

1 Blah, blah, blah. People are clamoring and we'll get it done.  
2 I mean, you can put it on Monday or Tuesday. We'll get it on  
3 next week anytime you want to get it on. And if they call you  
4 Detective, you can tell them that the DA's putting that on.  
5 We should have a resolution within a week or so.

6 MR. NICKELL: Yes, Your Honor.

7 [Off the record]

8 [In the presence of jury]

9 THE COURT: Okay. Back on the record in case number  
10 C228752 State of Nevada versus Bryan Fergason. Let the record  
11 reflect the presence of Mr. Fergason, his counsel, counsel for  
12 the State, all ladies and gentlemen of the jury back in the  
13 box.

14 This is the time that we give you the law that  
15 applies to in theory any potential conclusion you could reach  
16 about the facts of this case. Understand this, I'm just the  
17 messenger. I don't make the laws, I just go to the books and  
18 pull out the ones that seem to apply to all the potential ways  
19 you could view the evidence. And the law says I have to read  
20 them to you. But I found after years and years and years of  
21 doing this is the best way to do it is to give you each a  
22 copy. When I read it, it kind of makes more sense when you  
23 read it to yourself. You don't have to try to take notes.

24 Then the lawyers argue tomorrow. They may say, look  
25 at instruction 17 or 23 or 5 or some number you'll have it

1 right in front of you. Maybe most importantly when you go to  
2 deliberate instead of having one set that you pass around  
3 you'll each have your own set and it expedites things. I know  
4 you can all read. My preference would be to just say raise  
5 your hand when you're done but that ain't the way it works.  
6 So bear with me. It'll take about 30 minutes.

7 The third instruction is always the information and  
8 by law it has to be read, that one in and of itself takes  
9 awhile in this case.

10 MS. DIGIAMOCO: And, Your Honor, can we approach just  
11 real quick?

12 THE COURT: Uh-huh.

13 [Bench Conference Not Transcribed]

14 [Jury Instructions Not Transcribed]

15 MS. DIGIAMOCO: Your Honor, can we approach again?

16 [Bench Conference Not Transcribed]

17 THE COURT: Thank you.

18 [Jury Instructions Continued Not Transcribed]

19 THE COURT: Okay. I'm going to stop there for the night.  
20 Again, we're not going to go until 6:30 or 7:00. And it's  
21 just not good practice to split argument. And I actually  
22 thought we'd be right here at five o'clock tonight. So we'll  
23 get out just a little bit early. Please, just one more day.

24 [Court Admonishes Jury]

25 THE COURT: Ten o'clock?

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 MS. DUSTIN: Yes, sir.

2 THE COURT: Ten o'clock. We'll start ten o'clock sharp.  
3 If you'll get here about quarter two, give yourself a little  
4 time for the elevators, Officer Moon and Charmane. We will  
5 take your lunch orders. We'll have lunch delivered around  
6 12:30 and I think that we'll get the case to you sometime  
7 between say, 12:15 and one o'clock. So you can go right in,  
8 eat your lunch, work while you're eating and get our job  
9 finished by tomorrow.

10 Have a nice evening. Thanks for your patience.

11 Yeah. Leave your instructions here. Don't take  
12 them home with you. Just put them on your clipboards with  
13 your other stuff and they'll be there when you get there  
14 tomorrow.

15 (Jury Out)

16 THE COURT: The record should reflect that the jury's  
17 exited.

18 So Ms. DiGiacomo, I take it you've led me astray  
19 again in that when you gave me the original one it said  
20 property valued over 2500 and over 250, and it should have  
21 said 2500 or more --

22 MS. DIGIAMOCO: Yes.

23 THE COURT: -- and 250 or more.

24 MS. DIGIAMOCO: Yeah. That's correct. And that was --

25 THE COURT: So then we sort of tried to match that and --

1 MS. DIGIAMOCO: And it was wrong.  
2 THE COURT: -- two wrongs make three wrongs.  
3 MS. DIGIAMOCO: Exactly. So --  
4 THE COURT: I'll fix it.  
5 MS. DIGIAMOCO: Yeah. And I would ask that the -- yeah.  
6 The instruction's wrong with regard to all of them.  
7 THE COURT: Instruction number 10?  
8 MS. DIGIAMOCO: Yeah. Because it says if you find it's  
9 2500 or more your verdict should be guilty of over 2500, which  
10 is incorrect. We fixed the last one, and I was looking,  
11 they're all three wrong. I apologize. And then the verdict  
12 form needs to be fixed.  
13 THE COURT: I think that could be read to say, "If you  
14 find it 2500 or more it's over 2500," --  
15 MS. DIGIAMOCO: Okay.  
16 THE COURT: -- would mean including. I think -- I don't  
17 think we have to change 10, we just have to change all these.  
18 MS. DIGIAMOCO: The verdict form.  
19 THE COURT: And on the verdict form --  
20 MS. DIGIAMOCO: Well then the verdict form it would just  
21 be the last one that needs to be changed.  
22 THE COURT: Guilty of possession of stolen property value  
23 2500 or more. Guilty of possession of stolen property value  
24 \$250 or more. Guilty of possession of stolen property value  
25 less than --

1 MS. DIGIAMOCO: Less than --  
2 THE COURT: -- \$250.  
3 MS. DIGIAMOCO: That's correct, that's correct.  
4 THE COURT: All right. I'll change that on all those.  
5 MS. DIGIAMOCO: Thank you. Sorry about that, Judge.  
6 THE COURT: Okay.  
7 MS. DUSTIN: One last matter --  
8 THE COURT: I've been led astray by --  
9 MS. DIGIAMOCO: Sorry.  
10 MS. DUSTIN: One last matter, Your Honor, I'd ask just --  
11 THE COURT: Or devious.  
12 MS. DUSTIN: -- to be having a complete record, I'd ask  
13 that the Defense's proposed jury instructions be marked and  
14 put into the record for purposes of appeal, and I think the  
15 State --  
16 MS. DIGIAMOCO: As well as the State's proposed exhibit  
17 with regard to value.  
18 THE COURT: You know, here's the deal, I'll be glad to do  
19 that if you bring me some. Because what happened is after we  
20 did it today and I wrote one, I said, this okay with you, and  
21 this okay with you, and does this encompass all your stuff, I  
22 thought we'd sort of reached an agreement and there wasn't  
23 anything you were proposing that I hadn't solved so I threw  
24 them away.  
25 But to the extent that I was mistaken, if you will

1 actually give me a copy of anything you want, I'll make the  
2 whole package, I'll make the State's proposed instructions --  
3 MS. DIGIAMOCO: And I have my copy.  
4 THE COURT: -- Court Exhibit A, and I'll make Ms.  
5 Dustin's package Court Exhibit B.  
6 THE CLERK: Judge, you're going to actually need a  
7 coversheet --  
8 THE COURT: Oh okay. Tina knows how to do it. And  
9 they'll be part of the record for whatever it's worth.  
10 MS. DIGIAMOCO: Thank you.  
11 THE COURT: What else?  
12 MS. DUSTIN: I think we've got everything I think cleaned  
13 up.  
14 MS. DIGIAMOCO: You admonished the Defendant, right?  
15 MS. DUSTIN: You already rested and we did the --  
16 THE COURT: Admonished the Defendant? Yes.  
17 MS. DIGIAMOCO: Last week?  
18 THE COURT: I did that early, yes.  
19 MS. DIGIAMOCO: Yeah. Okay. I just wanted to make sure.  
20 THE COURT: And I told him that, you know, when Ms.  
21 Dustin doesn't call him to the stand --  
22 MS. DIGIAMOCO: I'm sorry. That is mine.  
23 THE COURT: Mr. Ferguson, you agree with Ms. Dustin's  
24 decision that you didn't want to testify, correct? .  
25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. That was the understanding I thought  
2 we had and I usually don't bother to ask. But we're good.

3 MS. DIGIAMOCO: It's been so long I can't remember what  
4 we've done --

5 THE COURT: Well, you know, a lot of people do it late on  
6 but I like to do it kind of early in the case usually because  
7 I have an opportunity. And secondly, I want the Defendant  
8 thinking about that as he's listening to the evidence and make  
9 an informed decision. So I guarantee you it's there.

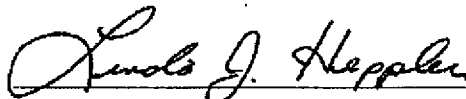
10 Okay. One more day.

11 [Proceedings Concluded at 3:34 p.m.]  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video recording in the above-entitled  
3 case to the best of my ability.  
4  
5  
6  
7  
8  
9

10   
11 LINDA J. HEPPLER, Transcriber  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25





ORIGINAL

1

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

BRYAN FERGASON,

Defendant.

CASE NO. C-228752

DEPT. VII

Jan 20 11 23 AM '09  
Clerk of the Court

FILED

BEFORE THE HONORABLE STEWART BELL, DISTRICT COURT JUDGE

THURSDAY, MAY 29, 2008

REPORTER'S PARTIAL TRANSCRIPT  
TRIAL BY JURY  
DAY 6 - VOLUME 1

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

CLERK OF THE COURT

RECEIVED  
JAN 20 2009

A/V-TRONICS, INC.  
E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

0597

1                    THURSDAY, MAY 29, 2008 AT 1:58 P.M.  
2                    [Outside the Presence of the Jury]  
3                    THE COURT: Let's go on the record in case number  
4                    C228752, State of Nevada versus Bryan Fergason. Let the  
5                    record reflect the presence of Mr. Fergason, Ms. Dustin, State  
6                    Counsel, absence of the jury. Ready to go? Okay, bring them  
7                    in. Let's go.  
8                    THE CLERK: All right, Rick.  
9                    [Within the Presence of the Jury]  
10                   THE COURT: Okay. Let's go back on the record in case  
11                   C228752, State of Nevada versus Bryan Fergason. Let the  
12                   record reflect the presence of Mr. Fergason, of his Counsel,  
13                   Counsel for the State, all ladies and gentlemen of the jury  
14                   are back in the box. Ms. Small, are you ready to proceed?  
15                   MS. SMALL: Yes, Your Honor.  
16                   THE COURT: Go ahead.  
17                   MS. SMALL: Good morning, ladies and gentlemen. They  
18                   didn't think we were anything big. Yeah, I know that. I know  
19                   that. On September 24<sup>th</sup>, 2006, police officers are called out  
20                   on a burglary call. They start to go out to that call, and  
21                   they receive another burglary call that diverts their  
22                   attention.  
23                   They drive out to that area, they see a white  
24                   minivan sitting in a parking lot. They approach, they follow  
25                   the white minivan. They eventually pull it over. The

1 officers walk up to the white minivan, and they see two  
2 individuals sitting in the front of that white minivan, Daimon  
3 Monroe and the Defendant, Bryan Fergason.

4 Officers ask them to get out of the vehicle, and you  
5 heard Officer Salisbury, he said he stuck his head in the  
6 passenger's door, and he took a look around inside. He was  
7 looking to see if anybody was hiding in the back of that  
8 minivan, for officer safety. But something catches his eye.

9 There's this crystal object sitting on the floor of  
10 the minivan. That crystal object is linked later to Anku  
11 Crystal Palace. Anku Crystal Palace had been burglarized that  
12 evening. That crystal object came from Anku Crystal Palace,  
13 along with other items that they found in that minivan.

14 Not only that, when they did a pat down of the  
15 Defendant, they found two bracelets in his front pocket  
16 belonging to the Anku Crystal Palace.

17 But that's not the only thing they find in the van,  
18 ladies and gentlemen. Because they also find tools. They  
19 find sledgehammers with tape wrapped around the handles. They  
20 find numerous screwdrivers. They find a crowbar. They find  
21 some big huge bolt-cutting tool. They find gloves, and they  
22 find this one screwdriver in particular. It catches their  
23 attention, because the shaft of that screwdriver is sort of  
24 shaved down narrowly, and it's bent in a 90-degree angle.

25 Detective Nickell came in here and he testified. He

1 told you, through his investigation, he learned that these two  
2 individuals, the Defendant and Daimon Monroe, referred to that  
3 particular tool as Matthew. He went on to investigate. What  
4 does he find out?

5 He finds out that when you take Matthew, and you  
6 slide it in between two commercial glass doors with the metal  
7 framing around it, it'll slide right in between those doors.  
8 It'll come up on the other side, and it'll flip open that  
9 thumb-lock on the other side. Easy access. You walk right  
10 into the store. Very little damage to the door.

11 Well, Detective Nickell continues to investigate.  
12 He's listening into telephone calls. He's listening to  
13 numerous telephone calls between the Defendant and David  
14 Monroe, between the Defendant and Tonya Trevarthen and Daimon  
15 Monroe, between Daimon Monroe and Bobby Holmes. He's  
16 investigating. He's listening. He decides to set up  
17 surveillance.

18 He sets up surveillance, and out of all of that  
19 investigation, search warrants are served. They're served on  
20 Cutler, they're served at Riespine, they're served at Pirate's  
21 Cove. Where else are they served? They're served at the  
22 Buffalo storage units, Sahara storage unit, Charleston storage  
23 unit, the Smoke Ranch storage unit. And that's the very  
24 reason we're here today. I mean, that's why I'm standing here  
25 today.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1           What they find in those storage units and those  
2 residences is the very reason that we're here today. They're  
3 going to have to prove it's somebody else's shit, okay. Who  
4 in the world is going to come to court four years later, three  
5 years later? You think somebody is going to take their time  
6 and still matter for five years?

7           Right. Don't make sense, man. It did matter. It  
8 did matter to some of those victims, ladies and gentlemen,  
9 because some of those victims did show up in court here. They  
10 did come and testify. They did take the stand tell you that  
11 their offices, that their businesses, that their companies,  
12 that their corporations, had been burglarized.

13           They came in here and told you that out of those  
14 burglaries, numerous pieces of property were taken from them.  
15 And lo and behold, in November of 2006, some of that exact  
16 property that was taken from those burglaries, where does it  
17 show up? Where does it show up?

18           It shows up in connection with these four  
19 individuals. And how is it connected to these four  
20 individuals? It's connected to these four individuals based  
21 on the location of the property. Because we know that some of  
22 that property was found at Cutler, was found at Charleston,  
23 was found at Sahara, was found at Smoke Ranch, was found at  
24 Pirate's Cove, was found at Buffalo, was found at Riespine,  
25 connecting all of these individuals in a web of conspiracy,

1 connecting them together by their words, by their actions, and  
2 by the location of the stolen property. Connecting the  
3 Defendant, Bryan Fergason, in this conspiracy to possess  
4 stolen property.

5 Now, we have the burden of proof. We have to prove  
6 to you beyond a reasonable doubt that a crime has been  
7 committed, and that the Defendant committed those crimes. So,  
8 let's talk about the crimes. I mean, what crimes have been  
9 committed here?

10 And the first thing we're going to look at is  
11 conspiracy. Looking at jury instruction number 11, excuse me,  
12 number 4. It says that,

13 "A conspiracy is an agreement between two or more  
14 persons for an unlawful purpose. To be guilty of  
15 conspiracy, a Defendant must intend to commit or to aid  
16 in the commission of the specific crime agreed to. The  
17 crime is the agreement to do something unlawful. It does  
18 not matter whether it was successful or not. A person  
19 who knowingly does any act to further the object of the  
20 conspiracy, or otherwise participates therein, is  
21 criminally liable as a conspirator. However, mere  
22 knowledge or approval of or acquiescence in the object  
23 and purpose of the conspiracy without an agreement to  
24 cooperate in achieving such object or purpose does not  
25 make one a party to the conspiracy."

1                   Now, conspiracy is seldom, susceptible, a  
2                   direct proof, and is usually established by inferences  
3                   from the conduct of the parties, in particular, a  
4                   conspiracy may be supported by a coordinated series of  
5                   act in furtherance of the underlying offense, sufficient  
6                   to infer the existence of an agreement."

7                   Well, what does all of that mean? I mean, I think  
8                   what we can do is break it down into three basic elements. We  
9                   need to have an agreement between two or more persons for an  
10                  unlawful purpose. I think the first thing I'm just going to  
11                  submit to you, give it to you, I don't think there's any doubt  
12                  that there is two or more persons involved in this situation.

13                  You heard telephone call after telephone call after  
14                  telephone call between these individuals. I submit to you,  
15                  ladies and gentlemen, there were at least two, probably more,  
16                  people involved in this conspiracy.

17                  Unlawful purpose, I would submit, is the possession  
18                  of stolen property. So, I guess the real issue is this: How  
19                  do we show that there was an agreement for two or more people  
20                  to possess stolen property? And we kind of touched on it just  
21                  a little minute ago, because we were talking about the fact  
22                  that they're all connected in this web of conspiracy by their  
23                  words, by their actions, and by the stolen property.

24                  And what do I mean about the stolen property? Think  
25                  about this. Follow the stolen property. If you follow the



1 stolen property, it becomes very clear how all these  
2 individuals are connected.

3 Let's just take one of the counts, for instance.  
4 Let's take -- let's look at Count IV, Annie Lee Gallery. We  
5 know there was a burglary July 9<sup>th</sup>, 2006. One single burglary.  
6 There were numerous pieces of artwork taken, from July 9<sup>th</sup> of  
7 2006. In November of 2006, some of that exact property was  
8 recovered. Where was it recovered?

9 We know four of the paintings were recovered from  
10 Cutler. We know four of the paintings were recovered from the  
11 Buffalo storage unit. We know one painting was recovered from  
12 Charleston, and we know those little price tags with Annie  
13 Lee's name on it, they were recovered from Pirate's Cove.  
14 Okay.

15 What do we know about all these locations? We know  
16 that Cutler was where Daimon Monroe lived with Tonya  
17 Trevarthen. They had their three children there, they paid  
18 rent, \$1,600 a month. They paid six months' in advance in  
19 cash.

20 We also know that the Defendant, Bryan Ferguson, was  
21 there frequently. In fact, you heard Tonya testify that they  
22 didn't hide the fact that they were in possession of stolen  
23 property. We also know that the Defendant's vehicle was  
24 parked on the side of the Cutler residence, and inside that  
25 truck was paperwork for the Buffalo storage unit.

1           And we know that the Buffalo storage unit was in the  
2 name of Bryan Fergason, the Defendant. We saw a  
3 representative come in here and testify that yes, indeed, it  
4 was Bryan Fergason who rented the Buffalo storage unit. Four  
5 Annie Lee paintings were found at the Buffalo storage unit.

6           What do we know about Charleston? We know that was  
7 in the name of Tonya Trevarthen. What else do we know about  
8 Charleston? We know that Bryan Fergason took a big, huge  
9 moving van, and moved all of Bryan Fergason's stuff out of his  
10 apartment and into that Charleston storage unit. We also know  
11 that there was a piece of paperwork found in the Charleston  
12 storage unit in the name of the Defendant, Bryan Fergason.

13           Pirate's Cove, the two little tags, price tags, with  
14 Annie Lee's name on it. Connecting all of these people in  
15 this conspiracy to possess the stolen property. Think about  
16 this. One single burglary, with all of this stolen property,  
17 and it shows up in all of these different locations, tying all  
18 of these individuals into this conspiracy.

19           Let's take -- let's just take one more for instance.  
20 How about McNeilly? I mean, we have a lot to say about Mr.  
21 McNeilly, don't we? We heard the telephone calls, but let's  
22 just think about this. January 18<sup>th</sup>, 2005, there's a burglary.  
23 Again, numerous artwork is taken from Mr. McNeilly. Where did  
24 they find the artwork?

25           They find it in the Sahara storage unit, and they

1 find at the Charleston storage unit. We've already talked  
2 about the Charleston storage unit. What do we know about  
3 Sahara? We know that Daimon Monroe rented it in the name of  
4 Ashton Monroe. You saw a representative come out from that  
5 storage unit and say yes indeed, it was Daimon Monroe who  
6 rented that in his name.

7 What do we know was found at the Sahara storage  
8 unit? We know that McNeilly's were found there, and think  
9 about this. You heard several different conversations between  
10 Daimon Monroe and Bryan Ferguson. I got McNeilly's now. I'm  
11 taking all of your McNeilly's until I get my money back. I  
12 took McNeilly's out, and all of your g's. I haven't gotten  
13 Bones yet. He said be careful dude. The Defendant.

14 You got Mr. Bones over there, Gypsy Bones, skeleton  
15 and razors. Just based on those conversations, we know that  
16 the McNeilly's, who did they belong to? I mean, ask  
17 yourselves who did the McNeilly's belong to, based on the  
18 conversations between Monroe and the Defendant? And where  
19 were they found? They were found at the Sahara storage unit,  
20 and they were found at the Charleston storage unit, linking  
21 them together in this conspiracy to possess stolen property.

22 Because, don't forget, it's out of one single  
23 burglary that all of these possessions are stolen, and they're  
24 found in all of these different locations connecting all of  
25 these people.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1           Looking for one more, are you? I mean, we could go  
2 through each and every one like this, but let's look at Count  
3 XXII, the Family Music Center. You know on November 29<sup>th</sup>,  
4 2002, what was stolen? A lot of guitars. Right? A lot of  
5 guitars were taken. Where did they find the guitars? They  
6 found guitars at Cutler, and they found their guitars at Smoke  
7 Ranch. Conversation, again, between the Defendant and Daimon  
8 Monroe. "I took McNeilly's out and all your g's. Put them in  
9 the unit for now." Defendant is sort of confused at first.  
10 He's not catching on to the code. "What do you mean, g's?  
11 What are you talking about, dude?" "Your g's, your four- and  
12 six-string g's."

13           I mean, I submit to you, ladies and gentlemen, what  
14 do you think g's meant? I submit it meant guitars, and he's  
15 talking about the fact that he put them in the unit for now.  
16 Out of those two locations, Cutler, which is a residence, and  
17 Smoke Ranch, which is a storage unit, which one do you think  
18 he was talking about? Think he was talking about the Smoke  
19 Ranch storage unit? Connecting the Defendant in this  
20 conspiracy to possess this stolen property.

21           I'm going to ask you now to look at one other  
22 instruction. Instruction number 7. It says,

23           "Each member of a criminal conspiracy is liable for  
24 each act, and bound by each declaration of every other  
25 member of the conspiracy. If the act or the declaration

1 is in furtherance of the object of the conspiracy, the  
2 act of one conspirator pursuant to or in the furtherance  
3 of the common design of the conspiracy is the act of all  
4 conspirators.

5 "Every conspirator is legally responsible for a  
6 specific intent crime of a co-conspirator that follows  
7 from the object of the conspiracy, so long as the  
8 specific intent crime was intended by the Defendant."

9 What does that mean? The act of one is the act of  
10 all. The act of one is the act of all. What other crime has  
11 been committed? Possession of stolen property. We have a  
12 jury instruction on that. It's jury instruction number 10.  
13 And it states that "any person for his own gain or to prevent  
14 the rightful owner from again possessing his property, shall  
15 buy, receive, or possess stolen property, or more, knowing the  
16 property was stolen", it goes on and on and on and on. And we  
17 can break that down.

18 We can break that down into three elements. The  
19 first element, "for his own gain or to prevent the rightful  
20 owner from again possessing the property". What does that  
21 mean? Did they intend to permanently deprive the rightful  
22 owners of their property?

23 Well, think about this. I mean, some of that  
24 property was taken from 2004. Some of it was taken from 2005,  
25 some of it was taken from 2006. Do you think when those

1 search warrants went down in November of 2006 they were  
2 planning on returning all of that property? Think about where  
3 the property was located. Think about how they were using the  
4 property, how it's in their homes, it's in their apartments.  
5 It's stuffed in storage units with big locks on it. Do you  
6 think they were really planning on taking all of that property  
7 back to those victims? I submit to you that they were not.

8 "Buys, receives, or possesses stolen property".  
9 Looking at Jury instruction number 13, and we sort of have to  
10 look at this instruction based on possesses stolen property,  
11 because the law recognizes two kinds of possession. Actual  
12 possession, and constructive possession. "A person who  
13 knowingly has direct physical control over a thing at any  
14 given time is then in actual possession of it. A person who,  
15 although not in actual possession knowingly has both the power  
16 and the intention at any given time to exercise dominion or  
17 control over a thing, either directly", and listen to this,  
18 "or through another person or persons, is then in constructive  
19 possession of it.

20 "The law recognizes also that possession may be sole  
21 or joint. If one person alone has actual or constructive  
22 possession of a thing", because that's just sole, "if two or  
23 more persons share actual or constructive possession of the  
24 thing, possession is joint."

25 Let's talk about things that we possess every single

1 day, because you don't have to have something in your pocket,  
2 it doesn't have to be in your wallet, it doesn't have to be in  
3 your hand, it doesn't have to be in your purse. As a matter  
4 of fact, you see the pen on the desk over there in front of  
5 Ms. DiGiacomo? Right now, as I stand here, I'm in  
6 constructive possession of that pen. Why? Well, I know it's  
7 there, and I can walk over and use it at any time. It's that  
8 simple.

9 And I submit to you, ladies and gentlemen, after  
10 you've heard all of the evidence in this case, you can  
11 associate Daimon Monroe and Bryan Ferguson, the dynamic duo,  
12 as being in business together.

13 Think about it this way: two people go into  
14 business. They have tools for the business. They have  
15 equipment for the business. They have profits from the  
16 business. Wouldn't it be reasonable to infer that they have  
17 constructive possession --

18 MS. DUSTIN: I'll object as to this line that the State  
19 is throwing hypotheticals out instead of proving their case at  
20 this particular juncture.

21 THE COURT: I'm not sure that I understand what your  
22 objection is?

23 MS. DUSTIN: Well, Your Honor, with all due respect, in  
24 her theories that she's doing, she's now shifting the burden  
25 to where now I have to disprove her theories and her

1     hypotheticals on her case-in-chief, where she bears the  
2     burden. She can't shift it.

3             THE COURT: I don't think she's shifting it. She's  
4     saying this is her argument as to why your client is  
5     responsible in all of this. Overruled. Go ahead, Ms. Small.

6             MS. SMALL: Thank you, Your Honor. So, if you have two  
7     individuals are operating a business, although in this case, I  
8     would submit it's an illegal business, but if you have two  
9     people operating a business with tools and merchandise,  
10    they're both in constructive possession of those tools and  
11    merchandise, and everything within that business.

12            They don't have to have -- they all have, and I will  
13    submit to you, they all have the right to use, sell, give away  
14    those things belonging to that business. And that's what  
15    these people were doing in this situation, ladies and  
16    gentlemen.

17            I also want to point out to you this little issue.  
18    There is massive pieces of stolen property in this case. Now,  
19    just because they couldn't stick all of that massive pieces of  
20    stolen property into one storage unit doesn't mean that they  
21    weren't all in constructive possession of it. Just because  
22    they had to get more than one storage unit, and they had to  
23    put stuff in more than one location because there was so much  
24    of it, doesn't mean that they weren't in constructive  
25    possession of it.



1           The last element, "knowing the property was stolen  
2 or having acquired such property under such circumstances that  
3 a reasonable person would know that such property was stolen".  
4 Again, massive pieces of stolen property. And I would submit  
5 to you that, you know, if you have one piece of stolen  
6 property, maybe, in your storage unit or in your home, you may  
7 or may not know that it's stolen. But when you've got  
8 hundreds of pieces of stolen property either in your home or  
9 in your storage unit, isn't it reasonable to infer that you  
10 knew, or you should have known, that it was stolen?

11           I mean, couple this with the fact that the Defendant  
12 didn't have a job. You heard Detective Nickell get on the  
13 stand and testify that through all of this investigation, from  
14 listening to the telephone calls, there was nothing that  
15 indicated that the Defendant had a job. And Tonya confirmed  
16 that. She got on the stand and told you that the Defendant  
17 didn't have a job. She thought maybe a while back --

18           MS. DUSTIN: Objection.

19           MS. SMALL: -- he had a job for a couple of months.

20           THE COURT: I think that's what she said.

21           MS. DUSTIN: I know. She just finished it. I'm sorry.

22           THE COURT: Okay.

23           MS. SMALL: Couple that with the fact -- let's think  
24 about this. What about the telephone calls? Did you notice  
25 that they were trying to talk in code a lot of times? They're

1 talking about Matthew. And what did they say about Matthew?  
2 Think they figured out Matthew? No man, no dude, I don't  
3 think they figured out Matthew. Hey, you know, they got Big  
4 Matthew, but Little Matthew is still left in the car.

5 Why do you think they're talking in code? I got  
6 your g's man, I got your g's. I got your four-string, your  
7 six-string g's. Why are they talking in code? Why do they  
8 continue to remind each other that they're probably being  
9 listened to on the phone? Do you think it's because they  
10 knew, or they should have known?

11 And again, ladies and gentlemen, all of this  
12 evidence corroborates what Tonya said, because you heard what  
13 Tonya said. She said they didn't hide the fact that they were  
14 in possession of the stolen property.

15 Let's go into value, because basically that's the  
16 other element that we have to show in this case. And I'm  
17 sorry if this is going to be tedious, but we'll just go  
18 through it -- I'll try to get through it as quickly as I can  
19 with you.

20 The first one being Desert Rock Sports. We know the  
21 burglary was on August 8<sup>th</sup>, 2006. We know that sleeping bags,  
22 socks, and camping equipment were taken. And we know that  
23 they were found at Cutler. Now, a representative came in from  
24 that store and testified that two of the sleeping bags were  
25 about \$200, that the other two were about \$350, but there were

1 about 12 socks -- Gizmo socks were about ten bucks a piece,  
2 that the Techo hiking socks, there were about 14 pair of  
3 those, that they were 20 bucks a piece. There were 12  
4 headlamps worth about \$40 a piece, one worth about \$78. There  
5 were a couple of ladders, between \$60 to \$120 a piece.  
6 Certainly, when you add all of that up, you come up with more  
7 than \$2,500. I think you can go ahead and check that box on  
8 your guilty plea.

9 Looking, and here's the items that were taken --  
10 looking at Touch of Class --

11 MS. DUSTIN: And, I'll object, Your Honor, right now.

12 MS. SMALL: Let me finish, and you won't have to.

13 THE COURT: Go ahead.

14 MS. SMALL: Looking at Touch of Vegas [sic], we see that  
15 these items were found at the Cutler and Buffalo storage  
16 units. However, we're going to have to concede this one. When  
17 you look on your guilty plea agreement, check not guilty. And  
18 here's why.

19 We didn't prove to you beyond a reasonable doubt  
20 that these items were stolen. We didn't prove to you beyond a  
21 reasonable doubt what these items were worth, because no one  
22 came in from Touch of Vegas to testify to that. So, just turn  
23 to that one right away, and just go ahead and check off not  
24 guilty. We didn't prove it to you beyond a reasonable doubt.

25 Moving on, Annie Lee Galleries. We know the

1 burglary was on July 9<sup>th</sup>, 2006. We know numerous paintings  
2 were taken. We talked about four at Cutler, four at Buffalo,  
3 one at Charleston, but what was the value? Well, you heard a  
4 representative come in and talk about the value, okay? And we  
5 know there were nine paintings that they recovered. That  
6 representative that came in and testified said that one of  
7 those paintings alone could have been at least \$10,000. And I  
8 would suggest to you, ladies and gentlemen, nine of those  
9 paintings certainly would be over \$2,500. So you can go  
10 ahead, on your guilty plea agreement, and check \$2,500 or more  
11 on Annie Lee Gallery.

12 THE COURT: Ms. Small, it's a verdict form, it's not an  
13 guilty plea agreement.

14 MS. SMALL: Sorry. Yeah, I'm already -- here's Cutler  
15 with Annie Lee. And you know what's really interesting about  
16 this also, ladies and gentlemen? These were unique. These  
17 were unique paintings. They had her name on them. I don't  
18 think there's any question that these paintings belonged to  
19 Annie Lee.

20 Spa Depot, burglary June 26<sup>th</sup>, 2006. Spa chemicals  
21 recovered. And, this we pled at just as \$250 or more, but you  
22 did hear the representative come in and she talked about those  
23 chemicals, all of those chemical combined was probably about  
24 \$1,500 to \$2,700. But we just pled them as \$250 or more. So  
25 you can check that.

1           See's Candies, burglary June 15<sup>th</sup>, 2006, boxes of  
2 candy recovered, and we charged this as value over \$250.  
3 Again, See's Candies, she talked about, you know, there's \$15  
4 per pound basically for the candy. The lollipops were 30 in a  
5 box, they were \$14, the nuts and chews were \$75 for five  
6 pounds, \$45 for three pounds, and there were about 70 to 75  
7 pounds of candy returned. Certainly, it's over \$250. You can  
8 check that.

9           Mountain Springs Wellness, burglary June 8<sup>th</sup>, 2006.  
10 Hyperbolic chamber and tan massage chair. You heard the owner  
11 come in and testify that that hyperbolic chamber alone was  
12 over \$17,000. The chair was about \$900. Certainly, those two  
13 things together were over \$2,500.

14           Land Baron Investments, burglary May 8<sup>th</sup>, 2006. And  
15 here are all of the unique items that were taken from that  
16 burglary. And again we heard from several different  
17 representatives that came in from Land Baron. The one owner  
18 of the PGA flag that was encased said that it was about  
19 \$3,000. The baseball cards were worth between \$2,500 and  
20 \$3,000. The poker chips, he said, you know, it was  
21 sentimental value, so we can't really put a value to them,  
22 because he didn't know. But he did say that he paid \$150 for  
23 the framing. And the computer and the monitor were about  
24 \$2,500. All of these things combined certainly add up to  
25 \$2,500 or more.

1 Econ Division, burglary April 10<sup>th</sup>, 2006. Sub-Zero  
2 refrigerator/freezer, Sub-Zero icemaker, washer and dryer,  
3 small refrigerator, found at Cutler. You know, I think, most  
4 of our common sense would dictate, I think, this is worth over  
5 \$2,500. But you did hear from a representative that came in  
6 and testified as to the value. He testified that the small  
7 refrigerator was worth about \$1,458, that the Sub-Zero side-  
8 by-side was worth about \$6,500, that the washer was worth  
9 about \$4,500, that the dryer is \$1,700, ice maker maybe  
10 \$1,500. The refrigerator-freezer alone was probably worth  
11 more than the \$2,500. But certainly, when we combine all of  
12 these things together, we get over the \$2,500 mark.

13 Milton Homer, burglary February 20<sup>th</sup>, 2006, furniture  
14 and artwork found in Cutler. Bronze [indiscernible] urn and  
15 bronze [indiscernible] found in Charleston. And value over  
16 \$2,500. You heard the owner come in and testify as to what he  
17 got from insurance for the Milton Homer, and he testified that  
18 he got maybe two-thirds of the value. I think it was about  
19 \$75,000 that he got back for everything, which was probably  
20 well under what all that was valued at. And you heard a  
21 representative come in and talk about the value of each  
22 specific item, and it was well over that. But certainly it's  
23 over the \$2,500 mark.

24 Cal Spas, burglary July 4<sup>th</sup>, 2006. The spa and you  
25 heard that representative come in and testify that that spa

1 cost \$5,000. Over the \$2,500 mark. Over the \$2,500 mark.

2 And there is something else that I wanted to point  
3 out about the Milton Homer Furniture, and the spa, and the  
4 Sub-Zero refrigerator/freezers, and all of this really heavy  
5 equipment. Do you think that Daimon Monroe moved all of that  
6 stuff into Cutler by himself? Or do you think he had some  
7 help? And you heard Tonya's testimony. I'm going to leave it  
8 at that for you.

9 Hoshizaki, couldn't say it, burglary June 13<sup>th</sup>, 2005.  
10 Ice maker found at Charleston. He said it was worth about  
11 \$1,500, so you just -- you would check the \$250 or more on  
12 that one, because it doesn't reach the \$2,500 mark.

13 H.P. Media Group, burglary April 23<sup>rd</sup>, 2005. And  
14 again, when you look at H.P. Media, and all of the items, all  
15 of the electrical, you know, musical items that were  
16 recovered, certainly all of these items combined were worth  
17 more than \$2,500, but you did hear that the speakers, the JBL  
18 speakers were worth about \$8,000, that the receiver between  
19 \$1,600 to \$1,000, and the DVD players about \$650. So,  
20 certainly you're over, again, over the \$2,500 mark.

21 KDS CPA, burglary March 12<sup>th</sup>, 2005 and August 22<sup>nd</sup>,  
22 2005, and you know all of this stuff, the thing that's really  
23 striking about all of this stuff is how unique it is. I mean,  
24 a lot of it is really unique. And certainly very valuable.  
25 You heard people from KDS CPA come in, you know, the Joe

1 Namath, \$1,000, the Norman Rockwell, \$500, the Norman Rockwell  
2 silver set \$1,000, the matchbooks \$2,000. Certainly over  
3 \$2,500 combined.

4 See America, burglary February 21<sup>st</sup>, 2005. Fifteen  
5 cells and or pictures found at Cutler, five pictures found at  
6 Charleston storage unit, three pictures found at Buffalo.  
7 Again, you heard someone, you heard a couple of people come in  
8 and testify that the cells were worth about \$10,000, that the  
9 clown pictures were around \$800. Certainly, again, you  
10 combine all of these things together, they've got to be over  
11 the \$2,500.

12 McNeilly Art Studio is the next one on here. That  
13 burglary happened on January 18<sup>th</sup>, of 2005. You have all of  
14 that artwork taken, and I guess Mr. Bones was one of them.  
15 But, when you combine all of his artwork together, the  
16 sketches, the litho artwork and so forth, and he came in here  
17 and testified to, he said that the sketches were worth about  
18 \$1,000 to \$1,500 a piece, and that the litho art was worth  
19 \$20,000. Again, I mean, if you combine all of the quantity of  
20 the stuff that's being recovered from that one single  
21 burglary, it was over \$2,500 in value.

22 Grand Canyon Construction -- there's Mr. Bones --  
23 Grand Canyon Construction, burglary August 26<sup>th</sup>, 2004. Viking  
24 cook top found at Cutler. Viking refrigerator found at  
25 Riespine, and again, we had a representative that came in and



1 talked about the fact that it was between, I think they said  
2 that the -- I can't remember which one it was, if it was the  
3 cook top or the refrigerator, one of them was worth \$1,088 and  
4 the other one was worth \$5,400 -- or there, the refrigerator.  
5 But certainly, the two of them combined, over the \$2,500 mark.

6 Dr. Richard Groom, he came in, he had a burglary May  
7 30<sup>th</sup>, 2004. He had this particular painting stolen, among  
8 other things, but this is a thing he recovered. We just  
9 charged this as \$250 or more. And Richard Groom told you that  
10 he paid, I think he said like \$750 to \$800 would be the  
11 replacement cost for it, but that he paid maybe \$150 to \$200  
12 for it. Initially he paid \$400 to \$500 to frame it. But we  
13 didn't charge it for that much. We just charged it for the  
14 \$250 or more. Certainly it was worth \$250 or more.

15 Plaza Café, burglary March 26<sup>th</sup>, 2004. The  
16 commercial meat slicer. Again, this one, we just charged it,  
17 as \$250 or more. But you heard the gentleman come in, the  
18 owner of that store, and he testified that it cost him about  
19 \$1,200, and that if he got it used, that it would cost about  
20 \$800. Even if you cut that in half, certainly \$250 or more.

21 Cosmetic Surgery, burglary June 21<sup>st</sup>, 2003. The  
22 tapestries and you know, this one, he came in and told you how  
23 much he paid for those tapestries. They were pretty -- those  
24 tapestries, actually, were pretty amazing. He said he paid  
25 about, I think, \$5,000 alone to frame them, that he paid about

1 \$2,250 for one, and \$2,700 for the other one. But we only  
2 charged it for \$250 or more. Certainly it meets that mark.

3 DVD Unlimited, burglary May 19<sup>th</sup>, 2003. CD Monitor  
4 speakers, that production center found at Riespine. We just  
5 charged it for \$250 or more. And you heard the gentleman  
6 comes in. he says that the speakers were \$500 to \$600, that  
7 that MPC 2000 was about \$1,400. It would be like \$2,400 now  
8 if he had to go and replace it. The other interesting thing  
9 about it was that he had to close his business down.

10 Family Music Center, burglary November 29<sup>th</sup>, 2002.  
11 Six guitars found at Cutler, seven guitars found at Smoke  
12 Ranch. And they came in and showed you, you know, serial  
13 numbers connecting to those guitars. I mean, there's really  
14 no doubt as to, that the guitars belonged to them, and number  
15 two, what the value of those guitars were, because they told  
16 you that's it's about \$699 to \$2,600 per guitar. Certainly  
17 over the \$2,500 mark.

18 Brady Industries, burglary November 11<sup>th</sup>, 2002.  
19 Commercial vacuum, floor scrubbers, buffers, found at Smoke  
20 Ranch. He said that that the Tenant floor scrubber was about  
21 \$1,700, that used it would be about \$1,100, that the Brady  
22 floor machine was about \$1,200 new, \$700 used. He said that  
23 the vacuum was about \$1,100 new, \$650 used, that the Windsor  
24 was about \$1,600 new and \$1,100 used. So, when you combine  
25 all of those things together, it's over the \$2,500 mark.

1 Global Entertainment, burglary March of 2005.  
2 Again, all this unique, numerous framed celebrity CD's,  
3 albums, cassettes, and you heard the gentleman come in from  
4 Global Entertainment and testify to the fact that per record,  
5 they're about \$500 to \$600 per record, that the map of the  
6 world was about \$950, that the winter scene was about \$200.  
7 You add it all up, all these things combined, again, it's more  
8 than \$2,500.

9 Furniture Markdowns, burglary April 22<sup>nd</sup>, or April  
10 2<sup>nd</sup>, 2002. And all of this furniture that was located at -- we  
11 just valued this as \$250 or more. Okay, and you heard them  
12 come in and talk to you about the fact that the picture was  
13 about \$200, the chest was about \$450, the nightstands were  
14 about \$189 a piece, the mirror was about \$200 to \$250, the  
15 palm tree picture was about \$100 to \$179, the pineapple table,  
16 \$200 to \$400, the coffee table \$200 to \$300, and that the  
17 there was a cell also recovered, and that was worth about \$800  
18 that he also talked about, the fact that that went up in  
19 value, that now that particular item would be about \$1,000 to  
20 \$1,200. Again, ladies and gentlemen, I know this is probably  
21 getting tedious, but when you combine all of these things  
22 together, my goodness, it's well over that \$250 mark.

23 Platinum Collectibles, burglary March 18<sup>th</sup>, 2002.  
24 The guitars that were found there. We heard from Platinum  
25 Collectibles. They said, you know, those were signed guitars.

1 They were like \$3,000 to \$4,500 for just one guitar. So, I  
2 mean, even if you cut it in half, and you devalued it, or  
3 whatever you wanted to do, he would say maybe \$500 to \$800 for  
4 a guitar. So, certainly, it's over the \$2,500 mark for all of  
5 those guitars combined.

6 Right on Beat Productions, burglary April 15<sup>th</sup>, 2005.  
7 All of this equipment was taken. And what the value would be.  
8 And they came in and testified to that. The base stand, \$600  
9 to \$200, drum stand, \$600 to \$200, Ensoniq was \$750 to \$200  
10 times two, certainly, again, it's over -- and we just have  
11 that charged as \$250. It's over the \$250 mark.

12 And you go back, and you think about all of the  
13 phone calls. I mean, you heard phone call after phone call  
14 after phone call between these individuals, connecting them  
15 together in this conspiracy to possess all of this stolen  
16 property. I mean, look at all the exhibits. I mean, take the  
17 box back there. Flip through all the exhibits. Look at the  
18 property that was taken.

19 I know you're going to come back with a verdict of  
20 guilty. Guilty of possession of stolen property, and  
21 conspiracy to possess stolen property. Thank you.

22 THE COURT: Thanks. Ms. Dustin?

23 MS. DUSTIN: Your Honor, can you put the overhead  
24 on?

25 THE COURT: Certainly. Will you help Ms. Dustin,

1 please?

2 MS. DUSTIN: Okay. If you're hearing me talk, that  
3 means we're in the home stretch. I don't think anybody is  
4 going to disagree that we have a lot of exhibits, and items,  
5 and things to look at, and testimony, and witnesses through  
6 this whole case, so I will apologize to everybody, because  
7 normally I can do this on the fly, without having to use  
8 notes. But today, I'm going to be using notes.

9 Let's talk about instruction 15. This is our  
10 controlling [indiscernible]. This is the one that basically  
11 tells you what the State's job is here. All right? And this  
12 is our reasonable doubt instruction. And here's how this  
13 goes.

14 The State has to prove beyond a reasonable doubt  
15 every material element of the crime charged. So, I know we've  
16 heard a lot of testimony and a lot of things, and so you're  
17 kind of like, all right, let's get down to the nuts and bolts.  
18 And that's what we're kind of trying to talk to you about here  
19 in closing.

20 What's our material elements? Okay. What is the  
21 material elements that we need to do for finding a conviction  
22 here? So, let's start with possession of stolen property.  
23 And this is instruction number 10. All right. And I know Ms.  
24 Small talked to you a little about this, but let's get it down  
25 to the nitty-gritty. All right. Here's the big one, where

1 you see "buy, receive, or possess". Well, pretty much  
2 everything here has been talking about possession. "Knowing  
3 the property was stolen or having acquired it under such  
4 circumstances that a reasonable person would know that such  
5 property was stolen." All right.

6 So, the State has to show you, beyond a reasonable  
7 doubt, that (1) the property at issue is stolen, (2) that my  
8 client, Mr. Ferguson, knew it was stolen, or it was such  
9 circumstances that he got it that a reasonable person would  
10 know it was stolen, and then the last part is down here with  
11 the value. So the State also has a burden of showing you  
12 beyond a reasonable doubt what the value of the items were.

13 So, this is the overwhelming nutshell here, this is  
14 kind of our Bible instruction crime here, but I'm going to  
15 talk to you about conspiracy in just a few minutes. So let's  
16 talk, and let's break this down. Let's talk about possession  
17 first. Because, as Ms. Small said, you can possess things in  
18 two different ways. And this is instruction number 13.

19 Direct possession, okay, is direct physical control  
20 over a thing. I possess these pieces of paper. You possess  
21 that clipboard right now. You possess the pen that's in your  
22 hand to write this. That's direct possession.

23 But there's another type of possession, and that  
24 seems to be a little bit of the issue here, and that's  
25 constructive possession. All right. Constructive possession

1 is one of those words where you can exercise dominion or  
2 control over a thing. So, let me ask you this. Do I exercise  
3 control over the pens that are in your hand right now? Do I  
4 have it? Can I come get it? I'd have to take it from you.  
5 But, that's what that means, okay? Am I in the room with it?  
6 Yes. Is it mine? No.

7 She talked about the pen over there on the table,  
8 and this is why I'm making the distinction, because at the  
9 time, she could walk over and exercise dominion and control  
10 over it. She could walk over and she could pick it up. Now,  
11 I could walk over and pick it up. Unfortunately, I'd have to  
12 take it from Ms. DiGiacomo, and she's using it, so that  
13 wouldn't be nice. But, I can exercise dominion and control  
14 over it. I have access to it and I can go get it.

15 So, that's what this is talking about. I can  
16 exercise dominion, I have access to it, I can take control  
17 over it. Now, here's the fun one. "Either directly or  
18 through another person". So, either I can do it myself, or I  
19 can have somebody go get it. Okay.

20 Now, sole or joint possession. Here's a real easy  
21 one. Sole is kind of like everything that you yourself own.  
22 Okay. It's your item. But some of us might be married, and  
23 we have a car, and our significant others or spouses might  
24 have their name on the title. That's a way of having joint  
25 possession over something. They have the ability to drive the

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-8885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 car, you know, maybe you begrudgingly allow them to drive your  
2 car, but that still is joint possession over that item.

3 If you live in a house together, you have furniture,  
4 you jointly possess the furniture and belongings in your  
5 house. Okay. That's joint possession.

6 And Ms. Small did give an example of if you have a  
7 business, you form a business and you have a business partner,  
8 okay, all the items that you have within your business to do  
9 your business, you and your partner jointly own them. But  
10 then ask yourself, does your employee own them? Can they  
11 exercise control over them? Oh yeah, they can use them and  
12 stuff, but is it theirs? No, only if it comes up to be where  
13 they keep it or they actually give it into direct physical  
14 control. And that's kind of what that means.

15 So, let's break this one down and let's talk about  
16 direct possession. All right. It doesn't take a rocket  
17 scientist to figure out from all of our jail phone calls, that  
18 Mr. Ferguson was sitting in jail from September 24<sup>th</sup> until we  
19 know definitely from the phone calls, October 23<sup>rd</sup>. I mean, we  
20 heard the phone calls, and it was pretty obvious that Mr.  
21 Ferguson is making them to people going outside. And those  
22 are the phone calls, folks, that we actually heard. They're  
23 in evidence, and you heard them with the dates, and that's why  
24 we're going to that.

25 So, we've got the timeframe of before the 24<sup>th</sup> and as



1 the State has pled this, our timeframes are kind of important  
2 here. Because instruction 3 tells you, "on or between  
3 September 20<sup>th</sup> and November 27<sup>th</sup>", so we've got that timeframe  
4 from September 20<sup>th</sup> to the 24<sup>th</sup>, when we all know he was taken  
5 into custody and put in jail, and then you have to ask  
6 yourself, okay, well, Ms. Dustin, what about after the 23<sup>rd</sup>?  
7 Okay.

8 Well, we don't know and we didn't have any evidence  
9 of real clearly where Mr. Fergason was from October 23<sup>rd</sup> to  
10 November 27<sup>th</sup>, but here is what we do know. Metro was doing  
11 surveillance on Mr. Monroe. I don't think we ever heard  
12 anybody testify that they were surveilling Mr. Fergason. And  
13 I know that there was a lot -- quite a bit of a discussion of  
14 when they did the raids at people's houses, when they were  
15 going in there with the search warrants, who was present at  
16 the houses, and we never heard on November 6<sup>th</sup> that Mr.  
17 Fergason was at anybody's house.

18 And I know that we heard testimony from Detective  
19 Nickell [sic] that there were more phone calls going on about,  
20 so I think you can make a reasonable inference as to exactly  
21 where Mr. Fergason was from October 23<sup>rd</sup> through November 27<sup>th</sup>.

22 So, can he have direct possession, realistically,  
23 folks, when he's sitting in the Clark County Detention Center?  
24 It's going to be a little hard to do, so that means we've got  
25 to talk about constructive possession.

1           So, constructive possession, like we talked about,  
2   is exercising some form of dominion or control, either himself  
3   or through another one. So, basically, remember, can he  
4   access it? And does he have control over it? Okay. Perfect  
5   example is you hear him talking on the phones to Monroe about  
6   his car. And Monroe keeps wanting to know, hey, do you want  
7   me to move your car? Do you want me to move your car? Well,  
8   it's his car, so he still has some control over his car,  
9   because he finally sat there and said, dude, do whatever.  
10   Okay.

11           Let's talk about the Pirate's Cove apartment. We  
12   all know, if we break down these locations, this is what's  
13   going to help us figure out whether the State has met their  
14   burden of reasonable doubt. The Pirate's Cove location, we  
15   all know, we've heard the testimony, the lady came up on the  
16   stand, Mr. Ferguson that was his apartment. He leased it, he  
17   signed the paperwork, that's where he lived. Okay.

18           So, we know that the Pirate's Cove apartment,  
19   anything in there, that's his stuff. The Buffalo storage  
20   units, well, we heard from the lady coming in and testifying,  
21   he had two units, and they were in his name, and I think she  
22   said that we had one from March of 2005 and then he got a  
23   second one in the middle of 2006. Okay.

24           Those are his. Okay. We're not going to dispute  
25   it. What does that mean? That means the stuff in there is

1 most likely his, because we didn't have any evidence or any  
2 testimony that somebody else had access. They didn't have any  
3 other names on there. Okay. So, we don't know who else had  
4 access. There was no testimony. So, it's pretty fair to say,  
5 okay, stuff in Buffalo is going to be his.

6 So, you're going all right, well, I remember hearing  
7 some stuff on this case was found in Buffalo. So, let's go to  
8 that. Count IV, Count VIII, Count XIV, Count XV, and Count  
9 XXIV. Folks, I'm not going to kid you, I'm not going to try  
10 to play smoke and mirrors on you. We had testimony. It was  
11 found there. Okay. So, we're going to talk about exactly what  
12 was found there. But, it was there.

13 Let's talk about Cutler. We all know from the  
14 testimony and we all know that, I think it's reasonable to  
15 infer that was Daimon Monroe's house. He lived in there with  
16 Tonya Trevarthen and his kids. That's who they found there  
17 when they executed the search warrant on November 6<sup>th</sup>. That's  
18 his place. All right.

19 Nothing was ever offered that he had -- that Mr.  
20 Fergason had a key there, that he could access it at any time.  
21 And so you're saying to me, well, Ms. Dustin, we know that he  
22 was in and out of there, because we heard testimony about  
23 that. Well, let's think about that. Who else had a key to  
24 that house? Somebody else had a key to that house. He sat up  
25 here and testified on the stand. Mr. Foreman had a key to

1 that house.

2 Well, was Mr. Foreman charged? Well, I asked  
3 Detective Nickell that, and what did he say? No. Mr. Foreman  
4 had access, it was his house, does that mean that he was  
5 possessing all the stolen property? And remember, he said he  
6 was in and out of there in 2004, he said he was in and out of  
7 there. Think back to the dates that some of this stuff dates  
8 back to. He was in there, he was in the same room. Does that  
9 mean he's guilty?

10 This is where beyond a reasonable doubt gets to be  
11 an issue, because you have to make this distinction of whether  
12 beyond a reasonable doubt, Bryan Ferguson had dominion or  
13 control to constructively possess the items at Cutler, in the  
14 garage, in the attic, in the shed, in the back yard, in the  
15 house.

16 Now, I'm going to talk about conspiracy in a little  
17 bit, but we're staying with just, right here in this nutshell.  
18 Let's talk about Amanda Terry. Amanda Terry was in the house.  
19 She was in the house. I think she talked about that she was  
20 in there in 2006. She was over there. She went to see Tonya,  
21 and Tonya even gave her stuff, and told her, hey, if you don't  
22 want it anymore, instead of selling it or giving it to  
23 somebody else, can you give it back to me?

24 But Amanda wasn't charged. You heard. She wasn't  
25 charged with anything. But she was in there. She was a guest

1 there. And she even sat up there and testified on the stand,  
2 I thought this stuff in the house was pretty cool. She didn't  
3 walk in there and say whoa, all stolen. She didn't get up  
4 here on the stand and say, wow, everything in that house must  
5 be hot because it's weird. It's too much stuff. She thought  
6 it was neat.

7 So, Steve Foreman gives us a little bit of help here  
8 as to how much he saw Mr. Fergason coming in and out of there.  
9 And there's a reason why I want to point this out. Because  
10 Steve Foreman is not charged. Steve Foreman, his parents  
11 lived next door. Remember how he talked to us and said he was  
12 over there a couple of times a week, and he'd stop past Daimon  
13 and Tonya's house because he was going to pick up his mail.  
14 And he'd see people coming in and out.

15 And he said, yeah, you know, I recognize Mr.  
16 Fergason. I saw him. I think he was there, like, I think I  
17 saw him there, like two or three times. Not every single time  
18 I go to my dad's house here's this guy over there. Did you  
19 hear that out of him? No. Why? Because maybe he wasn't over  
20 there as much. And Tonya gave us a clue to that. Because  
21 remember what Tonya said? Yeah, we met Bryan in 2001, but  
22 there was a time period in 2001 to 2006 that he wasn't around.

23 Although Tonya sat there and said to us he was there  
24 all the time, he came past, it was like regular. You're going  
25 to hear over and over again that her testimony, and there's an

1 instruction that it has to be corroborated. So what does that  
2 mean? And there's an instruction that tells you. You have to  
3 take away her testimony and said if I take away everything  
4 that Tonya said, if I pretend that, you know, la la la, I  
5 never heard it, what other testimony did I hear that Bryan  
6 Fergason was over there all the time?

7 Because we didn't hear that. We heard that he  
8 called a bunch when he got put into jail. We knew that they  
9 were friends. But the person who was over there, who is not  
10 charged, more than once a week, on a regular basis, for years,  
11 tells us, well, yeah, I saw him, but I didn't see him, like  
12 all the time. It was only a couple of times.

13 So, now you're saying, well, okay, well, what about  
14 there was that phone call? There was that phone call where  
15 Mr. Monroe talks to Bryan Fergason while Bryan Fergason is  
16 staying in the jail, and says, dude, dude, don't worry. We  
17 put some of your stuff in the storage unit -- in the shed.  
18 There's some stuff in your truck. Remember that?

19 So, you're sitting there saying well, Ms. Dustin,  
20 some stuff evidently was there in the shed. Well, how many  
21 things -- think back -- how many things in that shed did  
22 anybody sit up there on the stand and say I'm looking in the  
23 shed, and that I think is mine? In case you want to know how  
24 many it was, that's it. And what was that? Remember that  
25 funky pineapple table thing? The one that I asked the guy

1 from Furniture Markdowns can you get it anywhere else? It was  
2 taken in 2002, you're saying. Can you get it anywhere else?  
3 And what did he say? Oh, well, yeah.

4 So, let's talk about the Riespine house. This is  
5 where Bobby Holmes lived. I don't think we ever had any  
6 testimony that Bryan Fergason ever lived there, had a key  
7 there, was hanging out over there. We never heard anything  
8 about that. The West Sahara storage unit, the one that Mr.  
9 Monroe rented under, I believe, the name Ashton Monroe. Do we  
10 ever hear testimony from anybody saying that Bryan Fergason's  
11 name was on the storage unit access thing, that he had control  
12 over it?

13 Well, remember when the West Sahara was rented? It  
14 was while he was sitting in jail. So tell me how he accessed  
15 anything at West Sahara.

16 The Smoke Ranch storage unit. This is Monroe and  
17 Tonya Trevarthen's storage unit. There was only person named  
18 as having access on that, and Tonya told us who had access to  
19 it. Did she ever say that Mr. Fergason had access to it? No.  
20 And that testimony is corroborated. Why? Because the lady  
21 from the -- the person from the storage unit came and said  
22 well, the only person that was noted as being authorized was  
23 Mr. Monroe. No one ever testified that Mr. Fergason was in  
24 the Smoke Ranch storage unit, ever. That he ever had any  
25 access over it. That he could ever go and punch in the code

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-8885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 and go there. Even Tonya sat there and said she was going  
2 there with Daimon.

3 The West Charleston storage unit. Now, this one we  
4 heard testimony was rented again, while Mr. Ferguson was  
5 sitting in jail. So, his name is not on the paperwork. It's  
6 pretty clear he doesn't have a key. It's pretty clear he  
7 doesn't have a code. It's pretty clear he was never in there,  
8 right? So, now, you're saying well, there was that phone  
9 call. There was that phone call, Ms. Dustin, where Mr.  
10 Ferguson is talking to Mr. Monroe. Mr. Monroe is like, going,  
11 dude, dude, don't worry, I got all your stuff out of your  
12 apartment so you don't have to worry about it, and I rented a  
13 storage unit. Remember that one?

14 And he talked about I got the biggest storage unit  
15 that they had there. Do you remember the surprise in Mr.  
16 Ferguson's voice when Mr. Monroe sat there and said oh, yeah,  
17 yeah, dude, I couldn't fit everything in the storage unit.  
18 Remember how surprised he was? What?

19 So, whose stuff was in this West Charleston storage  
20 unit? Well, you know what, Tonya told us, and the police  
21 officers told us, and let's think back. Because Tonya  
22 originally sat there and said oh, no, no, we got the West  
23 Charleston storage unit for Mr. Ferguson's stuff. She sat up  
24 here on the stand. But let's think back to her first  
25 statement to the police, November of 2006.



1           And remember when she gave this? Remember,  
2   everybody has talked about it, it's the day after  
3   Thanksgiving. But remember what else they said? It's the day  
4   after the Feds caught her in another state, after pulling out  
5   hundreds of thousands of dollars out of her bank account and  
6   transferring money, and the Feds are there, and she's  
7   terrified, because the Feds are knocking at her door, and  
8   talking about money, and her kids, and the whole nine yards.

9           So, what does she do? She gets scared and she  
10   hightails it back to Las Vegas, and she calls Detective  
11   Nickell, and I'm going to come clean, I don't want to lose my  
12   kids, I need to have some form of consideration. I know you  
13   can't give me a deal, but I'm coming clean right now. Right  
14   now, I'm telling you everything. That's the truth.

15           And what does she say? Whose stuff is in the West  
16   Charleston storage unit? It's her and Daimon. And --

17           MS. SMALL: Objection, Your Honor. That's facts not in  
18   evidence.

19           THE COURT: I don't remember what she said.

20           MS. DUSTIN: I'm sorry, she said it was ours. Because I  
21   had her read it in.

22           THE COURT: Okay.

23           MS. DUSTIN: From her transcript. This is corroborated.  
24   How is it corroborated? Remember the surveillance? Remember  
25   we heard all those cops come up and testify about surveilling

1 Daimon Monroe? Remember that? Remember how they said I saw  
2 this big white moving van in front of the Cutler residence,  
3 and I followed it. Where did they follow it? They followed  
4 it to West Charleston.

5 And remember the officer testifying that on the 23<sup>rd</sup>  
6 that he followed it from Cutler to West Charleston, and  
7 watched them unloading it? Did anyone ever testify I watched  
8 that moving van go from the Cutler residence and buzz around  
9 and it went to the Pirate's Cove, and it was there, and then  
10 it went from Pirate's Cove to Charleston? Did anyone ever  
11 testify about that?

12 Why is Mr. Fergason so surprised that his stuff  
13 doesn't fit into a storage unit? Why? Because somebody else  
14 is putting stuff into that storage unit that maybe isn't Mr.  
15 Fergason's, or didn't come from his apartment.

16 Reasonable doubt. Whose stuff is in the West  
17 Charleston storage unit? Tonya told us "ours". Who is "ours"  
18 with Tonya back in November of 2006? Is she together with Mr.  
19 Fergason? No. Who is she together with? Whose the father of  
20 her kids? Who is ours?

21 Our only other location is the minivan that we heard  
22 all this testimony about it being stopped, searched, and Mr.  
23 Hung came up here and testified about the bracelets and the  
24 crystal and the wood statue. You look through that  
25 indictment, ladies and gentlemen, you tell me where they're

1 charged with possessing anything from Anku Crystal Palace or  
2 Just for Kids Dentistry. Because they're not. Why?

3 Are they charged with actually doing burglary at  
4 Anku Crystal Palace or Just for Kids Dentistry? No. Why?  
5 Why didn't they --

6 MS. SMALL: Objection, Your Honor.

7 THE COURT: Sustained. Please talk about what they are  
8 charged with, not what they're not charged with.

9 MS. DUSTIN: We heard all that testimony. And we heard  
10 all those phone calls, and what was being discussed on the  
11 phone calls? The car stop. And what was all of our testimony  
12 about the car stop? Just from the Anku Crystal Palace and the  
13 Just for Kids Dentistry.

14 We heard that the van was in Tonya Trevarthen's  
15 name. So, when we talk about reasonable doubt, the State  
16 hasn't proven to you beyond a reasonable doubt that Mr.  
17 Ferguson had access, control, or exerted dominion over the  
18 Cutler location, the Riespine house, the West Sahara storage  
19 unit, the Smoke Ranch storage unit, the van, or the West  
20 Charleston unit.

21 So, let's talk about conspiracy. Instruction number  
22 4 gives us the help on conspiracy because this is where all  
23 that -- we're saying, okay, Ms. Dustin, we talked about  
24 whether he actually was there, whether he actually had  
25 dominion or control over those places, but what about the

1 conspiracy?

2 Let's talk about it, number 4. This is the big one.  
3 "A person who knowingly does any act to further the object of  
4 a conspiracy or otherwise participates therein is liable as a  
5 co-conspirator", right? But then it goes on. "Mere  
6 knowledge, approval of, acquiescence" here, "of the object and  
7 purpose of the conspiracy", the stolen property, "without an  
8 actual agreement" to say, hey, geez, let's go out and possess  
9 this, isn't enough to make you a party to a conspiracy.

10 What does this mean in a nutshell? If I know  
11 somebody is doing something, and I'm not helping them do it,  
12 I'm not guilty. Even if I approve, even if I go, dude, you  
13 know that's cool, I'm not a party to a conspiracy. This pulls  
14 us back to this thing.

15 Steve Foreman, in the house, saw stuff, not charged.  
16 Amanda Terry, in the house, saw stuff, got stuff, not charged.  
17 I think it was Englebert Clemente [phonetic], you heard about  
18 him. He's not charged, and evidently he knew stuff.

19 So the State wants you to believe that just because  
20 he was sitting in the car and got stopped at Just for Kids  
21 Dentistry, that therefore he's conspired for every single item  
22 of stolen property in the remaining 26 counts.

23 So, I'm going to bring you back to instruction  
24 number 3. And this is important. Count I is our conspiracy.  
25 And what does it say? That they conspired and agreed to

1 commit a crime, possession of stolen property, and or  
2 burglary, so either or, and in furtherance of it they  
3 committed the acts in Count I, which is this one, through 27.  
4 So that they did, the way that the State's put it, all of it.  
5 That he had to have done and possessed all of it.

6 But the State's already conceded that they've failed  
7 to meet their burden on Count III. So now how can he be doing  
8 Count 3 if they've already conceded that they didn't meet  
9 their burden? And how can he be doing other things that  
10 weren't even in a location that he ever had access to? The  
11 Smoke Ranch unit, the Riespine house. Places we never heard  
12 that he ever went. Because if you can't get there on all of  
13 them, then you can't have this overwhelming [phonetic]  
14 conspiracy to say that he's got to be guilty of everything.

15 Now, let's look at the rest of it. Committing  
16 burglaries at Anku Crystal Palace and Just for Kids Dentistry.  
17 So this isn't possessing anything, and did continue after --

18 MS. SMALL: Objection. She's misstating what it says.

19 THE COURT: Let -- she's stating literally what that  
20 says.

21 MS. SMALL: Well, it says and or. It doesn't say and.

22 THE COURT: Correct. That's her argument. And you're  
23 going to get your rebuttal, so you can go ahead, Ms. Dustin,  
24 and then you can point out to the jury your theory of that.  
25 Go ahead.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 MS. DUSTIN: Okay. And did continue after committing  
2 said acts conceal or hide proceeds and or stolen property of  
3 Defendant's acts. So basically, that after committing the  
4 acts in Count I, which is Anku Crystal Palace and Just for  
5 Kids, that they kept doing everything in the remaining acts.  
6 So, they kept possessing.

7 So, while Ms. Small says the act of one is the act  
8 of all, you really need to ask yourself as to each of those  
9 counts whether he even knew or he agreed to, for each of those  
10 acts, because that's what our law on conspiracy says, that  
11 you've got -- and the way that they've pled it, that it can't  
12 just be that he knows something is missing. He's got to be  
13 actively participating in it. For each and every count. All  
14 right?

15 So, a couple of other things. We're almost there.  
16 All right. We've talked kind of about the standard on  
17 possession of stolen property on the -- he knew or had reason  
18 to believe or a reasonable person would believe it was stolen.  
19 Amanda Terry is our perfect example. Here, she is in the  
20 house, she walked through, and she didn't come out and say  
21 wow, everything is stolen in there.

22 She was even given pictures, and she testified up  
23 here, she had no idea that they were stolen. She didn't even  
24 find out until she saw it on the news later. That's when she  
25 figured that out, so, a reasonable inference is that somebody

1 just wandering in isn't going to figure out right then and  
2 there, because there's not a big label on everything in that  
3 Cutler house that says stolen.

4 Is there a lot of stuff? Yeah. And that holds true  
5 for Steve Foreman, too, because he sat up here on the stand  
6 and said that he didn't know. This is beyond a reasonable  
7 doubt. This is reasonable doubt.

8 Now, we had a couple of funky things that we had  
9 some people testifying that the item was theirs. And really  
10 we have to ask ourselves, did the State meet its burden in  
11 showing that it really was theirs?

12 So, let's talk about Platinum Collectibles.  
13 Remember those guys? They go, they take the guitars from the  
14 Cutler house, and they also take those pictures. Oh, it looks  
15 like it's ours. We're just going to take it back to check.  
16 And then he sat up here on the stand and said, well, yeah, I  
17 returned it, but only after Cutler called me. So they didn't  
18 check. They took it.

19 Remember that phone call from Daimon Monroe to Bobby  
20 Holmes? Remember that last one that we heard? Where Bobby  
21 Holmes is like dude, that is on the news. They're telling  
22 people to come down. It's like a free-for-all down there.  
23 And that's what happened. I mean, look at this, the police  
24 were releasing stuff to people without any verification.

25 Furniture Markdowns is another example. They came

1 in and said yeah, popular -- one of our most popular sellers.  
2 There's no serial number, there's no nothing, went missing in  
3 2002, can buy it from like ten other places in town, but yeah,  
4 that's ours.

5 All right. Last hurdle. Let's talk about value of  
6 stolen property. You're instructed here that the value -- if  
7 the value of the property is \$2,500 or more, they're guilty of  
8 possession of stolen property valued at over \$2,500. If it's  
9 \$250 or more but less than \$2,500, they're guilty of  
10 possession of stolen property valued over \$250, or if the  
11 value of the property is less than \$250, a person is guilty of  
12 possession of stolen property value less than \$250.

13 Now, remember how I said, we had that instruction,  
14 that the State has to prove beyond a reasonable doubt, each  
15 and every material element. So, what you have to ask is, all  
16 right, I heard a lot of testimony of people kind of giving  
17 retail but not cost, cost, approximations, what I paid for it  
18 when it was new, what it would cost for me to replace it, what  
19 I approximate it's worth, it's priceless, this is what I'd  
20 sell it for. So we heard a lot of that.

21 And you're probably saying that I'm going to say  
22 well, Ms. Dustin why on earth would these people get up here  
23 on the stand and talk about how much their property was worth  
24 if that's really not the amount that it was worth?

25 Remember how many people, either when I asked a



1 question, or offered it up on their own, submitted insurance  
2 claims? And got paid on those insurance claims? If you are  
3 unclear as to the value of the stolen property, if there is a  
4 reasonable doubt in your mind as to the value of the stolen  
5 property, but there is not a reasonable doubt in your mind,  
6 the property is stolen and there is not a reasonable doubt in  
7 your mind that the Defendant possessed it, then you can't  
8 check the box for value over \$2,500. You can't check the box  
9 of over \$250, because unfortunately, you're going to have to  
10 check the last box.

11 Now, let's say the item, you say, well, you know, it  
12 might be like \$250. If it's \$250, you've got to check this  
13 box. \$250 or, you know, up to \$2,500. If you think it's  
14 right at \$2,500, you've got to check the top one. But if  
15 there's no value, if reasonable doubt has not been shown, if  
16 they have not proven beyond a reasonable doubt the actual  
17 value of the item, and you have questions, then you've got to  
18 check the less than \$250 box.

19 And you have an instruction as to how to value  
20 property. And you can't tag the sentimental on to it. Okay.  
21 You've got to actually have a determination of what the value  
22 is, beyond a reasonable doubt, because that's the State's  
23 burden that they have to do.

24 All right. Real quickly, let's talk about Tonya.  
25 Tonya told us a lot of things up there on the stand. And we

1 have some help with what Tonya told us. Tonya's testimony, as  
2 we all know, has to be corroborated. And here's what I was  
3 talking about before. You remember how I said you've got to  
4 kind of -- to figure out whether it's been corroborated you've  
5 got to kind of pretend everything that she told you, you never  
6 heard, and then kind of consider the facts of the case. And  
7 if you think that there's still the connection, then her  
8 testimony has been corroborated.

9 But if there is still not the connection when you  
10 take it away, then it hasn't been corroborated [sic], all  
11 right? So, the perfect example was on when she said Mr.  
12 Ferguson how frequently he was coming past. If we took that  
13 away, remember how she was talking about that he was always  
14 over there? If we took that away, was there other testimony  
15 that he was always over there? No. So that wasn't  
16 corroborated. So that's how you have to kind of deal with  
17 that.

18 And remember, this is a young lady who got up on the  
19 stand, and sat there and said, I had close to \$300,000 in an  
20 account in my name. I lived in the Cutler house. Remember  
21 the jewelry that we saw? Clothes, furniture, the food. And  
22 remember what deal she got? And all she had to do was say --  
23 you think about what her motives are to testify about doing  
24 the same things that she told us. And about when I questioned  
25 her before any deal was on, before she was guaranteed that she

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 493-8024  
Denver (303) 634-7295

1 was going to get probation, before any deal got worked out.  
2 You think about how her testimony modified a little bit. Why?  
3 Because she walks away with her first demeanor on probation.  
4 She doesn't go to jail. She doesn't go to prison. She gets  
5 her kids back.

6 Ladies and gentlemen, you are instructed to use your  
7 common sense. There is an instruction in your jury packet  
8 that you can. We don't expect you to walk back into that jury  
9 deliberation room and just take your life's experiences and  
10 your common sense out the door.

11 So I'm going to ask you to apply your common sense,  
12 and ask yourself this question. You think about your friends  
13 and your acquaintances, and you think about whether you know  
14 what every item in their house, garage, shed if they have it,  
15 storage unit if they have it, if you know what every item they  
16 have in their house is, and where it came from.

17 I think you will find the appropriate verdicts here.  
18 Thank you.

19 THE COURT: Ms. DiGiacomo?

20 MS. DIGIACOMO: Thank you, Your Honor. Good afternoon,  
21 or, good morning, sorry. It's been a long three weeks. Okay.  
22 Let's break this down. There's two different ways that you  
23 can find the Defendant guilty of any of the charges in this  
24 case. There's two different ways.

25 Conspiracy. Was he a member of the conspiracy? If

1 so, guess what? The Defendant is on the hook for everything.  
2 If you find, hmmm -- I'm not sure there was a conspiracy, then  
3 you can look at each individual count and determine whether or  
4 not he was in direct or actual or constructive possession of  
5 that property. There's two different ways to do it.

6 Now, Ms. Dustin went lengthy through each individual  
7 count, whether or not he was, you know, had access and control  
8 over things. But let's start with the conspiracy. And that  
9 was Count I that she referred you to. And read Count I. It  
10 shows that we, we have to show what we put in there, but it's  
11 and/or, and/or, and/or, you can go a lot of different ways  
12 when you look at the conspiracy to determine whether or not  
13 there was a conspiracy and what acts were part of the  
14 conspiracy.

15 And with regard to Count III that we concede, we did  
16 not show the value on that. We did not have Mr. Lantsberger  
17 at this trial come in and testify, yeah, my property was  
18 stolen.

19 MS. DUSTIN: Objection. That's facts that are not in  
20 evidence. Can we approach?

21 THE COURT: Well, they didn't have anybody testify?

22 MS. DUSTIN: Can we approach?

23 THE COURT: Yeah.

24 [Bench Conference Not Transcribed]

25 THE COURT: Go ahead.

1 MS. DIGIACOMO: All right. You didn't hear from anyone  
2 who owned the property in Count III, the Touch of Vegas  
3 property, we didn't have anyone come in here and say yeah,  
4 that was my property, it was stolen on this date, and this was  
5 the value of it. So that's why the State is conceding that  
6 count. We can't prove that count beyond a reasonable doubt.

7 But what you do have, you've got Tonya Trevarthen  
8 that did testify that the stuff that was part of that house  
9 was stolen. So, we have shown that there was some stolen  
10 property with regard to that count.

11 When you look at whether or not there was a  
12 conspiracy, start at the beginning, and start looking at who  
13 was a member of the conspiracy. The State has it alleged that  
14 there's four people. There's Daimon Monroe or Hoyt, there's  
15 Tonya Trevarthen, there's Bryan Fergason, and there's Robert  
16 Holmes.

17 So, the first of all you've got to look at, okay,  
18 who is in the conspiracy? I submit there's overwhelming  
19 evidence that Mr. Monroe, Mr. Fergason, were members of the  
20 conspiracy. I mean, let's start with the first car stop. I  
21 mean, with regard to the burglaries at the Anku Crystal Palace  
22 and Just for Kids Dentistry [sic]. It wasn't Mr. Fergason, he  
23 just happened to be caught in a car, sitting in a car that had  
24 property in it. No. He was part of the conspiracy.

25 You now know because of Detective Nickell, you know

1 the tool they used, you know how they got in there, you know  
2 how they got that property. And you know that after that that  
3 they got arrested for it, and you have a lot of talk on those  
4 phone calls between the two of them about hey, it ain't no big  
5 deal, how we're going to get out of it. And that goes to the  
6 conspiracy, because the conspiracy doesn't stop when the  
7 arrest happens.

8           You've got the phone calls. The conspiracy is still  
9 ongoing. They still plan to go out and commit more burgs.  
10 There's a lot of talk on that about doing the walk-throughs,  
11 and oh, dude, do you think it's okay if we get back to  
12 pressure washing, you know, when this is all said and done.  
13 And Ferguson is like, yeah, dude, you know, not a problem.  
14 You have it ongoing.

15           And not just ongoing as what their plans are for the  
16 rest of that time period that's charged, that they want to get  
17 out and make some money, as they said, and get out and commit  
18 more burglaries. But you also have them, the conspiracy goes  
19 on trying to conceal their acts as well. And when you have  
20 the concealing of the acts, you've got, oh, we're going to  
21 hire attorneys, we're going to get this taken care of. We're  
22 going to get out of this. We're going to also try and keep  
23 anyone from finding out about the rest of our stolen property.

24           And you have a lot of talk on the phones about that  
25 as well, where even -- there's a phone call from October 8<sup>th</sup>

1 where Monroe tells the Defendant, you know what, I panicked  
2 last night, dude. So I moved all your McNeilly's and I moved  
3 your g's. And that's when he's like what g's? And he's like  
4 four-string, six-string. He moved that stuff out of Mr.  
5 Fergason's residence. And he was really paranoid too, about  
6 anyone knowing Mr. Fergason, or the Defendant, was not there.  
7 Why? Because he knew there was a lot of stolen property in  
8 there.

9           You also look at the way Monroe always talked to the  
10 Defendant on the phone. Dude, we're okay, you're okay.  
11 You've got somebody out here doing stuff for you. Other  
12 people don't have. Why is he doing that? Because he's trying  
13 to make sure he stays in the conspiracy, because he doesn't  
14 want him to roll or talk to the police. There's talk in there  
15 about oh, they didn't come talk to you or anything, right?  
16 And he freaks out if he goes a day without hearing. And you  
17 have that in calls. Where were you yesterday? Why didn't you  
18 call? I was going to have Tonya come see you.

19           Clearly, there's a conspiracy going on between the  
20 two of them. They are in this criminal enterprise, as Ms.  
21 Small called it, it's a business. It's clear. You've also  
22 got Tonya involved in it as well. On the three-way call,  
23 she's on the calls listening, you've got her in the background  
24 talking about, oh, this is what we're going to say on this  
25 case. Can you believe it? Clearly, it's going on.

1           You've got Monroe paying Mr. Ferguson's rent, moving  
2 his stuff out. He gets an attorney for him. He's trying to  
3 keep him complacent. He's trying to keep him in that  
4 conspiracy, because he doesn't want him to blow the whistle on  
5 him.

6           Also, too, if there's not this ongoing criminal  
7 enterprise, why would it matter if the police followed him  
8 when they got out? There's a lot of talk about how we're  
9 going to make sure that we can hook up, so that the police  
10 can't follow, and you could go to Bobby's place and wait  
11 there, and all this kind of stuff. Because they have this  
12 ongoing criminal enterprise. They're not done. They want him  
13 to get out, or Monroe wants him out, so they can continue  
14 making money, continue going out and committing these  
15 burglaries.

16           Also, too, Ms. Dustin brought up about how Mr.  
17 Ferguson, or the Defendant, didn't have a key to the storage  
18 unit at West Charleston, and all this kind of stuff. We don't  
19 know that. There's no evidence to suggest he did, but there's  
20 no evidence to suggest he didn't. Look at Monroe and you've  
21 got those phone calls as well. He had a key to his apartment.  
22 He had -- when they talked about the police actually  
23 confiscating the Defendant's keys after their car stop, you've  
24 got Monroe saying I've got all of your keys, anyway. He had a  
25 complete set of the Defendant's keys, which probably could



1 have included a key to the North Buffalo storage unit. You  
2 don't know. The only key he didn't have of his was the  
3 mailbox key, and that's why there's talk about popping it  
4 open.

5 Monroe knows about how much monies that Ferguson has  
6 in the bank. He's got \$120,000 put away. He's got twelve,  
7 thirteen, fourteen, or fifteen in a shirt pocket in his  
8 apartment. He knows there's another call where he said hey,  
9 if you don't pay me back my thirty-five, I'm going to hold  
10 your McNeilly's as ransom. He knows what property he has. He  
11 knows he's got the guitars. He also knows he's got a safety  
12 deposit box. Clearly they were in this together.

13 And there's a lot of talk, too, on the phone calls  
14 about waiting to get back to work until the Defendant gets out  
15 of jail, and even Tonya, there's talk on the phone about Tonya  
16 saying yeah, that's really cold if you go out while JB is  
17 still in jail. Ongoing criminal enterprise.

18 And then also, too, there is a lot of talk between  
19 the two of them about the Chinaman, which is basically Mr.  
20 Hung from the Anku Crystal Palace and how can you keep him  
21 from going to court. Maybe he won't come. Maybe he'll go  
22 swimming for a little bit. There's all kinds of talk. It is  
23 a continuing criminal enterprise. It doesn't matter if the  
24 Defendant is sitting in jail or sitting right next to Monroe  
25 on the couch. They are in this together, and they're

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 483-8024  
Denver (303) 634-2295

1 continuing it.

2 And they want to hide the stolen property they have.  
3 You hear that on the phone calls as well. Dude, right now,  
4 we're not going to be able to go to that unit. We're going to  
5 have to get this other unit. And they talk about we're going  
6 to do a different split when you get out. On and on.  
7 Ferguson is well aware of everything that's going on. Monroe  
8 is well aware. So is Tonya. So, they're all on the hook for  
9 all of that property that they know about.

10 Doesn't matter if it was actually in Mr. Ferguson's  
11 unit, or the Smoke Ranch unit that belonged to Tonya and  
12 Daimon. Doesn't matter. He's part of that criminal  
13 conspiracy to possess stolen property and to commit  
14 burglaries. He's on the hook. That's that.

15 The question is really for you, was Bobby Holmes in  
16 on that conspiracy? He's a little more on the peripheral.  
17 You have a lot to look at. I mean, you've got all of these  
18 stolen properties taken from one burglary, or in the case of  
19 KDS, they were broken into twice, and the stolen property is  
20 found among all these people at the different places. You  
21 know, there's a piece found at Riespine that's found at  
22 Cutler. KDS, there's a piece in storage at Smoke Ranch, at  
23 North Buffalo, at West Charleston, at Cutler. That's why Ms.  
24 Small is saying follow the property. That will get you to  
25 your conspiracy as well.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 But, on the calls, between Monroe and the Defendant,  
2 the jail calls, too, you've got several references to Bobby.  
3 Yeah, dude, I told Bobby about what happened. He said oh, you  
4 ain't got nothing to worry about, the charges are garbage,  
5 dude. So obviously Bobby knows what's going on, too. He knows  
6 about their enterprise, the car stop where they were out  
7 committing the burglaries that night. He knows. He knows  
8 what's going on.

9 We've also got Monroe on the one jail call where he  
10 says hey, I paid thirty bucks to get in Bobby's car, because  
11 it was at the impound too. When he went to get his car out of  
12 impound, to get his [indiscernible], and what is Ferguson's  
13 response? What does the Defendant say when he says, oh yeah,  
14 I looked in Bobby's car and the laptop is still there. He  
15 goes, oh, fuck, you grab that out of there. The Defendant  
16 knew exactly what was going on with the laptop that was in  
17 Bobby's car. It's one big overriding conspiracy.

18 When Bobby was arrested for his possession of stolen  
19 property charges, for the September 20<sup>th</sup>, 2006 search warrant,  
20 Monroe knew exactly how old the stuff was and exactly, when  
21 you listen to those calls, what was taken. They're not  
22 discussing -- it was the refrigerator, it was this -- and he  
23 goes, was that the one pieces or two? I mean, he knows what's  
24 going on.

25 Mr. Ferguson knew that they were going to use Bobby

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Holmes's truck to move his stuff. After the September 20<sup>th</sup> '06  
2 search warrant at Riespine, where Holmes lived, and they saw  
3 that -- you know, Detective Holl told Lucy Shaw that sports  
4 memorabilia, only they went back on November 6<sup>th</sup>, 2006, it was  
5 all gone, but it was found the next day at the West Sahara  
6 storage unit.

7 Well, also at the West Sahara storage unit were  
8 McNeilly's. And why is that important? Because we have that  
9 first phone call on October 8<sup>th</sup>, 2006, when Monroe freaked out  
10 and said oh, I had to get your stuff out of there. I moved  
11 the McNeilly's, and I moved your g's. Well, there's guitars  
12 and there's McNeilly's found at West Sahara. And at that  
13 time, the West Charleston unit hadn't been rented yet.

14 After Monroe's arrest on November 6<sup>th</sup>, 2006, who did  
15 he call? He called Bobby, and he said hey, you got to go  
16 clean that spot. You got to go over there. Talking about the  
17 West Sahara. And he said you got to get the g's out and the  
18 other things. They're all part of this conspiracy.

19 And also, too, you remember the talk about the  
20 Chinaman, and maybe getting him not to come to court? There's  
21 a call that says that him and Bobby were going to go for a  
22 jog, and Bobby was going to act like he wants to buy  
23 something. Another call about yeah, a black man went in there  
24 and he talked to the guy, and he was really laid back, kind of  
25 like you, the Defendant.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8014  
Denver (303) 634-2295

1 And then he says I'm going to see if Princess knows  
2 anybody in the community. Meaning, the Asian community, that  
3 she was Filipino herself. You've got Mr. Holmes. Who is  
4 Princess? Robert Holmes's wife. That's Bobby's wife.  
5 Clearly they're all involved in this.

6 Even after Bobby was arrested for the stolen  
7 property in October, the Defendant on the phone with Monroe is  
8 like oh, how is he doing? You know, what's going on with him?  
9 And what really ties it all in though is after Monroe is  
10 arrested on November 6<sup>th</sup>, 2006, Holmes is on the phone with  
11 him. What does he say? He says, dude, I told you they could  
12 get a warrant for your house. He knew all that property was  
13 stolen. They're all involved in it.

14 If you find the conspiracy, then you've got him on  
15 all the stolen property charges as well. You don't have to go  
16 through each one and who possessed this and who didn't. They  
17 had this criminal conspiracy to possess stolen property.  
18 They're on the hook for all of it that their co-conspirators  
19 had. So if you find that all four of them were co-  
20 conspirators, then the Defendant is on the hook for all of  
21 that property.

22 If you find that maybe Holmes wasn't a conspirator,  
23 Defendant is still on the hook for all the property, except  
24 for that that's at Riespine.

25 Now, if you find hey, there wasn't a conspiracy,

1 although you have a lot of evidence here, and you have the  
2 benefit of hearing it from the Defendant's mouth as well. Not  
3 a lot of cases where you have all those jail phone calls that  
4 you have the benefit of. But, let's say you don't find  
5 there's a conspiracy.

6 Then what you're going to have to do is go through  
7 each individual count, as Ms. Dustin did for you, and  
8 determine whether or not the Defendant actually was in  
9 possession of that. There are a total of ten counts where  
10 stolen property was found at a location that had Mr.  
11 Fergason's stuff in it.

12 Now, Ms. Dustin will say well, West Charleston, we  
13 don't know whose property that is because Tonya said on the  
14 stand "ours". But go back and remember that I asked that the  
15 entire statement then be read back in. When Tonya was saying  
16 it was ours, she wasn't saying it was Monroe and hers and it  
17 wasn't Fergason's. She testified she helped move stuff out of  
18 Fergason's apartment. It was her birthday when they were  
19 moving it from the truck into the storage unit, on October  
20 23<sup>rd</sup>. When she said it was "ours", it could have meant it was  
21 all of ours, such as in the conspiracy.

22 But North Buffalo, okay. North Buffalo, the  
23 paperwork for the rental was found inside Mr. Fergason's car  
24 on the side of the Cutler residence. You know it was Mr.  
25 Fergason's car because his title was in the car as well.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Clearly, everything in that storage unit is his. And when you  
2 go through everything in those ten counts, his property alone  
3 meets the value.

4 With regard to West Charleston, you've got the phone  
5 calls. I mean, at one point, Ferguson is frustrated because  
6 he's not out, and he tells Monroe, he says, you know what,  
7 yeah, you better start moving the stuff. There's a lot of  
8 talk on that. He knows exactly who's moving it, and he's  
9 giving Monroe permission to move his stuff. And that's what's  
10 found in the West Charleston storage unit.

11 And you've got all the phone calls, as well, after  
12 the fact. Yeah, I put all your stuff in there, and it was too  
13 big. And he's like, really? I had that much stuff? And he  
14 talks about his Bones, they're in the back behind the chairs,  
15 and I crawled over the top to make sure they were okay. And  
16 Ferguson is like okay, what did you do with my records? What  
17 did you do with this? I mean, clearly Ferguson knows that's  
18 his stuff, and he's giving Monroe direction to move it. He's  
19 on the hook for everything in West Charleston.

20 And so when you look at each count. Count IV, Annie  
21 Lee Gallery. Where's the stuff found? At Cutler, West  
22 Charleston, and North Buffalo. One painting alone, I think,  
23 was testified, starts at \$10,000, and I think there is one at  
24 West Charleston, and there's, I think, four or five at North  
25 Buffalo. Clearly we've got the value there. He's on the hook

1 for Count IV.

2 Count VIII, Land Baron Investments. Stuff is found  
3 at Cutler, and stuff is also found at North Buffalo. You've  
4 got the picture of the baseball cards, which was valued at  
5 about \$3,000 to \$4,000, and you've also got the framed casino  
6 chips, that are, you know, for casinos no longer in existence,  
7 some of them. So, he's on the hook for Count VIII, Land Baron  
8 Investments. The values there, he knows it's stolen property,  
9 and we've shown you that it was stolen property.

10 Now, Count X, Milton Homer Furnishings. All of the  
11 stuff was found at the Cutler residence, except for there was  
12 two pieces that were found at West Charleston. It was like  
13 this big bronze urn thing, and then a bronze statue. One of  
14 those alone was \$3,500. So he's on the hook for Count X, as  
15 well.

16 Count XII, the Hoshizaki icemaker, that was found at  
17 West Charleston. That was in his stuff. He's on the hook for  
18 that.

19 Count XIV, KDS CPA. This was Mr. Kurt Salinger. He  
20 came in. His stuff, from the two burglaries, was found at  
21 four different locations. At Cutler, at West Charleston,  
22 which belonged to the Defendant, Smoke Ranch, and North  
23 Buffalo. And clearly when you look at the items. I mean,  
24 from West Charleston alone you've got the Joe Namath jersey  
25 and the -- one of the Norman Rockwell's, and then at North



1 Buffalo you have all that other sports memorabilia. Clearly  
2 it values there. He's on the hook. He's guilty of that  
3 count.

4 Count XV, See America. Found at three locations,  
5 Cutler, West Charleston, belong -- all of that stuff was the  
6 Defendant's, and North Buffalo, in the Defendant's storage  
7 unit. You look at just the stuff in his storage units.  
8 Clearly it's over the value and he's on the hook for that.

9 Count XVI is going to be McNeilly. And we know how  
10 much Mr. Ferguson liked his McNeilly's. And there's was talk  
11 about [indiscernible], and when Monroe was teasing him about  
12 the money he owed him, what did he hold over his head? The  
13 McNeilly's. Clearly, those were -- those belonged to the  
14 Defendant. And clearly, just one of them alone -- one of the,  
15 I believe, the largest, the skeleton sculpture that was found  
16 at West Charleston, one of those alone, Mr. Bones, or the  
17 Gypsy Bones that was referred to in the phone call, \$20,000.  
18 Well over, plus, you know, you have Monroe on the phone, when  
19 they're talking about -- Monroe is telling him, you know what?  
20 You owe me my thirty-five hundred bucks. You're going to owe  
21 me. And he's like, I'll take one of those McNeilly's. And  
22 then he goes, oh, one of those alone is more than that. They  
23 admit how much they're worth. Defendant is guilty of Count  
24 XVI.

25 Count XVIII, Dr. Richard Groom, he had one picture.

1 "Docs Race with a Stork". And where was it found? West  
2 Charleston. So, Defendant is guilty of that.

3 Count XXIV, Global Entertainment. This was the  
4 Caynes, and they had -- most of their stuff had their names on  
5 it, Phyllis Ashe Cayne or Phyllis Ashe, or Bob Cayne. These  
6 things were found at West Charleston and North Buffalo. Both  
7 units belonging to the Defendant. So, he's on the hook for  
8 that, and the value is there as well.

9 Count XXV, Furniture Markdown. Stuff was found from  
10 Amanda Terry, from Cutler, from West Charleston. The stuff at  
11 West Charleston is charged over \$250. I believe there was the  
12 mirror, which was about \$200. There was the palm tree  
13 painting or picture, which was like about \$179, and then there  
14 was one of those pineapple bases that were like \$200 to \$400.  
15 He's guilty of that count as well.

16 So, however you want to do it, the Defendant is  
17 guilty. He did these things. The State submits to you it was  
18 a big overriding conspiracy, and you have everything that you  
19 need in order to find that, with the phone calls, with the  
20 property, with the actions of the Defendant after the case  
21 came down. Clearly, guilty.

22 Now, Ms. Dustin brings up a point about well, Steve  
23 Foreman was in the house and he wasn't charged. Amanda Terry  
24 was in the house and she wasn't charged, and she didn't know  
25 it was all stolen. Amanda Terry also told you that Tonya had

1 a really good explanation, that he was some big music producer  
2 and he was getting these items as compensation. So, she did  
3 say oh, there is a lot of stuff. But she just thought they  
4 were living the good life.

5 And when you look at what she says about Tonya. She  
6 said, you know what? You have to corroborate what she says.  
7 You know what? You can take anything Tonya said, and throw it  
8 out of this case, and you still have more than ample evidence  
9 to find the conspiracy and convict the Defendant of  
10 everything. But, with regard to Tonya, she makes, you know,  
11 oh, look at the deal she got when she got to live in this  
12 house, and she got to have all these things.

13 Well, you know what? She told you, she was trying  
14 to do the right thing. She'd never been arrested before. She  
15 had three kids. She was young. She got pregnant at 14 by  
16 Monroe, and so she was trying to do the right thing. But look  
17 at what she did, too. You know, they were living the life.  
18 And when we look at the photographs of everything in that  
19 house, I mean, there was a lot of stuff in that house.

20 They had \$300,000 in the bank account. She didn't  
21 have to work. She was going to school, trying to get her  
22 teaching license. She was working as a substitute teacher.  
23 She didn't have to do that. She was trying to do the right  
24 thing. She was trying to do what was right for her kids.

25 You know, when -- lastly, Ms. Dustin talked about

1 well, how do we really know that this stuff these victims came  
2 in and testified to was really their property? Well, it could  
3 have been, you know, they could have sold it to someone else  
4 and they got this way, and it could have been this and it  
5 could have been that. You know what? When you look at your  
6 reasonable doubt instruction, reasonable doubt must be actual,  
7 not mere possibility, not speculation.

8 And, what are the odds -- what are the odds that  
9 these people in one burglary, or, with regards to  
10 Mr. Salinger, two different burglaries, had all these items  
11 stolen, and coincidentally, these pieces just happen to be  
12 found that were all stolen from the same burglary? They're  
13 terrible odds. It's just not going to happen. The reality is  
14 all of these came from one burglary, and the reality is these  
15 victims that came in and told you this is my property and this  
16 is what it's worth, it was their property.

17 And granted, the three posters that Mr. Veltre from  
18 Platinum Collectibles did take with him from the Cutler  
19 residence? It did have their codes on it. It was theirs at  
20 one time. So it wasn't like, just, it wasn't a free-for-all.  
21 I mean, you heard about the 24-page impound report just from  
22 the Cutler residence alone.

23 Don't be misled. Don't get sidetracked. Just go  
24 back there, look at all the evidence that the State has given  
25 you. All of it. And look at it cumulatively. And you're

1 going to find there was this huge, overriding conspiracy, and  
2 that the Defendant is guilty of everything that we've charged  
3 him, minus Count III.

4 THE COURT: Okay. Ms. Clerk, will you swear the Officer  
5 to take charge of the jury and will you draw two alternates at  
6 random, please?

7 [Officer Sworn]

8 THE CLERK: Juror number 2, Yvette Scurlock. And Juror  
9 number 3, James Buell.

10 THE COURT: Okay. Where's those -- that will work. All  
11 of you but Ms. Scurlock and Mr. Buell, are going to go into  
12 the jury room with the Officer. He'll get you settled in  
13 there, and then he'll leave. We're going to deliver your  
14 lunch in there. He's going to bring in all the exhibits.  
15 He's going to bring in this verdict form. And this verdict  
16 form, as you know, you've heard, there's 27 counts.

17 And the way you approach it is this: you start --  
18 sometimes there's two choices, sometimes there's three or four  
19 or more choices. You start at the top, and say, has the State  
20 proven the top charge beyond a reasonable doubt? If they  
21 have, you check that box, and you don't have to worry about  
22 the rest. Leave them all blank.

23 If they haven't, you go down to the second box, the  
24 third box, not guilty is always the default position. So,  
25 when you're done, you'll have one and only one box checked in

1 each section. And all of the rest will be blank. It has to  
2 be signed and dated by the foreperson.

3 The two alternates, Officer Moon will take you to a  
4 different room. We're going to feed you. Should somebody get  
5 sick or something happen, one of you will go in and take over  
6 their spot. While you're having lunch, until the verdict is  
7 reached, you're still not allowed to talk about the case with  
8 each other, because you may go in and actually take the place  
9 of one of the jurors, and then you sort of have had a  
10 discussion about the case with somebody on the outside where  
11 the other one didn't.

12 So, the officer will take you in. Just let us know  
13 when you have a verdict. You can take ten minutes, you can  
14 take ten days, or anything in between. And when you're done,  
15 we'll reassemble, and we'll take your verdict.

16 UNIDENTIFIED SPEAKER: [Indiscernible].

17 THE COURT: Take your sweaters, your coats, anything  
18 you've got, take it. If you need a break or anything, you  
19 just tell Officer Moon and he'll take care of it.

20 [Jury Out]

21 [Outside the Presence of the Jury]

22 THE COURT: Okay. The record shall reflect the jury has  
23 exited. Ladies? Mr. Ferguson, I assume you and your Counsel  
24 discussed your approach to the case, is that right?

25 THE DEFENDANT: Yes.

1 THE COURT: And you approve the way that she argued,  
2 recognizing that you may have some soft spots, it was her  
3 theory that she needed to make some concessions in order to  
4 take a shot at the greater good, you understand that, right?

5 THE DEFENDANT: Yes.

6 THE COURT: And you approve that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. You know, I've never had this happen  
9 where I had two alternates survive all the way, but our policy  
10 is first drawn is first in, so if you lose one, number 2 will  
11 go in, if we lose two then number 3 will go in. That's  
12 amazing, six days, and we've had 14 stay. Anything else until  
13 we get a verdict?

14 MS. DIGIACOMO: I don't think so.

15 MS. DUSTIN: No.

16 THE COURT: Okay. Don't get too far away. It's going  
17 to take them a little while. They're going to eat, but --  
18 okay, give the Clerk your numbers and we'll call you when we  
19 have something. Okay.

20 [Off the record]

21 [Within the Presence of the Jury]

22 THE COURT: Okay. We're back on the record in case  
23 number C228752, State of Nevada versus Bryan Ferguson. Let  
24 the record reflect the presence of Mr. Ferguson, Ms. Dustin,  
25 Ms. DiGiacomo, and Ms. Small for the State. All ladies and

1 gentlemen of the jury are back in the box. Who would be the  
2 foreperson?

3 FOREPERSON: I am, Your Honor.

4 THE COURT: Sir, have you reached a verdict?

5 FOREPERSON: We have, Your Honor.

6 THE COURT: Would you give the verdict to the Marshal,  
7 please? Ms. Clerk, would you read the verdict into the  
8 record, please?

9 THE CLERK: District Court, Clark County, Nevada. The  
10 State of Nevada, Plaintiff, versus Bryan Fergason, Defendant.  
11 Case number C228752, Department number VII. Verdict: We the  
12 jury in the above-entitled case find the Defendant, Bryan  
13 Fergason, as follows:

14 Count I, Guilty of Conspiracy to possess stolen property  
15 and/or to commit burglary.

16 Count II, Guilty of possession of stolen property value  
17 \$250 or more.

18 Count III, Not Guilty.

19 Count IV, Guilty of possession of stolen property value  
20 \$2,500 or more.

21 Count V, Guilty of possession of stolen property value  
22 \$250 or more.

23 Count VI, Guilty of possession of stolen property value  
24 \$250 or more.

25 Count VII, Guilty of possession of stolen property value



1 \$2,500 or more.  
2 Count VIII, Guilty of possession of stolen property value  
3 \$2,500 or more.  
4 Count XIX, Guilty of possession of stolen property value  
5 \$2,500 or more.  
6 Count X, Guilty of possession of stolen property value  
7 \$2,500 or more.  
8 Count XI, Guilty of possession of stolen property value  
9 \$2,500 or more.  
10 Count XII, Guilty of possession of stolen property value  
11 \$250 or more.  
12 Count XIII, Guilty of possession of stolen property value  
13 \$2,500 or more.  
14 Count XIV, Guilty of possession of stolen property value  
15 \$2,500 or more.  
16 Count XV, Guilty of possession of stolen property value  
17 \$2,500 or more.  
18 Count XVI, Guilty of possession of stolen property value  
19 \$2,500 or more.  
20 Count XVII, Guilty of possession of stolen property value  
21 \$2,500 or more.  
22 Count XVIII, Guilty of possession of stolen property  
23 value \$250 or more.  
24 Count XIX, Guilty of possession of stolen property value  
25 \$250 or more.

1 Count XX, Guilty of possession of stolen property value  
2 \$250 or more.  
3 Count XXI, Guilty of possession of stolen property value  
4 \$250 or more.  
5 Count XXII, Guilty of possession of stolen property value  
6 \$2,500 or more.  
7 Count XXIII, Guilty of possession of stolen property  
8 value \$2,500 or more.  
9 Count XXIV, Guilty of possession of stolen property value  
10 \$2,500 or more.  
11 Count XXV, Guilty of possession of stolen property value  
12 \$250 or more.  
13 Count XVI, Guilty of possession of stolen property value  
14 \$2,500 or more.  
15 Count XVII, Guilty of possession of stolen property value  
16 \$250 or more.  
17 Dated this 29<sup>th</sup> day of May, 2008. Shawn M. Goldstein,  
18 foreperson.  
19 Ladies and gentlemen of the jury, are those your verdicts  
20 as read? So say you one, so say you all?  
21 THE COURT: That's your verdict?  
22 JURORS: Yes, Your Honor.  
23 THE COURT: Either side decide to have the jury polled?  
24 MS. DUSTIN: No, Your Honor.  
25 THE COURT: Okay. Thank you very much. It's not easy.

1 It's been a long five or six days, but you've done a real  
2 service for your community. You may -- you know, you only saw  
3 a glimpse of this, or a little part of it. You may want to  
4 know what the whole story is. If you're interested, I'll be  
5 glad to tell you. It will take about ten minutes.

6 This ain't these fellows first rodeo. Mr. Monroe  
7 has been a burglar and a thief all his life. He spent most of  
8 the decade of the 90's in prison for the same thing, where he  
9 met Mr. Ferguson. When they got out around the start of the  
10 decade, they started this operation.

11 Of course, they were arrested as a result of some  
12 pretty good police work for the stuff on the Anku Palace and  
13 Just for Kids. What happened was the DA filed that case, and  
14 after Detective Nickell sort of figured out how the burglary  
15 went at the Just for Kids, they added that charge. And that  
16 case got into the system quite a bit before this case did,  
17 because they had to take this to the Grand Jury, and it was a  
18 massive thing to put together.

19 So, the cases never caught up with one another, and  
20 they went to trial in front of a Judge Wall on those cases,  
21 and they were both convicted by a jury and sentenced to prison  
22 for the Anku Palace and the Just for Kids stuff.

23 Nonetheless, you know, this comes trailing along.  
24 And, when this gentleman got arrested on September 24<sup>th</sup>, he was  
25 on probation for an unrelated offense. When you get arrested

1 and you're on probation, you don't -- you're not entitled to  
2 bail. You just get locked down.

3 If you're not on probation, you're entitled to bail,  
4 so, Monroe bailed out, of course, but Fergason couldn't. And  
5 eventually his probation was revoked. He's been in jail since  
6 September 24<sup>th</sup>, '06. These fine gentlemen in the back escort  
7 him back and forth from the jail.

8 Fergason, I mean, Monroe, gets arrested, of course,  
9 on November the 6<sup>th</sup>, and they don't arrest Holmes for a little  
10 while after that. While he's in jail, he's getting the money  
11 moved, getting it to Holmes to bail everybody out. Well,  
12 Holmes bails himself out, and hires some lawyers, but by then  
13 the police are on him, and take the rest of the money, so they  
14 don't have enough money to bail Monroe out. So he's been  
15 sitting there since November the 6<sup>th</sup>.

16 This kind of hit the news because it was a real big  
17 deal back then. Then there was kind of an unusual twist in  
18 the case. This wasn't a case that was assigned to me. It was  
19 assigned to Judge Michelle Leavitt. And, I don't know  
20 anything more than I read in the paper on this, but there was  
21 an allegation that Monroe tried to get another inmate to  
22 murder Judge Leavitt, and Ms. DiGiacomo, and Detective  
23 Nickell. And I don't know whether that's true or not. It  
24 hasn't gone to trial, but supposedly the police wired the  
25 inmate, and there was some discussions, and that hit the news

1 also.

2 As a result of that, the Chief Judge took the case  
3 away from the judge who was threatened, because of the  
4 appearance that maybe she couldn't be impartial. It got  
5 assigned to me. You know, crazy way things happen.

6 The inmate that was involved was another client of  
7 Ms. Dustin, who she had no idea, just a fluke thing. But, as  
8 a result of that, we ended up where we couldn't try Monroe and  
9 Fergason together. So, we had a trial scheduled starting  
10 three weeks ago Monday for Holmes and Monroe, and then we're  
11 going to have to try Fergason separately because of the  
12 conflict.

13 Holmes decides he doesn't want to be sitting there  
14 next to Monroe, so he skipped bail. The bail bondsman and the  
15 CAT team that you heard about are diligently looking for Mr.  
16 Holmes, so we're going to -- we did this once with Mr. Monroe.  
17 The jury made the same finding with him, they convicted him on  
18 all 27 counts -- well, actually 27 counts. The Count 3 person  
19 came in from out of state on that case, but he was unable to  
20 come back, so the State has to lose that case, as they  
21 properly conceded it.

22 So, now both Monroe and Fergason have been convicted  
23 of everything, and they're looking for Holmes. And so, as  
24 tough as it was for you guys to do it for six days, the  
25 prosecutors and all the staff have been doing it twice. We

1 heard the same 80 witnesses and the same 1,200 exhibits.  
2 Different defense people, different jury, but sometimes that's  
3 the way it goes. That's sort of our job.

4 Anybody got any questions? Anything you didn't  
5 understand? Anything I did that didn't make sense to you?  
6 So, oh, when Holmes skipped bail, that was on the news also.  
7 It comes on the news once in a while to look out for this guy.  
8 They'll pick him up fairly shortly. So this has been kind of  
9 on the news. Probably will be again.

10 You're certainly free to talk about it now. You're  
11 certainly free to look at the news or do anything you. You're  
12 also free not to. If somebody wants to talk to you and you're  
13 the kind of person that's private, you don't want to, you  
14 don't have to. A lot of times, the lawyers like to talk to  
15 you, kind of find out what they could do better, how to  
16 improve their [indiscernible]. If you want to talk to, great.  
17 These are very pleasant, professional lawyers. I've known  
18 them all for a long time.

19 Got arrangements made for your pay. Officer Moon  
20 will take you down.

21 THE CLERK: There's a question.

22 THE COURT: Oh. Yes, what was the question, ma'am?

23 JUROR: What happened to Tonya?

24 THE COURT: Okay. Here's what happened. The -- Tonya,  
25 of course, got the benefit of living off the sale of stolen

1 property. And you can compute these numbers in your head, but  
2 if they had \$425,000 in the bank, and for the most part, she's  
3 making \$100 a day, that -- she's just paying food and clothes.  
4 I mean, to live costs several thousands a month for these  
5 people, for five years. Add that all up, and then as Tonya  
6 testified, they got about 20, 25 cents on the dollar. So you  
7 multiple that by four or five, that's how much property had  
8 been sold.

9 But the police, all they really wanted out of Tonya  
10 was what they got. They -- you know, she isn't doing any  
11 burglaries. She isn't selling any stolen property. She's  
12 just the dumb young gal that, you know, picked a bad guy to  
13 cohabit with.

14 So, what they really wanted from her was  
15 cooperation, and they were able to leverage her into that.  
16 She's since moved to Texas. She hasn't been sentenced yet.  
17 But she so far lived up to the benefit of her bargain, so  
18 she's going to end up getting probation. If she behaves  
19 herself, she won't go to prison. Everybody else will if  
20 they're convicted. I don't know what's going to happen to  
21 Holmes. But these two fellows will be going for a good while.

22 Anything else? Okay, thanks. If you go with  
23 Officer Moon, he'll take you downstairs. You did a great job.  
24 Thanks.

25 [Jury Out]

1 [Outside the Presence of the Jury]  
2 [Court and Clerk Confer]  
3 THE COURT: Okay. Anything else?  
4 MS. DIGIACOMO: We just need a sentencing date, Your  
5 Honor.  
6 THE COURT: It's going to be the same sentencing date,  
7 August 26<sup>th</sup>, as for Monroe. Defendant will be held without  
8 bail, although that doesn't matter, because he's already under  
9 a sentence of imprisonment. Okay.  
10 MS. DUSTIN: I might need a transport order to bring him  
11 back down.  
12 MS. DIGIACOMO: Yeah, I've already got it.  
13 THE COURT: Okay.  
14 MS. DIGIACOMO: Because -- that -- he will get moved.  
15 MS. DUSTIN: Yeah, this is his last matter, so they'll  
16 probably ship him out.  
17 THE COURT: You know, everybody that I've ever known  
18 always would prefer to be in prison than in the County, so if  
19 he wants to go, fine with me. I don't care, you know.  
20 MS. DUSTIN: Yeah, County's -- going up to prison is  
21 better for him. Yeah.  
22 THE COURT: Okay. That's fine. We'll get a transport  
23 order. Okay.  
24 [Proceedings Concluded at 3:34 p.m.]  
25



1 ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video recording in the above-entitled  
3 case to the best of my ability.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Donna Schlachter  
Donna Schlachter, Transcriber

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295



IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON A/K/A BRYAN  
MICHAEL FERGASON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52877

**FILED**

AUG 04 2010

ORDER OF AFFIRMANCE

TRACEY K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to possess stolen property and/or to commit burglary, ten counts of possession of stolen property with a value of \$250 or more (category C felony), and fifteen counts of possession of stolen property with a value of \$2,500 or more (category B felony). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Bryan Fergason and an accomplice, Daimon Monroe, were arrested for burglarizing Anku Crystal Palace. Officers subsequently executed search warrants on Monroe's home and storage units rented by Fergason, Monroe, and Monroe's girlfriend, Tonya Trevarthen. They also searched Fergason's and Trevarthen's bank accounts and safety deposit boxes. The searches revealed large quantities of stolen property. Fergason, Monroe, and a third co-conspirator were tried separately. The State reduced charges against Trevarthen in exchange for her guilty plea and testimony against the other conspirators.

On appeal Fergason challenges the sufficiency of evidence to sustain his indictment and subsequent conviction as: (1) impermissibly based on uncorroborated accomplice testimony; (2) insufficient to establish his possession of certain items of stolen property; and (3) inadequate to

establish value. Fergason also challenges the legality of his pre-arrest detention.<sup>1</sup> We conclude that his arguments lack merit and affirm.

Accomplice testimony

NRS 175.291(1) provides that a defendant cannot be convicted based on accomplice testimony not "corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense." (Emphasis added.) NRS 175.291(1) applies at the grand jury stage, Sheriff v. Horner, 96 Nev. 312, 313-14, 608 P.2d 1106, 1106-07 (1980). Fergason challenges the district court's refusal to grant his pretrial petition for habeas corpus and motion to dismiss the indictment. He argues that the evidence presented to the grand jury on the conspiracy count was based solely on the uncorroborated testimony of his alleged accomplice, Trevarthan. He also claims there was insufficient evidence to indict him for possession of stolen property because the State did not produce evidence showing he had control over the property.

Corroborating evidence "need not in itself be sufficient to establish guilt, and it will satisfy [NRS 175.291] if it merely tends to connect the accused to the offense." Cheatham v. State, 104 Nev. 500, 504-05, 761 P.2d 419, 422 (1988). "Corroboration evidence need not be found in a single fact or circumstance and can, instead, be taken from the circumstances and evidence as a whole." Id. at 504, 761 P.2d at 422.

<sup>1</sup>Fergason also challenges the district court's order allowing the State to amend the indictment shortly before trial, its admission of bad acts evidence, and his sentencing under Nevada's large habitual felon statute. We have considered these arguments and conclude they lack merit.

The record shows that the grand jury received independent evidence beyond Trevarthan's account. This evidence included testimony that police found stolen items in Ferguson's storage unit and gallery tags linking Ferguson to stolen artwork in his home. The State also presented the grand jury with evidence from which it could have concluded that Ferguson was liable for his co-conspirators' possession of stolen property.<sup>2</sup> Thus, we conclude that the trial court did not err in denying Ferguson's pretrial challenge to the indictment.

Ferguson also challenges the evidence at trial as impermissibly based on uncorroborated accomplice testimony. See Cheatham, 104 Nev. at 504-05, 761 at 422. But the State presented extensive evidence at trial that corroborated Trevarthan's testimony. An arresting officer testified about the circumstances of Ferguson's and Monroe's arrests. The officers who executed search warrants on Ferguson's storage units, apartment, bank accounts, and safety deposit box also testified. These searches resulted in the discovery of evidence that directly or inferentially linked Ferguson to the crimes of burglary and/or possession of stolen property. In addition, testimony established that police found stolen items from single burglaries in multiple locations under the direct control of different co-conspirators, including Ferguson. From this evidence the jury could have concluded Ferguson conspired with all three of his alleged accomplices to commit burglary and/or possess stolen property. Thus, Ferguson's accomplice testimony argument fails.

Sufficiency of evidence supporting possession of stolen property

---

<sup>2</sup>We have reviewed Ferguson's additional claims that the grand jury proceedings were defective, and conclude they are without merit.

NRS 205.275(1) defines possession of stolen property as an offense where "the person, for his . . . own gain or to prevent the owner from again possessing [his] property, buys, receives, possesses or withholds property: (a) [k]nowing that it is stolen property." Ferguson maintains this statute does not apply to him since the evidence didn't establish that he had direct control over the stolen property. However, the State presented evidence and argument that as a member of the conspiracy, Ferguson was liable for the acts of the other members, including possession of stolen property. This evidence, together with Trevarthan's extensive testimony detailing the operations and activities of the conspiracy and Ferguson's central role in it, sufficiently supports his conviction for possession of stolen property.

Sufficiency of evidence of the value of the stolen property

Ferguson next challenges the evidence establishing the value of the stolen property. NRS 205.275(6) states that "the value of the property involved shall be deemed to be the highest value attributable to the property by any reasonable standard." This standard equates to "the fair market value of the property at the time and place it was stolen . . . [but] where such market value cannot be reasonably determined other evidence of value may be received such as replacement cost or purchase price." Bain v. Sheriff, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972) (citations and internal quotation marks omitted).

According to Ferguson, the State improperly based its proof of value on testimony from the property owners rather than experts. Ferguson ignores the general rule "that an owner, because of his ownership, is presumed to have special knowledge of the property and may testify as to its value." City of Elko v. Zillich, 100 Nev. 366, 371, 683

P.2d 5, 8 (1984) (holding that a real property owner's testimony as to the value of his property is admissible). Elko's holding, while arising out of a case involving the condemnation of real property in a civil action, is consistent with the holdings of the majority of courts in both civil and criminal cases. See e.g., M.C. Dransfield, Admissibility of opinion of nonexpert owner as to value of chattel, 37 A.L.R.2d 967 (1954) ("the right of the owner of a chattel to testify as to its value, although he may not possess sufficient knowledge or skill to testify as an expert on the subject, is generally recognized, the theory of such recognition being that he has such familiarity with his property that he may generally be presumed to know what it is worth"); Berryman v. Moore, 619 F. Supp. 853, 857 (E.D. Va. 1985) (an owner's testimony is competent evidence as to the value of stolen property); State v. Eiland, 633 S.W.2d 302 (Mo. Ct. App. 1982) (same).

None of Nevada's statutes which "make criminal penalties proportionate to the value of the property affected," Romero v. State, 116 Nev. 344, 348, 996 P.2d 894, 897 (2000), nor our cases interpreting them indicate that an expert must establish value or that an owner's testimony is not sufficient to do so. Our cases, rather, focus first on whether the fair market value can be reasonably determined. Bryant v. State, 114 Nev. 626, 630, 959 P.2d 964, 966 (1998). If not, other evidence of value can be considered as long as the prosecution has laid "a foundation for the admission of valuations that are not based on a traditional fair market value analysis." Romero, 116 Nev. at 347 n.3, 996 P.2d at 897 n.3. Nevada's statutes and the case law interpreting them thus provide no basis for us to diverge from the majority rule that under the circumstances present here a dispossessed owner's testimony is competent to establish

the value of her stolen property. Each instance where Ferguson challenges an owner's testimony as to value, that testimony was either adequately supported as to fair market value, or an adequate foundation was laid for the admission of an alternative valuation. Thus, we conclude that value was sufficiently established here.

#### Pre-arrest detention

Last, Ferguson challenges his initial arrest as the unlawful result of an unreasonable search or seizure. U.S. Const. amend. IV; Brown v. Texas, 443 U.S. 47, 50 (1979); Mapp v. Ohio, 367 U.S. 643 (1961). Since his arrest was unlawful, Ferguson argues, the evidence seized as the result of his arrest should have been suppressed, and without that evidence, his convictions fail. Steagald v. United States, 451 U.S. 204, 215-16 (1981).

NRS 171.123 governs investigative stops, and states, in relevant part:

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.

....

3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding [his] presence abroad. . . .

4. A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes.

NRS 171.123(1), (3), and (4).

Investigative stops are also governed as a matter of constitutional law by Terry v. Ohio, 392 U.S. 1 (1968), and its progeny.





State v. Lisenbee, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). Any stop by an officer must be “justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place.” Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty., 542 U.S. 177, 185 (2004) (internal citations and quotations omitted) (alteration in original). “The reasonable, articulable suspicion necessary for a Terry stop is more than an inchoate and unparticularized suspicion or ‘hunch.’ Rather, there must be some objective justification for detaining a person.” Lisenbee, 116 Nev. at 1128, 13 P.3d at 949 (citing Terry, 392 U.S. at 21-22) (internal quotation marks omitted).


The police initially stopped Ferguson and Monroe on suspicion of burglary of a nearby dentist’s office. Ferguson claims that the detention became unlawful once police learned that the dentist’s office showed no signs of forced entry or missing property. This argument, however, ignores the fact that the detaining officers knew there had been a suspected burglary at the nearby Anku Crystal Palace and were awaiting the arrival of another investigative unit. Under these circumstances, the officers were justified in detaining Ferguson and Monroe until the officers responding to Anku Crystal Palace had reported back their findings. The suspected break-ins were similar (entry through the front door), their locations were close to one another, and the timing would have enabled Ferguson and Monroe to have burglarized Anku Crystal Palace before

burglarizing the dentist's office. Thus, we conclude that Ferguson's pre-arrest detention was lawful. For these reasons, we

ORDER the judgment of the district court AFFIRMED.

\_\_\_\_\_, J.  
Hardesty

\_\_\_\_\_, J.  
Douglas

\_\_\_\_\_, J.  
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge  
Law Offices of Cynthia Dustin, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENT'S  
SUPPLEMENTAL APPENDIX, VOLUME 3 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

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON,

Appellant,

vs.

LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT,

Respondent.

Case No.: 62357

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

Electronically Filed  
Nov 14 2014 09:07 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**RESPONDENT'S SUPPLEMENTAL APPENDIX**  
**(Volume 3, Bates Nos. 446-685)**

**MARQUIS AURBACH COFFING**  
Micah S. Echols, Esq.  
Nevada Bar No. 8437  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
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

*Attorneys for Respondent, LVMPD*

## **INDEX TO RESPONDENT'S SUPPLEMENTAL APPENDIX**

<b>DOCUMENT DESCRIPTION</b>	<b>LOCATION</b>
District Court Case No. C228752 Reporter's Partial Transcript—Trial by Jury, May 15, 2008 (filed 01/20/09)	Volume 1, Bates Nos. 1–10
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
District Court Case No. C228752 Reporter's Partial Transcript—Trial by Jury, May 28, 2008 (filed 01/20/09)	Volume 3, Bates Nos. 508–596
District Court Case No. C228752 Reporter's Partial Transcript—Trial by Jury, May 29, 2008 (filed 01/20/09)	Volume 3, Bates Nos. 597–677
Supreme Court Case No. 52877 Order of Affirmance (filed 08/04/10)	Volume 3, Bates Nos. 678–685

1 MS. DIGIACOMO: Thank you.

2 BY MS. DUSTIN:

3 Q Refreshing your recollection as to this paragraph  
4 right here, can you please read this paragraph to yourself?

5 A Here to here?

6 Q Uh-huh.

7 MS. DIGIACOMO: Which paragraph?

8 MS. DUSTIN: It would be the second paragraph underneath  
9 obligation to be truthful.

10 BY MS. DUSTIN:

11 Q Does that refresh your recollection?

12 A Yes.

13 Q Isn't it true that the entire agreement becomes null  
14 and void if you -- and you would lose all the benefits of the  
15 agreement for any deviation from the truth, failure to answer  
16 any question that is the subject matter of investigation, for  
17 withholding information regarding the investigation, for  
18 providing an invasive answer to any questions asked by law  
19 enforcement officers, or giving any other false information at  
20 anytime on any matter concerning the investigation?

21 A Correct.

22 Q Okay. So isn't it true that if you are evasive, if  
23 you withhold, or you don't answer any questions asked to you  
24 by law enforcement that you could lose the entire deal that  
25 they offered you, right?

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 A Yes.

2 Q Meaning you wouldn't get probation, and you'd get  
3 sentenced on that felony, right?

4 A Yes.

5 THE COURT: Well, I'm not sure that's a fair question,  
6 because ultimately any sentence is up to the Court, and, you  
7 know, I'm not sure we can speculate what would happen, but she  
8 wouldn't have the guarantees from the State, she'd have to  
9 deal with me.

10 MS. DUSTIN: I'm sorry.

11 BY MS. DUSTIN:

12 Q That you would not have the stipulation by the  
13 State, right? And you could be adjudicated on the felony?

14 A I'm sorry. Repeat the question, please?

15 Q I'm sorry. What the Judge interjected is, is if you  
16 didn't follow through with everything that we just talked  
17 about you risk being sentenced on the felony, right?

18 A Yes.

19 Q And right now the agreement is, is that you don't  
20 get sentenced on the felony, right?

21 A If I complete the probation, and testify truthfully,  
22 and --

23 Q Okay.

24 A -- all those other stipulations.

25 Q So basically the only thing that's to happen to you

1 when you go to sentencing, if you do everything that the State  
2 asks, is you only get sentenced on the gross misdemeanor, and  
3 the parties are requesting the Court give you probation,  
4 right?

5 A Yes.

6 Q But you never get sentenced on that felony, right?

7 A Yes.

8 Q And only if you don't do something in the agreement,  
9 or you fail probation, is when you risk being sentenced on  
10 that felony, right?

11 A Yes.

12 MS. DUSTIN: Nothing further.

13 THE COURT: Go ahead.

14 MS. DIGIACOMO: I think I just --

15 REDIRECT EXAMINATION

16 BY MS. DIGIACOMO:

17 Q I forgot to ask you, do you recall the date of your  
18 agreement when you plead guilty?

19 A No, I don't remember the date.

20 Q I'm just going to show you page one of your guilty  
21 plea agreement, and at the top there's a file stamp. What's  
22 the date of that?

23 A March 6, 2007.

24 MS. DIGIACOMO: Nothing further.

25 THE COURT: Okay. Thanks. Appreciate your testimony.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295



1 You're excused. Next?

2 MS. DIGIACOMO: Brad Nickell.

3 THE COURT: While we're waiting for him will you come up

4 here, Ms. Dustin?

5 [Bench Conference Not Transcribed]

6 THE COURT: All right. Good.

7 THE CLERK: Please raise your right hand.

8 BRADLEY NICKELL, STATE'S WITNESS, SWORN

9 THE WITNESS: I do.

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

11 THE COURT: Sir, state your name, and spell your name for

12 the court recorder.

13 THE WITNESS: Bradley Nickell, B-r-a-d-l-e-y, N-i-c-k-e-

14 l-l.

15 MS. DIGIACOMO: I have to setup the speaker that's behind

16 the box over there.

17 [Court and Ms. DiGiacomo Confer]

18 THE COURT: Just for your edification, this -- I'm

19 generally aware of witness is going to testify to, and it's

20 going to take some several hours, so we're going to go until

21 about five, and we're just going to stop wherever we are, and

22 pick up tomorrow morning with him, so we're not going to go

23 6:30 at night, and, but we'll go as far as we can, because the

24 more we do today the less we'll have to do tomorrow.

25 Go ahead.

1 MS. DIGIACOMO: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. DIGIACOMO:

4 Q Sir, how are you employed?

5 A I'm a detective with the Las Vegas Metropolitan  
6 Police Department.

7 Q Now, directing your attention to the fall of 2006,  
8 what team were you assigned to?

9 A I worked as a detective in the repeat offender  
10 program.

11 Q All right. Now, there was arrest on September 24th  
12 of 2006 by persons in the name of Bryan Fergason and Daimon  
13 Monroe, or Daimon Hoyt. Are you familiar with that arrest?

14 A Yes, I am.

15 Q Okay. After that arrest happened, were you assigned  
16 the case a few days later?

17 A Yes.

18 Q Okay. When you first got the case, was there  
19 something that you did right away?

20 A One of the first things that I did early on in the  
21 case assessment -- one of the things that I try to do is  
22 determine if the defendants involved in the case are active.  
23 criminals, or what I believe to be active criminals --

24 Q Well, okay. So, well, okay. So you get the case  
25 and you start looking at just the facts, but I'm saying did

1 you do anything, did you call anyone?

2 A Yes, I called Tonya Trevarthen.

3 Q Okay. And what was the purpose of calling her?

4 A I wanted to find out what she knew about the  
5 Defendants that were arrested driving her van, and see what  
6 kind of intelligence I could gather from that.

7 Q Now, were you -- was she cooperative?

8 A No.

9 Q And were you able to find out any information on  
10 either Daimon Monroe, or Hoyt, or Bryan Fergason?

11 A No.

12 Q Was one of the things you were trying to do is  
13 figure out where they lived?

14 A Yes.

15 Q And why were you trying to figure out where either  
16 Monroe or Fergason lived?

17 A Because my unit specializes in conducting  
18 surveillance on people that we believe are committing crimes,  
19 and I thought if we knew where they lived that might be a way  
20 to find out where they're at, and do surveillance on them.

21 Q All right. So at some point did you figure out  
22 where Monroe and or Fergason lived?

23 A Yes.

24 Q Which one?

25 A Both.

1 Q All right. Was the next step then starting to  
2 listen to phone calls?

3 A Yes.

4 Q All right. And can you explain to the jury how you  
5 were able to do that?

6 A All of the phone calls that are made on inmate jail  
7 phones, or phones from the jail in the inmate areas, are  
8 recorded. There's a computer system with a hard drive and all  
9 kinds of data cables and stuff that records all of that  
10 information, keeps it on hard drive. I have been trained in  
11 the use of that system by the company that designed it and  
12 created it, installed it. I have the ability to use software  
13 on the system to listen to phone calls, search for phone  
14 calls.

15 Q All right. And where do you do this?

16 A I can do that from my desk.

17 Q All right. And all of these phone calls are just  
18 kept in the ordinary course of the jail business?

19 A Yes.

20 Q All right.

21 A Let me -- let me underscore. During the time of  
22 this investigation where I would conduct these computer  
23 searches from were from special computers that are in my  
24 office. It was a special dedicated system that required  
25 special hardware. Now, the system has been upgraded, and it

1 can be done from my desktop.

2 Q Okay. The hardware that you were using before  
3 during this investigation, you found -- well, first of all,  
4 how do you start searching for phone calls?

5 A There are several different methods. The easiest  
6 method to start searching for phone calls is, is if you know  
7 who an inmate might be calling, what particular phone number  
8 an inmate might be calling, you punch that phone number into  
9 the search tool, and it let's you know if anybody in the  
10 entire jail has been calling that phone number over a  
11 specified period of time that you can enter.

12 Q Now, be it when do this search you can look at past  
13 phone calls as well, not just current ones?

14 A That's correct.

15 Q All right. Now, do you recall what the first number  
16 was that you punched in?

17 A The first --

18 MS. DIGIACOMO: And we're not going to need the screen on  
19 our computer.

20 THE CLERK: Right.

21 MS. DIGIACOMO: I'm going to use photographs. Thank you.

22 THE WITNESS: The first number that I checked in the  
23 system was the same number that I called for Tonya Trevvarthen.

24 BY MS. DIGIACOMO:

25 Q All right. Now, do you recall approximately how

1 long it was after you began investigating this case that you  
2 punched in -- you started doing jail phone calls?

3 A It was during the first week, probably within three  
4 or four days of after being assigned the case.

5 Q And approximately how many phone calls do you think  
6 you listened to between when you were assigned this case, the  
7 end of September, through November 6, 2006, or actually  
8 through the end of November 2006?

9 A Phone calls that pertain to this case, probably a  
10 couple hundred.

11 Q All right. Now --

12 A Just a rough guess.

13 Q Okay. Based upon listening to these phone calls,  
14 were you able to start learning voices, and then identifying  
15 people?

16 A Absolutely.

17 Q All right. And could you also identify them too  
18 based upon who they said, who they asked for, what their names  
19 were, etcetera?

20 A Yeah, they had nicknames for each other.

21 Q All right. Now, was that the only step you took  
22 with regard to your investigation of a car stop that occurred  
23 on September 24, 2006?

24 A No, it's not.

25 Q All right. When you began investigating that car

1 stop, do you know approximately how many businesses were  
2 involved?

3 A Two.

4 Q All right. Now, were both charged initially when  
5 you began your investigation?

6 A No.

7 Q All right. Which one was charged?

8 A The one that was charged was a business called the  
9 Anku Crystal Palace.

10 Q And which one wasn't charged?

11 A Just For Kids Dentistry.

12 Q Now, based upon listening to these jail phone calls,  
13 did you start to formulate anything that you were going to do  
14 next in your investigation?

15 A Yes.

16 Q And what was that?

17 A I was very interested in the tools that had been  
18 impounded by the patrol officers. I know that from reading  
19 your reports there was no evidence of how entry was made. It  
20 was obvious to me that entry was made at the Anku Crystal  
21 Palace, because things that were inside the store were found  
22 in Mr. Ferguson and his Co-Defendant, Mr. Monroe's,  
23 possession, so obviously they had been in the store. How did  
24 they get in? There was no evidence that I read in any reports  
25 of a door being broken, or a window, or anything like that, so

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 I figured that there probably had to be the usage of some kind  
2 of tool to make entry into these different premises.

3 I went down to the evidence vault, I believe it was on  
4 October 10th, and --

5 Q Of 2006?

6 A Of 2006, and took photographs, and examined the  
7 tools for myself just to see if I could start getting some  
8 kind of idea as to what this was all about. A week later I  
9 checked the tools back out of evidence, and took them out to  
10 the crime scenes, and there was one tool in particular that I  
11 drew my attention to. It was what used to be a screwdriver, a  
12 long shaft screwdriver approximately 18, maybe 22 inches long.  
13 the shaft of it had been ground down very thin. There were  
14 burn marks, like from a paint torch, used on it obviously to  
15 make it so that the shaft of the screwdriver could be bent to  
16 a 90 degree angle. It was quite an odd looking tool, and I  
17 could tell that someone had put a pretty good amount of effort  
18 into constructing this out of what was ordinarily a  
19 screwdriver.

20 Q Did --

21 A That tool, yeah, it caught my attention, and I  
22 figured that maybe it was something important.

23 Q Now, were you also listening to the jail calls at  
24 this point?

25 A Yes.



1 Q Okay. And was there something on the phone calls  
2 that you were hearing that also led you to believe that maybe  
3 one of these tools were important?

4 A Yes, I heard Mr. Ferguson and Mr. Monroe talking  
5 about whether or not the cops had figured out Matthew, and  
6 whether -- when I first heard that I thought maybe there was a  
7 co-defendant that jumped out of the car and got away when the  
8 patrolmen had arrested them or something, or -- who was  
9 Matthew? I didn't know what Matthew was, but then as I  
10 listened further along in the phone calls the name Matthew  
11 came up a few more times, and there were a couple times where  
12 it came up in the context of these burglary tools, so I was  
13 thinking apparently someone has named this screwdriver that's  
14 been converted into some sort of tool, had given it a nickname  
15 Matthew. Why? I don't know why, but it seemed to fit  
16 together for me.

17 Q Now, I'm going to show you State's Exhibit 561. Do  
18 you recognize this?

19 A Yes.

20 Q All right. And what is this that we're looking at?

21 A That's the tool that I just described that I believe  
22 the Co-Defendants used as a nickname Matthew.

23 Q All right. And then you said you checked all the  
24 tools out on October 10, 2006?

25 A Yes.

1 Q And then you said, on October 16, 2006 you again  
2 went back?

3 A Yes, on the 10th I just went and photographed them.  
4 Never took them away from the evidence vault. On the 16th, I  
5 believe it was, I checked them out and actually took them to  
6 the businesses, and I used that tool right there to open both  
7 doors at both businesses.

8 Q All right. Now, when you first took this tool that  
9 we're looking at in 561 to the businesses, did you try it on  
10 different doors, did you try it different ways, or what  
11 happened?

12 A Yes, initially I was thinking, you know, just an  
13 idea in my mind, I'm familiar with some of these doors and  
14 things. I took that tool to the back door of the business  
15 thinking that the fire door may be susceptible to it, sliding  
16 in between the door and the jam, and somehow jimmying the  
17 tongue lock on the door handle. That wasn't possible, because  
18 there was a steel plate that blocked it, and it just, the  
19 space in between the door and the jam was too narrow.

20 Q All right. So what did you do then?

21 A I took it to the front door, which there were two  
22 double doors, they were glass steel framed doors, and I was  
23 able to slide that tool in between the two doors, and use the  
24 tip of that tool on the twisting thumb lock device, manipulate  
25 that twisting thumb lock device into unlocking the door.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q All right. So when you went out on October 16,  
2 2006, which business did you go to first?

3 A I went to the Anku Crystal Palace first.

4 Q All right. Now, when you -- and you said you were  
5 able to use this tool called Matthew to open the front doors?

6 A Yes.

7 Q At the time when you did this did the Anku Crystal  
8 Palace front doors still have that thumb lock mechanism --

9 A Yes.

10 Q -- on the inside?

11 A Yes.

12 Q Okay. And then after you were -- well, strike that.  
13 How long did it take you to use this tool to open the door?

14 A About a minute.

15 Q All right. Now, after you were done at the Anku  
16 Crystal Palace did you go somewhere else?

17 A Yes.

18 Q Where did you go?

19 A I went to the Just For Kids Dentistry.

20 Q All right. And did you try the same thing at the  
21 Just For Kids Dentistry?

22 A I tried the same tool. They have identical type of  
23 doors. The double doors that are glass doors, metal framed  
24 with the thumb locking device inside, and I ended up with the  
25 same results. About a minute and a half I think it was there.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 763-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q To open the door with the thumb lock?

2 A Yeah.

3 Q All right.

4 A Yes, excuse me.

5 Q At the time that you did these demonstrations, did  
6 you do anything to document it?

7 A During that visit no. I was by myself. I didn't  
8 have a digital camera with me or anything. I was there to  
9 basically just operating on a hunch, you know, that maybe  
10 these tools were going to unlock some of the questions that I  
11 had in the investigation.

12 Q All right. Now, did you go back at a later time to  
13 document it?

14 A Yeah, I think it was on the 23rd of October of 2006.  
15 I took another detective with me to go back and take kind of a  
16 step-by-step photograph array of how I used the tool to open  
17 each one of the doors.

18 Q And which businesses did you do that for?

19 A The Anku Crystal Palace and the Just For Kids  
20 Dentistry.

21 Q All right. I'm going to show you what's been marked  
22 for identification as State's Proposed Exhibits 562 through  
23 575. Would you just flip through each one of those quickly  
24 and let me know if you recognize anything.

25 MS. DUSTIN: And, Your Honor, while he's looking through

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8074  
Denver (303) 634-2295

1 those could we approach quickly?

2 THE COURT: Sure.

3 [Bench Conference Not Transcribed]

4 BY MS. DIGIACOMO:

5 Q All right. Sir, after looking at State's Proposed  
6 Exhibits 562 through 575, do you recognize what's depicted in  
7 these photographs?

8 A Yes.

9 Q And did they fairly and accurately depict the  
10 demonstration photos that you took of the Anku Crystal Palace  
11 and the Just For Kids Dentistry on October 23, 2006?

12 A Yes.

13 MS. DIGIACOMO: Your Honor, I move for admission of 562  
14 through 575.

15 THE COURT: I've heard the objection made at the bench of  
16 Defense Counsel. They'll be admitted, and you can let your  
17 record --

18 [State's Exhibit 562 through 575 Admitted]

19 THE CLERK: And, I'm sorry. Where do I put them in?

20 THE COURT: 562 to 575. Go ahead.

21 MS. DIGIACOMO: Thank you.

22 BY MS. DIGIACOMO:

23 Q First of all, showing you State's Exhibit 562. What  
24 are we looking at here?

25 A Those are the front doors of the Anku Crystal

1 Palace.

2 Q Okay. And this is where you used the tool to open  
3 the front door?

4 A That's correct.

5 Q Showing you 564. What are we looking at here?

6 A That's a picture of me inserting that tool in  
7 between the two doors.

8 Q And 565?

9 A That's a picture of me with the tool in between the  
10 two doors, and you can see that the shaft is inside the  
11 building there.

12 Q Now, showing you 566. What are we looking at there?

13 A That's a picture of me standing outside the building  
14 with the shaft of the tool inside the two doors here.

15 Q All right. Now, where's the thumb locking mechanism  
16 that you were talking about?

17 A It's not there. It's been removed.

18 Q Okay. Where would it have been?

19 A It would have been right here where this key lock  
20 mechanism is.

21 Q All right. And how do you know it was removed?

22 A I instructed Mr. Hung that it would be a good idea  
23 to change that out, so his business might not be so easily  
24 broken into.

25 Q All right. Now, showing you 567. What are we

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 looking at here?

2 A This is the key lock device that Mr. Hung took off  
3 and replaced with the key device.

4 Q So after the thumb lock was taken out --

5 A It's unlike --

6 Q -- you now need a key to lock it from the inside of  
7 the store?

8 A That's correct.

9 Q Showing you 568. What are we looking at here?

10 A That's the front of the strip mall including the  
11 Timbers bar and Blinds By Debbie at the -- I'm sorry, at the  
12 Just For Kids Dentistry business.

13 Q All right. Now, where are the front doors, or the  
14 doors that you would use to enter into the Timbers?

15 A Front doors to the Timbers is right here, these wood  
16 doors.

17 Q Okay. To the right of the picture?

18 A Correct.

19 Q Now, showing you State's 569. What are we looking  
20 at there?

21 A That's the front of the Just For Kids Dentistry.  
22 They have three sets of double doors.

23 Q All right. Now, which are the double doors that  
24 business is regularly opened for? Which one of the --

25 A Normally these doors here are locked during business

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 hours and after business hours. This is there public entrance  
2 right here.

3 Q So the public entrance is to the left, and the one  
4 in the middle and the one on the right is usually locked?

5 A Yes.

6 Q Okay. And it was like that the days that you went  
7 there to do your demonstrations?

8 A That's correct.

9 Q Showing you State's Exhibit 570. What are we  
10 looking at here?

11 A It's another shot of the front of the Just For Kids  
12 Dentistry, and the businesses to its east.

13 Q 571?

14 A That's the front doors, the two front doors where  
15 the public entrance is for the Just For Kids Dentistry.

16 Q And 572?

17 A That's where I'm preparing to insert the tool in  
18 between the two double doors.

19 Q 573?

20 A I've inserted the tool in between the two doors.  
21 You can see that the tip of the shaft is actually inside the  
22 building.

23 Q 574?

24 A This is a shot with me standing outside from inside  
25 the building. You can see that the shaft is inside the doors,

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295



1 and in contact with the thumb locking device there.

2 Q And you were able to open the door?

3 A Yes.

4 Q And then showing you 575?

5 A That's the, I guess you'd call it, the tongue of the

6 lock mechanism on the door.

7 Q All right. Now, each time that you used the tool to

8 open the doors at the Anku Crystal Palace and the Just For

9 Kids Dentistry, did you ever look to see whether or not any

10 damage was left behind by what you'd done?

11 A Yes.

12 Q And was there any?

13 A There was some very minor scratching. Nothing that

14 I could attribute specifically to the tool making that mark.

15 There were marks already on the door previously from just

16 normal wear and tear, and there was nothing that I did to the

17 door that appeared to be anything more than what was already

18 there, or maybe just added a little normal wear and tear look

19 to it.

20 Q All right. So now after you were able to figure out

21 that this tool could be used to get into a business, and not

22 leave signs of forced entry, was there a charge added for the

23 burglary of Just For Kids Dentistry regarding Mr. Monroe and

24 Mr. Ferguson?

25 A Yes.

1 MS. DUSTIN: And I'll object as to the same issues that I  
2 noted at the bench.

3 THE COURT: Well, what's the relevance of that at this  
4 juncture here?

5 MS. DIGIACOMO: Well, the relevance is based upon what I  
6 have plead in Count I, and also what the jail phone calls are  
7 going to explain.

8 THE COURT: All right. Overruled. I mean, I understand  
9 your concern, and it's a valid one, but it's kind of a general  
10 fine line. Go ahead.

11 BY MS. DIGIACOMO:

12 Q Now, directing your attention to November 6, 2006,  
13 is there something that you did on that date?

14 A Yes.

15 Q Okay. And what was that?

16 A Served several search warrants across the Las Vegas  
17 valley.

18 Q Now, were you the one that actually obtained the  
19 search warrants?

20 A Yes, I was the affiant.

21 Q And what search warrants did you have the morning of  
22 November 6, 2006?

23 A We had a search warrant for Mr. Ferguson's  
24 apartment, 7400 Pirates Cove. Had a search warrant for a  
25 storage unit at 5900 Smoke Ranch. Had a storage unit at 8100

1 West Charleston, and for Daimon Monroe's house at 1504 Cutler  
2 Drive.

3 Q Are all of the areas you just mentioned in Clark  
4 County, Nevada?

5 A Yes, they are.

6 Q Now, were you present when the entry was made on the  
7 Cutler residence?

8 A Not initially. The initial entry was made by our  
9 SWAT team.

10 Q And then at some point are you handed somebody who  
11 comes off out of that residence?

12 A Yes.

13 Q Okay. Who are you handed off?

14 A There was a SWAT team member that had Daimon Monroe,  
15 he brought him out of the house, and turned his custody over  
16 to me.

17 Q All right. Showing you State's Exhibit 991. Is  
18 this the person you are referring to?

19 A Yes.

20 Q Okay. So he came out of the house?

21 A Yes.

22 Q Now, when he came out of that house do you recall  
23 what he was wearing?

24 A He was naked.

25 Q Okay. And did you do something to -- or did you get

1 something for him?

2 A Yes, I wrapped him in one of our yellow foam  
3 emergency blankets to cover him up.

4 Q Great. Did you take place in the execution of the  
5 search warrant at Pirates Cove?

6 A No, I did not.

7 Q Did you take place in the execution of the search  
8 warrant at West Charleston?

9 A No.

10 Q Did you take place at the -- with regard to the  
11 execution of the search warrant at Smoke Ranch?

12 A No.

13 Q All right. Is it fair to say that your role was  
14 just at the Cutler residence on November 6, 2006?

15 A As pertained to the search warrants, yes.

16 Q All right. Now, were there also search warrants  
17 obtained for two other units based upon what was found at the  
18 Cutler residence?

19 A Yes.

20 Q And what were those storage units for?

21 A There was a storage unit on West Sahara that was  
22 rented in a false name for Daimon Monroe. That was what we  
23 call a piggyback search warrant was obtained.

24 Q And do you recall that location?

25 A I can't remember the numbers off the top of my head.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 I never visited it.

2 Q But it was West Sahara?

3 A West Sahara.

4 Q Does that sound familiar?

5 A Yes.

6 Q And that's in Clark County?

7 A Yes.

8 Q All right. And then what was the other one that was  
9 obtained?

10 A The other one was 3250 North Buffalo.

11 Q Was it for one or two units there?

12 A That was for two units.

13 Q And whose name were those units in?

14 A Those were rented in the name of Bryan Fergason.

15 Q Now, after the execution of the search warrants that  
16 day was your investigation over?

17 A No

18 Q All right. At some point did you see -- let me.  
19 Court's indulgence. Did you -- were you given any sort of  
20 bank documentation that was found during the search warrants  
21 at Cutler?

22 A Yes.

23 Q Okay. And then showing you State's Exhibit 215,  
24 which are multiple bank documents stapled together. Do you  
25 recognize that?

1           A     I'm familiar with it, yes.

2           Q     Okay. Are these -- and there's multiple copies in  
3 here of different ones. You recognize all of these?

4           A     Yes.

5           Q     Okay. Were you actually given these by another  
6 detective at that Cutler residence?

7           A     Yes.

8           Q     Okay. And based upon that did you continue your  
9 investigation through Bank of America?

10          A     Yes.

11          Q     All right. Did you eventually obtain search  
12 warrants for the accounts of Tonya Trevarthen and Bryan  
13 Ferguson?

14          A     Yes, I did.

15          Q     Do you recall what date you executed those search  
16 warrants?

17          A     I want to say it was November 22nd, but I could be  
18 wrong.

19          Q     Okay. November 22, 2006?

20          A     Yes.

21          Q     Okay. Is there anything that you could look at to  
22 refresh your recollection?

23          A     Yes, I have some notes with me.

24          Q     Okay. With you up there?

25          A     Yes.

1 Q That are folded over?  
2 A Yes.  
3 Q Okay. If that would refresh your recollection, if  
4 you want to look at that, and then close it after you're done.  
5 A Yes, it was November 22nd of 2006.  
6 Q All right. And you went to what branch?  
7 A I went -- myself another detective went to the main  
8 branch of Bank of America here, downtown, on Fourth Street.  
9 Q And who was the other detective?  
10 A Detective Pat Fielding.  
11 Q Now, is that a detective you normally work with?  
12 A No.  
13 Q Okay. Did you enlist his help with regard to these  
14 financial warrants?  
15 A Yes.  
16 Q And why was that?  
17 A Detective Fielding works on a federal money  
18 laundering task force and he has a lot of experience in  
19 complicated financial investigations.  
20 Q Now, had you ever done anything like this before?  
21 A I've never served bank warrants before, no.  
22 Q All right. And when you got to the Bank of American  
23 downtown and you executed the warrants, were you given  
24 anything after executing them?  
25 A Yes.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q And what was that?  
2 A Checks.  
3 Q All right. Cashier's checks?  
4 A Cashier's checks.  
5 Q Do you recall who helped you at the bank with that?  
6 A I remember there was a woman named Devan Thorns.  
7 She was, I think, an assistant bank manager.  
8 Q Okay. And do you recall how much the cashier's  
9 check was for the accounts in Tonya Trevarthen's name?  
10 A I believe it was about \$26,000 approximately.  
11 Q And what about the accounts in Bryan Ferguson's  
12 name?  
13 A I believe it was about \$124,000.  
14 Q All right. Do you know the exact amount?  
15 A I have them, the exact amount in my notes, but I  
16 don't have the number memorized.  
17 Q All right. Well, if that would refresh your  
18 recollection, if you want to look at your notes for the exact  
19 amounts.  
20 A Yes.  
21 Q Tonya Trevarthen's account, the cashier's check was  
22 \$26,938.64; and Mr. Ferguson's accounts totaled \$124,216.36.  
23 MS. DUSTIN: And for the record, he's reading off of his  
24 notes.  
25 THE COURT: I wouldn't expect that he'd be able to keep



1 that in his head, so.

2 BY MS. DIGIACOMO:

3 Q Okay. And, now, did you learn any other information  
4 when you were at the bank trying to seize the money in both  
5 Mr. Ferguson and Ms. Tonya Trevarthen's accounts?

6 A Yes.

7 Q And what was that?

8 A One of the bank employees had almost made a funny  
9 comment, and said that it too bad we weren't there a couple  
10 days earlier, and they elaborated to explain that there was a  
11 lot of money that was -- had been withdrawn from the bank  
12 account of Tonya Trevarthen.

13 Q Do you recall approximately how much money had been  
14 withdrawn before you got there?

15 A It wasn't real clear, because we were getting some  
16 conflicting information from a couple different employees, but  
17 I think both of them concurred that it was over \$200,000.

18 Q All right. Based upon that did you try and  
19 basically chase the \$200,000?

20 A Exactly.

21 Q All right. And were you able to track it down?

22 A Some of it.

23 Q All right. What were you able to track down?

24 A I knew that at least \$145,000 in cash was withdrawn  
25 by Tonya Trevarthen. We served a search warrant later that

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 day on the 22nd at the Cutler address again thinking maybe  
2 that Tonya had gone back to the house, and maybe she was just  
3 keeping the money with her.

4 Q Was Detective Fielding with you on that as well?

5 A It was actually Detective Schoening, I believe, that  
6 wrote that search warrant while Detective Fielding and I  
7 finished up at the bank on the original service of the search  
8 warrants there, so Detective Fielding and I did go over to the  
9 Cutler house after the service of the search warrant had  
10 begun.

11 Q Was there any cash found at the Cutler residence?

12 A No.

13 Q All right. Now, was there other search warrants  
14 that you executed that day on November 22, 2006 with regard to  
15 banking records, or anything at the banks?

16 A There was one other search warrant. It was part of  
17 the search warrant for Mr. Ferguson. It was a search warrant  
18 for his safe deposit box.

19 Q Was that the same location where you executed the  
20 warrants for the money?

21 A No, that was at the Westcliff branch of Bank of  
22 America.

23 Q All right. Now, were you present for the execution  
24 of that search warrant?

25 A Yes.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q All right. Was Detective Fielding as well?

2 A Yes.

3 Q Okay. Do you recall what was found with regard to  
4 the safety deposit box in Mr. Ferguson's name?

5 A I recall that there was a lot of what appeared to be  
6 rare coins. Expensive, what appeared to be gold coins. Saw a  
7 lot of silver money. There was foreign currency. There was  
8 what appeared to be collector's paper money. There were a  
9 couple of large prehistoric sharks teeth, megalodon teeth,  
10 that are very valuable, and other miscellaneous small  
11 valuables in the safe deposit box.

12 Q All right. Now, after you couldn't find the cash at  
13 the Cutler residence what happened at that point?

14 A Detective Fielding contacted -- like I said before,  
15 he's part of a federal money laundering task force, he  
16 contacted one of the federal agents on his task force, and  
17 that federal agent ended up contacting some federal agents in  
18 Texas, where I believed that Tonya Trevarthen had gone to for  
19 Thanksgiving.

20 Q All right. Now, at some point are you able to  
21 obtain information as to exactly what happened with that  
22 \$145,000?

23 A Yes.

24 Q Okay. And who did you obtain that information from?

25 A From Tonya Trevarthen.

1 Q All right. And how did that come about?

2 A It was the Monday after Thanksgiving. The federal  
3 agents had been, I guess, to her mother's house on  
4 Thanksgiving day and spoken with her. The Monday after  
5 Thanksgiving Tonya came back to town, and just out of the blue  
6 I got a phone call on my cell phone from Tonya, and she stated  
7 that she wanted to speak with me.

8 Q How would she have your cell phone number?

9 A I gave her my card the day that she was arrested at  
10 the Cutler house during the service of the search warrant.

11 Q On November 6, 2006?

12 A That's correct.

13 Q And what was the purpose of giving you -- giving her  
14 your card?

15 A I gave her my card in case she ever changed her mind  
16 and wanted to speak with me.

17 Q And, so on November twenty -- well, I'm sorry. The  
18 Monday after Thanksgiving she called you. Did you actually  
19 speak to her that day?

20 A Yes.

21 Q Was her attorney present?

22 A No.

23 Q All right. And when you spoke to her did you take a  
24 taped statement from her?

25 A Yes, I did.

1 Q And at that time did you promise her any deals with  
2 regard to cooperate?

3 A No, I never made her any promises whatsoever.

4 Q Okay. When you spoke to her did you find out where  
5 the \$145,000 in cash was?

6 A Yes.

7 Q And where was that?

8 A She told me that she had given the \$145,000 to Bobby  
9 Holmes, Robert Holmes, a long time friend of her boyfriend  
10 Daimon.

11 Q All right. Did you do anything to try and track  
12 down that \$145,000?

13 A At that time I told Tonya that it would probably be  
14 in her best interest to try and recover the money from Bobby,  
15 so that she can surrender it, and it would really make a true  
16 good faith showing on her part that she really was, you know,  
17 trying to come clean and do the right thing, and not, you  
18 know, try and -- often times we have people that want to try  
19 and help the police that aren't completely forthcoming. If  
20 she were to recover that money and turn it over for seizure  
21 proceedings in a court then that would certainly establish her  
22 credibility.

23 Q Was Tonya ever able to turn over the \$145,000?

24 A No.

25 Q Okay. So did you do something to try and recover

1 that yourself?

2 A Yes.

3 Q And what did you do?

4 A Well, I -- Tonya told me that Bobby wouldn't give  
5 her the money back.

6 Q Okay. So what did you do?

7 A So I contacted Detective Fielding again. Him and I  
8 seem to be partners there for a few days. We went out along  
9 with one or two federal agents off of his task force, we went  
10 off to Bobby's house, and spoke with -- we wanted to speak  
11 with Bobby, but Bobby wasn't there, so we spoke with Bobby's  
12 wife.

13 Q All right. And was that the same day that you had  
14 spoken to Tonya?

15 A No.

16 Q When was that?

17 A I believe that was two days later.

18 Q Okay. And then at some point did you ever speak to  
19 Bobby Holmes?

20 A Yes.

21 Q All right. And when was that?

22 A When I spoke with -- when I was at his house his  
23 wife put me in touch with him over the telephone, and Bobby  
24 had promised that he was going to be there in 20 minutes and  
25 we'd talk about it. I told Bobby that we weren't there to

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2195

1 arrest him, that we just wanted to talk to him about the money  
2 that was given to him by Tonya.

3 Q All right. And did you tell him how much money you  
4 were looking for?

5 A Yes, \$145,000.

6 Q All right. Now, at some point later -- well, do you  
7 ever get any of that money back?

8 A Yes.

9 Q And how do you get that money back?

10 A Robert Holmes surrendered \$70,000 of it in cash at  
11 my office.

12 Q All right. When was that in relation to when you  
13 were at his house?

14 A The next day.

15 Q I'm going to show you what's been marked for  
16 identification as 1182 to 1188. If you could flip through  
17 these and let me know if you recognize them.

18 A Sure.

19 MS. DUSTIN: For the record, Your Honor, I have no  
20 objection to these being admitted.

21 THE COURT: Okay. 1082 -- 1182 through 1188 will be  
22 admitted.

23 [State's Exhibit 1182 through 1188 Admitted]

24 MS. DIGIACOMO: Okay. Thank you.

25 BY MS. DIGIACOMO:

1 Q Well, what do these photos depict?

2 A These are the one hundred dollar bills that Robert  
3 Holmes brought to my office to surrender that were given to  
4 him by Tonya Trevarthen.

5 Q Okay. And are there seven photographs of  
6 approximately \$10,000 each?

7 A Yes.

8 Q Now, showing you State's Exhibit 1182. This depicts  
9 how you counted out the money, and it looks like in stacks of  
10 \$1,000?

11 A Yes.

12 Q And there's ten stacks per page?

13 A Yes.

14 Q All right. And all these photographs show the  
15 cumulative of \$70,000 that was returned?

16 A That's correct.

17 Q All right. Now, did you ever speak to Mr. Holmes  
18 regarding the other \$75,000?

19 A Yes.

20 Q Okay. And was that when he turned over the \$70,000?

21 A Yes.

22 Q Okay. And did you tell him that you still expected  
23 the other \$75,000?

24 A Yes, we expected the other \$75,000 to be turned in.

25 Q Okay. But it wasn't turned in?

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295



1           A     It never was.

2           Q     All the rest of the money that was transferred out  
3 of Ms. Trevarthen's account that wasn't cash, were you able to  
4 track down that money as well?

5           A     Not all of it, but there was much of it. Yes, I was  
6 able to track it down.

7           Q     At some point did you go back and execute a third  
8 search warrant at the Cutler residence?

9           A     Yes.

10          Q     And what was the purpose of that?

11          A     At the grand jury when this case was being heard we  
12 had numerous victims and stuff there, and we had them thumbing  
13 through photographs of the different crime scenes where these  
14 items of property were being found at, and we wanted them to  
15 look through these photographs to see if they'd recognized  
16 anything as possibly belonging to them. I mean, it would make  
17 sense to think that if these victims were there, and we  
18 already had confirmed some of the property was theirs, maybe  
19 there was more stuff that they didn't get to see. Maybe that  
20 was theirs, too.

21          Q     All right. And was somebody able to identify  
22 property out of some of the photographs?

23          A     Yes, there was a woman. Her name -- I can't  
24 remember her name, but she was the owner of Furniture  
25 Markdowns, and she recognized a couple of pieces of furniture

1 in the Cutler address as something that she believed came from  
2 her store.

3 Q Do you recall what room in the Cutler address?

4 A The master bedroom.

5 Q And were the pieces that she identified left behind  
6 after the search warrant on November 6, 2006?

7 A Yes.

8 Q And how were you able to identify whether or not  
9 those pieces were hers?

10 A She had given me a very good description of the  
11 items, and she also had told me some numbers that should be on  
12 the back and what the manufacturer name should be on the back  
13 of the, you know, I think it was a dresser and a nightstand.

14 Q Okay. Is it possible it was a dresser and two  
15 nightstands?

16 A Yes, it was.

17 Q Okay. Now, showing you State's Exhibit 461. Do you  
18 see the dresser you back to get in this photograph?

19 A Yes, I do. It's right here.

20 Q And you can --

21 A It's supporting that television.

22 Q Okay. And then showing you State's Exhibit 462. Do  
23 you see one of the two nightstands you back to get?

24 A Yes, I do. It's right here and it doesn't have any  
25 drawers in it at that moment.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q And where would the other nightstand have been?

2 A It would have been back on the other picture right

3 next to -- actually, you know, it might be right over here, or

4 it could've been in the other picture right next to the

5 dresser.

6 Q Okay. Well, I'm -- you circled the other side of

7 the bed that you can't see --

8 A Yeah, you can't see.

9 Q -- in 462. I'm showing you 461. Does that help you

10 determine which -- where it would have been?

11 A No, my memory is not correct there. I don't

12 remember.

13 Q Let me ask you this, do you recall if the

14 nightstands were identical?

15 A They were.

16 Q Okay. Now, this -- I'm just going to show you 463.

17 Is this another room in that house, one of the kids bedrooms?

18 A Yes, one of the children's bedrooms.

19 Q And 464, what are we looking at there?

20 A That's the shed out in the backyard.

21 Q Of the Cutler residence?

22 A Yes.

23 Q And these photographs were all taken on November 6,

24 2006?

25 A Correct.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 483-8024  
Denver (303) 634-2295

1 Q Okay. When you executed the search warrants on  
2 November 6, 2006 did you have a search warrant for something  
3 that you were unable to execute on that day?

4 A Yes.

5 Q What was that?

6 A Robert Holmes has a large international cargo van,  
7 cargo truck, almost like a R.C. Willey truck that delivers  
8 furniture. He owns one of those. I think it's a 27 foot  
9 cargo van.

10 Q All right. And were you able to execute the search  
11 warrant in November of 2006?

12 A No.

13 Q All right. Have you since been able to locate that  
14 truck?

15 A Yes.

16 Q All right. When was that?

17 A About a week and a half ago I believe.

18 Q All right. Now, I'm going to show you State's  
19 Proposed Exhibits 1150 through 1155. If you could flip  
20 through those and let me know if you recognize them.

21 A I recognize them all.

22 MS. DIGIACOMO: Your Honor, I move for admission of  
23 State's Proposed Exhibits 1150 through 1155.

24 THE COURT: Any objection?

25 MS. DUSTIN: No objection.

1 THE COURT: Admitted.

2 [State's Exhibit 1150 through 1155 Admitted]

3 BY MS. DIGIACOMO:

4 Q Okay. Showing you, first of all, State's 1150.  
5 What are we looking at there?

6 A That's the license plate of Robert Holmes' 27 foot  
7 cargo van.

8 Q Okay. 1151?

9 A That's the street sign of the street that it's  
10 parked on, Virgil.

11 Q And 1152?

12 A That's the house that it's parked in front of, 1109  
13 Virgil, which is owned by Robert Holmes.

14 Q But he doesn't live at that residence does he?

15 A I don't know that to be his normal residence, no,  
16 but he may stay there from time to time. I don't know.

17 Q Now, when you contacted him when you were looking  
18 for the \$145,000 was it the Virgil residence that you went to?

19 A No, the address is 6177 Risepine.

20 Q Okay. And then showing you 1153?

21 A That's a front view of the cargo van.

22 Q 1154?

23 A A side view of the cargo van.

24 Q 1155?

25 A A rearview of the cargo van.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q And these were all taken, you said, approximately  
2 two weeks ago?

3 A Yes.

4 Q All right. And do these pictures -- does the truck  
5 look differently in these pictures than it did back in the  
6 fall of 2006?

7 A Yes.

8 Q What's different about it?

9 A It has the labeling on the side and the back door.  
10 That was -- none of that was there back in 2006. I had seen  
11 the van before and it was plain. There were no advertisements  
12 or anything on the van then.

13 Q So you did see the van back then?

14 A Yes, I did.

15 Q Okay.

16 MS. DIGIACOMO: And, Your Honor, I have here what's been  
17 marked for identification as State's Proposed Exhibit 1189,  
18 1189-A through 1189-D. And, Your Honor, 1189 is a -- it's  
19 basically a call log that shows what calls are on the four  
20 disks, which are marked as 1189-A through D. These are the  
21 jail phone calls, some of them that we've been referring to,  
22 and I'd ask that they be admitted.

23 THE COURT: Any objection?

24 MS. DUSTIN: No, Your Honor.

25 THE COURT: They'll be admitted.

1 [State's Exhibit 1189 and 1189-A through 1189-D Admitted]  
2 MS. DIGIACOMO: And at this time I'd ask to begin  
3 publishing 1189-A.  
4 THE COURT: Okay. How many -- we're not going to hear  
5 200. How many are we going to hear?  
6 MS. DIGIACOMO: It is a total of 32.  
7 THE COURT: Okay.  
8 BY MS. DIGIACOMO:  
9 Q And then I'm going to -- Detective, I'm going to  
10 give you State's 1189, so you can state for the record what we  
11 are going to be listening to.  
12 I'm starting with disk one, which is marked as 1189-A.  
13 THE COURT: Well, what's the first call we're going to  
14 hear, and then who's talking, and when did this occur?  
15 THE WITNESS: The first call is from September 24, 2006,  
16 0758 hours. It's a call to Tonya Trevvarthen from Daimon  
17 Monroe.  
18 THE COURT: Okay.  
19 MS. DUSTIN: And, Your Honor?  
20 THE COURT: What?  
21 MS. DUSTIN: Your Honor, just very quickly as I just was  
22 provided with the breakdown sheet --  
23 THE COURT: Hold on just a second.  
24 MS. DIGIACOMO: I can't -- hold on. Let it stop. There  
25 it goes.

1 MS. DUSTIN: There are calls that do not involve or have  
2 my client noted as a party to the conversation.

3 THE COURT: And there's the first three, and the last  
4 one. Now, come up here and explain me to on calls one, two,  
5 three of 32.

6 [Bench Conference Not Transcribed]

7 THE COURT: Okay. The objection's overruled. We're  
8 going to listen to 32, but we're not going to hear 32 today.

9 MS. DIGIACOMO: Okay. Your Honor, for the record, I am  
10 sure we know how to hook up the speakers, so. No, we don't.  
11 Needing the Court's indulgence. Does anyone know how to plug-  
12 in the speaker, because they're not going to be able to hear  
13 it.

14 UNIDENTIFIED SPEAKER: Pin goes in the gray hole.

15 MS. DIGIACOMO: We don't have a gray hole.

16 UNIDENTIFIED SPEAKER: Gray hole in back of the laptop,  
17 or whatever computer you're using.

18 MS. DIGIACOMO: We didn't have a gray hole. Would it be  
19 on this side? No. We have one that -- oh, right there.  
20 Here, we have it looks like a microphone, a headset, and --

21 UNIDENTIFIED SPEAKER: Headset.

22 MS. DIGIACOMO: Headset. Yeah, thank you. That was  
23 right. This is power, positive? Let me turn it on.

24 [Jail Calls Not Transcribed]

25 THE COURT: What's next?



1 THE WITNESS: The next call is September 24, 2006, 0935  
2 hours. Call to Tonya Trevarthen from Daimon Monroe.  
3 [Jail Calls Not Transcribed]  
4 THE COURT: The stuff that we that hear where it says,  
5 this is a call from the Clark County jail, can the inmate hear  
6 that also?  
7 THE WITNESS: Yes.  
8 THE COURT: And it says that it's being recorded, and so  
9 they're aware. Is that right?  
10 THE WITNESS: Yes.  
11 THE COURT: All right. Go ahead. Next?  
12 MS. DIGIACOMO: And direct, just follow up.  
13 BY MS. DIGIACOMO:  
14 Q In fact, all of the jail, or all of the phones in  
15 the jail are marked on it as long as they're being recorded,  
16 they're on there?  
17 A That's correct.  
18 MS. DIGIACOMO: Just a minute.  
19 THE COURT: What's next?  
20 THE WITNESS: The next call is September 24, 2006, 1658  
21 hours. A call to Englebert Clemente from Daimon Monroe.  
22 [Jail Calls Not Transcribed]  
23 THE COURT: What are we going to hear next?  
24 THE WITNESS: September 24, 2006, 2144 hours. A call to  
25 Daimon Monroe from Bryan Ferguson. Daimon Monroe is now out.

1 of jail. At this point, he's bailed out.

2 THE COURT: Go ahead.

3 [Jail Calls Not Transcribed]

4 THE COURT: Okay. That's enough for today. We'll pick  
5 up here tomorrow. Do we have any witnesses other than  
6 Detective Nickell, or --

7 MS. DIGIACOMO: One.

8 THE COURT: One more short one? Okay. So we're doing  
9 well in terms of time. Okay. Don't talk about the case with  
10 each other or anyone else, please. Don't read, watch, or  
11 listen to a report on the case, go to the internet, newspaper,  
12 or radio. Don't form or express an opinion on the case until  
13 it's submitted to you.

14 Mr. Andrati (phonetic), will you just wait one second?

15 UNIDENTIFIED SPEAKER: Sure.

16 THE COURT: I need to chat with you there for just a  
17 second. Everybody else have a good evening. We'll pick up at  
18 9:30 tomorrow. We should be able to start pretty darn close  
19 to 9:30.

20 THE BAILIFF: Please take your badges off and put them on  
21 your clipboard. Put up the --

22 THE COURT: Just leave your stuff there.

23 THE BAILIFF: The notebooks.

24 THE COURT: We're done. 9:30, be ready to roll.

25 THE BAILIFF: Please walk --

1 UNIDENTIFIED SPEAKER: See it there?  
2 THE BAILIFF: Wait for the elevator to get here. Go on.  
3 Yes, all right.  
4 [Jury Out]  
5 THE COURT: No big deal. I just -- we have to do this.  
6 The record should reflect all the other jurors had exited.  
7 Somebody had noticed that you -- that the witness said  
8 Detective Churches apparently acknowledged you or talked to  
9 you outside. I assume that when we asked you if you had  
10 recognized anybody's names, you didn't?  
11 THE WITNESS: No, I mentioned that I knew and --  
12 THE COURT: Oh, you did, you mentioned? And I asked him,  
13 and he said that sometime ago you had been acquaintances  
14 through doing some martial art --  
15 THE WITNESS: Yeah.  
16 THE COURT: -- class together or something. I don't  
17 know, whatever, and he hadn't really run across you in  
18 sometime. Is there anything about that relationship that  
19 would make it difficult for you to be objective?  
20 THE WITNESS: No.  
21 THE COURT: Anybody else? Any questions?  
22 MS. DIGIACOMO: No.  
23 MS. DUSTIN: Are you going to hold testimony with greater  
24 weight than anybody else's?  
25 THE WITNESS: No.

1 MS. DUSTIN: Okay.

2 THE COURT: Okay. Thanks. I think you did mention that,  
3 and but you said you kind of knew him at passing, and it  
4 wasn't any big deal, and, so we just want to always make it  
5 clear. Have a good night, and we'll see you at 9:30 tomorrow.

6 [Outside the Presence of the Jury Jury]

7 Okay. The record should reflect that Mr. Andrati left.  
8 So what do we got? Jail calls, how much? Well, another two  
9 and half, three hours?

10 MS. DIGIACOMO: Yeah, and then we have at 1 o'clock  
11 tomorrow, David McQueen, coming for the last count, By The  
12 Cafe, and then that's it.

13 THE COURT: Okay. Is that the --

14 MS. DIGIACOMO: The meat cutter.

15 THE COURT: -- meat cutter guy?

16 MS. DIGIACOMO: Uh-huh.

17 THE COURT: Yeah, okay. All right. Well, we can -- when  
18 do you want to do the instructions? I mean, if there isn't  
19 too much dispute, but there is this dispute over value, and  
20 it's an interesting argument and we want to get it right, so.  
21 Do you want to do that, you know, before calendar tomorrow, or  
22 you want to do it at lunch tomorrow while the jury's gone,  
23 we'll give them a little extra lunch, and --

24 MS. DUSTIN: Maybe give them a little bit of extra lunch,  
25 because I'm sure they'll be a little fuzzy after the phone

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 calls.

2 THE COURT: Oh, the phone calls wear on you after a  
3 while.

4 MS. DUSTIN: Right.

5 THE COURT: You don't realize that you're straining to  
6 hear every word and so it really is kind of intense. When we  
7 did them with Monroe that day I just was exhausted when I went  
8 home.

9 MS. DIGIACOMO: Well, we take a break in the morning  
10 since it's going to be a lot of phone calls. I know you don't  
11 normally take a morning break.

12 THE COURT: Well, no we'd just go to noon, and, you know,  
13 we'll listen to phone calls. We probably won't be quite done.  
14 We'll break from about 12 to 1:15, so that the jailers and him  
15 can have an hour for lunch. We'll take 15 minutes and right  
16 after we break, and argue the jury instructions. Once we got  
17 them settled, then Charmaine can take that time to do the  
18 coffee. We'll pick up about 1:15 with Detective Nickell.  
19 We'll have everything in by 2 o'clock. I'll read them the  
20 instructions. We'll argue it. They're not going to get it  
21 resolved tomorrow, but you get to the case to them tomorrow,  
22 and then let them go until five or 5:30, and bring them back  
23 Thursday, because they're expecting a Thursday conclusion. I  
24 don't want them going until 10 o'clock on Wednesday, so we'll  
25 just bring them back Thursday. We're doing fine.

1 MS. DIGIACOMO: All right. But with regard to the jury  
2 instruction over value, yesterday you indicated that you  
3 thought it was the statute that ruled. Are you changing your  
4 mind?

5 THE COURT: Well, you know, this isn't any big deal. You  
6 know, I discuss it with you. I discuss it with you. I'm just  
7 trying to tell everybody to get it. There isn't any -- I  
8 think it is the case that it's got to be the value at the  
9 time, and it's got to be some objective standard. I know we  
10 had one witness who said to me it was priceless. I mean, it  
11 was like the MasterCard add. That ain't the standard. The  
12 standard has to be somewhat objective, and, you know, she said  
13 a reasonable argument that if a car gets in a wreck when it's  
14 three years old, you can't say what it cost to -- you can't  
15 prove value by showing to get a new one that a 2009 one it --  
16 so. I'm not sure she's --

17 MS. DIGIACOMO: Well, Your Honor, actually there is a  
18 jury instruction that says it can be by what they paid for it,  
19 the replacement cost --

20 THE COURT: Okay. Well, I had written one that kind of  
21 tried to do all this. That said something like this, value of  
22 property determined by the fair market value of the item and  
23 not the value of the item to a particular individual. Fair  
24 market value of an item is the value the property could be  
25 sold for in the open market if neither the buyer or seller was

1 under any urgent necessity to buy or sell. The value of  
2 property involved shall be deemed to be the highest value  
3 attributable to the property by any reasonable standard if  
4 fair market value is herein defined can not be reasonably  
5 determined fair market value may be determined by reference to  
6 other evidence such as purchasers price or replacement cost.

7 MS. DIGIACOMO: Okay. Well, we obviously are going to  
8 object to that --

9 THE COURT: I understand. That does --

10 MS. DIGIACOMO: -- because fair market value's the old  
11 standard. It's not a new standard.

12 THE COURT: Well, I don't know.

13 MS. DUSTIN: And I don't think that's right, because  
14 we've got stuff that's used, and you can't say, well, how much  
15 did I pay for it, but I've been using it, and then you --

16 MS. DIGIACOMO: Well, I don't think that's fair when  
17 they're the ones that stole it, and have been using it.

18 THE COURT: Well, I know, but we can't -- you can't prove  
19 that. Let's assume they didn't. I mean, if I was --

20 MS. DIGIACOMO: It's kind of hard in this case to assume  
21 they didn't.

22 THE COURT: Well, but let's assume I buy property from a  
23 guy who's, you know, opening his coat behind the bar, and,  
24 now, you want to buy, you know, a hot Rolex, and, you know, if  
25 it's used and I get popped at that point in time, it's the

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 used value. I mean, I'm not sure in the minds of independent  
2 Judges that they are going to give a person brownie points for  
3 having property long enough to -- you know, I'm not sure that  
4 they're not going to say --

5 MS. DIGIACOMO: Well, just --

6 MS. DUSTIN: I --

7 THE COURT: -- well, wait a minute, but the truth is I  
8 have to, whatever the law is, I have to rightly instruct them  
9 on the law and you guys get to argue it, and they can do with  
10 it what they want. And, so I kind of think that all the words  
11 of the statute are in there, such as highest value  
12 attributable, and you can use purchase price or replacement  
13 cost if it can't be determined, but that sort of takes the  
14 Bryant case which was before the statute was changed, but Ms.  
15 Dustin gave me another case on --

16 MS. DIGIACOMO: Well, she didn't give me that one.

17 THE COURT: Well, it's a malicious destruction case, but  
18 it's 2000. Malicious destruction still just has the word  
19 value, so it's like the old theft statutes used to be. It  
20 wasn't changed when the -- these theft statutes were changed,  
21 yet it's 2000, the Supreme Court should know they've been  
22 changed and they refer to the Bryant case as though it's still  
23 good law. I mean, I think the Supreme Court is going to say  
24 that fair market value is the standard, but that you can do --  
25 you know, highest value attributable to the property by any



1 reasonable standard. I think if a guy comes in and says,  
2 well, how much are those baseball cards worth, and he says,  
3 oh, \$2,000 to \$3,000. What that means is you get to take the  
4 \$3,000, but that still has to be the fair market value. You  
5 don't have to take the two, because he gives you a range. You  
6 get the highest value, and if you can't determine fair market  
7 value, they can, in their own minds, get it by reference to  
8 the purchase price, replacement costs, these kinds of things.  
9 So far that's the best I can do, so we're going to argue it at  
10 12:15. I'll just make a decision, and Charmaine will have  
11 from then to do it. We'll argue the case about two, and  
12 that's our schedule.

13 MS. DUSTIN: A couple of things that I just have to lay a  
14 record of, Your Honor, is, one, the -- number one, the  
15 objection that I noted at the bench regarding some of the  
16 testimony coming in by Detective Nickell regarding this long  
17 process that he did going back into all the Anku Crystal  
18 Palace and the Just For Kids Dentistry, as you've noted, and I  
19 repetitively noted, my objection as to that this is just  
20 bringing in, you know, particularized burglary of, and the  
21 burglary tools, and that coupled with some of the testimony  
22 that came in from Ms. Trevarthen is starting to slide us  
23 into -- it's clearly bad act evidence. My other --

24 THE COURT: Well, it said that that's what they're  
25 charged with. In Count I they're charged with conspiring to

1 do this and or to possess stolen property, and the detective  
2 just said, hey, here's my investigation, here's what I think  
3 happened, and it just -- it kind of ties all of this evidence  
4 together. I don't know how that they could do it any other  
5 way.

6 MS. DUSTIN: And then additionally, Your Honor, as to the  
7 third phone call that was played that was between Engle, I  
8 believe --

9 THE COURT: Right.

10 MS. DUSTIN: -- and Daimon Monroe. Daimon Monroe sits  
11 there and says on the phone call talking about the burglary  
12 that he's just been arrested for that we had two to three  
13 pieces from there, and then goes on to talk about how my  
14 client had to have them.

15 MS. DIGIACOMO: No, he says he had to have them. It  
16 doesn't say his client.

17 MS. DUSTIN: Well --

18 MS. DIGIACOMO: It says we or he, which is not a Brewton  
19 problem.

20 MS. DUSTIN: Well, and I think it does get to Brewton  
21 underneath Ducksworth, Your Honor, because he's talking about  
22 what happened that night with my client and him. He's  
23 basically saying that -- he basically makes an admission using  
24 the we plural saying that they had two or three pieces from  
25 the Anku Crystal Palace, and then continues on with the

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 conversation, and says that he just had to have those pieces  
2 and that they were Oriental. I think Ducksworth says, you  
3 know, while we can take out some of them, if it still shows up  
4 and is a Brewton problem that the jury can put two and two  
5 together --

6 THE COURT: I think that's a good point.

7 MS. DUSTIN: -- it's there. It's there, it came in on  
8 this phone call, and --

9 THE COURT: Well, okay. I mean, this isn't the biggest  
10 of things, but I think --

11 MS. DIGIACOMO: No, because the other phone calls --

12 THE COURT: I think she might be right.

13 MS. DIGIACOMO: -- between the two of them they're going  
14 talk about it again, but you said that it's -- I mean, the way  
15 Brewton is it -- I mean, yes, you can infer who he's with, but  
16 that's not the issue. It's he's not implicating --

17 THE COURT: Well, it's not infer who he's with, they were  
18 arrested together that night.

19 MS. DIGIACOMO: Right.

20 MS. DUSTIN: Okay.

21 THE COURT: I mean, if he's saying things that inculcate  
22 Ferguson, that Ferguson can't cross-examine, I think she's got  
23 a good point. I think that phone call is, you know, I --

24 MS. DIGIACOMO: I'm going by your prior ruling, Judge.  
25 And I do know --

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 THE COURT: Well, okay, but in the other call it was  
2 against Monroe, and Monroe isn't the same as Fergason. I just  
3 remember what he said. What I said is you can't put in  
4 Brewton stuff.

5 MS. DUSTIN: Right. You cant --

6 MS. DIGIACOMO: And I took out where he referred  
7 specifically to JB. That was taken out.

8 THE COURT: Well, that's more than that. It's more than  
9 that. The case's will say if you say, look, it was my next  
10 door neighbor Joe Jones, and you take out Joe Jones, and you  
11 just say, it's my next door neighbor, they still know it's Joe  
12 Jones.

13 MS. DIGIACOMO: But there's none of that. There's we and  
14 he. There's not my buddy who I was with that night. There's  
15 not that.

16 THE COURT: I think it'd be hard for them not to infer  
17 that. I think we shouldn't have put that in. I don't think  
18 it's a deal breaker, but I'm going to strike that evidence and  
19 tell them to disregard it.

20 MS. DUSTIN: Okay. And then just --

21 THE COURT: That one phone call. The phone call from  
22 Monroe to Engle, which was the third one.

23 MS. DUSTIN: It was the third call.

24 THE COURT: Yeah, I -- again, you know, I don't think  
25 it's this huge thing. I don't think it's a deal breaker. I

1 don't think that we've let the cat out of the bag. You are  
2 going to hear this other stuff, but I think if I had a  
3 transcript of that, or would have seen it I probably wouldn't  
4 have let that in. I'd let it in on Monroe's case of course,  
5 so she's saying, well, he's the same --

6 MS. DUSTIN: Well, because, yeah, he's the one who's  
7 saying it.

8 THE COURT: Right. She saying this is the same stuff we  
9 had, and I didn't find any problems there. We've eliminated  
10 all of the Brewton problems. I don't think we did. I think  
11 you're right. Again, it's not like they admitted to the  
12 Lindberg kidnapping, and that we can't unring the bell. I'm  
13 going to instruct them not to consider it.

14 MS. DUSTIN: Okay.

15 THE COURT: So your objection, I think, is valid.

16 MS. DIGIACOMO: Are there anymore?

17 THE COURT: Well, I don't know, because --

18 MS. DIGIACOMO: Well, I'm asking Counsel.

19 THE COURT: I can --

20 MS. DIGIACOMO: She knows, because I, you know --

21 THE COURT: Okay. Does she have retracted transcripts of  
22 this stuff?

23 MS. DUSTIN: No, but --

24 MS. DIGIACOMO: She doesn't of these, but she had gone  
25 through all the calls and given me what she thought needed to

1 be taken out.

2 THE COURT: And you took it out?

3 MS. DIGIACOMO: As far as I could read from her notes.

4 It was hard, but yes.

5 MS. DUSTIN: Unfortunately, here's what happened, just  
6 like on the Tonya Trevarthen voluntary statement, my page  
7 numbers were different numbered. Evidently, the phone calls,  
8 it was the same thing, because we were going through -- I was  
9 going through and marking them and highlighting them, and then  
10 we were going through by phone -- I was going through and  
11 having a list made.

12 THE COURT: Okay. Well, here's --

13 MS. DIGIACOMO: I can tell you it was on the report that  
14 I don't --

15 THE COURT: Here's the thing. Here's the thing.

16 MS. DUSTIN: All right.

17 THE COURT: All the rest of them involve Ferguson, so  
18 that's not a problem. Except for the --

19 MS. DIGIACOMO: Except for the ones with Holmes. It  
20 was --

21 THE COURT: -- two to Holmes and the last one.

22 MS. DIGIACOMO: And all that is, is a statement by co-  
23 conspirator. There's no issue referring to, you know --

24 THE COURT: Okay. Then you just --

25 MS. DIGIACOMO: I mean, he refers to his case though.

1 THE COURT: -- double check those, and make sure there  
2 isn't anything that would be a Brewton inculpatory of  
3 Fergason, that Fergason did this, Fergason did that, me and  
4 Fergason did that, or that night we did this, that, or the  
5 other.

6 MS. DUSTIN: And what I'll do is --

7 THE COURT: You'll know what it says. If it's not in  
8 there --

9 MS. DIGIACOMO: No, she's going to do it right now,  
10 because I'm going to have to get these disks remade, and  
11 remarked for tomorrow morning.

12 THE COURT: Why?

13 MS. DIGIACOMO: Because you just struck one of the calls.  
14 It's going to go to the jury at this point, so I have to redo  
15 it.

16 THE COURT: Okay. Well, yeah. We'll have to take call  
17 three out, yeah.

18 MS. DIGIACOMO: So I need to know right now what else,  
19 because I'm going to have to get those --

20 THE COURT: Well, you --

21 MS. DIGIACOMO: -- redone before 9:30 tomorrow morning.

22 THE COURT: Yeah, it's -- is there anything on the  
23 Fergason stuff where he says, you know --

24 MS. DIGIACOMO: Well, I don't think there's --

25 THE COURT: I mean, on the -- on the --

1 MS. DIGIACOMO: -- anything with the Ferguson calls.  
2 THE COURT: -- Holmes.  
3 MS. DIGIACOMO: It's just the Holmes. No, I mean, if she  
4 can just stay and look at it right now, I've got the redacted  
5 transcripts.  
6 MS. DUSTIN: That's fine, because it's -- I think it's  
7 the call of where Holmes --  
8 MS. DIGIACOMO: It's when Holmes gets arrested, and  
9 then --  
10 MS. DUSTIN: Holmes gets arrested and calls Daimon to  
11 say, I got arrested.  
12 THE COURT: Yeah.  
13 MS. DIGIACOMO: Yeah, I mean, on the stolen property  
14 that's charged within this conspiracy.  
15 THE COURT: So they're not talking about anything  
16 specific --  
17 MS. DIGIACOMO: They talk about --  
18 THE COURT: -- that Ferguson did, right?  
19 MS. DIGIACOMO: No, they just talk about the car stop.  
20 Saying, you know, dude, I can't believe the cops are going to  
21 say this. That kind of thing, but, no. I don't know. If she  
22 looks at it --  
23 THE COURT: Well, I don't think that's a problem.  
24 MS. DUSTIN: No, because I think that's coming in through  
25 the conversations --

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 654-2295



1 THE COURT: Okay. Take out number three.

2 MS. DUSTIN: -- between Daimon and my client.

3 THE COURT: Tomorrow morning I'm going to instruct them  
4 that that can't be considered, and I expect them to adhere  
5 that admonition, and we'll go from there. Okay. See you in  
6 the morning. All right. Other than deliberation, you're  
7 going to be done tomorrow.

8 [Proceedings Concluded at 5:14 p.m.]

9

10

11

12

13

14

15

16

17

18

19

20

21

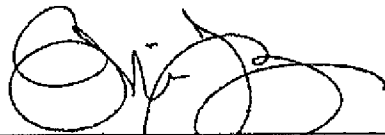
22

23

24

25

1 ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video recording in the above-entitled  
3 case to the best of my ability.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



ERIN LEAH FLYNN, Transcriber



ORIGINAL

1

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

BRYAN FERGASON,

Defendant.

CASE NO. C-228752

DEPT. VII

BEFORE THE HONORABLE STEWART BELL, DISTRICT COURT JUDGE

WEDNESDAY, MAY 28, 2008

REPORTER'S PARTIAL TRANSCRIPT  
TRIAL BY JURY  
DAY 5 - VOLUME 1

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

FILED  
JAN 20 11 22 AM '09  
Clerk of the Court

RECEIVED  
JAN 20 2009  
CLERK OF THE COURT

A/V-TRONICS, INC.  
E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

0508

TABLE OF CONTENTS

Page

May 28, 2008

Trial by Jury

State's Witness(es):

Bradley Nickell..... 6, 50

David McQueen..... 42

Defendant's Witness(es):

None

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

EXHIBITSSTATE'S:Page

Exhibit 75.....	58
Exhibit 77.....	59
Exhibit 350.....	61
Exhibit 352.....	61
Exhibit 415.....	61
Exhibit 419.....	61
Exhibit 422.....	61
Exhibit 424.....	62
Exhibit 427.....	62
Exhibit 430.....	62
Exhibit 433 .....	62
Exhibit 436.....	62
Exhibit 439.....	62
Exhibit 442.....	62
Exhibit 445.....	62
Exhibit 447.....	63
Exhibit 452.....	63
Exhibit 455.....	63
Exhibit 457.....	63

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
 Phoenix (602) 263-0885 • Tucson (520) 403-8024  
 Denver (303) 634-2295

EXHIBITS (Continued)STATE'S:Page

Exhibit 470.....	63
Exhibit 476.....	63
Exhibit 479.....	63
Exhibit 482.....	63
Exhibit 484.....	63
Exhibit 486.....	63
Exhibit 488.....	64

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-7295

1                    WEDNESDAY, MAY 28, 2008 AT 9:24 A.M.

2                    [Jury Out]

3                    THE COURT: Okay. The State of Nevada versus Bryan  
4                    Fergason, Case C228752, Fergason present with Cynthia Dustin,  
5                    Sandra DiGiacomo and Ms. Small for the State.

6                    Okay. There's an issue that came up last night  
7                    about the call number 3, the one from --

8                    MS. DIGIACOMO: Daimon Monroe to Engle.

9                    THE COURT: Daimon Monroe to Engle. You know, it's kind  
10                   of a catch 22 situation. It's hard to rule on it until you  
11                   hear it, and then you hear it and it's already played.

12                   I mean, the good news is, it was almost a  
13                   meaningless conversation and the things that were talked  
14                   about, well I think they technically violate the Bruton Rule,  
15                   are things that I know the Defendant himself is going to talk  
16                   about dozens of times over the next bunch of phone calls. But  
17                   the rules, are the rules, are the rules, and we still need to  
18                   apply them.

19                   So I've given this some more thought and I'm  
20                   convinced I need to strike that, tell the jury not to consider  
21                   it. I didn't see anybody writing any notes during any of  
22                   these phone calls, so I don't think it will indelibly  
23                   impressed on their mind. But that's my position at this  
24                   juncture now. I know you both want to --

25                   MS. DIGIACOMO: And, Your Honor, I just want to make a



1 record. I have a bench memorandum that's I'd like to file.

2 THE COURT: Yeah. I read it. I read it.

3 MS. DIGIACOMO: Okay.

4 THE COURT: I read it.

5 MS. DIGIACOMO: And basically the State's position is,  
6 that telephone call is not a Bruton issue, and the reason  
7 being is, in Bruton it dealt with a confession by one co-  
8 defendant that was played in court during the trial of the  
9 other co-defendant, and --

10 THE COURT: Why isn't that what this is? Why is --

11 MS. DIGIACOMO: Because if I can finish, Your Honor, I'll  
12 be glad to tell you. Because in Bruton there was no way that  
13 that co-defendant's confession was admissible against the  
14 other defendant. Okay.

15 In this case there is. There's a co-conspirator  
16 that's non-hearsay under the rules. And even Bruton in  
17 footnote 3 said:

18 "We emphasize that the hearsay statement inculcating  
19 the petitioner was clearly inadmissible against him  
20 under traditional rules of evidence. There is not  
21 before us therefore any recognized exception to the  
22 hearsay rule insofar as petitioner is concerned, and  
23 we intimate no view whatever that such exceptions  
24 necessarily raise questions under the confrontation  
25 clause."

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 493-8024  
Denver (303) 634-2295

1           You say, I understand your position is Bruton trumps  
2 co-conspirator, however under the reading of Bruton and under  
3 the reading of Crawford the State would disagree. First of  
4 all this isn't a confession to a police officer. There's no -  
5 - nothing testimonial about a call from one Defendant to one  
6 of his buddies. And it does come in under the co-conspirator.

7           So I understand the Court's ruling, but I just want  
8 the record clear --

9           THE COURT: I think --

10          MS. DIGIACOMO: -- because this will be an issue.

11          THE COURT: Think about this: let's assume Munroe gets  
12 on the phone and he talks to Engle and he says, you know, that  
13 damn Ferguson, you know, he's always messing up that's why we  
14 got caught. In fact after the time that he killed that old  
15 man with the axe handle I should have just cut him loose as my  
16 partner.

17          Now they try Ferguson for killing the old man with  
18 the axe handle, do you think that can come in? Even if it's  
19 theoretically in furtherance of their theft conspiracy?

20          MS. DIGIACOMO: Well, no, it had to be in furtherance of  
21 the conspiracy. The conspiracy here is possession of stolen  
22 property. So the axe murder wouldn't be allowed to come in.  
23 That would be another act that's not admissible. It has to be  
24 a statement in furtherance of the conspiracy, and his  
25 statements to Engle are in furtherance.

1           He even talks about, "Oh, they got all your tools?"  
2       "Yeah, man." "Are you going to be able to replace them?"  
3       "Yeah."  
4           THE COURT: That part is admissible. I think the part  
5       that isn't admissible is when he sort of confesses that he and  
6       Ferguson did the Anku Crystal Palace and the Just For Kids  
7       Dentistry, and then that's useable against Ferguson, in the  
8       case where a Count 1 charge with conspiracy to do that and he  
9       can't cross-examine Munroe.  
10       MS. DIGIACOMO: Well --  
11       THE COURT: But I've got your bench memo, it's filed,  
12       you've made your record. I know you're going to argue this --  
13       MS. DIGIACOMO: Well, I took --  
14       THE COURT: -- on appeal, but I think --  
15       MS. DIGIACOMO: Yeah, I know. But just for the record,  
16       the statement between the two gentlemen on the phone is not  
17       testimonial. It's not a proper violation. There's no right  
18       to confrontation violation.  
19       THE COURT: Okay. Ms. Dustin. I understand. I'm still  
20       going to rule --  
21       MS. DIGIACOMO: And also --  
22       THE COURT: -- in your favor, but I understand you have  
23       something to say too.  
24       MS. DIGIACOMO: And also, Judge, you just stated that  
25       part of that conversation could have come in. That was at

1 your ruling last night. You didn't allow me to be able to  
2 redact it.

3 THE COURT: Well --

4 MS. DIGIACOMO: You said strike the whole thing.

5 THE COURT: Okay. Here's the deal: I think it could  
6 have been redacted in a way that would have allowed some of it  
7 to come in, but I'm not going to now, now that we've -- tell  
8 them, well, we're going to play it again for you and we're  
9 only going to play part. I mean, I think all that does is  
10 highlight whatever we took out.

11 It is a meaningless piece of this puzzle. If this  
12 puzzle is 10,000 pieces, this is one piece, and with 9,999  
13 believe me, they're going to be able to figure out the puzzle  
14 whatever way it is. This is going to be irrelevant.

15 Go ahead, Ms. Dustin.

16 MS. DUSTIN: Your Honor, I think just based upon, and I  
17 know Ms. DiGiacomo's position, but I think when the  
18 conversation goes on to talk about, they've been talking about  
19 the Anku Crystal Palace and he basically says that my client  
20 just had to have those items, and that's why they have them.

21 THE COURT: I'm not sure that's what was said. My  
22 hearing was that Munroe was the one that wanted those items.  
23 But I guess you could put either spin on it.

24 MS. DUSTIN: Well anyway, I think that unfortunately that  
25 coupled with Tonya Trevarthen testifying that they'd been

1 doing burglaries in the past. Considering that I brought this  
2 very issue to the Court in my motion to suppress any evidence  
3 regarding other burglaries, and the Court said, well the stuff  
4 regarding Anku Crystal Palace and Just For Kids could come in  
5 they couldn't be bringing in all these other ones for the  
6 burglaries.

7 I think the bell has been unfortunately sufficiently  
8 run. I have to move for mistrial at this particular juncture.  
9 I just don't think any instruction to the jury is going to  
10 cure this. They've heard it and this issue is -- it shifts  
11 the burden too much. We've got possession of stolen property,  
12 and even Your Honor discussed one of the elements that is  
13 whether you know it has been stolen.

14 And if I have somebody sitting up here saying that  
15 they've been doing burglaries, which they're not even charged  
16 with, that suggests and shifts the burden that now I've got to  
17 disprove that. And it shifts the burden to suggest that my  
18 client was doing the burglaries that led to the theft of these  
19 items, so therefore he would know that they're stolen.

20 And I think it's -- the bell's been rung and it  
21 can't be fixed, so I think there's actually no other recourse  
22 but mistrial.

23 THE COURT: Well, I don't think it has been rung much and  
24 I certainly think it can be fixed. And I'm going to instruct  
25 them to take -- to disregard phone call 3 to Engle, and we'll

1 play the rest and we'll take it off the table.

2 Are we ready to go? Ready to go? Bring them in.

3 MS. DIGIACOMO: Do you want me to make the record in  
4 front of the jury?

5 THE COURT: I'll do it.

6 MS. DIGIACOMO: Or do want me to -- well I need to switch  
7 the disks now --

8 THE COURT: I'll just --

9 MS. DIGIACOMO: -- because I have the new list.

10 THE COURT: Yeah. I'll just tell them what happened and  
11 we argued this after-the-fact and it's kind of a catch 22, and  
12 I've done this, and strike it from your mind, strike it from  
13 the thing, and --

14 MS. DIGIACOMO: So then it's going to be the other taken  
15 out as 1189 and 1189a, and these are submitted in its place?

16 THE COURT: You can leave 1189 that's had the list, I'm  
17 assuming.

18 MS. DIGIACOMO: No, because we're going to take off  
19 today.

20 THE COURT: Why don't you put it next in order, then 1189  
21 will be an out, and 1189a will be out, and these two will be  
22 in as the next in order.

23 MS. DIGIACOMO: So E and F.

24 THE COURT: Yeah. Good. Everybody.

25 [Within the Presence of the Jury]

1 THE COURT: Okay. Back on the record in Case number  
2 C228752, State of Nevada versus Bryan Fergason. Let the  
3 record reflect the presence of the Defendant, his counsel,  
4 counsel for the State, all ladies and gentlemen of the jury  
5 back in the box.

6 One little thing, ladies and gentlemen, after you  
7 left there was some argument, an issue raised by Ms. Dustin on  
8 behalf of her client about one of the phone calls. And I  
9 agree that she's right, the third phone call, the one from Mr.  
10 Munroe to Mr. Engle probably is not admissible for the reasons  
11 that we -- keeping the playing field level. But it's kind of  
12 a catch 22. I can't tell until I hear the phone call and so -  
13 - what the law provides is that if that is the case I just  
14 tell you to strike it. If you wrote anything down about it  
15 take it out of there, don't discuss it.

16 In the instructions I'll give you -- tell you that  
17 you, by your oath, are bound to comply with that. So whatever  
18 weight that was set on that phone call is out, everything else  
19 is in. You're still under oath, Detective.

20 DETECTIVE BRADLEY NICKELL, STATE'S WITNESS, PREVIOUSLY SWORN

21 DIRECT EXAMINATION (Continued)

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Ms. DiGiacomo. And what we've done is we've  
24 actually changed the DVD so that we've taken it out, so you'll  
25 have the right to take these back and play them. By the time

1 you get there you may have heard so much of them you never  
2 want to hear them again. But you still have that right, and  
3 it won't be there, so there won't be any accidental playing of  
4 it.

5 Go ahead.

6 MS. DIGIACOMO: All right. And for the record, Your  
7 Honor, 1189 and 1189a that were moved into evidence yesterday  
8 have been withdrawn.

9 THE COURT: Yeah.

10 MS. DIGIACOMO: And in its place we have 1189e, which is  
11 the disk, and 1189f which is the new list.

12 THE COURT: Okay. We just heard the first phone call  
13 between Ferguson and Monroe. So it would be on the second  
14 phone between Ferguson and Monroe --

15 MS. DIGIACOMO: Right. So we're on call number five,  
16 Your Honor.

17 THE COURT: Okay.

18 THE WITNESS: September 24th, 2006, 22:18 hours. Call to  
19 Daimon Monroe from Bryan Ferguson.

20 THE COURT: And this is military time, so that would be  
21 10:00 something at night?

22 THE WITNESS: That's correct.

23 MS. DIGIACOMO: For the record, you just subtract 12,  
24 correct?

25 THE WITNESS: That is correct.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295



1 [5th Audio Tape Played in Courtroom]  
2 THE COURT: Next.  
3 THE WITNESS: The next call is September 25th, 2006,  
4 00:51 hours. A call to Daimon Monroe from Bryan Fergason.  
5 [6th Audio Tape Played in Courtroom]  
6 THE COURT: Next.  
7 THE WITNESS: The next call is September 25th, 2006,  
8 17:54 hours. A call from Daimon Monroe -- I'm sorry, a call  
9 to Daimon Monroe from Bryan Fergason.  
10 [7th Audio Tape Played in Courtroom]  
11 THE COURT: Next.  
12 THE WITNESS: September 25th, 2006, 18:23 hours. A call  
13 to Daimon Monroe from Bryan Fergason.  
14 [8th Audio Tape Played in Courtroom]  
15 THE COURT: Next.  
16 THE WITNESS: September 25th, 2006, 23:07 hours. A call  
17 to Daimon Monroe from Bryan Fergason.  
18 [9th Audio Tape Played in Courtroom]  
19 THE COURT: Next.  
20 THE WITNESS: The next, September 25th, 2006, 23:17  
21 hours. A call to Daimon Monroe from Bryan Fergason.  
22 THE COURT: All right.  
23 [10th Audio Tape Played in Courtroom]  
24 THE COURT: Next.  
25 THE WITNESS: September 26th, 2006, 00:50 hours. A call

1 to Daimon Monroe from Bryan Fergason.

2 MS. DIGIACOMO: And for the record, this is now starting  
3 with 1189b, the second disk.

4 THE COURT: Go ahead.

5 [11th Audio Tape Played in Courtroom]

6 THE COURT: Next.

7 THE WITNESS: September 26th, 2006, 19:26 hours. A call  
8 to Daimon Monroe from Bryan Fergason.

9 [12th Audio Tape Played in Courtroom]

10 THE COURT: Next.

11 THE WITNESS: The next call is September 25th, 2006,  
12 00:51 hours. A call to Daimon Monroe from Bryan Fergason.

13 [13th Audio Tape Played in Courtroom]

14 THE COURT: Has any of these calls from Fergason to  
15 Monroe, were any of them to the 408-2616 cell number, or were  
16 they all over the land line, or is it a mixture?

17 THE WITNESS: It appears that all the calls that are  
18 being presented were made to the house.

19 THE COURT: Okay.

20 MS. DIGIACOMO: If I can just follow-up.

21 BY MS. DIGIACOMO:

22 Q Were there other calls that aren't being presented  
23 that were to that number?

24 A Yes. But let me also add, I'm sorry, there may be a  
25 mixture in here where a phone call is made from the jail to

1 the house, and then Tonya at the house forwards the call to  
2 the cell phone.

3 THE COURT: Okay. Next.

4 MS. DIGIACOMO: I think you're on number 13.

5 THE WITNESS: Thank you. September 26, 2006, 19:37  
6 hours, a call to Daimon Monroe from Bryan Fergason.

7 [13th Audio Tape Played in Courtroom]

8 THE COURT: Next.

9 THE WITNESS: September 26th, 2006, 22:00 hours. A call  
10 to Daimon Monroe from Bryan Fergason.

11 [14th Audio Tape Played in Courtroom]

12 THE COURT: Next.

13 THE WITNESS: September 28th, 2006, 09:30 hours. A call  
14 to Daimon Monroe from Bryan Fergason.

15 [15th Audio Tape Played in Courtroom]

16 THE COURT: Next.

17 THE WITNESS: September 30th, 2006, 14:56 hours. A call  
18 to Daimon Monroe from Bryan Fergason.

19 [16th Audio Tape Played in Courtroom]

20 THE COURT: Next.

21 THE WITNESS: October 1st, 2006, 15:19 hours. A call to  
22 Daimon Monroe from Bryan Fergason.

23 [17th Audio Tape Played in Courtroom]

24 THE COURT: Next.

25 THE WITNESS: October 3rd, 2006, 20:17 hours. A call to

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Daimon Monroe from Bryan Fergason.  
2 [18th Audio Tape Played in Courtroom]  
3 THE COURT: Next.  
4 THE WITNESS: October 7, 2006, 19:35 hours. A call to  
5 Daimon Monroe from Bryan Fergason.  
6 [19th Audio Tape Played in Courtroom]  
7 THE COURT: Next.  
8 THE WITNESS: October 8th, 2006, 22:38 hours. A call to  
9 Daimon Monroe from Bryan Fergason.  
10 MS. DIGIACOMO: Just for the record, now using disk 1189c  
11 [20th Audio Tape Played in Courtroom]  
12 THE COURT: Next.  
13 THE WITNESS: October 11, 2006, 21:11 hours. A call to  
14 Daimon Monroe from Bryan Fergason.  
15 [21st Audio Tape Played in Courtroom]  
16 THE COURT: Next.  
17 THE WITNESS: October --  
18 MS. DIGIACOMO: I'm sorry. If I could interject here, I  
19 realized that there was something I forget ask Detective Julie  
20 Holl called last Friday. And so Defense counsel, instead of  
21 my recalling her we'll stipulate that if Detective Julie Holl  
22 was recalled she would testify that on October 12th, 2006, she  
23 arrested Bobby Holmes, or Robert Holmes for possession of  
24 stolen property regarding property that was taken out of his  
25 house on September 28th, 2006.

1 THE COURT: And he was arrested and taken to the  
2 detention center.

3 MS. DIGIACOMO: Yes.

4 THE COURT: All right. When there's a stipulation, as  
5 you'll see in the instructions later, that you just have to  
6 accept that as a fact. So that's what happened.

7 What's next?

8 THE WITNESS: October 12th, 2006, 23:33 hours. A call to  
9 Daimon Monroe from Bobby Holmes.

10 THE COURT: Okay.

11 [22nd Audio Tape Played in Courtroom]

12 THE COURT: Next.

13 THE WITNESS: October 13th, 2006, 14:52 hours. A call to  
14 Daimon Monroe from Bobby Holmes.

15 [23rd Audio Tape Played in Courtroom]

16 THE COURT: 23 down, 9 to go. Next.

17 THE WITNESS: October 13, 2006, 20:26 hours. A call to  
18 Tonya Trevarthen from Bryan Ferguson.

19 [24th Audio Tape Played in Courtroom]

20 THE COURT: All right. One more and we'll go to lunch.

21 MS. DIGIACOMO: Your Honor, I have to start a new disk.

22 Do you want me to --

23 THE COURT: Well let's just go to lunch now, then.

24 MS. DIGIACOMO: Okay.

25 THE COURT: We've got seven or eight to go, but we've got

1 way the bulk of them in.

2 MS. DIGIACOMO: There's eight more to go.

3 THE COURT: Okay.

4 [Court Admonishes Jury]

5 THE COURT: We have to do some haggling, the lawyers and  
6 myself on the instructions, which we'll be getting to this  
7 afternoon. So we're going to pick up with the trial about  
8 1:15. That'll give you an extra 15 minutes for lunch, because  
9 everybody else, all the staff has to have lunch too.

10 So 1:15 sharp, have a good lunch.

11 [Jury Out]

12 THE COURT: Okay. We'll get this settled and then we'll  
13 go to lunch.

14 MS. DIGIACOMO: Okay.

15 THE COURT: The record shall reflect that the jury has  
16 exited.

17 We've got the packet the State issued, and then I  
18 have some instructions from counsel for the Defendant.

19 MS. DUSTIN: Do you want to start with the State's  
20 packet, Your Honor?

21 THE COURT: Sure. Well the packet I gave you actually is  
22 my packet that I took the State's and took one or two out, and  
23 maybe wrote one or two myself, but basically it's what they  
24 submitted. Which ones do you want to object to, Ms. Dustin?

25 MS. DUSTIN: We didn't get a number of them, but it's --

1 THE COURT: I don't number them to the end, because I've  
2 got to insert --

3 MS. DUSTIN: Right.

4 THE COURT: -- yours in and we have to type them to get  
5 the same font on them --

6 MS. DUSTIN: Sure.

7 THE COURT: -- and then I'll number there, but --

8 MS. DUSTIN: It's the one that starts off: "Any person  
9 who for his own gain, or to prevent rightful owner from again  
10 possessing the property shall by receive." It's the one that  
11 talks about the value of the property.

12 THE COURT: Right.

13 MS. DUSTIN: 2500 or more.

14 THE COURT: Right.

15 MS. DUSTIN: 250 or more.

16 THE COURT: Right.

17 MS. DUSTIN: I'd ask that the full -- that \$250 or less,  
18 "less or included" be added to that.

19 THE COURT: "A person is guilty of possession of stolen  
20 property over \$250."

21 MS. DUSTIN: But the one that --

22 MS. DIGIACOMO: But she's saying if it's less than 250 it  
23 would be a petty larceny misdemeanor.

24 THE COURT: But you're not even asking for that, right?

25 MS. DUSTIN: Oh, Yeah. I am. I'm asking for the third

1 one on --

2 THE COURT: I was going to tell them if it's under 250  
3 that you find him not guilty. Wouldn't you rather have that  
4 than a petty larceny?

5 MS. DUSTIN: I think --

6 THE COURT: It's up to you.

7 MS. DUSTIN: I would ask that the 250 be -- the under 250  
8 be in there.

9 THE COURT: On every verdict count?

10 MS. DUSTIN: Please.

11 THE COURT: All right. So let's see how -- I suppose  
12 they're entitled to do that. I don't know that there's any  
13 that's going to be close, but --

14 MS. DIGIACOMO: Well, no, no. It's a less or included.

15 THE COURT: Right.

16 MS. DIGIACOMO: The way we normally would do it then, the  
17 next line would be, "If the value of the property is less than  
18 250 a person is guilty of possession of stolen property" --

19 THE COURT: Possession of stolen property.

20 MS. DIGIACOMO: -- "no value." And then on all the  
21 verdict forms --

22 THE COURT: Okay.

23 MS. DIGIACOMO: -- you have to add a box, "possession of  
24 stolen property."

25 THE COURT: If the value of the property is less than



1     \$250, a person is guilty of possession of stolen property.  
2           MS. DUSTIN: And I think it's what, possession of stolen  
3     property, no value?  
4           MS. DIGIACOMO: No, it's just -- do it plain. Possession  
5     of stolen property.  
6           MS. DUSTIN: Okay.  
7           THE COURT: Just possession of stolen property, that'll  
8     do it. All right.  
9           MS. DUSTIN: And then --  
10          THE COURT: I'll do that. And then I'll change the  
11     verdict form and put that in on each one.  
12          MS. DUSTIN: Then the very next one is the one that we're  
13     probably going to have to argue back and forth over.  
14          THE COURT: Let's do it right now.  
15          MS. DUSTIN: And that's the one that Your Honor typed up  
16     the --  
17          THE COURT: Well you gave me several.  
18          MS. DUSTIN: I gave -- well I gave --  
19          THE COURT: And I tried to take the concepts of those  
20     several and put it into one instruction, and then, you know,  
21     we went back and forth and Ms. DiGiacomo pointed out the  
22     statute was after the Bryant case, and blah, blah, blah.  
23                 So why don't make your argument and let's get a good  
24     record and we'll kind of go for there.  
25          MS. DIGIACOMO: Do you want me to go first, or do you

1 want Ms. Dustin to go first?

2 THE COURT: I don't care, go ahead.

3 MS. DIGIACOMO: Okay. Your Honor, I have looked at this  
4 and I actually spoke to the person that actually wrote the  
5 Romero versus State opinion. This is the state of the law,  
6 Your Honor. Back in 1997 before the statute was changed, the  
7 theft statute, let me find it --

8 THE COURT: Well, I know that that --

9 MS. DIGIACOMO: But basically what happened, Your Honor -  
10 -

11 THE COURT: -- that statute just had the word "value".

12 MS. DIGIACOMO: No, no. No, what I'm saying is, there  
13 was one statute within all the gambit of that statute and the  
14 large-named statutes, there's one that was changed back in the  
15 '80s that reflected the same language that's in our  
16 instruction. "The value of the property involved shall be  
17 deemed to the highest value attributable to the property by  
18 any reasonable standard."

19 THE COURT: Correct. But at --

20 MS. DIGIACOMO: Now, in --

21 THE COURT: -- that time this one just said "of a value  
22 of".

23 MS. DIGIACOMO: Right. So all the other statutes of  
24 possession of stolen vehicle, possession of stolen property, I  
25 believe the grand larceny, all of those just said "value" and

1 it wasn't define.

2 The Supreme Court then steps in and basically  
3 defines it as fair market value, at that time when you're  
4 caught possessing it or whatnot. In 1997 the legislature went  
5 through all those other statutes that didn't have the highest  
6 attributive value that was defined in the one statute and put  
7 it across the board.

8 THE COURT: Well they didn't get all of them, because  
9 they didn't get, for example, I know that's what they tried to  
10 do, but they didn't get the one on the malicious destruction  
11 of private property.

12 MS. DIGIACOMO: Right, right. But they didn't try on  
13 that one. And that's different, that's a public defend, a  
14 public defense. But I'm talking about within 205 up through  
15 the possession of stolen property charges, that's when the  
16 legislature did go through it.

17 THE COURT: They did.

18 MS. DIGIACOMO: They did not put in the malicious  
19 destruction of private property, which is 206 --

20 THE COURT: Six.

21 MS. DIGIACOMO: -- 130. But throughout 205 --

22 THE COURT: 310.

23 MS. DIGIACOMO: Sorry, 310. Without -- I'm sorry,  
24 throughout 205 chapter they were all changed in 1997. When  
25 the case came out that Ms. Dustin provided you -- well, first

1 of all, Bryant versus State, when it's discussed, that was  
2 specifically relating back to a 1995 crime in the previous  
3 statute where value wasn't defined.

4 THE COURT: It was. And the statute then just said "the  
5 value of". And I might point out at least, so far as you're  
6 concerned, in both the Bryant case and the Romero case, you've  
7 got situations where the value is just right on the line and  
8 arguably replacement value is more, fair market value is less,  
9 unlike, for example, most of the counts here where it isn't  
10 close.

11 MS. DIGIACOMO: Right. But with regard to Romero versus  
12 State, Your Honor, that is specifically referring to a statute  
13 where they have to determine what value is, because it does  
14 not have the language that is in 205.275 that specifically  
15 says: "For purposes of this statute the value of the property  
16 involved shall be deemed to be the highest value attributable  
17 to the property by any reasonable standard."

18 So in the Romero case they're looking at the  
19 malicious destruction of private property and the --

20 THE COURT: They are, I agree.

21 MS. DIGIACOMO: -- public offense in trying to determine  
22 the value there. In no way does it reflect just because they  
23 looked at Bryant, that fair market value still applies to  
24 205.275. And in fact, if you look at one part of the Romero  
25 case, it even says, you know, that arguing what the State was

1 trying to say, that the court said, you know, what's in this  
2 statute has a broader meaning than the language contained in  
3 the larceny statutes at issue in Bryant.

4 Which specifically acknowledges the statutes of  
5 Bryant are possibly different than the statutes now. They  
6 don't address the new language of our statute in the Romero  
7 case.

8 THE COURT: Have you found any case that does address it?

9 MS. DIGIACOMO: I did a search of 205.270 throughout  
10 Nevada case law. There has been no cases on this point,  
11 published opinion, with regard to the value of 205.275 since  
12 the law has changed in 1997. What I would suggest, Your Honor  
13 --

14 THE COURT: Wait. Let me answer the question. Let me  
15 give you an example. Let's say you take something that  
16 depreciates rapidly. I buy my house eight years ago. When I  
17 buy I buy a brand new top of the line washing machine that was  
18 then eight or \$900. I still have that same washing machine.

19 I couldn't get \$75 for it if I tried to sell it on  
20 the open market. Replacement cost today would be about \$1500.  
21 If somebody comes in and steals my washing machine, which is  
22 literally, fair market value, 75. Original cost years ago was  
23 800. What it's going to cost me to replace it is 1500.

24 What the insurance is going to give me is 75. What  
25 is the number that applies if somebody's found in possession

1 of that washing machine?

2 MS. DIGIACOMO: Well, Your Honor, and that's where I  
3 think it's up to the jury. According to what the statute has  
4 been changed, it's the highest value attributable to the  
5 property by any reasonable standard.

6 Now I don't think the fair market value, you know,  
7 in that term comes into play here, but certainly the  
8 principles behind it. If you wanted to add to our instruction  
9 where it says value may be shown as evidence, as to purchase  
10 price, price tag of our replacement cost, certainly you can  
11 throw in there as well that the jury can consider items that  
12 depreciate, items that appreciate.

13 You know, certainly the condition the property is  
14 found in --

15 THE COURT: But wouldn't it be great if it was stolen on  
16 Thursday and the person arrested and charged was arrested and  
17 charged on Friday, the value that the jury would have to  
18 decide would be the value of that item on that Friday, not the  
19 value eight years ago before, when I bought it, correct?

20 MS. DIGIACOMO: Yes. It would be -- but it would be the  
21 value at the time that it was possessed.

22 THE COURT: All right. So --

23 MS. DIGIACOMO: However, I --

24 THE COURT: So what is the standard for the value on  
25 Friday, of the item?

1 MS. DIGIACOMO: It is exactly what the statute says:  
2 "The highest value will be attributed to the property by any  
3 reasonable standard," and it's up the jury to consider all the  
4 factors, consider what evidence came out as to, you know, what  
5 they paid for it, would it be used now, what the condition was  
6 in, and it's up to the jury --

7 THE COURT: Okay.

8 MS. DIGIACOMO: -- to determine that.

9 THE COURT: I don't know that I disagree with you, but  
10 I'm not sure that that's too much different than what she  
11 says. What I was trying to do was put one together that had  
12 all the language of the statute in it, but reflected, "Look,  
13 you're talking about this property on this day, not this  
14 property four years ago today the day it was stolen.

15 And so the way I wrote it was, value of property is  
16 determined by fair market value of the item, not the value of  
17 an item, a value an item may have to a particular individual;  
18 i.e. sentimental value doesn't count. Fair market value is  
19 the property could be sold for in the open market, if neither  
20 the buy nor seller is under any urgent necessity to sell;  
21 that's Bryant.

22 The value of property involved shall be deemed to be  
23 the highest valuable attributed to the property by any  
24 reasonable standard. That's the statute, i.e. if a guy says:  
25 my property, I don't know, somewhere between two and 3,000,

1 under the law technically they would apply the 3,000. And if  
2 market value, as herein defined cannot be reasonably  
3 determined, I mean, it's really hard to find what's the fair  
4 market value of the Maytag washer that's eight years old,  
5 fair market value maybe determined by reference to other  
6 evidence such as purchase price, price tag or replacement  
7 cost; i.e. they can take these into consideration and come to  
8 their own conclusion as to what the value of the property was  
9 on November the 6th.

10 MS. DIGIACOMO: Right. But I think you're putting a  
11 burden on the State that is no longer required after the  
12 statute. You're referring to the Cleveland Place it's  
13 referred to in Bryant, that said basically the value that has  
14 to be shown by the fair market value, however, if the State  
15 shows as to why the fair market value can't be shown, then you  
16 can look to these other resources. However, that's not what  
17 the statute says.

18 THE COURT: Okay. Ms. Dustin?

19 MS. DUSTIN: With all due respect, Your Honor, I think  
20 the statute is not saying you can't use fair market value,  
21 it's using a reasonable standard, and it has to be construed  
22 actually, and it's been historically that it's got to be  
23 construed liberally in favor of the Defendant. And I think  
24 your instruction does that.

25 THE COURT: Well, except that I'm not sure the



1 legislature isn't saying, wait a minute, we're going to  
2 construe this favorably, liberally in favor of the government,  
3 by saying it's the highest value attributed to the property.  
4 I mean if there's these, we're not going to give the thief the  
5 benefit of the doubt.

6 MS. DUSTIN: Right, Your Honor. And --

7 THE COURT: But --

8 MS. DUSTIN: -- so that's why I printed out literally all  
9 the committee minutes from when they changed this --

10 THE COURT: And it didn't say a thing.

11 MS. DUSTIN: -- and it was completely --

12 MS. DIGIACOMO: It didn't say anything.

13 MS. DUSTIN: -- silent on it.

14 THE COURT: It did say that there was, you know, Ben  
15 Graham, or people like that of his elk saying, we're trying to  
16 get these all reconciled. Exactly what Ms. DiGiacomo is  
17 saying.

18 MS. DUSTIN: Right. So unfortunately because it's silent  
19 we can't infer -- I mean, historically it's been told, if we  
20 have to infer something we've got to construe it back towards  
21 the Defendant on construing the statute not towards the State.  
22 And I think that's what you -- you're hitting the happy medium  
23 on here, because there's nothing that's come back and said  
24 fair market value is no longer, you know, a reasonable method  
25 of determining value. And that's --

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 THE COURT: Well --

2 MS. DUSTIN: -- and I think --

3 THE COURT: -- it certainly is the method in those  
4 statutes that just use the word value, such as malicious  
5 destruction of private property.

6 MS. DIGIACOMO: Right. And, Your Honor, then if that's  
7 the case, then, it should be evaluated shown by evidence as to  
8 purchase price, price tag, replacement cost, or fair market  
9 value.

10 THE COURT: I had that written in there.

11 MS. DIGIACOMO: It's not the standard is fair market  
12 value and then you get to the statute to relinquish.

13 THE COURT: Well, I think the standard --

14 MS. DIGIACOMO: Fair market value is --

15 THE COURT: -- is what's it worth on that day, and you  
16 could prove, have an appraiser appraise it, that would be one  
17 way. But if it can't reasonably be determined maybe there's  
18 no market for this kind of thing. Then the jury has to figure  
19 it out and they can do that by reference to other evidence  
20 such as purchase price, price tag, or replacement cost.

21 MS. DIGIACOMO: Right. But there has been no evidence,  
22 because you're doing this at the end, there's been no evidence  
23 and we're relying on the instructions, we just used the --

24 THE COURT: Okay.

25 MS. DIGIACOMO: We've had no evidence that shows, oh, we

1 couldn't show what the fair market value was.

2 THE COURT: Well some of this stuff will be tough.

3 MS. DIGIACOMO: So you're -- but you're hindering us on a  
4 lot of the counts.

5 THE COURT: I understand what you're saying.

6 MS. DUSTIN, you submitted half a dozen different  
7 things, but they're all -- I thought I embodied them all in  
8 the one that I proposed, would you agree that that's sort of  
9 true?

10 MS. DUSTIN: Yes, Your Honor. The only thing that wasn't  
11 in there was the standards that the State, since I think we  
12 all agree that value is a material element to this crime, that  
13 they --

14 THE COURT: The State has to prove each and every element  
15 of the crime --

16 MS. DUSTIN: Beyond a reasonable doubt.

17 THE COURT: -- beyond a reasonable doubt. But I have a  
18 general instruction that says that. So I have --

19 MS. DUSTIN: Well I think I'm entitled to have the jury  
20 be instructed that value must also be proven beyond a  
21 reasonable doubt, because it is a material element. And if  
22 you want to put that --

23 THE COURT: There's a whole bunch of material elements.  
24 And the instruction says every material element must be proved  
25 beyond a reasonable doubt. And there's an instruction that

1 says, you know, the elements include the value of the  
2 property.

3 MS. DIGIACOMO: And obviously, from the jury verdict form  
4 it's obvious that you have to prove beyond a reasonable doubt.

5 THE COURT: Okay. Let me tell you what I think. I think  
6 you're right, Ms. DiGiacomo. I think there is an intent to  
7 change the legislature. I'm not 100 percent sure the Supreme  
8 Court's going to agree with that.

9 If I give the instruction that you want and they  
10 disagree, we're trying this again. If I give the instruction  
11 that I drafted, kind of putting everything together, then I  
12 think the Defense certainly has no gripe in terms of the issue  
13 on appeal. And I don't think that it makes a difference in  
14 the context of this case, because, you know, 90 percent of  
15 these aren't even close to 25. I mean, the furniture --

16 THE COURT: Right, Your Honor --

17 THE COURT: -- the art, the McNeely's, the guitars, I  
18 mean, they're all thousands and tens of thousands.

19 MS. DIGIACOMO: But I don't that instruction is fair to  
20 the State.

21 THE COURT: I understand.

22 MS. DIGIACOMO: I don't. And if you put the statutory  
23 language first and you expand upon fair market value that's  
24 one thing. But you're basically telling him, it's fair market  
25 value, but if the State can't show that, and then you have

1 these other options, and that's what the legislature overruled  
2 with regard to Cleveland and Bryant. And I think --

3 THE COURT: I think you're right.

4 MS. DIGIACOMO: -- the order is wrong.

5 THE COURT: I think you're right. I just don't see any  
6 downside to the State and I see a big downside to the State if  
7 even though I think you're right --

8 MS. DIGIACOMO: We have one shot, Your Honor, so there is  
9 a downside to this.

10 THE COURT: What do you mean you have one shot?

11 MS. DIGIACOMO: Well, if he's acquitted we don't get to  
12 come back again. If the --

13 THE COURT: I understand.

14 MS. DIGIACOMO: -- Supreme Court disagrees with us, then  
15 fine we'll come back and retry it. But I think you are  
16 hindering the State and it's not fair to the State, that  
17 instruction.

18 THE COURT: I know you think that. And I think you're  
19 right on your interpretation. You know, if he gets convicted  
20 on some of these he's going to appeal. He should do a cross-  
21 appeal and the Supreme Court should straighten it out, but  
22 without any cases I'm going to do it that way.

23 All right. You also submitted one --

24 MS. DIGIACOMO: I'm sorry, I don't have that in front of  
25 me. Can you read it again?

1 THE COURT: I'm going to read it to you. "The value of  
2 property is determined by the fair market value of the item,  
3 not the value of an item may have to a particular individual,"  
4 not someone --

5 MS. DIGIACOMO: So you're telling us right now, when they  
6 testify as to their opinion as to what it was worth, that's  
7 out window. That's --

8 THE COURT: No.

9 MS. DIGIACOMO: -- what it's saying; yes, it is.

10 THE COURT: I'm talking about sentimental value to it.  
11 I'll put in sentimental.

12 MS. DIGIACOMO: Well if you put sentimental value in.

13 THE COURT: Sure. "And not the sentimental value an item  
14 may have to a particular individual." You know, this is my  
15 grandma's, that's why it's valuable to me.

16 "Fair market value is the value of the property it  
17 could be sold for on the open market if neither the  
18 buyer nor seller was in an urgent necessity to sell.  
19 The value of the property involved shall be deemed  
20 to be the highest value attributable to the property  
21 by any reasonable standard;"

22 i.e. you know the person can say what he thinks it's worth,  
23 is what I paid.

24 "If fair market value is herein defined cannot be  
25 reasonably be determined fair market value may be

1           determined by you, ladies and gentlemen of the jury,  
2           by reference to other evidence, such as purchase  
3           price, price tag or replacement cost."

4           MS. DIGIACOMO: But when you're saying --

5           THE COURT: In other words use your common sense and come  
6           up with what this property's worth.

7           MS. DIGIACOMO: But what you're interpreting, your  
8           language is, is not the way the jury is going to read it. And  
9           that's why the State has a problem with it. Because you're  
10          saying if fair market value can't be determined then you can  
11          look at this other stuff --

12          THE COURT: That's probably a reasonable --

13          MS. DIGIACOMO: -- well there's been no evidence we can't  
14          determine the fair market value of this certain property.  
15          You're hindering us with that.

16          MS. DUSTIN: Well, I think it's not -- I think it  
17          actually says that it can still be shown by other evidence.

18          MS. DIGIACOMO: Well, yeah. But it says that we have to  
19          meet this burden before we can go to that.

20          THE COURT: I'm listening to you, Ms. DiGiacomo. What if  
21          it says this:

22                 "Property may be determined by the highest of the  
23                 value of the attributable property by any reasonable  
24                 standard. Fair market value may be determined by  
25                 reference to other evidence such as purchase price,

1 price tag or replacement cost."

2 MS. DIGIACOMO: I'm fine.

3 THE COURT: Okay. Nobody's ever going to be fine. But

4 we need the Supreme Court to decide that this will be the case

5 that will decide it, because this wasn't argued last week sort

6 of this way. Can you live with that?

7 MS. DUSTIN: I'll live with it.

8 THE COURT: Okay. That's the one I'm going to give them,

9 and again, they'll need to straighten it out. I think what

10 they're going to do is say that the statute the way it is, as

11 all of us have to give, but I can't predict it.

12 Now, Ms. Dustin, anything else in terms of the

13 original pack that you want to object to?

14 MS. DUSTIN: No, Your Honor. The only other thing that I

15 did present to the Court today, was I did give, and I gave a

16 copy to the State, two cautionary instructions --

17 THE COURT: It's sort of a bad acts' instruction, even

18 though we kind of had had that?

19 MS. DIGIACOMO: But it's --

20 MS. DUSTIN: The second one --

21 MS. DIGIACOMO: It's termed differently than our normal

22 bad acts.

23 MS. DUSTIN: And then the second one I think is

24 confusing, so I'll withdraw that. That's the one you may hear

25 evidence in relation to one defendant, which does not deal



1 with one of the other defendants. But --  
2 THE COURT: Well, I'm willing to give the bad acts'  
3 instruction.  
4 MS. DIGIACOMO: Right.  
5 THE COURT: Is there some particular language --  
6 MS. DIGIACOMO: Right. The way --  
7 THE COURT: -- that gives you some heartburn?  
8 MS. DIGIACOMO: Yeah. The way this is written I do have  
9 a little bit of an issue.  
10 THE COURT: Tell me what it is.  
11 MS. DIGIACOMO: But, Your Honor, I would also ask to  
12 remove the instruction that says: "The fact that a witness  
13 has been convicted of a felony, if such a fact may be  
14 considered by you only for the purpose of determining  
15 credibility of that witness."  
16 THE COURT: Okay.  
17 MS. DIGIACOMO: No one here has testified that they've  
18 been convicted of a felony --  
19 THE COURT: That's true.  
20 MS. DIGIACOMO: -- so we don't need that. The next one  
21 obviously we need with regard to somebody being induced --  
22 THE COURT: Have we had any expert testimony?  
23 MS. DUSTIN: We have not had any expert testimony, so I  
24 think --  
25 MS. DIGIACOMO: Not in this trial, we did in the last

1 one.

2 THE COURT: Okay. I'll take out the expert and I'll take  
3 out the felony. Go ahead. Which other one do you not want?

4 MS. DIGIACOMO: Well, we need the one with regard to the  
5 inducement in exchange for cooperation.

6 THE COURT: Yes, we do.

7 MS. DIGIACOMO: But that's that.

8 MS. DUSTIN: And then just as an over abundance of  
9 caution. I just want to make --

10 THE COURT: I'm going to take out the name. I'm just  
11 going to -- "you may hear evidence" -- "you may have".

12 MS. DIGIACOMO: Well, Your Honor, if I could read you  
13 what the stock one says.

14 THE COURT: What's it say?

15 MS. DIGIACOMO: It says:

16 "Evidence that the Defendant committed offenses other  
17 than that for which he was on trial, if believed was  
18 not received and may not be considered by you to  
19 prove that he is a person of bad character, or to  
20 prove that he has a disposition to commit crimes,  
21 such evidence was received and may be only considered  
22 by you for the limited purpose of proving the  
23 Defendant's,"

24 you know, blame, here we acknowledge that the property was  
25 stolen.

1           And then it says, the last sentence says: "If you  
2 must weigh this evidence in the same manner as you do all of  
3 their evidence like this."  
4           THE COURT: Any problem with that language?  
5           MS. DUSTIN: No. I mean, I just --  
6           THE COURT: Can you print it out?  
7           MS. DIGIACOMO: I'll email it to Charmane.  
8           THE COURT: All right. Now here's --  
9           MS. DUSTIN: And just because I want it -- I've been  
10 flipping through here and maybe I'm just blind, but I will  
11 say, I just want to make sure that when we get to the  
12 possession of stolen property in closing argument, that I'm  
13 not going to be drawing an objection for saying the State has  
14 to prove the material elements of possession of the stolen  
15 property, which are blank, blank, and blank, beyond a  
16 reasonable doubt.  
17           THE COURT: You certainly can say that.  
18           MS. DIGIACOMO: That's our burden.  
19           MS. DUSTIN: Okay.  
20           THE COURT: Yes, you do.  
21           MS. DIGIACOMO: The material elements.  
22           THE COURT: One of the elements is he knew it was stolen.  
23 One of the elements is value. You know, get this value on  
24 this, and he was on vacation, and blah, blah, blah. I know  
25 where that's going to go.

1           Okay. Here's the order we'll be in. Number 1  
2 obviously, 2 or 3 is the indictment. It's --  
3           MS. DIGIACOMO: Well, Your Honor, you're going to be  
4 adding some. Maybe can Charmane just number them?  
5           THE COURT: I'm going to tell you so you can -- yes, she  
6 will number them. But do you want to --  
7           MS. DIGIACOMO: I just want a new copy.  
8           MS. DUSTIN: Yeah, we're going to --  
9           THE COURT: We'll give you a new copy of it.  
10          MS. DUSTIN: Yeah. And the only reason why that becomes  
11 an issue, is because when we have to do this on direct appeal,  
12 I have to -- we have to actually have the formulated type and  
13 --  
14          THE COURT: All right. I'll give it to you. Okay. all  
15 right, I'm going to change the instruction on value to add the  
16 under 250. I'm going to put in the instruction we sort of  
17 haggled out on value, and I'm going to stick the bad acts'  
18 instruction after, whenever there's slight evidence that a  
19 conspiracy exists. And you would like the instruction on the,  
20 "he doesn't have to testify," correct?  
21          MS. DUSTIN: That's correct, Your Honor.  
22          THE COURT: Okay. All right. With those in mind any  
23 other objections? Any objections to the verdict form that we  
24 have, if I add on each one of Counts 2 through to the end, the  
25 misdemeanor. I won't use the word misdemeanor, but just

1 possession of stolen property.

2 MS. DIGIACOMO: Again, it's less or included.

3 THE COURT: Okay. All right. See you at 1:15, I'll have  
4 it already.

5 [Recess]

6 [Within the Presence of the Jury]

7 THE COURT: Okay. Back on the record in Case number  
8 C228752, State of Nevada versus Bryan Fergason. Let the  
9 record reflect the presence of Mr. Fergason, Ms. Dustin, Ms.  
10 DiGiacomo, Ms. Small, ladies and gentlemen of the jury back in  
11 the box.

12 It's my understanding you have the detective, but  
13 you have one short witness that has to be someplace else, so -  
14 -

15 MS. SMALL: Yes, Your Honor.

16 THE COURT: All right. We'll just hold the detective in  
17 abeyance for a few minutes, bring that witness in and then  
18 we'll come back and --

19 MS. SMALL: Thank you, Your Honor. David McQueen.

20 [Pause]

21 THE COURT: Which count does this relate to?

22 MS. SMALL: I'm sorry, Your Honor, Count 19.

23 THE CLERK: Please remain standing, raise your right  
24 hand.

25 DAVID MCQUEEN, STATE'S WITNESS, SWORN

1 THE COURT: Please state your name and spell your name  
2 for the court recorder.

3 THE WITNESS: David McQueen, D-a-v-i-d, M-c-Q-u-e-e-n.

4 THE COURT: Go ahead.

5 MS. SMALL: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. SMALL:

8 Q Mr. McQueen, what do you do for a living, sir?

9 A I'm in the wholesale business, the food business.

10 Q Okay. And what exactly do you do in the wholesale  
11 business?

12 A I sell Tequila.

13 Q Okay. And primarily that's what you sell?

14 THE COURT: Do you need any help?

15 THE WITNESS: Always. Yes.

16 BY MS. SMALL:

17 Q I'm going to draw your attention then back to March  
18 of 2004. Were you in that same business, or were you in a  
19 different business at that time?

20 A A different business, the food business.

21 Q And what was the name of this business?

22 A Classic Café.

23 Q Where was that located?

24 A 3199 Warm Springs Road.

25 Q Okay. Specifically on March 28th of 2004 did

1 something happen at your business?

2 A We had a break-in over the weekend.

3 Q You did. And did you come in that -- you said "over  
4 the weekend." Did you come in on a Monday morning then to the  
5 --

6 A No. We were down there on the weekend just to clean  
7 and do some things and we noticed everything amiss.

8 Q Okay. What did you notice?

9 A All the sodas were gone in the exterior part of the  
10 store. There was trash cans missing. And then we went in the  
11 back room and there was utensils and a slicer, and some  
12 utility trays were missing.

13 Q Okay. Did you call the police?

14 A Yes.

15 Q And did they come out?

16 A Yes.

17 Q Did you get a report?

18 A Uh-huh.

19 Q Okay. And did you, to the best of your ability at  
20 that time, list the items that you believe were missing from  
21 your store at that point?

22 A Yeah. We started developing a list before the  
23 police got there.

24 Q Okay. Had you given anybody permission to go in  
25 your store and take, you know, the meat slicer, the utensils,

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 and all those other things out of your store?

2 A No.

3 Q Okay. Did you get a call around November 6 of 2006

4 that gave you information that possibly some of the stuff that

5 had been taken from that burglary had been recovered?

6 A Yeah. They got the serial number from the police

7 report and they called me to come and pick it up.

8 Q Okay. What serial number off of what?

9 A Oh, one of the meat slicer.

10 Q Okay. So the meat slicer had a serial number?

11 A Correct.

12 Q And that was something that you kept in the ordinary

13 course of your business?

14 A Not necessarily, but it was brand new and we still

15 had the book, so we --

16 Q Yes. So you had --

17 A -- had the serial number.

18 Q -- the serial number and you were able to give that

19 information to the police?

20 A Right.

21 Q Okay. So in November 6, 2006 you get this phone

22 call. What did you do in response to the phone call?

23 A Talk to a detective. He told me to come down to a

24 street in northern part of Las Vegas and come to claim my

25 slicer.



1 Q Was that 31504 Cutler?  
2 A Cutler, yes.  
3 Q And was it a house that you went to?  
4 A Uh-huh, a residential house.  
5 Q All right. And when you got to the house what did  
6 you see?  
7 A There was all kinds of items out there; televisions,  
8 guitars, amps, paintings. My slicer wasn't out there. They  
9 went in the garage and got it.  
10 Q Okay. And the slicer that you saw at that location,  
11 did the serial number on that slicer match the serial number  
12 on the book that you had gotten, because you had just  
13 purchased that slicer?  
14 A I had actually taken a police report with me, asking  
15 me to bring that and they matched up.  
16 Q They matched up.  
17 MS. SMALL: I'm drawing the Court's attention to State's,  
18 which believe has already been entered into evidence; 327 to  
19 328.  
20 BY MS. SMALL:  
21 Q I'm going to show you State's 327. When you got out  
22 there and you retrieved the slicer, the meat slicer, tell us  
23 what we're looking at there?  
24 A That is the meat slicer.  
25 Q Okay. What kind of a meat slicer is it? Is it like

1 a commercial or --

2 A Yes. It's a commercial grade. I can't remember if  
3 it's a Globe or a Chef brand, or something like that. It  
4 slices ten pounds of meat at a time, so it's pretty --

5 Q So it's used for -- would it be accurate to say it's  
6 used for large pieces of meat to slice --

7 A Correct, meat and cheeses, yes.

8 Q That's something that you used in your business at  
9 that time?

10 A Correct. We made sandwiches.

11 Q So did you purchase that particular item for the  
12 store itself?

13 A Yes.

14 Q So the plan was not to resell that item; would that  
15 be correct?

16 A That would be correct, yes.

17 Q Okay. And what did -- you said it was brand new  
18 when you bought it. What did you pay for it?

19 A It was around \$1200.

20 Q Okay. And this was in 2004 that the burglary took  
21 place, correct?

22 A Correct.

23 Q Okay. And then you got it back in 2006?

24 A That's correct.

25 Q Was it still valuable to you; could you still use it

1 at your store?

2 A If we still had the store, yes.

3 Q Yes.

4 A Yeah, it's --

5 Q At that time when you retrieved it you no longer had  
6 that store?

7 A That's correct.

8 Q Do you still have that meat slicer?

9 A Yes, I do.

10 Q Okay. And I'm going to show you State's 328. If  
11 you can tell us what we're look at in that picture?

12 A That's me in the driveway of cutler, holding the  
13 slicer.

14 Q Okay. If you were still in the same business and  
15 you were going to go out and purchase a comparable meat  
16 slicer, do you know what the approximate value would be if you  
17 had to purchase a new one?

18 A I would say that much or a little bit more. We  
19 bought that in November of '03, so it wasn't that used.

20 Q Okay. And so you would, based on your experience in  
21 the food business, you would say it would be about \$1200?

22 A New. If I had to buy a used one it would probably  
23 be about \$900.

24 Q About \$900?

25 A Yeah.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 MS. SMALL: Thank you. Pass the witness.

2 THE COURT: Questions.

3 MS. DUSTIN: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MS. DUSTIN:

6 Q You said that back when this occurred you were the  
7 person who spoke with the police to help them fill out the  
8 crime report?

9 A Actually, no. It was the manager, Michelle Simpson  
10 that helped fill out the report, and I was writing down what  
11 was missing.

12 Q Okay. But were you present when they were talking  
13 to her, and when the officers were getting information for the  
14 crime report, back when your business got broken into in 2004?

15 A Yes.

16 Q Okay. And were you the one that provided the  
17 information to the officers as to the serial number and the  
18 value of this meat slicer?

19 A I believe so, yes.

20 Q Okay. So if I looked at an incident report and  
21 didn't see a serial number, that would be incorrect?

22 A No. I believe there was a serial number on it.

23 Q Okay. And you said that you went out to the Cutler  
24 residence with a copy of this incident report?

25 A That's correct.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 Q Do you remember what that looked like?

2 A It was a yellow sheet of paper. It was second or  
3 third generation copy.

4 Q Okay. Was it typewritten, or was it handwritten?

5 A It was handwritten. Okay.

6 Q And you didn't -- you never got a typewritten one  
7 later on that just --

8 A Not to my knowledge.

9 Q -- kind of summarized? Okay. And then just going  
10 back to the time that you gave the information to the police  
11 officers, you didn't tell them that the meat slicer was only  
12 roughly about \$780?

13 A Somebody could have given him that information. I'm  
14 the one who purchased it, so I knew what it cost.

15 MS. DUSTIN: Nothing further.

16 THE COURT: Anything else?

17 MS. SMALL: Nothing, Your Honor.

18 THE COURT: Thanks, Mr. McQueen, you're excused.

19 THE WITNESS: Thank you.

20 THE COURT: I appreciate your time.

21 Recall Nickell?

22 MS. DIGIACOMO: Yes, Your Honor.

23 THE COURT: Detective Nickell, you're still under  
24 oath.

25 THE WITNESS: Thank you, Your Honor.

1 DETECTIVE BRADLEY NICKELL, STATE'S WITNESS, PREVIOUSLY SWORN

2 DIRECT EXAMINATION (continued)

3 THE COURT: We were on number 25, were we not?

4 MS. DIGIACOMO: Right. And we are now the last disk,  
5 which is 1189d, as in dog.

6 THE COURT: What are we going to hear, Detective Nickell?

7 THE WITNESS: October 13th, 2006, 20:37 hours. A call to  
8 Tonya Trevarthen from Bryan Fergason.

9 THE COURT: Thank you. That's the initial call, in a  
10 three-way's outlet, like the last one?

11 THE WITNESS: Yes.

12 [25th Audio Tape Played in Courtroom]

13 THE COURT: Next.

14 THE WITNESS: October 16, 2006, 22:01 hours. Call to  
15 Tonya Trevarthen from Bryan Fergason.

16 [26th Audio Tape Played in Courtroom]

17 THE COURT: Next.

18 THE WITNESS: Next is October 17, 2006, 21:08 hours.  
19 Call to Daimon Monroe from Bryan Fergason.

20 [27th Audio Tape Played in Courtroom]

21 THE COURT: Next.

22 THE WITNESS: October 18, 2006, 19:40 hours. Call to  
23 Tonya Trevarthen from Bryan Fergason.

24 [28th Audio Tape Played in Courtroom]

25 THE COURT: Next.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0888 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 THE WITNESS: October 19th, 2006, 20:17 hours. A call to  
2 Daimon Monroe from Bryan Fergason.

3 [29th Audio Tape Played in Courtroom]

4 THE COURT: Next.

5 THE WITNESS: October 22nd, 2006, 21:13 hours. A call to  
6 Daimon Monroe from Bryan Fergason.

7 THE COURT: If we're really liking this, can we have the  
8 other 200?

9 THE WITNESS: I saved the best two for last.

10 [30th Audio Tape Played in Courtroom]

11 THE COURT: Next.

12 THE WITNESS: October 23rd, 2006, 21:33 hours. A call to  
13 Daimon Monroe from Bryan Fergason.

14 [31st Audio Tape Played in Courtroom]

15 THE COURT: We've got one more, is that right?

16 THE WITNESS: Yes, sir. November 6, 2006, 18:59 hours.

17 A call to Bobby Holmes from Daimon Monroe.

18 [32nd Audio Tape Played in Courtroom]

19 THE COURT: One of the jurors had a question. They  
20 wanted to know if you did any checking to see if Mr. Fergason  
21 had a regular job, or any apparent source of legitimate string  
22 of income?

23 THE WITNESS: There was no extensive work for me to do in  
24 checking to find out if he had a job. I mean, no, would be  
25 the basic answer to that question. But from my extensive work

1 on the phone calls you're seeing only a fraction of the phone  
2 calls here. There was never any mention of any legitimate  
3 sources of income for these people. Except for when I could  
4 tell that they were talking for the phones, trying to create  
5 information, talking pressure washing. Which actually I would  
6 later learn was -- was a code word for committing burglaries.

7 THE COURT: Go ahead.

8 MS. DIGIACOMO: Thank you.

9 BY MS. DIGIACOMO:

10 Q Well, when the search warrants were executed at Mr.  
11 Fergason's apartment at Pirates Cove, as well as the storage  
12 units in his name, as well as the car that was parked at the  
13 Cutler residence, if there had been paystubs or any other  
14 information such as that in Mr. Fergason's name, that would  
15 have been impounded wouldn't it?

16 A Yes.

17 Q Okay. Now on the jail calls that we listened to,  
18 you would say Bryan Fergason called Tonya Trevarthen at home  
19 and she would then do a three-way. On all of those calls who  
20 was it that was actually a three-way, and speaking on those  
21 calls?

22 A That was Daimon Monroe.

23 Q Now was any investigation done with regard to who  
24 Engle was?

25 A Yes.



1 Q Was that Englebert Clemente?  
2 A Yes, it is.  
3 Q Did you ever find out where he lived or whether or  
4 not he had any storage units?  
5 A Yes.  
6 Q Do you recall where the -- what you found out?  
7 A We found out where he lived. And we found out that  
8 there was a storage unit rented in his sister's name that she  
9 had rented for him and his mother.  
10 Q When did you get that information?  
11 A The approximate date would be within a week or so  
12 after the search warrants were served.  
13 Q All right. So when you served these initial search  
14 warrants you did not have any information regarding Mr.  
15 Clemente?  
16 A I knew who he was. I didn't do a lot of extensive  
17 research into his background, because there was such little  
18 amount of information coming through the phones about him. It  
19 seemed like maybe he was not somebody that was real big in  
20 this organization of people.  
21 Q Now when -- okay, but you did find out that he had a  
22 storage space rented in his sister's name?  
23 A Yes.  
24 Q Was that 1399 North Rainbow, Unit A-257?  
25 A That's correct.

1 Q All right. Was the search warrant executed there on  
2 November 9, 2008?

3 A Yes.

4 Q Was anything taken from that storage unit?

5 A No.

6 Q Do you know why not?

7 A When we served that search warrant everything in the  
8 -- in the storage unit appeared to be old items that were not  
9 of high dollar value. It didn't appear to be the same kind of  
10 stuff that we were finding at the other locations.

11 Q Okay. And just with regard to Tonya Trevarthen and  
12 the statement you took from her, do you recall the first time  
13 that you took a statement, the exact date?

14 A The first date I believe it would have been November  
15 27th of 2006.

16 Q And that would be the Monday after the Thanksgiving?

17 A Correct.

18 Q And when was the second statement that you took from  
19 her?

20 A The second statement I took was in January of 2007.

21 Q Do you recall the exact date?

22 A Off the top of my head I do not.

23 Q Do you have anything in front of you that you can  
24 refer to?

25 A Yes. My notes have that on there.

1 Q Okay. If you could just look at your notes and  
2 refresh your recollection as to the exact dates that you took  
3 both statements from Ms. Trevarthen?

4 A The second date was January 4th of 2007.

5 Q And was the first day confirmed --

6 A Yes.

7 Q -- November 27th --

8 A November 27th --

9 Q -- 2006?

10 A -- 2006.

11 Q Okay. Now Detective, after the victims were found,  
12 at some point with regard to the victims that didn't have  
13 their property released, did you do evidence views?

14 A Yes.

15 Q All right. Can you explain just briefly how these  
16 evidence views were conducted?

17 A Victims that we had already identified were asked to  
18 come down to the -- to the Metro evidence vault so that they  
19 could view these pieces of property in person. Many of the  
20 items of property that they had seen they'd only seen by  
21 photograph, they never actually got to see the -- the item  
22 itself. And we want it to be as conclusive as possible for  
23 these people to see these things and say, yeah, that's mine, I  
24 remember putting that mark on there, or I remember any number  
25 of different ways that they could recognize the item as

A/V-TRONICS, INC.

E-Reporting and E-Transcription  
Phoenix (602) 263-0888 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 belonging to them.

2 Q When these evidence views were done did you do  
3 anything to document what happened to the views?

4 A Yes.

5 Q And what did you do?

6 A I completed quite a lengthy officer's report, and I  
7 took photographs of each item that was conclusively identified  
8 by the owner, and took a photograph of the owner with the  
9 items at the same time.

10 Q Okay. When you took these photographs did you do  
11 anything on the photographs so that you knew who had viewed  
12 it, or what person it went to?

13 A Yes.

14 Q Okay. What did you do?

15 A Basically what I did is I applied a digital tag to  
16 each photograph, marking uniquely, the photograph, in sequence  
17 of the order in which the individual saw the item, and whether  
18 or not, you know, obviously, if it's got a tag on it, it means  
19 they positively identified the item as belonging to them.

20 Q Okay. And I'm showing you State's Exhibit 74. Do  
21 you see the tag that you're referring to?

22 A Yes.

23 Q All right. And where is that?

24 A Down here in the bottom corner.

25 Q Okay. And this tag that we're looking at, what does

1 it say?

2 A LBI1.

3 Q Now what does that mean?

4 A Land Baron Investments, and it was the first

5 photograph I took for that view.

6 Q Okay. So the next in line would be LBI2?

7 A That's correct.

8 Q I'm now showing you State's proposed Exhibit number

9 75, do you recognize this?

10 A Yes, I do.

11 Q What is that?

12 A It's LBI2, and it's a photograph of the evidence tag

13 which is attached to the item depicted in the State's exhibit

14 that you have there in your hand.

15 Q 74?

16 A Correct.

17 Q Okay. So is it fair to say after you would

18 photograph a piece of property you would then photograph the

19 corresponding evidence tag that went with it?

20 A That's correct.

21 Q Okay. And does State's proposed Exhibit 75 fairly

22 and accurately depict the evidence tag that went with the

23 picture that's depicted in State's Exhibit 74, with the tag of

24 LBI1?

25 A Yes, it does.

1 MS. DIGIACOMO: Your Honor, I move for admission of  
2 State's proposed Exhibit 75.  
3 THE COURT: Any objection?  
4 MS. DUSTIN: No objection.  
5 THE COURT: Admitted.  
6 [State's Exhibit 75 Admitted]  
7 BY MS. DIGIACOMO:  
8 Q I'm now showing you States proposed Exhibit number  
9 77; do you recognize that?  
10 A Yes.  
11 Q Okay. And how do you recognize it?  
12 A It has the tag on there that I placed. It's an  
13 evidence tag that was -- that I photographed for the same view  
14 with Land Baron Investments.  
15 Q All right. And does this evidence tag correspond  
16 with the photograph that's already been admitted in State's  
17 Exhibit 76?  
18 A Yes, it does.  
19 Q Okay. And actually State's Exhibit 76 has LBI3, and  
20 State's proposed Exhibit 77 has LBI4?  
21 A Correct.  
22 Q So that's how you know it goes with this one?  
23 A Because they're in sequence.  
24 MS. DIGIACOMO: Okay. Your Honor, I would --  
25

1 BY MS. DIGIACOMO:

2 Q And so State's proposed Exhibit 77, that fairly and  
3 accurately depicts the evidence tag that goes with the picture  
4 that's shown in State's Exhibit 76?

5 A Correct.

6 MS. DIGIACOMO: I'd move for admission of State's  
7 proposed Exhibit 77, Your Honor.

8 MS. DUSTIN: No objection.

9 THE COURT: Admitted.

10 [State's Exhibit 77 Admitted]

11 BY MS. DIGIACOMO:

12 Q And is it fair to say that the way you did what we  
13 looked at for Land Baron Investments, you did for all the  
14 evidence used?

15 A That is correct.

16 Q With the same tags?

17 A Exactly.

18 Q All right. And --

19 A Well, with a similar tag that has the initials that  
20 I assigned that particular entity that was making the view.

21 Q Okay. Now I'm showing you State's Exhibit 345 that  
22 has been admitted. The tag on this, what does it say?

23 A DVDU1.

24 Q All right. And so this would correspond with?

25 A DVD Unlimited.

1 Q Okay. I'm showing you State's proposed Exhibit 347.  
2 What are we looking at there?

3 A This is a photograph of the evidence label, versus a  
4 tag of labels placed on a large evidence container, either a  
5 bag or a box. This is the evidence label that would  
6 correspond with the item that you have there in your hand.

7 Q And you're referring to State's Exhibit 345, that's  
8 already been admitted?

9 A Yes.

10 Q Okay.

11 A That's correct.

12 Q And so State's 347 fairly and accurately depicts the  
13 evidence label that goes with the item depicted in 345?

14 A That is correct.

15 MS. DIGIACOMO: Okay. Your Honor, I move for admission  
16 of State's Exhibit 347.

17 THE COURT: Objection?

18 MS. DUSTIN: No, objection.

19 THE COURT: If she goes through all of these, is it going  
20 to be the same?

21 THE WITNESS: Yes, they will.

22 THE COURT: This is what I did. This is the number. The  
23 label is the next number and you've looked at them and they're  
24 all good?

25 THE WITNESS: Precisely.



1 THE COURT: Are you going to have any objection to any of  
2 these?

3 MS. DUSTIN: Only two exhibits, 19 through 31, and we  
4 would need to approach regarding those.

5 THE COURT: They why don't you --

6 MS. DIGIACOMO: I haven't gotten to those yet.

7 THE COURT: Okay. Well, go through the numbers that she  
8 doesn't object to and we'll admit them.

9 MS. DIGIACOMO: All right, Your Honor. I would move for  
10 admission of State's proposed Exhibit 350.

11 THE COURT: Admitted.

12 [State's Exhibit 350 Admitted]

13 MS. DIGIACOMO: 352.

14 THE COURT: Admitted.

15 [State's Exhibit 352 Admitted]

16 MS. DIGIACOMO: 415.

17 THE COURT: Admitted.

18 [State's Exhibit 415 Admitted]

19 MS. DIGIACOMO: 419.

20 THE COURT: Admitted.

21 [State's Exhibit 419 Admitted]

22 MS. DIGIACOMO: 422.

23 THE COURT: Admitted.

24 [State's Exhibit 422 Admitted]

25 MS. DIGIACOMO: 424.

1 THE COURT: Admitted.  
2 [State's Exhibit 424 Admitted]  
3 MS. DIGIACOMO: 427  
4 THE COURT: Admitted.  
5 [State's Exhibit 427 Admitted]  
6 MS. DIGIACOMO: 430.  
7 THE COURT: Admitted.  
8 [State's Exhibit 430 Admitted]  
9 MS. DIGIACOMO: 433.  
10 THE COURT: Admitted.  
11 [State's Exhibit 433 Admitted]  
12 MS. DIGIACOMO: 436.  
13 THE COURT: Admitted.  
14 [State's Exhibit 436 Admitted]  
15 MS. DIGIACOMO: 439.  
16 THE COURT: Admitted.  
17 [State's Exhibit 439 Admitted]  
18 MS. DIGIACOMO: 442.  
19 THE COURT: Admitted.  
20 [State's Exhibit 442 Admitted]  
21 MS. DIGIACOMO: 445.  
22 THE COURT: Admitted.  
23 [State's Exhibit 445 Admitted]  
24 MS. DIGIACOMO: 447.  
25 THE COURT: Admitted.

1 [State's Exhibit 447 Admitted]  
2 MS. DIGIACOMO: 452.  
3 THE COURT: Admitted.  
4 [State's Exhibit 452 Admitted]  
5 MS. DIGIACOMO: 455.  
6 THE COURT: Admitted.  
7 [State's Exhibit 455 Admitted]  
8 MS. DIGIACOMO: And 457.  
9 THE COURT: Admitted.  
10 [State's Exhibit 457 Admitted]  
11 MS. DIGIACOMO: 472.  
12 THE COURT: Admitted.  
13 MS. DIGIACOMO: Oh, I'm sorry, 470.  
14 THE COURT: Admitted.  
15 [State's Exhibit 470 Admitted]  
16 MS. DIGIACOMO: 476.  
17 THE COURT: Admitted.  
18 [State's Exhibit 476 Admitted]  
19 MS. DIGIACOMO: 479.  
20 THE COURT: Admitted.  
21 [State's Exhibit 479 Admitted]  
22 MS. DIGIACOMO: 482.  
23 THE COURT: Admitted.  
24 [State's Exhibit 482 Admitted]  
25 MS. DIGIACOMO: 484.

1 THE COURT: Admitted.  
2 [State's Exhibit 484 Admitted]  
3 MS. DIGIACOMO: 486.  
4 THE COURT: Admitted.  
5 [State's Exhibit 486 Admitted]  
6 MS. DIGIACOMO: 488.  
7 THE COURT: Admitted.  
8 [State's Exhibit 488 Admitted]  
9 THE COURT: And you were watching those as we went  
10 through, Detective, and each one of those was just the tag  
11 that corresponded with the picture you took?  
12 THE WITNESS: Yes, Your Honor.  
13 THE COURT: Okay.  
14 BY MS. DIGIACOMO:  
15 Q Detective, I'm going to show you what's been marked  
16 at State's proposed Exhibits 19 through 31. If you could  
17 please flip through these and let me know if you recognize  
18 them.  
19 MS. DUSTIN: And these are the ones that I would have  
20 objection.  
21 [Bench Conference Not Transcribed]  
22 THE COURT: Okay. Objection sustained, 19 through, what  
23 number?  
24 MS. DIGIACOMO: I believe it was 31.  
25 THE COURT: Okay, 19 through 31, objection sustained.

1 MS. DIGIACOMO: Pass the witness.

2 CROSS-EXAMINATION

3 BY MS. DUSTIN:

4 Q Detective, just going back a little bit you did say  
5 that there were some other people that you learned names of  
6 that might have been acquaintances or people that were on some  
7 of these phone calls. Do you recall that? Particularly I  
8 think you talked about Mr. Engle?

9 A Yes.

10 Q And I think that there was a discussion of whether  
11 you looked into whether he had a storage unit, and that you  
12 went and did a search warrant of the storage unit?

13 A Yes.

14 Q Did you also search his house?

15 A No.

16 Q Were there other people that you obtained search  
17 warrants for that you heard them talking to on the phone?

18 A No.

19 Q What about Mr. Foreman. Did you ever get a search  
20 warrant with Mr. Foreman's house or any of his possessions?

21 A No.

22 Q Did you ever look into or investigate Mr. Foreman?

23 A Yes.

24 Q What about Ms. Terry. Did you ever look into or  
25 investigate Ms. Terry?

1 A No.

2 Q Did you ever ask for a search warrant regarding Ms.  
3 Terry's possessions or her house?

4 A No.

5 Q You said that through the phone calls that you made  
6 a determination that there was no discussion for legitimate  
7 work; is that correct?

8 A Correct.

9 Q And is that just based upon the phone calls, or did  
10 you find something else that would support that inference?

11 A Most of my inference, in fact probably all of my  
12 inference was made from what I was learning through the  
13 phones. There were so many phone calls that -- that I was  
14 listening to, that I was really getting a pretty good insight  
15 into the -- the private lives of these people, because they  
16 talked about everything. And never once did I hear somebody  
17 say, "Hey, I need to call your boss and tell him you're not  
18 going to be at work next week."

19 Q Okay. Now is it fair to say that you were kind of  
20 the lead detective on this entire investigation --

21 A Sure.

22 Q -- on the surface?

23 A Yes.

24 Q And so you're familiar with, you know, all the items  
25 that were seized, impounded, looked at, considered, recovered?

1 A I would say no to that.

2 Q Okay. Were there certain -- well let me ask you  
3 this: were you made aware of any documents or paperwork that  
4 officers found, that had Mr. Fergason's name on it?

5 A Yes.

6 Q Okay. And you -- did you examine those items?

7 A I don't have any memory of examining those items at  
8 the scene, but I believe I've seen those items since then.

9 Q Okay. So subsequently, so not at the scene, but  
10 subsequently you had an opportunity to kind of review those  
11 particular items?

12 A I'm familiar with them.

13 Q Okay. Would it be fair to say that there was a very  
14 limited paperwork in Mr. Fergason's name every recovered?

15 A I would say that's fair to say.

16 Q Okay. Did you ever see a utility bill in his name?

17 A No.

18 Q Did you ever see a telephone bill in his name?

19 A I did not.

20 Q Did you ever see a cell phone bill in his name?

21 A No.

22 Q Did you -- so would it be fair to stay -- well, I'll  
23 strike that. Would it be fair to say that you never were able  
24 to view -- well, let me rephrase that.

25 So based upon the fact that you never saw a utility

1 bill in his name, phone bill in his name, or cell phone bill  
2 in his name, would it also be fair to say that perhaps you  
3 never were able to view all the paperwork that would be  
4 associated with Mr. Ferguson?

5 MS. DIGIACOMO: Objection; vague.

6 THE COURT: Well, I think I know where she's going. Is  
7 it something you can answer?

8 THE WITNESS: I believe I can answer that.

9 THE COURT: Go ahead.

10 THE WITNESS: I think if -- if there had been any  
11 significant documents found with Mr. Ferguson I would have  
12 seen them by now.

13 BY MS. DUSTIN:

14 Q Okay. So would it also be fair to say that if you  
15 didn't see a utility bill, or a phone bill, or another bill in  
16 his name, that that doesn't necessarily mean that it doesn't  
17 exist?

18 A That's correct.

19 MS. DUSTIN: The Court's indulgence.

20 [Pause]

21 MS. DUSTIN: Nothing further.

22 THE COURT: Anything else?

23 MS. DIGIACOMO: Yes.

24

25



## REDIRECT EXAMINATION

BY MS. DIGIACOMO:

Q You were asked whether or not you had searched Englebert Clemente's house and you said no?

A Correct.

Q Why didn't you?

A It was my belief that when we searched the storage unit that we knew was his, rented in someone else's name and it turned up without finding anything that appeared to be stolen, I believe that that -- that weakened our probable cause to try and get any search warrant for his house.

Q All right. So at the time that the search warrant was executed on that storage unit, that was three days after the house, or all the search warrants executed at Cutler and the other places that Monday?

A Correct.

Q And you attempted to search the storage unit for Mr. Clemente that was rented in someone else's name, before you were going to go to his house?

A Yes.

Q Now did you continue to listen to the phone calls you took after the arrests on November 6, 2006?

A Yes.

Q Do you know if Mr. Munroe or Mr. Hoyt ever call Englebert Clemente after that day, before you went to the

A/V-TRONICS, INC.

E-Reporting and E-Transcription  
Phoenix (602) 263-8885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 storage unit on the 9th?

2 THE COURT: You mean between the 6th and the 9th?

3 BY MS. DIGIACOMO:

4 Q Yes.

5 A I don't recall.

6 Q All right. Now you were asked whether or not you  
7 looked into Steve Foreman?

8 A Yes.

9 Q That was the owner of the Cutler residence?

10 A Correct.

11 Q And did you ever execute a search warrant for his  
12 residence, or any storage units, or anything in his name?

13 A No.

14 Q And why not?

15 A I didn't feel we had any probable cause.

16 Q You didn't have an information through your  
17 investigation that he was possessing stolen property at that  
18 time?

19 A Correct. I suspected that maybe Mr. Foreman at  
20 least had knowledge of what was going on, and may even be in  
21 possession of some things, but I didn't have anything that I  
22 could demonstrate probable cause with to get a search warrant.

23 Q And what about Amanda Terry, did you ever get a  
24 search warrant for her residence, or anything?

25 A No.

1 Q Why not?

2 A I didn't even know Amanda Terry existed until after  
3 she contacted the police and surrendered a piece of property  
4 that Daimon Monroe's girlfriend, Tonya, had given to her. I'd  
5 never heard any -- I think I'd heard mention of Amanda Terry  
6 one time on the phone calls, and at that time it was just by  
7 first name. So I didn't even know who Amanda was until she  
8 came forward.

9 Q So you didn't have any belief that she was involved  
10 in what you were investigating?

11 A No.

12 Q All right. And with regard -- I believe you said  
13 that you listened to approximately 200 phone calls between  
14 September 24, 2006 and the end of November; is that fair?

15 A That would be fair to say.

16 Q All right. And you said there was no discussion of  
17 legitimate work regarding Mr. Fergason?

18 A Correct.

19 Q Now when you interviewed Tonya Trevarthen on  
20 November 27, 2006, did you ask her about whether or not Mr.  
21 Munroe or Mr. Fergason were employed?

22 A Yes.

23 MS. DUSTIN: I'm going to object as to hearsay.

24 MS. DIGIACOMO: I just asked if he asked her.

25 THE COURT: Okay. So far it's not hearsay.

1 BY MS. DIGIACOMO:

2 Q I'm sorry, what was your answer?

3 A My answer was, yes, I did ask.

4 Q All right. Now did you learn anything from Ms.  
5 Trevarthen that gave you any leads to investigate whether or  
6 not Mr. Ferguson was employed anywhere?

7 MS. DUSTIN: And I'll object, because that's boot  
8 strappin' hearsay.

9 THE COURT: Well, the jury may have a different  
10 recollection, but I recollected that she testified that  
11 neither one of them had a job during this entire period. I  
12 think that's what she testified to?

13 MS. DUSTIN: I think she testified that -- no. Actually,  
14 Your Honor, that is a misstatement, because she did testify  
15 about where Mr. Ferguson had had employment, she basically  
16 testified that Mr. Monroe was not employed for a period --

17 THE COURT: Yeah, but --

18 MS. DIGIACOMO: No, no. During this time period that Ms.  
19 Trevarthen said that -- that at one point, like the year  
20 before or something Mr. Ferguson had employment for a couple  
21 of months, but not the time period that's charged here.

22 THE COURT: Well the jury will have to recall upon their  
23 own memory what Ms. Trevarthen said and make that decision.  
24 But she's here and testified, so I don't see any problem with  
25 this. Go ahead.

**A/V-TRONICS, INC.**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 BY MS. DIGIACOMO:

2 Q All right. Now with regard to Mr. Fergason's  
3 evidence at Pirates Cove, the apartment, how did you learn  
4 that that was his apartment?

5 A As I recall I ran a DMV check on Mr. Fergason, and  
6 that returned that he had a Ford Explorer registered to him,  
7 and the Ford Explorer was registered at the Pirates Cove  
8 address. That Pirates Cove address on his Explorer was the  
9 most recent address that we had. We have some other databases  
10 and things that showed a different address for him, so I took  
11 it that the most recent address was probably where he lived.

12 I then did some follow-up investigation on that,  
13 contacted the management and found out that in fact the  
14 apartment 220 I believe it was, was rented to Mr. Fergason.

15 MS. DIGIACOMO: Nothing further.

16 THE COURT: Anything else?

17 MS. DUSTIN: No, Your Honor.

18 THE COURT: Thanks, Detective. Appreciate your  
19 testimony.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Any other witnesses, State?

22 MS. DIGIACOMO: Not at this time.

23 THE COURT: Does the State rest?

24 MS. DIGIACOMO: With the caveat that I'd like to check  
25 with the Clerk to make sure all of my exhibits I want in are

1 in.

2 THE COURT: Okay. Ms. Dustin?

3 MS. DUSTIN: Your Honor, the Defense is not going to call  
4 any witnesses at this time.

5 THE COURT: Okay. Thanks.

6 All right. Ladies and gentlemen that's the  
7 evidence. Now here's kind of about the way this goes. I had  
8 hoped to be at five o'clock today with having gotten all the  
9 evidence in and given you the instructions, which I'm going to  
10 do. But we're going to actually be a little ahead of  
11 schedule. We're going to be about 3:30 and we're going to go  
12 home.

13 And the reason for that is this: after I give you  
14 the instructions we hear argument. And the argument, the  
15 final argument in this case is going to be probably two and a  
16 half, three hours total, because they're summing up a fairly  
17 large case. It's not good practice to do what they call split  
18 argument here; part of it one day and then part of it the  
19 other day. And so my plan all along was to have this done by  
20 five o'clock today, if we could get it. Come in tomorrow  
21 morning, hear argument. Hear argument all the way through.  
22 It'll be 12:30, 12:45, 12:15, somewhere in there, one o'clock,  
23 and then send you to lunch and let you deliberate, and you'll  
24 have as long as you need.

25 But there is one very smart collateral benefit with

1 that, and that is if you happen to be deliberating when lunch  
2 comes around the County buys you lunch. So kind of the way it  
3 would work is, we'll take about a ten minute break now. Come  
4 back, I'll read you these instructions, it'll take about a  
5 half hour.

6 We'll send everybody home. We can't start until  
7 10:00 because Ms. Dustin has an important appearance in  
8 another Court; is that right?

9 MS. DUSTIN: That's correct, Your Honor.

10 THE COURT: So we'll start at ten o'clock, you know, eat  
11 a little bit late breakfast, so that -- we plan to go until  
12 we're done, you know, 12:30ish. And if you come in at quarter  
13 to 10:00 Officer Moon and Charmane will take your lunch orders  
14 and will them available for you right while you deliberate so  
15 you won't waste any of your time, and we'll get you the case  
16 about 12:30 tomorrow. But we're actually about an hour and a  
17 half ahead of schedule from the point that we started this  
18 last Wednesday.

19 So let's take a ten minute break and listen to me  
20 read for a half hour.

21 [Court Admonished Jury]

22 THE COURT: We'll pick up at three o'clock, and you'll go  
23 home when I'm done reading.

24 [Jury Out]

25 [Recess]

1 [Outside the presence of jury]

2 THE COURT: Well I'm surprised it hasn't been released  
3 already.

4 MS. DIGIAMOCO: Well there was a court order in place  
5 from Justice Court that said we were not allowed to release  
6 anymore property from the inception of this case.

7 THE COURT: And who got that order?

8 MS. DIGIAMOCO: Judge, it was Mr. Monroe and Ms. Dustin  
9 and all the counsel got it from Judge Bennett. And so we  
10 haven't made an issue of it but now obviously with the trial -  
11 -

12 THE COURT: I wouldn't have entered that order. I think  
13 that's silly these people would do -- you know, the baseball  
14 cards --

15 MS. DIGIAMOCO: Okay.

16 THE COURT: -- the baseball cards, you know --

17 MS. DIGIAMOCO: Right.

18 THE COURT: Why don't you file --

19 MS. DIGIAMOCO: Can we do a motion?

20 THE COURT: -- to -- yeah. And it's only fair to serve  
21 everybody. Serve Marty and serve Sean and serve everybody.  
22 And they're going to have to tell me some good reason they  
23 aren't because these pictures are just fine and there's no  
24 reason that these people are -- particularly the property  
25 that's, you know, like the AV property and stuff that's going



1 down in value dramatically just year-by-year because of the  
2 changes. I mean, the art isn't a big deal or some of the  
3 other, but that AV property, you know, that guy's getting  
4 screwed.

5 So just file a motion saying here's what happened,  
6 blah, blah, blah. You know, they've had their trial so I  
7 don't suppose they're going to have too much of an objection.  
8 And Sean's guy doesn't have much standing since he is in the  
9 wind.

10 MS. DUSTIN: I think when it was originally done it was a  
11 mentioned by prior counsel that --

12 THE COURT: Well --

13 MS. DUSTIN: -- I joined into. And it was --

14 MS. DIGIAMOCO: But it was still the court --

15 THE COURT: If I were in the Defense at looking at this  
16 case early on because there was one or two incidents and  
17 surprisingly there weren't two dozen incidents where, you  
18 know, a couple of things were released and appeared to go to  
19 one place. They sent a couple things back to that one place  
20 that said they were ours. And they were theirs at one time  
21 but it turned out they'd sold -- I mean, you know, with all  
22 this mass amount of property --

23 MS. DUSTIN: There was more about that --

24 MS. DIGIAMOCO: Well there's going to be --

25 MS. DUSTIN: Yeah.

1 MS. DIGIAMOCO: -- more abuse, much more victims.

2 THE COURT: Understand. But the point is I think it  
3 might have been a reasonable thing for the Defense to do to  
4 say, wait a minute, I mean, when I have some -- but at this  
5 juncture now knowing what everybody knows I don't see any  
6 reason to hold it.

7 MS. DUSTIN: I think it got videotaped, didn't it?

8 THE COURT: He's got a picture of everything.

9 MS. DUSTIN: Yeah. I mean, he's got pictures.

10 MS. DIGIAMOCO: No there isn't a picture of everything  
11 that was impounded. There's over 5,000 pieces --

12 THE COURT: No, no. But the stuff you're talking about,  
13 the baseball cards and, you know, the match collection and the  
14 slice of --

15 MS. DIGIAMOCO: But the majority of it there are  
16 pictures, some of it there's not.

17 THE COURT: Well here's the deal, I wouldn't allow  
18 anything to be released that wasn't photographed just because  
19 we need to know.

20 MS. DIGIAMOCO: Okay.

21 THE COURT: So if you're going to put the motion on I'll  
22 say, hey there needs to at least be a photograph so later you  
23 may charge one of these guys or somebody else for something  
24 else.

25 MS. DIGIAMOCO: Well --

1 THE COURT: You're going to need the evidence.  
2 MS. DIGIAMOCO: Well and that will be most definitely --  
3 THE COURT: And that's their practice. Look at it,  
4 they've got photographs of everything. So --  
5 MS. DIGIAMOCO: Yeah. Right.  
6 THE COURT: -- you put on a motion, I'm sure it's going  
7 to be granted and then we can get releasing these people's  
8 property and get it back where it belongs. And we'll make  
9 sure that everybody has an opportunity to make sure they have  
10 a fair trial about it when push comes to shove.  
11 Are they bugging you Detective? I bet they would  
12 be.  
13 MS. DIGIAMOCO: Oh I've -- it's gotten to be --  
14 MR. NICKELL: For a couple years almost now.  
15 MS. DIGIAMOCO: Yeah. But -- and it's gone to Dave  
16 Rogers. There's some unhappy people with us.  
17 THE COURT: Well they probably should be but Dave Rogers  
18 can't do anything if the judge has entered an order.  
19 MS. DIGIAMOCO: Yeah, I mean, at this point because we're  
20 still have to do all the evidence, and then it just made sense  
21 to make sure the trial was over. So --  
22 THE COURT: But just put a one and a half page motion on.  
23 You don't need any authority. This is what it is and this is  
24 what it is. We've got these two, the other guys in the wind.  
25 We don't know if we're ever going to have another trial.