

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

THE STATE OF NEVADA,  
Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,  
Defendant.

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Sup. Ct. Case No. 63554  
Case No. CR03-1263  
Dept. 9

RECORD ON APPEAL

VOLUME 2 OF 13

DOCUMENTS

APPELLANT

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RESPONDENT

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FILED

2003 JUL -7 AM 11:13

RONALD A. JORGIN, JR.

BY  
DEPUTY

ORIGINAL

1080  
Bradley O. Van Ry  
Nevada Bar No. 7198  
1403 East Fourth St.  
Reno, NV 89512  
(775) 324-3681  
Attorney for Defendant

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

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

**RECIPROCAL DISCOVERY AGREEMENT**

The Defendant, Ferrill Joseph Volpicelli, by and through counsel undersigned, and the Plaintiff, State of Nevada, by and through the Washoe County Deputy District Attorney, hereby agree to reciprocate by providing any and all discovery in each other's possession, or that comes into the possession of either party, to the other party. Each party specifically agrees to provide copies of search warrants, inventory receipts, property records, receipts and any other financial instruments as well as police reports, notes, documents, witness statements, including any statements made by Bowman, videotapes of statements made and any other documents arising from or generated by Case No. CR03-1263.

DATED this 2nd day of July 2003.

DATED this 1st day of July 2003.

TAMMY RIGGS  
Deputy District Attorney

BRADLEY O. VAN RY  
Attorney for Defendant

1                                    AGREEMENT TO RECIPROCAL DISCOVERY

2                    The parties hereby agree that they will comply with the  
3 requirements of NRS 174.087, 174.089, 174.235 to 174.295,  
4 inclusive.

5 RICHARD A. GAMMICK  
6 District Attorney  
6 Washoe County, Nevada

7  
8 By *[Signature]*  
9 Deputy District Attorney

7/2/03  
Date

10  
11 *[Signature]*  
12 Defense Attorney

6/26/03

Date



Retained



Court Appointed



Public Defender

16                                    ORDER

17                    PURSUANT TO NRS 174.087, 174.089, and 174.235 to  
18 174.295 inclusive and good cause appearing therefore,

19                    IT IS HEREBY ORDERED that discovery be provided in  
20 accordance with the within requests and agreement.

21                    DATED this 9 day of July, 2003.

22  
23 *[Signature]*  
24 DISTRICT JUDGE  
25  
26

ORIGINAL

FILED

DA# 314735

2003 JUN 11 PM 4:45

RONALD A. LONGTIN, JR.

BY *[Signature]*  
DEPUTY

1 CODE 1300  
Richard A. Gammick  
2 #001510  
P.O. Box 30083  
3 Reno, NV 89520-3083  
(775) 328-3200  
Attorney for Plaintiff

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. **CR03-1263**

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

BENCH WARRANT

STATE OF NEVADA )  
 ) :ss.  
COUNTY OF WASHOE )

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE  
OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of  
Washoe County, Nevada, on the 11th day of June, 2003, charging  
FERRILL JOSEPH VOLPICELLI with the crimes of COUNT I. CONSPIRACY  
TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS  
205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS  
205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, COUNTS  
II., III., IV., V., VI., VII., VIII. and IX. BURGLARY, a

1 violation of NRS 205.060, a felony, and COUNT X. UNLAWFUL  
2 POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY  
3 PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony.

4 YOU ARE THEREFORE COMMANDED forthwith to arrest the  
5 above-named defendant and bring him before the Court to answer  
6 the Indictment; or, if this Court is not in session, that you  
7 deliver him into the custody of the Sheriff of Washoe County,  
8 Nevada, that he may be taken before this Court at such time as it  
9 be in session.

10 BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE  
11 SEAL OF THE COURT AFFIXED this 11<sup>th</sup> day of June, 2003.

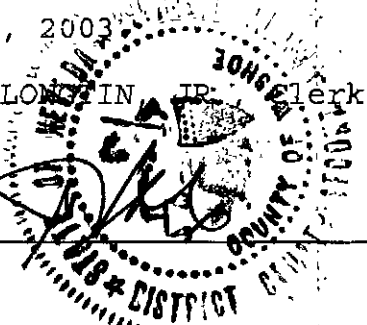
12  
13  
14 Burt R. [Signature]  
15 DISTRICT JUDGE

16 The defendant, FERRILL JOSEPH VOLPICELLI, is to be  
17 admitted to bail in the amount of \$50,000 CASH ONLY, Ad.

18 Endorsed this 11 day of June, 2003

19 RONALD A. LONGMAN, JR. Clerk

20 By [Signature]  
21 Deputy  
22  
23  
24  
25  
26





R E T U R N

I, \_\_\_\_\_, hereby certify that I  
have received the attached Bench Warrant on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, and served the same on the  
defendant, FERRILL JOSEPH VOLPICELLI, placing him in the custody  
of the Sheriff of Washoe County, Nevada, until bail in the sum of  
\$\_\_\_\_\_, as set by the Court has been posted.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_

ORIGINAL

FILED

DA # 314735

RPD RP01-216321/RP01-216452/RP01-219145/RP01-220300/2003 JUN 11 PM 4:45

1 CODE 1795  
2 Richard A. Gammick  
#001510  
P.O. Box 30083  
Reno, NV 89520-3083  
(775) 328-3200  
Attorney for Plaintiff

RONALD A. LONGTIN, JR.

BY  DEPUTY

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

@ 67988

Defendant.

INDICTMENT

The defendant, FERRILL JOSEPH VOLPICELLI, is accused by  
the Grand Jury of Washoe County, State of Nevada, of the  
following:

6130 COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY,  
violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090,  
NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS  
205.965, a gross misdemeanor, committed as follows:

That the said defendant on or between the 21st day of  
June A.D. 2001, and the 17th day of October A.D. 2001, or  
thereabout, at the County of Washoe, State of Nevada, did  
willfully, unlawfully, and with the intent to permanently

1 deprive, cheat or defraud conspire with BRETT BOWMAN with the  
2 intent then and there to commit Burglary, Theft, Forgery,  
3 Uttering a Forged Instrument, Larceny, Obtaining Property by  
4 False Pretenses, and/or Unlawful Possession, Making, Forgery or  
5 Counterfeiting of Inventory Pricing Labels, through a scheme  
6 where property and/or money was obtained from several stores in  
7 Washoe County, to wit: WALMART, K-MART, SHOPKO, TARGET, LOWE's,  
8 HOME DEPOT, OFFICE MAX, OFFICE DEPOT, BED BATH and BEYOND, BEST  
9 BUY, COMP USA, TOYS-R-US, and/or PETSMART by 1) entering said  
10 stores for the purpose of obtaining universal pricing label  
11 information to create false and forged universal pricing labels;  
12 2) by affixing false, forged or counterfeit universal pricing  
13 labels to merchandise at said stores to purchase said merchandise  
14 for less than the posted retail price; 3) by purchasing said  
15 merchandise under the false pretense that the forged or  
16 counterfeit pricing label is a true and valid document; and/or 4)  
17 by removing the false and forged inventory pricing labels and  
18 subsequently returning some of the fraudulently discounted  
19 merchandise for the original valid retail price, thereby making a  
20 profit.

21 <sup>FND</sup> COUNT II. BURGLARY, a violation of NRS 205.060, a  
22 felony, committed as follows:

23 That the said defendant on the 4th day of September  
24 A.D. 2001, or thereabout, at the County of Washoe, State of  
25 Nevada, did willfully and unlawfully enter a certain WALMART  
26 located at 2863 Northtowne Lane, Reno, Washoe County, Nevada,

1 with the intent then and there to commit Theft, Forgery, Uttering  
2 a Forged Instrument, Larceny, and/or Obtaining Property  
3 by False Pretenses therein, by entering to obtain UPC label  
4 and/or other pricing information, after having been previously  
5 convicted of Burglary in 1998.

6 ~~fito~~ COUNT III. BURGLARY, a violation of NRS 205.060, a  
7 felony, committed as follows:

8 That the said defendant on or between the 11th day of  
9 September A.D. 2001, and the 29th day of September A.D. 2001, or  
10 thereabout, at the County of Washoe, State of Nevada, on one or  
11 more occasions did willfully and unlawfully enter a certain HOME  
12 DEPOT located at 5125 Summit Ridge Court and/or 2955 Northtowne  
13 Lane, Reno, Washoe County, Nevada, with the intent then and there  
14 to commit Theft, Forgery, Uttering a Forged Instrument, Larceny,  
15 and/or Obtaining Property by False Pretenses therein by entering  
16 to scout miscellaneous UPC label and/or other pricing information  
17 and/or obtain a toilet; and/or said defendant did aid and abet  
18 BRETT BOWMAN in the commission of said burglary by providing him  
19 a fictitious UPC bar code label to affix to said merchandise, by  
20 providing him with U.S. currency to fraudulently purchase said  
21 merchandise, by driving him to and/or from the scene, by acting  
22 as a look-out, by counseling, encouraging, inducing, or otherwise  
23 procuring him to enter said store and fraudulently obtain said  
24 merchandise with said fictitious UPC bar code label, after having  
25 been previously convicted of Burglary in 1998.

26 ///

1 FILED COUNT IV.. BURGLARY, a violation of NRS 205.060, a  
2 felony, committed as follows:

3 That the said defendant on the 21st day of September  
4 A.D. 2001, or thereabout, at the County of Washoe, State of  
5 Nevada, did willfully and unlawfully enter a certain BED BATH and  
6 BEYOND located at 4983 South Virginia Street, Reno, Washoe  
7 County, Nevada, with the intent then and there to commit Theft,  
8 Forgery, Uttering a Forged Instrument, Larceny, and/or Obtaining  
9 Property by False Pretenses therein by entering with the intent  
10 to fraudulently obtain one or more coffee pots and/or scout  
11 pricing information related to said merchandise; and/or did aid  
12 and abet BRETT BOWMAN in the commission of said burglary by  
13 providing him a fictitious UPC bar code label to affix to said  
14 merchandise, by providing him with U.S. currency to fraudulently  
15 purchase said merchandise, by driving him to and/or from the  
16 scene, by acting as a look-out, by counseling, encouraging,  
17 inducing, or otherwise procuring him to enter said store and  
18 fraudulently obtain said merchandise with said fictitious UPC bar  
19 code label, after having been previously convicted of Burglary in  
20 1998.

21 FILED COUNT V. BURGLARY, a violation of NRS 205.060, a  
22 felony, committed as follows:

23 That the said defendant on the 28th day of September  
24 A.D. 2001, or thereabout, at the County of Washoe, State of  
25 Nevada, did willfully and unlawfully enter a certain WALMART  
26 located at 4855 Kietzke Lane, Reno, Washoe County, Nevada, with

1 the intent then and there to commit Theft, Forgery, Uttering a  
2 Forged Instrument, Larceny, and/or Obtaining Property by False  
3 Pretenses therein by entering to obtain UPC label and/or other  
4 pricing information to be used for an unlawful purpose, after  
5 having been previously convicted of Burglary in 1998.

6 <sup>PMO</sup> COUNT VI. BURGLARY, a violation of NRS 205.060, a  
7 felony, committed as follows:

8 That the said defendant on the 5th day of October A.D.  
9 2001, or thereabout, at the County of Washoe, State of Nevada, on  
10 one or more occasions did willfully and unlawfully enter a  
11 certain LOWE'S HOME IMPROVEMENT STORE located at 5075 Kietzke  
12 Lane, Reno, Washoe County, Nevada, with the intent then and there  
13 to commit Theft, Forgery, Uttering a Forged Instrument, Larceny,  
14 and/or Obtaining Property by False Pretenses, and/or Unlawful  
15 Possession, Making, Forgery or Counterfeiting of Inventory  
16 Pricing Labels therein, by entering with the intent to  
17 fraudulently obtain one or more wool rugs and/or scout pricing  
18 information related to said rugs, and/or said defendant did aid  
19 and abet BRETT BOWMAN in the commission of said burglary by  
20 providing him a fictitious UPC bar code label to affix to said  
21 merchandise, by providing him with U.S. currency to fraudulently  
22 purchase said merchandise, by driving him to and/or from the  
23 scene, by acting as a look-out, by counseling, encouraging,  
24 inducing, or otherwise procuring him to enter said store and

25 ///

26 ///

1 fraudulently obtain said merchandise with said fictitious UPC bar  
2 code label, after having been previously convicted of Burglary in  
3 1998.

4 FITO COUNT VII. BURGLARY, a violation of NRS 205.060, a  
5 felony, committed as follows:

6 That the said defendant on or between the 30th day of  
7 August A.D. 2001, and the 13th day of October A.D. 2001, or  
8 thereabout, at the County of Washoe, State of Nevada, on one or  
9 more occasions did willfully and unlawfully enter a certain  
10 WALMART located at 2863 Northtowne Lane and/or 155 Damonte Ranch  
11 Parkway, Reno, Washoe County, Nevada, with the intent then and  
12 there to commit Theft, Forgery, Uttering a Forged Instrument,  
13 Larceny, and/or Obtaining Property by False Pretenses, and/or  
14 Unlawful Possession, Making, Forgery or Counterfeiting of  
15 Inventory Pricing Labels, therein by entering with the intent to  
16 fraudulently obtain a Panasonic Home Theater system, Emerson 19"  
17 DVD-TV combo, KDS Rad-5 15" monitor, Serger sewing machine and/or  
18 a Hewlett-Packard printer and/or scout pricing information  
19 related to said merchandise; and/or said defendant did aid and  
20 abet BRETT BOWMAN in the commission of said burglary or  
21 burglaries by providing him a fictitious UPC bar code label to  
22 affix to said merchandise, by providing him with U.S. currency to  
23 fraudulently purchase said merchandise, by driving him to and/or  
24 from the scene, by acting as a look-out, by counseling,  
25 encouraging, inducing, or otherwise procuring him to enter said  
26 ///

1 store and fraudulently obtain said merchandise with said  
2 fictitious UPC bar code label, after having been previously  
3 convicted of Burglary in 1998.

4 **F170** COUNT VIII. BURGLARY, a violation of NRS 205.060, a  
5 felony, committed as follows:

6 That the said defendant on or between the 30th day of  
7 August A.D. 2001, and the 17th day of October A.D. 2001, or  
8 thereabout, at the County of Washoe, State of Nevada, on one or  
9 more occasions did willfully and unlawfully enter a certain  
10 SHOPKO located at 5150 MaeAnne Avenue and/or 6139 South Virginia  
11 Street, Reno, Washoe County, Nevada, with the intent then and  
12 there to commit Theft, Forgery, Uttering a Forged Instrument,  
13 Larceny, and/or Obtaining Property by False Pretenses, and/or  
14 Unlawful Possession, Making, Forgery or Counterfeiting of  
15 Inventory Pricing Labels, therein, by entering with the intent to  
16 fraudulently obtain a Sonicare electric toothbrush and/or one or  
17 more Willow Bay comforters, after having been previously  
18 convicted of Burglary in 1998.

19 **F170** COUNT IX. BURGLARY, a violation of NRS 205.060, a  
20 felony, committed as follows:

21 That the said defendant on the 17th day of October A.D.  
22 2001, or thereabout, at the County of Washoe, State of Nevada,  
23 did willfully and unlawfully enter a certain WALMART located at  
24 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the  
25 intent then and there to commit Theft, Forgery, Uttering a Forged  
26 Instrument, Larceny, and/or Obtaining Property by False



1 Pretenses, and/or Unlawful Possession, Making, Forgery or  
2 Counterfeiting of Inventory Pricing Labels, therein, by entering  
3 with the intent to fraudulently obtain a Mongoose bicycle and/or  
4 scout pricing information related to said bicycle; and/or said  
5 defendant did aid and abet BRETT BOWMAN in the commission of said  
6 burglary by affixing a fictitious UPC bar code label to said  
7 merchandise, by providing BOWMAN with U.S. currency to  
8 fraudulently purchase said merchandise, by driving him to and/or  
9 from the scene, by acting as a look-out, by counseling,  
10 encouraging, inducing, or otherwise procuring him to enter said  
11 store and fraudulently obtain said merchandise with said  
12 fictitious UPC bar code label, after having been previously  
13 convicted of Burglary in 1998.

14 COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR  
15 COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS  
16 205.965(2) and (3), a felony, committed as follows:

17 That the said defendant on the 17th day of October A.D.  
18 2001, or thereabout, at the County of Washoe, State of Nevada,  
19 did willfully, unlawfully, and with the intent to cheat or  
20 defraud a retailer, possess, make, forge or counterfeit fifteen

21 ///

22 ///

23 ///

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26 ///

1 or more inventory pricing labels, commonly known as "UPC bar code  
2 labels," in a motor vehicle located at the 9400 block of South  
3 Virginia Street, Reno, Washoe County, Nevada.

4  
5 Dated this 14th day of June, 2003.

6 RICHARD A. GAMMICK  
7 District Attorney

8  
9 By 

10 CHERYL GIER-JOHNSON

11 5021

12 Deputy District Attorney  
13  
14  
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16  
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18  
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21  
22

23 PCN 82444285  
24 81788297  
25 81625263  
82444206  
82444252

26 06105145

1 The following are the names of witnesses examined  
2 before the Grand Jury:

3 REED THOMAS

4 MICHAEL BROWN

5 SCOTT ARMITAGE

6 LARRY LODGE

7 BRETT BOWMAN

8 ~~MATT CARTER~~  
~~GREGORY DANIELSON~~

9 DAVID DELLA

10 JENNIFER POWELL

11 JOHN D<sup>aniel</sup> ELLIS

12  
13  
14  
15 "A TRUE BILL"

16 Charles J. McArthur  
17 FOREMAN

18 "NO TRUE BILL"

19  
20 FOREMAN

RPD CASES: 01-16321/01-216452/01-2147  
01-220307/01-221241.

FILED

FILED

DA# 314735

2003 JUN 17 AM 11:22

2003 JUN 11 PM 4:45

RONALD A. LONGTIN, JR.

RONALD A. LONGTIN, JR.

BY [Signature]  
DEPUTY

BY G. Volante  
DEPUTY

1 CODE 1300  
2 Richard A. Gammick  
3 #001510  
P.O. Box 30083  
Reno, NV 89520-3083  
(775) 328-3200  
Attorney for Plaintiff

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

BENCH WARRANT

STATE OF NEVADA )  
 ) : ss.  
COUNTY OF WASHOE )

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE  
OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of  
Washoe County, Nevada, on the 11th day of June, 2003, charging  
FERRILL JOSEPH VOLPICELLI with the crimes of COUNT I. CONSPIRACY  
TO COMMIT CRIMES AGAINST PROPERTY, violation of NRS 199.480, NRS  
205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS  
205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, COUNTS  
II., III., IV., V., VI., VII., VIII. and IX. BURGLARY, a

RECEIVED JUN 16 2003

V2.16

DC-9900025141-008  
CR03-1263  
STATE VS. FERRILL JOSEPH VOLPICELLI  
District Court  
Washoe County  
1300  
JRM-3  
DOC

1 violation of NRS 205.060, a felony, and COUNT X. UNLAWFUL  
2 POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY  
3 PRICING LABELS, a violation of NRS 205.965(2) and (3), a felony.

4 YOU ARE THEREFORE COMMANDED forthwith to arrest the  
5 above-named defendant and bring him before the Court to answer  
6 the Indictment; or, if this Court is not in session, that you  
7 deliver him into the custody of the Sheriff of Washoe County,  
8 Nevada, that he may be taken before this Court at such time as it  
9 be in session.

10 BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE  
11 SEAL OF THE COURT AFFIXED this 11<sup>th</sup> day of June, 2003.

12  
13 **Brent Adams**

14 DISTRICT JUDGE

15 The defendant, FERRILL JOSEPH VOLPICELLI, is to be  
16 admitted to bail in the amount of \$ 50,000 Cash only

17 Endorsed this 11 day of June, 2003.

18 RONALD A. LONGTIN, JR., Clerk

19  
20  
21 By A. Velarde  
Deputy

**CERTIFIED COPY**

22 The document to which this certificate is  
23 attached is a full, true and correct copy of  
the original on file and of record in my office.

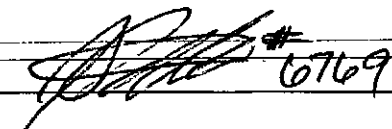
24 DATE: 6/11/03  
25 RONALD A. LONGTIN, JR., Clerk of the Second  
Judicial District Court, in and for the County  
of Washoe, State of Nevada.

26 By [Signature] Deputy

R E T R N

I, \_\_\_\_\_, hereby certify that I  
have received the attached Bench Warrant on the 16<sup>th</sup> day of  
June, 2003, and served the same on the  
defendant, FERRILL JOSEPH VOLPICELLI, placing him in the custody  
of the Sheriff of Washoe County, Nevada, until bail in the sum of  
\$ \_\_\_\_\_, as set by the Court has been posted.

DATED this 16 day of June, 2003.

 #6769

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/18/03

ARRAIGNMENT

HONORABLE

Deputy District Attorney Tammy Riggs represented the State.

09/24/03

JAMES W.

Defendant was present with counsel, Jack Alian, Esq. Probation

8:30 a.m.

HARDESTY

Officer Heidi Poe was present on behalf of the Division of Parole and

Motion to

DEPT. NO. 9

Probation.

Confirm

C. Wynn

Defense counsel was handed a copy of the Information; waived

(Clerk)

formal reading.

10/06/03

D. Davidson

TRUE NAME: FERRILL JOSEPH VOLPICELLI

8:30 a.m.

(Reporter)

Defendant entered a plea of Not Guilty; Defendant further waived  
the 60-day rule.

Jury Trial

(4 days)

COURT ORDERED: Matter continued for trial by jury.

Defendant was remanded to the custody of the Sheriff.

CR03-1263 DC-9900025179-027  
STATE VS. FERRILL JOSEPH VOLP 1 Page  
District Court 06/18/2003 10:36 AM  
Washoe County  
MTN  
TOWER

CR03-1263

D-9

ORIGINAL

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

-o0o-

IN THE MATTER OF:  
FERRILL JOSEPH VOLPICELLI

P R O C E E D I N G S

WEDNESDAY, JUNE 11, 2002

9:15 A.M.

APPEARANCE:

For the State:

CHERYL HIER-JOHNSON, ESQ.  
TAMMY RIGGS, ESQ.  
Deputy District Attorneys  
Washoe County Courthouse  
Reno, Nevada

Also Present:

Kevin VanRy, Esq.  
Deputy District Attorney

Reported by:

JUDITH ANN SCHONLAU, CSR #18  
Computer-Aided Transcription

FILED  
2003 JUN 20 PM 2:37  
RONALD B. CHRISTIAN, JR.  
DEPUTY

CR03-1263 DC-9900025141-004  
STATE VS FERRILL JOSEPH V. 149 Pages  
District Court 06/20/2003 02 29 PM  
Washoe County 4185  
JAMES  
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1 RENO, NEVADA; WEDNESDAY, June 11, 2003; 9:15 A.M.

2 -oOo-

3 MS. HIER-JOHNSON: Good morning ladies and gentlemen  
4 of the Grand Jury. My name is Cheryl Hier-Johnson. I am a  
5 Washoe County Deputy District Attorney. Present with me this  
6 morning are Deputy District Attorney Tammy Riggs and Kevin  
7 VanRy. As I just said, please excuse the interruption, I am  
8 here this morning with Ms. Riggs and Mr. VanRy. Ms. Riggs and  
9 I are trying this case together, so I would ask the Grand Jury  
10 Foreman's permission and request for both Ms. Riggs and I to be  
11 able to remain present in the Grand Jury this morning because  
12 we will both be questioning witnesses. We will each have our  
13 own witnesses, and we would like to remain for the entire  
14 proceeding even if we are not questioning a witness at the  
15 moment. Is that all right?

16 THE FOREMAN: That is fine by me. Any objections?  
17 No.

18 MS. HIER-JOHNSON: Also, with respect to Mr. VanRy,  
19 he's a new Deputy District Attorney in the office. I am his  
20 supervisor this week, and I am training him. I would ask that  
21 you specifically recognize his presence and invite him here to  
22 remain this morning not to participate but simply to observe  
23 for training purposes. Mr. Foreman, would that be all right?

24 THE FOREMAN: That would be fine.

1 MS. HIER-JOHNSON: The first matter for your  
2 consideration this morning is a proposed Indictment against  
3 Ferrill Joseph Volpicelli. The proposed Indictment alleges the  
4 crime of conspiracy to commit crimes against property, eight  
5 counts of burglary, unlawful possession, making, forgery or  
6 counterfeiting of inventory pricing labels, and possession of  
7 machine tools or implements adapted for the commission of  
8 burglary or crimes against property.

9 I have not yet signed the Indictment. If you, the  
10 Grand Jury, find there is sufficient evidence to issue a True  
11 Bill, I will then sign the Indictment after your  
12 deliberations.

13 Basically, the State has alleged that several counts  
14 of various property offenses were committed by Mr. Volpicelli  
15 over a several month-long period of time during the Summer and  
16 early Fall of 2001 here in Washoe County.

17 Count I alleges that Mr. Volpicelli conspired with a  
18 man named Brett Bowman to commit these crimes between the end  
19 of June through the middle to latter part of October.

20 Counts II through IX are all burglary counts, and  
21 they allege that on several different occasions throughout that  
22 time period, Mr. Volpicelli entered a number of different  
23 retail stores here in Washoe County with the intent to commit  
24 larceny or other crimes therein; or that he aided and abetted

1 Mr. Bowman in committing the crime of burglary in different  
2 ways that are alleged in the Indictment.

3 Count X alleges that Mr. Volpicelli unlawfully  
4 possessed, made, counterfeited, forged inventory pricing labels  
5 for retail merchandise, and that is a law that went into effect  
6 October 1, 2001.

7 So if you read through the Indictment, you will see  
8 that only crimes that are alleged to have occurred after  
9 October 1, 2001, made reference to that particular statute, and  
10 that is the reason why.

11 The final count is basically what we call possession  
12 of burglary tools. He's accused of possessing a portable label  
13 maker in his car to make counterfeit pricing labels for  
14 merchandise at retail stores.

15 I have also passed out the laws that define the  
16 various offenses. In your packet of laws, the top document you  
17 will find is entitled Instructions of Law. That is Nevada case  
18 law on certain points that are relevant to this case to aid the  
19 meaning of the various statutes that are for your consideration  
20 today.

21 I have also had a copy of that Instructions of Law  
22 marked as Exhibit 1 to maintain that for review purposes down  
23 the road.

24 So beyond that, the statutes are placed in numerical

1 order. You have NRS 175.291 which concerns accomplice  
2 testimony. You have NRS 195.020 which defines principals to  
3 crimes. You have NRS 199.480 which defines conspiracy. You  
4 have NRS 205.060 which defines burglary, and NRS 205.0832 which  
5 defines theft. NRS 205.090 which defines forgery. NRS 205.110  
6 which defines uttering a forged instrument. NRS 205.220 and  
7 .240 define the crimes of petty and grand larceny.  
8 NRS 205.380 defines obtaining money or property under false  
9 pretenses. NRS 205.965 defines the unlawful possession, making  
10 forgery or counterfeiting of inventory pricing labels. And I  
11 have indicated in my handwriting on your copies that that again  
12 is the law that did not go into effect until October 1, 2001.

13 Also at the begining of your packet you have NRS  
14 205.080 which defines the crime of possession of insruments  
15 with burglary as the intent.

16 Both Mr. Volpicelli and his attorney were notified of  
17 this morning's proceeding by letter delivered on June 4, 2003.  
18 Mr. Volpicelli was invited here to present evidence or  
19 testimony if he desired. His attorney called me last night and  
20 advised Mr. Volpicelli will not be here today to exercise that  
21 right. You are not to draw any inferences either in favor of  
22 or against Mr. Volpicelli for his choice not to appear here  
23 today.

24 The presentation of the evidence in this case will be

1 somewhat lengthy, so I would like to provide you with an  
2 outline of what to expect this morning.

3 The testimony will be presented from Mr. Volpicelli's  
4 alleged accomplice or co-conspirator in these crimes. His name  
5 is Brett Bowman. There are several documents and photographs  
6 that have been marked as exhibits here that will be offered for  
7 your consideration. And as we go through the various  
8 witnesses, they will explain where those came from and what the  
9 significance of them is.

10 There will be testimony from police officers and  
11 civilian store witnesses who will, through their testimony,  
12 attempt to tie together observations that they made relevant to  
13 the allegations, plus the relevance of some of these  
14 documents.

15 If at some point you wish to take a break before the  
16 noon recess, please don't hesitate to let me know. With all  
17 that being said, may I call the State's first witness?

18 THE FOREMAN: Please do.

19 MS. HIER-JOHNSON: Thank you.

20 (Whereupon a witness entered the Grand Jury room.)

21 THE FOREMAN: Please raise your right hand.

22 (Whereupon the witness was sworn by the Foreman.)

23 ///

24 ///

1                                   BRETT A. BOWMAN

2                   called as a witness having been first duly  
3                   sworn by the Foreman testified as follows:

4  
5                                   EXAMINATION

6   BY MS. HIER-JOHNSON:

7           Q     Please state your full name for the record and spell  
8           your last name?

9           A     Brett A. Bowman, B-O-W-M-A-N.

10          Q     Are you aware that the Grand Jury is currently  
11          investigating and considering evidence as it relates to several  
12          property crimes alleged against Ferrill Joseph Volpicelli?

13          A     I am.

14          Q     Do you understand that you are not a target of this  
15          Grand Jury but are simply called here as a witness today?

16          A     I do.

17          Q     Would you please direct your attention to the  
18          gentleman seated to your left?

19                   THE FOREMAN: Are you aware the Grand Jury is  
20          investigating charges of burglary, conspiracy and forgery?

21                   THE WITNESS: Yes, I do.

22   BY MS. HIER-JOHNSON:

23          Q     Mr. Bowman, how old are you?

24          A     Forty-five.

1 Q Do you currently live in the State of Nevada?  
2 A I do.  
3 Q How long have you lived in Nevada?  
4 A Since November of '99. Four years.  
5 Q Are you currently incarcerated?  
6 A I am.  
7 Q Where?  
8 A At the Northern Nevada Restitution Center.  
9 Q Is that located here in Reno?  
10 A Yes, it is.  
11 Q How long have you been assigned there?  
12 A Since October of last year.  
13 Q On what charge are you serving time?  
14 A Burglary.  
15 Q When were you convicted?  
16 A May or March.  
17 Q Do you recall of what year?  
18 A I don't. I am sorry.  
19 Q Were you just convicted a few months ago or convicted  
20 back in 2002?  
21 A I think it was 2002.  
22 Q When were you arrested for that charge?  
23 A October 17th of 2001.  
24 Q At the time that you were arrested, were you arrested



1 with anyone else?

2 A Yes, I was.

3 Q Who was that?

4 A Farrill Volpicelli.

5 Q Where were you two arrested?

6 A Right outside Wal-Mart.

7 Q Here in Reno?

8 A Here in Reno. It was on Virginia Street I know. I  
9 remember that much.

10 Q Down on the south end of Reno?

11 A Yes. Up the street from Wal-Mart.

12 Q Prior to your arrest on October 17, 2001, how long  
13 had you known Mr. Volpicelli?

14 A About a year. Maybe a little longer.

15 Q At some point after meeting with him, did you become  
16 a little bit better acquainted?

17 A Yes, I did.

18 Q About when was that?

19 A I'd say the Spring of 2001.

20 Q Did the two of you ever discuss a scheme to defraud  
21 retail stores of merchandise at reduced prices?

22 A Yes, we did.

23 Q Approximately when did that topic first come up?

24 A Early Summer.

1 Q Of 2001?

2 A Of 2001.

3 Q Who brought it up?

4 A He did.

5 Q Did Mr. Volpicelli ever ask you to participate in the  
6 scheme at some point in the future?

7 A Yes, he did.

8 Q When the idea was first proposed, did you give him a  
9 firm answer right then?

10 A No, I did not.

11 Q Did there come a time when you did take him up on his  
12 offer to participate in this scheme?

13 A Yes, I did.

14 Q Approximately when was that?

15 A The last part of June of 2001.

16 Q What did you discuss doing?

17 A Change UPC bar codes on merchandise in different  
18 stores and for reduced prices. He would--We discussed he would  
19 make the labels. And it really started he would make the  
20 labels, adhere the label. I would go in and buy after. For  
21 the most part, he would make the labels and I ended up buying  
22 the merchandise.

23 Q In the early stages were you--well, did you do this  
24 over the entire period of time that you first decided to do it

1 back at the end of June through the time of your arrest? Did  
2 you participate in the scheme that entire time period?

3 A Yes, I did.

4 Q Over the course of that few month-period of time,  
5 were there times where you guys would be, I don't know, more  
6 active or less active at achieving this?

7 A Yes. Yes, there was.

8 Q Describe that?

9 A It was mainly the heavy days was on my days off  
10 usually in the middle of the week. We would start either  
11 sometime in the morning, for the most part early afternoon, and  
12 work at it until the store started closing about 9:00 or 10:00  
13 o'clock at night.

14 Q Did you guys do this more frequently towards the end  
15 before you got caught versus in the beginning when you first  
16 started out?

17 A Yes. It progressed to where we were doing close to  
18 ten stores a night when we were doing them.

19 Q Between the end of June 2001 and the time of your  
20 arrest, can you estimate the number of different times you went  
21 out with Mr. Volpicelli to do this scheme?

22 A Roughly about twelve.

23 Q And you just testified that towards the end there  
24 were times when you hit as many as ten stores at a time?

1 A Yes.

2 Q What stores?

3 A Home Depot, Lowe's, Wal-Mart, K-Mart, Shopko, Comp  
4 USA, Office Depot. That was pretty much it.

5 Q Did you ever have the opportunity to go to a bed and  
6 bath store?

7 A Yes, one time.

8 Q Do you remember what its name was?

9 A Bed and Bath, I believe.

10 Q What about any toy stores?

11 A Yes. Toys R Us.

12 Q Did you have the opportunity to go to any pet stores?

13 A Petco one time.

14 Q As far as these different stores where you committed  
15 this scheme, were they all, for the most part, located here in  
16 Reno, Washoe County, Nevada?

17 A All of them were in Reno, Washoe County.

18 Q Did you guys ever go out of town or out of the state  
19 to do this?

20 A Out of town? I went out of town with him one time to  
21 the Lake Tahoe area.

22 Q At that time, did you leave town very much? I mean  
23 independent of Mr. Volpicelli, did you travel in and out of  
24 Reno very often?

1 A No. Never.

2 Q How well acquainted were you with Reno back in the  
3 Summer of 2001?

4 A I wasn't.

5 Q Were you new to the area?

6 A Very new.

7 Q Now, can you please describe with a little more  
8 detail what some of the different ways were that you guys  
9 carried out your scheme to get the money or property from these  
10 stores?

11 A Mr. Volpicelli would go in the store first. He would  
12 scout out the merchandise, get the bar code number off the  
13 lower end item, come back and print the label up with the lower  
14 bar code number to be adhered to a higher end item. After  
15 that, right, for the most part, right, he would give me the  
16 label. I would walk in, put it on the item he specifically  
17 wanted and buy it with that fictitious UPC bar code.

18 Q Where did you get the money to purchase this  
19 property?

20 A From Mr. Volpicelli.

21 Q Once property was purchased, did the scheme ever  
22 involve the return of stuff?

23 A Yes, it did.

24 Q Can you describe that aspect to the scheme?

1           A     I would take it in with the original bar code on it,  
2     and for the most part, I either received a gift card or  
3     exchanged it for something else.

4           Q     In exchanging it for something else, did you guys  
5     ever put fictitious labels on whatever it was you were buying  
6     in exchange?

7           A     No. No.

8           Q     So by returning some of these items, were you  
9     returning them for the price higher than they had been paid for  
10    with the fictitious label?

11          A     Yes.

12          Q     Who got the property that was purchased?

13          A     Mr. Volpicelli.

14          Q     What did you get for doing this?

15          A     Cash money.

16          Q     Were you working at the time?

17          A     Yes, I was.

18          Q     So this was money in addition to whatever your job  
19    was paying you?

20          A     Yes. Exactly.

21          Q     Who made the labels?

22          A     Mr. Volpicelli.

23          Q     Did you ever see him make labels?

24          A     Yes, on several different occasions.

1 Q I am showing you Grand Jury Exhibit 17. Do you  
2 recognize who is depicted in that photograph?

3 A That is Mr. Volpicelli.

4 MS. HIER-JOHNSON: Ladies of the Grand Jury and  
5 gentlemen of the Grand Jury, I will go ahead and pass that  
6 around.

7 BY MS. HIER-JOHNSON:

8 Q I am showing you Grand Jury Exhibit 4 which is three  
9 pages of digital color photographs. Do you recognize what is  
10 depicted in those photographs?

11 A Yes. The contents of the case and the actual Brother  
12 2400 label maker which actually made the UPC bar codes.

13 Q Did you actually see Mr. Volpicelli use this machine  
14 to create labels that you guys would then put on property?

15 A Yes, on several different occasions.

16 Q Where was this label maker kept?

17 A I'm not exactly sure where he kept it. But whenever  
18 he picked me up, right, it was always with him.

19 Q Did he pick you up in a car?

20 A Picked me up in an MPV van, Mazda MPV.

21 Q Showing you Grand Jury Exhibit 2, do you recognize  
22 the vehicle depicted in that photograph?

23 A Yes, that is the vehicle.

24 Q The van Mr. Volpicelli would pick you up in?

1 A Yes, it is.

2 Q Did you have a car back then?

3 A No, I did not.

4 MS. HIER-JOHNSON: Members of the Grand Jury, I will  
5 go ahead and pass these exhibits around for you to take a look  
6 at as well.

7 BY MS. HIER-JOHNSON:

8 Q When you guys purchased this property with the fake  
9 labels, did you ever get receipts from the different stores?

10 A Yes, we did, always.

11 Q What did you do with these receipts?

12 A I turned them over to Mr. Volpicelli.

13 Q Did you ever see what he did with them?

14 A He always put them in a little, what would you call  
15 them, something holding the receipts, right. I am not sure  
16 exactly what you call it. It is like--my mind just went blank  
17 for a second. I am sorry. It is something like an organizer,  
18 right. It is plastic with compartments inside. It is  
19 compartmented. He would always put it in there.

20 Q Did you see where he kept that little organizer?

21 A For the most part he kept it with the machine.

22 Q When you had the opportunity to see the organizer,  
23 would that be in the car?

24 A Yes, it would.



1 Q Showing you Grand Jury Exhibit 3 which consists of  
2 five black and white digital photographs, please flip through  
3 those and let me know when you are done. Do you recognize what  
4 is depicted in those photographs?

5 A Yes, I do. That is where he kept his receipts.

6 Q Is that the organizer you just described?

7 A Yes, it is.

8 Q Pass that around. Now do you know where the  
9 information was obtained to make these fake labels?

10 A The information was obtained inside each individual  
11 store.

12 Q Who would obtain that information?

13 A Mr. Farrill Volpicelli.

14 Q Once that information was obtained, did you ever see  
15 what he did with it?

16 A He put it on a master sheet.

17 Q Did you ever see that master sheet?

18 A Yes, I did.

19 Q I am showing you what has been marked as Grand Jury  
20 Exhibit 5, a two sided document. Do you recognize that?

21 A That is his master sheet.

22 Q Where had you seen this sheet?

23 A With Mr. Volpicelli with all the items, the receipt  
24 book. Mainly it was kept with the label maker.

1 Q Did you ever go in the stores to write down the  
2 information to make these labels?

3 A No. Never.

4 Q Did you ever see Mr. Volpicelli go into the stores to  
5 get that information?

6 A Yes, on a couple of different occasions.

7 Q To your knowledge, were there other times where he  
8 would have the information already before you two met up to go  
9 buy some merchandise?

10 A For the most part he already had the information,  
11 yes.

12 MS. HIER-JOHNSON: Ladies and gentlemen, I will go  
13 ahead and pass around Exhibit 5 for you to look at.

14 BY MS. HIER-JOHNSON:

15 Q Now, you have already testified that Mr. Volpicelli  
16 would take the property that was actually purchased. Did you  
17 end up ever taking any of the property?

18 A Once or twice.

19 Q What did you take?

20 A I got a shaver and a coffee maker.

21 Q Do you know what Mr. Volpicelli did with the rest of  
22 the merchandize?

23 A All I know, he kept the merchandise for the most part  
24 in a storage unit.

1 Q How do you know that?

2 A Because he would drop me off at Sierra Sid's on his  
3 way to it.

4 Q Would he tell you where he was going?

5 A He said he was going to the storage unit.

6 Q Did he ever let you see where exactly it was located?

7 A No. Never.

8 Q When you talk about being dropped off at Sierra  
9 Sid's, is that the truck stop casino located out in Sparks?

10 A Yes, it is.

11 Q When he dropped you off, did he come back a little  
12 later and pick you up?

13 A Yes, he would.

14 Q Usually how much time passed before he would return  
15 to pick you up?

16 A About a half hour.

17 Q Now can you estimate how many of these kinds of  
18 different transactions you guys did?

19 A To be honest with you, no.

20 Q More than ten?

21 A A lot more than ten.

22 Q More than twenty?

23 A More than twenty.

24 Q Are there some of those transactions that stick out

1 in your mind better than others?

2 A Yes, there is.

3 Q Describe some of the transactions that stick out  
4 better than others?

5 A Well, the one was when I went and bought a Panasonic  
6 theater system. He said he was going across the street to get  
7 some gas and basically left me standing outside in front of the  
8 store for about 35 minutes with the merchandise.

9 Q Now do you recall which store you got that home  
10 theater system from?

11 A At Wal-Mart.

12 Q Do you recall about how long before your arrest that  
13 transaction was?

14 A Couple weeks.

15 Q Who was responsible for going and putting-- Well, did  
16 you get this equipment, this merchandise, by putting a fake  
17 label on it?

18 A Yes, I did.

19 Q Who put the label on it?

20 A I put it on.

21 Q Who made that label?

22 A Mr. Volpicelli made the label.

23 Q When you put the label on this product, where was it?

24 A The label?

1 Q No, the product.

2 A The product was on the store shelf.

3 Q So you went ahead and labeled it right there in the  
4 store?

5 A For the most part, right, I put it in a shopping  
6 cart, wheeled it around to where there was fewer video cameras  
7 and adhered the label to the--to the merchandise.

8 Q How many times did you go in and buy one of these  
9 Panasonic home theater systems?

10 A For or five, maybe six.

11 Q So you bought that kind of product more than once?

12 A Yes.

13 Q Were they all bought at the same time?

14 A No.

15 Q Do you recall over what time period they were  
16 purchased?

17 A Probably over a two to three week period.

18 Q Two to three weeks?

19 A Yes.

20 Q Did all of those go to Mr. Volpicelli?

21 A Yes, they did.

22 Q Do you recall roughly how much that product was  
23 selling for?

24 A Roughly right around \$400.

1 Q Right around \$400?

2 A Somewhere in there. \$400.

3 Q I am going to ask you to speak up.

4 A Mostly run \$400.

5 Q Do you recall how much you were paying for this

6 product?

7 A \$60.

8 Q \$60?

9 A \$60, yes.

10 Q When these items were rung up, did you get a

11 receipt?

12 A Yes, I did.

13 Q Do you recall what they were coming up as, what sort

14 of merchandise they were coming up as?

15 A Coming up as an Emerson CD player.

16 Q I am showing you Grand Jury Exhibit 9. Do you

17 recognize the Polaroid photograph that is affixed to this

18 document?

19 A Yes, I do.

20 Q What is depicted in that photograph?

21 A Panasonic theater system.

22 Q Is this like these four or five theater systems you

23 went and bought?

24 A Exactly.

1           Q     Right behind that there are photo copies of a couple  
2 of Wal-Mart receipts dated October 13th. It looks like they  
3 are from two different stores. Do you recall ever buying more  
4 than one of those Panasonic systems on the same date?

5           A     Yes, I do.

6           Q     Did they come from the same store?

7           A     From the exact same store? No, two different stores,  
8 different ends of the valley.

9           Q     Do these look like copies of the receipts you got when  
10 you purchased these items?

11          A     Yes.

12          Q     What did you do with these receipts after you  
13 purchased them?

14          A     I handed them to Mr. Volpicelli.

15          Q     Also attached to this exhibit there is a couple of  
16 black and white digital photos. Do those appear to be the same  
17 home theater system?

18          A     Yes.

19               MS. HIER-JOHNSON: Ladies and gentlemen, I will pass  
20 Exhibit 9 around for your review.

21 BY MS. HIER-JOHNSON:

22          Q     Aside from these Panasonic home theater systems, are  
23 there any other products or transactions that stick out in your  
24 mind more so than others?

1           A     Yeah. Computer monitors, flat screen monitors, KDS  
2 monitors. I bought several of those. Very expensive rugs from  
3 Lowe's. A toilet that was bought with a Badger garbage  
4 disposal UPC bar code, and a few others. And the list goes on.

5           Q     Let's take them in the order you mentioned so far.  
6 You mentioned flat screen monitors?

7           A     Yes.

8           Q     Did you say KDS?

9           A     KDS.

10          Q     Does it look like possibly KOS?

11          A     Yes, it does.

12          Q     Showing you Grand Jury Exhibit 11 which consists of  
13 two pages of receipts and five pages of black and white digital  
14 photographs, do you recognize what is depicted in this  
15 exhibit?

16          A     Yes, I do.

17          Q     What is it?

18          A     Those monitors I just told you about.

19          Q     Now if I understand right, the merchandise you were  
20 actually buying was this KDS monitor?

21          A     Yes, it was.

22          Q     When you purchased these things, first off, do you  
23 recall about how many of them you purchased?

24          A     Probably about nine altogether. Eight or nine.



1 Q Do you recall over what period of time you bought  
2 them?

3 A Over a couple week period. The reason we were able  
4 to remember that is because the Wal-Mart we went to, right, I  
5 purchased them until the shelf was empty out of each Wal-Mart.

6 Q Would you buy more than one at a time?

7 A No, just one at a time.

8 Q And when you bought those items, did you receive  
9 receipts for them?

10 A Yes, I did.

11 Q When you were pulling them off the shelf, do you  
12 recall approximately what they were really selling for?

13 A \$377.

14 Q And do you recall about what you were really paying  
15 for them?

16 A About \$177.

17 Q Where did you get the money to buy them?

18 A From Mr. Volpicelli.

19 Q Who was responsible for putting labels, fake labels  
20 on those products?

21 A I was.

22 Q Where did you get those labels?

23 A From Mr. Volpicelli.

24 Q Now, when these products rang up for \$177, do you

1 recall what they were coming up as?

2 A 17 inch monitor.

3 Q So a computer monitor, just a different one?

4 A Exactly.

5 Q Now, as we flip through some of the pages of digital  
6 photographs, there is pictures of labels with bar codes on  
7 them. Is there anything significant about these bar codes?

8 A Yes. The top is the actual purchase price and  
9 description of the product. The rest is inventory and shipping  
10 control.

11 Q How do you know that?

12 A Farrill taught me. The top bar code is always the  
13 one that is the tracking and inventory control one for the  
14 product, itself, from the store.

15 Q So when you put a different label on the box, where  
16 would you put it in relation to the original labels?

17 A It would be right over the top bar code.

18 Q Then later on if any of this merchandise got  
19 returned, how would you return it for the higher price?

20 A By pulling the fictitious bar code off.

21 Q Did you ever pull some of those labels off?

22 A No, I didn't.

23 Q Did you ever see any of the products that had been  
24 purchased by you that had fake labels on them later being

1 returned with those labels missing?

2 A Yes.

3 Q When labels were missing, did you notice whether or  
4 not the original label was ever disturbed?

5 A Yes. It lifted a lot of ink off the original bar  
6 code.

7 MS. HIER-JOHNSON: I will pass exhibit 11 around for  
8 the Grand Jury's consideration.

9 BY MS. HIER-JOHNSON:

10 Q You also mentioned a few minutes ago picking up a  
11 high end rug from Lowe's; is that right?

12 A Yes.

13 Q Do you recall how many different times you picked up  
14 rugs at Lowe's?

15 A Twice.

16 Q And in picking up those rugs, were fake bar code  
17 labels put on them to buy them for a cheaper price?

18 A Yes, they were.

19 Q Who produced those labels?

20 A Mr. Volpicelli.

21 Q Who put them on the products?

22 A I did.

23 Q Were these two rugs bought at the same time?

24 A No. They were bought approximately a week apart from

1 each other.

2 Q Now when you bought those rugs, did you happen to see  
3 what they were really selling for?

4 A I believe roughly right around \$500 a piece.

5 Q Do you recall what you actually paid for them?

6 A Yes, \$80.

7 Q Where did you get the money to buy them?

8 A From Mr. Volpicelli.

9 Q Now with respect to a rug you purchased for \$80, do  
10 you remember how much money or what sort of denomination Mr.  
11 Volpicelli gave you to buy that rug?

12 A It was usually in hundred dollar bills.

13 Q I am showing you Grand Jury Exhibit 8. I ask you to  
14 direct your attention to the receipt on the top page, and the  
15 black and white digital photographs on the last three pages.  
16 Do you recognize the receipt?

17 A Yes, I do.

18 Q Does this appear to be a copy of the receipt that you  
19 received for the purchase of one of those rugs?

20 A Yes, it is.

21 Q Do you recognize the bar code label that is next to  
22 that receipt on the front page?

23 A No. To be honest with you, no I don't.

24 Q Do you recall when you went and put fake labels on

1 those products if they had an original label on them?

2 A Yes.

3 Q Do you recall where you put the fake labels in  
4 relation to the original label?

5 A It would go over the original bar code.

6 Q Now looking back at the digital photographs attached  
7 to this exhibit, do you recognize what is depicted?

8 A Yes, I do. In this one right here, it actually shows  
9 my fake label that I adhered to the rug over the original bar  
10 code.

11 Q Is that the photograph I am holding up for the Grand  
12 Jury to see? Is that the fake label, the one I am holding up  
13 now for them to see?

14 A Yes. Yes, it is.

15 Q What about this rolled up thing in the first photo,  
16 do you recognize that?

17 A That's the rug.

18 Q Is that how they were packaged when you bought them?

19 A Yes.

20 Q What did you do with these rugs when you bought  
21 them?

22 A I take them out and put them in the van and that is  
23 as far as I know.

24 MS. HIER-JOHNSON: I will pass Exhibit 8 around for

1 the Grand Jurors to review.

2 BY MS. HIER-JOHNSON:

3 Q You also mentioned buying a toilet.

4 A Yes.

5 Q Where did you buy that toilet?

6 A Home Depot.

7 Q How many toilets did you buy?

8 A Just one.

9 Q Do you recall about when that was?

10 A I believe it was the last part of September, first  
11 part of October.

12 Q Do you recall what time of day?

13 A I believe it was in the morning.

14 Q When you bought the toilet, did you happen to see how  
15 much it was really selling for?

16 A I believe it runs around \$350, \$400, somewhere in  
17 that area.

18 Q Did you buy this toilet by attaching a fake UPC  
19 label?

20 A Yes, I did.

21 Q Where did you get that label?

22 A I got it from Mr. Volpicelli.

23 Q Once you put--And you are the one that put the label  
24 on it?

1 A Yes.

2 Q Once you put the label on it, did you then go ahead  
3 and purchase it at the counter?

4 A Yes, I did.

5 Q Do you recall what it rang up as?

6 A Yes, Badger garbage disposal.

7 Q Do you recall how much you paid for the toilet?

8 A I think \$144, \$174, something like that. About \$150  
9 in the price range there.

10 Q Where did you get the money to buy it?

11 A Mr. Volpicelli.

12 Q Showing you Grand Jury Exhibit 6, do you recognize  
13 the copy of the receipt?

14 A Yes.

15 Q Does that appear to be the same receipt from the  
16 purchase of the toilet?

17 A Yeah. It was a one horse power disposal, yes.

18 Q After--Well, how was the toilet packaged when you  
19 bought it?

20 A A great big box.

21 Q I am flipping through to the three attached  
22 photographs. Do you recognize these photographs?

23 A Yes, I do.

24 Q What do they appear to be?

1 A The box with the label on the toilet.

2 Q Pass Grand Jury Exhibit 60 around.

3 Now earlier on when I asked you what some of the  
4 different stores were that you guys frequented to make these  
5 fraudulent purchases, you mentioned a bed and bath store.

6 A Yes.

7 Q Do you recall what you purchased there?

8 A Two Krups coffee makers, espresso coffee systems.

9 Q Were those purchased with the use of a fake UPC  
10 label?

11 A Yes, they were.

12 Q Who made that label?

13 A Mr. Volpicelli.

14 Q Who affixed the label to those products?

15 A I did.

16 Q Was Mr. Volpicelli present when you would buy these  
17 things?

18 A He was always out in the van.

19 Q Were there ever times that he would be in any of the  
20 stores while you were applying labels and buying products?

21 A On a few occasions, yes.

22 Q Now, when you bought these Krups coffee makers, do  
23 you recall about what they were selling for?

24 A Roughly a hundred dollars.



1 Q And do you recall about what you paid for them?

2 A About thirty dollars.

3 Q I am showing you Grand Jury Exhibit 7. Do you  
4 recognize that copy of a receipt?

5 A Yes.

6 Q Does that appear to be the receipt from the purchase  
7 of the two coffee makers?

8 A Yes, it is.

9 Q Attached to that exhibit are two photographs. Do you  
10 recognize what is depicted in those black and white photos?

11 A Yes, I do. It is the actual coffee maker.

12 Q Do you know what happened to those coffee makers  
13 after they were purchased?

14 A One went to him, one went to me.

15 Q What did you do with the one you got?

16 A I used it.

17 MS. HIER-JOHNSON: I will pass Grand Jury Exhibit 7  
18 for your consideration.

19 BY MS. HIER-JOHNSON:

20 Q Do you recall ever buying any TV-DVD combos for Mr.  
21 Volpicelli?

22 A Yes.

23 Q Where did you buy those from?

24 A Wal-Mart.

1 Q Do you recall about how many you bought?

2 A About three I believe. Two or three.

3 Q Do you recall what brand they were?

4 A They were Emerson.

5 Q Do you recall--Let me ask you this: Were they bought  
6 with a fake UPC label?

7 A Yes, they were.

8 Q Who generated the label?

9 A Mr. Volpicelli.

10 Q Who was--Who took the label into the store to put it  
11 on the products?

12 A I did.

13 Q When you took those and put those on the products,  
14 did you happen to see what Emerson TV-DVDs were really selling  
15 for?

16 A About \$229, \$230 I believe.

17 Q After affixing the fake labels, were you the one  
18 responsible for going up and purchasing those items?

19 A Yes, I was.

20 Q Do you recall about how much they were ringing up  
21 for?

22 A \$120.

23 Q And when they were ringing up, do you recall what  
24 they were ringing up as?

1 A Sanyo 9 inch TV.

2 Q A different kind of TV?

3 A Yes.

4 Q Now, when you bought these, you said there were two  
5 or three. Did you buy them at the same place, same time?

6 A No, I did not.

7 Q Do you recall over what time period you purchased  
8 them?

9 A Probably about a couple weeks. A week to two.

10 Q Do you recall about how long before your arrest was  
11 that you had purchased the Emerson TVs?

12 A No, I don't. No, I don't.

13 Q I am showing you Grand Jury Exhibit 10. Do you  
14 recognize the photo copies of receipts on the first page of  
15 this exhibit?

16 A Yes. These are the receipts from the TVs.

17 Q How about on page 2?

18 A The same.

19 Q There are several pages of black and white  
20 photographs attached. Do you recognize what is depicted in  
21 them?

22 A Yes.

23 Q What is it?

24 A The TVs and UPC bar codes.

1 Q Are those what the TVs looked like that you bought.?

2 A Yes, they are.

3 Q What did you do with them after buying them?

4 A I'd take them out to the van.

5 Q Where did you get the money to buy them?

6 A From Mr. Volpicelli.

7 Q Who kept those TVs?

8 A Mr. Volpicelli.

9 MS. HIER-JOHNSON: Just for the record, I am passing  
10 around Grand Jury Exhibit 10 for the Grand Jurors to review.

11 Q Did you ever buy any sewing machines?

12 A Yes, quite a few.

13 Q Where?

14 A Wal-Mart. K-Mart.

15 Q With respect to Wal-Mart sewing machines, did you  
16 ever have a chance to return or exchange one?

17 A Yes.

18 Q Do you recall what the nature of the return or  
19 exchange was?

20 A Oh, yeah. I bought a futon with it, right, and  
21 Mr. Ferrill Volpicelli forgot to take the fake UPC bar code  
22 off, so it actually returned for the exact same price we had  
23 paid for it.

24 Q Let me back up for a moment. Do you recall if you

1 were the one that bought the sewing machine originally at the  
2 reduced price?

3 A Yes.

4 Q What happened to the--Well, who put the label on it  
5 when you bought it the first time at the reduced price?

6 A I did.

7 Q What did you do with it after you bought it?

8 A I gave it to Ferrill. All the merchandise we ever  
9 bought, right, I always put it--

10 Q In the van?

11 A --in the van, yes.

12 Q After giving it to Ferrill, do you recall about how  
13 long, how much time passed before you took it back to the store  
14 to return?

15 A It could have been a matter of days or could have  
16 been a week.

17 Q And you have testified that the fake UPC label was  
18 not removed?

19 A Right.

20 Q So as a result, were you able to make a profit on the  
21 return?

22 A Oh, no. In fact, what he wanted and needed, right,  
23 it cost him full price.

24 Q Was that the futon?

1 A That was the futon, yes.

2 Q Where did you get the money to pay for the futon?

3 A From Ferrill.

4 Q After you bought the futon, what did you do with it?

5 A I gave it to Ferrill.

6 Q Did there come a time where you tried to go back and  
7 buy that same sewing machine again from Wal-Mart?

8 A Yes.

9 Q Describe that?

10 A Ferrill kept an eye on the store, right, for the  
11 machine. And when it finally came on the shelf, right, he had  
12 me go back and buy it again.

13 Q Did it still have the original fake label on it?

14 A Originally adhered to it, yes, it was there.

15 Q Did you have to put a second label on it?

16 A No, I did not.

17 Q When you bought it that second time, do you recall if  
18 you bought anything else along with it?

19 A Yes. I bought a Hewlett Packard printer with it.

20 Q Do you recall about how much you paid for the sewing  
21 machine?

22 A \$99.

23 Q Do you recall about how much they were really selling  
24 for?

1           A     To be honest with you, I think right around \$300.

2           Q     What about the Hewlett Packard printer, do you recall  
3 roughly how much you paid for it?

4           A     That I don't.

5           Q     Did the Hewlett Packard printer have a fake label on  
6 it?

7           A     Yes, it did.

8           Q     Who made that label?

9           A     Ferrill made the label.

10          Q     Who put it on the printer?

11          A     I did.

12          Q     How many times did you buy a sewing machine and  
13 printer at the same time?

14          A     Twice.

15          Q     Was it on the same day?

16          A     No, it wasn't.

17          Q     Did both of those transactions occur at local  
18 Wal-Mart stores?

19          A     Yes, it did.

20          Q     I am showing you Grand Jury Exhibit 12 which consists  
21 of three pages of receipts. Do you recognize these copies of  
22 the receipts?

23          A     Yes. They are for the monitor--or the printer and  
24 sewing machine.

1 Q Now according to these receipts, the printer shows up  
2 as a scanner for the purchase price of \$79.96. Does that sound  
3 about right?

4 A That would be it, yes.

5 Q Do you recall about what these printers were selling  
6 for?

7 A That I don't.

8 Q Do you recall if it was more than \$80?

9 A It was a lot more than \$80.

10 Q Moving on, there are a couple of black and white  
11 photographs attached, one of which says Simplicity on a box.  
12 Do you recognize what is depicted in that photograph?

13 A Yes. That is the sawing machine.

14 Q Is that what the sewing machine looked like that you  
15 were buying at reduced prices?

16 A Yes, it is.

17 Q Moving on, there is a photograph of two boxes in it  
18 that has printers. Do you recognize what is depicted in those  
19 photographs?

20 A Yes. Those are the printers.

21 Q Do they appear to look the same as the ones that you  
22 purchased along with the sewing machine?

23 A Yes.

24 MS. HIER-JOHNSON: I will pass around Grand Jury



1 Exhibit 12 for your review.

2 BY MS. HIER-JOHNSON:

3 Q On the day that you got arrested, October 17th, had  
4 you engaged in any of these fraudulent transactions with Mr.  
5 Volpicelli?

6 A The day I was arrested, right, I did one. It was for  
7 a bike at Wal-Mart.

8 Q Do you recall which Wal-Mart?

9 A Yes, on Damonte.

10 Q Down in south Reno?

11 A Yes, it was.

12 Q Was that bike purchased with a fake UPC label?

13 A Yes, it was.

14 Q Where did the label come from?

15 A From Ferrill.

16 Q Did you see him make that label?

17 A No, I did not.

18 Q Did he already have it made when you guys got  
19 together that day?

20 A Yes.

21 Q Do you recall about what time you guys got together?

22 A About 4:00 o'clock in the afternoon.

23 Q After getting together, did you go pretty much  
24 straight over to the Wal-Mart?

1           A     No. I had to stop off at my parole officer's office  
2 and drop off a rent receipt and a copy of my check stub.

3           Q     So you were showing you were maintaining employment  
4 and residence?

5           A     Exactly.

6           Q     So after that, did you go over to the Wal-Mart?

7           A     Yes.

8           Q     And who was responsible for placing the label on the  
9 bicycle?

10          A     He did it. Ferrill put the label on that bike.

11          Q     What were you doing while he did that?

12          A     Standing outside smoking a cigarette.

13          Q     Who actually purchased the bike?

14          A     I did.

15          Q     How did you get from outside smoking a cigarette in  
16 to purchase the bike?

17          A     When he came out to the van where I was smoking,  
18 right, he said, okay. He told me what he wanted, where it was  
19 at, what kind it was, right, and where the UPC bar code was  
20 adhered to.

21          Q     Following those instructions, did you find the bike?

22          A     Yes, I did.

23          Q     Was it different from the others?

24          A     Yeah. It was a Mongoose chrome. The rest were just

1 standard mountain bikes all painted. That was the only chrome  
2 one there.

3 Q Did you have to get anybody's assistance to obtain  
4 that bike?

5 A Yes, I did.

6 Q Describe that.

7 A I couldn't get it out of the rack, itself, so I had  
8 to get one of the floor techs to help me remove it from the  
9 rack.

10 Q Once it was removed from the rack, what did you do  
11 with the bike?

12 A I wheeled it up to the cashier.

13 Q Did you buy it?

14 A Yes, I did.

15 Q Did you do anything with the label that Mr.  
16 Volpicelli had placed on the bike during the course of the  
17 purchase?

18 A Yes. I took it off the bike and handed it to the  
19 cashier.

20 Q Why did you do that?

21 A To make it easy.

22 Q Do you recall about how much that bike was selling  
23 for?

24 A \$249.

1 Q Do you recall how much you actually purchased it for?

2 A \$80.

3 Q Where did you get the money to buy it?

4 A From Ferrill Volpicelli.

5 Q What did you do after purchasing the bike?

6 A I wheeled it out to the van.

7 Q What happened then?

8 A As we were leaving the parking lot, that is when they  
9 started arresting us. Ferrill wouldn't pull over, right. They  
10 tried blocking us in. And Ferrill just kept on driving until  
11 finally I got him to pull over.

12 Q Where did he pull over?

13 A I think it was like--To be honest, it was somewhere  
14 down South Virginia about a mile down from the store.

15 Q From the Wal-Mart store?

16 A Yes.

17 Q Before the officers attempted to pull you over, where  
18 were you guys headed?

19 A We were headed to Lowe's.

20 Q What was going to occur there?

21 A I was going to buy another rug.

22 Q At a fraudulently reduced price?

23 A Yes. Exactly.

24 Q Did you guys have plans to go to any other stores

1 that afternoon?

2 A Yes, we did.

3 Q Where was that?

4 A Hit the other Wal-Mart at the other end of town and  
5 to go to Shopko.

6 Q Now I am showing you Grand Jury Exhibit 15. Do you  
7 recognize the copy of the receipt that is attached on top?

8 A Yes.

9 Q How do you recognize that?

10 A Because it is the bike. It is for \$79.96.

11 Q Does this appear to be the same receipt you received  
12 in exchange for the purchase of that bike at Wal-Mart?

13 A Yes, because I handed the cashier a hundred dollar  
14 bill.

15 Q The second page of this exhibit shows a Toyland price  
16 tag of \$249.66. Does that look familiar?

17 A Yes. That is the actual price of the bike.

18 Q Was that posted back near the area where you took the  
19 bike?

20 A Posted right above the bike.

21 Q Then there is a color photograph attached to this  
22 Exhibit 15. Do you recognize what is depicted in the  
23 photograph?

24 A Yes. That is the bike.

1 Q Is that the bike you purchased back on October 17th?

2 A Yes it is.

3 MS. HIER-JOHNSON: Pass that around for the Grand  
4 Jurors' review.

5 BY MS. HIER-JOHNSON:

6 Q Once the officers stop the van, was there any  
7 evidence of the criminal activity in the van?

8 A Yes. It was all there. All the evidence was there  
9 in the van.

10 Q Describe that.

11 A The lable maker was in the van. All the receipts  
12 were in the van. His master sheet was in the van, plus the  
13 bike that I just purchased.

14 Q Do you recall if there was any other merchandise in  
15 the van?

16 A I believe there was a comforter, that I could see  
17 anyway.

18 Q Did you have anything to do with the purchase of  
19 that?

20 A No, I did not.

21 Q Were you arrested that night?

22 A Yes, I was.

23 Q And did you end up being charged with crimes  
24 resulting from this scheme and these fraudulent purchases you

1 had been involved in with Mr. Volpicelli?

2 A Yes.

3 Q During the course of the police investigation, did  
4 you end up cooperating with them?

5 A To the fullest.

6 Q And how did you cooperate with them?

7 A By giving them the information they wanted.

8 Q So you gave them statements?

9 A Yes, I did.

10 Q Did those statements include what you guys were  
11 doing, where you had been, what you guys were buying?

12 A Yes. Exactly.

13 Q What is the status of your charges?

14 A I pled guilty to a one to ten. Parole and Probation  
15 came back with a recommendation of 16 months to 72. And the  
16 judge kept it to the 16 and dropped the top end to 48. So I am  
17 serving 16 to 48.

18 Q Month-long sentence?

19 A Yes.

20 Q On a felony charge?

21 A Yes, it is.

22 Q What is the title of the charge?

23 A Burglary.

24 Q Were there some other charges either not pursued or

1 dismissed in this plea bargain?

2 A Yes, there was.

3 Q Did the plea bargain include cooperating in the  
4 prosecution of Mr. Volpicelli?

5 A Yes, it did.

6 Q Has anyone suggested or told you what to testify to  
7 concerning Mr. Volpicelli's activities?

8 A No. Nothing.

9 Q Has anyone asked you for anything other than the  
10 truth in exchange for your plea bargain?

11 A No. Nothing.

12 Q During the time that you were hanging out with Mr.  
13 Volpicelli and committing these crimes, to your knowledge, did  
14 he have a job?

15 A No, he did not. I know for a fact he did not.

16 MS. HIER-JOHNSON: Thank you. I have no further  
17 questions for Mr. Bowman. Do any of the Grand Jurors have  
18 questions?

19 A GRAND JUROR: One question. When you would buy the  
20 item then take it out, how long before he would bring it back  
21 for exchange or refund?

22 THE WITNESS: It varied. Sometimes probably back  
23 that night or he would wait two or three days.

24 A GRAND JUROR: Relatively short time?



1 THE WITNESS: Roughly pretty short time.

2 A GRAND JUROR: When you were returning an item, it  
3 would have the original label. You would take off the false  
4 bar code label?

5 THE WITNESS: Yes.

6 A GRAND JUROR: But in that case, your receipt would  
7 not match.

8 THE WITNESS: That's right.

9 A GRAND JUROR: So how was that handled?

10 THE WITNESS: It was returned for the most part  
11 without a receipt, and either a gift card would be issued or  
12 for the most part it was just a gift card, right, or he would  
13 have a receipt from a prior purchase for that item at full  
14 price.

15 A GRAND JUROR: A true receipt?

16 THE WITNESS: Yes.

17 A GRAND JUROR: The gift cards, you could not get  
18 money for those; is that correct?

19 THE WITNESS: That's correct.

20 A GRAND JUROR: And would he purchase other items  
21 falsely?

22 THE WITNESS: No.

23 A GRAND JUROR: With the gift cards?

24 THE WITNESS: No. When the gift cards were used,

1 right, the items bought on the gift card were full value.

2 A GRAND JUROR: Oh, I see. So you were making some  
3 money.

4 THE WITNESS: He was making money, ma'am. I have no  
5 knowledge of that, because he would pay me cash money at the  
6 end of each day for what I was doing. The rest it was all on  
7 him.

8 A GRAND JUROR: And the clerks never noticed any  
9 discrepancies between the box of the item you were purchasing  
10 and what came on the data base?

11 THE WITNESS: Due to poor training, all they would  
12 notice was the dollar amount. That is why I was able to walk  
13 out of the Home Depot with a Badger disposal displayed clearly  
14 on the screen with a toilet in hand.

15 THE FOREMAN: Any other questions?

16 A GRAND JUROR: When you bought the bicycle for \$80,  
17 you said, didn't the clerk wise up? They didn't call anybody  
18 in to check it or recheck it?

19 THE WITNESS: No.

20 A GRAND JUROR: They just let you go through?

21 THE WITNESS: At one point the checker said should we  
22 call security in to verify the bike. The cashier said no, so  
23 she let me walk on out.

24 THE FOREMAN: Any other questions?

1           It is my duty to--

2           MS. HIER-JOHNSON: I actually have one follow-up  
3 question if I may.

4 BY MS. HIER-JOHNSON:

5           Q     To your knowledge, I am only interested in what you  
6 know personally, to your knowledge, did Mr. Volpicelli return  
7 every single item or do you know if he had other means of  
8 getting rid of the stuff?

9           A     To my knowledge today, right, is that he used the  
10 barter system, on-line system to sell the merchandise.

11          Q     Were you personally involved in that aspect?

12          A     None of it.

13          MS. HIER-JOHNSON: Thank you. I have no further  
14 questions.

15          THE FOREMAN: Any other questions?

16                It is my duty to admonish you the proceedings before  
17 the Grand Jury are secret.

18                You may not disclose evidence presented to the Grand  
19 Jury, any event occurring or statement made in the presence of  
20 the Grand Jury, any information obtained by the Grand Jury or  
21 the results of investigation being made by the Grand Jury.

22                However, you may disclose the above information to  
23 the District Attorney for use in the performance of his  
24 duties.

1           You also may disclose your knowledge concerning the  
2       proceedings when directed by a court in connection with  
3       judicial proceedings or when otherwise permitted by the court  
4       or to your own attorney.

5           The obligation of secrecy applies until the Court  
6       allows the matter to become public record.

7           A gross misdemeanor and contempt of court may be  
8       pursued if your obligation of secrecy is not followed. Do you  
9       understand?

10          THE WITNESS: Yes, I do.

11          MS. HIER-JOHNSON: Thank you.

12                       (Witness excused.)

13          MS. HIER-JOHNSON: May Ms. Riggs call our next  
14       witness?

15          THE FOREMAN: Please.

16          MS. RIGGS: State will call detective Armitage, Scott  
17       Armitage.

18               (Whereupon another witness entered the Grand Jury room.)

19               (Whereupon the witness was sworn by the Foreman.)

20          MS. RIGGS: Sir, would you please step forward and  
21       raise your right hand?

22       ///

23       ///

24       ///

1 SCOTT ARMITAGE

2 called as a witness having been first duly  
3 sworn by the Foreman testified as follows:

4  
5 EXAMINATION

6 BY MS. RIGGS:

7 Q Would you please state your full name for the record  
8 and spell your last name?

9 A Scott Amritage, A-R-M-I-T-A-G-E.

10 Q Are you aware that the Grand Jury is currently  
11 investigating and considering evidence as it relates to several  
12 property crimes alleged against Farrill Volpicelli?

13 A Yes.

14 Q Do you understand that you are not a target of this  
15 Grand Jury, but you are called as a witness only?

16 A Yes.

17 Q Sir, would you please direct your attention to the  
18 Grand Jury Foreman seated to your left?

19 THE FOREMAN: Are you aware the Grand Jury is  
20 inquiring into evidence you may have related to charges of  
21 burglary, conspiracy, larceny, theft and forgery?

22 THE WITNESS: Yes, sir.

23 BY MS. RIGGS:

24 Q Can you tell me who employs you, please?

- 1 A City of Reno Police Department.
- 2 Q What is your position?
- 3 A I am a detective with them.
- 4 Q Detective Armitage, were you employed with RPD on
- 5 duty on September 4th of 2001 approximately 11:30 a.m.?
- 6 A Yes.
- 7 Q Detective Armitage, did you have somebody under
- 8 surveillance at that time?
- 9 A Yes.
- 10 Q Who was under surveillance?
- 11 A Mr. Volpicelli.
- 12 Q Detective, did you see him on that date and time?
- 13 A Yes.
- 14 Q Do you recall where you saw him?
- 15 A Yes. It was inside the Northtowne Wal-Mart.
- 16 Q That would be on Northtowne Lane?
- 17 A Yes.
- 18 Q Can you tell me where approximately in the Northtowne
- 19 Wal-Mart you observed Mr. Volpicelli?
- 20 A I followed him in and out of the store, and he went
- 21 to the sporting goods area of the store.
- 22 Q Do you recall whether he was looking at any
- 23 particular item in the sporting goods section?
- 24 A Yes. He stopped behind the bicycle rack near the golf

1 accessories for golf clubs and such, and was perusing the  
2 aisles, specifically looking at the end of the metal shelves  
3 very closely where the labels and the price tags are.

4 Q And the labels corresponding to which items?

5 A It looked like the golf accessories.

6 Q Detective, how far away were you from Mr. Volpicelli  
7 at this time?

8 A At one point, I was less than ten feet from him.

9 Q What were you doing?

10 A I was feigning interest in an extremely small bicycle  
11 on a display with four or five inch diameter wheels. It looks  
12 like something a clown would ride on in a Circus.

13 Q You said he was looking at some labels on the end of  
14 the shelves?

15 A Yes, ma'am.

16 Q What information is on the label on the end of those  
17 shelves?

18 A The bar codes, the price, the information about the  
19 products.

20 Q And specifically are there numbers associated with  
21 those bar codes?

22 A Yes, ma'am.

23 Q Did he appear to be writing those bar codes down?

24 A Yes, he was. He had a small piece of paper about

1 three by five and he appeared to be copying down, like watching  
2 for a few moments, look again, then copy. He did this for a  
3 couple of minutes.

4 Q So approximately how long, two minutes?

5 A Maybe two minutes, yeah.

6 Q What did he do when he finished copying down the  
7 information?

8 A He walked to the front of the store and outside.

9 Q Never purchased anything?

10 A No, ma'am.

11 Q Detective, were you also on duty on October 17, 2001  
12 approximately 2:20 p.m.?

13 A Yes, I was.

14 Q Did you also have Mr. Volpicelli under surveillance  
15 at that time?

16 A Yes.

17 Q Do you recall where he was located on that date and  
18 time?

19 A Yes, at the Shopko at 5150 Mae Anne in Reno.

20 Q Did you also watch him walk into that store?

21 A Yes.

22 Q To which part of the store did he go?

23 A I walked in shortly behind him, and he went in the  
24 north pedestrian doors. He walked directly west through the



1 doors, and a short distance inside the store he turned right  
2 into the bedding aisles.

3 Q Did you have him under constant surveillance at this  
4 time?

5 A There was broken times where, to keep my distance,  
6 where maybe an aisle or a row of shelves were between.

7 Q Did you see him leave the bedding section at any  
8 time?

9 A Yes.

10 Q Had he gotten any item out of the bedding?

11 A Yes. He selected a large clear plastic bag with what  
12 appeared to be a comforter inside it.

13 Q Can you tell me a little bit more about the bag? Did  
14 the bag appear to be the packaging that appeared to go along  
15 with that?

16 A It did.

17 Q Did it have a handle attached to it by chance?

18 A I believe he had a built-in carrying handle on the  
19 top of it.

20 Q Did you observe Mr. Volpicelli purchase that  
21 comforter?

22 A Yes.

23 Q Did you--Were you able to get close enough to observe  
24 what kind of transaction he made? For instance, were you able

1 to see whether he wrote a check, whether he used a credit  
2 card?

3 A I believe he paid cash for it.

4 Q Where did he go after he made that purchase?

5 A He exited the store.

6 Q Now, detective, did you approach anyone at the store  
7 after you observed this purchase by Mr. Volpicelli?

8 A Yes, ma'am. Soon as he left the store, I approached  
9 the clerk that conducted the transaction and identified  
10 myself.

11 Q Did you ask the clerk for assistance in trying to  
12 figure out how much he had paid for that?

13 A I did. She closed her register and asked for I  
14 believe her supervisor's assistance in actually printing out  
15 the previous transaction which was Mr. Volpicelli's  
16 transaction.

17 Q Did you observe the store manager printing out a  
18 transaction?

19 A Yes, I did.

20 Q Do you recall what the documentation looked like?  
21 Did it look like a store receipt?

22 A Yes. It looked like just a strip of paper, store  
23 register receipt.

24 Q Can you describe the procedure that the store manager

1 or clerk used to produce that receipt?

2 A I am not sure of the authorization he used to access  
3 the transaction, but whatever authority he had to do it, he  
4 recalled the transaction and reprinted exactly what the  
5 transaction was for.

6 Q Was that from the register where you observed Mr.  
7 Volpicelli making that purchase?

8 A Yes.

9 Q Detective, do you recall, tell me only if you recall,  
10 what brand of comforter was shown on the receipt that that  
11 manager produced for you?

12 A I believe it was Color Vision.

13 Q Do you recall by any chance the price on that  
14 receipt?

15 A \$24.99.

16 Q Detective, did you observe Mr. Volpicelli go into any  
17 other stores that day?

18 A Yes, I did.

19 Q What store did you watch him go into?

20 A Into the Super Wal-Mart, 155 Damonte Parkway in Reno.

21 Q Sir, do you recall approximately what time that was?

22 A It was almost or right about 5:00 p.m.

23 Q When you observed him up at the Shopko store at Mae  
24 Anne, did he have anybody with him?

1 A No, he was by himself.

2 Q When you observed him at Super Wal-Mart at 5:00  
3 o'clock, did he have anybody with him?

4 A Yes, he did. May I clarify?

5 Q Certainly?

6 A He entered the store by himself, but he went there  
7 with someone else.

8 Q Were they in a vehicle?

9 A Yes.

10 Q Who was driving the vehicle?

11 A Mr. Volpicelli.

12 Q What sort of vehicle was it?

13 A Gold Mazda van.

14 Q Where did the vehicle park when it got to the  
15 Wal-Mart, do you recall?

16 A No. Just in front of the store. I believe it was  
17 near the middle towards the east end of the lot. The store is  
18 divided into two halves, a grocery half and general merchandise  
19 half. I believe it was closer to the grocery half.

20 Q Did you watch both individuals get out of the van  
21 simultaneously?

22 A I don't remember both of them getting out. I just  
23 remember, because of the proximity of my vehicle to his, if he  
24 entered the store, I could follow him.

1 Q So did Mr. Volpicelli go into the store?

2 A Yes, he did.

3 Q Was he by himself when you observed him going into  
4 the store?

5 A Yes.

6 Q I am sorry, you maybe answered this, which door did  
7 he go in?

8 A He went in the east doors which are, for lack of a  
9 better description, the grocery side of the store.

10 Q Did he obtain a cart or anything like that?

11 A He selected a basket and pushed it in the store.

12 Q Did he appear to have a destination, or was he  
13 browsing around the store?

14 A No, he went directly westbound through the front  
15 store right by the registers. When he got past the registers,  
16 he turned right and went directly toward the toy section of the  
17 store.

18 Q You had him under surveillance at this time?

19 A Yes, I did.

20 Q Was anybody with you or did you have any other  
21 detectives with you when you conducted this surveillance?

22 A Yes.

23 Q Who would that be?

24 A Detective Mike Brown.

1 Q Were the two of you working in conjunction at this  
2 time watching Mr. Volpicelli?

3 A That's correct. We wouldn't necessarily walk side by  
4 side, but try to angulate to keep a constant eye on the person  
5 we were watching.

6 Q To your knowledge, did the two of you working in  
7 conjunction have constant visual contact with Mr. Volpicelli  
8 during this transaction?

9 A Yes. Yes.

10 Q You said he went to the toy section, correct?

11 A Yes.

12 Q Did he have any particular interest in any particular  
13 item of toy there?

14 A He went through the toy section where it ends up at  
15 the double decker bicycle racks for bicycles for sale.

16 Q Did he appear to have a particular bike in interest?

17 A Yeah. He stopped near the corner of the bike rack  
18 where I was looking through the bicycles at him. And I could  
19 see him stop at a specific spot in the rack.

20 Q What did he do when he was standing there near the  
21 bike rack?

22 A He was very closely, in one spot in the rack, he  
23 appeared to be closely looking at a specific bicycle as well as  
24 the tag with the information as far as price and the

1 description of the bicycle on the metal rack.

2 Q Did he have any particular interest on the label--in  
3 the label on the bicycle?

4 A It appeared so. And I was looking through the  
5 bicycles, but it appeared he was very closely examining one  
6 specific bicycle and the related stickers and prices, yes.

7 Q Are we talking about the hang tags hanging off the  
8 bicycles?

9 A No, the ones actually stuck on the metal rack. And I  
10 don't know if it was the brand name for the bicycle but maybe a  
11 sticker on the bicycle as well.

12 Q What did he do then?

13 A He, after stopping there for again a couple of  
14 minutes, he went north through the store into the electronic  
15 section. He selected a box with a cordless phone in it, put it  
16 in the basket, went east through the store, cut back  
17 southbound, stopped near housewares where skillets, irons,  
18 those kinds of things are, stopped there at the end of one  
19 aisle, looked at a few items for briefly thirty seconds or so.  
20 He pushed the basket up to the very front of the store right at  
21 a register between where you can go to one register or the  
22 other. There is an opening with the display right in the  
23 front. He left the basket literally stopped at a register,  
24 left it there, walked through the aisle by the registers and

1 into the men's restroom.

2 Q After he came out of the men's restroom, did he  
3 return to purchase his telephone?

4 A No. He left the store.

5 Q So he just abandoned the shopping cart there with an  
6 item in it and left the store?

7 A Yes.

8 Q Did you recognize the person that was with Mr.  
9 Volpicelli?

10 A Not at that time. I did not know who it was.

11 Q But you saw him close enough to get a good  
12 identification of him? I guess that is not the right word. I  
13 will withdraw that question.

14 Did you get a good look at him when he drove up in  
15 the van with Mr. Volpicelli?

16 A No I did not get a good look at the passenger until  
17 later.

18 Q Did you watch the passenger from the MPV van come  
19 into the store at all?

20 A No.

21 Q Detective, do you know whether Ferrill Volpicelli was  
22 arrested on the evening of October 17, 2001?

23 A Yes.

24 Q Was this briefly after you observed him in the



1 Wal-Mart store?

2 A Yes, it was.

3 Q Do you recall who conducted that stop?

4 A Patrol officers Quan and Cole.

5 Q Do you recall where the stop was, approximately?

6 A It was in the 9000 block of South Virginia Street  
7 just slightly north of the intersection of Foothill and South  
8 Virginia. One side is Foothill. The other side is South  
9 Meadows Parkway.

10 Q Detective, was a search conducted of this vehicle?

11 A Yes, it was.

12 Q Before that, was the defendant arrested?

13 A Yes, he was.

14 Q Was his passenger arrested?

15 A Yes, he was.

16 Q It was after that you searched the vehicle?

17 A Yes.

18 Q Why did you search this vehicle?

19 A We were impounding the vehicle. I was inventorying  
20 the contents of the inside.

21 Q Is that common police procedure to conduct an  
22 inventory?

23 A It is actually a written policy. Any vehicle we  
24 impound we are required to inventory the contents.

1           Q     If I may grab the exhibits here for a second,  
2     please. Detective, I am showing you what has been marked for  
3     identification as Grand Jury Exhibit 17. Do you recognize who  
4     is depicted in that photograph?

5           A     Yes.

6           Q     Who is that?

7           A     That is Ferrill Volpicelli.

8           Q     Thank you.

9           MS. RIGGS: May I pass the exhibit around to the  
10    Grand Jury?

11   BY MS. RIGGS:

12           Q     I am showing you what has been marked for  
13    identification as Grand Jury Exhibit 2. Can you tell me what  
14    is depicted in that photograph?

15           A     This is the Mazda MPV van Mr. Volpicelli was driving.

16           Q     You observed Mr. Volpicelli in that vehicle?

17           A     Yes, ma'am.

18           Q     You also observed his passenger; is that correct?

19           A     Yes, ma'am.

20           Q     Is that the vehicle from which you took the  
21    inventory?

22           A     Yes.

23           MS. RIGGS: Thank you. Sir, would you prefer to pass  
24    these among the Grand Jurors or just set it down since they

1 have already seen it? Thank you.

2 BY MS. RIGGS:

3 Q Detective, I am showing you what has been marked for  
4 identification as Grand Jury Exhibit 4. Can you tell me if you  
5 recognize that item?

6 A Yes.

7 Q Go ahead?

8 A It is a black zippered case that contained a Brother  
9 brand label maker.

10 Q Where was that located? Was that located inside the  
11 van?

12 A Yes.

13 Q Where was it located inside the van?

14 A On the floorboard of the car near the passenger side.

15 Q Was it in this condition when you found it, that is  
16 inside the closed bag?

17 A Inside the case, yes.

18 Q Was the bag closed?

19 A Yes.

20 Q Now you are looking at the second page of this  
21 exhibit?

22 A Yes.

23 Q Is this the way the item looked on the inside when  
24 you opened it?

1 A Yes.

2 Q And the next page, that is the actual label maker,  
3 itself?

4 A Yes.

5 Q Thank you. Detective, I am showing you now what has  
6 been marked for identification as Grand Jury Exhibit 3. Can  
7 you tell me is that an item that you found during your  
8 inventory search of this vehicle?

9 A Yes.

10 Q What is that item?

11 A It is a small fold-over accordian folder with  
12 numerous pockets inside.

13 Q If you would turn to the second page of that exhibit,  
14 please. That is the back of it, correct?

15 A Yeah, where you can latch it shut, correct.

16 Q Next page please. And does this fairly and  
17 accurately depict the way that the, I suppose, the accordian  
18 folder was configured when you opened it?

19 A Yes.

20 Q Sir, what do you see attached to the front of this  
21 accordian folder with a paper clip?

22 A A stack of various UPC bar code labels.

23 Q Were those on sort of a sticker material?

24 A Yes.

1           Q     So was it your impression that sticker material could  
2 be pulled off?

3           A     Like on paper so you can peel it off and apply it,  
4 yes.

5           Q     Thank you. Turn to the next page, please. Does this  
6 fairly and accurately depict the way the accordian folder  
7 looked on the inside?

8           A     Yes.

9           Q     What is in the inside of this accordian folder?

10          A     Very many receipts for transactions at various stores  
11 throughout the Reno-Sparks area.

12          Q     Now, detective, based on your observations, was there  
13 any sort of organization to those?

14          A     Yes, ma'am.

15          Q     Can you describe the organization?

16          A     Extremely organized by store name and location.

17          Q     Alphabetically by store?

18          A     I believe so.

19          Q     Thank you. Next page, please. Again, this is just a  
20 different view of the same item, correct?

21          A     Yes.

22          Q     Thank you. Now, detective, I am showing you what is  
23 marked for identification Grand Jury Exhibit 5. Can you tell  
24 me what that item is, please?

1           A     It is an eight and a half by eleven piece of paper  
2     that I believe was a photocopy, it might be the original, of a  
3     piece of paper that I found on the floor of the Mazda van.

4           Q     Whereabouts on the floor did you find that?

5           A     I believe it was on the floor near the front  
6     passenger seat.

7           Q     Can you tell me what the title of that document is?

8           A     Titled transpositions.

9           Q     Thank you. Now, detective, I am showing you what has  
10    been marked for identification Grand Jury Exhibit 13. I am  
11    showing you the photograph associated with this exhibit. Can  
12    you tell me what is depicted in that exhibit?

13          A     Yes. It is a light jacket or windbreaker on top of  
14    two comforters.

15          Q     Now is one of those comforters inside a shopping  
16    bag?

17          A     Yes, it is.

18          Q     Do you recall what store that shopping bag had  
19    printed on it? It is not visible in that photograph?

20          A     Yes. It was a Shopko shopping bag.

21          Q     Okay. Now looking at the exhibit on the first page,  
22    detective, do you recall finding that in the van?

23          A     Yes.

24          Q     What is it?

1           A     It is a receipt for purchasing a comforter, \$24.99  
2 from the Shopko on South Virginia Street in Reno.

3           Q     That is not the same Shopko you observed him walk  
4 into earlier?

5           A     No. It is from the same date but earlier in the day.

6           Q     What time of day is that?

7           A     11:38 a.m., on the receipt.

8           Q     Again, detective, can you tell me what amount is on  
9 the purchase price?

10          A     \$24.99 plus tax.

11          Q     Detective, I am now showing you what has been marked  
12 for identification Grand Jury Exhibit 15. Can you tell me what  
13 is depicted in that photograph, please?

14          A     You bet. It is an aluminum Mongoose fully suspended  
15 mountain bike.

16          Q     Can you tell me if that is the bicycle you watched  
17 Mr. Volpicelli looking at in Wal-Mart on the 17th?

18          A     I believe there was more than one in the display  
19 rack, but this looks just like the one he was looking at, yeah.

20          Q     Thank you. Detective, earlier you said it was your  
21 opinion that Mr. Volpicelli was looking at pricing information  
22 adjacent to those bicycles, correct?

23          A     Yes.

24          Q     I am showing you in the same exhibit basically a

1 display price sticker. Can you tell me, do you recognize this?

2 A I actually didn't handle this, but I see it is a  
3 receipt for what appears to be the same bicycle.

4 Q Did you observe this price tag or this display price  
5 while you were in the bicycle section?

6 A Probably from a distance, yes. Yes.

7 Q Thank you.

8 MS. RIGGS: May I have the Grand Jury's indulgence  
9 for a moment?

10 BY MS. RIGGS:

11 Q Detective, when you saw these photographs, there were  
12 two comforters, correct?

13 A Yes.

14 Q Do you recall what brand those comforters actually  
15 were?

16 A Sure.

17 Q What brand?

18 A Willow Bay.

19 Q That is different from a Color Vision?

20 A That is correct, yes.

21 Q Did you ever--I will withdraw that. How did these  
22 comforters--Did you have an opportunity to go back into Shopko  
23 and look at any comforters that were labeled Color Vision?

24 A I actually returned to the Shopko on Mae Anne on



1 October 18th to do a follow-up investigation. The Willow Bay  
2 comforters were in their own section actually top to bottom  
3 three or four shelves, an entire ten or twelve foot shelf that  
4 had nothing but Willow Bay comforters. The Color Vision  
5 comforters were on an aisle perpendicular.

6 Q Regarding the Willow Bay comforters, what sort of  
7 packaging did they have?

8 A Similar packaging, but did not have carrying handles  
9 built into the packaging. It was distinctly different than the  
10 Willow Bay.

11 Q The Willow Bay comforter had the plastic bag?

12 A Similar packaging without the plastic handle built  
13 into the packaging.

14 Q Do you recall seeing the pricing information on the  
15 Willow Bay comforters when you went back into Shopko?

16 A I believe the Willow Bay comforter in question was  
17 originally priced at \$119 but on sale for \$49.

18 Q So the price on it was \$49?

19 A Yes.

20 Q And the Color Vision comforter that was purchased at  
21 11:38 in the morning according to Mr. Volpicelli's receipt was  
22 for \$24.99, correct?

23 A Correct.

24 MS. RIGGS: Thank you. I have no further questions

1 for detective Armitage. Do any of the Grand Jurors have  
2 questions for the detective?

3 A GRAND JUROR: I have one question. The label  
4 maker, was it a standard off the shelf label maker?

5 THE WITNESS: It appeared to be so. I had actually  
6 never seen one like this until I actually handled this one. It  
7 appeared to be able to make actual bar code type labels.

8 A GRAND JUROR: But was it adapted in any way, shape  
9 and form or standard off the shelf?

10 THE WITNESS: Appeared to be off the shelf label  
11 maker.

12 A GRAND JUROR: Were you the only detective on the  
13 case?

14 THE WITNESS: No, sir. There were several detectives  
15 working with this case.

16 A GRAND JUROR: Did you check whether or not there  
17 were cashiers in cahoots with this person?

18 THE WITNESS: It was--I'm not sure how much--how  
19 freely I may speak but--

20 A GRAND JUROR: Yes or no?

21 THE WITNESS: I did not check, no, sir. But it did  
22 not appear in any way, shape or form that was the case as far  
23 as the observations we first hand made of Mr. Volpicelli.

24 THE FOREMAN: Any other questions?

1           It is my duty to admonish you the proceedings before  
2 the Grand Jury are secret.

3           You may not disclose evidence presented to the Grand  
4 Jury, any event occurring or statement made in the presence of  
5 the Grand Jury, any information obtained by the Grand Jury or  
6 the results of investigation being made by the Grand Jury.

7           However, you may disclose the above information to  
8 the District Attorney for use in the performance of his  
9 duties.

10          You also may disclose your knowledge concerning the  
11 proceedings when directed by a court in connection with  
12 judicial proceedings or when otherwise permitted by the Court  
13 or to your own attorney.

14          The obligation of secrecy applies until the Court  
15 allows the matter to become public record.

16          A gross misdemeanor and contempt of court may be  
17 pursued if your obligation of secrecy is not followed. Do you  
18 understand?

19           THE WITNESS: Yes, sir.

20           THE FOREMAN: Thank you.

21           THE WITNESS: Thank you.

22                   (Witness Excused.)

23          MS. RIGGS: Mr. Foreman, may I call the State's next  
24 witness.

1 THE FOREMAN: Everybody okay?  
2 A GRAND JUROR: Can we take a couple of minutes?  
3 THE FOREMAN: Can we have about a five minute break.  
4 (Short recess taken.

5 THE FOREMAN: Back in session.  
6 (Whereupon another witness entered the Grand Jury room.)  
7 (Whereupon the witness was sworn by the Foreman.)  
8

9 JENNIFER POWELL  
10 called as a witness having been first duly  
11 sworn by the Foreman testified as follows:  
12

13 EXAMINATION

14 BY MS. RIGGS:

15 Q Would you please state your full name and spell your  
16 last name for the record?

17 A Jennifer Powell, P-O-W-E-L-L.

18 Q Ms. Powell, are you aware the Grand Jury is currently  
19 investigating and considering evidence as it relates to several  
20 property crimes alleged against Farrill Volpicelli?

21 A Yes, ma'am.

22 Q Do you understand that you are not a target of this  
23 Grand Jury, but you are called here as a witness only?

24 A Yes, ma'am.

1 Q Would you please direct your attention to the Grand  
2 Jury Foreman seated to your left?

3 THE FOREMAN: Are you aware the Grand Jury is  
4 investigating charges of burglary, conspiracy, larceny, theft,  
5 forgery?

6 THE WITNESS: Yes.

7 BY MS. RIGGS:

8 Q Ms. Powell, can you tell me where you live?

9 A Fernley, Nevada.

10 Q Do you currently work for Wal-Mart?

11 A Currently I am working for Reno Truss.

12 Q But you were working for Wal-Mart at Northtowne as a  
13 manager?

14 A Actually, I was working--

15 Q I apologize. I apologize. Shopko, correct?

16 A Correct.

17 Q You worked at Shopko as a cashier?

18 A Yes.

19 Q But you don't work there any longer, correct?

20 A Correct.

21 Q Were you working for Shopko as a cashier October 17,  
22 2001.

23 A Yes.

24 Q Do you recall being on duty at approximately 2:20

1 p.m., on that date October 17, 2001?

2 A Yes.

3 Q Ms. Powell, do you recall a comforter being purchased  
4 at approximately that time?

5 A Yes.

6 Q Do you recall what the person looked like who made  
7 that purchase?

8 A Yes. It was a male of mid height. He had dark hair  
9 and he was wearing a business suit.

10 Q Now, regarding the item he purchased, again, can you  
11 tell me what he purchased?

12 A It was a down comforter.

13 Q Can you tell me how that item was packaged?

14 A It was in a plastic sealed zippered shut container  
15 with a plastic handle.

16 Q And he paid cash for that purchase or did he give you  
17 a credit card?

18 A Credit card.

19 Q Did he give you a check, or do you recall?

20 A I recall he used a credit card.

21 Q Now, after he made that purchase, do you recall him  
22 leaving the store?

23 A Yes.

24 Q Did a police detective approach you soon afterward

1 regarding that purchase?

2 A Following a few minutes after, yes.

3 Q After this police detective contacted you, did you  
4 request the assistance of the store manager?

5 A I got the manager and supervisor, yes, both.

6 Q Did they produce documents to check the price of that  
7 item?

8 A Yes. They went into the back room and got a  
9 duplicate receipt off the computer.

10 Q Now, Ms. Powell, do you recall what the price was for  
11 the item? Do you recall--Withdraw that. Do you recall how  
12 much the person who bought the comforter paid for it?

13 A No, I don't.

14 Q Ms. Powell, I am showing you a photograph. Can you  
15 tell me what is depicted in that photograph, the item in the  
16 foreground, please?

17 A The comforter that he purchased from me.

18 Q Do you recall whether you put that item into a  
19 shopping bag?

20 A I did not.

21 Q So you pointed to the comforter on the right, the tan  
22 comforter?

23 A Yes.

24 Q Ms. Powell, I am also showing you a different

1 document. What is the document or a copy of the document that  
2 you see here?

3 A Shopko's register receipts.

4 Q Again I am showing this witness Grand Jury Exhibit  
5 13. Do you recognize this as a Shopko receipt?

6 A Yes.

7 Q However, is that one from your store you worked at?

8 A It is not, no.

9 Q How do you know that?

10 A I worked at store 103 on Mae Anne and McCarran. This  
11 is store 77 which would be down on South South Virginia.

12 Q Can you tell me whether a purchase price for a  
13 comforter is listed in that receipt?

14 A Could you please repeat that?

15 Q Yes. Can you tell me whether a comforter is listed  
16 as an item purchased in this receipt?

17 A Yes, it was.

18 Q Can you tell me what appears to be the purchase price  
19 of the comforter?

20 A \$24.99.

21 Q And do you have any reason to believe that this is  
22 not an authentic Shopko receipt?

23 A Could you rephrase that for me?

24 Q Sure. Do you recognize this as generally being a



1 Shopko receipt?

2 A Yes.

3 Q Thank you.

4 MS. RIGGS: Thank you I have no further questions for  
5 Ms. Powell. Do any of the Grand Jurors have questions?

6 THE FOREMAN: No questions? It is my duty to  
7 admonish you the proceedings before the Grand Jury are secret.

8 You may not disclose evidence presented to the Grand  
9 Jury, any event occurring or statement made in the presence of  
10 the Grand Jury, any information obtained by the Grand Jury or  
11 the results of investigation being made by the Grand Jury.

12 However, you may disclose the above information to  
13 the District Attorney for use in the performance of his  
14 duties.

15 You also may disclose your knowledge concerning the  
16 proceedings when directed by a court in connection with  
17 judicial proceedings or when otherwise permitted by the court  
18 or to your own attorney.

19 The obligation of secrecy applies until the Court  
20 allows the matter to become public record.

21 A gross misdemeanor and contempt of court may be  
22 pursued if your obligation of secrecy is not followed. Do you  
23 understand?

24 THE WITNESS: Yes.

1 MS. RIGGS: May Ms. Hier-Johnson call our next  
2 witness?

3 THE FOREMAN: Yes.

4 A GRAND JUROR: Mr. Foreman, can I have a couple of  
5 minutes? I want this window closed. It is so noisy up here,  
6 okay. It is not--This is so noisy I do not hear half the  
7 things being said. There is noise coming from the window and  
8 so forth.

9 A GRAND JUROR: He can move up.

10 THE FOREMAN: That would be the best thing, to move  
11 up closer.

12 A GRAND JUROR: No, I feel comfortable here. Moving  
13 up here does not change the noise from above. Either it is  
14 very noisy or it is a very noisy room. I have got a splitting  
15 headache. That window does not need to be open. It is air  
16 conditioned up here. Because I cannot stand it any longer,  
17 okay. I request we close this window.

18 MS. HIER-JOHNSON: For your information, I appeared  
19 here a couple of weeks ago and it was so hot in here, I asked  
20 Linda to get the air conditioning working.

21 THE FOREMAN: Please call your next witness.

22 MS. HIER-JOHNSON: Sergeant Della.

23 THE FOREMAN: Please raise your right hand.

24 (Whereupon the witness was sworn by the Foreman.)

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DAVID DELLA

called as a witness having been first duly  
sworn by the Foreman testified as follows:

EXAMINATION

BY MS. HIER-JOHNSON:

Q Please state your name for the record and spell your  
last name?

A David Della, D-E-L-L-A.

Q Are you aware that the Grand Jury is currently  
investigating and considering evidence as it relates to several  
property crimes alleged against Ferrill Volpicelli?

A Yes, I am.

Q Do you understand you are not a target of this Grand  
Jury but called here as a witness only?

A Yes, I do.

Q Please direct your attention to the Grand Jury  
Foreman seated to your left?

THE FOREMAN: Are you aware the Grand Jury is  
inquiring into evidence you may have related to charges of  
burglary, conspiracy to commit burglary, larceny, theft,  
forgery?

THE WITNESS: Yes, I am

///

1 BY MS. HIER-JOHNSON:

2 Q What is your occupation?

3 A I am a sergeant with the Reno Police Department.

4 Q How long have you been employed by the Reno Police  
5 Department?

6 A One month short of eighteen years.

7 Q How long have you been a sergeant?

8 A I have been a sergeant for 7 years.

9 Q What is your current assignment?

10 A I am currently assigned to the Detective Division in  
11 charge of a unit.

12 Q What is the purpose of the unit to which you are  
13 assigned?

14 A It is to monitor and surveill persons suspected of  
15 criminal activity.

16 Q When conducting surveillance, how are the detectives  
17 in your unit generally dressed?

18 A Normally it is going to be something that anyone--you  
19 might wear everyday. That is the whole idea, to blend into  
20 society. Summer we may wear shorts or jeans. It is never in  
21 uniform.

22 Q At some point in 2001 did you become involved in an  
23 investigation to determine whether Farrill Volpicelli was  
24 involved in criminal activity?

1 A Yes, we did.

2 Q Approximately at what point did your unit become  
3 involved in this investigation?

4 A I believe I assigned the initial information to  
5 detective Thomas in mid to late Summer of 2001.

6 Q After making that assignment, along with members of  
7 your unit, did you have the opportunity to surveill Mr.  
8 Ferrill Volpicelli on a number of occasions?

9 A On several occasions, yes.

10 Q I would like to draw your attention to September 26,  
11 2001. Were you participating in a surveillance of Mr.  
12 Volpicelli in the morning around 8:00 or 9:00 o'clock?

13 A Yes.

14 Q Where?

15 A It would have been the Reno-Sparks area.

16 Q Here in Washoe County?

17 A Yes.

18 Q Did you have the opportunity to follow Mr. Volpicelli  
19 to the area of 30 East Victorian Avenue in Sparks?

20 A Yes, I did.

21 Q Was there a business located at that address?

22 A There is.

23 Q What kind of business?

24 A It is one of those mini storage rental complexes.

1 Q Do you happen to recall the name of it?

2 A I don't.

3 Q Where is that located in proximity to Sierra Sid's?

4 A It would be--It is to the west on the same street  
5 that comes away from there. I would guess it may be 800 yards.

6 Q When Mr. Volpicelli was surveilled to that location,  
7 what did you see him do there?

8 A I saw him pull into--through the gate and into the  
9 actual mini storage complex. And there is a little restaurant  
10 nextdoor to that I pulled into initially. Then I gave him a  
11 little bit of time to get in and see where he was going. I  
12 drove across the front, and I could see his van parked next to  
13 an open garage door. He appeared to be moving boxes in and out  
14 of there.

15 Q Approximately how long did you observe Mr. Volpicelli  
16 at that location?

17 A Probably close to twenty to twenty-five minutes.

18 Q Were you able, during the course of your  
19 surveillance, were you able to pinpoint a particular storage  
20 unit and convey that information to detective Thomas?

21 A Yes, I did.

22 Q On that date, was he assigned to maintain a log of  
23 surveillance activity?

24 A We normally keep surveillance logs when we are

1 running extended surveillances continually on these to monitor  
2 what we have so we don't have to try to remember it all later  
3 when we are doing our reports. He was assigned and would have  
4 done one.

5 Q As far as the vehicle you saw Mr. Volpicelli  
6 unloading on that date, can you describe it?

7 A On that day it was the Mazda MPV van, light colored.  
8 I don't recall the plate. California plates, I believe,  
9 registered to his brother.

10 Q I would like to move forward to October 17, 2001.  
11 Were you also participating in a surveillance of Mr. Volpicelli  
12 late that afternoon?

13 A Yes, we were.

14 Q What location?

15 A Again, several spots of Reno and Sparks. And on that  
16 day, we went down south to the Wal-Mart on Damonte Ranch  
17 Parkway. After he went downtown and picked somebody else up on  
18 Third Street, then he went down there.

19 Q Did you actually see him pick up the person on Third  
20 Street?

21 A I saw him stop and pick somebody up. I couldn't tell  
22 who at the time.

23 Q Was that person later identified as Brett Bowman?

24 A Yes, he was.

1 Q During the course of your surveillance where you  
2 ended up at the Wal-Mart on Damonte Ranch Parkway, did you have  
3 any Federal officers that were accompanying you on that date?

4 A Federal officer Barbara Hunt was working with us on  
5 that day. She was riding with me in my vehicle.

6 Q To your knowledge, was she conducting an  
7 investigation parallel to yours on Mr. Volpicelli?

8 A Yes, she was.

9 Q At some point at the Wal-Mart, did you follow Brett  
10 Bowman into the Wal-Mart?

11 A Yes.

12 Q Where did you see him go?

13 A He went in the west doors of the Wal-Mart, and when  
14 officer Hunt and I went in, he was at the bicycle rack where  
15 they have two rows of bicycles, and he had a clerk there  
16 helping him. And it was kind of unusual. They were taking a  
17 bike off the rack which isn't--Normally, any bike I have bought  
18 for my children or seen bought, you grab a tag, take it to the  
19 register, they get you another bike that matches so they don't  
20 have to assemble all these. They can keep them in the box in  
21 the back.

22 Q He was able to buy an assembled one not in the box?

23 A Correct.

24 Q Did it appear to be the display model, to your



1 observation?

2 A It was.

3 Q What did you see Mr. Bowman do with the bike after  
4 gaining the assistance of the clerk?

5 A He started wheeling it toward the check-out, cash-  
6 out stand, and he went to the very first one he could have come  
7 to. There is a whole row of them. He went to the furthest  
8 west one probably 40 feet from the bicycle rack.

9 Q What did you see him do there?

10 A He paid for the bike. He went up, handed the clerk a  
11 tag, paid for the bicycle. At that point, I went back to the  
12 bicycle rack, I could see both from where I was, to look and  
13 see exactly what spot he got it out of. I watched him pay for  
14 the bicycle and wheel it out the front door. I went to the  
15 clerk, asked how much he paid for that bicycle.

16 Q After obtaining that information, what did you do  
17 next?

18 A I had her print out a receipt. I radioed to the unit  
19 outside. We went outside and saw he just paid almost \$200 less  
20 than what that bike sold for.

21 Q Showing you Exhibit 15 which consists of a Wal-Mart  
22 receipt, a Toyland price tag and a color photograph, do you  
23 recognize what is depicted in those photos or in that entire  
24 exhibit?

1 A I do. May I explain?

2 Q Please explain.

3 A The bicycle is the Mongoose mountain bike he had the  
4 clerk grab off the stand and wheeled up and paid for. This is  
5 the actual one here. I know that, because after the stop and  
6 arrest of the defendant, we took this right out of the van  
7 after we watched him load it up. This would be the tag I was  
8 explaining earlier. This is the tag I was explaining when you  
9 go up there to buy a bicycle, there is like a whole pack of  
10 these tags. You would take one up to the register. This is  
11 one that is for that specific bicycle. It is the Mongoose. I  
12 believe their model calls it an XR 350. It was definitely a  
13 Mongoose they took off the stand, and this receipt depicts the  
14 amount that Mr. Bowman paid for the bicycle to the clerk when I  
15 witnessed him, \$74.96, with tax, \$80.39, much less than the  
16 \$249.66 the bike was supposed to sell for.

17 Q Now you testified that Mr. Volpicelli and Mr. Bowman  
18 were stopped and arrested after this transaction was observed?

19 A Yes.

20 Q At some point after that arrest, were you detectives  
21 involved in the search of that storage unit back on Victorian  
22 Avenue where you had seen Mr. Volpicelli on September 26th?

23 A We were.

24 Q Were you present at the time the search began of the

1 storage unit?

2 A Yes, I was. Again, officer Hunt was with me.

3 Q Which one of your detectives were primarily involved  
4 in the search of that unit?

5 A I believe with detective Thomas being the case agent,  
6 he would have had primary responsibility for it.

7 Q Would that include obtaining judicial approval, if  
8 necessary?

9 A Yes.

10 Q Was detective Thomas also responsible for following  
11 up on items located within that unit and contacting stores to  
12 try to identify property and determine whether or not it was  
13 unlawfully procured?

14 A He would have been the primary one responsible.  
15 Might have had other detectives. All the responsibility would  
16 fall back on him as the case agent.

17 Q Then I will ask him those questions. Thank you.

18 MS. HIER-JOHNSON: I have no further questions. Does  
19 anybody have any questions for sergeant Della?

20 THE FOREMAN: Any questions? It is my duty to  
21 admonish you the proceedings before the Grand Jury are secret.

22 You may not disclose evidence presented to the Grand  
23 Jury, any event occurring or statement made in the presence of  
24 the Grand Jury, any information obtained by the Grand Jury or

1 the results of the investigation being made by the Grand Jury.

2 However, you may disclose the above information to  
3 the District Attorney for use in the performance of his  
4 duties.

5 You also may disclose your knowledge concerning the  
6 proceedings when directed by a court in connection with  
7 judicial proceedings or when otherwise permitted by the court  
8 or to your own attorney.

9 The obligation of secrecy applies until the court  
10 allows the matter to become public record.

11 A gross misdemeanor and contempt of court may be  
12 pursued if your obligation of secrecy is not followed. Do you  
13 understand?

14 THE WITNESS: Yes, I do.

15 (Witness excused.)

16 MS. HIER-JOHNSON: May the State call it's next  
17 witness?

18 THE FOREMAN: Yes, please.

19 (Whereupon the witness was sworn by the Foreman.)

20 ///

21 ///

22 ///

23 ///

24 ///

1 LARRY LODGE

2 called as a witness having been first duly  
3 sworn by the Foreman testified as follows:  
4

5 EXAMINATION

6 BY MS. HIER-JOHNSON:

7 Q Please state your name for the record and spell your  
8 last name?

9 A Larry Lodge, L-O-D-G-E.

10 Q Are you aware the Grand Jury is currently  
11 investigating and considering evidence as it relates to several  
12 property crimes alleged against Ferrill Joseph Volpicelli?

13 A Yes, I am.

14 Q Please direct your attention to the Grand Jury  
15 Foreman seated to your left?

16 THE FOREMAN: Are yo aware the Grand Jury is  
17 inquiring into evidence you may have relating to charges of  
18 burglary, conspiracy to commit burglary, larceny, theft,  
19 forgery and unlawful possession of counterfeiting instruments?

20 THE WITNESS: Yes, sir.

21 BY MS. HIER-JOHNSON:

22 Q What is your occupation?

23 A I am a detective for the Washoe County Sheriff's  
24 Office.

1 Q How long have you been employed by the Sheriff's  
2 Office as a law enforcement officer?

3 A Approximately eighteen years.

4 Q Are you currently assigned to sergeant Della's  
5 special detective unit at the Reno Police Department?

6 A Yes, I am.

7 Q How long have you been assigned to that unit?

8 A It will be four years in September.

9 Q If I understand correctly, the purpose of that unit  
10 is to investigate people who are suspected of being involved in  
11 criminal activity; is that right?

12 A That's correct.

13 Q Now when you are out conducting surveillance and  
14 watching people you are investigating, how are you generally  
15 dressed?

16 A It actually depends on who we are watching. We will  
17 dress according to the environment or element we are going to  
18 be in. This is very typical of the days attire.

19 Q What you are wearing today?

20 A Yes, ma'am.

21 Q Are you on duty now?

22 A Yes, I am.

23 Q Now, back in 2001, did you participate in an  
24 investigation to determine whether Farrill Volpicelli was

1 involved in criminal activity?

2 A Yes, I did.

3 Q Do you recall about when you got involved in that  
4 investigation?

5 A It would be late August, September, that general  
6 area.

7 Q Did you have the opportunity to surveill Mr.  
8 Volpicelli on a number of occasions?

9 A Yes, ma'am.

10 Q I would like to draw your attention to September  
11 11th, 2001. Were you surveilling Mr. Volpicelli on that date?

12 A Yes, we were.

13 Q In what general area?

14 A It would be the Summit Ridge area, West McCarran  
15 Boulevard.

16 Q Here in Reno, Washoe County, Nevada?

17 A Yes.

18 Q Now around noontime, did you see Mr. Volpicelli go  
19 into the Home Depot up on Summit Ridge Court?

20 A Yes.

21 Q Did you follow him in?

22 A Yes, I did.

23 Q What did you observe him doing there?

24 A When he first went in, he returned a toolbox, a

1 yellow, I believe it was a plastic tool box probably about  
2 eighteen inches long by twelve inches wide he had taken out of  
3 the back of his vehicle. Then he began to walk around the  
4 store.

5 Q Did you follow him as he walked around the store?

6 A Yes.

7 Q What did you see him do?

8 A At one point, I lost visual contact with Mr.  
9 Volpicelli, and I came around and turned down an aisle. I am  
10 not sure what aisle we were on at this time, but it would have  
11 been in the right rear section of Home Depot. And as I turned  
12 on to the corner, Mr. Volpicelli was there directly in front of  
13 me, probably twenty feet in front of me. So rather than try to  
14 be obvious and stop and turn around, I just proceeded to walk  
15 behind him down the aisle.

16 Q What, if anything, did you observe as you walked  
17 behind him?

18 A He was standing looking at some item on a shelf.  
19 Again, I don't recall exactly what item he was looking at. I  
20 was paying more attention to him. He had a note pad and pen in  
21 his hand. He was bending over looking at the price tags that  
22 were on the shelving units of the Home Depot item, and he was  
23 writing numbers down on the pad.

24 Q After walking past him, what did you do?



1           A     I continued past him, remained in Home Depot and kept  
2 observing him walk up and down different aisles. He would  
3 repeat the same activity. He would stop, look at an item, be  
4 transcribing some type of numbers on to the note pad he had with  
5 him. This went on for some period of time.

6           Q     At some point did you see him exit the store?

7           A     Yes, he did.

8           Q     Did you see him buy anything?

9           A     No, he did not.

10          Q     And you testified that you had seen the vehicle he  
11 came out with that toolbox to return to. Do you recall what  
12 kind of vehicle it was?

13          A     I believe it was a van. I am not sure of the make or  
14 model, but it was a blue like Astro minivan type vehicle.

15          Q     Were there other detectives with you while you were  
16 conducting your surveillance of Mr. Volpicelli in Home Depot?

17          A     Detective Mike Brown from Sparks Police Department  
18 also assigned to our unit.

19                MS. HIER-JOHNSON: Thank you. I have no further  
20 questions for detective Lodge. Do any of the Grand Jurors have  
21 questions?

22                THE FOREMAN: Any of the jurors have questions?

23                It is my duty to admonish you that the proceedings  
24 before the Grand Jury are secret.

1           You may not disclose evidence presented to the Grand  
2 Jury, any event occurring or statement made in the presence of  
3 the Grand Jury, any information obtained by the Grand Jury or  
4 the results of the investigation being made by the Grand Jury.

5           However, you may disclose the above information to  
6 the District Attorney for use in the performance of his  
7 duties.

8           You also may disclose your knowledge concerning the  
9 proceedings when directed by a court in connection with  
10 judicial proceedings or or when otherwise permitted by the  
11 Court or to your own attorney.

12           The obligation of secrecy applies until the court  
13 allows the matter to become public record.

14           A gross misdemeanor and contempt of court may be  
15 pursued if your obligation of secrecy is not followed. Do you  
16 understand?

17           THE WITNESS: Yes, I do. Thank you.

18                           (Witness Excused.)

19           (Whereupon another witness entered the Grand Jury room.)

20           (Whereupon the witness was sworn by the Foreman.)

21           ///

22           ///

23           ///

24           ///

1 MICHAEL BROWN

2 called as a witness having been first duly  
3 sworn by the Foreman testified as follows:  
4

5 EXAMINATION

6 BY MS. HIER-JOHNSON:

7 Q Please state your name for the record and spell your  
8 last name?

9 A Michael Brown, B-R-O-W-N.

10 Q Are you aware that the Grand Jury is currently  
11 investigating and considering evidence as it relates to several  
12 property crimes alleged against Ferrill Joseph Volpicelli?

13 A Yes, I am.

14 Q Please direct your attention to the Grand Jury  
15 Foreman seated next to you.

16 THE FOREMAN: Are you aware the Grand Jury is  
17 investigating charges of burglary and related crimes?

18 THE WITNESS: Yes, sir.

19 BY MS. HIER-JOHNSON:

20 Q What is your occupation?

21 A Police detective.

22 Q With what agency?

23 A Sparks Police Department.

24 Q How long have you been employed in a law enforcement

1 capacity by Sparks Police Department?

2 A Twelve years.

3 Q Are you currently assigned to sergeant Della's  
4 special detective unit at the Reno Police Department?

5 A Yes, I am.

6 Q How long have you been in that assignment?

7 A Two years.

8 Q And do your duties and responsibilities in this  
9 current assignment include investigating and surveilling people  
10 who are suspected of being involved in criminal activity?

11 A Yes, they do.

12 Q When you are conducting surveillance, are you  
13 typically dressed in plain clothes as you appear here today?

14 A Yes.

15 Q Are you on duty now?

16 A Yes.

17 Q Back in the latter part of the Summer, 2001, did you  
18 become involved in an investigation to determine whether or not  
19 Ferrill Volpicelli was involved in criminal activity?

20 A Yes, I did.

21 Q About when did you become involved in that  
22 investigation?

23 A Early September of 2001.

24 Q Did you have the opportunity to surveill him on a

1 number of occasions in that investigation?

2 A Yes.

3 Q Drawing your attention to September 28, 2001, were  
4 you on duty that day?

5 A Yes. Oh, no, I was not.

6 Q It was a day off?

7 A Yes.

8 Q Were you out shopping?

9 A Yes.

10 Q While you were out, did you happen to see Mr.  
11 Volpicelli?

12 A Yes, I did.

13 Q Where did you see him?

14 A At Home Depot on Northtowne Lane in Reno.

15 Q As a result of observing him there, did you contact  
16 your supervisor and go on duty status?

17 A Yes, I did.

18 Q What happened from there?

19 A I followed him away from the Home Depot where he  
20 ultimately wound up at the Wal-Mart on Redfield Parkway.

21 Q Is that the one that has the technical address of  
22 4855 Kietzke Lane in Reno?

23 A Yes.

24 Q That would have been shortly after noon?

1           A     Approximately.

2           Q     Did you follow him into that Wal-Mart?

3           A     Yes, I did.

4           Q     Was anybody with you?

5           A     Detective Larry Lodge was with me inside the store,  
6 but we were not together.

7           Q     Once you entered the store, what did you observe Mr.  
8 Volpicelli do?

9           A     I watched him walk to the back of the store where car  
10 stereos and car alarms are sold. And he was writing down  
11 numbers while he was looking at some of the items that were on  
12 the shelves.

13          Q     Approximately how long did you observe him there in  
14 the Wal-Mart?

15          A     Five minutes.

16          Q     What did he do after copying down information in that  
17 section?

18          A     He just began walking around the store, appeared to  
19 be shopping.

20          Q     Did you see him purchase anything?

21          A     No.

22          Q     Did you see him exit the store?

23          A     Yes.

24          Q     Was that the extent of your surveillance of Mr.

1 Volpicelli on September 28th?

2 A Yes, it was.

3 MS. HIER-JOHNSON: Thank you. I have no further  
4 questions. Do any of the Grand Jurors have any questions for  
5 detective Brown?

6 THE FOREMAN: Are there any questions?

7 It is my duty to admonish you the proceedings before  
8 the Grand Jury are secret.

9 You may not disclose evidence presented to the Grand  
10 Jury, any event occurring or statement made in the presence of  
11 the Grand Jury, any information obtained by the Grand Jury or  
12 the results of the investigation being made by the Grand Jury.

13 However, you may disclose the above information to  
14 the District Attorney for use in the performance of his  
15 duties.

16 You also may disclose your knowledge concerning the  
17 proceedings when directed by a court in connection with  
18 judicial proceedings or when otherwise permitted by the Court  
19 or to your own attorney.

20 The obligation of secrecy applies until the Court  
21 allows the matter to become public record.

22 A gross misdemeanor and contempt of court may be  
23 pursued if your obligation of secrecy is not followed. Do you  
24 understand?

1 THE WITNESS: Yes, I do.

2 THE FOREMAN: Thank you.

3 (Witness excused.)

4 MS. HIER-JOHNSON: May Ms. Riggs call our next  
5 witness?

6 THE FOREMAN: Please do.

7 MS. RIGGS: State will call David Ellis.

8 (Whereupon another witness entered the Grand Jury room.)

9 MS. RIGGS: Sir, would you step forward and be sworn,  
10 please

11 (Whereupon the witness was sworn by the Foreman.)

12

13 JOHN DAVID ELLIS, JR.

14 Called as a witness having been first duly  
15 sworn by the Foreman testified as follows:

16

17 EXAMINATION

18 BY MS. RIGGS:

19 Q Sir, would you please state your full name and spell  
20 your last name for the record?

21 A John David Ellis, Jr., E-L-L-I-S.

22 Q Sir, are you aware that the Grand Jury is currently  
23 investigating and considering evidence as it is related to  
24 several property crimes alleged against Ferrill Volpicelli?



1           A     Yes.

2           Q     Do you understand that you are not a target of this  
3 Grand Jury but you are called here as a witness only?

4           A     Yes, ma'am.

5           Q     Would you please direct your attention to the Grand  
6 Jury Foreman seated to your left?

7           THE FOREMAN: Are you aware the Grand Jury is  
8 investigating charges of burglary and related crimes?

9           THE WITNESS: Yes.

10          BY MS. RIGGS:

11          Q     Mr. Ellis, can you tell me who employs you?

12          A     Lowe's Home Improvement Warehouse.

13          Q     What is your position with Lowe's?

14          A     I am a district loss prevention manager.

15          Q     What facility do you work out of? What town do you  
16 work in?

17          A     Currently in southern California, in Irvine,  
18 California.

19          Q     As of November 6th of 2000, can you tell me where you  
20 were mainly located?

21          A     Northern California, Vacaville, but I covered all of  
22 the stores in northern California and northern Nevada.

23          Q     Is the Lowe's on Kietzke Lane in Reno one of the  
24 stores that you were responsible for loss management?

1           A     Yes, ma'am.

2           Q     Sir, on November 6th of 2001, were you in the Lowe's  
3 store in Reno?

4           A     Yes, ma'am.

5           Q     Sir, were you contacted by Reno police detective Reed  
6 Thomas while you were there that day?

7           A     Yes, ma'am.

8           Q     Do you recall what detective Thomas was there to talk  
9 to you about?

10          A     Detective Thomas brought in one of our package rugs  
11 that we sell. And he was trying to inquire as to why, you  
12 know, whether or not the purchase that was made for a \$500,  
13 \$499 rug was purchased at \$74. He wanted to validate the rug  
14 and video tape.

15          Q     Thank you. Now, sir, did detective Thomas bring that  
16 rug in with him?

17          A     Yes, ma'am.

18          Q     Showing you what has been marked for identification  
19 as Grand Jury Exhibit 8, on page 3, can you tell me what is  
20 depicted in that photogrpah?

21          A     It is one of our package rugs in the package, the  
22 wrapping it comes in.

23          Q     Does it fairly and accuratelly depict the rug as it  
24 was presented to you by detective Thomas?

1           A     Yes, ma'am.

2           Q     I ask you keep this exhibit in front of you, please.  
3     Sir, when the rug was presented to you, did you observe more  
4     than one UPC code label on it?

5           A     Yes, ma'am. In fact, there were two UPC codes on it.

6           Q     Before we go on, Mr. Ellis, can you briefly describe  
7     to the Grand Jury what a UPC code is for? What does Lowe's use  
8     it for?

9           A     UPC code or Universal Product Code is what it stands  
10    for is used by retailers to identify specific merchandise by  
11    their location, the numbers recorded, electronical data base  
12    businesses. When you scan the item, it comes up the particular  
13    item it is suppose to be.

14          Q     The Lowe's data base?

15          A     Yes.

16          Q     Are all the UPC codes you use particular to Lowe's  
17    merchandise?

18          A     Absolutely.

19          Q     Now you discussed whether there were two UPC codes on  
20    this particular rug. Can you tell me how they were arranged on  
21    this rug?

22          A     I am trying to be specific here. I said there were  
23    two. Technically, there are three, okay. There is one UPC on  
24    the exterior of the package. That would normally have been

1 scanned by the cashier. Under that was another UPC code under  
2 that, and then within the actual package rug, itself, actually  
3 stapled to it, we have another code stapled to the rug,  
4 itself.

5 Q So there was a UPC code overlaid over another UPC  
6 code with yet another one inside the rug?

7 A Correct.

8 Q Are you familiar with the format Lowe's uses for  
9 their UPC labels?

10 A Yes, ma'am.

11 Q Did you form an opinion as to whether the UPC code on  
12 the outside was, the one that was stuck on the outside of the  
13 rug, was one Lowe's normally used?

14 A It wasn't one we would use. It was just a generic  
15 bar code, whereas our bar codes tend to have all the numbers  
16 along the bottom, a description of the product, that kind of  
17 thing.

18 Q Now did you happen to scan the bar codes that you  
19 observed on the rug?

20 A Yes, ma'am.

21 Q Can you tell me what item came up from that data base  
22 when you scanned the first UPC code, talking about the one on  
23 the outside.

24 A Came up as another \$74 rug.

1 Q Did you take that label off and scan it a second  
2 time?

3 A Yes, ma'am.

4 Q What did that bar code result in as far as the  
5 price?

6 A That was a \$499 rug.

7 Q Again, showing you Grand Jury Exhibit 8, do you  
8 recognize this document?

9 A A little project estimate we would use simply to  
10 capture, if we were setting up for a customer a project, we  
11 could give them kind of a total what the project is. In this  
12 case, we scanned the two separate UPCs into that project so we  
13 could give that to the detective.

14 Q You produced this, correct?

15 A Yes.

16 Q It indicates a five by eight tuft wool ivory rug,  
17 \$499?

18 A Yes.

19 Q Is that the actual Lowe's actual retail price of that  
20 carpet?

21 A Yes, ma'am.

22 Q What does the second price indicate there?

23 A That was the second UPC, \$74 for a Roundabout Mowhawk  
24 rug.

1           Q     I am showing you the first page of this exhibit. Do  
2 you recognize what is depicted on this page?

3           A     There is a copy of our Lowe's journal tape that shows  
4 the transaction done at a register. Each one successfully in  
5 the transaction number.

6           Q     In other words, is this a receipt for that purchase?

7           A     Yes.

8           Q     What does--Was this receipt presented to you by  
9 detective Thomas?

10          A     Yes, it was.

11          Q     What does the price indicate that the purchaser paid  
12 for whatever item they bought?

13          A     Paid for the rug at \$74.

14          Q     Is the item noted in the receipt?

15          A     Yes, it is.

16          Q     What is the item noted in the receipt.

17          A     The item noted is for the \$74 rug, not the  
18 description of the \$499 rug.

19          Q     Mr. Ellis, as the product loss person at Lowe's, are  
20 you familiar with the inventory that Lowe's carries?

21          A     Absolutely.

22          Q     You are familiar with the price Lowe's assesses to  
23 each of those items, correct?

24          A     Absolutely.

1 Q Most items?

2 A Absolutely.

3 Q The item you observed that detective Thomas brought  
4 in, the rug, five by eight rug, to your knowledge, would Lowe's  
5 generally sell that rug for \$74?

6 A No, ma'am.

7 Q Does that seem to you to be an extremely discounted  
8 price for that item?

9 A We will generally go below the cost of a product.  
10 Retail may be \$499, but cost may be \$464, so we may go down to  
11 \$400. We generally don't discount more than 75 percent of the  
12 price as a rule on any product. Typically that would certainly  
13 be an unusual purchase price.

14 Q Can you tell me what the date and time was of the  
15 purchase noted on that receipt?

16 A Purchased on October the 5th of 2001 at 7:45 in the  
17 evening.

18 Q Mr. Ellis, do you have the ability to review video  
19 tapes of purchases that have been made by the security cameras  
20 at Lowe's?

21 A Yes, ma'am.

22 Q Were you able to pull a video tape regarding this  
23 purchase?

24 A Yes, ma'am.

1 Q Were you able to see in a security video tape this  
2 purchase being made?

3 A Absolutely, yes, ma'am.

4 Q Can you describe the person who was making the  
5 purchase of the the video tape, male or female?

6 A Certainly. It was a male subject. I had previously  
7 not had the opportunity to ever see this person before. He was  
8 identified by detective Thomas as the defendant.

9 Q We will move on. Based on the price that is noted,  
10 pardon me, the time that is noted on the receipt and--By the  
11 way, when you are looking at videos, is there a time stamp on  
12 that video?

13 A Absolutely.

14 Q The time stamp on the video corresponds to the time  
15 noted on the receipt?

16 A Absolutely.

17 Q Is it done for a reason?

18 A So we can capture that information, sure.

19 Q Thank you.

20 MS. RIGGS: I have no further questions for  
21 Mr. Ellis. Do any of the Grand Jurors have any questions?

22 THE FOREMAN: It is my duty to admonish you the  
23 proceedings before the Grand Jury are secret.

24 You may not disclose evidence presented to the Grand



1 Jury, any event occurring or statement made in the presence of  
2 the Grand Jury, any information obtained by the Grand Jury or  
3 the results of the investigation being made by the Grand Jury.

4 However, you may disclose the above information to  
5 the District Attorney for use in the performance of his  
6 duties. You also may disclose your knowledge concerning the  
7 proceedings when directed by a court in connection with  
8 judicial proceedings or when otherwise permitted by the court  
9 or to your own attorney.

10 The obligation of secrecy applies until the court  
11 allows the matter to become public record.

12 A gross misdemeanor and contempt of court may be  
13 pursued if your obligation of secrecy is followed. Do you  
14 understand?

15 THE WITNESS: Yes, sir. Thank you.

16 (Witness excused.)

17 (Whereupon another witness entered the Grand Jury room.)

18 (Whereupon the witness was sworn by the Foreman.)

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

1 MATTHEW CARTER

2 called as a witness having been first duly  
3 sworn by the Foreman testified as follows:

4  
5 EXAMINATION

6 BY MS. RIGGS:

7 Q Sir, would you please state your full name for the  
8 record and spell your last name?

9 A Matthew Carter, C-A-R-T-E-R.

10 Q Mr. Carter, are you aware the Grand Jury is currently  
11 investigating and considering evidence as it is related to  
12 several property crimes alleged against Ferrill Volpicelli?

13 A Yes.

14 Q Sir, do you understand you are not a target of this  
15 Grand Jury but are here as a witness only?

16 A Yes.

17 Q Sir, would you please direct your attention to the  
18 Grand Jury Foreman seated to your left?

19 THE FOREMAN: Are you aware the Grand Jury is  
20 investigating charges of burglary, larceny and related crimes?

21 THE WITNESS: Yes.

22 BY MS. RIGGS:

23 Q Sir, who employs you?

24 A Wal-Mart Stores, Incorporated.

1 Q What is your position at Wal-Mart?

2 A I am a store manager.

3 Q Tell me which store you manage?

4 A The Northtowne Reno store.

5 Q Mr. Carter, can you tell me if you were managing the  
6 North Reno store on January 28, 2002?

7 A Yes, I was.

8 Q Do you recall being contacted by Reno police  
9 detectives regarding UPC codes on that date?

10 A Yes, I do.

11 Q Do you recall generally what that discussion  
12 involved?

13 A Yes, I do.

14 Q What was the general gist of the discussion?

15 A In general, detective Thomas was inquiring about  
16 whether we could do some research for him on some UPC,  
17 Universal Price Codes, bar codes, to see if they were actually  
18 legitimate numbers coming up in our computer and register  
19 system.

20 Q Did detective Thomas bring in any item?

21 A Yes, he did.

22 Q What did he bring in with him?

23 A He brought in an Panasonic I believe DVD player as I  
24 recall. It has been a period of time.

1 Q I am showing you what has been marked for  
2 identification as Grand Jury Exhibit 7. Do you recognize what  
3 is depicted in the Polaroid photograph in this exhibit?

4 A Yes, it is a home theater system, Panasonic DVD  
5 stereo system.

6 Q Does that fairly and accurately depict the item  
7 detective Thomas showed you on that date and time?

8 A Yes, it does.

9 Q Thank you. Now were there two separate bar codes  
10 applied to this?

11 A Yes there were at the time he brought the item in.

12 Q The item is packaged in its original package,  
13 correct?

14 A Yes, it was. To my knowledge, yes it is.

15 Q How did you check the validity of those bar codes?

16 A I actually took the item up to our customer return  
17 desk and scanned those through our register system to check  
18 whether the items were active and whether they were valid items  
19 in our computer system.

20 Q When you say you did a scan, does that scan produce  
21 any document?

22 A Yes, it does, a register receipt, obviously, for a  
23 regular sales transaction. It would be a register receipt. I  
24 believe at that time we produced what we called a void

1 receipt. I was able to produce that and make a copy for the  
2 detective.

3 Q Now the two UPC bar codes that you observed on this  
4 package, were they the same?

5 A No. No. They were different.

6 MS. RIGGS: Can we have an additional exhibit marked  
7 for identification, please? Thank you.

8 BY MS. RIGGS:

9 Q Mr. Carter, I am showing you what has been marked for  
10 identification as Grand Jury Exhibit 18. Do you recognize this  
11 as the document or the receipt that was produced as a result of  
12 your scan?

13 A Yes, I do.

14 Q Can you tell me what item came up on your tape when  
15 you scanned the first bar code?

16 A Three CD Emerson stereo system.

17 Q The item it was applied to was not an Emerson?

18 A No, it was a Panasonic stereo system.

19 Q Tell me what price is indicated by the receipt?

20 A \$69.94.

21 Q That is the value or the regular price for the  
22 Emerson?

23 A Yes, for the Emerson item.

24 Q Tell me what item came up when you scanned it?

1           A     Five DVD stereo system. That would be the Panasonic,  
2     the box that was actually presented for \$477.88.

3           Q     So there is approximately a four hundred dollar price  
4     difference between these two?

5           A     \$499, yes.

6           Q     The second bar code you scanned was the valid one,  
7     correct?

8           A     Correct. Correct.

9           Q     Mr. Danielson, being the manager of the Wal-Mart  
10    store, you are familiar with your inventory and in general with  
11    what prices are charged for particular items, correct?

12          A     Yes.

13          Q     Would this Panasonic DVD home theater system ever  
14    sell at Wal-Mart for \$70?

15          A     Absolutely, not no.

16          Q     Why is that?

17          A     It is a very advanced system. Its brand name  
18    Panasonic is very high tech. And the amount of equipment  
19    included in this particular package, the Panasonic system value  
20    is approximately \$500. It wouldn't be \$70.

21                MS. RIGGS: Thank you. I have no further questions  
22    for Mr. Carter.

23                MS. HIER-JOHNSON: May I have your indulgence?

24    ///

1 BY MS. RIGGS:

2 Q Now, Mr. Danielson-- Mr. Ellis, I will direct your  
3 attention again to the Wal-Mart receipt. We are looking at the  
4 three CD Emerson line, particularly the item that was scanned  
5 with the first UPC bar code. You will note there is a number  
6 next to that. Can you tell me what that number is?

7 A UPC number from the actual bar code that is on the  
8 product.

9 Q Now if we were to look at the actual bar code that  
10 was on the product, would it match that number exactly?

11 A No. Very often the bar code on a product is a series  
12 of twelve numbers, and our system only recognizes ten numbers.  
13 It generally drops the first digit called the check digit and  
14 the last digit on the bar code. You only have ten digits. On  
15 the product, you have twelve.

16 Q The Wal-Mart receipts indicate a trunkcated bar code,  
17 correct?

18 A Correct.

19 MS. RIGGS: I have no further questions. Do any of  
20 the Grand Jurors have any questions.

21 A GRAND JUROR: Do you have any way to find out or do  
22 you know where the first label on top, where that label came  
23 from? Was it printed off-site? Was it one your company  
24 transferred from another product? Where did that bar code come

1 from?

2 THE WITNESS: I asked that same question of the  
3 detective. He told me--

4 MS. RIGGS: I am going to have to stop that question  
5 because this is hearsay. It is not admissible in these  
6 proceedings.

7 THE WITNESS: I can't say specifically. I don't know  
8 have direct knowledge of that.

9 THE FOREMAN: Any other questions?

10 It is my duty to admonish you the proceedings before  
11 the Grand Jury are secret.

12 You may not disclose evidence presented to the Grand  
13 Jury, any event occurring or statement made in the presence of  
14 the Grand Jury, any information obtained by the Grand Jury or  
15 the results of the investigation being made by the Grand Jury.

16 However, you may disclose the above information to  
17 the District Attorney for use in the performance of his  
18 duties.

19 You also may disclose your knowledge concerning the  
20 proceeding when directed by a court in connection with judicial  
21 proceedings or when otherwise permitted by the Court or to your  
22 own attorney.

23 The obligation of secrecy applies until the Court  
24 allows the matter to become public record.



1           A gross misdemeanor and contempt of court may be  
2       pursued if your obligation of secrecy is not followed. Do you  
3       understand?

4           THE WITNESS: Yes, I do.

5                       (Witness excused.)

6           MS. RIGGS: May Ms. Hier-Johnson call our final  
7       witness?

8           THE FOREMAN: Yes. Just one minute, though. The  
9       copy marked original ends here. It doesn't have this page on  
10      it.

11          MS. HIER-JOHNSON: I am sorry?

12          THE FOREMAN: I lack that page.

13          MS. HIER-JOHNSON: Mr. Foreman, it appears in the  
14      copying process we lost the final page that should be attached  
15      to the Indictment which lists the witnesses presented before  
16      the Grand Jury this morning. I have an extra copy of that  
17      page, so I am going to affix that to the original. And at this  
18      time, since we are dealing with this issue, if I may, I would  
19      like to amend that page by interlineation. We found out this  
20      morning that an anticipated witness from Wal-Mart named Gregory  
21      Danielson who appears on that page was not available to appear  
22      and, therefore, his manager, Mr. Carter, appeared in his  
23      stead. So at line 8 of the witness page of the proposed  
24      Indictment, I am striking Gregory Danielson's name and just

1 above it I am handwriting Matt Carter.

2 May I call my final witness?

3 THE FOREMAN: Please call your final witness.

4 (Whereupon another witness entered the Grand Jury room.)

5 THE FOREMAN: Please raise your right hand.

6 (Whereupon the witness was sworn by the Foreman.)

7

8 REED SCOTT THOMAS

9 called as a witness having been first duly

10 sworn by the Foreman testified as follows:

11

12 EXAMINATION

13 BY MS. HIER-JOHNSON:

14 Q Please state your name for the record and spell your  
15 last name?

16 A Read Scott Thomas, last of T-H-O-M-A-S.

17 Q Are you aware the Grand Jury is currently  
18 investigating and considering evidence as it relates to crimes  
19 alleged against Ferrill Joseph Volpicelli?

20 A Yes.

21 Q Please direct your attention to the Grand Jury  
22 Foreman seated to your left.

23 THE FOREMAN: Are you aware the Grand Jury is  
24 investigating charges of burglary, larceny and related crimes?

1 THE WITNESS: Yes.

2 BY MS. HIER-JOHNSON:

3 Q What is your occupation?

4 A I am a detective with Reno Police Department.

5 Q How long have you been employed as a law-enforcement  
6 officer by the Reno Police Department?

7 A It will be 9 years in August.

8 Q Are you currently assigned to sergeant Della's  
9 special unit of detectives?

10 A Yes, I am.

11 Q How long have you been assigned to his unit?

12 A About three and a half years.

13 Q If I understand correctly, your duties and  
14 reponsibilities include investigating or surveilling people  
15 suspected of possibly being involved in criminal activity?

16 A That's correct.

17 Q When you typically conduct your surveillance, are you  
18 usually dressed how you appear here today?

19 A Usually a little worse, but, yes.

20 Q Are you on duty now?

21 A Yes, I am.

22 Q Back in the latter part of the Summer of 2001, did  
23 you become involved in an investigation to determine whether or  
24 not Ferrill Joseph Volpicelli was involved in some criminal

1 activity?

2 A Yes.

3 Q Was there a case agent on the investigation of Mr.  
4 Volpicelli in 2001?

5 A Yes, there was. That was me.

6 Q What are your duties and responsibilities as a case  
7 agent?

8 A Basically overseeing the entire investigation, you  
9 know, police reports, perform follow-ups, overseeing the  
10 evidence, go to court when necessary, replying to requests from  
11 the D.A.'s office for any follow-up that may need to be done.  
12 Statements, talking to witnesses and other people who are  
13 involved in the case, that type of thing.

14 Q Once you opened an investigation on Mr. Volpicelli  
15 that Summer, did you have an opportunity to surveill him on a  
16 number of occasions?

17 A Yes.

18 Q Can you estimate roughly how many times?

19 A Eight times.

20 Q Were there other undercover detectives involved in  
21 those surveillances as well?

22 A Every time.

23 Q During the 2001 surveillance on Mr. Volpicelli, did  
24 you ever see any indication that he was employed?

1           A     Physically watching him go to a place of employment,  
2     no, it didn't appear to us he was employed. He was doing a lot  
3     of driving store to store but didn't seem to go to, for  
4     instance, show up at work at 8:00 and leave at 5:00. It wasn't  
5     anything we ever saw.

6           Q     I would like to move forward to the date of Mr.  
7     Volpicelli's arrest, October 17, 2001. Upon his arrest, were  
8     you involved in obtaining judicial approval to search areas  
9     that had been identified as areas either controlled or accessed  
10    by Mr. Volpicelli?

11          A     Yes.

12          Q     Did that include storage unit B-114 at the Osage  
13    storage facility at 30 East Victorian Avenue in Sparks?

14          A     Osage Self Storage, yes.

15          Q     The same unit identified to you by sergeant Della in  
16    an earlier surveillance in this investigation?

17          A     Yes, it was.

18          Q     Were you present for the search of that unit?

19          A     Yes, I was.

20          Q     Was there anybody else primarily assisting you in  
21    executing the search of the unit?

22          A     Several of us were there. Parole and probation  
23    officers were there. There were the other detectives in the  
24    unit as well as my supervisor, sergeant Della.

1 Q Did you have the opportunity to complete some  
2 follow-up investigation on some merchandise that had been  
3 located within that unit?

4 A Yes.

5 Q Did that include a Panasonic home theater system?

6 A Yes, it did.

7 Q Why was this item significant to you? Why did you  
8 choose it out of others to follow up?

9 A It was one of the items in the unit I noticed  
10 appeared to have a sticky bar code that was inconsistent with  
11 bar codes of other UPC labels. It was on that unit.

12 Q Showing you Grand Jury Exhibit 9 which consists of  
13 two black and white digital photos, photo copies of two  
14 receipts on a single page and a colored Polaroid, do you  
15 recognize what is contained in that exhibit?

16 A Yes.

17 Q Are these all connected to the Panasonic home theater  
18 system you were investigating?

19 A Yes.

20 Q As a result of the stickers you noticed on it that  
21 didn't seem quite right, did you contact anyone at Wal-Mart to  
22 gain additional information about this product?

23 A Two people.

24 Q Who were they?

1 A Matt Carter and Gregory Danielson.

2 Q Do you recall approximately when you contacted them  
3 after the storage unit was searched?

4 A I believe that was early November I got to that  
5 case. There was really no priority as to what I was doing for  
6 a second and third. There was so much to do, I think that just  
7 fell in that time frame.

8 Q Were they able to provide you with information and  
9 documentation that you sought confirming its origin from  
10 Wal-Mart and also confirming price information related to each  
11 bar code you found on the product?

12 A Yes.

13 Q Showing you Grand Jury Exhibit 18, does that appear  
14 to be a voided receipt printed for you by Mr. Carter and  
15 Mr. Danielson related to your follow-up investigation?

16 A Yes, it is.

17 Q And that receipt bears the UPC code number and  
18 description for an Emerson CD player as opposed to the  
19 Panasonic home theater system that bar code was affixed to?

20 A Yes, it does.

21 Q Did your investigation in this case also include  
22 researching the origin and pricing of a rolled up rug recovered  
23 from the storage unit?

24 A Yes.

1           Q     Approximately where in the storage unit was that rug  
2 located?

3           A     That was easy to remember. As we pushed the roll-up  
4 doors up, it was on the left right. I remember thinking it was  
5 going to fall out of the unit. As you are facing the unit,  
6 directly on your left leaning up against the wall.

7           Q     Showing you Grand Jury 8, the front page consists of  
8 copies of Lowe's receipts and product labels with a bar code on  
9 it. Another photo copy entitled Lowe's Company Project  
10 Estimate for Investigation, and three digital photographs black  
11 and white photographs. Do you recognize the contents of this  
12 exhibit?

13          A     Yes, I do.

14          Q     As far as the photographs, are those photographs that  
15 were taken during your investigation of the rug after it was  
16 recovered from the storage unit?

17          A     Yes.

18          Q     Moving forward to the other documentation attached,  
19 do you recall where the Lowe's receipt came from?

20          A     The Lowe's receipt came from an accordion folder  
21 recovered from the inside of his vehicle at the time of his  
22 arrest.

23          Q     Mr. Volpicelli's vehicle?

24          A     Yes.



1 Q Moving to page 2, do you recall where that project  
2 estimate for investigation came from?

3 A I am sorry, what?

4 Q Do you recall where this document came from?

5 A I'm sorry. When I met with the Lowe's employees down  
6 on Kietzke Lane.

7 Q Did that include Mr. Ellis who was here earlier this  
8 morning?

9 A Yes.

10 Q Was Mr. Ellis able to--Well, actually back up for a  
11 moment. Why was this particular item found within the storage  
12 unit of some significance that caused you to complete some  
13 further investigation?

14 A Well, like the Panasonic that I talked about a few  
15 minutes ago, it had what I believed was a fictitious UPC label  
16 attached to it over the valid label on the package.

17 Q As a result of contacting Mr. Ellis at Lowe's, was he  
18 able to provide you with the information and documentation you  
19 sought confirming the origin of this rug from Lowe's, also the  
20 price information related to each of the two bar codes that you  
21 found on it?

22 A Yes, he was.

23 Q Is that what is contained on page 2 of Exhibit 8?

24 A Yes.

1           Q     Did your follow-up investigation also include  
2 researching the origin of a Sonicare toothbrush found in the  
3 store?

4           A     Yes, it was.

5           Q     Approximately where was the toothbrush found in the  
6 unit?

7           A     I don't clearly remember where that was. Being a  
8 small item, he tended to have the smaller items like that in  
9 the smaller boxes in larger plastic bins. For instance,  
10 plastic bins with telephones or alarm systems or something like  
11 that that were in smaller boxes, so he put them in the plastic  
12 box. These bins were generally stacked along the side of the  
13 unit.

14          Q     Again, the same question, of all the things you found  
15 in this unit, why did this draw extra attention from you?

16          A     Again, I wanted what I thought was a fictitious UPC  
17 label affixed over the top consistent with the other two that  
18 were on the Panasonic home theater system and the carpet from  
19 Lowe's.

20          Q     Based on that observation, did you contact employees  
21 at Shopko regarding this Sonicare toothbrush?

22          A     Yes.

23          Q     Approximately when was that in the investigation?

24          A     I don't recall exactly. Again, it was in the weeks

1 following his arrest. I think it was probably in November as  
2 well.

3 Q Were they able to provide you with the information  
4 and documentation you sought confirming the toothbrush's origin  
5 from Shopko and the price information related to each of the  
6 UPC codes displayed on the product?

7 A Yes.

8 Q Was there a cheaper bar code attached to the product?

9 A Yes, there was.

10 Q Was that bar code with the cheaper price consistent  
11 in appearance with some of the other fraudulent bar code labels  
12 identified in this case?

13 A Yes, it was.

14 Q Showing you Grand Jury Exhibit 14 which consists of  
15 three pages, the last two being black and white digital  
16 photographs, do you recognize that?

17 A Yes. That is the toothbrush you are talking about.

18 Q That is what you found in the storage unit?

19 A Yes.

20 Q Moving to page 1 of Exhibit 14, do you recognize that  
21 receipt?

22 A Yes.

23 Q Where did you find this Shopko receipt?

24 A That receipt was also found in the accordian folder

1 that was located in Mr. Volpicelli's vehicle he was driving on  
2 the night of his arrest.

3 Q I don't believe this receipt has previously been  
4 published to the Grand Jury. I will go ahead and pass it  
5 around at this time.

6 Now were any items reportedly recovered from Mr.  
7 Volpicelli's vehicle after his arrest and turned over to you to  
8 help you complete your follow-up investigation?

9 A Yeah. There were several of us booking evidence. I  
10 had access to all of it, yes.

11 Q Can you please describe some of the items that  
12 reportedly came from the Mazda that you used to help complete  
13 the investigation in this case?

14 A I used the accordian folder containing all the  
15 receipts from all the stores I mentioned previously. I also  
16 used or took note of the fact there was a label maker inside  
17 the vehicle in a black canvass being used. A sheet that was  
18 entitled transpositions that had the stores' apparent UPC  
19 numbers and pricing information and a description of the item  
20 as well.

21 Q Showing you Grand Jury Exhibit 4 which consists of  
22 three pages of color digital photographs, do you recognize what  
23 is depicted in those photographs?

24 A Yes, the black canvass bag the label maker was in

1 retrieved from his vehicle the night of his arrest.

2 Q Did you use this in completing your follow-up  
3 investigation?

4 A I took it into account, yes.

5 Q Showing you Grand Jury Exhibit 3 which contained  
6 several black and white digital photographs, do you recognize  
7 what is depicted in all of those photos?

8 A Yes. The accordion folder we have been referring to  
9 taken from his vehicle the night of the arrest.

10 Q Did you inspect its content?

11 A Yes, I did.

12 Q What did you find?

13 A I found several--Well, all of the pockets pretty much  
14 had receipts from stores. They were never mixed up. Usually  
15 by store, Shopko, Wal-Mart, K-Mart, Home Depot, Lowe's. They  
16 were in this accordion folder, not necessarily in alphabetical  
17 order but organized by store. I also located several  
18 fictitious UPC labels directly in the front pouch as well as  
19 some interspersed throughout the rest of the pouch, some even  
20 attached to the back of receipts.

21 Q Can you approximate how many fictitious UPC labels  
22 you located in that accordion file?

23 A The accordion file alone I am guessing probably 15 or  
24 20. I think there were more located in other spots in the

1 evidence that we found in the vehicle and storage unit.

2 Q Were some of those also found in the black bag that  
3 contained the label maker?

4 A Sometimes they were just laying freely out.  
5 Sometimes they were attached to something.

6 Q Are you confident there were at least 15 fictitious  
7 UPC bar code labels found within the Mazda MPV?

8 A Yes, I am.

9 Q Showing you Grand Jury Exhibit 5, do you recognize  
10 this exhibit?

11 A Yes, it is part of the transposition log I told you  
12 about.

13 Q Is that something that was also reportedly found in  
14 the vehicle?

15 A Yes, it was.

16 Q Is it also something you used in conducting your  
17 follow-up investigation in this case?

18 A Yes, I did.

19 Q During the course of your investigation did you  
20 determine who that Mazda belonged to?

21 A Yes, I did.

22 Q Whose was that?

23 A It belonged to his brother, Martin Volpicelli who  
24 lives in southern California.

1           Q     Now as far as all the receipts in that folder, what  
2     did you do with them? How did you use these in your  
3     investigation?

4           A     I tried to match up the receipts with the items in  
5     the storage unit that had the fictitious labels, and I also  
6     tried to marry those up with the statements that Brett Bowman  
7     had given me in several interviews in trying to kind of piece  
8     together where and when and how much they were paying for these  
9     items.

10          Q     Do you recall some of the names of the stores that  
11     appeared on the receipts found in that accordian file?

12          A     Again, Shopko. Most of the local retail stores,  
13     Shopko, K-Mart, Wal-Mart, Home Depot, Lowe's, Pet Smart, Office  
14     Max, Office Depot. There were probably ten, twelve, fourteen  
15     different retail stores.

16          Q     In inspecting the contents of the accordian file, did  
17     you observe any receipts that were from out of the area?

18          A     Yes, I did.

19          Q     From what areas did you observe receipts from?

20          A     Las Vegas and southern California.

21          Q     During the course of your investigation, did you find  
22     either of the suspects in this case, Mr. Volpicelli or  
23     Mr. Bowman, had ties to either of those geographic regions?

24          A     I am not aware Mr. Bowman had any ties in

1 California. The only ties I am aware of were Oregon and Utah.  
2 Mr. Volpicelli has a brother, actually most of his family who  
3 lives in southern California. And as far as Vegas connections  
4 go, Mr. Volpicelli traveled to Las Vegas for a court appearance  
5 in a civil proceeding, and I was aware of that travel. So I  
6 know he had been to Vegas.

7 Q How did you use the transposition sheet, Exhibit 5,  
8 in your investigation?

9 A Again, I was trying to match up the item of the  
10 fictitious bar codes with receipts and matching up the UPC  
11 labels. And, you know, at least trying to find the  
12 approximation on the price to see if the price was in the  
13 ballpark. Again, a description. Just trying to get those  
14 things put together.

15 Q Were you able to do that in some instances?

16 A Yes.

17 Q With respect to the contents of the storage unit, can  
18 you generally describe that for the Grand Jury?

19 A Very neatly arranged. But, basically, you opened the  
20 door, it was kind of a long storage unit. I am guessing  
21 probably twenty feet if I am not mistaken, 15, 20 feet. Mostly  
22 shelves and plastic bins stacked on the side. He seemed to be  
23 very neat about how he kept things in there. It wasn't  
24 disheveled or anything like that. Many, many items, electronic



1 items again, telephones, entertainment centers, LCD screens,  
2 things of that nature that were stacked neatly and in boxes  
3 along the end of the storage unit and then toward the back.

4 He also had one large plastic bin in the back of the  
5 storage unit you might use for your back yard for storing lawn  
6 equipment or something like that that was unlocked, and he had  
7 several items stored in there as well.

8 Q Were the contents of this entire storage unit  
9 inventoried?

10 A We inventoried what we took from the storage unit.  
11 There were obvious items in there we didn't believe were fruits  
12 of this investigation, things like, you know, personal women's  
13 clothing that was stacked in plastic boxes and neatly folded  
14 and stored there. We didn't inventory everything in the unit,  
15 just what we took.

16 Q During the course of the search of this unit, was  
17 there any indicia found in the name of Brett Bowman?

18 A No.

19 Q Was there any indicia found that tended to connect  
20 the contents to Mr. Volpicelli and/or family members of his?

21 A Yes.

22 Q As far at items that were seized by the Reno police  
23 department, were those photographed?

24 A Yes.

1           Q     Now, I previously showed you the Sonicare toothbrush  
2     and accompanying receipt from Shopko in Exhibit 14.

3           A     Right.

4           Q     Did you have an opportunity to compare this Shopko  
5     receipt from the accordian file to the transposition list found  
6     in the vehicle?

7           A     Yes, I did.

8           Q     Did you find any similarities between the receipt and  
9     the transposition list?

10          A     Yes. The UPC number here on the receipt matches this  
11     UPC number here with the exception of the 4 at the end. That  
12     was, I learned sometimes those things are trunkcated so they  
13     eliminate the number either at the beginning or the end. It is  
14     the same number.

15          Q     Directing your attention to Grand Jury Exhibit 7 with  
16     the receipt from Bed Bath and Beyond, where was that receipt  
17     located in this investigation?

18          A     That was also in the accordian folder.

19          Q     Attached to that there is a black and white digital  
20     photo of a Krups coffee maker. Do you recognize that?

21          A     Yes.

22          Q     Where was that located in the course of this  
23     investigation?

24          A     In the storage unit.

1           Q     Now did every item that was seized that appeared to  
2     be connected to this investigation have both a legitimate UPC  
3     code on it and false UPC code?

4           A     No.

5           Q     In looking at the UPC codes displayed on different  
6     products, did you notice if there was only one UPC code on the  
7     product, if there appeared to be any changes to its appearance?

8           A     Sometimes there were several UPC codes on a product.  
9     Sometimes they were stacked maybe five deep. Some of those  
10    were, for inventory, they were actually valid UPC numbers that  
11    weren't pricing information. The first one was always the  
12    pricing information. The next were used for inventory purposes  
13    or shipping or something of that nature. As far as--maybe I  
14    didn't answer your question.

15          Q     Well, in terms of if they only had a single, what  
16    appeared to be the original UPC code on them, did any of those  
17    appear to be damaged or altered in any way?

18          A     I don't recall if all of them were damaged or  
19    altered, but in many instances, the fictitious UPC label was  
20    affixed over the top of the old UPC label so you couldn't see  
21    the one underneath.

22          Q     In instances where you found products that didn't  
23    have both a valid and a fictitious label on them, did you ever  
24    see any indication such as fading, tears, adhesive?

1 A Sure. Yes.

2 Q That caused you to believe something had once been  
3 affixed atop of the valid UPC code?

4 A Yes.

5 Q Showing you Grand Jury Exhibit 11 which contains  
6 several Wal-Mart receipts talking about a 17 monitor and then  
7 has photographs attached, black and white digital photos of two  
8 items that appear to be KDS Rad-5 monitors, first off, do you  
9 recognize the monitors?

10 A Yes.

11 Q Where did those comes from?

12 A The storage unit.

13 Q With respect to the receipts attached to the same  
14 exhibit, where did these come from?

15 A The accordian folder from the vehicle.

16 Q Did you have the opportunity to compare these  
17 receipts to this tranposition list?

18 A Yes, I did.

19 Q Did you find any similarities between the information  
20 contained on the Wal-Mart receipt and the transposition list?

21 A Yes.

22 Q What did you find?

23 A I found that it was on the transposition list and it  
24 matched the receipt.

1           Q     Showing you Grand Jury Exhibit 12, it contains  
2     several receipts indicating sewing machines and scanners from  
3     Wal-Mart and then several photographs of Simplicity sewing  
4     machine bar codes, Hewlett Packard printers and more bar  
5     codes. Do you recognize all this documentation?

6           A     Yes, I do.

7           Q     Where did the sewing machine and those Hewlett  
8     Packard printer boxes come from?

9           A     The storage unit.

10          Q     Where did the receipts come from?

11          A     The accodian folder taken from the vehicle.

12          Q     Did you have the opportunity to review the receipts  
13     on the Wal-Mart and compare those to the transposition list?

14          A     Yes.

15          Q     Did you find any similarities for the sewing machines  
16     and scanners along with the UPC information on the  
17     transposition list?

18          A     Yes, I did.

19          Q     Showing you Grand Jury Exhibit 6 which has a Home  
20     Depot receipt attached and then several pages of toilet labels?

21          A     Right.

22          Q     Do you recognize the toilet labels?

23          A     Yes, I do.

24          Q     Where did those come from?

1 A Off a Kohler toilet taken from the storage unit.

2 Q How about the Home Depot receipt?

3 A The accordian folder taken from the vehicle.

4 Q Showing you Grand Jury Exhibit 10 which indicates

5 several photo copies of receipts from Wal-Mart for Sanyo 19

6 inch TVs, then several photographs of bar codes and products of

7 an Emerson 19 inch DVD-TV combo, do you recognize the

8 photographs associated with this Emerson TV-DVD combo?

9 A Yes, I do.

10 Q Where did those items come from?

11 A The storage unit.

12 Q How many did you find?

13 A Of those?

14 Q Yes?

15 A Three.

16 Q And how about the receipts, where did those come

17 from?

18 A The accordian folder taken from the vehicle.

19 Q Did you compare the information contained on those

20 receipts to the transposition unit?

21 A Yes, I did.

22 Q I am sorry, list. Did you find any similarities?

23 A Yes, I did.

24 MS. HIER-JOHNSON: Thank you. I have no further

1 questions for detective Thomas. Do any of the Grand Jurors  
2 have questions for him?

3 A GRAND JUROR: One. Those is the Bed Bath and  
4 Beyond, the coffee maker, did that have two of the bar codes on  
5 it or just one bar code or what?

6 THE WITNESS: I don't recall the coffee maker had a  
7 bar code on it.

8 A GRAND JUROR: Just the original bar code?

9 THE WITNESS: Right, just the original.

10 THE FOREMAN: Any other questions? Go ahead.

11 A GRAND JUROR: Is it possible to marry up the bar  
12 codes with the bar code machine found in the car?

13 THE WITNESS: I didn't personally do that. I didn't  
14 send that to the Crime Lab or anything like that. However, we  
15 had the bar code machine. We also had located, in the storage  
16 unit, he had the paperwork that you would use, the labels that  
17 you would use to put into the bar code machine to make the  
18 labels. Those were consistent with the bar codes we found.

19 THE FOREMAN: Any other questions?

20 It is my duty to admonish you the proceedings before  
21 the Grand Jury are secret.

22 You may not disclose evidence presented to the Grand  
23 Jury, any event occurring or statement made in the presence of  
24 the Grand Jury, any information obtained or the results of the

1 investigation being made by the Grand Jury.

2 However, you may disclose the above information to  
3 the District Attorney for use in the performance of his  
4 duties.

5 You also may disclose your knowledge concerning the  
6 proceedings when directed by a court in connection with  
7 judicial proceedings or when otherwise permitted by the court  
8 or to your own attorney.

9 The obligation of secrecy applies until the Court  
10 allows the matter to become public record.

11 A gross misdemeanor and contempt of court may be  
12 persued if your obligation of secrecy is not followed. Do you  
13 understand?

14 THE WITNESS: Yes, I do.

15 THE FOREMAN: Thank you

16 (Witness Excused.)

17 MS. HIER-JOHNSON: Ladies and gentlemen of the Grand  
18 Jury, that concludes the testimonial evidence the State intends  
19 to present this morning.

20 The final piece of evidence for your consideration  
21 today is being offered for a very limited purpose. It is Grand  
22 Jury Exhibit 16. All burglary counts alleged against Mr.  
23 Volpicelli allege he has been previously convicted of burglary  
24 in 1998. This allegation is not at all relevant to whether or



1 not Mr. Volpicelli committed the offenses that he is accused of  
2 in this Indictment. It is only relevant as a sentencing  
3 consideration to be reviewed by the District Court judge at the  
4 time of sentencing if Mr. Volpicelli is convicted of any of  
5 these burglary charges and for no other purpose.

6 Exhibit 16 is a certified copy of that 1998  
7 conviction. And the only reason it is being presented to you  
8 today is because case law requires that the District Attorney  
9 give the defendant notice of this potential sentencing  
10 consideration and also to show some evidence of it at a  
11 Preliminary Hearing or Grand Jury. That is the only reason  
12 that you may consider this prior burglary conviction today is  
13 to determine whether or not the D.A., presented some evidence  
14 at this stage. And with that, I will leave you to your  
15 deliberations.

16 (Whereupon the Deputy District Attorneys and the  
17 Court Reporter left the Grand Jury room.)

18 (Whereupon the Grand Jury deliberated.)

19 (Whereupon the Deputy District Attorney and the Court  
20 Reporter re-entered the Grand Jury room.)

21 THE FOREMAN: We have one question we would like  
22 explained, that is the definition of implements and adapting of  
23 tools for use of burglary and crimes.

24 MS. HIER-JOHNSON: Ladies and gentlemen of the Grand

1 Jury, included in your Instructions of Law packet is NRS  
2 205.080, and if you look in paragraph 1, it gives kind of a  
3 laundry list of various implements or instruments that can be  
4 the subject of this charge. With respect to the specific words  
5 selected by the State, that being machine tools or implements,  
6 then the word adapted, there is no case law on point that  
7 further defines those words. So I will represent what  
8 frequently occurs in these instances where the courts direct  
9 juries to use the common sense definition, ordinary meaning of  
10 the words, because we don't have anything more specific or  
11 different on point here in Nevada.

12 THE FOREMAN: Okay.

13 (Whereupon the Deputy District Attorney and the Court  
14 Reporter left the Grand Jury room.)

15 (Whereupon the Grand Jury deliberated.)

16 (Whereupon the Deputy District Attorney and the Court  
17 Reporter re- entered the Grand Jury room.)

18 THE FOREMAN: We have returned a true on bill on  
19 Counts I through X and a no True Bill on Count XI.

20 MS. HIER-JOHNSON: In light of the Grand Jury's  
21 findings, I will strike Count XI from the Indictment. But  
22 rather than signing the final page, since there is another  
23 matter for your consideration this afternoon, I am going to go  
24 to our word processing division and ask them to delete Count XI

1 from our memory bank. So my signature line will appear  
2 immediately following Count X, and I will have that document  
3 signed and prepared to present to whichever Judge takes the  
4 returns this afternoon. If that is satisfactory with you, Mr.  
5 Foreman, then I will go ahead and return the final page to you  
6 for an indication of a True Bill.

7 THE FOREMAN: You want me to sign this one now.  
8 Okay.

9 MS. HIER-JOHNSON: We will go ahead and put on the  
10 record at the time of the return that the document that I  
11 present to the Foreman is in fact in the document agreed upon  
12 by the Grand Jury into today's proceedings.

13 It looks like all the exhibits have been pushed  
14 forward. I would ask you to go ahead and return the copies of  
15 law and copies of proposed Indictments.

16 (Whereupon, the proceedings were concluded.)  
17  
18  
19  
20  
21  
22  
23  
24

1 STATE OF NEVADA, )  
2 COUNTY OF WASHOE. ) ss.  
3

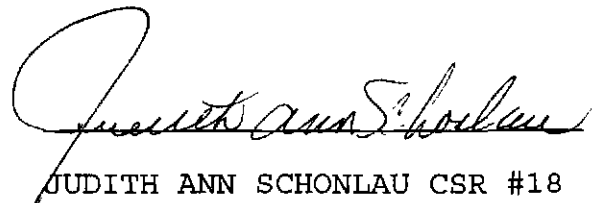
4 I, Judith Ann Schonlau, one of the Court Reporters of  
5 the Second Judicial District Court of the State of Nevada, in  
6 and for the County of Washoe, do hereby certify:

7 That I reported in stenotype the testimony of the  
8 witnesses before the Washoe County Grand Jury in the matter of  
9 FERRILL JOSEPH VOLPICELLI at Reno, Nevada on Wednesday, June  
10 11, 2003;

11 That the foregoing transcript, consisting of pages  
12 numbered 1 through 147, inclusive, is a full, true and correct  
13 transcription of the stenotype notes taken in the  
14 above-entitled matter, to the best of my knowledge, skill and  
15 ability.

16 I further certify that I am in no way interested in  
17 the outcome of said action.

18 Dated at Reno, Nevada, this 17th day of June, 2003.  
19

20  
21   
22 JUDITH ANN SCHONLAU CSR #18  
23  
24

1 CODE: 4185/1775

FILED

2003 JUN 20 PM 3:04

RONALD A. LONGTON, JR.

BY *[Signature]*  
DEPUTY

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

\*\*\*

STATE OF NEVADA

Plaintiffs,

CASE NO: CR03-1263

vs.

DEPT. NO.: 9

FERRILL JOSEPH VOLIPICELLI

Defendants.

**RECEIPT**

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Dated this 20 Day of June, 200 3

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RONALD A. LONGTON, JR.

CLERK OF THE COURT

BY *[Signature]*

DEPUTY

*[Signature]*  
24 RECIPIENT'S NAME/SIGNATURE

CODE: 4185

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JUN 23 2003

RONALD A. LONGTIN, JR. CLERK

By: *[Signature]*  
DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT ON INDICTMENT

JUNE 18, 2003

RENO, NEVADA

Reported by:

DONNA DAVIDSON, CCR #318, RMR, CRR  
Computer-Aided Transcription

CR03-1263 DC-9900025141-005  
STATE VS. FERRILL JOSEPH VO 21 Pages  
District Court 06/23/2003 12 08 PM  
Washoe County 4185  
DOC JAMES

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For the Division of Parole and Probation:

HEIDI POE

1 RENO, NEVADA, WEDNESDAY, JUNE 18, 2003, 10:05 A.M.

2 --oOo--

3  
4 THE COURT: State versus Ferrill Volpicelli,  
5 CR02-0145, 02-0146, 02-0147, and 02-0148 and 03-1263.

6 MS. RIGGS: Good morning, Your Honor, Tammy  
7 Riggs appearing on behalf of the State.

8 THE COURT: Ms. Poe is here for the Division.

9 Mr. Alian is here on behalf of Mr. Volpicelli in  
10 case 02-0145 an 02-0146.

11 MR. ALIAN: That's correct, Your Honor.

12 THE COURT: Mr. Kadlic, are you --

13 MR. KADLIC: I have just the one case which are  
14 the indecent exposures, lewdness, which I don't have the  
15 numbers.

16 THE COURT: That is 02-0147. And Mr. Van Ry?

17 MR. VAN RY: I believe I was on 02-0145, Your  
18 Honor.

19 THE COURT: Yes, Mr. Alian is on 02-0148.

20 Mr. Alian, do you have the Indictment case, as  
21 well, 03-1263?

22 MR. ALIAN: No, I do not, Your Honor. It's my  
23 understanding that the Indictment just came down, that  
24 the district attorney's office is going to be asking



1 then for a stay with respect to 02-0148 and with respect  
2 to Mr. Van Ry's case, as well, because apparently those  
3 are going to -- she's going to be asking for a stay of  
4 those because they take over with respect to the  
5 Indictment.

6 MS. RIGGS: Actually, Your Honor, we'll be  
7 asking for a stay in CR02-0145 and CR02-0146 after you  
8 determine whether this defendant is competent.

9 THE COURT: All right. The Court has reviewed  
10 and considered the reports supplied in this matter by  
11 Dr. Hiller and Dr. Henson. Do you have anything you  
12 wish to add to those reports, Mr. Alian?

13 MR. ALIAN: Your Honor, nothing really to add  
14 except to indicate that Dr. Henson suggests that perhaps  
15 in order to judge the serotonin levels in my client to  
16 see whether or not he's affected by being taken off the  
17 drug for a while would affect his ability, he suggests  
18 that a blind protocol be done at the center there, at  
19 the Lakes Crossing.

20 On behalf of my client, I would have to indicate  
21 to the Court that that may be a serious consideration in  
22 this case because one of the concerns I believe to the  
23 Court and to myself was the fact of whether or not my  
24 client had the ability at the time to waive his right to

1 a jury trial with respect to his cases, which he did in  
2 our case.

3 So based upon that, I simply raise that again  
4 and ask for the Court to make a determination.

5 THE COURT: Ms. Riggs, do you wish to be heard?

6 MS. RIGGS: Yes, Your Honor. The State would  
7 absolutely oppose that.

8 If you would go to page 11 of the competency  
9 evaluation, it would be the last page of Dr. Henson's  
10 assessment, this would be the second paragraph on the  
11 page, he concludes, "It is unlikely that such an  
12 assessment," the assessment that Mr. Alian speaks about,  
13 "effort would demonstrate significant cognitive function  
14 deficits related to the medication regimens. The  
15 client's symptoms reflect an emotional response to his  
16 untenable situation, facing severe long-term  
17 consequences arising from criminal conduct, if  
18 convicted, and personality characteristics represented  
19 by an obsession of unjust, but unsolvable entanglement  
20 with the criminal justice system."

21 In other words, Your Honor, Dr. Henson doesn't  
22 think that would have any conclusions that would result  
23 in this defendant being found incompetent.

24 Your Honor, the State believes that enough is

1 enough. This defendant has now been through two rounds  
2 of competency evaluations, all evaluators having found  
3 him competent.

4 The State is ready to go with these cases, Your  
5 Honor, his evaluators feel he is ready to go mentally,  
6 and we would oppose any further continuance based on any  
7 sort of mental incapability of this defendant. He's  
8 competent.

9 THE COURT: Anything further, Mr. Alian?

10 MR. ALIAN: No, Your Honor.

11 THE COURT: Mr. Kadlic or Mr. Van Ry, do you  
12 wish to comment? I asked that these evaluations apply  
13 to the cases on which you're representing  
14 Mr. Volpicelli.

15 MR. KADLIC: I'll stand by Mr. Alian's comments,  
16 Your Honor.

17 MR. VAN RY: Likewise, Your Honor.

18 THE COURT: All right. The Court finds that  
19 Mr. Volpicelli is competent to assist his counsel and to  
20 understand the nature of the charges against him. The  
21 Court does not believe that there is anything productive  
22 to be gained by the trial commented upon by counsel, and  
23 therefore the Court feels that that is not necessary.

24 With respect to the question of whether

1 Mr. Volpicelli was competent to -- at the time that he  
2 waived his jury trial in two of the cases, the Court is  
3 not satisfied really with the report's results on either  
4 one of those issues.

5 However, given the fact that the Court has  
6 determined that Mr. Volpicelli is competent, the Court  
7 will extend to Mr. Volpicelli and his counsel the  
8 opportunity now to seek a withdrawal of your request for  
9 a jury trial in those cases. Excuse me, a bench trial  
10 in those cases.

11 Therefore, Mr. Alian, you and your client will  
12 have the opportunity to withdraw your request for bench  
13 trial at this time.

14 MR. ALIAN: Your Honor, with respect to 02-0148,  
15 my client at this time would stand by his intention  
16 respectfully asking the Court for a trial before the  
17 Court only with respect to that case.

18 With respect to 02-0146, if the Court wants a  
19 determination now, that's fine, except it may become  
20 moot in light of the fact that the district attorney's  
21 office is seeking a stay, my understanding on 02-0146,  
22 because that's going to be incorporated in the  
23 Indictment.

24 THE COURT: Okay. Mr. Volpicelli, included in

1 the reports prepared by the doctors, and particularly  
2 Dr. Henson, have you reviewed that report?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Okay. Dr. Henson comments in the  
5 report at least three times that I recall that in  
6 addition to having concerns about the legal predicament  
7 you find yourself in, you have concerns about the  
8 fairness of the presiding judge in your cases.

9 This comment seems inconsistent to the Court by  
10 one who would ask that your case be resolved through a  
11 bench trial. I think you should explain or at least  
12 comment or your counsel should comment on that  
13 inconsistency.

14 I want to make absolutely certain that today  
15 you're in agreement to waive a jury trial in those  
16 cases, especially where you have expressed to this  
17 evaluator the fact that because I have previously  
18 revoked you and acted in prior cases that you do not  
19 believe that this judge may be fair and that you can get  
20 a fair hearing in front of this judge.

21 THE DEFENDANT: Your Honor, I did have a  
22 concern. I was just made aware a couple weeks ago of  
23 the amount of testimony that my codefendant gave when he  
24 was convicted, and I just thought that that might be

1 prejudicial, and I thought that that might affect your  
2 decision with these new cases. But I know that you have  
3 expressed fairness regardless. So I'm somewhat torn  
4 between whether or not I should have you or a jury. I'm  
5 leaning towards you.

6 THE COURT: Well, there's no offense to the  
7 Court if you want to have a jury hear your case.

8 THE DEFENDANT: I understand. I know you want  
9 an explanation, Your Honor, and that's the best I could  
10 come up with. I'm just confused.

11 THE COURT: All right. All right. Then you are  
12 satisfied in having -- the prior waiver you have made to  
13 the jury trials in 0148 and 0146?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Do you have any  
16 questions of the Court about your prior decisions to  
17 waive the jury trial in those cases?

18 THE DEFENDANT: None on that matter, Your Honor.

19 THE COURT: Okay. All right. Are counsel ready  
20 to proceed on the Indictment in 03-1263?

21 MS. RIGGS: The State is prepared, Your Honor.

22 MR. ALIAN: Your Honor, it's my understanding,  
23 because of that, that Mr. Van Ry will be representing  
24 Mr. Volpicelli on the Indictment.

1 THE COURT: Is that right, Mr. Van Ry?

2 MR. VAN RY: That is correct. I have not yet  
3 received a copy of the Indictment, however.

4 THE COURT: All right. Well, we'll provide that  
5 to you this morning. But let me provide you with a copy  
6 of the Indictment.

7 MR. VAN RY: If I may approach, Your Honor?

8 THE COURT: Yes, sir. Is your client's name  
9 correctly identified and spelled in the Indictment; and  
10 do you wish to have it read?

11 MR. VAN RY: If I could have a moment, Your  
12 Honor.

13 THE COURT: Yes, sir.

14 MR. VAN RY: Your Honor, my client and I have  
15 received a copy of the Indictment, case number  
16 CR03-1263. My client indicates that his name is  
17 correctly spelled on line 12 of the Indictment. We are  
18 familiar with its contents and would waive its formal  
19 reading at this time.

20 THE COURT: Okay. What is your plea to the  
21 charge in the Indictment, Mr. Volpicelli?

22 THE DEFENDANT: Not guilty, Your Honor.

23 THE COURT: You have the right to a jury trial  
24 on the Indictment to be conducted within 60 days of

1 today. Do you wish to exercise that right?

2 THE DEFENDANT: Your Honor, I'd like some time  
3 to investigate this, to be honest with you.

4 THE COURT: So do you waive your right to a jury  
5 trial within 60 days on that case?

6 THE DEFENDANT: I'm going to need more than 60  
7 days to prepare for this, Your Honor.

8 THE COURT: So I need an answer to my question.

9 THE DEFENDANT: I will waive it then. I will  
10 waive it, Your Honor.

11 THE COURT: Okay. Length of trial, counsel?

12 MS. RIGGS: Your Honor, the State anticipates  
13 approximately four days to present this case.

14 THE COURT: Mr. Van Ry?

15 MR. VAN RY: That sounds accurate, Your Honor.

16 THE COURT: All right. Ms. Riggs, do you wish  
17 to be heard on cases 0145, 6, 7 and 8?

18 MS. RIGGS: Your Honor, regarding 0148 and 0147,  
19 the State is prepared to proceed on those cases, and we  
20 would just ask that you set the trial date today.

21 THE COURT: Okay. And with respect to 145 and  
22 146?

23 MS. RIGGS: Your Honor, we will be asking you to  
24 stay those proceedings, if I may approach.



1 THE COURT: All right.

2 MS. RIGGS: Your Honor, State is handing you the  
3 proposed order staying the proceedings in those two  
4 cases. Thank you.

5 THE COURT: Is there any objection, counsel?

6 MR. VAN RY: No objection, Your Honor.

7 MR. ALIAN: Your Honor, no. I don't believe  
8 I've gotten a copy of that.

9 THE COURT: Oh, well, here it is. Why don't you  
10 take a look at it.

11 MR. ALIAN: Thank you, Your Honor.

12 THE COURT: All right. The length of trial in  
13 147?

14 MS. RIGGS: Your Honor, the State anticipates  
15 two days on 0147; also two days on 0148.

16 MR. KADLIC: Your Honor, 147 is my case,  
17 correct?

18 THE COURT: Yes, sir.

19 MR. KADLIC: I don't see how that's going to  
20 take two days. Further, I think that -- if any case  
21 deserves to be tried in front of a judge, that's the  
22 one. It's the one of open and gross lewdness and  
23 indecent exposure, correct?

24 MS. RIGGS: That's true, Your Honor; however,

1 the State will not waive its right to jury trial on that  
2 case.

3 THE COURT: Okay.

4 MR. KADLIC: If that's the case, Your Honor,  
5 then I need -- we had it originally set for what we  
6 anticipate was going to be a judge trial. That's going  
7 to have to be set way out after the first of the year  
8 because I literally have trials scheduled every month it  
9 seems like two abreast from now until the end of the  
10 year. My calendar is just -- unfortunately everybody  
11 that I have drawn off my conflict list is deciding to go  
12 to trial.

13 The Court knows I've been in three jury trials  
14 in the last two months. So I'm basically going to have  
15 to go way out.

16 THE COURT: All right. Have you discussed that  
17 with Mr. Volpicelli?

18 MR. KADLIC: Yes. You would agree,  
19 Mr. Volpicelli, to waive any 60-day speedy trial, right?

20 THE DEFENDANT: Yes, I agree to waive that, Your  
21 Honor.

22 THE COURT: Okay. In 148, that case is a bench  
23 trial.

24 MR. ALIAN: Your Honor, if I may be heard. It

1 was my understanding in talking to co-counsel I believe  
2 last week in this case not this counsel for the State  
3 but the co-counsel, that depending upon what happens in  
4 the Indictment case it may affect the outcome of case in  
5 02-0148. It may not go. I don't know. Based upon  
6 that, I would respectfully ask if we set this matter at  
7 least after the Indictment case.

8 MS. RIGGS: The State has no objection to  
9 setting this matter after the Indictment case; however,  
10 Your Honor, this case is not going to be dismissed by  
11 the State regardless of the outcome of any of the other  
12 cases.

13 If this defendant wishes to plead after our  
14 anticipated conviction of him in the other cases, that's  
15 fine, but we have no objection to that being set out  
16 later.

17 MR. VAN RY: For your information, Your Honor, I  
18 would prefer Octoberish for my CR03-1263.

19 THE COURT: How about October 6th, Mr. Van Ry?

20 MR. VAN RY: That would be great, Your Honor.

21 THE COURT: Ms. Riggs?

22 MS. RIGGS: That's fine with the State, Your  
23 Honor.

24 THE COURT: All right. October 6th at 8:30.

1 The motion to confirm will be held on September 24th at  
2 8:30.

3 Case number 0148 will be set for trial, let's  
4 see, is that two days approximately; is that correct?

5 MS. RIGGS: That's correct, Your Honor.

6 THE COURT: All right. That case will be set  
7 for October the 27th -- excuse me, 29th, at ten a.m.

8 MR. ALIAN: Your Honor, would the Court  
9 consider -- excuse me. The 29th?

10 THE COURT: Yes, sir.

11 MR. ALIAN: I just wanted the Court to note  
12 hopefully there's supposedly I have a two-week murder  
13 case beginning October 13th. Hopefully I should finish  
14 it before then. I just wanted the Court to know that in  
15 case it goes over.

16 THE COURT: All right. Does that give you  
17 enough time to prepare?

18 MR. ALIAN: Your Honor, I was going to  
19 respectfully ask the Court, to be honest, for the week  
20 of say November 19th, Wednesday. Because the week  
21 before that, I have another three-day jury trial which  
22 will go.

23 THE COURT: Well, is November the 20th okay?

24 MR. ALIAN: That's fine, Your Honor.

1 THE COURT: All right. 8:30 November 20th, with  
2 a motion to confirm on November the 5th, at 8:30.

3 MR. ALIAN: Thank you, Your Honor.

4 THE COURT: And the trial in the other case,  
5 0147, are you available in December?

6 MR. KADLIC: I was looking at December 22nd,  
7 Your Honor, Christmas week. Always good to try cases  
8 during Christmas week.

9 MS. RIGGS: Your Honor, may we approach?

10 (Off-the-record discussion held at the bench.)

11 THE COURT: All right. December 22nd at 8:30  
12 for two days, with a motion to confirm on December the  
13 10th at 8:30.

14 Have you had an opportunity to look at the  
15 proposed order staying proceedings?

16 MR. ALIAN: Your Honor, I did. I don't have any  
17 objection to that.

18 THE COURT: All right. The Court will enter the  
19 order staying proceedings in CR02-0145 and 02-0146 in  
20 the form proposed by the DA's Office.

21 MS. RIGGS: Thank you, Your Honor.

22 MR. ALIAN: Your Honor, I should indicate I only  
23 have one of those two cases. Mr. Van Ry has the other.

24 THE COURT: Mr. Van Ry, any objection?

1 MR. VAN RY: No objection, Your Honor.

2 MR. KADLIC: Your Honor, as to 147, originally  
3 we had a motion to confirm on the 25th of June and a  
4 trial date of the 10th of July. We were anticipating  
5 that we were going to try it in front of you, and so I  
6 guess I assume we can vacate those in light of all of  
7 the other proceedings?

8 MS. RIGGS: No objection, Your Honor.

9 THE COURT: Well, we could proceed to trial on  
10 those dates.

11 MR. KADLIC: Well, he wanted to do the jury --  
12 they wanted to do -- they are the ones who want the jury  
13 trial. If we can try it in front of you, Your Honor, I  
14 would be happy to go that date. That was anticipated we  
15 were going to have a judge trial, that's why we set it  
16 on a Thursday because --

17 THE COURT: Well, no, I do jury trials on a  
18 Thursday.

19 MR. KADLIC: Well, at this point now, because of  
20 all of this mess came up, I kind of rescheduled other  
21 things in the interim anticipating that we weren't going  
22 to go on this thing. This was sort of almost like a  
23 dominos. Everything was contingent on one domino  
24 falling and then the next one and the next one, except

1 the dominos keep getting set back up. I would just as  
2 well do the December 22nd at this point, Your Honor.

3 MS. RIGGS: State can go on either date, Your  
4 Honor. We'll leave it to your discretion.

5 THE COURT: Well, frankly Ms. Riggs had a  
6 conflict in December which was going to require State's  
7 counsel to get either her co-counsel or another lawyer  
8 to go on December 22nd. The trial for July 10th is set  
9 to go. It's on our calendar.

10 MR. KADLIC: Okay. That's fine. I mean I'll  
11 just as well go and do it and get it over with.

12 THE COURT: July 10th at 8:30.

13 MR. KADLIC: That's fine.

14 THE COURT: Okay.

15 MR. KADLIC: So do we really need to do the  
16 motion to confirm?

17 THE COURT: No, we don't.

18 MR. KADLIC: Okay. Then let's go on July 10th.  
19 That's fine.

20 THE COURT: You're confirmed for July 10th at  
21 8:30. Case 02-0147 will proceed to trial at 8:30 on  
22 July 10th. We've conducted the motion to confirm.

23 MR. VAN RY: Your Honor, I had one final issue  
24 with regard to CR03-1263 that discovery, as we

1 understand it, is to begin anew, and there are some  
2 particular items that we have not received that my  
3 client has submitted an inmate request form concerning  
4 search warrants, inventory receipts, property records,  
5 documents, files, receipts, cash and other financial  
6 instruments that arose out of the prosecution of this  
7 matter that we have not yet received.

8 THE COURT: Well, I want a reciprocal discovery  
9 agreement signed in that case within the next week.

10 MR. VAN RY: Okay.

11 THE COURT: Provide a copy of that list to  
12 Ms. Riggs and ask her to review that, and you discuss  
13 that with her. If there are any issues or difficulties  
14 with respect to the subject of discovery, then put it on  
15 calendar, and we'll resolve those disputes.

16 THE DEFENDANT: Thank you, Your Honor.

17 MR. VAN RY: Thank you, Your Honor.

18 MS. RIGGS: Thank you, Your Honor.

19 THE COURT: Okay. Anything further, then?

20 MS. RIGGS: No, Your Honor.

21 MR. ALIAN: No, Your Honor.

22 MR. KADLIC: No, Your Honor.

23 MR. VAN RY: No, Your Honor.

24 THE COURT: All right. Thank you very much.



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(Proceedings concluded.)

--oOo--

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 I, DONNA DAVIDSON, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada,  
6 in and for the County of Washoe, do hereby certify:

7 That as such reporter, I was present in  
8 Department No. 9 of the above court on said date, time  
9 and hour, and I then and there took verbatim stenotype  
10 notes of the proceedings had and testimony given  
11 therein.

12 That the foregoing transcript is a full, true  
13 and correct transcript of my said stenotype notes, so  
14 taken as aforesaid.

15 That the foregoing transcript was taken down  
16 under my direction and control, and to the best of my  
17 knowledge, skill and ability.

18 DATED: At Reno, Nevada, this 20th day of June,  
19 2003.

20  
21   
22 DONNA DAVIDSON, CCR #318  
23  
24

FILED

DA # 314735

Team KAY

2003 JUL -9 PM 4:29

RONALD A. LONGTIN, JR.

BY [Signature] DEPUTY

ORIGINAL

1 CODE 3839  
Richard A. Gammick  
2 #001510  
P.O. Box 30083  
3 Reno, NV 89520-3083  
(775) 328-3200  
Attorney for Plaintiff

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

Ferrill Joseph Volprille,

Dept. No. D-9

Defendant.

REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERY

DEFENDANT'S REQUEST FOR DISCOVERY

Pursuant to NRS 174.087, 174.089, 174.235 to 174.295,  
inclusive, the defendant requests all written or recorded  
statements or confessions made by the defendant, any written or  
recorded statements made by a witness or witnesses the State  
intends to call in its case-in-chief, or any reports of  
statements or confessions, or copies thereof, results or reports  
of physical or mental examinations, scientific tests or  
scientific experiments, or copies thereof, that are within the  
possession, custody or control of the State, the existence which  
is known, or with the exercise of due diligence may become known

CR03-1263 DC-9900025141-007  
STATE VS FERRILL JOSEPH VOL 2 Pages  
District Court 07/09/2003 10:56 AM  
3839  
Washoe County  
JAME  
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1 to the prosecuting attorney; and books, papers, documents or  
2 tangible objects that the State intends to introduce in its case-  
3 in-chief and which is in the possession, custody or control of  
4 the State, the existence which is known, or with the exercise of  
5 due diligence may become known to the prosecuting attorney.

6 STATE'S REQUEST FOR DISCOVERY

7 Pursuant to NRS 174.087, 174.089, 174.235 to 174.295,  
8 inclusive, the State requests any written or recorded statements  
9 made by a witness or witnesses the defendant intends to call in  
10 his or her case-in-chief, or copies thereof, results or reports  
11 of physical or mental examinations, scientific tests or  
12 scientific experiments, or copies thereof, that are within the  
13 possession, custody or control of the defendant, the existence  
14 which is known, or with the exercise of due diligence may become  
15 known to the defendant; and books, papers, documents or tangible  
16 objects that the defendant intends to introduce in his or her  
17 case-in-chief and which is in the possession, custody or control  
18 of the defendant, the existence which is known, or with the  
19 exercise of due diligence may become known to the defendant.

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1 CODE: 4185/1775

FILED

2003 JUL -9 PM 12: 26

RONALD A. LONGTIN, JR.

BY: [Signature]  
DEPUTY

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

\*\*\*

STATE OF NEVADA

Plaintiffs,

CASE NO: CR03-1263

vs.

DEPT. NO.: 9

FERRILL JOSEPH VOLIPICELLI

Defendants.

RECEIPT

RECEIVED FROM AMY HARVEY, COUNTY CLERK

The Amount of GRAND JURY TRANSCRIPT

Deposited for \_\_\_\_\_

Dated this 9 Day of July, 2003

Check No. \_\_\_\_\_

RONALD A. LONGTIN, JR.

CLERK OF THE COURT

BY: [Signature]

DEPUTY

MWinstead for RENS  
RECIPIENT'S NAME/SIGNATURE

Volpicelli, Ferrill - 60076  
Washoe County Detention Center  
911 Parr Blvd  
Reno, NV 89512

Hearing Date  
Hearing Time

**FILED**

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

2003 JUL 16 PM 2:14  
RONALD A. LONGSTIN, JR.

BY [Signature]  
DEPUTY

FERRILL J. VOLPICELLI,  
Petitioner,

vs

STATE OF NEVADA  
Respondents et al.,

CASE NO. 02-0147

02-0148

03-1263

DEPT. NO. 9 **EX PARTE**

PETITION FOR CLARIFICATION  
ON ISSUES REGARDING  
STATE BAIL

COMES NOW THE PETITIONER, FERRILL J. VOLPICELLI, AND THROUGH HIS COUNSEL, TO MOVE THE COURT FOR CLARIFICATION ON ISSUES REGARDING THE POSTING OF PETITIONER'S STATE BAIL; AS IT RELATES TO HIS FEDERAL HOLD. SAID PETITIONER'S FAMILY SEEKS TO MITIGATE PETITIONER'S CUSTODY SITUATION BY EXPEDITING HIS TRANSFER TO FEDERAL CUSTODY. THAT THIS WILL COMPEL THE DISPOSITION OF PETITIONER'S FEDERAL MATTER CONCOMITANT WITH THE STATE PENDING CHARGES. IN THE EVENT THE STATE BAIL IS POSTED WITH REGARD TO THE ABOVE REFERENCED CASES, PETITIONER'S CUSTODY WILL TRANSFER TO THE FEOS VIA THE US MARSHALS. AND ALTHOUGH IT IS THE PETITIONER'S OBJECTIVE TO APPROACH THE US ATTORNEY FOR A STIPULATION TO HAVE PETITIONER REMAIN IN

1 FEDERAL CUSTODY AT WCSO, WITH THE  
2 ANTICIPATION OF APPEARING IN STATE  
3 COURT, THERE IS THE POSSIBILITY OF THE  
4 PETITIONER'S TRANSFER FROM WCSO TO A  
5 FEDERAL FACILITY.

6 THAT IN EFFECT, THIS WILL POSE ADVERSE  
7 CONSEQUENCES IN TERMS OF PETITIONER'S  
8 ABILITY TO APPEAR IN STATE COURT.

9 INASMUCH AS THIS POTENTIAL COMPLICATION  
10 IS THROUGH NO FAULT OF THE PETITIONER,  
11 PETITIONER'S FAMILY WOULD LIKE WRITTEN  
12 CONFIRMATION THAT THIS COURT WILL NOT  
13 REVOKE THE STATE BAIL FOR AN F.T.A.;  
14 THEREBY SUBJECTING PETITIONER'S FAMILY'S  
15 FUNDS TO FORFEITURE.

16 THAT WHETHER THE PETITIONER IS IN STATE  
17 OR FEDERAL CUSTODY, PETITIONER'S FAMILY  
18 REQUESTS CONFIRMATION THAT, AT THEIR  
19 OPTION, THE PETITIONER'S FAMILY CAN  
20 REVOKE BAIL AND RECEIVE A PROMPT RETURN  
21 OF THEIR FUNDS.

22 FURTHER, THAT PETITIONER'S FAMILY RESPECTFULLY  
23 REQUESTS A COURT DOCUMENT ON THIS  
24 MATTER WITHIN THE NEXT 10 (TEN)  
25 BUSINESS DAYS.

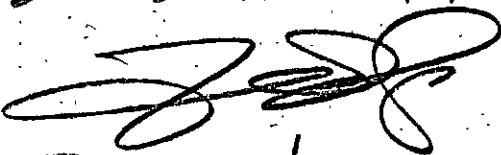
26 THAT THIS PETITION IS BASED UPON ALL  
27  
28

1 PAPERS AND PLEADINGS ON FILE  
2 HEREIN, AS WELL AS ORAL ARGUMENTS  
3 AT AN IMMEDIATE HEARING.

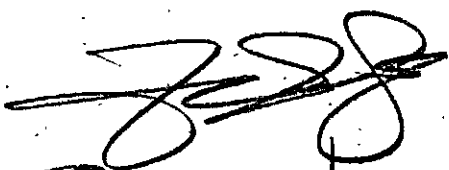
4 THE PETITION ITSELF WAS SUGGESTED BY  
5 JUDGE HANDELY AT THE CONCLUSION OF  
6 THE DAY'S COURT PROCEEDINGS ON 10  
7 JULY, 2003.

8  
9 RESPECTFULLY SUBMITTED,

10  
11 DATED THIS 14<sup>TH</sup> DAY OF JULY, 2003

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14 FERRIS VOLPICELLI

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16  
17 CERTIFICATE OF SERVICE DATED AND COPY  
18 MAILED ON THIS 14<sup>TH</sup> DAY OF JULY, 2003,  
19 TO THE WASHOE COUNTY DISTRICT ATTORNEY'S  
20 OFFICE UNDER PENALTY OF PERJURY PURSUANT  
21 TO NRS. 20F.165.

22  
23   
24 FERRIS VOLPICELLI  
25  
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Volpicelli, Ferrill - 60076  
Washoe County Detention Center  
911 Parr Blvd.  
Reno, NV 89512-

FILED

Hearing Date

Hearing Time

2003 AUG -1 PM 12:15

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

BY DEPUTY

FERRILL J. VOLPICELLI,  
Petitioner,

vs

STATE OF NEVADA  
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CASE NO. 02-0147

02-0148

03-1263

DEPT. NO. 9 EXPARTE

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CR03-1263  
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STATE VS. FERRILL JOSEPH VO 11 Pages  
District Court 08/01/2003 12:52 PM  
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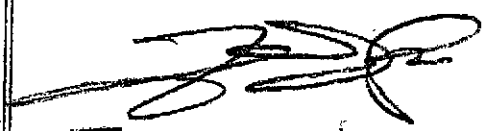
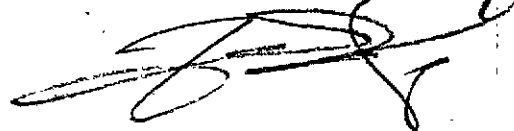
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2 HEREIN, AS WELL AS ORAL ARGUMENTS  
3 AT AN IMMEDIATE HEARING.

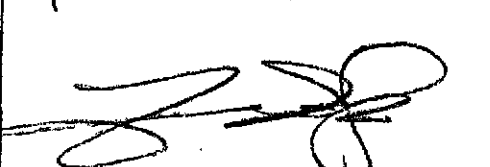
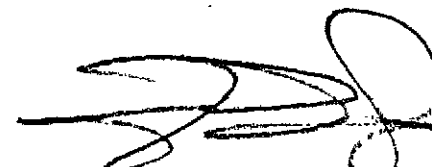
4 THE PETITION ITSELF WAS SUGGESTED BY  
5 JUDGE HANDESY AT THE CONCLUSION OF  
6 THE DAY'S COURT PROCEEDINGS ON 10  
7 JULY, 2003.

8  
9 RESPECTFULLY SUBMITTED,

10  
11 DATED THIS 14<sup>TH</sup> DAY OF JULY, 2003

12  
13    
14 FERNU VOLPICELLI

15  
16  
17 CERTIFICATE OF SERVICE: DATED AND COPY  
18 MAILED ON THIS 14<sup>TH</sup> DAY OF JULY, 2003,  
19 TO THE WASHOE COUNTY DISTRICT ATTORNEY'S  
20 OFFICE UNDER PENALTY OF PERJURY PURSUANT  
21 TO NRS. 20F.165.

22  
23  
24    
25 FERNU VOLPICELLI


WASHOE COUNTY DETENTION FACILITY  
**INMATE REQUEST**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: FERRILL VOLPICELLI Booking #: 03-06889  
Housing Unit: 7 Cell #: 12 Date: 7-15-03

Describe Request: DEAR MR. KADUC  
INASMUCH AS YOU DO, NOT ACCEPT MY CALLS,  
ALONG WITH MR. ALAN'S POSITION THAT CASE 03-0147  
IS NOT HIS CONCERN, I WAS LEFT WITH NO ALTERNATIVE  
BUT TO WRITE YOU. AND IN ORDER TO BE IN  
COMPLIANCE WITH THE GUIDELINES OF THE APPLICABLE  
NEVADA REVISED STATUTE, I WAS COMPELLED TO FILE  
THE ACCOMPANYING PLEADING.  
MOREOVER, IT IS SELF EXPLANATORY IN VIEW OF THE  
RECENT REVELATION CONCERNING YOUR INVOLVEMENT  
AS A JUDGE & A CONFLICT OF INTEREST WHICH  
CONTINUES TO DAUNT MY FAMILY AND I THROUGH  
PRESENT DAY.  
I'M CONFIDENT THAT YOU UNDERSTAND THE IMPLICATIONS  
WITH MY CASES.

THANK YOU,

Inmate's Signature: 

Receiving Staff Member / I.D.#: \_\_\_\_\_ Date: \_\_\_\_\_  
(PRINT NAME)

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐ Denied ☐

Reason:

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THE  
16TH DAY OF JULY 2003 TO THE HONORABLE JUDGE HARDESTY,  
WASHOE COUNTY DISTRICT ATTORNEY, WASHOE COUNTY DISTRICT COURT  
CLERK AND JACK ALAN, ESQ. AS CERTIFIED UNDER THE PENALTY  
OF PERJURY PURSUANT TO NRS 208.165

Responding Staff Member / I.D.#: \_\_\_\_\_ Date: JULY 16  
(PRINT NAME) FERRILL VOLPICELLI V2.200 2003

AFFIDAVIT

STATE OF NEVADA

SS

CASE# 02-0147

COUNTY OF WASHOE

COMES NOW DEFENDANT FERRILL T. VOLPICELLI,  
UNDER PENALTY OF PERJURY UNDER THE LAWS  
OF THE STATE OF NEVADA; DEPOSES AND SAYS:

THAT WITHIN A DAY OF THE TRIAL ADJOURNMENT  
IN THE ABOVE REFERENCED CASE, IT CAME TO  
THE ATTENTION OF THE DEFENDANT THAT A  
CONFLICT OF INTEREST EXISTS WITH LEGAL  
REPRESENTATION BY MR. JOHN KADLEC ESQ.  
THAT SAID CONFLICT OF INTEREST WAS  
REALIZED BY DEFENDANT, THROUGH COMMUNICATION  
WITH MS. LORI INMAN AND DEFENDANT'S  
CHILDREN.

THAT DEFENDANT CONFIRMED SAID CONFLICT OF  
INTEREST VIA RESEARCH OF COUNTY RECORDS -  
VERIFYING THAT IN OR ABOUT APRIL OF 1993,  
FORMER JUDGE KADLEC'S NAME APPEARED ON  
A SEARCH WARRANT.

THAT SAID SEARCH WARRANT AUTHORIZED  
INVESTIGATIONS INTO DEFENDANT'S RETAIL  
ACTIVITIES.

1  
2 THAT THIS INCLUDED INVESTIGATIONS BY RENO  
3 POLICE DEPARTMENT, CALIFORNIA DEPARTMENT  
4 OF JUSTICE, THE CRIMINAL DIVISION OF THE  
5 U.S. JUSTICE DEPARTMENT, AND THE REPEAT  
6 OFFENDER PROGRAM OF NEVADA.

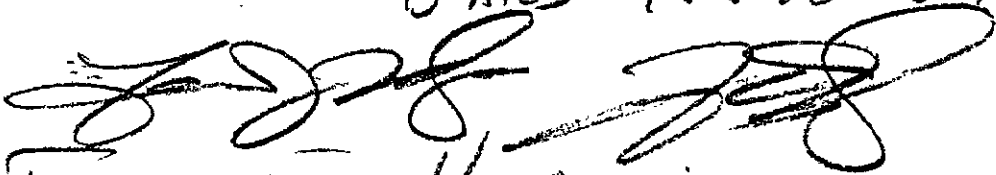
7 THAT SAID INVESTIGATIONS CULMINATED IN  
8 SUBSEQUENT INDICTMENTS AND EVENTUAL  
9 CONVICTIONS WITH COMMITMENTS OF THE  
10 DEFENDANT TO STATE AND FEDERAL FACILITIES.  
11 THAT TO DATE, UNRESOLVED ISSUES LINGER  
12 WITH RESPECT TO PROPERTY SEIZED BY  
13 THE C.D.O.T UNDER SAID WARRANT,  
14 (SEE ACCOMPANYING LETTER AND WASTE DISTRICT  
15 ATTORNEY ROGER WHOMES.)

16  
17 THAT IF THE DEFENDANT WAS MADE AWARE  
18 OF THE CONFLICT OF INTEREST EARLIER,  
19 HE WOULD HAVE PROMPTLY DISMISSED MR.  
20 KADUC ESQ.

21 THAT IN OR ABOUT THE MONTHS OF APRIL  
22 MAY, JUNE, AND JULY OF 1993, DEFENDANT  
23 SOUGHT LEGAL REPRESENTATION THROUGH  
24 MR. TERRY ALLEN REGARDING THE WARRANT  
25 AND ENSUING INVESTIGATIONS.

26 THAT DEFENDANT IS NOT SATISFIED WITH  
27 THE REPRESENTATION OF MR. KADUC  
28

1  
2 PRIOR TO AND DURING TRIAL; AS EVIDENCED  
3 BY THE ACCOMPANYING LETTERS.  
4 THAT DEFENDANT WAS NOT EVEN MADE  
5 AWARE OF THE 21 FEBRUARY, 2003 COMPLAINT  
6 AMENDMENT UNTIL DATE OF TRIAL.  
7 THAT AGAINST DEFENDANTS WISHER, MR  
8 KADIC PURPOSEFULLY DID NOT PRESENT EVIDENCE  
9 RELEVANT TO DEFENDANTS CASE.  
10 THAT IN VIEW OF THE FOREGOING, THE  
11 DEFENDANT APPEALS THE FINAL VERDICT  
12 BASED UPON EXCULPATORY EVIDENCE WITH  
13 RELATED TO ATTORNEY-CLIENT CONFLICT OF INTEREST.  
14 THAT IN THE EVENT THE PROSECUTION REOARS  
15 THE ELIMINATION OF CONTINGENTIAL INFORMATION  
16 PERTAINING TO THE 27, SEPTEMBER 2003  
17 INCIDENT, DEFENDANT INSISTS UPON A  
18 SEVERANCE OF MATTERS INTO TWO TRIALS.  
19 AND FINALLY, THAT IT WILL BE THE  
20 DEFENDANT'S INTENTION TO TESTIFY AT BOTH  
21 OF THESE TRIALS.  
22

23 RESPECTFULLY SUBMITTED,  
24 DATED THIS 16<sup>TH</sup> DAY OF JULY, 2003  
25  
26   
27 FERRILL V. VOLPICELLI  
28

June 25, 2002

**Ferrill Volpicelli**  
**#60076 @ NSP**  
**Box 607**  
**Carson City, NV 89702**

C.D.O.J.  
Attention: Special Agent In Charge  
Mr. Vincent Jura  
Mariposa Street  
Room 5000  
Fresno, CA.

**RE: RETURN OF PROPERTY**

Dear Mr. Jura,

In February of this year, I wrote a letter apprising you of my predicament and my continued interest in resolving the issue concerning the return of my property. Please find a copy of such for your review.

It is my ardent hope that I can make arrangements with my family to secure the property that you continue to store in evidence. Again, please bear with me on this matter.

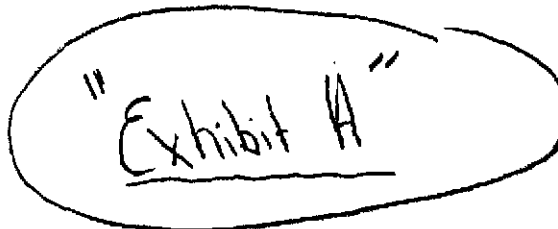
At your earliest convenience, please provide me with a timely reply acknowledging your receipt of my correspondence, as well as your cooperation with this matter.

Thank you.

Best wishes,

  
Ferrill Volpicelli

Cc: file

  
"Exhibit A"



April 4, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

John Kadlic, Esq.  
147 E. Liberty Ste 2  
Reno, NV 89501

RE: REPLY TO PREVIOUS LETTERS

Dear Mr. Kadlic,

Thus far, I have made innumerable attempts to contact you, including two letters and countless dozens of calls to your office: all to no avail.

Of paramount concern is the state bail situation for reasons clearly outlined in my last letter. It is my objective to deal with this matter in advance of the imminent status hearing with the early May trial date.

In addition, I am still without confirmation as to my representation on the three other matters. In view of this, coupled with the lack of discovery on certain issues, there is no way that I am prepared to venture in to trial.

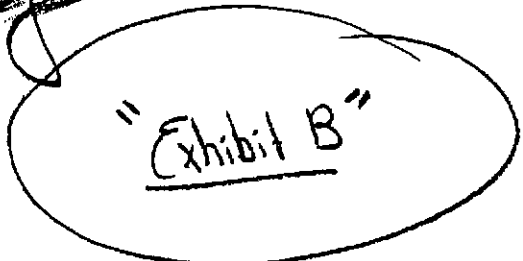
Finally, as a result of my desperation to discuss matters with you, I have requested my Power of Attorney, Kevin Sigstad, to call you. Please advise him as to the particulars regarding my bail situation. He is fully aware of my legal woes.

Thank you for your cooperation.

Sincerely,

  
Ferrill Volpicelli

cc: file

  
"Exhibit B"

April 9, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

John Kadlic Esq.  
147 E. Liberty Ste 201  
Reno, NV 89501

RE: REQUEST FOR IMMEDIATE BAIL HEARING

Dear Mr. Kadlic,

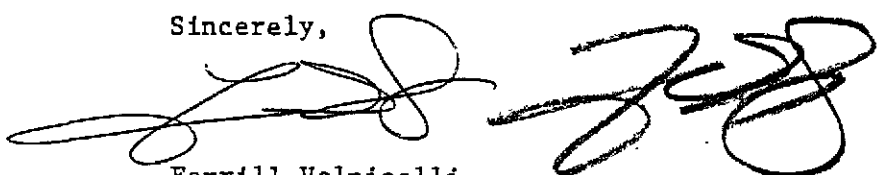
According to my federal public defender, it is imperative that you schedule an immediate bail hearing. In view of my pending federal warrant/detainer, I am requesting that you seek an O.R. on all the state matters.

In this way, I can achieve a timely and prudent objective of resolving my federal supervised release violations.

Inasmuch as your office does not accept my calls, and I have not received a reply to any of my written inquiries, I must insist that you pursue this matter within 5 business days. If not, I will be compelled to write the Honorable Judge Hardesty.

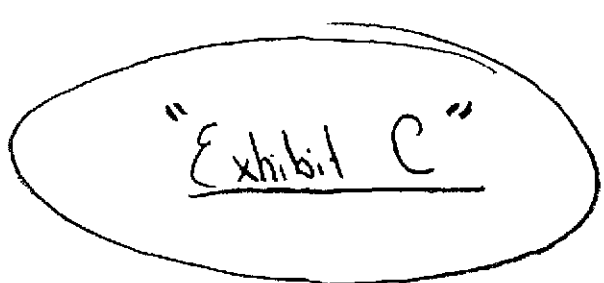
Thank you.

Sincerely,



Ferrill Volpicelli

cc: file



"Exhibit C"

LAW  
OFFICE  
OF  
JUDN  
KADUC

02-0147

FERRILL VOLPICELL  
03-06889 WCD  
911 PARR  
RENO, NV 89572  
JUNE 15, 2003

DEAR MR. KADUC,  
TO DATE, I HAVE LEFT SEVERAL  
MESSAGES OF INQUIRY ON YOUR VOICE  
MAIL; ALL TO NO AVAIL.  
IN MY LAST CONVERSATION WITH MR.  
ALIAN, HE PURSUED THAT YOU CONTINUE  
TO BE THE COUNSEL OF RECORD ON  
02-0147.

ALSO, I SPECIFICALLY RECALL YOUR PROMISED  
VISIT IN CARSON CITY TO DISCUSS ISSUES  
WITH MY CASE.

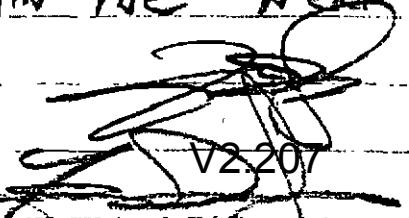
AS I MENTIONED IN MY LAST MESSAGE  
TO YOUR VOICE MAIL, THE JULY 10TH  
SCHEDULED TRIAL DATE POSSES A CONFLICT  
WITH MY HEARING IN THE FAMILY  
DIVISION OF WASHOE COUNTY DISTRICT  
COURT. 03-02634

IT IS MY ASSUMPTION THAT 02-0147 WILL  
BE DEFERRED. HOWEVER, I WOULD LIKE  
TO MEET WITH YOU FOR THE PREPARATION  
AND SUBMISSION OF A PRE-TRIAL MOTION  
TO SEVER THE 3 COUNTS INTO TWO  
TRIALS.

PLEASE VISIT ME AT WCDJ HOUSING UNIT  
1 ON THIS MATTER WITHIN THE NEXT  
10 DAYS.

SINCERELY,

THANK YOU,  
"Exhibit D"

  
V2207

0679881  
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DC-9900025179-014  
STATE VS FERRILL JOSEPH VOL 4 Pages  
District Court 08/08/2003 11 53 AM  
3585  
Washoe County  
nnc

3585  
Bradley O. Van Ry  
Nevada Bar No. 7198  
1403 East Fourth St.  
Reno, NV 89512  
(775) 324-3681

ORIGINAL  
2003 AUG -8 AM 11:53  
P. J. ... JR.  
BY [Signature]

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263<sup>w</sup>

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

PETITION FOR WRIT OF HABEAS CORPUS

TO: THE HONORABLE JUDGE OF THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

The defendant, Ferrill Joseph Volpicelli ("Mr. Volpicelli"), by and through his  
undersigned counsel respectfully shows:

1. That Mr. Volpicelli make application herein for a Writ of Habeas Corpus in that he  
is restrained of his liberty, and that the office by whom Mr. Volpicelli is restrained is DENNIS  
BALAAM, Sheriff;

2. Mr. Volpicelli hereby waives the 60-day limitation for being brought to trial;

3. Mr. Volpicelli consents that, if the petition is not decided within fifteen (15) days  
before the date set for trial, the Court may, without notice or hearing, continue the trial indefinitely or  
to a date designated by the Court;

1           4. Mr. Volpicelli consents that, if any party appeals the Court's ruling and the appeal is  
2 not determined before the date set for trial, the trial date is automatically vacated and the trial  
3 postponed until the Court otherwise order;  
4


5           5. That this petition and all supporting documents have been filed pursuant to  
6 stipulation of the parties in the District Court;  
7

8           6. That the restraint of Mr. Volpicelli is unlawful in that the Grand Jury considered  
9 legally improper evidence as presented to them. The Grand Jury was improperly presented with a  
10 prior conviction for burglary for its consideration.  
11

12           7. This petition is brought upon NRS 172.155 and all documents and records on file  
13 herein.  
14

15           WHEREFORE, Mr. Volpicelli prays that this Honorable Court make an Order directing  
16 the County Clerk to issue a Writ of Habeas Corpus directed to said DENNIS BALAAM, Sheriff,  
17 commanding him to bring Mr. Volpicelli before this Court and determine the cause of Mr. Volpicelli's  
18 restraint.  
19

20           DATED this 7<sup>th</sup> day of August, 2003.  
21

22             
23           BRADLEY O. VAN RY  
24           Attorney for Defendant  
25           Ferrill Joseph Volpicelli  
26  
27  
28

1 STATE OF NEVADA )  
: ss.  
2 COUNTY OF WASHOE )

3 BRADLEY O. VAN RY, being first duly sworn, deposes and says:

- 4 1. That I am the attorney for the Petitioner, Mr. Volpicelli, in the above-entitled matter;  
5  
6 2. That I have read the foregoing Petition and know the contents thereof, and that the same is true of  
7 my own knowledge except as to those matters therein stated on information and belief, and as to those  
8 matters, I believe them to be true;  
9  
10 3. This Writ verification is being signed with the knowledge and permission of Mr. Volpicelli.

11   
12 BRADLEY O. VAN RY

13 SUBSCRIBED AND  
14 SWORN to before me  
15 This 7 day of  
August, 2003.

16   
17 NOTARY PUBLIC




1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of Van Ry Law Office, 1403 E. Fourth  
3 Street, Reno, Nevada, 89512, and that on the date below, a true and correct copy of PETITION FOR  
4 WRIT OF HABEAS CORPUS & POINTS AND AUTHORITIEZS IN SUPPORT OF PETITION  
5 FOR WRIT OF HABEAS CORPUS was deposited for mailing with the United States Post Office,  
6  
7 Regular First Class Mail, at Reno, Nevada, in a sealed envelope, addressed to the following:

8 Deputy District Attorney Tammy Riggs  
9 Deputy District Attorney Cheryl Hier-Johnson  
10 75 Court St  
11 PO Box 30083  
12 Reno, NV 89520

13 Ferrill Volpicelli  
14 Washoe Cty Detention Ctr  
15 911 Parr Blvd  
16 Reno, NV 89512-1000

17 Dated: August 7, 2003

18   
19 Kari Halen

CR03-1263  
STATE VS FERRILL JOSEPH VOLPICELLI  
District Court  
Washoe County  
DC-9900025179-042  
VOL 2 Pages  
08/08/2003 11 53 AM  
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Tower

3665  
Bradley O. Van Ry  
Nevada Bar No. 7198  
1403 East Fourth St.  
Reno, NV 89512  
(775) 324-3681

ORIGINAL

2003 AUG -8 AM 11:53  
BY [Signature]  
DEPUTY

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

**POINTS AND AUTHORITIES IN SUPPORT OF PETITION  
FOR WRIT OF HABEAS CORPUS**

**1. STATEMENT OF FACTS**

On June 11, 2003, the State of Nevada presented a case to the Grand Jury involving Defendant, Ferrill Joseph Volpicelli ("Mr. Volpicelli"). During the presentation of its case, the State of Nevada improperly utilized a prior conviction and submitted it to the Grand Jury. As a result, the indictment in this case issued. See Exhibit "1" (Transcript of Proceeding p. 1,2; p. 144-147).

**2. ARGUMENT**

Nevada law is clear that the Grand Jury may only receive legal evidence. NRS 172.135(2); See also, Phillips v. Sheriff, Clark Co., 93 Nev. 309, 565 P.2d 330 (1977). Additionally, as this Court is aware, prior conviction or prior bad act evidence can only be introduced at trial after a "Petrocelli" hearing. NRS 48.045; Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000). In order to




1 admitted at a trial, a hearing must be held to establish that prior conviction or prior bad act evidence is  
2 relevant, proven by clear and convincing evidence and that the probative value of evidence is not  
3 substantially outweighed by the danger of unfair prejudice. Id.  
4

5 Although no Nevada cases appear to address the propriety of introducing prior  
6 conviction or prior bad act evidence before a Grand Jury, this Court should quash the indictment  
7 because of the danger of unfair prejudice and lack of relevance arising therefrom. The evidence  
8 presented in this case was legally improper and should not have been considered by the Grand Jury.  
9

10 Here, the Grand Jury was presented with a certified copy of a prior offense of burglary  
11 from 1998. The prejudicial effect of a prior conviction for burglary when charged with seven counts of  
12 burglary in a proposed indictment is obvious. Additionally, it is of no relevance to the counts of  
13 burglary as charged. There was, significantly, no hearing to determine any of the required findings for  
14 admissibility at a trial. As the Grand Jury can only consider proper evidence, the consideration of the  
15 prior conviction unfairly and prejudicially tainted the process. The presentation of this improper  
16 evidence is grounds for quashing the indictment. Accordingly, Mr. Volpicelli requests that the  
17 indictment be quashed based upon the foregoing.  
18  
19

20 DATED this 7<sup>th</sup> day of August, 2003.  
21

22  
23   
24 BRADLEY O. VAN RY  
25 Attorney for Defendant  
26 Ferrill Joseph Volpicelli  
27  
28

CR03-1263 DC-9900025179-043  
STATE VS FERRILL JOSEPH VOL 9 Pages  
District Court 08/08/2003 11 53 AM  
Washoe County 3665  
CV1 10MEC

# EXHIBIT 1

CR03-1263

D-9

# COPY

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3 BEFORE THE WASHOE COUNTY GRAND JURY

4  
5 -o0o-

6  
7  
8 IN THE MATTER OF:

9 FERRILL JOSEPH VOLPICELLI  
10 \_\_\_\_\_/

11  
12  
13 P R O C E E D I N G S

14 WEDNESDAY, JUNE 11, 2002

15 9:15 A.M.

16  
17  
18 APPEARANCE:

19 For the State:

CHERYL HIER-JOHNSON, ESQ.  
TAMMY RIGGS, ESQ.  
Deputy District Attorneys  
Washoe County Courthouse  
Reno, Nevada

20  
21  
22 Also Present:

Kevin VanRy, Esq.  
Deputy District Attorney

23  
24 Reported by:

JUDITH ANN SCHONLAU, CSR #18  
Computer-Aided Transcription

FILED  
2003 JUN 20 PM 2:41  
RONALD A. LONGTIN, JR.  
BY G. Velarde  
DEPUTY

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-ooo-

1 RENO, NEVADA; WEDNESDAY, June 11, 2003; 9:15 A.M.

2 -oOo-

3 MS. HIER-JOHNSON: Good morning ladies and gentlemen  
4 of the Grand Jury. My name is Cheryl Hier-Johnson. I am a  
5 Washoe County Deputy District Attorney. Present with me this  
6 morning are Deputy District Attorney Tammy Riggs and Kevin  
7 VanRy. As I just said, please excuse the interruption, I am  
8 here this morning with Ms. Riggs and Mr. VanRy. Ms. Riggs and  
9 I are trying this case together, so I would ask the Grand Jury  
10 Foreman's permission and request for both Ms. Riggs and I to be  
11 able to remain present in the Grand Jury this morning because  
12 we will both be questioning witnesses. We will each have our  
13 own witnesses, and we would like to remain for the entire  
14 proceeding even if we are not questioning a witness at the  
15 moment. Is that all right?

16 THE FOREMAN: That is fine by me. Any objections?  
17 No.

18 MS. HIER-JOHNSON: Also, with respect to Mr. VanRy,  
19 he's a new Deputy District Attorney in the office. I am his  
20 supervisor this week, and I am training him. I would ask that  
21 you specifically recognize his presence and invite him here to  
22 remain this morning not to participate but simply to observe  
23 for training purposes. Mr. Foreman, would that be all right?

24 THE FOREMAN: That would be fine.

1 investigation being made by the Grand Jury.

2           However, you may disclose the above information to  
3 the District Attorney for use in the performance of his  
4 duties.

5           You also may disclose your knowledge concerning the  
6 proceedings when directed by a court in connection with  
7 judicial proceedings or when otherwise permitted by the court  
8 or to your own attorney.

9           The obligation of secrecy applies until the Court  
10 allows the matter to become public record.

11           A gross misdemeanor and contempt of court may be  
12 pursued if your obligation of secrecy is not followed. Do you  
13 understand?

14           THE WITNESS: Yes, I do.

15           THE FOREMAN: Thank you

16                           (Witness Excused.)

17           MS. HIER-JOHNSON: Ladies and gentlemen of the Grand  
18 Jury, that concludes the testimonial evidence the State intends  
19 to present this morning.

20           The final piece of evidence for your consideration  
21 today is being offered for a very limited purpose. It is Grand  
22 Jury Exhibit 16. All burglary counts alleged against Mr.  
23 Volpicelli allege he has been previously convicted of burglary  
24 in 1998. This allegation is not at all relevant to whether or

not Mr. Volpicelli committed the offenses that he is accused of in this Indictment. It is only relevant as a sentencing consideration to be reviewed by the District Court judge at the time of sentencing if Mr. Volpicelli is convicted of any of these burglary charges and for no other purpose.

Exhibit 16 is a certified copy of that 1998 conviction. And the only reason it is being presented to you today is because case law requires that the District Attorney give the defendant notice of this potential sentencing consideration and also to show some evidence of it at a Preliminary Hearing or Grand Jury. That is the only reason that you may consider this prior burglary conviction today is to determine whether or not the D.A., presented some evidence at this stage. And with that, I will leave you to your deliberations.

(Whereupon the Deputy District Attorneys and the Court Reporter left the Grand Jury room.)

(Whereupon the Grand Jury deliberated.)

(Whereupon the Deputy District Attorney and the Court Reporter re-entered the Grand Jury room.)

THE FOREMAN: We have one question we would like explained, that is the definition of implements and adapting of tools for use of burglary and crimes.

MS. HIER-JOHNSON: Ladies and gentlemen of the Grand

Jury, included in your Instructions of Law packet is NRS 205.080, and if you look in paragraph 1, it gives kind of a laundry list of various implements or instruments that can be the subject of this charge. With respect to the specific words selected by the State, that being machine tools or implements, then the word adapted, there is no case law on point that further defines those words. So I will represent what frequently occurs in these instances where the courts direct juries to use the common sense definition, ordinary meaning of the words, because we don't have anything more specific or different on point here in Nevada.

THE FOREMAN: Okay.

(Whereupon the Deputy District Attorney and the Court Reporter left the Grand Jury room.)

(Whereupon the Grand Jury deliberated.)

(Whereupon the Deputy District Attorney and the Court Reporter re- entered the Grand Jury room.)

THE FOREMAN: We have returned a true on bill on Counts I through X and a no True Bill on Count XI.

MS. HIER-JOHNSON: In light of the Grand Jury's findings, I will strike Count XI from the Indictment. But rather than signing the final page, since there is another matter for your consideration this afternoon, I am going to go to our word processing division and ask them to delete Count XI



1 from our memory bank. So my signature line will appear  
2 immediately following Count X, and I will have that document  
3 signed and prepared to present to whichever Judge takes the  
4 returns this afternoon. If that is satisfactory with you, Mr.  
5 Foreman, then I will go ahead and return the final page to you  
6 for an indication of a True Bill.

7 THE FOREMAN: You want me to sign this one now.  
8 Okay.

9 MS. HIER-JOHNSON: We will go ahead and put on the  
10 record at the time of the return that the document that I  
11 present to the Foreman is in fact in the document agreed upon  
12 by the Grand Jury into today's proceedings.

13 It looks like all the exhibits have been pushed  
14 forward. I would ask you to go ahead and return the copies of  
15 law and copies of proposed Indictments.

16 (Whereupon, the proceedings were concluded.)  
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STATE OF NEVADA,                    )  
                                      ) ss.  
COUNTY OF WASHOE.                )

I, Judith Ann Schonlau, one of the Court Reporters of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I reported in stenotype the testimony of the witnesses before the Washoe County Grand Jury in the matter of FERRILL JOSEPH VOLPICELLI at Reno, Nevada on Wednesday, June 11, 2003;

That the foregoing transcript, consisting of pages numbered 1 through 147, inclusive, is a full, true and correct transcription of the stenotype notes taken in the above-entitled matter, to the best of my knowledge, skill and ability.

I further certify that I am in no way interested in the outcome of said action.

Dated at Reno, Nevada, this 17th day of June, 2003.

---

JUDITH ANN SCHONLAU CSR #18

ORIGINAL

FILED

AUG 13 2003

RONALD A. LONGHIN, JR., CLERK

By: m. Shull  
DEPUTY

2840

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CR03-1263 DC-9900025141-012  
STATE VS. FERRILL JOSEPH VOL 3 Pages  
District Court 08/13/2003 01:41 PM  
Washoe County 2840  
DOC JAME

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

FERRILL J. VOLPICELLI,

Plaintiff,

v.

Case No. CR03-1263

Dept. No. 9

THE STATE OF NEVADA,

Defendant.

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ORDER

17

The Court has reviewed and considered Petitioner's Ex Part Petition for  
Clarification filed on August 1, 2003.

18

19

Pursuant to WDCR 9(3)(c) "The court shall not consider any ex parte  
communication, letter, report or other document but shall forthwith notify counsel for all  
parties, on the record, of any attempted ex parte communication or document or  
submission."

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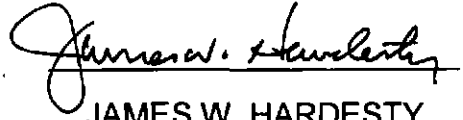
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Good cause appearing, IT IS HEREBY ORDERED that Petitioner's Ex Parte  
Petition for Clarification is DENIED without prejudice.<sup>1</sup>

Dated this 13 day of August, 2003.

  
JAMES W. HARDESTY  
DISTRICT JUDGE

---

<sup>1</sup> The relief requested by Petitioner must be resubmitted by his counsel of record pursuant to LCR 7.

1 CERTIFICATE OF MAILING

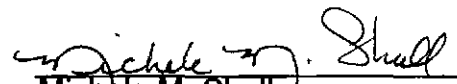
2  
3 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second  
4 Judicial District Court, in and for the County of Washoe; and that on this 13 day of  
5 August, 2003, I deposited in the County mailing system for postage and mailing with the  
6 United States Postal Service in Reno, Nevada, a true and correct copy of the attached  
7 document addressed as follows:  
8

9 Ferrill J. Volpicelli, #60076  
10 Washoe County Detention Facility  
(via interoffice mail)

11 Bradley O. Van Ry, Esq.  
12 1403 E. Fourth Street  
Reno, NV 89512

13 John J. Kadlic, Esq.  
14 550 California Avenue  
P. O. Box 2477  
15 Reno, NV 89505

16 Tammy Riggs, Esq.  
17 WASHOE COUNTY DISTRICT  
ATTORNEY'S OFFICE  
(via interoffice mail)  
18

19  
20   
21 Michele M. Shull  
22 Administrative Assistant  
23  
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25  
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FILED

2003 AUG 18 AM 9:25

RONALD A. LONGTIN, JR.  
BY [Signature] DEPUTY

ORIGINAL

CODE 3897  
Richard A. Gammick  
#001510  
P.O. 30083-3083  
Reno, NV. 89520  
(775)328-3200  
Attorney for Plaintiff

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

\* \* \*

IN THE MATTER OF THE APPLICATION  
OF FERRILL JOSEPH VOLPICELLI FOR  
A WRIT OF HABEAS CORPUS.

Case No. CR03-1263<sup>W</sup>  
Dept No. 9

RETURN

Respondent represents that Petitioner is no manner  
imprisoned, confined or deprived of liberty without law; and  
further avers:

I

That Respondent, at all times mentioned herein, was and  
is the Sheriff of Washoe County, Nevada; and, as such, is charged  
by law with the duty of detaining in custody such persons as are  
legally ordered to be confined.

II

That Respondent is restraining and detaining Petitioner  
above named by virtue of the Indictment accusing the above named  
defendant of Count I, Conspiracy to Commit Crimes Against  
Property; Counts II: - IX: Burglary; Count X: Unlawful

CR03-1263 FERRILL JOSEPH VOLPICELLI FOR  
STATE VS FERRILL JOSEPH VOLPICELLI  
District Court 08/18/2003 09:25 AM  
Washoe County  
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JAMES  
DOC

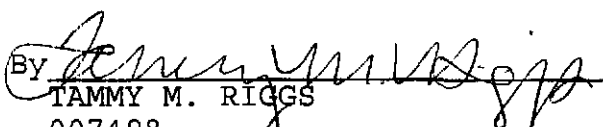
1 Possession, Making, Forgery or Counterfeiting of Inventory  
2 Pricing Labels said Indictment having been filed in the Second  
3 Judicial District Court on the 11th day of June, 2003.

4 III

5 The Petitioner above named, under the authority of the  
6 Indictment filed on the 11th day of June, 2003, has been and now  
7 is in custody in the Washoe County Jail:

8 DATED this 18<sup>th</sup> day of AUGUST, 2003.

9 RICHARD A. GAMMICK  
10 District Attorney  
11 Washoe County, Nevada

12  
13 By   
14 TAMMY M. RIGGS  
15 007498  
16 Deputy District Attorney  
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26 08184004





ORIGINAL

FILED

2003 SEP -4 PM 2:17

RONALD A. LUTIN, JR.

BY *[Signature]*

1 CODE  
2 Richard A. Gammick  
3 #001510  
P.O. Box 30083  
Reno, NV 89520-3083  
(775) 328-3200  
Attorney for Plaintiff

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, the State of Nevada by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and TAMMY M. RIGGS, Deputy District Attorney, and hereby OPPOSES the petitioner's Petition for Writ of Habeas Corpus. This OPPOSITION is based on the pleadings and papers on file in this case and the attached Memorandum of Points and Authorities.

RICHARD A. GAMMICK  
District Attorney  
Washoe County, Nevada

BY *[Signature]*  
TAMMY M. RIGGS  
007498  
Deputy District Attorney

V2.229

CR03-1263  
STATE VS. FERRILL JOSEPH VOLPICELLI  
District Court  
Washoe County  
DOCS  
09/04/2003 02:17 PM  
2650  
JAMES



1 insufficiency of the evidence or lack of jurisdiction, must be raised  
2 by motion before trial. Further, NRS 174.105(2) provides that  
3 failure to present such objection by motion constitutes a waiver of  
4 the objection (subject to the discretion of the Court).

5 Because the petitioner did not raise his objection to the  
6 State's evidence by motion as required by statute and habeas corpus  
7 is not an available remedy for the relief that he seeks, the Court  
8 should DENY his Petition as procedurally barred.

9 The State appropriately introduced the petitioner's 1998 burglary  
10 conviction during the grand jury proceedings.

11 NRS 205.060(2) provides:

12 ...A person who is convicted of burglary and who has  
13 previously been convicted of burglary or another crime  
14 involving the forcible entry or invasion of a dwelling must  
not be released on probation or granted a suspension of his  
sentence.

15 The provision eliminating probation as an option provides for  
16 sentence enhancement where a prior burglary conviction exists. As  
17 sentencing enhancements, prior convictions are not themselves  
18 elements of the State's case to be proven at trial. Accordingly, an  
19 evidentiary evaluation by the grand jury of a prior burglary  
20 conviction is not required to determine whether the offense itself  
21 was committed for purposes of a probable cause determination.

22 Parsons v. State, 116 Nev. 928, 934, 10 P.3d 836, 840 (2000).

23 However, including the prior conviction in the indictment  
24 and in the evidence before the grand jury puts the defendant on  
25 notice of the possible penalties faced and provides the defendant  
26 with enough information to challenge the prior conviction. Id. at

1 935, 840, citing Dressler v. State, 107 Nev. 686, 689, 819 P.2d 1288,  
2 1289-90 (1991). NRS 484.3792(2), Nevada's DUI sentencing provision,  
3 for example, requires that evidence of prior DUI convictions used to  
4 enhance a DUI to a felony be presented to the grand jury for these  
5 purposes. Id.

6 When introducing the prior conviction to the grand jury,  
7 the State included a limiting instruction, informing the members that  
8 the only purpose for which they could consider the prior conviction  
9 was to determine whether there was evidence of the conviction for the  
10 purpose of notice to the petitioner. (Grand Jury Tr. At 146.)  
11 Because the State provided the prior conviction to the grand jury for  
12 the purpose of notice, and the grand jury was appropriately cautioned  
13 as to its use, no prejudice to the petitioner resulted from its  
14 admission.

15 The State presented sufficient evidence for the grand jury to find a  
16 true bill.

17 Even if the prior conviction evidence had been improper,  
18 the State's evidence presented at the grand jury was more than  
19 sufficient for the grand jury to find a true bill and indict the  
20 petitioner. The legal efficacy of an indictment will be sustained if  
21 there has been presented to the grand jury the slightest sufficient  
22 legal evidence and best in degree even though inadmissible evidence  
23 may also have been adduced contrary to NRS 172.135. Franklin, 89  
24 Nev. at 387, 513 P.2d at 1256, citing Robertson v. State, 84 Nev.  
25 559, 445 P.2d 352(1968) and State v. Logan, 1 Nev. 509 (1865).

26 ///

1 At the grand jury proceeding, the State presented nine  
2 witnesses, including an accomplice, who testified to witnessing  
3 various acts committed by the petitioner during the ten charged  
4 crimes, as well as describing the merchandise illegally obtained by  
5 the petitioner. (See Grand Jury Tr. At 7 - 143.) The accomplice  
6 described the petitioner's scheme to burglarize various retail stores  
7 and the manner in which the petitioner carried out the burglaries.  
8 (Id. at 7-51). The State also presented fifteen exhibits in addition  
9 to the certified proof of prior conviction, including photographs of  
10 various merchandise discovered in the petitioner's vehicle and in his  
11 storage unit. In presenting this evidence, the State met its burden  
12 in producing the slight or marginal evidence required for the grand  
13 jury to find probable cause that the charged crimes were committed  
14 and that the petitioner committed them.

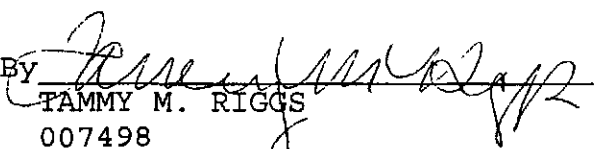
15 Because the State met its evidentiary burden at the grand  
16 jury proceeding, the indictment should not be quashed.

17 CONCLUSION

18 Based on the preceding, the Court should DENY the  
19 petitioner's Petition for Writ of Habeas Corpus.

20 Dated this 4th day of September 2003.

21 RICHARD A. GAMMICK  
22 District Attorney  
23 Washoe County, Nevada

24 BY   
25 TAMMY M. RIGGS  
007498  
26 Deputy District Attorney

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MR. BRAD VAN RY  
1403 E. FOURTH STREET  
RENO, NV 89512

Penny Basmussen

FILED

SEP 12 2003

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*  
DEPUTY

1 CODE: 1930

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CR03-1263  
DC-9900025141-015  
STATE VS. FERRILL JOSEPH VOL 6 Pages  
District Court 09/12/2003 02:55 PM  
Washoe County  
1930  
JAMES  
DOC

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

STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR02-0146

CR02-0147

CR02-0148

CR03-1263

Dept. No. 9

LETTER FROM DEFENDANT

SEE ATTACHED DOCUMENT

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V2.235

CHIEF  
DISTRICT  
COURT  
JUDGE  
DEPT.  
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SEPTEMBER 1, 2003

FERRILL VOLPICELLI  
09-06049 WCSO  
911 PARR BLVD  
RENO, NV 89512

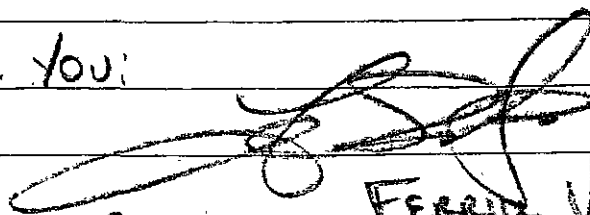
RE: DISINTERESTED COUNSEL

DEAR HONORABLE JUDGE HARDESTY,

AGAIN, I FIND MYSELF THE SAME ISSUES  
REGARDING THE DISINTEREST OF MY COUNSEL  
TO ASSIST ME WITH MY STATE BAIL  
SITUATION. (SEE PETITION FOR CLARIFICATION)  
ENCLOSED ARE COPIES OF LETTERS TO MY  
ATTORNEYS, AND TYPICALLY, NOT ONE OF THEM  
IS RESPONDING TO THE MATTER.

SO I RESPECTFULLY INQUIRE AS TO  
WHAT I AM TO DO NEXT?

THANK YOU:



FERRILL VOLPICELLI

SINCERE REGARDS,

RECEIVED

SEP 09 2003 -

Department Nine

ENCLOSURES  
cc: FILE

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY  
CERTIFIES THAT ON THE 4<sup>TH</sup>  
DAY OF SEPTEMBER 2003, HE  
DID MAIL A COPY OF THIS  
LETTER TO WASHOE COUNTY  
DISTRICT ATTORNEY, JACK ALLEN

JOAN KADUC, BRADLEY VAN DYK.

FERRILL VOLPICELLI V2.236



AUGUST 19, 2003

HERB VOLPICELLI  
03-06889 WCSO  
911 PARR BLVD  
RENO, NV 89512

LAW OFFICE

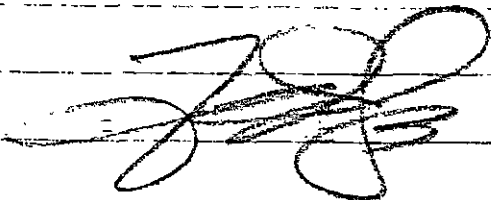
OF

DEAR MR. ALAN,

TACK ALAN ESQ.

PLEASE FIND THE ACCOMPANYING  
ORDER FROM JUDGE HARDESTY REGARDING MY  
EFFORTS TO RESOLVE MATTERS WITH MY STATE BAIL  
AT THIS POINT, I IMPURE YOU TO SCHEDULE A  
HEARING ON THIS MATTER WITHIN THE NEXT WEEK,  
IF NOT, THEN I WILL BE OVERWHELMINGLY  
COMPELLED TO WRITE JUDGE HARDESTY APPRISING  
HIM OF INATTENTIVE AND INEFFECTUAL COUNSEL

SINCERE REGARDS,



cc to file

ENCLOSURE

FERRILL VOLPICELLI  
03-06449 WCSO  
911 PARK BLVD  
RENO, NV 89512

AUGUST 19, 2003

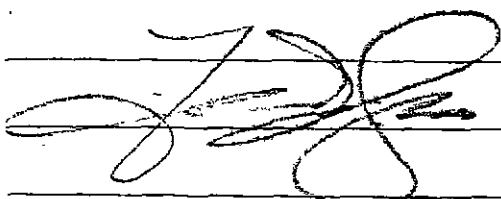
LAW OFFICE  
OF

DEAR MR. KADIC,

JOHN KADIC ESQ. BY NOW YOU ARE LIKELY IN  
RECEIPT OF JUDGE HARDESTY'S ORDER REGARDING  
CLARIFICATION OF MY STATE BAIL.

AT THIS POINT, I IMPLORE YOU TO SCHEDULE A  
HEARING ON THIS MATTER WITHIN THE NEXT WEEK  
IF NOT, THEN I WILL BE OVERWHELMINGLY  
COMPELLED TO WRITE JUDGE HARDESTY APPRAISING  
HIM OF INATTENTIVE & INEFFECTUAL COUNSEL.

SINCERE REGARDS,



cc 8 file

ENCLOSURE

V2.238

AUGUST 19, 2003

R

LAW OFFICE OF  
BRADLEY VAN RY ESQ.

DEAR MR.

PLEASE FIND THE ACCOMPANYING PLEADING WHICH  
COINCIDES WITH JUDGE HANDELY'S RECENT ORDER


INASMUCH AS YOU ARE THE ONLY ATTORNEY  
THAT PROFESSIONALLY ACKNOWLEDGED MY CORRESPONDENCE

I IMPLORE YOU TO SCHEDULE A HEARING  
THIS MATTER IN THE COMING WEEK. I'D

NOT PURSUE THIS MATTER AGAIN ON MY OWN.

SIMPLY APPRISE JUDGE HANDELY OF A LACK  
OF COOPERATION BY COUNSEL, THANK YOU

SINCERE REGARDS,



cc: file  
ENCLOSURE

CERTIFICATE OF MAILING

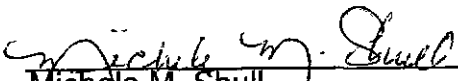
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 12 day of September, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Ferrill J. Volpicelli, #60076  
Washoe County Detention Facility  
(via interoffice mail)

Jack A. Alian, Esq.  
360 W. Liberty Street  
Reno, NV 89501

John J. Kadlic, Esq.  
550 California Avenue  
P. O. Box 2477  
Reno, NV 89505

Tammy Riggs, Esq.  
Deputy District Attorney  
WASHOE COUNTY DISTRICT  
ATTORNEY'S OFFICE  
(via interoffice mail)

  
Michele M. Shull  
Administrative Assistant

# INMATE REQUEST

Courts Transportation  
SEP 05 2003

FILED

OCT 07 2003

RONALD A. LONGTIN, JR., CLERK

By: [Signature]  
DEPUTY

Booking #: 03-06579

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: FERRILL VOLPICELLI

Residing Unit: 7

Cell #: 12

Date: 9-4-03

Describe Request:

COURTS

TO: MICHELLE OF DEPARTMENT 9 WCODC-CLERK

ATTACHED IS A COPY OF THE RESPONSE TO MY ATTEMPT IN  
RESOLVING THE ISSUE OF SUPERFLUOUS COUNTS ON MY  
RAP SHEET AT WCOD. AS A RESULT OF THE DUPLICATE  
CHARGES, WITH 02-0145 & 02-0146 CONVERTED TO 03-1263,  
THEY HAVE ADVERSELY AFFECTED MY CUSTODY LEVEL,  
COULD YOU PROVIDE ME WITH COURT MINUTES OR  
OTHER DOCUMENTATION SO THAT THIS MATTER CAN BE  
RESOLVED WITH WCOD RECORDS.

THANK YOU,

Inmate's Signature:

Receiving Staff Member/I.D.#: P41602591  
(PRINT NAME)

Date: 9/4/03

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

## ACTION

Routed to: Courts Date: 9-4 Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐ Denied ☐

Reason:

Advised inmate via phone that cases CR02-0145 and CR02-0146  
were stayed pursuant to ~~the~~ Courts order of 6/18/03, but not  
dismissed

cc: Jack Allen  
John Radlic  
Tammy Riggs

Responding Staff Member / I.D.#:

(PRINT NAME)

Date:

FILED

ORIGINAL

2003 SEP 17 AM 11:42

RONALD A. LONGTIN, JR.

DEPUTY

3795  
Bradley O. Van Ry  
Nevada Bar No. 7198  
1403 East Fourth St.  
Reno, NV 89512  
(775) 324-3681

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9


FERRILL JOSEPH VOLPICELLI,

Defendant.

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Defendant, Ferrill Joseph Volpicelli ("Mr. Volpicelli"), hereby replies in support of his petition for writ of habeas corpus. This reply is made and based upon the accompanying points and authorities.

DATED this 16<sup>th</sup> day of September, 2003.

  
BRADLEY O. VAN RY  
Attorney for Defendant  
Ferrill Joseph Volpicelli

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POINTS AND AUTHORITIES

1. Writ may be considered as "Motion".

Without conceding that a Writ is not the appropriate vehicle for the instant case, if the Court finds it proper, Mr. Volpicelli would alternatively request that his Writ be considered as a Motion. That the motion is made by a petition for a writ is not a substantive difference sufficient to deny review by this Court.

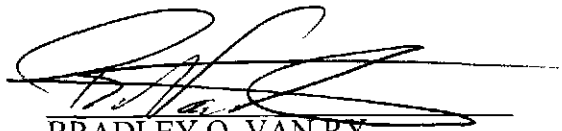
2. NRS 484.3792(2) does not apply to this Grand Jury proceeding.

The State cleverly points to a DUI statute to justify introducing the prior conviction of Mr. Volpicelli to the Grand Jury. That statute, however, clearly does not apply to this case. That statute is very specific and directed at driving while impaired and its elevation to a felony. It is, therefore, inapposite. Here, Mr. Volpicelli is accused of numerous felonies and a prior conviction was introduced against him. As a result, he was prejudiced beyond any repair by a limiting instruction.

3. Unfair Prejudice is the issue.

The State asserts that sufficient evidence exists to justify the true bill and indictment. That misses the point of the Writ. Mr. Volpicelli complains of the unfair prejudice arising from the Grand Jury reviewing a prior felony conviction. As such, the State's argument should be ignored, and the Indictment dismissed.

DATED this 16<sup>th</sup> day of September, 2003.

  
BRADLEY O. VAN RY  
Attorney for Defendant  
Ferrill Joseph Volpicelli

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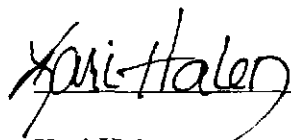
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Van Ry Law Office, 1403 E. Fourth Street, Reno, Nevada, 89512, and that on the date below, a true and correct copy of **REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** was deposited for mailing with the United States Post Office, Regular First Class Mail, at Reno, Nevada, in a sealed envelope, addressed to the following:

Deputy District Attorney Tammy Riggs  
Deputy District Attorney Cheryl Hier-Johnson  
75 Court St  
PO Box 30083  
Reno, NV 89520

Ferrill Volpicelli  
Washoe Cty Detention Ctr  
911 Parr Blvd  
Reno, NV 89512-1000

Dated: September 16, 2003

  
Kari Halen