

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

Electronically Filed
Sep 05 2013 04:50 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

THE STATE OF NEVADA,
Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,
Defendant.

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

RECORD ON APPEAL

VOLUME 3 OF 13

DOCUMENTS

APPELLANT

Ferrill J. Volpicelli #79565
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Lovelock, Nevada 89419

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
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Reno, Nevada 89502-3083

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CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

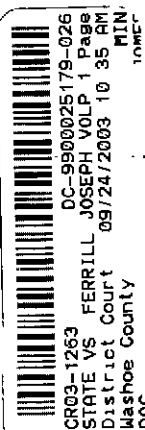
09/24/03
HONORABLE
JAMES W.
HARDESTY
DEPT. NO. 9
S. Sattler
(Clerk)
D. Davidson
(Reporter)

MOTION TO CONFIRM TRIAL

Deputy D.A. Tammy Riggs represented the State.
Defendant present without counsel.
Counsel for State addressed the Court and indicated they had met
with his Administrative Assistant to continue this matter and noted
this was Mr. Van Ry's case.
Court indicated he believed this matter had been previously
continued and advised the Defendant not to speak to the Court
without his counsel.
Defendant remanded to the custody of the Sheriff.

10/24/03
at 8:30 a.m.
Motion to
Confirm

11/10/03
at 8:30 a.m.
Jury Trial



ORIGINAL

FILED

OCT 07 2003

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY

4030
Bradley O. Van Ry
Nevada Bar No. 7198
1403 East Fourth St.
Reno, NV 89512
(775) 324-3681
Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

STIPULATION FOR CHANGE OF TRIAL DATE

The State of Nevada by and through undersigned counsel Tammy M. Riggs, Washoe
County Deputy District Attorney, and defendant, Ferrill Joseph Volpicelli, by and through undersigned
counsel Bradley O. Van Ry, hereby stipulate to change the time of the Trial scheduled for September
24, 2003 to November 10, 2003 at 8:30 a.m. in Department 9.

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District Court
Washoe County
JAMES
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DC-9900025141-019
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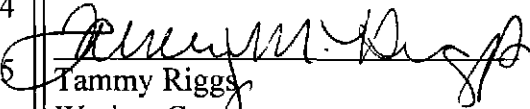
1 This stipulation is entered into for good cause and not for any purpose of delay.

2 DATED this 9/29 day of _____, 2003.

3

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5


Tammy Riggs
Washoe County
Deputy District Attorney

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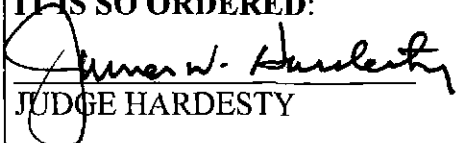
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IT IS SO ORDERED:

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JUDGE HARDESTY

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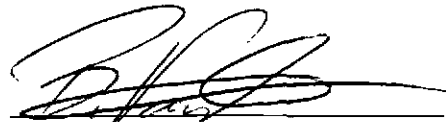
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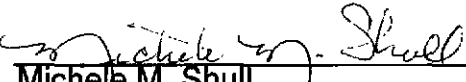

Bradley O. Van Ry
Attorney for Defendant
Ferrill Joseph Volpicelli

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 7th day of October, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)


Michele M. Shull
Administrative Assistant

Document Error**Binder Information**

Document Description: Inmate Request Form Filed NO DOCUMNET IN FILE TO
IMAGE - LMATHEUS

Document Name:

DMSID 9900025141018

CMSID: 2161254

Local

Document Date: 10-07-2003

ORIGINAL

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2003 OCT -9 PM 1:24

RONALD A. LONGSTIN, JR.

BY  DEPUTY

1 CODE 2610
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,

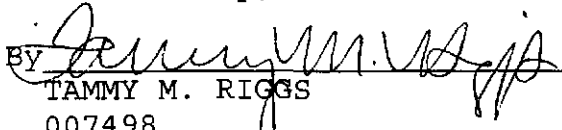
Defendant.

NOTICE OF INTENT TO SEEK HABITUAL CRIMINAL STATUS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and TAMMY M. RIGGS, Deputy District Attorney, and hereby files its notice of the State's intention to pursue Habitual Criminal status for the defendant in this case pursuant to NRS 207.010.

Dated this 9th day of October, 2003.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

BY 
TAMMY M. RIGGS
007498
Deputy District Attorney

10081634

V3.250

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

MR. BRAD VAN RY
1403 E. FOURTH STREET
RENO, NV 89512

DATED this 9th day of October, 2003.

Renny Rasmussen

CODE: 4185

ORIGINAL

FILED

2003 OCT 13 AM 9:00

RONALD A. JUNGSTIN, JR.

BY  DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263
Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

TRANSCRIPT OF PROCEEDINGS

MOTION TO CONFIRM TRIAL

SEPTEMBER 24, 2003

RENO, NEVADA

Reported by:

DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

CR03-1263 FERRILL JOSEPH VOLPICELLI
STATE VS FERRILL JOSEPH VOLPICELLI
District Court 10/13/2003 12:42 PM
Washoe County 4185
JANE
DOC

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Division of Parole and Probation:
LAURA PAPPAS

1 RENO, NEVADA, WEDNESDAY, SEPTEMBER 24, 2003, 9:08 A.M.

2 --oOo--

3
4 THE COURT: All right. State versus Ferrill
5 Volpicelli, CR03-1263.

6 Is Mr. Alian here?

7 MS. RIGGS: This is Mr. Van Ry's case, Your
8 Honor.

9 Tammy Riggs appearing on behalf of the State.

10 I don't believe Mr. Van Ry is going to be here,
11 Your Honor. Last week Mr. Van Ry and I met with your
12 administrative assistant, and we did continue this
13 motion to confirm hearing as well as the trial date.
14 Also, I believe that a stipulation was filed for the
15 continuance, although I do not find that in my file,
16 Your Honor.

17 THE COURT: I don't either. Do you know the
18 continuation date?

19 MS. RIGGS: Yes, I do, Your Honor. The motion
20 to confirm date is October 24th, 2003, at 8:30; and the
21 trial date will be November 10th, 2003, at 8:30.

22 THE COURT: Okay. Mr. Volpicelli?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I don't want you to speak without

1 the presence of your lawyer.

2 THE DEFENDANT: Okay.

3 THE COURT: So I'll continue the matters as
4 indicated. If you have a reason to raise an issue with
5 the Court, get a hold of your attorney and you can
6 schedule something with me.

7 THE DEFENDANT: Thank you, Your Honor.

8 MS. RIGGS: Thank you.

9 (Proceedings concluded.)

10 --oOo--

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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 10th day of
19 October, 2003.

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22 
23 DONNA DAVIDSON, CCR #318
24

ORIGINAL

FILED

2003 NOV -7 AM 10:27

RONALD A. LONGTIN, JR.

DEPUTY

1 CODE 2610
 2 Richard A. Gammick
 #001510
 P.O. 30083
 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.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

NOTICE OF WITNESSES PURSUANT TO NRS 174.234

COMES NOW, the State of Nevada, by and through RICHARD A.
 GAMMICK, District Attorney of Washoe County, and TAMMY M. RIGGS,
 Deputy District Attorney, and hereby gives notice of the names of the
 witnesses intended to be called during the State's case-in-chief.

RENO POLICE DEPARTMENT

REED THOMAS
 PATRICIA BROWN
 SCOTT ARMITAGE
 BRETT BOWMAN, c/o Reed Thomas
 DAVE DELLA

SPARKS POLICE DEPARTMENT

MICHAEL BROWN

///

11/10
 DC-9900025141-022
 CR03-1263
 STATE VS. FERRILL JOSEPH VOLPICELLI
 District Court
 Washoe County
 2592
 JANE
 DOC

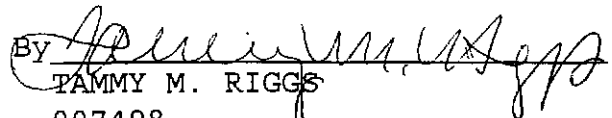
WASHOE COUNTY SHERIFF'S OFFICE

LARRY LODGE

MATTHEW CARTER, Wal-Mart, 2863 Northtowne Lane, Reno
GERG DANIELSON, Wal-Mart, 2863 Northtowne Lane, RenoCUSTODIAN OF RECORDSKARINAH PREVOST-ROBISON, Aussie Self-Storage, 30 East
Victorian Avenue, Sparks, Nevada
BXI BUSINESS EXCHANGE OF NORTHERN NEVDADA, 24 Hillcrest
Drive, Reno

JOHN DAVID ELLIS, Lowe's Loss Prevention

BILL MOWERY, Shopko, 5150 Mae Anne

Dated this 7 day of November, 2003.RICHARD A. GAMMICK
District Attorney
Washoe County, NevadaBY 
TAMMY M. RIGGS
007498
Deputy District Attorney

11062631

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

MR. BRADLEY VANRY
1403 E. FOURTH STREET
RENO, NV 89512

DATED this 7 day of November 2003.

Renny Rasmussen

CERTIFICATE OF FACSIMILE

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I faxed a true copy of the foregoing document to:

MR. BRADLEY VANRY
Fax #324-6281

DATED this 7 day of November, 2003.

Renny Hasmusser

ORIGINAL

FILED

1 CODE 3370

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NOV - 7 2003

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

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

THE STATE OF NEVADA,

Plaintiff,

11 vs.

CASE NO.: CR03-1263

12 FERRILL JOSEPH VOLPICELLI,

DEPT. NO.: 9

13 Defendant.
14 _____**ORDER TRANSFERRING CASE**

17 This matter being set for trial on November 12, 2003, in Department 9; the
18 Honorable James W. Hardesty presiding over another trial that commences November 12,
19 2003, and good cause appearing therefore,

20 **IT IS HEREBY ORDERED** that this matter shall be transferred to Department 10,
21 the Honorable Steven P. Elliott, for all future handling. The trial shall remain set for
22 November 12, 2003, in Department 10, and will begin at 8:30 a.m.

23
24 DATED this 7 day of November, 2003.

25 *[Signature]*
26 JAMES W. HARDESTY
27 DISTRICT JUDGE
28 DEPARTMENT NINE

[Signature]
STEVEN P. ELLIOTT
DISTRICT JUDGE
DEPARTMENT TEN

CR03-1263 DC-9900026141-023
STATE VS. FERRILL JOSEPH VOL. 2 Pages
District Court 11/07/2003 05:34 PM
Washoe County 3370
JWC

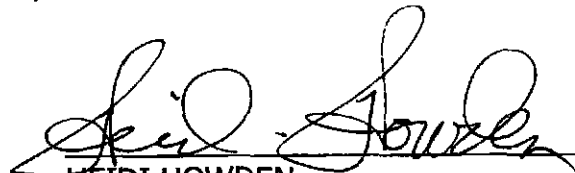
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 7 day of November, 2003, I deposited for mailing a copy of the foregoing document addressed to:

Bradley O. Van Ry, Esq.
1403 E. Fourth St.
Reno, NV 89512

Tammy M. Riggs, Esq.
Deputy District Attorney
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

DATED this 7 day of November, 2003.


HEIDI HOWDEN
Administrative Assistant

FILED

NOV 07 2003

RONALD A. LONGMAN, JR., CLERK

By: Shall
DEPUTY

1 3370

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

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

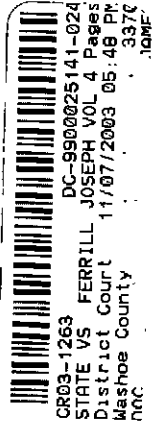
Defendant.

ORDER

The Court has reviewed and considered the points and authorities in support of and in opposition to Defendant's Petition for Pre-trial Writ of Habeas Corpus filed on August 8, 2003.

Defendant requests the Court quash his indictment based on the presentation of prior bad acts evidence by the State to the grand jury, during bind over proceedings.

A challenge to the validity of the grand jury proceedings must be made by motion and not by pretrial habeas corpus proceedings. *Franklin v. State*, 89 Nev. 382 (1973). Such an improper pleading constitutes a waiver of any defense or objection a defendant might have, however the Court may grant relief from said waiver for cause shown. *NRS 174.105(2)*.



1 Accordingly, the Court now considers Defendant's proposed Petition for Pre-
2 trial Writ of Habeas Corpus as a Motion to Suppress.

3 In the present case, the Grand Jury was presented with a certified copy of
4 Defendant's prior conviction of burglary dated 1998. The evidence was accompanied by a
5 limiting instruction by the State, informing the members of the grand jury that they only
6 consider the prior conviction for the sole purpose of noticing Defendant of the intent by the
7 State to pursue habitual criminal status at sentencing.

8 Defendant asserts the prejudicial effect of a prior burglary, when presently
9 charged with seven counts of burglary in a proposed indictment, is severe and warrants
10 the indictment be quashed by the Court.

11 The State cites several cases in its Opposition to Defendant's requested
12 relief. However said cases relate to DUI law, and following the Court's inquiry, do not
13 appear to have been applied to any other arena.

14 Good cause appearing, IT IS HEREBY ORDERED that Defendant's Motion
15 to Suppress is GRANTED regarding the presentation of Defendant's prior bad acts to the
16 grand jury.

17 "A grand jury 'ought to find an indictment when all the evidence before them,
18 taken together establishes probable cause to believe that an offense has been committed
19 and that the defendant has committed it.'" *Franklin v. State*, 89 Nev. 382, 388 (1973);
20 citing *NRS 172:155(1)*. A grand jury "does not determine guilt or innocence, but needs
21 only to have before them legally sufficient evidence to establish probable cause." *Id.*

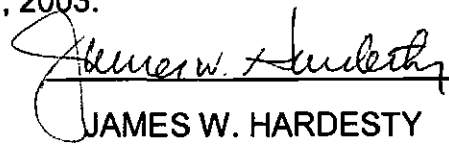
22 "A defendant is entitled to fair but not perfect consideration before a grand
23 jury." *Id.*; citing *Lutwak v. United States*, 344 U.S. 604 (1952). In the present case, the
24 State presented nine witnesses, including an accomplice, who testified to witnessing
25 various acts committed by Defendant during the ten charged crimes, as well as describing
26 the merchandise allegedly illegally obtained by Defendant.

27 ///

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1 IT IS FURTHER ORDERED that Defendant's request to quash the
2 indictment is DENIED.

3 Dated this 7 day of November, 2003.

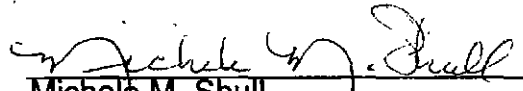
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5 JAMES W. HARDESTY
6 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 7th day of November, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)


Michele M. Shull
Administrative Assistant

0-5
12/5
relate 267267

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

11/10/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
P. Hoogs
(Reporter)

HEARING RE: CONFLICT OF COUNSEL

Deputy D.A. Tammy Riggs represented the State.
Defendant present with counsel, Bradley Van Ry.
Counsel for State addressed the Court and stated that she has not received notice of motion for discharging of counsel.
Counsel for Defendant informed the Court that no formal has been filed and stated the Defendant had written letters informing him that the Defendant was not prepared for trial.
Court made inquiries of defense counsel regarding preparedness for trial; counsel for Defendant stated he was prepared for trial.
Counsel for State informed the Court that the Defendant had tried to delay the trial many times before.
Court made inquiries of Defendant regarding self-representation; Defendant responded that he would not represent himself.
COURT ORDERED: Trial set for Wednesday, November 12, 2003 is confirmed.
Court informed respective counsel that the writ filed by the defense had been denied by Judge Hardesty.
Counsel for State requested the Court to admonish the Defendant as to making any eleventh hour motions to delay the trial.
Court informed the Defendant that all motions must be brought to the Court's attention through defense counsel.

11/12/03
8:30 a.m.
Jury Trial

CR03-1263
DC-9900025179-025
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
11/10/2003 10:35 AM
MTN
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CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/12/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL

Deputy D.A. Tammy Riggs represented the State.
 Defendant was present with counsel, Bradley Van Ry.
 Introductions of Court, counsel, Court personnel and respective parties were made to the prospective jurors.
 All prospective jurors were sworn to answer questions touching upon their qualifications to serve as jurors in this case.
 General and specific examination was had of the prospective jurors in the box.
 Following peremptory challenges, the following twelve (12) jurors and one (1) alternate(s) were sworn to try this case:

Russell Christiansen
 Eric Morgan
 Gerald Jackson
 Tony Major
 Heather Harzke
 Joy White

Caston Kennard
 Richard McNeely
 Diane Estep
 Christina Dutra
 Carlotta King
 Florence Albee

Alternate(s): Wallace Peterson

Upon direction of the Court, the Clerk read the Indictment which was filed in this case and stated the Defendant's plea thereto.
 The jurors were admonished prior to each recess throughout the trial and respective counsel stipulated to their presence each time the Court convened.
 Outside the presence of the jury, respective counsel stipulated to the admission of State's exhibits 1 through 10 and 12 through 43.
COURT ORDERED: State's exhibits 1-10 and 12-43 admitted.
 The jury returned to the courtroom
 Respective counsel presented opening statements.
 Counsel for Defendant moved to invoke the rule of exclusion; SO ORDERED.
David Della was called by counsel for State, sworn, testified and cross-examined.
Karinah Prevost was called by counsel for State, sworn and testified.
John David Ellis, Jr. was called by counsel for State, sworn, testified and cross-examined.
Brett Bowman was called by counsel for State, sworn, testified and cross-examined.

CR03-1263
 STATE VS. FERRILL JOSEPH VOL
 District Court
 Washoe County
 MTN
 11/12/2003 10:31 AM
 10MIC

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/12/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CON'T

The following exhibit was ordered admitted during the testimony of witness Bowman:

State's exhibit 11

COURT ORDERED: The trial is continued until Thursday, November 13, 2003 at 10:30 a.m. The jurors were excused until said time.

Outside the presence of the jury, respective counsel reserved their right to recall witness Bowman.

Counsel for Defendant informed the Court that the Defendant would like the opportunity to further cross-examine the witnesses; objection and response by counsel for State.

COURT ORDERED: All cross-examination shall be performed by defense counsel. Counsel for State informed the Court that defense counsel had gone into the character evidence of witness Bowman, therefore the State should be allowed to present evidence to the jury of where witness Bowman and the Defendant met; objection and response by counsel for Defendant.

COURT ORDERED: The State is hereby prohibited to present evidence of where witness Bowman and the Defendant had met.

COURT ORDERED: The trial is continued until Thursday, November 13, 2003 at 10:30 a.m.

11/13/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CON'T

Deputy D.A. Tammy Riggs represented the State.

Defendant was present with counsel, Bradley Van Ry.

Scott Armitage was called by counsel for State, sworn, testified and cross-examined.

The following exhibits were ordered marked and admitted during the testimony of witness Armitage:

State's exhibits 44-46

Larry Lodge was called by counsel for State, sworn, testified and cross-examined.

Michael Brown was called by counsel for State, sworn, testified and cross-examined.

Greg Danielson was called by counsel for State, sworn, testified and cross-examined.

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEOPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/13/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CONT

Willard Mowery was called by counsel for State, sworn, testified and cross-examined.

Reed Thomas was called by counsel for State, sworn, testified and cross-examined.

State rests.

Outside the presence of the jury, the Court canvassed the Defendant as to his right to testify on his own behalf.

Counsel for Defendant moved to dismiss the case and presented argument thereto; objection and response by counsel for State.

COURT ORDERED: Motion to dismiss denied.

Further discussion between Court and respective counsel.

The jury returned to the courtroom.

COURT ORDERED: The trial is continued until Friday, November 14, 2003 at 10:00 a.m.

11/14/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CONT

Deputy D.A. Tammy Riggs represented the State.

Defendant was present with counsel, Bradley Van Ry.

Defense rested.

The Court and respective counsel met in chambers for the purpose of settling jury instructions as noted in the stenographic record.

Instructions #1 through #37 and twenty (20) verdict forms were offered.

The jury returned to the courtroom.

Court read Jury Instructions #1 through #37 to the jury.

Closing arguments were presented by respective counsel.

Court proposed the alternate juror be excused, subject to recall; no objection by respective counsel.

At 2:10 p.m. the Bailiff was sworn by the Clerk to take charge of the jury during their deliberations.

Court stood in recess, subject to call of the jury.

At 3:50 p.m. the jury returned to the courtroom and the Clerk read the following verdicts:

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/14/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CONTVERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT I: CONSPIRACY TO COMMIT CRIMES
AGAINST PROPERTY

DATED this 14 day of November, 2003./s/ Joy White
FOREPERSONVERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT II: BURGLARY

DATED this 14 day of November, 2003./s/ Joy White
FOREPERSONVERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT III: BURGLARY

DATED this 14 day of November, 2003./s/ Joy White
FOREPERSON

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/14/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CONTVERDICTWe, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT IV: BURGLARYDATED this 14 day of November, 2003./s/ Joy White
FOREPERSONVERDICTWe, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT V: BURGLARYDATED this 14 day of November, 2003./s/ Joy White
FOREPERSONVERDICTWe, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT VI: BURGLARYDATED this 14 day of November, 2003./s/ Joy White
FOREPERSON

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/14/03
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
D. Gustin
(Reporter)JURY TRIAL, CONTVERDICTWe, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT VII: BURGLARYDATED this 14 day of November, 2003./s/ Joy White
FOREPERSONVERDICTWe, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT VIII: BURGLARYDATED this 14 day of November, 2003./s/ Joy White
FOREPERSONVERDICTWe, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH
VOLPICELLI, GUILTY of COUNT IX: BURGLARYDATED this 14 day of November, 2003./s/ Joy White
FOREPERSON

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(Reporter)JURY TRIAL, CON'TVERDICT

We, the jury in the above-entitled matter, find the defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT X: UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF INVENTORY PRICING LABELS.

DATED this 14 day of November, 2003./s/ Joy White
FOREPERSON

Upon request of counsel for Defendant, Court ordered the jury polled and to the question "Are these the Verdicts to which you agree?", each juror for himself/herself and not one for the other, replied "yes".
The jurors were thanked and excused.
Formal sentencing was set for December 23, 2003 at 8:30 a.m.
Defendant remanded to the custody of the Sheriff.

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

3:48 p.m.

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you, regardless of what you may think the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

Instruction No. 1

CR03-1263
STATE VS FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
11/14/2003 03:48 PM
1885
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1 The defendant in this matter, FERRILL JOSEPH
2 VOLPICELLI, is being tried upon an Indictment which was filed on
3 the 11th day of June, 2003, in the Second Judicial District
4 Court, charging the said defendant FERRILL JOSEPH VOLPICELLI,
5 with:

6 COUNT I. CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY,
7 violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090,
8 NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS
9 205.965, a gross misdemeanor, committed as follows:

10 That the said defendant on or between the 21st day of
11 June A.D. 2001, and the 17th day of October A.D. 2001, or
12 thereabout, at the County of Washoe, State of Nevada, did
13 willfully, unlawfully, and with the intent to permanently
14 deprive, cheat or defraud conspire with BRETT BOWMAN with the
15 intent then and there to commit Burglary, Theft, Forgery,
16 Uttering a Forged Instrument, Larceny, Obtaining Property by
17 False Pretenses, and/or Unlawful Possession, Making, Forgery or
18 Counterfeiting of Inventory Pricing Labels, through a scheme
19 where property and/or money was obtained from several stores in
20 Washoe County, to wit: WALMART, K-MART, SHOPKO, TARGET, LOWE's,
21 HOME DEPOT, OFFICE MAX, OFFICE DEPOT, BED BATH and BEYOND, BEST
22 BUY, COMP USA, TOYS-R-US, and/or PETSMART by 1) entering said
23 stores for the purpose of obtaining universal pricing label
24 information to create false and forged universal pricing labels;
25 2) by affixing false, forged or counterfeit universal pricing
26 labels to merchandise at said stores to purchase said merchandise

1 for less than the posted retail price; 3) by purchasing said
2 merchandise under the false pretense that the forged or
3 counterfeit pricing label is a true and valid document; and/or 4)
4 by removing the false and forged inventory pricing labels and
5 subsequently returning some of the fraudulently discounted
6 merchandise for the original valid retail price, thereby making a
7 profit.

8 COUNT II. BURGLARY, a violation of NRS 205.060, a
9 felony, committed as follows:

10 That the said defendant on the 4th day of September
11 A.D. 2001, or thereabout, at the County of Washoe, State of
12 Nevada, did willfully and unlawfully enter a certain WALMART
13 located at 2863 Northtowne Lane, Reno, Washoe County, Nevada,
14 with the intent then and there to commit Theft, Forgery, Uttering
15 a Forged Instrument, Larceny, and/or Obtaining Property
16 by False Pretenses therein, by entering to obtain UPC label
17 and/or other pricing information.

18 COUNT III. BURGLARY, a violation of NRS 205.060, a
19 felony, committed as follows:

20 That the said defendant on or between the 11th day of
21 September A.D. 2001, and the 29th day of September A.D. 2001, or
22 thereabout, at the County of Washoe, State of Nevada, on one or
23 more occasions did willfully and unlawfully enter a certain HOME
24 DEPOT located at 5125 Summit Ridge Court and/or 2955 Northtowne
25 Lane, Reno, Washoe County, Nevada, with the intent then and there
26 to commit Theft, Forgery, Uttering a Forged Instrument, Larceny,

1 and/or Obtaining Property by False Pretenses therein by entering
2 to scout miscellaneous UPC label and/or other pricing information
3 and/or obtain a toilet; and/or said defendant did aid and abet
4 BRETT BOWMAN in the commission of said burglary by providing him
5 a fictitious UPC bar code label to affix to said merchandise, by
6 providing him with U.S. currency to fraudulently purchase said
7 merchandise, by driving him to and/or from the scene, by acting
8 as a look-out, by counseling, encouraging, inducing, or otherwise
9 procuring him to enter said store and fraudulently obtain said
10 merchandise with said fictitious UPC bar code label.

11 COUNT IV. BURGLARY, a violation of NRS 205.060, a
12 felony, committed as follows:

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

1 inducing, or otherwise procuring him to enter said store and
2 fraudulently obtain said merchandise with said fictitious UPC bar
3 code label.

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

6 That the said defendant on the 28th day of September
7 A.D. 2001, or thereabout, at the County of Washoe, State of
8 Nevada, did willfully and unlawfully enter a certain WALMART
9 located at 4855 Kietzke Lane, Reno, Washoe County, Nevada, with
10 the intent then and there to commit Theft, Forgery, Uttering a
11 Forged Instrument, Larceny, and/or Obtaining Property by False
12 Pretenses therein by entering to obtain UPC label and/or other
13 pricing information to be used for an unlawful purpose.

14 COUNT VI. BURGLARY, a violation of NRS 205.060, a
15 felony, committed as follows:

16 That the said defendant on the 5th day of October A.D.
17 2001, or thereabout, at the County of Washoe, State of Nevada, on
18 one or more occasions did willfully and unlawfully enter a
19 certain LOWE'S HOME IMPROVEMENT STORE located at 5075 Kietzke
20 Lane, Reno, Washoe County, Nevada, with the intent then and there
21 to commit Theft, Forgery, Uttering a Forged Instrument, Larceny,
22 and/or Obtaining Property by False Pretenses, and/or Unlawful
23 Possession, Making, Forgery or Counterfeiting of Inventory
24 Pricing Labels therein, by entering with the intent to
25 fraudulently obtain one or more wool rugs and/or scout pricing
26 information related to said rugs, and/or said defendant did aid

1 and abet BRETT BOWMAN in the commission of said burglary by
2 providing him a fictitious UPC bar code label to affix to said
3 merchandise, by providing him with U.S. currency to fraudulently
4 purchase said merchandise, by driving him to and/or from the
5 scene, by acting as a look-out, by counseling, encouraging,
6 inducing, or otherwise procuring him to enter said store and
7 fraudulently obtain said merchandise with said fictitious UPC bar
8 code label.

9 COUNT VII. BURGLARY, a violation of NRS 205.060, a
10 felony, committed as follows:

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

1 affix to said merchandise, by providing him with U.S. currency to
2 fraudulently purchase said merchandise, by driving him to and/or
3 from the scene, by acting as a look-out, by counseling,
4 encouraging, inducing, or otherwise procuring him to enter said
5 store and fraudulently obtain said merchandise with said
6 fictitious UPC bar code label.

7 COUNT VIII. BURGLARY, a violation of NRS 205.060, a
8 felony, committed as follows:

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

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

23 That the said defendant on the 17th day of October A.D.
24 2001, or thereabout, at the County of Washoe, State of Nevada,
25 did willfully and unlawfully enter a certain WALMART located at
26 155 Damonte Ranch Parkway, Reno, Washoe County, Nevada, with the

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

15 COUNT X. UNLAWFUL POSSESSION, MAKING, FORGERY OR
16 COUNTERFEITING OF INVENTORY PRICING LABELS, a violation of NRS
17 205.965(2) and (3), a felony, committed as follows:

18 That the said defendant on the 17th day of October A.D.
19 2001, or thereabout, at the County of Washoe, State of Nevada,
20 did willfully, unlawfully, and with the intent to cheat or
21 defraud a retailer, possess, make, forge or counterfeit fifteen
22 or more inventory pricing labels, commonly known as "UPC bar code
23 labels," in a motor vehicle located at the 9400 block of South
24 Virginia Street, Reno, Washoe County, Nevada.

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1 To the charges stated in the Indictment, the defendant,
2 FERRILL JOSEPH VOLPICELLI, pled "NOT GUILTY."
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26 Instruction No. 2

1 An Indictment is a formal method of accusing a
2 defendant of a crime. It is not evidence of any kind against the
3 accused, and does not create any presumption or permit any
4 inference of guilt.

1 If in these instructions, any rule, direction or idea is
2 stated in varying ways, no emphasis thereon is intended by me and
3 none must be inferred by you. For that reason, you are not to
4 single out any certain sentence, or any individual point or
5 instruction, and ignore the others, but you are to consider all
6 the instructions as a whole and to regard each in the light of
7 all the others.

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26 Instruction No. 4

1 If, during this trial, I have said or done anything
2 which has suggested to you that I am inclined to favor the
3 position of either party, you will not be influenced by any such
4 suggestion.

5 I have not expressed, nor intended to express, nor have
6 I intended to intimate, any opinion as to which witnesses are or
7 are not worthy of belief, what facts are or are not established,
8 or what inference should be drawn from the evidence. If any
9 expression of mine has seemed to indicate an opinion relating to
10 any of these matters, I instruct you to disregard it.

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26 Instruction No. 5

1 Neither the prosecution nor the defense is required to
2 call as witnesses all persons who may appear to have some
3 knowledge of the matters in question in this trial.
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26 Instruction No. 6

1 Nothing that counsel say during the trial is evidence in
2 the case.

3 The evidence in a case consists of the testimony of the
4 witnesses and all physical or documentary evidence which has been
5 admitted.

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26 Instruction No. 7

1 It is the duty of attorneys on each side of a case to
2 object when the other side offers testimony or other evidence
3 which counsel believes is not admissible.

4 When the court has sustained an objection to a question,
5 the jury is to disregard the question and may draw no inference
6 from the wording of it or speculate as to what the witness would
7 have said if permitted to answer.

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26 Instruction No. 8

1 There are two types of evidence which the jury may
2 consider in this case. One is direct evidence, such as the
3 testimony of an eyewitness. The other is circumstantial
4 evidence, the proof of a chain of circumstances pointing to the
5 existence or non-existence of another circumstance.

6 The law makes no distinction between direct and
7 circumstantial evidence, but requires that before convicting a
8 defendant, the jury be satisfied of the defendant's guilt beyond
9 a reasonable doubt from all the evidence in the case.

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26 Instruction No. 9

1 To the jury alone belongs the duty of weighing the
2 evidence and determining the credibility of the witnesses. The
3 degree of credit due a witness should be determined by his or her
4 character, conduct, manner upon the stand, fears, bias,
5 impartiality, reasonableness or unreasonableness of the
6 statements he or she makes, and the strength or weakness of his
7 or her recollections, viewed in the light of all the other facts
8 in evidence.

9 If the jury believes that any witness has willfully
10 sworn falsely, they may disregard the whole of the evidence of
11 any such witness.
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1 It is a constitutional right of a defendant in a
2 criminal trial that he or she may not be compelled to testify.
3 Thus the decision as to whether he or she should testify is left
4 to the defendant on the advice and counsel of his or her
5 attorney.

6 You must not draw any inference of guilt from the fact
7 that he or she does not testify, nor should this fact be
8 discussed by you or enter into your deliberations in any way.

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Instruction No. 10A

1 In every crime there must exist a union or joint
2 operation of act and intent.

3 The burden is always upon the prosecution to prove both
4 act and intent beyond a reasonable doubt.

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26 Instruction No. 11

1 Intent may be proved by circumstantial evidence. It
2 rarely can be established by any other means. While witnesses
3 may see and hear and thus be able to give direct evidence of what
4 a defendant does or fails to do, there can be no eyewitness
5 account of a state of mind with which the acts were done or
6 omitted, but what a defendant does or fails to do may indicate
7 intent or lack of intent to commit the offense charged.

8 In determining the issue as to intent, the jury is
9 entitled to consider any statements made and acts done or omitted
10 by the accused, and all facts and circumstances in evidence which
11 may aid determination of state of mind.

1 The burden rests upon the prosecution to establish every
2 element of the crime with which the defendant is charged, and
3 every element of the crime must be established beyond a
4 reasonable doubt.

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26 Instruction No. 13

1 A reasonable doubt is one based on reason. It is not
2 mere possible doubt, but is such a doubt as would govern or
3 control a person in the more weighty affairs of life. If the
4 minds of the jurors, after the entire comparison and considera-
5 tion of all the evidence, are in such a condition that they can
6 say they feel an abiding conviction of the truth of the charge,
7 there is not a reasonable doubt. Doubt to be reasonable, must be
8 actual, not mere possibility or speculation.

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26 Instruction No. 14

1 Every person charged with the commission of a crime
2 shall be presumed innocent unless the contrary is proved by
3 competent evidence beyond a reasonable doubt.
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26 Instruction No. 15

1 Conspiracy is an agreement between two or more persons
2 to commit the offenses charged or to aid, abet, counsel or
3 encourage, or otherwise procure their commission and with the
4 specific intent to commit such offenses, followed by an overt act
5 committed in this State by one or more of the parties for the
6 purpose of accomplishing the object of the agreement. Conspiracy
7 is a crime.

8 The term "overt act" means any step taken or act
9 committed by one or more of the conspirators which goes beyond
10 mere planning or agreement to commit a public offense and which
11 step or act is done in furtherance of the accomplishment the
12 object of the conspiracy.

13 To be an "overt act", the step taken or act committed
14 need not, in and of itself, constitute the crime or even an
15 attempt to commit the crime which is the ultimate object of the
16 conspiracy. Nor is it required that such step or act, in and of
17 itself, be a criminal or an unlawful act.

1 Each member of a criminal conspiracy is liable for each
2 act and bound by each declaration of every other member of the
3 conspiracy if the act or the declaration is in furtherance of the
4 object of the conspiracy.

5 The act of one conspirator pursuant to or in furtherance
6 of the common design of the conspiracy is the act of all
7 conspirators. Every conspirator is legally responsible for an
8 act of a co-conspirator that follows as one of the probable and
9 natural consequences of the object of the conspiracy even if it
10 was not intended as part of the original plan and even if he or
11 she was not present at the time of the commission of such act.

1 A conviction shall not be had on the testimony of an
2 accomplice unless the accomplice is corroborated by other
3 evidence which in itself, and without the aid of the testimony of
4 the accomplice, tends to connect the defendant with the
5 commission of the offense; and the corroboration shall not be
6 sufficient if it merely shows the commission of the offense or
7 the circumstances thereof.

8 An accomplice is hereby defined as one who is liable to
9 prosecution, for the identical offense charged against the
10 defendant on trial.

11 The court finds as a matter of law that Brett Bowman is
12 an accomplice as to one or more charges against the defendant.
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1 Corroborative evidence is evidence of some act or fact
2 related to the offense which, if believed, by itself and without
3 any aid, interpretation or direction from the testimony of the
4 accomplice, tends to connect the defendant with the commission of
5 the offense charged.

6 However, it is not necessary that the corroborative
7 evidence be sufficient in itself to establish every element of
8 the offense charged, or that it corroborate every fact to which
9 the accomplice testifies.

10 In determining whether an accomplice has been
11 corroborated, you must first assume the testimony of the
12 accomplice has been removed from the case. You must then
13 determine whether there is any remaining evidence which tends to
14 connect the defendant with the commission of the offense.

15 If there is not such independent evidence which tends to
16 connect defendant with the commission of the offense, the
17 testimony of the accomplice is not corroborated.

18 If there is such independent evidence which you believe,
19 then the testimony of the accomplice is corroborated.

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26 Instruction No. 19

1 Nevada Revised Statutes Section 205:380 provides in
2 pertinent part as follows:

3 Every person who shall knowingly and designedly and by
4 any false pretense or pretenses obtain from any person or persons
5 property of a value of \$250.00 or more with the intent to cheat
6 or defraud any person or persons of the same is guilty of
7 Obtaining Money by False Pretenses, a felony.

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25 Instruction No. 20
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1 A false pretense may be defined as a representation of
2 some fact or circumstance which is not true and is calculated to
3 mislead. The representation may be implied from conduct or may
4 consist of concealment or nondisclosure where there is a duty to
5 speak. A false pretense may consist of any act, word, symbol or
6 token calculated and intended to deceive. It may be made either
7 expressly or by implication. Generally any words or conduct
8 which create any false circumstance will satisfy the statute.

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26 Instruction No. 21

1 It is not a necessary element of the crime of obtaining
2 money or property by false pretenses that the person against whom
3 the offense is directed suffer a pecuniary loss or permanently be
4 deprived of his or her money or property.

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26 Instruction No. 22

1 Forgery may be committed by altering a valid and genuine
2 instrument, paper, or document, with intent to defraud, and by
3 either adding, erasing, or changing a material part thereof, and
4 thus causing it to appear different from what it originally was
5 intended to be, and changing its apparent legal effect.

1 In the crime of uttering a forged instrument of which
2 the defendant is accused in this case, the specific intent to
3 defraud is a necessary element of the crime.

4 Thus, the defendant may not be found guilty of the crime
5 of uttering a forged instrument, unless you can and do find from
6 the evidence, beyond a reasonable doubt, that the defendant did
7 utter certain forged instruments with the intent to defraud and
8 knowing the same to be forged. This fact requires an inquiry
9 into the state of mind under which the defendant committed the
10 act charged, if he did commit it. The weight to be given the
11 evidence on that question and the significance to attach to it,
12 in relation to all other evidence, are exclusively within your
13 province.

14 The crime of Uttering a Forged Instrument is a felony.
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26 Instruction No. 24

1 Larceny consists of unlawful stealing, taking and
2 carrying away the personal goods or property of another.

3 If the value of the goods or property is worth less
4 than \$250.00, it is petty larceny.

5 If the value of the goods or property is worth \$250.00
6 or more, then it is grand larceny.

1 The two elements necessary to constitute theft by
2 larceny are:

3 First, at the time of the taking of the property, there
4 must exist in the mind of the perpetrator the specific intent to
5 deprive the owner permanently of his property having some value;
6 and

7 Second, a carrying away of such property.

8 In order to constitute a carrying away, the property
9 need not be retained in the possession of the perpetrator, nor
10 need it be actually removed from the premises of the owner. Any
11 removal of the property from the place where it is kept or placed
12 by the owner, done with the specific intent described, whereby
13 the perpetrator obtains possession and control of the property
14 for any period of time, is sufficient to constitute the element
15 of carrying away.

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26 Instruction No. 26

1 Nevada Revised Statutes, §205.060, insofar as applicable
2 to this case, provides:

3 "Every person who enters any building, with intent to
4 commit grand or petit larceny or any felony, is guilty of
5 burglary."

1 The essence of a burglary is entering such a place with
2 such specific intent, and the crime of burglary is complete as
3 soon as the entry is made, regardless of whether the intent
4 thereafter is carried out.

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26 Instruction No. 28

Pursuant to NRS 205.965, the elements of the crime of unlawful possession, making, altering, forgery or counterfeiting of inventory pricing label are:

1. A person shall not;
2. with the intent to cheat or defraud a retailer;
3. possess, make, alter, forge, or counterfeit;
4. any inventory pricing label.

1 As used in NRS 205.965, "inventory pricing label"
2 includes, without limitation, any written or electronic record or
3 label used by a retailer to identify, inventory, or price any
4 product or item it offers for sale.

1 It is not necessary for the prosecution to prove each
2 and every factual statement contained in the Indictment. So long
3 as the State proves all of the essential elements of the
4 particular crime charged, then the evidence is sufficient to
5 convict regardless of whether every statement in the bill of
6 particulars is proved.

1 Every person concerned in the commission of a felony,
2 whether he or she directly commits the act constituting the
3 offense, or aids or abets in its commission, and whether present
4 or absent; and every person who, directly or indirectly,
5 counsels, encourages, hires, commands, induces or otherwise
6 procures another to commit a felony is a principal, and shall be
7 proceeded against and punished as such.

1 Each count charges a separate and distinct offense. You
2 must decide each count separately on the evidence and the law
3 applicable to it, uninfluenced by your decision as to any other
4 count. The defendant may be convicted or acquitted on any or all
5 of the offenses charged. Your finding as to each count must be
6 stated in a separate verdict.

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25 Instruction No. 33
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1 Although you are to consider only the evidence in the
2 case in reaching a verdict, you must bring to the consideration
3 of the evidence your everyday common sense and judgment as
4 reasonable men and women. Thus, you are not limited solely to
5 what you see and hear as the witnesses testify. You may draw
6 reasonable inferences which you feel are justified by the
7 evidence, keeping in mind that such inferences should not be
8 based on speculation or guess.

9 A verdict may never be influenced by sympathy, passion,
10 prejudice, or public opinion. Your decision should be the
11 product of sincere judgment and sound discretion in accordance
12 with these rules of law.
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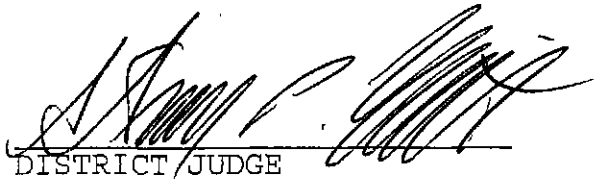
1 The penalty provided by law for the offense charged is
2 not to be considered by the jury in arriving at a verdict.
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Instruction No. 35

1 It is your duty as jurors to consult with one another
2 and to deliberate, with a view of reaching an agreement, if you
3 can do so without violence to your individual judgment. You each
4 must decide the case for yourself, but should do so only after a
5 consideration of the case with your fellow jurors, and you should
6 not hesitate to change an opinion when convinced that it is
7 erroneous. However, you should not be influenced to vote in any
8 way on any question submitted to you by the single fact that a
9 majority of the jurors, or any of them, favor such a decision.
10 In other words, you should not surrender your honest convictions
11 concerning the effect or weight of evidence for the mere purpose
12 of returning a verdict or solely because of the opinion of the
13 other jurors.

1 Upon retiring to the jury room you will select one of
2 your number to act as foreperson, who will preside over your
3 deliberations and who will sign a verdict to which you agree.

4 When all twelve (12) of you have agreed upon a verdict,
5 the foreperson should sign and date the same and request the
6 Bailiff to return you to court.

7
8 
9 DISTRICT JUDGE

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR., CLERK
By: *[Signature]*
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT I:
CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY.

DATED this ____ day of _____, 20____.

FOREPERSON

CR03-1263
DC-9900025141-026
STATE VS FERRILL JOSEPH VOLPICELLI Page
District Court 11/14/2003 03 59 PM
Washoe County 4236

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: *[Signature]*
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT II:
BURGLARY.

DATED this ____ day of _____, 20____.

FOREPERSON

CR03-1263
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
DC-9900625141-027
11/14/2003 03:59 PM
4235
TOME

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGZIN, JR., CLERK

By: *[Signature]*
DEPUTY

CODE 4245

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

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT III:
BURGLARY.

DATED this ____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK
By: *[Signature]*
DEPUTY

CODE 4245

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

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT IV:
BURGLARY.

DATED this ____ day of _____, 20__.

FOREPERSON

CR03-1263
STATE VS FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
11/14/2003 03:59 PM
4235
TOMC

ORIGINAL

FILED

NOV 14 2003

CODE 4245

RONALD A. LONGIN, JR. CLERK

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,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT V:
BURGLARY

DATED this ____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGIN, JR., CLERK

By: *[Signature]*
DEPUTY

CODE 4245

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

THE STATE OF NEVADA,

Plaintiff,

v.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Case No. CR03-1263

Dept. No. 10.

VERDICT

We, the jury in the above-entitled matter, find the
 defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT VI:
 BURGLARY.

DATED this ____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: 
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT VII:
BURGLARY.

DATED this ____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGIN, JR., CLERK

By: 
DEPUTY

CODE 4245

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

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT VIII:
BURGLARY.

DATED this ____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGIN, JR., CLERK

By: *[Signature]*
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT IX:
BURGLARY.

DATED this ____ day of _____, 20__.

FOREPERSON

CR03-1263 FERRILL JOSEPH VOLPICELLI
STATE VS FERRILL JOSEPH VOLPICELLI
District Court 11/14/2003 03:59 PM
Washoe County
4235

ORIGINAL

FILED

NOV 14 2003

RONALD A. LONGTIN, JR. CLERK

By: *[Signature]*
DEPUTY

CODE 4245

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

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, NOT GUILTY of COUNT X:
UNLAWFUL POSSESSION, MAKING, FORGERY OR COUNTERFEITING OF
INVENTORY PRICING LABELS.

DATED this _____ day of _____, 20____.

FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT I:
CONSPIRACY TO COMMIT CRIMES AGAINST PROPERTY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

CR03-1263
DC-9900025141-035
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court 11/14/2003 04:00 PM
Washoe County
4245
TOWER

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY1 CODE 4245
2
3

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

11 FERRILL JOSEPH VOLPICELLI,
12
13 Defendant.

Dept. No. 10

VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT II:
18 BURGLARY.

19 DATED this 14 day of November, 2003.
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22 [Signature]
FOREPERSON
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ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT III:
BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

1 CODE 4245

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3

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT IV:
BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

CR03-1263 FERRILL JOSEPH VOLPICELLI Page
STATE VS FERRILL JOSEPH VOLPICELLI Page
District Court 11/14/2003 04:00 PM
Washoe County 4245
JMC

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

1 CODE 4245

2
3
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

12 FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

13 Defendant.

VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT V:
18 BURGLARY.

19 DATED this 14 day of November, 2003.

21 *Joy White*
22 FOREPERSON

CR03-1263
STATE VS FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
DC-9900025141-040
Page 1
11/14/2003 04:00 PM
4245
JAN 14 2004

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

1 CODE 4245

CR03-1263
STATE VS FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
NOV 11/14/2003 04:00 PM
4245
JMR

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VI:
BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR. CLERK

By: [Signature]
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VII:
BURGLARY.

DATED this 14 day of November, 2003.
Joy White
FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

1 CODE 4245

CR03-1263
STATE VS FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
11/14/2003 04:00 PM
4245
1055

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT VIII:
BURGLARY.

DATED this 14 day of November, 2003.

Joy White
FOREPERSON

ORIGINAL

FILED

NOV 14 2003 4:00 p.m.

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY

CODE 4245

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT IX:
BURGLARY.

DATED this 14 day of November, 2003.
[Signature]
FOREPERSON

CR03-1263
DC-9900025141-044
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court 11/14/2003 04:00 PM
Washoe County
4245
JMR

ORIGINAL

FILED

NOV 14 2003 4:00 pm

RONALD A. LONGTIN, JR., CLERK
By: *[Signature]*
DEPUTY1 CODE 4245
2
3IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

FERRILL JOSEPH VOLPICELLI,

Dept. No. 10

Defendant.
_____/VERDICTWe, the jury in the above-entitled matter, find the
defendant, FERRILL JOSEPH VOLPICELLI, GUILTY of COUNT X:
UNLAWFUL PPOSSESSION, MAKING, FORGERY OR COUNTERFEITING OF
INVENTORY PRICING LABELS.DATED this 14 day of November, 2003.*Joy White*

FOREPERSONCR03-1263
STATE VS FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
11/14/2003 04:00 PM
4245
PAGE

340340

ORIGINAL

FILED

NOV 17 2003

RONALD A. LONGTIN, JR., CLERK

By Shull
DEPUTY

CODE: 1930

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

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

vs.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

LETTER FROM DEFENDANT

SEE ATTACHED DOCUMENT

///

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V3.340

FERRIC VOLPICELLI
03-0889 @ WGSU
411 PARR BLVD
RENO, NV 89512

9 November, 2003

03-1263

LAW
OFFICE
OF
VAN RY
ESQ

DEAR BRAD,


BY NOW, YOU ARE IN RECEIPT OF MY LETTER
DATED NOVEMBER 3, 2003.

AS OF FRIDAY, 7 OF NOVEMBER, 2003, YOUR
OFFICE ADVISED ME THAT DUE TO UNKNOWN CURRENT
ADDRESSES WITH WITNESSES WHICH NEED TO BE
SUBPOENAED, WE WILL LIKELY HAVE COMPLICATIONS
WITH THEIR APPEARANCES COME TRIAL.

IN VIEW OF THIS, COUPLED WITH ISSUES ADDRESSED
IN MY 3 NOVEMBER, 2003 LETTER, I AM OVER-
WHELMINGLY COMPELLED TO PROTEST THAT WE
PROCEED WITH TRIAL ON WEDNESDAY OF THIS
UPCOMING WEEK.

COME 12 NOVEMBER, 2003, I ANTICIPATE YOU
WILL BRING THESE MATTERS TO THE COURT'S ATTENTION.
THIS INCLUDES, BUT NOT LIMITED TO, THE REMAINING
DEFICIENT DISCOVERY, THE UNILATERAL DECISION ON
YOUR PART TO NOT FILE CRITICAL PRETRIAL MOTIONS,
AND MOST IMPORTANTLY, OUR DIFFERENCES WITH
RESPECT TO DEFENSE STRATEGIES. CLEARLY, YOUR
LETTER DATED 3 NOVEMBER, 2003 IS INDICATIVE
OF SECOND-CLASS REPRESENTATION.

BEST REGARDS,

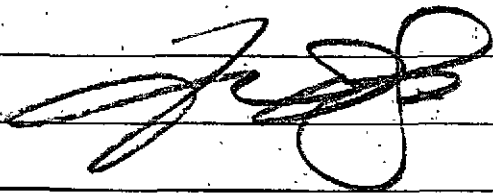

cc: file

CERTIFICATE OF
SERVICE ON REVERSE

SIDE

V3.341

DATED AND COPY MAILED ON THE 9TH DAY
OF NOVEMBER, 2003, TO TAMMY RIGGS ESQ
AND THE HONORABLE JUDGES HARDESTY AND
ELLIOT, AS CERTIFIED UNDER PENALTY OF
PERJURY PURSUANT TO NRS 208.165.


A handwritten signature in dark ink, appearing to be 'J. R. Riggs', written in a cursive style.

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 17th day of November, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Bradley O. Van Ry, Esq.
1403 E. Fourth Street
Reno, NV 89512

Tammy Riggs, Esq.
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)


Michele M. Shull
Administrative Assistant

CODE: 4185

ORIGINAL FILED

2003 NOV 26 PM 3:31

ROBERT J. LUDWIG, JR.

BY *[Signature]*
CLERK

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE

--ooOoo--

STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

Dept. No. 9

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

MOTION TO CONFIRM TRIAL

OCTOBER 24, 2003

RENO, NEVADA

Reported by:

DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription5
12/5/03


CR03-1263
DC-9900025141-048
STATE VS. FERRILL JOSEPH VOL 9 Pages
District Court 11/26/2003 02:14 PM
Washoe County 4185
JWD

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

BRADLEY O. VAN RY
Attorney at Law
1403 East Fourth Street
Reno, Nevada 89512

For the Division of Parole and Probation:

HEIDI POE

1 RENO, NEVADA, FRIDAY, OCTOBER 24, 2003, 8:30 A.M.

2 --oOo--

3
4 THE COURT: State versus Ferrill Volpicelli,
5 CR03-1263.

6 Ms. Riggs is here on behalf of the State. Good
7 morning, Ms. Riggs.

8 MS. RIGGS: Good morning, Your Honor, Tammy
9 Riggs appearing on behalf of the State.

10 MR. VAN RY: Good morning, Your Honor, Brad Van
11 Ry on behalf of Mr. Volpicelli who is present in
12 custody.

13 THE COURT: Okay. This is the time to confirm
14 the trial in this case for November 10th. Are counsel
15 ready to go to trial in the case?

16 MS. RIGGS: State is prepared for trial, Your
17 Honor.

18 MR. VAN RY: I believe we will be, Your Honor.
19 There are some discovery issues that my client believes
20 are outstanding, specifically bank statements, financial
21 records and receipts that were seized from the safety
22 deposit box, his condo and his van.

23 Ms. Riggs and I have discussed this at length.
24 She believes that all materials have been provided to

1 the Alian group and/or are part of the grand jury
2 evidentiary basis for the Indictment, Your Honor.

3 There's also a possible issue as to duplicate
4 copies and return of warrants. All the warrants that
5 are in my possession are unsigned. Ms. Riggs indicates
6 that's because they were telephonic, Your Honor.

7 Notwithstanding that, I believe that Ms. Riggs
8 and I can work this out, that we'll be ready to go to
9 trial. I'm supposed to meet today with her and go
10 through her materials and make sure that if I don't have
11 it, I will get it.

12 THE COURT: So do you need additional time to
13 prepare? I mean, I can perhaps give you a week or
14 something if that's necessary.

15 MR. VAN RY: I don't believe that would be
16 necessary, Your Honor. I can get my arms around it and
17 be ready.

18 THE COURT: Okay. Ms. Riggs?

19 MS. RIGGS: Your Honor, regarding any exhibits,
20 it is -- as Mr. Van Ry said, it is my belief that we
21 have discovered our entire file to this defendant. In
22 some cases multiple times. We do have an issue, as he
23 said, with some of the grand jury exhibits. I do want
24 to make sure, because of the duplicative nature of some

1 of the discovery, that does have everything we are going
2 to be getting together to go through that to make sure
3 that he does have that.

4 There's also an issue, Your Honor, I did do a
5 motion to release trial exhibits, and that was in
6 CR02-0146, a requirement that -- or you'll remember that
7 that was the previous case which Mr. Alian was handling
8 which we entered exhibits to the Court which we're going
9 to need back so that Mr. Van Ry can see them. Those
10 include pretty much everything in the case, Your Honor.

11 We have been trying with the Alian group to get
12 those back through stipulations and agreements, and it
13 hasn't worked. We're now at ten days after he's
14 received a copy of this motion, and we would like to get
15 those released, Your Honor. I would ask that the Court
16 grant our motion in that case.

17 THE COURT: Well, the order -- I'll enter the
18 order. I haven't seen it. Have you submitted it to me?

19 MS. RIGGS: Yes, Your Honor. That was filed on
20 October 9th, and that was in CR02-0146.

21 THE COURT: I understand that. But has the
22 order been given for me to sign?

23 MS. RIGGS: Yes, Your Honor. And again, Your
24 Honor, we'll go -- I'll go back to the office and make

1 sure.

2 THE COURT: Submit another one. I don't recall
3 seeing it. I sign those things daily.

4 MS. RIGGS: Thank you, Your Honor. Also, Your
5 Honor, I would ask, because of the history of this case,
6 we are at day 17 now, that any motions to suppress or
7 any other motions that are going to be made by
8 Mr. Volpicelli be done by Monday, which is the 15-day
9 deadline.

10 Again, the history of this case is that we
11 always seem to come in at the final hour with some sort
12 of motion that's going to be delaying the trial. If he
13 has questions, concerns regarding his counsel, regarding
14 any sort of things that he believes is missing other
15 than what Mr. Van Ry has asserted, we would ask that
16 they be -- that he either let us know now or by Monday.
17 Thank you.

18 THE COURT: Do you anticipate some pretrial
19 motions, Mr. Van Ry?

20 MR. VAN RY: There might be one or two, Your
21 Honor, yeah.

22 THE COURT: For that reason, and because of the
23 discovery exchange and a court-calendaring issue which
24 I'm about to explain, I want to have a status conference

1 in the case next Wednesday at 8:30.

2 There is a two-week civil trial scheduled to
3 begin on the 10th in this department. Because of the
4 court's no-bump policy, there's a possibility you may be
5 transferred to another department for this trial to
6 occur.

7 Additionally, the Court may have to sit on a
8 matter in Clark County on the 10th, which would mean
9 that if the civil trial settles you would start on
10 the -- since the 11th is a holiday, we would start on
11 the 12th. That may help with respect to some of your
12 case preparation as well. So we can resolve those
13 issues next Wednesday. Okay?

14 But in terms of witness planning, I think the
15 chances are greater, more likely than not, that if you
16 go in this department you'll go on Wednesday instead of
17 on Monday. Okay? But we'll sort that out next week.
18 Okay?

19 MS. RIGGS: So are we having a status conference
20 next Wednesday then?

21 THE COURT: Yes, ma'am. And by that time I
22 would like to get -- Mr. Van Ry, you will have filed
23 whatever motions you are going to file?

24 MR. VAN RY: Yes, Your Honor.

1 THE COURT: You can update me on the status of
2 the discovery issues, and we can discuss anything else
3 with regard to trial schedule. Okay?

4 MR. VAN RY: Yes, Your Honor. Thank you.

5 THE COURT: Anything else, Ms. Riggs, or Mr. Van
6 Ry?

7 MS. RIGGS: That's all from the State, Your
8 Honor.

9 THE COURT: Thank you.

10 (Proceedings concluded.)

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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
19 November, 2003.

20
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22 
23 DONNA DAVIDSON, CCR #318
24

CODE: 4185

ORIGINAL FILED

DEC 02 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

STATUS HEARING

OCTOBER 29, 2003

RENO, NEVADA

Reported by:

DONNA DAVIDSON, CCR #318, RMR, CRR
Computer-Aided Transcription

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CR03-1263
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
NVC

DC-9900025141-049
12/02/2003 09:21 AM
4185
TAMR

A P P E A R A N C E S

For the Plaintiff:

TAMMY M. RIGGS
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

BRADLEY O. VAN RY
Attorney at Law
1403 East Fourth Street
Reno, Nevada 89512

For the Division of Parole and Probation:
HEIDI POE

1 RENO, NEVADA, TUESDAY, OCTOBER 29, 2003, 10:06 A.M.

2 --oOo--

3
4 THE COURT: All right, State versus Ferrill
5 Volpicelli, CR03-1263.

6 Ms. Riggs is here for the State, Mr. Van Ry is
7 here on behalf of Mr. Volpicelli.

8 MR. VAN RY: Good morning, Your Honor.

9 MS. RIGGS: Good morning, Your Honor.

10 THE COURT: I wanted to have a status on this
11 case. Counsel, what can you tell me about this?

12 MS. RIGGS: Your Honor, Mr. Van Ry and I have
13 been in contact and actually had a meeting yesterday
14 regarding some of the discovery issues. He did have a
15 chance to review my entire file yesterday. We have
16 filed a few that are questionable regarding whether they
17 have been discovered on you or not, so we're going to go
18 ahead and get those done, discovered and to him today.

19 Also, regarding the evidence from CR02-0146, you
20 did sign an order yesterday releasing those from the
21 evidence room downstairs, so we hope to be able to
22 obtain those today, also, for his review.

23 We have also been in contact with RPD evidence,
24 and we expect to either go there today or tomorrow so

1 that Mr. Van Ry can review every single thing that is in
2 RPD evidence to make sure that he has everything that he
3 needs. We have asked that documentary evidence be
4 separated, and I'll be there to assist him in letting
5 him know what I believe he already has.

6 Also, he can let you know what's going on with
7 the discovery with the Alian group.

8 Those are all the issues that we have today.

9 Also, Your Honor, we do have an outstanding
10 petition for writ of habeas corpus that we would ask for
11 a ruling on. We did submit that quite a while ago.
12 Thank you.

13 THE COURT: Okay. Mr. Van Ry?

14 MR. VAN RY: That's an accurate statement of the
15 status of discovery. It appears that the materials that
16 have not been discovered or disclosed to the Alian group
17 are going to be to me by either today or by the end of
18 this week. I need to get with Mr. Alian and Ms. Hubach
19 and discuss where there are some items that appear to
20 have been disclosed already that have not made it to my
21 office, but I anticipate being able to do that by
22 Friday, Your Honor. I guess what I'm saying is I'll be
23 ready for trial.

24 THE COURT: All right. Trial will commence on

1 Wednesday, not Monday, at 10 a.m.

2 Length of trial still two days, counsel? Or
3 three?

4 MS. RIGGS: Your Honor, I believe that's -- that
5 could be a three-day trial. We could definitely attempt
6 to do it in two days, but it could go into three.

7 THE COURT: All right. And with respect to the
8 writ issue, I'll advise counsel this afternoon on that
9 point.

10 MR. VAN RY: Thank you.

11 MS. RIGGS: Thank you, Your Honor.

12 Also, one more issue. You did order on Friday
13 that any pretrial motions be submitted today. As far as
14 I understand, Mr. Van Ry doesn't have any pretrial
15 motions that are going to result in a continuance of
16 this case. I'd just like to verify that with him and
17 his client on the record.

18 THE COURT: I didn't see any in the file. Did
19 you file any?

20 MR. VAN RY: I did not. And it's my intention
21 at this time not to file.

22 THE COURT: All right. Then we'll see you on
23 Wednesday, the 12th.

24 MR. VAN RY: Thank you, Your Honor.

1 MS. RIGGS: Thank you, Your Honor.

2 THE COURT: All right.

3 (Proceedings concluded.)

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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 15th day of
19 November, 2003.

20
21 
22 DONNA DAVIDSON, CCR #318
23
24

ORIGINAL

LED

2003 DEC 12 PM 4:25

RONALD L. JUSTIN, JR.


 DEPUTY

1 CODE 1250
 Richard A. Gammick
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 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,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

APPLICATION FOR SETTINGTYPE OF ACTION: CRIMINALMATTER TO BE HEARD: SENTENCINGDATE OF APPLICATION: December 12, 2003 MADE BY PLAINTIFFCOUNSEL FOR PLAINTIFF: TAMMY RIGGS, D.D.A.COUNSEL FOR DEFENDANT: BRAD VAN RYCUSTODY STATUS: BAIL O.R. X IN CUSTODYSetting at 1:00 A.M. on the 5TH of FEBRUARY, 2004.

CR03-1263
 STATE VS. FERRILL JOSEPH VOLPICELLI
 District Court
 Washoe County
 12/12/2003 04:23 PM
 1250
 JAG

ORIGINAL

CODE: 4185
 PEGGY B. HOOGS, CCR #160
 Peggy Hoogs & Associates
 435 Marsh Avenue
 Reno, Nevada 89509
 (775) 327-4460
 Court Reporter

FILED

2003 DEC 15 AM 11:47

RONALD A. LONGTIN, JR.

BY

DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR03-1263

Plaintiff,
 vs.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

TRANSCRIPT OF PROCEEDINGS
 HEARING
 Monday, November 10, 2003

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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Reported By:

Peggy B. Hoogs, CCR #160

CR03-1263
 DC-9900025141-060
 STATE VS FERRILL JOSEPH VO 14 Pages
 District Court 12/15/2003 01:58 PM
 Washoe County 4185
 JOMC

1 -oOo-

2 RENO, NEVADA, MONDAY, NOVEMBER 10, 2003, 1:30 P.M.

3 -oOo-

4 THE COURT: We are here in Case No.
5 CR03-1263, State of Nevada versus Ferrill Joseph
6 Volpicelli, and the reason we're here is that my
7 secretary last week told me sometime on Friday that,
8 Mr. Volpicelli, you perhaps were interested in
9 discharging your counsel, and we certainly want to hear
10 about that because perhaps Mr. Van Ry should be excused
11 and wouldn't have to be here as the trial proceeds.

12 MS. RIGGS: Your Honor, at this time I would
13 ask the Court what sort of communication was received.
14 The State was not served with any notice of this. Was
15 this in the form of a letter? It certainly was ex parte
16 as far as the State is concerned, so we would like to
17 know what the content of the request was specifically and
18 whether a motion was made.

19 THE COURT: I haven't seen anything in
20 writing. All I know is what my secretary told me.

21 MR. VAN RY: If I may address that directly,
22 your Honor, I tried to reach Miss Riggs' office Friday
23 afternoon when I received a letter from my client
24 indicating his desire to seek additional representation.

1 Miss Riggs was out of the office. I left a message with
2 the secretary and then contacted your secretary to
3 indicate to her that we need to have a hearing on this
4 issue before trial on Wednesday so we can flush it out
5 and make sure that the Court is aware of what's going on.
6 So no formal motion has been filed, your Honor, was the
7 gist of it.

8 THE COURT: All right. Well, Mr. Volpicelli,
9 what are you interested in doing, then?

10 THE DEFENDANT: Your Honor, I have the
11 letters in question here that were, I guess, addressed --
12 the date of November 4, 2003, I sent a letter to my
13 attorney regarding issues, if you'd care to read it, and
14 then last night I wrote another, and I did send that one
15 certificate of service to you, to Judge Hardesty, as well
16 as Miss Riggs.

17 THE COURT: Well, what are you hoping to get
18 out of this?

19 THE DEFENDANT: Well, I don't think we're
20 prepared to go to trial because I have some issues here
21 with respect to --

22 THE COURT: I can resolve that very quickly,
23 then.

24 Mr. Van Ry, are you prepared to go to trial?

1 MR. VAN RY: By Wednesday I will be prepared
2 to go to trial, your Honor, yes.

3 THE COURT: Okay. Well, that takes care of
4 that issue. Your attorney is prepared for trial, so is
5 there anything else you want?

6 THE DEFENDANT: Well, we're deficient in
7 discovery, and I've been waiting for two years for it,
8 and I don't understand why between now and Wednesday
9 that's going to change any. I'll be glad to address the
10 Court --

11 THE COURT: Apparently the discovery is not
12 deficient or your counsel wouldn't be saying that he's
13 prepared for trial.

14 THE DEFENDANT: So when I get on the stand
15 and testify and I have -- and it comes out in court that
16 I can't substantiate that claim because certain
17 documentation was not provided pursuant to the discovery,
18 then where are we left at?

19 THE COURT: I guess, you know, that's a
20 problem for further action, I guess. Should you wind up
21 being convicted, you can raise these issues posttrial.

22 Miss Riggs.

23 MS. RIGGS: Your Honor, if I may be heard on
24 this issue, the State has been bombarded basically by

1 what amount to ex parte communications that have been
2 forwarded by Judge Hardesty of this defendant continually
3 claiming that he does not have discovery in this case
4 when in fact I believe that they had access or he's had
5 access through his various counsel, three counsel now in
6 this case, to every single piece of paper that the State
7 has access to.

8 In fact, last week or two weeks ago,
9 Mr. Van Ry and I got together at the evidence room of
10 Reno Police Department and had access to every single
11 piece of evidence that was collected during the
12 investigation, and we went through it for hours. We went
13 through it, and this was because the defendant claimed,
14 well, there is exculpatory information in there that we
15 haven't seen. Well, of course, what it turned out to be
16 is that it was all inculpatory, which didn't help his
17 cause any, but he continually makes this claim, and there
18 are -- there have been absolutely no discovery violations
19 in this case, and I will address the remainder of what
20 he's going to be going into, your Honor.

21 I was under the impression he was looking to
22 represent himself today and he was going to make such a
23 motion. If that's not the case, then it sounds like
24 you've already covered the issues and we can just proceed

1 to trial on Wednesday.

2 I do need to let you know this: In the two
3 prior hearings with Judge Hardesty -- and those were on
4 October 29th and October 24th -- I had Judge Hardesty or
5 I requested that Judge Hardesty ask this defendant and
6 his counsel if he was going to be making any motions that
7 would delay this trial because this case has nothing but
8 a history of delay on the part of defendant.

9 At that time Mr. Van Ry, as he has asserted
10 today, said, "I'm going to be ready to go to trial."
11 Defendant stood silent. On the 29th I made the same
12 motion -- the 24th was the Motion to Confirm and then the
13 29th was a status hearing -- to make sure we were
14 absolutely positive that all the discovery issues were
15 cleared up and there wasn't going to be any further
16 problems with going forward with trial. Again, Judge
17 Hardesty asked the defendant and Mr. Van Ry, "Are there
18 going to be any further motions that are going to
19 continue this trial?" Mr. Van Ry said, "No. We are
20 going to be ready to go to trial." Defendant stood
21 silent.

22 This is a delay tactic, your Honor, and I
23 would ask that we proceed with trial on Wednesday. If he
24 does go -- go ahead today and make his Motion to Dismiss

1 Mr. Van Ry or to represent himself, I'll address that at
2 the time. Thank you.

3 THE COURT: Mr. Volpicelli, do you want to
4 represent yourself in this case?

5 THE DEFENDANT: Your Honor, I never made any
6 reference to that effect. I think Mr. Riggs is referring
7 to a unilateral decision on the part of my counsel to not
8 pursue any -- what I feel are critical pretrial motions,
9 and it just represents, I think, a conflict of interest,
10 and with regards to the discovery, I was assured, by
11 virtue of the fact that the two of them were going to get
12 together, that the discovery would be in place, and then
13 when it finally did -- I did receive it, I reviewed it,
14 and it's still deficient, and I've been calling
15 Mr. Van Ry's office, apprising his office of that, and it
16 was just left at the hearing today, if I wanted to bring
17 it to your attention.

18 THE COURT: Well, as long as your counsel is
19 prepared for trial and he has the discovery that he finds
20 is complete and sufficient to proceed to trial, I'm not
21 going to go further into that issue, and if you don't
22 want to represent yourself, there may be nothing else for
23 us to discuss here.

24 Mr. Van Ry, do you --

1 MR. VAN RY: I do have a real concern in that
2 regard because we are at such loggerheads in terms of
3 what my client perceives is discovery and what is
4 deficient and what I perceive is not deficient and
5 further inculpatory evidence that I didn't want to have
6 anywhere near this case. I'm concerned about that. I
7 think it might be best if Mr. Volpicelli represented
8 himself in that light because of the -- I mean, we just
9 view this case in two entirely different lights, your
10 Honor, and as you can tell, Mr. Volpicelli has his
11 opinion, and I have mine, and I'm not convinced that it
12 would be in his best interest for us to remain as a --

13 THE COURT: Mr. Van Ry, the opinion with
14 regard to preparing this for trial and the tactical,
15 strategic decisions for trial are yours to make as the
16 lawyer for Mr. Volpicelli. I'm not interested in
17 Mr. Volpicelli's views and decisions regarding trial
18 tactics. That's up to the lawyer to make, and if Mr.
19 Volpicelli is not here attempting to represent himself,
20 then we really don't have anything else to talk about,
21 because I'm not going to appoint another lawyer, and, you
22 know, that's just going to be the way it goes.

23 Mr. Volpicelli, do you still wish to be
24 represented by counsel? Is that true? You've indicated

1 that.

2 THE DEFENDANT: Your Honor, this 4 November,
3 2003 letter that I sent to my attorney was in regards to
4 a letter that he sent me the prior day, on November 3rd,
5 and in that letter, if you could read the contents,
6 there's no indication of any viable defense strategy.
7 There's no -- in fact, to sum it up --

8 MS. RIGGS: Objection. At this time, your
9 Honor, I would ask that the defendant be warned or
10 admonished regarding his client confidentiality or his
11 attorney-client confidentiality. He's now going into
12 things he's discussed with Mr. Van Ry.

13 THE COURT: I can't possibly imagine it's in
14 your best interest to be discussing, you know, your trial
15 strategy in front of the prosecutor.

16 THE DEFENDANT: I understand that, your
17 Honor, but the fact is the letter was just clearly
18 indicative of a conflict of interest and just doesn't
19 leave much to be desired and give me much confidence
20 going into a trial.

21 THE COURT: This is the question,
22 Mr. Volpicelli: Do you want to dismiss Mr. Van Ry and
23 represent yourself in the trial that's scheduled to
24 commence in two days, on Wednesday, the 12th?

1 THE DEFENDANT: Your Honor, in my letter I
2 represent that I think it would be in both of our best
3 interests if he was dismissed from the case. However, I
4 am just a layperson, I'm incarcerated, bereft of
5 resources. There's no way that I would be able to
6 represent myself in the court proceedings, and so if you
7 want to assign stand-by counsel or -- I don't know what
8 the protocol is.

9 THE COURT: Mr. Volpicelli, since you don't
10 want to represent yourself and I know from past
11 experience that Mr. Van Ry is a very competent counsel
12 and he's tried cases in here this year, and I think
13 obtained, you know, a favorable showing, as good a result
14 as could be obtained for his client, so, therefore, I
15 don't believe there's anything else we can take up since
16 your counsel will be ready for trial and you don't want
17 to represent yourself, devoid of counsel so to speak, so
18 we'll see you, then, on Wednesday morning.

19 MR. VAN RY: Your Honor, there's one other
20 issue that Miss Riggs and I are both aware of. I filed a
21 writ in this matter sometime this summer and Judge
22 Hardesty mentioned he was going to address that.

23 THE COURT: I do have that.

24 MS. RIGGS: Your Honor, I also received that.

1 I was served with that via fax today.

2 MR. VAN RY: Was there an order?

3 MS. RIGGS: There was an order.

4 THE COURT: Yes.

5 MR. VAN RY: I didn't receive it. I'm sorry,
6 your Honor.

7 THE COURT: The judge issued an order. It's
8 showing here that it was filed on November 7th. I know I
9 was trying to get this filed on Friday, and we had a heck
10 of a time with it because I wasn't releasing it until the
11 end of the day on Friday, and I don't believe it actually
12 showed up in this office here until just this morning.

13 At any rate, yes, Judge Hardesty did issue
14 his ruling, and the final rule here is that defendant's
15 request to quash the indictment is denied.

16 MR. VAN RY: Your Honor, if it wouldn't be
17 too much trouble, if your staff could make a copy of that
18 for me and my client before we leave today, I would
19 appreciate that.

20 THE COURT: I'd be happy to do that.

21 MS. RIGGS: The State has one further matter
22 to discuss. This defendant, every single time he's --
23 we've gone to trial, has made some sort of 11th-hour
24 motion or delay tactic, and you can see what's happening

1 today, but my fear is that he is going to be, outside of
2 his attorney's advice, making some sort of move to delay
3 this trial on the day of trial, which is Wednesday, which
4 is exactly what he did the last time we came here for
5 trial in -- or went to Department 9 for trial in May.

6 I would ask you to ask him if he intends to
7 make any kind of motion at all with or without his
8 counsel that is going to -- or that has the potential to
9 delay this trial. The last time it was competency, your
10 Honor. He said that he was taking some new drugs or the
11 jail wasn't giving him his old drugs and that he just
12 couldn't possibly move on. Of course, we had to have the
13 competency hearing and he was found to be fine, his
14 second competency evaluation in this case.

15 So, your Honor, just to make doubly sure, I
16 would like to know if Mr. Volpicelli intends to make any
17 further moves that will delay this trial. Thank you.

18 THE COURT: Well, I don't know that I want to
19 ask Mr. Volpicelli what he intends to do, but I can tell
20 you, Mr. Volpicelli, that since you're represented by
21 counsel, if your counsel alone would be making any kind
22 of motion during the course of the trial, you won't be
23 doing that. Do you understand that?

24 THE DEFENDANT: I do, your Honor.

1 THE COURT: All right. Then court will stand
2 in recess.

3 (Proceedings concluded.)
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1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4

5 I, PEGGY B. HOOGS, Certified Court Reporter
6 in and for the State of Nevada, do hereby certify:

7 That the foregoing proceedings were taken by
8 me at the time and place therein set forth; that the
9 proceedings were recorded stenographically by me and
10 thereafter transcribed via computer under my supervision;
11 that the foregoing is a full, true and correct
12 transcription of the proceedings to the best of my
13 knowledge, skill and ability.

14 I further certify that I am not a relative
15 nor an employee of any attorney or any of the parties,
16 nor am I financially or otherwise interested in this
17 action.

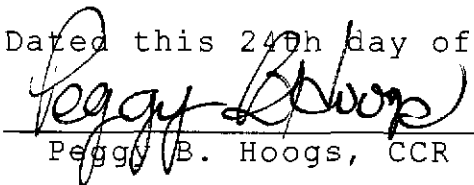
18 I declare under penalty of perjury under the
19 laws of the State of Nevada that the foregoing statements
20 are true and correct.

21 Dated this 24th day of November, 2003.

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23

24


Peggy B. Hoogs, CCR #160, RDR

FILED

2004 JAN 16 PM 2:26

ORIGINAL

RONALD A. LONGTIN, JR.

BY  DEPUTY

1 CODE 1260
 2 Richard A. Gammick
 3 #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.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI, (BAC# 79565)

Defendant.

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, Plaintiff herein, by and
 through RICHARD A. GAMMICK, District Attorney of Washoe County, by
 KRISTIN L. ERICKSON, Chief Deputy District Attorney, and alleges as
 follows:

1. That the above defendant, FERRILL JOSEPH VOLPICELLI,
 (BAC# 79565) is presently incarcerated at the Nevada State Prison,
 Carson City, Nevada.

2. That the above FERRILL JOSEPH VOLPICELLI (BAC# 79565)
 is scheduled for a sentencing before the Second District Judicial
 Court on Thursday the 5th of February, 2004 at 11:00 a.m.

WHEREFORE, Applicant prays that an Order be made ordering

1 the appearance of the said FERRILL JOSEPH VOLPICELLI (BAC# 79565)
2 before the Second District Judicial Court on Thursday the 5th of
3 February, 2004, and directing the execution of said Order by the
4 Sheriff of Washoe County, Nevada.

5 DATED this 16 day of January, 2004.

6
7 RICHARD A. GAMMICK
8 District Attorney
9 Washoe County, Nevada

10 By Kristin L. Erickson
11 KRISTIN L. ERICKSON
12 4258
13 Chief Deputy District Attorney

14 DA #314735/
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FILED
ORIGINAL

2004 JUN 12 PM 2:42

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

CODE 3340
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.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

v.

Dept No. 9

FERRILL JOSEPH VOLPICELLI, (BAC# 79565)

Defendant.

ORDER TO PRODUCE PRISONER

IT APPEARING to the satisfaction of the above-entitled
Court that it is necessary that the Defendant above named, FERRILL
JOSEPH VOLPICELLI, (BAC# 79565) presently incarcerated in the Nevada
State Prison, Carson City, Nevada, be brought before the Second
District Judicial Court for a sentencing in the above-entitled
action,

///

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///

1 NOW, THEREFORE, IT IS HEREBY ORDERED that the Warden of the
2 Nevada State Prison, Carson City, Nevada, bring the said FERRILL
3 JOSEPH VOLPICELLI (BAC# 79565) before the Second District Judicial
4 Court on Thursday the 5th of February, 2004 at the hour of 11:00
5 a.m., for a sentencing in the above-entitled action.

6 DATED this 21 day of January, 2004.

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8 James W. Henderty
9 DISTRICT JUDGE
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CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

04/01/04
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
L. Urmston
(Reporter)

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy D.A. Tammy Riggs represented the State.
Defendant present with counsel, Bradley Van Ry.
Probation Officer, Erin Lukl, also present.
Counsel for Defendant informed the Court that he will reserve his
argument till after the State's argument.
Counsel for State marked exhibits 1 through 3.
Scott Hopkins was called by counsel for State, sworn and testified.
During the testimony of witness Hopkins, the following exhibit was
ordered marked and admitted by the Court:

State's exhibit 4

Reid Thomas was called by counsel for State, sworn and testified.
During the testimony of witness Reid, the following exhibit was
ordered marked and admitted by the Court:

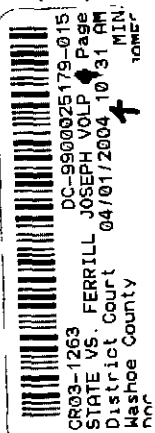
State's exhibit 5

Counsel for State discussed the Defendant's criminal history, the
negative economic impact on the community and presented
argument in support of the Court finding the Defendant an habitual
criminal.

Court made finding that State's exhibits 1 through 3 were
constitutionally valid proof of prior felony convictions; COURT
ORDERED: State's exhibits 1 through 3 are hereby admitted.
Counsel for Defendant discussed the Defendant's mental illness
and the length of time the Defendant has spent in custody and
objected to State's recommendation to find the Defendant an
Habitual Criminal. Counsel for Defendant urged the Court to
impose a one (1) to ten (10) year sentence on each burglary count
and have counts II through V run concurrently with counts VI
through IX.

During the argument, counsel for Defendant marked and moved for
the admission of exhibits 6 and 7; no objection by counsel for State.
COURT ORDERED: Defendant's exhibits 6 and 7 are hereby
admitted.

Officer Lukl stands by the recommendation of the Division.
Defendant made a statement to the Court.
Counsel for State presented further argument in support of the
State's recommendation.
COURT ORDERED: Judgment entered. The Court having



CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

04/01/04
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
L. Urmston
(Reporter)ENTRY OF JUDGEMENT AND IMPOSITION OF SENTENCE
CONTINUED

adjudged the Defendant to be a Habitual Criminal as provided for under NRS 207.010, upon a felony conviction, followed by proof of the three (3) prior felonies, the Court hereby sentences the Defendant to Washoe County Jail for the term of twelve (12) months, to run concurrently with Counts II through X, as to Count I. As to Count II, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served. As to Count III, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count II. As to Count IV, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count III. As to Count V, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count IV. As to Count VI, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count V. As to Count VII, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VI. As to Count VIII, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run concurrently with Count VII. As to Count IX, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run consecutively to Count VIII. As to Count X, the Defendant is sentence in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has been served, to run consecutively to Count IX. The above sentence shall be served consecutively to any other sentence the Defendant is obligated to serve.

CASE NO. CR03-1263

STATE OF NEVADA VS. FERRILL JOSEPH VOLPICELLI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

04/01/04
HON. STEVEN P.
ELLIOTT
DEPT. NO. 10
G. Bartlett
(Clerk)
L. Urmston
(Reporter)ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE
CONTINUED

The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee, a One Hundred Fifty Dollar (\$150.00) DNA testing fee, restitution in the amount of Ten Thousand Three Hundred Thirty-Nine Dollars and Sixteen Cents (\$10,339.16) and reimburse the County of Washoe the sum of Five Hundred Dollars (\$500.00) for legal representation by the Washoe County Public Defender's Office. The Defendant is given credit for zero (0) days time served.
Defendant remanded to the custody of the Sheriff.

STATE VS. FERRILL JOSEPH VOLPICELLI

SENTENCING DATE 4/1/04 DEPT. 10 REPORTER: L. URMSTON
CLERK: G. BARTLETT

\$25.00 AAF
\$150.00 DNA
\$10,339.16 REST
\$500.00 AF

Count I: WCJ 12 MOS., TO RUN CONCUR. WITH COUNTS II THROUGH X
Count II: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED

Count III: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT II

Count IV: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT III

Count V: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT IV

Count VI: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT V

Count VII: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT VI

Count VIII: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT VII

Count IX: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONCUR. W/ COUNT VIII

Count X: NSP LIFE W/ PAROLE ELIGIBILITY BEGINNING AFTER 10 YRS HAS
BEEN SERVED, TO RUN CONSEC. TO COUNTS ~~II~~ II THROUGH IX

SAID SENTENCE IS TO BE RUN CONSEC. TO ANY OTHER SENTENCE THE
DEFENDANT IS OBLIGATED TO SERVE.

DEFENDANT IS GIVEN ZERO (0) DAYS TIME SERVED CREDIT.

ORIGINAL

CODE 1850

FILED

APR - 1 2004

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-1263

vs.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

JUDGMENT

The Defendant having been found guilty by a jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crimes of Conspiracy to Commit Crimes Against Property, a violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, as charged in Count I of the Indictment, Burglary, a violation of NRS 205.060, a felony, as charged in Counts II through IX of the Indictment and Unlawful Possession, Making, Forgery or Counterfeiting of Inventory Pricing Labels, a violation of NRS 205.965(2) and (3), a felony, as charged in Count X of the Indictment and the Court having adjudged the Defendant to be an Habitual Criminal as provided under NRS 207.010, the Court hereby sentences the Defendant by imprisonment in the Washoe County Jail for the term of twelve (12) months, as to Count I, to run concurrently with the sentences

CR03-1263 DC-9900025141-054
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 04/01/2004 03:13 PM
Washoe County 1850
JAN 18 2004

1 imposed in Counts II through X. As to Count II, he be punished by imprisonment in the
2 Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years
3 has been served. As to Count III, he be punished by imprisonment in the Nevada State
4 Prison for the term of Life with parole eligibility beginning after ten (10) years has been
5 served, to run concurrently with Count II. As to Count IV, he be punished by imprisonment
6 in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10)
7 years has been served, to run concurrently with Count III. As to Count V, he be punished
8 by imprisonment in the Nevada State Prison for the term of Life with parole eligibility
9 beginning after ten (10) years has been served, to run concurrently with Count IV. As to
10 Count VI, he be punished by imprisonment in the Nevada State Prison for the term of Life
11 with parole eligibility beginning after ten (10) years has been served, to run concurrently with
12 Count V. As to Count VII, he be punished by imprisonment in the Nevada State Prison for
13 the term of Life with parole eligibility beginning after ten (10) years has been served, to run
14 concurrently with Count VI. As to Count VIII, he be punished by imprisonment in the
15 Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years
16 has been served, to run concurrently with Count VII. As to Count IX, he be punished by
17 imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning
18 after ten (10) years has been served, to run concurrently with Count VIII. As to Count X, he
19 be punished by imprisonment in the Nevada State Prison for the term of Life with parole
20 eligibility beginning after ten (10) years has been served, to run consecutively to Counts II
21 through IX. The Defendant is further ordered to pay the statutory Twenty-Five Dollar
22 (\$25.00) administrative assessment fee, a One Hundred Fifty Dollar (\$150.00) DNA testing
23 fee, restitution in the amount of Ten Thousand Three Hundred Thirty-Nine Dollars and
24 Sixteen Cents (\$10,339.16) and reimburse the County of Washoe the sum of Five Hundred
25 Dollars (\$500.00) for legal representation by the Washoe County Public Defender's Office.

26 ///

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1 The Defendant is given credit for zero (0) days time served.

2 It is further ordered the above sentence shall run consecutively to any other
3 sentence the Defendant is obligated to serve.

4 DATED this 1st day of April, 2004.

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7 DISTRICT JUDGE
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ORIGINAL

1 CODE: 4185
 LORI URMSTON, CCR #51
 2 Peggy Hoogs & Associates
 435 Marsh Avenue
 3 Reno, Nevada 89609
 (775) 327-4460
 Court Reporter

FILED
 2004 APR 13 AM 11:42
 RONALD W. LORSTON, JR.
 BY *[Signature]*
 DEPUTY

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

HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

STATE OF NEVADA,)
)
 Plaintiff,)
) Case No. CR03-1263
) Dept. No. 10
 10 vs.)
 11 FERRILL JOSEPH VOLPICELLI,)
)
 12 Defendant.)
)

14 TRANSCRIPT OF PROCEEDINGS
 SENTENCING
 15 APRIL 1, 2004; THURSDAY

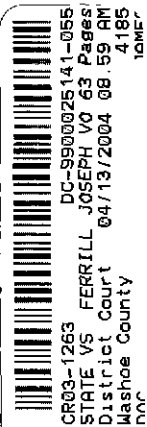
16 APPEARANCES:

17 For the Plaintiff: TAMMY M. RIGGS
 Deputy District Attorney
 18 Washoe County Courthouse
 Reno, Nevada

20 For the Defendant: BRADLEY O. VAN RY
 Attorney at Law
 21 1403 E. Fourth Street
 Reno, Nevada

23 For the Department of
 Parole & Probation: ERIN LUKL

25 Reported by: LORI URMSTON, CCR #51



I N D E X

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STATE'S WITNESSES

DR

CR

REDR

RECR

VD

SCOTT HOPKINS

6

14

REED THOMAS

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34

STATE'S EXHIBITS

IDENTIFICATION

EVIDENCE

1 - 2004 Prior conviction

4

43

2 - 1998 Prior conviction

4

43

3 - 1997 Prior conviction

4

43

4 - Photograph

10

14

5 - Report prepared by
Detective Thomas

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36

DEFENSE EXHIBITS

6 - Letters of completion

45

45

7 - Certificates of
achievement

45

45

1 RENO, NEVADA; THURSDAY, APRIL 1, 2004; 10:34 A.M.

2 --000--

3 THE COURT: The next case will be Ferrill
4 Volpicelli.

5 MS. RIGGS: Good morning, Your Honor. Tammy Riggs
6 appearing on behalf of the State.

7 THE COURT: This matter has been set for
8 sentencing. And, Mr. Van Ry, have you and
9 Mr. Volpicelli had the opportunity to review the
10 presentence report?

11 MR. VAN RY: Your Honor, Brad Van Ry on behalf of
12 Mr. Volpicelli who is present and in custody. My
13 client and I have reviewed the presentence report. We
14 have some factual differences with the credit time
15 served. In light of the State seeking habitual
16 criminal, I think I would like to reserve any arguments
17 and points to point out after the State goes forward,
18 Your Honor, if I might.

19 MS. RIGGS: And, Your Honor, in that case the State
20 would request an opportunity to rebut if the State is
21 going to be arguing first in this case.

22 MR. VAN RY: No objection to that.

23 THE COURT: All right. It just seems like
24 Mr. Volpicelli's trial wasn't that long ago, but I
25 guess it was. It seems so fresh in my mind. I would

1 have sworn that I heard this this year even though it
2 occurred in November. Okay. I've gotten through that
3 little shock.

4 All right. Mr. Van Ry, would you like to proceed?

5 MR. VAN RY: Yeah. I guess, Your Honor, you had
6 been reading. I requested-- in light of the habitual
7 criminal seeking by the State I ask that they proceed
8 and we as defense argue in a rebuttal mode after. And
9 we would have no objection to the State doing any
10 rebuttal as to our arguments, Your Honor.

11 THE COURT: All right. Ms. Riggs.

12 MS. RIGGS: Thank you, Your Honor. Initially, Your
13 Honor, at this point the State moves to have marked and
14 admitted into evidence the state certified proof of
15 this defendant's prior felony convictions, three of his
16 prior felony convictions. The first would be his cert
17 from February 11, 2004. This would be his conviction
18 for aiding and abetting in the commission of an attempt
19 to obtain money by false pretenses. The second
20 exhibit, Your Honor, would be his 1998 conviction on
21 two counts of burglary. This is also Second Judicial
22 District Court. And the third prior, Your Honor, is a
23 conviction for four counts of tax perjury in the United
24 States District Court, District of Nevada, 1997.

25 (State's Exhibits 1, 2 and 3 were marked.)

1 MS. RIGGS: Your Honor, this defendant chose crime
2 as his career over 17 years ago. Since that time,
3 since at least 1987, by his own admission, he's engaged
4 in continuous criminality, basically performing
5 variations of the same old scheme over and over and
6 occurred up until his apprehension in 2001 by members
7 of the Repeat Offender Program. This defendant is not
8 recoverable through rehabilitation, nor is he in any
9 way amenable to supervision by the Department. In
10 fact, he's consistently reoffended while being on
11 supervision and even, Your Honor, while in jail on
12 charges specifically in this case, the charges for the
13 19-- pardon me, the 2004 cert that you have in your
14 hand.

15 Accordingly, the State is asking you to impose
16 habitual offender status to this defendant. And we're
17 asking for a sentence of life imprisonment with ten
18 years minimum served in the Nevada State Prison on each
19 felony count, Your Honor. And we will follow the
20 recommendation-- or ask you to follow the
21 recommendation of the Division on the one gross
22 misdemeanor count.

23 Now, Your Honor, in order to fully inform you of
24 what's been going on in the past 17 years, I'm going to
25 ask to call two witnesses in this case. My first

1 witness will be Detective Scott Hopkins.

2 THE COURT: All right. You may call your witness.

3 Sir, if you'll step right in this area,

4 Mr. Bartlett will administer the oath.

5 (The Clerk administered the oath
6 to the prospective witness.)

7 THE COURT: Please have a seat in the witness
8 chair.

9
10 SCOTT HOPKINS,
11 having been called as a witness herein,
12 being first duly sworn, was examined
13 and testified as follows:

14
15 DIRECT EXAMINATION

16 BY MS. RIGGS:

17 Q Would you please state your full name and spell
18 it for the record.

19 A Scott A. Hopkins, H-o-p-k-i-n-s.

20 Q And, sir, what is your position in your
21 employment?

22 A I'm currently assigned as a detective to the
23 robbery/homicide unit.

24 Q Sir, are you familiar with the defendant,
25 Ferrill Joseph Volpicelli?

1 A Yes, I am.

2 Q And can you tell me how you first became
3 familiar with this defendant.

4 A When I was assigned with the Repeat Offender
5 Program we had received information that he was
6 criminally active in our area. I conducted some
7 background investigation into what his type of crimes
8 were and stuff and from there we conducted an
9 investigation.

10 Q And, again, this was 1998?

11 A Yes, it was, January.

12 Q Did you have the opportunity to observe any
13 criminal activity by this defendant?

14 A Yes.

15 Q And can you describe what you saw with his
16 particular criminal activity.

17 A During the surveillance we had followed him
18 over to the-- a couple of office stores. He was with
19 his eldest son at the time, Travis. I don't recall how
20 old he was. They had both gone in the store, were only
21 in there a very short time. They returned to the truck
22 that he was driving and we could observe that he was
23 working on something it looked like on the center
24 console.

25 Q When you say "he," are you talking about the

1 defendant?

2 A Yes, I am. A short time later Travis got out
3 of the truck. I followed Travis inside. Travis placed
4 a counterfeit UPC symbol on the bottom of a mouse and
5 then walked up and purchased an 80-dollar mouse for \$10
6 and returned out to the truck.

7 Q What happened once he returned out to the
8 truck?

9 A They left that location, eventually arriving at
10 another office store where the defendant went inside
11 this time.

12 Q And was Travis in the vehicle on the second
13 burglary?

14 A Yes.

15 Q Did you have occasion to-- Before we go on, do
16 you have any specific information regarding the
17 defendant's status regarding his 1977-- or 1997 federal
18 case during the time that you were watching him?

19 A He had already been convicted and he was on
20 basically a judge's OR for him to get his personal
21 affairs in order and spend some time with his family
22 before he was suppose to turn himself in to federal
23 custody.

24 Q So he was committing these crimes after he had
25 already been sentenced for his federal cases?

1 A Yes.

2 Q Now, after his conviction in this 1998 case did
3 you have any further conversations with Mr.-- or any
4 conversations with the defendant in this case?

5 A After the conviction, no. I had a
6 conversation-- Once the offenses were committed and we
7 arrested the defendant, he bailed a very short time
8 later. Contact was made with the federal probation
9 officer and then a retake warrant was issued for the
10 defendant.

11 Q And how did you come in contact with him then?

12 A At that time we set up another surveillance.
13 We located him, we made a traffic stop on him and
14 that's when we had contact again. During that contact
15 he made the comment to me that 22 months was worth a
16 million.

17 Q And what million do you think he was-- did
18 you-- were you under the impression that he was
19 referring to?

20 MR. VAN RY: Objection. That calls for
21 inappropriate evidence.

22 THE COURT: Well, the objection is overruled. The
23 witness may state what that meant to the witness.

24 THE WITNESS: What that meant to me is in reference
25 to the federal case that they had done, that he had

1 made a million dollars through his various fraud scams.

2 BY MS. RIGGS:

3 Q The defendant made a million dollars?

4 A Yes.

5 Q Sir, at some point did somebody forward a
6 photograph of this defendant to you, a photograph of
7 himself in the federal penitentiary?

8 A Yes.

9 MS. RIGGS: May I approach, Your Honor?

10 THE COURT: Yes, you may.

11 MS. RIGGS: State moves to have this marked and
12 admitted as State's Exhibit 3 for sentencing. Is
13 that-- 4 for sentencing. Thank you.

14 (State's Exhibit 4 was marked.)

15 MS. RIGGS: May I approach the witness, Your Honor?

16 THE COURT: Yes, you may.

17 BY MS. RIGGS:

18 Q Sir, I'm showing you what's been marked and
19 admitted as I believe State's Exhibit 4.

20 A Yes.

21 Q Could you tell me what I have just shown you,
22 please, or what is that document?

23 A This is a color photo of the defendant.

24 Q And what is he doing in that photograph?

25 A He's looking pretty casual leaning up against a

1 mural.

2 Q Does he appear to have a set of headphones on?

3 A Yes.

4 Q Does he appear to be tan and fit in that
5 photograph?

6 A Yes.

7 Q How did you-- And you came into possession of
8 this photograph, correct?

9 A Yes, I did.

10 Q How did you come into possession of that
11 photograph?

12 A This photograph was sent to me in the mail by
13 Lori.

14 Q Who is Lori?

15 A I believe his wife at the time.

16 Q And when did you obtain that photograph or when
17 was that sent to you?

18 A It was shortly after we did the case.

19 Q Is there an inscription on the back of that
20 photograph?

21 A Yes.

22 Q Can you tell me what the inscription says,
23 please.

24 MR. VAN RY: Objection. Lack of foundation, Your
25 Honor.

1 MS. RIGGS: What foundation is required, Your
2 Honor? He's reading directly.

3 MR. VAN RY: There's no authentication as to who
4 wrote that on the back.

5 MS. RIGGS: Authentication is not needed, Your
6 Honor, at sentencing. It's a weight issue, Your Honor.

7 THE COURT: Just to go over this issue of
8 foundation, can you tell me again how this happened to
9 be sent. I take it it's from the wife or ex-wife.
10 Maybe you can just fill me in again on the foundation
11 of how this photo came and was it altered in any way by
12 the witness.

13 MS. RIGGS: Certainly, Your Honor.

14 BY MS. RIGGS:

15 Q The photograph that you received, did you have
16 any conversation with Lori Volpicelli regarding why she
17 had sent this to you?

18 A She had told me prior to-- told me that she
19 received a letter that Ferrill had sent to one of the
20 children, I don't recall which one, and that she wanted
21 me to have it. She believed it would help us in our
22 investigation by what was said on the photo.

23 Q Okay. And if you look at the front of that
24 photograph, is that photograph in substantially the
25 same condition in which you received it?

1 A Yes.

2 Q Does it appear to be altered in any way?

3 A No.

4 Q Did you alter it in any way?

5 A No, I did not.

6 Q On the back-- does the inscription on the back
7 appear to be in the same condition in which you
8 received it?

9 A Yes.

10 Q Does it appear to be altered in any way?

11 A No.

12 Q Did you alter it in any way?

13 A No, I did not.

14 Q And where was that photograph after you
15 received it from the point that you received it until
16 recently?

17 A It's been in evidence, the case file.

18 Q So can you tell me what is inscribed on the
19 back of that photograph, please.

20 A It says, "I'm too sexy for this place." It has
21 been like a vacation. Just missing stores."

22 Q Okay. Thank you.

23 MS. RIGGS: Again, State moves to have admitted
24 State's Exhibit 4 for sentencing.

25 THE COURT: Any objection?

1 MR. VAN RY: No further objection.

2 THE COURT: All right. Exhibit 4 is admitted.

3 (State's Exhibit 4 was admitted.)

4 MS. RIGGS: Thank you, Your Honor. The State has
5 no further questions for this witness.

6 THE COURT: Mr. Van Ry, do you have questions of
7 the witness?

8

9 CROSS-EXAMINATION

10 BY MR. VAN RY:

11 Q Detective, to the best of your knowledge are
12 typewriters allowed in federal prison?

13 A I have no-- I couldn't tell you.

14 Q So you cannot really say with any degree of
15 certainty that Mr. Volpicelli typed that note on that
16 photograph?

17 A I did not see him do it, no.

18 Q The only person that produced that picture to
19 you was his wife or currently his ex-wife, is that
20 correct?

21 A That's who sent it to me, yes.

22 MR. VAN RY: Nothing further, Your Honor. Thank
23 you.

24 MS. RIGGS: The State has nothing further of this
25 witness, Your Honor.

1 THE COURT: All right. Mr. Hopkins, you may be
2 excused.

3 THE WITNESS: Thank you.

4 MS. RIGGS: The State calls Detective Reed Thomas,
5 Your Honor.

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

8 THE COURT: Please have a seat in the witness
9 chair.

10 MS. RIGGS: Your Honor, may I approach the clerk
11 for additional marking of a document?

12 THE COURT: Yes.

13 MS. RIGGS: Thank you. The State moves to have
14 marked State's Exhibit 5.

15 (State's Exhibit 5 was marked.)

16

17 REED THOMAS,
18 having been called as a witness herein,
19 being first duly sworn, was examined
20 and testified as follows:

21

22 DIRECT EXAMINATION

23 BY MS. RIGGS:

24 Q Could you please state your name and spell your
25 last name for the record.

1 A Reed Thomas, T-h-o-m-a-s.

2 Q And what is your position, please.

3 A I'm a detective with the Reno Police Department
4 assigned to the Repeat Offender Program.

5 Q And, Detective Thomas, did you-- have you had
6 contact or have you had the opportunity to observe the
7 activities of the defendant?

8 A That's correct.

9 Q And have you had the opportunity to interview
10 the co-conspirator in the current case, Brett Bowman?

11 A I did.

12 Q Did Brett Bowman inform you of when the
13 conspiracy between himself and the defendant began?

14 A Yes, he did. He told me that he spoke to the
15 defendant Volpicelli when they were incarcerated
16 together in the prison system in Nevada.

17 Q And what did Bowman assert that Volpicelli told
18 him?

19 A Basically just told him about this scheme that
20 he was in for and that he had asked him if he was
21 interested in participating once they both got out.

22 Q So it was your understanding that the defendant
23 invited Bowman to join this conspiracy?

24 A That's correct.

25 Q In other words, it was his idea?

1 A That's correct.

2 Q And this plan occurred while they were both in
3 the Nevada State Prison?

4 A That's my understanding.

5 Q Now, Detective Thomas, were you also involved
6 in another case, a felony case of burglary and attempt
7 to obtain money by false pretenses, with the defendant
8 also related to this particular case?

9 A Yes, I was.

10 Q And can you explain to the Court just the basic
11 facts of that case.

12 A Basically once the defendant was arrested--

13 Q In this case, correct?

14 A In this case, yes. He was taken up to the
15 Washoe County Sheriff's Office and, of course, his
16 property was removed from his person and he was booked
17 up there and it was booked up there into his property.
18 He had apparently \$886 in cash on him. The detectives
19 who took him up weren't aware that I wanted to retain
20 that money, because I believed it was possibly involved
21 in his criminal activity. But nevertheless, it was
22 booked into his property up there.

23 Later that night the defendant contacted his son
24 who responded to the jail to retrieve that money. The
25 jail subsequently wrote a check, issued a check to his

1 son for that amount.

2 Once I learned of this the next day or a day or two
3 later, the ROP detectives that had taken Travis or
4 had-- were familiar with Travis and had taken the
5 defendant up to the jail made contact with Travis,
6 explained the circumstances, that we needed the money
7 back, it was for evidentiary purposes. And Travis
8 produced the check, gave it back to the detectives. We
9 subsequently made arrangements with the county to get
10 that booked back into evidence and we did that.

11 Not long after that Travis had a phone call from
12 the defendant at the jail. Travis advised him what had
13 happened. The defendant was very angry about that and
14 told Travis at some point in the conversation that he
15 should go back up to the jail and tell the jail that he
16 lost the check, that they issue him another one because
17 he came home and he didn't know where it was, he just
18 lost it or somebody took it, something to that effect.

19 Travis was very hesitant to do that, but
20 nevertheless he responded to the jail, gave them that
21 story, signed a statement and the jail issued him
22 another check in the same amount.

23 Q And the defendant was eventually convicted of a
24 felony for this particular act, correct?

25 A That's correct.

1 Q To obtaining money by false pretenses?

2 A That's correct.

3 Q That was at the end of last year, correct?

4 A That's correct.

5 Q And again, you testified that Travis was
6 reluctant to do this, correct?

7 A Seemed to be.

8 Q This was on the phone?

9 A It was on the phone.

10 Q Have you had the opportunity to listen to any
11 other phone calls between the defendant and his
12 children in relation to your investigation in these
13 cases?

14 A Yes.

15 Q Do you happen to know whether he has contacted
16 his daughter, stepdaughter, Chanel?

17 A Yes.

18 Q And can you tell me what the-- whether he's had
19 any specific conversation with her regarding credit
20 cards?

21 A Yes, he had one conversation I particularly
22 remember when he told Chanel that-- They apparently
23 had a credit card account issued to them in both their
24 names. Apparently the defendant believed that he was
25 probably going to be going away for quite sometime. He

1 told Chanel to run up the credit cards, max them out,
2 get cash advances, pay for the car insurance, school,
3 pay their bills, that type of thing and just max them
4 out and that he was never going to pay them, because by
5 the time he got out it would be off his credit report.

6 Q And again, this is while he's incarcerated, is
7 that correct?

8 A That's correct. He was in the jail at the
9 time.

10 Q Now, Detective Thomas, you participated in
11 basically the accounting of all of the property that
12 was acquired inside this defendant's storage unit,
13 correct?

14 A That's correct.

15 Q And, by the way, whose name was the storage
16 unit put into when the account was opened?

17 A I believe it was actually Ashley Schilling, his
18 stepdaughter.

19 Q And during the course of your investigation you
20 realized that he was the one who was using the storage
21 unit?

22 A That's correct. He was listed on the account
23 over there as somebody who could also access that
24 storage unit.

25 Q Can you tell me generally what you found or ROP

1 detectives found when they opened up that storage unit.

2 A A lot of things that are typical to a storage
3 unit, the storage of clothes and shelves. It was very
4 neatly organized. But particularly there were a lot of
5 new-- what appeared to be new in the box electronics
6 equipment and everything from stereos to DVD players,
7 home entertainment systems, vacuum cleaners, a variety
8 of merchandise.

9 Q You use the term "new in the box." They'd
10 never been opened, correct?

11 A Didn't appear to be, no.

12 Q And many of those items or photographs of those
13 items were admitted as evidence in this case, is that
14 correct?

15 A That's correct.

16 Q Were there many items that were not admitted as
17 evidence?

18 A Oh, yes.

19 Q And how many stores do you estimate were
20 involved or could you determine were involved? Or let
21 me rephrase the question. How many stores were you
22 able to match products that you found in that storage
23 shed to?

24 A There were probably ten to 12 stores that were
25 listed in the grand jury indictment that we suspected.

1 As far as actually making matches, I don't recall the
2 exact number.

3 Q Is it fair to say that pretty much all of the
4 local superstores in town were represented by items in
5 that storage shed?

6 A That's correct.

7 Q And during the course of your investigation,
8 Detective Thomas, are you aware of whether any other
9 felonies were committed by this defendant during the
10 course of your investigation?

11 A Yes.

12 Q And what other felonies did he commit?

13 A We ultimately arrested him and he was convicted
14 for open and gross lewdness and indecent exposure.
15 Through the course of our surveillance--I believe there
16 was a total of eight days of surveillance time--he
17 would drive to retail shopping center parking lots and
18 find a place to park and he would masturbate in his
19 vehicle.

20 Q And he was eventually convicted of both of
21 those charges, lewdness and indecent exposure, correct?

22 A That is correct.

23 Q In the Second Judicial District Court last
24 year, 2003?

25 A That's correct.

1 Q Now, did you produce a report, Detective
2 Thomas, regarding the damages or the estimated damages
3 that were caused by this defendant monetarily to the
4 community?

5 A I did.

6 Q And can you tell me what your methodology was
7 that you used to.

8 A It's a prediction is what this report is.
9 We're kind of projecting out relying on information,
10 solid information, that we had, for instance, the
11 dollar cost of the items, statements from his
12 co-defendant as far as how many times they went out a
13 week, how many stops they made a day, applying this
14 scheme and using those dollar amounts, and based on the
15 evidence we found in the storage unit, we projected
16 what he could potentially make a day, a week, a year,
17 that type of thing, of tax free income.

18 Q Of the items that you were able to track and
19 get a decent estimate for the value, how much property
20 valuewise did he have in that storage unit?

21 A Well, what we were able to specifically track
22 through my research with the retailers, he had just
23 over \$10,000 of merchandise in there. Estimated it was
24 a little bit more than that, though, with many of the
25 things that we didn't know what the price was and

1 couldn't determine exactly where he may have gotten
2 them.

3 Q And using that methodology that you previously
4 described, what do you estimate-- what damage amount do
5 you put on his criminal acts between the time he got
6 out of prison in 2001 and the time he was apprehended
7 in October 2001?

8 A Are you talking about our projection as far as
9 what he may have been able to produce?

10 Q Yes, I am.

11 A What I've got here-- And, like I say, I've got
12 a couple of numbers and a couple of figures in here,
13 tried to go the low end and the high end. But using
14 some of these formulas, he could have conceivably
15 purchased \$16,380 resulting in a net savings to him of
16 \$49,140 in tax free income per year. That's the low
17 end. And that's assuming that he was engaging in this
18 scheme once a week five times a day for one calendar
19 year.

20 Q And I'm going to stop you for a second,
21 Detective Thomas. Where does that assumption come
22 from, the assumption regarding one time a week five
23 times per day?

24 A Well, what I did is I based it on the number of
25 times that his co-defendant, Brett Bowman, told me that

1 they went out and did this. He said they typically did
2 this maybe once a week, sometimes more, and made
3 anywhere from 10 to 12 stops a day. And again, I tried
4 to be conservative in my estimates to some degree and
5 try to show a low end and a high end.

6 Q And so do these figures represent only what he
7 would have obtained with the assistance of Brett
8 Bowman?

9 A Not necessarily, because we also take into
10 account that it's quite possible he was out doing these
11 things without Brett Bowman's help and at a time when
12 we were weren't conducting surveillance on him.

13 Q And again, from your projections he could have
14 received up to \$50,000 in nontaxable income from this
15 scheme during this time, correct?

16 A That's the low end. Again, assuming he engaged
17 in it ten times a day, once a week, his tax free income
18 would be \$93,000, over \$93,000.

19 Q Detective Thomas, during the days you said that
20 you surveilled this defendant for eight days, did you
21 ever watch him go to a place that appeared to be a bona
22 fide place of business-- of employment? I'm sorry.

23 A No.

24 Q So when you were watching him he was simply
25 going to stores?

1 A That was pretty much it, going from store to
2 store, shopping center to shopping center. On one
3 occasion I think we watched him go work out, but for
4 the most part just driving around going from store to
5 store.

6 MS. RIGGS: Thank you. I have no further
7 questions, Your Honor.

8 THE COURT: Mr. Van Ry.

9 MR. VAN RY: Thank you, Your Honor.

10

11

CROSS-EXAMINATION

12 BY MR. VAN RY:

13 Q Detective, I assume you have your report that's
14 been submitted to the Court in front of you. If you
15 would turn to page five.

16 A I don't believe I numbered the pages. Give me
17 just a second.

18 Okay.

19 Q And the one that says "Projected Economic Loss"
20 at the top, "Projected Economic Loss to the Community."
21 Is that the same page you've got?

22 A Yes, sir.

23 Q All right. I just want to run through a couple
24 of things. So you admit then that the number of
25 \$49,140 tax free income per year is a projection, is

1 that correct?

2 A It's a projection, that's correct.

3 Q Would you also admit that it, therefore, is a
4 speculation?

5 A It's a projection, speculation, yeah.

6 Q And the basis for that projection/speculation
7 is based upon Brett Bowman's testimony, is that
8 correct?

9 A In part. It was based on Brett Bowman's
10 testimony in regard to how often they did this, but, of
11 course, it also included the actual prices of the
12 merchandise that we found, to determine an average
13 price of that merchandise we found in the storage unit.
14 And we also took into account, you know, those costs
15 and how many times they could have done that had he
16 chosen to set that scheme in motion.

17 Q Okay. Isn't it also true that Mr. Bowman was
18 an accomplice in this case?

19 A Yes, he was.

20 Q And that he had pled guilty to one burglary
21 previous to this?

22 A I don't recall exactly what he pled guilty to,
23 but I know he pled in this case.

24 Q What he did pled guilty to was something
25 associated with Mr. Volpicelli, is that correct?

1 A That's correct.

2 Q So his fingerprints, I don't mean exact
3 fingerprints, but his hands were all over this case in
4 terms of Mr. Bowman.

5 A He was involved in this. Brett Bowman
6 described the fact that he was recruited by
7 Mr. Volpicelli. And I asked what Bowman's benefit was
8 to this and he said that he got usually a hundred bucks
9 a pop for doing the actual purchases on behalf of
10 Mr. Volpicelli. He didn't get to keep the merchandise
11 himself.

12 Q Is it also correct, same page, direct your
13 attention to the 93,280 figure, that also is a
14 projection, is that correct?

15 A That's correct.

16 Q And that also would be speculation based upon
17 what you've testified to today?

18 A That's correct.

19 Q And that would also include Mr. Bowman's
20 testimony?

21 A That's correct.

22 Q Isn't it true that the open and gross lewdness
23 case which was a conviction for my client is now on
24 appeal? Are you aware of that?

25 A I think his attorney may have mentioned that in

1 court, that they were going to appeal. I am not aware
2 that an official appeal has been set in motion. I
3 don't know.

4 Q Do you know if there's any other convictions
5 that are being brought forward to the court today that
6 are under appeal?

7 A I'm not aware.

8 Q Do you know if the 1998 conviction is under
9 appeal?

10 A I'm unaware. I haven't researched that.

11 Q If you would turn, Detective, to page two of
12 your impact report.

13 A Okay.

14 Q I want to direct your attention to it looks
15 like the third paragraph there, last sentence that
16 says, "All retailers identified in this case."

17 A That's correct.

18 Q Do you see that?

19 A Yes.

20 Q I want to ask you some questions about who you
21 specifically spoke with. You cite a bunch of stores.
22 I'm just going to run you through them real quick. Who
23 did you speak with at Office Depot?

24 A I don't have that information with me right
25 here. What I did was I asked for a store manager or a

1 loss prevention supervisor. And I obtained a signature
2 from them basically stating that they were interested
3 in recovering any property that's going to be returned
4 in this case.

5 Q Is that the case for all of the stores?

6 A Yeah, I just went to each store that was named
7 in the grand jury indictment, contacted, like I say, a
8 store manager or loss prevention manager and asked them
9 if they were interested in recovering that merchandise
10 that was fraudulently obtained and they all signed.

11 Q Okay. Just to clarify then, you have no
12 specific recollection as to who you spoke to from any
13 of the stores listed here?

14 A I have that document in my office, but I don't
15 know off the top of my head who exactly. There were
16 ten people at least.

17 Q But this information was taken from that
18 document and placed on this document, is that correct?

19 A Pardon me?

20 Q That information, meaning you said you spoke to
21 people, you had a document where you wrote it all down,
22 that was then transferred to this document, is that
23 correct?

24 A What was transferred was the sentence I think
25 you're referring to, if I'm clear on what you're asking

1 me, the retailers identified. Yeah, those retailers
2 from the grand jury indictment are the ones that I
3 spoke to, prepared a document that they signed and
4 then, yes, that's what I'm mentioning here, the
5 retailers identified in this case.

6 Q Then how did you arrive at the valuation of
7 these items?

8 A I'm not sure I understand.

9 Q For instance, number one, Quicken Business
10 Lawyer 2001 Deluxe.

11 A I contacted the stores.

12 Q So the same person that gave you that
13 information--

14 A No, that's not correct. What I did was for the
15 most part back shortly after his arrest I contacted the
16 stores once we had a list of all the merchandise and I
17 made basically a ton of phone calls calling and asking
18 how much this item cost.

19 Q Let me ask you this: Would your answer be the
20 same as to the specific person and your recollection,
21 you could not recollect as to each specific person you
22 spoke to as to each store and item?

23 A I'm not sure I understand what you're asking.

24 Q Difficult question. I'll say it again. You
25 testified earlier that you didn't have a specific

1 recollection today as to who you spoke to at each
2 store, and I'm asking that same question as to the
3 valuation of each item.

4 A That's correct. What I did was I got on the
5 phone, I didn't document who I spoke to. I just talked
6 to a sales representative or somebody in the loss
7 prevention department and asked them to research the
8 cost of that item and provide it to me and they did.
9 And it was done over the phone.

10 Q Let me ask you this, Detective: These items
11 that are listed, page two, one through 11, and then
12 page three, 12 through 31, were these items involved in
13 the trial of the matter that Mr. Volpicelli stands to
14 be sentenced for today?

15 A Some of them were.

16 Q Some of them were not?

17 A That's correct.

18 Q Can you testify today as to which ones were not
19 included in that?

20 A I don't recall offhand without going back and
21 pulling the file and researching the trial transcripts
22 and that type of thing as far as what exactly was
23 submitted. I know that most things that were submitted
24 were done via photographic format.

25 Q If I could direct your attention again to page

1 five. And I'll be wrapping up here in just a minute,
2 Detective. I had a question. One, two, three,
3 essentially the fourth paragraph states, "It is not
4 unreasonable." Do you see that sentence?

5 A Yes.

6 Q And you state, "It is not unreasonable to
7 conclude that defendant Volpicelli committed these
8 crimes on a far more frequent basis when he was not in
9 the company of his co-defendant."

10 A That's correct.

11 Q And the question I had was is that not also a
12 speculation on your part?

13 A Sure, it's speculation. I was basing my
14 opinion on his past criminal activity in doing this and
15 the money that he had admittedly made, so I thought it
16 was reasonable to conclude that he was probably doing
17 this a lot more often than we were actually watching
18 him do it.

19 Q And that leads to my next question. How many
20 times did you actually personally observe
21 Mr. Volpicelli commit a crime when you were following
22 him?

23 A Personally myself as part as this scheme goes,
24 I did not personally see him do anything other than
25 that one count that he was convicted of regarding the

1 UPC pricing information, that type of thing. As far as
2 switching bar codes, I never personally observed that.
3 As a matter of fact, I wasn't even present for the
4 night of his arrest.

5 Q Let me ask you this: Would you then agree that
6 you have-- and I should say the State has no direct
7 evidence that Mr. Volpicelli actually committed these
8 crimes on a far more frequent basis?

9 A Again, that's speculation on my part.

10 MR. VAN RY: No further questions, Your Honor.

11

12 REDIRECT EXAMINATION

13 BY MS. RIGGS:

14 Q Detective, you were asked several times whether
15 you have any specific recollection of the people that
16 you talked to when you were preparing this estimate of
17 the damages. But you specifically recollect that you
18 talked to a representative from each store, correct?

19 A When it came time to determine who wanted their
20 merchandise back, I didn't make phone calls, I actually
21 went to the store and spoke to a representative, yes.

22 Q And you specifically recollect contacting
23 representatives of the stores for the exact pricing
24 information for each of those items, correct?

25 A That's correct.

1 Q Even though you can't recall their exact names
2 today?

3 A I didn't ask for the names. All I was doing
4 was researching pricing information. I didn't think it
5 was necessary.

6 Q And, Detective, you also just told defense
7 counsel that you are-- it was basically an estimate or
8 an educated guess that this defendant committed these
9 crimes on a more regular basis than the evidence that
10 we supplied in court, correct?

11 A That's correct.

12 Q Wasn't there a lot more evidence inside that
13 storage unit that was never produced at trial?

14 A That's correct.

15 Q So isn't that a pretty fair implication or fair
16 guess that he did this more frequently than we actually
17 proved at trial?

18 A It is in my mind. At some point early on in
19 this case the District Attorney's Office actually asked
20 us to stop with our investigation because there was
21 such a mountain of evidence in this case and it was
22 getting more and more difficult to match things up, so
23 to speak, with the fictitious bar codes and the
24 merchandise and the stores. So, yeah, that's an
25 accurate statement.

1 MS. RIGGS: Thank you, Detective.

2 Your Honor, at this time, if I haven't already done
3 so, I would move for the admission of all the State's
4 exhibits in evidence.

5 THE COURT: You're talking about 4 and 5?

6 MS. RIGGS: I believe 1, 2 and 3 also need--

7 THE COURT: Those are already admitted.

8 MS. RIGGS: Okay. Thank you. State has no further
9 questions of this witness, Your Honor.

10 THE COURT: Is there an objection to the admission
11 of 4 which is the photograph and 5 which is the report
12 prepared by Detective Thomas?

13 MR. VAN RY: No objection as to 5, Your Honor.

14 THE COURT: Okay. Well, 5 will be admitted. And I
15 admit 4 as well. I believe a foundation was laid for
16 that.

17 (State's Exhibit 5 was admitted.)

18 MS. RIGGS: The State has nothing further of this
19 witness.

20 MR. VAN RY: No further questions.

21 THE COURT: All right. Detectives Thomas, you may
22 be excused.

23 MS. RIGGS: Your Honor, I don't have a witness to
24 describe to you the facts of the 1997 tax perjury, but
25 I would refer your attention to I believe it's Exhibit

1 3 which is the federal conviction and state certified
2 proof of his federal conviction. I'm looking at the
3 plea memorandum which in the top left-hand corner is
4 dated February 7th, 1997 and says page seven. It's
5 about one-third of the way back through the packet.
6 And, Your Honor, the item is item V, Roman Numeral V,
7 facts to support a plea of guilty. And I'm going to be
8 summarizing those for you now, Your Honor.

9 If you like, you can read these in detail, but this
10 is the summary of what happened in 1997. In 1997 this
11 defendant was convicted of four counts in I believe it
12 was an 18 count indictment for tax perjury. And he was
13 convicted on the basis that he did not report
14 significant income that was produced by a similar scam
15 to the one perpetrated in this case.

16 Specifically, this defendant obtained account
17 credit or obtained several credit cards, say at Target
18 stores, which was the major store involved in the 1997
19 case. What he would do is he would buy an item at full
20 price, he would copy the receipt and then he would
21 return the item and then obtain that item again at a
22 reduced price through various schemes and keep
23 returning it for the full price. And this way he
24 obtained significant account credits on several credit
25 cards.

1 By his own admission this defendant developed the
2 UPC scheme as a much more efficient way to return items
3 for their full value by obtaining them very cheaply and
4 then returning them for their full value.

5 According to the U.S. Attorney and this document,
6 this defendant between 1989 and 1992 managed to
7 accumulate \$800,000 worth of credit or account credit
8 on his credit cards. With this credit the defendant
9 basically used this credit as income, he paid mortgages
10 on his home, he paid mortgages on a home that he
11 obtained as a rental unit and he also bought personal
12 items for himself and for his family. And again, Your
13 Honor, he had been sentenced and was awaiting his time
14 to turn himself in when he committed the 1998 burglary
15 cases.

16 To sum up, Your Honor, the defendant in this case
17 has shown that he is unable to function according to
18 societal rules in our community. He does not accept
19 responsibility for any of his actions. In fact, when
20 you read his statement for the presentence report, he
21 begins it with, I'm Ferrill and I'm an addict, or
22 something like that. It's always an excuse with this
23 defendant, Your Honor. Every time he comes to
24 sentencing there's a new reason, a new problem, a new
25 scourge that has happened to him that is the reason for

1 his various criminal enterprises. This time it's drug
2 addiction and suddenly we learn that he was a victim of
3 childhood sexual abuse through this report.

4 Now, nowhere in any of his criminal convictions
5 have I seen any evidence that he admits the real reason
6 behind or the real motivations behind his activities,
7 Your Honor. Laziness and greed. Apparently sometime
8 back in his life this defendant had the wherewithal or
9 possibly the talent and intelligence to pursue a bona
10 fide career, but he hasn't done so, at least not since
11 1987. As far as we can tell, this is the same scam
12 that he's been-- that he's been perpetrating and
13 supporting himself and his family with for the past 17
14 years.

15 And as he bragged to federal authorities in 1997,
16 he developed this UPC scam and was very-- appeared to
17 be very proud of that and informed them that this was
18 how he provided the support for himself and his family
19 in perpetrating this scam over and over in our
20 community.

21 Your Honor, he's become a one-man economic drag on
22 this community. He's hit, as you saw in this case,
23 just about every store in town over and over as you
24 heard.

25 You remember when we were talking about I believe

1 it was a computer store, he kept going back to the same
2 store over and over again until all of the monitors
3 were gone obtaining those at significantly reduced
4 prices. Unfortunately for him, though, Your Honor, he
5 always leaves a paper trail in all of his cases so we
6 always know exactly what he's doing. For some reason
7 with his intelligence he hasn't figured out how to
8 perpetrate these crimes without getting caught, so he
9 keeps getting caught. Maybe he doesn't care. We don't
10 know. What we know is that he is a habitual offender.

11 He's not going to stop, Your Honor. This is how he
12 makes his living. We have no evidence that he's ever
13 done it any other way. He couldn't even stop himself
14 when he was incarcerated in the Nevada State Prison.
15 As you heard the testimony, he was already planning
16 what he was going to do when he got out.

17 He's going to tell you, well, I've taken all of
18 these courses, I've reformed, I've gone into therapy,
19 I've gone into rehabilitation while I've been in jail,
20 I've seen the light. Well, that's what he said the
21 last time, Your Honor. And as far as we can see, he
22 hasn't seen the light. Even when he was in jail in
23 this case he was perpetrating crimes. Even when he
24 just got arrested and he knows he's going back to the
25 prison he's still perpetrating crimes.

1 And that brings up my final point, Your Honor. Not
2 only is he perpetrating these crimes and getting
3 himself into trouble, Your Honor, he's dragging his
4 kids into this. Travis Volpicelli was with him, his
5 son who was then 12 years old, during the 1998 cases.
6 He had his son go in and place a false UPC label on an
7 item and buy it, Your Honor. And then after he was
8 convicted in 1998 he has the audacity in his motion to
9 reconsider sentence to blame the entire incident on his
10 child, Travis. He filed a motion blaming the entire
11 incident after his conviction on his 12-year-old son,
12 Travis.

13 Then he gets out, who's he involving in his crimes
14 again, his son who is now reluctant to participate.
15 But as you heard, in the phone calls during the case--
16 I'm sorry, Your Honor. That was a different judge.
17 I'll withdraw that.

18 During the case we presented some taped evidence of
19 his phone call and you could hear on the tape, Your
20 Honor, Travis reluctant to participate in this, but
21 it's his dad calling him from the jail telling him what
22 to do. So reluctantly he went to the jail and ends up
23 getting busted. By the way, Your Honor, Travis did not
24 get-- he was charged but was not convicted in that
25 case, only the defendant was.

1 Then you heard and you saw in this case, Your
2 Honor, he doesn't have the guts to go sign up Ferrill
3 Volpicelli, this is my storage unit, he puts it in the
4 name of Ashley Schilling. And if you recall, the BXI
5 account that he was running the-- writing checks for
6 were from-- for the rent of the storage unit was also
7 in the name of Ashley Schilling. You also heard him
8 telling his daughter Chanel that basically commit
9 credit card fraud. So the remorseful father routine is
10 over, Your Honor. This defendant doesn't care about
11 his kids. All he cares about is perpetrating this
12 scam. And now it's over.

13 Your Honor, this defendant has been given more
14 chances than he deserves and he's failed at every turn
15 to cease his criminal acts. This community should no
16 longer be forced to tolerate the negative economic
17 impact that he generates everywhere he goes, nor should
18 the department be forced to supervise someone so
19 obviously unamenable to supervision. This defendant is
20 the definitive candidate for habitual offender status
21 and the accompanying penalties, Your Honor. Therefore,
22 the State requests a prison term of life with possibly
23 of parole after ten years on each of the felony counts
24 and the fines as recommended by the department, Your
25 Honor. Thank you.

1 THE COURT: So what you're recommending is life
2 with the possibility of parole at ten years?

3 MS. RIGGS: That's correct, Your Honor.

4 THE COURT: Consecutive on each charge?

5 MS. RIGGS: I'll submit that to the Court, Your
6 Honor.

7 THE COURT: Also, you know, I may have misspoken
8 when I said that Exhibits 1, 2 and 3 were already
9 admitted. Thinking this over further, I don't think I
10 actually said that.

11 And does the defense have any objection to the
12 admission of Exhibits 1, 2 and 3?

13 MR. VAN RY: No objection.

14 THE COURT: Well, I have had a chance to look at
15 these, and in each case Mr. Volpicelli was afforded
16 appropriate constitutional rights and the record here
17 does meet all constitutional requirements for use to
18 prove the prior conviction at this type of hearing. So
19 Exhibits 1, 2 and 3 are admitted.

20 (State's Exhibits 1, 2 and 3 were admitted.)

21 THE COURT: Mr. Van Ry.

22 MR. VAN RY: If I may, Your Honor. Thank you.
23 Your Honor, just to start out and inform the Court as
24 to my client's mental status, because that is really
25 important in this case. Clearly he has a checkered

1 history, clearly his past demonstrates a problem. But
2 he was court ordered to get an evaluation in early
3 2002, and it was a mental health evaluation, and he was
4 diagnosed as being clinically depressed and was given
5 psychotropic medications. He is currently taking
6 Prozac, is that correct?

7 THE DEFENDANT: Yes.

8 MR. VAN RY: And he tells me that his mind is clear
9 and he feels better than he's ever felt in his entire
10 life. In fact, it may have been that could he have
11 been diagnosed earlier that his treatment could have
12 prevented much, if not all, of his prior criminal
13 history. He's no longer in pain, he no longer feels
14 sick mentally and he's ready to move on.

15 Your Honor, my client has been in custody for a
16 significant period of time, since 2001, October 2001.
17 While in custody besides being evaluated and being
18 treated for his mental condition, he has been very
19 productive. And I've had copied by him and I've
20 already shown the State, Ms. Riggs has reviewed them,
21 letters of completion, numerous, there's probably seven
22 or eight, and then certificates of achievement. And I
23 would like to have those admitted for purposes of
24 sentencing, the letters as a bunch, as Exhibit 6, and
25 these certificates as Exhibit 7, if I might.

1 THE COURT: All right.

2 (Defendant's Exhibits 6 and 7 were marked.)

3 MR. VAN RY: Your Honor, of course, defense would
4 move for admission for purposes of sentencing of
5 Exhibits 6 and 7.

6 MS. RIGGS: No objection, Your Honor.

7 THE COURT: Exhibits 6 and 7 are admitted.

8 (State's Exhibits 6 and 7 were admitted.)

9 MR. VAN RY: Thank you.

10 And as you'll note, Your Honor, that they are
11 simply letters and certificates of achievement,
12 different classes, different courses, some life skills,
13 et cetera, that he has participated in. He's been a
14 model-- I shouldn't say model citizen, he's been okay
15 while he's been in custody. He hasn't gotten in any
16 trouble and he really has done and demonstrated some
17 significant propensity to change his life.

18 And that's what we're talking about here, Your
19 Honor. He is ready for some sort of semblance-- I
20 can't think of the right word, to meld back into
21 society. Granted there is some penalty to be paid for
22 what he has been convicted for, Your Honor, but there
23 needs to be a chance for him to enter society under
24 circumstances where he can fully deal with society.
25 And we know that the clinical depression is a problem

1 that is treatable and was not treated.

2 Your Honor, a couple of mitigating factors that
3 were not mentioned on the presentence report. And
4 these are some of the factual differences that I have.
5 Under aggravating it's indicated that he has failed in
6 terms of community supervision, which may be accurate,
7 but it's also fully accurate to state that he was
8 honorably discharged in 1985 and in 1993 for two
9 separate criminal convictions. So he was successful
10 under those conditions. And you'll note those are
11 indicated on page three of the presentence report.

12 Your Honor, it's significant in this case that the
13 testimony of an accomplice was involved. And I'm sure
14 this Court remembers Mr. Bowman's testimony.
15 Mr. Bowman is a person who fingers my client on almost
16 all of the underlying convictions and claims against
17 him, yet he received only 16 to 42 months and it's my
18 belief that he is now out of custody. I think that
19 needs to be taken into consideration in terms of
20 sentencing on this case. If the accomplice in this
21 case is given 16 to 42, I think that needs to be a
22 consideration for this Court.

23 Your Honor, my client is 48. He will be 49 in
24 December. And I understand that this cuts both ways,
25 meaning it may demonstrate some propensity over the

1 course of his life not to be able to stay out of
2 trouble, but I submit to this Court that he is now in a
3 position to stay out of trouble. With his defendant
4 being 48 years old, going to be 49 in December, he
5 understands and is capable to deal with life with his
6 family, with his ex-wife, et cetera. He really is in a
7 position to do that.

8 I don't think anyone here doubts my client's
9 intelligence. Again, that cuts both ways. But he is
10 an intelligent articulate person and I'm sure you'll
11 notice that when he gives his statement to the Court.
12 He is ready-- he really is ready to be back in society.

13 Now, the division in this case recommends 36 months
14 to 120 on the burglaries. And, you know, that to me is
15 excessive, because it's also added on there as
16 consecutive in the recommendation. 205.060, section
17 two, provides that a sentence can be 12 to 120. I
18 would ask the Court to take a look at that. One to ten
19 years is the possible range of sentence, not three to
20 ten.

21 Your Honor, let me speak to the habitual offender
22 first. Again, my client does have a storied history,
23 there's no disputing that. But never in any of this
24 has he really faced the real demon inside him of his
25 clinical depression. He has faced it. He has been

1 instructed, he is receiving therapy, and some of those
2 will indicate that in Exhibit 6 and Exhibit 7. So I
3 submit that he is not a candidate for habitual
4 offender, that this is a man that is ready to move on,
5 that is ready to change his life and now has the tools
6 to do that.

7 Prior to him being diagnosed and being treated it
8 was clearly difficult for him, but now he's in a
9 position to do so. So I would ask the Court not to
10 impose the habitual offender status. I don't believe
11 that that would be appropriate in this matter.

12 Now, as to the charges for which he was convicted
13 in this case and the charges for which I represented
14 Mr. Volpicelli at the jury trial, I would ask the Court
15 to impose not a minimum 36 months to 120 months, I
16 would ask the Court to impose a minimum one to ten
17 years which would be 12 months to 120. And I would ask
18 the Court to do this: I would ask the Court not to run
19 each and every one consecutive, I would ask the Court
20 to run Count II, III-- II, III, IV and V consecutive
21 which would be four and then allow VI, VII, VIII and IX
22 to run concurrent, therefore, being a minimum of four
23 to whatever the total is at the back end.

24 Let me speak as to the habitual offender one more
25 time. I don't believe it's appropriate to use each one

1 of these sentences-- excuse me, each one of these
2 convictions, meaning Count II, III, IV, V to impose a
3 ten to life, ten to life, ten to life, ten to life
4 consecutive. I don't think that's proper. I don't
5 think it's allowed under the statute. I think that
6 prior felonies have to be prior to any common scheme or
7 plan that is determined by the Court or whatever
8 happens.

9 So as to the habitual offender, I don't think you
10 can go 10, 10, 10, 10. And we would ask the Court to
11 go Count II through IV, 2, 3, 4, 5, one to ten and let
12 the rest of it run concurrent. And that would also
13 include the gross misdemeanor, Count I.

14 Now, as to credit for time served, we have a
15 dispute. October 17th to October 16th-- October 17th,
16 2001 to October 16th, 2002 my client was in custody.
17 Now, while he was in custody he had not formally been
18 revoked as to any parole sentence or any probation that
19 he was currently on, so I submit to this Court that he
20 is eligible for that 365 days credit. The revocation
21 of what he was ultimately revoked on occurred
22 October 16th. So I believe that he ought to be given
23 credit for the time before that. That's 365 days, Your
24 Honor.

25 And then, of course, he has the other case which he

1 has been sentenced on already which is 12 to 48. But
2 we would ask for you to give him credit for 366 days.

3 In summation, Your Honor, this is a client of mine
4 who is intelligent, he's articulate, who clearly has
5 used his intelligence to the detriment of society in
6 the past. But he is here, and you can hear when he
7 speaks to you, he is here ready, willing and able to
8 finally and fully to make amends to society and to
9 blend in with society in a positive, positive manner.
10 So we would ask Your Honor for no imposition of
11 habitual criminal status and a sentence as I've
12 indicated. Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Van Ry.

14 And then, Ms. Riggs, did you want any rebuttal
15 time?

16 MS. RIGGS: Your Honor, may I have the opportunity
17 to rebut after the defendant's statement?

18 MR. VAN RY: I would have no objection to that,
19 Your Honor.

20 THE COURT: Okay. Well, I'm going to go to
21 Ms. Lukl then. Ms. Lukl, would you like to say
22 anything?

23 MS. LUKL: Your Honor, nothing to add to the
24 report. We stand by our recommendation.

25 THE COURT: And do you dispute the issue as to the

1 credit for time served?

2 MS. LUKL: Your Honor, I would in the sense that if
3 he was revoked even a year later credit would have gone
4 towards the case that he was revoked on. And if he was
5 a Nevada parolee committing a new offense, even if this
6 is-- he was in custody also on this offense, he was in
7 custody being held on the hold for the parole case and
8 when they're revoked the credit, even if it was served
9 in Washoe County Jail, goes towards that revocation on
10 the parole case. That's why we gave no credit.

11 THE COURT: Mr. Volpicelli, would you like to say
12 anything?

13 THE DEFENDANT: Yes, Your Honor. Thank you, Your
14 Honor. I would like to first address the Court with
15 the fact that I once had a life. But for the last ten,
16 12 years of my life I've just been on a downward spiral
17 as evidenced by all of these court proceedings. I grew
18 up in southern California with a good family. My
19 brother is a doctor, my dad's a doctor. I didn't get
20 into any significant trouble as a child. I went to
21 UCLA and graduated with honors. I had aspirations of
22 becoming a doctor. But then along the way I changed
23 that and went into business. And when I graduated in
24 '78 through the early '90s I was a securities broker,
25 an insurance broker and a real estate broker. I did

1 okay. But I noticed that there was just something in
2 our family.

3 My sister has been on psychotropics and my brother
4 as well for the past 10 or 15 years. Apparently
5 there's some type of chemical imbalance in our family.
6 And it's manifested itself in various ways and my
7 dysfunction has just lead me here. And I'm not proud
8 of it. My sister is a bulimic. She would probably be
9 dead right now, but they intervened and put her on
10 Prozac for the last 10 or 15 years and it's probably
11 kept her alive. I believe that if I probably got
12 involved with something like that and owned up and
13 became accountable and open minded I probably wouldn't
14 be here today. There's no excuse for me to be here,
15 but I am.

16 The Court's probably aware of the fact that for the
17 last six years now I've been incarcerated. I made some
18 mistakes throughout my life and it seems like with my
19 mental condition things just got worse. And sometimes
20 just when you're on a toboggan downhill, it's difficult
21 to stop. My addictions, self-medicating myself or
22 doing whatever I had to do to get some type of
23 endorphins going has landed me here. And I'm not
24 saying it's right. But over the last six years,
25 outside of the three and a half months that I was on

1 parole, four of it was with the state and the fed and
2 then when I got out I relapsed again.

3 Impaired judgment, poor choices, drugs. And I got
4 arrested October 17th, 2001. Since then I've been in
5 custody. Where it's credited, on which sentence, that
6 sentence, it was custody. It's given me time to think.
7 But outside of the programing, the extensive
8 programming that the prosecution brought up as well as
9 my attorney, I think I finally came to grips with the
10 fact that I needed psychotherapy. And that's what I
11 became involved with for the last couple of years.

12 And the Prozac has really been remarkable. It's
13 too bad now, because I just look and my life, my
14 career, my family, everything is just gone down the
15 tubes. Again, I'm not proud of it.

16 But aside from the fact that I've been incarcerated
17 for the last two and a half years, I have another
18 situation I'm dealing with as well. You probably heard
19 about the federal imprisonment with the tax perjury.
20 Not everything was accurate what was portrayed, but at
21 this point it's probably moot. I'm facing a two-year
22 sanction on that as well because it was a concomitant
23 federal supervised violation with the state parole
24 violation. It's really complicated and convoluted.
25 And then I have two other cases beside this matter

1 today. I've already been sentenced on those, one to
2 four. But just last week I went to the parole board on
3 one of them and they told me that due to my situation
4 I'm going to be expiring those sentences, which means I
5 will be expiring everything henceforth due to the
6 points or whatever their policy is.

7 So that puts me independent of today's sanction two
8 and a half already since my arrest for these cases, two
9 years more. And, by the way, these all have to be
10 consecutive, two years with the feds, two years with
11 case 0147 and two years with 0148. So I'm looking at--
12 I'm looking at eight and a half years of my life now
13 without even what you're considering today. And, well,
14 I'm approaching the half century mark, 50 years, pretty
15 quick. And that puts me getting out at about 60, and
16 with a hellacious sanction by this Court today, puts me
17 coming out an old man with nothing, because the IRS
18 took everything. I'm not saying they didn't have a
19 right. My divorce took everything. And my
20 incompetence and ignorance took everything and
21 addictions took everything.

22 I'm not blaming-- I'm solely accountable, I'm just
23 saying there's a reason for everything in this world
24 and I don't have all the answers. I would just like to
25 see some light at the end of the tunnel. And so I'm

1 asking you today for a restorative-type sanction rather
2 than a retributive-type sanction, and since I'm already
3 looking at eight and a half over and above what you're
4 going to give me, that perhaps maybe we could run--
5 Even consolidating everything here with what P and P
6 recommends with a three to ten or, as my attorney
7 suggested, a four to ten, I'm still looking at 12, 13
8 years, coming out an old man. And I would like to at
9 least have something to look forward to.

10 And with that, I thank you for your time.

11 THE COURT: Ms. Riggs, anything else?

12 MS. RIGGS: Yes, Your Honor, just a couple of
13 comments regarding this defendant's spiral into
14 criminal activity. He implied to you that that didn't
15 start occurring until after he graduated from UCLA in
16 1978 and continued on into business at some point he
17 implies that criminal activity began. Actually his
18 criminal activity began in 1974 four years before he
19 graduated from UCLA with two counts of petty theft as
20 is reflected in the P and P report.

21 A couple other comments, Your Honor. Millions of
22 people in this country live with the disease of
23 depression and those people manage to get through each
24 day without stealing hundreds of thousands of dollars
25 worth of merchandise from their communities.

1 Also, he's telling you about his family history,
2 his brothers and sisters and their particular scourges.
3 Well, we haven't heard of any evidence of that, but
4 even if it's true, Your Honor, we also haven't heard of
5 any evidence of his brothers and sisters walking into
6 Target and walking out with thousands of dollars worth
7 of merchandise illegally obtained.

8 Mr. Van Ry referred to the demon inside Mr. Ferrill
9 Volpicelli. The demon inside Ferrill Volpicelli is
10 himself. He can't help himself. It's not because he
11 wasn't on Prozac, it's not because he wasn't diagnosed
12 with this mystery illness that he now claims, all these
13 things as I told you before that he was going to blame
14 his activity on. It's because he does not make the
15 right choices and apparently hasn't at least for the
16 past 17 years and as you can see further back than
17 that. Unfortunately, all of his poor choices that he
18 refers to all involve again walking into stores and
19 walking out with lots of merchandise illegally
20 obtained.

21 And regarding his assertion that should you impose
22 habitual offender status he's going to be walking out
23 of prison an old man with nothing, hasn't he been on
24 notice that that could happen to him? Wasn't he on
25 notice when he received 18 federal counts against him

1 that he could be in trouble with this particular
2 activity, when he went to federal prison which
3 apparently he enjoyed very much, when he went to state
4 prison, when he was arrested by the ROP team? Your
5 Honor, these are all excuses that he gives you now.
6 Now is the time to punish him. We ask that you impose
7 the sentence the State has recommend. Thank you.

8 THE COURT: Well, in reviewing Mr. Volpicelli's
9 record, I have to consider the nature of his prior
10 felony convictions. And the prior felony convictions,
11 in fact, are largely part of a theft scheme that
12 Mr. Volpicelli developed years ago and persisted in
13 stealing from stores over the course of a long time and
14 perhaps various methods. Apparently he starts this--
15 this activity started with getting duplicate copies of
16 credit card receipts and then using that method to
17 return property for full value that wasn't purchased
18 for the full value, progressed to the more
19 sophisticated crime of using false UPC labels on boxes
20 of merchandise. But that shows a long pattern of this
21 type of theft.

22 And not only is it theft, but it's a theft that was
23 actually used to support Mr. Volpicelli, so it's
24 different than you see in most cases. You don't see
25 that many people who actually earn a living from theft

1 or crime. Usually people have other employment, they,
2 you know, live their life generally supporting
3 themselves lawfully but then have a sideline perhaps of
4 criminal activity, but Mr. Volpicelli, in fact, is a
5 career criminal and that's how he has made a living for
6 years while not incarcerated.

7 And under all the evidence that I see here, I do in
8 fact find that Mr. Volpicelli is a habitual criminal.
9 In fact, you are the poster child for habitual
10 criminality in that every time you're released from
11 custody it seems like you're out making a full-time
12 living stealing. So there really isn't any doubt in my
13 mind that the statutory scheme for habitual criminality
14 applies to you, Mr. Volpicelli.

15 And with that, I will sentence you as a habitual
16 criminal. I think society needs to be protected from
17 this level of theft where you're actually making a full
18 good living from stealing. And also our law
19 enforcement authorities need to devote themselves to
20 other people than to constantly monitor you as you
21 pursue this scheme of theft to make a living.

22 What I intend to do here is to impose two terms of
23 life in prison with the possibility of parole in ten
24 years to run consecutive to one another and then the
25 others will run concurrent so that on this case it is

1 my intention that you would have to spend at least 20
2 years in prison before being eligible for parole. In
3 addition, this case will run consecutive to any other
4 sentence you may be serving. So it's going to be a
5 little more complicated to go through all this to make
6 that work with my sentencing scheme, but that is my
7 overall sentencing scheme here.

8 So, Mr. Volpicelli, you must pay a 25-dollar
9 administrative assessment fee, a 500-dollar attorney's
10 fee, a 150-dollar DNA testing fee and you must submit
11 to testing to determine genetic markers. You are
12 hereby ordered to pay restitution in the amount of
13 \$10,339.16. And that is the amount that was verified
14 in Exhibit 5.

15 As to Count I, conspiracy to commit crimes against
16 property, a gross misdemeanor, you're sentenced to 12
17 months in the Washoe County jail. And that sentence
18 will run concurrent with all other counts.

19 As to Count II, burglary, you're sentenced to a
20 term of life with the possibility of parole after a
21 minimum of ten years have been served.

22 As to Count III, burglary, you're sentenced to a
23 term of life with a possibility of parole in ten, when
24 ten years have been served. That will run concurrent
25 to Count II.

1 As to Count IV, burglary, you're sentenced to a
2 term of life with a minimum parole eligibility of ten
3 years. And again, that will be concurrent.

4 As to Count V, burglary, you're sentenced to a
5 maximum term of life with a minimum parole eligibility
6 of ten years. That will be concurrent.

7 Count VI, burglary, you're sentenced to a term of
8 life with a minimum parole eligibility of ten years.
9 And that will be concurrent.

10 As to Count VII, burglary, you're sentenced to a
11 term of life with a minimum parole eligibility of ten
12 years. That will be a concurrent sentence.

13 As to Count VIII, burglary, you're sentenced to a
14 term of life with a parole eligibility beginning after
15 ten years. And that will be concurrent.

16 As to Count IX, burglary, you're sentenced to a
17 term of life with a minimum parole eligibility of ten
18 years. That will be concurrent.

19 As to Count X, unlawful possession, making,
20 forgery, counterfeiting of inventory pricing labels,
21 you're sentenced to a term of life with a minimum
22 parole eligibility of ten years. And that will be
23 consecutive to the other counts.

24 So that again to articulate this, you have Count II
25 which is the basic sentence for burglary and then Count

1 X, the other charge, the inventory pricing label
2 charge, and that will be the other consecutive sentence
3 of life with possibility of parole at ten years. There
4 will be zero days credit for time served as your time
5 has been credited to a prior case.

6 And I would like to thank law enforcement
7 authorities for doggedly following Mr. Volpicelli and
8 protecting our community from just the worst type of
9 thief.

10 MR. VAN RY: Your Honor, I did have a couple of
11 issues I need to be brought up before the Court. As
12 you're aware, since there's a life sentence imposed,
13 ultimately this case will be kicked over to the Public
14 Defender's Office, and I'll handle that, but in the
15 meantime, there's a couple of issues as to property
16 that Mr. Volpicelli has. He has requested several
17 times that a typewriter that is in the possession of
18 City of Reno be returned specifically to him in the
19 Department of Corrections for his use. I don't think
20 there's anything improper with him having a typewriter.
21 I think it's allowed. And I would ask this Court to--
22 of course, after the State's opportunity to speak--

23 THE COURT: I'm not going to make any rulings with
24 regard to property of Mr. Volpicelli's that may be in
25 the custody of the Sheriff or the City of Reno. I

1 think the proper authorities to issue a release of such
2 property would either be the City Attorney's Office or
3 the District Attorney's Office, not this Court.

4 MR. VAN RY: Okay. Thank you, Your Honor.

5 MS. RIGGS: Thank you, Your Honor.

6 THE COURT: Court will be in recess.

7 (The proceedings were concluded.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

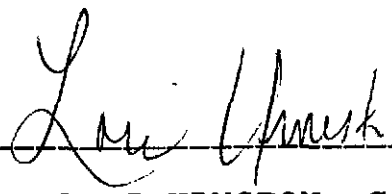
4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 10th day of
20 April, 2004.

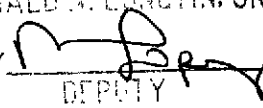
21
22
23 
24 _____
25 LORI URMSTON, CCR #51

ORIGINAL

FILED

2004 APR 19 PM 12:04

RONALD A. LONGTIN, JR.

BY  DEPUTY

4300
 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.

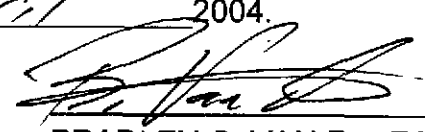
Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

NOTICE OF WITHDRAWAL OF ATTORNEY

The undersigned, being attorney of record for the Defendant Ferrill Joseph Volpicelli in the above-entitled action, and pursuant to Rule 46 of the Supreme Court of the State of Nevada, hereby withdraws as attorney of record effective as of this date.

DATED this 16th day of April, 2004.

 BRADLEY O. VAN RY, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 1403 East Fourth Street, Reno, Nevada 89512, and that on the date below, a true and correct copy of the foregoing, **NOTICE OF WITHDRAWAL OF ATTORNEY**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
PO Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 16th day of April, 2004.


KIM ROSLING

ORIGINAL

FILED

2505

2004 APR 22 PM 12:14

RONALD L. LEBSTIN, JR.

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiffs,

CASE NO. CR03-1263

vs.

DEPT. NO. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

NOTICE OF APPEAL

Notice is hereby given that FERRILL JOSEPH VOLPICELLI, Defendant above-named, hereby appeals to the Supreme Court of Nevada from the Judgment entered in this action on the 1st day of April, 2004.

DATED this 19th day of April, 2004.



FERRILL JOSEPH VOLPICELLI,

Inmate # 79365

Northern Nevada Correctional Center

P.O. Box 7000

Carson City, NV 89702

Defendant In Proper Person

CERTIFICATE OF SERVICE

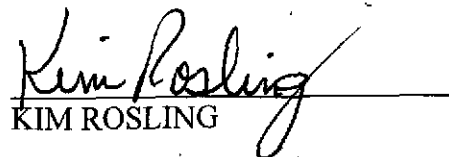
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 1403 East Fourth Street, Reno, Nevada 89512, and that on the date below, a true and correct copy of the foregoing, **NOTICE OF APPEAL**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Washoe County Public Defender's Office
350 South Center Street, 6th Floor
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 21st day of April, 2004.


KIM ROSLING

ORIGINAL

FILED

CODE 1310

2004 APR 22 PM 3:31

RONALD A. LORSTIN, JR.

BY

DEPUTY

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

FERRILL JOSEPH VOLPICELLI,

Appellant,

vs.

Case No. CR03-1263

Dept. No. 10

THE STATE OF NEVADA,
Respondent,

CASE APPEAL STATEMENT

1. Ferrill Joseph Volpicelli is the Appellant. He has filed a request for appointment of counsel.
2. The appeal is from the Order/Judgment filed on or about April 1, 2004 by the Hon. Steven P. Elliott.
3. The parties below in District Court consisted of The State of Nevada, the Plaintiff, and Ferrill Joseph Volpicelli, the Defendant, in District Court.
4. The parties herein in the Nevada Supreme Court consist of: Ferrill Joseph Volpicelli/Appellant and The State of Nevada/Respondent.
5. Counsel on Appeal for Appellant, consists of Ferrill Joseph Volpicelli/Pro Per Appellant, #79565, Northern Nevada Correctional Center, P. O. Box 7000, Carson City, NV 89702. Counsel on appeal for Respondent is Gary Hatlestad, Chief Appellant Deputy, Office of the District Attorney, P.O.Box 30083. Reno, NV 89520.

1 6. Appellant was represented by Bradley Van Ry, 1403 East Fourth Street, Reno,
2 NV 89512 in District Court.

3 7. Appellant is represented in Proper Person in this appeal.

4 8. N/A in this case.

5 9. The Indictment was filed on June 11, 2003.

6
7 Dated: April 22, 2004.

8 Ronald Longtin, Jr. Court Clerk

9
10
11 By: C. Kepler
12 Cathy Kepler, Appeals Clerk
13 (775) 328-3114
14
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ORIGINAL

FILED

CODE 1350

2004 APR 22 PM 3:31

RONALD A. LONGTIN, JR.

BY

DEPUTY

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

FERRILL JOSEPH VOLPICELLI,

Appellant,

vs.

Case No. CR03-1263

Dept. No. 10

THE STATE OF NEVADA,

Respondent,

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the Revised Rules of Appellant Procedure Rule D(1).

Dated: April 22, 2004

Ronald Longtin, Jr., Court Clerk

By:

Cathy Kepler, Appeals Clerk

(775) 328-3114

ORIGINAL

FILED

2004 APR 22 PM 3:31

RONALD A. LONGTIN, JR.

B.Y.

DEPUTY

1 CODE 1365
2
3

DC-990025141-082
CR03-1263 FERRILL JOSEPH VOLP 1 Page
STATE VS FERRILL JOSEPH VOLP 1 Page
District Court 04/22/2004 03:23 PM
1365
Washoe County
HNC

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

FERRILL JOSEPH VOLPICELLI,

Appellant,

vs.

Case No. CR03-1263

THE STATE OF NEVADA,
Respondent,

Dept. No. 10

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents
(certified copies), were delivered to the Second Judicial District Court mailroom
system for transmittal to the Nevada Supreme Court.

Dated: April 22, 2004

Ronald Longtin, Jr., Court Clerk

By: C. Kepler

Cathy Kepler, Appeals Clerk

(775) 328-3114

ORIGINAL

FILED

3870

2004 APR 22 PM 12:14

RONALD A. LONGMAN, JR.

BY  DEPUTY

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

STATE OF NEVADA,

Plaintiffs,

CASE NO. CR03-1263

vs.

DEPT. NO. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

REQUEST FOR APPOINTMENT OF COUNSEL

Defendant, having filed a Notice of Appeal from the Judgment of this Court entered on the 1st day of April, 2004, hereby requests that he be appointed counsel at the taxpayers' expense as he is financially unable to retain counsel to litigate this matter.

DATED this 19th day of April, 2004.
FERRILL JOSEPH VOLPICELLI,

Inmate # 79565

Northern Nevada Correctional Center

P.O. Box 7000

Carson City, NV 89702

Defendant In Proper Person

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Van Ry Law Office, 1403 East Fourth Street, Reno, Nevada 89512, and that on the date below, a true and correct copy of the foregoing, **REQUEST FOR APPOINTMENT OF COUNSEL**, was deposited for mailing with the United States Post Office, Regular First Class Mail at Reno, Nevada, in a sealed envelope, addressed to the following:

Tammy Riggs
Washoe County Deputy District Attorney
Criminal Division
75 Court Street
P.O. Box 30083
Reno, NV 89520

Washoe County Public Defender's Office
350 South Center Street, 6th Floor
P.O. Box 30083
Reno, NV 89520

Ferrill Joseph Volpicelli
Inmate #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 21st day of April, 2004.


KIM ROSLING

ORIGINAL

CODE: 2840

FILED

APR 27 2004

RONALD A. LONGTIN, JR. CLERK
By: *[Signature]*
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FERRILL VOLPICELLI,

Appellant,

CASE NO: CR03-01263

vs.

DEPT. NO.: 10

THE STATE OF NEVADA,

Respondent.

ORDER DENYING REQUEST FOR APPOINTMENT OF COUNSEL

The Court has read and considered Appellant's Request for Appointment of Counsel, filed April 22, 2004. Appellant makes his request for representation at taxpayers' expense on the basis that he is purportedly unable to obtain counsel through his own funds. Notably, the record is devoid of any proof of indigent status. The Court will require Appellant to establish his indigent status by demonstrating the funds in bank accounts to which he has access (i.e., his name is on the account), as well as his prison account.

NOW, THEREFORE, IT IS HEREBY ORDERED that Appellant's Request for Appointment of Counsel is DENIED.

DATED this 27 day of April, 2004.

[Signature]
STEVEN P. ELLIOTT
District Judge

CR03-1263
STATE VS. FERRILL VOLPICELLI
District Court
Washoe County
DC-9900025141-084
Pages
04/27/2004 08:26 AM
2840
10111

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 27 day of April, 2004, I deposited for mailing a copy of the foregoing document addressed to:

Ferrill Joseph Volpicelli, #79565
N.N.C.C.
P.O. Box 7000
Carson City, NV 89702

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

DATED this 27 day of April, 2004.



HEIDI HOWDEN
Administrative Assistant


MD 461461

ORIGINAL

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 43203
District Court Case No. CR031263

BY: 
DEPUTY CLERK
RONALD A. LONGTIN, JR.

2004 APR 29 AM 11:17

FILED

RECEIPT FOR DOCUMENTS

TO: Ferrill Joseph Volpicelli #79565
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Ronald A. Longtin Jr., District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/27/04 Filing Fee Waived: Criminal.
04/27/04 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.

DATE: April 27, 2004

Janette M. Bloom, Clerk of Court

By: 

Deputy Clerk

V3.461

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/5-11
462462

ORIGINAL

FERRILL VOLPICELLI
79565 NCCC
BOX 7000
CARSON CITY, NV 89702
DEFENDANT IN PRO PER

FILED

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

2004 MAY -7 PM 3:20
RONALD A. FOREMAN, JR.

STATE OF NEVADA,
Plaintiffs,

BY  DEPUTY

CASE # CR03-1263

VS

DEPT. # 10

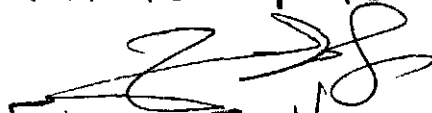
FERRILL T. VOLPICELLI,
DEFENDANT,

REQUEST FOR TRANSCRIPTS

DEFENDANT, HAVING FILED A NOTICE OF APPEAL FROM THE
JUDGMENT OF THIS COURT, ON OR ABOUT 19, APRIL, 2004,
HEREBY REQUESTS THAT HE BE SENT ALL COURT
TRANSCRIPTS OF TRIAL, AS WELL AS PRETRIAL AND POST-
TRIAL HEARINGS, AT THE TAXPAYER'S EXPENSE AS HE IS
FINANCIALLY UNABLE TO PAY FEES IN LITIGATING THIS MATTER.

DATED THIS 30 DAY OF APRIL, 2004 

CERTIFICATE OF SERVICE: DATED & COPY MAILED ON THIS
30 DAY OF APRIL, 2004, TO TAMMY RIGGS ESQ, WASHOE
COUNTY PUBLIC DEFENDER, AND THE NEVADA SUPREME COURT, AS
CERTIFIED BY PENALTY OF PERJURY PURSUANT TO NRCPS(b).


FERRILL T. VOLPICELLI
DEFENDANT PRO PER

ORIGINAL

CR03-1263

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

MAY 11 2004

No. 43203

FILED

FERRILL JOSEPH VOLPICELLI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

RONALD A. LONGTIN, JR., Clerk

By

Deputy Clerk

MAY 07 2004

JANETTE M. DUDON
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERKORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL

This is a proper person appeal from a judgment of conviction. We remand this appeal to the district court for the limited purpose of securing counsel for appellant.¹ The district court shall have 30 days from the date of this order to appoint counsel for appellant. Within 5 days from the date of appointment, the district court clerk shall transmit to the clerk of this court a copy of the district court's written or minute order appointing appellate counsel.

It is so ORDERED.

Shawing, C.J.

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

¹See Evitts v. Lucey, 469 U.S. 387 (1985).

CR03-1263
DC-99002517S-002
STATE VS FERRILL JOSEPH VOLP
District Court 05/11/2004 01 44 PM
Washoe County 4135
nor

ORIGINAL

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Case No.

CR03-1263

/ 43283

Dept. No.

10

FILED

2004 MAY 11 PM 2:56

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

FERRILL J. VOLPICELLI

Petitioner,

Vs.

STATE OF NEVADA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

COMES NOW, FERRILL J. VOLPICELLI Petitioner, and in his proper person, and files this Motion for Leave to Proceed in Forma Pauperis, without requiring Petitioner to pre-pay costs or provide security thereof, in the prosecution of the above-entitled action.

This Motion is based upon the provisions of NRS 12.015, and the attached Affidavit of Petitioner.

DATED this 19 day of April, 2004.

RESPECTFULLY SUBMITTED,


 PETITIONER, In Proper Person

///

V3.464

DC-9900025175-003
 STATE VS. FERRILL JOSEPH VOLP 1 Page
 District Court 05/11/2004 04:52 PM
 Washoe County 2385
 10467

ORIGINAL

FILED

2004 MAY 11 PM 2:56

RONALD A. JUSTIN JR.

BY [Signature]
DEPUTY

FERRILL VOLPICELLI

NCC # 79565

P.O. Box 7000

Carson City, Nv. 89702

Petitioner in Proper Person

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF WASHOEFERRILL VOLPICELLI

Petitioner,

Vs.

Case No. 60301263 / 43203STATE OF NEVADADept. No.: 10

Respondent

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, FERRILL VOLPICELLI, First being duly sworn, depose and say that I am Petitioner in the above-entitled case; that in support of my Motion to proceed without being required to prepay fees, costs or give security therefore; I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I am entitled to relief.

I do ☒ Do not ☐ request an attorney to be appointed for me. OTHER THAN THE WASHOE COUNTY PUBLIC DEFENDER DUE TO CONFLICT.
I further swear that the responses, which I have made to question, and instructions below are true.

1. Are you presently employed: Yes ☐ No ☒

A. If the answer is yes, state the amount of your salary of wages per month, and give name and address of your employer:

N/A

B. If the answer is no, state the date of last employment and the amount of salary and wages per month, which you received: \$1200/m 10/01

2. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or form of self-employment? Yes ___ No ☒
- b. Rent payments, interest or dividends? Yes ___ No ☒
- c. Pensions, annuities or life insurance payments? Yes ___ No ☒
- d. Gifts or inheritances? Yes ☒ No ___
- e. Any other sources? Yes ___ No ☒

If the answer to any of the above is "YES" describe each source of money and state the amount received from each during the past twelve months:

MY MOTHER SENDS ME APPROX \$50/m FOR ALERGONE, POSTAGE

3. Do you own cash or equivalent prison currency, or do you have money in a checking or savings account? Yes ☒ No ___

If the answer is "YES" state the total value of the items owned: \$69

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuables property (excluding ordinary household furnishing and clothing)? Yes ___ No ☒

If your answer is "YES: describe the property and state its approximate value:

N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support:

CITED SUPPORT RECEIVING AT \$100/m + MEDICAL INS

UNDER THE PENALTY OF PERJURY, Pursuant to NRS 208.165 the above affidavit is true and correct to the best of my personal knowledge.

DATED this 29 day of APRIL, 2004

Sign Your Name Here

FERRIE VOLPICELLI

Print Your Name Here

DOC#

V3.466

79565

NACC ✓

FINANCIAL CERTIFICATEI hereby certify that the Petitioner/Plaintiff, F. VOLPICELLI # 79565has the sum of \$ 38.23 on his account to his credit at the Northern Nevada
Correctional Center where he is confined.I further certify that the Petitioner/Plaintiff likewise has the following securities to his credit
according to the records of said institution: \$ 30.87Dated this 27th day of APRIL 2003

Rocky Acet Tech II
Custody of Records
Inmate Accounting Services
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, Nevada 89702-7000

RECD IN GEN. SEC. 04/23/03

RECD IN GEN. SEC. 04/23/03

ORIGINAL

FILED

2004 MAY 17 PM 4:36

RONALD A. LONGTIN, JR.

BY Rams
DEPUTY

1 CODE: 2405
 PATRICIA A. LYNCH
 2 Reno City Attorney
 KAREN S. FRALEY
 3 Deputy City Attorney
 P. O. Box 1900
 Reno, NV 89505
 (775) 334-2421
 Attorneys for City of Reno
 Reno Police Department

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

11 STATE OF NEVADA,)
)
 12 Plaintiff)
)
 13 vs.)
)
 14 FERRILL J. VOLPICELLI,)
)
 15 Defendant.)
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CP
 Case No. 03-1263
 Dept. No. 10

MOTION TO QUASH SUBPOENA DUCES TECUM

19 COMES NOW the City of Reno, by and through its attorneys, PATRICIA A. LYNCH,
 20 Reno City Attorney, and KAREN S. FRALEY, Deputy City Attorney, pursuant to N.R.S.
 21 174.335(2), and files this Motion to Quash Subpoena Duces Tecum served upon the Reno Police
 22 Department by Defendant Ferrill J. Volpicelli.
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CR03-1263
 STATE VS FERRILL JOSEPH VOLPICELLI
 District Court 05/17/2004 03:08 PM
 Washoe County
 2405
 lower

1 This Motion is supported by the Points and Authorities attached hereto.

2 DATED this 14th day of May, 2004.

3 PATRICIA A. LYNCH
4 Reno City Attorney

5 BY Karen S. Fraley
6 KAREN S. FRALEY

7 Deputy City Attorney
8 Nevada Bar No. 3825
9 P. O. Box 1900
10 Reno, NV 89505
11 (775) 334-2421
12 Attorneys for City of Reno
13 Reno Police Department
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POINTS AND AUTHORITIES**I. BRIEF STATEMENT OF FACTS**

On May 13, 2004, Counsel for the City of Reno Police Department received a Subpoena [Duces Tecum] in the mail from Defendant. The Subpoena's caption is State of Nevada v. Ferrill J. Volpicelli, Case No. 03-1263, Dept. 10 of the Second Judicial District Court of the State of Nevada in and for the County of Washoe. It reads as follows:

TO: Ms. Karen Swaney Fraley for the R.P.D.
You are commanded to provide within ten (10) days the defendant with copies of Count X's 15 or more UPC labels, R.O.P.'s complete surveillance notes for Defendant's activities on 10-17-01; and transcripts of statements between the investigators and co-defendant Brett A. Bowman at WCSO and R.P.D.

A copy of the Subpoena is attached hereto as Exhibit A.

Defendant was arrested by the Reno Police Department on October 17, 2001 and ultimately charged with eight counts of burglary, one count of conspiracy to commit crimes against property, and one count of unlawful possession making, forgery or counterfeiting of inventory pricing labels. Defendant was tried and convicted on November 14, 2003. On April 1, 2004, this Court designated Defendant a habitual criminal and sentenced him to nine life terms, seven to run concurrently and two to run consecutively. It is the City's understanding that there are no pending proceedings in the case.

II. DEFENDANT CANNOT SUBPOENA DOCUMENTS WHEN THERE IS NO PENDING CASE.

NRS 174.335 establishes the procedure through which a criminal defendant may subpoena objects and documentary evidence in advance of trial. The "court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence and may,

1 upon their production, permit the books, papers, documents or objects or portions thereof to be
2 inspected by the parties and their attorneys." NRS 174.335(3).[emphasis added].

3 The time for discovery or offering evidence in the case of the State v. Volpicelli has
4 passed. Defendant has been tried, convicted, and sentenced. There are no post-conviction
5 proceedings in the case. The Subpoena is therefore improper and an abuse of process.
6

7 The City respectfully requests the Court to quash the Subpoena.

8 **III. EVEN IF THE SUBPOENA WERE VALID, THE CITY WOULD SEEK A**
9 **PROTECTIVE ORDER**

10 Even if the subpoena wasn't barred by the absence of a pending case, the City would not
11 be able to respond as to one request and would seek a protective order for the other two requests.

12 The subpoena calls for copies of "Count X's 15 or more UPC labels." The City has been
13 advised that those UPC labels were entered into evidence at trial. Therefore, the City does not
14 possess them nor does it have any control over them.
15

16 As to the request for "transcripts of statements between the investigators and co-
17 defendant Brett A. Bowman at WCSO and R.P.D.", the tapes of all interviews in the case were
18 duplicated and turned over to defense counsel as part of the pre-trial discovery. It is again the
19 City's understanding that transcripts of all the interviews were not prepared. Defendant is free to
20 contact his attorney and obtain whatever he believes he needs from those tapes. The City has no
21 further obligation to either provide duplicates of the tapes or go to the expense of transcribing
22 them at this time simply because Defendant wants the City to do so.
23

24 Finally, as to the surveillance notes, the City would seek a protective order for what is
25 clearly investigative information under *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798
26 P.2d 144 (1990). While *Donrey* deals with a public records request, the balancing test it sets
27 forth is applicable in criminal cases as well. The interest of the requestor in receiving the
28

1 information is to be balanced against the interest of the governmental entity in keeping the
2 information confidential. In a criminal case, the requestor's interest has to be weighed in light of
3 the relevance the information has to the pending case. While the City has not reviewed a
4 transcript of the criminal case, it can state with certainty that Reno Police Department detectives
5 testified at trial. That testimony most certainly would have dealt with detectives' actions and
6 observations preceding Defendant's arrest. Defendant had full opportunity to cross-examine.
7 Indeed, if any existing investigative/surveillance notes had any relevance to the issue of
8 Defendant's guilt or innocence, this issue would have arisen pre-trial and been ruled upon at that
9 time.
10

11 Law enforcement surveillance records, to the extent that they exist, must remain
12 confidential. Otherwise, strategies and tactics used by detectives as they investigate crime and
13 conduct surveillance would be revealed to the public as a whole and the criminal population in
14 particular. The effectiveness of methods used to apprehend criminals would be seriously
15 impaired if the criminal population could anticipate what actions law enforcement officers would
16 take. Revelation of that information would also compromise officers' safety because those who
17 would do officers' harm would be able to evaluate methods and means of doing so based upon
18 knowledge of how the officers work.
19

20 The *Donrey* balancing test clearly favors keeping the surveillance records confidential.
21
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1 IV. CONCLUSION

2 The City respectfully requests the Court quash the subpoena.

3 DATED this 14th day of May, 2004.

4

5

PATRICIA A. LYNCH
Reno City Attorney

6

7

BY Karen S. Fraley
KAREN S. FRALEY

8

Deputy City Attorney

9

Nevada Bar #3825

10

P.O. Box 1900

11

Reno, NV 89505

12

(775) 334-2421

13

Attorneys for the City of Reno

14

Reno Police Department

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474474

CR03-1263 DC-9900025179-006
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 05/17/2004 03 08 PM
Washoe County 2405
FY 1 10MEP

EXHIBIT 1

V3.474

475475

FERRILL - VOUPICEM
DEFENDANT PRO SE
79565 NNEC
BOX 7000
CARSON CITY, NV
89702

CODE 4055

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

STATE OF NEVADA

Plaintiff,

vs.

FERRILL T. VOUPICEM

Defendant.

Case No. 03-1263

Dept. No. 10

SUBPOENA

TO: Mrs. Karen Swaney Friley FOR THE R.P.D.
(Name)

YOU ARE COMMANDED TO PROVIDE WITHIN TEN (10) DAYS THE DEFENDANT WITH COPIES
OF COURT'S 15 OR MORE UPC LABELS, R.O.P.'S COMPLETE SURVEILLANCE NOTES FOR
County, at the courtroom of said court, Department at Reno, Nevada, on the day of
DEFENDANT'S ACTIVITIES ON 10-17-01, AND TRANSCRIPTS OF STATEMENTS BETWEEN THE
INVESTIGATORS AND CO-DEFENDANT BRETT A. BOWMAN AT WASHOE AND TRIP.

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party
injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such
neglect or refusal.

Dated this 10th day of MAY, 2004.

RONALD A. LONGIN, JR., CLERK OF THE COURT

by [Signature]
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 10th day of MAY, 2004 and
personally served a copy of the same upon THE ABOVE NAME CITY ATTORNEY
MAILED

Subscribed and sworn to before me
this 10th day of MAY, 2004.

AS CERTIFIED UNDER PENALTY
Notary Public
OF PERTURE PURSUANT TO
NRS 208.165

[Signature]
Signature of Person Making Service

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

XX

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

Personal delivery.

Facsimile (FAX).

Federal Express or other overnight delivery.

Reno/Carson Messenger Service.

addressed as follows:

Tammy M. Riggs, Esq.
Deputy District Attorney
75 Court Street
P.O. Box 30083
Reno, NV 89520

Ferrill Volpicelli
Inmate ID #79565
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 14th day of May 2004.

Penelope H. Colter

Penelope H. Colter
An Employee of the Reno City Attorney

ORIGINAL

FILED

MAY 27 2004

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*
DEPUTY

✓ 1 3035

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3

CR03-1263 DC-9900025179-007
STATE VS FERRILL JOSEPH VOL 3 Pages
District Court 05/27/2004 09:20 AM
Washoe County 3035
NAME

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

FERRILL J. VOLPICELLI,

Petitioner,

Case No. CR03-1263

vs.

Dept. No. 10

THE STATE OF NEVADA,

Respondent.

ORDER TO PROCEED IN FORMA PAUPERIS

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

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

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

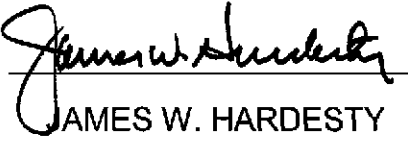
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//

1 within the state make personal service of any necessary writ, process, pleading or paper
2 without charge for FERRILL J. VOLPICELLI.

3 Dated this 26 day of May, 2004.

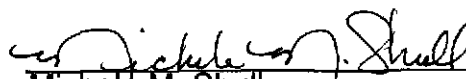
4
5
6 
7 JAMES W. HARDESTY
8 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 27th day of May, 2004, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Ferrill J. Volpicelli, #79565
N.N.C.C.
P. O. Box 7000
Carson City, NV 89702

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


Michele M. Shull
Administrative Assistant

480480

FERRILL T. VOLPICELLI
73565 HOSP

BOX 650
INDIAN SPRINGS, NV 89018
APPELLANT PRO PER

2004 JUN -1 PM 3:48

RONALD A. LONGTIN, JR.

BY C. Volpicelli
DEPUTY

IN THE SUPREME COURT
OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
APPELLANT,

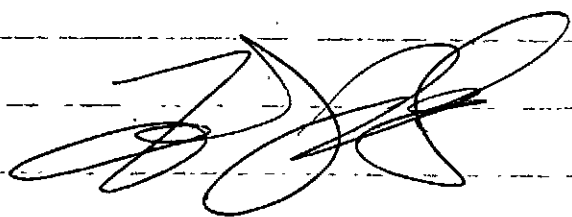
No. 43203
CR03-1263
D-10

NOTICE OF ADDRESS CHANGE

THE STATE OF NEVADA,
RESPONDENT,

NOTICE IS HEREBY GIVEN OF A CHANGE OF ADDRESS FOR
APPELLANT, FERRILL JOSEPH VOLPICELLI. HENCEFORTH,
ALL CORRESPONDENCE IS TO BE SENT TO c/o
H. D. S. P. BOX 650 INDIAN SPRINGS, NEVADA 89018

DATED THIS 29 DAY
OF MAY, 2004



FERRILL JOSEPH VOLPICELLI
APPELLANT PRO PER

CERTIFICATE OF MAILING:

DATED AND COPY MAILED
ON THIS 29 DAY OF MAY, 2004
TO DISTRICT COURT CLERK,
NEVADA ATTORNEY GENERAL AND
WASHOE COUNTY DISTRICT ATTORNEY
AS CERTIFIED UNDER PENALTY
OF PERJURY PURSUANT TO
NRS 208.165



FERRILL JOSEPH VOLPICELLI

V3480

481481

ORIGINAL

FERRILL J. VOLPIKELI
7065 HOSP

BOX 650

INDIAN SPRINGS, NV 89018
DEFENDANT PRO PER

FILED

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

2004 MAY 28 PM 2:02

RONALD A. [unclear]

BY [Signature]
Plaintiff,

CR 03-1263

Dear Sir

FERRILL J. VOLPIKELI
DEFENDANT,

NOTICE OF ADDRESS CHANGE

NOTICE IS HEREBY GIVEN OF A CHANGE OF ADDRESS FOR
DEFENDANT, FERRILL J. VOLPIKELI. HENCEFORTH, ALL
CORRESPONDENCE IS TO BE SENT TO C/O
H.D.S.P. BOX 650 INDIAN SPRINGS, NEVADA 89018

DATED THIS 24 DAY
OF MAY, 2004

[Signature]

CERTIFICATE OF MAILING

DATED AND COPY MAILED

ON THIS 24 DAY OF MAY, 2004
TO WASHOE COUNTY DISTRICT
ATTORNEY, WASHOE COUNTY PUBLIC
DEFENDER, BRAD VAN KYLE ESQ AS
CERTIFIED UNDER PENALTY OF
PERJURY PURSUANT TO NRS
208.165.

[Signature]

FERRILL J. VOLPIKELI
DEFENDANT PRO PER

FERRILL J. VOLPIKELI

DC-9900025179-009
CR03-1263 FERRILL VOLPI
STATE VS JOSEPH VOLPI
District Court 06/01/2004 10:40 AM
Washoe County
Nevada

ORIGINAL

CODE: 2715

FILED

JUN - 1 2004

RONALD A. LONGTIN, JR., CLERK
By: *H. H. H.*
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FERRILL JOSEPH VOLPICELLI,

Petitioner,

CASE NO: CR03-1263

vs.

DEPT. NO.: 10

STATE OF NEVADA,

Respondent.

ORDER APPOINTING COUNSEL

On May 7, 2004, the Nevada Supreme Court remanded to this Court the above entitled case for the limited purpose of appointing Appellant counsel for representation on his direct appeal. In accordance with said remand, this Court appoints Mary Lou Wilson, Esq., as Appellant's counsel for representation in relation to his direct appeal before the Nevada Supreme Court.

NOW, THEREFORE, IT IS HEREBY ORDERED that Mary Lou Wilson, Esq., is APPOINTED counsel for the above-entitled case before the Nevada Supreme Court.

DATED this 1 day of ^{June}~~May~~, 2004.

Steven P. Elliott
STEVEN P. ELLIOTT
District Judge

CR03-1263
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
06/01/2004 12:23 PM
2715
JRM

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 1 day of ^{June}~~May~~, 2004, I deposited for mailing a copy of the foregoing document addressed to:

Mary Lou Wilson, Esq.
333 Marsh Ave.
Reno, NV 89509

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

DATED this 1 day of ^{June}~~May~~, 2004.



HEIDI HOWDEN
Administrative Assistant

ORIGINAL

FILED

JUN - 1 2004

RONALD A. LONGTIN, JR., CLERK
By: *[Signature]*
DEPUTY

1 CODE
 2 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,

Case No. CR03-1263

v.

Dept. No. 10

FERRILL JOSEPH VOLPICELLI,

Defendant.

ORDER

Based on the totality of the circumstances presented in
 this case, the Court finds it proper to declare FERRILL JOSEPH
 VOLPICELLI a HABITUAL CRIMINAL pursuant to NRS 207.010.

DATED this 1 day of June, 2004.

[Signature]
 DISTRICT JUDGE

CR03-1263 FERRILL JOSEPH VOLPICELLI
 STATE VS FERRILL JOSEPH VOLPICELLI
 District Court 06/01/2004 04:52 PM
 Washoe County
 3370
 10MFC

ORIGINAL

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

FILED
 2004 JUN 14 AM 10:52
 RONALD A. LONGTIN, JR.

BY C. Keller
 DEPUTY

FERRILL JOSEPH VOLPICELLI,
 Appellant,
 vs.
 THE STATE OF NEVADA,
 Respondent.

Supreme Court No. 43203

District Court Case No. CR031263

NOTICE TO APPOINTED COUNSEL

TO: Mary Lou Wilson

This court has been notified by the clerk of the district court that you have been appointed as counsel or appellant in this matter. Pursuant to the Nevada Rules of Appellate Procedure, you are responsible for filing the following documents. The due dates commence to run from the date of this notice.

Locking Statement (NRAP 14) (form enclosed): 15 days

Request for Transcripts, or Certificate That Transcripts are Not Requested (NRAP 9): 15 days

Opening Brief and Appendix (NRAP 28, 28A, 30, 31 and 32): 120 days

Please submit the documents to the Clerk of the Supreme Court.

DATE: June 10, 2004

Janette M. Bloom, Clerk of Court

By: LC
 Deputy Clerk

cc: Attorney General Brian Sandoval/Carson City
 Washoe County District Attorney Richard A. Gammick
 Ronald A. Longtin Jr., District Court Clerk

CR03-1263 DC-9900025179-013
 STATE VS. FERRILL JOSEPH VOLPICELLI
 District Court 06/14/2004 10:52 AM
 Washoe County 12610
 Lower

FILED

JUN 14 PM 3:02

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND TO THE COUNTY OF WASHOESTATE OF NEVADA,
PLAINTIFFS,

CASE: CR03-0263

DEPT: 131

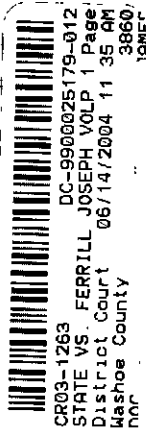
FERRILL T. VOLPICELLI,
DEFENDANT,REQUEST FOR SUBMISSION
AND ORDER FOR
TRANSCRIPTS.

DEFENDANT, HAVING FILED A MOTION FOR REQUEST FOR
TRANSCRIPTS, ON 7 MAY 2004, HEREBY MOVES THE
COURT FOR SUBMISSION OF SAID MOTION FOR THE
COURT'S REVIEW AND DETERMINATION.
WHEREFORE, DEFENDANT RESPECTFULLY REQUESTS
PROMPT RELIEF WITH AN ORDER GRANTING
DEFENDANT HIS RIGHT TO FURTHER HIS PAST
CONVICTION PROCEEDINGS WITH THE STATE PROVIDING
THE COURT'S TRANSCRIPTS TO DEFENDANT
WITHIN (FIFTEEN) DAYS.

SUBMITTED THIS 9TH
DAY OF JUNE, 2004

CERTIFICATE OF MAILING:
DATED AND COPY MAILED
ON THIS 9TH DAY OF JUNE,
2004, TO W.C.D.A. APPELLATE
OFFICE, AND THE NEVADA
SUPREME COURT AS CERTIFIED
UNDER PENALTY OF PERJURY
PURSUANT TO NRS 56.

FERRILL T. VOLPICELLI
DEFENDANT PRO PER
AND IN FORMA PAUPERIS



FERRILL VOLPICELLI
79565 HOSP
BOX 650

INDIAN SPRINGS, NV

FILED DEFENDANT PRO PER

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

2004 JUN 21 PM 2:33
RONALD A. LONGTIN, JR.
DEPUTY

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,
Plaintiff,

CASE: CR 03-263

Formerly (02-0145/02-0146)

DEPT: 9 (FORMERLY 9)

FERRILL T. VOLPICELLI,
Defendant

Request For Order To
Show Cause Regarding
Contempt of Court - AND
Order To Compel

DEFENDANT, FERRILL T. VOLPICELLI, IN PROPER
PERSON AND FOR PAID PAFFERS, MOVES THE COURT
TO ISSUE AN ORDER TO SHOW CAUSE WHY
BRUCE LINDSAY ESQ, DEFENDANT'S COUNSEL OF
RECORD AT ONE POINT IN THE LATTER PART OF
2001, SHOULD NOT BE HELD IN CONTEMPT OF
COURT FOR DELIBERATELY AND WILLFULLY VIOLATING
THE REQUEST IN A SUBPOENA, PURSUANT TO
NRS 34 AND 35, DATED 6 MAY, 2004.
A COPY OF THE RELEVANT PORTION OF THE
SUBPOENA DUCES TECUM IS ATTACHED AS
EXHIBIT 'A'. ACCORDING TO SAID SUBPOENA,
THE FOREGOING INDIVIDUAL, OR BUSINESS

1 WAS REQUIRED TO PROVIDE THE DEFENDANT,
2 WITHIN TEN (10) DAYS OF DATED SUBPOENA,
3 WITH A COPY OF THE CLIENT/ATTORNEY
4 CONTRACT EXECUTED IN LATE 2001 AT WASHOE
5 COUNTY SHERIFF'S OFFICE FOR REPRESENTATION,
6 THAT SAID CONTRACT FOR REPRESENTATION
7 WAS PRESENTED TO THE DEFENDANT BY BRUCE
8 LINDSAY ESQ, AT WCSO, WHEREBY DOCUMENTS
9 WERE ENDORSED BY DEFENDANT AND COUNSEL
10 TO WHICH DEFENDANT. NEVER RECEIVED HIS
11 COPIES.

12 THAT TO DATE, AND FIVE WEEKS SUBSEQUENT
13 TO THE MAILING OF SAID SUBPOENA, AS
14 CERTIFIED UNDER PENALTY OF PERJURY, BRUCE
15 LINDSAY ESQ HAS NOT RESPONDED. EXHIBIT B
16 SAID DOCUMENTATION IS CRITICAL FOR
17 DEFENDANT'S PURSUIT OF POST CONVICTION
18 RELIEF.

19 POINTS AND AUTHORITIES

20 NEVADA REVISED STATUTE 1.210(3) STATES
21 THAT THE COURT HAS THE POWER TO COMPEL
22 OBEDIENCE TO ITS ORDER AND NEVADA
23 REVISED STATUTE 22.010(3) PROVIDES THAT
24 "THE REFUSAL TO ABIDE BY A LAWFUL ORDER
25 ISSUED BY THE COURT IS CONTEMPT."
26

27 HUMANIT INC V EIGHTH JUDICIAL DISTRICT COURT
28

COUNTY OF CLARK, 110 NV 121, 867 P2d 1147

CONCLUSION
DEFENDANT, THEREFORE, RESPECTFULLY REQUESTS
THAT BRUCE LINDSAY ESQ BE ORDERED TO
APPEAR IN COURT TO SHOW WHY HE SHOULD
NOT BE HELD IN CONTEMPT OF COURT.

DATED THIS 16TH DAY OF JUNE, 2004

FERRIL T. VOLPICELLI
DEFENDANT PRO SE

AFFIDAVIT
DEFENDANT, FERRIL T. VOLPICELLI, HEREBY DECARES
UNDER PENALTY OF PERJURY THAT THE FACTS AND
ALLEGATIONS IN THIS PLEADING ARE TRUE AND
CORRECT TO THE BEST OF HIS KNOWLEDGE AND
BELIEF. (PURSUANT TO NRS 208.165)

CERTIFICATE OF MAILING
DATED AND COPY MAILED ON THIS 16TH DAY OF
JUNE, 2004, TO WCOA, AND BRUCE LINDSAY ESQ
AS CERTIFIED UNDER PENALTY OF PERJURY
PURSUANT TO NRS 208.165

FERRIE VOLPICELLI
79565 NVCC
BOX 7000
CARSON CITY, NV 89701
DEFENDANT & APPELLATE
IN PRS PER

CODE 4055

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

STATE OF NEVADA

Plaintiff,

vs.

FERRIE J. VOLPICELLI

Defendant.

Case No. 03-1263 FORMERLY
02-0145
Dept. No. 9 & 10 02-0146

SUBPOENA

To: BRUCE LINDSAY ESQ
(Name)

You are commanded to appear before the Second judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 9 at Reno, Nevada, on the 6 day of MAY, 2004, at 10:00 AM, to provide Defendant with a copy of the client/agency contract endorsed in late 2001 at WESO for representation.
Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 6th day of MAY, 2004.

RONALD A. LONGTIN JR., CLERK OF THE COURT

by

White
Deputy Clerk

STATE OF NEVADA
COUNTY OF WASHOE

I received the within Subpoena on the 6th day of MAY, 2004 and personally served a copy of the same upon BRUCE LINDSAY ESQ'S OFFICE

Subscribed and sworn to before me this 6th day of MAY, 2004.

Notary Public

AS CERTIFIED
UNDER PENALTY
OF PERJURY
PURSUANT TO NRS 204.165

[Signature]
Signature of Person Making Service

FERRIL VOLPICELLI
7565 HOSP
BOX 650

1 June, 2004

INDIAN SPRINGS, NV 89018

LAW
OFFICE

OF
BRUCE
LINDSAY

ESQ
565
CALIFORNIA

ALE
Reno
NEVADA
89509

RE: SUBPOENA Dices Tecum

Dear Mr. LINDSAY,

LAST MONTH I SENT YOU A SUBPOENA
Dices Tecum REQUESTING A COPY OF THE LEGAL
DOCUMENTS SPECIFICALLY THE RETAINER AGREEMENT
FOR YOUR REPRESENTATION IN CASE 2001.

TO DATE, I HAVE NOT RECEIVED THOSE DOCUMENTS
OR ANY ACKNOWLEDGMENT OF THEIR FORWARDING.
IN THE EVENT I DO NOT RECEIVE THE COPIES
WITHIN AN ADDITIONAL 10 DAYS FROM THE

DATE OF THIS LETTER, I WILL BE OVERWHELMINGLY
COMPELLED TO FILE A MOTION REQUESTING AN
ORDER TO SHOW CAUSE FOR CONTEMPT -

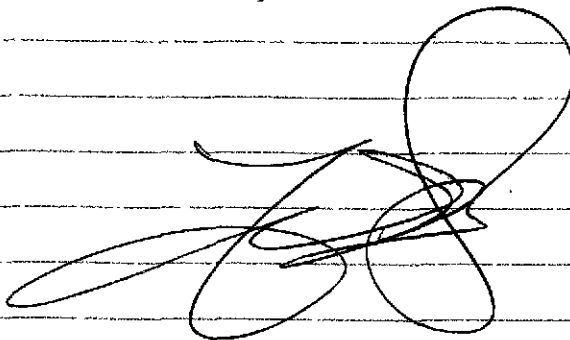
AND ORDER TO COMPEL

SO AS TO AVERT A PAPER STORM OF LEGAL
REGIMINANCE PLEASE ACCOMMODATE MY REQUEST
IN A TIMELY FASHION.

THANK YOU,

Sincerely

cc:file



B