. Okay. And they made the check out to who?

BOWMAN. Me.

THOMAS. Brent Kemp?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay, so the check was in the name of Brent Kemp and Ferrill got the check.

BOWMAN. I signed it as Brent Kemp and gave it to Ferrill. That's the last I seen of it.

THOMAS. And what did he do with it?

BOWMAN. What he did from there I have no clue.

THOMAS. So you signed, you actually signed the check?

BOWMAN. Um hmm (affirmative)

THOMAS. Cause it was made out to you, or to a Brent Kemp.

BOWMAN. Right.

THOMAS. Okay. And was that return legitimate or was it something, was he trying to return something that he bought cheaper than the bar code thing with that?

BOWMAN. I couldn't tell you. I know I had a receipt, right, that had that item on it, the actual price.

THOMAS. Okay.

BOWMAN. The actual receipt.

THOMAS. Okay. Did he ever tell you what to do if you were stopped by anybody?

BOWMAN. No. I (Inaudible)

THOMAS. What did he say to you when you guys were being stopped by us?

BOWMAN. He goes, "Oh my God Brett, we're going down."

THOMAS. Why did he say that?

BOWMAN. Because the vehicle that pulled us over had red and blues and apparently he knew it was ROP.

THOMAS. Did he mention ROP?

BOWMAN. Yeah he did.

THOMAS. What did he say?

BOWMAN. (Inaudible) ROP on several occasions. He thought that ROP was following him on several different occasions, right, and when the Blazer pulled in front, he goes, "Well Brett we're going down, we're going back to prison, cause that's ROP." (Inaudible)I'm going back. You know?

THOMAS. Who else knows about his scheme besides you?

BOWMAN. I couldn't, I don't know, I really don't. Cause honest to God, I don't know.

THOMAS. How about his kid?

BOWMAN. Ah, he might (Inaudible) his oldest boy, he probably knows.

THOMAS. You ever meet him?

BOWMAN. No.

THOMAS. You wouldn't know what he looked like if you saw him?

BOWMAN. I know what his youngest son looks like because he was, his youngest son (Inaudible) Drop him off skating, right? And ah, (Inaudible) deal.

THOMAS. Um hmm.

BOWMAN. Then drop him off, then go pick him back up.

THOMAS. Were you under the influence of drugs or alcohol at the time of your arrest?

BOWMAN. No.

THOMAS. Other than the medication you told me about?

BOWMAN. (Inaudible) No. Just that.

THOMAS. Okay. Anybody try to contact (Inaudible) about this stuff? Anybody making threats to you, anything like that?

BOWMAN. (Inaudible)

THOMAS. And the only contact you've had with him was ah...

BOWMAN. Since the arrest (Inaudible) go to court.

THOMAS. When you guys go to court he's talked to you. Okay. What do you think Volpicelli will tell me about you?

BOWMAN. That I made all the transactions. Basically the same thing. I've made all the, in the beginning, right, he was doing the set-ups, right. Then towards the end there, right, I was doing ninety percent (90%) of the sales, when I was working for him.

THOMAS. And why were you doing it that way?

BOWMAN. Probably because he was afraid of going in. I don't know.

THOMAS. Okay, so that was his idea?

BOWMAN. Yeah, it was his idea. (Inaudible)

THOMAS. What's a good time to come up here and interview you? I was just kind of taking a stab in the dark this time.

BOWMAN. Any time.

THOMAS. Any time?

BOWMAN. I'm not going anywhere. So.

THOMAS. What's that?

BOWMAN. I'm not going anywhere, you might as well..

THOMAS. I know that but I just don't know what the schedule is for the jail around here, is what I'm getting at.

BOWMAN. Any time during the day.

THOMAS. So.

BOWMAN. It don't matter.

THOMAS. What about ah, did you ever give him (Inaudible) Shopko, returning anything at Shopko? Oh I'm sorry. You mentioned in your first interview about a Home Depot, where you did a return. Do you recall that?

BOWMAN. Yeah, I returned a couple shelves for him.

THOMAS. You returned some shelves?

BOWMAN. Um hmm (affirmative)

THOMAS. Anything else?

BOWMAN. I tried to return a garbage disposal.

THOMAS. And what happened?

BOWMAN. Ah, they didn't, it didn't go.

THOMAS. What do you mean it didn't go?

BOWMAN. They said the items had already been returned.

Disposal

THOMAS. They said the item had already been returned?

BOWMAN. Um hmm (affirmative)

THOMAS. Which Home Depot was that?

BOWMAN. I believe it was the one up here.

THOMAS. The one ...

BOWMAN. On this side of town.

THOMAS. Well we're kind of in between the two. There's one on Summit Ridge up there (Inaudible)

BOWMAN. All the way up on the edge of town.

THOMAS. West edge?

BOWMAN. Um hmm. So all the way up on (Inaudible) the bank. You know? I know we were across the street from the Walmart and Office Supply store.

THOMAS. Okay, so Home, Northtowne Lane then.

BOWMAN. I guess that's where, I'm new to this town. I don't know this town very well at all.

THOMAS. Okay.

BOWMAN. You know? So when you start, you know, start talking about an address, I don't know. You know? The only time I got around, right, was when I went with Ferrill. Like for the most part, right, I walked to and from work and that's about as far as I got.

THOMAS. Okay. Did you..

BOWMAN. I've only been in this town since June.

THOMAS. Okay. Did you ever do any purchases at the Home Depot?

BOWMAN. Yeah.

THOMAS. That you knew were fictitious?

BOWMAN. Um hmm (affirmative)

THOMAS. Do you recall what you bought?

BOWMAN. Yeah, mainly shelves?

THOMAS. Mainly shelves?

BOWMAN. Yeah, I bought shelving units, right, and I bought a toilet, I bought some...

THOMAS. What was the brand name of the toilet, do you know?

BOWMAN. Elgin.

THOMAS. Elgin?

BOWMAN. Yeah, it was an Elgin.

THOMAS. Anything else?

BOWMAN. Ah, some Peerless. I believe they was Peerless ah, faucets, or shower heads or whatever they were.

THOMAS. And every time you bought these things it was fictitious?

BOWMAN. Yes.

THOMAS. It was a fictitious bar code? Was it one where he provided the bar code?

BOWMAN. Ah, there was some times where, for the most part right, he'd go in and set it up. There was only, in fact almost all of Home Depot, right, he set it up before I went in.

(Pause)

THOMAS. Do you have access to pen and paper in your cell?

BOWMAN. I have some paper and a pencil.

THOMAS. Two (2) man cells?

BOWMAN. Two (2) man cell.

THOMAS. Who are you staying with?

BOWMAN. Ah, Chris Getchels.

THOMAS. Do you know what he's in for?

BOWMAN. Uttering.

THOMAS. Uttering?

BOWMAN. Uh hmm (affirmative)

THOMAS. Do you ever talk to him about what you did?

BOWMAN. A little bit. As little as possible I talk to him.

THOMAS. What's he say? Hmm?

BOWMAN. As little as possible. I try to talk to him about this case as little as possible.

THOMAS. Did you ever buy a slide projector (Inaudible)

BOWMAN. Yes, I did.

THOMAS. Where did you buy it?

BOWMAN. At one of the office supply stores.

THOMAS. Was it a legitimate purchase or was it fictitious?

BOWMAN. It was fictitious.

THOMAS. How much did you pay for it?

BOWMAN. I really don't remember. It was one of the first things I bought for him.

THOMAS. Do you know how much it was worth, how much it originally sold for?

BOWMAN. No.

THOMAS. Would it be your opinion that everything in the storage unit came from merchandise like this that was probably bought fictitiously or fraudulently?

BOWMAN. Ah, probably a good ninety percent (90%) of it.

THOMAS. What did you say, a good...

BOWMAN. A good ninety percent (90%) probably, a good portion of it.

THOMAS. Okay. So you bought a faucet at ah,

BOWMAN. (Inaudible) ah, a pressure valve or whatever, something like that. You know? Like at one time it might be a shower combination, or it would be the faucet, the head and all that, you know, the guts and everything. I don't remember the exact name of it or the brand name was Delta or Peerless. I think it was Peerless.

THOMAS. Okay. You guys (Inaudible)

BOWMAN. Eight (8:00) o'clock.

THOMAS. Eight (8:00) o'clock?

BOWMAN. (Inaudible) if they're short handed or not. Yeah, I'll (Inaudible) with you as long as you want to go.

THOMAS. Well this is what I'm getting at, what I would like for you to do, if this is possible, you tell me whether it is or whether it isn't. Rather than me sitting here taking stabs in the dark and you know, trying to figure out what you did and when and where, would it be possible for you to take some time tonight, whether it's during your tier time or in your cell later. That's why I asked if you had a cell mate or not, cause I don't know how much privacy you've got. Would it be possible for you to sit down and write down, you know, what store you went to when you made the transaction, what you bought, how much you bought it for, how much it was ... You know what I'm talking about? Just a little bit more detail so I'm not..

BOWMAN. (Inaudible) well I really don't want to put anything on paper in my cell, in case ah, I don't need a snitch jacket put on (Inaudible) this type of quarters.

THOMAS. Okay. That's fair enough.

BOWMAN. If I had, was in a one (1) man cell, where there was no chance of me getting caught doing it, right, then sure. But ah... In answer to your questions the way you want em answered.

THOMAS. I know that. I'm just, what I'm trying to do is help you in stopping to think about what you did and clearing your mind a little bit. You know? Because you're talking fast and some details you can remember and some you can't. So I think what I'd rather do is come back up tomorrow morning after I'd had time to go through what we talked about tonight and maybe ask you some specific details.

BOWMAN. Okay.

THOMAS. That will maybe help jar your memory a bit. Okay? Cause like I say, I don't want you telling me anything that you're not sure of. What you don't know about I want you to embellish or,,, cause if you end up having to testify..

BOWMAN. Ah huh.

THOMAS. You're gonna have to tell the truth.

BOWMAN. Right.

THOMAS. Cause I don't want to be able to go in the court room and say, "I think he told me the truth." And the defense attorney starts picking you apart and saying...

BOWMAN. I'm doing the best I can.

THOMAS. I know you are, and that's why I just don't want you to exaggerate anything or say something that you really aren't sure of. I want you to be sure, or at least fairly sure.

BOWMAN. Okay.

THOMAS. Okay? Everybody knows that memories aren't perfect and you don't remember what you did on what specific day. I have no idea what I was doing on October twenty fourth (24th) either.

BOWMAN. To be honest with you, right, when I quit doing cocaine...

THOMAS. Um hmm.

BOWMAN. ... I had three (3) cocaine induced seizures in one (1) day.

THOMAS. Um hmm.

BOWMAN. Okay? I haven't done "coke" since then.

THOMAS. When was that?

BOWMAN. Ah, November ah, eighth (8th).

THOMAS. Okay.

BOWMAN. Of ninety nine (99) and ah, since the, right, my memory, my short term memory is not

good yet.

THOMAS. Okay. Did Volpicelli ever indicate that he had any sort of a drug or alcohol problem?

BOWMAN. That's the way he's trying to go with his defense now. And ah, that's (Inaudible) told me that.

THOMAS. That's what he told you?

BOWMAN. And I told him, "I'm not gonna go that route. You know? I mean..."

THOMAS. What did he say?

BOWMAN. I told him, "You can go the drug problem route if you want. Right? I have ah, me, myself and I, right, I have an addictive behavior, right?

THOMAS. Um hmm.

BOWMAN. And that ah, and I may not be addicted to cocaine now but it still doesn't give me the right.

THOMAS. Um hmm.

BOWMAN. And ah, I told him, "You go the route you're gonna go, but I'm not gonna back it. I can't back it cause (Inaudible) back it."

THOMAS. Um hmm.

BOWMAN. But as far as I know, honestly, right now, Volpicelli does not have a cocaine problem (Inaudible)

THOMAS. What did he say about his defense and...

BOWMAN. His defense (Inaudible) the drug problem, right.

THOMAS. He's trying to convince everybody he's got a drug problem?

BOWMAN. I think that's what he's probably gonna take.

THOMAS. And is that, did he indicate to you that he does not have a drug problem, he's just trying to use that?

BOWMAN. I know for a fact he doesn't have a drug problem. He's not an addictive behavior like

me. Right?

THOMAS. And what is an addictive behavior?

BOWMAN. (Inaudible) addictive, you know, but he's not into drugs, he doesn't do drugs.

THOMAS. Right. What is he addicted to? If he's saying...

BOWMAN. Doing this. He's addicted to the rush this gives him.

THOMAS. Okay. But he's saying he doesn't have a drug problem?

BOWMAN. (Inaudible)

THOMAS. No, did he say that?

BOWMAN. That's what he's saying now.

THOMAS. He says, "I don't have a drug problem?"

BOWMAN. He's saying now, right, he's gonna go the drug problem route." I go, "You go the drug problem route all you want but it's not gonna hold water. Cause, you know, you've never given a dirty U/A."

THOMAS. Um hmm.

BOWMAN. You've never, you know, there's nothing in your history that shows drug problems.

THOMAS. Um hmm.

BOWMAN. "So you go the route you want. (Inaudible) Brett." I go, "I can't."

THOMAS. He wants you to back him up on it?

BOWMAN. Um hmm (affirmative)

THOMAS. How so?

BOWMAN. Telling (Inaudible) he had a cocaine problem and all this other. I go, "No Poe." Cause he doesn't have, I told him, I go, "I can't go there, I can't do that, because I have no knowledge of you ever doing drugs. And I know for a fact you weren't doing drugs."

THOMAS. Did he say who he wanted you to say this to?

BOWMAN. Yeah, his defense, as part of his defense, for doing what he was doing.

THOMAS. Do you know his last name?

BOWMAN. Yeah ah, Volpicelli.

THOMAS. Do you know how to spell it?

BOWMAN. No.

THOMAS. Okay, it's kind of a long name. It's Volpicelli.

BOWMAN. I call him "Pope."

THOMAS. "Pope?"

BOWMAN. Yeah.

THOMAS. Okay. It's kind of a nickname huh? Did you give that to him or did he give it to him?

BOWMAN. (Inaudible)

THOMAS. Okay. (Sighs) Okay.

(Pause)

THOMAS. Oh yeah, I want to get back to those coupons. When you went in and did the exchange, what were you returning at the time?

BOWMAN. A serger.

THOMAS. A serger? That was at Walmart.

BOWMAN. Yeah.

THOMAS. And you wanted to do an exchange for a serger and got futons.

BOWMAN. I got "a" futon.

THOMAS. You got a futon. And how much did you pay for that futon?

BOWMAN. The futon was around two hundred (200) bucks, so I paid roughly a hundred (100) dollars and something for the futon.

THOMAS. Was there a balance fee or return or what?

BOWMAN. Right. Because the return, right, the return was supposed to have been more than the actual buy.

THOMAS. Okay.

BOWMAN. But the fictitious bar code was still on the machine.

THOMAS. So that was a mistake?

BOWMAN. It was a mistake.

THOMAS. So they weren't gonna obviously return it to the full price of what it was or give you the price that you bought it for to begin with.

BOWMAN. Um hmm.

THOMAS. Which was cheap, right?

BOWMAN. So I ended up paying mainly full price for the futon.

THOMAS. So the futon, as far as you're concerned, was not obtained illegitimately?

BOWMAN. Basically no. I mean that was the intent but it didn't work.

THOMAS. And this was at Walmart?

BOWMAN. Yeah.

THOMAS. Which one?

BOWMAN. The one way out, the new one. (Inaudible) street.

THOMAS. The one you were arrested from?

BOWMAN. Yeah.

THOMAS. The Super Walmart?

BOWMAN. Yeah.

THOMAS. Okay. And you returned a serger?

BOWMAN. Yeah.

THOMAS. That still had the fictitious bar code on it?

BOWMAN. Yeah.

THOMAS. For a hundred dollars ($100.00).

BOWMAN. Yeah.

THOMAS. And the serger was actually worth more than that?

BOWMAN. Yeah.

THOMAS. And you got, you did the exchange for a futon and it was two hundred dollars ($200.00) and you had to pay a hundred dollars ($100.00) difference.

BOWMAN. Ah huh (affirmative)

THOMAS. Okay. You recall the garbage disposal? We talked about the garbage disposal at Home Depot. Do you recall which Home Depot?

BOWMAN. Ah, the one up here, the one up across from the Walmart and office supply store.

THOMAS. Okay.

BOWMAN. And in that return, that was also a fraudulent return. Well like, when I went to return it they said, "The item had been returned." So no, the return didn't work.

THOMAS. So he provided you with a receipt?

BOWMAN. Um hmm (affirmative)

THOMAS. And they said (Inaudible) return, so you couldn't return it.

BOWMAN. Right.

THOMAS. So you attempted to return it but you couldn't?

BOWMAN. Ah huh (affirmative)

THOMAS. So did he ever go in the store with you?

BOWMAN. That time no, he didn't go in the store with me.

(END OF SIDE TWO - TAPE ONE)

(TAPE TWO - SIDE ONE)

BOWMAN. And then I guess later on he finally went back to the store where I got the garbage disposal, right, and returned the garbage disposal.

THOMAS. For a full price?

BOWMAN. For a full price.

(Pause)

THOMAS. You said you were buying shelves?

BOWMAN. Yeah.

THOMAS. At Home Depot also?

BOWMAN. Um hmm (affirmative)

THOMAS. And those were fictitious purchases?

BOWMAN. Yeah.

THOMAS. Did you ever purchase anything that wasn't a fraudulent purchase for him?

BOWMAN. No.

THOMAS. Every purchase...

BOWMAN. The only thing I purchased for him was fraudulent .

THOMAS. Every purchase you did for him was fraudulent ?

BOWMAN. Um hmm (affirmative)

THOMAS. How much was the garbage disposal again?

BOWMAN. Almost two hundred (200) bucks I believe.

THOMAS. And you put down the toilet?

BOWMAN. Um hmm (affirmative)

THOMAS. And bought the toilet?

BOWMAN. Yeah.

THOMAS. For two hundred (200) bucks?

BOWMAN. Um hmm (affirmative)

THOMAS. How much was the toilet worth?

BOWMAN. I think it was three (3). It was pretty close to, it was almost the same thing but he needed a receipt for the garbage disposal.

THOMAS. Okay. And you only did that one (1) time?

BOWMAN. One (1) time.

THOMAS. You remember what month that was by any chance?

BOWMAN. (Inaudible) just the beginning of fall I think, the end of summer.

THOMAS. Okay.

BOWMAN. September.

THOMAS. September?

BOWMAN. Yeah I think it was September. (Inaudible) September, last part of August.

THOMAS. Okay.

BOWMAN. (Inaudible) it's August/September, September/August.

THOMAS. August/September?

BOWMAN. August/September. It would be towards when the last of August, first part of September. I believe.

THOMAS. These shelving units you told me about, it was like wooden shelves or ..

BOWMAN. Plastic shelves.

THOMAS. Plastic shelves?

BOWMAN. Big industrial shelves, (Inaudible) shelves.

THOMAS. What were they for?

BOWMAN. For his storage unit. He said they were for his storage unit, to put the merchandise on the shelf. He needed the shelving for his storage unit.

THOMAS. So the storage shelves in the storage unit were stolen property?

BOWMAN. Yeah.

THOMAS. Or not stolen but fraudulently obtained.

BOWMAN. I mentioned that in the first interview also.

THOMAS. Okay. Alright. Well like I said, I think that's what we're gonna do is just pick this up tomorrow.

BOWMAN. Okay.

THOMAS. And come back up here tomorrow. And even though you can't write it down, maybe you can at least go through in your mind tonight ah, you know, purchases and (Inaudible) But you said you never did a purchase for him that wasn't fraudulent?

BOWMAN. Um hmm (affirmative)

THOMAS. Everything you did was fraudulent. But you did do returns that were valid.

BOWMAN. There were some valid returns, yes.

THOMAS. You did some fraudulent ones and some valid ones?

BOWMAN. Yeah.

THOMAS. Okay. And he would always, if he wanted to buy something, like say the bicycle that you guys bought at Walmart, he would always provide you with the cash to make the purchase?

BOWMAN. Right.

THOMAS. How much cash did he typically carry on him?

BOWMAN. It depends on how much he was able to get ahold of I guess. Ah, sometimes ah, I guess close to a thousand dollars ($1,000.00) (Inaudible)

THOMAS. He had close to a thousand dollars ($1,000.00) with him?

BOWMAN. Um hmm (affirmative)

THOMAS. Did you see that money in his wallet when you guys would go out or..

BOWMAN. No. I never did see it. I never seen it but I'd know, different occasions, right?

THOMAS. Yeah.

BOWMAN. Anywhere from five (5) to a thousand (1,000).

THOMAS. Five hundred (500) to a thousand (1,000).

BOWMAN. Yeah.

THOMAS. Okay. Okay, I'm gonna go call the deputies. You guys eaten yet?

BOWMAN. Yes, I've eaten.

THOMAS. Okay. So you're not missing dinner or anything?

BOWMAN. No. We eat at twelve (12:00), from twelve to twelve thirty (12:30), in the afternoon and between, well between four fifteen (4:15) and five (5:00).

THOMAS. Okay. What time do you guys eat breakfast in the morning?

BOWMAN. About five (5:00) A.M.

THOMAS. At five (5:00)?

BOWMAN. Um hmm. Between four thirty (4:30) and five (5:00).

THOMAS. When's your next meal after that?

BOWMAN. Lunch, twelve (12:00) to twelve thirty (12:30).

THOMAS. So you eat at twelve thirty (12:30)? What time do you guys get...

BOWMAN. Well actually twelve (12:00) to twelve thirty (12:30).

THOMAS. Then you get done, you do what?

BOWMAN. For the lock down.

THOMAS. You lock down? So if I come up here tomorrow at say, one (1:00) o'clock, you're gonna be locked down and I can get you out?

BOWMAN. Right.

THOMAS. Okay, till how long ah, would you be locked down for?

BOWMAN. Ah, if we just, some time we have it from two (2:00) to two thirty (2:30) right, and some time we don't.

THOMAS. Okay. So one (1:00) o'clock would be a good time to come up and get you. So I'm not disturbing a meal or anything like that? Okay? Well let me see about that and let me get on the phone and get these guys to come over and get you. Okay?

(Sound of door opening and closing)

(Lengthy Pause)

(Sound of door opening)

THOMAS. Well they're pretty busy down there so it may be a couple minutes. I don't know exactly how long. We might as well take advantage of the time if we can. I'll go through my stuff and see if there's anything I can think of off hand here. Remember I was talking to you about the check, where you gave the fictitious name at the office supply store? And do you recall what the return was gonna be, how much money?

BOWMAN. I don't.

THOMAS. Don't know?

BOWMAN. I know the check was about a hundred and something bucks.

THOMAS. A hundred and something bucks?

BOWMAN. Yeah, a hundred and something.

THOMAS. Okay.

BOWMAN. A hundred, I think it was a hundred and seventy five (175), I think.

THOMAS. Okay.

BOWMAN. I'm not exactly sure.

THOMAS. Okay. Oh let's see here.

BOWMAN. I'm doing the best I can for you.

THOMAS. I know you are, I know you are. How many felony convictions do you have?

BOWMAN. Probably five (5) now.

THOMAS. Five (5)?

BOWMAN. Utah's dropped two (2) felony holds against (Inaudible) three (3) there, probably (Inaudible)

THOMAS. What are they all for?

BOWMAN. Ah, one (1) is a Criminal Mischief. A guy stole five hundred (500) bucks from me. I couldn't find him but I found his car.

THOMAS. Okay.

BOWMAN. And I trashed his car.

THOMAS. Okay.

BOWMAN. Ah, Forgery and Burglary.

THOMAS. Were those in Utah you said?

BOWMAN. Yeah.

THOMAS. How much prison time did you do there?

BOWMAN. None, I was on probation (Inaudible) probation. And then they said the last two (2) convictions, right, I ah, I guess they dropped em ah, and run em concurrent with the time I was doing here in Nevada.

THOMAS. Okay.

BOWMAN. Well they either convicted me of em or they just dropped em. I don't know. I'm not too sure about it. But anywhere from..... I know I pleaded guilty to ah, burglary and forgery, run concurrent, right, but I told em if they'd let me out (Inaudible) if they let me out. And I told the judge too, you know, I told the judge and the D.A., my lawyer, right, if they (Inaudible) myself then.

THOMAS. Yeah.

BOWMAN. And I was doing heavy amounts of cocaine at the time.

THOMAS. They released you anyway?

BOWMAN. They released me anyway. And those were the two (2) felony warrants, felony holds that Utah had (Inaudible) doing the time for the Uttering.

THOMAS. How much prison time have you done?

BOWMAN. Nineteen (19) months.

THOMAS. Is that just here in Nevada?

BOWMAN. Yeah.

THOMAS. That was your first prison stay?

BOWMAN. Yeah.

THOMAS. Okay.

BOWMAN. (Inaudible)

THOMAS. Yeah. Did you ever see Volpicelli purchase the label maker?

BOWMAN. (Inaudible)

THOMAS. He already had it?

BOWMAN. (Inaudible)

THOMAS. He already had it.

BOWMAN. In fact he had a big (Inaudible) that he purchased, right.

THOMAS. Um hmm.

BOWMAN. And I bought the one we were using.

THOMAS. You bought, he had you buy the one he was using? Was that a fraudulent buy?

BOWMAN. No. It was kind of legal, It was an actual buy.

THOMAS. It was a good, legitimate, okay. Where did you buy it?

BOWMAN. Either Office Max or Office Depot, one of the two. I can never keep those two straight. I mean they're both the same to me actually.

THOMAS. Okay.

BOWMAN. When we were doing five (5) to ten (10) stores, each night we were out, right? They all kind of run together.

THOMAS. Oh I'm sure.

BOWMAN. And to try to separate each one is tough.

THOMAS. Um hmm. Yeah I'm sure.

BOWMAN. But like I said, from what he was telling me right, that you guys basically got, you guys cleaned him out. (Inaudible) storage unit, right. He told me you guys pretty much cleaned him out.

THOMAS. Um hmm.

BOWMAN. Ah, all the (Inaudible) done, right, he said was in that storage unit.

THOMAS. Okay. And you said all those purchases were all fraudulent?

BOWMAN. Ah huh (affirmative)

THOMAS. That you were involved in.

BOWMAN. That I was involved in, right, all the ones I had bought, right, were fraudulent.

THOMAS. Okay.

BOWMAN. There were several times, right, I went with the bar code myself. He'd make the bar

code, right, "See this is the item, right, this is where it's at, and here's the money, go do it."

THOMAS. Okay.

?? (Inaudible)

THOMAS. Alright. So I'll come back and hook up with you tomorrow, about one (1:00) o'clock or so.

BOWMAN. Okay.

THOMAS. Okay?

BOWMAN. Ah huh

THOMAS. Thanks huh.

(Sound of door closing)

(END OF SIDE ONE - TAPE TWO)

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 12-06-01 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

THOMAS. Did you ask him not to?

BOWMAN. It ain't done a damn bit of good .

THOMAS. I don't know if they can. It may be policy. Maybe you can do it out in corridor (Inaudible) C-3.

THOMAS. Is that right?

BOWMAN. Yeah, out of sight and out of mind.

THOMAS. Yeah? Well hopefully this is the last time I got to come see you. I know every time you got to get yanked out people are wondering.

BOWMAN. Yeah.

THOMAS. So it goes without saying. Alright. I'm up here for a couple of reasons. We were talking about.... the last time I spoke to you, (Inaudible) and (Inaudible) there and also about a car video.

BOWMAN. Yeah.

THOMAS. How much did you pay for that?

BOWMAN. It was two forty nine (249).

THOMAS. Did you see that or you just know?

BOWMAN. I remember. (Inaudible)

THOMAS. Okay. You paid two forty nine for it?

BOWMAN. Ah huh (affirmative)

THOMAS. How much was it normally?

BOWMAN. (Inaudible) normally but he told me it would be close to normal price.

THOMAS. Oh really?

BOWMAN. (Inaudible) he had something going on.

THOMAS. Hmm. I wonder why he'd take a chance, if he wasn't getting much of a break.

BOWMAN. I think, what he told me right, was he had an actual receipt for video and bag.

THOMAS. Okay. Because it looks like one was done on October thirteenth (13th) and another one was done on October fourteenth (14th).

BOWMAN. What, he bought two (2) of em?

THOMAS. He's got two (2) receipts for em. I take that back. He bought one (1) on the thirteenth (13th) and he returned it on the fourteenth (14th), so the same price. Does that make any sense?

BOWMAN. The day he returned the video in fact, yeah.

THOMAS. I...

BOWMAN. It's a small box, it's a VCR with (Inaudible) screen?

THOMAS. Um hmm.

BOWMAN. In a bag. And the box is about eighteen (18) inches by (Inaudible)

THOMAS. So you're saying that's what this is, is the car video?

BOWMAN. No.

THOMAS. It's not the car video?

BOWMAN. No, it's not the travel video, no. It's what's called a Travel Video. (Inaudible) Travel View,

THOMAS. Because the car video he's got, that's the only thing he bought, Friday on the thirteenth (13th).

BOWMAN. Um hmm (affirmative)

THOMAS. The car video and that's it.

BOWMAN. Right.

THOMAS. But he said he bought it with something.

BOWMAN. Right. The car video, right, it was a video in a bag is what it is, Okay?

THOMAS. Okay.

BOWMAN. And what he returned, right, was the video in a bag.

THOMAS. For?

BOWMAN. (Inaudible) sold that.

THOMAS. Okay.

BOWMAN. And the video in a bag was bought with a cooler ah, (sighs) UPS symbol, right off of a cooler.

THOMAS. Off of a cooler? Why would he change things like that?

BOWMAN. You got me.

THOMAS. Cause he's got a video cooler here at Target.

BOWMAN. Um hmm (affirmative)

THOMAS. Fifty (50) bucks.

BOWMAN. Right.

THOMAS. That's what the cooler cost?

BOWMAN. Um hmm (affirmative) It's a electric cooler or whatever.

THOMAS. An electric cooler?

BOWMAN. Yeah, it plugs into a cigarette lighter.

THOMAS. Okay, so he... okay, then you're gonna have to fill this in for me, because I'm not following you.

BOWMAN. He bought the video in the bag.

THOMAS. Which is not the travel little TV set that you're talking about.

BOWMAN. Right.

THOMAS. It's not that, right? Okay. He bought this video in a bag, whatever that it.

BOWMAN. Right.

THOMAS. Okay.

BOWMAN. And ah, it was with a cooler.

THOMAS. With the cooler?

BOWMAN. Car cooler, yeah, ah huh. And then later on, right, he sent me in with the actual ah, video bag of UPS symbol, right, for the travel video. And then later on, I guess the following day he went back and returned the video in a bag with the actual receipt.

THOMAS. Hmm. So what was the benefit?

BOWMAN. I guess to get ah, ... I don't know. I don't have a clue. You got me.

THOMAS. Yeah. That's where I'm confused. I don't have a clue either what the benefit was there.

BOWMAN. (Inaudible)

THOMAS. Okay. Okay. The other thing we need to talk about, now I spoke to you yesterday about phone calls, right?

BOWMAN. Um hmm (affirmative)

THOMAS. And ah, briefly explained to you that, you know, it's no secret we're monitoring his phone calls.

BOWMAN. Right.

THOMAS. Or not, you know, not all the time, but from time to time we've been checking on em.

BOWMAN. Um hmm (affirmative)

THOMAS. And I'm sure he knows that. He's no dummy. You know, I'm just thinking defense attorney here. He's gonna ask us if we've monitored your phone calls. Well I want to be able to say yes, okay? So I got your phone calls yesterday and you've got one (1) with your sister.

BOWMAN. (Inaudible)

THOMAS. Huh?

BOWMAN. That's the only one I've made (Inaudible)

THOMAS. Yeah. Was it Michelle or Lisa?

BOWMAN. It was Lisa.

THOMAS. Lisa, is the one you spoke to? Anyway, it was shortly after you got arrested. Okay? You indicated that, you know, you had some property in your apartment that you needed her to come down and try to pick up and get rid of and sell or hock or whatever and pay for expenses and give you the rest, right?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay?

BOWMAN. We (Inaudible) I'm gonna end up losing it anyway.

THOMAS. You ended up losing it anyway?

BOWMAN. Yeah. From what I understand the apartment put a lien against the place (Inaudible)

lease.

THOMAS. Okay. Well I spoke to the apartment manager yesterday and she said nothing's been done.

BOWMAN. Nothing's been done?

THOMAS. Nothing's been done. She said, "As a matter of fact the eviction notice was supposed to come out this morning." Okay? And she said she, by law, has to keep your stuff for 45 days from today.

BOWMAN. Okay.

THOMAS. Okay? So that's apparently what's happened. So she said nobody's been to your apartment to collect anything.

BOWMAN. Okay.

THOMAS. Okay? So your stuff should all still be there.

BOWMAN. Alright.

THOMAS. In your phone call you described a home theater system that was fairly new. Was that one of the home theater systems that you guys went out and bought?

BOWMAN. No, it's my TV, my ah, surround sound and VCR, or not VCR, ah, VCR and ah, CD (Inaudible)

THOMAS. So this is stuff that you bought on your own some time in the past? It wasn't from Volpicelli?

BOWMAN. No.

THOMAS. Are you sure?

BOWMAN. Yeah.

THOMAS. Okay. Because you seem to be very particular about that.

BOWMAN. Well that's the only thing I had in my life, that's the only thing I owned.

THOMAS. Okay. You said it was all brand new is all.

BOWMAN. It was brand new, yeah. I bought it over a period of time.

THOMAS. Okay.

BOWMAN. While I was at the Ridge House.

THOMAS. Where did you buy it?

BOWMAN. I got it at Shopko and ah, I got the CD player at ah, Walmart.

THOMAS. Okay, you have the boxes and everything for em.?

BOWMAN. No, I threw em all out.

THOMAS. Okay.

BOWMAN. Ah, all it is, is it's a little studio apartment is what it is.

THOMAS. Um hmm.

BOWMAN. And I don't have a whole lot of room there. I don't have any storage to keep boxes. So.

THOMAS. Okay.

BOWMAN. (Inaudible) my bed and my clothes.

THOMAS. Um hmm.

BOWMAN. You know, it's everything I own in my life.

THOMAS. Okay. Well you also indicated in your phone call that ah, you know, you didn't want to talk about anything on the phone, that you'd explain everything in a letter.

BOWMAN. Yeah.

THOMAS. Okay?

BOWMAN. I just (Inaudible) The reason I didn't want to explain everything over the phone was because of what was going on.

THOMAS. Okay.

BOWMAN. And I figured right, the phone calls were monitored. They do in Salt Lake anymore. Right?

THOMAS. Um hmm.

BOWMAN. I didn't want her phone call...

THOMAS. Well they have the capability there. It doesn't mean that they monitor them all the time, it just means they can.

BOWMAN. And ah, being in prison, being in this kind of prison, they monitor em all the time.

THOMAS. Do they?

BOWMAN. Um hmm (affirmative) So I didn't want to, you know, to self incriminate myself over the phone.

THOMAS. Yeah.

BOWMAN. Cause nobody, no deals had been struck.

THOMAS. Um hmm.

BOWMAN. And I just didn't want, I just didn't feel comfortable about it, talking about what's happening over the phone. (Inaudible) written (Inaudible)

THOMAS. Okay. Alright. Ah... what's the letter say?

BOWMAN. That I got caught changing price tags and now I'm looking at a two (2) to ten (10). And they're asking me to cooperate and if I don't I'm probably looking at a "bitch."

THOMAS. Okay. I got your last PSI this morning, your Pre Sentence Investigation.

BOWMAN. Um hmm.

THOMAS. When you were sentenced last time.

BOWMAN. Um hmm.

THOMAS. It's showing that you had two (2) felony convictions going into ah.... into that sentencing.

BOWMAN. Right.

THOMAS. So.

BOWMAN. With two (2) felony holds, right?

THOMAS. Two (2) warrants, yeah.

BOWMAN. Two (2) warrants, yeah.

THOMAS. Apparently you failed to appear for an interview, for doing a PSI in Utah.

BOWMAN. Right.

THOMAS. So, although I would imagine those are extraditable warrants.

BOWMAN. Ah, not any more. They were dropped.

THOMAS. They were dropped?

BOWMAN. While I was in custody for em, yeah.

THOMAS. Okay. So you don't have to worry about having to go to Utah?

BOWMAN. No. I wouldn't of gotten out if they hadn't dropped em. You know?

THOMAS. Yeah, that's true. Okay. Well this is what I want to do. Ah.... because of what you described on the phone and because of what you guys were involved in.

BOWMAN. Ah huh.

THOMAS. I would like to go to your apartment and look at that home theater stuff. I'm not gonna turn your apartment upside down. Okay? I'm not interested in anything else. I'm interested in the stuff that you described on the phone to your sister, the home theater system and the way you explain it, which sounds very similar to what you guys were out buying. Okay?

BOWMAN. Oh that was what we were out buying, yeah.

THOMAS. Okay. Well I want to go look at it. And if I think it's something that you guys bought together I'm gonna take it. Okay? And it's gonna be held in Evidence and we can deal with it later, once this is all over. Okay?

BOWMAN. Yeah.

THOMAS. Do you have receipts for em?

BOWMAN. No, I don't.

THOMAS. No? Okay. Now you understand why I'm doing this?

BOWMAN. Yeah.

THOMAS. I have an obligation. Okay? It's not that, you know, if you tell me that stuff is stolen, that you and Volpicelli went out and did that stuff, we have a deal in place. I can't charge you with anything else. Okay? The district attorney has told me, "He's cooperating. Don't charge, don't file any more cases on him. If he tells you that he did this and he did that, we can't charge him at this point." Okay? The only way we can start charging you again if you suddenly get uncooperative and the district attorney says, "You know what? He's being an asshole again and all bets are off." Okay? So that's kind of where we're at. So I'm telling you, if I find anything in your apartment that's stolen or that I think you bought with Volpicelli, I can't charge you with it.

BOWMAN. (Inaudible) Volpicelli (Inaudible) my transportation.

THOMAS. Okay.

BOWMAN. Volpicelli gave me a gift card. I might as well come clean with it. Volpicelli gave me a gift card.

THOMAS. Okay. For where?

BOWMAN. Shopko.

THOMAS. Okay.

BOWMAN. And also one for ah, Walmart.

THOMAS. Are these gift cards in his name or how do they work?

BOWMAN. I don't know if they were in his name or not. I don't know whose name they were in.

THOMAS. Okay.

BOWMAN. Alright? But ah, one ah, Shopko ah, right, it was a TV, VCR (Inaudible)

THOMAS. Well what I'm saying is, he gave you a gift card to use.

BOWMAN. Um hmm (affirmative)

THOMAS. So you went and used this gift card to buy these things.

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. Did you pay the current price for em?

BOWMAN. Yes I did.

THOMAS. Using the gift card.

BOWMAN. Yes I did.

THOMAS. Okay. So what you're assuming is, you're kind of getting ahead of me here, is you think that maybe the money on the gift card was fraudulent?

BOWMAN. (Inaudible)

THOMAS. Well I can't prove that one way or the other at this point, so all I want to know is that when you went and bought those items, whether you used a gift card or cash or a credit card or whatever, that you paid the current price for em.

BOWMAN. Right. When I used the money, the gift card, I paid with credit card. I (Inaudible) keeping it.

THOMAS. Right.

BOWMAN. I didn't want to take a chance of losing it really.

THOMAS. Well yeah.

BOWMAN. If the gift card was obtained fraudulently (Inaudible) it was probably due to (Inaudible) items that he bought on a discount item, returned ah... (Inaudible) at full price.

THOMAS. Sure but if you have no knowledge of that and I can't prove that, that's really irrelevant at this point. What I'm saying is that I just want to know that whether he used the gift card or not, or cash or whatever, that when you bought those items you paid full price for em.

BOWMAN. Yes I did.

THOMAS. You didn't go in there, use a gift card and buy a home theater system that was two hundred dollars ($200.00) less than it should have been. You didn't do that. Is that what you're telling me?

BOWMAN. Yes sir.

THOMAS. Okay. Alright. Well nevertheless, I'd still like to go to your apartment and take a look at the stuff and make sure it's okay. Ah.. so ah, I was gonna go down, I told the manager that I'd probably come down there today. I'd come talk to you first and get your permission.

BOWMAN. Ah, if you want, you want to the key, take the key back to the apartment?

THOMAS. She can get in.

BOWMAN. It's their property. You know? The key belongs to them now.

THOMAS. Where is the key?

BOWMAN. It's in my property.

THOMAS. Oh it's, don't worry about that. They're gonna be, I'm not gonna worry about digging your key out of the property section, cause she can get into your apartment. And if they re-rent it they're probably gonna change the keys anyway. So.

BOWMAN. (Inaudible) expensive key.

THOMAS. Yeah. Those things are easily changed. I wouldn't worry about that. She can get it. So I just want to know if I have permission from you to go down and check that stuff out. And like I say, I'm not gonna be in there tearing your beds and pulling your drawers out and that kind of stuff.

BOWMAN. (Inaudible) I had somebody check on it, right? And ah, (Inaudible) a lot of bullshit. Okay?

THOMAS. Okay. What were you gonna say? What do you mean you had somebody check on it?

BOWMAN. Ah, I asked my "cellie," right, to have his ah, wife, right, check on my property. I'd like to at least save my clothes. You know?

THOMAS. Um hmm.

BOWMAN. And so he said, "Well she can go get em, right? And I'll just have em put your clothes

in a locker till you get out."

THOMAS. Okay.

BOWMAN. And ah, she came back later saying that ah, there was a lien against my stuff. (Inaudible) bullshit. Yeah.

THOMAS. Okay. Well I'll tell you what, I'm gonna go speak to, you know who Luanne is.

BOWMAN. No.

THOMAS. Okay. Well Luanne, on the phone yesterday, told me she's the manager of this place.

BOWMAN. Okay.

THOMAS. So if there's a message you want me to give Luanne, or find out from her, what would that be? And what I'll do is I'll, we'll just write something out right here on a piece of paper that says, you know, "To Luanne...."

BOWMAN. (Inaudible) I'll try and find somebody to come get my stuff.

THOMAS. Okay.

BOWMAN. I mean I'll try and get some way to get my stuff out of there.

THOMAS. Okay. Well why don't I have you write it on a piece of paper, you know, if you think you can sit up here and write a note. You can either stand up or do whatever you got to do. You write ah, you know, to Luanne, as best you can. I know it's tough. And write the name of the person you would like to have come pick up your property.

BOWMAN. I'm not exactly sure who it'll be. If I can get my "cellie's" ah, wife to come do it. You know? Then that would be great. But if not I don't know who it will be.

THOMAS. You know who your cell-mates wife's is?

BOWMAN. Her name is ah, Paula, but like I said, she may not do it. I may end up losing it all.

THOMAS. Okay. Well if I have to touch bases with you again I will. Okay?

(Lengthy Pause)

BOWMAN. (Inaudible) Here?

THOMAS. Yeah.

BOWMAN. Okay.

THOMAS. If possible.

BOWMAN. Alright. Well I'll give that to her and see what she does. I'm expecting a couple of very important pieces of mail.

THOMAS. Okay.

BOWMAN. One's my birth certificate for my ah, (Inaudible) my birth certificate to me and ah... A couple of letters from my family.

THOMAS. Okay. What this is a permission to search. It basically means you're giving me permission to go search your residence.

BOWMAN. Okay.

THOMAS. What's your address down there?

BOWMAN. Six ninety five (695) West Third Street in (Inaudible) .

THOMAS. Number three three two (332)?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. What this basically says is, "The undersigned, residing at 695 West 3rd Street, #332, Reno, Nevada, does hereby voluntarily authorize Detective Reed Thomas," which is me, "and other officers, he or she may designate to assist me to search your residence or other real property, located at 695 West 3rd, number 332."

BOWMAN. (Inaudible)

THOMAS. Okay.

BOWMAN. That's what's all basically there?

THOMAS. Okay. Anything illegal in the apartment right now? Any illegal weapons or anything, or narcotics or..

BOWMAN. No.

THOMAS. Nothing illegal? Okay. It says, "I further authorize said officers to remove from my presence.. Or from my residence, real estate and/or motor vehicle. Whatever documents or items of property whatsoever, which they deem pertinent to their investigation, with the understanding that said officers will give me a receipt for whatever is removed. I am giving this written permission to these officers freely and voluntarily, without any threats or promises having been made, and after having been informed by said officer that I have a right to refuse this search or seizure." Do you understand that?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. So you can sign it right there at the "X" You can stand up and do that one more time.

BOWMAN. Okay.

THOMAS. The last thing I need to talk about... is that right there. (Inaudible)

BOWMAN. Huh? Yeah, I thought it was (Inaudible)

THOMAS. Huh? What's that?

BOWMAN. Yeah, I thought it was (Inaudible)

THOMAS. You recognize this box though?

BOWMAN. Oh yeah.

THOMAS. What did he do with this box?

BOWMAN. (Inaudible) Went into Home Depot.

THOMAS. Which Home Depot, do you know?

BOWMAN. It was the one up here, up on (Inaudible) here.

THOMAS. The one across from Walmart you were talking about?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay, it was back one of the last times I was in the Home Depot.

BOWMAN. Okay. That's why it's still pretty fresh in my memory.

THOMAS. Okay. So you went in there and did what?

BOWMAN. I put a false bar code onto it.

THOMAS. Okay.

BOWMAN. I don't exactly remember the exact price. I think it was about thirty (30) bucks.

THOMAS. Okay.

BOWMAN. (Inaudible)

THOMAS. Okay.

BOWMAN. I paid for it and walked out.

THOMAS. Okay. Do you remember approximately when that may have been? I know it's tough to remember dates and times and things like that but you said it was one of the last things that you did, so.

BOWMAN. Yeah, at Home Depot. One of the last times (Inaudible)

THOMAS. Oh okay, okay.

BOWMAN. It was probably about, somewhere around... the last part, to the first part of August ah, the last part of September, the first part of October.

THOMAS. Okay. The last part of September, the first part of October. So you just basically bought this?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay. And you paid about thirty (30) bucks for it?

BOWMAN. I believe. Somewhere around thirty (30) bucks.

(Pause)

THOMAS. How much was the full price, do you know?

BOWMAN. A couple hundred I believe.

THOMAS. Okay. Did you ever return it?

BOWMAN. No, I did not.

THOMAS. Okay. And the reason I ask you is the only receipt that I can find for this thing, is basically where it's being returned for seventy (70), approximately seventy dollars ($70.00), fifty nine dollars ($59.00), and whoever signed the return receipt, signed it Vance Simms.

BOWMAN. (Inaudible)

THOMAS. Okay. So did you ever sign fictitious names on return receipts, other than the time you (Inaudible) office supply stores?

BOWMAN. Whatever returns I did, right, was ah, either done with my real name, right, or ah, Brent Kemp.

THOMAS. Okay. Because there was one time you said you panicked and you didn't want to give em your name.

BOWMAN. Right, I used Brent Kemp.

THOMAS. You used Brent Kemp?

BOWMAN. Um hmm (affirmative).

BOWMAN. Okay. Do you know if Mr. Volpicelli has ever used Vance Simms?

BOWMAN. No I don't.

THOMAS. Okay. But you do recall buying something like this?

BOWMAN. Yes. (Inaudible)

THOMAS. Does that look familiar to you there?

BOWMAN. Yeah, that's (Inaudible) the bar code.

THOMAS. That you put on there?

BOWMAN. Um hmm (affirmative)

THOMAS. Was it the kind that Mr. Volpicelli was always manufacturing?

BOWMAN. Yes it is.

BOWMAN. (Inaudible)

THOMAS. Okay. Okay. Alrighty. Well, I guess that's it for now. I hope I won't have to come up and talk to you again. Ah, it's all really contingent on how far he wants to take this. Ah, I'll tell you right now that if he wants, he's got another preliminary hearing coming up next week. Ah, I don't know if you do as well. I think they'll probably drag you down there as well and I'll try and make sure that they don't bring you guys in the same vehicle and keep you separated. But the district attorney's opinion is right now that if he wants to play hard ball and he wants to take this to a jury, then every time he gets bound over on one of these cases, and I've got about six (6) or seven (7) of em right now, with about twenty (20) felonies facing him, she's gonna be asking for the twenty five (25) to life "bitch" every time. So. That's what he's looking at. So we'll see how much he really wants to play, if he wants to risk that, as opposed to what we're offering him. So, like I say, me talking to you is really contingent upon him at this point. If he wants to keep playing tough guy and being an asshole, then I'll keep charging him. But I may have to keep coming back and talking to you and ah, piecing together some more things.

BOWMAN. (Inaudible)

THOMAS. Okay?

BOWMAN. (Inaudible)

THOMAS. I understand. And you know what's ah, and like I say, it's all really contingent on him. I mean he's the one that's (Inaudible) gonna make this thing go away or he's the one that can drag it out. So. Alright?

BOWMAN. Right.

THOMAS. Okay.

BOWMAN. (Inaudible) talking about those coffee pots?

THOMAS. The coffee pots? Yeah.

BOWMAN. You'll (Inaudible) Volpicelli. Like I told you, I told you the other day (Inaudible)

THOMAS. Okay. Was that one bought legitimately or was it (Inaudible)

BOWMAN. No. You got the receipt for it.

THOMAS. Do I?

BOWMAN. Yeah.

THOMAS. Where's it from?

BOWMAN. Bed and Bath.

THOMAS. Bed, Bath and Beyond huh? Hmm. I'll go back to my miscellaneous receipts, cause I just saw some back there from Bed, Bath and Beyond. How about Custom Office Supply, this Brother Copier, Scanner P.C., Fax Message Center? Do you recall that one?

BOWMAN. Is it multi purpose?

THOMAS. Yeah, multi function copier, scanner P.C fax.

BOWMAN. That was bought legitimately. That was bought while...

THOMAS. That's right. I think you told me that.

BOWMAN. That was bought when we were going to ah, Tahoe.

THOMAS. Okay. How about K-Mart, the thing from Wild Cat vacuum?

BOWMAN. That was bought (Inaudible), was bought fictitiously.

THOMAS. Fictitiously? Do you recall which K-Mart?

BOWMAN. No, I don't remember which K-Mart.

THOMAS. Alright. Do you recall how much you paid for it?

BOWMAN. A hundred (100) bucks.

THOMAS. A hundred (100) bucks?.

BOWMAN. A hundred (100) bucks.

THOMAS. How much was it worth?

BOWMAN. About two sixty nine (269).

THOMAS. And you did that?

BOWMAN. (Inaudible) possibly I did.

THOMAS. But you're not sure?

BOWMAN. No.

THOMAS. And you guys were together when you bought that?

BOWMAN. Yeah.

THOMAS. Okay, so did you ever do this on your own?

BOWMAN. No.

THOMAS. Okay.

BOWMAN. I never did it on my own.

THOMAS. He never supplied you any bar codes or told you how to make these things, so that you went out and did em on your own?

BOWMAN. No.

THOMAS. So if you ever did these things he was probably with you.

BOWMAN. Always with me.

THOMAS. He was always with you. Okay.

BOWMAN. I didn't have any transportation.

THOMAS. Okay.

BOWMAN. And ah, like I say, I would buy em for him.

THOMAS. Right. So you paid a hundred (100) bucks for the vacuum and it was two sixty nine (269).

BOWMAN. Ah huh (affirmative) But it was roughly, I believe two sixty nine (269) or ah, at least two sixty nine (269).

THOMAS. Okay. Cause here's one from Easy Steamer that's ninety nine, ninety nine (99.99) at K-Mart. Then you got (Inaudible) Here's another one for Easy Steamer, ninety nine,

ninety nine (99.99).

BOWMAN. Um hmm (affirmative)

THOMAS. No other purchase. So that could have been that vacuum, huh?

BOWMAN. Um hmm (affirmative)

THOMAS. Do you think it was or (Inaudible)

BOWMAN. It, no I don't. It's...

THOMAS. You don't think it was?

BOWMAN. That's what I'm saying, I don't think, it couldn't have been. I mean it could have been or it may have been.

THOMAS. Okay.

BOWMAN. Like I say, I just know it came up as one oh seven (107) with tax, every time I bought a vacuum.

THOMAS. Yeah? That's exactly right, one oh seven twenty four (107.24). So you're saying, when it came up one oh seven twenty four (107.24), that was a vacuum that you bought?

BOWMAN. Not necessarily a vacuum, it could have the vacuum, right.

THOMAS. Ah huh.

BOWMAN. Or the vacuum I was buying for him or it could have been a steamer I was buying for him. It was always, it would always come up a hundred (100) and some dollars.

THOMAS. Okay. But they were more expensive than that.

BOWMAN. Oh yeah.

THOMAS. Okay. Because he's got three (3) receipts here for these Easy Steamers at ninety nine (99) bucks a pop. So he done em at least three (3) times.

BOWMAN. That could have been for the steamers I bought. You know? But then he's also had, you know, for the vacuums too. I'm not really sure.

THOMAS. Okay.

BOWMAN. I'm sorry.

THOMAS. You know we, all we've focused on so far is ah, his cash transactions. Okay? I know he was doing this without you because he's got...

BOWMAN. Oh yeah.

THOMAS. ...he's got credit card statements and all kinds of, we haven't even begun to look at the credit card stuff. So if he really wants to play, we'll start looking at his credit card activity and all of those corporations will be initiating their own investigations and this could go on forever, as far as he's concerned. Ah... Okay. What was I looking for?

BOWMAN. Bed and Bath.

THOMAS. For Bed, Bath and Beyond. And what did you say you bought there?

BOWMAN. I bought two (2) coffee pots, two coffee makers.

THOMAS. Oh that's right, the coffee makers. Bed, Bath and Beyond. How much did you pay for the coffee pot?

BOWMAN. I think about thirty (30) bucks.

THOMAS. How much for the (Inaudible)

BOWMAN. Hundred (100), ninety nine dollars ($99.00).

THOMAS. "Coffee maker. Pro Café Coffee maker. Fifty nine ninety eight (59.98)

BOWMAN. For the two (2) of em?

THOMAS. No, only one (1) on that one. Let's see if we have any more. I don't think we have any more Bed, Bath and Beyond receipts. No, nothing but the coffee maker (Inaudible) Okay. Ah, so as far as this faucet thing goes ah, he provided you with a receipt, or the UPC code, right? Out in his car?

BOWMAN. (Inaudible) in the car, out in the parking lot, yeah.

THOMAS. So this time, instead of going inside and sticking it in the box himself, he did it, or I mean he gave it to you and would have you do it. Is that right?

BOWMAN. (Inaudible)

THOMAS. Okay. So you went in and made the buy?

BOWMAN. Correct.

THOMAS. Came back out. He provided the cash for these as well?

BOWMAN. Yeah.

THOMAS. Do you recall how much he gave you to go in with?

BOWMAN. Um, no, I don't.

THOMAS. And how much did you say you paid for it?

BOWMAN. About thirty (30) bucks.

THOMAS. Thirty (30) bucks?

BOWMAN. Twenty nine ninety nine (29.99).

THOMAS. Thirty nine ninety nine (39.99)?

BOWMAN. Twenty nine ninety nine (29.99) (Inaudible) ninety nine (99).

THOMAS. Okay.

BOWMAN. Scan that bar code and it will tell you directly what it's marked. .

THOMAS. Okay.

BOWMAN. And you peel the bar code, right, and it will give you the actual price.

THOMAS. Well we've already done that. You can see both bar codes if you look at this. You can see the top one and you can see through the label and see the bottom one. No doubt. Okay. Let me ah.. go call the guys to come back and get you and we'll get you out of here.

BOWMAN. Okay.

(Sound of door closing)

(Lengthy Pause)

(END OF INTERVIEW)

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 01-03-02 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

BOWMAN. Cause he has court date on Monday.

THOMAS. On one of his prelims. Do you have any, are you scheduled to go there at all?

BOWMAN. (Inaudible)

THOMAS. Okay. I don't think you are. I know there's been a problem with transporting you guys again.

BOWMAN. Like when I have (Inaudible) or (Inaudible)

THOMAS. Do they?

BOWMAN. My court last time we were both transferred together.

THOMAS. Ah huh.

BOWMAN. And when we were sitting down there, right ah, (Inaudible)

THOMAS. Okay.

BOWMAN. (Inaudible) I told him I'm gonna testify.

THOMAS. Well the D.A. was not a happy camper when she kept finding out that you guys were getting transported together.

BOWMAN. (Inaudible) last time we both got transferred together.

THOMAS. Yeah.

BOWMAN. (Inaudible)

THOMAS. Well that was horse shit and we made phone call after phone call, after phone call and for some reason it kept slipping through the cracks and it just happened and I'm just glad that you're not rooming with a guy that's violent or (Inaudible) dealing with Volpicelli.

BOWMAN. I about told Volpicelli right, when we were both in (Inaudible) right?

THOMAS. Ah huh.

BOWMAN. (Inaudible) ah, when he starts (Inaudible) twenty five (25) years or better, right?

THOMAS. Um hmm.

BOWMAN. I'm not taking a chance, I'm taking a deal.

THOMAS. Right.

BOWMAN. But if it comes out testifying, I about told him, "Poe I'm gonna testify."

THOMAS. Right. Right. Okay. Well this is what I wanted to ask you. I spoke to him last night.

BOWMAN. Okay.

THOMAS. He put in a request to ask to talk to me.

BOWMAN. Right. I was aware of that.

THOMAS. Yeah. How were you aware of that?

BOWMAN. Well I went, (Inaudible) wanted talk to you. He goes ah, "If they cut me a deal of two (2) burglaries, right, and run the lewd concurrently with that ah..."

THOMAS. Right.

BOWMAN. ".....we'll talk to guys (Inaudible) and see how everything goes."

THOMAS. Yeah.

BOWMAN. And I said, (Inaudible)

THOMAS. Yeah. Well he's ah...

BOWMAN. (Inaudible) holding you anymore.

THOMAS. He's dreaming unfortunately and I don't have good news for him today because we sat and talked last night for probably three (3) hours and he's just, you know, he's desperate. He's pleading to get the same deal that you got. He doesn't seem to understand that he's in a completely different boat ah, than you. You don't have the criminal history that he has. You weren't the mastermind behind this whole thing, he was and this was his gig. You know? And you were just kind of a pawn. (Inaudible) So he's not getting it. But I wanted to ask you some things that he told me that I just, I'm just trying to find out whether I think he's telling me the truth or not. He makes it sound like you guys are good buddies and he doesn't want to see you get in trouble, he doesn't want to see you have to testify against him. He's just making it sound like, you know, "I just care about Bowman and I don't want to see anything bad happen to him That's why I'm looking for a deal." And quite frankly I think he's full of shit. I think he's out for himself all the way."

BOWMAN. (Inaudible) too.

THOMAS. Yeah. He's number one. He's also claiming now that he has a serious drug problem that he's (Inaudible) addiction and he's now looking into giving into, you know, half way houses and treatment programs and that type of thing and he told me last night, he said, "Man me and Bowman got into hooking and the cocaine heavy. You know? We got involved in that stuff and it was tempting and, you know, we were doing the coke." And I know you told me he had a drug problem in the past but he denied ever doing any drugs with Volpicelli.

BOWMAN. (Inaudible) right. I've been clean for over two (2) years now.

THOMAS. Okay.

BOWMAN. Drugs stopped working for me years ago.

THOMAS. Okay.

BOWMAN. I mean you know, I had three (3) cocaine induced seizures back in ninety nine (99).

THOMAS. Okay.

BOWMAN. I had a (Inaudible)

THOMAS. Okay.

BOWMAN. I haven't touched it at all since.

THOMAS. Okay.

BOWMAN. I don't even drink since then. So.

THOMAS. Okay.

BOWMAN. If Volpicelli's got a drug problem it's news to me. Okay? You know? Alright. If he does, he does, if he don't, he don't. I don't know. I can't say neither way.

THOMAS. Well I'm just saying, well I don't believe that he does.

BOWMAN. I'm not gonna let him (Inaudible) into something. You know? He approached me about that, right, and I told him, "Pope, you know, that's fine. Right? I had a drug problem in the past, right? I've got a history of..."

THOMAS. What do you mean he approached you about it?

BOWMAN. That he was gonna go to the ah...

THOMAS. Oh, try to get the drug rehab thing?

BOWMAN. Right. "Pope just, you're blowing smoke. You don't have to ask me."

THOMAS. Right. He doesn't. I don't believe it for a second. The only thing is I've spoken with his ex-wife and I said, "Did you guys ever do cocaine?" And she said, "Back in the early eighties (80's), we did it recreationally for a couple of years, probably eighty one (81), eighty two (82)." She said that was the last time. So. And that's why I'm saying that Volpicelli is now saying, "I've got this drug problem, I've had it for a long time and I got involved with Bowman and he's had a cocaine problem and we were doing drugs." And that's, you know, he's not trying to implicate you, he's just trying to ah, you know, justify and support his claim that he has a drug problem, because he knows that you had a drug problem and he knows, or he at least thinks that we would believe him when he says that, "Bowman was doing cocaine with me, and you know, we were doing drugs together." So. And I'm just here to find out whether it's true or not.

BOWMAN. My first (Inaudible) out I was at the Ridge House.

THOMAS. Um hmm.

BOWMAN. I was being tested for as many as three (3) times a week.

THOMAS. Yeah.

BOWMAN. And I wasn't gonna go, you know?

THOMAS. Yeah.

BOWMAN. But I told him, "If you want to go ahead and go for it man, go for it but just leave me out."

THOMAS. Yeah.

BOWMAN. You know? I mean, "That's your gig. You know what I mean?"

THOMAS. Yeah.

BOWMAN. That's where (Inaudible) gonna go that way. It can work for you or not. You know? So be it."

THOMAS. Right.

BOWMAN. You know? You're nothing but a throw away." That's what I told him, word for word.

THOMAS. Okay.

BOWMAN. But I'm not gonna, you know, I can't substantiate something that I don't have no knowledge of.

THOMAS. Um hmm.

BOWMAN. I was (Inaudible)

THOMAS. Right.

BOWMAN. I'm not (Inaudible) about that. You know?

THOMAS. Right. Okay.

BOWMAN. You know, I don't like a liar. You know? (Inaudible) right, my memory is shot.

THOMAS. Um hmm.

BOWMAN. Especially my short term memory.

THOMAS. Um hmm.

BOWMAN. You know? And I'm just now getting some long term back. You know?

THOMAS. Yeah. Well you were pretty good with remembering, you know, where you bought some of that stuff and I was impressed with you. You know?

BOWMAN. Who knows, with a memory that comes and goes.

THOMAS. Yeah.

BOWMAN. So.

THOMAS. Well I was just curious that, you know, what you thought of the fact that, you know, like I say, he's claiming a drug problem and also, that you know, he's trying to be your buddy. "I don't want to see Bowman hurt, I care about him." You know? Playing like I'm just doing this for him type of thing. It's like, you know what, "You're not doing this for anybody but yourself."

BOWMAN. That's what I told him too last time. I said, "Poe," I told him.. (Inaudible) right in front of the officer, I told you (Inaudible) You know?

THOMAS. Um hmm.

BOWMAN. Twist it to no end.

THOMAS. Yeah. He has, by dragging this thing out he has. You know?

BOWMAN. I mean I'm tired of being in this shit hole.

THOMAS. Right.

BOWMAN. I just want to get to prison and get my P.V. done with (Inaudible) jail and get on with my life.

THOMAS. Yeah.

BOWMAN. And (sighs) (Inaudible) bad memory man.

THOMAS. Yeah. Yeah. Okay.

BOWMAN. I mean I threw away a career, a (Inaudible) career. You know?

THOMAS. Yeah.

BOWMAN. I mean I was moving up the ladder.

THOMAS. Yeah.

BOWMAN. Hindsight was 20/20. You know?

THOMAS. Yeah. Yeah. Ah, do you have any questions (Inaudible) Anything for me (Inaudible)

BOWMAN. And you know, any idea (Inaudible) moved for? Any idea at all? You know what, at this point I'm so tired of seeing the postponements.

THOMAS. At this point it's contingent upon him. It really is. And I'm hoping that when I talk to him here in a few minutes I'm gonna be talking to him next. Because basically the way our meeting ended last night was he wanted me to take this deal to the D.A. that, the deal that he wants and I told him straight up, the D.A.'s not gonna take it." "Maybe she won't but would you please just take it to her anyway?" I said, "I'll think about it." So, I've spoken to the D.A. and there's no way that she is gonna give him the deal that he's asking for.

BOWMAN. What is he asking for? He told me ah, "Two (2) "birds" and ah, run the lewd to (Inaudible) "

THOMAS. He wants to whittle this down to one (1) "bird" basically. He's willing to plead to three (3) "birds" as long as we are willing to suspend two (2) of em, so that basically he'll only serve a sentence for one (1) "bird" and run the lewd concurrent. So basically he's looking to do time for one (1) "bird." And I keep telling him, "Ferrill you got six (6) cases, twenty five (25) charges here, you're not getting a one (1) "bird" but he just, he wouldn't listen to me. So he knows the district attorney is the one that makes the decision. And I said, "Fine, I'll take it to her and we'll see what she has to say." Well she gave me the answer that I knew she would and I could have told him that yesterday but he didn't want to listen to me, so he's gonna get the news today and it's gonna be up to him at this point to decide what he wants to do. Cause I told him, if he starts screwing with us and he wants to keep dragging this thing out and doing things like that, then we're just gonna start filing the habitual criminal on him and he can start looking at ten (10) to twenty five (25). So that's his choice. You know?

That's his choice. So in answer to your question, it really depends on him. If he pulls his head out of his ass today and realizes that this is as good as it's gonna get for him, that he's looking at eight (8) or ten (10) years at least, then, you know, we may be able to get moving and get this thing going and get him pled out and get him arraigned and he can enter a plea and then you can be on your way and released. So ah, do what you got to do. So like I said, I can't make it go any faster, that's all I can do.

BOWMAN. When I was down I spent a lot of time dealing with my drug problem, right.

THOMAS. Um hmm.

BOWMAN. This time I got to deal with the criminal thing (Inaudible)

THOMAS. Um hmm.

BOWMAN. And I'm getting (Inaudible)

THOMAS. Yeah.

BOWMAN. I'm tired of doing time.

THOMAS. Yeah.

BOWMAN. I mean the last ten (10) years I've done more time, County time, you know, for piddely ass shit. .

THOMAS. Yeah.

BOWMAN. (Inaudible) got no more time.

THOMAS. You took some classes and what not in prison?

BOWMAN. I spent my nineteen (19) months in program.

THOMAS. Did you?

BOWMAN. On my way here, on my way out.

THOMAS. Yeah.

BOWMAN. I didn't just kick rocks all the time.

THOMAS. Yeah. Did ah, do you know what he was doing when he was in prison?

BOWMAN. Kicking rocks.

THOMAS. Was he? He wasn't taking any classes or doing anything good?

BOWMAN. No.

THOMAS. No?

BOWMAN. (Inaudible) little exercise program in the morning you know, and what not.

THOMAS. Yeah.

BOWMAN. For the most part, no.

THOMAS. Okay. Well that's his choice.

BOWMAN. That's his choice of what he's gonna be.

THOMAS. Yeah.

BOWMAN. Well if you've been monitoring my phone calls, my last phone call to my sister I was basically ah...

THOMAS. I haven't listened to any more of your phone calls.

BOWMAN. I just, you already know, right, that ah, she spent her fifteen (15) minutes, right, fifteen (15) dollars, bitching at me.

THOMAS. Did she?

BOWMAN. Basically telling me ah, you know, "we're done with you." You know? I lost my family over this. All my (Inaudible)

THOMAS. I only listened to the one phone call that I told you about when you told me that you called her. I went back to listen to that one, because I was interested in, like I say, the apartment. And we need to go by your apartment and, you know, I spent thirty (30) seconds. I knew I was, I wasn't too concerned about finding anything and I didn't turn the place upside down. I figure if I'm not gonna help you with your belongings there and...

BOWMAN. I found a guy in here, right, (Inaudible) clothes and all that, right.

THOMAS. Okay.

BOWMAN. And I told him, you know, whatever's in the apartment (Inaudible) that. You know. Clean it out, right?

THOMAS. Yeah.

BOWMAN. Take what you need, right, whatever you can use, get yourself set up, right, and donate the rest to ah, charity.

THOMAS. Yeah.

BOWMAN. I believe he did.

THOMAS. Yeah.

BOWMAN. He sent me a note saying that he did.

THOMAS. Okay.

BOWMAN. So it helped somebody out at least. You know?

THOMAS. Yeah. Okay. Anything you need from me?

BOWMAN. No man, I'm okay.

THOMAS. Okay. You want me to call your sister or anything, put in a good word for you?

BOWMAN. If you would please.

THOMAS. Okay.

BOWMAN. It would be great.

THOMAS. Okay. I'll, was it Lisa?

BOWMAN. Lisa, yeah.

THOMAS. Lisa. Okay. I'll give her a call and....

BOWMAN. Cause she don't believe me. You know? She's a retard herself. She don't believe what I'm saying to her.

THOMAS. Okay.

BOWMAN. That's the way it'll look, you know, I'm being hit with a burglary and I told her, "I'm being hit with a burglary." And she goes, "I don't believe it. (Inaudible) changing price tags."

THOMAS. Um hmm.

BOWMAN. And you know?

THOMAS. Okay. Well as long as you were, you know, honest with her, what you told her.

BOWMAN. I told her (Inaudible)

THOMAS. I'll tell her the same thing, it won't be any difference.

BOWMAN. They offered us a deal right, and, cause I was gonna, I was probably gonna be faced with twenty five (25) to life over this.

THOMAS. Yeah.

BOWMAN. You know? If I didn't. And ah, (Inaudible)

THOMAS. Yeah.

BOWMAN. (Inaudible)

THOMAS. Yeah. You know it all applied. But like I say, we weren't looking to hammer you. We knew you weren't the brains behind the operation, so we knew that from the get go. From the first time (Inaudible)

BOWMAN. Well I came out of prison with my back against the wall.

THOMAS. Um hmm.

BOWMAN. (Inaudible) would of left me alone, long enough to get back on my feet, right, at the half way house, I would have never gone this route.

THOMAS. Yeah.

BOWMAN. But you know, I'm making only seven forty (7.40) an hour.

THOMAS. Right.

BOWMAN. Four hundred dollars ($400.00) off the top before taxes, right?

THOMAS. Right.

BOWMAN. It was the only (Inaudible)

THOMAS. Right.

BOWMAN. And I (Inaudible) with two (2) (Inaudible)

THOMAS. Yeah.

BOWMAN. You know? I got to live with my mistakes.

THOMAS. Yeah.

BOWMAN. Stupid.

THOMAS. Yeah.

BOWMAN. And this time down I got to re-evaluate my life again. You know? And (Inaudible) just kicking rocks.

THOMAS. Yeah.

BOWMAN. It'll be the last time (Inaudible) You know?

THOMAS. Yeah.

BOWMAN. This time I got the drug problem licked, you know, I won't, I know for a fact, right, in my heart I'll never use again.

THOMAS. Um hmm.

BOWMAN. (Inaudible) die.

THOMAS. Yeah.

BOWMAN. Cause if I ever use again, right, it's like putting five (5) bullets in a revolver, right in front of my (Inaudible)

THOMAS. Right.

BOWMAN. So.

THOMAS. Yeah. Do you think you're family would help you out once you got out, if I put in a good word for you?

BOWMAN. Hopefully.

THOMAS. I mean could you go home to Oregon or Colorado or wherever and...

BOWMAN. I'm stuck here.

THOMAS. Are you? You got to be here?

BOWMAN. Oh I got to (Inaudible) one (1) to ten (10), I got (Inaudible)

THOMAS. Is that what you got is a one (1) to ten (10)?

BOWMAN. Yeah.

THOMAS. Okay.

BOWMAN. That's why I'm (Inaudible) paper, I'd rather do the paper here. I got more of a chance doing it successfully here...

THOMAS. Um hmm.

BOWMAN. ...than I do anywhere else. You know? Salt Lake (Inaudible) there's too many problems there for me.

THOMAS. Yeah.

BOWMAN. I mean I know too many people.

THOMAS. Um hmm.

BOWMAN. The, my father's side of the family are deep into drugs.

THOMAS. Um hmm.

BOWMAN. Deep into em.

THOMAS. Yeah.

BOWMAN. And ah, no I can't go back to Utah.

THOMAS. Yeah.

BOWMAN. And my sister in Oregon, (Inaudible) right, but not really. I'm not (Inaudible) this time.

THOMAS. Okay. Alright. Well I'll call her and (Inaudible)

BOWMAN. If you do (Inaudible) I've got two (2) paychecks from the Sand's sitting in my property. They're gonna be expired.

THOMAS. In your property?

BOWMAN. Um hmm.

THOMAS. Here?

BOWMAN. Um hmm (affirmative) I need somebody to get em cashed before they expire.

THOMAS. How do you do that?

BOWMAN. I don't have a clue. I've written letters, I've asked people to help get em cashed. That's the only help I really need.

THOMAS. You got to endorse em.

BOWMAN. I know, all they need to do is just let me endorse em. I (Inaudible) deposit em and the money put back on my books or whatever.

THOMAS. So did you put a "kite" in to say, "Hey I want to endorse these checks and have the County cash em and put em on my books."

BOWMAN. Yeah and ah, they said ah, the jail doesn't get a service for paychecks. They'll do it for, if it was a money order but they wouldn't do it, not for paychecks.

THOMAS. What about this guy that went and cleaned up your apartment?

BOWMAN. I wrote him a letter, right, and all things got mixed up.

THOMAS. When do the checks expire?

BOWMAN. The biggest one expires the thirteenth (13th) of this month and the smaller one (Inaudible) One's for two hundred eighty five (285) and one's for seventy seven dollars ($77.00). The two eighty five (285) one expires the thirteenth (13th) of this

month. The smaller one expires the following week.

THOMAS. Okay. Well at the very least you're gonna have to get em ah... you know, you're gonna have to endorse em. So I'll have to arrange to (Inaudible) get em endorsed But let me talk to a deputy and find out exactly if that's the way to go about doing that. And I'll see what we can do.

BOWMAN. Cause it's everything I own down there.

THOMAS. Yeah.

BOWMAN. And that's everything I go. (Inaudible) buy the TV with it and get my appliances while I'm in prison.

THOMAS. Okay. Alright. Let me talk to a county deputy that I know and we'll see if we can try to work on that and figure something out.

BOWMAN. I appreciate it.

THOMAS. Yeah, I'll give it a shot.

BOWMAN. Thank you man.

THOMAS. Okay?

BOWMAN. (Inaudible) this has really (Inaudible), just to get em to send it to me.

THOMAS. Yeah.

BOWMAN. I've been fighting with the jail, right, some way to get it dealt with before it expired.

THOMAS. Um hmm.

BOWMAN. But it's like butting my head against a stone wall.

THOMAS. Yeah. Okay. Do you have a bank account or anything anywhere?

BOWMAN. No.

THOMAS. No? Okay. I'll talk to a deputy and see if there's something we can do. I don't know if there is or not but we'll give it a shot.

BOWMAN. Okay.

THOMAS. So, alright.

BOWMAN. I'm gonna tell you, I'm just tired of being in this jail.

THOMAS. Yeah, I know.

BOWMAN. (Inaudible) This is some of the most funkiest stuff I've ever seen in my life.

THOMAS. Yeah, for a fact.

BOWMAN. (Inaudible) there's not many (Inaudible) like this (Inaudible) here.

THOMAS. Yeah. That's what Volpicelli said too. He said, "I don't belong here." He goes, "These guys are idiots." You know? Just idiots. I think he's listened to too many jail house lawyers too.

BOWMAN. Oh he has, he'll listen to anybody who will talk to him man.

THOMAS. Yeah.

BOWMAN. (Inaudible) tell him, "You listen to too many people Bro."

THOMAS. Yeah.

BOWMAN. He's listening to too many people.

THOMAS. That's what I told him last night. Yeah, he's got a lot of people telling him he ought to get, you know, this drug program thing suddenly came up like a month ago. All of a sudden he's sending letters out to every treatment program that he can find, trying to get into a drug program, claiming that he has a crack cocaine addiction. You know? And it's like, well where did this come from? And I know, and he's saying that, "I've got, I'm sitting in jail with somebody who said that I could get into this program." You know? So I know he's listening to these other inmates.

BOWMAN. He's listening to somebody.

THOMAS. Yeah.

BOWMAN. I know it's not me. I told him it's very doubtful we even get in any program.

THOMAS. Yeah.

BOWMAN. For the simple fact that, he goes, "Well why do you think that Brett?" And I go, I told

him, "Because you haven't got a history. You haven't got a long history."

THOMAS. Right.

BOWMAN. Of a drug problem.

THOMAS. Right.

BOWMAN. He said, "Why?"

THOMAS. Right. (Inaudible) plain and simple. He's got nothing. He's got nothing. Nothing in his previous PSI's, he was on parole and never pissed dirty.

BOWMAN. Yeah.

THOMAS. No documentation ever, ever of drug history.

BOWMAN. (Inaudible) left Utah, right, the first time, right, was to, I had just gotten out of jail, right, for pissing dirty.

THOMAS. Um hmm.

BOWMAN. On probation.

THOMAS. Yeah.

BOWMAN. I did eighteen (18) months probation, five (5) years for it. I couldn't get off of paper because I kept pissing dirty.

THOMAS. Right. Yeah.

BOWMAN. You know, and..

THOMAS. Yeah.

BOWMAN. But you know, I told Ferrill, "You're shooting blanks there."

THOMAS. Um hmm. Yeah. Okay. Alrighty. I'll see what I can do about those checks.

BOWMAN. Okay.

THOMAS. And ah, we'll go from there. Hopefully you don't get transported with him anymore. We're gonna be making phone calls before you have anymore court appearances, just

in case he's got one too.

BOWMAN. Well I know I have an arraignment, right, on this, on the ninth (9th).

THOMAS. On the ninth (9th). Okay. And that's because he's got his next prelim on Monday, which is...

BOWMAN. (Inaudible)

THOMAS. Which is Monday the eighth (8th). Actually it's (Inaudible)

BOWMAN. Does that affect both of us or is that just one of his?

THOMAS. Actually the prelim does, it's the Walmart case. Yeah, it's the Walmart case. But since they're not pursuing it against you, I don't think there's gonna be a reason to transport you but I'll find out if that's the plan, if they're gonna bring you down or not. I don't know if they are or not. So I'll call the D.A. and ask.

BOWMAN. I never know when I'm being transported or not, until they call me, you know?

THOMAS. Yeah, yeah. Okay. Well he seems to know that he's got a prelim on the ninth (9th), and you don't know so I'm guessing that you don't.

BOWMAN. I just know that the one that I went to, right, was just me there, right, Ferrill wasn't there, right. That we asked for a continuance till the ninth (9th) right?

THOMAS. Um hmm.

BOWMAN. Depending on ah, they had to conference the D.A., had a conference with the judge at the (Inaudible) , right.

THOMAS. Um hmm.

BOWMAN. (Inaudible) all contingent on what Ferrill does.

THOMAS. Um hmm. And that's what it is. So, hopefully I get through to him today. Ah, and if I do I'll let you know.

BOWMAN. (Inaudible) pulls out of his ass.

THOMAS. Yeah.

BOWMAN. And starts, you know, thinking realistic here.

THOMAS. Yeah.

BOWMAN. Get on with this shit.

THOMAS. Yeah. Okay. Alrighty. Well let me ah, I'm gonna be bringing him up next so what I'm probably gonna do, since they're probably busy down there, is bring him up and get him in another room here somewhere and then take you out.

BOWMAN. I hope so.

THOMAS. So you won't be running into him or anything. Okay?

BOWMAN. Alright.

THOMAS. Alright.

(END OF INTERVIEW)

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 02-19-02 FROM: 1425 Hrs. TO:-------

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

THOMAS. February nineteenth, two thousand two (02-19-02), at fourteen twenty five (1425) hours. Detective Thomas, Reno P.D., speaking with Brett Bowman, an inmate at the Washoe County Jail. Okay. We're good to go.

BOWMAN. Ah, where do you want to start? I mean I can give you his working alias, which is Joseph Vim.

THOMAS. Well he's got lots of aliases.

BOWMAN. This was his main alias.

THOMAS. Yeah.

BOWMAN. Main working alias is Joseph Vim.

THOMAS. Yeah, that stands for Volpicelli Investment Management, something like that. So he uses that to get cards and order merchandise.

BOWMAN. And his P.O. Box is underneath that name, right, it's on California Avenue.

THOMAS. Right. Got that.

BOWMAN. You got that?

THOMAS. I've already got that, yeah.

BOWMAN. Right. His ah, main money source, (Inaudible)

THOMAS. Um hmm.

BOWMAN. With his daughter's credit cards.

THOMAS. Okay.

BOWMAN. Or his own, under a twenty four (24) hour grant.

THOMAS. Okay. Which daughter, do you know?

BOWMAN. Ah, I think his oldest. I know he's had it, I know he had that card pretty well maxed out.

THOMAS. It was probably Ashley. We've spoken with her and she's told us a few things about some old things he was doing. So.

BOWMAN. Right. And ah... ah, he was using some for fencing operations.

THOMAS. Okay. How was he doing that?

BOWMAN. Ah, I'm not exactly sure how he was doing it. But I'm sure his son was involved.

THOMAS. What did he say? Did he say anything specific?

BOWMAN. Well, (Inaudible) some of the items he had me buying, right?

THOMAS. Um hmm.

BOWMAN. Like ah, empty (Inaudible) cleaners, things like that.

THOMAS. Um hmm.

BOWMAN. That weren't.. You didn't find any empty (Inaudible) players, did you?

THOMAS. Um umm (negative) not that I recall. We may have found one (1) but I don't recall any.

BOWMAN. Ah, like I said, the insurance thing, right?

THOMAS. Um hmm.

BOWMAN. I'm sure was a scam because when he got it from the insurance outfit, right, he used that money to buy it.

THOMAS. Right. Ah, when his truck was car jacked?

BOWMAN. Um hmm (affirmative)

THOMAS. Yeah. We kind of figured.

BOWMAN. Ah, That Kevin guy, Kevin?

THOMAS. Siggstad, yeah. Wait a minute, let's go back to the truck. Do you think the car jacking itself was a scam?

BOWMAN. Yeah. Cause every time he told me the story, right, it changed.

THOMAS. Okay, what did he tell you?

BOWMAN. Well first off, right, his, he said his son was at a ball game.

THOMAS. Ah huh.

BOWMAN. But a bunch of guys, right, came over with ski masks on, right.

THOMAS. Okay.

BOWMAN. And jacked it, right. And then later on right, they said they found the car, right, it was a few blocks from his mother-in-laws house.

THOMAS. Right. They did.

BOWMAN. Okay, come one.

THOMAS. How did his, we said the same thing. How did his story change, do you know?

BOWMAN. Ah, cause he time he told me he went into a little bit more detail about it. You know?

THOMAS. Okay, what did he tell you?

BOWMAN. Then he, then another time right, he said there was a bunch of merchandise in the back of it.

THOMAS. Um hmm.

BOWMAN. And I asked him, "Well if there was a bunch of merchandise in the back of it....." Cause I kept asking him, why, you know, you're telling me the storage unit is full," right?

THOMAS. Um hmm.

BOWMAN. Now you're telling me right, you had a bunch of merchandise in the back of that, in the back of the Pathfinder, right? But when I seen it, right, which was a couple days before, we put (Inaudible) right, remember I told you that, right?

THOMAS. Um hmm.

BOWMAN. There was nothing there.

THOMAS. Um hmm.

BOWMAN. Except for his gym bag.

THOMAS. Okay.

BOWMAN. And like I say, there was a bunch of labels that we bought, right, an (Inaudible) player, a couple cameras, things like that, right? And actually they were in the back of the van. Well I know they weren't.

THOMAS. Okay.

BOWMAN. Cause I'm sure his son probably fenced em for him through school.

THOMAS. Yeah. Okay. Anything else you can tell me about that? Because that's still an unsolved crime at this point.

BOWMAN. Ah...

THOMAS. Detectives suspect that it wasn't on the up and up, but right now the detectives that's working that case has got nothing to prove otherwise, so.

BOWMAN. You know, basically it's all special issue, because like I said, you know, like when he kept trying to jack the price up for the damages and all that, right? And then when it

came time, when he finally did so, right, he just used the money to make purchases with.

THOMAS. Um hmm.

BOWMAN. So if it was on the up and up, right, he would have actually taken it, right, and got the door handles changed and door locks changed.

THOMAS. Right.

BOWMAN. Things like that. Right? I mean to protect a ten thousand dollar ($10,000.00) investment. Come on. I was like, looking at him like, "Pope what are you telling me man? You're telling me two and two don't come up with three, instead of four." You know?

THOMAS. Um hmm.

BOWMAN. And then he broke down and told me, "Well yeah, we just found it a couple blocks from his mom's house, out of gas."

THOMAS. Yeah. Yeah.

BOWMAN. Pssh. No.

THOMAS. That didn't....

BOWMAN. I wasn't born yesterday. You know?

THOMAS. Right.

BOWMAN. And ah, he just kept telling me, you know, different things that just didn't kosher, it wasn't kosher. I don't exactly remember the exact details about it, right, but ah, when I finally seen it, right, I didn't see any damage, there was no damage done to that thing.

THOMAS. Um hmm.

BOWMAN. And ah, a couple guys with ski masks, right.

THOMAS. Did he say how many guys?

BOWMAN. He just said a bunch.

THOMAS. He said a bunch?

BOWMAN. At first, right. Then a couple, they went down to a couple guys with skis masks, right? Yeah I think it was just a ploy.

THOMAS. Okay. Anything else about that?

BOWMAN. No that's as far as I can go.

THOMAS. Okay. He was renting some pretty expensive cars at the time that thing was missing.

BOWMAN. Um hmm (affirmative)

THOMAS. For some reason.

BOWMAN. That's what I understand, yeah.

THOMAS.. Insurance was paying for that I'm sure.

BOWMAN. Yeah, the insurance was paying for it.

THOMAS. He was renting some nice cars. He was renting ah, you know, Ford Mustang's and convertible Ford Mustang's and full size pickup trucks and all kinds of other things, that, you know?

BOWMAN. You know, when he and I went out he had this guilty conscious, cause, guilt complex about his kids, for some reason. Right? Ah, everything he was buying, right, was geared towards his kids.

THOMAS. Um hmm.

BOWMAN. From what I understand, right? But ah, there were several items there, right, that ah, weren't kid oriented.

THOMAS. Yeah.

BOWMAN. And there was times when he was coming up with some haliaetus money.

THOMAS. Um hmm.

BOWMAN. Cause every time we went out he had at least a thousand dollars ($1,000.00) in his pocket.

THOMAS. Okay.

BOWMAN. And I know for a fact, right, there was a couple times, right, he took a 24 hour draft off his own cars.

THOMAS. Okay.

BOWMAN. And he was worried sick about you guys finding em.

THOMAS. About us finding his 24 hour draft?

BOWMAN. (Inaudible) Huh?

THOMAS. About us finding the 24 hour draft?

BOWMAN. Ah, yeah, or his P.O., his federal P.O. You know?

THOMAS. Yeah.

BOWMAN. Because he goes, "Well I'm gonna get it back within, the money, as long as I get the money back within 24 hours, right, the draft will never show up on my TRW."

THOMAS. Right.

BOWMAN. Well (Inaudible) there was no money in it, right, how was he gonna replace that money within 24 hours?

THOMAS. Right. Okay.

BOWMAN. (Inaudible) replacing it somehow and I think one of his main things was where he was (Inaudible) Kevin.

THOMAS. Siggstad?

BOWMAN. Cause one time he let it slip. He goes, "Yeah, I got to go buy ah... two (2) VCR combos," right?

THOMAS. Um hmm.

BOWMAN. For ah, Kevin, and a couple theater systems also.

THOMAS. Okay. So he bought em for Kevin?

BOWMAN. Yeah.

THOMAS. Okay. What else?

BOWMAN. Ah... (Inaudible) for a second. Ah... and he used Kevin for a cover, a main cover for everything. To buffer him between him and his federal P.O., on several different items.

THOMAS. For instance?

BOWMAN. Like for instance his lease, it was a bogus lease.

THOMAS. Okay, tell me about that.

BOWMAN. Ah, he told me all about that. Ah, he had Kevin write him up a lease, right, with ah, under a complete furnished apartment, right? Him and I furnished that apartment.

THOMAS. Okay.

BOWMAN. Illegally.

THOMAS. Okay.

BOWMAN. And ah, to keep his cover right, as a poor (Inaudible) single father, trying to support the kids thing, right?

THOMAS. Um hmm.

BOWMAN. And he used Kevin as a buffer as a false job. He never worked a lick for Kevin.

THOMAS. Okay.

BOWMAN. Ah, he had Kevin write and sign a phony lease with furniture.

THOMAS. Okay.

BOWMAN. All the furniture right, was bought. I told you it was bought. We recovered that.

THOMAS. You guys bought illegally?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay, keep going.

BOWMAN. Ah... he has contact with Kevin right, twice a week.

THOMAS. Okay.

BOWMAN. Kevin picks up his mail every Sunday.

THOMAS. Okay.

BOWMAN. Or every Thursday, something like that, from a P.O. box, and he talks to Kevin every Sunday morning.

THOMAS. Okay. Okay.

BOWMAN. Ah, like I said, his main alias right, for his main business, I don't necessarily (Inaudible) but his main alias is Joseph Vim.

THOMAS. Okay.

BOWMAN. Any contact, right, was through, he wanted me to call him Joseph Vim.

THOMAS. Um hmm.

BOWMAN. Over the phone, anything like that.

THOMAS. Okay. What else can you tell me about this lease on the apartment, any other details?

BOWMAN. The lease on the apartment, right, was just mailing, right, to, so he had something to show his federal P.O. But the actual apartment is his.

THOMAS. How do you know that?

BOWMAN. He's told me that he's had it like for twenty (20) years. He bought it back when he was doing real estate. Back when that area, where he was still raw, back when that apartment was basically brand new.

THOMAS. Okay. Did he describe how he is hiding that apartment at all, because looking at the tax records ah, Siggstad shows to be the owner.

BOWMAN. But he's not.

THOMAS. Oh I know that.

BOWMAN. He signed it over to him.

THOMAS. I know that. But I'm..

BOWMAN. He signed it over when we went down the first time, from what I understand.

THOMAS. Okay. Is that what he said?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay.

BOWMAN. He signed it over to him to keep it from getting taken from him.

THOMAS. Is that what he said?

BOWMAN. Um hmm (affirmative)

THOMAS. Did he say what sort of an arrangement they have now?

BOWMAN. Mainly that Kevin, right ah, manages it for him, and ah, he collects the rents, make sure his property taxes are taken of. Alright? He wanted to make sure the place was rented.

THOMAS. Um hmm.

BOWMAN. And all that.

THOMAS. Okay. Do they have any sort of a financial arrangement? I mean what's the benefit for Kevin Siggstad on this, by doing this, any idea?

BOWMAN. No idea.

THOMAS. Okay.

BOWMAN. I don't know, but I'm pretty sure the apartment's paid for. So whatever after Kevin makes off the top of it is his.

THOMAS. Okay.

BOWMAN. Oh wait a minute, no, he said he owed something like twelve thousand ($12,000.00) Kevin, or he said he owed something like twelve (12), fifteen thousand (15,000) left on the apartment and that was it.

THOMAS. Okay.

BOWMAN. And he's been friends with Kevin for many years.

THOMAS. Okay. What else about the apartment, anything? As far as that whole financial arrangement goes? I can tell you right now the IRS is looking at taking that apartment.

BOWMAN. I know for a fact that...

THOMAS. Because they suspect that Volpicelli is the owner.

BOWMAN. He is the owner.

THOMAS. They know there's a problem. I guess one of the questions I have for you is if the IRS needs you to testify in a hearing of some sort, are you willing to testify to what you told me today?

BOWMAN. Sure. Yeah.

THOMAS. Okay.

BOWMAN. This is straight from him, right, he says he signed it all over to Kevin, right, just so he wouldn't lose it.

THOMAS. Um hmm.

BOWMAN. (Inaudible) what he told me. Right? Or else why would he move out of the Comstock, right, with two (2) kids, into that apartment, into a single little studio. It's his.

THOMAS. Right.

BOWMAN. And Kevin was just managing it, right, along with his down.

THOMAS. Right. Okay. Okay.

BOWMAN. And then he lived there before.

THOMAS. Yeah.

BOWMAN. You know?

THOMAS. Okay. Anything else?

BOWMAN. No, that's all, that's pretty much it. All I can remember at this point.

THOMAS. Okay. You talking about everything or just the lease and the apartment?

BOWMAN. The lease and the apartment.

THOMAS. Okay.

BOWMAN. I know he maintains contact with Kevin, right?

THOMAS. Oh he does, no doubt about that.

BOWMAN. I know that's an operation he has (Inaudible) just right there in his property, right, one of those bar checks you have?

THOMAS. Um hmm.

BOWMAN. I know for a fact one of the computer systems I bought for him, was (Inaudible) to help, so that his daughter's right, quote, "could get haircuts and nail jobs done." Things like that.

THOMAS. Okay. So you illegally bought a computer system?

BOWMAN. Um hmm (affirmative)

THOMAS. And bartered it.

BOWMAN. He bartered it.

THOMAS. Or he bartered it to be (Inaudible)

BOWMAN. Um hmm (affirmative) And I believe one of the rugs was bartered too.

THOMAS. Okay.

BOWMAN. And I'm sure there's probably plenty more that's been bartered on my, you know. Cause he's probably bartered, right, (Inaudible) right, has probably been illegally done. If I knew exactly what he was renting for I could tell you (Inaudible)

THOMAS. Right. Did he ever talk about future plans, what his intentions were ultimately, whether he wanted to build this into something bigger and that type of thing?

BOWMAN. Yeah, he wanted to go to Sacramento and I kept dragging my feet on that. He wanted me to get a California state ID.

THOMAS. You mean he wanted you guys to both go to Sacramento and do some of this stuff?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay.

BOWMAN. He wanted to travel down.

THOMAS. Okay.

BOWMAN. And I dragged my feet on it. I didn't want to go, but I didn't want him at the same time to know that.

THOMAS. Yeah.

BOWMAN. Ah, I kept dragging my feet about getting my birth certificate, so I could get a California ID and I didn't.

THOMAS. Why did he want you to have a California ID?

BOWMAN. So...

THOMAS. So you could make the purchases or...

BOWMAN. Purchases and returns. And I basically refused to do it. You know? I didn't say no but...

THOMAS. Okay.

BOWMAN. I just didn't follow through on it.

THOMAS. Okay.

BOWMAN. But he always talked about wanting to travel to do it.

THOMAS. Um hmm. Okay.

BOWMAN. And I know for a fact he was doing it when he was traveling, every time he traveled he did it, when he always traveled he did it. He did it when he went to see his mom, he did it when he was in Vegas.

THOMAS. Did he say what he bought when he went to see his mom?

BOWMAN. Ah, cartridges, computer cartridges.

THOMAS. Would you say those were all bogus buys?

BOWMAN. Pretty much, yeah I believe so. Well they were bought legally, right, to set up a bogus buy somewhere else down the line.

THOMAS. Right.

BOWMAN. Or set up a bogus return.

THOMAS. Okay. What else?

BOWMAN. (Inaudible) information on several occasions where I'm just trying to sort it all out.

THOMAS. Um hmm.

BOWMAN. Well I came to this conclusion just the other night, you know, it's like half the stuff he was telling me, right, just didn't jive.

THOMAS. Um hmm.

BOWMAN. It didn't add up.

THOMAS. Um hmm.

BOWMAN. He was telling me right, the storage unit was full, he had no more room for nothing, right? And when I (Inaudible) right, it wasn't full was it?

THOMAS. Ah... no, you could fit more things in there. Okay, I mean it was, you know, he had things stacked on shelves and there was a lot of property in there but it was a big storage unit and you could definitely walk into it and walk back out. It wasn't chock full.

BOWMAN. Cause he said he was running out of room. So you know.

THOMAS. Well that all depends on how you look at it. I mean, being the anal, you know, type person that he was, where everything was neat and in it's place and orderly, he had everything stacked very neatly. So in his mind, yeah, he may have been running out of room, where he couldn't walk in and out of it any more. But it wasn't like you open the door and there was no more room.

BOWMAN. Well he made it sound like (Inaudible) merchandise in there. Because he was doing

buys, right, during the day right, on the days when him and I hooked up, right, he was out doing it during the day.

THOMAS. Okay.

BOWMAN. And he was out doing it during the day and during the week also.

THOMAS. Yeah.

BOWMAN. You know. So he had to fence it somewhere.

THOMAS. Um hmm. How, any other information about his kid, do you know, how deep he was involved with his kid?

BOWMAN. Just that ah, he told his kid to come up here and pick that check up, right?

THOMAS. Yeah.

BOWMAN. Right. And then when P & P came and got it from him, right, he told them to come back down here and tell him, for a lost check.

THOMAS. Right.

BOWMAN. But that's straight from Ferrill. Ferrill told (Inaudible) And I don't know, you know, how much of it's truth or right on the story that he told me. All the...

THOMAS. Did he say why he did that?

BOWMAN. No he didn't say why. He just said that he told his kid to come pick up his check and then told him to come back, once it was taken away from him.

THOMAS. Right. Okay. Well we got all that on tape anyway, so I don't know.

BOWMAN. He did that on a phone conversation. So, that's pretty much it. That's it. (Inaudible)

THOMAS. Okay.

BOWMAN. I hope it's help this thing.

THOMAS. It'll help. I don't know if it'll help so much in as far as, you know, we're not interested in bringing any more charges against him at this point, simply because we have around twenty (20) to twenty five (25) already.

BOWMAN. (Inaudible) help with your investigation (Inaudible) look back into it.

THOMAS. Yeah, but it's gonna help in, you know, possible sentencing or something like that and we can stand up and say this and say some other things that, some of these things we already knew but it helps to have, you know, somebody else, if he's told these things to, that verifies it for us.

BOWMAN. Um hmm.

THOMAS. So, and (Inaudible)

BOWMAN. (Inaudible) everything I know.

THOMAS. Okay.

BOWMAN. Honest to God (Inaudible)

THOMAS. He ever say anything about having any money anywhere else or any anticipated money that he would be getting from other people or whether he had money in, you know, bank accounts in other states or (Inaudible)

BOWMAN. Most, I think most of his money was in a safe deposit box. His grandmother's money from her death.

THOMAS. Um hmm. Did he say that was his money?

BOWMAN. He said it was his kid's money but I think it was his. Yeah, it was his money.

THOMAS. He's been saying it was his money all along but the IRS has already made attempts to seize that as well, so I think (Inaudible)

BOWMAN. It's his money, his grandmother loved him to death, right?

THOMAS. Um hmm.

BOWMAN. And his grandmother (Inaudible) she wouldn't even have anything left to do with him, right?

THOMAS. Um hmm.

BOWMAN. And he said he owned (Inaudible) to his kids, right, but it's his money.

THOMAS. Yeah.

BOWMAN. It was all his.

THOMAS. Yeah.

BOWMAN. He may have been doling it out to his kids, right, because of his guilt thing, you know, maybe, you know, but it was his money.

THOMAS. Right. Okay. Any other money he talked about or assets that he had anywhere or apartments or homes or any sort of assets that he may have anywhere else?

BOWMAN. No, he didn't.

THOMAS. No? That's one thing, he's pretty much ah, he had money in the safe deposit box and
he had the apartment and that was about it huh?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay.

BOWMAN. I think everything (Inaudible) was in that safe deposit box.

THOMAS. He ever say anything about having, you know, investments, as far as in stocks or bonds or...

BOWMAN. Yeah he said he had stocks and bonds somewhere but he didn't say where . But ah... I know for a fact he had stock.

THOMAS. Um hmm.

BOWMAN. Because when I was at Warm Springs with him, right, he checked the stock market every day.

THOMAS. Did he?

BOWMAN. Ah huh (affirmative)

THOMAS. Okay.

BOWMAN. In fact he even talked about investing some for his mom.

THOMAS. Um hmm.

BOWMAN. I think he had stock in ah, (Inaudible) I know for a fact he had stock. (Inaudible)

THOMAS. Okay.

BOWMAN. When that September eleventh (11th) thing happened, right, ah, what's the name of that one that dropped to the bottom? But anyway, I know for a fact he had stock.

THOMAS. Okay.

BOWMAN. And the thing with the safe deposit box is, right, when he got out, right, he didn't have that box.

THOMAS. No, we know that.

BOWMAN. He got the box right, under, he had his daughter get the box, right, and he co-signed with it, right, so he could have access to it.

THOMAS. Right.

BOWMAN. But that box was got through his daughter.

THOMAS. Did he say why he had the box that way?

BOWMAN. Ah, so he could stick his credit cards in it.

THOMAS. Um hmm.

BOWMAN. And everything else in it.

THOMAS. Um hmm. Without anybody finding out about it. Is that what he said?

BOWMAN. That was his hiding hole.

THOMAS. Yeah. Is that what he said?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay.

BOWMAN. That's what he used the box for, was for his credit cards, right, and ah... to keep other items in it also. I believe that's where he kept the tape machine.

THOMAS. Okay.

BOWMAN. The one that had been used.

THOMAS. Okay.

(Pause)

THOMAS. Okay.

BOWMAN. I'm sure probably some of the items right, that was in the box, it may have been his daughters.

THOMAS. Um hmm.

BOWMAN. (Inaudible)

THOMAS. Yeah. He had a ah, there was a diamond in the box that I think belongs to his daughter.

BOWMAN. Yeah, that was his daughters.

THOMAS. Yeah.

BOWMAN. Cause he was highly upset about that. I mean you know, the rest of it, right, he wasn't that mad about but he really emphasized about how the diamond was his daughters.

THOMAS. Um hmm.

BOWMAN. So that part I believe is true.

THOMAS. Yeah.

BOWMAN. By the way, I was able to (Inaudible) Come on, and you're not putting that much emphasis on this money thing because I know for a fact that it's yours.

THOMAS. Um hmm.

BOWMAN. But the diamond thing he was really ranting and raving about. Because it affected his kid.

THOMAS. Yeah.

BOWMAN. Where his kids were involved, right, he was, he had a really bad conscious about it. You know?

THOMAS. Okay. So ah, did he say how much cash he had in the box?

BOWMAN. An actual dollar amount, no, but it was quite a bit.

THOMAS. What's quite a bit, any idea?

BOWMAN. No, no idea, no actual amount that I know of.

THOMAS. Okay. Alright. Okay. Well if we can help you, you know..

BOWMAN. Yeah.

THOMAS. And like I say, it may help at sentencing or something like that. I...

BOWMAN. I just thought I'd come completely clean with it, you know, because he's made my life miserable here.

THOMAS. Okay. What's going on with you here? Is it ah..

BOWMAN. Oh it's just that back when ah, he had a bald headed friend that went back to Orange County, right?

THOMAS. Um hmm.

BOWMAN. And to (Inaudible) his (Inaudible) back and forth, right, and he made it known to the whole deal, right, that I was talking.

THOMAS. Um hmm.

BOWMAN. You know? And ah, so now I'm more or less, you know, shunned. But that's okay though, you know, it's, what goes around, comes around.

THOMAS. Yeah.

BOWMAN. That's why I told him, when we were in Medical, right, and he come at me with (Inaudible), right? I'm talking.

THOMAS. Um hmm.

BOWMAN. And he can't stop me from doing that, right?

THOMAS. Right.

BOWMAN. I told him, "I'll be damned if I'm gonna do this kind of time for you."

THOMAS. Right. If you had a choice, would you rather be housed out of state?

(Pause)

THOMAS. And I'll tell you, there are two sides to this coin and I'll let you kind of decide and I'm not guaranteeing anything obviously, because I don't have that say, but I can at least ask. There are two thoughts when it comes to being incarcerated in another state. The first is, A) you get away from the inmates in this state. Okay? You don't have to worry about running into anybody necessarily that, you know, that you've seen here at the jail, that can, you know, tell people that you were talking to the cops. The other side of the coin is that sometimes when you're housed out of state, inmates in other penitentiaries will assume that you're being transported out of state for a reason and sometimes that reason is because you were talking and you're trying, and you know, law enforcement is trying to protect you. So sometimes they make that assumption. You know? It's....

BOWMAN. If he goes somewhere else, right, (Inaudible) but if he goes somewhere else, right, put me back in Warm Springs/

THOMAS. You okay with Warm Springs?

BOWMAN. I'm okay with Warm Springs, if he's not there.

THOMAS. Okay. Okay. Well that's, that was my plan and that's the request that I put in and they're okay with that. So matter of fact I will call them today when I get back and ask them how that process is going, just to see. And I'll get ahold of your P.O. to, do you remember your P.O.'s name?

BOWMAN. (Inaudible) Myers.

THOMAS. Is it Elizabeth?

BOWMAN. Myers, yeah.

THOMAS. I'll call Elizabeth and find out exactly what the plan is for you, because I'm, you know.

BOWMAN. And you know, in my revocation, right, she (Inaudible) said I was doing excellent.

THOMAS. Yeah.

BOWMAN. And I was, you know. I mean I was going somewhere but I was sunk.

THOMAS. Right.

BOWMAN. I mean I was really struggling, right, and physically, right, I couldn't do the hours, right?

THOMAS. Right.

BOWMAN. You know, I couldn't do the hours. You know, to pull another job, to survive.

THOMAS. Yeah.

BOWMAN. And I made the wrong choice.

THOMAS. Yeah.

BOWMAN. You know? And I regret it today. I'm regretting it.

THOMAS. Yeah.

BOWMAN. As long as you guys can go to bat for me, you know.

THOMAS. But like I say, we're not gonna stand up on the sentencing and say you're a good guy, you've been working with us. And like I say, that's not something we want (Inaudible)

BOWMAN. Cause I had an opportunity, right, to get my life.

THOMAS. True.

BOWMAN. I will take responsibility for what I've done.

THOMAS. Right.

BOWMAN. You know? It's just that ah, ten (10) scares me.

THOMAS. Right. Well..... like I say, we're not gonna stand up in sentencing and try to hammer you and we're not gonna stand up in sentencing and say that you're helping us, because we're gonna be saying that in front of a crowded courtroom with other inmates sitting there. So that's not, that doesn't do well for you.

BOWMAN. Ah...

THOMAS. However the D.A. is not gonna hammer you. She is gonna stand up and say we have

a plea agreement and this is the plea agreement and the judge will pretty much follow that plea agreement, even though P & P says, "Hammer him." You know? And they recommend more time than what the plea agreement is.

BOWMAN. Um hmm.

THOMAS. Obviously the judge can do whatever he wants but normally under a plea agreement, a situation like this, he'll go with the plea agreement. Okay? Unless there's some other circumstances or he just feels like he needs to hammer you for some reason but I just don't see that happening. So.

BOWMAN. Ah, well what's this, explain this out of state thing to me. I mean what's the ....

THOMAS. It's an Interstate Compact. You know? Where you can request it. You know? We had it done for inmates in the past. Usually on more high profile cases. The last guy that I had transported out of state. He was wanting to testify against the Hell's Angel's and he was testifying in a murder investigation. That guy is now doing time in Nevada State Prison for the rest of his life, based on the testimony of this guy. So we agreed to have him enter a state compact to another state. Like I say, so that's good, he gets away from all these inmates. But the down side is that maybe other inmates in other penitentiaries will assume that you're coming from out of state, simply because you know, they're trying to protect you, because you know, maybe you were talking. And granted, they won't know anything but they can still come to conclusions and make the wrong ah, you know, assessment, but that's just, you know. If you wanted to you could say, "Hey I have family here man and I got to, I'm in Utah cause I got family, or I'm in....."

BOWMAN. I can't go back to Utah.

THOMAS. Or, "I'm in Arizona cause I got family here. Or I'm in Oregon cause I got family or...."

BOWMAN. (Inaudible) I can't.

THOMAS. I can't. Okay.

BOWMAN. And there's nothing but trouble for me there.

THOMAS. Okay.

BOWMAN. My family, you know, I'll tell you right on tape, right, my family. The Bowman side is so heavily into drugs.

THOMAS. Um hmm.

BOWMAN. And ah...

THOMAS. Okay. Well that's up to you. Like I say, I can put in the request to have you Interstate Compacted somewhere else and have you housed out of state. But...

BOWMAN. I mean if I can go Interstate, NCC or Warm Springs, right?

THOMAS. Yeah.

BOWMAN. If it means down south it'll be fine.

THOMAS. Okay. Well I'll try to find out today. And I'll try to get word to you somehow that ah, that's gonna happen or not gonna happen, or whatever, but I'll, but they definitely know that you guys need to be separated. So I can guarantee you, they're not gonna put you in the same, they're not gonna put you in the same yard with him.

BOWMAN. (Inaudible) guarantee it (Inaudible)

THOMAS. Okay. I have no doubt, I have no doubt he's gonna win that one.

BOWMAN. Because you know, when we were in the house together, right, in Medical, I about told him exactly what I was gonna do.

THOMAS. Yeah.

BOWMAN. I told him, "Look I'll (Inaudible) , I'll do my own time, I won't beef," right?

THOMAS. Um hmm.

BOWMAN. But if they start coming at me with this other shit, right?

THOMAS. Um hmm.

BOWMAN. Then I'm gonna sing, sing like no tomorrow.

THOMAS. Yeah.

BOWMAN. And he was good with him.

THOMAS. Yeah.

BOWMAN. Then all of a sudden, you know, pssh.

THOMAS. Yeah. Yeah, no he's trying to paint you as, you know, he's telling his family and everybody else, that we're trying to hammer him and we're giving you an easy break and he feels like, "Hey you were the one going in and doing the crimes." You know? But everybody knows otherwise. Everybody knows that ah...

BOWMAN. I told you the exact truth on what was going on.

THOMAS. Yeah.

BOWMAN. You know? And I even told the judge (Inaudible) right, exactly what was going on.

THOMAS. Um hmm.

BOWMAN. The D.A. asked me to put it on record right now. I put it on record.

THOMAS. Did you testify?

BOWMAN. Yeah I did.

THOMAS. When?

BOWMAN. When I got my arraignment.

THOMAS. Got your arraignment?

BOWMAN. Um hmm (affirmative)

THOMAS. Okay, so the D.A., got you on record?

BOWMAN. Um hmm (affirmative)

THOMAS. Cause I wasn't there for your arraignment, so.

BOWMAN. Yeah.

THOMAS. Okay.

BOWMAN. Well I'm on record.

THOMAS. Okay.

BOWMAN. She wanted to know about ah, the theater system.

THOMAS. Um hmm.

BOWMAN. The rug and the bike.

THOMAS. Okay.

BOWMAN. I told her exactly what happened and how they went down. The bike, he went in, put the tag on it, right, I went in and I bought it.

THOMAS. Um hmm

BOWMAN. The other two (2) items, right, especially the rug, right, I put the tag on it.

THOMAS. Um hmm.

BOWMAN. He told me where it was at and I went in and bought it. When I put the tag on it, right?

THOMAS. Um hmm.

BOWMAN. And the same with the theater system, right. I put the tag on it and walked out and bought it. You know?

THOMAS. Okay. Well at this point he's just having a difficult time accepting reality and how far he's gonna go. The deal we've offered him, his attorney's think it's fair (Inaudible)

BOWMAN. (Inaudible)

THOMAS. Huh?

BOWMAN. What, three (3) four (4) tens (10's)?

THOMAS. Actually we, what we did was is we changed our offer somewhat. We said, "You need to plead to four (4) "birds" and a sex offense, and you can serve time on two (2) of em, but they have to be four (4) to tens (10's)." So that means, you know, he'll do a minimum of probably ten (10) years.

BOWMAN. Well he's got two (2) in front and two (2) in back.

THOMAS. Not counting his parole violation, so..

BOWMAN. Ten (10) he already owes.

THOMAS. So..

BOWMAN. So two (2) four (4) to tens (10's)?

THOMAS. Two (2) four (4) to tens (10's) he'll have to serve time on. He'll have to plead to four (4) "birds," but two (2) four (4) to tens (10's) he'll have to serve time on.

BOWMAN. And you know what, I told him you guys would come in with that.

THOMAS. Yeah?

BOWMAN. I told him, "Here's what's gonna happen. This is what they're gonna hammer at you with."

THOMAS. Um hmm.

BOWMAN. "Take it. Or they're gonna hammer the hell out of you."

THOMAS. He's hesitant right now. And that's fine. He can be as hesitant as he wants but his attorney thinks it's a fair offer (Inaudible) try to get him to take it. Because they know that if he goes to trial he's gonna get convicted...

BOWMAN. He was pre-warned that this was coming.

THOMAS. Yeah.

BOWMAN. Basically what it all boils down to, right, you're going away.

THOMAS. Um hmm.

BOWMAN. Right? The last time we were in transport together that's what I told him. I go, "Look, they're giving me one (1), right, my lawyer told me, right, they're gonna come at you, right, with two (2) four (4) to tens (10's). That's gonna be the bottom line."

THOMAS. Um hmm.

BOWMAN. "That's as best as you're gonna get is two (2) four (4) to tens (10's).

THOMAS. That's what your lawyer told you?

BOWMAN. Um hmm (affirmative) That's what gonna happen with Volpicelli, right, and I relayed the message to him.

THOMAS. Um hmm.

BOWMAN. I said, "Well you're a fool not to take it."

THOMAS. Yeah.

BOWMAN. Otherwise they will "bitch" you.

THOMAS. Yeah.

BOWMAN. (Inaudible)

THOMAS. Oh yeah, if he wants to play we're gonna play. And he's gonna go away for a lot longer than that. So, you know.

BOWMAN. He has abused me, taken advantage of me.

THOMAS. Yeah.

BOWMAN. You know? Our original agreement, right, was that he'd go in, right, set it up, all I had to do was the buys.

THOMAS. Um hmm.

BOWMAN. And then it came down to where he had me doing everything.

THOMAS. Um hmm.

BOWMAN. You know? So the more I thought about it, yeah, he left me, I told him, "You left me twisted Poe. Cause I only did this thing to get by."

THOMAS. Yeah.

BOWMAN. You know?

THOMAS. Okay. Alright. Well let me get you back downstairs and I'm gonna go back down and call the prison and I'll follow up with them on that. And I will get ahold of your P.O. also and find out what the deal is with Warm Springs Institute.

BOWMAN. And you'll get ahold of my sister too?

THOMAS. Yeah. And I will try and call her again to let her know about the picture. I'll try and find this David guy and see if he's got this picture. I'm guessing that even if I find it

he probably hasn't kept that picture.

BOWMAN. Probably not.

THOMAS. Why would he keep it. (Inaudible)

BOWMAN. (Inaudible)

THOMAS. Okay.

BOWMAN. (Inaudible) that I've got one.

THOMAS. Right.

BOWMAN. He told me that it will stay with me.

THOMAS. You've got one (1) picture.

BOWMAN. I've got ah...

THOMAS. The little laminated one?

BOWMAN. I've got the laminated one.

THOMAS. Okay. That's a picture of what?

BOWMAN. It's a picture of my father, right?

THOMAS. Okay.

BOWMAN. Inside with ah, with the pallbearers, right ah, mother and father right, at the services.

THOMAS. Okay.

BOWMAN. A grave benediction, the whole nine yards.

THOMAS. Okay.

BOWMAN. You know, It's one of the, it's the program is what it is (Inaudible)

THOMAS. Right. Okay.

BOWMAN. I have that and it's been laminated.

THOMAS. Okay.

BOWMAN. Which is the main important one I have.

THOMAS. I'll let her know. Okay.

BOWMAN. Yeah I finally was able to get ahold of her a week before last (Inaudible) vacation last week, so I haven't spoken to her. It's just like I said, you know, cause she was in retail....

(END OF SIDE ONE)

(SIDE TWO)

(SIDE TWO IS ALL BLANK)

No. CR03P1263

Post:

vs.

Ferrill J. Volpicelli

State Ex. 1

Admitted: 9/20, 20 07

RONALD A. LONGTIN, JR., CLERK

By mm

Deputy

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

THE STATE OF NEVADA,
Plaintiff,
vs.

FERRILL JOSEPH VOLPICELLI,
Defendant .
_____/

Sup. Ct. Case No. 61142
Case No. CR03-1263
Dept. 10

RECORD ON APPEAL

VOLUME 4 OF 6

DOCUMENTS

APPELLANT
Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

RESPONDENT
Washoe County District Attorney's Office
Terrance McCarthy, Esq.
P.O. Box 30083
Reno, Nevada 89520-3083

EXHIBITS

PLTF: **STATE OF NEVADA** PATY: **T. Riggs**
DEFT: **FERRILL JOSEPH VOLPICELLI** DATY: **B. Van Ry**

Case No: **CR03-1263** Dept. No: **10** Clerk: **G. Bartlett** Date: 11/10/03

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	State	Photo – Aussie Self-Storage, overview	11/10/03	Stip.	11/12/03
2	State	Photo – Aussie Self-Storage, B-114	11/10/03	Stip.	11/12/03
3	State	Bike display price tag	11/10/03	Stip.	11/12/03
4	State	Transaction check receipt, 10/17/01	11/10/03	Stip.	11/12/03
5	State	Photo – Mongoose Bicycle	11/10/03	Stip.	11/12/03
6	State	Occupant Information Sheet	11/10/03	Stip.	11/12/03
7	State	Photo – Lowe's rug	11/10/03	Stip.	11/12/03
8	State	Photo – Bar codes on Lowe's rug	11/10/03	Stip.	11/12/03
8.1	State	Sku # with bar code	11/10/03	Stip.	11/12/03
9	State	Brother label maker	11/10/03	Stip.	11/12/03
10	State	Photo – Mazda MPV Van	11/10/03	Stip.	11/12/03
11	State	Transpositions	11/10/03	Obj.	11/12/03
12	State	Accordion folder (Reserved)	11/12/03	Stip.	11/12/03
13	State	Polaroid – DVD Home Theater system	11/10/03	Stip.	11/12/03
14	State	2 Wal-Mart receipts, 10/13/01	11/10/03	Stip.	11/12/03
15	State	Photo – Computer Monitors	11/10/03	Stip.	11/12/03
16	State	4 Wal-Mart receipts	11/10/03	Stip.	11/12/03
17	State	4 Wal-Mart receipts (TV)	11/10/03	Stip.	11/12/03
18	State	Photo – DVD Combo	11/10/03	Stip.	11/12/03
19	State	3 Wal-Mart receipts (sewing machine)	11/10/03	Stip.	11/12/03
20	State	Photo – Serge sewing machine	11/10/03	Stip.	11/12/03
21	State	Wal-Mart receipt for bicycle	11/10/03	Stip.	11/12/03

EXHIBITS

PLTF: **STATE OF NEVADA** PATY: **T. Riggs**
DEFT: **FERRILL JOSEPH VOLPICELLI** DATY: **B. Van Ry**

Case No: **CR03-1263** Dept. No: **10** Clerk: **G. Bartlett** Date: 11/10/03

Exhibit No.	Party	Description	Marked	Offered	Admitted
21.1	State	Voided Wal-Mart bicycle receipt	11/10/03	Stip.	11/12/03
22	State	Lowe's rug receipt	11/10/03	Stip.	11/12/03
23	State	Home Depot toilet receipt	11/10/03	Stip.	11/12/03
24	State	Photo – Toilet box	11/10/03	Stip.	11/12/03
25	State	Bed Bath & Beyond receipt	11/10/03	Stip.	11/12/03
26	State	Photo – Krups coffee maker	11/10/03	Stip.	11/12/03
27	State	Photo – Comforters	11/10/03	Stip.	11/12/03
28	State	Shopko receipt (comforter)	11/10/03	Stip.	11/12/03
29	State	Label maker case	11/12/03	Stip	11/12/03
30	State	Photo – label maker	11/12/03	Stip.	11/12/03
31	State	Photo – accordion folder	11/12/03	Stip.	11/12/03
32	State	Wal-Mart price check receipt	11/12/03	Stip.	11/12/03
33	State	Sonicare toothbrush	11/12/03	Stip.	11/12/03
34	State	Lowe's project estimate (redacted)	11/12/03	Stip.	11/12/03
35	State	Lowe's videotape	11/12/03	Stip.	11/12/03
36	State	Shopko receipt toothbrush	11/12/03	Stip.	11/12/03
37	State	Super-Kmart Easy Steamer receipt	11/12/03	Stip.	11/12/03
38	State	CompUSA receipt	11/12/03	Stip.	11/12/03
39	State	Best Buy receipts (2)	11/12/03	Stip.	11/12/03
40	State	Home Depot receipt closet organizer	11/12/03	Stip.	11/12/03
41	State	Office Depot receipt	11/12/03	Stip.	11/12/03
42	State	PetSmart receipts (2)	11/12/03	Stip.	11/12/03
43	State	Target receipt	11/12/03	Stip.	11/12/03
44	State	Last transaction receipt	11/13/03	Stip.	11/13/03
45	State	Shopko receipt	11/13/03	Stip.	11/13/03

EXHIBITS

PLTF: **STATE OF NEVADA** PATY: **T. Riggs**
DEFT: **FERRILL JOSEPH VOLPICELLI** DATY: **B. Van Ry**

Case No: **CR03-1263** Dept. No: **10** Clerk: **G. Bartlett** Date: 11/10/03

Exhibit No.	Party	**Description**	Marked	Offered	Admitted
46	State	Shopko receipt	11/13/03	Stip.	11/13/03

Print Date: 8/13/2012
V4.3

AUSSIE SELF STORAGE, LLC
30 E VICTORIAN AVE SPARKS, NV 89431

OCCUPANT INFORMATION SHEET
(Occupant to fill out – PLEASE PRINT)

Name: Ashley Schilling **Space No.** B114

Address: 1060 Vassar St. **Contract No.** 2787

City: Reno **State:** NV **Zip:** 89502

Home ph.: (res) 329-0389 **Cel. Pager No. ( )** _____

Drivers License No: 4600555052 **Social Security No.:** 530 98 9653

Drivers License expiration date: 5/03 **Birth Date:** 5/19/79

EMPLOYMENT INFORMATION

Employers Name: _____ **Work ph.:** 321-8339

Address: _____

City: _____ **State:** _____ **Zip:** _____

EMERGENCY CONTACT - ALTERNATE **(Friend or relative at different address)**

Name: CARLA LEE

Address: 1060 VASSAR ST **City:** RENO

State: NV **Zip:** 89502 **Home Ph.** 329-0389 **Work ph.** —

PERSONS AUTHORIZED FOR ACCESS: **YES** _____ **NO** _____

Name Ferrill Joseph Volpicelli **Name** CHANEL VOLPICELLI

Name TRAVIS VOLPICELLI **Name** _____

****

I understand it is *MY SOLE RESPONSIBILITY* to keep all the above information current with Aussie Self Storage, LLC. I understand any changes with the above information are to be submitted in writing within (15) fifteen days, signed by the Occupant.

Ashley Schilling
OCCUPANT SIGNATURE

8/7/01
DATE

HOW DID YOU HERE ABOUT AUSSIE SELF STORAGE:

_____ 1. Drive by / Saw sign _____ 2. Live in neighborhood _____ 3. Yellow pages _____ 4. Newspaper Ad

_____ 5. Word of Mouth X 6. Referral-Company or business _____ 7. Other: _____

No. CR03-1263
State of Nevada
Vs.
Ferrill Joseph Volpicelli
Ex. 6
Admitted: November 12, **2003**
RONALD A. LONGTIN, JR., CLERK
By _____, Deputy

V4.5

STORE	ITEM	UPC#	PRICE
SHOPKO	TOOTHBRUSH	069055815984	$17.00
SHOPKO	CASIOPIA	682676200016	$15.00
SHOPKO	DOWNPILLOW	025521227408	$20.00
SHOPKO	MEMORYPILLOW	025521025905	$15.00
SHOPKO	COMFORTER	023521513815	
SHOPKO	CONVERTER	61797700014-	$12.00
SHOPKO	PS2 CONTROLLE	741948001031	$9.00
SHOPKO	CD	047323387005	$35.00
SHOPKO	BBQ	099143012476	$80.00
SHOPKO	VACUUM	023169110304	$100.00
TARGET	TI CHEAP	033317029990	$12.00
TARGET	STEAMER	011120172515	$100.00
TARGET	COMFORTER	028828446664	$30.00
TARGET	VIDEO/COOLER	617977223006	$50.00
TARGET	CDPLAYER	062118870319	$39.00
TARGET	TOOL BOX	028907058399	
TARGET	CALCULATOR	033317071784	
TARGET	BACKPACK	012697197123	$20.00
TARGET	VACUUM	023169110564	
TARGET	SHAVER	074590825336	$30.00
TOYRUS	SPIELBERG	042884013516	$60.00
TOYSRUS	REDUCER	042884013530	$15.00
WALMART	PRINTER	725184623189	$80.00
WALMART	SEWING	012502105404	$100.00
WALMART	FLAT	769940727216	$157.00
WALMART	COMPUTER	769940305001	$396.00
WALMART	19"SANYYO	086483037818	$129.00
WALMART	MONITOR	076994071711	$160.00
WALMART	VACUUM	681131061757	$88.00
WALMART	AUTOSTEREO	04325801235-	$70.00
WALMART	CHAIR	601385944226	$30.00
WALMART	LEGO	042884071462	$20.00
WALMART	THEATER	025806041989	$70.00
WALMART	GAME CONTROLL	741948001079	$9.00
WALMART	ADAPTER CARD	741948300936	$8.00
WALMART	PHONE	735078091161	$30.00
WALMART	SANYO	086483030673	$189.00
WALMART	LASER	052303203114	$40.00
WALMART	SEWING	012502105404	$100.00
WALMART	SPEAKERS	012986945413	
WALMART	DESK	721015331346	$50.00
WALMART	COOLER	075536110004	$35.00
WALMART	CAMERA	047007007823	$15.00
WALMART	RADIOS	715106133186	$20.00
WALMART	MEMORY CARD	728658080075	$8.00

EXHIBIT
tabbies
11

No. CR03-1263
STATE OF NEVADA
Vs.
FERRILL JOSEPH VOLPICELLI
Ex. 11
Admitted: November 12, 2003
RONALD A. LONGTIN, JR., CLERK
_____, Deputy

V4.6

TRANSPOSITIONS 10/4/01

STORE	ITEM	UPC#	PRICE
BEST BUY	SONY WALKMAN	027242587793	$69.00
BEST BUY	TV/DVD	022265270271	$225.00
BESTBUY	CAMERA	044701990246	$20.00
BESTBUY	WALKMAN	093293203258	$25.00
BESTBUY	SATRECEIVER	027242565685	$100.00
COMP USA	SWITCH	02286810973-	$29.00
COMPUSA	SWITCH OR?	662698107364	$70.00
HOMEDEPOT	ROLLER	721415405135	$29.00
HOMEDEPOT	RUG	029055014268	$50.00
HOMEDEPOT	H2O FILTER	084691790921	$39.00
HOMEDEPOT	FAN	784891258367	$28.00
HOMEDEPOT	SHOWER	012611232619	$69.00
HOMEDEPOT	SHELVES	075381016247	$29.00
HOMEDEPOT	BADGER 1	050375000419	$50.00
KMART	STEAMER	04603488594-	$100.00
KMART	BP/WRIST	767056041745	$16.00
KRAGEN	TREATMENT	024631000154	$7.00
KRAGEN	REDUCER	071153651487	$2.00
LOWES	FAN	060672240029	$25.00
LOWES	VACUUM	073581080811	$90.00
LOWES	RATCHET SET	662459057013	$65.00
LOWES	GRILL	081151639301	$60.00
LOWES	SHOWERHEAD	047266063233	$25.00
LOWES	SHOWER	034449364959	$70.00
LOWES	WOOD BLINDS	027088822157	$25.00
LOWES	CLOSET ORG	075381056649	$50.00
LOWES	SHOERACK	075381080811	$15.00
LOWES	FAX/PHONE	022265621554	$100.00
LOWES	ARM	720558422214	$20.00
LOWES	THERMOSTAT	049694400703	$20.00
LOWES	PAINT	02496412582-	$300.00
LOWES	ALARM	03862591623?	$50.00
OFFICE DEPO	BLACK/WHITE	012502534617	$9.00
OFFICEDEPO	SHARPENER	079946192407	$12.00
OFFICEDEPO	SAFE	049074000639	$30.00
OFFICEDEPO	CARTRIDGE	012502053347	$36.00
OFFICEDEPO	DESK	042495013912	$59.00
OFFICEMAX	LABEL SOFT	034707039551	$19.00
OFFICEMAX	APOLLO	718575150005	$100.00
OFFICEMAX	CARTRIDGE	012502053347	$37.00
PEPBOYS	CONVERTER	708609076340	$15.00
PEPBOYS	WIRE CH442	033086227559	$15.00
PEPBOYS	GREY RUG	033499970776	$20.00
PETSMART	PUMP	017163107025	$17.00
PHONES	PANASONIC	2570,2553,255	
SAVON	TUBE	072774860746	

Page 1

V4.7

4/6/04

EXHIBITS

PLTF: **STATE OF NEVADA** PATY: **T. Riggs**
DEFT: **FERRILL JOSEPH VOLPICELLI** DATY: **B. Van Ry**

Case No: **CR03-1263** Dept. No: **10** Clerk: **G. Bartlett** Date: 04/01/04

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	State	Certified copy of prior felony conviction	4/1/04	No obj.	4/1/04
2	State	Certified copy of prior felony conviction	4/1/04	No obj.	4/1/04
3	State	Certified copy of prior felony conviction	4/1/04	No obj.	4/1/04
4	State	Picture of Deft.	4/1/04	No obj.	4/1/04
5	State	RPD Financial Impact report	4/1/04	No obj.	4/1/04
6	Deft	Various letters of completion	4/1/04	No obj.	4/1/04
7	Deft.	Various certificates	4/1/04	No obj.	4/1/04

FILED

FEB 11 2004

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

Code 1850

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

/

Case No. CR02-0148

Dept. No. 9

Reporter: D. Davidson

JUDGMENT

The Defendant, Ferrill Joseph Volpicelli, having been found Guilty on Count II of the Information by the Court on December 17, 2003, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crime of Aiding And Abetting In The Commission Of Attempting To Obtain Money By False Pretenses, a violation of NRS 193.330, NRS 195.020 and NRS 205.380, a felony, as charged in Count II of the Information, and that he be punished by imprisonment in the Nevada Department of Corrections for a maximum term of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, with credit for zero (0) days time served to be served consecutively to the sentence imposed in case number CR03-1263.

It is further ordered that the Defendant pay the statutory Twenty-five Dollar ($25.00) administrative assessment fee and reimburse the County of Washoe the sum of

Five Hundred Dollars ($500.00) for legal representation by the Washoe County Public Defender's Office.

Dated this 11th day of February, 2004.

Connie J. Steinheimer for
JAMES W. HARDESTY
DISTRICT JUDGE

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAR 31 2004

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

CODE: 4185

ORIGINAL

FILED
2004 MAR -3 AM 11:32
...GTIN, JR.
...TY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR02-0148
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

SENTENCING

FEBRUARY 11, 2004

RENO, NEVADA

Reported by: DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

A P P E A R A N C E S

For the Plaintiff:

KRISTIN L. ERICKSON
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

JACK A. ALIAN
Attorney at Law
360 W. Liberty Street
Reno, Nevada 89501

For the Division of Parole and Probation:

HEIDI POE

RENO, NEVADA, WEDNESDAY, FEBRUARY 11, 2004

9:07 A.M.

--oOo--

THE COURT: State versus Ferrill Volpicelli.

Ms. Erickson is here for the State, Mr. Alian is here for Mr. Volpicelli, Ms. Poe is here for the Division of Parole and Probation.

This is the time set for sentencing in this case.

Mr. Volpicelli, have you seen the presentence report in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Any factual corrections, Mr. Alian, you or your client would like to bring to my attention?

MR. ALIAN: Your Honor, I believe on the last page where they are figuring out the custody status and total days, they have total days zero, and it says under sentencing 02-148. Or 147. I assume that what they mean is that he gets zero time for this case, which would be 02-148 rather than 147.

Other than that, I don't have any other factual corrections to make.

THE COURT: Okay. What is your position with regard to the recommendation of the Division?

MR. ALIAN: Thank you, Your Honor. Your Honor, if I may, I would respectfully ask the Court to consider first running this case concurrent with CR02-1264. The Parole and Probation Department has asked that it run consecutive.

The Court has heard this case, so I won't belabor the matter, but I would ask the Court to also consider perhaps a 12 to 30 month sentence in this instance; and the reason why I suggest that -- and run it -- and ask that the Court consider running it concurrent is the fact that Mr. Volpicelli, as we know, has an extensive criminal history but at the same time also has some severe, I think, psychological problems.

In addition, he's also facing federal revocation. So he's going to be in for a long period of time. This at least gives him some light at the end of the tunnel. I think that it also will allow him to do some things which I think he really must do in the prison system to help himself, and that is avail himself of all the psychological help that he can get while there.

Based upon that, that's why I respectfully ask the Court to run it concurrent and consider a 12-to-30-month sentence in this instance. Thank you.

THE COURT: Ms. Erickson?

MS. ERICKSON: Thank you, Your Honor.

Your Honor, the defendant now stands convicted of eight felonies. In addition he's been found guilty of eight burglary charges in Department Number 10, including charges of unlawful manufacturing of inventory labels.

I will not go over the facts of this crime as you heard all the facts during the course of the trial. What is of extreme concern to the State, Your Honor, is this is a despicable crime. This is a man who used his own son to further his criminal activities.

It's heartbreaking to listen to that tape of the phone call when he's trying to convince his son to commit this crime. You can hear the hesitation in his son's voice, he knows it's wrong, he knows he's not supposed to do it, he knows it's illegal, but it's his own dad asking him to do it. How could he say no to his own father trying to convince him, talk him into doing criminal acts? It's despicable, Your

Honor.

Your Honor, this man is dangerous. He's dangerous because he's smart. He's smart, he's persuasive, he's conniving. He persuaded his own son to commit this act. In the other trial in Department 10, he convinced another person, basically, to do the dirty work for him. Once he switched the labels, he convinced them to go in and make the purchase or return in order to steal from that particular store.

He's a dangerous man, Your Honor. The State would ask that you sentence the defendant to 24 to 60 months in the Nevada State Prison and run that case consecutive to CR02-1263.

THE COURT: All right. Ms. Poe?

MS. POE: Nothing further, Your Honor.

THE COURT: Okay. Mr. Volpicelli, you have an opportunity to address the Court. I have, of course, read your statement. Is there anything else you would like to say?

THE DEFENDANT: Your Honor, I would request that the Court consider running this sentence concurrent with the sentence I'm currently serving in Carson City, and that way I can put this behind me and get on with my life.

THE COURT: Okay. The Court believes the sentence should measure the crime and the offense that took place, not pile on years just because of your criminal history.

You are sentenced to a term of 48 months in the Nevada Department of Corrections, with a minimum parole eligibility of 12 months consecutive to CR02-1263.

You will pay a $25 administrative-assessment fee, $500 in public defender fees.

One other issue, Mr. Volpicelli, I wanted to mention to you. You have counsel in this case; I believe you have counsel in the other case in this department. You are a prolific letter writer, making a number of requests to the Court, to the Court's clerk, to the court reporters.

As long as you are represented by counsel, you need to channel those requests through your counsel. If you want transcripts, if you want copies of your records, if you want copies of your files, there's a procedure that's set into place. We respond to those as quickly as we can. And they will be responded to.

But I would request that those requests be

made through your counsel. And we will respond to those in due course with orders and directions to counsel and to the clerk's office accordingly. Otherwise, when we get all these letters written by you in a pro per way, frankly we just send those to your counsel requesting them to do the things that you should be asking them to do on your behalf. Okay?

THE DEFENDANT: I understand, Your Honor.

THE COURT: All right. Thank you.

Zero days credit for time served.

(Proceedings concluded.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DONNA DAVIDSON, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

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

DATED: At Reno, Nevada, this 21st day of February, 2004.

Donna Davidson

DONNA DAVIDSON, CCR #318

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAR 31 2004

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

DA #215954

WCSO WC01-204619

ORIGINAL

FILED
2002 FEB -6 PM 3:52
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CODE 1800
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR02-0148

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

_____/

INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that FERRILL JOSEPH VOLPICELLI, the defendant above named, has committed the crimes of:

F30 COUNT I. AIDING AND ABETTING IN THE COMMISSION OF BURGLARY, a violation of NRS 195.020 and NRS 205.060, a felony, in the manner following:

That the said defendant on or between the 22nd day of October A.D. 2001, and the 23rd day of October A.D. 2001, or thereabout, and before the filing of this Information, at and

within the County of Washoe, State of Nevada, did willfully and unlawfully aid and abet TRAVIS V., a juvenile, to enter the WASHOE COUNTY DETENTION FACILITY, at 911 Parr Boulevard, Reno, Washoe County, Nevada, with the intent to obtain money by false pretenses in an amount greater than $250.00 in that he counseled, encouraged, induced or otherwise procured TRAVIS V. to commit said offense.

F20 COUNT II. AIDING AND ABETTING IN THE COMMISSION OF ATTEMPTING TO OBTAIN MONEY BY FALSE PRETENSES, a violation of NRS 193.330, NRS 195.020 and NRS 205.380, a felony, in the manner following:

That the said defendant on or between the 22nd day of October A.D. 2001, and the 23rd day of October A.D. 2001, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully, unlawfully and knowingly aid and abet TRAVIS V., a juvenile, in attempting to obtain money by false pretenses in that TRAVIS V. falsely represented to Washoe County Sheriff's Office personnel that a previously issued Washoe County check to TRAVIS V. was lost and/or missing thereby requesting a new check in an amount greater than $250.00 be issued, with the intent to cheat or defraud at 911 Parr Boulevard, Reno, Washoe County, nevada, in that FERRILL JOSEPH VOLPICELLI counseled, encouraged, induced or otherwise procured TRAVIS V. to commit said offense.

///

///

All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Nevada.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By: _____
KRISTIN L. ERICKSON
4258
Deputy District Attorney

The following are the names and addresses of such witnesses as are known to me at the time of the filing of the within Information:

RENO POLICE DEPARTMENT

DETECTIVE R. THOMAS #2481

WASHOE COUNTY SHERIFF'S OFFICE

DETECTIVE L. LODGE #0386
MARGARET NETT
ELIZABETH BENNETT

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
KRISTIN L. ERICKSON
4258
Deputy District Attorney

PCN 82444353

02041619

V4.25

No. CR03-1263

State

vs.

Ferrill Volpicelli

_____ Ex. 1

Admitted: 4-1, 2004

RONALD A. LONGTIN, JR., CLERK

By _____ Deputy

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAR 31 2004

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

4/6/04

EXHIBITS

PLTF: **STATE OF NEVADA** PATY: **T. Riggs**
DEFT: **FERRILL JOSEPH VOLPICELLI** DATY: **B. Van Ry**

Case No: **CR03-1263** Dept. No: **10** Clerk: **G. Bartlett** Date: 04/01/04

Exhibit No.	Party	Description	Marked	Offered	Admitted
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2	State	Certified copy of prior felony conviction	4/1/04	No obj.	4/1/04
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6	Deft	Various letters of completion	4/1/04	No obj.	4/1/04
7	Deft.	Various certificates	4/1/04	No obj.	4/1/04

Print Date: 4/6/2004

V4.27

FILED

FEB 11 2004

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

Code 1850

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

/

Case No. CR02-0148

Dept. No. 9

Reporter: D. Davidson

JUDGMENT

The Defendant, Ferrill Joseph Volpicelli, having been found Guilty on Count II of the Information by the Court on December 17, 2003, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crime of Aiding And Abetting In The Commission Of Attempting To Obtain Money By False Pretenses, a violation of NRS 193.330, NRS 195.020 and NRS 205.380, a felony, as charged in Count II of the Information, and that he be punished by imprisonment in the Nevada Department of Corrections for a maximum term of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, with credit for zero (0) days time served to be served consecutively to the sentence imposed in case number CR03-1263.

It is further ordered that the Defendant pay the statutory Twenty-five Dollar ($25.00) administrative assessment fee and reimburse the County of Washoe the sum of

Five Hundred Dollars ($500.00) for legal representation by the Washoe County Public Defender's Office.

Dated this 11th day of February, 2004.

Connie J. Steinheimer for
JAMES W. HARDESTY
DISTRICT JUDGE

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAR 31 2004

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

CODE: 4185

ORIGINAL

FILED
2004 MAR -3 AM 11:32
...GTIN, JR.
...UTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR02-0148
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

SENTENCING

FEBRUARY 11, 2004

RENO, NEVADA

Reported by: DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

A P P E A R A N C E S

For the Plaintiff:

KRISTIN L. ERICKSON
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

JACK A. ALIAN
Attorney at Law
360 W. Liberty Street
Reno, Nevada 89501

For the Division of Parole and Probation:

HEIDI POE

RENO, NEVADA, WEDNESDAY, FEBRUARY 11, 2004

9:07 A.M.

--oOo--

THE COURT: State versus Ferrill Volpicelli.

Ms. Erickson is here for the State, Mr. Alian is here for Mr. Volpicelli, Ms. Poe is here for the Division of Parole and Probation.

This is the time set for sentencing in this case.

Mr. Volpicelli, have you seen the presentence report in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Any factual corrections, Mr. Alian, you or your client would like to bring to my attention?

MR. ALIAN: Your Honor, I believe on the last page where they are figuring out the custody status and total days, they have total days zero, and it says under sentencing 02-148. Or 147. I assume that what they mean is that he gets zero time for this case, which would be 02-148 rather than 147.

Other than that, I don't have any other factual corrections to make.

THE COURT: Okay. What is your position with regard to the recommendation of the Division?

MR. ALIAN: Thank you, Your Honor. Your Honor, if I may, I would respectfully ask the Court to consider first running this case concurrent with CR02-1264. The Parole and Probation Department has asked that it run consecutive.

The Court has heard this case, so I won't belabor the matter, but I would ask the Court to also consider perhaps a 12 to 30 month sentence in this instance; and the reason why I suggest that -- and run it -- and ask that the Court consider running it concurrent is the fact that Mr. Volpicelli, as we know, has an extensive criminal history but at the same time also has some severe, I think, psychological problems.

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Based upon that, that's why I respectfully ask the Court to run it concurrent and consider a 12-to-30-month sentence in this instance. Thank you.

THE COURT: Ms. Erickson?

MS. ERICKSON: Thank you, Your Honor.

Your Honor, the defendant now stands convicted of eight felonies. In addition he's been found guilty of eight burglary charges in Department Number 10, including charges of unlawful manufacturing of inventory labels.

I will not go over the facts of this crime as you heard all the facts during the course of the trial. What is of extreme concern to the State, Your Honor, is this is a despicable crime. This is a man who used his own son to further his criminal activities.

It's heartbreaking to listen to that tape of the phone call when he's trying to convince his son to commit this crime. You can hear the hesitation in his son's voice, he knows it's wrong, he knows he's not supposed to do it, he knows it's illegal, but it's his own dad asking him to do it. How could he say no to his own father trying to convince him, talk him into doing criminal acts? It's despicable, Your

Honor.

Your Honor, this man is dangerous. He's dangerous because he's smart. He's smart, he's persuasive, he's conniving. He persuaded his own son to commit this act. In the other trial in Department 10, he convinced another person, basically, to do the dirty work for him. Once he switched the labels, he convinced them to go in and make the purchase or return in order to steal from that particular store.

He's a dangerous man, Your Honor. The State would ask that you sentence the defendant to 24 to 60 months in the Nevada State Prison and run that case consecutive to CR02-1263.

THE COURT: All right. Ms. Poe?

MS. POE: Nothing further, Your Honor.

THE COURT: Okay. Mr. Volpicelli, you have an opportunity to address the Court. I have, of course, read your statement. Is there anything else you would like to say?

THE DEFENDANT: Your Honor, I would request that the Court consider running this sentence concurrent with the sentence I'm currently serving in Carson City, and that way I can put this behind me and get on with my life.

THE COURT: Okay. The Court believes the sentence should measure the crime and the offense that took place, not pile on years just because of your criminal history.

You are sentenced to a term of 48 months in the Nevada Department of Corrections, with a minimum parole eligibility of 12 months consecutive to CR02-1263.

You will pay a $25 administrative-assessment fee, $500 in public defender fees.

One other issue, Mr. Volpicelli, I wanted to mention to you. You have counsel in this case; I believe you have counsel in the other case in this department. You are a prolific letter writer, making a number of requests to the Court, to the Court's clerk, to the court reporters.

As long as you are represented by counsel, you need to channel those requests through your counsel. If you want transcripts, if you want copies of your records, if you want copies of your files, there's a procedure that's set into place. We respond to those as quickly as we can. And they will be responded to.

But I would request that those requests be

made through your counsel. And we will respond to those in due course with orders and directions to counsel and to the clerk's office accordingly. Otherwise, when we get all these letters written by you in a pro per way, frankly we just send those to your counsel requesting them to do the things that you should be asking them to do on your behalf. Okay?

THE DEFENDANT: I understand, Your Honor.

THE COURT: All right. Thank you.

Zero days credit for time served.

(Proceedings concluded.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DONNA DAVIDSON, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

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

DATED: At Reno, Nevada, this 21st day of February, 2004.

Donna Davidson

DONNA DAVIDSON, CCR #318

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAR 31 2004

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

DA #215954

WCSO WC01-204619

ORIGINAL

FILED
2002 FEB -6 PM 3:52
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CODE 1800
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR02-0148

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

_____/

INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that FERRILL JOSEPH VOLPICELLI, the defendant above named, has committed the crimes of:

F30 COUNT I. AIDING AND ABETTING IN THE COMMISSION OF BURGLARY, a violation of NRS 195.020 and NRS 205.060, a felony, in the manner following:

That the said defendant on or between the 22nd day of October A.D. 2001, and the 23rd day of October A.D. 2001, or thereabout, and before the filing of this Information, at and

within the County of Washoe, State of Nevada, did willfully and unlawfully aid and abet TRAVIS V., a juvenile, to enter the WASHOE COUNTY DETENTION FACILITY, at 911 Parr Boulevard, Reno, Washoe County, Nevada, with the intent to obtain money by false pretenses in an amount greater than $250.00 in that he counseled, encouraged, induced or otherwise procured TRAVIS V. to commit said offense.

F20 COUNT II. AIDING AND ABETTING IN THE COMMISSION OF ATTEMPTING TO OBTAIN MONEY BY FALSE PRETENSES, a violation of NRS 193.330, NRS 195.020 and NRS 205.380, a felony, in the manner following:

That the said defendant on or between the 22nd day of October A.D. 2001, and the 23rd day of October A.D. 2001, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully, unlawfully and knowingly aid and abet TRAVIS V., a juvenile, in attempting to obtain money by false pretenses in that TRAVIS V. falsely represented to Washoe County Sheriff's Office personnel that a previously issued Washoe County check to TRAVIS V. was lost and/or missing thereby requesting a new check in an amount greater than $250.00 be issued, with the intent to cheat or defraud at 911 Parr Boulevard, Reno, Washoe County, nevada, in that FERRILL JOSEPH VOLPICELLI counseled, encouraged, induced or otherwise procured TRAVIS V. to commit said offense.

///

///

All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Nevada.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By:
KRISTIN L. ERICKSON
4258
Deputy District Attorney

The following are the names and addresses of such witnesses as are known to me at the time of the filing of the within Information:

RENO POLICE DEPARTMENT

DETECTIVE R. THOMAS #2481

WASHOE COUNTY SHERIFF'S OFFICE

DETECTIVE L. LODGE #0386
MARGARET NETT
ELIZABETH BENNETT

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
KRISTIN L. ERICKSON
4258
Deputy District Attorney

PCN 82444353

02041619

No. CR03-1263

State

vs.

Ferrill Volpicelli

Ex. 1

Admitted: 4-1, 2004

RONALD A. LONGTIN, JR., CLERK

By _____ Deputy

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAR 31 2004

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

No. CR98-2160

Dept. No. 9

FILED
NOV 3 1998
BETTY L. LEWIS, Clerk
By _____ Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Reporter: D. Vieira

J U D G M E N T

The Defendant, having entered a plea of Guilty, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crime of Burglary, a violation of NRS 205.060, a felony, as charged in Counts I and II of the Information, and that he be punished by imprisonment in the Nevada State Prison for a minimum term of twenty-four (24) months to a maximum term of seventy-two (72) months and by payment of a fine in the amount of Five Thousand Dollars ($5,000.00) on Count I, to run consecutively to the Federal prison term he is obligated to serve; a minimum term of sixteen (16) months to a maximum term of seventy-two (72) months Nevada State Prison on Count II, to run consecutively to Count I. The sentence is suspended as to Count II and the Defendant is placed on probation for a period of time not to exceed three (3) years, to run consecutively to Count I and consecutively to the Federal prison term. The Defendant is given credit for eighty-seven (87) days time served. It is further ordered that the Defendant pay the

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EXHIBIT
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statutory Twenty-Five Dollar ($25.00) administrative assessment fee and pay the DNA fees of Two Hundred Fifty Dollars ($250.00).

Dated this 3rd day of November, 1998.

DISTRICT JUDGE

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-23-03

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

FILED

99 APR -1 A9:09

LARRY HARVEY, CLERK

BY _____ DEPUTY

Case No. CR98-2160

Department No. 9

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

BEFORE THE HONORABLE MARGARET SPRINGGATE DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA Plaintiff vs. FERRILL JOSEPH VOLPICELLI Defendant	ARRAIGNMENT

TRANSCRIPT OF PROCEEDINGS
Thursday, September 24, 1998; 8:30 A.M.
Reno, Nevada

APPEARANCES:

For the Plaintiff: MICHAEL MAHAFFEY, Esq.
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada, 89501

For Defendant: DAIVD HOUSTON, Esq.
333 Marsh Avenue
Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CSR #18
Computer-aided Transcription

THURSDAY, SEPTEMBER 24, 1998; 8:00 A.M.

-o0o-

THE COURT: CR98-2160, State versus Ferrill Joseph Volpicelli. The Defendant is present together with his attorney, Mr. Houston.

MR. HOUSTON: Good morning, Your Honor.

THE COURT: Good morning, Mr. Houston. Good morning, Mr. Olmstead.

MR. HOUSTON: Your Honor, the name is correctly spelled and stated on line twelve. We are familiar with the content of the Information.

Your Honor, the negotiations are we will be entering pleas to Count I and II of guilty.

THE COURT: State the nature of the negotiations.

MR. HOUSTON: Yes, Your Honor. The nature of the negotiations are as follows: The State agrees, primarily, to concur with Parole and Probation as far as whatever recommendation Parole and Probation may make.

Further, the State agrees not to pursue any additional charges that could have been filed or were filed in reference to this particular case.

THE COURT: Do you waive the reading of the Information?

V4.50

MR. HOUSTON: Yes, we do.

THE COURT: Mr. Mahaffey?

MR. MAHAFFEY: That is correct.

THE COURT: May I see the Plea Memorandum?

Mr. Volpicelli, you have heard the statements of your counsel and the District Attorney as to the plea negotiations. Is that your understanding as well?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Before I can accept your plea of guilty, I have to go through some questions with you to make sure you understand the rights you are giving up by entering the plea.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand by entering a plea of guilty to Counts I and II, burglary, felonies, do you understand that as to Count I, you may be imprisoned for one to ten years in the Nevada State Prison? You would be eligible for probation.

THE DEFENDANT: Yes, Your Honor.

THE COURT: That you may also be fined up to $10,000?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that as to Count II, you may be imprisoned for a period of one to ten years in the Nevada State Prison and would be eligible for probation?

THE DEFENDANT: Yes.

THE COURT: You may also be fined up to $10,000.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand the Court may also impose the requirement that you pay restitution in these cases?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that you could be sentenced to Count I and Count II consecutive to each other or concurrent?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand the Court is not bound by the plea negotiations that have gone on in this case, and that I can impose any sentence allowed by law?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand if you do not plead guilty, you have a right to trial by jury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand you have a right to confront the witnesses who testify against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You would have a right to subpoena witnesses to come and testify in your behalf.

THE DEFENDANT: Yes, Your Honor.

THE COURT: You would have a right to remain silent

throughout the trial and require the State to prove the elements of the offense beyond a reasonable doubt.

THE DEFENDANT: Yes, Your Honor.

THE COURT: By entering a plea of gulty in this case, you are giving up those constitutional rights; do you understand that?

THE DEFENDANT: Yes.

THE COURT: Mr. Mahaffey.

MR. MAHAFFEY: Thank you, Your Honor. Sir, you have pled guilty to two counts of burglary. If this matter went to trial, the State would prove the following as to each count: That on or about January 9, 1998, in Wahose County, State of Nevada, you did wilfully and unlawfully enter buildings belonging to others. When you did this, you did it with the intent to commit uttering a forged instrument, a felony, within those buildings. Do you understand what the State would prove?

THE DEFENDANT: Yes, Sir.

THE COURT: Mr. Volpicelli, did you commit these crimes?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is there anything you have not understood about the proceedings here today?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone made and threats or promises to

you in exchange for your plea?

THE DEFENDANT: No, Your Honor.

THE COURET: To Count I charged in the Information, burglary, a felony, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: To Count II charged in the Information, burglary, a felony, how do you plead?

THE DEFENDANT: Guilty, Your Honor.

THE COURT: The Court finds you understood your constitutional rights, you understood the nature of the charges and the penalties that may be imposed and will accept you plea of guilty.

A date for sentencing.

THE CLERK: October 29th, 8:30 A.M.

MR. HOUSTON: Your Honor, Would October 26th be possible?

THE COURT: Is that possible for Parole and Probation? That is a Monday. We can't do Mondays. Maybe Tuesday?

MR. HOUSTON: The 28th, Your Honor?

THE COURT: The 28th is fine. That should give you enought time, Mr. Webb.

MR. HOUSTON: Thank you, Your Honor.

(Whereupon the proceedings were concluded.)

STATE OF NEVADA,)
) ss.
County of Washoe.)

I, JUDITH ANN SCHONLAU, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in the Department 9 of the Second Judicial District Court on Thursday, September 24, 1998, at the hour of 8:30 a.m. and that I then and there took verbatim stenotypy notes of the proceedings had and testimony given therein in the case of THE STATE OF NEVADA versus FERRILL JOSEPH VOLPICELLI, Case Number CR98-2160.

That the foregoing transcript, consisting of pages numbered 1 - 5, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given in the matter of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 31st day of March, 1999.

Judith Ann Schonlau

JUDITH ANN SCHONLAU, CSR #18

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-23-03

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

In the Justice Court of Reno Township

Co ty of Washoe, State of Nevad

159462 T3A

CR98-2160

'98 SEP 17 P2:24

THE STATE OF NEVADA,

Plaintiff,

vs.

No. 91,346

FERRILL JOSEPH VOLPICELLI,

Defendant.

Waiver of Preliminary Examination

I, the Defendant in the above-entitled action, being fully advised of my rights in the premises, hereby waive my preliminary examination on the charge of Burglary in the above entitled action, and consent that I may be remanded to the Second Judicial District Court of the State of Nevada, for further proceedings therein.

DATE: 9 SEPT 98

DEF will plead Guilty to 2 counts Burg. State agrees to DISMISS All remaining charges and not to pursue any additional charges. State will concur w/ P+P

V4.57

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file in my office.

DATE: 4-23-03

ATTEST: [illegible], Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

Case No. CR98-2160

Dept. No. 9

FILED
BETTY L. LEWIS Clerk
By _____ Deputy Clerk
Dept. 24, 1998

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

GUILTY PLEA MEMORANDUM

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

1. I, FERRILL JOSEPH VOLPICELLI, understand that I am charged with the offense(s) of: COUNTS I and II: BURGLARY, violations of NRS 205.060, felonies.

2. I desire to enter a plea of guilty to the offense(s) of COUNTS I and II: BURGLARY, violations of NRS 205.060, felonies, as more fully alleged in the charge(s) filed against me.

3. By entering my plea of guilty I know and understand that I am waiving the following constitutional rights:

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A. I waive my privilege against self-incrimination.

B. I waive my right to trial by jury, at which trial the State would have to prove my guilt of all elements of the offenses beyond a reasonable doubt.

C. I waive my right to confront my accusers, that is, the right to confront and cross examine all witnesses who would testify at trial.

D. I waive my right to subpoena witnesses for trial on my behalf.

4. I understand the charge(s) against me and that the elements of the offense(s) which the State would have to prove beyond a reasonable doubt at trial are that on the 9th day of January, 1998, or thereabout, in the County of Washoe, State of Nevada, I did, as to Count I, willfully and unlawfully enter COMP USA located at 6407 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Uttering a Forged Instrument, a felony, therein.

I further understand the charge(s) against me and that the elements of the offense(s) which the State would have to prove beyond a reasonable doubt at trial are that on the 9th day of January, 1998, or thereabout, in the County of Washoe, State of Nevada, I did, as to Count II, willfully and unlawfully enter OFFICE DEPOT located at 4819 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Uttering a Forged Instrument, a felony, therein.

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5. I understand that I admit the facts which support all the elements of the offenses by pleading guilty. I admit that the State possesses sufficient evidence which would result in my conviction. I have considered and discussed all possible defenses and defense strategies with my counsel. I understand that I have the right to appeal from adverse rulings on pretrial motions only if the State and the Court consent to my right to appeal. In the absence of such an agreement, I understand that any substantive or procedural pretrial issue or issues which could have been raised at trial are waived by my plea.

6. I understand that the consequences of my plea of guilty are that, as to Count I, I may be imprisoned for a period of one to ten years in the Nevada State Prison and that I am eligible for probation. I may also be fined up to $10,000.00.

I further understand that the consequences of my plea of guilty are that, as to Count II, I may be imprisoned for a period of one to ten years in the Nevada State Prison and that I am eligible for probation. I may also be fined up to $10,000.00. The sentence on each count may be concurrent or consecutive to each other.

7. In exchange for my plea of guilty, the State, my counsel and I have agreed to recommend the following: The State will concur with the recommendation of the Division of Parole and Probation.

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8. I understand that, even though the State and I have reached this plea agreement, the State is reserving the right to present arguments, facts, and/or witnesses at sentencing in support of the plea agreement.

9. I also agree that I will make full restitution in this matter, as determined by the Court. Where applicable, I additionally understand and agree that I will be responsible for the repayment of any costs incurred by the State or County in securing my return to this jurisdiction.

10. I understand that the State is entitled to withdraw from this agreement and proceed with the prosecution of the original charges if I fail to appear at any scheduled proceeding in this matter OR if prior to the date of my sentencing I am arrested in any jurisdiction for a violation of law OR if I have misrepresented my prior criminal history. I represent that I do ~~not~~ have a prior felony criminal record. I understand and agree that the occurrence of any of these acts constitutes a material breach of my plea agreement with the State. I further understand and agree that by the execution of this agreement, I am waiving any right I may have to remand this matter to Justice Court should I later withdraw my plea.

11. I understand and agree that pursuant to the terms of the plea agreement stated herein, any counts which are to be dismissed and any other cases charged or uncharged which are either to be dismissed or not pursued by the State, may be considered by the court at the time of my sentencing.

12. I understand that the Court is not bound by the agreement of the parties and that the matter of sentencing is to be determined solely by the Court. I have discussed the charge(s), the facts and the possible defenses with my attorney. All of the foregoing rights, waiver of rights, elements, possible penalties, and consequences, have been carefully explained to me by my attorney. I am satisfied with my counsel's advice and representation leading to this resolution of my case. I am aware that if I am not satisfied with my counsel I should advise the Court at this time. I believe that entering my plea is in my best interest and that going to trial is not in my best interest.

13. I understand that this plea and resulting conviction may have adverse effects upon my residency in this country if I am not a U. S. Citizen.

14. I offer my plea freely, voluntarily, knowingly and with full understanding of all matters set forth in the Information and in this Plea Memorandum. I understand everything contained within this Memorandum.

15. My plea of guilty is voluntary, is not the result of any threats, coercion or promises of leniency.

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16. I am signing this Plea Memorandum voluntarily with advice of counsel, under no duress, coercion, or promises of leniency.

DATED this 23rd day of September, 1998.

DEFENDANT

TRANSLATOR/INTERPRETER

Attorney Witnessing Defendant's Signature

Michael L Mahaffey
Prosecuting Attorney

09152628

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-23-03

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court in and for the County of Washoe, State of Nevada.

By _____ Deputy

DA #159462

RPD 016628-98

'98 SEP 17 P2:24

Case No. CR98-2160

Dept. No. 9

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

INFORMATION

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

RICHARD A. GAMMICK, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that FERRILL JOSEPH VOLPICELLI, the defendant above named, has committed the crimes of:

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

That the said defendant on the 9th day of January A.D. 1998, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully and unlawfully enter COMP USA located at 6407 South Virginia Street, Reno, Washoe County, Nevada, with the intent

then and there to commit Uttering a Forged Instrument, a felony, therein.

COUNT II. BURGLARY, a violation of NRS 205.060, a felony, in the manner following:

That the said defendant on the 9th day of January A.D. 1998, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully and unlawfully enter OFFICE DEPOT located at 4819 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Uttering a Forged Instrument, a felony, therein.

All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Nevada.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By: Michael L. Mahaffey
MICHAEL L. MAHAFFEY
Deputy District Attorney

The following are the names and addresses of such witnesses as are known to me at the time of the filing of the within Information:

RENO POLICE DEPARTMENT:

DETECTIVE RICHARD BJELKE
DETECTIVE SCOTT HOPKINS
DETECTIVE CURTISS C. KULL

STACEY K. TODD, 2344 Kaska, South Lake Tahoe, California 96150

SUZANNE YOUNG, 460 Smithridge Drive, Reno, Nevada

BILLIE J. HOBBS, 295 Palace Drive, Reno, Nevada

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By Michael L. Mahaffey
MICHAEL L. MAHAFFEY
Deputy District Attorney

PCN 88364812

09152628

No. CR03-1263

State

vs.

Ferrill Volpicelli

Ex. 2

Admitted: 4-1, 2004

RONALD A. LONGTIN, JR., CLERK

By _____ Deputy

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-23-03

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By _____ Deputy

U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED
MAY 16 1997
U.S. DISTRICT COURT
CLERK, U.S. DISTRICT COURT
BY DEPUTY

UNITED STATES DISTRICT COURT

District of NEVADA

UNITED STATES OF AMERICA

V.

FERRILL J. VOLPICELLI

(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: CR-N-96-46-HDM(RAM)

Jerome Polaha (retained)
Defendant's Attorney

FILED
MAY 15 11 53 AM '97
JAMES R. WILSON
DEPUTY

THE DEFENDANT:

X pleaded guilty to count(s) 15, 16, 17, and 18

_ was found guilty on count(s) _____ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
26 USC 7206(1)	Tax Perjury	7-23-93	15, 16, 17 & 18

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

_ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

X Count(s) 1 - 14 & 19 - 21 are dismissed on the motion of the United States.

X It is ordered that the defendant shall pay a special assessment of $ 200.00 for count(s) 15, 16, 17 & 18 which shall be due X immediately as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 572-76-7620

Defendant's Date of Birth: 12-30-55
Defendant's USM No. 31441-048

Defendant's Mailing Address:
2705 Camelot Way
Reno, NV 89509

Defendant's Residence Address:
Same

May 13, 1997
Date of Imposition of Sentence

Signature of Judicial Officer

HOWARD D. McKIBBEN, U. S. District Judge
Name & Title of Judicial Officer

May 15, 1997
Date

CERTIFIED TO BE A TRUE COPY
Clerk, United States District Court
By _____
Deputy Clerk

EXHIBIT
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tabbies

V4.70

Defendant: VOLPICELLI, FERRILL J. Judgment-Page 2 of 5
Case Number: CR-N-96-46-HDM(RAM)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Twenty-two (22) months on each of Counts 15, 16, 17 & 18, said terms of incarceration to run concurrently with one another.

X The court makes the following recommendations to the Bureau of Prisons: Recommend defendant be incarcerated at FPC Nellis, Nevada.

_ The defendant is remanded to the custody of the United States marshal.
_ The defendant shall surrender to the United States marshal for this district.
at _ on _____
_ as notified by the United States marshal.
X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
X before 12:00 noon on Friday, July 18, 1997.
_ as notified by the United States marshal.
_ as notified by the probation office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____

_____ with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: VOLPICELLI, FERRILL J. Judgment-Page 3 of 5
Case Number: CR-N-96-46-HDM(RAM)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of One (1) year.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. (Revocation of supervised release is mandatory for possession of a controlled substance.) The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

X The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X The defendant shall pay any fines that remain unpaid during the term of supervised release.

X The defendant shall not possess a firearm or destructive device.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall submit to the search of his person and any property, residence or automobile under his control by the probation officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant to ensure compliance with all conditions of release.
2. Defendant shall pay any remaining tax obligations during the term of supervised release, as directed by the probation office..
3. Defendant shall participate in and complete a mental health treatment program, which may include outpatient counseling or residential placement, as approved and directed by the probation officer and shall comply with the rules of the treatment program.
4. Defendant shall refrain from incurring any new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
6. Defendant shall provide the probation officer access to any requested financial information, including personal income taxes, authorization for release of credit information, and any other business financial information in which the defendant has a control or interest.
7. The defendant shall cooperate with and arrange with the Internal Revenue Service to pay all past and present taxes, interest and penalties owed, and shall file timely, accurate, and lawful income tax returns and show proof of same to the probation officer.
8. Defendant is not restricted to the State of Nevada during the period of supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal , state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: VOLPICELLI, FERRILL J. Judgment-Page 4 of 5
Case Number: CR-N-96-46-HDM(RAM)

FINE

The defendant shall pay a fine of $ 3,000.00 . The fine includes any costs of incarceration and/ or supervision.

_ This amount is the total of the fines imposed on individual counts, as follows:

_ The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

_ The interest requirement is waived.
_ The interest requirement is modified as follows:

This fine plus any interest required shall be paid:
_ in full immediately.
_ in full not later than _____.

_ in equal monthly installments over a period of___ months . The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
_ in installments according to the following schedule of payments:
_X_ payable during and subsequent to the term of imprisonment. Any remaining balance shall be paid during the term of supervised release upon a schedule to be established by the supervising probation officer.

If the fine is not paid the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: VOLPICELLI, FERRILL J. Judgment-Page 5 of 5
Case Number: CR-N-96-46-HDM(RAM)

STATEMENT OF REASONS

X The court adopts the factual findings and guideline application in the presentence report.

OR

_ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 13

Criminal History Category: III

Imprisonment Range: 18 to 24 months

Supervised Release Range: - to 1 years

Fine Range: $ 3,000 to $ 30,000

_ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $ N/A

_ Full restitution is not ordered for the following reason(s):

X The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

_ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

_ upon motion of the government, as a result of defendant's substantial assistance.

_ for the following reason(s):

U.S. Department of Justice

Tax Division

Western Criminal Enforcement Section
P.O. Box 972, Ben Franklin Station
Washington, D.C. 20044

(202) 514-5684
Telefax (202) 514-9623

February 7, 1997

FILED
FEB 7 1997
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

AMENDED MEMORANDUM OF PLEA NEGOTIATION

TO: Howard D. McKibben
United States District Judge

FROM: Kevin M. Kelcourse
Danny N. Roetzel
Trial Attorneys
United States Department of Justice
Tax Division

SUBJECT: United States v. Ferrill J. Volpicelli
Criminal No. N-96-46-HDM (RAM)

I. PLEA NEGOTIATION:

Defendant FERRILL J. VOLPICELLI is charged by Indictment with violations of Title 18, United States Code, Sections 1014 and 1343, and Title 26, United States Code, Section 7206(1). These charges include Wire Fraud, False Bank Loan Statements, and Tax Perjury. The Government and the defendant, FERRILL J. VOLPICELLI, through his attorney, Jerome M. Polaha, have agreed to the following:

1. Defendant FERRILL J. VOLPICELLI will plead guilty to Counts Fifteen, Sixteen, Seventeen, and Eighteen of the Indictment, those each being Tax Perjury, in violation of Title 26, United States Code, Section 7206(1).

2. This plea is made pursuant to Rule 11(e)(1)(A) and (B) of the Federal Rules of Criminal Procedure and is not intended to be binding upon the Court.

3. Base Offense Level - Based upon the tax table (U.S.S.G. §§ 2T1.3, 2T4.1 (1991 edition)), the parties agree that the Base Offense Level concerning this defendant for Tax Perjury would be found in U.S.S.G. §2T1.3 and would carry a Base Offense Level of 11. This amount is determined pursuant to the tax table set out in U.S.S.G. § 2T4.1. Pursuant to the tax table, a tax loss greater than $40,000 but less than $70,000 would yield a Base Offense Level of 11.

4. Pursuant to U.S.S.G. § 2T1.3(b)(1), the parties agree that defendant VOLPICELLI "failed to report . . . income exceeding $10,000 in any year from criminal activity." That

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Clerk, United States District Court
By _____
Deputy Clerk

criminal activity is wire fraud. Accordingly, defendant VOLPICELLI's offense level would increase to 13.

5. The parties have reached no agreement as to whether, pursuant to U.S.S.G. § 2T1.3(b)(2), defendant VOLPICELLI used "sophisticated means . . . to impede discovery of the nature or extent of the offense." The parties reserve the right to argue their respective positions on this issue at the time of sentencing.

6. Pursuant to 26 U.S.C. § 7206(1), the defendant shall be sentenced to a term of imprisonment which may not exceed three (3) years and may be fined up to $250,000.

7. The Government agrees not to pursue an increase in offense levels pursuant to U.S.S.G. § 3B1.1(a) through (c) concerning an aggravating role in the offense. The Government agrees not to pursue any increase of offense levels pursuant to the defendant's role in the offense.

8. The parties agree that the Offense Level may be decreased by two (2) levels pursuant to U.S.S.G. § 3E1.1 if the Court finds that the defendant has accepted responsibility for his criminal conduct. The Government agrees not to oppose defendant's request to reduce the Offense Level by two (2) levels pursuant to U.S.S.G. § 3E1.1(a), if: (1) it is determined by the United States Probation Office that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct in all proceedings, including his interview with the United States Probation Office; (2) defendant VOLPICELLI cooperates with the Reno Office of the Internal Revenue Service by signing waivers to correct the previously filed Individual Income Tax Returns, Forms 1040, for the years 1989 through 1992, inclusive (including the unreported taxable income set forth in this Memorandum and the civil fraud penalty, which defendant VOLPICELLI agrees is appropriate for each of the years 1989 through 1992) by the date of sentencing; and (3) defendant VOLPICELLI pays by the date of sentencing any additional outstanding individual income taxes reflected as due on the waivers referred to in this paragraph, as well as any interest and fraud penalties related thereto, or enters into a binding agreement to pay said amounts.

9. The parties agree that there are no other facts or circumstances that would allow for any other adjustment to the Offense Level under Chapter 3 of the Sentencing Guidelines.

10. The parties agree that the Offense Level is based upon information concerning these offenses and the defendant as it is known at the present time, and defendant VOLPICELLI understands that the Offense Level could change based upon the investigation by the United States Probation Office and the findings of the District Court at the time of sentencing.

11. The parties agree that the Offense Level and the Criminal History Category (Chapter 4) will be based upon the investigation of the United States Probation Office and the findings of the Court at the time of sentencing. The determination of the Criminal History Category (points) directly affects the possible sentencing range available to the Court. The parties have not made any stipulation concerning the defendant's criminal history. The parties are free to argue the Criminal History Category and criminal history points applicable to the defendant.

12. The parties agree that a period of supervised release pursuant to U.S.S.G. § 5D1.1 is applicable if a sentence of more than one (1) year imprisonment is imposed by the Court. Pursuant to Title 18, United States Code, Section 3559(a)(2), the charged offense is a Class E felony and, therefore, pursuant to U.S.S.G. § 5D1.2(a)(1) and (b), if a term of supervised release is applicable, it shall be ordered for one year.

13. The parties agree that both sides will be free at sentencing to argue the appropriate fine that should be imposed by the Court.

14. The Government will move to dismiss the remaining counts from the Indictment pending against defendant VOLPICELLI (Counts One through Fourteen and Nineteen through Twenty-One) at the time of sentencing. The Court may consider all the relevant facts and circumstances of those offenses under U.S.S.G. § 1B1.3---Relevant Conduct, when deciding the appropriate sentence.

15. The defendant is aware that his sentence will be imposed in accordance with the Federal Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty.

16. The defendant is also aware that Title 18, United States Code, Section 3742 gives the defendant a right to appeal

the sentence to be imposed and that other federal laws give the defendant rights to appeal other aspects of his conviction. In exchange for the concessions made by the United States in the instant plea agreement, the defendant knowingly and expressly waives his right to appeal any sentence to be imposed that is within the applicable sentencing guideline range contemplated by the parties in this agreement, further waives his right to appeal the manner in which that sentence was determined on the grounds set forth in Title 18, United States Code, Section 3742, and further waives his right to appeal any sentence. As to his sentence, the defendant reserves only the right to appeal any sentence imposed to the extent, but only to the extent, that the sentence is an upward departure and outside the range established by the applicable sentencing guideline.

II. PENALTY:

Statutory

Tax Perjury

The punishment for violating the provisions of Title 26, United States Code, Section 7206(1) is recited in that Section, which states that for making and subscribing a false return, the defendant shall be sentenced to a term of imprisonment which may not exceed three (3) years, be fined not more than $250,000, or both for each count to which the defendant pleads guilty. (The fine amount is set forth in Title 18, United States Code, Section 3571.) Pursuant to U.S.S.G. § 5D1.2(b)(3), the Court may order a term of supervised release to follow imprisonment of not more than one year.

Under the provisions of Title 18, United States Code, Section 3013(a)(2)(A), a defendant must be fined a special assessment fine of $50.00 for every felony conviction. (See United States v. Munos-Flores, 110 S.Ct. 1964 (1990)).

III. SENTENCING GUIDELINES:

Based upon the tax table (U.S.S.G. §§ 2T1.3, 2T4.1), the Base Offense Level concerning this defendant for Tax Perjury would be found in U.S.S.G. § 2T1.3 and would carry a Base Offense Level of 11. This amount is determined pursuant to the tax table set out in U.S.S.G. § 2T4.1. Pursuant to U.S.S.G. § 2T1.3(a), the tax loss is 28% of the amount by which taxable income was understated, which equals $57,555.31. Pursuant to the tax table, a tax loss of greater than $40,000 but less than $70,000 would yield a Base Offense Level of 11.

However, pursuant to U.S.S.G. § 2T1.3(b)(1), the parties agree that defendant VOLPICELLI "failed to report . . . income exceeding $10,000 in any year from criminal activity." That criminal activity is wire fraud. Accordingly, defendant VOLPICELLI's offense level would increase to 13. Moreover, the parties are free to argue whether, pursuant to U.S.S.G. § 2T1.3(b)(2), defendant VOLPICELLI used "sophisticated means . . . to impede discovery of the nature or extent of the offense." If the Court finds that defendant VOLPICELLI did use "sophisticated means," defendant VOLPICELLI's offense level would increase to 15. If the Court finds that the defendant has accepted responsibility for his criminal conduct and grants the two-level reduction pursuant to U.S.S.G. § 3E1.1, the final offense level would be 11 or 13 (depending on the Court's finding as to "sophisticated means").

If defendant VOLPICELLI **does not** argue that he did not use "sophisticated means" pursuant to U.S.S.G. § 2T1.3(b)(2), the parties agree that a sentence in the **mid-point** of the sentencing range is appropriate. However, if defendant VOLPICELLI **does** argue that he did not use "sophisticated means," the parties are free to argue a sentence **anywhere** in the sentencing range.

Pursuant to Title 18, United States Code, Section 3551, the Sentencing Reform Act and the Sentencing Guidelines, the possible sentencing range for this offense runs as follows:

Final Offense Level 15

Criminal History Category I - 18-24 months
Criminal History Category II - 21-27 months
Criminal History Category III - 24-30 months

Final Offense Level 13

Criminal History Category I - 12-18 months
Criminal History Category II - 15-21 months
Criminal History Category III - 18-24 months

Final Offense Level 11

Criminal History Category I - 8-14 months
Criminal History Category II - 10-16 months
Criminal History Category III - 12-18 months

Pursuant to U.S.S.G. §§ 5B1.1 and 5C1.1(c), probation and a "split sentence" are both unavailable if the Court concludes that the final offense level is 13 or 15, regardless of defendant VOLPICELLI's Criminal History Category. If the Court concludes that the final offense level is 11, a "split sentence"

(but not probation) would be available if the Court finds that defendant VOLPICELLI's Criminal History Category is I or II, but not if it is III.

Pursuant to U.S.S.G. § 5D1.1(a), if a term of imprisonment of more than one year is imposed, a term of supervised release following imprisonment is required. Under Title 18, United States Code, Section 3559(a)(2), the offense charged in Counts Fifteen through Eighteen of the Indictment are Class E felonies, and, therefore, pursuant to U.S.S.G. § 5D1.2(a)(1) and (b), if a term of supervised release is applicable, it shall be ordered for a period of one year.

Depending upon the Court's finding of the appropriate Offense Level, the Court is required to impose a fine. Pursuant to U.S.S.G. § 5E1.2, a possible fine can be imposed within a range depending upon the Court's finding of the applicable sentencing guideline range. At offense level 15, the maximum allowable fine is $40,000 with a minimum fine of $4,000; at offense level 13, the maximum allowable fine is $30,000 with a minimum fine of $3,000; and at offense level 11, the maximum allowable fine is $20,000 with a minimum fine of $2,000.

In addition to the fine mentioned above, U.S.S.G. § 5E1.2(i) requires the Court to impose an additional fine amount that is at least sufficient to pay the costs to the Government of any imprisonment, probation or supervised release ordered. However, U.S.S.G. § 5E1.2(f) allows the Court to lower or waive any fine or impose an alternative sanction, such as community service, if a defendant establishes that he or she does not have the ability to pay a fine.

Title 18, United States Code, Section 3663 and U.S.S.G. § 5E1.1 permit restitution if deemed appropriate by the Court.

Pursuant to Title 18, United States Code, Section 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is required to impose a special assessment in the amount of $50.00 for each felony conviction. This special assessment shall be collected in the same manner that fines are collected in criminal cases.

IV. ESSENTIAL ELEMENTS OF THE OFFENSE:

Before a verdict of guilty may be reached, the Government would have to prove beyond a reasonable doubt each of the following essential elements of the offense as follows:

Tax Perjury

First: That the defendant made and subscribed a return, statement, or other document that was false as to a material matter;

Second: That the return, statement, or other document contained a written declaration that it was made under penalty of perjury;

Third: That the defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and

Fourth: That the defendant falsely subscribed to the return, statement, or other document with the specific intention to violate the law.

V. FACTS TO SUPPORT A PLEA OF GUILTY:

During the calendar years 1987 through at least 1993, defendant VOLPICELLI resided in Reno, Nevada. During this period, VOLPICELLI devised and carried out a scheme to defraud various stores (including, but not limited to, Target Stores and Mervyn's stores) by, among other things, purchasing various items with credit cards and then using multiple copies of the credit card receipts multiple times to return additional items in exchange for refunds. The additional returned items had been previously purchased by VOLPICELLI at a price less than the price indicated on the receipts he used to return the items. These refunds were made in the form of credits to various credit cards.

Specifically, VOLPICELLI carried out this fraud at least in part by purchasing an item at a store (the "original item"), using one of the numerous credit cards he or his wife had obtained from various credit card issuers. After purchasing the original item, VOLPICELLI made copies of the receipt he received from the store, at least in part by using a small, hand-held copy machine. VOLPICELLI then returned the original item for a full refund, which he knew would be posted as a credit to one of his or his wife's credit card accounts.

VOLPICELLI subsequently obtained the same item as the original item on several occasions from one or more stores for less than the full price (the "multiple items"). VOLPICELLI obtained the multiple items using different methods, including, but not limited to, using one of two UPC label machines to create new UPC labels for lower-priced items, which he then placed over the original code on the items' packaging. VOLPICELLI then

purchased those items at the lower price when the cashier at the store scanned the false UPC code on those items. Using the copies of the receipt he had made previously when he purchased the original item or claiming that he had lost the original receipt, VOLPICELLI returned the multiple items (however they were obtained) for a refund of the full price, which VOLPICELLI knew he had not paid and which amount he knew would be credited to one of his or his wife's credit card accounts.

As a result of this fraud, VOLPICELLI accumulated substantial credit card credit balances to which he knew he was not entitled. From calendar years 1989 through 1992 alone, VOLPICELLI obtained credit card credits on numerous separate credit card accounts totalling over $800,000. VOLPICELLI then used these credit card balances like a debit card for various purposes.

VOLPICELLI used these credit balances to, among other things, (1) purchase personal items and (2) pay the mortgage on both his personal residence and a rental property through the use of checks drawn on the credit card accounts. These credit balances constituted taxable income to VOLPICELLI, which he failed to report on his Forms 1040 (Individual Income Tax Return) for tax years 1989, 1990, 1991, and 1992. The amount of taxable income VOLPICELLI failed to report for criminal purposes, which takes into account any potential deductions for expenses incurred in carrying out the fraud, is as follows:

Tax Year	Unreported Taxable Income
1989	$ 28,136.74
1990	49,038.80
1991	67,884.05
1992	60,495.10
TOTAL	**$205,554.69**

On or about July 11, 1990, in the District of Nevada, VOLPICELLI did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1989, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service. VOLPICELLI did not believe this return to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the fraud discussed above or to report the taxable income he derived from that fraud, despite the fact that he knew he was required to report the taxable income derived from the fraud.

On or about August 1, 1991, in the District of Nevada, VOLPICELLI did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1990, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service. VOLPICELLI did not believe this return to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the fraud discussed above or to report the taxable income he derived from that fraud, despite the fact that he knew he was required to report the taxable income derived from the fraud.

On or about August 11, 1992, in the District of Nevada, VOLPICELLI did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1991, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service. VOLPICELLI did not believe this return to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the fraud discussed above or to report the taxable income he derived from that fraud, despite the fact that he knew he was required to report the taxable income derived from the fraud.

On or about July 23, 1993, in the District of Nevada, VOLPICELLI did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1992, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service. VOLPICELLI did not believe this return to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the fraud discussed above or to report the taxable income he derived from that fraud, despite the fact that he knew he was required to report the taxable income derived from the fraud.

VI. STATEMENT OF THE DEFENDANT:

I, FERRILL J. VOLPICELLI, hereby acknowledge that I have thoroughly read and reviewed this Memorandum with my attorney and agree it completely and accurately states both the negotiation between myself, my attorney and the United States and the facts supporting my plea of guilty. I have discussed the contents of this Memorandum with my attorney and he has explained them to my satisfaction. I understand that the contents of this Memorandum constitute the entire agreement between myself and the Government. The Government has not promised me anything not mentioned in this Memorandum.

My attorney has not promised me anything not mentioned in this Memorandum either, and, in particular, my attorney has not promised that I will get any specific sentence. I understand that any discussions with my attorney about the possible sentence I might receive from the Court are just predictions and are not binding on the Court. I know that I cannot withdraw my guilty plea because my attorney's sentencing predictions turn out wrong.

My attorney has also explained to me my constitutional rights, including my right to a jury trial, to confront my accusers, to call witnesses on my own behalf, and my right to remain silent. He has further explained to me that I have to waive these rights, that is, give them up, in order to have my guilty plea accepted by the Court.

I know that if the Government makes a non-binding recommendation as to what type of sentence I should receive, the Court does not have to follow that recommendation. I also understand that I cannot withdraw my guilty plea because the Court decides not to follow a non-binding sentencing recommendation of the Government.

I further understand that the matter of sentencing is entirely up to the Court. Any stipulations or agreements between myself, my attorney, and the Government are not binding upon the Court. I know that the Court will decide my sentence based upon the facts of this case, the applicable statutes and the Sentencing Guidelines. I fully understand that my sentence could be anywhere within the range set forth in Section II of this Memorandum.

I know that the maximum possible penalty provided by law for the violation of Title 26, United States Code, Section 7206(1), as alleged in the Indictment, is a $250,000 fine and three (3) years imprisonment, or both, plus the costs of prosecution.

I understand that a term of supervised release may be added to any prison sentence imposed; that if the supervised release term is violated, I can be returned to prison for the remainder of my sentence and the full length of the supervised release term.

Additionally, I know the Court is required to impose an assessment in the amount of $50.00 for each count to which I am pleading guilty.

I understand that if I knowingly violate any local, state or federal law between now and the time of my sentencing, such offense may constitute a violation of this plea agreement.

I also understand that the Court will decide whether a violation of the plea agreement has occurred. If the Court finds that I have breached this agreement by violating any law, I understand that the Court may relieve the government of all obligations and commitments in this plea agreement while leaving intact my plea of "Guilty".

I am pleading guilty freely, voluntarily and knowingly because I am guilty and for no other reason. I have not been pressured or induced by any other defendant or lawyer to enter this plea. I was not under the influence of any drugs, medication or intoxicants when the decision to enter the plea was made, and I am not now under the influence of any drugs, medication or intoxicants.

Finally, I understand that the decision to plead guilty or go to trial is mine alone. As stated above, I have discussed this case fully with my attorney and received legal advice about what is the best course of action that I should take. My decision after receiving this advice is to plead guilty under this agreement. In addition, I am fully satisfied with my attorney.

Date: 2-7-97

FERRILL J. VOLPICELLI
Defendant

Date: 2-7-97

JEROME M. POLAHA, ESQ.
Counsel for defendant VOLPICELLI

Presented and approved on behalf of the United States:

Kevin M. Kelcourse

KEVIN M. KELCOURSE
DANNY N. ROETZEL
Trial Attorneys
United States Department of Justice
Tax Division

AO 256
(Rev

CRIMINAL DOCKET - U.S. District Court

PO ☐ | 0978 | 3 | Assigned 7809 | Disp./Sentence
Misd. ☐ | | | |
Felony [X] | District | Off | Judge/Magistr

☐ WRIT ☐ JUVENILE ☐ ALIAS

U.S. vs. (LAST, FIRST, MIDDLE) VOLPICELLI, FERRILL J.

HDM (RAM)

Mo. 07 | Day 10 | Yr 96

Docket No. 96-00046-01

No. of Def's 1 | U.S. MAG. CASE NO.

CLOSED

I. CHARGES

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS	
18:1343	Wire Fraud	Ct 1-14	14
26:7206(1)	Tax Perjury	Ct 15-18	4
18:1014	False Bank Loan Statements	Ct 19-21	3

DISM. ▼ NG | GUILTY ▼ HOLD

SUPERSEDING COUNTS #

II. KEY DATE

INTERVAL ONE — KEY DATE — EARLIEST OF: ☐ arrest ☐ sum'ns ☐ custody ☐ appears on complaint

END ONE AND/OR BEGIN TWO (OR RESTART PERIOD TO TRIAL) — KEY DATE 7/10/96 — APPLICABLE: [X] Indictment filed/unsealed ☐ consent to Magr. trial on complaint ☐ Information ☐ Felony Waiver

KEY DATE — a) ☐ 1st appears on pending charge /R40 b) ☐ Receive file R20/21 c) ☐ Supsdg ☐ Indt ☐ Inf d) ☐ Order New trial e) ☐ Remand f) ☐ G/P Withdrawn

END INTERVAL TWO — KEY DATE — APPLICABLE: ☐ Dismissed ☐ Plead guilty ☐ Nolo ☐ After N.G. ☐ After nolo ☐ Trial (voir dire) began ☐ Jury ☐ N.J.

1st appears with or waives counsel	ARRAIGNMENT	1st Trial Ended	RE TRIAL	2nd Trial Began	DISPOSITION DATE	SENTENCE DATE	☐ PTD ☐ Nolle ☐ Pros.	FINAL CHARGES DISMISSED on S.T. grounds ☐ W.P. ☐ WOP	on def. motion ☐ on gov't motion

III. MAGISTRATE

	DATE	INITIAL/NO
Search Warrant Issued		
Search Warrant Return		
Summons Issued		
Summons Served		
Arrest Warrant Issued		
COMPLAINT ▶		
Date of Arrest	OFFENSE (In Complaint)	

INITIAL APPEARANCE DATE ▶ — INITIAL/NO

PRELIMINARY EXAMINATION OR REMOVAL HEARING ☐ — Date Scheduled ▶ / Date Held ▶

☐ WAIVED ☐ NOT WAIVED — Tape Number

☐ INTERVENING INDICTMENT

OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Show last names and suffix numbers of other defendants on same indictment/information

RULE 20 ☐ 21 ☐ 40 ☐ In ☐ Out ☐

IV. NAMES & ADDRESSES OF ATTORNEYS, SURETIES, ETC.

ATTORNEYS
U.S. Attorney or Asst. KATHRYN E. LANDRETH, U.S. ATTORNEY
KEVIN M. KELCOURSE & DANNY N. ROETZEL, Trial Attorneys, USDOJ, P.O. Box 972, Ben Franklin Station, Washington, DC 22004 (202) 514-5684/5381

Defense: 1 ☐ CJA 2 [X] Ret. 3 ☐ Waived 4 ☐ Self 5 ☐ Non / Other 6 ☐ PD 7 ☐ CD

Ferrill J. Volpicelli #
#60076 NNCC
PO Box 7007
Carson City NV 89702

JEROME M. POLAHA
2705 Camelot
Reno NV 89509
(702) 789-2622

Date Posted: 8/15/96 (#5)
Type: (P/B) U/S ☐ ☐ C/CS
Amt:
Receipt #
Passport: Y/N No:
Exoneration Date: 1/4/98
Return Date:

BAIL ● RELEASE

PRE-INDICTMENT
Release Date
☐ Bail Denied ☐ Fugitive ☐ Pers. Rec. ☐ PSA
AMOUNT SET $
Conditions: ☐ 10% Dep. ☐ Surety Bnd ☐ Collateral ☐ 3rd Prty ☐ Other
Date Set
☐ Bail Not Made
Date Bond Made

POST-INDICTMENT
Release Date
☐ Bail Denied ☐ Fugitive ☐ Pers. Rec. ☐ PSA
AMOUNT SET $
Conditions: ☐ 10% Dep. ☐ Surety Bnd ☐ Collateral ☐ 3rd Prty ☐ Other
Date Set
☐ Bail Not Made
Date Bond Made

APPEALS FEE PAYMENTS

FINE AND RESTITUTION PAYMENTS ☐ Docket Entries Begin On Reverse Side

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

V4.86

CERTIFIED TO BE A TRUE COPY
Clerk, United States District Court
By _____
Deputy Clerk

V4.87

DATE
DOCUMENT NO.

Vs. | Docket No. | Def.

☐ MASTER DOCKET - MULTIPLE DEFENDANT CASE
☐ PROCEEDINGS DOCKET FOR SINGLE DEFENDANT

PAGE ___ OF ___

VI EXCLUDABLE DELAY

Start Date / End Date	Ltr Code	Total Days

(OPTIONAL) Show last names of defendants

V. PROCEEDINGS

Interval I

Gross 0
Net 0

Inteval II

Gross 176

Les Excl
T 133

Net 43

CONTINUED TO PAGE ___

LETTER CODES

For identifying periods of excludable delay per 18 USC 3161 (h) (Sections in brackets)

A. Exam re trial competency (18 USC 4244) [(1) (A)]

B. NARA exam (18 USC 2902) [(1) (B)]

C. State/Fed'l proceedings on other charges [(1) (D)]

D. Interlocutory appeal [(1) (E)]

E. Pretrial motion (from filing to hearing or to other prompt disposition) [(1) (F)]

F. Transfer from other district per FRCrP 20, 21 or 40 or Mag. Rule 8a [(1) (G)]

G. Proceedings under advisement, not to exceed 30 days, after all necessary submissions filed and hearings completed [(1) (J)]

H. Misc. proceedings: arraignment, parole/probation, revocation, Deportation, extradition [(1)]

I. Deferral of prosecution (per 28 USC 2902) [(1) (C)]

J. Transportation from another district or to/from examination or hospitalization in 10 days or less [(1) (H)]

K. Consideration by Court of proposed plea agreement [(1) (I)]

L. Prosecution deferred by mutual agreement [(2)]

M. Unavailability of defendant or essential witness [(3) (A, B)]

N. Period of mental/physical incompetence of def. to stand trial [(4)]

O. Period of NARA commitment/treatment [(5)]

P. Superseding indictment and/or new charges [(6)]

R. Def. awaiting trial of co-defendant & no severance has been granted [(7)]

T. Continuances granted per [(8)] use "T" alone if more than one of the following reasons (T1 thru T4) is given in support of continuance [(8) (A, B)]

T1. Failure to continue would stop further proceedings or result in miscarriage of justice [(8) (B, i-ii)]

T2. Case unusual or complex [(8) (B, i-ii)]

T3. Indictment following arrest can't be filed in 30 days [(8) (B, i-ii)]

T4. Continuance granted to obtain or substitute counsel, or give reasonable time to prepare [(8) (B, i-ii)]

U. Time up to withdrawal guilty plea. 3161(i)

W. Grand Jury indictment time extended 30 more days. 3161 (b)

Docket No. | Def.
)6-00046-01

DISM NG | GUILTY HOLD

ERVAL TWO
Dismissal
Pled guilty — After N.G.
Nolo — After nolo
Trial (voir dire) began
Jury N.J.

IGES DISMISSED — on def motion / on gov't motion
W.P. WOP

DISMISSED
OR OTHER PRO
HIS DISTRICT
OR OTHER PRO
ISTRICT BELOW

21 40 In Out
IL & RELEASE
RE INDICTMENT
Date
Fugitive
Pers. Rec.
T SET
PSA
Conditions
10% Dep.
Surety Bnd
Collateral
3rd Prty
Other
OST-INDICTMENT
Fugitive
Pers. Rec.
T SET
PSA
Conditions
10% Dep.
Surety Bnd
Collateral
3rd Prty
Other
EALS FEE PAYMENTS

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET — U. S. vs FERRILL J. VOLPICELLI

AO 256A

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Yr. | Docket No. | Def.

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DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
7/10/96	1 INDICTMENT re **Volpicelli**. ca				
--	2 AO 257 re Volpicelli. ca				
--	- JS-2 re Volpicelli. (AT) ca				
--	3 GRAND JURY MINUTES: (RAM) ORD indict fld & summons iss for I/A 8/15/96, 3pm bef RAM. Cps dist. (C/R: Liza Chapin) (AT) ca				
--	- SUMMONS issd USM for I/A 8/15/96, 3pm. ca				
8/15/96	4 DESIGNATION of retn cnsl & apprnc Pracpe Jerome M. Polaha cnsl for **VOLPICELLI**. wj				
--	5 BOND, P/R obo **VOLPICELLI** posted 8/15/96. (AT) wj (Bond exon 11/14/96)				
--	6 ORDER: (RAM) ORD setng **VOLPICELLI** contds for rels. cps dist (AT) wj				
--	7 ORDER: (RAM) ORD P/T mtns due 8/29/96 w/rspns due 9/9/96. Reply to case dispo mtns due 9/12/96. cps dist (AT) wj				
8/19/96	8 MINUTES/INITIAL APPEARANCE/ARRAIGNMENT & PLEA re **VOLPICELLI** dtd 8/15/96: (RAM) ORD Jerome Polaha cnsl for D in ths mttr; P/R Bond set; D plds NG Cts 1-21; Cal call in HDM crt rm & tba; J/T set 10/15/96, 8:30am; Ord re pret prodr ent & srvd in open crt; (tape 96-35) cps dist (AT) wj				
9/13/96	9 ORDER: (HDM) ORD **volpicelli** trial set & cnsl to subp wits for 10/15/95, 8:30am w/cal call set 9/25/96, 8:30am. cps dist (AT) wj				
9/25/96	10 MINUTES/CALENDAR/CALL-STATUS/CONFERENCE: (Dtd: 9/25/96) (Re: D, **VOLPICELLI**) (HDM) ORD Cnsl mv for ext of trial dt. Trial set for 10/15/95 vac & reset to 2-wk stckd cal of **12/2/96 @ 8:30AM**. Crt signs stip ord in open crt. Cps.Dist. (C/R: Kathryn French) (AT) blg. *mld-9/26/96.				
--	11 STIPULATION/ORDER: (HDM) ORD trial set for 10/15/96 vac. Trial reset for **12/2/96 @ 8:30AM**. Tm Excld: 18:3161(h)(8)(A) & (B)(i)(iv). Attached Herewith: FINDINGS/FACT/CONCLUSIONS OF LAW: (HDM) ORD Trial reset to **12/2/96 @ 8:30AM** Crtrm #5 **(Stckd Settng)** Cal call set **11/26/96 @ 8AM** in Crtrm #5. Propsd voir dire questns & jury instrctns ect. due **11/27/96**. Cps.Dist. (AT) blg. *mld-9/26/96.	9/25/96 12/2/96	T	69 ✓	
		MBT 1/1/97			

DOCKET ENTRIES CONT'D ON PAGE #3

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

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USA VS. FERRILL J. VOLPICELLI

CR-N-96-46-HDM

DATE	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
			mbt	11/97		
9/25/96	12	STIPULATION/ORDER: (HDM) ORD Disc ext til 10/5/96. Tm Excld: 18:3161(h)(8)(A) & (B). Cps.Dist. (AT) blg. *mld-9/26/96.				
11/5/96	13	ORDER: HDM) ORD **VOLPICELLI** J/T set & cnsl to subp wits for 12/2/96, 8:30am w/cal call set 11/25/96, 8am. cps dist (AT) wj				
--	14	ORDER: (HDM) ORD **VOLPICELLI** jury instrucs due 5 days bef trial. cps dist (AT) wj				
11/19/96	15	STIPULATION/ORDER re **VOLPICELLI**: (HDM) ORD trial date 11/26/96, contd for prd of 60 days. cps dist (AT) wj 3161(h)(8)(A)&(B)(i)(iv)	15	11/26/96 1/28/97	T	64 v
			mbt	3/2/97		
--	16	MINUTE ORDER re **VOLPICELLI**: (HDM) ORD trial reset 1/28/97, 8:30am. cps dist (AT) wj				
1/8/97	17	MINUTE ORDER re **VOLPICELLI**: (HDM) ORD cal call set 1/17/97, 8:45 am. Hrng is telphon; cnsl hv been teleph notif. cps dist (AT) wj				
1/15/97	18	MINUTES/CALANDER CALL/STATUS CONFERENCE re **VOLPICELLI**: (HDM) ORD trial 1/28/97 vac & reset 2/10/97, 8:30am. FUR ORD chng of plea set 2/7/97, 9:15am. (C/R Kathryn French) cps dist (AT) wj				
2/3/97	19	MEMORANDUM of Plea negotiation re **VOLPICELLI**. wj				
2/4/97	--	SUB to HDM # 19 (AT) wj				
2/7/97	20	MINUTES/CHANGE OF PLEA re **VOLPICELLI**: (HDM) D plds G Cts 15,16,17,18 & crt acpts trms plea agrmnt & G plea to SSI; ORD impo of sentnce as to Cts abv set 5/13/97, 8am; trial set 2/10/97 vac; D remans on bond pend impo of sentc; (C/R Kathryn French) cps dist (AT) jw				
--	21	AMENDED MEMO of plea negotation re **VOLPICELLI**. wj				
5/13/97	22	MINUTES/IMPO of sentencing re **VOLPICELLI** dtd 5/13/97. (HDM) sentnc impsd on Cts 15-18; ORD Cts 1-14 & 19-21 are dsmsd. FUR ORD D sh rmn on bond subj to all estblshd cdnts of rels pend self-surr as desgntd USBOP on 7/18/97, 12noon; (C/R Kathryn French) cps dist (AT) wj				
5/15/97	23	JUDGMENT re **VOLPICELLI** dtd 5/13/97: (HDM) D pld G Cts 15-18; ORD CUSBOP 22 mos to each ct to rn cncrrntly; Crt rcmdns incar at FFC Nellis, NV; D sh self surr 7/18/97, 12noon; 1 Yr sprsd rels; $3000 fine; $200 specs assmt due immed; Cts 1-14&19-21 dsmsd mtn US. (EOD 5/16/97) cps dist (AT) wj				
--	--	JS-3 re **VOLPICELLI**. (AT) wj				

Interval (per Section II) | Start Date / End Date | Ltr Code | Total Days

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DATE
1/13/98
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5/24/99
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9/22/00
9/26/00
10/11/00

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DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
7/2/97	24 MOTION to delay surrender obo **VOLPICELLI.** wj granted (25)				
7/3/97	-- Sub to HDM # 24 (A)T wj				
7/7/97	25 ORDER re **VOLPICELLI:** (HDM) ORD D mtn #24 granted. D self surr by 8/18/97 to fed institute. cps dist (AT) wj				
8/12/97	26 MOTION to delay surrender obo **VOLPICELLI.** wj granted (27)				
8/12/97	-- SUB to HDM #26 (AT) wj				
8/13/97	27 ORDER re **VOLPICELLI:** (HDM) ORD D unopposd Mtn #26 to modify self surr granted. D sh surr on 10/17/97. cps dist (AT) wj				
8/27/97	28 MOTION to rels grand jury information obo Govt re **VOLPICELLI.** wj granted #29				
8/28/97	-- SUB to HDM #28 (AT) wj				
8/29/97	29 ORDER re **VOLPICELLI:** (HDM) ORD Govt unoppo mtn #28 is **granted.** cps dist (AT) wj				
10/15/97	30 MOTION to delay surrender (3rd/Req) obo D, **VOLPICELLI.** (m) (AT) blg. (#31)				
--	-- SUB to HDM: Item #30. (AT) blg.				
10/16/97	31 ORDER: (HDM) ORD D may hv til **11/28/97** in wh to surrendr to fed instutn to wh he is assigned. There will be no fur extensions. Cps.Dist. (AT) blg. *mld-10/16/97.				
10/20/97	32 ORDER: (HDM) ORD errata to correct dt of sur fm 11/28/97 to **12/1/97 grntd. D, VOLPICELLI** sh sur on **12/1/97** . Cps.Dist. (AT) blg. *mld-10/21/97.				
11/21/97	33 MOTION to delay surrender (4th Req) obo **VOLPICELLI** (A)T wj				
11/24/97	-- SUB to HDM #33. (A)T wj				
11/24/97	(34) ORDER re **VOLPICELLI:** (HDM) ORD D may hv to and incl 1/15/98, to self surr to fed inst he is assgnd. FUR ORD th wil be no fur extn grntd. cps dist (AT) wj (revoked #37)				
1/12/98	35 PETITION/ORDER re **VOLPICELLI:** (DWH) OR B/W be issd re vol cndtnl rels purs 18USC3148(b). cps dist (AT) wj				
--	-- WARRANT issd USM re **VOLPICELLI.** wj				

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DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
1/13/98	36 MINUTES/INITIAL APPEARNCE/REVOCATION PROCEEDINGS dtd 1/13/98 re **VOLPICELLI:** (PHA) Crt advs prts Ord extndng dt d self surr 1/15/98, (#34) **revoked.** ORD cdnts of rels imposed 7/15/96 are hereby revoked. FUR ORD D remanded CUSM bgn srvng sentence imposed 5/13/97. (Tape 98-3/4) E&S 1/14/98 cps dist (AT) wj				
1/13/98	37 ORDER re **VOLPICELLI:** (HDM) ORD D self surr on 1/15/98 (#34) revoked. cps dist (AT) wj				
1/20/98	38 MINUTES/TELEPHONIC STATUS CONFERENCE dtd 1/15/98 re **VOLPICELLI:** (HDM) ORD D remanded CUSM for trnfr to dsgntd institute. (C/R Margaret Griener) cps dist (AT) wj				
--	39 WARRANT w/USM rtn re **VOLPICELLI** arr 1/12/98. wj				
2/20/98	40 JUDGMENT w/USM rtn re **VOLPICELLI** dlvrd 2/5/98 to FCI SAF, Safford AZ. wj				
4/29/99	41 **MOTION** for order to return seized property and to account obo **VOLPICELLI.** (m) (AT) wj (Pro Se) 1/3 denied 44				
4/30/99	-- SUB to HDM Item #41 (AT) wj				
5/5/99	42 **ORDER** re **VOLPICELLI:** (HDM) ORD the US sh rspnd to the Mtn to rtnr seized property (#41) on or bef **6/1/99.** cps dist wj (AT)				
5/20/99	43 **RESPONSE** to doc (#41) obo Govt. (m) (AT) wj				
5/21/99	-- SUB to HDM Item #41 (AT) wj				
5/24/99	44 **ORDER** re **VOLPICELLI** (HDM) ORD the D's mtn for return of seized property is denied without prej to renew with the police department in Las Vegas and Murray City, UT, and with the California Department of Justice. cps dist wj (AT) EOD 5/25/99				
9/21/00	45 **PETITION** for modification of spvsd rels obo **VOLPICELLI.** (m)(AT) wj (cpy USA 9/22/00)				
--	46 **REQUEST** for IFP re doc #45 obo **VOLPICELLI.** wj (AT) granted 47				
9/22/00	-- SUB to HDM ITem #45 and 46 (AT) wj				
9/26/00	47 **ORDER** re **VOLPICELLI** (HDM) ORD D's req to proceed IFP granted. Govt sh rspn to D's pet for modif of spvsd rels on or bef 10/156/00. cps dist wj (AT)				
10/11/00	48 **RESPONSE** to petn for modif **(#45)** obo GVT. (m) (AT) blg.				

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Docket No.	Def.

(CLUDABLE DELAY

(b)	(c)	(d)

Start Date / End Date | Ltr. Code | Total Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

AO 256A ⊕

USA VS. FERRILL J. VOLPICELLI

Yr. | Docket No. | Def.

V. EXCLUDABLE DELAY

(a)	(b)	(c)	(d)

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DATE	PROCEEDINGS (continued) (Document No.)
10/12/00	-- SUB to HDM: Item #45. (AT) blg.
10/26/00	49 **ORDER:** (Re: D, **VOLPICELLI**) (HDM) ORD Ds mtn for modificatn of supervised release **(#45) denied.** Cps.Dist.(AT) blg. *Mld-10/27/00
11/6/00	50 **RETURN MAIL** of doc 49 to D: Transf relsed forwarding order expired. wj
11/8/00	51 **REPLY** to doc #48 to D's ex parte pet #45 obo VOLPICELLI. (m)(AT) wj
11/9/00	-- SUB to HDM ITem #51 (AT) wj
11/22/00	52 **REQUEST** for reconsideration of doc #49 obo **VOLPICELLI.** wj (AT)
11/22/00	-- SUB to HDM Item #52 (AT) jw
11/28/00	53 **ORDER** re **VOLPICELLI** (HDM) ORD aftr considration of D reply (#52) and good cause appearing, it is ORD that order of ths court entered on 10/25/00 (#49) be and hereby is affirmed. EOD 11/29/00 cps dist wj (AT)
11/6/01	54 **PETITION/ORDER** re **VOLPICELLI** (HDM) ORD B/W be issd to initiate proceedings to revoke spvsd rels. cps dist wj (AT)
11/6/01	-- **WARRANT** Issd. wj
11/19/01	55 **ADDENDUM** to doc #54 re **VOLPICELLI.** wj
11/20/01	56 **SECOND ADDENDUM** to doc #54 re **VOLPICELLI.** wj
1/18/02	57 **THIRD ADDENDUM** to doc #54 re **VOLPICELLI.** wj
3/4/02	58 **LETTER** dtd 2/28/02 to HDM from **VOLPICELLI** req information about sentencing guidelines as to revo of spvsd rels. wj
3/5/02	-- SUB to HDM ITem #58 (AT) wj

Interval (per Section II) | Start Date / End Date | Ltr. Code | Total Days

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED
JUL 10 1996
CLERK, U.S. DISTRICT COURT
BY _____ DEPUTY

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA, Plaintiff, v. FERRILL J. VOLPICELLI, Defendant.	CRIMINAL INDICTMENT CR- CR-N-96-00046-HDM (RAM) WIRE FRAUD (18 U.S.C. Section 1343); TAX PERJURY (26 U.S.C. SECTION 7206(1)); FALSE BANK LOAN STATEMENTS (18 U.S.C. Section 1014)

THE GRAND JURY CHARGES THAT:

INTRODUCTORY ALLEGATIONS

1. During the calendar years 1987 through at least 1993, defendant FERRILL J. VOLPICELLI ("VOLPICELLI") resided in Reno, Nevada, and was married to LORI VOLPICELLI.

2. During this period, VOLPICELLI was a real estate broker and insurance salesman. In addition, VOLPICELLI devised and carried out a scheme to defraud various stores (including, but not

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Clerk, United States District Court
By _____
Deputy Clerk

limited to, Target Stores and Mervyn's stores) by, among other things, purchasing various items with credit cards and then using the credit card receipts (or copies thereof) multiple times to return additional items in exchange for refunds (hereafter referred to as the "credit card scheme"). These refunds were made in form of credits to various credit cards.

3. As a result of this scheme, VOLPICELLI accum substantial credit card credit balances to which he was not entitled. From calendar years 1989 through 1992 alone, VOLPICELLI obtained credit card credits on numerous separate credit card accounts totalling over $800,000.

4. VOLPICELLI used these credit balances to (1) purchase personal items and (2) pay the mortgage on both his personal residence and a rental property through the use of checks drawn on the credit card accounts.

SCHEME TO DEFRAUD

5. Beginning at least as early as January 22, 1987, and continuing until at least April 6, 1993, in the District of Nevada and elsewhere, VOLPICELLI did knowingly devise and intend to devise a scheme or artifice to defraud and to obtain money from various stores in the form of credits on various credit cards held by himself or his wife, Lori Volpicelli, by means of false and fraudulent pretenses, representations and promises, the concealment of material facts, and other means (hereafter referred to as the "scheme").

METHOD AND MEANS OF THE ILLEGAL SCHEME

6. It was part of the scheme that, on several occasions, VOLPICELLI purchased an item at a store (the "original item"),

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using one of the numerous credit cards he or his wife had obtained from various credit card issuers. After purchasing the original item, VOLPICELLI made copies of the receipt he received from the store, at least in part by using a small, hand-held copy machine. VOLPICELLI then returned the original item for a full refund, which he knew would be posted as a credit to one of his or his wife's credit card accounts.

7. It was further part of the scheme that VOLPICELLI traveled to numerous stores in order to make thousands of purchases and returns discussed in the preceding paragraph, including stores located in Arizona, California, Nevada, Utah, and Washington, and, as a result, obtained credit card credits totalling over $800,000 during calendar years 1989 through 1992 alone.

8. It was further part of the scheme that VOLPICELLI used his own name as well as several different names other than his own when making the returns and obtaining the fraudulent credit card credits discussed in the preceding paragraphs.

9. It was further part of the scheme that VOLPICELLI obtained two machines used to make uniform product code ("UPC") labels. The first machine was seized by the Murray City, Utah police department after VOLPICELLI fled from security personnel at a Shopko store in Murray City and abandoned his rental car in which he had left the machine and other items. He obtained the second machine after the first machine was seized.

10. It further was part of the scheme that VOLPICELLI subsequently obtained the same item as the original item on several occasions from one or more stores for less than the full price (the "multiple items"). VOLPICELLI obtained the multiple items using

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different methods, including, but not limited to, using one of two UPC label machines to create new UPC labels for lower-priced items, which he then placed over the original code on the items' packaging. VOLPICELLI then purchased those items at the lower price when the cashier at the store scanned the false UPC code on those items.

11. It further was part of the scheme that, using the copies of the receipt he had made previously when he purchased the original item or claiming that he had lost the original receipt, VOLPICELLI returned the multiple items (however they were obtained) for a refund of the full price, which VOLPICELLI knew he had not paid and which amount he knew would be credited to one of his or his wife's credit card accounts.

12. It further was part of the scheme that VOLPICELLI returned the multiple items knowing full well that the stores, in order to provide VOLPICELLI with the credit he sought, would communicate in interstate commerce by means of wire communication as a direct result of his actions.

COUNTS ONE THROUGH TWELVE

WIRE FRAUD

13. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 12 of the Indictment.

14. For the purpose of executing the scheme to defraud and to obtain money in the form of credits on various credit cards held by himself or Lori Volpicelli, on or about the dates set forth below, within the District of Nevada and elsewhere, by means of false or fraudulent pretenses, representations, or promises, VOLPICELLI did knowingly cause to be transmitted by means of wire communication in

V4.96

interstate commerce certain signs, signals and sounds between the Target Store locations listed below and Minneapolis, Minnesota as a result of his purchase or return of various items, with the corresponding receipt number, as follows:

COUNT	DATE	DESCRIPTION
		Golf Clubs, Receipt No. 0369
1.	January 21, 1992	Returned set of golf clubs to Target Store T-263 in Las Vegas, Nevada, obtaining a credit in the amount of $213.99 on Visa account number 4128400355173.
		Tents, Receipt No. 0100
2.	March 14, 1992	Purchased a "two room tent" and a "Greatland two room tent" for a total price of $588.48 at Target Store T-262 in Reno, Nevada, using Visa account number 4128400355173.
3.	March 14, 1992	Returned a "two room tent" and a "Greatland two room tent" at Target Store T-262 in Reno, Nevada, obtaining a credit in the amount of $588.48 on Visa account number 4128400355173.
4.	April 9, 1992	Returned a "Greatland two room tent" to Target Store T-263 in Las Vegas, Nevada, obtaining a credit in the amount of $267.49 on Visa account number 4128400355173.
		Golf Clubs, Receipt No. 1150
5.	April 20, 1992	Purchased a set of "Black Diamond Irons" and a golf set for $427.98 at Target Store T-261 in Sparks, Nevada, using Visa account number 4317344210045698.
6.	April 20, 1992	Returned a set of "Black Diamond Irons" and a golf set for $427.98 at Target Store T-261 in Sparks, Nevada, using Visa account number 4317344210045698.
		Sunbeam Stand Mixer, Receipt No. 4484

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7.	December 22, 1992	Returned a "Sunbeam Stand Mixer" to Target Store T-265 in Las Vegas, Nevada, obtaining a credit in the amount of $107.74 on Master Card account number 5472330108229435.

Sunbeam Stand Mixer, Receipt No. 9661

8.	December 22, 1992	Returned a "Sunbeam Stand Mixer" to Target Store T-265 in Las Vegas, Nevada, obtaining a credit in the amount of $107.74 on Discover account number 6011009737000443.

Vacuum Cleaner, Receipt No. 8795

9.	January 14, 1993	Returned a "Hoover Legacy Vacuum" to Target Store T-263 in Las Vegas, Nevada, obtaining a credit in the amount of $192.59 on Visa account number 4800120216070755.

Telephone, Receipt No. 3108

10.	December 23, 1992	Returned an "AT&T 5500 Telephone" to Target Store T-680 in Henderson, Nevada, obtaining a credit in the amount of $171.19 on Master Card account number 5424180271573179.
11.	January 15, 1993	Returned an "AT&T 5500 Telephone" to Target Store T-680 in Henderson, Nevada, obtaining a credit in the amount of $173.19 on Master Card account number 5424180271573179.
12.	March 1, 1993	Returned an "AT&T 5500 Telephone" to Target Store T-263 in Las Vegas, Nevada, obtaining a credit in the amount of $173.19 on Master Card account number 5424180271573179.

All in violation of Title 18, United States Code, Section 1343.

COUNT THIRTEEN

WIRE FRAUD

15. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 12 of the Indictment.

16. For the purpose of executing the scheme to defraud and to obtain money in the form of credits on various credit cards held by

V4.98

himself or Lori Volpicelli, on or about November 21, 1992, within the District of Nevada, by means of false or fraudulent pretenses, representations, or promises, VOLPICELLI did knowingly cause to be transmitted by means of wire communication in interstate commerce certain signs, signals and sounds between Reno, Nevada and California for the purpose of purchasing two gold chains from the Mervyn's store # 167 in Mira Mesa, California.

In violation of Title 18, United States Code, Section 1343.

COUNT FOURTEEN

WIRE FRAUD

17. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 12 of the Indictment.

18. For the purpose of executing the scheme to defraud and to obtain money in the form of credits on various credit cards held by himself or Lori Volpicelli, on or about December 22, 1992, within the District of Nevada, VOLPICELLI did knowingly cause to be transmitted by means of wire communication in interstate commerce certain signs, signals and sounds between San Mateo, California and Nevada, relating to the purchase of two gold chains from the Mervyn's store # 59 in Cupertino, California, using Visa account number 4737000080773.

In violation of Title 18, United States Code, Section 1343.

COUNT FIFTEEN

TAX PERJURY

19. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

20. On or about July 11, 1990, in the District of Nevada, VOLPICELLI, a resident of Reno, Nevada, did willfully make and

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subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1989, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the operation of a business activity (i.e., the credit card scheme) from which he derived gross receipts or sales and incurred deductions or to report the income derived therefrom, whereas, as he then and there well knew and believed, he was required to disclose the operation of this business activity, the gross receipts or sales derived therefrom, and the deductions he incurred or to report the income derived therefrom.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SIXTEEN

TAX PERJURY

21. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

22. On or about August 1, 1991, in the District of Nevada, VOLPICELLI, a resident of Reno, Nevada, did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1990, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the operation of a business activity (i.e., the credit card scheme) from which he derived gross receipts or sales and incurred

V4.100

deductions or to report the income derived therefrom, whereas, as he then and there well knew and believed, he was required to disclose the operation of this business activity, the gross receipts or sales derived therefrom, and the deductions he incurred or to report the income derived therefrom.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SEVENTEEN

TAX PERJURY

23. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

24. On or about August 11, 1992, in the District of Nevada, VOLPICELLI, a resident of Reno, Nevada, did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1991, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the operation of a business activity (i.e., the credit card scheme) from which he derived gross receipts or sales and incurred deductions or to report the income derived therefrom, whereas, as he then and there well knew and believed, he was required to disclose the operation of this business activity, the gross receipts or sales derived therefrom, and the deductions he incurred or to report the income derived therefrom.

In violation of Title 26, United States Code, Section 7206(1).

COUNT EIGHTEEN

TAX PERJURY

25. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

26. On or about July 23, 1993, in the District of Nevada, VOLPICELLI, a resident of Reno, Nevada, did willfully make and subscribe a joint U.S. Individual Income Tax Return, for the calendar year 1992, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter in that the said return failed to disclose that he was engaged in the operation of a business activity (i.e., the credit card scheme) from which he derived gross receipts or sales and incurred deductions or to report the income derived therefrom, whereas, as he then and there well knew and believed, he was required to disclose the operation of this business activity, the gross receipts or sales derived therefrom, and the deductions he incurred or to report the income derived therefrom.

In violation of Title 26, United States Code, Section 7206(1).

COUNT NINETEEN

FALSE BANK LOAN STATEMENT

27. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

28. On or about February 2, 1993, in the District of Nevada, VOLPICELLI knowingly made a material false statement and report for the purpose of influencing the action of Great Basin Federal Credit Union, a Federal Credit Union, upon an application for credit in

that VOLPICELLI submitted a loan application which falsely stated that VOLPICELLI was an employee of Conner & Conner, Inc. ("Conner") and that his income from that employment was $7,000 per month, when in truth and in fact, as VOLPICELLI well knew, he was not an employee of Conner and his income from that employment was not $7,000 per month.

In violation of Title 18, United States Code, Section 1014.

COUNT TWENTY

FALSE BANK LOAN STATEMENT

29. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

30. On or about February 20, 1993, in the District of Nevada, VOLPICELLI knowingly made a material false statement and report for the purpose of influencing the action of World Savings & Loan Association, an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, upon a residential loan application in that VOLPICELLI submitted a loan application which falsely stated that VOLPICELLI was an employee of Conner & Conner, Inc. ("Conner") and that his monthly income from that employment was $7,000. In addition, VOLPICELLI submitted two false Forms W-2, one each for 1991 and 1992 which falsely stated that he was paid $81,600 and $84,000, respectively, by Conner, from which federal income tax of $14,300 and $16,900, respectively, was purportedly withheld. In truth and in fact, as VOLPICELLI well knew, he was not an employee of Conner, his income from that employment was not $7,000 per month, Conner did not pay him $81,600 in 1991 or $84,000 in 1992, and no federal income tax was withheld from any amounts VOLPICELLI received from Conner in 1991 and 1992.

In violation of Title 18, United States Code, Section 1014.

COUNT TWENTY-ONE

FALSE BANK LOAN STATEMENT

31. The Grand Jury repeats and realleges each and every allegation contained in paragraphs 1 through 4 of the Indictment.

32. On or about October 8, 1990, in the District of Nevada, VOLPICELLI knowingly made a material false statement and report for the purpose of influencing the action of Pioneer Citizens Bank of Nevada, an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, upon a credit application for an auto loan in that VOLPICELLI submitted a credit application which falsely stated that VOLPICELLI was an employee of Conner & Conner, Inc. ("Conner") and that his monthly gross income and net income from that employment was $6,500 and $5,900, respectively, when in truth and in fact, as VOLPICELLI well knew, he was not an employee of Conner and his gross income and net income from that employment was not $6,500 and $5,900, respectively, per month.

In violation of Title 18, United States Code, Section 1014.

A TRUE BILL:

FOREPERSON OF THE GRAND JURY

KATHRYN E. LANDRETH
United States Attorney

KEVIN M. KELCOURSE
DANNY N. ROETZEL
Trial Attorneys
U.S. Department of Justice
Tax Division
Washington, D.C. 20530

Attorneys for the United States of America

No. CR03-1263

State

vs.

Ferrill Volpicelli

Ex. 3

Admitted: 4-1, 20 04

RONALD A. LONGTIN, JR., CLERK

By _____

Deputy

NORTHERN NEVADA
REPEAT OFFENDER PROGRAM
RENO POLICE DEPARTMENT
FINANCIAL IMPACT REPORT
Defendant Ferrill Joseph Volpicelli
Washoe County District Court Dept. 10 – April 1, 2004

OFFENSE: Defendant Volpicelli was indicted by Grand Jury for the following offenses:

Count I	Conspiracy to Commit Crimes Against Property (GM)
Count II	Burglary (F)
Count III	Burglary (F)
Count IV	Burglary (F)
Count V	Burglary (F)
Count VI	Burglary (F)
Count VII	Burglary (F)
Count VIII	Burglary (F)
Count IX	Burglary (F)
Count X	Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels (F)

Defendant was convicted in a trial by jury on all 10 counts on November 14, 2003 and sentencing is set for April 1, 2004 in Washoe District Court Department 10.

FELONY CONVICTIONS:

1993 - Attempted Burglary
1996 - Tax Perjury (4 counts)
1998 - Burglary
- Principle to Burglary
2003 - Indecent Exposure
2003 - Open & Gross Lewdness
2003 - Aid & Abet in the Commission of Attempting to Obtain Money by False Pretenses

Additionally, the defendant has 2 (two) prior misdemeanors and 1 (one) gross misdemeanor conviction.

RECOVERED PROPERTY:

Search warrants executed on the defendant's residence, safe deposit box and storage unit pursuant to this investigation recovered over $11,000 of new, in the box, merchandise believed to be the fruits or instrumentalities of defendant Volpicelli's criminal activity. Some items still had fictitious Universal Product Code (UPC) labels attached.

The following is a list of items recovered from the defendant's storage unit that are new, in the box items. By monitoring telephone calls and mail at the Washoe County Sheriff's Office I've discovered numerous inconsistent statements made by Volpicelli to friends and relatives regarding the ownership of these items. Depending on who he is speaking to Volpicelli has stated that the items belonged to his co-defendant, Brett Bowman, and that he was storing the items for Bowman. In other conflicting statements Volpicelli has also stated that he had over $10,000 worth of merchandise in the storage unit that he purchased for his children. It is not difficult to conclude, considering Volpicelli's past criminal activities and the results of this investigation, that most, if not all, of the below listed items were fraudulently obtained by the defendant through the application of his criminal scheme. All retailers identified in this case and mentioned in the Grand Jury indictment have noticed me that they wish to have their property returned.

ARGUE TO GET TO STORES "KRISTIN"

1.	1 Quicken Business Lawyer 2001 Deluxe	Office Depot	$29.88
2.	1 Brother P-Touch Electronic Labeling System	Office Depot	$149.99
3.	1 Moen Extensa Faucet	Home Depot	$199.00
4.	1 Deflect-O Bath N' Spa Exhaust Kit	Home Depot	$175.00
5.	1 Kohler Rosario Low Flow Toilet	Home Depot	$482.00
6.	1 Bulldog Security Remote Starter	Shopko	$59.99
7.	1 Sonicare Plus Electric Toothbrush	Shopko	$119.99
8.	1 Casio Cassiopeia Automatic PC	Shopko	$79.99
9.	2 KDS Rad 5 - 15" LCD Monitors	Wal-Mart	$377.00 ea.
10.	2 Hewlett-Packard Office Jet Printers	Wal-Mart	$499.87 ea.
11.	3 Emerson TV/DVD Combos	Wal-Mart	$299.94 ea.

12.	1 Simplicity Serge Pro Sewing Machine	Wal-Mart	$263.00
13.	1 Compaq Computer	Wal-Mart	$998.00
14.	1 Panasonic SC-DK10 DVD Stereo System	Wal-Mart	$477.88
15.	1 Hoover Wind Tunnel Vacuum	Wal-Mart	$288.00
16.	1 Kodak Ektagraphic III Slide Projector	Office Max	$599.99
17.	1 Lego Steven Spielberg Movie Maker Set	Toys R' Us	$60.00
18.	1 V-Tech Digital Telephone w/Answering System	Target	$159.00
19.	2 V-Tech Digital Telephone Multi Handset Combo	Target	$130.00 ea.
20.	2 Panasonic SC-HT70 DVD Dyna Movie	Target	$449.67 ea.
21.	1 Memorex Travel View Mini-Van Console	Target	$399.99
22.	1 100% Wool Handcrafted Rug	Lowe's	$499.00
23.	1 Brother MFC-1970 Combo Fax-Scanner	Custom Office Supply	$348.99
24.	2 Mabis Smart Read Plus Digital Blood Pressure	K-Mart	$99.99 ea.
25.	1 Phantom Wildcat Vacuum	K-Mart	$149.97
26.	1 Hoover Steam Vac	Shopko	$299.99
27.	1 V-3 Racing Wheel	K-Mart	$49.99
28.	1 Ozark Queen Size Air Bed	Wal-Mart	$24.84
29.	2 Aero Minute Beds w/Fictitious Bar Codes	Wal-Mart	$78.42ea.
30.	3 Willow Bay Comforters	Shopko	$64.99ea.
31.	1 Krups Coffee Maker	Bed, Bath & Beyond	$59.99

TOTAL = $10,339.16

The following items were also recovered from the defendant's storage unit, however, retailer and pricing information was not immediately available at the time of this report:

One (1) G.E. Optima Amplified TV Antenna
One (1) Playstation Open Driving Force
Three (3) Kodak EZ200 Digital Cameras
One (1) Braun shaver
One (1) Norelco shaver
One (1) Panasonic Cordless Answering System
One (1) Texas Instruments Connectivity Value Kit
Two (2) Brother P-Touch cartridges
One (1) Texas Instruments calculator
One (1) Samsonite car charger
One (1) Multi Tool
One (1) Panasonic KP-150 Electric Pencil Sharpener
One (1) New in box Cigarette Lighter Jumpstarting System
One (1) New Sport Universal blue & green windbreaker size Large w/tags.

ESTIMATED RECOVERED TOTAL = IN EXCESS OF $11,000

DETECTIVE MAN HOURS WORKED: **647 TOTAL MAN HOURS.** Determined by the following:

Total number of hours worked by Detective Thomas on this case, excluding surveillance time, prior to the defendant's arrest on October 17, 2001 = 54 hours.

Total number of hours worked by Detective Thomas on this case after the defendant's arrest on October 17, 2001 = 285 hours.

Total surveillance hours worked by R.O.P. detectives = 189 hours.

Total number of hours worked by all R.O.P. detectives on the date of the defendant's arrest = 119 hours.

TOTAL = 647 hours or 16.17 40 hour work weeks.

It should be noted that this a conservative figure due to the fact that I did not take into account any follow-up investigative work completed by me or other R.O.P. detectives after February 2002. Additionally, I have not included court appearances, to include the Grand Jury, or any pre-trial meetings with the District Attorney's Office.

PROJECTED ECONOMIC LOSS TO THE COMMUNITY:

Through interviews with his co-defendant detectives learned that defendant Volpicelli engaged in his fraudulent price changing scheme *at least* once a week making approximately 5-10 stops a day at various retail stores throughout the Reno/Sparks area for the purpose of purchasing merchandise at a greatly reduced price through the application of defendant Volpicelli's scheme. NOTE: Numbers used in this projection have been rounded to the nearest dollar.

Merchandise defendant Volpicelli purchased ranged in price from $25 to $1000. For this projection I determined an average price by taking 41 of the items recovered from the defendant's storage unit with confirmed price information and divided that into the total cost of those items which is roughly $10,339. The resulting average purchase price is $252.

Assuming defendant Volpicelli only applied his scheme once a week, five (5) times per day, one could reasonably conclude that he purchased $1,260 worth of merchandise on any given day that he chose to set his scheme in motion. When that total is multiplied out over a twelve 12 month period defendant Volpicelli could conceivably attain over $65,520 worth of merchandise per year.
It is not unreasonable to conclude that defendant Volpicelli actually committed these crimes on a far more frequent basis when he was not in the company of his co-defendant.

Through an affidavit provided to I.R.S. Revenue Agents in 1997 defendant Volpicelli outlined his criminal enterprise and, in so doing, estimated that using fraudulent Universal Product Codes he purchased merchandise at approximately 25% of actual cost.

Using this information, defendant Volpicelli could conceivably have purchased the above mentioned items for approximately $16,380 resulting in a net savings to him of $49,140 tax free income per year. Consider that this figure applies only if the defendant engaged in his scheme one (1) time per week, five (5) times per day for one (1) calendar year.

Taking the same numbers but assuming the defendant engaged in his scheme ten (10) times per day, one (1) time per week his yearly tax free income would be $93,280.

SYNOPSIS:

On June 1, 2001 Defendant Volpicelli was released from the Nevada Department of Corrections and paroled to the Reno area stemming from a burglary conviction in 1998 wherein he committed similar, and in some instances, the same crimes alleged in this case for which he was ultimately convicted.

Based upon the evidence obtained in this case after the defendant's arrest on October 17, 2001 it is clear the defendant immediately engaged in the same criminal activity he was convicted of in his 1998 case and continued to do so right up until the time he was arrested. Additionally, defendant Volpicelli has previously sworn, through the above mentioned affidavit, that he has engaged in this type of criminal activity since the mid 1980's wherein he states in part, "This scheme was the way I generated the majority of the income to support my wife and family to a very nice lifestyle from the beginning of 1987 until I became aware of the IRS criminal investigation in 1995."

I've spoken to Internal Revenue Service Agent Robert Graham reference the defendant's criminal activities back in the late 1980's to mid 1990's and he advised me that his investigation showed that defendant Volpicelli earned approximately $800,000 over a three (3) year period while applying the same scheme he used in this case.

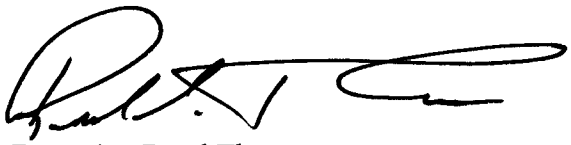
R.O.P. detectives also learned through monitoring jail telephone conversations and the defendant's mail that many items *not* seized in this investigation were also fruits of his criminal activity. Those items were discreetly transferred to family, friends and/or associates before detectives could follow up on the information.

Defendant Volpicelli's reasons for participating in this type of criminal activity vary depending on what day it is and to whom he is speaking. The defendant minimizes his crimes by describing them as misdemeanors and he has taken no responsibility in this case but, instead, has declared that his co-defendant was responsible for these crimes.

The defendant has no substantiated history of drug addiction, at least according to prior pre-sentence investigation reports before 2001, however, shortly after his arrest and incarceration for these crimes he suddenly described himself as a drug addict in an apparent attempt to get probation and enter a rehabilitation program. Through an interview I had with the defendant he described prison rehabilitation programs as "a joke". Through my contact with the defendant and my experience as the case agent with this investigation I have come to the personal conclusion that defendant Volpicelli is not only inherently dishonest but, more importantly, inherently criminal.

In spite of several prison incarcerations as well as opportunities at parole and probation, it is clear that defendant Volpicelli has no intention of curbing his criminal behavior. Since the date of his arrest up until the present time he has taken absolutely no responsibility for his actions but instead has laid blame at the feet of his co-defendant. The actual dollar figure that defendant Volpicelli has cost the taxpayers of this community reference this case is impossible to calculate but it is reasonable to conclude that it is in the tens of thousands if not hundred's of thousands of dollars.

Respectfully Submitted,



Detective Reed Thomas
Reno Police Department
Northern Nevada Repeat Offender Program

No. CR03-1263

State

vs.

Ferrill Volpicelli

Ex. 5

Admitted: 4-1, 20 04

RONALD A. LONGTIN, JR., CLERK

By _____ Deputy

Patricia M. McGaffin, CCS II
Street Readiness Program Coordinator
Northern Nevada Correctional Center

April 7, 2003

TO WHOM IT MAY CONCERN:

This letter is to certify that Ferrill Volpicelli, NDOC number 60076, was a participant in the Bridges to Freedom program, a pre-release program designed to assist people getting out of prison to develop a better, more positive self image. It also teaches them how to search for suitable legal employment and to be a successful interviewee in a hiring interview.

The specific topics covered are:

Orientation	Interview Skills
Time Management	Packing Our Product
Money and Credit	Responsiveness
Communication	Strengths
Goal Setting	First Impressions
Decision Making	Job Progression
Stress and Health	Show Time
Assertiveness	Employer Panel
Exploring Interests	Celebrating Success

Special guest speakers gave presentations on a variety of topics such as Twelve Step Programs, Parole Board Hearings, Doing a Successful Parole, and Driver's License testing and related questions about securing a license.

Sincerely

Patricia McGaffin

Patricia McGaffin
Program Coordinator

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

September 24, 2002

Ferrill Volpicelli 60076
Nevada State Prison

Letter of Completion

Dear Mr. Volpicelli

This letter is written to confirm that you have successfully completed the 16 contact hours; Parenting Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

To receive this letter, you met the following requirements;

Good attendance.

Class participation.

Class assignments.

Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

Rodger Hudnall Psych II
Rodger Hudnall, Psychologist II
Nevada State Prison

RH:rwm

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

July 25, 2002

Ferrill Volpicelli 60076
Nevada State Prison

Letter of Confirmation

Dear Mr. Volpicelli

This letter is written to confirm that you have successfully completed the 40 contact hour; Substance Abuse Addiction and Recovery Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

To receive this letter, you met the following requirements;

Good attendance.

Class participation.

Class assignments.

Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

Rodger Hudnall Psych II

Rodger Hudnall, Psychologist II

Nevada State Prison

RH:rwm

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

July 25, 2002

Darrell Volpicelli 60076
Nevada State Prison

To: Survive and Change Program; Relapse Prevention Module

Letter of Completion

Dear Mr. Volpicelli

This Letter of Completion is written to confirm that you have successfully completed the 20 contact hour Relapse Prevention Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

This letter confirms that you have met the following requirements:

- Class attendance
- Class participation
- Post assignments
- Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

Rodger Hudnall Psych II

Rodger Hudnall, Psychologist II
Nevada State Prison

RH:sm

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

July 23, 2002

Ferrin Volpicelli 60076

Re: Survive and Change Program; Anger Management Module

Letter of Completion

Dear Mr. Volpicelli

This letter is written to confirm that you have successfully completed the 16 contact hour; Anger Management Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

To receive this letter, you met the following requirements;

Good attendance.
Class participation.
Class assignments.
Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

R Hudnall Psych II

Dr. Rebecca Loftis, Senior Psychologist
Nevada State Prison

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

May 8, 2002

Ferrill Volpicelli 60076
Nevada State Prison

Re: Survive & Change Program; 106 Computer Assisted Alcohol Abuse Prevention Module

Letter of Completion

Dear Mr. Volpicelli

This Letter of Completion is written to confirm that you have successfully completed the 14 lesson, 28 Hour Computer Assisted Alcohol Abuse Prevention Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

This letter confirms that you have met the following requirements;

Good attendance.
Class participation.
Class assignments.
Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

Rodger Hudnall Psych II
Rodger Hudnall, Psychologist II
Nevada State Prison

RH: rwm

V4.118

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

April 18, 2002

Ferrill Volpicelli 60076
Nevada State Prison

Re: Survive and Change Program; 105 Computer Assisted Drug Abuse Prevention Module

Letter of Completion

Dear Mr. Volpicelli

This Letter of Completion is written to confirm that you have successfully completed the 10 lesson, 20 Hour Computer Assisted Drug Abuse Prevention Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

This letter confirms that you have met the following requirements;

Good attendance.
Class participation.
Class assignments.
Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

K Hudnall Psych II
Rodger Hudnall, Psychologist II
Nevada State Prison

RH: rwm

VIETNAM VETERANS OF AMERICA
CHAPTER #545
P.O. BOX 607
CARSON CITY, NEVADA 89702

October 15, 2002

Ferrill Volpicelli 60076
Nevada State Prison

Letter of Completion

Dear Mr. Volpicelli

This letter is written to confirm that you have successfully completed the 9 contact hours; Domestic Violence Module.

This Module is one of seven required to successfully complete the Survive and Change Program.

To receive this letter, you met the following requirements;

Good attendance.
Class participation.
Class assignments.
Homework assignments.

If there is any additional information required, please feel free to contact me.

Sincerely,

Dr. Rebecca Loftis

Dr. Rebecca Loftis, Senior Psychologist
Nevada State Prison

RH:rwm

V4.120

No. CR03-1263

State

vs.

Ferrill Volpicelli

Ex. 6

Admitted: 4-1, 2004

RONALD A. LONGTIN, JR., CLERK

By _____ Deputy

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS
INMATE ACHIEVEMENT CERTIFICATE

EXHIBIT 7

This is to certify that

Ferrill Volpicelli

Has successfully completed a prescribed course in the
Survive and Change Program
Consisting of Seven Modules of formal instruction.

Dated this 12 *day of* December 20 02

"Pride in Excellence"

JAMES BACA AWP
ASSOCIATE WARDEN PROGRAMS, N.S.P.

Rodger Hudnall Sr Psyc
SENIOR PSYCHOLOGIST, N.S.P.

A-1121

Department of Corrections, Medical Division

Health Related Recovery

This Is To Certify That:

FERRILL VOLPICELLI #60076

Has successfully completed
40 hour course addressing life skills and overcoming substance abuse

Awarded On:

March 13, 2003

By Dr. Karen Gedney
NNCC HRR Program Facilitator

V4.123

CERTIFICATE OF ACHIEVEMENT

Awarded To:

FERRILL VOLPICELLI # 60076

In recognition for:
SUCCESSFUL COMPLETION OF
LITERACY / ESL TUTOR TRAINING

JOSE QUINTERO / LITERACY SPECIALIST

10-28-02
Date

V4.124

NSP GARDENING CLASS 1

- THE BELOW NAMED STUDENT HAS COMPLETED THE FIRST NSP GARDENING COURSE:

- FERRIL VOLPICELLI #60076

WARDEN BUDGE

JAMES P. MAXEY

DATE: OCTOBER 17,2002

V4.125

CERTIFICATE OF ACHIEVEMENT

Awarded To:

FERRILL VOLPICELLI # 60076

In recognition for:

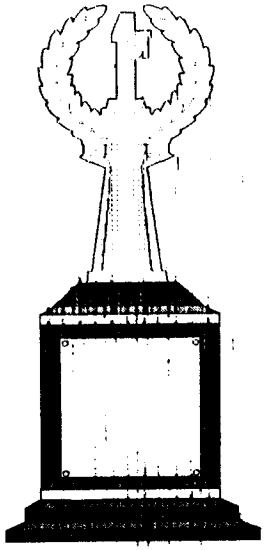
6 MONTHS OF DEDICATED SERVICE
FOR LITERACY/ESL TUTORING PROGRAM

Jose Quintero
JOSE QUINTERO / LITERACY SPECIALIST

10-28-02
Date

VA1126

Certificate of Achievement



FERRILL VOLPICELLI

PARTICIPATION IN
BRIDGES TO FREEDOM

Date March 10, 2003

Coordinator

V4.1Z

Criminon™

"There is no person alive who cannot make a new beginning."

...The Way To Happiness Book

Does hereby certify that

Ferrill Volpicelli

Has satisfactorily attained the requirements necessary and is hereby awarded a Certificate of Completion of

The Way to Happiness Course

This 15th day of Aug. 2002 Certificate # 5568

Steven Jay

Criminon Executive Director

Certificate of Achievement

for completion of

Bridges to Freedom / Street Readiness Program

awarded to:

FERRILL VOLPICELLI

for completing sixty four hours of class instruction
and participation in group activities
in Self Improvement and Job Search Workshop

April 7, 2003

Class
Number
VI

Patricia M. McGaffin, Coordinator

V4.129

GOSPEL ECHOES TEAM

Certificate

This is to certify that **FERRILL VOLPICELLI**

has successfully completed the Advance Course

The Christian Way in Marriage

by

Home Bible Studies, a ministry of the Mennonite Church.

Granted this **1st** day of **May**, 20 **03**

GOSPEL ECHOES TEAM ASSOCIATION

Roy Koch
Instructor

Marvin R. Beachy
Marvin R. Beachy, President

V4.130

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All Rights Reserved

LITHO. IN U.S.A

No. CR03-1263

State

vs.

Ferrill Volpicelli

Ex. 7

Admitted: 4-1, 2004

RONALD A. LONGTIN, JR., CLERK

By _____ Deputy

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

THE STATE OF NEVADA,
Plaintiff,
vs.

FERRILL JOSEPH VOLPICELLI,
Defendant.
_____/

Sup. Ct. Case No. 61142
Case No. CR03-1263
Dept. 10

RECORD ON APPEAL

VOLUME 3 OF 6

POST-CONVICTION DOCUMENTS

APPELLANT
Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

RESPONDENT
Washoe County District Attorney's Office
Terrance McCarthy, Esq.
P.O. Box 30083
Reno, Nevada 89520-3083

ORIGINAL

Case No. CR03P1263

Dept. No. 10

FILED

2005 NOV -9 PM 3:17

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

CR03P1263
POST: FERRILL J VOLPICELLI 9 Pages
District Court 11/09/2005 08:17 AM
Washoe County
DC-9900025217-018
3565

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

-oOo-

FERRILL J. VOLPICELLI,

Petitioner,

vs.

LENARD VARE,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Lovelock Correctional Center, Pershing County, Nevada

2. Name and location of court which entered the judgment of conviction under attack: 2ND Jud. Dist. Court, Washoe County, Reno, Nevada

3. Date of judgment of conviction: April 01, 2004

4. Case number: CR03-1263

5. (a) Length of sentence: Multiple Life w/'s

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes XXX No ____

If "yes" list crime, case number and sentence being served at

this time: CR02-0147 - Public Insensibilities - 12 to 48 Months

7. Nature of offense involved in conviction being challenged: Burglary, Conspiracy to Commit Burglary.

8. What was your plea? (check one)

(a) Not Guilty XXX

(b) Guilty ___

(c) Guilty but mentally ill ___

(d) Nolo Contendere ___

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury XXX (b) Judge without a jury ___

11. Did you testify at the trial? Yes ___ No XXX

12. Did you appeal from the judgment of conviction?

Yes XX No ___

13. If you did appeal, answer the following:

(a) Name of court: Nevada Supreme Court

(b) Case number or citation: 43203

(c) Result: Affirmed

(d) Date of result: JUNE 29, 2005

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not:

N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ___ No XXX

16. If your answer to No. 15 was "yes", give the following information:

(a) (1) Name of court: N/A

(2) Nature of proceedings: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: N/A

(2) Nature of proceedings: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___.

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach. N/A

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion? N/A

(1) First petition, application or motion?

Yes ___ No ___

Citation or date of decision:_____

(2) Second petition, application or motion?

Yes ___ No ___

Citation or date of decision:_____

(3) Third or subsequent petitions, applications or motions? Yes ___ No ___

Citation or date of decision:_____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed

five handwritten or typewritten pages in length.)

N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: Grounds 3, 4, 5, & 6

(b) The proceedings in which these grounds were raised: Direct Appeal to Nevada Supreme Court

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

All four grounds previously raised on direct appeal more appropriately contain elements of ineffectiveness of counsel, explained in respective grounds, & are appropriately raised on H.C.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) All remaining grounds are more appropriately raised on Petition for Post-conviction Writ of Habeas Corpus.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

~~This petition is timely filed per NRS chapter 34.~~

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ___ No XXX

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

~~Jack Alian, Esq. - Court-appointed, pretrial; Bradley Van Ry, Esq. -~~ pretrial/trial/sentencing; Mary Lou Wilson - Direct Appeal.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes XXX No ___

If yes, specify where and when it is to be served, if you know:

NDOC, consecutive to instant LIFE sentences, 12-48 months

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one: See Accompanying Memorandum For Grounds One Through Twenty Two

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(b) Ground two: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(c) Ground three: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(d) Ground four: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

WHEREFORE, petitioner prays that the Court grant him relief to which he may be entitled in this proceeding.

Executed at Lovelock Correctional Center on this 8th day of November, 2005.

N/A
Signature of Attorney (if any)

_____
_____
_____
Attorney & Address of Attorney

Ferrel Dolicello #78565
Lovelock Correctional Center
P.O. Box 359
Lovelock, Nevada 89419

Petitioner

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Petitioner - Ferrill J. Volpicelli

No Attorney of Record - IPP
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 8th day of NOVEMBER, 2005, by placing same into the hands of prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

LENARD VARE, Warden
Lovelock Correctional Center
[via Interdepartmental Mail]

BRIAN SANDOVAL
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Richard Gammick, Esq.
Washoe County District Attorney
195 South Sierra Street
Reno, Nevada 89520

Signature of Petitioner In Pro Se

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VOLPICEL 100 Pages
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CR03P1263
POST FERRILL J
District Court
Washoe County

Ferrill J. Volpicelli, 79565
Lovelock Correctional Center
Post Office Box 359
Lovelock, Nevada 89419

Petitioner, In Proper Person

ORIGINAL

FILED

2005 NOV -9 PM 3:17

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

vs.

LENARD VARE, (Warden;
Lovelock Correctional Center),

Respondent,

Case No. CR 03P1263

Dept. No. 10

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, Petitioner, Ferrill J. Volpicelli, in his proper person and in forma pauperis, and submits this Memorandum Of Points And Authorities In Support Of Petition For Writ Of Habeas Corpus (post-conviction) in the above entitled action.

This memorandum is made and based on the provisions of NRS 34.720 et. seq., all papers and pleadings on file herein, as well as the following argument and points and authorities.

Statement Of The Case

A Grand Jury was convened on June 11, 2003, to determine whether a true bill should be made against Ferrill Joseph Volpicelli, hereinafter called Petitioner. An Indictment was filed against Petitioner on June 11, 2003. An arraignment on the Indictment was heard on June 18, 2003. Trial counsel filed a Petition for Writ of Habeas Corpus on September 4, 2003. An Opposition to Petition for Writ of Habeas Corpus was filed on September 4, 2003. Trial counsel filed a Reply in Support of Petition for Writ of Habeas Corpus on September 17, 2003. The State filed Notice of Intent to Seek Habitual Criminal Status on October 9, 2003. The district court filed an Order granting the Motion to Suppress regarding the presentation of Petitioner's prior bad acts to the grand jury and denied the Motion to Quash the Indictment. Jury trial commenced and Petitioner was found guilty of all charges within the Indictment. A presentence report was done on November 25, 2003. A sentencing hearing was held on April 1, 2004. During sentencing, trial counsel argued that Petitioner had some mental health problems and referred to competency reports that had been requested and received in another recent case. Additional information was provided during the sentencing hearing for district court's consideration. These included exhibits 1-7, certificates of achievment, and letters of completion from trial counsel. The State presented three certificates of judgment of convictions 1997, 1998 and 2004, and a photograph of Petitioner while in custody, which was sent to his family. Judgment was filed on April 1, 2004. Notice of Appeal was filed on April 19, 2004. An Order declaring

Petitioner a Habitual Criminal was filed on June 1, 2004. Counsel for Appellant filed an Opening Brief in the Nevada Supreme Court on or about July 14, 2004. Respondents filed an Answering Brief on or about August 6, 2004. The Nevada Supreme Court issued it's Order of Affirmance on JUNE 29, 2005.

Remittitur issued on August 1, 2005.

Petitioner now brings forth the instant petition.

Statement Of The Facts

Petitioner was on parole and living in Reno, Nevada from approximately June 1, 2001 through October, 17, 2001. Petitioner was being investigated by the Washoe County Repeat Offender Program (ROP). ROP detectives conducted surveillance on Petitioner in a non-continuous fashion. ROP detectives also non-continuously surveilled Petitioner's alleged co-conspirator, Brett Bowman; also on parole at the time of the instant offenses.

The State and detectives allege that Petitioner entered several retail establishments in the Reno area and proceeded to write information on a tablet, allegedly copying pricing information from various items.

Detectives testified that Brett Bowman entered various retail establishments wherein he would affix pricing labels to merchandise, purchase the merchandise at a discounted rate, and leave the retail establishment with the property, thus constituting burglary, larceny, uttering forged instruments and/or obtaining property under false pretense.

The State alleges that the property purchased from the Reno area

stores was then returned to the retail establishments for a correct retail price, thus allowing Petitioner and Brett Bowman to reap a profit. (However, according to police records, detectives located and searched a personal storage unit rented by Petitioner's step-daughter. ROP detectives secured numerous items, new, and in unopened boxes from the storage unit. Detectives or other personnel returned the items to various retail stores in the Reno area, thus eliminating any and all financial impact on the establishments. Additionally, if the State's theory is accurate, the retail establishments reaped a profit by securing their property which was originally purchased at some price.)

On October 17, 2001, Petitioner waited outside a Wal-Mart store in south Reno where Brett Bowman exited the store with a bicycle. Bowman then placed the bicycle in the van with Petitioner, and Brett Bowman sat in the passenger seat of the vehicle while Petitioner drove north on Virginia Street. ROP detectives commenced a trafffic stop on Petitioner and Bowman who were then both subsequently arrested. A subsequent search of the van revealed a small black vinyl bag containing a label maker, UPC bar code labels, receipts, the bicycle, and numerous other items.

Brett Bowman and various detectives testified at Petitioner's trial alleging the entire above noted scheme was entirely the result of Petitioner's actions and planning.

Brett Bowman eventually received a sentence of only sixteen to forty two (16-42) months for his actions, while the Petitioner was sentenced to nine (9) life sentences..

Applicable Law-Standard For Effective Assistance Of Counsel

Petitioner has no choice but to raise the questions regarding the effectiveness of his counsel through the forum of a Petition for Writ of Habeas Corpus (Post-Conviction). See Franklin v. State, 110 Nev. 750, 877 P2d 1058 (1994). The question of ineffective assistance of counsel should not be considered in a direct appeal from a judgment of conviction. Instead, the issues should be raised, in the first instance, in the district court in a petition for post-conviction relief so that an evidentiary record regarding counsel's performance can be created. See Wallach v. State, 106 Nev. 470, 796 P2d 224 (1990).

It is possible for Petitioner to go straight to the Nevada Supreme Court on the issues of ineffectiveness of counsel, but the fact setting must be one where the Supreme Court can determine that there was not good reason for counsel's actions that could exist. See Jones v. State, 110 Nev. 730, 877 P2d 1052 (1994).

In the case at hand, the appropriate process is for the Petitioner to raise the claims of ineffective assistance of counsel at the district court level in the procedure of a petition for post-conviction relief and the district court to entertain the matter by conducting an evidentiary hearing.

In State v. Love, 109 Nev. 1136, 865 P2d 322 (1993), the Nevada Supreme Court reviewed the issue of whether or not a Defendant had received ineffective assistance of counsel at trial in violation of the Sixth Amendment. The Nevada Supreme Court held that this question is a mixed question of law in fact and is subject to

independent review. The Supreme Court reiterated the ruling of Strickland v. Washington, 466 U.S. 668 (1984). The Nevada Supreme Court indicated that the test on a claim of ineffective assistance of counsel is that of "reasonably effective assistance" as enunciated by the United States Supreme Court in Strickland. The Nevada Supreme Court revisited this issue in Warden v. Lyons, 100 Nev. 430 (1984) and Dawson v. State, 108 Nev. 112 (1992). The Supreme Court has provided a two-prong test in that the Defendant must show first that counsel's performance was deficient and second, that the Defendant was prejudiced by this deficiency.

The court will uphold a presumption that counsel was effective. Petitioner must, therefore, show that his attorney's performance was unreasonable under prevailing professional norms and that he was prejudiced as a result of the deficient performance.

In Smithhart v. State, 86 Nev. 925, (1970), the Nevada Supreme Court held that it will presume that an attorney has fully discharged their duties and that such presumption can only be overcome by strong and convincing proof to the contrary. The Court went on in Warden v. Lischko, 90 Nev. 220 (1974) to hold that the standard of review of counsel's performance was whether the representation of counsel was of such low caliber as to reduce the trial to a sham, a farce or a pretense. Thus, Petitioner is properly before the court on issues of ineffective assistance of counsel and would request this court grant him an evidentiary hearing on these issues.

GROUND ONE

APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT ISSUES ON DIRECT APPEAL TO THE NEVADA SUPREME COURT IN A PROPER CONSTITUTIONAL MANNER; THEREBY PREJUDICING AND BURDENING PETITIONER. THIS TANTAMOUNTS TO A VIOLATION OF PETITIONER'S RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AND THE DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The court appointed Appellate counsel, Mary Lou Wilson, Esq., to represent Petitioner on direct appeal. However, she failed to present issues to the Nevada Supreme Court in a federalized and constitutional manner. This effectively precluded Petitioner from presenting those issues to a federal court for review at a possible future date.

Appellate counsel presented the following issues to the Nevada Supreme Court in an Opening Brief. (See Supreme Court Case No. 43203)

I. WHETHER THE DISTRICT COURT ERRED IN FINDING THE INDICTMENT LAWFUL WHEN THE PROSECUTOR ADMITTED THE 1998 BURGLARY CONVICTION DURING THE GRAND JURY HEARING.

II. WHETHER APPELLANT WAS COMPETENT DURING THE CRIMES.

III. WHETHER THE JURY FOUND SUFFICIENT EVIDENCE TO CONVICT APPELLANT OF ALL COUNTS IN THE INDICTMENT.

IV. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN FINDING HABITUAL CRIMINAL STATUS FOR TWO COUNTS AND RUNNING THEM CONSECUTIVE.

The issues, as noted above, were not presented as constitutional issues; thereby preventing the Nevada Supreme Court's review of the issues under constitutional (U.S. & Nevada) scrutiny.

As is clear, counsel never pointed to constitutional errors or federal law in the above issues in order to preserve those issues

for federal review. This clearly put Petitiioner at a disadvantage, wherein Petitioner could have filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C 2254 in the United States District Court if it were not for the failures of counsel. A federal court will not grant a state prisoner's petition for habeas relief until prisoner has exhausted his available state remedies for all claims raised. See Rose v. Lundy, 455 U.S. 509 (1982). State remedies have not been exhausted unless the claim has been "fairly presented" to the state courts and the highest state court has disposed of the claim on the merits. See Carothers v. Rhay, 594 F2d 225, 228 (9th Cir. 1979). Furthermore, the state remedies are only exhausted where the Petitioner "characterized the claims he raised in the state proceedings specifically as federal claims." See Lyons v. Crawford, 232 F3d 666, 670 (9th Cir. 2000). The constitutional rights to effective assistance of counsel extend to a direct appeal. See Burke v. State, 110 Nev. 1366, 1368, 887 P2d 267, 268 (1994); and Evitts v. Lucey, Supra. A claim of ineffective assistance of counsel is reviewed under the "reasonable effective assistance" test set forth in Strickland v. Washington, Supra and Kirksey v. State, Supra.

Even the issues counsel did raise in the Opening Brief Statement were not addressed as far as their federal implications are concerned. It was ineffective for counsel to ignore constitutional issues, as failure to raise them on appeal may preclude further remedy in the federal court system. Generally, any exhausted claims must be dismissed without prejudice for failure to exhaust

all state created remedies. "To satisfy the exhaustion requirement, Petitioner must present every claim raised in the federal petition to each level of state courts." See Doctor v. Walters, 96 F3d 675 (3rd Cir. 1996).

Appellate counsel's failure to raise all viable issues on appeal, including all constitutional issues, fell below an objective standard of reasonableness. Because counsel failed to use her expertise and legal training to present all of Petitioner's appellate issues before the court, Petitioner was prejudiced. Pursuant to the standards set forth in Strickland ,Supra, counsel denied Petitioner the right to effective assistance of counsel during appeal.

Due to counsel's errors, Petitioner is forced to bring forth Grounds Two, Three, Four, Five and Six which are cited below.

GROUND TWO

PETITIONER WAS DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION WHEN THE NEVADA SUPREME COURT FAILED TO PROVIDE ADEQUATE APPELLATE REVIEW ON DIRECT APPEAL; IN VIOLATION OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

On behalf of Petitioner, appellate counsel, Mary Lou Wilson, submitted an Opening Brief to the Nevada Supreme Court on or about July 14, 2004. Petitioner did not review or sign or authorize the contents of the brief prior to submittal. The pleading contained brief arguments on four (4) grounds for relief outlined in Ground One, above.

The Nevada Supreme Court issued an Order of Affirmance on wherein the court did not apply the controlling precedent(s) of the United States Supreme Court. The court did not apply the just and proper review necessary, under constitutional scrutiny, to protect Petitioner's rights as guaranteed by the U.S. Constitution.

The Nevada Supreme Court has discretion to review issues of a U.S. Constitutional magnitude pursuant to the Nevada Constitution, Article 1 sec. 2, as well as Article 6 sec.(s) 4 & 6.

The Nevada Supreme Court has exercised its power to review U.S. Constitutional issues in the past. see e.g. Natchez v. State, 721 P2d 361.

Article 1, section 2 of the Nevada Constitution gives the Nevada Supreme Court the "power to compel obedience to the U.S. Constitutional Authority."

The Nevada Supreme Court failed to provide the necessary and adequate judicial review as necessary to protect Petitioner's U.S. Constitutional rights of equal protection and due process of law as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution.

Petitioner is now compelled to bring forth the following grounds (Grounds Three, Four, Five & Six) as outlined below, for this Court's review, seeking application of the U.S. Supreme Court and Constitutional precedence.

...

...

...

GROUND THREE

PETITIONER'S RIGHTS TO DUE PROCESS WERE VIOLATED WHEN THE PROSECUTOR ADMITTED A PRIOR BURGLARY CONVICTION TO THE GRAND JURY IN SUPPORT OF AN INDICTMENT IN VIOLATION OF THE RIGHTS GUARANTEED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The district court erred in finding the Indictment should stand after the prosecutor admitted Petitioner's 1998 burglary conviction. At the conclusion of a nine-witness grand jury hearing on June 11, 2003, the prosecutor admitted Exhibit 16, Petitioner's 1998 burglary conviction, for a limited purpose. The prosecutor explained that the allegation is not relevant as to whether Petitioner committed the offenses charged in the Indictment. However, it was relevant for the sentencing judge if the Petitioner was convicted of any of the burglary charges. Thereafter, trial counsel filed a pretrial petition for writ of habeas corpus. It stated that the prior burglary conviction was improperly presented for the grand jury's consideration. The State filed an Opposition to the writ of habeas corpus on September 4, 2003, indicating that the habeas corpus is an inappropriate vehicle to challenge the State's evidence at a grand jury proceeding; the State appropriately introduced the 1998 burglary conviction for a limited purpose of notice; and the State's evidence at the grand jury was sufficient to indict the Petitioner even if the prior conviction was inadmissible. The proper vehicle to challenge the validity of evidence presented at the grand jury proceedings is a Motion. NRS 174.105(1), Franklin v. State, 89 Nev. 382, 387, 513 P2d 1252, 1256

(1973); Cook v. State, 85 Nev. 692, 462 P2d 523 (1969), and Turpin v. Sheriff, 87 Nev. 236, 484 P2d 1083 (1971). The State relied upon NRS 484.3792 (2), Nevada's DUI sentencing provision, requiring that evidence of prior DUI convictions used to enhance a DUI to a felony be presented to the grand jury. Finally, the State argued that even if the admissibility of the 1998 burglary conviction was improper, there was sufficient evidence to return a true bill. The State relied on the nine witnesses and fifteen exhibits to bolster their argument. Trial counsel replied by asking the district court to consider the writ as a motion, NRS 484.3792(2) inapplicable to the facts, and Petitioner was unfairly prejudiced by the admission of the 1998 burglary conviction. The district court held that the Petitioner's pretrial writ of habeas corpus was considered as a motion to suppress under NRS 174.105(2). After consideration of the arguments submitted, the court granted the Petitioner's motion to suppress finding that the prior burglary conviction, when presented during a seven count burglary grand jury proceeding, was improper bad act evidence and the cases cited by the State relating to DUI law were inapplicable. However, the request to quash the Indictment was denied because the State presented nine witnesses, including an accomplice, who testified to witnessing various acts committed by Petitioner during the ten charged crimes, as well as describing the merchandise obtained.

The district court erred in not quashing the Indictment based upon the improper admission of the 1998 burglary conviction because the grand jurors were tainted by this information and returned a true

bill. Furthermore, even if the nature of the witnesses and exhibits presented during the grand jury hearing made it reasonable to believe that the slight to marginal test for the Indictment was met, the question of whether improper evidence substantially influenced the grand jury's decision to indict, or whether there is grave doubt that the decision to indict was free from substantial influence of improper evidence, thereby justifying a dismissal of said Indictment, requires examination of the state of mind of the reasonable grand juror. U.S. v. Sigma Intern, 244 F3d 841. Evidence is unfairly prejudicial if it tempts the jury to decide the case on an improper basis; especially when there exists a similarity between the charged criminal act(s) and the prior bad act. The more similar the acts, the greater the likelihood that the jury will draw the improper inference that if the defendant did it once, he probably did it again. Williams v. State, 99 P3d 432, 441.

In addition, even if this Court considers that the prosecutorial misconduct was harmless beyond a reasonable doubt given the subsequent jury trial convictions, there is case precedence from the U.S. Supreme Court which redirects the harmless error analysis to the grand jury proceedings; rather than the outcome of the trial. There, it was held that when a defendant raises a constitutional objection prior to the conclusion of trial-the rule set forth in Bank of Nova Scotia controls. That is to say, courts should not hesitate to remedy the violation because the Indictment is NOT, in reality, "of a grand jury" (USCA 5). U.S. v. Bank of

Nova Scotia, 108 Sct 2369, 2374.

In sum, the Ninth Circuit Court of Appeals has held that a prosecutor may not seek a grand jury Indictment by proffering tainted, prejudicial evidence to the grand jury. U.S. v. De Rosa, 783 F2d 1401, (9th Cir. 1986). Also, the existence of prosecutorial discretion may not be arbitrary and capricious. U.S. v. Samango, 607 F2d 877, 881 (9th Cir. 1979).

GROUND FOUR

PETITIONER'S CONVICTIONS ARE CONSTITUTIONALLY INVALID DUE TO PETITIONER'S MENTAL INCOMPETENCE AT THE TIME OF THE ALLEGED CRIMES IN VIOLATION OF PETITIONER'S RIGHTS OF EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

In an earlier case, Petitioner was evaluated for competency by Dr. Robert Hiller and Dr. Bill Davis. At that time, Dr. Hiller noted that Petitioner presented with numerous characteristics associated with a significant personality disorder and a history of significant polysubstance dependence. Additionally, Dr. Davis opined that Petitioner had an adjustment disorder with mixed anxiety and depressed mood. The Department of Parole and Probation interviewed Petitioner after his conviction, and, at that time, purported that the Petitioner admitted to suffering from asthma, sleep apnea, vertigo, depression, panic anxiety disorder, and drug addiction. During sentencing, trial counsel advised the parties that Petitioner was diagnosed with clinical depression, prescribed Prozac, and felt better than he had ever felt in his whole life. Furthermore, since Petitioner was in custody, October 2001, he was

successfully treated for his mental illness condition and that he had been productive. Thereafter, trial counsel admitted several positive documents showing Petitioner's achievments while in custody awaiting sentencing. Therefore, Petitioner was untreated for his mental illness until he was placed in custody. Thereafter, Petitioner had improved mentally and become productive, completing programs and staying trouble free at jail. Petitioner described his family members as having mental illnesses. For example, Petitioner's sister had been on psychotropic medication for ten to fifteen years, because of a familial chemical imbalance. Petitioner further explained his drug addiction and how that came about because he wa self-medicating and attempting to produce some endorphins. Petitioner believed that he needed some psychotherapy to help his mental illness. Therefore, given the nature of Petitioner's mental health problems, and his obvious rehabilitation after receiving medical treatment, he was ostensibly not competent during the crimes.

To this, the courts have long held that a defendant must be competent at the time of the alleged crimes for a valid conviction. Additionally, a person lacks sufficient mens rea if he is mentally incompetent at the time of the alleged crimes. See Santobello v. New York, 404 U.S. 257, 92 Sct 495 (1971); Moran v. Godinez, 57 F3d 690.

Clearly, there exists sufficient evidence in support of Petitioner's mental incompetence during the alleged crimes. Hence, the imposition of sentence on Petitioner is a violation of his constitutional rights and must be vacated.

GROUND FIVE

PETITIONER'S SENTENCES AND CONVICTIONS ARE CONSTITUTIONALLY INVALID DUE TO INSUFFICIENT EVIDENCE BEING PRODUCED AT TRIAL IN VIOLATION OF PETITIONER'S RIGHTS OF EQUAL PROTECTION AND DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

The evidence presented during the jury trial encompassed many witnesses and documents. For example, on November 12, 2003, the prosecutor called Detective Della to testify that he and other detectives surveyed Petitioner over a period of time noticing that he had access to a storage unit in Sparks in which he moved boxes in and out of; picked up Brett Bowman while driving his van; observed Mr. Bowman purchase a mountain bike at a great reduction in price; arrested Petitioner and Mr. Bowman while driving after a fraudulent purchase; and located property and indicia of fraud within the vehicle. Other surveillance officers presented were Detective Scott Armitage, who noticed Petitioner looking at labels and recording information on a small note pad; inventoried Petitioner's van upon arrest; and located comforters, a mountain bike, a label maker, bar code labels, receipts and a transposition sheet inside said vehicle. Detective Lodge also noticed Petitioner looking at items from Home Depot and writing down notes on a note pad. Detective Brown noticed the same alleged suspicious behavior from Petitioner while shopping at WalMart. After arrest, Detective Thomas received a search warrant for the storage unit to which the Petitioner had legal access and located three pick-up truckloads of merchandise. After receiving cooperating information from Accomplice Brett Bowman, the receipts and transposition sheet were

used to match fraudulently purchased items. According to Mr. Bowman, Petitioner would make fictitious labels reflecting lower prices and then Mr. Bowman would affix these UPC bar codes on higher priced merchandise; thereby reflecting savings of several dollars to hundreds of dollars. This included the purchases of one or more home theater systems, computer monitors, sewing machines, rugs, coffee machines, a toilet, a toothbrush, and other miscellaneous items.

The defense requested, but was denied, a Motion to Dismiss the State's case for failure to prove their case based upon a violation of NRS 175.291, opining that there was no independent evidence to show Petitioner's guilt outside of Accomplice Brett Bowman's testimony. The prosecutor then argued that the question was properly for the jury to decide and that the physical evidence found in Petitioner's van and the storage unit supported Accomplice Bowman's testimony. The district court agreed with the state.

As a result, the jury convicted based upon insufficient evidence because not one witness, except Accomplice Brett Bowman, ever testified about any criminal conduct exhibited by Petitioner, and that Mr. Bowman could have achieved all crimes by himself-having access to all indicia of fraud.

Therefore, absent Accomplice Brett Bowman's testimony, nobody viewed Petitioner commit any crime. In addition, mere presence and knowledge of Accomplice Bowman's intentions are insufficient to convict aiding and abetting culpability. 512 P2d 923, and U.S. v Dingle 114 F3d 307 (D.C. Cir. 1997). As such, the jury convicted based upon insufficient evidence since NRS 175.291 provides (1) a

conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corrobration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

It is abundantly clear that the courts have long recognized not only that the uncorroborated testimony of an accomplice has doubtful worth, but that his incrimination of another is not corroborated simply because he accurately describes the crime or the circumstances thereof. The requirement that a criminal charge must be proven beyond a reasonable doubt is "indispensable, for it impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issues." In re Winship, 397 U.S. 358, 364, 90 Sct 1068, 1072, 25 L.Ed. 2d 368 (1970).

Hence, since a conviction shall not be had based on uncorroborated testimony of an accomplice, as cited at NRS 175.291 (1) and in Austin v. State, 491 P2d 714 (Nev. 1971), as well as U.S. v. Laing, 889 F2d (D.C. Cir. 1989), Petitioner's convictions rest solely on the testimony of an alleged Accomplice and evidence submitted on the basis of the Accomplice's testimony; thereby rendering Petitioner's convictions and sentences constitutionally invalid.

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GROUND SIX

PETITIONER'S CONVICTIONS AND SENTENCES ARE UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION AND DUE PROCESS OF LAW PROTECTIONS OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE COURT IMPOSED THE HABITUAL CRIMINAL STATUTES UPON PETITIONER.

The State filed Notice of Intent to Seek the Habitual Criminal Status on October 9, 2003, under NRS 207.010. Upon review of the prior certificates of judgment of convictions from 1997, 1998, and 2004, and hearing argument and witnesses during sentencing, the district court found Petitioner to be an Habitual Criminal and filed an Order on June 1, 2004. During the sentencing hearing, the State requested that the district court find Petitioner an habitual criminal for a variety of reasons. Initially, the State marked and admitted the three prior certificates of judgment of convictions under exhibits 1, 2, and 3. The first certificate of conviction was filed February 11, 2004, in CR02-0148, involving the crime of aiding and abetting in the commission of attempting to obtain money by false pretenses. The prior certification showed that Petitioner was represented by counsel, had a sentencing, and judgment of conviction sentencing Petitioner to 12-48 months in prison consecutive to CR03-1263. The second prior certificate of conviction of judgment was filed November 3, 2003, 1998, in CR98-2160, involving two counts of burglary. This prior certification showed an arraignment with the assistance of counsel, a guilty plea memorandum, and sentence of 24-72 and 16-72 months in prison to run consecutive to each other and consecutive to the federal prison term. The third certificate of judgment of

conviction was filed on May 16, 1997, in CR-N-96-46-HDM (RAM), in the United States District Court, involving four counts of tax perjury. Petitioner was represented by counsel and received 22 months for each count to run concurrent with each other. Thereafter, the State requested that the district court impose a sentence of life of imprisonment with 10 years minimum served in prison on each felony count. The State called Officer Scott Hopkins as a sentencing witness. During the surveillance of Petitioner in 1997, he testified that he observed Petitioner committing these crimes after he had been sentenced for his federal case. Allegedly, the Petitioner had commented to the officer that the federal prison time of 22 months was worth a million; insinuating that he had made a million dollars through his various fraud scams. The officer identified a photograph of Petitioner that was allegedly sent by him to Lori, Petitioner's wife at the time, which was inscribed on the back stating, "I'm too sexy for this place. It has been like a vacation. Just missing stores." The State called Officer Reed Thomas to describe the Repeat Offender Program's involvement with the Petitioner, and the officer's contact with Petitioner and Brett Bowman. The officer discussed Petitioner's use of his son to obtain money by false pretenses; advising his daughter to run up their credit cards; putting the storage unit in his step-daughter's name; and describing the contents of the storage unit packed with stolen items. Finally, the office testified to making a report as to the estimate of value and property located in the storage unit at over ten thousand dollars of merchandise, as well as a speculative idea of

Petitioner's alleged tax-free income per year at somewhere between fifty thousand to ninety three thousand dollars. The State explained the federal conviction for tax perjury to the parties during the sentencing hearing, explaining that from 1989 and 1992, Petitioner allegedly managed to accumulate eight hundred thousand dollars worth of credits on his credit cards which were allegedly used to pay down mortgages, obtain a rental unit, and purchased personal items for himself and his family. Thereafter, trial counsel attempted to bring forward mitigating evidence on behalf of Petitioner. After finally being properly diagnosed and treated for his mental illness, Petitioner was presented as feeling better than he had ever felt in his life. From the evaluations done by Drs. Hiller and Davis, Petitioner received mental health care through psychotropic medication during the last two years of incarceration. Trial counsel then outlined Petitioner's productivity during his jail experience and proffered letters and certificates of achievement. Although not specifically reviewed by trial counsel, these documents included: Street Readiness Program, Parenting Module, Substance Abuse Addiction and Recovery Module, Relapse Prevention Module, Anger Management Module, two classes in computer assisted Chemical Abuse Prevention, and a Domestic Violence Module. Additional credentials included Inmate Achievment Certificates in Survive And Change Programs, two classes for Life Skills And Overcoming Substance Abuse, Literacy/ESL Tutor Training, NSP Gardening Class I, Participation in Bridges to Freedom, the Way To Happiness Course, Self Improvement and Job Search Workshop, and Christian Way In Marriage. Thereafter, trial counsel argued that

Petitioner was ready to lead a lawful life now that he had been treated for mental health conditions; he had honorable discharges from periods of probation; the disparity in treatment between Petitioner and Mr. Bowman was great wherein Accomplice Bowman received a mere 16-42 months; the mature age and intelligence of the Petitioner, all of which contribute to the Petitioner deserving a sentence of 4-40 years in prison and no habitual offender status. Petitioner explained to the district court about his troubled childhood, familial chemical imbalance, self-medication with drugs, and the need for psychotherapy. Thereafter, the district court found that upon review of Petitioner's prior record, including the prior felony convictions; the long pattern of theft, and the fact that he had allegedly made a living for years as a career criminal, he was the poster child for habitual criminality. Therefore, the district court imposed 9 terms of life in prison with the possibility of parole in ten years; two of which would run consecutive to one another and the others to run concurrently. Hence, Petitioner would have to spend at least twenty years in prison before parole eligibility and the sentences would run consecutive to any other sentencing currently being served. This includes initially expiring cases CR 98-2160, CR-N-96-46-HDM (RAM), CR02-0147 and CR02-0148. Thus, this would then bring the aggregate minimum time in custody wherein Petitoner would be eligible for parole when he attains 80 years of age.

NRS 207.010(2) indicates that the trial judge may, at his discretion, dismiss a count under the section, which is included in any indictment or information for purposes of habitual criminal

status. Clark v. State, 109 Nev. 426, 428, 851 P2d 426, 427 (1993). The decision to adjudicate an individual as a habitual criminal is not an automatic one. Sessions v. State, 106 Nev. 186, 190, 789 P2d 1242, 1244 (1990). The district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or justice. Some considerations within the discretion of the district court are whether the prior convictions were **violent or remote in time.** Arajakas v. State, 108 Nev. 976, 983, 843 P2d 800, 805 (1992). The district court should provide reasons for finding an habitual criminal status, however, this Court has stated that there is not a requirement for the district courts to utter talismanic phrases such as "just and proper". Hughes v. State, 116 Nev. 327, 333, 996 P2d 890, 893 (2000).

In Walker v. Deeds, 50 F3d 673 (1995), the district court must weigh the appropriate factors for and against the habitual criminal enhancement. The sentencing judge is required to make an actual judgment on the question of whether it is just and proper for the defendant to be punished and segregated as a habitual criminal. In Hicks v. Oklahoma, 447 U.S. 343, 346, 100 Sct 2227, 2229 (1980), the Supreme Court held that the state laws guaranteeing a defendant procedural rights at sentencing may create liberty interests protected against arbitrary deprivations by the due process clause of the Fourteenth Amendment. Therefore, when a state has provided a specific method for determining whether a certain sentence shall

be imposed, "it is not to say that the defendant's interest in having that method adhered to is **merely a matter of state procedural law.**" Fetterly v. Paskett, 997 F2d 1295, 1300 (9th Cir. 1993) citing Hicks v. Oklahoma, cert. denied,---U.S.---,115 Sct. 290, 130 L.Ed.2d 205 (1994). Based on Hicks, this Court found that state law requiring that the Washington Supreme Court review and make particular findings before affirming a death sentence created a constitutionally protected interest. Campbell v. Blodgett, 997 F2d 512, 522 (9th Cir. 1992), cert. denied, ---U.S.---, 114 Sct. 1337, 127 L.Ed2d 685 (1994). Nevada's law requiring a court to review and make particularized findings that it is "just and proper" for a defendant to be adjudged a habitual offender also creates a constitutionally protected liberty interest in a sentencing procedure. In Walker v. Deeds, 50 F3d 673 (9th Cir. 1995), it was held that because the state court did not make the requisite individualized determination that it was "just and proper", Walker be adjudged a habitual offender as mandated by Nevada law, Walker's due process rights were violated.

In the present case, the district court determined habitual status after hearing from all parties. In particular, the finding was the following:

Well, in reviewing Petitioner's record, I have to consider the nature of his prior felony convictions. And the prior felony convictions, in fact, are largely part of a theft scheme that Petitioner developed years ago and persisted in stealing from stores over the course of a long time and perhaps various methods.

Apparently, he starts this activity with getting duplicate

copies of credit card receipts and then using that method to return property for full value that wasn't purchased for the full value, and progressed to more sophisticated crime of using false UPC labels on boxes of merchandise. But that shows a long pattern of this type of theft.

And not only is it theft, but it's a theft that was actually used to support Petitioner, so it's different than you see in most cases. You don't see that many people who actually earn a living from theft or crime. Usually people have other employment, they, you know, live their life generally supporting themselves lawfully but then have a sideline perhaps of criminal activity, but Petitioner in fact, is a career criminal and that's how he has made a living for years while not incarcerated.

And under all the evidence that I see here, I do in fact, find that Petitioner is a habitual criminal. In fact, you are the poster child for habitual criminality in that every time you're released from custody, it seems like you're out making a full-time living stealing. So there really isn't any doubt in my mind that the statutory scheme for habitual criminality applied to you, Petitioner.

And with that, I will sentence you as a habitual criminal. I think society needs to be protected from this level of theft where you're actually making a full good living from stealing. And also our law enforcement authorities need to devote themselves to other people than to constantly monitor you as you pursue this scheme of theft to make a living.

It appears that the district court made a finding of habitual criminal status based upon all of the evidence presented. However, the District Court abused its discretion when finding nine counts satisfied the habitual criminal statute and ran two of them consecutively; with the remaining seven running concurrent to them. When considering Petitioner's untreated mental health problems and the fact that the prior convictions were not violent, the district court abused its discretion.

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GROUND SEVEN

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROTECT PETITIONER FROM THE SENTENCING COURT IMPOSING EXCESSIVE RESTITUTION NOT SUPPORTED BY TRIAL FACTS AND/OR TRIAL EVIDENCE; THEREBY VIOLATING PETITIONER'S RIGHTS OF DUE PROCESS, FAIR TRIAL, AND EQUAL PROTECTION, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

At the sentencing hearing held in this action on April 1, 2004, this Court imposed restitution of ten-thousand three-hundred thirty-nine dollars and sixteen cents ($10,339.16), where no factual basis existed for the imposition of such an inflated amount.

The prosecution's theory of this case was that Petitioner purchased sore items at a reduced price. The Reno Police Department ("RPD") officers testified that they located a storage unit containing items purported to belong to various Reno area retail establishments. The officers claim to have returned the aforementioned merchandise to its original owners. (See Exhibit "A" - Inventory List of Returned Items).

Restitution is a sentencing option, and as such, under **Apprendi vs. New Jersey** and **Blakely vs. Washington**, (530 US 466, 130 SCt 2348 (2000); and, 542 US ___, 124 SCt 2531 (2004), respectively), it was this Court's abuse of discretion to sanction Petitioner with restitution beyond that which the indictment specifically cited in the burglary counts, as well as what the trial jury adjudicated of same in their deliberation. Under Victim and Witness Protection Act, the court may not authorize restitution for losses from crimes for which Defendant is not convicted, even if those other crimes are significantly related to crimes of conviction. **18 U.S.C.A. §**

3663(a); U.S. v. Young, 953 F2d 1288. Hence, Defendant's sentence with respect to restitution had to be limited to amounts in counts on which the particular Defendant was found guilty. U.S. v. Cronan, 990 F2d 663 (1st Cir. 1993). Additionally, "a Defendant cannot be ordered to pay restitution for criminal activities for which the Defendant did not admit responsibility, was not specifically charged and convicted, or did not agree to pay restitution." State v. Wallace, 100 P3d 273, 274. Moreover, ... district court erred in ordering restitution amounts greater than that alleged in indictment. 18 U.S.C.A. § 3651, U.S. v. Black, 767 F2d 3651, and restitution order was illegal to the extent it covered losses which were not specifically related to offense counts of conviction. U.S. v. Savely, 814 FSupp 1519. (See Exhibit(s) A - Items Specifically Noted in Indictment & adjudicated as such).

Aside from the foregoing issue, and if the State's theory is to be taken as true, then the various retail items were not only paid for in part, but RPD subsequently returned the items to the retail establishments as new, in unopened boxes, and in original condition. Thus, the retail stores retained a profit; as opposed to incurring a loss as a victim. Restitution amounts must be ascertained and delineated with accurate computation. It cannot exceed actual loss incurred and must be clearly set out with specific findings. U.S. v. Boyle, 10 F3d 485 (9th Cir. 1993).

Therefore, it is patently clear from the record that this Court imposed restitution upon the Petitioener; wherein there is no evidence of actual loss to any victim. Restitution is to be based on an actual pecuniary loss to the victims. U.S. v. Harper, 32 F3d 1387,

(9th Cir. 1994).

Additionally, Petitioner is indigent as proven by this Court's Order To Proceed In Forma Pauperis, on file herein. Petitioner was indigent at the time of trial and sentencing, as this Court appointed counsel to represent Petitioner. This Court did not take into consideration Petitioner's ability to pay restitution, as the record is silent as to the Court's basis or reasoning for the imposition of restitution.

The district court may order an indigent defendant to pay restitution provided that there is sufficient evidence in the record demonstrating that he will have a future ability to make restititution. **U.S. v. Sarno, 73 F3d 1470, 1503 (9th Cir. 1995)**; **U.S. v. Ramillo, 986 F2d 333, 336, n.5 (9th Cir. 1993)**. Due to the length of sentences imposed by this Court, the Court cannot justify the Petitioner will eventually be able to pay restitution while incarcerated for the rest of his natural life, with no viable income or employment resources while incarcerated.

This issue is properly before this Court, as the Nevada Supreme Court has held in **Martinez v. State, 974 P2d 133 (Nev. 1999)**, as follows:

Petitioner is entitled to challenge restitution by the State and may obtain and present evidence to support that challenge.

Trial counsel's failure to object or otherwise protect Petitioner from the excessive restitution imposed by this Court was ineffective under the guarantees of theSixth Amendment and **Strickland v. Washington, supra.**. Petitioner has clearly been prejudiced as a result of counsel's failures.

GROUND EIGHT

TRIAL COUNSEL WAS INEFFECTIVE FOR ALLOWING PETITIONER TO BE SUBJECTED TO AN INDICTMENT/COMPLAINT CONTAINING MULTIPLICITOUS AND DUPLICITOUS CHARGES, THUS DENYING PETITIONER HIS DUE PROCESS, EQUAL PROTECTION, AND FAIR TRIAL RIGHTS AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The ban against duplicitous indictments derives from four (4) concerns: (1) prejudicial evidenciary rulings at trial; (2) the lack of adequate notice of the nature of the charges against a defendant; (3) prejudice in obtaining appellate review and prevention of double jeopardy; and, (4) risk of a jury's non-unanimous verdict. **US v. Cooper, 966 F2d 936, 939, n.3 (5th Cir. 1992).** Duplicitous indictments may prevent jurors from acquitting on a particular charge by allowing them to convict on another charge that is improperly lumped together with another offense on a single count. A duplicitous indictment precludes assurance of jury unanimity, and may prejudice a subsequent double jeopardy defense. **US v. Morse, 785 F2d 771, 774 (9th Cir. 1986) (citing, US v. UCo Oil Co., 546 F2d 833, 835 (9th Cir. 1976)).**

It shall be noted that the duplicitous and multiplicitous charges in this case arise due to the fact that the charges relate to acts alleged to have occurred between August 30, 2001, and October 17, 2001; wherein, trial testimony of retail investigators and RPD officers indicate there was no crime committed on the aforementioned dates by Petitioner, as is evidenced by the following quotes from the Trial Transcripts ("TT") in this matter:

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TT 11/12/03; wherein Van Ry cross-examines **Detective Della**, (Petitioner surveilled at Aussie Storage Unit on September 26, 2001; Page 129, Lines 4 - 20:

Q: And that's when you saw him taking something from the van into the storage unit?
A: Yes
Q: It's not a crime to put something in a storage unit, is it?
MS. RIGGS: Objection, it calls for a legal conclusion.
THE COURT: The objection is overruled.
THE WITNESS: Just to put something in a storage unit, no.
BY MR. VAN RY:
Q: Let's go to October 17th. And I believe you testified that you saw my client pick up Mr. Bowman around Third Street; is that correct?
A: Yes
Q: And then you testified that he went down to Wal-Mart; is that correct?

TT 11/12/03; wherein Van Ry cross-examines **Detective Della**, as to Count IX, (Petitioner surveilled at Wal-Mart on October 17, 2001); Page 133, Lines 3 - 6:

Q: And you certainly didn't observe Mr. Volpicelli put a UPC label on this bicycle tag, did you?
A: I did not observe him in the store, sir.

TT 11/12/03; wherein Van Ry cross-examines **Retail investigator Ellis**, as to Count VI, (Petitioner surveilled at Lowes on October 5, 2001); Page 152, Lines 2 - 9:

As you sit here you have no personal knowledge as to who actually placed this other UPC label over the existing label, do you?
A: No, Sir.
Q: So you can't say for certain that it was my client that did that?
A: No, Sir.
MR. VAN RY: Thank You.

TT 11/13/03; wherein Van Ry cross-examines **Detective Armitage**, as to Count VIII, (Petitioner surveilled at Shopko on August 30, 2001); Page 39, Lines 13 - 19:

Q: Did you see Volpicelli take a Colorvision queen size comforter out and remove it from --
A: No, I did not.
Q: Let me ask a better question. Did you see Mr. Volpicelli remove a comforter from it's manufacturer's package and put it into another?
A: I did not.

TT 11/13/03; wherein Van Ry cross-examines **Detective Armitage**, as to Cout II, (Petitioner surveilled at Wal-Mart on September 4, 2001); Page 39, Lines 20 - 25; Page 40, Lines 1 - 25; Page 41, Lines 1 - 13:

Q: And let's finally get to the beginning of your testimony where you testified about Northtowne Wal-Mart. And what did you observe him in the Northtown Wal-Mart?
A: September 4th.
Q: That September 4th, you observed Mr. Volpicelli

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go to the sporting goods section of the store, is that correct?
A: Yes
Q: And you followed him 20 to 30 feet behind?
A: Yes, Sir.
Q: As you walked into the store and the defendant was in the store, you testified that he stopped and looked at golf clubs and accessories, correct?
A: Correct
Q: And it appeared from your advantage point that he was observing the label and the pricing information, is that correct?
A: Yes.
Q: Observing pricing information isn't necessarily a chargeable offense, is it?
MS. RIGGS: Objection. Calls for a legal conclusion.
THE COURT: As I ruled yesterday, I will overrule that objection. I'm not going to prevent somebody from testifying as to a legal conclusion if it's within their sphere of knowledge. And I would find that this witness would know of these kinds of things.
THE WITNESS: Observing, no.
BY MR. VAN RY:
Q: How about writing down pricing information?

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A: Potentially, probably a crime.
Q: So you're saying if I walk in a Raley's, and I write down price information for the milk and yogurt, and I walk out of the store, that would be a chargeable

offense?
A: Not necessarily the pricing information, maybe the bar code information.
Q: But you would need additional information?
A: Correct.
Q: But just by itself?
A: Correct.
MR. VAN RY: No further questions, Your Honor. Thank you.

TT 11/13/03; wherein Van Ry cross-examines **Detective Armitage**, as to Count X, (Petitioner surveilled at Wal-Mart on October 17, 2001, in the presence of file with receipts, labels, and transposition list); Page 34, Lines 7 - 13:

Q: Do you know if there's been any DNA samples or any way to identify who's possessed this in their fingers?
A: No
Q: So you can't conclusively say that this has been in my client's possession?
A: Correct.

TT 11/13/03; wherein Van Ry cross-examines **Detective Armitage**, as to Count IX, (Petitioner surveilled at Wal-Mart on October 17, 2001); Page 36, Lines 4 - 20:

Q: Did you actually see him, Volpicelli, place a different UPC label on the tag of that bike?
A: I did not.
Q: So it's possible that between the time Mr. Volpicelli left that area and Mr. Bowman came in and approached that bike that Mr. Bowman placed that label on there?
MS. RIGGS: Objection. Calls for speculation.
THE COURT: Well, we are limited to what this witnesses knows. I sustain the objection.
BY MR. VAN RY:
Q: Let me ask you in a better way. Since you did not see Mr. Volpicelli place a label, another or different lable on that tag, is it possible for someone else to have done it?
MS. RIGGS: Objection. Calls for speculation.
THE COURT: The objection is overruled.
THE WITNESS: Yes.

TT 11/13/03; wherein Van Ry cross-examines **Detective Lodge**, as to Count III, (Petitioner surveilled at Home Depot

on September 11 and September 19, 2001); Page 50, Lines 14 - 20:

Q: Officer Lodge, sounds to me like you surveilled my client and watched him walk into a store and walk out without doing anything that would have been criminal, is that correct?
A: At the time, sir, it didn't appear to be criminal, no.
Q: Okay.

TT 11/13/03; wherein Van Ry cross-examines **Detective Brown**, as to Count I, (Petitioner surveilled at Wal-Mart on September 28, 2001); Page 57, Lines 7 - 25; Page 58, Lines 1 - 12:

Q: When you saw him inside the store, did you observe him do anything that you would consider inconsistent with someone who was a regular customer inside of the store?
A: Looking at things on the shelves and writing down whatever he was writing down was not something that I considered normal.
Q: So you would say someone who went in to comparison shop to write down prices would be inconsistent with a regular customer?
A: It's not something I usually see people do.
Q: Little bit different question, same thing. Based on your observations, was there enough to charge him with a crime?
A: No
Q: And during the time of this surveillance you didn't see him purchase anything, did you?
A: Not that I can recall.
Q: Okay. And I know that was repeated, kind of my

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fault there. A question you already answered.
You did not see my client adhere of affix any any UPC labels to any labels on merchandise in that store, did you?
A: In the store on Kietzke?
Q: The store you were just testifying about, the Home Depot?
A: No
Q: Okay. And you did not observe my client actually carrying the UPC label maker with him when he went into the Wal-Mart, did you?
A: No

TT 11/13/03; wherein Van Ry cross-examines **Retail Investigator Danielson**, as to Counts II, V, VII, and IX, (Petitioner surveilled at Wal-Mart during September/October, 2001); Page

71, Lines 2 - 10:

Q: Is it against Wal-Mart's policy to allow customers to come in and do price checking on the information that is listed on the price of the items?
A: No
Q: So I ask that in a positive better question, I kind of muddled through that.
So it is allowable for customers to come into Wal-Mart to check pricing information?
A: Yes, sir.

TT 11/13/03; wherein Van Ry cross-examines **Retail Investigator Mowry**, as to Count VIII, (Petitioner surveilled at Shopko on August 30, 2001 and October 17, 2001; Page 79, Lines 15 - 22:

Q: Mr. Mowery, as you observed that Sonicare toothbrush in the packaging and the label that's affixed over the box UPC label, isn't it true that you have no personal knowledge of how it got there?
A: How it was affixed to the box, that's correct, No, I have no idea.
Q: And you have no idea who may have done that?
A: No.

TT 11/13/03; wherein Van Ry cross-examines **Detective Thomas** (Case Agent), as to Counts I through X, (Petitioner surveilled at sundry retailers from August 30, 2001, through October 17, 2001); Page 133, Lines 13 - 23; Page 142, Lines 14 - 22:

Q: During the multiple days, and I believe you said it was eight days that you followed my client, is that correct?
A: That's correct.
Q: Did you ever see Mr. Volpicelli use Exhibit 9, that label maker?
A: I did not.
Q: At any time during your surveillance did you see Mr. Volpicelli affix a UPC label to merchandise in a store?
A: I personally did not.
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Q: Just one question. It wasn't a crime on those days when Mr. Volpicelli walked into those stores without Mr. Bowman, was it?
A: It wasn't a crime to walk into the stores --
Q: Correct
A: -- without Mr. Bowman.
Q: And then to walk out?
A: That in itself does not show anything that's a crime.

In addition, there was a lack of specificity, which precluded Petitioner's ability to defend the charges. Petitioner was prevented from being able to bring in witnesses to explain where he was, and why he was not with his co-defendant, BOWMAN. Hence, Petitioner was left with no ability to defend these charges.

It is patently clear from the testimony of Brett Bowman, that he did not meet Petitioner until June, 2001. There was not an overall agreement to achieve the objectives of one conspiracy. The dates charged by the prosecution demonstrate that Bowman acted alone on several of the alleged criminal activities. Therefore, there is insufficient evidence to support the conspiracy charge.

In this case, it was impossible for Petitioner to be indicted and/or convicted of a separate count for each activity, exclusive of one another, and/or separate from the conspiracy count. The counts are simply multiplicitous. Furthermore, the prosecution's theory of the case should be controlling. The prosecution charged Petitioner with a general conspiracy count. After that, the prosecution pieced each and every activity into a separate charge. Separate convictions for each activity are redundant and violate Petitioner's rights to be free from Double Jeopardy, and should be set aside by this Court.

Trial counsel was ineffective for allowing Petitioner to be subjected to the numerous multiplicitous and duplicitous charges as alleged by the prosecution. Petitioner has definitely been prejudiced as a result, as the subsequent multiple convictions prove. (See, **Exhibit B - 2 letters to Jack Alian, Esq., dated 2/23/02 & 5/27/03, which were also sent to Van Ry, Esq., clearly emphasizing Petitioner's conviction of multiplicitous/duplicitous charges).**

GROUND NINE

TRIAL COUNSEL WAS INEFFECTIVE FOR ALLOWING PETITIONER TO BE SUBJECTED TO A COMPLAINT/INDICIMENT AND SUBSEQUENT TRIAL BASED ON LESSER INCLUDED OFFENSES (WITH NO LESSER-INCLUDED INSTRUCTION TO THE JURY), THEREBY DENYING THE PETITIONER HIS RIGHTS TO EQUAL PROTECTION, A FAIR TRIAL, AND DUE PROCESS, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Petitioner was charged with a Conspiracy to Commit Crimes Against Property, (NRS 199.480, 205.060, 205.0832, 205.090, 205.110, 205.220, 205.240, 205.380, & 205.965), and multiple counts of Burglary (NRS 205.060), as well as a single count of Unlawful Possession, Making, Forgery, or Counterfeiting of Inventory Pricing Labels (NRS 205.965(2)(3)).

The above-noted charges are lesser-included offenses of each other, in particular, the Burglary charges are lesser-included offenses of each other and the Conspiracy charge.

To identify lesser-included offenses, federal courts follow the "elements" test. Under that test, an offense is not "lesser-included," unless: (1) the elements of the lesser offense are a subset of the elements of the charged offense; and, (2) it is impossible to commit the greater offense without first having committed the lesser. **Schmuck v. United States, 489 US 705, 716, 109 SCt (1989).** To be convicted of charges which are lesser-included offenses violated Double Jeopardy. **Blockberger v. United States, 284 US 299, 52 SCt 180 (1932).**

The elements test set forth in **Schmuck** requires a "textual comparison" of criminal statutes, an approach that we explained lends itself to certain and predictable outcome. **Carter v. United States, 530 US 255, 120 SCt 2159 (2000).**

It is at this precise juncture that Petitioner has been subjected to numerous convictions of Burglary which are a subset of the Conspiracy to Commit Burglary offense. Especially when taken into consideration that the alleged co-defendant, Brett Bowman, was never charged with Conspiracy, and/or many of

the alleged Burglaries.

Petitioner could not have committed the elements of the Conspiracy Offense without committing the elements of the Burglary Offenses. If the prosecution's theory is to be taken as true, the testimonial evidence submitted at trial indicates that Petitioner was seen entering various retail establishments, "writing something down," - not a crime in itself. It was the Co-defendant, Brett Bowman, who testified that he entered the retail establishments and purchased the individual items, therefore committing the Burglaries and continued the Conspiracy.

It is clear from the record, and Brett Bowman's statements to RPD personnel, that Petitioner is not guilty of the numerous Burglary offenses, as his participation was nominal, at best, if Brett Bowman's testimony is to be believed.

Lastly, where the Court recognized in Keeble v. United States, 412 US 205, 212-213, 93 SCt 1997-1998, that where the jury may suspect that the Defendant is plainly guilty of some offense, but one of the elements of the charged offense remains in doubt, in the absence of a lesser-offense instruction, the jury will likely fail to give full effect to the reasonable-doubt standard; resolving its doubt in favor of conviction. Had counsel at least proffered the availability of a lesser-included-offense instruction, the Petitioner would have been potentially protected from any improper conviction. Schmuck, supra., at 1451.

Trial counsel was ineffective for failing to investigate into the facts surrounding the instant offense, and therefore, ineffective in allowing Petitioner to be subjected to such numerous and various offenses which are lesser-included of each other. Counsel was further ineffective for not, at the very least, proffering a lesser-included-offense instruction to the jury, in an effort to minimize the multiplicitous/duplicitous charging practice of the prosecutor, and to attempt to protect Petitioner from the same. As a result, Petitioner was prejudiced with multiple counts, multiple life sentences, and consecutive sentences.

GROUND TEN

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROTECT PETITIONER FROM SELECTIVE AND VINDICTIVE PROSECUTION, IN VIOLATION OF THE PETITIONER'S RIGHTS TO DUE PROCESS, EQUAL PROTECTION, AND A FAIR TRIAL, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

During the entire judicial process in this case, the Prosecution sought to impose harsher and multiple penalties against the Petitioner for the fact that Petitioner insisted on his innocence, right to remain silent, and invoked his right to a preliminary hearing and a jury trial, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

The Co-Defendant in this case, Brett Bowman, received a drastically reduced sentence under fewer imposed charges, in consideration for his testimony against Petitioner. Brett Bowman received one (1) felony conviction, serving 16 to 48 months of incarceration, versus Petitioner's multiple life sentences.

Central to this ground, the Petitioner notes that the Prosecution made the following statements:

> Reno Police Department transcripts (hereafter 'RPDt') of 12/6/01; (Recorded testimonial, following Miranda, between Co-Defendant Bowman and Detective Thomas); Page 18, Lines 8 - 17: **Exhibit E**
>
> THOMAS: ... But the District Attorney's opinion is right now that if he wants to play hard ball and he wants to take this to a jury, then every time he gets bound over on one of these cases, and I've got about six (6) or seven (7) of em right now, with about twenty (20) felonies facing him, she's gonna be asking for the twenty five (25) to life "bitch" every time. So. That's what he's looking at. So we'll see how much he really wants to play, if he wants to risk that, as opposed to what we're offering him. So, like I say, me talking to you is really contingent upon him at this point. If he wants to keep playing tough guy and being an asshole, then I'll keep charging him. But I may have to keep coming back and talking to you and ah, piecing together some more things.

RPDt 1/2/02, (Recorded testimonial, following Miranda, between Petitioner Volpicelli and Detective Thomas); Page 16, Lines 8 - 12, Lines 17 - 20, Lines 24 - 26, Lines 37 - 38, and Line 43; Page 17, Line 1: **Exhibit F**

THOMAS: So her feeling right now is, fuck you. You know? You want to play hard ball? Fine, we'll play hard ball. Okay? So, she's told me, "We're goona start filing the Intent to file the "big bitch," every time we bind him over on another case. Every case that he gets bound over on I'm gonna file the "big bitch" on each one."

...

THOMAS: ...You go to prelim, you get bound over on those charges. Okay? Which means now you got a trial date. Right. After that prelim she's gonna file her intent to file the "big bitch" against you, which is basically ten (10) to twenty five (25) years. Okay?

...

THOMAS: And then we go to the next prelim and the next case and you get bound over on that one. Here it comes again, "I'm filing the big bitch, ten (10) to twenty five (25) years."

...

VOLPICELLI: I know you've had discussions. What does it look like that she's looking at? What recommendation is she gonna make?

...

THOMAS: ...she said, "Fine. Fuck him.

P.17

We'll start filing the big bitch."

RPDt 1/3/02, (Recorded testimonial, following Miranda, between Co-Defendant Bowman and Detective Thomas); Page 7, Lines 40 - 43: **Exhibit G**

THOMAS: ... Cause I told him, if he starts screwing with us and he wants to keep dragging this thing out and doing things like that, then we're just gonna start filing the habitual criminal on him and he can start looking at ten (10) to twenty five (25). So that's his choice. You know?

RPDt 2/19/02, (Recorded testimonial, following Miranda, between Co-Defendant Bowman and Detective Thomas); Page 28, Lines 13 - 14: **Exhibit H**

THOMAS: Oh yeah, if he wants to play we're gonna play. And he's gonna go away for a lot longer than that. So, you know.

The above-listed taped discussion evinces investigational and prosecutorial Conspiracy to violate the Petitioner's Constitutional Rights with Ad-Books (additional charges) and sentencing enhancements (i.e., the habitual criminal enhancement), solely due to Petitioner exercising his rights to preliminary hearing (binding-over), and a jury trial.

The Ninth Circuit Court of Appeals held in **US v. Van Doren, 182 F3d 1077 (9th Cir, 1999)**:

> Vindictive prosecution occurs when a prosecutor brings additional charges solely to punish a defendant for exercising a constitutional or statutory right, such as a criminal defendant's right to a preliminary hearing or jury trial, (i.e., Due Process).

Clearly, the prosecution was prejudicial and vindictive in their acts and prosecution of Petitioner; as there existed a Co-Defendant who admitted to more culpability in the instant offenses. In addition, Co-Defendant Bowman had an equal number or more, of prior felony convictions, thereby qualifying him as a more suitable candidate for sentencing under NRS 207.010 (Habitual Criminal Statute).

The Ninth Circuit Court of Appeals has held in **US v. Noushfar, 78 F3d 1442, 1446 (9th Cir, 1996)**, that:

> A prosecutor violates due process when he brings additional charges solely to punish the defendant for exercising a constituional or statutory right. To establish a claim of vindictiveness, the defendant must make an initial showing that the charges of increased severity were filed because the accused exercised a statutory, procedural, or constitutional right, in circumstances that give rise to an appearance of vindictiveness.

As the statements of the prosecution are a clear indication of vindictiveness against Petitioner for invoking a constitutional right, Petitioner has met his burden, as outlined in **US v. Noushfar, supra.**, and Petitioner's conviction should be vacated.

GROUND ELEVEN

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROTECT PETITIONER FROM THE ADMISSION OF IRRELEVANT TESTIMONY AND PERJURED TESTIMONY AT TRIAL, THUS DENYING PETITIONER DUE PROCESS, EQUAL PROTECTION, AND A FAIR TRIAL, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Trial counsel was ineffective under the guarantees of the Sixth Amendment to protect Petitioner from a plethora of irrelevant and perjured testimony at trial. It appears from the record, that counsel was: (1) ineffective in failing to utilize prior testimony of Brett Bowman; or, (2) cousel failed to investigate and secure transcripts of Brett Bowman's prior statements to police; or, (3) the prosecution may have failed in providing exculpatory evidence to counsel, prior to trial, in the form of transcripts of Brett Bowman's police interrogation.

The following excerpts are from Trial Transcripts (tt) and Reno Police Department Transcripts (RPDt), post-Miranda, and are examples of perjured and/or inconsistent testimony from the onset of the arrest, at the indictment, and later, at trial:

tt 11/12/03, District Attorney probes Co-Defendant Bowman;
Page 217, Lines 10 - 12:

Q: Were you threatened or promised anything in exchange for your plea or your testimony here today?
A: No.

and

RPDt 12/3/01, Co-Defendant Bowman and Detective Thomas;
Page 1, Lines 5 - 22: **Exhibit D**

BOWMAN: And I was promised (Inaudible) never find that out, till we got to court.

THOMAS: Who were you promised that by?

BOWMAN: The detective.

THOMAS: Okay. I watched that interview tape and never once heard that mentioned. Okay? I never once heard that mentioned.

BOWMAN: It was said out in the corridor.

THOMAS: Well

BOWMAN: at Ferrill would never fi out (Inaudible).

THOMAS: Well, that's water under the bridge now.

BOWMAN: Yeah

and

RPDt 12/6/01, Co-Defendant Bowman and Detective Thomas; Page 10, Lines 9 - 17: **Exhibit E**

THOMAS: I have an obligation. Okay? It's not that you know, if you tell me that stuff is stolen that you and Volpicelli went out and did that stuff, we have a deal in place. I can't charge you with anything else. Okay? The District Attorney has told me, "He's cooperating. Don't charge, don't file any more cases on him. If he tells you that he did this and he did that, we can't charge him at this point." Okay? The only way we can start charging you again if you suddenly get uncooperative and the district attorney says, "You know what? He's being an asshole again and all bets are off." Okay? So that's kind of where we're at. So I'm telling you, if I find anything in your apartment that's stolen or that I think you bought with Volpicelli, I can't charge you with it.

and

RPDt 1/3/02, Co-Defendant Bowman and Detective Thomas; Page 11, Lines 15 - 16: **Exhibit G**

BOWMAN: They offered us a deal right, and, cause I was gonna, I was probably gonna be faced with twenty five (25) to life over this.

* * * * *

tt 11/12/03, wherein Van Ry, Esq. cross-examines Co-Defendant Bowman; Page 226, Lines 1 - 11:

BY MR. VAN RY:
Q: Let's go back to your plea agreement. During the course of the negotiations of your plea agreement, which means that where you were to enter a plea in return for some agreement by the State, was there a discussion of the habitual criminal statute?
A: For me?
Q: um-hum.
A: no.
Q: That didn't come up?
A: No.

and

RPDt 12/3/02, Co-Defendant Bowman and Detective THomas; Page 64, Lines 11 - 15: ***Exhibit D***

THOMAS: I know you are, I know you are. How many felony convictions do you have?

BOWMAN: Probably five (5) now.

THOMAS: Five (5)?

and

RPDt 1/3/[illegible], Co-Defendant Bowman and Detective Thomas; Page 11, Lines 1 - 18: **Exhibit G**

BOWMAN: That's the way it'll look, you know. I'm being hit with a burglary and I told her, "I'm being hit with a burglary." And she goes, "I don't believe it. (Inaudible) changing price tags."

THOMAS: Um hmm.

BOWMAN: And you know?

THOMAS: Okay. Well as long as you were, you know, honest with her, what you told her.

BOWMAN: I told her (Inaudible).

THOMAS: I'll tell her the same thing, it won't be any difference.

BOWMAN: They offered us a deal, right, and, cause I I was gonna, I was probably gonna be faced with twenty five (25) to life over this.

THOMAS: Yeah.

* * * * *

tt 11/12/03, wherein the District Attorney probes Co-Defendant Brett Bowman; Page 180, Lines 5 - 6, 15 - 21:

Q: Did you ever go to the storage unit?
A: No, I did not.
...
Q: So is it fair to say, Mr. Bowman, that the defendant wouldn't allow you to go to the storage shed with him?
A: Yes.
Q: You weren't allowed to see where all the stuff was kept?
A: No

and

RPDt 12/3/01, Co-Defendant Bowman and Detective Thomas; Page 51, Lines 38 - 41: **Exhibit D**

THOMAS: Would it be your opinion that everything in the storage unit came from merchandise like this that was probably bought fictitiously or fraudulently?

BOWMAN: Ah, probably a good ninety percent (90%) of it.

and

AFFIDAVIT OF TRAVIS ALEXANDER VOLPICELLI, Page 1, Lines 10 - 12: **Exhibit K**

...That on one occasion in particular, I observed Bowman accessing the Aussie storage unit belonging to my sister-in which my father was not present and Bowman was accompanied by another gentleman in a pick-up.

* * * * *

tt 11/12/03, wherein Van Ry, Esq. cross-examines Co-Defendant Bowman; page 224, Lines 8 - 12:

Q: During this time in the summer to the fall of October, excuse me, of 2001, did you have access to a computer?
A: No, I did not.
Q: You did not?

and

See Exhibits: I Ridge House Letter, dated1/7/04
J Courtyard Center Apts. Subpoena for 9/25/05.

and

AFFIDAVIT OF TRAVIS A VOLPICELLI, dated 4/21/04, Lines 7 - 10: **Exhibit K**

That thereafter, I sporadically observed email communication between my father and Bowman on my computer.
That I distinctly recall Bowman's unique domain name as being listed at Yahoo and included his year of birth.

* * * * *

tt 11/12/03, wherein District Attorney probes Co-Defendant Bowman; Page 198, Lines 13 - 17:

Q: Sir, you said that Mr. Volpicelli did place the UPC tage on this bike. Where was that located specifically?
A: It was located specifically on the bar that holds the seat to the bike.

and

RPDt 10/17/01, Co-Defendant Bowman and Detective Brown; Page 13, Lines 17 - 35: **Exhibit C**

BROWN: Okay? Now remember what I just told you again. Just go back and describe the transaction. with this bicycle, at the counter with the clerk.

BOWMAN: Okay. The transaction went, I walked up, I tore off the bar code that was on the bike. Right? I handed it to her. Right? She scanned it. I paid for it. We talked about, she asked me would the Security need to come up and ah, clear this bike and she asked to (Inaudible) right and I said no.

BROWN: Okay.

BOWMAN: As long as I had the receipt I didn't (Inaudible).

BROWN: Go back to where did you get the bar code from.

BOWMAN: I tore it off the, it was already on the bike.

BROWN: Where was it on the bike?

35 BOWMAN: [redacted] the step of the bike, ri[redacted] front step.

and

RPDt 12/3/01, Co-Defendant Bowman and Detective Thomas;
Page 29, Lines 12 - 25: **Exhibit D**

12 BOWMAN: That's why I was getting so highly upset, cause of (Inaudible) he's supposed to go in
13 and set it up, right, I was just supposed to go in and buy it.
14
15 THOMAS: Okay.
16
17 BOWMAN: After that, I was getting ready to say something to him that night. When we was
18 getting ready to leave ah, right ther, as we was leaving Walmart with the bike, right,
19 he wouldn't even set that up.
20
21 THOMAS: Um hmm.
22
23 BOWMAN: Right? i was gonna tell him, "Look buddy, you know, (Inaudible) you're supposed to
24 set it up, right?" I was gonna tell him right flat out that I was gonna, I was done
25 running the bar code.

* * * * *

tt 11/24/03, wherein District Attorney probes Bowman;
Page 158, Lines 18 - 20, and, Page 160, Lines 16 - 19:

18 Q: What generally did he ask you to do?
19 A: To buy the merchandise after he placed a
20 fraudulent bar code on the merchandise.
...P.160
16 A: The original agreement was that he'd go in
17 the store, place the UPC bar code on an item and I'd come
18 in the store afterwards or a day later and purchase the
19 item.

and

RPDt 12/3/01, Co-Defendant Bowman and Detective Thomas;
In re: Count VII at Wal-Mart; Page 17, Lines 11 - 15, and 25 - 35; also, Page 19, Lines 15 - 17, and Page 20, Lines 37 - 43: **Exhibit D**

...P.17
11 BOWMAN: That was all me. That was when I went in. I put the label on it and ah...
12
13 THOMAS: Which store?
14
15 BOWMAN: Walmart.
...
25 THOMAS: What was the name of the home entertainment center, do you know, the brand name?
26
27 BOWMAN: Panasonic. Cause we specifically asked for one.
28
29 THOMAS: Okay. So did he go inside and do the bar code switch?

BOWMAN: No.

THOMAS: Huh? You did?

BOWMAN: I did.

...P.19

THOMAS: So you had the bar code when you went into the store?

BOWMAN: Ah huh (affirmative).

...P.20

THOMAS: Okay. Well at the Lowe's, did he have the bar code, or did you?

BOWMAN: The one where I bought the rug?

THOMAS: Yeah.

BOWMAN: Where I actually bought the rug, right? No, I had the bar code.

* * * * *

tt 11/12/03, wherein Van Ry, Esq. cross-examines Co-Defendant Bowman; Page 224, Lines 5 - 7:

Q; Have you ever purchased a Brother label maker at a Staples in California?

A: No, I have not.

and

RPDt 12/3/01, Co-Defendant Bowman and Detective Thomas; Page 66, Lines 3 - 9: **Exhibit D**

BOWMAN: And I bought the one we were using.

THOMAS: You bought, he had you buy the one he was using? Was that a fraudulent buy?

BOWMAN: No. It was kind of legal. It was an actual buy.

THOMAS: It was a good, legitimate, okay. Where did you buy it?

* * * * *

tt 11/12/03, wherein Van Ry, Esq. cross-examines Co-Defendant Bowman; Page 222, Lines 9 - 19:

Q: Did the detectives in this case ever assist you in obtaining a paycheck from the Sands?

A: No

Q: So your testimony is you never received assistance from the detectives in this matter to receive your paycheck from the Sands?

A: To receive my paycheck?

Q: Right.

A: That's correct.

Q: So that would be a no, it didn't happen?

A: It didn't happen.

and

V3.55

RPDt 1/3/02, Co-Defendant Bowman and Detective Thomas; Page 14, Lines 8 - 9; and, Page 15, Lines 4 - 6: **Exhibit G**

BOWMAN: If you do (Inaudible) I've got two (2) paychecks from the Sands sitting in my property. They're gonna be expired.

...P.15

THOMAS: ...So I'll have to arrange to (Inaudible) get em endorsed. But let me talk to a deputy and find out exactly if that's the way to go about doing that. And I'll see what we can do.

* * * * *

tt 11/13/03, Van Ry, Esq. cross-examines Detective Thomas, in re: Bowman's apartment property; Page 135, Lines 17 - 19, and, Page 136, Lines 14 - 23:

Q: Was there a search done of Mr. Bowman's apartment?
A: Yes.

...P.136

Q: Did you try to compare any of the items in his apartment with receipts you found in the accordian folder?
A: I did not. Again, the only one would have been the stereo system.
Q: Why did you not follow up on that stereo System?
A: Again, it just didn't strike me as a new system or didn't pique my interest at all to even attempt to compare it. i wasnt concerned about it.

and

tt 11/13/03, wherein District Attorney probes Detective Thomas; Page 140, Lines20 - 25, and, Page 141, Lines 1 - 5:

Q: Detective, you just testified that you found one item of electronic equipment in Brett Bowman's apartment, is that true?
A: That's correct.
Q: It didn't raise your suspicion, it didn't seem to be a super high-end item?

...P.141

A: I wasn't even convinced it was new. I didn't know how old it was.
Q: And you basically weren't interested in it, correct?
A: Correct.

and

RPDt 12/6/01, Co-Defendant Bowman and Detective Thomas; Page 6, Lines 23 - 27 and 42; Page 7, Lines 32 - 33;and Page 9, Lines 31 - 36: **Exhibit E**

THOMAS: In you phone call you described a home theater system that was fairly new. Was that one of the home theatre systems that you guys went out and bought?

BOWMAN: No, it's my TV, my ah, surround sound and VCR, or not VCR, ah, VCR and ah, CD (Inaudible).

...

42 THOMAS: Okay. You said it was all brand new is all.
...P.7
32 THOMAS: Okay. Well you also indicated in your phone call that ah, you know, you didn't want
33 to talk about anything on the phone, that you'd explain everything in a letter.
...P.9
31 THOMAS: ...I'm
32 interested in the stuff that you described on the phone to your sister, the home theater
33 system and the way you explain it, which sounds very similar to what you guys were
34 out buying. Okay?
35
36 BOWMAN: Oh that was what we were out buying, yeah.

and

RPDt 12/6/01, Co-Defendant Bowman and Detective Thomas; Page 7, Lines 1 - 9: **Exhibit E**

1 BOWMAN: it was brand new, yeah. I bought it over a period of time.
2
3 THOMAS: Okay.
4
5 BOWMAN: While I was at the Ridge House.
6
7 THOMAS: Where did you buy it?
8
9 BOWMAN: I got it at Shopko and ah, I got the CD player at ah, Walmart.

and

tt 11/12/03, wherein Van Ry cross-examines Co-Defendant Bowman; Page 223, Lines 21 - 22, and, Page 224, Lines 2 - 4:

21 Q: Isn't it true that you kept a CD player?
22 A: Not to my knowledge.
...P.224
2 Q: Is it also true that you kept one of those home
3 theater systems we talked about?
4 A: No, it is not.

* * * * *

Brett Bowman's trial testimony is clearly false, as his statements to detectives, closer in time to the actual occurrence of the alleged offenses, are considered more trustworthy, i.e., the police interviews at WCSO on 10/17/01, 12/3/01, 12/6/01, and 1/3/02.

A conviction based on perjured testimony is fundamentally unfair. Plyle v. Kansas, 317 US 213, 63 SCt 177. The conviction must be set aside if there is any likelihood that the false testimony could have affected the judgment of the jury. Giglio v. United

States, 405 US 150, 92 SCt 763. In this case, the excertps show subsequent changes in Bowman's testimony, once a deal was made, and on material issues relevant to the Petitioner's involvement with the alleged activities.

It is unclear from the record, whether trial counsel had possession of Brett Bowman's plice interview transcripts, or whether the prosecution failed to provide the transcripts pursuant to **Brady v. Maryland, 373 US 83, 83 SCt 1194.**

Therefore, Petitioner presents the instant ground for relief as ineffective assistance of counsel **and** as prosecutorial misconduct for failing to provide aforementioned transcripts and knowingly allowing Bowman to enter the perjured testimony. "The Fifth Amendment guarantee of Due Process protects the Defendant from consideration of improper or inaccurate information." **United States v. Tucker, 404 US 443, 92 SCt 589, 591 (1972).**

Counsel has a duty to investigate or to make a reasonable decision that makes particular investigations unnecessary. **Correll v. Stewart, 137 F3d 1404 (9th Cir, 1998).**

An evidentiary hearing is necessary in regard to this issue to ascertain counsel's reasoning for failing to investigate, failing to properly cross-examine Brett Bowman utilizing the transcripts of his prior inconsistent statements, and/or the prosecution's reasoning for failing to provide the **Brady** material.

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GROUND TWELVE

PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, EQUAL PROTECTION, AND A FAIR TRIAL, WHEN NOT OBJECTING TO THE PROSECUTOR'S VOUCHING FOR THE CO-DEFENDANT'S KNOWN-TO-BE PERJURED TESTIMONY, IN VIOLATION OF PETITIONER'S RIGHTS, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In addition to trial counsel failing to protect Petitioner from being subjected to known-to-be perjured testimony, aptly outlined in Ground Eleven, the Prosecutor was at all times throughout the proceedings, in possession of same (specifically the RPD transcripts dated 10/17/01 through 2/9/02, and the accompanying video/audio cassettes, involving contradictory testimonies between investigators and Co-Defendant Bowman, as compared to later Indictment and Trial testimony). United States v. Aichele, 941 F2d 761, 766 (9th Cir, 1991). To this, it is a prosecutor's duty to 'refrain from knowingly failing to disclose that the testimony used to convict defendant was false.'

In view of the testimonial statements by Co-Defendant Bowman and investigators, contrasted with subsequent amended versions, almost two (2) years later at the indictment and trial, it is patently clear that the State knew, **or should have known,** that Co-Defendant Bowman's testimony, as well as Detective Thomas' testimony, were false on numerous materially relevant issues which were central in relation to Petitioner's involvement in the alleged crimees. This rule rests upon the public policy(-ies) against corruption of the truth-seeking function of the trial process. Giglio v. United States, 405 US 150, 92 SCt 763 (1972); and, NAPUE v. ILLINOIS, US 264, 79 SCt 1173 (1959).

Deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.' Giglio v. United States, supra.; citing, Mooney v.

Huluhan, 294 US 103, 55Ct 340 (1935).

During closing arguments at Petitioner's jury trial, the prosecutor vouched for the prosecution's witness, Brett Bowman, the Co-Defendant in this action.

It is patently obvious that, had the jury been aware of the Co-Defendant's perjured testimony, the results of the trial would have been different. Central to this, Brett Bowman made numerous statements prior to trial, and at trial, which were inconsistent. Defense counsel successfully brought some out. The inconsistencies in Brett Bowman's testimony were not all brought out to the jury, however. Many more would have been brought out if Defense counsel had thoroughly reviewed discovery. Brett Bowman's credibility was a key prosecution element of the trial, as Bowman attempted to place all blame for all of the charged offenses upon Petitioner in exchange for a very minimal sentence, which Bowman eventually received. Therefore, Brett Bowman had a clear motive to lie to the prosecution and the Court, and defense counsel had a duty to bring forth all the false testimony.

As observed in **Austin v. State, 87 Nev 578, 589, 491 P2d 714, 728 (1971)**, "Courts have long recognized not only that the uncorroborated testimony of an accomplice has doubtful worth, but that his incrimination of another is not corroborated simply because he accurately describes the circumstances thereof." The federal courts have held similarly in **United States v. Laing, 889 F2d 281 (DC Cir, 1989),** wherein, the Court noted that a person could be considered an accomplice to all charged offenses due to his testimony.

As for further prosecutorial misconduct, the District Attorney vouched for the truthfulness of Brett Bowman's testimony by offering excuses for his inconsistent statements, as follows:

MS. RIGGS: He's working. Even when he's incarcerated, he's working. And you saw how tired he was on the stand.

(Trial Transcripts, Friday, November 14, 2003,afternoon session, Page 214, Lines 2 - 3).

* * * * *

MS. RIGGS: Perhaps he didn't remember that he did or that Detective Thomas had gotten that for him.

(Id., at Lines 12 - 14).

* * * * *

The prosecutor attempted to provide excuses for Brett Bowman's testimony, by saying he was "tired" or "had forgotten" facts.

A prosecutor may not express his opinion of the Defendant's guilt or his belief in the credibility of government witnesses. (Emphasis added). **United States v. Molina, 934 F2d 1440 (9th Cir, 1991).** Vouching is especially problematic in cases where the credibility of the witness is crucial, and in cases applying the more lenient "harmless error" standard of review. Courts have held that such prosecutorial vouching requires reversal. **Molina, at 1445.**

Petitioner's rights to a fair trial, due process, and equal protection of the laws, were violated by the aforementioned prosecutorial vouching. Petitioner received ineffective assistance of counsel, as guaranteed by the Sixth Amendment when trial counsel failed to object or request a jury instruction concerning the Co-Defendant's testimony.

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GROUND THIRTEEN

COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE AND ARGUE THAT WITNESSES ACTED AS POLICE AGENTS,WITH CONDUCT IN DISREGARD FOR THE PETITIONER'S FOURTH AMENDMENT RIGHT TO PRIVACY, IN VIOLATION OF PETITIONER'S RIGHTS TO DUE PROCESS, EQUITABLE JUDICIAL PROCEEDINGS, AND EQUAL PROTECTION OF THE LAW, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

If the Prosecution provided all relevant discovery, in accordance with the District Court's July, 2003 Order for full discovery reciprocity, specifically with respect to their investigations through the employees/owners of Aussie Storage; or, had counsel subpoenaed Aussie Storages records for unit B-114, the Defense would have possessed documentation wherein counsel could have argued effectively the fact that Aussie storage representatives acted as agents for the police.

On no less than two (2) occasions, and with no disclosure to the Defense, investigations, in concert with employees of Aussie Storage, breached not only the terms of the lease agreement for rental of unit B-114, but the Petitioner's Fourth Amendment right to privacy, created and sustained by said lease agreement.

Government investigators, under color of law, elicited unauthorized entry to the premises of Aussie Storage facility, and/or extracted privy information concerning the Petitioner and his family, absent the approval of a magistrate, (**See Exhibits** __L__.), including, but not limited to: (1) a handwritten memorandum, wherein Detective Della engages Aussie personnel; and, (2) a typed Aussie Storage memorandum, wherein it is noted that Parole and Probation entered the premises.

Said Lease Agreement expressly states, at numbered paragraph nine (9), in regard to the "RIGHT TO ENTER," that, "the occupant grants the owner or its agents... including police and fire officials, access to the premises upon **three (3) days NOTICE to occupant.**

On September 26, 2001, and again on October 7, 2001, Detective Della and an unidentified probation officer entered the premises, with no prior notification given to occupant, absent any exigency or valid search warrant, at the respective times noted in the accompanying **Exhibits**, illicitly obtaining Occupants'/Petitioner's privy information, and/or to park a government vehicle so as to block the Petitioner's storage unit (B-114). Such entering the premises without notification to occupant by the owners, at the request of the police, not only breaches the owner's contract with the Petitioner and his co-renters, but also puts the owners in league with police agents by virtue of this violation/breach, and thus makes the owners of Aussie Storage unit (and its representatives) agents of the police in breaching said contract. In working as agents of the police, Aussie storage representatives cannot, in the interests of Petitioner's Constitutional Rights, give consent to search the premises, or release/relinquish any information in regard to, or belonging to, the Petitioner without a valid search warrant.

As there was no valid search warrant at the point in time when law enforcement personnel first engaged Aussie Storage representatives, any information obtained from these representatives, or from officer presence on the premises, is therefore 'fruit of a poisonous tree,' for evidentiary purposes. Additionally, this information could not then be used as probable cause to obtain a search warrant, either. Thus, any and all information and/or items obtained from the Aussie Storage facility, whether from Aussie Storage representatives, office staff, or from the storage unit (B-114) itself, and the premises thereabouts, should rightfully have been dismissed and not used in trial, as it was obtained illegally and in violation of Petitioner's Constitutional Rights.

If the aforementioned documentation had been available to the Defense, or sought by counsel, the Defense would have been in a position to file a pleading for suppression of the entire contents of Unit B-114 at the Aussie Storage facility. Hence, either through the Prosecution's convenient cover-up of such exculpatory evidence, or counsel's failure to investigate or argue the same, the Petitioner was adversely prejudiced. Such conduct on the part of the Prosecution, with total disregard for the Petitioner's civil rights, was a violation thereof. Jiminez v. State, 775 P2d 694 (1989, Nev); and, Holyfield v. State, 711 P2d 834 (1985, Nev).

In United States v. Stevens, 601 F2d 1077 (5th Cir), the Court ruled that under certain circumstances, private actors may be transformed into government agents by virtue of their involvement in the prevention of crime. See, Estelle v. Smith, 451 US 454 (1981).

With the search and seizure of the Aussie Storage Unit's Unit B-114 contents, (In excess of 90% of the evidence in support of Probable Cause for the Indictment, and subsequent conviction on Counts I through X), the suppression of the same was paramount to a viable defense.

Pursuant to the Fourth Amendment, "issues concerning exigent circumstances, consent, and whether an individual is acting as an agent for the police, all present mixed questions of law and fact." State v. Miller, 877 P2d 1047 (1994, Nev).

Counsel's ineffectiveness in not thoroughly investigating allowed for the Prosecution's cover-up of exculpatory evidence, which adversely prejudiced Petitioner and violated Due Process, thereby mandating this Court's reversal of the conviction.

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GROUND FOURTEEN

COUNSEL WAS INEFFECTIVE IN NOT THOROUGHLY INVESTIGATING DISCOVERY AND ITS DEFICIENCIES PRIOR TO TRIAL, THEREBY NOT PROTECTING THE PETITIONER FROM INVESTIGATIONAL AND PROSECUTORIAL MISCONDUCT, IN VIOLATION OF THE PETITIONER'S RIGHTS TO DUE PROCESS, A FAIR TRIAL, AND EQUAL PROTECTION, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Prior to trial, counsel did not sufficiently review the Discovery in its entirety, nor did he investigate Discovery issues related to Prosecutorial transgressions, so as to unveil the State's purposeful withholding of exculpable evidence. In lieu, counsel relied solely on the Prosecution's file and representations by the District Attorney, with utter disregard for the Petitioner's concerns for Discovery deficiencies.

To this, Petitioner sought to bring this dilemma to the Court's attention, not only by advising counsel in writing, but again at the November 10, 2003, hearing to Confirm Trial, as evidenced by the following excerpts from the hearing transcripts.

At Page 3, Lines 19 - 24:

THE DEFENDANT: Well, I don't think we're prepared to go to trial because I have some issues here with respect to - -

THE COURT: I can resolve that very quickly, then.

Mr. Van Ry, are you prepared to go to trial?

* * *

At Page 4, Lines 1 - 21:

MR VAN RY: By Wednesday, I will be prepared to go to trial, Your Honor, yes.

THE COURT: Okay. Well, that takes care of that issue. Your attorney is prepared for trial, so is there anything else you want?

THE DEFENDANT: Well, we're deficient discovery, and I've been waiting for two years for it, and I don't understand why between now and Wednesday that's going to change any. I'll be glad to address the Court - -

THE COURT: Apparently the discovery is not deficient or your counsel wouldn't be saying that he's prepared for trial.

THE DEFENDANT: So when I get on the stand and testify and I have -- and it comes out in Court that I can't substantiate that claim because certain documentation was not provided pursuant to the discovery, then where are we left at?

THE COURT: I guess, you know, that's a

problem for further action, I guess. Should you wind up being convicted, you can raise these issues posttrial.

At Page 7, Lines 3 - 24:

THE COURT: Mr. Volpicelli, do you want to represent yourself in this case?
THE DEFENDANT: Your Honor, I never made any reference to that effect. I think Mr. Riggs is referring to a unilateral decision on the part of my counsel to not pursue any -- what I feel are critical pretrial motions, and it just represents, I think, a conflict of interest, and with regards to the discovery, I was assured, by virtue of the fact that the two of them were going to get together, that the discovery would be in place, and then when it finally did -- I did receive it, I reviewed it, and it's still deficient, and I've been calling Mr. Van Ry's office, apprising his office of that, and it was just left at the hearing today, if I wanted to bring it to your attention.
THE COURT: Well, as long as your counsel is prepared for trial and he has the discovery that he finds is complete and sufficient to proceed to trial, I'm not going to go further into that issue, and if you don't want to represent yourself, there may be nothing else for us to discuss here.
Mr. Van Ry, do you --

At Page 8, Lines 1 - 12

MR VAN RY: I do have a real concern in that regard because we are at such loggerheads in terms of what my client perceives is discovery and what is deficient and what I perceive is not deficient and further inculpatory evidence that I didn't want to have anywhere near this case. I'm concerned about that. I think it might be best of Mr. Volpicelli represented himself in that light because of the -- I mean, we just view this case in two entirely different lights, your Honor, and as you can tell, Mr. Volpicelli has his opinion, and I have mine, and I'm not convinced that it would be in his best interest for us to remain as a --

At Page 9, Lines 2 - 6:

THE DEFENDANT: Your Honor, this 4 November, 2003 letter that I sent to my attorney was in regards to a letter that he sent me the prior day, on November 3rd, and in that letter, if you could read the contents, there's no indication of any viable defense strategy.

At Page 9, Lines 13 - 20:

THE COURT: I can't possibly imagine it's in your best interest to be discussing, you know, your trial strategy in front of the prosecutor.
THE DEFENDANT: I understand that, you Honor, but the fact is the letter was just clearly inidcative of a conflict of interest and just doesn't leave much to be desired and give me much confidence going into a trial.

As a result, exculpatory evidence relevant to the Discovery was not available for trial. In addition, and at two (2) days before trial, counsel had not reviewed the case video and audio tapes, or subpoenaed critical documents and witnesses for effective cross-examination.

CASE AND POINT.

If the Prosecution had not withheld exculpatory evidence in the way of property records relevant to the search and seizure of Bowman's property at the time of arrest, or had counsel investigated the same, via subpoena, the Court would have been made aware at trial of the blatant nexus of property seized from the Aussie Storage Unit and Bowman's Courtyard Center Apartment. This was a controverted matter at trial, in which such evidence was critical for the defense. Ground Eleven elaborates on this matter with reference to the inconsistent/perjured testimony of both Bowman and Detective Thomas.

If the Prosecution had not withheld exculpatory evidence, in the way of Wal-Mart's video surveillance of the "Bicycle Section" on October 17, 2001, and/or any and all surveillance videos of the retail parking lots, or within the store's respective sections on the days in which Bowman claims Petitioner accompanied him to Wal-Mart, Home Depot, as well as, Bed, Bath, & Beyond; or, had counsel subpoenaed same, it would have been clear to the Court the Petitioner was not observed within the stores or their respective parking lots, either with or without Bowman, or, ever involved with activity inconsistent with that of a regular customer.

If the Prosecution had not withheld exculpatory evidence, in the way of Reno Police Department's Daily Surveillance Log of Petitioner, for October 17, 2001, or had counsel pressed the Reno Police Department for the same,the Court would have been made aware that the surveillance of Petitioner, on said day, was not continuoous.

In fact, as relevant to Count VIII, at Shopko, the lack of continuous surveillance prevented a valid chain of custody on one (1) or more comforters allegedly purchased at a reduced price and then seized later that same evening. This was critical to the Petitioner's defense in having possession of the different comforters in his vehicle. In essence, the lack of continuous surveillance by R.O.P. does not conclusively negate the Petitioner's exchange of said comforters at his mother-in-law's during that same day.

If, at the scheduled discovery meeting between counsel and the prosecution, the District Attorney had not withheld the written transcripts, transcribed from the Audio/Video tapes relevant to the Reno Police Department's post-Miranda interrogations of both Bowman and the Petitioner, or, had counsel thoroughly reviewed the audio/video tapes in their entirety, the Court would have been made aware of the blatant inconsistent/perjured testimony(ies), as to facts specifically material to the Petitioner's alleged involvement in the Counts.

If the Prosecution had not withheld exculpatory evidence, via not returning all the receipts seized in the investigations, and not merely releasing those the Prosecution selectively deemed appropriate for their case, or, had counsel subpoenaed retail transactions substantiating the Petitioner's family's legitimate purchases of items seized under the search warrant(s), counsel would have been in possession of indicia to support a contention that Petitioner's family rightfully owned the property items, over and above those cited in the indictment, all of which was returned to stores, absent a Court Order of Forfeiture.

Attempts by Petitioner to procure the replacement of said receipts while in custody, and after retailers purged their annual receipt databases, was no small undertaking. However, Petitioner gleaned

one (1) such receipt. See, Exhibit M, wherein, full price was paid for a KDS monitor seized from Petitioner's family's storage unit and which was returned, erroneously, to Wal-Mart.

To withhold exculpable evidence is a violation of Due Process, and motive for doing so is immaterial. **Brady v. Maryland, 373 US 83, 83 SCt 494.**

The Prosecution must disclose all evidence favorable to the accused when evidence is material to either guilt or punishment. Evidence is material, for purposes of the Prosecution's duty to disclose exculpatory evidence, if there is reasonable probability that the result of the trial would have been different. **United States v.Augurs, 427 US 97, 112, 96 SCT 2392, 2401-02 (1976).** Evidence that would enable effective cross-examination and impeachment may be material, and the Ptosecution's non-disclosure of such evidence may deprive the accused of a fair trial. **Passana v. State, 103 Nev 212, 213, 735 P2d 321, 322 (1989).** Suppression of favorable and material evidence includes situations in which the state, although not soliciting false evidence, allows evidence to go uncorrected when it appears. **Auson v. McKaskie, 724 F2d 1153 (1984).**

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Had counsel investigated the Discovery in its entirety, and not rely exclusively upon the Prosecution's file, evidence in support of the following issues would be a part of the Court record and likely would have affected the Jury's decision.

If counsel had investigated, via subpoena, a transaction involving the acquisition of the labeler by Bowman at a Staple's Store, either customer service documentation and/or store security surveillance tapes could have confirmed perjured testimony on the part of Bowman, and proven that he did, in fact, transact the labeler via an exchange - in direct contradiction to his testimony at trial. Exhibit N

shows the transaction for the purchase of the bicycle.

If counsel had investigated, via subpoena, the records of the Ridge House, the Courtyard Center Apartments, as well as, Online Search Engine/Portal "YAHOO", the Court would have been made aware that Bowman prevaricated in not only having access to computers, but was sufficiently proficient on the internet and that he attended computer literacy classes. **See, Exhibits I, J, K Ridge House Letter, Courtyard Center Apartment documentation, and Travis Volpicelli's AFFIDAVIT in support of the foregoing.**

If counsel had investigated the whereabouts of, and compelled the appearance of, defense witness Travis Volpicelli, material fact inconsistencies relevant to Bowman's statements concerning access to the storage unit, Bowman's use of computers to communicate with Petitioner, as well as, Bowman's expressed need and desire to acquire a bicycle for transportation, would have been clarified for the Court's record. **See, Exhibit K AFFIDAVIT of Travis Volpicelli, post-trial, 4/04.**

In **Thomas v. Lockhart, 738 F2d 304, 308 (8th Cir)**, the Court concluded that an attorney's performance was deficient where counsel relied solely on the Prosecutor's file, and where counsel refused to prepare a defense based on information, questions for witnesses, and so on, as requested by Petitioner in support of his innocence. **Kirksey v. State, 923 P2d 1102, 1111.**

Lastly, and most significantly, since INTENT is the key element in terms of the Petitioner's complicity with Bowman in the Burglary counts, if counsel had thoroughly investigated/reviewed the Reno Police Department incident reports, and effectively cross-examined Officers Brown and Teasley, the Court record would show, that relative to Count IX on October 17, 2001, (the Wal-Mart bicycle acquisition), Officer Brown purported:

"I returned to my vehicle and continued to monitor the activity of Volpicelli. He drives his vehicle toward the front of the store and let Bowman out of his vehicle. Bowman went into the store and was followed by other detectives."
See, Exhibit O, RPD Incident Report, 10/25/01, Page 2 of 3, Officer Brown, at Paragraph 4.

* * * * *

"And when Bowman was buying the bike, Volpicelli drove his vehicle through the lot and then out onto Vriginia Street, where he drove North, eventually re-entered the parking lot and parked in a different space."
See, Exhibit O, RPD Incident Report, 10/18/01, Page 6 of 7, at Paragraph 5.

* * * * *

Counsel was ineffective at cross-examination to not proffer the scenario on October 17, 2001, wherein, petitioner's conduct displayed an attempt to extricate himself from Bowman's intentions to commit Burglary. Petitioner's overt conduct to leave Bowman and to head home to Reno, and only circle back because Petitioner became aware of his vehicle being followed by RPD, is indicative of Petitioner not sharing the same 'intent' as Bowman:

1) Since an aider and abettor to a 'specific intent' crime must share the 'specific intent of the perpetrator; **See, People v. Beeman, 674 P2d 1318**; and,
2) That a Burglary cannot be committed unless... 'specific intent' exists at the time of entry, and...the jury should have been so instructed; **People v. Hill, 429 P2d 586**; and,
3) An aider and abettor to a Burglary must therefore have a 'specific intent' to assist the perpetrator in gaining unconsented entry for the perpetrator to commit the crime. **People v. Montoya, 874 P2d 903.**

Petitioner's lack of shared intent is further substantiated by Bowman, himself, on December 3, 2001, (closer in time to the actual Incident, and prior to having motive to fabricate and amend his statements), whereas Bowman stated:

"...as we was leaving Wal-Mart with the bike, right, he (Volpicelli) wouldn't even set that up."
See, RPDt 12/3/01, Investigator Lodge and Bowman, Page 29, Lines 18 - 19.

Clearly, the foregoing statement by Bowman alludes to Petitioner's conduct evincing a lack of cooperation of involvement, or withdrawal from the alleged Conspiracy, specifically a **lack of shared intent**. Again, the intent is the key element to alleged aiding and abetting the commission of Burglary.

To this, there is ample case law, wherein 'mere presence and knowledge of (Bowman's) intentions are insufficient to convict aiding and abetting culpability. **Tarnef v. State, 512 P2d 923, 924.** That if evidence of any conduct (by Petitioner) is at least consistent with innocence, as with guilt, it is insufficient to sustain a guilty verdict. **United States v. Berger, 224 F3d 107, 108.** That no subsequent conviction with possession of property allegedly stolen as a result of Burglary can make one guilty of Burglary who was not connected, conclusively, with the original intent to commit upon entry. See, **Hensel v. State, 604 P2d 222, 239, at n.69.**

That Petitioner's acts of abandonment or disassociation (in not tagging the bike and leaving Bowman, as well as the parking lot, in the direction of home) came before Bowman's act was put in progress of final execution (entering the threshhold with intent). Said conduct thereby displayed overt renunciation of any criminal intent (on Petitioner's part). That to avoid jury instruction violation with respect to the intent element of Burglary, the correct instruction in this case was advisement by counsel to focus on the (Petitioner's) intent more than the nature of acts committed by Bowman. **Haight v. State, 654 P2d 1232, 1242**; and, **People v. Beeman, 674 P2d 1318, 1326.**

That, according to NRS 205.165, the jury instruction is to include 'a requirement that the Defendant only provide some evidence to dispute the presumed element of criminal intent.' **Redford v. State, 572 P2d 219, 222.**

That a withdrawal of criminal activity can be demonstrated by one's conduct of taking definite, decisive, and positive steps to show (Petitioner's) attempt to separate or extricate himself from the crime. United States v. Lothian, 976 F2d 1257, 1261 (9th Cir, 1992).

But for counsel's failure to investigate the foregoing issues, and to proffer the same at trial, Petitioner's rights to effective assistance of counsel, a fair trial, and due process of law, were breached irreparably.

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GROUND FIFTEEN

TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO APPEAL THE DISTRICT COURT'S DECISION TO NOT QUASH THE INDICTMENT, AS WELL AS FOR FAILING TO INVESTIGATE AND PROFFER OTHER INDICTMENT DEFICIENCIES, IN VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS, EQUITABLE GRAND JURY PROCEEDINGS, AND EQUAL PROTECTION OF THE LAW, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

On November 7, 2003, Judge Hardesty rendered a decision with the pleadings relevant to the Prosecution's introduction of improper evidence to the Grand Jury. Said decision, in part, acknowledged the prejudicial taint of the improper evidence, with a suppression of the same. However, that consideration was moot, as the Grand Jurors had already been unduly influenced in their decision in June, 2003.

Apparently, Judge Hardesty's decision to not quash the indictment, despite the prosecutorial transgression, was based upon the sentiment that the probative value of all the evidence outweighed the prejudice stemming from the violative conduct of the Prosecution.

Had counsel further investigated the indictment for deficiencies, the Court's decision may likely have been different.

Case and Point: The Prosecution also misled the Grand Jurors when the District Attorney, at the onset of the June 11, 2003, hearing, specifically instructed the Grand Jurors that Bowman was not a target of the indictment, (nor referred to as a Defendant), and in fact, a witness.

> Grand Jury Indictment Transcripts ("GJIt"), June 11, 2003, Page 7, Lines 14 - 16:
> Q: Do you understand that you are not a target of this Grand Jury but are simply called here as a witness today?
> A: I do.

Yet, with respect to Count VI in said Indictment, further prejudice to the Petitioner ensued when erroneous testimony, either inadvertently or by design, reached the jurors when Lowes' investigator, Mr. Ellis, stated specifically that the Defendant is identified

and observed in the store's surveillance video, transacting the alleged fraudulently acquired rug.

GJIt June 11, 2003; Page 112, Lines 1 - 8:

Q: Were you able to see in a security video tape this purchase being made?
A: Absolutely, yes, ma'am.
Q: Can you describe the person who was making the purchase of the video tape, male or female?
A: Certainly. It was a male subject. I had previously not had the opportunity to ever see this person before. He was identified by detective Thomas as the defendant.

At that point, it was only logical to presume that the Grand Jurors believed it was the Petitioner - and not witness Bowman. After all, only minutes prior to that statement, the Prosecution made it clear that Bowman was not the Defendant. Hence, prejudice was obvious with no admonition by the Court. And that, in front of the trial jurors several months later, Bowman testified that it was him who entered the Lowes in the video, with the UPC tag, and transacted the purchase.

This transgression by the Prosecution went unchecked by counsel and culminated in a violation of NRS 51.035(2)(b), wherein, said statute was designed to rebut charges, claims or fabrication of improper influencing after a prior (in)consistent statement was made. To this, the Court has held in **Napue** that the Prosecution's use of known false testimony at an indictment is grounds for a reversal of conviction. **Napue v. Illinois, 79 SCt 1173**.

Another indictment insufficiency occurred at said hearing when the Prosecution specifically instructed the Grand Jurors that the presence of the Labeler within the Petitioner's vehicle was a Burglary tool - of sorts - under NRS 205.080, and that the charge of the same constituted the "intent element" of all the Burglary-related counts.

GJIt, June 11, 2003; Page 5, Lines 13 - 15:

Also at the beginning of your packet you have NRS 205.080 which defines the crime of possession of instruments with burglary as the intent.

If so, then logic dictates an insufficiency within the indictment, insofar as, instructions for the intent element of Burglary, when the Jurors posed a clarification inquiry and eventually issued a **NO TRUE BILL** for Count XI - NRS 205.080 - Possession of Burglary Tools.

GJIT, June 11, 2003; Page 145, Lines 21 - 23:

THE FOREMAN: We have one question we would like explained, that is the definition of implements and adapting of tools for use of burglary and crimes.

* * *

GJIt, June 11, 2003; Page 146, Lines 15 - 21:

(Whereupon the Grand Jury deliberated.)
(Whereupon the Deputy District Attorney and the Court Reporter re-entered the Grand Jury room.)
THE FOREMAN: We have returned a true bill on Counts I through X and a no True Bill on Count XI.
MS. HIER-JOHNSON: In light of the Grand Jury's findings, I will strike Count XI from the Indictment.

* * * * *

Needless to say, a **Beeman** violation had occurred in this matter, wherein, 'errors in instructing on "intent"element necessary to convict of Aiding and Abetting the Commission of a Crime in an Indictment of at Trial were no harmless error when inadequately instructed jurors required clarification to Court indicating confusion on point.' **People v. Beeman, 674 P2d 1318.**

The next insufficiency clouding the Indictment involves either a variance or constructive amendment issue.

From the onset of the judicial proceedings, initial cases 02-0145 & 02-0146 (later supplanted with 03-1263 at Indictment) alleged similar crimes of Bowman and Petitioner, and specifically cited NRS 195.020. Yet, at the re-indictment, wherein 02-0145 and 02-0146 were stayed, NRS 195.020, which is critical to the Prosecution's theory of Petitioner's complicity with Bowman, is not specifically cited in the Indictment, Counts I through X, nor in the closing statements of the District Attorney within the Grand Jury Transcripts. Central to this deficiency, NRS 173.075 is clear in the requirement that the

Indictment or Information must state, for each count, the official or customary citation of the statute, rule, regulation, or other provision of the law, which the Defendant is alleged therein to have violated.

Then, to have effectively averted a variance or constructive amendment issue between the Indictment and when the Prosecution asked for a conviction of Petitioner under NRS 195.020, Aiding and Abetting, said statute should have been present within the Indictment. Otherwise, If the Grand Jurors entered a True Bill absent NRS 195.020 for each Count, and specific only to NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380, and NRS 205.965, then accordingly, the District Attorney's request of trial jurors to convict, (in her closing argument at trial, relating Petitioner with culpability under NRS 195.020 relevant to all Burglary counts I through X), constituted a variance or constructive amendment to that of the Indictment. As such, Petitioner's substantial rights are affected since it shows 'prejudice to his ability to defend himself at trial, and to the general fairness of the proceedings or to the Indictment's sufficiency to bar subsequent prosecutions.' United States v. Hathaway, 789 F2d 902, 910 (1986).

In view of the foregoing additional deficiencies with the indictment, it is clear that the prosecution overreached the Grand Jury, even if unintentioanl, causing illicit influence with improper and multiple instances of such. The cumulative effect of this is patently prejudicial, and denied the Petitioner his Constitutional right to a fair Grand Jury proceeding, which is an integral part of the judicial mechanism.

The test with respect to inappropriate comments (or improper evidence) by the Prosecutor, is whether the comments so infected the Jurors with unfairness as to make the resulting Indictment a denial

of Due Process. Benn[redacted] v. State, 111 Nev 1099, 9[redacted] P2d 676 (1995).

In addition, higher Courts have ruled that even if the District Court ruled there was a sufficient amount of evidence presented to the Grand Jury to sustain the Indictment, if there is evidence of other misconduct issues which together, clearly destroy the existence of an independent and properly informed Grand Jury, then the irreparable impairment of fairness compels a reversal of conviction. Vasquez v. Hillery, 106 SCt 617, 623. Furthermore, even if a Grand Jury's determination of probable cause is confirmed in hindsight by a conviction of the indicted offenses, that confirmation, in no way, suggests that the prejudicial taint of improper evidence, indictment deficiencies, and prosecutorial misconduct did not infect the framing of the proceedings to come. Id., at 623.

Hence, the District Court's denial to quash the Indictment was an improper and discretionarily abused use of its supervisory power to which, counsel should have immediately filed an appeal, inclusive of the aforementioned issues. Counsel's failure to do so was a violation of Petitioner's right to Due Process guaranteed by the State of Nevada's Constitution, as well as that of the United States of America.

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GROUND SIXTEEN

PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, EQUAL PROTECTION, AND A FAIR TRIAL, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHERE AN ACTUAL CONFLICT OF INTEREST EXISTED BETWEEN PETITIONER AND TRIAL COUNSEL.

Prior to November 10, 2003, prior to trial, Petitioner notified the Trial Court of a conflict of interest with appointed counsel, Bradley O. Van Ry, Esq., to which counsel concurred. Petitioner informed the Court that counsel refused to discuss potential trial issues with Petitioner and refused to seek Discovery and/or investigate into evidence to be produced at trial in support of Petitioner's innocence. **(See Ground Fourteen).**

At said hearing, held on November 10, 2003, counsel informed the Court, "We are at such loggerheads." **(Transcripts of Proceedings, November 10, 2003, Page 8, Lines 1 - 3).** Counsel continues, "I think it might be best if Mr. Volpicelli represented himself..." **Id. at Lines 6-8.**

The Court erred in denying Petitioner's request for conflict-free counsel, and further, giving Petitioner the choice of keeping ineffective counsel, or representing himself - which would have been equally as ineffective. The Court applied the improper standard, and delineated as follows:

> **I'm not interested in Mr. Volpicelli's views and decisions regarding trial tactics.**
>
> **(Id. at lines 16 - 18).**

Apparently, the Court was unaware of the United States Supreme Court holding in **United States v. Teague, 953 F2d 1525 (11th Cir, 1992**, wherein the Court held that a "**defendant is the master of his own defense.**" By the Court's statement, it is clear that the Court did not take into consideration the drastic differences between counsel's and Petitioner's tactics and theories on how to defend

Petitioner at trial.

In Halloway v. Arkansas, 435 US 475 (1978), the United States Supreme Court held that counsel is in the best position to determine if an actual conflict of interests exists. In the instant action, as quoted above, counsel informed the Court that it would be best if Petitioner represented himself, that they were at "loggerheads." Thus, the Court erred in refusing to accept counsel's perception of his relationship with Petitioner.

Petitioner has the right to conflict-free counsel. See, Cuyler v. Sullivan, 446 US 335, 344 (1980); and, United States v. Cronic, 466 US 648, 662, n.31 (1984), wherein Petitioner need not show actual prejudice to require reversal of a conviction based on counsel being in conflict with his client's best interests.

This Court failed to make the proper inquiry into Petitioner's claim of conflict of interest, and failed to heed counsel's interpretation of his attorney-client relationship, in violation of Petitioner's rights to Due Process. See, Mickens v. Taylor, 535 US (2002).

Further, this Court failed to consider that, 'the client is the master of his own defense, even though the counsel serves as an advocate for his client.' And, By exercising the constitutional right to assistance of counsel, a Defendant does not relinquish his right to set the parameters of that representation. ABA Rules of Professional Conduct, Rule 1.2; and, United States v. Teague, 953 F2d 1525 911th Circuit, 1992). The Teague Court also reminds us that, Defense counsel bears the primary responsibility for advising the Defendant of his rights, the strategic implications of retaining or waiving those rights and the choices relating to each, and that it is ultimately for the Defendant to make the final decisions. See also, United States Constitutional Amendments 5, 6, & 14.

In the instant case, the Petitioner attempted to notify the Court of his conflicts with counsel, and the hopes that the Court would aid in rectifying these conflicts, which incidently rose to violations of Petitioner's 5th, 6th, and 14th Amendment Rights. However, rather than the Court appointing conflict-free counsel to the Petitioner, the Court forced Petitioner into a catch-22 situation in asking him to either proceed with conflict-laiden counsel (in violation of said rights), or waiving his right to counsel under duress, a judicial practice specifically denounced in **Jackson v. James, 839 F2d 1513, 1516 (11th Cir, 1998).**

As such, Petitioner was forced to proceed to trial with an ineffective counsel, laiden with conflict issues, in violation of Petitioner's rights, as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Petitioner's subsequent conviction is thus, constitutionally infirm, **AND MUST BE VACATED.**

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PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE SENTENCING HEARING, WHEN TRIAL COUNSEL FAILED TO INVESTIGATE AND PRESENT A HOST OF MITIGATING INFORMATION, THUS DEPRIVING PETITIONER OF HIS RIGHTS TO DUE PROCESS, EQUAL PROTECTION, AND A FAIR TRIAL, IN VIOLATION OF THE GUARANTEES OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATE CONSTITUTION.

At Petitioner's Sentencing Hearing, held on April 1, 2004, counsel failed to present available mitigating evidence in support of a lesser available sentence. Counsel failed to investigate the facts surrounding the instant offenses, and to present those facts as mitigating evidence at sentencing. Counsel failed to interview Petitioner's family, friends, etc., as well as present their testimony at sentencing.

Petitioner desired to have the following persons provide testimonial evidence to the Sentencing Court:

NAME:	RELATIONSHIP:
Kevin Sigstad	Employer While on Parole in 2001
Travis Volpicelli	Eldest Son
Ashley Shilling	Step-Daughter
Chanel Volpicelli	Daughter
James Brooke, Esq.	Family Attorney
F.J. Volpicelli, M.D.	Father
Robert Fahrendorf	Family Friend
Sandra Ruggiero	Former Manager/Employee
Stacy Ballard	Neighbor
Karen Volpicelli	Sister
Carl Jorgensen	Fellow Associate in Real Estate
Mark Volpicelli	Brother
Commissioner Morrow	Nevada Parole and Probation
Lori Inman (AKA Lori Volpicelli)	Former Spouse until 1997

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The above-named persons were willing to provide the Sentencing Court with testimony of Petitioner's social, ethical, and moral background, in an attempt to humanize Petitioner before the Court.

In Lockett v. Ohio, 438 US 586, 98 SCt 2954 (1978), the United States Supreme Court held that:

> Possession of the fullest information possible concerning the Defendant's life and characteristics... is highly relevant, if not essential, to the selection of an appropriate sentence.

The Nevada Supreme Court has held similarly in **Brown v. State, 110 Nev. 846 (1994)**, where "defense counsel neither presented any witnesses to testify on Brown's behalf, nor did he 'present any evidence of mitigating circumstances in an effective manner.'" **Id., at 851**. The Court went on to indicate, "When a judge has sentencing discretion, as in the instant case, possession of the fullest information possible regarding the Defendant's life and characteristics is essential to the selection of a proper sentence." **Id., at 851**. Additionally, in **Brown, supra.**, the Court further held that the District Court erred in denying Brown's Petition for Post-Conviction Relief based on his counsel's failure to call any witnesses on his client's behalf or to properly request that Brown's sentences be run concurrently.

The United States Supreme Court, in **Commonwealth of Pennsylvania v. Ashe, 302 US 51, 58 SCt 59 (1937)**, held:

> In the determination of sentences, justice requires consideration of more than particualr acts by which the crime was committed, and that there be taken into account the circumstances of the offense, together with the character and propensities of the offender, and his past may be taken to suggest the period of restraint and the kind of discipline that ought to be imposed.

Furthermore, the United States District Court of Nevada agrees with the principles laid out by the State of Nevada, by stating that, "counsel's complete failure to present any argument or evidence that might have persuaded the Judge to temper the severity of his sentence is sufficient to undermine our confidence in the outcome." **Butler v. Sumner, 783 FSupp 519, 522 (D.Nev, 1991)**.

The above-named witnesses would have provided testimony as to the morals, character, and social/work ethics, etc., of Petitioner, at the Sentencing Hearing. Counsel's failure to call the witnesses or to present their testimony in any manner, to the Court, prejudiced

Petitioner and resulted in ineffective assistance, as outlined in Strickland v. Washington, supra..

The primary purpose of the penalty phase is to ensure that the sentence is individualized, by focusing on the particularized characteristics of the Defendant. Brownlee v. Hale, 306 F3d 1043, 1074 (11th Cir, 2002); cf., Siripongs v. Calderon, 35 F3d 1308, 1316 (9th Cir, 1994), (Finding counsel is ineffective during the penalty phase when he fails to conduct more than a cursory investigation of a Defendant's background and makes no attempt to humanize him before a jury.).

Compounding counsel's failure to investigate and develop a positive mitigating case, counsel allowed the prosecution to admit unfounded statements and speculation without objection or attempts to prevent the admission of the prejudicial testimony.

The prosecution entered a photograph at the sentencing hearing that was not, and could not, have been produced by the Petitioner. In summation, the prosecution alluded that Petitioner had taken the photograph of himself while incarcerated in federal prison and commented that the time was "worth it."

The prosecution also offered the testimony of Detective Reed Thomas at sentencing. Detective Thomas made numerous statements of falsity which were based on pure speculation. Detective Thomas testified that Petitioner reaped monetary rewards of $49,140.00 to $93,000.00 annually, based on criminal activity. (Sentencing Transcripts, April 4, 2004, Pages 24 and 25). The prosecution also presented numerous instances of charged and uncharged offenses that went uncontested by counsel, such as the prosecution implying that Petitioner was making a living from criminal activity, and being unemployed. Petitioner can prove that the above-noted inferences

are false.

The record indicates that Petitioner had been under continuous imprisonment from 1997 until the present day, wherein he was initially sentenced to tax perjury in the federal court, followed by consecutive sanctions with the state.

Exhibit P provides letters of support in regard to the character of Petitioner as a person in general, a citizen, a neighbor, an employer of a sole-proprietorship, sibling, son, and father - all of which tell a varied story than that of the Prosecution. However, said letters were amongst Petitioner's legal files, seized from the Aussie storage unit, and purposefully not released by the Prosecution until subsequent to the Petitioner's sentencing hearing. Again, exculpatory evidence was withheld by the Prosecution, despite Petitioner's protestations to counsel and to the Court. Potential witness and former employer, Kevin Sigstad, would have testified to Petitioner's employment while he was on parole in 2001, Petitioner having been employed as a Market Specialist from the onset of his release from custody, until the date of his arrest, October 17, 2001. He further would have verified that Probation Officers personally verified Petitioner's continuous employment and that they procurred monthly documentation from Sigstad in support thereof.

Potential witness, Travis Volpicelli, as eldest son of the Petitioner, would have personally testified, in lieu of the accompanying Affidavit - after the fact, to the contradictions in Bowman's testimony, relevant to Petitioner's contact with Bowman, as well as to Bowman's access to the Aussie Storage Unit.

Potential witness, Ashley Schilling (Petitioner's step-daughter), and Chanel Volpicelli, would have substantiated as to their procurement and needs for renting a storage unit and bank safety deposit

box with their respective returns from college during the summer of 2001, and with no undue influence by Petitioner.

Potential witness, Commissioner Morrow, as part of the tribunal for the State, in regard to parole revocations, would have testified that, after considering the presentations by probation officers and nearly a dozen law enforcement officers from the Reno Police Department, he concluded that the Petitioner was, at all times on parole, cooperative with probation and not in violation of associating with Bowman. But, most significantly, the taped hearing of October 16, 2002, specifically purports the Commissioners' findings that the Petitioner was guilty of "Laws and Conduct" violations relevant to case number CR02-0147, and that in regard to the instant case, (formerly 02-01254 and 02-0146), the Commissioner states the case 'lacks foundation.' Had counsel subpoenaed the tapes of the Revocation Hearing, the foregoing would also be a part of this Court's record.

Lastly, and with respect to the controverted 'photo' of Petitioner proffered at trial by the prosecution, potential witness, and former spouse, Lori Inman, would have testified that she did not send the photo to the Reno Police Department, thereby contradicting Detective Hopkins' testimony. She would also have testified that, in fact, said photo was taken at a visit when former employee, Ann Stanfill, visited Petitioner during his custody at Safford FCI in Arizona, Furthermore, that, unbeknownst to Petitioner, Stamfill was responsible for typing the statement "I'm too sexy for this place, just missing stores," and sending same to law enforcement, in retaliation to the Petitioner's filing of complaints against Stamfill and her mother with law enforcement agencies in Nevada and California, regarding the identity theft and fraud perpetrated by the foregoing individuals during Petitioner's incarceration.

Clearly, the aforementioned scenarios paint the Petitioner in

a different light, and but for counsel's errors, the outcome of the sentencing hearing would have been different. The law in this context does not require certainty and prejudice is shown where there is a reasonable probability of a different result. **Mayfield v. Woodford, 270 F3d 915, 936 (9th Cir, 2001)**. Petitioner has proved that evidence would have been presented, but for counsel's errors, that would **probably** have rendered a substantially different result at the sentencing hearing.

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GROUND EIGHTEEN

TRIAL AND APPELLATE COUNSEL WERE INEFFECTIVE IN ALLOWING PETITIONER TO BE SUBJECTED TO SENTENCING UNDER NEVADA'S HABITUAL CRIMINAL STATUTE, AS SET FORTH BELOW, IN VIOLATION OF PETITIONER'S RIGHTS TO DUE PROCESS, EQUAL PROTECTION, A FAIR TRIAL, AND EFFECTIVE ASSISTANCE OF COUNSEL, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

A. THE TRIAL COURT DID NOT PROPERLY ADJUDICATE PETITIONER AS A HABITUAL CRIMINAL AND/OR DID NOT APPLY THE PROPER STANDARDS.

Petitioner was sentenced to numerous life sentences under the provisions of NRS 207.010. The Prosecution must provide proof of prior felony convictions to the sentencing court to properly impose NRS 207.010. The Prosecution offered: (1) A conviction for "aiding and abetting in the commission of an attempt to obtain money under false pretenses," (2/11/04), (2) A conviction for Burglary (1998), and (3) A United States District Court conviction for Tax Perjury (1997). None of the aforementioned offenses, or the instant offense, are violent crimes.

Pursuant to the Ninth Circuit holding in **Walker v. Deeds, 50 F3d 670, 673 (9th Cir, 1995)**:

> Moreover, if the trial Court had weighed Walker's prior convictions, under Nevada law, a prior conviction record for non-violent property crimes, "though reprehensible, simply doesn't warrant the harsh sanction available under the habitual criminality statute." **Sessions v. State, 106 Nev 186, 789 P2d 1242, 1245 (1990) (per curiam)**. The Nevada Supreme Court has determined that it may be an abuse of discretion to adjudge a defendant a habitual criminal if his prior felonies are minor property crimes and remote in time, as such a ruling "serves neither the purposes of the statute not the interests of justice." **See, also, Clark v. State, 851 P2d at 428**.

The Nevada Legislature and the Courts did not intend for non-violent property crimes to be sentenced under the habitual criminal statutes. Trial and Appellate counsel were ineffective for not presenting or preserving this issue and protecting Petitioner from

such an unjust implication of a harsh sentencing scheme, in violation of his rights, secured under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

B. THE PRIOR CONVICTION OF FEBRUARY 11, 2004, WAS NOT "FINAL" FOR PURPOSES OF ENHANCEMENT, AND DID NOT PRECEDE THE PRIMARY OFFENSE.

The prior conviction used by the Court to determine the imposition of the Habitual Sentences in this case was not "final." The Judgment of Conviction considered and incorporated was entered on February 11, 2004 (Case # CR020148), and was eventually appealled to the Nevada Supreme Court (Docket # 42971). On 4/1/04, the Nevada Supreme Court had not ruled on the merits of the appeal. 'Final Judgment is a decision by the District Court that ends the litigation on the merits!' **Williamson v. UNUM Life Ins. Co. of America, 160 F3d 1247 (9th Cir, 1998)**. The conviction must be deemed final after the end of the appellate procedure on the doubt phase of the trial. **Brady v. Maryland, 83 SCt 1194**; and, **Gretzler v. Stewart, 112 F3d 992, 1004**. Since a Judgment of Conviction is final only upon issuance of a Remittitur, (**See, NRS 34.726**), said alleged prior conviction is not final for enhancement purposes.

In addition, Nevada's habitual criminal statute, NRS 207.010, allows for the imposition of an enhancement penalty only upon the proof of prior convictions. The Judgment of Conviction utilized by the Prosecution, entered on February 11, 2004, was not prior to Petitioner's criminal arrest in October, 2001 for the primary offenses. Hence, it is being applied in an **ex-post-facto** manner. All prior convictions used to enhance a sentence must have preceeded the primary offense. **Brown v. State, 624 P2d 1005**; and, **Carr v. State, 620 P2d 869 (Nev, 1980)**.

Due to the fact that the evidence presented by the Prosecution, purported to be a valid Judgment of Conviction, not, in actuality, being a valid Judgment of Conviction (final), and not being a "prior" felony conviction, Petitioner's multiple life sentences must be vacated, and a new sentencing hearing held.

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GROUND NINETEEN

COUNSEL WAS INEFFECTIVE IN NOT PROTECTING PETITIONER FROM THE VIOLATION OF HIS EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL & UNUSUAL PUNISHMENT WITH SUCH HARSH SENTENCES, IN VIOLATION OF PETITIONER'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, AS WELL AS A FAIR SENTENCING HEARING, AS GUARANTEED BY THE SIXTH, FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

On April 1, 2004, Petitioner was sanctioned in this case to nine (9) LIFE sentences, consecutive to his other sentences, which he was already serving out through expiration. In view of this, and over four (4) years subsequent to the beginning of the judicial proceedings in this case, Petitioner has not even commenced with serving any of his LIFE sentences; meanwhile, accomplice Bowman has expired his sixteen to forty-eight (16 - 48) month sanction, much of which has been served at a restitution center, wherein he toiled as a baker at Baldini's Casino.

Yet, the Petitioner endures a MAXIMUM-custody environment, in custody at the likes of state prisons such as the Nevada State Prison (NSP) and High Desert State Prison (HDSP). Oddly enough, it was accomplice Bowman who admitted to more culpable conduct, coupled with possessing an equally-storied criminal history.

This apparent disparity attests to the Petitioner's claim of prejudicially harsh sentencing, to which counsel was ineffective at protecting the Petitioner from such **CRUEL & UNUSUAL PUNISHMENT.**

In support of this, Petitioner now proffers numerous cases, wherein the disproportionate sentencing clearly "shocks the conscience of reasonable people."

Firstly, and as previously addressed in the Ground relevant to the Habitual Criminal Statute, NRS 207.010 creates a unique possibility that a Defendant will receive one (1) or more LIFE sentences which are not proportionate to the crime(s) the Defendnat is convicted of, and disproportionate to that of his accomplice. Alvarez v. People,

797 P2d 37 at 40.

This disparity in sentencing occurred because the Habitual Offender Statute is highly punitive, coupled with an ambiguity concerning the ambit of criminal statutes, wherein the Legislature's intent for said sentencing enhancement is not followed.

On March 28, 1995, Governor Bob Miller, of Nevada, testified before the Nevada Assembly's Justice Committee on Comprehensive Criminal Code Reform regarding AB 317, which contained the provisions for NRS 207.010. Specifically, Governor Miller addressed the Bill's criminal statutory scheme, including the genesis of the Habitual Criminal Statute and the need "to attack the problem of violent crime." **See Exhibit Q**.

The testimony in said **Exhibit** contains no less than six (6) references to the fact that AB 317 is **DESIGNED TO ADDRESS VIOLENT CRIME AND VIOLENT CRIMINALS.** In the 1995 and 1997 Legislative sessions, which addressed the language of violent crimes of offenders in the statute, no discussion could be found regarding the Legislature's intent to include the likes of minor property crimes, or in the Petitioner's case, specifically with regard to Count II and Count V, entering a retailer to document pricing information. Here, it is respectfully argued that the Nevada Legislature did not intend for the Petitioner's alleged crimes to be sentenced under the Habitual Criminal statutory sentencing scheme.

To this, the United States Supreme Court has noted that the punishment in a state prison for multiple LIFE terms might be so disproportionate to the offense as to constitute **CRUEL AND UNUSUAL PUNISHMENT**, and shock the conscience of the people. Solem v. Helm, 103 SCt 3004.

That, in fact, a sentencing proportionality analysis should be guided by objective criteria, including the gravity of the offense,

and the harshness of the penalty, the sentences imposed on other criminals in the same jurisdiction, and the same sentences imposed for the same crime in other jurisdictions, as held in **United States v. Wilson, 787 F2d 375, CA 8**; **State v. Perkins, 699 P2d 364, Ari**; and, **State v. Childs, 466 S2d 1363, App 3 Cir, La**.

It is patently obvious, in the Petitioner's case, that the harshness of the punishment imposed is out of sync with the gravity of the offense, disproportionate to Accomplice Bowman's sixteen to forty-eight (16 - 48) months for Burglary, and other similar criminal matters in Northern Nevada, as well as other jurisdictions. **See, Exhibit R**. This is not to mention the basis of which is a result of vindictiveness and abuse of discretion by the prosecution and the Court for Petitioner exercising his Due Process Rights. **See, Ground Ten**.

As noted in **United States v. Driscoll, 761 F2d 589, CA 10, Colo**, the punishment should fit not only the crime, but the offender as well. In determining whether a sentence is excessive, each case must be considered on its own facts, **State v. Humphrey, 445 S2d 1155, La**; **Schultz v. State, 715 P2d 485, Okla Crim**, and considering all the facts and circumstances. As further noted in the previous grounds, it is clear from the record that the Court did not consider other mitigating factors of the ineffective assistance of counsel, as well as the prosecutorial misconduct issues. Petitioner has also presented a clear case that, not only did the District Court abuse its discretion in sentencing him as an habitual offender, but the process used by the District Court violated his rights to Due Process and Equal Protection of Law, by failing to weigh all the circumstances, the non-violent nature of the prior felonies, the absence of conformance to standards for use of prior convictions,

as well as by investigating similarly situated cases in the same and other jurisdictions before making an adjudication of punishment.

Furthermore, and as mentioned herein, the **United States Supreme Court** has held that " as a matter of principle, all criminal sentences must be proportionate to the crime for which the Defendant has been convicted. **Solem v. Helm, 463 US 277, 290 (1983)**. In that case, the Higher Court affirmed the District Court's finding that Helm's sentence was grossly disproportionate to his crime. The Court, further, stated it may be useful to compare the sentences imposed with the sentences imposed for other crimes; if more serious crimes merit the same or similar sentences, the sentence may be excessive.

The Nevada Supreme Court has held that there are three (3) basic tenets for determining whether a sentence constitutes **CRUEL & UNUSUAL PUNISHMENT:** In view of all the circumstances, (1) is the punishment of such character as to shock the conscience of reasonable people and to violate the principles of fundamental fairness? (2) Is the punishment clearly disproportionate to the offense (or the sanction of his accomplice)? and, (3) Does the punishment go beyond what is necessary to achieve the aim of the public interest as expressed by the Legislature? **Workman v. Commonwealth, 429 SW2d 374, 378 (Ky Ct App, 1968)**, as cited in **Nauvanath v. State, 779 P2d 944 (1989)**.

Whereas our Habitual Criminality Statute exists to enable the criminal justice system to deal determinably with career criminals who pose a serious threat to public safety. **Odoms v. State, 714 P2d 568, 571-72 (1986, Nev)**.

That, as seen in **Gaines v. State, 998 P2d 166 (2000, Nev)**, the Court stated, "It is a well recognized tenet of statutory con-

struction that multiple Legislative provisions be construed as a whole, and where possible, a statute should be read to give plain meaning to all its parts." The statutes should be read in peri materia, and a construction should be adopted which operates in favor of life and liberty.

Lastly, and most significantly, as held in **Speer v. State, 5 P3d 1063, Nev**, and, **Pelligrini v. State, 34 P3d 519 (2001, Nev)**, "Courts are not at liberty to go fishing in the Legislative mind where the statute is clear and unambiguous."

With that said, and in view of the Nevada Legislature's intentions of directing the Habitual Criminal statutory Sentencing Scheme at violent criminals who are a threat to public safety, it is abundantly clear that the Petitioner's harsh sentences are grossly disproportionate to the crimes; and, not in the best interest of the system or society, and constituting **CRUEL & UNUSUAL PUNISHMENT** for the Petitioner. This is a clear violation under the Eighth Amendment to the US Constitution, to which counsel failed to protect the Petitioner from incurring.

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GROUND TWENTY

COUNSEL WAS INEFFECTIVE FOR NOT PROTECTING PETITIONER FROM PROSECUTION OF COUNTS II AND V, WHEREAS PETITIONER'S FIRST AMENDMENT RIGHTS WERE BREACHED, IN VIOLATION OF PETITIONER'S RIGHTS TO DUE PROCESS, FAIR TRIAL, AND EQUAL PROTECTION OF THE LAW, AS GUARANTEED BY THE FIRST, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Due to trial Counsel's failure to object at the Indictment, and at trial, to the Prosecution of Counts II and V, Petitioner incurred multiple LIFE sentences, wherein NO crime was committed, and in violation of Petitioner's Civil Rights.

Testimonials throughout the Court proceedings established that the Petitioner was surveilled on September 4, 2001, and September 28, 2001, by Detectives Armitage and Brown, respectively.

Petitioner was observed, innocently gleaning information from retail items and shelves in Wal-Mart's Golf Club Accessories and Auto Alarms/Stereo sections on the above dates.

* * *

GJt, Detective Armitage, Page 102, Lines 9 - 12:

A: I watched him walk to the back of the store where car stereos and car alarms are sold. And he was writing down numbers while he was looking at some of the items that were on the shelves.

* * * * *

GJt, Detective Brown, Page 55, Lines 4 - 5, 8 - 10:

Q: And the labels corresponding to which items?
A: It looked like the golf accessories.

A: At one point, I was less than ten feet from him.
Q: What were you doing?
A: I was feigning interest in an extremely small bicycle...

* * *

Retail investigators testified that the conduct of the Petitioner was not inconsistent with customers welcome and having lawful privileged entry.

* * *

Tt, November 13, 2003, Van Ry cross-examines Detective Danielson, Page 71, Lines 2 - 10:

Q: Is it against Wal-Mart's policy to allow customers to come in and do price shecking on the information that is listed on the price of the items?
A. No
Q: So I ask that in a positive better question, I

kind of fiddled through that.
So it is allowable for customers to come into Wal-Mart to check pricing information?
A: Yes, Sir.

* * *

Detective Thomas, the Lead investigator, further testified that it was not illegal to enter the stores, absent Bowman.

* * *

Tt, November 13, 2003, Van Ry cross-examines Detective Brown, Page 142, Lines 14 - 23:

Q: Just one question. It wasn't a crime on those days when Mr. Volpicelli walked into those stores without Mr. Bowman, was it?
A: It wasn't a crime to walk into the stores --
Q: Correct.
A: -- without Mr. Bowman?
Q: And then to walk out.
A: That in itself does not show anything that's a crime.
MR. VAN RY: Nothing further.

* * *

But, most significantly, counsel failed to inform the Court that, despite Law Enforcement's perceived criminal thoughts of the Petitioner on the above-listed two (2) days, there was <u>not</u> any nexus between the items specifically cited in the Indictment, seized under the Search Warrant, nor any transactions purported by Bowman or the Investigators, relevant to golf club accessories or auto alarms/ stereos.

Yet, despite the compelling evidence in favor of acquittal on said Counts, the Petitioner was found guilty. This finding is inconsistent with the facts of the case and the law. To this, the Nevada Supreme Court has ruled "committing a non-criminal act, with (or without) intent, is not a crime." Further, "that (perceived) thoughts alone <u>do not</u> constitute a crime." **<u>Childs v. State, 864 P2d 277.</u>**

In addition, provisions of 42 USC 2000(a)-1, guarantee that all persons are entitled to be free at any establishment or place from discrimination <u>of any kind</u>, on the ground of religion - **INCLUSIVE** of Freedom of Thought, which is protected by the First Amend-

ment.

Based on the convictions on Counts II and V, it appears discriminatory that, any time the Petitioner enters a retail establishment, regardless of the innocence of his conduct, he is in violation of NRS 205.060. This is unconstitutional, wherein a State's Law Enforcement can arbitrarily enforce a statute on the desireability of controlling a person's perceived private thoughts. **Stanley v. Georgia, 89 SCt 1243, 1248.** In said case, the United States Supreme Court declared that ... "the assertions that the State or its representatives have the right to control the moral context of a person's perceived thoughts - is wholly inconsistent with the philosophy of the First Amendment."

If intent is a state of mind, then it has the same protection as "Freedom of Religion," and the protection of the First Amendment is available, regardless of motivation or intent. **LeBlanc-Streburg v. Fletcher, 781 FSupp 261, 266 (1991)**; and, **Sustre v. Rockefeller, 312 FSupp 863, 865 (1970).**

In which case, the Petitioner's conviction on Counts II and V were a breach of Petitioner's Civil Rights, and Counsel's decision to not protect Petitioner from such, constituted violations of Due Process and the right to Effective Assistance of Counsel.

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GROUND TWENTY-ONE

COUNSEL WAS INEFFECTIVE IN ALLOWING PETITIONER TO BE SUBJECTED TO PROSECUTION OF NRS 205.060 AND 205.965, WHICH ARE UNCONSTITUTIONALLY VAGUE UNDER THE DUE PROCESS CLAUSE, IN VIOLATION OF PETITIONER'S RIGHTS TO DUE PROCESS, A FAIR TRIAL, AND EQUAL PROTECTION OF THE LAW, AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES.

Petitioner's convictions under NRS 205.060 and 205.965 are unconstitutional. Said statutes are unconstitutionally vague and overbroad, under both NOTICE and an ARBITRARY ENFORCEMENT ANALYSIS. **Grayned v. City of Rockford, 408 US 104, 108 - 109.**

As referenced in GROUND TWENTY, wherein Petitioner's convictions for Counts II and V violated his First AMENDMENT rights, the above statutes fail to give fair NOTICE of the conduct proscribed or fail to provide explicit standards for those who enforce it, thereby allowing discriminatory enforcement.

CASE AND POINT.

The Nevada Supreme Court has held that, without defining the crime and understanding the proscribed conduct to persons of ordinary intelligence, there is no prosecutable offense. **Childs v. State, supra., quoting Lyons, 105 Nev at 320, 775 P2d at 221.**

CASE AND POINT.

At trial, counsel cross-examined Detective Armitage, and it becomes clear that said Detective discriminately assumes Petitioner's every entry into a retail establishment to "comparison shop" constitutes the intent to commit Larceny or a felony.

* * *

Tt, November 13, 2003, Van Ry cross-examines Detective Armitage, Page 40, Lines 1 - 25, and Page 41, Lines 1 - 13:

go to the sporting goods section of the store, is that correct?
A: Yes.
Q: And you followed him 20 to 30 feet behind?
A: Yes, sir.
Q: As you walked into the store and the defendant was in the store, you testified that he stopped and looked at golf clubs and accessories, correct?

A: Correct
Q: And it appeared from your advantage point that he was observing the label and the pricing information, is that correct?
A: Yes.
Q: Observing pricing information isn't necessarily a chargeable offense, is it?
MS. RIGGS: Objection. Calls for a legal conclusion.
THE COURT: As I ruled yesterday, I will overrule that objection. I'm not going to prevent somebody from testifying as to a legal conclusion if it's within their sphere of knowledge. And I would find that witness would know of these kinds of things.
THE WITNESS: Observing, no.
BY MR. VAN RY:
Q: How about writing down pricing information?
--- P.41
A: Potentially, probably a crime.
Q: So you're saying if I walk in a Raley's, and I write down price information for milk and yogurt, and I walk out of the store, that would be a chargeable offense?
A: Not necessarily the pricing information, maybe the bar code information.
Q: But you would need additional information?
A: Correct.
Q: But just by itself?
A: Correct.
MR. VAN RY: No further questions, Your Honor. Thank you.

* * *

Such arbitrary and discriminatory enforcement, as well as prosecution, under these two (2) Nevada statutes are unconstitutional.

To be prosecuted for NRS 205.060 and 205.965, upon the basis of an arbitrarily-ascribed intent by law enforcement, when an individual merely enters establishments or places open to the public, within the scope of 42 USC 2000(a) and 2000(a)-1, is repugnant to the Fourteenth Amendment to the United States Constitution. Said Amendment prohibits the State of Nevada from making or enforcing any law which abridges the privileges or immunities of citizens of this country.

Lastly, the arbitrary enforcement and prosecution of such exceeds the limit fixed by the Legislature, with regard to the extensions of the common-law scope of the Statute, as expressed in the file

of the enactment thereof. **See, Laws of Nevada Fifty-Sixth Session, Chapter 547, Page 1161.**

But for Counsel's failure to protect Petitioner's rights in this action, said ineffectiveness in representation falls below the objective standards of reasonableness.

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GROUND TWENTY-TWO

PETITIONER WAS DENIED HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS, EQUAL PROTECTION, EFFECTIVE ASSISTANCE OF COUNSEL, AND A FAIR TRIBUNAL, DUE TO THE CUMULATIVE EFFECT OF ERRORS COMMITTED BY COUNSELS, THE PROSECUTION, AND THE COURT, RESULTING IN PETITIONER BEING CONVICTED OF MULTIPLE LIFE SENTENCES.

Petitioner's convictions and sentences are invalid under the Federal and State Constitutional guarantees of Due Process, Equal Protection, Effective Assistance of Counsel, and a Fair Tribunal, due to the cumulative effect of errors, as presented herein, such as in the admission of evidence, gross misconduct of the Prosecutor, and the systematic deprivation of the Petitioner's right to Effective Assistance of Counsel. The Government's case against the Petitioner is weak; the only substantial evidence submitted to convict Petitioner at trial was the highly-tainted, perjured testimony of a more culpable Co-Defendant Brett Bowman.

The Court, Counsel, and the Prosecution, committed numerous errors throughout Petitioner's trial, sentencing hearing, and direct appeal, which include, but are not limited to, the following areas:

1. Ineffective assistance of appellate counsel for failing to present issues to the Nevada Supreme Court in a proper, Federalized fashion.

2. The Nevada Supreme Court failed to conduct a proper appellate review.

3. The Grand Jury Indictment is flawed due to the Prosecution proffering a prior Burglary conviction thereof.

4. Petitioner's mental competency was in question at the time of the alleged crimes.

5. Petitioner's sentences and convictions are invalid, due to insufficient evidence.

6. Petitioner's sentence and convictions are unconstitutional due to the imposition of the Habitual Criminal Enhancement.

7. Trial Counsel was ineffective for allowing Petitioner to be subjected to excessive restitution.

8. Trial counsel was ineffective for allowing Petitioner to be subjected to multiplicitous and duplicative counts.

9. Trial Counsel was ineffective for allowing Petitioner to be subjected to lesser-included offenses.

10. Trial Counsel was ineffective for allowing Petitioner to be subjected to vindictive prosecution and/or selective prosecution.

11. Trial Counsel was ineffective for allowing Petitioner to be subjected to irrelevant and perjured testimony.

12. Trial Counsel was ineffective for allowing Petitioner's jury to be subjected to known-to-be perjured testimony and vouching by the

13. Trial Counsel was ineffective for not investigating and arguing that witnesses acted as police agents with violative conduct.

14. Trial Counsel was ineffective for not thoroughly investigating Discovery, thereby allowing Petitioner to be subjected to Prosecutorial Misconduct.

15. Trial Counsel was ineffective for not appealing the Court's decision to not quash the Indictment and proffer other Indictment deficiencies.

16. Trial counsel was ineffective due to an actual conflict of interest.

17. Trial Counsel was ineffective at Petitioner's Sentencing Hearing for not investigating and proffering a host of mitigating evidence.

18. Petitioner's Habitual Criminal sentences are unconstitutional due to priors not being violent and compliant with standards for enhancement.

19. Counsel was ineffective in not protecting Petitioner from prosecution, whereas Petitioner's Eighth Amendment rights were breached.

20. Counsel was ineffective in not protecting Petitioner from prosecution, whereas Petitioner's First Amendment rights were breached.

21. Counsel was ineffective in allowing Petitioner to be subjected to prosecution of NRS 205.060 and 205.965, which are unconstitutionally vague under the Due Process Clause.

In **United States v. Frederick, 78 F3d 1370, 1381, (9th Cir, 1996)**, the Ninth Circuit Court of Appeals opined that:

> In some cases, although no single trial error examined in isolation is sufficiently prejudiced to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant. Where, as here, there are a number of errors at trial, a balkanized, issue-by-issue harmless error review is far less effective than analyzing the overall effect of all the errors in the context of the evidence introduced at trial against the defendant. In those cases where the government's case is weak, a defendant is more likely to be prejudiced by the effect of cumulative errors.

Although individual errors looked at separately may not rise to the level of reversible error, the cumulative effect may nevertheless be so prejudiced as to require reversal. **United States v. Necoechea, 986 F2d 1273 (9th Cir, 1993)**.

Petitioner's substantive rights were violated as demonstrated by the issues presented herein, let alone, the deprivation of his constitutional rights to a fair trial, due to cumulative errors.

Unless an aggregate harmlessness determination can be made, corrective error will mandate reversal, just as surely as will individual error that cannot be considered harmless. **United States v. Rivera, 900 F2d 1467, at 1470 (10th Cir, 1990)**.

Due to the cumulative effect of errors, Petitioner's conviction requires reversal.

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CONCLUSION

Petitioner files this Petition For Writ of Habeas Corpus (Post-Conviction), pursuant to NRS 34.360, et. seq., in which he raises several viable colorable claims of Ineffective Assistance of counsel. The claims arise out of instances from Constitutional violations during pre-trial, preliminary, arraignment, sentencing, and appellate procedures. See Petitioner's PETITION, on file herein.

Nevada Revised Statute 34.770 provides for judicial determination in warranting an evidentiary hearing: (1) upon return and/or answer, and review of all supporting documents on file, a determination shall be made as to whether an evidentiary hearing is required.

Ordinarily, claims like the ones raised in Petitioner's instant PETITION would require that this Court enter an ORDER mandating the need for an evidentiary hearing on the questions of facts regarding Counsels' (both trial and appellate) explanations for why several defenses were omitted, and to inquire into the Constitutional violations. Indeed, this Court is fully aware of the Nevada Supreme Court's jurisprudence regarding the need for an evidentiary hearing when Petitioners raise colorable claims of ineffective assistance of counsel. **Bolden v. State, 99 Nev 181 (1983)**. See also, **Gibbons v. State, 97 Nev 520 (1981)**.

In the instant Petition, a hearing is necessary, because based on a review of the record as a whole, including the charging documents, arraignment, preliminary waiver by counsel, evidence, sentencing, and absence of competent assistance of counsel on direct appeal, the Statute is on point for an evidentiary hearing. Owing to the nature of Petitioner's claims, such hearing is necessary to decide these matters.

Furthermore, Petitioner raises claims outside the scope of the record. Therefore, the claims raised "outside" cannot be relied

on by the record to establish the facts needed to determine counsel's ineffective performance. **Bolden, at 659 P2d 886 (1983).**

Thus, Petitioner has not simply raised bare or naked allegations. Even without the benefit of a complete record in the preparation of these pleadings, the documentation, and absence of a crucial defense, there are great significances that have been established in misconduct and inadequate representation. **Hsrgrove v. State, 100 Nev 498, 502, 686 P2d 222**; **State v. Runningeagle, 859 P2d 169 (1993)**, cited by the Nevada Supreme Court in **Brown v. State, 113 Nev 305, 933 P2d 187, 190 - 91 (1997)**.

A colorable claim is one that, if the claims are true, might have changed the outcome of the proceedings. **Id., 859 P2d 173**. In the instant Petition, Petitioner respectfully draws this Court's attention to the instant Memorandum of Points and Authorities In Support of Petition For Writ of Habeas Corpus (Post-Conviction), incorporated within said Petition.

Counsels' performances were severely deficient and prejudiced the defense, violating Petitioner's First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights, secured by the United States Constitution, and equivalent rights under the Constitution of the State of Nevada.

First, Counsels' representation fell below an objective standard of reasonableness. Second, the deficient performance prejudiced Petitioner's defense. There is a reasonable probability that, but for Counsels' ineffectiveness, the results of the proceedings would have been different. **Strickland v. Washington, 466 US 668 (1984)**. Specifically, the applicable law standard for judging the effectiveness of assistance of counsel in accordance with the Sixth Amendment was adopted by the Nevada Supreme Court in **Wilson v. State, 105 Nev 110, 771 P2d 583 (1989)**.

Thus, Petitioner has satisfied the burden of the two-prong examination. Counsels' representation fell far below the qualitative normative standards dictated by these Constitutional Amendments. See, **Washington v. Estelle, 648 F2d 875 at 879 (1988)**.

WHEREFORE, Petitioner respectfully requests this Honorable Court to appoint counsel and allow counsel to review the full record of this case. (Petitioner is a layman at law, and is limited to the assistance of other incarcerated inmates, in attempting to bring forth the instant proceedings). Petitioner further requests this Honorable Court **GRANT** him and evidentiary hearing on the issues herein to support granting the relief as requested herein.

RESPECTFULLY SUBMITTED, this 8th day of November, 2005, by:

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona
c/o Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

VERIFICATION

I, Ferrill J. Volpicelli, do hereby depose and say, under the pains and penalties of perjury, as pursuant to NRS 208.165, that all assertions of fact contained in the foregoing PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) are true and correct, as to the best of my knowledge, information, and belief.

EXECUTED and DATED, this 8th day of November, 2005, ath the Lovelock Correctional Center, Lovelock, Nevada, by:

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

CERTIFICATE OF SERVICE BY MAIL

I, Ferrill J. Volpicelli, do hereby CERTIFY that, I have, on the date last-here-written, served a true and correct copy of the attached PETITION FOR WRIT OF HABEAS CORPUS, and accompanying EXHIBITS, upon all opposing parties, pursuant to NRCP 5B, by placing the same in sealed envelopes, with sufficient postage affixed, addressed to the following individuals at their respective places of business, and placing the same in the United States Postal Service Mail at the Lovelock Correctional Center Law Library Facilities, Lovelock, Pershing County Nevada:

Washoe County District Attorney
Attorney General of the State of Nevada
Warden, Lovelock Correctional Center

EXECUTED and DATED, this 8th day of NOVEMBER, 2005, at the Lovelock Correctional Center, Lovelock, Nevada, by:

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

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ITEM	EVID. NO.	OWNER	STATUS
One (1) Radius 15" Liquid Crystal Monitor*	A87919	WalMart	Returned
One (1) Compaq Model 5000 NIB Computer System*	A87920	WalMart	Returned
One (1) HP V-40 Fax-Copier*	A87921	WalMart	Returned
One (1) HP V-40 Fax-Copier*	A87922	WalMart	Returned
One (1) Panasonic SC-HT70 Dyna Movie*	A87923	Target	Returned
One (1) Panasonic SC-HT70 Dyna Movie*	A87924	Target	Returned
One (1) Hoover Wind Tunnel Vacuum*	A87925	WalMart	Returned
One (1) Fountain Blue Wool Handcrafted Rug*	A87926	Lowe's	Returned
One (1) Panasonic Cordless Answering System Box – empty	A87927	F. Volpicelli	In Evidence
One (1) Computer Keyboard	A87927	F. Volpicelli	In Evidence
One (1) Computer Mouse	A87927	F. Volpicelli	In Evidence
Two (2) Power Strips	A87927	F. Volpicelli	In Evidence
One (1) Phantom Wildcat Vacuum*	A87928	KMart	Returned
One (1) Memorex 9" Miniview Travel Television*	A87929	Target	Returned
One (1) V-3 Racing Wheel NIB Game*	A87930	KMart	Returned
One (1) Playstation Open Force Driving Game*	A87931	KMart	Return Pending
One (1) Deflect-O Bath N' Spa Exhaust Kit*	A87932	Home Depot	Returned
One (1) Simplicity Serge Pro Sewing Machine*	A87933	WalMart	Returned
One (1) Kodak Slide Projector*	A87934	Office Max	Return Pending
One (1) Krups Espresso Machine*	A87935	Bed, Bath & Beyond	Return Pending

CR03P1263 DC-9900025217-002
POST: FERRILL J VOLPICELL 17 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955
FX1

EXHIBIT 1

RPD CASE NO. 01-216321
INVENTORY OF PROPERTY

ITEM	EVID. NO.	OWNER	STATUS
One (1) Emerson EWC19D1 Television*	A87909	WalMart	Returned
One (1) Emerson EWC19D1 Television*	A87910	WalMart	Returned
One (1) Emerson EWC19D1 Television & DVD Combo Set*	A87911	WalMart	Returned
One (1) Panasonic SC-DK10 DVD Stereo System*	A87912	WalMart	Returned
One (1) Kohler Rosario Low Flow Toilet*	A87913	Home Depot	Returned
One (1) Computer	A87914	F. Volpicelli	In Evidence
Various colored empty plastic bags from several local merchants	A87915	F. Volpicelli	In Evidence
One (1) Art Explosion Label Factory Deluxe	A87915	F. Volpicelli	In Evidence
One (1) Panasonic 2.4 GHz Cordless Answering System	A87915	F. Volpicelli	In Evidence
One (1) Nokia Phone Box – Empty	A87915	F. Volpicelli	In Evidence
One (1) Samsonite Charger	A87915	F. Volpicelli	In Evidence
Two (2) Avery #8165 Labels	A87915	F. Volpicelli	In Evidence
One (1) Multi-Tool	A87915	F. Volpicelli	In Evidence
One (1) Texas Instrument Connectivity Value Kit	A87915	F. Volpicelli	In Evidence
One (1) Texas Instrument TI-89 Calculator	A87915	F. Volpicelli	In Evidence
One (1) Hoover Steam Vacuum*	A87916	Shopko	Return Pending
One (1) Brother Fax Machine*	A87917	Custom Office	Return Pending
One (1) KDS-RAD5 Monitor*	A87918	WalMart	Returned

ITEM	EVID. NO.	OWNER	STATUS
One (1) Closetmaid Closet	A87936	F. Volpicelli	In Evidence
Two (2) Aero Minute Air Beds*	A87937	WalMart	Returned
One (1) Ozark Queen Size Air Bed*	A87938	WalMart	Returned
One (1) Optima Amplified TV Antenna	A87939	F. Volpicelli	In Evidence
One (1) V-Tech 2.4 ghz Digital Telephone Multi Handset Combo*	A87940	Target	Returned
One (1) V-Tech 2.4ghz Digital Telephone & Answering System*	A87941	Target	Returned
Four (4) Brother Correctable Film Ribbons	A87942	F. Volpicelli	In Evidence
Five (5) Gelikan Lift Tabs	A87942	F. Volpicelli	In Evidence
One (1) Plastic Knob	A87942	F. Volpicelli	In Evidence
One (1) Avery Clear Ink Jet Labels Package	A87942	F. Volpicelli	In Evidence
Two (2) Audiovox Handi Talkies, with Chargers	A87942	F. Volpicelli	In Evidence
One (1) Norelco Shaver	A87942	F. Volpicelli	In Evidence
One (1) Braun Syncro Shaver System	A87942	F. Volpicelli	In Evidence
Three (3) Red & one (1) black plastic folder containing miscellaneous papers	A87942	F. Volpicelli	Returned
One (1) NIB Electronic Brother Brand Labeling System Control*	A87943	Office Depot	Returned
Three (3) Kodak Digital Cameras	A87944	F. Volpicelli	In Evidence
One (1) Stereo	A87945	F. Volpicelli	In Evidence
Two (2) Stereo Speakers	A87945	F. Volpicelli	In Evidence
One (1) Lego Movie Maker Toy*	A87946	Toys R US	Return Pending

ITEM	EVID. NO.	OWNER	STATUS
One (1) Sharp TV/VCR	A87947	F. Volpicelli	In Evidence
One (1) Jean Computer Monitor	A87948	F. Volpicelli	In Evidence
One (1) Sonya TV Box – empty	A87949	F. Volpicelli	In Evidence
One (1) Brother Typewriter – no case	A87950	F. Volpicelli	In Evidence
One (1) Steel Horse Wireless Headphones box – empty	A87951	F. Volpicelli	In Evidence
One (1) Moen Extensa Faucet*	A87952	Home Depot	Returned
Several unopened packages of Filler paper – 200 count each	A87953	F. Volpicelli	In Evidence
One (1) empty box Playstation 2 Gran Turismo	A87954	F. Volpicelli	In Evidence
One (1) grey folder containing miscellaneous paperwork	A87955	F. Volpicelli	Returned
Five (5) receipts	A87974	F. Volpicelli	Court
Three (3) ShopKo receipts	A87988	F. Volpicelli	Court
One (1) envelope w/fictitious UPC tags	A88171	F. Volpicelli	Destroy
Transposition Sheet	A88172	F. Volpicelli	Court
Miscellaneous Paperwork	A88172	F. Volpicelli	Returned
One (1) accordion folder containing receipts from numerous retail stores	A88173	F. Volpicelli	Court
Miscellaneous merchandise & gift cards	A88174	F. Volpicelli	Returned
Great Basin checkbook & duplicate DL paperwork	A88174	F. Volpicelli	Returned
Two (2) Key Rings w/Keys	A88174	F. Volpicelli	In Evidence
One (1) Separate Key Safe Deposit Box	A88174	Wells Fargo	Return Pending

ITEM	EVID. NO.	OWNER	STATUS
One (1) Brother Label Maker in black canvas case containing several fictitious UPC labels	A88175	F. Volpicelli	Court
One (1) Cigarette Lighter Jumper	A88176	F. Volpicelli	In Evidence
One (1) Sport Nylon Jacket	A88176	F. Volpicelli	In Evidence
One (1) box of miscellaneous files	A88177	F. Volpicelli	Returned
One (1) Panasonic KP-150 Electric Pencil Sharpener	A88178	F. Volpicelli	In Evidence
One (1) Orbital Wallarm VCR/ DVD Mount	A88179	F. Volpicelli	In Evidence
Two (2) Audio Tapes of Interview	A88277	RPD	In Evidence
Two (2) Audio Tapes of Interview	A88278	RPD	In Evidence
One (1) Video Tape of Interview	A88279	RPD	In Evidence
One (1) Video Tape of Interview	A88280	RPD	In Evidence
One (1) brown Perry Ellis wallet containing miscellaneous cards	A88281	F. Volpicelli	Returned
One (1) Capital One Mastercard	A88663	F. Volpicelli	Returned
One (1) Video Tape	A88663	RPD	In Evidence
One (1) Gateway Laptop Computer in case	A88664	F. Volpicelli	In Evidence
$886.00 U.S. Currency	A88700	F. Volpicelli	I.R.S. lien
Miscellaneous Paperwork	A90208	Chanel Volpicelli	Return Pending
One (1) Loose Diamond	A90208	Chanel Volpicelli	Return Pending
One (1) Black & Decker Variable Speed Drill	A90208	F. Volpicelli	In Evidence
Computer Disks	A90208	F. Volpicelli	In Evidence
Laminating Sheets	A90208	F. Volpicelli	In Evidence
Credit Cards	A90208	F. Volpicelli	In Evidence

ITEM	EVID. NO.	OWNER	STATUS
IDs	A90208	F. Volpicelli	In Evidence
CD-ROM	A90208	F. Volpicelli	In Evidence
One (1) blue plastic zipper file folder containing miscellaneous paperwork	A90208	F. Volpicelli	Returned
One (1) Gottschalks Card	A90208	F. Volpicelli	Returned
Miscellaneous Paperwork	A90208	F. Volpicelli	Returned
One (1) blue zippered pocket organizer	A90208	F. Volpicelli	In Evidence
One (1) Cross pen in box	A90208	F. Volpicelli	In Evidence
One (1) set Koss earphones	A90208	F. Volpicelli	In Evidence
One (1) telephone cord	A90208	F. Volpicelli	In Evidence
One (1) bottle sticker & decal remover	A90208	F. Volpicelli	In Evidence
$2,300.00 U.S. Currency	A90683	F. Volpicelli	I.R.S. lien
One (1) Floppy Disk	A91662	F. Volpicelli	In Evidence
One (1) Floppy Disk with photos	A91662	RPD	In Evidence
One (1) voided WalMart receipt	A92683	F. Volpicelli	Court
Video & Audio Tapes	A94257	RPD	In Evidence
Video & Audio Tapes	A94258	RPD	In Evidence
Video of Search from Wells Fargo	B01442	RPD	In Evidence
One (1) Bulldog Security Remote Starter*	#6 on log	ShopKo	Return Pending
One (1) Casio Cassiopeia Automatic PC*	#8 on log	ShopKo	Return Pending
Sonicare Plus Electric Toothbrush		ShopKo	Court
Two (2) Mabis Smart Read Plus Digital Blood Pressure Monitors*		KMart	Returned

ITEM	EVID. NO.	OWNER	STATUS
One (1) Quicken Business Lawyer 2001 Deluxe*		Office Depot	Returned
One (1) Book BXI checks		F. Volpicelli	In Evidence

* Restitution items

DA # 314735

FILED

2003 JUN 11 PM 4:45

RONALD A. LONGTIN, JR.

BY G. Velarde DEPUTY

RPD RP01-216321/RP01-216452/RP01-219145/RP01-220307/RP01-221241

CODE 1795
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

_____/

INDICTMENT

The defendant, FERRILL JOSEPH VOLPICELLI, is accused by the Grand Jury of Washoe County, State of Nevada, of the following:

COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, committed as follows:

That the said defendant on or between the 21st day of June A.D. 2001, and the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully, and with the intent to permanently

deprive, cheat or defraud conspire with BRETT BOWMAN with the intent then and there to commit Burglary, Theft, Forgery, Uttering a Forged Instrument, Larceny, Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, through a scheme where property and/or money was obtained from several stores in Washoe County, to wit: WALMART, K-MART, SHOPKO, TARGET, LOWE's, HOME DEPOT, OFFICE MAX, OFFICE DEPOT, BED BATH and BEYOND, BEST BUY, COMP USA, TOYS-R-US, and/or PETSMART by 1) entering said stores for the purpose of obtaining universal pricing label information to create false and forged universal pricing labels; 2) by affixing false, forged or counterfeit universal pricing labels to merchandise at said stores to purchase said merchandise for less than the posted retail price; 3) by purchasing said merchandise under the false pretense that the forged or counterfeit pricing label is a true and valid document; and/or 4) by removing the false and forged inventory pricing labels and subsequently returning some of the fraudulently discounted merchandise for the original valid retail price, thereby making a profit.

COUNT II. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 4th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 2863 Northtowne Lane, Reno, Washoe County, Nevada,

with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein, by entering to obtain UPC label and/or other pricing information, after having been previously convicted of Burglary in 1998.

COUNT III. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 11th day of September A.D. 2001, and the 29th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain HOME DEPOT located at 5125 Summit Ridge Court and/or 2955 Northtowne Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering to scout miscellaneous UPC label and/or other pricing information and/or obtain a toilet; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

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COUNT IV. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 21st day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain BED BATH and BEYOND located at 4983 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering with the intent to fraudulently obtain one or more coffee pots and/or scout pricing information related to said merchandise; and/or did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

COUNT V. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 28th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 4855 Kietzke Lane, Reno, Washoe County, Nevada, with

the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering to obtain UPC label and/or other pricing information to be used for an unlawful purpose, after having been previously convicted of Burglary in 1998.

COUNT VI. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 5th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain LOWE'S HOME IMPROVEMENT STORE located at 5075 Kietzke Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels therein, by entering with the intent to fraudulently obtain one or more wool rugs and/or scout pricing information related to said rugs, and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and

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fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

COUNT VII. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August A.D. 2001, and the 13th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain WALMART located at 2863 Northtowne Lane and/or 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein by entering with the intent to fraudulently obtain a Panasonic Home Theater system, Emerson 19" DVD-TV combo, KDS Rad-5 15" monitor, Serger sewing machine and/or a Hewlett-Packard printer and/or scout pricing information related to said merchandise; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary or burglaries by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said

///

DESIGNATES ONE OF EACH

store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

COUNT VIII. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August A.D. 2001, and the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain SHOPKO located at 5150 MaeAnne Avenue and/or 6139 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein, by entering with the intent to fraudulently obtain a Sonicare electric toothbrush and/or one or more Willow Bay comforters, after having been previously convicted of Burglary in 1998.

COUNT IX. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False

Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein, by entering with the intent to fraudulently obtain a Mongoose bicycle and/or scout pricing information related to said bicycle; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by affixing a fictitious UPC bar code label to said merchandise, by providing BOWMAN with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony, committed as follows:

That the said defendant on the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully, and with the intent to cheat or defraud a retailer, possess, make, forge or counterfeit fifteen

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or more inventory pricing labels, commonly known as "UPC bar code labels," in a motor vehicle located at the 9400 block of South Virginia Street, Reno, Washoe County, Nevada.

Dated this 11th day of June, 2003.

RICHARD A. GAMMICK
District Attorney

By _____
CHERYL HIER-JOHNSON
5021
Deputy District Attorney

PCN 82444285
81788297
81625263
82444206
82444252

06105145

The following are the names of witnesses examined before the Grand Jury:

REED THOMAS

MICHAEL BROWN

SCOTT ARMITAGE

LARRY LODGE

BRETT BOWMAN

~~GREGORY DANIELSON~~ MATT CARTER

DAVID DELLA

JENNIFER POWELL

JOHN D. ELLIS

"A TRUE BILL"

FOREMAN

"NO TRUE BILL"

FOREMAN

CR03P1263 DC-99000025217-003
POST: FERRILL J VOLPICELLI 4 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955

EXHIBIT 2

5/27/03

FERRILL VOLPICELLI
03-06479 @ WCSC
911 PARR BLVD
RENO, NV 89512

LAW
OFFICE
OF
JACK
ALIAN
ESQ:

DEAR JACK,

BASED ON OUR LAST CONVERSATION BY TELEPHONE, YOU HAVE MERELY CONFIRMED MY SENTIMENT THAT YOU HAVE NO INTENTION WITH INTERPRETING THE LAW IN MY BEST INTEREST. IT IS TRULY A TRAVESTY, WHEN I HAVE PATIENTLY WAITED FOR YOU TO FILE THE MANY PRE-TRIAL MOTIONS THAT YOU PROMISED AND NONE OF WHICH HAVE BEEN FILED SOME 20 MONTHS AFTER MY ARREST.

THE MOTION TO DISMISS THE BURGLARY RELATED CHARGES SHOULD HAVE BEEN SUBMITTED AT THE PRELIMINARY HEARINGS. ADDITIONALLY, TO ENTER TRIAL DEVOID OF ALL THE DISCOVERY IS INSANITY. CONSEQUENTLY, WE ARE UNPREPARED FOR TRIAL ON THESE MATTERS.

CLEARLY, PRACTICING LAW IS NOT ABOUT JUGGLING CASE LOADS AND ACCOMMODATING THE PROSECUTION'S CREATIVE AND MANIPULATIVE STACKED, MULTIPLICITOUS & DUPLICITOUS CHARGES. IT INVOLVES A FIDUCIARY RELATIONSHIP WITH THE CLIENT TO PROFESSIONALLY AND VIGOROUSLY CHALLENGE THE WELL GROOMED PROSECUTION'S CASE

July 23, 2002

Ferrill Volpicelli
#60076 2 NSP
Box 607
Carson City, NV 89702

Jack Alian, Esq.
160 W. Liberty
Reno, NV 89509

RE: PRE-TRIAL PREPARATION

Dear Jack,

I am writing you to confirm the issues discussed in our 7/17/02 telephone conversation.

Firstly, please forward to me a copy of the District Attorney's April letter regarding the plea bargain offered in my case. As I indicated in our last conversation, that offer is unacceptable.

I believe the referenced plea bargain offer reflects bad faith and misconduct by the prosecution. The offer to dismiss the charge against my son, Travis, in exchange for my guilty plea, clearly demonstrates that the charges should not have been filed in the first place. In addition, the pending threat to bring charges against my daughter, unless I accept the plea bargain offer, further demonstrates the prosecution's bad faith and misconduct.

Similarly, this same manipulative tactic was leveraged against Bowman, the codefendant, in exchange for his testimony against me. To alter Bowman's plea, the prosecution threatened him with the filing of the *habitual criminal enhancement* in the event that he did not cooperate with them. Further embellishment on the part of Bowman ensued when ROP's detective Thomas offered consideration to Bowman by accommodating the transfer of Bowman's paycheck to an account in County Jail. In addition, the detective promised the seizure, safekeeping and return of all Bowman's apartment property, knowing full well that all of items were the fruits of Bowman's illegal activities.

Moreover, I will not be a party to such coercion and manipulation. Please investigate and conduct appropriate legal research on these matters. Such behavior by public servants should not be tolerated or legally acceptable.

As far as my daughter, Ashley, is concerned, she is not guilty of possessing any stolen property. She merely rented a storage unit for her family. Other than her visit to the facility's office to open the account, she never visited the unit itself until after 17 October 2001. Furthermore, she had no knowledge of the contents of the unit. Any attempt to prove otherwise will be futile.

I am also concerned with the timely filing of the motions referenced in my 6-18-02 letter to you. In our 7/17/02 conversation, you specifically indicated that we could file those motions one at a time. You also stated that a continuance of the projected trial date is likely, and that we are not in jeopardy for not filing all those motions immediately and concomitantly.

Please confirm these matters to me in writing, since I am very concerned with the filing of these motions well before the scheduled trial date.

When you file the motion for a bail reduction, and as I requested in my 6/18/02 letter, I insist that you file a motion to remand my cases back to the Justice Court for a preliminary hearing. Despite your sentiments that such a motion would be denied, I believe it is imperative that the attempt be made. Again, please review my 6/18/02 letter pertaining to this motion. In the event that the motion is denied, we can then file an appropriate motion in the District Court to dismiss, or cause election, on the multiplicitous and duplicitous charges.

According to my information, on 4/23/02, an agreement for reciprocal discovery was filed. To date, I have not received any additional discovery, except the deficient material provided to me at the February Preliminary Hearing. As I previously indicated to you in my 2/1/012, 2/21/02, 3/21/02/ 6/02/02 and 6/18/01 letters, I want a copy of **ALL** discoverable materials provided to me.

Please advise me when you intend to provide me with the discovery materials clearly outlined in those letters. Additionally, please advise me of when you are going to review the prosecution's file for discoverable materials. I believe you have been less than diligent in this matter and I respectfully request you give *"discovery"* in my cases your immediate attention.

Again, please respond to the above referenced matters in writing as soon as possible.

Thank you very much for your prompt attention to these matters.

Sincerely,

Ferrill Volpicelli

Cc: file

CR03P1263
POST- FERRILL J. VOLPICELLI 3 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955
DC-99000252117-004

EXHIBIT 3

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: SEX/RACE/DOB: ------1958 AGE: 43 Years	Brent BOWMAN
RESIDENCE ADDRESS: HOME PHONE:	695 W. 3rd St., Apt. #332, Reno, Nevada 284-2280
EMPLOYMENT:	Sand's Hotel - Cabana Deli - Lead Supervisor
TAKEN BY:	Detective Mike BROWN - Sparks P.D. and Detective Larry LODGE - W.C. Sheriff's Office
ON: 10-17-01	FROM: TO:
LOCATION OF INTERVIEW:	
IN THE PRESENCE OF:	

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

LODGE. Okay. Up until, who's your P.O.?

BOWMAN. Myers.

LODGE. Myers?

BOWMAN.. Um hmm (affirmative)

LODGE. And August two thousand two (2002)?

BOWMAN. Um hmm (affirmative)

LODGE. How much a tail you got hanging over you?

BOWMAN. That's, what do you mean by tail?

LODGE. If you get violated?

BOWMAN. Ah, that's my expiration date.

BOWMAN. No conversation, just ah, "Howdy. How's the night going?" Things like that. Basic patron/clerk conversation. Nothing special or specific.

BROWN. Okay. You remember what we were talking of before we started the interview here, about us already knowing the answers to some questions?

BOWMAN. Hm umm (affirmative)

BROWN. Okay, keep that in mind as you're talking to us. Okay?

BOWMAN. Um hmm (affirmative)

BROWN. Or asking you questions.

BOWMAN. Alright.

BROWN. Okay? Now remember what I just told you again. Just go back and describe the transaction with this bicycle, at the counter with the clerk.

BOWMAN. Okay. The transaction went, I walked up, I tore off the bar code that was on the bike. Right? I handed it to her. Right? She scanned it. I paid for it. We talked about, she asked me would the Security need to come up and ah, clear this bike and she asked to (Inaudible) right and I said no.

BROWN. Okay.

BOWMAN. As long as I had the receipt I didn't (Inaudible)

BROWN. Go back to where did you get the bar code from.

BOWMAN. I tore it off the, it was already on the bike.

BROWN. Where was it on the bike?

BOWMAN. On the step of the bike, right front step.

BROWN. Why did you tear it off?

BOWMAN. To hand her the receipt, to hand to the clerk to scan it.

BROWN. Is that something you normally do on all those things you buy?

BOWMAN. No.

CR03P1263
POST FERRILL J VOLPICELLI 8 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955
Ex4

EXHIBIT 4

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 12-03-01 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

BOWMAN. ...he asked him.

THOMAS. Okay.

BOWMAN. And I was promised (Inaudible) never find that out, till we got to court.

THOMAS. Who were you promised that by?

BOWMAN. The detective.

THOMAS. Okay. I watched that interview tape and never once heard that mentioned. Okay? I never once heard that mentioned.

BOWMAN. It was said out in the corridor.

THOMAS. Well..

BOWMAN. That Ferrill would never find out (Inaudible)

THOMAS. Well, that's water under the bridge now.

BOWMAN. Yeah.

bought something? I mean I know, based on the receipts and what not, that we found in this vehicle and the merchandise we found in the storage unit, I mean I know he was buying. But rather than spoon feed you, I'd rather align your memory to see if you can recall specifically what items you bought or returned, that you'd know were fraudulent, what kind of items?

BOWMAN. (Inaudible) There was (Inaudible)

THOMAS. Um hmm.

BOWMAN. That was all me. That was when I went in I put the label on it and ah....

THOMAS. Which store?

BOWMAN. Ah, Walmart.

THOMAS. Which one?

BOWMAN. The one ah, up by here (Inaudible)

THOMAS. (Inaudible) line?

BOWMAN. Yeah. For a camcorder, I believe that's what we got.

THOMAS. What was the name of the home entertainment center, do you know, the brand name?

BOWMAN. Panasonic. Cause we specifically asked for one.

THOMAS. Okay. So did he go inside and do the bar code switch?

BOWMAN. No. I NEVER DID AND HE'LL COMPLAIN ABOUT IT LATER ON.

THOMAS. Huh? You did?

BOWMAN. I did.

THOMAS. What did he do?

BOWMAN. He just made, designed the label and said, "This is what I want and go in and get it. I'm gonna go get gas for the vehicle."

THOMAS. So he handed you the label and what was this label like? Was it sticky on the back or something, so you could stick it onto the box?

BOWMAN. Yeah. (Inaudible)

THOMAS. Yeah. Okay. Do you recall any other, what other merchandise?

BOWMAN. Ah... A rug, a hose ah...

THOMAS. And that's what you've already been booked for.

BOWMAN. Um hmm (affirmative)

THOMAS. What happened there?

BOWMAN. He told me whatever he wanted, right? I went and got it. I put this bar code to it.

THOMAS. So you had the bar code when you went into the store?

BOWMAN. Ah huh (affirmative)

THOMAS. And he told you which one he wanted, so (Inaudible)

He always altered UPC codes

BOWMAN. He said (Inaudible)

THOMAS. And the bin?

BOWMAN. When he went in the store he told me what bin it was it. I went and got it out of the bin, on the way up to the deal I put the bar code over the old, the original bar code, right? And paid for it.

THOMAS. Were you guys ever inside the store at the same time?

BOWMAN. ~~Yeah.~~ False Never.

THOMAS. And

BOWMAN. For several times.

THOMAS. Why was that?

BOWMAN. There'd be times when he'd have the bar code himself.

THOMAS. Okay.

BOWMAN. He'd set it up, leave it in the basket or on floor for me to pick up and I'd buy it.

THOMAS. Okay. Did he ever say why he wasn't doing it himself?

BOWMAN. No.

THOMAS. I mean it's obvious to me why he's not doing it himself. He doesn't want to get caught. So he's willing to pay you to do it, right? Is that the feeling you got?

BOWMAN. That's the feeling I got.

THOMAS. Okay.

BOWMAN. That's why I was getting so highly upset, cause of (Inaudible) he's supposed to go in and set it up, right, I was just supposed to go in and buy it.

THOMAS. Okay.

BOWMAN. After that, I was getting ready to say something to him that night. When we was getting ready to leave ah, right there, as we was leaving Walmart with the bike, right, he wouldn't even set that up.

THOMAS. Um hmm.

BOWMAN. Right? I was gonna tell him, "Look buddy, you know, (Inaudible) you're supposed to set it up, right?" I was gonna tell him right flat out that I was gonna, I was done running the bar code.

THOMAS. Um hmm.

BOWMAN. If he wanted any more, right, then he had to set up his own bar code.

THOMAS. Okay. How many other stops you planning on making that night before you were arrested? Because you only made the one (1) right?

BOWMAN. Three (3) He gave me three (3) stops.

THOMAS. You were gonna do three (3)? Do you know where the other two (2) were gonna be?

BOWMAN. I have no idea.

THOMAS. So he hadn't told you yet?

BOWMAN. No.

THOMAS. Do you know what he's in for?

BOWMAN. Uttering.

THOMAS. Uttering?

BOWMAN. Uh hmm (affirmative)

THOMAS. Do you ever talk to him about what you did?

BOWMAN. A little bit. As little as possible I talk to him.

THOMAS. What's he say? Hmm?

BOWMAN. As little as possible. I try to talk to him about this case as little as possible.

THOMAS. Did you ever buy a slide projector (Inaudible)

BOWMAN. Yes, I did.

THOMAS. Where did you buy it?

BOWMAN. At one of the office supply stores.

THOMAS. Was it a legitimate purchase or was it fictitious?

BOWMAN. It was fictitious.

THOMAS. How much did you pay for it?

BOWMAN. I really don't remember. It was one of the first things I bought for him.

THOMAS. Do you know how much it was worth, how much it originally sold for?

BOWMAN. No.

THOMAS. Would it be your opinion that everything in the storage unit came from merchandise like this that was probably bought fictitiously or fraudulently?

BOWMAN. Ah, probably a good ninety percent (90%) of it.

I thought he was never there so how does he know this to be fact!

THOMAS. What did you say, a good...

12-3-01

BOWMAN. A hundred, I think it was a hundred and seventy five (175), I think.

THOMAS. Okay.

BOWMAN. I'm not exactly sure.

THOMAS. Okay. Oh let's see here.

BOWMAN. I'm doing the best I can for you.

THOMAS. I know you are, I know you are. How many felony convictions do you have?

BOWMAN. Probably five (5) now.

THOMAS. Five (5)?

BOWMAN. Utah's dropped two (2) felony holds against (Inaudible) three (3) there, probably (Inaudible)

THOMAS. What are they all for?

BOWMAN. Ah, one (1) is a Criminal Mischief. A guy stole five hundred (500) bucks from me. I couldn't find him but I found his car.

THOMAS. Okay.

BOWMAN. And I trashed his car.

THOMAS. Okay.

BOWMAN. Ah, Forgery and Burglary.

THOMAS. Were those in Utah you said?

BOWMAN. Yeah.

THOMAS. How much prison time did you do there?

BOWMAN. None, I was on probation (Inaudible) probation. And then they said the last two (2) convictions, right, I ah, I guess they dropped em ah, and run em concurrent with the time I was doing here in Nevada.

THOMAS. Okay.

THOMAS. Um hmm.

BOWMAN. And I bought the one we were using.

THOMAS. You bought, he had you buy the one he was using? Was that a fraudulent buy?

BOWMAN. No. It was kind of legal, It was an actual buy.

THOMAS. It was a good, legitimate, okay. Where did you buy it?

BOWMAN. Either Office Max or Office Depot, one of the two. I can never keep those two straight. I mean they're both the same to me actually.

THOMAS. Okay.

BOWMAN. When we were doing five (5) to ten (10) stores, each night we were out, right? They all kind of run together.

THOMAS. Oh I'm sure.

BOWMAN. And to try to separate each one is tough.

THOMAS. Um hmm. Yeah I'm sure.

BOWMAN. But like I said, from what he was telling me right, that you guys basically got, you guys cleaned him out. (Inaudible) storage unit, right. He told me you guys pretty much cleaned him out.

THOMAS. Um hmm.

BOWMAN. Ah, all the (Inaudible) done, right, he said was in that storage unit.

THOMAS. Okay. And you said all those purchases were all fraudulent?

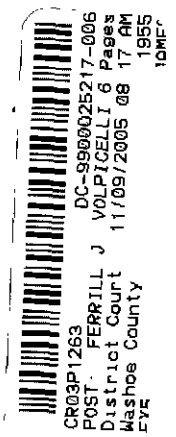
BOWMAN. Ah huh (affirmative)

THOMAS. That you were involved in.

BOWMAN. That I was involved in, right, all the ones I had bought, right, were fraudulent.

THOMAS. Okay.

BOWMAN. There were several times, right, I went with the bar code myself. He'd make the bar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District Court 11/09/2005 08 17 AM
Washoe County 1955

EXHIBIT 5

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 12-06-01 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

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THOMAS. Did you ask him not to?

BOWMAN. It ain't done a damn bit of good .

THOMAS. I don't know if they can. It may be policy. Maybe you can do it out in corridor (Inaudible) C-3.

THOMAS. Is that right?

BOWMAN. Yeah, out of sight and out of mind.

THOMAS. Yeah? Well hopefully this is the last time I got to come see you. I know every time you got to get yanked out people are wondering.

BOWMAN. Yeah.

THOMAS. So it goes without saying. Alright. I'm up here for a couple of reasons. We were talking about.... the last time I spoke to you, (Inaudible) and (Inaudible) there and also about a car video.

BOWMAN. Yeah.

lease.

THOMAS. Okay. Well I spoke to the apartment manager yesterday and she said nothing's been done.

BOWMAN. Nothing's been done?

THOMAS. Nothing's been done. She said, "As a matter of fact the eviction notice was supposed to come out this morning." Okay? And she said she, by law, has to keep your stuff for 45 days from today.

BOWMAN. Okay.

THOMAS. Okay? So that's apparently what's happened. So she said nobody's been to your apartment to collect anything.

BOWMAN. Okay.

THOMAS. Okay? So your stuff should all still be there.

BOWMAN. Alright.

THOMAS. In your phone call you described a home theater system that was fairly new. Was that one of the home theater systems that you guys went out and bought?

BOWMAN. No, it's my TV, my ah, surround sound and VCR, or not VCR, ah, VCR and ah, CD (Inaudible)

THOMAS. So this is stuff that you bought on your own some time in the past? It wasn't from Volpicelli?

BOWMAN. No.

THOMAS. Are you sure?

BOWMAN. Yeah.

B.S. THE FRUIT OF ILLEGAL ACTIVITIES. THE ITEMS IN STORAGE MATCH THOSE AT HIS APARTMENT, CAMCORDER, HOME THEATER SYSTEM

THOMAS. Okay. Because you seem to be very particular about that.

BOWMAN. Well that's the only thing I had in my life, that's the only thing I owned.

THOMAS. Okay. You said it was all brand new is all.

COURT TRANSCRIPT SHOWS THE DEFENDANTS CONTRADICTS THIS

BOWMAN. It was brand new, yeah. I bought it over a period of time.

THOMAS. Okay.

BOWMAN. While I was at the Ridge House.

THOMAS. Where did you buy it?

BOWMAN. I got it at Shopko and ah, I got the CD player at ah, Walmart.

Shaver
T.V.
coffeemaker
VCR
home theater system

THOMAS. Okay, you have the boxes and everything for em.?

BOWMAN. No, I threw em all out.

THOMAS. Okay.

BOWMAN. Ah, all it is, is it's a little studio apartment is what it is.

THOMAS. Um hmm.

BOWMAN. And I don't have a whole lot of room there. I don't have any storage to keep boxes. So.

BOWMAN LYING ABOUT THE ACQUISITIONS IN HIS APARTMENT

THOMAS. Okay.

BOWMAN. (Inaudible) my bed and my clothes.

THOMAS. Um hmm.

BOWMAN. You know, it's everything I own in my life.

THOMAS. Okay. Well you also indicated in your phone call that ah, you know, you didn't want to talk about anything on the phone, that you'd explain everything in a letter.

BOWMAN. Yeah.

THOMAS. Okay?

BOWMAN. I just (Inaudible) The reason I didn't want to explain everything over the phone was because of what was going on.

THOMAS. Okay.

THOMAS. So.

BOWMAN. With two (2) felony holds, right?

THOMAS. Two (2) warrants, yeah.

BOWMAN. Two (2) warrants, yeah.

THOMAS. Apparently you failed to appear for an interview, for doing a PSI in Utah.

BOWMAN. Right.

THOMAS. So, although I would imagine those are extraditable warrants.

BOWMAN. Ah, not any more. They were dropped.

THOMAS. They were dropped?

BOWMAN. While I was in custody for em, yeah.

THOMAS. Okay. So you don't have to worry about having to go to Utah?

BOWMAN. No. I wouldn't of gotten out if they hadn't dropped em. You know?

THOMAS. Yeah, that's true. Okay. Well this is what I want to do. Ah.... because of what you described on the phone and because of what you guys were involved in.

BOWMAN. Ah huh.

THOMAS. I would like to go to your apartment and look at that home theater stuff. I'm not gonna turn your apartment upside down. Okay? I'm not interested in anything else. (I'm interested in the stuff that you described on the phone to your sister, the home theater system and the way you explain it, which sounds very similar to what you guys were out buying. Okay?

BOWMAN. Oh that was what we were out buying, yeah.

THOMAS. Okay. Well I want to go look at it. And if I think it's something that you guys bought together I'm gonna take it. Okay? And it's gonna be held in Evidence and we can deal with it later, once this is all over. Okay?

BOWMAN. Yeah.

12-6-9

BINGO

CHANGES HIS STORY ABOUT THE HOME THEATER

BOTH LIED AT TRIAL

V3.146

BOWMAN. (Inaudible)

THOMAS. Okay. Okay. Alrighty. Well, I guess that's it for now. I hope I won't have to come up and talk to you again. Ah, it's all really contingent on how far he wants to take this. Ah, I'll tell you right now that if he wants, he's got another preliminary hearing coming up next week. Ah, I don't know if you do as well. I think they'll probably drag you down there as well and I'll try and make sure that they don't bring you guys in the same vehicle and keep you separated. (But the district attorney's opinion is right now that if he wants to play hard ball and he wants to take this to a jury, then every time he gets bound over on one of these cases, and I've got about six (6) or seven (7) of em right now, with about twenty (20) felonies facing him, she's gonna be asking for the twenty five (25) to life "bitch" every time. So. That's what he's looking at. So we'll see how much he really wants to play, if he wants to risk that, as opposed to what we're offering him. So, like I say, me talking to you is really contingent upon him at this point. If he wants to keep playing tough guy and being an asshole, then I'll keep charging him. But I may have to keep coming back and talking to you and ah, piecing together some more things)

BOWMAN. (Inaudible)

THOMAS. Okay?

BOWMAN. (Inaudible)

THOMAS. I understand. And you know what's ah, and like I say, it's all really contingent on him. I mean he's the one that's (Inaudible) gonna make this thing go away or he's the one that can drag it out. So. Alright?

BOWMAN. Right.

THOMAS. Okay.

BOWMAN. (Inaudible) talking about those coffee pots?

THOMAS. The coffee pots? Yeah.

BOWMAN. You'll (Inaudible) Volpicelli. Like I told you, I told you the other day (Inaudible)

THOMAS. Okay. Was that one bought legitimately or was it (Inaudible)

BOWMAN. No. You got the receipt for it.

THOMAS. Do I?

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District Court VOLPICELLI 3 Pages
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EXHIBIT 6

1-2-02
Conflict/Julian

RENO POLICE DEPARTMENT
TRANSCRIPT

DA# 213980

CASE # 01-216321

PERSON GIVING STATEMENT: Ferrill VOLPICELLI
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS - #4042

ON: 01-02-02 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

VOLPICELLI. ....for your protection?

THOMAS. Ah, you asked to speak with me. Yeah. I don't want there to be any dispute down the road about what we talked about.

VOLPICELLI. Okay. Alright.

THOMAS. So if there's a problem at all and you got an issue with anything that was talked about here today, it's on tape. So it protects you, it protects me. Okay?

VOLPICELLI. I guess that understandable.

THOMAS. Okay? I got this ah, "kite."

VOLPICELLI. Did I see you, did I see you at the police station?

THOMAS. We've never met.

VOLPICELLI. Never met. But you're the one that's been on the charge of my case?

THOMAS. I'm the detective in charge of your case, yes.

10

EXHIBIT

down there and she's a very accomplished attorney and very capable. She's the chief of her division for a reason. She's not gonna have anybody, you know, come in and snow her, as far as, you know, taking twenty (20) felonies and you know, reducing em down to one or two or whatever it is.

VOLPICELLI. I understand.

THOMAS. So her feeling right now is, fuck you. You know? You want to play hard ball? Fine, we'll play hard ball. Okay? So she's told me, "We're gonna start filing the Intent to file the "big bitch," every time we bind him over on another case. Every case that he gets bound over on I'm gonna file the "big bitch" on each one."

VOLPICELLI. So you get a "big bitch" on top of it?

THOMAS. You, what you get is, you know, say case number one, the Walmart case down there we arrested you on, the very first case. Okay? You go to prelim, you get bound over on those charges. Okay? Which means now you got a trial date. Right. After that prelim she's gonna file her intent to file the "big bitch" against you, which is basically ten (10) to twenty five (25) years. Okay?

VOLPICELLI. Okay.

THOMAS. And then we go to the next prelim and the next case and you get bound over on that one. Here it comes again, "I'm filing the big bitch, ten (10) to twenty five (25) years."

VOLPICELLI. So I have what, five (5), six (6) cases? How many cases do I have?

THOMAS. Yeah, you've got about six (6) cases.

VOLPICELLI. I'm gonna be doing life then basically, is that what...

THOMAS. No, what I'm saying is, is the odds of you doing life are no. You're not gonna do life. Okay? You're not gonna do life.

VOLPICELLI. I know you've had discussions. What does it look like that she's looking at? What recommendation is she gonna make?

THOMAS. But that's where this comes back on you. That's what I'm trying to explain to you. She, you know she offered you a fair deal. Your attorney even told us, "I think that's a fair deal and I think you should take it." Okay? You didn't. You came back and you basically insulted her and she said, "Fine. Fuck him.

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VOLPICELLI 6 Pages
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Washoe County
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EXHIBIT 7

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 01-03-02 FROM: TO:

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

BOWMAN. Cause he has court date on Monday.

THOMAS. On one of his prelims. Do you have any, are you scheduled to go there at all?

BOWMAN. (Inaudible)

THOMAS. Okay. I don't think you are. I know there's been a problem with transporting you guys again.

BOWMAN. Like when I have (Inaudible) or (Inaudible)

THOMAS. Do they?

BOWMAN. My court last time we were both transferred together.

THOMAS. Ah huh.

BOWMAN. And when we were sitting down there, right ah, (Inaudible)

THOMAS. Okay.

BOWMAN. (Inaudible) I told him I'm gonna testify.

BOWMAN. And (sighs) (Inaudible) bad memory man.

THOMAS. Yeah. Yeah. Okay.

BOWMAN. I mean I threw away a career, a (Inaudible) career. You know?

THOMAS. Yeah.

BOWMAN. I mean I was moving up the ladder.

THOMAS. Yeah.

BOWMAN. Hindsight was 20/20. You know?

THOMAS. Yeah. Yeah. Ah, do you have any questions (Inaudible) Anything for me (Inaudible)

BOWMAN. And you know, any idea (Inaudible) moved for? Any idea at all? You know what, at this point I'm so tired of seeing the postponements.

THOMAS. At this point it's contingent upon him. It really is. And I'm hoping that when I talk to him here in a few minutes I'm gonna be talking to him next. Because basically the way our meeting ended last night was he wanted me to take this deal to the D.A. that, the deal that he wants and I told him straight up, the D.A.'s not gonna take it." "Maybe she won't but would you please just take it to her anyway?" I said, "I'll think about it." So, I've spoken to the D.A. and there's no way that she is gonna give him the deal that he's asking for.

BOWMAN. What is he asking for? He told me ah, "Two (2) "birds" and ah, run the lewd to (Inaudible) "

THOMAS. He wants to whittle this down to one (1) "bird" basically. He's willing to plead to three (3) "birds" as long as we are willing to suspend two (2) of em, so that basically he'll only serve a sentence for one (1) "bird" and run the lewd concurrent. So basically he's looking to do time for one (1) "bird." And I keep telling him, "Ferrill you got six (6) cases, twenty five (25) charges here, you're not getting a one (1) "bird" but he just, he wouldn't listen to me. So he knows the district attorney is the one that makes the decision. And I said, "Fine, I'll take it to her and we'll see what she has to say." Well she gave me the answer that I knew she would and I could have told him that yesterday but he didn't want to listen to me, so he's gonna get the news today and it's gonna be up to him at this point to decide what he wants to do. Cause I told him, if he starts screwing with us and he wants to keep dragging this thing out and doing things like that, then we're just gonna start filing the habitual criminal on him and he can start looking at ten (10) to twenty five (25). So that's his choice. You know?

BOWMAN. That's the way it'll look, you know, I'm being hit with a burglary and I told her, "I'm being hit with a burglary." And she goes, "I don't believe it. (Inaudible) changing price tags."

THOMAS. Um hmm.

BOWMAN. And you know?

THOMAS. Okay. Well as long as you were, you know, honest with her, what you told her.

BOWMAN. I told her (Inaudible)

THOMAS. I'll tell her the same thing, it won't be any difference.

BOWMAN. They offered us a deal right, and, cause I was gonna, I was probably gonna be faced with twenty five (25) to life over this.

THOMAS. Yeah.

BOWMAN. You know? If I didn't. And ah, (Inaudible)

THOMAS. Yeah.

BOWMAN. (Inaudible)

THOMAS. Yeah. You know it all applied. But like I say, we weren't looking to hammer you. We knew you weren't the brains behind the operation, so we knew that from the get go. From the first time (Inaudible)

BOWMAN. Well I came out of prison with my back against the wall.

THOMAS. Um hmm.

BOWMAN. (Inaudible) would of left me alone, long enough to get back on my feet, right, at the half way house, I would have never gone this route.

THOMAS. Yeah.

BOWMAN. But you know, I'm making only seven forty (7.40) an hour.

THOMAS. Right.

BOWMAN. Four hundred dollars ($400.00) off the top before taxes, right?

THOMAS. Yeah.

BOWMAN. And my sister in Oregon, (Inaudible) right, but not really. I'm not (Inaudible) this time.

THOMAS. Okay. Alright. Well I'll call her and (Inaudible)

BOWMAN. If you do (Inaudible) I've got two (2) paychecks from the Sand's sitting in my property. They're gonna be expired.

THOMAS. In your property?

BOWMAN. Um hmm.

THOMAS. Here?

BOWMAN. Um hmm (affirmative) I need somebody to get em cashed before they expire.

THOMAS. How do you do that?

BOWMAN. I don't have a clue. I've written letters, I've asked people to help get em cashed. That's the only help I really need.

THOMAS. You got to endorse em.

BOWMAN. I know, all they need to do is just let me endorse em. I (Inaudible) deposit em and the money put back on my books or whatever.

THOMAS. So did you put a "kite" in to say, "Hey I want to endorse these checks and have the County cash em and put em on my books."

BOWMAN. Yeah and ah, they said ah, the jail doesn't get a service for paychecks. They'll do it for, if it was a money order but they wouldn't do it, not for paychecks.

THOMAS. What about this guy that went and cleaned up your apartment?

BOWMAN. I wrote him a letter, right, and all things got mixed up.

THOMAS. When do the checks expire?

BOWMAN. The biggest one expires the thirteenth (13th) of this month and the smaller one (Inaudible) One's for two hundred eighty five (285) and one's for seventy seven dollars ($77.00). The two eighty five (285) one expires the thirteenth (13th) of this

1-3-02

FACILITATION OF $ TO BOWMANS INMATE ACCOUNT

month. The smaller one expires the following week.

THOMAS. Okay. Well at the very least you're gonna have to get em ah... you know, you're gonna have to endorse em. So I'll have to arrange to (Inaudible) get em endorsed But let me talk to a deputy and find out exactly if that's the way to go about doing that. And I'll see what we can do.

INVOLVEMENT FAVOR TO KEEP BOWMAN TALKING ABOUT SPECIFICS HE FIGURED THE DETECTIVES WANTED TO HEAR

BOWMAN. Cause it's everything I own down there.

THOMAS. Yeah.

BOWMAN. And that's everything I go. (Inaudible) buy the TV with it and get my appliances while I'm in prison.

THOMAS. Okay. Alright. Let me talk to a county deputy that I know and we'll see if we can try to work on that and figure something out.

BOWMAN. I appreciate it.

THOMAS. Yeah, I'll give it a shot.

BOWMAN. Thank you man.

THOMAS. Okay?

BOWMAN. (Inaudible) this has really (Inaudible), just to get em to send it to me.

THOMAS. Yeah.

BOWMAN. I've been fighting with the jail, right, some way to get it dealt with before it expired.

THOMAS. Um hmm.

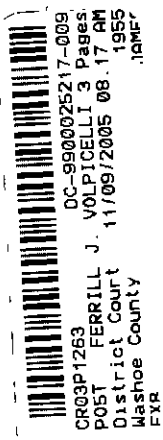
BOWMAN. But it's like butting my head against a stone wall.

THOMAS. Yeah. Okay. Do you have a bank account or anything anywhere?

BOWMAN. No.

THOMAS. No? Okay. I'll talk to a deputy and see if there's something we can do. I don't know if there is or not but we'll give it a shot.

BOWMAN. Okay.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Washoe County
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EXHIBIT 8

RENO POLICE DEPARTMENT
TRANSCRIPT

CASE # 01-216321

PERSON GIVING STATEMENT: Brett BOWMAN
SEX/RACE/DOB:

RESIDENCE ADDRESS:

EMPLOYMENT:

TAKEN BY: Detective Reed THOMAS

ON: 02-19-02 FROM: 1425 Hrs. TO:-------

LOCATION OF INTERVIEW:

IN THE PRESENCE OF:

This is NOT a certified transcript. Although every effort has been made to ensure accuracy, you need to refer to the original or a copy of the source audio/video tape.

THOMAS. February nineteenth, two thousand two (02-19-02), at fourteen twenty five (1425) hours. Detective Thomas, Reno P.D., speaking with Brett Bowman, an inmate at the Washoe County Jail. Okay. We're good to go.

BOWMAN. Ah, where do you want to start? I mean I can give you his working alias, which is Joseph Vim.

THOMAS. Well he's got lots of aliases.

BOWMAN. This was his main alias.

THOMAS. Yeah.

BOWMAN. Main working alias is Joseph Vim.

THOMAS. Yeah, that stands for Volpicelli Investment Management, something like that. So he uses that to get cards and order merchandise.

BOWMAN. And his P.O. Box is underneath that name, right, it's on California Avenue.

THOMAS. Right. Got that.

THOMAS. Um hmm.

BOWMAN. I said, "Well you're a fool not to take it."

THOMAS. Yeah.

BOWMAN. Otherwise they will "bitch" you.

THOMAS. Yeah.

BOWMAN. (Inaudible)

THOMAS. Oh yeah, if he wants to play we're gonna play. And he's gonna go away for a lot longer than that. So, you know.

BOWMAN. He has abused me, taken advantage of me.

THOMAS. Yeah.

BOWMAN. You know? Our original agreement, right, was that he'd go in, right, set it up, all I had to do was the buys.

THOMAS. Um hmm.

BOWMAN. And then it came down to where he had me doing everything.

FACT - HE WAS DOING IT ALONE TO PAY FOR HIS GAMBLING HABIT

THOMAS. Um hmm.

BOWMAN. You know? So the more I thought about it, yeah, he left me, I told him, "You left me twisted Poe. Cause I only did this thing to get by."

THOMAS. Yeah.

BOWMAN. You know?

THOMAS. Okay. Alright. Well let me get you back downstairs and I'm gonna go back down and call the prison and I'll follow up with them on that. And I will get ahold of your P.O. also and find out what the deal is with Warm Springs Institute.

FACILITATE PUBLIC INCARCERATION

BOWMAN. And you'll get ahold of my sister too?

THOMAS. Yeah. And I will try and call her again to let her know about the picture. I'll try and find this David guy and see if he's got this picture. I'm guessing that even if I find it

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Washoe County 1955
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EXHIBIT 9

<3

The Ridge House

Founded 1982

275 Hill Street, Suite 281 • Reno, Nevada 89501-1840
Phone: 775-322-8941 • Fax: 322-1544 • ridgehouse@sbcglobal.net

Dan Drinan
Executive Director

Gary Meneley
Interim Director

DIRECTORS

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Jim Faehling

Kay Elliott

Terrance P. Hubert

Mary Price

January 7, 2004

Second Letter

Mr. Ferrill Volpicelli - #79565
NNCC
P.O. Box 7000
Carson City, NV 89702

Dear Mr. Volpicelli:

This letter is in response to your correspondence dated, December 6, 2003. As I stated via telephone, due to Federal Confidentiality, 42 CFR, part 2, and 45 CFR parts 160-165, Ridge House can not confirm or deny whether individuals reside at our facility.

However, I can give you general information about the program. From 1998 to mid 2002, Ridge House expanded the career enhancement component by adding desktop computers at each facility. Clients had access to JobLink and attended computer class once per week. Basic curriculum was taught, along with how to access the internet and how to setup an email account. The computer facilitator was responsible for maintenance and upkeep of the equipment at each facility.

In July of 2002, the computer classes and client access to computers at each of the facilities was dropped. It became to costly for the upkeep of the equipment.

As far as questions a, c, d and e, as indicated in your letter, please refer to the first paragraph of this letter. Hopefully, this letter has been of some help to you. Ridge House wishes you success in your future endeavors.

Sincerely,

Dani Doehring, L.A.D.C.
Program Administrator
The Ridge House, Inc.

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POST FERRILL J. VOLPICELLI 3 Pages
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Washoe County 1955

EXHIBIT 10

Affidavit and Claim

I, Travis Volpicelli, hereby aver the following: that regrettably, and due to my transience during the summer of 2003, my father, Ferrill Volpicelli, was unable to contact me so that I could appear as a witness at his trial (#03-1263).

That as far as Brett Bowman is concerned, he initially and mysteriously appeared one morning in an elevator at the Comstock Apartments during the summer of 2001 when my father was en route to driving my brother, Logan, and I to summer school.

That thereafter, I sporadically observed e-mail communication between my father and Bowman on my computer.

That I distinctly recall Bowman's unique domain name as being listed at Yahoo and included his year of birth. That on one occasion in particular, I observed Bowman accessing the Aussie storage unit belonging to my sister- in which my father was not present and Bowman was accompanied by another gentleman in a pick-up.

That I also overheard telephone conversations between Bowman and my father whereby Bowman was requesting my father to transport him to work, RPD and P and P. That in exchange for such, I know Bowman was providing my father with prescriptions for Zanax. That on the night of the carjacking incident involving my ex-girlfriend and the 1997 explorer, I accessed some of the Zanax to self-medicate my anxiety. That outside of the initial introduction to Bowman in the elevator sometime in July of 2001, my brother and I were never together with my father and Bowman. Nor were we ever involved in any suspicious or illegal activities.

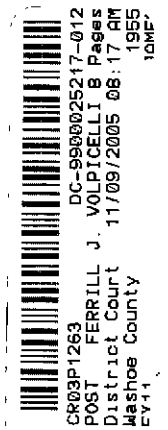
That on only one occasion did I ever see my father in possession of a labeler and it was expressly for making printed labels for organizing my father's files. That I was also aware that Bowman was storing his property at my sister's storage unit so that his probation officer would not see all of his property.

That my brother and I were compelled to store our property at my sister's storage unit due to space constraints in the studio apartment where my father, brother and I resided.

That during the summer of 2001, my father specifically reserved Saturdays, both day and evening, for quality time for Logan and I.

That Saturday evenings involved skating, bowling, movies or Reno's special events.

29) That in October of 2001, I specifically recall hearing a conversation on the telephone between
30) Bowman and my father- whereby my father insisted Bowman to remove his belongings from
31) my sister's storage unit and, instead of gambling away his pay checks, to save for a motorcycle.
33) Where to fore, I hereby request a prompt release of my property from our residence and my
34) sister's storage unit.
35)
36) Travis Volpicelli 4/21/2004
37) Travis Volpicelli Date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Washoe County 1955

EXHIBIT 11

Dave Della
Detective Sergeant -
Repeat Offender Program
Reno Police Department
P.O. Box 1900 Reno, NV 89505
(775) 334-3877

DO NOT SHOW TO TENANT

Detective SAID He IS UNDER COVER AND would like To STAY THAT WAY!

INQUIRED ON UNIT AND SHOWED BADGE + I.D.

He took A Copy of Contract AND INFOSHEET 1st Page

9:32 AM ARIVED
9:40 AM ~~LEFT~~ LEFT

RECEIVED
SEP 26 2001

T P

B-114

RECEIVED
SEP 62 2001

Dave Della
232-2080

V3.166

AUSSIE SELF STORAGE
30 E. VICTORIAN AVENUE
SPARKS, NEVADA 89431-5167

Tenant Notes

Site: AS | Date: 10/17/01 | Page: 1

SPACE : B114

Size : 10X20
Deposit: $0.00
Rent : $100.00

Entry : 08/06/01
Insurance: $0.00
Premium : $0.00

ASHLEY SCHILLING
1060 VASSAR STREET
RENO, NV 89502

Balance: $0.00
Remarks: BXI ACOUNT

Paid-To : 11/01/01

NOTES

1 09/06/01 TENANT PAYED BXI 100.00 ON THE 31ST OF AUGUST IP GAVE CREDIT AND WAVED LATE FEE IP

2 10/17/01 PAROLE&PROBATION OFFICER CAME AT 6:38PM ON THUR. EVE., FOR VOLPICELLI'S. ASHLEY SCHILLING HAS A UNIT WHERE THEY ARE AUTHORIZED FOR ACCESS. OFFICER ASKED TO PARK CAR NEAR UNIT, GETTING A WARRANT.
KP AUTHORIZED

END

DECLARATION

I hereby declare under penalty of perjury that the following statements are true to the best of my knowledge and belief.

1. I am one of the principal owners of Aussie Self Storage, LLC,
2. That on the 11th day of September, 2205, I received a Subpoena Duces Tecum demanding the production of the all records related to the rental of storage unit B-114 to Ferill J. Volpicelli.
3. That I have examined the original of the records referred to in the Subpoena Duces Tecum, and have made a true and exact copy of them.
4. That the true and complete copy of the records subpoenaed is attached.

Dale Prevost

SUBSCRIBED AND SWORN to before me

this 23rd day of September 2005.

SUSAN G. DAVIS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-37796-2 - Expires September 24, 2007

NOTARY PUBLIC

AUSSIE SELF STORAGE, LLC
30 E VICTORIAN AVE SPARKS, NV 89431

OCCUPANT INFORMATION SHEET
(Occupant to fill out – PLEASE PRINT)

Name: Ashley Schilling
Space No. B 114
Address: 1060 Vassar St.
Contract No. 2787
City: Reno
State: NV **Zip:** 89502
Home ph.: (rx) 329-0389
Cel. Pager No. ( )
Drivers License No: 4609555052
Social Security No.:
Drivers License expiration date: 5/03
Birth Date: 5/19/79

EMPLOYMENT INFORMATION

Employers Name:
Work ph.: 321-8339
Address:
City: **State:** **Zip:**

EMERGENCY CONTACT - ALTERNATE (Friend or relative at different address)

Name: CARLA LEE
Address: 1060 VASSAR ST **City:** RENO
State: NV **Zip:** 89502 **Home Ph.** 329-0389 **Work ph.** —

PERSONS AUTHORIZED FOR ACCESS: **YES** **NO**

Name Ferrill Joseph Volpicelli **Name** CHANEL Volpicelli
Name TRAVIS Volpicelli **Name**

****

I understand it is *MY SOLE RESPONSIBILITY* to keep all the above information current with Aussie Self Storage, LLC. I understand any changes with the above information are to be submitted in writing within (15) fifteen days, signed by the Occupant.

Ashley Schilling
OCCUPANT SIGNATURE

8/7/01
DATE

HOW DID YOU HERE ABOUT AUSSIE SELF STORAGE:
_____ 1. Drive by / Saw sign _____ 2. Live in neighborhood _____ 3. Yellow pages _____ 4. Newspaper Ad
_____ 5. Word of Mouth X 6. Referral-Company or business _____ 7. Other: _____

AUSSIE SELF STORAGE, L.L.C.

RENTAL AGREEMENT

30 Victorian Avenue • Sparks, Nevada 89431 • (775) 331-6000

2787

BXI

☑ INDIVIDUAL

This agreement is executed on this 8th day of Aug 20 01, ("Commencement Date") by and between Aussie Self Storage, hereinafter called "Owner" and "Occupant", for the purpose of leasing or renting space as specified above and with the express understanding that no bailment or deposit of goods for safekeeping is intended or created hereunder. **OCCUPANT** whose name is:

Ashley Schilling
NAME

SPACE NO./ APPROX. SIZE: B114 10X20

BXI

BUSINESS NAME

MONTHLY RENT: 100.00

1060 Vassar St.
STREET ADDRESS

NEXT RENT DUE/AMT.: 9/1 /$ 100.00

[redacted]ILING ADDRESS

460055052
DL. NO./I.D. NO.

SOCIAL SECURITY NO.

Reno NV 89502
CITY STATE ZIP CODE

329 0389
RESIDENCE PHONE

321 8339
BUSINESS PHONE

DATE OF BIRTH 5/19/79

RENT SCHEDULE

PARTIAL MONTH	$ 0	LATE FEE (5 days past due)	$10.00
MONTHLY RENT	$ 86.67	PRE-LIEN FEE (min. 14 days past due)	$18.00
ADMINISTRATIVE FEE	$ 15.00	RETURN CHECK CHARGE	$25.00
SECURITY DEPOSIT	$ 0	LIEN FEE (min. 28 days past due)	$25.00
[redacted]PAID RENT	$ 0	LIEN SALE FEE (min. 45 days + any auction fees)	$25.00
INSURANCE ($ _____)	$ 0	NOT LEAVING UNIT BROOM CLEAN	$50.00
OTHER (SPECIFY)	$ 0	LOCK CUT FEE	$10.00
SALES TAX	$ 0	**(MAKE CHECKS PAYABLE TO: AUSSIE SELF STORAGE)**	
TOTAL DUE	$ 101.67	**Method:** Cash _____ Check BXI Credit Card _____	

Receipt of the first monthly rent is hereby acknowledged Each succeeding month's rent is due and payable on the **1ST** day of each succeeding month until terminated by either OWNER or OCCUPANT in writing.

1. PREMISES: Owner hereby rents to Occupant, and Occupant rents from Owner, on the terms and conditions herein set forth, the self storage space described above, herein called the "Premises". The Premises shall be used solely for the purpose of storage pursuant to the terms and conditions of this Rental Agreement and for no other purposes whatsoever.

2. TERM: The term of this tenancy shall commence as of the Commencement Date and continue until Sept 1ST, 20 01. In the event that Occupant holds over the Premises beyond said term, such holdover shall be deemed a month-to month tenancy subject to all the terms and conditions of this Rental Agreement.

3. RENT: Occupant agrees to pay to Owner at 30 Victorian Avenue, Sparks, NV 99431, without deduction, prior notice, demand or billing statement, the sum of money set forth in the Rent Schedule above per month beginning on the 8th day of Aug, 20 01, and continuing on the 1st day of each and every month thereafter until this Rental Agreement terminates. If the terms of this Rental Agreement shall commence other than on the first of the month, Occupant shall owe a prorate portion of the first month's rent. Occupant shall pay, in advance, at least one full month's rent. With respect to any month-to-month tenancy, the monthly rent may be adjusted by Owner effective the month following Owner's thirty (30) day written notice to Occupant specifying such adjustment. Upon vacating the premises, Occupant agrees to give Aussie Self Storage (7) seven days notice prior to actual vacate date and leave the premises clean without waste or damage. **NO REFUNDS!** Owner also reserves the right to give Occupant (7) seven days notice to vacate upon non-compliance and/or breach of any provision of the Rental Agreement or Rules and Regulations other than non-payment of rent (Nevada Self Storage Lien Laws Apply).

4. LATE FEES, SERVICE CHARGES, DEPOSITS:--NO BILLINGS NOTICES ARE SENT!

V3.170

a. Concurrently with the execution of this Rental Agreement, Occupant shall pay to Owner a fee as specified in Rent Schedule above as a non-refundable new account administration fee.

b. All rent shall be paid in advance on the first day of each month and in the event Occupant shall fail to pay the rent by the 5th day of the month, Occupant shall pay, in addition to any of the amounts

[redacted] by signing for the insurance plan described in the insurance brochure made available by Owner, which insurance does not cover goods stored [redacted] other exclusions described in the insurance policy. To the extent Occupant does not obtain insurance coverage for the full value of Occupant's property stored [redacted] the Parking Space, Occupant agrees Occupant will personally assume all risk of loss, including damage or loss by burglary, fire, vandalism or vermin. **Owner and [redacted], affiliates, authorized representatives and employees ("Owner's Agents") will not be responsible for, and occupant hereby releases Owner and Owner's Agents from any responsibility for, any loss, liability, claim, expense, damage to property or injury to persons ("Loss") that could have been insured (including without limitation any Loss arising from the active or passive sets, omission or negligence of Owner or Owner's Agents) (the "Released Claims").** Although Owner and Owner's Agents may give insurance information in Occupant, Occupant understands that Owner and Owner's Agents are not an insurance company or insurance agents. Owner has not explained any coverage or assisted Occupant in making any claim under any insurance policy. The provisions of this paragraph will not limit the rights of Owner and Owner's Agents under paragraph 8.

7. NEVADA SELF STORAGE FACILITY LIEN LAW: In the event rent and other charges shall remain due and unpaid for a period of fourteen (14) consecutive days, Occupant's right to possession may be terminated by Owner upon written notice and Occupant's personal property in or on the Premises may be subject to a claim of lien and may even be sold to satisfy the lien if the rent and other charges due remain unpaid for fourteen (14) consecutive days after date of mailing notices

8. RELEASE OF OWNER'S LIABILITY, INDEMNIFICATION: Owner and Owner's agents shall not be liable to Occupant for any damage to, or loss of, my personal property while at the rented Premises arising from any cause whatsoever, including, but not limited to, burglary, fire, water damage, mysterious disappearance, rodents, Acts of God, or the active or passive acts of omissions or negligence of Owner or Owner's agents. Owner, Owner's agents, and employees shall not be liable to Occupant for injury or death as a result of Occupant's use of this storage space or the Premises, even if such injury is caused (in whole or in part) by the active or passive acts, omissions, or negligence of Owner, Owner's agents, or employees. Occupant will indemnify, hold harmless, and defend Owner from all claims, demands, action or causes of action (including attorney's fees and costs) that are hereinafter brought by others arising out of the Occupant's use of the Premises, including (without limitation) claims for Owner's active negligence. **Occupant agrees that Owner's and Owner's Agents' total responsibility for any Loss from any cause whatsoever will not exceed a total of $5,000.00.**

9. RIGHT TO ENTER: Occupant grants Owner, Owner's agents, or representatives of my government authority including police and fire officials, access to the Premises upon THREE (3) days prior written notice to Occupant. In the event of an emergency, Owner Owner's agents, or representatives of any governmental authority shall have the right to remove Occupant's lock and enter the Premises, without notice to Occupant, and take such action as may be necessary or appropriate to preserve the Premises, to comply with applicable law, or enforce any of Owner's rights. If any default shall be made in any of the covenants herein contained or if Occupant shall abandon the Premises, Owner may enter the Premises and remove all property therefrom, in which event this [redacted]ental Agreement shall terminate without prejudice to Owner's right to recover rent due and unpaid through the date of such entry, damages in respect of any default under this Rental Agreement, and such other amounts as may be recoverable pursuant to law in the event of a breach of this Rental Agreement or abandonment of the Premises by Occupant prior to the expiration of the Rental Agreement, Owner may, at its option, determine not to terminate this Rental Agreement in which event the Rental Agreement shall continue in effect and Owner may enforce all of its rights and remedies under this Rental Agreement.

10. INSPECTION AND SECURITY: Occupant has been afforded an opportunity to inspect the Premises and the project property, and acknowledges and agrees that the Premises and the common areas, including the safety and security thereof, are satisfactory to Occupant's intended uses of the Premises or the common areas of the project. All storage unit sizes are approximate. Occupant shall be entitled to access to the Premises and the common areas of the project only during such hours and on such days as are regularly posted at the project. Owned shall not be deemed to, either expressly or implicitly, provide any security or protection to Occupant's property. Any security devices which Owner may maintain are for the protection of Owner's investment, including but not limited to building and equipment. Owner my discontinue that use at any time without notice

11. WASTE, QUIET CONDUCT, MAINTENANCE: Occupant shall take good care of the Premises and repair any damage or waste, whether to the interior and/or exterior of the Premises, necessitated or occasioned by the act or neglect of Occupant or any agent of Occupant or other person for whose acts Occupant is responsible.

12. LOCKS: Occupant shall not put more than one lock on his unit at any time. Occupant shall provide, at Occupant's own expense, a lock for the Premises which Occupant, in Occupant's sole discretion, deems sufficient to secure the Premises. Owner may, but is not required to lock the space if it is found open. Owner has the right, as it deems necessary to remove such lock by cutting or other means, to gain entry to the Premises under Paragraph 9 above Owner shall not be held liable for replacement of any lock that is damaged by forced entry by the Owner under provisions of Paragraph 9 above.

13. ENFORCEABILITY: If any part of this Rental Agreement is held to be unenforceable for any reason, all remaining parts of this Rental Agreement will nevertheless be valid and enforceable [redacted] all circumstances and Occupant hereby expressly agrees.

14. ACCEPTANCE OF PAYMENT OF RENT: In the event of a default by Occupant, Occupant agrees that (a) the tender of the rental by Occupant and the acceptance thereof by Owner, if not the full amount due, or (b) the allowing of Occupant to remove his personal property from the Premises, after the delivery of a preliminary lien notice or during the pendency of an unlawful detainer action, shall not constitute a waiver of the preliminary lien notice, the notice of termination nor shall it reinstate the terms and provisions of this Rental Agreement

15. WAIVER: The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term covenant or condition upon any subsequent breach of the same term, covenant or condition. Any subsequent acceptance of performance shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Rental Agreement, other than the failure to perform the particular duties subsequently accepted, regardless of knowledge of such preceeding breach at the time of acceptance of such performance.

16. ATTORNEYS FEES AND COSTS: In the event any action be instituted, or other proceedings taken to enforce any covenant herein contained or to recover any rent due or to recover possession of the Premises for any default or breach of this Rental Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses at trial or on appeal

17. RULES: Owner shall have the right to establish or change hours of operation and access or to promulgate rules and amendments, or additional rules and regulations for the safety, care and cleanliness of the Premises, or the preservation of good order of the facility. Occupant agrees to follow all of Owner's rules now in effect, or that may be put into effect from time to time. A current list of all rules and regulations will be posted in the facility office. Rules and regulations are made a part of this Rental Agreement and Occupant shall comply at all times with such rules and regulations. Copies of the list an available to all Occupants.

18. NOTICES: All notices required by law, or by this Rental Agreement may be sent to Occupant at any of the addresses given by Occupant above, by first class mail, postage prepaid and shall be deemed given when deposited in the U.S. Mail. Occupant agrees that any such notice is conclusively presumed to have been received by Occupant FIVE (5) days after mailing, unless returned to Owner by the Postal Service. Any of the terms of this Rental Agreement may be changed by Owner by giving written notice by mail, as provided in this paragraph, FIVE (5) days prior to the expiration of any month of this tenancy

19. NO ORAL RENTAL AGREEMENTS: This Rental Agreement contains the entire Rental Agreement between Owner and Occupant and no oral Rental Agreements shall be of any effect whatsoever Occupant agrees that he is not relying, and will not rely, upon any oral representations made by Owner, or by any of Owner's agents or employees purporting to modify or add to this Rental Agreement in any way whatsoever Occupant agrees that this Rental Agreement may be modified only in writing, by Owner, in order for such modification to have any effect whatsoever.

20. CHANGE OF OCCUPANT'S ADDRESS: Occupant is responsible for notifying Owner in writing of the change of any of the addresses given by Occupant Owner shall not be presumed to have received notice of any change of address unless given in writing by Occupant, and sent to Owner at Owner's address given above, first class mail, postage prepaid. In the event Occupant shall change Occupant's place of residence or business or alternate name and address as set forth in this Rental Agreement, Occupant shall give Owner written notice of any such change within ten (10) days of the change, specifying Occupants current residence and alternate name, address and telephone number.

15. WAIVER: The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term covenant or condition upon any subsequent breach of the same term, covenant or condition Any subsequent acceptance of performance shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Rental Agreement, other than the failure to perform the particular duties subsequently accepted, regardless of knowledge of such preceding breach at the time of acceptance of such performance.

16. ATTORNEYS FEES AND COSTS: In the event any action be instituted, or other proceedings taken to enforce any covenant herein contained or to recover any rent due or to recover possession of the Premises for any default or breach of this Rental Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses at trial or on appeal.

17. RULES: Owner shall have the right to establish or change hours of operation and access or to promulgate rules and amendments, or additional rules and regulations for the safety, care and cleanliness of the Premises, or the preservation of good order of the facility. Occupant agrees to follow all of Owner's rules now in effect, or that may be put into effect from time to time A current list of all rules and regulations will be posted in the facility office. Rules and regulations are made a part of this Rental Agreement and Occupant shall comply at all times with such rules and regulations. Copies of the list an available to all Occupants

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21. ASSIGNMENT: Occupant shall not assign or sublease the Premises or any portion thereof. Owner has the right to assign this contract

22. WARRANTIES: Owner hereby disclaims any implied or express warranties, guarantees or representations of the nature, condition, safety, or security of the Premises. The Premises are not protected by cold weather or by heat

23. HOLD HARMLESS AGREEMENT. Occupant agrees that if he or an authorized person for access borrows or uses my equipment such as dollies, carts or hand trucks or keys for elevator(s), he holds harmless Aussie Self Storage, its Owner's and agents responsible for any injury or damage caused by such use Any such equipment is considered property of Aussie Self Storage and may only be used with permission Aussie Self Storage and a deposit my be required upon request for use of said equipment

24. INCORPORATION OF PROVISIONS. Occupant acknowledges that he has read, is familiar with and agrees to all of the provisions of this Rental Agreement, all pages and numbered items, and Owner and Occupant agree that all such provisions constitute a material part of this Rental Agreement and are hereby incorporated by reference Occupant agrees that he has received a copy of this Rental Agreement and the Rules and Regulations

IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement the day and year first above written

Ashley Schilling
Occupant. Print Name

Ashley Schilling
Occupant Signature

8/7/01
Date

Owner. **AUSSIE Self Storage, L.L.C.**

Received by. Agent for Owner

END OF RENTAL AGREEMENT (pg 2 of 2)

V3.172

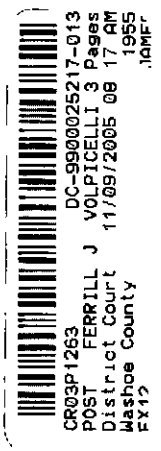
CR03P1263
POST FERRILL J
District Court
Washoe County
DC-99000025217-013
VOLPICELLI 3 Pages
11/09/2005 08 17 AM
1955

EXHIBIT 12

ST# 2838 OP# 00000814 TE# 26 TR# 01774

NOKIA CHARGR 0043168404515	9.96	J
COUNTER CARD 0610290020755	1.99	J
15 MONITOR 0769940305005	394.44	J ←
SUBTOTAL	406.39	
SALES TAX 1	29.46	
TOTAL	435.85	
CASH TEND	436.00	
CHANGE DUE	0.15	

TC# 0000 2855 5464 9612 9341 9

10/01/01 13:03:01

Sorry!
This was the only one we could find

3-19-04
Cash Office

WAL★MART
ALWAYS LOW PRICES. ALWAYS WAL-MART.

Always

WE SELL FOR LESS
MANAGER MATTHEW CARTER
(775) 359 - 8200
ST# 2106 OP# 00002821 TE# 66 TR# 07826

LUGG CART	003905281895K	9.88 J
	SUBTOTAL	9.88
TAX 1	7.250 %	0.72
	TOTAL	10.60
	CASH TEND	20.00
	CHANGE DUE	9.40

ITEMS SOLD 1

TC# 1289 7625 6311 8771 1678

CASH YOUR TAX REBATE CHECKS HERE!
09/01/01 18:38:54

WAL★MAR
ALWAYS LOW PRICES. ALWAYS WAL-MAI

Always

WE SELL FOR LESS
MANAGER SAMUEL KUPFER
(775) 829 - 8088
ST# 2189 OP# 00002377 TE# 92 TR# 036

MICROWAVE	007400063950	99.96
REFRIGERATR	068805710122	169.84
FREEZER	068805711048	156.83
	SUBTOTAL	426.63
JAW CLIPS	004319413991	2.47
SKIN CARE	038137003475	4.77
	SUBTOTAL	433.87
TAX 1	7.250 %	31.46
	TOTAL	465.33
	MCARD TEND	465.33

ACCOUNT #7541-09/03
APPROVAL #045166
TRANS ID -
VALIDATION -
PAYMENT SERVICE - N
CHANGE DUE 0.00

ITEMS SOLD 5

TC# 0240 3856 3427 7629 2441 6

CASH YOUR TAX REBATE CHECKS HERE!
07/31/01 18:46:26

CUSTOMER COPY

WAL★MART
ALWAYS LOW PRICES. ALWAYS WAL-MART.

Always

WE SELL FOR LESS
MANAGER GERALD LALONDE
(714) 491 - 0744
ST# 2242 OP# 00002941 TE# 04 TR# 06236

HOVWINDVAC	007350202288K	288.00 J
SERGER	009861293254K	263.83 J
900MHZ PHONE	073507809116	29.97 J
	SUBTOTAL	581.80
TAX 1	7.500 %	43.64
	TOTAL	625.44
	MCARD TEND	625.44

ACCOUNT #7541-09/03
APPROVAL #025104
TRANS ID -
VALIDATION -
PAYMENT SERVICE - N
CHANGE DUE 0.00

ITEMS SOLD 3

TC# 7713 1233 1172 1055 5519 1

CASH YOUR TAX REBATE CHECK
08/20/01 13:24:1

CUSTOMER COPY

WAL★MART
ALWAYS LOW PRICES. ALWAYS WAL-MART.

Always

WE SELL FOR LESS
MANAGER MATTHEW CARTER
(775) 359 - 8200
ST# 2106 OP# 00002941 TE# 03 TR# 09685

MENS SOCKS	001309618061	3.98 J
900MHZ PHONE	073507809116	29.97 J
	SUBTOTAL	33.95
TAX 1	7.250 %	2.46
	TOTAL	36.41
	CASH TEND	40.00
	CHANGE DUE	3.59

ITEMS SOLD 2

TC# 0049 7541 6971 8872 4618

CASH YOUR TAX REBATE CHECKS HERE!
08/23/01

CR03P1263 DC-9900025217-014
POST FERRILL J. VOLPICELLI 4 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955
EY12 10MF

EXHIBIT 13

Incident Report

RENO POLICE DEPARTMENT	01-216321	Supplement No 0002

OFFICER 1: ;BROWN, MIKE

Invl	Seq	Type	Name
OFF	1	I	;BROWN, MIKE

Narrative

DETAILS:

On Wednesday, October 17, 2001, I was assisting other Detectives in the Repeat Offender Program with a surveillance involving Defendant Ferrill VOLPICELLI. He was followed to the Wal-Mart Store at 155 Damonte Ranch Parkway in Reno. I followed him inside the store and witnessed crimes occurring there.

Around 1700 hrs., VOLPICELLI picked up Defendant BOWMAN near the intersection of Washington and Third St. in Reno. They then drove to the area of Vassar and Kietzke where BOWMAN went to the office of Adult Parole and Probation.

They then drove to Damonte Ranch Parkway and entered the parking lot of Wal-Mart. VOLPICELLI then got out of his vehicle and went into the store near the east side of the building (grocery store entrance). Det. ARMITAGE and I followed him into the store. VOLPICELLI went to the bicycle display rack and appeared to be tampering with one of the bicycles. He then went to the electronics section of the store where he selected a cordless telephone and placed into the cart he had obtained when he entered the store. I then lost sight of him when Det. ARMITAGE was following him. ARMITAGE then told me that he had gone out of the store while leaving the phone and cart behind.

I then returned to my vehicle and continued to monitor the activity of VOLPICELLI. He drove his vehicle toward the front of the store and let BOWMAN out of the vehicle. BOWMAN went into the store and was followed by other Detectives.

BOWMAN and VOLPICELLI were arrested a short time later by RPD Officers KULL and YAWN. They were transported to the Reno Police Department and placed into interview rooms.

At 6:30 pm, Det. LODGE and I began an interview with Def. BOWMAN. LODGE gave BOWMAN his Miranda Rights and asked BOWMAN if he understood his rights. BOWMAN stated that he understood and signed a waiver of his rights and agreed to give a statement regarding the incident at Wal-Mart.

BOWMAN stated that VOLPICELLI and he have been acquaintances since they met while both were incarcerated at the Warm Springs Correctional Center. BOWMAN said that this was in November of 2000. BOWMAN said he has been in regular contact with VOLPICELLI since he was released in June of 2001.

BOWMAN said VOLPICELLI had called him via cell phone and said they were going to buy some things at area stores. BOWMAN stated that VOLPICELLI would pay him $100 to $200 a night for buying things with cash that VOLPICELLI would provide. BOWMAN said that VOLPICELLI would ask him to buy specific items at certain stores. BOWMAN recalled buying a home theater system at Wal-Mart, a rug at Lowe's, and a garbage disposal at Home Depot. I asked about the bicycle that he had purchased at Wal-Mart. BOWMAN said that VOLPICELLI had gone into the store to put a fraudulent bar code sticker on the bicycle. BOWMAN said he

At 1610 hours, VOLPICELLI drove his vehicle to 3rd and Washington, where he picked up defendant Brett BOWMAN. They drove around town, and at 1640 hours, they arrived at the Super Wal-Mart at 155 Damonte Ranch Parkway in Reno, Nevada. They parked the vehicle and VOLPICELLI walked towards the entrance of Wal-Mart. (See Detective ARMITAGE'S follow-up reference the vehicle.) While BOWMAN stood at the vehicle smoking a cigarette, VOLPICELLI went inside Wal-Mart through the east entrance. Detectives ARMITAGE and BROWN followed VOLPICELLI in and monitored his activities.

VOLPICELLI got a shopping cart and walked around the store. He went over to the toy department and looked at the bicycles that were on the display rack. VOLPICELLI leaned over a bike and began tampering with the tags on the bike. The detectives could not see exactly what he was doing. Once he finished, VOLPICELLI went to the electronics department and removed a cordless phone from a display. He put the phone in the cart and walked over to the front of the store. He left the cart with the phone in it and went into the bathroom. When he came out of the bathroom, he did not return to the shopping cart and left the store; returning to his vehicle.

Two minutes after VOLPICELLI left the store, BOWMAN went inside through the east entrance at 1700 hours. Detective Sergeant DELLA and Federal P&P Officer HUNT went inside the store through the west entrance to monitor BOWMAN'S activities. Once inside the store, they found BOWMAN at the bike display. BOWMAN was having an employee remove the same bike from the display that VOLPICELLI had been tampering with earlier. BOWMAN took the bike to register #31, where store cashier Julia VOLLOR was working. She asked BOWMAN to put the bike closer to her so she could scan the bar code. BOWMAN said, "I've already done that for you. I took the tag off for you to make it easier." VOLLOR scanned the bar code and the cost of the bike with tax, came to a total of $74.36. BOWMAN gave her a $100 bill and she tendered the change. BOWMAN got his receipt and exited the store.

DELLA and HUNT approached VOLLOR and asked how much BOWMAN had paid for the bike. She told them it was $74.36. DELLA had looked at the price of the bike at the display, and it showed to be $249.66. (SEE EVIDENCE.)

Outside, while BOWMAN was buying the bike, VOLPICELLI drove his vehicle through the lot and then out onto Virginia St., where he drove north, re-entered the parking lot, and parked the vehicle in a different space.

BOWMAN walked the bike outside to the vehicle, put it in the back and they drove off. We asked dispatch for marked units, to stop the defendants. Officers YAWN and KULL responded and stopped the vehicle in the 9400 block of S. Virginia. The defendants were subsequently arrested for parole violations and transported to the Reno Police Department for interviews. Detectives LODGE and BROWN interviewed BOWMAN post-Miranda. (SEE THEIR FOLLOW-UPS FOR DETAILS.)

During the interview, BOWMAN admitted that VOLPICELLI had changed the barcode on the bike and then asked BOWMAN to go in the store and buy the bike for the fraudulent price. He said that VOLPICELLI was going to pay BOWMAN $100 to help VOLPICELLI commit several of these crimes during the day. At the conclusion of the interviews, both defendants were booked into the Washoe County Jail by P&P Officers DIEK and ADRIAN for parole violations.

On Wednesday, October 17 2001, I was assisting other Detectives in the Repeat Offender Program with a surveillance involving Defendant Ferrill VOLPICELLI. This involved keeping him and/or his vehicle under surveillance throughout the day, which included crimes committed at the Shopko Store, 5150 Mae Anne Ave, Reno, at about 1425 hours. (Please see case number 01-216452) I followed him inside the store at that time and witnessed crimes occurring there.

Later in the day, near 1700 hours, Detective Mike BROWN and I followed him into the Super Wal-Mart at 155 Damonte Ranch Parkway. By that time he had picked up Defendant BOWMAN. VOLPICELLI entered the store alone, and Detective M. BROWN and I went inside as well. VOLPICELLI entered on the grocery side of the store, retrieved a basket, and walked west through the store at the front along the registers. He went through the toy aisles, then continued west to the bicycles.

Once at the bicycles, he stopped and perused that section for a while. He specifically spent a few minutes at the rack holding bicycles, near the north corner on the east side. He appeared to be reading the label, or price tag posted on the rack for the bicycleS When he was finished in that area, he then walked north through the store into the electronics section. He walked through the electronics section, then exited to the rear main aisle running east and west. He had put a cordless telephone in the basket, and it was the only item in it. He turned south in an aisle that feeds into the registers, and stopped partway and looked at some items in housewares. He then pushed the basket to the registers, and left the basket near one of them with the phone still in the basket. He walked through one of the lines and into the men's restroom. He was in the restroom a few minutes, then came out and exited the store at the merchandise doors.. He did not go back inside, but Defendant BOWMAN did.

SHOPKO

THIS IS AN ACCURATE STATEMENT BUT HE LIED AT MY REVOCATION HEARING

At about 1725 hours we had Patrol Officers YAWN and KULL conducted a traffic stop as VOLPICELLI and BOWMAN left the store, and the stop occurred in the parking lot at 9490 S. Virginia St. I was present for the stop, and conducted the inventory of the items in the vehicle. Please see the items listed on the Vehicle Report, and in the Property folder of this report.

For further detail, please refer to Detective TEASLEY's report

MOTHER NATURE CALLED

CR03P1263 DC-9900025217-015
POST FERRILL J. VOLPICELL 14 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955
EX14 JAMES

EXHIBIT 14

PINK—Prison "C" File
BLUE—Prison "I" File

BOARD OF PAROLE COMMISSIONERS

CERTIFICATION OF ACTION
PAROLE VIOLATION HEARINGS

Warrant No.: 21441
Date: 10-31-01
Arrest: 10-17-01
CC No. 98 2160

To: THE WARDEN, NEVADA STATE PRISON

The Nevada Board of Parole Commissioners took the following action:

RE: Volpicelli, Ferrill NSP No.: 60076

AT: WNCC ON: Oct. 16, 2002

Request for/or waiver of Preliminary Hearing executed: ✓ New arrest/conviction: ✓ Notice of Rights executed: ✓

Retained counsel: ☐ Yes ☑ No Waived counsel: ☐ Yes ☑ No

Represented by: Washoe County Public Defender: Tom Mitchell

Subject appeared in person this date to answer charges as specified:

	Conditions	Plea	Board Action	Action Taken
✓	10. ~~RELEASE~~ ASSOCIATES	GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	
✓	11. COOPERATION	GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	
✓	12. LAWS AND CONDUCT	GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	
	13. SPECIAL CONDITIONS:			
		GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	
		GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	
		GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	
		GUILTY/NOT GUILTY	GUILTY/NOT GUILTY	

Return to prison ordered for reasons set forth in the retake warrant of which this order is a part. **WARRANT SUSTAINED.**

☑ Parole revoked Exp. Review on ____ with no two months advance
☐ Parole reinstated: RUAPP:
☐ Continued on parole with all previous special conditions: ____

Other action: ____

☐ The Board has determined that you have absconded from parole supervision:

☐ Loss of all flat time Ø days. Time on absconder status not credited on sentence per NRS 213.160, Sec. 4.
☐ Loss of Ø days stat time.
☐ Loss of stat/absc. time Ø
☐ Loss of Ø days under MPR. Previously paroled under Mandatory Release. (Statutes of Nevada, 1987, Chapter 416, Sec. 2.)

Evidence relied on:

✓ Plea of guilty (where applicable) ✓ Report of Parole and Probation Department 10-24-01
Judgment of Conviction
✓ Testimony of Witnesses Officer Armitage City of Reno P.D. Det. Officer Brown, Det. (City of Reno) Officer Thomas (City of Reno) Det. Reed.
Laboratory Reports
✓ Other RPD# 01-213180, 216452-01, 01-216321, 221241-01, 204619-01

Reason for revocation:

The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole agreement by:

Failed to follow supervision rules.

This is to ~~certify~~ that the above order is a true and correct copy of the action of the Board of Parole Commissioners.

Staff Representative — Nevada Board of Parole Commissioners

Commissioners present: Morrow Goodson

Exp. Stat. Flat. Abso/Stat.

V3.181

James R. Brooke Attorney at Law
3392 Lakeside Court • Reno, Nevada 89509
Phone: (702) 826-9110 • Fax: (702) 826-9113 • E-Mail: JBLawyer@aol.com

October 8, 1998

Judge Margaret Springgate
P.O. Box 11130
Reno, NV 89520

RE: State of Nevada vs. Ferrill J. Volpicelli

Dear Judge Springgate:

Having been Ferrill Volpicelli's family law attorney for the past year and a half, I represented him throughout a rather complex, and, at times, bitter divorce. What impressed me most has always been Ferrill's genuine love, affection and concern for his three children. Having met his children personally, I can easily see how strongly they care for him and are in need of his care and attention. Since his incarceration, we have talked at least once a week and his primary concern has always been for his children's welfare. Accordingly, he has made financial arrangements, some through my office, for their support and well-being.

Although I don't represent him in this recent criminal matter, I believe he is sincere in his contrition for past errors. The acts before you now were desperate, but ill-conceived attempts by a father frantic to help his family. I firmly believe he is an excellent candidate for probation, especially after he finishes his current federal sentence. His children need his support, paternal guidance and physical presence. He has learned his lesson and is anxious to start from the bottom to put his life in order and be a caring father for his children. It is my opinion that any further incarceration after completion of his present federal sentence would be counter-productive insofar as the children are concerned.

Thank you for your consideration.

Very truly yours,

James R. Brooke

JRB:bb

Exhibit

James R. Brooke **Attorney at Law**
4790 Caughlin Pkwy #408 ♦ Reno, Nevada 89509 ♦ Phone: 775-825-1123
e-Mail: JBLawyer@aol.com Fax: 775-826-9110
Nevada State Bar No. 21

November 28, 2000

Nevada Parole Board
1445 Hot Springs Road, Ste 108B
Carson City, NV 89706

Re: Ferrill Volpicelli #60076 @WSCC/Parole Hearing

Dear Sirs:

I represent Ferrill Volpicelli, inmate #60076. His parole hearing is scheduled for late January, 2001.

I have been Mr. Volpicelli's family law attorney for the past several years. I have been in close touch with Mr. Volpicelli, on a weekly basis, both telephonically and through the mail, since his incarceration. He has kept me aware of his rehabilitation and I am of the firm opinion he has full realization of the consequences of his criminal activity. He is very aware of what poor choices led to his imprisonment.

While in prison, he remained a supporting parent to his children and his child support obligation is presently current. I personally know of his continuing love, affection and concern for his children. I am sure his visitation record is available to you. He would like to return to Reno and continue to support his children. He has held licenses, in good standing, in the real estate and insurance brokerage businesses. He anticipates employment with Sigstad & Company in Reno to reactivate his insurance license and ultimately affiliate with a mortgage broker. In both employments, he is subject to state regulations.

Needless to say, his incarceration has been an eye-opening experience. He has a sound parole plan and has the support of his family and friends. He has been diligent in working towards his objectives. Please give Mr. Volpicelli the utmost consideration regarding parole eligibility for May, 2001.

Very truly yours,

James R. Brooke

JRB:bb

LAW OFFICES OF
ROBERT P. FAHRENDORF
338 CALIFORNIA AVENUE
P.O. BOX 3677
RENO, NV 89505
(702) 348-7775
FAX (702) 348-0540

March 27, 1997

Honorable Howard D. McKibben
400 S. Virginia Street
Reno, NV 89509

RE: FERRILL VOLPICELLI

Honorable Judge McKibben:

I am writing you in regard to Ferrill Volpicelli, who I have know for approximately eight years. During that time, I have had the opportunity to see Ferrill interact with the community and his family, specifically, his wife Lori and their children Ashley, Chanel, Travis and Logan.

I have seen Ferrill donate time to the community, helping out with Little League baseball and youth basketball. He has always been generous with his time in helping the youth of this community. In addition, I have been to his home and know the love he has for his wife and children.

Ferrill has made a mistake and has acknowledged that he was wrong in his actions. He has expressed remorse to me and realizes that he must be punished.

I am hopeful that this letter will help describe Ferrill as the man that I have known. He is a good man who is not making excuses for his offenses. Instead, he is accepting responsibility and apologizing. I believe that there is hope for such a man. Therefore, any consideration in regard to his sentencing would be appreciated by his family and those who know him.

If you have any questions or would like any further information, please feel free to contact me at your convenience.

Sincerely,

ROBERT P. FAHRENDORF, ESQ.

RPF:rlg

F. J. VOLPICELLI, M.D.
INTERNAL MEDICINE
5025 SCOTT STREET
TORRANCE, CA 90503
310-543-1211

October 10, 1998

TO WHOM IT MAY CONCERN:

I write this letter on behalf of my son, Ferrill, who is presently incarcerated. I sincerely hope that consideration will be given to him for all of the changes that have come about since his incarceration.

I have noticed a remarkable change overall in his disposition, attitude and introspection. I believe for the first time that he now realizes the terrible price he is paying for his misdeeds, and how it has affected him, and even more so his family and children.

Fortunately, Ferrill was intelligent enough to realize hs needed help, not just incarceration. I would say that he has learned much from the seminars and lectures he attended, and he is now examining himself deeply, and is coming to face the stark reality of the problem and mess that he created. his time in the facility is nothing by comparison to what he must face when he returns home. He will have to surmount great obstacles, because wherever he applies for employment his past will be noted, and this fact alone will make it unduly difficult to cope with. He seems to be thinking of all these factors even now, and is seeking legitimate ideas to build a new future for himself, and he mentions frequently to be with his children again, and to share his life with them.

Ferrill is a very intelligent person and very capable, and now, this time he will build a more secure foundation and join and engage in society the way he should have in the first place.

There is absolutely no doubt that he regrets his past, but it is not too late for him to plan a new and more secure future when he again is allowed to return to society.

It is my sincere hope that due consideration will be accorded him and trust him for a final chance for a new and better future. He needs that chance, and he needs the trust of the officials where he is presently incarcerated.

To do otherwise is to basically condemn him to hopelessness, and that will accomplish little or nothing.

The family acknowledges what he has done (all too well), but we all still feel that he is a good person basically, and can make good in society if only given the chance, and the respect that he needs to finish bringing him back to the fold.

F. J. Volpicelli

Exhibit

March 25, 1997

To Whom it May Concern:

I have worked for Ferrill Volpicelli since October 1994, when he purchased an espresso cart business called C.C. & Co. I performed the bookkeeping duties from October 1994 through April 1996. I became the manager and continued my bookkeeping from April 1996 to the present.

I have had only a business relationship with Ferrill. But I have worked very closely with him and believe I can speak about his character with some degree of knowledge.

I have found Ferrill to be very compassionate when his first manager was having personal problems both financially and emotionally Ferrill was there to lend a helping hand. He give him money to assist in his legal battle as well as a truck to get around town. He paid him excessively for the duties he performed but felt that it was the least he could do given the problems this man seemed to have. Unfortunately, this manager took advantage of Ferrill by mismanaging his business and losing money each month. Either because of thief or just poor management it really doesn't matter, Ferrill looked the other way for a long time, but finally had to remove this man from managing. I could never really understand why he would be so generous with someone who was taking advantage of him, but he often tried to explain and as best as I can understand he felt badly for him. He seemed to believe that this man had it so bad and that was what was causing the mismanagement. How could he possibly put this man out of a job when he had a child to support.

This is how Ferrill treated all the people who worked for him. Regardless of the problem they could come to him and he'd always extend a helping financial hand. More than once the money advanced was never returned. But I never heard him complain. He believed that their problems must be the cause of their behavior. At Christmas time even when his business was doing very poorly he bought gift certificates for the employees. He is always there to pick someone up during a snow storm or when their car was broke down.

It appeared to me that he treated his family with this same attitude. Regardless of what problems they might be having he always was there to take care of them. They seemed to have a good relationship, traveling together often, eating out and just doing family things. I have never socialized with them, but often they would stop in at my yogurt shop and visit. All seem quite well and they looked like a happy family.

Approximately three weeks ago everything changed. There seems to be a major family disjunction. This disjunction has hampered the operation at the espresso cart and caused many stressful moments for the employees as well as myself. Do to these problems it has been requested that I give my opinion of Ferrill.

Therefore, to summarize I can only say that it has been a pleasure working for Ferrill. He is extremely kind and generous. I can only speak from my first hand experience and what I have seen.

Sandra Ruggiero

March 24, 1997

Stacy Ballard
2655 Camelot Way
Reno, Nv. 89509
323-7668

To whom it may concern,

I am writing this letter on the behalf of Ferrill Volpicelli. We have been next door neighbors for over three years. We have had a very friendly relationship with Ferrill and his entire family. Ferrill has always proven himself to be a great neighbor and father, he is constantly doing things for his children as well as other neighborhood kids. He often drives them to various places, special kids events, and movies. Last week he took our six year old and his son to the kids fair at the Convention Center for the afternoon. Ferrill can always be trusted to take care of the children without any worries.

It is difficult to know what to tell you about Ferrill and the type of family man he is. He has many fine characteristics as a neighbor and a family friend. Our whole family is deeply saddened by this situation, since it not only affects Ferrill, but four young children and his wife.

We sincerely hope this letter will in some manner make a difference to the court, and that the court will look favorably on Ferrill and his family.

Sincerely,

Stacy Ballard

The Ballard Family.

2-26-97

To Whom It May Concern;

I am writing this letter on behalf of my brother. I feel it is essential that you are aware of my brothers' character. Ferrill is a loving, giving, generous and loyal, husband and father. He is extremely devoted to his children and I know of no other father who spends as much time with his children as he does.

He is my oldest brother and he is a loving and caring brother. Whenever I am in a crisis or depressed, Ferrill is always there to listen to me, sometime he is just a sympathetic ear and other times he gives me valuable advice.

Ferrill is always there for me, no matter how busy he is, he always makes time for me. How many brothers will come visit you on your birthday every year even though they live in another state? He does. Ferrill is always there for me on my birthday unless there is a rare hardship on him or his family, like the present time, then he is unable to come. I missed not being able to see him on this past birthday but I understand

if was attributable to all the strain and stress he and his family are now under.
What my brother may have done is wrong. I believe he is aware of that and he deeply regrets his actions. However, my brother is not a malicious, cruel man. He is not a threat to other human beings or even to animals.
I do not understand how so many people can rape, murder, and even maim other individuals, yet they get light sentences if any at all, when my brother, what he did may have been wrong, but he is by no means a threat to society. There are so many free people who should be behind bars. My brother is not one of them.
Why can he not be punished for his wrong doing by serving under house arrest or 2000 hours of community service? He would be fabulous at community service because he is a caring individual and he has the wonderful ability to help others and to make them realize that there is a light at the end of the tunnel and for them to never give up on hope.
In conclusion, I would like to say that I love my brother, Ferrill, dearly. He may have done an act that was wrong, but I sincerely believe in comparison to what other people do and then are free to walk, such as murder, rape, mutilation,

scamming little old ladies out of their life savings, and other sick actions, what my brother has done is insignificant in comparison.

I understand that he should be penalized but let the punishment fit the wrong. I believe house arrest or extensive community service would be much more suitable,

I appreciate you taking the time to read my letter and I believe a more lenient sentence would be beneficial for his entire family and society.

Sincerely,

Karen Volpicelli

652 Forest St., Reno, NV 89509 TELEPHONE (702) 688-4800

SOLD
Keystone Realty
Better Homes and Gardens®

March 16, 1997

Re: Ferrill Volpicelli

To Whom It May Concern,

I have been an acquaintance of Ferrill for approximately the past 5 years and a friend for approximately the past 2 years. We met by going to the same gym, the Reno Athletic Club. As far as I am concerned Ferrill has always been a fine upstanding member of our community.

In the past six months, I have become some what aware of his current problems with the IRS. He has employed Keystone Realty Better Homes & Gardens services in order to make sure that the financial institutions, that he has his obligations with, get paid the money they are owed. In the spirit of good will, Ferrill is doing the responsible thing with no monetary gain.

I look forward to continuing both a personal and working relationship with the Volpicelli's for a long time to come.

Sincerely,

Carl Jorgensen
Keystone Realty
Better Homes & gardens

PENINSULA EYE
PHYSICIANS & SURGEONS

October 10, 1998

To Whom It May Concern,

This letter is written on behalf of my brother, Ferrill J Volpicelli, and of equal importance for his four young children who reside in Reno, Nevada. As you may already know, Ferrill has been incarcerated at the Federal Corrections Institute in Safford , Arizona since January, 1998.

What you might not realize, however, is the total destruction and devastation his internment has caused on his young children His eldest son, Travis, has had recurrent problems with school truancy, while his sixteen year old daughter, Chanel, stays out until all hours of the night. His two other children are so confused and depressed that they won't interact with their peers and have lost all interest in any type of social interaction.

Ferrill has availed himself of many of the courses and "self-help" classes offered during his confinement. He is very proud and excited about the new parenting and living skills he has learned during his incarceration I can definitely see and here a change for the positive during my telephone calls and personal correspondence with Ferrill; however, he too is worried and anguished over his children's future.

Although Ferrill's siblings and parents have tried to be give emotional and financial support to their nieces, nephews and grandchildren, his kids have been reluctant and withdrawn and truly need Ferrill at home or nearby to help with their day to day living conditions.

Ferrill has been repentant and remorseful for his ill deeds and should be given any potential leniency and/or early probation options that are available. I would like to make a final humble appeal on Ferrill's behalf and for the future sake of my nephews and nieces. Please do not hesitate to contact me for any additional information I may provide to expedite Ferrill's timely return to society.

Respectfully,

Mark Volpicelli, M.D

Exhibit

DANIEL J. BEERS, M.D MARK VOLPICELLI, M.D HENRY F. LENARTZ, M.D

1174 CASTRO STREET SUITE 100 MOUNTAIN VIEW CALIFORNIA 94040 TELEPHONE 650-961-2585 FAX 650-961-0527 WWW.LASIK2020.COM

CR03P1263 DC-9900025217-016
POST FERRILL J VOLPICELLI 2 Pages
District Court 11/09/2005 08:17 AM
Washoe County 1955

EXHIBIT 15

TESTIMONY OF GOV. BOB MILLER TO ASSEMBLY JUDICIARY
COMMITTEE ON COMPREHENSIVE CRIMINAL CODE REFORM. AB 317
MARCH 28, 1995

Chairman Anderson, Chairman Humke, and members of the Committee. Thank you for this opportunity to address one of the most imporant issues of the session.

I want to begin this morning by recognizing the diligent and responsible efforts that have been put forth by so many members of the Nevada Legislature in the quest for comprehensive reform of our criminal codes.

Members of the Judiciary Committees of both houses have been hard at work grappling with criminal reform since the first days of the session. I believe the numerous and lengthy hearings that have been held to date were highly productive. Many questions have been raised, and many questions have been answered as you have labored to develop the conceptual framework upon which to build concrete legislation. This effort is most laudable, all the more because it represents a sincere bi-partisan effort to serve the needs of our constituents.

I have looked forward to this day, when hearings would begin on the comprehensive legislation I have proposed to attack the problem of violent crime. I have been involved in dialogue with all of you on this issue. And going back for well over a year, I have gathered the strong opinions of people from throughout our communities...law enforcement professionals...victims of crime... civic leaders... and the general public.

The time has come to take action. As I've emphasized so often, we must take action to be both tough--and smart--on crime. AB 317 is the end product of that philosophy. I commend you for giving this proposed legisaltion a full and in-dpeth hearing, beginning today.

First, let me talk about "tough." Before the 1995 session adjourns, I want to sign a bill that sends the strongest message we can to violent criminals. I want them off our streets....locked away for longer terms...in many cases, life without parole--ever--is what justice demands.

That's why AB 317 beefs up Nevada's habitiual criminal statute in a very tough way. My proposal--and I'm 100 percent committed to it--requires prosecutors to invoke the habitual criminal statute whenever an offender is tried for a third violent crime. That means the prosecution must seek a life sentence. If it's with parole, a conviction means at least 20 years in prison. My proposal eliminates plea bargaining for repeat violent offenders.
It means, for example, that a third armed robbery, or a third assault, means a life sentence. Naturally, a violent offender can get a life sentence for a first offense for many crimes, but this reform eliminates the revolving door for all types of violent offenders.

This is getting tough on crime.

EXHIBIT

1075

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District Court VOLPICELLI 3 Pages
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EXHIBIT 16

EXHIB

Penalties to stiffen for thefts in stores

BY GEOFF DORNAN
Appeal Capitol Bureau Chief ✓

Penalties would be increased for people convicted of repeated petit larceny, or shoplifting, under a bill proposed by Sen. Kathy Augustine, R-Las Vegas.

SB31 would make the crime a gross misdemeanor instead of a misdemeanor for the third or subsequent offense.

Augustine said the bill is aimed at crimes such as shoplifting where a few people are guilty of multiple offenses.

She said some crooks go through a mall "and hit one store after another."

She said she is aware that current law already allows repeat misdemeanor offenders to be finally declared habitual criminals and sentenced as felons. But Augustine said the gross misdemeanor is more realistic since it's unlikely the felony statute would be applied.

The advantage of a gross misdemeanor is that it will be applied to cases automatically on the third offense and become part of a criminal's permanent record.

Petit larceny is defined as taking goods worth less than $250. Augustine said the damage these criminals do adds up to major losses for stores.

"They're ripping off thousands and thousands of dollars in merchandise," she said, adding that other customers pay for those crimes through higher prices.

But current law treats the third, 10th or 30th offense just like the first — as a misdemeanor. Augustine said if a shoplifter winds up facing a gross misdemeanor instead on their third offense, "maybe they'll wise up."

The measure was referred to the Judiciary Committee for

V3.197

EXHIB

Tough penalties sought for habitual shoplifters

By Faith Bremner
RENO GAZETTE-JOURNAL

Petty larceny isn't trivial to businesses such as Reno's Wild West Electronics.

Last year, the store lost several thousand dollars worth of merchandise to sticky fingered thieves.

In 1995 the electronic store lost $5,000 to $6,000, owner Brad Bolotin said.

"Shoplifting is a serious problem. It's not a lot different than burglary," said Bolotin, who installed an expensive video surveillance system at his new store. "It forces us to raise prices."

Until now, most shoplifting cases in Nevada have been treated as minor crimes. Those arrested

See SHOPLIFT on page 5A

The '97 Legislature

SENATE BILL 31

■ **What it would do:** Increase the penalty for shoplifting from a maximum six months in jail and $1,000 fine to a year in prison and $2,000 fine for three or more convictions.

■ **Introduced by:** Sen. Kathy Augustine, R-Las Vegas, 687-3634 and Sen. Mark James, R-Las Vegas, 687-8132.

■ **Budget debate:** Prisons struggle to keep up with growing population.

Page 6A

RENO BLOTTER

Armed robber runs with sum of cash

1 Police said a man jumped over a counter at Winner's Corner, 2169 Prater Way, Sparks, at 12:15 a.m. Thursday, threatened a clerk with a knife and demanded money. He fled with an unspecified amount from a cash register. He was described as white, 28 to 32 years old, 5 feet 6 inches tall and weighing about 130 pounds.

Suspect tries to run down Kmart worker, flees

2 A thief fleeing from Super Kmart, 4855 Summit Ridge Drive, Wednesday tried to run over an employee, Reno police said.

It occurred at 10:30 a.m. What police initially would have called a petty theft is a robbery now because of the use of force, police said. No one was arrested.

...reports contain...

Shoplift

From page 1A

are charged with a misdemeanor, which carries a punishment of up to six months in jail and a $1,000 fine. Most shoplifters aren't taken to jail but instead are given a ticket to appear in court.

As a result, shoplifting is on the increase and shoplifters are getting bolder and more dangerous, merchants and police told members of the Senate Judiciary Committee Tuesday. They said the penalties need to be increased and testified in favor of Senate Bill 31, which would make a third and subsequent conviction for shoplifting a gross misdemeanor punishable by up to one year in jail and a $2,000 f...

...oplifters) think it's a joke and they don't ever expect to see the inside of a jail," said Pamela Terry, representative of the Southern Nevada Retail Loss Prevention Associa...

bill it will send a message that we're tired of being ripped off by the same people over and over again."

Business owners complained shoplifters come in to the stores with bulky coats and bags and load up but are smart enough to keep their take to under $250, the cut-off point for being charged with petty larceny. In Clark County, swarming — in which a group of kids hit a store and take everything they can — has become more common.

But Sen. Ernie Adler, D-Carson City, said changing the seriousness of the offense does not guarantee repeat shoplifters will go to jail. Judges could still sentence shoplifters to a $1 fine and one day in jail and prosecutors could still plea bargain the charge down to a misdemeanor, Adler said. Perhaps the bill should specify a mandatory jail sentence, he said.

"I don't see this bill ...

County public defender's chief administrative deputy, complained that gross misdemeanor shoplifting cases would have to be tried in district court instead of municipal courts, adding to an already overloaded system.

The state's Department of Parole and Probation would have to get involved as it does with all district court cases for presentencing investigations and reports for the judges, he said.

Plus it costs $60 a day to house convicted shoplifters in the Washoe County jail, Morrow said.

"Are we willing to pay that price ... to keep these people off the street," Morrow asked. "I'm not sure that's the case."

But Washoe County sheriff's Capt. Jim Nadeau said many of these shoplifters are in and out of jail anyway.

"If you put them in our jail for a year and we ...

Exhibit "

V3.198

ORIGINAL

CR03P1263
POST: FERRILL J VOLPICELLI 5 Pages
District Court 11/09/2005 08:18 AM
DC-9900025217-019

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
Post Office Box 359
Lovelock, Nevada 89419

Petitioner, In Proper Person

FILED
2005 NOV -9 PM 3:17
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--ooOoo--

FERRILL J. VOLPICELLI,

Petitioner,

vs.

LENARD VARE, (Warden),

Respondent.
_____/

Case NO. CR03P1263

Dept. No. 10

EX-PARTE MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, Petitioner, Ferrill J. Volpicelli, in his proper person, and submits the instant EX-PARTE MOTION FOR APPOINTMENT OF COUNSEL in the above entitled action on his Petition for Writ of Habeas Corpus (Post-Conviction) on file herein.

This Motion is made and based upon the provisions of NRS 34.750, all papers and pleadings on file herein as well as the following Argument and Points and Authorities.

BRIEF STATEMENT OF THE CASE AND FACTS

Petitioner is incarcerated in the Nevada Department of Corrections ("NDOC") pursuant to a lengthy jury trial wherein Petitioner was adjudicated guilty of multiple felony counts of

burglary (felonies). Petitioner was eventually sentenced under the provisions of the habitual criminal enhancement statute, wherein Petitioner received in excess of nine (9) life sentences. Petitioner must serve a minimum of twenty (20) years before becoming eligible for parole pursuant to the Judgment of Conviction entered by this court.

Petitioner ultimately filed a timely Notice of Appeal to the Nevada Supreme Court. The Nevada Supreme Court ultimately affirmed Petitioner's conviction.

Petitioner has now submitted a Petition for Writ of Habeas Corpus (Post-Conviction), timely filed, wherein he alleges multiple constitutional errors of trial and appellate counsel.

Due to the complexity of the case, and the voluminous discovery in this action, Petitioner requests this Honorable Court to appoint counsel to assist Petitioner in the instant post-conviction proceedings.

POINTS AND AUTHORITIES

Although it is well established that, absent a statutory mandate, a defendant does not have a constitutional right to counsel under the Sixth Amendment in post-conviction proceedings, Coleman v. Thompson, 501 U.S. 722, 725, 111 S.Ct. 2546, 2552 (1991), the Nevada Supreme Court addressed the issue in McKague v. Warden, 112 Nev. 159, 912 P.2d 255, 257-58 (1996). The Nevada Supreme Court held that with the exception of NRS 34.820(1)(a) (appointment of counsel when a defendant is under a death sentence), one does not have ". . . any constitutional or

statutory right to counsel at all . . ." in post-conviction proceedings.

However, in support of the instant pleading, petitioner cites NRS 34.645, which provides a format that petition for counsel must adhere to. The third instruction of this stattue requires an Affidavit in support in order to have an attorney appointed. (Petitioner has provided the required affidavit accompanying his Motion for Leave to Proceed in Forma Pauperis, on file herein). NRS 34.650 allows the District Court discretion to appoint counsel if certain criteria are met, which provides in pertinent part:

> a petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied with the allegation of indigency as being true, and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner, and whether
>
> (a) The Issues are difficult;
> (b) The Petitioner is unable to comprehend the proceedings, or
> (c) Counsel is necessary to proceed with discovery.

NRS 34.750 (1) states that the petitioner must first show that his petition will not be summarily dismissed. Petitioner's Petition is right on point, in that he raises several claims of ineffective assistance of trial and appellate counsel.

Counsel's failure to litigate the issues found in this case subjected petitioner to ineffective assistance of counsel throughout the judicial proceedings in this action.

The issues presented before this court are complex, Petitioner is unlettered in the science of law, does not comprehend the

instant proceedings, is being assisted by other incarcerated inmates to research and prepare the instant post-conviction pleadings. Counsel would absolutely be necessary to proceed with discovery, as the case file is very limited. However, a complete review of the entire record may warrant the filing of a supplemental petition by competent counsel.

Ordinarily, claims like the ones presented herein would probably require that this court enter an ORDER mandating an evidentiary hearing on the questions of facts regarding counsels' explanation for why the multiple defenses were omitted. Indeed, this court is fully aware of the Nevada Supreme Court's jurisprudence regarding the need for an evidentiary hearing when petitioners' allega a colorable claim of ineffective assistance of counsel. See e.g. Bolden v. State, 99 Nev. 181 (1983); and Gibbons v. State, 97 Nev. 520 (1981). Petitioner's claims have viable merits.

In visiting United States v. Curtis, 742 F.2d 1070 (1984), the court stated that certain constitutional rights are so fundamental that they are deemed personal to a defendant, and he alone may decide whether these rights will be exercised or waived. Trial counsel failed to put forth evidence as requested by Petitioner that would have affected the outcome of the verdict.

In the instant case, a denial of counsel for this Petitioner would rise to the level of a clear "equal protection violation" of the law. Griffin v. Illinois, 351 U.S. 12 @ 17 (1956). The Fourteenth Amendment weighs the interests of rich and poor criminals in equal scale, and its hand extends as far

to each.

Where the complexities of a case, and a petitioner's ability to comprehend the proceedings, are such that a denial of counsel would amount to a denial of due process, this is especially true when a petitioner has such limited education and is incapable of presenting his cliams in such a way that the court can afford him a fair hearing. See Brown v. United States, 621 F.2d 54 (9th Cir. 1980) and Hawkins v. Bennett, 423 F.2d 948 (1970).

CONCLUSION

Based upon the foregoing argument and the accompanying proof of petitioner's indigency, this Honorable Court should find that Petitioner has met his burden in justifying the appointment of counsel to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction) on file herein. Thus, Petitioner respectfully requests that this court issue an ORDER appointing counsel.

WHEREFORE, petitioner prays that this Honorable Court grant the relief sought herein.

DATED THIS 31st DAY OF OCTOBER, 2005.

Respectfully Submitted,

Ferrill J. Volpicelli
I.D. #79565
Petitioner, In Proper Person
Lovelock Correctional Center
Post Office Box 359
Lovelock, Nevada 89419

FERRILL J. VOLPICELLI
79565 @ LCC
POB 359
Lovelock, Nv 89419

ORIGINAL

Petitioner, In Proria Persona

FILED
2006 JAN 31 AM 8:00
RONALD A. LONGTIN, JR.
BY
DEPUTY

DC-9900025217-020
VOLPICELLI 3 Pages
01/31/2006 02 55 PM
2270
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POST FERRILL J
District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,
Petitioner,

vs.

Case No: CRP03-1263

THE STATE OF NEVADA,
Respondent,

Dept No: 10

MOTION FOR ORDER TO COMPEL

COMES NOW, the Petitioner, FERRILL J. VOLPICELLI, in his proper person and as countenanced in Haines v. Kerner, 404 US 519, 92 SCt 594, 596 (1972),(Under said case, pleadings filed by pro se litigants are held to less stringent standards than those filed by practicing attorneys), and respectfully moves this Honorable Court for an ORDER to Compel Reno City Attorney, Karen Swaney Fraley Esq., legal advisor to the Reno Police Department, to forward to the Petitioner, at his current place of confinement above-noted, ALL documentation relevant to the property seized from Co-defendant Brett A. Bowman by RPD, in or about October of 2001, at his #332 apartment/residence (695 W. 3rd St. Reno Nevada 89503) in case RPD# 01-21634.

This MOTION is made and predicated upon all papers, documents, and pleadings on file in said case, as well as any argument at any hearing this COurt may deem necessary.

STATEMENT OF JURISDICTION

This Court has JURISDICTION in this matter, as a remittitur has issued in the Nevada Supreme COurt's review of this case on August 1, 2005. See Nevada Supreme Court Case No. 43203.

ARGUMENT

Petitioner would direct the Court's attention to NRS 1.210(3), which states substantially as follows:

That the Court has the power to COMPEL OBEDIENCE to its ORDER; and, NRS 22.010(3) provides that 'refusal to abide by a lawful order issued by the COurt is CONTEMPT.' HUMANA, INC. V. EIGHTH JUDICIAL COURT, CLARK COUNTY, 110 Nev 121, 867 P2d 1147.

Petitioner has diligently pursued receipt of the foregoing referenced evidence/documentation; all to no avail. Siad documentation requested in the 15 December, 2005 Subpoema DUces Tecum is critical to the Petitioner's preparation of his Writ of Habeas Corpus (post-conviction).

CONCLUSION

WHEREFORE, Petitioner respectfully moves this Court for relief, with an ORDER compelling Ms. Fraley to immediately forward copies of the requested evidence in the Subpoena Duces Tecum.

Respectfully submitted this 26th day of January, 2006.

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that Ferrill J. Volpicelli, on this 26 day of January, 2006, personally deposited for mailing, postage prepaid, a true copy of the Motion To Compel to Reno City Attorney Karen Swaney Fraley.

Ferrill J. Volpicelli, NDOC# 79565
c/o Lovelock Correctional Center
1200 Prison Road POB 359
Lovelock, Nevada 89419-0359

Petitioner, In Propria Persona

IN THE SECOND JUDICIAL COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI, Petitioner,	)	Case No. CR03-1263
v.	)	Dept. X
STATE OF NEVADA, Respondent,	)	

SUBPOENA "DUCES TECUM" NRCP 45(b)

The State of Nevada Sends Greetings To:

City Attorney
Karen Swaney Fraley Esq.

WE COMMAND YOU, that all and singular business aside, you submit immediately, to the inmate above-named (Petitioner), at his respective address, ANY AND ALL documentation relevant to the property seized from Brett A. Bowman (Codefendant) by RPD, in or about October of 2001, at his #332 apartment/residence (695 W. 3rd St., Reno, Nevada 89503, in case # RPD 01-21634.
The above-referenced documentation is to be sent in a sealed envelope or box, addressed and delivered as noted herein, and marked "LEGAL DOCUMENTS," Within ten (10) working days of the date of service of this Supoena.
If you fail to forward the requested documentation, you will be deemed guilty of CONTEMPT OF COURT , and liable to pay all losses and damages caused by your failure, and in addition, forfeit $100.00 (One Hundred Dollars).
IN WITNESS WHEREOF, I have set my hand and affixed the seal of the above-entitled Court, this 15th day of December, 2005.

Ronald Longtin, County Clerk

By: _____
Deputy Clerk

Ferrill J. Volpicelli
79565 @ LCC
POB 359
Lovelock, Nevada 89419

Petitioner, In Propria Persona

ORIGINAL

FILED
2006 JAN 31 AM 8:00
RONALD A. LONGTIN JR.
BY _____ DEPUTY

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VOLPICELLI 1 Page
01/31/2006 02:56 PM
CR03P1263 FERRILL J
POST District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,
Petitioner,

vs.

THE STATE OF NEVADA,
Respondent,

Case No: CRP03-1263

Dept No: 10

REQUEST FOR SUBMISSION

Petitioner, FERRILL J. VOLPICELLI, in his proper person, hereby moves the Court for a submission of the Writ of Habeas Corpus (post-conviction), and accompanying pleadings, filed on 9 November, 2005; so that the Court can ORDER the State of Nevada to respond to Petitioner's pleadings.

Respectfully submitted on this 26th day of January, 2006.

Ferrill J. Volpicelli
Petitioner, In Propria Persona

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that Ferrill J. Volpicelli, on this 26th day of January, 2006, personally deposited for mailing, postage prepaid, a true copy of the Request For Submission to WCDA T. McCarthy, Esq.

Ferrill J. Volpicelli
Petitioner, In Propria Persona

Ferrill J. Volpicelli
79565 @ LCC
POB 359
Lovelock, Nevada 89419

ORIGINAL

Petitioner, In Propria Persona

FILED
2006 JAN 31 AM 8:00
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

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VOLPICELLI 2 Pages
01/31/2006 02 56 PM
CR03P1263 FERRILL J.
POST: District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,
Petitioner,

vs.

THE STATE OF NEVADA,
Respondent,

Case No. CR03-1263

Dept. No. 10

SECOND REQUEST FOR SUBMISSION

Petitioner, Ferrill J. Volpicelli, in his proper person, moves the Court for a SECOND Request For Submission of the Motion For Order To Compel, filed September 12, 2005.

Inasmuch as Mr. Van Ry Esq. has not responded to the Court's ORDER To Compel, dated 12 December, 2005, Petitioner respectfully requests the Court grant Petitioner relief with an Order compelling Mr. Van Ry to return, or replace, the vinyl folders (valued @ $20.00) which were sent to his office on 4 May, 2004: as evidenced by the attached receipt.

Petitioner also requests ORDER compell Mr. Van Ry to provide Petitioner with an Affidavit which addresses the matter outlined in #3 of said Motion To Compel.

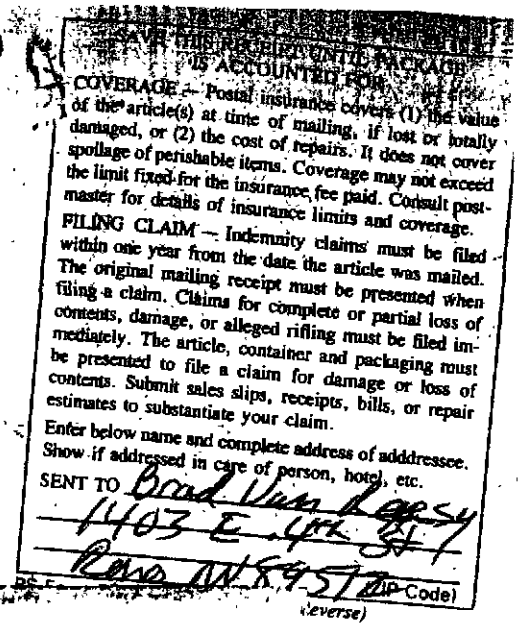
Dated this 26th day of January, 2006

Ferrill J. Volpicelli

Petitioner, In Propria Persona

CERTIFICATE OF Service

Pursuant to NRCP 5(b), I Ferrill J. Volpicelli, on this 26th day of January, 2006, personally deposited for mailing, postage prepaid, a true copy of this pleading to WCDA T. McCarthy/Van Ry.



IS ACCOUNTED FOR

COVERAGE — Postal insurance covers (1) the value of the article(s) at time of mailing, if lost or totally damaged, or (2) the cost of repairs. It does not cover spoilage of perishable items. Coverage may not exceed the limit fixed for the insurance fee paid. Consult postmaster for details of insurance limits and coverage.

FILING CLAIM — Indemnity claims must be filed within one year from the date the article was mailed. The original mailing receipt must be presented when filing a claim. Claims for complete or partial loss of contents, damage, or alleged rifling must be filed immediately. The article, container and packaging must be presented to file a claim for damage or loss of contents. Submit sales slips, receipts, bills, or repair estimates to substantiate your claim.

Enter below name and complete address of addressee. Show if addressed in care of person, hotel, etc.

SENT TO Brad Van Leesy

1403 E. 4th St.

Reno NV 89512 (ZIP Code)

(Reverse)

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS

INMATE ACCOUNT TRANSACTION REQUEST

Date 5/4/04 **№ 980420**

To: Inmate Services

I hereby authorize my account to be charged in the amount of $ 7.15 (Seven & 15/100 Dollars).

Please pay to NDOC Not Legal

work -

Signature

Print name FERRELL HOLMES

ID No. 79565 Institution NNCC

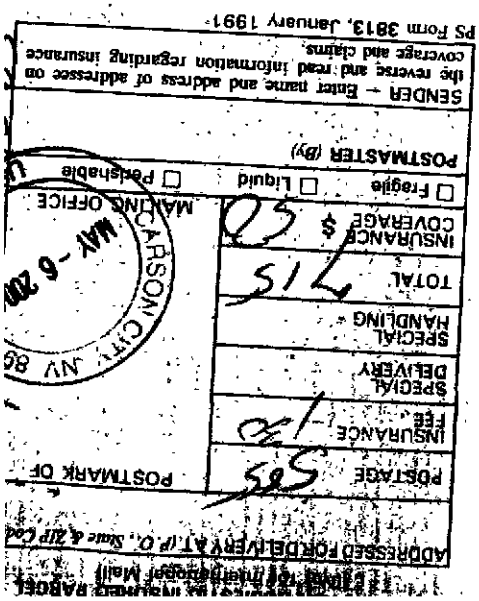
Approved by

TO VAN FLEET

Transfer	Purchase Order	Postage	Other
		~~Envelope~~ Postage	

White Inmate Services
Canary Inmate Services
Pink Institution Copy
Goldenrod Inmate Copy

DOC 509 (Rev. 9/01)



PS Form 3813, January 1991

SENDER — Enter name and address of addressee on the reverse and read information regarding insurance coverage and claims.

POSTMASTER (By)

☐ Fragile ☐ Liquid ☐ Perishable

INSURANCE COVERAGE $ 25

TOTAL 5.15

SPECIAL HANDLING

SPECIAL DELIVERY

INSURANCE FEE 1.30

POSTAGE 3.85

POSTMARK OF

ADDRESSED FOR DELIVERY AT (P.O., Suite & ZIP Code)

MAILING OFFICE

CARSON CITY NV 89

MAY - 6 20

V3.209

FERRILL J. VOLPICELLI
79565 @ LCC
POB 359
Lovelock, Nevada 89419

ORIGINAL

FILED

2006 FEB -9 AM 11:12

KUNA JUNTIN, JR.
BY
DEPUTY

DC-9900025217-044
CR03P1263
POST: FERRILL J. VOLPICELLI 1 Page
District Court 02/09/2006 01 02 PM
Washoe County 3860

Petitioner, In Propria Persona

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,
Petitioner,

vs.

Case No CR03-1263

Dept No: 10

THE STATE OF NEVADA,
Respondent,

REQUEST FOR SUBMISSION

Petitioner, FERRILL J. VOLPICELLI, in his proper person, hereby moves the Court for a submission of the Motion To Compel NDOC Director Wharton to comply with the Subpoena Duces Tecum; dated and mailed on the 13th day of December, 2005.

Respectfully submitted on this 6th day of February, 2006

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that Ferrill J. Volpicelli, on this 6th day of February, 2006, personally deposited for mailing postage prepaid, a true copy of this pleading to the State Attorney General's office.

0-10-23 sub

CR03P1263 DC-9900025217-030
POST FERRILL J VOLPICELLI 6 Pages
District Court 02/17/2006 11:14 AM 2645
Washoe County

2645
PATRICIA A. LYNCH
Reno City Attorney
KAREN S. FRALEY
Deputy City Attorney
P.O. Box 1900
Reno, NV 89505
(775) 334-2421

ORIGINAL

FILED
2006 FEB 17 PM 4:23
RONALDA. LONGTIN, JR.
BY
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI, Petitioner, vs. STATE OF NEVADA Respondent.	Case No. CR03-P1263 Dept. No. 10

OPPOSITION TO MOTION FOR ORDER TO COMPEL AND MOTION TO QUASH SUBPOENA DUCES TECUM

COMES NOW the City of Reno, by and through its attorneys, PATRICIA A. LYNCH, Reno City Attorney, and KAREN S. FRALEY, Deputy City Attorney, in opposition to Petitioner's Motion for Order to Compel a response to the Subpoena Duces Tecum mailed to the City of Reno Police Department on December 23, 2005. The City of Reno also moves the Court to Quash the same Subpoena Duces Tecum under NRCP Rule 45(c)(3)(A)(iv).

This Motion is based upon the Points and Authorities below.

DATED this 17th day of February, 2006.

PATRICIA A. LYNCH
Reno City Attorney

BY: Karen S. Fraley
KAREN S. FRALEY
Deputy City Attorney

POINTS AND AUTHORITIES

I. BRIEF STATEMENT OF FACTS

Ferrill Volpicelli was arrested by the Reno Police Department on October 17, 2001 and ultimately charged with eight counts of burglary, one count of conspiracy to commit crimes against property, and one count of unlawful possession making, forgery or counterfeiting of inventory pricing labels. Detectives investigating his crimes obtained and served several search warrants and a substantial amount of property was seized and placed into Evidence at the Reno Police Department. Mr. Volpicelli was tried and convicted on November 14, 2003. On April 1, 2004, he was designated a habitual criminal and sentenced to nine life terms, seven to run concurrently and two to run consecutively.

On June 29, 2005, the Nevada Supreme Court affirmed the judgment of conviction and issued a Remittitur to the District Court on August 1, 2005. The City has been advised that the Petitioner has filed a Petition for Writ of Habeas Corpus, upon which there has been no ruling.

Notwithstanding the absence of any pending case or legal authority, Petitioner saw fit to mail a Subpoena Duces Tecum to the Deputy City Attorney assigned as Legal Advisor to the Reno Police Department, received on or about December 27, 2005, demanding production of "ANY AND ALL documentation relevant to the property seized from Brett A. Bowman (Codefendant) by RPD, in or about October of 2001, at his #332 apartment/residence (695 W. 3rd St., Reno, Nevada 89503, in case # RPD 01-21634." A copy of the Subpoena Duces Tecum is attached here to as Exhibit A.

Petitioner then filed the instant Motion for Order to Compel.

///

///

II. THERE IS NO RIGHT TO DISCOVERY AFTER AFFIRMATION OF CONVICTION AND REMITTITUR.

The Petitioner appears to have a misunderstanding as to the procedural rules that attach at this stage. Having filed a Motion for Order to Compel, received by the City on or about January 30, 2006, he seems to be laboring under the misapprehension that the affirmation of his convictions and the issuance of the Remittitur to the District Court reopens the criminal case for purposes of discovery. He argues that this Court has jurisdiction and that "Siad [sic] documentation requested in the 15 December, 2005 Subpoena Duces Tecum is critical to the Petitioner's preparation of his Writ of Habeas Corpus (post-conviction)." A copy of the Motion is attached here to as Exhibit B.

In fact, until and unless the Petition for Writ of Habeas Corpus is granted, Petitioner has no right to discovery. For discovery purposes, NRS 34.780 applies the Nevada Rules of Civil Procedure to proceedings once the Petition for Writ of Habeas Corpus has been granted. Even then, there are restrictions placed upon a party to that proceeding. NRS 34.780(2) requires that a writ must have been granted, a date set for hearing, and leave of court be granted before a party may seek discovery under the Nevada Rules of Civil Procedure.

None of those prerequisites have been met in this case. The Petitioner has no legal authority to subpoena any records from the Reno Police Department, nor does the City have any obligation to respond in any fashion. The City respectfully requests the Court quash the Subpoena Duces Tecum.

III. A RESPONSE TO AN INVALID SUBPOENA CANNOT BE COMPELLED.

If, as the City argues above, Petitioner has no right to serve a subpoena duces tecum when

there is no pending case, then Petitioner's Motion for Order to Compel is also invalid. The City cannot be compelled to do that which it has no legal obligation to do. The City respectfully requests the Court deny the Motion for Order to Compel.

IV. THERE ARE NO RENO POLICE DEPARTMENT RECORDS RESPONSIVE TO THE SUBPOENA.

Should the Petition for Writ of Habeas Corpus be granted and the prerequisites of NRS 34.780(2) met, with Petitioner receiving leave of Court to seek discovery, the City wishes to represent at this time that there are no Reno Police Department records responsive to the Subpoena Duces Tecum. The RPD case number provided, 01-21634, is a traffic stop not related to either defendant in this series of cases. Further, the City wishes to represent at this time that, while a search was made of Mr. Bowman's residence, it was a consensual search and no evidence or property of any kind was seized. The City will, of course, provide evidentiary support for each of those representations upon direction from the Court.

V. CONCLUSION

The City's experience with the Petitioner in both the criminal and domestic matters[1] since November, 2003 has been very extensive, including correspondence, records requests, property release requests, subpoenaes duces tecum, and motions of various types including a Motion for an Order to Show Cause Why the City Should Not be Held in Contempt in the domestic case, where the decision was in favor of the City, and the present Motion for Order to Compel in the criminal case.

///

///

[1] Petitioner also has a domestic case, Volpicelli v. Inman, et al, CV03-03582, which was dismissed, a decision under appeal to the Nevada Supreme Court. In several instances, Petitioner has subpoenaed records for that case that he also subpoenaed or requested for the criminal case.

The City is in the unfortunate position of having to respond to every document sent to it by the Petitioner, whether or not there is legal authority for the document. Once again, without legal authority, the Petitioner has frivolously wasted both the City's and the Court's time.

The City respectfully requests the Court deny Petitioner's Motion for Order to Compel and Quash the Subpoena Duces Tecum.

DATED this 17th day of February, 2006.

PATRICIA A. LYNCH
Reno City Attorney

BY _____
KAREN S. FRALEY
Deputy City Attorney
Nevada Bar #3825
P.O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for the City of Reno

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

Ferrill Volipicelli, #79565
Lovelock Correctional Center
P.O. Box Box 359
Lovelock, NV 89419

Terrence McCarthy
Deputy District Attorney
P.O. Box 30083
Reno, NV 89520

DATED this 17th day of February 2006.

Sylvia E. Atherton, MSM
An Employee of the Reno City Attorney

CR03P1263 DC-9900025217-031
POST FERRILL J VOLPICELLI 2 Pages
District Court 02/17/2006 11:14 AM
Washoe County 2645

EXHIBIT 1

Ferrill J. Volpicelli, NDOC# 79565
c/o Lovelock Correctional Center
1200 Prison Road POB 359
Lovelock, Nevada 89419-0359

Petitioner, In Propria Persona

IN THE SECOND JUDICIAL COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI, Petitioner,	)	Case No. CR03-1263
v.	)	Dept. X
STATE OF NEVADA, Respondent,	)	

SUBPOENA "DUCES TECUM" NRCP 45(b)

The State of Nevada Sends Greetings To:

City Attorney
Karen Swaney Fraley Esq.

WE COMMAND YOU, that all and singular business aside, you submit immediately, to the inmate above-named (Petitioner), at his respective address, ANY AND ALL documentation relevant to the property seized from Brett A. Bowman (Codefendant) by RPD, in or about October of 2001, at his #332 apartment/residence (695 W. 3rd St., Reno, Nevada 89503, in case # RPD 01-21634.
The above-referenced documentation is to be sent in a sealed envelope or box, addressed and delivered as noted herein, and marked "LEGAL DOCUMENTS," Within ten (10) working days of the date of service of this Supoena.
If you fail to forward the requested documentation, you will be deemed guilty of CONTEMPT OF COURT , and liable to pay all losses and damages caused by your failure, and in addition, forfeit $100.00 (One Hundred Dollars).
IN WITNESS WHEREOF, I have set my hand and affixed the seal of the above-entitled Court, this 15th day of December, 2005.

Ronald Longtin, County Clerk

By: _____
Deputy Clerk

CR03P1263 DC-9900025217-032
POST FERRILL J. VOLPICELLI 3 Pages
District Court 02/17/2006 11 14 AM
Washoe County 2645

EXHIBIT 2

FERRILL J. VOLPICELLI
79565 @ LCC
POB 359
Lovelock, Nv 89419

Petitioner, In Proria Persona

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,
Petitioner,

vs.

Case No: CRP03-1263

THE STATE OF NEVADA,
Respondent,

Dept No: 10

MOTION FOR ORDER TO COMPEL

COMES NOW, the Petitioner, FERRILL J. VOLPICELLI, in his proper person and as countenanced in Haines v. Kerner, 404 US 519, 92 SCt 594, 596 (1972),(Under said case, pleadings filed by pro se litigants are held to less stringent standards than those filed by practicing attorneys), and respectfully moves this Honorable Court for an ORDER to Compel Reno City Attorney, Karen Swaney Fraley Esq., legal advisor to the Reno Police Department, to forward to the Petitioner, at his current place of confinement above-noted, ALL documentation relevant to the property seized from Co-defendant Brett A. Bowman by RPD, in or about October of 2001, at his #332 apartment/residence (695 W. 3rd St. Reno Nevada 89503) in case RPD# 01-21634.

This MOTION is made and predicated upon all papers, documents, and pleadings on file in said case, as well as any argument at any hearing this COurt may deem necessary.

STATEMENT OF JURISDICTION

This Court has JURISDICTION in this matter, as a remittitur has issued in the Nevada Supreme COurt's review of this case on August 1, 2005. See Nevada Supreme Court Case No. 43203.

ARGUMENT

Petitioner would direct the Court's attention to NRS 1.210(3), which states substantially as follows:

That the Court has the power to COMPEL OBEDIENCE to its ORDER; and, NRS 22.010(3) provides that 'refusal to abide by a lawful order issued by the COurt is CONTEMPT.' HUMANA, INC. V. EIGHTH JUDICIAL COURT, CLARK COUNTY, 110 Nev 121, 867 P2d 1147.

Petitioner has diligently pursued receipt of the foregoing referenced evidence/documentation; all to no avail. Siad documentation requested in the 15 December, 2005 Subpoena DUces Tecum is critical to the Petitioner's preparation of his Writ of Habeas Corpus (post-conviction).

CONCLUSION

WHEREFORE, Petitioner respectfully moves this Court for relief, with an ORDER compelling Ms. Fraley to immediately forward copies of the requested evidence in the Subpoena Duces Tecum.

Respectfully submitted this 26th day of January, 2006.

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that Ferrill J. Volpicelli, on this 26 day of January, 2006, personally deposited for mailing, postage prepaid, a true copy of the Motion To Compel to Reno City Attorney Karen Swaney Fraley.

FERRILL J. VOLPICELLI
79565 LCC POB 359
Lovelock, Nevada 89419

ORIGINAL

FILED

2006 MAR -6 PM 3:29

BY DEPUTY

Petitioner, In Propria Persona

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VOLPICELLI 4 Pages
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FERRILL J
District Court
Washoe County
CR03P1263
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No. CR03-P1263

Dept. No. 10

LETTER BRIEF

Honorable Steve Elliot As Presiding Judge
POB 30083
Reno, Nevada 89520-3083

Please accept this letter-brief in lieu of a more formal brief relevant to the pending matters in this case.
Currently, there are three (3) Motions To Compel involving the Petitioner's quest for evidence relative to the recently filed Writ of Habeas Corpus (post-conviction).
Firstly, the issues regarding trial counsel Brad Van Ry involve the Petitioner's request for the return of his vinyl folders. Said property was commingled with Mr. Van Ry's case file and never returned to Petitioner. In addition, there is the request for an Affidavit from Mr. Van Ry relative to his receipt of the controverted excupatory evidence (ie. the complete transcribed transcripts involving taped conversations between investigators of the RPD and the Defendants at WCSO circa 10/01-202), from the State and/or his review of the tapes in their entirety prior to trial.

Since November of 2005, the Court has been in receipt of said Writ wherein many of the Grounds proffered involve the ineffective assistance of counsel. The aforereferenced RPD transcripts buttress the claims of ineffective assistance of counsel and/or the possibility of the State prosecutors withholding exculpatory evidence. Without Mr. Van Ry's Affidavit as an accompanying exhibit with the Writ, the Court may rule in favor of the STate's likely request for a dismissal due to the lack of support.

Next, the issue regarding the Motion To Compel NDOC Director Whorton involves the Petitioner's diligent pursuit of taped telephone conversations between Mr. Kevin Sigstad and the Petitioner. The discussions involve various issues relavent to the seized property and return thereof, as well as evidence in support of Petitioner's employment with Mr. Sigstad while Petitioner was on parole in 2001. Again, this evidence supports many of the claims Petitioner cites in his pending Writ.

The final matter involves a Motion To Compel Reno City Deputy Attorney Ms. Fraley to provide documentation of a search and/or seizure concerning the RPD case which culminated in the prosecution of the instant case. Although the Petitioner mistranscribed the RPD case number, Ms. Fraley is very familiar with RPD case number 01-216321 AS the Petitioner has filed numerous pleadings over the past few years relative to the seizure and confiscation of Petitioner's family's property by the RPD and certain family members at the time of Petitioner's arrest. Although Ms. Fraley refers to the pleadings as frivolous, Petitioner was compelled to file the Motions due to the excessive delays and lack of cooperation by those individuals involved.

The documentation sought from the RPD, via the City of Reno Attorney, is discovery evidence which should have been provided to the defense prior to trial and pursuant to Judge Hardesty's order for reciprocal discovery in 2003. This evidence relates to co-defendant Bowman's

searched property in RPD case 01-216321 at Bowman's apartment. Incidentally, it was harmless error to cite case 01-21634 and Ms. Fraley is well aware of the correct case number as she has received correspondence over the past few years concerning matters pertaining to Petitioner's quest for accountability and return of his family's seized property. The documentation of the poperty searched and eventually released to Bowman's agent related directly to issues outlined in the now pending Writ. This includes, but is not limited to, the inconsistent and/or perjured relevant testimony at trial as to promises made to Bowman by the prosecution, the nexus between the property at his apartment and the storage unit, as well as the fraud perpetrated to the jury in conveying minimal involvement of Bowman. And again, without such evidence to accompany the Writ which the COurt will initially review to determine if an evidentiary hearing is warranted, the COurt may dismiss the related Grounds as unsubstantiated.

Now the City Attorney argues in her Opposition to the Motion To Copel that the applicable NRCP and NRS do not allow for such discovery at this juncture of the post conviction proceedings. This may be so, but the Petitioner counters with the fact that this evidence should have been in the possession of the defense years ago. So in this regard, the State should be compelled to immediately release that evidence which is not new discovery. Otherwise, to deny said evidence further only constitutes additional due process violations. Should not the State, County and City be held accountable to the applicable NRCP and NRS in this case?

It is no small wonder why so many incarcerated pro se litigants are compelled to inundate the Courts with such pleadings; thereby consumming Court resources.

The Petitioner trusts that this COurt will review all the pleadings pending in this case and render rulings consistent with equitable justice under both the Nevada and United States Constitutions.

Respectfully Submitted,
on this 27 day of February, 2006.

FERRILL J. VOLPICELLI

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an incarcerated inmate at LCC, Lovelock, Nevada, and that on this date, I did place this Letter-Brief in the Law Library drop-off. Said copies of the Letter-Brief are true copies and sealed for mailing in the United States Mail, postage pre-paid and addressed to the following individuals:

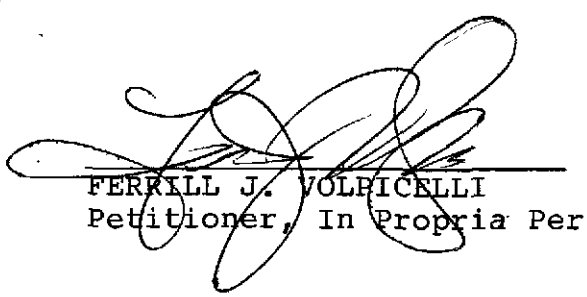
Karen S. Fraley Esq.

Terrance McCarthy Esq.

Bradley Van Ry Esq.

STate of Nevada Attorney General

Dated this 26 day of February, 2006



FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

DC-99000025217-034
FERRILL J. VOLPICELLI 6 Pages
District Court 03/21/2006 04:28 PM
Washoe County 3880
CR03P1263
POST: FERRILL J. VOLPICELLI

ORIGINAL

FILED

MAR 21 2006

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

3880
PATRICIA A. LYNCH
Reno City Attorney
KAREN S. FRALEY
Deputy City Attorney
P.O. Box 1900
Reno, NV 89505
(775) 334-2421

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI, Petitioner, vs. STATE OF NEVADA, Respondent.	Case No. CR03-P1263 Dept. No. 10

RESPONSE TO PETITIONER'S "LETTER BRIEF" FILED IN REPLY TO THE CITY OF RENO'S OPPOSITION TO MOTION FOR ORDER TO COMPEL AND MOTION TO QUASH SUBPOENA DUCES TECUM

COMES NOW the City of Reno, by and through its attorneys, PATRICIA A. LYNCH, Reno City Attorney, and KAREN S. FRALEY, Deputy City Attorney, in Response to Petitioner's "Letter Brief" Filed in Reply to the City of Reno's Opposition to Motion for Order to Compel and Motion to Quash Subpoena Duces Tecum.

The City will not address the first two issues specified by Petitioner in his "Letter Brief", as they do not relate to the Subpoena Duces Tecum served upon the Reno Police Department, which is the subject of his Motion for Order to Compel.

I. Petitioner Has Already Received All Records Regarding Search Warrants Served and Evidence Seized in RPD Case No. 01-216321.

In his "Letter Brief", Petitioner states that "Ms. Fraley is very familiar with RPD case

number 01-216321 As [sic] the Petitioner has filed numerous pleadings over the **past few years** [emphasis added] relative to the seizure and confiscation of Petitioner's family's property by the RPD and certain family members at the time of Petitioner's arrest."[1] Letter Brief, p. 2. Petitioner is correct. He has filed numerous pleadings over the past few years, to the extent that "pleadings" refers to correspondence requesting records, subpoenaes duces tecum, and various Motions thereto related. He has done so in two different cases: the criminal matter, the convictions for which were recently affirmed by the Nevada Supreme Court, and a domestic matter entitled Ferrill Volpicelli vs. Lori Inman et al, Case No. CV-03-03582. Often he has subpoenaed the same records in each case.

On January 6, 2004, the City provided Petitioner with returns for the search warrants served in RPD Case No. 216321-01, records for which he had mailed a subpoena. See Exhibit A. In response, Petitioner corresponded with the City on January 9, 2004, indicating he had received the information subpoenaed. See Exhibit B. He did raise an issue regarding a cell phone he expected to find listed as seized, as well as some other non-search warrant issues. However, he did not raise an issue concerning the absence of any information related to his allegation that the Reno Police Department obtained a search warrant for Co-Defendant Bowman's residence, searched it and seized property which he appears to allege actually belonged to him. Letter Brief, pp. 2-3. Certainly, if he believed the City had withheld documents in response to his subpoena, that would have been the time to raise the issue.

On October 22, 2004, the City provided the Petitioner with an inventory list for RPD Case No. 01-216321 at his request. The list provided the name of the owner of the property and

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[1] Petitioner characterizes the incorrect case number as "harmless error", as indeed it is, although it was necessary for the City to access the case number to ensure it wasn't a related case. It was also necessary to clarify that issue in the City's Opposition.

its status. See Exhibit C. Again, Petitioner did not inquire as to any property he believed had been seized from Co-Defendant Bowman's residence pursuant to a Search Warrant.

In September 2005, Petitioner again mailed subpoenaes duces tecum to the Reno Police Department in the case of Volpicelli v. Inman, Case No. CV03-3582[2], one directed to Detective Reed Thomas, assigned to the Repeat Offender Program, and one directed to the Reno Police Department. The subpoena addressed to Detective Thomas is virtually identical to the subpoena at issue in the instant matter, including the incorrect case number. See Exhibit D. The subpoena directed to the City is attached as Exhibit E. The City's initial response is attached hereto as Exhibit F. The follow-up response, dated October 19, 2005, is attached as Exhibit G.

The preceding narrative and the exhibits show that the Petitioner has already received all information available regarding search warrants, property in evidence and its disposition. As the City indicated in its Opposition to Motion for Order to Compel and Motion to Quash Subpoena Duces Tecum, Mr. Bowman's residence was searched, with his consent, and no property relevant to the case was located or seized. The City will once again represent that it stands ready to provide evidentiary support for those representations upon direction from the Court.

The Police Department cannot provide Petitioner with search warrants that were not issued or inventories of property not seized. He has repeatedly been provided with comprehensive lists of the property that the Reno Police Department did seize and has been given information regarding the disposition of the property, often confirming his own requests.

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[2] The City was unaware at the time that, in Petitioner's case against Ms. Inman, CV03-03582, Summary Judgment had been granted to the defendant, Petitioner's Motion for Reconsideration had been denied, and his appeal to the Nevada Supreme Court had been received and assigned Case No. 45999.

II. Petitioner's Allegations of Prosecutorial or Law Enforcement Misconduct Are Irrelevant to the Issue before the Court.

Petitioner's "Letter Brief" contains allegations regarding the conduct of the prosecutor and the investigating officer(s) and implies that the City has now joined the "conspiracy" to deprive him of due process. In the words of the Petitioner, "[n]ow the City Attorney argues in her Opposition to the Motion to Copel [sic] that the applicable NRCP and NRS do not allow for such discovery at this juncture of the post conviction proceedings. This may be so, but the Petitioner counters with the fact that this evidence should have been in the possession of the defense years ago." Letter Brief, p. 3 [emphasis in original]. His argument appears to be that he doesn't have to adhere to the applicable law because, he alleges, evidence was improperly withheld years ago.

Even if true, Petitioner's unsubstantiated allegations do not provide license to disregard the law. Nor do they give him license to misuse process of court, forcing the City into the position of responding to fugitive documents and inappropriate or frivolous motions in order to ensure that silence is not interpreted as disrespect toward the Court.

III. Conclusion.

The documentation sought by the Petitioner is to "evidence relat[ing] to co-defendant Bowman's search property in RPD case 01-216321 at Bowman's apartment." Letter Brief, pp. 2-3. The simple response is that there is no such evidence. What he seeks does not exist and repeated attempts to subpoena such records, both in the instant matter and the domestic case, will not make it so.

The City respectfully requests the Court Quash the Subpoena Duces Tecum and Deny Petitioner's Motion for an Order to Compel. The City further respectfully requests that

Petitioner be admonished as to the proper procedures to be followed at this juncture. If and when Petitioner's Petition for Writ of Habeas Corpus is granted, the City will cooperate to the fullest extent with any requests, direction or orders issuing from the Court.

DATED this 21st day of March, 2006.

PATRICIA A. LYNCH
Reno City Attorney

BY _____
KAREN S. FRALEY
Deputy City Attorney
Nevada Bar #3825
P.O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for the City of Reno

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

__X__ Reno/Carson Messenger Service.

addressed as follows:

Ferrill Volipicelli, #79565
Lovelock Correctional Center
P.O. Box Box 359
Lovelock, NV 89419

Terrence McCarthy
Deputy District Attorney
P.O. Box 30083
Reno, NV 89520

DATED this 21st day of March 2006.

Sylvia E. Atherton, MSM
An Employee of the Reno City Attorney

CR03P1263
POST: FERRILL J
District Court
Washoe County
DC-99000025217-035
VOLPICELL 24 Pages
03/21/2006 04:28 PM
3880

EXHIBIT 1

RANDALL EDWARDS
Chief Deputy, Civil Division

Civil Division Deputies
GABRIELLE CARR
TRACY CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MICHAEL K. HALLEY
SUSAN BALL ROTHE
JONATHAN SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX FELKER

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
ROSALBA I. ARANGO
LYNN BRANZELL
CAROLYN CRAMER
LEANNE KENDALL
PAMELA G. ROBERTS
HENRY SOTELO

Victim Advocates
LORI FRALICK
TERI GALVIN
SUZANNE RAMOS

January 6, 2004

Ferrill Volpicelli
#79565
Northern Nevada Correctional Center
Box 7000
Carson City, NV 89702

Dear Mr. Volpicelli:

In accordance with the subpoena duces tecum addressed to the Reno Police Department, I have enclosed copies of the Search Warrants issued in October 2001 and the returns for each, indicating the property seized in compliance with the warrants.

In other correspondence you addressed to DDA Riggs and me, you indicated competing claims for the property seized in accordance with those search warrants. Please provide me with a specific list of the property you are claiming is subject to claims by your children.

Finally, you included a copy of a letter from James R. Brooke, Esq. to DDA Kristin Erickson in which Mr. Brooke requested the release of certain property. As that letter was dated June, 2002, we require an updated designation of the appropriate person to whom property should be released in the event that the Reno Police Department determines that some property in its custody should be returned to you. Please confirm Mr. Brooke as your designee or provide me with the identity and telephone number of another designee.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley
Deputy City Attorney
Legal Advisor – Reno Police Department
(775) 334-2421

cc: DDA Tammy Riggs (w/o enclosure)
Detective Reed Thomas (w/o enclosure)

Wells Fargo
Safe Deposit Box
Search Warrant

10/17

FILED
'01 OCT 18 P3:44
LOUNSBURY,
MARIE H. EICHEMEYER, CLERK
RENO JUSTICE COURT
BY: DEPUTY

COURT OF RENO
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

IN THE MATTER OF THE APPLICATION
FOR A SEARCH WARRANT.

_____/

DUPLICATE ORIGINAL
SEARCH WARRANT

THE STATE OF NEVADA, TO ANY PEACE OFFICER IN THE COUNTY OF WASHOE:

Proof by Affidavit having been made this date before me by Det. Reed Thumas, of the Reno Police Department, Washoe County, Nevada, that there is probable cause to believe that the crime(s) of Burglary and Obtaining & Money / Property By False Pretenses and Grand Larceny felony violations of NRS 205.060 & 205.220 & 205.380 has/have been committed by Ferrill Volpicelli, and that evidence of the crime(s) SEE ATTACHED DOCUMENT ENTITLED "ATTACHMENT A"

_____

_____

_____

is/are presently located, concealed and/or hidden on or within (___) a residence and its surrounding premises and curtilage including sheds, outbuildings and areas appurtenant thereto,

described as _____

_____ in Washoe County, Nevada;

(___) a vehicle, described as _____

_____ which is presently located at

_____ in Washoe County, Nevada;

(✓) a container, described as A SAFETY DEPOSIT BOX BEARING NUMBER 300 which is/are presently located at Wells Fargo Bank, 490 California Ave, Reno in Washoe County, Nevada.

YOU ARE THEREFORE DIRECTED to make a complete search within the exterior boundaries of the location and items described above, including any containers therein, whether locked or unlocked, which could reasonably contain the evidence to be searched for, and if the evidence is found, to seize it, make a written inventory of the same, and bring the inventory forthwith before me at the above Court.

FILED
OCT 18 P 3:44
MARILYN [illegible]
CLERK
BY: [illegible] DEPUTY

(___) Serve this Warrant between the hours of 7:00 a.m. and 7:00 p.m.

(✓) Good cause appearing, serve this Warrant at any time.

DATED this 17th day of October, 2001.

Judge Edmund Quinn
JUSTICE OF THE PEACE

DATE: 10-17-01

TIME: 8:16 PM

PEACE OFFICER

WITNESS

This Search Warrant having been issued based upon an oral statement given under oath, this duplicated original Warrant is hereby endorsed this _____ day of _____, 20___.

_____
JUSTICE OF THE PEACE

RETURN

I HEREBY CERTIFY and return that I received the annexed Search Warrant on the 17th day of October, 2001; that I executed the same by making said search of the premises commonly designated as a safety deposit box (#300) located at Wells Fargo - 490 California Ave. in Reno, Washoe County, Nevada; that upon said search I seized the following item(s): See Attachment.

FILED
01 OCT 18 P3:44
MARIE A. GALLAGHER, CLERK
WASHOE COUNTY JUSTICE COURT
BY: [illegible]
DEPUTY

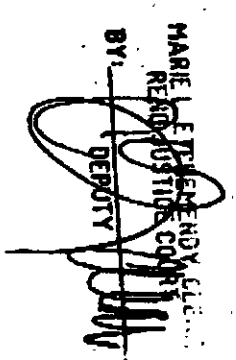
described in the annexed Search Warrant.

DATED this 18th day of October, 2001.

Peace Officer

to wit: cash register receipts, cash register receipt tape, refund slips or other documents or paper reflecting transactions with retail stores, cash, unopened merchandise, label makers, UPC/bar code stickers that are blank or filled out, ad circlers, public and personal telephone directories, computer records, disks, software and/or computer generated records, including, but not limited to: computers, keyboards, central processing units, external drives and/or external storage, tape, and or disk, terminals and/or video display units and/or other receiving devices and peripheral equipment such as, but not limited to, printers, automatic dialers, modems, acoustic couplers, journal diaries, correspondence, memoranda, computer software, programs and source documentation, logs, operating instructions, flow charts, diagrams, historical data, all or of the above whether found on paper, in handwritten, typewritten, photocopied or printed form, or stored on computer printouts, magnetic tapes, cassettes, disks, diskettes, hard drives, or any other medium, lists of computer words or passwords or codes, any bank, financial services or checking account records and identifications in the name of Ferrill Volpicelli or identified aliases including, but not limited to, checkbooks, cancelled checks, checking instruments, credit cards and statements, income tax and property tax records, any utility bills or receipts, rent receipts, or addressed envelopes and keys and other articles of personal property tending to establish the identy of the persons in control of the residence, safety deposit box and storage unit described in this search warrant.

ATTACHMENT "A"



Case #216321-01

10-18-01 1000 hrs

Safe Deposit Box Inventory of Seizure

One envelope containing $4300 in $100 bills; one plastic card holder containing NV. drivers license, 2 Wal Mart cards, prison I.D., 2 B of A VISA cards, in the name of Lori & Fernill Volpicelli; one Chase Mastercard, one Great Basin VISA, 3 Pets Mart giftcards; one Nordstrom card; one Staples cash card, one European Fitness I.D; one diamond w/ Appraisal; misc. paperwork; barcodes; labels; Foodstamps; 2 Hawthorne Savings C.D. checks, Great Basin check stubs; catalog page advertising label makers; temporary CA. drivers license; credit card applications; RXI exchange checks; Label Factory Deluxe CD; Office Depot floppy disk; Receipts; barcodes & rain checks for Toys R' US; one pack of label sheets; 1 pack of cable ties; ~~one~~ Two J.C. Penny card (Lori Volpicelli); one CA. drivers license (Fernill Volpicelli); one Gottschalks card; one Frederick Nelson card; one SS card # 530-63-2551 (Logan Volpicelli); one SS card # 530-04-7258 (Travis Volpicelli); one SS card # 572-76-7620 (Fernill Volpicelli); One Accordian Folder containing misc. financial information, titles, receipts, credit card info, bank account info, etc.

FILED
OCT 18 P 4:42
MARK JEBRO SHERIFF-CORONER
DEPUTY

Det. Reed Thomas 4082

Storage Unit
Search Warrant

10/17

FILED

'01 OCT 18 P3:49

MARIE L. ETCHEMENDY, CLERK
RENO, NEVADA
BY: DEPUTY

IN THE JUSTICE COURT OF RENO TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

IN THE MATTER OF THE APPLICATION

FOR A SEARCH WARRANT.

_____/

DUPLICATE ORIGINAL
SEARCH WARRANT

THE STATE OF NEVADA, TO ANY PEACE OFFICER IN THE COUNTY OF WASHOE:

Proof by Affidavit having been made this date before me by Det. Reed Thomas, of the RENO Police Department, Washoe County, Nevada, that there is probable cause to believe that the crime(s) of BURGLARY AND OBTAINING MONEY/PROPERTY BY FALSE PRETENSES AND Grand Larceny, felony violations of NRS 205.220 & 205.380 & 205.060 has/have been committed by Ferrill Volpicelli, and that evidence of the crime(s) SEE ATTACHED DOCUMENT ENTITLED "ATTACHMENT A"

_____

_____

_____

is/are presently located, concealed and/or hidden on or within (___) a residence and its surrounding premises and curtilage including sheds, outbuildings and areas appurtenant thereto,

described as _____

_____ in Washoe County, Nevada;

(___) a vehicle, described as _____

_____ which is presently located at

_____ in Washoe County, Nevada;

(✓) a container, described as Unit # B114 A Storage Unit

which is/are presently located at 30 East Victorian Ave Sparks in Washoe County, Nevada.

YOU ARE THEREFORE DIRECTED to make a complete search within the exterior boundaries of the location and items described above, including any containers therein, whether locked or unlocked, which could reasonably contain the evidence to be searched for, and if the evidence is found, to seize it, make a written inventory of the same, and bring the inventory forthwith before me at the above Court.

(___) Serve this Warrant between the hours of 7:00 a.m. and 7:00 p.m.

(X) Good cause appearing, serve this Warrant at any time. Approved

FILED
01 OCT 18 P 3:49
MARIE A. HEATH
REQUISITIONING CLERK
BY: _____ DEPUTY

DATED this 17th day of October, 2001.

Judge Edward Dannan
JUSTICE OF THE PEACE

DATE: 10-17-01

TIME: 8:15 pm

_____
PEACE OFFICER

_____
WITNESS

This Search Warrant having been issued based upon an oral statement given under oath, this duplicated original Warrant is hereby endorsed this _____ day of _____, 20___.

_____
JUSTICE OF THE PEACE

RETURN

I HEREBY CERTIFY and return that I received the annexed Search Warrant on the 17th day of October, 2001; that I executed the same by making said search of the premises commonly designated as Storage Unit #B114 at 30 E. Victorian Ave. in Sparks. Washoe County, Nevada; that upon said search I seized the following item(s): See Attachment.

FILED
01 OCT 18 P3:49

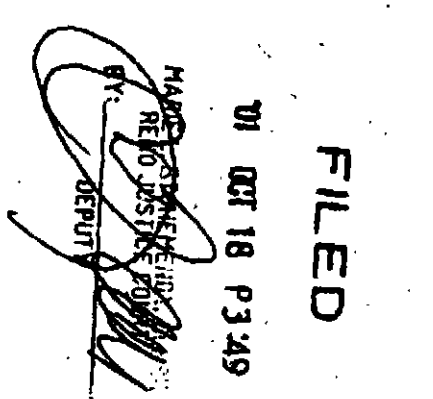
described in the annexed Search Warrant.

DATED this 17th day of October, 2001.

Peace Officer

to wit: cash register receipts, cash register receipt tape, refund slips or other documents or paper reflecting transactions with retail stores, cash, unopened merchandise, label makers, UPC/bar code stickers that are blank or filled out, ad circlers, public and personal telephone directories, computer records, disks, software and/or computer generated records, including, but not limited to: computers, keyboards, central processing units, external drives and/or external storage, tape, and or disk, terminals and/or video display units and/or other receiving devices and peripheral equipment such as, but not limited to, printers, automatic dialers, modems, acoustic couplers, journal diaries, correspondence, memoranda, computer software, programs and source documentation, logs, operating instructions, flow charts, diagrams, historical data, all or of the above whether found on paper, in handwritten, typewritten, photocopied or printed form, or stored on computer printouts, magnetic tapes, cassettes, disks, diskettes, hard drives, or any other medium, lists of computer words or passwords or codes, any bank, financial services or checking account records and identifications in the name of Ferrill Volpicelli or identified aliases including, but not limited to, checkbooks, cancelled checks, checking instruments, credit cards and statements, income tax and property tax records, any utility bills or receipts, rent receipts, or addressed envelopes and keys and other articles of personal property tending to establish the identy of the persons in control of the residence, safety deposit box and storage unit described in this search warrant.

ATTACHMENT "A"



RETURN
10.17.01
30 E. VICTORIAN #B114

R.P.D. CASE # 01-216321

1) Rug # 100948 – Fountain Blue
2) Remote Starter
3) Playstation Driving force
4) V-3 Racing wheel
5) KDS RAD 5 15" Crystal Display
6) GE OPTIMA TV ANTENNA
7) Portable Closet
8) ONE BOX - OFFICE MAX filler Paper
9) Hewlett Packer office jet V-40 Printer FAX SCAN Copy
10) Connectivity Value kit
11) Queen size Air Bed - INFLATABLE
12) Brother mc 100 Typewriter
13) Empty Box - PANASONIC KX-TG2583W phone/answer machine (Looks like phone in apt.)
14) FOLDER MARKED CREDIT CARDS

FILED
01 OCT 18 P3:49
CLERK OF THE CIRCUIT COURT
DEPUTY

Returned
10-17-01

30 E. Victorian Ave # B114

RPD Case # 01-216321

15) ~~Folder Marked~~

16) Empty Sanyo Box for 27" Flat View Television (Looks like one in Apt.)

17) Empty Steelhorse wireless headphones

18) Empty Nokia cell box # 544-4813

19) Samsonite Radio Cabelser

20) Misc. word Process Accessories in paper bag

21) Panasonic DVD Home Theatre SC HT70

22) Kodak EZ 200 Digital Camera Sets

23) " " " "

24) " " " "

25) VTech Digital Tele Phones # 2430

26) " " " # 2430

27) " " " # 2430

28) Plastic Bin of Misc files
2 way radios w/ charger
Braun Syncro System

29) Brother Electronic labeling System

30) Norelco Shaver

31) Trax View Mini Vision Console T.V. w/ Remote

32) Lego Steven Spielberg movie maker set

FILED
01 OCT 18 P3:50
MARIEL A. HERNANDEZ
SACRAMENTO COUNTY, CA
BY DEPUTY

RETURN
10.17.01
30 E. VICTORIAN AVE # B114

R.P.D. CASE # 01-216321

33) MOEN FACET
34) KDS RDD 5 CRYSTAL DISPLAY 15"
35) Phantom wildcat Vacume Cleanr
36) Tyrbo power bath spa
37) Hoover Vacume Cleaner
38) Simplicity Sewing machine
39) KODAK SLIDE Projector
40) Krupps Coffee maker
41) Emerson 19" DVD TV Combo
42) " " " "
43) " " " "
44) Panasonic SCDK10 DVD Stereo System
45) Compaq Presario 5150 WM
46) KOHLER TOILET
47) Sony NCD-D6900 Home stereo w/speakers
→ 48) Empty Playstation GT3 Racing Pack
49) SHARP VCR/TV Combo
50) Hewlett Packer OFFICEJet Printer - V40
51) FAX - Brother Intl System MF 9[illegible]
52) AERO AIR BED
53) AERO AIR BED
54) Computer Monitor
55) CPU
56) Hoover Steam VAC
57) Plastic Box w/ power strips, Keyboard & Mouse
58) ~~Empty~~ Plastic Box of misc electronic equipment
Unknown Blood pressure monitor
Boxes tooth brushes

FILED
OCT 18 P 3:50
MARIE GRAD JUSTICE COURT
BY DEPUTY

V3.247

10/17

2955 Lakeside Dr.
Search Warrant

FILED
01 OCT 18 P3:42
MARIE EICHEMEYER
BY: DEPUTY

COURT OF RENO TOWNSHIP,
COUNTY OF WASHOE, STATE OF NEVADA

* * *

IN THE MATTER OF THE APPLICATION
FOR A SEARCH WARRANT.

_____/

DUPLICATE ORIGINAL
SEARCH WARRANT

THE STATE OF NEVADA, TO ANY PEACE OFFICER IN THE COUNTY OF WASHOE:

Proof by Affidavit having been made this date before me by Det. Reed Thomas, of the Reno Police Department, Washoe County, Nevada, that there is probable cause to believe that the crime(s) of BURGLARY AND OBTAINING MONEY/PROPERTY BY FALSE PRETENSES AND Grand Larceny felony violations of NRS 205.220 & 205.380 & 205.060 has/have been committed by Ferrill Volpicelli. and that evidence of the crime(s) SEE ATTACHED DOCUMENT ENTITLED "ATTACHMENT A"

_____

_____

_____

is/are presently located, concealed and/or hidden on or within (✓) a residence and its surrounding premises and curtilage including sheds, outbuildings and areas appurtenant thereto,

described as Unit 214 a condominium _____ in Washoe County, Nevada; (___) a vehicle, described as _____ _____ which is presently located at _____ in Washoe County, Nevada; (___) a container, described as _____ _____ which is/are presently located at 2955 LAKESIDE DRIVE, RENO in Washoe County, Nevada.

YOU ARE THEREFORE DIRECTED to make a complete search within the exterior boundaries of the location and items described above, including any containers therein, whether locked or unlocked, which could reasonably contain the evidence to be searched for, and if the evidence is found, to seize it, make a written inventory of the same, and bring the inventory forthwith before me at the above Court.

(___) Serve this Warrant between the hours of 7:00 a.m. and 7:00 p.m.

(✓) Good cause appearing, serve this Warrant at any time.

DATED this 17th day of October, 2001.

Judge Edward Donnan
JUSTICE OF THE PEACE

DATE: 10-17-01

TIME: 8:17 PM

PEACE OFFICER

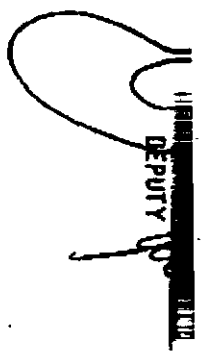
WITNESS

This Search Warrant having been issued based upon an oral statement given under oath, this duplicated original Warrant is hereby endorsed this _____ day of _____, 20___.

_____
JUSTICE OF THE PEACE

RETURN

I HEREBY CERTIFY and return that I received the Search Warrant on the 17th day of October that I executed the same by making said search of the premises commonly designated as A condominium located at 2955 Lakeside Dr. #214 in Reno Washoe County, Nevada; that upon said search I seized the following item(s): See Attachment



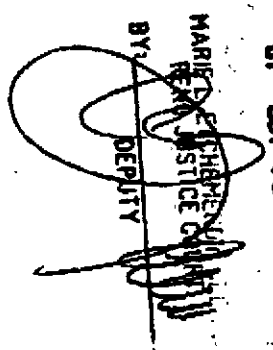
described in the annexed Search Warrant.

DATED this 17th day of October, 20[illegible]

Peace Offi[illegible]

to wit: cash register receipts, cash register receipt tape, refund slips or other documents or paper reflecting transactions with retail stores, cash, unopened merchandise, label makers, UPC/bar code stickers that are blank or filled out, ad circlers, public and personal telephone directories, computer records, disks, software and/or computer generated records, including, but not limited to: computers, keyboards, central processing units, external drives and/or external storage, tape, and or disk, terminals and/or video display units and/or other receiving devices and peripheral equipment such as, but not limited to, printers, automatic dialers, modems, acoustic couplers, journal diaries, correspondence, memoranda, computer software, programs and source documentation, logs, operating instructions, flow charts, diagrams, historical data, all or of the above whether found on paper, in handwritten, typewritten, photocopied or printed form, or stored on computer printouts, magnetic tapes, cassettes, disks, diskettes, hard drives, or any other medium, lists of computer words or passwords or codes, any bank, financial services or checking account records and identifications in the name of Ferrill Volpicelli or identified aliases including, but not limited to, checkbooks, cancelled checks, checking instruments, credit cards and statements, income tax and property tax records, any utility bills or receipts, rent receipts, or addressed envelopes and keys and other articles of personal property tending to establish the identy of the persons in control of the residence, safety deposit box and storage unit described in this search warrant.

ATTACHMENT "A"



FILED
01 OCT 18 P3:42

CASE# 216321-01

1) Various Speed
Black & Decker Cordless Drill / Patio storage

2) Wal Mart receipt $1.37 RPR
09/21/01 - Jaggari jeans in closet

3) Sticker Dent remover / Kitchen sink

4) Computer soft case black / closet

5) ~~Mini DISK RECORDER + ACCESS in Attic box / closet~~

6) Camera Paper/Labels Kitchen Counter

7) External CD-ROM GATEWAY 2000 5JBV401960I / Kitch. Counter

8) Koss Headset - plugged in laptop - Kitch. counter

9) one letter to Travis from DAD in envelope dated May 4, 0

10) Gateway 2000 Solo Laptop PB1D093 / Kitch Counter

11) Deskjet 820CSE Printer / Kitch. Counter

12) Cross Pen in box / Kitch counter

13) Philippe Amiel organizer/banana switch/watch cabinet

14) Misc. Paperwork: financial, telephone bills, receipts etc. letters
Amiens Sweep

V3.253

x2

FERRILL VOLPICELLI
7956 @ NNCC
BOX 7000
CARSON CITY, NV 8970

JANUARY 9, 2004

CITY ATTORNEY OF RENO

RE: 6 JANUARY, 2004 LETTER

DEAR MS. FRALEY,

I AM IN RECEIPT OF YOUR LETER AND ACCOMPANYING SEARCH WARRANT DOCUMENTATION. ALTHOUGH THE WARRANTS INDICATE PROPERTY SEIZED, TWO ISSUES STILL REMAIN. FIRST, THERE IS NO REFERENCE TO THE SEIZURE AND LOCATION OF THE CELL TELEPHONE REMOVED FROM THE MAZDA VAN ON OR ABOUT 17 OCTOBER, 2001. AM I TO ASSUME THAT IT IS IN THE NOKIA CELL BOX (775-544-4813) WHICH IS DESIGNATED AS # 18; AND IN FACT EMPTY? (SEE AUSSIE STORAGE ITEMS

SECONDLY, AND IN REGARDS TO THE SUBPOENA FOR CASE # 03-3582, I AM REQUESTING COPIES OF ALL RECEIPTS SEIZED WITH THE INVESTIGATIONS; INCLUDING BUT NOT LIMITED TO: THE LAKESIDE CONDO, MAZDA VAN, FORD EXPLORER, & WELLS FARGO SAFE BOX.

WITH REGARDS TO PROVIDING YOU WITH A SPECIFIC LIST OF THE PROPERTY CLAIMED BY ME FOR MY CHILDREN, OR THEIR INDIVIDUAL CLAIMS IN THE EVENT I CAN CONTACT THEM, I WILL BE DELAYED UNTIL MIDDLE OF FEBRUARY OR EARLY MARCH. AT THAT TIME, I WILL ALSO INDICATE THE DESIGNEES FOR RETRIEVAL OF CELL PHONES

V3.254

ASIDE FROM THIS AND BETWEEN NOW AND THEN, I WOULD LIKE TO INDULGE YOUR ASSISTANCE IN FACILITATING THE RETURN AND TRANSPORT OF A PRISON PURCHASED TYPEWRITER AND ACCOMPANYING ACCESSORIES, APTLY DESIGNATED AS ITEMS #12 AND #20 ON THE STORAGE UNIT INVENTORY LIST. SAID ITEMS ARE CLEARLY NOT DESIGNATED AS TO FRUITS OF, OR INSTRUMENTALITIES OF, ANY CRIMINAL MATTERS. THESE ITEMS ARE CRITICAL FOR ME TO FURTHER MY LEGAL AFFAIRS AND ARE CONSIDERED LEGAL RESOURCES AS INDICATED IN THE COPY OF AN AFFIDAVIT ENCLOSED. INASMUCH AS THE NDOC IS AUTHORIZED TO TRANSPORT THESE ITEMS AND THE FACT THAT I AM APPEARING IN COURT ON JANUARY 23, 2004, COULD YOU SEE TO IT THAT THE TWO FOREGOING ITEMS ARE BROUGHT TO THE COURT BY DEFENSE REED? IN THAT WAY, I CAN RETURN TO THE NDOC WITH THESE ITEMS IN LIEU OF FILING MORE DOCUMENTS TO DRAIN THE COURT OF THEIR RESOURCES.

PLEASE REPLY TO ME ON THESE MATTERS AT YOUR EARLIEST CONVENIENCE SO THAT I CAN PLAN ACCORDINGLY.

THANK YOU.

SINCERE REGARDS,

cc: file
enclosure

CR03P1263
POST: FERRILL J. VOLPICELLI
District Court
Washoe County
DC-9900025217-036
9 Pages
03/21/2006 04 28 PM
3880

EXHIBIT 2

TRACY L. CHASE
Acting Chief Deputy, Civil Division

Civil Division Deputies
MARK F. BRUCE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MICHAEL K. HALLEY
SUSAN BALL ROTHE
JONATHAN SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
ROSALBA I. ARANGO
LYNN BRANZELL
CAROLYN CRAMER
LEANNE KENDALL
PAMELA G. ROBERTS
HENRY SOTELO

Victim Advocates
EILENE KANE
SUZANNE RAMOS
LAURA ZIMMERMAN

October 22, 2004

Ferrill J. Volpicelli #79565
High Desert State Prison
Box 650
Indian Springs, NV 89018

Dear Mr. Volpicelli:

Enclosed please find the inventory list for RPD Case No. 01-216321. You will note that the property is listed, followed by identification of the owner of the property and its disposition. All items identified as belonging to you and "In Evidence" can now be released as you designate. You previously designated Kevin Sigstad to receive your property. Mr. Sigstad has now contacted me and is prepared to act on your behalf. I did ask him to wait until you had received this list before calling to make an appointment to pick up the property.

If you wish to change your designation, please advise me immediately.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley
Deputy City Attorney
Legal Advisor – Reno Police Department
(775) 334-2421

ksf
Enc.

RPD CASE NO. 01-216321
INVENTORY OF PROPERTY

ITEM	EVID. NO.	OWNER	STATUS
One (1) Emerson EWC19D1 Television*	A87909	WalMart	Returned
One (1) Emerson EWC19D1 Television*	A87910	WalMart	Returned
One (1) Emerson EWC19D1 Television & DVD Combo Set*	A87911	WalMart	Returned
One (1) Panasonic SC-DK10 DVD Stereo System*	A87912	WalMart	Returned
One (1) Kohler Rosario Low Flow Toilet*	A87913	Home Depot	Returned
One (1) Computer	A87914	F. Volpicelli	In Evidence
Various colored empty plastic bags from several local merchants	A87915	F. Volpicelli	In Evidence
One (1) Art Explosion Label Factory Deluxe	A87915	F. Volpicelli	In Evidence
One (1) Panasonic 2.4 GHz Cordless Answering System	A87915	F. Volpicelli	In Evidence
One (1) Nokia Phone Box – Empty	A87915	F. Volpicelli	In Evidence
One (1) Samsonite Charger	A87915	F. Volpicelli	In Evidence
Two (2) Avery #8165 Labels	A87915	F. Volpicelli	In Evidence
One (1) Multi-Tool	A87915	F. Volpicelli	In Evidence
One (1) Texas Instrument Connectivity Value Kit	A87915	F. Volpicelli	In Evidence
One (1) Texas Instrument TI-89 Calculator	A87915	F. Volpicelli	In Evidence
One (1) Hoover Steam Vacuum*	A87916	Shopko	Return Pending
One (1) Brother Fax Machine*	A87917	Custom Office	Return Pending
One (1) KDS-RAD5 Monitor*	A87918	WalMart	Returned

ITEM	EVID. NO.	OWNER	STATUS
One (1) Radius 15" Liquid Crystal Monitor*	A87919	WalMart	Returned
One (1) Compaq Model 5000 NIB Computer System*	A87920	WalMart	Returned
One (1) HP V-40 Fax-Copier*	A87921	WalMart	Returned
One (1) HP V-40 Fax-Copier*	A87922	WalMart	Returned
One (1) Panasonic SC-HT70 Dyna Movie*	A87923	Target	Returned
One (1) Panasonic SC-HT70 Dyna Movie*	A87924	Target	Returned
One (1) Hoover Wind Tunnel Vacuum*	A87925	WalMart	Returned
One (1) Fountain Blue Wool Handcrafted Rug*	A87926	Lowe's	Returned
One (1) Panasonic Cordless Answering System Box – empty	A87927	F. Volpicelli	In Evidence
One (1) Computer Keyboard	A87927	F. Volpicelli	In Evidence
One (1) Computer Mouse	A87927	F. Volpicelli	In Evidence
Two (2) Power Strips	A87927	F. Volpicelli	In Evidence
One (1) Phantom Wildcat Vacuum*	A87928	KMart	Returned
One (1) Memorex 9" Miniview Travel Television*	A87929	Target	Returned
One (1) V-3 Racing Wheel NIB Game*	A87930	KMart	Returned
One (1) Playstation Open Force Driving Game*	A87931	KMart	Return Pending
One (1) Deflect-O Bath N' Spa Exhaust Kit*	A87932	Home Depot	Returned
One (1) Simplicity Serge Pro Sewing Machine*	A87933	WalMart	Returned
One (1) Kodak Slide Projector*	A87934	Office Max	Return Pending
One (1) Krups Espresso Machine*	A87935	Bed, Bath & Beyond	Return Pending

ITEM	EVID. NO.	OWNER	STATUS
One (1) Closetmaid Closet	A87936	F. Volpicelli	In Evidence
Two (2) Aero Minute Air Beds*	A87937	WalMart	Returned
One (1) Ozark Queen Size Air Bed*	A87938	WalMart	Returned
One (1) Optima Amplified TV Antenna	A87939	F. Volpicelli	In Evidence
One (1) V-Tech 2.4 ghz Digital Telephone Multi Handset Combo*	A87940	Target	Returned
One (1) V-Tech 2.4ghz Digital Telephone & Answering System*	A87941	Target	Returned
Four (4) Brother Correctable Film Ribbons	A87942	F. Volpicelli	In Evidence
Five (5) Gelikan Lift Tabs	A87942	F. Volpicelli	In Evidence
One (1) Plastic Knob	A87942	F. Volpicelli	In Evidence
One (1) Avery Clear Ink Jet Labels Package	A87942	F. Volpicelli	In Evidence
Two (2) Audiovox Handi Talkies, with Chargers	A87942	F. Volpicelli	In Evidence
One (1) Norelco Shaver	A87942	F. Volpicelli	In Evidence
One (1) Braun Syncro Shaver System	A87942	F. Volpicelli	In Evidence
Three (3) Red & one (1) black plastic folder containing miscellaneous papers	A87942	F. Volpicelli	Returned
One (1) NIB Electronic Brother Brand Labeling System Control*	A87943	Office Depot	Returned
Three (3) Kodak Digital Cameras	A87944	F. Volpicelli	In Evidence
One (1) Stereo	A87945	F. Volpicelli	In Evidence
Two (2) Stereo Speakers	A87945	F. Volpicelli	In Evidence
One (1) Lego Movie Maker Toy*	A87946	Toys R US	Return Pending

ITEM	EVID. NO.	OWNER	STATUS
One (1) Sharp TV/VCR	A87947	F. Volpicelli	In Evidence
One (1) Jean Computer Monitor	A87948	F. Volpicelli	In Evidence
One (1) Sonya TV Box – empty	A87949	F. Volpicelli	In Evidence
One (1) Brother Typewriter – no case	A87950	F. Volpicelli	In Evidence
One (1) Steel Horse Wireless Headphones box – empty	A87951	F. Volpicelli	In Evidence
One (1) Moen Extensa Faucet*	A87952	Home Depot	Returned
Several unopened packages of Filler paper – 200 count each	A87953	F. Volpicelli	In Evidence
One (1) empty box Playstation 2 Gran Turismo	A87954	F. Volpicelli	In Evidence
One (1) grey folder containing miscellaneous paperwork	A87955	F. Volpicelli	Returned
Five (5) receipts	A87974	F. Volpicelli	Court
Three (3) ShopKo receipts	A87988	F. Volpicelli	Court
One (1) envelope w/fictitious UPC tags	A88171	F. Volpicelli	Destroy
Transposition Sheet	A88172	F. Volpicelli	Court
Miscellaneous Paperwork	A88172	F. Volpicelli	Returned
One (1) accordion folder containing receipts from numerous retail stores	A88173	F. Volpicelli	Court
Miscellaneous merchandise & gift cards	A88174	F. Volpicelli	Returned
Great Basin checkbook & duplicate DL paperwork	A88174	F. Volpicelli	Returned
Two (2) Key Rings w/Keys	A88174	F. Volpicelli	In Evidence
One (1) Separate Key Safe Deposit Box	A88174	Wells Fargo	Return Pending

ITEM	EVID. NO.	OWNER	STATUS
One (1) Brother Label Maker in black canvas case containing several fictitious UPC labels	A88175	F. Volpicelli	Court
One (1) Cigarette Lighter Jumper	A88176	F. Volpicelli	In Evidence
One (1) Sport Nylon Jacket	A88176	F. Volpicelli	In Evidence
One (1) box of miscellaneous files	A88177	F. Volpicelli	Returned
One (1) Panasonic KP-150 Electric Pencil Sharpener	A88178	F. Volpicelli	In Evidence
One (1) Orbital Wallarm VCR/ DVD Mount	A88179	F. Volpicelli	In Evidence
Two (2) Audio Tapes of Interview	A88277	RPD	In Evidence
Two (2) Audio Tapes of Interview	A88278	RPD	In Evidence
One (1) Video Tape of Interview	A88279	RPD	In Evidence
One (1) Video Tape of Interview	A88280	RPD	In Evidence
One (1) brown Perry Ellis wallet containing miscellaneous cards	A88281	F. Volpicelli	Returned
One (1) Capital One Mastercard	A88663	F. Volpicelli	Returned
One (1) Video Tape	A88663	RPD	In Evidence
One (1) Gateway Laptop Computer in case	A88664	F. Volpicelli	In Evidence
$886.00 U.S. Currency	A88700	F. Volpicelli	I.R.S. lien
Miscellaneous Paperwork	A90208	Chanel Volpicelli	Return Pending
One (1) Loose Diamond	A90208	Chanel Volpicelli	Return Pending
One (1) Black & Decker Variable Speed Drill	A90208	F. Volpicelli	In Evidence
Computer Disks	A90208	F. Volpicelli	In Evidence
Laminating Sheets	A90208	F. Volpicelli	In Evidence
Credit Cards	A90208	F. Volpicelli	In Evidence

ITEM	EVID. NO.	OWNER	STATUS
IDs	A90208	F. Volpicelli	In Evidence
CD-ROM	A90208	F. Volpicelli	In Evidence
One (1) blue plastic zipper file folder containing miscellaneous paperwork	A90208	F. Volpicelli	Returned
One (1) Gottschalks Card	A90208	F. Volpicelli	Returned
Miscellaneous Paperwork	A90208	F. Volpicelli	Returned
One (1) blue zippered pocket organizer	A90208	F. Volpicelli	In Evidence
One (1) Cross pen in box	A90208	F. Volpicelli	In Evidence
One (1) set Koss earphones	A90208	F. Volpicelli	In Evidence
One (1) telephone cord	A90208	F. Volpicelli	In Evidence
One (1) bottle sticker & decal remover	A90208	F. Volpicelli	In Evidence
$2,300.00 U.S. Currency	A90683	F. Volpicelli	I.R.S. lien
One (1) Floppy Disk	A91662	F. Volpicelli	In Evidence
One (1) Floppy Disk with photos	A91662	RPD	In Evidence
One (1) voided WalMart receipt	A92683	F. Volpicelli	Court
Video & Audio Tapes	A94257	RPD	In Evidence
Video & Audio Tapes	A94258	RPD	In Evidence
Video of Search from Wells Fargo	B01442	RPD	In Evidence
One (1) Bulldog Security Remote Starter*	#6 on log	ShopKo	Return Pending
One (1) Casio Cassiopeia Automatic PC*	#8 on log	ShopKo	Return Pending
Sonicare Plus Electric Toothbrush		ShopKo	Court
Two (2) Mabis Smart Read Plus Digital Blood Pressure Monitors*		KMart	Returned

ITEM	EVID. NO.	OWNER	STATUS
One (1) Quicken Business Lawyer 2001 Deluxe*		Office Depot	Returned
One (1) Book BXI checks		F. Volpicelli	In Evidence

* Restitution items

DC-9900025217-037
VOLPICELLI 2 Pages
03/21/2006 04:28 PM
3800
CR03P1263
POST: FERRILL J
District Court
Washoe County

Professional Indexes & Files, Inc. 800.422.9191 Recycled Paper

EXHIBIT 3

CODE 4055
FERRILL J. VOLPICELLI, NDOC# 79565
c/o Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Plaintiff.

vs.

Case No. 03-3582

LORI INMAN, et al.,

Dept. No. VI

Defendant.

/

SUBPOENA

To: Detective Thomas, c/o City Attorney Karen Swaney Fraley
(Name)

You are commanded to appear before the Second judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department VI at Reno, Nevada, on the 29th day of September, 2005 at 9:00am, to testify on the part of Plaintiff.

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of $100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal. You are further commanded to provide Plaintiff with any & all documentation relevant to property seized from Brett A. Bowman, by RPD at 695 W. 3rd St., Apt# 332, in case # 01-21634.

Dated this 20th day of September, 2005

RONALD A. LONGTIN, JR., CLERK OF THE COURT

by _____
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 20th day of September, 2005 and personally ~~served~~ mailed a copy of the same upon Det. Thomas, c/o City Attorney (Reno)

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

_____
Notary Public

Pursuant to NRS 208.165, notary not required.

_____
Signature of Person Making Service

JUD 100 (Rev 12/01)
NRS 111.150
NRCP 45 a

Recycled Paper

DC-9900025217-038
CR03P1253 FERRILL J VOLPICELLI 3 Pages
POST District Court 03/21/2006 04 28 PM
Washoe County 3880

EXHIBIT 4

FERRILL J. VOLPICELLI
NDOC # 79565
Lovelock Correctional Center
POB 359 1200 Prison Road
Lovelock, Nevada 89419

Plaintiff, In Propria Persona

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Plaintiff,

vs.

LORI INMAN, et al.,

Defendant(s).

_____/

Case no. CV-03-3582

Dept. no. VI

SUBPOENA "DUCES TECUM" NRCP 45(b)

The State Of Nevada Sends Greetings To:

RENO POLICE DEPARTMENT
c/o Karen Fraley Swaney
City Attorney's Office
POB 1900
Reno, Nevada 89501

WE COMMAND YOU, that all and singular business and excuses being set aside, you appear and attend on the 29th day of September, 2005, in Department No. VI of the District Court, Washoe County, Nevada.

YOU ARE FURTHER COMMANDED to submit immediately to the above-named Plaintiff, by sending to the above-noted address, any and all evidence, dating back to 2001, including, but not limited to, written/taped statements/correspondence between Defendants and law enforcement, receipts, inventory lists, photographs, and documentation releasing all seized property in RPD case # 01-216321 to individual(s), IRS and retail establishments relevant to the Lakeside condo, Mazda Van, Ford Explorer, Wells Fargo Bank and Aussie Storage facility.

The above referenced documentation is to be sent in a sealed envelope or box addressed and delivered as noted herein, in a sealed envelope or box, marked "legal documents", WITHIN TEN (10) WORKING DAYS OF THE ABOVE FILING DATE.

If you fail to attend, and forward the requested documentation, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure; and in addition forfeit One Hundred ($100.00) Dollars.

In WITNESS WHEREOF, I have set my hand and affixed the seal of the above-entitled Court this 25th day of Aug, 2005.

RONALD LONGTIN, COUNTY CLERK

By: T White
DEPUTY CLERK

STATE OF_____)
) ss:
COUNTY OF_____)

I hereby certify that I received the within Subpoena (Duces Tecum), and I, _____, personally served the same upon _____, by showing the within to him/her, and delivery to him /her, a copy of the same in the County of _____, State of_____, on this_____day of _____, 2005.

_____
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE
ME THIS_____DAY OF_____, 2005.

_____
NOTARY PUBLIC

PREPARED AND SUBMITTED

BY:_____
FERRILL J. VOLPICELLI
PLAINTIFF, IN PROPRIA PERSONA

V3.269

CR03P1263
POST. FERRILL J. DC-9900025217-039
District Court VOLPICELLI-0 Pages
Washoe County 03/21/2006 04 28 PM
3880

EXHIBIT 5

WILLIAM R. SHERMAN
Chief Deputy, Civil Division

Civil Division Deputies
TRACY L. CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MATTHEW JENSEN
SUSAN BALL ROTHE
JONATHAN D. SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
CAROLYN CRAMER
PAMELA G. ROBERTS
BRIAN M. SOOUDI
HENRY SOTELO
PATRICK SULLIVAN
KIMBERLY PASINI WOOD

Victim Advocates
JEANNA BENTO
EILENE KANE
SUZANNE RAMOS

September 26, 2005

Ferrill J. Volpicelli
NDOC #79565
Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

RE: Volpicelli v. Inman, et al

Dear Mr. Volpicelli:

I am in receipt of your Subpoenaes Duces Tecum directed to the Reno Police Department and to Detective Reed Thomas. As you know, and has previously been litigated, Detective Thomas is not a custodian of record for the Reno Police Department and, therefore, the subpoena is not valid. Further, it was not submitted with an appropriate amount of time to respond.

Much of the information you request has already been submitted to you. I will be happy to review my file and send you copies of any information I have not previously forwarded. I have enclosed with this letter a copy of the IRS Levy and the RPD disposition. I have also enclosed a copy of the release signed by Kevin Sigstad. There are several items that are not marked off and that Mr. Sigstad did not receive. RPD is attempting to locate those items, although I believe some were already returned to you. In the event RPD is unable to locate the items and it cannot be shown that they were already returned, I will forward to you a claim form.

As to the subpoena addressed to Detective Thomas, your cover letter contains one case number and the subpoena another. I will have to review the records of RPD to attempt to determine what it is you are seeking.

I will be out of the office until October 10. I will address your issues as soon as possible after my return.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley
Deputy City Attorney
Legal Advisor – Reno Police Department
(775) 334-2421

ksf
Enc.

Form 668-A(ICS)
(Rev. Jan. 2003)

Department of the Treasury – Internal Revenue Service

Notice of Le[redacted]

DATE: **January 13, 2004**

REPLY TO: ***Internal Revenue Service***
Lori Harris
675 W Moana Lane
Reno NV 89509

TELEPHONE NUMBER
OF IRS OFFICE: **775-824-2234 x268**

NAME AND ADDRESS OF TAXPAYER:
Ferrill J. Volpicelli
911 Parr Blvd
Reno NV 89512

TO: **Reno Police Department**
Attn: Karen Fraley, Dep. City Atty
PO Box 1900
Reno NV 89505

IDENTIFYING NUMBER(S): 572-76-7620

THIS ISN'T A BILL FOR TAXES YOU OWE. THIS IS A NOTICE OF LEVY WE ARE USING TO COLLECT MONEY OWED BY THE TAXPAYER NAMED ABOVE.

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/1989	$903.41	$5,687.74	$6,591.15
1040	12/31/1990	$35,106.62	$20,769.04	$55,875.66
1040	12/31/1991	$47,728.10	$28,620.59	$76,348.69
1040	12/31/1992	$33,256.26	$20,168.65	$53,424.91

THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. ⇒

Total Amount Due $192,240.41

We figured the interest and late payment penalty to **02/15/2004**

The Internal Revenue Code provides that there is a lien for the amount that is owed. Although we have given the notice and demand required by the Code, the amount owed hasn't been paid. This levy requires you to turn over to us this person's property and rights to property *(such as money, credits, and bank deposits)* that you have or which you are already obligated to pay this person. However, don't send us more than the "Total Amount Due."

Money in banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must be held for 21 calendar days from the day you receive this levy before you send us the money. Include any interest the person earns during the 21 days. Turn over any other money, property, credits, etc. that you have or are already obligated to pay the taxpayer, when you would have paid it if this person asked for payment.

Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying number*(s)* shown on this form. Don't offset money this person owes you without contacting us at the telephone number shown above for instructions. You may not subtract a processing fee from the amount you send us.

To respond to this levy —

1. Make your check or money order payable to **United States Treasury.**
2. Write the taxpayer's name, identifying number*(s)*, kind of tax and tax period shown on this form, and "LEVY PROCEEDS" on your check or money order *(not on a detachable stub.)*.
3. Complete the back of Part 3 of this form and mail it to us with your payment in the enclosed envelope.
4. Keep Part 1 of this form for your records and give the taxpayer Part 2 within 2 days.

If you don't owe any money to the taxpayer, please complete the back of Part 3, and mail that part back to us in the enclosed envelope.

Signature of Service Representative	Title
Lori Harris Lori Harris	**Revenue Officer**

Part 1 – For Addressee Catalog No. 15704T www.irs.gov Form **668-A(ICS)** (Rev. 1-2003)

V3.273

Excerpts from the Internal Revenue Code

* * * * * * * * * *

SEC. 6331. LEVY AND DISTRAINT.

(b).Seizure and Sale of Property.–The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive Seizures.–Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) Requirement.–Except as otherwise provided in this section, any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Special rule for Life Insurance and Endowment Contracts

(1) In general.–A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

(2) Satisfaction of levy.–Such levy shall be deemed to be satisfied if such organization pays over to the Secretary the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the data such organization had actual notice or knowledge (within the meaning of section 6323 (i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

(3) Enforcement proceedings.–The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.

(c) Special Rule for Banks.–Any bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(d) Enforcement of Levy.

(1) Extent of personal liability.–Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the underpayment rate established under section 6621 from the date of such levy (or, in the case of a levy described in section 6331 (d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer). Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for violation.–In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(e) Effect of honoring levy.–Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)), shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

SEC. 6333. PRODUCTION OF BOOKS.

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary, exhibit such books or records to the Secretary.

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

(a) Release of Levy and Notice of Release.–

(1) In general.–Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if–

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

(2) Expedited determination on certain business property.–In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) Subsequent levy.–The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.

(b) Return of Property.–If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return-

(1) the specific property levied upon,
(2) an amount of money equal to the amount of money levied upon, or
(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(d) Return of Property in Certain Cases.—If—

(1) any property has been levied upon, and

(2) the Secretary determines that—

(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the return of such property will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).

* * * * * * * * * *

Applicable Sections of Internal Revenue Code

6321. LIEN FOR TAXES.
6322. PERIOD OF LIEN.
6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.
6331. LEVY AND DISTRAINT.
6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.
6333. PRODUCTION OF BOOKS.
6334. PROPERTY EXEMPT FROM LEVY.
6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.
7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.
7429. REVIEW OF JEOPARDY LEVY OR ASSESSMENT PROCEDURES.

For more information about this notice, please call the phone number on the front of this form.

RENO POLICE DEPARTMENT
EVIDENCE DISPOSITION ORDER

CASE # [redacted]-216321

Date 8/18/04	*Offense* Burglary

The Evidence/Property Section, Investigative Services Bureau, is authorized to dispose of the listed items being held as evidence/property by the Reno Police Department as indicated:

Release Only ☒	Dispose/Auction ☐	Both ☐	RMC ☐	NRS ☐

You are authorized to release property as follows:

Name	*Phone*
Internal Revenue Service Attn: Lori Harris	**824-2234**
Address	
675 W. Moana Lane, Reno, NV 89509	
Property to be released:	
A88700 $886.00 U. S. Currency A90683 $2,300.00 U. S. Currency	

Photograph Prior to Release	*Date*	*By*
☐		

Dispose of and/or auction in accordance with department policy:		
Photograph Prior to Release	*Date*	*By*
☐		

Support data for release of evidence/property:
IRS Notice of Levy for any & all funds belonging to Ferrill J. Volpicelli/Case is now closed and Volpicelli convicted.

Date Notification Sent		*By*
Date Property Released		***By***
Date Property Destroyed		

Evidence Technician	*Date*
Investigator	*Date*
Authorizing Supervisor	*Date*
Bureau Commander (if required)	*Date*
Deputy City Attorney (if required)	*Date*
Karen Ashley Ford	8-18-04

Printed 10/6/03

V3.275

SECTION 1.— Levy Acknowledgment

Signature of person responding Karen S. Fraley

Printed name of person responding Karen S. Fraley, Deputy City Attorney

Your telephone number (775)334-2421

Date and time this levy received _____

SECTION 2.— Levy Results ***(Check all applicable boxes.)***

[x] Check attached in the amount of $ 3,186.00

[ ] No funds

[ ] No account

[ ] No record

SECTION 3.— Other Information ***(Please complete this section only if you are NOT sending us the total amount the taxpayer owes.)***

Taxpayer's latest address, if different from the one on this levy Ferrill Volpicelli, #79565, High Desert State Prison, Box 650, Indian Springs, NV 89018

Taxpayer's telephone number: ( ) Unk

Name and address of taxpayer's employer, if different from addressee None

Next date you will owe funds to the taxpayer No additional funds in RPD possession belonging to Ferrill Volpicelli

Other information you believe may help us:

Department of the Treasury – Internal Revenue Service

(Rev. Jan. 2003) **Notice of Levy**

DATE: **January 13, 2004**

REPLY TO: **Internal Revenue Service**
Lori Harris
675 W Moana Lane
Reno NV 89509

TELEPHONE NUMBER OF IRS OFFICE: **775-824-2234 x268**

NAME AND ADDRESS OF TAXPAYER:
Ferrill J. Volpicelli
911 Parr Blvd
Reno NV 89512

TO: **Reno Police Department**
Attn: Karen Fraley, Dep. City Atty
PO Box 1900
Reno NV 89505

IDENTIFYING NUMBER(S): 572-76-7620

THIS ISN'T A BILL FOR TAXES YOU OWE. THIS IS A NOTICE OF LEVY WE ARE USING TO COLLECT MONEY OWED BY THE TAXPAYER NAMED ABOVE.

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/1989	$903.41	$5,687.74	$6,591.15
1040	12/31/1990	$35,106.62	$20,769.04	$55,875.66
1040	12/31/1991	$47,728.10	$28,620.59	$76,348.69
1040	12/31/1992	$33,256.26	$20,168.65	$53,424.91

THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. ⇒

Total Amount Due $192,240.41

We figured the interest and late payment penalty to **02/15/2004**

The Internal Revenue Code provides that there is a lien for the amount that is owed. Although we have given the notice and demand required by the Code, the amount owed hasn't been paid. This levy requires you to turn over to us this person's property and rights to property *(such as money, credits, and bank deposits)* that you have or which you are already obligated to pay this person. However, don't send us more than the "Total Amount Due."

Money in banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must be held for 21 calendar days from the day you receive this levy before you send us the money. Include any interest the person earns during the 21 days. Turn over any other money, property, credits, etc. that you have or are already obligated to pay the taxpayer, when you would have paid it if this person asked for payment.

Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying number*(s)* shown on this form. Don't offset money this person owes you without contacting us at the telephone number shown above for instructions. You may not subtract a processing fee from the amount you send us.

To respond to this levy —

1. Make your check or money order payable to **United States Treasury**.
2. Write the taxpayer's name, identifying number*(s)*, kind of tax and tax period shown on this form, and "LEVY PROCEEDS" on your check or money order *(not on a detachable stub.)*.
3. Complete the back of Part 3 of this form and mail it to us with your payment in the enclosed envelope.
4. Keep Part 1 of this form for your records and give the taxpayer Part 2 within 2 days.

If you don't owe any money to the taxpayer, please complete the back of Part 3, and mail that part back to us in the enclosed envelope.

Signature of Service Representative
/S/ Lori Harris Lori Harris

Title
Revenue Officer

Part 3 – Complete and return to IRS Catalog No. 15704T www.irs.gov Form **668-A(ICS)** (Rev. 1-2003)

V3.277

March 21, 2005

R.P.D. Case Number : 01-216321 (Ferrell VOLPICELLI)

Following items currently located at Elko Warehouse, 440 Elko Avenue, Reno, NV. Will be released to Kevin SIGSTAD.

	EVIDENCE #	DESCRIPTION
~~1.~~	A87914	One (1) Computer
~~2.~~	A87915	Various Colored Empty Plastic Bags From Several Local Merchants
~~3.~~	A87915	One (1) Art Explosion Label Factory Deluxe
~~4.~~	A87915	One (1) Panasonic 2.4 Ghz Cordless Answering System
~~5.~~	A87915	One (1) Nokia Phone Box - Empty
~~6.~~	A87915	Two (2) Avery #8165 Labels
~~7.~~	A87915	One (1) Multi-Tool
~~8.~~	A87915	One (1) Texas Instrument Connectivity Value Kit
~~9.~~	A87915	One (1) Texas Instrument TI-89 Calculator
~~10.~~	A87927	One (1) Panasonic Cordless Answering System Box - Empty
~~11.~~	A87927	One (1) Computer Keyboard
~~12.~~	A87927	One (1) Computer Mouse
~~13.~~	A87927	Two (2) Power Strips
14.	A87915	One (1) Samsonite Charger
~~15.~~	A87936	One (1) Closetmaid Closet
~~16.~~	A87939	One (1) Optima Amplified TV Antenna
~~17.~~	A87942	Four (4) Brother Correctable Film Ribbons
~~18.~~	A87942	Five (5) Gelikan Lift Tabs
~~19.~~	A87942	One (1) Plastic Knob
~~20.~~	A87942	One (1) Avery Clear Ink Jet Labels Package
~~21.~~	A87942	Two (2) Audiovox Handi Talkies - With Chargers
~~22.~~	A87942	One (1) Norelco Shaver
~~23.~~	A87942	One (1) Braun Syncro Shaver System
~~24.~~	A87944	Three (3) Kodak Digital Cameras
~~25.~~	A87945	One (1) Stereo
~~26.~~	A87945	Two (2) Stereo Speakers
~~27.~~	A87947	One (1) Sharp TV/VCR
~~28.~~	A87948	One (1) Jean Computer Monitor
~~29.~~	A87949	One (1) Sonya TV Box - Empty – DESTROY
~~30.~~	A87950	One (1) Brother Typewriter - No Case
~~31.~~	A87951	One (1) Steel Horse Wireless Headphones Box - Empty
~~32.~~	A87953	Several Unopened Packages Of Filler Paper - 200 Count Each
~~33.~~	A87954	One (1) Empty Box - Playstation 2 Gran Turismo DESTROY
34.	A88174 ✓	Two (2) Key Rings With Keys
35.	A88176	One (1) Cigarette Lighter Jumper

36.	A88176	One (1) Sport Nylon Jacket
~~37.~~	A88178	One (1) Panasonic KP-150 Electric Pencil Sharpener
38.	A88179	One (1) Orbital Wallarm VCR-DVD Mount
~~39.~~	A88664	One (1) Gateway Laptop Computer - In Case
40.	A90208	One (1) Black & Decker Variable Speed Drill
41.	A90208	Computer Disks
42.	A90208	Laminating Sheets
43.	A90208	CD-ROM
44.	A90208	One (1) Blue Zippered Pocket Organizer
45.	A90208	One (1) Cross Pen In Box
46.	A90208	One (1) Set Koss Earphones
47.	A90208	One (1) Telephone Cord
48.	A90208	One (1) Bottle Sticker & Decal Remover
~~49.~~	None	One (1) 6"x9" Brown Envelope With The Following Writing On It: "Reed Thomas - RPD - RE: Volpicelli - Release To Kevin Sigstad - Det. R. Thomas #4042 - 2-15-05"

SUBJECT TO UNDISCLOSED ITEMS.

All of the above items released to: KEVIN SIGSTAD DATE: 3/22/05

BY: [signature]

P. L. [illegible] 3/22/05

Printed on Recycled Paper
20% Post Consumer Waste

DC-9900025217-040
VOLPICELL 23 Pages
03/21/2006 04 28 PM
3880
CR03P1263
POST. FERRILL J
District Court
Washoe County

EXHIBIT 6

WILLIAM R. SHERMAN
Chief Deputy, Civil Division

Civil Division Deputies
TRACY L. CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
TIMOTHY HAY
MATTHEW JENSEN
SUSAN BALL ROTHE
CREIG SKAU
ANN WILKINSON

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
CAROLYN CRAMER
PAMELA G. ROBERTS
BRIAN M. SOOUDI
HENRY SOTELO
PATRICK SULLIVAN
KIMBERLY PASINI WOOD

Victim Advocates
JEANNE BENTO
EILENE KANE
SUZANNE RAMOS

October 19, 2005

Ferrill J. Volpicelli
NDOC #79565
Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

RE: Volpicelli v. Inman, et al

Dear Mr. Volpicelli:

Attached to my letter of September 26 was the documentation showing the Internal Revenue Service Notice and Levy in the amount of $192,240.41 and the City's compliance with the Notice of Levy in forwarding a check in the amount of $3,186.00, representing cash assets belonging to you in the City's possession. A copy of the check is attached hereto.

Attached hereto are the following documents related to RPD Case No. 216321-00:

1. Evidence Photo Release Certificate reflecting the release of reading glasses to you on January 3, 2002.

2. Evidence Photo Release Certificate reflecting the release of One Mongoose XR350 bicycle to WalMart.

3. Property Return List for WalMart – Northtowne.

4. Property Return List for Home Depot – Northtowne.

5. Property Return List for K-Mart – Summit Ridge.

6. Property Return List for Target – Sierra Center Parkway

7. Property Return List for Lowe's – Kietzke Lane.

8. Property Return List for Office Depot – Harvard Way.

9. Transaction Receipt for release of loose diamond to Chanel Volpicelli. The diamond was released to Ms. Volpicelli because it was taken from a safe deposit box that was in her name and she specifically requested that it be returned to her.

10. Transaction Receipt, Evidence Disposition Order and related correspondence showing documents released to the undersigned and sent to you on March 31, 2004.

11. Transaction Receipt and related correspondence showing items released to the undersigned and sent to you on April 27, 2004. These items were returned and then forwarded upon your request. The cover letter addressed to Mr. J. A. Volpicelli is also attached.

Attached are the following documents related to RPD Case No. 216452-01:

1. Evidence inventory list for the referenced case. There is no other evidence in that case.

As to the remaining items, the following retailers have not yet retrieved the listed property. We do, however, have written documentation of their intent to do so.

1. Shopko – Mae Anne:
   a. Hoover Steam Vacuum
   b. Remote Starter
   c. Cassiopeia Palm Pilot

2. Office Max – Northtowne:
   a. Kodak Slide Projector NIB

3. Bed, Bath and Beyond:
   a. Krups Espresso Machine

4. Toys R Us – Smithridge:
   a. Lego Spielberg Movie Maker Set

On the list of property to be released to Kevin Sigstad as you requested, there were a number of items not crossed off. RPD Evidence personnel were attempting to locate them when I sent the list to you previously. Number 40, the Black & Decker Variable Speed Drill, has been located

and will be picked up by Mr. Sigstad on Monday, October 24. Items Number 41 through 48, identified by inventory number A90208, were checked out by the undersigned (identified on the Transaction Receipt as "miscellaneous papers") and included in the mailing of April 30, 2004, which was refused by the prison and redirected at your request to J. A. Volpicelli. You may, of course, check with Mr. Volpicelli to confirm.

That leaves five items that Evidence personnel have not been able to locate:

1. One Samsonite Charger (#14)
2. Two Key Rings with Keys (#34)
3. One Cigarette Lighter Jumper (#35)
4. One Sport Nylon Jacket (#36)
5. One Orbital Wallarm VCR-DVD Mount (#38)

Attempts to locate the remaining property are on-going. However, if you would care to submit a claim, I have attached a claim form which you may complete and return to the undersigned.

Finally, as to your request for information related to the criminal case which is concluded, your criminal attorney should be able to provide you with whatever discovery was provided in advance of trial and evidence produced at trial. The subpoenaes you have sent to Detective Thomas and I are in a civil case between you and your ex-wife, which actually weren't necessary to receive the information I have provided you. I believe, however, it is inappropriate to use subpoenaes in a civil case to attempt to obtain information relative to a criminal case that is concluded. Additionally, as I have previously advised you, the City of Reno holds records of the Repeat Offender Program confidential. If additional surveillance records were introduced at your trial, I suggest again that you contact your criminal attorney for copies.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley

Karen Swaney Fraley
Deputy City Attorney
Legal Advisor – Reno Police Department

kls

Encs.

1 East First Street, 3rd Floor, Post Office Box 1900, Reno, Nevada 89505-1900
Telephone: (775) 334-2050; Facsimile: (775) 334-2420
www.cityofreno.com

3499

CITY OF RENO
EVIDENCE IMPOUND ACCOUNT
P.O. BOX 1900
RENO, NV 89505

DATE 9-19-04

PAY TO THE ORDER OF United States Treasury

$ 3,186.56

Three thousand One hundred Eighty Six dollars seven

DOLLARS

VOID AFTER 90 DAYS

US BANK

FOR IRS LEVY Ferrell J Vaccaro (xxx-xx-xxxx)
#01-216321

⑈003499⑈ ⑆121201696⑆ 653790086075⑈

RENO POLICE DEPARTMENT
Reno, Nevada

EVIDENCE PHOTO RELEASE CERTIFICATE

RPD Case #216321-01

Crime Burglary

D.A.#

DEFENDANT: VOLPICELLI, Ferrill

VICTIM: State of Nevada/Wal-Mart

TO: WASHOE COUNTY DISTRICT ATTORNEY, or other appropriate prosecutor:

Pursuant to and in compliance with NRS 52.385, Sections 1, 2 and 3, it is requested that the following property be released to the owner or person entitled to possess said property:

PROPERTY (Describe in detail each item such as color, size, brand, serial number, etc.)

One pair of reading glasses.

Peace Officer/Evidence Custodian: THOMAS, R #4042 Date: 1-3-02

(NOTE: This section to be completed by ISB personnel ONLY)
TO: RENO POLICE DEPT Authorization: Telephonic_____ Written_____
Property (may)(may not) be released pursuant to NRS 52.385.

Deputy District Attorney — Date

PROPERTY PHOTOGRAPHED ON 1-3-02 (Date) By: THOMAS # 4042

PROPERTY RELEASED TO: (Name and Address. Explain if other than rightful owner.)

Ferrill Volpicelli
911 Parr Blvd.

Person Receiving Evidence — Date

Under penalty of perjury, I certify that photograph(s) of this property have been taken and the description of the property is accurate.

#4042 — 1-3-02
Peace Officer — Date

White: Records; Yellow: Evidence; Pink: Dets/Comp.Ofcr; Goldenrod: Prosecutor.
Rev. 1/8/88

RENO POLICE DEPARTMENT
Reno, Nevada

EVIDENCE PHOTO RELEASE CERTIFICATE

RPD Case # 01-216321

Crime BURGLARY

D.A.# _____

DEFENDANT: VOLPICELLI, F. & BOWMAN, B.

VICTIM: WAL MART @ 155 DAMONTE RANCH

TO: WASHOE COUNTY DISTRICT ATTORNEY, or other appropriate prosecutor:

Pursuant to and in compliance with NRS 52.385, Sections 1, 2 and 3, it is requested that the following property be released to the owner or person entitled to possess said property:

PROPERTY (Describe in detail each item such as color, size, brand, serial number, etc.)

One (1), MONGOOSE XR350 mountain bike. Silver, red, and black in color.

ITEM # 725983

SERIAL # - C1H0051104

Peace Officer/Evidence Custodian: DETECTIVE TEASLEY Date: 10/17/01

(NOTE: This section to be completed by ISB personnel ONLY)
TO: RENO POLICE DEPT Authorization: Telephonic _____ Written _____
Property (may)(may not) be released pursuant to NRS 52.385.

_____ _____
Deputy District Attorney Date

PROPERTY PHOTOGRAPHED ON _____ By: _____
Date

PROPERTY RELEASED TO: (Name and Address. Explain if other than rightful owner.)

BILL MACKLIN / ASST. MGR. WAL MART

155 DAMONTE RANCH PKWY RENO, NV.

Bill MacKlin ASST MGR 10-17-01
Person Receiving Evidence Date

Under penalty of perjury, I certify that photograph(s) of this property have been taken and the description of the property is accurate.

Dave Tuttle #2765 10/17/2001
Peace Officer Date

White:Records;Yellow:Evidence;Pink:Dets/Comp.Ofcr;Goldenrod:Prosecutor.
Rev. 1/8/88

Volpicelli Case – Property Return List

Wal – Mart Northtowne

A87909	Emerson TV Set
A87910	Emerson TV Set
A87911	Emerson TV Set
A37912	Panasonic DVD Stereo System
A87918	Radius KDS –RAD 5 Monitor
A87919	Radius 15 " Liquid Crystal Monitor
A87920	Compaq 500 NIB Computer System
A87921	HP V-40 Fax/Copier
A87922	HP V-40 Fax/Copier
A87925	Hoover Wind Tunnel Vacuum
A87933	Simplicity Sewing Machine
A87937	AERO Air beds (2 boxes taped together)
A87938	Ozark Queen Air Bed

7-14-04

DOUGLAS E. SUMMERS

ENTERED Q-TEL 7-14-04 pbr
BAR CODES UPDATED pbr 7-14-04

Volpicelli Case – Property Return List

Home Depot – NorthTowne

A87913	Kohler Model Toilet
A87932	Deflec Bathroom Fan
A87952	Moen Faucet

LPM
07/14/04

ENTERED Q-TEC
7-15-04 ph
BARCODES
UPDATED
7-15-04 ph

Volpicelli Case – Property Return List

Target Sierra Center Pkwy

A87923	Panasonic Dyna Movie
A87924	Panasonic Dyna Movie
A87929	9" Memorx Mini Travel TV
A87940	Vtech 2430 Telephone Answering Machine
A87941	Vtech 2461 Telephone Answering Machine

Christina Giannotti 7-14-04

Entered D-Tel/
Bar Codes Updated
gbn #115 7-15-04

Volpicelli Case – Property Return List

Lowes Kietzke Lane

A87926 100% Wool Handcrafted Rug

7-14-04

Entered O-Tel/
Bar Code Updated
ph 7-15-04

01-216321

Volpicelli Case – Property Return List

Office Depot Harvard Way

A87943
No Bar Code

Brother Labeling System
Quicken Business Lawyer 2001 Delux

Justin Chapez
Justin Chapez
825 Office Depot
7/14/04

Entered O-Tel/
Bar Code(s) updated
gbm 7-15-04

V3.291

01-21632

********** TRANSACTION RECEIPT **********

Transaction type : XFR
To Location : RTO
Assignee : 001159
Remarks : ONLY ITEM TO CHANTAL VOLPICELLI WAS LOOSE DIAMOND
Date : 12/29/2004 Time : 10:52:30

Bar Code #	A90208	Case #	216321-01	Offense	BURGLARY
Location	RTO	Evid.Held As	MRS		
Officer ID	004042	Officer Name	THOMAS		
Detective #					
Owner Name					
OwnerAddress					
City/ST/Zip					
Other Name					
Prop.Type	BOX			Item Ser #	
Make/Brand				Caliber	
Item Descr.	PLASTIC BOX W/ PHONE CORD/ GATEWAY CDROM DRIVE/ 4 DISKS				
Remarks	POWER DRILL/ ROSS HEADSET/ LETTER/ MISC ID'S/ MISC PAPERWORK				
Remarks	BLU WEEKLY PLANNER/ WALMART RECEIPT/ DIAMOND W/ APPRAISAL				
CurrencyAmt	0.00			Create Date	12/10/2001
Action Date	/ /			Last Changed	12/11/2003
Status	RETURN TO OWNER				

Signed: Chantal Volpicelli

216321-01

********** TRANSACTION RECEIPT **********

Transaction type : XFR
To Location : RTO
Assignee : 8267
Remarks : SENT VIA MAIL BY KAREN FRALEY 3/31/04 TO NSP CARSON
Date : 04/21/2004 Time : 07:24:21
Bar Code # A88177 Case # 216321-01 Offense BURGLARY
Location RTO
Evid.Held As MRS
Officer ID 002765 Officer Name TEASLEY, BRENT
Detective #

Owner Name
OwnerAddress
City/ST/Zip
Other Name

Prop.Type PAPERS Item Ser #
Make/Brand Caliber

Item Descr. CARDBOARD BOX FILE W/PAPERS FILED INSIDE
Remarks
Remarks
CurrencyAmt 0.00 Create Date 10/24/2001
Action Date / / Last Changed 12/11/2003
Status RETURN TO OWNER

Signed: sent by mail to NSP Carson City
by Karen Fraley

RENO POLICE DEPARTMENT
EVIDENCE DISPOSITION ORDER

CASE NO: 216321-01

Date 3/31/04 | Offense Burglary

The Evidence/Property Section, Investigative Services Bureau, is authorized to dispose of the listed items being held as evidence/property by the Reno Police Department as indicated:

Release Only ☒ Dispose/Auction ☐ Both ☐ RMC ☐ NFS ☒

You are authorized to release property as follows:

Name	Phone
Volpicelli	

Address: Sent via US mail by K. Fraley 3/31/04 to NSP Carson

Property to be released:

A88177

Photograph Prior to Release	Date	By
☐		

Dispose of and/or auction in accordance with department policy:

Photograph Prior to Release	Date	By
☐		

Support data for release of evidence/property:

Date Notification Sent	By:
Date Property Released	By:

Evidence Technician: Alisa Ellison	Date: 3/31/04
Investigator	Date
Authorizing Supervisor	Date
Bureau Commander (if required)	Date
Deputy City Attorney (if required): Kathleen Fraley	Date: 3-31-04

Printed 10/6/03

RANDALL H. EDWARDS
Chief Deputy, Civil Division

Civil Division Deputies
GABRIELLE CARR
TRACY CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MICHAEL K. HALLEY
SUSAN BALL ROTHE
JONATHAN SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX FELKER

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
ROSALBA I. ARANGO
LYNN BRANZELL
CAROLYN CRAMER
LEANNE KENDALL
PAMELA G. ROBERTS
HENRY SOTELO

Victim Advocates
LORI FRALICK
TERI GALVIN
SUZANNE RAMOS

March 31, 2004

Ferrill Volpicelli
#79565
Northern Nevada Correctional Center
Box 7000
Carson City, NV 89702

RE: Volpicelli v. Inman, Case No. CV-03-3582

Dear Mr. Volpicelli:

In response to the Subpoena Duces Tecum you served on the Reno Police Department in the referenced case, the District Attorney's Office has released the personal files previously held in evidence in RPD Case No. 01-216321. Accordingly, those records are being mailed to you today in two boxes.

We discussed the possibility of having them transported by prison personnel when you make your court appearance on April 1. The prison officials indicated to us that such arrangements are not possible. That, of course, also applies to your request for the typewriter.

When the District Attorney's Office releases the rest of the property, the Reno Police Department will determine what property is immediately releasable, what property is to be returned to victims and which property will be the subject of additional discussion and perhaps Court action. Please advise where your designees, Kevin Sigstad and Travis Volpicelli, may be reached or have them contact me at the number below, so we can make contact when the property is ready for release.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley
Deputy City Attorney
Legal Advisor – Reno Police Department
(775) 334-2421

ksf
cc: DDA Kristen Ericksen
Detective Reed Thomas

216321-01

********** RTO RECEIPT **********

Transaction type : XFR
To Location : RTO
Assignee : 000190
Remarks : RTO'D BY CITY ATT FRALEY
Date : 04/27/2004 Time : 18:43:03

Barcode	Case #	Officer ID	Owner Name	Rec'd By	Date
A87955	216321-01	000811		KSF	4/27/04
A90391	216321-01	004062		KSF	4/27/04

Signed: Karen S Fraley

PARTIAL : A90208 : MISC. PAPERS

by KSF Date 4/27/04

RANDALL K. EDWARDS
Chief Deputy, Civil Division

Civil Division Deputies
GABRIELLE CARR
TRACY L. CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MICHAEL K. HALLEY
SUSAN BALL ROTHE
JONATHAN SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal. LINDA FOX

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
ROSALBA I. ARANGO
LYNN BRANZELL
CAROLYN CRAMER
LEANNE KENDALL
PAMELA G. ROBERTS
HENRY SOTELO

Victim Advocates
EILENE KANE
SUZANNE RAMOS
LAURA ZIMMERMAN

June 14, 2004

Mr. J. A. Volpicelli
5733 Capeswood Drive
Rancho Palos Verdes, CA 90275

Dear Mr. Volpicelli:

This box of possessions of Ferrill Volpicelli, previously held in evidence by the Reno Police Department, is being sent to you at the request of Ferrill Volpicelli. Please see attached copy of letter dated May 27, 2004.

Feel free to contact me if you have any questions.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley
Deputy City Attorney
Legal Adviser – Reno Police Department
(775) 334-2421

ksf
Enc.

RANDALL K. EDWARDS
Chief Deputy, Civil Division

Civil Division Deputies
GABRIELLE CARR
TRACY L. CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MICHAEL K. HALLEY
SUSAN BALL ROTHE
JONATHAN SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
ROSALBA I. ARANGO
LYNN BRANZELL
CAROLYN CRAMER
LEANNE KENDALL
PAMELA G. ROBERTS
HENRY SOTELO

Victim Advocates
EILENE KANE
SUZANNE RAMOS
LAURA ZIMMERMAN

May 10, 2004

Ferrill Volpicelli #79565
Northern Nevada Correctional Center
Box 7000
Carson City, NV 89702

RE: Volpicelli v. Inman
Case No. CV-03-3582

Dear Mr. Volpicelli:

On April 30, I wrote you advising that I was mailing the last of the documents held in evidence by the Reno Police Department in response to the Subpoena Duces Tecum in the referenced case.

This letter is to advise you that, in my absence from my office last week, the box was returned unopened by prison officials, marked "no approval on file".

Please have a local designee call me at the number below to arrange to pick up the box of documents. You, of course, will need to make appropriate arrangements to receive the box.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley

Karen Swaney Fraley
Deputy City Attorney
Legal Adviser – Reno Police Department
(775) 334-2421

ksf
Enc.
cc: Lewis S. Taitel, Esq.
Robert R. Jensen, Esq.
Detective Reed Thomas

RANDALL K. EDWARDS
Chief Deputy, Civil Division

Civil Division Deputies
GABRIELLE CARR
TRACY L. CHASE
DONALD L. CHRISTENSEN
MARILYN CRAIG
KAREN SWANEY FRALEY
MICHAEL K. HALLEY
SUSAN BALL ROTHE
JONATHAN SHIPMAN
CREIG SKAU

Legal Researcher, LISA RILEY
Paralegal, LINDA FOX

OFFICE OF THE CITY ATTORNEY

PATRICIA A. LYNCH

KATHRINE I. BERNING
Chief Deputy, Criminal Division

Criminal Division Deputies
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LYNN BRANZELL
CAROLYN CRAMER
LEANNE KENDALL
PAMELA G. ROBERTS
HENRY SOTELO

Victim Advocates
EILENE KANE
SUZANNE RAMOS
LAURA ZIMMERMAN

April 30, 2004

Ferrill Volpicelli #79565
Northern Nevada Correctional Center
Box 7000
Carson City, NV 89702

RE: Volpicelli v. Inman
Case No. CV-03-3582

Dear Mr. Volpicelli:

I am writing to advise you that I am mailing today, under separate cover, a box containing all remaining paperwork, or anything that could loosely be referred to as paperwork, held in evidence by the Reno Police Department. The items are identified on the inventory sheets as follows:

"One (1) blue plastic zipper file folder containing misc. Paperwork such as bills, titles, statements, invoivces, insurance policy paperwork, etc."

"Misc. paperwork to include credit card applications, Great Basin check stubs, label maker advertisement, homeowners insurance application, compputer printouts of addresses, photocopies of receipts, Social Security Cards in the names of Logan & Travis Volpicelli, JC Penny [sic] cards bearing Ferrill & Lori Volpicelli, B of A VISA cards bearing Lori & Ferrill Volpicelli, One (1) Chase M/C bearing Ferrill Volpicelli, One (1) Gereat Basin VISA bearing Ferri Volpocelli, One (1) Wal-Mart receipt, One (1) European Fitness Center card, One(1) Frederick & Nelson card, One (1) Staples Cash Card, Three (3) Petsmart giftcards, One (1) Nordstrom card, Two (2) Wal-Mart cards, One (1) envelope entitled Wells Fargo containing paperwork, One (1) DMV DL remewal, One (1) envelope addressed to Travis Volpicelli & One (1) Federal Bureau of Prisons I.D.card for Volpicelli."

P.O. Box 1900, Reno, NV 89505 * 490 S. Center St., Rm. 204 * Telephone: (775) 334-2050 * Fax: (775) 334-2420

"One (1) grey fólder labeled "Credit Cards" filled with numerous statements and correspondence between Volpicelli and Credit Card companies regarding his claim that he has been defrauded and wants the account credited and/or cleared. In several letters he uses the name "Ferrill Colpicelli" "Volticelli" and other spellings. . ."

"Four (4) Toy's R Us Rainchecks w/receipts. NOTE: Toys R Us Loss Prevention Manager notified me during this investigation in 2001 and stated that due to Volpicelli's fraudulent activity that they were initiating their right to render the rainchecks invalid and cancelled."

"One (1) brown Perry Ellis leather wallet containing the following: 1 NV. DL bearing the name Ferrill Wolpicelli, 2 receipts, 4 blank BXI checks, One (1) Safeway Club Card, One (1) Costco card, One (1) Lowe's Merchandise Credit card, One (1) Smart & Final card, One (1) Sprint Prepaid Phonecard, One (1) Smith's Fresh Values card, One (1) K-Mart cash gift card & 1 US bank VISA bearing the name Ferrill Volpicelli expiring 07/03."

"One (1) Capital One Mastercard bearing the names Ferrill and Lori "Colpicelli".

"One (1) Gottschalks card #801 088 542 bearing the name Ferrill Volpicelli."

"BXI paperwork, misc. Advertisements, blank notepad & Budget Rental Car rental agreement."

"Two (2) Toys R Us Merchandise Cards, Two (2) Nevada Care Kids I.D.cards for Logan and Travis Volpicelli & One (1) Petsmart gift card."

"Great Basin checkbook & Duplicate DL paperwork."

"3 Red & 1 black plastic fólder containing misc. Papers."

The above listing, in addition to the files and documents already submitted to you, constitutes all financial records, documents, etc. believed to have been in the possession of the Reno Police Department. Again, everything listed above is being shipped separately.

Sincerely,

PATRICIA A. LYNCH, CITY ATTORNEY

Karen Swaney Fraley
Deputy City Attorney
Legal Adviser – Reno Police Department
(775) 334-2421

ksf
Enc.
cc: Lewis S. Taitel, Esq.
DDA Tami Riggs
Detective Reed Thomas

RENO APP

Filter: Case # begins with "216452-01"

BarCode Number	Location	Item Description
A87986	AUCTION	COMFORTER
A87987	AUCTION	COMFORTER
A87988	COURT	RECEIPTS
A87989	AUCTION	COMFORTER

Total number of records = 4

ORIGINAL

FILED
2006 MAR 21 PM 4:41
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CR03P1263
POST FERRILL J. VOLPICELLI 1 Page
District Court DC-9900025217-042
Washoe County 03/21/2006 12:17 PM
3860

CODE: 3860
PATRICIA A. LYNCH
Reno City Attorney
KAREN S. FRALEY
Deputy City Attorney
P.O. Box 1900
Reno, NV 89505
(775) 334-2421

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLIPCELLI,

Petitioner,

vs.

CASE NO.: CR03-P1263

STATE OF NEVADA

DEPT. NO.: 10

Respondent.

_____/

REQUEST FOR SUBMISSION

It is requested that the City of Reno's RESPONSE TO PETITIONER'S "LETTER BRIEF' FILED IN REPLY TO THE CITY OF RENO'S OPPOSITION TO MOTION FOR ORDER TO COMPEL AND MOTIONT TO QUASH SUBPOENA DUCES be submitted to the Court for decision. The undersigned attorney signifies that a copy of this request has been mailed to all counsel of record.

DATED this 21st day of March, 2006.

PATRICIA A. LYNCH
Reno City Attorney

By: _____
Karen S. Fraley
Deputy City Attorney

ORIGINAL

FILED
2006 MAR 22 PM 3:42
RONALD A. LONGTIN, JR.
BY
DEPUTY

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
Post Office Box 359
Lovelock, Nevada 89419

Petitioner, In Proper Person

DC-9900025217-041
VOLPICELL 14 Pages
03/22/2006 09:44 AM
FERRILL J
District Court
Washoe County
CR03P1263
POST

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--ooOoo--

FERRILL J. VOLPICELLI,

Petitioner,

vs.

LENARD VARE,
(Warden, Lovelock
Correctional Center),

Respondent.

Case No. CR03P1263

Dept. No. 10

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, Petitioner, Ferrill J. Volpicelli, in his proper person, and submits the instant SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) in the above-entitled action.

This Supplement is made and based upon all papers and pleadings on file herein, and due to a recent holding in the Ninth Circuit Court of Appeals relevant to Petitioner's instant action, as more fully explained below, herein, in addition to the following Argument and Points and Authorities.

. . .

. . .

. . .

BRIEF CASE HISTORY AND FACTS

Petitioner has been convicted, pursuant to a jury trial, of multiple charges of Burglary pursuant to NRS 205.060, Conspiracy to Commit Crimes Against Property pursuant to NRS' 199.480, 205.060, 205.0832, 205.090, 205.110, 205.220, 205.240, 205.380, and 205.965, in addition to a single count of Unlawful Possession, Making, Forgery, or Counterfeiting of Inventory Pricing labels pursuant to NRS 205.965(2)(3).

The Prosecution sought the imposition of Nevada's Habitual Criminal Statute, NRS 207.010.

Ultimately, on April 1, 2004, this Honorable Court sentenced Petitioner to multiple life sentences under the provisions of Nevada's Criminal (Habitual) Statute, NRS 207.010.

Petitioner timely filed a Notice of Appeal to the Nevada Supreme Court. (Docket No. 43203). The Nevada Supreme Court issued an ORDER OF AFFIRMANCE on June 29, 2005. Remittittur issued on August 1, 2005.

On November 9, 2005, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction), as well as a Memorandum of Points and Authorities in support thereof, in this court. The aforementioned Petition is currently pending in this court. The Court has not entered any Orders relative to the disposition of the Petition, and the Respondents have failed to Answer or otherwise plead.

Petitioner now brings forth the instant Supplement, wherein he presents an additional claim for relief in ADDITION to the claims for relief presented in the aforementioned Petition.

Petitioner's Petition, currently on file herein, contains Twenty-Two (22) claims for relief, numbered consecutively. Petitioner now submits the following claims for relief, continuing sequential numbering, commencing with Ground Twenty-Three (23).

The instant supplement is not prejudicial to the parties herein due to fhe fact that this Court, nor the Respondent, has responded or entered any Orders relevant to the disposition of the Petition.

GROUND TWENTY-THREE

TRIAL COUNSEL WAS INEFFECTIVE UNDER THE GUARANTEES OF THE SIXTH AMENDMENT IN FAILING TO PROTECT PETITIONER FROM THE ERRONEOUS IMPLICATION OF THE HABITUAL CRIMINAL STATUTE - NRS 207.010 - WHICH DENIED PETITIONER HIS RIGHTS TO DUE PROCESS, EQUAL PROTECTION AND A FAIR TRIAL AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

On October 9, 2003, the prosecution filed a NOTICE OF INTENT TO SEEK HABITUAL CRIMINAL STATUS against Petitioner in the instant action.

Nevada's Habitual Criminal Statute, NRS 207.010, reads as follows:

> **NRS 207.010 Habitual Criminals: Definition; Punishment.**
>
> 1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this State of:
>
> (a) Any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this stte would amount to a felony, or who has previously been three times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, is a habitual criminal and shall be punished for a category B felony by imprisonment in the State prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.

(b) Any felon, who has previously been three times convicted, whether in this state or elsewhere, of any crime which under the alws of the situs of the crime or of this state would amount to a felony, or who has previously been five times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or the intent to defraud is an element, is a habitual criminal and shall be punished for a Category A felony by imprisonment in the state prison:

1. For life without the possibility of parole;

2. For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. It is within the discretion of the prosecuting attorney whether to include a count under this section if any information or file a Notice of habitual criminality if an indictment is found. The trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.

Nevada Revised Statute 207.016 sets forth the procedure a court must follow in imposition of NRS 207.010.

NRS 207.016 states, in relevant part:

3. If a defendant charged pursuant to NRS 207.010, 207.012 or 207.014 pleads guilty to or is found guilty of the primary offense but denies any previous conviction charged, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the defendant. At such a hearing, the defendant may not challenge the validity of a previous conviction. The court shall impose sentence:

(a) Pursuant to NRS 207.010 upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual criminality;

A hearing was held, apparently pursuant to the provisions of NRS 207.016(3), in this Honorable Court on April 1, 2004.

At the hearing, the prosecution admitted evidence of Petitioner's three (3) prior convictions, one of which is a conviction from February 11, 2004. (Sentencing Transcripts "ST", Page 4, lines 16 - 17).

Petitioner asserts the February 11, 2004 conviction is not a valid or final conviction, and therefore, the court should not have relied on the conviction for enhancement purposes under 207.010. Counsel failed to ensure the conviction was valid and/or final. Counsel failed to object or otherwise subject the conviction to scrutiny, thus prejudicing Petitioner. Therefore, reversable error has occurred in that this court relied on a conviction that was not valid and/or final, as it was currently under review by the Nevada Supreme Court.

Additionally, in support of seeking habitual criminal status against Petitioner, the prosecution brought forth testimonial evidence of Detective Scott A. Hopkins at the hearing held April 1, 2004. This testimonial evidence was presented to the court, outside the presence of the jury, and related to allegations by the state concerning Petitioner's prior bad acts, both charged and uncharged, which were never brought forth in the State's case in chief against petitioner during the jury trial.

Detective Scott A. Hopkins' testimony, in relevant part, is as follows:

> A. . . . During that contact he made the comment to me that 22 months was worth a million.
>
> . . .

> What that meand to me is in reference to the federal case that they had done, that he had made a million dollars through is various fraud scams.

(ST, Page 9, lines 14 - 16, lines 24 -25, Page 10, lines 1 - 4).

> Q. Sir, at some point did somebody forward a photograph of this defendant to you, a photograph of himself in the federal penitentiary?
>
> A. Yes.

(ST, Page 10, lines 5 - 13, where the State entered the photograph as evidence, Exhibit 4)

Detective Scott A. Hopkins then proceeds to testify as to an apparent conversation he had between himself and Petitioner's ex-spouse, Lori Volpicelli. This amounts to hearsay testimony without Petitioner being able to confront or cross-examine Lori Volpicelli. (ST, Page 12, lines 18 - 22)

The Prosecution then produces Detective Reed Thomas, and the court allows his testimony at the sentencing hearing. Mr. Thomas is allowed to proffer hearsay testimony concerning conversations with Brett Bowman, the alleged co-conspirator in this action.

Mr. Thomas states that "the defendant invited Bowman to join his conspiracy." (ST, Page 16, lines 22 - 23) Mr. Thomas continues to testify about alleged prior criminal activity concerning Petitioner, regarding a conviction currently under appellate review. (ST, Pages 17 & 18)

Mr. Thomas continues to admit testimony concerning an alleged prior bad act regarding credit cards. (ST, Pages 19 & 20, lines 1 - 5).

Continuing, Mr. Thomas and the prosecution enter evidence at sentencing that was not admitted as evidence at Petitioner's jury trial.

> Q. Were there many items that were not admitted as evidence?
>
> A. Oh, yes.
>
> Q. And how many stores do you estimate were involved? or let me rephrase the questio. How many stores were you able to match products that you dound in that storage shed to?
>
> A. There were probably ten to 12 stores that were listed in the grand jury indictment that we suspected.

(ST, Page 21, lines 16 - 25)

The prosecution also admits evidene of a prior conviction through hearsay evidence of Mr. Thomas:

> Q. And he was eventually convicted of both of those charges, lewdness and indecent exposure, correct?
>
> A. That is correct.

(ST, Page 22, lines 20 - 22)

Once again, the prosecution admits evidence of prior bad acts, uncharged, and not proven to the jury, as follows:

> A. It's a prediction is what this report is.
>
> Q. . . . what do you estimate -- what damage amount do you put on his criminal acts . . .
>
> A. . . . $49,140 in tax free income per year. That's the low end. And that's assuming that he was engaging in this scheme once a week five times a day for one calendar year.

(ST, Pages 23 and 24).

After the plethora of evidence admitted by the prosecution at the sentencing hearing, the court enters its' recommendation.

> And under all the evidence that I see here, I do in fact find that Mr. Volpicelli is a habitual criminal.
>
> In fact, you are the poster child for habitual criminality
>
> And with that, I will sentence you as a habitual criminal. I think society needs to be protected from this level of theft where you're actually making a full good living from stealing.

(ST, page 58, lines 7 - 21)

The court, as stated above, maked its' determination based on "all the evidence." Id. Therefore, the court did not only use the fact of Petitioner's prior convictions, one of which was not a valid or final conviction, but utilized the evidence proffered by the prosecution, all of which was not proffered as evidence at Petitioner's jury trial.

A. DUE PROCESS AND FAIR TRIAL VIOLATION

The United States Supreme Court has held in Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000), that "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

In Blakely v. Washington, 542 U.S. ____, 124 S.Ct. 2531 (2004), the United States Supreme Court continued to address the issue of enhanced sentenes, stating:

> Our precedents make clear, however, that the statutory maximum for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.

In the instant action, the court succinctly states it considered "all the evidence" introduced at the sentencing hearing.

The evidence the court relied on in imposing the habitual criminal statute against petitioner, was not introduced or proven beyond a reasonable doubt to the jury. Therefore, the court violated Petitioner's Sixth Amendment right to a fair trial and Fifth and Fourteenth Amendment rights to due process of law by relying on unproven evidence. See Blakely v. Washington, Supra.

The Nevada Supreme Court, in Sessions v. State, 789 P.2d 1242 (Nev. 1990), stated that "when the prior offenses are stale or trivial, or in other circumstances where an adjudication of habitual criminality would not serve the purposes of the statute or the interests of justice," the court abuses its' discretion.

Petitioner asserts in the instant action the court abused its' discretion in considering irrelevant evidence to support its' findings and ultimately imposing multiple life sentences against petitioner in accord with NRS 207.010.

Additionally, the Nevada Supreme Courts' ruling in Sessions v. State, Supra, indicates that the imposition of NRS 207.010 is not mandated and/or automatic based on prior convictions, hence, it is the extrinsic evidence admitted at the sentencing hearing, and relied upon by the court, that is utilized to impose NRS 207.010's sentencing scheme against defendants in similar situations as Petitioner.

In Walker v. Deeds, 50 P.3d 670 (9th Cir. 1995) the Ninth Circuit Court of Appeals found that Nevada's habitual criminal

enhancement is not warranted simply on finding that a defendant has committed three felonies. (NRS 207.010).

Recently, in the case of Kaua v. Frank, Published Opinion Filed January 11, 2006, No. 05-15059, (opinion by Judge Thomas G. Nelson), the Ninth Circuit Court of Appeals addressed Hawaii's enhancement statutes, similar to Nevada's NRS 207.010 and 207.016, wherein a two-step process is utilized to find a defendant an habitual criminal. The court found that the court may not exempt the court from adherein to the mandates of Apprendi v. New Jersey, Supra, and continued to hold that a court may not rely on evidence from a hearing, outside the presence of a jury, in determining to impose an enhanced sentence against a convicted defendant.

Kaua v. Frank is directly on point with the instant action. The sentencing court in this case stated "I think society needs to be protected from this level of theft . ." (ST, Page 58, lines 7 - 21). In Kaua v. Frank, Supra, the court held, "Because the effect of the public protection finding was to increase Kaua's sentence above that authorized by the jury's guilty verdict, the Sixth Amendment required a jury to make the finding. Therefore, the district court's grant of Kaua's petition for a writ of habeas corpus is Affirmed."

B. EQUAL PROTECTION VIOLATION

Petitioner asserts that Nevada does not impose the provisions of NRS 207.010 against all similarly situated individuals as Petitioner, thus making it a violation of

Petitioner's rights under the Equal Protection clause to be sentenced under the scheme created by NRS 207.010.

NRS 207.010 contains mandatory language, in that it states, "is a habitual criminal and shall be punished for a Category A felony . . ."

While the statute contains mandatory language, the various courts and / or prosecutors throughout Nevada do not impose this harsh sentencing scheme to all persons similarly situated as Petitioner.

It is rather apparent that the prosecutor has used discretion in applying NRS 207.010 against Petitioner, and thereby imposed an indeterminate prison sentence.

The test of a statute is by the Constitution regardless of Supreme Court decisions. R.C. Tway Coal Co. v. Glenn, 12 F.Supp. 570 (1935).

The equal protection clause is essentially a direction that all persons similarly situated should be treated the same. City of Cleburne Texas v. Cleburne Living Center, 105 S.Ct. 3249 (1985); Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982); and United States v. Harding, 971 F.2d 410 (9th Cir. 1992).

Sentencing rationale considers the aggravating and mitigating circumstances relevant in each instance. Ostensibly, the greater the aggravating circumstances warrant and compel the imposition of the harsher sentence. However, it is precisely at this juncture that equal protection is fouled in this case. Petitioner received a substantially more severe punishment than other persons convicted of the same crime, especially if this court is to look at the minor sentence Petitioner's alleged co-conspirator recieved.

V3.314

This disparity in sentences is nothing less than absurd, unjust and in violation of the Constitution as it guarantees equal protection.

A statute that is not imposed equally to all similarly situated persons is unconstitutional. In Guillory v. County of Orange, 731 F.2d 1379, 1383 (9th Cir. 1984), the Ninth Circuit Court of Appeals has held that:

> A law that is administered so as to unjustly discriminate between persons similarly situated may deny equal protection.

Also see Mackenzi v. City of Rockledge, 920 F.2d 1554 (11th Cir. 1991).

A statute that allows the prosecutor to impose sentencing on an individual for no reason other than on a whimsical selection on the part of the prosecutor shall be considered unjust by this court.

It is well settled that statutes are not to be construed to produce absurd, illogical, or unjust or capricious results. Bechtel Construction v. United Brotherhood of Carpenters, 812 F.2d 1220 (9th Cir. 1987). Nor can it be reasonably argued against that when the defendant with more culpability receives far less sentence than the defendant with less culpability, that statutory construction and application is at a minimum absurd, illogical and unjust. Due process means fundamental fairness. Hampton v. United States, 96 S.Ct. 1646, 1652, note 6 (1976).

The equal protection standard cannot be held when NRS 207.010 is applied to select group of defendants, as is the case in the instant action. The United States Constitution

requires that penal statutes be structured so as to prevent penalty from being administered in arbitrary and unpredictable fashion. California v. Brown, 107 S.Ct. 837 (1987).

Applying NRS 207.010 to Petitioner clearly and absolutely prescribes drastically differing degrees of punishment for the same offense, committed under similar circumstances, by persons in like situations, specifically increasing the punishment for the defendant with less culpability.

Counsel's failure to object or otherwise protect Petitioner from the application of NRS 207.010 fell below an objective standard of reasonableness as required by Strickland v. Washington, Supra, and resulted in the depravation of Petitioner's right to equal protection as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Additionally, by the Nevada legislature enacting this statute that allows a prosecutor to selectively impose this statute arbitrarily as he wishes, clearly violates the Constitutional guarantee of equal protection and a fair sentencing hearing.

CONCLUSION

WHEREFORE, for the facts and arguments as set forth herein above, Petitioner respectfully requests this Honorable Court grant the instant WRIT.

DATED THIS 29th DAY OF MARCH, 2006.

Respectfully Submitted,

Ferrill J. Volpicelli
Petitioner, In Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Ferrill J. Volpicelli, do hereby certify that on this date I did serve a true and correct copy of the foregoing SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION), by placing same in the United States Postal Service, postage being fully prepaid, and addressed as follows:

RICHARD GAMMICK
WASHOE COUNTY DISTRICT ATTORNEY
POST OFFICE BOX 30083
RENO, NEVADA 89520-3083

DATED THIS 27th DAY OF MARCH, 2006.

By: _____
Ferrill J. Volpicelli
Petitioner, In Proper Person

/ / /

/ / /

/ / /

FERRILL J. VOLPICELLI
79565 LCC POB 359
Lovelock, Nevada 89419

Petitioner, In Propria Persona

ORIGINAL

FILED

2006 MAY 22 PM 3:29

AMY N. JR

DEPUTY

IN THE SECOND JUDICIAL COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DC-99000252217-043
CR03P1263
POST FERRILL J. VOLPICELLI 1 Page
District Court 05/22/2006 09:08 AM
Washoe County 3860

FERRILL J. VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: CR 03-P1263

Dept. No: 10

SECOND REQUEST FOR SUBMISSION

Petitioner, FERRILL J. VOLPICELLI, in his proper person, hereby moves the Court for a prompt submission of the Writ Of Habeas Corpus (post-conviction), filed on 9 November, 2005, regardless of the Court's decision on other pending Motions with this case, so that the COurt can ORDER the STate of Nevada to respond to Petitioner's Writ Of Habeas Corpus (post-conviction).

Respectfully submitted on this 18th day of May, 2006.

FERRILL J. VOLPICELLI
Petitioner, In Propria Persona

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that Ferrill J. Volpicelli, on this 18th day of May, 2006, personally deposited for mailing, postage prepaid, a true copy of the Second Request For Submission to WCDA Terrance McCarthy, Esq.

FERRILL J. VOLPICELLI

CR03P1263
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District Court 08/10/2006 04:02 PM
Washoe County DC-99000000035-290
3370

CODE: 3060

FILED

AUG 10 2006

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

***

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO: CR03P1263

DEPT. NO.: 10

ORDER APPOINTING COUNSEL

The Court has received and considered Petitioner's Ex Parte Motion to Appoint counsel, filed November 9, 2005. Petitioner was granted leave to proceed *in forma pauperis* on May 27, 2004. Petitioner has filed a multiple Petitions for Writ of Habeas Corpus on November 9, 2005, January 1, 2006, and June 27, 2006. The Court has determined that Petitioner should be represented by counsel.

IT IS HEREBY ORDERED that Petitioner's Request for Appointment of Counsel is **GRANTED**. Attorney Kay Ellen Armstrong, Esq. is appointed to represent Petitioner in his Writ of Habeas Corpus proceedings. Ms. Armstrong shall have 45 days from the date of

//

//

//

this Order to file a Supplemental Petition of Writ of Habeas Corpus on behalf of Petitioner.

DATED this 9 day of August, 2006.

STEVEN P. ELLIOTT
District Judge

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 10 day of August, 2006, I deposited for mailing a copy of the foregoing document addressed to:

Kay Ellen Armstrong
415 West Second St.
Carson City, NV 89703

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
P.O. Box 359
Lovelock, NV 89419

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

DATED this 10 day of August, 2006

HEIDI HOWDEN
Administrative Assistant

CR03P1263
POST: FERRILL J. VOLPICELLI 3 Pages
District Court 08/10/2006 04:03 PM
Washoe County
DC-9900000035-291
3370

CODE: 3370

FILED

AUG 10 2006

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO: CR03P1263

DEPT. NO.: 10

ORDER QUASHING SUBPOENA DUCES TECUM AND DENYING MOTION TO COMPEL

The Court has read and considered Petitioner's Motion for Order to Compel, filed January 31, 2006, as well as all supporting and opposing documents and memoranda.

Petitioner requests that this Court order the Reno City Attorney to forward "ALL documentation relevant to the property seized from Co-Defendant Brett A. Bowman by RPD, on or about October 2001."

Petitioner mailed a Subpoena Duces Tecum seeking the aforementioned documentation to the Reno Police Department on December 23, 2005. Respondent informs this Court that "Petitioner has already received all information available regarding search warrants, property in evidence and its disposition." Respondent also moves that the Court quash the subpoena pursuant to NRCP 45(c)(3)(A)(iv).

The City cannot be compelled or subpoenaed to provide Petitioner with search warrants that were not issued or inventories of property not seized. Accordingly, this Court finds good cause exists to quash the subpoena, and denies Petitioner's motion to compel.

Additionally, the Court notes that Petitioner has been appointed counsel to represent him in his Petition for Habeas Corpus. Petitioner is therefore notified that the Court will not accept any additional proper person documents from Petitioner while he is represented by counsel.

DATED this 9 day of August, 2006.

STEVEN P. ELLIOTT
District Judge

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 10 day of August, 2006, I deposited for mailing a copy of the foregoing document addressed to:

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
P.O. Box 359
Lovelock, NV 89419

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

Kay Ellen Armstrong, Esq.
415 West Second St.
Carson City, NV 89703

DATED this 10 day of August, 2006

HEIDI HOWDEN
Administrative Assistant

DC-99000000061-329
CR03P1263 VOLPICELLI 1 Page
POST: FERRILL J. VOLPICELLI 09/15/2006 10:37 AM
District Court 4047
Washoe County

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

Code 4047
Kay Ellen Armstrong
State Bar No. 0715
415 West Second Street
Carson City, NV 89703
775-883-3990

FILED

2006 SEP 15 AM 11:42

RONALD C. LONGTIN, JR.

BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

_____/

Case No. CR03P1263

DEPT. NO. 10

STIPULATION TO EXTEND TIME TO FILE SUPPLEMENT TO PETITION

COMES NOW, petitioner, Ferrill Joseph Volpicelli, by and through his attorney Kay Ellen Armstrong, and Terrance McCarthy, Deputy District Attorney, and hereby stipulate to extend the time, to and including November 20, 2006, within which to file a supplement to the proper person petition for a writ of habeas corpus (post-conviction). The supplement is currently due on September 25, 2006.

Dated: 9-15-06

KAY ELLEN ARMSTRONG
Attorney for Petitioner

Terrance McCarthy
Deputy District Attorney

ORIGINAL

FILED
2006 NOV 21 PM 1:47
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

Code No. 4100

Kay Ellen Armstrong
State Bar No. 0715
415 West Second Street
Carson City, Nevada 89703
775-883-3990
Attorney for Volpicelli

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CR03P1263 VOLPICELLI 6 Pages
POST: FERRILL J. 11/21/2006 05:09 PM
District Court 4100
Washoe County

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8855

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

_____/

Case No. CR03P-1263

Dept. No. 9

SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION

Comes now petitioner, Ferrill Joseph Volpicelli, by and through his attorney, Kay Ellen Armstrong, and hereby supplements the proper person post-conviction petition for writ of habeas corpus previously filed in this matter on November 9, 2005 and supplemented on March 22, 2006.

Petitioner Ferrill J. Volpicelli stands convicted pursuant to a jury verdicts of conspiracy to commit crimes against property, a gross misdemeanor, eight (8) counts of burglary, category B felonies, and unlawful possession, making, forgery or counterfeiting of inventory pricing labels, a category D or E felony. Mr. Volpicelli is serving eight (8) life sentences, with parole eligibility after 10 years, concurrent to each other, and one (1) life sentence, with parole eligibility after

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
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CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

ten (10) years, consecutive to the other eight (8) life sentences. Mr. Volpicelli was also sentenced to 12 months in the Washoe County Jail, concurrent with his other sentences. In his petition Mr. Volpicelli alleges ineffective assistance of counsel.

Mr. Volpicelli was represented by appointed attorneys, Bradley O. Van Ry at trial and Mary Lou Wilson on appeal. Mr. Volpicelli was charged by indictment filed June 11, 2003. Notice of Intent to Seek Habitual Criminal Status was filed on October 9, 2003. After the denial of a pretrial petition for writ of habeas corpus on November 7, 2003, the matter proceeded to trial on November 12, 13, and 14, 2003. The jury found Mr. Volpicelli guilty of all counts. At sentencing the court found Mr. Volpicelli to be an habitual criminal and imposed eight (8) life sentences.

ARGUMENT

Mr. Volpicelli enumerated twenty-two (22) grounds for relief in his proper person petition and supplement. Mr. Volpicelli summarized the first 21 grounds at pages 93-94 on his petition filed November 9, 2005. The grounds include allegations of ineffective counsel at both the trial and on appeal. The trial grounds include:

> 3. Allowing petitioner to be prosecuted using a flawed grand jury indictment;
>
> 4. Failure to plead defendant's mental incompetence at the time of the crimes;
>
> 5. Allowing guilty verdicts in light of insufficient evidence;
>
> 6. Allowing petitioner to be unconstitutionally sentenced as an habitual criminal;

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

7. Allowing imposition of excessive restitution at sentencing;

8. Allowing petitioner to be subject to multiplicitous and duplicative counts;

9. Allowing petitioner to be subject to lesser included offenses;

10. Allowing petitioner to be subject to vindictive/selective prosecution;

11. Allowing petitioner to be subject to irrelevant and perjured testimony;

12. Allowing petitioner to be subject to perjured testimony and vouching for the witness by the prosecutor;

13. Failing to investigate and argue certain witnesses were agents of the police;

14. Failing to investigate discovery thereby allowing petitioner to be subject to prosecutorial misconduct;

15. Failing to appeal the trial courts decision allowing the trial to proceed on the indictments;

16. Representing petitioner in spite of an actual conflict of interest;

17. Failing to investigate and proffer mitigating evidence at sentencing;

18. Allowing petitioner to be unconstitutionally sentenced as an habitual criminal because his prior convictions were not violent;

19. Failing to protect petitioner from violations of the Eighth Amendment's prohibition against cruel and unusual punishment;

20. Failing to protect petitioner from prosecution for exercising his First Amendment right to free speech in counts two and five;

21. Allowing petitioner to be prosecuted under statutes which are constitutionally vague and violate the due process clauses of the Fifth and Fourteenth Amendments;

23. (sic) Failing to protect petitioner from erroneous implication of the habitual criminal statute, by failing to insure the validity of the prior

convictions and allowing the court to consider improper evidence, among other things.

The grounds for ineffective assistance of appellate counsel include:

1. Failure to present issues to the Nevada Supreme Court in a proper, Federalized fashion;

2. Allowing the Nevada Supreme Court to conduct an improper appellate review.

Each ground pled by Mr. Volpicelli in his proper person petition is amply supported by citations to the record.

CONCLUSION

It is respectfully requested this court hold an evidentiary hearing in this matter, so that he may demonstrate both his trial and appellate counsel were deficient and that the deficient performance was prejudiced. Petitioner will demonstrate that but for trial counsel's mistakes there is a reasonable probability that the result of the trial would have been different. Petitioner will further demonstrate that issues omitted by appellate counsel would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); Strickland v. Washington, 466 U.S. 668 (1984).

Dated this 20th day of November, 2006.

Kay Ellen Armstrong
State Bar I.D. No. 0715
415 West Second Street
Carson City, NV 89703
775-883-3990
Attorney for Diaz-Cano

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

VERIFICATION TO SUPPLEMENT TO PETITION FOR POST-CONVICTION WRIT OF HABEAS CORPUS

COMES NOW, petitioner, Ferrill Joseph Volpicelli, by and through his attorney, Kay Ellen Armstrong, and hereby verifies the supplement to the petition for writ of habeas corpus previously filed in this matter on November 9, 2005 and supplemented on March 22, 2006.

DATED this 20th day of November, 2006.

Kay Ellen Armstrong
State Bar I.D. No. 0715
415 West Second Street
Carson City, NV 89703
775-883-3990
Attorney for Volpicelli

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ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

Washoe County District Attorney
75 Court Street
Reno, NV 89520

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

November 20, 2006

Anne Bowen

Anne Bowen

CR03P1263
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District Court 12/18/2006 01:21 PM
Washoe County 3370
DC-99000003392-078

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CODE: 3370

FILED

DEC 18 2006

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

***

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

_____/

CASE NO: CR03P1263

DEPT. NO.: 10

ORDER TO RESPOND

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) on November 9, 2005, and Supplement March 22, 2006 in pro per.

On August 10, 2006, this Court appointed Kay Ellen Armstrong to represent Petitioner. Ms. Armstrong filed a Supplemental Petition to Petitioner's Petition for Writ of Habeas Corpus on November 21, 2006.

The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his liberty.

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NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent shall, within 45 days of entry of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 and 34.830, inclusive.

DATED this 18 day of December, 2006.

STEVEN P. ELLIOTT
District Judge

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; and that on this date I deposited for mailing a copy of the foregoing document addressed to:

Kay Ellen Armstrong, Esq.
415 W. Second St.
Carson City, NV 89703

Terrance McCarthy, Esq.
Washoe County District Attorney's Office
Appellate Division
P.O. Box 30083
Reno, Nevada. 89520
(Interoffice Mail)

DATED this 18 day December, 2006.

HEIDI HOWDEN
Judicial Assistant

ORIGINAL

FILED

2007 FEB -5 AM 11:20

RONALD A. LONGTIN, JR.

BY

CODE #2155
RICHARD A. GAMMICK
#001510
P. O. Box 30083
Reno, Nevada 89520-3083
(775)328-3200
Attorney for Respondent

DC-9900000592-106
POST: FERRILL J. VOLPICELLI 9 Pages
District Court 02/05/2007 11:20 AM 2155
CR03P1263 Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI,

Petitioner,

v.

LENARD VARE, WARDEN,

Respondent.

_____/

Case No. CR03P1263

Dept. No. 9

MOTION FOR PARTIAL DISMISSAL OF PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, the Respondent, by and through counsel, and moves this court for an order for partial dismissal of the petition for writ of habeas corpus (post-conviction). This motion is based upon the records of this court and the Supreme Court and the following points and authorities.

POINTS AND AUTHORITIES

The petition for writ of habeas corpus appears to be timely and verified. Furthermore, some of the claims warrant a hearing. Others, described below, should be dismissed.

Ground 1 is a claim that appellate counsel rendered ineffective assistance in failing to present the arguments to the Supreme Court in terms of the United States Constitution. According to petitioner, if counsel had "federalized" the claims, that might one day open the door to the federal courthouse to Volpicelli. No hearing is warranted because that is the wrong analysis of prejudice.

Prejudice is an element of a claim of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In order to demonstrate prejudice, the petitioner must show that but for the failings of counsel, a different result of the litigation was likely. *Id.* In other words, Volpicelli would have to show not that the doors of the federal courthouse might someday be open to him, but that the doors of the prison would now be open to him if only counsel had raised the appellate arguments in federal terms. Because the proposed prejudice is not the correct kind of prejudice, no hearing is warranted and ground 1 should be dismissed.

Ground 2 seems to be a claim that the Supreme Court erred in deciding the appeal. This court has no authority to overrule the Supreme Court and so no hearing is warranted on ground 2.

Grounds 3, 4, 5 and 6 concern the issues that were decided on appeal. Each was considered and rejected on direct appeal and the doctrine of the law of the case precludes revisiting them in this proceeding. The doctrine applies to all proceedings in which the facts are substantially the same and it cannot be avoided by a more detailed or precisely focused arguments. *State v. District Court*, 121 Nev. ___, 112 P.3d 1070, 1075 (2005). Therefore, grounds 3, 4, 5 and 6 should be dismissed.

Ground 7 concerns restitution. It includes three separate arguments. Furthermore, one of the contentions warrants a hearing, although the remedy is not terribly attractive.

Unlike much of the petition, it includes a reasonable argument. One argument is fairly clever, although ultimately incorrect. Petitioner contends that he is entitled to have a jury determine the precise amount of restitution. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (2000) established the principle that the right to a trial by jury includes the right to have a jury determine any fact that increases the range of sentences that is available on the basis of the facts established in the basic jury verdict. Those courts that have considered the application of that decision to restitution, have concluded that the basic jury verdict allows restitution and the precise amount of restitution need not be determined by the jury. *See State v. McMillan*, 111 P.3d 1136 (Ore. App. 2005) and cases cited therein; *State v. Kinneman*, 119 P.3d 350 (Wash. 2005). The State also suggests that a restitution order that merely divests the crook of the proceeds of his crimes is not punitive because he has no right to the loot anyway. For the

moment, however, this court should simply rule that the basic verdict allows for the restitution order and the precise amount of restitution, like the precise prison sentence to be imposed, does not require an additional jury decision.

Ground 7 also includes the assertion that the court failed to consider the defendant's ability to pay before ordering restitution. An order for restitution is not dependent upon the defendant's ability to pay. *See Martinez v. State*, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999). Thus, no hearing is warranted.

Within ground 7 is another assertion, that counsel was ineffective in failing to contest the amount of restitution. That warrants a hearing. The remedy, however, is simply to modify the amount of restitution that Volpicelli is not going to pay anyway. *See Erickson v. State*, 107 Nev. 864, 821 P.2d 1042 (1991). So, even though there is no reason to believe that Volpicelli is ever going to pay a dime in restitution, a hearing is warranted to determine if counsel was ineffective in not paying closer attention to restitution when defending an indigent client facing multiple life sentences.

Ground 8 has two claims: that the indictment was duplicitous and that it was multiplicitous. A duplicitous charging instrument allows the jury to chose between two unrelated allegations and return a verdict without specifying which crime the defendant committed. For instance, if the charging instrument alleged the Volpicelli either committed burglary or lewdness, that would be duplicitous. That argument should be rejected as a matter of law because there are no duplicitous counts in the indictment.

A multiplicitous indictment takes a single crime and improperly divides it into multiple counts, thereby improperly increasing the available sentence for a single crime. The argument in the petition is flawed. The indictment alleges a single conspiracy and then multiple crimes of burglary, or of aiding and abetting burglary, each specifying a different victim and date of the crime. If the State had alleged multiple conspiracies when there was but one continuing conspiracy, that might be multiplicitous. There are no such allegations. Instead, each crime, both the conspiracy and the completed crimes, are alleged separately and thus ground 8 should be dismissed.

Ground 9 mentions a theory of lesser included charges. Apparently, petitioner contends that trial counsel or appellate counsel was ineffective in failing to assert that he cannot be convicted of both a

single conspiracy and then a series of completed crimes. When two persons conspire to commit crimes, they are liable for both the conspiracy and the completed crimes. *See generally, Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180 (1946); *Gordon v. District Court*, 112 Nev. 216, 230, 913 P.2d 240, 249 (1996). Thus, no hearing is warranted on ground 9.

Ground 10 is a claim of vindictive prosecution, in the guise of ineffective assistance of counsel. The burden of pleading such a claim is difficult because the movant must demonstrate something other than the regular plea bargaining process. *See United States v. Goodwin*, 457 U.S. 368, 380, 102 S.Ct. 2485, 2492 (1982)("For just as a prosecutor may forgo legitimate charges already brought in an effort to save the time and expense of trial, a prosecutor may file additional charges if an initial expectation that a defendant would plead guilty to lesser charges proves unfounded."). Here, Volpicelli presents no facts that would take this outside the normal realm of aggressive prosecution. Accordingly, the State contends that petitioner has failed to meet his burden of pleading specific facts and ground 10 should be dismissed.

Grounds 11 and 12 are apparently claims that trial counsel rendered ineffective assistance of counsel in failing to impeach a witness with every possible prior statement of that witness. Alternatively, it might be a claim that the State failed to disclose evidence. Either way, a hearing is warranted but the hearing should be limited to the specific claims advanced in grounds 11 and 12.

Ground 13 concerns a hypothetical motion to suppress evidence and is phrased in terms of ineffective assistance of counsel. According to the petition, stolen goods were stored in a commercial storage facility known as Aussie Storage. Petitioner's daughter had rented a space there. Petitioner characterizes the management as state agents due to two alleged incidents. First, he claims that a police officer once came to the facility and acquired information identifying the person who rented the unit. Merely acquiring information is not a seizure and cops do not need a warrant to ask questions of or obtain information from one who voluntarily gives it. So, that part of the claim would seem to be meaningless.

The other incident, according to the petition, involves a policeman who came to the storage

facility and was allowed entry, and parked his car in front of the unit rented by Volpicelli's daughter. According to the petition, the management breached its contract by not allowing three days notice before allowing the police to access the unit. There are two problems with this allegation, even if we could assume that the management acts as a state agent by giving consent to enter. First, Volpicelli alleges that his daughter rented the space. He has no standing to assert a breach, or a violation of the rights of another person. *Scott v. State*, 110 Nev. 622, 877 P.2d 503 (1994). Second, when one reads the petition carefully, it becomes apparent that he is complaining that the police entered into the facility, the common areas owned by the landlord, not the individual unit rented by the daughter. Police do not need a warrant or cause or anything else to park a car where the owner allows. Volpicelli had no constitutional or contractual right to exclude anyone from the common areas of the facility. Now, if Volpicelli had alleged that he tried to move some of the goods from the unit and the police actually detained him or the goods, then that would be an entirely different issue, but there is no such claim and so ground 13 should be dismissed.

Ground 14 is a claim that the State withheld exculpatory evidence. The claim is untrue, but it warrants a hearing.

Ground 15 includes a great deal of rambling, but Volpicelli describes it as an assertion that counsel should have immediately appealed when Judge Hardesty denied his efforts to "quash" or dismiss the indictment. First, interlocutory orders in criminal cases are not immediately appealable. *See* NRS 177.015 (allowing an appeal only from a final judgment). Second, the Supreme Court addressed the issue on direct appeal and found it without merit. The doctrine of the Law of the Case precludes revisiting that issue now.

Ground 16 is phrased in terms of a conflict of interest, but Volpicelli does not identify any competing interests. Instead, he makes it clear that he and his attorney had a conflict of opinion concerning tactics and strategies (of an unspecified nature). Volpicelli seems to claim that he is charged with making tactical decisions and that counsel is a mere mouthpiece that must accede to his demands. He is incorrect. When one elects to be represented by counsel, then certain fundamental decisions are

reserved to the client to make with the advice of counsel. Those include the decision of whether to plead guilty, whether to testify and whether to demand to a jury. The balance of the decisions are reserved to counsel. *See Rhyne v. State*, 118 Nev. 1, 38 P.3d 163 (2002). The client chooses the desired outcome of the litigation and counsel deploys his professional skills in deciding how best to achieve that outcome. *Id.* Thus, no hearing is warranted on ground 16.

Ground 17(A) concerns the adjudication of Volpicelli as a habitual criminal. That claim was rejected on direct appeal and is barred by the Law of the Case. Ground 17(B) asserts that one of the prior convictions had been appealed and the appeal was pending when this court considered that conviction in determining that Volpicelli was a habitual criminal. Other courts have recognized that a judgment of conviction issued by a court of competent jurisdiction is appropriate and admissible until and unless it is set aside by the appellate court. *State v. Johnson*, 406 P.2d 403 (Ariz. 1965).[1] *See also Berg v. State*, 711 P.2d 553 (Alaska App. 1985); *United States v. Leonard*, 630 F.2d 789 (10th Cir. 1980); *United States v. MacGregor*, 617 F.2d 348 (3d Cir. 1980). *United States v. Mackbee*, 894 F.2d 1057 (9th Cir. 1990). In *Clawson v. United States*, 52 F.3d 806 (9th Cir. 1995), the court held that a conviction that is being reviewed is sufficient to allow an enhancement unless the statute providing for the enhancement specifically requires that the prior conviction be "final."). That would seem to be the rule in Nevada as well, as evidenced by the undeniable fact that one may be committed to the state prison even while the conviction is appealed. Furthermore, such a rule is consistent with general principles that a person may be convicted of contempt for refusal to comply with a judgment, even while the judgment is being appealed, because the conviction is deemed valid until and unless it is set aside.

If the contention in ground 17(B) is that counsel was ineffective in failing to raise the argument concerning the finality of the prior conviction, no hearing is warranted because the general rule seems to be that one may indeed suffer collateral consequences to a conviction, even while an appeal is pending, and even if some court eventually rejects that theory, "[t]he failure of counsel to anticipate a change in

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[1]The disputed conviction was eventually affirmed. *Volpicelli v. State*, Docket No. 42971, Order of Affirmance (May 18, 2005).

the law does not constitute ineffective assistance." *Doyle v. State*, 116 Nev. 148, 156, 995 P.2d 465, 470 (2000). Therefore, no hearing is warranted on either variation of ground 17.

Ground 18 addresses the habitual criminal enhancement. The propriety of the sentence has already been determined on appeal and the claim is barred by the Law of the Case.

Ground 19 again addresses the sentencing determination. That has been reviewed by the Supreme Court and the attempt to refine the claim does not alter the conclusion that the claim is barred by the Law of the Case.

Ground 20 seems to be a claim that two of the counts are not supported by sufficient evidence. That claim could have been raised on direct appeal and is therefore barred by NRS 34.810. Furthermore, the premise that petitioner cannot be convicted of burglary because the stores were open to the public and he did not actually complete a larceny while in the store is incorrect. *See State v. Adams*, 94 Nev. 530, 581 P.2d 868 (1978)(burglary of store that is open to the public). Burglary requires only entry with the requisite felonious intent, not the completion of the felony. Therefore, no hearing is required on ground 20.

Ground 21 seems to be a claim that counsel is ineffective in failing to argue that the statute defining burglary fails to give fair notice of what conduct is prohibited. It is not. The statute prohibits entering a store with certain specified intents. If Volpicelli cannot figure out what "enter" means, that does not mean that a person of ordinary intelligence could not figure it out. Because ground 21 is incorrect as a matter of law, no hearing is warranted.

Ground 22 is merely a summary of the prior claims, so no hearing is warranted.

CONCLUSION

Most of the claims in the petition should be dismissed. The court should allow a hearing limited to part of ground 7 and grounds 11, 12 and 14.

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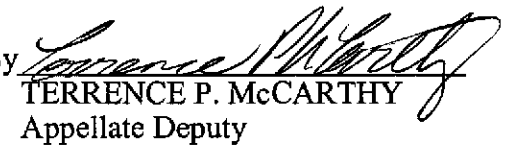
AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 5, 2007.

RICHARD A. GAMMICK
District Attorney

By 
TERRENCE P. McCARTHY
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kay Ellen Armstrong, Esq.
415 West Second Street
Carson City, NV 89703

DATED: February 5, 2007.

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RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CODE #1130
RICHARD A. GAMMICK
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Reno, Nevada 89520-3083
(775) 328-3200
Attorney for Respondent

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI,

Petitioner,

v.

LENARD VARE, WARDEN,

Respondent.

_____/

Case No. CR03P1263

Dept. No. 9

ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, Respondent, by and through counsel, and answers the petition filed on or about November 9, 2005, as follows:

1. That Respondent admits all allegations in paragraphs 1-5, 7-16, 19, 21 and 22 of the petition.

2. That Respondent denies all allegations in paragraphs 17 and 18 of the petition.

3. That Respondent lacks sufficient knowledge to admit or deny and therefore denies parts 6 and 20 of the petition.

4. As to the supplemental petition filed on or about November 21, 2006, due to the narrative nature of the supplement, Respondent denies each and every allegation of fact included therein.

5. That your affiant is informed and does believe that all relevant pleadings and transcripts necessary to resolve the petition are currently available.

6. That Respondent is informed and does believe that aside from an unsuccessful appeal from his judgment of conviction, Petitioner has not applied for any other relief from this conviction.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 5, 2007.

RICHARD A. GAMMICK
District Attorney

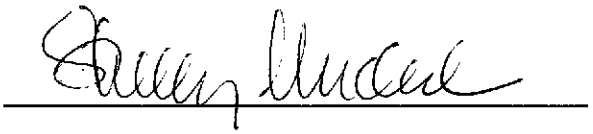
By _____
TERRENCE P. McCARTHY
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kay Ellen Armstrong, Esq.
415 West Second Street
Carson City, NV 89703

DATED: February 5, 2007.



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RONALD A. LONGTIN, JR.

BY S. Davis
DEPUTY

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Attorney for Volpicelli

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Washoe County
3790

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
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CARSON CITY, NEVADA 89703
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner, Case No. CR03P-1263

vs. Dept. No. 9

THE STATE OF NEVADA,

Respondent.

_____/

OPPOSITION TO PARTIAL MOTION TO DISMISS/REPLY

Comes now petitioner, Ferrill Joseph Volpicelli, by and through his attorney, Kay Ellen Armstrong, and opposes the partial motion to dismiss and replies to the answer, both filed on February 5, 2007.

This opposition/reply is based on the attached February 13, 2007 letter from petitioner, (See Exhibit A). Further, petitioner requests this court hold a full evidentiary hearing before ruling on any of the petitioner's claim. The state agrees an evidentiary hearing should be held on grounds 7, 11, 12 and

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14. However, this court should make a decision after hearing all pertinent evidence.

Dated this 15th day of February, 2007

Kay Ellen Armstrong
State Bar I.D. No. 0715
415 West Second Street
Carson City, NV 89703
775-883-3990
Attorney for Ferrill J. Volpicelli

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

February 13, 2007

Ferrill Volpicelli
79565 @ LCC POB 359
Lovelock, Nevada 89419

Kay Ellen Armstrong
Attorney At Law
415 West Second Street
Carson City, Nevada 89703

CASE NO: CR03-P1263

Dear Ms. Armstrong,

I am in receipt of your February 7, 2007 letter along with the accompanying State's Motion to Dismiss certain grounds within my pending Writ. After reviewing the arguments in the State's response, I have noted the following discrepancies which the Court needs to be made aware of.

It would appear that the State concedes to a hearing on those matters which, I believe, the State feels they can easily overcome at an evidentiary hearing. Meanwhile, the district attorney's office has requested the dismissal of many viable grounds after proffering only partial analysis and argument(s). This is done by skirting certain issues on certain grounds with an attempt to persuade the Court to foreclose further review.

Now, I do understand how certain issues were federalized and that those issues within the Writ cannot be revisited at this juncture in my quest for post-conviction relief. However, I do have pause and concern as to the State's attempts to have certain grounds dismissed by circuitously avoiding issues which entitle me to relief.

For example, the State makes a convincing argument that the third felony in the habitual criminal enhancement proceedings was later finalized by the Nevada Supreme Court. But, Mr. McCarthy skirts the paramount issue which claims that the very same felony proffered at sentencing was not a valid PRIOR for enhancement purposes. If you recall, the NRS is abundantly clear as to the specific date and order of the prior offenses admitted for enhancement at sentencing. After all, that particular conviction involves a felony related to the incident which occurred while I was in Washoe County Jail; SUBSEQUENT to my arrest for the crimes to which I was later sanctioned with multiple life sentences.

Next, and as far as the stacking of counts and the lesser included offense matters are concerned, the State correctly posits that a conviction for conspiracy can coexist with the burglary convictions without incurring a double jeopardy situation. Yet, there is no reference to the more important relationship between the count involving the possession of instrumentalities (NRS205.965) and the burglary counts (NRS205.060); wherein the judgment of conviction has them running consecutive to one another with life sentence enhancements. A review of the Writ will show that the State's indictment and trial transcripts clearly inform the juries that the possession of the label maker, UPC bar codes, receipts, and any pricing information constitute the intent element of all the burglary

EXHIBIT "A"

counts; NRS 205.060. So, the general test for determining the existence of a lesser included offense is whether the offense in question cannot be committed without committing the lesser offense. The State is adamant that the burglary counts are justified by the intent element of possessing the instrumentalities to defraud retailers. Hence, there indeed exists a double jeopardy scenario for the Court's consideration. And again, the State conveniently sidesteps this issue so as to foreclose the Court's proper analysis at review.

I also remain inquisitive as to why the State conveniently circumvented the supplemental ground filed late last summer relevant to the Court's imposition of the habitual criminal enhancement absent a jury's consideration.(Ground 23) This needs to be addressed as well.

There is also the State's attempt to thwart the claims of a due process issue concerning the vindictive prosecution matter. The fact that the prosecution may be entitled to intimidate with threats and later sanction a defendant for compelling the State to endure the pains and costs of going to trial, does not make for the same scenario when the defendant is intimidated, threatened and later sanctioned for merely exercising his right to a preliminary hearing and/or to have counsel present during the investigative process.

Lastly, the State seeks to have the last few grounds dismissed, relative to counts 2 & 5, by claiming that any further consideration at the imminent hearing is barred under the previously heard "insufficient evidence matter". In other words, something to which the Nevada Supreme Court previously heard on direct appeal. Nevertheless, it is my contention that those convictions ensued because of the mutiplicity/duplicity factor, coupled with the authorities apparent problem with interpreting the burglary statute, as evinced by their arbitrary enforcement of said statute absent any evidence whatsoever of criminal conduct.

With that said, I am requesting that you review the foregoing matters and challenge the State's motion to have those respective grounds summarily dismissed. Such a dismissal would indeed be a travesty of justice.

Thank you.

Ferrill Volpicelli
cc:file

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

Washoe County District Attorney
75 Court Street
Reno, NV 89520

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

February 15, 2007

Judy W. Collie

Kay Ellen Armstrrong
Attorney at Law
415 West Second St.
Carson City, NV 89703
(775)883-3990

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent

_____/

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person in case **NoCR03P-1263**

1. **OPPOSITION TO PARTIAL MOTION TO DISMISS/REPLY**

Kay Ellen Armstrong, Esq.

2-15-07
Dated

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

ORIGINAL

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Attorney for Respondent

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2007 MAR -5 AM 11:29
RONALD A. LONGTIN, JR.
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POST: FERRILL J. VOLPICELLI
District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI,

Petitioner,

v.

LENARD VARE, WARDEN,

Respondent.

Case No. CR03P1263

Dept. No. 8/10

REQUEST FOR SUBMISSION

It is requested that the Motion for Partial Dismissal of Petition and Supplemental Petition, filed on February 5, 2007, in the above-entitled matter, be submitted to the court for decision.

The undersigned attorney certifies that a copy of this request has been mailed to all parties of record.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 1, 2007.

RICHARD A. GAMMICK
District Attorney

By
TERRENCE P. McCARTHY
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kay Ellen Armstrong, Esq.
415 West Second Street
Carson City, NV 89703

DATED: March 5, 2007.

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Code: 2922

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI,

Petitioner,

vs.

LENARD VARE, WARDEN,

Respondent.

Case No.: CR03P1263

Dept. No.: 10

ORDER PARTIALLY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND ORDER TO SET HEARING

On November 14, 2003, this Court convicted Petitioner of one count of conspiracy to commit crimes against property, eight counts of burglary, and one count of unlawful possession, making, forgery or counterfeiting of inventory pricing labels. Petitioner was adjudged to be an habitual criminal, under NRS 207.010, and was sentenced to confinement in the Nevada State Prison for a term of 12 months for the conspiracy conviction, he was given concurrent life sentences for each burglary conviction, and he was given an additional life sentence for the possession/counterfeiting conviction. Petitioner was also ordered to pay restitution in the amount of $10,339.16. Those convictions were affirmed by the Nevada Supreme Court. Petitioner filed a timely Petition for Writ of Habeas Corpus as well as a Supplemental Petition. Respondent filed a Motion for Partial Dismissal of the Petition and Supplemental Petition, and Petitioner has opposed that motion.

Law

This Court will dismiss a petition for writ of habeas corpus without a hearing when the petitioner's conviction was the result of a trial and the grounds for the petition could have been (1) presented to the trial court, (2) raised in a direct appeal, or (3) raised in any other proceeding petitioner has taken to secure relief. NRS 34.810(1)(b). Claims of ineffective assistance of trial or appellate counsel are properly raised for the first time in a timely post-conviction petition. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Additionally, this Court will dismiss a petition without a hearing if the petitioner fails to "support any claims with specific factual allegations that if true would entitle him or her to relief." Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996).

In the event the petitioner does allege specific facts to properly support a claim for ineffective assistance of counsel, relief will only be granted if petitioner can show (1) his counsel's performance was deficient, and (2) the deficiency prejudiced the petitioner. Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish prejudice, the claimant must show that an omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. At 998, 923 P.2d at 1113. Judicial review of a lawyer's representation is highly deferential, and a claimant must overcome the presumption that a challenged action might be considered sound strategy. Strickland, 466 U.S. at 689.

Analysis

Petitioner alleges twenty-two grounds for habeas relief. Upon review, this Court finds that only grounds 7, 11, 12, and 14 warrant an evidentiary hearing. The remaining grounds for relief must be dismissed.

Ground One

Petitioner argues that appellate counsel failed to present issues in constitutional or "federalized" terms, which, in turn, prevented the Nevada Supreme Court from applying constitutional standards of review and also prevented petitioner from being able to petition for relief in a federal district court. The terms appellate counsel used are presumed to be part of a sound strategy and no amount of federal language used will allow a federal

district court to exercise appellate jurisdiction over a decision of the Nevada Supreme Court. Thus, petitioner was not prejudiced by appellate counsel's choice of language, and Ground One must be dismissed.

Ground Two

Petitioner's second ground for relief alleges that, on appellate review, the Nevada Supreme Court applied the wrong law in its decision. This Court has no authority to overrule the Nevada Supreme Court. Ground two is dismissed.

Grounds Three, Four, Five, and Six

In Grounds Three, Four, Five, and Six, petitioner argues issues that were either argued and decided on appeal or should have been argued and decided on appeal. These grounds must therefore be dismissed pursuant to NRS 34.810(b).

Ground Seven

Ground Seven pertains to the restitution order. Specifically, petitioner claims that a jury should have determined the precise amount of restitution, that the court failed to consider petitioner's ability to pay, and that counsel was ineffective in failing to contest the amount of restitution. Only the latter allegation within Ground Seven warrants a hearing. Courts that have considered the issue have determined that the precise amount of restitution need not be decided by a jury. State v. Kinneman, 119 P.3d 350, 355 (Wash. 2005). Furthermore, an order for restitution is not dependant upon a defendant's ability to pay. Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

This Court is satisfied that the claim that counsel was ineffective for having failed to contest the restitution amount does warrant a hearing. A hearing on this issue will be limited to a determination of the amount of restitution petitioner has been ordered to pay.

Ground Eight

Here, Petitioner claims that the indictment was duplicitous (that he was charged with either X or Y, and a jury was allowed to choose between crimes) and multiplicitous (that he was charged more than once for the same crime). The indictment contains no duplicitous counts, and each count represents a separate crime. Thus, Ground Eight is

dismissed.

Ground Nine

Petitioner argues, in Ground Nine, that the conspiracy conviction is a lesser included offense of his burglary convictions. A charge of conspiracy does not merge into the completed crime. Gordon v. District Court, 112 Nev. 216, 230, 913 P.2d 240, 249 (1996). Ground Nine is dismissed.

Ground Ten

Ground Ten is a claim that petitioner's conviction was a result of malicious prosecution. This is yet another claim that either was or should have been raised on direct appeal. It therefore must be dismissed pursuant to NRS 34.810(b).

Ground Eleven

Here, petitioner argues that trial counsel was ineffective for failing to impeach a prosecution witness with prior inconsistent statements. Such a failure on the part of trial counsel, if true, may constitute a deficient performance that could have prejudiced the petitioner. A hearing is warranted on Ground Eleven.

Ground Twelve

Ground Twelve alleges that the prosecution withheld exculpatory evidence and that trial counsel did not put forth sufficient effort to retrieve that evidence. If true, this would constitute deficient performance that may have prejudiced petitioner. A hearing is warranted on Ground Twelve.

Ground Thirteen

Here, petitioner argues that trial counsel was ineffective for failing to suppress certain evidence. Essentially, petitioner argues that physical evidence was improperly admitted because it was obtained in violation of his Fourth Amendment right against unreasonable search and seizure. The evidentiary issue, itself, should have been raised on direct appeal and is therefore barred from consideration under NRS 34.810(b). Petitioner's argument that trial counsel was ineffective for failing to suppress the evidence is insufficient to overcome the presumption that trial counsel employed a sound strategy.

Ground Thirteen is dismissed.

Ground Fourteen

This is essentially the same allegation as that in Ground Twelve—that the prosecution withheld exculpatory evidence and that trial counsel put forth insufficient effort to obtain the evidence. Ground Fourteen warrants a hearing.

Ground Fifteen

Ground Fifteen is an assertion that counsel was ineffective for failing to quash the indictment and for failing to immediately file an appeal when the indictment was upheld. Pursuant to NRS 177.015, interlocutory orders in criminal cases are not immediately appealable. In addition, petitioner's argument in Ground One indicates that the Supreme Court addressed this issue on direct appeal. This Court has no authority to overrule the Supreme Court. Ground Fifteen must be dismissed.

Ground Sixteen

This is an assertion that petitioner and trial counsel did not agree when it came to various tactics and strategies. Such an assertion, if true, does not lead to a conclusion that counsel was either deficient or that any possible deficiency prejudiced the petitioner. Therefore, Ground Sixteen does not present sufficient specific factual allegations that if true would entitle him or her to relief. Ground Sixteen is dismissed.

Ground Seventeen

In Ground Seventeen, petitioner claims that trial counsel was ineffective for failing to present testimony at sentencing that may have projected petitioner in a more favorable light. Aside from the issue of whether this constitutes a deficient performance, this Court is not satisfied that but for such an omission, the result of sentencing would have been different. Thus, Ground Seventeen is not supported with sufficient factual allegations that, if true, would entitle petitioner to relief. It must be dismissed.

Ground Eighteen

Here, couched in terms of ineffective assistance of counsel, petitioner argues that his status as an habitual criminal was improper. This is one of the issues argued and

decided on direct appeal to the Nevada Supreme Court. This Court has no authority to overrule the Supreme Court. Ground Eighteen is dismissed.

Ground Nineteen

Ground Nineteen, again couched in terms of ineffective assistance of counsel, is an argument that petitioner has received cruel and unusual punishment due to his status as an habitual criminal. This has been argued and decided on direct appeal to the Nevada Supreme Court. Ground Nineteen is dismissed.

Ground Twenty

Here, petitioner argues that there was insufficient evidence to convict him of two of the ten counts. This is an argument that could have been raised in a direct appeal. It is therefore barred by NRS 34.810(b) and must be dismissed.

Ground Twenty-One

This is an argument that counsel was ineffective in failing to argue that Nevada's burglary statute is unconstitutionally vague. This Court is not convinced that this omitted issue would have had a reasonable probability of success on appeal. It is therefore dismissed.

Ground Twenty-Two

Ground Twenty-Two is a general assertion that the cumulative effect of all the alleged deficiencies in each of the previous allegations has resulted in a miscarriage of justice. This argument is not supported by any specific factual allegations that, if true, would entitle petitioner to relief. No hearing is warranted for Ground Twenty-Two.

Having shown sufficient grounds for relief warranting a hearing on Grounds Seven, Eleven, Twelve, and Fourteen, an evidentiary hearing shall be set pertaining to those grounds. The remainder of the Petition must be summarily dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED that all grounds set forth in the Petition for Writ of Habeas Corpus other than grounds 7, 11, 12, and 14 are **DISMISSED**.

IT IS FURTHER ORDERED that the parties shall contact the Judicial Assistant for

Department 10 for the purposes of setting a hearing regarding Grounds 7, 11, 12, and 14 within 20 (twenty) days of the issuance of this Order.

DATED this 2 day of August, 2007.

STEVEN P. ELLIOTT
District Judge

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; and on this date I deposited for mailing a copy of the foregoing document addressed to:

Richard A. Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

Kay Ellen Armstrong, Esq.
415 West Second Street
Carson City, NV 89703

DATED this 2 day of August, 2007.

HEIDI HOWDEN
Judicial Assistant

CR03P1263
POST: FERRILL J. VOLPICELLI 1 Page
District Court 08/09/2007 11:24 AM 1250
Washoe County

ORIGINAL

FILED

2007 AUG -9 AM 11:24

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

CODE 1250

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Plaintiff,

vs.

Case No. CR03P1263

THE STATE OF NEVADA,

Dept. No. 10

Defendant.

/

APPLICATION FOR SETTING

TYPE OF ACTION: Post-Conviction

MATTER TO BE HEARD: Evidentiary Hearing

Date of Application : August 8, 2007 Made by: Petitioner/Respondent
Plaintiff or Defendant

COUNSEL FOR PLAINTIFF: Kay Ellen Armstrong, 415 W. Second St., Carson City 89703

COUNSEL FOR DEFENDANT: Terrence P. McCarthy, WCDA, POB 33083, Reno 89520

Instructions: Check the appropriate box. Indicate who id requesting the jury. Estimated No. Of Jurors:

☐ Jury Demanded by (Name): _____

☐ No Jury Demanded by (Name): _____

Estimated Duration of Trial: _____

Set telephonically	Set telephonically
Kay Ellen Armstrong	Terrence P. McCarthy
_____	_____
Attorney(s) for Plaintiff	Attorney(s) for Defendant

____ Motion - No.	1:30 Setting at	20th on the	September day of	07	20
____ Trial - No.	____ Setting at	____ on the	_____ day of	____	20

JUD 500 (Rev 3/03)

V3.363

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VOLPICELLI 3 Pages
08/20/2007 11:39 AM
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CR03P1263
POST: FERRILL J.
District Court
Washoe County
DOC

ORIGINAL

CODE #1260
RICHARD A. GAMMICK
#001510
P. O. Box 30083
Reno, Nevada 89520-3083
(775)328-3200
Attorney for Respondent

FILED
2007 AUG 20 AM 11:39
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

* * *

FERRILL VOLPICELLI,

Petitioner,

v.

LENARD VARE, WARDEN

Respondent.

_____/

Case No. CR03P1263

Dept. No. 10

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, Respondent herein, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, by TERRENCE P. McCARTHY, Appellate Deputy, and alleges as follows:

1. That the above Petitioner, FERRILL VOLPICELLI, is presently incarcerated at the Nevada State Prison, Carson City, Nevada.

2. That the above FERRILL VOLPICELLI is scheduled for a post-conviction hearing before the Second Judicial District Court on September 20, 2007 at 1:30 p.m.

WHEREFORE, Applicant prays that an Order be made ordering the appearance of the said FERRILL VOLPICELLI before the Second Judicial District Court, and from time to time thereafter at such times and places as may be ordered and directed by the Court for such proceedings as thereafter may be necessary and proper in the premises, and directing the execution of said Order by the Sheriff of

Washoe County, Nevada.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: August 9, 2007.

RICHARD A. GAMMICK
DISTRICT ATTORNEY

By _____
TERRENCE P. McCARTHY
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kay Ellen Armstrong, Esq.
415 W. Second Street
Carson City, NV 89703

DATED: August 20, 2007.

DC-99000001487-117 VOLPICELLI 3 Pages 08/20/2007 11:40 AM 3340 YLLOYD
CR03P1263 POST FERRILL J VOLPICELLI District Court Washoe County DOC

ORIGINAL

CODE #3340
RICHARD A. GAMMICK
#001510
P. O. Box 30083
Reno, Nevada 89520-3083
(775)328-3200
Attorney for Respondent

FILED
2007 AUG 20 AM 11:40
RONALD A. LONGTIN, JR.
BY [signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

* * *

FERRILL VOLPICELLI,

Petitioner,

v.

LEONARD VARE, WARDEN

Respondent.

_____/

Case No. CR03P1263

Dept. No. 10

ORDER TO PRODUCE PRISONER

IT APPEARING to the satisfaction of the above-entitled Court that it is necessary that the Petitioner above named, FERRILL VOLPICELLI #79565, presently incarcerated in the Nevada State Prison, Carson City, Nevada, be brought before the Second Judicial District Court for a post-conviction hearing in the above-entitled action,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Warden of the Nevada State Prison, Carson City, Nevada, bring the said FERRILL VOLPICELLI before the Second Judicial District Court on September 20, 2007 at 1:30 for a post-conviction hearing in the above-entitled action, and from time to time thereafter at such times and places as may be ordered and directed by the Court for such

///

///

///

proceedings as thereafter may be necessary and proper in the premises.

DATED: August 14, 2007.

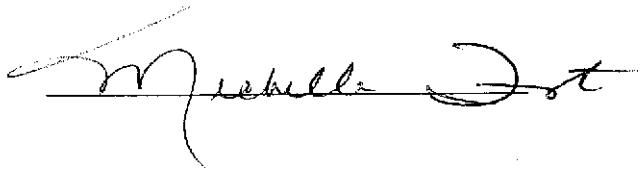
DISTRICT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kay Ellen Armstrong, Esq.
415 W. Second Street
Carson City, NV 89703

DATED: August 20, 2007.



e-filed

CASE NO. CR03P1263 POST: FERRILL J. VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
09/20/07 HONORABLE STEVEN P. ELLIOTT DEPT. NO. 10 M. Merkouris (Clerk) J. Schonlau (Reporter)	PETITION FOR POST CONVICTION/EVIDENTIARY HEARING Deputy District Attorney Terrence McCarthy represented the State. Petitioner was present with counsel, Kay Armstrong, Esq. Counsel Armstrong moved to invoke the rule of exclusion; no objection; SO ORDERED. Counsel Armstrong called Bradley Van Ry who was sworn and examined; cross examined; re-direct examined and excused. State called Deputy District Attorney Tammy Riggs who was sworn and examined; cross examined; re-direct examined; excused. 2:45 p.m. – Court stood in recess. 3:00 p.m. – Court reconvened. Counsel Armstrong requested time to obtain an affidavit to supplement Exhibit A; State objected; COURT found that the Petitioner will be allowed time to attempt to supplement Exhibit A. COURT further ordered that it will go forward today on items #11, 12 and 14. Counsel Armstrong argued in support of the petition. State argued in opposition of the petition. Counsel Armstrong had no further argument. COURT presented it's findings of fact and conclusions of law and ruled in favor of the State. Items #11, 12 and 14 are hereby denied. COURT further reserved it's ruling as to item #7 upon further review of the evidence. 3:15 p.m. – Court stood in recess. 3:20 p.m. – Court reconvened. **State's exhibit 1 marked and offered; no objection; ordered ADMITTED into evidence.** 3:24 p.m. – Court concluded and stood in recess.	

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VOLPICELLI 1 Page
09/20/2007 01:09 PM MIN
CR03P1263
POST: FERRILL J
District Court
Washoe County

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Electronically
10-03-2007:10:06:02 AM
Ronald A. Longtin, Jr.
Clerk of the Court
Transaction # 61059

CASE NO. CR03P1263 POST: FERRILL J. VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
09/20/07 HONORABLE STEVEN P. ELLIOTT DEPT. NO. 10 M. Merkouris (Clerk) J. Schonlau (Reporter)	PETITION FOR POST CONVICTION/EVIDENTIARY HEARING Deputy District Attorney Terrence McCarthy represented the State. Petitioner was present with counsel, Kay Armstrong, Esq. Counsel Armstrong moved to invoke the rule of exclusion; no objection; SO ORDERED. Counsel Armstrong called Bradley Van Ry who was sworn and examined; cross examined; re-direct examined and excused. State called Deputy District Attorney Tammy Riggs who was sworn and examined; cross examined; re-direct examined; excused. 2:45 p.m. – Court stood in recess. 3:00 p.m. – Court reconvened. Counsel Armstrong requested time to obtain an affidavit to supplement Exhibit A; State objected; COURT found that the Petitioner will be allowed time to attempt to supplement Exhibit A. COURT further ordered that it will go forward today on items #11, 12 and 14. Counsel Armstrong argued in support of the petition. State argued in opposition of the petition. Counsel Armstrong had no further argument. COURT presented it's findings of fact and conclusions of law and ruled in favor of the State. Items #11, 12 and 14 are hereby denied. COURT further reserved it's ruling as to item #7 upon further review of the evidence. 3:15 p.m. – Court stood in recess. 3:20 p.m. – Court reconvened. **State's exhibit 1 marked and offered; no objection; ordered ADMITTED into evidence.** 3:24 p.m. – Court concluded and stood in recess.	

CR03P1263
POST: FERRILL J. VOLPICELLI 4 Pages
District Court 10/11/2007 01:51 PM
Washoe County 1075
DC-9900001824-062
ASMITH

ORIGINAL

FILED

CODE NO: 1075

2007 OCT 11 PM 1:51

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ROBERT C. LOCKIE, JR.
BY

FERRILL J. VOLPICELLI, Petitioner, vs. LENARD VARE, Respondent	Case No.: CR03P1263Y Dept. No.: 10

AFFIDAVIT OF KAREN S. FRALEY

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

KAREN S. FRALEY, being duly sworn, deposes and states:

1. My name is Karen S. Fraley. I am a Deputy City Attorney with the City of Reno, assigned as Legal Advisor for the Reno Police Department. I am over the age of 18 and I have personal knowledge of the facts set forth herein and am competent to testify thereto.

2. As Legal Advisor for the Reno Police Department, I am asked from time to time to deal with issues regarding property retained in the Evidence Division.

3. I was contacted on numerous occasions over a period of two or three years by Petitioner Ferrill J. Volpicelli concerning property retained in Evidence that had been seized in criminal investigations by the Reno Police Department.

4. After a number of inquiries and disputes over the disposition of Mr. Volpicelli's property and, at his request, I prepared a detailed inventory of property held by the Reno Police Department in RPD Case No. 01-216321.

5. I detailed the property, evidence number, owner of the property and status.

6. The inventory was prepared specifically as an accounting to Mr. Volpicelli, not for any other use.

7. The inventory was mailed to Mr. Volpicelli and a copy provided to the Evidence Division.

Karen S. Fraley
Deputy City Attorney
City of Reno

SUBSCRIBED and SWORN to before me this 1st day of October, 2007.

NOTARY PUBLIC in and for
said County and State

COCHELLE SCHEINER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-95725-2 - Expires November 19, 2008

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

Washoe County District Attorney
75 Court Street
Reno, NV 89520

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

October 8, 2007

Judy W. Collie

Judy W. Collie

Kay Ellen Armstrrong
Attorney at Law
415 West Second St.
Carson City, NV 89703
(775)883-3990

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI.,

Petitioner,

vs.

LENARD VARE,

Respondent

_____/

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person in case CR03P-1263

1. AFFIDAVIT OF KAREN S. FRALEY

Kay Ellen Armstrong, Esq.

10-10-07
Dated

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

ORIGINAL

Case No. CR03-P1263

Dept. No. 10

FILED
2007 OCT 11 PM 2:41
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

FERRILL T. VOLPICELLI,
PETITIONER,

-vs-

STATE OF NEVADA,
RESPONDENT.

AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED IN FORMA PAUPERIS

STATE OF NEVADA)
) ss:
COUNTY OF PERSHING)

COMES NOW FERRILL VOLPICELLI, who being first duly sworn and on my own oath, do hereby depose and state the following under the penalty of perjury in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing judicial action or to give security therefor; I am entitled to relief. This application is made in good faith.

(2) I ✓ do ___ do ~~not~~ request an attorney to be appointed to me. AND WISH TO CONTINUE REPRESENTATION WITH KAY ARMSTRONG, ESQ.

(3) I further swear that the responses which I make to the questions and instructions below are true and correct to the best of my knowledge:

(a) I ___ am ✓ am not presently employed. I currently earn salary or wages per month in the following amount and the name and address of my employer

CR03P1263
POST: FERRILL J. VOLPICELLI 2 Pages
District Court 10/11/2007 02:41 PM
Washoe County 1030
DC-9900001816-044
JRFRCHFM

is as follows; OR if I am not presently employed, the date of my last employment and the amount of salary or wages I earned per month were as follows: I HAVE NOT BEEN EMPLOYED SINCE PRIOR TO MY INCARCERATION IN 2001.

(b) I have NOT received any money from any of the following sources within the past 12 months: business, profession, form of self-employment, rent payments, interest or dividends, pensions, annuities, life insurance payments, gifts or inheritances. Money, if any, placed on my prison accounts from outside sources such as family or friends, is in the amount as indicated on the attached Certificate of Inmate's Institutional Account, which likewise reflects the amount of money on my prison account.

(c) I do NOT own any real estate, stocks, bonds, notes, automobiles, or other valuable property, and nor do I have money in a checking account.

(d) I ✓ do ___ do ~~NOT~~ have persons dependent upon me for support. The persons I support, if any, are as follows, with my relationship to those persons and the amount of my contribution towards their support being as follows: LOGAN VOLPICELLI, SON, @ $150/m - OWED $ ARREARS.

(4) I do swear under the penalty of perjury that the above facts are true and correct to the best of my personal knowledge, and are rendered without notary pursuant to the provisions of NRS 208.165, as I am incarcerated.

Dated this 8th day of OCTOBER, 2007.

FERRIL VOLPICELLI #79565
Lovelock Correctional Center
P.O. Box 359
Lovelock, Nevada 89419

/ / /

/ / /

/ / /

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POST: FERRILL J. VOLPICELLI
District Court 10/11/2007 02:41 PM
Washoe County 2385
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2 Pages
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2007 OCT 11 PM 2:41

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

Case No. CR03-P1263

Dept. No. 10

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

FERRILL J. VOLPICELLI,
PETITIONER,

-vs-

STATE OF NEVADA,
RESPONDENT.

APPLICATION TO PROCEED IN FORMA PAUPERIS

COMES NOW PETITIONER, FERRILL VOLPICELLI, in pro se, and moves this Court for an order granting him leave to proceed in the above-entitled action without paying the costs and/or security of proceeding herein.

This motion is made and based upon NRS 12.015 and the attached affidavit and certificate of inmate's institutional account.

Dated this 8th day of OCTOBER, 2007.

Respectfully submitted,

FERRILL VOLPICELLI #79565
Lovelock Correctional Center
P.O. Box 359
Lovelock, Nevada 89419

PETITIONER In Pro Se

LCC

ORIGINAL

Case No. CR03-P1263

Dept. No. 10

FILED

2007 OCT 11 PM 3

RONALD A. LONGTIN, JR.

FILED IN ERROR

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe

INMAN,

PLAINTIFF,

vs.

Volpicelli, F. #79565,

DEFENDANT.

CERTIFICATE OF
INMATE'S INSTITUTIONAL ACCOUNT

I, the undersigned, hereby certify that Ferrin Volpicelli, #79565, DEFENDANT above-named, has a balance of $.10 on account to his credit in the prisoners' personal property fund for his use at Lovelock Correctional Center, in the County of Pershing, State of Nevada, where he is presently confined.

I further certify that said F. Volpicelli owes departmental charges in the amount of $0 and that the solitary security to his credit is a savings account established pursuant to NRS 209.247(5) with a balance of $200.00 which is inaccessible to him.

DATED THIS 28th day of August, 2007.

Accounting Technician
Inmate Services Division
Nevada Department of Corrections

Submitted by: _____, #79565, on 8/22/07

RCVD IN SECRETARY'S

DC-9900001841-220
CR03P1263 VOLPICELLI 3 Pages
POST: FERRILL J. 10/17/2007 02:29 PM
District Court 3035
Washoe County

3035

ORIGINAL

FILED

OCT 17 2007

HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

Case No. CR03p1263

vs.

Dept. No. 10

STATE OF NEVADA,

Respondent.

_____/

ORDER

Having read Petitioner FERRILL J. VOLPICELLI's "Motion for Leave to Proceed in Forma Pauperis," his "Petition for Writ of Habeas Corpus," and his "Certificate of Inmate's Institutional Account," this Court finds that Petitioner has properly filed for propria persona status.

IT IS HEREBY ORDERED, pursuant to *NRS 12.015,* Petitioner's Motion to Proceed in Forma Pauperis is GRANTED.

IT IS HEREBY ORDERED that the Court allow said FERRILL J. VOLPICELLI to bring such action without costs and file or issue any necessary writ, process, pleading or paper without charge, with the exception of juror fees.

//

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

within the state make personal service of any necessary writ, process, pleading or paper without charge for REFFILL J. VOLPICELLI.

Dated this 16th day of October, 2007.

JEROME M. POLAHA
CHIEF DISTRICT JUDGE

CERTIFICATE OF SERVICE

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 17 day of October, 2007, 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:

FERRILL J. VOLPICELLI, #79565
Lovelock Correctional Cent
P.O. Box 359
Lovelock, Nevada 89419

ORIGINAL

FILED

2007 OCT 25 PM 12: 28

HOWARD W. CONVERS

BY _____ DEPUTY

Code No. 3860

Kay Ellen Armstrong
State Bar No. 0715
415 West Second Street
Carson City, Nevada 89703
775-883-3990
Attorney for Petitioner

DC-9900001905-171
VOLPICELLI 3 Pages
10/25/2007 12:28 PM
3860
JBERCHEM
CR03P1263
POST: FERRILL J.
District Court
Washoe County
DOC

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

CASE NO. CR03P-1263

DEPT. NO. 10

THE STATE OF NEVADA,

Respondent.

_____/

REQUEST FOR SUBMISSION

COMES NOW, petitioner, Ferrill Joseph Volpicelli, by and through his attorney, Kay Ellen Armstrong, and hereby requests that the above-entitled matter be submitted for decision. This request is based on the facts that the Court has had an opportunity to review the full transcripts of interviews with prosecution witness Wolf, as well as the affidavit of Karen Fraley authenticating petitioner's proposed exhibit.

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///

Therefore, it is respectfully requested that this Court rule on petitioner's post-conviction habeas matter.

DATED this 24th day of October, 2007.

KAY ELLEN ARMSTRONG
State Bar No. 0715
415 West Second Street
Carson City, NV 89703
(775) 883-3990
Attorney for Petitioner
Ferrill Joseph Volpicelli

AFFIDAVIT PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 24th day of October, 2007.

KAY ELLEN ARMSTRONG
State Bar No. 0715
415 West Second Street
Carson City, NV 89703
(775) 883-3990
Attorney for Petitioner
Ferrill Joseph Volpicelli

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

Terrence McCarthy, Deputy
Washoe County District Attorney
75 Court Street
Reno, NV 89520

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

October , 2007.

Anne Bowen
Anne Bowen

ORIGINAL

1250

FILED

NOV - 5 2007

HOWARD W. CONYERS, CLERK
By: _____
DEPUTY CLERK

CR03P1263
POST: FERRILL J. VOLPICELLI 2 Pages
District Court 11/05/2007 01:52 PM 1250
Washoe County
DC-99000001956-090

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: CR03P1263

Dept. No.: 10

APPLICATION FOR SETTING

TYPE OF ACTION:	CRIMINAL
MATTER TO BE HEARD:	EVIDENTIARY HEARING
DATE OF APPLICATION:	NOVEMBER 5, 2007, **BY THE COURT**
COUNSEL FOR PETITIOINER:	KAY ELLEN ARMSTRONG, ESQ.
COUNSEL FOR RESPONDENT:	TERRENCE MCCARTHY, D.D.A.

EVIDENTIARY HEARING SET FOR WEDNESDAY, JANUARY 23, 2008, AT 1:30 P.M.

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,and that on this date I deposited for mailing a copy of the foregoing document addressed to:

Kay Ellen Armstrong, Esq.
415 W. Second St.
Carson City, NV 89703

Terrence McCarthy, DDA
Washoe County District Attorney
(Interoffice Mail)

DATED this 5 day of November, 2007.

Heidi Howden
Judicial Assistant

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JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

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HOWARD W. CONYERS, CLERK
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

-oOo-

FERRILL J. VOLPICELLI,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

CR03P1263

CASE NO. ~~CR03-P12263~~
DEPARTMENT NO. 10

TRANSCRIPT OF PROCEEDINGS

PETITION FOR POST CONVICTION

THURSDAY, SEPTEMBER 20, 2007

1:30 P.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

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For the Respondent: OFFICE OF THE DISTRICT ATTORNEY
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Deputy District Attorney
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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
BRADLEY OTTO VAN RY	4	31	34	
TAMMY RIGGS	36	38	48	

RENO, NEVADA; THURSDAY, SEPTEMBER 20; 1:30 P.M.

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THE COURT: This afternoon we are here on a post conviction Petition for Habeas Corpus on behalf of Ferrill Volpicelli. And I see that what we have are grounds 7, 11, 12 and 14 remaining to be heard today.

Ms. Armstrong, do you want to proceed?

MS. ARMSTRONG: Yes, Your Honor. Thank you. Good afternoon. The first thing I would like to do is invoke the rule of exclusion. I don't have any witnesses here other than Mr. Van Ry whom I had asked Mr. McCarthy to make sure to arrange. I don't know if anybody else is going to be testifying who is in the room or not.

THE COURT: Mr. McCarthy?

MR. McCARTHY: Yes, one other potential witness. She's on her way out.

THE COURT: Okay.

MS. ARMSTRONG: Thank you, Your Honor. I would like to begin by calling Mr. Van Ry.

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

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BRADLEY OTTO VAN RY

called as a witness, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. ARMSTRONG:

Q Would you please state your name?

A Sure. Bradley Otto Van Ry.

Q Would you please state your full name? You just did that. Spell your last name?

A Sure, V-A-N space R-Y.

Q What is your current occupation?

A I am an attorney.

Q Do you work here in Reno, Nevada?

A I do.

Q What type of practice do you have?

A I do primarily civil litigation. I have gotten out of doing much criminal representation lately. So I'd say it is primarily criminal--excuse me--primarily civil litigation with just a small portion of criminal litigation.

Q Previously, did you practice more criminal law?

A Yes. Yes. Probably when I went on my own four years ago it was probably fifty percent criminal, fifty percent civil.

Q How long have you been a lawyer, Mr. Van Ry?

A This is going on my tenth year.

Q How many jury trials have you had?

A Over twenty.

Q Over twenty?

A Probably. That is civil and criminal.

Q Can you approximate how many of them were criminal?

A Probably fifteen.

Q All to verdict?

A I'd say probably. There may have been one or two that pled at a certain point in the trial. But I would say mostly, yes.

Q Back when you were appointed to represent Mr. Volpicelli in 2003, would that have been when your practice was about fifty/fifty civil and criminal?

A Yes, that's true.

Q Do you remember representing Mr. Volpicelli?

A Pretty broad question. Yes.

Q All right. Do you remember being assigned to represent him on a case that arose from several Indictments?

A Again, generally, yes.

Q As part of your representation of him, would you normally obtain discovery from the State?

A Of course.

Q And how does that work for you? Do you file a motion or do you just make a request?

A With this particular case, I can tell you that I was appointed I believe through the Jack Alian group as a conflict counsel, and all discovery would filter from the D.A.'s office, mostly through the D.A.'s office to Mr. Alian and then to me.

Q Because Mr. Alian was appointed before you were?

A That's correct.

Q And are you still working with the Alian group?

A No.

Q At the time when you were and you were representing Mr. Volpicelli, were you paid a flat rate for cases?

A That's correct.

Q Were you allowed or did you have the ability to use investigative help?

A If Mr. Alian and I discussed it and we thought it was prudent in a matter, yes, we could expend some cost in terms of investigative.

Q It sounds as though you were trying to be cautious about costs, though?

A Yeah. It would have been the exception in a case that I was assigned for Mr. Alian for me to use an investigator.

Q Do you recall if an investigator was used in helping Mr. Volpicelli?

A I don't recall specifically, but I have a feeling there was not an investigator in this case.

Q Specifically, let me ask you if you received, by way of discovery from Mr. Alian, the prior statements, prior recorded statements of the co-defendant, Brent Bowman?

A I don't have a specific recollection. I would say generally, yes. But it has been a long time. I believe I did, yes.

Q And do you recall in the case when you represented Mr. Volpicelli at trial the main point of attack for you or your general trial strategy was to attack Mr. Bowman, wasn't it?

A You know, honestly, we had a difficult defense case.

Q Do you recall?

A Let me finish, please. Whether the primary defense strategy was to try to impeach or undercut Mr. Bowman, I am not sure that was an accurate statement. I think that was a part of the defense strategy, of course. I don't know if that was the primary part.

Q Do you remember telling the jury in your opening statement that this case was a case about reasonable doubt and reasonable doubt would be shown through Brent Bowman?

A If it is in the transcript, that is what I said. I am sorry I don't have a specific recollection. As a matter of

course in criminal trials that have very little--Honestly, this was one of those cases where you have very little defense. You know, reasonable doubt is what you hang your hat on or attempt to hang your hat on.

Q In this case, Mr. Bowman was somewhat attackable don't you agree? Pardon me?

A I am sorry, I didn't answer. I am still thinking. I don't remember. Maybe at the time, you know, 30 days after trial I had a better answer, but I just don't remember. I think I tried to go after him a little bit.

Q Do you recall--You have testified I believe that you think you received the complete discovery including the statements, the recorded statements of Brent Bowman of which there are five or six. Do you remember that? He interviewed with Reno police detectives on five or six occasions and each of those times it was transcribed. Do you recall that?

A Yeah, vaguely.

Q All right. When I was reviewing the transcripts in preparation for today's hearing, it appeared that even up to the last trial setting or trial confirmation hearing there was still some difficulties regarding obtaining discovery. Do you recall that?

A I have a recollection of my client at that time, Mr. Volpicelli, voicing that opinion.

Q But it wasn't your opinion?

A I don't--Let me just say this: I think prior to the trial, I received everything I needed to try to defend Mr. Volpicelli.

Q Did you have adequate time to review what you had received?

A Yes. Yes.

Q As you sit here today, you feel comfortable testifying that you adequately reviewed all of Mr. Brent Bowman's taped statements to the police?

A I believe so, yes.

Q Okay. And I am going to switch gears a little bit and ask you about the restitution issue as well. Now were you provided with I believe it was exhibit, let me see which exhibit it was at the sentencing, were you provided with Exhibit 5, a copy of that? It was an exhibit prepared by the detective, Reid Thomas, who was the head detective on the case in support of sentencing?

A If I might look at it, please.

MS. ARMSTRONG: May I approach, Your Honor?

THE COURT: Yes, you may.

MS. ARMSTRONG: Thank you.

THE WITNESS: Your question was was I provided this at the time of sentencing or prior to sentencing?

BY MS. ARMSTRONG:

Q Prior to sentencing?

A I would say the answer is I believe so, yes. If I could just magnify that.

Q I'd appreciate it?

A I have turned over all of my file to Mr. Volpicelli except for some jury trial Jury Instructions, et cetera, so I can't go to the file and pull it out and say here it is. But I believe that I did receive this prior to the sentencing of Mr. Volpicelli.

Q Do you recall if you had an opportunity to discuss it with Mr. Volpicelli prior to sentencing?

A You know, I don't recall specific conversation, but, again, as a matter of course, I am sure that we had some discussion over the restitution issues.

Q All right. Now I am going to refer to an Exhibit A that was filed attached to the Proper Person Writ filed by Mr. Volpicelli on November the 9th, 2005. I am going to have you look at Exhibit A.

MS. ARMSTRONG: If I could approach the witness with that, Your Honor.

THE COURT: Yes, you may approach the witness.

MS. ARMSTRONG: I will trade him. Did counsel for the State want to verify this was Exhibit A? I don't know if

it is Exhibit A.

MR. McCARTHY: It is.

BY MS. ARMSTRONG:

Q All right.

A This looks like a list of property--excuse me--an inventory of property in RPD Case Number 01-216321; is that correct?

Q Yes. Have you seen that before?

A My answer will be probably. I don't have a specific recollection of it.

Q As you look at that Exhibit A, can you see that, I am not looking at it now, but I think almost everything on the right column says, returned or in evidence, or returned pending. That would be true of every page I believe.

MR. McCARTHY: Your Honor, I am willing to stipulate Mr. Van Ry can in fact read. If it is offered to prove the truth of any matter asserted in that document, I object to it.

THE COURT: You are not objecting to the question right now; is that right?

MR. McCARTHY: I believe the question that was asked is do you see that it says that. It says things were returned. If it is offered to prove things were in fact returned, I object to it.

THE COURT: I have to sustain that. But certainly

the witness can look at the document to see if it refreshes his recollection.

BY MS. ARMSTRONG:

Q Let me try a different question. Mr. Van Ry, do you recall comparing what has been filed as Exhibit A--what exhibit did I give him? Did you have an opportunity to compare Exhibit A from the Writ with Exhibit 5 from the sentencing prior to sentencing?

A Did I have the opportunity, is that the question?

Q Did you review them?

A Did I review them? Again, I don't have specific recollection. I would say I probably reviewed both of them, yes.

Q And you recall that at the time of sentencing, the request was made Mr. Volpicelli be ordered to make in excess of $10,000 in restitution, correct?

A Yes. Yes.

Q The items that total the $10,339.16 on Exhibit 5 are many of the same items in the inventory you are looking at now, aren't they?

A It is hard to go off my memory. It would be easier if I could compare them side by side.

Q I would be glad to give you this other one back?

A Thank you. It appears that some of Exhibit A are

included in Exhibit 5.

Q Now that you have had a chance to confirm that, do you recall objecting to the restitution amount at the sentencing hearing?

A Boy, I'd have to read the transcript. I do not recall. I just don't remember. I don't.

Q Based on what you have just reviewed, do you believe it would have been prudent at sentencing to inquire into why he was being charged restitution for items which had been returned to the rightful owners?

A In order to really answer that question, I would ask that--I don't know if it is feasible to really answer that question. I would have to compare item by item, line by line from Exhibit 5 with Exhibit A.

MS. ARMSTRONG: If the Court would like to recess to give him a chance to do that, Your Honor. I have done it. It took me 15 minutes or so.

MR. McCARTHY: The question is based on assumption Exhibit A truthfully represents that which was returned and that which was not. That hasn't been established. The question is irrelevant. We don't need a recess to have him look at it.

THE COURT: Well, it sounds like all you are asking the witness to do is compare the document he didn't prepare,

doesn't know the truth about anything there. I am not sure it is that worthwhile in court to look at the document and do that.

MS. ARMSTRONG: True. I would argue, Your Honor, that the documents are self-authenticating. The one inventory is prepared by the Reno Police Department in connection with this particular case, and the other exhibit was filed at sentencing and accepted by the Court and relied upon by the Court. So I agree we don't need Mr. Van Ry to go through it line by line necessarily. Maybe I could rephrase a better question.

THE COURT: Should these be admitted for purposes of these proceedings?

MS. ARMSTRONG: Yes, Your Honor.

MR. McCARTHY: On that I will object. If some police officer came in and said I prepared this, I would probably believe it and have no objection. Thus far I haven't heard that, and I don't know what that document is or where it came from.

THE COURT: I am not sure about A. You are saying Exhibit 5 was admitted at the sentencing perhaps?

MS. ARMSTRONG: Correct, Your Honor.

THE COURT: Well, things that were admitted at sentencing I think I can take judicial notice of. The other

matter, Exhibit A, I think you would have to lay some foundation for that. I don't think that has been admitted.

MS. ARMSTRONG: It hasn't, Your Honor. I agree with that. And I don't know who prepared the document because there is no author stated, but it does have an RPD case number at the top and it is titled Inventory of Property. I suppose I could ask the case agent to authenticate it for me. Is he in the courtroom? I don't know what detective Thomas looks like. Then I would suppose he could authenticate it for us if necessary.

THE COURT: Well, at least as to Exhibit 5 is there any contest to this having been admitted and reviewed by the Court at the sentencing?

MR. McCARTHY: I believe it was in fact admitted, considered and I have no objection to it.

THE COURT: I will consider Exhibit 5 for purposes of this proceeding.

MS. ARMSTRONG: Thank Your Honor. But you agree with Mr. McCarthy there is no basis to admit what has already been filed as Exhibit A with the Pro Per Writ?

THE COURT: Well, I don't think I can consider that to be a document considered by the Court when it is merely attached to a pleading. It hasn't been admitted in any way or authenticated in any way.

MS. ARMSTRONG: Well let me take a different tact or try to.

BY MS. ARMSTRONG:

Q Mr. Van Ry, are you still looking at Exhibit 5?

A I have Exhibit A and Exhibit 5.

Q If you would look at Exhibit 5 with me, please.

On page 2 of the unnumbered pages, if you look at the second page, what does the bold writing at the top say?

A Recovered property.

Q All right. And then on the next page which would be page 3, what do you see the total?

A Bottom right total in bold $10,339.16.

Q Do you recall that was the amount of restitution Mr. Volpicelli was ordered to pay exactly?

A I believe so.

Q All right. And so at sentencing it didn't occur to you to say, hey, fellows, if all this property has been recovered, where is it? Why does Mr. Volpicellli have to pay for it?

A Did it occur to me to ask that question?

Q Why didn't you ask that question?

A You know, I have two answers. The first answer is I don't really remember, to be honest. And the second, the second answer is I am not sure it was relevant. That is me

answering as of this time.

Q Why wouldn't it be relevant if the items had been returned?

A Because these items had been taken from a property owner, and they had been deprived of the full retail value of that item. Even if, assuming they were returned, you know the wholesale and/or trade-in value and/or restorative value of a piece of property may not necessarily be what the full retail value might be.

Q Isn't that still something you would argue on behalf of Mr. Volpicelli? That is your role is to help him out and to limit the damage as much as possible.

MR. McCARTHY: Objection to the argumentative question.

THE COURT: Well, I think you can ask him what he did. It does sound argumentative.

MS. ARMSTRONG: I apologize.

BY MS. ARMSTRONG:

Q Was one of your goals at sentencing to help Mr. Volpicelli receive the lowest possible sentence and only pay the proper amount of restitution?

A I would agree with that, yes.

Q Do you believe if you had questioned the detective on the case about this property being returned, you could have

kept the restitution amount down?

MR. McCARTHY: Calls for the witness to speculate how the detective would have responded had he been questioned.

THE COURT: Sustained.

BY MS. ARMSTRONG:

Q Were you aware the property that was recovered from the storage shed and the van at the time of the arrest was returned to the rightful owners? Did you know that at sentencing?

A I don't remember. I am sorry, I really don't. Again, as I stated, as I sit here today, I am not sure it is really relevant, to be honest with you. I am not the Judge in the case. I mean they were deprived the use of their property, so to say that they got it back a year later doesn't make up for the fact they were deprived of the use of their property.

Q Why do you say they got it back a year later?

A I am just assuming that they did get it back.

Q It is your legal opinion that that doesn't impact the restitution question?

A If I was a judge, it wouldn't, but I am not the judge in the case. That doesn't mean much to me. They were still deprived of the fair market value. That doesn't take into consideration the fact Mr. Volpicelli and his crony didn't actual pay fair market value of the property when they left the

store with it. They used label makers and put lesser amounts of value on those items of property.

Q For your logic then, Mr. Van Ry, the store actually had a little bit of a gain because they got the property back and paid a lesser price for it?

A No, I don't think that is logical at all. If, using a hypothetical a $500 rug. Mr. Volpicelli and/or his crony goes in, puts a label on that says the rug is only $75. You walk out the door, you being Mr. Volpicelli or his crony paying $75 for a $500 rug, how is there a gain?

Q Because the rightful owner got the rug back?

A Okay. But they were only paid $75 in the first place.

Q So it is your legal opinion today there was no sense in making that argument to Judge Elliott at sentencing?

A Well, as I sit here today, yes. As I did the sentencing, I don't really recall what went through my mind with regard to that issue. But I think it is pretty ridiculous for a--strike that. I think it is ridiculous for a defendant who took property at value significantly less than its retail value to come into the court and say his restitution amount is too high. I think that is, again I am not the judge, I will let Judge Elliott rule on that, in my opinion, I think it is ridiculous. He got property--let me finish. He got thousands

of dollars worth of property for less than hundreds of dollars, and he stored it for a period of time, and it may or may not have been returned. To me, it doesn't seem-- Well, I don't think it would be just or fair to the property owner. That is my feeling, my opinion.

Q I appreciate that?

A For what it is worth.

Q I don't know if it is really relevant, but I appreciate it. But let me review then and see if I can capsulize what you have said about this restitution issue.

It is true that you don't recall comparing what was in A with 5 prior to sentencing, right?

A Couple of double negatives there. Yes, I did not compare them.

Q Yet more than $10,000 was ordered in restitution, right?

A That's correct.

Q And you made no argument on behalf of Mr. Volpicelli in regard to the restitution amount, did you?

A I can't remember. I am not sure I fought it very hard. I'd have to see the transcript to really verify that. I don't think I fought it very hard.

Q Do you feel you were adequately prepared to fight it?

A Yes.

Q You do?

A Yes. Just let me interject if I may. This is one of the, I shouldn't say the exception, but this is one of the most difficult cases I ever tried because the evidence in the case was overwhelming. And that included the amounts of the restitution, in my opinion.

Q When you say overwhelming, do you mean in terms of showing Mr. Volpicelli's guilt or the volume of it?

A Both.

Q It was voluminous, wasn't it?

A Yes.

Q And it seems as though there were difficulties during your representation acquiring all of the discovery. Do you agree with that?

A I would say as a general statement that would--that is accurate.

Q And we know from reviewing the record that as late as two days before trial, Monday before the trial started on Wednesday, Mr. Volpicelli still had concerns about your readiness to proceed. Do you recall that?

A That he had concerns, yes.

Q But you felt adequately prepared?

A Yes.

Q Even though the records were voluminous?

A Yeah. I had adequate time over the weekend to review them.

Q I think you even testified or told the Court at some point you had met with Ms. Riggs over at evidence looking at each and every piece for a while?

A I believe we did that, yes. Yes.

Q So most of the evidence was either photographs or receipts, that type of thing?

A Yeah. It was interesting, because it was kind of a white color crime in that there were a lot of accounting related, you know, invoicing or labels or price tags, receipts that kind of thing.

Q You feel comfortable reviewing that type of thing?

A Sure.

Q Do you have some business background?

A Not necessarily.

Q Do you run a business?

A I run a business.

Q But you are not a business major?

A Not necessarily a business major, no, nor accounting. I did take an accounting class many years ago but--

Q You have just testified that you had time over the weekend to review and prepare for this trial which was going to

begin the following Wednesday right?

A Yes.

Q And do you recall if, during that review, you concentrated particularly on Mr. Bowman's prior statements to the police?

A I am sure that was part of it, yes.

Q Do you recall when you were actually in trial in here in the courtroom when Mr. Bowman was testifying?

A Vaguely. Vaguely. I have probably, to let you know, I have probably since then tried ten cases. I haven't numbered them, but it has been four years.

Q Do you recall Mr. Volpicelli asking you to ask additional questions on cross-examination of Mr. Bowman?

A I do remember Mr. Volpicelli being very active and feeding me questions that he thought needed to be brought up, yes.

Q And the method he used to do that, was it like note cards?

A He had them on three by five index cards I believe or maybe bigger, five by eight.

Q Did you have any difficulty understanding what he was asking you to ask the witness?

A You know, that is a difficult question, because sometimes, yeah. When you are in trial and listening to a

witness, you are watching the judge, you are watching the jury, listening to the D.A., to have a client continually feeding you information, it can be difficult, you know. Three by five or five by eight cards was not my method or recommended method of communicating with me. I gave him a tablet. I always bring a tablet and say if you have something, write it on the tablet, when I get a minute I will look at it. I guess the long answer is, sometimes yes, I did have difficulty understanding, because I was trying to keep track of other things.

Q Mr. Volpicelli was, in his way, making an effort to aid you in the cross-examination, don't you think?

A Oh, yes.

Q And--

A Absolutely.

Q And he has a pretty good recollection of what is on file and what is of record, would you agree with that?

A Well, good being, you know, characterized how? I mean he has a recollection, yes. Whether I would call it good, I don't know.

Q Was he able at times to point you specifically to places that you could use to impeach something that Mr. Bowman had just testified?

A Sometimes. Sometimes.

Q He did help you with that, didn't he?

A Sometimes.

Q Those times, didn't he walk or take you right to the place where you could say, Mr. Bowman, it says here in black and white left and today you have testified right?

A I don't remember to be honest with you. Sometimes he may have stumbled on something. Again, that would be the exception not the rule.

Q Do you recall asking Mr. Bowman if he had received any favors? Do you recall the State asking Mr. Bowman if he had received any favors in exchange for his testimony?

A I don't. I know it is in the transcript. I know that was an issue, because he had turned State's evidence and was going to testify against Mr. Volpicelli. I know that he had some sort of plea agreement or some leniency in terms of the State's recommended sentence or something. But I don't recall the State--I know she did, I just specifically don't recall it.

Q Do you recall Mr. Bowman was at least a three-time convicted felon, himself?

A Yes, I do remember that.

Q And do you recall that he also could have been eligible for the habitual sentencing enhancement?

A I guess that is two questions. Do I recall it, no. Was it possible he was subject to habitual criminal, maybe. I

am sorry, I don't fit in this little area very well. I am kind of struggling. I apologize for that.

Q You just agreed Mr. Bowman had at least three felony convictions at the time of this trial?

A I believe so.

Q Wouldn't you agree that he might be eligible for the habitual?

A Possibly, yes.

Q And so isn't that something that could have been brought up on cross-examination to demonstrate Bowman really got a good deal only having to plead to one count of burglary?

A It could have been possibly another additional item, yes.

Q We know Mr. Bowman was worried about it because he had discussed it with the detectives and his sister on the telephone. Do you recall that?

A I don't. I don't.

Q Do you remember Mr. Bowman told you the habitual enhancement had never come up when you cross-examined him?

A I don't remember that. If it is in the transcript I did, but I just don't remember. To be fair, I did not review the transcript in the entirety.

Q Before coming here today?

A Correct, I didn't.

MS. ARMSTRONG: Your Honor, what I am looking at in asking these questions at this time is Ground 11. You might recall that the Petitioner has laid out specific instances of testimony from Mr. Bowman, and then he pointed out where he could have been impeached based on records. I'd be glad to walk Mr. Van Ry through each of those, but I would prefer the Court would take notice of exactly what has been pled. I have double checked each and every cite. They are accurate. The only issue that might cause a difficulty, and I mentioned this to Mr. McCarthy yesterday, is in Mr. Volpicelli's pleadings when he refers to a prior written or recorded statement of Mr. Bowman, he will tell you about the date that the Reno detectives interviewed him. He will give the first page of the interview, then if he is talking about something that happened on page 10. He doesn't include pages 2 through 9. He just goes from the face sheet to the page he's talking about. I have the entire transcripts, but they are marked up and they are not appropriate for filing with the Court, I don't believe.

THE COURT: And, Mr. McCarthy, do you have any opinion on how the Court could consider this?

MR. McCARTHY: Well, I think the best we could do would be to introduce the entire transcripts. I found Mr. Volpicelli's pleadings to be, on occasion, misleading by omission, and there is the lack of completeness. It may

mislead the Court. Now I don't have such transcripts with me, however, Ms. Riggs is available today, and I wouldn't be at all surprised if I can get them for you. I am sure we can agree to their authenticity.

MS. ARMSTRONG: If they are supplied by Ms. Riggs and not marked up, I would agree they are authentic.

THE COURT: Well, it seems to me I have some extensive transcripts here as well. I have the Transcript of Proceedings, Jury Trial November 13, 2003 through November 14, 2003. It is real thick.

MR. McCARTHY: It is interviews with cops, Judge, the ones we are talking about, not trial transcripts. Interviews with cops, police officers.

THE COURT: Oh. So this isn't from the actual transcript of the trial.

MR. McCARTHY: I think what Ms. Armstrong is trying to demonstrate is the trial transcript was accurate. Mr. Volpicelli has pled places where he thinks trial counsel should have tried to impeach a witness, and she's suggesting the transcripts of interviews with the police officers would form the basis of that impeachment.

I might point out that a question to the witness has no value to itself. It is only the answer. Unless we are going to hear what the answers are, I don't know what value it is.

But in any event, I don't object to the Court considering the transcripts of the Bowman interviews with the policemen, and we can get them for you, but I don't have them right this minute.

THE COURT: Okay. I will be happy to consider them even though they are outside the record I have.

MR. McCARTHY: I think that is the purpose of the hearing is to expand the record.

THE COURT: Okay.

MS. ARMSTRONG: Thank you, Your Honor. Thank you. If the Court is willing to do that, I believe that will satisfactorily illuminate the issues that you have agreed to hear today on Grounds 11, 12 and 14.

I should let Mr. Van Ry off the stand. I have finished with him. Let me think about that real quick.

BY MS. ARMSTRONG:

Q I do have one last group of questions I would like to ask you, Mr. Van Ry. As far as the prior convictions that were used as the idea for the Judge to consider in the habitual sentencing, did you have an opportunity to review those before you came into court that day?

A You mean the actual documentation of the convictions, themselves?

Q Whatever was provided to Judge Elliott?

A I had an opportunity to review the pre-sentence

report which included reference to the prior convictions, but I did not see--I never put my fingers on each separate conviction of record, formal written conviction of record.

Q So you don't know if they were--if they met the constitutional standard require for the Judge to consider them?

A Again, I didn't put my fingers on every conviction that was listed, no.

Q I am particularly talking about the three that the Judge considered for the enhancement?

A I believe Ms. Riggs did bring those to the sentencing. So I guess, to elaborate, I believe at the sentencing I did see the three prior to her admitting them for purposes of habitual criminal.

Q Did you review them for authenticity and other requirements?

A I would say yes, but I don't remember. I am sure she and I had a little discussion about it before. Again, I don't remember.

MS. ARMSTRONG: That is all I have for this witness, Your Honor.

THE COURT: Mr. McCarthy, do you have any questions of Mr. Van Ry?

MR. McCARTHY: I do, yeah.

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CROSS-EXAMINATION

BY MR. McCARTHY:

Q You were asked a few minutes ago if Mr. Volpicelli actually used transcripts of Bowman's interviews with police to help you frame questions. Does that refresh your recollection at all on the question whether you had been provided with those transcripts before the trial?

A If he was referring to them during trial, I would presume that we had them.

Q Did it help you recall whether or not you had them?

A I still don't really recall to be honest. During trial he pointed to a lot of different things on a lot of different occasions during the trial. In fact I kept asking him to quit giving me so much information.

Q The prosecutor in this case was Tammy Riggs; is that right?

A Yes.

Q Have you dealt with her before?

A Yes.

Q Did she have an open file?

A Yes.

Q She would make--Whatever she had would be available to you for your inspection and copying; is that correct?

A I would agree with that, yes.

Q Now, on cases where you do not employ an investigator, you are free to do your own investigation, aren't you?

A Sure.

Q When as a general rule if you are at sentencing with a client and you are trying to persuade the Judge to impose a relatively lenient prison sentence, do you find it wise to dispute the amount of restitution?

A My answer would be it depends on the Judge.

Q Do you recall what judge imposed sentence in this case?

A Judge Elliott.

Q How do you think about doing that with Judge Elliott?

A That's kind of a loaded question.

Q Are there judges, in your experience, who would see such an argument about restitution being inconsistent with the notion of one who is taking responsibility, is amenable to rehabilitation, all those good things?

A Yes.

Q I won't ask you about Judge Elliott at this point. Prior to sentencing, did your client seem to be more interested in the length of the prison term or in the amount of restitution?

A Clearly, the length, potential length of the criminal

sentence.

Q Do you recall at the time of trial whether or not Mr. Bowman had already been sentenced?

A Again, two questions. I don't recall, but I believe he had been.

Q Assuming he had already been sentenced by the time of trial, can you think of how he might be perceived of as still owing some allegiance to the prosecutor?

A It is a speculative question at best.

Q As a trial attorney?

A Yeah. I think that would be a hard sell.

Q Okay. Do you know or do you believe whether or not Bowman negotiated directly with the District Attorney?

A I have actually no idea how that negotiation went.

Q It would be unusual for that to happen, wouldn't it?

A Well, it would be unusual for me to find out about it.

Q When your client is on trial, who generally does the negotiating, you or the defendant?

A Usually the lawyer.

MR. McCARTHY: That is all I have. Thank you.

THE COURT: Ms. Armstrong, any other questions?

MS. ARMSTRONG: Just a couple, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MS. ARMSTRONG:

Q Is it your testimony this afternoon, Mr. Van Ry, you chose not to contest the restitution amount as a sentencing tactic or a trial tactic at sentencing?

A I really don't remember. Perhaps. I honestly don't remember.

MS. ARMSTRONG: Thank you.

THE COURT: Anything else?

MR. McCARTHY: No.

THE COURT: Then, Mr. Van Ry, you are excused.

THE WITNESS: Thank you, Judge.

THE COURT: Sorry about the small chair.

THE WITNESS: It is this thing. My knees are two inches above it. Should I leave Exhibit 5 and A here, Judge?

THE COURT: Ms. Armstrong, you may take them.

THE WITNESS: Am I free to go or do I need to stay?

MS. ARMSTRONG: You are free to go as far as I am concerned.

MR. McCARTHY: So am I.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

MS. ARMSTRONG: I don't have any further witnesses, but as I stand here thinking about this Exhibit A that has not

been admitted or authenticated, I believe that I should have had a witness here to do that, and I wonder if the Court would allow me to come back at a later time to have this authenticated and admitted in support of our restitution argument.

THE COURT: Well, I am kind of hopeful to get this case taken care of today. I think there is another witness out there that might know something about it anyway.

MS. ARMSTRONG: If I could authenticate it through that witness, if Mr. McCarthy is planning to call her.

MR. McCARTHY: I am planning to call her. I don't know. I don't have the entire trial file here. I have no police reports, things like that. So Ms. Riggs might know. I don't know where that document came from. She might.

MS. ARMSTRONG: I'd be willing to ask her.

THE COURT: Does the State want to call a witness?

MR. McCARTHY: Sure. Soon as she is done, I will call Tammy Riggs if the Petitioner is done.

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

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TAMMY RIGGS

called as a witness, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. McCARTHY:

Q Do you want to introduce yourself, please?

A Yes. My name is Tammy Riggs, T-A-M-M-Y. R-I-G-G-S. I am a Deputy District Attorney with the Washoe County District Attorney's Office.

Q Were you involved in the prosecution of Ferrill Volpicelli?

A Yes, I was. I was the prosecutor.

Q I am going to show you what is tagged as Exhibit A. Do you know what that is?

A Yes. This is the inventory of the property that was stolen by Ferrill Volpicelli.

Q Do you know who prepared that document?

A This was prepared by Reid Thomas of the Reno Police Department.

Q When you prosecuted this case, did you have that document in your file?

A If it is Exhibit A, I believe I did.

Q The thing that is labeled as Exhibit A, did you have

that in your file?

A You know, Mr. McCarthy, I don't recall this specific exhibit, but I do recognize the list of items as those items that were stolen by him.

Q Did you take a look at your files lately?

A Yes, I have.

Q Today?

A Yes.

Q What were you looking for?

A Specifically, I was looking for what was alleged in the Writ of Habeas Corpus as far as what was discovered and what may not have been discovered in this case.

Q Can you tell the Court what does a red star on a document in your file mean to you?

A A red star indicates that this file has been presented to our Discovery Division, and that the Discovery Division has made a copy of that item. That they have forwarded that to be released to the defense for their use, and then they apply the red star to the item that has been discovered to indicate to us that that has been released to the defense.

Q Did you check for red stars on transcripts of interviews by one Mr. Bowman and various police officers?

A Yes, I did.

Q Were there red stars on those documents?

A On every single transcript in the file.

Q From those, do you conclude those transcripts had been provided to Bradley Van Ry?

A Yes, I do.

MR. McCARTHY: That is all I have.

THE COURT: All right. Ms. Armstrong, you may ask questions of the witness.

MS. ARMSTRONG: Thank you.

CROSS-EXAMINATION

BY MS. ARMSTRONG:

Q Ms. Riggs, your testimony is that it is a practice in your office to put a star on something once it has been discovered or sent to the defense attorney?

A Yes.

Q Do you know in this particular case if those stars reflected that the materials had been sent to Jack Alian rather than Mr. Van Ry?

A I know that they had been specifically released to whoever was Ferrill Volpicelli's attorney at the time they were produced, because I went into the D.A.'s business system and it indicated discovery was requested by defendant Volpicelli and was released to him.

Q So that tells you what, it was released to his attorney at that time?

A Whoever was representing Ferrill Volpicelli.

Q Do you know who that was?

A No.

Q So is it possible that those documents were provided to Mr. Alian and not directly to Mr. Van Ry?

A They were provided to Ferrill Volpicelli.

Q How could he get them?

A Mr. Volpicelli repeated over and over again during the course of this trial that he wanted copies of his documents, so he was provided all of his documents, to my knowledge.

Q By your office?

A These were released to Ferrill Volpicelli. Whoever his agent was at that time received those documents.

Q So what your system-- What your review of your system tells you today is that Mr. Volpicelli was represented by an attorney. The documents were provided to Mr. Volpicelli, to his attorney?

A They were released to Ferrill Volpicelli.

Q Did he come and pick them up?

A I don't work in Discovery, so I don't know.

Q Do you know he was in custody so he couldn't come

pick them up?

A I can't speculate.

Q He would have to rely on his attorney to provide the discovery, wouldn't he?

A Again, I can't speculate.

Q You don't provide two sets do you?

A Sometimes we do.

Q Is that in the event there has been a change in attorney?

A Sometimes we provide two sets of discovery. In fact, in this case, I noticed there were some items that were double discovered. It just happens.

Q Not every item was double discovered was it?

A No, but every item was discovered.

Q You were able to confirm that this morning?

A Yes, I did.

Q So let me ask you specifically, and I suppose Mr. McCarthy already did, I was trying to listen to Mr. Volpicelli, did you specifically say that you had discovered each and every interview of Brent Bowman with the Reno Police Department?

A Yes.

Q That is a total of five or six interviews?

A Yes.

Q And you are able to confirm those have been provided to someone?

A Yes.

Q You can't tell us as you sit here today exactly who received the document, can you?

A I don't work in discovery, so I don't know who came and picked them up.

Q Do you recall that several months before this case went to trial, I think it was in June or so, that you were in court with a group of attorneys. Mr. Volpicelli was represented by several attorneys at one time?

A I was in court on many, many days with Mr. Volpicelli. You would have to be more specific as to what you are talking about.

Q This particular day I believe you appeared in front of Judge Hardesty. Judge Hardesty ordered within a week you and Mr. Van Ry sign a reciprocal discovery agreement.

A I don't recall that specific inquiry or that requirement by Judge Hardesty or that conversation.

Q If I told you it was part of the record, you wouldn't dispute it, would you?

A No.

Q Do you recall that Mr. Volpicelli was originally represented by Mr. Alian in this case?

A I recall that Mr. Volpicelli had a lot of arguments with Mr. Alian, and Mr. Alian at some point conflicted off the case and Mr. Van Ry became his attorney. I believe that Mr. Volpicelli went through several attorneys on this case. I am not sure. Well, he had four cases, so he had several attorneys.

Q But Mr. Alian had this particular case before Mr. Van Ry had it?

A Again, he had four cases. I don't specifically recall which Mr. Alian was on and which he was not.

Q Do you have any recollection of Mr. Volpicelli specifically requesting that these interview documents be provided to Mr. Van Ry?

A I know they were provided to Mr. Volpicelli, but I can't speculate as to what he wanted or didn't want.

Q You have worked in Washoe County for several years?

A Yes.

Q And you have had experience with Mr. Alian over the years?

A Yes.

Q Is he the kind of guy that makes a set of copies of discovery and provides it to the client?

A I have no idea.

MR. McCARTHY: Your Honor, it sounds like this

witness is being asked to testify either to Mr. Alian's character or habits and customs, and I don't think either one is appropriate.

THE COURT: Well, the witness already said she doesn't know. I guess that is to be expected, so I will overrule the objection. We'll accept the witness' statement.

BY MS. ARMSTRONG:

Q Was it at your request that detective Thomas prepare what was admitted as Exhibit 5 at sentencing? If you can't remember that, I can show you Exhibit 5?

A I don't remember.

MS. ARMSTRONG: May I approach, Your Honor?

THE COURT: You may.

MS. ARMSTRONG: Thanks.

BY MS. ARMSTRONG:

Q Now, that you have seen Exhibit 5, do you recall this exhibit?

A Not specifically, but I recall all the items on it that were stolen by Ferrill Volpicelli.

Q You don't know if you had this prepared to aid you at sentencing?

A I don't recall whether I had that or I specifically requested detective Thomas to prepare that or whether he did that through somebody's else request. I just don't remember. I

am sorry.

Q As you sit here today, Ms. Riggs, do you recall the two-day trial that involved all these Indictments regarding this stolen property?

A Do I recall being in it? Yes.

Q Not much specifically, though?

A Well, you know, that is kind of a vague question. I guess you would have to ask me more specifically.

Q All right. There were occasions when Mr. Volpicelli-- when Mr. Bowman testified. One instance he testified that he had never been a person who could have received the habitual criminal enhancement as a result of his conviction in this case. Do you remember him saying that at trial?

A I don't specifically remember him saying that.

Q If he did, it would have been false, wouldn't it?

A I don't know. I don't remember. Mr. Bowman was a repeat offender target.

Q The criteria for the habitual criminal enhancement isn't repeat offender program, is it?

A Oh, no.

Q It is the number of prior felony convictions?

A Yes.

Q Or misdemeanors?

A Yes.

Q So do you recall Mr. Bowman had more than three felony convictions?

A I don't recall.

Q So you don't recall him testifying that he didn't receive, as a favor in this case, no habitual criminal enhancement?

A That was not contemplated as far as I know as part of his plea agreement.

Q Did you do his plea agreement?

A I did not, but I have had a chance to review it.

Q Well, any three-time convicted felon is potentially subject to that; aren't they?

A No.

Q Is that right? Why not?

A Because it would be a waste of the system's resources if we tried to apply the habitual offender status to all people who have three felonies in their background. That habitual offender status is reserved for the worst criminals.

Q So it is a policy not a law because the law, itself, the statute, itself, simply requires three prior convictions?

A I don't understand your question.

Q I didn't understand your answer. I believe you said that the habitual criminal enhancement wouldn't have been

available to the State to impose on Mr. Bowman?

A Are you saying--Are you asking me whether we would have considered imposing that or asking the Court for that or whether he is eligible for that under the law?

Q Eligible first.

A As far as I know, he would have been eligible if he had three felonies.

Q You know that he had three felonies?

A No, I don't.

Q Wouldn't that have been information you would have had to provide Mr. Van Ry five years ago?

A Yes.

Q So what are you saying? If you knew that he had three or more felony convictions in 2003, would you have let Mr. Van Ry know that?

A I am confused by your question.

Q In the defense practice, it is common to impeach a witness with prior convictions for felonies, particularly if they are within the last ten years. So in your practice, if you knew that the witness for the State had prior felony convictions, wouldn't you give that information to the defense attorney?

A I did.

Q How do you know that you did?

A Because I reviewed my file on Brent Bowman that was included in the Volpicelli file today, and there was a faxed document that included the Guilty Plea Memorandum as well as the defendant's, Bowman's, criminal history attached to it.

Q How is the criminal history attached?

A It was--The criminal history was separate underneath the Guilty Plea Memo, and on top of that was the faxed document containing Mr. Van Ry's address, et cetera.

Q Are you talking about the NCIC printout or is it something typed up that says conviction one, conviction two?

A I am talking about the NCIC printout.

Q Okay. In my jurisdiction, those aren't commonly given to defense attorneys. Here you allow them to have that?

A Well, this one I did for the defense. That is what appears from my file.

Q Do you recall when you were working with detective Thomas on this that he aided Mr. Bowman in obtaining his last paycheck from the Sands Casino?

A I have no idea.

Q Too long ago?

A No knowledge about that.

Q Too long ago?

A I don't have any knowledge about it.

Q Did you personally review the interviews between

Brent Bowman and the Reno Police Department? I am talking about five or six different ones beginning on the date of arrest, 10-17-03, then there are a couple more in December I think. We have some more at the beginning of the year of 2002. Did you review those before trial?

A Yes.

Q Each and every one?

A To my knowledge I did. They are all in my file.

Q So you would have read every word of every interview?

A Yes, five years ago.

Q You, yourself, had a couple of interviews with Mr. Bowman before coming into court?

A I recall one.

MS. ARMSTRONG: I think that is all the questions I have, Your Honor. Thank you.

THE COURT: Any other questions Mr. McCarthy?

REDIRECT EXAMINATION

BY MR. McCARTHY:

Q You wouldn't happen to have an extra unmarked up copy of those police interview transcripts would you?

A Unmarked up?

Q Yeah?

A I don't believe that I do. All the transcripts I

have have the red stars on them.

Q Other than the star?

A I don't recall. I know several of them are marked up. I don't know how many are unmarked. I just don't know, I am sorry.

Q That's all right.

MR. McCARTHY: That's all I have. We'll try to work it out.

MS. ARMSTRONG: Nothing further.

THE COURT: Then, Ms. Riggs, you may be excused. Why don't we take a recess?

(Short recess taken.)

THE COURT: You may be seated. Ms. Armstrong, how would you like to proceed?

MS. ARMSTRONG: Thank you, Your Honor. During the recess, I telephoned the office where Mr. Volpicelli told me he got this document, and it was the City Attorney's Office, and the City Attorney in particular that he had talked to is out of town until next week. I am not sure she could have authenticated it anyway. I think it will probably take the policeman who actually prepared it. So I think what I would like to ask the Court is to allow me to obtain an Affidavit to supplement the record from the author of this report within the next ten days or so, if possible, just so you would know that

this is true and accurate.

And other than that issue, I am prepared to argue.

THE COURT: As to that matter, Mr. McCarthy, do you have any opinion?

MR. McCARTHY: I will have to go out of character and get hard nosed. Today is the date of the hearing, Judge, and the evidence is completed. I ask it be submitted for decision. I object to a ten-day recess to gather additional evidence.

THE COURT: Well, I do feel every effort should be made to provide a complete record. I mean this thing is coming on years later. I think we can afford the time to allow Ms. Armstrong to obtain an Affidavit if she can get it from somebody to authenticate the document, you know, attempt to do that. I am going to allow Ms. Armstrong to go forward to attempt do that with regard to what we know as Exhibit A, then.

MR. McCARTHY: All right. Okay. Fine, Your Honor.

THE COURT: But then I suppose as to the other issues Numbers 11, 12 and 14, I think we can go forward with those to determine those today. And it would just be 7 that I guess is somewhat in the air. What that really is is just a challenge to the amount of restitution. It is not going to result in a retrial or re-sentencing or anything like that. I think it is

just a way to get around to the restitution at a later time.

All right, Ms. Armstrong, you may proceed then.

MS. ARMSTRONG: Thank you, Your Honor. As far as the other issues, not the restitution as you have just stated, Grounds 11, 12 and 14, those all, to me, involve trial counsel's performance during the trial, and particularly in terms of what he had reviewed prior to beginning the trial, and then how effective he was in using that information to impeach the State's, one of the State's witnesses, the original co-defendant, Brent Bowman. And as I mentioned earlier, Your Honor, in Mr. Volpicelli's Pro Per Petition that was filed on November 9, 2005, he has I think done a very good job of lining out exactly what question was asked and then what could have been used by way of cross-examination by Mr. Van Ry to impeach the answer given by Mr. Bowman. And they mainly involve the issues of whether Mr. Bowman was given any reward in exchange for his testimony or his plea. The issues also involved whether Mr. Bowman ever went into the stores and put these--changed the UPC codes on the items, himself. At trial he continually denied doing so, yet in his statements to the police, he had told them that, yes, he had done that on several occasions. Mr. Van Ry did not cross-examine based on the previous inconsistent statement in that instance.

Another issue in which a previous inconsistent

statement was not used for cross-examination was the statement by Mr. Bowman that Mr. Volpicelli bought the label maker that was used to change the UPC codes. In one of the interviews, Mr. Bowman admits that he bought that label maker.

The third topic would have been something I alluded to earlier, because Mr. Bowman was in custody, he was unable to pick up his final paycheck from the Sands Casino where he was working, so the police officers helped him get that. He denied that that had happened at trial. And if Mr. Van Ry had, it is our argument, if Mr. Van Ry had in black and white something to impeach him with and that is the best kind of impeachment, he should have done that.

Another issue was what proceeds Mr. Bowman gained from this enterprise, and Mr. Bowman testified that he only received I think a coffee pot and a toothbrush or something. Again, in the interviews with the detectives, it is apparent he also received a home stereo television system, a home theater system. Pretty expensive item. Again, if Mr. Van Ry had confronted Mr. Bowman with his previous statement during the trial, the jury would have been able to discern that Mr. Bowman was less than honest about many of the facts of this case. And because he was such an important witness to the State, we think that would have made a difference in the long run.

You know, the State has agreed to supply you with the

transcripts of those interviews with Mr. Bowman, so I am arguing to you today only what has been recited by Mr. Volpicelli in his Petition. I think that is all I have on that issue, Your Honor.

But, generally, because there was impeachment available from prior recorded statements that was not used over and over and over, not just one time and not just, you know, a trial attorney can't be 100 percent all the time, of course, but we believe in this instance, because of the demonstrable inaccuracies as impeachment, this rises to the level of ineffective assistance.

THE COURT: Thank you. Mr. McCarthy.

MR. McCARTHY: Thank you, Your Honor. The claims are phrased in a couple of ways. One is a failure to disclose evidence by the prosecution. I think that has been pretty disproved. Mr. Van Ry believed he had received everything, and Ms. Riggs was adamant that everything had in fact been delivered. So it converts to a claim of ineffective assistance standard, failure to properly utilize everything. I would remind the Court that a claim of ineffective assistance of counsel requires a demonstration that counsel's specific decisions fell below an objective standard of reasonableness. Subjective standard is not appropriate. Further, prejudice is an element of the claim. They must show if the lawyer had

acted differently, it is reasonably likely the result of the litigation would have been different. All we are talking about here, all this impeachment business is about much ado about nothing, for lack of a better phrase.

Furthermore, and finally before I get into the specifics, I mentioned earlier, Your Honor, in a trial, questions have no value. Answers are what the jury is to consider. Without Mr. Bowman here to testify how he would have responded to any given question, we have half a case at best. There is information available that could have led Mr. Van Ry to ask a question, but we have zero evidence on how Bowman would have responded. So I suggest there is nothing to consider here.

Moving from that to the specifics, I notice one of the claims concerns the label maker that was the instrument of this great fraud. And the specific question posed to Bowman was asked: Did you buy that at a Staples store in California? The answer was no. The transcript will show, which you don't yet have, will show the question was did you buy it and the answer was yes. Those are completely different things. They are different questions. So there is nothing to impeach here. It is not inconsistent at all.

The question of Bowman that was asked at trial was did detectives assist you in getting a paycheck from the Sands

Hotel. Once again, the specific question. The answer was no, it never happened. The prior statement that is the taped interview with the police will reveal he said I picked up my paychecks. They were on my person when I was arrested. They are now in my property. They are going to expire if I don't get them negotiated. And the cop said, yes, I can help you with that, get it out of the evidence vault of personal property, give it to you so you can do with it what you will. There is no statement saying the police helped him obtain a paycheck from the Sands Hotel. He already had it. Again, there is nothing inconsistent. There is no impeachment there. Even if that were significant in some way, which it isn't, there is still no impeachment.

I notice that Mr. Bowman had already been sentenced, page 155 of the transcript, in which he testified he had already been sentenced by the time of the trial. So we want to impeach him with a perceived value of the plea bargain when he's no longer under the thumb of the prosecutor and the prosecutor can't do anything with him. I don't know the value of that. I suggest it would not have altered the outcome to see that the plea bargain is really a very good plea bargain.

He was thoroughly cross-examined, and Bowman was cross-examined on the subject, actually directly examined on the subject of his plea bargain, and it was fully disclosed to

the jury. They knew he pleaded out to avoid, I think he said six separate felonies. I suppose maybe it is a qualitative difference, you know. But I don't see how it can get--how that can make the difference. You have got a plea bargain. You got a very good plea bargain. Well, the jury would have acquitted if they had known it was a very, very, very, good plea bargain. That seems to suggest more likely than not the outcome would have been changed.

I also suggest there is no evidence anywhere that anyone discussed specifically the habitual criminal allegation with Mr. Bowman. Now whatever his lawyer said to him I have no idea. You may notice that lawyer did not testify in this hearing. I conclude from that, Your Honor, you also still don't know what that lawyer said to him, what came up in negotiation and what did not. Once again we have half a case.

The proceeds, what Bowman kept, you know, I couldn't figure out from the trial transcript precisely what question and answer one might impeach. I know what inconsistent statements are, but I don't know what is the consistent statement. There has to be a specific time in which one interposes or one raises the impeachment. I couldn't find that. I don't know where it is. But assuming it is somehow pertinent, and Van Ry could have asked some question about the home stereo system, when Your Honor is provided with the

complete transcripts not merely excerpts and the pleadings, Your Honor will see Mr. Bowman claimed then to have bought, purchased lawfully, the home entertainment system that was found in his home. How that is inconsistent with anything at trial I don't know. Can we ask Mr. Volpicelli to keep it down a little bit here?

By the way, among other things, Petitioner bears the burden of proving any decisions made by counsel were not strategic or tactical decisions. On that subject, Mr. Van Ry didn't recall a whole lot about the trial as one might expect. But you may notice that page 236 or 237 of the trial transcript, I am sorry, I don't remember which, today Mr. Van Ry described he told the court then that his choice of the scope of cross-examination was in fact a tactical strategic decision. There being no evidence to the contrary, it hasn't been proved it wasn't a tactical decision and, therefore, the Petition ought to be denied at least on those other grounds.

THE COURT: Okay. Thank you. Anything else on these subjects, Ms. Armstrong?

MS. ARMSTRONG: I don't believe so, Your Honor.

THE COURT: Well then from what I have heard, I mean we know Bowman was given a deal, had already pled, was sentenced at the time the trial came around. It was certainly true he was no longer beholding to the District Attorney's

Office to maintain some kind of a deal. So I think it would be somewhat ineffective to push it too far that he has, you know, gotten a deal. That was already known.

With regard to the issue of did Bowman change UPC codes, frankly, I guess we don't really care. I mean I can't see that it matters. It is certainly not falling below any objective standard of reasonableness on the part of the defense counsel not to pursue it any further than it was. In terms of who bought the label maker, I will accept that there really isn't any strong impeachment there based on what has been told to me by Mr. McCarthy.

The issue of did the police actually get Bowman's check from the Sands, again, I don't find any value to that if all that happened. They helped him negotiate the check when he had it in his personal property at the jail.

The issue of did he get an expensive TV or, you know, what he personally got out of the deal in his relationship with Mr. Volpicelli, again, I don't see any value to the cross-examination. Should it have been fruitful to contend that he obtained a TV, something more than he claimed that he received on the stand, I don't imagine anybody would really believe Mr. Bowman is, you know, the most up and up, you know, outstanding citizen as he comes in to testify and that he admits he's a participant in a criminal enterprise and he

admits he's been convicted of prior felonies. We know that he is not, you know, your typical Chamber of Commerce member. I don't feel that any of these issues would fall below the objective reasonableness on the part of defense counsel for trying to raise some picky point that, you know, the answer doesn't correspond with some prior response he may have given to the police. And, certainly, the result would not have been any different for Mr. Volpicelli, because, again, I don't think anybody believes that, you know, Mr. Bowman is the most up and up guy, but he's just a guy that has, you know, already pled out. He admits to his participation and explains some of, you know, his role with Mr. Volpicelli. But the case doesn't hinge just on that, just on his 100 percent credibility. So, you know, there are many other things at issue in the case beyond that.

Anyway, I do make those findings. With regard to the exculpatory evidence, I believe, based on the testimony of Ms. Riggs, there was no withholding of any exculpatory evidence. All the information that the Court has benefit of is that, if anything, that the District Attorney's Office be found they released it to Mr. Volpicelli's attorney. And we know nothing else of this background is unfounded.

I would leave open the issue as to number 7, the correct amount of restitution. I can understand in a case like

this where, you know, prison time is the overwhelming issue and $10,000 really doesn't mean that much, and I suppose in the reality, once Mr. Volpicelli received his sentence, there is a very slim possibility that any restitution will ever be collected from him, highly unlikely. It could happen, but I don't really expect it. So it is not an issue in the case when you look at the much bigger picture of a life sentence hanging in the balance here. So I think, still, Mr. Volpicelli is entitled to his case here that you would like to contest the amount of restitution, and maybe it wasn't in fact appropriate and more could have been done. But that is not something that is going to result, in essence, really, to a reopening of the entire sentencing or a new trial or anything to that extent. It would just be a contest of some of the dollars.

With that, I do rule in favor of the State as to Items 11, 12, 14. And number 7 I would like to receive additional information on that.

MR. McCARTHY: Your Honor, you mentioned as you were making your rulings that it was partly dependent whether I accurately described the transcript interviews with the police, and we haven't provided those to you. Does it make a difference?

THE COURT: Well, do you feel, you know, I mean it just sounds to me like these are not points that is going to

turn anything around here.

MR. McCARTHY: I think Your Honor could legitimately argue if the impeachment was available, Your Honor could legitimately say it wouldn't have made any difference, then it doesn't matter if I described it correctly or not. I would still like to provide those to you. We have the ten-day extension.

THE COURT: Are you saying as an officer of the court you are representing these things accurately?

MR. McCARTHY: That is a good assumption. If you can't trust old uncle Terry, who can you trust? I would like you to have them. Maybe when we come back after you see the additional Affidavit, you can let us know if that has changed, if your review of those transcripts has changed your holding. How about that?

THE COURT: All right. That is fine. I am willing to wait to give any final ruling on this, so I can confirm what you are telling me is accurate.

MR. McCARTHY: I read them. I will make sure you get them one way or the other.

THE COURT: Okay.

MR. McCARTHY: By stipulation.

THE COURT: We'll stand in recess.

(Short recess taken.)

THE COURT: You may be seated.

MR. McCARTHY: Your Honor, just after you left the bench, Ms. Riggs gave me a copy of the transcript we have been talking about, the interviews between Brent Bowman and various policemen, and it has been marked as Exhibit 1. I believe we have an agreement Exhibit 1 is an authentic copy. I submit it to the Court.

THE COURT: All right.

THE COURT: Ms. Armstrong, do you agree with that?

MS. ARMSTRONG: Yes, that is so stipulated, Your Honor.

MR. McCARTHY: Thank you, Your Honor, for accommodating that.

THE COURT: Exhibit 1, the series of transcripts will be admitted for purposes of this proceeding.

MR. McCARTHY: Thank you, Your Honor.

(Exhibit 1 admitted in evidence.)

THE COURT: We shall be in recess again.

(Whereupon, the proceedings were concluded.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, Judith Ann Schonlau, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 10 of the above-entitled court on Thursday, September 20, 2007, at the hour of 8:30 o'clock a.m., of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of THE STATE OF NEVADA vs. FERRILL J. VOLPICELLI, Case Number CR03P1263.

That the foregoing transcript, consisting of pages numbered 1- 62 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 5th day of November, 2007.

JUDITH ANN SCHONLAU CSR #18

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JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

-oOo-

FERRILL J. VOLPICELLI,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

CR03P1263

CASE NO. ~~CR03-P1263~~
DEPARTMENT NO. 10

TRANSCRIPT OF PROCEEDINGS

PETITION FOR POST CONVICTION

THURSDAY, SEPTEMBER 20, 2007

1:30 P.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

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For the Respondent: OFFICE OF THE DISTRICT ATTORNEY
BY: TERRY McCARTHY, ESQ.
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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
BRADLEY OTTO VAN RY	4	31	34	
TAMMY RIGGS	36	38	48	

RENO, NEVADA; THURSDAY, SEPTEMBER 20; 1:30 P.M.

-oOo-

THE COURT: This afternoon we are here on a post conviction Petition for Habeas Corpus on behalf of Ferrill Volpicelli. And I see that what we have are grounds 7, 11, 12 and 14 remaining to be heard today.

Ms. Armstrong, do you want to proceed?

MS. ARMSTRONG: Yes, Your Honor. Thank you. Good afternoon. The first thing I would like to do is invoke the rule of exclusion. I don't have any witnesses here other than Mr. Van Ry whom I had asked Mr. McCarthy to make sure to arrange. I don't know if anybody else is going to be testifying who is in the room or not.

THE COURT: Mr. McCarthy?

MR. McCARTHY: Yes, one other potential witness. She's on her way out.

THE COURT: Okay.

MS. ARMSTRONG: Thank you, Your Honor. I would like to begin by calling Mr. Van Ry.

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

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BRADLEY OTTO VAN RY

called as a witness, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. ARMSTRONG:

Q Would you please state your name?

A Sure. Bradley Otto Van Ry.

Q Would you please state your full name? You just did that. Spell your last name?

A Sure, V-A-N space R-Y.

Q What is your current occupation?

A I am an attorney.

Q Do you work here in Reno, Nevada?

A I do.

Q What type of practice do you have?

A I do primarily civil litigation. I have gotten out of doing much criminal representation lately. So I'd say it is primarily criminal--excuse me--primarily civil litigation with just a small portion of criminal litigation.

Q Previously, did you practice more criminal law?

A Yes. Yes. Probably when I went on my own four years ago it was probably fifty percent criminal, fifty percent civil.

Q How long have you been a lawyer, Mr. Van Ry?

A This is going on my tenth year.

Q How many jury trials have you had?

A Over twenty.

Q Over twenty?

A Probably. That is civil and criminal.

Q Can you approximate how many of them were criminal?

A Probably fifteen.

Q All to verdict?

A I'd say probably. There may have been one or two that pled at a certain point in the trial. But I would say mostly, yes.

Q Back when you were appointed to represent Mr. Volpicelli in 2003, would that have been when your practice was about fifty/fifty civil and criminal?

A Yes, that's true.

Q Do you remember representing Mr. Volpicelli?

A Pretty broad question. Yes.

Q All right. Do you remember being assigned to represent him on a case that arose from several Indictments?

A Again, generally, yes.

Q As part of your representation of him, would you normally obtain discovery from the State?

A Of course.

Q And how does that work for you? Do you file a motion or do you just make a request?

A With this particular case, I can tell you that I was appointed I believe through the Jack Alian group as a conflict counsel, and all discovery would filter from the D.A.'s office, mostly through the D.A.'s office to Mr. Alian and then to me.

Q Because Mr. Alian was appointed before you were?

A That's correct.

Q And are you still working with the Alian group?

A No.

Q At the time when you were and you were representing Mr. Volpicelli, were you paid a flat rate for cases?

A That's correct.

Q Were you allowed or did you have the ability to use investigative help?

A If Mr. Alian and I discussed it and we thought it was prudent in a matter, yes, we could expend some cost in terms of investigative.

Q It sounds as though you were trying to be cautious about costs, though?

A Yeah. It would have been the exception in a case that I was assigned for Mr. Alian for me to use an investigator.

Q Do you recall if an investigator was used in helping Mr. Volpicelli?

A I don't recall specifically, but I have a feeling there was not an investigator in this case.

Q Specifically, let me ask you if you received, by way of discovery from Mr. Alian, the prior statements, prior recorded statements of the co-defendant, Brent Bowman?

A I don't have a specific recollection. I would say generally, yes. But it has been a long time. I believe I did, yes.

Q And do you recall in the case when you represented Mr. Volpicelli at trial the main point of attack for you or your general trial strategy was to attack Mr. Bowman, wasn't it?

A You know, honestly, we had a difficult defense case.

Q Do you recall?

A Let me finish, please. Whether the primary defense strategy was to try to impeach or undercut Mr. Bowman, I am not sure that was an accurate statement. I think that was a part of the defense strategy, of course. I don't know if that was the primary part.

Q Do you remember telling the jury in your opening statement that this case was a case about reasonable doubt and reasonable doubt would be shown through Brent Bowman?

A If it is in the transcript, that is what I said. I am sorry I don't have a specific recollection. As a matter of

course in criminal trials that have very little--Honestly, this was one of those cases where you have very little defense. You know, reasonable doubt is what you hang your hat on or attempt to hang your hat on.

Q In this case, Mr. Bowman was somewhat attackable don't you agree? Pardon me?

A I am sorry, I didn't answer. I am still thinking. I don't remember. Maybe at the time, you know, 30 days after trial I had a better answer, but I just don't remember. I think I tried to go after him a little bit.

Q Do you recall--You have testified I believe that you think you received the complete discovery including the statements, the recorded statements of Brent Bowman of which there are five or six. Do you remember that? He interviewed with Reno police detectives on five or six occasions and each of those times it was transcribed. Do you recall that?

A Yeah, vaguely.

Q All right. When I was reviewing the transcripts in preparation for today's hearing, it appeared that even up to the last trial setting or trial confirmation hearing there was still some difficulties regarding obtaining discovery. Do you recall that?

A I have a recollection of my client at that time, Mr. Volpicelli, voicing that opinion.

Q But it wasn't your opinion?

A I don't--Let me just say this: I think prior to the trial, I received everything I needed to try to defend Mr. Volpicelli.

Q Did you have adequate time to review what you had received?

A Yes. Yes.

Q As you sit here today, you feel comfortable testifying that you adequately reviewed all of Mr. Brent Bowman's taped statements to the police?

A I believe so, yes.

Q Okay. And I am going to switch gears a little bit and ask you about the restitution issue as well. Now were you provided with I believe it was exhibit, let me see which exhibit it was at the sentencing, were you provided with Exhibit 5, a copy of that? It was an exhibit prepared by the detective, Reid Thomas, who was the head detective on the case in support of sentencing?

A If I might look at it, please.

MS. ARMSTRONG: May I approach, Your Honor?

THE COURT: Yes, you may.

MS. ARMSTRONG: Thank you.

THE WITNESS: Your question was was I provided this at the time of sentencing or prior to sentencing?

BY MS. ARMSTRONG:

Q Prior to sentencing?

A I would say the answer is I believe so, yes. If I could just magnify that.

Q I'd appreciate it?

A I have turned over all of my file to Mr. Volpicelli except for some jury trial Jury Instructions, et cetera, so I can't go to the file and pull it out and say here it is. But I believe that I did receive this prior to the sentencing of Mr. Volpicelli.

Q Do you recall if you had an opportunity to discuss it with Mr. Volpicelli prior to sentencing?

A You know, I don't recall specific conversation, but, again, as a matter of course, I am sure that we had some discussion over the restitution issues.

Q All right. Now I am going to refer to an Exhibit A that was filed attached to the Proper Person Writ filed by Mr. Volpicelli on November the 9th, 2005. I am going to have you look at Exhibit A.

MS. ARMSTRONG: If I could approach the witness with that, Your Honor.

THE COURT: Yes, you may approach the witness.

MS. ARMSTRONG: I will trade him. Did counsel for the State want to verify this was Exhibit A? I don't know if

it is Exhibit A.

MR. McCARTHY: It is.

BY MS. ARMSTRONG:

Q All right.

A This looks like a list of property--excuse me--an inventory of property in RPD Case Number 01-216321; is that correct?

Q Yes. Have you seen that before?

A My answer will be probably. I don't have a specific recollection of it.

Q As you look at that Exhibit A, can you see that, I am not looking at it now, but I think almost everything on the right column says, returned or in evidence, or returned pending. That would be true of every page I believe.

MR. McCARTHY: Your Honor, I am willing to stipulate Mr. Van Ry can in fact read. If it is offered to prove the truth of any matter asserted in that document, I object to it.

THE COURT: You are not objecting to the question right now; is that right?

MR. McCARTHY: I believe the question that was asked is do you see that it says that. It says things were returned. If it is offered to prove things were in fact returned, I object to it.

THE COURT: I have to sustain that. But certainly

the witness can look at the document to see if it refreshes his recollection.

BY MS. ARMSTRONG:

Q Let me try a different question. Mr. Van Ry, do you recall comparing what has been filed as Exhibit A--what exhibit did I give him? Did you have an opportunity to compare Exhibit A from the Writ with Exhibit 5 from the sentencing prior to sentencing?

A Did I have the opportunity, is that the question?

Q Did you review them?

A Did I review them? Again, I don't have specific recollection. I would say I probably reviewed both of them, yes.

Q And you recall that at the time of sentencing, the request was made Mr. Volpicelli be ordered to make in excess of $10,000 in restitution, correct?

A Yes. Yes.

Q The items that total the $10,339.16 on Exhibit 5 are many of the same items in the inventory you are looking at now, aren't they?

A It is hard to go off my memory. It would be easier if I could compare them side by side.

Q I would be glad to give you this other one back?

A Thank you. It appears that some of Exhibit A are

included in Exhibit 5.

Q Now that you have had a chance to confirm that, do you recall objecting to the restitution amount at the sentencing hearing?

A Boy, I'd have to read the transcript. I do not recall. I just don't remember. I don't.

Q Based on what you have just reviewed, do you believe it would have been prudent at sentencing to inquire into why he was being charged restitution for items which had been returned to the rightful owners?

A In order to really answer that question, I would ask that--I don't know if it is feasible to really answer that question. I would have to compare item by item, line by line from Exhibit 5 with Exhibit A.

MS. ARMSTRONG: If the Court would like to recess to give him a chance to do that, Your Honor. I have done it. It took me 15 minutes or so.

MR. McCARTHY: The question is based on assumption Exhibit A truthfully represents that which was returned and that which was not. That hasn't been established. The question is irrelevant. We don't need a recess to have him look at it.

THE COURT: Well, it sounds like all you are asking the witness to do is compare the document he didn't prepare,

doesn't know the truth about anything there. I am not sure it is that worthwhile in court to look at the document and do that.

MS. ARMSTRONG: True. I would argue, Your Honor, that the documents are self-authenticating. The one inventory is prepared by the Reno Police Department in connection with this particular case, and the other exhibit was filed at sentencing and accepted by the Court and relied upon by the Court. So I agree we don't need Mr. Van Ry to go through it line by line necessarily. Maybe I could rephrase a better question.

THE COURT: Should these be admitted for purposes of these proceedings?

MS. ARMSTRONG: Yes, Your Honor.

MR. McCARTHY: On that I will object. If some police officer came in and said I prepared this, I would probably believe it and have no objection. Thus far I haven't heard that, and I don't know what that document is or where it came from.

THE COURT: I am not sure about A. You are saying Exhibit 5 was admitted at the sentencing perhaps?

MS. ARMSTRONG: Correct, Your Honor.

THE COURT: Well, things that were admitted at sentencing I think I can take judicial notice of. The other

matter, Exhibit A, I think you would have to lay some foundation for that. I don't think that has been admitted.

MS. ARMSTRONG: It hasn't, Your Honor. I agree with that. And I don't know who prepared the document because there is no author stated, but it does have an RPD case number at the top and it is titled Inventory of Property. I suppose I could ask the case agent to authenticate it for me. Is he in the courtroom? I don't know what detective Thomas looks like. Then I would suppose he could authenticate it for us if necessary.

THE COURT: Well, at least as to Exhibit 5 is there any contest to this having been admitted and reviewed by the Court at the sentencing?

MR. McCARTHY: I believe it was in fact admitted, considered and I have no objection to it.

THE COURT: I will consider Exhibit 5 for purposes of this proceeding.

MS. ARMSTRONG: Thank Your Honor. But you agree with Mr. McCarthy there is no basis to admit what has already been filed as Exhibit A with the Pro Per Writ?

THE COURT: Well, I don't think I can consider that to be a document considered by the Court when it is merely attached to a pleading. It hasn't been admitted in any way or authenticated in any way.

MS. ARMSTRONG: Well let me take a different tact or try to.

BY MS. ARMSTRONG:

Q Mr. Van Ry, are you still looking at Exhibit 5?

A I have Exhibit A and Exhibit 5.

Q If you would look at Exhibit 5 with me, please.

On page 2 of the unnumbered pages, if you look at the second page, what does the bold writing at the top say?

A Recovered property.

Q All right. And then on the next page which would be page 3, what do you see the total?

A Bottom right total in bold $10,339.16.

Q Do you recall that was the amount of restitution Mr. Volpicelli was ordered to pay exactly?

A I believe so.

Q All right. And so at sentencing it didn't occur to you to say, hey, fellows, if all this property has been recovered, where is it? Why does Mr. Volpicellli have to pay for it?

A Did it occur to me to ask that question?

Q Why didn't you ask that question?

A You know, I have two answers. The first answer is I don't really remember, to be honest. And the second, the second answer is I am not sure it was relevant. That is me

answering as of this time.

Q Why wouldn't it be relevant if the items had been returned?

A Because these items had been taken from a property owner, and they had been deprived of the full retail value of that item. Even if, assuming they were returned, you know the wholesale and/or trade-in value and/or restorative value of a piece of property may not necessarily be what the full retail value might be.

Q Isn't that still something you would argue on behalf of Mr. Volpicelli? That is your role is to help him out and to limit the damage as much as possible.

MR. McCARTHY: Objection to the argumentative question.

THE COURT: Well, I think you can ask him what he did. It does sound argumentative.

MS. ARMSTRONG: I apologize.

BY MS. ARMSTRONG:

Q Was one of your goals at sentencing to help Mr. Volpicelli receive the lowest possible sentence and only pay the proper amount of restitution?

A I would agree with that, yes.

Q Do you believe if you had questioned the detective on the case about this property being returned, you could have

kept the restitution amount down?

MR. McCARTHY: Calls for the witness to speculate how the detective would have responded had he been questioned.

THE COURT: Sustained.

BY MS. ARMSTRONG:

Q Were you aware the property that was recovered from the storage shed and the van at the time of the arrest was returned to the rightful owners? Did you know that at sentencing?

A I don't remember. I am sorry, I really don't. Again, as I stated, as I sit here today, I am not sure it is really relevant, to be honest with you. I am not the Judge in the case. I mean they were deprived the use of their property, so to say that they got it back a year later doesn't make up for the fact they were deprived of the use of their property.

Q Why do you say they got it back a year later?

A I am just assuming that they did get it back.

Q It is your legal opinion that that doesn't impact the restitution question?

A If I was a judge, it wouldn't, but I am not the judge in the case. That doesn't mean much to me. They were still deprived of the fair market value. That doesn't take into consideration the fact Mr. Volpicelli and his crony didn't actual pay fair market value of the property when they left the

store with it. They used label makers and put lesser amounts of value on those items of property.

Q For your logic then, Mr. Van Ry, the store actually had a little bit of a gain because they got the property back and paid a lesser price for it?

A No, I don't think that is logical at all. If, using a hypothetical a $500 rug. Mr. Volpicelli and/or his crony goes in, puts a label on that says the rug is only $75. You walk out the door, you being Mr. Volpicelli or his crony paying $75 for a $500 rug, how is there a gain?

Q Because the rightful owner got the rug back?

A Okay. But they were only paid $75 in the first place.

Q So it is your legal opinion today there was no sense in making that argument to Judge Elliott at sentencing?

A Well, as I sit here today, yes. As I did the sentencing, I don't really recall what went through my mind with regard to that issue. But I think it is pretty ridiculous for a--strike that. I think it is ridiculous for a defendant who took property at value significantly less than its retail value to come into the court and say his restitution amount is too high. I think that is, again I am not the judge, I will let Judge Elliott rule on that, in my opinion, I think it is ridiculous. He got property--let me finish. He got thousands

of dollars worth of property for less than hundreds of dollars, and he stored it for a period of time, and it may or may not have been returned. To me, it doesn't seem-- Well, I don't think it would be just or fair to the property owner. That is my feeling, my opinion.

Q I appreciate that?

A For what it is worth.

Q I don't know if it is really relevant, but I appreciate it. But let me review then and see if I can capsulize what you have said about this restitution issue.

It is true that you don't recall comparing what was in A with 5 prior to sentencing, right?

A Couple of double negatives there. Yes, I did not compare them.

Q Yet more than $10,000 was ordered in restitution, right?

A That's correct.

Q And you made no argument on behalf of Mr. Volpicelli in regard to the restitution amount, did you?

A I can't remember. I am not sure I fought it very hard. I'd have to see the transcript to really verify that. I don't think I fought it very hard.

Q Do you feel you were adequately prepared to fight it?

A Yes.

Q You do?

A Yes. Just let me interject if I may. This is one of the, I shouldn't say the exception, but this is one of the most difficult cases I ever tried because the evidence in the case was overwhelming. And that included the amounts of the restitution, in my opinion.

Q When you say overwhelming, do you mean in terms of showing Mr. Volpicelli's guilt or the volume of it?

A Both.

Q It was voluminous, wasn't it?

A Yes.

Q And it seems as though there were difficulties during your representation acquiring all of the discovery. Do you agree with that?

A I would say as a general statement that would--that is accurate.

Q And we know from reviewing the record that as late as two days before trial, Monday before the trial started on Wednesday, Mr. Volpicelli still had concerns about your readiness to proceed. Do you recall that?

A That he had concerns, yes.

Q But you felt adequately prepared?

A Yes.

Q Even though the records were voluminous?

A Yeah. I had adequate time over the weekend to review them.

Q I think you even testified or told the Court at some point you had met with Ms. Riggs over at evidence looking at each and every piece for a while?

A I believe we did that, yes. Yes.

Q So most of the evidence was either photographs or receipts, that type of thing?

A Yeah. It was interesting, because it was kind of a white color crime in that there were a lot of accounting related, you know, invoicing or labels or price tags, receipts that kind of thing.

Q You feel comfortable reviewing that type of thing?

A Sure.

Q Do you have some business background?

A Not necessarily.

Q Do you run a business?

A I run a business.

Q But you are not a business major?

A Not necessarily a business major, no, nor accounting. I did take an accounting class many years ago but--

Q You have just testified that you had time over the weekend to review and prepare for this trial which was going to

begin the following Wednesday right?

A Yes.

Q And do you recall if, during that review, you concentrated particularly on Mr. Bowman's prior statements to the police?

A I am sure that was part of it, yes.

Q Do you recall when you were actually in trial in here in the courtroom when Mr. Bowman was testifying?

A Vaguely. Vaguely. I have probably, to let you know, I have probably since then tried ten cases. I haven't numbered them, but it has been four years.

Q Do you recall Mr. Volpicelli asking you to ask additional questions on cross-examination of Mr. Bowman?

A I do remember Mr. Volpicelli being very active and feeding me questions that he thought needed to be brought up, yes.

Q And the method he used to do that, was it like note cards?

A He had them on three by five index cards I believe or maybe bigger, five by eight.

Q Did you have any difficulty understanding what he was asking you to ask the witness?

A You know, that is a difficult question, because sometimes, yeah. When you are in trial and listening to a

witness, you are watching the judge, you are watching the jury, listening to the D.A., to have a client continually feeding you information, it can be difficult, you know. Three by five or five by eight cards was not my method or recommended method of communicating with me. I gave him a tablet. I always bring a tablet and say if you have something, write it on the tablet, when I get a minute I will look at it. I guess the long answer is, sometimes yes, I did have difficulty understanding, because I was trying to keep track of other things.

Q Mr. Volpicelli was, in his way, making an effort to aid you in the cross-examination, don't you think?

A Oh, yes.

Q And--

A Absolutely.

Q And he has a pretty good recollection of what is on file and what is of record, would you agree with that?

A Well, good being, you know, characterized how? I mean he has a recollection, yes. Whether I would call it good, I don't know.

Q Was he able at times to point you specifically to places that you could use to impeach something that Mr. Bowman had just testified?

A Sometimes. Sometimes.

Q He did help you with that, didn't he?

A Sometimes.

Q Those times, didn't he walk or take you right to the place where you could say, Mr. Bowman, it says here in black and white left and today you have testified right?

A I don't remember to be honest with you. Sometimes he may have stumbled on something. Again, that would be the exception not the rule.

Q Do you recall asking Mr. Bowman if he had received any favors? Do you recall the State asking Mr. Bowman if he had received any favors in exchange for his testimony?

A I don't. I know it is in the transcript. I know that was an issue, because he had turned State's evidence and was going to testify against Mr. Volpicelli. I know that he had some sort of plea agreement or some leniency in terms of the State's recommended sentence or something. But I don't recall the State--I know she did, I just specifically don't recall it.

Q Do you recall Mr. Bowman was at least a three-time convicted felon, himself?

A Yes, I do remember that.

Q And do you recall that he also could have been eligible for the habitual sentencing enhancement?

A I guess that is two questions. Do I recall it, no. Was it possible he was subject to habitual criminal, maybe. I

am sorry, I don't fit in this little area very well. I am kind of struggling. I apologize for that.

Q You just agreed Mr. Bowman had at least three felony convictions at the time of this trial?

A I believe so.

Q Wouldn't you agree that he might be eligible for the habitual?

A Possibly, yes.

Q And so isn't that something that could have been brought up on cross-examination to demonstrate Bowman really got a good deal only having to plead to one count of burglary?

A It could have been possibly another additional item, yes.

Q We know Mr. Bowman was worried about it because he had discussed it with the detectives and his sister on the telephone. Do you recall that?

A I don't. I don't.

Q Do you remember Mr. Bowman told you the habitual enhancement had never come up when you cross-examined him?

A I don't remember that. If it is in the transcript I did, but I just don't remember. To be fair, I did not review the transcript in the entirety.

Q Before coming here today?

A Correct, I didn't.

MS. ARMSTRONG: Your Honor, what I am looking at in asking these questions at this time is Ground 11. You might recall that the Petitioner has laid out specific instances of testimony from Mr. Bowman, and then he pointed out where he could have been impeached based on records. I'd be glad to walk Mr. Van Ry through each of those, but I would prefer the Court would take notice of exactly what has been pled. I have double checked each and every cite. They are accurate. The only issue that might cause a difficulty, and I mentioned this to Mr. McCarthy yesterday, is in Mr. Volpicelli's pleadings when he refers to a prior written or recorded statement of Mr. Bowman, he will tell you about the date that the Reno detectives interviewed him. He will give the first page of the interview, then if he is talking about something that happened on page 10. He doesn't include pages 2 through 9. He just goes from the face sheet to the page he's talking about. I have the entire transcripts, but they are marked up and they are not appropriate for filing with the Court, I don't believe.

THE COURT: And, Mr. McCarthy, do you have any opinion on how the Court could consider this?

MR. McCARTHY: Well, I think the best we could do would be to introduce the entire transcripts. I found Mr. Volpicelli's pleadings to be, on occasion, misleading by omission, and there is the lack of completeness. It may

mislead the Court. Now I don't have such transcripts with me, however, Ms. Riggs is available today, and I wouldn't be at all surprised if I can get them for you. I am sure we can agree to their authenticity.

MS. ARMSTRONG: If they are supplied by Ms. Riggs and not marked up, I would agree they are authentic.

THE COURT: Well, it seems to me I have some extensive transcripts here as well. I have the Transcript of Proceedings, Jury Trial November 13, 2003 through November 14, 2003. It is real thick.

MR. McCARTHY: It is interviews with cops, Judge, the ones we are talking about, not trial transcripts. Interviews with cops, police officers.

THE COURT: Oh. So this isn't from the actual transcript of the trial.

MR. McCARTHY: I think what Ms. Armstrong is trying to demonstrate is the trial transcript was accurate. Mr. Volpicelli has pled places where he thinks trial counsel should have tried to impeach a witness, and she's suggesting the transcripts of interviews with the police officers would form the basis of that impeachment.

I might point out that a question to the witness has no value to itself. It is only the answer. Unless we are going to hear what the answers are, I don't know what value it is.

But in any event, I don't object to the Court considering the transcripts of the Bowman interviews with the policemen, and we can get them for you, but I don't have them right this minute.

THE COURT: Okay. I will be happy to consider them even though they are outside the record I have.

MR. McCARTHY: I think that is the purpose of the hearing is to expand the record.

THE COURT: Okay.

MS. ARMSTRONG: Thank you, Your Honor. Thank you. If the Court is willing to do that, I believe that will satisfactorily illuminate the issues that you have agreed to hear today on Grounds 11, 12 and 14.

I should let Mr. Van Ry off the stand. I have finished with him. Let me think about that real quick.

BY MS. ARMSTRONG:

Q I do have one last group of questions I would like to ask you, Mr. Van Ry. As far as the prior convictions that were used as the idea for the Judge to consider in the habitual sentencing, did you have an opportunity to review those before you came into court that day?

A You mean the actual documentation of the convictions, themselves?

Q Whatever was provided to Judge Elliott?

A I had an opportunity to review the pre-sentence

report which included reference to the prior convictions, but I did not see--I never put my fingers on each separate conviction of record, formal written conviction of record.

Q So you don't know if they were--if they met the constitutional standard require for the Judge to consider them?

A Again, I didn't put my fingers on every conviction that was listed, no.

Q I am particularly talking about the three that the Judge considered for the enhancement?

A I believe Ms. Riggs did bring those to the sentencing. So I guess, to elaborate, I believe at the sentencing I did see the three prior to her admitting them for purposes of habitual criminal.

Q Did you review them for authenticity and other requirements?

A I would say yes, but I don't remember. I am sure she and I had a little discussion about it before. Again, I don't remember.

MS. ARMSTRONG: That is all I have for this witness, Your Honor.

THE COURT: Mr. McCarthy, do you have any questions of Mr. Van Ry?

MR. McCARTHY: I do, yeah.

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CROSS-EXAMINATION

BY MR. McCARTHY:

Q You were asked a few minutes ago if Mr. Volpicelli actually used transcripts of Bowman's interviews with police to help you frame questions. Does that refresh your recollection at all on the question whether you had been provided with those transcripts before the trial?

A If he was referring to them during trial, I would presume that we had them.

Q Did it help you recall whether or not you had them?

A I still don't really recall to be honest. During trial he pointed to a lot of different things on a lot of different occasions during the trial. In fact I kept asking him to quit giving me so much information.

Q The prosecutor in this case was Tammy Riggs; is that right?

A Yes.

Q Have you dealt with her before?

A Yes.

Q Did she have an open file?

A Yes.

Q She would make--Whatever she had would be available to you for your inspection and copying; is that correct?

A I would agree with that, yes.

Q Now, on cases where you do not employ an investigator, you are free to do your own investigation, aren't you?

A Sure.

Q When as a general rule if you are at sentencing with a client and you are trying to persuade the Judge to impose a relatively lenient prison sentence, do you find it wise to dispute the amount of restitution?

A My answer would be it depends on the Judge.

Q Do you recall what judge imposed sentence in this case?

A Judge Elliott.

Q How do you think about doing that with Judge Elliott?

A That's kind of a loaded question.

Q Are there judges, in your experience, who would see such an argument about restitution being inconsistent with the notion of one who is taking responsibility, is amenable to rehabilitation, all those good things?

A Yes.

Q I won't ask you about Judge Elliott at this point. Prior to sentencing, did your client seem to be more interested in the length of the prison term or in the amount of restitution?

A Clearly, the length, potential length of the criminal

sentence.

Q Do you recall at the time of trial whether or not Mr. Bowman had already been sentenced?

A Again, two questions. I don't recall, but I believe he had been.

Q Assuming he had already been sentenced by the time of trial, can you think of how he might be perceived of as still owing some allegiance to the prosecutor?

A It is a speculative question at best.

Q As a trial attorney?

A Yeah. I think that would be a hard sell.

Q Okay. Do you know or do you believe whether or not Bowman negotiated directly with the District Attorney?

A I have actually no idea how that negotiation went.

Q It would be unusual for that to happen, wouldn't it?

A Well, it would be unusual for me to find out about it.

Q When your client is on trial, who generally does the negotiating, you or the defendant?

A Usually the lawyer.

MR. McCARTHY: That is all I have. Thank you.

THE COURT: Ms. Armstrong, any other questions?

MS. ARMSTRONG: Just a couple, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MS. ARMSTRONG:

Q Is it your testimony this afternoon, Mr. Van Ry, you chose not to contest the restitution amount as a sentencing tactic or a trial tactic at sentencing?

A I really don't remember. Perhaps. I honestly don't remember.

MS. ARMSTRONG: Thank you.

THE COURT: Anything else?

MR. McCARTHY: No.

THE COURT: Then, Mr. Van Ry, you are excused.

THE WITNESS: Thank you, Judge.

THE COURT: Sorry about the small chair.

THE WITNESS: It is this thing. My knees are two inches above it. Should I leave Exhibit 5 and A here, Judge?

THE COURT: Ms. Armstrong, you may take them.

THE WITNESS: Am I free to go or do I need to stay?

MS. ARMSTRONG: You are free to go as far as I am concerned.

MR. McCARTHY: So am I.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

MS. ARMSTRONG: I don't have any further witnesses, but as I stand here thinking about this Exhibit A that has not

been admitted or authenticated, I believe that I should have had a witness here to do that, and I wonder if the Court would allow me to come back at a later time to have this authenticated and admitted in support of our restitution argument.

THE COURT: Well, I am kind of hopeful to get this case taken care of today. I think there is another witness out there that might know something about it anyway.

MS. ARMSTRONG: If I could authenticate it through that witness, if Mr. McCarthy is planning to call her.

MR. McCARTHY: I am planning to call her. I don't know. I don't have the entire trial file here. I have no police reports, things like that. So Ms. Riggs might know. I don't know where that document came from. She might.

MS. ARMSTRONG: I'd be willing to ask her.

THE COURT: Does the State want to call a witness?

MR. McCARTHY: Sure. Soon as she is done, I will call Tammy Riggs if the Petitioner is done.

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

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TAMMY RIGGS

called as a witness, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. McCARTHY:

Q Do you want to introduce yourself, please?

A Yes. My name is Tammy Riggs, T-A-M-M-Y. R-I-G-G-S. I am a Deputy District Attorney with the Washoe County District Attorney's Office.

Q Were you involved in the prosecution of Ferrill Volpicelli?

A Yes, I was. I was the prosecutor.

Q I am going to show you what is tagged as Exhibit A. Do you know what that is?

A Yes. This is the inventory of the property that was stolen by Ferrill Volpicelli.

Q Do you know who prepared that document?

A This was prepared by Reid Thomas of the Reno Police Department.

Q When you prosecuted this case, did you have that document in your file?

A If it is Exhibit A, I believe I did.

Q The thing that is labeled as Exhibit A, did you have

that in your file?

A You know, Mr. McCarthy, I don't recall this specific exhibit, but I do recognize the list of items as those items that were stolen by him.

Q Did you take a look at your files lately?

A Yes, I have.

Q Today?

A Yes.

Q What were you looking for?

A Specifically, I was looking for what was alleged in the Writ of Habeas Corpus as far as what was discovered and what may not have been discovered in this case.

Q Can you tell the Court what does a red star on a document in your file mean to you?

A A red star indicates that this file has been presented to our Discovery Division, and that the Discovery Division has made a copy of that item. That they have forwarded that to be released to the defense for their use, and then they apply the red star to the item that has been discovered to indicate to us that that has been released to the defense.

Q Did you check for red stars on transcripts of interviews by one Mr. Bowman and various police officers?

A Yes, I did.

Q Were there red stars on those documents?

A On every single transcript in the file.

Q From those, do you conclude those transcripts had been provided to Bradley Van Ry?

A Yes, I do.

MR. McCARTHY: That is all I have.

THE COURT: All right. Ms. Armstrong, you may ask questions of the witness.

MS. ARMSTRONG: Thank you.

CROSS-EXAMINATION

BY MS. ARMSTRONG:

Q Ms. Riggs, your testimony is that it is a practice in your office to put a star on something once it has been discovered or sent to the defense attorney?

A Yes.

Q Do you know in this particular case if those stars reflected that the materials had been sent to Jack Alian rather than Mr. Van Ry?

A I know that they had been specifically released to whoever was Ferrill Volpicelli's attorney at the time they were produced, because I went into the D.A.'s business system and it indicated discovery was requested by defendant Volpicelli and was released to him.

Q So that tells you what, it was released to his attorney at that time?

A Whoever was representing Ferrill Volpicelli.

Q Do you know who that was?

A No.

Q So is it possible that those documents were provided to Mr. Alian and not directly to Mr. Van Ry?

A They were provided to Ferrill Volpicelli.

Q How could he get them?

A Mr. Volpicelli repeated over and over again during the course of this trial that he wanted copies of his documents, so he was provided all of his documents, to my knowledge.

Q By your office?

A These were released to Ferrill Volpicelli. Whoever his agent was at that time received those documents.

Q So what your system-- What your review of your system tells you today is that Mr. Volpicelli was represented by an attorney. The documents were provided to Mr. Volpicelli, to his attorney?

A They were released to Ferrill Volpicelli.

Q Did he come and pick them up?

A I don't work in Discovery, so I don't know.

Q Do you know he was in custody so he couldn't come

pick them up?

A I can't speculate.

Q He would have to rely on his attorney to provide the discovery, wouldn't he?

A Again, I can't speculate.

Q You don't provide two sets do you?

A Sometimes we do.

Q Is that in the event there has been a change in attorney?

A Sometimes we provide two sets of discovery. In fact, in this case, I noticed there were some items that were double discovered. It just happens.

Q Not every item was double discovered was it?

A No, but every item was discovered.

Q You were able to confirm that this morning?

A Yes, I did.

Q So let me ask you specifically, and I suppose Mr. McCarthy already did, I was trying to listen to Mr. Volpicelli, did you specifically say that you had discovered each and every interview of Brent Bowman with the Reno Police Department?

A Yes.

Q That is a total of five or six interviews?

A Yes.

Q And you are able to confirm those have been provided to someone?

A Yes.

Q You can't tell us as you sit here today exactly who received the document, can you?

A I don't work in discovery, so I don't know who came and picked them up.

Q Do you recall that several months before this case went to trial, I think it was in June or so, that you were in court with a group of attorneys. Mr. Volpicelli was represented by several attorneys at one time?

A I was in court on many, many days with Mr. Volpicelli. You would have to be more specific as to what you are talking about.

Q This particular day I believe you appeared in front of Judge Hardesty. Judge Hardesty ordered within a week you and Mr. Van Ry sign a reciprocal discovery agreement.

A I don't recall that specific inquiry or that requirement by Judge Hardesty or that conversation.

Q If I told you it was part of the record, you wouldn't dispute it, would you?

A No.

Q Do you recall that Mr. Volpicelli was originally represented by Mr. Alian in this case?

A I recall that Mr. Volpicelli had a lot of arguments with Mr. Alian, and Mr. Alian at some point conflicted off the case and Mr. Van Ry became his attorney. I believe that Mr. Volpicelli went through several attorneys on this case. I am not sure. Well, he had four cases, so he had several attorneys.

Q But Mr. Alian had this particular case before Mr. Van Ry had it?

A Again, he had four cases. I don't specifically recall which Mr. Alian was on and which he was not.

Q Do you have any recollection of Mr. Volpicelli specifically requesting that these interview documents be provided to Mr. Van Ry?

A I know they were provided to Mr. Volpicelli, but I can't speculate as to what he wanted or didn't want.

Q You have worked in Washoe County for several years?

A Yes.

Q And you have had experience with Mr. Alian over the years?

A Yes.

Q Is he the kind of guy that makes a set of copies of discovery and provides it to the client?

A I have no idea.

MR. McCARTHY: Your Honor, it sounds like this

witness is being asked to testify either to Mr. Alian's character or habits and customs, and I don't think either one is appropriate.

THE COURT: Well, the witness already said she doesn't know. I guess that is to be expected, so I will overrule the objection. We'll accept the witness' statement.

BY MS. ARMSTRONG:

Q Was it at your request that detective Thomas prepare what was admitted as Exhibit 5 at sentencing? If you can't remember that, I can show you Exhibit 5?

A I don't remember.

MS. ARMSTRONG: May I approach, Your Honor?

THE COURT: You may.

MS. ARMSTRONG: Thanks.

BY MS. ARMSTRONG:

Q Now, that you have seen Exhibit 5, do you recall this exhibit?

A Not specifically, but I recall all the items on it that were stolen by Ferrill Volpicelli.

Q You don't know if you had this prepared to aid you at sentencing?

A I don't recall whether I had that or I specifically requested detective Thomas to prepare that or whether he did that through somebody's else request. I just don't remember. I

am sorry.

Q As you sit here today, Ms. Riggs, do you recall the two-day trial that involved all these Indictments regarding this stolen property?

A Do I recall being in it? Yes.

Q Not much specifically, though?

A Well, you know, that is kind of a vague question. I guess you would have to ask me more specifically.

Q All right. There were occasions when Mr. Volpicelli-- when Mr. Bowman testified. One instance he testified that he had never been a person who could have received the habitual criminal enhancement as a result of his conviction in this case. Do you remember him saying that at trial?

A I don't specifically remember him saying that.

Q If he did, it would have been false, wouldn't it?

A I don't know. I don't remember. Mr. Bowman was a repeat offender target.

Q The criteria for the habitual criminal enhancement isn't repeat offender program, is it?

A Oh, no.

Q It is the number of prior felony convictions?

A Yes.

Q Or misdemeanors?

A Yes.

Q So do you recall Mr. Bowman had more than three felony convictions?

A I don't recall.

Q So you don't recall him testifying that he didn't receive, as a favor in this case, no habitual criminal enhancement?

A That was not contemplated as far as I know as part of his plea agreement.

Q Did you do his plea agreement?

A I did not, but I have had a chance to review it.

Q Well, any three-time convicted felon is potentially subject to that; aren't they?

A No.

Q Is that right? Why not?

A Because it would be a waste of the system's resources if we tried to apply the habitual offender status to all people who have three felonies in their background. That habitual offender status is reserved for the worst criminals.

Q So it is a policy not a law because the law, itself, the statute, itself, simply requires three prior convictions?

A I don't understand your question.

Q I didn't understand your answer. I believe you said that the habitual criminal enhancement wouldn't have been

available to the State to impose on Mr. Bowman?

A Are you saying--Are you asking me whether we would have considered imposing that or asking the Court for that or whether he is eligible for that under the law?

Q Eligible first.

A As far as I know, he would have been eligible if he had three felonies.

Q You know that he had three felonies?

A No, I don't.

Q Wouldn't that have been information you would have had to provide Mr. Van Ry five years ago?

A Yes.

Q So what are you saying? If you knew that he had three or more felony convictions in 2003, would you have let Mr. Van Ry know that?

A I am confused by your question.

Q In the defense practice, it is common to impeach a witness with prior convictions for felonies, particularly if they are within the last ten years. So in your practice, if you knew that the witness for the State had prior felony convictions, wouldn't you give that information to the defense attorney?

A I did.

Q How do you know that you did?

A Because I reviewed my file on Brent Bowman that was included in the Volpicelli file today, and there was a faxed document that included the Guilty Plea Memorandum as well as the defendant's, Bowman's, criminal history attached to it.

Q How is the criminal history attached?

A It was--The criminal history was separate underneath the Guilty Plea Memo, and on top of that was the faxed document containing Mr. Van Ry's address, et cetera.

Q Are you talking about the NCIC printout or is it something typed up that says conviction one, conviction two?

A I am talking about the NCIC printout.

Q Okay. In my jurisdiction, those aren't commonly given to defense attorneys. Here you allow them to have that?

A Well, this one I did for the defense. That is what appears from my file.

Q Do you recall when you were working with detective Thomas on this that he aided Mr. Bowman in obtaining his last paycheck from the Sands Casino?

A I have no idea.

Q Too long ago?

A No knowledge about that.

Q Too long ago?

A I don't have any knowledge about it.

Q Did you personally review the interviews between

Brent Bowman and the Reno Police Department? I am talking about five or six different ones beginning on the date of arrest, 10-17-03, then there are a couple more in December I think. We have some more at the beginning of the year of 2002. Did you review those before trial?

A Yes.

Q Each and every one?

A To my knowledge I did. They are all in my file.

Q So you would have read every word of every interview?

A Yes, five years ago.

Q You, yourself, had a couple of interviews with Mr. Bowman before coming into court?

A I recall one.

MS. ARMSTRONG: I think that is all the questions I have, Your Honor. Thank you.

THE COURT: Any other questions Mr. McCarthy?

REDIRECT EXAMINATION

BY MR. McCARTHY:

Q You wouldn't happen to have an extra unmarked up copy of those police interview transcripts would you?

A Unmarked up?

Q Yeah?

A I don't believe that I do. All the transcripts I

have have the red stars on them.

Q Other than the star?

A I don't recall. I know several of them are marked up. I don't know how many are unmarked. I just don't know, I am sorry.

Q That's all right.

MR. McCARTHY: That's all I have. We'll try to work it out.

MS. ARMSTRONG: Nothing further.

THE COURT: Then, Ms. Riggs, you may be excused. Why don't we take a recess?

(Short recess taken.)

THE COURT: You may be seated. Ms. Armstrong, how would you like to proceed?

MS. ARMSTRONG: Thank you, Your Honor. During the recess, I telephoned the office where Mr. Volpicelli told me he got this document, and it was the City Attorney's Office, and the City Attorney in particular that he had talked to is out of town until next week. I am not sure she could have authenticated it anyway. I think it will probably take the policeman who actually prepared it. So I think what I would like to ask the Court is to allow me to obtain an Affidavit to supplement the record from the author of this report within the next ten days or so, if possible, just so you would know that

this is true and accurate.

And other than that issue, I am prepared to argue.

THE COURT: As to that matter, Mr. McCarthy, do you have any opinion?

MR. McCARTHY: I will have to go out of character and get hard nosed. Today is the date of the hearing, Judge, and the evidence is completed. I ask it be submitted for decision. I object to a ten-day recess to gather additional evidence.

THE COURT: Well, I do feel every effort should be made to provide a complete record. I mean this thing is coming on years later. I think we can afford the time to allow Ms. Armstrong to obtain an Affidavit if she can get it from somebody to authenticate the document, you know, attempt to do that. I am going to allow Ms. Armstrong to go forward to attempt do that with regard to what we know as Exhibit A, then.

MR. McCARTHY: All right. Okay. Fine, Your Honor.

THE COURT: But then I suppose as to the other issues Numbers 11, 12 and 14, I think we can go forward with those to determine those today. And it would just be 7 that I guess is somewhat in the air. What that really is is just a challenge to the amount of restitution. It is not going to result in a retrial or re-sentencing or anything like that. I think it is

just a way to get around to the restitution at a later time.

All right, Ms. Armstrong, you may proceed then.

MS. ARMSTRONG: Thank you, Your Honor. As far as the other issues, not the restitution as you have just stated, Grounds 11, 12 and 14, those all, to me, involve trial counsel's performance during the trial, and particularly in terms of what he had reviewed prior to beginning the trial, and then how effective he was in using that information to impeach the State's, one of the State's witnesses, the original co-defendant, Brent Bowman. And as I mentioned earlier, Your Honor, in Mr. Volpicelli's Pro Per Petition that was filed on November 9, 2005, he has I think done a very good job of lining out exactly what question was asked and then what could have been used by way of cross-examination by Mr. Van Ry to impeach the answer given by Mr. Bowman. And they mainly involve the issues of whether Mr. Bowman was given any reward in exchange for his testimony or his plea. The issues also involved whether Mr. Bowman ever went into the stores and put these--changed the UPC codes on the items, himself. At trial he continually denied doing so, yet in his statements to the police, he had told them that, yes, he had done that on several occasions. Mr. Van Ry did not cross-examine based on the previous inconsistent statement in that instance.

Another issue in which a previous inconsistent

statement was not used for cross-examination was the statement by Mr. Bowman that Mr. Volpicelli bought the label maker that was used to change the UPC codes. In one of the interviews, Mr. Bowman admits that he bought that label maker.

The third topic would have been something I alluded to earlier, because Mr. Bowman was in custody, he was unable to pick up his final paycheck from the Sands Casino where he was working, so the police officers helped him get that. He denied that that had happened at trial. And if Mr. Van Ry had, it is our argument, if Mr. Van Ry had in black and white something to impeach him with and that is the best kind of impeachment, he should have done that.

Another issue was what proceeds Mr. Bowman gained from this enterprise, and Mr. Bowman testified that he only received I think a coffee pot and a toothbrush or something. Again, in the interviews with the detectives, it is apparent he also received a home stereo television system, a home theater system. Pretty expensive item. Again, if Mr. Van Ry had confronted Mr. Bowman with his previous statement during the trial, the jury would have been able to discern that Mr. Bowman was less than honest about many of the facts of this case. And because he was such an important witness to the State, we think that would have made a difference in the long run.

You know, the State has agreed to supply you with the

transcripts of those interviews with Mr. Bowman, so I am arguing to you today only what has been recited by Mr. Volpicelli in his Petition. I think that is all I have on that issue, Your Honor.

But, generally, because there was impeachment available from prior recorded statements that was not used over and over and over, not just one time and not just, you know, a trial attorney can't be 100 percent all the time, of course, but we believe in this instance, because of the demonstrable inaccuracies as impeachment, this rises to the level of ineffective assistance.

THE COURT: Thank you. Mr. McCarthy.

MR. McCARTHY: Thank you, Your Honor. The claims are phrased in a couple of ways. One is a failure to disclose evidence by the prosecution. I think that has been pretty disproved. Mr. Van Ry believed he had received everything, and Ms. Riggs was adamant that everything had in fact been delivered. So it converts to a claim of ineffective assistance standard, failure to properly utilize everything. I would remind the Court that a claim of ineffective assistance of counsel requires a demonstration that counsel's specific decisions fell below an objective standard of reasonableness. Subjective standard is not appropriate. Further, prejudice is an element of the claim. They must show if the lawyer had

acted differently, it is reasonably likely the result of the litigation would have been different. All we are talking about here, all this impeachment business is about much ado about nothing, for lack of a better phrase.

Furthermore, and finally before I get into the specifics, I mentioned earlier, Your Honor, in a trial, questions have no value. Answers are what the jury is to consider. Without Mr. Bowman here to testify how he would have responded to any given question, we have half a case at best. There is information available that could have led Mr. Van Ry to ask a question, but we have zero evidence on how Bowman would have responded. So I suggest there is nothing to consider here.

Moving from that to the specifics, I notice one of the claims concerns the label maker that was the instrument of this great fraud. And the specific question posed to Bowman was asked: Did you buy that at a Staples store in California? The answer was no. The transcript will show, which you don't yet have, will show the question was did you buy it and the answer was yes. Those are completely different things. They are different questions. So there is nothing to impeach here. It is not inconsistent at all.

The question of Bowman that was asked at trial was did detectives assist you in getting a paycheck from the Sands

Hotel. Once again, the specific question. The answer was no, it never happened. The prior statement that is the taped interview with the police will reveal he said I picked up my paychecks. They were on my person when I was arrested. They are now in my property. They are going to expire if I don't get them negotiated. And the cop said, yes, I can help you with that, get it out of the evidence vault of personal property, give it to you so you can do with it what you will. There is no statement saying the police helped him obtain a paycheck from the Sands Hotel. He already had it. Again, there is nothing inconsistent. There is no impeachment there. Even if that were significant in some way, which it isn't, there is still no impeachment.

I notice that Mr. Bowman had already been sentenced, page 155 of the transcript, in which he testified he had already been sentenced by the time of the trial. So we want to impeach him with a perceived value of the plea bargain when he's no longer under the thumb of the prosecutor and the prosecutor can't do anything with him. I don't know the value of that. I suggest it would not have altered the outcome to see that the plea bargain is really a very good plea bargain.

He was thoroughly cross-examined, and Bowman was cross-examined on the subject, actually directly examined on the subject of his plea bargain, and it was fully disclosed to

the jury. They knew he pleaded out to avoid, I think he said six separate felonies. I suppose maybe it is a qualitative difference, you know. But I don't see how it can get--how that can make the difference. You have got a plea bargain. You got a very good plea bargain. Well, the jury would have acquitted if they had known it was a very, very, very, good plea bargain. That seems to suggest more likely than not the outcome would have been changed.

I also suggest there is no evidence anywhere that anyone discussed specifically the habitual criminal allegation with Mr. Bowman. Now whatever his lawyer said to him I have no idea. You may notice that lawyer did not testify in this hearing. I conclude from that, Your Honor, you also still don't know what that lawyer said to him, what came up in negotiation and what did not. Once again we have half a case.

The proceeds, what Bowman kept, you know, I couldn't figure out from the trial transcript precisely what question and answer one might impeach. I know what inconsistent statements are, but I don't know what is the consistent statement. There has to be a specific time in which one interposes or one raises the impeachment. I couldn't find that. I don't know where it is. But assuming it is somehow pertinent, and Van Ry could have asked some question about the home stereo system, when Your Honor is provided with the

complete transcripts not merely excerpts and the pleadings, Your Honor will see Mr. Bowman claimed then to have bought, purchased lawfully, the home entertainment system that was found in his home. How that is inconsistent with anything at trial I don't know. Can we ask Mr. Volpicelli to keep it down a little bit here?

By the way, among other things, Petitioner bears the burden of proving any decisions made by counsel were not strategic or tactical decisions. On that subject, Mr. Van Ry didn't recall a whole lot about the trial as one might expect. But you may notice that page 236 or 237 of the trial transcript, I am sorry, I don't remember which, today Mr. Van Ry described he told the court then that his choice of the scope of cross-examination was in fact a tactical strategic decision. There being no evidence to the contrary, it hasn't been proved it wasn't a tactical decision and, therefore, the Petition ought to be denied at least on those other grounds.

THE COURT: Okay. Thank you. Anything else on these subjects, Ms. Armstrong?

MS. ARMSTRONG: I don't believe so, Your Honor.

THE COURT: Well then from what I have heard, I mean we know Bowman was given a deal, had already pled, was sentenced at the time the trial came around. It was certainly true he was no longer beholding to the District Attorney's

Office to maintain some kind of a deal. So I think it would be somewhat ineffective to push it too far that he has, you know, gotten a deal. That was already known.

With regard to the issue of did Bowman change UPC codes, frankly, I guess we don't really care. I mean I can't see that it matters. It is certainly not falling below any objective standard of reasonableness on the part of the defense counsel not to pursue it any further than it was. In terms of who bought the label maker, I will accept that there really isn't any strong impeachment there based on what has been told to me by Mr. McCarthy.

The issue of did the police actually get Bowman's check from the Sands, again, I don't find any value to that if all that happened. They helped him negotiate the check when he had it in his personal property at the jail.

The issue of did he get an expensive TV or, you know, what he personally got out of the deal in his relationship with Mr. Volpicelli, again, I don't see any value to the cross-examination. Should it have been fruitful to contend that he obtained a TV, something more than he claimed that he received on the stand, I don't imagine anybody would really believe Mr. Bowman is, you know, the most up and up, you know, outstanding citizen as he comes in to testify and that he admits he's a participant in a criminal enterprise and he

admits he's been convicted of prior felonies. We know that he is not, you know, your typical Chamber of Commerce member. I don't feel that any of these issues would fall below the objective reasonableness on the part of defense counsel for trying to raise some picky point that, you know, the answer doesn't correspond with some prior response he may have given to the police. And, certainly, the result would not have been any different for Mr. Volpicelli, because, again, I don't think anybody believes that, you know, Mr. Bowman is the most up and up guy, but he's just a guy that has, you know, already pled out. He admits to his participation and explains some of, you know, his role with Mr. Volpicelli. But the case doesn't hinge just on that, just on his 100 percent credibility. So, you know, there are many other things at issue in the case beyond that.

Anyway, I do make those findings. With regard to the exculpatory evidence, I believe, based on the testimony of Ms. Riggs, there was no withholding of any exculpatory evidence. All the information that the Court has benefit of is that, if anything, that the District Attorney's Office be found they released it to Mr. Volpicelli's attorney. And we know nothing else of this background is unfounded.

I would leave open the issue as to number 7, the correct amount of restitution. I can understand in a case like

this where, you know, prison time is the overwhelming issue and $10,000 really doesn't mean that much, and I suppose in the reality, once Mr. Volpicelli received his sentence, there is a very slim possibility that any restitution will ever be collected from him, highly unlikely. It could happen, but I don't really expect it. So it is not an issue in the case when you look at the much bigger picture of a life sentence hanging in the balance here. So I think, still, Mr. Volpicelli is entitled to his case here that you would like to contest the amount of restitution, and maybe it wasn't in fact appropriate and more could have been done. But that is not something that is going to result, in essence, really, to a reopening of the entire sentencing or a new trial or anything to that extent. It would just be a contest of some of the dollars.

With that, I do rule in favor of the State as to Items 11, 12, 14. And number 7 I would like to receive additional information on that.

MR. McCARTHY: Your Honor, you mentioned as you were making your rulings that it was partly dependent whether I accurately described the transcript interviews with the police, and we haven't provided those to you. Does it make a difference?

THE COURT: Well, do you feel, you know, I mean it just sounds to me like these are not points that is going to

turn anything around here.

MR. McCARTHY: I think Your Honor could legitimately argue if the impeachment was available, Your Honor could legitimately say it wouldn't have made any difference, then it doesn't matter if I described it correctly or not. I would still like to provide those to you. We have the ten-day extension.

THE COURT: Are you saying as an officer of the court you are representing these things accurately?

MR. McCARTHY: That is a good assumption. If you can't trust old uncle Terry, who can you trust? I would like you to have them. Maybe when we come back after you see the additional Affidavit, you can let us know if that has changed, if your review of those transcripts has changed your holding. How about that?

THE COURT: All right. That is fine. I am willing to wait to give any final ruling on this, so I can confirm what you are telling me is accurate.

MR. McCARTHY: I read them. I will make sure you get them one way or the other.

THE COURT: Okay.

MR. McCARTHY: By stipulation.

THE COURT: We'll stand in recess.

(Short recess taken.)

THE COURT: You may be seated.

MR. McCARTHY: Your Honor, just after you left the bench, Ms. Riggs gave me a copy of the transcript we have been talking about, the interviews between Brent Bowman and various policemen, and it has been marked as Exhibit 1. I believe we have an agreement Exhibit 1 is an authentic copy. I submit it to the Court.

THE COURT: All right.

THE COURT: Ms. Armstrong, do you agree with that?

MS. ARMSTRONG: Yes, that is so stipulated, Your Honor.

MR. McCARTHY: Thank you, Your Honor, for accommodating that.

THE COURT: Exhibit 1, the series of transcripts will be admitted for purposes of this proceeding.

MR. McCARTHY: Thank you, Your Honor.

(Exhibit 1 admitted in evidence.)

THE COURT: We shall be in recess again.

(Whereupon, the proceedings were concluded.)

--o0o--

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, Judith Ann Schonlau, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 10 of the above-entitled court on Thursday, September 20, 2007, at the hour of 8:30 o'clock a.m., of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of THE STATE OF NEVADA vs. FERRILL J. VOLPICELLI, Case Number CR03P1263.

That the foregoing transcript, consisting of pages numbered 1- 62 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 5th day of November, 2007.

JUDITH ANN SCHONLAU CSR #18

ORIGINAL

FILED
2007 DEC -5 PM 12:30
HOWARD W. CONYERS
BY
DEPUTY

Code No. 3860

Kay Ellen Armstrong
State Bar No. 0715
415 West Second Street
Carson City, Nevada 89703
775-883-3990
Attorney for Petitioner

CR03P1263
POST: FERRILL J VOLPICELLI 3 Pages
District Court 12/05/2007 12:30 PM
Washoe County 3860
DOC JSHEETS
DC-99000002154-099

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

CASE NO. CR03P-1263

DEPT. NO. 10

THE STATE OF NEVADA,

Respondent.
_____/

REQUEST FOR SUBMISSION

COMES NOW, petitioner, Ferrill Joseph Volpicelli, by and through his attorney, Kay Ellen Armstrong, and hereby requests that the Waiver of Appearance, filed on or about December 5, 2007, be submitted to the court for decision.

DATED this 4th day of December, 2007.

KAY ELLEN ARMSTRONG
State Bar No. 0715
415 West Second Street
Carson City, NV 89703
(775) 883-3990
Attorney for Petitioner
Ferrill Joseph Volpicelli

AFFIDAVIT PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 4th day of December, 2007.

KAY ELLEN ARMSTRONG
State Bar No. 0715
415 West Second Street
Carson City, NV 89703
(775) 883-3990
Attorney for Petitioner
Ferrill Joseph Volpicelli

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

Terrence McCarthy, Deputy
Washoe County District Attorney
75 Court Street
Reno, NV 89520

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

December 4th, 2007.

Anne Bowen

Anne Bowen

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

ORIGINAL

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District Court 12/05/2007 12:30 PM
Washoe County 4270
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Code No. 4270

Kay Ellen Armstrong
State Bar No. 0715
415 West Second Street
Carson City, Nevada 89703
775-883-3990
Attorney for Petitioner

FILED
2007 DEC -5 PM 12:30
HOWARD W. CONYERS
BY
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

CASE NO. CR03P-1263

DEPT. NO. 9

THE STATE OF NEVADA,

Respondent.
_____/

WAIVER OF APPEARANCE

I, Ferrill Joseph Volpicelli, petitioner above-named, hereby waive my appearance for my appeal hearing on January 23, 2008. I understand my attorney, Kay Ellen Armstrong, will appear and argue on my behalf.

DATED this 28th day of November, 2007.

FERRILL JOSEPH VOLPICELLI

SIGNED UNDER PENALTY OF PERJURY on this 28th day of November, 2007.

FERRILL JOSEPH VOLPICELLI

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

AFFIRMATION PURSUANT TO NRS239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 4th day of December, 2007.

Kay Ellen Armstrong
Attorney at Law

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

Terrence McCarthy, Deputy
Washoe County District Attorney
75 Court Street
Reno, NV 89520

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

December 4th, 2007.

Anne Bowen
Anne Bowen

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District Court 12/21/2007 05:55 PM
Washoe County 2610

Code: 2610

FILED

DEC 21 2007

HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI,

Petitioner,

Case No.: CR03P1263

vs.

Dept. No.: 10

THE STATE OF NEVADA,

Respondent.

/

NOTICE OF WAIVER OF APPEARANCE

On December 5, 2007, Petitioner filed a Waiver of Appearance pertaining to his upcoming post-conviction habeas corpus hearing. Petitioner's counsel, Kay Ellen Armstrong, will appear and argue on his behalf. Also on December 5, 2007, Petitioner filed a Request for Submission of the Waiver of Appeal. Although a Request for Submission is unnecessary in this circumstance, the Court hereby takes notice of Petitioner's Waiver of Appearance.

DATED this 20 day of December, 2007.

STEVEN P. ELLIOTT
District Judge

V3.522

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; and on this date I deposited for mailing a copy of the foregoing document addressed to:

Terry McCarthy
Deputy District Attorney
Appellate Division
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

Kay Ellen Armstrong, Esq.
415 W. Second St.
Carson City, NV 89703

DATED this 21 day of December, 2007.

HEIDI HOWDEN
Judicial Assistant

CR03P1263 DC-9900002458-060
POST: FERRILL J. VOLPICELLI 1 Page
District Court 01/28/2008 04:25 PM
Washoe County 1250
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FILED
2008 JAN 28 PM 4:25
HOWARD W. CONYERS
BY [signature] DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL VOLPICELLI
Plaintiff,

vs.

Case No. CR03P1263

LENARD VARE, WARDEN,
Defendant.

Dept. No. 10

/

APPLICATION FOR SETTING

TYPE OF ACTION: Petition for Writ of Habeas Corpus

MATTER TO BE HEARD: Post-Conviction Hearing

Date of Application : 1-28-08 Made by: Both Parties
Plaintiff or Defendant

COUNSEL FOR PLAINTIFF: Kay Ellen Armstrong, Esq.

COUNSEL FOR DEFENDANT: Deputy D.A. Terrence McCarthy

Instructions: Check the appropriate box. Indicate who id requesting the jury. Estimated No. Of Jurors:

☐ Jury Demanded by (Name): _____

☐ No Jury Demanded by (Name): _____

Estimated Duration of Trial: _____

By Telephone	By Telephone

Attorney(s) for Plaintiff

Attorney(s) for Defendant

____ Motion - No.	1:30 Setting at	14th on the	February day of	08	20
____ Trial - No.	____ Setting at	____ on the	____ day of	____	20

JUD 500 (Rev 3/03)

V3.524

ORIGINAL

FILED
2008 JAN 30 PM 4:19
HOWARD W. CONYERS
BY
DEPUTY

CR03P1263
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District Court 01/30/2008 04:19 PM
Washoe County
DC-990000247B-010
4050
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Code 4045
Kay Ellen Armstrong
State Bar No. 0715
415 West Second Street
Carson City, NV 89703
775-883-3990

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

_____/

Case No. CR03P1263

DEPT. NO. 10

STIPULATION FOR CONTINUANCE

COMES NOW, petitioner, Ferrill Joseph Volpicelli, by and through his attorney Kay Ellen Armstrong, and Terrance McCarthy, Deputy District Attorney, and hereby stipulate to continue the time set for an evidentiary hearing in this matter from January 23, 2008 to Thursday, February 14, 2008 at 1:30 p.m.

Dated: Jan 30 2008

KAY ELLEN ARMSTRONG
Attorney for Petitioner

Terrance McCarthy
Deputy District Attorney

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Stipulation for Continuance

(Title of Document)

filed in case number: _____

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: Jan 30, 2008

(Signature)

Michelle Foster

(Print Name)

(Attorney for)

V3.526

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03-05-2008:10:19:53 AM
Howard W. Conyers
Clerk of the Court
Transaction # 152335

CASE NO. CRP3P1263 POST: FERRILL J. VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
02/14/08 HONORABLE STEVEN P. ELLIOTT DEPT. NO. 10 C. Wynn (Clerk) J. Schonlau (Reporter)	HEARING RE: PETITION FOR POST CONVICTION CONTINUATION OF WRIT OF HABEAS CORPUS HEARING Deputy District Attorney Terry McCarthy represented Respondent, State of Nevada. Kay Armstrong, Esq. represented Petitioner, Ferrill Joseph Volpicelli who was not present. COURT noted the issues that were denied during the last hearing; further indicated the last remaining issue as to ground (7) seven regarding restitution. Counsel Armstrong addressed the Court and reviewed exhibit 5; further made statements regarding the list of property totaling over $10,000.00 and the affidavit filed with the City Attorney; and further presenting statement in support of the petition. Counsel McCarthy addressed the Court reviewing the two prongs and further presenting statement in opposition to the petition. COURT presented its findings of fact and conclusions of law. **COURT ORDERED:** Request for relief if hereby DENIED.	

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VOLPICELLI 5 Pages
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FERRILL J.
District Court
Washoe County
CR03P1263
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

v.

Case No. CR03P1263

LENARD VARE, WARDEN,

Dept. No. 10

Respondent.

_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause is before the court upon a petition for writ of habeas corpus (post-conviction). Petitioner Volpicelli was represented by counsel when he stood trial for several charges stemming from a scheme involving changing UPC price codes in retail stores. He was found guilty of several felonies and at sentencing the court sentenced him as a habitual criminal. He appealed, but the judgment was affirmed. He then filed a petition for writ of habeas corpus, asserting claims of ineffective assistance of counsel.

The State moved to dismiss some of the claims. On August 27, 2007 this court entered an order dismissing some of the claims and allowing a hearing on claims 7, 11, 12 and 14. The court incorporates that interim order into this final judgment.

The surviving claims were scheduled for a hearing on September 20, 2007. The court

heard evidence from attorney Van Ry and from the prosecutor, Tammy Riggs. Petitioner elected not to testify. Some of the claims concerned alleged prior inconsistent statements by a witness at the trial. The alleged prior statements mostly arose during an interview between that witness and police officers. The court was also able to review the transcripts of those interviews. These findings are based on the evaluation of the record, the transcripts of the police interviews and the evidence adduced at the habeas corpus hearing.

One of the claims involved restitution. The claim of ineffective assistance of counsel, however, was based on a chart showing the disposition of stolen property. That chart was prepared well after this litigation, by an Assistant City Attorney who was not involved in the instant litigation. In argument, counsel for petitioner conceded that trial counsel could not be ineffective in failing to utilize that which did not exist at the time. Accordingly, the claim that counsel was ineffective in failing to challenge the amount of restitution is denied.

Another claim was that the prosecutor failed to produce exculpatory evidence. By the end of the hearing the petitioner had not adduced any evidence that had not been provided to the defense. Accordingly, the claim of withholding evidence remains unproven and is denied.

Another claim is that trial counsel was ineffective in failing to adduce additional evidence to show the extent of the plea bargain that was accepted by Volpicelli's confederate, witness Brett Bowman. The record reveals that Bowman had already been sentenced by the time of Volpicelli's trial and the details of the agreement were fully disclosed in the trial. Petitioner has not introduced any evidence of any other or additional terms to Bowman's plea agreement and so that claim, too, remains unproven.

Finally, the petition had a list of alleged prior statements by Bowman that could have been used to impeach Bowman's testimony. The court has reviewed the trial transcripts and the transcripts of Bowman's interviews with police and finds nothing significant. Certainly there is nothing that would probably have altered the outcome of the trial. On that subject, the court notes that Bowman did not testify in the habeas corpus hearing and thus there is no

evidence at all about how Bowman would have responded if he had been questioned further about his prior statements.

Most of the alleged inconsistent statements were not inconsistent at all. For example, at trial Bowman was asked if he has purchased a certain bit of equipment at a Staples store in California. He answered "no." The alleged inconsistent statement arises from interview transcripts in which he admitted purchasing the device, but without any reference to the name of the store or the state in which it was purchased. Thus, the prior statement is not inconsistent at all. To the extent that the prior statement could have been used to start a dialogue, the court notes again that Bowman did not testify in the habeas corpus hearing and there is therefore no evidence showing how he would have responded to additional questions on the subject of purchasing the label making device.

Similarly, at trial he was asked specifically if police officers helped him get a paycheck from the Sands casino and he denied getting such help. The interview transcripts do not contradict that testimony as they only indicate that he had indeed got his paychecks but that they were in his personal property. The police offered only to help him negotiate the checks. That is not inconsistent with his trial testimony and there is no evidence showing how further discussions would have helped petitioner in any way.

At trial, Bowman minimized his share of the loot. Volpicelli contends that he could have been impeached with evidence that Bowman also acquired some home electronics. The interview transcripts, however, are not inconsistent as they do not show that the home electronics were stolen in the scheme with Volpicelli. Instead, Bowman claimed to have purchased those items. Volpicelli has adduced no evidence to the contrary and so the claim that counsel was ineffective in failing to impeach remains unproven.

The court has reviewed the evidence presented, including the transcripts of police interviews, and finds nothing that would have been likely to alter the outcome of this litigation.

One who would claim ineffective assistance of counsel bears the burden of showing, by a

preponderance of the evidence, that the specific acts, omissions or decisions of counsel fell below an objective standard of reasonableness and that but for the failings of counsel a different result was reasonably probable. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). This court has simply not been persuaded by the evidence that counsel acted unreasonably or that the results would probably have been different if counsel had made different decisions. Accordingly, the petition is denied.

DATED this 11 day of April, 2008.

DISTRICT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kay Ellen Armstrong, Esq.
415 W. Second Street
Carson City, NV 89703

Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
P.O. Box 359
Lovelock, NV 89419

DATED: April 14, 2008.

ORIGINAL

FILED
2008 APR 24 AM 11:42
HOWARD W. CONYERS
BY
DEPUTY

DC-9900003011-013
CR03P1263
POST: FERRILL J. VOLPICELLI 11 Pages
District Court 04/24/2008 11:42 AM 4185
Washoe County R.JOHNSON

4185

JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

-oOo-

FERRILL J. VOLPICELLI, Petitioner, vs. THE STATE OF NEVADA, Respondent.	CASE NO. CR03P1263 DEPARTMENT NO. 10

TRANSCRIPT OF PROCEEDINGS

PETITION FOR POST CONVICTION

THURSDAY, FEBRUARY 14, 2008

1:30 P.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

For the Petitioner: KAY ARMSTRONG, ESQ.
Attorney at Law
Carson City, Nevada

For the Respondent: OFFICE OF THE DISTRICT ATTORNEY
BY: TERRENCE McCARTHY, ESQ.
Deputy District Attorney
1 S. Sierra Street
Reno, Nevada

RENO, NEVADA; THURSDAY, FEBRUARY 14, 2008; 1:30 P.M.

-oOo-

THE COURT: Good afternoon. You may be seated.

The record will reflect that we are meeting here concerning the Post Conviction Writ of Habeas Corpus filed by the Petitioner, Ferrill Joseph Volpicelli.

We previously had a hearing on this, and I denied several portions of the Petition. And, according, to my record, Item 7 was not ruled on and reserved pending a review of the transcript. And I have done the best I can, but I am interested really in hearing from the lawyers to see if you can pinpoint anything that is of help on this.

Ms. Armstrong, did you want to say anything?

MS. ARMSTRONG: Yes. Thank you, Your Honor, and thank you for rescheduling this due to my illness. I apologize for any inconvenience.

I also reviewed the record after our last hearing and the place that I can point you I believe in the sentencing transcript from April 1st, 2004 is at page 36, Petitioner's trial counsel, Mr. Van Ry, allowed Exhibit 5 to be admitted without objection.

THE COURT: Right.

MS. ARMSTRONG: And Exhibit 5 is the list that we have seen of the property that totals slightly over $10,000.

THE COURT: This is rally the inventory that detective Reid Thomas created; isn't it?

MS. ARMSTRONG: I believe so. It is part of the packet he prepared to aid the sentencing judge. After we were in court, I was able to contact Karen Fraley, the Deputy City Attorney, and we filed an Affidavit from her explaining that what we had attached to the original Pro Per Habeas Petition as Exhibit A was something that had been prepared by her. It appears, from her Affidavit, that it was not. It didn't exist at the time of sentencing. It was prepared sometime after sentencing at the request of Mr. Volpicelli. So I think I am unable to argue Mr. Van Ry had the benefit of this memo prepared by Ms. Fraley. But I would still like to argue that simply the fact that detective Reid Thomas testified at sentencing that this property was all found in the storage shed and would be returned to the proper owners should have flagged defense counsel to say, well, then no restitution should be paid for the things that were returned. So I think that is what it comes down to. It is as simple as that.

THE COURT: I don't happen to have Ms. Fraley's document handy, but what does it say? What is the difference between it and what detective Thomas came up with?

MR. McCARTHY: It lists what things were given back to the owners. I don't think the sentencing record included

that.

THE COURT: No, it did not.

MS. ARMSTRONG: Would you like me to approach? This is an unfiled stamped copy, but I believe it is exactly what was filed.

THE COURT: Okay. I have had a chance to see this. How does this affect--I actually went along I am pretty sure with Exhibit 5 which amounted to restitution. At least I know I issued an order for restitution in the amount of $10,339.16. How does this affect that now?

MS. ARMSTRONG: As I said, Your Honor, it appears from what Karen is telling me that she didn't prepare that until sometime after the sentencing, so I don't think I can argue that Mr. Van Ry should have been looking at that the way I did because he didn't have it.

When I originally saw this, Your Honor, I thought it had been prepared by Reid Thomas, but I was able to determine that no, he didn't do it. Ms. Fraley did. The restitution amount that you ordered did come from Exhibit 5 which was admitted. Mr. Van Ry, if you recall, testified that he thought the restitution was the least of the issues before you that day and it was somewhat of a matter of trial strategy in his opinion. And I am just always struck by a big $10,000 bill. I think that is a big thing. And I believe that competent

sentencing counsel, at the very least, would advance the argument if those items were recovered, they shouldn't have to be paid for again.

THE COURT: All right. Thank you. What is the State's position on this?

MR. McCARTHY: Geez, it is hard to have one, Your Honor. You know, I think if Mr. Volpicelli had ever paid a dime of restitution or ever indicated an intent to pay a dime of restitution, I could probably give this more attention. As it is, I suggest when a defense lawyer is looking at multiple life sentences, reasonable lawyers don't devote a moment's attention to the question of restitution. The truth of the matter is he probably could have got a lower ordered restitution if he had devoted his attention to that instead of trying to avoid the multiple life sentences. He probably would have been successful, but that doesn't make counsel reasonable.

There are, of course, two prongs for the claim of ineffective assistance, prejudice and performance. I say the performance was fine. If the performance was fine, we don't have to look at prejudice. I think you ought to just deny the Writ.

I was wondering, my notes don't make any sense here, and they never do, but I thought the Court also wanted to check

some other things in the transcript just to see if I had accurately represented the transcript to you. I assume the Court has checked that.

THE COURT: Well, I read the sentencing transcript, and I also read quite a bit of other matters. The Brent Bowen--

MR. McCARTHY: That was the guy their claims in the Petition regarding his testimony, I suggested that the transcript testimony reveals for instance that he did fully disclose the plea bargain despite the claim in the Petition that there were quotes in the Petition that were misleading by omission, and I had suggested to Your Honor that the transcript would repeal the allegation. When we were here last, the Court ruled as though I were accurately representing the transcript, but you hadn't actually read it, so I was asking, don't just take my word for it, if you would please read it. It sounds like you have.

THE COURT: So the bottom line on this issue concerning restitution is the State's position that the best information that the Court had was the $10,339 at the time of sentencing, and there certainly was no incompetence, nothing following below a reasonable standard of care on the part of defense counsel since that is all defense counsel had as well.

When you are looking at a guy who spent virtually a

lifetime of thievery and did this for a living and he's stolen a lot more than $10,000, so this is, you know, really just a drop in the bucket. It is just, you know, his current inventory.

MR. McCARTHY: As the Court said in Strickland over and over again, not every error is going to lead to relief, so even if--Well, anyway, in this case, there may indeed have been error, but it shouldn't lead to relief because counsel's performance was not unreasonable. I ask you deny the Petition.

THE COURT: All right. Then, Ms. Armstrong, anything else?

MS. ARMSTRONG: No, Your Honor.

THE COURT: Well, I would certainly find that Brad Van Ry acted, you know, appropriately. Certainly his conduct did not fall below any objective standard of reasonableness in presenting issues as to restitution, and I admitted Exhibit 5 prepared by detective Reid Thomas, and that is what we had at the sentencing, basically, an inventory of the stuff found in Mr. Volpicelli's warehouse that was gotten through ill means, in essence was part of his scheme to defraud various retail establishments.

Under those conditions, I don't think I have any grounds to grant a Petition for relief at this time. I would still accept Mr. McCarthy's representation as to anything that

Brent Bowen may have done, so I am going to deny the petition and direct the State then to prepare appropriate findings and conclusions.

MR. McCARTHY: I will, Your Honor. It won't be quick because I don't remember this case, and I need to order the transcript from the last hearing. But as soon as I have it, I know what we are talking about, I will prepare an order and send it to Ms. Armstrong.

MS. ARMSTRONG: That hearing was on September the 20th, 2007.

THE COURT: Yes. It is a distant memory.

MR. McCARTHY: It has nothing to do with me getting older either.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: I do appreciate your work on this, both counsel, and appreciate you being here which helps me a bit in determining what to do on this.

Do we want this Affidavit of Karen Fraley to be part of this record?

MR. McCARTHY: If it is not now, let's make it. I don't object to it.

MS. ARMSTRONG: Yes.

THE COURT: I will staple it and cover it with this cover sheet then.

MS. ARMSTRONG: Thank you.

THE COURT: All right.

(Whereupon, the proceedings were concluded.)

--o0o--

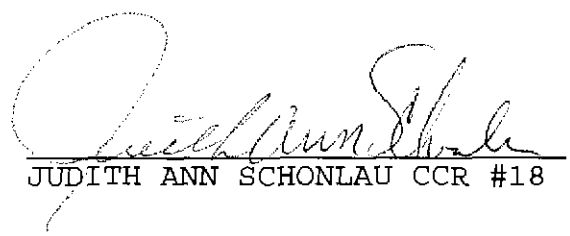
STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, Judith Ann Schonlau, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 10 of the above-entitled court on Thursday February 14, 2008,, at the hour of 1:30 o'clock p.m, of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of FERRILL J. VOLPICELLI vs. THE STATE OF NEVADA, Case Number CR03P1263.

That the foregoing transcript, consisting of pages numbered 1- 10 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 3rd day of April, 2008.



JUDITH ANN SCHONLAU CCR #18

ORIGINAL

CODE 2505

FERRILL J. VOLPICELLI # 79565
Lovelock Correctional Center
~~P.O. Box 359~~ 1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

FILED
2008 MAY -8 PM 1:42
HOWARD W. CONYERS
BY

DC-9900003124-018
CR03P1263
POST: FERRILL J. VOLPICELLI 2 Pages
District Court 05/08/2008 01:42 PM
Washoe County 2515
DOC CKEPLER

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

FERRILL JOSEPH VOLPICELLI, Petitioner,

-vs-

LENARD VARE, WARDEN, Respondent.

Case No. CR03P1263

Dept. No. 10

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Petitioner, Ferrill J. Volpicelli, in pro se, hereby appeals to the Nevada Supreme Court the Findings of Fact, Conclusions of Law and Order Denying/Dismissing petition for writ of habeas corpus, as filed/entered ~~on~~ or about the 11th day of April, 2008, in the above-entitled Court.

Dated this 6th day of May, 2008.

FERRILL J. VOLPICELLI #79565
Lovelock Correctional Center
~~P.O. Box 359~~ 1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

ORIGINAL

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below addresses on this 6th day of May, 2008, by placing same into the hands of prison staff for posting in the U.S. Mail, per NRCP 5(b):

TERRY MCCARTHY
Deputy District Attorney
Appellate Div.
P.O. Box 30083
Reno, NV 89520

KAY ELLEN ARMSTRONG, Esq.
415 W. Second St.
Carson City, NV 89703

FERRIL J. VOLPICELLI # 29565
Lovelock Correctional Center
~~P.O. Box 359~~ 1200 Prison Rd.
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document, NOTICE OF APPEAL, filed in Case Number CR03P1263 does NOT contain the social security number of any person.

Dated this 6th day of May, 2008

FERRIL J. VOLPICELLI # 29565

Petitioner In Pro Se

V3.545

DC-9900003124-014
CR03P1263 POST: FERRILL J. VOLPICELLI 1 Page
District Court 05/12/2008 09:22 AM 1365
Washoe County CKEPLER
NOC

1365

FILED
MAY 12 2008
HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL JOSEPH VOLPICELLI,

Appellant(s) **Case No. CR03P1263**

vs. **Dept. No. 10**

THE STATE OF NEVADA,

Respondent(s)

_____/

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed the Notice of Appeal and other required documents (certified copies) were delivered to the Second Judicial District Court mailroom system for transmittal to the Nevada Supreme Court.

Dated: **May 12, 2008**

Howard W. Conyers, Clerk of the Court,

By: C. Kepler

Cathy Kepler, Appeals Clerk

CR03P1263
POST: FERRILL J. VOLPICELLI 1 Page
District Court 05/12/2008 09:24 AM
Washoe County 1350
CKEPLER
DC-99000003124-015

1350

FILED
MAY 12 2008
HOWARD W. CONYERS, CLERK
By DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL JOSEPH VOLPICELLI,

Appellant(s)

vs.

THE STATE OF NEVADA,

Respondent(s)

Case No. CR03P1263

Dept. No. 10

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the NRAP 3(e).

Dated: **May 12, 2008**

Howard W. Conyers, Clerk of the Court,

By: _____.

Cathy Kepler, Appeals Clerk

DC-99000031124-016
CR03P1263 POST: FERRILL J. VOLPICELLI 2 Pages
District Court 05/12/2009 09:24 AM
Washoe County 1310
CKEPLER.J

FILED
MAY 12 2008
HOWARD W. CONVERSE, CLERK
By: DEPUTY CLERK

CODE 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe County

FERRILL JOSEPH VOLPICELLI,

Appellant(s) **Case No. CR03P1263**

vs. **Dept. No. 10**

THE STATE OF NEVADA,

Respondent(s)

_____/

CASE APPEAL STATEMENT

1. **Ferrill Joseph Volpicelli** is the Appellant.
2. The appeal is from a **Judgment/Order on or about April 14, 2008 by the Honorable Steven Elliott.**
3. The parties below in District Court consisted of: **Ferrill Joseph Volpicelli** the Defendant, and **The State of Nevada,** the Plaintiff, in District Court.
4. The parties herein in the Nevada Supreme Court consist of: **Ferrill Joseph Volpicelli/Appellant,** and **The State of Nevada/Respondent.**
5. Counsel on Appeal for Appellant, consists of: **Ferrill Joseph Volpicelli /Pro Per Appellant #79565, Lovelock Correctional Center, P.O. Box 359, Lovelock, NV 89419.**

6. Counsel on appeal for Respondent is **Gary Hatlestad, Deputy District Attorney – Appellant Division, P.O. Box 30083, Reno, NV 89520-3083.**

7. In District Court Appellant was represented **In Proper Person.**

8. Appellant is represented **in Proper Person** in this appeal.

9. N/A in this case.

10. The **Indictment** was filed on **June 11, 2003.**

Dated: **May 12, 2008**

Howard W. Conyers, Clerk of the Court,

By: _____

Cathy Kepler, Appeals Clerk

(775) 328-3114

CR03P1263
POST: FERRILL J. VOLPICELLI 1 Page
District Court 05/15/2008 09:21 AM
Washoe County 3370
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DC-99000003160-043

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FILED

MAY 15 2008

HOWARD W. CONYERS, CLERK
By: _____
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No. CR03P1263

Dept. No. 10

ORDER

Upon Invoice of Peggy Hoogs & Associates, Court Reporter for Department No. 10, and good cause appearing therefore,

IT IS HEREBY ORDERED that payment of transcription fees be granted and that the State Public Defender pay Peggy Hoogs & Associates the sum of $42.60.

Dated this 1st day of May, 2008.

DISTRICT JUDGE

DC-99000031160-042
CR03P1263 POST: FERRILL J. VOLPICELLI Page 1
District Court 05/15/2008 09:22 AM
Washoe County 3370
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CODE 3370

FILED

MAY 15 2008

HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

RECEIVED
By District Court
MAY 15 2008
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Approved by

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

vs. **Case No. CR03P1263**

STATE OF NEVADA, **Dept. No. 10**

Respondent.

/

ORDER

Upon Invoice of Peggy Hoogs & Associates, Court Reporter for Department No. 10, and good cause appearing therefore,

IT IS HEREBY ORDERED that payment of transcription fees be granted and that the State Public Defender pay Peggy Hoogs & Associates the sum of $34.10.

Dated this 1st day of May, 2008.

DISTRICT JUDGE

FILED

MAY 19 2008

HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 51622
District Court Case No. CR031263

CR03P1263

DC-99000003169-143
CR03P1263 FERRILL J. VOLPICELLI 1 Page
POST: District Court 05/19/2008 03:17 PM
Washoe County 1188
DOC CKEPLER

RECEIPT FOR DOCUMENTS

TO: Ferrill Joseph Volpicelli #79565
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Howard W. Conyers , District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

05/14/08	Filing Fee Waived: Criminal.
05/14/08	Filed Certified Copy of proper person Notice of Appeal. Appeal docketed in the Supreme Court this day.

DATE: May 14, 2008

Tracie Lindeman, Clerk of Court

By: _____
Deputy Clerk

FILED
08-13941 JUN 04 2008
HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

DC-99000003288-049
VOLPICELLI, FERRILL J.
1 Page
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CR03P1263
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District Court
Washoe County
10C

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51622

CR03P1263

FILED
JUN 03 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF LIMITED REMAND
FOR DESIGNATION OF COUNSEL

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We remand this appeal to the district court for the limited purpose of securing counsel for appellant. The district court shall have 30 days from the date of this order to appoint counsel for appellant. Within 5 days from the appointment or appearance of counsel, the district court clerk shall transmit to the clerk of this court a copy of the district court's written or minute order appointing appellate counsel.

It is so ORDERED.

_____, C.J.

cc: Hon. Steven P. Elliott, District Judge
Ferrill Joseph Volpicelli
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk✓

08-13941

Code: 2715

FILED
JUN - 9 2008
HOWARD W. CONYERS, CLERK
By: DEPUTY CLERK

CR03P1263
POST: FERRILL J. VOLPICELLI 2 Pages
District Court 06/09/2008 08:54 AM
Washoe County 2715
DC-9900003331-002
CKEPLER

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

FERRILL J. VOLPICELLI,

Petitioner,

Case No.: CR03P1263

vs.

Dept. No.: 10

THE STATE OF NEVADA,

Respondent.

/

ORDER APPOINTING COUNSEL

The Court has received the Nevada Supreme Court's Order of Limited Remand for Designation of Counsel, entered June 3, 2008. Petitioner has previously been found indigent and has received leave to proceed in forma pauperis.

NOW, THEREFORE, IT IS HEREBY ORDERED that Kay Ellen Armstrong, Esq. is appointed to represent Petitioner in his appeal.

DATED this 6 day of June, 2008.

STEVEN P. ELLIOTT
District Judge

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; and on this date I deposited for mailing a copy of the foregoing document addressed to:

Terry McCarthy
Deputy District Attorney
Appellate Division
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

Kay Ellen Armstrong, Esq.
415 W. Second St.
Carson City, NV 89703

DATED this _____ day of June, 2008.

HEIDI HOWDEN
Judicial Assistant

DC-9900003324-005
VOLPICELLI 6 Pages
06/10/2008 09:32 AM
2540
CGALINDR
CR03P1263
POST: FERRILL J.
District Court
Washoe County
DOC

CODE: 2540

FILED
08 JUN 10 AM 9:32
HOWARD W. CONYERS
BY
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

FERRILL JOSEPH VOLPICELLI,

Petitioner,

VS.

THE STATE OF NEVADA,

Respondent,

_____/

CASE NO: CR03P1263

DEPT. NO.: 10

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on April 14, 2008 the Court entered a decision or Order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of the Court. If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-Three (33) days, after the date this notice is mailed to you. This notice was mailed on the 10 day of June, 2008.

HOWARD W. CONYERS
Clerk of the Court
By
Deputy Clerk

ORIGINAL

1750

FILED

2008 APR 14 AM 11: 35

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

RRILL JOSEPH VOLPICELLI,

Petitioner,

v. Case No. CR03P1263

LENARD VARE, WARDEN, Dept. No. 10

Respondent.

_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause is before the court upon a petition for writ of habeas corpus (post-conviction). Petitioner Volpicelli was represented by counsel when he stood trial for several charges stemming from a scheme involving changing UPC price codes in retail stores. He was found guilty of several felonies and at sentencing the court sentenced him as a habitual criminal. He appealed, but the judgment was affirmed. He then filed a petition for writ of habeas corpus, asserting claims of ineffective assistance of counsel.

The State moved to dismiss some of the claims. On August 27, 2007 this court entered an order dismissing some of the claims and allowing a hearing on claims 7, 11, 12 and 14. The court incorporates that interim order into this final judgment.

The surviving claims were scheduled for a hearing on September 20, 2007. The court

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heard evidence from attorney Van Ry and from the prosecutor, Tammy Riggs. Petitioner elected not to testify. Some of the claims concerned alleged prior inconsistent statements by a witness at the trial. The alleged prior statements mostly arose during an interview between that witness and police officers. The court was also able to review the transcripts of those interviews. These findings are based on the evaluation of the record, the transcripts of the police interviews and the evidence adduced at the habeas corpus hearing.

One of the claims involved restitution. The claim of ineffective assistance of counsel, however, was based on a chart showing the disposition of stolen property. That chart was prepared well after this litigation, by an Assistant City Attorney who was not involved in the instant litigation. In argument, counsel for petitioner conceded that trial counsel could not be ineffective in failing to utilize that which did not exist at the time. Accordingly, the claim that counsel was ineffective in failing to challenge the amount of restitution is denied.

Another claim was that the prosecutor failed to produce exculpatory evidence. By the end of the hearing the petitioner had not adduced any evidence that had not been provided to the defense. Accordingly, the claim of withholding evidence remains unproven and is denied.

Another claim is that trial counsel was ineffective in failing to adduce additional evidence to show the extent of the plea bargain that was accepted by Volpicelli's confederate, witness Brett Bowman. The record reveals that Bowman had already been sentenced by the time of Volpicelli's trial and the details of the agreement were fully disclosed in the trial. Petitioner has not introduced any evidence of any other or additional terms to Bowman's plea agreement and so that claim, too, remains unproven.

Finally, the petition had a list of alleged prior statements by Bowman that could have been used to impeach Bowman's testimony. The court has reviewed the trial transcripts and the transcripts of Bowman's interviews with police and finds nothing significant. Certainly there is nothing that would probably have altered the outcome of the trial. On that subject, the court notes that Bowman did not testify in the habeas corpus hearing and thus there is no

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evidence at all about how Bowman would have responded if he had been questioned further about his prior statements.

Most of the alleged inconsistent statements were not inconsistent at all. For example, at trial Bowman was asked if he has purchased a certain bit of equipment at a Staples store in California. He answered "no." The alleged inconsistent statement arises from interview transcripts in which he admitted purchasing the device, but without any reference to the name of the store or the state in which it was purchased. Thus, the prior statement is not inconsistent at all. To the extent that the prior statement could have been used to start a dialogue, the court notes again that Bowman did not testify in the habeas corpus hearing and there is therefore no evidence showing how he would have responded to additional questions on the subject of purchasing the label making device.

Similarly, at trial he was asked specifically if police officers helped him get a paycheck from the Sands casino and he denied getting such help. The interview transcripts do not contradict that testimony as they only indicate that he had indeed got his paychecks but that they were in his personal property. The police offered only to help him negotiate the checks. That is not inconsistent with his trial testimony and there is no evidence showing how further discussions would have helped petitioner in any way.

At trial, Bowman minimized his share of the loot. Volpicelli contends that he could have been impeached with evidence that Bowman also acquired some home electronics. The interview transcripts, however, are not inconsistent as they do not show that the home electronics were stolen in the scheme with Volpicelli. Instead, Bowman claimed to have purchased those items. Volpicelli has adduced no evidence to the contrary and so the claim that counsel was ineffective in failing to impeach remains unproven.

The court has reviewed the evidence presented, including the transcripts of police interviews, and finds nothing that would have been likely to alter the outcome of this litigation.

One who would claim ineffective assistance of counsel bears the burden of showing, by a

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Copy of original document on file with the Clerk of Court -- Second Judicial District Court, County of Washoe, State of Nevada

preponderance of the evidence, that the specific acts, omissions or decisions of counsel fell below an objective standard of reasonableness and that but for the failings of counsel a different result was reasonably probable. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). This court has simply not been persuaded by the evidence that counsel acted unreasonably or that the results would probably have been different if counsel had made different decisions. Accordingly, the petition is denied.

DATED this 11 day of April, 2008.

DISTRICT JUDGE

Copy of original document on file with the Clerk of Court -- Second Judicial District Court, County of Washoe, State of Nevada

CERTIFICATE OF SERVICE

Case No. CR03P1263

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court, and that on the 10 day of June, 2008, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addresses to:

WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
APPELLATE DIVISION
(Inter-office mail)

ATTORNEY GENERAL'S OFFICE
100 N. CARSON STREET
CARSON CITY, NV 89701-4717

KAY ELLEN ARMSTRONG, ESQ.
415 W. SECOND STREET
CARSON CITY, NV 89703

FERRILL JOSEPH VOLPICELLI #79565
LOVELOCK CORRECTIONAL CENTER
P.O. BOX 359
LOVELOCK, NV 89419

Celina Galindo
Deputy Clerk

FILED
NOV 12 2008
HOWARD W. CONNER, CLERK
By: DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

DC-99000004598-009
CR03P1263 POST: FERRILL J. VOLPICELLI 2 Pages
District Court 11/12/2008 01:20 PM
Washoe County 4128
CKFPI FF

FERRILL JOSEPH VOLPICELLI,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ROBERT H. PERRY, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 52600
CR03P1263

FILED
NOV 06 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order compelling the district court to reissue an amended judgment of conviction, provide appellant with credit for time served, and transmit the amended judgment of conviction to the Nevada Department of Corrections. We have considered the documents submitted to this court, and we conclude that this court's intervention in this matter is not warranted.[1] We are confident that the district court will comply with this court's prior directive to transmit the amended judgment of conviction to the Nevada Department of Corrections in an expeditious manner. To the extent that petitioner seeks presentence credits in district

[1]See NRS 34.160; NRS 34.170.

court case number CR03-1263, a claim for additional presentence credits must be raised in a timely post-conviction petition for a writ of habeas corpus filed in the district court in the first instance.[2] Accordingly, we

ORDER the petition DENIED.

Cherry, J.

Cherry

Maupin, J.

Maupin

Saitta, J.

Saitta

cc: Hon. Robert H. Perry, District Judge
Ferrill Joseph Volpicelli
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

[2]See NRS 34.724(2)(c); NRS 34.738(1); Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006).

FILED
Electronically
09-10-2009:12:23:18 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1031520

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51622 CR03P1263

FILED
SEP - 8 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Wiesado
DEPUTY CLERK

ORDER TO FILE SUPPLEMENTAL APPENDIX

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. On appeal, appellant argues that the district court erred when it concluded that his trial counsel was not ineffective for failing to argue that one of the judgments of convictions was not permissible to be nsed to adjudicate appellant a habitual criminal. The appendix filed by appellant's counsel does not contain the judgments of conviction that were used to prove that appellant had at least three prior felony convictions. See NRS 207.010. The judgments of conviction that were filed in the district court are necessary for this court's review of this appeal. See NRAP 10(b).

Accordingly, Kay Ellen Armstrong, as post-conviction counsel for appellant, shall have 10 days from the date of this order to file a supplemental appendix containing the judgments of conviction that were used to adjudicate appellant a habitual criminal.

It is so ORDERED.

/ Saitta, C.J.

cc: Ferrill Joseph Volpicelli
Kay Ellen Armstrong
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

FILED
Electronically
12-04-2009:03:15:21 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1189844

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51622

CR03P1263

FILED

DEC 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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 April 1, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit crimes against property, eight counts of burglary, and one count of unlawful possession, making, forging or counterfeiting of inventory pricing labels. The district court adjudicated appellant a habitual criminal and sentenced appellant to terms totaling life in the Nevada State Prison with the possibility of parole after 20 years. Appellant was also ordered to pay $10,339.16 in restitution. On appeal, this court confirmed the judgment of conviction and sentence. Volpicelli v. State, Docket No. 43203 (Order of Affirmance, June 29, 2005). The remittitur issued on July 26, 2005.

On November 9, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Counsel was appointed and filed a supplement. On April 2, 2007, the district court entered an order dismissing the majority of appellant's claims and set an evidentiary

hearing concerning the remaining claims. Following an evidentiary hearing, the district court denied the remaining claims on April 14, 2008. This appeal follows.

Appellant argues that the district court erred in denying four of his ineffective assistance of trial counsel claims. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). A petitioner must demonstrate the facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence, and the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

First, appellant argues that his trial counsel was ineffective for failing to object to the use of a 2004 Nevada conviction for aiding and abetting in the commission of attempting to obtain money by false

pretenses for adjudication as a habitual criminal. Appellant fails to demonstrate that he was prejudiced.

The criminal activity for the 2004 conviction for attempting to obtain money by false pretenses occurred after appellant had been charged and was awaiting trial for this case. However, appellant was convicted of attempting to obtain money by false pretenses prior to his conviction in this case. After the trial for this case, the State sought adjudication of appellant as a habitual criminal and filed the 2004 judgment of conviction for obtaining money by false pretenses along with two other judgments of conviction. The other judgments of conviction were a 1998 federal court conviction of four counts of felony tax perjury and a 1998 Nevada conviction for two counts of burglary. As the conviction for the attempt to obtain money by false pretenses was not entered before the unlawful actions leading to the instant offense occurred, the conviction for the attempt to obtain money by false pretenses was not properly used as a past conviction for purposes of adjudication as a habitual criminal in the instant matter. Brown v. State, 97 Nev. 101, 102, 624 P.2d 1005, 1006 (1981). However, we conclude that any error was harmless because a sufficient number of convictions was presented. See NRS 178.598 (stating that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded").

The two additional judgments of conviction list six additional felonies which were properly considered when determining appellant's adjudication as a habitual felon. Appellant makes no argument that any of the six other felonies were improperly considered. A review of the record reveals that, at the sentencing hearing, the State presented evidence that the felony tax perjury convictions stemmed from a plan

running over at least four years, with numerous transactions, throngh which appellant fraudulently gained at least $800,000. Accordingly, the previous tax perjury convictions were not the result of the same act, transaction, or occurrence and may be used as four separate convictions for purposes of babitual criminal adjudication. Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979). Thus, even excluding the conviction for the attempt to obtain money by false pretenses, there were sufficient past felony convictions for the district court to adjudicate appellant a habitual criminal. NRS 207.010. Considering the district court's statement at the sentencing hearing to appellant that he was the "poster child for habitual criminality in that every time you're released from custody it seems like you're out making a full-time living stealing," appellant fails to demonstrate a reasonable probability that the outcome of the sentencing hearing would have been different had bis trial counsel objected to the use of the 2004 Nevada conviction for attempt to obtain money by false pretenses when adjudicating him as a habitual criminal. Therefore, the district court did not err in denying this claim.

Second, appellant argues tbat his trial counsel was ineffective for failing to argue that tbe burglary offenses and the unlawful possession, making, forging or counterfeiting of inventory pricing labels offense merged, and that conviction and sentence for both constitute a violation of double jeopardy. Appellant fails to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. To determine whether multiple offenses violate double jeopardy principles "'[t]he test is whether the individual acts are prohibited, or the course of action which they constitute. If the former, then eacb act is punishable separately. If the latter, there can be but one penalty.'" Blockburger v. United States,

284 U.S. 299, 302 (1932) (quoting Wharton's Criminal Law § 35 (11th ed.)); see also United States v. Dixon, 509 U.S. 688, 696 (1993). Burglary occurs when a person enters a building with the intent to commit any felony, or to obtain money or property by false pretenses. NRS 205.060(1). The unlawful possession, making, forging or counterfeiting of inventory pricing labels occurs when a person possesses, makes, alters, forges, or counterfeits any sales receipt or inventory pricing label with the intent to cheat or defraud a retailer. NRS 205.965(1). Therefore, the acts of burglary and the unlawful possession, making, forging or counterfeiting of inventory pricing labels offense are distinct individual acts with different elements. Thus, conviction and sentencing for the offenses do not violate double jeopardy principles. Appellant fails to demonstrate a reasonable probability that the outcome of the proceedings would have been different had his trial counsel argued the conviction and sentence for both crimes violated double jeopardy. Therefore, the district court did not err in denying this claim.

Third, appellant argues that his trial counsel was ineffective for failing to argue for a lesser restitution amount. Appellant argues that the items taken from the various businesses were returned after they were recovered by the police, and therefore, the businesses did not lose the total amount of the restitution that was imposed. Appellant fails to demonstrate that he was prejudiced. Appellant fails to identify any way in which to reasonably calculate the value lost by the businesses due to appellant's crimes. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); see also NRS 205.0831 (stating that the standard by which to calculate the value of property obtained through theft is the fair market value of the property at the time of the theft). The district court concluded

that trial counsel was not ineffective for failing to argue for a lower restitution amount and substantial evidence supports that conclusion. Therefore, the district court did not err in denying this claim.

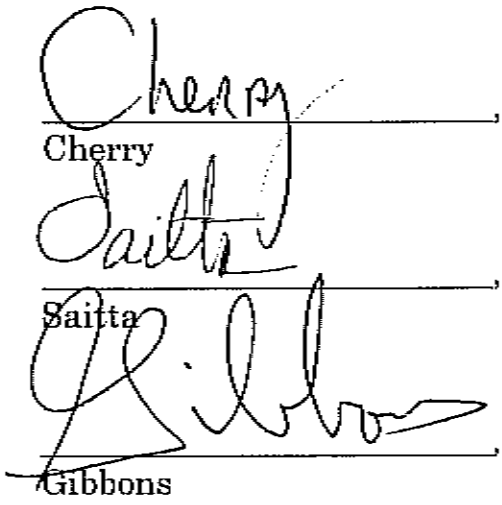
Fourth, appellant argues that his trial counsel was ineffective for failing to cross-examine Brett Bowman concerning his inconsistent statements. Appellant fails to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant compares statements Bowman made prior to trial with those that Bowman made during trial and argues they were inconsistent. The district court determined that the statements appellant compares covered different topics and that the questions were posed differently in each situation. The district court also determined that the questions posed to Bowman necessarily elicited different answers. Those statements were, therefore, consistent statements that could not have been used for impeachment purposes. See NRS 51.035(2)(a); Leonard v. State, 114 Nev. 639, 652-53, 958 P.2d 1220, 1230 (1998). The district court also determined that appellant failed to demonstrate a reasonable probability that the outcome of the trial would have been different had counsel questioned Bowman about these statements. Appellant fails to demonstrate that the district court's determination was erroneous and we conclude that substantial evidence supports the district court's determination. Therefore, the district court did not err in denying this claim.

Next, appellant argues that the district court erred by conducting an evidentiary hearing over only four of his claims and dismissing the remainder. Other than the claim concerning the use of past convictions for adjudicating appellant as a habitual criminal, appellant makes no specific argument for why an evidentiary hearing

should have been conducted concerning any other claims or why the district court erred in dismissing any other claims. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Because appellant's claim was not supported by specific argument, we conclude appellant failed to demonstrate the district court erred. See Mazzan v. Warden, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000).

Accordingly, having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.



Cherry, J.

Saitta, J.

Gibbons, J.

cc: Hon. Steven P. Elliott, District Judge
Kay Ellen Armstrong
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03P1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	12-04-2009:15:15:21
Clerk Accepted:	12-04-2009:15:16:09
Court:	Second Judicial District Court - State of Nevada
Case Title:	POST: FERRILL J. VOLPICELLI (D10)
Document(s) Submitted:	Supreme Court Order Affirming
Filed By:	Cathy Kepler
	You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

KAY ARMSTRONG

RICHARD GAMMICK, ESQ.

FILED
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12-30-2009:04:35:37 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1235675

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 51622

District Court Case No. CR031263
CR03P1263

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: December 29, 2009

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc (without enclosures):
Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Kay Ellen Armstrong

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on DEC 30 2009.

Howard W. Conyers by C. Kopler
District Court Clerk

FILED
Electronically
12-30-2009:04:35:37 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1235675

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 51622

District Court Case No. CR031263
CR03P1263

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 3rd day of December, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 29th day of December, 2009.

Tracie Lindeman, Supreme Court Clerk

By: H. Ingersoll
Deputy Clerk

FILED
Electronically
12-30-2009:04:35:37 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1235675

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51622
CR03P1263

FILED
DEC 03 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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 April 1, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit crimes against property, eight counts of burglary, and one count of unlawful possession, making, forging or counterfeiting of inventory pricing labels. The district court adjudicated appellant a habitual criminal and sentenced appellant to terms totaling life in the Nevada State Prison with the possibility of parole after 20 years. Appellant was also ordered to pay $10,339.16 in restitution. On appeal, this court confirmed the judgment of conviction and sentence. Volpicelli v. State, Docket No. 43203 (Order of Affirmance, June 29, 2005). The remittitur issued on July 26, 2005.

On November 9, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Counsel was appointed and filed a supplement. On April 2, 2007, the district court entered an order dismissing the majority of appellant's claims and set an evidentiary

hearing concerning the remaining claims. Following an evidentiary hearing, the district court denied the remaining claims on April 14, 2008. This appeal follows.

Appellant argues that the district court erred in denying four of his ineffective assistance of trial counsel claims. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). A petitioner must demonstrate the facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence, and the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

First, appellant argues that his trial counsel was ineffective for failing to object to the use of a 2004 Nevada conviction for aiding and abetting in the commission of attempting to obtain money by false

pretenses for adjudication as a habitual criminal. Appellant fails to demonstrate that he was prejudiced.

The criminal activity for the 2004 conviction for attempting to obtain money by false pretenses occurred after appellant had been charged and was awaiting trial for this case. However, appellant was convicted of attempting to obtain money by false pretenses prior to his conviction in this case. After the trial for this case, the State sought adjudication of appellant as a habitual criminal and filed the 2004 judgment of conviction for obtaining money by false pretenses along with two other judgments of conviction. The other judgments of conviction were a 1998 federal court conviction of four counts of felony tax perjury and a 1998 Nevada conviction for two counts of burglary. As the conviction for the attempt to obtain money by false pretenses was not entered before the unlawful actions leading to the instant offense occurred, the conviction for the attempt to obtain money by false pretenses was not properly used as a past conviction for purposes of adjudication as a habitual criminal in the instant matter. Brown v. State, 97 Nev. 101, 102, 624 P.2d 1005, 1006 (1981). However, we conclude that any error was harmless because a sufficient number of convictions was presented. See NRS 178.598 (stating that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded").

The two additional judgments of conviction list six additional felonies which were properly considered when determining appellant's adjudication as a habitual felon. Appellant makes no argument that any of the six other felonies were improperly considered. A review of the record reveals that, at the sentencing hearing, the State presented evidence that the felony tax perjury convictions stemmed from a plan

running over at least four years, with numerous transactions, through which appellant fraudulently gained at least $800,000. Accordingly, the previous tax perjury convictions were not the result of the same act, transaction, or occurrence and may be used as four separate convictions for purposes of habitual criminal adjudication. Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979). Thus, even excluding the conviction for the attempt to obtain money by false pretenses, there were sufficient past felony convictions for the district court to adjudicate appellant a habitual criminal. NRS 207.010. Considering the district court's statement at the sentencing hearing to appellant that he was the "poster child for habitual criminality in that every time you're released from custody it seems like you're out making a full-time living stealing," appellant fails to demonstrate a reasonable probability that the outcome of the sentencing hearing would have been different had his trial counsel objected to the use of the 2004 Nevada conviction for attempt to obtain money by false pretenses when adjudicating him as a habitual criminal. Therefore, the district court did not err in denying this claim.

Second, appellant argues that his trial counsel was ineffective for failing to argue that the burglary offenses and the unlawful possession, making, forging or counterfeiting of inventory pricing labels offense merged, and that conviction and sentence for both constitute a violation of double jeopardy. Appellant fails to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. To determine whether multiple offenses violate double jeopardy principles "'[t]he test is whether the individual acts are prohibited, or the course of action which they constitute. If the former, then each act is punishable separately. If the latter, there can be but one penalty.'" Blockburger v. United States,

284 U.S. 299, 302 (1932) (quoting Wharton's Criminal Law § 35 (11th ed.)); see also United States v. Dixon, 509 U.S. 688, 696 (1993). Burglary occurs when a person enters a building with the intent to commit any felony, or to obtain money or property by false pretenses. NRS 205.060(1). The unlawful possession, making, forging or counterfeiting of inventory pricing labels occurs when a person possesses, makes, alters, forges, or counterfeits any sales receipt or inventory pricing label with the intent to cheat or defraud a retailer. NRS 205.965(1). Therefore, the acts of burglary and the unlawful possession, making, forging or counterfeiting of inventory pricing labels offense are distinct individual acts with different elements. Thus, conviction and sentencing for the offenses do not violate double jeopardy principles. Appellant fails to demonstrate a reasonable probability that the outcome of the proceedings would have been different had his trial counsel argued the conviction and sentence for both crimes violated double jeopardy. Therefore, the district court did not err in denying this claim.

Third, appellant argues that his trial counsel was ineffective for failing to argue for a lesser restitution amount. Appellant argues that the items taken from the various businesses were returned after they were recovered by the police, and therefore, the businesses did not lose the total amount of the restitution that was imposed. Appellant fails to demonstrate that he was prejudiced. Appellant fails to identify any way in which to reasonably calculate the value lost hy the businesses due to appellant's crimes. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); see also NRS 205.0831 (stating that the standard by which to calculate the value of property obtained through theft is the fair market value of the property at the time of the theft). The district court concluded

that trial counsel was not ineffective for failing to argue for a lower restitution amount and substantial evidence supports that conclusion. Therefore, the district court did not err in denying this claim.

Fourth, appellant argues that his trial counsel was ineffective for failing to cross-examine Brett Bowman concerning his inconsistent statements. Appellant fails to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant compares statements Bowman made prior to trial with those that Bowman made during trial and argues they were inconsistent. The district court determined that the statements appellant compares covered different topics and that the questions were posed differently in each situation. The district court also determined that the questions posed to Bowman necessarily elicited different answers. Those statements were, therefore, consistent statements that could not have been used for impeachment purposes. See NRS 51.035(2)(a); Leonard v. State, 114 Nev. 639, 652-53, 958 P.2d 1220, 1230 (1998). The district court also determined that appellant failed to demonstrate a reasonable probability that the outcome of the trial would have been different had counsel questioned Bowman about these statements. Appellant fails to demonstrate that the district court's determination was erroneous and we conclude that substantial evidence supports the district court's determination. Therefore, the district court did not err in denying this claim.

Next, appellant argues that the district court erred by conducting an evidentiary hearing over only four of his claims and dismissing the remainder. Other than the claim concerning the use of past convictions for adjudicating appellant as a habitual criminal, appellant makes no specific argument for why an evidentiary hearing

should have been conducted concerning any other claims or why the district court erred in dismissing any other claims. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Because appellant's claim was not supported by specific argument, we conclude appellant failed to demonstrate the district court erred. See Mazzan v. Warden, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000).

Accordingly, having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.

Cherry

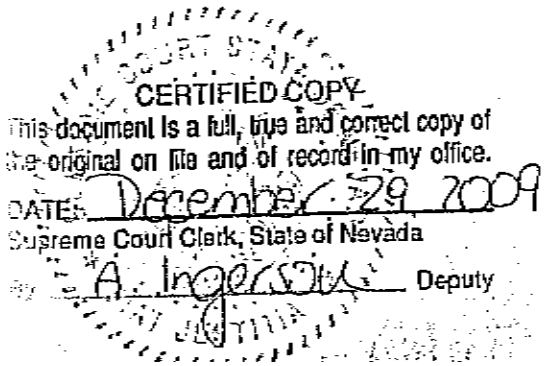
Saitta, J.

Saitta

Gibbons, J.

Gibbons

cc: Hon. Steven P. Elliott, District Judge
Kay Ellen Armstrong
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk


CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: December 29 2009
Supreme Court Clerk, State of Nevada
By: A. Ingersoll Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD WAYNE BEALL,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE; AND AMY HARVEY, WASHOE COUNTY CLERK,
Respondents.

Supreme Court No. 54899

District Court Case No. CR91396

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on 12/03/09, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: December 29, 2009

Tracie Lindeman, Clerk of Court

By: A. Ingerson
Deputy Clerk

cc: Howard W. Conyers, Washoe District Court Clerk
Attorney General/Carson City
Ronald Wayne Beall

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03P1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	12-30-2009:16:35:37
Clerk Accepted:	12-30-2009:16:36:27
Court:	Second Judicial District Court - State of Nevada
Case Title:	POST: FERRILL J. VOLPICELLI (D10)
Document(s) Submitted:	Supreme Court Remittitur
	Supreme Ct Clk's Cert & Judg
	Supreme Court Order Affirming
Filed By:	Cathy Kepler
	You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

KAY ARMSTRONG

RICHARD GAMMICK, ESQ.

FILED
Electronically
01-28-2010:10:21:31 AM
Howard W. Conyers
Clerk of the Court
Transaction # 1286820

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51622

CR03P1263

FILED

JAN 22 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION TO RECALL REMITTITUR AND DENYING PERMISSION FOR A LATE PETITION FOR REHEARING

On December 3, 2009, this court affirmed the order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. On December 29, 2009, the remittitur was issued in this case. On January 6, 2010, this court received a motion to recall the remittitur and a petition for rehearing. Appellant failed to demonstrate that that the remittitur should be recalled. See Wood v. State, 60 Nev. 139, 104 P.2d 187 (1940). Further, the petition for rehearing is untimely. NRAP 40(a)(1). No good cause appearing, this court denies the motion to recall remittitur and denies permission to submit a late petition for rehearing.

It is so ORDERED.

Parraguirre, C.J.

cc: Hon. Steven P. Elliott, District Judge
Kay Ellen Armstrong
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03P1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	01-28-2010:10:21:31
Clerk Accepted:	01-28-2010:10:22:13
Court:	Second Judicial District Court - State of Nevada
Case Title:	POST: FERRILL J. VOLPICELLI (D10)
Document(s) Submitted:	Supreme Court Order Denying
Filed By:	Cathy Kepler
	You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

KAY ARMSTRONG

RICHARD GAMMICK, ESQ.

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VOLPICELLI 1 Page
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CR03P1263
FERRILL J.
District Court
Washoe County
DSEAL

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
209 N. PRATT AVE.
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PHONE (775) 883-3990, FAX (775) 883-4030

Code No. 3860

Kay Ellen Armstrong
State Bar No. 715
415 West Second Street
Carson City, Nevada 89703
775-883-3990
Attorney for Petitioner

FILED
10 APR 22 AM 10:48
HOWARD W. CONYERS
BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

* * *

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

CASE NO. CR03P-1263

DEPT. NO. 9

THE STATE OF NEVADA,

Respondent.

_____/

REQUEST FOR SUBMISSION

COMES NOW, petitioner, Ferrill Joseph Volpicelli, by and through his attorney, Kay Ellen Armstrong, and hereby requests that the Motion for Court Appointed Fees in the above-entitled action be submitted to the court for consideration.

DATED this 19th day of April, 2010.

KAY ELLEN ARMSTRONG
State Bar No. 715
209 N. Pratt Ave.
Carson City, NV 89701
(775) 883-3990
Attorney for Petitioner
Ferrill Joseph Volpicelli

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

THE STATE OF NEVADA,
Plaintiff,
vs.

FERRILL JOSEPH VOLPICELLI,
Defendant.
_____/

Sup. Ct. Case No. 61142
Case No. CR03-1263
Dept. 10

RECORD ON APPEAL

VOLUME 2 OF 6

DOCUMENTS

APPELLANT
Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

RESPONDENT
Washoe County District Attorney's Office
Terrance McCarthy, Esq.
P.O. Box 30083
Reno, Nevada 89520-3083

CR03-1263
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 07/07/2003 10 08 AM 1080
Washoe County JAMF
DOC DC-9900025141-006

FILED

2003 JUL -7 AM 11: 13

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

ORIGINAL

1080
Bradley O. Van Ry
Nevada Bar No. 7198
1403 East Fourth St.
Reno, NV 89512
(775) 324-3681
Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

/

RECIPROCAL DISCOVERY AGREEMENT

The Defendant, Ferrill Joseph Volpicelli, by and through counsel undersigned, and the Plaintiff, State of Nevada, by and through the Washoe County Deputy District Attorney, hereby agree to reciprocate by providing any and all discovery in each other's possession, or that comes into the possession of either party, to the other party. Each party specifically agrees to provide copies of search warrants, inventory receipts, property records, receipts and any other financial instruments as well as police reports, notes, documents, witness statements, including any statements made by Bowman, videotapes of statements made and any other documents arising from or generated by Case No. CR03-1263.

DATED this 2nd day of July 2003.

TAMMY RIGGS
Deputy District Attorney

DATED this 1st day of July 2003.

BRADLEY O. VAN RY
Attorney for Defendant

V2.1

AGREEMENT TO RECIPROCAL DISCOVERY

The parties hereby agree that they will comply with the requirements of NRS 174.087, 174.089, 174.235 to 174.295, inclusive.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____ 7/2/03
Deputy District Attorney Date

_____ 6/26/03
Defense Attorney Date
for Brad Van Ley

☐ Retained ☒ Court Appointed ☐ Public Defender

ORDER

PURSUANT TO NRS 174.087, 174.089, and 174.235 to 174.295 inclusive and good cause appearing therefore,

IT IS HEREBY ORDERED that discovery be provided in accordance with the within requests and agreement.

DATED this 9 day of July, 2003.

_____
DISTRICT JUDGE

ORIGINAL

FILED

2003 JUN 11 PM 4:45

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

DA # 314735

RPD RP01-216321/RP01-216452/RP01-219145/RP01-220307/RP01-221241

CODE 1795
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

DC-9900025141-002
JOSEPH VO 10 Pages
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CR03-1263
STATE VS FERRILL JOSEPH VO
District Court
Washoe County
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

@ 67988

Defendant.

_____/

INDICTMENT

The defendant, FERRILL JOSEPH VOLPICELLI, is accused by the Grand Jury of Washoe County, State of Nevada, of the following:

@130 COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, committed as follows:

That the said defendant on or between the 21st day of June A.D. 2001, and the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully, and with the intent to permanently

deprive, cheat or defraud conspire with BRETT BOWMAN with the intent then and there to commit Burglary, Theft, Forgery, Uttering a Forged Instrument, Larceny, Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, through a scheme where property and/or money was obtained from several stores in Washoe County, to wit: WALMART, K-MART, SHOPKO, TARGET, LOWE's, HOME DEPOT, OFFICE MAX, OFFICE DEPOT, BED BATH and BEYOND, BEST BUY, COMP USA, TOYS-R-US, and/or PETSMART by 1) entering said stores for the purpose of obtaining universal pricing label information to create false and forged universal pricing labels; 2) by affixing false, forged or counterfeit universal pricing labels to merchandise at said stores to purchase said merchandise for less than the posted retail price; 3) by purchasing said merchandise under the false pretense that the forged or counterfeit pricing label is a true and valid document; and/or 4) by removing the false and forged inventory pricing labels and subsequently returning some of the fraudulently discounted merchandise for the original valid retail price, thereby making a profit.

FMD COUNT II. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 4th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 2863 Northtowne Lane, Reno, Washoe County, Nevada,

with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein, by entering to obtain UPC label and/or other pricing information, after having been previously convicted of Burglary in 1998.

F1TO COUNT III. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 11th day of September A.D. 2001, and the 29th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain HOME DEPOT located at 5125 Summit Ridge Court and/or 2955 Northtowne Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering to scout miscellaneous UPC label and/or other pricing information and/or obtain a toilet; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

///

F170 COUNT IV. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 21st day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain BED BATH and BEYOND located at 4983 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering with the intent to fraudulently obtain one or more coffee pots and/or scout pricing information related to said merchandise; and/or did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

F170 COUNT V. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 28th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 4855 Kietzke Lane, Reno, Washoe County, Nevada, with

the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering to obtain UPC label and/or other pricing information to be used for an unlawful purpose, after having been previously convicted of Burglary in 1998.

FMD COUNT VI. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 5th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain LOWE'S HOME IMPROVEMENT STORE located at 5075 Kietzke Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels therein, by entering with the intent to fraudulently obtain one or more wool rugs and/or scout pricing information related to said rugs, and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and

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fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

FITD COUNT VII. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August A.D. 2001, and the 13th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain WALMART located at 2863 Northtowne Lane and/or 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein by entering with the intent to fraudulently obtain a Panasonic Home Theater system, Emerson 19" DVD-TV combo, KDS Rad-5 15" monitor, Serger sewing machine and/or a Hewlett-Packard printer and/or scout pricing information related to said merchandise; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary or burglaries by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said

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store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

F17D COUNT VIII. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August A.D. 2001, and the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain SHOPKO located at 5150 MaeAnne Avenue and/or 6139 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein, by entering with the intent to fraudulently obtain a Sonicare electric toothbrush and/or one or more Willow Bay comforters, after having been previously convicted of Burglary in 1998.

F17D COUNT IX. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False

Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein, by entering with the intent to fraudulently obtain a Mongoose bicycle and/or scout pricing information related to said bicycle; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by affixing a fictitious UPC bar code label to said merchandise, by providing BOWMAN with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label, after having been previously convicted of Burglary in 1998.

COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony, committed as follows:

That the said defendant on the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully, and with the intent to cheat or defraud a retailer, possess, make, forge or counterfeit fifteen

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or more inventory pricing labels, commonly known as "UPC bar code labels," in a motor vehicle located at the 9400 block of South Virginia Street, Reno, Washoe County, Nevada.

Dated this 17th day of June, 2003.

RICHARD A. GAMMICK
District Attorney

By _____
CHERYL HIER-JOHNSON
5021
Deputy District Attorney

PCN 82444285
81788297
81625263
82444206
82444252

06105145

V2.11

The following are the names of witnesses examined before the Grand Jury:

REED THOMAS

MICHAEL BROWN

SCOTT ARMITAGE

LARRY LODGE

BRETT BOWMAN

MATT CARTER
~~GREGORY DANIELSON~~

DAVID DELLA

JENNIFER POWELL

JOHN DAVID ELLIS

"A TRUE BILL"

FOREMAN

"NO TRUE BILL"

FOREMAN

V2.12

ORIGINAL

FILED

2003 JUN 11 PM 4:45

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

DA# 314735

CODE 1300
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

CR03-1263 STATE VS FERRILL JOSEPH VOL 3 Pages DC-9900025141-001 District Court 06/11/2003 08:00 AM Washoe County 1300 JAME DOC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

_____/

BENCH WARRANT

STATE OF NEVADA)
):ss.
COUNTY OF WASHOE)

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of Washoe County, Nevada, on the 11th day of June, 2003, charging FERRILL JOSEPH VOLPICELLI with the crimes of COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, COUNTS II., III., IV., V., VI., VII., VIII. and IX. BURGLARY, a

violation of NRS 205.060, a felony, and COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony.

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-named defendant and bring him before the Court to answer the Indictment; or, if this Court is not in session, that you deliver him into the custody of the Sheriff of Washoe County, Nevada, that he may be taken before this Court at such time as it be in session.

BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE SEAL OF THE COURT AFFIXED this 11th day of June, 2003.

DISTRICT JUDGE

The defendant, FERRILL JOSEPH VOLPICELLI, is to be admitted to bail in the amount of $50,000 CASH OR BAIL.

Endorsed this 11 day of June, 2003.

RONALD A. LONGTIN, JR., Clerk

By _____
Deputy

V2.14

R E T U R N

I, _____, hereby certify that I have received the attached Bench Warrant on the _____ day of _____, 20____, and served the same on the defendant, FERRILL JOSEPH VOLPICELLI, placing him in the custody of the Sheriff of Washoe County, Nevada, until bail in the sum of $_____, as set by the Court has been posted.

DATED this _____ day of _____, 2003.

_____

V2.15

RPD CASES: 01-216321/01-216452/01-21[illegible]47
01-220307/01-221241.

DA# 314735

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2003 JUN 17 AM 11:22
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

FILED
2003 JUN 11 PM 4:45
RONALD A. LONGTIN, JR.
BY G. Valente DEPUTY

CODE 1300
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

DC-9900025141-008
CR03-1263 FERRILL JOSEPH VOL 3 Pages
STATE VS. District Court 06/17/2003 11 22 AM
Washoe County 1300
DOC JAME

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

_____/

BENCH WARRANT

STATE OF NEVADA)
):ss.
COUNTY OF WASHOE)

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of Washoe County, Nevada, on the 11th day of June, 2003, charging FERRILL JOSEPH VOLPICELLI with the crimes of COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, COUNTS II., III., IV., V., VI., VII., VIII. and IX. BURGLARY, a

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violation of NRS 205.060, a felony, and COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony.

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-named defendant and bring him before the Court to answer the Indictment; or, if this Court is not in session, that you deliver him into the custody of the Sheriff of Washoe County, Nevada, that he may be taken before this Court at such time as it be in session.

BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE SEAL OF THE COURT AFFIXED this 11th day of June, 2003.

Brent Adams

DISTRICT JUDGE

The defendant, FERRILL JOSEPH VOLPICELLI, is to be admitted to bail in the amount of $50,000 Cashonly

Endorsed this 11 day of June, 2003.

RONALD A. LONGTIN, JR., Clerk

By A Velarde
Deputy

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.
DATE: 6/11/03
RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.
By _____ Deputy

V2.17

R E T U R N

I, _____, hereby certify that I have received the attached Bench Warrant on the 16th day of June, 2003, and served the same on the defendant, FERRILL JOSEPH VOLPICELLI, placing him in the custody of the Sheriff of Washoe County, Nevada, until bail in the sum of $_____, as set by the Court has been posted.

DATED this 16 day of June, 2003.

_____ #6769

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
06/18/03	ARRAIGNMENT	
HONORABLE JAMES W. HARDESTY	Deputy District Attorney Tammy Riggs represented the State. Defendant was present with counsel, Jack Alian, Esq. Probation Officer Heidi Poe was present on behalf of the Division of Parole and Probation.	09/24/03 8:30 a.m. Motion to Confirm
DEPT. NO. 9	Defense counsel was handed a copy of the Information; waived formal reading.	
C. Wynn (Clerk)	TRUE NAME: FERRILL JOSEPH VOLPICELLI	10/06/03 8:30 a.m. Jury Trial (4 days)
D. Davidson (Reporter)	Defendant entered a plea of Not Guilty; Defendant further waived the 60-day rule.	
	COURT ORDERED: Matter continued for trial by jury. Defendant was remanded to the custody of the Sheriff.	

DC-9900025179-027
CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 06/18/2003 10:36 AM MIN
Washoe County

CR03-1263
D-9

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE WASHOE COUNTY GRAND JURY

FILED
2003 JUN 20 PM 2:37
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

-oOo-

IN THE MATTER OF:

FERRILL JOSEPH VOLPICELLI

_____/

P R O C E E D I N G S

WEDNESDAY, JUNE 11, 2002

9:15 A.M.

APPEARANCE:

For the State: CHERYL HIER-JOHNSON, ESQ.
TAMMY RIGGS, ESQ.
Deputy District Attorneys
Washoe County Courthouse
Reno, Nevada

Also Present: Kevin VanRy, Esq.
Deputy District Attorney

Reported by: JUDITH ANN SCHONLAU, CSR #18
Computer-Aided Transcription

CR03-1263 STATE VS FERRILL JOSEPH V 149 Pages District Court 06/20/2003 02 29 PM 4186 JAMES Washoe County DOC DC-99000025141-004

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RENO, NEVADA; WEDNESDAY, June 11, 2003; 9:15 A.M.
-oOo-

MS. HIER-JOHNSON: Good morning ladies and gentlemen of the Grand Jury. My name is Cheryl Hier-Johnson. I am a Washoe County Deputy District Attorney. Present with me this morning are Deputy District Attorney Tammy Riggs and Kevin VanRy. As I just said, please excuse the interruption, I am here this morning with Ms. Riggs and Mr. VanRy. Ms. Riggs and I are trying this case together, so I would ask the Grand Jury Foreman's permission and request for both Ms. Riggs and I to be able to remain present in the Grand Jury this morning because we will both be questioning witnesses. We will each have our own witnesses, and we would like to remain for the entire proceeding even if we are not questioning a witness at the moment. Is that all right?

THE FOREMAN: That is fine by me. Any objections? No.

MS. HIER-JOHNSON: Also, with respect to Mr. VanRy, he's a new Deputy District Attorney in the office. I am his supervisor this week, and I am training him. I would ask that you specifically recognize his presence and invite him here to remain this morning not to participate but simply to observe for training purposes. Mr. Foreman, would that be all right?

THE FOREMAN: That would be fine.

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MS. HIER-JOHNSON: The first matter for your consideration this morning is a proposed Indictment against Ferrill Joseph Volpicelli. The proposed Indictment alleges the crime of conspiracy to commit crimes against property, eight counts of burglary, unlawful possession, making, forgery or counterfeiting of inventory pricing labels, and possession of machine tools or implements adapted for the commission of burglary or crimes against property.

I have not yet signed the Indictment. If you, the Grand Jury, find there is sufficient evidence to issue a True Bill, I will then sign the Indictment after your deliberations.

Basically, the State has alleged that several counts of various property offenses were committed by Mr. Volpicelli over a several month-long period of time during the Summer and early Fall of 2001 here in Washoe County.

Count I alleges that Mr. Volpicelli conspired with a man named Brett Bowman to commit these crimes between the end of June through the middle to latter part of October.

Counts II through IX are all burglary counts, and they allege that on several different occasions throughout that time period, Mr. Volpicelli entered a number of different retail stores here in Washoe County with the intent to commit larceny or other crimes therein; or that he aided and abetted

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Mr. Bowman in committing the crime of burglary in different ways that are alleged in the Indictment.

Count X alleges that Mr. Volpicelli unlawfully possessed, made, counterfeited, forged inventory pricing labels for retail merchandise, and that is a law that went into effect October 1, 2001.

So if you read through the Indictment, you will see that only crimes that are alleged to have occurred after October 1, 2001, made reference to that particular statute, and that is the reason why.

The final count is basically what we call possession of burglary tools. He's accused of possessing a portable label maker in his car to make counterfeit pricing labels for merchandise at retail stores.

I have also passed out the laws that define the various offenses. In your packet of laws, the top document you will find is entitled Instructions of Law. That is Nevada case law on certain points that are relevant to this case to aid the meaning of the various statutes that are for your consideration today.

I have also had a copy of that Instructions of Law marked as Exhibit 1 to maintain that for review purposes down the road.

So beyond that, the statutes are placed in numerical

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order. You have NRS 175.291 which concerns accomplice testimony. You have NRS 195.020 which defines principals to crimes. You have NRS 199.480 which defines conspiracy. You have NRS 205.060 which defines burglary, and NRS 205.0832 which defines theft. NRS 205.090 which defines forgery. NRS 205.110 which defines uttering a forged instrument. NRS 205.220 and .240 define the crimes of petty and grand larceny. NRS 205.380 defines obtaining money or property under false pretenses. NRS 205.965 defines the unlawful possession, making forgery or counterfeiting of inventory pricing labels. And I have indicated in my handwriting on your copies that that again is the law that did not go into effect until October 1, 2001.

Also at the begining of your packet you have NRS 205.080 which defines the crime of possession of insruments with burglary as the intent.

Both Mr. Volpicelli and his attorney were notified of this morning's proceeding by letter delivered on June 4, 2003. Mr. Volpicelli was invited here to present evidence or testimony if he desired. His attorney called me last night and advised Mr. Volpicelli will not be here today to exercise that right. You are not to draw any inferences either in favor of or against Mr. Volpicelli for his choice not to appear here today.

The presentation of the evidence in this case will be

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somewhat lengthy, so I would like to provide you with an outline of what to expect this morning.

The testimony will be presented from Mr. Volpicelli's alleged accomplice or co-conspirator in these crimes. His name is Brett Bowman. There are several documents and photographs that have been marked as exhibits here that will be offered for your consideration. And as we go through the various witnesses, they will explain where those came from and what the significance of them is.

There will be testimony from police officers and civilian store witnesses who will, through their testimony, attempt to tie together observations that they made relevant to the allegations, plus the relevance of some of these documents.

If at some point you wish to take a break before the noon recess, please don't hesitate to let me know. With all that being said, may I call the State's first witness?

THE FOREMAN: Please do.

MS. HIER-JOHNSON: Thank you.

(Whereupon a witness entered the Grand Jury room.)

THE FOREMAN: Please raise your right hand.

(Whereupon the witness was sworn by the Foreman.)

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BRETT A. BOWMAN

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. HIER-JOHNSON:

Q Please state your full name for the record and spell your last name?

A Brett A. Bowman, B-O-W-M-A-N.

Q Are you aware that the Grand Jury is currently investigating and considering evidence as it relates to several property crimes alleged against Ferrill Joseph Volpicelli?

A I am.

Q Do you understand that you are not a target of this Grand Jury but are simply called here as a witness today?

A I do.

Q Would you please direct your attention to the gentleman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is investigating charges of burglary, conspiracy and forgery?

THE WITNESS: Yes, I do.

BY MS. HIER-JOHNSON:

Q Mr. Bowman, how old are you?

A Forty-five.

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Q Do you currently live in the State of Nevada?
A I do.
Q How long have you lived in Nevada?
A Since November of '99. Four years.
Q Are you currently incarcerated?
A I am.
Q Where?
A At the Northern Nevada Restitution Center.
Q Is that located here in Reno?
A Yes, it is.
Q How long have you been assigned there?
A Since October of last year.
Q On what charge are you serving time?
A Burglary.
Q When were you convicted?
A May or March.
Q Do you recall of what year?
A I don't. I am sorry.
Q Were you just convicted a few months ago or convicted back in 2002?
A I think it was 2002.
Q When were you arrested for that charge?
A October 17th of 2001.
Q At the time that you were arrested, were you arrested

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with anyone else?

A Yes, I was.

Q Who was that?

A Farrill Volpicelli.

Q Where were you two arrested?

A Right outside Wal-Mart.

Q Here in Reno?

A Here in Reno. It was on Virginia Street I know. I remember that much.

Q Down on the south end of Reno?

A Yes. Up the street from Wal-Mart.

Q Prior to your arrest on October 17, 2001, how long had you known Mr. Volpicelli?

A About a year. Maybe a little longer.

Q At some point after meeting with him, did you become a little bit better acquainted?

A Yes, I did.

Q About when was that?

A I'd say the Spring of 2001.

Q Did the two of you ever discuss a scheme to defraud retail stores of merchandise at reduced prices?

A Yes, we did.

Q Approximately when did that topic first come up?

A Early Summer.

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Q Of 2001?

A Of 2001.

Q Who brought it up?

A He did.

Q Did Mr. Volpicelli ever ask you to participate in the scheme at some point in the future?

A Yes, he did.

Q When the idea was first proposed, did you give him a firm answer right then?

A No, I did not.

Q Did there come a time when you did take him up on his offer to participate in this scheme?

A Yes, I did.

Q Approximately when was that?

A The last part of June of 2001.

Q What did you discuss doing?

A Change UPC bar codes on merchandise in different stores and for reduced prices. He would--We discussed he would make the labels. And it really started he would make the labels, adhere the label. I would go in and buy after. For the most part, he would make the labels and I ended up buying the merchandise.

Q In the early stages were you--well, did you do this over the entire period of time that you first decided to do it

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back at the end of June through the time of your arrest? Did you participate in the scheme that entire time period?

A Yes, I did.

Q Over the course of that few month-period of time, were there times where you guys would be, I don't know, more active or less active at achieving this?

A Yes. Yes, there was.

Q Describe that?

A It was mainly the heavy days was on my days off usually in the middle of the week. We would start either sometime in the morning, for the most part early afternoon, and work at it until the store started closing about 9:00 or 10:00 o'clock at night.

Q Did you guys do this more frequently towards the end before you got caught versus in the beginning when you first started out?

A Yes. It progressed to where we were doing close to ten stores a night when we were doing them.

Q Between the end of June 2001 and the time of your arrest, can you estimate the number of different times you went out with Mr. Volpicelli to do this scheme?

A Roughly about twelve.

Q And you just testified that towards the end there were times when you hit as many as ten stores at a time?

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A Yes.

Q What stores?

A Home Depot, Lowe's, Wal-Mart, K-Mart, Shopko, Comp USA, Office Depot. That was pretty much it.

Q Did you ever have the opportunity to go to a bed and bath store?

A Yes, one time.

Q Do you remember what its name was?

A Bed and Bath, I believe.

Q What about any toy stores?

A Yes. Toys R Us.

Q Did you have the opportunity to go to any pet stores?

A Petco one time.

Q As far as these different stores where you committed this scheme, were they all, for the most part, located here in Reno, Washoe County, Nevada?

A All of them were in Reno, Washoe County.

Q Did you guys ever go out of town or out of the state to do this?

A Out of town? I went out of town with him one time to the Lake Tahoe area.

Q At that time, did you leave town very much? I mean independent of Mr. Volpicelli, did you travel in and out of Reno very often?

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A No. Never.

Q How well acquainted were you with Reno back in the Summer of 2001?

A I wasn't.

Q Were you new to the area?

A Very new.

Q Now, can you please describe with a little more detail what some of the different ways were that you guys carried out your scheme to get the money or property from these stores?

A Mr. Volpicelli would go in the store first. He would scout out the merchandise, get the bar code number off the lower end item, come back and print the label up with the lower bar code number to be adhered to a higher end item. After that, right, for the most part, right, he would give me the label. I would walk in, put it on the item he specifically wanted and buy it with that fictitious UPC bar code.

Q Where did you get the money to purchase this property?

A From Mr. Volpicelli.

Q Once property was purchased, did the scheme ever involve the return of stuff?

A Yes, it did.

Q Can you describe that aspect to the scheme?

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A I would take it in with the original bar code on it, and for the most part, I either received a gift card or exchanged it for something else.

Q In exchanging it for something else, did you guys ever put fictitious labels on whatever it was you were buying in exchange?

A No. No.

Q So by returning some of these items, were you returning them for the price higher than they had been paid for with the fictitious label?

A Yes.

Q Who got the property that was purchased?

A Mr. Volpicelli.

Q What did you get for doing this?

A Cash money.

Q Were you working at the time?

A Yes, I was.

Q So this was money in addition to whatever your job was paying you?

A Yes. Exactly.

Q Who made the labels?

A Mr. Volpicelli.

Q Did you ever see him make labels?

A Yes, on several different occasions.

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Q I am showing you Grand Jury Exhibit 17. Do you recognize who is depicted in that photograph?

A That is Mr. Volpicelli.

MS. HIER-JOHNSON: Ladies of the Grand Jury and gentlemen of the Grand Jury, I will go ahead and pass that around.

BY MS. HIER-JOHNSON:

Q I am showing you Grand Jury Exhibit 4 which is three pages of digital color photographs. Do you recognize what is depicted in those photographs?

A Yes. The contents of the case and the actual Brother 2400 label maker which actually made the UPC bar codes.

Q Did you actually see Mr. Volpicelli use this machine to create labels that you guys would then put on property?

A Yes, on several different occasions.

Q Where was this label maker kept?

A I'm not exactly sure where he kept it. But whenever he picked me up, right, it was always with him.

Q Did he pick you up in a car?

A Picked me up in an MPV van, Mazda MPV.

Q Showing you Grand Jury Exhibit 2, do you recognize the vehicle depicted in that photograph?

A Yes, that is the vehicle.

Q The van Mr. Volpicelli would pick you up in?

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A Yes, it is.

Q Did you have a car back then?

A No, I did not.

MS. HIER-JOHNSON: Members of the Grand Jury, I will go ahead and pass these exhibits around for you to take a look at as well.

BY MS. HIER-JOHNSON:

Q When you guys purchased this property with the fake labels, did you ever get receipts from the different stores?

A Yes, we did, always.

Q What did you do with these receipts?

A I turned them over to Mr. Volpicelli.

Q Did you ever see what he did with them?

A He always put them in a little, what would you call them, something holding the receipts, right. I am not sure exactly what you call it. It is like--my mind just went blank for a second. I am sorry. It is something like an organizer, right. It is plastic with compartments inside. It is compartmented. He would always put it in there.

Q Did you see where he kept that little organizer?

A For the most part he kept it with the machine.

Q When you had the opportunity to see the organizer, would that be in the car?

A Yes, it would.

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Q Showing you Grand Jury Exhibit 3 which consists of five black and white digital photographs, please flip through those and let me know when you are done. Do you recognize what is depicted in those photographs?

A Yes, I do. That is where he kept his receipts.

Q Is that the organizer you just described?

A Yes, it is.

Q Pass that around. Now do you know where the information was obtained to make these fake labels?

A The information was obtained inside each individual store.

Q Who would obtain that information?

A Mr. Farrill Volpicelli.

Q Once that information was obtained, did you ever see what he did with it?

A He put it on a master sheet.

Q Did you ever see that master sheet?

A Yes, I did.

Q I am showing you what has been marked as Grand Jury Exhibit 5, a two sided document. Do you recognize that?

A That is his master sheet.

Q Where had you seen this sheet?

A With Mr. Volpicelli with all the items, the receipt book. Mainly it was kept with the label maker.

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Q Did you ever go in the stores to write down the information to make these labels?

A No. Never.

Q Did you ever see Mr. Volpicelli go into the stores to get that information?

A Yes, on a couple of different occasions.

Q To your knowledge, were there other times where he would have the information already before you two met up to go buy some merchandise?

A For the most part he already had the information, yes.

MS. HIER-JOHNSON: Ladies and gentlemen, I will go ahead and pass around Exhibit 5 for you to look at.

BY MS. HIER-JOHNSON:

Q Now, you have already testified that Mr. Volpicelli would take the property that was actually purchased. Did you end up ever taking any of the property?

A Once or twice.

Q What did you take?

A I got a shaver and a coffee maker.

Q Do you know what Mr. Volpicelli did with the rest of the merchandize?

A All I know, he kept the merchandise for the most part in a storage unit.

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Q How do you know that?

A Because he would drop me off at Sierra Sid's on his way to it.

Q Would he tell you where he was going?

A He said he was going to the storage unit.

Q Did he ever let you see where exactly it was located?

A No. Never.

Q When you talk about being dropped off at Sierra Sid's, is that the truck stop casino located out in Sparks?

A Yes, it is.

Q When he dropped you off, did he come back a little later and pick you up?

A Yes, he would.

Q Usually how much time passed before he would return to pick you up?

A About a half hour.

Q Now can you estimate how many of these kinds of different transactions you guys did?

A To be honest with you, no.

Q More than ten?

A A lot more than ten.

Q More than twenty?

A More than twenty.

Q Are there some of those transactions that stick out

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in your mind better than others?

A Yes, there is.

Q Describe some of the transactions that stick out better than others?

A Well, the one was when I went and bought a Panasonic theater system. He said he was going across the street to get some gas and basically left me standing outside in front of the store for about 35 minutes with the merchandise.

Q Now do you recall which store you got that home theater system from?

A At Wal-Mart.

Q Do you recall about how long before your arrest that transaction was?

A Couple weeks.

Q Who was responsible for going and putting-- Well, did you get this equipment, this merchandise, by putting a fake label on it?

A Yes, I did.

Q Who put the label on it?

A I put it on.

Q Who made that label?

A Mr. Volpicelli made the label.

Q When you put the label on this product, where was it?

A The label?

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Q No, the product.

A The product was on the store shelf.

Q So you went ahead and labeled it right there in the store?

A For the most part, right, I put it in a shopping cart, wheeled it around to where there was fewer video cameras and adhered the label to the--to the merchandise.

Q How many times did you go in and buy one of these Panasonic home theater systems?

A For or five, maybe six.

Q So you bought that kind of product more than once?

A Yes.

Q Were they all bought at the same time?

A No.

Q Do you recall over what time period they were purchased?

A Probably over a two to three week period.

Q Two to three weeks?

A Yes.

Q Did all of those go to Mr. Volpicelli?

A Yes, they did.

Q Do you recall roughly how much that product was selling for?

A Roughly right around $400.

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Q Right around $400?

A Somewhere in there. $400.

Q I am going to ask you to speak up.

A Mostly run $400.

Q Do you recall how much you were paying for this product?

A $60.

Q $60?

A $60, yes.

Q When these items were rung up, did you get a receipt?

A Yes, I did.

Q Do you recall what they were coming up as, what sort of merchandise they were coming up as?

A Coming up as an Emerson CD player.

Q I am showing you Grand Jury Exhibit 9. Do you recognize the Polaroid photograph that is affixed to this document?

A Yes, I do.

Q What is depicted in that photograph?

A Panasonic theater system.

Q Is this like these four or five theater systems you went and bought?

A Exactly.

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Q Right behind that there are photo copies of a couple of Wal-Mart receipts dated October 13th. It looks like they are from two different stores. Do you recall ever buying more than one of those Panasonic systems on the same date?

A Yes, I do.

Q Did they come from the same store?

A From the exact same store? No, two different stores, different ends of the valley.

Q Do these look like copes of the receipts you got when you purchased these items?

A Yes.

Q What did you do with these receipts after you purchased them?

A I handed them to Mr. Volpicelli.

Q Also attached to this exhibit there is a couple of black and white digital photos. Do those appear to be the same home theater system?

A Yes.

MS. HIER-JOHNSON: Ladies and gentlemen, I will pass Exhibit 9 around for your review.

BY MS. HIER-JOHNSON:

Q Aside from these Panasonic home theater systems, are there any other products or transactions that stick out in your mind more so than others?

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A Yeah. Computer monitors, flat screen monitors, KDS monitors. I bought several of those. Very expensive rugs from Lowe's. A toilet that was bought with a Badger garbage disposal UPC bar code, and a few others. And the list goes on.

Q Let's take them in the order you mentioned so far. You mentioned flat screen monitors?

A Yes.

Q Did you say KDS?

A KDS.

Q Does it look like possibly KOS?

A Yes, it does.

Q Showing you Grand Jury Exhibit 11 which consists of two pages of receipts and five pages of black and white digital photographs, do you recognize what is depicted in this exhibit?

A Yes, I do.

Q What is it?

A Those monitors I just told you about.

Q Now if I understand right, the merchandise you were actually buying was this KDS monitor?

A Yes, it was.

Q When you purchased these things, first off, do you recall about how many of them you purchased?

A Probably about nine altogether. Eight or nine.

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Q Do you recall over what period of time you bought them?

A Over a couple week period. The reason we were able to remember that is because the Wal-Mart we went to, right, I purchased them until the shelf was empty out of each Wal-Mart.

Q Would you buy more than one at a time?

A No, just one at a time.

Q And when you bought those items, did you receive receipts for them?

A Yes, I did.

Q When you were pulling them off the shelf, do you recall approximately what they were really selling for?

A $377.

Q And do you recall about what you were really paying for them?

A About $177.

Q Where did you get the money to buy them?

A From Mr. Volpicelli.

Q Who was responsible for putting labels, fake labels on those products?

A I was.

Q Where did you get those labels?

A From Mr. Volpicelli.

Q Now, when these products rang up for $177, do you

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recall what they were coming up as?

A 17 inch monitor.

Q So a computer monitor, just a different one?

A Exactly.

Q Now, as we flip through some of the pages of digital photographs, there is pictures of labels with bar codes on them. Is there anything significant about these bar codes?

A Yes. The top is the actual purchase price and description of the product. The rest is inventory and shipping control.

Q How do you know that?

A Farrill taught me. The top bar code is always the one that is the tracking and inventory control one for the product, itself, from the store.

Q So when you put a different label on the box, where would you put it in relation to the original labels?

A It would be right over the top bar code.

Q Then later on if any of this merchandise got returned, how would you return it for the higher price?

A By pulling the fictitious bar code off.

Q Did you ever pull some of those labels off?

A No, I didn't.

Q Did you ever see any of the products that had been purchased by you that had fake labels on them later being

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returned with those labels missing?

A Yes.

Q When labels were missing, did you notice whether or not the original label was ever disturbed?

A Yes. It lifted a lot of ink off the original bar code.

MS. HIER-JOHNSON: I will pass exhibit 11 around for the Grand Jury's consideration.

BY MS. HIER-JOHNSON:

Q You also mentioned a few minutes ago picking up a high end rug from Lowe's; is that right?

A Yes.

Q Do you recall how many different times you picked up rugs at Lowe's?

A Twice.

Q And in picking up those rugs, were fake bar code labels put on them to buy them for a cheaper price?

A Yes, they were.

Q Who produced those labels?

A Mr. Volpicelli.

Q Who put them on the products?

A I did.

Q Were these two rugs bought at the same time?

A No. They were bought approximately a week apart from

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each other.

Q Now when you bought those rugs, did you happen to see what they were really selling for?

A I believe roughly right around $500 a piece.

Q Do you recall what you actually paid for them?

A Yes, $80.

Q Where did you get the money to buy them?

A From Mr. Volpicelli.

Q Now with respect to a rug you purchased for $80, do you remember how much money or what sort of denomination Mr. Volpicelli gave you to buy that rug?

A It was usually in hundred dollar bills.

Q I am showing you Grand Jury Exhibit 8. I ask you to direct your attention to the receipt on the top page, and the black and white digital photographs on the last three pages. Do you recognize the receipt?

A Yes, I do.

Q Does this appear to be a copy of the receipt that you received for the purchase of one of those rugs?

A Yes, it is.

Q Do you recognize the bar code label that is next to that receipt on the front page?

A No. To be honest with you, no I don't.

Q Do you recall when you went and put fake labels on

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those products if they had an original label on them?

A Yes.

Q Do you recall where you put the fake labels in relation to the original label?

A It would go over the original bar code.

Q Now looking back at the digital photographs attached to this exhibit, do you recognize what is depicted?

A Yes, I do. In this one right here, it actually shows my fake label that I adhered to the rug over the original bar code.

Q Is that the photograph I am holding up for the Grand Jury to see? Is that the fake label, the one I am holding up now for them to see?

A Yes. Yes, it is.

Q What about this rolled up thing in the first photo, do you recognize that?

A That's the rug.

Q Is that how they were packaged when you bought them?

A Yes.

Q What did you do with these rugs when you bought them?

A I take them out and put them in the van and that is as far as I know.

MS. HIER-JOHNSON: I will pass Exhibit 8 around for

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the Grand Jurors to review.

BY MS. HIER-JOHNSON:

Q You also mentioned buying a toilet.

A Yes.

Q Where did you buy that toilet?

A Home Depot.

Q How many toilets did you buy?

A Just one.

Q Do you recall about when that was?

A I believe it was the last part of September, first part of October.

Q Do you recall what time of day?

A I believe it was in the morning.

Q When you bought the toilet, did you happen to see how much it was really selling for?

A I believe it runs around $350, $400, somewhere in that area.

Q Did you buy this toilet by attaching a fake UPC label?

A Yes, I did.

Q Where did you get that label?

A I got it from Mr. Volpicelli.

Q Once you put--And you are the one that put the label on it?

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A Yes.

Q Once you put the label on it, did you then go ahead and purchase it at the counter?

A Yes, I did.

Q Do you recall what it rang up as?

A Yes, Badger garbage disposal.

Q Do you recall how much you paid for the toilet?

A I think $144, $174, something like that. About $150 in the price range there.

Q Where did you get the money to buy it?

A Mr. Volpicelli.

Q Showing you Grand Jury Exhibit 6, do you recognize the copy of the receipt?

A Yes.

Q Does that appear to be the same receipt from the purchase of the toilet?

A Yeah. It was a one horse power disposal, yes.

Q After--Well, how was the toilet packaged when you bought it?

A A great big box.

Q I am flipping through to the three attached photographs. Do you recognize these photographs?

A Yes, I do.

Q What do they appear to be?

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A The box with the label on the toilet.

Q Pass Grand Jury Exhibit 60 around.

Now earlier on when I asked you what some of the different stores were that you guys frequented to make these fraudulent purchases, you mentioned a bed and bath store.

A Yes.

Q Do you recall what you purchased there?

A Two Krups coffee makers, espresso coffee systems.

Q Were those purchased with the use of a fake UPC label?

A Yes, they were.

Q Who made that label?

A Mr. Volpicelli.

Q Who affixed the label to those products?

A I did.

Q Was Mr. Volpicelli present when you would buy these things?

A He was always out in the van.

Q Were there ever times that he would be in any of the stores while you were applying labels and buying products?

A On a few occasions, yes.

Q Now, when you bought these Krups coffee makers, do you recall about what they were selling for?

A Roughly a hundred dollars.

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Q And do you recall about what you paid for them?
A About thirty dollars.
Q I am showing you Grand Jury Exhibit 7. Do you recognize that copy of a receipt?
A Yes.
Q Does that appear to be the receipt from the purchase of the two coffee makers?
A Yes, it is.
Q Attached to that exhibit are two photographs. Do you recognize what is depicted in those black and white photos?
A Yes, I do. It is the actual coffee maker.
Q Do you know what happened to those coffee makers after they were purchased?
A One went to him, one went to me.
Q What did you do with the one you got?
A I used it.
MS. HIER-JOHNSON: I will pass Grand Jury Exhibit 7 for your consideration.
BY MS. HIER-JOHNSON:
Q Do you recall ever buying any TV-DVD combos for Mr. Volpicelli?
A Yes.
Q Where did you by those from?
A Wal-Mart.

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Q Do you recall about how many you bought?
A About three I believe. Two or three.
Q Do you recall what brand they were?
A They were Emerson.
Q Do you recall--Let me ask you this: Were they bought with a fake UPC label?
A Yes, they were.
Q Who generated the label?
A Mr. Volpicelli.
Q Who was--Who took the label into the store to put it on the products?
A I did.
Q When you took those and put those on the products, did you happen to see what Emerson TV-DVDs were really selling for?
A About $229, $230 I believe.
Q After affixing the fake labels, were you the one responsible for going up and purchasing those items?
A Yes, I was.
Q Do you recall about how much they were ringing up for?
A $120.
Q And when they were ringing up, do you recall what they were ringing up as?

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A Sanyo 9 inch TV.

Q A different kind of TV?

A Yes.

Q Now, when you bought these, you said there were two or three. Did you buy them at the same place, same time?

A No, I did not.

Q Do you recall over what time period you purchased them?

A Probably about a couple weeks. A week to two.

Q Do you recall about how long before your arrest was that you had purchased the Emerson TVs?

A No, I don't. No, I don't.

Q I am showing you Grand Jury Exhibit 10. Do you recognize the photo copies of receipts on the first page of this exhibit?

A Yes. These are the receipts from the TVs.

Q How about on page 2?

A The same.

Q There are several pages of black and white photographs attached. Do you recognize what is depicted in them?

A Yes.

Q What is it?

A The TVs and UPC bar codes.

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Q Are those what the TVs looked like that you bought.?
A Yes, they are.
Q What did you do with them after buying them?
A I'd take them out to the van.
Q Where did you get the money to buy them?
A From Mr. Volpicelli.
Q Who kept those TVs?
A Mr. Volpicelli.
MS. HIER-JOHNSON: Just for the record, I am passing around Grand Jury Exhibit 10 for the Grand Jurors to review.
Q Did you ever buy any sewing machines?
A Yes, quite a few.
Q Where?
A Wal-Mart. K-Mart.
Q With respect to Wal-Mart sewing machines, did you ever have a chance to return or exchange one?
A Yes.
Q Do you recall what the nature of the return or exchange was?
A Oh, yeah. I bought a futon with it, right, and Mr. Ferrill Volpicelli forgot to take the fake UPC bar code off, so it actually returned for the exact same price we had paid for it.
Q Let me back up for a moment. Do you recall if you

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were the one that bought the sewing machine originally at the reduced price?

A Yes.

Q What happened to the--Well, who put the label on it when you bought it the first time at the reduced price?

A I did.

Q What did you do with it after you bought it?

A I gave it to Ferrill. All the merchandise we ever bought, right, I always put it--

Q In the van?

A --in the van, yes.

Q After giving it to Ferrill, do you recall about how long, how much time passed before you took it back to the store to return?

A It could have been a matter of days or could have been a week.

Q And you have testified that the fake UPC label was not removed?

A Right.

Q So as a result, were you able to make a profit on the return?

A Oh, no. In fact, what he wanted and needed, right, it cost him full price.

Q Was that the futon?

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A That was the futon, yes.

Q Where did you get the money to pay for the futon?

A From Ferrill.

Q After you bought the futon, what did you do with it?

A I gave it to Ferrill.

Q Did there come a time where you tried to go back and buy that same sewing machine again from Wal-Mart?

A Yes.

Q Describe that?

A Ferrill kept an eye on the store, right, for the machine. And when it finally came on the shelf, right, he had me go back and buy it again.

Q Did it still have the original fake label on it?

A Originally adhered to it, yes, it was there.

Q Did you have to put a second label on it?

A No, I did not.

Q When you bought it that second time, do you recall if you bought anything else along with it?

A Yes. I bought a Hewlett Packard printer with it.

Q Do you recall about how much you paid for the sewing machine?

A $99.

Q Do you recall about how much they were really selling for?

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A To be honest with you, I think right around $300.

Q What about the Hewlett Packard printer, do you recall roughly how much you paid for it?

A That I don't.

Q Did the Hewlett Packard printer have a fake label on it?

A Yes, it did.

Q Who made that label?

A Ferrill made the label.

Q Who put it on the printer?

A I did.

Q How many times did you by a sewing machine and printer at the same time?

A Twice.

Q Was it on the same day?

A No, it wasn't.

Q Did both of those transactions occur at local Wal-Mart stores?

A Yes, it did.

Q I am showing you Grand Jury Exhibit 12 which consists of three pages of receipts. Do you recognize these copies of the receipts?

A Yes. They are for the monitor--or the printer and sewing machine.

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Q Now according to these receipts, the printer shows up as a scanner for the purchase price of $79.96. Does that sound about right?

A That would be it, yes.

Q Do you recall about what these printers were selling for?

A That I don't.

Q Do you recall if it was more than $80?

A It was a lot more than $80.

Q Moving on, there are a couple of black and white photographs attached, one of which says Simplicity on a box. Do you recognize what is depicted in that photograph?

A Yes. That is the sawing machine.

Q Is that what the sewing machine looked like that you were buying at reduced prices?

A Yes, it is.

Q Moving on, there is a photograph of two boxes in it that has printers. Do you recognize what is depicted in those photographs?

A Yes. Those are the printers.

Q Do they appear to look the same as the ones that you purchased along with the sewing machine?

A Yes.

MS. HIER-JOHNSON: I will pass around Grand Jury

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Exhibit 12 for your review.

BY MS. HIER-JOHNSON:

Q On the day that you got arrested, October 17th, had you engaged in any of these fraudulant transactions with Mr. Volpicelli?

A The day I was arrested, right, I did one. It was for a bike at Wal-Mart.

Q Do you recall which Wal-Mart?

A Yes, on Damonte.

Q Down in south Reno?

A Yes, it was.

Q Was that bike purchased with a fake UPC label?

A Yes, it was.

Q Where did the label come from?

A From Ferrill.

Q Did you see him make that label?

A No, I did not.

Q Did he already have it made when you guys got together that day?

A Yes.

Q Do you recall about what time you guys got together?

A About 4:00 o'clock in the afternoon.

Q After getting together, did you go pretty much straight over to the Wal-Mart?

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A No. I had to stop off at my parole officer's office and drop off a rent receipt and a copy of my check stub.

Q So you were showing you were maintaining employment and residence?

A Exactly.

Q So after that, did you go over to the Wal-Mart?

A Yes.

Q And who was responsible for placing the label on the bicycle?

A He did it. Ferrill put the label on that bike.

Q What were you doing while he did that?

A Standing outside smoking a cigarette.

Q Who actually purchased the bike?

A I did.

Q How did you get from outside smoking a cigarette in to purchase the bike?

A When he came out to the van where I was smoking, right, he said, okay. He told me what he wanted, where it was at, what kind it was, right, and where the UPC bar code was adhered to.

Q Following those instructions, did you find the bike?

A Yes, I did.

Q Was it different from the others?

A Yeah. It was a Mongoose chrome. The rest were just

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standard mountain bikes all painted. That was the only chrome one there.

Q Did you have to get anybody's assistance to obtain that bike?

A Yes, I did.

Q Describe that.

A I couldn't get it out of the rack, itself, so I had to get one of the floor techs to help me remove it from the rack.

Q Once it was removed from the rack, what did you do with the bike?

A I wheeled it up to the cashier.

Q Did you buy it?

A Yes, I did.

Q Did you do anything with the label that Mr. Volpicelli had placed on the bike during the course of the purchase?

A Yes. I took it off the bike and handed it to the cashier.

Q Why did you do that?

A To make it easy.

Q Do you recall about how much that bike was selling for?

A $249.

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Q Do you recall how much you actually purchased it for?
A $80.
Q Where did you get the money to buy it?
A From Ferrill Volpicelli.
Q What did you do after purchasing the bike?
A I wheeled it out to the van.
Q What happened then?
A As we were leaving the parking lot, that is when they started arresting us. Ferrill wouldn't pull over, right. They tried blocking us in. And Ferrill just kept on driving until finally I got him to pull over.
Q Where did he pull over?
A I think it was like--To be honest, it was somewhere down South Virginia about a mile down from the store.
Q From the Wal-Mart store?
A Yes.
Q Before the officers attempted to pull you over, where were you guys headed?
A We were headed to Lowe's.
Q What was going to occur there?
A I was going to buy another rug.
Q At a fraudulently reduced price?
A Yes. Exactly.
Q Did you guys have plans to go to any other stores

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that afternoon?

A Yes, we did.

Q Where was that?

A Hit the other Wal-Mart at the other end of town and to go to Shopko.

Q Now I am showing you Grand Jury Exhibit 15. Do you recognize the copy of the receipt that is attached on top?

A Yes.

Q How do you recognize that?

A Because it is the bike. It is for $79.96.

Q Does this appear to be the same receipt you received in exchange for the purchase of that bike at Wal-Mart?

A Yes, because I handed the cashier a hundred dollar bill.

Q The second page of this exhibit shows a Toyland price tag of $249.66. Does that look familiar?

A Yes. That is the actual price of the bike.

Q Was that posted back near the area where you took the bike?

A Posted right above the bike.

Q Then there is a color photograph attached to this Exhibit 15. Do you recognize what is depicted in the photograph?

A Yes. That is the bike.

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Q Is that the bike you purchased back on October 17th?

A Yes it is.

MS. HIER-JOHNSON: Pass that around for the Grand Jurors' review.

BY MS. HIER-JOHNSON:

Q Once the officers stop the van, was there any evidence of the criminal activity in the van?

A Yes. It was all there. All the evidence was there in the van.

Q Describe that.

A The lable maker was in the van. All the receipts were in the van. His master sheet was in the van, plus the bike that I just purchased.

Q Do you recall if there was any other merchandise in the van?

A I believe there was a comforter, that I could see anyway.

Q Did you have anything to do with the purchase of that?

A No, I did not.

Q Were you arrested that night?

A Yes, I was.

Q And did you end up being charged with crimes resulting from this scheme and these fraudulent purchases you

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had been involved in with Mr. Volpicelli?

A Yes.

Q During the course of the police investigation, did you end up coooperating with them?

A To the fullest.

Q And how did you cooperate with them?

A By giving them the information they wanted.

Q So you gave them statements?

A Yes, I did.

Q Did those statements include what you guys were doing, where you had been, what you guys were buying?

A Yes. Exactly.

Q What is the status of your charges?

A I pled guilty to a one to ten. Parole and Probation came back with a recommendation of 16 months to 72. And the judge kept it to the 16 and dropped the top end to 48. So I am serving 16 to 48.

Q Month-long sentence?

A Yes.

Q On a felony charge?

A Yes, it is.

Q What is the title of the charge?

A Burglary.

Q Were there some other charges either not pursued or

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dismissed in this plea bargain?

A Yes, there was.

Q Did the plea bargain include cooperating in the prosecution of Mr. Volpicelli?

A Yes, it did.

Q Has anyone suggested or told you what to testify to concerning Mr. Volpicelli's activities?

A No. Nothing.

Q Has anyone asked you for anything other than the truth in exchange for your plea bargain?

A No. Nothing.

Q During the time that you were hanging out with Mr. Volpicelli and committing these crimes, to your knowledge, did he have a job?

A No, he did not. I know for a fact he did not.

MS. HIER-JOHNSON: Thank you. I have no further questions for Mr. Bowman. Do any of the Grand Jurors have questions?

A GRAND JUROR: One question. When you would buy the item then take it out, how long before he would bring it back for exchange or refund?

THE WITNESS: It varied. Sometimes probably back that night or he would wait two or three days.

A GRAND JUROR: Relatively short time?

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THE WITNESS: Roughly pretty short time.

A GRAND JUROR: When you were returning an item, it would have the original label. You would take off the false bar code label?

THE WITNESS: Yes.

A GRAND JUROR: But in that case, your receipt would not match.

THE WITNESS: That's right.

A GRAND JUROR: So how was that handled?

THE WITNESS: It was returned for the most part without a receipt, and either a gift card would be issued or for the most part it was just a gift card, right, or he would have a receipt from a prior purchase for that item at full price.

A GRAND JUROR: A true receipt?

THE WITNESS: Yes.

A GRAND JUROR: The gift cards, you could not get money for those; is that correct?

THE WITNESS: That's correct.

A GRAND JUROR: And would he purchase other items falsely?

THE WITNESS: No.

A GRAND JUROR: With the gift cards?

THE WITNESS: No. When the gift cards were used,

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right, the items bought on the gift card were full value.

A GRAND JUROR: Oh, I see. So you were making some money.

THE WITNESS: He was making money, ma'am. I have no knowledge of that, because he would pay me cash money at the end of each day for what I was doing. The rest it was all on him.

A GRAND JUROR: And the clerks never noticed any discrepancies between the box of the item you were purchasing and what came on the data base?

THE WITNESS: Due to poor training, all they would notice was the dollar amount. That is why I was able to walk out of the Home Depot with a Badger disposal displayed clearly on the screen with a toilet in hand.

THE FOREMAN: Any other questions?

A GRAND JUROR: When you bought the bicycle for $80, you said, didn't the clerk wise up? They didn't call anybody in to check it or recheck it?

THE WITNESS: No.

A GRAND JUROR: They just let you go through?

THE WITNESS: At one point the checker said should we call security in to verify the bike. The cashier said no, so she let me walk on out.

THE FOREMAN: Any other questions?

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It is my duty to--

MS. HIER-JOHNSON: I actually have one follow-up question if I may.

BY MS. HIER-JOHNSON:

Q To your knowledge, I am only interested in what you know personally, to your knowledge, did Mr. Volpicelli return every single item or do you know if he had other means of getting rid of the stuff?

A To my knowledge today, right, is that he used the barter system, on-line system to sell the merchandise.

Q Were you personally involved in that aspect?

A None of it.

MS. HIER-JOHNSON: Thank you. I have no further questions.

THE FOREMAN: Any other questions?

It is my duty to admonish you the proceedings before the Grand Jury are secret.

You may not disclose evidence presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, any information obtained by the Grand Jury or the results of investigation being made by the Grand Jury.

However, you may disclose the above information to the District Attorney for use in the performance of his duties.

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You also may disclose your knowledge concerning the proceedings when directed by a court in connection with judicial proceedings or when otherwise permitted by the court or to your own attorney.

The obligation of secrecy applies until the Court allows the matter to become public record.

A gross misdemeanor and contempt of court may be pursued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes, I do.

MS. HIER-JOHNSON: Thank you.

(Witness excused.)

MS. HIER-JOHNSON: May Ms. Riggs call our next witness?

THE FOREMAN: Please.

MS. RIGGS: State will call detective Armitage, Scott Armitage.

(Whereupon another witness entered the Grand Jury room.)

(Whereupon the witness was sworn by the Foreman.)

MS. RIGGS: Sir, would you please step forward and raise your right hand?

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SCOTT ARMITAGE

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. RIGGS:

Q Would you please state your full name for the record and spell your last name?

A Scott Amritage, A-R-M-I-T-A-G-E.

Q Are you aware that the Grand Jury is currently investigating and considering evidence as it relates to several property crimes alleged against Farrill Volpicelli?

A Yes.

Q Do you understand that you are not a target of this Grand Jury, but you are called as a witness only?

A Yes.

Q Sir, would you please direct your attention to the Grand Jury Foreman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is inquiring into evidence you may have related to charges of burglary, conspiracy, larceny, theft and forgery?

THE WITNESS: Yes, sir.

BY MS. RIGGS:

Q Can you tell me who employs you, please?

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A City of Reno Police Department.

Q What is your position?

A I am a detective with them.

Q Detective Armitage, were you employed with RPD on duty on September 4th of 2001 approximately 11:30 a.m.?

A Yes.

Q Detective Armitage, did you have somebody under surveillance at that time?

A Yes.

Q Who was under surveillance?

A Mr. Volpicelli.

Q Detective, did you see him on that date and time?

A Yes.

Q Do you recall where you saw him?

A Yes. It was inside the Northtowne Wal-Mart.

Q That would be on Northtowne Lane?

A Yes.

Q Can you tell me where approximately in the Northtowne Wal-Mart you observed Mr. Volpicelli?

A I followed him in and out of the store, and he went to the sporting goods area of the store.

Q Do you recall whether he was looking at any particular item in the sporting goods section?

A Yes. He stopped behind the bicycle rack near the golf

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accessories for golf clubs and such, and was perusing the aisles, specifically looking at the end of the metal shelves very closely where the labels and the price tags are.

Q And the labels corresponding to which items?

A It looked like the golf accessories.

Q Detective, how far away were you from Mr. Volpicelli at this time?

A At one point, I was less than ten feet from him.

Q What were you doing?

A I was feigning interest in an extremely small bicycle on a display with four or five inch diameter wheels. It looks like something a clown would ride on in a Circus.

Q You said he was looking at some labels on the end of the shelves?

A Yes, ma'am.

Q What information is on the label on the end of those shelves?

A The bar codes, the price, the information about the products.

Q And specifically are there numbers associated with those bar codes?

A Yes, ma'am.

Q Did he appear to be writing those bar codes down?

A Yes, he was. He had a small piece of paper about

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three by five and he appeared to be copying down, like watching for a few moments, look again, then copy. He did this for a couple of minutes.

Q So approximately how long, two minutes?

A Maybe two minutes, yeah.

Q What did he do when he finished copying down the information?

A He walked to the front of the store and outside.

Q Never purchased anything?

A No, ma'am.

Q Detective, were you also on duty on October 17, 2001 approximately 2:20 p.m.?

A Yes, I was.

Q Did you also have Mr. Volpicelli under surveillance at that time?

A Yes.

Q Do you recall where he was located on that date and time?

A Yes, at the Shopko at 5150 Mae Anne in Reno.

Q Did you also watch him walk into that store?

A Yes.

Q To which part of the store did he go?

A I walked in shortly behind him, and he went in the north pedestrian doors. He walked directly west through the

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doors, and a short distance inside the store he turned right into the bedding aisles.

Q Did you have him under constant surveillance at this time?

A There was broken times where, to keep my distance, where maybe an aisle or a row of shelves were between.

Q Did you see him leave the bedding section at any time?

A Yes.

Q Had he gotten any item out of the bedding?

A Yes. He selected a large clear plastic bag with what appeared to be a comforter inside it.

Q Can you tell me a little bit more about the bag? Did the bag appear to be the packaging that appeared to go along with that?

A It did.

Q Did it have a handle attached to it by chance?

A I believe he had a built-in carrying handle on the top of it.

Q Did you observe Mr. Volpicelli purchase that comforter?

A Yes.

Q Did you--Were you able to get close enough to observe what kind of transaction he made? For instance, were you able

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to see whether he wrote a check, whether he used a credit card?

A I believe he paid cash for it.

Q Where did he go after he made that purchase?

A He exited the store.

Q Now, detective, did you approach anyone at the store after you observed this purchase by Mr. Volpicelli?

A Yes, ma'am. Soon as he left the store, I approached the clerk that conducted the transaction and identified myself.

Q Did you ask the clerk for assistance in trying to figure out how much he had paid for that?

A I did. She closed her register and asked for I believe her supervisor's assistance in actually printing out the previous transaction which was Mr. Volpicelli's transaction.

Q Did you observe the store manager printing out a transaction?

A Yes, I did.

Q Do you recall what the documentation looked like? Did it look like a store receipt?

A Yes. It looked like just a strip of paper, store register receipt.

Q Can you describe the procedure that the store manager

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or clerk used to produce that receipt?

A I am not sure of the authorization he used to access the transaction, but whatever authority he had to do it, he recalled the transaction and reprinted exactly what the transaction was for.

Q Was that from the register where you observed Mr. Volpicelli making that purchase?

A Yes.

Q Detective, do you recall, tell me only if you recall, what brand of comforter was shown on the receipt that that manager produced for you?

A I believe it was Color Vision.

Q Do you recall by any chance the price on that receipt?

A $24.99.

Q Detective, did you observe Mr. Volpicelli go into any other stores that day?

A Yes, I did.

Q What store did you watch him go into?

A Into the Super Wal-Mart, 155 Damonte Parkway in Reno.

Q Sir, do you recall approximately what time that was?

A It was almost or right about 5:00 p.m.

Q When you observed him up at the Shopko store at Mae Anne, did he have anybody with him?

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A No, he was by himself.

Q When you observed him at Super Wal-Mart at 5:00 o'clock, did he have anybody with him?

A Yes, he did. May I clarify?

Q Certainly?

A He entered the store by himself, but he went there with someone else.

Q Were they in a vehicle?

A Yes.

Q Who was driving the vehicle?

A Mr. Volpicelli.

Q What sort of vehicle was it?

A Gold Mazda van.

Q Where did the vehicle park when it got to the Wal-Mart, do you recall?

A No. Just in front of the store. I believe it was near the middle towards the east end of the lot. The store is divided into two halves, a grocery half and general merchandise half. I believe it was closer to the grocery half.

Q Did you watch both individuals get out of the van simultaneously?

A I don't remember both of them getting out. I just remember, because of the proximity of my vehicle to his, if he entered the store, I could follow him.

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Q So did Mr. Volpicelli go into the store?

A Yes, he did.

Q Was he by himself when you observed him going into the store?

A Yes.

Q I am sorry, you maybe answered this, which door did he go in?

A He went in the east doors which are, for lack of a better description, the grocery side of the store.

Q Did he obtain a cart or anything like that?

A He selected a basket and pushed it in the store.

Q Did he appear to have a destination, or was he browsing around the store?

A No, he went directly westbound through the front store right by the registers. When he got past the registers, he turned right and went directly toward the toy section of the store.

Q You had him under surveillance at this time?

A Yes, I did.

Q Was anybody with you or did you have any other detectives with you when you conducted this surveillance?

A Yes.

Q Who would that be?

A Detective Mike Brown.

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Q Were the two of you working in conjunction at this time watching Mr. Volpicelli?

A That's correct. We wouldn't necessarily walk side by side, but try to angulate to keep a constant eye on the person we were watching.

Q To your knowledge, did the two of you working in conjunction have constant visual contact with Mr. Volpicelli during this transaction?

A Yes. Yes.

Q You said he went to the toy section, correct?

A Yes.

Q Did he have any particular interest in any particular item of toy there?

A He went through the toy section where it ends up at the double decker bicycle racks for bicycles for sale.

Q Did he appear to have a particular bike in interest?

A Yeah. He stopped near the corner of the bike rack where I was looking through the bicycles at him. And I could see him stop at a specific spot in the rack.

Q What did he do when he was standing there near the bike rack?

A He was very closely, in one spot in the rack, he appeared to be closely looking at a specific bicycle as well as the tag with the information as far as price and the

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description of the bicycle on the metal rack.

Q Did he have any particular interest on the label--in the label on the bicycle?

A It appeared so. And I was looking through the bicycles, but it appeared he was very closely examining one specific bicycle and the related stickers and prices, yes.

Q Are we talking about the hang tags hanging off the bicycles?

A No, the ones actually stuck on the metal rack. And I don't know if it was the brand name for the bicycle but maybe a sticker on the bicycle as well.

Q What did he do then?

A He, after stopping there for again a couple of minutes, he went north through the store into the electronic section. He selected a box with a cordless phone in it, put it in the basket, went east through the store, cut back southbound, stopped near housewares where skillets, irons, those kinds of things are, stopped there at the end of one aisle, looked at a few items for briefly thirty seconds or so. He pushed the basket up to the very front of the store right at a register between where you can go to one register or the other. There is an opening with the display right in the front. He left the basket literally stopped at a register, left it there, walked through the aisle by the registers and

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into the men's restroom.

Q After he came out of the men's restroom, did he return to purchase his telephone?

A No. He left the store.

Q So he just abandoned the shopping cart there with an item in it and left the store?

A Yes.

Q Did you recognize the person that was with Mr. Volpicelli?

A Not at that time. I did not know who it was.

Q But you saw him close enough to get a good identification of him? I guess that is not the right word. I will withdraw that question.

Did you get a good look at him when he drove up in the van with Mr. Volpicelli?

A No I did not get a good look at the passenger until later.

Q Did you watch the passenger from the MPV van come into the store at all?

A No.

Q Detective, do you know whether Ferrill Volpicelli was arrested on the evening of October 17, 2001?

A Yes.

Q Was this briefly after you observed him in the

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Wal-Mart store?

A Yes, it was.

Q Do you recall who conducted that stop?

A Patrol offers Quan and Cole.

Q Do you recall where the stop was, approximately?

A It was in the 9000 block of South Virginia Street just slightly north of the intersection of Foothill and South Virginia. One side is Foothill. The other side is South Meadows Parkway.

Q Detective, was a search conducted of this vehicle?

A Yes, it was.

Q Before that, was the defendant arrested?

A Yes, he was.

Q Was his passenger arrested?

A Yes, he was.

Q It was after that you searched the vehicle?

A Yes.

Q Why did you search this vehicle?

A We were impounding the vehicle. I was inventorying the contents of the inside.

Q Is that common police procedure to conduct an inventory?

A It is actually a written policy. Any vehicle we impound we are required to inventory the contents.

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Q If I may grab the exhibits here for a second, please. Detective, I am showing you what has bee marked for identification as Grand Jury Exhibit 17. Do you recognize who is depicted in that photograph?

A Yes.

Q Who is that?

A That is Ferrill Volpicelli.

Q Thank you.

MS. RIGGS: May I pass the exhibit around to the Grand Jury?

BY MS. RIGGS:

Q I am showing you what has been marked for identification as Grand Jury Exhibit 2. Can you tell me what is depicted in that photograph?

A This is the Mazda MPV van Mr. Volpicelli was driving.

Q You observed Mr. Volpicelli in that vehicle?

A Yes, ma'am.

Q You also observed his passenger; is that correct?

A Yes, ma'am.

Q Is that the vehicle from which you took the inventory?

A Yes.

MS. RIGGS: Thank you. Sir, would you prefer to pass these among the Grand Jurors or just set it down since they

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have already seen it? Thank you.

BY MS. RIGGS:

Q Detective, I am showing you what has been marked for identification as Grand Jury Exhibit 4. Can you tell me if you recognize that item?

A Yes.

Q Go ahead?

A It is a black zippered case that contained a Brother brand label maker.

Q Where was that located? Was that located inside the van?

A Yes.

Q Where was it located inside the van?

A On the floorboard of the car near the passenger side.

Q Was it in this condition when you found it, that is inside the closed bag?

A Inside the case, yes.

Q Was the bag closed?

A Yes.

Q Now you are looking at the second page of this exhibit?

A Yes.

Q Is this the way the item looked on the inside when you opened it?

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A Yes.

Q And the next page, that is the actual label maker, itself?

A Yes.

Q Thank you. Detective, I am showing you now what has been marked for identification as Grand Jury Exhibit 3. Can you tell me is that an item that you found during your inventory search of this vehicle?

A Yes.

Q What is that item?

A It is a small fold-over accordian folder with numerous pockets inside.

Q If you would turn to the second page of that exhibit, please. That is the back of it, correct?

A Yeah, where you can latch it shut, correct.

Q Next page please. And does this fairly and accurately depict the way that the, I suppose, the accordian folder was configured when you opened it?

A Yes.

Q Sir, what do you see attached to the front of this accordian folder with a paper clip?

A A stack of various UPC bar code labels.

Q Were those on sort of a sticker material?

A Yes.

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Q So was it your impression that sticker material could be pulled off?

A Like on paper so you can peal it off and apply it, yes.

Q Thank you. Turn to the next page, please. Does this fairly and accurately depict the way the accordian folder looked on the inside?

A Yes.

Q What is in the inside of this accordian folder?

A Very many receipts for transactions at various stores throughout the Reno-Sparks area.

Q Now, detective, based on your observations, was there any sort of organization to those?

A Yes, ma'am.

Q Can you describe the organization?

A Extremely organized by store name and location.

Q Alphabetically by store?

A I believe so.

Q Thank you. Next page, please. Again, this is just a different view of the same item, correct?

A Yes.

Q Thank you. Now, detective, I am showing you what is marked for identification Grand Jury Exhibit 5. Can you tell me what that item is, please?

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A It is an eight and a half by eleven piece of paper that I believe was a photocopy, it might be the original, of a piece of paper that I found on the floor of the Mazda van.

Q Whereabouts on the floor did you find that?

A I believe it was on the floor near the front passenger seat.

Q Can you tell me what the title of that document is?

A Titled transpositions.

Q Thank you. Now, detective, I am showing you what has been marked for identification Grand Jury Exhibit 13. I am showing you the photograph associated with this exhibit. Can you tell me what is depicted in that exhibit?

A Yes. It is a light jacket or windbreaker on top of two comforters.

Q Now is one of those comforters inside a shopping bag?

A Yes, it is.

Q Do you recall what store that shopping bag had printed on it? It is not visible in that photograph?

A Yes. It was a Shopko shopping bag.

Q Okay. Now looking at the exhibit on the first page, detective, do you recall finding that in the van?

A Yes.

Q What is it?

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A It is a receipt for purchasing a comforter, $24.99 from the Shopko on South Virginia Street in Reno.

Q That is not the same Shopko you observed him walk into earlier?

A No. It is from the same date but earlier in the day.

Q What time of day is that?

A 11:38 a.m., on the receipt.

Q Again, detective, can you tell me what amount is on the purchase price?

A $24.99 plus tax.

Q Detective, I am now showing you what has been marked for identification Grand Jury Exhibit 15. Can you tell me what is depicted in that photograph, please?

A You bet. It is an aluminum Mongoose fully suspended mountain bike.

Q Can you tell me if that is the bicycle you watched Mr. Volpicelli looking at in Wal-Mart on the 17th?

A I believe there was more than one in the display rack, but this looks just like the one he was looking at, yeah.

Q Thank you. Detective, earlier you said it was your opinion that Mr. Volpicelli was looking at pricing information adjacent to those bicycles, correct?

A Yes.

Q I am showing you in the same exhibit basically a

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display price sticker. Can you tell me, do you recognize this?

A I actually didn't handle this, but I see it is a receipt for what appears to be the same bicycle.

Q Did you observe this price tag or this display price while you were in the bicycle section?

A Probably from a distance, yes. Yes.

Q Thank you.

MS. RIGGS: May I have the Grand Jury's indulgence for a moment?

BY MS. RIGGS:

Q Detective, when you saw these photographs, there were two comforters, correct?

A Yes.

Q Do you recall what brand those comforters actually were?

A Sure.

Q What brand?

A Willow Bay.

Q That is different from a Color Vision?

A That is correct, yes.

Q Did you ever--I will withdraw that. How did these comforters--Did you have an opportunity to go back into Shopko and look at any comforters that were labeled Color Vision?

A I actually returned to the Shopko on Mae Anne on

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October 18th to do a follow-up investigation. The Willow Bay comforters were in their own section actually top to bottom three or four shelves, an entire ten or twelve foot shelf that had nothing but Willow Bay comforters. The Color Vision comforters were on an aisle perpendicular.

Q Regarding the Willow Bay comforters, what sort of packaging did they have?

A Similar packaging, but did not have carrying handles built into the packaging. It was distinctly different than the Willow Bay.

Q The Willow Bay comforter had the plastic bag?

A Similar packaging without the plastic handle built into the packaging.

Q Do you recall seeing the pricing information on the Willow Bay comforters when you went back into Shopko?

A I believe the Willow Bay comforter in question was originally priced at $119 but on sale for $49.

Q So the price on it was $49?

A Yes.

Q And the Color Vision comforter that was purchased at 11:38 in the morning according to Mr. Volpicelli's receipt was for $24.99, correct?

A Correct.

MS. RIGGS: Thank you. I have no further questions

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for detective Armitage. Do any of the Grand Jurors have questions for the detective?

A GRAND JUROR: I have one question. The label maker, was it a standard off the shelf label maker?

THE WITNESS: It appeared to be so. I had actually never seen one like this until I actually handled this one. It appeared to be able to make actual bar code type labels.

A GRAND JUROR: But was it adapted in any way, shape and form or standard off the shelf?

THE WITNESS: Appeared to be off the shelf label maker.

A GRAND JUROR: Were you the only detective on the case?

THE WITNESS: No, sir. There were several detectives working with this case.

A GRAND JUROR: Did you check whether or not there were cashiers in cahoots with this person?

THE WITNESS: It was--I'm not sure how much--how freely I may speak but--

A GRAND JUROR: Yes or no?

THE WITNESS: I did not check, no, sir. But it did not appear in any way, shape or form that was the case as far as the observations we first hand made of Mr. Volpicelli.

THE FOREMAN: Any other questions?

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It is my duty to admonish you the proceedings before the Grand Jury are secret.

You may not disclose evidence presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, any information obtained by the Grand Jury or the results of investigation being made by the Grand Jury.

However, you may disclose the above information to the District Attorney for use in the performance of his duties.

You also may disclose your knowledge concerning the proceedings when directed by a court in connection with judicial proceedings or when otherwise permitted by the Court or to your own attorney.

The obligation of secrecy applies until the Court allows the matter to become public record.

A gross misdemeanor and contempt of court may be pursued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes, sir.

THE FOREMAN: Thank you.

THE WITNESS: Thank you.

(Witness Excused.)

MS. RIGGS: Mr. Foreman, may I call the State's next witness.

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THE FOREMAN: Everybody okay?

A GRAND JUROR: Can we take a couple of minutes?

THE FOREMAN: Can we have about a five minute break.

(Short recess taken.

THE FOREMAN: Back in session.

(Whereupon another witness entered the Grand Jury room.)

(Whereupon the witness was sworn by the Foreman.)

JENNIFER POWELL

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. RIGGS:

Q Would you please state your full name and spell your last name for the record?

A Jennifer Powell, P-O-W-E-L-L.

Q Ms. Powell, are you aware the Grand Jury is currently investigating and considering evidence as it relates to several property crimes alleged against Farrill Volpicelli?

A Yes, ma'am.

Q Do you understand that you are not a target of this Grand Jury, but you are called here as a witness only?

A Yes, ma'am.

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Q Would you please dirrect your attention to the Grand Jury Foreman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is investigating charges of burglary, conspiracy, larceny, theft, forgery?

THE WITNESS: Yes.

BY MS. RIGGS:

Q Ms. Powell, can you tell me where you live?

A Fernley, Nevada.

Q Do you currently work for Wal-Mart?

A Currently I am working for Reno Truss.

Q But you were working for Wal-Mart at Northtowne as a manager?

A Actually, I was working--

Q I apologize. I apologize. Shopko, correct?

A Correct.

Q You worked at Shopko as a cashier?

A Yes.

Q But you don't work there any longer, correct?

A Correct.

Q Were you working for Shopko as a cashier October 17, 2001.

A Yes.

Q Do you recall being on duty at approximately 2:20

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p.m., on that date October 17, 2001?

A Yes.

Q Ms. Powell, do you recall a comforter being purchased at approximately that time?

A Yes.

Q Do you recall what the person looked like who made that purchase?

A Yes. It was a male of mid height. He had dark hair and he was wearing a business suit.

Q Now, regarding the item he purchased, again, can you tell me what he purchased?

A It was a down comforter.

Q Can you tell me how that item was packaged?

A It was in a plastic sealed zippered shut container with a plastic handle.

Q And he paid cash for that purchase or did he give you a credit card?

A Credit card.

Q Did he give you a check, or do you recall?

A I recall he used a credit card.

Q Now, after he made that purchase, do you recall him leaving the store?

A Yes.

Q Did a police detective approach you soon afterward

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regarding that purchase?

A Following a few minutes after, yes.

Q After this police detective contacted you, did you request the assistance of the store manager?

A I got the manager and supervisor, yes, both.

Q Did they produce documents to check the price of that item?

A Yes. They went into the back room and got a duplicate receipt off the computer.

Q Now, Ms. Powell, do you recall what the price was for the item? Do you recall--Withdraw that. Do you recall how much the person who bought the comforter paid for it?

A No, I don't.

Q Ms. Powell, I am showing you a photograph. Can you tell me what is depicted in that photograph, the item in the foreground, please?

A The comforter that he purchased from me.

Q Do you recall whether you put that item into a shopping bag?

A I did not.

Q So you pointed to the comforter on the right, the tan comforter?

A Yes.

Q Ms. Powell, I am also showing you a different

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document. What is the document or a copy of the document that you see here?

A Shopko's register receipts.

Q Again I am showing this witness Grand Jury Exhibit 13. Do you recognize this as a Shopko receipt?

A Yes.

Q However, is that one from your store you worked at?

A It is not, no.

Q How do you know that?

A I worked at store 103 on Mae Anne and McCarran. This is store 77 which would be down on South South Virginia.

Q Can you tell me whether a purchase price for a comforter is listed in that receipt?

A Could you please repeat that?

Q Yes. Can you tell me whether a comforter is listed as an item purchased in this receipt?

A Yes, it was.

Q Can you tell me what appears to be the purchase price of the comforter?

A $24.99.

Q And do you have any reason to believe that this is not an authentic Shopko receipt?

A Could you rephrase that for me?

Q Sure. Do you recognize this as generally being a

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Shopko receipt?

A Yes.

Q Thank you.

MS. RIGGS: Thank you I have no further questions for Ms. Powell. Do any of the Grand Jurors have questions?

THE FOREMAN: No questions? It is my duty to admonish you the proceedings before the Grand Jury are secret.

You may not disclose evidence presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, any information obtained by the Grand Jury or the results of investigation being made by the Grand Jury.

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You also may disclose your knowledge concerning the proceedings when directed by a court in connection with judicial proceedings or when otherwise permitted by the court or to your own attorney.

The obligation of secrecy applies until the Court allows the matter to become public record.

A gross misdemeanor and contempt of court may be pursued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes.

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MS. RIGGS: May Ms. Hier-Johnson call our next witness?

THE FOREMAN: Yes.

A GRAND JUROR: Mr. Foreman, can I have a couple of minutes? I want this window closed. It is so noisy up here, okay. It is not--This is so noisy I do not hear half the things being said. There is noise coming from the window and so forth.

A GRAND JUROR: He can move up.

THE FOREMAN: That would be the best thing, to move up closer.

A GRAND JUROR: No, I feel comfortable here. Moving up here does not change the noise from above. Either it is very noisy or it is a very noisy room. I have got a splitting headache. That window does not need to be open. It is air conditioned up here. Because I cannot stand it any longer, okay. I request we close this window.

MS. HIER-JOHNSON: For your information, I appeared here a couple of weeks ago and it was so hot in here, I asked Linda to get the air conditioning working.

THE FOREMAN: Please call your next witness.

MS. HIER-JOHNSON: Sergeant Della.

THE FOREMAN: Please raise your right hand.

(Whereupon the witness was sworn by the Foreman.)

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DAVID DELLA

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. HIER-JOHNSON:

Q Please state your name for the record and spell your last name?

A David Della, D-E-L-L-A.

Q Are you aware that the Grand Jury is currently investigating and considering evidence as it relates to several property crimes alleged against Ferrill Volpicelli?

A Yes, I am.

Q Do you understand you are not a target of this Grand Jury but called here as a witness only?

A Yes, I do.

Q Please direct your attention to the Grand Jury Foreman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is inquiring into evidence you may have related to charges of burglary, conspiracy to commit burglary, larceny, theft, forgery?

THE WITNESS: Yes, I am

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BY MS. HIER-JOHNSON:

Q What is your occupation?

A I am a sergeant with the Reno Police Department.

Q How long have you been employed by the Reno Police Department?

A One month short of eighteen years.

Q How long have you been a sergeant?

A I have been a sergeant for 7 years.

Q What is your current assignment?

A I am currently assigned to the Detective Division in charge of a unit.

Q What is the purpose of the unit to which you are assigned?

A It is to monitor and surveill persons suspected of criminal activity.

Q When conducting surveillance, how are the detectives in your unit generally dressed?

A Normally it is going to be something that anyone--you might wear everyday. That is the whole idea, to blend into society. Summer we may wear shorts or jeans. It is never in uniform.

Q At some point in 2001 did you become involved in an investigation to determine whether Farrill Volpicelli was involved in criminal activity?

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A Yes, we did.

Q Approximately at what point did your unit become involved in this investigation?

A I believe I assigned the initial information to detective Thomas in mid to late Summer of 2001.

Q After making that assignment, along with members of your unit, did you have the opportunity to surveill Mr. Ferrill Volpicelli on a number of occasions?

A On several occasions, yes.

Q I would like to draw your attention to September 26, 2001. Were you participating in a surveillance of Mr. Volpicelli in the morning around 8:00 or 9:00 o'clock?

A Yes.

Q Where?

A It would have been the Reno-Sparks area.

Q Here in Washoe County?

A Yes.

Q Did you have the opportunity to follow Mr. Volpicelli to the area of 30 East Victorian Avenue in Sparks?

A Yes, I did.

Q Was there a business located at that address?

A There is.

Q What kind of business?

A It is one of those mini storage rental complexes.

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Q Do you happen to recall the name of it?

A I don't.

Q Where is that located in proximity to Sierra Sid's?

A It would be--It is to the west on the same street that comes away from there. I would guess it may be 800 yards.

Q When Mr. Volpicelli was surveilled to that location, what did you see him do there?

A I saw him pull into--through the gate and into the actual mini storage complex. And there is a little restaurant nextdoor to that I pulled into initially. Then I gave him a little bit of time to get in and see where he was going. I drove across the front, and I could see his van parked next to an open garage door. He appeared to be moving boxes in and out of there.

Q Approximately how long did you observe Mr. Volpicelli at that location?

A Probably close to twenty to twenty-five minutes.

Q Were you able, during the course of your surveillance, were you able to pinpoint a particular storage unit and convey that information to detective Thomas?

A Yes, I did.

Q On that date, was he assigned to maintain a log of surveillance activity?

A We normally keep surveillance logs when we are

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running extended surveillances continually on these to monitor what we have so we don't have to try to remember it all later when we are doing our reports. He was assigned and would have done one.

Q As far as the vehicle you saw Mr. Volpicelli unloading on that date, can you describe it?

A On that day it was the Mazda MPV van, light colored. I don't recall the plate. California plates, I believe, registered to his brother.

Q I would like to move forward to October 17, 2001. Were you also participating in a surveillance of Mr. Volpicelli late that afternoon?

A Yes, we were.

Q What location?

A Again, several spots of Reno and Sparks. And on that day, we went down south to the Wal-Mart on Damonte Ranch Parkway. After he went downtown and picked somebody else up on Third Street, then he went down there.

Q Did you actually see him pick up the person on Third Street?

A I saw him stop and pick somebody up. I couldn't tell who at the time.

Q Was that person later identified as Brett Bowman?

A Yes, he was.

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Q During the course of your surveillance where you ended up at the Wal-Mart on Damonte Ranch Parkway, did you have any Federal officers that were accompanying you on that date?

A Federal officer Barbara Hunt was working with us on that day. She was riding with me in my vehicle.

Q To your knowledge, was she conducting an investigation parallel to yours on Mr. Volpicelli?

A Yes, she was.

Q At some point at the Wal-Mart, did you follow Brett Bowman into the Wal-Mart?

A Yes.

Q Where did you see him go?

A He went in the west doors of the Wal-Mart, and when officer Hunt and I went in, he was at the bicycle rack where they have two rows of bicycles, and he had a clerk there helping him. And it was kind of unusual. They were taking a bike off the rack which isn't--Normally, any bike I have bought for my children or seen bought, you grab a tag, take it to the register, they get you another bike that matches so they don't have to assemble all these. They can keep them in the box in the back.

Q He was able to buy an assembled one not in the box?

A Correct.

Q Did it appear to be the display model, to your

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observation?

A It was.

Q What did you see Mr. Bowman do with the bike after gaining the assistance of the clerk?

A He started wheeling it toward the check-out, cash-out stand, and he went to the very first one he could have come to. There is a whole row of them. He went to the furthest west one probably 40 feet from the bicycle rack.

Q What did you see him do there?

A He paid for the bike. He went up, handed the clerk a tag, paid for the bicycle. At that point, I went back to the bicycle rack, I could see both from where I was, to look and see exactly what spot he got it out of. I watched him pay for the bicycle and wheel it out the front door. I went to the clerk, asked how much he paid for that bicycle.

Q After obtaining that information, what did you do next?

A I had her print out a receipt. I radioed to the unit outside. We went outside and saw he just paid almost $200 less than what that bike sold for.

Q Showing you Exhibit 15 which consists of a Wal-Mart receipt, a Toyland price tag and a color photograph, do you recognize what is depicted in those photos or in that entire exhibit?

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A I do. May I explain?

Q Please explain.

A The bicycle is the Mongoose mountain bike he had the clerk grab off the stand and wheeled up and paid for. This is the actual one here. I know that, because after the stop and arrest of the defendant, we took this right out of the van after we watched him load it up. This would be the tag I was explaining earlier. This is the tag I was explaining when you go up there to buy a bicycle, there is like a whole pack of these tags. You would take one up to the register. This is one that is for that specific bicycle. It is the Mongoose. I believe their model calls it an XR 350. It was definitely a Mongoose they took off the stand, and this receipt depicts the amount that Mr. Bowman paid for the bicycle to the clerk when I witnessed him, $74.96, with tax, $80.39, much less than the $249.66 the bike was supposed to sell for.

Q Now you testified that Mr. Volpicelli and Mr. Bowman were stopped and arrested after this transaction was observed?

A Yes.

Q At some point after that arrest, were you detectives involved in the search of that storage unit back on Victorian Avenue where you had seen Mr. Volpicelli on September 26th?

A We were.

Q Were you present at the time the search began of the

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storage unit?

A Yes, I was. Again, officer Hunt was with me.

Q Which one of your detectives were primarily involved in the search of that unit?

A I believe with detective Thomas being the case agent, he would have had primary responsibility for it.

Q Would that include obtaining judicial approval, if necessary?

A Yes.

Q Was detective Thomas also responsible for following up on items located within that unit and contacting stores to try to identify property and determine whether or not it was unlawfully procured?

A He would have been the primary one responsible. Might have had other detectives. All the responsibilty would fall back on him as the case agent.

Q Then I will ask him those questions. Thank you.

MS. HIER-JOHNSON: I have no further questions. Does anybody have any questions for sergeant Della?

THE FOREMAN: Any questions? It is my duty to admonish you the proceedings before the Grand Jury are secret.

You may not disclose evidence presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, any information obtained by the Grand Jury or

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the results of the investigation being made by the Grand Jury.

However, you may disclose the above information to the District Attorney for use in the performance of his duties.

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The obligation of secrecy applies until the court allows the matter to become public record.

A gross misdemeanor and contempt of court may be pursued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes, I do.

(Witness excused.)

MS. HIER-JOHNSON: May the State call it's next witness?

THE FOREMAN: Yes, please.

(Whereupon the witness was sworn by the Foreman.)

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LARRY LODGE

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. HIER-JOHNSON:

Q Please state your name for the record and spell your last name?

A Larry Lodge, L-O-D-G-E.

Q Are you aware the Grand Jury is currently investigating and considering evidence as it relates to several property crimes alleged against Ferrill Joseph Volpicelli?

A Yes, I am.

Q Please direct your attention to the Grand Jury Foreman seated to your left?

THE FOREMAN: Are yo aware the Grand Jury is inquiring into evidence you may have relating to charges of burglary, conspiracy to commit burglary, larceny, theft, forgery and unlawful possession of counterfeiting instruments?

THE WITNESS: Yes, sir.

BY MS. HIER-JOHNSON:

Q What is your occupation?

A I am a detective for the Washoe County Sheriff's Office.

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Q How long have you been employed by the Sheriff's Office as a law enforcement officer?

A Approximately eighteen years.

Q Are you currently assigned to sergeant Della's special detective unit at the Reno Police Department?

A Yes, I am.

Q How long have you been assigned to that unit?

A It will be four years in September.

Q If I understand correctly, the purpose of that unit is to investigate people who are suspected of being involved in criminal activity; is that right?

A That's correct.

Q Now when you are out conducting surveillance and watching people you are investigating, how are you generally dressed?

A It actually depends on who we are watching. We will dress according to the environment or element we are going to be in. This is very typical of the days attire.

Q What you are wearing today?

A Yes, ma'am.

Q Are you on duty now?

A Yes, I am.

Q Now, back in 2001, did you participate in an investigation to determine whether Farrill Volpicelli was

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involved in criminal activity?

A Yes, I did.

Q Do you recall about when you got involved in that investigation?

A It would be late August, September, that general area.

Q Did you have the opportunity to surveill Mr. Volpicelli on a number of occasions?

A Yes, ma'am.

Q I would like to draw your attention to September 11th, 2001. Were you surveilling Mr. Volpicelli on that date?

A Yes, we were.

Q In what general area?

A It would be the Summit Ridge area, West McCarran Boulevard.

Q Here in Reno, Washoe County, Nevada?

A Yes.

Q Now around noontime, did you see Mr. Volpicelli go into the Home Depot up on Summit Ridge Court?

A Yes.

Q Did you follow him in?

A Yes, I did.

Q What did you observe him doing there?

A When he first went in, he returned a toolbox, a

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yellow, I believe it was a plastic tool box probably about eighteen inches long by twelve inches wide he had taken out of the back of his vehicle. Then he began to walk around the store.

Q Did you follow him as he walked around the store?

A Yes.

Q What did you see him do?

A At one point, I lost visual contact with Mr. Volpicelli, and I came around and turned down an aisle. I am not sure what aisle we were on at this time, but it would have been in the right rear section of Home Depot. And as I turned on to the corner, Mr. Volpicelli was there directly in front of me, probably twenty feet in front of me. So rather than try to be obvious and stop and turn around, I just proceeded to walk behind him down the aisle.

Q What, if anything, did you observe as you walked behind him?

A He was standing looking at some item on a shelf. Again, I don't recall exactly what item he was looking at. I was paying more attention to him. He had a note pad and pen in his hand. He was bending over looking at the price tags that were on the shelving units of the Home Depot item, and he was writing numbers down on the pad.

Q After walking past him, what did you do?

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A I continued past him, remained in Home Depot and kept observing him walk up and down different aisles. He would repeat the same activity. He would stop, look at an item, be transribing some type of numbers on to the note pad he had with him. This went on for some period of time.

Q At some point did you see him exit the store?

A Yes, he did.

Q Did you see him buy anything?

A No, he did not.

Q And you testified that you had seen the vehicle he came out with that toolbox to return to. Do you recall what kind of vehicle it was?

A I believe it was a van. I am not sure of the make or model, but it was a blue like Astro minivan type vehicle.

Q Were there other detectives with you while you were conducting your surveillance of Mr. Volpicelli in Home Depot?

A Detective Mike Brown from Sparks Police Department also assigned to our unit.

MS. HIER-JOHNSON: Thank you. I have no further questions for detective Lodge. Do any of the Grand Jurors have questions?

THE FOREMAN: Any of the jurors have questions?

It is my duty to admonish you that the proceedings before the Grand Jury are secret.

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THE WITNESS: Yes, I do. Thank you.

(Witness Excused.)

(Whereupon another witness entered the Grand Jury room.)

(Whereupon the witness was sworn by the Foreman.)

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MICHAEL BROWN

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. HIER-JOHNSON:

Q Please state your name for the record and spell your last name?

A Michael Brown, B-R-O-W-N.

Q Are you aware that the Grand Jury is currently investigating and considering evidence as it relates to several property crimes alleged against Ferrill Joseph Volpicelli?

A Yes, I am.

Q Please direct your attention to the Grand Jury Foreman seated next to you.

THE FOREMAN: Are you aware the Grand Jury is investigating charges of burglary and related crimes?

THE WITNESS: Yes, sir.

BY MS. HIER-JOHNSON:

Q What is your occupation?

A Police detective.

Q With what agency?

A Sparks Police Department.

Q How long have you been employed in a law enforcement

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capacity by Sparks Police Department?

A Twelve years.

Q Are you currently assigned to sergeant Della's special detective unit at the Reno Police Department?

A Yes, I am.

Q How long have you been in that assignment?

A Two years.

Q And do your duties and reponsibilities in this current assignment include investigating and surveilling people who are suspected of being involved in criminal activity?

A Yes, they do.

Q When you are conducting surveillance, are you typically dressed in plain clothes as you appear here today?

A Yes.

Q Are you on duty now?

A Yes.

Q Back in the latter part of the Summer, 2001, did you become involved in an investigation to determine whether or not Ferrill Volpicelli was involved in criminal activity?

A Yes, I did.

Q About when did you become involved in that investigation?

A Early September of 2001.

Q Did you have the opportunity to surveill him on a

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number of occasions in that investigation?

A Yes.

Q Drawing your attention to September 28, 2001, were you on duty that day?

A Yes. Oh, no, I was not.

Q It was a day off?

A Yes.

Q Were you out shopping?

A Yes.

Q While you were out, did you happen to see Mr. Volpicelli?

A Yes, I did.

Q Where did you see him?

A At Home Depot on Northtowne Lane in Reno.

Q As a result of observing him there, did you contact your supervisor and go on duty status?

A Yes, I did.

Q What happened from there?

A I followed him away from the Home Depot where he ultimately wound up at the Wal-Mart on Redfield Parkway.

Q Is that the one that has the technical address of 4855 Kietzke Lane in Reno?

A Yes.

Q That would have been shortly after noon?

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A Approximately.

Q Did you follow him into that Wal-Mart?

A Yes, I did.

Q Was anybody with you?

A Detective Larry Lodge was with me inside the store, but we were not together.

Q Once you entered the store, what did you observe Mr. Volpicelli do?

A I watched him walk to the back of the store where car stereos and car alarms are sold. And he was writing down numbers while he was looking at some of the items that were on the shelves.

Q Approximately how long did you observe him there in the Wal-Mart?

A Five minutes.

Q What did he do after copying down information in that section?

A He just began walking around the store, appeared to be shopping.

Q Did you see him purchase anything?

A No.

Q Did you see him exit the store?

A Yes.

Q Was that the extent of your surveillance of Mr.

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Volpicelli on September 28th?

A Yes, it was.

MS. HIER-JOHNSON: Thank you. I have no further questions. Do any of the Grand Jurors have any questions for detective Brown?

THE FOREMAN: Are there any questions?

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THE WITNESS: Yes, I do.

THE FOREMAN: Thank you.

(Witness excused.)

MS. HIER-JOHNSON: May Ms. Riggs call our next witness?

THE FOREMAN: Please do.

MS. RIGGS: State will call David Ellis.

(Whereupon another witness entered the Grand Jury room.)

MS. RIGGS: Sir, would you step forward and be sworn, please

(Whereupon the witness was sworn by the Foreman.)

JOHN DAVID ELLIS, JR.

Called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. RIGGS:

Q Sir, would you please state your full name and spell your last name for the record?

A John David Ellis, Jr., E-L-L-I-S.

Q Sir, are you aware that the Grand Jury is currently investigating and considering evidence as it is related to several property crimes alleged against Ferrill Volpicelli?

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A Yes.

Q Do you understand that you are not a target of this Grand Jury but you are called here as a witness only?

A Yes, ma'am.

Q Would you please direct your attention to the Grand Jury Foreman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is investigating charges of burglary and related crimes?

THE WITNESS: Yes.

BY MS. RIGGS:

Q Mr. Ellis, can you tell me who employs you?

A Lowe's Home Improvement Warehouse.

Q What is your position with Lowe's?

A I am a district loss prevention manager.

Q What facility do you work out of? What town do you work in?

A Currently in southern California, in Irvine, California.

Q As of November 6th of 2000, can you tell me where you were mainly located?

A Northern California, Vacaville, but I covered all of the stores in northern California and northern Nevada.

Q Is the Lowe's on Kietzke Lane in Reno one of the stores that you were responsible for loss management?

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A Yes, ma'am.

Q Sir, on November 6th of 2001, were you in the Lowe's store in Reno?

A Yes, ma'am.

Q Sir, were you contacted by Reno police detective Reed Thomas while you were there that day?

A Yes, ma'am.

Q Do you recall what detective Thomas was there to talk to you about?

A Detective Thomas brought in one of our package rugs that we sell. And he was trying to inquire as to why, you know, whether or not the purchase that was made for a $500, $499 rug was purchased at $74. He wanted to validate the rug and video tape.

Q Thank you. Now, sir, did detective Thomas bring that rug in with him?

A Yes, ma'am.

Q Showing you what has been marked for identification as Grand Jury Exhibit 8, on page 3, can you tell me what is depicted in that photogrpah?

A It is one of our package rugs in the package, the wrapping it comes in.

Q Does it fairly and accuratelly depict the rug as it was presented to you by detective Thomas?

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A Yes, ma'am.

Q I ask you keep this exhibit in front of you, please. Sir, when the rug was presented to you, did you observe more than one UPC code label on it?

A Yes, ma'am. In fact, there were two UPC codes on it.

Q Before we go on, Mr. Ellis, can you briefly describe to the Grand Jury what a UPC code is for? What does Lowe's use it for?

A UPC code or Universal Product Code is what it stands for is used by retailers to identify specific merchandise by their location, the numbers recorded, electronical data base businesses. When you scan the item, it comes up the particular item it is suppose to be.

Q The Lowe's data base?

A Yes.

Q Are all the UPC codes you use particular to Lowe's merchandise?

A Absolutely.

Q Now you discussed whether there were two UPC codes on this particular rug. Can you tell me how they were arranged on this rug?

A I am trying to be specific here. I said there were two. Technically, there are three, okay. There is one UPC on the exterior of the package. That would normally have been

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scanned by the cashier. Under that was another UPC code under that, and then within the actual package rug, itself, actually stapled to it, we have another code stapled to the rug, itself.

Q So there was a UPC code overlaid over another UPC code with yet another one inside the rug?

A Correct.

Q Are you familiar with the format Lowe's uses for their UPC labels?

A Yes, ma'am.

Q Did you form an opinion as to whether the UPC code on the outside was, the one that was stuck on the outside of the rug, was one Lowe's normally used?

A It wasn't one we would use. It was just a generic bar code, whereas our bar codes tend to have all the numbers along the bottom, a description of the product, that kind of thing.

Q Now did you happen to scan the bar codes that you observed on the rug?

A Yes, ma'am.

Q Can you tell me what item came up from that data base when you scanned the first UPC code, talking about the one on the outside.

A Came up as another $74 rug.

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Q Did you take that label off and scan it a second time?

A Yes, ma'am.

Q What did that bar code result in as far as the price?

A That was a $499 rug.

Q Again, showing you Grand Jury Exhibit 8, do you recognize this document?

A A little project estimate we would use simply to capture, if we were setting up for a customer a project, we could give them kind of a total what the project is. In this case, we scanned the two separate UPCs into that project so we could give that to the detective.

Q You produced this, correct?

A Yes.

Q It indicates a five by eight tuft wool ivory rug, $499?

A Yes.

Q Is that the actual Lowe's actual retail price of that carpet?

A Yes, ma'am.

Q What does the second price indicate there?

A That was the second UPC, $74 for a Roundabout Mowhawk rug.

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Q I am showing you the first page of this exhibit. Do you recognize what is depicted on this page?

A There is a copy of our Lowe's journal tape that shows the transaction done at a register. Each one successfully in the transaction number.

Q In other words, is this a receipt for that purchase?

A Yes.

Q What does--Was this receipt presented to you by detective Thomas?

A Yes, it was.

Q What does the price indicate that the purchaser paid for whatever item they bought?

A Paid for the rug at $74.

Q Is the item noted in the receipt?

A Yes, it is.

Q What is the item noted in the receipt.

A The item noted is for the $74 rug, not the description of the $499 rug.

Q Mr. Ellis, as the product loss person at Lowe's, are you familiar with the inventory that Lowe's carries?

A Absolutely.

Q You are familiar with the price Lowe's assesses to each of those items, correct?

A Absolutely.

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Q Most items?

A Absolutely.

Q The item you observed that detective Thomas brought in, the rug, five by eight rug, to your knowledge, would Lowe's generally sell that rug for $74?

A No, ma'am.

Q Does that seem to you to be an extremely discounted price for that item?

A We will generally go below the cost of a product. Retail may be $499, but cost may be $464, so we may go down to $400. We generally don't discount more than 75 percent of the price as a rule on any product. Typically that would certainly be an unusual purchase price.

Q Can you tell me what the date and time was of the purchase noted on that receipt?

A Purchased on October the 5th of 2001 at 7:45 in the evening.

Q Mr. Ellis, do you have the ability to review video tapes of purchases that have been made by the security cameras at Lowe's?

A Yes, ma'am.

Q Were you able to pull a video tape regarding this purchase?

A Yes, ma'am.

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Q Were you able to see in a security video tape this purchase being made?

A Absolutely, yes, ma'am.

Q Can you describe the person who was making the purchase of the the video tape, male or female?

A Certainly. It was a male subject. I had previously not had the opportunity to ever see this person before. He was identified by detective Thomas as the defendant.

Q We will move on. Based on the price that is noted, pardon me, the time that is noted on the receipt and--By the way, when you are looking at videos, is there a time stamp on that video?

A Absolutely.

Q The time stamp on the video corresponds to the time noted on the receipt?

A Absolutely.

Q Is it done for a reason?

A So we can capture that information, sure.

Q Thank you.

MS. RIGGS: I have no further questions for Mr. Ellis. Do any of the Grand Jurors have any questions?

THE FOREMAN: It is my duty to admonish you the proceedings before the Grand Jury are secret.

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Jury, any event occurring or statement made in the presence of the Grand Jury, any information obtained by the Grand Jury or the results of the investigation being made by the Grand Jury.

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A gross misdemeanor and contempt of court may be pursued if your obligation of secrecy is followed. Do you understand?

THE WITNESS: Yes, sir. Thank you.

(Witness excused.)

(Whereupon another witness entered the Grand Jury room.)

(Whereupon the witness was sworn by the Foreman.)

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MATTHEW CARTER

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. RIGGS:

Q Sir, would you please state your full name for the record and spell your last name?

A Matthew Carter, C-A-R-T-E-R.

Q Mr. Carter, are you aware the Grand Jury is currently investigating and considering evidence as it is related to several property crimes alleged against Ferrill Volpicelli?

A Yes.

Q Sir, do you understand you are not a target of this Grand Jury but are here as a witness only?

A Yes.

Q Sir, would you please direct your attention to the Grand Jury Foreman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is investigating charges of burglary, larceny and related crimes?

THE WITNESS: Yes.

BY MS. RIGGS:

Q Sir, who employs you?

A Wal-Mart Stores, Incorporated.

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Q What is your position at Wal-Mart?

A I am a store manager.

Q Tell me which store you manage?

A The Northtowne Reno store.

Q Mr. Carter, can you tell me if you were managing the North Reno store on January 28, 2002?

A Yes, I was.

Q Do you recall being contacted by Reno police detectives regarding UPC codes on that date?

A Yes, I do.

Q Do you recall generally what that discussion involved?

A Yes, I do.

Q What was the general gist of the discussion?

A In general, detective Thomas was inquiring about whether we could do some research for him on some UPC, Universal Price Codes, bar codes, to see if they were actually legitimate numbers coming up in our computer and register system.

Q Did detective Thomas bring in any item?

A Yes, he did.

Q What did he bring in with him?

A He brought in an Panasonic I believe DVD player as I recall. It has been a period of time.

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Q I am showing you what has been marked for identification as Grand Jury Exhibit 7. Do you recognize what is depicted in the Polaroid photograph in this exhibit?

A Yes, it is a home theater system, Panasonic DVD stereo system.

Q Does that fairly and accurately depict the item detective Thomas showed you on that date and time?

A Yes, it does.

Q Thank you. Now were there two separate bar codes applied to this?

A Yes there were at the time he brought the item in.

Q The item is packaged in its original package, correct?

A Yes, it was. To my knowledge, yes it is.

Q How did you check the validity of those bar codes?

A I actually took the item up to our customer return desk and scanned those through our register system to check whether the items were active and whether they were valid items in our computer system.

Q When you say you did a scan, does that scan produce any document?

A Yes, it does, a register receipt, obviously, for a regular sales transaction. It would be a register receipt. I believe at that time we produced what we called a void

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receipt. I was able to produce that and make a copy for the detective.

Q Now the two UPC bar codes that you observed on this package, were they the same?

A No. No. They were different.

MS. RIGGS: Can we have an additional exhibit marked for identification, please? Thank you.

BY MS. RIGGS:

Q Mr. Carter, I am showing you what has been marked for identification as Grand Jury Exhibit 18. Do you recognize this as the document or the receipt that was produced as a result of your scan?

A Yes, I do.

Q Can you tell me what item came up on your tape when you scanned the first bar code?

A Three CD Emerson stereo system.

Q The item it was applied to was not an Emerson?

A No, it was a Panasonic stereo system.

Q Tell me what price is indicated by the receipt?

A $69.94.

Q That is the value or the regular price for the Emerson?

A Yes, for the Emerson item.

Q Tell me what item came up when you scanned it?

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A Five DVD stereo system. That would be the Panasonic, the box that was actually presented for $477.88.

Q So there is approximately a four hundred dollar price difference between these two?

A $499, yes.

Q The second bar code you scanned was the valid one, correct?

A Correct. Correct.

Q Mr. Danielson, being the manager of the Wal-Mart store, you are familiar with your inventory and in general with what prices are charged for particular items, correct?

A Yes.

Q Would this Panasonic DVD home theater system ever sell at Wal-Mart for $70?

A Absolutely, not no.

Q Why is that?

A It is a very advanced system. Its brand name Panasonic is very high tech. And the amount of equipment included in this particular package, the Panasonic system value is approximately $500. It wouldn't be $70.

MS. RIGGS: Thank you. I have no further questions for Mr. Carter.

MS. HIER-JOHNSON: May I have your indulgence?

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BY MS. RIGGS:

Q Now, Mr. Danielson-- Mr. Ellis, I will direct your attention again to the Wal-Mart receipt. We are looking at the three CD Emerson line, particularly the item that was scanned with the first UPC bar code. You will note there is a number next to that. Can you tell me what that number is?

A UPC number from the actual bar code that is on the product.

Q Now if we were to look at the actual bar code that was on the product, would it match that number exactly?

A No. Very often the bar code on a product is a series of twelve numbers, and our system only recognizes ten numbers. It generally drops the first digit called the check digit and the last digit on the bar code. You only have ten digits. On the product, you have twelve.

Q The Wal-Mart receipts indicate a trunkcated bar code, correct?

A Correct.

MS. RIGGS: I have no further questions. Do any of the Grand Jurors have any questions.

A GRAND JUROR: Do you have any way to find out or do you know where the first label on top, where that label came from? Was it printed off-site? Was it one your company transferred from another product? Where did that bar code come

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from?

THE WITNESS: I asked that same question of the detective. He told me--

MS. RIGGS: I am going to have to stop that question because this is hearsay. It is not admissible in these proceedings.

THE WITNESS: I can't say specifically. I don't know have direct knowledge of that.

THE FOREMAN: Any other questions?

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A gross misdemeanor and contempt of court may be pursued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes, I do.

(Witness excused.)

MS. RIGGS: May Ms. Hier-Johnson call our final witness?

THE FOREMAN: Yes. Just one minute, though. The copy marked original ends here. It doesn't have this page on it.

MS. HIER-JOHNSON: I am sorry?

THE FOREMAN: I lack that page.

MS. HIER-JOHNSON: Mr. Foreman, it appears in the copying process we lost the final page that should be attached to the Indictment which lists the witnesses presented before the Grand Jury this morning. I have an extra copy of that page, so I am going to affix that to the original. And at this time, since we are dealing with this issue, if I may, I would like to amend that page by interlineation. We found out this morning that an anticipated witness from Wal-Mart named Gregory Danielson who appears on that page was not available to appear and, therefore, his manager, Mr. Carter, appeared in his stead. So at line 8 of the witness page of the proposed Indictment, I am striking Gregory Danielson's name and just

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above it I am handwriting Matt Carter.

May I call my final witness?

THE FOREMAN: Please call your final witness.

(Whereupon another witness entered the Grand Jury room.)

THE FOREMAN: Please raise your right hand.

(Whereupon the witness was sworn by the Foreman.)

REED SCOTT THOMAS

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MS. HIER-JOHNSON:

Q Please state your name for the record and spell your last name?

A Read Scott Thomas, last of T-H-O-M-A-S.

Q Are you aware the Grand Jury is currently investigating and considering evidence as it relates to crimes alleged against Ferrill Joseph Volpicelli?

A Yes.

Q Please direct your attention to the Grand Jury Foreman seated to your left.

THE FOREMAN: Are you aware the Grand Jury is investigating charges of burglary, larceny and related crimes?

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THE WITNESS: Yes.

BY MS. HIER-JOHNSON:

Q What is your occupation?

A I am a detective with Reno Police Department.

Q How long have you been employed as a law-enforcement officer by the Reno Police Department?

A It will be 9 years in August.

Q Are you currently assigned to sergeant Della's special unit of detectives?

A Yes, I am.

Q How long have you been assigned to his unit?

A About three and a half years.

Q If I understand correctly, your duties and reponsibilities include investigating or surveilling people suspected of possibly being involved in criminal activity?

A That's correct.

Q When you typically conduct your surveillance, are you usually dressed how you appear here today?

A Usually a little worse, but, yes.

Q Are you on duty now?

A Yes, I am.

Q Back in the latter part of the Summer of 2001, did you become involved in an investigation to determine whether or not Ferrill Joseph Volpicelli was involved in some criminal

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activity?

A Yes.

Q Was there a case agent on the investigation of Mr. Volpicelli in 2001?

A Yes, there was. That was me.

Q What are your duties and responsibilities as a case agent?

A Basically overseeing the entire investigation, you know, police reports, perform follow-ups, overseeing the evidence, go to court when necessary, replying to requests from the D.A.'s office for any follow-up that may need to be done. Statements, talking to witnesses and other people who are involved in the case, that type of thing.

Q Once you opened an investigation on Mr. Volpicelli that Summer, did you have an opportunity to surveill him on a number of occasions?

A Yes.

Q Can you estimate roughly how many times?

A Eight times.

Q Were there other undercover detectives involved in those surveillances as well?

A Every time.

Q During the 2001 surveillance on Mr. Volpicelli, did you ever see any indication that he was employed?

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A Physically watching him go to a place of employment, no, it didn't appear to us he was employed. He was doing a lot of driving store to store but didn't seem to go to, for instance, show up at work at 8:00 and leave at 5:00. It wasn't anything we ever saw.

Q I would like to move forward to the date of Mr. Volpicelli's arrest, October 17, 2001. Upon his arrest, were you involved in obtaining judicial approval to search areas that had been identified as areas either controlled or accessed by Mr. Volpicelli?

A Yes.

Q Did that include storage unit B-114 at the Osage storage facility at 30 East Victorian Avenue in Sparks?

A Osage Self Storage, yes.

Q The same unit identified to you by sergeant Della in an earlier surveillance in this investigation?

A Yes, it was.

Q Were you present for the search of that unit?

A Yes, I was.

Q Was there anybody else primarily assisting you in executing the search of the unit?

A Several of us were there. Parole and probation officers were there. There were the other detectives in the unit as well as my supervisor, sergeant Della.

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Q Did you have the opportunity to complete some follow-up investigation on some merchandise that had been located within that unit?

A Yes.

Q Did that include a Panasonic home theater system?

A Yes, it did.

Q Why was this item significant to you? Why did you choose it out of others to follow up?

A It was one of the items in the unit I noticed appeared to have a sticky bar code that was inconsistent with bar codes of other UPC labels. It was on that unit.

Q Showing you Grand Jury Exhibit 9 which consists of two black and white digital photos, photo copies of two receipts on a single page and a colored Polaroid, do you recognize what is contained in that exhibit?

A Yes.

Q Are these all connected to the Panasonic home theater system you were investigating?

A Yes.

Q As a result of the stickers you noticed on it that didn't seem quite right, did you contact anyone at Wal-Mart to gain additional information about this product?

A Two people.

Q Who were they?

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A Matt Carter and Gregory Danielson.

Q Do you recall approximately when you contacted them after the storage unit was searched?

A I believe that was early November I got to that case. There was really no priority as to what I was doing for a second and third. There was so much to do, I think that just fell in that time frame.

Q Were they able to provide you with information and documentation that you sought confirming its origin from Wal-Mart and also confirming price information related to each bar code you found on the product?

A Yes.

Q Showing you Grand Jury Exhibit 18, does that appear to be a voided receipt printed for you by Mr. Carter and Mr. Danielson related to your follow-up investigation?

A Yes, it is.

Q And that receipt bears the UPC code number and description for an Emerson CD player as opposed to the Panasonic home theater system that bar code was affixed to?

A Yes, it does.

Q Did your investigation in this case also include researching the origin and pricing of a rolled up rug recovered from the storage unit?

A Yes.

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Q Approximately where in the storage unit was that rug located?

A That was easy to remember. As we pushed the roll-up doors up, it was on the left right. I remember thinking it was going to fall out of the unit. As you are facing the unit, directly on your left leaning up against the wall.

Q Showing you Grand Jury 8, the front page consists of copies of Lowe's receipts and product labels with a bar code on it. Another photo copy entitled Lowe's Company Project Estimate for Investigation, and three digital photographs black and white photographs. Do you recognize the contents of this exhibit?

A Yes, I do.

Q As far as the photographs, are those photographs that were taken during your investigation of the rug after it was recovered from the storage unit?

A Yes.

Q Moving forward to the other documentation attached, do you recall where the Lowe's receipt came from?

A The Lowe's receipt came from an accordian folder recovered from the inside of his vehicle at the time of his arrest.

Q Mr. Volpicelli's vehicle?

A Yes.

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Q Moving to page 2, do you recall where that project estimate for investigation came from?

A I am sorry, what?

Q Do you recall where this document came from?

A I'm sorry. When I met with the Lowe's employees down on Kietzke Lane.

Q Did that include Mr. Ellis who was here earlier this morning?

A Yes.

Q Was Mr. Ellis able to--Well, actually back up for a moment. Why was this particular item found within the storage unit of some significance that caused you to complete some further investigation?

A Well, like the Panasonic that I talked about a few minutes ago, it had what I believed was a fictitious UPC label attached to it over the valid label on the package.

Q As a result of contacting Mr. Ellis at Lowe's, was he able to provide you with the information and documentation you sought confirming the origin of this rug from Lowe's, also the price information related to each of the two bar codes that you found on it?

A Yes, he was.

Q Is that what is contained on page 2 of Exhibit 8?

A Yes.

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Q Did your follow-up investigation also include researching the origin of a Sonicare toothbrush found in the store?

A Yes, it was.

Q Approximately where was the toothbrush found in the unit?

A I don't clearly remember where that was. Being a small item, he tended to have the smaller items like that in the smaller boxes in larger plastic bins. For instance, plastic bins with telephones or alarm systems or something like that that were in smaller boxes, so he put them in the plastic box. These bins were generally stacked along the side of the unit.

Q Again, the same question, of all the things you found in this unit, why did this draw extra attention from you?

A Again, I wanted what I thought was a fictitious UPC label affixed over the top consistent with the other two that were on the Panasonic home theater system and the carpet from Lowe's.

Q Based on that observation, did you contact employees at Shopko regarding this Sonicare toothbrush?

A Yes.

Q Approximately when was that in the investigation?

A I don't recall exactly. Again, it was in the weeks

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following his arrest. I think it was probably in November as well.

Q Were they able to provide you with the information and documentation you sought confirming the toothbrush's origin from Shopko and the price information related to each of the UPC codes displayed on the product?

A Yes.

Q Was there a cheaper bar code attached to the product?

A Yes, there was.

Q Was that bar code with the cheaper price consistent in appearance with some of the other fraudulent bar code labels identified in this case?

A Yes, it was.

Q Showing you Grand Jury Exhibit 14 which consists of three pages, the last two being black and white digital photographs, do you recognize that?

A Yes. That is the toothbrush you are talking about.

Q That is what you found in the storage unit?

A Yes.

Q Moving to page 1 of Exhibit 14, do you recognize that receipt?

A Yes.

Q Where did you find this Shopko receipt?

A That receipt was also found in the accordian folder

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that was located in Mr. Volpicelli's vehicle he was driving on the night of his arrest.

Q I don't believe this receipt has previously been published to the Grand Jury. I will go ahead and pass it around at this time.

Now were any items reportedly recovered from Mr. Volpicelli's vehicle after his arrest and turned over to you to help you complete your follow-up investigation?

A Yeah. There were several of us booking evidence. I had access to all of it, yes.

Q Can you please describe some of the items that reportedly came from the Mazda that you used to help complete the investigation in this case?

A I used the accordian folder containing all the receipts from all the stores I mentioned previously. I also used or took note of the fact there was a label maker inside the vehicle in a black canvass being used. A sheet that was entitled transpositions that had the stores' apparent UPC numbers and pricing information and a description of the item as well.

Q Showing you Grand Jury Exhibit 4 which consists of three pages of color digital photographs, do you recognize what is depicted in those photographs?

A Yes, the black canvass bag the label maker was in

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retrieved from his vehicle the night of his arrest.

Q Did you use this in completing your follow-up investigation?

A I took it into account, yes.

Q Showing you Grand Jury Exhibit 3 which contained several black and white digital photographs, do you recognize what is depicted in all of those photos?

A Yes. The accordian folder we have been referring to taken from his vehicle the night of the arrest.

Q Did you inspect its content?

A Yes, I did.

Q What did you find?

A I found several--Well, all of the pockets pretty much had receipts from stores. They were never mixed up. Usually by store, Shopko, Wal-Mart, K-Mart, Home Depot, Lowe's. They were in this accordian folder, not necessarily in alphabetical order but organized by store. I also located several fictitious UPC labels directly in the front pouch as well as some interspersed throughout the rest of the pouch, some even attached to the back of receipts.

Q Can you approximate how many fictitious UPC labels you located in that accordian file?

A The accordian file alone I am guessing probably 15 or 20. I think there were more located in other spots in the

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evidence that we found in the vehicle and storage unit.

Q Were some of those also found in the black bag that contained the label maker?

A Sometimes they were just laying freely out. Sometimes they were attached to something.

Q Are you confident there were at least 15 fictitious UPC bar code labels found within the Mazda MPV?

A Yes, I am.

Q Showing you Grand Jury Exhibit 5, do you recognize this exhibit?

A Yes, it is part of the transposition log I told you about.

Q Is that something that was also reportedly found in the vehicle?

A Yes, it was.

Q Is it also something you used in conducting your follow-up investigation in this case?

A Yes, I did.

Q During the course of your investigation did you determine who that Mazda belonged to?

A Yes, I did.

Q Whose was that?

A It belonged to his brother, Martin Volpicelli who lives in southern California.

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Q Now as far as all the receipts in that folder, what did you do with them? How did you use these in your investigation?

A I tried to match up the receipts with the items in the storage unit that had the fictitious labels, and I also tried to marry those up with the statements that Brett Bowman had given me in several interviews in trying to kind of piece together where and when and how much they were paying for these items.

Q Do you recall some of the names of the stores that appeared on the receipts found in that accordian file?

A Again, Shopko. Most of the local retail stores, Shopko, K-Mart, Wal-Mart, Home Depot, Lowe's, Pet Smart, Office Max, Office Depot. There were probably ten, twelve, fourteen different retail stores.

Q In inspecting the contents of the accordian file, did you observe any receipts that were from out of the area?

A Yes, I did.

Q From what areas did you observe receipts from?

A Las Vegas and southern California.

Q During the course of your investigation, did you find either of the suspects in this case, Mr. Volpicelli or Mr. Bowman, had ties to either of those geographic regions?

A I am not aware Mr. Bowman had any ties in

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California. The only ties I am aware of were Oregan and Utah. Mr. Volpicelli has a brother, actually most of his family who lives in southern California. And as far as Vegas connections go, Mr. Volpicelli traveled to Las Vegas for a court appearance in a civil proceeding, and I was aware of that travel. So I know he had been to Vegas.

Q How did you use the transposition sheet, Exhibit 5, in your investigation?

A Again, I was trying to match up the item of the fictitious bar codes with receipts and matching up the UPC labels. And, you know, at least trying to find the approximation on the price to see if the price was in the ballpark. Again, a description. Just trying to get those things put together.

Q Were you able to do that in some instances?

A Yes.

Q With respect to the contents of the storage unit, can you generally describe that for the Grand Jury?

A Very neatly arranged. But, basically, you opened the door, it was kind of a long storage unit. I am guessing probably twenty feet if I am not mistaken, 15, 20 feet. Mostly shelves and plastic bins stacked on the side. He seemed to be very neat about how he kept things in there. It wasn't disheveled or anything like that. Many, many items, electronic

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items again, telephones, entertainment centers, LCD screens, things of that nature that were stacked neatly and in boxes along the end of the storage unit and then toward the back.

He also had one large plastic bin in the back of the storage unit you might use for your back yard for storing lawn equipment or something like that that was unlocked, and he had several items stored in there as well.

Q Were the contents of this entire storage unit inventoried?

A We inventoried what we took from the storage unit. There were obvious items in there we didn't believe were fruits of this investigation, things like, you know, personal women's clothing that was stacked in plastic boxes and neatly folded and stored there. We didn't inventory everything in the unit, just what we took.

Q During the course of the search of this unit, was there any indicia found in the name of Brett Bowman?

A No.

Q Was there any indicia found that tended to connect the contents to Mr. Volpicelli and/or family members of his?

A Yes.

Q As far at items that were seized by the Reno police department, were those photographed?

A Yes.

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Q Now, I previously showed you the Sonicare toothbrush and accompanying receipt from Shopko in Exhibit 14.

A Right.

Q Did you have an opportunity to compare this Shopko receipt from the accordian file to the transposition list found in the vehicle?

A Yes, I did.

Q Did you find any similarities between the receipt and the transposition list?

A Yes. The UPC number here on the receipt matches this UPC number here with the exception of the 4 at the end. That was, I learned sometimes those things are trunkcated so they eliminate the number either at the beginning or the end. It is the same number.

Q Directing your attention to Grand Jury Exhibit 7 with the receipt from Bed Bath and Beyond, where was that receipt located in this investigation?

A That was also in the accordian folder.

Q Attached to that there is a black and white digital photo of a Krups coffee maker. Do you recognize that?

A Yes.

Q Where was that located in the course of this investigation?

A In the storage unit.

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Q Now did every item that was seized that appeared to be connected to this investigation have both a legitimate UPC code on it and false UPC code?

A No.

Q In looking at the UPC codes displayed on different products, did you notice if there was only one UPC code on the product, if there appeared to be any changes to its appearance?

A Sometimes there were several UPC codes on a product. Sometimes they were stacked maybe five deep. Some of those were, for inventory, they were actually valid UPC numbers that weren't pricing information. The first one was always the pricing information. The next were used for inventory purposes or shipping or something of that nature. As far as--maybe I didn't answer your question.

Q Well, in terms of if they only had a single, what appeared to be the original UPC code on them, did any of those appear to be damaged or altered in any way?

A I don't recall if all of them were damaged or altered, but in many instances, the fictitious UPC label was affixed over the top of the old UPC label so you couldn't see the one underneath.

Q In instances where you found products that didn't have both a valid and a fictitious label on them, did you ever see any indication such as fading, tears, adhesive?

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A Sure. Yes.

Q That caused you to believe something had once been affixed atop of the valid UPC code?

A Yes.

Q Showing you Grand Jury Exhibit 11 which contains several Wal-Mart receipts talking about a 17 monitor and then has photographs attached, black and white digital photos of two items that appear to be KDS Rad-5 monitors, first off, do you recognize the monitors?

A Yes.

Q Where did those comes from?

A The storage unit.

Q With respect to the receipts attached to the same exhibit, where did these come from?

A The accordian folder from the vehicle.

Q Did you have the opportunity to compare these receipts to this tranposition list?

A Yes, I did.

Q Did you find any similarities between the information contained on the Wal-Mart receipt and the transposition list?

A Yes.

Q What did you find?

A I found that it was on the transposition list and it matched the receipt.

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Q Showing you Grand Jury Exhibit 12, it contains several receipts indicating sewing machines and scanners from Wal-Mart and then several photographs of Simplicity sewing machine bar codes, Hewlett Packard printers and more bar codes. Do you recognize all this documentation?

A Yes, I do.

Q Where did the sewing machine and those Hewlett Packard printer boxes come from?

A The storage unit.

Q Where did the receipts come from?

A The accordian folder taken from the vehicle.

Q Did you have the opportunity to review the receipts on the Wal-Mart and compare those to the transposition list?

A Yes.

Q Did you find any similarities for the sewing machines and scanners along with the UPC information on the transposition list?

A Yes, I did.

Q Showing you Grand Jury Exhibit 6 which has a Home Depot receipt attached and then several pages of toilet labels?

A Right.

Q Do you recognize the toilet labels?

A Yes, I do.

Q Where did those come from?

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A Off a Kohler toilet taken from the storage unit.

Q How about the Home Depot receipt?

A The accordian folder taken from the vehicle.

Q Showing you Grand Jury Exhibit 10 which indicates several photo copies of receipts from Wal-Mart for Sanyo 19 inch TVs, then several photographs of bar codes and products of an Emerson 19 inch DVD-TV combo, do you recognize the photographs associated with this Emerson TV-DVD combo?

A Yes, I do.

Q Where did those items come from?

A The storage unit.

Q How many did you find?

A Of those?

Q Yes?

A Three.

Q And how about the receipts, where did those come from?

A The accordian folder taken from the vehicle.

Q Did you compare the information contained on those receipts to the transposition unit?

A Yes, I did.

Q I am sorry, list. Did you find any similarities?

A Yes, I did.

MS. HIER-JOHNSON: Thank you. I have no further

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questions for detective Thomas. Do any of the Grand Jurors have questions for him?

A GRAND JUROR: One. Those is the Bed Bath and Beyond, the coffee maker, did that have two of the bar codes on it or just one bar code or what?

THE WITNESS: I don't recall the coffee maker had a bar code on it.

A GRAND JUROR: Just the original bar code?

THE WITNESS: Right, just the original.

THE FOREMAN: Any other questions? Go ahead.

A GRAND JUROR: Is it possible to marry up the bar codes with the bar code machine found in the car?

THE WITNESS: I didn't personally do that. I didn't send that to the Crime Lab or anything like that. However, we had the bar code machine. We also had located, in the storage unit, he had the paperwork that you would use, the labels that you would use to put into the bar code machine to make the labels. Those were consistent with the bar codes we found.

THE FOREMAN: Any other questions?

It is my duty to admonish you the proceedings before the Grand Jury are secret.

You may not disclose evidence presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, any information obtained or the results of the

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investigation being made by the Grand Jury.

However, you may disclose the above information to the District Attorney for use in the performance of his duties.

You also may disclose your knowledge concerning the proceedings when directed by a court in connection with judicial proceedings or when otherwise permitted by the court or to your own attorney.

The obligation of secrecy applies until the Court allows the matter to become public record.

A gross misdemeanor and contempt of court may be persued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes, I do.

THE FOREMAN: Thank you

(Witness Excused.)

MS. HIER-JOHNSON: Ladies and gentlemen of the Grand Jury, that concludes the testimonial evidence the State intends to present this morning.

The final piece of evidence for your consideration today is being offered for a very limited purpose. It is Grand Jury Exhibit 16. All burglary counts alleged against Mr. Volpicelli allege he has been previously convicted of burglary in 1998. This allegation is not at all relevant to whether or

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not Mr. Volpicelli committed the offenses that he is accused of in this Indictment. It is only relevant as a sentencing consideration to be reviewed by the District Court judge at the time of sentencing if Mr. Volpicelli is convicted of any of these burglary charges and for no other purpose.

Exhibit 16 is a certified copy of that 1998 conviction. And the only reason it is being presented to you today is because case law requires that the District Attorney give the defendant notice of this potential sentencing consideration and also to show some evidence of it at a Preliminary Hearing or Grand Jury. That is the only reason that you may consider this prior burglary conviction today is to determine whether or not the D.A., presented some evidence at this stage. And with that, I will leave you to your deliberations.

(Whereupon the Deputy District Attorneys and the Court Reporter left the Grand Jury room.)

(Whereupon the Grand Jury deliberated.)

(Whereupon the Deputy District Attorney and the Court Reporter re-entered the Grand Jury room.)

THE FOREMAN: We have one question we would like explained, that is the definition of implements and adapting of tools for use of burglary and crimes.

MS. HIER-JOHNSON: Ladies and gentlemen of the Grand

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Jury, included in your Instructions of Law packet is NRS 205.080, and if you look in paragraph 1, it gives kind of a laundry list of various implements or instruments that can be the subject of this charge. With respect to the specific words selected by the State, that being machine tools or implements, then the word adapted, there is no case law on point that further defines those words. So I will represent what frequently occurs in these instances where the courts direct juries to use the common sense definition, ordinary meaning of the words, because we don't have anything more specific or different on point here in Nevada.

THE FOREMAN: Okay.

(Whereupon the Deputy District Attorney and the Court Reporter left the Grand Jury room.)

(Whereupon the Grand Jury deliberated.)

(Whereupon the Deputy District Attorney and the Court Reporter re- entered the Grand Jury room.)

THE FOREMAN: We have returned a true on bill on Counts I through X and a no True Bill on Count XI.

MS. HIER-JOHNSON: In light of the Grand Jury's findings, I will strike Count XI from the Indictment. But rather than signing the final page, since there is another matter for your consideration this afternoon, I am going to go to our word processing division and ask them to delete Count XI

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from our memory bank. So my signature line will appear immediately following Count X, and I will have that document signed and prepared to present to whichever Judge takes the returns this afternoon. If that is satisfactory with you, Mr. Foreman, then I will go ahead and return the final page to you for an indication of a True Bill.

THE FOREMAN: You want me to sign this one now. Okay.

MS. HIER-JOHNSON: We will go ahead and put on the record at the time of the return that the document that I present to the Foreman is in fact in the document agreed upon by the Grand Jury into today's proceedings.

It looks like all the exhibits have been pushed forward. I would ask you to go ahead and return the copies of law and copies of proposed Indictments.

(Whereupon, the proceedings were concluded.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

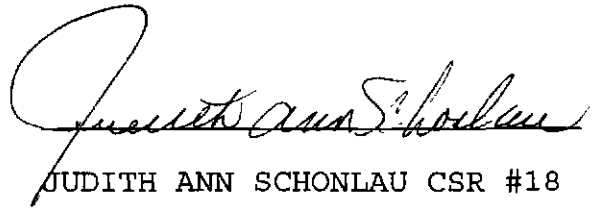
I, Judith Ann Schonlau, one of the Court Reporters of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I reported in stenotype the testimony of the witnesses before the Washoe County Grand Jury in the matter of FERRILL JOSEPH VOLPICELLI at Reno, Nevada on Wednesday, June 11, 2003;

That the foregoing transcript, consisting of pages numbered 1 through 147, inclusive, is a full, true and correct transcription of the stenotype notes taken in the above-entitled matter, to the best of my knowledge, skill and ability.

I further certify that I am in no way interested in the outcome of said action.

Dated at Reno, Nevada, this 17th day of June, 2003.



JUDITH ANN SCHONLAU CSR #18

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STATE VS
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Washoe County 1775
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CODE: 4185/1775

FILED
2003 JUN 20 PM 3:04
RONALD A. LONGTIN, JR.
BY _____
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

STATE OF NEVADA
Plaintiffs,

vs.

FERRILL JOSEPH VOLIPICELLI
Defendants.
_____/

CASE NO: CR03-1263

DEPT. NO.: 9

RECEIPT

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Dated this 20 Day of June, 2003.

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RONALD A. LONGTON, JR.
CLERK OF THE COURT

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RECIPIENT'S NAME/SIGNATURE

BY: _____
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STATE VS. FERRILL JOSEPH VO 21 Pages
District Court 06/23/2003 12 08 PM
Washoe County 4185
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CR03-1263

CODE: 4185

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FILED
JUN 23 2003
RONALD A. LONGTIN, JR. CLERK
By: DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT ON INDICTMENT

JUNE 18, 2003

RENO, NEVADA

Reported by: DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

JACK A. ALIAN
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Reno, Nevada 89501

JOHN A. KADLIC
Attorney at Law
147 East Liberty Street
Suite 2
Reno, Nevada 89801

BRADLEY O. VAN RY
Attorney at Law
71 Washington Street
Reno, Nevada 89503

For the Division of Parole and Probation:

HEIDI POE

RENO, NEVADA, WEDNESDAY, JUNE 18, 2003, 10:05 A.M.

--oOo--

THE COURT: State versus Ferrill Volpicelli, CR02-0145, 02-0146, 02-0147, and 02-0148 and 03-1263.

MS. RIGGS: Good morning, Your Honor, Tammy Riggs appearing on behalf of the State.

THE COURT: Ms. Poe is here for the Division.

Mr. Alian is here on behalf of Mr. Volpicelli in case 02-0145 an 02-0146.

MR. ALIAN: That's correct, Your Honor.

THE COURT: Mr. Kadlic, are you --

MR. KADLIC: I have just the one case which are the indecent exposures, lewdness, which I don't have the numbers.

THE COURT: That is 02-0147. And Mr. Van Ry?

MR. VAN RY: I believe I was on 02-0145, Your Honor.

THE COURT: Yes, Mr. Alian is on 02-0148.

Mr. Alian, do you have the Indictment case, as well, 03-1263?

MR. ALIAN: No, I do not, Your Honor. It's my understanding that the Indictment just came down, that the district attorney's office is going to be asking

then for a stay with respect to 02-0148 and with respect to Mr. Van Ry's case, as well, because apparently those are going to -- she's going to be asking for a stay of those because they take over with respect to the Indictment.

MS. RIGGS: Actually, Your Honor, we'll be asking for a stay in CR02-0145 and CR02-0146 after you determine whether this defendant is competent.

THE COURT: All right. The Court has reviewed and considered the reports supplied in this matter by Dr. Hiller and Dr. Henson. Do you have anything you wish to add to those reports, Mr. Alian?

MR. ALIAN: Your Honor, nothing really to add except to indicate that Dr. Henson suggests that perhaps in order to judge the serotonin levels in my client to see whether or not he's affected by being taken off the drug for a while would affect his ability, he suggests that a blind protocol be done at the center there, at the Lakes Crossing.

On behalf of my client, I would have to indicate to the Court that that may be a serious consideration in this case because one of the concerns I believe to the Court and to myself was the fact of whether or not my client had the ability at the time to waive his right to

a jury trial with respect to his cases, which he did in our case.

So based upon that, I simply raise that again and ask for the Court to make a determination.

THE COURT: Ms. Riggs, do you wish to be heard?

MS. RIGGS: Yes, Your Honor. The State would absolutely oppose that.

If you would go to page 11 of the competency evaluation, it would be the last page of Dr. Henson's assessment, this would be the second paragraph on the page, he concludes, "It is unlikely that such an assessment," the assessment that Mr. Alian speaks about, "effort would demonstrate significant cognitive function deficits related to the medication regimens. The client's symptoms reflect an emotional response to his untenable situation, facing severe long-term consequences arising from criminal conduct, if convicted, and personality characteristics represented by an obsession of unjust, but unsolvable entanglement with the criminal justice system."

In other words, Your Honor, Dr. Henson doesn't think that would have any conclusions that would result in this defendant being found incompetent.

Your Honor, the State believes that enough is

enough. This defendant has now been through two rounds of competency evaluations, all evaluators having found him competent.

The State is ready to go with these cases, Your Honor, his evaluators feel he is ready to go mentally, and we would oppose any further continuance based on any sort of mental incapability of this defendant. He's competent.

THE COURT: Anything further, Mr. Alian?

MR. ALIAN: No, Your Honor.

THE COURT: Mr. Kadlic or Mr. Van Ry, do you wish to comment? I asked that these evaluations apply to the cases on which you're representing Mr. Volpicelli.

MR. KADLIC: I'll stand by Mr. Alian's comments, Your Honor.

MR. VAN RY: Likewise, Your Honor.

THE COURT: All right. The Court finds that Mr. Volpicelli is competent to assist his counsel and to understand the nature of the charges against him. The Court does not believe that there is anything productive to be gained by the trial commented upon by counsel, and therefore the Court feels that that is not necessary.

With respect to the question of whether

Mr. Volpicelli was competent to -- at the time that he waived his jury trial in two of the cases, the Court is not satisfied really with the report's results on either one of those issues.

However, given the fact that the Court has determined that Mr. Volpicelli is competent, the Court will extend to Mr. Volpicelli and his counsel the opportunity now to seek a withdrawal of your request for a jury trial in those cases. Excuse me, a bench trial in those cases.

Therefore, Mr. Alian, you and your client will have the opportunity to withdraw your request for bench trial at this time.

MR. ALIAN: Your Honor, with respect to 02-0148, my client at this time would stand by his intention respectfully asking the Court for a trial before the Court only with respect to that case.

With respect to 02-0146, if the Court wants a determination now, that's fine, except it may become moot in light of the fact that the district attorney's office is seeking a stay, my understanding on 02-0146, because that's going to be incorporated in the Indictment.

THE COURT: Okay. Mr. Volpicelli, included in

the reports prepared by the doctors, and particularly Dr. Henson, have you reviewed that report?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. Dr. Henson comments in the report at least three times that I recall that in addition to having concerns about the legal predicament you find yourself in, you have concerns about the fairness of the presiding judge in your cases.

This comment seems inconsistent to the Court by one who would ask that your case be resolved through a bench trial. I think you should explain or at least comment or your counsel should comment on that inconsistency.

I want to make absolutely certain that today you're in agreement to waive a jury trial in those cases, especially where you have expressed to this evaluator the fact that because I have previously revoked you and acted in prior cases that you do not believe that this judge may be fair and that you can get a fair hearing in front of this judge.

THE DEFENDANT: Your Honor, I did have a concern. I was just made aware a couple weeks ago of the amount of testimony that my codefendant gave when he was convicted, and I just thought that that might be

prejudicial, and I thought that that might affect your decision with these new cases. But I know that you have expressed fairness regardless. So I'm somewhat torn between whether or not I should have you or a jury. I'm leaning towards you.

THE COURT: Well, there's no offense to the Court if you want to have a jury hear your case.

THE DEFENDANT: I understand. I know you want an explanation, Your Honor, and that's the best I could come up with. I'm just confused.

THE COURT: All right. All right. Then you are satisfied in having -- the prior waiver you have made to the jury trials in 0148 and 0146?

THE DEFENDANT: Yes.

THE COURT: All right. Do you have any questions of the Court about your prior decisions to waive the jury trial in those cases?

THE DEFENDANT: None on that matter, Your Honor.

THE COURT: Okay. All right. Are counsel ready to proceed on the Indictment in 03-1263?

MS. RIGGS: The State is prepared, Your Honor.

MR. ALIAN: Your Honor, it's my understanding, because of that, that Mr. Van Ry will be representing Mr. Volpicelli on the Indictment.

THE COURT: Is that right, Mr. Van Ry?

MR. VAN RY: That is correct. I have not yet received a copy of the Indictment, however.

THE COURT: All right. Well, we'll provide that to you this morning. But let me provide you with a copy of the Indictment.

MR. VAN RY: If I may approach, Your Honor?

THE COURT: Yes, sir. Is your client's name correctly identified and spelled in the Indictment; and do you wish to have it read?

MR. VAN RY: If I could have a moment, Your Honor.

THE COURT: Yes, sir.

MR. VAN RY: Your Honor, my client and I have received a copy of the Indictment, case number CR03-1263. My client indicates that his name is correctly spelled on line 12 of the Indictment. We are familiar with its contents and would waive its formal reading at this time.

THE COURT: Okay. What is your plea to the charge in the Indictment, Mr. Volpicelli?

THE DEFENDANT: Not guilty, Your Honor.

THE COURT: You have the right to a jury trial on the Indictment to be conducted within 60 days of

today. Do you wish to exercise that right?

THE DEFENDANT: Your Honor, I'd like some time to investigate this, to be honest with you.

THE COURT: So do you waive your right to a jury trial within 60 days on that case?

THE DEFENDANT: I'm going to need more than 60 days to prepare for this, Your Honor.

THE COURT: So I need an answer to my question.

THE DEFENDANT: I will waive it then. I will waive it, Your Honor.

THE COURT: Okay. Length of trial, counsel?

MS. RIGGS: Your Honor, the State anticipates approximately four days to present this case.

THE COURT: Mr. Van Ry?

MR. VAN RY: That sounds accurate, Your Honor.

THE COURT: All right. Ms. Riggs, do you wish to be heard on cases 0145, 6, 7 and 8?

MS. RIGGS: Your Honor, regarding 0148 and 0147, the State is prepared to proceed on those cases, and we would just ask that you set the trial date today.

THE COURT: Okay. And with respect to 145 and 146?

MS. RIGGS: Your Honor, we will be asking you to stay those proceedings, if I may approach.

THE COURT: All right.

MS. RIGGS: Your Honor, State is handing you the proposed order staying the proceedings in those two cases. Thank you.

THE COURT: Is there any objection, counsel?

MR. VAN RY: No objection, Your Honor.

MR. ALIAN: Your Honor, no. I don't believe I've gotten a copy of that.

THE COURT: Oh, well, here it is. Why don't you take a look at it.

MR. ALIAN: Thank you, Your Honor.

THE COURT: All right. The length of trial in 147?

MS. RIGGS: Your Honor, the State anticipates two days on 0147; also two days on 0148.

MR. KADLIC:: Your Honor, 147 is my case, correct?

THE COURT: Yes, sir.

MR. KADLIC: I don't see how that's going to take two days. Further, I think that -- if any case deserves to be tried in front of a judge, that's the one. It's the one of open and gross lewdness and indecent exposure, correct?

MS. RIGGS: That's true, Your Honor; however,

the State will not waive its right to jury trial on that case.

THE COURT: Okay.

MR. KADLIC: If that's the case, Your Honor, then I need -- we had it originally set for what we anticipate was going to be a judge trial. That's going to have to be set way out after the first of the year because I literally have trials scheduled every month it seems like two abreast from now until the end of the year. My calendar is just -- unfortunately everybody that I have drawn off my conflict list is deciding to go to trial.

The Court knows I've been in three jury trials in the last two months. So I'm basically going to have to go way out.

THE COURT: All right. Have you discussed that with Mr. Volpicelli?

MR. KADLIC: Yes. You would agree, Mr. Volpicelli, to waive any 60-day speedy trial, right?

THE DEFENDANT: Yes, I agree to waive that, Your Honor.

THE COURT: Okay. In 148, that case is a bench trial.

MR. ALIAN: Your Honor, if I may be heard. It

was my understanding in talking to co-counsel I believe last week in this case not this counsel for the State but the co-counsel, that depending upon what happens in the Indictment case it may affect the outcome of case in 02-0148. It may not go. I don't know. Based upon that, I would respectfully ask if we set this matter at least after the Indictment case.

MS. RIGGS: The State has no objection to setting this matter after the Indictment case; however, Your Honor, this case is not going to be dismissed by the State regardless of the outcome of any of the other cases.

If this defendant wishes to plead after our anticipated conviction of him in the other cases, that's fine, but we have no objection to that being set out later.

MR. VAN RY: For your information, Your Honor, I would prefer Octoberish for my CR03-1263.

THE COURT: How about October 6th, Mr. Van Ry?

MR. VAN RY: That would be great, Your Honor.

THE COURT: Ms. Riggs?

MS. RIGGS: That's fine with the State, Your Honor.

THE COURT: All right. October 6th at 8:30.

The motion to confirm will be held on September 24th at 8:30.

Case number 0148 will be set for trial, let's see, is that two days approximately; is that correct?

MS. RIGGS: That's correct, Your Honor.

THE COURT: All right. That case will be set for October the 27th -- excuse me, 29th, at ten a.m.

MR. ALIAN: Your Honor, would the Court consider -- excuse me. The 29th?

THE COURT: Yes, sir.

MR. ALIAN: I just wanted the Court to note hopefully there's supposedly I have a two-week murder case beginning October 13th. Hopefully I should finish it before then. I just wanted the Court to know that in case it goes over.

THE COURT: All right. Does that give you enough time to prepare?

MR. ALIAN: Your Honor, I was going to respectfully ask the Court, to be honest, for the week of say November 19th, Wednesday. Because the week before that, I have another three-day jury trial which will go.

THE COURT: Well, is November the 20th okay?

MR. ALIAN: That's fine, Your Honor.

THE COURT: All right. 8:30 November 20th, with a motion to confirm on November the 5th, at 8:30.

MR. ALIAN: Thank you, Your Honor.

THE COURT: And the trial in the other case, 0147, are you available in December?

MR. KADLIC: I was looking at December 22nd, Your Honor, Christmas week. Always good to try cases during Christmas week.

MS. RIGGS: Your Honor, may we approach?

(Off-the-record discussion held at the bench.)

THE COURT: All right. December 22nd at 8:30 for two days, with a motion to confirm on December the 10th at 8:30.

Have you had an opportunity to look at the proposed order staying proceedings?

MR. ALIAN: Your Honor, I did. I don't have any objection to that.

THE COURT: All right. The Court will enter the order staying proceedings in CR02-0145 and 02-0146 in the form proposed by the DA's Office.

MS. RIGGS: Thank you, Your Honor.

MR. ALIAN: Your Honor, I should indicate I only have one of those two cases. Mr. Van Ry has the other.

THE COURT: Mr. Van Ry, any objection?

MR. VAN RY: No objection, Your Honor.

MR. KADLIC: Your Honor, as to 147, originally we had a motion to confirm on the 25th of June and a trial date of the 10th of July. We were anticipating that we were going to try it in front of you, and so I guess I assume we can vacate those in light of all of the other proceedings?

MS. RIGGS: No objection, Your Honor.

THE COURT: Well, we could proceed to trial on those dates.

MR. KADLIC: Well, he wanted to do the jury -- they wanted to do -- they are the ones who want the jury trial. If we can try it in front of you, Your Honor, I would be happy to go that date. That was anticipated we were going to have a judge trial, that's why we set it on a Thursday because --

THE COURT: Well, no, I do jury trials on a Thursday.

MR. KADLIC: Well, at this point now, because of all of this mess came up, I kind of rescheduled other things in the interim anticipating that we weren't going to go on this thing. This was sort of almost like a dominos. Everything was contingent on one domino falling and then the next one and the next one, except

the dominos keep getting set back up. I would just as well do the December 22nd at this point, Your Honor.

MS. RIGGS: State can go on either date, Your Honor. We'll leave it to your discretion.

THE COURT: Well, frankly Ms. Riggs had a conflict in December which was going to require State's counsel to get either her co-counsel or another lawyer to go on December 22nd. The trial for July 10th is set to go. It's on our calendar.

MR. KADLIC: Okay. That's fine. I mean I'll just as well go and do it and get it over with.

THE COURT: July 10th at 8:30.

MR. KADLIC: That's fine.

THE COURT: Okay.

MR. KADLIC: So do we really need to do the motion to confirm?

THE COURT: No, we don't.

MR. KADLIC: Okay. Then let's go on July 10th. That's fine.

THE COURT: You're confirmed for July 10th at 8:30. Case 02-0147 will proceed to trial at 8:30 on July 10th. We've conducted the motion to confirm.

MR. VAN RY: Your Honor, I had one final issue with regard to CR03-1263 that discovery, as we

understand it, is to begin anew, and there are some particular items that we have not received that my client has submitted an inmate request form concerning search warrants, inventory receipts, property records, documents, files, receipts, cash and other financial instruments that arose out of the prosecution of this matter that we have not yet received.

THE COURT: Well, I want a reciprocal discovery agreement signed in that case within the next week.

MR. VAN RY: Okay.

THE COURT: Provide a copy of that list to Ms. Riggs and ask her to review that, and you discuss that with her. If there are any issues or difficulties with respect to the subject of discovery, then put it on calendar, and we'll resolve those disputes.

THE DEFENDANT: Thank you, Your Honor.

MR. VAN RY: Thank you, Your Honor.

MS. RIGGS: Thank you, Your Honor.

THE COURT: Okay. Anything further, then?

MS. RIGGS: No, Your Honor.

MR. ALIAN: No, Your Honor.

MR. KADLIC: No, Your Honor.

MR. VAN RY: No, Your Honor.

THE COURT: All right. Thank you very much.

(Proceedings concluded.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DONNA DAVIDSON, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

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

DATED: At Reno, Nevada, this 20th day of June, 2003.

Donna Davidson

DONNA DAVIDSON, CCR #318

DA # 314735

Team KAy

FILED

2003 JUL -9 PM 4:29

RONALD A. LONGTIN, JR.

BY DEPUTY

ORIGINAL

CODE 3839
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
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Attorney for Plaintiff

CR03-1263 DC-9900025141-007
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 07/09/2003 10:56 AM
Washoe County 3839
DOC JAMF

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Ferrill Joseph Volpicelli,

Defendant.

Case No. CR03-1263

Dept. No. D-9

REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERY

DEFENDANT'S REQUEST FOR DISCOVERY

Pursuant to NRS 174.087, 174.089, 174.235 to 174.295, inclusive, the defendant requests all written or recorded statements or confessions made by the defendant, any written or recorded statements made by a witness or witnesses the State intends to call in its case-in-chief, or any reports of statements or confessions, or copies thereof, results or reports of physical or mental examinations, scientific tests or scientific experiments, or copies thereof, that are within the possession, custody or control of the State, the existence which is known, or with the exercise of due diligence may become known

to the prosecuting attorney; and books, papers, documents or tangible objects that the State intends to introduce in its case-in-chief and which is in the possession, custody or control of the State, the existence which is known, or with the exercise of due diligence may become known to the prosecuting attorney.

STATE'S REQUEST FOR DISCOVERY

Pursuant to NRS 174.087, 174.089, 174.235 to 174.295, inclusive, the State requests any written or recorded statements made by a witness or witnesses the defendant intends to call in his or her case-in-chief, or copies thereof, results or reports of physical or mental examinations, scientific tests or scientific experiments, or copies thereof, that are within the possession, custody or control of the defendant, the existence which is known, or with the exercise of due diligence may become known to the defendant; and books, papers, documents or tangible objects that the defendant intends to introduce in his or her case-in-chief and which is in the possession, custody or control of the defendant, the existence which is known, or with the exercise of due diligence may become known to the defendant.

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CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 07/09/2003 10 57 AM 1775
Washoe County JAMES
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CODE: 4185/1775

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2003 JUL -9 PM 12: 26
RONALD A. LONGTIN, JR.
BY: DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

STATE OF NEVADA
Plaintiffs,

vs.

FERRILL JOSEPH VOLIPICELLI
Defendants.
_____/

CASE NO: CR03-1263

DEPT. NO.: 9

RECEIPT

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Dated this 9 Day of July, 2003.

Check No. _____

RONALD A. LONGTON, JR.
CLERK OF THE COURT
BY: _____
DEPUTY

MWinstead for Rens
RECIPIENT'S NAME/SIGNATURE

Volpicelli, Ferrill - 60076
Washoe County Detention Ce
911 Parr Blvd
Reno, NV 89512-

Hearing Date
Hearing Time

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2003 JUL 16 PM 2:14
RONALD A. LONGTIN, JR.
BY
DEPUTY

CR03-1263 DC-9900026141-009
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 07/16/2003 10:23 AM
Washoe County 3645
DOC JAMES

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

FERRILL J. VOLPICELLI,
Petitioner,

vs

STATE OF NEVADA
Respondents et al.,

CASE NO. 02-0147
02-0148
03-1263

DEPT. NO. 9

EXPARTE
PETITION FOR CLARIFICATION ON ISSUES REGARDING STATE BAIL

COMES NOW THE PETITIONER, FERRILL J. VOLPICELLI, AND THROUGH HIS COUNSEL, TO MOVE THE COURT FOR CLARIFICATION ON ISSUES REGARDING THE POSTING OF PETITIONER'S STATE BAIL; AS IT RELATES TO HIS FEDERAL HOLD. SAID PETITIONER'S FAMILY SEEKS TO MITIGATE PETITIONER'S CUSTODY SITUATION BY EXPEDITING HIS TRANSFER TO FEDERAL CUSTODY.
THAT THIS WILL COMPEL THE DISPOSITION OF PETITIONER'S FEDERAL MATTER CONCOMITANT WITH THE STATE PENDING CHARGES.
IN THE EVENT THE STATE BAIL IS POSTED WITH REGARDS TO THE ABOVE REFERENCED CASES, PETITIONER'S CUSTODY WILL TRANSFER TO THE FEDS VIA THE US MARSHALS.
AND ALTHOUGH IT IS THE PETITIONER'S OBJECTIVE TO APPROACH THE US ATTORNEY FOR A STIPULATION TO HAVE PETITIONER REMAIN IN

FEDERAL CUSTODY AT WCSO, WITH THE ANTICIPATION OF APPEARING IN STATE COURT, THERE IS THE POSSIBILITY OF THE PETITIONER'S TRANSFER FROM WCSO TO A FEDERAL FACILITY.

THAT IN EFFECT, THIS WILL POSE ADVERSE CONSEQUENCES IN TERMS OF PETITIONER'S ABILITY TO APPEAR IN STATE COURT.

INASMUCH AS THIS POTENTIAL COMPLICATION IS THROUGH NO FAULT OF THE PETITIONER, PETITIONER'S FAMILY WOULD LIKE WRITTEN CONFIRMATION THAT THIS COURT WILL NOT REVOKE THE STATE BAIL FOR AN F.T.A. THEREBY SUBJECTING PETITIONER'S FAMILY'S FUNDS TO FORFEITURE.

THAT WHETHER THE PETITIONER IS IN STATE OR FEDERAL CUSTODY, PETITIONER'S FAMILY REQUESTS CONFIRMATION THAT, AT THEIR OPTION, THE PETITIONER'S FAMILY CAN REVOKE BAIL AND RECEIVE A PROMPT RETURN OF THEIR FUNDS.

FURTHER, THAT PETITIONER'S FAMILY RESPECTFULLY REQUESTS A COURT DOCUMENT ON THIS MATTER WITHIN THE NEXT 10 (TEN) BUSINESS DAYS.

THAT THIS PETITION IS BASED UPON ALL

PAPERS AND PLEADINGS ON FILE HEREIN, AS WELL AS ORAL ARGUMENTS AT AN IMMEDIATE HEARING.

THE PETITION ITSELF WAS SUGGESTED BY JUDGE HANDELSTY AT THE CONCLUSION OF THE DAY'S COURT PROCEEDINGS ON 10 JULY, 2003.

RESPECTFULLY SUBMITTED,

DATED THIS 14th DAY OF JULY, 2003

FERRIL VOLPICELLI

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THIS 14th DAY OF JULY, 2003, TO THE WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE UNDER PENALTY OF PERJURY PURSUANT TO NRS. 208.165.

FERRIL VOLPICELLI

Volpicelli, Ferrill - 60076
Washoe County Detention Center
911 Parr Blvd.
Reno, NV 89512-

FILED

Hearing Date _____
Hearing Time _____

2003 AUG -1 PM 12:15

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

BY _____ DEPUTY

CR03-1263 DC-99000026141-011
STATE VS. FERRILL JOSEPH VO 11 Pages
District Court 08/01/2003 12.52 PM
Washoe County 3645
DOC JAMF

FERRILL J. VOLPICELLI,
Petitioner,

vs

STATE OF NEVADA
Respondents et al.,

CASE NO. 02-0147
02-0148
03-1263

DEPT. NO. 9

EXPARTE PETITION FOR CLARIFICATION ON ISSUES REGARDING STATE BAIL

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IN THE EVENT THE STATE BAIL IS POSTED WITH REGARDS TO THE ABOVE REFERENCED CASES, PETITIONER'S CUSTODY WILL TRANSFER TO THE FEDS VIA THE US MARSHALS.
AND ALTHOUGH IT IS THE PETITIONER'S OBJECTIVE TO APPROACH THE US ATTORNEY FOR A STIPULATION TO HAVE PETITIONER REMAIN IN

FEDERAL CUSTODY AT WCSO, WITH THE ANTICIPATION OF APPEARING IN STATE COURT, THERE IS THE POSSIBILITY OF THE PETITIONER'S TRANSFER FROM WCSO TO A FEDERAL FACILITY.

THAT IN EFFECT, THIS WILL POSE ADVERSE CONSEQUENCES IN TERMS OF PETITIONER'S ABILITY TO APPEAR IN STATE COURT.

INASMUCH AS THIS POTENTIAL COMPLICATION IS THROUGH NO FAULT OF THE PETITIONER, PETITIONER'S FAMILY WOULD LIKE WRITTEN CONFIRMATION THAT THIS COURT WILL NOT REVOKE THE STATE BAIL FOR AN F.T.A. THEREBY SUBJECTING PETITIONER'S FAMILY'S FUNDS TO FORFEITURE.

THAT WHETHER THE PETITIONER IS IN STATE OR FEDERAL CUSTODY, PETITIONER'S FAMILY REQUESTS CONFIRMATION THAT, AT THEIR OPTION, THE PETITIONER'S FAMILY CAN REVOKE BAIL AND RECEIVE A PROMPT RETURN OF THEIR FUNDS.

FURTHER, THAT PETITIONER'S FAMILY RESPECTFULLY REQUESTS A COURT DOCUMENT ON THIS MATTER WITHIN THE NEXT 10 (ten) BUSINESS DAYS.

THAT THIS PETITION IS BASED UPON ALL

PAPERS AND PLEADINGS ON FILE HEREIN, AS WELL AS ORAL ARGUMENTS AT AN IMMEDIATE HEARING.

THE PETITION ITSELF WAS SUGGESTED BY JUDGE HARDESTY AT THE CONCLUSION OF THE DAY'S COURT PROCEEDINGS ON 10 JULY, 2003.

RESPECTFULLY SUBMITTED,

DATED THIS 14TH DAY OF JULY, 2003

FERNIL VOLPICELLI

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THIS 14TH DAY OF JULY, 2003, TO THE WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE UNDER PENALTY OF PERJURY PURSUANT TO NRS. 208.165.

FERNIL VOLPICELLI

WASHOE COUNTY DETENTION FACILITY

INMATE REQUEST

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: FERRILL VOLPICELLI Booking #: 03-0689

Housing Unit: 7 Cell #: 12 Date: 7-16-03

Describe Request: DEAR Mr. KADLIC

INASMUCH AS YOU DO, NOT ACCEPT MY CALLS, ALONG WITH MR. ALLANS POSITION THAT CASE 03-0147 IS NOT HIS CONCERN, I WAS LEFT WITH NO ALTERNATIVE BUT TO WRITE YOU. AND IN ORDER TO BE IN COMPLIANCE WITH THE GUIDELINES OF THE APPLICABLE NEVADA REVISED STATUE, I WAS COMPELLED TO FILE THE ACCOMPANYING PLEADING.

MOREOVER, IT IS SELF EXPLANATORY IN VIEW OF THE RECENT REVELATION CONCERNING YOUR INVOLVEMENT AS A JUDGE & A CONFLICT OF INTEREST WHICH CONTINUES TO HAUNT MY FAMILY AND I THROUGH PRESENT DAY.

I'm CONFIDENT THAT YOU UNDERSTAND THE IMPLICATIONS WITH MY CASES.

THANK YOU.

Inmate's Signature: [signature]

Receiving Staff Member/I.D.#: _____ Date: _____
(PRINT NAME)

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

ACTION

Routed to: _____ Date: _____ Re-Routed to: _____ Date: _____

Answer: Approved ☐ Denied ☐

Reason:

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THIS 16th DAY OF JULY, 2003 TO THE HONORABLE JUDGE HARDESTY, WASHOE COUNTY DISTRICT ATTORNEY, WASHOE COUNTY DISTRICT COURT CLERK AND JACK ALLAN, ESQ. AS CERTIFIED UNDER THE PENALTY OF PERJURY PURSUANT TO NRS 208.165

[signature]

Responding Staff Member / I.D.#: _____ Date: JULY 16
(PRINT NAME) FERRILL VOLPICELLI

White-Booking, Canary-Inmate; Pink-Inmate Receipt

S-725 (01/02)

V2.200 2003

Ferrill Volpicelli
03-06889 @WCSO
911 Parr Blvd
Reno, NV 89512

AFFIDAVIT

STATE OF NEVADA }
} SS
COUNTY OF WASHOE }

CASE# 02-0147

COMES NOW DEFENDANT FERRILL V. VOLPICELLI, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA; DEPOSES AND SAYS:

THAT WITHIN A DAY OF THE TRIAL ADJOURNMENT IN THE ABOVE REFERENCED CASE, IT CAME TO THE ATTENTION OF THE DEFENDANT THAT A CONFLICT OF INTEREST EXISTS WITH LEGAL REPRESENTATION BY MR JOHN KADLIC ESQ.
THAT SAID CONFLICT OF INTEREST WAS REALIZED BY DEFENDANT THROUGH COMMUNICATION WITH MS. LORI INMAN'S AND DEFENDANTS CHILDREN.
THAT DEFENDANT CONFIRMED SAID CONFLICT OF INTEREST VIA RESEARCH OF COUNTY RECORDS - VERIFYING THAT IN OR ABOUT APRIL OF 1993, FORMER JUDGE KADLICK'S NAME APPEARED ON A SEARCH WARRANT.
THAT SAID SEARCH WARRANT AUTHORIZED INVESTIGATIONS INTO DEFENDANTS LEGAL ACTIVITIES.

V2.201

Ferrill Volpicelli
03-06889 @WCSO
911 Parr Blvd
Reno, NV 89512

THAT THIS INCLUDED INVESTIGATIONS BY RENO POLICE DEPARTMENT, CALIFORNIA DEPARTMENT OF JUSTICE, THE CRIMINAL DIVISION OF THE U.S. JUSTICE DEPARTMENT, AND THE REPEAT OFFENDER PROGRAM OF NEVADA.

THAT SAID INVESTIGATIONS CULMINATED IN SUBSEQUENT INDICTMENTS AND EVENTUAL CONVICTIONS WITH COMMITMENTS OF THE DEFENDANT TO STATE AND FEDERAL FACILITIES.

THAT TO DATE, UNRESOLVED ISSUES LINGER WITH RESPECT TO PROPERTY SEIZED BY THE C.D.O.T UNDER SAID WARRANT. (SEE ACCOMPANYING LETTER AND WAIVER DEPUTY ATTORNEY ROGER WINNES.)

THAT IF THE DEFENDANT WAS MADE AWARE OF THIS CONFLICT OF INTEREST EARLIER, HE WOULD HAVE PROMPTLY DISMISSED MR. KADLIC ESQ.

THAT IN OR ABOUT THE MONTHS OF APRIL MAY, JUNE, AND JULY OF 1993, DEFENDANT SOUGHT LEGAL REPRESENTATION THROUGH MR. JACK ALIAN REGARDING THE CURRENT AND ENSUING INVESTIGATIONS.

THAT DEFENDANT IS NOT SATISFIED WITH THE REPRESENTATION OF MR. KADLIC

Ferrill Volpicelli
03-06889 @WCSO
911 Parr Blvd
Reno, NV 89512

PRIOR TO AND DURING TRIAL; AS EVIDENCED BY THE ACCOMPANYING LETERS.
THAT DEFENDANT WAS NOT EVEN MADE AWARE OF THE 21 FEBRUARY, 2003 COMPLAINT AMENDMENT UNTIL DATE OF TRIAL.
THAT AGAINST DEFENDANTS WISHES, MR. KADLIC PURPOSEFULLY DID NOT PRESENT EVIDENCE RELEVANT TO DEFENDANTS CASE.
THAT IN VIEW OF THE FOREGOING, THE DEFENDANT APPEALS THE FINAL VERDICT BASED UPON EXCULPATORY EVIDENCE WITH REGARD TO ATTORNEY-CLIENT CONFLICT OF INTEREST.
THAT IN THE EVENT THE PROSECUTION REQUESTS THE ELIMINATION OF CONTROVERSIAL INFORMATION PERTAINING TO THE 27 SEPTEMBER 2003 INCIDENT, DEFENDANT INSISTS UPON A SEVERANCE OF MATTERS INTO TWO TRIALS.
AND FINALLY, THAT IT WILL BE THE DEFENDANTS INTENTION TO TESTIFY AT BOTH OF THESE TRIALS.

RESPECTFULLY SUBMITTED,
DATED THIS 16TH DAY OF JULY, 2005

FERRILL V. VOLPICELLI

June 25, 2002

Ferrill Volpicelli
#60076 @ NSP
Box 607
Carson City, NV 89702

C.D.O.J.
Attention: Special Agent In Charge
Mr. Vincent Jura
Mariposa Street
Room 5000
Fresno, CA.

RE: RETURN OF PROPERTY

Dear Mr. Jura,

In February of this year, I wrote a letter apprising you of my predicament and my continued interest in resolving the issue concerning the return of my property. Please find a copy of such for your review.

It is my ardent hope that I can make arrangements with my family to secure the property that you continue to store in evidence. Again, please bear with me on this matter.

At your earliest convenience, please provide me with a timely reply acknowledging your receipt of my correspondence, as well as your cooperation with this matter.

Thank you.

Best wishes,

Ferrill Volpicelli

Cc: file

"Exhibit A"

April 4, 2003

Ferrill Volpicelli
60076 @ NNCC
Box 7000
Carson City, nV 89702

John Kadlic, Esq.
147 E. Liberty Ste 2
Reno, NV 89501

RE: REPLY TO PREVIOUS LETTERS

Dear Mr. Kadlic,

Thus far, I have made innumerable attempts to contact you, including two letters and countless dozens of calls to your office: all to no avail.

Of paramount concern is the state bail situation for reasons clearly outlined in my last letter. It is my objective to deal with this matter in advance of the imminent status hearing with the early May trial date.

In addition, I am still without confirmation as to my representation on the three other matters. In view of this, coupled with the lack of discovery on certain issues, there is no way that I am prepared to venture in to trial.

Finally, as a result of my desperation to discuss matters with you, I have requested my Power of Attorney, Kevin Sigstad, to call you. Please advise him as to the particulars regarding my bail situation. He is fully aware of my legal woes.

Thank you for your cooperation.

Sincerely,

Ferrill Volpicelli

cc: file

"Exhibit B"

April 9, 2003

Ferrill Volpicelli
60076 @ NNCC
Box 7000
Carson City, NV 89702

John Kadlic Esq.
147 E. Liberty Ste 201
Reno, NV 89501

RE: REQUEST FOR IMMEDIATE BAIL HEARING

Dear Mr. Kadlic,

According to my federal public defender, it is imperative that you schedule an immediate bail hearing. In view of my pending federal warrant/detainer, I am requesting that you seek an O.R. on all the state matters.

In this way, I can achieve a timely and prudent objective of resolving my federal supervised release violations.

Inasmuch as your office does not accept my calls, and I have not received a reply to any of my written inquiries, I must insist that you pursue this matter within 5 business days. If not, I will be compelled to write the Honorable Judge Hardesty.

Thank you.

Sincerely,

Ferrill Volpicelli

cc: file

"Exhibit C"

FERRILL VOLPICELLI
03-06779 WCSO
911 PARR
RENO, NV 89512

JUNE 15, 2003

LAW OFFICE OF JOHN KADLIC

DEAR MR. KADLIC,

TO DATE, I HAVE LEFT SEVERAL MESSAGES OF INQUIRY ON YOUR VOICE MAIL; ALL TO NO AVAIL.

IN MY LAST CONVERSATION WITH MR. ALIAN, HE PURPORTED THAT YOU CONTINUE TO BE THE COUNSEL OF RECORD ON 02-0147.

02-0147

ALSO, I SPECIFICALLY RECALL YOUR PROMISED VISIT IN CARSON CITY TO DISCUSS ISSUES WITH MY CASE.

AS I MENTIONED IN MY LAST MESSAGE TO YOUR VOICE MAIL, THE JULY 10TH SCHEDULED TRIAL DATE POSES A CONFLICT WITH MY HEARING IN THE FAMILY DIVISION OF WASHOE COUNTY DISTRICT COURT. 03-02634

IT IS MY ASSUMPTION THAT 02-0147 WILL BE DEFENDED. HOWEVER, I WOULD LIKE TO MEET WITH YOU FOR THE PREPARATION AND SUBMISSION OF A PRE-TRIAL MOTION TO SEVER THE 3 COUNTS INTO TWO TRIALS.

PLEASE VISIT ME AT WCSO HOUSING UNIT 1 ON THIS MATTER WITHIN THE NEXT 10 DAYS. THANK YOU.

"Exhibit D"

SINCERELY,

V2.207

(2679881
0-9
7-22

3585
Bradley O. Van Ry
Nevada Bar No. 7198
1403 East Fourth St.
Reno, NV 89512
(775) 324-3681

ORIGINAL

FILED
2003 AUG -8 AM 11:53
...TH, JR.
BY ... DEPUTY

DC-9900025179-014
FERRILL JOSEPH VOL 4 Pages
08/08/2003 11 53 AM
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CR03-1263
STATE VS
District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

PETITION FOR WRIT OF HABEAS CORPUS

TO: THE HONORABLE JUDGE OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

The defendant, Ferrill Joseph Volpicelli ("Mr. Volpicelli"), by and through his undersigned counsel respectfully shows:

1. That Mr. Volpicelli make application herein for a Writ of Habeas Corpus in that he is restrained of his liberty, and that the office by whom Mr. Volpicelli is restrained is DENNIS BALAAM, Sheriff;

2. Mr. Volpicelli hereby waives the 60-day limitation for being brought to trial;

3. Mr. Volpicelli consents that, if the petition is not decided within fifteen (15) days before the date set for trial, the Court may, without notice or hearing, continue the trial indefinitely or to a date designated by the Court;

V2.208

4. Mr. Volpicelli consents that, if any party appeals the Court's ruling and the appeal is not determined before the date set for trial, the trial date is automatically vacated and the trial postponed until the Court otherwise order;

5. That this petition and all supporting documents have been filed pursuant to stipulation of the parties in the District Court;

6. That the restraint of Mr. Volpicelli is unlawful in that the Grand Jury considered legally improper evidence as presented to them. The Grand Jury was improperly presented with a prior conviction for burglary for its consideration.

7. This petition is brought upon NRS 172.155 and all documents and records on file herein.

WHEREFORE, Mr. Volpicelli prays that this Honorable Court make an Order directing the County Clerk to issue a Writ of Habeas Corpus directed to said DENNIS BALAAM, Sheriff, commanding him to bring Mr. Volpicelli before this Court and determine the cause of Mr. Volpicelli's restraint.

DATED this 7th day of August, 2003.

BRADLEY O. VAN RY
Attorney for Defendant
Ferrill Joseph Volpicelli

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

BRADLEY O. VAN RY, being first duly sworn, deposes and says:

1. That I am the attorney for the Petitioner, Mr. Volpicelli, in the above-entitled matter;

2. That I have read the foregoing Petition and know the contentns thereof, and that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true;

3. This Writ verification is being signed with the knowledge and permission of Mr. Volpicelli.

BRADLEY O. VAN RY

SUBSCRIBED AND
SWORN to before me
This 7 day of
August, 2003.

NOTARY PUBLIC

KARI HALEN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 03-80570-2 - Expires February 28, 2007

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Van Ry Law Office, 1403 E. Fourth Street, Reno, Nevada, 89512, and that on the date below, a true and correct copy of PETITION FOR WRIT OF HABEAS CORPUS & POINTS AND AUTHORITIEZS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS was deposited for mailing with the United States Post Office, Regular First Class Mail, at Reno, Nevada, in a sealed envelope, addressed to the following:

Deputy District Attorney Tammy Riggs
Deputy District Attorney Cheryl Hier-Johnson
75 Court St
PO Box 30083
Reno, NV 89520

Ferrill Volpicelli
Washoe Cty Detention Ctr
911 Parr Blvd
Reno, NV 89512-1000

Dated: August 7, 2003

Kari Halen

DC-9900025179-042
CR03-1263
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 08/08/2003 11 53 AM
Washoe County 3665

3665
Bradley O. Van Ry
Nevada Bar No. 7198
1403 East Fourth St.
Reno, NV 89512
(775) 324-3681

ORIGINAL

2003 AUG -8 AM 11:53

BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

1. STATEMENT OF FACTS

On June 11, 2003, the State of Nevada presented a case to the Grand Jury involving Defendant, Ferrill Joseph Volpicelli ("Mr. Volpicelli"). During the presentation of its case, the State of Nevada improperly utilized a prior conviction and submitted it to the Grand Jury. As a result, the indictment in this case issued. See Exhibit "1" (Transcript of Proceeding p. 1,2; p. 144-147).

2. ARGUMENT

Nevada law is clear that the Grand Jury may only receive legal evidence. NRS 172.135(2); See also, Phillips v. Sheriff, Clark Co., 93 Nev. 309, 565 P.2d 330 (1977). Additionally, as this Court is aware, prior conviction or prior bad act evidence can only be introduced at trial after a "Petrocelli" hearing. NRS 48.045; Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000). In order to

admitted at a trial, a hearing must be held to establish that prior conviction or prior bad act evidence is relevant, proven by clear and convincing evidence and that the probative value of evidence is not substantially outweighed by the danger of unfair prejudice. Id.

Although no Nevada cases appear to address the propriety of introducing prior conviction or prior bad act evidence before a Grand Jury, this Court should quash the indictment because of the danger of unfair prejudice and lack of relevance arising therefrom. The evidence presented in this case was legally improper and should not have been considered by the Grand Jury.

Here, the Grand Jury was presented with a certified copy of a prior offense of burglary from 1998. The prejudicial effect of a prior conviction for burglary when charged with seven counts of burglary in a proposed indictment is obvious. Additionally, it is of no relevance to the counts of burglary as charged. There was, significantly, no hearing to determine any of the required findings for admissibility at a trial. As the Grand Jury can only consider proper evidence, the consideration of the prior conviction unfairly and prejudicially tainted the process. The presentation of this improper evidence is grounds for quashing the indictment. Accordingly, Mr. Volpicelli requests that the indictment be quashed based upon the foregoing.

DATED this 7th day of August, 2003.

BRADLEY O. VAN RY
Attorney for Defendant
Ferrill Joseph Volpicelli

DC-9900025179-043
CR03-1263 FERRILL JOSEPH VOL 9 Pages
STATE VS
District Court 08/08/2003 11 53 AM
Washoe County 3665

EXHIBIT 1

CR03-1263
D-9

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE WASHOE COUNTY GRAND JURY

-o0o-

FILED
2003 JUN 20 PM 2:41
RONALD A. LONGTIN, JR.
BY G. Velarde
DEPUTY

IN THE MATTER OF:

FERRILL JOSEPH VOLPICELLI

_____/

P R O C E E D I N G S

WEDNESDAY, JUNE 11, 2002

9:15 A.M.

APPEARANCE:

For the State: CHERYL HIER-JOHNSON, ESQ.
TAMMY RIGGS, ESQ.
Deputy District Attorneys
Washoe County Courthouse
Reno, Nevada

Also Present: Kevin VanRy, Esq.
Deputy District Attorney

Reported by: JUDITH ANN SCHONLAU, CSR #18
Computer-Aided Transcription

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-o0o-

RENO, NEVADA; WEDNESDAY, June 11, 2003; 9:15 A.M.
-oOo-

MS. HIER-JOHNSON: Good morning ladies and gentlemen of the Grand Jury. My name is Cheryl Hier-Johnson. I am a Washoe County Deputy District Attorney. Present with me this morning are Deputy District Attorney Tammy Riggs and Kevin VanRy. As I just said, please excuse the interruption, I am here this morning with Ms. Riggs and Mr. VanRy. Ms. Riggs and I are trying this case together, so I would ask the Grand Jury Foreman's permission and request for both Ms. Riggs and I to be able to remain present in the Grand Jury this morning because we will both be questioning witnesses. We will each have our own witnesses, and we would like to remain for the entire proceeding even if we are not questioning a witness at the moment. Is that all right?

THE FOREMAN: That is fine by me. Any objections? No.

MS. HIER-JOHNSON: Also, with respect to Mr. VanRy, he's a new Deputy District Attorney in the office. I am his supervisor this week, and I am training him. I would ask that you specifically recognize his presence and invite him here to remain this morning not to participate but simply to observe for training purposes. Mr. Foreman, would that be all right?

THE FOREMAN: That would be fine.

investigation being made by the Grand Jury.

However, you may disclose the above information to the District Attorney for use in the performance of his duties.

You also may disclose your knowledge concerning the proceedings when directed by a court in connection with judicial proceedings or when otherwise permitted by the court or to your own attorney.

The obligation of secrecy applies until the Court allows the matter to become public record.

A gross misdemeanor and contempt of court may be persued if your obligation of secrecy is not followed. Do you understand?

THE WITNESS: Yes, I do.

THE FOREMAN: Thank you

(Witness Excused.)

MS. HIER-JOHNSON: Ladies and gentlemen of the Grand Jury, that concludes the testimonial evidence the State intends to present this morning.

The final piece of evidence for your consideration today is being offered for a very limited purpose. It is Grand Jury Exhibit 16. All burglary counts alleged against Mr. Volpicelli allege he has been previously convicted of burglary in 1998. This allegation is not at all relevant to whether or

not Mr. Volpicelli committed the offenses that he is accused of in this Indictment. It is only relevant as a sentencing consideration to be reviewed by the District Court judge at the time of sentencing if Mr. Volpicelli is convicted of any of these burglary charges and for no other purpose.

Exhibit 16 is a certified copy of that 1998 conviction. And the only reason it is being presented to you today is because case law requires that the District Attorney give the defendant notice of this potential sentencing consideration and also to show some evidence of it at a Preliminary Hearing or Grand Jury. That is the only reason that you may consider this prior burglary conviction today is to determine whether or not the D.A., presented some evidence at this stage. And with that, I will leave you to your deliberations.

(Whereupon the Deputy District Attorneys and the Court Reporter left the Grand Jury room.)

(Whereupon the Grand Jury deliberated.)

(Whereupon the Deputy District Attorney and the Court Reporter re-entered the Grand Jury room.)

THE FOREMAN: We have one question we would like explained, that is the definition of implements and adapting of tools for use of burglary and crimes.

MS. HIER-JOHNSON: Ladies and gentlemen of the Grand

Jury, included in your Instructions of Law packet is NRS 205.080, and if you look in paragraph 1, it gives kind of a laundry list of various implements or instruments that can be the subject of this charge. With respect to the specific words selected by the State, that being machine tools or implements, then the word adapted, there is no case law on point that further defines those words. So I will represent what frequently occurs in these instances where the courts direct juries to use the common sense definition, ordinary meaning of the words, because we don't have anything more specific or different on point here in Nevada.

THE FOREMAN: Okay.

(Whereupon the Deputy District Attorney and the Court Reporter left the Grand Jury room.)

(Whereupon the Grand Jury deliberated.)

(Whereupon the Deputy District Attorney and the Court Reporter re- entered the Grand Jury room.)

THE FOREMAN: We have returned a true on bill on Counts I through X and a no True Bill on Count XI.

MS. HIER-JOHNSON: In light of the Grand Jury's findings, I will strike Count XI from the Indictment. But rather than signing the final page, since there is another matter for your consideration this afternoon, I am going to go to our word processing division and ask them to delete Count XI

from our memory bank. So my signature line will appear immediately following Count X, and I will have that document signed and prepared to present to whichever Judge takes the returns this afternoon. If that is satisfactory with you, Mr. Foreman, then I will go ahead and return the final page to you for an indication of a True Bill.

THE FOREMAN: You want me to sign this one now. Okay.

MS. HIER-JOHNSON: We will go ahead and put on the record at the time of the return that the document that I present to the Foreman is in fact in the document agreed upon by the Grand Jury into today's proceedings.

It looks like all the exhibits have been pushed forward. I would ask you to go ahead and return the copies of law and copies of proposed Indictments.

(Whereupon, the proceedings were concluded.)

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, Judith Ann Schonlau, one of the Court Reporters of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I reported in stenotype the testimony of the witnesses before the Washoe County Grand Jury in the matter of FERRILL JOSEPH VOLPICELLI at Reno, Nevada on Wednesday, June 11, 2003;

That the foregoing transcript, consisting of pages numbered 1 through 147, inclusive, is a full, true and correct transcription of the stenotype notes taken in the above-entitled matter, to the best of my knowledge, skill and ability.

I further certify that I am in no way interested in the outcome of said action.

Dated at Reno, Nevada, this 17th day of June, 2003.

JUDITH ANN SCHONLAU CSR #18

ORIGINAL

FILED

AUG 13 2003

RONALD A. LONGTIN, JR., CLERK

By: [signature] DEPUTY

2840

DC-9900025141-012
CR03-1263 STATE VS. FERRILL JOSEPH VOL 3 Pages
District Court 08/13/2003 01:41 PM 2840
Washoe County JAME
DOC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Plaintiff,

v.

Case No. CR03-1263

Dept. No. 9

THE STATE OF NEVADA,

Defendant.

_____/

ORDER

The Court has reviewed and considered Petitioner's Ex Part Petition for Clarification filed on August 1, 2003.

Pursuant to WDCR 9(3)(c) "The court shall not consider any ex parte communication, letter, report or other document but shall forthwith notify counsel for all parties, on the record, of any attempted ex parte communication or document or submission."

////

////

Good cause appearing, IT IS HEREBY ORDERED that Petitioner's Ex Parte Petition for Clarification is DENIED without prejudice.[1]

Dated this 13 day of August, 2003.

JAMES W. HARDESTY
DISTRICT JUDGE

[1] The relief requested by Petitioner must be resubmitted by his counsel of record pursuant to LCR 7.

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 13 day of August, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Ferrill J. Volpicelli, #60076
Washoe County Detention Facility
(via interoffice mail)

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

John J. Kadlic, Esq.
550 California Avenue
P. O. Box 2477
Reno, NV 89505

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)

Michele M. Shull
Administrative Assistant

FILED

2003 AUG 18 AM 9:25

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

ORIGINAL

CODE 3897
Richard A. Gammick
#001510
P.O. 30083-3083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

DC-9900025141-013
CR03-1263 FERRILL JOSEPH VOL 3 Pages
STATE VS District Court 08/18/2003 09.25 AM
Washoe County 3897
DOC JAMEF

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

IN THE MATTER OF THE APPLICATION OF FERRILL JOSEPH VOLPICELLI FOR A WRIT OF HABEAS CORPUS.

Case No. CR03W-1263

Dept No. 9

/

RETURN

Respondent represents that Petitioner is no manner imprisoned, confined or deprived of liberty without law; and further avers:

I

That Respondent, at all times mentioned herein, was and is the Sheriff of Washoe County, Nevada; and, as such, is charged by law with the duty of detaining in custody such persons as are legally ordered to be confined.

II

That Respondent is restraining and detaining Petitioner above named by virtue of the Indictment accusing the above named defendant of Count I, Conspiracy to Commit Crimes Against Property; Counts II: - IX: Burglary; Count X: Unlawful

Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels said Indictment having been filed in the Second Judicial District Court on the 11th day of June, 2003.

III

The Petitioner above named, under the authority of the Indictment filed on the 11th day of June, 2003, has been and now is in custody in the Washoe County Jail.

DATED this 18th day of AUGUST, 2003.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
TAMMY M. RIGGS
007498
Deputy District Attorney

08184004

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

Bradley O. Van Ry
1403 East Fourth Street
Reno, NV 89512

DATED this 18 day of August, 2003.

Penny Rasmussen

ORIGINAL

FILED
2003 SEP -4 PM 2:17
RONALD A. LONGTIN, JR.
BY
DEPUTY

CODE
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

DC-99000025141-014
CR03-1263 STATE VS. FERRILL JOSEPH VOL 6 Pages
District Court 09/04/2003 02.17 PM 2650
Washoe County JAMES
DOC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Case No. CR03-1263

Dept. No. 9

OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, the State of Nevada by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and TAMMY M. RIGGS, Deputy District Attorney, and hereby OPPOSES the petitioner's Petition for Writ of Habeas Corpus. This OPPOSITION is based on the pleadings and papers on file in this case and the attached Memorandum of Points and Authorities.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
TAMMY M. RIGGS
007498
Deputy District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In his Petition, the petitioner alleges that the State improperly presented evidence to the grand jury of the petitioner's 1998 conviction for burglary to obtain the indictment in this case, and asserts "this Court should quash the indictment because of the danger of unfair prejudice and lack of relevance arising therefrom." (Pet. for Writ of Habeas Corpus at 2.) Because (1) habeas corpus is the inappropriate vehicle to challenge the State's evidence at a grand jury proceeding, (2) the state appropriately introduced the petitioner's 1998 conviction for the limited purpose of notice, and (3) the State's evidence at grand jury was sufficient to indict the petitioner even had his allegations that the evidence of his prior conviction was illegal been accurate, the Petition should be DENIED.

LAW AND ARGUMENT

The remedy of habeas corpus is not available to challenge the State's evidence at a grand jury proceeding.

The petitioner alleges that the "danger of unfair prejudice" resulted from the admission into evidence at the grand jury proceeding of certified proof of his 1998 burglary conviction. Challenges to the validity of grand jury proceedings based on alleged illegal introduction of evidence is properly made by motion and not by pretrial habeas corpus proceedings. Franklin v. State, 89 Nev. 382, 387, 513 P.2d 1252, 1256 (1973), citing NRS 174.105(1), Cook v. State, 85 Nev. 692, 462 P.2d 523 (1969), and Turpin v. Sheriff, 87 Nev. 236, 484 P.2d 1083 (1971). NRS 174.105(1) provides that all objections based on defects in the indictment, save objections of

insufficiency of the evidence or lack of jurisdiction, must be raised by motion before trial. Further, NRS 174.105(2) provides that failure to present such objection by motion constitutes a waiver of the objection (subject to the discretion of the Court).

Because the petitioner did not raise his objection to the State's evidence by motion as required by statute and habeas corpus is not an available remedy for the relief that he seeks, the Court should DENY his Petition as procedurally barred.

The State appropriately introduced the petitioner's 1998 burglary conviction during the grand jury proceedings.

NRS 205.060(2) provides:

> ...A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of his sentence.

The provision eliminating probation as an option provides for sentence enhancement where a prior burglary conviction exists. As sentencing enhancements, prior convictions are not themselves elements of the State's case to be proven at trial. Accordingly, an evidentiary evaluation by the grand jury of a prior burglary conviction is not required to determine whether the offense itself was committed for purposes of a probable cause determination. Parsons v. State, 116 Nev. 928, 934, 10 P.3d 836, 840 (2000).

However, including the prior conviction in the indictment and in the evidence before the grand jury puts the defendant on notice of the possible penalties faced and provides the defendant with enough information to challenge the prior conviction. Id. at

935, 840, citing Dressler v. State, 107 Nev. 686, 689, 819 P.2d 1288, 1289-90 (1991). NRS 484.3792(2), Nevada's DUI sentencing provision, for example, requires that evidence of prior DUI convictions used to enhance a DUI to a felony be presented to the grand jury for these purposes. Id.

When introducing the prior conviction to the grand jury, the State included a limiting instruction, informing the members that the only purpose for which they could consider the prior conviction was to determine whether there was evidence of the conviction for the purpose of notice to the petitioner. (Grand Jury Tr. At 146.) Because the State provided the prior conviction to the grand jury for the purpose of notice, and the grand jury was appropriately cautioned as to its use, no prejudice to the petitioner resulted from its admission.

The State presented sufficient evidence for the grand jury to find a true bill.

Even if the prior conviction evidence had been improper, the State's evidence presented at the grand jury was more than sufficient for the grand jury to find a true bill and indict the petitioner. The legal efficacy of an indictment will be sustained if there has been presented to the grand jury the slightest sufficient legal evidence and best in degree even though inadmissible evidence may also have been adduced contrary to NRS 172.135. Franklin, 89 Nev. at 387, 513 P.2d at 1256, citing Robertson v. State, 84 Nev. 559, 445 P.2d 352(1968) and State v. Logan, 1 Nev. 509 (1865).

///

At the grand jury proceeding, the State presented nine witnesses, including an accomplice, who testified to witnessing various acts committed by the petitioner during the ten charged crimes, as well as describing the merchandise illegally obtained by the petitioner. (See Grand Jury Tr. At 7 - 143.) The accomplice described the petitioner's scheme to burglarize various retail stores and the manner in which the petitioner carried out the burglaries. (Id. at 7-51). The State also presented fifteen exhibits in addition to the certified proof of prior conviction, including photographs of various merchandise discovered in the petitioner's vehicle and in his storage unit. In presenting this evidence, the State met its burden in producing the slight or marginal evidence required for the grand jury to find probable cause that the charged crimes were committed and that the petitioner committed them.

Because the State met its evidentiary burden at the grand jury proceeding, the indictment should not be quashed.

CONCLUSION

Based on the preceding, the Court should DENY the petitioner's Petition for Writ of Habeas Corpus.

Dated this 4th day of September 2003.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

BY _____
TAMMY M. RIGGS
007498
Deputy District Attorney

09042634

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

MR. BRAD VAN RY
1403 E. FOURTH STREET
RENO, NV 89512

DATED this 4th day of September, 2003.

Penny Rasmussen

DC-9900025141-015
CR03-1263 STATE VS. FERRILL JOSEPH VOL 6 Pages
District Court 09/12/2003 02:56 PM 1930
Washoe County JAMES
DOC

FILED

SEP 12 2003

RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

CODE: 1930

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR02-0146
CR02-0147
CR02-0148
CR03-1263

Dept. No. 9

LETTER FROM DEFENDANT

SEE ATTACHED DOCUMENT

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FERRILL VOLPICELLI
08-06879 WCSO
911 PARR BLVD
RENO, NV 89512

CHIEF DISTRICT COURT JUDGE DEPT. 9

SEPTEMBER 1, 2003

RE: DISINTERESTED COUNSEL

DEAR HONORABLE JUDGE HARDESTY,

AGAIN, I FIND MYSELF THE SAME ISSUES REGARDING THE DISINTEREST OF MY COUNSEL TO ASSIST ME WITH MY STATE BAIL SITUATION. (SEE PETITION FOR CLARIFICATION) ENCLOSED ARE COPIES OF LETTERS TO MY ATTORNEYS. AND TYPICALLY, NOT ONE OF THEM IS RESPONDING TO THE MATTER.

SO I RESPECTFULLY INQUIRE AS TO WHAT I AM TO DO NEXT?

THANK YOU:

FERRILL VOLPICELLI

SINCERE REGARDS,

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT ON THE 4th DAY OF SEPTEMBER, 2003, HE DID MAIL A COPY OF THIS LETTER TO WASHOE COUNTY DISTRICT ATTORNEY, JACK ALIAN JOAN KADLIC, BRADLEY VARNEY.

FERRILL VOLPICELLI

RECEIVED
SEP 09 2003
Department Nine

ENCLOSURES
CC: FILE

HERMAN VOLPICELLI
03-06889 WCSO
911 PARR BLVD
RENO, NV 89512

AUGUST 19, 2003

LAW OFFICE
OF
JACK ALIAN ESQ.

DEAR MR. ALIAN,

PLEASE FIND THE ACCOMPANYIN ORDER FROM JUDGE HARDESTY REGARDING MY EFFORTS TO RESOLVE MATTERS WITH MY STATE BAIL AT THIS POINT, I IMPLORE YOU TO SCHEDULE A HEARING ON THIS MATTER WITHIN THE NEXT WEEK, IF NOT, THEN I WILL BE OVERWHELMINGLY COMPELLED TO WRITE JUDGE HARDESTY APPRISING HIM OF INATTENTIVE AND INEFFECTUAL COUNSEL

SINCERE REGARDS,

CC: FILE
ENCLOSURE

FERRILL VOLPICELLI
03-06479 WCSO
911 PARR BLVD
RENO, NV 89512

AUGUST 19, 2003

LAW OFFICE
OF
JOHN KADLIC ESQ.

DEAR MR. KADLIC,

BY NOW YOU ARE LIKELY IN RECEIPT OF JUDGE HARDESTY'S ORDER REGARDING CLARIFICATION OF MY STATE BAIL.

AT THIS POINT, I IMPLORE YOU TO SCHEDULE A HEARING ON THIS MATTER WITHIN THE NEXT WEEK IF NOT, THEN I WILL BE OVERWHELMINGLY COMPELLED TO WRITE JUDGE HARDESTY APPRISING HIM OF INATTENTIVE & INEFFECTUAL COUNSEL.

SINCERE REGARDS,

cc & file
ENCLOSURE

AUGUST 19, 2003

LAW OFFICE OF
BRADLEY VAN RY ESQ.

Dear Mr.

PLEASE FIND THE ACCOMPANYING PLEADING WHIC
COINCIDES WITH JUDGE HANDELY'S RECENT ORDE
IT WAS MUCH AS YOU ARE THE ONLY ATTORNE
THAT PROFESSIONALLY ACKNOWLEDGE MY CORRESPOND
I IM PLORE YOU TO SCHEDULE A HEARING
THIS MATTER IN THE COMING WEEK. I'D
NOT PURSUE THIS MATTER AGAIN ON MY OWN.
SIMPLY APPRISE JUDGE HANDELY OF A LA
OF COURTESY BY COUNSEL. THANK

SINCERELY REGARDS,

cc: file
ENCLOSURE

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 12 day of September, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Ferrill J. Volpicelli, #60076
Washoe County Detention Facility
(via interoffice mail)

Jack A. Alian, Esq.
360 W. Liberty Street
Reno, NV 89501

John J. Kadlic, Esq.
550 California Avenue
P. O. Box 2477
Reno, NV 89505

Tammy Riggs, Esq.
Deputy District Attorney
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)

Michele M. Shull
Administrative Assistant

WASHOE COUNTY DETENTION FACILITY

INMATE REQUEST

Courts Transportation
SEP 0 5 2003

FILED
OCT 0 7 2003
RONALD A. LONGTIN, JR., CLERK
By: _____ DEPUTY

DC-9900025141-016
CR03-1263
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 10/07/2003 04:20 PM
Washoe County 1812
DOC JAMES

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: FERRILL VOLPICELLI Booking #: 03-06879

Housing Unit: 7 Cell #: 12 Date: 9-4-03

Describe Request:

COURTS

TO: MICHELLE OF DEPARTMENT 9 WCDC - CLERK

ATTACHED IS A COPY OF THE RESPONSE TO MY ATTEMPT IN RESOLVING THE ISSUE OF SUPERFLUOUS COUNTS ON MY RAP SHEET AT WCSO. AS A RESULT OF THE DUPLICATE CHARGES WHEN 02-0145 & 02-0146 CONVERTED TO 03-1263, THEY HAVE ADVERSELY AFFECTED MY CUSTODY LEVEL. COULD YOU PROVIDE ME WITH COURT MINUTES OR OTHER DOCUMENTATION SO THAT THIS MATTER CAN BE RESOLVED WITH WCSO RECORDS.

THANK YOU.

Inmate's Signature: [signature]

Receiving Staff Member/I.D.#: PLAYA 2541 Date: 9/4/03
(PRINT NAME)

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

ACTION

Routed to: Courts Date: 9-4 Re-Routed to: _____ Date: _____

Answer: Approved ☐ Denied ☐

Reason:

Advised inmate via phone that cases CR02-0145 and CR02-0146 were stayed pursuant to ~~[redacted]~~ Courts order of 6/18/03, but not dismissed

cc: Jack Alian
John Kadlic
Tammy Riggs

Responding Staff Member / I.D.#: _____ Date: _____
(PRINT NAME)

White-Booking; Canary-Inmate, Pink-Inmate Receipt

S-725 (01/02)

V2.241

DC-9900025141-017
CR03-1263 FERRILL JOSEPH VOL 3 Pages
STATE VS. FERRILL JOSEPH VOL 3 Pages
District Court 09/17/2003 11.42 AM
Washoe County 3795
DOC JAME

3795
Bradley O. Van Ry
Nevada Bar No. 7198
1403 East Fourth St.
Reno, NV 89512
(775) 324-3681

ORIGINAL

FILED
2003 SEP 17 AM 11:42
RONALD A. LONGTIN, JR.
BY
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.
_____/

Case No. CR03-1263

Dept. No. 9

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Defendant, Ferrill Joseph Volpicelli ("Mr. Volpicelli"), hereby replies in support of his petition for writ of habeas corpus. This reply is made and based upon the accompanying points and authorities.

DATED this 16th day of September, 2003.

BRADLEY O. VAN RY
Attorney for Defendant
Ferrill Joseph Volpicelli

///

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///

POINTS AND AUTHORITIES

1. Writ may be considered as "Motion".

Without conceding that a Writ is not the appropriate vehicle for the instant case, if the Court finds it proper, Mr. Volpicelli would alternatively request that his Writ be considered as a Motion. That the motion is made by a petition for a writ is not a substantive difference sufficient to deny review by this Court.

2. NRS 484.3792(2) does not apply to this Grand Jury proceeding.

The State cleverly points to a DUI statute to justify introducing the prior conviction of Mr. Volpicelli to the Grand Jury. That statute, however, clearly does not apply to this case. That statute is very specific and directed at driving while impaired and its elevation to a felony. It is, therefore, inapposite. Here, Mr. Volpicelli is accused of numerous felonies and a prior conviction was introduced against him. As a result, he was prejudiced beyond any repair by a limiting instruction.

3. Unfair Prejudice is the issue.

The State asserts that sufficient evidence exists to justify the true bill and indictment. That misses the point of the Writ. Mr. Volpicelli complains of the unfair prejudice arising from the Grand Jury reviewing a prior felony conviction. As such, the State's argument should be ignored, and the Indictment dismissed.

DATED this 16th day of September, 2003.

BRADLEY O. VAN RY
Attorney for Defendant
Ferrill Joseph Volpicelli

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Van Ry Law Office, 1403 E. Fourth Street, Reno, Nevada, 89512, and that on the date below, a true and correct copy of **REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** was deposited for mailing with the United States Post Office, Regular First Class Mail, at Reno, Nevada, in a sealed envelope, addressed to the following:

Deputy District Attorney Tammy Riggs
Deputy District Attorney Cheryl Hier-Johnson
75 Court St
PO Box 30083
Reno, NV 89520

Ferrill Volpicelli
Washoe Cty Detention Ctr
911 Parr Blvd
Reno, NV 89512-1000

Dated: September 16, 2003

Kari Halen

CASE NO. CR03-1263 **STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
09/24/03 HONORABLE JAMES W. HARDESTY DEPT. NO. 9 S. Sattler (Clerk) D. Davidson (Reporter)	**MOTION TO CONFIRM TRIAL** Deputy D.A. Tammy Riggs represented the State. Defendant present without counsel. Counsel for State addressed the Court and indicated they had met with his Administrative Assistant to continue this matter and noted this was Mr. Van Ry's case. Court indicated he believed this matter had been previously continued and advised the Defendant not to speak to the Court without his counsel. Defendant remanded to the custody of the Sheriff.	10/24/03 at 8:30 a.m. Motion to Confirm 11/10/03 at 8:30 a.m. Jury Trial

DC-9900025179-026
CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 09/24/2003 10:35 AM MIN
Washoe County

DC-9900025141-01G
CR03-1263 FERRILL JOSEPH VOL 3 Pages
STATE VS District Court 10/07/2003 01 26 PM
Washoe County 4030
DOC JAMES

ORIGINAL

FILED

OCT 07 2003

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

4030
Bradley O. Van Ry
Nevada Bar No. 7198
1403 East Fourth St.
Reno, NV 89512
(775) 324-3681
Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Case No. CR03-1263

Dept. No. 9

STIPULATION FOR CHANGE OF TRIAL DATE

The State of Nevada by and through undersigned counsel Tammy M. Riggs, Washoe County Deputy District Attorney, and defendant, Ferrill Joseph Volpicelli, by and through undersigned counsel Bradley O. Van Ry, hereby stipulate to change the time of the Trial scheduled for September 24, 2003 to November 10, 2003 at 8:30 a.m. in Department 9.

///

///

///

This stipulation is entered into for good cause and not for any purpose of delay.

DATED this 9/29 day of _____, 2003.

Tammy Riggs
Washoe County
Deputy District Attorney

Bradley O. Van Ry
Attorney for Defendant
Ferrill Joseph Volpicelli

IT IS SO ORDERED:

JUDGE HARDESTY

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 7th day of October, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)

Michele M. Shull
Administrative Assistant

ORIGINAL

FILED

2003 OCT -9 PM 1:24

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

CODE 2610
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

DC-9900025141-020
CR03-1263 STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 10/09/2003 01:53 PM
Washoe County 2610
DOC. JAMES

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Case No. CR03-1263

Dept. No. 9

NOTICE OF INTENT TO SEEK HABITUAL CRIMINAL STATUS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and TAMMY M. RIGGS, Deputy District Attorney, and hereby files its notice of the State's intention to pursue Habitual Criminal status for the defendant in this case pursuant to NRS 207.010.

Dated this 9th day of October, 2003.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
TAMMY M. RIGGS
007498
Deputy District Attorney

10081634

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

MR. BRAD VAN RY
1403 E. FOURTH STREET
RENO, NV 89512

DATED this 9th day of October, 2003.

Penny Rasmussen

CR03-1263
STATE VS FERRILL JOSEPH VOL 5 Pages
District Court 10/13/2003 12.42 PM
Washoe County 418E
DOC DC-9900025141-021
JAME

CODE: 4185

ORIGINAL

FILED

2003 OCT 13 AM 9:00

RONALDA. LONGTIN, JR.

BY_____ DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

MOTION TO CONFIRM TRIAL

SEPTEMBER 24, 2003

RENO, NEVADA

Reported by: DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Division of Parole and Probation:
LAURA PAPPAS

RENO, NEVADA, WEDNESDAY, SEPTEMBER 24, 2003, 9:08 A.M.

--oOo--

THE COURT: All right. State versus Ferrill Volpicelli, CR03-1263.

Is Mr. Alian here?

MS. RIGGS: This is Mr. Van Ry's case, Your Honor.

Tammy Riggs appearing on behalf of the State.

I don't believe Mr. Van Ry is going to be here, Your Honor. Last week Mr. Van Ry and I met with your administrative assistant, and we did continue this motion to confirm hearing as well as the trial date. Also, I believe that a stipulation was filed for the continuance, although I do not find that in my file, Your Honor.

THE COURT: I don't either. Do you know the continuation date?

MS. RIGGS: Yes, I do, Your Honor. The motion to confirm date is October 24th, 2003, at 8:30; and the trial date will be November 10th, 2003, at 8:30.

THE COURT: Okay. Mr. Volpicelli?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I don't want you to speak without

the presence of your lawyer.

THE DEFENDANT: Okay.

THE COURT: So I'll continue the matters as indicated. If you have a reason to raise an issue with the Court, get a hold of your attorney and you can schedule something with me.

THE DEFENDANT: Thank you, Your Honor.

MS. RIGGS: Thank you.

(Proceedings concluded.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DONNA DAVIDSON, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

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

DATED: At Reno, Nevada, this 10th day of October, 2003.

Donna Davidson

DONNA DAVIDSON, CCR #318

ORIGINAL

FILED
2003 NOV -7 AM 10: 27
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CODE 2610
Richard A. Gammick
#001510
P.O. 30083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

DC-9900025141-022
CR03-1263 STATE VS. FERRILL JOSEPH VOL 4 Pages
District Court 11/07/2003 03:47 PM
Washoe County 2592
DOC JAME

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Case No. CR03-1263

Dept. No. 10

NOTICE OF WITNESSES PURSUANT TO NRS 174.234

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and TAMMY M. RIGGS, Deputy District Attorney, and hereby gives notice of the names of the witnesses intended to be called during the State's case-in-chief.

RENO POLICE DEPARTMENT

REED THOMAS
PATRICIA BROWN
SCOTT ARMITAGE
BRETT BOWMAN, c/o Reed Thomas
DAVE DELLA

SPARKS POLICE DEPARTMENT

MICHAEL BROWN

///

WASHOE COUNTY SHERIFF'S OFFICE

LARRY LODGE

MATTHEW CARTER, Wal-Mart, 2863 Northtowne Lane, Reno
GERG DANIELSON, Wal-Mart, 2863 Northtowne Lane, Reno

CUSTODIAN OF RECORDS

KARINAH PREVOST-ROBISON, Aussie Self-Storage, 30 East Victorian Avenue, Sparks, Nevada
BXI BUSINESS EXCHANGE OF NORTHERN NEVDADA, 24 Hillcrest Drive, Reno

JOHN DAVID ELLIS, Lowe's Loss Prevention

BILL MOWERY, Shopko, 5150 Mae Anne

Dated this 7 day of November, 2003.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
TAMMY M. RIGGS
007498
Deputy District Attorney

11062631

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

MR. BRADLEY VANRY
1403 E. FOURTH STREET
RENO, NV 89512

DATED this 7 day of November 2003.

Penny Rasmussen

CERTIFICATE OF FACSIMILE

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I faxed a true copy of the foregoing document to:

MR. BRADLEY VANRY
Fax #324-6281

DATED this 7 day of November, 2003.

Penny Rasmussen

ORIGINAL

FILED

NOV - 7 2003

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

CODE 3370

DC-9900025141-022
CR03-1263 STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 11/07/2003 05:34 PM
Washoe County 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

CASE NO.: CR03-1263

DEPT. NO.: 9

ORDER TRANSFERRING CASE

This matter being set for trial on November 12, 2003, in Department 9; the Honorable James W. Hardesty presiding over another trial that commences November 12, 2003, and good cause appearing therefore,

IT IS HEREBY ORDERED that this matter shall be transferred to Department 10, the Honorable Steven P. Elliott, for all future handling. The trial shall remain set for November 12, 2003, in Department 10, and will begin at 8:30 a.m.

DATED this 7 day of November, 2003.

JAMES W. HARDESTY
DISTRICT JUDGE
DEPARTMENT NINE

STEVEN P. ELLIOTT
DISTRICT JUDGE
DEPARTMENT TEN

V2.260

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 7 day of November, 2003, I deposited for mailing a copy of the foregoing document addressed to:

Bradley O. Van Ry, Esq.
1403 E. Fourth St.
Reno, NV 89512

Tammy M. Riggs, Esq.
Deputy District Attorney
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

DATED this 7 day of November, 2003.

HEIDI HOWDEN
Administrative Assistant

FILED
NOV 07 2003
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

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DC-9900025141-024
CR03-1263 FERRILL JOSEPH VOLPICELLI 4 Pages
STATE VS District Court 11/07/2003 05:48 PM
Washoe County 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

ORDER

The Court has reviewed and considered the points and authorities in support of and in opposition to Defendant's Petition for Pre-trial Writ of Habeas Corpus filed on August 8, 2003.

Defendant requests the Court quash his indictment based on the presentation of prior bad acts evidence by the State to the grand jury, during bind over proceedings.

A challenge to the validity of the grand jury proceedings must be made by motion and not by pretrial habeas corpus proceedings. *Franklin v. State,* 89 Nev. 382 (1973). Such an improper pleading constitutes a waiver of any defense or objection a defendant might have, however the Court may grant relief from said waiver for cause shown. *NRS 174.105(2).*

Accordingly, the Court now considers Defendant's proposed Petition for Pre-trial Writ of Habeas Corpus as a Motion to Suppress.

In the present case, the Grand Jury was presented with a certified copy of Defendant's prior conviction of burglary dated 1998. The evidence was accompanied by a limiting instruction by the State, informing the members of the grand jury that they only consider the prior conviction for the sole purpose of noticing Defendant of the intent by the State to pursue habitual criminal status at sentencing.

Defendant asserts the prejudicial effect of a prior burglary, when presently charged with seven counts of burglary in a proposed indictment, is severe and warrants the indictment be quashed by the Court.

The State cites several cases in its Opposition to Defendant's requested relief. However said cases relate to DUI law, and following the Court's inquiry, do not appear to have been applied to any other arena.

Good cause appearing, IT IS HEREBY ORDERED that Defendant's Motion to Suppress is GRANTED regarding the presentation of Defendant's prior bad acts to the grand jury.

"A grand jury 'ought to find an indictment when all the evidence before them, taken together establishes probable cause to believe that an offense has been committed and that the defendant has committed it.'" *Franklin v. State,* 89 Nev. 382, 388 (1973); citing *NRS 172.155(1).* A grand jury "does not determine guilt or innocence, but needs only to have before them legally sufficient evidence to establish probable cause." *Id.*

"A defendant is entitled to fair but not perfect consideration before a grand jury." *Id.*; citing *Lutwak v. United States,* 344 U.S. 604 (1952). In the present case, the State presented nine witnesses, including an accomplice, who testified to witnessing various acts committed by Defendant during the ten charged crimes, as well as describing the merchandise allegedly illegally obtained by Defendant.

////

IT IS FURTHER ORDERED that Defendant's request to quash the indictment is DENIED.

Dated this 7 day of November, 2003.

JAMES W. HARDESTY
DISTRICT JUDGE

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 7th day of November, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)

Michele M. Shull
Administrative Assistant

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1263 Related

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

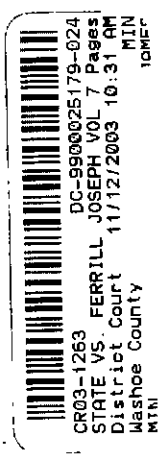
DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
11/10/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) P. Hoogs (Reporter)	HEARING RE: CONFLICT OF COUNSEL Deputy D.A. Tammy Riggs represented the State. Defendant present with counsel, Bradley Van Ry. Counsel for State addressed the Court and stated that she has not received notice of motion for discharging of counsel. Counsel for Defendant informed the Court that no formal has been filed and stated the Defendant had written letters informing him that the Defendant was not prepared for trial. Court made inquiries of defense counsel regarding preparedness for trial; counsel for Defendant stated he was prepared for trial. Counsel for State informed the Court that the Defendant had tried to delay the trial many times before. Court made inquiries of Defendant regarding self-representation; Defendant responded that he would not represent himself. COURT ORDERED: Trial set for Wednesday, November 12, 2003 is confirmed. Court informed respective counsel that the writ filed by the defense had been denied by Judge Hardesty. Counsel for State requested the Court to admonish the Defendant as to making any eleventh hour motions to delay the trial. Court informed the Defendant that all motions must be brought to the Court's attention through defense counsel.	11/12/03 8:30 a.m. Jury Trial

DC-9900025179-025
CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 11/10/2003 10:35 AM MIN
Washoe County MTN

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT APPEARANCES-HEARING

11/12/03
HON. STEVEN P. ELLIOTT
DEPT. NO. 10
G. Bartlett (Clerk)
D. Gustin (Reporter)



JURY TRIAL

Deputy D.A. Tammy Riggs represented the State.
Defendant was present with counsel, Bradley Van Ry.
Introductions of Court, counsel, Court personnel and respective parties were made to the prospective jurors.
All prospective jurors were sworn to answer questions touching upon their qualifications to serve as jurors in this case.
General and specific examination was had of the prospective jurors in the box.
Following peremptory challenges, the following twelve (12) jurors and one (1) alternate(s) were sworn to try this case:

Russell Christiansen	Caston Kennard
Eric Morgan	Richard McNeely
Gerald Jackson	Diane Estep
Tony Major	Christina Dutra
Heather Harzke	Carlotta King
Joy White	Florence Albee

Alternate(s): Wallace Peterson

Upon direction of the Court, the Clerk read the Indictment which was filed in this case and stated the Defendant's plea thereto.
The jurors were admonished prior to each recess throughout the trial and respective counsel stipulated to their presence each time the Court convened.
Outside the presence of the jury, respective counsel stipulated to the admission of State's exhibits 1 through 10 and 12 through 43.
COURT ORDERED: **State's exhibits 1-10 and 12-43 admitted.**
The jury returned to the courtroom
Respective counsel presented opening statements.
Counsel for Defendant moved to invoke the rule of exclusion; SO ORDERED.
David Della was called by counsel for State, sworn, testified and cross-examined.
Karinah Prevost was called by counsel for State, sworn and testified.
John David Ellis, Jr. was called by counsel for State, sworn, testified and cross-examined.
Brett Bowman was called by counsel for State, sworn, testified and cross-examined.

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
11/12/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T The following exhibit was ordered admitted during the testimony of witness Bowman: **State's exhibit 11** COURT ORDERED: The trial is continued until Thursday, November 13, 2003 at 10:30 a.m. The jurors were excused until said time. Outside the presence of the jury, respective counsel reserved their right to recall witness Bowman. Counsel for Defendant informed the Court that the Defendant would like the opportunity to further cross-examine the witnesses; objection and response by counsel for State. COURT ORDERED: All cross-examination shall be performed by defense counsel. Counsel for State informed the Court that defense counsel had gone into the character evidence of witness Bowman, therefore the State should be allowed to present evidence to the jury of where witness Bowman and the Defendant met; objection and response by counsel for Defendant. COURT ORDERED: The State is hereby prohibited to present evidence of where witness Bowman and the Defendant had met. COURT ORDERED: The trial is continued until Thursday, November 13, 2003 at 10:30 a.m.
11/13/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T Deputy D.A. Tammy Riggs represented the State. Defendant was present with counsel, Bradley Van Ry. **Scott Armitage** was called by counsel for State, sworn, testified and cross-examined. The following exhibits were ordered marked and admitted during the testimony of witness Armitage: **State's exhibits 44-46** **Larry Lodge** was called by counsel for State, sworn, testified and cross-examined. **Michael Brown** was called by counsel for State, sworn, testified and cross-examined. **Greg Danielson** was called by counsel for State, sworn, testified and cross-examined.

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
11/13/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T **Willard Mowery** was called by counsel for State, sworn, testified and cross-examined. **Reed Thomas** was called by counsel for State, sworn, testified and cross-examined. **State rests.** Outside the presence of the jury, the Court canvassed the Defendant as to his right to testify on his own behalf. Counsel for Defendant moved to dismiss the case and presented argument thereto; objection and response by counsel for State. COURT ORDERED: Motion to dismiss denied. Further discussion between Court and respective counsel. The jury returned to the courtroom. COURT ORDERED: The trial is continued until Friday, November 14, 2003 at 10:00 a.m.

11/14/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T Deputy D.A. Tammy Riggs represented the State. Defendant was present with counsel, Bradley Van Ry. **Defense rested.** The Court and respective counsel met in chambers for the purpose of settling jury instructions as noted in the stenographic record. Instructions #1 through #37 and twenty (20) verdict forms were offered. The jury returned to the courtroom. Court read Jury Instructions #1 through #37 to the jury. Closing arguments were presented by respective counsel. Court proposed the alternate juror be excused, subject to recall; no objection by respective counsel. At 2:10 p.m. the Bailiff was sworn by the Clerk to take charge of the jury during their deliberations. Court stood in recess, subject to call of the jury. At 3:50 p.m. the jury returned to the courtroom and the Clerk read the following verdicts:

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
11/14/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT I: CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT II: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT III: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
11/14/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT IV: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT V: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VI: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
11/14/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VII: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VIII: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT IX: BURGLARY

DATED this 14 day of November, 2003.

/s/ Joy White
FOREPERSON

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
11/14/03 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) D. Gustin (Reporter)	JURY TRIAL, CON'T VERDICT We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT X: UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS. DATED this 14 day of November, 2003. /s/ Joy White FOREPERSON Upon request of counsel for Defendant, Court ordered the jury polled and to the question "Are these the Verdicts to which you agree?", each juror for himself/herself and not one for the other, replied "yes". The jurors were thanked and excused. Formal sentencing was set for December 23, 2003 at 8:30 a.m. Defendant remanded to the custody of the Sheriff.

ORIGINAL

FILED
NOV 14 2003
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY 3:48 p.m.

CR03-1263 STATE VS FERRILL JOSEPH VO 45 Pages
District Court 11/14/2003 03:48 PM
Washoe County DC-9900025141-026
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you, regardless of what you may think the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

Instruction No. 1

The defendant in this matter, FERRILL JOSEPH VOLPICELLI, is being tried upon an Indictment which was filed on the 11th day of June, 2003, in the Second Judicial District Court, charging the said defendant FERRILL JOSEPH VOLPICELLI, with:

COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, committed as follows:

That the said defendant on or between the 21st day of June A.D. 2001, and the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully, and with the intent to permanently deprive, cheat or defraud conspire with BRETT BOWMAN with the intent then and there to commit Burglary, Theft, Forgery, Uttering a Forged Instrument, Larceny, Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, through a scheme where property and/or money was obtained from several stores in Washoe County, to wit: WALMART, K-MART, SHOPKO, TARGET, LOWE's, HOME DEPOT, OFFICE MAX, OFFICE DEPOT, BED BATH and BEYOND, BEST BUY, COMP USA, TOYS-R-US, and/or PETSMART by 1) entering said stores for the purpose of obtaining universal pricing label information to create false and forged universal pricing labels; 2) by affixing false, forged or counterfeit universal pricing labels to merchandise at said stores to purchase said merchandise

for less than the posted retail price; 3) by purchasing said merchandise under the false pretense that the forged or counterfeit pricing label is a true and valid document; and/or 4) by removing the false and forged inventory pricing labels and subsequently returning some of the fraudulently discounted merchandise for the original valid retail price, thereby making a profit.

COUNT II. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 4th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 2863 Northtowne Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein, by entering to obtain UPC label and/or other pricing information.

COUNT III. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 11th day of September A.D. 2001, and the 29th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain HOME DEPOT located at 5125 Summit Ridge Court and/or 2955 Northtowne Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny,

and/or Obtaining Property by False Pretenses therein by entering to scout miscellaneous UPC label and/or other pricing information and/or obtain a toilet; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label.

COUNT IV. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 21st day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain BED BATH and BEYOND located at 4983 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering with the intent to fraudulently obtain one or more coffee pots and/or scout pricing information related to said merchandise; and/or did aid and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging,

inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label.

COUNT V. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 28th day of September A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 4855 Kietzke Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses therein by entering to obtain UPC label and/or other pricing information to be used for an unlawful purpose.

COUNT VI. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 5th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain LOWE'S HOME IMPROVEMENT STORE located at 5075 Kietzke Lane, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels therein, by entering with the intent to fraudulently obtain one or more wool rugs and/or scout pricing information related to said rugs, and/or said defendant did aid

and abet BRETT BOWMAN in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label.

COUNT VII. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August A.D. 2001, and the 13th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain WALMART located at 2863 Northtowne Lane and/or 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein by entering with the intent to fraudulently obtain a Panasonic Home Theater system, Emerson 19" DVD-TV combo, KDS Rad-5 15" monitor, Serger sewing machine and/or a Hewlett-Packard printer and/or scout pricing information related to said merchandise; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary or burglaries by providing him a fictitious UPC bar code label to

affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label.

COUNT VIII. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August A.D. 2001, and the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain SHOPKO located at 5150 MaeAnne Avenue and/or 6139 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein, by entering with the intent to fraudulently obtain a Sonicare electric toothbrush and/or one or more Willow Bay comforters.

COUNT IX. BURGLARY, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain WALMART located at 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the

intent then and there to commit Theft, Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining Property by False Pretenses, and/or Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, therein, by entering with the intent to fraudulently obtain a Mongoose bicycle and/or scout pricing information related to said bicycle; and/or said defendant did aid and abet BRETT BOWMAN in the commission of said burglary by affixing a fictitious UPC bar code label to said merchandise, by providing BOWMAN with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a look-out, by counseling, encouraging, inducing, or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label.

COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony, committed as follows:

That the said defendant on the 17th day of October A.D. 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully, and with the intent to cheat or defraud a retailer, possess, make, forge or counterfeit fifteen or more inventory pricing labels, commonly known as "UPC bar code labels," in a motor vehicle located at the 9400 block of South Virginia Street, Reno, Washoe County, Nevada.

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To the charges stated in the Indictment, the defendant, FERRILL JOSEPH VOLPICELLI, pled "NOT GUILTY."

Instruction No. 2

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

Instruction No. 3

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

Instruction No. 4

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the position of either party, you will not be influenced by any such suggestion.

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

Instruction No. 5

Neither the prosecution nor the defense is required to call as witnesses all persons who may appear to have some knowledge of the matters in question in this trial.

Instruction No. 6

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

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

Instruction No. 7

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

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

Instruction No. 8

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

The law makes no distinction between direct and circumstantial evidence, but requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Instruction No. 9

To the jury alone belongs the duty of weighing the evidence and determining the credibility of the witnesses. The degree of credit due a witness should be determined by his or her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections, viewed in the light of all the other facts in evidence.

If the jury believes that any witness has willfully sworn falsely, they may disregard the whole of the evidence of any such witness.

Instruction No. 10

It is a constitutional right of a defendant in a criminal trial that he or she may not be compelled to testify. Thus the decision as to whether he or she should testify is left to the defendant on the advice and counsel of his or her attorney.

You must not draw any inference of guilt from the fact that he or she does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

Instruction No. 10A

In every crime there must exist a union or joint operation of act and intent.

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

Instruction No. 11

Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eyewitness account of a state of mind with which the acts were done or omitted, but what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

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

Instruction No. 12

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

Instruction No. 13

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable, must be actual, not mere possibility or speculation.

Instruction No. 14

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

Instruction No. 15

Conspiracy is an agreement between two or more persons to commit the offenses charged or to aid, abet, counsel or encourage, or otherwise procure their commission and with the specific intent to commit such offenses, followed by an overt act committed in this State by one or more of the parties for the purpose of accomplishing the object of the agreement. Conspiracy is a crime.

The term "overt act" means any step taken or act committed by one or more of the conspirators which goes beyond mere planning or agreement to commit a public offense and which step or act is done in furtherance of the accomplishment the object of the conspiracy.

To be an "overt act", the step taken or act committed need not, in and of itself, constitute the crime or even an attempt to commit the crime which is the ultimate object of the conspiracy. Nor is it required that such step or act, in and of itself, be a criminal or an unlawful act.

Instruction No. 16

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for an act of a co-conspirator that follows as one of the probable and natural consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he or she was not present at the time of the commission of such act.

Instruction No. 17

A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial.

The court finds as a matter of law that Brett Bowman is an accomplice as to one or more charges against the defendant.

Instruction No. 18

Corroborative evidence is evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

If there is such independent evidence which you believe, then the testimony of the accomplice is corroborated.

Instruction No. 19

Nevada Revised Statutes Section 205:380 provides in pertinent part as follows:

Every person who shall knowingly and designedly and by any false pretense or pretenses obtain from any person or persons property of a value of $250.00 or more with the intent to cheat or defraud any person or persons of the same is guilty of Obtaining Money by False Pretenses, a felony.

Instruction No. 20

A false pretense may be defined as a representation of some fact or circumstance which is not true and is calculated to mislead. The representation may be implied from conduct or may consist of concealment or nondisclosure where there is a duty to speak. A false pretense may consist of any act, word, symbol or token calculated and intended to deceive. It may be made either expressly or by implication. Generally any words or conduct which create any false circumstance will satisfy the statute.

Instruction No. 21

It is not a necessary element of the crime of obtaining money or property by false pretenses that the person against whom the offense is directed suffer a pecuniary loss or permanently be deprived of his or her money or property.

Instruction No. 22

Forgery may be committed by altering a valid and genuine instrument, paper, or document, with intent to defraud, and by either adding, erasing, or changing a material part thereof, and thus causing it to appear different from what it originally was intended to be, and changing its apparent legal effect.

Instruction No. 23

In the crime of uttering a forged instrument of which the defendant is accused in this case, the specific intent to defraud is a necessary element of the crime.

Thus, the defendant may not be found guilty of the crime of uttering a forged instrument, unless you can and do find from the evidence, beyond a reasonable doubt, that the defendant did utter certain forged instruments with the intent to defraud and knowing the same to be forged. This fact requires an inquiry into the state of mind under which the defendant committed the act charged, if he did commit it. The weight to be given the evidence on that question and the significance to attach to it, in relation to all other evidence, are exclusively within your province.

The crime of Uttering a Forged Instrument is a felony.

Instruction No. 24

Larceny consists of unlawful stealing, taking and carrying away the personal goods or property of another.

If the value of the goods or property is worth less than $250.00, it is petty larceny.

If the value of the goods or property is worth $250.00 or more, then it is grand larceny.

Instruction No. 25

The two elements necessary to constitute theft by larceny are:

First, at the time of the taking of the property, there must exist in the mind of the perpetrator the specific intent to deprive the owner permanently of his property having some value; and

Second, a carrying away of such property.

In order to constitute a carrying away, the property need not be retained in the possession of the perpetrator, nor need it be actually removed from the premises of the owner. Any removal of the property from the place where it is kept or placed by the owner, done with the specific intent described, whereby the perpetrator obtains possession and control of the property for any period of time, is sufficient to constitute the element of carrying away.

Instruction No. 26

Nevada Revised Statutes, §205.060, insofar as applicable to this case, provides:

"Every person who enters any building, with intent to commit grand or petit larceny or any felony, is guilty of burglary."

Instruction No. 27

The essence of a burglary is entering such a place with such specific intent, and the crime of burglary is complete as soon as the entry is made, regardless of whether the intent thereafter is carried out.

Instruction No. 28

Pursuant to NRS 205.965, the elements of the crime of unlawful possession, making, altering, forgery or counterfeiting of inventory pricing label are:

1. A person shall not;
2. with the intent to cheat or defraud a retailer;
3. possess, make, alter, forge, or counterfeit;
4. any inventory pricing label.

Instruction No. 29

As used in NRS 205.965, "inventory pricing label" includes, without limitation, any written or electronic record or label used by a retailer to identify, inventory, or price any product or item it offers for sale.

Instruction No. 30

It is not necessary for the prosecution to prove each and every factual statement contained in the Indictment. So long as the State proves all of the essential elements of the particular crime charged, then the evidence is sufficient to convict regardless of whether every statement in the bill of particulars is proved.

Instruction No. 31

Every person concerned in the commission of a felony, whether he or she directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who, directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony is a principal, and shall be proceeded against and punished as such.

Instruction No. 32

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

Instruction No. 33

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences which you feel are justified by the evidence, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, passion, prejudice, or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

Instruction No. 34

The penalty provided by law for the offense charged is not to be considered by the jury in arriving at a verdict.

Instruction No. 35

It is your duty as jurors to consult with one another and to deliberate, with a view of reaching an agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Instruction No. 36

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

DISTRICT JUDGE

Instruction No. 32

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

CODE 4245

DC-9900025141-035
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 03 59 PM
Washoe County 4235

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT X: UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: _____ DEPUTY

CODE 4245

DC-9900025141-034
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS
District Court 11/14/2003 03:59 PM
Washoe County 4235

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT IX: BURGLARY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

CODE 4245

CR03-1263 DC-9900025141-026
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 03 59 PM
Washoe County 4235

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT I: CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page DC-9900025141-027 District Court 11/14/2003 03:59 PM Washoe County 4235

CODE 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT II: BURGLARY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

CODE 4245

CR03-1263
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 03.59 PM
Washoe County
DC-9900025141-028
4235

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT III: BURGLARY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED
NOV 14 2003
RONALD A. LONGTIN, JR. CLERK
By: DEPUTY

CR03-1263
STATE VS FERRILL JOSEPH VOLP 1 Page
DC-9900025141-029
District Court 11/14/2003 03:59 PM
Washoe County 4235

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT IV: BURGLARY.

DATED this ____ day of _____, 20____.

_____
FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

DC-9900025141-030
FERRILL JOSEPH VOLP 1 Page
11/14/2003 03 59 PM
4235
CR03-1263
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County

CODE 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT V: BURGLARY.

DATED this _____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

CODE 4245

CR03-1263 DC-99000025141-031
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 03:59 PM
Washoe County 4235

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT VI: BURGLARY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

CODE 4245

DC-3900025141-032
CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 03:59 PM 4235
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT VII: BURGLARY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK

By: _____ DEPUTY

CODE 4245

CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
DC-9900025141-033
District Court 11/14/2003 03 59 PM
Washoe County 4235

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT VIII: BURGLARY.

DATED this ____ day of _____, 20____.

_____

FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR. CLERK

By: DEPUTY

CODE 4245

CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page
DC-9900025141-036
District Court 11/14/2003 04 00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT I: CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY.

DATED this 14 day of November, 2003.

Joy White

FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

CODE 4245

CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page DC-9900025141-037 District Court 11/14/2003 04:00 PM Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT II: BURGLARY.

DATED this 14 day of November, 2003.

Joy White

FOREPERSON

ORIGINAL

FILED
NOV 14 2003 4:00 p.m.
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

CODE 4245

DC-9900025141-038
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS
District Court 11/14/2003 04:00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT III: BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: _____ DEPUTY

CODE 4245

CR03-1263 DC-9900025141-039
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 04:00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT IV: BURGLARY.

DATED this 14 day of November, 2003.

Joy White

FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: _____ DEPUTY

CODE 4245

DC-9900025141-040
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS District Court 11/14/2003 04:00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT V: BURGLARY.

DATED this 14 day of November, 2003.

Joy White

FOREPERSON

ORIGINAL

FILED
NOV 14 2003 4:00 p.m.
RONALD A. LONGTIN, JR. CLERK
By: DEPUTY

CODE 4245

DC-9900025141-041
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS District Court 11/14/2003 04 00 PM
Washoe County 4245
DMF 10MF

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VI: BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED
NOV 14 2003 4:00 p.m.
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

CODE 4245

CR03-1263 DC-9900025141-042
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 04:00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VII: BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED
NOV 14 2003 4:00 p.m.
RONALD A. LONGTIN, JR. CLERK
By: DEPUTY

CODE 4245

CR03-1263
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 11/14/2003 04:00 PM
Washoe County
DC-9900025141-043
4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VIII: BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED
NOV 14 2003 4:00 p.m.
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

CODE 4245

DC-9900025141-044
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS. FERRILL JOSEPH VOLP
District Court 11/14/2003 04.00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT IX: BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED
NOV 14 2003 4:00 pm
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

CODE 4245

CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page
DC-9900025141-045
District Court 11/14/2003 04:00 PM
Washoe County 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI, Dept. No. 10

Defendant.

_____/

VERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT X: UNLAWFUL PPOSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

0-D5
12-5 rel.

ORIGINAL

FILED

NOV 17 2003

RONALD A. LONGTIN, JR., CLERK
By: J. Shull
DEPUTY

CODE: 1930

DC-9900025141-046
JOSEPH VOL 3 Pages
11/17/2003 01:42 PM
1930
CR03-1263
STATE VS. FERRILL
District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR03-1263

Dept. No. 10

LETTER FROM DEFENDANT

SEE ATTACHED DOCUMENT

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FERRIL VOLPICELLI
03-●.889 @ WCSD
611 PARR BLVD
RENO, NV 89512

9 NOVEMBER, 2003

#03-1263

LAW OFFICE OF VAN RY ESQ

DEAR BRAD,

BY NOW, YOU ARE IN RECEIPT OF MY LETTER DATED NOVEMBER 3, 2003.

AS OF FRIDAY, 7 OF NOVEMBER, 2003, YOUR OFFICE ADVISED ME THAT DUE TO UNKNOWN CURRENT ADDRESSES WITH WITNESSES WHICH NEED TO BE SUBPOENAED; WE WILL LIKELY HAVE COMPLICATIONS WITH THEIR APPEARANCES COME TRIAL.

IN VIEW OF THIS, COUPLED WITH ISSUES ADDRESSED IN MY 3 NOVEMBER, 2003 LETTER, I AM OVERWHELMINGLY COMPELLED TO PROTEST THAT WE PROCEED WITH TRIAL ON WEDNESDAY OF THIS UPCOMING WEEK.

COME 12 NOVEMBER, 2003, I ANTICIPATE YOU WILL BRING THESE MATTERS TO THE COURT'S ATTENTION. THIS INCLUDES, BUT NOT LIMITED TO, THE REMAINING DEFICIENT DISCOVERY, THE UNILATERAL DECISION ON YOUR PART TO NOT FILE CRITICAL PRETRIAL MOTIONS, AND MOST IMPORTANTLY, OUR DIFFERENCES WITH RESPECT TO DEFENSE STRATEGIES. CLEARLY, YOUR LETTER DATED 3 NOVEMBER, 2003 IS INDICATIVE OF SECOND-CLASS REPRESENTATION.

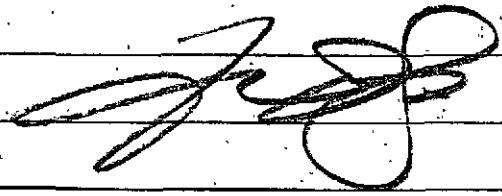
BEST REGARDS,

CERTIFICATE OF SERVICE ON REVERSE SIDE

cc: file

V2.340

DATED AND COPY MAILED ON THIS 9th DAY OF NOVEMBER, 2023, TO TAMMY REGES ESQ AND THE HONORABLE JUDGES HARDESTY AND ELLIOT, AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165.



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 17th day of November, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)

Michele M. Shull
Administrative Assistant

CODE: 4185

ORIGINAL FILED

2003 NOV 26 PM 3:31

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

DC-9900025141-048
FERRILL JOSEPH VOL 9 Pages
District Court 11/26/2003 02:14 PM
Washoe County
CR03-1263
STATE VS

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

MOTION TO CONFIRM TRIAL

OCTOBER 24, 2003

RENO, NEVADA

Reported by: DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

BRADLEY O. VAN RY
Attorney at Law
1403 East Fourth Street
Reno, Nevada 89512

For the Division of Parole and Probation:

HEIDI POE

RENO, NEVADA, FRIDAY, OCTOBER 24, 2003, 8:30 A.M.

--oOo--

THE COURT: State versus Ferrill Volpicelli, CR03-1263.

Ms. Riggs is here on behalf of the State. Good morning, Ms. Riggs.

MS. RIGGS: Good morning, Your Honor, Tammy Riggs appearing on behalf of the State.

MR. VAN RY: Good morning, Your Honor, Brad Van Ry on behalf of Mr. Volpicelli who is present in custody.

THE COURT: Okay. This is the time to confirm the trial in this case for November 10th. Are counsel ready to go to trial in the case?

MS. RIGGS: State is prepared for trial, Your Honor.

MR. VAN RY: I believe we will be, Your Honor. There are some discovery issues that my client believes are outstanding, specifically bank statements, financial records and receipts that were seized from the safety deposit box, his condo and his van.

Ms. Riggs and I have discussed this at length. She believes that all materials have been provided to

the Alian group and/or are part of the grand jury evidentiary basis for the Indictment, Your Honor.

There's also a possible issue as to duplicate copies and return of warrants. All the warrants that are in my possession are unsigned. Ms. Riggs indicates that's because they were telephonic, Your Honor.

Notwithstanding that, I believe that Ms. Riggs and I can work this out, that we'll be ready to go to trial. I'm supposed to meet today with her and go through her materials and make sure that if I don't have it, I will get it.

THE COURT: So do you need additional time to prepare? I mean, I can perhaps give you a week or something if that's necessary.

MR. VAN RY: I don't believe that would be necessary, Your Honor. I can get my arms around it and be ready.

THE COURT: Okay. Ms. Riggs?

MS. RIGGS: Your Honor, regarding any exhibits, it is -- as Mr. Van Ry said, it is my belief that we have discovered our entire file to this defendant. In some cases multiple times. We do have an issue, as he said, with some of the grand jury exhibits. I do want to make sure, because of the duplicative nature of some

of the discovery, that does have everything we are going to be getting together to go through that to make sure that he does have that.

There's also an issue, Your Honor, I did do a motion to release trial exhibits, and that was in CR02-0146, a requirement that -- or you'll remember that that was the previous case which Mr. Alian was handling which we entered exhibits to the Court which we're going to need back so that Mr. Van Ry can see them. Those include pretty much everything in the case, Your Honor.

We have been trying with the Alian group to get those back through stipulations and agreements, and it hasn't worked. We're now at ten days after he's received a copy of this motion, and we would like to get those released, Your Honor. I would ask that the Court grant our motion in that case.

THE COURT: Well, the order -- I'll enter the order. I haven't seen it. Have you submitted it to me?

MS. RIGGS: Yes, Your Honor. That was filed on October 9th, and that was in CR02-0146.

THE COURT: I understand that. But has the order been given for me to sign?

MS. RIGGS: Yes, Your Honor. And again, Your Honor, we'll go -- I'll go back to the office and make

sure.

THE COURT: Submit another one. I don't recall seeing it. I sign those things daily.

MS. RIGGS: Thank you, Your Honor. Also, Your Honor, I would ask, because of the history of this case, we are at day 17 now, that any motions to suppress or any other motions that are going to be made by Mr. Volpicelli be done by Monday, which is the 15-day deadline.

Again, the history of this case is that we always seem to come in at the final hour with some sort of motion that's going to be delaying the trial. If he has questions, concerns regarding his counsel, regarding any sort of things that he believes is missing other than what Mr. Van Ry has asserted, we would ask that they be -- that he either let us know now or by Monday. Thank you.

THE COURT: Do you anticipate some pretrial motions, Mr. Van Ry?

MR. VAN RY: There might be one or two, Your Honor, yeah.

THE COURT: For that reason, and because of the discovery exchange and a court-calendaring issue which I'm about to explain, I want to have a status conference

in the case next Wednesday at 8:30.

There is a two-week civil trial scheduled to begin on the 10th in this department. Because of the court's no-bump policy, there's a possibility you may be transferred to another department for this trial to occur.

Additionally, the Court may have to sit on a matter in Clark County on the 10th, which would mean that if the civil trial settles you would start on the -- since the 11th is a holiday, we would start on the 12th. That may help with respect to some of your case preparation as well. So we can resolve those issues next Wednesday. Okay?

But in terms of witness planning, I think the chances are greater, more likely than not, that if you go in this department you'll go on Wednesday instead of on Monday. Okay? But we'll sort that out next week. Okay?

MS. RIGGS: So are we having a status conference next Wednesday then?

THE COURT: Yes, ma'am. And by that time I would like to get -- Mr. Van Ry, you will have filed whatever motions you are going to file?

MR. VAN RY: Yes, Your Honor.

THE COURT: You can update me on the status of the discovery issues, and we can discuss anything else with regard to trial schedule. Okay?

MR. VAN RY: Yes, Your Honor. Thank you.

THE COURT: Anything else, Ms. Riggs, or Mr. Van Ry?

MS. RIGGS: That's all from the State, Your Honor.

THE COURT: Thank you.

(Proceedings concluded.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DONNA DAVIDSON, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

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

DATED: At Reno, Nevada, this 20th day of November, 2003.

Donna Davidson

DONNA DAVIDSON, CCR #318

DC-9900025141-049
CR03-1263 FERRILL JOSEPH VOL 7 Pages
STATE VS.
District Court 12/02/2003 09:21 AM
Washoe County 4185

CODE: 4185

ORIGINAL

FILED
DEC 02 2003
RONALD A. LONGTIN, JR., CLERK
By: DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

STATUS HEARING

OCTOBER 29, 2003

RENO, NEVADA

Reported by: DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

BRADLEY O. VAN RY
Attorney at Law
1403 East Fourth Street
Reno, Nevada 89512

For the Division of Parole and Probation:
HEIDI POE

RENO, NEVADA, TUESDAY, OCTOBER 29, 2003, 10:06 A.M.

--oOo--

THE COURT: All right, State versus Ferrill Volpicelli, CR03-1263.

Ms. Riggs is here for the State, Mr. Van Ry is here on behalf of Mr. Volpicelli.

MR. VAN RY: Good morning, Your Honor.

MS. RIGGS: Good morning, Your Honor.

THE COURT: I wanted to have a status on this case. Counsel, what can you tell me about this?

MS. RIGGS: Your Honor, Mr. Van Ry and I have been in contact and actually had a meeting yesterday regarding some of the discovery issues. He did have a chance to review my entire file yesterday. We have filed a few that are questionable regarding whether they have been discovered on you or not, so we're going to go ahead and get those done, discovered and to him today.

Also, regarding the evidence from CR02-0146, you did sign an order yesterday releasing those from the evidence room downstairs, so we hope to be able to obtain those today, also, for his review.

We have also been in contact with RPD evidence, and we expect to either go there today or tomorrow so

that Mr. Van Ry can review every single thing that is in RPD evidence to make sure that he has everything that he needs. We have asked that documentary evidence be separated, and I'll be there to assist him in letting him know what I believe he already has.

Also, he can let you know what's going on with the discovery with the Alian group.

Those are all the issues that we have today.

Also, Your Honor, we do have an outstanding petition for writ of habeas corpus that we would ask for a ruling on. We did submit that quite a while ago. Thank you.

THE COURT: Okay. Mr. Van Ry?

MR. VAN RY: That's an accurate statement of the status of discovery. It appears that the materials that have not been discovered or disclosed to the Alian group are going to be to me by either today or by the end of this week. I need to get with Mr. Alian and Ms. Hubach and discuss where there are some items that appear to have been disclosed already that have not made it to my office, but I anticipate being able to do that by Friday, Your Honor. I guess what I'm saying is I'll be ready for trial.

THE COURT: All right. Trial will commence on

Wednesday, not Monday, at 10 a.m.

Length of trial still two days, counsel? Or three?

MS. RIGGS: Your Honor, I believe that's -- that could be a three-day trial. We could definitely attempt to do it in two days, but it could go into three.

THE COURT: All right. And with respect to the writ issue, I'll advise counsel this afternoon on that point.

MR. VAN RY: Thank you.

MS. RIGGS: Thank you, Your Honor.

Also, one more issue. You did order on Friday that any pretrial motions be submitted today. As far as I understand, Mr. Van Ry doesn't have any pretrial motions that are going to result in a continuance of this case. I'd just like to verify that with him and his client on the record.

THE COURT: I didn't see any in the file. Did you file any?

MR. VAN RY: I did not. And it's my intention at this time not to file.

THE COURT: All right. Then we'll see you on Wednesday, the 12th.

MR. VAN RY: Thank you, Your Honor.

MS. RIGGS: Thank you, Your Honor.

THE COURT: All right.

(Proceedings concluded.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DONNA DAVIDSON, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

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

DATED: At Reno, Nevada, this 15th day of November, 2003.

DONNA DAVIDSON, CCR #318

ORIGINAL

FILED

2003 DEC 12 PM 4:25

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

CODE 1250
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

CR03-1263 DC-9900025141-047
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 12/12/2003 04:23:PM
Washoe County 1250

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

APPLICATION FOR SETTING

TYPE OF ACTION: CRIMINAL

MATTER TO BE HEARD: SENTENCING

DATE OF APPLICATION: December 12, 2003 MADE BY PLAINTIFF

COUNSEL FOR PLAINTIFF: TAMMY RIGGS, D.D.A.

COUNSEL FOR DEFENDANT: BRAD VAN RY

CUSTODY STATUS: __ BAIL __ O.R. X IN CUSTODY

Setting at 11:00 A.M. on the 5TH of FEBRUARY, 2004.

ORIGINAL

CODE: 4185
PEGGY B. HOOGS, CCR #160
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

FILED
2003 DEC 15 AM 11:47
RONALD A. LONGTIN, JR.
BY
DEPUTY

CR03-1263
STATE VS FERRILL JOSEPH VO 14 Pages
District Court 12/15/2003 01:58 PM
Washoe County DC-9900025141-050
4185

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR03-1263

Dept. No. 10

TRANSCRIPT OF PROCEEDINGS
HEARING
Monday, November 10, 2003

APPEARANCES:

For the Plaintiff: TAMMY M. RIGGS, ESQ.
Deputy District Attorney
75 Court Street, No. 214
Reno, Nevada 89520

For the Defendant: BRADLEY O. VAN RY, ESQ.
VAN RY LAW OFFICE
1403 E. Fourth St.
Reno, Nevada 89512

Reported By: Peggy B. Hoogs, CCR #160

-oOo-

RENO, NEVADA, MONDAY, NOVEMBER 10, 2003, 1:30 P.M.

-oOo-

THE COURT: We are here in Case No. CR03-1263, State of Nevada versus Ferrill Joseph Volpicelli, and the reason we're here is that my secretary last week told me sometime on Friday that, Mr. Volpicelli, you perhaps were interested in discharging your counsel, and we certainly want to hear about that because perhaps Mr. Van Ry should be excused and wouldn't have to be here as the trial proceeds.

MS. RIGGS: Your Honor, at this time I would ask the Court what sort of communication was received. The State was not served with any notice of this. Was this in the form of a letter? It certainly was ex parte as far as the State is concerned, so we would like to know what the content of the request was specifically and whether a motion was made.

THE COURT: I haven't seen anything in writing. All I know is what my secretary told me.

MR. VAN RY: If I may address that directly, your Honor, I tried to reach Miss Riggs' office Friday afternoon when I received a letter from my client indicating his desire to seek additional representation.

Miss Riggs was out of the office. I left a message with the secretary and then contacted your secretary to indicate to her that we need to have a hearing on this issue before trial on Wednesday so we can flush it out and make sure that the Court is aware of what's going on. So no formal motion has been filed, your Honor, was the gist of it.

THE COURT: All right. Well, Mr. Volpicelli, what are you interested in doing, then?

THE DEFENDANT: Your Honor, I have the letters in question here that were, I guess, addressed -- the date of November 4, 2003, I sent a letter to my attorney regarding issues, if you'd care to read it, and then last night I wrote another, and I did send that one certificate of service to you, to Judge Hardesty, as well as Miss Riggs.

THE COURT: Well, what are you hoping to get out of this?

THE DEFENDANT: Well, I don't think we're prepared to go to trial because I have some issues here with respect to --

THE COURT: I can resolve that very quickly, then.

Mr. Van Ry, are you prepared to go to trial?

MR. VAN RY: By Wednesday I will be prepared to go to trial, your Honor, yes.

THE COURT: Okay. Well, that takes care of that issue. Your attorney is prepared for trial, so is there anything else you want?

THE DEFENDANT: Well, we're deficient in discovery, and I've been waiting for two years for it, and I don't understand why between now and Wednesday that's going to change any. I'll be glad to address the Court --

THE COURT: Apparently the discovery is not deficient or your counsel wouldn't be saying that he's prepared for trial.

THE DEFENDANT: So when I get on the stand and testify and I have -- and it comes out in court that I can't substantiate that claim because certain documentation was not provided pursuant to the discovery, then where are we left at?

THE COURT: I guess, you know, that's a problem for further action, I guess. Should you wind up being convicted, you can raise these issues posttrial.

Miss Riggs.

MS. RIGGS: Your Honor, if I may be heard on this issue, the State has been bombarded basically by

what amount to ex parte communications that have been forwarded by Judge Hardesty of this defendant continually claiming that he does not have discovery in this case when in fact I believe that they had access or he's had access through his various counsel, three counsel now in this case, to every single piece of paper that the State has access to.

In fact, last week or two weeks ago, Mr. Van Ry and I got together at the evidence room of Reno Police Department and had access to every single piece of evidence that was collected during the investigation, and we went through it for hours. We went through it, and this was because the defendant claimed, well, there is exculpatory information in there that we haven't seen. Well, of course, what it turned out to be is that it was all inculpatory, which didn't help his cause any, but he continually makes this claim, and there are -- there have been absolutely no discovery violations in this case, and I will address the remainder of what he's going to be going into, your Honor.

I was under the impression he was looking to represent himself today and he was going to make such a motion. If that's not the case, then it sounds like you've already covered the issues and we can just proceed

to trial on Wednesday.

I do need to let you know this: In the two prior hearings with Judge Hardesty -- and those were on October 29th and October 24th -- I had Judge Hardesty or I requested that Judge Hardesty ask this defendant and his counsel if he was going to be making any motions that would delay this trial because this case has nothing but a history of delay on the part of defendant.

At that time Mr. Van Ry, as he has asserted today, said, "I'm going to be ready to go to trial." Defendant stood silent. On the 29th I made the same motion -- the 24th was the Motion to Confirm and then the 29th was a status hearing -- to make sure we were absolutely positive that all the discovery issues were cleared up and there wasn't going to be any further problems with going forward with trial. Again, Judge Hardesty asked the defendant and Mr. Van Ry, "Are there going to be any further motions that are going to continue this trial?" Mr. Van Ry said, "No. We are going to be ready to go to trial." Defendant stood silent.

This is a delay tactic, your Honor, and I would ask that we proceed with trial on Wednesday. If he does go -- go ahead today and make his Motion to Dismiss

Mr. Van Ry or to represent himself, I'll address that at the time. Thank you.

THE COURT: Mr. Volpicelli, do you want to represent yourself in this case?

THE DEFENDANT: Your Honor, I never made any reference to that effect. I think Mr. Riggs is referring to a unilateral decision on the part of my counsel to not pursue any -- what I feel are critical pretrial motions, and it just represents, I think, a conflict of interest, and with regards to the discovery, I was assured, by virtue of the fact that the two of them were going to get together, that the discovery would be in place, and then when it finally did -- I did receive it, I reviewed it, and it's still deficient, and I've been calling Mr. Van Ry's office, apprising his office of that, and it was just left at the hearing today, if I wanted to bring it to your attention.

THE COURT: Well, as long as your counsel is prepared for trial and he has the discovery that he finds is complete and sufficient to proceed to trial, I'm not going to go further into that issue, and if you don't want to represent yourself, there may be nothing else for us to discuss here.

Mr. Van Ry, do you --

MR. VAN RY: I do have a real concern in that regard because we are at such loggerheads in terms of what my client perceives is discovery and what is deficient and what I perceive is not deficient and further inculpatory evidence that I didn't want to have anywhere near this case. I'm concerned about that. I think it might be best if Mr. Volpicelli represented himself in that light because of the -- I mean, we just view this case in two entirely different lights, your Honor, and as you can tell, Mr. Volpicelli has his opinion, and I have mine, and I'm not convinced that it would be in his best interest for us to remain as a --

THE COURT: Mr. Van Ry, the opinion with regard to preparing this for trial and the tactical, strategic decisions for trial are yours to make as the lawyer for Mr. Volpicelli. I'm not interested in Mr. Volpicelli's views and decisions regarding trial tactics. That's up to the lawyer to make, and if Mr. Volpicelli is not here attempting to represent himself, then we really don't have anything else to talk about, because I'm not going to appoint another lawyer, and, you know, that's just going to be the way it goes.

Mr. Volpicelli, do you still wish to be represented by counsel? Is that true? You've indicated

that.

THE DEFENDANT: Your Honor, this 4 November, 2003 letter that I sent to my attorney was in regards to a letter that he sent me the prior day, on November 3rd, and in that letter, if you could read the contents, there's no indication of any viable defense strategy. There's no -- in fact, to sum it up --

MS. RIGGS: Objection. At this time, your Honor, I would ask that the defendant be warned or admonished regarding his client confidentiality or his attorney-client confidentiality. He's now going into things he's discussed with Mr. Van Ry.

THE COURT: I can't possibly imagine it's in your best interest to be discussing, you know, your trial strategy in front of the prosecutor.

THE DEFENDANT: I understand that, your Honor, but the fact is the letter was just clearly indicative of a conflict of interest and just doesn't leave much to be desired and give me much confidence going into a trial.

THE COURT: This is the question, Mr. Volpicelli: Do you want to dismiss Mr. Van Ry and represent yourself in the trial that's scheduled to commence in two days, on Wednesday, the 12th?

THE DEFENDANT: Your Honor, in my letter I represent that I think it would be in both of our best interests if he was dismissed from the case. However, I am just a layperson, I'm incarcerated, bereft of resources. There's no way that I would be able to represent myself in the court proceedings, and so if you want to assign stand-by counsel or -- I don't know what the protocol is.

THE COURT: Mr. Volpicelli, since you don't want to represent yourself and I know from past experience that Mr. Van Ry is a very competent counsel and he's tried cases in here this year, and I think obtained, you know, a favorable showing, as good a result as could be obtained for his client, so, therefore, I don't believe there's anything else we can take up since your counsel will be ready for trial and you don't want to represent yourself, devoid of counsel so to speak, so we'll see you, then, on Wednesday morning.

MR. VAN RY: Your Honor, there's one other issue that Miss Riggs and I are both aware of. I filed a writ in this matter sometime this summer and Judge Hardesty mentioned he was going to address that.

THE COURT: I do have that.

MS. RIGGS: Your Honor, I also received that.

I was served with that via fax today.

MR. VAN RY: Was there an order?

MS. RIGGS: There was an order.

THE COURT: Yes.

MR. VAN RY: I didn't receive it. I'm sorry, your Honor.

THE COURT: The judge issued an order. It's showing here that it was filed on November 7th. I know I was trying to get this filed on Friday, and we had a heck of a time with it because I wasn't releasing it until the end of the day on Friday, and I don't believe it actually showed up in this office here until just this morning.

At any rate, yes, Judge Hardesty did issue his ruling, and the final rule here is that defendant's request to quash the indictment is denied.

MR. VAN RY: Your Honor, if it wouldn't be too much trouble, if your staff could make a copy of that for me and my client before we leave today, I would appreciate that.

THE COURT: I'd be happy to do that.

MS. RIGGS: The State has one further matter to discuss. This defendant, every single time he's -- we've gone to trial, has made some sort of 11th-hour motion or delay tactic, and you can see what's happening

today, but my fear is that he is going to be, outside of his attorney's advice, making some sort of move to delay this trial on the day of trial, which is Wednesday, which is exactly what he did the last time we came here for trial in -- or went to Department 9 for trial in May.

I would ask you to ask him if he intends to make any kind of motion at all with or without his counsel that is going to -- or that has the potential to delay this trial. The last time it was competency, your Honor. He said that he was taking some new drugs or the jail wasn't giving him his old drugs and that he just couldn't possibly move on. Of course, we had to have the competency hearing and he was found to be fine, his second competency evaluation in this case.

So, your Honor, just to make doubly sure, I would like to know if Mr. Volpicelli intends to make any further moves that will delay this trial. Thank you.

THE COURT: Well, I don't know that I want to ask Mr. Volpicelli what he intends to do, but I can tell you, Mr. Volpicelli, that since you're represented by counsel, if your counsel alone would be making any kind of motion during the course of the trial, you won't be doing that. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: All right. Then court will stand in recess.

(Proceedings concluded.)

STATE OF NEVADA)

) ss.

COUNTY OF WASHOE)

I, PEGGY B. HOOGS, Certified Court Reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken by me at the time and place therein set forth; that the proceedings were recorded stenographically by me and thereafter transcribed via computer under my supervision; that the foregoing is a full, true and correct transcription of the proceedings to the best of my knowledge, skill and ability.

I further certify that I am not a relative nor an employee of any attorney or any of the parties, nor am I financially or otherwise interested in this action.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct.

Dated this 24th day of November, 2003.

Peggy B. Hoogs, CCR #160, RDR

FILED
2004 JAN 16 PM 2:26
RONALD A. LONGTIN, JR.
BY
DEPUTY

ORIGINAL

CODE 1260
Richard A. Gammick
#001510
P.O. 30083-3083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

DC-9900026141-052
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 01/16/2004 09:47 AM
Washoe County
CR03-1263
1260
DAC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI, (BAC# 79565)

Defendant.

_____/

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, Plaintiff herein, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, by KRISTIN L. ERICKSON, Chief Deputy District Attorney, and alleges as follows:

1. That the above defendant, FERRILL JOSEPH VOLPICELLI, (BAC# 79565) is presently incarcerated at the Nevada State Prison, Carson City, Nevada.

2. That the above FERRILL JOSEPH VOLPICELLI (BAC# 79565) is scheduled for a sentencing before the Second District Judicial Court on Thursday the 5th of February, 2004 at 11:00 a.m.

WHEREFORE, Applicant prays that an Order be made ordering

the appearance of the said FERRILL JOSEPH VOLPICELLI (BAC# 79565) before the Second District Judicial Court on Thursday the 5th of February, 2004, and directing the execution of said Order by the Sheriff of Washoe County, Nevada.

DATED this 16 day of January, 2004.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
KRISTIN L. ERICKSON
4258
Chief Deputy District Attorney

DA #314735/

ORIGINAL

FILED
2004 JAN 22 PM 2:42
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CODE 3340
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Attorney for Plaintiff

CR03-1263
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 01/22/2004 03:44 PM
Washoe County
DC-9900025141-053
3340

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff, Case No. CR03-1263

v. Dept No. 9

FERRILL JOSEPH VOLPICELLI, (BAC# 79565)

Defendant.

_____/

ORDER TO PRODUCE PRISONER

IT APPEARING to the satisfaction of the above-entitled Court that it is necessary that the Defendant above named, FERRILL JOSEPH VOLPICELLI, (BAC# 79565) presently incarcerated in the Nevada State Prison, Carson City, Nevada, be brought before the Second District Judicial Court for a sentencing in the above-entitled action,

///

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NOW, THEREFORE, IT IS HEREBY ORDERED that the Warden of the Nevada State Prison, Carson City, Nevada, bring the said FERRILL JOSEPH VOLPICELLI (BAC# 79565) before the Second District Judicial Court on Thursday the 5th of February, 2004 at the hour of 11:00 a.m., for a sentencing in the above-entitled action.

DATED this 21 day of January, 2004.

James W. Hardesty
DISTRICT JUDGE

ORIGINAL

CODE 1850

FILED

APR - 1 2004

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR03-1263

Dept. No. 10

JUDGMENT

The Defendant having been found guilty by a jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crimes of Conspiracy to Commit Crimes Against Property, a violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, as charged in Count I of the Indictment, Burglary, a violation of NRS 205.060, a felony, as charged in Counts II through IX of the Indictment and Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, a violation of NRS 205.965(2) and (3), a felony, as charged in Count X of the Indictment and the Court having adjudged the Defendant to be an Habitual Criminal as provided under NRS 207.010, the Court hereby sentences the Defendant by imprisonment in the Washoe County Jail for the term of twelve (12) months, as to Count I, to run concurrently with the sentences

DC-9900025141-054
CR03-1263 STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 04/01/2004 03:13 PM 1850
Washoe County

imposed in Counts II through X. As to Count II, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served. As to Count III, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count II. As to Count IV, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count III. As to Count V, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count IV. As to Count VI, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count V. As to Count VII, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VI. As to Count VIII, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VII. As to Count IX, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VIII. As to Count X, he be punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run consecutively to Counts II through IX. The Defendant is further ordered to pay the statutory Twenty-Five Dollar ($25.00) administrative assessment fee, a One Hundred Fifty Dollar ($150.00) DNA testing fee, restitution in the amount of Ten Thousand Three Hundred Thirty-Nine Dollars and Sixteen Cents ($10,339.16) and reimburse the County of Washoe the sum of Five Hundred Dollars ($500.00) for legal representation by the Washoe County Public Defender's Office.

///

///

The Defendant is given credit for zero (0) days time served.

It is further ordered the above sentence shall run consecutively to any other sentence the Defendant is obligated to serve.

DATED this 1st day of April, 2004.

DISTRICT JUDGE

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO

04/01/04
HON. STEVEN P. ELLIOTT
DEPT. NO. 10
G. Bartlett (Clerk)
L. Urmston (Reporter)

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy D.A. Tammy Riggs represented the State.
Defendant present with counsel, Bradley Van Ry.
Probation Officer, Erin Lukl, also present.
Counsel for Defendant informed the Court that he will reserve his argument till after the State's argument.
Counsel for State marked exhibits 1 through 3.
Scott Hopkins was called by counsel for State, sworn and testified.
During the testimony of witness Hopkins, the following exhibit was ordered marked and admitted by the Court:

State's exhibit 4

Reid Thomas was called by counsel for State, sworn and testified.
During the testimony of witness Reid, the following exhibit was ordered marked and admitted by the Court:

State's exhibit 5

Counsel for State discussed the Defendant's criminal history, the negative economic impact on the community and presented argument in support of the Court finding the Defendant an habitual criminal.
Court made finding that State's exhibits 1 through 3 were constitutionally valid proof of prior felony convictions; COURT ORDERED: State's exhibits 1 through 3 are hereby admitted.
Counsel for Defendant discussed the Defendant's mental illness and the length of time the Defendant has spent in custody and objected to State's recommendation to find the Defendant an Habitual Criminal. Counsel for Defendant urged the Court to impose a one (1) to ten (10) year sentence on each burglary count and have counts II through V run concurrently with counts VI through IX.
During the argument, counsel for Defendant marked and moved for the admission of exhibits 6 and 7; no objection by counsel for State.
COURT ORDERED: Defendant's exhibits 6 and 7 are hereby admitted.
Officer Lukl stands by the recommendation of the Division.
Defendant made a statement to the Court.
Counsel for State presented further argument in support of the State's recommendation.
COURT ORDERED: Judgment entered. The Court having

DC-99000025179-015 Page 1 of 1
CR03-1263 STATE VS. FERRILL JOSEPH VOLP 04/01/2004 10:31 AM MIN
District Court Washoe County Nev

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO

04/01/04
HON. STEVEN P. ELLIOTT
DEPT. NO. 10
G. Bartlett (Clerk)
L. Urmston (Reporter)

ENTRY OF JUDGEMENT AND IMPOSITION OF SENTENCE CONTINUED

adjudged the Defendant to be a Habitual Criminal as provided for under NRS 207.010, upon a felony conviction, followed by proof of the three (3) prior felonies, the Court hereby sentences the Defendant to Washoe County Jail for the term of twelve (12) months, to run concurrently with Counts II through X, as to Count I. As to Count II, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served. As to Count III, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count II. As to Count IV, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count III. As to Count V, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count IV. As to Count VI, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count V. As to Count VII, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VI. As to Count VIII, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VII. As to Count IX, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VIII. As to Count X, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run consecutively to Count IX. The above sentence shall be served consecutively to any other sentence the Defendant is obligated to serve.

CASE NO. CR03-1263 STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO

04/01/04 HON. STEVEN P. ELLIOTT DEPT. NO. 10 G. Bartlett (Clerk) L. Urmston (Reporter)	ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE CONTINUED The Defendant is further ordered to pay the statutory Twenty-Five Dollar ($25.00) administrative assessment fee, a One Hundred Fifty Dollar ($150.00) DNA testing fee, restitution in the amount of Ten Thousand Three Hundred Thirty-Nine Dollars and Sixteen Cents ($10,339.16) and reimburse the County of Washoe the sum of Five Hundred Dollars ($500.00) for legal representation by the Washoe County Public Defender's Office. The Defendant is given credit for zero (0) days time served. Defendant remanded to the custody of the Sheriff.

STATE VS. FERRILL JOSEPH VOLPICELLI

SENTENCING DATE 4/1/04 DEPT. 10 REPORTER: L. URMSTON
CLERK: G. BARTLETT

$25.00 AAF
$150.00 DNA
$10,339.16 REST
$500.00 AF

Count I: WCJ 12 MOS., TO RUN CONCUR. WITH COUNTS II THROUGH X
Count II: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED

Count III: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT II

Count IV: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT III

Count V: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT IV

Count VI: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT V

Count VII: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT VI

Count VIII: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT VII

Count IX: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCUR. W/ COUNT VIII

Count X: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONSEC. TO COUNTS I THROUGH IX
II

SAID SENTENCE IS TO BE RUN CONSEC. TO ANY OTHER SENTENCE THE DEFENDANT IS OBLIGATED TO SERVE.

DEFENDANT IS GIVEN ZERO (0) DAYS TIME SERVED CREDIT.

ORIGINAL

FILED

2004 APR 13 AM 11:42

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

DC-9900025141-055
CR03-1263 FERRILL JOSEPH VO 63 Pages
STATE VS FERRILL JOSEPH VO
District Court 04/13/2004 08:59 AM
Washoe County 4185

CODE: 4185
LORI URMSTON, CCR #51
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89609
(775) 327-4460
Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

STATE OF NEVADA, Plaintiff, vs. FERRILL JOSEPH VOLPICELLI, Defendant.	Case No. CR03-1263 Dept. No. 10

TRANSCRIPT OF PROCEEDINGS
SENTENCING
APRIL 1, 2004; THURSDAY

APPEARANCES:

For the Plaintiff: TAMMY M. RIGGS
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: BRADLEY O. VAN RY
Attorney at Law
1403 E. Fourth Street
Reno, Nevada

For the Department of Parole & Probation: ERIN LUKL

Reported by: LORI URMSTON, CCR #51

I N D E X

STATE'S WITNESSES	DR	CR	REDR	RECR	VD
SCOTT HOPKINS	6	14			
REED THOMAS	15	26	34		

STATE'S EXHIBITS	IDENTIFICATION	EVIDENCE
1 - 2004 Prior conviction	4	43
2 - 1998 Prior conviction	4	43
3 - 1997 Prior conviction	4	43
4 - Photograph	10	14
5 - Report prepared by Detective Thomas	15	36
DEFENSE EXHIBITS		
6 - Letters of completion	45	45
7 - Certificates of achievement	45	45

V2.386

RENO, NEVADA; THURSDAY, APRIL 1, 2004; 10:34 A.M.

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THE COURT: The next case will be Ferrill Volpicelli.

MS. RIGGS: Good morning, Your Honor. Tammy Riggs appearing on behalf of the State.

THE COURT: This matter has been set for sentencing. And, Mr. Van Ry, have you and Mr. Volpicelli had the opportunity to review the presentence report?

MR. VAN RY: Your Honor, Brad Van Ry on behalf of Mr. Volpicelli who is present and in custody. My client and I have reviewed the presentence report. We have some factual differences with the credit time served. In light of the State seeking habitual criminal, I think I would like to reserve any arguments and points to point out after the State goes forward, Your Honor, if I might.

MS. RIGGS: And, Your Honor, in that case the State would request an opportunity to rebut if the State is going to be arguing first in this case.

MR. VAN RY: No objection to that.

THE COURT: All right. It just seems like Mr. Volpicelli's trial wasn't that long ago, but I guess it was. It seems so fresh in my mind. I would

have sworn that I heard this this year even though it occurred in November. Okay. I've gotten through that little shock.

All right. Mr. Van Ry, would you like to proceed?

MR. VAN RY: Yeah. I guess, Your Honor, you had been reading. I requested-- in light of the habitual criminal seeking by the State I ask that they proceed and we as defense argue in a rebuttal mode after. And we would have no objection to the State doing any rebuttal as to our arguments, Your Honor.

THE COURT: All right. Ms. Riggs.

MS. RIGGS: Thank you, Your Honor. Initially, Your Honor, at this point the State moves to have marked and admitted into evidence the state certified proof of this defendant's prior felony convictions, three of his prior felony convictions. The first would be his cert from February 11, 2004. This would be his conviction for aiding and abetting in the commission of an attempt to obtain money by false pretenses. The second exhibit, Your Honor, would be his 1998 conviction on two counts of burglary. This is also Second Judicial District Court. And the third prior, Your Honor, is a conviction for four counts of tax perjury in the United States District Court, District of Nevada, 1997.

(State's Exhibits 1, 2 and 3 were marked.)

MS. RIGGS: Your Honor, this defendant chose crime as his career over 17 years ago. Since that time, since at least 1987, by his own admission, he's engaged in continuous criminality, basically performing variations of the same old scheme over and over and occurred up until his apprehension in 2001 by members of the Repeat Offender Program. This defendant is not recoverable through rehabilitation, nor is he in any way amenable to supervision by the Department. In fact, he's consistently reoffended while being on supervision and even, Your Honor, while in jail on charges specifically in this case, the charges for the 19-- pardon me, the 2004 cert that you have in your hand.

Accordingly, the State is asking you to impose habitual offender status to this defendant. And we're asking for a sentence of life imprisonment with ten years minimum served in the Nevada State Prison on each felony count, Your Honor. And we will follow the recommendation-- or ask you to follow the recommendation of the Division on the one gross misdemeanor count.

Now, Your Honor, in order to fully inform you of what's been going on in the past 17 years, I'm going to ask to call two witnesses in this case. My first

witness will be Detective Scott Hopkins.

THE COURT: All right. You may call your witness.

Sir, if you'll step right in this area, Mr. Bartlett will administer the oath.

(The Clerk administered the oath to the prospective witness.)

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

SCOTT HOPKINS,

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

DIRECT EXAMINATION

BY MS. RIGGS:

Q Would you please state your full name and spell it for the record.

A Scott A. Hopkins, H-o-p-k-i-n-s.

Q And, sir, what is your position in your employment?

A I'm currently assigned as a detective to the robbery/homicide unit.

Q Sir, are you familiar with the defendant, Ferrill Joseph Volpicelli?

A Yes, I am.

Q And can you tell me how you first became familiar with this defendant.

A When I was assigned with the Repeat Offender Program we had received information that he was criminally active in our area. I conducted some background investigation into what his type of crimes were and stuff and from there we conducted an investigation.

Q And, again, this was 1998?

A Yes, it was, January.

Q Did you have the opportunity to observe any criminal activity by this defendant?

A Yes.

Q And can you describe what you saw with his particular criminal activity.

A During the surveillance we had followed him over to the-- a couple of office stores. He was with his eldest son at the time, Travis. I don't recall how old he was. They had both gone in the store, were only in there a very short time. They returned to the truck that he was driving and we could observe that he was working on something it looked like on the center console.

Q When you say "he," are you talking about the

defendant?

A Yes, I am. A short time later Travis got out of the truck. I followed Travis inside. Travis placed a counterfeit UPC symbol on the bottom of a mouse and then walked up and purchased an 80-dollar mouse for $10 and returned out to the truck.

Q What happened once he returned out to the truck?

A They left that location, eventually arriving at another office store where the defendant went inside this time.

Q And was Travis in the vehicle on the second burglary?

A Yes.

Q Did you have occasion to-- Before we go on, do you have any specific information regarding the defendant's status regarding his 1977-- or 1997 federal case during the time that you were watching him?

A He had already been convicted and he was on basically a judge's OR for him to get his personal affairs in order and spend some time with his family before he was suppose to turn himself in to federal custody.

Q So he was committing these crimes after he had already been sentenced for his federal cases?

A Yes.

Q Now, after his conviction in this 1998 case did you have any further conversations with Mr.-- or any conversations with the defendant in this case?

A After the conviction, no. I had a conversation-- Once the offenses were committed and we arrested the defendant, he bailed a very short time later. Contact was made with the federal probation officer and then a retake warrant was issued for the defendant.

Q And how did you come in contact with him then?

A At that time we set up another surveillance. We located him, we made a traffic stop on him and that's when we had contact again. During that contact he made the comment to me that 22 months was worth a million.

Q And what million do you think he was-- did you-- were you under the impression that he was referring to?

MR. VAN RY: Objection. That calls for inappropriate evidence.

THE COURT: Well, the objection is overruled. The witness may state what that meant to the witness.

THE WITNESS: What that meant to me is in reference to the federal case that they had done, that he had

made a million dollars through his various fraud scams.
BY MS. RIGGS:
Q The defendant made a million dollars?
A Yes.
Q Sir, at some point did somebody forward a photograph of this defendant to you, a photograph of himself in the federal penitentiary?
A Yes.
MS. RIGGS: May I approach, Your Honor?
THE COURT: Yes, you may.
MS. RIGGS: State moves to have this marked and admitted as State's Exhibit 3 for sentencing. Is that-- 4 for sentencing. Thank you.
(State's Exhibit 4 was marked.)
MS. RIGGS: May I approach the witness, Your Honor?
THE COURT: Yes, you may.
BY MS. RIGGS:
Q Sir, I'm showing you what's been marked and admitted as I believe State's Exhibit 4.
A Yes.
Q Could you tell me what I have just shown you, please, or what is that document?
A This is a color photo of the defendant.
Q And what is he doing in that photograph?
A He's looking pretty casual leaning up against a

mural.

Q Does he appear to have a set of headphones on?

A Yes.

Q Does he appear to be tan and fit in that photograph?

A Yes.

Q How did you-- And you came into possession of this photograph, correct?

A Yes, I did.

Q How did you come into possession of that photograph?

A This photograph was sent to me in the mail by Lori.

Q Who is Lori?

A I believe his wife at the time.

Q And when did you obtain that photograph or when was that sent to you?

A It was shortly after we did the case.

Q Is there an inscription on the back of that photograph?

A Yes.

Q Can you tell me what the inscription says, please.

MR. VAN RY: Objection. Lack of foundation, Your Honor.

MS. RIGGS: What foundation is required, Your Honor? He's reading directly.

MR. VAN RY: There's no authentication as to who wrote that on the back.

MS. RIGGS: Authentication is not needed, Your Honor, at sentencing. It's a weight issue, Your Honor.

THE COURT: Just to go over this issue of foundation, can you tell me again how this happened to be sent. I take it it's from the wife or ex-wife. Maybe you can just fill me in again on the foundation of how this photo came and was it altered in any way by the witness.

MS. RIGGS: Certainly, Your Honor.

BY MS. RIGGS:

Q The photograph that you received, did you have any conversation with Lori Volpicelli regarding why she had sent this to you?

A She had told me prior to-- told me that she received a letter that Ferrill had sent to one of the children, I don't recall which one, and that she wanted me to have it. She believed it would help us in our investigation by what was said on the photo.

Q Okay. And if you look at the front of that photograph, is that photograph in substantially the same condition in which you received it?

A Yes.

Q Does it appear to be altered in any way?

A No.

Q Did you alter it in any way?

A No, I did not.

Q On the back-- does the inscription on the back appear to be in the same condition in which you received it?

A Yes.

Q Does it appear to be altered in any way?

A No.

Q Did you alter it in any way?

A No, I did not.

Q And where was that photograph after you received it from the point that you received it until recently?

A It's been in evidence, the case file.

Q So can you tell me what is inscribed on the back of that photograph, please.

A It says, "I'm too sexy for this place. It has been like a vacation. Just missing stores."

Q Okay. Thank you.

MS. RIGGS: Again, State moves to have admitted State's Exhibit 4 for sentencing.

THE COURT: Any objection?

MR. VAN RY: No further objection.

THE COURT: All right. Exhibit 4 is admitted.

(State's Exhibit 4 was admitted.)

MS. RIGGS: Thank you, Your Honor. The State has no further questions for this witness.

THE COURT: Mr. Van Ry, do you have questions of the witness?

CROSS-EXAMINATION

BY MR. VAN RY:

Q Detective, to the best of your knowledge are typewriters allowed in federal prison?

A I have no-- I couldn't tell you.

Q So you cannot really say with any degree of certainty that Mr. Volpicelli typed that note on that photograph?

A I did not see him do it, no.

Q The only person that produced that picture to you was his wife or currently his ex-wife, is that correct?

A That's who sent it to me, yes.

MR. VAN RY: Nothing further, Your Honor. Thank you.

MS. RIGGS: The State has nothing further of this witness, Your Honor.

THE COURT: All right. Mr. Hopkins, you may be excused.

THE WITNESS: Thank you.

MS. RIGGS: The State calls Detective Reed Thomas, Your Honor.

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

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

MS. RIGGS: Your Honor, may I approach the clerk for additional marking of a document?

THE COURT: Yes.

MS. RIGGS: Thank you. The State moves to have marked State's Exhibit 5.

(State's Exhibit 5 was marked.)

REED THOMAS,

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

DIRECT EXAMINATION

BY MS. RIGGS:

Q Could you please state your name and spell your last name for the record.

A Reed Thomas, T-h-o-m-a-s.

Q And what is your position, please.

A I'm a detective with the Reno Police Department assigned to the Repeat Offender Program.

Q And, Detective Thomas, did you-- have you had contact or have you had the opportunity to observe the activities of the defendant?

A That's correct.

Q And have you had the opportunity to interview the co-conspirator in the current case, Brett Bowman?

A I did.

Q Did Brett Bowman inform you of when the conspiracy between himself and the defendant began?

A Yes, he did. He told me that he spoke to the defendant Volpicelli when they were incarcerated together in the prison system in Nevada.

Q And what did Bowman assert that Volpicelli told him?

A Basically just told him about this scheme that he was in for and that he had asked him if he was interested in participating once they both got out.

Q So it was your understanding that the defendant invited Bowman to join this conspiracy?

A That's correct.

Q In other words, it was his idea?

A That's correct.

Q And this plan occurred while they were both in the Nevada State Prison?

A That's my understanding.

Q Now, Detective Thomas, were you also involved in another case, a felony case of burglary and attempt to obtain money by false pretenses, with the defendant also related to this particular case?

A Yes, I was.

Q And can you explain to the Court just the basic facts of that case.

A Basically once the defendant was arrested--

Q In this case, correct?

A In this case, yes. He was taken up to the Washoe County Sheriff's Office and, of course, his property was removed from his person and he was booked up there and it was booked up there into his property. He had apparently $886 in cash on him. The detectives who took him up weren't aware that I wanted to retain that money, because I believed it was possibly involved in his criminal activity. But nevertheless, it was booked into his property up there.

Later that night the defendant contacted his son who responded to the jail to retrieve that money. The jail subsequently wrote a check, issued a check to his

son for that amount.

Once I learned of this the next day or a day or two later, the ROP detectives that had taken Travis or had-- were familiar with Travis and had taken the defendant up to the jail made contact with Travis, explained the circumstances, that we needed the money back, it was for evidentiary purposes. And Travis produced the check, gave it back to the detectives. We subsequently made arrangements with the county to get that booked back into evidence and we did that.

Not long after that Travis had a phone call from the defendant at the jail. Travis advised him what had happened. The defendant was very angry about that and told Travis at some point in the conversation that he should go back up to the jail and tell the jail that he lost the check, that they issue him another one because he came home and he didn't know where it was, he just lost it or somebody took it, something to that effect.

Travis was very hesitant to do that, but nevertheless he responded to the jail, gave them that story, signed a statement and the jail issued him another check in the same amount.

Q And the defendant was eventually convicted of a felony for this particular act, correct?

A That's correct.

Q To obtaining money by false pretenses?
A That's correct.
Q That was at the end of last year, correct?
A That's correct.
Q And again, you testified that Travis was reluctant to do this, correct?
A Seemed to be.
Q This was on the phone?
A It was on the phone.
Q Have you had the opportunity to listen to any other phone calls between the defendant and his children in relation to your investigation in these cases?
A Yes.
Q Do you happen to know whether he has contacted his daughter, stepdaughter, Chanel?
A Yes.
Q And can you tell me what the-- whether he's had any specific conversation with her regarding credit cards?
A Yes, he had one conversation I particularly remember when he told Chanel that-- They apparently had a credit card account issued to them in both their names. Apparently the defendant believed that he was probably going to be going away for quite sometime. He

told Chanel to run up the credit cards, max them out, get cash advances, pay for the car insurance, school, pay their bills, that type of thing and just max them out and that he was never going to pay them, because by the time he got out it would be off his credit report.

Q And again, this is while he's incarcerated, is that correct?

A That's correct. He was in the jail at the time.

Q Now, Detective Thomas, you participated in basically the accounting of all of the property that was acquired inside this defendant's storage unit, correct?

A That's correct.

Q And, by the way, whose name was the storage unit put into when the account was opened?

A I believe it was actually Ashley Schilling, his stepdaughter.

Q And during the course of your investigation you realized that he was the one who was using the storage unit?

A That's correct. He was listed on the account over there as somebody who could also access that storage unit.

Q Can you tell me generally what you found or ROP

detectives found when they opened up that storage unit.

A A lot of things that are typical to a storage unit, the storage of clothes and shelves. It was very neatly organized. But particularly there were a lot of new-- what appeared to be new in the box electronics equipment and everything from stereos to DVD players, home entertainment systems, vacuum cleaners, a variety of merchandise.

Q You use the term "new in the box." They'd never been opened, correct?

A Didn't appear to be, no.

Q And many of those items or photographs of those items were admitted as evidence in this case, is that correct?

A That's correct.

Q Were there many items that were not admitted as evidence?

A Oh, yes.

Q And how many stores do you estimate were involved or could you determine were involved? Or let me rephrase the question. How many stores were you able to match products that you found in that storage shed to?

A There were probably ten to 12 stores that were listed in the grand jury indictment that we suspected.

As far as actually making matches, I don't recall the exact number.

Q Is it fair to say that pretty much all of the local superstores in town were represented by items in that storage shed?

A That's correct.

Q And during the course of your investigation, Detective Thomas, are you aware of whether any other felonies were committed by this defendant during the course of your investigation?

A Yes.

Q And what other felonies did he commit?

A We ultimately arrested him and he was convicted for open and gross lewdness and indecent exposure. Through the course of our surveillance--I believe there was a total of eight days of surveillance time--he would drive to retail shopping center parking lots and find a place to park and he would masturbate in his vehicle.

Q And he was eventually convicted of both of those charges, lewdness and indecent exposure, correct?

A That is correct.

Q In the Second Judicial District Court last year, 2003?

A That's correct.

Q Now, did you produce a report, Detective Thomas, regarding the damages or the estimated damages that were caused by this defendant monetarily to the community?

A I did.

Q And can you tell me what your methodology was that you used to.

A It's a prediction is what this report is. We're kind of projecting out relying on information, solid information, that we had, for instance, the dollar cost of the items, statements from his co-defendant as far as how many times they went out a week, how many stops they made a day, applying this scheme and using those dollar amounts, and based on the evidence we found in the storage unit, we projected what he could potentially make a day, a week, a year, that type of thing, of tax free income.

Q Of the items that you were able to track and get a decent estimate for the value, how much property valuewise did he have in that storage unit?

A Well, what we were able to specifically track through my research with the retailers, he had just over $10,000 of merchandise in there. Estimated it was a little bit more than that, though, with many of the things that we didn't know what the price was and

couldn't determine exactly where he may have gotten them.

Q And using that methodology that you previously described, what do you estimate-- what damage amount do you put on his criminal acts between the time he got out of prison in 2001 and the time he was apprehended in October 2001?

A Are you talking about our projection as far as what he may have been able to produce?

Q Yes, I am.

A What I've got here-- And, like I say, I've got a couple of numbers and a couple of figures in here, tried to go the low end and the high end. But using some of these formulas, he could have conceivably purchased $16,380 resulting in a net savings to him of $49,140 in tax free income per year. That's the low end. And that's assuming that he was engaging in this scheme once a week five times a day for one calendar year.

Q And I'm going to stop you for a second, Detective Thomas. Where does that assumption come from, the assumption regarding one time a week five times per day?

A Well, what I did is I based it on the number of times that his co-defendant, Brett Bowman, told me that

they went out and did this. He said they typically did this maybe once a week, sometimes more, and made anywhere from 10 to 12 stops a day. And again, I tried to be conservative in my estimates to some degree and try to show a low end and a high end.

Q And so do these figures represent only what he would have obtained with the assistance of Brett Bowman?

A Not necessarily, because we also take into account that it's quite possible he was out doing these things without Brett Bowman's help and at a time when we were weren't conducting surveillance on him.

Q And again, from your projections he could have received up to $50,000 in nontaxable income from this scheme during this time, correct?

A That's the low end. Again, assuming he engaged in it ten times a day, once a week, his tax free income would be $93,000, over $93,000.

Q Detective Thomas, during the days you said that you surveilled this defendant for eight days, did you ever watch him go to a place that appeared to be a bona fide place of business-- of employment? I'm sorry.

A No.

Q So when you were watching him he was simply going to stores?

A That was pretty much it, going from store to store, shopping center to shopping center. On one occasion I think we watched him go work out, but for the most part just driving around going from store to store.

MS. RIGGS: Thank you. I have no further questions, Your Honor.

THE COURT: Mr. Van Ry.

MR. VAN RY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. VAN RY:

Q Detective, I assume you have your report that's been submitted to the Court in front of you. If you would turn to page five.

A I don't believe I numbered the pages. Give me just a second.

Okay.

Q And the one that says "Projected Economic Loss" at the top, "Projected Economic Loss to the Community." Is that the same page you've got?

A Yes, sir.

Q All right. I just want to run through a couple of things. So you admit then that the number of $49,140 tax free income per year is a projection, is

that correct?

A It's a projection, that's correct.

Q Would you also admit that it, therefore, is a speculation?

A It's a projection, speculation, yeah.

Q And the basis for that projection/speculation is based upon Brett Bowman's testimony, is that correct?

A In part. It was based on Brett Bowman's testimony in regard to how often they did this, but, of course, it also included the actual prices of the merchandise that we found, to determine an average price of that merchandise we found in the storage unit. And we also took into account, you know, those costs and how many times they could have done that had he chosen to set that scheme in motion.

Q Okay. Isn't it also true that Mr. Bowman was an accomplice in this case?

A Yes, he was.

Q And that he had pled guilty to one burglary previous to this?

A I don't recall exactly what he pled guilty to, but I know he pled in this case.

Q What he did pled guilty to was something associated with Mr. Volpicelli, is that correct?

A That's correct.

Q So his fingerprints, I don't mean exact fingerprints, but his hands were all over this case in terms of Mr. Bowman.

A He was involved in this. Brett Bowman described the fact that he was recruited by Mr. Volpicelli. And I asked what Bowman's benefit was to this and he said that he got usually a hundred bucks a pop for doing the actual purchases on behalf of Mr. Volpicelli. He didn't get to keep the merchandise himself.

Q Is it also correct, same page, direct your attention to the 93,280 figure, that also is a projection, is that correct?

A That's correct.

Q And that also would be speculation based upon what you've testified to today?

A That's correct.

Q And that would also include Mr. Bowman's testimony?

A That's correct.

Q Isn't it true that the open and gross lewdness case which was a conviction for my client is now on appeal? Are you aware of that?

A I think his attorney may have mentioned that in

court, that they were going to appeal. I am not aware that an official appeal has been set in motion. I don't know.

Q Do you know if there's any other convictions that are being brought forward to the court today that are under appeal?

A I'm not aware.

Q Do you know if the 1998 conviction is under appeal?

A I'm unaware. I haven't researched that.

Q If you would turn, Detective, to page two of your impact report.

A Okay.

Q I want to direct your attention to it looks like the third paragraph there, last sentence that says, "All retailers identified in this case."

A That's correct.

Q Do you see that?

A Yes.

Q I want to ask you some questions about who you specifically spoke with. You cite a bunch of stores. I'm just going to run you through them real quick. Who did you speak with at Office Depot?

A I don't have that information with me right here. What I did was I asked for a store manager or a

loss prevention supervisor. And I obtained a signature from them basically stating that they were interested in recovering any property that's going to be returned in this case.

Q Is that the case for all of the stores?

A Yeah, I just went to each store that was named in the grand jury indictment, contacted, like I say, a store manager or loss prevention manager and asked them if they were interested in recovering that merchandise that was fraudulently obtained and they all signed.

Q Okay. Just to clarify then, you have no specific recollection as to who you spoke to from any of the stores listed here?

A I have that document in my office, but I don't know off the top of my head who exactly. There were ten people at least.

Q But this information was taken from that document and placed on this document, is that correct?

A Pardon me?

Q That information, meaning you said you spoke to people, you had a document where you wrote it all down, that was then transferred to this document, is that correct?

A What was transferred was the sentence I think you're referring to, if I'm clear on what you're asking

me, the retailers identified. Yeah, those retailers from the grand jury indictment are the ones that I spoke to, prepared a document that they signed and then, yes, that's what I'm mentioning here, the retailers identified in this case.

Q Then how did you arrive at the valuation of these items?

A I'm not sure I understand.

Q For instance, number one, Quicken Business Lawyer 2001 Deluxe.

A I contacted the stores.

Q So the same person that gave you that information--

A No, that's not correct. What I did was for the most part back shortly after his arrest I contacted the stores once we had a list of all the merchandise and I made basically a ton of phone calls calling and asking how much this item cost.

Q Let me ask you this: Would your answer be the same as to the specific person and your recollection, you could not recollect as to each specific person you spoke to as to each store and item?

A I'm not sure I understand what you're asking.

Q Difficult question. I'll say it again. You testified earlier that you didn't have a specific

recollection today as to who you spoke to at each store, and I'm asking that same question as to the valuation of each item.

A That's correct. What I did was I got on the phone, I didn't document who I spoke to. I just talked to a sales representative or somebody in the loss prevention department and asked them to research the cost of that item and provide it to me and they did. And it was done over the phone.

Q Let me ask you this, Detective: These items that are listed, page two, one through 11, and then page three, 12 through 31, were these items involved in the trial of the matter that Mr. Volpicelli stands to be sentenced for today?

A Some of them were.

Q Some of them were not?

A That's correct.

Q Can you testify today as to which ones were not included in that?

A I don't recall offhand without going back and pulling the file and researching the trial transcripts and that type of thing as far as what exactly was submitted. I know that most things that were submitted were done via photographic format.

Q If I could direct your attention again to page

five. And I'll be wrapping up here in just a minute, Detective. I had a question. One, two, three, essentially the fourth paragraph states, "It is not unreasonable." Do you see that sentence?

A Yes.

Q And you state, "It is not unreasonable to conclude that defendant Volpicelli committed these crimes on a far more frequent basis when he was not in the company of his co-defendant."

A That's correct.

Q And the question I had was is that not also a speculation on your part?

A Sure, it's speculation. I was basing my opinion on his past criminal activity in doing this and the money that he had admittedly made, so I thought it was reasonable to conclude that he was probably doing this a lot more often than we were actually watching him do it.

Q And that leads to my next question. How many times did you actually personally observe Mr. Volpicelli commit a crime when you were following him?

A Personally myself as part as this scheme goes, I did not personally see him do anything other than that one count that he was convicted of regarding the

UPC pricing information, that type of thing. As far as switching bar codes, I never personally observed that. As a matter of fact, I wasn't even present for the night of his arrest.

Q Let me ask you this: Would you then agree that you have-- and I should say the State has no direct evidence that Mr. Volpicelli actually committed these crimes on a far more frequent basis?

A Again, that's speculation on my part.

MR. VAN RY: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MS. RIGGS:

Q Detective, you were asked several times whether you have any specific recollection of the people that you talked to when you were preparing this estimate of the damages. But you specifically recollect that you talked to a representative from each store, correct?

A When it came time to determine who wanted their merchandise back, I didn't make phone calls, I actually went to the store and spoke to a representative, yes.

Q And you specifically recollect contacting representatives of the stores for the exact pricing information for each of those items, correct?

A That's correct.

Q Even though you can't recall their exact names today?

A I didn't ask for the names. All I was doing was researching pricing information. I didn't think it was necessary.

Q And, Detective, you also just told defense counsel that you are-- it was basically an estimate or an educated guess that this defendant committed these crimes on a more regular basis than the evidence that we supplied in court, correct?

A That's correct.

Q Wasn't there a lot more evidence inside that storage unit that was never produced at trial?

A That's correct.

Q So isn't that a pretty fair implication or fair guess that he did this more frequently than we actually proved at trial?

A It is in my mind. At some point early on in this case the District Attorney's Office actually asked us to stop with our investigation because there was such a mountain of evidence in this case and it was getting more and more difficult to match things up, so to speak, with the fictitious bar codes and the merchandise and the stores. So, yeah, that's an accurate statement.

MS. RIGGS: Thank you, Detective.

Your Honor, at this time, if I haven't already done so, I would move for the admission of all the State's exhibits in evidence.

THE COURT: You're talking about 4 and 5?

MS. RIGGS: I believe 1, 2 and 3 also need--

THE COURT: Those are already admitted.

MS. RIGGS: Okay. Thank you. State has no further questions of this witness, Your Honor.

THE COURT: Is there an objection to the admission of 4 which is the photograph and 5 which is the report prepared by Detective Thomas?

MR. VAN RY: No objection as to 5, Your Honor.

THE COURT: Okay. Well, 5 will be admitted. And I admit 4 as well. I believe a foundation was laid for that.

(State's Exhibit 5 was admitted.)

MS. RIGGS: The State has nothing further of this witness.

MR. VAN RY: No further questions.

THE COURT: All right. Detectives Thomas, you may be excused.

MS. RIGGS: Your Honor, I don't have a witness to describe to you the facts of the 1997 tax perjury, but I would refer your attention to I believe it's Exhibit

3 which is the federal conviction and state certified proof of his federal conviction. I'm looking at the plea memorandum which in the top left-hand corner is dated February 7th, 1997 and says page seven. It's about one-third of the way back through the packet. And, Your Honor, the item is item V, Roman Numeral V, facts to support a plea of guilty. And I'm going to be summarizing those for you now, Your Honor.

If you like, you can read these in detail, but this is the summary of what happened in 1997. In 1997 this defendant was convicted of four counts in I believe it was an 18 count indictment for tax perjury. And he was convicted on the basis that he did not report significant income that was produced by a similar scam to the one perpetrated in this case.

Specifically, this defendant obtained account credit or obtained several credit cards, say at Target stores, which was the major store involved in the 1997 case. What he would do is he would buy an item at full price, he would copy the receipt and then he would return the item and then obtain that item again at a reduced price through various schemes and keep returning it for the full price. And this way he obtained significant account credits on several credit cards.

By his own admission this defendant developed the UPC scheme as a much more efficient way to return items for their full value by obtaining them very cheaply and then returning them for their full value.

According to the U.S. Attorney and this document, this defendant between 1989 and 1992 managed to accumulate $800,000 worth of credit or account credit on his credit cards. With this credit the defendant basically used this credit as income, he paid mortgages on his home, he paid mortgages on a home that he obtained as a rental unit and he also bought personal items for himself and for his family. And again, Your Honor, he had been sentenced and was awaiting his time to turn himself in when he committed the 1998 burglary cases.

To sum up, Your Honor, the defendant in this case has shown that he is unable to function according to societal rules in our community. He does not accept responsibility for any of his actions. In fact, when you read his statement for the presentence report, he begins it with, I'm Ferrill and I'm an addict, or something like that. It's always an excuse with this defendant, Your Honor. Every time he comes to sentencing there's a new reason, a new problem, a new scourge that has happened to him that is the reason for

his various criminal enterprises. This time it's drug addiction and suddenly we learn that he was a victim of childhood sexual abuse through this report.

Now, nowhere in any of his criminal convictions have I seen any evidence that he admits the real reason behind or the real motivations behind his activities, Your Honor. Laziness and greed. Apparently sometime back in his life this defendant had the wherewithal or possibly the talent and intelligence to pursue a bona fide career, but he hasn't done so, at least not since 1987. As far as we can tell, this is the same scam that he's been-- that he's been perpetrating and supporting himself and his family with for the past 17 years.

And as he bragged to federal authorities in 1997, he developed this UPC scam and was very-- appeared to be very proud of that and informed them that this was how he provided the support for himself and his family in perpetrating this scam over and over in our community.

Your Honor, he's become a one-man economic drag on this community. He's hit, as you saw in this case, just about every store in town over and over as you heard.

You remember when we were talking about I believe

it was a computer store, he kept going back to the same store over and over again until all of the monitors were gone obtaining those at significantly reduced prices. Unfortunately for him, though, Your Honor, he always leaves a paper trail in all of his cases so we always know exactly what he's doing. For some reason with his intelligence he hasn't figured out how to perpetrate these crimes without getting caught, so he keeps getting caught. Maybe he doesn't care. We don't know. What we know is that he is a habitual offender.

He's not going to stop, Your Honor. This is how he makes his living. We have no evidence that he's ever done it any other way. He couldn't even stop himself when he was incarcerated in the Nevada State Prison. As you heard the testimony, he was already planning what he was going to do when he got out.

He's going to tell you, well, I've taken all of these courses, I've reformed, I've gone into therapy, I've gone into rehabilitation while I've been in jail, I've seen the light. Well, that's what he said the last time, Your Honor. And as far as we can see, he hasn't seen the light. Even when he was in jail in this case he was perpetrating crimes. Even when he just got arrested and he knows he's going back to the prison he's still perpetrating crimes.

And that brings up my final point, Your Honor. Not only is he perpetrating these crimes and getting himself into trouble, Your Honor, he's dragging his kids into this. Travis Volpicelli was with him, his son who was then 12 years old, during the 1998 cases. He had his son go in and place a false UPC label on an item and buy it, Your Honor. And then after he was convicted in 1998 he has the audacity in his motion to reconsider sentence to blame the entire incident on his child, Travis. He filed a motion blaming the entire incident after his conviction on his 12-year-old son, Travis.

Then he gets out, who's he involving in his crimes again, his son who is now reluctant to participate. But as you heard, in the phone calls during the case-- I'm sorry, Your Honor. That was a different judge. I'll withdraw that.

During the case we presented some taped evidence of his phone call and you could hear on the tape, Your Honor, Travis reluctant to participate in this, but it's his dad calling him from the jail telling him what to do. So reluctantly he went to the jail and ends up getting busted. By the way, Your Honor, Travis did not get-- he was charged but was not convicted in that case, only the defendant was.

Then you heard and you saw in this case, Your Honor, he doesn't have the guts to go sign up Ferrill Volpicelli, this is my storage unit, he puts it in the name of Ashley Schilling. And if you recall, the BXI account that he was running the-- writing checks for were from-- for the rent of the storage unit was also in the name of Ashley Schilling. You also heard him telling his daughter Chanel that basically commit credit card fraud. So the remorseful father routine is over, Your Honor. This defendant doesn't care about his kids. All he cares about is perpetrating this scam. And now it's over.

Your Honor, this defendant has been given more chances than he deserves and he's failed at every turn to cease his criminal acts. This community should no longer be forced to tolerate the negative economic impact that he generates everywhere he goes, nor should the department be forced to supervise someone so obviously unamenable to supervision. This defendant is the definitive candidate for habitual offender status and the accompanying penalties, Your Honor. Therefore, the State requests a prison term of life with possibly of parole after ten years on each of the felony counts and the fines as recommended by the department, Your Honor. Thank you.

THE COURT: So what you're recommending is life with the possibility of parole at ten years?

MS. RIGGS: That's correct, Your Honor.

THE COURT: Consecutive on each charge?

MS. RIGGS: I'll submit that to the Court, Your Honor.

THE COURT: Also, you know, I may have misspoken when I said that Exhibits 1, 2 and 3 were already admitted. Thinking this over further, I don't think I actually said that.

And does the defense have any objection to the admission of Exhibits 1, 2 and 3?

MR. VAN RY: No objection.

THE COURT: Well, I have had a chance to look at these, and in each case Mr. Volpicelli was afforded appropriate constitutional rights and the record here does meet all constitutional requirements for use to prove the prior conviction at this type of hearing. So Exhibits 1, 2 and 3 are admitted.

(State's Exhibits 1, 2 and 3 were admitted.)

THE COURT: Mr. Van Ry.

MR. VAN RY: If I may, Your Honor. Thank you. Your Honor, just to start out and inform the Court as to my client's mental status, because that is really important in this case. Clearly he has a checkered

history, clearly his past demonstrates a problem. But he was court ordered to get an evaluation in early 2002, and it was a mental health evaluation, and he was diagnosed as being clinically depressed and was given psychotropic medications. He is currently taking Prozac, is that correct?

THE DEFENDANT: Yes.

MR. VAN RY: And he tells me that his mind is clear and he feels better than he's ever felt in his entire life. In fact, it may have been that could he have been diagnosed earlier that his treatment could have prevented much, if not all, of his prior criminal history. He's no longer in pain, he no longer feels sick mentally and he's ready to move on.

Your Honor, my client has been in custody for a significant period of time, since 2001, October 2001. While in custody besides being evaluated and being treated for his mental condition, he has been very productive. And I've had copied by him and I've already shown the State, Ms. Riggs has reviewed them, letters of completion, numerous, there's probably seven or eight, and then certificates of achievement. And I would like to have those admitted for purposes of sentencing, the letters as a bunch, as Exhibit 6, and these certificates as Exhibit 7, if I might.

THE COURT: All right.

(Defendant's Exhibits 6 and 7 were marked.)

MR. VAN RY: Your Honor, of course, defense would move for admission for purposes of sentencing of Exhibits 6 and 7.

MS. RIGGS: No objection, Your Honor.

THE COURT: Exhibits 6 and 7 are admitted.

(State's Exhibits 6 and 7 were admitted.)

MR. VAN RY: Thank you.

And as you'll note, Your Honor, that they are simply letters and certificates of achievement, different classes, different courses, some life skills, et cetera, that he has participated in. He's been a model-- I shouldn't say model citizen, he's been okay while he's been in custody. He hasn't gotten in any trouble and he really has done and demonstrated some significant propensity to change his life.

And that's what we're talking about here, Your Honor. He is ready for some sort of semblance-- I can't think of the right word, to meld back into society. Granted there is some penalty to be paid for what he has been convicted for, Your Honor, but there needs to be a chance for him to enter society under circumstances where he can fully deal with society. And we know that the clinical depression is a problem

that is treatable and was not treated.

Your Honor, a couple of mitigating factors that were not mentioned on the presentence report. And these are some of the factual differences that I have. Under aggravating it's indicated that he has failed in terms of community supervision, which may be accurate, but it's also fully accurate to state that he was honorably discharged in 1985 and in 1993 for two separate criminal convictions. So he was successful under those conditions. And you'll note those are indicated on page three of the presentence report.

Your Honor, it's significant in this case that the testimony of an accomplice was involved. And I'm sure this Court remembers Mr. Bowman's testimony. Mr. Bowman is a person who fingers my client on almost all of the underlying convictions and claims against him, yet he received only 16 to 42 months and it's my belief that he is now out of custody. I think that needs to be taken into consideration in terms of sentencing on this case. If the accomplice in this case is given 16 to 42, I think that needs to be a consideration for this Court.

Your Honor, my client is 48. He will be 49 in December. And I understand that this cuts both ways, meaning it may demonstrate some propensity over the

course of his life not to be able to stay out of trouble, but I submit to this Court that he is now in a position to stay out of trouble. With his defendant being 48 years old, going to be 49 in December, he understands and is capable to deal with life with his family, with his ex-wife, et cetera. He really is in a position to do that.

I don't think anyone here doubts my client's intelligence. Again, that cuts both ways. But he is an intelligent articulate person and I'm sure you'll notice that when he gives his statement to the Court. He is ready-- he really is ready to be back in society.

Now, the division in this case recommends 36 months to 120 on the burglaries. And, you know, that to me is excessive, because it's also added on there as consecutive in the recommendation. 205.060, section two, provides that a sentence can be 12 to 120. I would ask the Court to take a look at that. One to ten years is the possible range of sentence, not three to ten.

Your Honor, let me speak to the habitual offender first. Again, my client does have a storied history, there's no disputing that. But never in any of this has he really faced the real demon inside him of his clinical depression. He has faced it. He has been

instructed, he is receiving therapy, and some of those will indicate that in Exhibit 6 and Exhibit 7. So I submit that he is not a candidate for habitual offender, that this is a man that is ready to move on, that is ready to change his life and now has the tools to do that.

Prior to him being diagnosed and being treated it was clearly difficult for him, but now he's in a position to do so. So I would ask the Court not to impose the habitual offender status. I don't believe that that would be appropriate in this matter.

Now, as to the charges for which he was convicted in this case and the charges for which I represented Mr. Volpicelli at the jury trial, I would ask the Court to impose not a minimum 36 months to 120 months, I would ask the Court to impose a minimum one to ten years which would be 12 months to 120. And I would ask the Court to do this: I would ask the Court not to run each and every one consecutive, I would ask the Court to run Count II, III-- II, III, IV and V consecutive which would be four and then allow VI, VII, VIII and IX to run concurrent, therefore, being a minimum of four to whatever the total is at the back end.

Let me speak as to the habitual offender one more time. I don't believe it's appropriate to use each one

of these sentences-- excuse me, each one of these convictions, meaning Count II, III, IV, V to impose a ten to life, ten to life, ten to life, ten to life consecutive. I don't think that's proper. I don't think it's allowed under the statute. I think that prior felonies have to be prior to any common scheme or plan that is determined by the Court or whatever happens.

So as to the habitual offender, I don't think you can go 10, 10, 10, 10. And we would ask the Court to go Count II through IV, 2, 3, 4, 5, one to ten and let the rest of it run concurrent. And that would also include the gross misdemeanor, Count I.

Now, as to credit for time served, we have a dispute. October 17th to October 16th-- October 17th, 2001 to October 16th, 2002 my client was in custody. Now, while he was in custody he had not formally been revoked as to any parole sentence or any probation that he was currently on, so I submit to this Court that he is eligible for that 365 days credit. The revocation of what he was ultimately revoked on occurred October 16th. So I believe that he ought to be given credit for the time before that. That's 365 days, Your Honor.

And then, of course, he has the other case which he

has been sentenced on already which is 12 to 48. But we would ask for you to give him credit for 366 days.

In summation, Your Honor, this is a client of mine who is intelligent, he's articulate, who clearly has used his intelligence to the detriment of society in the past. But he is here, and you can hear when he speaks to you, he is here ready, willing and able to finally and fully to make amends to society and to blend in with society in a positive, positive manner. So we would ask Your Honor for no imposition of habitual criminal status and a sentence as I've indicated. Thank you, Your Honor.

THE COURT: Thank you, Mr. Van Ry.

And then, Ms. Riggs, did you want any rebuttal time?

MS. RIGGS: Your Honor, may I have the opportunity to rebut after the defendant's statement?

MR. VAN RY: I would have no objection to that, Your Honor.

THE COURT: Okay. Well, I'm going to go to Ms. Lukl then. Ms. Lukl, would you like to say anything?

MS. LUKL: Your Honor, nothing to add to the report. We stand by our recommendation.

THE COURT: And do you dispute the issue as to the

credit for time served?

MS. LUKL: Your Honor, I would in the sense that if he was revoked even a year later credit would have gone towards the case that he was revoked on. And if he was a Nevada parolee committing a new offense, even if this is-- he was in custody also on this offense, he was in custody being held on the hold for the parole case and when they're revoked the credit, even if it was served in Washoe County Jail, goes towards that revocation on the parole case. That's why we gave no credit.

THE COURT: Mr. Volpicelli, would you like to say anything?

THE DEFENDANT: Yes, Your Honor. Thank you, Your Honor. I would like to first address the Court with the fact that I once had a life. But for the last ten, 12 years of my life I've just been on a downward spiral as evidenced by all of these court proceedings. I grew up in southern California with a good family. My brother is a doctor, my dad's a doctor. I didn't get into any significant trouble as a child. I went to UCLA and graduated with honors. I had aspirations of becoming a doctor. But then along the way I changed that and went into business. And when I graduated in '78 through the early '90s I was a securities broker, an insurance broker and a real estate broker. I did

okay. But I noticed that there was just something in our family.

My sister has been on psychotropics and my brother as well for the past 10 or 15 years. Apparently there's some type of chemical imbalance in our family. And it's manifested itself in various ways and my dysfunction has just lead me here. And I'm not proud of it. My sister is a bulimic. She would probably be dead right now, but they intervened and put her on Prozac for the last 10 or 15 years and it's probably kept her alive. I believe that if I probably got involved with something like that and owned up and became accountable and open minded I probably wouldn't be here today. There's no excuse for me to be here, but I am.

The Court's probably aware of the fact that for the last six years now I've been incarcerated. I made some mistakes throughout my life and it seems like with my mental condition things just got worse. And sometimes just when you're on a toboggan downhill, it's difficult to stop. My addictions, self-medicating myself or doing whatever I had to do to get some type of endorphins going has landed me here. And I'm not saying it's right. But over the last six years, outside of the three and a half months that I was on

parole, four of it was with the state and the fed and then when I got out I relapsed again.

Impaired judgment, poor choices, drugs. And I got arrested October 17th, 2001. Since then I've been in custody. Where it's credited, on which sentence, that sentence, it was custody. It's given me time to think. But outside of the programing, the extensive programming that the prosecution brought up as well as my attorney, I think I finally came to grips with the fact that I needed psychotherapy. And that's what I became involved with for the last couple of years.

And the Prozac has really been remarkable. It's too bad now, because I just look and my life, my career, my family, everything is just gone down the tubes. Again, I'm not proud of it.

But aside from the fact that I've been incarcerated for the last two and a half years, I have another situation I'm dealing with as well. You probably heard about the federal imprisonment with the tax perjury. Not everything was accurate what was portrayed, but at this point it's probably moot. I'm facing a two-year sanction on that as well because it was a concomitant federal supervised violation with the state parole violation. It's really complicated and convoluted. And then I have two other cases beside this matter

today. I've already been sentenced on those, one to four. But just last week I went to the parole board on one of them and they told me that due to my situation I'm going to be expiring those sentences, which means I will be expiring everything henceforth due to the points or whatever their policy is.

So that puts me independent of today's sanction two and a half already since my arrest for these cases, two years more. And, by the way, these all have to be consecutive, two years with the feds, two years with case 0147 and two years with 0148. So I'm looking at-- I'm looking at eight and a half years of my life now without even what you're considering today. And, well, I'm approaching the half century mark, 50 years, pretty quick. And that puts me getting out at about 60, and with a hellacious sanction by this Court today, puts me coming out an old man with nothing, because the IRS took everything. I'm not saying they didn't have a right. My divorce took everything. And my incompetence and ignorance took everything and addictions took everything.

I'm not blaming-- I'm solely accountable, I'm just saying there's a reason for everything in this world and I don't have all the answers. I would just like to see some light at the end of the tunnel. And so I'm

asking you today for a restorative-type sanction rather than a retributive-type sanction, and since I'm already looking at eight and a half over and above what you're going to give me, that perhaps maybe we could run-- Even consolidating everything here with what P and P recommends with a three to ten or, as my attorney suggested, a four to ten, I'm still looking at 12, 13 years, coming out an old man. And I would like to at least have something to look forward to.

And with that, I thank you for your time.

THE COURT: Ms. Riggs, anything else?

MS. RIGGS: Yes, Your Honor, just a couple of comments regarding this defendant's spiral into criminal activity. He implied to you that that didn't start occurring until after he graduated from UCLA in 1978 and continued on into business at some point he implies that criminal activity began. Actually his criminal activity began in 1974 four years before he graduated from UCLA with two counts of petty theft as is reflected in the P and P report.

A couple other comments, Your Honor. Millions of people in this country live with the disease of depression and those people manage to get through each day without stealing hundreds of thousands of dollars worth of merchandise from their communities.

Also, he's telling you about his family history, his brothers and sisters and their particular scourges. Well, we haven't heard of any evidence of that, but even if it's true, Your Honor, we also haven't heard of any evidence of his brothers and sisters walking into Target and walking out with thousands of dollars worth of merchandise illegally obtained.

Mr. Van Ry referred to the demon inside Mr. Ferrill Volpicelli. The demon inside Ferrill Volpicelli is himself. He can't help himself. It's not because he wasn't on Prozac, it's not because he wasn't diagnosed with this mystery illness that he now claims, all these things as I told you before that he was going to blame his activity on. It's because he does not make the right choices and apparently hasn't at least for the past 17 years and as you can see further back than that. Unfortunately, all of his poor choices that he refers to all involve again walking into stores and walking out with lots of merchandise illegally obtained.

And regarding his assertion that should you impose habitual offender status he's going to be walking out of prison an old man with nothing, hasn't he been on notice that that could happen to him? Wasn't he on notice when he received 18 federal counts against him

that he could be in trouble with this particular activity, when he went to federal prison which apparently he enjoyed very much, when he went to state prison, when he was arrested by the ROP team? Your Honor, these are all excuses that he gives you now. Now is the time to punish him. We ask that you impose the sentence the State has recommend. Thank you.

THE COURT: Well, in reviewing Mr. Volpicelli's record, I have to consider the nature of his prior felony convictions. And the prior felony convictions, in fact, are largely part of a theft scheme that Mr. Volpicelli developed years ago and persisted in stealing from stores over the course of a long time and perhaps various methods. Apparently he starts this--this activity started with getting duplicate copies of credit card receipts and then using that method to return property for full value that wasn't purchased for the full value, progressed to the more sophisticated crime of using false UPC labels on boxes of merchandise. But that shows a long pattern of this type of theft.

And not only is it theft, but it's a theft that was actually used to support Mr. Volpicelli, so it's different than you see in most cases. You don't see that many people who actually earn a living from theft

or crime. Usually people have other employment, they, you know, live their life generally supporting themselves lawfully but then have a sideline perhaps of criminal activity, but Mr. Volpicelli, in fact, is a career criminal and that's how he has made a living for years while not incarcerated.

And under all the evidence that I see here, I do in fact find that Mr. Volpicelli is a habitual criminal. In fact, you are the poster child for habitual criminality in that every time you're released from custody it seems like you're out making a full-time living stealing. So there really isn't any doubt in my mind that the statutory scheme for habitual criminality applies to you, Mr. Volpicelli.

And with that, I will sentence you as a habitual criminal. I think society needs to be protected from this level of theft where you're actually making a full good living from stealing. And also our law enforcement authorities need to devote themselves to other people than to constantly monitor you as you pursue this scheme of theft to make a living.

What I intend to do here is to impose two terms of life in prison with the possibility of parole in ten years to run consecutive to one another and then the others will run concurrent so that on this case it is

my intention that you would have to spend at least 20 years in prison before being eligible for parole. In addition, this case will run consecutive to any other sentence you may be serving. So it's going to be a little more complicated to go through all this to make that work with my sentencing scheme, but that is my overall sentencing scheme here.

So, Mr. Volpicelli, you must pay a 25-dollar administrative assessment fee, a 500-dollar attorney's fee, a 150-dollar DNA testing fee and you must submit to testing to determine genetic markers. You are hereby ordered to pay restitution in the amount of $10,339.16. And that is the amount that was verified in Exhibit 5.

As to Count I, conspiracy to commit crimes against property, a gross misdemeanor, you're sentenced to 12 months in the Washoe County jail. And that sentence will run concurrent with all other counts.

As to Count II, burglary, you're sentenced to a term of life with the possibility of parole after a minimum of ten years have been served.

As to Count III, burglary, you're sentenced to a term of life with a possibility of parole in ten, when ten years have been served. That will run concurrent to Count II.

As to Count IV, burglary, you're sentenced to a term of life with a minimum parole eligibility of ten years. And again, that will be concurrent.

As to Count V, burglary, you're sentenced to a maximum term of life with a minimum parole eligibility of ten years. That will be concurrent.

Count VI, burglary, you're sentenced to a term of life with a minimum parole eligibility of ten years. And that will be concurrent.

As to Count VII, burglary, you're sentenced to a term of life with a minimum parole eligibility of ten years. That will be a concurrent sentence.

As to Count VIII, burglary, you're sentenced to a term of life with a parole eligibility beginning after ten years. And that will be concurrent.

As to Count IX, burglary, you're sentenced to a term of life with a minimum parole eligibility of ten years. That will be concurrent.

As to Count X, unlawful possession, making, forgery, counterfeiting of inventory pricing labels, you're sentenced to a term of life with a minimum parole eligibility of ten years. And that will be consecutive to the other counts.

So that again to articulate this, you have Count II which is the basic sentence for burglary and then Count

X, the other charge, the inventory pricing label charge, and that will be the other consecutive sentence of life with possibility of parole at ten years. There will be zero days credit for time served as your time has been credited to a prior case.

And I would like to thank law enforcement authorities for doggedly following Mr. Volpicelli and protecting our community from just the worst type of thief.

MR. VAN RY: Your Honor, I did have a couple of issues I need to be brought up before the Court. As you're aware, since there's a life sentence imposed, ultimately this case will be kicked over to the Public Defender's Office, and I'll handle that, but in the meantime, there's a couple of issues as to property that Mr. Volpicelli has. He has requested several times that a typewriter that is in the possession of City of Reno be returned specifically to him in the Department of Corrections for his use. I don't think there's anything improper with him having a typewriter. I think it's allowed. And I would ask this Court to-- of course, after the State's opportunity to speak--

THE COURT: I'm not going to make any rulings with regard to property of Mr. Volpicelli's that may be in the custody of the Sheriff or the City of Reno. I

think the proper authorities to issue a release of such property would either be the City Attorney's Office or the District Attorney's Office, not this Court.

MR. VAN RY: Okay. Thank you, Your Honor.

MS. RIGGS: Thank you, Your Honor.

THE COURT: Court will be in recess.

(The proceedings were concluded.)

--o0o--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

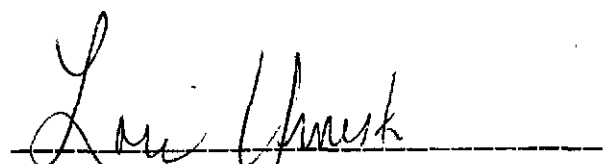
I, LORI URMSTON, Certified Court Reporter, in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken by me at the time and place therein set forth; that the proceedings were recorded stenographically by me and thereafter transcribed via computer under my supervision; that the foregoing is a full, true and correct transcription of the proceedings to the best of my knowledge, skill and ability.

I further certify that I am not a relative nor an employee of any attorney or any of the parties, nor am I financially or otherwise interested in this action.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct.

DATED: At Reno, Nevada, this 10th day of April, 2004.



LORI URMSTON, CCR #51

ORIGINAL

4300
Bradley O. Van Ry
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1403 East Fourth St.
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(775) 324-3681
Attorney for Defendant

FILED

2004 APR 19 PM 12:04

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

DC-9900025141-056
CR03-1263
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 04/19/2004 09:44 AM
Washoe County 4300

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

NOTICE OF WITHDRAWAL OF ATTORNEY

The undersigned, being attorney of record for the Defendant Ferrill Joseph Volpicelli in the above-entitled action, and pursuant to Rule 46 of the Supreme Court of the State of Nevada, hereby withdraws as attorney of record effective as of this date.

DATED this 16th day of April 2004.

BRADLEY O. VAN RY, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 1403 East Fourth Street, Reno, Nevada 89512, and that on the date below, a true and correct copy of the foregoing, **NOTICE OF WITHDRAWAL OF ATTORNEY**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
PO Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 16th day of April, 2004.

Kim Rosling
KIM ROSLING

ORIGINAL

2505

FILED
2004 APR 22 PM 12:14
RONALD A. LONGTIN, JR.
BY
DEPUTY

DC-9900025141-057
CR03-1263 FERRILL JOSEPH VOL 2 Pages
STATE VS
District Court 04/22/2004 03 23 PM
Washoe County 2515

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiffs,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

CASE NO. CR03-1263

DEPT. NO. 10

NOTICE OF APPEAL

Notice is hereby given that FERRILL JOSEPH VOLPICELLI, Defendant above-named, hereby appeals to the Supreme Court of Nevada from the Judgment entered in this action on the 1st day of April, 2004.

DATED this 19th day of April, 2004.

FERRILL JOSEPH VOLPICELLI,
Inmate # 79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702
Defendant In Proper Person

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 1403 East Fourth Street, Reno, Nevada 89512, and that on the date below, a true and correct copy of the foregoing, **NOTICE OF APPEAL,** was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Washoe County Public Defender's Office
350 South Center Street, 6th Floor
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 21st day of April, 2004.

Kim Rosling
KIM ROSLING

ORIGINAL

FILED

2004 APR 22 PM 3:31

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

CODE 1310

CR03-1263 DC-9900025141-058
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 04/22/2004 03:23 PM
Washoe County 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL JOSEPH VOLPICELLI,

Appellant,

vs.

Case No. CR03-1263

Dept. No. 10

THE STATE OF NEVADA,

Respondent,

_____/

CASE APPEAL STATEMENT

1. Ferrill Joseph Volpicelli is the Appellant. He has filed a request for appointment of counsel.
2. The appeal is from the Order/Judgment filed on or about April 1, 2004 by the Hon. Steven P. Elliott.
3. The parties below in District Court consisted of The State of Nevada, the Plaintiff, and Ferrill Joseph Volpicelli, the Defendant, in District Court.
4. The parties herein in the Nevada Supreme Court consist of: Ferrill Joseph Volpicelli/Appellant and The State of Nevada/Respondent.
5. Counsel on Appeal for Appellant, consists of Ferrill Joseph Volpicelli/Pro Per Appellant, #79565, Northern Nevada Correctional Center, P. O. Box 7000, Carson City, NV 89702. Counsel on appeal for Respondent is Gary Hatlestad, Chief Appellant Deputy, Office of the District Attorney, P.O.Box 30083. Reno, NV 89520.

6. Appellant was represented by Bradley Van Ry, 1403 East Fourth Street, Reno, NV 89512 in District Court.
7. Appellant is represented in Proper Person in this appeal.
8. N/A in this case.
9. The Indictment was filed on June 11, 2003.

Dated: April 22, 2004.

Ronald Longtin, Jr. Court Clerk

By: C. Kepler .

Cathy Kepler, Appeals Clerk

(775) 328-3114

ORIGINAL

FILED

2004 APR 22 PM 3:31

RONALD A. LONGTIN, JR.

BY C. Kepler DEPUTY

CODE 1350

DC-9900025141-059
CR03-1263 FERRILL JOSEPH 1 Pages
STATE VS. FERRILL JOSEPH 04/22/2004 03:23 PM
District Court 1350
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.

Case No. CR03-1263

Dept. No. 10

THE STATE OF NEVADA,
Respondent,
_____/

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the Revised Rules of Appellant Procedure Rule D(1).

Dated: April 22, 2004

Ronald Longtin, Jr., Court Clerk

By: C. Kepler.

Cathy Kepler, Appeals Clerk

(775) 328-3114

ORIGINAL

FILED
2004 APR 22 PM 3:31
RONALD A. LONGTIN, JR.
BY C. Kepler
DEPUTY

DC-9900025141-082
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS
District Court 04/22/2004 03:23 PM
Washoe County 1365

CODE 1365

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.

THE STATE OF NEVADA,
Respondent,
_____/

Case No. CR03-1263
Dept. No. 10

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents (certified copies), were delivered to the Second Judicial District Court mailroom system for transmittal to the Nevada Supreme Court.

Dated: April 22, 2004

Ronald Longtin, Jr., Court Clerk

By: C. Kepler

Cathy Kepler, Appeals Clerk
(775) 328-3114

ORIGINAL

FILED

2004 APR 22 PM 12:14

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

3870

DC-9900025141-083
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 04/22/2004 04 33 PM 1215
Washoe County
CR03-1263

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiffs,

CASE NO. CR03-1263

vs.

DEPT. NO. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

/

REQUEST FOR APPOINTMENT OF COUNSEL

Defendant, having filed a Notice of Appeal from the Judgment of this Court entered on the 1st day of April, 2004, hereby requests that he be appointed counsel at the taxpayers' expense as he is financially unable to retain counsel to litigate this matter.

DATED this 19th day of April, 2004.

FERRILL JOSEPH VOLPICELLI,
Inmate # 79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702
Defendant In Proper Person

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 1403 East Fourth Street, Reno, Nevada 89512, and that on the date below, a true and correct copy of the foregoing, **REQUEST FOR APPOINTMENT OF COUNSEL,** was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Washoe County Public Defender's Office
350 South Center Street, 6th Floor
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 21st day of April, 2004.

Kim Rosling
KIM ROSLING

ORIGINAL

CODE: 2840

FILED

APR 27 2004

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY

DC-9900025141-084
CR03-1263 FERRILL JOSEPH VOL 2 Pages
STATE VS. District Court 04/27/2004 08:26 AM 2840
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

FERRILL VOLPICELLI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO: CR03-01263

DEPT. NO.: 10

ORDER DENYING REQUEST FOR APPOINTMENT OF COUNSEL

The Court has read and considered Appellant's Request for Appointment of Counsel, filed April 22, 2004. Appellant makes his request for representation at taxpayers' expense on the basis that he is purportedly unable to obtain counsel through his own funds. Notably, the record is devoid of any proof of indigent status. The Court will require Appellant to establish his indigent status by demonstrating the funds in bank accounts to which he has access (i.e., his name is on the account), as well as his prison account.

NOW, THEREFORE, IT IS HEREBY ORDERED that Appellant's Request for Appointment of Counsel is DENIED.

DATED this 27 day of April, 2004.

STEVEN P. ELLIOTT
District Judge

V2.458

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 27 day of April, 2004, I deposited for mailing a copy of the foregoing document addressed to:

Ferrill Joseph Volpicelli, #79565
N.N.C.C.
P.O. Box 7000
Carson City, NV 89702

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

DATED this 27 day of April, 2004.

HEIDI HOWDEN
Administrative Assistant

1 MD

ORIGINAL

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

CR03-1263 DC-99000251141-085
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 04/29/2004 11 35 AM
Washoe County 1188

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 43203
District Court Case No. CR031263

FILED
2004 APR 29 AM 11:17
RONALD A. LONGTIN, JR.
BY: [signature]
DEPUTY

RECEIPT FOR DOCUMENTS

TO: Ferrill Joseph Volpicelli #79565
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Ronald A. Longtin Jr., District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/27/04 Filing Fee Waived: Criminal.

04/27/04 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.

DATE: April 27, 2004

Janette M. Bloom, Clerk of Court

By: _____
Deputy Clerk

d-10
/5-11

ORIGINAL

FERRILL VOLPICELLI
79565 NNCC
BOX 7000
CARSON CITY, NV 89702
DEFENDANT IN PRO PER

FILED
2004 MAY -7 PM 3:27
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

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

STATE OF NEVADA,
PLAINTIFFS,

CASE # CR03-1263

VS

DEPT. #10

FERRILL T. VOLPICELLI,
DEFENDANT,

REQUEST FOR TRANSCRIPTS

DEFENDANT, HAVING FILED A NOTICE OF APPEAL FROM THE JUDGMENT OF THIS COURT, ON OR ABOUT 19, APRIL, 2004, HEREBY REQUESTS THAT HE BE SENT ALL COURT TRANSCRIPTS OF TRIAL, AS WELL AS PRETRIAL AND POST-TRIAL HEARINGS, AT THE TAXPAYERS EXPENSE AS HE IS FINANCIALLY UNABLE TO PAY FEES IN LITIGATING THIS MATTER.

DATED THIS 30 DAY OF APRIL, 2004

CERTIFICATE OF SERVICE: DATED & COPY MAILED ON THIS 30 DAY OF APRIL, 2004, TO TAMMY RIGGS ESQ, WASHOE COUNTY PUBLIC DEFENDER, AND THE NEVADA SUPREME COURT, AS CERTIFIED BY PENALTY OF PERJURY PURSUANT TO NRCP 5(b).

FERRILL T. VOLPICELLI
DEFENDANT PRO PER

DC-9900025179-001
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 05/07/2004 08:14 AM
Washoe County
CR03-1263
3868

ORIGINAL CR03-1263

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED
MAY 11 2004
RONALD A. LONGTIN, JR., Clerk
By _____ Deputy Clerk

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43203

FILED
MAY 07 2004
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY _____ CHIEF DEPUTY CLERK

CR03-1263 DC-99000251 79-002
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 05/11/2004 01 44 PM
Washoe County 4135

ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL

This is a proper person appeal from a judgment of conviction. We remand this appeal to the district court for the limited purpose of securing counsel for appellant.[1] The district court shall have 30 days from the date of this order to appoint counsel for appellant. Within 5 days from the date of appointment, the district court clerk shall transmit to the clerk of this court a copy of the district court's written or minute order appointing appellate counsel.

It is so ORDERED.

_____, C.J.

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

[1]See Evitts v. Lucey, 469 U.S. 387 (1985).

ORIGINAL

Case No. CR03-1263 / 43283

Dept. No. 10

FILED
2004 MAY 11 PM 2:56
RONALD A. LONGTIN, JR.
BY [illegible] DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--ooOoo--

FERRILL V. VOLPICELLI,

Petitioner,

Vs.

STATE OF NEVADA,

Respondent.

/

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

COMES NOW, FERRILL V. VOLPICELLI Petitioner, and in his proper person, and files this Motion for Leave to Proceed in Forma Pauperis, without requiring Petitioner to pre-pay costs or provide security thereof, in the prosecution of the above-entitled action.

This Motion is based upon the provisions of NRS 12.015, and the attached Affidavit of Petitioner.

DATED this 29 day of April, 2004.

RESPECTFULLY SUBMITTED,

PETITIONER, In Proper Person

///

DC-9900025179-003
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 05/11/2004 04:52 PM 2385
Washoe County
CR03-1263

ORIGINAL

FILED

2004 MAY 11 PM 2:56

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

Ferrill Vaupell
NNCC, #79565
P.O. Box 7000
Carson City, Nv. 89702
Petitioner in Proper Person

DC-9900025179-004
STATE VS. FERRILL JOSEPH VOL 3 Pages
District Court 05/11/2004 04 52 PM
Washoe County 1030
CR03-1263

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe

Ferrill T. Vaupell

Petitioner,

Vs.

State of Nevada

Respondent

Case No. CR03-1263 / 43203

Dept. No.: 10

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, Ferrill T. Vaupell, First being duly sworn, depose and say that I am Petitioner in the above-entitled case; that in support of my Motion to proceed without being required to prepay fees, costs or give security therefore; I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I am entitled to relief.

I do ✓ Do not ___ request an attorney to be appointed for me. other than the Washoe County Public Defender due to conflict. I further swear that the responses, which I have made to question, and instructions below are true.

1. Are you presently employed: Yes ___ No ✓

A. If the answer is yes, state the amount of your salary of wages per month, and give name and address of your employer:

N/A

B. If the answer is no, state the date of last employment and the amount of salary and wages per month, which you received: $1200/m 10/01

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment? Yes ___ No ✓

b. Rent payments, interest or dividends ? Yes ___ No ✓

c. Pensions, annuities or life insurance payments? Yes ___ No ✓

d. Gifts or inheritances ? Yes ✓ No ___

e. Any other sources ? Yes ___ No ✓

If the answer to any of the above is "YES" describe each source of money and state the amount received from each during the past twelve months:

MY MOTHER SENDS ME APPROX $50/m FOR HYGIENE, POSTAGE

3. Do you own cash or equivalent prison currency, or do you have money in a checking or savings account ? Yes ✓ No ___

If the answer is "YES" state the total value of the items owned: $69.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuables property (excluding ordinary household furnishing and clothing)? Yes ___ No ✓

If your answer is "YES: describe the property and state its approximate value:

N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support:

CHILD SUPPORT ACCRUING AT $100/m + MEDICAL INS

UNDER THE PENALTY OF PERJURY, Pursuant to NRS 208.165 the above affidavit is true and correct to the best of my personal knowledge.

DATED this 29 day of APRIL, 2004

Sign Your Name Here

FERRIL VOLPICELLI

Print Your Name Here DOC# 79565

NNCC

FINANCIAL CERTIFICATE

I hereby certify that the Petitioner/Plaintiff. F. VOLPICELLI # 79565

has the sum of $ 38.23 on his account to his credit at the Northern Nevada Correctional Center where he is confined.

I further certify that the Petitioner/Plaintiff likewise has the following securities to his credit according to the records of said institution: $ 30.87

Dated this 27th day of APRIL 2003.

Acct Tech II

Custody of Records
Inmate Accounting Services
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, Nevada 89702-7000

ORIGINAL

CODE: 2405
PATRICIA A. LYNCH
Reno City Attorney
KAREN S. FRALEY
Deputy City Attorney
P. O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for City of Reno
Reno Police Department

FILED
2004 MAY 17 PM 4:36
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

DC-9900025179-005
CR03-1263 FERRILL JOSEPH VOL 6 Pages: 1
STATE VS
District Court 05/17/2004 03:08 PM
Washoe County 2405
nar

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff

vs.

FERRILL J. VOLPICELLI,

Defendant.

Case No. 03-1263
Dept. No. 10

MOTION TO QUASH SUBPOENA DUCES TECUM

COMES NOW the City of Reno, by and through its attorneys, PATRICIA A. LYNCH, Reno City Attorney, and KAREN S. FRALEY, Deputy City Attorney, pursuant to N.R.S. 174.335(2), and files this Motion to Quash Subpoena Duces Tecum served upon the Reno Police Department by Defendant Ferrill J. Volpicelli.

This Motion is supported by the Points and Authorities attached hereto.

DATED this 14th day of May, 2004.

PATRICIA A. LYNCH
Reno City Attorney

BY Karen S. Fraley
KAREN S. FRALEY
Deputy City Attorney
Nevada Bar No. 3825
P. O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for City of Reno
Reno Police Department

POINTS AND AUTHORITIES

I. BRIEF STATEMENT OF FACTS

On May 13, 2004, Counsel for the City of Reno Police Department received a Subpoena [Duces Tecum] in the mail from Defendant. The Subpoena's caption is State of Nevada v. Ferrill J. Volpicelli, Case No. 03-1263, Dept. 10 of the Second Judicial District Court of the State of Nevada in and for the County of Washoe. It reads as follows:

> TO: Ms. Karen Swaney Fraley for the R.P.D.
> You are commanded to provide within ten (10) days the defendant with copies of Count X's 15 or more UPC labels, R.O.P.'s complete surveillance notes for Defendant's activities on 10-17-01; and transcripts of statements between the investigators and co-defendant Brett A. Bowman at WCSO and R.P.D.

A copy of the Subpoena is attached hereto as Exhibit A.

Defendant was arrested by the Reno Police Department on October 17, 2001 and ultimately charged with eight counts of burglary, one count of conspiracy to commit crimes against property, and one count of unlawful possession making, forgery or counterfeiting of inventory pricing labels. Defendant was tried and convicted on November 14, 2003. On April 1, 2004, this Court designated Defendant a habitual criminal and sentenced him to nine life terms, seven to run concurrently and two to run consecutively. It is the City's understanding that there are no pending proceedings in the case.

II. DEFENDANT CANNOT SUBPOENA DOCUMENTS WHEN THERE IS NO PENDING CASE.

NRS 174.335 establishes the procedure through which a criminal defendant may subpoena objects and documentary evidence in advance of trial. The "court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time **before the trial or before the time when they are to be offered in evidence** and may,

upon their production, permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys." NRS 174.335(3).[emphasis added].

The time for discovery or offering evidence in the case of the State v. Volpicelli has passed. Defendant has been tried, convicted, and sentenced. There are no post-conviction proceedings in the case. The Subpoena is therefore improper and an abuse of process.

The City respectfully requests the Court to quash the Subpoena.

III. EVEN IF THE SUBPOENA WERE VALID, THE CITY WOULD SEEK A PROTECTIVE ORDER

Even if the subpoena wasn't barred by the absence of a pending case, the City would not be able to respond as to one request and would seek a protective order for the other two requests.

The subpoena calls for copies of "Count X's 15 or more UPC labels." The City has been advised that those UPC labels were entered into evidence at trial. Therefore, the City does not possess them nor does it have any control over them.

As to the request for "transcripts of statements between the investigators and co-defendant Brett A. Bowman at WCSO and R.P.D.", the tapes of all interviews in the case were duplicated and turned over to defense counsel as part of the pre-trial discovery. It is again the City's understanding that transcripts of all the interviews were not prepared. Defendant is free to contact his attorney and obtain whatever he believes he needs from those tapes. The City has no further obligation to either provide duplicates of the tapes or go to the expense of transcribing them at this time simply because Defendant wants the City to do so.

Finally, as to the surveillance notes, the City would seek a protective order for what is clearly investigative information under *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). While *Donrey* deals with a public records request, the balancing test it sets forth is applicable in criminal cases as well. The interest of the requestor in receiving the

information is to be balanced against the interest of the governmental entity in keeping the information confidential. In a criminal case, the requestor's interest has to be weighed in light of the relevance the information has to the pending case. While the City has not reviewed a transcript of the criminal case, it can state with certainty that Reno Police Department detectives testified at trial. That testimony most certainly would have dealt with detectives' actions and observations preceding Defendant's arrest. Defendant had full opportunity to cross-examine. Indeed, if any existing investigative/surveillance notes had any relevance to the issue of Defendant's guilt or innocence, this issue would have arisen pre-trial and been ruled upon at that time.

Law enforcement surveillance records, to the extent that they exist, must remain confidential. Otherwise, strategies and tactics used by detectives as they investigate crime and conduct surveillance would be revealed to the public as a whole and the criminal population in particular. The effectiveness of methods used to apprehend criminals would be seriously impaired if the criminal population could anticipate what actions law enforcement officers would take. Revelation of that information would also compromise officers' safety because those who would do officers' harm would be able to evaluate methods and means of doing so based upon knowledge of how the officers work.

The *Donrey* balancing test clearly favors keeping the surveillance records confidential.

IV. CONCLUSION

The City respectfully requests the Court quash the subpoena.

DATED this 14th day of May, 2004.

PATRICIA A. LYNCH
Reno City Attorney

BY Karen S. Fraley
KAREN S. FRALEY
Deputy City Attorney
Nevada Bar #3825
P.O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for the City of Reno
Reno Police Department

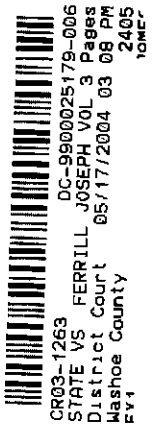
CR03-1263
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 05/17/2004 03 08 PM
Washoe County
DC-9900025179-006
2405

EXHIBIT 1

FERRILL T. VOLPICELLI
DEFENDANT PRO SE
79565 NNCC
BOX 7000
CARSON CITY, NV
89702

CODE 4055

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL T. VOLPICELLI,

Defendant.

Case No. 03-1263

Dept. No. 10

SUBPOENA

To: Ms. KAREN SWANEY FRALEY FOR THE R.P.D.
(Name)

YOU ARE COMMANDED TO PROVIDE WITHIN TEN (10) DAYS THE DEFENDANT WITH COPIES ~~You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department ____ at Reno, Nevada, on the ____ day of ____, at ____ m, to testify on the part of~~ OF COUNT I'S 15 OR MORE UPC LABELS, R.O.P.'S COMPLETE SURVEILLANCE NOTES FOR DEFENDANTS ACTIVITIES ON 10-17-01; AND TRANSCRIPTS OF STATEMENTS BETWEEN THE INVESTIGATORS AND CO-DEFENDANT BRETT A. BOWMAN AT WCSO AND R.P.D.

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of $100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 10TH day of MAY, 2004.

RONALD A. LONGTIN, JR., CLERK OF THE COURT

by J. White
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 10TH day of MAY, 2004 and personally ~~served~~ MAILED a copy of the same upon THE ABOVE NAME CITY ATTORNEY

Subscribed and sworn to before me this 10TH day of MAY, 2004.

AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165

Notary Public

Signature of Person Making Service

JUD 100 (Rev 12/01)
NRS 111.150
NRCP 45 a

EXHIBIT "A"

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

__XX__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

Tammy M. Riggs, Esq.
Deputy District Attorney
75 Court Street
P.O. Box 30083
Reno, NV89520

Ferrill Volpicelli
Inmate ID #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 19th day of May 2004.

Penelope H. Colter

Penelope H. Colter
An Employee of the Reno City Attorney

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

ORIGINAL

FILED

MAY 27 2004

RONALD A. LONGTIN, JR., CLERK

By _____ DEPUTY

3035

DC-9900025179-007
CR03-1263 FERRILL JOSEPH VOL 3 Pages
STATE VS 05/27/2004 09:20 AM
District Court 3035
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

Case No. CR03-1263

vs. **Dept. No. 10**

THE STATE OF NEVADA,

Respondent.

_____/

ORDER TO PROCEED IN FORMA PAUPERIS

Having read the Affidavit in Support of FERRILL J. VOLPICELLI's 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 FERRILL J. VOLPICELLI 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

////

///

//

within the state make personal service of any necessary writ, process, pleading or paper without charge for FERRILL J. VOLPICELLI.

Dated this 26 day of May, 2004.

JAMES W. HARDESTY
DISTRICT JUDGE

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 27th day of May, 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:

Ferrill J. Volpicelli, #79565
N.N.C.C.
P. O. Box 7000
Carson City, NV 89702

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

Michele M. Shull
Administrative Assistant

DC-99000025179-008
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 05/28/2004 10 33 AM
Washoe County 2525
CR03-1263

FERRILL T. VOLPICELLI
#5565 H.D.S.P.
BOX 650
INDIAN SPRINGS, NV 89018
APPELLANT PRO PER

2004 JUN -1 PM 3:48
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

IN THE SUPREME COURT
OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
APPELLANT,

NO. 43203
CR03-1263
D-10

NOTICE OF ADDRESS CHANGE

THE STATE OF NEVADA,
RESPONDENT,

NOTICE IS HEREBY GIVEN OF A CHANGE OF ADDRESS FOR APPELLANT, FERRILL JOSEPH VOLPICELLI. HENCEFORTH, ALL CORRESPONDENCE IS TO BE SENT TO c/o H.D.S.P. BOX 650 INDIAN SPRINGS, NEVADA 89018

DATED THIS 24 DAY OF MAY, 2004

FERRILL JOSEPH VOLPICELLI
APPELLANT PRO PER

CERTIFICATE OF MAILING: DATED AND COPY MAILED ON THIS 24 DAY OF MAY, 2004 TO DISTRICT COURT CLERK, NEVADA ATTORNEY GENERAL AND WASHOE COUNTY DISTRICT ATTORNEY AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165

FERRILL JOSEPH VOLPICELLI

ORIGINAL

FILED

JUN - 1 2004

RONALD A. LONGTIN, JR./CLERK
By: A. Howell
DEPUTY

CODE
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

DC-9900025179-011
CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 06/01/2004 04:52 PM
Washoe County 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR03-1263

Dept. No. 10

/

ORDER

Based on the totality of the circumstances presented in this case, the Court finds it proper to declare FERRILL JOSEPH VOLPICELLI a HABITUAL CRIMINAL pursuant to NRS 207.010.

DATED this 1 day of June, 2004.

DISTRICT JUDGE

FERRILL T. VOLPICELLI
7[illegible]65 HDSP
BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO PER

ORIGINAL

DC-9800025179-009
FERRILL JOSEPH VOLP 1 Page
06/01/2004 10:40 AM
CR03-1263
STATE VS
District Court
Washoe County

FILED
2004 MAY 28 PM 2:
RONALD A. [illegible]
BY [illegible] DEPUTY

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

[illegible] OF NEVADA,
PLAINTIFF,

CR 03-1263

DEPT. 10

FERRILL T. VOLPICELLI
DEFENDANT,

NOTICE OF ADDRESS CHANGE

NOTICE IS HEREBY GIVEN OF A CHANGE OF ADDRESS FOR DEFENDANT, FERRILL T. VOLPICELLI. HENCEFORTH, ALL CORRESPONDENCE IS TO BE SENT TO c/o H.D.S.P. BOX 650 INDIAN SPRINGS, NEVADA 89018

DATED THIS 24 DAY OF MAY, 2004

FERRILL T. VOLPICELLI
DEFENDANT PRO PER

CERTIFICATE OF MAILING

DATED AND COPY MAILED ON THIS 24 DAY OF MAY, 2004 TO WASHOE COUNTY DISTRICT ATTORNEY, WASHOE COUNTY PUBLIC DEFENDER, BRAD VANKY ESQ AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165.

FERRILL T. VOLPICELLI

ORIGINAL

CODE: 2715

FILED
JUN - 1 2004
RONALD A. LONGTIN, JR., CLERK
By: [signature]
DEPUTY

CR03-1263
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 06/01/2004 12:23 PM
Washoe County 2715
DC-99000025179-010

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO: CR03-1263

DEPT. NO.: 10

ORDER APPOINTING COUNSEL

On May 7, 2004, the Nevada Supreme Court remanded to this Court the above entitled case for the limited purpose of appointing Appellant counsel for representation on his direct appeal. In accordance with said remand, this Court appoints Mary Lou Wilson, Esq., as Appellant's counsel for representation in relation to his direct appeal before the Nevada Supreme Court.

NOW, THEREFORE, IT IS HEREBY ORDERED that Mary Lou Wilson, Esq., is APPOINTED counsel for the above-entitled case before the Nevada Supreme Court.

DATED this 1 day of ~~May~~ June, 2004.

STEVEN P. ELLIOTT
District Judge

V2.482

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 1 day of ~~May,~~ June 2004, I deposited for mailing a copy of the foregoing document addressed to:

Mary Lou Wilson, Esq.
333 Marsh Ave.
Reno, NV 89509

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

DATED this 1 day of ~~May,~~ June 2004.

HEIDI HOWDEN
Administrative Assistant

ORIGINAL

FILED

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

2004 JUN 14 AM 10:51

RONALD A. LONGTIN, JR.

BY C. Keller DEPUTY

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 43203
District Court Case No. CR031263

DC-9900025179-013
CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 06/14/2004 10:52 AM 2610
Washoe County

NOTICE TO APPOINTED COUNSEL

TO: Mary Lou Wilson

This court has been notified by the clerk of the district court that you have been appointed as counsel for appellant in this matter. Pursuant to the Nevada Rules of Appellate Procedure, you are responsible for filing the following documents. The due dates commence to run from the date of this notice.

Docketing Statement (NRAP 14) (form enclosed): 15 days

Request for Transcripts, or Certificate That Transcripts are Not Requested (NRAP 9): 15 days

Opening Brief and Appendix (NRAP 28, 28A, 30, 31 and 32): 120 days

Please submit the documents to the Clerk of the Supreme Court.

DATE: June 10, 2004

Janette M. Bloom, Clerk of Court

By: _____
Deputy Clerk

cc: Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Ronald A. Longtin Jr., District Court Clerk

CR03-1263
DC-99000025179-012
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 06/14/2004 11 35 AM
Washoe County 3860
10MER

FERRILL VOLPICELLI
#9563 HDSP
BOX 650
INDIAN SPRINGS NV 89018
DEFENDANT PRO PER

FILED
JUN 14 PM 3:02
BY DEPUTY

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

STATE OF NEVADA,
PLAINTIFF,

CASE: CR03-1263

DEPT: 1B

FERRILL V. VOLPICELLI,
DEFENDANT,

REQUEST FOR SUBMISSION AND ORDER FOR TRANSCRIPTS.

DEFENDANT, HAVING FILED A MOTION FOR REQUEST FOR TRANSCRIPTS, ON 7 MAY 2004, HEREBY MOVES THE COURT FOR SUBMISSION OF SAID MOTION FOR THE COURTS REVIEW AND DETERMINATION.

WHEREFORE, DEFENDANT RESPECTFULLY REQUESTS PROMPT RELIEF BY WAY OF AN ORDER GRANTING DEFENDANT HIS RIGHT TO FURTHER HIS POST CONVICTION PROCEEDINGS WITH THE STATE PROVIDING THE COURT TRANSCRIPTS TO DEFENDANT WITHIN 15 (FIFTEEN) DAYS.

SUBMITTED THIS 9th DAY OF JUNE, 2004

FERRILL V. VOLPICELLI
DEFENDANT PRO PER
AND IN FORMA PAUPERIS

CERTIFICATE OF MAILING: DATED AND COPY MAILED ON THIS 9th DAY OF JUNE, 2004, TO WCDA. APPELLATE OFFICE, AND THE NEVADA SUPREME COURT AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRCP 5(b).

FILED 28 JUN 04
ORDER RELEASED FROM

10
6-15

FERRILL VOLPICELLI
79565 HDSP
BOX 650
INDIAN SPRINGS, NV

Defendant Pro Per

FILED
2004 JUN 21 PM 2:38
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CR03-1263
STATE VS FERRILL JOSEPH VOL 5 Pages
District Court 06/21/2004 05 16 PM
Washoe County 3870

STATE OF NEVADA,
PLAINTIFF,

v

FERRILL T. VOLPICELLI,
DEFENDANT

CASE: CR03-1263
FORMERLY (02-2045/02-0146)
DEPT: 9 (FORMERLY 9)

REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT - AND ORDER TO COMPEL

DEFENDANT, FERRILL T. VOLPICELLI, IN PROPER PERSON AND FILED IN FORMA PAUPERIS, MOVES THE COURT TO ISSUE AN ORDER TO SHOW CAUSE WHY BRUCE LINDSAY, ESQ, DEFENDANTS COUNSEL OF RECORD AT ONE POINT IN THE LATTER PART OF 2001, SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATELY AND WILLFULLY VIOLATING THE REQUEST IN A SUBPOENA, PURSUANT TO NRCP 34 AND 35, DATED 6 MAY, 2004. A COPY OF THE RELEVANT PORTION OF THE SUBPOENA DUCES TECUM IS ATTACHED AS EXHIBIT 'A'. ACCORDING TO SAID SUBPOENA, THE FORECOING INDIVIDUAL, OR BUSINESS

WAS REQUIRED TO PROVIDE THE DEFENDANT, WITHIN TEN (10) DAYS OF DATED SUBPOENA, WITH A COPY OF THE CLIENT / ATTORNEY CONTRACT EXECUTED IN LATE 2001 AT WASHOE COUNTY SHERIFFS OFFICE FOR REPRESENTATION, THAT SAID CONTRACT FOR REPRESENTATION WAS PRESENTED TO THE DEFENDANT BY BRUCE LINDSAY ESQ, AT WCSO, WHEREBY DOCUMENTS WERE ENDORSED BY DEFENDANT AND COUNSEL TO WHICH DEFENDANT. NEVER RECEIVED HIS COPIES.

THAT TO DATE, AND FIVE WEEKS SUBSEQUENT TO THE MAILING OF SAID SUBPOENA, AS CERTIFIED UNDER PENALTY OF PERJURY, BRUCE LINDSAY ESQ HAS NOT RESPONDED. EXHIBIT B SAID DOCUMENTATION IS CRITICAL FOR DEFENDANTS PURSUIT OF POST CONVICTION RELIEF.

POINTS AND AUTHORITIES

NEVADA REVISED STATUTE 1.210(3) STATES THAT THE COURT HAS THE POWER TO COMPEL OBEDIENCE TO ITS ORDER AND NEVADA REVISED STATUTE 22.010(3) PROVIDES THAT "THE REFUSAL TO ABIDE BY A LAWFUL ORDER ISSUED BY THE COURT IS CONTEMPT."

HUMANA INC V EIGHTH JUDICIAL DISTRICT COURT

COUNTY OF CLARK, 110 NV 121, 867 P2d 1147

CONCLUSION

DEFENDANT, THEREFORE, RESPECTFULLY REQUESTS THAT BRUCE LINDSAY ESQ BE ORDERED TO APPEAR IN COURT TO SHOW WHY HE SHOULD NOT BE HELD IN CONTEMPT OF COURT.

DATED THIS 16th DAY OF JUNE, 2004

FERRILL T. VOLPICELLI
DEFENDANT PRO SE

AFFIDAVIT

DEFENDANT, FERRILL T. VOLPICELLI, HEREBY DECLARES UNDER PENALTY OF PERJURY THAT THE FACTS AND ALLEGATIONS IN THIS PLEADING ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF. (PURSUANT TO NRS 208.165)

CERTIFICATE OF MAILING

DATED AND COPY MAILED ON THIS 16th DAY OF JUNE, 2004, TO WCDA, AND BRUCE LINDSAY ESQ AS I CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165

FERRIL VOLPICELLI
79565 NNCC
BOX 7000
CARSON CITY, NV 89702
DEFENDANT & APPELLANT
IN PRO PER

CODE 4055

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRIL J. VOLPICELLI,

Defendant.

Case No. 03-1263 FORMERLY 02-0145 02-0146

Dept. No. 9 & 10

/

SUBPOENA

To: BRUCE LINDSAY ESQ
(Name)

You are commanded to appear before the Second judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 9 at Reno, Nevada, on the _____ day of _____, at _____ m, to ~~testify on the part of~~ PROVIDE DEFENDANT WITH A COPY OF THE CLIENT/ATTORNEY CONTRACT ENDORSED IN LATE 2001 AT WCSO FOR REPRESENTATION WITHIN 15 DAYS

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of $100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 6th day of MAY, 2004.

RONALD A. LONGTIN, JR., CLERK OF THE COURT

by _____
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 6th day of MAY, 2004 and personally ~~served~~ MAILED a copy of the same upon BRUCE LINDSAY ESQ's OFFICE

Subscribed and sworn to before me
this 6th day of MAY, 2004.

_____
Notary Public

AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165

_____
Signature of Person Making Service

A

JUD 100 (Rev 12/01)
NRS 111.150
NRCP 45 a

FERRILL VOLPICELLI
76565 HDSP
BOX 650
INDIAN SPRINGS, NV 89018

1 JUNE, 2004

LAW OFFICE OF BRUCE LINDSAY ESQ 560 CALIFORNIA AVE RENO NEVADA 89509

RE: SUBPOENA DUCES TECUM

DEAR MR. LINDSAY,

LAST MONTH I SENT YOU A SUBPOENA DUCES TECUM REQUESTING A COPY OF THE LEGAL DOCUMENTS SPECIFICALLY THE RETAINER AGREEMENT FOR YOUR REPRESENTATION IN LATE 2001. TO DATE, I HAVE NOT RECEIVED THOSE DOCUMENTS OR ANY ACKNOWLEDGMENT OF THEIR FORTHCOMING. IN THE EVENT I DO NOT RECEIVE THE COPIES WITHIN AN ADDITIONAL 10 DAYS FROM THE DATE OF THIS LETTER, I WILL BE OVERWHELMINGLY COMPELLED TO FILE A MOTION REQUESTING AN ORDER TO SHOW CAUSE FOR CONTEMPT - AND ORDER TO COMPEL. SO AS TO AVERT A PAPER STORM OF LEGAL RELEVANCE PLEASE ACCOMMODATE MY REQUEST IN A TIMELY FASHION.

THANK YOU,

SINCERELY

ccfile

B

DC-9900025179-031
CR03-1263
STATE VS. FERRILL JOSEPH V 225 Pages
District Court 07/02/2004 11:49 AM
Washoe County 4185

FILED
2004 JUL -2 PM 3:09
RONALD L. LANGTON, JR.
BY
DEPUTY

4185
EVELYN J. STUBBS, CCR #356
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

--o0o--

THE STATE OF NEVADA,

Plaintiff, Case No. CR03-1263

vs. Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

November 13, 2003 - November 14, 2003

APPEARANCES:

For the State: TAMMY RIGGS, ESQ.
Deputy District Attorney
75 Court Street
Reno, Nevada

For the Defendant: BRADLEY O. VAN RY, ESQ.
Robison, Belaustegui,
Sharp & Law
Attorneys at Law
71 Washington Street
Reno, Nevada 89503

The Defendant: FERRILL JOSEPH VOLPICELLI

Reported By: EVELYN J. STUBBS, CCR #356

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
SCOTT ARMITAGE	4	32	41	
LARRY LODGE	44	50		
MICHAEL BROWN	51	56	58	
GREGORY DANIELSON	61	69	71	73
WILLARD D. MOWERY	74	79		
REED THOMAS	81	132	140	142

* * *

EXHIBITS:	MARKED:	ADMITTED:
44 - Last transaction receipt	10	12
45 - Shopko receipt	10	12
46 - Shopko receipt	10	12

* * *

--o0o--

RENO, NEVADA; THURSDAY, NOVEMBER 13, 2003; 11:17 A.M.

--o0o--

THE COURT: Good morning. You may be seated.

First of all, will counsel stipulate to the presence of all 13 jurors?

MS. RIGGS: The State will so stipulate, Your Honor.

MR. VAN RY: The defense stipulates, Your Honor.

THE COURT: Ladies and gentlemen of the jury, I do apologize, the criminal docket went to 11:00, and it just sometimes takes some time that I can't control, but I do very much value your time, and I try to do this so that you don't wait, but I'm very sorry about that.

So, Ms. Riggs, would you like to call your next witness?

MS. RIGGS: Next, Your Honor, the State will call Reno Police Detective Scott Armitage.

THE COURT: Sir, if you'll please step right up to this area, Mr. Bartlett will administer the oath.

(Witness sworn.)

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

SCOTT ARMITAGE,

called as a witness by the plaintiff herein,

being first duly sworn, was examined

and testified as follows:

DIRECT EXAMINATION

BY MS. RIGGS:

Q Good morning.

A Good morning.

Q Would you please state your name and spell it for the record?

A Scott Armitage, A-r-m-i-t-a-g-e.

Q Can you tell me what agency employs you, please?

A The Reno Police Department.

Q What's your current assignment, please?

A I'm a detective.

Q What was your assignment in the fall of 2001?

A I was a detective assigned to an investigative unit.

Q Sir, do you recall being on duty on September 4th of 2001, at approximately 11:30 a.m.?

A Yes.

Q And were you participating in an investigation?

A Yes, I was.

Q Did that investigation involve surveillance?
A Yes, it did.
Q And who was it that you were watching?
A I was watching the defendant, Volpicelli.
Q Would that be Ferrill Volpicelli?
A Yes, ma'am.
Q Do you recall where you saw him on that date and time?
A Yes, I do, at the Northtowne Wal-Mart in Reno.
Q Is that in Washoe County?
A Yes, it is.
Q Can you tell me where you first saw him at the Northtowne Wal-Mart?
A Outside the store just prior to him entering.
Q Just prior to what, sir?
A Just prior to him entering the store.
Q Did you follow him into the store?
A Yes, I did.
Q Did he go to any place in particular once inside the store?
A Yes, he did. He went back to the sporting goods section of the store.
Q Now, can you tell me how close you were following him?
A I usually was 20 to 30 feet behind him as I

followed him.

Q So when he went to the sporting goods section, did he stop at any particular spot in the sporting goods section?

A He perused one area of the sporting goods section and stopped at the aisle where the golf clubs and accessories were.

Q Now, what did you do at this point?

A Since he stopped and became stationary, I became a little closer. I was stopped near where the bicycles were, which is adjacent to where the golf clubs were and golf accessories were on the shelves, on a series of shelves.

Q Do you recall how close you got to him?

A I was probably within ten feet at that point.

Q Would you recognize the person that you were watching in the Northtowne Wal-Mart that day if you saw him again?

A Yes, ma'am.

Q Is he in the courtroom today?

A Yes, ma'am.

Q Would you please point him out and briefly describe what he's wearing?

A He's seated to my left wearing the white shirt and black slacks and a tie.

MS. RIGGS: Your Honor, may the record reflect that the witness has identified the defendant in this case?

THE COURT: The record will reflect that the witness has identified Mr. Volpicelli, the defendant.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now did the defendant appear to be looking at anything in particular?

A Yes, he did.

Q What was he looking at?

A He was closely examining the labels at the end of the steel shelves for the merchandise.

Q When you say the end of the steel shelves, are you talking about there's a long line of shelves, say, one facing me and one facing you and the end facing the jury?

A Actually, it would be like a series of shelves maybe a foot and a half to two feet wide that, horizontally, where merchandise is put in. And on the end face of that shelf were labels that describe the merchandise, the price, bar code; pertinent information like that.

Q Was he recording any of this information?

A He appeared to be doing so, yes.

Q How was he doing that?
A Small either note pad or piece of paper that was about palm size, three by five or so, and he would look, and then he would write down some information, and look again, and continue to do so.
Q Were you able to get close enough to see approximately what that was that he was writing?
A I was not, no.
Q How long did the defendant remain in the sporting goods section?
A A couple minutes, two to three minutes, maybe.
Q Where did he go after that?
A He walked directly outside the store.
Q Did he purchase anything from the store?
A No, he did not.
Q Sir, were you also on duty on October 17, 2001, at approximately 2:20 p.m.?
A Yes, I was.
Q Did you have the defendant under surveillance at that time?
A Yes, I did.
Q Do you recall where the defendant was on that day and time?
A Yes, this was at the Shopko at 5150 Mae Anne Avenue.

Q Is that in Washoe County?
A Yes, it is.
Q Did you happen to see him first when you were inside or outside the store?
A Outside the store, after.
Q He was outside the store?
A Yes, ma'am.
Q Did he ever go inside?
A Yes.
Q Did you follow him?
A Yes, I did.
Q Where did he go upon entering the store?
A He went into the store and went into the bedding section immediately.
Q How close visual contact were you able to keep with him?
A I was probably 30 or more feet away from him at this time.
Q So you weren't able to determine exactly which aisle he went down in the bedding section?
A Yes, he walked through the bedding section, stopped at a particular aisle and stayed there for a while looking at some of the products for sale there.
Q How long did he remain in this bedding section?
A A few minutes.

Q Did you happen to see what it was that he was looking at?
A He was looking at comforters.
Q When he exited that section of the store did he have anything with him?
A Yes.
Q What did he have with him?
A He was carrying a comforter in a clear plastic manufacturer's bag with a carrying handle on top.
Q And what did he do with that comforter?
A He went directly to a register and bought it.
Q Did you happen to see how he paid for the item?
A He appeared to pay cash for it.
MS. RIGGS: May I approach the clerk for marking of exhibits, Your Honor?
THE COURT: Yes, you may.
MS. RIGGS: Thank you.
(Whereupon State's Exhibits 44, 45, 46, were marked for identification.)
BY MS. RIGGS:
Q After the defendant paid for the comforter and exited the store, what did you do?
A I approached the clerk that handled the transaction and identified myself.
Q Did you ask her any questions?

A I asked her specifically what he purchased and how much it cost. She seemed a little confused or otherwise unable to help me. She closed her register and called for the manager.

Q And what did the manager do?

A The manager printed me a reprint of the transaction that Volpicelli made.

Q I'm showing you what's been marked for identification as State's Exhibit 44. Can you describe what I've just handed you, please?

A This is a reprint from the register where the actual transaction occurred for the purchase of that comforter.

Q Do you recognize this as the item that was printed out for you by the manager at Shopko that day?

A Yes, ma'am.

MS. RIGGS: State moves to admit Exhibit 44, Your Honor.

THE COURT: Any objection?

MR. VAN RY: No objection. The defendant will stipulate to 44, 45, and 46.

THE COURT: And then will you be asking for 44, 45, and 46 to be admitted?

MS. RIGGS: I will, Your Honor.

THE COURT: Pursuant to stipulation those three

exhibits are hereby admitted.

(Whereupon State's Exhibits 44, 45, 46, were admitted into evidence.)

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Can you describe the information that is on that document that I've handed you, please?

A Sure. There's a series of numbers, followed by the word, "comforter," and to the right a column of the prices. It says, "24.99, tax, cash, $27 change and 20 cents." And it states the date of October 17, 2001, 2:25 p.m., and then another series of numbers below that.

Q And it's your understanding that that's what the defendant paid for the comforter in the few minutes before you got there?

A Correct.

Q Thank you. Detective, did you return to Shopko at any time to investigate the series of events further?

A Yes, I did.

Q And when did you do that?

A I returned on October 18.

Q Tell me what you did once you got there?

A I met with the manager again and queried the price of specific brands of comforters, and he printed me a price checks on register receipts on two different

brands of comforters.

Q Now, what brands of comforters did you ask him to --

A I had him check the Willow Bay comforters, as well as Colorvision comforter.

Q Now why in particular did you ask him to check the Willow Bay comforters?

A Because later in the day on October 17th, I had come across two Willow Bay comforters in Volpicelli's possession.

Q I'm showing you what's been marked for identification and actually admitted as State's Exhibit 45. Can you tell what that is, sir?

A Sure this is the price check of a Willow Bay comforter printed for me on October 18, at 2:08 p.m. It shows -- it lists it as a classic down comforter with a price of 49.99.

Q Now, the Willow Bay comforter that you had the manager check, was that identical to one of the comforters that you found?

A Yes, it was.

Q And finishing my sentence, identical to one of the comforters found in the defendant's vehicle at the time of his arrest, correct?

A Yes.

Q And what other kind of comforter did you have a price check run on?

A A Colorvision brand comforter.

Q Why did you decide to have a Colorvision --

A The series of numbers that I presumed to match the bar code for the Willow Bay comforter on the price check did not match the series of numbers on the reprinted transaction from the previous day. And that's when the manager informed me that would be a Colorvision brand comforter, a different brand.

Q So the manager had scanned -- or you tell me, how did the manager find out --

A The manager actually scanned the actual product from the bar code on the price that was actually put on by Shopko.

Q Now as far as asking for a Colorvision comforter, was the manager able to tell, from your recollection after seeing Exhibit 44, that was a Colorvision comforter?

A It was either by the -- I believe it was by the description as the Willow Bay listed as classic down comforter on the receipt. And the transaction on the previous day just says the word, "comforter."

Q I'm now showing you Exhibit 46. Can you tell me what that is please?

A It's a price check also printed on October 18, 2001, 2:11 p.m. of the Colorvision comforter listed as a comforter with the same series of numbers as the previous transaction on the 17th. It lists the price as 24.99.

Q So, the Willow Bay comforter cost how much?

A 24.99.

Q I'm sorry, the Willow Bay?

A The Willow Bay actually cost 49.99, and that was actually a sale price.

Q And the comforter -- or the Colorvision comforter cost how much?

A 24.99.

Q Detective, were you on duty later that day on October 17, 2001, at approximately 5:20 p.m.?

A Yes, I was.

Q Where were you at that place in time?

A In the 9000 block of South Virginia Street at the location of a traffic stop.

Q Do you recall who were the subjects of the traffic stop?

A Yes, Ferrill Volpicelli and Brett Bowman.

Q Do you remember who was driving?

A Volpicelli was driving.

Q What sort of vehicle had he been driving, do you recall?

A Gold Mazda MPV van with California plates.
Q So was the defendant arrested that day?
A Yes, he was.
Q So what happened -- when he was arrested, he was taken somewhere, where was that?
A Eventually to the jail.
Q What happened with the Mazda MPV?
A It was impounded and inventoried.
Q Did you conduct that inventory?
A I did.
Q Sir, I'm showing you State's Exhibit 10. Can you tell me what is depicted in that photograph, please?
A That's the gold Mazda MPV van that Volpicelli was driving at the actual parking lot at the 9000 block of South Virginia Street where the traffic stop was made.
Q Do you recognize that as the vehicle in which you conducted the inventory?
A Yes.
Q Thank you.
MS. RIGGS: Your Honor, actually I'd like to publish Exhibits 44, 45, and 46 to the jury please.
THE COURT: You may do so.
MS. RIGGS: Thank you.
BY MS. RIGGS:
Q Sir, can you tell me why you conducted an

inventory on the items in the vehicle?

A Yes. It was being impounded, and the Reno Police Department has a written policy that all vehicles that are impounded, all items must be inventoried inside of that vehicle.

Q Were any comforters discovered inside of the MPV?

A Yes, two.

Q Do you recall what condition you found those comforters in or what they looked like when you found them?

A I know there were two Willow Bay comforters, both were still in the clear plastic, the manufacturer's bag that I believe zips with a carry handle on it and one was further inside a Shopko shopping bag.

Q I'm showing you what's been marked State's Exhibit 27, also admitted is Exhibit 27. Can you tell me what that is?

A Yes. It's the two comforters I found in the van.

Q And it's a photograph of the two comforters?

A Yes, it is.

Q Can you describe what you see in that photograph in a little more detail, regarding the comforters only?

A The comforter on the right is a tan comforter, it's a Willow Bay in the clear plastic carry handle bag from the manufacturer.

The comforter to the left is a green Willow Bay comforter, also in the same manufacturer's clear plastic bag with a carrying handle, that is further inside a Shopko shopping bag.

Q And that fairly depicts the comforters when you saw them during your vehicle inventory?

A After I removed them from the vehicle, yes.

Q Thank you.

MS. RIGGS: Your Honor, may I show Exhibit 27 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q And you testified earlier that both of those comforters were Willow Bay brand?

A Yes.

Q Sir, did you locate any receipts in the vehicle?

A Yes, I did.

Q Can you tell me whereabouts in the vehicle you located the receipts?

A On the floorboard of the passenger -- near the

passenger side of the car, I found a container with many receipts in it.

Q Did you look for any receipts for the comforters?

A Yes, I did.

Q Did you find one for the 2:25 p.m. transaction?

A I did not.

Q Did you find any --

A I found --

Q -- for comforters?

A Yes, I did.

Q And can you tell me what you found?

A I found a comforter from the Shopko at the 6000 block of South Virginia Street for the purchase of a comforter earlier in the same day.

Q I'm showing you now Exhibit 28 or State's Exhibit 28. Can you tell me what that is, please?

A Yes, it's a Shopko receipt for the purchase of a comforter, listed as a comforter for 24.99, purchased with cash, October 17, 2001, at 11:38 a.m.

Q And is that the receipt that you found in the accordion folder?

A Yes, it is.

Q And I'm sorry, tell me what the price is on that again?

A 24.99.
Q Thank you.
MS. RIGGS: Your Honor, may I show State's Exhibit 28 to the jury?
THE COURT: Yes, you may.
MS. RIGGS: Thank you.
BY MS. RIGGS:
Q So, Detective, the price shown on that receipt, State's 28, is the same as the price that was marked or the manager obtained for the Colorvision comforter; is that right?
A Yes, ma'am.
Q Did you do any further investigation, sir, regarding the comforters?
A Specifically in reference to?
Q Did you return to figure out the approximate location --
A Yes, I did.
Q -- of the store --
A When I returned to the --
Q I'm going to ask you to let me finish my question first, for the court reporter, okay?
A I'm sorry.
Q The question I want to ask you is, did you return to the store to locate where the Willow Bay

comforters were located relative to the Colorvision comforters?

A Yes, I did. When I did the price check on October 18, I also went and checked inside the store where they were both placed for sale, and the Willow Bay comforters occupied an entire section of the bedding department, a series of horizontal shelves, top to bottom, that was entirely the Willow Bay section.

The Colorvision comforters were in an aisle perpendicular to that and separated from it, as well as I learned that the Willow Bay comforters are sold in a manufacturer's case with a carrying handling as the Colorvision ones are not.

Q And you learned that by personal observation?

A Yes.

Q Sir, did you follow the defendant to any other stores on October 17, 2001, that same day?

A Yes, I did.

Q What store did the defendant go to?

A The super Wal-Mart at 155 Del Monte Parkway.

Q Is that Washoe County?

A Yes, it is.

Q Do you remember approximately what time he arrived at Wal-Mart?

A It was about 5:00.

Q How did he get there?
A He drove the gold Mazda MPV van.
Q Was he alone when he got there?
A No, he wasn't. He had a passenger.
Q Was the person in the vehicle with the defendant eventually identified as Brett Bowman?
A Yes, he was.
Q Did either the defendant or Bowman go into the Wal-Mart from your observation?
A Yes.
Q Who did you see go into Wal-Mart?
A I saw Volpicelli go into the store by himself after parking.
Q You watched the defendant walk in, right?
A Yes.
Q Did Mr. Bowman accompany him into the store or did the defendant go alone?
A He went alone.
Q He what did he do when he went in the doors?
A He went through the doors on the grocery half of the store. He selected a basket, pushed it along the front of the registers westbound through the store, and then turned past the registers and continued west to the toy section and stopped at the bicycle racks where the bicycles are.

Q So on the way from the time he got this cart to the time he reached the bicycle section, did he seem to be browsing or did he seem to have a clear destination?

A Clear destination. He walked directly there.

Q You followed him, correct?

A Yes.

Q What kind of distance did you maintain between yourself and the defendant?

A It's a fairly large store. It was fairly open. I would say 30 to 40 feet, sometimes more than that.

Q Now, to your knowledge were you the only Reno Police Detective watching him at this point?

A No. There was another detective that came into the store as well.

Q Could you identify the other detective?

A Yes. Sparks Detective, Mike brown.

Q Were you and Detective Brown walking together or separately?

A We were walking separately.

Q Why is that?

A Because of the distance we were keeping and so we wouldn't appear together and/or too close or to make it easier to follow him, we would walk in separate locations and triangulate and try to keep a constant visual contact on Volpicelli.

Q And based on your personal knowledge, were the two of you able to keep constant visual contact with the defendant while he was in the store?

MR. VAN RY: Objection. Calls for speculation.

MS. RIGGS: I'm only asking based on his own personal knowledge.

THE COURT: I'll overrule the objection, provided this isn't speculation as to what another officer saw.

BY MS. RIGGS:

Q Before you answer that, Detective, I'll just ask one more question. Did you have any mode of communication with another detective while you were in the store on this particular day?

A We did. At this time we were using cell phones.

Q Okay. So you were able to keep in contact with Detective Brown this entire time?

A And other detectives as well, yes.

Q So based on your personal knowledge did you or were you and Detective Brown able to keep constant surveillance on the defendant?

A Except for when he entered the restroom, yes.

Q Once he was in the toy section on that day, did he appear to you to be looking at any item in particular?

A Yes.
Q What was he looking at?
A He stopped and specifically was looking at a mountain bike in the two-tiered bicycle racks.
Q Which tier was the mountain bike located on, do you recall?
A I don't -- I was further west from him towards the pet section looking through the bicycles, and Detective Brown was closer at an actually better angle. All I can remember him specifically looking at -- again the racks have price and other product information on the signs on the end of the racks. And I remember him looking specifically at that information.
Q Did he select a bike to purchase?
A He did not.
Q What did he do?
A He, after spending a couple of minutes in the bicycle rack, he went north in the store to the electronics section, entered the electronics section, selected a cordless telephone in a box, put it in a basket and then went east through the store in front of the photo section and then turned south through one of the main aisles towards the front of the store. And he stopped about midway near the housewares section, and he stopped there for less than a minute looking at items.

And then he pushed the basket up to the registers on the west end of the store, stopped at the end of the aisle where products were for sale at the registers, stopped the basket there and abandoned the basket there and walked through the check stand and into the men's restroom.

Q And again, you didn't maintain visual contact, no detective went into the restroom after him; is that correct?

A That's correct.

Q But you maintained visual contact of the door?

A Yes, ma'am.

Q Did you watch him exit the restroom?

A Yes.

Q So did the defendant come back and make his purchase of the telephone?

A Cordless phone, no. He came out of the restroom and immediately exited the store.

Q He never returned to the basket?

A No.

Q Do you have any personal knowledge of whether Brett Bowman came into the store shortly thereafter?

A Yes.

Q And do you know whether the defendant and Brett Bowman were arrested shortly thereafter?

A Yes.
Q They were?
A Yes.
Q You testified earlier that you had inventoried the contents of the Mazda MPV that they were arrested in, correct?
A Yes.
Q Detective, I'm showing you State's Exhibit 5. Would you tell me what's depicted in this photograph, please?
A It's a photograph of an aluminum frame Mongoose mountain bike that was inside of the van.
Q So that's the bicycle that was recovered from the van inventoried, correct?
A Yes, ma'am.
Q And is that the bicycle that you saw the defendant looking at that day?
A Yes.
Q Thank you. Sir, I'm showing you what's been marked and admitted as State's 29. Do you recognize that item, sir?
A Yes. It's a black corduroy case that I found inside the Mazda van when I inventoried the Mazda van.
Q How is it that you recognize that?
A I recognize the sticker that was on the bag, as

well as the address label that is on the outside.

Q Can you tell me specifically where in the Mazda MPV you found this item?

A It was on the passenger floorboard. I believe the van had like captain's chairs and there was an open space in the floor between the two. It was on the floor. I believe it was behind the passenger front seat captain's chair in front of the first bench seat in the back.

Q Sir, I'm now showing you State's Exhibit 30. What does that photograph depict, please?

A It shows the front passenger area of the Mazda van. In between the front seats on the floor you can see the top of this case with the Southwest Airlines sticker on it, on the top.

Q Is that the place in the van where you found the black zippered case that day?

A Yes, ma'am.

Q And again, the black zippered case, did you open it?

A Yes, I did.

Q What did it contain?

A It contained a Brother brand electronic label maker.

Q Thank you.

MS. RIGGS: Your Honor, may I show State's Exhibits 29 and 30 to the jury, please?

THE COURT: Yes, you may.

BY MS. RIGGS:

Q Sir, you said earlier that you found some receipts --

A Yes.

Q -- correct? What kind of container were they in?

A A little, black, larger than an envelope size, accordion folder.

Q Where did you find that accordion folder?

A This was also on the floor, the passenger floor of the Mazda van.

Q Showing you State's Exhibit 31, what does that photograph depict, please?

A On the front passenger area of the gold van, right at the floorboard where the passenger's feet would be, is a photograph where you can see the black accordion folder with a Wal-Mart receipt next to it.

Q And does that photograph fairly and accurately depict the location where you found the accordion folder during your inventory search?

A Yes.

Q Thank you.

MS. RIGGS: Your Honor, may I show Exhibit 31 to the jury, please?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Detective, I'm showing you State's Exhibit 12. Do you recognize what that is, please?

A Yes. This is the accordion folder that I was referring to.

Q And the accordion folder that's depicted in the previous exhibit?

A Yes.

Q Thank you. Sir, I'm opening State's Exhibit 12 and showing you the front pocket of this exhibit. And I'll hand it to you. Can you tell me what is contained in the front pocket of State's Exhibit 12?

A Yes. There are bar code labels similar to what were in the label making machine that I found in the car.

These are still new on the bike. The elastic that you peel off of the stickers, as yet, unapplied.

Q So those have an adhesive backing, in other words?

A Yes.

Q Did you happen to notice whether any of the items that you inventoried in the vehicle have the same

type of labels attached?

A I believe the label maker had some inside the container that it was in.

Q Do you recall if any of the comforters had one of the those labels?

A I remember one of those three comforters had a UPC label like this stuck on the outside of it and one of them did not.

Q When you say, "like this," it was similar --

A Uh-huh, similar in style to this, yes.

Q Thank you, Detective.

Sir, I'm now showing you State's Exhibit 11. Do you recognize that exhibit?

A Yes. This is a piece of paper I found on the floor of the Mazda also. It's titled "Transpositions." It has four columns titled from left to right, "store" "item," "UPC number," and "price," with corresponding stores listed by name, items listed by description, series of numbers under UPC, and then the price listed in dollars.

Q Does it appear to have handwritten entries on it?

A On both sides, yes, adjacent to some of the items.

Q Now I realize it's in a sheet protector, but is

that in substantially the same condition that you found it when you found it?

A Other than the sheet protector, yes.

Q Where did you find it, specifically, inside the vehicle?

A I believe it was on the floorboard also of the van, folded.

Q Thank you, sir. Thank you, Detective, I have no further questions.

THE COURT: Mr. Van Ry, do you have questions for the witness?

MR. VAN RY: If I may approach the lectern, Your Honor, not the bench. I apologize. Made the judge nervous there for a minute. I'm sorry.

CROSS-EXAMINATION

BY MR. VAN RY:

Q Detective Armitage, can you work in reverse, starting at the testimony that you gave last to where you began?

You just testified about Exhibit 11, and it's been admitted and marked as Exhibit 11, entitled "Transposition sheet."

You indicated there were some handwritten notations on the front or the back. Can you identify

whose handwriting that is?

A I can't.

Q And was this found on the passenger side of the vehicle or the driver's side of the vehicle?

A I don't recall. I just remember it being on the floorboard.

Q Could the passenger in that van have had access to where you found it?

A Yes.

Q And based upon your observations of the van, Mr. Volpicelli was driving the van, is that correct?

A Yes.

Q And who was his passenger?

A Brett Bowman.

THE COURT: And for everyone's information, I'm thinking that we will continue until this witness has concluded his testimony, and then we will break for a one-hour lunch. Is that acceptable to everybody?

Please proceed.

MR. VAN RY: Thank you, Your Honor.

BY MR. VAN RY:

Q You testified that Exhibit 12, the accordion file, was found in the vehicle also, is that correct?

A Yes, sir.

Q It was found on the passenger side, is that

correct?
A Yes, sir.
Q During the course of your investigation and your involvement therein, do you know whether there's been any fingerprints identified on this exhibit?
A I don't know.
Q Do you know if there's been any DNA samples or any way to identify who's possessed this in their fingers?
A No.
Q So you can't conclusively say that this has been in my client's possession?
A Correct.
MR. VAN RY: Excuse me, Your Honor. If I may approach the jury to grab some exhibits.
THE COURT: Yes, you may.
MR. VAN RY: Exhibits 29 and 30.
BY MR. VAN RY:
Q Exhibit 29 is the case which you testified was found in between the seats, is that correct?
A Yes, sir.
Q Would the passenger of that vehicle, i.e. Mr. Bowman, have access to that?
A Yes, sir.
Q Of course the driver would also have access to

it if it's between the front seats?
A Yes, sir.
Q Are you aware of any fingerprints being found on Exhibit 29?
A No, sir.
Q How about any DNA?
A No, sir.
Q Exhibit 9 appears to be the label maker which was found inside Exhibit 29, is that correct?
A Correct.
Q Same question, access to that because it was in Exhibit 29 would have been to the passenger also?
A Correct.
Q Fingerprints found on Exhibit 9?
A I don't believe so.
Q Any DNA?
A I don't think so.
Q We are working backwards in time. You were in the store, you saw Mr. Volpicelli approach the bike rack area, is that correct?
A Yes.
Q And you testified that you saw him do something with the bikes, but can you conclusively say what he did with those bikes?
A I saw him stop, closely examine the bike and

the -- I don't know if it's a sign, but the actual --

Q The pricing information and the label?

A Correct.

Q Did you actually see him, Volpicelli, place a different UPC label on the tag of that bike?

A I did not.

Q So it's possible that between the time Mr. Volpicelli left that area and Mr. Bowman came in and approached that bike that Mr. Bowman placed that label on there?

MS. RIGGS: Objection. Calls for speculation.

THE COURT: Well, we are limited to what this witnesses knows. I'll sustain the objection.

BY MR. VAN RY:

Q Let me ask you in a better way. Since you did not see Mr. Volpicelli place a label, another or different label on that tag, is it possible for someone else to have done it?

MS. RIGGS: Objection. Calls for speculation.

THE COURT: The objection is overruled.

THE WITNESS: Yes.

BY MR. VAN RY:

Q Okay. Let's go earlier that evening, or afternoon would probably be a better characterization, when you followed my client to the Shopko. You remember

your testimony involving a comforter, and you stated that you went back on October 18 to do a price check, is that correct?

A Yes, sir.

Q And you met with the attendant or clerk by the name of Mr. Beasley?

A The manager or one of the assistant managers. The assistant manager.

Q And when you met with Mr. Beasley, what did he pull out from underneath the counter?

A I don't recall.

MR. VAN RY: If I may approach, Your Honor, and show the witness what has not been marked, but a copy of his police report to refresh his recollection, Your Honor.

MS. RIGGS: Your Honor, it would be an inappropriate method to refresh recollection.

MR. VAN RY: If I may approach, Your Honor.

THE COURT: You may approach.

MR. VAN RY: Thank you.

BY MR. VAN RY:

Q Officer, I'd like you to review this, just this first paragraph and refresh your recollection.

MS. RIGGS: Again, Your Honor, not appropriate method. I'll withdraw my objection at this time, but ask

him if a recollection is going to be recollected or refreshed in the future in this case, it be done so in an appropriate manner.

Thank you.

THE COURT: Let's proceed.

MS. RIGGS: Thank you.

MR. VAN RY: May I approach, Your Honor?

THE COURT: Yes.

BY MR. VAN RY:

Q After reviewing a copy of a report that I believe you issued, does that refresh your recollection?

A Yes.

Q And what happened there?

A The manager, unbeknownst to me, on the 17th had found a Colorvision comforter in the television section of the store having been removed from the plastic case, a black one, and had been put back in, instead of being folded it was just shoved back in, and as well the UPC tag was missing from that package.

Q And as well as the label?

A Correct.

Q And based upon your observations of Mr. Volpicelli in the store that day, is it possible that he was the one that did that?

MS. RIGGS: Objection, Your Honor. Calls for

speculation.

MR. VAN RY: Based upon his observation, Your Honor.

MS. RIGGS: It isn't a proper question.

THE COURT: Well, I am --

MS. RIGGS: As opposed to, "Did you see him do that?"

THE COURT: Well, I'm going to sustain this objection as to the form of the question. I think it would call for speculation, as it's opposed to the witness.

BY MR. VAN RY:

Q Did you see Volpicelli take a Colorvision queen size comforter out and remove it from --

A No, I did not.

Q Let me ask a better question. Did you see Mr. Volpicelli remove a comforter from its manufacturer's package and put it into another?

A I did not.

Q And let's finally get to the beginning of your testimony where you testified about the Northtowne Wal-Mart. And what day did you observe him in the Northtowne Wal-Mart?

A September 4th.

Q That September 4th, you observed Mr. Volpicelli

go to the sporting goods section of the store, is that correct?

A Yes.

Q And you followed him 20 to 30 feet behind?

A Yes, sir.

Q As you walked into the store and the defendant was in the store, you testified that he stopped and looked at golf clubs and accessories, correct?

A Correct.

Q And it appeared from your advantage point that he was observing the label and the pricing information, is that correct?

A Yes.

Q Observing pricing information isn't necessarily a chargeable offense, is it?

MS. RIGGS: Objection. Calls for a legal conclusion.

THE COURT: As I ruled yesterday, I will overrule that objection. I'm not going to prevent somebody from testifying as to a legal conclusion if it's within their sphere of knowledge. And I would find that this witness would know of these kinds of things.

THE WITNESS: Observing, no.

BY MR. VAN RY:

Q How about writing down pricing information?

A Potentially, probably a crime.
Q So you're saying if I walk in a Raley's, and I write down price information for the milk and yogurt, and I walk out of the store, that would be a chargeable offense?
A Not necessarily the pricing information, maybe the bar code information.
Q But you would need additional information?
A Correct.
Q But just by itself?
A Correct.
MR. VAN RY: No further questions, Your Honor. Thank you.
THE COURT: Ms. Riggs, you may ask additional questions.
MS. RIGGS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. RIGGS:
Q Detective, you had testified earlier that both the transposition sheet and the accordion folder were found on the floorboard of the passenger side, correct?
A Yes, ma'am.
Q Would that be within the reach of a person who would be driving a Mazda MPV van?

A Yes, ma'am.
Q And do you know whether the defendant regularly drove the Mazda MPV van?
A Yes.
Q Do you know whether Brett Bowman ever drove that van?
A I never saw him drive it.
Q Also Detective, counsel just asked you whether writing down information is a crime and you testified "no," correct?
A Yes.
Q If you had information telling you that the person writing that information intended to defraud the store that he was in, would writing that information then be a crime?
A Yes, ma'am.
Q Thank you.
MS. RIGGS: Nothing further, Your Honor.
THE COURT: Mr. Van Ry?
MR. VAN RY: No further questions, Your Honor.
THE COURT: Detective Armitage, you may be excused.
THE WITNESS: Thank you, Your Honor.
(Witness excused.)
THE COURT: I'll advise the jury that you're

not to discuss this case among yourselves or with anyone else. You are not to read, watch or listen to any media account of this proceeding. And do not to form or express any opinion on any subject connected with this trial until the matter is submitted to you for your deliberations.

And we will be in recess until 1:15.

(Lunch recess taken.)

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RENO, NEVADA; TUESDAY, NOVEMBER 13, 2004; 1:15 P.M.

AFTERNOON SESSION

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THE COURT: You may be seated.

Ms. Riggs, you may call your next witness.

MS. RIGGS: Your Honor, the State will call Larry Lodge.

THE COURT: Sir, if you will please step right up into this area, Mr. Bartlett will administer the oath.

(Witness sworn.)

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

LARRY LODGE,

called as a witness by the plaintiff herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RIGGS:

Q Would you please state your name and spell it for the record, please.

A Yes. My name is Larry, L-A-R-R-Y, Lodge, L-O-D-G-E.

Q And what agency employs you?
A Washoe County Sheriff's Office.
Q What's your current assignment, please?
A I'm currently assigned to the patrol division.
Q What was your assignment in the fall of 2000 -- pardon me, the fall of 2001?
A I was assigned to the detective division.
Q Were you part of an investigative team at that time?
A Yes, I was.
Q Do you recall being involved in the investigation of someone named Ferrill Joseph Volpicelli in September of 2001?
A Yes, ma'am.
Q Do you recall being on duty on September 11, 2001, at a approximately 12:00 p.m.?
A Yes, I do.
Q Were you participating in an investigation on that date?
A Yes.
Q Did that investigation involve conducting surveillance?
A Yes.
Q And who were you watching?
A The defendant.

Q Do you recall where you saw him on that date and time?

A That would have been at the Home Depot on Summit Ridge Drive in Reno.

Q Is that in Washoe County?

A Yes, it is.

Q Where was he when you first saw him at the Home Depot?

A The first place I observed the defendant was at the rear of his vehicle parked in the parking lot.

Q Did he ever go into the store?

A Yes, he did.

Q Did you follow him?

A Yes.

Q What did he do once he was in the store?

A He made a return. He went to the return department first. He had some type of a -- I believe it was a yellow tool casing or tool box that he returned, and after that he went into the main area of the store.

Q Did you follow him?

A Yes, I did.

Q Did you keep constant visual contact with him while he was walking around the store?

A No, I did not. There were points in time -- I was in there with other detectives from the unit, and at

some point in time I would lose visual contact but one of the other detectives would attempt to make or keep visual contact on him.

Q Did there come a time while you were surveilling him that you got extremely close to him?

A Yes, there was. I actually walked down the same aisle and walked directly behind him.

Q Did you mean to do this?

A No, I accidently made a turn into an aisle and did not know his location in the store at that time. And as I made the corner, he was right there in the aisle.

Q So what did you elect to do at that point?

A At that time it seemed to be more natural for me to be walking through the store than abruptly stop and turn around and leave. So I just continued to walk down the aisle past the defendant.

Q When you walked past the defendant, did you happen to notice what he was doing?

A Yes, I did.

Q What was he doing at the time that you saw him?

A As I approached and -- he was about mid point down the aisle, and as I approached I could see that he had a note pad of some type and he was writing on the pad. He was looking at items on the shelf and he was writing something on the pad.

So I attempted, without attempting to be too obvious, I did look and see that he was writing some type of number configuration on the pad.

I couldn't tell you what the numbers were, I just noticed that there was a line of some type of numbers on the pad.

Q After walking past the defendant and noticing that he was writing down numbers, what did you do after that?

A We continued surveillance, not as close as walking past him, but paralleling the different aisles where you could look through some of the aisles and see where he would be in the approximation of the store and continued to surveil him until he left.

Q So he was walking around the store?

A Yes.

Q What was he doing while he was walking around the store?

A Basically the same. He would go to a set of items, he would stop. He would look at the items. You could see that he was making some type of notation on his note pad and continuing on.

Q Did he eventually purchase something at Home Depot that day?

A Not to my knowledge, no.

Q And did you watch him walk out of the store?
A I don't recall if I actually watched him walk out of the store, but I do know that he did at some point leave the store.
Q And did you see him outside after he left the store?
A Yes, I did.
Q Did he have any kind of a bag with him, a merchandise bag?
A Not that I saw, no.
Q And obviously you had a good look at the person you were watching, right, being in that close proximity?
A Oh, yes.
Q Would you recognize him if you saw him?
A Yes.
Q Is he seated here in the courtroom today?
A Yes, he is.
Q Would you please point him out and describe what he's wearing?
A He's the gentleman sitting at the -- my left of the defendant table. He's wearing a white shirt, dark slacks with a multi-color tie.
MS. RIGGS: Your Honor, may the record reflect that the witness has identified the defendant in this case?

THE COURT: The record will reflect that the witness has identified Mr. Volpicelli.

MS. RIGGS: Thank you, Your Honor.

Thank you, Detective Lodge, no more questions.

THE COURT: Mr. Van Ry, you may ask questions of the witness.

MR. VAN RY: Thank you, Your Honor. If I may approach the lectern.

CROSS-EXAMINATION

BY MR. VAN RY:

Q Officer, detective; which do you prefer?

A Officer is fine.

Q Officer Lodge, sounds to me like you surveilled my client and watched him walk into a store and walk out without doing anything that would have been criminal, is that correct?

A At the time, sir, it didn't appear to be criminal, no.

Q Okay.

MR. VAN RY: Nothing further, Your Honor. Thank you.

THE COURT: Anything else?

MS. RIGGS: Not for the State, thank you, Your Honor.

THE COURT: Officer Lodge, you may be excused.

THE WITNESS: Thank you, sir.

(Witness excused.)

MS. RIGGS: Your Honor, the State's next witness is Reno Police Department or pardon me, Sparks Police Detective Mike brown.

THE COURT: Mike Brown.

MS. RIGGS: Yes.

THE COURT: Sir, if you'll please step right over in this area, Mr. Bartlett will administer the oath.

(Witness sworn.)

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

MICHAEL BROWN,

called as a witness by the plaintiff herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RIGGS:

Q Sir, would you please state your full name and spell it for the record.

A Michael Brown. Last name is spelled B-R-O-W-N.

Q And can you tell me which agency employs you, please?

A Sparks Police Department.
Q What is your current assignment, sir?
A Detective.
Q And what was your assignment as of the fall of 2001?
A I also was a detective.
Q Were you working on an investigatory team at that time?
A Yes, I was.
Q Do you recall being involved in an investigation of Ferrill Joseph Volpicelli in September of 2001?
A Yes, I do.
Q Sir, do you recall being on duty on September 28, 2001, at approximately 12:00 p.m.?
A No.
Q Do you recall -- do you recall observing the defendant in Wal-Mart on Kietzke Lane sometime in December of 2001?
A Yes, if that's the day you're talking about, I started that day off duty and saw Mr. Volpicelli during some off-duty activities and put myself on duty.
Q So you observed him where when you were off duty?
A At Home Depot at Northtowne Lane in Reno.

Q And you just happened to bump into him?
A Yeah. I was there returning some things, and I saw him there and knew from our investigation that we needed to follow him when we saw him. So I called Detective Reed Thomas, advised him of that, and called Sergeant Della and put myself on duty.
Q So at this time you're at Home Depot and put yourself on duty and started doing surveillance, correct?
A Yes.
Q Did you follow him somewhere after he left the Home Depot?
A Yes.
Q And where did you follow him?
A Ultimately in the Wal-Mart on Kietzke Lane.
Q Is that in Washoe County?
A Yes.
Q Did he go into the store?
A Yes, he did.
Q Did you follow him?
A Yes, I did.
Q And how close did you follow him, if you can approximate?
A Anywhere from 10, 15 feet to 10 to 15 yards.
Q What did he do, sir, once he went into the Wal-Mart on Kietzke Lane?

A I followed him back to the area where they sell car stereos and alarms.

Q What did he do once he got to the car stereo section?

A He pulled out a pad of paper and was looking at some of the items on the shelves back there and was writing some things down.

Q Did you get close enough to note what he was writing down?

A No, I did not.

Q How long did you observe him in the car stereo section?

A Five, ten minutes.

Q So did he stay in the car stereo section for just five minutes or did you leave after watching him for five minutes?

A I left after that amount of time.

Q But you kept surveillance on him?

A Yes.

Q What did he do once he left the store or pardon me, did he leave the store?

A I think we broke surveillance before he left the store.

Q After he left the car stereo section, then what did he do?

A I don't recall.
Q Do you recall whether he eventually purchased something?
A No.
Q You don't recall that?
A No.
Q I'm sorry. I guess I'm missing the answer to your question. You don't recall or he did not purchase anything?
A I don't recall whether he purchased anything or not.
MS. RIGGS: Thank you. May I have the Court's indulgence for just a moment, Your Honor?
THE COURT: All right.
BY MS. RIGGS:
Q So picking up from the point where he left or you break your surveillance of him, you got close enough to see him to get a good look at him, right?
A Oh, yeah.
Q Would you recognize him if you saw him again?
A Yes.
Q Is he seated in the courtroom?
A Yes, he is.
Q Would you point him out for the jury and please describe briefly what he's wearing?

A He's the dark-haired gentleman seated at the defendant's table wearing the white shirt and the multi-colored tie.

MS. RIGGS: Your Honor, may the record reflect the witness has identified the defendant?

THE COURT: Yes, the record will reflect that the witness has identified Mr. Volpicelli.

MS. RIGGS: Thank you, Your Honor. The State has no further questions.

THE COURT: Mr. Van Ry, you may ask questions of the witness.

MR. VAN RY: Thank you. May I approach the lectern?

THE COURT: You don't have to ask me to do that. That's fine.

MR. VAN RY: Okay.

CROSS-EXAMINATION

BY MR. VAN RY:

Q Officer, Detective; what do you prefer?

A Either.

Q Either. Mr. ?

A Detective's fine.

Q Detective Brown, I just have a few quick and questions for you.

When you observed Mr. Volpicelli, which I thought you said was up to about five minutes inside the store, is that correct?

A Five to ten minutes.

Q Okay. So it wasn't very long?

A No.

Q When you saw him inside the store, did you observe him do anything that you would consider inconsistent with someone who was a regular customer inside of the store?

A Looking at things on the shelves and writing down whatever he was writing down was not something that I considered normal.

Q So you would say someone who went in to comparison shop to write down prices would be inconsistent with a regular customer?

A It's not something I usually see people do.

Q Little bit different question, same thing. Based on your observations, was there enough to charge him with a crime?

A No.

Q And during the time of this surveillance you didn't see him purchase anything, did you?

A Not that I can recall.

Q Okay. And I know that was repeated, kind of my

fault there. A question you already answered.

You did not see my client adhere or affix any UPC labels to any labels on merchandise in that store, did you?

A In the store on Kietzke?

Q The store you were just testifying about, the Home Depot.

A No.

Q Okay. And you did not observe my client actually carrying the UPC label maker with him when he went into the Wal-Mart, did you?

A No.

MR. VAN RY: Nothing further, Your Honor. Thank you.

THE COURT: Ms. Riggs, do you have additional questions?

MS. RIGGS: Your Honor, may I have the Court's indulgence for one moment, please?

THE COURT: Yes.

MS. RIGGS: Thank you.

I do have one further question, Your Honor.

REDIRECT EXAMINATION

BY MS. RIGGS:

Q Detective, do you recall testifying at the

grand jury proceeding in this case?

A Yes.

Q And when you were asked whether the defendant purchased anything when he was at the Wal-Mart store that date, do you recall what your answer was?

A No, I don't.

Q Would reviewing your testimony from the grand jury proceeding refresh your recollection?

A Yes.

MS. RIGGS: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MS. RIGGS:

Q Detective, I'm showing you the grand jury transcript in this case, Page 102, and I ask you to review the bottom part of the page to yourself and then tell me when you're finished, please.

A To the bottom of page 102?

Q Yes.

A I'm finished.

Q Has reviewing your testimony in the grand jury proceeding refreshed your recollection as to whether the defendant purchased anything while he was in the Wal-Mart on that day?

A Yes, he did.

Q And after having your recollection refreshed, did he or did he not purchase anything when he was at the Wal-Mart that day?

A He did not.

MS. RIGGS: Thank you. Nothing further, Your Honor.

THE COURT: Any questions?

MR. VAN RY: No, Your Honor.

THE COURT: Detective Brown, you may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MS. RIGGS: Your Honor, the State's next witness is Greg Danielson.

THE COURT: Sir, if you'll step right up into this area, Mr. Bartlett will administer the oath.

(Witness Sworn)

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

GREGORY DANIELSON,

called as a witness by the plaintiff herein, being first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MS. RIGGS:

Q Good afternoon, sir. Would you please state your name and spell your entire name for the record.

A Gregory Danielson. And it's D-A-N-I-E-L-S-O-N.

Q Sir, who employs you?

A Wal-Mart.

Q And what is your position with Wal-Mart?

A I'm an assistant manager at Store 2106, which is the Northtowne Store.

Q Which shift do you currently work now?

A 9:00 at night until 9:00 in the morning.

Q So you have been up continuously since 9:00 o'clock last night?

A I have.

Q How are you feeling today?

A Very tired.

Q Sir, have you also been ill?

A Yes.

Q Thank you for coming here and testifying today.

A You're welcome.

Q Sir, were you employed there as of January, 2002?

A Yes.

Q At the Northtowne store, correct?

A Yes.
Q Do you recall being contacted by Reno Police detectives regarding Wal-Mart UPC codes on January 28, 2002?
A Yes. I remember specifically Detective Thomas was a very big man when he came in.
Q Did he make a request of you, sir?
A Yes. He asked me to check bar codes on an item.
Q Did Detective Thomas bring in an item for you to research?
A Yes, he did. And I recall it was a DVD player, and I believe it was a Panasonic DVD player.
Q Sir, I'm showing you State's Exhibit 13. Do you recognize what that item is?
A Yes, I do. It was quite large actually.
Q Sir, I'm going to ask you to scoot up to the microphone. Stay comfortable, but I'm having a hard time hearing you.
A Okay.
Q And again, that's a photograph, correct?
A Yes.
Q And what's depicted in the photograph?
A Panasonic DVD player that we sell in our store.
Q You recognized that as an item that Wal-Mart

sold?

A At that time we did, yes. They're updated all the time. I don't think we currently carry it.

Q Thank you. Did you get a chance to examine the outside of the box that the home theater system was in?

A Yes.

Q And again, it was a Panasonic DVD home theatre system, correct?

A Yes.

Q Did you notice how many UPC bar codes were present on the package?

A Yes, there were two.

Q And how were they arranged on the package?

A As I recall, well, one of the UPCs is ingrained right in the box with the printing and everything, and as I recall the other one was like right over top of the original one as I recall.

Q So is it fair to say that it was a sticker UPC code?

A Yes.

Q And it was placed over the top of the original UPC code?

A Yes.

Q Did you check the validity of both the UPC codes?

A Yes, we went behind our courtesy counter and went to a terminal or register or whatever you want to call it, and I scanned it, and I scanned both of those, and I voided the transaction. So the register wouldn't be over or short, I voided the transaction.

Q Do you recall if another Wal-Mart employee was with you at this time, sir?

A I don't remember. All I remember is Officer Thomas.

Q Okay.

A Or Detective Thomas.

Q Do you recall whether Matt Carter was there with you, sir?

A I do not. I really do not, he may have been.

Q So when you performed this scan, did that produce a document?

A Well, whenever you void a transaction it produces a slip of paper, yes, ma'am.

Q I'm showing you State's Exhibit 32. Do you recognize that as the slip the cash register produced that day?

A Yes, it is.

Q Sir, did one of the bar codes match a DVD home theatre system that was in the inventory?

A Yes, the bottom one is the correct amount of

the item for the DVD player, yes.

Q And is the bottom entry the scan from the UPC code that was stuck on or from the original one on the box?

A No. It was from the original one on the box.

Q And can you tell me what item is indicated on the item line, please?

A Repeat that please?

Q Can you tell me what item is indicated on the receipt for the second item?

A Oh, the second item. It says, "Five DVD stereo," and then it gives the UPC code.

Q And what price did that ring up at?

A $477.88.

Q Now, regarding the top sticker or the top UPC code, what did that scan as?

A That scanned as a three CD Emerson, and then it gives the UPC code, and then the amount of $69.94.

Q So the top sticker clearly didn't match up to the product?

A Exactly, and clearly it was on it.

Q And also that scan returned to something that was in Wal-Mart's system?

A Yes, ma'am, obviously. It's on the receipt.

Q Now, turning your attention to the actual

pricing labels on the stereo system, you said that the top UPC code was a sticker, correct?

A As I recall, yes.

Q And you're an assistant manager for the store, familiar with the type of UPC codes that Wal-Mart uses, the type of pricing procedures that your store uses; isn't that correct?

A Yes.

Q Based upon your experience, did you know whether that top sticker was something that Wal-Mart would normally apply to its packaging?

A Well, in this instance, no, because the original UPC is ingrained right in the box with the printing and everything. In this instance there would actually be no reason to have a sticker over another bar code.

Q Did you recognize the sticker as anything you had seen previously on any Wal-Mart merchandise?

A No.

Q Sir, I'm going to ask you something about the bar code numbers. When you look at the bar code, the UPC number you called it, the --

A Right.

Q -- the number on the receipt?

A Right.

Q And if we are to take that and compare it against the actual valid UPC number on the package, would those match exactly?

A No.

Q Tell me more about that.

A Well, what our system does is UPCs have 12 digits, and the first and the last are very small, and then ten digits in the middle. And our registers are able to capture the ten and truncate the first and the last digit which are very small on either side of the UPC code.

Except in rare instances, I have to have one because there have been instances where it does capture one of the other when we're trying to make signs or flags, but when the register picks it up, it only picks up the ten.

Q So any of receipt that emits from a Wal-Mart cash register is going to have a truncated bar code for the first and last digits out?

A Omitted, yes, thank you.

Q Sir, again, being the assistant manager of Wal-Mart, are you familiar with Wal-Mart's electronics inventory and generally the prices that Wal-Mart charges for various things?

A Yes.

Q Sir, do you know whether the Panasonic DVD home theatre system that I showed you in the last exhibit would ever sell for $70 at Wal-Mart?

A No, ma'am.

Q You don't know or it would not?

A Never, never, because there's very little markup on electronics as it is.

Q And so that $70 is not a typical sale place for a $477 item?

A No, absolutely not.

Q Thank you. Mr. Danielson, I have no further questions.

MS. RIGGS: Your Honor, may I -- actually the jury has seen this exhibit, Your Honor. Thank you.

Court's indulgence for one moment, Your Honor.

THE COURT: All right.

MS. RIGGS: Your Honor, just for safety sake, may I publish Exhibit 32 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

THE COURT: Mr. Van Ry. You may ask questions of the witness.

MR. VAN RY: Thank you.

CROSS-EXAMINATION

BY MR. VAN RY:

Q Mr. Danielson, how long have you been employed with Wal-Mart?

A I've been employed with Wal-Mart three years now.

Q Three years?

A Yes.

Q And you've been an assistant manager since 2002?

A I started as an assistant manager. I worked for JC Penney for 15 years.

Q And that was in retail sales?

A Yes, sir.

Q What is your current assignment as far as your job duties at Wal-Mart now?

A Right now I'm in charge of the night stocking crew. So I'm essentially in charge of the store from 9:00 p.m. to 9:00 a.m.

Q So you're familiar with all the products that come into Wal-Mart?

A There's over 88,000 products in the division one store that I work in, so I can't say that I'm familiar with them all.

Q But you have some reasonable familiarity with

everything that comes in the door, at least you have supervisory duties over those items?

A Yes, sir.

Q Okay. Are you aware of whether Wal-Mart actually sells label makers?

MS. RIGGS: Objection, relevance.

THE COURT: I'm wondering, relevance as to whether or not Wal-Mart would sell such an item. I'm inclined to sustain the objection.

MR. VAN RY: Let me ask a more specific question. If I may approach the clerk, Your Honor?

THE COURT: You may.

BY MR. VAN RY:

Q Mr. Danielson, I'm handing you what's been marked and admitted as Exhibit 9 in this matter. And I ask you if you have ever seen a label maker such as that in Wal-Mart?

A I honestly have not in my store seen a label maker like this.

Q Are you aware of whether other office supply stores may sell that type of a label maker?

A No, sir. I've never, I don't --

Q As an assistant manager at Wal-Mart, are you familiar with store policies with respect to customers who come into purchase items?

A Yes, sir, very much so.

Q Is it against Wal-Mart's policy to allow customers to come in and do price checking on the information that is listed on the price of the items?

A No.

Q So I ask that in a positive better question, I kind of muddled through that.

So it is allowable for customers to come into Wal-Mart to check pricing information?

A Yes, sir.

MR. VAN RY: No further questions, Your Honor.

THE COURT: Anything else then?

MS. RIGGS: One question, Your Honor.

REDIRECT EXAMINATION

BY MS. RIGGS:

Q Mr. Danielson, is it generally frowned on at Wal-Mart for customers to record pricing information so they can then use that information to obtain higher-end merchandise for the low-end merchandise price; is that frowned upon at Wal-Mart?

A You've lost me, now.

Q Let me break it down. It's a compound question. I do apologize.

A We have competitive shopping going on all the

time, like Target comes in or something like that. But I don't know what you're saying.

Q Okay. Let me ask it this way. If a customer is coming into Wal-Mart and recording information on your products and then subsequently uses that information to defraud Wal-Mart, is that a security issue for Wal-Mart?

A Very much so, yes.

Q Does Wal-Mart have a policy of prosecution for those offenses?

A We have security everywhere on issues like that. It's very hard, as you might imagine, to catch individuals in such a thing, but it would be against the law, I imagine.

MR. VAN RY: Objection. Move to strike. Beyond the scope of the witness's expertise.

THE COURT: Well, to the extent the witness has speculated by saying, "I imagine," I am going to strike that last portion of the witness's testimony.

BY MS. RIGGS:

Q But it would be against Wal-Mart policy, correct?

A Yes.

MS. RIGGS: Thank you, nothing further.

THE COURT: Any further questions?

MR. VAN RY: Just one briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. VAN RY:

Q I believe you just testified that competitors come in for pricing information from Wal-Mart, including Target, is that correct?

A Yes, sir.

MR. VAN RY: Nothing else, Your Honor.

THE COURT: Anything else?

MS. RIGGS: The State has nothing further.

THE COURT: Then, Mr. Danielson, you may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MS. RIGGS: Your Honor, the State will call Bill Mowery.

THE COURT: Sir, if you will please step right up in this area, Mr. Bartlett will administer the oath.

(Witness sworn.)

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

WILLARD D. MOWERY,

called as a witness by the plaintiff herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RIGGS:

Q Sir, would you please state your full name and spell it for the record.

A Willard D. Mowery. Last name is spelled, M-O-W-E-R-Y.

Q Will you please state where you were employed in November of 2001?

A Shopko Stores, Incorporated.

Q At which store were you employed?

A Mae Anne and McCarran.

Q Is that in Washoe County, sir?

A Yes.

Q What was your position there?

A I was assistant store manager.

Q Sir, do you recall being contacted by law enforcement personnel approximately November 7, 2001?

A Yes.

Q And do you recall who contacted you?

A It was a detective, I don't remember his name.

Q Would that have been Detective Reed of the Reno Police Department?

A Yes.

Q Do you recall what he wanted?

A He just asked me for a price on an item that he

had brought into the store.

Q Sir, I'm showing you State's Exhibit 33. Can you describe what that is, please?

A It's a Sonicare electronic toothbrush.

Q And do you recognize that as the item that Detective Reed wanted you to check on?

A Yes, I do.

Q Sir, I would ask you to look at the bottom of that box. Do you see anything there that's not typical of Shopko merchandise?

A Yeah, there's a fabricated sticker UPC over the one that's on the box itself.

Q Sir, how did you know that's a fabricated UPC sticker?

A Shopko doesn't have stickered UPC codes on their products, it's on the actual box itself. You can see right through the sicker, and it's got two different UPC numbers on it.

Q So that UPC sticker is actually covering the actual one that Shopko would use?

A Yes.

Q Is that the way that item was presented to you by Detective Thomas back in 2001?

A Yes, it was.

Q Sir, did you check the actual price of the

Sonicare toothbrush against Shopko's data base?
A Yeah, I used the computer. And I originally asked him which one he wanted me to check; the one that was on the box or the one that was on the sticker. And he wanted me to check both of them.
Q You don't happen to recall the approximate price, do you?
A Not off hand. I just know that they varied.
Q Did you fill out a police report in this case?
A I don't believe I did.
Q Are you sure?
A No. It's been like two years ago. And probably in your hand is a statement from me.
Q Sir, I am showing you a document, if you wouldn't mind taking it.
A Yes.
Q Sir, do you recognize that document that I'm showing you?
A Absolutely.
Q How do you recognize it?
A That's my handwriting and my signature.
Q So is that the police report that you filled out for Detective Thomas that day?
A It's a statement. I thought it was something different.

Q And would reviewing that report refresh your recollection as to what the price was?
A Um-hum.
Q Then, sir, would you please review that report to yourself and let me know when you are finished?
A Okay.
Q Thank you, sir. If I could get that back from you.
Has reviewing your report refreshed your recollection as to actual selling price, the Shopko selling price of the Sonicare toothbrush?
A Yes.
Q How much was the Sonicare toothbrush going for in 2001?
A 39.99.
Q Are you certain?
A Yes, I believe so.
Q I'd ask you to review your report.
A Am I backwards? The actual is 119.99, I'm sorry.
Q And $119?
A Yes.
Q And you also scanned the other code, correct?
A The makeshift one, yes.
Q And what price did the makeshift --

A 39.99.
Q Sir, would this particular -- first of all, let me step back. You're familiar with the inventory at Shopko, correct? And generally what the prices are that Shopko charges for the merchandise?
A I guess so, yes.
Q You were familiar back then or are you guessing?
A Back then, yes.
Q Do you know whether Shopko would ever sell a $119 Sonicare toothbrush for 39.99?
A No, never.
Q Why would they never sell it for that much?
A Because that's an expensive item, and the markdowns on that wouldn't be that low. If anything we'd send them back to the company for credit back to the store.
Q So you'd send it back before you would sell it for 39.99?
A That's right. We would probably have it marked down. If it became a clearance item, it would have marked down to a certain degree, and then it would probably go back to the company to get a full credit back. Depending on the vendor's needs or whatever it is.
Q Thank you.

MS. RIGGS: Your Honor, may I show Exhibit 33 to the jury, please?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

Thank you, Mr. Mowery. The State will have no further questions.

THE COURT: Mr. Van Ry, you may ask questions of the witness.

MR. VAN RY: Thank you. I just have one.

CROSS-EXAMINATION

BY MR. VAN RY:

Q And it's Mowery, is that how you say that?

A Correct.

Q Mr. Mowery, as you observed that Sonicare toothbrush in the packaging and the label that's affixed over the box UPC label, isn't it true that you have no personal knowledge of how it got there?

A How it was affixed to the box, that's correct, No, I have no idea.

Q And you have no idea who may have done that?

A No.

MR. VAN RY: Nothing further.

THE COURT: Anything else?

MS. RIGGS: The State will have nothing

further, Your Honor.

THE COURT: All right. Mr. Mowery, you may be excused.

(witness excused.)

THE COURT: We could take a brief recess between witnesses.

MS. RIGGS: That's fine, Your Honor.

THE COURT: I will admonish the jurors not to discuss this case among yourselves, do not read, watch or listen to any media account of this proceeding, and do not form or express on any subject connected with this trial until the matter is submitted to you for your deliberations.

And with regard to the exhibits, if you just want to leave it in one of the juror's chairs out here and resume looking at it after you come back from a recess that will be fine.

(Recess taken.)

THE COURT: You may be seated. Ms. Riggs, you may call your next witness.

MS. RIGGS: Thank you, Your Honor. State will call Reed Thomas.

THE COURT: Sir, if you will step right here in this area, Mr. Bartlett will administer the oath.

(Witness sworn.)

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

THE WITNESS: Thanks.

REED THOMAS,

called as a witness by the plaintiff herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RIGGS:

Q Would you please state your name and spell it for the record.

A Reed Thomas, first is spelled, R-E-E-D, last is T-H-O-M-A-S.

Q What agency employs you, please?

A I work for the Reno Police Department.

Q And can you tell me how long you've worked for R.P.D.?

A A little over nine years.

Q What is your current assignment in the Reno Police Department right now?

A I'm currently assigned to the detective division.

Q How long have you been assigned to that team?

A It will be four years in January.
Q And do you work for any particular team as a detective with R.P.D.?
A Yes, I do.
Q And could you describe what that team does, please?
A We're a plain-clothes unit that follows and investigates those people suspected of engaging in criminal activity.
Q Sir, during the late summer of 2001 -- first of all, is Sergeant Della your supervisor?
A Yes, he is.
Q In the summer of 2001, did Sergeant Della assign a case to you?
A Yes, he did.
Q And that was an investigation, correct?
A Yes, it was.
Q Who was the target of that investigation?
A Ferrill Volpicelli.
Q And you had the opportunity to conduct surveillance of Volpicelli during the course of your investigation?
A Yes, about eight times.
Q When you say eight times, would that be eight days?

A It was eight days, eight different days. And it depended on what was on-going and the day and what we were doing. But it was for several hours, usually no less than three, no longer than six or seven.

Q And you personally participated in the surveillance of the defendant, correct?

A Yes.

Q And there were other detectives involved in surveilling him during that investigation?

A Yes, there were.

Q You had a chance to get a look at him during your surveillance of him, correct?

A Yes.

Q Would you please point him out to the jury, if he's in the courtroom today, and describe what he's wearing?

A He is the defendant sitting there at the table with the white shirt and tie and black pants.

MS. RIGGS: Your Honor, may the record reflect that the witness has identified the defendant?

THE COURT: The record will reflect that the witness has identified Mr. Volpicelli.

BY MS. RIGGS:

Q Now again, you were the supervisor of this investigation, correct?

A I'm the case agent.
Q Can you tell me what your duties/ responsibilities are as the case agent?
A Completing police reports, follow-up investigation, interviewing witnesses, victims, if it's applicable, responding to any questions from the District Attorney's Office regarding further follow-up, booking evidence, overseeing the evidence processed.
Q And you watched this defendant at least for eight days, correct?
A Yes.
Q During the course of that eight days, did the defendant ever go to a place that seemed to be a place of employment?
A No.
Q What did he do for the majority of the time that you watched him?
A It varied, but a large portion of the time was spent going from shopping center to shopping center, retail store to retail store, occasionally he was picking his child up at school, watched him go work out one day, but primarily going from store to store.
Q Detective, jumping ahead to the date of the defendant's arrest, which was October 17, 2001, correct?
A Correct.

Q Did you and your team conduct a search of an area thought to be controlled or accessed by the defendant? Specifically, I'm talking about a storage area?

A Yes, we did.

Q And can you describe that please?

A It was the Aussie Self-Storage on Victorian Avenue over in Sparks, and it was unit number B, as in boy, 114.

Q And did you obtain a search warrant prior to appearing at that place?

A Yes, we did.

Q And did you conduct a search of that unit?

A Yes, we did.

Q I'm sorry, I didn't hear. Did you describe which unit it was at Aussie Self-Storage?

A B-114.

Q Were you there when the door was opened?

A Yes.

Q What was inside the unit when the door was opened?

A It was a fairly large unit, fairly full, filled with a lot of electronic equipment, TVs, DVD players, telephones. Seemed to be computer equipment, that type of thing, a lot of electronic-type merchandise, some

personal items that like -- some that were in plastic bins. Things of that nature.

Q What proportion would you say, if you can estimate, were personal items as compared to the electronics items?

A Well, a larger portion of it was the electronics and the items such as that. I don't think that there was too much that we left behind that we didn't feel we needed to seize.

Q Were any of the items that you observed in that storage unit seized as evidence?

A Yes.

Q Sounds like it was?

A We took approximately three pickup truck loads out of there.

Q How did you choose which items you were going to seize and which items you were going to be leaving?

A We were looking for things pursuant to the search warrant, but specifically electronic items that I just mentioned, anything, indicia indicating his connection to that storage unit, bar codes, label makers, supplies to that effect such as label sheets. Anything of that nature.

Q Did you track some of those items or log them in any particular way?

A Everything was logged, yes.
Q Why was that, Detective?
A We wanted to do it, first of all. And secondly, we were required to leave an inventory behind of what we took out of the unit.
Q Is that routine procedure in obtaining a search warrant?
A Yes, it is.
Q Do you remember whether the items taken from that storage unit were photographed?
A Yes, they were.
Q Now was anyone else arrested on October 17, 2001, prior to your investigation?
A Yes.
Q Who was that?
A That was Brent Bowman.
Q And during the course of your investigation, did you ever come across anything that would lead you to believe that Brett Bowman had any kind of access or control of Unit B-114?
MR. VAN RY: Objection, Your Honor, leading.
MS. RIGGS: I can break it down.
THE COURT: You may withdraw your question.
MS. RIGGS: I'll withdraw and ask a different question, Your Honor.

BY MS. RIGGS:

Q You conducted a parallel investigation of Brett Bowman, correct?

A Yes.

Q During that investigation, did you know whether Brett Bowman ever rented a storage facility?

A Not to my knowledge.

Q You didn't investigate it or you just don't know whether he did?

A We investigated it, and as far as I could tell he didn't have a storage unit. He told me he didn't have a storage unit as well.

Q During your investigation of the defendant, did you ever come across any information that indicated that Brett Bowman had access to B-114 at Aussie Self-Storage?

A No.

Q Detective, did you have an opportunity to interview Brett Bowman regarding his knowledge of the scheme charged in this case?

A Yes, I did.

Q Was he cooperative with you?

A Yes, he was.

Q Did he provide you information regarding the scheme that you further investigated?

A Yes.

Q What kind of information did Brett Bowman give you that you followed up upon?

A Basically talked about the entire scheme, about how they would go from store to store. The defendant was paying Mr. Bowman to go in and make fraudulent purchases on his behalf. Discussed the transposition sheet.

He introduced how the fact that -- how the fictitious bar codes were made. Sometimes they were pre-made, sometimes the defendant made them right there in the car.

He just kind of went through a little bit of everything.

Q Did he indicate to you or did you get the impression that he could remember what he paid for certain items when he purchased them?

A He had a pretty good memory, it seemed, in that regard. He had an idea, you know, he was able to recall quite a few things and approximately what they paid for them.

Q Returning to the storage shed, Detective, were there some particular items that you seized from the storage unit that you chose to conduct follow-up investigation upon?

A Yes.

Q Now what was it about the items that you chose

to follow up upon above all others that made you want to investigate those things?

A Well, the enormous amount of property that was in the storage unit, I chose to go with the easiest stuff first. And those were items that I thought had fictitious bar codes overlaid on the bar codes and the merchandise, so I started with those.

Q What made you think that particular bar codes on those particular items you chose to follow up on were fraudulent?

A There were several reasons, but one of which was they just didn't look like they belonged on that merchandise. It wasn't consistent with anything else we'd seen.

Q Did all the items that were seized from the storage shed have inconsistent bar codes?

A No. Although we noted that several bar codes on boxes, for instance, looked like they had had something stuck on at one point and then pulled off, like an adhesive would do, and that kind of damaged the bar code. So we saw indication of that.

Q Detective, I'm showing you State's Exhibit 12. Do you recognize that item, sir?

A Yes, I do.

Q How is it that you recognize it?

A It's an accordion folder that contains receipts and bar codes. It was found in the defendant's vehicle at the time of his arrest.

Q And you were there at the time of his arrest?

A Actually, I was not.

Q However you had an opportunity to follow up on that particular item which you're holding, correct?

A Yes. I saw it later that evening.

Q What did it contain when you originally investigated that?

A Pretty much what it contains now. It's filled with receipts. They appeared to be in some sort of an alphabetical order, however there are -- some of the folders do have receipts from different stores. It also had bar codes tucked into the front pocket, several of those, just 14 or 15 right there in the front pocket alone.

Q When you say the receipts were organized alphabetically, alphabetically by what category?

A By store, store name.

Q Do you recall some of the store names or some of the stores that were listed on the receipts?

A Some of the common retail stores here in the area; Target, Shopko, Wal-Mart, Home Depot, PetsMart, Office Max, Office Depot. All the retail stores.

Q Did you inspect the receipts, actual contents of the receipts as part of your investigation in this case?

A Yes, I did.

Q Sir, I'm now showing you State's Exhibit 11. Do you recognize this document?

A Yes, I do.

Q What is that document?

A It's -- well, it's entitled "Transpositions." It was something recovered from the defendant's vehicle at the time of his arrest. It's got categories here by store, merchandise, UPC number and pricing information. It's a two-page document.

Q And to your knowledge that was found where?

A That was found where. The defendant's vehicle he was driving at the time of his arrest.

MR. VAN RY: Your Honor, may I ask that this officer lay some foundation for that. He's already testified that he wasn't present at the scene.

THE COURT: Do you object then to the question and answer?

MR. VAN RY: I object to the answer. Lack of foundation, Your Honor.

MS. RIGGS: Your Honor, he's a case investigator in the case, all of the information in the

case goes through him. He testified to that earlier. He wrote all the police reports.

THE COURT: I'm going to overrule the objection. I believe Ms. Riggs has stated there was a foundation laid through other officers.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q During the course of your investigation, Detective, did someone explain to you how the defendant used this paper?

A Yeah, I had an idea by looking at it.

Q And I'm going to ask you to stop right there. Because I want to know if someone explained --

A Yes, I spoke to Brett Bowman.

Q Okay. Thank you. The term, "Transpositions," does that mean anything to you?

A It does to me.

Q Does or does not?

A Does.

Q What does the term "transpositions" mean to you?

A Long for transposed.

Q What is implied by the word "transposed"?

A That transposing numbers, merchandise type of thing. In this case I think it was UPC numbers and/or

pricing information.

Q So transposing, is it fair to say, means switching out?

A Yes.

Q Sir, did you do your own inspection of the information contained on that transposition sheet as part of your investigation in this case?

A Yes, I did.

Q How did you use that sheet in your investigation?

A Again, beginning with some of the merchandise we found in the storage unit that had what I belive were fictitious bar codes attached to the merchandise, I take those bar codes and try to find those UPC numbers in the transposition sheet, and then I was trying to match up those UPC numbers and that bar code to receipts that I found in the accordion folder.

Q And you looked for matches between the transposition sheet and the receipts?

A Yes, I did.

Q What kind of matches were you looking for? What items were you looking to match?

A Any item that had a bar code on it, the rug, several items of that nature.

Q Sir, on the transposition sheet, the four

columns are what?

A The four columns, again, are by store, the item, a UPC number for that item, and the price or an approximate price. They seem to be rounded off. I don't see any cents here.

Q So you looked for those particular four items on the receipts as you were looking through the receipts and checking them against the transposition sheet?

A That's correct.

Q Did you find that any of the receipts from the accordion folder matched items indicated on the transposition sheet?

A Yes, I did.

Q A few? A lot? Can you define that please?

A Several.

Q Were you also able to match any of the items from the defendant's storage shed with the receipts or the transposition sheet or both?

A Yes.

Q Sir, was one of the items obtained from the defendant's storage unit a Panasonic DVD home theatre system?

A Yes.

Q And you selected that for follow-up, correct?

A Yes, I did.

Q And did you select that item, as you indicated earlier, because the bar code looked to be inconsistent with its packaging?

A That's correct.

Q Did you also receive information from Brett Bowman regarding that item?

A Yes, I did.

Q In January 2002, did you contact someone regarding the inconsistencies with the bar code stickers on that home theatre system?

A Yes.

Q First of all, how many bar code stickers did you observe to be on that?

A Just -- are you talking fictitious or over all?

Q Some --

A Some fictitious --

Q How many over all?

A Over all, occasionally some of these boxes had several bar codes on them that were fabricated into the box because they were used for pricing information, inventory, a number of things. But that one specifically, because of what I believe was one fictitious bar code that was overlaid on the box.

Q So there were actually two pricing codes, the fictitious one overlaid on top of the valid one?

A That's correct.
Q How did you follow up on those particular bar codes?
A Again, I tried to match up the UPC number from the transposition sheet that reflected Wal-Mart, and I went to Wal-Mart, believing it was a product of theirs, and spoke to some people there.
Q Who did you speak to there?
A Matt Carter, who was the store manager, and Greg Danielson.
Q And was one or both of them able to assist you in getting the information that you needed?
A They were both there. Greg Danielson primarily was the one that helped me.
Q Detective, I'm showing you State's Exhibit 32. Do you recognize that, please?
A Yes.
Q And what is that document that I've just handed you?
A It's a receipt that was printed up by Greg. Basically a voided receipt that was scanning both of the bar codes that were on the box, one being what we believed to be the correct bar code on the box and one was the overlaid label, the sticker.
Q And that was Greg Danielson that was helping

you?

A Yeah. They were both helping me that day. They were both present the entire time that we were doing this.

Q Sir, can you explain how Mr. Danielson assisted you in producing that receipt?

A Again, he scanned, you know, what we believed was the correct bar code on the box, what they knew to be the correct bar code on the box, it was their merchandise, and then scanned what we believed was the fictitious bar code on the box.

The fictitious one came back to a three CD Emerson for 69.94, and the correct item was for a five DVD stereo system that sells for $477.88.

Q Now, sir, does the Wal-Mart receipt that you have in your hand include UPC bar code numbers?

A Yes, it does.

Q And where is that located on the receipt?

A Just to the right, three CD Emerson, just to the right of the price and the merchandise.

Q Now, when you compared those UPC codes against the transposition sheet, did those two items match something in the transposition sheet?

A Yes.

Q And can you describe that match, please?

A Yes. It's a Wal-Mart theater. And it's UPC number 025806041989. And it's priced at $70.

Q And that's what appears on the transposition sheet?

A Yes, it does.

Q And that matches the higher-price item?

A Actually, that's the number for the lower-price item of 69.94.

Q So the entry in the transposition sheet is for the lower-price item on the receipt for the corresponding fraudulent bar code, correct?

A That's correct.

Q Thank you. Sir, I'm showing you State's Exhibit 14. Do you recognize that, please?

A Yes.

Q Where have you seen that before? First of all what is it?

A It's two receipts for a three CD Emerson player, the same item that was on the reprint.

Q Are those items that you found in the accordion folder?

A Yes, they are.

Q What is the date on those receipts, sir?

A The first one is 10-13 of '01, and the second one is also 10-13-01.

Q And again, the bar code number on those receipts matches the Emerson three CD entry on the transposition sheet, doesn't it?

A Yes, it does.

MS. RIGGS: Thank you.

Your Honor, may I show Exhibit 14 to the jury, please, along with Exhibit 11? Although I know they have already been published, I'd like to present them together.

THE COURT: Yes, you may.

MS. RIGGS: Also Exhibit 32.

THE COURT: And Exhibit 32 is admitted?

MS. RIGGS: Yes, it is.

THE COURT: All right. You may publish those to the jury.

BY MS. RIGGS:

Q Detective, did you receive some information from Brett Bowman regarding some computer monitors obtained at Wal-Mart?

A Yes.

Q Sir, I'm showing you State's Exhibit 15. Do you recognize those?

A Yes, I do.

Q What's depicted in that photograph, please?

A Two KDS Rad five monitors.

Q And have you seen those before?
A Yes, I have.
Q Where have you seen them?
A They were taken from the storage unit the night we executed the search warrant.
Q Based on that information provided to you by Brett Bowman, did you search for and find a Wal-Mart receipt in the accordion folder that corresponded to those two monitors?
A Yes, I did.
Q Sir, I'm showing you Exhibit 16. Do you recognize what's depicted in that exhibit, sir?
A Yes.
Q Can you tell me what they are?
A Four receipts here. What they all have in common, 17-inch monitor bearing UPC number 076994072721, priced at a $177.84.

MS. RIGGS: And, Your Honor, I apologize, I'm going to ask for Exhibit 11 back from the jury.

At the end of Detective Thomas' testimony I'll be returning it to them to finish looking at it.

THE COURT: All right. If you would like to collect Exhibit 11 you may.

MS. RIGGS: Thank you.

///

BY MS. RIGGS:

Q And I'm showing you, again, Exhibit 11. Regarding the receipts that you have in your hands, sir, what item in common is indicated on those receipts?

A The 17-inch monitor.

Q Was the UPC code associated with those two receipts?

A This one 076994072721.

Q And for the corresponding price, what is that?

A $177.84.

Q Did you find a corresponding entry on the transposition sheet, sir, for the 17-inch monitor, but Wal-Mart with that particular UPC code or for another item?

A Yes.

Q And what item is indicated on the transposition sheet, sir?

A It's from Wal-Mart. It's a monitor. Sells for $160. And the UPC number is 076994071711.

Q Thank you. And, sir, did you come across any DVD TV combos in this storage shed?

A Yes.

Q Sir, I'm showing you State's Exhibit 18?

A Yes.

Q Can you tell me what that depicts, please?

A 19-inch DVD/TV combo made by Emerson.
Q Do you remember how many you found in the storage shed?
A Three.
Q Based on the information that Brett Bowman gave you, did you research the receipts in the accordion folder and find any that may match?
A Yes.
Q Did you find any?
A Yes.
Q Sir, I'm now showing you State's Exhibit 17. Can you tell me what that is, please?
A Four receipts here. What they have in common is what I believe are Sanyo, it's depicted on here as SYO 19 TV bearing UPC number 008648303781 priced at $129.96.
Q Have you seen those receipts before?
A Yes.
Q Where did those come from?
A The accordion folder taken from the defendant's vehicle.
Q Is there a corresponding entry on the sheet there to match the bar codes on the item indicating a Sanyo 19-inch TV?
A Yes, there is.
Q Sir, did you come across any sewing machines in

the storage unit?

A Yes.

Q Sir, I'm showing you State's Exhibit 20. Do you remember seeing what's depicted in that photograph before?

A Yes, I did.

Q And what is depicted in that photograph?

A It's a SurgePro Simplicity sewing machine.

Q Sir, I'm now showing you State's Exhibit 19. Do you recognize that?

A Yes, I do.

Q What is the exhibit I've just handed you?

A Three receipts all sharing -- or what they have in common are sewing machines on each bearing UPC number 001250210540 priced at $99.96.

Q Do you note any corresponding item in the transposition sheet, the UPC code indicated on those receipts, sir?

A Actually, it's listed twice in here. It's a Wal-Mart sewing machine, UPC number on the transposition sheet is 012502105404 for $100.

Q So of all the items that I've just shown you, the Wal-Mart items that you obtained or followed up on the storage shed, there's corresponding transposition numbers, correct?

A That's correct.
Q Thank you. Sir, did you find any rugs in the storage unit?
A Yes, I did.
Q Can you describe to me, please, what sort of rug or rugs did you find?
A It was a large rug. As we opened up the door to the storage unit, it was actually standing up on the left side, kind of leaning against the wall. I remember it specifically, because as we opened the door, I thought it was going to fall out onto the ground, but it was wrapped in kind of a plastic covering tied at one end.
Q Sir, I'm now showing State's Exhibit 7. Do you recognize that?
A Yes. That's the same rug I just described.
Q And, again, you watched these photographs being taken or you were there when these photographs were being taken?
A Yes.
Q And that is the item that you saw in the storage unit?
A Yes.
Q Sir, did the rug have any kind of UPC bar codes attached to it?
A Yes, it did.

Q Can you describe the configuration of that, if you recall, please?

A Again, it was on one end of the rug, and it appeared to be fictitious sticky type UPC bar code overlaid over the original UPC code.

Q And now I'm showing you State's Exhibit 8. Do you recognize that?

A Yes, I do.

Q Is that the bar code configuration that you just described on the rug?

A Yes. That's a close-up of the same rug. Actually in this photo you can just barely see that. This picture here is where this whole label is affixed on one end. And, yes, that's the same thing I just described.

Q Did you do any follow-up on this with anybody at -- well, I'll withdraw that question.

Did you receive some information from Brett Bowman regarding where this rug came from?

A Yes, I did.

Q And did you follow-up based on the information that Brett Bowman gave you?

A Yes.

Q And whom did you contact regarding the purchase of this rug?

A I went to Lowe's Home Center and spoke with John David Ellis.

Q And was he able to confirm that that rug was obtained at Lowe's?

A Yes, he was.

Q Did he provide you any information regarding the pricing of that rug?

A Yes, he did.

Q Showing you State's Exhibit 34, do you recognize that document, sir?

A Yes, I do.

Q Where did it come from?

A John David Ellis produced this document when he checked the bar codes, both the correct one and the overlaid bar code.

Q He produced that and provided it to you as part of your investigation?

A Yes, he did.

Q Did he do a price check on the outside -- or the -- what appeared to be the fraudulent bar code on the rug?

A Yes, he did.

Q A what price came up for that particular item?

A $74.

Q So if returned to Lowe's, a Lowe's item that

was priced at $74?

A Yes, it was for a cheaper rug that they carried.

Q And did he also scan the actual or the valid bar code for that rug?

A Yes, he did.

Q And what price resulted when he did that?

A $499.

Q So the lower-end item was 74 and the higher end was 499?

A Yes. I learned that they never would have sold that rug as cheap as $74, even on sale.

Q Now, sir, did you find an item on the transposition sheet that corresponded to one of those or that corresponded to the rug from Lowe's?

And I'll ask you also to review the handwritten notes in the margins, please.

A Yes.

Q And could you describe the match on the transposition sheet?

A Yes, it says, "cheap rug," with UPC number 029055098398.

Actually, I'm sorry there is another one here also. Says rug as well, 086093026448, which matches the fictitious UPC bar code on the rug that we had.

Q And what is the price indicated on the transposition sheet for that item?
A Got 80 circled.
Q Sir, your inspection of the receipts in the accordion folder, did you find any receipts that match the price and the description that you see in that project estimate from Lowe's?
A Yes, I did.
Q I'm showing you State's Exhibit 22. Is that the receipt that you found, sir?
A Yes, it is.
Q What item and price is indicated on the receipt?
A 25 by 94 round about, $74.
Q And what date and time is indicated on that receipt, sir?
A October 5, 2001, at 19 -- or 19:45, 7:45 in the evening.
Q Sir, you were at which Lowe's location?
A That was the one on Kietzke Lane down south.
Q Is that in Washoe county?
A Yes, it is.
Q Do you know of any other Lowe's stores in Washoe County?
A Yes, there's one in Sparks.

Q Based on the information contained on that receipt, did you ask Mr. Ellis for any further information?

A Yes. I asked him if he could pull an videotape of the transaction with their surveillance system based on that date and time, and he was able to do that.

Q Sir, I'm now showing you State's Exhibit 35. Do you recognize this?

A Yes, I do.

Q What is it?

A It was the tape provided to me by Lowe's.

Q Did you have a chance to review it?

A Yes, I did.

Q Can you describe what it depicts, please?

A Basically, it's a color videotape on this date and time indicated on the receipt. I don't recall the order. I believe Mr. Volpicelli enters the front doors of the store first, followed by Mr. Bowman approximately 20 or 25 seconds later. And then it's the end of that sequence. And then the next sequence shows Mr. Bowman purchasing the rug at the checkout stand.

MS. RIGGS: Your Honor, at this time I request permission to play the tape for the jury.

THE COURT: All right. And which exhibit is that?

MS. RIGGS: This is Exhibit 35, Your Honor.
MR. VAN RY: No objection, Your Honor.
THE COURT: Would it be best if we took a recess while this is set up?
MS. RIGGS: It's set up and ready to go, sir.
THE COURT: You may proceed then.
MR. VAN RY: Your Honor, may I approach the jury box to observe?
THE COURT: Yes, you may.
MS. RIGGS: Your Honor, permission for the witness to step off of the witness stand and to stand over where he can view the television so he can describe what he sees in the video?
THE COURT: Yes. Detective Thomas may leave the witness stand and approach the television.
MS. RIGGS: Thank you, Your Honor.
BY MS. RIGGS:
Q Detective Thomas, I'm going it ask you to stand next to the TV set. And I'm going to be pausing this at some intervals or pausing the videotape so you can describe what you see.
A That's the defendant coming into the store at 19:49 hours.
Q And what you see looks like the defendant who is sitting over at defense counsel table?

A Yes. Again, we followed him at least eight days. I saw him dressed like that several times.

Q When you saw this video, you recognized him immediately?

A Immediately.

Q And again, can you tell me approximately what date and time?

A It's approximately 7:49 in the morning on October 5, 2001.

Q And is that approximately the date and time listed on the receipt?

A It's just prior to. The transaction lists it on the receipt, because this is a recording of when the actual purchase took place, this is a few minutes before.

Q I'm going to start the video again. What is the defendant doing in that sequence?

A He just grabbed a shopping cart and going farther into the store. That's Brett Bowman --

Q And again --

A -- entering the store.

Q You had the opportunity to see Brett Bowman several times during the course of your investigation?

A No, I never saw Brett Bowman until after he was arrested. But I met with him several times at that point. So, by the time I had the chance to review that

videotape I certainly knew what he looked like.

Q And, again, these are the front doors of the Lowe's store on Kietzke lane?

A That's correct.

That's Mr. Bowman continuing on in the store.

Q And what did he -- did he have a cart in front of him?

A I don't recall. I don't think he did.

Q And do you see either the defendant or Brett Bowman depicted in this view?

A Not here, not yet.

Q Do you see what appears to be a long white rug in the picture?

A That's the rug.

Q And what is it in particular that we are looking at right here?

A Checkout stand at Lowe's by the front door. Again, he's kind of out of the picture. He's beginning to come into view.

Q What's the --

A That's Mr. Bowman there purchasing the rug.

Q And we're going to rewind for just a moment on this.

A Based upon the date and time, and as well as some other numbers that are --

Q I'm going to ask you to stop there. There's no question before you at this time.

What's happening right there? Did you -- I'm going to ask you to keep your eye on the clerk in this segment, Detective Thomas, and tell me when you think the purchase occurs?

A Right there. What she has is a scanner in her hand and she's scanning the bar code off of the rug.

Q And it looks like Brett Bowman had the bar code accessible to where she could do that instantly?

A That's correct.

Q And in this video you observed people coming up to her cashier stand consistently?

A Yeah.

Q She looked like --

A Yeah. Again, she had a couple people in behind her, in front of him, actually, prior to him walking up. She's busy and she's obviously busy and she's got somebody else waiting.

Q What is she doing now? She just give change back to Brett Bowman?

A That's correct.

Q And then he left the store, correct?

A Yes.

Q Thank you. Detective, you can return.

MS. RIGGS: Your Honor. May I have permission to republish State's Exhibits 22, 34, 7 and 8 to the jury so they may look at them at the same time?

THE COURT: Those are all admitted exhibits, and you may publish them to the jury.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Sir, did you also follow up on the Sonicare toothbrush found in the storage shed?

A Yes, I did.

Q Sir, I'm showing you State's Exhibit 33. Is this the Sonicare that you followed up on?

A Yes, it is.

Q Did you notice an inconsistent bar code similar to those from other merchandise from the storage shed, sir?

A Yes, I did. On the bottom of the box overlaid over the -- on what was the -- what is the correct bar code for this product.

Q And, sir, can you tell me what the correct bar code number is on that Sonicare?

A On the label here it's 6905581598.

Q And did you find an entry on the transposition sheet that corresponds to that UPC bar code number?

A Yes, I did. The very first entry from the

Shopko category for a toothbrush.

Q And what price is indicated on the transposition sheet?

A $17.

Q Did you find a receipt in the accordion folder indicating the purchase of an item with this bar code number?

A Yes, I did.

Q Sir, I'm showing you State's Exhibit 36. Have you seen that before?

A Yes.

Q What is it?

A It's a Shopko receipt.

Q Where did it come from?

A Shopko Store No. 103 up at the May Anne McCarran area.

Q But where did you find it?

A I found it in the accordion folder taken from the defendant's vehicle at the time of his arrest.

Q How much did the purchaser pay for the item that was bought depicted in that receipt?

A 39.99.

Q And you contacted Mr. Mowery at Shopko?

A Yes, I did.

Q And, again, he indicated to you that that was a

substantially reduced price from the actual Shopko price?
A Yes.
Q Thank you.
MS. RIGGS: May I show State's Exhibit 36 to the jury, Your Honor?
THE COURT: Yes, you may.
MS. RIGGS: Thank you.
BY MS. RIGGS:
Q Sir, did you recover any espresso machines from the storage unit?
A Yes.
Q Sir, I'm showing you State's Exhibit 26. Do you recognize what's depicted in that photograph?
A It's a Krups coffee maker, espresso machine.
Q And based on the information given to you by Brett Bowman, did you search for and find a receipt for a similar item purchased at --
A Yes.
Q -- Bed and Bath?
A Yes, I did.
Q Or bed, Bath and Beyond. Pardon me.
A Yes.
Q Sir, I'm showing you State's Exhibit 25. Do you recognize what that is?
A Yes, I do.

Q And where did you find this?
A Also found this in the accordion folder at the time of the defendant's arrest.
Q And what purchase is depicted in that receipt?
A It's a purchase for a ProCafe coffee maker for $59.98.
Q And again, the item found in the storage shed was not a ProCafe coffee maker, was it?
A That's correct.
Q What information is on the receipt in addition to the ProCafe brand and the 29.99 purchase price?
A Are you looking for the date and time?
Q Actually is there a UPC number on there?
A On here it appears the UPC number is 1094211184. And in parentheses it lists 29.99 next to that UPC number.
Q Thank you, sir. Sir, did you also find a toilet among the items at the defendant's storage unit?
A Yes, I did.
Q Sir, I'm showing you State's Exhibit 24. Do you recognize what that is, please?
A Yes, that's the label that was on the toilet.
Q Is the toilet package in that photograph?
A Yes.
Q Based on information given to you by Brett

Bowman, did you inspect the Home Depot receipts in the accordion folder?

A Yes, I did.

Q And did you find a receipt that matched the information that he gave you?

A Yes.

Q I'm now showing you Exhibit 23. Do you recognize that receipt, sir?

A Yes.

Q And what is that receipt for?

A It's a Home Depot receipt with a UPC number 050375001973. It's for a one-horse power disposal selling for $194.

Q Thank you. Now, sir, regarding the Sonicare toothbrush and the coffee maker and also the toilet, is it true that you did not find transposition items that matched those?

A That's true.

Q Yet you did find receipts in the defendant's accordion folder that matched the items from the warehouse, correct?

MR. VAN RY: Objection. That has not actually been established as the defendant's accordion folder.

THE COURT: You may withdraw the question.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q The receipts that I've just shown you were found in the accordion folder that was located in the defendant's vehicle, correct?

A That's correct.

Q Thank you. Regarding the accordion folder, sir, what else did it contain rather than the receipts?

A Like I stated earlier, in the front pocket it had several UPC label stickers. It also had a few that were inside the accordion folder in the back that were adhered to the plastic dividers.

Q And, sir, for the second time, I'm showing you State's Exhibit 12. Would you open that exhibit and show the jury where the bar code stickers are located?

A Right here in the front.

Q How many bar code stickers did you locate between the accordion folder and the rest of the van?

A 15 to 20. Maybe a couple more.

Q Now, sir, is it true that you had a chance to review the numbers on those bar codes and compare them to the transposition sheet?

A Yes.

Q And did you find any matches among them?

A Yes, I did.

Q Several? A few? Do you recall?

A Seven or eight.
Q Thank you. And, I'm sorry, I don't recall your answer, how many UPC bar codes did you locate that were either somewhere else in the defendant's van or in the accordion folder?
A 15 to 20 between the accordion folder, the defendant's van, and the black zipper bag that contained the label maker had three.
Q And again, what was the date of the defendant's arrest?
A October 17, 2001.
Q That's when the bar codes were located in the defendant's vehicle, correct?
A That's correct.
Q Now, sir, did the accordion folder contain receipts for things that were never found in the storage unit?
A That's correct.
Q Were you able to match any of the receipts in the accordion folder to entries on the transposition sheets even though you may have not found these items in the storage unit?
A Yes.
Q Did you find any receipts that matched the transposition sheet entries for K-Mart?

A Yes.
Q I'm showing you State's Exhibit 37. Can you tell me what that is, please?
A It's a Super K receipt for an Easy Steamer.
Q And where did you find that, sir?
A This was taken from the accordion folder that was in the defendant's vehicle at the time of his arrest.
Q Is there a UPC code number on the receipt?
A 04603488594.
Q And do you recall whether there's a corresponding transposition sheet entry that matches that UPC code number?
A Yes, there is.
Q Sir, I'm now showing you State's Exhibit 38. Do you recognize that?
A Yes. It's a receipt from CompUSA that was also found in the accordion folder taken from the defendant's vehicle at the time of his arrest.
Q Does that -- is there a UPC code indicated or -- I'll withdraw that question.

Is there a corresponding entry that matches one of the defendant's categories in the transposition sheet?

For instance, is there an entry on the transposition sheet under the CompUSA item or a CompUSA item or either a switch for an item that is close to

29.99?

A Yes, there is one for a switch that is $29.

Q Thank you.

Sir, were you able to or did you locate any receipts in the accordion folder from Best Buy?

A Yes.

Q Showing you State's Exhibit 39, can you tell me what this is, please?

A Two receipts for Sony CD Walkmans. And there is an entry on the transposition sheet matching the price on the receipts for 69.99.

Q Thank you.

THE COURT: Ms. Riggs, this would be a good time to take another recess.

And I will admonish the jurors that you're not to read, watch or listen to any media account of this proceeding, do not form or express any opinion on any subject connected with this case until it is submitted to you for your deliberation, and do not discuss this case among yourselves or anyone else.

Court will stand in recess.

(Recess taken.)

THE COURT: You may be seated.

Ms. Riggs, you may proceed.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Again, going back to State's Exhibit 39, can you tell me what that is, Detective?

A Again, it's two receipts for Sony CD Walkmans purchased at Best Buy for 69.99.

Q And I believe you testified that there was a corresponding transposition entry for that item?

A That's correct. It's the very first entry on the sheet.

Q Sir, did you find any further, besides the toilet, did you find any further Home Depot receipts that matched the transposition entries?

A Yes.

Q I'm showing you Exhibit 40. Can you describe what that is, please?

A It's Home Depot receipt dated September 24th of 2001, at 4:18 in the afternoon for a closet organizer that sold for $28.43.

Q What is the UPC code indicated on that, sir?

A 075381016247.

Q And did you find a corresponding transposition sheet entry for that, sir?

A Yes, I did.

Q Sir, did you find any receipts -- I'll withdraw that, Your Honor.

Did you find any receipts, any indications that the defendant had been to Office Depot?

A Yes.

Q I'm showing you State's Exhibit 41. Can you tell me what I just handed you is, please?

A It's a receipt from Office Depot dated August 28th, I believe, of 2001.

Q And again, that came from the accordion folder?

A Yes, it did.

Q Do you recognize it?

A Yes.

Q What does the item or does the receipt indicate which items were purchased, sir?

A Well, it looks like there was a return and then a purchase.

Q What were the purchased items?

A Printing cartridges.

Q And what are the UPC codes or code associated with those printer cartridges?

A Yes. Do you want me to --

Q What is the UPC code number, please?

A Looks like 1250205334.

Q And what is the purchase price of those cartridges, please?

A One was for 110.97 and this other one looks

like 147 and it's 90 something. There is a pen mark over it, it's been written on.

Q Now disregarding the returned item, were those for multiple cartridge purchases, sir? Does the receipt indicate that?

A Yes.

Q Does the receipt indicate that each cartridge cost $36?

A Yes. I'm sorry, that was a sub total I read out before as I was going down the column.

Q Now, sir, I'm going to ask you to turn that receipt over. What did you see -- besides the evidence sticker, what do you see on the back of that receipt?

A Handwritten number, 04907400063, and the last number looks like a 9.

Q And do both of the numbers, the cartridge -- the UPC code number for the cartridges and also the number on the back, the handwritten number, correspond to items on the transposition sheet? And that would be in the Office Depot items on the transposition sheet?

A Yes, that's correct.

Q So both of them have entries?

A Yes, they both have entries. One, the UPC numbers that are on the front of receipt list for $9 as opposed to 36, and the other one on the back, shows a

price of $30.

Q What does the item on the back correspond to on the transposition sheet, what item?

A It was a safe.

Q Thank you. Sir, did you find in the accordion file any receipts for PetsMart?

A Yes.

Q Showing you State's Exhibit 42. What have I just handed you, sir?

A Two receipts for PetsMart.

Q Do you recognize those?

A Yes, I do.

Q And obviously those came from the accordion folder?

A Yes, those came from the accordion folder.

Q What item does it indicate on the front of the receipts?

A Well, the one they have in common is a filtration sold for 19.99.

Q And what's the UPC code on that, sir?

A UPC number 01716310702.

Q Is there a corresponding transposition sheet entry, sir?

A Yes, there is. It's for a pump for $17.

Q Sir, do you recall whether any Target receipts

were found in the accordion folder?

A Yes.

Q I'm showing you Exhibit 43. Do you recognize it?

A Yes. It's a receipt from Target dated August 14, '01. It's a pilot case, a shaver, and it looks like a bag of cottons swabs.

Q And does that UPC number on the receipt -- Actually, I'll withdraw that question.

Is there a matching item on the transposition sheet for a Target shaver?

A Yes, there is.

Q Now, sir, I'm going to ask you just to look at the transposition sheet in the Wal-Mart items. Is there a car stereo item indicated?

A Yes, there is.

Q And how much is the entry for the car stereo?

A $70.

Q And again, all the receipts that I've just shown you, sir, those were found in the accordion folder in the defendant's vehicle, correct?

A That's correct.

MS. RIGGS: Your Honor, I would like to request permission to show all State's Exhibits, and this will be State's Exhibit 37, 38, 39, 40, 41, 42, and 43, together

with State's Exhibit 11 to the jury so that they may compare if they need to?

THE COURT: Yes, you may do so.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now, Detective, there was no physical evidence other than the paper was collected in this case, was there? For instance, you didn't collect any DNA samples, nor did you collect for fingerprints, did you?

A No.

Q Why was DNA not collected?

A DNA is typically collected for crimes against persons, this is a fraud crime.

Q Did you find it necessary to run DNA analysis for this case?

A No, we collected no DNA.

Q Would you ever collect DNA in a paper case such as this?

A I can't see a reason why.

Q So, sir, no fingerprint evidence was collected in this case either, was there?

A No, we had a known suspect.

Q And is this the reason why no fingerprints were collected?

A Yes. I was satisfied with our surveillance and

with the evidence that we had. I didn't see the need to collect fingerprint evidence. I didn't think there was anything in dispute about what may or may not have been touched by the defendant.

Q And you've been a detective for nine years, correct?

A I've been a police officer for nine years and a detective for almost four.

Q And you're familiar with the situations in which it's appropriate to collect different kinds of physical evidence?

A Yes.

Q And again, you are satisfied that during your investigation the proper evidence was collected in this case?

A Yes.

Q Okay. Sir, I'm showing you State's Exhibit 29. Do you recognize this item?

A It's a black satchel that contained the label maker.

Q Is there any kind of personal identification on that item by any chance?

A Yes. There's label on the front that says, "VIM or VIM Inc., with an address of 316 California Avenue in Reno, Nevada.

Q During the course of your investigation, did you become familiar with either who VIM Inc. is or that address on California Avenue?

A Yes.

Q Can you describe that?

A Stands for Volpicelli Investment Management. He has several aliases and also has been known to call himself Joseph Vim, Joseph being his middle name.

Q Are you familiar with the address?

A Yes, he had a PO box there. That's a post office box down there on California.

Q And you have knowledge of this information through your investigation, is that correct?

A Yes, that's correct.

Q Thank you.

MS. RIGGS: May I have the Court's indulgence for one moment, Your Honor?

THE COURT: Yes.

MS. RIGGS: Your Honor, the State has no further questions for this witness.

THE COURT: Mr. Van Ry, you may ask questions of the witness.

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CROSS-EXAMINATION

BY MR. VAN RY:

Q Officer, Detective; which do you prefer?

A Doesn't matter. Detective's, fine.

Q Detective, just for clarification sake, of all the receipts that have been presented to this jury, the State, you and the people you have investigated this case with have no --

MS. RIGGS: Objection, Your Honor. The witness does not represent the State in this case. I represent the State.

THE COURT: Perhaps you could rephrase your question.

MR. VAN RY: I was simply stating that this officer is testifying on behalf of the State, and any admission he would make would be applicable to the State. Therefore, he is the State.

THE COURT: Well, I would sustain the objection to the form of that question.

MR. VAN RY: Let me ask it in a different way then.

THE WITNESS: Okay.

BY MR. VAN RY:

Q Of all the receipts and all of the evidence, in terms of the physical evidence, there's not one

fingerprint of my client on any of that, is that true?

A We didn't take fingerprint evidence, so I can't say whether there is or there isn't.

Q So you can't say conclusively that there is a fingerprint, but you can say simply you didn't take fingerprint evidence?

A We did not take fingerprint evidence, and I can't say conclusively whether the defendant's fingerprints are on any of those items.

Q Okay. And same question as to DNA; same answer?

A Correct.

Q During the multiple days, and I believe you said it was eight days that you followed my client, is that correct?

A That's correct.

Q Did you ever see Mr. Volpicelli use Exhibit 9, that label maker?

A I did not.

Q At any time during your surveillance did you see Mr. Volpicelli affix a UPC label to merchandise in a store?

A I personally did not.

Q During your role as, I think you called it case agent in this matter did you have an opportunity to have

a conversation with Mr. Bowman?

A Yes.

Q And was this after he had been formally charged with crimes or before or together or --

A He was interviewed post Miranda the night of the arrest by other detectives and interviewed by myself later.

When you say, "formally charged," are you talking about when I charged him or when the DA formally charged him?

Q When the DA formally charged him.

A I don't recall whether it was before or after. We spoke several times over probably four months. There were times that he certainly was interviewed after he was formally charged.

Q How many times did you interview and speak with Mr. Bowman?

A I believe it was five.

Q And during your courses of meeting with Mr. Bowman, did you become aware of the plea bargain arrangement that was going to be entered by Mr. Bowman?

A Yes.

Q Did you appear on Mr. Bowman's behalf at his sentencing?

A I did not.

Q Based upon your involvement as a case agent, are you aware of any detective that may have appeared at Mr. Bowman's sentencing?

A I am not aware of anybody else that appeared at the sentencing.

Q At the initial arrest of Mr. Bowman and Mr. Volpicelli in October, which would be October 17, Mr. Bowman was considered a suspect, is that correct?

A At the time of his arrest?

Q Correct.

A He was observed committing a crime, along with the defendant here today. And yes, he was not a suspect, he was a defendant at that point. He was arrested.

Q Once you arrested, or whoever arrested him, he became a defendant?

A Yes, sir.

Q Was there a search done of Mr. Bowman's apartment?

A Yes.

Q Did you personally undertake that search?

A Yes, I did.

Q Did you find any items in Mr. Bowman's apartment that appear on that transposition list?

A Mostly what I found in the apartment were personal items, such as clothing, the bear bones. I did

find a stereo system, but it didn't intrigue or pique my interest. I didn't try to match that stereo system up with the transposition sheet.

Q You kind of led me to the better question. During your investigation of Mr. Bowman's apartment, did you try to try to match up any items in his apartment with that transposition sheet?

A That stereo system would have been the only thing that I would have even tried. Again, we're talking about an individual who had just gotten out of prison a few months earlier. He had a few clothes and a few toiletry items, and that was it. It was pretty much bear bones.

Q Did you try to compare any of the items in his apartment with receipts you found in the accordion folder?

A I did not. Again, the only one would have been the stereo system.

Q Why did you not follow up on that stereo system?

A Again, it just didn't strike me as a new system or didn't pique my interest at all to even attempt to compare it. I wasn't concerned about it.

Q Let me ask you this question. Once you or your office determined that Mr. Bowman was going to enter a

plea agreement, did you stop pursuing the investigation as to Mr. Bowman?

A No. We stopped pursuing the investigation after speaking with the DA, had approximately 20 to 25 felony charges pending against the defendant. And again, the investigation was just continuing until the decision was made to just stop and see where we're at and just go from there.

Q Was that point in time before or after Mr. Bowman agreed to enter into the plea agreement?

A That was probably after.

Q Did you yourself personally have any involvement in the transfer of Mr. Bowman's paycheck from the Sands into his possession?

A Yes.

Q Can you describe that please?

A Yes. He had a check that he needed to have taken to him, and we accomplished that. It was his last paycheck, obviously.

Q Now, you mentioned that Mr. Bowman was also surveilled or followed in this matter prior to his arrest, is that correct?

A Only on the occasion of his arrest, that's correct, and not by me.

Q And only on October 17?

A Only on October 17. On October 17th, was the first time that we were aware of Brett Bowman.

Q So when you indicated in your testimony earlier that there was a parallel investigation prior to the arrest, you meant simply that date?

A That's correct.

Q So Mr. Bowman was not followed or investigated prior to October 17, 2002 by you, is that correct?

A That's correct. We were completely unaware of who he was.

Q And is it also true that you were not present at the time of the arrest of Mr. Volpicelli and Mr. Bowman on October 17?

A That's correct.

MR. VAN RY: I'm not sure who has the exhibits, Your Honor. Oh, they're still trickling down. I just want the transposition sheet, Exhibit 11, which is the big one. Thank you.

Your Honor, if I may approach the witness.

THE COURT: Yes, you may.

BY MR. VAN RY:

Q Detective Thomas, I'm showing you what's been marked and admitted identified as Exhibit No. 11.

A Yes.

Q And you've testified about that extensively

today, correct?
A That's correct.
Q Can you tell me whose handwriting that is?
A I can tell you who I think.
Q I don't want to know who you think, I want you to tell me whose it is.
A I don't know.
Q And flip it over on the back. Same question as to the back handwriting?
A I can't say whose that is 100 percent.
MR. VAN RY: If I may approach the jury?
THE COURT: Yes, you may.
MR. VAN RY: Your Honor, if I may, this is a small exhibit, Exhibit 41, this should be the Office Depot.
(Getting exhibit from juror.)
BY MR. VAN RY:
Q Officer or Detective Thomas, I'm going to show you Exhibit 41, which has been marked and admitted.
A Okay.
Q There's some writing on the front of that receipt. And then again, the same question as to the handwriting identity, who made that?
A I can't say with 100 percent certainty who made that.

Q And the same for the back.
A Same response.
Q And the back is the number that you identified earlier in your testimony that was put into the transposition sheet, is that correct?
A That's correct.
MR. VAN RY: May I approach, Your Honor?
THE COURT: You may.
MR. VAN RY: If I may have a moment, Your Honor.
THE COURT: Yes.
MR. VAN RY: No further questions. Thank you.
THE COURT: Ms. Riggs, you may ask additional questions.
MS. RIGGS: Thank you. Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. RIGGS:
Q Detective, you just testified that you found one item of electronic equipment in Brett Bowman's apartment, is that true?
A That's correct.
Q It didn't raise your suspicion, it didn't seem to be a super high-end item?

A I wasn't even convinced it was new. I didn't know how old it was.

Q And you basically weren't interested in it, correct?

A Correct.

Q How many electronic items do you estimate that you found in the defendant's storage unit?

MR. VAN RY: Objection, Your Honor. That's beyond the scope of cross-examination.

MS. RIGGS: Your Honor, I'm asking in comparison to what he's asking about Mr. Bowman.

I'll just leave my objection.

THE COURT: I'll sustain the objection of being outside the scope of the cross.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now you testified, Detective, that you only saw Brett Bowman on the 17th of October or -- or I'll withdraw that. That Brett Bowman only came to your attention as of October 17, 2001, correct?

A That's correct.

Q So the entire eight days that you were watching the defendant you never saw Brett Bowman?

A Never saw Brett Bowman. Again, didn't know who he was.

Q And you earlier testified that during those eight days you were watching the defendant going in and out of stores all day long, is that correct?
A That's correct.
Q By himself?
A That's correct.
MS. RIGGS: Thank you, the State has nothing further, Your Honor.
THE COURT: Mr. Van Ry, anything else?
MR. VAN RY: If I may have a moment.

RECROSS-EXAMINATION

BY MR. VAN RY:
Q Just one question. It wasn't a crime on those days when Mr. Volpicelli walked into those stores without Mr. Bowman, was it?
A It wasn't a crime to walk into the stores --
Q Correct.
A -- without Mr. Bowman?
Q And then to walk out.
A That in itself does not show anything that's a crime.
MR. VAN RY: Nothing further.
MS. RIGGS: The State has nothing further.
THE COURT: Detective Thomas, you may be

excused.

THE WITNESS: Thank you.

(Witness excused.)

MS. RIGGS: Your Honor, the State has no further witnesses and the State will rest.

THE COURT: We will take a recess at this time. Probably a short recess, but nonetheless there is something I need to do.

I want you as jurors not to discuss this case among yourselves or anyone else, do not read, read, watch or listen to any media account of this proceeding, and do not form or express any opinion connected with this case until the matter is submitted to you for your deliberations.

And we will rise for the exist of the jury.

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(The following proceedings were held outside the presence of the jury.)

THE COURT: Mr. Volpicelli, I wanted to discuss something with you before we conclude for the day, and that is with regard to decisions that have to be made by you as to whether or not you will testify in this case on your own behalf.

The State has rested its case in chief, and now it's up to the defense to call any witnesses, and you

could be a witness. And, Mr. Volpicelli, first, do you understand that you have the right to remain silent and basically can't be made to testify against yourself in this case?

THE DEFENDANT: I understand that, Your Honor.

THE COURT: However, in the event you do not testify, I want you to know that the State is prohibited from making any statement or suggestion to the jury that your failure to testify and exercise that Constitutional Right is evidence of a guilty conscience on your part. They can't infer guilt to you simply because you do not testify.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now you have the right to testify, and if you do testify you would be sworn as other witnesses have been sworn to tell the truth. You would take the stand, and then Mr. Van Ry would first ask you questions, and then after that Ms. Riggs would be entitled to cross-examine you.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And have you discussed this issue about whether or not you will testify with your lawyer, Mr. Van Ry?

THE DEFENDANT: Yes, I have, Your Honor.

THE COURT: At this point have you reached any conclusion as to that matter?

THE DEFENDANT: At this point I am seriously considering testifying, provided our other witness goes before me, and that we would recall Brett Bowman for probably five or six questions, at which time I would then like to take the stand.

MS. RIGGS: Your Honor, may I be heard on this matter?

THE COURT: All right.

MS. RIGGS: Your Honor, you had advised this defendant earlier that he has one attorney in this case who will be making the legal strategic decisions in this case. It sounds like the defendant is trying to negotiate something with the Court.

I object to it. I don't think it's proper. He is either going to testify or he is not. He has had ample opportunity to discuss his case with his attorney, Mr. Van Ry, and you are asking him at this time if he intends to testify. I believe he should answer the question.

We are at that portion of the case where he needs to make a decision. I believe he should make it today and in discussion with his attorney, not setting

the standard or the goal himself and calling the shots, as far as who his attorney is going to call and who is he not.

THE COURT: Well, it actually is necessary for me to know what he intends to do, and probably doesn't have to make that decision today. We're probably going to recess, I suspect unless there would be no defense witnesses, so we can do some other planning.

Mr. Van Ry, but with regard to the defense case, are you intending to call witnesses?

MR. VAN RY: That may be contingent upon what I'm going to say next. I would like to take a few moments with the Court to make an oral motion to dismiss this case, and I have some law. I would like to discuss that with you. Your ruling will impact the defense strategy, Your Honor.

THE COURT: Well, I know I've been down this road before, and I actually granted a defense motion to dismiss a case at this stage because the State's case started, they empanelled the jury, and I think we actually had a police officer, one short witness, but then the actual victim of the case, who was a critical element, you know, to the State's case, did not show up and they couldn't proceed, and I granted the defense motion to dismiss.

It was then appealed to the State Supreme Court. The Supreme Court reversed and instead of the defendant winning, the defendant would have won if we had simply presented the case to the jury at that point, and then the State had another shot at it and was able to convict the defendant when they did get the complaining witness there.

So, the way it works is that in a civil case you can move to dismiss with a 41B Motion at the conclusion of the plaintiff's case, but once a trial starts, the judge does not have the authority to dismiss charges.

MR. VAN RY: Your Honor, if I may be heard.

THE COURT: All right.

MR. VAN RY: Thank you, Your Honor.

Your Honor, there is a statute that we're all familiar with in this case, the accomplice statute. And it talks about the corroboration required to prove a case in a criminal action. And the statute is NRS -- and I apologize for the frog in my throat. NRS 175.291. And I'd like the Court to consider the evidence in this matter where it is clearly the common thread to all the counts, including the non-burglary counts, that the testimony of Mr. Bowman.

We have one, two, three, four, five, six,

seven, eight, nine, ten counts, eight of which are burglaries. First count is conspiracy and the last count is unlawful possession of counterfeiting of inventory pricing. And as we examine each one of these charges against Mr. Volpicelli, it seems readily apparent to me from the evidence that this court has heard and the jury has heard that it hinges upon Mr. Bowman.

And the statute is pretty clear, and again, I'm reading 175.291, "A conviction shall not be had on the testimony of an accomplice. That is unless he is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense. And the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof."

Which I submit to the court is precisely what we have in this case. We have Mr. Bowman, who is pointing to all of these items of evidence to be held against my client. And I say for the record that is precisely what this statute is trying to prohibit. To prohibit an accomplice, one who is clearly involved in something, who is charged with a crime, received a plea bargain agreement, that his testimony needs to be corroborated by outside extrinsic evidence.

And there are several cases on this point, Your Honor. There's Lapina v. State, 92 Nevada, one, there is a 2002 case, I didn't get the Nevada Advanced Opinion, but it's 39 Pacific 3rd, 114 Rowland v. State. And the initial underlying case is Allen v. State, Your Honor, or excuse me, Austin v. State which is a 1971 case which interpreted this statute.

I made copies for Ms. Riggs of the cases.

In examination of the Rowland v. State case, Your Honor, and I'm citing Rowland v. State, which is in turn citing Austin v. State.

"We explained in Austin that NRS 175.291 was a legislative declaration that one who has participated criminally in a given criminal venture shall be deemed to have such character and such motives that his testimony alone shall not rise to the dignity of proof beyond a reasonable doubt.

"Although the question of whether a witness is an accomplice is typically a question of fact, the District Court should instruct the jury as a matter of law," and we'll get to this when we talk about jury instructions, Your Honor, "regarding a witness's accomplice status when the witness's own testimony leaves no doubt that witness was an accomplice."

And I don't believe there's any doubt that

Mr. Bowman was an accomplice in this. And while we do have voluminous receipts, we have all sorts of circumstantial type of evidence, but the only thread that pulls them together, that pins this on my client is Mr. Bowman.

There's no fingerprints, no DNA, none of the officers ever saw my client use the label maker, none of the State's witnesses saw my client affix a UPC label to an item of merchandise. And I think that's enough to satisfy what the statute says, should it not count, and as a result I would ask that you dismiss really all the counts, Your Honor.

Thank you.

THE COURT: Thank you. And, Ms. Riggs, do you have any response to this?

MS. RIGGS: Yes, I do. Thank you, Your Honor.

First of all, the State absolutely agrees with Your Honor's interpretation of the ability of the jurisdiction of the District Court to dismiss a case once a jury has been empanelled.

Second of all, NRS 175.291 describes what the factual standard is. It says that "A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence, without the aid of testimony that tends to connect the defendant with the

commission of an offense."

Your Honor, that's a jury question. It's a question of fact. It's up to the jury to decide whether there's enough corroboration here, and that's appropriately handled in a jury instruction, which there will be in this case.

As to Mr. Van Ry's characterization that there is no other evidence in the State's case that connected the defendant to the offense without or independent of Bowman's testimony, Your Honor, I'm looking at 41 pieces of physical evidence that have been admitted in this case.

For instance, the bag that had contained the label machine that made the UPC codes that were stuck on items in this case has the defendant's identification on it, Your Honor.

Many of the items in this case were found in this defendant's vehicle that he alone drove. Many of the items were found in the storage shed that he had access to and that Brett Bowman did not.

Your Honor, the State believes that it has produced voluminous evidence to support the rule, 174, pardon me, 175.291. And we believe that the jury will find that as well.

It is a jury question, Your Honor, and the

State asks you not to dismiss this case at this point.

Thank you.

THE COURT: Well, I would certainly find that Mr. Bowman would be an accomplice. And in so far as that would be a finding, it would seem that 175.291 can apply. However, the conviction will not stand on the testimony of an accomplice alone, unless there is corroborating evidence. And in this case I would certainly find that there is sufficient corroborating evidence beyond simply the testimony of Mr. Bowman to support the charges.

As Ms. Riggs has pointed out, you have surveillance by several of the witnesses in this case, the police officers, you have the van, all the contents of the van, the storage shed and it's contents.

You know, all that put together is a case which certainly merits going to the jury, has corroboration beyond any testimony of an accomplice.

So I deny your motion to dismiss pursuant to 175.291.

MR. VAN RY: Thank you for hearing me, Your Honor.

THE COURT: What I would propose is that we come back with the jury at 9:00 o'clock, you see if there is testimony. If their isn't testimony, I would say why don't we bring the jury in, you know, at noon or 1:00 or

something, I'm not sure. I don't know how long it will take to settle the jury instructions, but I'm assuming that the jury instructions won't be that difficult.

It ought to be an hour's project, and otherwise I'm intending to work on this case starting at 9:00, because we're taking a plea at 8:30. So I do need to know in terms of telling the jury when to come back how the case is proceeding.

And for that, Mr. Van Ry, will there be any defense witnesses tomorrow?

MR. VAN RY: There will be at least one defense witness tomorrow, Your Honor.

THE COURT: Okay. Should I actually bring the jury back at 10:00 o'clock, and we meet between 9:00 and 10:00 to work on jury instructions? Would that make sense?

MS. RIGGS: That would be fine with the State, Your Honor. I do have one matter to discuss regarding this defendant's potential testimony in the case tomorrow, and it is a matter of notice actually.

The defendant, if he intends to testify, Your Honor, as you have heard throughout the course of this case, the defendant's case seems to be leaning toward blaming Brett Bowman for the entire scheme or asserting that Brett Bowman is actually the one committing all

these crimes.

In that case, Your Honor, first of all, in any case, this defendant has three prior felony convictions. One of them is August 9th of '93. Your Honor, although it is now November of 2003, and that is slightly over ten years old, this case has been continued by the defendant several times. Our first trial date in this case was last year, Your Honor, and I don't believe the State should be prejudiced by omitting that prior because the defendant has managed to continue this case over and over again.

In addition, Your Honor, the defendant has a 1997 felony conviction for perjury. That certainly would come in if he decided to testify.

Thirdly, this defendant was convicted in 1998 of two burglary charges under facts that were almost identical, save and except the involvement of Brett Bowman to this case, Your Honor. And because the State anticipates that Brett Bowman is going to be the person that the defendant blames in this case, the State intends to admit, after the appropriate Volpicelli or pardon me, Petrocelli Hearing, the facts of those prior convictions. Especially the '98 burglary conviction in which we intend to have a witness here to describe what he saw Mr. Volpicelli do.

Also, Your Honor, this defendant pled guilty to the '97 conviction or 1997 charge for tax perjury, and incorporated in the charges in the plea agreement are the facts of that case. So the State believes that we'll be able to just simply read into the record the '97 conviction. By which I'm trying to notify the defendant includes the facts of the case for which he was convicted.

So before the defendant makes the decision to testify, the State believes it's appropriate to put him on notice that these will be the facts the State intends to admit tomorrow.

Thank you.

THE COURT: It seems to me, however, pursuant to case law that you would ordinarily ask the defendant if he has the prior felony convictions, and it would only be if he denies the conviction that you would then go into the proof of the conviction and the facts surrounding it.

I'm not much inclined to have you go into all the facts about a prior conviction if the defendant is going to admit the conviction.

MS. RIGGS: And I understand that, Your Honor, and I apologize for being unclear. I understand that if the defendant takes the stand I'm only allowed to ask him

regarding his convictions, the date of the conviction and what he was convicted for.

However, as I stated, the State anticipates that this defendant is going to testify as to implicate Brett Bowman as the master, as the person completely in charge of this conspiracy, and thereby try to exonerate himself.

In that case, the State intends to move to admit the prior bad acts or the prior facts of those cases in a 48.045 motion or request a Petrocelli hearing. And we believe this falls squarely within the Petrocelli case law, Your Honor, as motive and intent, because he is going to lay this on Brett Bowman. And our evidence of prior bad acts clearly indicate, no, that was not his motive, he was not simply trying to help out Brett Bowman, as we've heard so far, he was intending to go forward with a scheme that was substantially similar to those he perpetrated before.

So that's what you're going to hear in a Petrocelli motion tomorrow, if we get there, Your Honor.

THE COURT: Well, we'll take up the issue of a Petrocelli hearing regarding prior bad act if it comes to that.

Why don't we all meet at 9:00 o'clock, and I'll tell the jury to come back at 10:00.

MR. VAN RY: That will be fine, Your Honor. Thank you.

MS. RIGGS: Your Honor, what time would you like to see counsel? Are we going to be settling jury instructions before 10:00 o'clock?

THE COURT: At 9:00.

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(The following was held in the presence of the jury.)

THE COURT: You may be seated.

Ladies and gentlemen of the jury, I've been discussing how the case is to progress tomorrow with the attorneys. And it seems best that we have you come back tomorrow at 10:00 a.m. We have some other matters to attend to, including reviewing the written jury instructions before that. But I would anticipate that there will probably be some more testimony at 10:00 o'clock.

And I did just give you the standard admonishment. I'm going to say that all those admonishments apply at this time regarding discussion of the case, don't read, watch or listen to any media account of this proceeding, and do not form or express any opinion on any subject connected with this trial until the matter is submitted to you for your deliberations.

And we will be in recess then until 10:00 a.m. tomorrow morning.

(Proceedings continued to Friday, November 14, 2003)

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RENO, NEVADA; FRIDAY, NOVEMBER 14, 2003; 10:09 A.M.

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THE COURT: Will counsel stipulate to the presence of all 13 jurors?

MS. RIGGS: State will stipulate, Your Honor.

MR. VAN RY: Defense so stipulates, Your Honor.

THE COURT: Mr. Van Ry, would you like to call a witness?

MR. VAN RY: Defense would call no witnesses at this time, and we rest.

Thank you, Your Honor.

THE COURT: Well, that would conclude the witnesses in the case. And I'll need to get with the attorneys to settle jury instructions. It probably won't take all that long to do this, because I have been meeting for the past hour with them.

As you heard from the reading of the Indictment, there are, I believe, nine charges, so we have a lot of work to do.

MS. RIGGS: There are ten, Your Honor.

THE COURT: Ten. Well, anyway it amounts to more instructions than the normal case, put it that way.

So I will be excusing you, and I think we can

actually accomplish this within a half hour, so if you would just take a half hour. And I would authorize the jurors to leave the building. You won't be just cooped up in the jury room. If you would come back at about 20 minutes before 11:00, it seems to me that would be reasonable.

That will give us a half hour to put everything on the record.

All right, with that, I will again admonish the jurors that you are not to discuss this case among yourselves or with anyone else, do not read, watch or listen to any media account of this proceeding, and do not form or express any opinion on any subject connected with this trial until the matter is submitted to you for your deliberations.

Court will stand in recess.

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(The following proceedings held outside the presence of the Jury)

THE COURT: We will go on the record. The record will reflect that we are meeting in the courtroom, and both counsel and Mr. Volpicelli are present. And I'm going to go through the instructions that the Court intends to give. And I will be affixing numbers to them as I read them.

No. 1, "Ladies and gentlemen of the jury, it is my duty."

2, "The defendant in this matter." And this instruction has numerous pages, but we all know that it's a long one.

3, "An Indictment is a formal method."

4, "If in these instructions."

5, "If during this trial."

6, "Neither the prosecution."

7, "Nothing that counsel say."

8, "It is the duty of attorneys."

9, "There are two types of evidence."

10, "To the jury alone."

11, "In every crime there must exist."

12, "Intent may be proved."

13, "The burden rests."

14, "A reasonable doubt."

15, "Every person charged."

16, "Conspiracy is."

17, "Each member of a criminal conspiracy."

18, "A conviction shall not be had."

MR. VAN RY: Your Honor, did you want me to interpose objections now or wait?

THE COURT: Not yet.

19, "Corroborative evidence is."

20, "Nevada Revised Statutes." And this is 205.380.

21, "A false pretense may."

22, "It is not a necessary element."

23, "Forgery may be committed."

24, "In the crime of uttering a forged instrument."

25, "Larceny consists of."

26, "The two elements necessary to constitute theft by larceny are."

27, "Nevada Revised Statute 205.060."

28, "The essence of a burglary is."

29, "Pursuant to NRS 205.965."

30, "As used in NRS 205.965."

31, "It is not necessary."

32, "Every person concerned."

33, "Each count charges."

34, "Although you are to consider."

35, "The penalty provided by law."

36, "It is your duty."

And 37 is the last instruction. "Upon retiring to the jury room."

And Ms. Riggs, does the State object to the giving of any of these instructions?

MS. RIGGS: Your Honor, the State does not

object to the giving of any of these instructions. However, Your Honor, regarding Instruction No. 30, this instruction does need to be revised as to reflect the proper NRS in this case, which is NRS 205.965, which I can do as soon as we're finished, Your Honor, or at your discretion.

THE COURT: Well, I will read it with the five. We will make any final corrections before it's actually turned over to the jury.

Are there any further instructions the prosecution would seek to have given?

MS. RIGGS: There are no further instructions, Your Honor.

THE COURT: Mr. Van Ry, does the defense object to the giving of any of these instructions?

MR. VAN RY: Yes, Your Honor. As to Instruction No. 18 and Instruction No. 19, I would ask that this Court find as a matter of law that Brett Bowman is an accomplice, and that a sentence be added to both Instruction 18 and 19 that would read as follows:

"The court finds as a matter of law that Brett Bowman is an accomplice in this case."

And that is based upon the recent case of Rowland v. State, 39 Pacific 3rd, 114, 2002 case. I do not have the Nevada Advanced Opinion cite, but I did want

to read and that's spelled R-O-W-L-A-N-D v. State. And this is on page 120 of Rowland v. State.

"Although the question of whether a witness is an accomplice is typically a question of fact, the District Court should instruct the jury as a matter of law regarding a witness' accomplice status, when the witness' own testimony leaves no doubt that the witness was an accomplice."

And I would state pursuant to that case, Your Honor, that the evidence in this case demonstrates there was no doubt that the witness was an accomplice and that those additional sentences should be added to those two instructions, Your Honor.

THE COURT: And can you read again what you're proposing?

MR. VAN RY: I would ask simply the sentence be added at the bottom, which would be just following the two paragraphs in Instruction 18 at the bottom of the fourth or fifth paragraph there.

In Instruction 19, I would like it to say, "The Court finds as a matter of law that Brett Bowman is an accomplice in this case."

And I'm sure the State would like to be heard on that issue.

THE COURT: And, Ms. Riggs, what is the State's

position on this?

MS. RIGGS: The State would object to this amendment to the instruction, Your Honor. The State believes that the jury is entitled, as the fact finder, to determine whether Brett Bowman is an accomplice in this case or not.

I'm not sure what the standard under the case that defense counsel's just read means. I don't know what the standard is for "no doubt," but certainly there's some room for speculation in this case.

I believe that it would be prejudicial to the State's case to include such an instruction of law, and I would ask that that be -- that counsel's or defense counsel's motion be denied.

Thank you.

THE COURT: Well, from your reading of Rowland versus State, it sounds like I would be obligated to have the language that you have requested. Ordinarily this would really be a finding of fact by the jury as to whether somebody is an accomplice.

But it is clear to me from the testimony of what Mr. Bowman did, that Mr. Bowman was an accomplice regarding some of the charges, anyway. I don't know that it would involve all of the charges, but some, yes.

MS. RIGGS: And that's exactly my point, Your

Honor. He wasn't even involved in some of these charges. So, if the jury is to find as a matter of law, for instance, in the case where Mr. Volpicelli went in or is alleged to have gone into Shopko and bought the comforters all by himself, placing the product information and leaving, if the jury is to believe that Brett Bowman was an accomplice in that act, it could just lead to confusion.

THE COURT: I certainly want to follow the instructions of the state supreme court, and I think that's important for me to do, and I want to do that. It's just difficult in that, you know, Brett Bowman is an accomplice as to some of the charges involved in this case, but not all.

And do you have any guidance on that, Mr. Van Ry?

MR. VAN RY: I simply would state that his accomplice status is enough to taint the entire testimony that he gave, because that is what, you've seen the evidence in this case, that's what ties even the occasions that Mr. Volpicelli was separate and distinct from Mr. Bowman, when he may have gone into a store, for instance. The only way to prove that that's essentially an intent to go in to do something improper is based upon Mr. Bowman's testimony.

And that's the reason for this type of an instruction, Your Honor, is because courts recognized that an accomplice's testimony is inherently unreliable and certainly extremely prejudicial.

In fact, the sentence before that sentence I just read, Your Honor, again in Rowland v. State on Page 120, 39 P 3rd, 120, the Supreme Court says, "We explain in Austin, "which is another case talking about this very issue, "that NRS 175.291 was a legislative declaration that one who has participated," and it's important to know, and here this is my interjection that although it's not completely participated in every element of every crime that's charged, "criminally in a given criminal venture shall be deemed to have such character and such motives as the testimony alone shall not rise to the dignity of proof beyond a reasonable doubt."

So I would say that while it is a good argument that he did not participate in all of the alleged criminal activity in this matter, I would say that it's such tainted that this court needs to give that instruction, even though it's not as to all.

THE COURT: Well, what if I did this, "The Court finds as a matter of law that Brett Bowman is an accomplice as to some of the charges against the defendant."

MS. RIGGS: Your Honor, the State believes that's only to Count I, as that is the only conspiracy count alleged in the Indictment. Any other accomplice-type characterization is not fair for the rest of the complaint. Only Count I, which does include by the way, Your Honor, king of incorporates Counts II through X, as far as he, Brett Bowman, being the conspirator to -- co-conspiracy to Mr. Volpicelli.

So I believe the problem is solved by including that only as to Count I only.

Also, Your Honor, regarding Mr. Van Ry's comment that co-conspirator testimony is inherently unreliable. If that where the case, it wouldn't be admissible. It simply needs to be corroborated by evidence which clearly it has been in the case, Your Honor.

Thank you.

THE COURT: Could you live with that instruction as an accomplice as to Count I?

MR. VAN RY: No, I could not, Your Honor. Thank you for the opportunity.

As I read the Indictment I find Mr. Bowman's name mentioned in Count I, Count III, Count IV, Count VI, Count VII, Count IX.

So I find him named in one, two, three, four,

five, six of the ten counts, Your Honor. So I would submit that some of the charges would be extremely favorable to the State. I should be able to say that he's an accomplice in the majority of the charges, Your Honor.

MS. RIGGS: Your Honor, may I be heard?

THE COURT: Yes.

MS. RIGGS: Regarding the counts that Mr. Van Ry just read off, this defendant is alleged to be aiding and abetting Brett Bowman, it's not -- Brett Bowman is not the co-conspirator as named in those charges, which is a completely standard of law, Your Honor.

So the State would still object to the conspiracy or to the defense's proposed instruction or amendment to the instruction. We would ask that you only amend if you're going to amend Count I or that instruction as to Count I only.

Thank you.

THE COURT: Well, what about this? "Accomplice as to one or more charges against the defendant"?

MR. VAN RY: That would be acceptable, Your Honor.

THE COURT: I'm inclined to do that. I want to follow Rowland versus State, clearly based on the

testimony Brett Bowman was an accomplice.

MS. RIGGS: Your Honor, may I have the Court's indulgence for one moment before --

THE COURT: I'm going to do that.

Okay. Well, really I only need to add it to 18, because that covers what the Court finds. We really don't need to add it to 19.

MR. VAN RY: That would be fine, Your Honor.

THE COURT: Then do you have any other objection?

MR. VAN RY: Yes, thank you. As to Instruction No. 24. And this is the instruction pertaining to uttering a forged instrument. I do not believe that UPC labels would constitute an instrument within the definitions of crimes against property under NRS 205.085.

While Mr. Volpicelli may not actually have been charged under that particular statute, 205.085 is specifically a definitial statute, Your Honor, and it gives definitions in Subsection (1) as to what an instrument may be.

THE COURT: And does the State have any position on this?

MS. RIGGS: Yes, Your Honor. The actual definition for forgery is 205.090. And that statute, Your Honor, is written very broadly and includes just

about anything that can be forged or misrepresented. And it says, "It's not specifically included, or exclusive to written instruments, such as checks." So if you read that, Your Honor, the UPC codes definitely fit into the definition of forgery or forged instruments. I believe this defendant and -- I will need the Court's indulgence for this, Your Honor, because I want to be accurate.

Your Honor, I'll just withdraw my final comment. However, the State believes that under 205.090 the statute's very broad and incorporates UPC codes.

Thank you.

MR. VAN RY: Your Honor, if I may be heard, briefly.

THE COURT: All right.

MR. VAN RY: I believe the State's counsel is correct as to forgery, but in this instruction we have a forged, as part A, second part, part B, instrument. And I don't believe UPC labels constitute an instrument under the definitional provision of that statute, 205.085.

It's pretty clear to me that there has to be some sort of written or partly printed or whole printed with a written signature thereto.

And reading from NRS 205.085 "Or a signature or writing purporting to be a signature," to be included as an instrument, Your Honor.

So I would agree as to the characterization of forgery, and I'm not objecting to that instruction I'm simply objecting to this instruction because of the instrument implications, Your Honor.

Thank you.

MS. RIGGS: And if I may be heard one more time, Your Honor. I have the definition of uttering a forged instrument under 205.110.

THE COURT: Well, I believe that forgery is adequately defined in Instruction No. 23. I don't believe that there is an objection to that definition of forgery, and from that the jury may then proceed to determine whether or not the documents allegedly altered in this case amount to a forgery.

So, I am going to present to the jury, Instructions No. 23 and 24 as provided by the State.

And does the defense have other objections to the instructions?

MR. VAN RY: No, Your Honor. The defense would pass or approve the remainder of the instructions.

THE COURT: Are there other instructions which you seek to have given?

MR. VAN RY: None, Your Honor. Thank you.

THE COURT: All right. Then going back to 18, just so we know, this is the additional sentence in

number 18. "The Court finds as a matter of law that Brett Bowman is an accomplice as to one or more charges against the defendant."

MS. RIGGS: Your Honor, the State does have one further matter to address.

THE COURT: What's that?

MS. RIGGS: Your Honor, it's my understanding that the defense at least needs to consider offering the instruction which the State cannot offer because it would be error, but it is a Constitutional Right of a defendant in a criminal trial that he may or may not be compelled to testify.

MR. VAN RY: Oh, thank you. I brought that with me, Your Honor, and I did not anticipate having to use it. I thank you.

THE COURT: Well, a lot of times defense counsel don't ask for that, that once more offers up the issue to the jury, so they don't actually favor it.

MR. VAN RY: I would like to have that entered, Your Honor. I accept responsibility for that, Your Honor. It was a surprise, Your Honor, thank you.

THE COURT: Well, this should go up near the witness instructions, near the beginning.

Why doesn't this then become 10A, "To the jury only belongs the duty of weighing the evidence and

determining the credibility of the witnesses." It could go there.

MR. VAN RY: That would be fine, Your Honor. Fine for the defense.

MS. RIGGS: The State has no objection, Your Honor.

THE COURT: All right. We will make that 10A.

And that concludes our issues as to the instructions, but then we have all these verdict forms. So we have a verdict form, "guilty," "not guilty," for all of the counts.

I take it the State has no objection to those verdict forms?

MS. RIGGS: State has no objection to the verdict forms, Your Honor.

THE COURT: Does the defense object to any of those verdict forms?

MR. VAN RY: Defense has no objection to the verdict forms.

THE COURT: Then we can proceed on with the jury. It's going to take a long time to read all these instructions. I'm just deciding how we're going to do this now that it's 5 after 11:00.

MR. VAN RY: I have no preference, except I'd like to move this along. I think if we need to read

instructions and counsel needs to finish her's, I'd be more than happy to come back after lunch and finish mine or if counsel needs to do it after lunch and start with her closing.

MS. RIGGS: I would prefer that whichever way we do it, we do our closing arguments at the same time rather than having them split up.

I have no preference either whether we do our closings after lunch or before, but the jury has been sitting around for a while.

THE COURT: Cooped up for an hour here.

MS. RIGGS: So they may want to push things along. And maybe, Your Honor, we could give the jury a choice of whether they want to go to lunch or sit through closing arguments.

THE COURT: Well, you're closing, do you have any idea how long it might be?

MS. RIGGS: Well, Your Honor, I estimate between 20 and 30 minutes.

THE COURT: Well, it could be that I could read this, have you give your first closing argument, and then we break for lunch. That would not be your preference, I understand, but that would work at least in terms of the timing then. Probably be a little bit after 12:00 to begin the lunch recess.

MS. RIGGS: State will submit, Your Honor.

THE COURT: But it seems to me that since you have another opportunity to address the jurors after Mr. Van Ry, that there isn't any magic to having a recess after your argument and before his. You'll still address them last.

MS. RIGGS: Then I'll submit, Your Honor.

Thank you.

THE COURT: All right. We will just go head, and then during the lunch recess I'll get No. 18 reprinted, so I can read it according to the way it's been agreed upon.

MS. RIGGS: Thank you, Your Honor.

MR. VAN RY: Thank you, Your Honor.

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(The following proceedings were had in the presence of the jury.)

THE COURT: You may be seated.

Ladies and gentlemen of the jury, I am now going to read the instructions as to the law, and this is going to take some time since the second instruction is fairly long. Please bear in mind that you will receive copies of these jury instructions when you deliberate. And you can read them at your leisure and in detail at that time, each though at the reading here it's going to

be somewhat difficult to follow everything.

(Jury Instructions Read.)

THE COURT: And that concludes our instructions as to law. And I did discuss with counsel before you came out how we would proceed based on the time, et cetera, and it was the thought that perhaps we would go ahead and have Ms. Riggs present her closing argument and then we would bread for a one hour lunch and have Mr. Van Ry present closing argument on behalf of Mr. Volpicelli, and then Ms. Riggs has one more opportunity to address you and then that way we get a little more done before the lunch break, but obviously, Ms. Riggs is going to take longer than 15 minutes, but I think we can have a one-hour lunch break, we can work with that.

So Ms. Riggs would you like to present the closing argument on behalf of the State?

MS. RIGGS: Yes, Your Honor, thank you.

Ladies and gentlemen, good morning I know that it's been a long couple of days for you, and first I want to thank you. So thank you for the time that you've put into this case so far.

I know even though the facts of this case are pretty interesting I know that at times the testimony has been somewhat mundane, the entry of many, many receipts

and publishing those to the jury, et cetera, I know that it hasn't been the most exciting experience, probably, that you've ever been through. But as I said on Wednesday, this is an important case, and the State does appreciate your attention.

The State has shown you that the defendant, Ferrill Joseph Volpicelli, perpetrated a scheme to obtain or to defraud retail outlets throughout Washoe County by entering those stores and recording UPC code information, using that information to manufacture fraudulent UPC bar codes, applying those bar codes to high end merchandise in each of those stores, either himself or through his conspiracy with Brett Bowman and obtaining those high end items at costs deeply discounted for the asking retail price.

You've heard the testimony of the State's witnesses and have seen all of the documentary evidence and, of course, you are going to get to see that all again once you go into the jury room.

Now is the time to tie it all together, beginning with the counts you heard most about, so I will be taking these counts out of order as we go.

Let's begin with count seven, and ladies and gentlemen in all of the burglary counts, I do want you to keep in mind State's Exhibit 11. There's a lot of

information in this sheet, and I want you to remember or to consider how all of this information got there.

Count VII, of course, is burglary occurring between August 30 and October 13, 2001, at Wal-Mart. You heard the testimony of Brett Bowman that on October 13, 2001, the defendant twice manufactured and provided him with a fraudulent UPC bar code. It was that of an Emerson CD player, as Mr. Bowman did recall.

Twice on October 13th, Mr. Bowman entered two different Wal-Mart stores, and in each case placed that Emerson CD bar code on a Panasonic DVD home theatre system. The purchase price for the Emerson CD player was 69.94. And that's what Bowman paid for those home theater systems.

Now, his testimony was corroborated by Detective Reed Thomas who found a Panasonic DVD home theatre system among the many electronic items at the defendant's storage facility at Aussie Self-Storage in Sparks. And you know that the defendant did have access to that unit by the testimony of Karinah Prevost, who came and said, "Yes, his name was on the sheet." On the list of occupancy information sheet, a list of people who are allowed access to that particular facility.

And you recall that Detective Thomas testified that that DVD home theatre system had a UPC symbol or UPC

bar code on it that appeared to him to be fraudulent. Now the fraudulence of that bar code was confirmed by Greg Danielson, who checked it and found that it returned to the said Emerson CD player in the Wal-Mart computer system. And he also confirmed that the actual retail price of that theatre system at that time was $477.88.

So Brett Bowman paid approximately $70 for an item that sells at Wal-Mart for $477.88. $400 profit.

You recall that Detective Thomas also matched the fraudulent UPC code number that was on the box to an entry in the document that Bowman called the master sheet or the transposition sheet. And You remember, I asked Detective Thomas, "Well, what does transposition means to you?" Transposition means switching out. So the name of this document in itself shows you the defendant's intent of what he was going to do with this information, switching out pricing labels.

Regarding the DVD home theatre systems, Detective Thomas also found two receipts in the plastic accordion file that was located on the floor of the defendant's MPV van. And you recall that Bowman testified that the defendant kept that item in the Mazda MPV. And Detective Scott Armitage found it there upon the defendant's arrest.

Those receipts that Detective Thomas found in

his investigation indicate that the purchase had been made using that same fraudulent Emerson CD bar code on October 13, 2001, that's printed on that receipt. And you will see it when you go back into the grand jury room or pardon me, the jury room.

Now, I am going to be asking to you look at Exhibits 11, 13, 14, an 32. Those are the exhibits that tie this particular part of Count VII together. You recall the Detective Armitage also found a Brother label maker in the bag, which contained some UPC bar codes.

And you'll also recall that that bag had the defendant's identification on it. VIM, Inc. Volpicelli Investment Management, is who VIM, Inc. is, as you heard Detective Thomas testify.

And with that I'll ask you to reference State's Exhibits 9, 29, and 30.

Now, within the same count, you heard Mr. Bowman testify that he used the fraudulent UPC codes provided by the defendant, manufactured by the defendant, to purchase at Wal-Mart several more items.

Regarding the KDS flat panel computer monitors, you recall that Brett Bowman remembered that he had used the UPC codes from cheaper 17-inch monitors. This testimony was corroborated by Detective Thomas who testified that he found two KDS monitors in the

defendant's storage unit. He also found receipts in the defendant's accordion file, which were in the vehicle. And those receipts indicated that four purchases were made for product with that 17-inch monitor UPC code.

In addition that UPC code also returned to the transposition sheet.

I'll ask you to reference State's Exhibits 11, 15 and 16 regarding the KDS monitors.

Also in Count VII is the Emerson DVD/TV combo. You will recall that Detective Thomas described those as the TVs with the built-in DVD players. And that Brett Bowman testified that the Sanyo 19-inch TV bar codes is what he attached to those. That was corroborated by Detective Thomas, who discovered three of those DVD combos in the defendant's storage unit, four receipts indicating purchases of such an item -- or pardon me, they reflected purchases of something with Sanyo 19-inch TV bar code attached, and again corresponding transposition entry.

Now, regarding the storage unit, ladies and gentlemen, remember Brett Bowman had no access to the storage unit. He was not allowed to go there by the defendant. Whenever the defendant went there he dropped Bowman off, even if he was going to come back and get him, for instance when he dropped him off at Sierra Sids

and then came back and got him. Brett Bowman didn't even know where it was. He said, "Somewhere in Sparks."

There's no evidence in this case that shows that Brett Bowman has ever been there. So, the evidence in this case shows that only the defendant had access, of the parties in this case, to that storage unit.

Regarding the Emerson DVD/TV combo, I'll ask you to reference State's Exhibits 11, 17 and 18.

Also, the last item in Count VII, remember that the detective found a Singer surger sewing machine. And of course, Brett Bowman had -- pardon me, Your Honor, I'm going to withdraw that.

Detective Thomas did find a Singer sewing machine in the defendant's storage unit and three of those receipts for the sewing machines in the accordion folder, also corresponding UPC entries. And I will ask you to refer to State's Exhibits 11, 19 and 20.

Count VIII is the burglary at Wal-Mart, October 17, 2001. This was the Mongoose bicycle. If you recall there's a lot of testimony regarding that item. You heard Brett Bowman testify the defendant manufactured a fraudulent bar code and placed it on the Mongoose bicycle, and you recall it was placed on the neck of the seat.

Bowman then purchased this bike for around $80

at Wal-Mart. And this is a case where there was actually detectives who saw the whole thing happen, R.P.D. saw this entire transaction. You heard Detective Scott Armitage testify that he watched the defendant, Mr. Volpicelli, walk up to the bicycle section and show particular interest in a particular bicycle. Then the defendant, displaying highly unusual behavior, if you recall drove his cart down an aisle, then went over to the electronic section, stuck a telephone in his shopping cart, came back to the check stand, parked the cart between check stands, and went into the restroom and then left the store. Didn't come back for his item, didn't by anything, left.

Immediately thereafter, Detective Dave Della watched Mr. Bowman go in. Mr. Bowman goes straight to the bike, gets assistance in taking the bike down, pulls the bar code off for ease for the cashier, and you recall he testified that he was looking for somebody basically who didn't look like they knew what they were doing, pulled the bar code off, showed it to the cashier, who scanned it, rolled the bike out the door after paying $80.39.

And you recall that Detective Della pulled the price tag down from the spot where that bike was. That bike when for $249.66. And of course the bicycle was

found in the defendant's van at the time of his arrest.

I'll refer you to State's Exhibits 3, 4, and 5 on those, please.

Count VI was the burglary at Lowe's Home Improvement Store on October 5th, 2001. This is the count with the video tape. You got to see this transaction yourself. And if you'd like to get a chance, because the tape will be in the evidence and available for you to view again, if you need to.

You heard Brett Bowman testify that he obtained two rugs in late September, early October, from Lowe's using the fraudulent bar codes again, manufactured and obtained from the defendant. And you remember Bowman recalled paying approximately $80 for each of those rugs.

Now his testimony was corroborated by Reed Thomas, who found the actual rolled up rug in the storage unit when he opened the storage unit on the night of the defendant's arrest. Thomas noted that the rug was still in its paper, in its white covering, and the photograph indicates that. The photograph that's been entered in this case. As you recall Brett Bowman also testified that cover was still on. And you remember that Thomas found a false UPC code on the end of that rug.

The UPC bar code was confirmed fraudulent by John David Ellis, the Lowe's loss prevention manager, and

he fount the item that that false UPC code returned to was a $74 rug. A cheaper rug that Lowe's sells. However, you recall that he said there is another label inside that he scanned, that's basically a copy of the actual one on the outside, he scanned that and found this to actually be a $499 rug.

So in this case the defendant made a profit of approximately $425.

Now you recall also that Thomas found a handwritten note in handwriting on the defendant's transposition sheet indicating a bar code number for the less expensive rug. So obviously the defendant had been in Lowe's recently, did not have enough time to update his computer transposition sheet and wrote down the number and used it.

You recall that Detective Thomas also located a receipt dated October 15, 2001, which indicated that the purchase was made at 7:45 p.m., and which also of course indicates that the cheaper rug had been purchased at Lowe's. Now he took that receipt and gave it to John David Ellis, who pulled the tape, the video tape which you had a chance to watch. And that, ladies and gentlemen, is very compelling evidence.

It shows the defendant walking in with Brett Bowman, almost, only a few seconds apart into Lowe's and

shows you that Brett Bowman bought that rug, and you remember the checker sort of had it arranged so the UPC code was facing the checker. She was busy, took the scan gun, scanned, sale was over.

And for that count I ask you to look at State's Exhibits 7, 8, 11, 22, 34, and 35.

Now Count VIII is burglaries at Shopko. You recall that Detective Thomas found the Sonicare toothbrush in the storage unit with the bar code, again, that appeared to be false.

And I would ask you when you get back into the jury room, ladies and gentlemen, to take a good look at that. Also to take a look at the UPC bar codes that you find in the outside of the accordion folder, State's Exhibit 12, and see how those compare to actual bar codes.

Now, thank you know what you know, you probably agree that it should have been obvious to a cashier that something was different if you look at UPC bar codes on the actual product, but again, they're very business and these do look very official.

Now Detective Thomas was able to match that bar code to the defendant's transposition sheet, and he found that it corresponded to a Shopko item, which was another kind of an electric toothbrush. Thomas found the receipt

comforters, in fact, sold at Shopko for $49. You recall that he went back, looked for the Willow Bay comforters found one that looked exactly like the one that he had obtained and found out it was $49. And you also remember that one of the comforters inside the van had a fraudulent UPC code on it.

You will recall also that Armitage went through the receipts while he was doing the inventory search and found a receipt for earlier that day for 24.99 for a comforter bought at Shopko. And he later determined that that was for a Colorvision brand comforter, which does not have plastic handles built into it's packaging. So it is clear that the comforter that the Detective Armitage watched the defendant buy was clearly not a Colorvision brand comforter, which was indicated on the receipt that he had for that item.

And please reference State's Exhibits 27 and 28 on that. Also we did have a late admission of Exhibits 44, 45, 46, which are the price check receipts, if you want to take a look at those.

This is Count IV, the Bed, Bath and Beyond count. This is the count that Brett Bowman testified he obtained two coffee makers from Bed, Bath and Beyond. And you recall that he said he paid $30 each for those. They're espresso makers.

in the defendant's accordion folder indicating that an item was purchased from Shopko using that bar code on August 30, 2001 for $39.99. When he brought the item to Bill Mowery at Shopko and Bill Mowery was here testifying. He told you that that item originally went for $119.99. And said that that item would never sell at Shopko for $39. In fact, Shopko would sent it back to the manufacturer before they would sell it for that low of a price.

Regarding that portion of the count, I would refer you to State's Exhibits 11, 33, and 36.

Now the second part of the Shopko count, was the down comforter that the defendant obtained at Shopko. You heard Scott Armitage testify to watching the defendant actually purchase a comforter that was wrapped in a plastic bag with a handle built into it on October 17, 2001, the morning of his arrest.

Armitage determined that the defendant paid 24.99 for that comforter. And he did that by going up after the defendant made the purchase, you recall he asked the manager to reprint the transaction receipt. And you'll get a chance to see that.

Later that day when the defendant was arrested two Willow Bay comforters were located inside of his vehicle. Further follow-up by Armitage showed that the

Now the way this was corroborated by Detective Thomas was that a Krups espresso machine was found in the defendant's storage unit. You recall that Brett Bowman said, well, he was allowed to keep one of those. Thomas also found a receipt in the defendant's accordion folder, that was in his vehicle, again, for two ProCafe coffee makers purchased from Bed, Bath and Beyond for $29 each, which is basically what Brett Bowman recalled paying.

And I would ask you to please looks at State's Exhibits 25 and 26 on that count.

Also the Home Depot toilet, now this is a count, ladies and gentlemen, that sort of indicates the defendant's arrogance regarding this scheme. This is the case where the defendant obtained through Brett Bowman a toilet, a high end toilet for $350 to $400 toilet for a sticker which returned to Home Depot's data base as a one horsepower garbage disposal.

You heard Brett Bowman testify that he obtained that toilet after the defendant gave him the UPC bar code that he already knew was to a garbage disposal. He saw that it was priced between 350 and $400, and he paid between $144 and a $74.

Now that count was corroborated by Detective Thomas who testified, No. 1, that was a toilet found in the storage unit and a receipt for this purchase

indicating that a one horsepower garbage disposal was purchased at Home Depot for $194. And you'll find that information in Exhibits 23 and 24.

Now this is the conspiracy count, ladies and gentlemen, and I did want to read back one of the conspiracy instructions that Judge Elliott just read to you. This will be Instruction No. 17. You will have a pack of these jury instructions when you go back.

"Each member of a criminal conspiracy is label for each act and bound by each declaration of every other member of the conspiracy if the act or declaration is in furtherance of the object of the conspiracy. The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy, is the act of all conspirators."

And the instruction does go on. But the point is when a person is involved in a conspiracy, and that that agreement has been made to act in furtherance of the conspiracy, when the other person goes and acts, the person not acting is as guilty is the person who is doing the act.

Now you recall Brett Bowman testified that he was working in conjunction with the defendant to commit larceny, theft, and other crimes by carrying out this defendant's scheme. And you recall this defendant

approached Brett Bowman with this scheme to place fraudulent bar codes, and the defendant or that the defendant had manufactured, again, Brett Bowman witnessed this defendant making these bar codes on the Brother label maker. And he testified that he never did that, only the defendant did that.

And what Brett Bowman received in exchange was $200 a night, that was it. And sometimes he didn't even get paid, he had to wait until the next day. And times he didn't know about that when he started out in the evening.

Now Bowman testified to entering several retail outlets to accomplish this defendant's scheme. You recall that in addition, to the Wal-Mart, Shopko, Lowe's Home Depot, and Bed, Bath and Beyond, Detective Thomas found receipts from several stores for items with UPC codes that matched entries in the transposition log. Those are items that weren't found in the storage unit, but we know that this defendant intended to procure from his entries in the transposition log.

These stores included K-Mart, CompUSA, Best Buy, Office Depot, Pets Mart and Target, in addition to the stores we've already talked about. And I've indicated for your reference State's Exhibits 11, 37, 38, 39, 40 through 43.

Before we go on to another burglary count, ladies and gentlemen, I do want to read two of the burglary instructions, because the burglary counts we're going to talk about now are burglaries which we don't have items to match. The investigation never produced the actual items that the defendant procured during these acts.

However, I'll remind you under Instruction No. 28, "The essence of a burglary is entering such a place with such specific intent and the crime of burglary -- pardon me. I'm sorry. I'll go back to Instruction No. 17.

"Each member of a criminal conspiracy is label for each act and bound -- I apologize wrong one.

Okay. This is the real one. "NRS 205.060 in so far as applicable to this case. Every person who enters any building with the intent to commit grand or petty larceny or any felony is guilty of a burglary. When you enter with the intent to commit one of those crimes, you're guilty of burglary."

And the essence of a burglary is entering such a place with such specific intent and the crime of burglary is complete as soon as the entry is made. When the defendant walked over the threshold or through the sliding doors of Wal-Mart stores with his intent to

collect pricing information, he is guilty of burglary.

If he's going to be collecting that pricing information in order to defraud Wal-Mart, which you've seen that that's what he did in this case. And that holds regardless of whether the intent thereafter is actually carried out.

Those are Instructions No. 27 and 28, ladies and gentlemen.

Now you recall, regarding Count II, Brett Bowman testified to working -- pardon me. Scott Armitage observed the defendant walk into Wal-Store at Northtowne. You recall that Scott Armitage followed the defendant to the sporting goods section, where he appeared to be paying close attention, you heard him say to some shelves and writing furiously. Only for a minute. But collecting pricing information and item information on a card. He then left the store without buying anything.

Now, ladies and gentlemen, that is the State's proof on that count, but this defendant you can see from his course of conduct actually had done into that Wal-Mart with the intent to collect information. And you can see by this transposition sheet that there are plenty of Wal-Mart entries on here. In fact, the whole bottom half of Page 2 are Wal-Mart entries. So he had the intent to use that pricing information to defraud

Wal-Mart, to commit petty and grand larceny in this case.

Count III, similar count, Larry Lodge observes the defendant enter Home Depot. He specifically sees -- now you recall how close Larry Lodge got. He loses track of the defendant coming around a corner and there he is. He's so close, he feels that he needs to walk past him because it will be to obvious, he might below his cover if he stopped and turned around and walked away. But he, when he goes back past him, specifically sees the defendants writing down numbers, series of numbers, you remember him saying from the pricing information on the shelves at Home Depot. He then watched the defendant, again, walk away without buying anything.

Defendant's crime was complete when he walked over the threshold an through the sliding glass doors of the Home Depot that day. And you'll see on the transposition sheet several Home Depot items listed.

Count V, you recall Mike Brown testifying that he watched the defendant walk into the stereo -- straight into the stereo section of Wal-Mart and start writing information down, and again leave the store without buying anything. You recall that Detective Brown said he was looking at the car stereos. Well, ladies and gentlemen, when Detective Thomas testified you saw that he matched a Wal-Mart auto stereo on the transposition

and his bag with him, which you recall Detective Armitage to have testified right next to the defendant where he could reach it at all times.

You also recall that Detective Thomas was able to research those labels on the outside of the accordion folder and those indeed matched transpositions entries here. So the State believes he was getting ready to use those. They're in the convenient outside pocket of the accordion file ready to go.

Now, ladies and gentlemen, at the beginning of this case I told you that the State would product overwhelming evidence of the defendant's guilt. And now you've seen it. There is no reasonable doubt in this case that this defendant entered various stores as charged in the Indictment, and that while in those stores he recorded UPC bar code information. Here it is.

The reason he obtained this bar code information was so he could use it to product UPC code labels that he would later put on more expensive merchandise. And you can see the outrageous profits that this defendant was gathering from this activity.

You heard Brett Bowman testify that they would hit up to ten stores per night, ladies and gentlemen. Now think about it. If he made about $400 on the Lowe's rug, times ten, if there were similar profit margins

involved, let's say he made a thousand dollars a night, give Brett Bowman a quick 200 bucks, and that's $800, ladies and gentlemen.

Now that's speculation on my part, but you can see how that can add up, especially when you consider that the detectives in this case followed this defendant and he seemed to be doing nothing but hitting stores all day long. And that you recall was without Brett Bowman, who only did this, participated in this about one night per week because he had a job. The defendant didn't have a job.

So, ladies and gentlemen, every single time that this defendant entered a store to collect bar code information he was committing the crime of burglary.

Now I'm going to ask you, ladies and gentlemen, to return a verdict of guilty on all eight counts of burglary, the count of conspiracy, Count I, and Count X, possession or making of fraudulent inventory pricing labels, also known as UPC codes.

Thank you for your attention in this case.

THE COURT: Let's take a one hour lunch break at this time and come back at 25 after 1:00.

I will admonish the jurors that you're not to discuss this case among yourselves or with anyone else or do not read, watch or listen to any media account of this

proceeding, and do not form or express any opinion on any subject connected with this trial until this matter is submitted to you for your deliberation.

So we will be in recess until 1:25.

(Lunch recess taken.)

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RENO, NEVADA; FRIDAY, NOVEMBER 14, 2003; 1:30 P.M.

AFTERNOON SESSION

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THE COURT: Mr. Van Ry, you may proceed to present the closing argument on behalf of Mr. Volpicelli.

MR. VAN RY: Thank you, Your Honor.

Thank you again for being here. At the beginning of this I told you that this case boiled down to a dispute about reasonable doubt. But according to evidence that's been presented, I submit that there is ample reasonable doubt in this matter as to all of the counts. And I'll talk about that in a moment.

Thank you for your service. We recognize, the DA, the State, the Court and my client recognize the sacrifice for you to here, away from your family, your work, your friends. And it is an important duty that you serve. Thank you.

Hopefully you're jury duty has been a positive one for you and will continue to be so. It is important, you stand between the State and my client and the dispute between them. And you will resolve that dispute, not by client, not the State, but you.

Let's talk about the common thread throughout all of the counts in this case. I'm not going to go

through each count. I don't think that's necessary. Your senses have been dulled by all the counts in this case. But there are ten counts. The common thread in each one of those counts is Mr. Bowman. And you'll remember that in the State's closing argument in eight out of ten, in eight out of ten of the counts, the State relies in some part on Mr. Bowman's testimony. Eight of ten. That's important. That's very, very important, because it's Mr. Bowman who ties that thread of this case that implicates my client on all the charges. On every single charge.

And we'll talk about some of the other evidence that may point to my client in a few moments. But I submit to you that the only way that those items can be proven, as the evidence had been presented to you, is by Mr. Bowman's testimony. Therefore, let's examine Mr. Bowman's testimony.

Why would Mr. Bowman not present a fully accurate picture of what happened? It's pretty obvious. He testified he was an accomplice, and if you will note, there will be an instruction -- if I may have a moment, Your Honor.

THE COURT: Yes.

MR. VAN RY: It will be instruction No. 18. And instruction No. 18, I won't read the whole thing to

you, but you will be able to read it, but the reference is that a conviction in a criminal case cannot abide solely upon the testimony of an accomplice. It's at the bottom, this Court finds as a matter of law that Brett Bowman is an accomplice as to one or more charges against the defendant.

Okay. As an accomplice, he obtained, he obtained a plea bargain in this case didn't he? He testified to that. What did he get in exchange of his testimony? A significantly reduced charge against him. Multiple charges went to one charge. Multiple possible sentences went to one capped agreed-upon stipulated sentence. That's a significant reason for him to pin this upon my client. Significant reason. Significant reason.

Now, did Mr. Bowman lie? I'm not altogether sure, but I can tell you there's inconsistencies in his testimony. And I asked him on the stand, "Did the detectives ever assist you in obtaining a paycheck from the Sands?" What was his testimony? "No." Detective Thomas, in his testimony yesterday, said, "Yes, I did assist Mr. Bowman in obtaining a paycheck from the Sands."

That's an inconsistent statement, which demonstrates his propensity in this case to try and pin

these charges upon my client. You will also remember there was testimony briefly about his previous felony conviction, Mr. Bowman. And that's important for you to remember. And, if you will note, by the State's own admission, eight out of ten of their counts utilize in some way Mr. Bowman's testimony.

That testimony was clear that the car was driven by my client, especially on October 17, that Mr. Bowman was in the car. They go to Lowe's. My client is seen walking in, then Mr. Bowman. Mr. Bowman himself stated, "Hey, he took me places. He dropped me off at the casino." So that in and of itself doesn't really prove that my client assisted Mr. Bowman to do what he did.

Now, let's talk about the overwhelming amount of documentary evidence, because there has been a lot. And it's been -- you've been able to see it throughout this trial. There are receipts, after receipts, after receipts. There is a label maker, there is a case the label maker came in, there is a transposition sheet. I'll talk about the transposition sheet in just a minute.

But there is a mountain of evidence pointing to somebody. And before I go into that, I wanted to use an analogy. I don't know how many of you here have seen the movie "Where the Red Fern Grows" or read the book. As

typical, the book is better. But in the book the young boy wants to hunt raccoons, and so he gets some coon dogs. And the way that he obtained his first coon to train his dogs with, was with a trap. And I don't want you to fall into the trap that may happen in a case like that when there is so much documentary evidence pointing to my client, because there is no evidence pointing to my client beyond a reasonable doubt.

But in this book, the boys take a log, they bore a hole into it, and they put a shiny object into this hole. And the hole would be just big enough so the raccoons could get their handed into it. And the shiny object would be at the bottom. They would take nails, pound them in around the hole, and they would bend the nails over. Why? So when the raccoon went to grab the shiny object, and they would, they are very inquisitive creatures, they would grab onto that shiny object, they wouldn't let go. They wouldn't let go. They would stay there for hours and hours and hours, until he came by and took care of them and skinned them and give them to train his dogs.

But I don't want you to be like the raccoons in this case. There is a lot of documentary evidence. I don't to hold on to that and not let go, because there is reasonable doubt in this matter. And it arises from

Mr. Bowman.

You heard Officer Thomas say that there was no fingerprint evidence on any of this. No DNA evidence. Now, you also heard Officer Thomas say that it might not be their custom and practice in this case. Well, that's their call. And I'm not impugning the police in any way, that's their call. But in this trial that evidence didn't come forward and it didn't prove that my client had any of these in his possession. And on the flip side, it doesn't prove that Mr. Bowman did it all by himself either.

The investigation of Mr. Bowman ceased. When? When he decided to do a plea. Again, I'm not impugning the police in any way. They made a calculated decision to do what they did in this matter. They decided to rely upon Mr. Bowman, and all the other evidence that they could bring forward. I submit to you that's not enough. That's not enough to see a man walk into a store, write down prices in a notebook and walk out. It's not enough. It's not enough.

You also remember that there was another motivating factor for Mr. Bowman. Anger. He testified that he was angry that he got caught. On October 17, that night when they got caught in the car together, he was angry. Reasonable doubt. He got caught, and he's

trying to pin it upon my client.

Let's talk about many of the observations of the police who followed my client over the course of several or many days, depending on which officer testified. Not one of the police officers ever saw Mr. Volpicelli use that label maker. They never saw Mr. Volpicelli himself actually affix a fraudulent label to any piece of merchandise. That's significant, because they can't prove that he used that label maker, except through Mr. Bowman. Right?

Well, I'm just going to write here, "No visual observation." Now there's testimony that the officer saw him walk into the store. Officer Armitage, he walked into the store and looked at some sporting goods, may have wrote down some information, examined the bike, walked out. That's not enough. Not in the America I live in, that's not enough. That's not beyond a reasonable doubt. A reasonable doubt.

There's an instruction that the judge gave you, and it's going to be Instruction No. 9, and it concerns direct evidence and circumstantial evidence. And the judge tells you what the difference is. I'd like to give you an analogy so you'll understood why the circumstantial evidence in this case is not enough.

You go to bed at night, there's no snow on the

ground. This happens in Reno all the time. You wake up in the morning, there's snow on the ground. So from that fact, you wake up in the morning, there's now snow on the ground, you can infer that circumstantially that it snowed and the snow came from the sky. Right? That's an example of circumstantial evidence. Snow on the ground. It snowed last night. But that works only when there's only one logical cause.

What do I mean by that? The only cause of snow on the ground is snow from the sky. Right? Well, in this case there is more than one real possibility as to what went on. My client may have been giving Mr. Bowman rides and Mr. Bowman was doing this scheme by himself, and he's upset, and he's pinning it on my client. That's a real possibility.

I submit that the circumstantial evidence in this case which is overwhelming, there's receipt, after, receipt, after receipt. That's where it breaks down. Because there's more than one possible logical cause.

Okay. Instruction No. 10, the last sentence of the instruction, "If the jury believes that any witness has willfully sworn falsely they may disregard the whole of the evidence of any such witness."

Instruction No. 10, "If you believe that any witness," if Bowman testified falsely, "you may disregard

the whole of the evidence." That's an important instruction in this case.

Instruction No. 11. Short, "In every crime there must exist a union or joint operation of act and intent." Act and intent. The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

My client walking into a store with or without Mr. Bowman, without Mr. Bowman's testimony, is not enough. It's not beyond a reasonable doubt. The intent of my client to cross the threshold of any building, and granted the burglary statute is very broad, and the judge has instructed you on that, but to prove that my client had the intent to further a scheme that included Mr. Bowman, necessarily requires his testimony, doesn't it?

Now, in the closing the State mentioned a couple of things that I'd like to discuss briefly. The State mentioned that Mr. Bowman testified he didn't have access to that storage shed. But then Officer Thomas testified that they didn't even think Bowman was a suspect until October 17, that night. So there's really no evidence of what Bowman may have done since the middle of June, July, August, September as to that storage unit.

So I state to you that the State cannot exclude

that as a possibility that he may have had access. It's not my burden to prove or Mr. Volpicelli's burden to prove that Bowman had access. It's a possibility, because they did not even think he was a suspect. Of course Mr. Bowman denies it.

Exhibit No. 11, which has been admitted, the transposition sheet found in the car October 17. No testimony as to whose writing that is. What does that mean? Well, it means a couple things. The broadest explanation is it could be anybody's. More reasonable explanation, it's possibly one of the two guys in the car. Who were the two guys in the car? Bowman and Volpicelli. But that doesn't prove that that's Volpicelli's writing on there, does it? That doesn't prove it. And you heard testimony that the officers don't know whose writing that is.

Lastly, I'd like to talk about what evidence there is of what Mr. Volpicelli, my client, really did. And you'll remember he was seen walking in the stores, he was seen checking out prices, he was seen writing down prices. You heard Mr. Danielson state that even competitors come into his store to write down prices. What else? He may have checked prices on a bike. None of that demonstrates the intent to commit burglary or any of those crimes without Mr. Bowman's testimony.

Mr. Bowman's testimony is the thread. And if you thread that with him, you can find him guilty on all ten counts, but if you cannot, you have to find him not guilty, because Mr. Volpicelli was not seen himself committing those crimes.

You heard testimony about the comforter, the comforter. The officer testified that day when he came back for a price check that there was a comforter in the wrong package without a label, without a price. What does that prove? Not much, really. But it demonstrates that there was a problem with the comforters in that store.

One other thing that there's been testimony about is that Mr. Volpicelli had a storage unit and inside that storage unit there was what? Products. Stored products. Again, without the testimony of Bowman, you can't reach the conclusion that that storage of those products was in some way a crime. You just, you can't get to it. You can't get to it without Mr. Bowman.

I want you to know that I think the police did a good job in this case. There is a lot of evidence and a lot of work behind the documents that you've seen. But I don't think they did enough. I think they relied upon Mr. Bowman to their detriment, because I think in my opinion that there's not proof beyond a reasonable doubt

in this case because of that very reason.

Lastly, there will be some verdict forms that the judge will give you. I'm not going to show you each one, because there's ten guilty, ten not guilty, but they look like this.

And as the result of your viewing of the evidence, hearing the arguments, hearing the testimony, reviewing the documents and all the other evidence, physical evidence in this case, I ask you to find Ferrill Volpicelli not guilty of every single count. And I ask you by the foreperson to sign the verdict forms that say, "We the jury in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, not guilty."

Thank you.

THE COURT: Ms. Riggs, you may conclude the arguments.

MS. RIGGS: Thank you, Your Honor.

Ladies and gentlemen, you just heard defense counsel tell you that Brett Bowman is the only common thread among the ten counts that the State has charged against the defendant. Well, as you heard through the testimony that simply is not true. The defendant is the only common thread among all of the counts that the State has charged.

So let's look at that for a second. You recall

that in Count II, Detective Scott Armitage watched the defendant walk into Wal-Mart, not in the presence of Brett Bowman, writing information down, writing pricing information down and immediately leaving the store without buying anything. No Brett Bowman.

Count III. That's the count where Detective Larry Lodge accidently bumped into this defendant in the Home Depot writing what he thought were numbers, pricing information off the shelves and then continuing off throughout the store. Brett Bowman is nowhere.

Count IV. That's the count where Detective Mike Brown saw this defendant go into Wal-Mart looking at car stereos, and low and behold a car stereo entry appears on the transposition sheet under the category of Wal-Mart stores. No Brett Bowman anywhere.

Regarding the comforters and the Sonicare toothbrush at Shopko. No Brett Bowman. Only evidence obtained from this defendant's storage shed and from his vehicle.

And lastly, regarding the labels, the UPC codes, again found in this defendant's possession in his vehicle. Independent of Brett Bowman's testimony. So it's untrue that the State relies completely on Brett Bowman's testimony in this case.

And, ladies and gentlemen, what's wrong with

Brett Bowman's testimony anyway? Judge Elliott told you at the beginning of this case that he thought it was important that you be able to look at the witness and be able to hear the witness, which is why during voir dire about physical defects that you might have, so you can judge the reliability of the witness.

Brett Bowman is a person who has already pled guilty to his crime, and his term of incarceration is almost up. Now you heard him say that he does anticipate being on probation when he gets done, but as of February he's pretty much done. What does he have to gain by coming in at this point and spinning some yarn about the defendant in this case?

Also you heard about his conditions or his living conditions. You heard that when Reed Thomas went to his house, bear bones, coming out of products, pretty much just a small stereo, that didn't grab Detective Thomas' attention, and clothes, and that's about it.

And you also heard him testify that he's been working pretty much as hard as he can since the first time he got out of products, and you heard him say, "I wasn't making it. I needed that $200 a night." And since he's been incarcerated you heard him say that he's incarcerated at the Northern Nevada Restitution Center and is able to work from that facility. You heard him

say that he makes doughnuts at Baldini's.

He's working. Even when he's incarcerated, he's working. And you saw how tired he was on the stand. This is a guy who even though he admits he's made mistakes and he has, he's trying to pull his weight at this point.

Now, defense counsel is arguing about inconsistencies in his testimony, Brett Bowman's testimony, and he points to the fact that Brett Bowman said Detective Thomas didn't get his check at the Sands. Detective Thomas said, "Yes, I did." Well, Brett Bowman is incarcerated and needed his money. Perhaps he didn't remember that he did or that Detective Thomas had gotten that for him. He had just been put in jail. But that inconsistency in his testimony does not spread to this entire case. Especially when you look at the amount of corroboration in this case.

Now you heard Brett Bowman testify repeatedly as to approximate times and prices he paid for various products, and low and behold Detective Thomas found receipts taken or produced during that time of year and the approximate time frame and some with the prices dead on. He provided descriptions of products which turned out to be exactly as found in this defendant's storage shed.

In fact, Brett Bowman didn't provide any evidence to the police at all that would make them think that he was leading them astray. All pure corroboration.

In fact, the counts that I just told you about where the defendant was acting alone is exactly in line with what Brett Bowman said he would do, what the defendant would do, in recording information and leaving the store. And there's your documentary proof of that fact, ladies and gentlemen.

Now you've heard some testimony -- or pardon me, you heard some argument that Brett Bowman was angry. That's his motive for lying in this case.

Well, first of all there's been no indication of lying. Second of all, of course he's angry. When he was trying to get the defendant to pull over, he's got a line of police vehicles following him up Virginia Street, the defendant won't pull over, and says "Oh, by the way, I'm being followed by the police." Wouldn't you be angry? He was angry.

Defense also argues that the police never saw the defendant make any labels. Well, a label maker was found in his vehicle in a bag with his identification on it. There were labels found inside the accordion folder that was inside his vehicle that Brett Bowman didn't have any access to except for when he was with the defendant.

Those labels matched up with the paper that this defendant carried around with him at all times that was in the vehicle. And this defendant was seen, at least in the Wal-Mart bike case, going in and leaving and Brett Bowman going in immediately after and getting the piece of merchandise. That's the circumstantial evidence that we're talking about, that defense counsel was talking about.

And regarding the evidence collected in this case, ladies and gentlemen, I'm not even going to go into DNA and fingerprint evidence. I told you in the beginning of this case it wasn't going to happen. You heard Detective Thomas' reasoning for not providing that in this case, and I trust your common sense on that issue.

Finally, corroboration is the essential in this case. Again, the judge instructed you that as a matter of law we know that Brett Bowman is an accomplice, but all the State has to show you is that some of what he says is corroborated. And the State believes -- or pardon me, the State has shown you that almost everything he says is corroborated. It's corroborated by paper, corroborated by witnesses, and corroborated by circumstances in this case.

Ladies and gentlemen, the State has proven

beyond a reasonable doubt that this defendant is guilty of all counts in this criminal case. Please return a verdict finding him so.

Thank you.

THE COURT: Our next order of business is with Mr. Peterson, because you are the alternate juror on this trial. And I propose that we allow Mr. Peterson to leave the courthouse, as long as he goes to a place where he can be reached by telephone in the event that a juror might be excused before the jury reaches a verdict.

Is there any objection to this?

MS. RIGGS: State has no objection.

MR. VAN RY: Defense has no objection.

THE COURT: Mr. Peterson, can you go somewhere where you can be reached by telephone in case you are needed?

JUROR PETERSON: Yes I can.

THE COURT: On behalf of all of here involved in this trial, we certainly appreciate your attendance.

I will say that while you can think about, you know, your conclusions on the case at this point you should not talk to anybody about the case until you get the word either that you're to come back here and deliberate with the jury or the jury has a verdict.

We certainly appreciate your assistance in this

and the time that you've given to the case.

And have you already given a number to Deputy Medina? All right. If you'd please do that, you may be excused. Thank you.

(Alternate Juror Excused.)

THE COURT: And now, ladies and gentlemen of the jury, you will have, I think, seven copies of the jury instructions. We're hoping that you can share. I would have made 12, but they're so thick I was thinking it may not actually be necessary, try to work with that. But if you each want to have your own copy you can request that of the bailiff and he'll transmit that to our clerk here and make extra copies, but they are so thick, hopefully we can save some paper and you might be able to share.

You will be allowed to take the exhibits into the jury room. Mr. Bartlett has suggested that maybe we will leave at least the small receipts out here on the table so that they're not lost. We don't want to lose any marked exhibit. If you would like to have those in the jury room you may request those to be brought into the jury room.

We would like you to rely on the collective memory of the testimony. You really only have two days of testimony to remember. It is difficult to do a

readback of any witness' testimony, although it could conceivably be done, it is time consuming and difficult. You won't actually have a transcript. The record that's made is actually a record that may later become a transcript for purposes of future proceedings in this case.

At this time, I would like Mr. Bartlett to administer the oath to Deputy Medina to take charge of the jury.

(Deputy Medina Sworn.)

THE COURT: Court will stand in recess subject to the call of the jury.

(Jury deliberating.)

--o0o--

THE COURT: Ladies and gentlemen, there is a centuries old tradition at this stage of the proceeding, whereby we have the roll call of the jury taken. And Mr. Bartlett will call each jurors name, and will you please respond by saying, "Here."

(Roll Call of the Jury.)

THE COURT: Ladies and gentlemen of the jury, have one of you been selected the foreperson of the jury?

JUROR WHITE: Yes, I have, Your Honor.

THE COURT: And, Ms. White has the jury reached

a unanimous verdict?

JUROR WHITE: Yes, we have, Your Honor.

THE COURT: Will you please hand the verdict forms to Deputy Medina who will in turn hand them to me.

All right. I will hand the verdicts to Mr. Bartlett who will in turn read the juror's verdicts.

THE CLERK: In the Second Judicial District Court in the State of Nevada in and for the County of Washoe, State of Nevada, Plaintiff, versus Ferrill Joseph Volpicelli, defendant, Case No. CR03-1263. Department No. 10.

Verdict: We the jury, in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count I, conspiracy to commit crimes against property.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury, in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count II, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury, in the above entitled matter find the defendant, Ferrill Joseph Volpicelli guilty of Count III, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury, in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count IV, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury, in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count V, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count VI, burglary.

Dated this 14th day of November, 2003.

Joy white, Foreperson.

Verdict: We the jury, in the above-entitled matter, find the defendant, Ferrill Joseph Volpicelli, guilty of Count VII, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury, in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count VIII, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury in the above-entitled matter find the defendant, Ferrill Joseph Volpicelli, guilty of Count IX, burglary.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

Verdict: We the jury, in the above-entitled matter, find the defendant, Ferrill Joseph Volpicelli, guilty of Count X, unlawful possession, making, forgery or counterfeiting of inventory pricing labels.

Dated this 14th day of November, 2003.

Joy White, Foreperson.

THE COURT: Before the verdicts are recorded would either attorney request the jurors be polled as to their verdict?

MS. RIGGS: The State would not, Your Honor. Thank you.

MR. VAN RY: I would just ask that the jury be polled as to the collective verdicts, not to go through each one separately, just ask if this was a verdict on all ten counts per juror, Your Honor.

THE COURT: All right. We will have the jurors polled as to all the verdicts collectively. So the question will be, "is this your verdict."

THE CLERK: Russell Christiansen, are these the verdicts to which you agree?
JUROR CHRISTIANSEN: Yes.
THE CLERK: Eric Morgan, are these the verdicts to which you agree?
JUROR MORGAN: Yes.
THE CLERK: Gerald Jackson, are these the verdicts to which you agree?
JUROR JACKSON: Yes.
THE CLERK: Tony Major, are these the verdicts to which you agree?
JUROR MAJOR: Yes.
THE CLERK: Heather Harzke, are these the verdicts to which you agree?
JUROR HARZKE: Yes.
THE CLERK: Joy white, are these the verdicts to which you agree?
JUROR WHITE: Yes.
THE CLERK: Caston Kennard, are these the verdicts to which you agree?
JUROR KENNARD: Yes.
THE CLERK: Richard McNeely, are these the verdicts to which you agree?
JUROR MCNEELY: Yes.
THE CLERK: Dianne Estep, are these the

verdicts to which you agree?

JUROR ESTEP: Yes.

THE CLERK: Christina Dutra, are these the verdicts to which you agree?

JUROR DUTRA: Yes.

THE CLERK: Caroltta King, are these the verdicts to which you agree?

JUROR KING: Yes.

THE CLERK: Florence Albee, are these the verdicts to which you agree?

JUROR ALBEE: Yes.

MR. VAN RY: Thank you, Your Honor.

THE COURT: The verdicts will be recorded.

And, Mr. Volpicelli, the jury having found you guilty, you will be remanded to the custody of the Washoe County Sheriff pending sentencing. And we will now set the matter for sentencing.

THE CLERK: December 23rd at 8:30.

THE COURT: And I would like to thank the jurors for your service in this case. I know it was the thickest bunch of jury instructions I think I've ever had, and the charges were long charges because of the description, but we do very much appreciate your hard work to render this verdict, and I want to thank you for that.

You may wish to meet with either counsel or myself after this proceeding, because we do appreciate any feedback you can give us with regard to our professional service.

With that we render you our thanks, and have a good day.

Court is dismissed.

(Proceedings Concluded)

--o0o--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, EVELYN STUBBS, official reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That as such reporter I was present in Department No. 10 of the above court on Thursday and Friday, November 13, 2003, and November 14, 2003, and I then and there took verbatim stenotype notes of the proceedings had and testimony given therein upon the case of THE STATE OF NEVADA, Plaintiff, vs. FERRILL JOSEPH VOLPICELLI, Defendant, Case No. CR03-1263.

That the foregoing transcript, consisting of pages numbered 1 to 225, inclusive, is a full, true and correct transcript of my said stenotype notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given therein upon the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 22nd day of June, 2004.

Evelyn Stubbs

EVELYN J. STUBBS, CCR #356

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DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, Plaintiff, vs. FERRILL JOSEPH VOLPICELLI, Defendant.	Case No. CR03-1263 Dept. No. 10

TRANSCRIPT OF PROCEEDINGS

TRIAL

Wednesday, November 12, 2003

APPEARANCES:

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Reno, Nevada 89501

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RENO, NEVADA, WEDNESDAY, NOVEMBER 12, 2004, 9:45 A.M.

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THE BAILIFF: All rise. Second Judicial District Court, State of Nevada is now in session, the Honorable Steven P. Elliott presiding.

THE COURT: Good morning, you may be seated.

This is the time set for trial in Case Number CR03-1263, State of Nevada versus Ferrill Joseph Volpicelli. And is the plaintiff prepared for trial?

MS. RIGGS: State's prepared, Your Honor.

THE COURT: And is the defendant prepared for trial?

MR. VAN RY: Yes, sir. Thank you.

THE COURT: I would like to offer, we will be going through a jury selection process and the first part of that process is in fact to have you stand up again and raise your right hand and you'll be taking an oath to tell the truth. So will all the members of our jury panel please stand up and raise your right hand. Mr. Bartlett, our clerk, will administer the oath.

(The prospective jury panel was sworn in.)

THE COURT: You may be seated.

I would like to welcome each of you to Department 10 this morning. We will be going through a, what's called a voir dire. It's French for "to tell the truth," or some ancient derivation of French. And it's a process by which we hope to find at least 23 of you who can be passed for cause to sit and hear this case.

The case this morning happens to be one in which it is a criminal case and it involves charges of burglary. That's the nature of the case.

We value your time and appreciate that and we'll try to get through this process and ultimately seat the jury and begin the trial and let those of you who won't be needed for the case go. But we're not going to push the process such that everybody doesn't get a fair chance to make sure that you are an appropriate juror for this particular case.

We do value your time and we value your service as citizens. It's very important in this process of justice that we have ordinary citizens to be seated and hear these cases because I think you bring a certain sensibility and common sense to this process, which might be lost if we simply relied upon judges who ultimately are bureaucrats , and we like to involve the citizens to ensure that justice is fair for all.

Now, before we proceed further, I do want to introduce the court staff to you. We have Deputy John Medina, the bailiff; we have Greg Bartlett, our court recorder; and we don't always have the same court reporter, but today we have Dawn Gustin as our court reporter; and I'm Judge Steve Elliott.

The other important people, much more important really than us, are the parties. And I'll have the attorneys introduce themselves and their client. And perhaps, Ms. Riggs, you could introduce yourself and who you represent.

MS. RIGGS: Thank you, Your Honor.

My name is Tammy Riggs. I'm a deputy district attorney. I work in the Washoe County District Attorney's office and I represent the State of Nevada in this proceeding.

THE COURT: And Mr. Van Ry, could you introduce yourself and your client to our panel?

MR. VAN RY: Good morning. My name is Brad Van Ry and I am Mr. Volpicelli's defense attorney. This is Ferrill Volpicelli.

THE COURT: And now of interest, I'm sure, to everyone would be the length of trial. And Ms. Riggs, how long do you anticipate the trial lasting?

MS. RIGGS: Your Honor, maximum two-and-a-half days, but we may be able to get it done in two, but for safety's sake I would estimate two-and-a-half days.

THE COURT: And Mr. Van Ry, what are your thoughts on this?

MR. VAN RY: I agree on that, Your Honor.

THE COURT: All right. So most likely the case will be ended on Friday. Since today is Wednesday, it will be two-and-a-half-day trial, end on Friday, hopefully. Since this Court has other matters starting on Monday, we certainly hope that it would end on Friday.

I will ask Mr. Bartlett to call out the names of 23 prospective jurors to have a seat in our chairs here, both in the jury box and several seats in front. The first person will need to go into the jury box into the last row and we'll fill up that last row going from my end of the courtroom to your end of the courtroom, and then each successive row in front. And Mr. Bartlett, would you please call out the names of 23 prospective jurors.

THE CLERK: Deanna Seegmiller.

Russell Christiansen.

Patrick Cunning.

Eric Morgan.

Gerald Jackson.

Diane Buck.

Heather Harzke.

Jeffrey Glavor.

Joy White.

Charles Slycord.

Lance Payne.

Richard Hanson.

Richard Mc Neely.

Dianne Estep.

Sandra Asquith.

David Herico.

Christina Dutra.

Michael Chambers.

Carlotta King.

Florence Albee.

Nicole Zane.

Lillian Rosenthal.

Wallace Peterson.

THE COURT: Now, before I begin asking questions of this group of 23, I want to address those of you who are still seated in the gallery chairs. I would ask that you please pay careful attention to the

questions even though you are not up here directly answering. In the event one of these prospective jurors is excused for cause, we'll be calling one of you up to fill that seat, and the question I would prefer to ask is is there any question to which you would have supplied an answer. And that way if you would have paid attention to the questions, there will probably only be a few things that you might be answering, and that speeds up the process for everybody.

In order to release those of you who won't be needed for the jury, we have to get down to the point where approving 23 people for cause has been accomplished. And it's much better that I ask the one question of you rather than begin the process over to ask all the questions of you.

Now, during the questioning here, first I'll be asking questions, then Ms. Riggs and then Mr. Van Ry, in that order. And I don't anticipate that we'll be asking questions of such a personal nature that there would be any need for privacy, so to speak, in your responses, but if there is a question that you feel would be embarrassing or uncomfortable for you to answer here in front of the group, you may request to come forward to the bench and discuss the issue with both counsel and

myself. So if that need arises, please feel free to do so.

Now, the first questions that I will ask deal with hardship, and there are two types of hardship. First, obviously the hardship of simply being here probably for three days based on what the attorneys have said about the duration of the case. And it is difficult to get off a jury simply because it's difficult for you to be here. An easier way to get off the jury, I would say, is for a quasi medical hardship and that's the hardship that I will begin asking questions about. We need to have jurors who can sit for up to an hour at a time. We usually take breaks at about an hour and you'll be allowed to go into the jury room, there are restrooms in there, you can stretch, et cetera. You need to be able to observe the witnesses as they testify. We believe there is some degree of credibility that can be gained by watching the body language of a person, witness on the stand, as well as the actual spoken word. You need to obviously be able to hear the witnesses and the lawyers asking questions as the case proceeds and you need to speak English well enough to follow these proceedings in the English language.

Is there anyone with what I call a quasi

medical hardship, those issues of vision, hearing, English language and sitting for up to an hour at a time?

Yes, ma'am, Ms. Asquith, you have raised your hand. And what is your hardship?

PROSPECTIVE JUROR ASQUITH: I've had two back surgeries and a hip replacement. It's very difficult for me to sit for any length of time at all. Plus the fact that I'm being treated for depression and anxiety. This doesn't help.

THE COURT: Okay. So sitting for an hour would cause you great pain; is that true?

PROSPECTIVE JUROR ASQUITH: Um-hum.

THE COURT: All right. And Ms. Riggs, do you have any questions of Ms. Asquith concerning her medical hardship?

MS. RIGGS: No, Your Honor. We dismiss her for cause.

THE COURT: Mr. Van Ry?

MR. VAN RY: No, Your Honor. We should thank her for coming. I have no objection.

THE COURT: Ms. Asquith, I will release you for cause based on your stated hardship. Would you please report back to the Jury Commissioner's office and let them know that you have been excused. Thank you.

PROSPECTIVE JUROR ASQUITH: Thank you, sir.

THE COURT: And we'll be filling Ms. Asquith's seat. Mr. Bartlett will call out another name.

THE CLERK: Robert Beard.

THE COURT: And now I will proceed again to go to the questions regarding vision, hearing, English, sitting, and I believe Mr. Herico, you have raised your hand.

PROSPECTIVE JUROR HERICO: Yes, sir, Your Honor. I cannot hardly, you know, hear. I have a problem on hearing and my eyes kind of, I cannot see far enough, sir.

THE COURT: And as to your hearing, is this something that you have a hearing aid or something?

PROSPECTIVE JUROR HERICO: No, sir. I don't have a hearing aid yet, sir, or --

THE COURT: And does this hearing pose a problem for you with regard to being able to hear things so far?

PROSPECTIVE JUROR HERICO: So far, yes, Your Honor. Sometimes a word, I cannot hear, I cannot understand the words.

THE COURT: All right. And Ms. Riggs, do you

have any questions for Mr. Herico?

MS. RIGGS: No, Your Honor. Again, no objection, dismissal for cause.

THE COURT: Mr. Van Ry, any questions?

MR. VAN RY: Yeah, Your Honor.

Are you able to understand the judge as he speaks to you today?

PROSPECTIVE JUROR HERICO: I, some of the words I cannot understand, sir.

MR. VAN RY: Is that because you can't hear it or is it perhaps a language barrier?

PROSPECTIVE JUROR HERICO: And the language barrier, too.

MR. VAN RY: What is the language that you speak other than English?

PROSPECTIVE JUROR HERICO: I speak Tagalog.

MR. VAN RY: From the Philippines?

PROSPECTIVE JUROR HERICO: Yes.

MR. VAN RY: If a witness is sitting in that chair, are you going to have a hard time understanding what the witness says?

PROSPECTIVE JUROR HERICO: Probably, yes.

MR. VAN RY: You think so?

PROSPECTIVE JUROR HERICO: Yes.

MR. VAN RY: Do you think it would be hard for you to render a fair, impartial verdict in this case based upon that inability to hear?

PROSPECTIVE JUROR HERICO: Yes.

MR. VAN RY: No, objection, release, Your Honor.

THE COURT: Mr. Herico, I am going to excuse you for the cause that you have explained, but will you please report back to the Jury Commissioner's office and let them know that you have been excused? Thank you.

PROSPECTIVE JUROR HERICO: Thank you.

THE COURT: Next, sir, will be to fill this seat.

THE CLERK: Joseph Byrne.

THE COURT: Is Mr. Byrne here?

PROSPECTIVE JUROR BYRNE: Yes, sorry.

THE COURT: And now going again to this question of a medical type of hardship. I noticed that Mr. Slycord, you raised your hand. And what is your hardship?

PROSPECTIVE JUROR SLYCORD: Hearing. I have been 40 years in heavy construction and there is women's voices I have a hard time with and men's voices if they are just high enough. I have lost all my high tone, but

other than that I hear you just fine, I hear that gentleman just fine, but there is just some people I cannot hear. My wife says it's selective.

THE COURT: Well, when you said it's women's voices, one would wonder about this.

PROSPECTIVE JUROR SLYCORD: Yes, sir.

THE COURT: And Mr. Slycord, do you feel that based on your experience with your hearing you are likely to find some witnesses difficult to hear?

PROSPECTIVE JUROR SLYCORD: Yes, sir, I am. I find that at work I answer questions I think they ask and they didn't ask them. I give the wrong answer to it.

THE COURT: All right. And Ms. Riggs, do you have any questions for Mr. Slycord?

MS. RIGGS: Briefly, Your Honor.

Mr. Slycord, you did note that in your jury questionnaire that you have difficulty hearing.

PROSPECTIVE JUROR SLYCORD: Yes, I put it on there.

MS. RIGGS: And is this something that comes and goes or something that's consistent? If you sat perhaps closer to the witness do you think you could hear better or is it just not predictable?

PROSPECTIVE JUROR SLYCORD: It doesn't come

and go, it's all day long, all of my life, last eight years, ten years.

MS. RIGGS: State would have no objection to a medical dismissal, Your Honor.

THE COURT: Mr. Van Ry, do you have any questions?

MR. VAN RY: None, Your Honor. Thank you for his service and release him. No objection, Your Honor.

THE COURT: All right. Mr. Slycord, I will release you based upon your statement of medical hardship, but please report back to the Jury Commissioner's office and let them know that you have been excused. Thank you.

PROSPECTIVE JUROR SLYCORD: Thank you, sir.

THE CLERK: Caston Kennard.

THE COURT: Now, is there anyone else with what I would call a quasi medical hardship? And I see Mr. Mc Neely, you have raised your hand.

PROSPECTIVE JUROR MC NEELY: That's correct.

THE COURT: And what is your hardship?

PROSPECTIVE JUROR MC NEELY: On Monday I actually had to have my heart stopped and restarted. I'm still under medical care for the next two weeks. I'm supposed to have complete rest. I had a fluttering valve

in the atrium and they stopped it so that they could get it back to the, consistent with the ventricle.

THE COURT: Well, sitting as a juror is fairly restful for some people, but has your doctor actually told you that you are not to work or do anything, being out in the community, you are simply to stay home and rest?

PROSPECTIVE JUROR MC NEELY: No, he said I can't lift 20 pounds and I should, you know, rest as much as possible, but there wasn't anything like can't go outside or do stuff like that.

THE COURT: Well, do you feel that coming here in court has, walking from the car to the building and sitting as a juror is going to be a problem for you?

PROSPECTIVE JUROR MC NEELY: No, I still manage to run four or five miles a day, so I'm okay that way.

THE COURT: Well, if you can run that far it's further than I'm going to run, I'm sure. Do you think actually you'll be all right, then, for three days?

PROSPECTIVE JUROR MC NEELY: I feel I'll be all right. I just wanted to bring it to your attention.

THE COURT: All right. And Ms. Riggs, do you have any questions for Mr. Mc Neely?

MS. RIGGS: Mr. Mc Neely, you realize that if for some reason you need to get somebody's attention you are free to wave your hand to the bailiff or the judge and let them know that you are uncomfortable or something like that; is that, is that enough comfort for you with your medical condition?

PROSPECTIVE JUROR MC NEELY: Yeah, I think so.

MS. RIGGS: All right. Thank you.

State would ask you not to dismiss for cause, Your Honor.

THE COURT: And Mr. Van Ry, do you have questions for Mr. Mc Neely?

MR. VAN RY: No questions, Your Honor. Thank you.

THE COURT: All right. Well, we appreciate your comments and you will remain on our panel, Mr. Mc Neely.

PROSPECTIVE JUROR MC NEELY: Okay.

THE COURT: Anyone else with a quasi medical hardship?

All right. And then the other type of hardship is simply being here where you are away from your job, family, other commitments in life. And I will

say that sometimes I have to be harsh on this in keeping somebody on, but we need to have a good cross-section of the community. We can't just have people who don't have a job or other commitments in life, that sort of thing. And so we do, in fact, require as part of your duty as a citizen that you serve as a juror even though it will interfere with other aspects of your life.

But with that as a preface, does anybody wish to explain a hardship with regard to service during the next three days?

All right. I'll start in the front. Ms. Zane, you have raised your hand.

PROSPECTIVE JUROR ZANE: Day-care. I am a stay-at-home mom and I watch my niece. For me to come here today my husband had to take off work and my sister had to take off work, and she just got her job yesterday, so it was, they weren't really happy that she had asked for the next day, today off. I don't know who I'd get to watch her daughter and my daughter tomorrow and Friday. I have nobody. All my friends work. I'm usually the one that they bring their kids to me because -- I just don't have anybody who could watch my kids or her kid.

THE COURT: So if you were here tomorrow, your husband -- Well, the others that would, might be

caregivers, you don't feel that any of them could, could remain home for these, I take it, preschool children?

PROSPECTIVE JUROR ZANE: If she, my niece, if my sister, if she were to stay home she would probably lose her job that she just got. Yesterday was her first day and the way that they acted when she asked for today off, they weren't real happy with the fact that she was asking for today off. And I'm the one that watches her child. My husband could probably take off if he had to, but he would lose, we would lose probably quite a bit of money in doing so. He's a real estate agent and he's got homes to show tomorrow. We're kind of -- He's just starting out, so money's tight and it would be really hard for us if he were to lose --

THE COURT: Well, if you were to, in fact, be selected for this particular jury and somebody else had to care for the child or, I don't know, you haven't explained actually how old these children -- How old are they?

PROSPECTIVE JUROR ZANE: My daughter is three and my niece is nine months.

THE COURT: So the nine-month-old can't simply be left.

PROSPECTIVE JUROR ZANE: No, and a

three-year-old can't simply be left. I mean my --

THE COURT: Would you be able to give this case the attention that it deserves if you, in fact, were selected for the jury?

PROSPECTIVE JUROR ZANE: You know, I really don't know how I could be here. I mean, I guess my husband -- I could be here. My husband would have to take off, but, I mean, my sister's just starting out, she's just, she had to have a tough time. She hasn't worked for over two years and this is the first job that she's gotten, and it would be a real shame that something like this would cause her to lose the first job that she's gotten because of no day-care. You know what I'm saying?

THE COURT: All right. And Ms. Riggs, do you have questions for Ms. Zane?

MS. RIGGS: No questions and no objection to dismissal for cause, Your Honor.

THE COURT: Mr. Van Ry?

PROSPECTIVE JUROR ZANE: Mr. Van Ry, I think, knows my sister.

MR. VAN RY: In what capacity?

PROSPECTIVE JUROR ZANE: You were actually her lawyer, I think, on a case that her and her

boyfriend.

MR. VAN RY: A criminal case or civil case?

PROSPECTIVE JUROR ZANE: Criminal.

MR. VAN RY: I have an identical twin brother.

PROSPECTIVE JUROR ZANE: Oh, do you?

MR. VAN RY: I do.

PROSPECTIVE JUROR ZANE: Could have been him, I don't know.

MR. VAN RY: He was actually a DA that works for the State now. Previously worked for the DA's office.

PROSPECTIVE JUROR ZANE: You guys look alike.

PROSPECTIVE JUROR DUTRA: Identical.

MR. VAN RY: I don't have any objections, but I think it's a hardship for other extenuating circumstances and I'm not sure I would agree to release her at this time.

THE COURT: Ms. Zane, I don't like to release people for childcare issues, but it sounds like yours is a particularly bad situation and I am going to release you for that cause.

PROSPECTIVE JUROR ZANE: Thank you.

THE COURT: But would you please report back

to the Jury Commissioner's office and let them know that you had been excused.

PROSPECTIVE JUROR ZANE: I mean, if I had more notice I'm sure, if there's any way in a different trial or something.

THE COURT: You will probably be called again pretty soon.

PROSPECTIVE JUROR ZANE: Thank you.

MR. VAN RY: Thank you.

THE CLERK: Gregory Hopkins.

THE COURT: And Mr. Hopkins, since we've gone now to the second question, I'll ask you, is there any hardship that you would like to explain.

PROSPECTIVE JUROR HOPKINS: No, Your Honor.

THE COURT: Anyone else with a hardship?

First we'll go to Ms. Dutra. You have raised your hand.

PROSPECTIVE JUROR DUTRA: Yes, sir.

THE COURT: And what is your hardship?

PROSPECTIVE JUROR DUTRA: Well, I have a couple. I am a single mother and I go to school full-time and at this moment right now my kids are off track for school and I'm having a hard time -- I mean, I'm not saying I couldn't be here, it would be difficult.

Right now my grandmother, she's 86, she's watching my children right now. I have a six- and a seven-year-old. And she's, she can watch them for a couple hours. I'm a little concerned about her watching them on a, I'm not sure how long the day is as far as the trial. Is it an all day?

THE COURT: We typically go till 5 o'clock, yes.

PROSPECTIVE JUROR DUTRA: Okay. Well, I mean, I'm just concerned about her. I'll be missing school and then I would have to work something out with her, because, of course, I watch my kids when they are not in school. And when I go to school she can watch them for an hour or two in between. I don't have a, I don't really have a big, any other problem being here. I mean, I don't, you know, I wouldn't mind being here. I just have an issue with school, me missing school and then I'll be juggling them around for the next couple days. I mean, it's hard for me. I don't have any, I don't really have any backup. I do my own thing. I have her to help me out when she can and I'm grateful for that.

THE COURT: All right. And Ms. Riggs, do you have any questions for Ms. Dutra?

MS. RIGGS: Ms. Dutra, I'm really kind of unclear on whether you can or can't be here because your childcare, and I know that you did also include the day-care issue in your jury questionnaire. Can you cover it for the next couple of days?

PROSPECTIVE JUROR DUTRA: Well, I probably could. I'm just a little -- you know, I'm a little nervous about leaving my Grandma with the kids all day. You know, they are a handful for me. She's 86 years old. I'm not saying that she's not competent or anything. She's at an age where it's difficult for her. I mean, you know, a couple hours, yes, I can see that, but all day, you know, I get tired when I have them all day, you know. My grandmother, I mean, they get a little -- They're boys. I mean, they get wild at home.

MS. RIGGS: Has she watched them before?

THE WITNESS: Yes, she has, but not that long, you know, not all day. You know, when she watches them for me, because right now I go to school during the day, she watches them for an hour or two here and there and that's enough time for her. So I'm a little concerned, I have concerns with my grandmother, you know.

MS. RIGGS: Now, you realize we'll be taking several breaks during the day and that could be an

opportunity for you to make a phone call to make sure everything is okay at home. Is that enough, would that be enough reassurance for you that everything could be okay?

PROSPECTIVE JUROR DUTRA: Yes, I would have to do that. I would have to do that. It just makes me a little nervous. I always think what if something happens, you know, and I'm not there. You know, it concerns me, that's all. I'm not saying, I'm not trying to get out of it for a certain reason, I'm just concerned for my grandmother's sake. She is getting old and it just worries me, that's all.

MS. RIGGS: Okay, given the fact that you are dismissed, as the judge said that you may be recalled soon and that may be in a longer case.

PROSPECTIVE JUROR DUTRA: Well, you know, this is a, they are on year-round school and they are out of school in November, you know. I mean, I don't, I wouldn't mind if, heck, it was next month, it would be easier for me, you know, what I mean, I would have that time in between. But as far as them not having, you know, since -- They just happen to be home and I just happened to get this card at that time, you know. I know I could be recalled and I don't have a problem with that.

MS. RIGGS: Your Honor, the State actually would object to dismissal for cause at this point as Ms. Dutra sounds like she can at least get the day-care covered for the next couple of days. Thank you.

THE COURT: And Mr. Van Ry, do you have any questions of Ms. Dutra?

MR. VAN RY: No questions. Thank you.

THE COURT: Well, Ms. Dutra, it does sound like, you know, another month would be better for you, but on the other hand you do in fact have some adult, albeit your grandmother and an older woman, to do it, but because you do in fact have an arrangement and these are preschool children --

PROSPECTIVE JUROR DUTRA: Well, no, they are six and seven.

THE COURT: Right, so they are not preschool children.

PROSPECTIVE JUROR DUTRA: They are in first and second grade.

THE COURT: So I'm not going to excuse you for this cause.

PROSPECTIVE JUROR DUTRA: Okay.

THE COURT: And then I believe Mr. Hanson raised his hand.

PROSPECTIVE JUROR HANSON: Yes, sir.

THE COURT: And what is your hardship?

PROSPECTIVE JUROR HANSON: This is a financial burden for me. I am the breadwinner of my family. My wife is diagnosed with lupus a year ago and my medical bills are astronomical even though my insurance tries to take care of it. But I have paid out just in prescription $2700 already at this point this year. So, and my company don't reimburse me for being here, jury duty. I'm losing money. I'm not being paid for being here. So what I'm trying to say, it's a financial burden on me and my wife at this time. I mean, I just, my company don't pay me like probably everybody else gets paid for their day's work, I don't get paid for it.

THE COURT: Well, I'm not going to assume that everybody else would be paid by their employer. It's probably the minority of jurors. But Mr. Hanson, if you were selected for this jury, would you give it the attention that it deserves?

PROSPECTIVE JUROR HANSON: Yes, I would. I mean, that's, the only problem I have is I'm not making money. I'm going to lose three days' wages and that, like I said, it puts a financial burden on myself.

THE COURT: Ms. Riggs, do you have questions of Mr. Hanson?

MS. RIGGS: State has no questions, Your Honor.

THE COURT: Mr. Van Ry?

MR. VAN RY: No questions, Your Honor.

THE COURT: Mr. Hanson, I can extend my sympathy on this and, you know, I wish things were different for you and for us as, you know, picking our jury, but I don't find that you have expressed a reason that would justify dismissal for cause. So I will not do that at this time.

THE COURT: Anyone else with a hardship?

All right. We have Mr. Byrne. You raised your hand.

PROSPECTIVE JUROR BYRNE: I would just like to bring up the fact that I am a full-time student at the University of Nevada-Reno right now and being that it's two months left before the semester is done with and we're into finals and it is a kind of a crucial time for tests and all the other stuff being presented. I guess I would just like to bring that aware.

THE COURT: But the next three, three days, would you be missing any examinations?

PROSPECTIVE JUROR BYRNE: Not to my knowledge. I could quickly look to see.

There are no tests until prior -- end of the week, so ...

THE COURT: Well, you are better equipped than I am. I took my calendar home on Monday and forgot to bring it back today.

And Ms. Riggs, would you like to ask Mr. Byrne some questions?

MS. RIGGS: No questions.

THE COURT: Mr. Van Ry?

MR. VAN RY: Just a couple.

Mr. Byrne, I note that you currently work for Costco; is that correct?

PROSPECTIVE JUROR BYRNE: Yes.

MR. VAN RY: How long have you worked for Costco?

PROSPECTIVE JUROR BYRNE: About two years now.

MR. VAN RY: I formerly represented Costco in a personal injury, several personal injury actions about two years ago. I don't know if you were aware of that or not Mr. Byrne. Were you aware of that?

PROSPECTIVE JUROR BYRNE: Not entirely.

MR. VAN RY: Would that be a no?

PROSPECTIVE JUROR BYRNE: No.

MR. VAN RY: That fact wouldn't impact your ability to be fair and impartial on this jury, would it?

PROSPECTIVE JUROR BYRNE: No.

THE COURT: Well, Mr. Byrne, we appreciate there will be a hardship that you will be missing class for three days, but I don't find it a justification to remove you from the jury for cause.

Anyone else with a hardship?

All right. Now we'll go into more substantive issues and that is knowledge of the parties and witnesses. And we want to go through this process to make sure that everybody can be fair and impartial to both parties in this lawsuit and not base a decision on factors other than evidence presented in the case.

And first we have Ms. Riggs, Tammy Riggs is the deputy district attorney. Do any of you know Ms. Riggs?

All right. And the defense counsel is Bradley Van Ry. Do any of you know Mr. Van Ry?

Yes, sir, Mr. Peterson. And how do you know Mr. Van Ry?

PROSPECTIVE JUROR PETERSON: I went to school

with him in Reno High, I think.

THE COURT: Will the fact that Mr. Van Ry is counsel for one of the parties in the case, do you think that would be something that would make it difficult for you to render a fair and impartial verdict?

PROSPECTIVE JUROR PETERSON: No. No, sir. No, Your Honor.

THE COURT: And Ms. Riggs, do you have any questions for Mr. Peterson in this regard?

MS. RIGGS: None, Your Honor.

THE COURT: Mr. Van Ry, do you have any questions?

MR. VAN RY: None, Your Honor.

THE COURT: All right. Thank you.

And then we have Ferrill Volpicelli who is a party in the case. Do any of you know Mr. Volpicelli?

All right, Mr. Hopkins, and how do you know Mr. Volpicelli?

PROSPECTIVE JUROR HOPKINS: I would ask to come to approach you personally.

MR. VAN RY: Yeah, I think that's good.

THE COURT: All right.

(A discussion was held at the bench off the record.)

THE COURT: I will note for the record that Mr. Hopkins approached the bench and I do find that there is just cause to release Mr. Hopkins in this particular case.

Mr. Hopkins, will you please report back to the Jury Commissioner's office and let them know that you have been excused?

PROSPECTIVE JUROR HOPKINS: Yes, Your Honor.

THE CLERK: James Harris.

THE COURT: Good morning, Mr. Harris.

PROSPECTIVE JUROR HARRIS: Morning.

THE COURT: And Mr. Harris is there any question to which you would have applied an answer?

PROSPECTIVE JUROR HARRIS: No.

THE COURT: Very good.

PROSPECTIVE JUROR HARRIS: Not thus far.

THE COURT: All right. Now, the next issue is with regard to potential witnesses. And Ms. Riggs, I see that there are some names placed on a pad of paper there on the board. And perhaps you could explain first the name, and if you know the occupation of that potential witness, perhaps you could state the occupation so that we have a better idea of whether or not we know that person.

MS. RIGGS: Sure. Reed Thomas is a detective with the Reno Police Department. Patricia Brown is also a detective with the Reno Police Department. Scott Armitage is a detective with the Reno Police Department. Brett Bowman is currently, I'm not sure, Your Honor, the status of his employment, where he is employed, but he is a civilian. David Della is a detective with the Reno Police Department. Michael Brown is a detective with the Sparks Police Department. Larry Lodge is a detective with Washoe County Sheriff's Office. Matthew Carter is a store manager for Wal-Mart stores. Greg Danielson is also a manager for Wal-Mart stores. Karinah Prevost-Robison who now goes by Karinah Prevost is an owner of a place called Aussie Self-Storage in Sparks on Victorian Avenue. Jennifer Powell is formerly an employee of Wal-Mart stores, or, pardon me, of Shopko. John David Ellis is a risk manager for Lowe's Incorporated. Bill Mowery now works for Bed & Bath, or, pardon me, Bed Bath & Beyond. The BXI Business Exchange of Northern Nevada, that would be an appearance by affidavit. It is a bartered exchange organization. And Officer Teasley is also a detective with the Reno Police Department.

THE COURT: All right. Does anyone know any

of those people?

All right, we have Ms. Albee, you have raised your hand.

PROSPECTIVE JUROR ALBEE: I believe I know Matt Carter and Greg Danielson. I worked as a stocker at Wal-Mart last year, but I don't know them very well and I don't think it would make any difference and I would listen.

THE COURT: And are you currently employed with Wal-Mart?

PROSPECTIVE JUROR ALBEE: No.

THE COURT: Ms. Riggs, would you like to ask Ms. Albee any further questions in this regard?

MS. RIGGS: Ms. Albee, your experience working with Wal-Mart, you said you no longer work with them anymore?

PROSPECTIVE JUROR ALBEE: Right.

MS. RIGGS: And do you have any contact with either of the two witnesses that we just talked about?

PROSPECTIVE JUROR ALBEE: No.

MS. RIGGS: And I believe you stated that having known them briefly wouldn't have any impact on your ability to decide this case one way or the other?

PROSPECTIVE JUROR ALBEE: Right.

MS. RIGGS: Thank you.

No further questions, Your Honor.

THE COURT: Mr. Van Ry?

MR. VAN RY: No questions, Your Honor.

THE COURT: All right. I believe there was another hand raised. Ms. Dutra, who do you know?

PROSPECTIVE JUROR DUTRA: I don't want you to think I know these -- I do know an Officer Michael Brown. I know him through, I work in a casino and I know him as far as coming in there and I know who his wife is, but I haven't seen him in a while, so that probably wouldn't make a difference. I mean, I don't see him on a daily basis. It's been a while since I've seen him, but I do know him, I do know who he is.

THE COURT: All right. And --

PROSPECTIVE JUROR DUTRA: I mean, we have the same friends.

THE COURT: And if he were to testify in this case, would you look at his testimony and determine its credibility as you would every other witness or would you look at his testimony as being that of a friend that you trust implicitly and perhaps would not treat it the same as the other witnesses?

PROSPECTIVE JUROR DUTRA: No, I would treat

him the same, I mean, as far as credibility for, not as a friend.

THE COURT: And Ms. Riggs, would you like to ask Ms. Dutra questions with regard to that issue knowing a Michael Brown, I believe?

MS. RIGGS: No questions, Your Honor.

THE COURT: Mr. Van Ry, do you have questions of Ms. Dutra?

MR. VAN RY: No questions, Your Honor.

THE COURT: All right. Ms. Dutra, thank you very much.

Anyone else know any of those prospective witnesses?

Now, it is inherent in our process of criminal justice that the defense has nothing to prove. The defendant is deemed innocent till the State establishes guilt beyond a reasonable doubt through competent evidence here in court. So it's not necessary for the defense to call any witnesses and I don't know if there are any potential defense witnesses listed.

Are there any defense witnesses listed?

MR. VAN RY: Just Mr. or Officer Teasley at the end, Your Honor.

THE COURT: Okay. And Officer Teasley, where

does he work?

MR. VAN RY: He's a Reno police officer.

THE COURT: All right. Anybody know Officer Teasley? Thank you.

There is one more who-you-know question that I'll ask, and that is, among this group of 23 of you, do any of you know another prospective juror?

All right. And Ms. Estep has raised her hand. And Ms. Estep, who do you know?

PROSPECTIVE JUROR: I know Carlotta King and I know Patrick Cunning. All right.

THE COURT: All right. And if Mr. Cunning and Ms. King were both selected for the jury and you were deliberating toward a verdict at the conclusion of the case, do you think that you would be inclined to follow the lead of either Mr. Cunning or Ms. King or would you decide the case yourself after consulting with all the other jurors?

PROSPECTIVE JUROR: I would decide the case myself after consulting with the jurors.

THE COURT: All right. And Mr. Cunning, I take it you know Ms. Estep?

PROSPECTIVE JUROR CUNNING: Yes.

THE COURT: And do you know anyone else?

PROSPECTIVE JUROR CUNNING: No.

THE COURT: Would you be inclined to follow Ms. Estep's thoughts with regard to the facts and ultimate verdict in the case or do you think you would be inclined to listen to her and all the other jurors and make up your own mind?

PROSPECTIVE JUROR CUNNING: Listen to the jurors.

THE COURT: All right. Thank you.

And then Ms. King, you know Ms. Estep?

PROSPECTIVE JUROR KING: Yes.

THE COURT: Do you know anyone else among this group of 23?

PROSPECTIVE JUROR KING: I don't believe so.

THE COURT: And if you were to deliberate toward a verdict, would you be inclined to follow Ms. Estep's lead with regard to thoughts on the facts and how the case ought to be decided or would you decide the case for yourself after consulting with all the other jurors?

PROSPECTIVE JUROR KING: For myself with the rest of the jurors.

THE COURT: All right. Thank you.

Now, did I miss anybody? Oh, Ms. Dutra, yes.

PROSPECTIVE JUROR DUTRA: Okay. I know Diane.

PROSPECTIVE JUROR BUCK: Guilty.

THE COURT: Diane Buck?

PROSPECTIVE JUROR DUTRA: Yes, sir.

THE COURT: And if you and Ms. Buck were deliberating toward a verdict at the conclusion of the case, would you be inclined to follow her lead with regard to the facts and verdict in the case or would you decide the case for yourself after consulting with all the other jurors?

PROSPECTIVE JUROR DUTRA: I would decide the case for myself.

THE COURT: And Ms. Buck, do you feel that same way?

PROSPECTIVE JUROR BUCK: As long as we remain friends.

PROSPECTIVE JUROR DUTRA: Really. No.

PROSPECTIVE JUROR BUCK: Yes, I can do that, I hope.

THE COURT: Do you think you would have any difficulty in disagreeing with Ms. Dutra.

PROSPECTIVE JUROR BUCK: No.

THE COURT: All right. Thank you.

Now, as I stated previously, the basic principle of a criminal justice system is that the State bears the burden of proof in a criminal case, at every level, whether it's a drunk driving case, a parking ticket, up to murder and extremely serious crimes. The principle is that the defendant in a case is presumed innocent unless the case brings forth witnesses who can testify here in court as to the elements of the offense establishing that a criminal defendant is guilty beyond a reasonable doubt. And can all of you abide by that basic principle, that is, as Mr. Volpicelli sits here, you must presume that he is innocent; is there any problem with that?

Now, during the course of trial --

MS. RIGGS: Excuse me, Your Honor, there's a juror.

THE COURT: Whoops. Ms. Rosenthal?

PROSPECTIVE JUROR ROSENTHAL: May I approach the front?

THE COURT: Yes, you may.

(A discussion was held at the bench off the record.)

THE COURT: Ms. Rosenthal, based on your statements here at the bench, I do find that you should

be excused for cause and I am going to release you, but will you please report back to the Jury Commissioner's office and let them know that you have been excused?

PROSPECTIVE JUROR ROSENTHAL: Yes, sir. Thank you.

THE COURT: And now we're getting some additional jurors to come up, and in the interim I'm going to call a recess before we fill Ms. Rosenthal's seat. During the course of the recess, I will instruct Ms. Riggs, Mr. Van Ry and Mr. Volpicelli that you are not to say anything to any prospective juror so that even if a prospective juror says "hi" to you, you are not allowed to say "hi" back. What we want to do is avoid any appearance of impropriety. I don't believe that any of these individuals would attempt to unduly sway a potential juror in their favor or against the other side, so to speak, but we want to avoid any appearance from a distance of something inappropriate taking place. So you may just want to steer clear of them, hopefully they will steer clear of you.

Otherwise, I would just say that you are not to discuss any aspect of this case during our recess. And I would imagine we'll be in recess for about 15 minutes. So try to be back here about ten minutes after

10:00 according to that clock. My watch actually says that it's about two minutes before 10:00, it's a little slower, but just try to be back here about ten after. And when you come back, please come back to the same seat that you are in. We have a seating chart that helps us ask the questions, so please do that. You will be free to go outside the building to get some fresh air if you'd like.

With that, Court will stand in recess.

THE BAILIFF: All rise.

(Recess taken from 9:59 a.m. to 10:19 a.m.)

THE BAILIFF: All rise. This Court is again in session.

THE COURT: You may be seated.

We have some additional members of our jury panel who have just arrived, and I am going to ask that each of our new members of our panel please stand up and raise your right hand and be sworn by Mr. Bartlett to tell the truth.

(The additional prospective jury panelists were sworn in.)

THE COURT: You may be seated. Now, those of you who have just arrived, we have gone through some of the questions already on our jury selection process

called the voir dire. You weren't present for that, and I'll recognize that going in, but, you know, I can't just ask you is there any question that you would have supplied an answer since you haven't heard any of the questions, but I'll tell you that this particular case is a criminal case and it's expected to last for the duration of the week to go into Friday, so it will be a three-day trial most likely. That's what the lawyers have indicated.

Now, we do need to have one of you to come forward and fill a seat which has been vacated, and I'll ask Mr. Bartlett to go ahead and do that.

THE CLERK: Judith Anderson.

THE COURT: Ms. Anderson, it's right in front. The easiest seat to find.

Good morning, Ms. Anderson. Before we proceed further, since the other members of our panel had the opportunity to be introduced to both counsel and Mr. Volpicelli, I will introduce first Tammy Riggs, who is the deputy district attorney representing the State in this matter. We have Bradley Van Ry, defense counsel, and we have Ferrill Volpicelli who is the defendant in the case.

And Ms. Anderson, first, do you know any of

those three individuals?

PROSPECTIVE JUROR ANDERSON: No, I do not.

THE COURT: All right. And the first question that always comes out are the issues of hardship. And first we have the hardship of what I would call a quasi medical hardship, being able to sit for about an hour at a time in between recesses and every recess you'll be allowed to go into the jury room, there are restrooms in there. In addition, you can walk around. Occasionally the bailiff will even lead the group out to take a smoke break which sometimes occurs out on the little balcony here or sometimes out in front of the building.

The other hardships that I call quasi medical are vision, inability to see very well, since there are exhibits, being able to see that or observe the witnesses as they testify. You need to have hearing sufficiently good to hear the proceedings, both the witnesses and the attorneys as they ask questions, to render meaning to an answer, and you would need to be able to speak the English language well enough to follow the proceedings in English.

And Ms. Anderson, is there any hardship in that regard --

PROSPECTIVE JUROR ANDERSON: No, there's not.

THE COURT: -- that you would have? And given the fact that this is going to be a three-day trial, is there any hardship you have with regard to being here for those three days.

PROSPECTIVE JUROR ANDERSON: I am self-employed and I don't have employees, so it would be a little bit difficult for me. If it were a one-day trial it would be no problem.

THE COURT: Well, I think the eight jurors who have just arrived came from what we would intend to be a one-day trial, so you have kind of gone from the frying pan into the fire, so it will be a little longer than in that situation. But still we need to have obviously jurors, and this case being a three-day trial still isn't up there in the three-week range or two-week range that we often see. So it's still a relatively short trial.

And Ms. Anderson, even though you would suffer a financial hardship by reason of being here, do you feel that you could nevertheless be here and give the case the attention to which it deserves?

PROSPECTIVE JUROR ANDERSON: Yes.

THE COURT: All right. And Ms. Anderson, I'm

going to ask Ms. Riggs to, again, go through the list of witnesses and let's find out if you know them, and also for those of you in the gallery chairs, if you could pay attention to this it will be of some assistance if you are called up to have a seat. If you could pay attention to all these questions and let me know if there's any question to which you would supply an answer.

And Ms. Riggs, you may proceed.

MS. RIGGS: Ms. Anderson, Reed Thomas is a detective with Reno Police Department. Patricia Brown is also a detective with Reno Police Department. Scott Armitage is a detective with Reno Police Department. Brett Bowman is a civilian. Dave Della is a detective with Reno Police Department. Michael Brown is a detective with the Sparks Police Department. Larry Lodge is a detective with the Washoe County Sheriff's Office. Matthew Carter is a manager for Wal-Mart stores. Greg Danielson is also a manager for Wal-Mart stores. Karinah Prevost-Robison, who now also goes by Karinah Prevost, is an owner of Aussie Self-Storage in Sparks, Nevada. Jennifer Powell is formerly of Shopko. John David Ellis is a loss manager for Lowe's stores. Bill Mowery is -- I'm sorry, Your Honor, I'm drawing a blank. Bill Mowery is a, is an employee, former employee of Shopko and now

works for Bed Bath & Beyond. BXI, Business Exchange of Northern Nevada, that actually is an appearance by affidavit. And Officer Teasley works for the Reno Police Department as a detective.

THE COURT: Ms. Anderson, do you know any of those prospective witnesses.

PROSPECTIVE JUROR ANDERSON: No, I do not.

THE COURT: And I did afford Mr. Van Ry the opportunity to state the name of a prospective witness for the defense, and who was that person?

MR. VAN RY: It was Officer Teasley, Your Honor.

THE COURT: All right. And he's with the Reno Police Department?

MR. VAN RY: That's correct.

THE COURT: This time I heard Ms. Riggs state that Officer Teasley was a witness for the plaintiff, I didn't hear that the first time, but you may have said that. I don't know.

Anyway, we're just trying to nail down who the witnesses are for various parties. And you don't know any of those people, correct?

PROSPECTIVE JUROR ANDERSON: No, I do not.

THE COURT: And if you look behind you, among

this group of 23, do you know anybody in this group?

PROSPECTIVE JUROR ANDERSON: No.

THE COURT: All right. Now, one of the principles of criminal justice is that a defendant in any criminal case, whether it's a misdemeanor, a gross demeanor case or felony case is presumed innocent unless the contrary is proved by competent evidence beyond a reasonable doubt by the State. The State bears the burden of proving the case. The defense is not obligated to bring forth any witnesses or ask any questions. They merely have the position of pointing out failure of the State to meet its burden of proof.

So as Mr. Volpicelli sits here, you must find him to be not guilty. Do you have any difficulty in following that basic instruction of criminal justice law?

PROSPECTIVE JUROR ANDERSON: No, I don't.

THE COURT: All right. During the course of trial, it will be the jury's exclusive duty and burden to determine the facts in the case. And I assure you that you are very well equipped to do that. You have led a life where you have, you know, dealt with people and I'm sure you have a good feeling for whether or not somebody is telling the truth and whether or not sufficient testimony would come forward to prove the elements that

the State is required to prove in this case.

On the other hand, it is my duty as judge to present you with the law that you must then apply to the facts as you find them in the case. And the question is this: Does anybody feel that they would have a difficult time or would not follow the law that I will be presenting to you at the conclusion of the evidence? And I can assure you that the way this is done is actually both parties will present some jury instructions to me. I may modify them, add to them. We ultimately settle jury instructions as a team, so to speak, so that we expect everyone to be operating from the same page, and that is very important that you do follow the law in the case.

Now, some people have either a religious belief or philosophical belief that prevents them from sitting in judgment of other people and may in fact prevent them from rendering a judgment in a, either a civil or a criminal case. Does anybody have a religious or philosophical belief that would make it difficult or impossible for you to render a verdict in this case?

All right. And I didn't tell you, Ms. Anderson, that the nature of this case is that the State has brought charges of burglary against

Mr. Volpicelli. That's the nature of the charge. And based on all that you've heard about this particular case thus far, is there anybody who feels for some reason that they really are an inappropriate juror to sit on this case and be fair to both sides?

All right. And I'm going to turn the questioning over to -- Whoops.

PROSPECTIVE JUROR SEEGMILLER: What if you've been burglarized before?

THE COURT: You raised your hand, I'm sorry, I didn't see that.

PROSPECTIVE JUROR SEEGMILLER: What if you've been burglarized before?

THE COURT: The issue is you need to remain objective. That is not be subjective and bring in your personal experience, so to speak, in a way that would be inappropriate, either not following the facts as proven or the law as provided by, by me. Can you set aside your background and view this case as an impartial juror?

PROSPECTIVE JUROR SEEGMILLER: Yes, I guess so.

THE COURT: And Ms. Riggs, do you have questions of Ms. Seegmiller in this regard?

MS. RIGGS: No questions.

THE COURT: Mr. Van Ry?

MR. VAN RY: Yes, Your Honor.

How long ago was that?

PROSPECTIVE JUROR SEEGMILLER: About two years ago.

MR. VAN RY: Two?

PROSPECTIVE JUROR SEEGMILLER: Yes.

MR. VAN RY: Was that here in Washoe County?

PROSPECTIVE JUROR SEEGMILLER: Yes.

MR. VAN RY: Is it something that makes you afraid of potential criminal defendants as you sit here today?

PROSPECTIVE JUROR SEEGMILLER: Yes.

MR. VAN RY: Is that something you would hold against Mr. Volpicelli?

PROSPECTIVE JUROR SEEGMILLER: I'm not sure. Maybe.

MR. VAN RY: Would you be able to wait until you hear all of the evidence, both sides of the case before you were to render a verdict in this matter?

PROSPECTIVE JUROR SEEGMILLER: I guess so. Yes.

MR. VAN RY: I have nothing further, Your Honor.

THE COURT: Ms. Seegmiller, as I have stated, the defense need not establish anything during the course of the trial. The burden is not on them at all and the burden is upon the State to prove its case beyond a reasonable doubt. And if you would find from the testimony that facts have not been brought out to establish an element of the offense charged by the State, would you then find Mr. Volpicelli not guilty of that charge?

PROSPECTIVE JUROR SEEGMILLER: Yes.

THE COURT: And would you have any problem in doing that?

PROSPECTIVE JUROR SEEGMILLER: No.

THE COURT: All right. Very good.

Then if there are no other hands raised, I'll turn the questioning over to Ms. Riggs.

MS. RIGGS: Thank you, Your Honor.

Ladies and Gentlemen, I'm going to begin with some questions for the entire panel. Now, I know Mr. Byrne works for Costco. Is there anybody else -- and also Ms. Albee formerly worked for Wal-Mart. Anyone else have any experience working for a superstore, large retail establishment?

PROSPECTIVE JUROR ANDERSON: Worked for a

time at Sav-on.

MS. RIGGS: Okay, is there anything for those people who have worked for superstores, anything about that experience that makes you biased against anybody associated with a big store, store managers, detectives, et cetera? Anybody have a horrible experience as an employee at a superstore? No?

Anybody have -- Has anybody had a business that may have been impacted when a new superstore moves into your neighborhood? Nobody?

Does anybody believe that chains like Wal-Mart, Target, Shopko, are so big that they can afford to lose a few items here and there? Anybody have that attitude or feeling somehow?

Anybody mad about long Christmas shopping lines? (Laughter) Okay. Fair enough.

Now, I have a question generally for you about your thoughts on the law of burglary. And I'm -- Burglary is going to be explained to you, the judge will give you the instructions at the end of this trial of the law on burglary.

Anybody think that you have to break in or someone needs to break in to commit a burglary? Anybody just know that there has to be a breaking to commit

burglary? Well, that's good, because that's not the law in the State of Nevada.

Does anybody think that the person who is in a house, a store, needs to take something or commit a crime inside for there to be a burglary?

Yes. And you are Ms. Buck?

PROSPECTIVE JUROR BUCK: Yes.

MS. RIGGS: And that's your belief --

PROSPECTIVE JUROR BUCK: Yeah.

MS. RIGGS: -- generally?

THE WITNESS: That's what a burglary is.

MS. RIGGS: Would you be surprised to learn that that's not required for a burglary in the State of Nevada.

PROSPECTIVE JUROR BUCK: Okay.

MS. RIGGS: Again, the judge will instruct you on the law of burglary at the end of this case. And burglary is neither requires any kind of crime to have been committed before you go in or, as I said, for a breaking. What is required is the intent in Nevada for a larc -- for the person going into the establishment to commit either larceny or a felony. You will get that instruction at the end.

And having heard that, are you willing to

follow the law as the judge instructs you at the end of the case?

PROSPECTIVE JUROR BUCK: I'll try.

MS. RIGGS: Will your opinion regarding your former opinion thinking that something actually has to occur inside, a crime has to occur once the person is inside the building, is that going to keep you or is that going to be in the back of your head?

PROSPECTIVE JUROR BUCK: No.

MS. RIGGS: So you will be able to follow the law as you are instructed at the end of the case?

PROSPECTIVE JUROR BUCK: (Moves head up and down.)

MS. RIGGS: Okay. Now, this case, as you know, there are eight counts of burglary, a count of conspiracy to commit other crimes, theft and larceny included, and also a count of possessing or counterfeiting UPC codes are what are involved in this case. This is what we affectionately call a paper case. There are going to be a lot of exhibits for you to look at, a lot of testimony regarding receipts, papers, that sort of thing. It's not going to be an exciting murder trial full of, well, blood and guts and gore and that kind of stuff. That's not what this case is about.

Does anybody feel like they are going to have a hard time sitting through two, at least two days of testimony regarding papers, receipts and that sort of thing? Everybody think you can focus long enough? The State is going to be showing you approximately 40 exhibits, mostly receipts, so I want to front load you on that ahead of time. And no one's going to have any difficulty with that? Okay.

Anybody watch any criminal shows, *Law and Order, Cops, CSI*, any of those shows regularly? Lots of people. They're good, huh? They're fun to watch.

PROSPECTIVE JUROR HARRIS: No options.

MS. RIGGS: Well, that's true. It's all over. And everybody realizes those are dramas produced for television, correct? Does everybody pretty much realize that Bobby Goren is not going to come blasting through the back door with last-minute exculpatory evidence? (Laughter) No one's going to stand up and make a weeping alibi confession, anything like that in this case. This is real life and unfortunately real trials aren't always as, or we don't present our cases with as much flare as attorneys do in the dramas.

CSI in particular, does anybody watch that show, Tuesday night, CBS? Few people? I ask about that

show in particular because that show takes place in Las Vegas and there, they often quote Nevada law in that case. Now, for *CSI* fans, do you think you can follow the law as Judge Elliott gives it to you at the end of the case despite what you've heard in the latest *CSI* which was about a case in Elko? So that you'll, if you've heard something different on *CSI*, the law that Judge Elliott gives you at the end of this case is what goes in this case?

Also in *CSI* they always have the best, handiest evidentiary gathering techniques. There's -- No matter what kind of case it is, there's always fingerprints, there's always DNA. You all understand that that's not going to be involved in this case? Anybody going to doubt the value of the State's evidence because we are not going to have fingerprints, DNA, blood spatter or any of those interesting kind of things? You are all okay with that? Good.

Now, we have some people who have been members of some criminal juries. Ms. Estep? I'm sorry, there you are. Ms. Albee, you have been a civil juror. Mr. Beard, you've been on both. And Ms. Anderson, as you said, you've been on a criminal jury --

PROSPECTIVE JUROR ANDERSON: Yes.

MS. RIGGS: -- correct? And Ms. Buck, you have been on a federal grand jury?

Okay. For those of you on criminal juries, please, can anybody who has been on a criminal jury who did not reach a verdict please raise their hand? So those of you who have been on criminal juries, your jury deliberated to a verdict in all cases? Good.

Ms. Buck --

THE WITNESS: Yeah --

MS. RIGGS: -- you look a little confused.

PROSPECTIVE JUROR BUCK: Federal doesn't --

MS. RIGGS: Correct, and you were on a grand jury, correct?

PROSPECTIVE JUROR BUCK: Right.

MS. RIGGS: So your job as a grand juror was just to determine whether there was probable cause for a case to go to trial, correct?

PROSPECTIVE JUROR BUCK: Right.

MS. RIGGS: And you understand that that's a completely different burden than what we have in this case, correct?

PROSPECTIVE JUROR BUCK: Uh-huh. Yes.

MS. RIGGS: The burden in this case is for the State or myself to prove a case beyond a reasonable

doubt. Does everybody understand that? You'll also be given a specific instruction at the end of the case by Judge Elliott regarding that.

Now, those of you who have been civil jurors, Ms. Estep, Ms. Albee, Mr. Beard, you understand that in those civil trials the burden was a little bit different? You had to find by a preponderance of the evidence whether the plaintiff, or whether the defendant was or was not liable. Do you understand the difference? The preponderance of the evidence is just tipping the scales. State's burden is a little bit, is quite a bit more than that in a criminal case.

Anybody have any questions about that? Again you'll be instructed at the end of this trial regarding the reasonable doubt standard.

Has anybody had any contact either as a defendant, a victim, or in some other capacity with any attorney at the district attorney's office?

PROSPECTIVE JUROR HARRIS: Not that I know that they are still there, but I have had some contact in previous years.

MS. RIGGS: Okay. Having had that contact, would that sway your opinion one way or the other against the Washoe County District Attorney's office.

PROSPECTIVE JUROR HARRIS: No.

MS. RIGGS: So you feel like we're all starting off on level ground here?

PROSPECTIVE JUROR HARRIS: Well, I recognize the fact that there's a service to be done to the community and in particular cases feelings flare and attitudes and, you know, specifics. Those things are gone and done with. I don't have any grudges or anything like that.

MS. RIGGS: That's good.

Somebody else raised their hand?

Yes, and you are Mr. Jackson?

PROSPECTIVE JUROR JACKSON: Yes.

MS. RIGGS: Okay.

PROSPECTIVE JUROR JACKSON: I know Mr. Paul Giese.

MS. RIGGS: Paul Giese?

PROSPECTIVE JUROR JACKSON: Yes.

MS. RIGGS: Now, you realize he no longer works for the Washoe County DA's office, correct?

PROSPECTIVE JUROR JACKSON: Yes.

MS. RIGGS: I believe he still is a criminal defense attorney, correct?

PROSPECTIVE JUROR JACKSON: Yes.

MS. RIGGS: And your association with Paul Giese, would that sway your opinion one way or the other --

PROSPECTIVE JUROR JACKSON: No.

MS. RIGGS: -- against Washoe County DA's office?

PROSPECTIVE JUROR JACKSON: No.

MS. RIGGS: The fact that he no longer works there, does that have any effect on your opinion?

PROSPECTIVE JUROR JACKSON: No.

MS. RIGGS: Yes.

PROSPECTIVE JUROR ALBEE: I have had some contact about eight years ago, but it was --

MS. RIGGS: So it doesn't affect your opinion one way or the other; we're all going to be starting on level ground here?

PROSPECTIVE JUROR ALBEE: Right.

MS. RIGGS: Okay. Thank you.

The State is going to be presenting some testimony of a coconspirator in this case. It is a person who was accused at the same time as the defendant in this case of committing similar crimes who has since been convicted.

Does anybody feel that someone who is

convicted of a crime is inherently unbelievable? Nobody is going to think that somebody who has been convicted is just going to start out in the hole? You are willing to listen to the testimony of a coconspirator and give it the weight that you believe it deserves? Okay.

Couple more specific questions.

Ms. Seegmiller, you had noted in your jury questionnaire that you will have a childcare issue here.

PROSPECTIVE JUROR SEEGMILLER: Right.

MS. RIGGS: Do you feel like your childcare issue is covered for the next couple of days?

PROSPECTIVE JUROR SEEGMILLER: Yeah.

MS. RIGGS: So it's not going to be a problem for you?

PROSPECTIVE JUROR SEEGMILLER: No.

MS. RIGGS: It won't distract you from what's going on here?

PROSPECTIVE JUROR SEEGMILLER: No.

MS. RIGGS: All right. Thank you.

Ms. Harzke, am I saying that correctly?

PROSPECTIVE JUROR HARZKE: Yeah.

MS. RIGGS: Is it true that you actually want to serve on jury duty?

PROSPECTIVE JUROR HARZKE: Yeah, I think it's

an interesting experience. I've been called on before.

MS. RIGGS: It's just you want to fulfill your patriotic duty; you don't have an agenda or anything?

PROSPECTIVE JUROR HARZKE: No.

MS. RIGGS: Okay. Great. Good news.

Ms. White, you also indicated you may have a possible childcare dilemma. Is that cleared up for the next couple of days?

PROSPECTIVE JUROR WHITE: I'm fine this week, yes.

MS. RIGGS: Mr. Beard, you had expressed in your jury questionnaire a little reluctance regarding jury duty. Are you okay with it now after you've had a chance to hear everything?

PROSPECTIVE JUROR BEARD: Yeah, that was a question I, it was for elderly people that I, I think filled out wrong.

MS. RIGGS: Okay, so ...

PROSPECTIVE JUROR BEARD: I just said I didn't want to serve.

MS. RIGGS: But you are --

PROSPECTIVE JUROR BEARD: No, I'm fine.

MS. RIGGS: So a two-day, two-and-a-half-day

trial --

PROSPECTIVE JUROR BEARD: I think it was a two-part question of whether I could or would. No, I'm fine to serve.

MS. RIGGS: Good.

Okay. Just as a last matter, some of you might have noticed that State's counsel is pregnant. And does anybody have a problem with that, about women who are pregnant doing this kind of work, the kind of work that I do? I can take it if you do feel that way. I had one defense attorney in another trial accuse me of having raging hormones 'cuz he lost. Nobody has a problem with that? Okay. Thank you.

The State has no further questions. State will pass for cause, Your Honor.

THE COURT: Mr. Van Ry, you may ask the jury questions.

MR. VAN RY: Thank you.

Good morning. Thank you for being here. I have just a few brief general type questions that I'd like to ask in these types of cases.

The first question I have already kind of spilled the beans, but the question is, defense, we get to go second. State gets to go first because they have

the burden of proof. The question I have is, is there anybody here that feels that they cannot wait until our opportunity to show our side of the story, that they will not wait for that opportunity before they make a decision in this case? Is everybody comfortable with that? That you need to wait till the end before you make a decision? Okay.

Does anybody here not like the idea that Mr. Volpicelli does not necessarily have to testify on his behalf? Nobody -- As a follow-up, is there anybody here that will hold it against him if he does not testify? Can you find him not guilty if he does not testify?

PROSPECTIVE JUROR BUCK: Why would he not testify? I mean, to me that doesn't seem right because he can be innocent, he can be guilty, but you are an attorney, you can say whatever you want because you know the right words to say. I'm sorry, I said that really rude.

MR. VAN RY: I may not say the right thing, I may not.

PROSPECTIVE JUROR BUCK: That doesn't seem right to me.

MR. VAN RY: So are you saying that if he

does not testify you might be less willing to find him not guilty?

PROSPECTIVE JUROR BUCK: Yeah.

MR. VAN RY: And the basis for that is simply you like to hear his side of the story?

PROSPECTIVE JUROR BUCK: Yeah. I like to hear people say in their own words what happened or what was going on.

MR. VAN RY: Do you disagree with the State of American law, and that includes Nevada, that the defendant is innocent until he's proven guilty; do you agree with that?

PROSPECTIVE JUROR BUCK: I agree with that.

MR. VAN RY: Would you agree that that caveat includes that he does not have to testify because he does not have the burden of proof? Do you agree with that?

PROSPECTIVE JUROR BUCK: Everybody's looking at me. C'mon.

MR. VAN RY: You kind of put yourself on the hot seat.

PROSPECTIVE JUROR BUCK: Well, I did. There's a lot that I don't know about the law and I just think it's strange that somebody wouldn't, you know, if I'm guilty of something I want somebody to ask me what I

think about it. You know, that's all. I feel like I'm wrong now.

MR. VAN RY: Do you feel that you can uphold the law as the judge will instruct you that will tell you that a defendant does not have to testify on his behalf?

PROSPECTIVE JUROR BUCK: I don't think that's right. I'm sorry, I can't help my feeling on that.

MR. VAN RY: So just to take it to the conclusion, then, you would, you would possibly hold that against Mr. Volpicelli if he does not testify, therefore, not follow that instruction given to you by the judge?

PROSPECTIVE JUROR BUCK: I don't know. I'm open to listen to everything and form an opinion, but -- Okay, I'll just listen to everything and be quiet and do my job.

MR. VAN RY: That's the ultimate question. Can you render a fair and impartial verdict in this matter following the underlying rulings of law that the judge will instruct you? Can you do that?

PROSPECTIVE JUROR BUCK: No, I can't. No.

MR. VAN RY: I think Ms. Buck should be thanked for her service and released for cause, Your Honor.

MS. RIGGS: Your Honor, may I approach? May

we approach?

THE COURT: You may approach.

(A discussion was held at the bench off the record.)

THE COURT: All right. I'm going to say a few things and perhaps ask a few questions of you, Ms. Buck.

The first comment that I'll make is that I happen to be a member of the Rotary Club and we had Oscar Goodman come up and be our lunchtime speaker about two years ago. Oscar is currently the Las Vegas mayor and Oscar had a very illustrative career as a criminal defense counsel, and among his clients were people reputed to be members of the Mafia. And Oscar explained, you know, what he did as defense counsel to a certain extent and said that he was a firm believer in constitutional law and that meant that his basic duty as a defense counsel was to ensure that the State was put to the test to prove its case beyond a reasonable doubt through competent evidence that his client was, in fact, guilty of the offenses charged. And Oscar said that he very seldom had his client testify in those cases because the burden is not up to the defense to prove anything, it's to put the State to the test.

And, in fact, there is a constitutional guarantee that an individual charged with an offense has a right to remain silent and cannot be required to testify in a case. And I think that's what Mr. Van Ry is pointing out. I mean, we all know the, you know, the O. J. Simpson criminal case in which they did not have Mr. Simpson testify. They followed Mr. Goodman's good advice in not doing that.

There are certain pitfalls inherent in having the actual defendant testify, and they are just numerous, that a lot of good defense counsel simply don't have their client testify as a strategic matter, because it's not up to the defense to prove anything.

And given all those statements and experiences, do you think in this case that the defendant does not testify, exercises his constitutional right not to testify, that you would feel that that in essence is some admission of guilt on the part of the defendant?

PROSPECTIVE JUROR BUCK: I do.

THE COURT: Well, then, Ms. Buck, I am going to excuse you for cause. Because we can't have somebody, you know, hold it against somebody to exercise their constitutionally protected right to remain silent. And Ms. Buck, please report back to the Jury Commissioner's

office and let them know that you are excused. Thank you.

PROSPECTIVE JUROR BUCK: I'm sorry.

THE CLERK: Tony Major.

THE COURT: Mr. Major, you have been here before. Really all the questioning as I went through the questions with Ms. Anderson that were asked before you in fact arrived. And those issues are hardship and ability to be fair, follow the law, knowledge of the parties and witnesses. And Mr. Major, is there any question to which you would have supplied an answer?

PROSPECTIVE JUROR MAJOR: I think he has the right, I think he has the constitutional right not to speak.

THE COURT: Okay. And you don't happen to know the attorneys or Mr. Volpicelli?

PROSPECTIVE JUROR MAJOR: No, Your Honor.

THE COURT: All right. And do you have any hardship that you would like to explain?

PROSPECTIVE JUROR MAJOR: No, Your Honor.

THE COURT: All right. Well, I'll turn the questioning back to Mr. Van Ry, and because you are new in the case, I will also afford Ms. Riggs an opportunity to ask you questions after Mr. Van Ry has completed with

the group.

MR. VAN RY: The Court will define reasonable doubt for you. Does anybody here believe that the standard that the State has to prove is too high? It ought to be lower? Nobody?

So you all agree that that's an appropriate level of burden of proof for the State?

Does anybody here believe that if you are simply accused with a crime that you are therefore guilty of a crime? Nobody believes that?

Does anyone here believe that if a witness is called by the State, that they are more worthy of belief than someone who might be called by the defense? Nobody thinks that?

Let me ask a follow-up to that. Does anybody here believe that simply because a police officer testifies, that his or her testimony is worthy of more belief than a civilian who testifies?

Does anybody here have a negative opinion about the jury system? I know there's been some discussions about prior experiences with some of the jurors here. Does anybody here have a negative opinion or negative feeling, negative thoughts about the jury system? Yeah.

PROSPECTIVE JUROR PAYNE: On the questionnaire, I have somebody who wants to serve duty too, and is there a possibility of getting their name put on as an alternate?

MR. VAN RY: So you are just asking kind of a question why has that person not been selected before?

PROSPECTIVE JUROR PAYNE: Right. Or is there a way if that person wants to get on the belt like it was sent to me?

MR. VAN RY: Well, I don't know a specific answer to that. I know it's done randomly by the Jury Commissioner's office downstairs. But does that fact impact your ability to see the evidence and to participate in this case?

PROSPECTIVE JUROR PAYNE: I don't think so.

MR. VAN RY: Does it taint you in any way?

PROSPECTIVE JUROR PAYNE: No.

MR. VAN RY: You think the jury system is screwed up or faulty or bad because of that?

PROSPECTIVE JUROR PAYNE: No.

MR. VAN RY: And I'm sure the judge is more than happy to follow up on that if you need to follow up.

Ms. Riggs talked about some of the shows that portray attorneys in Hollywood light. I'm going to ask

you kind of a reverse question. Does anybody here have negative opinions about attorneys?

I heard some chuckling. Does anybody here have an opinion that is so negative that it might impact your ability to sit as a fair and impartial juror in this case? Because that's the important question. I don't like a lot of attorneys either. Well, I like most of them, some of them.

Okay, let me ask you a more specific question. Is there anybody here who has a negative opinion about criminal defense attorneys? Nobody?

As a follow-up to that, if I say or do anything in this trial that offends you or upsets you or makes you uncomfortable, is there anybody here who would hold that against Mr. Volpicelli? Because I do represent him.

Lastly, this case is very serious, meaning there are some serious charges that have been alleged against my client. Yet, this case will likely be resolved in just a few days. Does anybody here believe that because we can do it in an efficient, hopefully an efficient manner, that these charges would not be taken as seriously as they ought to be taken? Nobody has any feeling about that?

I have no further questions, Your Honor. I would pass the jury for cause.

THE COURT: All right. Ms. Riggs, you did not have an opportunity to ask any questions of Mr. Major, and would you like to ask him any questions?

MS. RIGGS: State has no questions for Mr. Major, Your Honor. Thank you.

THE COURT: And would you pass him for cause?

MS. RIGGS: Yes, I would also pass him for cause, Your Honor.

THE COURT: All right. Well, our group of 23, then, has been passed for cause which means that those of you who are still seated in the gallery chairs will be free to leave. We won't need you on this case, but we certainly appreciate you coming up because we had run out of our initial panel and that put us in a pretty poor situation of actually going forward with the trial. So we certainly appreciate your work here to get this trial going. And with that we are very grateful and you are excused.

Perhaps I'll ask that you go back to the Jury Commissioner's office one more time and let them know that you are not needed on this case.

We will be taking another recess. We'll be

taking this group of 23 and reducing it by 10 and we'll actually have 13 jurors seated to hear the case. During the course of this recess I will ask that you not discuss anything about this case. And, again, the admonishment that I issued, Ms. Riggs, Mr. Van Ry and Mr. Volpicelli will not be allowed to talk to you at all even to say "hi." So don't consider that they are rude people, but if you should happen upon them in the recess, we are just trying to avoid any appearance of impropriety.

Now, when you come back into the courtroom, please have a seat in the gallery chairs and we'll just call up 13 of you to be seated for purposes of the trial. And this typically takes about 20 minutes or so to do this. So why don't you plan to come back here at roughly 25 after 11:00, which according to my watch would be a 20-minute break, and we'll see you at that time. Court will stand in recess.

THE BAILIFF: All rise.

THE COURT: The record will reflect that I am meeting in chambers with both counsel, and Mr. Volpicelli is present as well, to go through the peremptory challenges. And each side will have four peremptory challenges as to our pool of people for the position of the 12-person jury, so it will take us up through Juror

No. 20, Albee, in that pool. Once we have selected the 12-person jury, each side will have one additional peremptory challenge to exercise for the position of alternate juror, and the last three jurors, Harris, Anderson and Peterson, are in our pool for alternate juror.

So at this time all four peremptory challenges will just be exercised for this pool of 20 jurors. So you can exclude the last three from consideration at this point. And the State or plaintiff always has the first peremptory challenge. So Ms. Riggs, you may proceed.

MS. RIGGS: Thank you, Your Honor.

Your Honor, the State will thank and excuse No. 11, Lance Payne.

MR. VAN RY: Defense would excuse Deanna Seegmiller, No. 1.

MS. RIGGS: State would thank and excuse Richard Hanson, No. 12.

THE COURT: Okay. Hanson.

MR. VAN RY: Defense would excuse Jeffrey Glavor, which is Juror No. 8.

THE COURT: Okay.

MS. RIGGS: State will thank and excuse

Michael Chambers, No. 18.

MR. VAN RY: Defense would excuse Robert Beard, No. 14 -- or 15.

THE COURT: Fifteen. Yes, Beard.

MR. VAN RY: Fifteen.

MS. RIGGS: State will thank and excuse No. 16, Joseph Byrne.

MR. VAN RY: Defense would excuse Mr. Patrick Cunning.

MS. RIGGS: Your Honor, I have a question. Are we on our fourth peremptory or was that our third?

MR. VAN RY: That was the fourth.

THE COURT: That was the fourth. That was your last peremptory challenge. Do you want to rethink Mr. Byrne?

MS. RIGGS: Oh, no. I'm sorry, Your Honor. We can go on. I was mixed up as to who went first. Thank you.

THE COURT: Well, we have exercised all the peremptory challenges for this pool to determine the 12-person jury. And I will state my understanding of who now are the 12 jurors.

We have Christiansen, Morgan, Jackson, Major, Harzke, White, Kennard, Mc Neely, Estep, Dutra, King and

Albee.

MR. VAN RY: That's correct on mine, Your Honor.

MS. RIGGS: Yes.

THE COURT: All right. And now we will focus on our final three prospective jurors: Harris, Anderson and Peterson. And the State will have the first peremptory challenge.

MS. RIGGS: Your Honor, State will thank and excuse James Harris, No. 21.

MR. VAN RY: Defense would excuse Ms. Judith Anderson.

THE CLERK: I'm sorry?

MR. VAN RY: Judith Anderson.

THE COURT: That leaves Wallace Peterson as the alternate juror.

Is there anything else we need to take up before we go back out and -- Due to the time, you know, we will be seating the jurors and we could just at that point take a recess until one o'clock to do opening statements and call a witness or, you know, we can try to start opening statements if, you know, they will be done by noon.

MR. VAN RY: My opening statement is

relatively short. I don't know what Ms. Riggs' will be.

MS. RIGGS: I estimate mine will probably be ten minutes, Your Honor.

THE COURT: Do you think it's best if we just go ahead and do the opening statement --

MR. VAN RY: Yeah, I do.

THE COURT: -- and then take a lunch break?

MS. RIGGS: That's fine with the State, Your Honor. I do have some questions about, we do have some stipulations that we need to talk to you about. Would you like to do that after lunch before we call our first witness and before we bring the jury in?

THE COURT: Are these -- Well --

MR. VAN RY: Evidentiary stipulations.

MS. RIGGS: Evidentiary stipulations, Your Honor.

MR. VAN RY: Right.

THE COURT: Honestly we can do it now. We still have seven minutes before the jury is going to be back.

MR. VAN RY: Let's do it.

MS. RIGGS: And Your Honor, I would have to -- I apologize, I left my file.

MR. VAN RY: Well, why don't we do it at

another time.

MS. RIGGS: Thank you.

THE COURT: We can do that, for instance, after we let the jurors go to lunch.

MS. RIGGS: That will be fine with the State, Your Honor.

THE COURT: Okay. We'll do it that way. And we'll see how long it takes all the people to get back, but assuming the opening statements will be short, I assume we'll do that before lunch, not after.

All right. Thank you.

MR. VAN RY: Thank you, Your Honor.

THE DEFENDANT: Thank you, Your Honor.

(Recess taken from 11:19 a.m. to 11:26 a.m.)

(The following proceedings were had in open court in the presence of the prospective jury panel.)

THE BAILIFF: All rise. Court is again in session.

THE COURT: You may be seated. We have met and gone through the peremptory challenges and have selected 13 of you to serve on this case. And I will ask that the first person whose name is called again go into the back row of the jury box and have a seat at the

next-to-last chair. You will all be seated at a chair which Deputy Medina has placed a pen and writing pad for your notes on that chair, so just sit at chairs with a pad of paper on them in the back row. When the back row is completed down to your end, please have a seat in the front row.

And with that, Mr. Bartlett, will you please call out the names of our 13 jurors.

THE CLERK: Russell Christiansen.

Eric Morgan.

Gerald Jackson.

Tony Major.

Heather Harzke.

Joy White.

Caston Kennard.

Richard Mc Neely.

Diane Estep.

Christina Dutra.

Carlotta King.

Florence Albee.

Wallace Peterson.

THE COURT: Now, I would like to say a few words of thanks to those of you who will not actually be needed to sit and determine this case. I want to express

my appreciation on behalf of the Court, but also the parties for your participation in the jury selection process and your forthright answers to all the questions presented to you. I think I can honestly say on behalf of everybody that each one of you would have been an excellent juror to serve on this case, but the process is such that we start with a larger pool and only call a few names up and then from that pool we keep coming down to ensure that everybody is fully satisfied with the fairness of each juror. And we do appreciate your service to this in this regard.

I'm going to excuse you, but I'm going to ask you to report back to the Jury Commissioner's office. I can't imagine that there's any other case that might be out there in the wings wanting jurors, but please report back there and let them know you will not be needed on this case. Thank you.

Now, we do have one more bit of exercise that I have to ask you to perform and that is you will need to stand up and raise your right hand and take an oath to serve as a juror in this case. Will you please stand up.

(The jury panel was sworn in.)

THE COURT: You may be seated. Before we move on to the opening statements presented by the

lawyers, there are just a few words I want to say to you.

First of all, my role in this will be really as an impartial referee. The case really belongs to the lawyers at this point and they will be asking questions and moving the case forward. And my role will be largely to determine the breaks and act as a referee between the parties as to issues of evidence.

Each attorney will be asking questions of the witnesses. And if opposing counsel determines that a question asked would call for inadmissible testimony or a document would not be authorized to be admitted and viewed by the attorney, that attorney will object, and then I will make a determination as to whether or not the question would call for inadmissible evidence. And I do that not because I like one side or dislike the other side or wish to in any way influence the outcome of the case. Believe me, I don't. I don't have any position as between these parties. I just do these rulings based on my understanding of the law and I hope you'll view it in that regard.

If I sustain an objection, it means that I have determined that the question would indeed call for inadmissible evidence in the case, and that means that the witness will be prohibited from any further answer.

And if the witness has answered, I will ask you to disregard the answer. I'll probably be striking the response if it gets to that point where my ruling comes after the witness has blurted out part of an answer, but if I do sustain an objection, please do not also consider the question itself, just move on to those questions that would call for admissible testimony. I'm sure there will be plenty of admissible testimony to consider and don't worry about those things that you are not to consider.

If I overrule an objection, it means that I have determined the question actually does call for admissible testimony. The witness will be allowed to proceed to answer the question and you may consider it.

Now, Deputy Medina will be your conduit to the Court in the course of the trial, and if you have anything you would like, please convey that issue to Deputy Medina and he will convey it to me or do what he can to help you.

During the course of trial and as soon as we break today, you will be going into the jury room. That will be your office, so to speak, and you will be the only ones in there during the course of trial. So you can leave some reading material, for instance, if you want reading material. We do have some magazines, things

like that in there.

You are certainly free to talk amongst yourselves as jurors usually do during the break, chat with one another. I am going to ask that when you are excused, you go into the jury room, you can wait there however long you want, but when you exit the building, please go straight out and leave the premises. Don't kind of loiter in the hallways, because there may be witnesses talking to one another or to investigators or to attorneys in the hallway and we don't want you obtaining information out there. We want you to determine the case solely from what you hear here in the courtroom through sworn admissible testimony.

The lawyers in the case will endeavor to help you to understand all the facets of the case, but there is one thing that I have to ask you to bear in mind, and that is, that what an attorney says is not proof of any fact in the case unless they both stipulate to the existence of a fact, in which case you would accept that fact as being proven. But for the most part the attorneys simply help you to understand the real factual testimony in the case which is coming from sworn witnesses and evidence admitted by the way of documents in the case.

So with that, bear in mind that as you hear the witnesses [sic] give an opening statement or ask questions or give a closing argument, that what they say is not evidence in a case.

And I did actually have a case just a month ago where the jurors during deliberations asked questions indicating that they thought a certain thing to be the evidence and they wanted to read back that portion of the evidence. And we had actually found out that there was no testimony in that regard, it was only a statement made by a lawyer during opening statement that one or more jurors had remembered and thought that was part of the factual proof in the case. So bear that in mind. It does come up.

All right. At this point I'm going to ask Mr. Bartlett to read the Information that was filed by the State.

THE CLERK: In the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, the State of Nevada, Plaintiff, versus Ferrill Joseph Volpicelli, Defendant, Case Number CR03-1263, Department No. 10, filed June 11th, 2003, 4:45 p.m., Ronald A. Longton, Jr., by George Velardy, Deputy. Indictment. The defendant, Ferrill Joseph Volpicelli, is

accused by the Grand Jury of Washoe County, State of Nevada, of the following:

Count I, conspiracy to commit crimes against property, violation of NRS 109.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, committed as follows:

That the said defendant on or between the 21st day of June, A.D., 2001, and the 17th day of October, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully and with the intent to permanently deprive, cheat or defraud, conspired with Brett Bowman with the intent then and there to commit burglary, theft, forgery, uttering a forged instrument, larceny, obtaining property by false pretenses and/or unlawful possession, making forgery or counterfeiting of inventory pricing labels through a scheme where property and/or money was obtained from several stores in Washoe County, to wit, Wal-Mart, Kmart, Shopko, Target, Lowe's, Home Depot, Office Max, Office Depot, Bed Bath & Beyond, Best Buy, CompUSA, Toys 'R Us and/or PETSmart by, 1., entering said stores for the purpose of obtaining universal pricing label information to create false and forged universal pricing labels; 2., by affixing false,

forged or counterfeited universal pricing labels to merchandise at said stores to purchase said merchandise for less than the posted retail price; 3., by purchasing said merchandise under the false pretense with a forged or counterfeit pricing label as a true and valid document; and/or, 4., by removing the false and forged inventory pricing labels and subsequently returning some of the fraudulently discounted merchandise for the original valid retail price thereby making a profit;

Count II, burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 4th day of September, A.D., 2001 or thereabout at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain Wal-Mart located at 2863 Northtowne Lane, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny and/or obtaining property by false pretenses therein by entering to obtain UPC label and/or other pricing information;

Count III, burglary, a violation of NRS 205.060 a felony, committed as follows:

That the said defendant on or between the 11th day of September, A.D., 2001 and the 29th day of

September, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain Home Depot located at 5125 Summit Ridge Court, and/or 2955 Northtowne Lane, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny and/or obtaining property by false pretenses therein by endeavoring to scout miscellaneous UPC labels and/or other pricing information and/or obtain a toilet and/or said defendant did aid and abet Brett Bowman in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a lookout, by counseling, encouraging, inducing or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label;

Count IV. Burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 21st day of September, A.D., 2001, or thereabout, in the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain Bed Bath & Beyond located at 4983 South

Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny, and/or obtain property by false pretenses therein by entering with the intent to fraudulently obtain one or more coffee pots and/or scout pricing information related to said merchandise, and/or did aid and abet Brett Bowman in the commission of said burglary by providing him with a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a lookout, by counseling, encouraging, inducing or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label;

Count V. Burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 28th day of September, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain Wal-Mart located at 4855 Kietzke Lane, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny and/or obtaining property by false

pretenses therein by entering to obtain UPC label and/or other pricing information to be used for an unlawful purpose;

Count VI. Burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 5th day of October, A.D., 2001, or thereabout, in the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain Lowe's Home Improvement store located at 5075 Kietzke Lane, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny and/or obtaining property by false pretenses and/or unlawful possession, making, forging or counterfeiting of inventory pricing labels therein, by entering with the intent to fraudulently obtain one or more wool rugs and/or scout pricing information related to said rugs, and/or said defendant did aid and abet Brett Bowman in the commission of said burglary by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a lookout, by counseling, encouraging, inducing or otherwise procuring

him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label;

Count VII. Burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August, A.D., 2001, and the 13th day of October, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain Wal-Mart located at 2863 Northtowne Lane and/or 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny and/or obtaining property by false pretenses and/or unlawful possession, making, forgery, or counterfeiting of inventory pricing labels therein by entering with the intent to fraudulently obtain a Panasonic home theater system, Emerson TV-DVD combo, KDSRAE-5 15-inch monitor, surger sewing machine and/or a Hewlett Packard printer and/or scout pricing information related to said merchandise and/or said defendant did aid and abet Brett Bowman in the commission of said burglary or burglaries by providing him a fictitious UPC bar code label to affix to said merchandise, by providing him with U.S. currency to fraudulently purchase said merchandise,

by driving him to and/or from the scene, by acting as a lookout, by counseling, encouraging, inducing or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label;

Count VIII. Burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on or between the 30th day of August, A.D., 2001, and the 17th day of October, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, on one or more occasions did willfully and unlawfully enter a certain Shopko located at 5150 Mae Anne Avenue and/or 6139 South Virginia Street, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny and/or obtaining property by false pretenses and/or unlawful possession, making, forgery, or counterfeiting of inventory pricing labels therein by entering with the intent to fraudulently obtain a Sonicare electric toothbrush and/or one or more Willow Bay comforters;

Count IX. Burglary, a violation of NRS 205.060, a felony, committed as follows:

That the said defendant on the 17th day of

October, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully and unlawfully enter a certain Wal-Mart located at 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the intent then and there to commit theft, forgery, uttering a forged instrument, larceny, and/or obtaining property by false pretenses and/or unlawful possession, making, forgery or counterfeiting of inventory pricing labels therein by entering with the intent to fraudulently obtain a Mongoose bicycle and/or scout pricing information related to said bicycle, and/or said defendant did aid and abet Brett Bowman in the commission of said burglary by affixing a fictitious UPC bar code label to said merchandise, by providing Bowman with U.S. currency to fraudulently purchase said merchandise, by driving him to and/or from the scene, by acting as a lookout, by counseling, encouraging, inducing or otherwise procuring him to enter said store and fraudulently obtain said merchandise with said fictitious UPC bar code label;

Count X. Unlawful possession, making, forgery or counterfeiting of inventory pricing labels, a violation of NRS 205.965, Subsection 2 and 3, a felony, committed as follows:

That the said defendant on the 17th day of October, A.D., 2001, or thereabout, at the County of Washoe, State of Nevada, did willfully, unlawfully and with the intent to cheat or defraud a retailer, possess, make, forge or counterfeit 15 or more inventory pricing labels, commonly known as UPC bar code labels, in a motor vehicle located at 9400 block of South Virginia Street, Reno, Washoe County, Nevada.

Dated this 11th day of June, 2003, Richard A. Gammick, District Attorney, by Cheryl Heir-Johnson, Deputy District Attorney, to which indictment the defendant entered a plea of not guilty as charged.

THE COURT: Those charges will again be read to the jury by me during the course of reading you the jury instructions. And Mr. Bartlett did such an outstanding job with such a lengthy, the wordiness of the charges, I wish you could do that again because I don't think I could do it that well.

Anyway, I am wondering, since it's now less than 15 minutes to 12:00, if you'd like just to let the jury go and come back at 1 o'clock. We had expected that we would get the opening statements done before our break, but this would allow the jurors to get kind of a jump on the lunch rush, I'm thinking.

Does counsel have any objection to just letting the jury go and coming back at 1:00?

MS. RIGGS: State will have no objection, Your Honor.

MR. VAN RY: No objection.

THE COURT: All right. I think that's best to do. That way you can take care of some of your affairs again avoiding the lunch rush.

I'm going to give you some special instructions and these are instructions that I will be giving to you at every recess during the course of the trial. And that is that you are not to discuss this case among yourselves or with anyone else. You are not to read, watch or listen to any media account of this proceeding and you are not to form or express any opinion on any matter connected with this trial until the matter is submitted to you for your deliberations. There are some other instructions that I will give to you as well, and that is that you are not to do any, any independent research into the law that applies to this case or research as to the scene of any event or, you know, other research that you might do to prove or disprove any fact in the case. All the information you need to determine the case will be provided here in open court and we want

you to use that information, not information that you might investigate and discover outside of this courtroom.

And with that, court will stand in recess, then, until 1 o'clock this afternoon. Court will stand in recess.

THE BAILIFF: All rise.

(Midday recess taken at 11:51 a.m.)

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RENO, NEVADA, WEDNESDAY, NOVEMBER 11, 2003, 1:16 P.M.

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THE BAILIFF: All rise. This Court is again in session.

THE COURT: You may be seated.

The record will reflect that we are meeting outside the presence of the jury and we would like to take up any issues of stipulations that our parties may enter at this time. And Ms. Riggs.

MS. RIGGS: Your Honor, the parties have stipulated to the admissibility of most of the exhibits, or State's exhibits in this case. Parties have stipulated to the admissibility of State's 1 through 10 and 12 through 43. As I understand, defense's only objection will be to State's Exhibit 11 entitled Transpositions.

THE COURT: And is that correct?

MR. VAN RY: That's correct, Your Honor.

THE COURT: All right. Thanks Mr. Van Ry.

MS. RIGGS: And Your Honor, I do have one more matter. If I may have leave to approach witnesses with the exhibits rather than asking each time I go up, since we do have 43 exhibits, it will probably save quite

a bit of time.

THE COURT: Does the defense have any objection to that?

MR. VAN RY: No objection, Your Honor.

THE COURT: All right. Ms. Riggs, I will give you the court leave, then, to approach witnesses with exhibits.

MS. RIGGS: Thank you, Your Honor.

The COURT: I guess we can bring the jurors in.

Well, all those exhibits that Ms. Riggs has stated are stipulated exhibits, that is, all the exhibits we have up through 43 with the exception of No. 11 are admitted.

MS. RIGGS: Thank you, Your Honor.

MR. VAN RY: Thank you, Your Honor.

THE BAILIFF: All rise for the jury.

Your Honor, I believe we have one in the restroom.

THE COURT: You may be seated.

I don't want to say anything of consequence outside the presence of Ms. White, but we are lucky that at least the weather is good today. I went out strolling and I saw some of you walking along the river today.

That's pretty nice. Let's hope it stays that way for the rest of the week.

And now that we're all present, I'm going to ask Ms. Riggs if she would like to present the opening statement on behalf of the State.

MS. RIGGS: Thank you, Your Honor.

Ladies and gentlemen, as you heard from the reading of the indictment in this case, this is a very serious case. The defendant is charged with eight counts of burglary, one count of conspiracy, conspiracy to commit several crimes including theft and larceny, and one count of possession for counterfeiting of inventory pricing control labels or commonly known as UPC codes.

At the end of the State's case, State will have proven all of these charges to you beyond a reasonable doubt and at that point I will ask you to find this man, Ferrill Joseph Volpicelli, guilty of all ten counts.

The State will show you that between June and October of 2001, this defendant conceived of a scheme to defraud local retail stores in Washoe County out of thousands of dollars. Now, he did this knowing two pieces of information that the general public may or may not know.

First piece of information. This defendant knows about UPC bar codes. UPC bar codes are the square stripy bar codes on anything, or just about everything you can purchase. For instance, I'm showing, for the record I'm showing you the bottom of a tissue box from off of counsel table. That square with the stripes, that's the UPC bar code.

And you'll notice it has a series of numbers under it. Retailers use these bar codes for everything from shipping to tracking to inventory control to pricing information. Just about every aspect of a piece of merchandise from the time it is manufactured to the time it leaves the store in your hand is tracked by UPC bar code. Retailers depend upon the information generated from these UPC bar codes and this defendant knows it.

Second thing this defendant knows is that cashiers at checkout registers at almost every superstore are extremely busy. A cashier at your basic superstore does not have time to scan an item, make sure that the item on the receipt matches the item that they just scanned. They just don't have time for it. Their job is to get that line moving as quickly as possible and get the people out as quickly as possible.

Defendant knows this as well and he exploited

those two facts. Knowing those two facts he developed a scheme, and this is how it worked.

The defendant would enter a retail store, picked out something that he liked. For instance, the State will show you that one of these things was a DVD and a very expensive home theater system and the kind you hook up a TV to make it go into Sensurround so you can listen to your favorite movies in very high-quality sound. He would pick out an item such as that. Then he would leave that item and go and find a lower end item in the same category, for instance, the State will show you in this case he found a CD player, one of those little CD players that you put in, it holds up to three CDs. Very much less expensive than the large ticket item.

The defendant would then collect the bar code information from that lower end product, either by looking right on the shelves, some stores list those right on the shelf right in front of the product, or by examining the item itself and recording that bar code number, because it's the number that's important here. He doesn't have to copy the stripes or the bars, it's the number is what is the tool or his tools in this case.

So, for example, the DVD system costs around $500, the CD player costs around 70. Then the defendant

would turn, would return to his vehicle where he had a bar code maker. Now, it's not a specialized piece of equipment. It's a simple item that can be bought at any store, a label maker that made UPC bar code numbers.

And by the way, when I told you that he recorded some of these bar codes, he would use them again and again. Anyway, he'd go back to his vehicle, make the bar code. Then he would take that sticker, the new sticker, and either himself or his accomplice would go back into the store, stick that bar code that came from the lower end item onto the higher end item. Then he would take, or his accomplice would take the large end item out to the register, hand it to the checker who would just scan it in the normal place that they are used to scanning it, because he would place that bar code right over the normal bar code, scan, it would show up on the register tape CD player. But does the checker have time to check that? No. Checker doesn't notice.

Then either the defendant or his accomplice would hand $60 or another form, another amount of cash, $100 to the clerk, gets his change back and walks out with a $500 DVD system for 60 bucks, 70 bucks.

Then the defendant would either take this to a storage unit, this item to a storage unit and store it

for some future purpose or he would take off the UPC code, the new UPC code from the lower end item, bring it back to the store where he got it from and say, hey, I need to return this. Here you go sir, here's your $500. There you go. He pays $70, that's $430 profit.

In this way the defendant was able to accumulate thousands of dollars of merchandise attained at a fraction of its actual price from local merchants all over Washoe County.

At the end of the State's case you will see overwhelming evidence of the defendant's guilt on all the counts charged in the criminal indictment. I mentioned to you that he was also charged with conspiracy, working with another in pursuit of a criminal scheme, which is what he did, and we will show you that. Also we are going to be showing you that he had in his possession at least 15 of these UPC bar codes at the time of his arrest, which is what is charged in Count X.

So at that time, ladies and gentlemen, I'm going to be asking you to find him guilty. Now, due to some scheduling issues, the State is going to be presenting some of these witnesses slightly out of order, but we believe you will have no, no confusion as to, as far as what is going on here and we believe you will find

him guilty of all counts. Thank you.

THE COURT: Mr. Van Ry, you can either make an opening statement at this time or reserve it for later. Would you like to make it at this time?

MR. VAN RY: I would, Your Honor. Thank you. May I approach?

THE COURT: You may proceed.

MR. VAN RY: Good afternoon. Thank you for bearing with us this morning.

This case is about reasonable doubt. We're here because there exists reasonable doubt. We're here because from our viewpoint the evidence will show that there's reasonable doubt. And I will talk about that in a minute, but first let me thank you for your service.

Service on a jury is a sacrifice, it's a hardship, it's trouble, it's time-consuming. It takes you away from your family, friends, job, occupation, hobbies, et cetera. We recognize that imposition. But you are fulfilling an important purpose. There's a dispute between the State and my client and you are here to help resolve that dispute. So we thank you for that and want you to recognize it's important. Your duty here is important.

There are numerous counts against

Mr. Volpicelli, as has been stated and has been read to you, and there are going to be many items of evidence documentary. There's also going to be many witnesses. But the reasonable doubt in this case does not necessarily arise from the documents that you are going to see. And it doesn't necessarily arise from all of the State's witnesses. It will arise from one witness, namely Brett Bowman. You heard him referred to in voir dire as a coconspirator. That's what the State believes he is. We believe the evidence will not show that he's a coconspirator, that he acted solely in his best interest. And there are a lot of, a lot of things that we will go into to demonstrate that he is not credible and that he has much to gain by pinning this elaborate scheme upon Mr. Volpicelli. But I want you to pay very careful attention when he testifies, because that's where reasonable doubt exists in this case.

There really will be no other witness, the evidence will not show that Mr. Volpicelli was engaged in criminal activity. Walking into a store, writing down pricing information is not a crime. Possessing the label maker, it's sold over the counter. It's not a crime. So there will be a lot of evidence to demonstrate that Mr. Volpicelli's actions were not criminal. Were not

criminal.

And as a result I will ask you, at the end of the evidence I will ask you to find him not guilty under all the counts, under all the counts charged. Thank you.

THE COURT: Ms. Riggs, you may call your first witness.

MS. RIGGS: Thank you, Your Honor. The State will call Dave Della.

MR. VAN RY: Your Honor, defense would invoke the rule of exclusion.

THE COURT: All right. You have the right to do that, and that means that all witnesses in the case, other than a party to the case, would have to be excluded during the course of testimony.

And, sir, if you'll please step right up into this area, Mr. Bartlett will administer the oath.

DAVID DELLA,

having been first duly sworn by the court clerk, was examined and testified as follows:

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

THE WITNESS: Thank you.

^.^ DIRECT EXAMINATION ^.^

BY MS. RIGGS:

Q Would you please state your name and spell it for the record?

A David Della, D-e-l-l-a.

Q And what agency employs you, please?

A The City of Reno Police Department.

Q What's your rank at RPD?

A Detective sergeant.

Q And Detective, do you prefer to be called Detective or Sergeant or both?

A Whichever you prefer.

Q How about Detective Della?

A That's fine.

Q Detective Della, what is your current assignment?

A I am assigned to the detective division, I'm in a unit that gathers intelligence and conducts surveillances on persons suspected of criminal activity.

Q So you supervise a group of detectives?

A Yes, I do.

Q And can you tell me, what kind of activities do the detectives in your unit typically perform during the investigation?

A The initial part that we do would be the intelligence gathering and that can be from both public and private sources. Get as much intelligence as we can on individuals and then we conduct surveillances as needed on that individual up to and including arrest, if appropriate.

Q And can you tell me what the detectives in your unit are typically wearing when they are on duty?

A It oftentimes depends on the assignment, but we're never in uniform. It's always in one form of civilian attire or another. Could be anywhere from jeans to a suit.

Q Depending on where they are and what they are doing?

A Exactly.

Q Detective, in 2001 did you and the detectives in your unit become involved in investigating the activities of a person named Ferrill Joseph Volpicelli?

A Yes, we did.

Q Do you recall when that investigation began?

A I assigned that file to Detective Thomas on September 4th, 2001.

Q And did you have any personal participation in the investigation?

A Subsequent to the assignment of the file, yes, I did.

Q Did you and the detectives in your unit observe the defendant over a period of time?

A Yes, we did.

Q Do you recall approximately what that period of time was?

A It would have started shortly after September 4th. I believe it was probably like three or four days prior that we actually started the surveillance portion where the entire unit would be assisting and that would have gone up through and including October 17th of the same year.

Q And at some point in time in that period did you become familiar with what Ferrill Volpicelli looks like?

A Yes, I did.

Q Would you recognize him if you saw him again?

A Yes, I would.

Q Do you see him in the courtroom today?

A Yes.

Q Would you please point him out and describe what he's wearing?

A Sure. Certainly. He's seated at the defense

table next to Mr. Van Ry in a white, long-sleeved, collared shirt and a tie.

MS. RIGGS: Your Honor, may the record reflect that the witness has correctly identified the defendant in this case?

THE COURT: Yes, the record will reflect the witness has identified Mr. Volpicelli.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Detective, do you recall participating in surveilling the defendant on September 26, 2001?

A Yes, I do.

Q And do you recall what general area or what city or cities that surveillance was occurring?

A Reno-Sparks, primarily in Sparks in the morning.

Q And, sir, is that in Washoe County?

A Yes, it is.

Q Do you recall approximately what time of day you began watching him?

A I believe it was between 8:00 and 9:00 in the morning.

Q And did you follow him somewhere? Did he go somewhere that morning?

A Yes, he did.

Q Where did he go?

A To a business called Aussie Self-Storage on East Victorian Avenue in Sparks.

Q And can you tell me how he was traveling that day? By foot, vehicle, how?

A He was driving a gold color, light color Mazda MPV van.

Q Now, you said you followed him to Aussie Self-Storage. That's a business establishment, correct?

A Yes, it is.

Q And is the name of that business establishment self-explanatory for the kind of business it conducts? In other words, is it a storage facility?

A It is, those mini storage rentals.

Q Did you follow the defendant all the way into the storage facility?

A Not into the business itself. Traditionally what we would do is not follow the vehicle in, but drive by and just continue to watch where the vehicle went into, and there's also trailing units that would also see where it went. So we saw it go in, but I did not follow it in.

Q But were you able to maintain eye contact

with him from some other vantage point?

A I went to the restaurant next door after I saw his vehicle pull into the self-storage unit. Could not see actually where he was at that time, so I drove back onto the street across the front of the business which is open with one of those, just like wrought iron gates and I could see through that as to where he was.

Q And you saw his van?

A I did.

Q You saw him?

A I did.

Q Can you describe where the defendant went once he was inside the storage unit complex?

A Over to the east side of this actual storage complex where several of the garages are located. He had parked his van there and there was one open garage door when I drove back by in front.

Q From your vantage point -- And by the way, Detective, can you tell me approximately how many feet you were away from him?

A When I drove by the front of the business I would estimate that to probably be, probably 60 yards.

Q Did you have an unobstructed view of what he was doing?

A Yes, I did.

Q Could you see what he was doing in front of the storage unit?

A He was actually going in and out of the storage unit with boxes in his hand like he was putting stuff in the unit.

Q At some point, Detective, did you determine exactly which storage unit it was --

A Yes.

Q -- that he was moving in and out of?

A Yes.

Q Do you recall which number it was?

A It was B, as in boy, 114.

Q Now, Detective, I'm showing you State's Exhibit 1. Do you recognize what's depicted in that photograph?

A Yes, I do.

Q What is that?

A This is the east side of the mini storage unit that I was mentioning a moment ago where the garages were that his vehicle was parked in front of.

Q And can you take my pen, please, and mark with an X the unit that he was parked in front of?

A As I recall it was the fifth one in from the

left and that's where I have placed the X.

Q Thank you. May I have the exhibit, please?

A Certainly.

Q Thank you.

Detective, I am now showing you what's been marked as State's Exhibit 2. Can you tell me what that exhibit is, please?

A This is a photograph that depicts the numbers on front of the actual storage unit, B, as in boy, 114.

Q And is that, is that the unit that you saw him in front of, Detective?

A Yes.

Q Thank you.

MS. RIGGS: Your Honor, may I show State's Exhibits 1 and 2 to the jury?

THE COURT: Yes, you may publish them to the jury.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now, Detective, did you also participate in surveilling the defendant on October 17th, 2001?

A Yes, I did.

Q In what general area were you watching him?

A Again, Reno-Sparks located within Washoe

County.

Q Was the defendant traveling by vehicle that day?

A Yes, he was.

Q Was he driving the same van that you had observed him in earlier?

A Yes, he was.

Q Detective, do you recall whether he had anyone else with him that day?

A I do recall. Initially he did not, however, I observed him on Third Street pick up another individual, so there were then two in the, in the van.

Q Was that person identified later that day?

A Yes, he was.

Q And who was that person?

A Brett Bowman.

Q Detective, where did the defendant and Bowman go from this Third Street location where you observed him pick him up?

A To the Wal-Mart on South Damonte Parkway in south Reno.

Q Now, once they got there, did you observe either the defendant or Bowman go into the Wal-Mart?

A Yes, I did.

Q Which one, or both?

A I did not observe the Defendant Volpicelli go into the Wal-Mart. I did not have eyes on at that time. Someone else in my unit would have. Shortly after that I did observe Mr. Bowman go inside.

Q Detective, did you follow Bowman?

A I did.

Q Where did he go once he was inside the store?

A Directly to the bicycle rack inside of Wal-Mart.

Q Now, were you able to keep your eyes on him while he was in the bicycle section?

A Yes, I was.

Q Describe to me what your vantage point was.

A When I went in the west doors to the store, which as you are facing Wal-Mart would be to the left, when I went in those doors, the bicycle racks are just inside those doors to the left. Again, you almost come across them right away. So as soon as I came through the door I could see where he was.

Q And what did you do at that point? Were you standing there watching him? Were you doing something else?

A I went to an aisle right across from where he

was, almost like I was shopping, and just peered over the top and watched what he was going.

Q What did he -- And what was he doing there as you observed him.

A He was having one of the store clerks remove a bicycle off the rack.

Q Now, were you close enough to observe what kind of bicycle it was?

A Yes.

Q And do you remember it well enough to describe it?

A I do. I could see it was a mountain bike when they were taking it off the rack. When he wheeled it toward the front of the store I could see it was a Mongoose mountain bicycle.

Q So with the assistance of someone else he was able to get that bicycle down?

A Yes.

Q What did he do with it once he had it down?

A Took it to the first register that he would have come to inside the store. Again, if you went inside those same west doors to Wal-Mart, it would be the register right in front of you, the first one.

Q Once he got to the cashier or the register,

what did he do?

A He handed the tag to the cashier and paid for the bicycle and then exited the store with the bicycle.

Q What did you do at that point?

A While he was at the cash register, I went over to where the bicycle rack is and took a look at the, they have tags in there, when you buy a bicycle normally in those stores you pull out a little tag and take that to the front and usually they send you around back or something to get the box. But I looked at the tag on it to see how much the bicycle was. After he exited the store, I went to the cashier, he being Mr. Bowman. He exited the store, I went to the cashier to see how much was paid for the bicycle.

Q And you brought the cashier one of those tags that you were talking about or one of the price tags?

A Yes, I did.

Q Okay. Detective, I'm showing you State's Exhibit 3. Can you describe what that is, please?

A This is the tag that is located at the bicycle rack that's for a 26 Mongoose XR 350, which is the model number of the Mongoose bicycle, for 249.66.

Q And that was the sale price of the bicycle at the time that you saw it, correct?

A Yes, it was.

MS. RIGGS: Your Honor, may I show this exhibit to the jury?

THE COURT: Ask which number is that?

MS. RIGGS: This would be State's Exhibit 3.

THE COURT: Yes, you may publish Exhibit 3 to the jury.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Now, when you went up to the cashier, what specifically did you ask the cashier?

A I asked the cashier how much that person had just paid for the bicycle.

Q Now, during the time that you were watching that register, did anybody else approach the register between the time that Bowman left and the time that you got there?

A No.

Q Was the clerk able to assist you --

A Yes, she was.

Q -- in getting that price?

A Yes, she was.

Q Did you watch her produce a document?

A She printed a receipt right out of the cash

register and handed that to me.

Q And was it any particular type of receipt? Was it a special kind of receipt?

A I'm not sure. It was a Wal-Mart receipt for the purchase that had just been made.

Q Detective, I'm showing you what's been marked as State's Exhibit 4. Do you recognize this item?

A Yes, I do.

Q And what is that item that I just showed you?

A This is the receipt that I just mentioned that the cashier printed up. It's the previous transaction printout for what he had paid for the bicycle.

Q What time is printed on that, sir?

A 17:09:41.

Q So approximately ten after 5:00 or nine after 5 p.m.?

A Correct.

Q On what date?

A October 17th, '01.

Q What price is indicated on the receipt that the previous purchaser had bought that item for?

A $74.96.

Q What happened, sir, after the, after Bowman

left the Wal-Mart?

A I radioed the information about what had been paid for the bicycle to the units outside and subsequently a traffic stop and arrest was effected.

MS. RIGGS: Your Honor, may I show State's Exhibit 4 to the jury, please?

THE COURT: Yes, you may do so.

BY MS. RIGGS:

Q Now, again, Detective, you got a good look at the bicycle that Bowman took off the rack that day, correct?

A Yes.

Q I'm showing you State's Exhibit 5. Do you recognize that item, sir?

A Yes, I do.

Q What is that item?

A It is a photograph depicting the Mongoose mountain bicycle that was taken at the place of the traffic stop.

Q Thank you.

MS. RIGGS: May I show State's Exhibit 5 to the jury, Your Honor?

THE COURT: Yes, you may.

/////

BY MS. RIGGS:

Q Now, you said a traffic stop was effected upon the gold van, correct?

A Yes.

Q At that time were both the defendant and Mr. Bowman in the van?

A Yes.

Q Do you recall where that vehicle was stopped?

A It was a used car sales lot probably about a mile or so north of the Wal-Mart. The exact address I don't --

Q Were they arrested?

A Yes.

Q And was a search conducted of the Mazda MPV?

A It was inventoried, yes.

Q And can you describe to the jury what an inventory search is, please?

A Actually it would be two different things. One is an inventory where anytime -- We have a policy in the Reno Police Department, anytime we are towing a vehicle, to protect both the city and the person who owns or is driving the vehicle, we conduct an inventory of everything located within that vehicle. Just so, one of two things, somebody says something was in there that

wasn't, or vice versa, if they say something wasn't in there and it was and they didn't get it back, then the City needs to take a look at that also. So every vehicle we conduct an impound and is being towed we do an inventory on.

Q And that's the reason why the vehicle was inventoried, correct?

A Yes.

Q Was the bicycle I showed you in State's Exhibit 5 recovered during that time, sir?

A It was.

Q It was in the van?

A Yes, it was.

MS. RIGGS: State has nothing further for this witness. Thank you.

THE COURT: Mr. Van Ry, do you have questions for the witness?

MR. VAN RY: I do. If I may approach.

THE COURT: All right.

MR. VAN RY: If I may move the lectern over so counsel can see the witness?

THE COURT: Yes, you may.

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^.^ CROSS-EXAMINATION ^.^

BY MR. VAN RY:

Q Good afternoon, Mr. Della.

A Good afternoon.

Q I think it only fair the jury know that you and I know each other.

A Yes, we do.

Q And how do we know each other?

A A few years ago we went to high school together.

Q And played football together?

A Yes, we did.

Q And you understand that I have a duty to my client to cross-examine you to the best of my ability; is that correct?

A Oh, yes.

Q Sounds like there were two distinct personal events that involved you and my client, that of September 26th and on October 17th; is that correct?

A There were actually more than that, sir.

Q There were more, but you actually testified to those two today?

A That is correct.

Q Okay. Let's talk about the September 26th

testimony that you gave earlier. When you were situated so you could see what Mr. Volpicelli was doing, you testified that he was moving boxes in and out of the unit; is that correct?

A No, I believe I testified he was moving them in. I don't recall seeing him taking anything out.

Q Okay. But you recall him putting something into the unit?

A Yes.

Q Could you specifically say what that was?

A No.

Q Was it boxes?

A Yes.

Q Big boxes, little boxes, mixture of both?

A I don't recall. I didn't see him long enough to see multiple trips inside. Like I said, I drove by the front, it wasn't like I was sitting somewhere in that whole time to see everything that he did.

Q Oh, okay, so you really saw a snapshot as you drove by?

A Right.

Q Would you drive around and come back every minute or so or was it just one time you drove by?

A For me specifically it was just the one time.

Well, two. One when he pulled in I drove past, and, secondly, when I drove back westbound, then I saw where the van was parked.

Q And that's when you saw him taking something from the van into the storage unit?

A Yes.

Q It's not a crime to put something in a storage unit, is it?

MS. RIGGS: Objection, it calls for a legal conclusion.

THE COURT: The objection is overruled.

THE WITNESS: Just to put something in a storage unit, no.

BY MR. VAN RY:

Q Let's go to October 17th. And I believe you testified that you saw my client pick up Mr. Bowman around Third Street; is that correct?

A Yes.

Q And then you testified that he went down to Wal-Mart; is that correct?

A Yes.

Q Did they drive directly to Wal-Mart?

A I believe they did. It's -- I'm trying to recall since it's been two years, but I believe he did.

Q Did -- And I'm sorry I cut you off.

A I was done.

Q I was thinking. I'm sorry.

Did Mr. Volpicelli give Mr. Bowman a ride to another place before they went to Wal-Mart?

A Yes, I believe they went to, to --

MS. RIGGS: Objection. I'm going to have to object to this line of questioning, Your Honor. May we approach?

THE COURT: Yes, you may approach.

(A discussion was held at the bench off the record.)

THE COURT: Mr. Van Ry, you may proceed.

MR. VAN RY: Thank you, Your Honor.

BY MR. VAN RY:

Q To kind of clarify that question, when Mr. Volpicelli picked up Mr. Bowman, he took Mr. Bowman to a place; is that correct?

A Yes, they went to a place.

Q Okay. It's very -- This is important. And isn't it true that Mr. Bowman went to that place?

A Yes.

Q And that place was the Division of Parole and Probation?

A Yes.

Q Now, you testified later that evening on October 17th that Mr. Volpicelli did not go into Wal-Mart; is that correct?

A No, sir, I did not testify to that.

Q I'm sorry?

A I did not see him go in.

Q Got it.

A Was that -- Okay.

Q Got it. You did not see Mr. Volpicelli go into Wal-Mart, you observed Mr. Bowman go into Wal-Mart?

A Correct.

Q Now, Mr. Volpicelli dropped off Mr. Bowman, Mr. Bowman went into Wal-Mart; is that what you saw?

A No.

Q That's not what you saw?

A No, sir.

Q What did you see?

A The vehicle was parked in the parking lot at the point I was asked to come forth to the front of the building by other detectives, was when Mr. Bowman went in.

Q And that's when you observed Mr. Bowman go in?

A Yes.

Q So you can't say for sure whether Mr. Volpicelli went into Wal-Mart this night or not based upon what you observed?

A Based upon my actual observation, no.

Q So Bowman goes into Wal-Mart, and it's Bowman who takes the bicycle off the rack; is that correct?

A I believe he has the clerk do it for him.

Q But Mr. Volpicelli is not around at this time?

A He's outside the store.

Q I mean, you didn't observe him in the bicycle area at this time?

A No, out -- No.

Q And Mr. Bowman is the one who takes the tag out of wherever the tag was and presents that along with the bike to the cashier; is that correct?

A I'm not sure where he got the tag from, but he is the one that presented it to the cashier.

MR. VAN RY: Let me have a moment, Your Honor.

BY MR. VAN RY:

Q Did you observe Mr. Bowman at the time he was in the bicycle area place a different UPC label on this

tag?

A No, I did not.

Q And you certainly didn't observe Mr. Volpicelli put a UPC label on this bicycle tag, did you?

A I did not observe him in the store, sir.

MR. VAN RY: Nothing further, Your Honor. Thank you.

THE COURT: Ms. Riggs, anything else?

MS. RIGGS: State will have nothing further for this witness, Your Honor.

THE COURT: All right. Detective Della, you may be excused.

THE WITNESS: Thank you, Your Honor.

MS. RIGGS: Your Honor, State will call Karinah Prevost, please. Also, Your Honor, may I collect the previous exhibits from the jury, please?

THE COURT: Oh, yes, you may collect the exhibits from the jurors.

Ma'am, please step right into this area. Mr. Bartlett will administer the oath.

KARINAH PREVOST,

having been first duly sworn by the court clerk,

was examined and testified as follows:

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

THE WITNESS: Okay.

^.^ DIRECT EXAMINATION ^.^

BY MS. RIGGS:

Q Would you please state your name and spell your last name for the record?

A Karinah Prevost, last name P-r-e-v-o-s-t.

Q Are you employed, ma'am?

A Yes.

Q And are you self-employed?

A Yes.

Q Can you tell me what your business is?

A I own a self-storage facility in Sparks.

Q What is the name of it?

A Aussie Self-Storage.

Q Can you tell me where in Sparks that business is located?

A 30 East Victorian Avenue.

Q Is that in Washoe County?

A Yes, it is.

Q Can you describe the business activities of Aussie Self-Storage, please?

A We rent storage space.

Q And are you full owner of that business?

A Part owner.

Q Who else owns that business with you?

A Dale Prevost.

Q And is that person related to you?

A Yes, my father.

Q Ms. Prevost, were you employed at Aussie Self-Storage as of August 2001?

A Yes, I was.

Q And are you responsible for renting or leasing these storage spaces or units to customers?

A Yes, I am.

Q Do you also maintain records at Aussie Self-Storage?

A Yes, I do.

Q And do you personally maintain those records?

A Yes, I do.

Q Are you familiar with Unit B-114 --

A Yes.

Q -- at Aussie Self-Storage?

A Yes.

Q Can you describe what sort of storage unit that is, please?

A It's a 10-by-20 storage with about an eight-foot standard roll-up garage style door.

Q Are you familiar with the rental history of that unit from August 2001 to October 2001?

A Yes, I am.

Q And do you recall who rented Unit B-114 during that period?

A Ashley Schilling.

Q Did Ashley Schilling complete a contract for renting that unit?

A Yes, she did.

Q Now, Ms. Prevost, in addition to a standard contract, is there other documentation that your renters are required to fill out prior to their renting a unit from you?

A Yes, there is.

Q What kind of documentation?

A An occupant information sheet.

Q Ms. Prevost, I'm showing you State's Exhibit 6. Could you -- First of all, are you familiar with that exhibit?

A Yes, I am.

Q Can you tell me what it is?

A It's an additional information sheet that we ask the occupants to fill out.

Q And Ashley Schilling filled that form out, correct?

A Yes.

Q Ma'am, is there a section in that form that indicates other persons, in addition to the renter, in this case Ashley Schilling, who are allowed access to that storage unit?

A Yes.

Q And did Ms. Schilling indicate on that form whether anyone was allowed access to the storage shed besides her?

A Yes, she did.

Q Who was allowed access to Unit B-114 besides Ashley Schilling?

A Ferrill Joseph Volpicelli, Travis Volpicelli and Shanell Volpicelli.

Q Thank you.

MS. RIGGS: May I show this exhibit to the jury, Your Honor, Exhibit 6?

THE COURT: Yes, you may.

MS. RIGGS: Thank you, Ms. Prevost. I don't

have any further questions.

THE COURT: Mr. Van Ry, do you have questions?

MR. VAN RY: No questions, Your Honor.

THE COURT: All right. Then Ms. Prevost, you may be excused.

THE WITNESS: Thank you.

MS. RIGGS: Your Honor, at this time State will call John David Ellis, Jr.

THE COURT: Please step into this area. Mr. Bartlett will administer you the oath.

JOHN DAVID ELLIS,

having been first duly sworn by the court clerk, was examined and testified as follows:

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

^.^ DIRECT EXAMINATION ^.^

BY MS. RIGGS:

Q Sir, would you please state your name and spell your last name for the record?

A John David Ellis, E-l-l-i-s.

Q And, sir, who employs you?

A Lowe's Home Improvement Warehouse.

Q What's your position with Lowe's?

A It's a district loss prevention manager.

Q Was this your position as of January 2002?

A Yes, it was.

Q Do you work out of the same area now as you did in January 2002?

A No, I don't.

Q Can you describe the area that you cover now, please?

A I cover the Southern California districts, just the Orange County area, for those of you who know the area.

Q And in January of 2002 what was your area of coverage?

A All of Northern California, Northern Nevada.

Q Can you describe your duties as loss prevention manager?

A Inventory control primarily. By that I mean we focus on conducting audits for things like review of receiving pricing, inventory integrity checks from the vendors, that type of work.

Q Now, sir, in November 2001 through January

2002, were you in charge of loss prevention at the Lowe's store on Kietzke Lane in Reno?

A Yes.

Q Did you happen to be in the Reno store on November 6, 2001?

A Yes.

Q At that time, sir, on that date do you recall being contacted by Reno Police Detective Reed Thomas?

A Yes, I do.

Q Did he make a request from you on that date?

A Yes, he did.

Q What was that request?

A He asked that I validate a UPC code on a purchase against the actual product in the building and the surveillance tapes, the CCTV tapes that we have on file.

Q Do you recall what product from Lowe's he was specifically asking you about?

A It was a rug.

Q When he came to speak to you, did he come to the Lowe's?

A Yes, he did.

Q Did he bring that rug with him?

A I want to say, yeah, I'm pretty sure he did,

yes.

Q Okay. Sir, I'm showing you State's Exhibit 7. Do you recognize that, sir?

A It's a packaged rug.

Q Is that the rug that Detective Thomas brought to show you that day?

A I would believe so, yes.

Q Now, what condition is that rug in that you see in the photograph?

A Looks to be in its original vendor packaging.

Q Is it rolled up?

A Yes, it is.

Q Sir, I'm showing you State's Exhibit 8. Do you recognize what is depicted in that photograph, please?

A It's a bar code, specifically on the outside of the packaged rug.

Q Sir, before we go on further with this exhibit, would you mind explaining to the jury what a bar code is, specifically a UPC bar code and what it is used for in your business?

A It's kind of like a fingerprint for each product inside of the building. All bar codes that come in from a vendor have a certain series of numbers that

correspond specifically to products in our stores so that our computer recognizes it when you scan it. Is that --

Q In -- Well, we'll get a little bit more specific. What does UPC stand for, first of all?

A Universal product code.

Q And does Lowe's only use UPC codes for pricing?

A Yes.

Q Okay. Are there other uses that UPC codes have related to merchandise?

A It does contain things like the pricing, the product information, it tells you specifically what the product is as well.

Q So when you say that a UPC code is scanned, what does that mean? What happens during the scan?

A Well, it captures the UPC information, it tells you what the product is, the specifics of the product as well, something that's very verifiable by simply looking at the product, you know, in question. For instance, it may be something tan and it may be 15 inches long and it will say 15 inches tan and whatever that item may be. And it captures the price of that item in the system that our system has it set at.

Q So when you are saying "it," you are talking

about the register?

A The register. I'm sorry, yes.

Q Where is the register getting that information from?

A There's a central database from our corporate office.

Q And, sir, do you recognize the UPC codes as the codes that were on the rug that day?

A Yes.

Q Bar codes? I'm sorry, I didn't hear your answer.

A Yes.

Q Sir, can you explain how those UPC codes are arranged on the actual package of the rug?

A Can you clarify that?

Q Certainly. You see one or more than one UPC bar code in that photograph?

A There's technically two UPCs on there.

Q So can you tell me how they are arranged on that package?

A Well, it's obvious that there is, one UPC is overlaid on the original UPS that's there, the vendor's UPC.

Q Now, sir, do you know whether Lowe's rugs

normally contain yet another UPC code attached to them?

A Typically no.

Q Is there one that would be rolled up inside or stapled to the inside?

A In, specifically with our rugs they come packaged from the vendors with a vendor packaging on the outside so it's scannable, but if for some reason the rug was taken out of its package, on the inside of the rolled rug there's a tag, much like you have on any other fabric type item you would buy, that has a UPC that's scannable on the inside as well.

Q Now, sir, I'm showing you State's Exhibit 8.1. Do you recognize that, that document that I'm showing you?

A That looks like that came off of the inside of the rug.

Q And would you mind looking at the document I just showed you, 8.1, State's Exhibit 8.1, compare it to the photograph, State's Exhibit 8, and verify whether those have the same information on them?

A It is in fact the same rug; however, the UPC that has been placed over this is not the UPC from the inside of the rug.

Q Sir, in your position as the loss prevention

manager, district loss prevention manager at Lowe's, are you familiar with the format that Lowe's uses for its UPC bar code labels?

A I'm sorry, you'll have to clarify that.

Q Okay, sure. Let's try it another way.

Sir, you allude to the fact that it looks like the outside UPC bar code was placed there?

A Um-hum.

Q What makes you say that?

A Well, typically, we are a large company, we wouldn't have vendors come into 900 stores and stick labels on top of existing product. Our computer systems are such that we simply can go into them from our general law offices, if we need to make any changes to the information in the computer system, we just change the information already associated with the existing UPC. So it's rare, that I know of, that we would have someone come in and place new UPCs on top of existing UPCs. We simply do that in the computer and it would automatically update everything associated with the normal UPC.

Q Sir, do you recall checking that UPC code that was on the outside of that rug for Detective Thomas?

A Yes.

Q And do you recall whether the Lowe's computer

database returned a Lowe's item corresponding with that UPC code that appears to have been supplied there?

A If I recall, and, you know, forgive me because it has been some time, but I do believe it scanned as another item inside the building. But when, in fact, when you match the descriptions up, it wasn't the same item at all.

MS. RIGGS: May I have the Court's indulgence for one moment, Your Honor?

THE COURT: Yes.

BY MS. RIGGS:

Q Sir, I am now showing you State's Exhibit 34. Do you recognize that document?

A Yes, that's a, what we call a project estimate. Something we would typically ring up just to give to a customer. If they were thinking about purchasing something and they wanted to see what the total price with tax and that type of thing would be.

Q Did you produce that document, sir?

A Yes. It contains the two different universal product code numbers. We also call them item numbers or sku's and it has two separate item numbers. One is for the UPC that was placed on the outside of the package rug and the other is for the actual rug itself from the

interior tag.

Q What is the price indicated which you call the actual price from the interior tag on that project estimate?

A 499.

Q And, sir, can you tell me what price corresponded with the exterior tag that you classified as being previously -- or applied consequently?

A $74.

Q Thank you.

MS. RIGGS: Your Honor, may I show these four exhibits to the jury? This would be State's 7, 8, 8.1 and 34?

THE COURT: Yes, you may publish those to the jury.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Sir, are you familiar with Lowe's carpet inventory and the prices that Lowe's normally charges for its Orient products?

A Pretty intimately, yes.

Q And based on your knowledge of Lowe's inventory and their pricing policies, do you know whether Lowe's would ever charge $74 for the rug that was brought

in to you by Detective Thomas on that day?

A Not through a scannable UPC code, no.

Q Oh, I'm sorry, sir. I didn't hear your full answer. Would you repeat that, please?

A Not through a scannable UPC code. If something was ever marked down that drastically it would be because of a product defect, a rip or tear and it may be -- And we have in-store labeling we would use at that point which is handwritten with the manager's signature written on it. So a markdown that extreme, to answer your question, no.

Q So that UPC code that had been applied did not have any kind of manager's initial on it?

A No.

Q In fact, did it look to you like the package had even been opened?

A I don't -- At the time I don't think that it did.

Q Sir, does the Reno Lowe's store have a videotape system for the purposes of security?

A Yes.

Q And I believe you testified earlier that Detective Thomas had asked about a, any kind of security tape for this transaction, correct?

A Yes.

Q Did the detective inform you of the date and time of the rug purchase?

A Yes, he did.

Q And is that the way you were able to pull the security tape?

A Yes, it was.

Q Are they filed by date and time?

A Yes, they are.

Q You were able to provide a copy to Detective Thomas?

A Yes, a copy was provided to him.

Q Thank you, sir.

MS. RIGGS: State has no further questions for this witness, Your Honor.

THE COURT: Mr. Van Ry, do you have questions?

MR. VAN RY: Yes, I do.

^.^ CROSS-EXAMINATION ^.^

BY MR. VAN RY:

Q Mr. Ellis, hello.

A Hi.

Q You appear to be a little uncomfortable. Are

you a little nervous?

A A little bit, sir.

Q I understand. I understand. If you don't understand a question, please let me know.

A Okay.

Q I believe you testified just a few minutes ago that it's rare that a UPC label might be produced in-store and then placed over the existing UPC label; is that correct?

A Yes, it is.

Q Well, if it's rare, it may not be likely but it's possible; is that correct?

A Yes, sir.

Q And that would also mean that in-store you, as Lowe's own and possess a label maker, to make such UPC labels?

A No.

Q You do not?

A No, we do not.

Q How would you do that?

A We wouldn't do that. As I was stating earlier, if we need to change information in the UPC we do it through the computers where we don't have to actually put a new UPC on the outside of the product.

Q Okay. So I guess I need to backtrack. How would a UPC label in a rare occasion get a new one to be placed upon the old existing UPC label?

A In my experiences in the past, sometimes UPCs come in defaced from the vendors, smudges or blurs, and we will request that they come out to the entire shipment area that they sent the shipment to and place new UPCs on the outside of all those blurred, you know, so that they are scannable. That's typically how you would probably get a new UPC on the outside.

Q Would that happen before it got to you?

A In many cases, I say in many cases, I've been with Lowe's eight years and I can probably think of two or three times that I've had to contact a vendor to come out and do it specifically for a district, maybe eight, ten, twelve stores, something of that size, so it has been pretty rare. But we would contact the vendor after the product has arrived, someone has notified us that none of these UPCs are scanning at the point of sale and we would ask that they would come in and put new UPCs on those items.

Q Okay. So the vendor would come into the store?

A Yeah.

Q Okay. Thank you.

As you sit here you have no personal knowledge as to who actually placed this other UPC label over the existing label, do you?

A No, sir.

Q So you can't say for certain that it was my client that did that?

A No, sir.

MR. VAN RY: Thank you.

Nothing further, Your Honor.

^.^ REDIRECT EXAMINATION ^.^

BY MS. RIGGS:

Q Sir, you just testified that it's a rare event to have to have a vendor come in and have to reapply a UPC code, correct?

A Yes.

Q Is this event so rare that you would know about it if it happened?

A Typically I would be the one to make the call or someone else would let me know that it was happening.

Q Between June and November of 2001, do you recall receiving any kind of phone call or making a phone call to the vendor of that carpet that I just showed you

regarding the UPC codes?

A No.

MS. RIGGS: Thank you. State has nothing further, Your Honor.

THE COURT: Anything else?

MR. VAN RY: Nothing further, Your Honor.

THE COURT: Mr. Ellis, you may be excused.

And we'll go ahead and take our first recess at this point. And I will instruct the jurors that you are not to discuss this case among yourselves or with anyone else. Do not read, watch or listen to any media account of this proceeding and do not form or express any opinion on any subject of this trial before the matter is submitted for your deliberations. And we will take about a ten-minute recess.

THE BAILIFF: All rise.

(Recess taken from 2:24 p.m. to 2:42 p.m.)

THE BAILIFF: All rise. This Court is again in session.

THE COURT: You may be seated.

Ms. Riggs, you may call your next witness.

MS. RIGGS: Thank you, Your Honor.

State will call Brett Bowman.

THE COURT: Sir, if you'll please step into

this area, Mr. Bartlett will administer the oath.

BRETT BOWMAN,

having been first duly sworn by the court clerk, was examined and testified as follows:

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

^.^ DIRECT EXAMINATION ^.^

BY MS. RIGGS:

Q Sir, would you please state your name and spell it for the record.

A Brett Bowman, B-r-e-t-t, B-o-w-m-a-n.

Q Sir, you live in Nevada?

A Yes, I do.

Q How long have you lived in Nevada?

A Since '99, November of '99.

Q Sir, are you currently incarcerated?

A Yes, I am.

Q Where are you incarcerated?

A The Northern Nevada Restitution Center.

Q Is that in Reno?

A Yes, it is.

Q Sir, can you tell me how long you've been at the Northern Nevada Restitution Center?

A Since October of last year.

Q Upon what charge are you serving time now?

A Burglary.

Q When were you convicted of that crime?

A February of 2001, I believe.

Q Do you recall perhaps in 2002, sir?

A 2002, could have been.

Q Could it have been May 2002?

A Yes.

Q Do you recall what day you were arrested on the charge of burglary?

A October 17th.

Q And what year was that?

A 2001.

Q Was someone else arrested with you on that date?

A Yes, there was.

Q And who was that?

A The defendant.

Q And what was, what is his name?

A Mr. Volpicelli.

Q Is that Ferrill Volpicelli?

A Yes, it is.

Q Is Ferrill Volpicelli seated in the courtroom today?

A Yes, he is.

Q Would you please point him out and describe briefly what he is wearing?

A (Indicating) white shirt, blue tie.

MS. RIGGS: Your Honor, may the record reflect that the witness has identified the defendant in this case?

THE COURT: Yes, the record will reflect that the witness has identified Mr. Volpicelli.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Now, on the date of October 17th, 2001, Mr. Bowman, do you recall where you were arrested?

A Down the street from Wal-Mart on Del Monte, South Virginia.

Q You were on South Virginia Street when you got arrested?

A Yes, we were.

Q Prior to your arrest on that date, do you recall how long you had been acquainted with the defendant?

A Six months, in that area. Maybe about a year.

Q Six months to a year?

A Yes.

Q At some point during your acquaintance, sir, did the two of you discuss a scheme to defraud retail stores?

A Yes, we did.

Q And did that scheme include obtaining merchandise at drastically reduced prices --

A Yes.

Q -- from those stores?

Do you recall about what time of year during 2001 that topic first came up?

A The spring of 2001.

Q Who brought up the topic?

A The defendant did.

Q Did the defendant describe the scheme to you?

A Yes, he did. Over a period of time he did, yes.

Q Did he ask you to participate in it?

A Yes, he did.

Q And when he asked you to participate, did you jump on the chance, did you think about it for a while;

what did you do?

A I thought about it for a while.

Q Did there come a time when you took him up on his offer?

A Yes, there was.

Q Do you recall when that was?

A June of 2001.

Q As a general overview, Mr. Bowman, so I'm asking you to answer very generally, what did he ask you to do?

A He asked me to go into different stores and --

Q And I'm going to have you stop there for a second. I'm having a difficult time hearing you, sir, so would you please bring the microphone to your mouth a little bit more and speak up a little bit. And I'll ask the question again.

What generally did he ask you to do?

A To buy the merchandise after he placed a fraudulent bar code on the merchandise.

Q Did he ask you to do that with your own money?

A Pardon?

Q Did he want you to use your own money to buy

that merchandise?

A No, he did not.

Q Whose money did he want you to use?

A I used his.

Q Was that your idea or his?

A His.

Q And when you finally made the agreement with the defendant, was part of the agreement who would actually be making those UPC codes?

A Yes, there was.

Q Who was to be making the UPC codes?

A The defendant.

Q And during the time, between the time you were arrested in October 2001 back to June of 2001, sir, did you ever produce or make a single bar code?

A No, I did not.

Q Who made those bar codes?

A The defendant did.

Q Did you ever see him make those?

A Yes, I did.

Q How did he make those bar codes?

A With a label maker.

Q Was it, did this appear to be a specialized piece of equipment to you?

A No.

Q Did he tell you where he got the label maker?

A Yes.

Q Where did he get the label maker?

A At Office Depot.

Q When you saw him making those UPC bar codes, where specifically was he producing those?

A In the van.

Q What van are you talking about?

A It was a Mazda MPV.

Q Sir, did your original agreement include who would actually place those fraudulent UPC codes on merchandise that you were to obtain?

A Originally, yes.

Q And what was the original agreement?

A The original agreement was that he'd go in the store, place the UPC bar code on an item and I'd come in the store afterwards or a day later and purchase the item.

Q And how would you know which item to purchase?

A He would tell me where it was at and what it was -- well, what was it and where was it at.

Q And this obviously was after he had placed

the bar code?

A Yes.

Q Now, did that arrangement change during the course of this scheme, sir?

A Yes, it did.

Q How did that arrangement change?

A It changed to the point where he would make the label and I would take it in and place it on the item.

Q And then what would you do?

A I'd place it on the item and purchase the item.

Q Again, where did you get the money to purchase the item?

A From the defendant.

Q At any time, sir, did you use your own money to make any of the purchases during this scheme?

A No.

Q Now, you, I believe you previously testified, sir, that you began carrying out the scheme in June 2001; is that correct?

A It is.

Q Sir, did you participate in this scheme continuously between June 2001 and the time of your

arrest in October 2001?

A Yes.

Q Did your activity escalate at some point during that time?

A Yes, it did.

Q Could you describe that escalation, please?

A It started off maybe two or three stores to as many as ten in a night.

Q Now, when generally would you go out to the stores?

A It was mostly on my days off.

Q Which were when?

A Wednesday. Mainly Wednesdays.

Q Is there any particular time of day that you usually went?

A Early. It would be early evening.

Q And why did you go in the early evening?

A Because he had to deal with his boys.

Q When the defendant went into a store to place a bar code on an item, you came in after him to purchase the item, correct?

A That's correct.

Q Where generally had he placed the UPC bar code that he had produced?

A On top of the original bar code on the merchandise.

Q Did he tell you the reason for that was?

A It was to cover up the original bar code.

Q Sir, do you recall on approximately how many evenings total, not stores, but evenings, you participated in this scheme?

A Roughly around 12.

Q And on these approximately 12 evenings, do you recall which stores you entered and obtained merchandise from?

A Yes, I do.

Q Can you tell me which stores were involved, please?

A Wal-Mart, Kmart, Shopko, PETSmart, CompUSA, Bed & Bath. Right off the top of my head. I'm sure there's more than that.

Q Do you recall going into Target to obtain merchandise --

A Yes.

Q -- fraudulently, sir?

A Yes.

Q Do you recall going into Lowe's improvement warehouse?

A Yes.

Q Do you recall going into Home Depot?

A Yes.

Q Do you recall going into Office Depot?

A Yes.

Q Do you recall going into Office Max?

A Yes.

Q Do you recall going into Best Buy?

A Yes.

Q And do you recall going into Toys 'R Us?

A Yes.

Q Now, in all the stores that I just mentioned, sir, did you carry out the scheme that you just described?

A Yes, ma'am.

Q All those stores that I just described, Mr. Bowman, are those stores all located in Washoe County?

A Yes, they are.

Q Now, who is the one who decided which stores you were going to be going to when you would get together with the defendant for the night?

A The defendant did.

Q Did you ever discuss, did you tell him you

ever wanted to go someplace different tonight or --

A No.

Q -- how did that work?

A No. We always went where he wanted to go. We bought what he wanted to purchase.

Q So he was the one who also -- Did he tell you what you were going to be buying that night, or buying in quotation marks?

A Usually not until we got to the store. When he picked me up in the afternoon, earlier in the evening, he'd discuss which stores. And sometimes, right, he would tell me what he planned on buying that night. But for the most part, when he got to the store, he would tell me what he wanted when he got to the parking lot.

Q And what would happen to the merchandise after you obtained it?

A Obtain it, put it in the van.

Q Did you ever keep it and take any of it home?

A No. Just -- Let me back up here. A couple items, yes.

Q What were those couple items?

A One was a shaver, a bronze shaver, a coffee maker.

Q Those were the two items that you obtained

for yourself during the entire course of the scheme?

A Yes. Yes, it is.

Q And, again, going toward the end of the period, you are hitting up to ten stores per night, right?

A Yeah.

Q Well, sir, if all you got in merchandise out of this scheme was a coffee maker and a shaver, what was the benefit to you?

A He was paying me cash.

Q How much was he paying you?

A Roughly around $200 a night.

Q Sir, I know you described this a little bit earlier, but now I would like you to go into a little more detail and tell the jury on a particular night after Mr., after the defendant had told you what you were going to get, how the scheme would work from there. Can you tell -- Describe to the jury typically how it worked after he had decided what he wanted to get for that night.

A After he decided what he wanted, right, what he would do, he would pull out a --

Q And again, sir, I'm going to have to ask you to speak up a little bit into the microphone because I'm

having a hard time hearing you.

A What would happen, we'd pull into a parking lot, he'd pull out the master sheet.

Q And I'm sorry, let's stop there. You said a market sheet?

A Yes.

Q What do you mean by master sheet?

A It would be a sheet of paper with different stores with merchandise and the price of items with the bar codes.

Q He had a list of those?

A Yes, he did.

Q Did you -- And where did he normally keep that; do you know?

A With, in a black pouch with a label maker and receipts. They were all contained in a little carry bag.

Q Okay. And I'm sorry to interrupt, sir. Go on. After he would pull out the master sheet what would happen?

A He would go down the list, find what he wanted. Then he'd either make up the label or he already had the labels made. He had an organizer right where he would make the labels. Tell me where the stuff was located at in the store. After that I would go in the

store with the cash, adhere the label to the merchandise over the original bar code. If the bar code was too big, he would hand me another label, right, to place over the original bar code. And I'd adhere the bar code to the box and then walk up to the cashier line, right, picked out a cashier that looked dumb to me and I'd buy the merchandise.

Q And you'd buy the merchandise using whose money?

A The defendant's.

Q Now, you say that if the UPC code on the original package was too big he'd give you some kind of label to cover that?

A Right.

Q Does this mean that he would have already scouted the area where you were going before you got there or would he typically get out of the van after you got there, do his scouting and come back to talk to you?

A For the most part, right, it was already pre-scouted. Once or twice, a couple times, right, he scouted the store while I was in it.

Q What happened with the change after -- Say, you said the defendant would give you money to make the purchase, correct?

A Correct.

Q Would he have you pay with a credit card?

A No, always cash.

Q Always cash?

A Always cash.

Q What happened with the change if there was change?

A With the change, right, I kept ahold of the change, right, until we got to the next store. And if I had enough from the previous, buy, right, I'd just buy it, if not he would add more to it.

Q And what happened with the spare change at the end of the night?

A The end of the night, right, I kept it and then he, if it was a small amount, right, then he would give me more money.

Q Did you typically have a lot of change left at the end of the night?

A No.

Q Now, describe to me how you and the defendant typically would get to the stores themselves.

A We'd drive.

Q And who would drive?

A The defendant.

Q Do you have a vehicle or did you have a vehicle at this time?

A No, I did not.

Q Is there one vehicle in particular that the defendant would be driving or did he drive various vehicles?

A It was always the same.

Q What vehicle was that?

A It was the van.

Q Mr. Bowman, I'm showing you State's Exhibit 10. Do you recognize what's depicted in that photograph, please?

A That's the van he drives.

Q That's the van that Mr., or the defendant would drive during the course of this scheme?

A Yes, it is.

Q Is that the vehicle he always drove?

A Yes, it is.

Q At least when he was with you?

A Yes.

Q Thank you.

MS. RIGGS: Your Honor, may I show this Exhibit 10 to the jury?

THE COURT: Yes, you may publish Exhibit 10

to the jury.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Now, Mr. Bowman, we talked earlier about a label maker that the defendant would use to produce the UPC bar codes in question, correct?

A Yes.

Q I'm showing you what's been marked as State's Exhibit 9. Sir, do you recall what that exhibit is?

A Yes, I do.

Q What is that exhibit?

A It is the label maker, ma'am.

Q Is that the device that the defendant would use to produce these labels?

A Yes, it is.

Q And, again, where did he typically keep that?

A With everything else in a black carry bag.

Q And do you know where he kept the black carry bag?

A It was always in the van when he was with me, but where he actually kept it when we weren't together, I have no clue.

Q So when he was with you it was always in the van?

A Yes, it was.

Q Thank you.

MS. RIGGS: May I show State's Exhibit 9 to the jury, Your Honor?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now, sir, you said that you did not own a vehicle during the period of this scheme between June 2001 and October 2001, correct?

A Yes.

Q Did you have access to a vehicle that you could drive?

A No, I did not. I don't have a driver's license.

Q So do you drive at all?

A No, I do not.

Q Now, you testified that -- Well, let's back up to make sure this is what you testified to. You said that the defendant would sometimes pull out a trans -- pardon me, a sheet of paper, what you call the master sheet, correct?

A Yes.

Q Did the defendant tell you how the

information got onto the master sheet or where that information came from?

A Yes.

Q Where did that information come from?

A It came from each individual store. He would go into a store, looked for something he wanted.

Q I'm sorry, I can't hear you.

A I'm sorry. He'd go into a store, look for an item that he wanted, okay, he'd find the item and then he'd look for an alike item only cheaper and he'd take the bar code off that item and write it down.

Q And did you ever see him do this?

A Once or twice, yes.

Q Did he tell you that that's how that information got into the, to that master sheet?

A Yes.

Q And I believe you testified earlier that he kept that master sheet in the bag with the label maker, correct?

A Yes.

Q Was the master sheet in the van on the evening of October 17, 2001?

A Yes, it was.

Q To your knowledge did he use any of the UPC

code numbers from the master sheet more than once to make fraudulent UPC codes?

A Yes, he did.

Q How do you know this, sir?

A Because I'd buy several, several items of the same item.

Q And would the same item keep appearing on the cash register tape?

A Yes.

Q Even though you were buying different things?

A Yes.

Q Now, regarding the master sheet, sir, did you produce it?

A No, I did not.

Q Do you know who produced it?

A The defendant did.

Q Sir, I'm showing you what has been marked for identification as State's Exhibit 11. Do you recognize that piece of paper, sir?

A Yes, I do.

Q How do you recognize it?

A This is the master sheet.

Q The master sheet you were just discussing?

A Yes, it is.

Q Is that the master sheet that was in the Mazda MPV vehicle on October 17th, 2001?

A Yes, it is.

MS. RIGGS: State moves to admit State's Exhibit 11, Your Honor.

MR. VAN RY: Objection, lack of foundation. Improper, inadequate authentication, Your Honor.

MS. RIGGS: Your Honor, this has been authenticated. This defendant knows exactly what it is. He knows where it came from, he knows where it was when it was found and he knows where the information in it came from.

THE COURT: Well, I'm just wondering, are there any voir dire questions you would like to ask?

MR. VAN RY: Let me approach, Your Honor.

(A discussion was held at the bench off the record.)

THE COURT: The objection will be overruled and Exhibit 11 will be admitted.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Now, again, Mr. Bowman, can you describe to the jury what is in that sheet or how that sheet is organized?

A It's organized by store and the items in the store and the UPC bar codes and then the price of each item.

Q And is that the actual price of each of those items?

A It's the price that shows up for the bar code.

Q Do you also see a series of handwritten notes on the, in the margins?

A Yes, I do.

Q Do you have any personal knowledge of what those indicate?

A Yes, I do.

Q What are they?

A The ones that I can read are his, for instance, DVD theater system and the bar code numbers underneath it, then there's a video of the bar codes. What BB is I have no clue, but I recognize the number, the series of numbers. They are bar code numbers.

Q Sir, do you recognize the handwriting on, in those notes?

A I know it's not mine.

Q So do you recognize whose it is?

A No, I do not.

Q Thank you.

MS. RIGGS: May I show State's Exhibit 11 to the jury, Your Honor, please?

THE COURT: Yes, you may publish that to the jury.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Mr. Bowman, the scheme you just described that you participated in with the defendant, did that scheme ever involve returning items to retail stores?

A Yes, it did.

Q So when you returned those items, did you return them for the price that you originally paid, that is, the discounted price?

A No, I did not.

Q Well, how did you return them if you weren't returning them for the price that you paid for them?

A The label that I saw was removed and returned for the original.

Q Could you repeat the answer to my question, please?

A The label would be removed from the item and then it would be returned at the full price.

Q Who would remove that label?

A The defendant.

Q Did you ever remove fraudulent UPC bar codes?

A No.

Q Sir, did you obtain printed receipts for the purchases you made at the various stores?

A Yes, I did.

Q So when you went, for instance, let's say to Wal-Mart, you would walk out with an item, you would have a receipt in your hand, correct?

A That's correct.

Q What would you do with these receipts when you returned to the defendant's vehicle?

A I gave them to the defendant.

Q Were you able to see what he did with them?

A He'd either put them on the visor or he'd put them in the organizer.

Q Did you ever see where he kept the organizer?

A It was with the label maker and the master sheet.

Q Sir, I'm now showing you what's been marked State's Exhibit 12. That actually is admitted as State's Exhibit 12. Can you tell me what that is?

A It's the organizer.

Q Is that the organizer that the defendant

would typically put your receipts in?

A Yes, it is.

Q Sir, would you mind opening that exhibit and taking a quick look inside. What is contained inside State's Exhibit 12, please?

A Receipts and bar codes.

Q Thank you.

MS. RIGGS: Your Honor, may I show State's Exhibit 12 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now, again, sir, you testified that you didn't keep any of the merchandise except for a shaver and a coffee pot, correct?

A That's correct.

Q So what would typically happen after you would be done for the evening with your activities?

A He would give me some cash and drop me back off at my apartment.

Q So he didn't -- He paid you after you were done, correct?

A That's correct.

Q Did he keep all the rest of the merchandise

with him?

A Yes, he did.

Q Did he ever tell you what he did with it?

A He told me he kept it in a storage unit.

Q Did you ever go to the storage unit?

A No, I did not.

Q Sir, do you have access to a storage unit at all?

A I don't.

Q Did the defendant ever drop you off anywhere else besides at home after you were finished?

A Sometimes he'd drop me off at Sierra Sid's before he took me home to drop things off at the storage unit before he went home himself.

Q So is it fair to say, Mr. Bowman, that the defendant wouldn't allow you to go to the storage shed with him?

A Yes.

Q You weren't allowed to see where all the stuff was kept?

A No.

Q Did the defendant tell you whether the storage unit was somewhere in Sparks?

A I assumed that, but, no. Like I said, he'd

drop me off at Sierra Sid's, tell me he was going to the storage unit and he'd be back, pick me back up.

Q Now, sir, you testified that on about 12 occasions you participated in this scheme, about 12 evenings, hitting up to ten stores at a time. Thinking back on those evenings, were there any particular transactions that you remember better than others?

A Yes, I do.

Q Can you tell me about one of them, please?

A One of them was late in the evening, right, we went to a Wal-Mart. He told me what he wanted, which was a Panasonic theater system, and that while I was in the store he was going to go across the street and get fuel for the van. I went in the store, purchased the item, came back out and he was nowhere in sight. I ended up waiting 30, 35 minutes out in front of the store before he finally showed up.

Q How did that make you feel, Mr. Bowman?

A I was hot. I was mad.

Q Why were you angry?

A Because here I am sitting in front of a store with a theater system in a shopping cart just freshly bought. I had previously told him, "Don't leave me stranded. Always be somewhere where I can see you when I

come out of the store."

Q And why did you always want him there out front in front of the store when you came out?

A So I wasn't spending time in the parking lot looking for him.

Q So when you are here spending time in the parking lot, Mr. Bowman, is it fair to say that security has more chances to notice you?

A Exactly.

Q Well, tell me this, then. Did the scheme ever work in reverse? Did you ever become the one to wait in the van and have the defendant go in and come out with merchandise?

A No.

Q So he never had to be exposed to that kind of risk, did he?

A Exactly.

Q You just testified about an incident that occurred at Wal-Mart. Sir, do you recall approximately when this incident occurred?

A Late September, early October of 2001.

Q Sir, did you obtain any other Panasonic DVD theater systems using this same method during this period of time?

A Yes.

Q Do you recall how many?

A Maybe four or five.

Q Sir, do you recall what Wal-Mart was selling those items for?

A Roughly 4- to $500.

Q Do you recall what you paid for those?

A $60.

Q Apiece?

A Apiece.

Q When you obtained those or when you purchased those theater systems, did you obtain receipts for them?

A Yes, I did.

Q For those Panasonic DVD home theater systems, sir, do you recall what item was printed on the register receipt when the tape came out?

A Yes, I do.

Q What item was that?

A An Emerson CD player.

Q Sir, I'm showing you State's Exhibit 13. Do you recognize what is depicted in that photograph?

A Yes, I do.

Q What is depicted in that photograph?

A The Panasonic DVD theater system.

Q That's one of the --

A Yes.

Q -- several that you --

A Yes.

Q -- that you obtained?

A Yes, it is.

Q Thank you.

MS. RIGGS: May I show this exhibit to the jury, Your Honor?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Sir, did you and the defendant purchase all the theater systems from the same Wal-Mart store?

A No.

Q Did you ever purchase more than one on the same date?

A Yes.

Q Were those from the same Wal-Mart store?

A No.

Q From different stores, correct?

A Yes.

Q Sir, I'm showing you Exhibit 14. Do you recognize those, please?

A Yes.

Q What are those receipts that I just handed you?

A They are the receipts for the theater system.

Q What item is present or is indicated on the receipts?

A Three-CD Emerson.

Q Now, sir, would you mind looking at the back of the top receipt in that exhibit, please. What do you see there?

A It's a bar code.

Q Sir, is that typical of the bar code that you would normally place on an item --

A Yes, it is.

Q -- when going into a store?

A Yes, it is.

Q Is that typical of the bar codes that the defendant would make using the Brother label maker?

A Yes, it is a label that, it's the same tape that the label maker does make.

Q Thank you.

A White on black.

MS. RIGGS: Your Honor, may I show Exhibit 14 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Are there any other purchases or transactions, sir, that stand out in your mind?

A Yeah, there is. I had bought a lot of computer monitors.

Q Okay. Sir, regarding the computer monitors, do you recall about how many of those you obtained?

A Right around ten, 11, somewhere, maybe more.

Q And over what kind of time period did you obtain these?

A Couple weeks.

Q Sir, I'm showing you State's Exhibit 15. Do you recognize what is depicted in that photograph?

A Yes, those are the monitors.

Q Those are the monitors you were just speaking of you obtained eight or nine of?

A Yes.

Q Mr. Bowman, why would those computer monitor transactions be particularly memorable to you?

A It was the fact that I'd go into stores, right, and I'd keep going into stores until they were completely gone off the shelf so there was no more left

on the shelf at all.

Q What store would that be?

A It would be Wal-Mart.

Q So you would keep perpetuating this scheme until Wal-Mart didn't have any of these left?

A Exactly.

Q Thank you.

MS. RIGGS: May I show State's Exhibit 15 to the jury, Your Honor?

THE COURT: Yes, you may.

BY MS. RIGGS:

Q By the way, Mr. Bowman, did you ever participate in this activity by yourself?

A No, I did not.

Q Even though the defendant had shown you how to do this?

A Exactly.

Q At all times when you participated in this scheme you were in the personal presence of the defendant?

A Yes.

Q Sir, do you recall the approximate posted price or Wal-Mart's posted price for those computer monitors?

A $377, approximately, I believe.

Q Do you recall what you were paying for them?

A 177.

Q And, sir, who placed those bar codes on the computer monitors?

A I did.

Q Who made the bar codes?

A The defendant.

Q Do you recall, sir, what showed up on the register tape when you made the purchases for those computer monitors?

A Seventeen-inch computer monitor.

Q Sir, I'm showing you State's Exhibit 16. Do you recognize the items in that exhibit?

A Yes, I do.

Q Can you explain to me what those items are, please?

A A 17-inch monitor and some personal items.

Q Do each of those receipts contain an entry for a 17-inch monitor?

A Yes, they do.

Q Are each of those receipts for a Wal-Mart store?

A Yes, they are.

Q Are they for various Wal-Mart stores at various times?

A Yes, they are.

Q Thank you, Mr. Bowman.

MS. RIGGS: May I show State's Exhibit 16 to the jury, Your Honor?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Sir, did you and the defendant ever fraudulently obtain any DVD-TV combos at Wal-Mart?

A Yes, we did.

Q And can you briefly describe what that is, a DVD-TV combo?

A It's a DVD player built into a small TV.

Q Do you happen to recall the brand name on those items?

A Yes, Emerson.

Q Do you recall how many you obtained?

A Four or five.

Q And did you, you and Mr. -- or you and the defendant obtain those from Wal-Mart using a fraudulent UPC bar code?

A Yes, we did.

Q Can you tell me who made the bar codes that were applied to those --

A The defendant.

Q -- please? Who affixed them to the TV boxes?

A I did.

Q Do you happen to recall the approximate price that Wal-Mart was asking for those items?

A I believe $250, somewhere in that area.

Q Do you recall what you were paying for them?

A 120.

Q Did you obtain a receipt for each of these TVs?

A Yes, I did.

Q And do you recall what item appeared on each receipt that you received?

A Yes. A nine-inch TV.

Q Did you purchase the TVs at the same time?

A No, I did not.

Q Did you purchase them all at the same store?

A No.

Q I'm showing you State's Exhibit 17. Do you recognize those, sir?

A Yes.

Q And can you tell me or tell the jury what

those are, please?

A They are the receipts for the TV-DVD combos.

Q And what item appears on those receipts?

A Sanyo color TV.

Q Can you tell me on what date those receipts were printed, please?

A 9/24/01, 9/21/01, 9/24/01, 9/26.

Q Thank you, sir.

MS. RIGGS: Your Honor, may I have permission to show Exhibit 17 to the jury?

THE COURT: Yes, you may.

BY MS. RIGGS:

Q Sir, I'm now showing you State's Exhibit 18. Do you recognize what's depicted in that photograph?

A I do.

Q What is depicted in that photograph?

A The TV-DVD player.

Q Is that one of the items that you obtained?

A Yes, it is.

Q Thank you.

MS. RIGGS: Permission to show State's Exhibit 18 to the jury, Your Honor?

THE COURT: Permission granted. You may show it to the jury.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Sir, do you ever recall fraudulently obtaining with the defendant any sewing machines at Wal-Mart?

A Yes, I did.

Q And would you proceed as you previously described to the jury here today?

A Yes.

Q Did you ever have an occasion to return one of those sewing machines to Wal-Mart?

A Yes, I did.

Q Did you return that sewing machine for the price you paid for it or for the full retail price?

A For the price we paid for it.

Q So you testified earlier that you would normally return things for the higher retail price --

A Right.

Q -- is that correct?

A That's correct.

Q What happened in this case?

A The defendant forgot to take the fraudulent bar code off the item.

Q So it ended up getting returned for the lower

price?

A Yes, it did.

Q What did the defendant do about this particular transaction, sir?

A He waited for it to come back under the shelf and when it came back on the shelf, we had to go back in and buy it.

Q So he kept watching and waiting to --

A Yes.

Q -- make sure he got that sewing machine --

A Exactly.

Q -- for the reduced price?

A Exactly. They didn't take the bar code off of it. They left the same bar code on it.

Q So Wal-Mart never noticed that the new fraudulent bar code was on it?

A No, they did not.

Q And you went back in and repurchased that sewing machine?

A Yes, I did.

Q Do you recall how much you paid for the sewing machine?

A $99.

Q Do you recall about how much Wal-Mart was

asking for those?

A Roughly 300.

Q Sir, I'm showing you Exhibit 19. Do you recognize this?

A Yes, I do.

Q And can you tell the jury what that is, please?

A They are the receipt for the sewing machine. And one of the receipts is for the machine that went wrong.

Q Thank you, sir.

MS. RIGGS: Your Honor, may I have permission to show Exhibit 19 to the jury?

THE COURT: Yes, you may.

BY MS. RIGGS:

Q Sir, I'm now showing you State's Exhibit 20. Do you recognize what that is?

A Yes, I do.

Q What is that?

A This is the sewing machine.

Q Is that the sewing machine that you bought, returned and then rebought again?

A It very well could be.

Q Is that the type of sewing machine that was

involved in that transaction?

A It is the type, yes. Yes, it is.

Q Thank you.

MS. RIGGS: Your Honor, may I have permission to show State's Exhibit 20 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Sir, on the day that you were arrested, October 17th, 2001, did you engage in a fraudulent transaction at Wal-Mart?

A Yes, I did.

Q Do you remember which Wal-Mart?

A The one on Del Monte.

Q Would that be Del Monte or Damonte?

A Del Monte. The brand-new one.

Q It's the new one down on South Virginia Street --

A Yes.

Q -- off of Arrowcreek Parkway?

What merchandise did you obtain that day, sir?

A I bought a mountain bike.

Q Was the bicycle obtained using a fraudulent

UPC bar code label?

A Yes, it was.

Q On October 17th, 2001, sir, who made that label?

A The defendant did.

Q Did you watch him make that label that day?

A That label, no. It was already made.

Q It was made when?

A It was made when -- I have no idea when he made it. It was already made when he picked me up.

Q So by the time you arrived at Wal-Mart it had already been made?

A Yes.

Q Do you recall about approximately what time of day you went to Wal-Mart?

A It was roughly around 4 o'clock.

Q And who placed the UPC bar code on that bicycle, sir?

A The defendant did.

Q So during this transaction it was actually the defendant who went into the store, correct?

A Correct.

Q Did you meet him inside the store or did you meet him outside the store?

A I waited outside the store for him.

Q Where approximately were you?

A I was in the van, roughly in the middle of the parking lot.

Q And what were you doing while you were waiting for him?

A I was smoking a cigarette.

Q And did the defendant eventually come out of the store?

A Eventually, yes.

Q And what was his conversation with you?

A Conversation with me was that he had placed the label on a Mongoose mountain bike, he told me where it was at and handed me the money and told me to go get it.

Q And did you go into the store?

A Yes, I did.

Q And where did you go?

A I went around to the electronics shop, the electronic section of the store and worked my way to the bicycle display and found it on the rack. Couldn't get it off the rack by myself. I had one of the store clerks help me get it off the rack and then I wheeled it up to the cashier.

Q Okay.

MS. RIGGS: And, Your Honor, I apologize at this time, it looks like the jury is beginning to accumulate some exhibits. I believe that the court clerk will have no objection if they want to, when they are finished looking at them, put them in the spare chair up at the top, if you have no objection to that.

THE COURT: No. I see that Mr. Christiansen is placing them in the extra chair there in the corner and that's a fine place for them for the time being.

MS. RIGGS: Okay. Thank you, Your Honor.

BY MS. RIGGS:

Q Sir, you said that Mr. Volpicelli did place the UPC tag on this bike. Where was that located specifically?

A It was located specifically on the bar that holds the seat to the bike.

Q So what happened when you got to the register?

A I wheeled it up to the register, right, I proceeded to tear the UPC bar code off and handed it to the cashier. I told her it would be a lot easier if I handed it to her than if she scanned it.

Q And did she go ahead and scan the bar code?

A Yes, she did.

Q Sir, do you recall what Wal-Mart's asking price was for that bicycle?

A $249.

Q Do you recall what price you paid for it?

A $80.

Q Where did you get the money to pay for it?

A From the defendant.

Q And what did you do with the bike after paying for it?

A I put it in the van.

Q Now, sir, do you ride a bicycle?

A No, I don't.

Q Even though you don't drive you don't ride a bicycle?

A No, I take the bus wherever I go, or I walk.

Q Do you have any children?

A Not in this state, no.

Q No small children that would be using a bicycle?

A No.

Q So did you, at any time did you intend to retain the bicycle?

A No, I did not.

Q And, again, where did you put the bicycle when you came out of the store?

A In the back of the van.

Q And you received a receipt when you purchased the bicycle, correct?

A Yes, I did.

Q I'm showing you State's Exhibit 21. Can you tell me what's, what I have just handed you, please?

A It's a receipt for the bike.

Q And can you tell me what date is printed on that, please?

A October 17th, 2001.

Q And what is indicated on that receipt, please?

A 26-inch mountain bike.

Q And what is the price indicated?

A 74.96.

Q $74.96?

A Yes, it is.

Q Now I'm showing you State's Exhibit 3, Mr. Bowman. Can you tell me what that is or do you recognize it?

A It's the price for the 26-inch Mongoose.

Q And is that the actual price that was posted

at Wal-Mart?

A Yes, it is.

Q And I'm showing you State's Exhibit 5. Do you recognize what that is, sir?

A That's the bicycle.

Q That's the bicycle that you took down from the rack and obtained with a UPC bar code that the defendant gave you?

A It is.

Q And with the defendant's money, correct?

A That's correct.

Q Thank you.

MS. RIGGS: Your Honor, may I have permission to show State's Exhibit 21 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Sir, you mentioned that you obtained some expensive rugs -- Oh, I'm sorry, you did not say that. Did you have occasion to go to Lowe's?

A Yes.

Q Did you ever purchase anything at Lowe's using a fraudulent UPC bar code?

A Yes.

Q What did you purchase at Lowe's?

A Rugs, high-end rugs.

Q Okay. When you say high-end rugs, what do you mean by that?

A Rugs that retailed for $500 apiece.

Q How many times did you do this; do you recall?

A Twice.

Q And who made the bar codes that you used when you went into Lowe's?

A The defendant.

Q Who placed the bar codes on the rugs?

A I did.

Q Do you recall whether those rugs had any packaging when you --

A Yes, they were in a white fiberglass packaging, fiberglass mesh packaging.

Q And were the rugs flat, were they rolled up; do you recall?

A They were rolled up.

Q Where on the rugs, sir, specifically did you place the bar codes?

A Over the original bar code at the end of the package.

Q You said how many of these did you purchase?
A Two.
Q Were they bought at the same time?
A No, they were not.
Q Approximately how far apart were they bought?
A A week.
Q And you said earlier, you had mentioned earlier what the store's purchase price or list price was for those rugs; do you recall?
A They were listed at $500 apiece.
Q Do you recall what you were paying for those rugs?
A $80.
Q And, sir, do you recall receiving receipts for the rug transactions?
A I do.
Q Sir, I'm showing you State's Exhibit 22, can you tell me what this is?
A It's a receipt for an area rug.
Q What is the price indicated on that rug?
A $74.
Q Do you recognize that as one of the receipts you obtained during one of these two fraudulent transactions?

A Yes, it is.

Q Thank you.

MS. RIGGS: Your Honor, may I have permission to show State's Exhibit 22 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now, sir, what happened to the rugs after you obtained them?

A I put them in the van.

Q Did you ever see them again after that?

A I did not.

Q Sir, did you ever have occasion to go into Home Depot?

A Yes, I did.

Q Do you remember a particular transaction at all that you conducted in Home Depot?

A Yeah, I bought a toilet for the price of a one-horsepower garbage disposal.

Q So did the -- Am I to assume from that statement, did the register tape read out one-horsepower garbage disposal when a toilet was rung up?

A Yeah, it rung up as a garbage disposal.

Q Do you recall what time of day that was, sir?

A It was in the morning.

Q Do you recall approximately how much Home Depot was charging for that toilet?

A Roughly 3- or $400, I believe.

Q Was the toilet obtained using a fraudulent UPC code label?

A It was.

Q Again, who made that label?

A The defendant.

Q And was, how was the toilet packaged?

A A big box.

Q And you checked out at the register; is that correct?

A That's correct.

Q Do you recall receiving a receipt?

A Yes, I do.

Q Did the clerk ask you any questions when here you are with this big box obviously containing a toilet and a one-horsepower or a garbage disposal appears on the register tape?

A No. All he asked was the money.

Q Nobody at Home Depot picked up on it?

A No.

Q How did you pay for the toilet, sir?

A Cash.

Q And where did you get that cash?

A From the defendant.

Q I'm showing you what's been marked as State's Exhibit 23. Can you tell me what that is or do you recognize it?

A It's a receipt for the toilet.

Q What is indicated on the receipt?

A One-horsepower disposal.

Q And how much is, what's the price as indicated on the receipt?

A 194.

Q And, again, that's far less than what Home Depot was asking for the toilet?

A A lot less.

Q Thank you.

MS. RIGGS: Permission to show State's Exhibit 23 to the jury, Your Honor?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

THE COURT: We're headed towards a recess again since it appears this witness will be still a bit longer from what I can tell. But if we have a recess, I don't want the actual exhibits to go into the jury room

at this time. I don't think that's appropriate. So perhaps, since you keep giving these items to the jury and they are still looking at them, perhaps I can let the last receipt be placed in the chair and then we'll take a recess.

MS. RIGGS: That's fine, Your Honor.

THE COURT: Now, during the course of this upcoming recess, I will admonish the jurors that you are not to discuss this case among yourselves, with anyone else, do not read, watch or listen to any media account of this proceeding, and do not form or express an opinion on any subject connected with this trial until the matter is submitted to you for your deliberation.

And perhaps we could just pass the last of the receipts and have them placed in the chair there since we want to preserve the integrity of these exhibits.

Court will stand in recess.

THE BAILIFF: All rise.

(Recess taken from 3:46 p.m. to 4:08 p.m.)

THE BAILIFF: Court is again in session.

THE COURT: You may be seated.

Ms. Riggs, you may continue.

MS. RIGGS: Thank you, Your Honor.

BY MS. RIGGS:

Q Sir, before the break we were talking about the purchase of a toilet at Home Depot. Do you recall that?

A Yes, I do.

Q And you recall your testimony that you had purchased that toilet with a bar code that had come from a garbage disposal, correct?

A Exactly.

Q Sir, I'm showing you State's Exhibit 24. Can you tell me what that is, if you recall?

A It's the toilet.

Q That's the toilet that you purchased?

A Yes, it is.

Q Thank you.

MS. RIGGS: Your Honor, may I show the jury State's Exhibit 24?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Mr. Bowman, do you also recall in conjunction with the defendant making fraudulent purchases at a bed and bath store?

A Yes, I do.

Q Do you recall the name of that store?

A Bed & Bath Beyond.

Q Okay. Do you recall what merchandise you obtained at that store?

A Two coffeemakers.

Q Did you use fraudulent UPC bar codes to obtain those two items?

A Yes, I did.

Q Who made those bar codes, sir?

A The defendant.

Q Who placed those on the coffeemakers?

A I did.

Q Do you recall what Bed Bath & Beyond was charging for those coffeemakers?

A A hundred dollars apiece.

Q And how much were you paying for them, if you recall?

A $30.

Q Did you receive a receipt for each of these transactions?

A Yes, I did.

Q I'm showing you what's been marked as State's Exhibit 25. Do you recognize that, sir?

A Yes, I do.

Q And what is it?

A It's for the coffeemakers.

Q And they were -- How many coffeemakers were purchased during that transaction?

A Two.

Q And that's the -- Can you tell me what date that was, please?

A 9/21/01.

Q September 21, 2001?

A Yes.

Q Thank you.

MS. RIGGS: Permission to show State's Exhibit 25 to the jury, Your Honor?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q Now, sir, the two coffeemakers that you bought, you did mention earlier that you kept a coffee maker. Did you keep one of these coffeemakers purchased at Bed Bath & Beyond?

A Yes, I did.

Q What happened to the other one?

A I gave it to the defendant.

Q Sir, I'm showing you State's Exhibit 26. Do

you recognize what's depicted in this paragraph?

A Yes, I do.

Q And what is that?

A It's one of the coffeemakers.

Q And that's one of the coffeemakers that was purchased on this night in question?

A Yes, it is.

Q Thank you.

MS. RIGGS: Your Honor, may I show State's Exhibit 26 to the jury?

THE COURT: Yes, you may.

MS. RIGGS: Thank you.

BY MS. RIGGS:

Q We're going to return your attention now, Mr. Bowman, to the night you were arrested. And before we do go on, can you tell me if you have a job now?

A I do.

Q Where do you work now?

A I work at Baldini's Grand Pavilion.

Q What are your work hours?

A From 8:30 at night to whenever I get off, usually by 7:00 a.m.

Q Do you work graveyard shift?

A Yes, I am.

Q So did you get any sleep right now?

A About an hour.

Q So you are running on one hour sleep right now, correct?

A That's correct.

Q We'll move through this as fast as we can, Mr. Bowman.

Returning your attention to October 17th, 2001, you testified that you just obtained a Mongoose bicycle, correct?

A That's correct.

Q After you returned to the vehicle, did the two of you, meaning you and the defendant, leave Wal-Mart?

A Yes, we did.

Q How far did you get?

A Just down the street.

Q Why did you get just down the street?

A We were pulled over.

Q By whom?

A The police.

Q And how did you become aware that the police were trying to stop the two of you?

A By the red and blue flashing lights.

Q And who was driving at this point?

A The defendant.

Q What vehicle was he driving?

A The Mazda MPV.

Q Now, did the defendant stop the vehicle immediately when it became apparent that the two of you were being pulled over by the police?

A No, he did not.

Q He kept driving?

A He did.

Q Did either -- Do you recall whether either of you had a cellular telephone with you that day?

A He did.

Q Did you?

A I did not.

Q Did Mr. -- or did the defendant attempt to make any phone calls before the vehicle was pulled to the side of the road?

A Just one.

Q And you could hear him speaking?

A I could.

Q Could you tell from what he was saying who he was speaking, or who he was speaking to?

A One of his boys.

Q One of his children?

A Yes.

Q What was the defendant saying to his child?

A He was apologizing to him.

Q Apologizing saying what?

A That he had screwed up, that he was headed back to jail.

Q Did the defendant eventually pull the car over?

A He did.

Q Did you have to do anything to convince him to pull that car over?

A No. It was a big -- As we went down the road, right, the bigger the police car procession got behind us.

Q So you got down to, what, the 9000 block of Virginia Street?

A I truly don't remember how far. It wasn't very far, a couple lights.

Q Would you say it was about the same -- You got to about where the Winco store is now, maybe not quite that far?

A To be honest with you I don't remember.

Q Okay.

A I know it was a used car lot at the time.

Q Sir, when the officer stopped the two of you, was any of the evidence that you described today in the van?

A Yes.

Q Can you tell me what was in the van?

A The bike. There was a comforter. The label maker, the carry -- all the equipment to, to make the bar codes, the bar code receipts, everything.

Q So the little plastic organizer, the accordion folder was in there?

A Yes, it was.

Q And, again, the label maker?

A Yes.

Q Do you have any personal knowledge about how all that stuff, discounting the bicycle, got into the van?

A No.

Q Did you put any of that stuff in the van?

A I did not.

Q Sir, was the defendant arrested that evening?

A He was.

Q Were you arrested that evening?

A I was.

Q Were you charged with any crimes resulting from your participation in the scheme that you have just described to the jury?

A Yes, I was.

Q What was the charge?

A Burglary.

Q During the police investigation of this defendant, did you cooperate with the police?

A I did.

Q How did you cooperate?

A By answering the questions truthfully.

Q Did you give statements to the police regarding dates, times, stores, items obtained, methods that you used, things like that?

A I did.

Q What's the status of your criminal case now, sir?

A I'm currently incarcerated, coming towards the end of it.

Q When is your incarceration going to be over?

A February 9th of next year.

Q Do you anticipate being on parole at that time?

A I do.

Q Did you plead guilty pursuant to a plea bargain in this case, sir?

A I did.

Q Were any other charges dismissed by the district attorney in exchange for your plea of guilty to one count of burglary?

A Yes, there was.

Q Has anyone told you what to say here today?

A No.

Q Were you threatened or promised anything in exchange for your plea or your testimony here today?

A No.

Q Sir, during -- between June and October 2001, did you have a job?

A I did.

Q And how many hours per week do you, did you work during that time?

A Forty to 56.

Q Up to 56 hours per week?

A Up to 56 hours per week.

Q During the time you were acquainted with the defendant, did you have any personal knowledge as to whether he had a job?

A Yes, I do.

Q Did he have a job or didn't he?

A He did not.

Q Did he ever inform you about whether he had any other source of income since he wasn't working?

A Just his credit cards from what I know.

MS. RIGGS: State has nothing further for this witness. Thank you, Your Honor.

THE COURT: Mr. Van Ry, you may ask questions of the witness.

MR. VAN RY: I do. Thank you. May I approach?

^.^ CROSS-EXAMINATION ^.^

BY MR. VAN RY:

Q Mr. Bowman, I note that you are, you appear to be very tired; is that correct?

A I am tired, yes.

Q Is that tiredness the result of any medication you might be taking?

A No, it is not.

Q So your testimony is you are not taking any medication?

A None.

Q You are not taking any Xanax?

A No.

Q No Paxil?

A No.

Q You testified that you did plead guilty in this matter, that there were charges dismissed; is that correct?

A That is correct.

Q How many charges were dismissed?

A Six.

Q And were those six also burglary charges?

A Some were burglary, some were conspiracy.

Q When you agreed to plead guilty to one count, was there a stipulation or an agreement as to the possible sentence you would receive?

A Yes.

Q And what was that?

A A one-to-ten.

Q So you gave up six, at least six other charges in return for an agreed one-to-ten sentence; is that correct?

A That's correct.

Q And in fact when you were sentenced, the sentence was even better than a one-to-ten; is that correct?

A That's correct.

Q The judge gave you a lighter sentence. What was that sentence that he gave you?

A Sixteen to 48, 16 months to 48 months.

Q So instead of the six charges you may have had as felonies, you ended up with a 16 to, 16-month to four-year sentence; is that correct?

A That's correct.

Q What other felonies, if any, do you have in your background?

MS. RIGGS: Objection. Objection, Your Honor. Prior bad acts.

THE COURT: I am just wondering, is this something that would fall into the category of statutory prior convictions? Is this what you are after?

MR. VAN RY: That's correct.

THE COURT: Well, that would be limited to felony convictions within the past ten years.

MR. VAN RY: That's correct, Your Honor. I can clarify that question.

THE COURT: All right.

I would overrule the objection insofar as we're only talking about statutory convictions.

/////

BY MR. VAN RY:

Q In the last ten years have you been convicted of any other felony?

A Yes, I have.

Q What was that?

A Burglary and forgery.

Q And was that here in Nevada?

A Yes, it was.

Q When you say forgery, was that forging of checks?

A It was forging of checks.

Q In effect during the time that you allege that you were involved with Mr. Volpicelli in this scheme, you were on parole and probation for those charges; is that correct?

A That's correct.

Q And in fact Mr. Volpicelli gave you rides because you didn't have a car to check in to your parole and probation officer; is that correct?

A One time, yes, and then we were arrested.

Q Did Mr. Volpicelli give you rides to other places, like to purchase culinary items for your work?

A That was on the way back from doing our scheme.

Q So that would be a yes, he did?

A Yes.

Q Did he ever drop you off at the Gold Dust West?

A Yes, he did.

Q Did he ever drop you off at the Silver Legacy?

A Yes, he did.

Q Did the detectives in this case ever assist you in obtaining a paycheck from the Sands?

A No.

Q So your testimony is you never received assistance from the detectives in this matter to receive your paycheck from the Sands?

A To receive my paycheck?

Q Right.

A That's correct.

Q So that would be a no, it didn't happen?

A It didn't happen.

Q Okay. This case has been pending for quite some time in terms of my client and when these actions allegedly occurred. How many conversations have you personally had with detectives?

A Several.

Q Pardon?

A The actual number I couldn't say. There's been several.

Q Would it have been more than five?

A Yes.

Q And, again, additionally in preparing for your role in this, because it was understood pursuant to the agreement that you would, you might be called upon to testify against Mr. Volpicelli; is that correct?

A That's correct.

Q During the course of the preparation for that, have you spoken with the district attorney or any district attorneys?

A Yes, I have.

Q How many times?

A Twice.

Q Now, you testified earlier that you did keep a shaver and a coffee maker in your apartment; is that correct?

A That's correct.

Q Isn't it also true that you kept a CD player?

A Not to my knowledge.

Q Isn't it also true that you kept an alarm clock?

A Don't recall.

Q Is it also true that you kept one of those home theater systems we talked about?

A No, it is not.

Q Have you ever purchased a Brother label maker at a Staples in California?

A No, I have not.

Q During this time in the summer to the fall of October, excuse me, of 2001, did you have access to a computer?

A No, I did not.

Q You did not?

Now, you testified that on most occasions you claim that you would go in separate from Mr. Volpicelli into the store that, whatever the place was; is that correct?

A That's correct.

Q What dates and what times were there when Mr. Volpicelli entered the store at the same time you did?

A There's too much of a time in between to give you those exact dates for sure.

Q You are not sure of those exact dates?

A No.

Q Were there times when Mr. Volpicelli would walk in by himself without you and then you would follow him?

A There was times, yes.

Q And what dates and times would those be?

A I, again, it's been too long of a time to recall that.

Q You don't recall for sure?

A No.

Q And were there also times when you walked into the store on your own without Mr. Volpicelli entering at all?

A That's correct.

Q And what dates and times were those?

A Again, just the times when I had gone in, right, to do the purchase or he'd stay out in the van. But to remember dates and times, again --

Q So the answer -- I'm sorry to interrupt. The answer would be you don't recall?

A I don't know.

MR. VAN RY: If I may have a moment, Your Honor.

THE COURT: Yes.

/////

BY MR. VAN RY:

Q Let's go back to your plea agreement. During the course of the negotiations of your plea agreement, which means that where you were to enter a plea in return for some agreement by the State, was there a discussion of the habitual criminal statute?

A For me?

Q Um-hum.

A No.

Q That didn't come up?

A No.

Q You testified at one point that you became angry at Mr. Volpicelli because he didn't arrive soon enough to pick you up, you had to wait for 30, 35 minutes. Do you remember that testimony?

A Yes, I do.

Q Is that the only time you became angry with Mr. Volpicelli?

A Yes, it is.

Q So your testimony is you never at any time during this summer and fall escapade, you only became angry with him once?

A Only one time. It's the only time he left me standing out in front of the store for a half hour.

Q Are you angry with him because you were with him when you were arrested?

A I was mad, sure.

Q Yes?

A I was upset I was going back to jail.

MR. VAN RY: If I may have a moment, Your Honor.

BY MR. VAN RY:

Q Did you ever ask Mr. Volpicelli if you could use his vehicle for the purpose of you going on a date?

A No, I did not.

Q Did Mr. Volpicelli give you money to help you go to Salt Lake City for the funeral of your father?

A Only after when I did the service for him.

Q But he did give you some money for that?

A Yes, he did.

Q So you could go to Salt Lake for the funeral of your father?

A That's correct. But like I said, the prior day, right, we went on three or four stores.

Q This is a broad question, but I need some clarification on this point. Is it your testimony that you never actually saw Mr. Volpicelli affix these fraudulent UPC labels to any item that you purchased?

A That's correct.

Q So the only way you know that he put those on those items is based upon what you claim he told you; is that correct?

A That's correct.

Q Just one further moment, Your Honor, if I may.

MR. VAN RY: Nothing further, Your Honor. Thank you.

THE COURT: Ms. Riggs, you may ask additional questions, if you wish.

MS. RIGGS: Thank you, Your Honor, I just have a couple.

^.^ REDIRECT EXAMINATION ^.^

BY MS. RIGGS:

Q Mr. Bowman, you had indicated to defense counsel that you were angry with Mr. Volpicelli on, at the time of your arrest, correct?

A That's correct.

Q Do you have a reason for that, sir?

A Yes, I was headed back to jail. I know I was headed back to jail. I had been caught, he wouldn't pull over.

Q And you were angry at him because he wouldn't pull over?

A Mainly because I was going back to jail because I was mad. I was more mad at myself than him.

Q Did the defendant indicate to you that he knew he was being followed?

A Yes, he did.

Q By the police?

A Yes.

Q Didn't bother to tell you this during the time of your scheme with him, did he?

A No, he didn't.

Q And let's go into this a little more. You said that you were angry at yourself. Mr. Bowman, why, if you had just gotten out of prison, you said, why did you start participating in this particular scheme?

A At the time I was making $7 an hour. I just -- and garnishment for half my pay before taxes.

Q What was the purpose of that garnishment?

A Child support. And I hadn't really had a chance to get on my feet and I was sinking.

Q Sinking, is that the --

A Yeah, I was losing everything.

Q And did that $200 a night seem attractive to

you?

A Very attractive.

Q And, again, you were working 40 to 56 hours per week at this time --

A Per week.

Q -- at this time, correct?

A That's correct.

Q As far as you know the defendant wasn't working at all, correct?

A No.

Q So what are you doing now? What is -- You have testified that you are working, correct?

A That's correct.

Q And what is your job again?

A I cut donuts.

Q And where is this?

A The Grand Pavilion at Baldini's.

Q And how many hours per week do you work?

A Close to 66.

Q Since you've been at the Northern Nevada Restitution Center, sir, have you maintained a steady job?

A I have.

Q What's your plans for when you get out of

that facility?

A To maintain work, get an apartment, get on my feet. The facility has actually offered me an opportunity where I can get a good start, to where when I do get the garnishment, which is coming, I guarantee a 50 percent garnishment when I got out, but this time I'll have money in my pocket to weather the storm. And if I have to I'll go get a second part-time job to maintain it.

Q So Mr. Bowman, you sound like you are determined to make it out on the outside this time?

A I've had enough. Enough's enough.

Q Okay. Now, you testified to defense counsel that sometime during the duration of this scheme your father died in Utah, correct?

A That's correct.

Q At that time did the defendant approach you and say, "Hey, Brett, you know, I'm sorry to hear your bad news, I know you are short, here's some money, go see, you know, go do what you got to do in Utah?" Was the conversation anything like that?

A Nothing like that at all.

Q So you sound like or it sounds like by the testimony you gave you basically had to work for it,

correct?

A That's correct.

Q After -- Well, let me ask you this.

On the day that the defendant gave you some money to go to Utah, you said that was after you had completed the work or the scheme for the day before, correct?

A That's correct.

Q Did you tell him about your father before or after you started that work?

A It was after.

Q So, so now I'm a little confused. Was he aware prior to when you started doing the job or hitting the stores that your dad had died?

A He was aware that my father was deathly ill in the hospital at the time, and over the course of a 12-hour period he had passed away. And then I had informed him, right, that I might have to go back to Utah for a couple of days.

Q What was his response when you said that?

A Sorry to hear basically.

Q But no "here's some money"?

A No.

Q You did the work first?

A Did the work first.

Q Then he --

A I went out and worked for it. He didn't pay me that day. He paid me the following day before I left.

Q Now, why didn't he pay you that day?

A Because he didn't have enough money in his pocket to pay me after we got done doing what we did.

Q Did he tell you that before you hit the stores that night?

A No.

Q He didn't tell you he didn't have enough money to pay you that night?

A No.

Q So then what happened?

A At the end of the day, "I'll get with you tomorrow and I'll pay you tomorrow." And I said that would be fine.

Q Okay. And then --

A It happened like that a few times, which was okay with me because he was always good for the money.

Q But not always good the day that you --

A Right, that's correct.

Q And to finish my question, I was going to say that the day you hit the stores, sometimes he would not

pay you right away, you would have to wait for a day or so?

A Right.

Q Okay. Thank you.

MS. RIGGS: State has nothing further, Your Honor.

THE COURT: Anything else?

MR. VAN RY: Your Honor, I do have a matter we need to consider outside the presence of the jury.

THE COURT: Would you, in general, though, be finished with this witness?

MR. VAN RY: Yes, Your Honor. Well, may I approach?

THE COURT: Yes, you may approach the bench.

(A discussion was held at the bench off the record.)

THE COURT: Mr. Bowman, you may be excused. And we will be excusing the jury for the day as well.

I will admonish the jury that you are not to discuss this case amongst yourselves or with anyone else. Do not read, watch or listen to any media account of this proceeding and do not form or express any opinion on any subject connected with this trial until the matter is submitted to you for your deliberation.

Now, on Tuesday and Thursday mornings this department has some summary criminal matters, so we have that at 8:30 tomorrow morning as well. I'm informed we have 19 matters and eight of those are sentencings, so I am going to anticipate that it will take a while to work through that morning docket, so we'll be in recess until 10:30 tomorrow. So if you would be back here at 10:30, we'll start up then. I would imagine the morning criminal matters will be over. So with that we'll all rise for the exit of the jury.

And Mr. Bowman, you are excused.

THE WITNESS: Thank you, Your Honor.

MR. VAN RY: For the record, defense reserves the right to recall Mr. Bowman.

MS. RIGGS: And also the State, Your Honor. Thank you.

THE COURT: All right.

MS. RIGGS: Thank you.

THE WITNESS: No problem.

(The following proceedings were had in open court, defendant present, out of the presence of the jury.)

MR. VAN RY: Your Honor, I think it would be appropriate that I speak, unless you have something you

wanted to direct me to do.

THE COURT: I just want to make sure Mr. Bowman had exited the room before we get into any other matter. And I was informed, Mr. Van Ry, that you wish to put something on the record outside the presence of the jury.

MR. VAN RY: Yeah, thank you, Your Honor. After cross-examination of several witnesses, and particularly Mr. Bowman, my client indicates a desire to do further cross-examination of the witness by himself. And that's where we're at. And we bring that to the Court's attention because I know that I am currently counsel of record and I believe strategic questioning is within the domain of my skill, expertise and my representation in this matter.

THE COURT: Well, Mr. Volpicelli, is it true that you wanted to ask additional questions of the witness?

THE DEFENDANT: Your Honor, I have a slurry of questions which I would like to address to each of the witnesses. And in the event that the questions are not in line with the protocol of the Court, I would be glad to consult with counsel to modify those questions to suit the Court's needs.

THE COURT: Well, Mr. Volpicelli, you are represented by counsel and your side does not get two attorneys, so to speak, to ask questions of the witness. As long as you are represented by counsel, questions will be asked by Mr. Van Ry and no one else for the defense side. And if you are dissatisfied with the services of your attorney, you know, that's something that can be brought up, you know, after the trial. But we're not going to disturb the way the trial is proceeding in this matter in that you did make a motion to represent your, yourself and we are proceeding with you being represented by counsel. But we do have the record that, you know, you wanted to ask additional questions.

THE DEFENDANT: Yes, Your Honor.

THE COURT: But your attorney is the one asking the questions and representing you in this matter. He's the trained legal expert and has to make those strategic decisions as to what is going to be most favorable for you in the eyes of the jury.

And with that we will stand in recess until --

MS. RIGGS: Your Honor, I apologize. May I bring one more matter to the Court's attention?

During Mr. Van Ry's cross-examination of

Mr. Bowman, he went into the fact that Mr. Bowman has a felony conviction and that he was going to his parole officer. I believe that -- and that was specifically interested his character at part -- or specifically gone into as character evidence. What I believe that does is it opens up the door for the State to show where Mr. Bowman met Mr. Volpicelli, which was in prison. Mr. Volpicelli, or the defendant has now attacked Brett Bowman's character with a felony conviction. The State should have right to say, okay, so how did you two meet. If he's going to be characterized as an ex-felon person who was recently in prison, State has a right to present, well, where did they meet in June 2001 if Mr. Bowman was recently in prison. They met in prison, Your Honor.

THE COURT: And Mr. Van Ry, do you have anything to say as to this?

MR. VAN RY: Yeah, I do. I think that's a ridiculous leap. Mr. Bowman is the one who is testifying for the State, and as a defense we have a right to examine his motives, his bias, his interests, and that does not open the door to my client's potentially prior bad acts and/or location. I think that may be a different story if my client chooses to testify, however, but I don't think inquiring about Mr. Bowman's prior

previous felony convictions opens any door as to Mr. Volpicelli's location at the time they met.

THE COURT: Well, I see that NRS 50.095 talks about impeachment by evidence of conviction of crime, and that's where we get the evidence of a felony conviction within the preceding ten years. And that simply goes to the issue of the credibility of the witness, not to other issues. And so long as Mr. Volpicelli does not himself take the stand and his personal credibility come into play here, I would not authorize the State to go into testimony with regard to Mr. Bowman concerning, well, where did you meet the defendant, in prison. I don't feel that's appropriate. The cross-examination by Mr. Van Ry simply went into the prior offenses which are admissible pursuant to NRS 50.095. And that's as far as it would go at this point.

And then with that we will be in recess until 10:30 tomorrow.

THE BAILIFF: All rise.

MR. VAN RY: Thank you, Your Honor.

(The proceedings adjourned for the day at hour of 4:50 p.m.)

-oOo-

STATE OF NEVADA)

) ss.

COUNTY OF WASHOE)

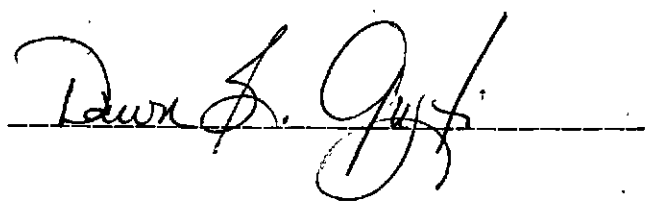
I, DAWN B. GUSTIN, Certified Court Reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken by me at the time and place therein set forth; that the proceedings were recorded stenographically by me and thereafter transcribed via computer under my supervision; that the foregoing is a full, true and correct transcription of the proceedings to the best of my knowledge, skill and ability.

I further certify that I am not a relative nor an employee of any attorney or any of the parties, nor am I financially or otherwise interested in this action.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct.

Dated this 30th day of June, 2004.



Dawn B. Gustin, CCR #253

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78565 HDSP BOX 650
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DEFENDANT PRO PER

ORIGINAL

FILED

2004 JUL -8 PM 3:23

RONALD A. LONGTIN, JR.

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,
PLAINTIFF,

CASE: CR03-1263

DEPT 9

FERRILL J. VOLPICELLI,
DEFENDANT,

REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT - AND ORDER TO COMPEL

DEFENDANT, FERRILL J. VOLPICELLI, IN PROPER PERSON AND FORMA PAUPERIS, MOVES THE COURT TO ISSUE AN ORDER TO SHOW CAUSE WHY BRADLEY VAN RY ESQ. DEFENDANT'S COUNSEL OF RECORD UNTIL NOTICE OF WITHDRAWL OF ATTORNEY, DATED 16 APRIL 2004, SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATELY AND WILLFULLY VIOLATING THE REQUEST IN A SUBPOENA, PURSUANT TO NRCP 34 AND 35, DATED 4 MAY, 2004. A COPY OF THE RELEVANT PORTION OF THE SUBPOENA DUCES TECUM IS ATTACHED AS EXHIBITS A & B. ACCORDING TO SAID SUBPOENA, THE FOREGOING INDIVIDUAL,

1

V2.956

CR03-1263
STATE VS. FERRILL JOSEPH VOL 8 Pages
District Court 07/06/2004 03:50 PM
Washoe County
Doc: DC-99000025179-033
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OR BUSINESS WAS REQUIRED TO PROVIDE THE DEFENDANT, WITHIN TEN (10) DAYS OF THE DATED SUBPOENA, WITH ALL PAPERS, EVIDENCE, LETTERS, VINYL FOLDERS AND EXHIBITS RELEVANT TO CASE # 03-1263 RECEIVED FROM FERRILL V VOLPICELLI, OFFICE OF JACK ALIAN ESQ, RENO POLICE DEPT AND THE WASHOE COUNTY DISTRICT ATTORNEYS OFFICE. SAID COPIES OF SAME ARE TO BE ORGANIZED AND DESIGNATED AS TO THEIR RESPECTIVE SOURCE, AND ACCOMPANIED BY A LETTER OF AFFIDAVIT PURPORTING SUCH. SAID LETTER OF AFFIDAVIT IS ALSO TO INCLUDE WHETHER OR NOT COUNSEL EVER RECEIVED, AS PART OF THE COURT ORDERED DISCOVERY, COPIES OF THE TRANSCRIPTS PERTAINING TO ALL TAPED CONVERSATIONS AT WASHOE COUNTY SHERIFFS OFFICE AND RENO POLICE DEPT. BETWEEN THE DETECTIVES AND DEFENDANTS FERRILL VOLPICELLI AND BRET BOWMAN.

THAT TO DATE, AND ALMOST TWO (2) MONTHS SUBSEQUENT TO THE MAILING OF SAID SUBPOENA, AS CERTIFIED UNDER PENALTY OF PERJURY, BRADLEY VAN RY ESQ HAS NOT RESPONDED. EXHIBIT 'C' SAID DOCUMENTATION IS CRITICAL FOR THE DEFENDANTS PURSUIT OF POST CONVICTION RELIEF.

Points and Authorities

Nevada Revised Statute 1.210(3) states that the Court has the Power to Compel obedience to its order and Nevada Revised Statute 22.010(3) provides that "Refusal to abide by a lawful order issued by the court is contempt".

Humana Inc. v Eighth Judicial District Court County of Clark, 110 Nv 121, 867 P2d 1147

Conclusion

Defendant, therefore, respectfully requests that Bradley Van Ry Esq be ordered to appear in Court to show why he should not be held in Contempt of Court.

Dated this 28 day of June, 2004

Ferrill T. Volpicelli
Defendant Pro Se

Affidavit

Defendant, Ferrill T. Volpicelli, hereby declares under penalty of perjury that the facts and allegations in this pleading are true and correct to the best of his knowledge and belief. (Pursuant to NRS 208.165)

Ferrill T. Volpicelli / Defendant Pro Se

CERTIFICATE OF MAILING

DATED AND COPY MAILED ON THIS 29 DAY OF JUNE, 2004, TO WASHOE COUNTY DISTRICT ATTORNEY AND BRADLEY VAN RY ESQ, AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 209.165.

FERRILL J VOLPICELLI
DEFENDANT PRO SE

FERRILL VOLPICELLI
79565 NVCC
BOX 7000
CARSON CITY, NV 89702
DEFENDANT & APPELLANT
IN PRO PER

CODE 4055

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE of NEVADA,

Plaintiff,

vs.

FERRILL V. VOLPICELLI,

Defendant.

Case No. CR-03-1263

Dept. No. 10

/

SUBPOENA

To: BRADLEY VAN RY ESQ
(Name)

SEE ACCOMPANYING DOCUMENT ON CANARY LEGAL PAPER

~~You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department _____ at Reno, Nevada, on the _____ day of _____, _____, at _____ m, to testify on the part of _____.~~

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of $100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 4th day of MAY, 20 04.

RONALD A. LONGTIN, JR., CLERK OF THE COURT

by _____
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 6th day of MAY, 2004 and personally ~~served~~ MAILED a copy of the same upon BRADLEY VAN RY ESQ

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

_____
Notary Public

UNDER PENALTY OF PERJURY
PURSUANT TO NRS. 208.165

_____
Signature of Person Making Service

JUD 100 (Rev 12/01)
NRS 111.150
NRCP 45 a

V2.960

FERRILL
VOLPICELLI
#79565
BOX 7000
CARSON CITY
NEVADA
89702
DEFENDANT
PRO PER

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

STATE OF NEVADA,
PLAINTIFF,
v
FERRILL J. VOLPICELLI,
DEFENDANT,

CASE # CR-03-1263
DEPT # 10
5/4/04

SUBPOENA DUCES TECUM ADDENDUM

THE STATE OF NEVADA SENDS GREETINGS TO: BRAD VAN RY ESQ,
WE COMMAND YOU, THAT ALL SINGULAR, BUSINESS AND EXCUSES BEING SET ASIDE, TO SUBMIT BY SENDING TO THE DEFENDANT ABOVE NAMED, AT THE ABOVE NOTED ADDRESS: ALL PAPERS, LETTERS, EXHIBITS & VINYL FOLDERS RELEVANT TO CASE CR03-1263 RECEIVED FROM FERRILL VOLPICELLI, OFFICE OF JACK ALIAN ESQ, RENO POLICE DEPT, AND THE WASHOE COUNTY DISTRICT ATTORNEYS OFFICE. SAID COPIES OF SAME ARE TO BE ORGANIZED AND DESIGNATED AS TO THEIR RESPECTIVE SOURCE, AND ACCOMPANIED BY A LETTER OF AFFIDAVIT PURPORTING SUCH. SAID LETTER OF AFFIDAVIT IS ALSO TO INCLUDE WHETHER OR NOT COUNSEL EVER RECEIVED AND REVIEWED, AS PART OF THE COURT ORDERED DISCOVERY, COPIES OF THE TRANSCRIPTS PERTAINING TO ALL TAPED CONVERSATIONS AT THE WASHOE COUNTY SHERIFFS OFFICE BETWEEN DETECTIVES AND THE DEFENDANTS, FERRILL VOLPICELLI AND BRETT BOWMAN.
THE ABOVE REQUESTED DOCUMENTATION IS TO BE IN A SEALED ENVELOPE OR BOX ADDRESSED AND DELIVERED AS NOTED HEREIN, IN A SEALED ENVELOPE OR BOX, MARKED 'LEGAL DOCUMENTS', WITHIN TEN (10) DAYS OF THE ABOVE FILING DATE.
AND FAILURE TO ABIDE BY THIS SUBPOENA, YOU WILL BE DEEMED GUILTY OF CONTEMPT OF COURT AND LIABLE TO PAY ALL LOSSES AND DAMAGES SUSTAINED THEREBY TO THE PARTIES AGGRIEVED AND FORFEIT ONE HUNDRED ($100) DOLLARS IN ADDITION THERETO.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND AFFIXED SEAL OF SAID COURT THIS ___ DAY OF APRIL, 2004.

SEE COVER PAGE

A-1

DEPUTY CLERK OF THE COURT

FERRILL T. VOLPICELLI
79565 @ NNCC
BOX 7000
CARSON CITY, NV 89702

1 MAY, 2004

(43203) (03-1263)

APPELLANT PRO PER

LAW OFFICE of JAN RY ESQ

RE: CASE FILE AND ACCOMPANYING VINYL FOLDERS

DEAR MR. VAN RY,

THE ACCOMPANYING VINYL LEGAL FOLDERS ARE PART OF THE EVIDENCE BEING RELEASED BY THE RENO POLICE DEPT. THROUGH THE CITY ATTORNEYS OFFICE IN RENO. I AM REQUESTING THAT YOU INCLUDE THESE LABELED LEGAL FOLDERS WITH MY CASE FILE.

YOU WILL ALSO NOTE FROM THE ENCLOSURE(S) THAT I AM BEREFT OF COUNSEL, AND THAT I AM CURRENTLY FURTHERING MY APPEAL ~~that~~ IN PROPER PERSON.

CONSEQUENTLY, YOUR UNAUTHORIZED PLOY TO DELIVER MY CASE FILE TO THE WASHOE COUNTY PUBLIC DEFENDERS OFFICE WAS PREMATURE. IN VIEW OF THIS, I MUST INSIST THAT YOU RETRIEVE MY CASE FILE IN ITS ENTIRETY AND FORWARD SAME, ALONG WITH THE VINYL FOLDERS TO MY PLACE OF INCARCERATION WHEN I TRANSFER TO NSP.

INCIDENTALLY, I REVIEWED NEVADA SUPREME COURT RULE 46, AND I AM LED TO BELIEVE THAT YOU MISREPRESENTED ME REGARDING THE NECESSITY OF YOUR WITHDRAWL FROM MY CASE BASED ON THE NATURE OF MY JUDGMENT AND CONVICTION. ACCORDINGLY, IT MERELY DEMONSTRATES ANOTHER BREACH OF THE CLIENT-ATTORNEY FEALTY; WHICH I WAS TO BE AFFORDED UNDER THE SIXTH AMENDMENT.

HENCE, IN VIEW OF THE FOREGOING, YOUR FAILURE TO COOPERATE WITH THIS REQUEST WILL ONLY COMPEL ME TO PURSUE THIS MATTER THROUGH THE SUBPOENA PROCESS. I ANTICIPATE THAT THIS LETTER WILL PROMPT YOUR COOPERATION IN THIS MATTER.

GOVERN YOURSELF ACCORDINGLY,

cc file
enclosure

V2.962

FRANK VOLPICELLI
79565 HWY 95
BOX 650
INDIAN SPRINGS, NV 89070

2 JUNE, 2004

LAW OFFICE OF BRAD VAN RY ESQ

RE: CASE # CR03-1263 / SUBPOENA

DEAR MR. VAN RY,

BY NOW, YOU ARE LIKELY IN RECEIPT OF THE SUBPOENA DUCES TECUM FILED LAST MONTH.

AS A FOLLOW UP, I PLACED A CALL TO THE STATE PUBLIC DEFENDERS OFFICE. MR. CHAMPAGNE PURPORTED TO ME THAT THE CASE FILE HAS BEEN RETRIEVED BY YOUR OFFICE, AND, YOUR RECEPTIONIST IS SUPPOSEDLY FORWARDING THE ITEMS REFERENCED IN THE SUBPOENA TO ME. IN VIEW OF THIS, I ANTICIPATE RECEIPT OF THE CASE FILE BY NO LATER THAN 6/11/04, AT WHICH TIME I WILL BE COMPELLED TO FILE A REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT AND ORDER TO COMPEL. SO AS TO AVOID THIS ACTION, PLEASE PROVIDE ME WITH THE ITEMS REFERENCED IN THE SUBPOENA BY 6/11/04.

THANK YOU FOR YOUR CONCERNS AND COOPERATION WITH THIS MATTER.

SINCERELY,

CC: FILE

V2.963

1-6

ORIGINAL

FERRILL VOLPICELLI 7850
BOX 650 HOP
FALLON SPRINGS, NV 8900

FILED
2004 AUG -3 PM 2:37
RONALD A. LONGTIN, JR.
BY: [illegible]
DEPUTY

Defendant Pro Se

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

STATE OF NEVADA,
PLAINTIFF,
v
FERRILL T. VOLPICELLI,
DEFENDANT,

CASE: 03-1263
DEPT: 10
MOTION FOR RETURN OF PROPERTY AND - REQUEST FOR HEARING - RECORDING RETENTION AMOUNT

COMES NOW DEFENDANT, FERRILL T. VOLPICELLI, IN PROPER PERSON AND IN FORMA PAUPERIS MOVING THE COURT FOR AN ORDER RETURNING ANY AND ALL PROPERTY SEIZED IN THE 2001 INVESTIGATIONS, (RELEVANT TO RPD #101-216321) AND NOT SPECIFICALLY CITED IN THE CRIMINAL MATTERS OF DISTRICT COURT (02-0145, 02-0146 AND 03-1263)

STATEMENT

THAT ON OCTOBER, 2001, DEFENDANT WAS ARRESTED FOR A PAROLE VIOLATION WITH CHARGES ADDED THROUGH EARLY DECEMBER OF 2001.

THAT ON OR ABOUT 17 & 18 OCTOBER, 2001, AUTHORITIES SEIZED PROPERTY BELONGING TO BRETT A. BOWMAN, FERRILL T. VOLPICELLI, TRAVIS A. VOLPICELLI, ASHLEY SCHILLING, CHANEL A. VOLPICELLI AND LOGAN R. VOLPICELLI.

REFER TO EXHIBIT A

FILED PER ORDER RELEASED FROM RECORD 9-21-04

DC-99000025179-036
CR03-1263 FERRILL JOSEPH VOL 6 Pages
STATE VS Washoe County
District Court 08/03/2004 08:32 AM
2490
JAMES

THAT SAID PROPERTY WAS SEIZED PURSUANT TO MULTIPLE SEARCH WARRANTS FROM DEFENDANTS RESIDENCE, DEFENDANTS BROTHERS MAZDA VAN, ASHLEY SCHLUENG'S STORAGE UNIT AND THE DEFENDANT'S DAUGHTERS SAFE BOX. (CHANEL VOLPICELLI)

Refer to Exhibit B

THAT SAID WARRANTS WERE NEVER RETURNED TO THE MAGISTRATE FOR ENDORSEMENT PURSUANT TO N.R.S. 179.085 (4)

THAT INITIALLY, THE AFOREFENCED RPD CASE CULMINATED IN DISTRICT COURT CASES 02-0145 & 02-0146 - SPECIFICALLY CITING BURGLARY RELATED COUNTS INVOLVING: A WALMART BIKE, A SHOPKO COMFORTER, A LOWES RUG AND A WAL MART HOME THEATER SYSTEM.

Refer to Exhibit C

THAT SUBSEQUENT TO THIS, AND SOME TWENTY MONTHS AFTER THE OCTOBER, 2001 ARREST, THE DEFENDANT WAS INDICTED ON SAME ALLEGED CRIMINAL ACTIVITY CULMINATING IN CASE 03-1263. (11 JUNE, 2003)

Refer to Exhibit D

THAT CONCOMITANT WITH SAID INDICTMENT, CASES 02-0145 & 02-0146 WERE STAYED.

THAT SAID INDICTMENTS BURGLARY RELATED COUNTS INCLUDED THE SAME OFFENSES AND PROPERTY CITED IN 02-0145 & 02-0146, BUT ALSO NEW ALLEGED CHARGES REFERENCING AN ELECTRIC SONICARE TOOTHBRUSH, A KDS 15" MONITOR, A HEWLETT-PACKARD PRINTER, A SERGER SEWING MACHINE, AN EMERSON 19" DVD-TV COMBO, 2 COFFEE POTS AND ANOTHER COMFORTER. JA V. I. PP 151-257

THAT ON 14 NOVEMBER, 2003, DEFENDANT WAS FOUND GUILTY OF ALL COUNTS IN THE 10 COUNT INDICTMENT.

Refer to Exhibit E

THAT ON 1 APRIL, 2004, DEFENDANT WAS SENTENCED IN THE MATTER WITH THE JUDGMENT REFLECTING IN EXCESS OF $10,339.16 AS RESTITUTION.

ARGUMENT.

DEFENDANT RESPECTFULLY REQUESTS THAT THE LVPD EVIDENCE DEPARTMENT RETURN ANY AND ALL PROPERTY SEIZED IN THE AFOREMENTIONED CASES, NOT SPECIFICALLY CITED IN SAME &/OR FOUND TO BE FRUITS OF ALLEGED CRIMINALITIES WITH COUNTS II-IX OF 03-1263. THE TRIAL COURT HELD THAT ONLY THOSE ARTICLES WHICH WERE PROVEN IN A COURT OF LAW TO BE 'FRUITS OF THE CRIME(S) IN WHICH APPELLEES WERE INVOLVED COULD BE WITHHELD FROM THE APPELLEES 572 P2d 480

FURTHER, THAT 'IN RECOGNITION OF THE DUE PROCESS REQUIREMENT, NEVADA CRIMINAL PROCEDURES PROVIDE THAT AN AGGRIEVED PERSON MAY MOVE THE DISTRICT COURT FOR THE RETURN OF THE SEIZED PROPERTY WHERE THE RETENTION IS UNLAWFUL. 572 P2d 481

AND AS FAR AS THE HYPER INFLATED RESTITUTION FIGURE REFERENCED IN THE JUDGMENT IS CONCERNED, 'IN

ORDINARY CASE A CITIZEN HAS A RIGHT TO A HEARING TO CONTEST THE FORFEITURE OF HIS PROPERTY, (INCLUDING THE IMPOSITION OF RESTITUTION); A RIGHT SECURED BY THE DUE PROCESS CLAUSE. 116 SCT 1777 / 114 SCT 492 92 SCT 1983

FINALLY, THE FIFTH AND FOURTEENTH AMENDMENTS COMMAND THAT NO PERSON SHALL BE DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW. 572 P2d 480. AND, IT HAS ALWAYS BEEN PUBLIC POLICY THAT FORFEITURES ARE NOT FAVORED IN THE LAW, AND MAY BE ENFORCED ONLY WITHIN THE LETTER AND SPIRIT OF THE LAW. 95 SCT 656.

CONCLUSION

WHEREFORE, DEFENDANT RESPECTFULLY MOVES THE COURT FOR AN ORDER FOR A PROMPT RETURN OF ANY AND ALL PROPERTY TO THE VOLPICELLI FAMILY - NOT SPECIFICALLY CITED IN THE RESPECTIVE COUNTS OF THE INDICTMENT - AND ADJUDICATED BY THE COURTS -TURY AS BEING INVOLVED IN ANY OFFENSE. THAT THE COURT ALSO ORDER AN IMMEDIATE HEARING IN THE MATTER AS TO THE CONTROVERTED RESTITUTION FIGURE REFENENCED IN THE JUDGMENT OF THIS CASE.

5-6

DECLARATION

I, FERRILL T. VOLPICELLI, UNDER PENALTY OF PERJURY DEPOSE AND SAY THAT:

I AM THE AFFIANT IN THIS DECLARATION AND THE DEFENDANT IN CASES 02-0145, 02-0146 & 03-1263. I AM CURRENTLY IN CUSTODY AT HDSP WHICH IS CURRENTLY ON 'LOCK-DOWN' STATUS FOR THE FORESEEABLE FUTURE. THAT SAID CUSTODY SITUATION PRECLUDES ANY ACCESS TO TELEPHONE, CANTEEN FOR WRITING MATERIALS, AND LAW LIBRARY FOR LEGAL RESOURCES. THAT THIS ALSO INCLUDES MY INABILITY TO DUPLICATE DOCUMENTS IE EXHIBITS FOR THIS PLEADING. AND FINALLY, THAT SAID EXHIBITS REFERENCED HEREIN REFER TO: EXHIBIT 'A' – SEARCH WARRANT RETURNS FOR RPD 01-216324 / AUSSIE STORAGE; LAKESIDE CONDO; MAZDA VAN AND WELLS FARGO SAFE BOX.

EXHIBIT 'B' – PAGES 3 OF RESPECTIVE SEARCH WARRANTS FOR THE ABOVE SEIZURE LOCATIONS

EXHIBIT 'C' – COMPLAINTS AND AMENDED COMPLAINTS FOR CASES 02-0145 AND 02-0146

EXHIBIT 'D' – INDICTMENT BY GRAND JURY DATED 11 JUNE, 2003 FOR CASE 03-1263

EXHIBIT 'E' – JUDGMENT OF CONVICTION DATED 1 APRIL 2004.

ALL EXHIBITS ALREADY PART OF COURT RECORD.

DATED THIS 22 DAY OF JULY, 2004

FERRILL T. VOLPICELLI
DEFENDANT VPRO 968 SE

6-6

RESPECTFULLY SUBMITTED AND DATED
THIS 22 DAY OF JULY, 2004.

FERRIL T. VOLPICELLI
DEFENDANT PRO SE

CERTIFICATE OF MAILING

DATED AND COPY MAILED THIS 22
DAY OF JULY, 2004, TO THE
WASHOE COUNTY DISTRICT ATTORNEY &
CITY OF RENO ATTORNEY MS. KAREN
FRALEY AS CERTIFIED UNDER THE
PENALTY OF PERJURY PURSUANT
TO NRS 208.165.

FERRIL T. VOLPICELLI
DEFENDANT PRO SE.

FERRILL VOLPICELLI
79565 HDSP BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO SE

ORIGINAL

FILED

2004 AUG -3 PM 2:36

RONALD A. LONGTIN, JR. CLERK

BY DEPUTY

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

STATE OF NEVADA,
PLAINTIFF,

CASE: CR03-1263

DEPT: 10

FERRILL T. VOLPICELLI,
DEFENDANT,

REQUEST FOR SUBMISSION OF MOTION FOR TRANSCRIPTS (SECOND REQUEST)

FILED 9-23-03

ORDER

FROM RECORD

DEFENDANT, HAVING FILED A NOTICE OF APPEAL, A REQUEST FOR COURTS PROCEEDINGS TRANSCRIPTS, A SUBSEQUENT REQUEST FOR SUBMISSION OF SAME, TOGETHER WITH AN ORDER TO FURTHER HIS POST CONVICTION RELIEF IN FORMA PAUPERIS, HEREBY SUBMITS A SECOND REQUEST FOR SUBMISSION AND DECISION IN THIS MATTER.

WHEREFORE, DEFENDANT MOVES THE COURT FOR AN IMMEDIATE REVIEW AND DETERMINATION IN THIS REQUEST.

DATED THIS 26th DAY OF JULY, 2004

FERRILL T. VOLPICELLI
DEFENDANT PRO PER

CERTIFICATE OF MAILING

DATED & COPY MAILED TO WCDA'S OFFICE ON 7/26/04 AS CERTIFIED UNDER THE PENALTY OF PERJURY PURSUANT TO NRS 208.165

DC-9900025179-037
CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 08/03/2004 08 33 AM
Washoe County 3860

FERRILL VOLPICELLI
78560 HDSP BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO SE

ORIGINAL

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

FILED
2004 AUG -3 PM 2:37
RONALD A. LONGTIN, JR.
BY
DEPUTY

STATE OF NEVADA,
PLAINTIFF,

v

FERRILL V. VOLPICELLI,
DEFENDANT,

CASE NO. CR03-1263

REQUEST FOR SUBMISSION OF REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT-AND ORDER TO COMPEL.

DEFENDANT, HAVING FILED A REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT - AND ORDER TO COMPEL ON 7 JULY, 2004, HEREBY MOVES THE COURT FOR SUBMISSION OF SAID MOTION FOR THE COURTS REVIEW & DETERMINATION. WHEREFORE, BRADLEY VAN RY ESQ. HAS NOT RESPONDED TO THIS ACTION AS OF THIS DATE, AND DEFENDANT REQUESTS IMMEDIATE RECEIPT OF WRIT ORDER.

PROOF

DATED THIS 26th DAY OF JULY, 2004

FERRILL V. VOLPICELLI
DEFENDANT PRO SE

CERTIFICATE OF MAILING
DATED & COPY MAILED ON 7/26/04 TO VAN RY & WCDA AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS. 208.165.

DC-9900025179-038
CR03-1263 STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 08/03/2004 08 34 AM
Washoe County 3860
DOC ...IAMF...

FERRILL VOLPICELLI
79560 HDSP BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO SE

ORIGINAL

FILED

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

RONALD A. LONGTIN, JR.
BY: _____ DEPUTY

STATE OF NEVADA,
PLAINTIFF.

CASE: CR03-1263
DEPT: 10

FERRILL V. VOLPICELLI,
DEFENDANT,

REQUEST FOR SUBMISSION OF REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT AND ORDER TO COMPEL.

DEFENDANT, HAVING FILED A REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT - AND ORDER TO COMPEL ON 24 JUNE, 2004, HEREBY MOVES THE COURT FOR SUBMISSION OF SAID MOTION FOR PROPER COURTS REVIEW & CONSIDERATION. WHEREFORE, BNRD LINDSAY ESQ HAS NOT RESPONDED TO THIS ACTION AS OF THIS DATE, AND DEFENDANT REQUESTS IMMEDIATE RELIEF W/ AN ORDER.

STRUCK FROM RECORD BY ORDER FILED

DATED THIS 26 DAY OF JULY, 2004

FERRILL V. VOLPICELLI
DEFENDANT PRO SE

CERTIFICATE OF MAILING
DATED & COPY MAILED ON 7/26/04 TO LINDSAY & WCDA AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165.

CR03-1263 DC-9900025179-039
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 08/03/2004 08:35 AM
Washoe County 3860

D-10
6-15
DC-9900025179-040
CR03-1263 STATE VS. FERRILL JOSEPH VOL 3 Pages
District Court 08/18/2004 11:35 AM 2475
Washoe County

ORIGINAL

FILED
2004 AUG 18 PM 4:27
RONALD A. LONGTIN, JR.
BY
DEPUTY

CODE: 2475
PATRICIA A. LYNCH
Reno City Attorney
KAREN S. FRALEY
Deputy City Attorney
P. O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for City of Reno
Reno Police Department

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff

vs.

FERRILL J. VOLPICELLI,

Defendant.

CR

Case No. 03-1263
Dept. No. 10

MOTION TO STRIKE FUGITIVE DOCUMENT

COMES NOW the City of Reno, by and through its attorneys, PATRICIA A. LYNCH, Reno City Attorney, and KAREN S. FRALEY, Deputy City Attorney, pursuant to NRCP 12(f) and files this Motion to Strike Fugitive Document.

Defendant mailed a Motion for Return of Property and Request for Hearing Regarding Restitution Amount to the District Attorney's Office and the Reno City Attorney's Office, purportedly filed in the case referenced above. The Motion is attached hereto as Exhibit A. The case is closed, with Defendant having been found guilty and sentenced to nine life sentences on

April 1, 2004. The City is informed that Defendant has filed a notice of appeal with the Nevada Supreme Court.[1]

The timely filing of a notice of appeal divests the District Court of jurisdiction and vests jurisdiction in the Supreme Court. *See* Robertson v. State, 109 Nev. 1086 (1993)("A timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court.").

Defendant's Motion is a fugitive document.

The City of Reno respectfully requests the Court strike the Motion in accordance with NRCP 12(f).

DATED this 18th day of August, 2004.

PATRICIA A. LYNCH
Reno City Attorney

BY Karen S. Fraley
KAREN S. FRALEY
Deputy City Attorney
Nevada Bar No. 3825
P. O. Box 1900
Reno, NV 89505
(775) 334-2421
Attorneys for City of Reno
Reno Police Department

[1] The City is informed that the appeal was filed with the Nevada Supreme Court on April 22, 2004, Docket #43203.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

Terrence McCarthy
Deputy District Attorney
50 W. Liberty St., #300
P.O. Box 30083
Reno, NV 89520

Ferrill Volpicelli #79565
High Desert State Prison
Box 650
Indian Springs, NV 89018

DATED this 18th day of August, 2004.

Jill Zarker

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

CR03-1263 DC-9900025179-041
STATE VS FERRILL JOSEPH VOL 7 Pages
District Court 08/18/2004 11:35 AM
Washoe County 2475

EXHIBIT 1

1-6

FERRILL VOLPICELLI 72886
BOX 650 HDSP
INDIAN SPRINGS, NV 89018
DEFENDANT PRO SE

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

STATE OF NEVADA,
PLAINTIFF,
v
FERRILL T. VOLPICELLI,
DEFENDANT,

CASE 03-1263
DEPT. 10
MOTION FOR RETURN OF PROPERTY AND - REQUEST FOR HEARING RECALLING RETENTION AMOUNT

COMES NOW DEFENDANT, FERRILL T. VOLPICELLI, IN PROPER PERSON AND IN FORMA PAUPERIS MOVING THE COURT FOR AN ORDER RETURNING ANY AND ALL PROPERTY SEIZED IN THE 2001 INVESTIGATIONS, (RELEVANT TO RPD # 01-216321) AND NOT SPECIFICALLY CITED IN THE CRIMINAL MATTERS OF DISTRICT COURT (02-0145, 02-0146 AND 03-1263)

STATEMENT

THAT ON 17 OCTOBER, 2001, DEFENDANT WAS ARRESTED FOR A PAROLE VIOLATION WITH CHARGES ADDBOOKED THROUGH EARLY DECEMBER OF 2001,

THAT ON OR ABOUT 17 & 18 OCTOBER, 2001, AUTHORITIES SEIZED PROPERTY BELONGING TO BRETT A. BOWMAN, FERRILL T. VOLPICELLI, TRAVIS A. VOLPICELLI, ASHLEY SCHWING, CHANCE A VOLPICELLI AND LOGAN R. VOLPICELLI.

REFER TO EXHIBIT A

V2.977

THAT SAID PROPERTY WAS SEIZED PURSUANT TO MULTIPLE SEARCH WARRANTS FROM DEFENDANTS' RESIDENCE, DEFENDANTS' BROTHERS MAZDA VAN, ASHLEY SCHILLING'S STORAGE UNIT AND THE DEFENDANT'S DAUGHTERS' SAFE BOX. (CHANEL VOLPICELLI)

Refer to Exhibit B

THAT SAID WARRANTS WERE NEVER RETURNED TO THE MAGISTRATE FOR ENDORSEMENT PURSUANT TO N.R.S. 179.085 (4)

THAT INITIALLY, THE AFOREFERENCED RPD CASE CULMINATED IN DISTRICT COURT CASES 02-0145 & 02-0146 - SPECIFICALLY CITING BURGLARY RELATED COUNTS INVOLVING: A WALMART BIKE, A SHOPKO COMFORTER, A LOWES RUG AND A WAL MART HOME THEATER SYSTEM.

Refer to Exhibit C

THAT SUBSEQUENT TO THIS, AND SOME TWENTY MONTHS AFTER THE OCTOBER, 2001 ARREST, THE DEFENDANT WAS INDICTED ON SAME ALLEGED CRIMINAL ACTIVITY CULMINATING IN CASE 03-1263. (11 JUNE, 2003)

Refer to Exhibit D

THAT CONCOMITANT WITH SAID INDICTMENT, CASES 02-0145 & 02-0146 WERE STAYED.

THAT SAID INDICTMENTS' BURGLARY RELATED COUNTS INCLUDED THE SAME OFFENSES AND PROPERTY CITED IN 02-0145 & 02-0146, BUT ALSO NEW ALLEGED CHARGES REFERENCING AN ELECTRIC [illegible], A "KOSS" MONITOR, A HEINEKEN KEGERATOR, A SEGA [illegible] AN ESPRESSO 19" DVD TV COMBO, [illegible]

Refer to

THAT ON 14 NOVEMBER, 2003, DEFENDANT WAS FOUND GUILTY OF ALL COUNTS IN THE 10 COUNT INDICTMENT.

THAT ON 1 APRIL, 2004, DEFENDANT WAS SENTENCED IN THE MATTER WITH THE JUDGMENT REFLECTING IN EXCESS OF $10,339.16 AS RESTITUTION.

ARGUMENT.

DEFENDANT RESPECTFULLY REQUESTS THAT THE LVMPD EVIDENCE DEPARTMENT RETURN ANY AND ALL PROPERTY SEIZED IN THE AFOREMENTIONED CASES, NOT SPECIFICALLY CITED IN SAME &/OR FOUND TO BE FRUITS OF ALLEGED CRIMINALITY ASSOCIATED WITH COUNTS II-IX OF 03-1263. THE TRIAL COURT HELD THAT ONLY THOSE ARTICLES WHICH WERE PROVEN IN A COURT OF LAW TO BE FRUITS OF THE CRIME(S) IN WHICH APPELLEES WERE INVOLVED COULD BE WITHHELD FROM THE APPELLEES 572 P2d 480

FURTHER, THAT IN RECOGNITION OF THE DUE PROCESS REQUIREMENT, NEVADA CRIMINAL PROCEDURES PROVIDE THAT AN AGGRIEVED PERSON MAY MOVE THE DISTRICT COURT FOR THE RETURN OF THE SEIZED PROPERTY WHERE THE RETENTION IS UNLAWFUL. 572 P2d 46

AND AS FAR AS THE HYPER-INFLATED RESTITUTION FIGURE REFERENCED IN THE JUDGMENT OF CONVICTION, IT IS

ORDINARY CASE A CITIZEN HAS A RIGHT TO A HEARING TO CONTEST THE FORFEITURE OF HIS PROPERTY, (INCLUDING THE IMPOSITION OF RESTITUTION); A RIGHT SECURED BY THE DUE PROCESS CLAUSE. 116 SCT 1777 / 114 SCT 492 92 SCT 1983

FINALLY, THE FIFTH AND FOURTEENTH AMENDMENTS COMMAND THAT NO PERSON SHALL BE DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW. 572 P2d 480. AND, IT HAS ALWAYS BEEN PUBLIC POLICY THAT FORFEITURES ARE NOT FAVORED IN THE LAW, AND MAY BE ENFORCED ONLY WITHIN THE LETTER AND SPIRIT OF THE LAW. 95 SCT 6556.

CONCLUSION

WHEREFORE, DEFENDANT RESPECTFULLY MOVES THE COURT FOR AN ORDER FOR A PROMPT RETURN OF ANY AND ALL PROPERTY TO THE VOLPICELLI FAMILY — NOT SPECIFICALLY CITED IN THE RESPECTIVE COUNTS OF THE INDICTMENT — AND ADJUDICATED BY THE COURT/JURY AS BEING INVOLVED IN ANY OFFENSE. THAT THE COURT ALSO ORDER AN IMMEDIATE HEARING IN THE MATTER AS TO THE CONTROVERTED RESTITUTION FIGURE REFERENCED IN THE JUDGMENT OF THIS CASE.

5-6

Declaration

I, Ferrill T. Volpicelli, under Penalty of Perjury depose and say that:

I am the Affiant in this Declaration and the Defendant in cases 02-0145, 02-0146 & 03-1263. I am currently in custody at HDSP which is currently on 'lock-down' status for the foreseeable future. That said custody situation precludes any access to telephone, canteen for writing materials, and law library for legal resources. That this also includes my inability to duplicate documents i.e. Exhibits for this pleading.

And finally, that said exhibits referenced herein refer to: Exhibit 'A' – Search Warrant Returns for RPD 01-216324 / Aussie Storage, Lakeside Condo; Mazda Van and Wells Fargo Safe Box.

Exhibit 'B' – Pages 3 of respective Search Warrants for the above seizure location

Exhibit 'C' – Complaints and Amended Complaints for cases 02-0145 and 02-0146

Exhibit 'D' – Indictment by Grand Jury dated 11 June, 2003 for case 03-1263

Exhibit 'E' – Judgment of Conviction dated 1 April 2004.

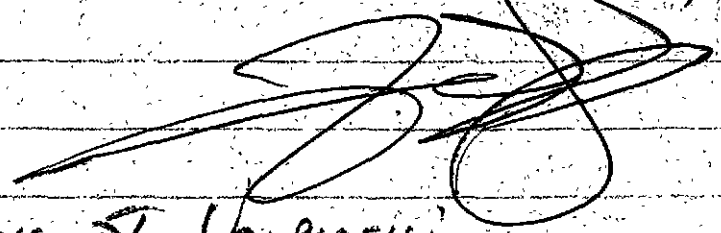
All Exhibits already part of Court Record.

Dated this 22 Day of June, 2004

Ferrill T. Volpicelli
Defendant Pro Se

6-6

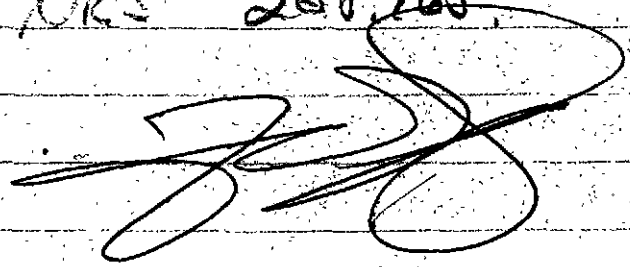
Respectfully Submitted and Dated
this 22 day of July, 2004.



Ferrill V. Volpicelli
Defendant Pro Se

Certificate of Mailing

Dated and Copy Mailed this 22
day of July, 2004 to the
Wayne County District Attorney &
City of Reno Attorney Ms. Karen.
Foley as certified under the
penalty of perjury pursuant
to NRS 208.165.



Ferrill V. Volpicelli
Defendant Pro Se

CR03-1263
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 08/26/2004 04:24 PM
Washoe County DC-99000251179-045
3860

ORIGINAL

FERRILL VOLPICELLI
79560 HDSP BOX 650
INDIAN SPRINGS NV 89018
DEFENDANT PRO PER

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

FILED
2004 AUG 26 PM 3:26
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

STATE OF NEVADA,
PLAINTIFF,

CASE: CR 03-1263

DEPT 10

v

FERRILL T. VOLPICELLI,
DEFENDANT,

REQUEST FOR SUBMISSION
(BRADLEY VAN RY ESQ)

DEFENDANT, HAVING FILED A MOTION FOR REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT AND ORDER TO EXPEL, ON 6 JULY, 2004, HEREBY MOVES THE COURT FOR SUBMISSION OF SAID MOTION FOR THE COURTS REVIEW AND DETERMINATION. THAT TO DATE, MR. VAN RY ESQ HAS NOT RESPONDED TO THIS MATTER, WHEREFORE, DEFENDANT PRAYS FOR RELIEF IN THIS ACTION WITH AN ORDER FOR BRADLEY VAN RY ESQ TO COMPLY.

DATED THIS 16TH DAY OF AUGUST, 2004

FERRILL T. VOLPICELLI
DEFENDANT PRO PER

CERTIFICATE OF MAILING
DATED AND COPY MAILED ON THIS 16TH DAY OF AUGUST, 2004, TO WCDA & VAN RY
AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS 208.165

STRICKEN FROM RECORD PER ORDER FILED ON 9-23-04

FERRILL VOLPICELLI
70565 HDSP BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO PER

ORIGINAL

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

FILED
2004 AUG 26 PM 3:26
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

STATE OF NEVADA
PLAINTIFF,

CASE: CR03-1263

DEPT 10

FERRILL V. VOLPICELLI,
DEFENDANT,

REQUEST FOR SUBMISSION
(BRUCE LINDSAY ESQ)

DEFENDANT, HAVING FILED A MOTION FOR REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT AND ORDER TO COMPEL, ON 21 JUNE, 2004, HEREBY MOVES THE COURT FOR SUBMISSION OF SAID MOTION FOR THE COURTS REVIEW AND DETERMINATION. THAT TO DATE, MR. LINDSAY ESQ HAS NOT RESPONDED TO THIS MATTER.
WHEREFORE, DEFENDANT PRAYS FOR RELIEF IN THIS ACTION WITH AN ORDER FOR BRUCE LINDSAY ESQ TO COMPLY.

DATED THIS 16th
DAY OF AUGUST, 2004

FERRILL V. VOLPICELLI
DEFENDANT PRO PER

CERTIFICATE OF MAILING
DATED AND COPY MAILED
ON THIS 16th DAY OF AUGUST,
2004, TO WCDA & LINDSAY
AS CERTIFIED UNDER PENALTY
OF PERJURY PURSUANT TO
NRS 208.165

STRUCK FROM RECORD PER ORDER FILED 10-23-04

CR03-1263 DC-99000025179-044
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 08/26/2004 04:24 PM
Washoe County 3860
DOC JAMES

GINAL

CODE: 3250

FILED
SEP 23 2004
RONALD A. LONGTIN, JR. CLERK
By: DEPUTY

DC-9900025179-046
CR03-1263 STATE VS. FERRILL JOSEPH VOL 3 Pages
District Court 09/23/2004 04 49 PM
Washoe County 3250

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

FERRILL T. VOLPICELLI,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

CASE NO: CR03-1263

DEPT. NO.: 10

ORDER TO STRIKE FUGITIVE DOCUMENTS

The Appellant in this matter requested legal counsel on May 11, 2004, and legal counsel was assigned at public expense on June 1, 2004. This Court has received numerous documents filed by the Appellant in this matter, but many of these documents do not contain the signature of his appointed counsel. Specifically, these documents not signed by Appellant's attorney include:

1. Request For Submission And Order For Transcripts, filed June 14, 2004.
2. Request For Order To Show Cause Regarding Contempt Of Court – And Order To Compel, filed June 21, 2004.
3. Request For Order To Show Cause Regarding Contempt Of Court – And Order To Compel, filed July 6, 2004.
4. Request For Submission Of Request For Order To Show Cause Regarding Contempt Of Court – And Order To Compel, filed August 3, 2004.
5. Request For Submission Of Motion For Transcripts, filed August 3, 2004.

6. Motion For Return Of Property And – Request For Hearing Regarding Restitution Amount, filed August 3, 2004.

7. Request For Submission (Bradley Van Ry, Esq.), filed August 26.

8. Request For Submission (Bruce Lindsay, Esq.), filed August 26.

Rule 11 of the Nevada Rules of Civil Procedure states, in pertinent part,

> Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated.
>
> ...
>
> The signature of an attorney or party constitutes a certificate by that attorney or party that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief, formed after reasonable inquiry under the circumstances obtaining at the time of signature, that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. (Emphasis added)

The Court wishes to express in the clearest possible terms that the Appellant has requested and been appointed counsel at public expense, and as a result the Court will not entertain documents from the Appellant which are not signed by counsel of record.

NOW, THEREFORE, IT IS HEREBY ORDERED that all above-named submissions filed by the Appellant after June 1, 2004, which do not contain the signature of the Appellant's attorney of record, Mary Lou Wilson, are hereby **STRUCK** from the record for violation of NRCP 11.

DATED this 22 day of September, 2004.

STEVEN P. ELLIOTT
District Judge

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 23 day of September, 2004, I deposited for mailing a copy of the foregoing document addressed to:

Mary Lou Wilson
Law Office Of Mary Lou Wilson
33 Marsh Ave.
Reno, NV 89509

Bradley Van Ry
VanRy Law Office
1403 E. Fourth Street
Reno, NV 89513

Bruce Lindsay
565 California Ave.
Reno, NV 89509

Chief Deputy District Attorney
Washoe County District Attorney
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

DATED this 23 day of September, 2004.

HEIDI HOWDEN
Administrative Assistant

ORIGINAL

CR03-1263

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

2005 JUN 30 PM 2:57

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43203

FILED

JUN 29 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of eight counts of burglary, one count of conspiracy, and one count of possession or making of counterfeit pricing labels. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Ferrill Volpicelli asserts four errors on appeal of his indictment, conviction, and sentencing. First, Volpicelli claims that the district court erred in not quashing his indictment after the grand jury heard inadmissible evidence of his prior burglary conviction. Next, Volpicelli contends that the district court erred in finding him competent to stand trial. Volpicelli also argues that the jury had insufficient corroborating evidence of accomplice testimony to convict him. Finally, Volpicelli claims that the district court abused its discretion in enhancing his sentence after adjudicating him a habitual criminal. We disagree.

DISCUSSION

Grand jury indictment

Volpicelli cites no law, but contends that the district court erred in not quashing his indictment based on the improper admission of his prior conviction, claiming that the jurors were tainted by the prior conviction since they returned a true bill. The State cites State of Nevada

DC-9900025179-047
CR03-1263 FERRILL JOSEPH VOL 9 Pages
STATE VS
District Court 06/30/2005 03 10 PM
Washoe County 4134

v. Logan[1] and contends the applicable standard is whether the evidence presented to the grand jury, without the disputed evidence, was sufficient to sustain the indictment. The State further argues that there was more than sufficient evidence presented to sustain the indictment.

NRS 172.155 calls for grand jury indictment "when all the evidence before them, taken together, establishes probable cause to believe that an offense has been committed and that the defendant committed it." NRS 172.135 mandates that "the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." But an indictment is not automatically quashed if some of the evidence presented is not legal evidence.[2]

In Robertson v. State, this court held that although the grand jury may have heard inadmissible hearsay evidence, the indictment could be sustained where there was sufficient legal evidence.[3] This court affirmed the dismissal of an indictment in Sheriff v. Frank, a case where

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[1]1 Nev. 509 (1865) (republished as 1-2 Nev. 427, 431) ("[W]here there is the slightest legal evidence, the court cannot inquire into its sufficiency, or set it aside, because some illegal evidence was received with it.").

[2]Logan, 1-2 Nev. at 431:

> That a grand jury should receive none but legal proof, is an old and well-established rule, but that the admission of evidence not strictly legal will authorize a setting aside of an indictment, is a proposition which seems to have no authority to sanction it, and, if adopted, would only be an impediment to the execution of criminal justice[.]

[3]84 Nev. 559, 561-62, 445 P.2d 352, 353 (1968).

the grand jury heard inadmissible evidence.[4] However, contributing to this court's finding that the dismissal was proper was the omission by the prosecutor of important exculpatory evidence;[5] and this court specifically reiterated adherence "to the general rule announced in Robertson."

Here, there was testimony from many witnesses as to Volpicelli's involvement in the alleged burglary scheme. Additionally, the prosecutor advised the grand jury that the prior burglary conviction was being presented for a limited purpose,[6] and should not be considered in determining whether there was sufficient probable cause to indict Volpicelli. While the grand jury here heard inadmissible evidence, its effect does not rise to the level of "clearly destroying" the independence, and "irreparably impairing" the function, of the grand jury under Frank. We conclude that there was sufficient legal evidence presented to the grand jury to sustain the indictment; and that the district court did not err in refusing to dismiss the indictment.

Competency

Again citing no law, Volpicelli argues on appeal that he may not have been "competent during the crimes," citing as evidence the

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[5]Id. at 165-66, 734 P.2d at 1245 (finding that the omission of exculpatory evidence, along with the presentation of substantial inadmissible evidence, "clearly destroyed the existence of an independent and informed grand jury and irreparably impaired its function").

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successful treatment of his "mental illness" since his incarceration. The State assumes that since Volpicelli's appeal brief refers to the competency hearing, the competency being appealed was actually Volpicelli's competency to stand trial.

This court will make the same assumption, in light of the fact that the record contains no evidence that the defense of insanity was considered or even mentioned. In Ogden v. State, this court noted that "[c]ompetency at the time of trial is not to be confused with the defense of insanity. Competency to stand trial is a judicial determination, whereas the defendant's sanity at time of commission of the act is a factual question."[7] The competency determination is based on "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational and factual understanding of the proceedings against him."[8] In reviewing a district court's determination of competency, this court will sustain such a finding when substantial evidence exists to support it.[9]

Here, the judge reviewed evaluations from two different doctors, and allowed several different attorneys for Volpicelli to be heard on the matter of competency. The two evaluations both concluded that Volpicelli understood his legal situation, and had sufficient ability to consult with his attorneys. We therefore conclude that substantial

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[7]96 Nev. 697, 698, 615 P.2d 251, 252 (1980).

[8]Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991) (citing Melchor-Gloria v. State, 99 Nev. 174, 178-80, 660 P.2d 109, 113 (1983)).

[9]Tanksley v. State, 113 Nev. 844, 847, 944 P.2d 240, 242 (1997) (citing Ogden v. State, 96 Nev. 697, 698, 615 P.2d 251, 252 (1980)).

evidence existed to support the district court's determination that Volpicelli was competent to stand trial.

Sufficiency of the evidence to corroborate accomplice testimony

Next Volpicelli contends that the jury had insufficient evidence to convict him on some of the charges, although which specific charges were not supported by sufficient evidence is not enumerated in his appeal. Volpicelli bases this contention on the State's failure to provide adequate corroboration of the testimony of Volpicelli's alleged accomplice. Volpicelli argues that with the exception of accomplice Brett Bowman, nobody else testified to seeing Volpicelli commit any crimes.

The State counters that there was ample corroboration to meet the statutory standard of independent evidence connecting the defendant to the crime.[10] The State argues that there was corroborative testimony as to the planning and execution of the crimes, as well as corroborative testimony connecting Volpicelli to physical evidence, including both the instruments of the crimes and the "booty" of the crimes.

This court will not disturb a conviction if it is supported by substantial evidence.[11] NRS 175.291 requires that accomplice testimony be corroborated:

> 1. A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to

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[10]NRS 175.291.

[11]Coffman v. State, 93 Nev. 32, 34, 559 P.2d 828, 829 (1977).

> connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.
>
> 2. An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

"Corroboration evidence need not be found in a single fact or circumstance and can, instead, be taken from the circumstances and evidence as a whole."[12] However, such evidence must "independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice's testimony."[13]

Here, there was corroborative evidence that connected Volpicelli with both the commission of the crimes and the merchandise that was the object of the crimes. Volpicelli was placed at the scene of the crime the day of the arrest by the testimony of multiple police officers. Further, the State introduced independent testimony that Volpicelli (1) closely inspected the bike that was ultimately found in the van with the two suspects; (2) purchased one of the comforters found in the van; (3) owned both the van and the bag containing the label maker; and (4) was seen in stores where much of the recovered merchandise had been

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[12]Cheatham v. State, 104 Nev. 500, 504, 761 P.2d 419, 422 (1988) (citing LaPena v. State, 92 Nev. 1, 544 P.2d 1187 (1976)).

[13]Heglemeier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995).

purchased, recording UPC codes. Additionally, there was ample testimony from various store representatives that supported the testimony of Bowman as to the value of the various merchandise recovered in the storage unit. Finally, there was independent testimony from both a police officer and the owner of the mini-storage business that connected Volpicelli, and not Bowman, to the storage unit where much of the merchandise was found.

We conclude, therefore, that there was sufficient corroboration of accomplice Bowman's testimony under NRS 175.291 to support all the jury's guilty verdicts against Volpicelli.

Habitual criminal status

Volpicelli contends that the district court abused its discretion when it found habitual criminal status and ran two of the enhanced sentences consecutively. Volpicelli's argument is based on the fact that none of his prior convictions were violent, and that he had untreated mental health problems. The State responds that the district court did not abuse its discretion, based on case law that permits such discretion, and the validity of the prior convictions.

NRS 207.010, the statute applied to Volpicelli's sentencing, provides several different levels of sentence enhancement against convicted criminals, depending on the offense committed and the offender's prior convictions. From the use of three prior felony convictions, along with the ten-to-life sentencing, we can make a reasonable assumption that it was NRS 207.010(1)(b)(2) that was used in Volpicelli's case, although the specific subsection is not cited in the record. That subsection reads in pertinent part:

> 1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this state of:
>
> . . . .
>
> (b) Any felony, who has previously been three times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony . . . is a habitual criminal and shall be punished for a category A felony by imprisonment in the state prison:
>
> . . .
>
> (2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served . . .

"The decision to adjudicate a person as a habitual criminal is not an automatic one."[14] It may be an abuse of discretion for a court to adjudicate an offender a habitual criminal using convictions that are remote in time and non-violent.[15] However, the statute "makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court."[16] In exercising its discretion, a trial court considering habitual

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[14]Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

[15]Id. (citing Sessions v. State, 106 Nev. 186, 789 P.2d 1242 (1990)).

[16]Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (citing French v. State, 98 Nev. 235, 645 P.2d 440 (1982)).

criminal status must make a judgment on the question of "whether it [i]s just and proper" for the offender to be adjudicated as a habitual criminal.[17]

Here, it is clear from the record that the district court considered the nature of Volpicelli's prior convictions, and considered the impact of Volpicelli's crimes on both law enforcement and society as a whole. We conclude that this meets the requirements of Clark as to "weigh[ing] the appropriate factors"[18] and making a judgment that Volpicelli "deserved to be declared a habitual criminal."[19] Accordingly we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Douglas

_____, J.
Parraguirre

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

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[17]Clark, 109 Nev. at 428, 851 P.2d at 427.

[18]Id.

[19]Id. at 427, 851 P.2d at 427.

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2005 AUG -1 AM 11:00

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 43203

District Court Case No. CR031263

DC-9900025179-048
CR03-1263
STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 08/01/2005 10:53 AM
Washoe County 4145

REMITTITUR

TO: Ronald A. Longtin Jr., Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 26, 2005

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Steven P. Elliott, District Judge
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Mary Lou Wilson

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on AUG 01 2005

Ronald Longtin Jr. by K. Keller
District Court Clerk

V2 997
05-12992

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2005 AUG -1 AM 11:40

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 43203

District Court Case No. CR031263

DC-3900025179-049
CR03-1263
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 08/01/2005 10:53 AM
Washoe County
4111

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 29th day of June, 2005.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 26th day of July, 2005.

Janette M. Bloom, Supreme Court Clerk

By: J. Richards
Chief Deputy Clerk

ORIGINAL

CR03-1263

FILED

2005 AUG -1 AM 11:00

RONALD A. LONGTIN, JR.

BY

DEPUTY

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43203

FILED

JUN 29 2005

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

ORDER OF AFFIRMANCE

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DC-9900025179-050
CR03-1263 FERRILL JOSEPH VOL-4 Pages
STATE VS District Court 08/01/2005 10:53 AM
Washoe County 4134

05-12862
V2.999

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> 1. A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to

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[10]NRS 175.291.

[11]Coffman v. State, 93 Nev. 32, 34, 559 P.2d 828, 829 (1977).

connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

2. An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

"Corroboration evidence need not be found in a single fact or circumstance and can, instead, be taken from the circumstances and evidence as a whole."[12] However, such evidence must "independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice's testimony."[13]

Here, there was corroborative evidence that connected Volpicelli with both the commission of the crimes and the merchandise that was the object of the crimes. Volpicelli was placed at the scene of the crime the day of the arrest by the testimony of multiple police officers. Further, the State introduced independent testimony that Volpicelli (1) closely inspected the bike that was ultimately found in the van with the two suspects; (2) purchased one of the comforters found in the van; (3) owned both the van and the bag containing the label maker; and (4) was seen in stores where much of the recovered merchandise had been

---

[12]Cheatham v. State, 104 Nev. 500, 504, 761 P.2d 419, 422 (1988) (citing LaPena v. State, 92 Nev. 1, 544 P.2d 1187 (1976)).

[13]Heglemeier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995).

purchased, recording UPC codes. Additionally, there was ample testimony from various store representatives that supported the testimony of Bowman as to the value of the various merchandise recovered in the storage unit. Finally, there was independent testimony from both a police officer and the owner of the mini-storage business that connected Volpicelli, and not Bowman, to the storage unit where much of the merchandise was found.

We conclude, therefore, that there was sufficient corroboration of accomplice Bowman's testimony under NRS 175.291 to support all the jury's guilty verdicts against Volpicelli.

Habitual criminal status

Volpicelli contends that the district court abused its discretion when it found habitual criminal status and ran two of the enhanced sentences consecutively. Volpicelli's argument is based on the fact that none of his prior convictions were violent, and that he had untreated mental health problems. The State responds that the district court did not abuse its discretion, based on case law that permits such discretion, and the validity of the prior convictions.

NRS 207.010, the statute applied to Volpicelli's sentencing, provides several different levels of sentence enhancement against convicted criminals, depending on the offense committed and the offender's prior convictions. From the use of three prior felony convictions, along with the ten-to-life sentencing, we can make a reasonable assumption that it was NRS 207.010(1)(b)(2) that was used in Volpicelli's case, although the specific subsection is not cited in the record. That subsection reads in pertinent part:

> 1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this state of:
>
> . . . .
>
> (b) Any felony, who has previously been three times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony . . . is a habitual criminal and shall be punished for a category A felony by imprisonment in the state prison:
>
> . . .
>
> (2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served . . .

"The decision to adjudicate a person as a habitual criminal is not an automatic one."[14] It may be an abuse of discretion for a court to adjudicate an offender a habitual criminal using convictions that are remote in time and non-violent.[15] However, the statute "makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court."[16] In exercising its discretion, a trial court considering habitual

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[14]Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

[15]Id. (citing Sessions v. State, 106 Nev. 186, 789 P.2d 1242 (1990)).

[16]Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (citing French v. State, 98 Nev. 235, 645 P.2d 440 (1982)).

criminal status must make a judgment on the question of "whether it [i]s just and proper" for the offender to be adjudicated as a habitual criminal.[17]

Here, it is clear from the record that the district court considered the nature of Volpicelli's prior convictions, and considered the impact of Volpicelli's crimes on both law enforcement and society as a whole. We conclude that this meets the requirements of Clark as to "weigh[ing] the appropriate factors"[18] and making a judgment that Volpicelli "deserved to be declared a habitual criminal."[19] Accordingly we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Douglas

_____, J.
Parraguirre

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

---

[17]Clark, 109 Nev. at 428, 851 P.2d at 427.

[18]Id.

[19]Id. at 427, 851 P.2d at 427.

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.

DATE: July 26, 2005
Supreme Court Clerk, State of Nevada

By J. Rebardo Chief Deputy

ORIGINAL

FILED

2005 SEP 12 PM 4:12

RONALD A. LONGTIN, JR.

BY K. Williams
DEPUTY

2645
Bradley O. Van Ry
Nevada Bar No. 7198
201 West Liberty Street, Suite 100
Reno, NV 89501
(775) 333-9000

DC-9900025179-052
FERRILL JOSEPH VOL 2 Pages
09/12/2005 04 23 PM
2645
CR03-1263
STATE VS
District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

OPPOSITION TO MOTION FOR ORDER TO COMPEL

The undersigned, Bradley O. Van Ry, hereby opposes the Motion For Order To Compel filed by Defendant FERRILL JOSEPH VOLPICELLI and served on Bradley Van Ry on September 6, 2005, as follows:

Counsel Bradley O. Van Ry represented Defendant FERRILL JOSEPH VOLPICELLI in the above-referenced matter up and to the filing of his Notice of Wthdrawal on April 19, 2004.

Counsel Mary Lou Wilson began representing Defendant FERRILL JOSEPH VOLPICELLI on June 1, 2004, upon the filing of an Order Appointing Counsel filed in the above-referenced case.

On April 23, 2400, Bradley O. Van Ry informed Defendant FERRILL JOSEPH VOLPICELLI via correspondence sent U.S. Mail that his file in its entirety was hand-delivered to the Washoe County Public Defender's office. See attached Exhibit "1."

On June 22, 2005, Bradley O. Van Ry received correspondence from John Reese Petty, Chief Deputy, Washoe County Public Defender's office, asking for arrangements to be made to pick up two boxes containing trial materials relating to FERRILL JOSEPH VOLPICELLI's case. See attached Exhibit "2." Bradley O. Van Ry did not make arrangements to pick up the files, as he no longer was counsel to the Defendant.

WHEREFORE, Bradley O. Van Ry respectfully moves this Honorable Court for relief from an Order compelling release to Defendant of his trial files. Bradley O. Van Ry does not have possession of the files referenced in Defendant's Motion For Order To Compel.

DATED this 12th day of September 2005.

VAN RY LAW OFFICES, LLP

BRADLEY O. VAN RY

CR03-1263 DC-99000251 79-053
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 09/12/2005 04 23 PM
Washoe County 2645
EX1 1OMF

EXHIBIT 1

BRADLEY O. VAN RY
VAN RY LAW OFFICE
1403 E. Fourth St.
RENO, NEVADA 89512
TELEPHONE: (775) 324-3681
FACSIMILE: (775) 324-6281
E-MAIL: bvanry@sdi.net

LIKE FREEDOM, THE PURSUIT OF JUSTICE IS BORN OF VIGILANCE AND COURAGE.

April 23, 2004

Ferrill Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

Re: *Volpicelli adv. State of Nevada*
Case No.: CR03-1263

Dear Mr. Volpicelli:

This letter will serve to advise you that your file in its entirety was hand-delivered to the Washoe County Public Defender's Office today. I cannot release the entire file to you prior to delivering it to your new counsel. Thus, you will have to contact your new counsel to obtain a copy as you requested. The address and phone number is as follows: 350 South Center Street, 6th Floor, P.O. Box 30083, Reno, Nevada 89520; telephone: (775) 332-4800.

Very truly yours,

Bradley O. Van Ry

BVR/kjr

cc: Washoe County Public Defender's Office

V2.10

DC-9900025179-054
CR03-1263 FERRILL JOSEPH VOL 3 Pages
STATE VS
District Court 09/12/2005 04.23 PM
Washoe County 2645

EXHIBIT 2

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 201 W. Liberty Street, Suite 100, Reno, Nevada 89501, and that on the date below, a true and correct copy of the foregoing, **OPPOSITION TO MOTION FOR ORDER TO COMPEL**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419-0359

Mary Lou Wilson
333 Marsh Avenue
Reno, NV 89509

Jack A. Alian
360 W. Liberty Street
Reno, NV 89501

DATED this 12th day of September, 2005.

Debra L. Goss

Washoe County Public Defender
Michael R. Specchio / Public Defender
Standard of Excellence Since 1969

June 22, 2005

Mr. Bradley Van Ry, Esq.
Mr. Kevin Van Ry, Esq.
1403 East Fourth Street
Reno, Nevada 8912

Re: Ferrill Joseph Volpicelli v. The State of Nevada
District Court Case Number CR03-1263, Dept. 10

Dear Sirs:

Please make arrangements to come pick up two boxes containing trial materials relating to the above entitled case. Mary Lou Wilson is handling the direct appeal in that matter and has indicated to me that she does not want these materials. Since we, at the Public Defender's Office have no involvement in this case, we do not want them either.

If you have any questions please feel free to call me at **(775) 337-4827**.

Sincerely,

JEREMY T. BOSLER
WASHOE COUNTY PUBLIC DEFENDER

by: _____
John Reese Petty
Chief Deputy

350 South Center Street, 6th Floor • P.O. Box 30083, Reno, Nevada 89520-3083
Phone (775) 337-4800 • Fax (775) 337-4856

FERRILL J. VOLPICELLI, #DOC 79565
c/o Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

ORIGINAL

FILED
2005 SEP 12 PM 4:21
RONALD A. LONGTIN, JR.
BY
DEPUTY

Petitioner, In Propria Persona

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

CR03-1263
STATE VS FERRILL JOSEPH VO 14 Pages
District Court 09/12/2005 11 04 AM
Washoe County
DC-99000251 79-051
2270

FERRILL J. VOLPICELLI,
Petitioner,

v.

THE STATE OF NEVADA,
Respondent.

Case No.: CR03-1263

Dept No.: 10

MOTION FOR ORDER TO COMPEL

COMES NOW, the Petitioner, Ferrill J. Volpicelli, in his proper person and as countenanced in HAINES v. KERNER, 404 US 519, 92 SCt 594, 596 (1972), (pleadings filed by pro se litigants are to be held to less stringent standards than those filed by practicing attorneys), and respectfully moves this Honorable Court for an ORDER to COMPEL all court-appointed counsel in the above-referenced case to forward to the Petitioner, at his current place of confinement above-noted, ALL papers, documents, pleadings, and items of tangible personal property which belong to, or were prepared for or by the Petitioner in the instant case.

This MOTION is made and predicated upon all papers, documents, and pleadings on file in said case, as well as any argument at any hearing which this Court may deem necessary.

STATEMENT OF JURISDICTION

This Court has JURISDICTION in this matter, as a remittitur has issued in the Supreme Court of Nevada's review of this case on August 1, 2005. See, Supreme Court Case No. 43203.

STATEMENT OF FACTS

At the time of the incident in the above-referenced case, Petitioner was represented by Jack Alian, Esq., as court-appointed counsel. Prior to the in-

cident, Jack Alian, Esq., represented the Petitioner in cases 02-0145 and 02-0146, both of which were eventually 'stayed' concomitant with the indictment of case no. 03-1263.

Following the indictment proceedings, Jack Alian assigned the court-appointed counsel representation to Bradley Van Ry, Esq.. Bradley Van Ry, Esq., represented Petitioner through pre-trial, trial, and sentencing proceedings. Immediately subsequent to sentencing, Bradley Van Ry withdrew as counsel, wherein Defendant/Petitioner was compelled to file pleadings in proper person - specifically, a NOTICE OF APPEAL and REQUEST FOR APPELLATE COUNSEL.

Petitioner then requested the entire case file from Bradley Van Ry; all to no avail. Van Ry purported to Petitioner that he was compelled to forward said file in its entirety to the State of Nevada's Public Defender's Office, where it would await transfer to court-appointed appellate counsel. (See, June 2, 2004 EXHIBIT). Petitioner pursued said file through State Public Defender, Mr. Champaign, again, all to no avail.

Petitioner then commenced with the subpoena process and the filing of pleadings to retrieve his file from Bradley Van Ry. (See, May 4, 2004 and July 6, 2004, letters and pleadings attached hereto). Shortly thereafter, the court appointed Mary Lou Wilson, Esc., as appellate counsel in appealing the judgment of conviction in case no. 03-1263. Petitioner then assumed that Ms. Wilson was in possession of the file. Ms. Wilson never responded to Petitioner's written and telephonic inquiries. (See, July 10, 2005 letter).

On or about July 25, 2005, Petitioner again sent written requests to Attorney Van Ry and Attorney Wilson regarding said file. To date, there have been no responses to either of these letters. (See, letters of July 25, 2005, attached hereto).

ARGUMENT

Petitioner would direct this Court's attention to NRS 7.055, which

states substantially as follows:

> **NRS 7.055 - Duty of discharged attorney to deliver certain materials to client; enforcement; adjudication of claims to materials; . . .**
>
> 1) Counsel will immediately deliver to the client all papers, documents, pleadings, and items of tangible personal property which belong to or were prepared for that client.

Nevada Revised Statute 1.210(3) states that the Court has the power to COMPEL OBEDIENCE to its ORDER; and, NRS 22.010(3) provides that 'refusal to abide by a lawful ofder issued by the Court is CONTEMPT.' HUMANA, INC. v. EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY,110 Nev 121, 867 P2d 1147.

Petitioner has diligently pursued retrieval of his personal property and entire case file in case no. 03-1263, as Ordered in the Subpoena Duces Tecum. This includes, but is not limited to, documents/folders mailed by Petitioner to Bradley Van Ry, Esq., in or around May, 2004, from the Norther Nevada Correctional Center; any and all index cards/notes prepared by Petitioner for trial, in or around November, 2003; as well as, the 'Staples' Office Supply (at South Lake Tahoe) receipt, dated circa September of 2001, (exchange transaction of an ink cartridge for label maker) and all transcripts provided by the prosecution or Jack Alian relevant to taped conversations between Investigations at WCSD, CoDefendant Brett A. Bowman and the Petitioner subsequent to October 17, 2001, and through November 13, 2003. Petitioner is in need of the foregoing items and documentation so as to prepare and file a WRIT OF HABEAS CORPUS (POST-CONVICTION).

CONCLUSION

WHEREFORE, Petitioner respectfully moves this Honorable Court for relief, via an ORDER COMPELLING Bradley Van Ry, Esq., Jack Alian, Esq., and Mary Lou Wilson, Esq., either individually or collectively, to immediately release to Petitioner, his entire case file for case no. 03-1263, including, but not limited

to, the specific items referenced in the SUBPOENA and reiterated in the accompanying ARGUMENT.

RESPECTFULLY SUBMITTED, this 6th day of September, 2005, by:

FERRILL J. VOLPICELLI, Petitioner
In Propria Persona

VERIFICATION

I, Ferrill J. Volpicelli, do hereby depose and say, under the pains and penalties of perjury, as pursuant to NRS 208.165, that all statements contained in the foregoing MOTION are true and correct, as to the best of my knowledge, information, and belief.

EXECUTED and DATED, this 6th day of September, 2005, at the Lovelock Correctional Center, Lovelock, Pershing County, Nevada, by:

FERRILL J. VOLPICELLI, Petitioner
In Propria Persona

CERTIFICATE OF SERVICE BY MAIL

I, Ferrill J. Volpicelli do hereby CERTIFY that, on the date last-herewritten, I have mailed a true and correct copy of the foregoing MOTION to the parties listed below, by placing the same in sealed envelops, with sufficient postage affixed, and placing said pleadings in the US Postal Service Mail at the Lovelock Correctional Center, Lovelock, Nevada, addressed as follows:

Dick Gammick, District Attorney
Washoe County Courthouse
195 South Sierra Street
Reno, NV 89520; and

Mary Lou Wilson, Esq.
1030 Holcomb
Reno, NV 89502; and

Jack Alian, Esq.
360 West Liberty
Reno, NV 89509; and

Bradley Van Ry, Esq.
West Liberty, Suite 100
Reno, NV 89501.

EXECUTED and DATED, this 6th day of September, 2005, at the Lovelock Correctional Center, Lovelock, Nevada, by:

FERRILL J. VOLPICELLI, Petitioner
In Propria Persona

FERRILL V. VOLPICELLI
#56516 DSP BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO PER

FILED

2004 JUL -6 PM 3:51

RONALD A. LONGTIN, JR.

BY Kurt White
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,
PLAINTIFF,

✓

FERRILL V. VOLPICELLI,
DEFENDANT,

CASE: CR03-1263

DEPT: 10

REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT - AND ORDER TO COMPEL

DEFENDANT, FERRILL V. VOLPICELLI, IN PROPER PERSON AND FORMA PAUPERIS, MOVES THE COURT TO ISSUE AN ORDER TO SHOW CAUSE WHY BRADLEY VAN RY ESQ, DEFENDANTS COUNSEL OF RECORD UNTIL NOTICE OF WITHDRAWL OF ATTORNEY, DATED 16 APRIL, 2004, SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATELY AND WILFULLY VIOLATING THE REQUEST IN A SUBPOENA, PURSUANT TO NRCP 34 AND 35, DATED 4 MAY, 2004. A COPY OF THE RELEVANT PORTION OF THE SUBPOENA DUCES TECUM IS ATTACHED AS EXHIBITS A & B. ACCORDING TO SAID SUBPOENA, THE FOREGOING INDIVIDUAL,

OR BUSINESS WAS REQUIRED TO PROVIDE THE DEFENDANT, WITHIN TEN (10) DAYS OF THE DATED SUBPOENA, WITH ALL PAPERS, EVIDENCE, LETTERS, VINYL FOLDERS AND EXHIBITS RELEVANT TO CASE #CR03-1263 RECEIVED FROM FERRILL J VOLPICELLI, OFFICE OF JACK ALIAN ESQ, RENO POLICE DEPT. AND THE WASHOE COUNTY DISTRICT ATTORNEYS OFFICE, SAID COPIES OF SAME ARE TO BE ORGANIZED AND DESIGNATED AS TO THEIR RESPECTIVE SOURCE, AND ACCOMPANIED BY A LETTER OF AFFIDAVIT PURPORTING SUCH. SAID LETTER OF AFFIDAVIT IS ALSO TO INCLUDE WHETHER OR NOT COUNSEL EVER RECEIVED, AS PART OF THE COURT ORDERED DISCOVERY, COPIES OF THE TRANSCRIPTS PERTAINING TO ALL TAPED CONVERSATIONS AT WASHOE COUNTY SHERIFFS OFFICE AND RENO POLICE DEPT BETWEEN THE DETECTIVES AND DEFENDANTS FERRILL VOLPICELLI AND BRET BOWMAN.

THAT TO DATE, AND ALMOST TWO (2) MONTHS SUBSEQUENT TO THE MAILING OF SAID SUBPOENA, AS CERTIFIED UNDER PENALTY OF PERJURY, BRADLEY VAN RY ESQ HAS NOT RESPONDED. EXHIBIT C SAID DOCUMENTATION IS CRUCIAL FOR THE DEFENDANTS PURSUIT OF POST CONVICTION RELIEF.

Points and Authorities

Nevada Revised Statute 1.210(3) states that the Court has the Power to Compel obedience to its order and Nevada Revised Statute 22.010(3) provides that "Refusal to abide by a lawful order issued by the Court is contempt".

Humana Inc. v Eighth Judicial District Court County of Clark, 110 Nv 121, 867 P2d 1147

Conclusion

Defendant, therefore, respectfully requests that Bradley Van Ry Esq be ordered to appear in Court to show why he should not be held in Contempt of Court.

Dated this X day of June, 2004

Ferrill V. Vorrelli
Defendant Pro Se

Affidavit

Defendant, Ferrill V. Vorrelli, Hereby Declares under Penalty of Perjury that the facts and allegations in this pleading are true and correct to the best of his knowledge and belief. (Pursuant to NRS 208.165)

Ferrill V. Vorrelli / Defendant Pro Se

V2.1022

CERTIFICATE OF MAILING

DATED AND DULY MAILED ON THIS 28
DAY OF JUNE, 2004, TO WAYNE
COUNTY DISTRICT ATTORNEY AND BRADLEY
VAN PELT, ESQ., AS CERTIFIED UNDER
PENALTY OF PERJURY PURSUANT TO
MRS 208.165

FERRIS J. VOLPICELLI
DEFENDANT PRO SE

FERRIL VOLPICELLI
79565 NVCC
BOX 7000
CARSON CITY, NV 89702
DEFENDANT & APPELLANT
IN PRO PER

CODE 4055

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

FERRIL T. VOLPICELLI,

Defendant.

Case No. CR-03-1263

Dept. No. 10

/

SUBPOENA

To: BRADLEY VAN RY ESQ
(Name)

SEE ACCOMPANYING DOCUMENT ON CANARY LEGAL PAPER

~~You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department _____ at Reno, Nevada, on the _____ day of _____, _____, at _____m, to testify on the part of _____.~~

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of $100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 4th day of MAY, 20 04.

RONALD A. LONGTIN, JR., CLERK OF THE COURT

by _____
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 4th day of MAY, 2004 and personally ~~served~~ MAILED a copy of the same upon BRADLEY VAN RY. ESQ

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

_____
Notary Public

_____
Signature of Person Making Service

UNDER PENALTY OF PERJURY
PURSUANT TO NRS. 208.165

JUD 100 (Rev 12/01)
NRS 111.150
NRCP 45 a

V2.1024

ERRILL
OLPICELLI
79565
K 7000
SON CITY
NEVADA
89702
EFENDANT
PRO PER

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

STATE OF NEVADA,
PLAINTIFF,
v.
FERRILL J. VOLPICELLI,
DEFENDANT,

CASE # CR-03-1263
DEPT # 10
5/4/04

SUBPOENA DUCES TECUM ADDENDUM

THE STATE OF NEVADA SENDS GREETINGS TO: BRAD VAN RY ESQ,
WE COMMAND YOU, THAT ALL SINGULAR, BUSINESS AND EXCUSES BEING SET ASIDE, TO SUBMIT BY SENDING TO THE DEFENDANT ABOVE NAMED, AT THE ABOVE NOTED ADDRESS: ALL PAPERS, LETTERS, EXHIBITS & VINYL FOLDERS RELEVANT TO CASE CR03-1263 RECEIVED FROM FERRILL VOLPICELLI, OFFICE OF JACK ALIAN ESQ, RENO POLICE DEPT, AND THE WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE. SAID COPIES OF SAME ARE TO BE ORGANIZED AND DESIGNATED AS TO THEIR RESPECTIVE SOURCE, AND ACCOMPANIED BY A LETTER OF AFFIDAVIT PURPORTING SUCH. SAID LETTER OF AFFIDAVIT IS ALSO TO INCLUDE WHETHER OR NOT COUNSEL EVER RECEIVED AND REVIEWED, AS PART OF THE COURT ORDERED DISCOVERY, COPIES OF THE TRANSCRIPTS PERTAINING TO ALL TAPED CONVERSATIONS AT THE WASHOE COUNTY SHERIFF'S OFFICE BETWEEN DETECTIVES AND THE DEFENDANTS, FERRILL VOLPICELLI AND BRETT BOWMAN.
THE ABOVE REQUESTED DOCUMENTATION IS TO BE IN A SEALED ENVELOPE OR BOX ADDRESSED AND DELIVERED AS NOTED HEREIN, IN A SEALED ENVELOPE OR BOX, MARKED 'LEGAL DOCUMENTS', WITHIN TEN (10) DAYS OF THE ABOVE FILING DATE.
AND FAILURE TO ABIDE BY THIS SUBPOENA, YOU WILL BE DEEMED GUILTY OF CONTEMPT OF COURT AND LIABLE TO PAY ALL LOSSES AND DAMAGES SUSTAINED THEREBY TO THE PARTIES AGGRIEVED AND FORFEIT ONE HUNDRED ($100) DOLLARS IN ADDITION THERETO.

N WITNESS WHEREOF, I HEREUNTO SET MY HAND AND AFFIXED SEAL OF AID COURT THIS DAY OF APRIL, 2004.

SEE COVER PAGE

A T _____

DEPUTY CLERK OF THE COURT

V2.1025

PERRILL T. VOLPICELLI
79565 @ NNCC
BOX 7000
CARSON CITY, NV 89702

1 MAY, 2004

(43203) (03-1263)

APPELLANT PRO PER

LAW OFFICE OF VAN RY ESQ

RE: CASE FILE AND ACCOMPANYING VINYL FOLDERS

DEAR MR. VAN RY,

THE ACCOMPANYING VINYL LEGAL FOLDERS ARE PART OF THE EVIDENCE BEING RELEASED BY THE RENO POLICE DEPT. THROUGH THE CITY ATTORNEY'S OFFICE IN RENO. I AM REQUESTING THAT YOU INCLUDE THESE LABELED LEGAL FOLDERS WITH MY CASE FILE.

YOU WILL ALSO NOTE FROM THE ENCLOSURE(S) THAT I AM BEREFT OF COUNSEL, AND THAT I AM CURRENTLY FURTHERING MY APPEAL ~~with~~ IN PROPER PERSON. CONSEQUENTLY, YOUR UNAUTHORIZED PLOY TO DELIVER MY CASE FILE TO THE WASHOE COUNTY PUBLIC DEFENDERS OFFICE WAS PREMATURE. IN VIEW OF THIS, I MUST INSIST THAT YOU REMOVE MY CASE FILE IN ITS ENTIRETY AND FORWARD SAME, ALONG WITH THE VINYL FOLDERS TO MY PLACE OF INCARCERATION WHEN I TRANSFER TO NSP.

INCIDENTALLY, I REVIEWED NEVADA SUPREME COURT RULE 46, AND I AM LED TO BELIEVE THAT YOU MISREPRESENTED ME REGARDING THE NECESSITY OF YOUR WITHDRAWL FROM MY CASE BASED ON THE NATURE OF MY JUDGMENT AND CONVICTION. ACCORDINGLY, IT MERELY DEMONSTRATES ANOTHER BREACH OF THE CLIENT-ATTORNEY FEALTY; WHICH I WAS TO BE AFFORDED UNDER THE SIXTH AMENDMENT.

HENCE, IN VIEW OF THE FOREGOING, YOUR FAILURE TO COOPERATE WITH THIS REQUEST WILL ONLY COMPEL ME TO PURSUE THIS MATTER THROUGH THE SUBPOENA PROCESS. I ANTICIPATE THAT THIS LETTER WILL PROMPT YOUR COOPERATION IN THIS MATTER.

GOVERN YOURSELF ACCORDINGLY,

BY

encl: file closure

FRANK VOLPICELLI
79560 HWY 95
BOX 650
INDIAN SPRINGS, NV 89070

2 JUNE, 2004

LAW OFFICE OF BRAD VAN RY ESQ

RE: CASE # CR03-1263 / SUBPOENA

DEAR MR. VAN RY,

BY NOW, YOU ARE LIKELY IN RECEIPT OF THE SUBPOENA DUCES TECUM FILED LAST MONTH.

AS A FOLLOW UP, I PLACED A CALL TO THE STATE PUBLIC DEFENDERS OFFICE. MR. CHAMPAGNE PURPORTED TO ME THAT THE CASE FILE HAS BEEN RETRIEVED BY YOUR OFFICE, AND, YOUR RECEPTIONIST IS SUPPOSEDLY FORWARDING THE ITEMS REFERENCED IN THE SUBPOENA TO ME. IN VIEW OF THIS, I ANTICIPATE RECEIPT OF THE CASE FILE BY NO LATER THAN 6/11/04, AT WHICH TIME I WILL BE COMPELLED TO FILE A REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT AND ORDER TO COMPEL. SO AS TO AVOID THIS ACTION, PLEASE PROVIDE ME WITH THE ITEMS REFERENCED IN THE SUBPOENA BY 6/11/04.

THANK YOU FOR YOUR CONCERNS AND COOPERATION WITH THIS MATTER.

SINCERELY,

C.

FERRELL VOLPICELLI
79565 HOST BOX 650
JUNIPER SPRINGS, NV 89828
DEFENDANT PRO SE

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

FILED
2004 AUG -3 PM 2:38
RONALD A. LONGTIN, JR.
T. White
BY _____ DEPUTY

STATE OF NEVADA,
PLAINTIFF,

v.

FERRELL V. VOLPICELLI
DEFENDANT,

CASE CR03-1263
DEPT. 15

REQUEST FOR SUBMISSION OF REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT AND ORDER TO COMPEL

DEFENDANT HAVING FILED A REQUEST FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT OF COURT — AND ORDER TO COMPEL ON 6 JULY, 2004, HEREBY MOVES THE COURT FOR SUBMISSION OF SAID MOTION FOR THE COURT'S REVIEW & DETERMINATION. WHEREFORE, BRADLEY VAN ESH HAS NOT RESPONDED TO THIS REQUEST AS OF THIS DATE, AND DEFENDANT REQUESTS IMMEDIATE RELIEF AS AN ORDER.

DATED THIS 26th DAY OF JULY, 2004

FERRELL VOLPICELLI
DEFENDANT PRO SE

CERTIFICATE OF MAILING
DATED & COPY MAILED ON 7/26/04 TO VAN ESH & WCDA AS CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO NRS. 208.165

V2.1028

10 JULY, 2004

FERRILL VOLPICELLI
79565 HDSP BOX 650
INDIAN SPRINGS, NV 89018.

LAW OFFICE OF MARY LOU WILSON ESQ.

RE: CR031263/ 43203

DEAR MS. WILSON, THIS IS MY 3RD LETTER OF INQUIRY REGARDING ISSUES AND CONCERNS WITH MY CASE. INASMUCH AS COMMUNICATION WITH YOUR OFFICE, TELEPHONICALLY, HAS REACHED AN IMPASSE, COULD I REQUEST THAT YOU PLACE AN INQUIRY WITH THE DIRECTORS OFFICE AT THE NDOC IN CARSON CITY REGARDING A TRANSFER OF CUSTODY BACK TO NORTHERN NEVADA? IN THAT WAY, VISITATION MAY BE FACILITATED TO DISCUSS PERSONAL MATTERS WITH MY CASE. NEXT, IT IS MY ASSUMPTION THAT YOU ARE LIKELY IN RECEIPT OF THE CASE FILE WHICH TRANSFERRED FROM EITHER THE OFFICE OF BRAD VANRY OR THE PUBLIC DEFENDER. IF SO, COULD I TROUBLE YOU FOR A COPY OF THE SOUTH LAKE TAHOE, CALIFORNIA 'STAPLES' RECEIPT INVOLVING AN EXCHANGE TRANSACTION? IT IS IMPERATIVE THAT I GLEAN INFORMATION FROM IT FOR REASONS RELEVANT TO POST CONVICTION RELIEF ISSUES WHICH I INTEND TO ELABORATE ON IN FUTURE LETTERS TO YOU. ALSO, COULD YOU PERUSE THE FILE TO ASCERTAIN WHETHER OR NOT THERE ARE COMPLETE TRANSCRIPTS IN THE DISCOVERY FILE PERTAINING TO TAPED CONVERSATIONS, AT WCSO AND RPD, BETWEEN INVESTIGATORS, MYSELF & CODEFENDANT BOWMAN?

I ANXIOUSLY AWAIT YOUR RESPONSE TO THE FOREGOING MATTERS, AS WELL AS OTHER ITEMS REFERENCED IN PRIOR CORRESPONDENCE.

THANK YOU.

SINCERELY,

CC: FILE

V2.1029

ORIGINAL

FILED
2005 SEP 13 AM 11:55
RONALD A. LONGTIN, JR.
BY _____ DEPUTY

CR03-1263 DC-99000025179-055
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 09/13/2005 04 10 PM 1650
Washoe County

1650
Bradley O. Van Ry
Nevada Bar No. 7198
201 West Liberty Street, Suite 100
Reno, NV 89501
(775) 333-9000

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

ERRATA TO OPPOSITION TO MOTION FOR ORDER TO COMPEL

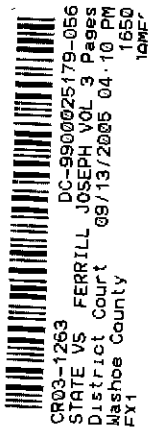
The undersigned, Bradley O. Van Ry, hereby files this Errata to his Opposition To Motion For Order to Compel filed on September 12, 2005. This Errata is being filed as counsel stated in his Opposition that he was not in possession of the files referenced in the Motion For Order To Compel filed by Defendant FERRILL JOSEPH VOLPICELLI.

However, Mr. Van Ry's staff has located the trial files of FERRILL JOSEPH VOLPICELLI and the same were forwarded to the Defendant on September 13, 2005. See attached Exhibit "1."

DATED this 13th day of September 2005.

VAN RY LAW OFFICES, LLP

BRADLEY O. VAN RY


CR03-1263
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 09/13/2005 04:10 PM
Washoe County
FX1
DC-9900025179-056
1650

Kevin Van Ry
Bradley O. Van Ry
VAN RY LAW OFFICES, LLP
201 West Liberty Street, Suite 100
Reno, Nevada 89501
TELEPHONE: (775) 333-9000
FACSIMILE: (775) 333-9004
E-MAIL: kvanry@sdi.net
E-MAIL: bvanry@sdi.net

LIKE FREEDOM, THE PURSUIT OF JUSTICE IS BORN OF VIGILANCE AND COURAGE.

September 13, 2005

Ferrill Joseph Volpicelli
Inmate #79565
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419-0359

Re: Ferrill Joseph Volpicelli adv. State of Nevada
Case No. CR03-1263

Dear Mr. Volpicelli:

Enclosed please find your entire file from our office. We are forwarding the same to you based upon your Motion For Order To Compel. As you know, we filed an Opposition stating we did not have the files in our possession. We then filed an Errata to our Opposition, as your files were found in our office.

Please be advised that we have forwarded you all original documents, tapes and videos from our file and have not kept a copy of the same. Therefore, you are now in possession of the original file. Once again, we **DID NOT** keep a copy of your file in our office.

Thank you.

Very truly yours,

Bradley O. Van Ry

BVR/dlg
Enc.

V2.1033

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 201 W. Liberty Street, Suite 100, Reno, Nevada 89501, and that on the date below, a true and correct copy of the foregoing, **ERRATA TO OPPOSITION TO MOTION FOR ORDER TO COMPEL**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419-0359

Mary Lou Wilson
333 Marsh Avenue
Reno, NV 89509

Jack A. Alian
360 W. Liberty Street
Reno, NV 89501

DATED this 13th day of September, 2005.

Debra L. Goss

ORIGINAL

FERRILL J. VOLPICELLI, NDOC# 79565
c/o Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

FILED
2005 SEP 27 PM 3:25
RONALD A. LONGTIN
DEPUTY

DC-9900025217-022
FERRILL JOSEPH VOL 4 Pages
09/27/2005 08:21 AM
3795
CR03-1263
STATE VS
District Court
Washoe County

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

FERRILL J. VOLPICELLI, Petitioner, v. THE STATE OF NEVADA, Respondent, and BRADLEY VAN RY, Real Party In Interest.	Case No. CR03-1263 Dept No. X REPLY TO STATE'S OPPOSITION TO MOTION FOR ORDER TO COMPEL AND TO VAN RY'S ERRATA TO OPPOSITION TO MOTION FOR ORDER TO COMPEL

COMES NOW, Ferrill J. Volpicelli, the Petitioner, in his proper person, and as countenanced in **Haines v. Kerner**, 404 US 519, 92 SCt 594, 596 (1972), (pleadings filed by pro se litigants are to be held to less stringent standards than those filed by practicing attorneys), and files this Reply as above-referenced.

This Reply is based upon the following facts, as well as all papers and pleadings on file herein, and any Exhibits attached hereto.

FACTS IN SUPPORT OF REPLY

On or about May 4, 2004, Petitioner-Defendant served a Subpoena Duces Tecum upon the Real Party in Interest, Bradley Van Ry ("Van Ry"), in which Petitioner requested copies of all case records in relation to the above-referenced case, as well as a Letter of Affidavit stating whether or not Van Ry was provided with copies of the Transcripts pertaining to all taped conversations at the Washoe County Sheriff's Office between the Detectives and Defendants, Ferrill J. Volpicelli, and Brett A. Bowman, and whether counsel had ever had the opportunity to receive or review these as part of reciprocal Discovery in this case. This Affidavit was an item of specifically-documented evidence necessary to Petitioner-Defendant to prove a ground in his forthcoming Petition For Writ of Habeas Corpus, Post-conviction.

Over the course of the next year, Petitioner-Defendant followed up with numerous letters to Van Ry requesting his case records, including, but not limited to: "all papers, letters, exhibits, index cards, and vinyl folders relevant to case number CR03-1263, received from Ferrill J. Volpicelli, the Office of Jack Alian, Esq., the Reno Police Department, and the Washoe County District Attorney's Office." Van Ry failed to comply with the Subpoena Duces Tecum, or any of the myriads of follow-up letters sent to him in the year following the Service of said Subpoena.

As a result, Petitioner-Defendant was compelled to file a Motion For Order To Compel Van Ry to produce these case records in the instant Court. In his Opposition, Van Ry asserts that he did not have possession of Petitioner's files in his office. One (1) day after the filing of the Opposition, Van Ry then files and Errata to his Opposition, claiming that he has located Defendant's files in his office, and he has forwarded them to Petitioner-Defendant. It is at this point that Petitioner disagrees with Counsel.

After a review of the records received from Van Ry's Office on this date, a number of items were clearly missing from these records, and as such, must still be in Van Ry's possession, or could be obtained by Van Ry through the exercise of due diligence. Had Van Ry exercised due diligence one and a half years ago, it would not have taken Petitioner-Defendant upwards over a year to obtain the bit of case records which he has.

The Petitioner-Defendamt has requested, specifically, the following items from his case files, which were not received by him with the rest of his files:

1) A set of index cards including questions Defendant wished counsel to establish at trial in this matter. Defendant's parent(s) sent a check to Van Ry to purchase these cards for this specific person, and Defendant did use them, and they should have been included in Petitioner-Defendant's case files; (This item is listed in letters subseqwuent to trial, circa., January, 2004);

2) Vinyl legal folders containing Petitioner-Defendant's legal

materials, seized by the Reno Police Department, returned to Petitioner-Defendant, and provided to Van Ry's office by Petitioenr-Defendant to return Petitioner's legal work to him in; (These folders are mentioned in letters subsequent to trial, circa., May, 2004);

3) An AFFIDAVIT, mentioned in the Subpoena Duces Tecum, which is to reference the fact that the Prosecutor did not cooperate fully with the July, 2003, Court Order for Full Reciprocity in Discovery; i.e., Prosecutor should have provided a complete set of RPD Interview Transcripts, as follows:
   a) 10/17/01 43 pages
   b) 12/03/01 67 pages
   c) 12/06/01 24 pages
   d) 01/03/02 19 pages
   e) 02/19/02 30 pages, and in consequence, Van Ry

was unable to review the same in their entirety, thereby precluding his ability to effectively cross-examine/impeach all witnesses; especially, Brett A. Bowman and Detective Thomas.

WHEREBY, Petitioner respectfully represents to this Honorable Court that, although Van Ry attempts to purport to this Court that he has already complied with Petitioner's requests for his case records, Van Ry still has not fully complied with this request, as he has not returned the afore-mentioned index cards, vinyl folders, and Affidavit, as requested on numerous occassions, both formally and informally; and Petitioner therefore respectfully prays this Honorable Court **GRANT** his Motion For Order To Compel, in the interests of providing the Petitioner-Defendant a full and complete record from which to develop his post-conviction pleadings.

RESPECTFULLY SUBMITTED, September 20, 2005, by:

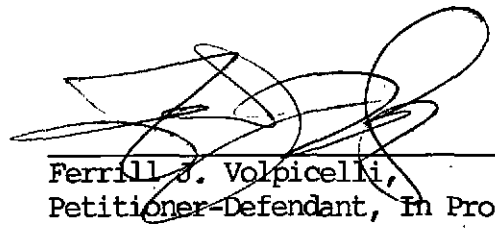
FERRILL J. VOLPICELLI,
Petitioner-Defendant, In Pro Per

VERIFICATION

I, Ferrill J. Volpicelli, do hereby depose and say, under the pains and penalties of perjury, as pursuant to NRS 208.165, that the foregoing statements are true and corract, as to the best of my knowledge, information, and belief.

EXECUTED and DATED, this 20th day of September, 2005, at the Lovelock

Correctional Center, Lovelock, Nevada, by:

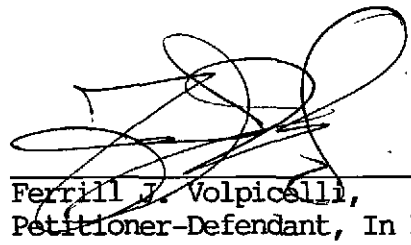


Ferrill J. Volpicelli,
Petitioner-Defendant, In Pro Per

CERTIFICATE OF SERVICE

I, Ferrill J. Volpicelli, do hereby CERTIFY, that on the date last-here written, I have mailed a true and correct copy of the foregoing Reply to the Office of Bradley Van Ry, by placing the same in a sealed envelope, with sufficient postage affixed, and depositing it in the US Postal Service mail, addressed to him at his respective address.

EXECUTED and DATED, this 20th day of September, 2005, at the Lovelock Correctional Center, Lovelock, Nevada, by:



Ferrill J. Volpicelli,
Petitioner-Defendant, In Pro Per

ORIGINAL

FERRILL J. VOLPICELLI, NDOC #79565
c/o Lovelock Correctional Center
Post Office Box 359
1200 Prison Road
Lovelock, NV 89419-0359

DC-9900025217-021
CR03-1263 STATE VS. FERRILL JOSEPH VOLP 1 Page
District Court 09/30/2005 08:26 AM
Washoe County 3860

FILED
2005 SEP 30 PM 3:54
RONALD A. LONGTIN, JR.
BY
DEPUTY

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

THE STATE OF NEVADA,
Plaintiff,

v.

FERRILL J. VOLPICELLI,
Defendant.

Case No. CR03-1263

Dept No. 10

REQUEST FOR SUBMISSION OF
PLAINTIFF'S MOTION TO COMPEL, DEFENDANT'S ANSWER,
DEFENDANT'S ERRATA TO OPPOSITION TO MOTION TO COMPEL,
AND
PLAINTIFF'S REPLY TO OPPOSITION AND ERRATA

The above pleadings having been filed in this Court, all within the appropriate time frames, and full briefing having been completed, the Plaintiff hereby requests that this Honorable Court take these pleadings under advisement, and GRANT whatever relief, upon review of the pleadings, that this Honorable Court deems equitable law and justice to require.

RESPECTFULLY SUBMITTED, this 27th day of September, 2005, by:

FERRILL J. VOLPICELLI, Defendant
In Propria Persona

CR03-1263 DC-99000025217-023
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 12/12/2005 05 24 PM
Washoe County 3370

CODE: 3370

ORIGINAL

FILED
DEC 12 2005
RONALD A. LONGTIN, JR. CLERK
By: DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL T. VOLPICELLI,

Defendant.

CASE NO: CR03-1263

DEPT. NO.: 10

ORDER TO RESPOND

The Court has read and considered Defendant Ferrill Volpicelli's Motion for Order To Compel filed September 12, 2005, as well as all supporting and opposing documents and memoranda.

Defendant asks the Court to compel production of all documents related to his case. In an Errata filed on September 13, 2005, Defendant's former counsel Bradley Van Ry informs the Court that he has forwarded Defendant's trial files to Defendant. On September 30, 2005, Defendant filed a motion indicating that he believes Mr. Van Ry is still in possession of a set of index cards and vinyl folders containing notes that Defendant used during trial. Additionally, Defendant references an affidavit "which is to reference the fact the Prosecutor did not cooperate fully with the July 2003 Court Order for Full Reciprocity in Discovery."

The Court has determined that a response from Mr. Van Ry will assist the Court in

deciding Defendant's Motion to Compel.

NOW, THEREFORE, IT IS HEREBY ORDERED that former counsel Bradley Van Ry, Esq. shall file a responsive pleading, regarding the issues raised in Defendant's motion filed September 20, 2005, within 30 days of the issuance of this Order.

DATED this 12 day of December, 2005.

STEVEN P. ELLIOTT
District Judge

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 12 day of December, 2005, I deposited for mailing a copy of the foregoing document addressed to:

Mary Lou Wilson
Law Office Of Mary Lou Wilson
33 Marsh Ave.
Reno, NV 89509

Bradley Van Ry
Van Ry Law Office
201 W. Liberty St., #100
Reno, NV 89501

Ferrill J. Volipicelli #79565
Lovelock Correctional Center
P.O. Box 359
Lovelock, NV 89419

DATED this 12 day of December, 2005.

HEIDI HOWDEN
Administrative Assistant

CR03-1263
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 01/10/2006 05 00 PM
Washoe County
DC-9900025217-024
3880

ORIGINAL FILED

2006 JAN 10 PM 12:16

RONALD A. LONGTIN, JR.

BY _____ DEPUTY

~~1650~~ 3880

Bradley O. Van Ry
Nevada Bar No. 7198
201 West Liberty Street, Suite 100
Reno, NV 89501
(775) 333-9000

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

/

FORMER COUNSEL'S RESPONSE IN ACCORDANDCE WITH ORDER TO RESPOND

Bradley O. Van Ry, former counsel for Mr. Volpicelli, hereby files this response as ordered by Judge Steven P. Elliot in this matter. This response is made and based upon all papers and pleadings on file herein and any other such evidence as the Court deems necessary.

This office discovered that we had the file in our possession on or about September 13, 2005. See Exhibit "1" (September 13, 2005 letter to Mr. Volpicelli from the Van Ry Law Offices, LLP). This confusion was due to the file being forwarded earlier by this office to the Public Defender's

office and a subsequent return of the file to this office. See Exhibit "2" (June 22, 2005 letter to the Van Ry Law Offices, LLP from the Public Defender's office). We then forwarded the entire file excepting the index cards to Mr. Volpicelli and subsequently sent the index cards to him. See Exhibit "1"; "3" (October 5, 2005 letter to Mr. Volpicelli from the Van Ry Law Offices, LLP). This office cannot find, and we do not believe that we ever possessed, the vinyl folders that Mr. Volpicelli used during trial. It is believed that he took all of his own materials with him.

DATED this 9th day of January, 2006.

VAN RY LAW OFFICES, LLP

BRADLEY O. VAN RY

DC-9900025217-025
CR03-1263 STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 01/10/2006 05 00 PM
Washoe County 3880

EXHIBIT 1

Kevin Van Ry
Bradley O. Van Ry
VAN RY LAW OFFICES, LLP
201 West Liberty Street, Suite 100
Reno, Nevada 89501
TELEPHONE: (775) 333-9000
FACSIMILE: (775) 333-9004
E-MAIL: kvanry@sdi.net
E-MAIL: bvanry@sdi.net

LIKE FREEDOM, THE PURSUIT OF JUSTICE IS BORN OF VIGILANCE AND COURAGE.

September 13, 2005

Ferrill Joseph Volpicelli
Inmate #79565
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419-0359

Re: Ferrill Joseph Volpicelli adv. State of Nevada
Case No. CR03-1263

Dear Mr. Volpicelli:

Enclosed please find your entire file from our office. We are forwarding the same to you based upon your Motion For Order To Compel. As you know, we filed an Opposition stating we did not have the files in our possession. We then filed an Errata to our Opposition, as your files were found in our office.

Please be advised that we have forwarded you all original documents, tapes and videos from our file and have not kept a copy of the same. Therefore, you are now in possession of the original file. Once again, we **DID NOT** keep a copy of your file in our office.

Thank you.

Very truly yours,

Bradley O. Van Ry

BVR/dlg
Enc.

DC-9900025217-026
CR03-1263
STATE VS. FERRILL JOSEPH VOL 2 Pages
District Court 01/10/2006 05:00 PM
Washoe County
3880

EXHIBIT 2

Washoe County Public Defender
Michael R. Specchio / Public Defender
Standard of Excellence Since 1969

June 22, 2005

Mr. Bradley Van Ry, Esq.
Mr. Kevin Van Ry, Esq.
1403 East Fourth Street
Reno, Nevada 8912

Re: Ferrill Ioseph Volpicelli v. The State of Nevada
District Court Case Number CR03-1263, Dept. 10

Dear Sirs:

Please make arrangements to come pick up two boxes containing trial materials relating to the above entitled case. Mary Lou Wilson is handling the direct appeal in that matter and has indicated to me that she does not want these materials. Since we, at the Public Defender's Office have no involvement in this case, we do not want them either.

If you have any questions please feel free to call me at **(775) 337-4827**.

Sincerely,

JEREMY T. BOSLER
WASHOE COUNTY PUBLIC DEFENDER

by: _____
John Reese Petty
Chief Deputy

350 South Center Street, 6th Floor • P.O. Box 30083, Reno, Nevada 89520-3083
Phone (775) 337-4800 • Fax (775) 337-4856

DC-9900025217-027
CR03-1263 STATE VS. FERRILL JOSEPH VOL 3 Pages
District Court 01/10/2006 05 00 PM 3880
Washoe County

EXHIBIT 3

Kevin Van Ry
Bradley O. Van Ry
VAN RY LAW OFFICES, LLP
201 West Liberty Street, Suite 100
Reno, Nevada 89501
TELEPHONE: (775) 333-9000
FACSIMILE: (775) 333-9004
E-MAIL: kvanry@sdi.net
E-MAIL: bvanry@sdi.net

LIKE FREEDOM, THE PURSUIT OF JUSTICE IS BORN OF VIGILANCE AND COURAGE.

October 5, 2005

Ferrill Joseph Volpicelli
Inmate #79565
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419-0359

Re: Ferrill Joseph Volpicelli adv. State of Nevada
Case No. CR03-1263

Dear Mr. Volpicelli:

Enclosed please find your requested index cards. I apologize that these were not sent with your file. I assumed they were the attorney's notes, as opposed to the client's notes. Therefore, I did not include them.

Also, with regard to the vinyl legal folders requested, our file did not contain said folders. I have included all research documents from your file. Normally, these research documents are not forwarded to a client with the file, but Mr. Van Ry instructed me to send these to you as well. I am sorry we do not have your vinyl legal folders.

Finally, Mr. Van Ry will not be preparing Affidavits in this case.

Very truly yours,

Debra L. Goss, Legal Assistant to:
Bradley O. Van Ry

/dlg
Enc.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 201 W. Liberty Street, Suite 100, Reno, Nevada 89501, and that on the date below, a true and correct copy of the foregoing, **FORMER COUNSEL'S RESPONSE IN ACCORDANCE WITH ORDER TO RESPOND**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Lovelock Correctional Center
1200 Prison Road
P.O. Box 359
Lovelock, NV 89419-0359

Mary Lou Wilson
333 Marsh Avenue
Reno, NV 89509

Jack A. Alian
360 W. Liberty Street
Reno, NV 89501

DATED this 10th day of January, 2006.

Debra L. Goss

CR03-1263 DC-9900030865-002
STATE VS FERRILL JOSEPH VO 16 Pages
District Court 12/06/2011 11:29 AM
Washoe County 4305
DOC JYOST

4306

CODE:

FERRILL J VOLPICELLI #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
DEFENDANT In Pro Se

FILED
2011 DEC -6 AM 11:29
CRAIG FRANDEN, ACTING CLERK
HOWARD W. CONYERS
BY [signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

THE STATE OF NEVADA, PLAINTIFF, -vs- FERRILL V. VOLPICELLI, DEFENDANT.

Case No. CR03-1263

Dept. No. 9

DEFENDANT'S WRIT OF PROHIBITION CHALLENGING PROCEEDING IN EXCESS OF JURISDICTION AT SENTENCING

COMES NOW, DEFENDANT, FERRILL V. VOLPICELLI, (HEREIN-AFTER "VOLPICELLI"), APPEARING IN PROPER PERSON, AND FILES THIS WRIT OF PROHIBITION CHALLENGING PROCEEDING IN EXCESS OF JURISDICTION AT SENTENCING, IN THE ABOVE-ENTITLED ACTION. THIS WRIT IS FILED, PURSUANT TO NRS 34.320, RELEVANT DOCUMENTS ON FILE HEREIN, AND THE FOREGOING LEGAL MEMORANDUM OF POINTS AND AUTHORITIES, AS WELL AS ANY FURTHER ARGUMENTS OF EVIDENCE TO BE ADDUCED AT TIME OF HEARING ON THE MATTER.

/

/

I. BACKGROUND DISCUSSION

IN OCTOBER 2001, VOLPICELLI WAS ARRESTED FOR A PAROLE VIOLATION IN UNRELATED CASE NO CR98-2160. SUBSEQUENTLY, VOLPICELLI WAS ARRESTED ON RELATED BURGLARY COUNTS IN CASE NOS. CR02-0145 AND 0146. VOLPICELLI WAS RETURNED TO CUSTODY WHERE HE EXPIRED CR98-2160.

IN MAY 2003, VOLPICELLI WAS RELEASED TO THE WASHOE COUNTY SHERIFF'S OFFICE PENDING AN INDICTMENT RELATIVE TO CR02-0145, 0146. THESE TWO CASES WERE STAYED AND SUPPLANTED WITH THE INSTANT CASE BEFORE THE COURT. VOLPICELLI PROCEEDED TO A JURY TRIAL AND WAS CONVICTED OF ONE COUNT OF CONSPIRACY, ONE COUNT OF POSSESSION OF REAL INSTRUMENTALITIES, AND EIGHT COUNTS OF BURGLARY. PRIOR TO SENTENCING, THE STATE FILED A NOTICE TO SEEK HABITUAL STATUS ON THE CONVICTIONS. ON APRIL 1, 2004, THE COURT SENTENCED VOLPICELLI TO MULTIPLE LIFE SENTENCES AND PAROLE ELIGIBILITY AFTER 10 YEARS, CONSECUTIVE, PURSUANT TO NRS 207.010(1)(b)(2). BASED UPON THREE EXHIBITS OF PRIOR CONVICTIONS PRESENTED BY THE STATE, (SEE DEFENDANT'S EXHIBIT 1) VOLPICELLI WAS SENTENCED AS A HABITUAL CRIMINAL. BASED UPON A NOVICE REVIEW OF THE RECORD, THE COURT WAS WITHOUT JURISDICTION TO IMPOSE THE SENTENCE STRUCTURE. THE INSTANT PLEADING FOLLOWS

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II APPLICABLE STANDARD FOR A WRIT OF PROHIBITION (NRS 34.320).

NRS 34.320. WRIT OF PROHIBITION DEFINED. THE WRIT OF PROHIBITION IS THE ENCOUNTER PART OF THE WRIT OF MANDATE. IT ARRESTS THE PROCEEDINGS OF ANY TRIBUNAL, CORPORATION, BOARD OR PERSON EXERCISING JUDICIAL FUNCTIONS WHEN PROCEEDINGS ARE WITHOUT OR IN EXCESS OF THE JURISDICTION OF SUCH TRIBUNAL, CORPORATION, BOARD OR PERSON.

A WRIT OF PROHIBITION IS NOT A WRIT OF RIGHT, BUT ONE OF SOUND JUDICIAL DISCRETION TO BE ISSUED OR REFUSED ACCORDING TO FACTS AND THE CIRCUMSTANCES OF THE CASE. WALCOTT V STATE, WELLS, 21 NEV 47, 24 PAC. 367 (1890); DIOTALLEVI V. SECOND JUDICIAL DISTRICT COURT, 93 NEV 633, 636, 572 P2d 214 (1977).

THE OBJECT OF THE WRIT OF PROHIBITION IS TO RESTRAIN THE COURTS FROM ACTING WITHOUT AUTHORITY OF LAW IN CASES WHERE WRONG, DAMAGE AND INJUSTICE ARE LIKELY TO FOLLOW FROM SUCH ACTION. SILVER PEAK MINES V. SECOND JUDICIAL DISTRICT COURT, 33 NEV. 97, 116, 110 PAC. 503. (1910).

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III LEGAL MEMORANDUM/POINTS AND AUTHORITIES

THE DISTRICT COURT WAS BEYOND ITS JURISDICTION WHEN IT SENTENCED A DEFENDANT ILLEGALLY. THE INSTANT PLEADING IS NOT TO BE CONSTRUED WITH THE APPLICATION OF NRS 176.555, WHICH PROVIDES THAT AN ILLEGAL SENTENCE MAY BE CORRECTED AT ANY TIME. EDWARDS V STATE, 918 P2d 321, 324 (1996). SUCH A CHALLENGE IS BASED UPON THE FACIAL LEGALITY OF THE IMPOSED SENTENCE, ACCORDING TO LEGAL STANDARDS BY LAW. PASSANISI V STATE, 831 P2d 1371, 1372. (1992). VOLPICELLI'S PLEADING SHOULD NOT BE MIS-CONSTRUED AND TREATED UNDER NRS 176.555. THE INSTANT PLEADING IS NOT USED TO ATTACK THE VALIDITY OF THE JUDGMENT OF CONVICTION BASED ON ALLEGED ERRORS OCCURRING AT TRIAL OR SENTENCING. Id. 1372. IN ALL CRIMINAL PROCEEDINGS THE JURISDICTION OF THE COURT IS RETAINED BY AN INHERENT AUTHORITY THROUGH THE EXPIRATION OF THE SENTENCED IMPOSED. A WRIT OF PROHIBITION MAY ISSUE UPON THE MATERIAL UNTRUE ASSUMPTION, OR MISTAKE OF FACT (OR LAW) THAT HAS WORKED TO THE EXTREME DETRIMENT OF THE DEFENDANT. DEMOSTHENIES V. WILLIAMS, 637 P2d 1203 (1981).

THAT SAID, VOLPICELLI MUST FIRST GENERALLY CHALLENGE THE JURISDICTION OF THE COURT'S SENTENCE IN THE DISTRICT COURT. PUBLIC SERVICE COMMISSION V.

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EIGHTH JUDICIAL DISTRICT COURT, 61 Nev. 245, 123 P2d 232 (1942). HEREIN, VOLPICELLI PRESENTS A COLORABLE MERITORIOUS ISSUE AS TO THE PRIMA FACIE LEGAL ARGUMENTS BELOW. THE FACT THAT AN APPEAL WAS MADE AVAILABLE FROM FINAL JUDGMENT DOES NOT PRECLUDE THE FILING, OR ISSUANCE, OF A WRIT OF PROHIBITION PARTICULARLY IN CIRCUMSTANCES WHERE TRIAL COURT IS ALLEGED TO HAVE EXCEEDED ITS JURISDICTION. G & M PROPERTIES V. SECOND JUDICIAL DISTRICT COURT, 90 Nev. 301, 594 P2d 714 (1974). NRS 176.355 IS NOT AN AVAILABLE REMEDY TO VOLPICELLI WHERE SUCH AN APPLICATION UNDER THIS STATUTE WOULD BE INADEQUATE BY LAW. THIS IS A MATTER WHERE THE COURT HAS ISSUED OR ABUSED ITS POWER OR DISCRETION, AND WAS WITHOUT JURISDICTION IN THE MANNER IT IMPOSED SENTENCES. THE INSTANT WRIT WOULD ENTIRE VOLPICELLI TO ADEQUATE FULL RELIEF AS A MATTER OF LAW. INTERNATIONAL LIFE UNDERWRITERS V. SECOND JUDICIAL DISTRICT COURT, 61 Nev. 42, 113 P2d 616 (1941).

A. RESTRAINT IN CRIMINAL PROCEEDINGS.

RESPECTFULLY, IT IS A GREAT LEGAL WRONG TO COMPEL A PERSON CHARGED WITH CRIMINAL OFFENSES TO UNDERGO A VOID PROCEDURE WITHOUT JURISDICTION

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AND IN CASES of THIS CHARACTER - SUCH AS VOLPICELLI'S. REASON AND JUSTICE DICTATE THE RESTRAINING OF THE COURT'S JURISDICTIONAL ERROR AND GRANT THE ISSUANCE OF THE WRIT OF PROHIBITION. BELL V FIRST JUDICIAL DISTRICT COURT, 28 NEV 280, 81 PAC. 875 (1905); BUCKINGHAM V. FIFTH JUDICIAL DISTRICT COURT, 60 NEV 129, 133, 102 P2d 632 (1940).

B. VOLPICELLI'S JURISDICTIONAL CLAIMS

THIS COURT HAS JURISDICTION AS TO VOLPICELLI'S INSTANT WRIT. THE NEVADA STATE CONSTITUTION ARTICLE 6 § 6 GRANTS THE DISTRICT COURTS THE POWERS TO GRANT THE WRIT, PURSUANT TO NRS 34.320, AS TO THEIR JURISDICTIONAL ERRORS. STATE V. JUSTICE COURT, 112 NEV 803, 805, 919 P2d 401 (1996). VOLPICELLI ASSERTS THAT THE COURT WAS WITHOUT JURISDICTION, THAT THIS SENTENCE IS ILLEGAL, AND SIMPLY BECAUSE THE COURT HAD RELIED UPON A MISAPPREHENSION OF THE DEFENDANT'S CRIMINAL RECORD. THE COURT ERRED IN ITS RELIANCE UPON A MISAPPREHENSION THAT WORKED EGREGIOUSLY TO VOLPICELLI'S EXTREME DETRIMENT. STATE V DISTRICT COURT, 677 P2d 1044, 1048 (2004); WARD V STATE, 567 P2d 329 (1977).

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ARGUMENTS

THE DISTRICT COURT ERRED IN ITS RELIANCE UPON A MISAPPREHENSION AS TO EXHIBIT 1 FOR THE ADJUDICATION OF AN HABITUAL CRIMINAL AS IT WAS NOT A VALID CERTIFIED PRIOR CONVICTION FOR PURPOSES OF NRS 207.010(1)(b)(2).

DEFENDANT WAS PREJUDICED WITH SUBSTANTIAL RIGHT VIOLATIONS WHEN HE WAS ADJUDICATED AN HABITUAL CRIMINAL, ABSENT PROOF BEYOND A REASONABLE DOUBT OF THE 'THREE-TIMES CONVICTED OF A FELONY' PROVISION OF NRS 207.010(1)(b)(2).

AT THE SENTENCING HEARING ON APRIL 1, 2004, THE STATE SOUGHT THE HABITUAL CRIMINAL ENHANCEMENT SPECIFIC TO NRS 207.010(1)(b)(2) WITH THREE (3) CORRESPONDING EXHIBIT; (SEE DEFENDANT'S EXHIBIT 1), EACH OF WHICH WERE CORRELATED TO THE REQUISITE 'THREE-TIMES CONVICTED OF A FELONY' CLAUSE OF SAID STATUTE.

WITHIN THE DISTRICT COURT'S TRIAL TRANSCRIPT AT SENTENCING ON APRIL 1, 2004, THE STATE SPECIFICALLY ARGUED:

"THE STATE MOVES TO HAVE MARKED AND ADMITTED INTO EVIDENCE THE STATE CERTIFIED PROOF OF THIS DEFENDANT'S PRIOR FELONY CONVICTIONS THREE OF THE PRIOR FELONY CONVICTIONS." (SENTENCING TRANSCRIPT, p. 4).

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(EMPHASIS ADDED THAT THE STATE PROFFERED THE EXHIBITS AS EACH CORRESPONDING TO THE THREE SEPARATE CASES NECESSARY FOR THE 'THREE-TIMES CONVICTED OF A FELONY' CLAUSE OF NRS 207.010(1)(b)(2).

"THE FIRST WOULD BE HIS CERT. FROM 2004.... THE SECOND WOULD BE HIS 1998 CONVICTION ON TWO COUNTS OF BURGLARY (EMPHASIS ADDED THAT THE STATE PROFFERED THE EXHIBIT AS ONE CONVICTION FOR ADJUDICATION PURPOSES, DESPITE 2 COUNTS IN JUDGMENT OF CONVICTION)..... AND THE THIRD PRIOR... IS A CONVICTION OF FOUR COUNTS OF TAX PERJURY IN THE UNITED STATES DISTRICT COURT OF NEVADA 1997." (AGAIN, EMPHASIS ADDED THAT DESPITE JUDGMENT OF CONVICTION INCLUDING 4 COUNTS, STATE PROFFERED AND COURT ACCEPTED IT AS ONLY ONE FELONY CONVICTION/PRIOR TOWARDS THE REQUISITE 'THREE-TIMES CONVICTED OF A FELONY' CLAUSE UNDER NRS 207.010(1)(b)(2)) SEE SENTENCING TRANSCRIPT p. 4.

"ACCORDINGLY, THE STATE IS ASKING YOU TO IMPOSE HABITUAL CRIMINAL STATUS TO THIS DEFENDANT, AND WE'RE ASKING FOR A SENTENCE OF LIFE IMPRISONMENT WITH TEN YEARS MINIMUM SERVED IN THE NEVADA STATE PRISON ON EACH FELONY COUNT." SENTENCING TRANSCRIPT p. 4.

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HENCE, THE STATE AND COURT WERE ON THE SAME PAGE INSOFAR AS PROVIDING AND ACCEPTING THE THREE (3) EXHIBITS IN THEIR ENTIRETY AS THE REQUISITE 'THREE-TIMES CONVICTED OF A FELONY' CLAUSE SPECIFIC TO NLS 207.010(1)(b)(2). WITH THOSE SPECIFIC DOCUMENTS THE SENTENCING-JUDGE STATED FOR THE RECORD; "I HAVE HAD A CHANCE TO LOOK AT THESE EXHIBITS AND IN EACH CASE MR. VOLPICELLI WAS AFFORDED APPROPRIATE CONSTITUTIONAL RIGHTS, AND THE RECORD HERE DOES MEET ALL CONSTITUTIONAL REQUIREMENTS FOR USE TO PROVE THE PRIOR CONVICTIONS AT THIS TYPE OF HEARING. SO, EXHIBITS 1, 2 & 3 ARE ADMITTED." SENTENCING TRANSCRIPT p. 43.

AT THAT POINT IN THE PROCEEDING THE COURT WAS CONVINCED THAT THERE EXISTED BEYOND A REASONABLE DOUBT SUFFICIENT EVIDENCE WITH ALL THREE EXHIBITS AS SATISFYING THE REQUISITE 'THREE-TIMES CONVICTED OF A FELONY' PROVISION SPECIFIC TO NLS 207.010(1)(b)(2). THERE WAS NEVER ANY MENTION OR CONSIDERATION GIVEN TO THE NOTION THAT THE EXHIBITS DULY NOTED A TOTAL OF SEVEN PRIOR FELONIES, OR THAT IF THERE WAS ANY DEFICIENCY WITH ONE OR MORE OF THE EXHIBITS, THE STATE AND COURT

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WOULD RELY ON THE 4 COUNTS IN THE FEDERAL CASE AS BEING SUFFICIENT TO QUALIFY ALONE SO AS TO SATISFY THE REQUISITE "THREE-TIMES CONVICTED OF A FELONY CLAUSE."

THAT SAID, DEFENDANT REFERS THIS COURT TO THE NEVADA SUPREME COURT'S REVIEW OF DEFENDANT'S CLAIM THAT EXHIBIT 1, SPECIFICALLY CASE CR02-0141, WAS NOT A VALID PRIOR FELONY CONVICTION FOR PURPOSES OF ADJUDICATION UNDER NRS 207.010 (1)(b)(2). THEREIN, THE HIGH COURT AGREED THAT SAID EXHIBIT WAS ERRONEOUSLY CONSIDERED BY THE DISTRICT COURT. SEE VOLPICELLI V STATE, CASE # 51622, ORDER DATED DECEMBER 3, 2008. HENCE, THE DISTRICT COURT'S RELIANCE ON EXHIBIT 1 TRANSLATED TO A MISAPPREHENSION OF THE DEFENDANT'S CRIMINAL RECORD AT SENTENCING WHEN ADJUDICATING THE DEFENDANT AN HABITUAL CRIMINAL. AS SUCH, THE DEFENDANT WAS SIGNIFICANTLY PREJUDICED BECAUSE, HAD DEFENDANT'S COUNSEL OR THE COURT RECOGNIZED THE ERROR, THE REQUISITE "THREE-TIMES CONVICTED OF A FELONY" CLAUSE WOULD NOT HAVE BEEN SATISFIED; AND THE COURT WOULD HAVE BEEN COMPELLED TO RELY ON EXHIBITS 2 & 3 ONLY, WHICH, BY THEMSELVES, FAIL TO SATISFY THE REQUISITE CRITERIA FOR TRIGGERING THE "THREE-TIMES CONVICTED OF A FELONY" CLAUSE FOR NRS 207.010(1)(b)(2).

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2) THE DISTRICT COURT ERRED IN ITS RELIANCE UPON THE MISAPPREHENSION OF DEFENDANT'S IMPRISONMENT RECORD IN THE ADJUDICATION AS AN HABITUAL CRIMINAL FOR PURPOSES OF NRS 207.010(1)(b)(2).

DEFENDANT ASSERTS THAT HE WAS PREJUDICED WITH THE DISTRICT COURT'S ERRONEOUS RELIANCE UPON THE MISCONCEPTION AS TO THE DEFENDANT'S RECORD OF IMPRISONMENT WHICH IS INDICATIVE OF HIS CRIMINAL RECORD.

AT THE APRIL 1, 2004 SENTENCING HEARING, WHEREIN DEFENDANT WAS DEEMED BY THE DISTRICT COURT AN HABITUAL CRIMINAL, THE SENTENCING JUDGE STATED: "AND UNDER ALL THE EVIDENCE THAT I SEE HERE, I DO IN FACT FIND MR. VOLPICELLI IS A HABITUAL CRIMINAL. IN FACT, YOU ARE THE POSTER CHILD FOR HABITUAL CRIMINALITY IN THAT EVERY TIME YOU'RE RELEASED FROM CUSTODY IT SEEMS LIKE YOU'RE OUT MAKING A FULL-TIME LIVING STEALING." SENTENCING TRANSCRIPT, p58. YET, THE DISTRICT COURT GAVE NO HEED TO THE DEFENDANT'S PROFFERED MITIGATING EVIDENCE IN THE PRESENTENCE INVESTIGATION REPORT PREPARED BY PAROLE AND PROBATION AS TO THE FACTS OF DEFENDANT'S ACTUAL IMPRISONMENT RECORD. SAID RECORD CLEARLY INDICATED THAT DEFENDANT HAD NEVER SERVED ANY

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JAIL TIME WHATSOEVER. ANY TIME SPENT IN COUNTY JAIL WAS PART OF HIS INCARCERATION FOR PRISON TERMS SPECIFIC TO EXHIBIT CASES 2 & 3 FROM JANUARY 1998 CONTINUOUSLY THROUGH JUNE of 2001. FURTHERMORE, THAT DEFENDANT HAD ONLY ONE RELEASE FROM IMPRISONMENT WHEREIN HE DID INCUR THE CHARGES ON THE INSTANT CASE WHILE ON PAROLE FROM THE SECOND EXHIBITS CASE. AGAIN, THE DISTRICT COURT WAS UNDER THE MISGUIDED CONCEPTION THAT THE DEFENDANT WAS RE-OFFENDING AFTER BEING PUNISHED WITH IMPRISONMENT WITH ALL THREE OF THE CASES PROFFERED IN THE EXHIBITS. WHEN, IN REALITY, THERE HAD ONLY BEEN ONE.
DEFENDANT ASSERTS THAT THIS HAS PARTICULAR RELEVANCE AS TO THE LETTER AND SPIRIT OF THE LEGISLATIVE INTENT UNDERLYING THE STATES' HABITUAL CRIMINAL ACT. MORE SPECIFICALLY, IT HAS TO DO WITH THE FACTOR OF REFORMATION OPPORTUNITY IN BETWEEN THOSE "THREE-TIMES CONVICTED OF A FELONY" CASES.
CLEARLY, THE NEVADA COURTS HAVE RECOGNIZED THE OPPORTUNITY FOR REFORMATION FACTOR IN BETWEEN CONVICTIONS AS EVIDENCED IN REZIN V. STATE, 596 P2d 226 (1979), AND TANKSLEY V STATE,

946 P2d 148 (1997). But the District Court failed to apply that standard in interpreting the Defendant's actual incarceration record, thereby exceeding its jurisdiction.
Matter of fact, within the Nevada Supreme Court's case, O'Neill v Nevada, 153 P3d 38 (2006) lies a discussion of the significance of what parameters specifically trigger the Court's ability to adjudicate under NRS 207.010(1)(b)(2), as well as the significance of time & punishment in between convictions. The High Court compares the fact-finding criteria to adjudicate under the habitual criminal statute with that of the State of New York. Moreover, both Nevada's & New York's highest Courts agree that the only fact-finding necessary to trigger the Court's consideration for the imposition of an enhancement of a recidivist is the requisite number of prior convictions. However, it is also clear within both States' legislative intent concerning such recidivist statutes that opportunity for reformation in between convictions is paramount.
Although Defendant can find no cases except Rezin & Tinkesley in support of this claim, O'Neill specifically references the

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FOOTNOTE 10 TO THE NEW YORK'S FEDERAL CASE BROWN V GREINER, 409 F3d 523, 525 (2nd CIR. 2005), WHERE ~~THAT~~ STATE'S RECIDIVIST STATUTE APTLY DEMONSTRATES THE PROMOTION OF REFORMATION AS A PART OF THE LEGISLATIVE INTENT. FOR EXAMPLE, UNDER NEW YORK'S PENAL LAW § 70.10(1)(c), RELATIVE TO SENTENCING RECIDIVISTS, "FOR PURPOSES OF DETERMINING WHETHER A PERSON HAS TWO OR MORE CONVICTIONS ~~THAT~~ WERE COMMITTED PRIOR TO THE TIME DEFENDANT WAS ~~ACTUALLY~~ IMPRISONED UNDER SENTENCE, FOR ANY SUCH CONVICTIONS SHALL BE DEEMED TO BE ONLY ONE CONVICTION." Id. 525. THUS, SINCE DEFENDANT'S CONVICTIONS FOR EXHIBITS' CASES TWO ~~AND~~ THREE OCCURRED BEFORE HIS INCARCERATION COMMENCEMENT IN 1998, THOSE TWO PRIOR CONVICTIONS UNDER THE REFORMATION CONSIDERATION IN NEW YORK'S RECIDIVIST STATUTE WOULD COUNT FOR BUT ONE "STRIKE" ONLY TOWARDS THE REQUISITE THREE-TIMES CONVICTED CLAUSE OF NRS 207.010 (1)(b)(2). IF SO, ~~AND~~ SINCE THE NEVADA SUPREME COURT HAS ~~ALREADY~~ RULED ~~THAT~~ EXHIBIT 1'S CASE PRIOR WAS AN INVALID CONSIDERATION FOR NRS 207.010(1)(b)(2),

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THEN DEFENDANT, BY WAY OF SUCH LOGIC AND LEGISLATIVE INTENT TO INCLUDE NOT JUST RECIDIVISM BUT REFORMATION OPPORTUNITY IN BETWEEN CONVICTIONS, FALLS SHORT OF THE QUALIFICATIONS OF EITHER AN HABITUAL CRIMINAL/FELON.

CONCLUSION

WHEREFORE, FOR THE REASONS SET FORTH ABOVE, THIS COURT SHOULD REVERSE THE DEFENDANTS LIFE SENTENCE ENHANCEMENTS UNDER NRS 207.010(1)(b)(2) ON THE DEFENDANTS UNDERLYING CONVICTIONS, BECAUSE THE DISTRICT COURT EXCEEDED ITS JURISDICTION WHEN IT RELIED ON A MISAPPREHENSION AS TO DEFENDANTS CRIMINAL AND IMPRISONMENT RECORD, THEREBY EGREGIOUSLY VIOLATING DUE PROCESS WHICH HAS CLEARLY WORK TO THE DEFENDANTS DETRIMENT.

DATED THIS 22 DAY
OF NOVEMBER, 20__

FERRILL T. VOLPICELLI

DEFENDANT IN PRO SE

Ferrill J. Volpicelli
Pro Se Litigant

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Defendant's Writ of Prohibition to the below address(es) on this 22 day of November, 2011, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County
District Attorney
POB 30083
Reno, NV 89520-3083

Ferrick Olpicelli #78565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Defendant's Writ of Prohibition filed in District Court Case No. CR03-1263 does *not* contain the social security number of any person.

Dated this 22 day of November, 2011.

Ferrick Olpicelli
Defendant In Pro Se

LCC LL FORM 26.024

CR03-1263 DC-9900030865-001
STATE VS FERRILL JOSEPH VOL 4 Pages
District Court 12/06/2011 11 31 AM
Washoe County 2385
DOC JYOS

Case No. CR03-1263

Dept. No. 9

FILED

2011 DEC -6 AM 11:31

CRAIG FRANDEN, ACTING CLERK

BY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

FERRILL T. VOLPICELLI,
PETITIONER,

-vs-

STATE OF NEVADA,
RESPONDENT.

APPLICATION TO PROCEED IN FORMA PAUPERIS

COMES NOW PETITIONER, FERRILL T. VOLPICELLI, in pro se, and moves the Court for an order granting him leave to proceed in the above-entitled action without paying the costs and/or security of proceeding herein.

This motion is made and based upon NRS 12.015 and the attached affidavit and certificate of inmate's institutional account.

Dated this 22 day of November, 2011.

FERRILL T VOLPICELLI #79563
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
PETITIONER In Pro Se

LCC LL FORM 26.012

Affidavit in Support of Application to Proceed In Forma Pauperis

State of Nevada)
) ss:
County of Pershing)

COMES NOW, Ezekiel T. Vollmer, who first being duly sworn and on my own oath, do hereby depose and state the following in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing action ot to give security therefore; I am entitled to relief. This application is made in good faith.

(2) I swear that the responses below are true and correct and to the best of my knowledge, information and belief:

(a) I ____ am X (am not) presently employed. I currently earn salary or wages per month in the following amount at Lovelock Correctional Center or, if I am not presently employed, the date of my last employment and the amount of salary or wages I earned per month were as follows: 2001 $1600/m

(b) I have NOT received any money from any of the following sources within the past 12 months: business, profession, self-employment, rent payments, pensions, interests or dividends, annuities, insurance payments, gifts or inheritances. Money, if any, placed on my prison account from sources such as family or friends, is in the amount as indicated on the attached Certificate of Inmate's Institutional Account, which reflects the total amount of money in my prison account.

(c) I do NOT own any real estate, stocks, bonds, notes, automobiles or other valuable property, and I do not have any money in a checking account.

(d) I ____ do X do not have persons dependent upon me for support. The person(s) I support, if any, are as follows, with my relationship to them and the amount of my contribution towards their support being as follows: _____

(3) I swear under the penalty of perjury that the above is true and correct and to the best of my personal knowledge, and that the foregoing is rendered without notary per NRS 208.165.

Dated this 22 day of November, 2011.

Ezekiel T Vollmer #78265
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
Petitioner In Pro Se

LCC

Case No. _____

Dept. No. _____

IN THE ____ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF _____

FERRILL T. VOLPICELLI 79565,
_____,

vs.

_____,
_____,
_____

CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT

I, the undersigned, do certify that FERRILL T. VOLPICELLI, NDOC # 79565, above-named, has a balance of $.62 on account to his credit in the prisoner's personal property fund for his use at Lovelock Correctional Center, in Pershing County.

I further certify that said prisoner owes departmental charges in the amount of $ 0 and that the solitary security to his credit is a savings account established pursuant to NRS § 209.247(5) with a balance of $ 200.00 which is inaccessible to him.

Dated this 24th day of October, 2011.

AA II

Accounting Technician
Inmate Services Division
Nevada Department of Corrections

Submitted by _____ #79565, on 10/17/11.

This is for a civil ___ habeas X matter.

LCC LL FORM 26.020

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS does *not* contain the social security number of any person.

Dated this 22 day of November, 2011.

Patrick J Vaccaro #78261
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Petitioner In Pro Se

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Craig Franden
Clerk of the Court
Transaction # 2668506

2842

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.
_____/

Case No. CR03-1263

Department No.: 4

ORDER DENYING MOTION TO PROCEED IN *FORMA PAUPERIS*

On December 6, 2011, the Defendant filed Defendant's Writ of Prohibition Challenging Proceeding in Excess of Jurisdiction at Sentencing and an Application to Proceed in *Forma Pauperis,* which was submitted to the Chief Judge of the Second Judicial District Court for decision.

The Court having reviewed the pleadings filed herein, finds that there is nothing pending before this Court that requires the Defendant to pay any fees. Further, the action which Defendant attempts to file herein is not appropriate for this Court.

Therefore,

IT IS HEREBY ORDERED that the Motion for Leave to Proceed in *Forma Pauperis* is DENIED at this time.

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IT IS HEREBY FURTHER ORDERED that the State file a Response to the Defendant's Writ of Prohibition Challenging Proceeding in Excess of Jurisdiction at Sentencing within forty-five (45) days of the date of this order.

DATED this 13 day of December, 2011.

CHIEF DISTRICT JUDGE

V2.1073

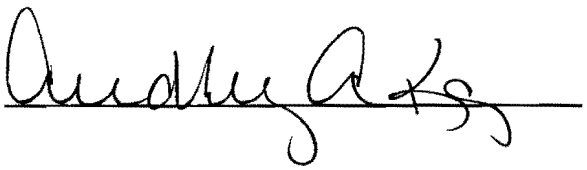
CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 27 day of December, 2011, I electronically filed the attached document with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney

I further certify that on the 27 day of December, 2011, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service, a true copy of the same, addressed to:

Ferrill Volpicelli
Inmate no. 79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419



****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03-1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	12-27-2011:14:10:05
Clerk Accepted:	12-27-2011:14:10:47
Court:	Second Judicial District Court - State of Nevada
Case Title:	STATE VS. FERRILL JOSEPH VOLPICELLI (D10)
Document(s) Submitted:	Ord Deny in Forma Pauperis
Filed By:	Audrey Kay
	You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY RIGGS, ESQ. for STATE OF NEVADA

GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA

FERRILL VOLPICELLI

FILED
Electronically
02-10-2012:04:17:45 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2758941

CODE No. 3880
RICHARD A. GAMMICK
#001510
P. O. Box 30083
Reno, Nevada 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL VOLPICELLI, Dept. No. 10

Defendant.
_____/

RESPONSE TO "DEFENDANT'S WRIT OF PROHIBITION"

Ferrill Volpicelli has filed a pleading styled as "Writ of Prohibition." The Washoe County District Attorney assumes that he meant the pleading to be a "petition" for a writ, as Volpicelli has no authority to issue any sort of writ to anyone. Unfortunately, he does not specify to whom he wishes the writ to be directed, or what should be prohibited by that writ. In fact, it appears that he is asking the Second Judicial District Court to issue a writ to the Second Judicial District Court, commanding itself to do something, but not commanding itself to refrain from doing something.

The nonsensical nature of the writ is reason enough to deny it.

To the claim that Volpicelli is trying to argue that this court lacks jurisdiction to issue a judgment of conviction for the crimes of burglary and for violations of NRS 205.965, and 199.480, the district court does indeed have jurisdiction over felonies and gross misdemeanors,

and those same felonies when committed by a habitual criminal. *See* Nev. Const. Art 6, Section 6; *Walker v. State*, 78 Nev. 463, 472, 376 P.2d 137 (1962).

Whatever the argument is, it is barred by principles of *res judicata*. Volpicelli's convictions have been repeatedly reviewed and upheld. Accordingly, if the pleading is a petition, it should be denied. If it is intended to be an actual writ, it should be ignored.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 10, 2012.

RICHARD A. GAMMICK
District Attorney

By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Ferrill Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

DATED: February 10, 2012.

/s/ SHELLY MUCKEL
SHELLY MUCKEL

FILED
Electronically
02-10-2012:04:17:45 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2758941

CODE #2610
RICHARD A. GAMMICK
#001510
P. O. Box 30083
Reno, Nevada 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR03-1263

FERRILL VOLPICELLI, Dept. No. 10

Defendant.
_____/

NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY

COME NOW, Plaintiff, by and through Terrence P. McCarthy, Appellate Deputy, and hereby provides notice to the court, all parties, and their respective counsel that Terrence P. McCarthy, Appellate Deputy, has replaced Gary H. Hatlestad, retired Chief Appellate Deputy, as the responsible attorney for Plaintiff in all future matters related hereto.

Respondent herein requests that the Court and all parties herein update their service list with Terrence P. McCarthy's name and address in order to facilitate timely service of all documents in this matter.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the

/ / /

/ / /

social security number of any person.

DATED: February 10, 2012.

RICHARD A. GAMMICK
District Attorney

By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
Appellate Deputy
Nevada Bar No. 2745

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Ferrill Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

DATED: February 10, 2012.

/s/ SHELLY MUCKEL
SHELLY MUCKEL

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03-1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	02-10-2012:16:17:45
Clerk Accepted:	02-10-2012:16:33:27
Court:	Second Judicial District Court - State of Nevada
Case Title:	STATE VS. FERRILL JOSEPH VOLPICELLI (D10)
Document(s) Submitted:	Notice of Change of Attorney Response
Filed By:	TERRENCE MCCARTHY, ESQ.
	You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY RIGGS, ESQ. for STATE OF NEVADA

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

DIV. OF PAROLE &PROBATION

GARY HATLESTAD, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA

FERRILL VOLPICELLI

DC-9900033149-017
CR03-1263 FERRILL JOSEPH VOL 6 Pages
STATE VS District Court 03/02/2012 02 40 PM
Washoe County 3795

CODE:
FERRILL T. VOLPICELLI #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
DEFENDANT In Pro Se

FILED
2012 MAR -2 PM 2:40
JOE P. HASTINGS
BY M Chalmers
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

STATE OF NEVADA, PLAINTIFF,

-vs-

FERRILL VOLPICELLI, DEFENDANT.

Case No. CR03-1263

Dept. No. 10

REPLY TO RESPONSE TO DEFENDANT'S WRIT OF PROHIBITION

IN ITS RESPONSE, THE WASHOE COUNTY DISTRICT ATTORNEY ASSERTS THAT DEFENDANT VOLPICELLI'S WRIT OF PROHIBITION IS 'NONSENSICAL', AND THEREFORE SHOULD BE DENIED OR IGNORED (WHILE THE MERITS OF THE WRIT WENT UNOPPOSED.)

SAID RESPONSE IS MERELY INSUFFICIENT AND VAGUE AT BEST. FURTHER, WHILE VOLPICELLI DOES NOT CONCEDE ANY ALLEGED DEFICIENCIES IN THE PLEADING, TO THE EXTENT THAT THE COURT FINDS IT NECESSARY, VOLPICELLI REQUESTS THE OPPORTUNITY TO AMEND OR SUPPLANT THE 'WRIT OF PROHIBITION'. COURTS

SHOULD ALLOW AMENDMENTS TO PLEADINGS WITH EXTREME LIBERALITY, PARTICULARLY WHERE A PARTY SEEKS LEAVE TO AMEND IS APPEARING PRO SE. ELDRIDGE V. BLOCK, 832 F2d 1132 (9th CIR. 1987). IN ADDITION, PRO SE LITIGANTS' PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY LAWYERS. MOREOVER, IF A COURT CAN REASONABLY READ PLEADINGS TO STATE A VALID CLAIM ON WHICH THE LITIGANT COULD PREVAIL, IT SHOULD DO SO DESPITE FAILURE TO CITE PROPER LEGAL AUTHORITY, CONFUSION OF LEGAL THEORIES, POOR SYNTAX AND SENTENCE CONSTRUCTION, OR LITIGANTS' UNFAMILIARITY WITH PLEADING REQUIREMENTS. HAINES V. KERNER, 404 U.S. 519, 92 SCT 594 (1972). IN THE INSTANT CASE, THE COURT, PROCEEDING LIBERALLY & REASONABLY RECOGNIZED VOLPICELLI'S CLAIM, IE. THAT THE DISTRICT COURT'S IMPOSITION OF THE HABITUAL CRIMINAL ENHANCEMENT UPON VOLPICELLI'S UNDERLYING BURGLARY RELIED CONVICTION MAY HAVE BEEN ERRONEOUS, ILLEGAL; OR IT LACKED SUFFICIENT EVIDENCE OF JURISDICTION AT THE TIME OF SENTENCING ON APRIL 4, 2001. AS SUCH, AND IN THE ALTERNATIVE, THE COURT, AT VOLPICELLI'S REQUEST, SHOULD SUPPLANT THE WRIT OF PROHIBITION WITH THIS MOTION TO

Ferrill J. Volpicelli
Pro Se Litigant

CORRECT ILLEGAL SENTENCE / MODIFY SENTENCE.
SEE ATTACHED HERETO AS EXHIBIT A | 39?
IN THE STATE'S RESPONSE, THE DISTRICT ATTORNEY ASSERTS THAT THE PRINCIPLES OF RES JUDICATA APPLY HERE AND THAT VOLPICELLI'S CONVICTIONS HAVE BEEN UPHELD. RESPONSE, at 2.
RES JUDICATA HAS NO APPLICATION HERE, RATHER IT IS A DOCTRINE THAT A FINAL JUDGMENT OF A COURT IS CONCLUSIVE AGAINST THE SAME PARTIES IN ANY FURTHER IDENTICAL CAUSE OF ACTION BETWEEN THE PARTIES.
SUCH IS NOT THE CASE HERE. THE DISTRICT ATTORNEY DOES NOT AND CANNOT DEMONSTRATE THAT 'CONCLUSIVE' RULINGS HAVE BEEN ENTERED AGAINST VOLPICELLI'S INSTANT CLAIMS, NOR THAT THE CLAIMS ARE 'IDENTICAL' TO ANY PREVIOUS ONES. ALTHOUGH VOLPICELLI HAS SPECIFICALLY ARGUED PREVIOUSLY THAT TRIAL COUNSEL WAS INEFFECTIVE AT SENTENCING IN HIS WRIT OF HABEAS CORPUS FILED IN 2005, THE CLAIMS IN THE INSTANT PLEADING AND ACCOMPANYING SUPPLANTED DOCUMENT ARGUE THE COURT'S RELIANCE ON INSUFFICIENT EVIDENCE, MISINFORMATION AND LACK OF JURISDICTION TO IMPOSE THE HABITUAL CRIMINAL ENHANCEMENT. THE COURT DID HAVE JURISDICTION TO IMPOSE THE SENTENCES UPON THE UNDERLYING BURGLARY

Ferrill J. Volpicelli
Pro Se Litigant

RELATED CONVICTIONS PURSUANT TO NRS 205.060 AND NRS 205.965 ONLY; NOT NRS 207.010(1)(B)(2). ADDITIONALLY, THE DISTRICT ATTORNEY HAS FAILED TO SUFFICIENTLY PLEAD RES JUDICATA. UNDER NRCP 8(C), RES JUDICATA IS AN AFFIRMATIVE DEFENSE; IN PLEADING TO A PRECEDING PLEADING, A PARTY SHALL SET FORTH AFFIRMATIVELY xxxx RES JUDICATA, AND ANY OTHER MATTER CONSTITUTING AN AVOIDANCE OR AFFIRMATIVE DEFENSE. AS AN AFFIRMATIVE DEFENSE, RES JUDICATA MUST BE SPECIFICALLY PLEADED. HENCE, RES JUDICATA FAILS AS THE DISTRICT ATTORNEY'S FAILURE TO SUFFICIENTLY PLEAD RES JUDICATA IS CONSIDERED A WAIVER THEREOF. SCHWARTZ V. SCHWARTZ, 95 NEV. 202, 591 P2d 1137 (1979).

CONCLUSION:

BASED ON THE FOREGOING, THE DISTRICT ATTORNEY'S RESPONSE MUST BE DENIED. VOLPICELLI'S PETITION FOR A WRIT OF PROHIBITION, ON THE OTHER HAND, SHOULD BE GRANTED. IN THE ALTERNATIVE, THE COURT SHOULD PERMIT AMENDMENT OF THE PETITION OR SUPPLEMENT THE PETITION WITH THE ATTACHED MOTION TO CORRECT AN ILLEGAL SENTENCE/MODIFY SENTENCE.

DATED THIS 21st DAY OF FEBRUARY, 2012

FERRILL VOLPICELLI, PRO SE

Ferrill J. Volpicelli
Pro Se Litigant

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Reply To Response To Defendant's Writ of Prohibition to the below address(es) on this 21st day of February, 2012, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County District Attorney
PO Box 30083
Reno, NV 89520-3083

Ferrill DiPiceni #72525
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Reply To Response To Defendant's Writ of Prohibition filed in District Court Case No. CR03-1263 does not contain the social security number of any person.

Dated this 21st day of February, 2012.

Ferrill DiPiceni
Defendant In Pro Se

LCC LL FORM 26.024

V2.1087

INDEX OF EXHIBITS

Exhibit Number 1 **Number of Pages** 13

Exhibit Description: Motion to Correct Illegal Sentence/ Modify Sentence

Exhibit Number _____ **Number of Pages** _____

Exhibit Description: _____

Exhibit Number _____ **Number of Pages** _____

Exhibit Description: _____

Exhibit Number _____ **Number of Pages** _____

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Exhibit Number _____ **Number of Pages** _____

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Exhibit Number _____ **Number of Pages** _____

Exhibit Description: _____

DC-9900033149-018
CR03-1263 FERRILL JOSEPH V0 15 Pages
STATE VS.
District Court 03/02/2012 02:40 PM
Washoe County 3795
FYI

EXHIBIT A

FERRILL VOLPICELLI #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

IN THE SECOND DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

FERRILL J. VOLPICELLI, Petitioner,	)	Case No. CR03-1263
-vs-	)	Dept. No. 9
STATE OF NEVADA Respondent.	)	**MOTION TO CORRECT ILLEGAL SENTENCE/ MODIFY SENTENCE**

Comes now, Ferrill J. Volpicelli, Petitioner, in Forma Pauperis and in Pro Se, to hereby submit a **Motion To Correct Illegal Sentence** pursuant to NRS 176.555.

This motion is based upon all pleadings, documents and papers on file herein, as well as those within District Court case CR03-1263's progeny cases on appeal, and the following points and authorities.

Dated this 28th Day of February, 2012.

Ferrill J. Volpicelli

Petitioner in Pro Se

FERRILL VOLPICELLI #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

IN THE SECOND DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

FERRILL J. VOLPICELLI, Petitioner,	)	Case No. CR03-1263
-vs-	)	Dept. No. 9
STATE OF NEVADA Respondent.	)	**MEMORANDUM TO MOTION TO CORRECT ILLEGAL SENTENCE/ MODIFY SENTENCE**

The Petitioner, Ferrill J. Volpicelli, in Forma Pauperis and in Pro Se, hereby submits this Memorandum in Support of Petitioner's Motion to Correct Illegal Sentence.

As set forth below, the Petitioner is entitled to relief under NRS 176.555 because the District Court relied upon a misapprehension as to the Petitioner's criminal, as well as his imprisonment record at sentencing, all of which acted to Petitioner's extreme detriment.

V2.1091

Statement of Facts

Petitioner was arrested for a parole violation in or about October of 2001 while on parole from unrelated case CR98-2160. The state subsequently filed Burglary related counts in new cases CR02-0145 & CR02-0146 stemming from alleged activities by the Petitioner while on parole in 2001. Petitioner was returned to custody wherein he expired District Court case CR98-2160's Judgment of Conviction.

In or about May of 2003, Petitioner was transferred to Washoe County Jail to face an indictment wherein cases CR02-0145 & CR02-0146 were stayed and supplanted with District Court case CR03-1263. Trial ensued and the Petitioner was convicted of one count of Conspiracy, nine counts of Burglary & one count of Possession of Retail Instrumentalities.

At sentencing on April 1, 2004, the State sought the adjudication of the Habitual Criminal enhancement upon the underlying convictions. In support thereof, the State specifically presented exhibits 1, 2 & 3 corresponding to the three separate cases.

Based on that evidence, the State requested the Petitioner be deemed an Habitual Criminal, as well as be sentenced specific to

the 'three-times convicted of a felony' clause of NRS 207-010(1)(b)(2); that being ten years to life on each of the underlying convictions.

The District Court thereafter resounded with its acceptance and acknowledgment of All the evidence being duly constitutionally sound, and pronounced the Petitioner to multiple life sentences in accordance with the State's request.

Standard of Review

A Motion to Correct an Illegal Sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for challenging the validity of a judgment of conviction based on alleged errors occurring at trial or sentencing. Edwards v State, 918 P2d 321, 324 (1996). The Nevada Supreme Court has the right to correct an illegal sentence at any time. Passanisi v State, 831 P2d 1371, 1372 (1992). See also NRS 176.555.

The grounds in such a Petition to Correct an Illegal Sentence are interpreted narrowly as a defendant is limited to asserting that the sentence is facially illegal. Edwards, Id @ 324. A sentence is illegal where the Court goes beyond its authority by

acting without jurisdiction in imposing it. Edwards, Id @ 324, (citing Allen v U.S. 495 A. 2d 1145, 1149 (D.C. 1985). See also Vasquez v Palmer, 2009 U.S. Dist. Lexis 9422 (D. Nev., Sept. 22, 2009) (Quoting N.S.C., "which declared a sentence to be illegal for purposes of NRS 176.555 where the District Court was without jurisdiction to impose a sentence...".

The District Court retains inherent authority to correct, vacate or modify a sentence that is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the Defendant, but only if the mistaken sentence "is the result of the sentencing Judge's misapprehension of a Defendant's criminal record." State v District Court, 677 P2d 1044, 1048.

Arguments

Petitioner asserts that his sentence is illegal & that pursuant to NRS 176.555 he is entitled to relief because the District Court relied upon a misapprehension as to the Petitioner's criminal record; inclusive of his imprisonment record.

A. The District Court erred in its reliance upon a misapprehension as to exhibit 1 for the adjudication of an

Habitual Criminal as it was not a valid prior for Purposes of NRS 207.010 (1)(b)(2).

Petitioner was prejudiced with substantial right violations when he was adjudicated an Habitual Criminal absent proof beyond a reasonable doubt of the 'three-times convicted of a felony' provision specific to NRS 207.010 (1)(b)(2).

At the sentencing hearing on April 1, 2004, the State sought the Habitual Criminal enhancement specific to NRS 207.010 (1)(b)(2) with three corresponding exhibits; each of which were correlated to the requisite 'three-times convicted of a felony' clause of said statute.

Referring to the District Court's trial transcript on April 1, 2004, the prosecutor informed the Court to wit:

"The State moves to have marked and admitted into evidence the State certified proof of this Defendant's prior felony convictions three of his prior felony convictions": Sentencing transcript pg. 4. (*Emphasis added that the State proffered the exhibits as each corresponding to the three separate cases necessary for the 'three-times convicted of a felony' clause of NRS 207.010 (1)(b)(2).*) "The first would be his cert. from 2004... The second would be his 1998 conviction on two counts

of Burglary (*emphasis added that the State proffered the exhibit as one conviction for adjudication purposes-despite 2 counts in judgment of conviction*). ...And the third prior...is a conviction of four counts of Tax Perjury in the United States District Court of Nevada 1997" (*Again, emphasis added that despite judgment of conviction including 4 counts, State proffered and Court accepted it as only one felony conviction/prior towards the requisite 'three-times convicted of a felony' clause under NRS 207.010 (1)(b)(2)*): Sentencing transcript pg. 4.

"Accordingly, the State is asking you to impose Habitual Offender status to this Defendant, and we're asking for a sentence of life imprisonment with ten years minimum served in the Nevada State Prison on each felony count": Sentencing transcript pg. 4.

Hence, the State and the Court were on the same page as providing and accepting the foregoing three exhibits in their entirety towards the requisite 'three-times convicted of a felony' clause specific to NRS 207.010 (1)(b)(2). With those specific parameters in place, the sentencing Judge stated for the record to wit; "I have had a chance to look at these exhibits and in each case Mr. Volpicelli was afforded

appropriate constitutional rights, and the record here does meet all constitutional requirements for use to prove the prior convictions at this type of hearing. So, exhibits 1, 2 & 3 are admitted": Sentencing transcript pg. 43.

At that point in the proceeding, the Court was convinced that there existed beyond a reasonable doubt sufficient evidence with all three exhibits as satisfying the requisite 'three-times convicted of a felony' provision specific to NRS 207.010 (1)(b)(2). There was never any mention or consideration given to the notion that said exhibits duly noted a total of seven felonies, or that if there was any deficiency with one or more of the exhibits, the State and Court would rely on the 4 counts in the Federal case as being sufficient to qualify alone so as to satisfy the requisite 'three-times convicted of a felony' clause.

That said, Petitioner refers this Court to the Nevada Supreme Court's Review of Petitioner's claim that exhibit 1, specifically case CR02-0148, was not a valid prior for purposes of adjudication under NRS 207.010 (1)(b)(2). Therein, the High Court agreed that said exhibit was considered erroneously by the District Court. (Case# 51622)

Hence, the District Court's reliance on exhibit 1 translated to

a misapprehension of the Petitioner's criminal record at sentencing when adjudicating the Petitioner an Habitual Criminal. As such, the Petitioner was significantly prejudiced because, had the Petitioner's counsel, or the Court recognized the error, the requisite 'three-times convicted of a felony' clause would not have been met and the Court would have been compelled to rely on exhibits 2 and 3 only which, by themselves, fail to satisfy the requisite criteria for NRS 201.010(1)(b)(2). This would have demonstrated that the State failed to meet its burden beyond a reasonable doubt in the adjudication specific to NRS 201.010 (1)(b)(2).

B. The District Court erred in its reliance upon the misapprehension of Petitioner's imprisonment record in the adjudication as an Habitual Criminal for Purposes of NRS 207.010 (1)(b)(2).

Petitioner asserts that he was prejudiced with the District Court's erroneous reliance upon the misconception as to the Petitioner's record of imprisonment which is indicative of his criminal record.

At the April 1, 2004 sentencing hearing, wherein Petitioner was deemed by the District Court an Habitual Criminal, the

sentencing Judge stated to wit: "And under all the evidence that I see here, I do in fact find Mr. Volpicelli is a habitual criminal. In fact, you are the poster child for habitual criminality in that every time you're released from custody it seems like you're out making a full-time living stealing." Sentencing transcript p.58.

Yet, the District Court gave no heed to the Petitioner's proffered mitigating evidence in the PSI's facts of the Petitioner's actual imprisonment record. Said record clearly indicated that Petitioner had never served any jail time whatsoever. Furthermore, that Petitioner's first commitment to prison was at the age of 42, wherein he served a continuous stint of imprisonment from 1/98 through 6/01 for the judgment of convictions aptly cited in Exhibit 2's case and Exhibit 3's case. And, that he had only one release from imprisonment wherein he did incur the charges while on parole from the second exhibit's case. Again, the District Court was under the misguided conception that the Petitioner was re-offending at his release from imprisonment with all 3 of the proffered exhibits. When, in reality, there had only been one.

Petitioner asserts that this has particular relevance as to the letter and spirit of the legislative intent underlying the

State's Habitual Criminal Act. More specifically, it has to do with the factor of reformation in between those 'three-times convicted of a felony' cases.

Clearly, the Nevada Courts have recognized the reformation factor in between felony case priors as evidenced in Rezin v State and Tanksley v Nevada. But the District Court failed to apply that standard in interpreting the Petitioner's actual incarceration record. Matter of fact, the Nevada Supreme Court has recognized the importance of such an opportunity to reform in between episodes of imprisonment in its case O'Neil v Nevada. Therein, the high court's opinion in O'Neil aptly makes reference to its Recidivism Statute with comparison to that of the State of New York. Moreover, both States' highest courts agree that the only fact-finding necessary for the imposition of an enhancement of a recidivist is the requisite number of prior convictions, as well as the promotion of reformation as part of the legislative intent.

But, a closer comparison of the similarity of the intent of the two States' recidivist statutory considerations, shows the following: That under New York's Penal Law § 70.10(1)(c) 'For purposes of determining whether a person has two or more convictions of crimes that were committed prior to the time

Defendant was actually imprisoned under sentence, for any such convictions shall be deemed to be only one conviction.' see Brown v Greiner 409 F3d 523, 525 (2nd cir 2005).

Thus, Petitioner's incarceration and opportunity for reformation involving exhibit cases two & three as priors should count for but one 'strike' only towards the requisite 'three-times convicted clause of NRS 207.010 (1)(b)(2). If so, and since the Nevada Supreme Court has already ruled exhibit 1's case as being an invalid prior for consideration under NRS 207.010 (1)(b)(2), then Petitioner, by way of logic and legislative intent, falls short of the qualifications of either a Habitual Criminal and/or a Habitual Felon.

After all, its only appropriate to turn to applications of other sister State's legislative intent on such statutes of recidivism, as articulated by The United States Supreme Court case, U.S. V Ron Rair Enterprise, Inc, 109 Sct 1031 (1989), wherein "the intention of the drafters controls rather than the strict language."

Conclusion

Wherefore, for the reasons set forth above, this court should reverse the Petitioner's life sentence enhancements under NRS

207.010 (1)(b)(2) on the Petitioner's underlying convictions, because the District Court relied on a misapprehension as to Petitioner's criminal and imprisonment record; thereby egregiously violating due process which has clearly worked to the Petitioner's detriment.

Dated this 21 Day of

FEBRUARY, 2012.

Perrill J. Volpicelli

Petitioner in Pro Se

Certificate of Service by Mail

I do certify that I mailed a true and correct copy of the foregoing Motion to Correct an Illegal Sentence to the below address on this 21st day of FEBRUARY, 2012, by placing same in the U.S. Mail via Prison Law Library Staff, pursuant to NRCP 5 (b).

Washoe County
District Attorney
PO Box 30083
Reno, NV 89520-3083

Ferrill J. Volpicelli
Petitioner In Pro Se

Affirmation Pursuant to NRS 239 B. 630

The undersigned does hereby affirm that the preceding Motion to Correct an Illegal Sentence does NOT contain the social security number of any person.

Dated this 21st
Day of FEBRUARY, 2012.

Ferrill J. Volpicelli
Petitioner In Pro Se

DC-9900034263-015
CR03-1263 FERRILL JOSEPH VOL 2 Pages
STATE VS District Court 04/10/2012 03 21 PM
Washoe County 3860
nnc

Case No. CR03-1263

Dept. No. 9

FILED

2012 APR 10 PM 3:21

JACKIE BRYANT
BY M. Chatrec
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

STATE of NEVADA,
PLAINTIFF,

-vs-

FERRILL J VARICELLI,
DEFENDANT.

REQUEST FOR SUBMISSION OF MOTION

It is requested that the WRIT of PROHIBITION AND ACCOMPANYING RESPONSES, which was filed on the 6th day of DECEMBER, 2011, in the above-entitled matter, be submitted to the Court for decision.

Dated this 6th day of APRIL, 2012.

FERRILL VARICELLI #78565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
DEFENDANT In Pro Se

LCC LL FORM 26.090

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 6th day of April, 2012, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY
DISTRICT ATTORNEY
PO BOX 30083
RENO, NV 89520-3083

[signature]
[illegible] #78565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
DEFENDANT In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does *not* contain the social security number of any person.

Dated this 6th day of April, 2012.

[signature]
[illegible]
DEFENDANT In Pro Se

FILED
Electronically
05-24-2012:05:11:43 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2978589

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff, Case No.: CR03-1263

vs. Dept. No.: 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF PROHIBITION

Presently before the Court is a Petition for Writ of Prohibition Challenging Proceeding in Excess of Jurisdiction at Sentencing, filed by Defendant FERRILL JOSEPH VOLPICELLI ("Defendant") on December 6, 2011. Following, on February 10, 2012, Plaintiff THE STATE OF NEVADA ("Plaintiff") filed a Response to Defendant's Writ of Prohibition. Subsequently, on March 2, 2012, Defendant filed a Reply to Response to Defendant's Writ of Prohibition. On April 10, 2012, Defendant filed a Request for Submission, thereby submitting the matter for the Court's consideration.

In his Petition, Defendant is asserting that the Court lacks jurisdiction to issue a judgment of conviction for the crimes of burglary and for violations of NRS 205.965, and 199.480. The State argues that the District Court does have jurisdiction over felonies and misdemeanors, and those same felonies when committed by a habitual criminal. *See* Nev. Const. Art 6, Section 6; *Walker v. State*, 78 Nev. 463, 472, 376 P.2d 137 (1962).

//

This Court agrees with Plaintiff that this Court's jurisdiction over Defendant's judgment is proper. Accordingly, Defendant's Petition must be denied.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Petition for Writ of Prohibition is **DENIED**.

DATED this 24 day of May 2012.

STEVEN P. ELLIOTT
District Judge

CERTIFICATE OF MAILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

TAMMY RIGGS, ESQ. for STATE OF NEVADA

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

DIV. OF PAROLE AND PROBATION

I further certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and that on this date I deposited for mailing a copy of the foregoing document addressed to:

Ferrill Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

DATED this 24 day of May, 2012.

HEIDI HOWDEN
Judicial Assistant

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03-1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	05-24-2012:17:11:43
Clerk Accepted:	05-24-2012:17:12:03
Court:	Second Judicial District Court - State of Nevada
Case Title:	STATE VS. FERRILL JOSEPH VOLPICELLI (D10)
Document(s) Submitted:	Ord Denying
Filed By:	Heidi Howden
	You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE &PROBATION

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

FERRILL VOLPICELLI

STATE OF NEVADA

CR03-1263
STATE VS FERRILL JOSEPH VOL 2 Pages
District Court 06/22/2012 08 33 AM
Washoe County
DC-9900036307-001
2515

Case No. CR03-1263

Dept. No. 10

FILED

2012 JUN 22 AM 8:33

JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY M Fernandez
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERRILL JOLLICOEUR,

Defendant.

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant, FERRILL JOLLICOEUR, in pro se, hereby appeals to the Nevada Supreme Court the DENIAL OF THE WRIT OF PROHIBITION filed/entered on or about the 24th day of MAY, 2012, in the above-entitled Court.

Dated this 18th day of JUNE, 2012.

FERRILL JOLLICOEUR #7856
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant In Pro Se

LCC LL FORM 26.064

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 18th day of JUNE, 2012, by placing same in the U.S. Mail via prison law library staff:

WASHOE COUNTY
DISTRICT ATTORNEY
PO BOX 30083
RENO, NV 89520-3083

[signature]
[redacted] #78567
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. CR03-1263 does *not* contain the social security number of any person.

Dated this 18th day of JUNE, 2012.

[signature]
[redacted]

Defendant In Pro Se

F I L E D
Electronically
06-22-2012:09:13:09 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3035933

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR03-1263

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 22nd day of June, 2012, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 22nd day of June, 2012.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/Mary Fernandez
Mary Fernandez
Deputy Clerk

F I L E D
Electronically
06-22-2012:09:13:09 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3035933

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Case No. CR03-1263

Dept. No. 10

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to N.R.A.C.P. 3(2).

1. This appeal is from an order entered by the Honorable Steven Elliott.
2. Appellant is Ferrill Jospeh Volpicelli. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:

   Ferrill Joseph Volpicelli, #79565
   Lovelock Correctional Center
   1200 Prison Road
   Lovelock, NV 89419

4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

   Terrance McCarthy, Esq.
   P.O. Box 30083
   Reno, NV 89520

5. Respondent's attorney is licensed to practice law in Nevada.

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis in the District Court on May 27, 2004.
9. Proceeding commenced by the filing of an Grand Jury Indictment on June 11, 2003.
10. This is a criminal proceeding and the Appellant is appealing the Denial of the Writ of Probihition Order filed on May 24, 2012.
11. The case has been the subject of a previous appeal to the Supreme Court; Supreme Court Case No. 43203
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 22nd day of June, 2012.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Mary Fernandez
Mary Fernandez
Deputy Clerk

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03-1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	06-22-2012:09:13:09
Clerk Accepted:	06-22-2012:09:13:36
Court:	Second Judicial District Court - State of Nevada
Case Title:	STATE VS. FERRILL JOSEPH VOLPICELLI (D10)
Document(s) Submitted:	Case Appeal Statement
	Certificate of Clerk
Filed By:	Mary Fernandez
	You may review this filing by clicking on the following link to take you to your cases.

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DIV. OF PAROLE &PROBATION

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

FERRILL VOLPICELLI

STATE OF NEVADA

FILED
Electronically
06-28-2012:10:32:54 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3049152

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 61142
District Court Case No. CR031263

CR03-1263
10

RECEIPT FOR DOCUMENTS

TO: Ferrill Joseph Volpicelli
Attorney General/Carson City/Catherine Cortez Masto, Attorney General
Washoe County District Attorney/Terrence P. McCarthy, Deputy District Attorney
Joey Orduna Hastings, District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

06/26/2012 Appeal Filing fee waived. Criminal.

06/26/2012 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: June 26, 2012

Tracie Lindeman, Clerk of Court
tm

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03-1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	06-28-2012:10:32:54
Clerk Accepted:	06-28-2012:10:49:23
Court:	Second Judicial District Court - State of Nevada
Case Title:	STATE VS. FERRILL JOSEPH VOLPICELLI (D10)
Document(s) Submitted:	Supreme Court Receipt for Doc
Filed By:	Lori Matheus
	You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

DIV. OF PAROLE &PROBATION

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

FERRILL VOLPICELLI

STATE OF NEVADA

FILED
Electronically
07-26-2012:08:08:51 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3108805

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61142

CR03-1263
10

FILED
JUL 24 2012
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

Having reviewed the documents on file in this proper person appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order within which to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall not include any physical, non-documentary exhibits or the original documentary exhibits filed in the district court, but copies of documentary exhibits submitted in the district court proceedings shall be transmitted as part of the record on appeal. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

It is so ORDERED.

Cherry, C.J.

cc: Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE:	CR03-1263
Judge:	STEVEN ELLIOTT
Official File Stamp:	07-26-2012:08:08:51
Clerk Accepted:	07-26-2012:08:09:14
Court:	Second Judicial District Court - State of Nevada
Case Title:	STATE VS. FERRILL JOSEPH VOLPICELLI (D10)
Document(s) Submitted:	Supreme Ct Order Directing
Filed By:	Lori Matheus
	You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

DIV. OF PAROLE &PROBATION

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

FERRILL VOLPICELLI

STATE OF NEVADA

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

Electronically Filed
Aug 31 2012 09:39 a.m.
Tracie K. Lindeman
Clerk of Court

THE STATE OF NEVADA,
Plaintiff,
vs.

FERRILL JOSEPH VOLPICELLI,
Defendant.
_____/

Sup. Ct. Case No. 61142
Case No. CR03-1263
Dept. 10

RECORD ON APPEAL

VOLUME 1 OF 6

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CASE HISTORY
CERTIFICATE OF CLERK AND TRANSMITTAL

APPELLANT
Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

RESPONDENT
Washoe County District Attorney's Office
Terrance McCarthy, Esq.
P.O. Box 30083
Reno, Nevada 89520-3083

Docket 61142 Document 2012-27630

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The State of Nevada vs Ferrill Joseph Volpicelli
August 30, 2012

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The State of Nevada vs Ferrill Joseph Volpicelli
August 30, 2012

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August 30, 2012

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UNUSED VERDICT FORM	11/14/03	2	325
UNUSED VERDICT FORM	11/14/03	2	326
UNUSED VERDICT FORM	11/14/03	2	327
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The State of Nevada vs Ferrill Joseph Volpicelli
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/

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

Case History - CR03-1263

DEPT. D10

HON. STEVEN P. ELLIOTT

Report Date & Time
8/30/2012
3:42:20PM

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: **CR03-1263** **Case Type:** **CRIMINAL** **Initial Filing Date:** **6/11/2003**

Parties

PROP	FERRILL JOSEPH VOLPICELLI - @67988
PNP	Div. of Parole & Probation - DPNP
RESP	STATE OF NEVADA - STATE
APPE	FERRILL JOSEPH VOLPICELLI - @67988
PLTF	STATE OF NEVADA - STATE
DA	Terrence P. McCarthy, Esq. - 2745
DEFT	FERRILL JOSEPH VOLPICELLI - @67988

Charges

Charge No.	*Charge Code*	*Charge Date*	*Charge Description*
1	G130	6/11/2003	IND CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY
2	F170	6/11/2003	IND BURGLARY
3	F170	6/11/2003	IND BURGLARY
4	F170	6/11/2003	IND BURGLARY
5	F170	6/11/2003	IND BURGLARY
6	F170	6/11/2003	IND BURGLARY
7	F170	6/11/2003	IND BURGLARY
8	F170	6/11/2003	IND BURGLARY
9	F170	6/11/2003	IND BURGLARY
10	F1086	6/11/2003	IND UNLAWFUL POSSESSION, MAKING, FORGERY OF COUNTERFEITING OF INVENTORY PRICING LABELS

Plea Information

Charge No.	*Plea Code*	*Plea Date*	*Plea Description*
1	G130	6/18/2003	PLED NOT GUILTY
2	F170	6/18/2003	PLED NOT GUILTY
3	F170	6/18/2003	PLED NOT GUILTY
4	F170	6/18/2003	PLED NOT GUILTY
5	F170	6/18/2003	PLED NOT GUILTY
6	F170	6/18/2003	PLED NOT GUILTY
7	F170	6/18/2003	PLED NOT GUILTY
8	F170	6/18/2003	PLED NOT GUILTY
9	F170	6/18/2003	PLED NOT GUILTY
10	F1086	6/18/2003	PLED NOT GUILTY

Sentences

Date	*Charge No.*	*Charge Desc*	*Time Served*	*Sentence Text*

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type:** CRIMINAL **Initial Filing Date:** 6/11/2003

4/1/2004	1 - Washoe County Jail	WCJ 12 MOS., TO RUN CONCUR. W/ COUNTS II THRU X + REST. + FEES. SAID SENTENCE IS TO RUN CONSEC. TO ANY OTHER SENTENCE THE DEFT. IS OBLIGATED TO SERVE.
4/1/2004	10 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONSEC. TO COUNT IX
4/1/2004	2 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED
4/1/2004	3 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT II
4/1/2004	4 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT III
4/1/2004	5 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT IV
4/1/2004	6 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT V
4/1/2004	7 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT VI
4/1/2004	8 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT VII
4/1/2004	9 - Life With Poss of Parole	NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS BEEN SERVED, TO RUN CONCURRENTLY W/ COUNT VIII

Release Information

Custody Status

Hearings

	Department	*Event Description*	*Sched. Date & Time*		*Disposed Date*
1	D9	ARRAIGNMENT	6/18/2003	08:30:00	6/18/2003

Event Extra Text: ON INDICTMENT

Disposition:
D725 6/18/2003
INDICTMENT

	Department	*Event Description*	*Sched. Date & Time*		*Disposed Date*
2	D9	MOTION TO CONFIRM TRIAL	9/24/2003	08:30:00	9/24/2003

Event Extra Text:

Disposition:
D435 9/24/2003
COUNSEL FOR STATE INDICATED THIS CASE HAD BEEN RESCHEDULED FOR A MTC 10/24/03 AT 8:30 A.M. AND A JURY TRIAL 11/10/03 AT 8:30 A.M. WITH THE COURT'S ADMINISTRATIVE ASSISTANT

	Department	*Event Description*	*Sched. Date & Time*		*Disposed Date*
3	D9	TRIAL - JURY	10/6/2003	08:30:00	9/24/2003

Event Extra Text: (4 DAYS)

Disposition:
D844 9/24/2003
STIP & ORDER TO BE SENT TO DEPT

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type:** CRIMINAL **Initial Filing Date:** 6/11/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
4	D9	MOTION TO CONFIRM TRIAL	10/24/2003	08:30:00	10/24/2003

Event Extra Text:

Disposition:
D425 10/24/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
5	D9	STATUS HEARING	10/29/2003	08:30:00	10/29/2003

Event Extra Text: RE: SUBMITTED MOTIONS BY DEFENSE COUNSEL

Disposition:
D435 10/29/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
6	D10	EXHIBITS TO BE MARKED W/CLERK	11/10/2003	13:30:00	11/10/2003

Event Extra Text:

Disposition:
D596 11/10/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
7	D10	HEARING...	11/10/2003	13:30:00	11/10/2003

Event Extra Text: HEARING REGARDING DEFENSE COUNSEL ADVISING COURT THAT DEFENDANT HAS REQUESTED NEW COUNSEL

Disposition:
D435 11/10/2003
TRIAL TO PROCEED AS SCHEDULED

	Department	Event Description	Sched. Date & Time		Disposed Date
8	D9	TRIAL - JURY	11/10/2003	08:30:00	10/29/2003

Event Extra Text:

Disposition:
D844 10/29/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
9	D9	TRIAL - JURY	11/12/2003	10:00:00	11/10/2003

Event Extra Text: (2 DAYS)

Disposition:
D844 11/10/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
10	D10	TRIAL - JURY	11/12/2003	08:30:00	11/12/2003

Event Extra Text: (2 DAYS)

Disposition:
D832 11/12/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
11	D10	TRIAL ONGOING	11/13/2003	10:30:00	11/13/2003

Event Extra Text:

Disposition:
D832 11/13/2003

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type:** CRIMINAL **Initial Filing Date:** 6/11/2003

	Department	Event Description	Sched. Date & Time		Disposed Date
12	D10	TRIAL ONGOING	11/14/2003	10:00:00	11/14/2003

Event Extra Text:

Disposition:
D895 11/14/2003
COUNTS I THROUGH X

	Department	Event Description	Sched. Date & Time		Disposed Date
13	D10	SENTENCING	12/23/2003	08:30:00	12/22/2003

Event Extra Text:

Disposition:
D870 12/22/2003
STIP AND ORDER TO BE FILED (RESET 12/12/03)

	Department	Event Description	Sched. Date & Time		Disposed Date
14	D10	SENTENCING	2/5/2004	11:00:00	2/2/2004

Event Extra Text:

Disposition:
D875 2/2/2004
RESET BY STIPULATION OF COUNSEL TO 4/1/04 @ 10:00 A.M.

	Department	Event Description	Sched. Date & Time		Disposed Date
15	D10	SENTENCING	4/1/2004	10:00:00	4/1/2004

Event Extra Text:

Disposition:
D765 4/1/2004

	Department	Event Description	Sched. Date & Time		Disposed Date
16	D10	Request for Submission	4/10/2012	15:24:00	5/24/2012

Event Extra Text: WRIT OF PROHIBITION AND ACCOMPANYING RESPONSES (NO PAPER ORDER PROVIDED)

Disposition:
S200 5/24/2012

Agency Cross Reference

Code	*Agency Description*	*Case Reference I.D.*
DA	District Attorney's Office	DA314735
PC	PCN number	PCN82444206/82444252
PC	PCN number	PCN82444285/81788297/81625263
RP	Reno Police Department	RPDRP01216321/RP01216452
RP	Reno Police Department	RPDRP01219145/RP01220307
RP	Reno Police Department	RPDRP01221241
SC	Supreme Court	SCN 43203
SC	Supreme Court	SCN 61142

Actions

Action Entry Date	*Code*	*Code Description*	*Text*
7/7/200	1080	Agreement...	RECIPROCAL DISCOVERY AGREEMENT
6/11/2003	1795	Indictment	
6/11/2003	1300	Bench Warrant Filed-Case Clsd	BAIL SET AT $50,000.00 CASH ONLY
6/17/2003	1300	Bench Warrant Filed-Case Clsd	
6/17/2003	1325	** Case Reopened	

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type: CRIMINAL** **Initial Filing Date: 6/11/2003**

6/17/2003	3897	Return	BENCH WARRANT
6/18/2003	MIN	***Minutes	
6/18/2003	1280	** 60 Day Rule - Waived	
6/20/2003	4185	Transcript	GRAND JURY
6/20/2003	1775	General Receipt	GRAND JURY TRANSCRIPT (D.A.)
6/23/2003	4185	Transcript	JUNE 18, 2003 - ARRAIGNMENT ON INDICTMENT
7/9/2003	3839	Request Agree Ord Recp Discv	
7/9/2003	1775	General Receipt	GRAND JURY TRANSCRIPT:
7/16/2003	3645	Petition ...	EX PARTE PET FOR CLARIFICATION ON ISSUES RE: STATE BAIL
7/22/2003	3862	**Criminal Submit	DOCUMENT TITLE: EX PARTE PET PARTY SUBMITTING: VOLPICELLI DATE SUBMITTED: 7/22/03 SUBMITTED BY: P. MEACHAM DATE RECEIVED JUDGE'S OFFICE:
8/1/2003	3645	Petition ...	EX PARTE PET FOR CLARIFICATION ON ISSUES RE: STATE BAIL: DUPLICATE ENTRY
8/1/2003	3645	Petition ...	EX PARTE PET FOR CLARIFICATION ON ISSUES RE: STATE BAIL
8/1/2003	3862	**Criminal Submit	DOCUMENT TITLE: EX PARTE PET FOR CLARIFICATION PARTY SUBMITTING: VOLPICELLI DATE SUBMITTED: 8/1/03 SUBMITTED BY: P. MEACHAM DATE RECEIVED JUDGE'S OFFICE:
8/8/2003	3665	Points&Authorities Support...	POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WEIT OF HABEAS CORPUS
8/8/2003	3585	Pet Writ Habeas Corpus	
8/13/2003	2840	Ord Denying ...	EX PARTE PETITION FOR CLARIFICATION
8/18/2003	3897	Return	
9/3/2003	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR RELEASE OF DOCUMENTS PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 9-24-03 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: DOCUMENT NOT FOUND IN FILE, 4/13/11 BY J.AMES
9/4/2003	2650	Opposition to ...	
9/12/2003	1930	Letters ...	FROM DEFENDANT
9/12/2003	3860	Request for Submission	
9/17/2003	3795	Reply...	REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS
9/24/2003	MIN	***Minutes	
10/7/2003	4030	Stip & Ord Continue Trial	STIPULATION FOR CHANGE OF TRIAL DATE
10/7/2003	1810	Inmate Request Form Filed	NO DOCUMNET IN FILE TO IMAGE - LMATHEUS
10/9/2003	2610	Notice ...	NOTICE OF INTENT TO SEEK HABITUAL CRIMINAL STATUS
10/13/2003	4185	Transcript	09/24/03 - MOTION TO CONFIRM TRIAL
11/7/2003	3370	Order ...	GRANTING DEFENDANT'S MOTION TO SUPPRESS; DENYING DEFENDANT'S REQUEST TO QUASH THE INDICTMENT
11/7/2003	3370	Order ...	ORDER TRANSFERRING CASE TO D10 FOR TRIAL 11/12/03 (D9 PRESIDING OVER ANOTHER MATTER THAT DATE)
11/7/2003	2592	Notice of Witnesses	
11/10/2003	MIN	***Minutes	
11/12/2003	MIN	***Minutes	
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY OF COUNT 7: BURGARY

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type: CRIMINAL** **Initial Filing Date: 6/11/2003**

11/14/2003	1695	** Exhibit(s) ...	STATE'S EXHIBITS 1 THROUGH 46
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 10: ULAWFUL POSSESSION, MAKING , FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 9: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 8: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 7: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 6: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY COUNT 1: CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY OF COUNT 1: CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY
11/14/2003	1885	Jury Instructions	1 THROUGH 37
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY OF COUNT 2: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY OF COUNT 3: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY OF COUNT 4: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY ON COUNT 5: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY ON COUNT 6: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILTY OF COUNT 8: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILY OF COUNT 9: BURGLARY
11/14/2003	4235	Unused Verdict Form(s)...	NOT GUILYT COUNT 10: ULAWFUL POSSESSION, MAKING, OF COUNTERFEITING OF INVENTORY PRICING LABELS
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 2: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 3: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 4: BURGLARY
11/14/2003	4245	Verdict(s)...	GUILTY OF COUNT 5: BURGLARY
11/17/2003	1930	Letters ...	FROM DEFENDANT
11/26/2003	4185	Transcript	10/24/03 - MOTION TO CONFIRM TRIAL
12/2/2003	4185	Transcript	OCTOBER 29, 2003 - STATUS HEARING
12/12/2003	1250	Application for Setting	2-5-04 @11:00
12/15/2003	4185	Transcript	11/10/03 - HEARING
12/19/2003	4500	PSI - Confidential	11/25/03 REPORT
1/16/2004	1260	Application Produce Prisoner	
1/22/2004	3340	Ord to Produce Prisoner	
4/1/2004	1695	** Exhibit(s) ...	STATE'S EXHIBIT 1-5 DEFENDANT'S EXHIBITS 6-7
4/1/2004	MIN	***Minutes	
4/1/2004	1850	Judgment of Conviction	
4/13/2004	4185	Transcript	04/01/04 - SENTENCING
4/19/2004	4300	Withdrawal of Counsel	
4/22/2004	1215	Application Appoint Counsel	REQUEST
4/22/2004	1365	Certificate of Transmittal	
4/22/2004	1350	Certificate of Clerk	
4/22/2004	2515	Notice of Appeal Supreme Court	
4/22/2004	1310	Case Appeal Statement	
4/27/2004	2840	Ord Denying ...	ORDER DENYING REQUEST FOR APPOINTMENT OF COUNSEL

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type: CRIMINAL** **Initial Filing Date: 6/11/2003**

4/29/2004	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 43203
4/29/2004	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 43203
5/7/2004	3868	Req to Crt Rptr - Rough Draft	
5/11/2004	4135	Supreme Court Ord Remanding	SUPREME COURT CASE NO. 43203 ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL
5/11/2004	3862	**Criminal Submit	DOCUMENT TITLE: ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL PARTY SUBMITTING: CKEPLER DATE SUBMITTED: 5/11/04 SUBMITTED BY: CKEPLER DATE RECEIVED JUDGE'S OFFICE:
5/11/2004	2385	Mtn Proceed Forma Pauperis	
5/11/2004	1030	Affidavit in Support...	OF REQUEST TO PROCEED IN FORMA PAUPERIS
5/17/2004	2405	Mtn to Quash...	SUBPOENA DUCES TECUM
5/19/2004	3862	**Criminal Submit	DOCUMENT TITLE: MOTION TO PROCEED IN FORMA PAUPERIS PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 5-19-04 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: 5/21/04
5/27/2004	3035	Ord Grant in Forma Pauperis	
5/28/2004	2525	Notice of Change of Address	
6/1/2004	2715	Ord Appointing Counsel	MARY LOU WILSON
6/1/2004	3370	Order ...	DECLARING DEFENDANT A HABITUL CRIMINAL
6/1/2004	2525	Notice of Change of Address	
6/14/2004	2610	Notice ...	NOTICE TO APPOINTED COUNSEL
6/14/2004	3860	Request for Submission	DOCUMENT STRUCK FROM RECORD PER ORDER FILED 9-23-04
6/21/2004	3870	Request	DOCUMENT STRUCK FROM RECORD PER ORDER FILED 9-23-04
7/2/2004	4185	Transcript	JURY TRIAL 11-13-03 - 11-14-03
7/2/2004	4185	Transcript	TRIAL 11-12-03
7/6/2004	2145	Mtn Ord to Show Cause	DOCUMENT STRUCK FROM RECORD PER ORDER FILED 9-23-04
7/6/2004	3870	Request	
7/14/2004	1670	Ex-Parte Mtn...	*SEALED* - EXPARTE MOTION FOR APPROVAL OF FEES IN THE APPELLANT'S OPENING BRIEF AND JOINT APPENDIX
7/22/2004	1675	Ex-Parte Ord...	*SEALED* - EXPARTE ORDER FOR APPROVAL OF FEES IN THE PREPARATION AND COMPLETION OF THE APPELLANT'S OPENING BRIEF AND JOINT APPENDIX
8/3/2004	3860	Request for Submission	DOCUMENT STRUCK FROM RECORD PER ORDER FILED 9-23-04
8/3/2004	3860	Request for Submission	DOCUMENT STRUCK FROM RECORD PER ORDER FILED 9-23-04
8/3/2004	3860	Request for Submission	DOCUMENT STRUCK FROM RECORD PER ORDER FILED 9-23-04
8/3/2004	2490	Motion ...	MOTION FOR RETURN OF PROPERTY AND REQUEST FOR HEARING RE: RESTITUTION AMOUNT STRUCK FROM RECORD PER ORDER FILED ON 9-23-04
8/18/2004	2475	Mtn to Strike...	FUGITIVE DOCUMENT (SCANNED IMAGE REFLECTS MANNER IN WHICH DOCUMENT WAS RECEIVED -4-14-2011 -SC)
8/26/2004	3860	Request for Submission	STRUCK FROM RECORD PER ORDER FILED ON 9-23-04
8/26/2004	3860	Request for Submission	BOTH REQUESTS FOR SUBMISSION FILED 8-26-04: STRUCK FROM RECORD PER ORDER FILED 9-23-04
9/23/2004	3250	Ord Striking ...	FUGITIVE DOCUMENTS
6/30/2005	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 43203

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type: CRIMINAL** **Initial Filing Date: 6/11/2003**

8/1/2005	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 43203
8/1/2005	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 43203
8/1/2005	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 43203
9/12/2005	2645	Opposition to Mtn ...	FOR ORDER TO COMPEL
9/12/2005	2270	Mtn to Compel...	MOTION FOR ORDER TO COMPEL (SCANNED IMAGE REFLECTS MANNER IN WHICH DOCUMENT WAS RECEIVED -4-14-2011-SC)
9/13/2005	1650	Errata...	TO OPPOSITION TO MOTION FOR ORDER TO COMPEL
9/27/2005	3795	Reply...	TO STATE'S OPPOSITION TO MOTION FOR ORDER TO COMPEL AND AND TO VAN RY'S ERRATA TO OPPOSITION TO MOTION FOR ORDER TO COMPEL
9/30/2005	3860	Request for Submission	DOCUMENT TITLE: MOTION TO COMPEL, DEFENDANT'S ANSWER, ERRATA TO OPPOSITION... PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 10-3-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:
12/12/2005	3370	Order ...	ORDER TO RESPOND
12/15/2005	4065	Subpoena Duces Tecum	DOCUMENT NOT IN FILE
12/15/2005	1245	Application Ord Show Cause	(2) REQUEST(S) FOR ORDER TO SHOW CAUSE RE: CONTEMPT OF COURT - ORDER TO COMPEL DOCUMENT NOT IN FILE
1/10/2006	3880	Response...	FORMER COUNSEL'S RESPONSE IN ACCORDANCE WITH ORDER TO RESPOND
2/9/2006	3860	Request for Submission	DOCUMENT TITLE: MOTION TO COMPEL PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 2-9-06 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: DOCUMENT NOT IN FILE
1/14/2011	PAYRC	**Payment Receipted	A Payment of -$122.78 was made on receipt DCDC300116.
12/6/2011	3862	**Criminal Submit	DOCUMENT TITLE: APPLICATION TO PROCEED IN FORMA PAUPERIS (PAPER ORDER) PARTY SUBMITTING: FERRILL JOSEPH VOLPICELLI DATE SUBMITTED: 12-6-11 SUBMITTED BY: J YOST DATE RECEIVED JUDGE OFFICE: 12-13-11
12/6/2011	2385	Mtn Proceed Forma Pauperis	APPLICATION TO PROCEED IN FORMA PAUPERIS
12/6/2011	1325	** Case Reopened	
12/6/2011	4305	Writ ...	DEFENDANTS WRIT OF PROHIBITION CHALLENGING PROCEEDING IN EXCESS OF JURISDICTION AT SENTENCING
12/27/2011	3336	Ord Deny in Forma Pauperis	Transaction 2668506 - Approved By: NOREVIEW : 12-27-2011:14:10:47
12/27/2011	NEF	Proof of Electronic Service	Transaction 2668532 - Approved By: NOREVIEW : 12-27-2011:14:15:15
2/10/2012	2526	Notice of Change of Attorney	NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY - Transaction 2758941 - Approved By: JYOST : 02-10-2012:16:33:27
2/10/2012	3880	Response...	RESPONSE TO DEFENDANT'S WRIT OF PROHIBITION - Transaction 2758941 - Approved By: JYOST : 02-10-2012:16:33:27
2/10/2012	NEF	Proof of Electronic Service	Transaction 2759131 - Approved By: NOREVIEW : 02-10-2012:16:37:50
3/2/2012	3795	Reply...	REPLY TO RESPONSE TO DEFENDANTS WRIT OF PROHIBITION
4/10/2012	3860	Request for Submission	DOCUMENT TITLE: WRIT OF PROHIBITION AND ACCOMPANYING RESPONSES (NO PAPER ORDER PROVIDED) PARTY SUBMITTING: FERRILL VOLPICELLI DATE SUBMITTED: 4/10/12 SUBMITTED BY: MCHOLICO DATE RECEIVED JUDGE OFFICE:

Case Description: STATE VS. FERRILL JOSEPH VOLPICELLI (D10)

Case ID: CR03-1263 **Case Type: CRIMINAL** **Initial Filing Date: 6/11/2003**

5/24/2012	2840	Ord Denying ...	WRIT OF PROHIBITION - Transaction 2978589 - Approved By: NOREVIEW : 05-24-2012:17:12:03
5/24/2012	NEF	Proof of Electronic Service	Transaction 2978594 - Approved By: NOREVIEW : 05-24-2012:17:13:26
5/24/2012	1315	** Case Closed	
5/24/2012	S200	Request for Submission Complet	
6/22/2012	2515	Notice of Appeal Supreme Court	
6/22/2012	NEF	Proof of Electronic Service	Transaction 3035938 - Approved By: NOREVIEW : 06-22-2012:09:15:21
6/22/2012	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 3035933 - Approved By: NOREVIEW : 06-22-2012:09:13:36
6/22/2012	1310E	Case Appeal Statement	Transaction 3035933 - Approved By: NOREVIEW : 06-22-2012:09:13:36
6/28/2012	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 61142/RECEIPT FOR DOCUMENTS - Transaction 3049152 - Approved By: NOREVIEW : 06-28-2012:10:49:23
6/28/2012	NEF	Proof of Electronic Service	Transaction 3049223 - Approved By: NOREVIEW : 06-28-2012:10:53:16
7/26/2012	NEF	Proof of Electronic Service	Transaction 3108812 - Approved By: NOREVIEW : 07-26-2012:08:11:10
7/26/2012	4126	Supreme Ct Order Directing...	SUPREME COURT CASE NO. 61142/ORDER DIRECTING TRANSMISSION OF RECORD - Transaction 3108805 - Approved By: NOREVIEW : 07-26-2012:08:09:14
8/30/2012	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 3187592 - Approved By: NOREVIEW : 08-30-2012:15:32:29
8/30/2012	NEF	Proof of Electronic Service	Transaction 3187612 - Approved By: NOREVIEW : 08-30-2012:15:33:55

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

Case History - CR03P1263

DEPT. D10

HON. STEVEN P. ELLIOTT

Report Date & Time
8/30/2012
3:41:09PM

Case Description: POST: FERRILL J. VOLPICELLI (D10)

Case ID: **CR03P1263** **Case Type:** **POST CONVICTION** **Initial Filing Date:** **11/9/2005**

Parties

PETR	FERRILL JOSEPH VOLPICELLI - @67988
RESP	STATE OF NEVADA - STATE
DA	Terrence P. McCarthy, Esq. - 2745
DA	Richard Allen Gammick, Esq. - 1510
CAA	Kay Armstrong - 715

Charges

Charge No.	*Charge Code*	*Charge Date*	*Charge Description*

Plea Information

Charge No.	*Plea Code*	*Plea Date*	*Plea Description*

Release Information

Custody Status

Hearings

	Department	*Event Description*	*Sched. Date & Time*		*Disposed Date*
1	D10	Request for Submission	1/29/2007	08:30:00	1/30/2007

Event Extra Text: MOTION FOR COURT APPOINTED FEES

Disposition:
S200 1/30/2007
ORDER GRANTING FEES

	Department	*Event Description*	*Sched. Date & Time*		*Disposed Date*
2	D10	Tickle Start Code	5/7/2007	07:00:00	8/2/2007

Event Extra Text: 60 DAYS SINCE REQUEST FOR SUBMISSION OF MOTION FOR PARTIAL DISMISSAL OF PETITION AND SUPPLEMENTAL PETITION FILED 3/5/07.
STATUS?

Disposition:
T200 8/2/2007
ORDER PARTIALLY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND ORDER TO SET HEARING

	Department	*Event Description*	*Sched. Date & Time*		*Disposed Date*
3	D10	Tickle Start Code	8/27/2007	07:00:00	8/8/2007

Event Extra Text: PER ORDER OF 8/2/07 HEARING TO HAVE BEEN SET BY 8/23/07

Disposition:
T200 8/8/2007
EVIDENTIARY HEARING SET FOR 9/20/07 @ 1:30 P.M.

Case Description: POST: FERRILL J. VOLPICELLI (D10)

Case ID: **CR03P1263** **Case Type:** **POST CONVICTION** **Initial Filing Date:** **11/9/2005**

	Department	Event Description	Sched. Date & Time		Disposed Date
4	D10	PETITION FOR POST CONVICTION	9/20/2007	13:30:00	9/20/2007

Event Extra Text: EVIDENTIARY HEARING

Disposition:
D445 9/20/2007

	Department	Event Description	Sched. Date & Time		Disposed Date
5	D10	Request for Submission	10/25/2007	12:55:00	10/25/2007

Event Extra Text: PETITION FOR POST-CONVICTION HABEAS CORPUS

Disposition:
S200 10/25/2007
ENTERED IN ERROR

	Department	Event Description	Sched. Date & Time		Disposed Date
6	D10	Request for Submission	12/24/2007	12:45:00	1/8/2008

Event Extra Text: MOTION FOR COURT APPOINTED FEES

Disposition:
S200 1/8/2008
ORDER GRANTING MOTION FOR COURT APPOINTED FEES

	Department	Event Description	Sched. Date & Time		Disposed Date
7	D10	PETITION FOR POST CONVICTION	1/23/2008	13:30:00	1/23/2008

Event Extra Text: EVIDENTIARY HEARING

Disposition:
D843 1/23/2008

COURT CLERKS- PLEASE GET POLICE TRANSCRIPT EXHIBITS FROM EXHIBIT ROOM FOR JUDGE FOR HEARING

RESPECTIVE COUNSEL STIPULATED TO VACATE AND RESET HRG DUE TO MS. ARMSTRONG'S ILLNESS.

	Department	Event Description	Sched. Date & Time		Disposed Date
8	D10	PETITION FOR POST CONVICTION	2/14/2008	13:30:00	2/14/2008

Event Extra Text: CONTINUATION OF WRIT OF HABEAS CORPUS HEARING

Disposition:
D355 2/14/2008

	Department	Event Description	Sched. Date & Time		Disposed Date
9	D10	Request for Submission	7/7/2008	10:31:00	7/17/2008

Event Extra Text: MOTION FOR COURET APPOINTED FEES

Disposition:
S200 7/17/2008

Agency Cross Reference

Code	*Agency Description*	*Case Reference I.D.*
SC	Supreme Court	SCN 51622

Actions

Action Entry Date	*Code*	*Code Description*	*Text*
11/9/2005	3565	Pet Post-Conviction Relief	
11/9/2005	1955	Memorandum Points&Authorities	
11/9/2005	1670	Ex-Parte Mtn...	FOR APPOINTMENT OF COUNSEL

Case Description: POST: FERRILL J. VOLPICELLI (D10)

Case ID: CR03P1263 **Case Type: POST CONVICTION** **Initial Filing Date: 11/9/2005**

1/5/2006	3862	**Criminal Submit	DOCUMENT TITLE: PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) PARTY SUBMITTING: FERRILL J. VOLPICELLI DATE SUBMITTED: 1/5/06 SUBMITTED BY: A. SIMPSON DATE RECEIVED JUDGE'S OFFICE:
1/31/2006	2270	Mtn to Compel...	MOTION FOR ORDER TO COMPEL
1/31/2006	3860	Request for Submission	DOCUMENT TITLE: MOTION TO COMPEL PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 2-3-06 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:
1/31/2006	3860	Request for Submission	DOCUMENT TITLE: POST CONVICTION PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 2-3-06 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:
2/9/2006	3860	Request for Submission	
2/17/2006	2645	Opposition to Mtn ...	FOR ORDER TO COMPEL AND MOTION TO QUASH SUBPOENA DUCES TECUM
3/6/2006	1930	Letters ...	LETTER BRIEF
3/17/2006	2645	Opposition to Mtn ...	OPPOSITION TO MOTION FOR ORDER TO COMPEL AND MOTION TO QUASH SUBPOENA DUCES TECUM
3/21/2006	3860	Request for Submission	DOCUMENT TITLE: RESPONSE TO PETITIONER'S LETTER BRIEF PARTY SUBMITTING: KAREN FRALEY, ESQ. DATE SUBMITTED: 3-22-06 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: DOCUMENT NOT IN FILE
3/21/2006	3880	Response...	RESPONSE TO PETITIONER' "LETTER BREIF" FILED IN REPLY TO THE CITY OF RENO'S OPPOSITION TO MOTION FOR ORDER TO COMPEL AND MOTION TO QUASH SUBPOENA DUCES TECUM (SCANNED IMAGE REFLECTS MANNER IN WHICH DOCUMENT WAS RECEIVED - 4-15-2011 -SC)
3/22/2006	4105	Supplemental ...	MEMORANDUM OF POINTS AND AUTHROITIES IN SUPPORT OF PETITION FOR POST CONVICTION
5/22/2006	3860	Request for Submission	DOCUMENT TITLE: POST CONVICTION PARTY SUBMITTING: F. VOLPICELLI DATE SUBMITTED: 5-31-06 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:
8/10/2006	3370	Order ...	APPOINTING KAY ELLEN ARMSTRON AS COUNSEL TO REPRESENT PETITION IN HIS WRIT OF HABEAS CORPUS PROCEEDINGS. MS. ARMSTRONG SHALL HAVE 45 DAYS FROM THE DATE OF THIS ORDER TO FILE A SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS ON BEHALF OF PETITIONER
8/10/2006	3370	Order ...	QUASHING SUBPOENA DUCES TECUM AND DENYING MOTION TO COMPEL
9/15/2006	4047	Stip Extension of Time ...	STIPULATION TO EXTEND TIME TO FILE SUPPLEMENT TO PETITION
11/21/2006	4100	Supplemental Petition	
12/18/2006	3370	Order ...	FOR RESPONSE [FROM DISTRICT ATTORNEY]
1/26/2007	3860	Request for Submission	*SEALED * DOCUMENT TITLE: MOTION FOR COURT APPOINTED FEES PARTY SUBMITTING: KAY ARMSTRONG DATE SUBMITTED: 1/29/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
1/30/2007	1315	** Case Closed	
1/30/2007	S200	Request for Submission Complet	ORDER GRANTING FEES

Case Description: POST: FERRILL J. VOLPICELLI (D10)

Case ID: CR03P1263 **Case Type: POST CONVICTION** **Initial Filing Date: 11/9/2005**

1/30/2007	3060	Ord Granting Mtn ...	*SEALED* ORDER GRANTING MOTION FOR COURT APPOINTED FEES.
2/5/2007	1130	Answer ...	TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)
2/5/2007	2155	Mtn Partial Dismissal ...	MOTION FOR PARTIAL DISMISSAL OF PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABASU CORPUS (POST CONVICTION)
2/20/2007	3790	Reply to/in Opposition	
3/5/2007	1325	** Case Reopened	
3/5/2007	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR PARTIAL DISMISSAL OF PETITION AND SUPPLEMENTAL PETITION PARTY SUBMITTING: TERRY MCCARTHY DATE SUBMITTED: 3/6/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
8/2/2007	T200	Tickle End Code	ORDER PARTIALLY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND ORDER TO SET HEARING
8/2/2007	3370	Order ...	ORDER PARTIALLY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND ORDER TO SET HEARING
8/8/2007	T200	Tickle End Code	EVIDENTIARY HEARING SET FOR 9/20/07 @ 1:30 P.M.
8/9/2007	1325	** Case Reopened	
8/9/2007	1250	Application for Setting	SET FOR 9/20/07 AT 1:30 PM
8/20/2007	1260	Application Produce Prisoner	
8/20/2007	3340	Ord to Produce Prisoner	
9/20/2007	MIN	***Minutes	
10/3/2007	MIN	***Minutes	09/20/07-PETITION FOR POST CONVICTION/EVIDENTIARY HEARING - Transaction 61059 - Approved By: NOREVIEW : 10-03-2007:10:06:22
10/11/2007	2385	Mtn Proceed Forma Pauperis	
10/11/2007	1030	Affidavit in Support...	AFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED IN FORMA PAUPERIS
10/11/2007	1075	Affidavit ...	AFFIDAVIT OF KAREN S FRALEY
10/17/2007	3035	Ord Grant in Forma Pauperis	
10/25/2007	3860	Request for Submission	DOCUMENT TITLE: PETITION FOR POST-CONVICTION HABEAS CORPUS PARTY SUBMITTING: KAY ARMSTRONG DATE SUBMITTED: 10/25/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
10/25/2007	S200	Request for Submission Complet	ENTERED IN ERROR
11/5/2007	1250	Application for Setting	CONTINUATION OF EVIDENTIARY HEARING SET FOR 1/23/08 @ 1:30 P.M.
11/8/2007	4185	Transcript	EVIDENTIARY HEARING ON PETITION FOR POST CONVICTION - HEARD 9/20/07
11/8/2007	4185	Transcript	9/20/2007 PETITION FOR POST CONVICTION
11/8/2007	4185	Transcript	9/20/07 PETITION FOR POST CONVICTION
11/8/2007	4185	Transcript	9/20/2007 PETITION FOR POST CONVICTION
11/8/2007	4185	Transcript	PETITION FOR POST CONVICTION - SEPT 20, 2007
12/5/2007	3370	Order ...	*SEALED ORDER*
12/5/2007	3860	Request for Submission	
12/5/2007	4270	Waiver of Appearance	
12/21/2007	2610	Notice ...	OF WAIVER OF APPEARANCE
12/21/2007	2490	Motion ...	*SEALED* MOTION FOR COURT APPOINTED FEES WITH AFFIDAVIT IN SUPPORT

Case Description: POST: FERRILL J. VOLPICELLI (D10)

Case ID: CR03P1263 **Case Type: POST CONVICTION** **Initial Filing Date: 11/9/2005**

12/21/2007	3860	Request for Submission	*SEALED* DOCUMENT TITLE: MOTION FOR COURT APPOINTED FEES PARTY SUBMITTING: KAY ARMSTRONG DATE SUBMITTED: 12/24/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
1/8/2008	S200	Request for Submission Complet	ORDER GRANTING MOTION FOR COURT APPOINTED FEES
1/8/2008	3060	Ord Granting Mtn ...	*SEALED* ORDER GRANTING MOTION FOR COURT APPOINTED FEES
1/28/2008	1250	Application for Setting	02/14/2008 @ 1:30 P.M. - PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION HEARING
1/30/2008	4050	Stipulation ...	STIPULATION FOR CONTINUANCE
2/14/2008	1315	** Case Closed	
3/5/2008	MIN	***Minutes	FEBRUARY 14, 2008 - WRIT OF HABEAS CORPUS - Transaction 152335 - Approved By: NOREVIEW : 03-05-2008:10:20:23
4/14/2008	1750	Findings, Conclusions & Judg	
4/24/2008	4185	Transcript	POST CONVICTION - 2/14/08
5/8/2008	2515	Notice of Appeal Supreme Court	
5/12/2008	1350	Certificate of Clerk	
5/12/2008	1310	Case Appeal Statement	
5/12/2008	1365	Certificate of Transmittal	
5/15/2008	3370	Order ...	ORDER DIRECTING STATE PUBLIC DEFENDER TO PAY PEGGY HOOGS & ASSOCIATES $42.60.
5/15/2008	3370	Order ...	ORDER DIRECTING THE STATE PUBLIC DEFENDER TO PAY PEGGY HOOGS & ASSOCIATES $34.10.
5/19/2008	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 51622
5/19/2008	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 51622
6/4/2008	4135	Supreme Court Ord Remanding	SURPEME COURT CASE NO. 51622 ORDER OF LIMITED REMAND FOR DESIGNATION OF COUNSEL (WITHIN 30 DAYS)
6/4/2008	3863	**Submit regarding Appeals	DOCUMENT TITLE: SUPREME COURT ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL PARTY SUBMITTING: NEVADA SUPREME COURT DATE SUBMITTED: 6/4/08 SUBMITTED BY: CKEPLER DATE RECEIVED JUDGE OFFICE:
6/9/2008	2715	Ord Appointing Counsel	KAY ELLEN ARMSTRONG, ESQ. FOR FERRILL J. VOLPICELLI FOR APPEAL PURPOSES ONLY
6/10/2008	2540	Notice of Entry of Ord	
7/7/2008	2010	Mtn for Attorney's Fee	*SEALED* MOTION FOR COURT APPOINTED FEES WITH AFFIDAVIT IN SUPPORT KAY ARMSTRONG
7/7/2008	1325	** Case Reopened	
7/7/2008	3860	Request for Submission	*SEALED* DOCUMENT TITLE: MOTION FOR COURT APPOINTED FEES PARTY SUBMITTING: KAY ARMSTRONG DATE SUBMITTED: 07-07-08 SUBMITTED BY: C GALINDO DATE RECEIVED JUDGE OFFICE:
7/17/2008	3060	Ord Granting Mtn ...	*SEALED* ORDER GRANTING MOTION FOR COURT APPOINTED FEES
7/17/2008	S200	Request for Submission Complet	
7/17/2008	1315	** Case Closed	
11/12/2008	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 52600 SUPREME COURT ORDER DENYING PETITION

Case Description: POST: FERRILL J. VOLPICELLI (D10)

Case ID: CR03P1263 **Case Type: POST CONVICTION** **Initial Filing Date: 11/9/2005**

9/10/2009	4125	Supreme Court Order...	ORDER TO (KAY ELLEN ARMSTRONG) TO FILE SUPPLEMENTAL APPENDIX: SUPREME COURT CASE NO. 51622 - Transaction 1031520 - Approved By: NOREVIEW : 09-10-2009:12:25:51
10/27/2009	2010	Mtn for Attorney's Fee	*SEALED* MOTION FOR COURT APPOINTED FEES WITH AFFIDAVIT IN SUPPORT
10/27/2009	3860	Request for Submission	*SEALED* NO S1 CREATED; SUBMITTED TO BOB BELL FOR REVIEW DOCUMENT TITLE: MOTION FOR COURT APPOINTED FEES WITH AFFIDAVIT IN SUPPORT PARTY SUBMITTING: KAY ARMSTRONG DATE SUBMITTED: 10/27/2009 SUBMITTED BY: IFLORES DATE RECEIVED JUDGE OFFICE:
11/6/2009	2777	Order Approving ...	*SEALED * RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S FEES AND EXPENSES
12/4/2009	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 51622 - Transaction 1189844 - Approved By: NOREVIEW : 12-04-2009:15:16:09
12/4/2009	NEF	Proof of Electronic Service	Transaction 1189860 - Approved By: NOREVIEW : 12-04-2009:15:18:39
12/30/2009	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 51622 - Transaction 1235675 - Approved By: NOREVIEW : 12-30-2009:16:36:27
12/30/2009	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 51622 - Transaction 1235675 - Approved By: NOREVIEW : 12-30-2009:16:36:27
12/30/2009	NEF	Proof of Electronic Service	Transaction 1235684 - Approved By: NOREVIEW : 12-30-2009:16:38:06
12/30/2009	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 51622 - Transaction 1235675 - Approved By: NOREVIEW : 12-30-2009:16:36:27
1/28/2010	4128	Supreme Court Order Denying	ORDER DENYING MOTION TO RECALL REMITTITUR AND DENYING PERMISSION FOR A LATE PETITION FOR REHEARING; SUPREME COURT CASE NO. 51622 - Transaction 1286820 - Approved By: NOREVIEW : 01-28-2010:10:22:13
1/28/2010	NEF	Proof of Electronic Service	Transaction 1286834 - Approved By: NOREVIEW : 01-28-2010:10:23:42
4/22/2010	3860	Request for Submission	*SEALED* NO S1 DONE; SUBMITTED TO BOB BELL FOR REVIEW DOCUMENT TITLE: MOTION FOR COURT APPOINTED FEES PARTY SUBMITTING: KAY ARMSTRONG DATE SUBMITTED: 4/22/2010 SUBMITTED BY: IFLORES DATE RECEIVED JUDGE OFFICE:
4/22/2010	2010	Mtn for Attorney's Fee	*SEALED * MOTION FOR COURT APPOINTED FEES WITH AFFIDAVIT IN SUPPORT
5/6/2010	2777	Order Approving ...	*SEALED* RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES

FILED
Electronically
08-30-2012:03:31:19 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3187592

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

Case No. CR03-1263

Dept. No. 10

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 30th day of August, 2012, I electronically filed Volumes 1 through 5 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 6 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court in accordance NRAP 11(2)(b).

Dated this 30th day of August, 2012.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/Lori Matheus
Lori Matheus
Deputy Clerk