

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

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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 4 OF 13

DOCUMENTS

APPELLANT

Ferrill J. Volpicelli #79565
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Lovelock, Nevada 89419

RESPONDENT

Washoe County District Attorney's
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Reno, Nevada 89502-3083

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ORIGINAL

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1 4185
2 EVELYN J. STUBBS, CCR #356
3 Peggy Hoogs & Associates
4 435 Marsh Avenue
5 Reno, Nevada 89509
6 (775) 327-4460
7 Court Reporter

FILED
2004 JUL -2 PM 3:09
RONALD E. LINGG, JR.
DEPUTY

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

9 --oOo--

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No. CR03-1263

12 vs.

Dept. No. 10

13 FERRILL JOSEPH VOLPICELLI,

14 Defendant.

15 -----
TRANSCRIPT OF PROCEEDINGS

16 [JURY TRIAL]

November 13, 2003 - November 14, 2003.

17 APPEARANCES:

For the State:

TAMMY RIGGS, ESQ.

Deputy District Attorney

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Reno, Nevada

20 For the Defendant:

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71 Washington Street

Reno, Nevada 89503

24 The Defendant:

FERRILL JOSEPH VOLPICELLI

25 Reported By:

EVELYN J. STUBBS, CCR #356

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DC-9900025179-031
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District Court 07/02/2004 11:49 AM
Washoe County
4185
TOMEC

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6	MICHAEL BROWN	51	56	58	
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2 RENO, NEVADA; THURSDAY, NOVEMBER 13, 2003; 11:17 A.M.

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5 THE COURT: Good morning. You may be seated.

6 First of all, will counsel stipulate to the
7 presence of all 13 jurors?

8 MS. RIGGS: The State will so stipulate, Your
9 Honor.

10 MR. VAN RY: The defense stipulates, Your
11 Honor.

12 THE COURT: Ladies and gentlemen of the jury, I
13 do apologize, the criminal docket went to 11:00, and it
14 just sometimes takes some time that I can't control, but
15 I do very much value your time, and I try to do this so
16 that you don't wait, but I'm very sorry about that.

17 So, Ms. Riggs, would you like to call your next
18 witness?

19 MS. RIGGS: Next, Your Honor, the State will
20 call Reno Police Detective Scott Armitage.

21 THE COURT: Sir, if you'll please step right up
22 to this area, Mr. Bartlett will administer the oath.

23 (Witness sworn.)

24 THE COURT: Please have a seat in the witness
25 chair.

1 SCOTT ARMITAGE,
2 called as a witness by the plaintiff herein,
3 being first duly sworn, was examined
4 and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. RIGGS:

8 Q Good morning.

9 A Good morning.

10 Q Would you please state your name and spell it
11 for the record?

12 A Scott Armitage, A-r-m-i-t-a-g-e.

13 Q Can you tell me what agency employs you,
14 please?

15 A The Reno Police Department.

16 Q What's your current assignment, please?

17 A I'm a detective.

18 Q What was your assignment in the fall of 2001?

19 A I was a detective assigned to an investigative
20 unit.

21 Q Sir, do you recall being on duty on September
22 4th of 2001, at approximately 11:30 a.m.?

23 A Yes.

24 Q And were you participating in an investigation?

25 A Yes, I was.

1 Q Did that investigation involve surveillance?

2 A Yes, it did.

3 Q And who was it that you were watching?

4 A I was watching the defendant, Volpicelli.

5 Q Would that be Ferrill Volpicelli?

6 A Yes, ma'am.

7 Q Do you recall where you saw him on that date
8 and time?

9 A Yes, I do, at the Northtowne Wal-Mart in Reno.

10 Q Is that in Washoe County?

11 A Yes, it is.

12 Q Can you tell me where you first saw him at the
13 Northtowne Wal-Mart?

14 A Outside the store just prior to him entering.

15 Q Just prior to what, sir?

16 A Just prior to him entering the store.

17 Q Did you follow him into the store?

18 A Yes, I did.

19 Q Did he go to any place in particular once
20 inside the store?

21 A Yes, he did. He went back to the sporting
22 goods section of the store.

23 Q Now, can you tell me how close you were
24 following him?

25 A I usually was 20 to 30 feet behind him as I

1 followed him.

2 Q So when he went to the sporting goods section,
3 did he stop at any particular spot in the sporting goods
4 section?

5 A He perused one area of the sporting goods
6 section and stopped at the aisle where the golf clubs and
7 accessories were.

8 Q Now, what did you do at this point?

9 A Since he stopped and became stationary, I
10 became a little closer. I was stopped near where the
11 bicycles were, which is adjacent to where the golf clubs
12 were and golf accessories were on the shelves, on a
13 series of shelves.

14 Q Do you recall how close you got to him?

15 A I was probably within ten feet at that point.

16 Q Would you recognize the person that you were
17 watching in the Northtowne Wal-Mart that day if you saw
18 him again?

19 A Yes, ma'am.

20 Q Is he in the courtroom today?

21 A Yes, ma'am.

22 Q Would you please point him out and briefly
23 describe what he's wearing?

24 A He's seated to my left wearing the white shirt
25 and black slacks and a tie.

1 MS. RIGGS: Your Honor, may the record reflect
2 that the witness has identified the defendant in this
3 case?

4 THE COURT: The record will reflect that the
5 witness has identified Mr. Volpicelli, the defendant.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q Now did the defendant appear to be looking at
9 anything in particular?

10 A Yes, he did.

11 Q What was he looking at?

12 A He was closely examining the labels at the end
13 of the steel shelves for the merchandise.

14 Q When you say the end of the steel shelves, are
15 you talking about there's a long line of shelves, say,
16 one facing me and one facing you and the end facing the
17 jury?

18 A Actually, it would be like a series of shelves
19 maybe a foot and a half to two feet wide that,
20 horizontally, where merchandise is put in. And on the
21 end face of that shelf were labels that describe the
22 merchandise, the price, bar code; pertinent information
23 like that.

24 Q Was he recording any of this information?

25 A He appeared to be doing so, yes.

1 Q How was he doing that?

2 A Small either note pad or piece of paper that
3 was about palm size, three by five or so, and he would
4 look, and then he would write down some information, and
5 look again, and continue to do so.

6 Q Were you able to get close enough to see
7 approximately what that was that he was writing?

8 A I was not, no.

9 Q How long did the defendant remain in the
10 sporting goods section?

11 A A couple minutes, two to three minutes, maybe.

12 Q Where did he go after that?

13 A He walked directly outside the store.

14 Q Did he purchase anything from the store?

15 A No, he did not.

16 Q Sir, were you also on duty on October 17, 2001,
17 at approximately 2:20 p.m.?

18 A Yes, I was.

19 Q Did you have the defendant under surveillance
20 at that time?

21 A Yes, I did.

22 Q Do you recall where the defendant was on that
23 day and time?

24 A Yes, this was at the Shopko at 5150 Mae Anne
25 Avenue.

1 Q Is that in Washoe County?

2 A Yes, it is.

3 Q Did you happen to see him first when you were
4 inside or outside the store?

5 A Outside the store, after.

6 Q He was outside the store?

7 A Yes, ma'am.

8 Q Did he ever go inside?

9 A Yes.

10 Q Did you follow him?

11 A Yes, I did.

12 Q Where did he go upon entering the store?

13 A He went into the store and went into the
14 bedding section immediately.

15 Q How close visual contact were you able to keep
16 with him?

17 A I was probably 30 or more feet away from him at
18 this time.

19 Q So you weren't able to determine exactly which
20 aisle he went down in the bedding section?

21 A Yes, he walked through the bedding section,
22 stopped at a particular aisle and stayed there for a
23 while looking at some of the products for sale there.

24 Q How long did he remain in this bedding section?

25 A A few minutes.

1 Q Did you happen to see what it was that he was
2 looking at?

3 A He was looking at comforters.

4 Q When he exited that section of the store did he
5 have anything with him?

6 A Yes.

7 Q What did he have with him?

8 A He was carrying a comforter in a clear plastic
9 manufacturer's bag with a carrying handle on top.

10 Q And what did he do with that comforter?

11 A He went directly to a register and bought it.

12 Q Did you happen to see how he paid for the item?

13 A He appeared to pay cash for it.

14 MS. RIGGS: May I approach the clerk for
15 marking of exhibits, Your Honor?

16 THE COURT: Yes, you may.

17 MS. RIGGS: Thank you.

18 (Whereupon State's Exhibits 44, 45, 46, were marked for
19 identification.)

20 BY MS. RIGGS:

21 Q After the defendant paid for the comforter and
22 exited the store, what did you do?

23 A I approached the clerk that handled the
24 transaction and identified myself.

25 Q Did you ask her any questions?

1 A I asked her specifically what he purchased and
2 how much it cost. She seemed a little confused or
3 otherwise unable to help me. She closed her register and
4 called for the manager.

5 Q And what did the manager do?

6 A The manager printed me a reprint of the
7 transaction that Volpicelli made.

8 Q I'm showing you what's been marked for
9 identification as State's Exhibit 44. Can you describe
10 what I've just handed you, please?

11 A This is a reprint from the register where the
12 actual transaction occurred for the purchase of that
13 comforter.

14 Q Do you recognize this as the item that was
15 printed out for you by the manager at Shopko that day?

16 A Yes, ma'am.

17 MS. RIGGS: State moves to admit Exhibit 44,
18 Your Honor.

19 THE COURT: Any objection?

20 MR. VAN RY: No objection. The defendant will
21 stipulate to 44, 45, and 46.

22 THE COURT: And then will you be asking for 44,
23 45, and 46 to be admitted?

24 MS. RIGGS: I will, Your Honor.

25 THE COURT: Pursuant to stipulation those three

1 exhibits are hereby admitted.

2 (Whereupon State's Exhibits 44, 45, 46, were admitted
3 into evidence.)

4 MS. RIGGS: Thank you, Your Honor.

5 BY MS. RIGGS:

6 Q Can you describe the information that is on
7 that document that I've handed you, please?

8 A Sure. There's a series of numbers, followed by
9 the word, "comforter," and to the right a column of the
10 prices. It says, "24.99, tax, cash, \$27 change and 20
11 cents." And it states the date of October 17, 2001, 2:25
12 p.m., and then another series of numbers below that.

13 Q And it's your understanding that that's what
14 the defendant paid for the comforter in the few minutes
15 before you got there?

16 A Correct.

17 Q Thank you. Detective, did you return to Shopko
18 at any time to investigate the series of events further?

19 A Yes, I did.

20 Q And when did you do that?

21 A I returned on October 18.

22 Q Tell me what you did once you got there?

23 A I met with the manager again and queried the
24 price of specific brands of comforters, and he printed me
25 a price checks on register receipts on two different

1 brands of comforters.

2 Q Now, what brands of comforters did you ask him
3 to --

4 A I had him check the Willow Bay comforters, as
5 well as Colorvision comforter.

6 Q Now why in particular did you ask him to check
7 the Willow Bay comforters?

8 A Because later in the day on October 17th, I had
9 come across two Willow Bay comforters in Volpicelli's
10 possession.

11 Q I'm showing you what's been marked for
12 identification and actually admitted as State's Exhibit
13 45. Can you tell what that is, sir?

14 A Sure this is the price check of a Willow Bay
15 comforter printed for me on October 18, at 2:08 p.m. It
16 shows -- it lists it as a classic down comforter with a
17 price of 49.99.

18 Q Now, the Willow Bay comforter that you had the
19 manager check, was that identical to one of the
20 comforters that you found?

21 A Yes, it was.

22 Q And finishing my sentence, identical to one of
23 the comforters found in the defendant's vehicle at the
24 time of his arrest, correct?

25 A Yes.

1 Q And what other kind of comforter did you have a
2 price check run on?

3 A A Colorvision brand comforter.

4 Q Why did you decide to have a Colorvision --

5 A The series of numbers that I presumed to match
6 the bar code for the Willow Bay comforter on the price
7 check did not match the series of numbers on the
8 reprinted transaction from the previous day. And that's
9 when the manager informed me that would be a Colorvision
10 brand comforter, a different brand.

11 Q So the manager had scanned -- or you tell me,
12 how did the manager find out --

13 A The manager actually scanned the actual product
14 from the bar code on the price that was actually put on
15 by Shopko.

16 Q Now as far as asking for a Colorvision
17 comforter, was the manager able to tell, from your
18 recollection after seeing Exhibit 44, that was a
19 Colorvision comforter?

20 A It was either by the -- I believe it was by the
21 description as the Willow Bay listed as classic down
22 comforter on the receipt. And the transaction on the
23 previous day just says the word, "comforter."

24 Q I'm now showing you Exhibit 46. Can you tell
25 me what that is please?

1 A It's a price check also printed on October 18,
2 2001, 2:11 p.m. of the Colorvision comforter listed as a
3 comforter with the same series of numbers as the previous
4 transaction on the 17th. It lists the price as 24.99.

5 Q So, the Willow Bay comforter cost how much?

6 A 24.99.

7 Q I'm sorry, the Willow Bay?

8 A The Willow Bay actually cost 49.99, and that
9 was actually a sale price.

10 Q And the comforter -- or the Colorvision
11 comforter cost how much?

12 A 24.99.

13 Q Detective, were you on duty later that day on
14 October 17, 2001, at approximately 5:20 p.m.?

15 A Yes, I was.

16 Q Where were you at that place in time?

17 A In the 9000 block of South Virginia Street at
18 the location of a traffic stop.

19 Q Do you recall who were the subjects of the
20 traffic stop?

21 A Yes, Ferrill Volpicelli and Brett Bowman.

22 Q Do you remember who was driving?

23 A Volpicelli was driving.

24 Q What sort of vehicle had he been driving, do
25 you recall?

1 A Gold Mazda MPV van with California plates.

2 Q So was the defendant arrested that day?

3 A Yes, he was.

4 Q So what happened -- when he was arrested, he
5 was taken somewhere, where was that?

6 A Eventually to the jail.

7 Q What happened with the Mazda MPV?

8 A It was impounded and inventoried.

9 Q Did you conduct that inventory?

10 A I did.

11 Q Sir, I'm showing you State's Exhibit 10. Can
12 you tell me what is depicted in that photograph, please?

13 A That's the gold Mazda MPV van that Volpicelli
14 was driving at the actual parking lot at the 9000 block
15 of South Virginia Street where the traffic stop was made.

16 Q Do you recognize that as the vehicle in which
17 you conducted the inventory?

18 A Yes.

19 Q Thank you.

20 MS. RIGGS: Your Honor, actually I'd like to
21 publish Exhibits 44, 45, and 46 to the jury please.

22 THE COURT: You may do so.

23 MS. RIGGS: Thank you.

24 BY MS. RIGGS:

25 Q Sir, can you tell me why you conducted an

1 inventory, on the items in the vehicle?

2 A Yes. It was being impounded, and the Reno
3 Police Department has a written policy that all vehicles
4 that are impounded, all items must be inventoried inside
5 of that vehicle.

6 Q Were any comforters discovered inside of the
7 MPV?

8 A Yes, two.

9 Q Do you recall what condition you found those
10 comforters in or what they looked like when you found
11 them?

12 A I know there were two Willow Bay comforters,
13 both were still in the clear plastic, the manufacturer's
14 bag that I believe zips with a carry handle on it and one
15 was further inside a Shopko shopping bag.

16 Q I'm showing you what's been marked State's
17 Exhibit 27, also admitted is Exhibit 27. Can you tell me
18 what that is?

19 A Yes. It's the two comforters I found in the
20 van.

21 Q And it's a photograph of the two comforters?

22 A Yes, it is.

23 Q Can you describe what you see in that
24 photograph in a little more detail, regarding the
25 comforters only?

1 A The comforter on the right is a tan comforter,
2 it's a Willow Bay in the clear plastic carry handle bag
3 from the manufacturer.

4 The comforter to the left is a green Willow Bay
5 comforter, also in the same manufacturer's clear plastic
6 bag with a carrying handle, that is further inside a
7 Shopko shopping bag.

8 Q And that fairly depicts the comforters when you
9 saw them during your vehicle inventory?

10 A After I removed them from the vehicle, yes.

11 Q Thank you.

12 MS. RIGGS: Your Honor, may I show Exhibit 27
13 to the jury?

14 THE COURT: Yes, you may.

15 MS. RIGGS: Thank you.

16 BY MS. RIGGS:

17 Q And you testified earlier that both of those
18 comforters were Willow Bay brand?

19 A Yes.

20 Q Sir, did you locate any receipts in the
21 vehicle?

22 A Yes, I did.

23 Q Can you tell me whereabouts in the vehicle you
24 located the receipts?

25 A On the floorboard of the passenger -- near the

1 passenger side of the car, I found a container with many
2 receipts in it.

3 Q Did you look for any receipts for the
4 comforters?

5 A Yes, I did.

6 Q Did you find one for the 2:25 p.m. transaction?

7 A I did not.

8 Q Did you find any --

9 A I found --

10 Q -- for comforters?

11 A Yes, I did.

12 Q And can you tell me what you found?

13 A I found a comforter from the Shopko at the 6000
14 block of South Virginia Street for the purchase of a
15 comforter earlier in the same day.

16 Q I'm showing you now Exhibit 28 or State's
17 Exhibit 28. Can you tell me what that is, please?

18 A Yes, it's a Shopko receipt for the purchase of
19 a comforter, listed as a comforter for 24.99, purchased
20 with cash, October 17, 2001, at 11:38 a.m.

21 Q And is that the receipt that you found in the
22 accordion folder?

23 A Yes, it is.

24 Q And I'm sorry, tell me what the price is on
25 that again?

1 A 24.99.

2 Q Thank you.

3 MS. RIGGS: Your Honor, may I show State's
4 Exhibit 28 to the jury?

5 THE COURT: Yes, you may.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q So, Detective, the price shown on that receipt,
9 State's 28, is the same as the price that was marked or
10 the manager obtained for the Colorvision comforter; is
11 that right?

12 A Yes, ma'am.

13 Q Did you do any further investigation, sir,
14 regarding the comforters?

15 A Specifically in reference to?

16 Q Did you return to figure out the approximate
17 location --

18 A Yes, I did.

19 Q -- of the store --

20 A When I returned to the --

21 Q I'm going to ask you to let me finish my
22 question first, for the court reporter, okay?

23 A I'm sorry.

24 Q The question I want to ask you is, did you
25 return to the store to locate where the Willow Bay

1 comforters were located relative to the Colorvision
2 comforters?

3 A Yes, I did. When I did the price check on
4 October 18, I also went and checked inside the store
5 where they were both placed for sale, and the Willow Bay
6 comforters occupied an entire section of the bedding
7 department, a series of horizontal shelves, top to
8 bottom, that was entirely the Willow Bay section.

9 The Colorvision comforters were in an aisle
10 perpendicular to that and separated from it, as well as I
11 learned that the Willow Bay comforters are sold in a
12 manufacturer's case with a carrying handling as the
13 Colorvision ones are not.

14 Q And you learned that by personal observation?

15 A Yes.

16 Q Sir, did you follow the defendant to any other
17 stores on October 17, 2001, that same day?

18 A Yes, I did.

19 Q What store did the defendant go to?

20 A The super Wal-Mart at 155 Del Monte Parkway.

21 Q Is that Washoe County?

22 A Yes, it is.

23 Q Do you remember approximately what time he
24 arrived at Wal-Mart?

25 A It was about 5:00.

1 Q How did he get there?

2 A He drove the gold Mazda MPV van.

3 Q Was he alone when he got there?

4 A No, he wasn't. He had a passenger.

5 Q Was the person in the vehicle with the
6 defendant eventually identified as Brett Bowman?

7 A Yes, he was.

8 Q Did either the defendant or Bowman go into the
9 Wal-Mart from your observation?

10 A Yes.

11 Q Who did you see go into Wal-Mart?

12 A I saw Volpicelli go into the store by himself
13 after parking.

14 Q You watched the defendant walk in, right?

15 A Yes.

16 Q Did Mr. Bowman accompany him into the store or
17 did the defendant go alone?

18 A He went alone.

19 Q He what did he do when he went in the doors?

20 A He went through the doors on the grocery half
21 of the store. He selected a basket, pushed it along the
22 front of the registers westbound through the store, and
23 then turned past the registers and continued west to the
24 toy section and stopped at the bicycle racks where the
25 bicycles are.

1 Q So on the way from the time he got this cart to
2 the time he reached the bicycle section, did he seem to
3 be browsing or did he seem to have a clear destination?

4 A Clear destination. He walked directly there.

5 Q You followed him, correct?

6 A Yes.

7 Q What kind of distance did you maintain between
8 yourself and the defendant?

9 A It's a fairly large store. It was fairly open.
10 I would say 30 to 40 feet, sometimes more than that.

11 Q Now, to your knowledge were you the only Reno
12 Police Detective watching him at this point?

13 A No. There was another detective that came into
14 the store as well.

15 Q Could you identify the other detective?

16 A Yes. Sparks Detective, Mike brown.

17 Q Were you and Detective Brown walking together
18 or separately?

19 A We were walking separately.

20 Q Why is that?

21 A Because of the distance we were keeping and so
22 we wouldn't appear together and/or too close or to make
23 it easier to follow him, we would walk in separate
24 locations and triangulate and try to keep a constant
25 visual contact on Volpicelli.

1 Q And based on your personal knowledge, were the
2 two of you able to keep constant visual contact with the
3 defendant while he was in the store?

4 MR. VAN RY: Objection. Calls for speculation.

5 MS. RIGGS: I'm only asking based on his own
6 personal knowledge.

7 THE COURT: I'll overrule the objection,
8 provided this isn't speculation as to what another
9 officer saw.

10 BY MS. RIGGS:

11 Q Before you answer that, Detective, I'll just
12 ask one more question. Did you have any mode of
13 communication with another detective while you were in
14 the store on this particular day?

15 A We did. At this time we were using cell
16 phones.

17 Q Okay. So you were able to keep in contact with
18 Detective Brown this entire time?

19 A And other detectives as well, yes.

20 Q So based on your personal knowledge did you or
21 were you and Detective Brown able to keep constant
22 surveillance on the defendant?

23 A Except for when he entered the restroom, yes.

24 Q Once he was in the toy section on that day, did
25 he appear to you to be looking at any item in particular?

1 A Yes.

2 Q What was he looking at?

3 A He stopped and specifically was looking at a
4 mountain bike in the two-tiered bicycle racks.

5 Q Which tier was the mountain bike located on, do
6 you recall?

7 A I don't -- I was further west from him towards
8 the pet section looking through the bicycles, and
9 Detective Brown was closer at an actually better angle.
10 All I can remember him specifically looking at -- again
11 the racks have price and other product information on the
12 signs on the end of the racks. And I remember him
13 looking specifically at that information.

14 Q Did he select a bike to purchase?

15 A He did not.

16 Q What did he do?

17 A He, after spending a couple of minutes in the
18 bicycle rack, he went north in the store to the
19 electronics section, entered the electronics section,
20 selected a cordless telephone in a box, put it in a
21 basket and then went east through the store in front of
22 the photo section and then turned south through one of
23 the main aisles towards the front of the store. And he
24 stopped about midway near the housewares section, and he
25 stopped there for less than a minute looking at items.

1 And then he pushed the basket up to the registers on the
2 west end of the store, stopped at the end of the aisle
3 where products were for sale at the registers, stopped
4 the basket there and abandoned the basket there and
5 walked through the check stand and into the men's
6 restroom.

7 Q And again, you didn't maintain visual contact,
8 no detective went into the restroom after him; is that
9 correct?

10 A That's correct.

11 Q But you maintained visual contact of the door?

12 A Yes, ma'am.

13 Q Did you watch him exit the restroom?

14 A Yes.

15 Q So did the defendant come back and make his
16 purchase of the telephone?

17 A Cordless phone, no. He came out of the
18 restroom and immediately exited the store.

19 Q He never returned to the basket?

20 A No.

21 Q Do you have any personal knowledge of whether
22 Brett Bowman came into the store shortly thereafter?

23 A Yes.

24 Q And do you know whether the defendant and Brett
25 Bowman were arrested shortly thereafter?

1 A Yes.

2 Q They were?

3 A Yes.

4 Q You testified earlier that you had inventoried
5 the contents of the Mazda MPV that they were arrested in,
6 correct?

7 A Yes.

8 Q Detective, I'm showing you State's Exhibit 5.
9 Would you tell me what's depicted in this photograph,
10 please?

11 A It's a photograph of an aluminum frame Mongoose
12 mountain bike that was inside of the van.

13 Q So that's the bicycle that was recovered from
14 the van inventoried, correct?

15 A Yes, ma'am.

16 Q And is that the bicycle that you saw the
17 defendant looking at that day?

18 A Yes.

19 Q Thank you. Sir, I'm showing you what's been
20 marked and admitted as State's 29. Do you recognize that
21 item, sir?

22 A Yes. It's a black corduroy case that I found
23 inside the Mazda van when I inventoried the Mazda van.

24 Q How is it that you recognize that?

25 A I recognize the sticker that was on the bag, as

1 well as the address label that is on the outside.

2 Q Can you tell me specifically where in the Mazda
3 MPV you found this item?

4 A It was on the passenger floorboard. I believe
5 the van had like captain's chairs and there was an open
6 space in the floor between the two. It was on the floor.
7 I believe it was behind the passenger front seat
8 captain's chair in front of the first bench seat in the
9 back.

10 Q Sir, I'm now showing you State's Exhibit 30.
11 What does that photograph depict, please?

12 A It shows the front passenger area of the Mazda
13 van. In between the front seats on the floor you can see
14 the top of this case with the Southwest Airlines sticker
15 on it, on the top.

16 Q Is that the place in the van where you found
17 the black zippered case that day?

18 A Yes, ma'am.

19 Q And again, the black zippered case, did you
20 open it?

21 A Yes, I did.

22 Q What did it contain?

23 A It contained a Brother brand electronic label
24 maker.

25 Q Thank you.

1 MS. RIGGS: Your Honor, may I show State's
2 Exhibits 29 and 30 to the jury, please?

3 THE COURT: Yes, you may.

4 BY MS. RIGGS:

5 Q Sir, you said earlier that you found some
6 receipts --

7 A Yes.

8 Q -- correct? What kind of container were they
9 in?

10 A A little, black, larger than an envelope size,
11 accordion folder.

12 Q Where did you find that accordion folder?

13 A This was also on the floor, the passenger floor
14 of the Mazda van.

15 Q Showing you State's Exhibit 31, what does that
16 photograph depict, please?

17 A On the front passenger area of the gold van,
18 right at the floorboard where the passenger's feet would
19 be, is a photograph where you can see the black accordion
20 folder with a Wal-Mart receipt next to it.

21 Q And does that photograph fairly and accurately
22 depict the location where you found the accordion folder
23 during your inventory search?

24 A Yes.

25 Q Thank you.

1 MS. RIGGS: Your Honor, may I show Exhibit 31
2 to the jury, please?

3 THE COURT: Yes, you may.

4 MS. RIGGS: Thank you.

5 BY MS. RIGGS:

6 Q Detective, I'm showing you State's Exhibit 12.
7 Do you recognize what that is, please?

8 A Yes. This is the accordion folder that I was
9 referring to.

10 Q And the accordion folder that's depicted in the
11 previous exhibit?

12 A Yes.

13 Q Thank you. Sir, I'm opening State's Exhibit 12
14 and showing you the front pocket of this exhibit. And
15 I'll hand it to you. Can you tell me what is contained
16 in the front pocket of State's Exhibit 12?

17 A Yes. There are bar code labels similar to what
18 were in the label making machine that I found in the car.
19 These are still new on the bike. The elastic
20 that you peel off of the stickers, as yet, unapplied.

21 Q So those have an adhesive backing, in other
22 words?

23 A Yes.

24 Q Did you happen to notice whether any of the
25 items that you inventoried in the vehicle have the same

1 type of labels attached?

2 A I believe the label maker had some inside the
3 container that it was in.

4 Q Do you recall if any of the comforters had one
5 of the those labels?

6 A I remember one of those three comforters had a
7 UPC label like this stuck on the outside of it and one of
8 them did not.

9 Q When you say, "like this," it was similar --

10 A Uh-huh, similar in style to this, yes.

11 Q Thank you, Detective.

12 Sir, I'm now showing you State's Exhibit 11.
13 Do you recognize that exhibit?

14 A Yes. This is a piece of paper I found on the
15 floor of the Mazda also. It's titled "Transpositions."
16 It has four columns titled from left to right, "store"
17 "item," "UPC number," and "price," with corresponding
18 stores listed by name, items listed by description,
19 series of numbers under UPC, and then the price listed in
20 dollars.

21 Q Does it appear to have handwritten entries on
22 it?

23 A On both sides, yes, adjacent to some of the
24 items.

25 Q Now I realize it's in a sheet protector, but is

1 that in substantially the same condition that you found
2 it when you found it?

3 A Other than the sheet protector, yes.

4 Q Where did you find it, specifically, inside the
5 vehicle?

6 A I believe it was on the floorboard also of the
7 van, folded.

8 Q Thank you, sir. Thank you, Detective, I have
9 no further questions.

10 THE COURT: Mr. Van Ry, do you have questions
11 for the witness?

12 MR. VAN RY: If I may approach the lectern,
13 Your Honor, not the bench. I apologize. Made the judge
14 nervous there for a minute. I'm sorry.

15

16 CROSS-EXAMINATION

17 BY MR. VAN RY:

18 Q Detective Armitage, can you work in reverse,
19 starting at the testimony that you gave last to where you
20 began?

21 You just testified about Exhibit 11, and it's
22 been admitted and marked as Exhibit 11, entitled
23 "Transposition sheet."

24 You indicated there were some handwritten
25 notations on the front or the back. Can you identify

1 whose handwriting that is?

2 A I can't.

3 Q And was this found on the passenger side of the
4 vehicle or the driver's side of the vehicle?

5 A I don't recall. I just remember it being on
6 the floorboard.

7 Q Could the passenger in that van have had access
8 to where you found it?

9 A Yes.

10 Q And based upon your observations of the van,
11 Mr. Volpicelli was driving the van, is that correct?

12 A Yes.

13 Q And who was his passenger?

14 A Brett Bowman.

15 THE COURT: And for everyone's information, I'm
16 thinking that we will continue until this witness has
17 concluded his testimony, and then we will break for a
18 one-hour lunch. Is that acceptable to everybody?

19 Please proceed.

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

21 BY MR. VAN RY:

22 Q You testified that Exhibit 12, the accordion
23 file, was found in the vehicle also, is that correct?

24 A Yes, sir.

25 Q It was found on the passenger side, is that

1 correct?

2 A Yes, sir.

3 Q During the course of your investigation and
4 your involvement therein, do you know whether there's
5 been any fingerprints identified on this exhibit?

6 A I don't know.

7 Q Do you know if there's been any DNA samples or
8 any way to identify who's possessed this in their
9 fingers?

10 A No.

11 Q So you can't conclusively say that this has
12 been in my client's possession?

13 A Correct.

14 MR. VAN RY: Excuse me, Your Honor. If I may
15 approach the jury to grab some exhibits.

16 THE COURT: Yes, you may.

17 MR. VAN RY: Exhibits 29 and 30.

18 BY MR. VAN RY:

19 Q Exhibit 29 is the case which you testified was
20 found in between the seats, is that correct?

21 A Yes, sir.

22 Q Would the passenger of that vehicle, i.e.
23 Mr. Bowman, have access to that?

24 A Yes, sir.

25 Q Of course the driver would also have access to

1 it if it's between the front seats?

2 A Yes, sir.

3 Q Are you aware of any fingerprints being found
4 on Exhibit 29?

5 A No, sir.

6 Q How about any DNA?

7 A No, sir.

8 Q Exhibit 9 appears to be the label maker which
9 was found inside Exhibit 29, is that correct?

10 A Correct.

11 Q Same question, access to that because it was in
12 Exhibit 29 would have been to the passenger also?

13 A Correct.

14 Q Fingerprints found on Exhibit 9?

15 A I don't believe so.

16 Q Any DNA?

17 A I don't think so.

18 Q We are working backwards in time. You were in
19 the store, you saw Mr. Volpicelli approach the bike rack
20 area, is that correct?

21 A Yes.

22 Q And you testified that you saw him do something
23 with the bikes, but can you conclusively say what he did
24 with those bikes?

25 A I saw him stop, closely examine the bike and

1 the -- I don't know if it's a sign, but the actual --

2 Q The pricing information and the label?

3 A Correct.

4 Q Did you actually see him, Volpicelli, place a
5 different UPC label on the tag of that bike?

6 A I did not.

7 Q So it's possible that between the time
8 Mr. Volpicelli left that area and Mr. Bowman came in and
9 approached that bike that Mr. Bowman placed that label on
10 there?

11 MS. RIGGS: Objection. Calls for speculation.

12 THE COURT: Well, we are limited to what this
13 witnesses knows. I'll sustain the objection.

14 BY MR. VAN RY:

15 Q Let me ask you in a better way. Since you did
16 not see Mr. Volpicelli place a label, another or
17 different label on that tag, is it possible for someone
18 else to have done it?

19 MS. RIGGS: Objection. Calls for speculation.

20 THE COURT: The objection is overruled.

21 THE WITNESS: Yes.

22 BY MR. VAN RY:

23 Q Okay. Let's go earlier that evening, or
24 afternoon would probably be a better characterization,
25 when you followed my client to the Shopko. You remember

1 your testimony involving a comforter, and you stated that
2 you went back on October 18 to do a price check, is that
3 correct?

4 A Yes, sir.

5 Q And you met with the attendant or clerk by the
6 name of Mr. Beasley?

7 A The manager or one of the assistant managers.
8 The assistant manager.

9 Q And when you met with Mr. Beasley, what did he
10 pull out from underneath the counter?

11 A I don't recall.

12 MR. VAN RY: If I may approach, Your Honor, and
13 show the witness what has not been marked, but a copy of
14 his police report to refresh his recollection, Your
15 Honor.

16 MS. RIGGS: Your Honor, it would be an
17 inappropriate method to refresh recollection.

18 MR. VAN RY: If I may approach, Your Honor.

19 THE COURT: You may approach.

20 MR. VAN RY: Thank you.

21 BY MR. VAN RY:

22 Q Officer, I'd like you to review this, just this
23 first paragraph and refresh your recollection.

24 MS. RIGGS: Again, Your Honor, not appropriate
25 method. I'll withdraw my objection at this time, but ask

1 him if a recollection is going to be recollected or
2 refreshed in the future in this case, it be done so in an
3 appropriate manner.

4 Thank you.

5 THE COURT: Let's proceed.

6 MS. RIGGS: Thank you.

7 MR. VAN RY: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MR. VAN RY:

10 Q After reviewing a copy of a report that I
11 believe you issued, does that refresh your recollection?

12 A Yes.

13 Q And what happened there?

14 A The manager, unbeknownst to me, on the 17th had
15 found a Colorvision comforter in the television section
16 of the store having been removed from the plastic case, a
17 black one, and had been put back in, instead of being
18 folded it was just shoved back in, and as well the UPC
19 tag was missing from that package.

20 Q And as well as the label?

21 A Correct.

22 Q And based upon your observations of
23 Mr. Volpicelli in the store that day, is it possible that
24 he was the one that did that?

25 MS. RIGGS: Objection, Your Honor. Calls for

1 speculation.

2 MR. VAN RY: Based upon his observation, Your
3 Honor.

4 MS. RIGGS: It isn't a proper question.

5 THE COURT: Well, I am --

6 MS. RIGGS: As opposed to, "Did you see him do
7 that?"

8 THE COURT: Well, I'm going to sustain this
9 objection as to the form of the question. I think it
10 would call for speculation, as it's opposed to the
11 witness.

12 BY MR. VAN RY:

13 Q Did you see Volpicelli take a Colorvision queen
14 size comforter out and remove it from --

15 A No, I did not.

16 Q Let me ask a better question. Did you see
17 Mr. Volpicelli remove a comforter from its manufacturer's
18 package and put it into another?

19 A I did not.

20 Q And let's finally get to the beginning of your
21 testimony where you testified about the Northtowne
22 Wal-Mart. And what day did you observe him in the
23 Northtowne Wal-Mart?

24 A September 4th.

25 Q That September 4th, you observed Mr. Volpicelli

1 go to the sporting goods section of the store, is that
2 correct?

3 A Yes.

4 Q And you followed him 20 to 30 feet behind?

5 A Yes, sir.

6 Q As you walked into the store and the defendant
7 was in the store, you testified that he stopped and
8 looked at golf clubs and accessories, correct?

9 A Correct.

10 Q And it appeared from your advantage point that
11 he was observing the label and the pricing information,
12 is that correct?

13 A Yes.

14 Q Observing pricing information isn't necessarily
15 a chargeable offense, is it?

16 MS. RIGGS: Objection. Calls for a legal
17 conclusion.

18 THE COURT: As I ruled yesterday, I will
19 overrule that objection. I'm not going to prevent
20 somebody from testifying as to a legal conclusion if it's
21 within their sphere of knowledge. And I would find that
22 this witness would know of these kinds of things.

23 THE WITNESS: Observing, no.

24 BY MR. VAN RY:

25 Q How about writing down pricing information?

1 A Potentially, probably a crime.

2 Q So you're saying if I walk in a Raley's, and I
3 write down price information for the milk and yogurt, and
4 I walk out of the store, that would be a chargeable
5 offense?

6 A Not necessarily the pricing information, maybe
7 the bar code information.

8 Q But you would need additional information?

9 A Correct.

10 Q But just by itself?

11 A Correct.

12 MR. VAN RY: No further questions, Your Honor.
13 Thank you.

14 THE COURT: Ms. Riggs, you may ask additional
15 questions.

16 MS. RIGGS: Thank you, Your Honor.

17

18 REDIRECT EXAMINATION

19 BY MS. RIGGS:

20 Q Detective, you had testified earlier that both
21 the transposition sheet and the accordion folder were
22 found on the floorboard of the passenger side, correct?

23 A Yes, ma'am.

24 Q Would that be within the reach of a person who
25 would be driving a Mazda MPV van?

1 A Yes, ma'am.

2 Q And do you know whether the defendant regularly
3 drove the Mazda MPV van?

4 A Yes.

5 Q Do you know whether Brett Bowman ever drove
6 that van?

7 A I never saw him drive it.

8 Q Also Detective, counsel just asked you whether
9 writing down information is a crime and you testified
10 "no," correct?

11 A Yes.

12 Q If you had information telling you that the
13 person writing that information intended to defraud the
14 store that he was in, would writing that information then
15 be a crime?

16 A Yes, ma'am.

17 Q Thank you.

18 MS. RIGGS: Nothing further, Your Honor.

19 THE COURT: Mr. Van Ry?

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

21 THE COURT: Detective Armitage, you may be
22 excused.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused.)

25 THE COURT: I'll advise the jury that you're

1 not to discuss this case among yourselves or with anyone
2 else. You are not to read, watch or listen to any media
3 account of this proceeding. And do not to form or
4 express any opinion on any subject connected with this
5 trial until the matter is submitted to you for your
6 deliberations.

7 And we will be in recess until 1:15.

8 (Lunch recess taken.)

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1 RENO, NEVADA; TUESDAY, NOVEMBER 13, 2004; 1:15 P.M.

2 AFTERNOON SESSION

3 --o0o--

5 THE COURT: You may be seated.

6 Ms. Riggs, you may call your next witness.

7 MS. RIGGS: Your Honor, the State will call
8 Larry Lodge.

9 THE COURT: Sir, if you will please step right
10 up into this area, Mr. Bartlett will administer the oath.

11 (Witness sworn.)

12 THE COURT: Please have a seat in the witness
13 chair.

15 LARRY LODGE,
16 called as a witness by the plaintiff herein,
17 being first duly sworn, was examined
18 and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. RIGGS:

22 Q Would you please state your name and spell it
23 for the record, please.

24 A Yes. My name is Larry, L-A-R-R-Y, Lodge,
25 L-O-D-G-E.

1 Q And what agency employs you?

2 A Washoe County Sheriff's Office.

3 Q What's your current assignment, please?

4 A I'm currently assigned to the patrol division.

5 Q What was your assignment in the fall of 2000 --
6 pardon me, the fall of 2001?

7 A I was assigned to the detective division.

8 Q Were you part of an investigative team at that
9 time?

10 A Yes, I was.

11 Q Do you recall being involved in the
12 investigation of someone named Ferrill Joseph Volpicelli
13 in September of 2001?

14 A Yes, ma'am.

15 Q Do you recall being on duty on September 11,
16 2001, at a approximately 12:00 p.m.?

17 A Yes, I do.

18 Q Were you participating in an investigation on
19 that date?

20 A Yes.

21 Q Did that investigation involve conducting
22 surveillance?

23 A Yes.

24 Q And who were you watching?

25 A The defendant.

1 Q Do you recall where you saw him on that date
2 and time?

3 A That would have been at the Home Depot on
4 Summit Ridge Drive in Reno.

5 Q Is that in Washoe County?

6 A Yes, it is.

7 Q Where was he when you first saw him at the Home
8 Depot?

9 A The first place I observed the defendant was at
10 the rear of his vehicle parked in the parking lot.

11 Q Did he ever go into the store?

12 A Yes, he did.

13 Q Did you follow him?

14 A Yes.

15 Q What did he do once he was in the store?

16 A He made a return. He went to the return
17 department first. He had some type of a -- I believe it
18 was a yellow tool casing or tool box that he returned,
19 and after that he went into the main area of the store.

20 Q Did you follow him?

21 A Yes, I did.

22 Q Did you keep constant visual contact with him
23 while he was walking around the store?

24 A No, I did not. There were points in time -- I
25 was in there with other detectives from the unit, and at

1 some point in time I would lose visual contact but one of
2 the other detectives would attempt to make or keep visual
3 contact on him.

4 Q Did there come a time while you were
5 surveilling him that you got extremely close to him?

6 A Yes, there was. I actually walked down the
7 same aisle and walked directly behind him.

8 Q Did you mean to do this?

9 A No, I accidentally made a turn into an aisle and
10 did not know his location in the store at that time. And
11 as I made the corner, he was right there in the aisle.

12 Q So what did you elect to do at that point?

13 A At that time it seemed to be more natural for
14 me to be walking through the store than abruptly stop and
15 turn around and leave. So I just continued to walk down
16 the aisle past the defendant.

17 Q When you walked past the defendant, did you
18 happen to notice what he was doing?

19 A Yes, I did.

20 Q What was he doing at the time that you saw him?

21 A As I approached and -- he was about mid point
22 down the aisle, and as I approached I could see that he
23 had a note pad of some type and he was writing on the
24 pad. He was looking at items on the shelf and he was
25 writing something on the pad.

1 So I attempted, without attempting to be too
2 obvious, I did look and see that he was writing some type
3 of number configuration on the pad.

4 I couldn't tell you what the numbers were, I
5 just noticed that there was a line of some type of
6 numbers on the pad.

7 Q After walking past the defendant and noticing
8 that he was writing down numbers, what did you do after
9 that?

10 A We continued surveillance, not as close as
11 walking past him, but paralleling the different aisles
12 where you could look through some of the aisles and see
13 where he would be in the approximation of the store and
14 continued to surveil him until he left.

15 Q So he was walking around the store?

16 A Yes.

17 Q What was he doing while he was walking around
18 the store?

19 A Basically the same. He would go to a set of
20 items, he would stop. He would look at the items. You
21 could see that he was making some type of notation on his
22 note pad and continuing on.

23 Q Did he eventually purchase something at Home
24 Depot that day?

25 A Not to my knowledge, no.

1 Q And did you watch him walk out of the store?

2 A I don't recall if I actually watched him walk
3 out of the store, but I do know that he did at some point
4 leave the store.

5 Q And did you see him outside after he left the
6 store?

7 A Yes, I did.

8 Q Did he have any kind of a bag with him, a
9 merchandise bag?

10 A Not that I saw, no.

11 Q And obviously you had a good look at the person
12 you were watching, right, being in that close proximity?

13 A Oh, yes.

14 Q Would you recognize him if you saw him?

15 A Yes.

16 Q Is he seated here in the courtroom today?

17 A Yes, he is.

18 Q Would you please point him out and describe
19 what he's wearing?

20 A He's the gentleman sitting at the -- my left of
21 the defendant table. He's wearing a white shirt, dark
22 slacks with a multi-color tie.

23 MS. RIGGS: Your Honor, may the record reflect
24 that the witness has identified the defendant in this
25 case?

1 THE COURT: The record will reflect that the
2 witness has identified Mr. Volpicelli.

3 MS. RIGGS: Thank you, Your Honor.

4 Thank you, Detective Lodge, no more questions.

5 THE COURT: Mr. Van Ry, you may ask questions
6 of the witness.

7 MR. VAN RY: Thank you, Your Honor. If I may
8 approach the lectern.

9

10 CROSS-EXAMINATION

11 BY MR. VAN RY:

12 Q Officer, detective; which do you prefer?

13 A Officer is fine.

14 Q Officer Lodge, sounds to me like you surveilled
15 my client and watched him walk into a store and walk out
16 without doing anything that would have been criminal, is
17 that correct?

18 A At the time, sir, it didn't appear to be
19 criminal, no.

20 Q Okay.

21 MR. VAN RY: Nothing further, Your Honor.

22 Thank you.

23 THE COURT: Anything else?

24 MS. RIGGS: Not for the State, thank you, Your
25 Honor.

1 THE COURT: Officer Lodge, you may be excused.

2 THE WITNESS: Thank you, sir.

3 (Witness excused.)

4 MS. RIGGS: Your Honor, the State's next
5 witness is Reno Police Department or pardon me, Sparks
6 Police Detective Mike brown.

7 THE COURT: Mike Brown.

8 MS. RIGGS: Yes.

9 THE COURT: Sir, if you'll please step right
10 over in this area, Mr. Bartlett will administer the oath.

11 (Witness sworn.)

12 THE COURT: Please have a seat in the witness
13 chair.

14 MICHAEL BROWN,
15 called as a witness by the plaintiff herein,
16 being first duly sworn, was examined
17 and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MS. RIGGS:

21 Q Sir, would you please state your full name and
22 spell it for the record.

23 A Michael Brown. Last name is spelled B-R-O-W-N.

24 Q And can you tell me which agency employs you,
25 please?

1 A Sparks Police Department.

2 Q What is your current assignment, sir?

3 A Detective.

4 Q And what was your assignment as of the fall of

5 2001?

6 A I also was a detective.

7 Q Were you working on an investigatory team at

8 that time?

9 A Yes, I was.

10 Q Do you recall being involved in an

11 investigation of Ferrill Joseph Volpicelli in September

12 of 2001?

13 A Yes, I do.

14 Q Sir, do you recall being on duty on September

15 28, 2001, at approximately 12:00 p.m.?

16 A No.

17 Q Do you recall -- do you recall observing the

18 defendant in Wal-Mart on Kietzke Lane sometime in

19 December of 2001?

20 A Yes, if that's the day you're talking about, I

21 started that day off duty and saw Mr. Volpicelli during

22 some off-duty activities and put myself on duty.

23 Q So you observed him where when you were off

24 duty?

25 A At Home Depot at Northtowne Lane in Reno.

1 Q And you just happened to bump into him?

2 A Yeah. I was there returning some things, and I
3 saw him there and knew from our investigation that we
4 needed to follow him when we saw him. So I called
5 Detective Reed Thomas, advised him of that, and called
6 Sergeant Della and put myself on duty.

7 Q So at this time you're at Home Depot and put
8 yourself on duty and started doing surveillance, correct?

9 A Yes.

10 Q Did you follow him somewhere after he left the
11 Home Depot?

12 A Yes.

13 Q And where did you follow him?

14 A Ultimately in the Wal-Mart on Kietzke Lane.

15 Q Is that in Washoe County?

16 A Yes.

17 Q Did he go into the store?

18 A Yes, he did.

19 Q Did you follow him?

20 A Yes, I did.

21 Q And how close did you follow him, if you can
22 approximate?

23 A Anywhere from 10, 15 feet to 10 to 15 yards.

24 Q What did he do, sir, once he went into the
25 Wal-Mart on Kietzke Lane?

1 A I followed him back to the area where they sell
2 car stereos and alarms.

3 Q What did he do once he got to the car stereo
4 section?

5 A He pulled out a pad of paper and was looking at
6 some of the items on the shelves back there and was
7 writing some things down.

8 Q Did you get close enough to note what he was
9 writing down?

10 A No, I did not.

11 Q How long did you observe him in the car stereo
12 section?

13 A Five, ten minutes.

14 Q So did he stay in the car stereo section for
15 just five minutes or did you leave after watching him for
16 five minutes?

17 A I left after that amount of time.

18 Q But you kept surveillance on him?

19 A Yes.

20 Q What did he do once he left the store or pardon
21 me, did he leave the store?

22 A I think we broke surveillance before he left
23 the store.

24 Q After he left the car stereo section, then what
25 did he do?

1 A I don't recall.

2 Q Do you recall whether he eventually purchased
3 something?

4 A No.

5 Q You don't recall that?

6 A No.

7 Q I'm sorry. I guess I'm missing the answer to
8 your question. You don't recall or he did not purchase
9 anything?

10 A I don't recall whether he purchased anything or
11 not.

12 MS. RIGGS: Thank you. May I have the Court's
13 indulgence for just a moment, Your Honor?

14 THE COURT: All right.

15 BY MS. RIGGS:

16 Q So picking up from the point where he left or
17 you break your surveillance of him, you got close enough
18 to see him to get a good look at him, right?

19 A Oh, yeah.

20 Q Would you recognize him if you saw him again?

21 A Yes.

22 Q Is he seated in the courtroom?

23 A Yes, he is.

24 Q Would you point him out for the jury and please
25 describe briefly what he's wearing?

1 A He's the dark-haired gentleman seated at the
2 defendant's table wearing the white shirt and the
3 multi-colored tie.

4 MS. RIGGS: Your Honor, may the record reflect
5 the witness has identified the defendant?

6 THE COURT: Yes, the record will reflect that
7 the witness has identified Mr. Volpicelli.

8 MS. RIGGS: Thank you, Your Honor. The State
9 has no further questions.

10 THE COURT: Mr. Van Ry, you may ask questions
11 of the witness.

12 MR. VAN RY: Thank you. May I approach the
13 lectern?

14 THE COURT: You don't have to ask me to do
15 that. That's fine.

16 MR. VAN RY: Okay.

17

18 CROSS-EXAMINATION

19 BY MR. VAN RY:

20 Q Officer, Detective; what do you prefer?

21 A Either.

22 Q Either. Mr. ?

23 A Detective's fine.

24 Q Detective Brown, I just have a few quick and
25 questions for you.

1 When you observed Mr. Volpicelli, which I
2 thought you said was up to about five minutes inside the
3 store, is that correct?

4 A Five to ten minutes.

5 Q Okay. So it wasn't very long?

6 A No.

7 Q When you saw him inside the store, did you
8 observe him do anything that you would consider
9 inconsistent with someone who was a regular customer
10 inside of the store?

11 A Looking at things on the shelves and writing
12 down whatever he was writing down was not something that
13 I considered normal.

14 Q So you would say someone who went in to
15 comparison shop to write down prices would be
16 inconsistent with a regular customer?

17 A It's not something I usually see people do.

18 Q Little bit different question, same thing.
19 Based on your observations, was there enough to charge
20 him with a crime?

21 A No.

22 Q And during the time of this surveillance you
23 didn't see him purchase anything, did you?

24 A Not that I can recall.

25 Q Okay. And I know that was repeated, kind of my

1 fault there. A question you already answered.

2 You did not see my client adhere or affix any
3 UPC labels to any labels on merchandise in that store,
4 did you?

5 A In the store on Kietzke?

6 Q The store you were just testifying about, the
7 Home Depot.

8 A No.

9 Q Okay. And you did not observe my client
10 actually carrying the UPC label maker with him when he
11 went into the Wal-Mart, did you?

12 A No.

13 MR. VAN RY: Nothing further, Your Honor.
14 Thank you.

15 THE COURT: Ms. Riggs, do you have additional
16 questions?

17 MS. RIGGS: Your Honor, may I have the Court's
18 indulgence for one moment, please?

19 THE COURT: Yes.

20 MS. RIGGS: Thank you.

21 I do have one further question, Your Honor.

22

23 REDIRECT EXAMINATION

24 BY MS. RIGGS:

25 Q Detective, do you recall testifying at the

1 grand jury proceeding in this case?

2 A Yes.

3 Q And when you were asked whether the defendant
4 purchased anything when he was at the Wal-Mart store that
5 date, do you recall what your answer was?

6 A No, I don't.

7 Q Would reviewing your testimony from the grand
8 jury proceeding refresh your recollection?

9 A Yes.

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

12 THE COURT: Yes.

13 BY MS. RIGGS:

14 Q Detective, I'm showing you the grand jury
15 transcript in this case, Page 102, and I ask you to
16 review the bottom part of the page to yourself and then
17 tell me when you're finished, please.

18 A To the bottom of page 102?

19 Q Yes.

20 A I'm finished.

21 Q Has reviewing your testimony in the grand jury
22 proceeding refreshed your recollection as to whether the
23 defendant purchased anything while he was in the Wal-Mart
24 on that day?

25 A Yes, he did.

1 Q And after having your recollection refreshed,
2 did he or did he not purchase anything when he was at the
3 Wal-Mart that day?

4 A He did not.

5 MS. RIGGS: Thank you. Nothing further, Your
6 Honor.

7 THE COURT: Any questions?

8 MR. VAN RY: No, Your Honor.

9 THE COURT: Detective Brown, you may be
10 excused.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 MS. RIGGS: Your Honor, the State's next
14 witness is Greg Danielson.

15 THE COURT: Sir, if you'll step right up into
16 this area, Mr. Bartlett will administer the oath.

17 (Witness Sworn)

18 THE COURT: Please have a seat in the witness
19 chair.

20 GREGORY DANIELSON,
21 called as a witness by the plaintiff herein,
22 being first duly sworn, was examined
23 and testified as follows:

24

25 ///

1 DIRECT EXAMINATION

2 BY MS. RIGGS:

3 Q Good afternoon, sir. Would you please state
4 your name and spell your entire name for the record.

5 A Gregory Danielson. And it's D-A-N-I-E-L-S-O-N.

6 Q Sir, who employs you?

7 A Wal-Mart.

8 Q And what is your position with Wal-Mart?

9 A I'm an assistant manager at Store 2106, which
10 is the Northtowne Store.

11 Q Which shift do you currently work now?

12 A 9:00 at night until 9:00 in the morning.

13 Q So you have been up continuously since 9:00
14 o'clock last night?

15 A I have.

16 Q How are you feeling today?

17 A Very tired.

18 Q Sir, have you also been ill?

19 A Yes.

20 Q Thank you for coming here and testifying today.

21 A You're welcome.

22 Q Sir, were you employed there as of January,
23 2002?

24 A Yes.

25 Q At the Northtowne store, correct?

1 A Yes.

2 Q Do you recall being contacted by Reno Police
3 detectives regarding Wal-Mart UPC codes on January 28,
4 2002?

5 A Yes. I remember specifically Detective Thomas
6 was a very big man when he came in.

7 Q Did he make a request of you, sir?

8 A Yes. He asked me to check bar codes on an
9 item.

10 Q Did Detective Thomas bring in an item for you
11 to research?

12 A Yes, he did. And I recall it was a DVD player,
13 and I believe it was a Panasonic DVD player.

14 Q Sir, I'm showing you State's Exhibit 13. Do
15 you recognize what that item is?

16 A Yes, I do. It was quite large actually.

17 Q Sir, I'm going to ask you to scoot up to the
18 microphone. Stay comfortable, but I'm having a hard time
19 hearing you.

20 A Okay.

21 Q And again, that's a photograph, correct?

22 A Yes.

23 Q And what's depicted in the photograph?

24 A Panasonic DVD player that we sell in our store.

25 Q You recognized that as an item that Wal-Mart

1 sold?

2 A At that time we did, yes. They're updated all
3 the time. I don't think we currently carry it.

4 Q Thank you. Did you get a chance to examine the
5 outside of the box that the home theater system was in?

6 A Yes.

7 Q And again, it was a Panasonic DVD home theatre
8 system, correct?

9 A Yes.

10 Q Did you notice how many UPC bar codes were
11 present on the package?

12 A Yes, there were two.

13 Q And how were they arranged on the package?

14 A As I recall, well, one of the UPCs is ingrained
15 right in the box with the printing and everything, and as
16 I recall the other one was like right over top of the
17 original one as I recall.

18 Q So is it fair to say that it was a sticker UPC
19 code?

20 A Yes.

21 Q And it was placed over the top of the original
22 UPC code?

23 A Yes.

24 Q Did you check the validity of both the UPC
25 codes?

1 A Yes, we went behind our courtesy counter and
2 went to a terminal or register or whatever you want to
3 call it, and I scanned it, and I scanned both of those,
4 and I voided the transaction. So the register wouldn't
5 be over or short, I voided the transaction.

6 Q Do you recall if another Wal-Mart employee was
7 with you at this time, sir?

8 A I don't remember. All I remember is Officer
9 Thomas.

10 Q Okay.

11 A Or Detective Thomas.

12 Q Do you recall whether Matt Carter was there
13 with you, sir?

14 A I do not. I really do not, he may have been.

15 Q So when you performed this scan, did that
16 produce a document?

17 A Well, whenever you void a transaction it
18 produces a slip of paper, yes, ma'am.

19 Q I'm showing you State's Exhibit 32. Do you
20 recognize that as the slip the cash register produced
21 that day?

22 A Yes, it is.

23 Q Sir, did one of the bar codes match a DVD home
24 theatre system that was in the inventory?

25 A Yes, the bottom one is the correct amount of

1 the item for the DVD player, yes.

2 Q And is the bottom entry the scan from the UPC
3 code that was stuck on or from the original one on the
4 box?

5 A No. It was from the original one on the box.

6 Q And can you tell me what item is indicated on
7 the item line, please?

8 A Repeat that please?

9 Q Can you tell me what item is indicated on the
10 receipt for the second item?

11 A Oh, the second item. It says, "Five DVD
12 stereo," and then it gives the UPC code.

13 Q And what price did that ring up at?

14 A \$477.88.

15 Q Now, regarding the top sticker or the top UPC
16 code, what did that scan as?

17 A That scanned as a three CD Emerson, and then it
18 gives the UPC code, and then the amount of \$69.94.

19 Q So the top sticker clearly didn't match up to
20 the product?

21 A Exactly, and clearly it was on it.

22 Q And also that scan returned to something that
23 was in Wal-Mart's system?

24 A Yes, ma'am, obviously. It's on the receipt.

25 Q Now, turning your attention to the actual

1 pricing labels on the stereo system, you said that the
2 top UPC code was a sticker, correct?

3 A As I recall, yes.

4 Q And you're an assistant manager for the store,
5 familiar with the type of UPC codes that Wal-Mart uses,
6 the type of pricing procedures that your store uses;
7 isn't that correct?

8 A Yes.

9 Q Based upon your experience, did you know
10 whether that top sticker was something that Wal-Mart
11 would normally apply to its packaging?

12 A Well, in this instance, no, because the
13 original UPC is ingrained right in the box with the
14 printing and everything. In this instance there would
15 actually be no reason to have a sticker over another bar
16 code.

17 Q Did you recognize the sticker as anything you
18 had seen previously on any Wal-Mart merchandise?

19 A No.

20 Q Sir, I'm going to ask you something about the
21 bar code numbers. When you look at the bar code, the UPC
22 number you called it, the --

23 A Right.

24 Q -- the number on the receipt?

25 A Right.

1 Q And if we are to take that and compare it
2 against the actual valid UPC number on the package, would
3 those match exactly?

4 A No.

5 Q Tell me more about that.

6 A Well, what our system does is UPCs have 12
7 digits, and the first and the last are very small, and
8 then ten digits in the middle. And our registers are
9 able to capture the ten and truncate the first and the
10 last digit which are very small on either side of the UPC
11 code.

12 Except in rare instances, I have to have one
13 because there have been instances where it does capture
14 one of the other when we're trying to make signs or
15 flags, but when the register picks it up, it only picks
16 up the ten.

17 Q So any of receipt that emits from a Wal-Mart
18 cash register is going to have a truncated bar code for
19 the first and last digits out?

20 A Omitted, yes, thank you.

21 Q Sir, again, being the assistant manager of
22 Wal-Mart, are you familiar with Wal-Mart's electronics
23 inventory and generally the prices that Wal-Mart charges
24 for various things?

25 A Yes.

1 Q Sir, do you know whether the Panasonic DVD home
2 theatre system that I showed you in the last exhibit
3 would ever sell for \$70 at Wal-Mart?

4 A No, ma'am.

5 Q You don't know or it would not?

6 A Never, never, because there's very little
7 markup on electronics as it is.

8 Q And so that \$70 is not a typical sale place for
9 a \$477 item?

10 A No, absolutely not.

11 Q Thank you. Mr. Danielson, I have no further
12 questions.

13 MS. RIGGS: Your Honor, may I -- actually the
14 jury has seen this exhibit, Your Honor. Thank you.

15 Court's indulgence for one moment, Your
16 Honor.

17 THE COURT: All right.

18 MS. RIGGS: Your Honor, just for safety sake,
19 may I publish Exhibit 32 to the jury?

20 THE COURT: Yes, you may.

21 MS. RIGGS: Thank you.

22 THE COURT: Mr. Van Ry. You may ask questions
23 of the witness.

24 MR. VAN RY: Thank you.

25

1 CROSS-EXAMINATION

2 BY MR. VAN RY:

3 Q Mr. Danielson, how long have you been employed
4 with Wal-Mart?

5 A I've been employed with Wal-Mart three years
6 now.

7 Q Three years?

8 A Yes.

9 Q And you've been an assistant manager since
10 2002?

11 A I started as an assistant manager. I worked
12 for JC Penney for 15 years.

13 Q And that was in retail sales?

14 A Yes, sir.

15 Q What is your current assignment as far as your
16 job duties at Wal-Mart now?

17 A Right now I'm in charge of the night stocking
18 crew. So I'm essentially in charge of the store from
19 9:00 p.m. to 9:00 a.m.

20 Q So you're familiar with all the products that
21 come into Wal-Mart?

22 A There's over 88,000 products in the division
23 one store that I work in, so I can't say that I'm
24 familiar with them all.

25 Q But you have some reasonable familiarity with

1 everything that comes in the door, at least you have
2 supervisory duties over those items?

3 A Yes, sir.

4 Q Okay. Are you aware of whether Wal-Mart
5 actually sells label makers?

6 MS. RIGGS: Objection, relevance.

7 THE COURT: I'm wondering, relevance as to
8 whether or not Wal-Mart would sell such an item. I'm
9 inclined to sustain the objection.

10 MR. VAN RY: Let me ask a more specific
11 question. If I may approach the clerk, Your Honor?

12 THE COURT: You may.

13 BY MR. VAN RY:

14 Q Mr. Danielson, I'm handing you what's been
15 marked and admitted as Exhibit 9 in this matter. And I
16 ask you if you have ever seen a label maker such as that
17 in Wal-Mart?

18 A I honestly have not in my store seen a label
19 maker like this.

20 Q Are you aware of whether other office supply
21 stores may sell that type of a label maker?

22 A No, sir. I've never, I don't --

23 Q As an assistant manager at Wal-Mart, are you
24 familiar with store policies with respect to customers
25 who come into purchase items?

1 A Yes, sir, very much so.

2 Q Is it against Wal-Mart's policy to allow
3 customers to come in and do price checking on the
4 information that is listed on the price of the items?

5 A No.

6 Q So I ask that in a positive better question, I
7 kind of muddled through that.

8 So it is allowable for customers to come into
9 Wal-Mart to check pricing information?

10 A Yes, sir.

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

12 THE COURT: Anything else then?

13 MS. RIGGS: One question, Your Honor.

14

15 REDIRECT EXAMINATION

16 BY MS. RIGGS:

17 Q Mr. Danielson, is it generally frowned on at
18 Wal-Mart for customers to record pricing information so
19 they can then use that information to obtain higher-end
20 merchandise for the low-end merchandise price; is that
21 frowned upon at Wal-Mart?

22 A You've lost me, now.

23 Q Let me break it down. It's a compound
24 question. I do apologize.

25 A We have competitive shopping going on all the

1 time, like Target comes in or something like that. But I
2 don't know what you're saying.

3 Q Okay. Let me ask it this way. If a customer
4 is coming into Wal-Mart and recording information on your
5 products and then subsequently uses that information to
6 defraud Wal-Mart, is that a security issue for Wal-Mart?

7 A Very much so, yes.

8 Q Does Wal-Mart have a policy of prosecution for
9 those offenses?

10 A We have security everywhere on issues like
11 that. It's very hard, as you might imagine, to catch
12 individuals in such a thing, but it would be against the
13 law, I imagine.

14 MR. VAN RY: Objection. Move to strike.
15 Beyond the scope of the witness's expertise.

16 THE COURT: Well, to the extent the witness has
17 speculated by saying, "I imagine," I am going to strike
18 that last portion of the witness's testimony.

19 BY MS. RIGGS:

20 Q But it would be against Wal-Mart policy,
21 correct?

22 A Yes.

23 MS. RIGGS: Thank you, nothing further.

24 THE COURT: Any further questions?

25 MR. VAN RY: Just one briefly, Your Honor.

1 RECROSS-EXAMINATION

2 BY MR. VAN RY:

3 Q I believe you just testified that competitors
4 come in for pricing information from Wal-Mart, including
5 Target, is that correct?

6 A Yes, sir.

7 MR. VAN RY: Nothing else, Your Honor.

8 THE COURT: Anything else?

9 MS. RIGGS: The State has nothing further.

10 THE COURT: Then, Mr. Danielson, you may be
11 excused.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MS. RIGGS: Your Honor, the State will call
15 Bill Mowery.

16 THE COURT: Sir, if you will please step right
17 up in this area, Mr. Bartlett will administer the oath.

18 (Witness sworn.)

19 THE COURT: Please have a seat in the witness
20 chair.

21

22 WILLARD D. MOWERY,

23 called as a witness by the plaintiff herein,

24 being first duly sworn, was examined

25 and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. RIGGS:

3 Q Sir, would you please state your full name and
4 spell it for the record.

5 A Willard D. Mowery. Last name is spelled,
6 M-O-W-E-R-Y.

7 Q Will you please state where you were employed
8 in November of 2001?

9 A Shopko Stores, Incorporated.

10 Q At which store were you employed?

11 A Mae Anne and McCarran.

12 Q Is that in Washoe County, sir?

13 A Yes.

14 Q What was your position there?

15 A I was assistant store manager.

16 Q Sir, do you recall being contacted by law
17 enforcement personnel approximately November 7, 2001?

18 A Yes.

19 Q And do you recall who contacted you?

20 A It was a detective, I don't remember his name.

21 Q Would that have been Detective Reed of the Reno
22 Police Department?

23 A Yes.

24 Q Do you recall what he wanted?

25 A He just asked me for a price on an item that he

1 had brought into the store.

2 Q Sir, I'm showing you State's Exhibit 33. Can
3 you describe what that is, please?

4 A It's a Sonicare electronic toothbrush.

5 Q And do you recognize that as the item that
6 Detective Reed wanted you to check on?

7 A Yes, I do.

8 Q Sir, I would ask you to look at the bottom of
9 that box. Do you see anything there that's not typical
10 of Shopko merchandise?

11 A Yeah, there's a fabricated sticker UPC over the
12 one that's on the box itself.

13 Q Sir, how did you know that's a fabricated UPC
14 sticker?

15 A Shopko doesn't have stickered UPC codes on
16 their products, it's on the actual box itself. You can
17 see right through the sticker, and it's got two different
18 UPC numbers on it.

19 Q So that UPC sticker is actually covering the
20 actual one that Shopko would use?

21 A Yes.

22 Q Is that the way that item was presented to you
23 by Detective Thomas back in 2001?

24 A Yes, it was.

25 Q Sir, did you check the actual price of the

1 Sonicare toothbrush against Shopko's data base?

2 A Yeah, I used the computer. And I originally
3 asked him which one he wanted me to check; the one that
4 was on the box or the one that was on the sticker. And
5 he wanted me to check both of them.

6 Q You don't happen to recall the approximate
7 price, do you?

8 A Not off hand. I just know that they varied.

9 Q Did you fill out a police report in this case?

10 A I don't believe I did.

11 Q Are you sure?

12 A No. It's been like two years ago. And
13 probably in your hand is a statement from me.

14 Q Sir, I am showing you a document, if you
15 wouldn't mind taking it.

16 A Yes.

17 Q Sir, do you recognize that document that I'm
18 showing you?

19 A Absolutely.

20 Q How do you recognize it?

21 A That's my handwriting and my signature.

22 Q So is that the police report that you filled
23 out for Detective Thomas that day?

24 A It's a statement. I thought it was something
25 different.

1 Q And would reviewing that report refresh your
2 recollection as to what the price was?

3 A Um-hum.

4 Q Then, sir, would you please review that report
5 to yourself and let me know when you are finished?

6 A Okay.

7 Q Thank you, sir. If I could get that back from
8 you.

9 Has reviewing your report refreshed your
10 recollection as to actual selling price, the Shopko
11 selling price of the Sonicare toothbrush?

12 A Yes.

13 Q How much was the Sonicare toothbrush going for
14 in 2001?

15 A 39.99.

16 Q Are you certain?

17 A Yes, I believe so.

18 Q I'd ask you to review your report.

19 A Am I backwards? The actual is 119.99, I'm
20 sorry.

21 Q And \$119?

22 A Yes.

23 Q And you also scanned the other code, correct?

24 A The makeshift one, yes.

25 Q And what price did the makeshift --

1 A 39.99.

2 Q Sir, would this particular -- first of all, let
3 me step back. You're familiar with the inventory at
4 Shopko, correct? And generally what the prices are that
5 Shopko charges for the merchandise?

6 A I guess so, yes.

7 Q You were familiar back then or are you
8 guessing?

9 A Back then, yes.

10 Q Do you know whether Shopko would ever sell a
11 \$119 Sonicare toothbrush for 39.99?

12 A No, never.

13 Q Why would they never sell it for that much?

14 A Because that's an expensive item, and the
15 markdowns on that wouldn't be that low. If anything we'd
16 send them back to the company for credit back to the
17 store.

18 Q So you'd send it back before you would sell it
19 for 39.99?

20 A That's right. We would probably have it marked
21 down. If it became a clearance item, it would have
22 marked down to a certain degree, and then it would
23 probably go back to the company to get a full credit
24 back. Depending on the vendor's needs or whatever it is.

25 Q Thank you.

1 MS. RIGGS: Your Honor, may I show Exhibit 33
2 to the jury, please?

3 THE COURT: Yes, you may.

4 MS. RIGGS: Thank you.

5 Thank you, Mr. Mowery. The State will have no
6 further questions.

7 THE COURT: Mr. Van Ry, you may ask questions
8 of the witness.

9 MR. VAN RY: Thank you. I just have one.

10

11 CROSS-EXAMINATION

12 BY MR. VAN RY:

13 Q And it's Mowery, is that how you say that?

14 A Correct.

15 Q Mr. Mowery, as you observed that Sonicare
16 toothbrush in the packaging and the label that's affixed
17 over the box UPC label, isn't it true that you have no
18 personal knowledge of how it got there?

19 A How it was affixed to the box, that's correct,
20 No, I have no idea.

21 Q And you have no idea who may have done that?

22 A No.

23 MR. VAN RY: Nothing further.

24 THE COURT: Anything else?

25 MS. RIGGS: The State will have nothing

1 further, Your Honor.

2 THE COURT: All right. Mr. Mowery, you may be
3 excused.

4 (witness excused.)

5 THE COURT: We could take a brief recess
6 between witnesses.

7 MS. RIGGS: That's fine, Your Honor.

8 THE COURT: I will admonish the jurors not to
9 discuss this case among yourselves, do not read, watch or
10 listen to any media account of this proceeding, and do
11 not form or express on any subject connected with this
12 trial until the matter is submitted to you for your
13 deliberations.

14 And with regard to the exhibits, if you just
15 want to leave it in one of the juror's chairs out here
16 and resume looking at it after you come back from a
17 recess that will be fine.

18 (Recess taken.)

19 THE COURT: You may be seated. Ms. Riggs, you
20 may call your next witness.

21 MS. RIGGS: Thank you, Your Honor. State will
22 call Reed Thomas.

23 THE COURT: Sir, if you will step right here in
24 this area, Mr. Bartlett will administer the oath.

25 (Witness sworn.)

1 THE COURT: Please have a seat in the witness
2 chair.

3 THE WITNESS: Thanks.
4

5 REED THOMAS,
6 called as a witness by the plaintiff herein,
7 being first duly sworn, was examined
8 and testified as follows:
9

10 DIRECT EXAMINATION

11 BY MS. RIGGS:

12 Q Would you please state your name and spell it
13 for the record.

14 A Reed Thomas, first is spelled, R-E-E-D, last is
15 T-H-O-M-A-S.

16 Q What agency employs you, please?

17 A I work for the Reno Police Department.

18 Q And can you tell me how long you've worked for
19 R.P.D.?

20 A A little over nine years.

21 Q What is your current assignment in the Reno
22 Police Department right now?

23 A I'm currently assigned to the detective
24 division.

25 Q How long have you been assigned to that team?

1 A It will be four years in January.

2 Q And do you work for any particular team as a
3 detective with R.P.D.?

4 A Yes, I do.

5 Q And could you describe what that team does,
6 please?

7 A We're a plain-clothes unit that follows and
8 investigates those people suspected of engaging in
9 criminal activity.

10 Q Sir, during the late summer of 2001 -- first of
11 all, is Sergeant Della your supervisor?

12 A Yes, he is.

13 Q In the summer of 2001, did Sergeant Della
14 assign a case to you?

15 A Yes, he did.

16 Q And that was an investigation, correct?

17 A Yes, it was.

18 Q Who was the target of that investigation?

19 A Ferrill Volpicelli.

20 Q And you had the opportunity to conduct
21 surveillance of Volpicelli during the course of your
22 investigation?

23 A Yes, about eight times.

24 Q When you say eight times, would that be eight
25 days?

1 A It was eight days, eight different days. And
2 it depended on what was on-going and the day and what we
3 were doing. But it was for several hours, usually no
4 less than three, no longer than six or seven.

5 Q And you personally participated in the
6 surveillance of the defendant, correct?

7 A Yes.

8 Q And there were other detectives involved in
9 surveilling him during that investigation?

10 A Yes, there were.

11 Q You had a chance to get a look at him during
12 your surveillance of him, correct?

13 A Yes.

14 Q Would you please point him out to the jury, if
15 he's in the courtroom today, and describe what he's
16 wearing?

17 A He is the defendant sitting there at the table
18 with the white shirt and tie and black pants.

19 MS. RIGGS: Your Honor, may the record reflect
20 that the witness has identified the defendant?

21 THE COURT: The record will reflect that the
22 witness has identified Mr. Volpicelli.

23 BY MS. RIGGS:

24 Q Now again, you were the supervisor of this
25 investigation, correct?

1 A I'm the case agent.

2 Q Can you tell me what your duties/
3 responsibilities are as the case agent?

4 A Completing police reports, follow-up
5 investigation, interviewing witnesses, victims, if it's
6 applicable, responding to any questions from the District
7 Attorney's Office regarding further follow-up, booking
8 evidence, overseeing the evidence processed.

9 Q And you watched this defendant at least for
10 eight days, correct?

11 A Yes.

12 Q During the course of that eight days, did the
13 defendant ever go to a place that seemed to be a place of
14 employment?

15 A No.

16 Q What did he do for the majority of the time
17 that you watched him?

18 A It varied, but a large portion of the time was
19 spent going from shopping center to shopping center,
20 retail store to retail store, occasionally he was picking
21 his child up at school, watched him go work out one day,
22 but primarily going from store to store.

23 Q Detective, jumping ahead to the date of the
24 defendant's arrest, which was October 17, 2001, correct?

25 A Correct.

1 Q Did you and your team conduct a search of an
2 area thought to be controlled or accessed by the
3 defendant? Specifically, I'm talking about a storage
4 area?

5 A Yes, we did.

6 Q And can you describe that please?

7 A It was the Aussie Self-Storage on Victorian
8 Avenue over in Sparks, and it was unit number B, as in
9 boy, 114.

10 Q And did you obtain a search warrant prior to
11 appearing at that place?

12 A Yes, we did.

13 Q And did you conduct a search of that unit?

14 A Yes, we did.

15 Q I'm sorry, I didn't hear. Did you describe
16 which unit it was at Aussie Self-Storage?

17 A B-114.

18 Q Were you there when the door was opened?

19 A Yes.

20 Q What was inside the unit when the door was
21 opened?

22 A It was a fairly large unit, fairly full, filled
23 with a lot of electronic equipment, TVs, DVD players,
24 telephones. Seemed to be computer equipment, that type
25 of thing, a lot of electronic-type merchandise, some

1 personal items that like -- some that were in plastic
2 bins. Things of that nature.

3 Q What proportion would you say, if you can
4 estimate, were personal items as compared to the
5 electronics items?

6 A Well, a larger portion of it was the
7 electronics and the items such as that. I don't think
8 that there was too much that we left behind that we
9 didn't feel we needed to seize.

10 Q Were any of the items that you observed in that
11 storage unit seized as evidence?

12 A Yes.

13 Q Sounds like it was?

14 A We took approximately three pickup truck loads
15 out of there.

16 Q How did you choose which items you were going
17 to seize and which items you were going to be leaving?

18 A We were looking for things pursuant to the
19 search warrant, but specifically electronic items that I
20 just mentioned, anything, indicia indicating his
21 connection to that storage unit, bar codes, label makers,
22 supplies to that effect such as label sheets. Anything
23 of that nature.

24 Q Did you track some of those items or log them
25 in any particular way?

1 A Everything was logged, yes.

2 Q Why was that, Detective?

3 A We wanted to do it, first of all. And
4 secondly, we were required to leave an inventory behind
5 of what we took out of the unit.

6 Q Is that routine procedure in obtaining a search
7 warrant?

8 A Yes, it is.

9 Q Do you remember whether the items taken from
10 that storage unit were photographed?

11 A Yes, they were.

12 Q Now was anyone else arrested on October 17,
13 2001, prior to your investigation?

14 A Yes.

15 Q Who was that?

16 A That was Brent Bowman.

17 Q And during the course of your investigation,
18 did you ever come across anything that would lead you to
19 believe that Brett Bowman had any kind of access or
20 control of Unit B-114?

21 MR. VAN RY: Objection, Your Honor, leading.

22 MS. RIGGS: I can break it down.

23 THE COURT: You may withdraw your question.

24 MS. RIGGS: I'll withdraw and ask a different
25 question, Your Honor.

1 BY MS. RIGGS:

2 Q You conducted a parallel investigation of Brett
3 Bowman, correct?

4 A Yes.

5 Q During that investigation, did you know whether
6 Brett Bowman ever rented a storage facility?

7 A Not to my knowledge.

8 Q You didn't investigate it or you just don't
9 know whether he did?

10 A We investigated it, and as far as I could tell
11 he didn't have a storage unit. He told me he didn't have
12 a storage unit as well.

13 Q During your investigation of the defendant, did
14 you ever come across any information that indicated that
15 Brett Bowman had access to B-114 at Aussie Self-Storage?

16 A No.

17 Q Detective, did you have an opportunity to
18 interview Brett Bowman regarding his knowledge of the
19 scheme charged in this case?

20 A Yes, I did.

21 Q Was he cooperative with you?

22 A Yes, he was.

23 Q Did he provide you information regarding the
24 scheme that you further investigated?

25 A Yes.

1 Q What kind of information did Brett Bowman give
2 you that you followed up upon?

3 A Basically talked about the entire scheme, about
4 how they would go from store to store. The defendant was
5 paying Mr. Bowman to go in and make fraudulent purchases
6 on his behalf. Discussed the transposition sheet.

7 He introduced how the fact that -- how the
8 fictitious bar codes were made. Sometimes they were
9 pre-made, sometimes the defendant made them right there
10 in the car.

11 He just kind of went through a little bit of
12 everything.

13 Q Did he indicate to you or did you get the
14 impression that he could remember what he paid for
15 certain items when he purchased them?

16 A He had a pretty good memory, it seemed, in that
17 regard. He had an idea, you know, he was able to recall
18 quite a few things and approximately what they paid for
19 them.

20 Q Returning to the storage shed, Detective, were
21 there some particular items that you seized from the
22 storage unit that you chose to conduct follow-up
23 investigation upon?

24 A Yes.

25 Q Now what was it about the items that you chose

1 to follow up upon above all others that made you want to
2 investigate those things?

3 A Well, the enormous amount of property that was
4 in the storage unit, I chose to go with the easiest stuff
5 first. And those were items that I thought had
6 fictitious bar codes overlaid on the bar codes and the
7 merchandise, so I started with those.

8 Q What made you think that particular bar codes
9 on those particular items you chose to follow up on were
10 fraudulent?

11 A There were several reasons, but one of which
12 was they just didn't look like they belonged on that
13 merchandise. It wasn't consistent with anything else
14 we'd seen.

15 Q Did all the items that were seized from the
16 storage shed have inconsistent bar codes?

17 A No. Although we noted that several bar codes
18 on boxes, for instance, looked like they had had
19 something stuck on at one point and then pulled off, like
20 an adhesive would do, and that kind of damaged the bar
21 code. So we saw indication of that.

22 Q Detective, I'm showing you State's Exhibit 12.
23 Do you recognize that item, sir?

24 A Yes, I do.

25 Q How is it that you recognize it?

1 A It's an accordion folder that contains receipts
2 and bar codes. It was found in the defendant's vehicle
3 at the time of his arrest.

4 Q And you were there at the time of his arrest?

5 A Actually, I was not.

6 Q However you had an opportunity to follow up on
7 that particular item which you're holding, correct?

8 A Yes. I saw it later that evening.

9 Q What did it contain when you originally
10 investigated that?

11 A Pretty much what it contains now. It's filled
12 with receipts. They appeared to be in some sort of an
13 alphabetical order, however there are -- some of the
14 folders do have receipts from different stores. It also
15 had bar codes tucked into the front pocket, several of
16 those, just 14 or 15 right there in the front pocket
17 alone.

18 Q When you say the receipts were organized
19 alphabetically, alphabetically by what category?

20 A By store, store name.

21 Q Do you recall some of the store names or some
22 of the stores that were listed on the receipts?

23 A Some of the common retail stores here in the
24 area; Target, Shopko, Wal-Mart, Home Depot, PetsMart,
25 Office Max, Office Depot. All the retail stores.

1 Q Did you inspect the receipts, actual contents
2 of the receipts as part of your investigation in this
3 case?

4 A Yes, I did.

5 Q Sir, I'm now showing you State's Exhibit 11.
6 Do you recognize this document?

7 A Yes, I do.

8 Q What is that document?

9 A It's -- well, it's entitled "Transpositions."
10 It was something recovered from the defendant's vehicle
11 at the time of his arrest. It's got categories here by
12 store, merchandise, UPC number and pricing information.
13 It's a two-page document.

14 Q And to your knowledge that was found where?

15 A That was found where. The defendant's vehicle
16 he was driving at the time of his arrest.

17 MR. VAN RY: Your Honor, may I ask that this
18 officer lay some foundation for that. He's already
19 testified that he wasn't present at the scene.

20 THE COURT: Do you object then to the question
21 and answer?

22 MR. VAN RY: I object to the answer. Lack of
23 foundation, Your Honor.

24 MS. RIGGS: Your Honor, he's a case
25 investigator in the case, all of the information in the

1 case goes through him. He testified to that earlier. He
2 wrote all the police reports.

3 THE COURT: I'm going to overrule the
4 objection. I believe Ms. Riggs has stated there was a
5 foundation laid through other officers.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q During the course of your investigation,
9 Detective, did someone explain to you how the defendant
10 used this paper?

11 A Yeah, I had an idea by looking at it.

12 Q And I'm going to ask you to stop right there.
13 Because I want to know if someone explained --

14 A Yes, I spoke to Brett Bowman.

15 Q Okay. Thank you. The term, "Transpositions,"
16 does that mean anything to you?

17 A It does to me.

18 Q Does or does not?

19 A Does.

20 Q What does the term "transpositions" mean to
21 you?

22 A Long for transposed.

23 Q What is implied by the word "transposed"?

24 A That transposing numbers, merchandise type of
25 thing. In this case I think it was UPC numbers and/or

1 pricing information.

2 Q So transposing, is it fair to say, means
3 switching out?

4 A Yes.

5 Q Sir, did you do your own inspection of the
6 information contained on that transposition sheet as part
7 of your investigation in this case?

8 A Yes, I did.

9 Q How did you use that sheet in your
10 investigation?

11 A Again, beginning with some of the merchandise
12 we found in the storage unit that had what I believe were
13 fictitious bar codes attached to the merchandise, I take
14 those bar codes and try to find those UPC numbers in the
15 transposition sheet, and then I was trying to match up
16 those UPC numbers and that bar code to receipts that I
17 found in the accordion folder.

18 Q And you looked for matches between the
19 transposition sheet and the receipts?

20 A Yes, I did.

21 Q What kind of matches were you looking for?
22 What items were you looking to match?

23 A Any item that had a bar code on it, the rug,
24 several items of that nature.

25 Q Sir, on the transposition sheet, the four

1 columns are what?

2 A The four columns, again, are by store, the
3 item, a UPC number for that item, and the price or an
4 approximate price. They seem to be rounded off. I don't
5 see any cents here.

6 Q So you looked for those particular four items
7 on the receipts as you were looking through the receipts
8 and checking them against the transposition sheet?

9 A That's correct.

10 Q Did you find that any of the receipts from the
11 accordion folder matched items indicated on the
12 transposition sheet?

13 A Yes, I did.

14 Q A few? A lot? Can you define that please?

15 A Several.

16 Q Were you also able to match any of the items
17 from the defendant's storage shed with the receipts or
18 the transposition sheet or both?

19 A Yes.

20 Q Sir, was one of the items obtained from the
21 defendant's storage unit a Panasonic DVD home theatre
22 system?

23 A Yes.

24 Q And you selected that for follow-up, correct?

25 A Yes, I did.

1 Q And did you select that item, as you indicated
2 earlier, because the bar code looked to be inconsistent
3 with its packaging?

4 A That's correct.

5 Q Did you also receive information from Brett
6 Bowman regarding that item?

7 A Yes, I did.

8 Q In January 2002, did you contact someone
9 regarding the inconsistencies with the bar code stickers
10 on that home theatre system?

11 A Yes.

12 Q First of all, how many bar code stickers did
13 you observe to be on that?

14 A Just -- are you talking fictitious or over all?

15 Q Some --

16 A Some fictitious --

17 Q How many over all?

18 A Over all, occasionally some of these boxes had
19 several bar codes on them that were fabricated into the
20 box because they were used for pricing information,
21 inventory, a number of things. But that one
22 specifically, because of what I believe was one
23 fictitious bar code that was overlaid on the box.

24 Q So there were actually two pricing codes, the
25 fictitious one overlaid on top of the valid one?

1 A That's correct.

2 Q How did you follow up on those particular bar
3 codes?

4 A Again, I tried to match up the UPC number from
5 the transposition sheet that reflected Wal-Mart, and I
6 went to Wal-Mart, believing it was a product of theirs,
7 and spoke to some people there.

8 Q Who did you speak to there?

9 A Matt Carter, who was the store manager, and
10 Greg Danielson.

11 Q And was one or both of them able to assist you
12 in getting the information that you needed?

13 A They were both there. Greg Danielson primarily
14 was the one that helped me.

15 Q Detective, I'm showing you State's Exhibit 32.
16 Do you recognize that, please?

17 A Yes.

18 Q And what is that document that I've just handed
19 you?

20 A It's a receipt that was printed up by Greg.
21 Basically a voided receipt that was scanning both of the
22 bar codes that were on the box, one being what we
23 believed to be the correct bar code on the box and one
24 was the overlaid label, the sticker.

25 Q And that was Greg Danielson that was helping

1 you?

2 A Yeah. They were both helping me that day.
3 They were both present the entire time that we were doing
4 this.

5 Q Sir, can you explain how Mr. Danielson assisted
6 you in producing that receipt?

7 A Again, he scanned, you know, what we believed
8 was the correct bar code on the box, what they knew to be
9 the correct bar code on the box, it was their
10 merchandise, and then scanned what we believed was the
11 fictitious bar code on the box.

12 The fictitious one came back to a three CD
13 Emerson for 69.94, and the correct item was for a five
14 DVD stereo system that sells for \$477.88.

15 Q Now, sir, does the Wal-Mart receipt that you
16 have in your hand include UPC bar code numbers?

17 A Yes, it does.

18 Q And where is that located on the receipt?

19 A Just to the right, three CD Emerson, just to
20 the right of the price and the merchandise.

21 Q Now, when you compared those UPC codes against
22 the transposition sheet, did those two items match
23 something in the transposition sheet?

24 A Yes.

25 Q And can you describe that match, please?

1 A Yes. It's a Wal-Mart theater. And it's UPC
2 number 025806041989. And it's priced at \$70.

3 Q And that's what appears on the transposition
4 sheet?

5 A Yes, it does.

6 Q And that matches the higher-price item?

7 A Actually, that's the number for the lower-price
8 item of 69.94.

9 Q So the entry in the transposition sheet is for
10 the lower-price item on the receipt for the corresponding
11 fraudulent bar code, correct?

12 A That's correct.

13 Q Thank you. Sir, I'm showing you State's
14 Exhibit 14. Do you recognize that, please?

15 A Yes.

16 Q Where have you seen that before? First of all
17 what is it?

18 A It's two receipts for a three CD Emerson
19 player, the same item that was on the reprint.

20 Q Are those items that you found in the accordion
21 folder?

22 A Yes, they are.

23 Q What is the date on those receipts, sir?

24 A The first one is 10-13 of '01, and the second
25 one is also 10-13-01.

1 Q And again, the bar code number on those
2 receipts matches the Emerson three CD entry on the
3 transposition sheet, doesn't it?

4 A Yes, it does.

5 MS. RIGGS: Thank you.

6 Your Honor, may I show Exhibit 14 to the jury,
7 please, along with Exhibit 11? Although I know they have
8 already been published, I'd like to present them
9 together.

10 THE COURT: Yes, you may.

11 MS. RIGGS: Also Exhibit 32.

12 THE COURT: And Exhibit 32 is admitted?

13 MS. RIGGS: Yes, it is.

14 THE COURT: All right. You may publish those
15 to the jury.

16 BY MS. RIGGS:

17 Q Detective, did you receive some information
18 from Brett Bowman regarding some computer monitors
19 obtained at Wal-Mart?

20 A Yes.

21 Q Sir, I'm showing you State's Exhibit 15. Do
22 you recognize those?

23 A Yes, I do.

24 Q What's depicted in that photograph, please?

25 A Two KDS Rad five monitors.

1 Q And have you seen those before?

2 A Yes, I have.

3 Q Where have you seen them?

4 A They were taken from the storage unit the night
5 we executed the search warrant.

6 Q Based on that information provided to you by
7 Brett Bowman, did you search for and find a Wal-Mart
8 receipt in the accordion folder that corresponded to
9 those two monitors?

10 A Yes, I did.

11 Q Sir, I'm showing you Exhibit 16. Do you
12 recognize what's depicted in that exhibit, sir?

13 A Yes.

14 Q Can you tell me what they are?

15 A Four receipts here. What they all have in
16 common, 17-inch monitor bearing UPC number 076994072721,
17 priced at a \$177.84.

18 MS. RIGGS: And, Your Honor, I apologize, I'm
19 going to ask for Exhibit 11 back from the jury.

20 At the end of Detective Thomas' testimony I'll
21 be returning it to them to finish looking at it.

22 THE COURT: All right. If you would like to
23 collect Exhibit 11 you may.

24 MS. RIGGS: Thank you.

25 ///

1 BY MS. RIGGS:

2 Q And I'm showing you, again, Exhibit 11.

3 Regarding the receipts that you have in your hands, sir,
4 what item in common is indicated on those receipts?

5 A The 17-inch monitor.

6 Q Was the UPC code associated with those two
7 receipts?

8 A This one 076994072721.

9 Q And for the corresponding price, what is that?

10 A \$177.84.

11 Q Did you find a corresponding entry on the
12 transposition sheet, sir, for the 17-inch monitor, but
13 Wal-Mart with that particular UPC code or for another
14 item?

15 A Yes.

16 Q And what item is indicated on the transposition
17 sheet, sir?

18 A It's from Wal-Mart. It's a monitor. Sells for
19 \$160. And the UPC number is 076994071711.

20 Q Thank you. And, sir, did you come across any
21 DVD TV combos in this storage shed?

22 A Yes.

23 Q Sir, I'm showing you State's Exhibit 18?

24 A Yes.

25 Q Can you tell me what that depicts, please?

1 A 19-inch DVD/TV combo made by Emerson.

2 Q Do you remember how many you found in the
3 storage shed?

4 A Three.

5 Q Based on the information that Brett Bowman gave
6 you, did you research the receipts in the accordion
7 folder and find any that may match?

8 A Yes.

9 Q Did you find any?

10 A Yes.

11 Q Sir, I'm now showing you State's Exhibit 17.
12 Can you tell me what that is, please?

13 A Four receipts here. What they have in common
14 is what I believe are Sanyo, it's depicted on here as SYO
15 19 TV bearing UPC number 008648303781 priced at \$129.96.

16 Q Have you seen those receipts before?

17 A Yes.

18 Q Where did those come from?

19 A The accordion folder taken from the defendant's
20 vehicle.

21 Q Is there a corresponding entry on the sheet
22 there to match the bar codes on the item indicating a
23 Sanyo 19-inch TV?

24 A Yes, there is.

25 Q Sir, did you come across any sewing machines in

1 the storage unit?

2 A Yes.

3 Q Sir, I'm showing you State's Exhibit 20. Do
4 you remember seeing what's depicted in that photograph
5 before?

6 A Yes, I did.

7 Q And what is depicted in that photograph?

8 A It's a SurgePro Simplicity sewing machine.

9 Q Sir, I'm now showing you State's Exhibit 19.
10 Do you recognize that?

11 A Yes, I do.

12 Q What is the exhibit I've just handed you?

13 A Three receipts all sharing -- or what they have
14 in common are sewing machines on each bearing UPC number
15 001250210540 priced at \$99.96.

16 Q Do you note any corresponding item in the
17 transposition sheet, the UPC code indicated on those
18 receipts, sir?

19 A Actually, it's listed twice in here. It's a
20 Wal-Mart sewing machine, UPC number on the transposition
21 sheet is 012502105404 for \$100.

22 Q So of all the items that I've just shown you,
23 the Wal-Mart items that you obtained or followed up on
24 the storage shed, there's corresponding transposition
25 numbers, correct?

1 A That's correct.

2 Q Thank you. Sir, did you find any rugs in the
3 storage unit?

4 A Yes, I did.

5 Q Can you describe to me, please, what sort of
6 rug or rugs did you find?

7 A It was a large rug. As we opened up the door
8 to the storage unit, it was actually standing up on the
9 left side, kind of leaning against the wall. I remember
10 it specifically, because as we opened the door, I thought
11 it was going to fall out onto the ground, but it was
12 wrapped in kind of a plastic covering tied at one end.

13 Q Sir, I'm now showing State's Exhibit 7. Do you
14 recognize that?

15 A Yes. That's the same rug I just described.

16 Q And, again, you watched these photographs being
17 taken or you were there when these photographs were being
18 taken?

19 A Yes.

20 Q And that is the item that you saw in the
21 storage unit?

22 A Yes.

23 Q Sir, did the rug have any kind of UPC bar codes
24 attached to it?

25 A Yes, it did.

1 Q Can you describe the configuration of that, if
2 you recall, please?

3 A Again, it was on one end of the rug, and it
4 appeared to be fictitious sticky type UPC bar code
5 overlaid over the original UPC code.

6 Q And now I'm showing you State's Exhibit 8. Do
7 you recognize that?

8 A Yes, I do.

9 Q Is that the bar code configuration that you
10 just described on the rug?

11 A Yes. That's a close-up of the same rug.
12 Actually in this photo you can just barely see that.
13 This picture here is where this whole label is affixed on
14 one end. And, yes, that's the same thing I just
15 described.

16 Q Did you do any follow-up on this with anybody
17 at -- well, I'll withdraw that question.

18 Did you receive some information from Brett
19 Bowman regarding where this rug came from?

20 A Yes, I did.

21 Q And did you follow-up based on the information
22 that Brett Bowman gave you?

23 A Yes.

24 Q And whom did you contact regarding the purchase
25 of this rug?

1 A I went to Lowe's Home Center and spoke with
2 John David Ellis.

3 Q And was he able to confirm that that rug was
4 obtained at Lowe's?

5 A Yes, he was.

6 Q Did he provide you any information regarding
7 the pricing of that rug?

8 A Yes, he did.

9 Q Showing you State's Exhibit 34, do you
10 recognize that document, sir?

11 A Yes, I do.

12 Q Where did it come from?

13 A John David Ellis produced this document when he
14 checked the bar codes, both the correct one and the
15 overlaid bar code.

16 Q He produced that and provided it to you as part
17 of your investigation?

18 A Yes, he did.

19 Q Did he do a price check on the outside -- or
20 the -- what appeared to be the fraudulent bar code on the
21 rug?

22 A Yes, he did.

23 Q A what price came up for that particular item?

24 A \$74.

25 Q So if returned to Lowe's, a Lowe's item that

1 was priced at \$74?

2 A Yes, it was for a cheaper rug that they
3 carried.

4 Q And did he also scan the actual or the valid
5 bar code for that rug?

6 A Yes, he did.

7 Q And what price resulted when he did that?

8 A \$499.

9 Q So the lower-end item was 74 and the higher end
10 was 499?

11 A Yes. I learned that they never would have sold
12 that rug as cheap as \$74, even on sale.

13 Q Now, sir, did you find an item on the
14 transposition sheet that corresponded to one of those or
15 that corresponded to the rug from Lowe's?

16 And I'll ask you also to review the handwritten
17 notes in the margins, please.

18 A Yes.

19 Q And could you describe the match on the
20 transposition sheet?

21 A Yes, it says, "cheap rug," with UPC number
22 029055098398.

23 Actually, I'm sorry there is another one here
24 also. Says rug as well, 086093026448, which matches the
25 fictitious UPC bar code on the rug that we had.

1 Q And what is the price indicated on the
2 transposition sheet for that item?

3 A Got 80 circled.

4 Q Sir, your inspection of the receipts in the
5 accordion folder, did you find any receipts that match
6 the price and the description that you see in that
7 project estimate from Lowe's?

8 A Yes, I did.

9 Q I'm showing you State's Exhibit 22. Is that
10 the receipt that you found, sir?

11 A Yes, it is.

12 Q What item and price is indicated on the
13 receipt?

14 A 25 by 94 round about, \$74.

15 Q And what date and time is indicated on that
16 receipt, sir?

17 A October 5, 2001, at 19 -- or 19:45, 7:45 in the
18 evening.

19 Q Sir, you were at which Lowe's location?

20 A That was the one on Kietzke Lane down south.

21 Q Is that in Washoe county?

22 A Yes, it is.

23 Q Do you know of any other Lowe's stores in
24 Washoe County?

25 A Yes, there's one in Sparks.

1 Q Based on the information contained on that
2 receipt, did you ask Mr. Ellis for any further
3 information?

4 A Yes. I asked him if he could pull an videotape
5 of the transaction with their surveillance system based
6 on that date and time, and he was able to do that.

7 Q Sir, I'm now showing you State's Exhibit 35.
8 Do you recognize this?

9 A Yes, I do.

10 Q What is it?

11 A It was the tape provided to me by Lowe's.

12 Q Did you have a chance to review it?

13 A Yes, I did.

14 Q Can you describe what it depicts, please?

15 A Basically, it's a color videotape on this date
16 and time indicated on the receipt. I don't recall the
17 order. I believe Mr. Volpicelli enters the front doors
18 of the store first, followed by Mr. Bowman approximately
19 20 or 25 seconds later. And then it's the end of that
20 sequence. And then the next sequence shows Mr. Bowman
21 purchasing the rug at the checkout stand.

22 MS. RIGGS: Your Honor, at this time I request
23 permission to play the tape for the jury.

24 THE COURT: All right. And which exhibit is
25 that?

1 MS. RIGGS: This is Exhibit 35, Your Honor.

2 MR. VAN RY: No objection, Your Honor.

3 THE COURT: Would it be best if we took a
4 recess while this is set up?

5 MS. RIGGS: It's set up and ready to go, sir.

6 THE COURT: You may proceed then.

7 MR. VAN RY: Your Honor, may I approach the
8 jury box to observe?

9 THE COURT: Yes, you may.

10 MS. RIGGS: Your Honor, permission for the
11 witness to step off of the witness stand and to stand
12 over where he can view the television so he can describe
13 what he sees in the video?

14 THE COURT: Yes. Detective Thomas may leave
15 the witness stand and approach the television.

16 MS. RIGGS: Thank you, Your Honor.

17 BY MS. RIGGS:

18 Q Detective Thomas, I'm going to ask you to stand
19 next to the TV set. And I'm going to be pausing this at
20 some intervals or pausing the videotape so you can
21 describe what you see.

22 A That's the defendant coming into the store at
23 19:49 hours.

24 Q And what you see looks like the defendant who
25 is sitting over at defense counsel table?

1 A Yes. Again, we followed him at least eight
2 days. I saw him dressed like that several times.

3 Q When you saw this video, you recognized him
4 immediately?

5 A Immediately.

6 Q And again, can you tell me approximately what
7 date and time?

8 A It's approximately 7:49 in the morning on
9 October 5, 2001.

10 Q And is that approximately the date and time
11 listed on the receipt?

12 A It's just prior to. The transaction lists it
13 on the receipt, because this is a recording of when the
14 actual purchase took place, this is a few minutes before.

15 Q I'm going to start the video again. What is
16 the defendant doing in that sequence?

17 A He just grabbed a shopping cart and going
18 farther into the store. That's Brett Bowman --

19 Q And again --

20 A -- entering the store.

21 Q You had the opportunity to see Brett Bowman
22 several times during the course of your investigation?

23 A No, I never saw Brett Bowman until after he was
24 arrested. But I met with him several times at that
25 point. So, by the time I had the chance to review that

1 videotape I certainly knew what he looked like.

2 Q And, again, these are the front doors of the
3 Lowe's store on Kietzke lane?

4 A That's correct.

5 That's Mr. Bowman continuing on in the store.

6 Q And what did he -- did he have a cart in front
7 of him?

8 A I don't recall. I don't think he did.

9 Q And do you see either the defendant or Brett
10 Bowman depicted in this view?

11 A Not here, not yet.

12 Q Do you see what appears to be a long white rug
13 in the picture?

14 A That's the rug.

15 Q And what is it in particular that we are
16 looking at right here?

17 A Checkout stand at Lowe's by the front door.
18 Again, he's kind of out of the picture. He's beginning
19 to come into view.

20 Q What's the --

21 A That's Mr. Bowman there purchasing the rug.

22 Q And we're going to rewind for just a moment on
23 this.

24 A Based upon the date and time, and as well as
25 some other numbers that are --

1 Q I'm going to ask you to stop there. There's no
2 question before you at this time.

3 What's happening right there? Did you -- I'm
4 going to ask you to keep your eye on the clerk in this
5 segment, Detective Thomas, and tell me when you think the
6 purchase occurs?

7 A Right there. What she has is a scanner in her
8 hand and she's scanning the bar code off of the rug.

9 Q And it looks like Brett Bowman had the bar code
10 accessible to where she could do that instantly?

11 A That's correct.

12 Q And in this video you observed people coming up
13 to her cashier stand consistently?

14 A Yeah.

15 Q She looked like --

16 A Yeah. Again, she had a couple people in behind
17 her, in front of him, actually, prior to him walking up.
18 She's busy and she's obviously busy and she's got
19 somebody else waiting.

20 Q What is she doing now? She just give change
21 back to Brett Bowman?

22 A That's correct.

23 Q And then he left the store, correct?

24 A Yes.

25 Q Thank you. Detective, you can return.

1 MS. RIGGS: Your Honor. May I have permission
2 to republish State's Exhibits 22, 34, 7 and 8 to the jury
3 so they may look at them at the same time?

4 THE COURT: Those are all admitted exhibits,
5 and you may publish them to the jury.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q Sir, did you also follow up on the Sonicare
9 toothbrush found in the storage shed?

10 A Yes, I did.

11 Q Sir, I'm showing you State's Exhibit 33. Is
12 this the Sonicare that you followed up on?

13 A Yes, it is.

14 Q Did you notice an inconsistent bar code similar
15 to those from other merchandise from the storage shed,
16 sir?

17 A Yes, I did. On the bottom of the box overlaid
18 over the -- on what was the -- what is the correct bar
19 code for this product.

20 Q And, sir, can you tell me what the correct bar
21 code number is on that Sonicare?

22 A On the label here it's 6905581598.

23 Q And did you find an entry on the transposition
24 sheet that corresponds to that UPC bar code number?

25 A Yes, I did. The very first entry from the

1 Shopko category for a toothbrush.

2 Q And what price is indicated on the
3 transposition sheet?

4 A \$17.

5 Q Did you find a receipt in the accordion folder
6 indicating the purchase of an item with this bar code
7 number?

8 A Yes, I did.

9 Q Sir, I'm showing you State's Exhibit 36. Have
10 you seen that before?

11 A Yes.

12 Q What is it?

13 A It's a Shopko receipt.

14 Q Where did it come from?

15 A Shopko Store No. 103 up at the May Anne
16 McCarran area.

17 Q But where did you find it?

18 A I found it in the accordion folder taken from
19 the defendant's vehicle at the time of his arrest.

20 Q How much did the purchaser pay for the item
21 that was bought depicted in that receipt?

22 A 39.99.

23 Q And you contacted Mr. Mowery at Shopko?

24 A Yes, I did.

25 Q And, again, he indicated to you that that was a

1 substantially reduced price from the actual Shopko price?

2 A Yes.

3 Q Thank you.

4 MS. RIGGS: May I show State's Exhibit 36 to
5 the jury, Your Honor?

6 THE COURT: Yes, you may.

7 MS. RIGGS: Thank you.

8 BY MS. RIGGS:

9 Q Sir, did you recover any espresso machines from
10 the storage unit?

11 A Yes.

12 Q Sir, I'm showing you State's Exhibit 26. Do
13 you recognize what's depicted in that photograph?

14 A It's a Krups coffee maker, espresso machine.

15 Q And based on the information given to you by
16 Brett Bowman, did you search for and find a receipt for a
17 similar item purchased at --

18 A Yes.

19 Q -- Bed and Bath?

20 A Yes, I did.

21 Q Or bed, Bath and Beyond. Pardon me.

22 A Yes.

23 Q Sir, I'm showing you State's Exhibit 25. Do
24 you recognize what that is?

25 A Yes, I do.

1 Q And where did you find this?

2 A Also found this in the accordion folder at the
3 time of the defendant's arrest.

4 Q And what purchase is depicted in that receipt?

5 A It's a purchase for a ProCafe coffee maker for
6 \$59.98.

7 Q And again, the item found in the storage shed
8 was not a ProCafe coffee maker, was it?

9 A That's correct.

10 Q What information is on the receipt in addition
11 to the ProCafe brand and the 29.99 purchase price?

12 A Are you looking for the date and time?

13 Q Actually is there a UPC number on there?

14 A On here it appears the UPC number is
15 1094211184. And in parentheses it lists 29.99 next to
16 that UPC number.

17 Q Thank you, sir. Sir, did you also find a
18 toilet among the items at the defendant's storage unit?

19 A Yes, I did.

20 Q Sir, I'm showing you State's Exhibit 24. Do
21 you recognize what that is, please?

22 A Yes, that's the label that was on the toilet.

23 Q Is the toilet package in that photograph?

24 A Yes.

25 Q Based on information given to you by Brett

1 Bowman, did you inspect the Home Depot receipts in the
2 accordion folder?

3 A Yes, I did.

4 Q And did you find a receipt that matched the
5 information that he gave you?

6 A Yes.

7 Q I'm now showing you Exhibit 23. Do you
8 recognize that receipt, sir?

9 A Yes.

10 Q And what is that receipt for?

11 A It's a Home Depot receipt with a UPC number
12 050375001973. It's for a one-horse power disposal
13 selling for \$194.

14 Q Thank you. Now, sir, regarding the Sonicare
15 toothbrush and the coffee maker and also the toilet, is
16 it true that you did not find transposition items that
17 matched those?

18 A That's true.

19 Q Yet you did find receipts in the defendant's
20 accordion folder that matched the items from the
21 warehouse, correct?

22 MR. VAN RY: Objection. That has not actually
23 been established as the defendant's accordion folder.

24 THE COURT: You may withdraw the question.

25 MS. RIGGS: Thank you.

1 BY MS. RIGGS:

2 Q The receipts that I've just shown you were
3 found in the accordion folder that was located in the
4 defendant's vehicle, correct?

5 A That's correct.

6 Q Thank you. Regarding the accordion folder,
7 sir, what else did it contain rather than the receipts?

8 A Like I stated earlier, in the front pocket it
9 had several UPC label stickers. It also had a few that
10 were inside the accordion folder in the back that were
11 adhered to the plastic dividers.

12 Q And, sir, for the second time, I'm showing you
13 State's Exhibit 12. Would you open that exhibit and show
14 the jury where the bar code stickers are located?

15 A Right here in the front.

16 Q How many bar code stickers did you locate
17 between the accordion folder and the rest of the van?

18 A 15 to 20. Maybe a couple more.

19 Q Now, sir, is it true that you had a chance to
20 review the numbers on those bar codes and compare them to
21 the transposition sheet?

22 A Yes.

23 Q And did you find any matches among them?

24 A Yes, I did.

25 Q Several? A few? Do you recall?

1 A Seven or eight.

2 Q Thank you. And, I'm sorry, I don't recall your
3 answer, how many UPC bar codes did you locate that were
4 either somewhere else in the defendant's van or in the
5 accordion folder?

6 A 15 to 20 between the accordion folder, the
7 defendant's van, and the black zipper bag that contained
8 the label maker had three.

9 Q And again, what was the date of the defendant's
10 arrest?

11 A October 17, 2001.

12 Q That's when the bar codes were located in the
13 defendant's vehicle, correct?

14 A That's correct.

15 Q Now, sir, did the accordion folder contain
16 receipts for things that were never found in the storage
17 unit?

18 A That's correct.

19 Q Were you able to match any of the receipts in
20 the accordion folder to entries on the transposition
21 sheets even though you may have not found these items in
22 the storage unit?

23 A Yes.

24 Q Did you find any receipts that matched the
25 transposition sheet entries for K-Mart?

1 A Yes.

2 Q I'm showing you State's Exhibit 37. Can you
3 tell me what that is, please?

4 A It's a Super K receipt for an Easy Steamer.

5 Q And where did you find that, sir?

6 A This was taken from the accordion folder that
7 was in the defendant's vehicle at the time of his arrest.

8 Q Is there a UPC code number on the receipt?

9 A 04603488594.

10 Q And do you recall whether there's a
11 corresponding transposition sheet entry that matches that
12 UPC code number?

13 A Yes, there is.

14 Q Sir, I'm now showing you State's Exhibit 38.
15 Do you recognize that?

16 A Yes. It's a receipt from CompUSA that was also
17 found in the accordion folder taken from the defendant's
18 vehicle at the time of his arrest.

19 Q Does that -- is there a UPC code indicated
20 or -- I'll withdraw that question.

21 Is there a corresponding entry that matches one
22 of the defendant's categories in the transposition sheet?

23 For instance, is there an entry on the
24 transposition sheet under the CompUSA item or a CompUSA
25 item or either a switch for an item that is close to

1 29.99?

2 A Yes, there is one for a switch that is \$29.

3 Q Thank you.

4 Sir, were you able to or did you locate any
5 receipts in the accordion folder from Best Buy?

6 A Yes.

7 Q Showing you State's Exhibit 39, can you tell me
8 what this is, please?

9 A Two receipts for Sony CD Walkmans. And there
10 is an entry on the transposition sheet matching the price
11 on the receipts for 69.99.

12 Q Thank you.

13 THE COURT: Ms. Riggs, this would be a good
14 time to take another recess.

15 And I will admonish the jurors that you're not
16 to read, watch or listen to any media account of this
17 proceeding, do not form or express any opinion on any
18 subject connected with this case until it is submitted to
19 you for your deliberation, and do not discuss this case
20 among yourselves or anyone else.

21 Court will stand in recess.

22 (Recess taken.)

23 THE COURT: You may be seated.

24 Ms. Riggs, you may proceed.

25 MS. RIGGS: Thank you, Your Honor.

1 BY MS. RIGGS:

2 Q Again, going back to State's Exhibit 39, can
3 you tell me what that is, Detective?

4 A Again, it's two receipts for Sony CD Walkmans
5 purchased at Best Buy for 69.99.

6 Q And I believe you testified that there was a
7 corresponding transposition entry for that item?

8 A That's correct. It's the very first entry on
9 the sheet.

10 Q Sir, did you find any further, besides the
11 toilet, did you find any further Home Depot receipts that
12 matched the transposition entries?

13 A Yes.

14 Q I'm showing you Exhibit 40. Can you describe
15 what that is, please?

16 A It's Home Depot receipt dated September 24th of
17 2001, at 4:18 in the afternoon for a closet organizer
18 that sold for \$28.43.

19 Q What is the UPC code indicated on that, sir?

20 A 075381016247.

21 Q And did you find a corresponding transposition
22 sheet entry for that, sir?

23 A Yes, I did.

24 Q Sir, did you find any receipts -- I'll withdraw
25 that, Your Honor.

1 Did you find any receipts, any indications that
2 the defendant had been to Office Depot?

3 A Yes.

4 Q I'm showing you State's Exhibit 41. Can you
5 tell me what I just handed you is, please?

6 A It's a receipt from Office Depot dated August
7 28th, I believe, of 2001.

8 Q And again, that came from the accordion folder?

9 A Yes, it did.

10 Q Do you recognize it?

11 A Yes.

12 Q What does the item or does the receipt indicate
13 which items were purchased, sir?

14 A Well, it looks like there was a return and then
15 a purchase.

16 Q What were the purchased items?

17 A Printing cartridges.

18 Q And what are the UPC codes or code associated
19 with those printer cartridges?

20 A Yes. Do you want me to --

21 Q What is the UPC code number, please?

22 A Looks like 1250205334.

23 Q And what is the purchase price of those
24 cartridges, please?

25 A One was for 110.97 and this other one looks

1 like 147 and it's 90 something. There is a pen mark over
2 it, it's been written on.

3 Q Now disregarding the returned item, were those
4 for multiple cartridge purchases, sir? Does the receipt
5 indicate that?

6 A Yes.

7 Q Does the receipt indicate that each cartridge
8 cost \$36?

9 A Yes. I'm sorry, that was a sub total I read
10 out before as I was going down the column.

11 Q Now, sir, I'm going to ask you to turn that
12 receipt over. What did you see -- besides the evidence
13 sticker, what do you see on the back of that receipt?

14 A Handwritten number, 04907400063, and the last
15 number looks like a 9.

16 Q And do both of the numbers, the cartridge --
17 the UPC code number for the cartridges and also the
18 number on the back, the handwritten number, correspond to
19 items on the transposition sheet? And that would be in
20 the Office Depot items on the transposition sheet?

21 A Yes, that's correct.

22 Q So both of them have entries?

23 A Yes, they both have entries. One, the UPC
24 numbers that are on the front of receipt list for \$9 as
25 opposed to 36, and the other one on the back, shows a

1 price of \$30.

2 Q What does the item on the back correspond to on
3 the transposition sheet, what item?

4 A It was a safe.

5 Q Thank you. Sir, did you find in the accordion
6 file any receipts for PetsMart?

7 A Yes.

8 Q Showing you State's Exhibit 42. What have I
9 just handed you, sir?

10 A Two receipts for PetsMart.

11 Q Do you recognize those?

12 A Yes, I do.

13 Q And obviously those came from the accordion
14 folder?

15 A Yes, those came from the accordion folder.

16 Q What item does it indicate on the front of the
17 receipts?

18 A Well, the one they have in common is a
19 filtration sold for 19.99.

20 Q And what's the UPC code on that, sir?

21 A UPC number 01716310702.

22 Q Is there a corresponding transposition sheet
23 entry, sir?

24 A Yes, there is. It's for a pump for \$17.

25 Q Sir, do you recall whether any Target receipts

1 were found in the accordion folder?

2 A Yes.

3 Q I'm showing you Exhibit 43. Do you recognize
4 it?

5 A Yes. It's a receipt from Target dated August
6 14, '01. It's a pilot case, a shaver, and it looks like
7 a bag of cottons swabs.

8 Q And does that UPC number on the receipt --
9 Actually, I'll withdraw that question.

10 Is there a matching item on the transposition
11 sheet for a Target shaver?

12 A Yes, there is.

13 Q Now, sir, I'm going to ask you just to look at
14 the transposition sheet in the Wal-Mart items. Is there
15 a car stereo item indicated?

16 A Yes, there is.

17 Q And how much is the entry for the car stereo?

18 A \$70.

19 Q And again, all the receipts that I've just
20 shown you, sir, those were found in the accordion folder
21 in the defendant's vehicle, correct?

22 A That's correct.

23 MS. RIGGS: Your Honor, I would like to request
24 permission to show all State's Exhibits, and this will be
25 State's Exhibit 37, 38, 39, 40, 41, 42, and 43, together

1 with State's Exhibit 11 to the jury so that they may
2 compare if they need to?

3 THE COURT: Yes, you may do so.

4 MS. RIGGS: Thank you.

5 BY MS. RIGGS:

6 Q Now, Detective, there was no physical evidence
7 other than the paper was collected in this case, was
8 there? For instance, you didn't collect any DNA samples,
9 nor did you collect for fingerprints, did you?

10 A No.

11 Q Why was DNA not collected?

12 A DNA is typically collected for crimes against
13 persons, this is a fraud crime.

14 Q Did you find it necessary to run DNA analysis
15 for this case?

16 A No, we collected no DNA.

17 Q Would you ever collect DNA in a paper case such
18 as this?

19 A I can't see a reason why.

20 Q So, sir, no fingerprint evidence was collected
21 in this case either, was there?

22 A No, we had a known suspect.

23 Q And is this the reason why no fingerprints were
24 collected?

25 A Yes. I was satisfied with our surveillance and

1 with the evidence that we had. I didn't see the need to
2 collect fingerprint evidence. I didn't think there was
3 anything in dispute about what may or may not have been
4 touched by the defendant.

5 Q And you've been a detective for nine years,
6 correct?

7 A I've been a police officer for nine years and a
8 detective for almost four.

9 Q And you're familiar with the situations in
10 which it's appropriate to collect different kinds of
11 physical evidence?

12 A Yes.

13 Q And again, you are satisfied that during your
14 investigation the proper evidence was collected in this
15 case?

16 A Yes.

17 Q Okay. Sir, I'm showing you State's Exhibit 29.
18 Do you recognize this item?

19 A It's a black satchel that contained the label
20 maker.

21 Q Is there any kind of personal identification on
22 that item by any chance?

23 A Yes. There's label on the front that says,
24 "VIM or VIM Inc., with an address of 316 California
25 Avenue in Reno, Nevada.

1 Q During the course of your investigation, did
2 you become familiar with either who VIM Inc. is or that
3 address on California Avenue?

4 A Yes.

5 Q Can you describe that?

6 A Stands for Volpicelli Investment Management.
7 He has several aliases and also has been known to call
8 himself Joseph Vim, Joseph being his middle name.

9 Q Are you familiar with the address?

10 A Yes, he had a PO box there. That's a post
11 office box down there on California.

12 Q And you have knowledge of this information
13 through your investigation, is that correct?

14 A Yes, that's correct.

15 Q Thank you.

16 MS. RIGGS: May I have the Court's indulgence
17 for one moment, Your Honor?

18 THE COURT: Yes.

19 MS. RIGGS: Your Honor, the State has no
20 further questions for this witness.

21 THE COURT: Mr. Van Ry, you may ask questions
22 of the witness.

23

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. VAN RY:

3 Q Officer, Detective; which do you prefer?

4 A Doesn't matter. Detective's, fine.

5 Q Detective, just for clarification sake, of all
6 the receipts that have been presented to this jury, the
7 State, you and the people you have investigated this case
8 with have no --

9 MS. RIGGS: Objection, Your Honor. The witness
10 does not represent the State in this case. I represent
11 the State.

12 THE COURT: Perhaps you could rephrase your
13 question.

14 MR. VAN RY: I was simply stating that this
15 officer is testifying on behalf of the State, and any
16 admission he would make would be applicable to the State.
17 Therefore, he is the State.

18 THE COURT: Well, I would sustain the objection
19 to the form of that question.

20 MR. VAN RY: Let me ask it in a different way
21 then.

22 THE WITNESS: Okay.

23 BY MR. VAN RY:

24 Q Of all the receipts and all of the evidence, in
25 terms of the physical evidence, there's not one

1 fingerprint of my client on any of that, is that true?

2 A We didn't take fingerprint evidence, so I can't
3 say whether there is or there isn't.

4 Q So you can't say conclusively that there is a
5 fingerprint, but you can say simply you didn't take
6 fingerprint evidence?

7 A We did not take fingerprint evidence, and I
8 can't say conclusively whether the defendant's
9 fingerprints are on any of those items.

10 Q Okay. And same question as to DNA; same
11 answer?

12 A Correct.

13 Q During the multiple days, and I believe you
14 said it was eight days that you followed my client, is
15 that correct?

16 A That's correct.

17 Q Did you ever see Mr. Volpicelli use Exhibit 9,
18 that label maker?

19 A I did not.

20 Q At any time during your surveillance did you
21 see Mr. Volpicelli affix a UPC label to merchandise in a
22 store?

23 A I personally did not.

24 Q During your role as, I think you called it case
25 agent in this matter did you have an opportunity to have

1 a conversation with Mr. Bowman?

2 A Yes.

3 Q And was this after he had been formally charged
4 with crimes or before or together or --

5 A He was interviewed post Miranda the night of
6 the arrest by other detectives and interviewed by myself
7 later.

8 When you say, "formally charged," are you
9 talking about when I charged him or when the DA formally
10 charged him?

11 Q When the DA formally charged him.

12 A I don't recall whether it was before or after.
13 We spoke several times over probably four months. There
14 were times that he certainly was interviewed after he was
15 formally charged.

16 Q How many times did you interview and speak with
17 Mr. Bowman?

18 A I believe it was five.

19 Q And during your courses of meeting with
20 Mr. Bowman, did you become aware of the plea bargain
21 arrangement that was going to be entered by Mr. Bowman?

22 A Yes.

23 Q Did you appear on Mr. Bowman's behalf at his
24 sentencing?

25 A I did not.

1 Q Based upon your involvement as a case agent,
2 are you aware of any detective that may have appeared at
3 Mr. Bowman's sentencing?

4 A I am not aware of anybody else that appeared at
5 the sentencing.

6 Q At the initial arrest of Mr. Bowman and
7 Mr. Volpicelli in October, which would be October 17,
8 Mr. Bowman was considered a suspect, is that correct?

9 A At the time of his arrest?

10 Q Correct.

11 A He was observed committing a crime, along with
12 the defendant here today. And yes, he was not a suspect,
13 he was a defendant at that point. He was arrested.

14 Q Once you arrested, or whoever arrested him, he
15 became a defendant?

16 A Yes, sir.

17 Q Was there a search done of Mr. Bowman's
18 apartment?

19 A Yes.

20 Q Did you personally undertake that search?

21 A Yes, I did.

22 Q Did you find any items in Mr. Bowman's
23 apartment that appear on that transposition list?

24 A Mostly what I found in the apartment were
25 personal items, such as clothing, the bear bones. I did

1 find a stereo system, but it didn't intrigue or pique my
2 interest. I didn't try to match that stereo system up
3 with the transposition sheet.

4 Q You kind of led me to the better question.
5 During your investigation of Mr. Bowman's apartment, did
6 you try to try to match up any items in his apartment
7 with that transposition sheet?

8 A That stereo system would have been the only
9 thing that I would have even tried. Again, we're talking
10 about an individual who had just gotten out of prison a
11 few months earlier. He had a few clothes and a few
12 toiletry items, and that was it. It was pretty much bear
13 bones.

14 Q Did you try to compare any of the items in his
15 apartment with receipts you found in the accordion
16 folder?

17 A I did not. Again, the only one would have been
18 the stereo system.

19 Q Why did you not follow up on that stereo
20 system?

21 A Again, it just didn't strike me as a new system
22 or didn't pique my interest at all to even attempt to
23 compare it. I wasn't concerned about it.

24 Q Let me ask you this question. Once you or your
25 office determined that Mr. Bowman was going to enter a

1 plea agreement, did you stop pursuing the investigation
2 as to Mr. Bowman?

3 A No. We stopped pursuing the investigation after
4 speaking with the DA, had approximately 20 to 25 felony
5 charges pending against the defendant. And again, the
6 investigation was just continuing until the decision was
7 made to just stop and see where we're at and just go from
8 there.

9 Q Was that point in time before or after
10 Mr. Bowman agreed to enter into the plea agreement?

11 A That was probably after.

12 Q Did you yourself personally have any
13 involvement in the transfer of Mr. Bowman's paycheck from
14 the Sands into his possession?

15 A Yes.

16 Q Can you describe that please?

17 A Yes. He had a check that he needed to have
18 taken to him, and we accomplished that. It was his last
19 paycheck, obviously.

20 Q Now, you mentioned that Mr. Bowman was also
21 surveilled or followed in this matter prior to his
22 arrest, is that correct?

23 A Only on the occasion of his arrest, that's
24 correct, and not by me.

25 Q And only on October 17?

1 A Only on October 17. On October 17th, was the
2 first time that we were aware of Brett Bowman.

3 Q So when you indicated in your testimony earlier
4 that there was a parallel investigation prior to the
5 arrest, you meant simply that date?

6 A That's correct.

7 Q So Mr. Bowman was not followed or investigated
8 prior to October 17, 2002 by you, is that correct?

9 A That's correct. We were completely unaware of
10 who he was.

11 Q And is it also true that you were not present
12 at the time of the arrest of Mr. Volpicelli and
13 Mr. Bowman on October 17?

14 A That's correct.

15 MR. VAN RY: I'm not sure who has the exhibits,
16 Your Honor. Oh, they're still trickling down. I just
17 want the transposition sheet, Exhibit 11, which is the
18 big one. Thank you.

19 Your Honor, if I may approach the witness.

20 THE COURT: Yes, you may.

21 BY MR. VAN RY:

22 Q Detective Thomas, I'm showing you what's been
23 marked and admitted identified as Exhibit No. 11.

24 A Yes.

25 Q And you've testified about that extensively

1 today, correct?

2 A That's correct.

3 Q Can you tell me whose handwriting that is?

4 A I can tell you who I think.

5 Q I don't want to know who you think, I want you
6 to tell me whose it is.

7 A I don't know.

8 Q And flip it over on the back. Same question as
9 to the back handwriting?

10 A I can't say whose that is 100 percent.

11 MR. VAN RY: If I may approach the jury?

12 THE COURT: Yes, you may.

13 MR. VAN RY: Your Honor, if I may, this is a
14 small exhibit, Exhibit 41, this should be the Office
15 Depot.

16 (Getting exhibit from juror.)

17 BY MR. VAN RY:

18 Q Officer or Detective Thomas, I'm going to show
19 you Exhibit 41, which has been marked and admitted.

20 A Okay.

21 Q There's some writing on the front of that
22 receipt. And then again, the same question as to the
23 handwriting identity, who made that?

24 A I can't say with 100 percent certainty who made
25 that.

1 Q And the same for the back.

2 A Same response.

3 Q And the back is the number that you identified
4 earlier in your testimony that was put into the
5 transposition sheet, is that correct?

6 A That's correct.

7 MR. VAN RY: May I approach, Your Honor?

8 THE COURT: You may.

9 MR. VAN RY: If I may have a moment, Your
10 Honor.

11 THE COURT: Yes.

12 MR. VAN RY: No further questions. Thank you.

13 THE COURT: Ms. Riggs, you may ask additional
14 questions.

15 MS. RIGGS: Thank you. Very briefly, Your
16 Honor.

17

18 REDIRECT EXAMINATION

19 BY MS. RIGGS:

20 Q Detective, you just testified that you found
21 one item of electronic equipment in Brett Bowman's
22 apartment, is that true?

23 A That's correct.

24 Q It didn't raise your suspicion, it didn't seem
25 to be a super high-end item?

1 A I wasn't even convinced it was new. I didn't
2 know how old it was.

3 Q And you basically weren't interested in it,
4 correct?

5 A Correct.

6 Q How many electronic items do you estimate that
7 you found in the defendant's storage unit?

8 MR. VAN RY: Objection, Your Honor. That's
9 beyond the scope of cross-examination.

10 MS. RIGGS: Your Honor, I'm asking in
11 comparison to what he's asking about Mr. Bowman.

12 I'll just leave my objection.

13 THE COURT: I'll sustain the objection of being
14 outside the scope of the cross.

15 MS. RIGGS: Thank you.

16 BY MS. RIGGS:

17 Q Now you testified, Detective, that you only saw
18 Brett Bowman on the 17th of October or -- or I'll
19 withdraw that. That Brett Bowman only came to your
20 attention as of October 17, 2001, correct?

21 A That's correct.

22 Q So the entire eight days that you were watching
23 the defendant you never saw Brett Bowman?

24 A Never saw Brett Bowman. Again, didn't know who
25 he was.

1 Q And you earlier testified that during those
2 eight days you were watching the defendant going in and
3 out of stores all day long, is that correct?

4 A That's correct.

5 Q By himself?

6 A That's correct.

7 MS. RIGGS: Thank you, the State has nothing
8 further, Your Honor.

9 THE COURT: Mr. Van Ry, anything else?

10 MR. VAN RY: If I may have a moment.

11

12 RECROSS-EXAMINATION

13 BY MR. VAN RY:

14 Q Just one question. It wasn't a crime on those
15 days when Mr. Volpicelli walked into those stores without
16 Mr. Bowman, was it?

17 A It wasn't a crime to walk into the stores --

18 Q Correct.

19 A -- without Mr. Bowman?

20 Q And then to walk out.

21 A That in itself does not show anything that's a
22 crime.

23 MR. VAN RY: Nothing further.

24 MS. RIGGS: The State has nothing further.

25 THE COURT: Detective Thomas, you may be

1 excused.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 MS. RIGGS: Your Honor, the State has no
5 further witnesses and the State will rest.

6 THE COURT: We will take a recess at this time.
7 Probably a short recess, but nonetheless there is
8 something I need to do.

9 I want you as jurors not to discuss this case
10 among yourselves or anyone else, do not read, read, watch
11 or listen to any media account of this proceeding, and do
12 not form or express any opinion connected with this case
13 until the matter is submitted to you for your
14 deliberations.

15 And we will rise for the exist of the jury.

16 --o0o--

17 (The following proceedings were held outside the presence
18 of the jury.)

19 THE COURT: Mr. Volpicelli, I wanted to discuss
20 something with you before we conclude for the day, and
21 that is with regard to decisions that have to be made by
22 you as to whether or not you will testify in this case on
23 your own behalf.

24 The State has rested its case in chief, and now
25 it's up to the defense to call any witnesses, and you

1 could be a witness. And, Mr. Volpicelli, first, do you
2 understand that you have the right to remain silent and
3 basically can't be made to testify against yourself in
4 this case?

5 THE DEFENDANT: I understand that, Your Honor.

6 THE COURT: However, in the event you do not
7 testify, I want you to know that the State is prohibited
8 from making any statement or suggestion to the jury that
9 your failure to testify and exercise that Constitutional
10 Right is evidence of a guilty conscience on your part.
11 They can't infer guilt to you simply because you do not
12 testify.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Now you have the right to testify,
16 and if you do testify you would be sworn as other
17 witnesses have been sworn to tell the truth. You would
18 take the stand, and then Mr. Van Ry would first ask you
19 questions, and then after that Ms. Riggs would be
20 entitled to cross-examine you.

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And have you discussed this issue
24 about whether or not you will testify with your lawyer,
25 Mr. Van Ry?

1 THE DEFENDANT: Yes, I have, Your Honor.

2 THE COURT: At this point have you reached any
3 conclusion as to that matter?

4 THE DEFENDANT: At this point I am seriously
5 considering testifying, provided our other witness goes
6 before me, and that we would recall Brett Bowman for
7 probably five or six questions, at which time I would
8 then like to take the stand.

9 MS. RIGGS: Your Honor, may I be heard on this
10 matter?

11 THE COURT: All right.

12 MS. RIGGS: Your Honor, you had advised this
13 defendant earlier that he has one attorney in this case
14 who will be making the legal strategic decisions in this
15 case. It sounds like the defendant is trying to
16 negotiate something with the Court.

17 I object to it. I don't think it's proper. He
18 is either going to testify or he is not. He has had
19 ample opportunity to discuss his case with his attorney,
20 Mr. Van Ry, and you are asking him at this time if he
21 intends to testify. I believe he should answer the
22 question.

23 We are at that portion of the case where he
24 needs to make a decision. I believe he should make it
25 today and in discussion with his attorney, not setting

1 the standard or the goal himself and calling the shots,
2 as far as who his attorney is going to call and who is he
3 not.

4 THE COURT: Well, it actually is necessary for
5 me to know what he intends to do, and probably doesn't
6 have to make that decision today. We're probably going
7 to recess, I suspect unless there would be no defense
8 witnesses, so we can do some other planning.

9 Mr. Van Ry, but with regard to the defense
10 case, are you intending to call witnesses?

11 MR. VAN RY: That may be contingent upon what
12 I'm going to say next. I would like to take a few
13 moments with the Court to make an oral motion to dismiss
14 this case, and I have some law. I would like to discuss
15 that with you. Your ruling will impact the defense
16 strategy, Your Honor.

17 THE COURT: Well, I know I've been down this
18 road before, and I actually granted a defense motion to
19 dismiss a case at this stage because the State's case
20 started, they empanelled the jury, and I think we
21 actually had a police officer, one short witness, but
22 then the actual victim of the case, who was a critical
23 element, you know, to the State's case, did not show up
24 and they couldn't proceed, and I granted the defense
25 motion to dismiss.

1 It was then appealed to the State Supreme
2 Court. The Supreme Court reversed and instead of the
3 defendant winning, the defendant would have won if we had
4 simply presented the case to the jury at that point, and
5 then the State had another shot at it and was able to
6 convict the defendant when they did get the complaining
7 witness there.

8 So, the way it works is that in a civil case
9 you can move to dismiss with a 41B Motion at the
10 conclusion of the plaintiff's case, but once a trial
11 starts, the judge does not have the authority to dismiss
12 charges.

13 MR. VAN RY: Your Honor, if I may be heard.

14 THE COURT: All right.

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

16 Your Honor, there is a statute that we're all
17 familiar with in this case, the accomplice statute. And
18 it talks about the corroboration required to prove a case
19 in a criminal action. And the statute is NRS -- and I
20 apologize for the frog in my throat. NRS 175.291. And
21 I'd like the Court to consider the evidence in this
22 matter where it is clearly the common thread to all the
23 counts, including the non-burglary counts, that the
24 testimony of Mr. Bowman.

25 We have one, two, three, four, five, six,

1 seven, eight, nine, ten counts, eight of which are
2 burglaries. First count is conspiracy and the last count
3 is unlawful possession of counterfeiting of inventory
4 pricing. And as we examine each one of these charges
5 against Mr. Volpicelli, it seems readily apparent to me
6 from the evidence that this court has heard and the jury
7 has heard that it hinges upon Mr. Bowman.

8 And the statute is pretty clear, and again, I'm
9 reading 175.291, "A conviction shall not be had on the
10 testimony of an accomplice. That is unless he is
11 corroborated by other evidence which in itself and
12 without the aid of the testimony of the accomplice, tends
13 to connect the defendant with the commission of the
14 offense. And the corroboration shall not be sufficient
15 if it merely shows the commission of the offense or the
16 circumstances thereof."

17 Which I submit to the court is precisely what
18 we have in this case. We have Mr. Bowman, who is
19 pointing to all of these items of evidence to be held
20 against my client. And I say for the record that is
21 precisely what this statute is trying to prohibit. To
22 prohibit an accomplice, one who is clearly involved in
23 something, who is charged with a crime, received a plea
24 bargain agreement, that his testimony needs to be
25 corroborated by outside extrinsic evidence.

1 And there are several cases on this point, Your
2 Honor. There's Lapina v. State, 92 Nevada, one, there is
3 a 2002 case, I didn't get the Nevada Advanced Opinion,
4 but it's 39 Pacific 3rd, 114 Rowland v. State. And the
5 initial underlying case is Allen v. State, Your Honor, or
6 excuse me, Austin v. State which is a 1971 case which
7 interpreted this statute.

8 I made copies for Ms. Riggs of the cases.

9 In examination of the Rowland v. State case,
10 Your Honor, and I'm citing Rowland v. State, which is in
11 turn citing Austin v. State.

12 "We explained in Austin that NRS 175.291 was a
13 legislative declaration that one who has participated
14 criminally in a given criminal venture shall be deemed to
15 have such character and such motives that his testimony
16 alone shall not rise to the dignity of proof beyond a
17 reasonable doubt.

18 "Although the question of whether a witness is
19 an accomplice is typically a question of fact, the
20 District Court should instruct the jury as a matter of
21 law," and we'll get to this when we talk about jury
22 instructions, Your Honor, "regarding a witness's
23 accomplice status when the witness's own testimony leaves
24 no doubt that witness was an accomplice."

25 And I don't believe there's any doubt that

1 Mr. Bowman was an accomplice in this. And while we do
2 have voluminous receipts, we have all sorts of
3 circumstantial type of evidence, but the only thread that
4 pulls them together, that pins this on my client is
5 Mr. Bowman.

6 There's no fingerprints, no DNA, none of the
7 officers ever saw my client use the label maker, none of
8 the State's witnesses saw my client affix a UPC label to
9 an item of merchandise. And I think that's enough to
10 satisfy what the statute says, should it not count, and
11 as a result I would ask that you dismiss really all the
12 counts, Your Honor.

13 Thank you.

14 THE COURT: Thank you. And, Ms. Riggs, do you
15 have any response to this?

16 MS. RIGGS: Yes, I do. Thank you, Your Honor.

17 First of all, the State absolutely agrees with
18 Your Honor's interpretation of the ability of the
19 jurisdiction of the District Court to dismiss a case once
20 a jury has been empanelled.

21 Second of all, NRS 175.291 describes what the
22 factual standard is. It says that "A conviction shall
23 not be had on the testimony of an accomplice unless he is
24 corroborated by other evidence, without the aid of
25 testimony that tends to connect the defendant with the

1 commission of an offense."

2 Your Honor, that's a jury question. It's a
3 question of fact. It's up to the jury to decide whether
4 there's enough corroboration here, and that's
5 appropriately handled in a jury instruction, which there
6 will be in this case.

7 As to Mr. Van Ry's characterization that there
8 is no other evidence in the State's case that connected
9 the defendant to the offense without or independent of
10 Bowman's testimony, Your Honor, I'm looking at 41 pieces
11 of physical evidence that have been admitted in this
12 case.

13 For instance, the bag that had contained the
14 label machine that made the UPC codes that were stuck on
15 items in this case has the defendant's identification on
16 it, Your Honor.

17 Many of the items in this case were found in
18 this defendant's vehicle that he alone drove. Many of
19 the items were found in the storage shed that he had
20 access to and that Brett Bowman did not.

21 Your Honor, the State believes that it has
22 produced voluminous evidence to support the rule, 174,
23 pardon me, 175.291. And we believe that the jury will
24 find that as well.

25 It is a jury question, Your Honor, and the

1 State asks you not to dismiss this case at this point.

2 Thank you.

3 THE COURT: Well, I would certainly find that
4 Mr. Bowman would be an accomplice. And in so far as that
5 would be a finding, it would seem that 175.291 can apply.
6 However, the conviction will not stand on the testimony
7 of an accomplice alone, unless there is corroborating
8 evidence. And in this case I would certainly find that
9 there is sufficient corroborating evidence beyond simply
10 the testimony of Mr. Bowman to support the charges.

11 As Ms. Riggs has pointed out, you have
12 surveillance by several of the witnesses in this case,
13 the police officers, you have the van, all the contents
14 of the van, the storage shed and it's contents.

15 You know, all that put together is a case which
16 certainly merits going to the jury, has corroboration
17 beyond any testimony of an accomplice.

18 So I deny your motion to dismiss pursuant to
19 175.291.

20 MR. VAN RY: Thank you for hearing me, Your
21 Honor.

22 THE COURT: What I would propose is that we
23 come back with the jury at 9:00 o'clock, you see if there
24 is testimony. If their isn't testimony, I would say why
25 don't we bring the jury in, you know, at noon or 1:00 or

1 something, I'm not sure. I don't know how long it will
2 take to settle the jury instructions, but I'm assuming
3 that the jury instructions won't be that difficult.

4 It ought to be an hour's project, and otherwise
5 I'm intending to work on this case starting at 9:00,
6 because we're taking a plea at 8:30. So I do need to
7 know in terms of telling the jury when to come back how
8 the case is proceeding.

9 And for that, Mr. Van Ry, will there be any
10 defense witnesses tomorrow?

11 MR. VAN RY: There will be at least one defense
12 witness tomorrow, Your Honor.

13 THE COURT: Okay. Should I actually bring the
14 jury back at 10:00 o'clock, and we meet between 9:00 and
15 10:00 to work on jury instructions? Would that make
16 sense?

17 MS. RIGGS: That would be fine with the State,
18 Your Honor. I do have one matter to discuss regarding
19 this defendant's potential testimony in the case
20 tomorrow, and it is a matter of notice actually.

21 The defendant, if he intends to testify, Your
22 Honor, as you have heard throughout the course of this
23 case, the defendant's case seems to be leaning toward
24 blaming Brett Bowman for the entire scheme or asserting
25 that Brett Bowman is actually the one committing all

1 these crimes.

2 In that case, Your Honor, first of all, in any
3 case, this defendant has three prior felony convictions.
4 One of them is August 9th of '93. Your Honor, although
5 it is now November of 2003, and that is slightly over ten
6 years old, this case has been continued by the defendant
7 several times. Our first trial date in this case was
8 last year, Your Honor, and I don't believe the State
9 should be prejudiced by omitting that prior because the
10 defendant has managed to continue this case over and over
11 again.

12 In addition, Your Honor, the defendant has a
13 1997 felony conviction for perjury. That certainly would
14 come in if he decided to testify.

15 Thirdly, this defendant was convicted in 1998
16 of two burglary charges under facts that were almost
17 identical, save and except the involvement of Brett
18 Bowman to this case, Your Honor. And because the State
19 anticipates that Brett Bowman is going to be the person
20 that the defendant blames in this case, the State intends
21 to admit, after the appropriate Volpicelli or pardon me,
22 Petrocelli Hearing, the facts of those prior convictions.
23 Especially the '98 burglary conviction in which we intend
24 to have a witness here to describe what he saw
25 Mr. Volpicelli do.

1 Also, Your Honor, this defendant pled guilty to
2 the '97 conviction or 1997 charge for tax perjury, and
3 incorporated in the charges in the plea agreement are the
4 facts of that case. So the State believes that we'll be
5 able to just simply read into the record the '97
6 conviction. By which I'm trying to notify the defendant
7 includes the facts of the case for which he was
8 convicted.

9 So before the defendant makes the decision to
10 testify, the State believes it's appropriate to put him
11 on notice that these will be the facts the State intends
12 to admit tomorrow.

13 Thank you.

14 THE COURT: It seems to me, however, pursuant
15 to case law that you would ordinarily ask the defendant
16 if he has the prior felony convictions, and it would only
17 be if he denies the conviction that you would then go
18 into the proof of the conviction and the facts
19 surrounding it.

20 I'm not much inclined to have you go into all
21 the facts about a prior conviction if the defendant is
22 going to admit the conviction.

23 MS. RIGGS: And I understand that, Your Honor,
24 and I apologize for being unclear. I understand that if
25 the defendant takes the stand I'm only allowed to ask him

1 regarding his convictions, the date of the conviction and
2 what he was convicted for.

3 However, as I stated, the State anticipates
4 that this defendant is going to testify as to implicate
5 Brett Bowman as the master, as the person completely in
6 charge of this conspiracy, and thereby try to exonerate
7 himself.

8 In that case, the State intends to move to
9 admit the prior bad acts or the prior facts of those
10 cases in a 48.045 motion or request a Petrocelli hearing.
11 And we believe this falls squarely within the Petrocelli
12 case law, Your Honor, as motive and intent, because he is
13 going to lay this on Brett Bowman. And our evidence of
14 prior bad acts clearly indicate, no, that was not his
15 motive, he was not simply trying to help out Brett
16 Bowman, as we've heard so far, he was intending to go
17 forward with a scheme that was substantially similar to
18 those he perpetrated before.

19 So that's what you're going to hear in a
20 Petrocelli motion tomorrow, if we get there, Your Honor.

21 THE COURT: Well, we'll take up the issue of a
22 Petrocelli hearing regarding prior bad act if it comes to
23 that.

24 Why don't we all meet at 9:00 o'clock, and I'll
25 tell the jury to come back at 10:00.

1 MR. VAN RY: That will be fine, Your Honor.

2 Thank you.

3 MS. RIGGS: Your Honor, what time would you
4 like to see counsel? Are we going to be settling jury
5 instructions before 10:00 o'clock?

6 THE COURT: At 9:00.

7 --oOo--

8 (The following was held in the presence of the jury.)

9 THE COURT: You may be seated.

10 Ladies and gentlemen of the jury, I've been
11 discussing how the case is to progress tomorrow with the
12 attorneys. And it seems best that we have you come back
13 tomorrow at 10:00 a.m. We have some other matters to
14 attend to, including reviewing the written jury
15 instructions before that. But I would anticipate that
16 there will probably be some more testimony at 10:00
17 o'clock.

18 And I did just give you the standard
19 admonishment. I'm going to say that all those
20 admonishments apply at this time regarding discussion of
21 the case, don't read, watch or listen to any media
22 account of this proceeding, and do not form or express
23 any opinion on any subject connected with this trial
24 until the matter is submitted to you for your
25 deliberations.

1 And we will be in recess then until 10:00 a.m.
2 tomorrow morning.

3 (Proceedings continued to Friday, November 14, 2003)

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2 RENO, NEVADA; FRIDAY, NOVEMBER 14, 2003; 10:09 A.M.

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4

5 THE COURT: Will counsel stipulate to the
6 presence of all 13 jurors?

7 MS. RIGGS: State will stipulate, Your Honor.

8 MR. VAN RY: Defense so stipulates, Your Honor.

9 THE COURT: Mr. Van Ry, would you like to call
10 a witness?

11 MR. VAN RY: Defense would call no witnesses at
12 this time, and we rest.

13 Thank you, Your Honor.

14 THE COURT: Well, that would conclude the
15 witnesses in the case. And I'll need to get with the
16 attorneys to settle jury instructions. It probably won't
17 take all that long to do this, because I have been
18 meeting for the past hour with them.

19 As you heard from the reading of the
20 Indictment, there are, I believe, nine charges, so we
21 have a lot of work to do.

22 MS. RIGGS: There are ten, Your Honor.

23 THE COURT: Ten. Well, anyway it amounts to
24 more instructions than the normal case, put it that way.

25 So I will be excusing you, and I think we can

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1 actually accomplish this within a half hour, so if you
2 would just take a half hour. And I would authorize the
3 jurors to leave the building. You won't be just cooped
4 up in the jury room. If you would come back at about 20
5 minutes before 11:00, it seems to me that would be
6 reasonable.

7 That will give us a half hour to put everything
8 on the record.

9 All right, with that, I will again admonish the
10 jurors that you are not to discuss this case among
11 yourselves or with anyone else, do not read, watch or
12 listen to any media account of this proceeding, and do
13 not form or express any opinion on any subject connected
14 with this trial until the matter is submitted to you for
15 your deliberations.

16 Court will stand in recess.

17 --o0o--

18 (The following proceedings held outside the presence of
19 the Jury)

20 THE COURT: We will go on the record. The
21 record will reflect that we are meeting in the courtroom,
22 and both counsel and Mr. Volpicelli are present. And I'm
23 going to go through the instructions that the Court
24 intends to give. And I will be affixing numbers to them
25 as I read them.

1 No. 1, "Ladies and gentlemen of the jury, it is
2 my duty."

3 2, "The defendant in this matter." And this
4 instruction has numerous pages, but we all know that it's
5 a long one.

6 3, "An Indictment is a formal method."

7 4, "If in these instructions."

8 5, "If during this trial."

9 6, "Neither the prosecution."

10 7, "Nothing that counsel say."

11 8, "It is the duty of attorneys."

12 9, "There are two types of evidence."

13 10, "To the jury alone."

14 11, "In every crime there must exist."

15 12, "Intent may be proved."

16 13, "The burden rests."

17 14, "A reasonable doubt."

18 15, "Every person charged."

19 16, "Conspiracy is."

20 17, "Each member of a criminal conspiracy."

21 18, "A conviction shall not be had."

22 MR. VAN RY: Your Honor, did you want me to
23 interpose objections now or wait?

24 THE COURT: Not yet.

25 19, "Corroborative evidence is."

1 20, "Nevada Revised Statutes." And this is
2 205.380.

3 21, "A false pretense may."

4 22, "It is not a necessary element."

5 23, "Forgery may be committed."

6 24, "In the crime of uttering a forged
7 instrument."

8 25, "Larceny consists of."

9 26, "The two elements necessary to constitute
10 theft by larceny are."

11 27, "Nevada Revised Statute 205.060."

12 28, "The essence of a burglary is."

13 29, "Pursuant to NRS 205.965."

14 30, "As used in NRS 205.965."

15 31, "It is not necessary."

16 32, "Every person concerned."

17 33, "Each count charges."

18 34, "Although you are to consider."

19 35, "The penalty provided by law."

20 36, "It is your duty."

21 And 37 is the last instruction. "Upon retiring
22 to the jury room."

23 And Ms. Riggs, does the State object to the
24 giving of any of these instructions?

25 MS. RIGGS: Your Honor, the State does not

1 object to the giving of any of these instructions.
2 However, Your Honor, regarding Instruction No. 30, this
3 instruction does need to be revised as to reflect the
4 proper NRS in this case, which is NRS 205.965, which I
5 can do as soon as we're finished, Your Honor, or at your
6 discretion.

7 THE COURT: Well, I will read it with the five.
8 We will make any final corrections before it's actually
9 turned over to the jury.

10 Are there any further instructions the
11 prosecution would seek to have given?

12 MS. RIGGS: There are no further instructions,
13 Your Honor.

14 THE COURT: Mr. Van Ry, does the defense object
15 to the giving of any of these instructions?

16 MR. VAN RY: Yes, Your Honor. As to
17 Instruction No. 18 and Instruction No. 19, I would ask
18 that this Court find as a matter of law that Brett Bowman
19 is an accomplice, and that a sentence be added to both
20 Instruction 18 and 19 that would read as follows:

21 "The court finds as a matter of law that Brett
22 Bowman is an accomplice in this case."

23 And that is based upon the recent case of
24 Rowland v. State, 39 Pacific 3rd, 114, 2002 case. I do
25 not have the Nevada Advanced Opinion cite, but I did want

1 to read and that's spelled R-O-W-L-A-N-D v. State. And
2 this is on page 120 of Rowland v. State.

3 "Although the question of whether a witness is
4 an accomplice is typically a question of fact, the
5 District Court should instruct the jury as a matter of
6 law regarding a witness' accomplice status, when the
7 witness' own testimony leaves no doubt that the witness
8 was an accomplice."

9 And I would state pursuant to that case, Your
10 Honor, that the evidence in this case demonstrates there
11 was no doubt that the witness was an accomplice and that
12 those additional sentences should be added to those two
13 instructions, Your Honor.

14 THE COURT: And can you read again what you're
15 proposing?

16 MR. VAN RY: I would ask simply the sentence be
17 added at the bottom, which would be just following the
18 two paragraphs in Instruction 18 at the bottom of the
19 fourth or fifth paragraph there.

20 In Instruction 19, I would like it to say, "The
21 Court finds as a matter of law that Brett Bowman is an
22 accomplice in this case."

23 And I'm sure the State would like to be heard
24 on that issue.

25 THE COURT: And, Ms. Riggs, what is the State's

1 position on this?

2 MS. RIGGS: The State would object to this
3 amendment to the instruction, Your Honor. The State
4 believes that the jury is entitled, as the fact finder,
5 to determine whether Brett Bowman is an accomplice in
6 this case or not.

7 I'm not sure what the standard under the case
8 that defense counsel's just read means. I don't know
9 what the standard is for "no doubt," but certainly
10 there's some room for speculation in this case.

11 I believe that it would be prejudicial to the
12 State's case to include such an instruction of law, and I
13 would ask that that be -- that counsel's or defense
14 counsel's motion be denied.

15 Thank you.

16 THE COURT: Well, from your reading of Rowland
17 versus State, it sounds like I would be obligated to have
18 the language that you have requested. Ordinarily this
19 would really be a finding of fact by the jury as to
20 whether somebody is an accomplice.

21 But it is clear to me from the testimony of
22 what Mr. Bowman did, that Mr. Bowman was an accomplice
23 regarding some of the charges, anyway. I don't know that
24 it would involve all of the charges, but some, yes.

25 MS. RIGGS: And that's exactly my point, Your

1 Honor. He wasn't even involved in some of these charges.
2 So, if the jury is to find as a matter of law, for
3 instance, in the case where Mr. Volpicelli went in or is
4 alleged to have gone into Shopko and bought the
5 comforters all by himself, placing the product
6 information and leaving, if the jury is to believe that
7 Brett Bowman was an accomplice in that act, it could just
8 lead to confusion.

9 THE COURT: I certainly want to follow the
10 instructions of the state supreme court, and I think
11 that's important for me to do, and I want to do that.
12 It's just difficult in that, you know, Brett Bowman is an
13 accomplice as to some of the charges involved in this
14 case, but not all.

15 And do you have any guidance on that, Mr. Van
16 Ry?

17 MR. VAN RY: I simply would state that his
18 accomplice status is enough to taint the entire testimony
19 that he gave, because that is what, you've seen the
20 evidence in this case, that's what ties even the
21 occasions that Mr. Volpicelli was separate and distinct
22 from Mr. Bowman, when he may have gone into a store, for
23 instance. The only way to prove that that's essentially
24 an intent to go in to do something improper is based upon
25 Mr. Bowman's testimony.

1 And that's the reason for this type of an
2 instruction, Your Honor, is because courts recognized
3 that an accomplice's testimony is inherently unreliable
4 and certainly extremely prejudicial.

5 In fact, the sentence before that sentence I
6 just read, Your Honor, again in Rowland v. State on Page
7 120, 39 P 3rd, 120, the Supreme Court says, "We explain
8 in Austin, "which is another case talking about this very
9 issue, "that NRS 175.291 was a legislative declaration
10 that one who has participated," and it's important to
11 know, and here this is my interjection that although it's
12 not completely participated in every element of every
13 crime that's charged, "criminally in a given criminal
14 venture shall be deemed to have such character and such
15 motives as the testimony alone shall not rise to the
16 dignity of proof beyond a reasonable doubt."

17 So I would say that while it is a good argument
18 that he did not participate in all of the alleged
19 criminal activity in this matter, I would say that it's
20 such tainted that this court needs to give that
21 instruction, even though it's not as to all.

22 THE COURT: Well, what if I did this, "The
23 Court finds as a matter of law that Brett Bowman is an
24 accomplice as to some of the charges against the
25 defendant."

1 MS. RIGGS: Your Honor, the State believes
2 that's only to Count I, as that is the only conspiracy
3 count alleged in the Indictment. Any other
4 accomplice-type characterization is not fair for the rest
5 of the complaint. Only Count I, which does include by
6 the way, Your Honor, king of incorporates Counts II
7 through X, as far as he, Brett Bowman, being the
8 conspirator to -- co-conspiracy to Mr. Volpicelli.

9 So I believe the problem is solved by including
10 that only as to Count I only.

11 Also, Your Honor, regarding Mr. Van Ry's
12 comment that co-conspirator testimony is inherently
13 unreliable. If that where the case, it wouldn't be
14 admissible. It simply needs to be corroborated by
15 evidence which clearly it has been in the case, Your
16 Honor.

17 Thank you.

18 THE COURT: Could you live with that
19 instruction as an accomplice as to Count I?

20 MR. VAN RY: No, I could not, Your Honor.
21 Thank you for the opportunity.

22 As I read the Indictment I find Mr. Bowman's
23 name mentioned in Count I, Count III, Count IV, Count VI,
24 Count VII, Count IX.

25 So I find him named in one, two, three, four,

1 five, six of the ten counts, Your Honor. So I would
2 submit that some of the charges would be extremely
3 favorable to the State. I should be able to say that
4 he's an accomplice in the majority of the charges, Your
5 Honor.

6 MS. RIGGS: Your Honor, may I be heard?

7 THE COURT: Yes.

8 MS. RIGGS: Regarding the counts that
9 Mr. Van Ry just read off, this defendant is alleged to be
10 aiding and abetting Brett Bowman, it's not -- Brett
11 Bowman is not the co-conspirator as named in those
12 charges, which is a completely standard of law, Your
13 Honor.

14 So the State would still object to the
15 conspiracy or to the defense's proposed instruction or
16 amendment to the instruction. We would ask that you only
17 amend if you're going to amend Count I or that
18 instruction as to Count I only.

19 Thank you.

20 THE COURT: Well, what about this? "Accomplice
21 as to one or more charges against the defendant"?

22 MR. VAN RY: That would be acceptable, Your
23 Honor.

24 THE COURT: I'm inclined to do that. I want to
25 follow Rowland versus State, clearly based on the

1 testimony Brett Bowman was an accomplice.

2 MS. RIGGS: Your Honor, may I have the Court's
3 indulgence for one moment before --

4 THE COURT: I'm going to do that.

5 Okay. Well, really I only need to add it to
6 18, because that covers what the Court finds. We really
7 don't need to add it to 19.

8 MR. VAN RY: That would be fine, Your Honor.

9 THE COURT: Then do you have any other
10 objection?

11 MR. VAN RY: Yes, thank you. As to Instruction
12 No. 24. And this is the instruction pertaining to
13 uttering a forged instrument. I do not believe that UPC
14 labels would constitute an instrument within the
15 definitions of crimes against property under NRS 205.085.

16 While Mr. Volpicelli may not actually have been
17 charged under that particular statute, 205.085 is
18 specifically a definitional statute, Your Honor, and it
19 gives definitions in Subsection (1) as to what an
20 instrument may be.

21 THE COURT: And does the State have any
22 position on this?

23 MS. RIGGS: Yes, Your Honor. The actual
24 definition for forgery is 205.090. And that statute,
25 Your Honor, is written very broadly and includes just

1 about anything that can be forged or misrepresented. And
2 it says, "It's not specifically included, or exclusive to
3 written instruments, such as checks." So if you read
4 that, Your Honor, the UPC codes definitely fit into the
5 definition of forgery or forged instruments. I believe
6 this defendant and -- I will need the Court's indulgence
7 for this, Your Honor, because I want to be accurate.

8 Your Honor, I'll just withdraw my final
9 comment. However, the State believes that under 205.090
10 the statute's very broad and incorporates UPC codes.

11 Thank you.

12 MR. VAN RY: Your Honor, if I may be heard,
13 briefly.

14 THE COURT: All right.

15 MR. VAN RY: I believe the State's counsel is
16 correct as to forgery, but in this instruction we have a
17 forged, as part A, second part, part B, instrument. And
18 I don't believe UPC labels constitute an instrument under
19 the definitional provision of that statute, 205.085.

20 It's pretty clear to me that there has to be
21 some sort of written or partly printed or whole printed
22 with a written signature thereto.

23 And reading from NRS 205.085 "Or a signature or
24 writing purporting to be a signature," to be included as
25 an instrument, Your Honor.

1 So I would agree as to the characterization of
2 forgery, and I'm not objecting to that instruction I'm
3 simply objecting to this instruction because of the
4 instrument implications, Your Honor.

5 Thank you.

6 MS. RIGGS: And if I may be heard one more
7 time, Your Honor. I have the definition of uttering a
8 forged instrument under 205.110.

9 THE COURT: Well, I believe that forgery is
10 adequately defined in Instruction No. 23. I don't
11 believe that there is an objection to that definition of
12 forgery, and from that the jury may then proceed to
13 determine whether or not the documents allegedly altered
14 in this case amount to a forgery.

15 So, I am going to present to the jury,
16 Instructions No. 23 and 24 as provided by the State.

17 And does the defense have other objections to
18 the instructions?

19 MR. VAN RY: No, Your Honor. The defense would
20 pass or approve the remainder of the instructions.

21 THE COURT: Are there other instructions which
22 you seek to have given?

23 MR. VAN RY: None, Your Honor. Thank you.

24 THE COURT: All right. Then going back to 18,
25 just so we know, this is the additional sentence in

1 number 18. "The Court finds as a matter of law that Brett
2 Bowman is an accomplice as to one or more charges against
3 the defendant."

4 MS. RIGGS: Your Honor, the State does have one
5 further matter to address.

6 THE COURT: What's that?

7 MS. RIGGS: Your Honor, it's my understanding
8 that the defense at least needs to consider offering the
9 instruction which the State cannot offer because it would
10 be error, but it is a Constitutional Right of a defendant
11 in a criminal trial that he may or may not be compelled
12 to testify.

13 MR. VAN RY: Oh, thank you. I brought that
14 with me, Your Honor, and I did not anticipate having to
15 use it. I thank you.

16 THE COURT: Well, a lot of times defense
17 counsel don't ask for that, that once more offers up the
18 issue to the jury, so they don't actually favor it.

19 MR. VAN RY: I would like to have that entered,
20 Your Honor. I accept responsibility for that, Your
21 Honor. It was a surprise, Your Honor, thank you.

22 THE COURT: Well, this should go up near the
23 witness instructions, near the beginning.

24 Why doesn't this then become 10A, "To the jury
25 only belongs the duty of weighing the evidence and

1 determining the credibility of the witnesses." It could
2 go there.

3 MR. VAN RY: That would be fine, Your Honor.
4 Fine for the defense.

5 MS. RIGGS: The State has no objection, Your
6 Honor.

7 THE COURT: All right. We will make that 10A.

8 And that concludes our issues as to the
9 instructions, but then we have all these verdict forms.
10 So we have a verdict form, "guilty," "not guilty," for
11 all of the counts.

12 I take it the State has no objection to those
13 verdict forms?

14 MS. RIGGS: State has no objection to the
15 verdict forms, Your Honor.

16 THE COURT: Does the defense object to any of
17 those verdict forms?

18 MR. VAN RY: Defense has no objection to the
19 verdict forms.

20 THE COURT: Then we can proceed on with the
21 jury. It's going to take a long time to read all these
22 instructions. I'm just deciding how we're going to do
23 this now that it's 5 after 11:00.

24 MR. VAN RY: I have no preference, except I'd
25 like to move this along. I think if we need to read

1 instructions and counsel needs to finish her's, I'd be
2 more than happy to come back after lunch and finish mine
3 or if counsel needs to do it after lunch and start with
4 her closing.

5 MS. RIGGS: I would prefer that whichever way
6 we do it, we do our closing arguments at the same time
7 rather than having them split up.

8 I have no preference either whether we do our
9 closings after lunch or before, but the jury has been
10 sitting around for a while.

11 THE COURT: Cooped up for an hour here.

12 MS. RIGGS: So they may want to push things
13 along. And maybe, Your Honor, we could give the jury a
14 choice of whether they want to go to lunch or sit through
15 closing arguments.

16 THE COURT: Well, you're closing, do you have
17 any idea how long it might be?

18 MS. RIGGS: Well, Your Honor, I estimate
19 between 20 and 30 minutes.

20 THE COURT: Well, it could be that I could read
21 this, have you give your first closing argument, and then
22 we break for lunch. That would not be your preference, I
23 understand, but that would work at least in terms of the
24 timing then. Probably be a little bit after 12:00 to
25 begin the lunch recess.

1 MS. RIGGS: State will submit, Your Honor.

2 THE COURT: But it seems to me that since you
3 have another opportunity to address the jurors after
4 Mr. Van Ry, that there isn't any magic to having a recess
5 after your argument and before his. You'll still address
6 them last.

7 MS. RIGGS: Then I'll submit, Your Honor.

8 Thank you.

9 THE COURT: All right. We will just go head,
10 and then during the lunch recess I'll get No. 18
11 reprinted, so I can read it according to the way it's
12 been agreed upon.

13 MS. RIGGS: Thank you, Your Honor.

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

15 --o0o--

16 (The following proceedings were had in the presence of
17 the jury.)

18 THE COURT: You may be seated.

19 Ladies and gentlemen of the jury, I am now
20 going to read the instructions as to the law, and this is
21 going to take some time since the second instruction is
22 fairly long. Please bear in mind that you will receive
23 copies of these jury instructions when you deliberate.
24 And you can read them at your leisure and in detail at
25 that time, each though at the reading here it's going to

1 be somewhat difficult to follow everything.

2 (Jury Instructions Read.)

3 THE COURT: And that concludes our instructions
4 as to law. And I did discuss with counsel before you
5 came out how we would proceed based on the time, et
6 cetera, and it was the thought that perhaps we would go
7 ahead and have Ms. Riggs present her closing argument and
8 then we would bread for a one hour lunch and have
9 Mr. Van Ry present closing argument on behalf of
10 Mr. Volpicelli, and then Ms. Riggs has one more
11 opportunity to address you and then that way we get a
12 little more done before the lunch break, but obviously,
13 Ms. Riggs is going to take longer than 15 minutes, but I
14 think we can have a one-hour lunch break, we can work
15 with that.

16 So Ms. Riggs would you like to present the
17 closing argument on behalf of the State?

18 MS. RIGGS: Yes, Your Honor, thank you.

19 Ladies and gentlemen, good morning I know that
20 it's been a long couple of days for you, and first I want
21 to thank you. So thank you for the time that you've put
22 into this case so far.

23 I know even though the facts of this case are
24 pretty interesting I know that at times the testimony has
25 been somewhat mundane, the entry of many, many receipts

1 and publishing those to the jury, et cetera, I know that
2 it hasn't been the most exciting experience, probably,
3 that you've ever been through. But as I said on
4 Wednesday, this is an important case, and the State does
5 appreciate your attention.

6 The State has shown you that the defendant,
7 Ferrill Joseph Volpicelli, perpetrated a scheme to obtain
8 or to defraud retail outlets throughout Washoe County by
9 entering those stores and recording UPC code information,
10 using that information to manufacture fraudulent UPC bar
11 codes, applying those bar codes to high end merchandise
12 in each of those stores, either himself or through his
13 conspiracy with Brett Bowman and obtaining those high end
14 items at costs deeply discounted for the asking retail
15 price.

16 You've heard the testimony of the State's
17 witnesses and have seen all of the documentary evidence
18 and, of course, you are going to get to see that all
19 again once you go into the jury room.

20 Now is the time to tie it all together,
21 beginning with the counts you heard most about, so I will
22 be taking these counts out of order as we go.

23 Let's begin with count seven, and ladies and
24 gentlemen in all of the burglary counts, I do want you to
25 keep in mind State's Exhibit 11. There's a lot of

1 information in this sheet, and I want you to remember or
2 to consider how all of this information got there.

3 Count VII, of course, is burglary occurring
4 between August 30 and October 13, 2001, at Wal-Mart. You
5 heard the testimony of Brett Bowman that on October 13,
6 2001, the defendant twice manufactured and provided him
7 with a fraudulent UPC bar code. It was that of an
8 Emerson CD player, as Mr. Bowman did recall.

9 Twice on October 13th, Mr. Bowman entered two
10 different Wal-Mart stores, and in each case placed that
11 Emerson CD bar code on a Panasonic DVD home theatre
12 system. The purchase price for the Emerson CD player was
13 69.94. And that's what Bowman paid for those home
14 theater systems.

15 Now, his testimony was corroborated by
16 Detective Reed Thomas who found a Panasonic DVD home
17 theatre system among the many electronic items at the
18 defendant's storage facility at Aussie Self-Storage in
19 Sparks. And you know that the defendant did have access
20 to that unit by the testimony of Karinah Prevost, who
21 came and said, "Yes, his name was on the sheet." On the
22 list of occupancy information sheet, a list of people who
23 are allowed access to that particular facility.

24 And you recall that Detective Thomas testified
25 that that DVD home theatre system had a UPC symbol or UPC

1 bar code on it that appeared to him to be fraudulent.
2 Now the fraudulence of that bar code was confirmed by
3 Greg Danielson, who checked it and found that it returned
4 to the said Emerson CD player in the Wal-Mart computer
5 system. And he also confirmed that the actual retail
6 price of that theatre system at that time was \$477.88.

7 So Brett Bowman paid approximately \$70 for an
8 item that sells at Wal-Mart for \$477.88. \$400 profit.

9 You recall that Detective Thomas also matched
10 the fraudulent UPC code number that was on the box to an
11 entry in the document that Bowman called the master sheet
12 or the transposition sheet. And You remember, I asked
13 Detective Thomas, "Well, what does transposition means to
14 you?" Transposition means switching out. So the name of
15 this document in itself shows you the defendant's intent
16 of what he was going to do with this information,
17 switching out pricing labels.

18 Regarding the DVD home theatre systems,
19 Detective Thomas also found two receipts in the plastic
20 accordion file that was located on the floor of the
21 defendant's MPV van. And you recall that Bowman
22 testified that the defendant kept that item in the Mazda
23 MPV. And Detective Scott Armitage found it there upon
24 the defendant's arrest.

25 Those receipts that Detective Thomas found in

1 his investigation indicate that the purchase had been
2 made using that same fraudulent Emerson CD bar code on
3 October 13, 2001, that's printed on that receipt. And
4 you will see it when you go back into the grand jury room
5 or pardon me, the jury room.

6 Now, I am going to be asking to you look at
7 Exhibits 11, 13, 14, an 32. Those are the exhibits that
8 tie this particular part of Count VII together. You
9 recall the Detective Armitage also found a Brother label
10 maker in the bag, which contained some UPC bar codes.

11 And you'll also recall that that bag had the
12 defendant's identification on it. VIM, Inc. Volpicelli
13 Investment Management, is who VIM, Inc. is, as you heard
14 Detective Thomas testify.

15 And with that I'll ask you to reference State's
16 Exhibits 9, 29, and 30.

17 Now, within the same count, you heard
18 Mr. Bowman testify that he used the fraudulent UPC codes
19 provided by the defendant, manufactured by the defendant,
20 to purchase at Wal-Mart several more items.

21 Regarding the KDS flat panel computer monitors,
22 you recall that Brett Bowman remembered that he had used
23 the UPC codes from cheaper 17-inch monitors. This
24 testimony was corroborated by Detective Thomas who
25 testified that he found two KDS monitors in the

1 defendant's storage unit. He also found receipts in the
2 defendant's accordion file, which were in the vehicle.
3 And those receipts indicated that four purchases were
4 made for product with that 17-inch monitor UPC code.

5 In addition that UPC code also returned to the
6 transposition sheet.

7 I'll ask you to reference State's Exhibits 11,
8 15 and 16 regarding the KDS monitors.

9 Also in Count VII is the Emerson DVD/TV combo.
10 You will recall that Detective Thomas described those as
11 the TVs with the built-in DVD players. And that Brett
12 Bowman testified that the Sanyo 19-inch TV bar codes is
13 what he attached to those. That was corroborated by
14 Detective Thomas, who discovered three of those DVD
15 combos in the defendant's storage unit, four receipts
16 indicating purchases of such an item -- or pardon me,
17 they reflected purchases of something with Sanyo 19-inch
18 TV bar code attached, and again corresponding
19 transposition entry.

20 Now, regarding the storage unit, ladies and
21 gentlemen, remember Brett Bowman had no access to the
22 storage unit. He was not allowed to go there by the
23 defendant. Whenever the defendant went there he dropped
24 Bowman off, even if he was going to come back and get
25 him, for instance when he dropped him off at Sierra Sids

1 and then came back and got him. Brett Bowman didn't even
2 know where it was. He said, "Somewhere in Sparks."

3 There's no evidence in this case that shows
4 that Brett Bowman has ever been there. So, the evidence
5 in this case shows that only the defendant had access, of
6 the parties in this case, to that storage unit.

7 Regarding the Emerson DVD/TV combo, I'll ask
8 you to reference State's Exhibits 11, 17 and 18.

9 Also, the last item in Count VII, remember that
10 the detective found a Singer surge sewing machine. And
11 of course, Brett Bowman had -- pardon me, Your Honor, I'm
12 going to withdraw that.

13 Detective Thomas did find a Singer sewing
14 machine in the defendant's storage unit and three of
15 those receipts for the sewing machines in the accordion
16 folder, also corresponding UPC entries. And I will ask
17 you to refer to State's Exhibits 11, 19 and 20.

18 Count VIII is the burglary at Wal-Mart, October
19 17, 2001. This was the Mongoose bicycle. If you recall
20 there's a lot of testimony regarding that item. You
21 heard Brett Bowman testify the defendant manufactured a
22 fraudulent bar code and placed it on the Mongoose
23 bicycle, and you recall it was placed on the neck of the
24 seat.

25 Bowman then purchased this bike for around \$80

1 at Wal-Mart. And this is a case where there was actually
2 detectives who saw the whole thing happen, R.P.D. saw
3 this entire transaction. You heard Detective Scott
4 Armitage testify that he watched the defendant,
5 Mr. Volpicelli, walk up to the bicycle section and show
6 particular interest in a particular bicycle. Then the
7 defendant, displaying highly unusual behavior, if you
8 recall drove his cart down an aisle, then went over to
9 the electronic section, stuck a telephone in his shopping
10 cart, came back to the check stand, parked the cart
11 between check stands, and went into the restroom and then
12 left the store. Didn't come back for his item, didn't buy
13 anything, left.

14 Immediately thereafter, Detective Dave Della
15 watched Mr. Bowman go in. Mr. Bowman goes straight to
16 the bike, gets assistance in taking the bike down, pulls
17 the bar code off for ease for the cashier, and you recall
18 he testified that he was looking for somebody basically
19 who didn't look like they knew what they were doing,
20 pulled the bar code off, showed it to the cashier, who
21 scanned it, rolled the bike out the door after paying
22 \$80.39.

23 And you recall that Detective Della pulled the
24 price tag down from the spot where that bike was. That
25 bike when for \$249.66. And of course the bicycle was

1 found in the defendant's van at the time of his arrest.

2 I'll refer you to State's Exhibits 3, 4, and 5
3 on those, please.

4 Count VI was the burglary at Lowe's Home
5 Improvement Store on October 5th, 2001. This is the
6 count with the video tape. You got to see this
7 transaction yourself. And if you'd like to get a chance,
8 because the tape will be in the evidence and available
9 for you to view again, if you need to.

10 You heard Brett Bowman testify that he obtained
11 two rugs in late September, early October, from Lowe's
12 using the fraudulent bar codes again, manufactured and
13 obtained from the defendant. And you remember Bowman
14 recalled paying approximately \$80 for each of those rugs.

15 Now his testimony was corroborated by Reed
16 Thomas, who found the actual rolled up rug in the storage
17 unit when he opened the storage unit on the night of the
18 defendant's arrest. Thomas noted that the rug was still
19 in its paper, in its white covering, and the photograph
20 indicates that. The photograph that's been entered in
21 this case. As you recall Brett Bowman also testified
22 that cover was still on. And you remember that Thomas
23 found a false UPC code on the end of that rug.

24 The UPC bar code was confirmed fraudulent by
25 John David Ellis, the Lowe's loss prevention manager, and

1 he found the item that that false UPC code returned to
2 was a \$74 rug. A cheaper rug that Lowe's sells.
3 However, you recall that he said there is another label
4 inside that he scanned, that's basically a copy of the
5 actual one on the outside, he scanned that and found this
6 to actually be a \$499 rug.

7 So in this case the defendant made a profit of
8 approximately \$425.

9 Now you recall also that Thomas found a
10 handwritten note in handwriting on the defendant's
11 transposition sheet indicating a bar code number for the
12 less expensive rug. So obviously the defendant had been
13 in Lowe's recently, did not have enough time to update
14 his computer transposition sheet and wrote down the
15 number and used it.

16 You recall that Detective Thomas also located a
17 receipt dated October 15, 2001, which indicated that the
18 purchase was made at 7:45 p.m., and which also of course
19 indicates that the cheaper rug had been purchased at
20 Lowe's. Now he took that receipt and gave it to John
21 David Ellis, who pulled the tape, the video tape which
22 you had a chance to watch. And that, ladies and
23 gentlemen, is very compelling evidence.

24 It shows the defendant walking in with Brett
25 Bowman, almost, only a few seconds apart into Lowe's and

1 shows you that Brett Bowman bought that rug, and you
2 remember the checker sort of had it arranged so the UPC
3 code was facing the checker. She was busy, took the scan
4 gun, scanned, sale was over.

5 And for that count I ask you to look at State's
6 Exhibits 7, 8, 11, 22, 34, and 35.

7 Now Count VIII is burglaries at Shopko. You
8 recall that Detective Thomas found the Sonicare
9 toothbrush in the storage unit with the bar code, again,
10 that appeared to be false.

11 And I would ask you when you get back into the
12 jury room, ladies and gentlemen, to take a good look at
13 that. Also to take a look at the UPC bar codes that you
14 find in the outside of the accordion folder, State's
15 Exhibit 12, and see how those compare to actual bar
16 codes.

17 Now, thank you know what you know, you probably
18 agree that it should have been obvious to a cashier that
19 something was different if you look at UPC bar codes on
20 the actual product, but again, they're very business and
21 these do look very official.

22 Now Detective Thomas was able to match that bar
23 code to the defendant's transposition sheet, and he found
24 that it corresponded to a Shopko item, which was another
25 kind of an electric toothbrush. Thomas found the receipt

1 comforters, in fact, sold at Shopko for \$49. You recall
2 that he went back, looked for the Willow Bay comforters
3 found one that looked exactly like the one that he had
4 obtained and found out it was \$49. And you also remember
5 that one of the comforters inside the van had a
6 fraudulent UPC code on it.

7 You will recall also that Armitage went through
8 the receipts while he was doing the inventory search and
9 found a receipt for earlier that day for 24.99 for a
10 comforter bought at Shopko. And he later determined that
11 that was for a Colorvision brand comforter, which does
12 not have plastic handles built into it's packaging. So
13 it is clear that the comforter that the Detective
14 Armitage watched the defendant buy was clearly not a
15 Colorvision brand comforter, which was indicated on the
16 receipt that he had for that item.

17 And please reference State's Exhibits 27 and 28
18 on that. Also we did have a late admission of Exhibits
19 44, 45, 46, which are the price check receipts, if you
20 want to take a look at those.

21 This is Count IV, the Bed, Bath and Beyond
22 count. This is the count that Brett Bowman testified he
23 obtained two coffee makers from Bed, Bath and Beyond.
24 And you recall that he said he paid \$30 each for those.
25 They're espresso makers.

1 in the defendant's accordion folder indicating that an
2 item was purchased from Shopko using that bar code on
3 August 30, 2001 for \$39.99. When he brought the item to
4 Bill Mowery at Shopko and Bill Mowery was here
5 testifying. He told you that that item originally went
6 for \$119.99. And said that that item would never sell at
7 Shopko for \$39. In fact, Shopko would sent it back to
8 the manufacturer before they would sell it for that low
9 of a price.

10 Regarding that portion of the count, I would
11 refer you to State's Exhibits 11, 33, and 36.

12 Now the second part of the Shopko count, was
13 the down comforter that the defendant obtained at Shopko.
14 You heard Scott Armitage testify to watching the
15 defendant actually purchase a comforter that was wrapped
16 in a plastic bag with a handle built into it on October
17 17, 2001, the morning of his arrest.

18 Armitage determined that the defendant paid
19 24.99 for that comforter. And he did that by going up
20 after the defendant made the purchase, you recall he
21 asked the manager to reprint the transaction receipt.
22 And you'll get a chance to see that.

23 Later that day when the defendant was arrested
24 two Willow Bay comforters were located inside of his
25 vehicle. Further follow-up by Armitage showed that the

1 Now the way this was corroborated by Detective
2 Thomas was that a Krups espresso machine was found in the
3 defendant's storage unit. You recall that Brett Bowman
4 said, well, he was allowed to keep one of those. Thomas
5 also found a receipt in the defendant's accordion folder,
6 that was in his vehicle, again, for two ProCafe coffee
7 makers purchased from Bed, Bath and Beyond for \$29 each,
8 which is basically what Brett Bowman recalled paying.

9 And I would ask you to please look at State's
10 Exhibits 25 and 26 on that count.

11 Also the Home Depot toilet, now this is a
12 count, ladies and gentlemen, that sort of indicates the
13 defendant's arrogance regarding this scheme. This is the
14 case where the defendant obtained through Brett Bowman a
15 toilet, a high end toilet for \$350 to \$400 toilet for a
16 sticker which returned to Home Depot's data base as a one
17 horsepower garbage disposal.

18 You heard Brett Bowman testify that he obtained
19 that toilet after the defendant gave him the UPC bar code
20 that he already knew was to a garbage disposal. He saw
21 that it was priced between 350 and \$400, and he paid
22 between \$144 and a \$74.

23 Now that count was corroborated by Detective
24 Thomas who testified, No. 1, that was a toilet found in
25 the storage unit and a receipt for this purchase

1 indicating that a one horsepower garbage disposal was
2 purchased at Home Depot for \$194. And you'll find that
3 information in Exhibits 23 and 24.

4 Now this is the conspiracy count, ladies and
5 gentlemen, and I did want to read back one of the
6 conspiracy instructions that Judge Elliott just read to
7 you. This will be Instruction No. 17. You will have a
8 pack of these jury instructions when you go back.

9 "Each member of a criminal conspiracy is label
10 for each act and bound by each declaration of every other
11 member of the conspiracy if the act or declaration is in
12 furtherance of the object of the conspiracy. The act of
13 one conspirator pursuant to or in furtherance of the
14 common design of the conspiracy, is the act of all
15 conspirators."

16 And the instruction does go on. But the point
17 is when a person is involved in a conspiracy, and that
18 that agreement has been made to act in furtherance of the
19 conspiracy, when the other person goes and acts, the
20 person not acting is as guilty is the person who is doing
21 the act.

22 Now you recall Brett Bowman testified that he
23 was working in conjunction with the defendant to commit
24 larceny, theft, and other crimes by carrying out this
25 defendant's scheme. And you recall this defendant

1 approached Brett Bowman with this scheme to place
2 fraudulent bar codes, and the defendant or that the
3 defendant had manufactured, again, Brett Bowman witnessed
4 this defendant making these bar codes on the Brother
5 label maker. And he testified that he never did that,
6 only the defendant did that.

7 And what Brett Bowman received in exchange was
8 \$200 a night, that was it. And sometimes he didn't even
9 get paid, he had to wait until the next day. And times
10 he didn't know about that when he started out in the
11 evening.

12 Now Bowman testified to entering several retail
13 outlets to accomplish this defendant's scheme. You
14 recall that in addition, to the Wal-Mart, Shopko, Lowe's
15 Home Depot, and Bed, Bath and Beyond, Detective Thomas
16 found receipts from several stores for items with UPC
17 codes that matched entries in the transposition log.
18 Those are items that weren't found in the storage unit,
19 but we know that this defendant intended to procure from
20 his entries in the transposition log.

21 These stores included K-Mart, CompUSA, Best
22 Buy, Office Depot, Pets Mart and Target, in addition to
23 the stores we've already talked about. And I've
24 indicated for your reference State's Exhibits 11, 37, 38,
25 39, 40 through 43.

1 Before we go on to another burglary count,
2 ladies and gentlemen, I do want to read two of the
3 burglary instructions, because the burglary counts we're
4 going to talk about now are burglaries which we don't
5 have items to match. The investigation never produced
6 the actual items that the defendant procured during these
7 acts.

8 However, I'll remind you under Instruction No.
9 28, "The essence of a burglary is entering such a place
10 with such specific intent and the crime of burglary --
11 pardon me. I'm sorry. I'll go back to Instruction No.
12 17.

13 "Each member of a criminal conspiracy is label
14 for each act and bound -- I apologize wrong one.

15 Okay. This is the real one. "NRS 205.060 in
16 so far as applicable to this case. Every person who
17 enters any building with the intent to commit grand or
18 petty larceny or any felony is guilty of a burglary.
19 When you enter with the intent to commit one of those
20 crimes, you're guilty of burglary."

21 And the essence of a burglary is entering such
22 a place with such specific intent and the crime of
23 burglary is complete as soon as the entry is made. When
24 the defendant walked over the threshold or through the
25 sliding doors of Wal-Mart stores with his intent to

1 collect pricing information, he is guilty of burglary.

2 If he's going to be collecting that pricing
3 information in order to defraud Wal-Mart, which you've
4 seen that that's what he did in this case. And that
5 holds regardless of whether the intent thereafter is
6 actually carried out.

7 Those are Instructions No. 27 and 28, ladies
8 and gentlemen.

9 Now you recall, regarding Count II, Brett
10 Bowman testified to working -- pardon me. Scott Armitage
11 observed the defendant walk into Wal-Store at Northtowne.
12 You recall that Scott Armitage followed the defendant to
13 the sporting goods section, where he appeared to be
14 paying close attention, you heard him say to some shelves
15 and writing furiously. Only for a minute. But
16 collecting pricing information and item information on a
17 card. He then left the store without buying anything.

18 Now, ladies and gentlemen, that is the State's
19 proof on that count, but this defendant you can see from
20 his course of conduct actually had done into that
21 Wal-Mart with the intent to collect information. And you
22 can see by this transposition sheet that there are plenty
23 of Wal-Mart entries on here. In fact, the whole bottom
24 half of Page 2 are Wal-Mart entries. So he had the
25 intent to use that pricing information to defraud

1 Wal-Mart, to commit petty and grand larceny in this case.

2 Count III, similar count, Larry Lodge observes
3 the defendant enter Home Depot. He specifically sees --
4 now you recall how close Larry Lodge got. He loses track
5 of the defendant coming around a corner and there he is.
6 He's so close, he feels that he needs to walk past him
7 because it will be too obvious, he might blow his cover
8 if he stopped and turned around and walked away. But he,
9 when he goes back past him, specifically sees the
10 defendants writing down numbers, series of numbers, you
11 remember him saying from the pricing information on the
12 shelves at Home Depot. He then watched the defendant,
13 again, walk away without buying anything.

14 Defendant's crime was complete when he walked
15 over the threshold and through the sliding glass doors of
16 the Home Depot that day. And you'll see on the
17 transposition sheet several Home Depot items listed.

18 Count V, you recall Mike Brown testifying that
19 he watched the defendant walk into the stereo -- straight
20 into the stereo section of Wal-Mart and start writing
21 information down, and again leave the store without
22 buying anything. You recall that Detective Brown said he
23 was looking at the car stereos. Well, ladies and
24 gentlemen, when Detective Thomas testified you saw that
25 he matched a Wal-Mart auto stereo on the transposition

1 and his bag with him, which you recall Detective Armitage
2 to have testified right next to the defendant where he
3 could reach it at all times.

4 You also recall that Detective Thomas was able
5 to research those labels on the outside of the accordion
6 folder and those indeed matched transpositions entries
7 here. So the State believes he was getting ready to use
8 those. They're in the convenient outside pocket of the
9 accordion file ready to go.

10 Now, ladies and gentlemen, at the beginning of
11 this case I told you that the State would product
12 overwhelming evidence of the defendant's guilt. And now
13 you've seen it. There is no reasonable doubt in this
14 case that this defendant entered various stores as
15 charged in the Indictment, and that while in those stores
16 he recorded UPC bar code information. Here it is.

17 The reason he obtained this bar code
18 information was so he could use it to product UPC code
19 labels that he would later put on more expensive
20 merchandise. And you can see the outrageous profits that
21 this defendant was gathering from this activity.

22 You heard Brett Bowman testify that they would
23 hit up to ten stores per night, ladies and gentlemen.
24 Now think about it. If he made about \$400 on the Lowe's
25 rug, times ten, if there were similar profit margins

1 involved, let's say he made a thousand dollars a night,
2 give Brett Bowman a quick 200 bucks, and that's \$800,
3 ladies and gentlemen.

4 Now that's speculation on my part, but you can
5 see how that can add up, especially when you consider
6 that the detectives in this case followed this defendant
7 and he seemed to be doing nothing but hitting stores all
8 day long. And that you recall was without Brett Bowman,
9 who only did this, participated in this about one night
10 per week because he had a job. The defendant didn't have
11 a job.

12 So, ladies and gentlemen, every single time
13 that this defendant entered a store to collect bar code
14 information he was committing the crime of burglary.

15 Now I'm going to ask you, ladies and gentlemen,
16 to return a verdict of guilty on all eight counts of
17 burglary, the count of conspiracy, Count I, and Count X,
18 possession or making of fraudulent inventory pricing
19 labels, also known as UPC codes.

20 Thank you for your attention in this case.

21 THE COURT: Let's take a one hour lunch break
22 at this time and come back at 25 after 1:00.

23 I will admonish the jurors that you're not to
24 discuss this case among yourselves or with anyone else or
25 do not read, watch or listen to any media account of this

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1 proceeding, and do not form or express any opinion on any
2 subject connected with this trial until this matter is
3 submitted to you for your deliberation.

4 So we will be in recess until 1:25.

5 (Lunch recess taken.)

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1 RENO, NEVADA; FRIDAY, NOVEMBER 14, 2003; 1:30 P.M.

2 AFTERNOON SESSION

3 --oOo--

4

5 THE COURT: Mr. Van Ry, you may proceed to
6 present the closing argument on behalf of Mr. Volpicelli.

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

8 Thank you again for being here. At the
9 beginning of this I told you that this case boiled down
10 to a dispute about reasonable doubt. But according to
11 evidence that's been presented, I submit that there is
12 ample reasonable doubt in this matter as to all of the
13 counts. And I'll talk about that in a moment.

14 Thank you for your service. We recognize, the
15 DA, the State, the Court and my client recognize the
16 sacrifice for you to here, away from your family, your
17 work, your friends. And it is an important duty that you
18 serve. Thank you.

19 Hopefully you're jury duty has been a positive
20 one for you and will continue to be so. It is important,
21 you stand between the State and my client and the dispute
22 between them. And you will resolve that dispute, not by
23 client, not the State, but you.

24 Let's talk about the common thread throughout
25 all of the counts in this case. I'm not going to go

1 through each count. I don't think that's necessary.
2 Your senses have been dulled by all the counts in this
3 case. But there are ten counts. The common thread in
4 each one of those counts is Mr. Bowman. And you'll
5 remember that in the State's closing argument in eight
6 out of ten, in eight out of ten of the counts, the State
7 relies in some part on Mr. Bowman's testimony. Eight of
8 ten. That's important. That's very, very important,
9 because it's Mr. Bowman who ties that thread of this case
10 that implicates my client on all the charges. On every
11 single charge.

12 And we'll talk about some of the other evidence
13 that may point to my client in a few moments. But I
14 submit to you that the only way that those items can be
15 proven, as the evidence had been presented to you, is by
16 Mr. Bowman's testimony. Therefore, let's examine
17 Mr. Bowman's testimony.

18 Why would Mr. Bowman not present a fully
19 accurate picture of what happened? It's pretty obvious.
20 He testified he was an accomplice, and if you will note,
21 there will be an instruction -- if I may have a moment,
22 Your Honor.

23 THE COURT: Yes.

24 MR. VAN RY: It will be instruction No. 18.

25 And instruction No. 18, I won't read the whole thing to

1 you, but you will be able to read it, but the reference
2 is that a conviction in a criminal case cannot abide
3 solely upon the testimony of an accomplice. It's at the
4 bottom, this Court finds as a matter of law that Brett
5 Bowman is an accomplice as to one or more charges against
6 the defendant.

7 Okay. As an accomplice, he obtained, he
8 obtained a plea bargain in this case didn't he? He
9 testified to that. What did he get in exchange of his
10 testimony? A significantly reduced charge against him.
11 Multiple charges went to one charge. Multiple possible
12 sentences went to one capped agreed-upon stipulated
13 sentence. That's a significant reason for him to pin
14 this upon my client. Significant reason. Significant
15 reason.

16 Now, did Mr. Bowman lie? I'm not altogether
17 sure, but I can tell you there's inconsistencies in his
18 testimony. And I asked him on the stand, "Did the
19 detectives ever assist you in obtaining a paycheck from
20 the Sands?" What was his testimony? "No." Detective
21 Thomas, in his testimony yesterday, said, "Yes, I did
22 assist Mr. Bowman in obtaining a paycheck from the
23 Sands."

24 That's an inconsistent statement, which
25 demonstrates his propensity in this case to try and pin

1 these charges upon my client. You will also remember
2 there was testimony briefly about his previous felony
3 conviction, Mr. Bowman. And that's important for you to
4 remember. And, if you will note, by the State's own
5 admission, eight out of ten of their counts utilize in
6 some way Mr. Bowman's testimony.

7 That testimony was clear that the car was
8 driven by my client, especially on October 17, that
9 Mr. Bowman was in the car. They go to Lowe's. My client
10 is seen walking in, then Mr. Bowman. Mr. Bowman himself
11 stated, "Hey, he took me places. He dropped me off at
12 the casino." So that in and of itself doesn't really
13 prove that my client assisted Mr. Bowman to do what he
14 did.

15 Now, let's talk about the overwhelming amount
16 of documentary evidence, because there has been a lot.
17 And it's been -- you've been able to see it throughout
18 this trial. There are receipts, after receipts, after
19 receipts. There is a label maker, there is a case the
20 label maker came in, there is a transposition sheet.
21 I'll talk about the transposition sheet in just a minute.

22 But there is a mountain of evidence pointing to
23 somebody. And before I go into that, I wanted to use an
24 analogy. I don't know how many of you here have seen the
25 movie "Where the Red Fern Grows" or read the book. As

1 typical, the book is better. But in the book the young
2 boy wants to hunt raccoons, and so he gets some coon
3 dogs. And the way that he obtained his first coon to
4 train his dogs with, was with a trap. And I don't want
5 you to fall into the trap that may happen in a case like
6 that when there is so much documentary evidence pointing
7 to my client, because there is no evidence pointing to my
8 client beyond a reasonable doubt.

9 But in this book, the boys take a log, they
10 bore a hole into it, and they put a shiny object into
11 this hole. And the hole would be just big enough so the
12 raccoons could get their handed into it. And the shiny
13 object would be at the bottom. They would take nails,
14 pound them in around the hole, and they would bend the
15 nails over. Why? So when the raccoon went to grab the
16 shiny object, and they would, they are very inquisitive
17 creatures, they would grab onto that shiny object, they
18 wouldn't let go. They wouldn't let go. They would stay
19 there for hours and hours and hours, until he came by and
20 took care of them and skinned them and give them to train
21 his dogs.

22 But I don't want you to be like the raccoons in
23 this case. There is a lot of documentary evidence. I
24 don't to hold on to that and not let go, because there is
25 reasonable doubt in this matter. And it arises from

1 Mr. Bowman.

2 You heard Officer Thomas say that there was no
3 fingerprint evidence on any of this. No DNA evidence.
4 Now, you also heard Officer Thomas say that it might not
5 be their custom and practice in this case. Well, that's
6 their call. And I'm not impugning the police in any way,
7 that's their call. But in this trial that evidence
8 didn't come forward and it didn't prove that my client
9 had any of these in his possession. And on the flip
10 side, it doesn't prove that Mr. Bowman did it all by
11 himself either.

12 The investigation of Mr. Bowman ceased. When?
13 When he decided to do a plea. Again, I'm not impugning
14 the police in any way. They made a calculated decision
15 to do what they did in this matter. They decided to rely
16 upon Mr. Bowman, and all the other evidence that they
17 could bring forward. I submit to you that's not enough.
18 That's not enough to see a man walk into a store, write
19 down prices in a notebook and walk out. It's not enough.
20 It's not enough.

21 You also remember that there was another
22 motivating factor for Mr. Bowman. Anger. He testified
23 that he was angry that he got caught. On October 17,
24 that night when they got caught in the car together, he
25 was angry. Reasonable doubt. He got caught, and he's

1 trying to pin it upon my client.

2 Let's talk about many of the observations of
3 the police who followed my client over the course of
4 several or many days, depending on which officer
5 testified. Not one of the police officers ever saw
6 Mr. Volpicelli use that label maker. They never saw
7 Mr. Volpicelli himself actually affix a fraudulent label
8 to any piece of merchandise. That's significant, because
9 they can't prove that he used that label maker, except
10 through Mr. Bowman. Right?

11 Well, I'm just going to write here, "No visual
12 observation." Now there's testimony that the officer saw
13 him walk into the store. Officer Armitage, he walked
14 into the store and looked at some sporting goods, may
15 have wrote down some information, examined the bike,
16 walked out. That's not enough. Not in the America I
17 live in, that's not enough. That's not beyond a
18 reasonable doubt. A reasonable doubt.

19 There's an instruction that the judge gave you,
20 and it's going to be Instruction No. 9, and it concerns
21 direct evidence and circumstantial evidence. And the
22 judge tells you what the difference is. I'd like to give
23 you an analogy so you'll understood why the
24 circumstantial evidence in this case is not enough.

25 You go to bed at night, there's no snow on the

1 ground. This happens in Reno all the time. You wake up
2 in the morning, there's snow on the ground. So from that
3 fact, you wake up in the morning, there's now snow on the
4 ground, you can infer that circumstantially that it
5 snowed and the snow came from the sky. Right? That's an
6 example of circumstantial evidence. Snow on the ground.
7 It snowed last night. But that works only when there's
8 only one logical cause.

9 What do I mean by that? The only cause of snow
10 on the ground is snow from the sky. Right? Well, in
11 this case there is more than one real possibility as to
12 what went on. My client may have been giving Mr. Bowman
13 rides and Mr. Bowman was doing this scheme by himself,
14 and he's upset, and he's pinning it on my client. That's
15 a real possibility.

16 I submit that the circumstantial evidence in
17 this case which is overwhelming, there's receipt, after,
18 receipt, after receipt. That's where it breaks down.
19 Because there's more than one possible logical cause.

20 Okay. Instruction No. 10, the last sentence of
21 the instruction, "If the jury believes that any witness
22 has willfully sworn falsely they may disregard the whole
23 of the evidence of any such witness."

24 Instruction No. 10, "If you believe that any
25 witness," if Bowman testified falsely, "you may disregard

1 the whole of the evidence." That's an important
2 instruction in this case.

3 Instruction No. 11. Short, "In every crime
4 there must exist a union or joint operation of act and
5 intent." Act and intent. The burden is always upon the
6 prosecution to prove both act and intent beyond a
7 reasonable doubt.

8 My client walking into a store with or without
9 Mr. Bowman, without Mr. Bowman's testimony, is not
10 enough. It's not beyond a reasonable doubt. The intent
11 of my client to cross the threshold of any building, and
12 granted the burglary statute is very broad, and the judge
13 has instructed you on that, but to prove that my client
14 had the intent to further a scheme that included
15 Mr. Bowman, necessarily requires his testimony, doesn't
16 it?

17 Now, in the closing the State mentioned a
18 couple of things that I'd like to discuss briefly. The
19 State mentioned that Mr. Bowman testified he didn't have
20 access to that storage shed. But then Officer Thomas
21 testified that they didn't even think Bowman was a
22 suspect until October 17, that night. So there's really
23 no evidence of what Bowman may have done since the middle
24 of June, July, August, September as to that storage unit.

25 So I state to you that the State cannot exclude

1 that as a possibility that he may have had access. It's
2 not my burden to prove or Mr. Volpicelli's burden to
3 prove that Bowman had access. It's a possibility,
4 because they did not even think he was a suspect. Of
5 course Mr. Bowman denies it.

6 Exhibit No. 11, which has been admitted, the
7 transposition sheet found in the car October 17. No
8 testimony as to whose writing that is. What does that
9 mean? Well, it means a couple things. The broadest
10 explanation is it could be anybody's. More reasonable
11 explanation, it's possibly one of the two guys in the
12 car. Who were the two guys in the car? Bowman and
13 Volpicelli. But that doesn't prove that that's
14 Volpicelli's writing on there, does it? That doesn't
15 prove it. And you heard testimony that the officers
16 don't know whose writing that is.

17 Lastly, I'd like to talk about what evidence
18 there is of what Mr. Volpicelli, my client, really did.
19 And you'll remember he was seen walking in the stores, he
20 was seen checking out prices, he was seen writing down
21 prices. You heard Mr. Danielson state that even
22 competitors come into his store to write down prices.
23 What else? He may have checked prices on a bike. None
24 of that demonstrates the intent to commit burglary or any
25 of those crimes without Mr. Bowman's testimony.

1 Mr. Bowman's testimony is the thread. And if you thread
2 that with him, you can find him guilty on all ten counts,
3 but if you cannot, you have to find him not guilty,
4 because Mr. Volpicelli was not seen himself committing
5 those crimes.

6 You heard testimony about the comforter, the
7 comforter. The officer testified that day when he came
8 back for a price check that there was a comforter in the
9 wrong package without a label, without a price. What
10 does that prove? Not much, really. But it demonstrates
11 that there was a problem with the comforters in that
12 store.

13 One other thing that there's been testimony
14 about is that Mr. Volpicelli had a storage unit and
15 inside that storage unit there was what? Products.
16 Stored products. Again, without the testimony of Bowman,
17 you can't reach the conclusion that that storage of those
18 products was in some way a crime. You just, you can't
19 get to it. You can't get to it without Mr. Bowman.

20 I want you to know that I think the police did
21 a good job in this case. There is a lot of evidence and
22 a lot of work behind the documents that you've seen. But
23 I don't think they did enough. I think they relied upon
24 Mr. Bowman to their detriment, because I think in my
25 opinion that there's not proof beyond a reasonable doubt

1 in this case because of that very reason.

2 Lastly, there will be some verdict forms that
3 the judge will give you. I'm not going to show you each
4 one, because there's ten guilty, ten not guilty, but they
5 look like this.

6 And as the result of your viewing of the
7 evidence, hearing the arguments, hearing the testimony,
8 reviewing the documents and all the other evidence,
9 physical evidence in this case, I ask you to find Ferrill
10 Volpicelli not guilty of every single count. And I ask
11 you by the foreperson to sign the verdict forms that say,
12 "We the jury in the above-entitled matter find the
13 defendant, Ferrill Joseph Volpicelli, not guilty."

14 Thank you.

15 THE COURT: Ms. Riggs, you may conclude the
16 arguments.

17 MS. RIGGS: Thank you, Your Honor.

18 Ladies and gentlemen, you just heard defense
19 counsel tell you that Brett Bowman is the only common
20 thread among the ten counts that the State has charged
21 against the defendant. Well, as you heard through the
22 testimony that simply is not true. The defendant is the
23 only common thread among all of the counts that the State
24 has charged.

25 So let's look at that for a second. You recall

1 that in Count II, Detective Scott Armitage watched the
2 defendant walk into Wal-Mart, not in the presence of
3 Brett Bowman, writing information down, writing pricing
4 information down and immediately leaving the store
5 without buying anything. No Brett Bowman.

6 Count III. That's the count where Detective
7 Larry Lodge accidentally bumped into this defendant in the
8 Home Depot writing what he thought were numbers, pricing
9 information off the shelves and then continuing off
10 throughout the store. Brett Bowman is nowhere.

11 Count IV. That's the count where Detective
12 Mike Brown saw this defendant go into Wal-Mart looking at
13 car stereos, and low and behold a car stereo entry
14 appears on the transposition sheet under the category of
15 Wal-Mart stores. No Brett Bowman anywhere.

16 Regarding the comforters and the Sonicare
17 toothbrush at Shopko. No Brett Bowman. Only evidence
18 obtained from this defendant's storage shed and from his
19 vehicle.

20 And lastly, regarding the labels, the UPC
21 codes, again found in this defendant's possession in his
22 vehicle. Independent of Brett Bowman's testimony. So
23 it's untrue that the State relies completely on Brett
24 Bowman's testimony in this case.

25 And, ladies and gentlemen, what's wrong with

1 Brett Bowman's testimony anyway? Judge Elliott told you
2 at the beginning of this case that he thought it was
3 important that you be able to look at the witness and be
4 able to hear the witness, which is why during voir dire
5 about physical defects that you might have, so you can
6 judge the reliability of the witness.

7 Brett Bowman is a person who has already pled
8 guilty to his crime, and his term of incarceration is
9 almost up. Now you heard him say that he does anticipate
10 being on probation when he gets done, but as of February
11 he's pretty much done. What does he have to gain by
12 coming in at this point and spinning some yarn about the
13 defendant in this case?

14 Also you heard about his conditions or his
15 living conditions. You heard that when Reed Thomas went
16 to his house, bear bones, coming out of products, pretty
17 much just a small stereo, that didn't grab Detective
18 Thomas' attention, and clothes, and that's about it.

19 And you also heard him testify that he's been
20 working pretty much as hard as he can since the first
21 time he got out of products, and you heard him say, "I
22 wasn't making it. I needed that \$200 a night." And
23 since he's been incarcerated you heard him say that he's
24 incarcerated at the Northern Nevada Restitution Center
25 and is able to work from that facility. You heard him

1 say that he makes doughnuts at Baldini's.

2 He's working. Even when he's incarcerated,
3 he's working. And you saw how tired he was on the stand.
4 This is a guy who even though he admits he's made
5 mistakes and he has, he's trying to pull his weight at
6 this point.

7 Now, defense counsel is arguing about
8 inconsistencies in his testimony, Brett Bowman's
9 testimony, and he points to the fact that Brett Bowman
10 said Detective Thomas didn't get his check at the Sands.
11 Detective Thomas said, "Yes, I did." Well, Brett Bowman
12 is incarcerated and needed his money. Perhaps he didn't
13 remember that he did or that Detective Thomas had gotten
14 that for him. He had just been put in jail. But that
15 inconsistency in his testimony does not spread to this
16 entire case. Especially when you look at the amount of
17 corroboration in this case.

18 Now you heard Brett Bowman testify repeatedly
19 as to approximate times and prices he paid for various
20 products, and low and behold Detective Thomas found
21 receipts taken or produced during that time of year and
22 the approximate time frame and some with the prices dead
23 on. He provided descriptions of products which turned
24 out to be exactly as found in this defendant's storage
25 shed.

1 In fact, Brett Bowman didn't provide any
2 evidence to the police at all that would make them think
3 that he was leading them astray. All pure corroboration.

4 In fact, the counts that I just told you about
5 where the defendant was acting alone is exactly in line
6 with what Brett Bowman said he would do, what the
7 defendant would do, in recording information and leaving
8 the store. And there's your documentary proof of that
9 fact, ladies and gentlemen.

10 Now you've heard some testimony -- or pardon
11 me, you heard some argument that Brett Bowman was angry.
12 That's his motive for lying in this case.

13 Well, first of all there's been no indication
14 of lying. Second of all, of course he's angry. When he
15 was trying to get the defendant to pull over, he's got a
16 line of police vehicles following him up Virginia Street,
17 the defendant won't pull over, and says "Oh, by the way,
18 I'm being followed by the police." Wouldn't you be
19 angry? He was angry.

20 Defense also argues that the police never saw
21 the defendant make any labels. Well, a label maker was
22 found in his vehicle in a bag with his identification on
23 it. There were labels found inside the accordion folder
24 that was inside his vehicle that Brett Bowman didn't have
25 any access to except for when he was with the defendant.

1 Those labels matched up with the paper that this
2 defendant carried around with him at all times that was
3 in the vehicle. And this defendant was seen, at least in
4 the Wal-Mart bike case, going in and leaving and Brett
5 Bowman going in immediately after and getting the piece
6 of merchandise. That's the circumstantial evidence that
7 we're talking about, that defense counsel was talking
8 about.

9 And regarding the evidence collected in this
10 case, ladies and gentlemen, I'm not even going to go into
11 DNA and fingerprint evidence. I told you in the
12 beginning of this case it wasn't going to happen. You
13 heard Detective Thomas' reasoning for not providing that
14 in this case, and I trust your common sense on that
15 issue.

16 Finally, corroboration is the essential in this
17 case. Again, the judge instructed you that as a matter
18 of law we know that Brett Bowman is an accomplice, but
19 all the State has to show you is that some of what he
20 says is corroborated. And the State believes -- or
21 pardon me, the State has shown you that almost everything
22 he says is corroborated. It's corroborated by paper,
23 corroborated by witnesses, and corroborated by
24 circumstances in this case.

25 Ladies and gentlemen, the State has proven

1 beyond a reasonable doubt that this defendant is guilty
2 of all counts in this criminal case. Please return a
3 verdict finding him so.

4 Thank you.

5 THE COURT: Our next order of business is with
6 Mr. Peterson, because you are the alternate juror on this
7 trial. And I propose that we allow Mr. Peterson to leave
8 the courthouse, as long as he goes to a place where he
9 can be reached by telephone in the event that a juror
10 might be excused before the jury reaches a verdict.

11 Is there any objection to this?

12 MS. RIGGS: State has no objection.

13 MR. VAN RY: Defense has no objection.

14 THE COURT: Mr. Peterson, can you go somewhere
15 where you can be reached by telephone in case you are
16 needed?

17 JUROR PETERSON: Yes I can.

18 THE COURT: On behalf of all of here involved
19 in this trial, we certainly appreciate your attendance.

20 I will say that while you can think about, you
21 know, your conclusions on the case at this point you
22 should not talk to anybody about the case until you get
23 the word either that you're to come back here and
24 deliberate with the jury or the jury has a verdict.

25 We certainly appreciate your assistance in this

1 and the time that you've given to the case.

2 And have you already given a number to Deputy
3 Medina? All right. If you'd please do that, you may be
4 excused. Thank you.

5 (Alternate Juror Excused.)

6 THE COURT: And now, ladies and gentlemen of
7 the jury, you will have, I think, seven copies of the
8 jury instructions. We're hoping that you can share. I
9 would have made 12, but they're so thick I was thinking
10 it may not actually be necessary, try to work with that.
11 But if you each want to have your own copy you can
12 request that of the bailiff and he'll transmit that to
13 our clerk here and make extra copies, but they are so
14 thick, hopefully we can save some paper and you might be
15 able to share.

16 You will be allowed to take the exhibits into
17 the jury room. Mr. Bartlett has suggested that maybe we
18 will leave at least the small receipts out here on the
19 table so that they're not lost. We don't want to lose
20 any marked exhibit. If you would like to have those in
21 the jury room you may request those to be brought into
22 the jury room.

23 We would like you to rely on the collective
24 memory of the testimony. You really only have two days
25 of testimony to remember. It is difficult to do a

1 readback of any witness' testimony, although it could
2 conceivably be done, it is time consuming and difficult.
3 You won't actually have a transcript. The record that's
4 made is actually a record that may later become a
5 transcript for purposes of future proceedings in this
6 case.

7 At this time, I would like Mr. Bartlett to
8 administer the oath to Deputy Medina to take charge of
9 the jury.

10 (Deputy Medina Sworn.)

11 THE COURT: Court will stand in recess subject
12 to the call of the jury.

13 (Jury deliberating.)

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16 THE COURT: Ladies and gentlemen, there is a
17 centuries old tradition at this stage of the proceeding,
18 whereby we have the roll call of the jury taken. And
19 Mr. Bartlett will call each jurors name, and will you
20 please respond by saying, "Here."

21 (Roll Call of the Jury.)

22 THE COURT: Ladies and gentlemen of the jury,
23 have one of you been selected the foreperson of the jury?

24 JUROR WHITE: Yes, I have, Your Honor.

25 THE COURT: And, Ms. White has the jury reached

1 a unanimous verdict?

2 JUROR WHITE: Yes, we have, Your Honor.

3 THE COURT: Will you please hand the verdict
4 forms to Deputy Medina who will in turn hand them to me.

5 All right. I will hand the verdicts to
6 Mr. Bartlett who will in turn read the juror's verdicts.

7 THE CLERK: In the Second Judicial District
8 Court in the State of Nevada in and for the County of
9 Washoe, State of Nevada, Plaintiff, versus Ferrill Joseph
10 Volpicelli, defendant, Case No. CR03-1263. Department
11 No. 10.

12 Verdict: We the jury, in the above-entitled
13 matter find the defendant, Ferrill Joseph Volpicelli,
14 guilty of Count I, conspiracy to commit crimes against
15 property.

16 Dated this 14th day of November, 2003.

17 Joy White, Foreperson.

18 Verdict: We the jury, in the above-entitled
19 matter find the defendant, Ferrill Joseph Volpicelli,
20 guilty of Count II, burglary.

21 Dated this 14th day of November, 2003.

22 Joy White, Foreperson.

23 Verdict: We the jury, in the above entitled
24 matter find the defendant, Ferrill Joseph Volpicelli
25 guilty of Count III, burglary.

1 Dated this 14th day of November, 2003.

2 Joy White, Foreperson.

3 Verdict: We the jury, in the above-entitled
4 matter find the defendant, Ferrill Joseph Volpicelli,
5 guilty of Count IV, burglary.

6 Dated this 14th day of November, 2003.

7 Joy White, Foreperson.

8 Verdict: We the jury, in the above-entitled
9 matter find the defendant, Ferrill Joseph Volpicelli,
10 guilty of Count V, burglary.

11 Dated this 14th day of November, 2003.

12 Joy White, Foreperson.

13 Verdict: We the jury in the above-entitled
14 matter find the defendant, Ferrill Joseph Volpicelli,
15 guilty of Count VI, burglary.

16 Dated this 14th day of November, 2003.

17 Joy white, Foreperson.

18 Verdict: We the jury, in the above-entitled
19 matter, find the defendant, Ferrill Joseph Volpicelli,
20 guilty of Count VII, burglary.

21 Dated this 14th day of November, 2003.

22 Joy White, Foreperson.

23 Verdict: We the jury, in the above-entitled
24 matter find the defendant, Ferrill Joseph Volpicelli,
25 guilty of Count VIII, burglary.

1 Dated this 14th day of November, 2003.

2 Joy White, Foreperson.

3 Verdict: We the jury in the above-entitled
4 matter find the defendant, Ferrill Joseph Volpicelli,
5 guilty of Count IX, burglary.

6 Dated this 14th day of November, 2003.

7 Joy White, Foreperson.

8 Verdict: We the jury, in the above-entitled
9 matter, find the defendant, Ferrill Joseph Volpicelli,
10 guilty of Count X, unlawful possession, making, forgery
11 or counterfeiting of inventory pricing labels.

12 Dated this 14th day of November, 2003.

13 Joy White, Foreperson.

14 THE COURT: Before the verdicts are recorded
15 would either attorney request the jurors be polled as to
16 their verdict?

17 MS. RIGGS: The State would not, Your Honor.

18 Thank you.

19 MR. VAN RY: I would just ask that the jury be
20 polled as to the collective verdicts, not to go through
21 each one separately, just ask if this was a verdict on
22 all ten counts per juror, Your Honor.

23 THE COURT: All right. We will have the jurors
24 polled as to all the verdicts collectively. So the
25 question will be, "is this your verdict."

1 THE CLERK: Russell Christiansen, are these the
2 verdicts to which you agree?
3 JUROR CHRISTIANSEN: Yes.
4 THE CLERK: Eric Morgan, are these the verdicts
5 to which you agree?
6 JUROR MORGAN: Yes.
7 THE CLERK: Gerald Jackson, are these the
8 verdicts to which you agree?
9 JUROR JACKSON: Yes.
10 THE CLERK: Tony Major, are these the verdicts
11 to which you agree?
12 JUROR MAJOR: Yes.
13 THE CLERK: Heather Harzke, are these the
14 verdicts to which you agree?
15 JUROR HARZKE: Yes.
16 THE CLERK: Joy white, are these the verdicts
17 to which you agree?
18 JUROR WHITE: Yes.
19 THE CLERK: Caston Kennard, are these the
20 verdicts to which you agree?
21 JUROR KENNARD: Yes.
22 THE CLERK: Richard McNeely, are these the
23 verdicts to which you agree?
24 JUROR MCNEELY: Yes.
25 THE CLERK: Dianne Estep, are these the

1 verdicts to which you agree?

2 JUROR ESTEP: Yes.

3 THE CLERK: Christina Dutra, are these the
4 verdicts to which you agree?

5 JUROR DUTRA: Yes.

6 THE CLERK: Caroltta King, are these the
7 verdicts to which you agree?

8 JUROR KING: Yes.

9 THE CLERK: Florence Albee, are these the
10 verdicts to which you agree?

11 JUROR ALBEE: Yes.

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

13 THE COURT: The verdicts will be recorded.

14 And, Mr. Volpicelli, the jury having found you
15 guilty, you will be remanded to the custody of the Washoe
16 County Sheriff pending sentencing. And we will now set
17 the matter for sentencing.

18 THE CLERK: December 23rd at 8:30.

19 THE COURT: And I would like to thank the
20 jurors for your service in this case. I know it was the
21 thickest bunch of jury instructions I think I've ever
22 had, and the charges were long charges because of the
23 description, but we do very much appreciate your hard
24 work to render this verdict, and I want to thank you for
25 that.

1 You may wish to meet with either counsel or
2 myself after this proceeding, because we do appreciate
3 any feedback you can give us with regard to our
4 professional service.

5 With that we render you our thanks, and have a
6 good day.

7 Court is dismissed.

8 (Proceedings Concluded)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
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4 I, EVELYN STUBBS, official reporter of the
5 Second Judicial District Court of the State of Nevada, in
6 and for the County of Washoe, do hereby certify:

7 That as such reporter I was present in
8 Department No. 10 of the above court on Thursday and
9 Friday, November 13, 2003, and November 14, 2003, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein upon the case
12 of THE STATE OF NEVADA, Plaintiff, vs. FERRILL JOSEPH
13 VOLPICELLI, Defendant, Case No. CR03-1263.

14 That the foregoing transcript, consisting
15 of pages numbered 1 to 225, inclusive, is a full, true
16 and correct transcript of my said stenotype notes, so
17 taken as aforesaid, and is a full, true and correct
18 statement of the proceedings had and testimony given
19 therein upon the above-entitled action to the best of my
20 knowledge, skill and ability.

21 DATED: At Reno, Nevada, this 22nd day of
22 June, 2004.

23 
24 EVELYN J. STUBBS, CCR #356
25