

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 BRYAN FERGASON,

3
4 Appellant,

5 vs.

6 LAS VEGAS METROPOLITAN
7 POLICE DEPARTMENT,

8 Respondent.
9

Electronically Filed
Nov 14 2014 09:06 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: 62357

Appeal from The Eighth Judicial
District Court, The Honorable Douglas
E. Smith Presiding

10 **RESPONDENT'S SUPPLEMENTAL APPENDIX**
11 **(Volume 2, Bates Nos. 196-445)**

12 **MARQUIS AURBACH COFFING**

13 Micah S. Echols, Esq.
14 Nevada Bar No. 8437
15 10001 Park Run Drive
16 Las Vegas, Nevada 89145
17 Telephone: (702) 382-0711
18 Facsimile: (702) 382-5816
19 mechols@maclaw.com

**CLARK COUNTY DISTRICT
ATTORNEY**

Steven B. Wolfson
Clark County District Attorney
Nevada Bar No. 1565
Thomas J. Moreo
Chief Deputy District Attorney
Nevada Bar No. 2415
200 Lewis Avenue
Las Vegas, NV 89155
Telephone: (702) 671-2501
Facsimile: (702) 455-2294
thomas.moreo@clarkcountynvda.com

20 *Attorneys for Respondent, LVMPD*
21
22
23

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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District Court Case No. C228752 Reporter's Partial Transcript—Trial by Jury, May 19, 2008 (filed 01/20/09)	Volume 1, Bates Nos. 11–195
District Court Case No. C228752 Reporter's Partial Transcript—Trial by Jury, May 27, 2008 (filed 01/20/09)	Volume 2, Bates Nos. 196–445 through Volume 3, Bates Nos. 446–507
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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
v.) CASE NO. C-228752
)
BRYAN FERGASON,) DEPT. VII
)
Defendant.)

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

TUESDAY, MAY 27, 2008

REPORTER'S PARTIAL TRANSCRIPT
TRIAL BY JURY
DAY 4 - VOLUME I

APPEARANCES:

For the Plaintiff: SANDRA A. DIGIACOMO, ESQ.
SHELLY L. SMALL, ESQ.
Deputy District Attorneys

For the Defendant: CYNTHIA L. DUSTIN, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

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DEFENDANT'S:

None

1 TUESDAY, MAY 27, 2008 AT 9:52 A.M.

2 [Outside the Presence of the Jury Jury]

3 [Audio Begins]

4 THE COURT: Thanks. Let's go on the record in case
5 number C228752, The State of Nevada versus Bryan Fergason.
6 Let the record reflect the presence of Mr. Fergason and Ms.
7 Dustin, Ms. Digiacomio, and Ms. Small.

8 Did you get what Marty has?

9 MS. DIGIACOMO: No, I think I got the stomach flu that's
10 going around.

11 THE COURT: Well, do you need to not go today?

12 MS. DIGIACOMO: No, I'm fine. Something happened --

13 THE COURT: All right. Absent the ladies and gentlemen
14 of the jury. Anything to come before the Court before the
15 jury comes in? Anything to come before the Court before the
16 jury comes in?

17 MS. DUSTIN: No, Your Honor. On the -- because I figure
18 we'll just deal with arguing jury instructions later on when
19 she feels a --

20 THE COURT: Probably at noon.

21 MS. DUSTIN: -- little bit better.

22 THE COURT: Yeah.

23 MS. DUSTIN: Can I just throw this back in, so she can
24 have something cold to sip on?

25 THE COURT: Yeah. Yeah, I don't care. I don't care if

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1 you guys have a, you know, soda at your table, or a glass of
2 water or something. Okay. Apparently, we're ready. The
3 jury's here --

4 MS. SMALL: Nice haircut, Judge.

5 THE COURT: Huh?

6 MS. SMALL: Nice haircut.

7 MS. DIGIACOMO: Yeah, it looks really nice.

8 THE COURT: I wasn't kidding. I needed it bad. What are
9 we looking at in terms of time? A day and a half more of
10 testimony?

11 MS. DIGIACOMO: I think we're going to be done with
12 testimony by 1:30, 2 o'clock tomorrow, 2 o'clock, 1:30
13 tomorrow.

14 THE COURT: Okay. Where's Moon? Let's have him come on
15 in.

16 THE CLERK: Okay. Well, he's missing four.

17 THE COURT: Okay.

18 [Unrelated matters not transcribed]

19 THE COURT: How are we doing?

20 THE BAILIFF: We need about three more.

21 THE COURT: Okay. Well, we're ready when they are.

22 [Court and Ms. Dustin Confer]

23 [Court and Clerk Confer]

24 THE BAILIFF: Ready to go, Your Honor?

25 THE COURT: Bring them in. Let's go.

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1 [Jury In]

2 THE COURT: Okay. Back on the record in case number
3 C228752, State of Nevada versus Bryan Ferguson. Hope you had
4 a good weekend. Let the record reflect the presence of the
5 Defendant, his Counsel, Counsel for the State. All ladies and
6 gentlemen of the jury are back in the box.

7 Who will be your next witness?

8 MS. SMALL: Marcus Giannella.

9 THE COURT: Okay. Come on up here, sir.

10 THE CLERK: Please remain standing, and raise your right
11 hand.

12 MARCUS GIANNELLA, STATE'S WITNESS, SWORN

13 THE WITNESS: I do.

14 THE CLERK: Thank you. You may be seated.

15 THE COURT: This relates to ten, is that right?

16 MS. SMALL: Yes, Your Honor.

17 THE COURT: Okay, Count X. Sir, state your name, and
18 spell your name for the court recorder.

19 THE WITNESS: Marcus Giannella, M-a-r-c-u-s, G-i-a-n-n-e-
20 l-l-a.

21 THE COURT: Go ahead.

22 MS. SMALL: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. SMALL:

25 Q Mr. Giannella, what do you do for a living?

1 A I'm an interior designer.

2 Q Okay. And what does an interior designer do?

3 A I meet with clients, sell furniture, sell interior
4 design services, draperies, window coverings, flooring, design
5 homes from the ground up.

6 Q And how long have you been in that line of work?

7 A 17 years.

8 Q 17 years. I'm going to draw your attention then to
9 February of 2006. Where were you working at that time?

10 A Milton Homer Fine Home Furnishings.

11 Q Where is that located?

12 A It was located at 5455 South Valley View.

13 Q Okay. And how long had you worked for the Milton
14 Homer store?

15 A Cumulatively, approximately seven years.

16 Q Can you describe to the ladies and gentlemen of the
17 jury what Milton Homer is?

18 A It's a high end home furnishings store. We sold
19 luxury furniture, accessories, artwork. We provided interior
20 design services for clients as well.

21 Q Now, in working for that store what would your
22 duties be within the store itself?

23 A I would assist in receiving merchandise, doing floor
24 displays, selling the merchandise, going out on deliveries,
25 meeting with clients. We were in charge of doing all of our

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1 invoicing, purchase orders, inventory, all of that.

2 Q So as part of your job in purchasing merchandise
3 then you would be privy to the cost and value of items that
4 were in the store. Would that be correct?

5 A That's correct.

6 Q And you would also know what items were, in fact, in
7 that particular store?

8 A That's correct.

9 Q You said that you would set the furniture. Can you
10 explain to us what you mean by that? I mean, within the store
11 itself.

12 A The store was approximately 10,000 square feet. We
13 had 16 to 17 room settings that we would vignette. We would
14 include a bedroom setting, a living room or dining room
15 setting, and a family room setting in -- within the vignette
16 itself.

17 Q And you were very directly part of setting up those
18 little vignettes within the store?

19 A Yes.

20 Q Okay. I'm going to draw your attention specifically
21 to February 20th of 2006.

22 A Uh-huh.

23 Q Had you gone into Milton Homer to work that day?

24 A Yes.

25 Q And when you got there what did you see?

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1 A An associate of mine and I arrived at the same time.
2 The back door, we had a difficult time getting the door
3 unlocked. Once we did get it unlocked we entered the store.
4 The alarm system did not go off, and once we entered into the
5 store we noticed that things were displaced and missing. We
6 got to the breaker boxes, turned the lights all on, and saw
7 that we had indeed been robbed.

8 Q And you mentioned that the alarm didn't go off?

9 A Correct.

10 Q Did you check on the alarm system itself once you
11 got in there at some point?

12 A It was entirely gone.

13 Q What do you mean by that?

14 A It had been pulled off the wall, the cords had been
15 cut, and the unit itself was no longer in the building.

16 Q Okay. Now, you said you went in, you turned on the
17 lights, and you noticed that things were askew. What else did
18 you notice?

19 A That there was merchandise missing.

20 Q Okay. And, very specifically, did you eventually
21 take inventory of what was missing out of the store?

22 A Yes, the following day.

23 Q You did?

24 A Yes.

25 Q On that particular day when you arrived, and you

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1 noticed that things were missing, did you contact the police?
2 A Yes.
3 Q Did the police come out?
4 A Yes, they did.
5 Q And did you make a report to the police officers?
6 A Yes, we did.
7 Q And in that report did you list every single thing
8 that was missing from the store?
9 A No, we did not.
10 Q Why didn't you do that?
11 A Because there were hundreds of items that were no
12 longer there.
13 Q Okay. So would it be fair to say you gave them,
14 basically, an overall of what you knew was missing from the
15 store on that day?
16 A Yes.
17 Q Okay. Now, you stated that the next day you went
18 and you did an inventory?
19 A Correct.
20 Q Was the store opened for business when you were
21 doing that inventory?
22 A No.
23 Q Okay. So you -- is it based on the fact that there
24 was so much merchandise missing that you had to close the
25 store down for a few days, or?

1 A Well, that and we had to also try to move
2 merchandise from areas and spread what was left out, so that
3 it appeared as though nothing had happened.

4 Q Okay. What, based on your memory, do you recall
5 being missing from the store from that burglary?

6 A There were sofas, chairs, cocktail table, end
7 tables, chests, dining room set, original artwork,
8 accessories, lamps, trees, floral arrangements.

9 Q Okay. I'm going to draw your attention now to
10 November 6th of 2006.

11 A Uh-huh.

12 Q Did you receive a call indicating that possible
13 merchandise had been recovered from that burglary?

14 A Yes, I did.

15 Q And based on that telephone call that you got, what
16 did you say in response to the person on the phone?

17 A I was asked if I could give a description of any of
18 the merchandise that had been stolen from the store, and when
19 I spoke with the gentlemen on the telephone I tried to
20 describe as best as I could some of the merchandise. I asked
21 him if he would go over to one of the sofas and lift up the
22 seat cushion, and if it had a label underneath it on the
23 decking that said Marge Carson, it most likely would have come
24 from our store. At that time Milton Homer was the only retail
25 store in Las Vegas that carried that line of furniture.

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1 Q Okay. And based on that conversation that you had,
2 what did you do?

3 A He came back to the telephone and said, yes it was,
4 and asked how quickly I could get to the home to identify any
5 of the merchandise that could possibly belong to Milton Homer.

6 Q So after that did you go out to 1504 Cutler here in
7 Las Vegas, Clark County, Nevada?

8 A Yes, I did.

9 Q And when you arrived at that Cutler address what did
10 you see?

11 A The yard had stuff all over it. There were guitars.
12 Artwork was leaning up. There were sinks. The garage doors
13 were open. I identified myself as to who I was. I was then
14 asked to enter the home, and start identifying the
15 merchandise.

16 Q And did you do that?

17 A Yes, I did.

18 Q How big would you say that the house was that you
19 were in?

20 A I would say about 3,000 square feet.

21 Q And was it one story, two story?

22 A Two story.

23 Q Okay. So you went into the house and you started
24 looking for Milton Homer items. Is that correct?

25 A That's correct.

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1 Q Okay. And based on what you saw, what did you do to
2 identify those items?

3 A I walked with, I think, a team of two detectives,
4 and we were -- I was asked to put yellow sticky notes on all
5 the merchandise that belonged to us.

6 Q Okay. And how could you be sure that the items that
7 you were putting the yellow sticky note on belonged to Milton
8 Homer?

9 A There were a couple of the pieces that still had
10 some of the tag ribbon, black ribbon, that we use to attach
11 our tags to on the floor, and there were two, or three of us,
12 employees, that worked there. I moved the floor constantly.
13 There was no way -- after walking the floor the first day I,
14 without even taking inventory, had -- was pretty right on to
15 know exactly what was taken from that store.

16 Q Okay. And based on what you saw there, at some
17 point did you contact someone to come out and pick up the
18 Milton Homer furniture that you saw at that Cutler residence?

19 A Yes, we had both our delivery trucks pulled off of
20 any deliveries that were scheduled for that day, and they were
21 routed to the house on Cutler Street to retrieve the
22 merchandise.

23 Q Okay. I'm going to draw your attention now to
24 State's 91. And looking at this particular photograph --
25 first of all, do you know where this photograph was taken?

1 A This was the back patio on the main level of the
2 house at Cutler Street.

3 Q Okay. And looking at that picture, do you identify
4 anything in the picture that belonged to Milton Homer?

5 A The tree in the planter on the right hand side of
6 the photograph.

7 Q Okay. And based on your purchasing for the store,
8 and your experience, what would be the retail value of that
9 plant?

10 A I would say between seven and \$900.

11 Q And just as aside, had you given anyone permission
12 to come into the Milton Homer store and take all of those
13 items out of the store from that previous burglary, and put
14 them in this home at Cutler?

15 A No.

16 Q Looking at State's 92. Do you recognize, first of
17 all, where the picture was taken?

18 A It's taken from the dining room looking down to the
19 living room.

20 Q Okay. And that's at the Cutler residence?

21 A Yes.

22 Q What in that picture did you identify as belonging
23 to Milton Homer that had been taken from that previous
24 burglary?

25 A The two pieces of artwork hanging on either side of

1 the window. The two floor lamps in front of it. The two
2 chairs in front of that, and you can see on the right hand
3 side in the foreground the arm of another chair that was from
4 Milton Homer as well.

5 Q Okay. If you could just circle the artwork that
6 you're talking about. What would be the retail value of that
7 artwork?

8 A About \$2,000.

9 Q A piece, together?

10 A I think those were priced as a pair.

11 Q They were priced -- so \$2,000 together. Now, if you
12 could circle the lamps that you were talking about. And what
13 would be the retail value of those lamps?

14 A Those were about \$2,500 a piece.

15 Q And the chairs, the armchairs? And the retail
16 value?

17 A Those were about \$3,000 a piece.

18 Q Okay. And then you said there was a chair in the
19 right hand corner. And what would be the retail value of
20 that?

21 A Those were around \$3,000 a piece as well.

22 Q Okay. So we're talking about high end furniture?

23 A Yes.

24 Q Would that be an accurate statement?

25 A Uh-huh.

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1 Q Looking at State's 93. Is that just another picture
2 of the closer-up of the artwork, the lamp, the armchair?

3 A Correct.

4 Q Do you see anything else in there that belonged to
5 Milton Homer besides those items?

6 A No.

7 Q Okay. Looking at State's 94. Is there anything in
8 this picture that we haven't previously identified?

9 A This is the other armchair. There were a pair of
10 them that were taken.

11 Q Okay. And State's 96, would that be just a close-up
12 of that armchair that you were talking about before?

13 A Correct. This tree over here was ours as well, as
14 was this mirror that was hanging on the back wall.

15 Q Okay. And what are the retail values of both of
16 those items?

17 A The mirror would probably be around \$1,500. The
18 tree around \$900.

19 Q Okay. Looking at State's 98. Is there something in
20 this picture that we didn't previously identify?

21 A The dining room table, the floral arrangement on it,
22 and the two pieces of art that are hanging on either side of
23 the window.

24 Q Okay. And could you circle the dining room table
25 that you're talking about?

1 A And all these items that we're looking at, and
2 correct me if I'm wrong, but all of these items that we're
3 looking at were found in the Cutler residence. Is that
4 correct?

5 A That's correct.

6 Q What would be the retail value of that table?

7 A The table I believe was around \$2,500. The chairs
8 were probably around nine to \$1,200 a piece.

9 Q Looking at State's 100. Is there something in that
10 picture that you recognize as belonging to Milton Homer?

11 A The chest of drawers.

12 Q Okay. And what would be the retail value of that
13 chest of drawers?

14 A Probably around \$800.

15 Q Is this just a close-up? State's 102, just a close-
16 up of that table and that floral arrangement?

17 A Correct.

18 Q Looking at State's 106. Do we see anything in this
19 picture that we didn't identify previously as belonging to
20 Milton Homer?

21 A The accent table, the lamp, and the tree.

22 Q Okay. And what would be the retail value of the
23 table, the accent table?

24 A Table would be around \$1,800.

25 Q The lamp?

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1 A Around \$2,500, and the tree probably \$400.

2 Q Okay. Looking at State's 107. Is there something
3 in this picture that belonged to Milton Homer that we didn't
4 previously identify?

5 A Another floral arrangement, and you can see the back
6 of a chair that's going into the family room area.

7 Q Okay. Can you circle the back of that chair --

8 A Uh-huh.

9 Q -- that you're looking at?

10 A Also, a lamp, and also a floral that's hanging on
11 the wall back over here.

12 Q Okay. What would be the retail value of those
13 items?

14 A The chairs were around \$4,000 a piece. The lamps
15 were around \$1,500 a piece, and the floral hanging on the
16 wall, I think they were about \$1,500 for the pair.

17 Q Okay. Looking at State's 109. Is there something
18 in this picture that we didn't previously identify?

19 A You can see the two chairs down here. There's the
20 sofa, a mirror, that's one of the two lamps, one of the two
21 floral arrangements, the cocktail table, a pair of end tables,
22 a chest that the TV was sitting on.

23 Q These were sort of setup -- were these setup this
24 exact way in the store in those vignettes that you were
25 talking about previously?

1 A No, not exactly.

2 Q Okay. But these were part of the displays?

3 A Part of the displays. The sofa here actually
4 matched the two chairs that they had in the living room area
5 of the home.

6 Q Okay. What is the retail value of those items?

7 A The sofas probably about \$7,000. The cocktail table
8 \$2,000. The chest over here probably about \$2,000. The
9 mirror, I would say, around \$1,500. The end tables, they were
10 probably around \$1,000 a piece.

11 Q Looking at State's 111. Is there something in there
12 that we didn't previously identify?

13 A It's a close-up of the chest that the TV was sitting
14 on.

15 Q Okay. So it's the same thing that we previously
16 identified. Looking at State's 112. Is there something in
17 that picture that belonged to Milton Homer?

18 A Artwork.

19 Q Okay. And what would be the retail value of that
20 artwork?

21 A I think it was a set of four pieces, and probably
22 around \$600, \$700.

23 Q Okay. And I think I'm noticing, are those the
24 little sticky's that you said you were --

25 A Yes.

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1 Q -- going around and placing on the items that
2 belonged to Milton Homer? Okay, and looking at State's 113.
3 Again, where is this area within the house that we're looking
4 at here?

5 A The front door is this direction, and right over
6 here you can see where the kitchen nook eating area is. To
7 the left of that would have been the family room that we just
8 looked at.

9 Q Okay. And in this picture what would you identify
10 as belonging to Milton Homer?

11 A These two pieces of artwork here that were
12 originals, and you can start to see a set of, I think it was,
13 six that's right here hanging on that wall.

14 Q Okay. And what was the retail value of those?

15 A I think those were around \$3,500 a piece.

16 Q Looking at 114. Something in that that you would
17 identify that we didn't previously identify?

18 A Another original piece of artwork and a decorative
19 panel that was hanging on the wall there.

20 Q And, again, the retail value of those items?

21 A The tulip art was probably around \$1,500, \$1,600.
22 The other piece, I think, was around \$1,000.

23 Q Is there something different in State's 115 that we
24 didn't previously identify?

25 A This is looking just back from the other angle.

1 There is a little table here that's sitting on the floor that
2 was probably around \$900.

3 Q And looking at State's 116?

4 A That's the set of six pieces that was hanging on the
5 wall going up the stairs.

6 Q That we talked about before?

7 A Right.

8 Q And, again, those little yellow sticky's --

9 A Uh-huh.

10 Q -- that you were putting on stuff? Okay. I think
11 two of ours -- looking at State's 118. Do we see anything in
12 that picture that we didn't previously identify?

13 A There's a lamp here. A mirror hanging on the wall.
14 A game table here in the center of the room. I think, a
15 floral arrangement that's on the side here as well.

16 Q Okay. And what would be the retail value of those
17 items?

18 A The lamp was probably around \$1,400 or \$1,500. The
19 game table around \$2,000. The mirror on the right hand side
20 probably around \$1,400 or \$1,500, and the floral arrangement
21 probably around \$400.

22 Q Would it be fair to say that you identified items in
23 virtually every room in this house as belonging to Milton
24 Homer?

25 A There was merchandise in every room with the

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1 exception of one of the rooms that was a recording studio.

2 Q Okay. Looking at State's 119. Do you know where
3 this picture was taken?

4 A It was in one of -- one of the children's bedroom.

5 Q Okay. Is there something in that picture that you
6 can identify as belonging to Milton Homer?

7 A The cabinet here that the computer is sitting on.

8 Q Okay. And what would be the retail value of that
9 item?

10 A About \$2,000.

11 Q And is this just another picture of that
12 particular -- oh, this -- actually, this looks different. Is
13 that different?

14 A It is. This is, I believe, the chest of drawers
15 that you showed earlier that had the drawer open with all the
16 socks in it.

17 Q Okay. Looking at State's 121. Can you tell us what
18 room we're looking at in this picture?

19 A This was another child's bedroom. This table here
20 was from Milton Homer, as was this mirror.

21 Q Okay. And what were the retail values of those two
22 items?

23 A Probably about \$900 on the table, and about \$2,000
24 on the mirror.

25 Q We're going to look at State's 122. Can you tell us

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1 what room when we're looking at in this picture?

2 A The master bedroom.

3 Q Okay. Are there items within the master bedroom
4 that you identified as belonging to Milton Homer?

5 A This chest here. This little table here. The
6 artwork on the wall here.

7 Q Okay. The retail value of those items?

8 A The artwork was around \$2,300. The little chest
9 about \$900, and this little chest over here about \$1,400.

10 Q Looking at State's 124. Is that still within the
11 master bedroom?

12 A It is. It's the piece of artwork that was hanging
13 behind the door.

14 Q Okay. State's 125?

15 A This piece of art here, and, I believe, the mirror
16 that's hanging here as well.

17 Q Okay. And that's still within that master bedroom?

18 A It is.

19 Q What would be the retail value of that piece of art?

20 A About \$900.

21 Q Okay. And, I think, did you already give us the
22 retail value on the mirror?

23 A Uh, no. This is a different mirror that was
24 probably around \$600 or \$700.

25 Q And State's 126?

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1 A There were two of these hanging in the master
2 bathroom. The piece of art, they were probably about \$500 a
3 piece.

4 Q Now, you've stated that eventually after you went
5 around and you tagged all the items belonging to Milton Homer
6 you had requested some of the trucks to come out to pick up
7 that merchandise. Is that correct?

8 A Correct.

9 Q Or those items?

10 A Uh-huh. .

11 Q Looking at State's 127. Is that the Milton Homer
12 truck that -- one of the Milton Homer trucks that came out to
13 pick up --

14 A It is one of them, yes.

15 Q Okay. And looking at State's 128. Would this be
16 the other truck that came out to pick up your merchandise?

17 A That's the other one, correct.

18 Q Okay. Now, you spoke earlier about the fact that
19 some of the items had like um, I think you said, a black
20 ribbon around them that were ribbons that you placed on your
21 items?

22 A Correct. We used the black ribbons to attach all of
23 the tags to the merchandise.

24 Q And in looking at State's 129, is that what we see
25 in this picture?

1 A Right here, yes.

2 Q Okay. And what is it attached to?

3 A This was one of the floral arrangements that was

4 hanging on the wall in the family room downstairs.

5 Q Okay. And I'm just showing you briefly some of

6 these pictures. Looking at State's 130.

7 A Uh-huh.

8 Q Is this where you're getting the merchandise ready

9 to take it and put it onto the trucks?

10 A Correct.

11 Q Okay. And these are items that we've previously

12 already identified by going through the house?

13 A Correct.

14 Q Okay. And 131, again, here's just another picture

15 of the merchandise being loaded onto your trucks, correct?

16 A Correct.

17 Q And the little yellow sticky's. Okay. So would it

18 be fair to say that the merchandise filled up both of those

19 entire trucks?

20 A Yes.

21 Q I think everything -- okay. Now, how long would you

22 say you were at the home that afternoon?

23 A About three hours.

24 Q And at some point after that in that afternoon, were

25 you asked to go to another location?

1 A Yes, as they were loading the merchandise on the
2 trucks I was called and asked to go to a storage unit on
3 Charleston.

4 Q Okay. Now, the property -- the Courts indulgence.
5 The property that was released at Cutler, was that released to
6 you by officer Benson?

7 A It -- I don't believe it was released to me. It was
8 released to either Greg or Jill Thomson.

9 Q Okay. Oh, and you weren't there when they actually
10 officially released it to them?

11 A No.

12 Q Okay. So, now, you stated that you had gone out to
13 Charleston --

14 A Correct.

15 Q -- is that correct? And there was a storage unit
16 there that they had to go out?

17 A Correct.

18 Q When you got to that storage unit did you identify
19 anything as belonging to Milton Homer?

20 A Yes, there was a bronze sculpture and a bronze urn.

21 MS. SMALL: And, Your Honor, just for the record, we're
22 moving to enter in State's Proposed Exhibit 166 to 168, and
23 Ms. Dustin has no objection.

24 THE COURT: It will be admitted.

25 [State's Exhibit 166 through 168 Admitted]

1 MS. SMALL: Thank you.

2 BY MS. SMALL:

3 Q Looking at 166. First of all, what location are we
4 at here when we're looking at this bronze statue?

5 A This is at the Charleston storage unit.

6 Q Okay. And tell us what we're looking at as far as
7 the statue?

8 A That's a bronze sculpture called Bella Donna.

9 Q Okay. And that belonged to Milton Homer?

10 A Yes.

11 Q That was one of the items taken in that previous
12 burglary?

13 A Yes.

14 Q What would be the retail value of that?

15 A That was \$3,000.

16 Q And looking at State's 167, do you recognize
17 anything within that picture as belonging to Milton Homer?

18 A Yeah, this was the bronze urn right here.

19 Q Okay. And is that -- that's different from the
20 previous item we just looked at, correct?

21 A Correct.

22 Q What would be the retail value of that item?

23 A That was \$2,500.

24 Q And, well, State's 168, would that just be a close-
25 up of that?

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1 A Yes.

2 Q Okay. Were these items released to you from the --

3 A Those were released to me.

4 Q From the Charleston --

5 A Correct.

6 Q -- location?

7 MS. SMALL: Pass the witness, Your Honor.

8 THE COURT: Questions?

9 CROSS-EXAMINATION

10 BY MS. DUSTIN:

11 Q Now, I know, sir, we've been through a lot of
12 questions regarding value, have a lot of things, and I know
13 you repetitively said it would be approximately this or
14 approximately that. You don't have the exact number of what
15 the retail went on, and you're doing an approximation, right?

16 A Correct.

17 Q Okay. And that would be retail value not
18 necessarily what Milton Homer would be paying for the item,
19 right?

20 A Correct.

21 Q Okay. And would it also be fair to say that while
22 the Marge Carson items -- I think you said that the couch was
23 a Marge Carson item?

24 A Yes.

25 Q And that Milton Homer at that time was the only

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1 retail location in Las Vegas. You could try to get that
2 particular item in other places, right?

3 A Correct.

4 Q Okay. So you could order it off the internet,
5 right?

6 A No.

7 Q You couldn't get it off the internet?

8 A No.

9 Q I'm sorry. Could you get it from purchasing a
10 catalog and ordering it through a catalog?

11 A No.

12 Q Okay. Could you get it from another location in
13 another state?

14 A Yes.

15 Q Okay. So if I went to Marge Carson and saw the
16 catalogs. They're just display catalogs of what items have?
17 You can't purchase from those catalogs?

18 A You would have to purchase through an authorized
19 dealer.

20 Q Okay. So you can't buy from Marge Carson directly.
21 You'd have to go from a dealer?

22 A Correct.

23 Q Okay. And then let's just look back at State's
24 Exhibit 91. Probably because I didn't pull this up, which
25 tree did you say came from Milton Homer?

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1 A The one on the right, right here.

2 Q Okay. The tree with the -- does it have a clock in
3 it, or?

4 A It doesn't. The clock was standing in front of it,
5 but an urn, a cement, or cast stone urn that the tree was
6 sitting in.

7 Q Okay. And I think you talked about that when you
8 came to the store back in February of 2006, you opened the
9 door and you saw that, once you got the lights on, a lot of
10 things were missing. I think you said that there was such a
11 volume that you weren't able to catalog each and every thing,
12 right?

13 A Not at that exact moment.

14 Q Okay. And you're the only -- at that time Milton
15 Homer was the only place in town that you could find an
16 artificial tree in an urn like that, right?

17 A No.

18 Q Okay. Was there anything else on some of -- and I'm
19 not talking about the furniture, but on the common items like
20 the trees that we've looked at --

21 A Uh-huh.

22 Q Was there something that was distinctive? Did you
23 find one of the black ribbons on the trees, or a price tag on
24 the tree, or anything that basically would show you that that,
25 in fact, came from your store?

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1 A There was not a ribbon or anything like that that I
2 saw on the trees. However, we did have a firm out of Salt
3 Lake that manufactured the trees in specific containers for
4 our store.

5 Q Okay. So you guys had a unique place that you were
6 getting the trees from, so it matched the manufacturer?

7 A Correct.

8 Q Okay. Now -- Courts indulgence. I think we said
9 that the break-in occurred back in February of 2006?

10 A Correct.

11 Q And that you said that the alarm system was
12 completely gone?

13 A Correct.

14 Q And that basically you kind of had no idea what
15 happened with anything until you got that phone call in
16 November of 2006?

17 A The insurance company had been notified, and police
18 reports had been filed.

19 Q Okay. But other than that you had no idea where
20 anything went, or what happened with anything until you the
21 phone call in November, right?

22 A Correct.

23 Q And just to go back, when you looked at all of these
24 pictures aside from the last two items, were they all in one
25 house?

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1 A Yes.

2 Q Okay. And do you recall where that house was?

3 A It was on Cutler Street.

4 Q Okay. And, so when we go through all of these

5 pieces of furniture, and the trees, and the floral

6 arrangements, there all at the Cutler location?

7 A That's correct.

8 Q And, I think, you said that there was just two items

9 that you found at a West Charleston storage unit?

10 A That's correct.

11 Q Were you ever told to go to any other location

12 besides the Cutler or the Charleston location?

13 A I was called regarding an additional warehouse

14 location. I was described, as far as the furniture pieces

15 that were at the location were described as, I think it was, a

16 green leather sofa and loveseat, which we didn't have anything

17 green leather on our floor, and we never sold a sofa loveseat

18 combination, so it clearly was not from Milton Homer.

19 Q Okay. So, as far as you know, from everything that

20 you've been called to look at, or talk to about, it's just

21 been at those two locations?

22 A That's correct.

23 MS. DUSTIN: Nothing further.

24 THE COURT: Anything else?

25 MS. SMALL: Nothing, Your Honor.

1 THE COURT: Thanks, Mr. Giannella. Appreciate your
2 testimony. You're excused. Call your next.
3 MS. DIGIACOMO: Kenneth Salisbury.
4 THE COURT: Salisbury.
5 THE BAILIFF: Salisbury?
6 THE COURT: Come on up, sir.
7 THE CLERK: Please remain standing, and raise your right
8 hand.
9 KENNETH SALISBURY, STATE'S WITNESS, SWORN
10 THE WITNESS: I do.
11 THE CLERK: Thank you. You may be seated.
12 THE COURT: State your name, and spell your name for the
13 court recorder, please.
14 THE WITNESS: Kenneth Salisbury, K-e-n-n-e-t-h, S-a-l-i-
15 s-b-u-r-y.
16 THE COURT: Go ahead, Ms. DiGiacomo.
17 MS. DIGIACOMO: Your Honor?
18 THE COURT: Uh-huh.
19 MS. DIGIACOMO: She wants to approach.
20 THE COURT: Uh-huh. Okay.
21 [Bench Conference Not Transcribed]
22 THE COURT: Go ahead.
23 MS. DIGIACOMO: Thank you.
24 DIRECT EXAMINATION
25 BY MS. DIGIACOMO:

1 Q Sir, how are you employed?
2 A With Las Vegas Metropolitan Police Department.
3 Q And how long have you been so employed?
4 A Four years.
5 Q Directing your attention to September 24th in the
6 early morning hours of approximately 2 o'clock of 2006, were
7 your so employed and working?
8 A I was.
9 Q All right. What was your assignment at that time?
10 A I was in the southwest area command patrol division.
11 Q What shift did you work?
12 A Graveyard.
13 Q So if you were working at two in the morning on
14 September 24, 2006, when would you have gone into work?
15 A Ten the night before.
16 Q And when did --
17 A 10 p.m.
18 Q -- you get off?
19 A Eight the next morning, or that same morning.
20 Q All right. So you'd go in on September 23rd at 10
21 a.m., or, so excuse me, 10 p.m.?
22 A Yes.
23 MS. DIGIACOMO: Do you have an objection?
24 MS. DUSTIN: No.
25 MS. DIGIACOMO: Your Honor, I have here an aerial that's

1 been marked as State's Proposed Exhibit Number 3. I move for
2 admission. Defense Counsel does not have an objection.

3 THE COURT: Admitted.

4 [State's Exhibit 3 Admitted]

5 MS. DIGIACOMO: Thank you.

6 BY MS. DIGIACOMO:

7 Q Sir, at approximately 2:15 in the morning on
8 September 24, 2006, were you dispatched to a call of a
9 burglary?

10 A I was.

11 Q And where was that located?

12 A At the Anku Crystal Palace.

13 Q Do you know the exact location?

14 A I don't remember the exact address.

15 Q All right. Was it on Fort Apache?

16 A It was.

17 Q All right. Now, were you assigned to that call by
18 yourself, or with another officer?

19 A With Officer McDonald.

20 Q What's Officer McDonald's full name?

21 A A Officer Jerry McDonald. He's a sergeant with our
22 department.

23 Q Okay. Did you ever make it to the Anku Crystal
24 Palace?

25 A We did not.

1 Q And why not?

2 A The -- another burglary in progress came out right
3 down the street from our current location in route to the Anku
4 Crystal Palace.

5 Q All right. Now, I'm going to show you State's
6 Exhibit Number 3. It's an aerial map of the area of South
7 Grand Canyon and West Tropicana. Do you recognize this?

8 A Yes.

9 Q Okay. Now, when you were dispatched to a -- or
10 excuse me. When a call came out for a second burglary in
11 progress, where was that location?

12 A I'm sorry. What was your question?

13 Q You said that you didn't make it to the Anku Crystal
14 Palace, because another burglary in progress call came out --

15 A Where was that burglary's location?

16 Q Yes.

17 A It was that building on the southwest corner of that
18 intersection.

19 Q Can you use the -- could you go ahead and circle
20 that?

21 A It was a Just For Kids Children Dentistry, and it is
22 right there.

23 Q What happened when you were getting to that call,
24 or -- well, I'll strike that. Approximately how long did it
25 take you from where you were to get to the Just For Kids

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1 Dentistry?

2 A Within a minute, maybe two minutes. We were on
3 Tropicana already, just at Fort Apache, so in Grand Canyon is
4 the next, I think, major light down was all. I mean, all --

5 Q All right. So show which direction did you come
6 from?

7 A We came westbound on Tropicana towards the business.

8 Q And you're saying we. Was that you and Officer
9 McDonald?

10 A Officer McDonald was in his own separate car, but he
11 was following behind me.

12 Q Okay. So as you come down West Tropicana heading
13 towards Grand Canyon, what happens?

14 A When I get right about here in front of this miss,
15 this area here wasn't there at the time this call happened.

16 Q So on the southeast corner, that building was not
17 there?

18 A It's all new construction. That was a dirt lot.

19 Q Now, where is this miss that you were talking about?

20 A It is on the north side.

21 Q Okay. So the northwest, and excuse me, northeast
22 corner?

23 A Yes.

24 Q Okay.

25 A Like I said that wasn't there. That was a dirt lot.

1 I had direct line of sight into the parking lot for the Just
2 For Kids, and I knew just from that being my area exactly
3 where the Just For Kids Dentistry was on my way there, so I'm
4 already looking there as I approach, and I see a single
5 vehicle in the parking lot.

6 Q Do you recall what kind of a vehicle that was?

7 A It was a white minivan.

8 Q All right. And, so you said you see that in the
9 parking lot. What else is located in that parking lot?

10 A Nothing. There was nothing else in the parking lot.

11 Q There's not a bar named Timbers?

12 A There is in the adjacent parking lot. The adjacent
13 business is Timbers.

14 Q Okay. So the Timbers is down on the corner, the
15 southwest corner of the building?

16 A The northwest corner --

17 Q I'm sorry. The northwest corner?

18 A -- of the same building. Yes.

19 Q And then the Just For Kids was closer to the
20 northeast corner?

21 A Yes.

22 Q Okay. And, so you see only one car anywhere around
23 the dentist's office?

24 A It -- well, not anywhere around. It's parked
25 directly in front of the dentist's office.

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1 Q Okay. And there's no other cars in the parking lot
2 around where that car is parked?

3 A No where near them.

4 Q All right. So what happens at that point?

5 A I let Officer McDonald know over the radio that
6 we're going to be taking down that vehicle first before we
7 check out the business.

8 Q All right. So do you see -- or, I mean, what
9 happens? Where do you go? Where does the car go?

10 A As I'm approaching this intersection I give out that
11 radio traffic. The van starts to move. It's starts to backup
12 from the Just For Kids Dentistry. I head south on Grand
13 Canyon, and Officer McDonald heads west on Tropicana. This
14 road didn't go through here at the time, and this is towards
15 the south end of town, so there's not a whole lot. One, he
16 can't leave westbound unless he goes off-road, and if he goes
17 southbound, which I thought he was going to do there's not a
18 whole lot of town out that way. By splitting up we almost
19 have him boxed in, so our potential suspects can't get away.

20 Q All right. And, so at the point that you see the
21 minivan backing out, you come down Grand Canyon, do you lose
22 sight of the minivan at any point?

23 A Just for a second while I'm turning into this
24 driveway.

25 Q Okay. So you come from behind the Just For Kids

1 Dentistry?

2 A Yes.

3 Q All right. And then where does the white van go?

4 A I guessed wrong. The minivan backed up, and I don't
5 know if he saw me coming down Grand Canyon, but he --

6 MS. DUSTIN: And I'm going to object as to speculation at
7 that particular point. I move to strike.

8 THE COURT: He said he didn't know whether he did or not,
9 so I don't think he's speculating. He just said -- overruled.
10 Go ahead.

11 THE WITNESS: The minivan doesn't leave out the driveway
12 I came in. The minivan moves out the north driveway. Officer
13 McDonald seeing this stops his car right there.

14 BY MS. DIGIACOMO:

15 Q Okay. Then what do you see next?

16 A Next, the minivan comes out -- sorry. I'm where?
17 The minivan comes out and goes eastbound on Tropicana.
18 Officer McDonald is waiting there. I've already come through
19 the parking lot, and I'm attempting to get to the back of it.
20 The -- Officer McDonald flips a u-turn on Tropicana. The
21 minivan goes through, that's a stop sign at that intersection,
22 and I can't erase it. There we go. And, now, the minivan is
23 in front. Officer McDonald's right behind it, and I'm not
24 right behind Officer McDonald as we go through that
25 intersection.

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1 Q Okay. And what happened? Now, what kind of a car
2 are you working in?

3 A A marked police vehicle, black and white, light
4 sirens.

5 Q As the same, was Officer McDonald?

6 A Absolutely.

7 Q All right. And you -- are you both wearing uniforms
8 such as you're wearing in Court here today?

9 A Yes, like this.

10 Q Okay. So what happens at this point?

11 A At this point we conduct a Terry stop, and Officer
12 McDonald activates his lights, and his siren. The van pulls
13 over right in this area here, and we're right behind him all
14 facing eastbound.

15 Q So east of the intersection of Grand Canyon and West
16 Tropicana?

17 A Yes.

18 Q Okay. And who put on their lights and sirens first?

19 A Officer McDonald.

20 Q And are you behind Officer McDonald?

21 A Behind him and off to the side.

22 Q Okay. Now, what happens at this point when the car
23 stops?

24 A We have both occupants of the vehicle step out.
25 Officer McDonald is approaching on the driver side, and I'm

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1 approaching the passenger side of the vehicle.

2 Q What happens at that point?

3 A Officer McDonald has the driver step out. I have
4 the passenger, Mr. Fergason, step out of the passenger front
5 seat.

6 Q Now, you say you have the passenger, Mr. Fergason.
7 Do you know the passenger before that night?

8 A No, I didn't. Just by knowing him there.

9 Q Did you later identify him?

10 A I did.

11 Q Okay. And do you see him in the courtroom here
12 today?

13 A I do.

14 Q And the person you just pointed out, what's he
15 wearing right now?

16 A A green shirt, and it looks like a gray or blue tie.

17 THE COURT: Record will reflect identification of the
18 Defendant Bryan Fergason.

19 BY MS. DIGIACOMO:

20 Q All right. Now, did you ever see who came out of
21 the drivers side?

22 A As we got to the rear of the vehicle, I did see who
23 came out of the drivers side.

24 Q All right. Was he identified as well?

25 A He was.

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1 Q And what was his name?
2 A Daimon Monroe.
3 Q Okay. Now, showing you State's Exhibit 991. Do you
4 recognize this?
5 A Yes, absolutely.
6 Q Okay. And who is this we're looking at?
7 A That is Daimon Monroe, the driver.
8 Q Okay. Is that the way he looked that night in
9 September of 2006?
10 A Yes.
11 Q I'm also going to show you what's been marked for
12 identification State's Exhibit 993. Do you recognize this?
13 A Yes.
14 Q Okay. And how do you recognize it?
15 A That's Mr. Ferguson from that night.
16 Q Okay. This is the way he looked that night on
17 September 24, 2006?
18 A Yes.
19 MS. DIGIACOMO: Your Honor, I move for identification.
20 THE COURT: Any objection?
21 MS. DIGIACOMO: Excuse me, I move for admission.
22 MS. DUSTIN: No objection.
23 THE COURT: It'll be admitted.
24 [State's Exhibit 993 Admitted]
25 MS. DIGIACOMO: And, just for the record, putting 993.

1 BY MS. DIGIACOMO:

2 Q This is Mr. Ferguson?

3 A Yes.

4 Q The way he looked that night?

5 A Yes.

6 Q Okay. So as the -- both gentlemen are, you said
7 they were taken out of the car and brought to the back of the
8 patrol vehicle?

9 A Brought back to the front of the patrol vehicle,
10 yes.

11 Q Front, okay. What happened at that point?

12 A We had both subjects step in front of the patrol
13 vehicle. Officer McDonald is acting as a contact officer, and
14 I'm acting as a cover officer.

15 Q What do you do at that point?

16 A Once I see that he has control of both subjects in
17 front of the patrol car, I go back to the minivan.

18 Q What's the purpose of going back to the minivan?

19 A The purpose of going back to the minivan is make
20 sure nobody else is inside the minivan waiting for us with a
21 surprise.

22 Q Couldn't you just see through the windows of the
23 minivan?

24 A No, I can not. They're tinted, and it night time.
25 Very hard to see in.

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1 Q So what did you do?

2 A The -- Mr. Ferguson had left the passenger front
3 door opened to the minivan, so I had leaned, if this is the
4 minivan's door and the minivan's facing this way, I just
5 leaned inside the minivan.

6 Q And you had -- you were acting as if you're gun is
7 drawn. You have --

8 A Absolutely, yes.

9 Q Okay. You have your gun drawn in front of you?

10 A Yes.

11 Q And what's the purpose of leaning into the minivan?

12 A So I could get a better visual inside the minivan
13 without putting my face up next to the glass.

14 Q So it's just to see if anyone else is in there?

15 A A protective sweep to make sure nobody else is
16 inside the vehicle.

17 Q All right. When you lean into the minivan, do you
18 see any other people?

19 A No, I do not.

20 Q Do you see anything that catches your eye?

21 A I did.

22 Q What was that?

23 A In -- there's two bucket seats in the minivan, the
24 passenger seat and the drivers seat, as I'm doing my
25 protective sweep, I come inside and I go like this, and

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1 something catches the light off my gun, and it's glass. And
2 for a second I'm thinking it's a piece of broken glass, just
3 for a split second I look closer, and it's like a polished
4 glass, and I'm like that's weird. I don't know what that's
5 doing in here, but finish my sweep, and get out of the car.

6 Q Now, showing you State's Exhibit 574. Do you
7 recognize this photograph?

8 A Yes.

9 Q And what are we looking at here?

10 A The area I described between the drivers seat and
11 the passengers seat. This is the floorboard, and this is the
12 polished glass object right there.

13 Q Okay. So after you do the sweep, no one else is in
14 the car, what happens at that point?

15 A I go back to the car, and act again as a cover
16 officer while Officer McDonald solicits their names, date of
17 births.

18 Q All right. Did you also do a pat down of each of
19 these suspects?

20 A Yes.

21 Q All right. Now, when you did a pat down of Mr.
22 Ferguson did you feel anything?

23 A Yes.

24 Q Okay. What was that?

25 A He had some bulge in his front pants pocket. I

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1 asked him what it was, and he said that they were bracelets.

2 Q All right. At that point did you go into his
3 pocket?

4 A No, I did not.

5 Q Okay. Are you present when Officer McDonald is
6 questioning both of the suspects?

7 A Yes.

8 Q Okay. And what was Officer McDonald asking?

9 MS. DUSTIN: Objection, hearsay.

10 MS. DIGIACOMO: Well, it's just to lay foundation for
11 what their statements are, which their statements are not
12 hearsay.

13 THE COURT: Go ahead. Overruled.

14 BY MS. DIGIACOMO:

15 Q Okay.

16 A Officer McDonald was specifically soliciting their
17 names and date of birth, so we can do a records check at that
18 point.

19 Q Okay. Did he also ask if they worked, or what they
20 were doing in that area of town?

21 A I did as he was in the car running their names and
22 date of births on the computer.

23 Q Well, oh, I'm sorry. You did?

24 A Yes.

25 Q Okay. So you asked them what they were doing on

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1 that side of town?

2 A Yes.

3 Q All right. And what did Mr. Monroe and Mr. Ferguson
4 tell you?

5 A They didn't have any legitimate reason. They didn't
6 have anything to say.

7 Q Okay. Did you ask them whether or not either or one
8 of them work?

9 A Yes.

10 Q And what did Mr. Monroe tell you?

11 A Mr. Monroe told me that they both worked at, I think
12 it was, J&B's Pressure Washing. I can't remember the name of
13 the company, but they worked for a pressure washing company.

14 Q All right. And did Mr. Ferguson say anything
15 regarding that?

16 A No, he did not.

17 Q Okay. So he didn't say, no, I don't?

18 A Nothing like that at all.

19 Q Okay. And did you ask them where they lived?

20 A I did.

21 Q And where did Mr. Monroe live?

22 A He said that they lived at 1501 East Katie. It
23 was -- I think it was the 1500 block of East Katie. It was
24 something on the complete other side of town.

25 Q Okay. And they both gave the same address?

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1 A Yes.

2 Q At some point -- well, let me ask you this, did
3 other officers, why you were at this car stop, did other
4 officers respond to the Just For Kids Dentistry where the
5 burglary in progress was supposed to be?

6 A Yes.

7 Q Okay. Did you speak with any of those officers
8 regarding what they found in their investigation?

9 A Yes, I did.

10 Q All right. And did one of those officers actually
11 go over to the Anku Crystal Palace?

12 A Yes.

13 Q All right. At some point were you in phone contact
14 with officers at the Anku Crystal Palace?

15 A Yes.

16 Q All right. And based upon what they had told you
17 over the phone, did you then place both Mr. Monroe and Mr.
18 Ferguson under arrest?

19 A I did.

20 Q Okay. Now, did you call ID out to the scene later
21 to photograph the car and the contents?

22 A I did.

23 Q Okay. Now, showing you, first of all, State's
24 Exhibit 502. What are we looking at there?

25 A That's the -- this is the minivan in question that

1 we stopped, and this is after ID has come out to the scene,
2 opened the doors, and started photographs.

3 Q Okay. So when you initially stopped this vehicle,
4 the back end and the side door weren't open?

5 A Not at all.

6 Q Just the front passenger door?

7 A Yes.

8 Q And then showing you State's Exhibit 507, is this
9 the backend of that car?

10 A This is the rear end of the minivan.

11 Q All right. And this is before anything's been
12 removed?

13 A Yes.

14 Q Now, showing you State's Exhibit 510. What are we
15 looking at here?

16 A This is the -- a close-up of that same rearview of
17 the van. This is that rear seat and at the bottom that's the
18 end of a crowbar.

19 Q Showing you State's Exhibit 515. What's next to the
20 crystal or glass piece that you initially saw when you did the
21 protective sweep?

22 A These are like a specialized --

23 MS. DUSTIN: And I'll object right there, because I don't
24 think he's qualified to be able to give that kind of an
25 answer.

1 THE COURT: Sustained. Just, from your observation, what
2 does that appear to be?

3 THE WITNESS: It's a bracelet, but it's not a normal gold
4 bracelet. It's like a stone bracelet.

5 MS. DUSTIN: Objection, move to strike.

6 MS. DIGIACOMO: I think he can say it's --

7 THE COURT: Yeah, he says it's a stone bracelet. He can
8 say that.

9 MS. DIGIACOMO: Thank you.

10 THE COURT: Go ahead.

11 BY MS. DIGIACOMO:

12 Q All right. And what's next to the bracelet and the
13 crystal piece?

14 A Those are black gloves.

15 Q Showing you State's Exhibit 516. What are we
16 looking at here?

17 A This is the second row of seats that you would see
18 through the slider on the minivan. This is that front
19 passenger seat. Those bracelets we saw in the previous
20 picture are right down here. This is a hammer with the handle
21 covered with duct tape. There were some things of sour cream,
22 eggs on the backseat, bananas, and this is a laptop.

23 Q Showing you State's Exhibit 517?

24 A This is a close-up of that same hammer.

25 Q That was behind the sour cream?

1 A Yes.

2 Q Now, showing you State's Exhibit 518. There's also
3 a black handle with a long shaft area kind of tool. What is
4 that?

5 A It's a pry bar.

6 Q Showing you State's Exhibit 523. It think it goes
7 more like this. Do you recognize what's depicted here?

8 A This is between the second and third row of seats in
9 the minivan, and this is a Nintendo GameCube, and there were
10 games scattered about, and this back here is a set of bolt
11 cutters, and, I believe, that's the end of the crowbar that we
12 saw earlier.

13 Q And showing you State's Exhibit 524. Can you see
14 the bolt cutters more closely?

15 A Yes, the --

16 Q Go ahead.

17 A And there's another bent tool there.

18 Q Now, you say it's a bent tool. Is it bent --

19 A It's not inherently made to be bent, no.

20 Q Okay. So it doesn't come like that

21 A No.

22 Q Okay. Showing you 525. Can you see that that bent
23 tool?

24 A It's the same thing.

25 Q Is it the one with the orange handle?

1 A It is.

2 Q Showing you State's Exhibit 528. What are we
3 looking at here?

4 A This is the front drivers seat, and underneath it is
5 another hammer with, again, with the handle covered with duct
6 tape.

7 Q Showing you State's Exhibit 529?

8 A This is a close-up of the same hammer. There is a
9 screwdriver here, and, again, here's that glass piece in
10 between the two seats.

11 Q Now, did you -- after arresting Mr. Ferguson did you
12 do a search incident to arrest on his per se?

13 A I did.

14 Q All right. The item, the bulge that you had felt in
15 his pocket earlier, did you pull those items out?

16 A The bracelets. He said, yes, I did pull them out.

17 Q All right. And were there two bracelets in there?

18 A There were.

19 Q All right. Now, showing you State's Exhibit 531.

20 Are these the two bracelets that you took out of Mr.
21 Ferguson's pocket?

22 A Yes.

23 Q All right. Did you find any money on two of them?

24 A I did.

25 Q Okay. Where was the money located?

1 A He had money in two separate areas of his pockets.
2 One, he had just a crumpled nasty just dollar bill in his
3 front pants pocket. I asked him if it was his. He said, yes.
4 Is this where you keep your cash? He said, yes.

5 Q All right. And then later did you find more cash on
6 him?

7 A Then I took out his wallet, I went through his
8 wallet, and I obtained a different set of denominations of
9 bills.

10 Q All right. What did that money look like that you
11 pulled out of his wallet?

12 A All of the -- all of the money that was in his
13 wallet was stacked accordingly, five, five, five, five. I
14 think there was a couple of tens, and then 20, 20. It was
15 stacked all equally, and they're denominations, all the bills,
16 not all the bills, but most of all the five dollar bills were
17 like new crisp bills.

18 Q All right. Now, showing you State's Exhibit 533.
19 Is this a photograph of the 20 dollar bills that was found in
20 his wallet?

21 A Yes.

22 Q Showing you State's Exhibit 534. What are we
23 looking at there?

24 A The tens obtained from his wallet.

25 Q Now, showing you State's Exhibit 535. What are we

1 looking at there?

2 A These are the fives obtained from him.

3 Q And showing you 536, is this a picture of some of
4 those five dollar bills?

5 A Yes.

6 Q Okay. What's the purpose of taking this picture?

7 A I had the ID tech take this picture specifically.
8 It doesn't show up very well in the picture, but the -- I
9 mean, these are like brand new crisp five dollar bills. Like
10 when -- the ones that you get from the bank that you separate
11 with your fingers to make sure you're giving the checker two
12 of them.

13 Q Now, the items -- well, no, strike that. Did Mr.
14 George Hung ever come over to the car stop where you were
15 located?

16 A He did.

17 Q Okay. And did he identify some of the belongings as
18 being his in the car?

19 A He did.

20 Q All right. What -- do you recall what those items
21 were?

22 A He identified, first, the glass piece in between the
23 two seats. He identified those bracelets that he saw. As
24 soon as the ID tech opened up that passenger side slider, he
25 said, that's my sons GameCube, and those are his games.

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1 Q Okay. And what about a laptop?

2 A I don't have a direct recollection of remembering
3 whether or not that laptop was his. I would have to refer to
4 the property report.

5 Q And what about the wood pieces in the back of the
6 car?

7 A And the wood pieces in the back of the car, he also
8 said were from his business.

9 Q Were all of the items he identified in the car as
10 belonging to him eventually released to him that night?

11 A I believe so.

12 Q Okay. And the two bracelets that were found on Mr.
13 Ferguson, were those released to Mr. Hung as well?

14 A I would have to refer to the property sheet to tell
15 exactly which items were released, and which were impounded as
16 evidence.

17 Q Okay. And what about the money that was found on
18 Mr. Ferguson?

19 A I believe the petty cash was released to Mr. Hung.

20 Q Okay. Now, showing you State's Exhibit 539. Do you
21 recognize everything that's depicted in this photograph?

22 A I do.

23 Q All right. Are these all the items that were
24 impounded from the car that night?

25 A Yes.

1 Q All right. And all of these tools that are laid out
2 here, based upon your training and experience, did this,
3 these -- all of these tools collectively have significance to
4 you?

5 A Yes.

6 Q Okay. Now, for instance, you had said that the two
7 hammers had duct tape on them. Based on your training and
8 experience --

9 MS. DUSTIN: I'll object. He's not been noticed as an
10 expert, Your Honor.

11 MS. DIGIACOMO: He's not an expert. It's just --

12 THE COURT: And I'm not sure he's giving an expert
13 opinion.

14 MS. DUSTIN: Well, it's based upon, Your Honor, with all
15 due respect, she's qualified him, and she's asking based upon
16 his training and experience, so she's asking for an expert
17 opinion at this particular point.

18 THE COURT: Sustained. I think the jury can figure it
19 out.

20 MS. DUSTIN: Oh, okay.

21 BY MS. DIGIACOMO:

22 Q So did you, based upon all of these tools that were
23 impounded, did you arrest him for anything regarding all these
24 tools?

25 A Yes.

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1 Q And what was that?

2 MS. DUSTIN: And I'll object, because I think that's
3 outside the scope.

4 THE COURT: Well, overruled, sustained. And overruled.
5 He can testify to that.

6 BY MS. DIGIACOMO:

7 Q All right. What did you arrest Mr. Monroe or Mr.
8 Fergason for?

9 A Based on the fact that I did arrest them, because I
10 believed that they had committed a burglary, and that these
11 were, in fact, not pressure washing tools. I based them to be
12 burglary tools, and I arrested them for that as well.

13 Q Okay. Both of them?

14 A Yes.

15 Q Okay. Showing you State's Exhibit 547. What are we
16 looking at here?

17 A Registration certificate from that evening on the
18 minivan.

19 Q All right. That is who the white Plymouth was
20 registered to?

21 A Yes.

22 Q And it was Tonya Trevarthen?

23 A Yes.

24 MS. DIGIACOMO: I'll pass the witness.

25 THE COURT: Questions?

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1 THE WITNESS: Do you mind if I steal some of your water,
2 again, Your Honor?

3 THE COURT: No, here's some.

4 THE WITNESS: Thank you. Appreciate it. Thank you, Your
5 Honor.

6 THE COURT: Go ahead.

7 CROSS-EXAMINATION

8 BY MS. DUSTIN:

9 Q Officer, back on that night you filled out a
10 declaration of arrest, right?

11 A Yes.

12 Q And a declaration of arrest was your sworn
13 testimony, right?

14 A Yes.

15 Q And isn't it true that in that declaration of arrest
16 you put down that you stopped them for a traffic stop?

17 A Yes.

18 Q And isn't it true that one of the basis's of the
19 traffic stop, and when you pulled them out, is that they
20 appeared to be inebriated, or on some form of substance?

21 A I would have to refer to my report.

22 MS. DUSTIN: Court's indulgence. Can I approach?

23 THE COURT: Sure. Don't have to ask. It's --

24 BY MS. DUSTIN:

25 Q Officer, I'm just going to have you glance at this

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1 to refresh your recollection, and then I'll ask you again.

2 A Okay. What was your question?

3 Q Isn't it true that you became suspicious that they
4 might be under the influence of either alcohol or drugs?

5 A Yes.

6 Q Did you do any field sobriety tests on them?

7 A No, I did not.

8 Q Did you watch Officer McDonald do any field sobriety
9 tests on them?

10 A No, I did not.

11 Q Did you or Officer McDonald go to the Just For Kids
12 Dentistry?

13 A No, we did not.

14 Q Okay. But other officers did go to the Just For
15 Kids Dentistry?

16 A Yes.

17 Q And at some point did you get information that lead
18 you to believe that nothing at that moment appeared to have
19 happened at the Just For Kids Dentistry?

20 A Yes.

21 Q Okay. Now, you said that at that time you were
22 still detaining Mr. Monroe and Mr. Ferguson, right?

23 A No, at that time they were under arrest.

24 Q Okay. So before the information got back to you
25 regarding Just For Kids Dentistry, they were under arrest?

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1 A Yes.

2 Q Okay. And were you already searching the van inside
3 until the arrest at that time?

4 A No, I never searched the van inside until the
5 arrest.

6 Q Okay. So you never opened up the doors and started
7 going through the van?

8 A No. Like I said before I had the ID tech do that.

9 Q Okay. So it wasn't until ID got there that all the
10 doors started being opened up to the van?

11 A With Mr. Hung, yes.

12 Q Okay. So if somebody comes in here and says, well,
13 before anybody even went to the Anku Crystal Palace all of the
14 doors to this van were wide open, they would be incorrect,
15 right?

16 A Absolutely, yes.

17 Q Okay. And you said that you asked some questions
18 regarding where these two individuals lived, what they were
19 doing, and what they did for work, right?

20 A Yes.

21 Q Okay. And you said that Mr. Fergason wasn't
22 responding at those times, right?

23 A Yes, that's what I said.

24 Q Okay. That somebody else was answering the
25 questions?

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1 A Yes.

2 Q Okay. And that you were just inferring, because he
3 wasn't saying anything to you, that he was agreeing with
4 everything that the other person, Mr. Monroe, was saying,
5 right?

6 A Yes.

7 Q Okay. At anytime were you giving him his rights to
8 remain silent?

9 A No, I did not.

10 Q Did you give it to him after he was under arrest?

11 A No, I did not.

12 Q Okay. So you've been a police officer for four
13 years now?

14 A Yes.

15 Q And you're familiar with Miranda, right?

16 A I am.

17 Q Okay. And I'm sure it's fair to say that it's
18 pretty common place that you have the right to remain silent,
19 right?

20 A No, not at all.

21 Q Okay. Well, you didn't give Mr. Fergason any
22 Miranda warnings, right?

23 A And he wasn't under arrest.

24 Q Well, I thought you said when you put him under
25 arrest that you still didn't give him any Miranda warnings?

1 A I didn't investigate him any further after he was
2 under arrest.

3 Q Okay. So you didn't ask him any other questions?

4 A No, I did not.

5 Q Isn't it true, sir, that you felt that he was under
6 arrest from the moment that you stopped that van?

7 A What's that?

8 Q Isn't it true that you felt that he was under arrest
9 the minute that you stopped that van?

10 A No.

11 Q No. So he would be free to leave if everything came
12 back as being fine?

13 A No.

14 Q All right. Now, you said that you stopped him
15 relatively right outside the parking lot for the Just For Kids
16 Dentistry? Was he fairly close to that parking lot?

17 A I wouldn't say so, no.

18 Q Okay. Would you say that he was a block down the
19 road, quarter mile down the road, half a mile down the road?

20 A I pointed it out on the map. That's about the best
21 I can do.

22 Q Okay. Well, you were there that night, right?

23 A Yes.

24 Q Okay. Well, was he stopped right going through the
25 intersection?

1 A I pointed it out on the map. Would you like me to
2 do that again?

3 Q Sure. I'm showing you State's Exhibit Number 3.
4 Can you please mark where the Just For Kids Dentistry was?

5 A Right there.

6 Q Where did you stop the van?

7 A Right there, and if you look at the photo of the van
8 you can see the tapering off of that white line.

9 Q Okay. And you said that you were traveling
10 westbound on Tropicana?

11 A No, eastbound on West Tropicana.

12 Q Okay. You were -- so you were traveling --

13 THE COURT: Wait a minute. Time out. I think that the
14 question is unclear. Are you talking about when they first --

15 MS. DUSTIN: And I was going --

16 THE COURT: -- got the call of burglary in progress, or
17 are you talking about at the point they pulled the vehicle
18 over, because it's different.

19 MS. DUSTIN: And that's what I was going to clarify.

20 BY MS. DUSTIN:

21 Q When you first got the call, which direction were
22 you traveling on Tropicana?

23 A Westbound.

24 Q Okay. So you were headed coming up Tropicana
25 towards Grand Canyon Drive?

1 A Yes.

2 Q Okay. And, I think, you said that you made a left
3 on Grand Canyon Drive?

4 A Yes.

5 Q And that you entered into the parking lot, right?

6 A Yes.

7 Q Okay. And where do you recall you were on Tropicana
8 Avenue when you got the call to switch to the Just For Kids
9 Dentistry?

10 A I believe we were on Fort Apache just south of
11 Tropicana.

12 Q Okay. So you were at a location that does not show
13 on this map, right?

14 A Yes, you're correct.

15 Q Okay. And that's when you got the call that it
16 looked like something was going on, right?

17 A Yes.

18 Q Okay. And you said that the van was stopped in
19 front of Just For Kids Dentistry as you were approaching it?

20 A Yes.

21 Q Okay. And, I think, you said that the development
22 right here was not there at that time?

23 A It was not.

24 Q Okay. And, so that -- what time of night was this?

25 A It was approximately two. I don't remember the

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1 exact minute.

2 Q Okay. So 2 a.m. in the morning roughly?

3 A Yes.

4 Q Give or take a little bit?

5 A Yes.

6 Q So it was dark out, right?

7 A Yes.

8 Q And, so would it be fair to say that since this area
9 here was under construction that it wasn't very well
10 illuminated?

11 A I didn't say it was under construction. I said it
12 was a dirt lot.

13 Q Okay. I'll take it back. Because it was a dirt
14 lot, would it be fair to say that it wasn't really illuminated
15 over there?

16 A Yes.

17 Q Okay. But the shopping center over here was
18 illuminated?

19 A Yes.

20 Q And you said that you could see the white van from
21 your vantage point coming up Tropicana?

22 A Yes.

23 Q And that there were no other cars over by the Just
24 For Kids Dentistry?

25 A Yes.

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1 Q And how far away from Timbers is Just For Kids
2 Dentistry?

3 A It's that same building complex. The Timbers
4 entrance doors were right there, and the Just For Kids is
5 already marked.

6 Q Okay. Would you say that Just For Kids is right
7 next door to Timbers, or like there's another business in
8 between?

9 A No, I believe there's a business or two in between
10 them.

11 Q Okay. So is Just For Kids right at the corner, or
12 is kind of in the middle? Is it the very end unit on that
13 shopping center?

14 A Yeah, I don't believe it is.

15 Q Okay.

16 A I would have to see the building again to refresh my
17 memory.

18 Q Okay. And, so you said that there were no other
19 cars in front of Just For Kids Dentistry?

20 A Yes.

21 Q Okay. And that's what clued you in to having cause
22 for concern of the van?

23 A Yes.

24 Q Okay.

25 MS. DUSTIN: Court's indulgence.

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1 BY MS. DUSTIN:

2 Q And just to clarify, you said that you were in phone
3 contact with officers that had responded to the Anku Crystal
4 Palace at the time that you were having the Just For Kids
5 Dentistry looked into?

6 A What was question? I'm sorry.

7 Q Okay. And I'll ask, you said that you were in phone
8 contact with officers who were responding to Anku Crystal
9 Palace. Was that at the same time that officers were checking
10 into the dentist location as well?

11 A I'm trying to remember. I mean, roughly thereabout.
12 I don't remember at the exact same time, no. For the most
13 part, I was in contact with one officer, but he was at both
14 locations, so I would say, no.

15 Q Okay. So is it fair to say -- do you recall that
16 officers name?

17 A Officer Hardman.

18 Q I'm sorry?

19 A Officer Hardman.

20 Q Hardman?

21 A Yes.

22 Q So is it fair to say Officer Hardman was at the
23 dentist location prior to the Anku Crystal Palace location
24 based upon your information that night?

25 A I couldn't tell you where he was at.

1 Q Okay.

2 A At which time.

3 Q But you do know that he -- you spoke to him at both
4 locations?

5 A He came -- no, I didn't speak to him at locations.
6 He was calling me. He came by the area where we were at with
7 the white van one time, went to the Anku Crystal Palace, which
8 other officers were already there, spoke with the victim Mr.
9 Hung, called me, I had placed them under arrest, and Officer
10 Hardman came back --

11 Q Okay.

12 A -- and so did Mr. Hung, came to the scene.

13 Q All right. So you were -- and I just want to
14 clarify, you were in contact with other officers at -- who
15 were at the Anku Crystal Palace prior to you getting
16 verification that everything was fine at Just For Kids
17 Dentistry -- everything looked secure at Just For Kids
18 Dentistry?

19 A

20 MS. DUSTIN: Nothing further.

21 THE COURT: Anything else?

22 MS. DIGIACOMO: Yes.

23 REDIRECT EXAMINATION

24 BY MS. DIGIACOMO:

25 Q Just to be clear, the night of September 24, 2006,

1 you said you arrested Mr. Monroe and Mr. Fergason. What did
2 you arrest them for?

3 A The exact charges, ma'am?

4 Q Yeah, well, let me -- I guess I can clarify. It was
5 for the burglary at Anku Crystal Palace, but not for Just For
6 Kids Dentistry, correct?

7 A That is correct.

8 Q All right. Now, at the time that you and Officer
9 McDonald stopped the van, what was the purpose of stopping the
10 van?

11 A It was a Terry stop. We were investigating a
12 burglary at the Just For Kids Children Dentistry.

13 Q So it was an investigative detention?

14 A Yes.

15 Q All right. During an investigative detention,
16 Miranda rights aren't required?

17 A Not applicable at all.

18 Q Okay. But after a defendant is arrested they are
19 required before questioning them?

20 A If you question them, yes.

21 Q All right. But it's your testimony that after you
22 arrested Mr. Monroe and Mr. Fergason you did not question
23 them?

24 A I had no further need to question them.

25 MS. DIGIACOMO: Nothing further.

1 THE COURT: Anything else, Ms. Dustin?
2 MS. DUSTIN: No, Your Honor.
3 THE COURT: Thanks, Officer. Appreciate your time.
4 THE WITNESS: Thank you, sir.
5 THE COURT: You're excused.
6 THE WITNESS: Have a good day.
7 THE COURT: Next?
8 MS. SMALL: Stephen Gordon.
9 THE COURT: Is this the doctor?
10 MS. DIGIACOMO: Yes.
11 MS. SMALL: Yes, Your Honor.
12 THE COURT: What Count?
13 MS. SMALL: Count --
14 MS. DIGIACOMO: 20.
15 MS. SMALL: -- XX.
16 THE COURT: Come up, doctor. How are you?
17 THE CLERK: Please remain standing, and raise your right
18 hand.
19 STEPHEN GORDON, M.D., STATE'S WITNESS, SWORN
20 THE WITNESS: I do.
21 THE CLERK: Thank you. You may be seated.
22 THE COURT: Doctor, please give your name, and spell your
23 name for the court recorder.
24 THE WITNESS: My name is Stephen, S-t-e-p-h-e-n, Gordon,
25 G-o-r-d-o-n.

1 THE COURT: Go ahead.

2 DIRECT EXAMINATION

3 BY MS. SMALL:

4 Q Dr. Gordon, sir, what type of a doctor are you?

5 A I'm a plastic surgeon.

6 Q And how long have you been a plastic surgeon?

7 A Since 1979.

8 Q Okay. Do you have an office located here in Las
9 Vegas?

10 A Yes, I do.

11 Q And how long have you had that office?

12 A Since 1998.

13 Q And where is that office located?

14 A It's at 7710 West Sahara Avenue, Las Vegas, Nevada.

15 Q I'm going to draw your attention, sir, to June 21st
16 of 2003. Did something happen at your office on that day?

17 A Yes, that was a Saturday morning and I came to my
18 office, unlocked the door, and discovered that my alarm system
19 had been disabled, and that there was quite a bit of office
20 property strewn about the office.

21 Q Now, you said that your alarm system had been
22 disabled. What did you mean? What did you see?

23 A When I went back to check the alarm the battery had
24 been removed, and part of the alarm itself had been removed
25 from the premises.

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1 Q Okay. Now, once you got in there and you saw that
2 things weren't as they should be did you notice anything was
3 missing from your office?

4 A Yes, quite a few things were missing.

5 Q Okay. What was that?

6 A Computers -- 11 computers were missing. Three
7 televisions with built-in VCR's were gone. Two large
8 tapestries that were in my waiting area, it was removed.
9 Drugs were removed from a drug -- double locked drug cabinet
10 in the surgical suite. Cosmetic surgical instruments as well
11 as clothing were removed. Bags were removed, and skin care
12 products were removed.

13 Q Okay. Did you contact the police department?

14 A Yes, we did.

15 Q And did they come out?

16 A Yes, they did.

17 Q Did you give a report?

18 A Yes, I did.

19 Q And were you able to give a report based on every
20 single thing that was missing from your office?

21 A Well, we gave a report based on our collective
22 impression, me and my staff, of what was missing. Yes, we
23 did.

24 Q Okay. And at some point after that date, did you
25 receive information that possibly some of your items that had

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1 been taken from your office had been recovered?

2 A Yes, I did.

3 Q And what did you do in response to that?

4 A I was able to appear and identify two large
5 tapestries that were -- that I purchased in Phuket several
6 years ago that had been recovered.

7 MS. SMALL: Drawing the Court's attention to State's 329
8 to 333, and I believe all of these have been marked into
9 evidence. And then drawing the Court's attention to State's
10 Proposed Exhibits 334 to 339, and we would move to enter those
11 into evidence at this time, Your Honor. Ms. Dustin has no
12 objection.

13 MS. DUSTIN: That's correct.

14 THE COURT: Admitted.

15 [State's Exhibit 334 through 339 Admitted]

16 BY MS. SMALL:

17 Q Doctor, I'm showing you State's 329.

18 A Okay.

19 Q The first that I would ask you, sir, is do you
20 recognize where this picture was taken?

21 A No, I do not.

22 Q Is there something in the picture that you recognize
23 as belonging to you?

24 A Yes, I recognize this tapestry right here as
25 belonging to me.

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1 Q And would that tapestry be one of the tapestries
2 that was taken from your office in that 2003 burglary?
3 A Yes, it would be.
4 Q Okay. Looking at State's 330. And, again, I would
5 ask you do you recognize the place that this picture was
6 taken?
7 A No, I do not.
8 Q And do you recognize something in the picture
9 belonging to you?
10 A I recognize this tapestry as belonging to me also.
11 Q Okay. Looking at State's 331. Again, do you
12 recognize the place that the picture is taken from?
13 A No, ma'am.
14 Q And do you recognize something in the picture
15 belonging to you?
16 A Yes, I recognize the tapestry above the doorway that
17 belongs to me.
18 Q And could you just circle that for the ladies and
19 gentlemen of the jury?
20 A Right here.
21 Q Thank you. Looking at State's 332. Again, is there
22 something in this picture that you recognize?
23 A Yes, I recognize this. This is another picture of
24 that same tapestry. Right -- yeah, well, obviously.
25 Q Thank you. Looking at State's 333. Is there

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1 something in this picture that you recognize as belonging to
2 you?

3 A It appears as though the lower right hand corner of
4 this tapestry is visible right here.

5 Q Okay. How do you know -- I mean, you just got
6 through stating that you don't recognize the location where
7 the tapestries are --

8 A Uh-huh.

9 Q -- how do you know those tapestries belong to you?

10 A Because they had an identification on the back of
11 them that was used by the detective to find me.

12 Q So at some point you stated that you were contacted
13 as to these possible tapestries being recovered?

14 A Right.

15 Q Did you go somewhere to identify them?

16 A Yes, I did.

17 Q Where did you go?

18 A I went to a police, I'd guess you'd call it a
19 warehouse, where they had presumably stolen but recovered
20 merchandise, and I was asked to once again identify these
21 tapestries, and I did that.

22 Q And looking at State's 334, is that one of those
23 tapestries that you identified?

24 A Yes, this is. Yes, ma'am.

25 Q Now, looking at this particular picture can you tell

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1 us the value of this tapestry?

2 A Yes, that tapestry was appraised at \$2,700.

3 Q So you did have an appraiser come out and appraise
4 the tapestry?

5 MS. DUSTIN: Objection, hearsay.

6 THE COURT: No, I think he can testify as to value of his
7 own property regardless of what kind of source he had.

8 MS. SMALL: Thank you, Your Honor.

9 MS. DUSTIN: Well, then, Your Honor, I'd ask for a little
10 bit more foundation as to how he got that appraisal. Hang on.

11 THE COURT: If you want to ask a question on voir dire
12 right now you may.

13 MS. DUSTIN: When did you have the appraisal done?

14 THE WITNESS: The appraisal was done by the insurance
15 company in an effort to provide compensation for this lost
16 property.

17 MS. DUSTIN: So it was after the property was --

18 THE WITNESS: That's right.

19 MS. DUSTIN: When it was taken?

20 THE WITNESS: Right.

21 MS. DUSTIN: I'll still object, Your Honor.

22 THE COURT: Okay. Overruled. Go ahead.

23 BY MS. SMALL:

24 Q And can you describe the tapestry to us? I mean --

25 A Well, this --

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1 Q -- what made it so valuable?

2 A This was a handmade tapestry that was bought in 1991
3 in Phuket, Thailand. I literally found it on the floor in a
4 closet of an antique dealer's shop, and it is hand woven, of
5 course, and it has quite a bit of extensive bead work and that
6 sort of thing, and it was purchased, brought back to the
7 United States, and then it was framed, and it was framed a
8 second time in a plexiglass container to protect it, and
9 that's how it was in my office when it was taken.

10 Q So you recognize the frame, also, then?

11 A Oh, definitely.

12 Q Would that be correct?

13 A Yes.

14 Q And you paid for it to be reframed?

15 A Yes, I did.

16 Q What did you pay for it to have it --

17 A Well, it wasn't framed at all when I got it. I
18 paid -- oh, man. I paid probably about \$5,000 to get it
19 framed, but I'm -- that's my recollection. I don't exactly
20 the amount.

21 Q Okay. I'm going to show you State's 335. Do you
22 recognize what's depicted in this?

23 A Yeah, that's a partially damaged logo, or sign,
24 or -- from Art Encounters, and those are the people who framed
25 the artwork for me.

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1 Q Okay. Now, I'm going to show you State's 337. Do
2 you recognize what's depicted in this picture?

3 A Yes.

4 Q And would that be the other tapestry that was
5 recovered?

6 A That's the other tapestry, right.

7 Q Okay. And what would be the value of that tapestry?

8 A Well, the same insurance company appraised that one
9 at 2250, \$2,250.

10 Q And did you get this tapestry the same place that
11 you got the other one?

12 A Yes, ma'am.

13 Q Okay. And then I'm just going to show you 339.
14 What are we looking at here in this picture?

15 A You're looking at a picture of me standing at the
16 police, I don't know if you call it impound, but where the
17 property was located, and they asked me to come down and
18 identify it, and I did, and then they took a picture of me
19 next to the tapestries.

20 Q And I think that the striking thing about this
21 picture is the size of these tapestries. I mean --

22 A Oh, yeah.

23 Q -- they were fairly large?

24 A Yes, they were.

25 Q Did you -- have you recovered these tapestries at

1 this point?

2 A No, they're still in police custody.

3 MS. SMALL: Pass the witness.

4 THE COURT: Questions?

5 CROSS-EXAMINATION

6 BY MS. DUSTIN:

7 Q Doctor, isn't it true that those tapestries each
8 cost you roughly about \$150?

9 A Yes, ma'am.

10 Q Okay. And that's when you purchased them in
11 Thailand?

12 A Yes, ma'am.

13 MS. DUSTIN: Nothing further.

14 THE COURT: There's a juror question. They wanted to
15 know if at sometime in reasonable proximity, before the
16 burglary, did you have your parking lot pressure washed?

17 THE WITNESS: Well, I didn't, because I don't own the
18 parking lot, but if you're trying to ask me if I remember
19 whether or not it was pressure washed, I can't remember.

20 THE COURT: Okay. Can't remember, can't remember.
21 Anything else?

22 MS. SMALL: That's it, Your Honor.

23 THE COURT: Thanks, doctor. We know you're a busy guy.

24 THE WITNESS: All right.

25 THE COURT: Appreciate your testimony. Next?

1 MS. DIGIACOMO: Allen Hanners.

2 THE COURT: Come on up, sir.

3 THE CLERK: Please remain standing, and raise your right
4 hand.

5 ALLEN HANNERS, STATE'S WITNESS, SWORN

6 THE WITNESS: I do.

7 THE CLERK: Thank you. You may be seated.

8 THE COURT: State your name, and spell your name for the
9 court recorder, please.

10 THE WITNESS: Allen Hanners, A-l-l-e-n, H-a-n-n-e-r-s.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MS. DIGIACOMO:

14 Q Sir, how are you employed?

15 A By the Las Vegas Metropolitan Police Department.

16 Q How long have you been so employed?

17 A 13 years.

18 Q Directing your attention to the fall of 2006, what
19 was your assignment at that time?

20 A I was working in the property crimes section as a
21 detective.

22 Q All right. At some point on November 6, 2006 were
23 you called out to 1504 Cutler to assist with a search warrant?

24 A Yes, I was.

25 Q And when you got out to that Cutler residence, what

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1 did you do?

2 A We met with other detectives that were on the scene,
3 and we were kind of given assignments.

4 Q Oh, all right. And what was your assignment?

5 A We were in the garage area recovering property and
6 pulling property out to be inventoried.

7 Q And was that property being brought out and staged
8 in the front yard of the driveway before it being impounded?

9 A Driveway in the front yard, yes.

10 Q Okay. At some point were you sent to a different
11 location?

12 A Yes, to 5900 Smoke Ranch.

13 Q Was that to execute a search warrant on space number
14 174?

15 A Yes.

16 Q And who did you go out there with?

17 A With Sergeant Elliott, Detective Bernie Bruno,
18 Detective Riesselmann, Detective Masizaki (phonetic), and I
19 believe there was one or two other detectives.

20 Q All right. Now, were you -- you were there for the
21 impound, or excuse me, for the execution. Did you also do the
22 impound?

23 A Yes, I did the actual inventory sheet, yes.

24 MS. DIGIACOMO: All right. Your Honor, I have here
25 what's been marked for identification as State's Proposed

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1 Exhibits 975 through -- well, 975 it appears through 1032,
2 excuse me, 1033. I move for admission at this time. Defense
3 Counsel does not have an objection.

4 THE COURT: They'll be admitted.

5 [State's Exhibit 975 through 1033 Admitted]

6 BY MS. DIGIACOMO:

7 Q All right. First of all, showing you State's
8 Exhibit 977. Do you recognize what's depicted here in these
9 four photographs?

10 A Yes, that was the storage unit number along with the
11 lock that was on the storage unit.

12 Q And it was cut off?

13 A Yes.

14 Q All right. Is it fair to say detectives took a few
15 photographs on their own before calling someone out?

16 A Yes.

17 Q All right. And showing you 975, do you recognize
18 this?

19 A Those were the floor scrubbers that were inside the
20 storage unit, and shampooer it looks like.

21 Q Okay. Showing you 980. Is this the way the storage
22 unit looked when the -- after the execution of the search
23 warrant, what was left behind?

24 A Yes, that's what we left.

25 Q Showing you State's Exhibit 984. Are these some of

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1 the items that were taken out of the storage unit?

2 A Yes.

3 Q Do you recall the different types of items that were

4 taken out of that storage unit?

5 A Well, there was a lot of sports memorabilia,

6 guitars, photographs, different other -- like baseball cards,

7 footballs, football helmets, there was a lot of --

8 Q Now --

9 A -- bathroom items, stuff like that.

10 Q All right. Now, every item that was impounded was

11 not necessarily photographed?

12 A That's correct.

13 Q Okay. But you're the one that actually did the

14 impound from the Smoke Ranch?

15 A Yes.

16 Q Okay.

17 MS. DIGIACOMO: Your Honor, may I approach?

18 THE COURT: Go ahead.

19 BY MS. DIGIACOMO:

20 Q All right. I'm going to show you a typed six page

21 property report. Sir, do you recognize this?

22 A Yes, that's the property report we completed that

23 day.

24 Q Let me -- now who's name is on it?

25 A My name as the reporting officer.

1 Q Okay, and --

2 A And (11:27:41).

3 Q -- there were other officers that helped you record
4 some of the items that you actually impounded?

5 A I was actually typing it on the computer as they
6 were pulling items out of the storage unit.

7 Q Okay. So as they're bringing things to you, you're
8 typing it up, and then they're getting taken to the truck, or
9 getting impounded, correct?

10 A They're putting tags on them, and then it would be
11 impounded.

12 Q All right. Well, explain the tags. Is every item
13 that's impounded, is it tagged, so that it corresponds with
14 your impound report?

15 A It -- most of the large items have their own
16 individual tag. If they were small items that were like items
17 they'd be put together in a box, and would be boxed together
18 as one item.

19 Q Okay. But everything that's impounded will have
20 it's own tag, or will have a tag signifying it was impounded?

21 A Yes.

22 Q That would correspond to your impound report?

23 A Yes.

24 Q Okay. Now, showing you page two of your report.
25 Item 16, what was impounded there?

1 A Item 16 is a Blade electric guitar.
2 Q And what was the serial number, if any, associated?
3 A The serial number's 127843.
4 Q All right. Then directing you to item 17 on that
5 same page. What was impounded there?
6 A Another Blade electric guitar with serial number
7 7097370.
8 Q And item 18 on that same page?
9 A That's a Heritage guitar that was listed stolen
10 under that number, 021119-0698.
11 Q Was there a social, or excuse me, a serial number
12 associated with that?
13 A Yeah, 004402.
14 Q Item 19, what's depicted there? What was impounded?
15 A A G&L electric guitar, serial number 2334.
16 Q Item number 20, what was impounded there?
17 A G&L electric guitar, serial number CLF24949.
18 Q Item number 21?
19 A Is a Blade electric guitar, serial number 127788.
20 Q Item 22?
21 A It was a Heritage electric guitar with a black nylon
22 case, serial number R16002.
23 Q And then directing you to item 28 on that same page,
24 too. What was impounded there?
25 A It was a framed Ted Williams signed photograph that

1 had a coin with the picture.

2 Q Okay. And showing you item 34. What was impounded
3 there?

4 A It was a framed Nolan Ryan baseball picture with
5 four photos.

6 Q Now, page three, item 74, what was impounded there?

7 A That's a JBL speaker with serial number NM0733-
8 002133.

9 Q And was that speaker in a box?

10 A Yes.

11 Q Showing you page three, item 86, what's depicted
12 there, or what did you impound under that number?

13 A Another JBL speaker that was in a box, serial number
14 HA0091-02415.

15 Q And item 100 on that same page/

16 A It was a Marantz surround sound receiver with serial
17 number MZ000506001583.

18 Q Okay. Item 105 on page -- I'm sorry. Item 104 on
19 page four, what is that?

20 A It's a Sonamp 12 channel audio amplifier.

21 Q Did it have a serial number?

22 A The serial number, 9178505080008.

23 Q And then item 105 on this same page, four?

24 A It's another JBL speaker that was in a box, serial
25 number HA0091-02414.

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1 Q At this Smoke Ranch location do you recall a
2 hyperbaric chamber?
3 A Yes.
4 Q And that was located in the storage unit?
5 A Yes, it was.
6 Q All right. Showing you State's Exhibit 62. Do you
7 recognize this?
8 A That was the chamber that was inside the storage
9 unit.
10 Q All right. And this was identified by serial
11 number?
12 A I believe it was.
13 Q All right. And --
14 A It was on this property report.
15 Q And it was actually released to the owner from the
16 scene?
17 A Yes.
18 Q All right. And showing you State's Exhibit 64. Was
19 that one of the components that went with it?
20 A Yeah, the pumps. Uh-huh.
21 Q And that was found in the Smoke Ranch storage unit
22 as well?
23 A Yes.
24 Q And item -- State's Exhibit 66?
25 A It's a mobile air oxygen machine.

1 Q And that was found as well with the hyperbaric
2 chamber at the Smoke Ranch location?
3 A Yes, it was.
4 Q And, lastly, you had already mentioned before, but I
5 want to show you specifically State's 393. Is this one of the
6 floor buffer units that was found in the Smoke Ranch unit?
7 A Yes, it was.
8 Q 394, was this also found at Smoke Ranch?
9 A Yes.
10 Q 395?
11 A That was inside also.
12 Q Lastly, 396?
13 A Yes, that was inside also.
14 MS. DIGIACOMO: Nothing further.
15 THE COURT: Questions?
16 MS. DUSTIN: No. No questions.
17 THE COURT: Thank you, Detective. Appreciate your time.
18 Next?
19 MS. DIGIACOMO: Ernie Morgan.
20 THE COURT: Come up here, sir.
21 THE CLERK: Please remain standing, and raise your right
22 hand.
23 ERNEST MORGAN, STATE'S WITNESS, SWORN
24 THE WITNESS: I do.
25 THE CLERK: Thank you. You may be seated.

1 THE COURT: State your name, and spell your name please.

2 THE WITNESS: Ernest Morgan, M-o-r-g-a-n.

3 THE COURT: Go ahead.

4 DIRECT EXAMINATION

5 BY MS. DIGIACOMO:

6 Q How are you employed?

7 A With the Las Vegas Metropolitan Police Department.

8 Q And how long have you been so employed?

9 A Ten years.

10 Q Directing your attention to the fall of 2006. What
11 was your assignment at that time?

12 A I was a detective with the fugitive detail.

13 Q How long had you been with the unit at that time?

14 A Just a few months.

15 Q Was Lieutenant Lee your supervisor?

16 A Yes, ma'am.

17 Q All right. Were you asked on November 6, 2006 to go
18 to 1504 Cutler to assist with a search warrant?

19 A Yes, ma'am. I believe I went there briefly.

20 Q Okay. Well, actually did you go somewhere before
21 you went to Pirates Cove?

22 A Um --

23 Q I mean, did you go somewhere before Cutler?

24 A I think after Cutler I went to the storage units.

25 Q All right. Which storage unit did you go to?

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1 A The storage units on North Buffalo.

2 Q Who were you with when you went to that storage
3 unit? Do you recall?

4 A I was with Detective Radke and Detective Schoening,
5 and myself responding.

6 Q Okay. All right. And were you the one that
7 actually impounded all the property from the storage facility
8 at North Buffalo?

9 A Yes, ma'am. I filled out the paperwork.

10 Q Do you recall who else you were there with?

11 THE COURT: He said Radke and Schoening.

12 MS. DIGIACOMO: Oh, okay. Sorry.

13 BY MS. DIGIACOMO:

14 Q All right. Now, do you recall releasing any
15 property from that scene?

16 A Yes, ma'am. I did.

17 Q Okay. And do you recall who you released that to?

18 A I recall the one person, Ms. Annie Lee. I released
19 some paintings.

20 Q All right. Now, showing you State's Exhibit 37. Do
21 you recognize any of the paintings you released to her?

22 A I do. I believe the one with the person in the
23 person in the bathtub for sure.

24 Q All right. This one?

25 A Yes, ma'am. With the --

1 Q To the left?

2 A To the left, yes, ma'am.

3 Q All right. Showing you State's Exhibit Number 38.
4 Do you recognize any in this photograph that you released to
5 Annie Lee?

6 A I recognize them. I believe the two with the lady
7 on the couch, and possibly the other one. I'm not 100% sure
8 with that one, but possibly both of those.

9 Q Okay. All right. And a close-up of -- on 39, is
10 the lady on the couch?

11 A Yes, ma'am.

12 Q All right. Showing you State's Exhibit Number 40.
13 Do you recognize that?

14 A Yes, ma'am. I'd describe it as a harvest.

15 Q And you did release that to Annie Lee?

16 A Yes, ma'am.

17 Q All right. And I'm going to show you your property
18 released to Ms. Lee. Can you -- do you recognize this one
19 page property report?

20 A Yes, ma'am.

21 Q Was that made that day when you were executing the
22 search warrant at North Buffalo?

23 A It was.

24 Q All right. And did you list out specifically what
25 you released to Ms. Lee?

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1 A I did.

2 Q All right. What did you release to her? How many
3 different pictures?

4 A Five different ones. The female in the bathtub, a
5 lady on the subway, a lady reading to children, females
6 harvesting, and a lady on a couch.

7 Q Okay. Now, when things were impounded from North
8 Buffalo you made an impound report listing all those items,
9 did everything that got impounded have a corresponding tag on
10 them as well, so that when they went to the vault they knew
11 what it was that was impounded?

12 A Yes, ma'am.

13 Q Okay. Now, do you recall specifically impounding a
14 framed Las Vegas matchbook?

15 A I do not recall specifically, no.

16 Q All right. Here, look at your property report.
17 Will that refresh your recollection?

18 A Hopefully.

19 Q I'm going to show you page six, item 136. Do you
20 recognize this?

21 A Well, I recognize my -- yes, ma'am. That I wrote
22 down Las Vegas matchbook, yes. That's my writing.

23 Q Do you recall also impounding some photographs of
24 quarterbacks with Super Bowl tickets?

25 A I'd have to see. I don't recall. There's so many

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1 items, but there was a lot of memorabilia.

2 Q Okay. Now, let me grab -- Here, I'm going to show
3 you what has been marked and admitted as State's Exhibit 230.
4 Do you recognize this evidence tag?

5 A Yes, ma'am.

6 Q Okay. And who would have filled out this evidence
7 tag?

8 A Well, this one here was done by Troy Radke, his key
9 number, and the signature there.

10 Q All right. Now, do these items correspond to what
11 you have on your impound report in front of you?

12 A Yes, ma'am, with my report that we had to put them
13 directly over to the actual evidence sticker.

14 Q Okay. So the item numbers correspond?

15 A Correspond here.

16 Q And it also tells you where it was -- where the
17 stuff was impounded from?

18 A Yes, ma'am.

19 Q If there was an evidence tag that we have here that
20 lists out what was impounded at this location, these item
21 numbers would correspond with what's in your report?

22 A Yes, ma'am.

23 Q Okay.

24 MS. DIGIACOMO: Nothing further.

25 THE COURT: Any questions?

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CROSS-EXAMINATION

BY MS. DUSTIN:

Q Officer, when people came to try to get property released to them did they have to -- were you the person that they talked to, or were they talking to somebody else?

A They were talking to somebody else that had knowledge of the case, which I was there to assist, because of the large amount of property.

Q Okay. And would it be fair to say that to get some item of property released they'd have to possibly present maybe an incident report showing that it was taken from them?

A Possibly, or just identify it as theirs, and maybe an identifying mark or something. I'm not sure.

Q Okay. So if they came up and said, that looks like mine, they would potentially just release it?

A Potentially, yes.

MS. DUSTIN: Nothing further.

THE COURT: Anything else?

MS. DIGIACOMO: Nope.

THE COURT: Thanks, Detective. Appreciate your time.

THE WITNESS: Thank you, sir.

THE COURT: Next?

MS. DIGIACOMO: Kevin Peltier.

THE COURT: Come on up, sir.

MS. DIGIACOMO: And this is going to relate to Count

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1 XIII.

2 THE COURT: Okay.

3 THE CLERK: Please remain standing, and raise your right
4 hand.

5 KEVIN PELTIER, STATE'S WITNESS, SWORN

6 THE WITNESS: Yes, ma'am. I do.

7 THE CLERK: Thank you. You may be seated.

8 THE COURT: State your name, sir. Spell your name for
9 the court recorder.

10 THE WITNESS: My name is Kevin Peltier. The last name is
11 P-e-l-t-i-e-r.

12 THE COURT: Go ahead.

13 DIRECT EXAMINATION

14 BY MS. DIGIACOMO:

15 Q Sir, how are you employed?

16 A I'm the co-owner of a company called HP Media Group.

17 Q And who do you own that with?

18 A A gentlemen by the name of Michael Heck.

19 THE COURT: Hence the H and the P.

20 THE WITNESS: That's correct, sir.

21 THE COURT: Okay.

22 BY MS. DIGIACOMO:

23 Q Now, directing your attention back to April 23rd of
24 2005. Did you have the company at that time?

25 A Yes, ma'am.

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1 Q Where was it located at that time?

2 A It's still in the same place. It's 3725 West Teco
3 Avenue. It's in the Russell and Valley View area.

4 Q Okay. Now, when you got to work on that day back in
5 2005 did something happen to your business?

6 A It was a Saturday morning. One of my employees had
7 gone into catch up on some work, and had discovered that we
8 had been broken into.

9 Q All right. And based upon that call did you respond
10 to your business?

11 A Yes, the employee called the police and called me,
12 and I went to the site as well.

13 Q Now, when -- back then, what kind of office or
14 business did you run? I mean, was it open to the public?

15 A No, it was -- it's a small -- it's a warehouse
16 complex, so we have a very small office space in front where
17 there's just a few computers and printers, and in the back is
18 a large warehouse about 1,000 feet of warehouse space in the
19 back.

20 Q All right. And, so the warehouse in the back, would
21 customers generally get back there?

22 A No, the warehouse space was for us to store all of
23 the equipment for the jobs that we were doing. We design home
24 theaters and home automation systems, so we have to store a
25 lot of audio/video equipment. Meaning, TV's, amplifiers,

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1 speakers, other consumer electronics.

2 Q Now, do you keep your -- the warehouse stocked as a
3 normal course of business, or --

4 A We do. We actually purchase each item for each
5 client, you know, prior to their installation. The homes are
6 typically large custom homes, and, so we're providing all of
7 their electronics for the homes with their lighting, security,
8 and audio/video needs.

9 Q So as you get an order from one of these custom
10 homes, you then purchase the stuff, and then keep it in your
11 warehouse until it's all complete to install it on the job?

12 A That's correct, so each client with this contract,
13 we'll purchase all of the equipment for that project, and
14 store it in our warehouse, and try to label the items, yeah,
15 so we can determine which equipment is going to which client.

16 Q All right. So is it fair to say that at times when
17 you don't have things waiting to go to clients your warehouse
18 might not be as full?

19 A Correct. We typically do have things that we'd
20 stock. Obviously, wire and, you know, speakers that we're
21 using on a daily basis, but for the most part that is correct.
22 at the time of the robbery though we had a number of projects
23 in progress, so we were very stocked.

24 Q Okay. How many projects do you recall that you had
25 at the time?

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1 A There was two large ones that we were in the process
2 off, and then a third one that we had just completed, so there
3 was a few items from that project as well. There --

4 Q And what kind -- okay. So when you get there, and
5 you see your business, what did you notice first about the way
6 your business looked in 2005 after the burglary?

7 A Well, when I walked in the front office was in
8 shambles, because everything had been thrown on the floor.
9 Going in the warehouse there was a large hole in the wall
10 where they had broken into the unit next to us, which did not
11 have any type of security. Our building had security and a
12 lot of locks and things on it, but they came through the wall,
13 and right where they came through the wall was our security
14 panel, so it knocked the security panel off the wall for
15 the --

16 Q And that would have been for your alarm?

17 A That was our alarm, and, so what happened was
18 instead of it being registered as an alarm break-in the
19 monitoring company received it as a trouble signal. We had
20 been receiving problems with one of our motion detectors, so
21 in the middle of the night when this had happened the previous
22 evening, my business partner assumed it was just another
23 trouble signal, and said to them don't send the guards, it's
24 no problem, we'll take care of it Monday.

25 Q Okay. So nobody responded when the alarm went off?

1 A So no one responded to the event and the fact that
2 someone had broken-in at that time.

3 Q All right. And, now, when you get there and you see
4 the hole underneath where the alarm panel was, did you ever
5 find the alarm panel?

6 A Yeah, it was sitting there on the floor broken, and
7 then there was another hole on the opposite side where after
8 they got done robbing us they broke through the wall to break
9 into the unit next to us.

10 Q Okay. And you can tell that from the way the debris
11 was?

12 A The debris was -- exactly. Our debris had gone into
13 our office, and the debris -- the other one had gone into the
14 other office.

15 Q Okay. Now, what kind of items were missing from
16 your business after this burglary?

17 A We had a large list of items. There was
18 approximately 25 different items with the retail value of
19 \$105,000 that was stolen from us.

20 Q And you're looking at something you have next to
21 you?

22 A Yeah, I have a list here of -- that we had put
23 together for our insurance company, and for the police of the
24 items that we had discovered missing from our place of
25 business.

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1 Q Now, at some point were you contacted by detectives
2 regarding possibly some of your items being returned?

3 A Yes, we were.

4 Q Or recovered, I should have said?

5 A Uh-huh.

6 Q Is that a, yes, for the record?

7 A Yes, it is.

8 Q All right. And have you ever had any of those items
9 physically returned to HP Media?

10 A No, ma'am.

11 Q All right. When you initially were contacted you
12 viewed photographs?

13 A Yes, we viewed photographs of different items that
14 the police had recovered.

15 Q And, also, when you made your report with the
16 Metropolitan Police Department, were you able to provide
17 serial numbers for some of the items that had been taken
18 during your burglary?

19 A Yes, ma'am.

20 MS. DIGIACOMO: Your Honor, I have here what's been
21 marked for identification State's Proposed Exhibits 178 to
22 179, as well as 180 to 209. I move for admission as there's
23 not an objection at this time by Defense.

24 THE COURT: 178 to 209 will be admitted.

25 [State's Exhibit 178 through 209 Admitted]

1 BY MS. DIGIACOMO:

2 Q Now, first of all, sir, showing you State's Exhibit
3 178, do you recognize the location where this photograph was
4 taken?

5 A No, I do not.

6 Q All right. Do you recognize anything in this
7 photograph as that could be --

8 A The item next to the computer on the bottom, the
9 black item there, it looks like one of our Marantz receivers.

10 Q And you can go ahead and circle that. All right.
11 Now, this is going to be kind of dark, but showing you 179,
12 specifically -- I think it's dark on the screen.
13 Specifically, the area to the left of the photograph on the
14 side here, can you recognize anything there?

15 A It looks there's possibly another one here, but
16 honestly the photographs too dark for me to make any
17 determination.

18 Q So it's possibly it's one of the Marantz receivers?

19 A Yeah.

20 Q Okay. It's possibly yours?

21 A It's possible, yes.

22 Q Okay. But you can't tell?

23 A I can't tell with that quality of the photo.

24 Q All right. Now, at some point were you asked to go
25 down to the evidence vault for Metro to view specific items?

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1 A Yes, ma'am.

2 Q And at the time when you went down there did you
3 bring your paperwork you have in front of you?

4 A I did. Uh-huh.

5 Q And, so you had your serial numbers?

6 A Correct.

7 Q Okay. Now, showing you State's Exhibit 180. What
8 are we looking at here?

9 A That's a Sonance amplifier.

10 Q And how many are we looking at?

11 A Um --

12 Q Oh, I'm sorry. Let me zoom out. Sorry about that.

13 A Two.

14 Q Okay. And they're boxed?

15 A Yes.

16 Q Is this the way you last saw them in your warehouse
17 back in 2005?

18 A Yes. Well, I mean, they didn't have the red
19 evidence tape, but --

20 Q Okay. But they were --

21 A Yeah.

22 Q -- still boxed?

23 A Yeah.

24 Q Okay. Now, showing you State's Exhibit 181. What
25 are we looking at there?

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1 A Looking at a wiring diagram just to show how the
2 speakers would be wired to the volume control.

3 Q And that would have been done by somebody in your
4 business?

5 A One of employees, yeah.

6 Q Okay. Was that one of the ways you were able to
7 identify this?

8 A Yes, and by, you know, just what it was.

9 Q All right. Now, showing you State's Exhibit 182?

10 A It's showing the actual clients name. That was Dr.
11 Todd Swanson. We were in the middle of getting ready to do
12 his installation of his home in The Ridges, and his name is
13 there on the amplifier. Even though I did not have the serial
14 number for it, his name shows it as an identifying
15 characteristic belonging to us.

16 Q Okay. Now, were you the only ones that carried
17 Sonamp's at the time?

18 A No, there were other manufacturers for that
19 particular unit.

20 Q The jury will identify by it by your clients name?

21 A Absolutely.

22 Q Okay. Now, showing you State's Exhibit 185. What
23 are we looking at here?

24 A Those are four JBL THX surround effect speakers.
25 They're -- we actually are the only dealer for that, and I do

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1 have serial numbers for each of those items.

2 Q All right. Now, what does each one of these
3 speakers cost, or do you buy them as a whole? How does that
4 work?

5 A We actually -- they are purchased typically as a
6 set. Each of those speakers is \$2,000 a piece.

7 Q So what we're looking at, these four speakers, would
8 be \$8,000?

9 A Correct.

10 Q And is that your cost, or is that what you would
11 charge --

12 A That's the retail. That was what we would charge
13 our client for them.

14 Q \$8,000, okay.

15 A Uh-huh.

16 Q And, now, showing you State's Exhibit 186?

17 A That's one of the same speakers.

18 Q All right. And it says, parts for all four in this
19 box?

20 A Yeah, that was not written by us. I believe when
21 the police had found the item it had been damaged, and so they
22 had put it back together and threw it in the box.

23 Q All right. But, now, can you see over here in the
24 corner, is there something written on there that indicates
25 that you have --

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1 A Uh, yeah. That's Suko. That's for Mr. Gil Suko.
2 That was the client that we were getting ready to install
3 those speakers in his home theater.

4 Q And showing you State's Exhibit 187? Is that --

5 A That's a close-up of the gentleman's name again.

6 Q All right. And you said you had serial numbers for
7 all four of these?

8 A Yes, ma'am.

9 Q And you confirmed those when you went down to the
10 evidence vault?

11 A Yes, I did.

12 Q And State's Exhibit 188, is that just a close-up of
13 one of the serial numbers --

14 A That's correct.

15 Q -- on one of the boxes?

16 A Uh-huh.

17 Q Okay. And then State's Exhibit 190, is that another
18 serial number from a different box?

19 A Yes, it is. It corresponds to what I'm showing here
20 in my paperwork as well.

21 Q State's Exhibit 192?

22 A That's correct.

23 Q That's another serial number from one of the boxes?

24 A Yep.

25 Q All right. And State's Exhibit 194, is that the

1 last serial number from the fourth box?

2 A Yes, it is.

3 Q Now, showing you State's Exhibit 196. What are we
4 looking at here?

5 A That looks like a Marantz DVD player.

6 Q Okay. And --

7 A I have a serial number for that item that matches
8 the item.

9 Q Okay. And do you recall what that serial number
10 was?

11 A I do.

12 Q Are you looking through your --

13 A I'm looking at my notes, but it's MZ00050902592.

14 Q And what is the cost, or what's the retail price for
15 State's 196?

16 A At that time it was \$650.

17 Q Showing you State's Exhibit 198. What are we
18 looking at there?

19 A That's one of our Marantz audio/video receivers.

20 Q All right. And you had more than one of these
21 taken?

22 A That's correct.

23 Q Now, do you recall what the serial numbers were for
24 both of these?

25 A I have both serial numbers. I can't tell you which

1 one that one is, but --

2 Q Okay. What are both serial numbers?

3 A Let's see. I'll give you the last four digits. One
4 is 1583, and the other is 4989.

5 Q How much do each of these Marantz DVD, or excuse me,
6 surround sound --

7 A One was \$1,600 and the other one was \$1,000.

8 Q That is the cost to the client?

9 A That's correct.

10 Q All right. And then showing you State's Exhibit
11 200?

12 A That's the Sonance power amplifier, and once again
13 it has the gentleman's name as an identifying characteristic
14 on the box, Mr. Suko.

15 Q All right. And this is different than the speakers
16 we looked at before?

17 A That's correct.

18 Q Okay.

19 A It's a different item.

20 Q And then showing you State's Exhibit 203?

21 A That's one of the Marantz receivers. I have a
22 serial number, and you can see the gentleman's name written on
23 the box, Dr. Todd Swanson.

24 Q And, in fact, State's Exhibit 204, is that a close-
25 up from that box, and it includes the serial number?

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1 A Yes, it does, and it's one of the serial numbers I
2 read to you earlier.

3 Q Okay. The one ending in 1583?

4 A Correct.

5 Q Now, showing you State's Exhibit 206. What are we
6 looking at here?

7 A That's a JBL powered subwoofer. I did not have
8 serial numbers for those, but we were the only authorized
9 dealer for that product in Las Vegas, so the shipper's
10 identification showing it coming from Arizona to us was the
11 identifying characteristic.

12 Q And showing you State's 207, is that what you're
13 referring to, that shipping label?

14 A Yes, ma'am.

15 Q And then, lastly, showing you State's Exhibit 209.
16 What are we looking at there?

17 A That's the evidence that the police retrieved that
18 they were able to identify to us. We'd gone through all the
19 items except for the TV's on the side. I didn't have serial
20 numbers for those, but those TV's matched the exact make,
21 model, and quantity of what we reported missing.

22 Q And what are you holding in the photograph?

23 A I'm holding a list of -- this list I'm reading these
24 serial numbers from that I brought with me to the evidence
25 viewing.

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1 MS. DIGIACOMO: Nothing further.

2 THE COURT: Questions?

3 CROSS-EXAMINATION

4 BY MS. DUSTIN:

5 Q Real quickly, I think, going back to that JBL
6 subwoofer --

7 A Uh-huh.

8 Q You said that you didn't have the serial number for
9 that?

10 A Correct.

11 Q And you said that you were the only distributor or
12 retailer?

13 A Retailer for the product.

14 Q Okay. And you also said that -- so could you get it
15 anywhere else?

16 THE COURT: You mean could a person --

17 MS. DUSTIN: Could a person just go get a JBL subwoofer
18 anywhere else?

19 THE WITNESS: That particular model is part of their
20 Synthesis line. It's only sold through the custom install
21 channel. It's not sold through retail chains. I assume they
22 could probably get one from another dealer out of state, or
23 possibly maybe on the internet from another authorized dealer,
24 but in terms of authorized dealers in Las Vegas, we were the
25 only one.

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1 BY MS. DUSTIN:

2 Q Okay. And then just looking at State's Exhibit 207.
3 Does this have your name on it?

4 A No, it does not. It's showing its point of origin,
5 which is Phoenix where the product is distributed from to Las
6 Vegas. Since we were the only authorized dealer to receive it
7 in Las Vegas, that's why we were trying to make that
8 establishment.

9 Q Okay. So there's no way that anybody could contact
10 anywhere else, and have them have the product shipped directly
11 to them?

12 A Not from that point of origin.

13 Q Not from Phoenix?

14 A Not from Phoenix. From that -- that's coming from -
15 - that distributor is the same carrier that we use from JBL,
16 because we receive a number of products from them. That's the
17 same carrier, so no. It would be very highly unlikely.

18 Q Okay. So that carrier only services your business?

19 A No, I'm not saying that.

20 Q Okay.

21 A So, yes, I guess in a one in a billion chance, yes.

22 Q Okay. So would it be fair to say that possibly that
23 carrier's services groups on the west coast --

24 A Of course.

25 Q Okay. Now, a couple of other things. You said that

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1 you were called out to an evidence vault to look at
2 everything?

3 A It was a warehouse, yes.

4 Q Okay. So it was just a big warehouse. You weren't
5 sure where they got anything. You just knew that they had
6 stuff that matched up?

7 A Yeah, they called me to say that because we had
8 provided them with the serial numbers of these products, they
9 were able to match that to the items they had in their
10 possession.

11 Q Right. And then just to go back, the burglary
12 happened towards the earlier part of 2005?

13 A It was April 22nd.

14 Q Okay. And prior to this phone call that you got, I
15 guess in November, you hadn't heard anything about anything?

16 A Actually, we had seen some coverage of the arrest on
17 the TV. One of my employees noticed those JBL S4 speakers
18 actually in the coverage of the news, and called me to let me
19 know that, hey, these are the guys that broke into us, because
20 we were by far the only people who carried that item.

21 Q Well, you -- basically, so what you're saying is, is
22 you guys got information from what was a newscast, and then --

23 A And then we were contacted shortly thereafter by the
24 police.

25 Q Okay. But you didn't have a videotape of people --

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1 these people breaking in. You just knew that it looked like
2 some of your stuff was sitting in their house?

3 A That's correct.

4 Q Okay. So when you say that these people broke-in,
5 you're just making an assumption. You don't have information
6 on that. It's just you know that JBL speakers were sitting in
7 this guys house?

8 A Well, they were in possession of my products, so
9 that's all I'm saying.

10 Q Okay. Thank you.

11 A You're welcome.

12 THE COURT: Anything else?

13 MS. DIGIACOMO: No, Your Honor.

14 THE COURT: Thanks, Mr. Peltier.

15 THE WITNESS: Thank you.

16 THE COURT: Appreciate your testimony. You're excused.
17 You, what's your pleasure? Lunch or you got somebody real
18 short that you're going home?

19 MS. DIGIACOMO: Actually, I prefer lunch. I don't think
20 that --

21 THE COURT: Okay. I think that's probably going to be a
22 unanimous vote. All right. Lunch. Don't talk about the
23 case. Don't read, watch, or listen to a report on the case by
24 TV, internet, newspaper, or radio. Don't form any question or
25 an opinion on the case until it's submitted. We'll pick up at

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1 1 o'clock.

2 [Jury Out]

3 [Bench Conference]

4 [Recess]

5 [Outside the Presence of the Jury Jury]

6 MS. DIGIACOMO: -- stolen and we didn't show the value,
7 but I can still use, I think, for the overriding conspiracy
8 the fact that this guys property was found at two different
9 locations.

10 THE COURT: Yeah, but I -- if you don't show that it was
11 stolen --

12 MS. DIGIACOMO: No, I'm going to concede.

13 THE COURT: -- that counts gone.

14 MS. DIGIACOMO: No, I know, and I -- that's what I'm
15 saying. I'm going to concede that count in -- but I can still
16 get in the fact that he came in --

17 THE COURT: Oh, sure.

18 MS. DIGIACOMO: -- and did the evidence view.

19 THE COURT: It's material to whether they're both
20 involved, or each one of them are.

21 MS. DIGIACOMO: Right.

22 MS. DUSTIN: Well, the problem is that I have with that,
23 Judge, is that was the very issue with our ruling about
24 letting these officers testify as to stuff that they impounded
25 and sought of --

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1 MS. DIGIACOMO: But that would never -- the detective
2 with regard to this victim never came in and said that I
3 released this property. It's not property that's been
4 released, so this wasn't one of those objections that she
5 made. All of that property's been tied up.

6 THE COURT: I understand, but this is -- this fellow --
7 you're going to have to concede the count, but you --

8 MS. DIGIACOMO: Right.

9 THE COURT: -- can show that, you know, part of it was in
10 Ferguson's storage and part of it was in Tonya's storage.

11 MS. DUSTIN: I think it's Cutler. But the problem is is
12 they can't -- then it's hearsay as to whose item it was, so I
13 don't really think that --

14 MS. DIGIACOMO: It's not hearsay if Detective Nickell was
15 doing all these evidence views, brought victims down, he
16 photographed them with the property that they said was theirs.
17 I mean, he can certainly get into, this is what I went through
18 with every victim, and I can show it was this --

19 THE COURT: Well, wait a minute. Well, if -- she may be
20 making a good point.

21 MS. DUSTIN: It's for the truth of the matter of service.

22 THE COURT: I mean, isn't it a fact that the -- they're
23 saying this is my property, is the only reason he took the
24 photograph?

25 MS. DIGIACOMO: Right. Well, yeah, but it's -- that was

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1 his M.O. It's -- I don't have to say that he said it was his
2 property.

3 THE COURT: I think Ms. Dustin's right on this. I don't
4 think you could do that.

5 MS. DIGIACOMO: Well, can I -- well, they can come in and
6 say he took this photograph with one person without -- with
7 items from two different places.

8 MS. DUSTIN: I'll object to it.

9 MS. DIGIACOMO: I should be able to get that in.

10 THE COURT: He can say, I took a photograph with him, but
11 he can't say, this is the person who claimed the property. He
12 can just say, I took a photograph of this person --

13 MS. DUSTIN: Well, the problem --

14 THE COURT: -- with this property.

15 MS. DIGIACOMO: Right.

16 THE COURT: And then you can make that in argument, but
17 he can't say, this was the person that claimed the property.

18 MS. DIGIACOMO: No, no, no. I understand that.

19 MS. DUSTIN: And I still object to that, because they've
20 been showing pictures of the owner of the property with the
21 property, so I think it's just, the picture is the same thing,
22 it's the same issue.

23 THE COURT: I don't think it is the same thing. I mean,
24 if he says, he identified himself as the owner and he claimed
25 this property, it's hearsay. They might have took a picture

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1 of you with some of it, or me. I mean, if they -- if I took
2 this picture, is not hearsay. I took this picture of this guy
3 with this stuff, without saying more is not hearsay. You can
4 say that, but you can't say that this was the guy that claimed
5 to be the owner of the property, he just -- I took this
6 picture of this guy with this property. Then you can point
7 out in your argument that --

8 MS. DIGIACOMO: And then I can argue that this property
9 was found in two different locations?

10 THE COURT: In two different locations.

11 MS. DIGIACOMO: Okay. That's fine.

12 MS. DUSTIN: And I'll still have to object to the --

13 THE COURT: I understand.

14 MS. DUSTIN: -- for the record on that --

15 THE COURT: Well, we --

16 MS. DUSTIN: -- Your Honor, because all of the people
17 have been coming in saying, yeah, and they took my picture
18 with this property that I was claiming was stolen --

19 THE COURT: I understand.

20 MS. DUSTIN: -- and I think it just presupposes a --

21 MS. DIGIACOMO: Well, but, again, and we're conceding
22 that we couldn't show that --

23 THE COURT: Okay.

24 MS. DIGIACOMO: -- that property was stolen.

25 THE COURT: I agree with her that to the extent that if

1 he says, I took this picture of this person who came in,
2 claimed the property, that would involve hearsay, and is a
3 left handed way of getting hearsay, and if he says, I took
4 this picture with this person with this property, and then you
5 argue this property was found in two different locations along
6 with other -- well, not -- you know, here's the problem. If
7 you can't prove that that property's stolen what's the
8 difference that it was in two different locations?

9 MS. DUSTIN: I think it just --

10 THE COURT: But they had honest property in two different
11 locations what's the difference?

12 MS. DIGIACOMO: Welcome back, we've been here -- this is,
13 what day is this, Judge?

14 THE COURT: 11.

15 MS. DIGIACOMO: Day 11.

16 THE COURT: If they had property that wasn't stolen, if
17 it was honest property, the sheer fact that they had it in two
18 locations, but what's the evidentiary value?

19 MS. DIGIACOMO: That it ties in -- okay, wait. Hold on a
20 second. It ties in with the conspiracy, because the stuff was
21 found at Cutler, which belonged to Monroe, and it was also
22 found at North Buffalo, which belonged to Ferguson.

23 THE COURT: What stuff is this?

24 MS. DIGIACOMO: A Touch of Vegas, Michael Landsberger, he
25 testified last week. We just couldn't get him back. He's on

1 stage.

2 THE COURT: What kind of property?

3 MS. DIGIACOMO: It was all pictures and memorabilia.

4 MS. DUSTIN: It's charged as the framed Woodstock picture
5 and ticket, memorabilia, and or artwork, but the problem is,
6 Your Honor, is that I still don't --

7 THE COURT: If it's honest property, the sheer fact that
8 they're sharing it, you think that that shows conspiracy?

9 MS. DIGIACOMO: I do.

10 THE COURT: If it's property that they really owned? If
11 I owned stuff and --

12 MS. DIGIACOMO: Well, it sure shows that they do a lot of
13 stuff together, and they get stuff together.

14 THE COURT: Well, I think you can prove that in other
15 ways. Okay, Ms. Dustin, you've convinced me. We'll just
16 leave it out. Concede the count and don't do that.

17 MS. DIGIACOMO: All right.

18 THE COURT: I think if you can't show that it's stolen,
19 then it doesn't have any evidentiary value as to conspiracy to
20 possess stolen property between these two guys, because if
21 this is honestly held property it has no evidentiary value,
22 and we know that it isn't, but as far as proof in this trial's
23 concerned you're going to have to concede that count, and I
24 think therefore there's no proof that it's stolen. It doesn't
25 have -- you can't use honest property held by two guys to

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1 prove that they conspired to possess stolen property. I mean,
2 for example, if they -- if he and Monroe had a bunch of honest
3 property together in two separate spots, two separate -- they
4 came from the same store, they actually purchased it together,
5 and they had it together, but Monroe had all the stolen
6 property. The fact that they had the two spots and shared
7 honest property wouldn't be of any relevance to the fact
8 whether he's guilty of possessing it by Monroe.

9 MS. DIGIACOMO: Well, we've got Tonya outside. She'll
10 say it was all stolen.

11 THE COURT: Well, if she can identify that as stolen
12 property you may be able to get it specifically. I mean --

13 MS. DIGIACOMO: I mean, she can identify what is in the
14 Cutler residence as stolen. She -- you know, I mean, she
15 testified there was nothing --

16 THE COURT: You might be able to lay foundation there if
17 she knows.

18 MS. DIGIACOMO: Okay. So like if --

19 THE COURT: I mean, she's got to know through a non-
20 hearsay way as far as she's concerned. I mean, you know,
21 these guys worked together, he discussed it in my presence, he
22 talked to me about it, my boyfriend discussed it in his
23 presence. You might be able to lay foundation, but as far
24 as --

25 MS. DUSTIN: Well, that means she's going to have to come

1 in and say that Daimon told her that it was stolen, and
2 there's no way I --

3 THE COURT: If he told her in his presence, it's good.

4 MS. DUSTIN: Right, but if Daimon --

5 THE COURT: Or if he told her, it's good.

6 MS. DUSTIN: And to touch --

7 THE COURT: But if Daimon told her outside of his
8 presence, I don't see it.

9 MS. DIGIACOMO: Yeah, Your Honor -- yeah, but, okay.

10 THE COURT: But we'll just see.

11 MS. DIGIACOMO: I mean, Tonya's testimony, which I think
12 we'd begin a little far off is that these two worked together
13 for years, nothing that they did ever involved legitimate
14 property, it was all stolen, and that would be in front of
15 him.

16 THE COURT: If she says, look, they sell it, they split
17 the money, they do whatever --

18 MS. DIGIACOMO: Okay, that's what she says.

19 THE COURT: -- then I think she can testify to that.

20 MS. DIGIACOMO: Well, you said in the last trial, no.

21 THE COURT: No what?

22 MS. DIGIACOMO: Okay. That is what happened. They would
23 steal it, Monroe would sell his for 25% to Holmes and other
24 people, but at the last trial you didn't let any of that come
25 in.

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1 MS. DUSTIN: Well, that's a bad act. That's bad acts,
2 all over the place, that she can testify --

3 THE COURT: I'll let her say that all this property was
4 stolen.

5 MS. DIGIACOMO: Right. There was nothing --

6 THE COURT: And I let her say, where we got all the money
7 was from sales of stolen property.

8 MS. DIGIACOMO: Right.

9 THE COURT: Now, if she knows that that's the same with
10 this Defendant, because he told her, or it was said in his
11 presence, or she knew the M.O., then she can say that.

12 MS. DUSTIN: Right. But, I guess what she wants her to
13 say is that my client --

14 THE COURT: Not on a specific day that these two --

15 MS. DUSTIN: My client --

16 THE COURT: -- went out, did a burglary, and came home
17 with this property.

18 MS. DUSTIN: But she wants to sit there and allow her to
19 say that my client with Monroe stole all this stuff
20 collectively in the Cutler house. He's not on trial for that.

21 THE COURT: I understand.

22 MS. DUSTIN: This has been the very issue. This is an
23 uncharged bad act, and --

24 THE COURT: Well, one of the ways you know that it's
25 stolen is when you stole it.

1 MS. DUSTIN: Well, yes.

2 THE COURT: I mean, if they come home with it and they
3 say, hey, we had another score, we hit a doctors office and
4 got this stuff, he got to live with it.

5 MS. DUSTIN: But that means that he had to have been
6 present for that conversation.

7 THE COURT: You have to be present, or have said it.

8 MS. DUSTIN: And, so I think that's what the problem's
9 going to be is, we don't have how -- I don't know how much
10 she's going to be able to say.

11 THE COURT: Well, I don't know either, but those are the
12 rules, so let's --

13 MS. DUSTIN: Right, but that's very close to the line --

14 THE COURT: It is.

15 MS. DUSTIN: -- that if she sits there and says, yeah,
16 Daimon came -- would come home, and he would tell me the
17 following morning --

18 THE COURT: No, can't say that.

19 MS. DUSTIN: -- then --

20 THE COURT: Can't say that.

21 MS. DUSTIN: And I --

22 THE COURT: I'm guessing when the furniture truck came
23 in, and when --

24 MS. DIGIACOMO: Your Honor, she can say that everything
25 from A Touch of Vegas was stolen at both locations.

1 MS. DUSTIN: But then --

2 THE COURT: And how does she know that?

3 MS. DUSTIN: I want -- I would want this on testimony,
4 because I need to preserve the record instead of them going
5 and talking to her.

6 THE COURT: Well, I understand, but how does she know
7 that? If she knows it because it was -- if she can attribute
8 it to him, then it's good to go. I mean, if she knows it
9 because your client told her. If she knows it because Daimon
10 told her, I won't let her go there. Even though in theory
11 there's this argument there's this ongoing conspiracy --

12 MS. DIGIACOMO: Well, yeah, but then it would depend on
13 when he told her --

14 THE COURT: Right. And it would also --

15 MS. DIGIACOMO: -- and I don't have the conspiracy to
16 charge that far back.

17 THE COURT: The jury would have to find that there was a
18 conspiracy. I think it just gets the be too much of a catch
19 22.

20 All right. Well, let's go. We know where we're going.
21 I'm not going to let you --

22 THE BAILIFF: Juror 12 --

23 THE COURT: I'm not going to let you ask --

24 MS. DIGIACOMO: Well, we have an issue, Your Honor.

25 THE BAILIFF: Juror 12 knows Amanda Terry.

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1 THE COURT: Who's Amanda Terry?
2 MS. DIGIACOMO: She is --
3 THE BAILIFF: She's one of the --
4 MS. DIGIACOMO: She's the one that Tonya gave the two
5 photographs to.
6 THE COURT: Oh, okay. Anybody have any problem with
7 that?
8 MS. DIGIACOMO: It depends on --
9 THE COURT: And she doesn't have much to say.
10 MS. DIGIACOMO: No, but, I mean --
11 THE COURT: Tonya gave me two photos.
12 MS. DIGIACOMO: We don't know how she knows her.
13 MS. SMALL: She knows, because all of those items came to
14 the Cutler house first before it was taken to the storage
15 units, and that both of them told her, is what she said to me.
16 THE COURT: No, no, she --
17 MS. SMALL: I didn't say, how do you. I just said, how
18 do you know her.
19 THE COURT: She can do that. If they're both there,
20 then, you know, they come in in the morning and have some
21 eggs, and say, yeah, we made a score, we just hit the such and
22 such --
23 MS. DUSTIN: But, and that's --
24 THE COURT: -- a place for this stuff.
25 MS. DUSTIN: She has to be real -- she's going to have to

1 be -- see that's my dilemma is, is that I'm getting back and
2 forth instead of us finding out exactly if she can testify
3 that my client was either present, or told her specifically --

4 THE COURT: Well, that's what Ms. Small says.

5 MS. DUSTIN: -- that these items --

6 MS. SMALL: I said, how do you know that the items are
7 stolen? I didn't put any words in her mouth. She said -- I,
8 first of all, I said, how did you, did you go to those other
9 stores, because how did you recognize that those items are
10 stolen? She said, because those items would come into Cutler
11 first before they would go out to the storage units. I said,
12 and then how did you know that those items are stolen to begin
13 with? She said, because they both told me that they were
14 stolen.

15 MS. DUSTIN: For A Touch of Vegas?

16 MS. SMALL: Those pictures and photographs.

17 MS. DUSTIN: Okay.

18 MS. SMALL: Now, I don't know --

19 THE COURT: Okay. She'll say that, and you can get it in
20 that way. Okay. Let's go.

21 MS. SMALL: I mean, I don't -- that's what she said. I
22 didn't --

23 THE COURT: Okay. What do you want to do about this
24 juror number 12? She didn't recognize the name before, but
25 now she recognizes it?

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1 MS. DIGIACOMO: Your Honor, do you want me to just ask
2 her like how she knows her? I mean, I don't --
3 THE COURT: Yeah.
4 MS. DIGIACOMO: -- know if anything --
5 MS. DUSTIN: Or how much she knows her.
6 THE COURT: Let's bring her in. Let's bring in number
7 12.
8 MS. DIGIACOMO: Do you just want her?
9 THE COURT: Yeah.
10 MS. DIGIACOMO: Ric, just number 12, please.
11 MS. SMALL: I think he's got her.
12 THE CLERK: Ric, hold on. I just want juror number 12,
13 please.
14 THE BAILIFF: Juror number 12, please stand up.
15 THE COURT: That's the one that --
16 THE CLERK: We just have a question for you.
17 THE COURT: Hi, Mr. Smith, apparently you know somebody
18 that's going to testify now?
19 JUROR NO. 12: I believe so, yeah.
20 THE COURT: And you didn't recognize that name earlier?
21 JUROR NO. 12: No.
22 THE COURT: How --
23 JUROR NO. 12: Well, I mean, I recognized the name, but I
24 didn't --
25 THE COURT: Didn't put two and two together?

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1 JUROR NO. 12: No.

2 THE COURT: And how close are you to this person?

3 JUROR NO. 12: I haven't seen them in years, so it's --

4 THE COURT: Think you can be --

5 JUROR NO. 12: They were a friend -- they were a friend a

6 long time ago, and --

7 THE COURT: Think you can be objective?

8 JUROR NO. 12: Yeah, I don't have a problem.

9 THE COURT: All right. Let's bring them all in.

10 THE CLERK: Okay.

11 THE COURT: Thanks. Have a seat.

12 [Jury In]

13 [Court and Clerk Confer]

14 THE COURT: Okay. Back on the record in case number

15 C228752, State of Nevada versus Bryan Ferguson. Let the

16 record reflect the presence of the Defendant, his Counsel,

17 Counsel for the State. All ladies and gentlemen of the jury

18 are back in the box.

19 Who's next?

20 MS. SMALL: Jose Duenas. It relates to Count VII, or

21 Count IX and VII.

22 THE COURT: Go ahead. Come on up, sir.

23 UNIDENTIFIED SPEAKER: Count XVII?

24 THE COURT: IX and VII.

25 UNIDENTIFIED SPEAKER: XVIII.

1 THE CLERK: Will you please remain standing, and raise
2 your right hand?

3 JOSE DUENAS, STATE'S WITNESS, SWORN

4 THE WITNESS: Yes.

5 THE CLERK: Thank you. You may be seated.

6 THE COURT: Sir, state your name, and spell your name for
7 the court recorder.

8 THE WITNESS: Jose Duenas. First name, J-o-s-e. Last
9 name, D-u-e-n-a-s.

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION

12 BY MS. SMALL:

13 Q Mr. Duenas, what do you do for a living, sir?

14 A I'm a appliance installation manager at Econ
15 Appliances.

16 Q At Econ. Where's Econ located?

17 A We got -- the main location is on Rainbow and 215.
18 Our second location is on Stephanie and 215.

19 Q Okay. And you said your -- what was your official
20 title?

21 A Installation manager.

22 Q And as an installations manager, what do you do?
23 What is your job duties?

24 A My job is to oversee the installation of product
25 that's coming in and going out of the warehouse.

1 Q And as an installations manager, would you have
2 access to the records that are kept in the ordinary course of
3 that business?

4 A Yes.

5 Q Records such as items that were purchased for the
6 business?

7 A Yes.

8 Q Items that had left the business and been delivered
9 to other locations?

10 A Yes.

11 Q Information based on the value of those items that
12 were purchased?

13 A Yes.

14 Q Okay. I'm going to draw your attention then
15 specifically to April 8th of 2006. Are you aware of one of
16 those locations, one of the Econ locations, being burglarized?

17 A Yes.

18 Q And can you describe to us what happened at that
19 specific store, and what store we're talking about?

20 A Talking about the Stephanie location. We got a call
21 that it'd been burglarized, and a lot of appliances were taken
22 from that location. Some refrigerators. A lot of
23 undercounter appliances, and, you know, was taken from that
24 one location.

25 Q Were the police called out?

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1 A The police were called out. Police report was made.
2 We gave them model serial numbers of the product that's stored
3 in that location.

4 Q Okay. And, so you did an itemized list based on
5 what was missing from the store?

6 A Yes.

7 Q And you then looked at your records, and located the
8 serial numbers of those products?

9 A Right.

10 Q Okay. Now, I'm going to move you forward then to --
11 well, first of all, did you give anybody permission to go into
12 the Stephanie store and take those items out of the store?

13 A No.

14 Q Okay. And then on November 6th of 2006, did you
15 receive a call about possibly recovering some of the items
16 that had been taken from the Stephanie store?

17 A Yes.

18 Q And what did you do with regard to that?

19 A My boss called me and he gave me a list of the model
20 and serial numbers, and told me that I needed to talk to the
21 police officer on sight, so I went out there and I got with
22 the police officer. He showed me the inside of the house. I
23 went inside with the list, verified model and serial number of
24 the product that was in there that was ours, so once I
25 identified the product, I told him what product, and then he

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1 gave me the permission to take the product, and as I was
2 taking it, we were verifying the model and serial number as we
3 were putting it inside the truck.

4 Q Okay. So, and this location that you went to, was
5 that 1504 Cutler here in Las Vegas, Clark County, Nevada?

6 A Yes.

7 Q Okay. Now, you stated that when you got out there
8 and you located these items, you went ahead and verified that
9 the serial numbers matched on the product out at that Cutler
10 residence with the serial numbers of the items that had been
11 burglarized from the Stephanie store, correct?

12 A Yes.

13 Q Looking at State's 79. Do you recognize something
14 in that photograph that belonged to Econ that was taken from
15 the Stephanie store?

16 A Yes, the small refrigerator by the barbeque to the
17 right.

18 Q Would you go ahead and circle that for us?

19 A Yeah.

20 Q Okay. And what was the value? What was the retail
21 value of that particular refrigerator?

22 A That refrigerator, I think the value on that one,
23 was the -- the small refrigerator was \$1,458.

24 MS. DUSTIN: And, for the record, he's reviewing some
25 document to be able to --

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1 THE WITNESS: Yes, I've got a document showing what the
2 value of those products are worth.

3 MS. SMALL: Is that to --

4 THE COURT: Is this from some price list in the business
5 that you got?

6 THE WITNESS: Yes.

7 THE COURT: Any objection to him using it?

8 MS. DUSTIN: I -- just a little bit of --

9 THE COURT: Well, would you be able to, off the top of
10 your head without referring to this, that you made up from the
11 price list in your business without using it, could you do it
12 from your head?

13 THE WITNESS: I can estimate --

14 THE COURT: Go ahead.

15 THE WITNESS: -- but I can't give you exact.

16 THE COURT: Start with that, and then either of you want
17 him to refer you can.

18 BY MS. SMALL:

19 Q Now, we're looking at State's 81. First of all, do
20 you recognize the location?

21 A Yes, I was in that garage.

22 Q That's the garage at Cutler?

23 A Uh-huh.

24 Q Okay. And do you recognize something in the picture
25 that belonged to Econ?

1 A Yeah, I see two refrigerators there. They are ours.
2 Q Okay. Would you circle that for me, please?
3 A Yes, this one here is the side-by-side, which looks
4 like a 601, and the other one next to it is a 601 our freezer.
5 Q And those were identified by serial number, correct?
6 A Yes.
7 Q And I'm going to show you State's 82. Is that a
8 close-up of those?
9 A Yes, that's a close-up of those two units.
10 Q Okay. Can you tell me the value, the retail value
11 of the refrigerator/freezer on the left of that picture?
12 A The refrigerator/freezer estimated looks almost like
13 about \$6,500 on that price there.
14 Q Okay.
15 A And the freezer on the right, you're looking about
16 between \$4,500.
17 Q Okay. And looking at State's 83, that's just --
18 A That's all the stuff that was in the refrigerator
19 we had to remove to take our refrigerators.
20 Q Looking at State's 85. What's that a picture of?
21 A That's a picture of the refrigerator that we were
22 taking out of the home after we verified the model and serial
23 number, and the police officer made a notation of it.
24 Q Okay. I'm going to show you then State's 90. Do
25 you recognize what's depicted in that?

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1 A Yes, it's a small undercounter refrigerator.
2 Q Okay. And what was the value of that?
3 A Those are usually around about \$1,400.
4 Q Okay. Looking at State's 87. Can you tell us what
5 we're looking at in that picture?
6 A Yes, your looking at looks like the washer and dryer
7 combo that were at our location.
8 Q Okay. And looking at State's 88, would that be --
9 A Part of the --
10 Q -- part of that combo?
11 A Yes.
12 Q What's the value of the washer?
13 A The washer usual runs with the pedestal that's
14 underneath here. That's two separate items. The washer
15 usually runs with the pedestal about \$1,700.
16 Q And the dryer?
17 A The dryer, you're looking at about, with the
18 pedestal, about \$1,500 or \$1,400.
19 Q Okay. Was there anything recovered from Cutler that
20 you recall off the top of your head?
21 A Not on top of my head.
22 Q Were -- I've think what we've looked at here is a
23 washer and dryer, a refrigerator/freezer, a freezer, a small
24 refrigerator. Was an ice machine recovered from this
25 location?

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1 MS. DUSTIN: Objection, leading.

2 THE COURT: Sustained. Rephrase.

3 BY MS. SMALL:

4 Q After you went out there, and you located the items
5 that you had found from the location, did you recover anything
6 else besides the items we've just looked at?

7 A From the top of memory I think the only thing that
8 was missing was the Scotsman ice maker.

9 Q Okay. And what would be the value of the ice maker?

10 A Those is about another \$1,800 for that ice maker.

11 Q And did you recover that from that location?

12 A Yes, we did recover that from that location.

13 Q Here, let me see if I have one.

14 MS. DIGIACOMO: There's not a photo.

15 MS. SMALL: There wasn't? Okay.

16 BY MS. SMALL:

17 Q Now, explain to us a little bit about what Econ
18 does. I mean, as far as you purchase -- my understanding is,
19 you purchase appliances, correct?

20 A Yes, we would purchase appliances and we install for
21 custom homes, remodels, individual homes. We basically go out
22 and survey the -- where they're going to be installed, make
23 sure everything's going to fit, and do new construction, old
24 construction, and we take the product out, and once we get to
25 the house we try to install everything as best as we can.

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1 Sometimes there's issues that we can not install the stuff, so
2 we get the model, serial number, the signature, and until the
3 products 100% we're still liable for the product until it's
4 100% installed.

5 Q Until it's 100% installed?

6 A Right.

7 Q Okay. Now, do you recall a situation after this
8 point where appliances that had been sent out to one of your
9 job sights hadn't been installed, and there had been a
10 burglary at that job site?

11 A Yes, it was Grand Canyon construction. We were out
12 there installing, and they still had some issues on the
13 cooktop and refrigerator, so we ended up leaving the product
14 there, so after we get a phone call saying that the product
15 was --

16 MS. DUSTIN: Objection, hearsay.

17 THE COURT: Sustained. You got a phone call and then
18 what did you do?

19 THE WITNESS: We went out there to see, make sure
20 everything was what they said it was, and the product was
21 removed from that property.

22 THE COURT: Okay.

23 THE WITNESS: So Econ had to pay for that product. We
24 paid -- had to purchase it again, because it was not 100%
25 installed yet.

1 BY MS. SMALL:

2 Q And what product are we talking about?

3 A We're talking about the Viking and the cooktop,
4 refrigerator and cooktop.

5 Q Did there come a point in time where you received
6 information that those two pieces of equipment may have been
7 recovered?

8 A Yes, we got a phone call from the police department
9 that they recovered the refrigerator. I, myself, went and
10 picked it up from the storage, and the cooktop is still in the
11 impound.

12 Q The cooktop they did not release to you?

13 A No.

14 Q Looking at --

15 MS. SMALL: And did you have any objection to these? I'm
16 sorry.

17 MS. DUSTIN: No.

18 MS. SMALL: Okay. Your Honor, at this time we move to
19 enter in State's Proposed 316 to 319, and Ms. Dustin has no
20 objection.

21 THE COURT: They'll be admitted.

22 [State's Exhibit 316 through 319 Admitted]

23 BY MS. SMALL:

24 Q Okay. Now, the evidence view, looking at State's
25 316, can you tell us what we're looking at there?

1 A Yes, the electric Viking cooktop.

2 Q And that was a cooktop that had been taken from the

3 Grand Canyon construction?

4 A Yes.

5 Q And you were still liable for that cooktop, isn't

6 that what you said?

7 A Yes.

8 Q So what would be the value of that -- well, you --

9 did you replace the cooktop? Is that what you did?

10 A Yeah, we replaced the cooktop and refrigerator.

11 Q Okay.

12 A We had to purchase them through Econ.

13 Q Now, the refrigerator that -- you said you went out

14 and recovered that?

15 A Yes, I went out there, and picked it up.

16 Q Where did you go?

17 A I went to the police department that's off of

18 Stewart.

19 Q Looking at what's been admitted as State's 315, do

20 you recognize that refrigerator in this picture?

21 A Yes, that's the Viking side-by-side refrigerator

22 that I picked up.

23 Q Can you go ahead and circle what you're talking

24 about? And do you recognize the location?

25 A This location I don't recognize.

1 MS. DIGIACOMO: Probably in there.

2 MS. SMALL: Oh, I missed that. Court's indulgence.

3 BY MS. SMALL:

4 Q I'm just going to have you look here at State's 317.

5 Now, what are we looking at here?

6 A This is the serial and model number. This is the

7 model number of the cooktop, and right below it is the serial

8 number. That's where we had to verify it when we went to the

9 pound and looked at it with the police officer with our

10 paperwork to make sure that that was the one that was stolen.

11 Q Looking at State's 319. What are we looking at?

12 A That's a picture of my boss, because I went out

13 there with him that day to verify that cooktop that it was

14 ours.

15 Q And who's your boss?

16 A That's Jim Vincent.

17 MS. SMALL: Pass the witness, Your Honor.

18 THE COURT: Questions?

19 MS. DUSTIN: Yes.

20 CROSS-EXAMINATION

21 BY MS. DUSTIN:

22 Q Now, sir, you said that the Econ Stephanie location

23 was broken into. Was that back in 2006?

24 A I believe so.

25 Q Would it be in April of 2006?

1 A I believe so. I'm not too sure on the exact date.
2 It's been a while.

3 Q Okay. And is it fair to say at your locations that
4 you have kind of a display floor of the models that you carry?

5 A Yes.

6 Q Okay. And do you know if the -- well, isn't it true
7 that the -- many of the items off of the display floor were
8 taken during that burglary?

9 A Yes, on that Stephanie location.

10 Q And it's because it was documented that there was
11 damage to, I guess, the wood --

12 A The cabinetry.

13 Q Okay. So these items were already kind of on the
14 display floor for purposes of looking at them, and using them,
15 and testing them out?

16 A Right.

17 Q Okay. So they weren't brand new and in boxes?

18 A Well, they were from -- they're all new product out
19 of the box. We install them as new product in there, but once
20 you take them out of the box they're not new no more.

21 Q Right. So the items that were taken from the
22 Stephanie -- and the Stephanie location that were found at the
23 Cutler location were those that were off of the display floor,
24 right?

25 A Yes.

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1 Q But the ones that were at the Grand Canyon
2 construction site, those were not off of the display floor?

3 A Right.

4 Q Okay. Now, you said when you went to the Cutler
5 location that you went there with a list of serial numbers to
6 match up and pick up property that belonged to Econ. Is that
7 correct?

8 A Yes.

9 Q And that you were given, would it be fair to say,
10 and incident report that had the list of everything on there
11 that you provided to the officers to verify that --

12 A Yes.

13 Q -- the items were yours?

14 A Uh-huh.

15 Q Is that a, yes?

16 A Yes, that's a yes.

17 Q Okay. And is it fair to say that after you were
18 recovering everything you had to sign off on a report
19 acknowledging that you received the items?

20 A Yes, I signed it myself.

21 Q Okay. And that they gave you a copy of that sheet?

22 A Yes.

23 Q And you took particular care to make sure that every
24 item that you were taking into your control were, in fact, the
25 ones that were taken from Econ?

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1 A Yes.

2 Q Okay. And you're sure that out of those six items
3 everything was reported previously in your reports as the
4 belonging to Econ?

5 A Yes.

6 Q Okay. Can you tell me, sir, why you took possession
7 of a Maytag ice maker that was not on or listed in the
8 incident report then?

9 A Maytag ice maker?

10 Q Yes.

11 A I don't remember the Maytag --

12 Q You don't recall taking a Maytag ice maker?

13 A Uh-uh.

14 Q Is that a, no?

15 A Yes, that's a no.

16 Q So when the police filled out the property report
17 that you had to sign, you made sure that everything was
18 correct in there, right?

19 A I looked at the stuff that my boss gave me, I
20 verified what was there, and everything I took I verified it
21 with it.

22 Q Okay. So you verified on the property report that
23 everything that they wrote out was correct, and matched up
24 with your forms, right?

25 A Uh-huh.

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1 Q Is that a, yes?

2 A Yes.

3 Q Can I please approach?

4 A Yes.

5 THE COURT: Sure, don't ask just go ahead.

6 BY MS. DUSTIN:

7 Q Now, sir, I'm just going to have you look at this to
8 yourself real briefly, and this item here. Does this reflect
9 your recollection as to the property report that you signed
10 that day?

11 A Uh-huh.

12 Q Is that a, yes?

13 A Yes, that's my signature.

14 Q Okay. And do you see on there that you took a
15 Maytag ice maker?

16 A Yes.

17 Q Okay. And there would be a corresponding Maytag ice
18 maker listed on the incident report for your company, right?

19 A I got to look at the document to verify, but --

20 Q Okay. Hold on. We'll get you that. Now, just for
21 the record, you weren't the person who reported all of this to
22 the police. It was somebody else that reported all the
23 information that was taken to the police, right?

24 A Yes.

25 Q And you were just given a copy of this, and told to

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1 go down there, match up serial numbers, and bring back what
2 belonged to Econ, right?

3 A Right.

4 MS. DUSTIN: Can I approach again, Your Honor?

5 THE COURT: Sure. Come up.

6 BY MS. DUSTIN:

7 Q Now, I just want you to look to yourself real quick,
8 and see if that refreshes your recollection as to the listing.

9 A I actually had a different list than yours. Yeah, I
10 don't see it.

11 Q Okay, so I'll ask you again. Was on this report,
12 and would you agree that this was an incident report prepared
13 by Metro for the break-in --

14 A Uh-huh.

15 Q -- back in April of 2006?

16 A Yes.

17 Q And would you also agree with me that there's not a
18 Maytag ice maker on this report?

19 A Yes.

20 MS. DUSTIN: Nothing further.

21 REDIRECT EXAMINATION

22 BY MS. SMALL:

23 Q Were you there when the police report was given to
24 the police officers --

25 A No.

1 Q -- from the Stephanie store? Are you aware of
2 whether or not every single item that was taken from the store
3 was on that report?

4 A No.

5 Q Now, when you went out to the Cutler residence, did
6 you go out with a blank piece of paper, walk around and look
7 at pieces of equipment, and write down the serial numbers, and
8 then walk back up to the police and say, this is our item?

9 A What I did was he took me inside, he showed me all
10 the pieces, and at that time I made some phone calls to the
11 shop and let them know if this is ours or not, because all the
12 pieces that were on my list were not some of the stuff that
13 was there. There was other stuff that was there that was not
14 on the list --

15 Q Okay.

16 A -- but it was -- so I had to call the shop and
17 verify that it was ours.

18 Q So you called the shop, they gave you the serial
19 number, and then you looked to see if that serial number
20 matched those items, correct?

21 A Right.

22 Q It wasn't like you just walked out there and wrote
23 serial numbers down --

24 A No.

25 Q -- and they said, hey, this belongs to us, correct?

1 A No, because the police record, the only thing they
2 had -- they had some of the stuff, but they didn't have all
3 the stuff.

4 Q Now, records are kept as far as invoice --

5 MS. DIGIACOMO: Show him.

6 MS. SMALL: Okay.

7 BY MS. SMALL:

8 Q I'm going to show you an impound property report.

9 MS. SMALL: May I approach, Your Honor?

10 THE COURT: Sure.

11 BY MS. SMALL:

12 Q And I'm going to have you look at this property
13 report from the Cutler residence, and I'm going to ask you if
14 whether or not this is the Maytag ice machine that Ms. Dustin
15 was just speaking to you about?

16 A Yes.

17 Q And is there a serial number listed as to the ice
18 machine on there?

19 A Yes.

20 Q And what does it say? What type of ice machine does
21 it say it is?

22 A Maytag.

23 Q Looking at this invoice, this is your company? This
24 is from your company [indiscernible] Corporation?

25 A Yes.

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1 Q And can --

2 MS. DUSTIN: And before he testifies to that, I haven't
3 seen that document that he's testifying over.

4 THE COURT: Come up, and take a look.

5 BY MS. SMALL:

6 Q And looking at -- this is a piece of inventory that
7 your company would keep a report based on items?

8 A This is what the manufacturer send us when we
9 receive the product.

10 Q Okay. And can you tell us what it says as to the
11 serial number of this ice machine? Can you just go ahead and
12 read that serial number?

13 A Well, this is the model number.

14 Q That's the model number, okay.

15 A This says, JIM1558RS --

16 Q Okay.

17 A -- undercounter ice maker, which is a Maytag.

18 Q Which would be a Maytag?

19 A Yes.

20 Q And you know that based on your experience?

21 A Because of the knowledge of the product.

22 Q Okay. And what would -- and what does it list that
23 it is here?

24 A Maytag.

25 Q And, just for the record, can you tell us what the

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1 serial number that they have listed --

2 MS. DUSTIN: And I'll object. That is hearsay testimony

3 that she's about to go into. That's not printed on the

4 invoice. It's handwritten.

5 MS. SMALL: This is the property report from Cutler.

6 THE COURT: Say it again?

7 MS. SMALL: I was asking him to go ahead and tell me what

8 the serial number, based on the property report, of that --

9 THE COURT: What's written there?

10 MS. SMALL: Uh-huh.

11 THE COURT: Why? Isn't that a Metro business record?

12 MS. DUSTIN: Well, go ahead. It's going to be on the

13 next question.

14 THE COURT: Well, okay. Well, then he can say that. Go

15 ahead he can answer this question.

16 THE WITNESS: The serial number's 01300u807C1.

17 BY MS. SMALL:

18 Q Thank you. Now, again, when you went out to Cutler

19 did you verify all of the serial numbers that were given to

20 you by your company with the items that were located at

21 Cutler?

22 A Yes.

23 MS. SMALL: Nothing further.

24 THE COURT: All right. Anything else, Ms. Dustin?

25 MS. DUSTIN: No, Your Honor.

1 THE COURT: Thanks, Mr. Duenas. Appreciate your
2 testimony. You're excused. Next?

3 MS. DIGIACOMO: Your Honor, can we approach?

4 THE COURT: Yeah.

5 [Bench Conference Not Transcribed]

6 THE COURT: Go ahead, name it. Churches?

7 MS. DIGIACOMO: Detective Churches.

8 THE COURT: Come on up, sir.

9 THE CLERK: Please remain standing, and raise your right
10 hand.

11 JAMES CHURCHES, STATE'S WITNESS, SWORN

12 THE WITNESS: I do.

13 THE CLERK: Thank you. You may be seated.

14 THE COURT: State your name, and spell your name for the
15 record, please.

16 THE WITNESS: James Churches, J-a-m-e-s, C-h-u-r-c-h-e-s.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q Thank you. How are you employed?

21 A I'm a police officer with the LVMPD.

22 Q And how long have you been so employed?

23 A A little over nine years, ma'am.

24 Q Directing your attention to the fall of 2006. What
25 was your assignment at that time?

1 A I was assigned as a detective in the financial
2 property crimes section.

3 Q On November 6, 2006 were you called --

4 MS. DIGIACOMO: Court's indulgence.

5 BY MS. DIGIACOMO:

6 Q On, I'm sorry. November 6, 2006, were you called to
7 a residence at 1504 Cutler to assist another section in
8 executing a search warrant?

9 A Yes, that's correct.

10 Q When you got to the Cutler residence did you do
11 anything to help out with the search warrant being executed
12 there?

13 A No, I did not.

14 Q Okay. Were you asked to go to a different location?

15 A I was.

16 Q Okay. Where did you go?

17 A To a storage. I believe the address 8100 West
18 Charleston. 8100, 8200, something like that.

19 Q Okay. Is there anything I could show you that would
20 refresh your recollection as to what the exact address was?

21 A Yes.

22 Q Did you actually do a property impound with regard
23 to the search warrant executed at the storage unit?

24 A I did.

25 Q So showing you a nine page property report. Do you

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1 recognize this?

2 A Yes, I do.

3 Q Is this your handwriting?

4 A It is.

5 Q And the property impound you filled out?

6 A That's correct.

7 Q And what was the address for this location?

8 A 8100 West Charleston.

9 Q And was there a specific unit number attached with
10 this address that you actually searched?

11 A Yes, I helped served the warrant at unit number A,
12 as in Adam, 138.

13 Q Okay. When you executed the search warrant were you
14 one of the first officers there?

15 A Yes.

16 Q And, so then you helped take the property out of the
17 storage unit?

18 A That's correct.

19 Q When you first opened the storage unit how full
20 would you say it was?

21 A To the gills.

22 Q Okay. How big of a storage unit was this?

23 A I would say, I think, like ten by ten by either 15
24 or 20 deep. It was a good size.

25 Q And did anyone take photographs of everything that

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1 was taken out of that was property?

2 A Yes.

3 Q And who was that?

4 A I did.

5 Q Okay. So you did the impound, and you took all the
6 photographs?

7 A That's correct.

8 Q Okay. I'm going to show you some photographs, and
9 tell me whether or not these came out from West Charleston.
10 Showing you State's Exhibit 36, which has already been
11 admitted. Do you recognize that as coming out of that storage
12 unit?

13 A Yes.

14 Q Showing you State's Exhibit Number 166. Do you
15 recognize this?

16 A Yes, I do.

17 Q Is this a photograph of items that came out of West
18 Charleston?

19 A Yes.

20 Q And, now, with regard to this bronze statue that we
21 see in the forefront of this photograph, do you know what
22 happened to that?

23 A It was released.

24 Q Okay. To Milton Homer Furnishings?

25 A I can't say who it was released to. I don't recall

1 specifically.

2 Q Do you know who released that property?

3 A It would have been either Sergeant Elliot or
4 Detective Morris, I believe.

5 Q But it was released?

6 A That's correct.

7 Q Okay. Showing you State's Exhibit 167. Do you
8 recognize this?

9 A Yes, I do.

10 Q More of the stuff that came out of that storage unit
11 on West Charleston?

12 A That's correct.

13 Q Now, specifically looking at this urn, do you know
14 what happened with that?

15 A That was released as well.

16 Q Okay. And actually showing you State's Exhibit 168,
17 is that that same urn in the back of a car?

18 A It is, and I helped put it there.

19 Q Okay. So you actually helped load it to the person
20 it was released to?

21 A That's correct.

22 Q Okay. Next, showing you State's Exhibit -- oops.

23 Was that wrong? Sorry about that. Showing you State's

24 Exhibit Number 172. Do you recognize this?

25 A Yes.

1 Q And what is this?

2 A It looks like a small refrigerator, or some type of
3 appliance.

4 Q Okay. Now, can you actually see -- there's a label
5 on the side of this. All right. There's yellow tape across
6 the front of it. Would that have been put on by the police,
7 or was that there?

8 A That would have been there already. That doesn't
9 look like any of the police department's evidence tape.

10 Q Okay. So this is in the same condition that you
11 found it in?

12 A That's correct.

13 Q Minus there's now an evidence tag on it?

14 A That's correct.

15 Q All right. Can you read what that says right there
16 on the side?

17 A Hoshizaki ice maker.

18 Q All right. But this did come out of the West
19 Charleston unit?

20 A Yes, it did.

21 Q Showing you State's Exhibit 215. Do you recognize
22 this?

23 A Yes, ma'am.

24 Q Okay. Also came out of the West Charleston storage
25 unit?

1 A Correct.

2 Q Same with State's Exhibit 216?

3 A Yes.

4 Q And then showing you State's Exhibit 212, what is
5 this?

6 A More artwork found inside the storage unit at the
7 West Charleston location.

8 Q Okay.

9 THE COURT: I think she's done looking through, so.

10 MS. DIGIACOMO: Okay. All right, Your Honor, and for the
11 record here, I have what's been marked as State's Proposed
12 Exhibits 876 through 973. I move -- ooh. I'd move for their
13 admission at this time. There's no objection by Defense.

14 THE COURT: Even the torn one?

15 MS. DIGIACOMO: I'm sorry.

16 MS. DUSTIN: The torn one.

17 THE COURT: Admitted.

18 [State's Exhibit 876 through 973 Admitted]

19 MS. DIGIACOMO: Your Honor, I actually didn't tear one.

20 THE COURT: All right.

21 MS. DIGIACOMO: It sounded like it, but I didn't.

22 THE COURT: Admitted. It did sound like it, yes.

23 MS. DIGIACOMO: Thank you.

24 BY MS. DIGIACOMO:

25 Q All right. Next, Detective, all right. Showing you

1 State's Exhibit 242. Did that come out of the West Charleston
2 unit?

3 A It did.

4 Q 243?

5 A Yes.

6 Q 244?

7 A Yes.

8 Q 245?

9 A Yes.

10 Q 246?

11 A Yes.

12 Q 247?

13 A Yes.

14 Q How about did 298? Did these items come out of the
15 West Charleston unit?

16 A They did.

17 Q 299?

18 A Oh, yes.

19 Q 300?

20 A Yes.

21 Q 301?

22 A Yes.

23 Q 302?

24 A Yes.

25 Q 303?

1 A Yes.
2 Q 304?
3 A Yes.
4 Q 305?
5 A Yes.
6 Q 306?
7 A Yes.
8 Q 307?
9 A Yes.
10 Q 308?
11 A Yes.
12 Q 309?
13 A Yes.
14 Q 310?
15 A Yes.
16 Q 311?
17 A Yes.
18 Q 312?
19 A Yes.
20 Q 312-A?
21 A Yes.
22 Q 312-B?
23 A Yes.
24 Q 312-C?
25 A Yes.

1 Q 312-D?
2 A Yes.
3 Q Next, showing you State's Exhibit 321. Is this
4 another view of all the items taken out of the West Charleston
5 storage unit?
6 A It is.
7 Q Showing you 320. Did that come out of the West
8 Charleston storage unit?
9 A It did.
10 Q Wait, oh. I think I showed you -- 397, that's this
11 West Charleston storage unit?
12 A Yes.
13 Q Okay. 398?
14 A Yes.
15 Q Okay. 399 also came out of the West Charleston?
16 A Yes.
17 Q Showing you 465. Did this come out of West
18 Charleston?
19 A Yes.
20 Q 466?
21 A Yes.
22 Q 467?
23 A Yes.
24 Q And 468?
25 A Yes.

1 Q All right. Now, State's 875, what are we looking at
2 there?

3 A That is the storage unit immediately after it was
4 opened, as it was found.

5 Q Now, as items are being taken out of it, does 876
6 show how the unit looked after some of the belongings had come
7 out?

8 A That is correct.

9 Q And 877, this was found in the unit as well?

10 A It was.

11 Q And can you read the name on that?

12 A The name is Bryan Fergason.

13 Q 878, that was this unit as well?

14 A Yes.

15 Q In fact, well --

16 THE COURT: You don't need to --

17 MS. DIGIACOMO: For the record, so I don't show all of
18 these. All of these from 875 through 973 came out of the West
19 Charleston unit as long as Counsel will stipulate I won't show
20 them all.

21 MS. DUSTIN: Well, probably the officer can just look
22 through them, and just --

23 THE COURT: Yeah, why don't you just give them to him,
24 and let him look right through them

25 MS. DIGIACOMO: Sure.

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1 BY MS. DIGIACOMO:

2 Q Officer, if you can flip through everyone of those
3 photographs, please, and let me know if these all came -- when
4 you're done, if they all came from West Charleston. Do you
5 recognize -- did all of these come from West Charleston?

6 A Yes, they did.

7 Q They are all photographs that you actually took?

8 A That's correct.

9 MS. DIGIACOMO: But for the record, State's 875 through
10 973 are all West Charleston photographs.

11 BY MS. DIGIACOMO:

12 Q Showing you State's Exhibit 880. What are we
13 looking at there?

14 A A large screen Sony television and some other
15 furnishings.

16 Q Showing you 881. What are we looking at here?

17 A This was about the best angle I could get after
18 everything had been taken out of the unit.

19 Q So everything that we see on both sides of the
20 driveway came out of the west --

21 A That's correct. That's not everything, but that's
22 the bulk of it.

23 Q Showing you 891. Are these items that came out of
24 that storage unit as well?

25 A Yes, they are.

1 Q Now, everything that was taken out, was the majority
2 of it impounded?

3 A That's correct.

4 Q Showing you 906. What is this?

5 A An electric guitar.

6 Q Do you know was there more than one guitar taken
7 out, or just one?

8 A I don't recall. I'd have to refer to the property
9 report.

10 Q Okay. And 907, what are we looking at here?

11 A It's like a -- I'm not an electronics person, but
12 it's some type of music electronics equipment. It's like all
13 built into a stand.

14 Q Okay. So is it fair to say that this right here, in
15 the center, is a rack with these music, or electronic
16 equipment screwed into it?

17 A Yes.

18 Q Okay.

19 MS. DIGIACOMO: Nothing further.

20 THE COURT: Questions?

21 MS. DUSTIN: Yes.

22 [Court and Witness Confer Indiscernible]

23 CROSS-EXAMINATION

24 BY MS. DUSTIN:

25 Q Now, Officer, I know you've looked at --

1 THE COURT: Miss, go ahead.
2 BY MS. DUSTIN:
3 Q Now, Officer, I know you've looked at a bunch of
4 photographs, and you recall each and every item that was taken
5 out of that unit on that day?
6 A Do I recall each and every item that was taken out
7 of that unit?
8 Q Yes.
9 A No, I don't recall each and every item. I recall
10 everything that's been shown in the photographs --
11 Q Okay. Well --
12 A -- as being there that day, and that I took the
13 photograph.
14 Q Okay. Showing you State's Exhibit 1106. Did that
15 come out of that unit?
16 A It appears familiar. I would need to check against
17 the property report if you have that available.
18 Q So this appears familiar to you?
19 A It does.
20 Q You saw this come out of the West Charleston unit?
21 A I'm not certain.
22 MS. DIGIACOMO: Objection, that misstates his testimony.
23 THE COURT: Well, she can cross-examine, but --
24 BY MS. DUSTIN:
25 Q So you're not 100% sure whether this item came out

1 of the West Charleston unit?

2 A No, I'm not.

3 Q So if prior testimony said that that came out of the
4 West Sahara unit, you wouldn't be sure whether or not it did
5 or not, correct?

6 MS. DIGIACOMO: And I'm going to object to West Sahara.
7 We're talking about West Charleston.

8 THE WITNESS: I was not at West Sahara.

9 THE COURT: I know. He -- she asked him if that came
10 out -- if he'd seen it before, and he said, it looked
11 familiar, which could be from anything, and then she asked him
12 if it came out of West Charleston, he said, I wouldn't know if
13 that --

14 MS. DIGIACOMO: No, she said, West Sahara. She said,
15 that there was prior testimony that it came out of the West
16 Sahara.

17 THE COURT: Well, I don't know. Is there or isn't there?
18 I don't remember.

19 MS. DUSTIN: It's already been admitted, Your Honor.

20 THE COURT: I don't remember --

21 MS. DUSTIN: Okay.

22 THE COURT: -- that he said, he wasn't sure, he'd have to
23 check the property report, and, so she said, well, if there
24 was testimony it came out of Sahara would you dispute that,
25 and he said, no, he didn't know, so I don't know if there was

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1 testimony or not.

2 BY MS. DUSTIN:

3 Q How about this, State's Exhibit 1119? Did this come
4 out of West Charleston?

5 A That does not look familiar to me.

6 Q How about 1051, State's Exhibit 1051? Did that come
7 out of West Charleston?

8 A Those items don't appear familiar to me.

9 Q Sir, would it be fair to say that due to the volume
10 you're really not 100% sure of each and every item that came
11 out of the West Charleston location, but there were some that
12 kind of stuck out in your mind?

13 A It would be fair to say that there was a great
14 volume of items that came out of that storage unit.
15 Everything that was impounded I photographed, and those were
16 cross-referenced. If I -- if they came out of there it was
17 impounded on my property report, I took a photograph of it.
18 Some things stuck out better than others, that's correct.

19 Q Okay. So when you flipped through all of those
20 photos that the State had you go through earlier, you're not
21 100% sure, but if you could cross-reference with your property
22 report you would be able to verify things, right?

23 A That's a fair statement.

24 Q Okay. Now, there was one picture that depicted a
25 piece of paper with Bryan Ferguson's name on it?

1 A Yes.

2 Q And you were instrumental in going through all of
3 the West Charleston storage unit?

4 A That's correct.

5 Q Did you find any other pieces of paper with Bryan
6 Fergason's name on it?

7 A I don't recall specifically. I do recall being
8 asked in the course of the warrant that I was to be on the
9 lookout for -- that was a specific item related to the search.

10 Q Okay.

11 A Papers with that name on it.

12 Q And would it be fair to say that if you had found
13 such information, you would have documented it on your
14 property report?

15 A Yes.

16 Q And, because you were told to pay particular
17 attention for such items, you would have made particular
18 attention to be documenting such on your property report?

19 A That's a fair statement.

20 Q Okay. And you can't recall whether or not there was
21 more than that one item?

22 A I don't recall specifically. It is possible that
23 items may have been impounded such as assorted documents.
24 That's a common practice when there are large volumes of
25 paperwork.

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1 Q Okay. Would it refresh your recollection to glance
2 through the property report that you prepared?

3 A It would.

4 Q And you were the person who actually prepared the
5 property report?

6 A That is correct.

7 MS. DUSTIN: May I approach?

8 THE COURT: Yeah.

9 BY MS. DUSTIN:

10 Q Can you just glance through that just to refresh
11 your recollection?

12 A Okay.

13 Q Does that refresh your recollection?

14 A In regards to what specifically?

15 Q In regards to how many documents, or items, or
16 paperwork in Bryan Fergason's name you found in there.

17 A Specifically, the first item listed is paperwork in
18 Bryan Fergason's name.

19 Q Okay.

20 A Again, if there were other large volumes of
21 paperwork it may have gone in with other items.

22 Q Okay. But you didn't see anything else that said
23 large volume of paperwork, or anything else like that?

24 A No.

25 Q And you would have -- it would be fair to say that

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1 if you had found that, because you were being told to
2 specifically look for it you would have impounded that
3 paperwork?

4 A Yes.

5 Q And would it be fair to say that you would have also
6 as you had taken a picture of one document with Mr. Fergason's
7 name on it, you would have taken pictures of those?

8 A Yes.

9 MS. DUSTIN: Nothing further.

10 THE COURT: Anything else?

11 MS. DIGIACOMO: Oh, yes.

12 REDIRECT EXAMINATION

13 BY MS. DIGIACOMO:

14 Q Sir, Counsel asked you whether or not you
15 specifically recall every photograph that was shown to you by
16 the State as coming from West Charleston. Do you recall that?

17 A Yes.

18 Q Okay. I want you to flip through everyone of these
19 photographs between 875 to 973, and pull out any that you're
20 unsure of and we'll match that against your property report.

21 THE COURT: Let me ask you a question, Counsel. Have you
22 matched these against the property report?

23 MS. DIGIACOMO: Well, no. What I did is, I was
24 personally given all of the photographs Detective Churches had
25 took, and that's what I've shown him, and that's what's in the

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1 other folder as well.

2 THE COURT: You want to go through this exercise?

3 MS. DUSTIN: No, Your Honor. I'll agree that they are
4 pictures that Detective Churches took. That was not my point..

5 THE COURT: Okay.

6 MS. DIGIACOMO: Okay.

7 THE WITNESS: Are we done here?

8 MS. DIGIACOMO: Yes. Okay. So she's agreeing that these
9 are all things that came out of the storage unit, and I don't
10 need to go through every photograph again.

11 THE COURT: And that you took a picture of them.

12 MS. DUSTIN: Right. Your Honor, that was not my point.
13 My point was is that due to the volume he couldn't recall each
14 and every item unless he possibly matched them up to his
15 property report.

16 THE COURT: He couldn't. Okay.

17 MS. DIGIACOMO: And that's fine. Nothing further.

18 THE COURT: Thanks, Detective. Appreciate your time.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Next?

21 MS. DIGIACOMO: Amanda Terry.

22 THE COURT: Come up here, ma'am.

23 THE CLERK: Please remain standing, and raise your right
24 hand.

25 AMANDA TERRY, STATE'S WITNESS, SWORN

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1 THE WITNESS: I do.

2 THE CLERK: Thank you. You may be seated.

3 THE COURT: State your name, and spell your name for the
4 court recorder.

5 THE WITNESS: Amanda Terry, A-m-a-n-d-a, T-e-r-r-y.

6 THE COURT: Go ahead.

7 MS. DIGIACOMO: And, for the record, this is going to
8 relate to Count XXV.

9 DIRECT EXAMINATION

10 BY MS. DIGIACOMO:

11 Q Ms. Terry, do you know a person by the name of Tonya
12 Trevarthen?

13 A I do.

14 Q Okay. And how do you know her?

15 A I was a student with her, and I also worked with her
16 at Nova Southeastern University.

17 Q I'm going to show you State's Exhibit Number 992.
18 Do you recognize this person?

19 A Yes.

20 Q Okay. Is this Tonya Trevarthen that you know?

21 A Yes.

22 Q Now, when did you meet her?

23 A I met her about two and a half, three years ago.

24 Q At some point did Ms. Trevarthen give you anything?

25 A Tonya had given me two paintings when I'd moved into

1 a house.

2 Q Okay. And then in the -- on November 6, 2006 did
3 you happen to see a police report?

4 A On the news, yes.

5 Q Okay. And based upon that, did you contact the
6 police?

7 A Yes, I did.

8 Q And it was regarding these two paintings?

9 A Correct.

10 Q Okay. Now, showing you State's Exhibit Number 459.
11 Do you recognize this?

12 A Yes.

13 Q And how do you recognize it?

14 A The martini glass.

15 Q Okay. Was this one of the pictures that Tonya had
16 given you?

17 A Yes.

18 Q And showing you State's Exhibit Number 460, do you
19 recognize this?

20 A Yes.

21 Q And what are we looking at here?

22 A Somewhat of a clown is what I would identify it as.

23 Q And does it say Picasso at the bottom?

24 A Yes.

25 Q Is this one of the pictures that was given to you by

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1 Tonya Trevarthen?

2 A Yes.

3 Q All right. Now, based upon seeing the news, you
4 contacted detectives. Did a detective eventually come and get
5 the photographs from you?

6 A Yes. The next morning the detective came and took
7 photographs of the pictures, and then took them from my home.

8 Q Okay. At some point did you actually get those
9 photographs back?

10 A Yes, I did.

11 Q Or those pictures back, I should say. And how did
12 you get them back?

13 A The company that they were returned to phone called
14 me and said that they had already claimed them on their
15 insurance, and if I wanted them that I could come and pick
16 them up.

17 Q Okay. And that -- does the name Phyllis Paulson
18 sound familiar?

19 A No, not off --

20 Q Okay. Do you recall where you went to pick them up?

21 A Furniture Markdowns on Eastern and Russell area.

22 Q Okay. And, now, you were friends with Tonya. Did
23 you know her boyfriend?

24 A I had met her boyfriend, yes.

25 Q All right. What was his name?

1 A Devon Monroe.

2 Q And showing you State's Exhibit 991, do you
3 recognize this person?

4 A Yes.

5 Q Okay. And who is this?

6 A That's Devon Monroe.

7 Q All right. Now, did you know anybody else
8 associated with Devon or Tonya?

9 A No, no.

10 Q Did you -- had you ever been to there house at
11 Cutler, on 1504 Cutler?

12 A Yes, twice.

13 Q And how many -- oh, so you were there twice?

14 A Yes.

15 Q What did the interior look like when you were there?

16 A Very fancy. They had a lot of pricy things I would
17 say. You know, they had a beautiful piano. A lot of
18 different paintings. They had a room that was -- had signed
19 guitars, and things of that nature. They had a Slurpee
20 machine and a soda fountain machine, and a TV in practically
21 every room. They also had a high-tech like security system
22 with cameras and what not.

23 Q Okay. When you were there -- well, do you remember
24 approximately when it was you were in the Cutler residence?

25 A It was during the summer about two years ago.

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1 Q Summer of 2006?

2 A Yeah.

3 Q Okay. So --

4 A Maybe earlier than that at the beginning of that
5 year.

6 Q Okay. So within the year before you saw this on the
7 news?

8 A Yes, yes.

9 MS. DIGIACOMO: Nothing further.

10 THE COURT: Any questions?

11 CROSS-EXAMINATION

12 BY MS. DUSTIN:

13 Q Now, Ms. Terry, you said that that you did go over
14 to Tonya's house?

15 A Yes.

16 Q And would it be fair to say that you thought it was
17 a pretty nice house?

18 A Oh, absolutely.

19 Q Pretty neat things inside?

20 A Absolutely.

21 Q And when you walked in and you went through the
22 house aside from it looking and having a lot of neat things in
23 there, was there anything that made you said, ooh, maybe I
24 shouldn't be in here?

25 A No, nothing that caught my eye that was like out of

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1 place. It was all very much, you know, it all kind of
2 coordinated with each other.

3 Q Okay. So aside from the fact that it looked that
4 there was a lot of neat things, and I think you said that
5 there was a Slurpee machine, and --

6 A Yeah.

7 Q And that there were some things that you thought
8 were pricy, there was nothing that when you walked into the
9 house that you immediately said, hey, this doesn't look like
10 it belongs here?

11 A No, because as I said there was one room that had
12 like the signed guitars and what not, and that went along with
13 the story that Tonya had told me, you know, that her -- that
14 her boyfriend was this underground music producer, and
15 sometimes instead of money people would pay him in goods such
16 as TV's, or, you know, vases, or whatever, and, so it just all
17 fit into the story that she had told us.

18 Q Now, you said that Tonya had given you these
19 pictures --

20 A Yes.

21 Q -- because you were moving into a new house?

22 A Yes.

23 Q Was there something else strange that Tonya told you
24 about that?

25 A She did say that if I did not want them, and if I

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1 were not going to use them to give them back and not to resell
2 them.

3 Q And you didn't think that was weird?

4 A No.

5 Q Thought that was kind of normal to -- somebody to
6 give you a gift and say, hey, if your -- if you decide that
7 you don't want it, give it back to me, don't sell it to
8 anybody else.

9 A Tonya was my friend. I had no reasoning at that
10 point to not trust her, or second guess what she told me.

11 Q Now, do you remember when she gave you those
12 pictures?

13 A It was April of 2006 was when I moved into the
14 house, so it was around that time.

15 Q Okay. And I think you said that you had met her
16 boyfriend?

17 A Yes.

18 Q Okay. And did you hangout with Tonya quite a bit?

19 A I did, not so much at her home, but as I had said we
20 were students together, so we spent breaks together, and we
21 had gone out to dinner a couple of times. We went to a play a
22 couple of times, so.

23 Q Okay. Did she seem -- did she always pay for
24 everything, or did she split the cost with you?

25 A We split the cost.

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1 Q Okay. And just as a silly question, you weren't
2 charged with any crime for this were you?

3 A No, I was not.

4 MS. DUSTIN: Nothing further.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MS. DIGIACOMO:

8 Q Did the pictures that you were given, did you have
9 any reason to believe that they were stolen?

10 A No.

11 MS. DIGIACOMO: Nothing further.

12 THE COURT: Thanks. Appreciate your testimony, Ms.
13 Terry.

14 THE WITNESS: Uh-huh.

15 THE COURT: Next?

16 MS. DIGIACOMO: Devan Thorns.

17 THE COURT: Come up here, Ms. Thorns.

18 THE CLERK: Please remain standing, and raise your right
19 hand.

20 DEVAN THORNS, STATE'S WITNESS, SWORN

21 THE WITNESS: Yes.

22 MS. DUSTIN: Thank you. You may be seated.

23 THE COURT: State your name please, ma'am, and spell your
24 name for the court recorder.

25 THE WITNESS: It's Devan Thorns, D-e-v-a-n. Last name,

1 T-h-o-r-n-s.

2 DIRECT EXAMINATION

3 BY MS. DIGIACOMO:

4 Q Ma'am, how are you employed?

5 A By Bank of America.

6 Q What is your title, or your duty?

7 A The assistant manager.

8 Q For what branch?

9 A The 300 South Fourth Street, downtown.

10 Q All right. Is that sometimes referred to as The
11 Plaza branch?

12 A Yes.

13 Q All right. Now, in November of 2006, specifically I
14 believe it was November 21, 2006, were you contacted by
15 detectives regarding search warrants?

16 A Yes.

17 Q And I'm sorry -- I think --

18 A Well, they came inside the banking center.

19 Q Okay. And do you recall how many detectives came
20 in?

21 A I believe it was two.

22 Q When they came in they contacted you?

23 A Well, when they came in they had the search and
24 seizure warrant that they presented to me.

25 Q Okay. And that was for how many different accounts?

1 A Between the two individuals, or just one?

2 Q Well, then how many different individuals were they

3 seeking the accounts of?

4 A That I recall, two.

5 Q All right. And do you recall how many total

6 accounts that involved for those two individuals?

7 A Four or five maybe.

8 Q All right. Now, do you recall the individuals

9 names?

10 A Bryan Fergason and Tonya. I don't her -- I can't --

11 Q You don't remember her last name?

12 A -- pronounce the last name.

13 Q Okay. I'm going to show you some documents, and if

14 you can flip through and just let me know, first of all, if

15 you recognize the documents that I'm showing you.

16 A Okay, yes.

17 Q Do you recognize all these documents?

18 A Yes.

19 Q Okay. Now, the first set that you set off to the

20 left, those documents, were you the one that actually printed

21 those documents for detectives when they executed the warrant?

22 A Yes.

23 Q All right. And does that refresh your recollection

24 after viewing those documents as to the name of the second

25 individual that had accounts that they were seeking to seize?

1 A Yes.

2 Q And what is the name of that person?

3 A Trevarthen.

4 Q How do you spell it?

5 A T-r-e-v-a-r-t-h-e-n.

6 Q All right. And then the second set that you have to

7 your right, who are these records pertaining to?

8 A Bryan M. Fergason.

9 Q Okay. Now, how many accounts did Bryan Fergason

10 have at your bank when the detectives showed up with the

11 seizure warrant?

12 A Three.

13 Q And what was the total amount in all three of those

14 accounts, or approximate amount?

15 A By looking at this I would be able to tell you. In

16 the CD there was \$20,690.64. \$12.84 in the savings, and

17 \$822.12 in the checking, so about --

18 Q Okay. Now, hold on. It's possible I'm not showing

19 you all of the documents.

20 A Well, that was my mistake. It's \$11,000 in this --

21 Q Okay.

22 A In the money market savings.

23 Q All right. So the documents that I have in front of

24 me it shows approximately --

25 A It's \$11,291.97 in the money market.

1 Q Okay. Plus an approximate almost \$21,000 in the
2 other, okay. Now, do you recall when you closed all of Mr.
3 Fergason's account the total amount that you handed over to
4 detectives?

5 A No.

6 Q All right. When you would have handed that money
7 over to detectives, what form would you have used?

8 A A cashier's check.

9 Q So you were the one that actually created the
10 cashier's check, and you handed it to detectives?

11 A Yes.

12 Q Okay. But you don't recall the exact amount --

13 A No.

14 Q -- of the cashier's check for the accounts regarding
15 Bryan Fergason?

16 A No.

17 Q Okay. Now, with regard to Tonya Trevarthen, do you
18 recall approximately what the amount was that you gave the
19 detectives in a cashier's check for her account?

20 A Not the exact amount.

21 Q All right. When you were getting these records for
22 the detectives, did you give them any information regarding
23 what she had been doing with her accounts before they had
24 gotten to the bank?

25 A Yes. Well, did I give them anything before they got

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1 to the bank?

2 Q No, no. When they were at your bank and you pulled
3 these records, did you provide them with information regarding
4 what Ms. Trevarthen had been doing with her accounts?

5 A Yes.

6 Q All right. What did you tell them?

7 A Well, I had noticed that the CD had been closed.

8 Q Well, what's a CD, just for the record?

9 A It's a certificate of deposit. It's an account that
10 you earn more interest on.

11 Q Okay. And do you know how much was in the
12 certificate of deposit account before Ms. Trevarthen closed
13 it?

14 A I believe it was -- the paper was right here. Oh,
15 here it is, sorry. \$101,546.47.

16 Q And what date was it that she closed that account?

17 A November 16, 2006.

18 Q And when she closed that account, what did she do
19 for the money, or how was the account closed? What happened
20 to that money?

21 A It was deposited into one of her accounts, which was
22 -- with the included interest on the 16th, it shows that there
23 was a credit of 102 -- \$102,477.71 put into her money market
24 account.

25 Q And what's a money market account?

1 A That's a savings account that also earns interest.

2 Q All right. So, and you're talking about November
3 16, 2006?

4 A Yes.

5 Q All right. Now, was there any other -- from
6 November 6, 2006 until the police arrived, the end of
7 November, was she withdrawing or moving any other funds from
8 any other -- any account?

9 A Yes. So back in October of 2006, there was \$1,000
10 transfer --

11 Q Well, just from November 6th of 2006.

12 A Oh, November 6th.

13 Q Yes.

14 A Okay. So that would be after, right?

15 Q Uh-huh.

16 A On November 7, 2006 there was \$1,000 transfer.

17 Q Transfer, can you tell to what?

18 A On this one, no, I can't.

19 Q Okay. So when you call it a transfer, it wasn't a
20 withdrawal?

21 A No, it's a transfer that's --

22 Q Is it possible it's like an electronic transfer to
23 another account?

24 A Uh-huh. It could go into another account.

25 Q But you don't have it in front of you?

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1 A Correct.

2 Q Okay. So what was the next withdrawal after
3 November 6, 2007?

4 A There was a cash withdrawal inside of a banking
5 center for \$7,500.

6 Q And what was that? And what date was that?

7 A That was November 7, 2006.

8 Q All right. What was next?

9 A There was also on November 8, 2006, a \$25,000
10 transfer into a checking account that ended in 2236.

11 Q All right. But that was not her checking account?

12 A No.

13 Q All right. And what was the next withdrawal?

14 A On November 9, 2006 there was a \$17,500 wire sent
15 out of her account.

16 Q Okay. And what was the next withdrawal?

17 A On the same day, November 9, 2006, there was also,
18 same amount, \$17,500 counter debit, and that would be a form
19 that's used to -- that we have the customer fill out, or we
20 would fill it out ourselves and have them sign for a
21 withdrawal.

22 Q So a counter debit would mean that they're
23 withdrawing the money?

24 A They're withdrawing the money, or they're using it
25 in the form of to purchase a cashier's check, traveler checks,

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1 uh-huh.

2 Q Okay. So it's not transferred into another account,
3 it's actually withdrawn at the bank?

4 A Yes.

5 Q Okay. And then what's the next withdrawal after
6 that?

7 A There -- on November 16, 2006 a withdrawal for
8 \$67,108.39, and that was transferred the checking account
9 ending in 2764.

10 Q Was that her checking account?

11 A Yes.

12 Q Okay.

13 A So that went into her checking's.

14 Q Okay. And then was there any other withdrawals from
15 the money market after November 6, 2006?

16 A Not that my records show. They left the account
17 negative \$19.37.

18 Q All right. Now, if you look at the checking
19 account. Now, were there withdrawals after November 6, 2006?

20 A There was an ATM withdrawal on November 7, 2006.

21 Q It was the large amount or small amount?

22 A \$1,000.

23 Q Okay.

24 A Should it be just withdrawals at a banking center?

25 Q Yes, like any large withdrawals that would --

1 A On the 16th of November, 2006 there was a withdrawal
2 for \$20,000.

3 Q And was that in cash?

4 A Yes, this says Nevada teller cash withdrawal.

5 Q Okay. And then what was the next withdrawal?

6 A On November 16, 2006 there was a \$5,000, but that's
7 a purchase.

8 Q What would that -- you say it's a purchase. Would
9 that be a cashier's check?

10 A It's a check card for As The Bail.

11 Q Okay.

12 A And then there's also on November 17, 2006 a counter
13 debit, that's when they have to come in, and sign for a
14 withdrawal, of \$2,500.

15 Q All right. So that would be money taken out of the
16 bank?

17 A Yes.

18 Q Okay.

19 A And then also November 17, 2006 a \$25,000 counter
20 debit.

21 Q So that would be cash, or a cashier's check taken
22 out?

23 A Yes.

24 Q And then what's the next one?

25 A On November 20, 2006 there was a counter debit for

1 \$125,000.

2 Q So that would be cash, or a cashier's check?

3 A Yes.

4 Q Okay. Thank you.

5 A Uh-huh.

6 MS. DIGIACOMO: Nothing further.

7 THE COURT: Questions?

8 MS. DUSTIN: No, Your Honor.

9 THE COURT: Thanks, Ms. Thorns. Appreciate your time.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MS. DIGIACOMO: Thomas Riesselmann.

13 THE COURT: Come on up, Officer.

14 THE CLERK: Please remain standing, and raise your right
15 hand.

16 THOMAS RIESELDMANN, STATE'S WITNESS, SWORN

17 THE WITNESS: Yes, it is.

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: State your name, Officer, and spell your name
20 for the court recorder.

21 THE WITNESS: Detective Tom Riesselmann, R-i-e-s-s-e-l-m-
22 a-n-n.

23 THE COURT: Go ahead.

24 DIRECT EXAMINATION

25 BY MS. DIGIACOMO:

1 Q How are you employed?

2 A I'm a detective with the Las Vegas Metropolitan
3 Police Department.

4 Q And how long have you been so employed?

5 A I've been employed eight -- almost 18 years.

6 Q Okay. Now, directing your attention to November 6,
7 2006, were you called to 1504 Cutler to assist other
8 detectives in the execution of a search warrant?

9 A Originally, but I was reassigned en route.

10 Q And what were you reassigned to?

11 A To assist for serving a search warrant at a storage
12 unit?

13 Q And do you recall what storage unit that was?

14 A 5900 Smoke Ranch.

15 Q And, now, when you got to Smoke Ranch do you recall
16 the exact unit number?

17 A No, I do not.

18 Q Okay. If I showed you a report would that refresh
19 your recollection?

20 A Yes, ma'am.

21 Q Okay. Sir, I'm going to show you this. It's a one
22 page property release report. Do you recognize this?

23 A Yes.

24 Q Okay. And how do you recognize it?

25 A This is my name up here, my P-number, and my

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1 writing.

2 Q Okay. Now, on here did you document the exact
3 location where you were at Smoke Ranch?

4 A It was either 173 or 174. I don't remember which
5 one.

6 Q Okay. But there was only one unit that you were
7 actually going into?

8 A Yes.

9 Q Okay. Now, did you release -- well, first of all,
10 do you recall finding a hyperbaric chamber?

11 A Yes.

12 Q Okay. And did you release that?

13 A Yes.

14 Q And that was to Mountain Springs Wellness?

15 A Yes.

16 Q For the record, I'm showing you State's Exhibit 62.

17 A Yes, that's it.

18 Q All right. And were there two other components that
19 went with that as well?

20 A Yes.

21 Q And then did you also release to Brady Industries
22 some cleaning equipment such as what's shown in State's 393?

23 A Yes.

24 Q And State's 394, was that also released by you?

25 A Yes.

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1 Q 395?
2 A Yes.
3 Q And 396?
4 A Yes.
5 Q These were all released to Brady Industries?
6 A Yes.
7 MS. DIGIACOMO: Pass the witness.
8 THE COURT: Any questions?
9 MS. DUSTIN: No questions for this witness.
10 THE COURT: Thanks, Detective. Appreciate your time.
11 Next?
12 THE WITNESS: Thank you, Your Honor.
13 MS. DIGIACOMO: Tonya Trevarthen.
14 THE COURT: By my count we're on number 72, so we're
15 pretty close getting there. Come on up here, ma'am.
16 THE CLERK: Please remain standing, and raise your right
17 hand.
18 THE WITNESS: Sure.
19 TONYA MICHELLE ISSA, STATE'S WITNESS, SWORN
20 THE WITNESS: I do.
21 THE CLERK: Thank you. You may be seated.
22 THE COURT: State your name, ma'am, and spell your name
23 for the court recorder.
24 THE WITNESS: Tonya Michelle Issa. It's T-o-n-y-a, I-s-
25 s-a.

1 THE COURT: You can have a seat. Go ahead.
2 DIRECT EXAMINATION
3 BY MS. DIGIACOMO:
4 Q And, I'm sorry. Is Issa your married name?
5 A Yes.
6 Q And is your maiden name Trevarthen?
7 A Yes.
8 Q Okay. And when did you start going by Issa?
9 A April of this year.
10 Q Okay. Now, directing your attention back to 2006.
11 Specifically, November 6, 2006, where were you living?
12 A At the 1504 Cutler Drive.
13 Q How long had you lived at the Cutler residence?
14 A Since Halloween of 2003.
15 Q And who did you live there with?
16 A With Daimon Monroe and my three kids.
17 Q Now, you call him Daimon Monroe. I'm going to show
18 you State's Exhibit 991. Is that who you're referring to?
19 A Yes.
20 Q Now, did you call him Daimon Monroe?
21 A No, I called him Devon.
22 Q All right. Did he ever go by Daimon Monroe, I mean,
23 with you?
24 A Not with me.
25 Q Okay. So you always knew him as Devon?

1 A Yes.

2 Q Was his last name Monroe?

3 A Yes.

4 Q When did you meet Devon, or Daimon?

5 A It was when I was 14, so it would have been 1994, I

6 guess.

7 Q Now, do you have any kids in common?

8 A Yes.

9 Q All right. How old, or what are there names and how

10 old?

11 A Ashley Monroe is 11, and then Ian Monroe is 4.

12 Q All right. Do you have another child as well?

13 A Yes.

14 Q And what's that child's name?

15 A Elizabeth Monroe.

16 Q And how old is she?

17 A She's eight.

18 Q Okay. Now, is she biologically Daimon Monroe's?

19 A No.

20 Q But she has his last name?

21 A Yes.

22 Q Now, in the spring on 2001 did you move in with

23 Daimon, or Devon?

24 A Yes.

25 Q And at that time how many kids did you have?

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1 A Two, the older two, Ashley and Elizabeth.

2 Q And when you first moved in together, do you recall
3 where you lived?

4 A Yeah, it was an apartment off of Jones, and I can't
5 remember the exact address.

6 Q Now, did you go straight from the apartment on Jones
7 into the Cutler residence?

8 A No, we went from the apartment to a townhouse. That
9 was Angel Mountain Drive near the Sante Fe Hotel in northwest
10 Las Vegas, and then to the house on Cutler.

11 Q All right. Now, did you own either the apartment or
12 the townhouse?

13 A No.

14 Q What about the Cutler residence?

15 A We rented that also, all three.

16 Q How much did you rent the Cutler residence for?

17 A \$1,600 a month.

18 Q And who was that rented from?

19 A Stephen Foreman.

20 Q And how was the rent paid?

21 A Cash.

22 Q All right. Well, was there a lease agreement, or
23 anything that was signed?

24 A No.

25 Q And did you -- was it six months in advance that was

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1 paid?

2 A Yes.

3 Q Okay. It was always paid in cash?

4 A Yes.

5 Q All right. Now, back in 2006 were you working at
6 all?

7 A In 2006, yes, I was working.

8 Q Okay. Where were you working?

9 A I was working for the school district as a long term
10 substitute teacher at Deerfield Elementary.

11 Q How long did you -- how much did you make?

12 A Ten dollars, well, sorry. It was \$100 a day.

13 Q All right. And did you work five days a week?

14 A Yes.

15 Q And that's before taxes?

16 A Yes.

17 Q All right. And were you going to school at the same
18 time?

19 A Yes.

20 Q What were you going to school for?

21 A Elementary education.

22 Q Is that how you met Amanda Terry?

23 A Yes.

24 Q By the fall of 2006, how much more school did you
25 have left before you would finish?

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1 A I was in my last two classes, and then I just had to
2 do a semester of student teaching.

3 Q Now, did you have any bank accounts in your name
4 back in 2006?

5 A Yes, I did.

6 Q And what were those bank accounts?

7 A I had a checking, a savings, and a CD all through
8 Bank of America.

9 Q And the money that was deposited into those
10 accounts, where did that money -- well, was that more -- well,
11 I'll strike that. Did you put your paychecks into those
12 accounts?

13 A Yes.

14 Q Okay. Did you -- were you the only person that had
15 access to those accounts?

16 A No.

17 Q Who else had access to those accounts?

18 A Well, Devon had access through the ATM card.

19 Q But his name wasn't on the account?

20 A No.

21 Q What about online banking? Who did that?

22 A We both had access to online banking.

23 Q All right. And back in the fall of 2006, in
24 November, how much money did you have in all of your accounts
25 combined?

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- 1 A I believe it was approximately \$300,000.
- 2 Q Now, who would deposit money into those accounts?
- 3 A Devon and I would deposit money. My paycheck was
- 4 direct deposit, but he'd deposited cash through the ATM.
- 5 Q Now, were you ever present with him when he did
- 6 that?
- 7 A Yes.
- 8 Q And back in the fall, again, in 2006, how many cars
- 9 did you have in your name, did you own?
- 10 A Three.
- 11 Q And what three cars did you have?
- 12 A A 2000 Toyota Avalon. A minivan that I believe was
- 13 a '97 Plymouth Grand Voyager, and then a cargo van that I
- 14 believe was a 2001. It was a Chevy Express.
- 15 Q And you called it a cargo van. Was there any seats,
- 16 or anything in it for people to ride in?
- 17 A Just the front two seats.
- 18 Q Okay. So the back, that was just an area for
- 19 basically cargo, no seats?
- 20 A Correct.
- 21 Q Okay. And then showing you State's Exhibit 501. Do
- 22 you recognize this?
- 23 A Yes.
- 24 Q And what is this?
- 25 A That's the '97 Plymouth Grand Voyager.

1 Q The one that you own?

2 A Yes.

3 Q Did Devon have any cars of his own?

4 A No.

5 Q All right. Now, did you ever meet a person by the

6 name of Bryan Fergason?

7 A Yes.

8 Q And who did you meet him through?

9 A Devon.

10 Q All right. Do you see him in the courtroom here

11 today?

12 A Yes, I do.

13 Q Would you point to the person you're referring to,

14 and describe what he's wearing right now?

15 A Light green shirt and a grey tie.

16 THE COURT: Record will reflect the identification of the

17 Defendant Bryan Fergason.

18 MS. DIGIACOMO: Thank you, Your Honor.

19 BY MS. DIGIACOMO:

20 Q Do you recall what year it was when you met Bryan

21 Fergason?

22 A It was either 2001, or at the end, or 2002.

23 Q So it was at the end of 2001, beginning of 2002?

24 A Yes.

25 Q Okay. And did you meet him, did he come over to

1 your house?

2 A Yes.

3 Q Did he hangout on a regular basis?

4 A With Devon he did.

5 Q Okay. Now, during the time that you lived with
6 Devon, from 2001 until 2006, did he have employment?

7 THE COURT: He, who?

8 MS. DIGIACOMO: Devon.

9 THE WITNESS: Only in 2001 for a few months.

10 BY MS. DIGIACOMO:

11 Q And what did he do for those few months?

12 A He was cleaning. It was in restaurants. Some sort
13 of cleaning with grease.

14 Q Okay. And that was for a couple of months?

15 A Yes.

16 Q And, but for the rest of the time you knew him he
17 didn't have any legitimate employment?

18 A Yeah, correct.

19 Q All right. Now, how well did you know Mr. Fergason?

20 A I'd say pretty well. I saw him pretty often. At
21 least, a few times a week.

22 Q All right. From the time you met him in the end of
23 2001, 2002, until November 2006 --

24 A Not, I guess, not every week, the entire time, but
25 at least that last year or so, and I saw him fairly regularly.

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1 Q Okay. Now, during the time that you knew Mr.
2 Fergason did he have a legitimate employment during any period
3 at that time?

4 MS. DUSTIN: Objection, speculation.

5 THE COURT: If she knows. Do you know?

6 THE WITNESS: He -- I do know of one job he had.

7 THE COURT: Go ahead. You can answer.

8 THE WITNESS: He worked for a moving company, and I
9 believe it was only for a few months though, and that's the
10 only job he ever had.

11 BY MS. DIGIACOMO:

12 Q Okay. And do you recall what year that was that he
13 had that job for a couple months?

14 A No, it wasn't something that was recent as of 2006,
15 but I don't remember exactly when it was.

16 Q Okay. And other than that, you didn't know him to
17 have another job?

18 A No.

19 Q Now, do you know whether or not Mr. Fergason had any
20 accounts at Bank of America where you banked?

21 A Yes.

22 Q Okay. And how did you know that?

23 A Because I had discussed with him and Devon when he
24 was wanting to get a banking account -- a bank account, and I
25 banked with Bank of America, so I recommended that he go meet

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1 with them.

2 Q Okay. Now, the house that you had at Cutler, who
3 paid the bills of the house, the gas, the power, the electric?

4 A I paid those all through our -- the checking account
5 that was in my name.

6 Q All right. And you said the rent was \$1,600 a
7 month?

8 A Yes.

9 Q How much was the bills a month approximately,
10 between the gas, the electric, the water?

11 A Several hundred dollars. The electricity had gone
12 as high as \$500 in a month, during the summer probably.

13 Q Okay. All right. And then did you have any other
14 bills such as phone, or cell phone, or anything?

15 A Yeah, I had a home phone and internet through Cox.
16 I don't -- you know, the gas, water, all those things.

17 Q Now, do you recall how much your take home pay was?

18 A No. I know the \$500 a week was before taxes. I
19 don't remember exactly how much was taken out.

20 Q Okay. Is it fair to say though the amount of money
21 you made teaching did pay for all the bills that you had
22 monthly at the Cutler residence?

23 A Yes.

24 Q Now, did Devon have any nicknames?

25 A Yes, he did.

1 Q And what was his nickname?
2 A Well, he had a few. One was Dicky. One was Wado,
3 and by different friends of his. Not ones that I used though.
4 Q All right. Now, Bryan Fergason, did you call him
5 Bryan?
6 A No.
7 Q What did you call him?
8 A JB.
9 Q And was that what Devon called him as well?
10 A Yes.
11 Q So the initials, JB?
12 A Yes.
13 Q And did you know a person by the name of Robert
14 Holmes?
15 A Yes.
16 Q And how long have you known Robert Holmes?
17 A Since I was 14, or 15.
18 Q Showing you State's Exhibit Number 994. Do you
19 recognize who's depicted there?
20 A Yes.
21 Q And who is this?
22 A Robert Holmes, but I called him Bobby.
23 Q Okay. So he went by Bobby?
24 A Uh-huh.
25 Q Is that a, yes, for the record?

1 A Yes.

2 Q Okay. What about somebody named Engle?

3 A Yes.

4 Q Did you know him through Devon?

5 A Yes.

6 Q All right. And did Bryan know him as well, or JB?

7 A Yes, they had worked together at the moving company,

8 and --

9 Q Who did, Bryan and Engle?

10 A Bryan. Yeah, Bryan and Engle.

11 Q And what's Engle's real name?

12 A Englebert Clemente, I think.

13 Q All right. And is there another person by the name

14 of Carlos?

15 A Yes.

16 Q And what's Carlos' full name?

17 A Carlos Martinez.

18 Q At some point did you ever give Amanda Terry two

19 pictures?

20 A Yes.

21 Q Do you recall what the pictures were of?

22 A I remember one was a Picasso. It was kind of black,

23 like black around the frame.

24 Q Do you recall what the other one was?

25 A It was -- it had like a martini glass I think,

1 and --

2 Q All right. So showing you State's Exhibit 460, do
3 you recognize this?

4 A Yes.

5 Q Was that the picture you gave to Amanda?

6 A Yes, one of the two.

7 Q And showing you 459, is that another picture you
8 gave to Amanda?

9 A Yes.

10 Q All right. And when did you give them to her?

11 A It was in the time whether -- either whether I
12 was -- well, I was still going to school, so I don't remember
13 exactly when. I guess probably 2006. Maybe a little before
14 then.

15 Q And before you gave her those pictures, where were
16 they? Where'd you get them from?

17 A They had been hanging on our house, but they were
18 ones that Devon had brought home that I knew to be stolen.

19 Q Okay. So you didn't buy those pictures?

20 A No.

21 Q Okay. Now, did you ever rent any storage units?

22 A I rented one that was on Smoke Ranch and Jones I
23 believe, and another one that was on West Charleston.

24 Q All right. The one that you rented at Smoke Ranch
25 and Jones, when did you do that?

1 A It was sometime -- Yeah, I think it was while I
2 still lived at that first apartment, so we'd had it for
3 several years probably dating back to 2001, 2002.

4 Q All right. And who did you give the gate code, and
5 the key to the lock for the Smoke Ranch unit?

6 A Devon had those from the first day I rented it.

7 Q All right. So he had access. Did you ever go to
8 that storage unit?

9 A I did go there, never alone, but I went with Devon.

10 Q And then did you rent another one?

11 A Yes. In 2006 I rented one on West Charleston.

12 Q Okay. Well, let me direct your attention to
13 September 23rd of 2006, it's a Saturday night. Do you recall
14 that night?

15 A Yes.

16 Q Did you see Bryan Fergason that night?

17 A He -- I had seen him at the house in the evening.

18 Q Okay. So did he come over to the house?

19 A Yes.

20 Q All right. And do you know what kind of car he
21 drove?

22 A It was like an Explorer I think.

23 Q And when he came over to the house that night, did
24 he stick around?

25 A Not for more than a few minutes probably.

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1 Q All right. Did he leave?
2 A He left with Devon.
3 Q And what car did they leave in?
4 A It was the Plymouth Grand Voyager I believe.
5 Q And, so both of them left in the Plymouth Grand
6 Voyager?
7 A Yes.
8 Q And Bryan's car was left at the house?
9 A Yes.
10 Q At some point did you get a call from police
11 officers later that night?
12 A Yes.
13 Q All right. And what was the purpose that they were
14 calling?
15 A I believe at first they had asked whether anyone,
16 you know, I had given anyone permission to drive the vehicle.
17 Q And what did you tell them?
18 A Which I said I did. That I'd given Devon permission
19 to drive the car.
20 Q Now, did you call him Devon to the police?
21 A I don't remember what I called him.
22 Q Okay. And then later on, did you actually speak to
23 Devon?
24 A Yes, I did.
25 Q And did you take part in actually getting him out of

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1 jail?

2 A Yes.

3 Q Okay. While he was out, did JB, or Bryan continue
4 to call the house to speak with Devon?

5 A Yes.

6 Q Okay. Between the time of September 24th in 2006
7 and the end of October did you ever go to where JB, or Bryan
8 lived?

9 A Yes.

10 Q And where was that?

11 A That was on North Buffalo. I think the apartment
12 complex was Pirates Cove.

13 Q All right. And do you recall which apartment was
14 his?

15 A I don't remember the number. I know it by sight
16 when I was in there.

17 Q How many times would you say you went to that
18 apartment over the course of that time, a month period?

19 A Several times. I don't remember exactly how many
20 times.

21 Q Did you go by yourself, or with someone else?

22 A No, I went with Devon.

23 Q And then you said you rented a unit at West
24 Charleston storage?

25 A Yes.

1 Q Okay. Do you recall the approximate date of that?
2 A I don't think I remember the date, no.
3 Q Okay. But it was sometime during the month of
4 October 2006?
5 A Right.
6 Q And what was the purpose of renting that storage
7 unit?
8 A To move all the contents from Bryan's apartment to
9 the storage unit.
10 Q Okay. And did you actually help do that?
11 A Yes.
12 Q And when's your birthday?
13 A October 23rd.
14 Q Now, on your birthday did you actually take part in
15 helping move some of the stuff of Bryan's into that storage
16 unit?
17 A Yes, I did.
18 Q How was that moved?
19 A It was moved through our cars, and then also through
20 a white truck.
21 Q Okay. Who's white truck was it?
22 A Bobby, or Robert Holmes.
23 Q All right. And what did the truck look like?
24 A It was pretty large. I'm guessing at least probably
25 17 feet, but I'm not sure exactly how large it was. It looked

1 like a moving van.

2 Q Okay. And you actually helped unload stuff from
3 Bobby's moving van into the storage unit?

4 A Yes.

5 Q Who's the one that had access, you know, like the
6 gate code to get into the storage unit, or the key to unlock
7 the storage unit?

8 A Devon.

9 Q And every time that you went over to Bryan, or JB's
10 apartment during that month of October, were you alone?

11 A No.

12 Q Okay. Who did you normally go over there with?

13 A Devon.

14 Q Did you take part at all in the rental of a storage
15 unit on West Sahara?

16 A I didn't go to rent the storage unit, but I was
17 aware of it when it was being rented.

18 Q Okay. And who were you aware of that from? Were
19 you present for a conversation?

20 A Yes.

21 Q And that was between whom?

22 A It was between Devon and Bobby.

23 Q And was this storage unit rented before or after
24 September 24, 2006?

25 A I actually don't remember.

1 Q Okay. Was it rented during that time period around
2 when the car stop was up until the search warrants were
3 executed?

4 A Yes.

5 Q So do you know who had access to that storage unit?

6 A Devon and Bobby.

7 Q Do you recall what your house phone was back in the
8 fall of 2006?

9 A I think so. I think it was 413-0333.

10 Q The home at Cutler, were there any security cameras?

11 A Yes.

12 Q Okay. And describe to the jury what those security
13 cameras were.

14 A There was -- there were four cameras, and one
15 pointed at the front door, and one pointed at the driveway,
16 and you could also see the street in front of the house, and
17 then there was one facing the backyard, and one facing a side
18 yard where there was like a storage shed, and we parked the
19 cargo van on that side.

20 Q The four cameras that were on the outside of the
21 house, could you view those cameras, what they were looking
22 at, inside the house?

23 A Yes.

24 Q And where was that located?

25 A It was in our loft, which was upstairs, and all four

1 cameras, you could see them at -- all at the same time. It
2 was four screens. Basically, it was one screen split into
3 four.

4 Q Okay. Were there any motion lights outside the
5 house as well?

6 A Yes.

7 Q Okay. How many motion lights?

8 A There were motion lights by the front door. Also,
9 by the like facing, or on either side of the garage, and then
10 I believe by the back door and the side door leading out from
11 the garage to the side yard.

12 Q So back in October of 2006 -- well, no, strike that.
13 After you talked to the police the night of the initial car
14 stop, did you ever get a call from a detective or a police
15 officer after that date?

16 A Yes.

17 Q Do you know approximately how long after that date
18 you got the call?

19 A I believe it was only a few days.

20 Q Do you recall who you got the call from?

21 A Yes, it was Detective Brad Nickell.

22 Q Now, did you tell Devon about getting this call?

23 A Yes.

24 Q During the month of October 2006, did Devon ever
25 believe that possibly the police were watching him?

1 A Yes.

2 Q All right. And did he ask you to do something with
3 him at one point?

4 A Yes.

5 Q Do you remember that? What happened?

6 A He asked me to -- well, he thought that he was --
7 there was a car that was watching our house, and so I got in
8 the car with him. It was our Toyota Avalon, and so then he
9 showed me in the neighborhood where this car was, and then he
10 ended up chasing the car out of the neighborhood sort of. He
11 was following it until it left the neighborhood.

12 Q Okay. And, so he continued to follow it outside the
13 neighborhood, or did he --

14 A Yeah, and then it, at one point after we'd gotten,
15 you know, a little ways out of our neighborhood, then he
16 turned around and went back to the house.

17 Q And do you know what a GPS tracker is?

18 A Yes.

19 Q All right. Did you ever see a GPS tracker?

20 A Yes.

21 Q And how was that that you saw that?

22 A Devon had found it under the Plymouth Grand Voyager,
23 and then he showed it to me, and he had taken pictures.

24 Q Now, do you know was that before or after you and
25 Devon had chased the person around the neighborhood?

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1 A I believe it was after that he noticed the tracker.

2 Q Okay. I'm going to show you State's Exhibit 612.
3 Do you know what we're looking at here?

4 A Yes.

5 Q What is this?

6 A It's an ID card that Devon, you know, asked to be
7 made and purchased, using the name Ashton Devon Monroe.

8 Q All right. And this was actually in the residence
9 on November 6, 2006?

10 A Yes.

11 Q Okay. The name Ashton Monroe, did you ever use that
12 name yourself?

13 A No.

14 Q Okay. Do you recall ever putting it down on one of
15 the storage unit rentals?

16 A I don't recall putting it down.

17 Q I'm going to show you State's Exhibit 974 on the
18 screen. Do you recognize this?

19 A Yes.

20 Q Okay. Is this the rental agreement that you filled
21 out from Smoke Ranch Road for a Smoke Ranch storage unit?

22 A Yes.

23 Q And this was filled out, I believe you said a couple
24 of years ago, 2001, 2002?

25 A Yes.

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1 Q All right. And then where it has authorized access,
2 do you recall putting down the name Ashton Monroe as having
3 authorization to go in?

4 A I didn't remember that. Just, I guess, it's been a
5 long time, so.

6 Q Okay. But you did actually put down Ashton Monroe
7 there?

8 A Well, I mean, it's not my handwriting, but I'm
9 assuming from looking at that that I might have provided it at
10 that time.

11 Q Okay. Now, are you aware of a tool that was called
12 Matthew?

13 A Yes.

14 Q I'm going to show you what's been marked for
15 identification State's Proposed Exhibit 561. Do you recognize
16 the tool in that photograph?

17 A Yes.

18 Q And how do you recognize it?

19 A I was there when Devon made it in the garage, and --
20 well, I was there when he bought the screwdriver, and then
21 when he turned it into this tool in the garage.

22 Q So this fairly and accurately depicts a tool that
23 Devon had made back in the fall of 2006?

24 A Yes.

25 MS. DIGIACOMO: Your Honor, I move for admission of

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1 State's Proposed Exhibit 561.

2 THE COURT: Any objection?

3 MS. DUSTIN: Not at this time. I'll reserve it for
4 later, and it's 561?

5 MS. DIGIACOMO: 61, uh-huh.

6 THE COURT: No objection, it will be admitted.

7 [State's Exhibit 561 Admitted]

8 MS. DIGIACOMO: Thank you.

9 BY MS. DIGIACOMO:

10 Q Okay. Now, showing you State's Exhibit 561. You
11 said that you were there when the screwdriver was actually
12 purchased?

13 A Yes.

14 Q And were you also there when Devon made this, invent
15 it, or how -- whatever he did?

16 A Yes.

17 Q Okay. Where did he do this at?

18 A In the garage at our Cutler residence.

19 Q Now, did he use it -- did he call it a certain name?

20 A Yes.

21 Q And what was that name?

22 A Matthew.

23 Q All right. And after the car stop on September 24,
24 2006, do you know whether or not Devon had ever attempted to
25 make any more of these Matthew's?

1 A Yes.

2 Q Okay. Did he?

3 A Yes.

4 Q And showing you State's Exhibit 742, do you
5 recognize what we're looking at there?

6 A Yeah, it's the trunk of the Toyota Avalon that I
7 had.

8 Q Okay. And is this -- are these the tools that were
9 in there on November 6, 2006?

10 A Yes.

11 Q All right. Now, showing you State's Exhibit 743.
12 Are these those same tools kind of laid out on the ground?

13 A Yes.

14 Q Now, were you present when any of these were made --

15 A Yeah, I was --

16 Q -- or purchased?

17 A Yeah, I was present while he made those.

18 Q Do you know how he did it?

19 A He would use something that looked like a saw, and,
20 I mean, I don't know. There'd be sparks flying, and he'd kind
21 of heat it up, and then he'd put it against something to bend
22 it, and, I mean, I wouldn't have been able to do it myself,
23 but I watched him do it.

24 MS. DIGIACOMO: Court's indulgence.

25 BY MS. DIGIACOMO:

1 Q I'm going to show you State's Exhibits 9 through 12.
2 If you can look at these exhibits, and let me know if you
3 recognize what's depicted in these photographs. Do you
4 recognize these?

5 A Yes, I do recognize them.

6 Q Okay. How do you recognize these things?

7 A Well, several of them were hanging in our garage, if
8 not all.

9 Q Okay. And then do you recall how they came to your
10 garage?

11 A Yes.

12 Q And how was that?

13 A They were ones that were brought home by Devon and
14 Bryan.

15 Q Okay. And do you recall when they were brought home
16 in relation to November 6, 2006?

17 A I would say within that past year, but I don't
18 remember exactly when.

19 Q Okay. And then showing you State's Exhibit 13
20 through 18. If you could look through those. Just flip
21 through them all, and let me know if you recognize what's
22 depicted in these photographs.

23 A Yes.

24 Q And how do you recognize what's depicted in all of
25 these photographs?

1 A I remember them being brought to the Cutler
2 residence, and --

3 Q By whom?

4 A By Devon and Bryan.

5 Q Okay. So Devon and Bryan brought all of these,
6 these photographs that we're looking at, between 9 and 18, to
7 the Cutler residence?

8 A Yes.

9 Q Okay. Then did some of them actually leave the
10 residence?

11 A Yes.

12 Q Okay. Then did you -- do you know whether or not
13 all those photographs that were shown in 9 through 18 were
14 paid for?

15 A No, they weren't.

16 Q Okay. And how do you know they weren't?

17 A Because they never hid the fact that they were going
18 out to do burglaries to bring home the sports memorabilia, and
19 different things depicted in the pictures.

20 Q Now, when you're saying -- when you're saying, they,
21 who are you referring to?

22 A Bryan and Devon.

23 Q Thanks.

24 MS. DIGIACOMO: Thanks. Pass the witness.

25 THE COURT: We have a question here, did the furniture,

1 the hot tub, the other stuff, were you there when this was
2 brought into the house?

3 THE WITNESS: Yes.

4 THE COURT: And who brought it in?

5 THE WITNESS: Devon and Bryan.

6 THE COURT: Okay. Cross?

7 MS. DUSTIN: It might be a little while, Your Honor. Did
8 you want to --

9 THE COURT: Sure, you want to break? Sure. Okay. Let's
10 take our afternoon break at this time. Don't talk about the
11 case. Don't read, watch, or listen to any report on the case.
12 Don't form or trust any opinion on the case. Pick up at ten
13 after. Now would be a good time to break. Thanks.

14 [Jury Out]

15 [Recess]

16 [Outside the Presence of the Jury Jury]

17 THE CLERK: Touch the button.

18 MS. DUSTIN: Okay. Just additionally for the record, she
19 has had a lot of testimony that she talked about Bobby and
20 Daimon talking about things that my client wasn't privy to,
21 things that Daimon was telling her --

22 THE COURT: Well, if you object on something that's
23 hearsay I'll sustain. If, you know, I can only rule on
24 objections.

25 MS. DUSTIN: Well, my problem is, is that her -- I didn't

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1 know -- we didn't know where she was going to testify to --
2 THE COURT: I would -- I didn't --
3 MS. DUSTIN: -- and that was what our whole issue was.
4 THE COURT: -- remember her saying anything about
5 conversations. I mean, they used Bobby's truck, and --
6 MS. DIGIACOMO: She actually -- she had actually
7 testified more in the last trial, because Daimon was a part of
8 it.
9 THE COURT: Oh, she did, too.
10 MS. DUSTIN: Right.
11 MS. DIGIACOMO: Yeah, that the storage unit was rented
12 just for Bobby to get his stuff out of his house. I didn't
13 get into that.
14 THE COURT: Okay. Well, I'll be glad to give that
15 cautionary instruction, so --
16 MS. DIGIACOMO: Sure.
17 THE COURT: -- as soon as we -- if you want to do it
18 right then say, Judge, before I start, you know, they'd
19 mention this would you tell the ladies and gentlemen --
20 MS. DUSTIN: Right. And then some of the other --
21 THE COURT: -- that it's not charged, they're not to
22 consider that.
23 MS. DUSTIN: Right.
24 THE COURT: You know, except as it relates to them.
25 MS. DUSTIN: And then the other thing is, is that she

1 also said that Daimon said that those pictures that she gave
2 to Amanda Terry were stolen. She never said that my client
3 told her that.

4 THE COURT: Well, if you --

5 MS. DIGIACOMO: Well --

6 THE COURT: -- object saying, Judge, that's hearsay, I
7 can rule on it. I can't --

8 MS. DUSTIN: Okay.

9 THE COURT: I can't do anything after the fact on that,
10 so.

11 MS. DUSTIN: Well, I guess what my problem is, is --

12 THE COURT: I don't know whether that would have been
13 said in your client's presence, or it wasn't. I mean, we'd
14 have to --

15 MS. DUSTIN: Right.

16 THE COURT: -- explore it. I just can't -- you know, you
17 got to make a contemporary objection, and I'll rule.

18 MS. DUSTIN: Well, I'll -- my biggest problem is, is that
19 I'm trying to not draw attention to things, and --

20 THE COURT: I understand.

21 MS. DUSTIN: -- since I can't really catch what she's
22 going to say a lot of times, because --

23 THE COURT: Listen --

24 MS. DUSTIN: -- this was our whole issue before she got
25 on the stand, that I wanted her brought to the stand, so that

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1 we could do a little bit of --

2 THE COURT: That's not something --

3 MS. DUSTIN: -- questioning on this.

4 THE COURT: I've been where she is many a time, and I
5 understand that they're just strategic decisions lawyers have
6 to make, and sometimes it's a decision between, you know, bad
7 and worser [sic]. I mean, that's kind of the way it is.

8 MS. DUSTIN: Right.

9 THE COURT: And you make a decision, and you just you
10 can't be wrong. You do the best you can, and I understand --

11 MS. DIGIACOMO: Right.

12 MS. DUSTIN: Right.

13 THE COURT: -- why you would make those decisions, and I
14 don't disagree strategically. I'm just saying from the
15 Court's point of view sometimes a defense lawyer let something
16 come in that's hearsay. It's not because they don't realize.
17 They couldn't object. Maybe they actually want the
18 information in, or maybe they just think the object -- I mean,
19 there's a million reasons why they don't, so --

20 MS. DUSTIN: Right.

21 THE COURT: -- if they don't, I don't say anything,
22 because I'm not -- you know, otherwise I may affect your
23 ability to try your case.

24 MS. DUSTIN: Right. My only issue is, Judge, is this was
25 the very issue that we talked about regarding what she was

1 going to say that was inculpatory that started talking about
2 other crimes, and I think I did note at that time, that my
3 issue was is, since we couldn't find out exactly who, what, or
4 what things she was going to say that I wanted her brought
5 into the stand, out the presence of the jury, so we could
6 explore this --

7 THE COURT: Well, we could -- you didn't ask for that.

8 MS. DUSTIN: Yeah, I did, and you said, no.

9 THE COURT: That she comes in outside the presence of the
10 jury? When did you ask for that?

11 MS. DUSTIN: When we were talking about what she -- with
12 the pictures, and what she was going to testify to of whether
13 --

14 THE COURT: You didn't ask for that. I might have done
15 it, but it --

16 MS. DUSTIN: Okay.

17 THE COURT: It's not of any moment. I would be glad to
18 give a cautionary instruction, which is -- I thought, the only
19 thing that really was, she probably shouldn't have said was
20 that -- she probably should have said, look, you know, they're
21 there everyday, they come home every night bringing stuff,
22 they make no bones about the fact that it's stolen, whether
23 they stole it, or bought it stolen, or whatever, so I'll be
24 glad to tell them this isn't a burglary trial, they're not
25 charged with burglaries in here. That the only issue of

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1 anything about that is whether or not they knew property was
2 stolen, and, you know, otherwise disregard it.

3 MS. DUSTIN: And then, now, since she's also started
4 going into the fact that she -- she was very unclear as to --
5 I think her testimony was that she did meet my client back in
6 --

7 THE COURT: Late 2001 --

8 MS. DUSTIN: -- 2001 --

9 THE COURT: -- or early 2002.

10 MS. DUSTIN: -- but she basically said that he wasn't
11 coming past until regularly, I guess, in 2006. My problem is,
12 is I'm sure she's --

13 THE COURT: No --

14 MS. DIGIACOMO: Well --

15 MS. DUSTIN: She's been --

16 THE COURT: -- that isn't what she said.

17 MS. DIGIACOMO: That's not what she said, and I can --

18 THE COURT: What she said was, he used to come by three,
19 four times a week, and then she just backed up and clarified,
20 and she said, well, he didn't come by that often in the early
21 years, but by 2006 he was coming by three, four times a week.

22 MS. DIGIACOMO: Well, no. And there isn't -- let me
23 finish, and I'll --

24 MS. DUSTIN: Yeah.

25 MS. DIGIACOMO: The reason she did is, because I

1 cautioned her. What happened was when he first gets out of
2 prison, Ferguson first gets out of prison, they go out working
3 together, and then something happens, I think Ferguson gets on
4 drugs, and Monroe won't work with him anymore. He works with
5 Engle. Ferguson gets his act cleaned up, and then he goes
6 back to working with him again, and, so that's what she was
7 trying to stay away from. Like they worked together, then
8 there was a period they didn't, and then they went back
9 together.

10 MS. DUSTIN: So my only thing is, is if I clarify that
11 there was a period of time that he wasn't around. I'm not
12 going to -- I'm not trying to get as to why he wasn't around.
13 I just --

14 THE COURT: Yeah, if you keep it that narrow, and how
15 long was that? A few months?

16 MS. DIGIACOMO: It was only the few months he was working
17 as the moving.

18 THE COURT: Okay. Was there a period around the time he
19 was working with moving where he really wasn't around for
20 several months, or a few months, and I'll let you ask that
21 without opening the door.

22 MS. DUSTIN: Okay.

23 THE COURT: But don't go getting anymore specific.

24 MS. DUSTIN: No, no, no, no, no. I'll try to keep it as
25 a yes or no.

1 THE COURT: Let's go, Moon. Yeah, you have every right
2 to lead, so you can take it right where you want it. Don't
3 give any open ended opportunities to her. What'd you do?

4 MS. DIGIACOMO: Just kicked the chair.

5 THE COURT: Oh, geez. You know after -- you know, that
6 high heel fiasco in the last trial, I thought you'd go with
7 flats.

8 MS. DIGIACOMO: No, these are actually comfortable shoes
9 just not when you make them do 31 witnesses.

10 THE COURT: I guess, 31. 72, 31? Who's counting?

11 MS. DIGIACOMO: That was the one day.

12 [Jury In]

13 THE COURT: Okay. Back on the record in case number
14 C228752, State of Nevada versus Bryan Ferguson. Let the
15 record reflect presence of the Defendant, his Counsel, Ms.
16 Dustin, Counsel for the State. All ladies and gentlemen of
17 the jury are back in the box. Where's Ms. Trevarthen?
18 Where's Ms. Trevarthen?

19 MS. DIGIACOMO: She's in the juror, or the --

20 THE COURT: Let's bring her back.

21 Come on up here, ma'am. Let me remind you that
22 you're still under oath. Okay?

23 THE WITNESS: Sure.

24 THE COURT: Ms. Dustin?

25 CROSS-EXAMINATION

1 BY MS. DUSTIN:

2 Q Is it, Issa, now?

3 A Excuse me?

4 Q What's your last name now?

5 A Issa.

6 Q Issa. Ms. Issa, you were originally charged with
7 quite a few crimes in this case, right?

8 A Yes.

9 Q And you were charged with being in possession of all
10 the stolen property alleged to have been in your house as well
11 as in every storage unit, right?

12 A Yes.

13 Q And you worked out a deal with the State that you
14 agreed in exchange for being able to enter a plea to one
15 felony count and one gross misdemeanor, getting probation, and
16 then getting a reduction at the end, to come and testify in
17 this case, right?

18 A Yes.

19 Q And part of that agreement was is that you had to
20 agree to testify truthfully to get the benefit of that
21 bargain, right?

22 A Yes.

23 Q Because if you said anything that the State didn't
24 agree with, or was different than their position, then the
25 State could come back and re-launch all of the charges against

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1 you, right?

2 A I -- how you worded that I don't --

3 Q I'm sorry.

4 A I'm not sure that that's right.

5 Q So if you don't testify how the State wants you to
6 they can come back --

7 MS. DIGIACOMO: Objection, argumentative.

8 THE COURT: Well --

9 MS. DIGIACOMO: And it's also assuming facts not in
10 evidence.

11 THE COURT: It may be a little bit, but this is cross-
12 examination, and she's entitled to cross-examine, and she can
13 ask the questions, and she seems to be very able to give
14 answers, and I'll let -- I'll give you the lead way. Go
15 ahead.

16 MS. DUSTIN: Okay.

17 BY MS. DUSTIN:

18 Q So you have an agreement that if you don't testify
19 the way that the State finds appropriate, they can come back
20 and bring the charges against you, as well as trying to charge
21 you with additional crimes, right?

22 A If I didn't testify truthfully.

23 Q Okay. And there was also some concern by yourself
24 when you had these charges that about your children, right?

25 A Yes.

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1 Q That your children could be taken away from you,
2 right?

3 A Yes.

4 Q And isn't it true that you'd say anything and do
5 anything, so that you could get your children back, right?

6 A I -- but I mean that's such a broad scope that I
7 wouldn't say that.

8 Q Well, when you say anything in relation to this case
9 that would comport to what they wanted you to say in order to
10 get favorable treatment?

11 A No.

12 Q So what you're saying is, is that you would be
13 completely candid, and you would never change your story in
14 order to gain more favor from the State?

15 MS. DIGIACOMO: Objection, compound.

16 THE COURT: It is compound. Why don't you try to --

17 MS. DUSTIN: I'll rephrase.

18 THE COURT: -- make it a little simpler.

19 BY MS. DUSTIN:

20 Q So basically your statement, from the first time
21 that you ever started speaking to anybody about this case, has
22 maintained the same through each and every time that you've
23 ever talked to anybody?

24 MS. DIGIACOMO: Objection, vague.

25 MS. DUSTIN: All right. I'll clarify that one.

1 THE COURT: Go ahead, and try.

2 BY MS. DUSTIN:

3 Q You gave a statement, you spoke with Detective
4 Nickells [sic] back in November of 2006, right?

5 A Yes.

6 Q You testified before a grand jury in, I believe,
7 December of 2006, right?

8 A Yes.

9 Q And you also gave another statement that was a
10 recorded statement, again with Detective Nickell, January 4,
11 2007, right?

12 A Yes.

13 Q So if anything starts changing in your story between
14 those three, that's just an accident, right?

15 MS. DIGIACOMO: Objection, assuming facts not in
16 evidence, and it's argumentative.

17 THE COURT: Well, was there any differences that you know
18 between what you told Nickell the first time, and as the story
19 evolved?

20 THE WITNESS: I remember being asked, you know,
21 additional questions. I don't remember that my story would
22 have changed. I'd have to hear an example of that, because I
23 just answered questions from, you know, that I thought
24 everything I told was always truthful.

25 THE COURT: So you're saying as far as you know it wasn't

1 inconsistent, but it may have been --

2 THE WITNESS: Right.

3 THE COURT: -- more detailed?

4 THE WITNESS: Right, in order to call it an inconsistency
5 I would need to hear an example.

6 THE COURT: Okay. Go ahead, Ms. Dustin.

7 BY MS. DUSTIN:

8 Q Okay. So going back to the first time that you
9 spoke with Detective Nickell in November of 2006?

10 A Uh-huh.

11 Q Do you recall that conversation?

12 A Yes.

13 Q Okay. And do you recall that you were very
14 concerned about what was going to happen to you?

15 A Yes.

16 Q And you were very concerned as to what might happen
17 to you, how that would affect your kids?

18 A Yes.

19 Q And you were really worried that you could go to
20 prison?

21 A Yes.

22 Q And, so at that particular point you also wanted to
23 try to be as honest as possible in hopes that maybe Mr.
24 Nickell would go speak to the State on your behalf?

25 A Well, I was hoping that, you know, by my cooperating

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1 that, you know, I would end up with something, you know, to
2 where I didn't have prison time, that's true.

3 Q Okay. And he said that he couldn't make you any
4 promises, but he would note your cooperation to the State,
5 right?

6 A Yes.

7 Q Okay. And you didn't have any form of deal formed
8 at that time, right?

9 A Right.

10 Q You didn't have any promises on the table at that
11 particular time?

12 A No.

13 Q So at that particular time, in November of 2006, you
14 felt that let's lay it all out on the table and hope for the
15 best, right?

16 A Basically.

17 Q Okay. So isn't it true, back in November of 2006,
18 that you were asked about the storage units?

19 A Uh-huh.

20 Q Is that a, yes?

21 A Yes, sorry.

22 Q And isn't it true that at that particular time you
23 also noted that the storage unit at Charleston and Cimarron,
24 that everything in there belonged to you? .

25 A I don't remember saying that.

1 Q So you wouldn't have said that, it's like Charleston
2 and Cimarron you probably know --

3 MS. DIGIACOMO: I'm going to object if she's reading.

4 THE COURT: Yeah, why don't you show it to her, and see
5 if --

6 MS. DUSTIN: Page 17.

7 THE COURT: She hasn't said anything inconsistent yet, so
8 she said she didn't remember, but if you show it to her that
9 might refresh her recollection.

10 MS. DUSTIN: Sure. Approaching with page 17.

11 MS. DIGIACOMO: Okay. On the first statement?

12 MS. DUSTIN: Yeah, do you want me to put it up?

13 MS. DIGIACOMO: Oh, 163 for her.

14 MS. DUSTIN: Okay.

15 THE COURT: If you want to come up, Ms. DiGiacomo, you
16 certainly can. If you think --

17 MS. DIGIACOMO: No, she showed me. Mines just -- my page
18 break's are --

19 THE COURT: Now, this is the statement you gave to
20 Detective Nickell in November the first time you talked to
21 him. Is that right? Is that what we're talking about, Ms.
22 Dustin?

23 MS. DUSTIN: Yes.

24 THE COURT: Okay. Go ahead.

25 BY MS. DUSTIN:

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1 Q Okay. Just glancing at that in the highlighted
2 area. Does that refresh your recollection?

3 A Well, I remember telling the detective about storage
4 units that I was aware of, but I don't remember every saying
5 that it was my belongings at that storage unit --

6 Q Okay. So --

7 A -- because that's not correct, so I wouldn't have
8 said that.

9 Q So here the transcription, that everything -- for
10 everything belonged to us, was a misquote?

11 A Well, it's just, you know, by -- it was -- you know,
12 this was a long statement that I have here, and I was -- I was
13 telling them I wanted to make sure they knew about all the
14 storage units, because I didn't want, you know, other -- you
15 know, I didn't want to pick up more charges. I wanted to make
16 sure they were aware of everything, and but --

17 Q So basically when this says that --

18 A That I didn't specifically say that --

19 Q Well --

20 A -- the contents of that storage unit were --

21 Q Well, so --

22 A -- things that belonged to me.

23 Q If it says, you probably know that that's where, um,
24 you know, everything -- for everything that belonged to us,
25 and it predates saying, Charleston and Cimarron?

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1 A I mean, I see what you're saying is how it looks
2 there --
3 Q Well --
4 A I'm just saying I --
5 Q Well --
6 A -- it's not like I said that the contents of that
7 storage unit were my belongings. That, I mean --
8 Q But that's what it's transcribed as, right?
9 A Right. Yeah, I see what it says there.
10 Q Okay. Now, and I think you talked about that
11 whenever you guys were moving stuff into the West Charleston
12 unit it was in the Bobby Holmes' truck, right?
13 A I think we might've used the cars as well --
14 Q Okay.
15 A -- but part of it was with that truck, yes.
16 Q So you may have also used that Plymouth van to help
17 move stuff in?
18 A Right.
19 Q Did you ever go by yourself to the West Charleston
20 unit?
21 A I don't believe so. I went in -- I went into the
22 office maybe by myself to rent the unit, but I'd never go to
23 the storage unit myself.
24 Q Okay. So would Daimon, or Devon be with you when
25 you were loading stuff into the storage unit?

1 A Yes.

2 Q Okay. And was some of the stuff going into the West
3 Charleston unit belonging to Ferguson, Mr. Ferguson?

4 A Yes.

5 Q Okay. Now, let's talk about the Bank of America
6 accounts. Isn't it true that back in November of 2006 when
7 you were talking to Detective Nickell that he particularly
8 asked you about whether Mr. Ferguson came up with the idea of
9 putting monies in the CD's and the money markets?

10 A Yes.

11 Q Okay. And isn't it true that you said that you
12 didn't have anything to do with that?

13 A Well, I -- I mean, I didn't have anything to do with
14 it other than I had CD's with Bank of America first. I had
15 worked at a bank before, so Devon had asked for my advice
16 about the CD's, as well as Bryan. When they were all there
17 we'd had conversations.

18 Q Okay. But when he asked you whether how Mr.
19 Ferguson came up with the idea, you basically said straight
20 out you didn't have anything to do with that?

21 MS. DIGIACOMO: Can I have a page number, Counsel?

22 MS. DUSTIN: I'm sorry. Page 91.

23 MS. DIGIACOMO: I'm sorry?

24 MS. DUSTIN: 51, sorry.

25 MS. DIGIACOMO: Thank you.

1 BY MS. DUSTIN:

2 Q You don't recall that?

3 A No, I don't remember. I can take a look at what's
4 transcribed.

5 MS. DUSTIN: Can I approach?

6 THE COURT: Sure, come up here. You don't need to ask
7 us.

8 MS. DUSTIN: Okay.

9 THE COURT: It's generally sort of a rule of etiquette
10 that lawyers ask if they can approach witnesses. The reason
11 for that is sometimes you have lawyers that take advantage, or
12 are abusive, or get in the witnesses face, and it's the Judges
13 responsibility to kind of manage that. These ladies, as you
14 can see, are very professional and respectful. I don't care
15 if they move around the courtroom, because they don't take
16 advantage of that privilege, so. But they're used to asking,
17 so when I say, you don't need to ask, they still do it,
18 because that's the way it usually operates.

19 BY MS. DUSTIN:

20 Q Okay. I'm showing you again your statement from
21 November 27th of 2006. And if you want to read, you can read
22 from right here down.

23 A Well, I mean -- well, it --

24 Q Well, hold on. Hold on.

25 A Okay.

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1 Q Does that refresh your recollection?

2 A Well, I mean, I'm reading what's here. You know,
3 these conversations were a long time ago.

4 Q Okay. And it's not that I'm saying I expect you to
5 remember every single thing in your conversation, but isn't it
6 true that you were asked about that, and that you said that
7 you really didn't have anything to do with that?

8 A Well; it said there was, you know, that I -- they
9 saw a picture of me wearing a Wells Fargo badge, and was that
10 why he opened the CD, if that's what it looks like to me --

11 Q Okay. Well, isn't it true --

12 A And I mean, the fact that I worked at Wells Fargo
13 didn't really --

14 Q Okay. Well, isn't it true that the line of
15 questioning says, question, I saw a picture of you at your
16 house that you were wearing a Wells Fargo badge, used to work
17 for the bank? The answer is, yes. The question is then, is
18 that how Bryan and -- is that how Bryan came up with the idea
19 of putting money in CD's and money markets, and your answer
20 is, no, I never had anything to do with that. Isn't that true
21 that's what it says?

22 MS. DIGIACOMO: And, Your Honor, I'd ask that Counsel
23 read the whole answer.

24 THE COURT: Go ahead.

25 MS. DUSTIN: I mean, I -- question, did you ever talk to

1 him about it though? I mean, I -- Bryan doesn't seem like the
2 type of person that, and then the next line is, that's when I
3 talked to him like -- like a, you know, like a -- I mean, I
4 guess it's just convenient for Devon, because he has been
5 somebody to go out with.

6 THE COURT: All right. So what's the question?

7 BY MS. DUSTIN:

8 Q Isn't it true that's what the line of the
9 conversation was? Do you want me --

10 A I'm not sure what the question is now.

11 Q Isn't that -- well, I'll approach.

12 THE COURT: She said -- you don't dispute that that was a
13 sort of a fair transcription, what was said there?

14 THE WITNESS: No, I don't.

15 THE COURT: Okay.

16 BY MS. DUSTIN:

17 Q So that's what was said on that particular day?

18 A Yeah.

19 Q Okay. Now, your landlord, at that time, was Mr.
20 Foreman, right?

21 A Yes.

22 Q Did he ever come past your house?

23 A Yeah, I mean his parents lived right next door to
24 us, so.

25 Q Was he inside your house?

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1 A Yes.

2 Q Okay. Did he come in on a frequent basis?

3 A No, I mean, I'm sure he had a key, but I wouldn't
4 say he came in on a regular basis. A lot of times he would --
5 we'd see him outside, or next door.

6 Q Okay. But he did have the opportunity to be in, and
7 out of your house a few times?

8 A Yes.

9 Q Okay. And was that all the way up through 2006?

10 A He had -- I mean, he had access if that's what
11 you're asking.

12 Q And then going back to when you -- regarding Mr.
13 Ferguson coming past, wasn't there a period of time, and we're
14 going to stick with a yes or no. Wasn't there a period of
15 time during the timeframe when you said in 2001 when you first
16 met him to 2006 when he started being around more frequently,
17 wasn't there a period of time that he wasn't coming around?

18 A Yes.

19 MS. DUSTIN: Nothing further.

20 THE COURT: Approach, can you please?

21 [Bench Conference Not Transcribed]

22 MS. DUSTIN: And, Your Honor, just in an overabundance of
23 caution from considering the prior testimony both on cross and
24 on direct, I'd ask that you provide a cautionary instruction
25 to the jury regarding some of the testimony that has come out

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1 from Ms. Trevarthen regarding potential other uncharged acts.

2 THE COURT: Okay. This gentlemen is on trial for -- I
3 think that's a fair request, and I told you that I would give
4 it. Is on trial for possession of stolen property. I'm going
5 to give you the elements of possession of stolen property.
6 One of which is, that you know or have reason to know that
7 it's stolen, and there's been some testimony from which you
8 could infer that, or maybe you wouldn't infer that, but
9 neither he, nor Mr. Monroe, nor anybody else is on charge for
10 theft, or burglary, nor has there been any evidence presented
11 up to this juncture that they did that, and to the extent that
12 there's any mention of that, please, consider it only as it
13 relates to whether or not they may have known that the
14 property was stolen, and for no other purpose, because they're
15 not charged with that, and it's not appropriate to take any
16 evidence that would relate to that.

17 Is that fair, or is there something more that you want?

18 MS. DUSTIN: I think that should be fair then, Your
19 Honor.

20 THE COURT: Okay. Redirect?

21 MS. DIGIACOMO: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. DIGIACOMO:

24 Q Ms. Trevarthen, I want to go back to the fall of
25 2006, and how you got here testifying today. You were

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1 arrested on November 6, 2006, correct?

2 A Yes.

3 Q And when you were arrested, what happened with your

4 kids?

5 A They were taken to Child Haven.

6 Q And that had never happened to you before, had it?

7 A No.

8 Q Okay. And after you got out of custody, I mean, you

9 were still doing things to help Devon, correct?

10 A Yes.

11 Q In fact, you were moving money and taking money out.

12 In fact, what did you do with some of that money that you --

13 of the \$200,000 you withdrew?

14 A I gave it to Robert Holmes.

15 Q Do you recall approximately how much you gave to

16 him?

17 A I believe it was \$145,000.

18 Q All right. And do you recall Thanksgiving of that

19 year?

20 A Yes.

21 Q All right. Was that November 23, 2006?

22 A Sounds right.

23 Q Okay. And what happened why you were in Texas at

24 Thanksgiving?

25 A ICE agents and local law enforcement came to my

1 mother's house where I was staying for the weekend.

2 Q And what were they doing there?

3 A Wondering where that money was, and if it was -- if
4 I had it with me.

5 Q At that point had you talked to Devon?

6 A Up --

7 Q When was the last time you had talked to him when
8 the federal agent showed up?

9 MS. DUSTIN: And I'm going to object as being outside the
10 line of cross-examination.

11 MS. DIGIACOMO: It's going to explain how she came to
12 testify here today. She break open the door.

13 THE COURT: Yeah, I think she can do it for that purpose.
14 Go ahead.

15 MS. DIGIACOMO: Thank you.

16 BY MS. DIGIACOMO:

17 Q Did you talk to Devon -- when was the last time you
18 had talked to Devon up until Thanksgiving of that year?

19 A It was right before I had gone to my mom's place for
20 Thanksgiving weekend.

21 Q Okay. And at some point did you come back to Vegas?

22 A Yes.

23 Q And when was that?

24 A It was probably the Sunday or Monday, because it was
25 right after Thanksgiving weekend.

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1 Q All right. So you came back either that Sunday or
2 Monday after Thanksgiving?

3 A Yeah, I don't remember if it was a flight Sunday
4 night, or Monday morning.

5 Q All right. When you got back into town what did you
6 do? Did you call somebody?

7 A Yes.

8 Q And who did you call?

9 A Detective Nickell.

10 Q All right. And you did that on your own?

11 A Yes.

12 Q And that's when you went in, and you gave a taped
13 statement?

14 A Yes.

15 Q All right. Is the date of November 27, 2006 sound
16 familiar?

17 A Yes.

18 Q Now, had you also at this point received noticed
19 that a grand jury was going to take place?

20 A That same day.

21 Q That same, November 27th?

22 A Yes.

23 Q Was that before or after you had called Detective
24 Nickell?

25 A It was while I was talking to Detective Nickell.

1 Q All right. And did the grand jury convene the
2 following day, that Tuesday on the 28th?

3 A Yes.

4 Q Did you testify in front of the grand jury?

5 A Yes.

6 Q Okay. Did you do that pursuant to having any sort
7 of deal?

8 A No

9 Q Okay. Why did you go in and testify for the grand
10 jury?

11 A Because I was trying to do the right thing and
12 testify hoping that, you know, I would, you know, be able to
13 stay with my kids after that, or, you know, I -- I was just
14 trying to do the right thing at that point, and hope for the
15 best.

16 Q And then did you tell the truth then?

17 A Yes.

18 Q Okay. And, then I think she alluded to later in
19 January of 2007 you gave another taped statement to Detective
20 Nickell?

21 A Yes.

22 Q Okay. And that one was, I think you said, a little
23 more detailed than the previous one you had given?

24 A Yes.

25 Q Now, with regard to the deal that was given to you

1 by the State, do you know when you got that deal?

2 A I don't remember exactly when it was, no.

3 Q Okay. Do you remember the exact deal that you got,

4 what you plead to?

5 A Yes.

6 Q What did you plea to?

7 A I plead to one felony and one gross misdemeanor.

8 Q All right. The felony, what was the felony for?

9 A I believe it was possession of stolen property,

10 but --

11 Q All right. And what about the gross demeanor, what

12 was that for?

13 A I believe it was a conspiracy, but I --

14 Q Okay. Now, if I were to show you the document would

15 that refresh your recollection?

16 A I'm sure.

17 Q Okay. I'm going to show you photo -- it's a

18 photocopy of the document entitled guilty plea agreement. Do

19 you recognize this?

20 A Yes.

21 Q And attached to the guilty plea agreement as Exhibit

22 1 is the second amended indictment, do you recognize this?

23 A Yes.

24 Q Okay. So what was the gross misdemeanor count that

25 you plead to?

1 A This is conspiracy to possess stolen property, and
2 or to commit burglary.

3 Q And who did you -- who did you conspire with?

4 A Devon and Bryan, and I guess Bobby. I don't know.

5 Q Okay. And that was in the pleading?

6 A Yes.

7 Q And with the felony count that you plead to, and
8 it's on Count II all the way through Count III, did you plead
9 to possessing all of the stolen property that's been an issue
10 in this case?

11 A Yes.

12 Q Okay. And you do after -- if you complete
13 probation, and you testify truthfully, then you do get to
14 withdraw the felony plea, but the gross misdemeanor stands.
15 Is that correct?

16 A Yes.

17 Q And is it fair to say that you would come in here
18 and lie, or do whatever you had to, to get this deal?

19 A Well, I -- I mean, I don't, you know, believe it's
20 fair to say that I would do anything, but it's hard to say
21 what I would do, because I haven't been in a situation where
22 I've had to lie.

23 Q Well, what have you done today?

24 A I've just answered questions based on what I
25 remember from that period of my life.

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1 Q And you've been truthful?

2 A Yes.

3 Q And, I guess, just one last question, the way the
4 house looked when detectives went in on November 6, 2006, I
5 mean, you were there and you knew how it looked with all of
6 the property in the house?

7 A Yes.

8 Q What property did you actually buy that was in that
9 house?

10 A Very, very little. It was mostly small things, not
11 any furniture, TV's, electronics, anything like that.

12 Q Well, what would small things be?

13 A Clothes, some groceries, things like that.

14 MS. DIGIACOMO: Nothing further.

15 THE COURT: Anything else?

16 MS. DUSTIN: Yes.

17 RECROSS-EXAMINATION

18 BY MS. DUSTIN:

19 Q Tonya, I'm approaching with, in addition to your
20 guilty plea agreement, your agreement to testify. Looking at
21 your guilty plea agreement can you please read aloud this
22 paragraph right here.

23 MS. DIGIACOMO: I'm sorry, Counsel, which page?

24 MS. DUSTIN: Guilty plea agreement, page one.

25 THE WITNESS: Where?

1 BY MS. DUSTIN:

2 Q Where it starts off, the State has agreed.

3 A And then down to here?

4 Q Yes.

5 A It says, the State has --

6 MS. DIGIACOMO: Well, I'm going to object. Is there a
7 question?

8 THE COURT: I think the question is, is this your
9 understanding of your agreement?

10 MS. DUSTIN: Sorry.

11 BY MS. DUSTIN:

12 Q Is this your understanding of the guilty plea
13 agreement that you signed on that day?

14 A So read it out loud then?

15 Q Well, hold on. Is this the guilty plea agreement
16 that you signed this day when you entered your plea of guilt?

17 A I'm sure it's what I signed, but --

18 Q Does this look like what the -- Ms. DiGiacomo did
19 present to you just a few moments ago?

20 A Yes.

21 Q Okay. And she asked what you had entered your pleas
22 of guilt to? Do you recall that, what the crimes were?

23 A Yes.

24 Q Okay. Can you plea tell me what the agreement was
25 between you and the State as set forth in the guilty plea

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1 agreement? Do you recall it verbatim?

2 A Do I recall it verbatim? Are you saying do I
3 remember all of this information?

4 Q Yes.

5 A No.

6 Q Okay. Would it refresh your recollection to read it
7 in the guilty plea agreement that's on file?

8 A I'm sure.

9 Q Okay. Go ahead.

10 THE COURT: Go ahead and read it to yourself, and then
11 Ms. Dustin will ask you a question.

12 BY MS. DUSTIN:

13 Q Do you recall that?

14 A Yes.

15 Q Okay. Do you know exactly what the agreement that
16 the State offered you is now?

17 A Well, I mean, they --

18 Q Okay.

19 A I mean, that's not specific enough I guess.

20 Q Okay. Isn't it true that the State agreed to make
21 no opposition to you receiving probation as to the gross
22 misdemeanor charge?

23 A Yes.

24 Q And isn't it true that the State retains their right
25 to argue terms and condition of probation?

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1 A Yes.

2 Q Okay. Is it also true that both you and the State
3 agree that if you successfully complete your probation as to
4 the gross misdemeanor the felony is going to be dismissed?

5 A Yes.

6 Q And if you fail to successfully complete the
7 probation as to the gross misdemeanor, you get adjudicated as
8 to the felony, right?

9 A Yes.

10 Q And sentenced then, right?

11 A Yes.

12 Q Meaning, is it your understanding, that you would
13 not be sentenced on the felony unless you didn't do well on
14 the probation?

15 A Yes.

16 Q Okay. Have you been sentenced yet on this case?

17 A No.

18 Q Okay. Now, you also had to sign an agreement to
19 testify, right?

20 A Yes.

21 Q And do you recall all of the particulars of the
22 agreement to testify?

23 A No.

24 Q Okay.

25 MS. DUSTIN: Page two, Counsel.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT'S**
SUPPLEMENTAL APPENDIX, VOLUME 2 was filed electronically with
the Nevada Supreme Court on the 13th day of November, 2014. Electronic
Service of the foregoing document shall be made in accordance with the Master
Service List as follows:

Ryan Daniels, Esq.

I further certify that I served a copy of this document by mailing a true
and correct copy thereof, postage prepaid, addressed to:

Thomas J. Moreo
Chief Deputy District Attorney
Clark County District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
Co-counsel for Respondent, LVMPD

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing