

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

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Tracie K. Lindeman
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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 5 OF 13

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ORIGINAL

CODE: 4185
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FILED

2004 JUL -2 PH 3:09

RONALD A. LONGTIN, JR.

BY

DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

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

TRANSCRIPT OF PROCEEDINGS

TRIAL

Wednesday, November 12, 2003

APPEARANCES:

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CR03-1263
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
NVC
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2 RENO, NEVADA, WEDNESDAY, NOVEMBER 12, 2004, 9:45 A.M.

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4
5 THE BAILIFF: All rise. Second Judicial
6 District Court, State of Nevada is now in session, the
7 Honorable Steven P. Elliott presiding.

8 THE COURT: Good morning, you may be seated.

9 This is the time set for trial in Case Number
10 CR03-1263, State of Nevada versus Ferrill Joseph
11 Volpicelli. And is the plaintiff prepared for trial?

12 MS. RIGGS: State's prepared, Your Honor.

13 THE COURT: And is the defendant prepared for
14 trial?

15 MR. VAN RY: Yes, sir. Thank you.

16 THE COURT: I would like to offer, we will be
17 going through a jury selection process and the first part
18 of that process is in fact to have you stand up again and
19 raise your right hand and you'll be taking an oath to
20 tell the truth. So will all the members of our jury
21 panel please stand up and raise your right hand.

22 Mr. Bartlett, our clerk, will administer the oath.

23 (The prospective jury panel was sworn in.)

24 THE COURT: You may be seated.

1 I would like to welcome each of you to
2 Department 10 this morning. We will be going through a,
3 what's called a voir dire. It's French for "to tell the
4 truth," or some ancient derivation of French. And it's a
5 process by which we hope to find at least 23 of you who
6 can be passed for cause to sit and hear this case.

7 The case this morning happens to be one in
8 which it is a criminal case and it involves charges of
9 burglary. That's the nature of the case.

10 We value your time and appreciate that and
11 we'll try to get through this process and ultimately seat
12 the jury and begin the trial and let those of you who
13 won't be needed for the case go. But we're not going to
14 push the process such that everybody doesn't get a fair
15 chance to make sure that you are an appropriate juror for
16 this particular case.

17 We do value your time and we value your
18 service as citizens. It's very important in this process
19 of justice that we have ordinary citizens to be seated
20 and hear these cases because I think you bring a certain
21 sensibility and common sense to this process, which might
22 be lost if we simply relied upon judges who ultimately
23 are bureaucrats , and we like to involve the citizens to
24 ensure that justice is fair for all.

1 Now, before we proceed further, I do want to
2 introduce the court staff to you. We have Deputy John
3 Medina, the bailiff; we have Greg Bartlett, our court
4 recorder; and we don't always have the same court
5 reporter, but today we have Dawn Gustin as our court
6 reporter; and I'm Judge Steve Elliott.

7 The other important people, much more
8 important really than us, are the parties. And I'll have
9 the attorneys introduce themselves and their client. And
10 perhaps, Ms. Riggs, you could introduce yourself and who
11 you represent.

12 MS. RIGGS: Thank you, Your Honor.

13 My name is Tammy Riggs. I'm a deputy
14 district attorney. I work in the Washoe County District
15 Attorney's office and I represent the State of Nevada in
16 this proceeding.

17 THE COURT: And Mr. Van Ry, could you
18 introduce yourself and your client to our panel?

19 MR. VAN RY: Good morning. My name is Brad
20 Van Ry and I am Mr. Volpicelli's defense attorney. This
21 is Ferrill Volpicelli.

22 THE COURT: And now of interest, I'm sure, to
23 everyone would be the length of trial. And Ms. Riggs,
24 how long do you anticipate the trial lasting?

1 MS. RIGGS: Your Honor, maximum
2 two-and-a-half days, but we may be able to get it done in
3 two, but for safety's sake I would estimate
4 two-and-a-half days.

5 THE COURT: And Mr. Van Ry, what are your
6 thoughts on this?

7 MR. VAN RY: I agree on that, Your Honor.

8 THE COURT: All right. So most likely the
9 case will be ended on Friday. Since today is Wednesday,
10 it will be two-and-a-half-day trial, end on Friday,
11 hopefully. Since this Court has other matters starting
12 on Monday, we certainly hope that it would end on Friday.

13 I will ask Mr. Bartlett to call out the names
14 of 23 prospective jurors to have a seat in our chairs
15 here, both in the jury box and several seats in front.
16 The first person will need to go into the jury box into
17 the last row and we'll fill up that last row going from
18 my end of the courtroom to your end of the courtroom, and
19 then each successive row in front. And Mr. Bartlett,
20 would you please call out the names of 23 prospective
21 jurors.

22 THE CLERK: Deanna Seegmiller.

23 Russell Christiansen.

24 Patrick Cuning.

1 Eric Morgan.
2 Gerald Jackson.
3 Diane Buck.
4 Heather Harzke.
5 Jeffrey Glavor.
6 Joy White.
7 Charles Slycord.
8 Lance Payne.
9 Richard Hanson.
10 Richard Mc Neely.
11 Dianne Estep.
12 Sandra Asquith.
13 David Herico.
14 Christina Dutra.
15 Michael Chambers.
16 Carlotta King.
17 Florence Albee.
18 Nicole Zane.
19 Lillian Rosenthal.
20 Wallace Peterson.

21 THE COURT: Now, before I begin asking
22 questions of this group of 23, I want to address those of
23 you who are still seated in the gallery chairs. I would
24 ask that you please pay careful attention to the

1 questions even though you are not up here directly
2 answering. In the event one of these prospective jurors
3 is excused for cause, we'll be calling one of you up to
4 fill that seat, and the question I would prefer to ask is
5 is there any question to which you would have supplied an
6 answer. And that way if you would have paid attention to
7 the questions, there will probably only be a few things
8 that you might be answering, and that speeds up the
9 process for everybody.

10 In order to release those of you who won't be
11 needed for the jury, we have to get down to the point
12 where approving 23 people for cause has been
13 accomplished. And it's much better that I ask the one
14 question of you rather than begin the process over to ask
15 all the questions of you.

16 Now, during the questioning here, first I'll
17 be asking questions, then Ms. Riggs and then Mr. Van Ry,
18 in that order. And I don't anticipate that we'll be
19 asking questions of such a personal nature that there
20 would be any need for privacy, so to speak, in your
21 responses, but if there is a question that you feel would
22 be embarrassing or uncomfortable for you to answer here
23 in front of the group, you may request to come forward to
24 the bench and discuss the issue with both counsel and

1 myself. So if that need arises, please feel free to do
2 so.

3 Now, the first questions that I will ask deal
4 with hardship, and there are two types of hardship.
5 First, obviously the hardship of simply being here
6 probably for three days based on what the attorneys have
7 said about the duration of the case. And it is difficult
8 to get off a jury simply because it's difficult for you
9 to be here. An easier way to get off the jury, I would
10 say, is for a quasi medical hardship and that's the
11 hardship that I will begin asking questions about. We
12 need to have jurors who can sit for up to an hour at a
13 time. We usually take breaks at about an hour and you'll
14 be allowed to go into the jury room, there are restrooms
15 in there, you can stretch, et cetera. You need to be
16 able to observe the witnesses as they testify. We
17 believe there is some degree of credibility that can be
18 gained by watching the body language of a person, witness
19 on the stand, as well as the actual spoken word. You
20 need to obviously be able to hear the witnesses and the
21 lawyers asking questions as the case proceeds and you
22 need to speak English well enough to follow these
23 proceedings in the English language.

24 Is there anyone with what I call a quasi

1 medical hardship, those issues of vision, hearing,
2 English language and sitting for up to an hour at a time?

3 Yes, ma'am, Ms. Asquith, you have raised your
4 hand. And what is your hardship?

5 PROSPECTIVE JUROR ASQUITH: I've had two back
6 surgeries and a hip replacement. It's very difficult for
7 me to sit for any length of time at all. Plus the fact
8 that I'm being treated for depression and anxiety. This
9 doesn't help.

10 THE COURT: Okay. So sitting for an hour
11 would cause you great pain; is that true?

12 PROSPECTIVE JUROR ASQUITH: Um-hum.

13 THE COURT: All right. And Ms. Riggs, do you
14 have any questions of Ms. Asquith concerning her medical
15 hardship?

16 MS. RIGGS: No, Your Honor. We dismiss her
17 for cause.

18 THE COURT: Mr. Van Ry?

19 MR. VAN RY: No, Your Honor. We should thank
20 her for coming. I have no objection.

21 THE COURT: Ms. Asquith, I will release you
22 for cause based on your stated hardship. Would you
23 please report back to the Jury Commissioner's office and
24 let them know that you have been excused. Thank you.

1 PROSPECTIVE JUROR ASQUITH: Thank you, sir.

2 THE COURT: And we'll be filling
3 Ms. Asquith's seat. Mr. Bartlett will call out another
4 name.

5 THE CLERK: Robert Beard.

6 THE COURT: And now I will proceed again to
7 go to the questions regarding vision, hearing, English,
8 sitting, and I believe Mr. Herico, you have raised your
9 hand.

10 PROSPECTIVE JUROR HERICO: Yes, sir, Your
11 Honor. I cannot hardly, you know, hear. I have a
12 problem on hearing and my eyes kind of, I cannot see far
13 enough, sir.

14 THE COURT: And as to your hearing, is this
15 something that you have a hearing aid or something?

16 PROSPECTIVE JUROR HERICO: No, 'sir. I don't
17 have a hearing aid yet, sir, or --

18 THE COURT: And does this hearing pose a
19 problem for you with regard to being able to hear things
20 so far?

21 PROSPECTIVE JUROR HERICO: So far, yes, Your
22 Honor. Sometimes a word, I cannot hear, I cannot
23 understand the words.

24 THE COURT: All right. And Ms. Riggs, do you

1 have any questions for Mr. Herico?

2 MS. RIGGS: No, Your Honor. Again, no
3 objection, dismissal for cause.

4 THE COURT: Mr. Van Ry, any questions?

5 MR. VAN RY: Yeah, Your Honor.

6 Are you able to understand the judge as he
7 speaks to you today?

8 PROSPECTIVE JUROR HERICO: I, some of the
9 words I cannot understand, sir.

10 MR. VAN RY: Is that because you can't hear
11 it or is it perhaps a language barrier?

12 PROSPECTIVE JUROR HERICO: And the language
13 barrier, too.

14 MR. VAN RY: What is the language that you
15 speak other than English?

16 PROSPECTIVE JUROR HERICO: I speak Tagalog.

17 MR. VAN RY: From the Philippines?

18 PROSPECTIVE JUROR HERICO: Yes.

19 MR. VAN RY: If a witness is sitting in that
20 chair, are you going to have a hard time understanding
21 what the witness says?

22 PROSPECTIVE JUROR HERICO: Probably, yes.

23 MR. VAN RY: You think so?

24 PROSPECTIVE JUROR HERICO: Yes.

1 MR. VAN RY: Do you think it would be hard
2 for you to render a fair, impartial verdict in this case
3 based upon that inability to hear?

4 PROSPECTIVE JUROR HERICO: Yes.

5 MR. VAN RY: No, objection, release, Your
6 Honor.

7 THE COURT: Mr. Herico, I am going to excuse
8 you for the cause that you have explained, but will you
9 please report back to the Jury Commissioner's office and
10 let them know that you have been excused? Thank you.

11 PROSPECTIVE JUROR HERICO: Thank you.

12 THE COURT: Next, sir, will be to fill this
13 seat.

14 THE CLERK: Joseph Byrne.

15 THE COURT: Is Mr. Byrne here?

16 PROSPECTIVE JUROR BYRNE: Yes, sorry.

17 THE COURT: And now going again to this
18 question of a medical type of hardship. I noticed that
19 Mr. Slycord, you raised your hand. And what is your
20 hardship?

21 PROSPECTIVE JUROR SLYCORD: Hearing. I have
22 been 40 years in heavy construction and there is women's
23 voices I have a hard time with and men's voices if they
24 are just high enough. I have lost all my high tone, but

1 other than that I hear you just fine, I hear that
2 gentleman just fine, but there is just some people I
3 cannot hear. My wife says it's selective.

4 THE COURT: Well, when you said it's women's
5 voices, one would wonder about this.

6 PROSPECTIVE JUROR SLYCORD: Yes, sir.

7 THE COURT: And Mr. Slycord, do you feel that
8 based on your experience with your hearing you are likely
9 to find some witnesses difficult to hear?

10 PROSPECTIVE JUROR SLYCORD: Yes, sir, I am.
11 I find that at work I answer questions I think they ask
12 and they didn't ask them. I give the wrong answer to it.

13 THE COURT: All right. And Ms. Riggs, do you
14 have any questions for Mr. Slycord?

15 MS. RIGGS: Briefly, Your Honor.

16 Mr. Slycord, you did note that in your jury
17 questionnaire that you have difficulty hearing.

18 PROSPECTIVE JUROR SLYCORD: Yes, I put it on
19 there.

20 MS. RIGGS: And is this something that comes
21 and goes or something that's consistent? If you sat
22 perhaps closer to the witness do you think you could hear
23 better or is it just not predictable?

24 PROSPECTIVE JUROR SLYCORD: It doesn't come

1 and go, it's all day long, all of my life, last eight
2 years, ten years.

3 MS. RIGGS: State would have no objection to
4 a medical dismissal, Your Honor.

5 THE COURT: Mr. Van Ry, do you have any
6 questions?

7 MR. VAN RY: None, Your Honor. Thank you for
8 his service and release him. No objection, Your Honor.

9 THE COURT: All right. Mr. Slycord, I will
10 release you based upon your statement of medical
11 hardship, but please report back to the Jury
12 Commissioner's office and let them know that you have
13 been excused. Thank you.

14 PROSPECTIVE JUROR SLYCORD: Thank you, sir.

15 THE CLERK: Caston Kennard.

16 THE COURT: Now, is there anyone else with
17 what I would call a quasi medical hardship? And I see
18 Mr. Mc Neely, you have raised your hand.

19 PROSPECTIVE JUROR MC NEELY: That's correct.

20 THE COURT: And what is your hardship?

21 PROSPECTIVE JUROR MC NEELY: On Monday I
22 actually had to have my heart stopped and restarted. I'm
23 still under medical care for the next two weeks. I'm
24 supposed to have complete rest. I had a fluttering valve

1 in the atrium and they stopped it so that they could get
2 it back to the, consistent with the ventricle.

3 THE COURT: Well, sitting as a juror is
4 fairly restful for some people, but has your doctor
5 actually told you that you are not to work or do
6 anything, being out in the community, you are simply to
7 stay home and rest?

8 PROSPECTIVE JUROR MC NEELY: No, he said I
9 can't lift 20 pounds and I should, you know, rest as much
10 as possible, but there wasn't anything like can't go
11 outside or do stuff like that.

12 THE COURT: Well, do you feel that coming
13 here in court has, walking from the car to the building
14 and sitting as a juror is going to be a problem for you?

15 PROSPECTIVE JUROR MC NEELY: No, I still
16 manage to run four or five miles a day, so I'm okay that
17 way.

18 THE COURT: Well, if you can run that far
19 it's further than I'm going to run, I'm sure. Do you
20 think actually you'll be all right, then, for three days?

21 PROSPECTIVE JUROR MC NEELY: I feel I'll be
22 all right. I just wanted to bring it to your attention.

23 THE COURT: All right. And Ms. Riggs, do you
24 have any questions for Mr. Mc Neely?

1 MS. RIGGS: Mr. Mc Neely, you realize that if
2 for some reason you need to get somebody's attention you
3 are free to wave your hand to the bailiff or the judge
4 and let them know that you are uncomfortable or something
5 like that; is that, is that enough comfort for you with
6 your medical condition?

7 PROSPECTIVE JUROR MC NEELY: Yeah, I think
8 so.

9 MS. RIGGS: All right. Thank you.
10 State would ask you not to dismiss for cause,
11 Your Honor.

12 THE COURT: And Mr. Van Ry, do you have
13 questions for Mr. Mc Neely?

14 MR. VAN RY: No questions, Your Honor. Thank
15 you.

16 THE COURT: All right. Well, we appreciate
17 your comments and you will remain on our panel,
18 Mr. Mc Neely.

19 PROSPECTIVE JUROR MC NEELY: Okay.

20 THE COURT: Anyone else with a quasi medical
21 hardship?

22 All right. And then the other type of
23 hardship is simply being here where you are away from
24 your job, family, other commitments in life. And I will

1 say that sometimes I have to be harsh on this in keeping
2 somebody on, but we need to have a good cross-section of
3 the community. We can't just have people who don't have
4 a job or other commitments in life, that sort of thing.
5 And so we do, in fact, require as part of your duty as a
6 citizen that you serve as a juror even though it will
7 interfere with other aspects of your life.

8 But with that as a preface, does anybody wish
9 to explain a hardship with regard to service during the
10 next three days?

11 All right. I'll start in the front.
12 Ms. Zane, you have raised your hand.

13 PROSPECTIVE JUROR ZANE: Day-care. I am a
14 stay-at-home mom and I watch my niece. For me to come
15 here today my husband had to take off work and my sister
16 had to take off work, and she just got her job yesterday,
17 so it was, they weren't really happy that she had asked
18 for the next day, today off. I don't know who I'd get to
19 watch her daughter and my daughter tomorrow and Friday.
20 I have nobody. All my friends work. I'm usually the one
21 that they bring their kids to me because -- I just don't
22 have anybody who could watch my kids or her kid.

23 THE COURT: So if you were here tomorrow,
24 your husband -- Well, the others that would, might be

1 caregivers, you don't feel that any of them could, could
2 remain home for these, I take it, preschool children?

3 PROSPECTIVE JUROR ZANE: If she, my niece, if
4 my sister, if she were to stay home she would probably
5 lose her job that she just got. Yesterday was her first
6 day and the way that they acted when she asked for today
7 off, they weren't real happy with the fact that she was
8 asking for today off. And I'm the one that watches her
9 child. My husband could probably take off if he had to,
10 but he would lose, we would lose probably quite a bit of
11 money in doing so. He's a real estate agent and he's got
12 homes to show tomorrow. We're kind of -- He's just
13 starting out, so money's tight and it would be really
14 hard for us if he were to lose --

15 THE COURT: Well, if you were to, in fact, be
16 selected for this particular jury and somebody else had
17 to care for the child or, I don't know, you haven't
18 explained actually how old these children -- How old are
19 they?

20 PROSPECTIVE JUROR ZANE: My daughter is three
21 and my niece is nine months.

22 THE COURT: So the nine-month-old can't
23 simply be left.

24 PROSPECTIVE JUROR ZANE: No, and a

1 three-year-old can't simply be left. I mean my --

2 THE COURT: Would you be able to give this
3 case the attention that it deserves if you, in fact, were
4 selected for the jury?

5 PROSPECTIVE JUROR ZANE: You know, I really
6 don't know how I could be here. I mean, I guess my
7 husband -- I could be here. My husband would have to
8 take off, but, I mean, my sister's just starting out,
9 she's just, she had to have a tough time. She hasn't
10 worked for over two years and this is the first job that
11 she's gotten, and it would be a real shame that something
12 like this would cause her to lose the first job that
13 she's gotten because of no day-care. You know what I'm
14 saying?

15 THE COURT: All right. And Ms. Riggs, do you
16 have questions for Ms. Zane?

17 MS. RIGGS: No questions and no objection to
18 dismissal for cause, Your Honor.

19 THE COURT: Mr. Van Ry?

20 PROSPECTIVE JUROR ZANE: Mr. Van Ry, I think,
21 knows my sister.

22 MR. VAN RY: In what capacity?

23 PROSPECTIVE JUROR ZANE: You were actually
24 her lawyer, I think, on a case that her and her

1 boyfriend.

2 MR. VAN RY: A criminal case or civil case?

3 PROSPECTIVE JUROR ZANE: Criminal.

4 MR. VAN RY: I have an identical twin
5 brother.

6 PROSPECTIVE JUROR ZANE: Oh, do you?

7 MR. VAN RY: I do.

8 PROSPECTIVE JUROR ZANE: Could have been him,
9 I don't know.

10 MR. VAN RY: He was actually a DA that works
11 for the State now. Previously worked for the DA's
12 office.

13 PROSPECTIVE JUROR ZANE: You guys look alike.

14 PROSPECTIVE JUROR DUTRA: Identical.

15 MR. VAN RY: I don't have any objections, but
16 I think it's a hardship for other extenuating
17 circumstances and I'm not sure I would agree to release
18 her at this time.

19 THE COURT: Ms. Zane, I don't like to release
20 people for childcare issues, but it sounds like yours is
21 a particularly bad situation and I am going to release
22 you for that cause.

23 PROSPECTIVE JUROR ZANE: Thank you.

24 THE COURT: But would you please report back

1 to the Jury Commissioner's office and let them know that
2 you had been excused.

3 PROSPECTIVE JUROR ZANE: I mean, if I had
4 more notice I'm sure, if there's any way in a different
5 trial or something.

6 THE COURT: You will probably be called again
7 pretty soon.

8 PROSPECTIVE JUROR ZANE: Thank you.

9 MR. VAN RY: Thank you.

10 THE CLERK: Gregory Hopkins.

11 THE COURT: And Mr. Hopkins, since we've gone
12 now to the second question, I'll ask you, is there any
13 hardship that you would like to explain.

14 PROSPECTIVE JUROR HOPKINS: No, Your Honor.

15 THE COURT: Anyone else with a hardship?

16 First we'll go to Ms. Dutra. You have raised
17 your hand.

18 PROSPECTIVE JUROR DUTRA: Yes, sir.

19 THE COURT: And what is your hardship?

20 PROSPECTIVE JUROR DUTRA: Well, I have a
21 couple. I am a single mother and I go to school
22 full-time and at this moment right now my kids are off
23 track for school and I'm having a hard time -- I mean,
24 I'm not saying I couldn't be here, it would be difficult.

1 Right now my grandmother, she's 86, she's watching my
2 children right now. I have a six- and a seven-year-old.
3 And she's, she can watch them for a couple hours. I'm a
4 little concerned about her watching them on a, I'm not
5 sure how long the day is as far as the trial. Is it an
6 all day?

7 THE COURT: We typically go till 5 o'clock,
8 yes.

9 PROSPECTIVE JUROR DUTRA: Okay. Well, I
10 mean, I'm just concerned about her. I'll be missing
11 school and then I would have to work something out with
12 her, because, of course, I watch my kids when they are
13 not in school. And when I go to school she can watch
14 them for an hour or two in between. I don't have a, I
15 don't really have a big, any other problem being here. I
16 mean, I don't, you know, I wouldn't mind being here. I
17 just have an issue with school, me missing school and
18 then I'll be juggling them around for the next couple
19 days. I mean, it's hard for me. I don't have any, I
20 don't really have any backup. I do my own thing. I have
21 her to help me out when she can and I'm grateful for
22 that.

23 THE COURT: All right. And Ms. Riggs, do you
24 have any questions for Ms. Dutra?

1 MS. RIGGS: Ms. Dutra, I'm really kind of
2 unclear on whether you can or can't be here because your
3 childcare, and I know that you did also include the
4 day-care issue in your jury questionnaire. Can you cover
5 it for the next couple of days?

6 PROSPECTIVE JUROR DUTRA: Well, I probably
7 could. I'm just a little -- you know, I'm a little
8 nervous about leaving my Grandma with the kids all day.
9 You know, they are a handful for me. She's 86 years old.
10 I'm not saying that she's not competent or anything.
11 She's at an age where it's difficult for her. I mean,
12 you know, a couple hours, yes, I can see that, but all
13 day, you know, I get tired when I have them all day, you
14 know. My grandmother, I mean, they get a little --
15 They're boys. I mean, they get wild at home.

16 MS. RIGGS: Has she watched them before?

17 THE WITNESS: Yes, she has, but not that
18 long, you know, not all day. You know, when she watches
19 them for me, because right now I go to school during the
20 day, she watches them for an hour or two here and there
21 and that's enough time for her. So I'm a little
22 concerned, I have concerns with my grandmother, you know.

23 MS. RIGGS: Now, you realize we'll be taking
24 several breaks during the day and that could be an

1 opportunity for you to make a phone call to make sure
2 everything is okay at home. Is that enough, would that
3 be enough reassurance for you that everything could be
4 okay?

5 PROSPECTIVE JUROR DUTRA: Yes, I would have
6 to do that. I would have to do that. It just makes me a
7 little nervous. I always think what if something
8 happens, you know, and I'm not there. You know, it
9 concerns me, that's all. I'm not saying, I'm not trying
10 to get out of it for a certain reason, I'm just concerned
11 for my grandmother's sake. She is getting old and it
12 just worries me, that's all.

13 MS. RIGGS: Okay, given the fact that you are
14 dismissed, as the judge said that you may be recalled
15 soon and that may be in a longer case.

16 PROSPECTIVE JUROR DUTRA: Well, you know,
17 this is a, they are on year-round school and they are out
18 of school in November, you know. I mean, I don't, I
19 wouldn't mind if, heck, it was next month, it would be
20 easier for me, you know, what I mean, I would have that
21 time in between. But as far as them not having, you
22 know, since -- They just happen to be home and I just
23 happened to get this card at that time, you know. I know
24 I could be recalled and I don't have a problem with that.

1 MS. RIGGS: Your Honor, the State actually
2 would object to dismissal for cause at this point as
3 Ms. Dutra sounds like she can at least get the day-care
4 covered for the next couple of days. Thank you.

5 THE COURT: And Mr. Van Ry, do you have any
6 questions of Ms. Dutra?

7 MR. VAN RY: No questions. Thank you.

8 THE COURT: Well, Ms. Dutra, it does sound
9 like, you know, another month would be better for you,
10 but on the other hand you do in fact have some adult,
11 albeit your grandmother and an older woman, to do it, but
12 because you do in fact have an arrangement and these are
13 preschool children --

14 PROSPECTIVE JUROR DUTRA: Well, no, they are
15 six and seven.

16 THE COURT: Right, so they are not preschool
17 children.

18 PROSPECTIVE JUROR DUTRA: They are in first
19 and second grade.

20 THE COURT: So I'm not going to excuse you
21 for this cause.

22 PROSPECTIVE JUROR DUTRA: Okay.

23 THE COURT: And then I believe Mr. Hanson
24 raised his hand.

1 PROSPECTIVE JUROR HANSON: Yes, sir.

2 THE COURT: And what is your hardship?

3 PROSPECTIVE JUROR HANSON: This is a
4 financial burden for me. I am the breadwinner of my
5 family. My wife is diagnosed with lupus a year ago and
6 my medical bills are astronomical even though my
7 insurance tries to take care of it. But I have paid out
8 just in prescription \$2700 already at this point this
9 year. So, and my company don't reimburse me for being
10 here, jury duty. I'm losing money. I'm not being paid
11 for being here. So what I'm trying to say, it's a
12 financial burden on me and my wife at this time. I mean,
13 I just, my company don't pay me like probably everybody
14 else gets paid for their day's work, I don't get paid for
15 it.

16 THE COURT: Well, I'm not going to assume
17 that everybody else would be paid by their employer.
18 It's probably the minority of jurors. But Mr. Hanson, if
19 you were selected for this jury, would you give it the
20 attention that it deserves?

21 PROSPECTIVE JUROR HANSON: Yes, I would. I
22 mean, that's, the only problem I have is I'm not making
23 money. I'm going to lose three days' wages and that,
24 like I said, it puts a financial burden on myself.

1 THE COURT: Ms. Riggs, do you have questions
2 of Mr. Hanson?

3 MS. RIGGS: State has no questions, Your
4 Honor.

5 THE COURT: Mr. Van Ry?

6 MR. VAN RY: No questions, Your Honor.

7 THE COURT: Mr. Hanson, I can extend my
8 sympathy on this and, you know, I wish things were
9 different for you and for us as, you know, picking our
10 jury, but I don't find that you have expressed a reason
11 that would justify dismissal for cause. So I will not do
12 that at this time.

13 THE COURT: Anyone else with a hardship?

14 All right. We have Mr. Byrne. You raised
15 your hand.

16 PROSPECTIVE JUROR BYRNE: I would just like
17 to bring up the fact that I am a full-time student at the
18 University of Nevada-Reno right now and being that it's
19 two months left before the semester is done with and
20 we're into finals and it is a kind of a crucial time for
21 tests and all the other stuff being presented. I guess I
22 would just like to bring that aware.

23 THE COURT: But the next three, three days,
24 would you be missing any examinations?

1 PROSPECTIVE JUROR BYRNE: Not to my
2 knowledge. I could quickly look to see.
3 There are no tests until prior -- end of the
4 week, so ...
5 THE COURT: Well, you are better equipped
6 than I am. I took my calendar home on Monday and forgot
7 to bring it back today.
8 And Ms. Riggs, would you like to ask
9 Mr. Byrne some questions?
10 MS. RIGGS: No questions.
11 THE COURT: Mr. Van Ry?
12 MR. VAN RY: Just a couple.
13 Mr. Byrne, I note that you currently work for
14 Costco; is that correct?
15 PROSPECTIVE JUROR BYRNE: Yes.
16 MR. VAN RY: How long have you worked for
17 Costco?
18 PROSPECTIVE JUROR BYRNE: About two years
19 now.
20 MR. VAN RY: I formerly represented Costco in
21 a personal injury, several personal injury actions about
22 two years ago. I don't know if you were aware of that or
23 not Mr. Byrne. Were you aware of that?
24 PROSPECTIVE JUROR BYRNE: Not entirely.

1 MR. VAN RY: Would that be a no?

2 PROSPECTIVE JUROR BYRNE: No.

3 MR. VAN RY: That fact wouldn't impact your
4 ability to be fair and impartial on this jury, would it?

5 PROSPECTIVE JUROR BYRNE: No.

6 THE COURT: Well, Mr. Byrne, we appreciate
7 there will be a hardship that you will be missing class
8 for three days, but I don't find it a justification to
9 remove you from the jury for cause.

10 Anyone else with a hardship?

11 All right. Now we'll go into more
12 substantive issues and that is knowledge of the parties
13 and witnesses. And we want to go through this process to
14 make sure that everybody can be fair and impartial to
15 both parties in this lawsuit and not base a decision on
16 factors other than evidence presented in the case.

17 And first we have Ms. Riggs, Tammy Riggs is
18 the deputy district attorney. Do any of you know
19 Ms. Riggs?

20 All right. And the defense counsel is
21 Bradley Van Ry. Do any of you know Mr. Van Ry?

22 Yes, sir, Mr. Peterson. And how do you know
23 Mr. Van Ry?

24 PROSPECTIVE JUROR PETERSON: I went to school

1 with him in Reno High, I think.

2 THE COURT: Will the fact that Mr. Van Ry is
3 counsel for one of the parties in the case, do you think
4 that would be something that would make it difficult for
5 you to render a fair and impartial verdict?

6 PROSPECTIVE JUROR PETERSON: No. No, sir.
7 No, Your Honor.

8 THE COURT: And Ms. Riggs, do you have any
9 questions for Mr. Peterson in this regard?

10 MS. RIGGS: None, Your Honor.

11 THE COURT: Mr. Van Ry, do you have any
12 questions?

13 MR. VAN RY: None, Your Honor.

14 THE COURT: All right. Thank you.

15 And then we have Ferrill Volpicelli who is a
16 party in the case. Do any of you know Mr. Volpicelli?

17 All right, Mr. Hopkins, and how do you know
18 Mr. Volpicelli?

19 PROSPECTIVE JUROR HOPKINS: I would ask to
20 come to approach you personally.

21 MR. VAN RY: Yeah, I think that's good.

22 THE COURT: All right.

23 (A discussion was held at the bench off the
24 record.)

1 THE COURT: I will note for the record that
2 Mr. Hopkins approached the bench and I do find that there
3 is just cause to release Mr. Hopkins in this particular
4 case.

5 Mr. Hopkins, will you please report back to
6 the Jury Commissioner's office and let them know that you
7 have been excused?

8 PROSPECTIVE JUROR HOPKINS: Yes, Your Honor.

9 THE CLERK: James Harris.

10 THE COURT: Good morning, Mr. Harris.

11 PROSPECTIVE JUROR HARRIS: Morning.

12 THE COURT: And Mr. Harris is there any
13 question to which you would have applied an answer?

14 PROSPECTIVE JUROR HARRIS: No.

15 THE COURT: Very good.

16 PROSPECTIVE JUROR HARRIS: Not thus far.

17 THE COURT: All right. Now, the next issue
18 is with regard to potential witnesses. And Ms. Riggs, I
19 see that there are some names placed on a pad of paper
20 there on the board. And perhaps you could explain first
21 the name, and if you know the occupation of that
22 potential witness, perhaps you could state the occupation
23 so that we have a better idea of whether or not we know
24 that person.

1 MS. RIGGS: Sure. Reed Thomas is a detective
2 with the Reno Police Department. Patricia Brown is also
3 a detective with the Reno Police Department. Scott
4 Armitage is a detective with the Reno Police Department.
5 Brett Bowman is currently, I'm not sure, Your Honor, the
6 status of his employment, where he is employed, but he is
7 a civilian. David Della is a detective with the Reno
8 Police Department. Michael Brown is a detective with the
9 Sparks Police Department. Larry Lodge is a detective
10 with Washoe County Sheriff's Office. Matthew Carter is a
11 store manager for Wal-Mart stores. Greg Danielson is
12 also a manager for Wal-Mart stores. Karinah
13 Prevost-Robison who now goes by Karinah Prevost is an
14 owner of a place called Aussie Self-Storage in Sparks on
15 Victorian Avenue. Jennifer Powell is formerly an
16 employee of Wal-Mart stores, or, pardon me, of Shopko.
17 John David Ellis is a risk manager for Lowe's
18 Incorporated. Bill Mowery now works for Bed & Bath, or,
19 pardon me, Bed Bath & Beyond. The BXI Business Exchange
20 of Northern Nevada, that would be an appearance by
21 affidavit. It is a bartered exchange organization. And
22 Officer Teasley is also a detective with the Reno Police
23 Department.

24 THE COURT: All right. Does anyone know any

1 of those people?

2 All right, we have Ms. Albee, you have raised
3 your hand.

4 PROSPECTIVE JUROR ALBEE: I believe I know
5 Matt Carter and Greg Danielson. I worked as a stocker at
6 Wal-Mart last year, but I don't know them very well and I
7 don't think it would make any difference and I would
8 listen.

9 THE COURT: And are you currently employed
10 with Wal-Mart?

11 PROSPECTIVE JUROR ALBEE: No.

12 THE COURT: Ms. Riggs, would you like to ask
13 Ms. Albee any further questions in this regard?

14 MS. RIGGS: Ms. Albee, your experience
15 working with Wal-Mart, you said you no longer work with
16 them anymore?

17 PROSPECTIVE JUROR ALBEE: Right.

18 MS. RIGGS: And do you have any contact with
19 either of the two witnesses that we just talked about?

20 PROSPECTIVE JUROR ALBEE: No.

21 MS. RIGGS: And I believe you stated that
22 having known them briefly wouldn't have any impact on
23 your ability to decide this case one way or the other?

24 PROSPECTIVE JUROR ALBEE: Right.

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MS. RIGGS: Thank you.

No further questions, Your Honor.

THE COURT: Mr. Van Ry?

MR. VAN RY: No questions, Your Honor.

THE COURT: All right. I believe there was another hand raised. Ms. Dutra, who do you know?

PROSPECTIVE JUROR DUTRA: I don't want you to think I know these -- I do know an Officer Michael Brown. I know him through, I work in a casino and I know him as far as coming in there and I know who his wife is, but I haven't seen him in a while, so that probably wouldn't make a difference. I mean, I don't see him on a daily basis. It's been a while since I've seen him, but I do know him, I do know who he is.

THE COURT: All right. And --

PROSPECTIVE JUROR DUTRA: I mean, we have the same friends.

THE COURT: And if he were to testify in this case, would you look at his testimony and determine its credibility as you would every other witness or would you look at his testimony as being that of a friend that you trust implicitly and perhaps would not treat it the same as the other witnesses?

PROSPECTIVE JUROR DUTRA: No, I would treat

1 him the same, I mean, as far as credibility for, not as a
2 friend.

3 THE COURT: And Ms. Riggs, would you like to
4 ask Ms. Dutra questions with regard to that issue knowing
5 a Michael Brown, I believe?

6 MS. RIGGS: No questions, Your Honor.

7 THE COURT: Mr. Van Ry, do you have questions
8 of Ms. Dutra?

9 MR. VAN RY: No questions, Your Honor.

10 THE COURT: All right. Ms. Dutra, thank you
11 very much.

12 Anyone else know any of those prospective
13 witnesses?

14 Now, it is inherent in our process of
15 criminal justice that the defense has nothing to prove.
16 The defendant is deemed innocent till the State
17 establishes guilt beyond a reasonable doubt through
18 competent evidence here in court. So it's not necessary
19 for the defense to call any witnesses and I don't know if
20 there are any potential defense witnesses listed.

21 Are there any defense witnesses listed?

22 MR. VAN RY: Just Mr. or Officer Teasley at
23 the end, Your Honor.

24 THE COURT: Okay. And Officer Teasley, where

1 does he work?

2 MR. VAN RY: He's a Reno police officer.

3 THE COURT: All right. Anybody know Officer
4 Teasley? Thank you.

5 There is one more who-you-know question that
6 I'll ask, and that is, among this group of 23 of you, do
7 any of you know another prospective juror?

8 All right. And Ms. Estep has raised her
9 hand. And Ms. Estep, who do you know?

10 PROSPECTIVE JUROR: I know Carlotta King and
11 I know Patrick Cunning. All right.

12 THE COURT: All right. And if Mr. Cunning
13 and Ms. King were both selected for the jury and you were
14 deliberating toward a verdict at the conclusion of the
15 case, do you think that you would be inclined to follow
16 the lead of either Mr. Cunning or Ms. King or would you
17 decide the case yourself after consulting with all the
18 other jurors?

19 PROSPECTIVE JUROR: I would decide the case
20 myself after consulting with the jurors.

21 THE COURT: All right. And Mr. Cunning, I
22 take it you know Ms. Estep?

23 PROSPECTIVE JUROR CUNNING: Yes.

24 THE COURT: And do you know anyone else?

1 PROSPECTIVE JUROR CUNNING: No.

2 THE COURT: Would you be inclined to follow
3 Ms. Estep's thoughts with regard to the facts and
4 ultimate verdict in the case or do you think you would be
5 inclined to listen to her and all the other jurors and
6 make up your own mind?

7 PROSPECTIVE JUROR CUNNING: Listen to the
8 jurors.

9 THE COURT: All right. Thank you.
10 And then Ms. King, you know Ms. Estep?

11 PROSPECTIVE JUROR KING: Yes.

12 THE COURT: Do you know anyone else among
13 this group of 23?

14 PROSPECTIVE JUROR KING: I don't believe so.

15 THE COURT: And if you were to deliberate
16 toward a verdict, would you be inclined to follow
17 Ms. Estep's lead with regard to thoughts on the facts and
18 how the case ought to be decided or would you decide the
19 case for yourself after consulting with all the other
20 jurors?

21 PROSPECTIVE JUROR KING: For myself with the
22 rest of the jurors.

23 THE COURT: All right. Thank you.

24 Now, did I miss anybody? Oh, Ms. Dutra, yes.

1 PROSPECTIVE JUROR DUTRA: Okay. I know
2 Diane.
3 PROSPECTIVE JUROR BUCK: Guilty.
4 THE COURT: Diane Buck?
5 PROSPECTIVE JUROR DUTRA: Yes, sir.
6 THE COURT: And if you and Ms. Buck were
7 deliberating toward a verdict at the conclusion of the
8 case, would you be inclined to follow her lead with
9 regard to the facts and verdict in the case or would you
10 decide the case for yourself after consulting with all
11 the other jurors?
12 PROSPECTIVE JUROR DUTRA: I would decide the
13 case for myself.
14 THE COURT: And Ms. Buck, do you feel that
15 same way?
16 PROSPECTIVE JUROR BUCK: As long as we remain
17 friends.
18 PROSPECTIVE JUROR DUTRA: Really. No.
19 PROSPECTIVE JUROR BUCK: Yes, I can do that,
20 I hope.
21 THE COURT: Do you think you would have any
22 difficulty in disagreeing with Ms. Dutra.
23 PROSPECTIVE JUROR BUCK: No.
24 THE COURT: All right. Thank you.

1 Now, as I stated previously, the basic
2 principle of a criminal justice system is that the State
3 bears the burden of proof in a criminal case, at every
4 level, whether it's a drunk driving case, a parking
5 ticket, up to murder and extremely serious crimes. The
6 principle is that the defendant in a case is presumed
7 innocent unless the case brings forth witnesses who can
8 testify here in court as to the elements of the offense
9 establishing that a criminal defendant is guilty beyond a
10 reasonable doubt. And can all of you abide by that basic
11 principle, that is, as Mr. Volpicelli sits here, you must
12 presume that he is innocent; is there any problem with
13 that?

14 Now, during the course of trial --

15 MS. RIGGS: Excuse me, Your Honor, there's a
16 juror.

17 THE COURT: Whoops. Ms. Rosenthal?

18 PROSPECTIVE JUROR ROSENTHAL: May I approach
19 the front?

20 THE COURT: Yes, you may.

21 (A discussion was held at the bench off the
22 record.)

23 THE COURT: Ms. Rosenthal, based on your
24 statements here at the bench, I do find that you should

1 be excused for cause and I am going to release you, but
2 will you please report back to the Jury Commissioner's
3 office and let them know that you have been excused?

4 PROSPECTIVE JUROR ROSENTHAL: Yes, sir.
5 Thank you.

6 THE COURT: And now we're getting some
7 additional jurors to come up, and in the interim I'm
8 going to call a recess before we fill Ms. Rosenthal's
9 seat. During the course of the recess, I will instruct
10 Ms. Riggs, Mr. Van Ry and Mr. Volpicelli that you are not
11 to say anything to any prospective juror so that even if
12 a prospective juror says "hi" to you, you are not allowed
13 to say "hi" back. What we want to do is avoid any
14 appearance of impropriety. I don't believe that any of
15 these individuals would attempt to unduly sway a
16 potential juror in their favor or against the other side,
17 so to speak, but we want to avoid any appearance from a
18 distance of something inappropriate taking place. So you
19 may just want to steer clear of them, hopefully they will
20 steer clear of you.

21 Otherwise, I would just say that you are not
22 to discuss any aspect of this case during our recess.
23 And I would imagine we'll be in recess for about 15
24 minutes. So try to be back here about ten minutes after

1 10:00 according to that clock. My watch actually says
2 that it's about two minutes before 10:00, it's a little
3 slower, but just try to be back here about ten after.
4 And when you come back, please come back to the same seat
5 that you are in. We have a seating chart that helps us
6 ask the questions, so please do that. You will be free
7 to go outside the building to get some fresh air if you'd
8 like.

9 With that, Court will stand in recess.

10 THE BAILIFF: All rise.

11 (Recess taken from 9:59 a.m. to 10:19 a.m.)

12 THE BAILIFF: All rise. This Court is again
13 in session.

14 THE COURT: You may be seated.

15 We have some additional members of our jury
16 panel who have just arrived, and I am going to ask that
17 each of our new members of our panel please stand up and
18 raise your right hand and be sworn by Mr. Bartlett to
19 tell the truth.

20 (The additional prospective jury panelists
21 were sworn in.)

22 THE COURT: You may be seated. Now, those of
23 you who have just arrived, we have gone through some of
24 the questions already on our jury selection process

1 called the voir dire. You weren't present for that, and
2 I'll recognize that going in, but, you know, I can't just
3 ask you is there any question that you would have
4 supplied an answer since you haven't heard any of the
5 questions, but I'll tell you that this particular case is
6 a criminal case and it's expected to last for the
7 duration of the week to go into Friday, so it will be a
8 three-day trial most likely. That's what the lawyers
9 have indicated.

10 Now, we do need to have one of you to come
11 forward and fill a seat which has been vacated, and I'll
12 ask Mr. Bartlett to go ahead and do that.

13 THE CLERK: Judith Anderson.

14 THE COURT: Ms. Anderson, it's right in
15 front. The easiest seat to find.

16 Good morning, Ms. Anderson. Before we
17 proceed further, since the other members of our panel had
18 the opportunity to be introduced to both counsel and
19 Mr. Volpicelli, I will introduce first Tammy Riggs, who
20 is the deputy district attorney representing the State in
21 this matter. We have Bradley Van Ry, defense counsel,
22 and we have Ferrill Volpicelli who is the defendant in
23 the case.

24 And Ms. Anderson, first, do you know any of

1 those three individuals?

2 PROSPECTIVE JUROR ANDERSON: No, I do not.

3 THE COURT: All right. And the first
4 question that always comes out are the issues of
5 hardship. And first we have the hardship of what I would
6 call a quasi medical hardship, being able to sit for
7 about an hour at a time in between recesses and every
8 recess you'll be allowed to go into the jury room, there
9 are restrooms in there. In addition, you can walk
10 around. Occasionally the bailiff will even lead the
11 group out to take a smoke break which sometimes occurs
12 out on the little balcony here or sometimes out in front
13 of the building.

14 The other hardships that I call quasi medical
15 are vision, inability to see very well; since there are
16 exhibits, being able to see that or observe the witnesses
17 as they testify. You need to have hearing sufficiently
18 good to hear the proceedings, both the witnesses and the
19 attorneys as they ask questions, to render meaning to an
20 answer, and you would need to be able to speak the
21 English language well enough to follow the proceedings in
22 English.

23 And Ms. Anderson, is there any hardship in
24 that regard --

1 PROSPECTIVE JUROR ANDERSON: No, there's not.

2 THE COURT: -- that you would have? And
3 given the fact that this is going to be a three-day
4 trial, is there any hardship you have with regard to
5 being here for those three days.

6 PROSPECTIVE JUROR ANDERSON: I am
7 self-employed and I don't have employees, so it would be
8 a little bit difficult for me. If it were a one-day
9 trial it would be no problem.

10 THE COURT: Well, I think the eight jurors
11 who have just arrived came from what we would intend to
12 be a one-day trial, so you have kind of gone from the
13 frying pan into the fire, so it will be a little longer
14 than in that situation. But still we need to have
15 obviously jurors, and this case being a three-day trial
16 still isn't up there in the three-week range or two-week
17 range that we often see. So it's still a relatively
18 short trial.

19 And Ms. Anderson, even though you would
20 suffer a financial hardship by reason of being here, do
21 you feel that you could nevertheless be here and give the
22 case the attention to which it deserves?

23 PROSPECTIVE JUROR ANDERSON: Yes.

24 THE COURT: All right. And Ms. Anderson, I'm

1 going to ask Ms. Riggs to, again, go through the list of
2 witnesses and let's find out if you know them, and also
3 for those of you in the gallery chairs, if you could pay
4 attention to this it will be of some assistance if you
5 are called up to have a seat. If you could pay attention
6 to all these questions and let me know if there's any
7 question to which you would supply an answer.

8 And Ms. Riggs, you may proceed.

9 MS. RIGGS: Ms. Anderson, Reed Thomas is a
10 detective with Reno Police Department. Patricia Brown is
11 also a detective with Reno Police Department. Scott
12 Armitage is a detective with Reno Police Department.
13 Brett Bowman is a civilian. Dave Della is a detective
14 with Reno Police Department. Michael Brown is a
15 detective with the Sparks Police Department. Larry Lodge
16 is a detective with the Washoe County Sheriff's Office.
17 Matthew Carter is a manager for Wal-Mart stores. Greg
18 Danielson is also a manager for Wal-Mart stores. Karinah
19 Prevost-Robison, who now also goes by Karinah Prevost, is
20 an owner of Aussie Self-Storage in Sparks, Nevada.
21 Jennifer Powell is formerly of Shopko. John David Ellis
22 is a loss manager for Lowe's stores. Bill Mowery is --
23 I'm sorry, Your Honor, I'm drawing a blank. Bill Mowery
24 is a, is an employee, former employee of Shopko and now

1 works for Bed Bath & Beyond. BXI, Business Exchange of
2 Northern Nevada, that actually is an appearance by
3 affidavit. And Officer Teasley works for the Reno Police
4 Department as a detective.

5 THE COURT: Ms. Anderson, do you know any of
6 those prospective witnesses.

7 PROSPECTIVE JUROR ANDERSON: No, I do not.

8 THE COURT: And I did afford Mr. Van Ry the
9 opportunity to state the name of a prospective witness
10 for the defense, and who was that person?

11 MR. VAN RY: It was Officer Teasley, Your
12 Honor.

13 THE COURT: All right. And he's with the
14 Reno Police Department?

15 MR. VAN RY: That's correct.

16 THE COURT: This time I heard Ms. Riggs state
17 that Officer Teasley was a witness for the plaintiff, I
18 didn't hear that the first time, but you may have said
19 that. I don't know.

20 Anyway, we're just trying to nail down who
21 the witnesses are for various parties. And you don't
22 know any of those people, correct?

23 PROSPECTIVE JUROR ANDERSON: No, I do not.

24 THE COURT: And if you look behind you, among

1 this group of 23, do you know anybody in this group?

2 PROSPECTIVE JUROR ANDERSON: No.

3 THE COURT: All right. Now, one of the
4 principles of criminal justice is that a defendant in any
5 criminal case, whether it's a misdemeanor, a gross
6 demeanor case or felony case is presumed innocent unless
7 the contrary is proved by competent evidence beyond a
8 reasonable doubt by the State. The State bears the
9 burden of proving the case. The defense is not obligated
10 to bring forth any witnesses or ask any questions. They
11 merely have the position of pointing out failure of the
12 State to meet its burden of proof.

13 So as Mr. Volpicelli sits here, you must find
14 him to be not guilty. Do you have any difficulty in
15 following that basic instruction of criminal justice law?

16 PROSPECTIVE JUROR ANDERSON: No, I don't.

17 THE COURT: All right. During the course of
18 trial, it will be the jury's exclusive duty and burden to
19 determine the facts in the case. And I assure you that
20 you are very well equipped to do that. You have led a
21 life where you have, you know, dealt with people and I'm
22 sure you have a good feeling for whether or not somebody
23 is telling the truth and whether or not sufficient
24 testimony would come forward to prove the elements that

1 the State is required to prove in this case.

2 On the other hand, it is my duty as judge to
3 present you with the law that you must then apply to the
4 facts as you find them in the case. And the question is
5 this: Does anybody feel that they would have a difficult
6 time or would not follow the law that I will be
7 presenting to you at the conclusion of the evidence? And
8 I can assure you that the way this is done is actually
9 both parties will present some jury instructions to me.
10 I may modify them, add to them. We ultimately settle
11 jury instructions as a team, so to speak, so that we
12 expect everyone to be operating from the same page, and
13 that is very important that you do follow the law in the
14 case.

15 Now, some people have either a religious
16 belief or philosophical belief that prevents them from
17 sitting in judgment of other people and may in fact
18 prevent them from rendering a judgment in a, either a
19 civil or a criminal case. Does anybody have a religious
20 or philosophical belief that would make it difficult or
21 impossible for you to render a verdict in this case?

22 All right. And I didn't tell you,
23 Ms. Anderson, that the nature of this case is that the
24 State has brought charges of burglary against

1 Mr. Volpicelli. That's the nature of the charge. And
2 based on all that you've heard about this particular case
3 thus far, is there anybody who feels for some reason that
4 they really are an inappropriate juror to sit on this
5 case and be fair to both sides?

6 All right. And I'm going to turn the
7 questioning over to -- Whoops.

8 PROSPECTIVE JUROR SEEGMILLER: What if you've
9 been burglarized before?

10 THE COURT: You raised your hand, I'm sorry,
11 I didn't see that.

12 PROSPECTIVE JUROR SEEGMILLER: What if you've
13 been burglarized before?

14 THE COURT: The issue is you need to remain
15 objective. That is not be subjective and bring in your
16 personal experience, so to speak, in a way that would be
17 inappropriate, either not following the facts as proven
18 or the law as provided by, by me. Can you set aside your
19 background and view this case as an impartial juror?

20 PROSPECTIVE JUROR SEEGMILLER: Yes, I guess
21 so.

22 THE COURT: And Ms. Riggs, do you have
23 questions of Ms. Seegmiller in this regard?

24 MS. RIGGS: No questions.

1 THE COURT: Mr. Van Ry?
2 MR. VAN RY: Yes, Your Honor.
3 How long ago was that?
4 PROSPECTIVE JUROR SEEGMILLER: About two
5 years ago.
6 MR. VAN RY: Two?
7 PROSPECTIVE JUROR SEEGMILLER: Yes.
8 MR. VAN RY: Was that here in Washoe County?
9 PROSPECTIVE JUROR SEEGMILLER: Yes.
10 MR. VAN RY: Is it something that makes you
11 afraid of potential criminal defendants as you sit here
12 today?
13 PROSPECTIVE JUROR SEEGMILLER: Yes.
14 MR. VAN RY: Is that something you would hold
15 against Mr. Volpicelli?
16 PROSPECTIVE JUROR SEEGMILLER: I'm not sure.
17 Maybe.
18 MR. VAN RY: Would you be able to wait until
19 you hear all of the evidence, both sides of the case
20 before you were to render a verdict in this matter?
21 PROSPECTIVE JUROR SEEGMILLER: I guess so.
22 Yes.
23 MR. VAN RY: I have nothing further, Your
24 Honor.

1 THE COURT: Ms. Seegmiller, as I have stated,
2 the defense need not establish anything during the course
3 of the trial. The burden is not on them at all and the
4 burden is upon the State to prove its case beyond a
5 reasonable doubt. And if you would find from the
6 testimony that facts have not been brought out to
7 establish an element of the offense charged by the State,
8 would you then find Mr. Volpicelli not guilty of that
9 charge?

10 PROSPECTIVE JUROR SEEGMILLER: Yes.

11 THE COURT: And would you have any problem in
12 doing that?

13 PROSPECTIVE JUROR SEEGMILLER: No.

14 THE COURT: All right. Very good.

15 Then if there are no other hands raised, I'll
16 turn the questioning over to Ms. Riggs.

17 MS. RIGGS: Thank you, Your Honor.

18 Ladies and Gentlemen, I'm going to begin with
19 some questions for the entire panel. Now, I know
20 Mr. Byrne works for Costco. Is there anybody else -- and
21 also Ms. Albee formerly worked for Wal-Mart. Anyone else
22 have any experience working for a superstore, large
23 retail establishment?

24 PROSPECTIVE JUROR ANDERSON: Worked for a

1 time at Sav-on.

2 MS. RIGGS: Okay, is there anything for those
3 people who have worked for superstores, anything about
4 that experience that makes you biased against anybody
5 associated with a big store, store managers, detectives,
6 et cetera? Anybody have a horrible experience as an
7 employee at a superstore? No?

8 Anybody have -- Has anybody had a business
9 that may have been impacted when a new superstore moves
10 into your neighborhood? Nobody?

11 Does anybody believe that chains like
12 Wal-Mart, Target, Shopko, are so big that they can afford
13 to lose a few items here and there? Anybody have that
14 attitude or feeling somehow?

15 Anybody mad about long Christmas shopping
16 lines? (Laughter) Okay. Fair enough.

17 Now, I have a question generally for you
18 about your thoughts on the law of burglary. And I'm --
19 Burglary is going to be explained to you, the judge will
20 give you the instructions at the end of this trial of the
21 law on burglary.

22 Anybody think that you have to break in or
23 someone needs to break in to commit a burglary? Anybody
24 just know that there has to be a breaking to commit

1 burglary? Well, that's good, because that's not the law
2 in the State of Nevada.

3 Does anybody think that the person who is in
4 a house, a store, needs to take something or commit a
5 crime inside for there to be a burglary?

6 Yes. And you are Ms. Buck?

7 PROSPECTIVE JUROR BUCK: Yes.

8 MS. RIGGS: And that's your belief --

9 PROSPECTIVE JUROR BUCK: Yeah.

10 MS. RIGGS: -- generally?

11 THE WITNESS: That's what a burglary is.

12 MS. RIGGS: Would you be surprised to learn
13 that that's not required for a burglary in the State of
14 Nevada.

15 PROSPECTIVE JUROR BUCK: Okay.

16 MS. RIGGS: Again, the judge will instruct
17 you on the law of burglary at the end of this case. And
18 burglary is neither requires any kind of crime to have
19 been committed before you go in or, as I said, for a
20 breaking. What is required is the intent in Nevada for a
21 larc -- for the person going into the establishment to
22 commit either larceny or a felony. You will get that
23 instruction at the end.

24 And having heard that, are you willing to

1 follow the law as the judge instructs you at the end of
2 the case?

3 PROSPECTIVE JUROR BUCK: I'll try.

4 MS. RIGGS: Will your opinion regarding your
5 former opinion thinking that something actually has to
6 occur inside, a crime has to occur once the person is
7 inside the building, is that going to keep you or is that
8 going to be in the back of your head?

9 PROSPECTIVE JUROR BUCK: No.

10 MS. RIGGS: So you will be able to follow the
11 law as you are instructed at the end of the case?

12 PROSPECTIVE JUROR BUCK: (Moves head up and
13 down.)

14 MS. RIGGS: Okay. Now, this case, as you
15 know, there are eight counts of burglary, a count of
16 conspiracy to commit other crimes, theft and larceny
17 included, and also a count of possessing or
18 counterfeiting UPC codes are what are involved in this
19 case. This is what we affectionately call a paper case.
20 There are going to be a lot of exhibits for you to look
21 at, a lot of testimony regarding receipts, papers, that
22 sort of thing. It's not going to be an exciting murder
23 trial full of, well, blood and guts and gore and that
24 kind of stuff. That's not what this case is about.

1 Does anybody feel like they are going to have
2 a hard time sitting through two, at least two days of
3 testimony regarding papers, receipts and that sort of
4 thing? Everybody think you can focus long enough? The
5 State is going to be showing you approximately 40
6 exhibits, mostly receipts, so I want to front load you on
7 that ahead of time. And no one's going to have any
8 difficulty with that? Okay.

9 Anybody watch any criminal shows, *Law and*
10 *Order*, *Cops*, *CSI*, any of those shows regularly? Lots of
11 people. They're good, huh? They're fun to watch.

12 PROSPECTIVE JUROR HARRIS: No options.

13 MS. RIGGS: Well, that's true. It's all
14 over. And everybody realizes those are dramas produced
15 for television, correct? Does everybody pretty much
16 realize that Bobby Goren is not going to come blasting
17 through the back door with last-minute exculpatory
18 evidence? (Laughter) No one's going to stand up and
19 make a weeping alibi confession, anything like that in
20 this case. This is real life and unfortunately real
21 trials aren't always as, or we don't present our cases
22 with as much flare as attorneys do in the dramas.

23 *CSI* in particular, does anybody watch that
24 show, Tuesday night, CBS? Few people? I ask about that

1 show in particular because that show takes place in Las
2 Vegas and there, they often quote Nevada law in that
3 case. Now, for CSI fans, do you think you can follow the
4 law as Judge Elliott gives it to you at the end of the
5 case despite what you've heard in the latest CSI which
6 was about a case in Elko? So that you'll, if you've
7 heard something different on CSI, the law that Judge
8 Elliott gives you at the end of this case is what goes in
9 this case?

10 Also in CSI they always have the best,
11 handiest evidentiary gathering techniques. There's -- No
12 matter what kind of case it is, there's always
13 fingerprints, there's always DNA. You all understand
14 that that's not going to be involved in this case?
15 Anybody going to doubt the value of the State's evidence
16 because we are not going to have fingerprints, DNA, blood
17 spatter or any of those interesting kind of things? You
18 are all okay with that? Good.

19 Now, we have some people who have been
20 members of some criminal juries. Ms. Estep? I'm sorry,
21 there you are. Ms. Albee, you have been a civil juror.
22 Mr. Beard, you've been on both. And Ms. Anderson, as you
23 said, you've been on a criminal jury --

24 PROSPECTIVE JUROR ANDERSON: Yes.

1 MS. RIGGS: -- correct? And Ms. Buck, you
2 have been on a federal grand jury?

3 Okay. For those of you on criminal juries,
4 please, can anybody who has been on a criminal jury who
5 did not reach a verdict please raise their hand? So
6 those of you who have been on criminal juries, your jury
7 deliberated to a verdict in all cases? Good.

8 Ms. Buck --

9 THE WITNESS: Yeah --

10 MS. RIGGS: -- you look a little confused.

11 PROSPECTIVE JUROR BUCK: Federal doesn't --

12 MS. RIGGS: Correct, and you were on a grand
13 jury, correct?

14 PROSPECTIVE JUROR BUCK: Right.

15 MS. RIGGS: So your job as a grand juror was
16 just to determine whether there was probable cause for a
17 case to go to trial, correct?

18 PROSPECTIVE JUROR BUCK: Right.

19 MS. RIGGS: And you understand that that's a
20 completely different burden than what we have in this
21 case, correct?

22 PROSPECTIVE JUROR BUCK: Uh-huh. Yes.

23 MS. RIGGS: The burden in this case is for
24 the State or myself to prove a case beyond a reasonable

1 doubt. Does everybody understand that? You'll also be
2 given a specific instruction at the end of the case by
3 Judge Elliott regarding that.

4 Now, those of you who have been civil jurors,
5 Ms. Estep, Ms. Albee, Mr. Beard, you understand that in
6 those civil trials the burden was a little bit different?
7 You had to find by a preponderance of the evidence
8 whether the plaintiff, or whether the defendant was or
9 was not liable. Do you understand the difference? The
10 preponderance of the evidence is just tipping the scales.
11 State's burden is a little bit, is quite a bit more than
12 that in a criminal case.

13 Anybody have any questions about that? Again
14 you'll be instructed at the end of this trial regarding
15 the reasonable doubt standard.

16 Has anybody had any contact either as a
17 defendant, a victim, or in some other capacity with any
18 attorney at the district attorney's office?

19 PROSPECTIVE JUROR HARRIS: Not that I know
20 that they are still there, but I have had some contact in
21 previous years.

22 MS. RIGGS: Okay. Having had that contact,
23 would that sway your opinion one way or the other against
24 the Washoe County District Attorney's office.

1 PROSPECTIVE JUROR HARRIS: No.

2 MS. RIGGS: So you feel like we're all
3 starting off on level ground here?

4 PROSPECTIVE JUROR HARRIS: Well, I recognize
5 the fact that there's a service to be done to the
6 community and in particular cases feelings flare and
7 attitudes and, you know, specifics. Those things are
8 gone and done with. I don't have any grudges or anything
9 like that.

10 MS. RIGGS: That's good.

11 Somebody else raised their hand?

12 Yes, and you are Mr. Jackson?

13 PROSPECTIVE JUROR JACKSON: Yes.

14 MS. RIGGS: Okay.

15 PROSPECTIVE JUROR JACKSON: I know Mr. Paul
16 Giese.

17 MS. RIGGS: Paul Giese?

18 PROSPECTIVE JUROR JACKSON: Yes.

19 MS. RIGGS: Now, you realize he no longer
20 works for the Washoe County DA's office, correct?

21 PROSPECTIVE JUROR JACKSON: Yes.

22 MS. RIGGS: I believe he still is a criminal
23 defense attorney, correct?

24 PROSPECTIVE JUROR JACKSON: Yes.

1 MS. RIGGS: And your association with Paul
2 Giese, would that sway your opinion one way or the
3 other --

4 PROSPECTIVE JUROR JACKSON: No.

5 MS. RIGGS: -- against Washoe County DA's
6 office?

7 PROSPECTIVE JUROR JACKSON: No.

8 MS. RIGGS: The fact that he no longer works
9 there, does that have any effect on your opinion?

10 PROSPECTIVE JUROR JACKSON: No.

11 MS. RIGGS: Yes.

12 PROSPECTIVE JUROR ALBEE: I have had some
13 contact about eight years ago, but it was --

14 MS. RIGGS: So it doesn't affect your opinion
15 one way or the other; we're all going to be starting on
16 level ground here?

17 PROSPECTIVE JUROR ALBEE: Right.

18 MS. RIGGS: Okay. Thank you.

19 The State is going to be presenting some
20 testimony of a coconspirator in this case. It is a
21 person who was accused at the same time as the defendant
22 in this case of committing similar crimes who has since
23 been convicted.

24 Does anybody feel that someone who is

1 convicted of a crime is inherently unbelievable? Nobody
2 is going to think that somebody who has been convicted is
3 just going to start out in the hole? You are willing to
4 listen to the testimony of a coconspirator and give it
5 the weight that you believe it deserves? Okay.

6 Couple more specific questions.

7 Ms. Seegmiller, you had noted in your jury questionnaire
8 that you will have a childcare issue here.

9 PROSPECTIVE JUROR SEEGMILLER: Right.

10 MS. RIGGS: Do you feel like your childcare
11 issue is covered for the next couple of days?

12 PROSPECTIVE JUROR SEEGMILLER: Yeah.

13 MS. RIGGS: So it's not going to be a problem
14 for you?

15 PROSPECTIVE JUROR SEEGMILLER: No.

16 MS. RIGGS: It won't distract you from what's
17 going on here?

18 PROSPECTIVE JUROR SEEGMILLER: No.

19 MS. RIGGS: All right. Thank you.

20 Ms. Harzke, am I saying that correctly?

21 PROSPECTIVE JUROR HARZKE: Yeah.

22 MS. RIGGS: Is it true that you actually want
23 to serve on jury duty?

24 PROSPECTIVE JUROR HARZKE: Yeah, I think it's

1 an interesting experience. I've been called on before.

2 MS. RIGGS: It's just you want to fulfill
3 your patriotic duty; you don't have an agenda or
4 anything?

5 PROSPECTIVE JUROR HARZKE: No.

6 MS. RIGGS: Okay. Great. Good news.

7 Ms. White, you also indicated you may have a
8 possible childcare dilemma. Is that cleared up for the
9 next couple of days?

10 PROSPECTIVE JUROR WHITE: I'm fine this week,
11 yes.

12 MS. RIGGS: Mr. Beard, you had expressed in
13 your jury questionnaire a little reluctance regarding
14 jury duty. Are you okay with it now after you've had a
15 chance to hear everything?

16 PROSPECTIVE JUROR BEARD: Yeah, that was a
17 question I, it was for elderly people that I, I think
18 filled out wrong.

19 MS. RIGGS: Okay, so ...

20 PROSPECTIVE JUROR BEARD: I just said I
21 didn't want to serve.

22 MS. RIGGS: But you are --

23 PROSPECTIVE JUROR BEARD: No, I'm fine.

24 MS. RIGGS: So a two-day, two-and-a-half-day

1 trial --

2 PROSPECTIVE JUROR BEARD: I think it was a
3 two-part question of whether I could or would. No, I'm
4 fine to serve.

5 MS. RIGGS: Good.

6 Okay. Just as a last matter, some of you
7 might have noticed that State's counsel is pregnant. And
8 does anybody have a problem with that, about women who
9 are pregnant doing this kind of work, the kind of work
10 that I do? I can take it if you do feel that way. I had
11 one defense attorney in another trial accuse me of having
12 raging hormones 'cuz he lost. Nobody has a problem with
13 that? Okay. Thank you.

14 The State has no further questions. State
15 will pass for cause, Your Honor.

16 THE COURT: Mr. Van Ry, you may ask the jury
17 questions.

18 MR. VAN RY: Thank you.

19 Good morning. Thank you for being here. I
20 have just a few brief general type questions that I'd
21 like to ask in these types of cases.

22 The first question I have already kind of
23 spilled the beans, but the question is, defense, we get
24 to go second. State gets to go first because they have

1 the burden of proof. The question I have is, is there
2 anybody here that feels that they cannot wait until our
3 opportunity to show our side of the story, that they will
4 not wait for that opportunity before they make a decision
5 in this case? Is everybody comfortable with that? That
6 you need to wait till the end before you make a decision?
7 Okay.

8 Does anybody here not like the idea that
9 Mr. Volpicelli does not necessarily have to testify on
10 his behalf? Nobody -- As a follow-up, is there anybody
11 here that will hold it against him if he does not
12 testify? Can you find him not guilty if he does not
13 testify?

14 PROSPECTIVE JUROR BUCK: Why would he not
15 testify? I mean, to me that doesn't seem right because
16 he can be innocent, he can be guilty, but you are an
17 attorney, you can say whatever you want because you know
18 the right words to say. I'm sorry, I said that really
19 rude.

20 MR. VAN RY: I may not say the right thing, I
21 may not.

22 PROSPECTIVE JUROR BUCK: That doesn't seem
23 right to me.

24 MR. VAN RY: So are you saying that if he

1 does not testify you might be less willing to find him
2 not guilty?

3 PROSPECTIVE JUROR BUCK: Yeah.

4 MR. VAN RY: And the basis for that is simply
5 you like to hear his side of the story?

6 PROSPECTIVE JUROR BUCK: Yeah. I like to
7 hear people say in their own words what happened or what
8 was going on.

9 MR. VAN RY: Do you disagree with the State
10 of American law, and that includes Nevada, that the
11 defendant is innocent until he's proven guilty; do you
12 agree with that?

13 PROSPECTIVE JUROR BUCK: I agree with that.

14 MR. VAN RY: Would you agree that that caveat
15 includes that he does not have to testify because he does
16 not have the burden of proof? Do you agree with that?

17 PROSPECTIVE JUROR BUCK: Everybody's looking
18 at me. C'mon.

19 MR. VAN RY: You kind of put yourself on the
20 hot seat.

21 PROSPECTIVE JUROR BUCK: Well, I did.
22 There's a lot that I don't know about the law and I just
23 think it's strange that somebody wouldn't, you know, if
24 I'm guilty of something I want somebody to ask me what I

1 think about it. You know, that's all. I feel like I'm
2 wrong now.

3 MR. VAN RY: Do you feel that you can uphold
4 the law as the judge will instruct you that will tell you
5 that a defendant does not have to testify on his behalf?

6 PROSPECTIVE JUROR BUCK: I don't think that's
7 right. I'm sorry, I can't help my feeling on that.

8 MR. VAN RY: So just to take it to the
9 conclusion, then, you would, you would possibly hold that
10 against Mr. Volpicelli if he does not testify, therefore,
11 not follow that instruction given to you by the judge?

12 PROSPECTIVE JUROR BUCK: I don't know. I'm
13 open to listen to everything and form an opinion, but --
14 Okay, I'll just listen to everything and be quiet and do
15 my job.

16 MR. VAN RY: That's the ultimate question.
17 Can you render a fair and impartial verdict in this
18 matter following the underlying rulings of law that the
19 judge will instruct you? Can you do that?

20 PROSPECTIVE JUROR BUCK: No, I can't. No.

21 MR. VAN RY: I think Ms. Buck should be
22 thanked for her service and released for cause, Your
23 Honor.

24 MS. RIGGS: Your Honor, may I approach? May

1 we approach?

2 THE COURT: You may approach.

3 (A discussion was held at the bench off the
4 record.)

5 THE COURT: All right. I'm going to say a
6 few things and perhaps ask a few questions of you,
7 Ms. Buck.

8 The first comment that I'll make is that I
9 happen to be a member of the Rotary Club and we had Oscar
10 Goodman come up and be our lunchtime speaker about two
11 years ago. Oscar is currently the Las Vegas mayor and
12 Oscar had a very illustrative career as a criminal
13 defense counsel, and among his clients were people
14 reputed to be members of the Mafia. And Oscar explained,
15 you know, what he did as defense counsel to a certain
16 extent and said that he was a firm believer in
17 constitutional law and that meant that his basic duty as
18 a defense counsel was to ensure that the State was put to
19 the test to prove its case beyond a reasonable doubt
20 through competent evidence that his client was, in fact,
21 guilty of the offenses charged. And Oscar said that he
22 very seldom had his client testify in those cases because
23 the burden is not up to the defense to prove anything,
24 it's to put the State to the test.

1 And, in fact, there is a constitutional
2 guarantee that an individual charged with an offense has
3 a right to remain silent and cannot be required to
4 testify in a case. And I think that's what Mr. Van Ry is
5 pointing out. I mean, we all know the, you know, the
6 O. J. Simpson criminal case in which they did not have
7 Mr. Simpson testify. They followed Mr. Goodman's good
8 advice in not doing that.

9 There are certain pitfalls inherent in having
10 the actual defendant testify, and they are just numerous,
11 that a lot of good defense counsel simply don't have
12 their client testify as a strategic matter, because it's
13 not up to the defense to prove anything.

14 And given all those statements and
15 experiences, do you think in this case that the defendant
16 does not testify, exercises his constitutional right not
17 to testify, that you would feel that that in essence is
18 some admission of guilt on the part of the defendant?

19 PROSPECTIVE JUROR BUCK: I do.

20 THE COURT: Well, then, Ms. Buck, I am going
21 to excuse you for cause. Because we can't have somebody,
22 you know, hold it against somebody to exercise their
23 constitutionally protected right to remain silent. And
24 Ms. Buck, please report back to the Jury Commissioner's

1 office and let them know that you are excused. Thank
2 you.

3 PROSPECTIVE JUROR BUCK: I'm sorry.

4 THE CLERK: Tony Major.

5 THE COURT: Mr. Major, you have been here
6 before. Really all the questioning as I went through the
7 questions with Ms. Anderson that were asked before you in
8 fact arrived. And those issues are hardship and ability
9 to be fair, follow the law, knowledge of the parties and
10 witnesses. And Mr. Major, is there any question to which
11 you would have supplied an answer?

12 PROSPECTIVE JUROR MAJOR: I think he has the
13 right, I think he has the constitutional right not to
14 speak.

15 THE COURT: Okay. And you don't happen to
16 know the attorneys or Mr. Volpicelli?

17 PROSPECTIVE JUROR MAJOR: No, Your Honor.

18 THE COURT: All right. And do you have any
19 hardship that you would like to explain?

20 PROSPECTIVE JUROR MAJOR: No, Your Honor.

21 THE COURT: All right. Well, I'll turn the
22 questioning back to Mr. Van Ry, and because you are new
23 in the case, I will also afford Ms. Riggs an opportunity
24 to ask you questions after Mr. Van Ry has completed with

1 the group.

2 MR. VAN RY: The Court will define reasonable
3 doubt for you. Does anybody here believe that the
4 standard that the State has to prove is too high? It
5 ought to be lower? Nobody?

6 So you all agree that that's an appropriate
7 level of burden of proof for the State?

8 Does anybody here believe that if you are
9 simply accused with a crime that you are therefore guilty
10 of a crime? Nobody believes that?

11 Does anyone here believe that if a witness is
12 called by the State, that they are more worthy of belief
13 than someone who might be called by the defense? Nobody
14 thinks that?

15 Let me ask a follow-up to that. Does anybody
16 here believe that simply because a police officer
17 testifies, that his or her testimony is worthy of more
18 belief than a civilian who testifies?

19 Does anybody here have a negative opinion
20 about the jury system? I know there's been some
21 discussions about prior experiences with some of the
22 jurors here. Does anybody here have a negative opinion
23 or negative feeling, negative thoughts about the jury
24 system? Yeah.

1 PROSPECTIVE JUROR PAYNE: On the
2 questionnaire, I have somebody who wants to serve duty
3 too, and is there a possibility of getting their name put
4 on as an alternate?

5 MR. VAN RY: So you are just asking kind of a
6 question why has that person not been selected before?

7 PROSPECTIVE JUROR PAYNE: Right. Or is there
8 a way if that person wants to get on the belt like it was
9 sent to me?

10 MR. VAN RY: Well, I don't know a specific
11 answer to that. I know it's done randomly by the Jury
12 Commissioner's office downstairs. But does that fact
13 impact your ability to see the evidence and to
14 participate in this case?

15 PROSPECTIVE JUROR PAYNE: I don't think so.

16 MR. VAN RY: Does it taint you in any way?

17 PROSPECTIVE JUROR PAYNE: No.

18 MR. VAN RY: You think the jury system is
19 screwed up or faulty or bad because of that?

20 PROSPECTIVE JUROR PAYNE: No.

21 MR. VAN RY: And I'm sure the judge is more
22 than happy to follow up on that if you need to follow up.

23 Ms. Riggs talked about some of the shows that
24 portray attorneys in Hollywood light. I'm going to ask

1 you kind of a reverse question. Does anybody here have
2 negative opinions about attorneys?

3 I heard some chuckling. Does anybody here
4 have an opinion that is so negative that it might impact
5 your ability to sit as a fair and impartial juror in this
6 case? Because that's the important question. I don't
7 like a lot of attorneys either. Well, I like most of
8 them, some of them.

9 Okay, let me ask you a more specific
10 question. Is there anybody here who has a negative
11 opinion about criminal defense attorneys? Nobody?

12 As a follow-up to that, if I say or do
13 anything in this trial that offends you or upsets you or
14 makes you uncomfortable, is there anybody here who would
15 hold that against Mr. Volpicelli? Because I do represent
16 him.

17 Lastly, this case is very serious, meaning
18 there are some serious charges that have been alleged
19 against my client. Yet, this case will likely be
20 resolved in just a few days. Does anybody here believe
21 that because we can do it in an efficient, hopefully an
22 efficient manner, that these charges would not be taken
23 as seriously as they ought to be taken? Nobody has any
24 feeling about that?

1 I have no further questions, Your Honor. I
2 would pass the jury for cause.

3 THE COURT: All right. Ms. Riggs, you did
4 not have an opportunity to ask any questions of
5 Mr. Major, and would you like to ask him any questions?

6 MS. RIGGS: State has no questions for
7 Mr. Major, Your Honor. Thank you.

8 THE COURT: And would you pass him for cause?

9 MS. RIGGS: Yes, I would also pass him for
10 cause, Your Honor.

11 THE COURT: All right. Well, our group of
12 23, then, has been passed for cause which means that
13 those of you who are still seated in the gallery chairs
14 will be free to leave. We won't need you on this case,
15 but we certainly appreciate you coming up because we had
16 run out of our initial panel and that put us in a pretty
17 poor situation of actually going forward with the trial.
18 So we certainly appreciate your work here to get this
19 trial going. And with that we are very grateful and you
20 are excused.

21 Perhaps I'll ask that you go back to the Jury
22 Commissioner's office one more time and let them know
23 that you are not needed on this case.

24 We will be taking another recess. We'll be

1 taking this group of 23 and reducing it by 10 and we'll
2 actually have 13 jurors seated to hear the case. During
3 the course of this recess I will ask that you not discuss
4 anything about this case. And, again, the admonishment
5 that I issued, Ms. Riggs, Mr. Van Ry and Mr. Volpicelli
6 will not be allowed to talk to you at all even to say
7 "hi." So don't consider that they are rude people, but
8 if you should happen upon them in the recess, we are just
9 trying to avoid any appearance of impropriety.

10 Now, when you come back into the courtroom,
11 please have a seat in the gallery chairs and we'll just
12 call up 13 of you to be seated for purposes of the trial.
13 And this typically takes about 20 minutes or so to do
14 this. So why don't you plan to come back here at roughly
15 25 after 11:00, which according to my watch would be a
16 20-minute break, and we'll see you at that time. Court
17 will stand in recess.

18 THE BAILIFF: All rise.

19 THE COURT: The record will reflect that I am
20 meeting in chambers with both counsel, and Mr. Volpicelli
21 is present as well, to go through the peremptory
22 challenges. And each side will have four peremptory
23 challenges as to our pool of people for the position of
24 the 12-person jury, so it will take us up through Juror

1 No. 20, Albee, in that pool. Once we have selected the
2 12-person jury, each side will have one additional
3 peremptory challenge to exercise for the position of
4 alternate juror, and the last three jurors, Harris,
5 Anderson and Peterson, are in our pool for alternate
6 juror.

7 So at this time all four peremptory
8 challenges will just be exercised for this pool of 20
9 jurors. So you can exclude the last three from
10 consideration at this point. And the State or plaintiff
11 always has the first peremptory challenge. So Ms. Riggs,
12 you may proceed.

13 MS. RIGGS: Thank you, Your Honor.

14 Your Honor, the State will thank and excuse
15 No. 11, Lance Payne.

16 MR. VAN RY: Defense would excuse Deanna
17 Seegmiller, No. 1.

18 MS. RIGGS: State would thank and excuse
19 Richard Hanson, No. 12.

20 THE COURT: Okay. Hanson.

21 MR. VAN RY: Defense would excuse Jeffrey
22 Glavor, which is Juror No. 8.

23 THE COURT: Okay.

24 MS. RIGGS: State will thank and excuse

1 Michael Chambers, No. 18.

2 MR. VAN RY: Defense would excuse Robert
3 Beard, No. 14 -- or 15.

4 THE COURT: Fifteen. Yes, Beard.

5 MR. VAN RY: Fifteen.

6 MS. RIGGS: State will thank and excuse No.
7 16, Joseph Byrne.

8 MR. VAN RY: Defense would excuse Mr. Patrick
9 Cunning.

10 MS. RIGGS: Your Honor, I have a question.
11 Are we on our fourth peremptory or was that our third?

12 MR. VAN RY: That was the fourth.

13 THE COURT: That was the fourth. That was
14 your last peremptory challenge. Do you want to rethink
15 Mr. Byrne?

16 MS. RIGGS: Oh, no. I'm sorry, Your Honor.
17 We can go on. I was mixed up as to who went first.
18 Thank you.

19 THE COURT: Well, we have exercised all the
20 peremptory challenges for this pool to determine the
21 12-person jury. And I will state my understanding of who
22 now are the 12 jurors.

23 We have Christiansen, Morgan, Jackson, Major,
24 Harzke, White, Kennard, Mc Neely, Estep, Dutra, King and

1 Albee.

2 MR. VAN RY: That's correct on mine, Your
3 Honor.

4 MS. RIGGS: Yes.

5 THE COURT: All right. And now we will focus
6 on our final three prospective jurors: Harris, Anderson
7 and Peterson. And the State will have the first
8 peremptory challenge.

9 MS. RIGGS: Your Honor, State will thank and
10 excuse James Harris, No. 21.

11 MR. VAN RY: Defense would excuse Ms. Judith
12 Anderson.

13 THE CLERK: I'm sorry?

14 MR. VAN RY: Judith Anderson.

15 THE COURT: That leaves Wallace Peterson as
16 the alternate juror.

17 Is there anything else we need to take up
18 before we go back out and -- Due to the time, you know,
19 we will be seating the jurors and we could just at that
20 point take a recess until one o'clock to do opening
21 statements and call a witness or, you know, we can try to
22 start opening statements if, you know, they will be done
23 by noon.

24 MR. VAN RY: My opening statement is

1 relatively short. I don't know what Ms. Riggs' will be.

2 MS. RIGGS: I estimate mine will probably be
3 ten minutes, Your Honor.

4 THE COURT: Do you think it's best if we just
5 go ahead and do the opening statement --

6 MR. VAN RY: Yeah, I do.

7 THE COURT: -- and then take a lunch break?

8 MS. RIGGS: That's fine with the State, Your
9 Honor. I do have some questions about, we do have some
10 stipulations that we need to talk to you about. Would
11 you like to do that after lunch before we call our first
12 witness and before we bring the jury in?

13 THE COURT: Are these -- Well --

14 MR. VAN RY: Evidentiary stipulations.

15 MS. RIGGS: Evidentiary stipulations, Your
16 Honor.

17 MR. VAN RY: Right.

18 THE COURT: Honestly we can do it now. We
19 still have seven minutes before the jury is going to be
20 back.

21 MR. VAN RY: Let's do it.

22 MS. RIGGS: And Your Honor, I would have
23 to -- I apologize, I left my file.

24 MR. VAN RY: Well, why don't we do it at

1 another time.

2 MS. RIGGS: Thank you.

3 THE COURT: We can do that, for instance,
4 after we let the jurors go to lunch.

5 MS. RIGGS: That will be fine with the State,
6 Your Honor.

7 THE COURT: Okay. We'll do it that way. And
8 we'll see how long it takes all the people to get back,
9 but assuming the opening statements will be short, I
10 assume we'll do that before lunch, not after.

11 All right. Thank you.

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

13 THE DEFENDANT: Thank you, Your Honor.

14 (Recess taken from 11:19 a.m. to 11:26 a.m.)

15 (The following proceedings were had in open
16 court in the presence of the prospective jury
17 panel.)

18 THE BAILIFF: All rise. Court is again in
19 session.

20 THE COURT: You may be seated. We have met
21 and gone through the peremptory challenges and have
22 selected 13 of you to serve on this case. And I will ask
23 that the first person whose name is called again go into
24 the back row of the jury box and have a seat at the

1 next-to-last chair. You will all be seated at a chair
2 which Deputy Medina has placed a pen and writing pad for
3 your notes on that chair, so just sit at chairs with a
4 pad of paper on them in the back row. When the back row
5 is completed down to your end, please have a seat in the
6 front row.

7 And with that, Mr. Bartlett, will you please
8 call out the names of our 13 jurors.

9 THE CLERK: Russell Christiansen.

10 Eric Morgan.

11 Gerald Jackson.

12 Tony Major.

13 Heather Harzke.

14 Joy White.

15 Caston Kennard.

16 Richard Mc Neely.

17 Diane Estep.

18 Christina Dutra.

19 Carlotta King.

20 Florence Albee.

21 Wallace Peterson.

22 THE COURT: Now, I would like to say a few
23 words of thanks to those of you who will not actually be
24 needed to sit and determine this case. I want to express

1 my appreciation on behalf of the Court, but also the
2 parties for your participation in the jury selection
3 process and your forthright answers to all the questions
4 presented to you. I think I can honestly say on behalf
5 of everybody that each one of you would have been an
6 excellent juror to serve on this case, but the process is
7 such that we start with a larger pool and only call a few
8 names up and then from that pool we keep coming down to
9 ensure that everybody is fully satisfied with the
10 fairness of each juror. And we do appreciate your
11 service to this in this regard.

12 I'm going to excuse you, but I'm going to ask
13 you to report back to the Jury Commissioner's office. I
14 can't imagine that there's any other case that might be
15 out there in the wings wanting jurors, but please report
16 back there and let them know you will not be needed on
17 this case. Thank you.

18 Now, we do have one more bit of exercise that
19 I have to ask you to perform and that is you will need to
20 stand up and raise your right hand and take an oath to
21 serve as a juror in this case. Will you please stand up.

22 (The jury panel was sworn in.)

23 THE COURT: You may be seated. Before we
24 move on to the opening statements presented by the

1 lawyers, there are just a few words I want to say to you.

2 First of all, my role in this will be really
3 as an impartial referee. The case really belongs to the
4 lawyers at this point and they will be asking questions
5 and moving the case forward. And my role will be largely
6 to determine the breaks and act as a referee between the
7 parties as to issues of evidence.

8 Each attorney will be asking questions of the
9 witnesses. And if opposing counsel determines that a
10 question asked would call for inadmissible testimony or a
11 document would not be authorized to be admitted and
12 viewed by the attorney, that attorney will object, and
13 then I will make a determination as to whether or not the
14 question would call for inadmissible evidence. And I do
15 that not because I like one side or dislike the other
16 side or wish to in any way influence the outcome of the
17 case. Believe me, I don't. I don't have any position as
18 between these parties. I just do these rulings based on
19 my understanding of the law and I hope you'll view it in
20 that regard.

21 If I sustain an objection, it means that I
22 have determined that the question would indeed call for
23 inadmissible evidence in the case, and that means that
24 the witness will be prohibited from any further answer..

1 And if the witness has answered, I will ask you to
2 disregard the answer. I'll probably be striking the
3 response if it gets to that point where my ruling comes
4 after the witness has blurted out part of an answer, but
5 if I do sustain an objection, please do not also consider
6 the question itself, just move on to those questions that
7 would call for admissible testimony. I'm sure there will
8 be plenty of admissible testimony to consider and don't
9 worry about those things that you are not to consider.

10 If I overrule an objection, it means that I
11 have determined the question actually does call for
12 admissible testimony. The witness will be allowed to
13 proceed to answer the question and you may consider it.

14 Now, Deputy Medina will be your conduit to
15 the Court in the course of the trial, and if you have
16 anything you would like, please convey that issue to
17 Deputy Medina and he will convey it to me or do what he
18 can to help you.

19 During the course of trial and as soon as we
20 break today, you will be going into the jury room. That
21 will be your office, so to speak, and you will be the
22 only ones in there during the course of trial. So you
23 can leave some reading material, for instance, if you
24 want reading material. We do have some magazines, things

1 like that in there.

2 You are certainly free to talk amongst
3 yourselves as jurors usually do during the break, chat
4 with one another. I am going to ask that when you are
5 excused, you go into the jury room, you can wait there
6 however long you want, but when you exit the building,
7 please go straight out and leave the premises. Don't
8 kind of loiter in the hallways, because there may be
9 witnesses talking to one another or to investigators or
10 to attorneys in the hallway and we don't want you
11 obtaining information out there. We want you to
12 determine the case solely from what you hear here in the
13 courtroom through sworn admissible testimony.

14 The lawyers in the case will endeavor to help
15 you to understand all the facets of the case, but there
16 is one thing that I have to ask you to bear in mind, and
17 that is, that what an attorney says is not proof of any
18 fact in the case unless they both stipulate to the
19 existence of a fact, in which case you would accept that
20 fact as being proven. But for the most part the
21 attorneys simply help you to understand the real factual
22 testimony in the case which is coming from sworn
23 witnesses and evidence admitted by the way of documents
24 in the case.

1 So with that, bear in mind that as you hear
2 the witnesses [sic] give an opening statement or ask
3 questions or give a closing argument, that what they say
4 is not evidence in a case.

5 And I did actually have a case just a month
6 ago where the jurors during deliberations asked questions
7 indicating that they thought a certain thing to be the
8 evidence and they wanted to read back that portion of the
9 evidence. And we had actually found out that there was
10 no testimony in that regard, it was only a statement made
11 by a lawyer during opening statement that one or more
12 jurors had remembered and thought that was part of the
13 factual proof in the case. So bear that in mind. It
14 does come up.

15 All right. At this point I'm going to ask
16 Mr. Bartlett to read the Information that was filed by
17 the State.

18 THE CLERK: In the Second Judicial District
19 Court of the State of Nevada, in and for the County of
20 Washoe, the State of Nevada, Plaintiff, versus Ferrill
21 Joseph Volpicelli, Defendant, Case Number CR03-1263,
22 Department No. 10, filed June 11th, 2003, 4:45 p.m.,
23 Ronald A. Longton, Jr., by George Velardy, Deputy.
24 Indictment. The defendant, Ferrill Joseph Volpicelli, is

1 accused by the Grand Jury of Washoe County, State of
2 Nevada, of the following:

3 Count I, conspiracy to commit crimes against
4 property, violation of NRS 109.480, NRS 205.060, NRS
5 205.0832, NRS 205.090, NRS 205.110, NRS 205.220, NRS
6 205.240, NRS 205.380 and NRS 205.965, a gross
7 misdemeanor, committed as follows:

8 That the said defendant on or between the 21st
9 day of June, A.D., 2001, and the 17th day of October,
10 A.D., 2001, or thereabout, at the County of Washoe, State
11 of Nevada, did willfully, unlawfully and with the intent
12 to permanently deprive, cheat or defraud, conspired with
13 Brett Bowman with the intent then and there to commit
14 burglary, theft, forgery, uttering a forged instrument,
15 larceny, obtaining property by false pretenses and/or
16 unlawful possession, making forgery or counterfeiting of
17 inventory pricing labels through a scheme where property
18 and/or money was obtained from several stores in Washoe
19 County, to wit, Wal-Mart, Kmart, Shopko, Target, Lowe's,
20 Home Depot, Office Max, Office Depot, Bed Bath & Beyond,
21 Best Buy, CompUSA, Toys 'R Us and/or PETSmart by, 1.,
22 entering said stores for the purpose of obtaining
23 universal pricing label information to create false and
24 forged universal pricing labels; 2., by affixing false,

1 forged or counterfeited universal pricing labels to
2 merchandise at said stores to purchase said merchandise
3 for less than the posted retail price; 3., by purchasing
4 said merchandise under the false pretense with a forged
5 or counterfeit pricing label as a true and valid
6 document; and/or, 4., by removing the false and forged
7 inventory pricing labels and subsequently returning some
8 of the fraudulently discounted merchandise for the
9 original valid retail price thereby making a profit;

10 Count II, burglary, a violation of NRS
11 205.060, a felony, committed as follows:

12 That the said defendant on the 4th day of
13 September, A.D., 2001 or thereabout at the County of
14 Washoe, State of Nevada, did willfully and unlawfully
15 enter a certain Wal-Mart located at 2863 Northtowne Lane,
16 Reno, Washoe County, Nevada, with the intent then and
17 there to commit theft, forgery, uttering a forged
18 instrument, larceny and/or obtaining property by false
19 pretenses therein by entering to obtain UPC label and/or
20 other pricing information;

21 Count III, burglary, a violation of NRS
22 205.060 a felony, committed as follows:

23 That the said defendant on or between the 11th
24 day of September, A.D., 2001 and the 29th day of

1 September, A.D., 2001, or thereabout, at the County of
2 Washoe, State of Nevada, on one or more occasions did
3 willfully and unlawfully enter a certain Home Depot
4 located at 5125 Summit Ridge Court, and/or 2955
5 Northtowne Lane, Reno, Washoe County, Nevada, with the
6 intent then and there to commit theft, forgery, uttering
7 a forged instrument, larceny and/or obtaining property by
8 false pretenses therein by endeavoring to scout
9 miscellaneous UPC labels and/or other pricing information
10 and/or obtain a toilet and/or said defendant did aid and
11 abet Brett Bowman in the commission of said burglary by
12 providing him a fictitious UPC bar code label to affix to
13 said merchandise, by providing him with U.S. currency to
14 fraudulently purchase said merchandise, by driving him to
15 and/or from the scene, by acting as a lookout, by
16 counseling, encouraging, inducing or otherwise procuring
17 him to enter said store and fraudulently obtain said
18 merchandise with said fictitious UPC bar code label;

19 Count IV. Burglary, a violation of NRS
20 205.060, a felony, committed as follows:

21 That the said defendant on the 21st day of
22 September, A.D., 2001, or thereabout, in the County of
23 Washoe, State of Nevada, did willfully and unlawfully
24 enter a certain Bed Bath & Beyond located at 4983 South

1 Virginia Street, Reno, Washoe County, Nevada, with the
2 intent then and there to commit theft, forgery, uttering
3 a forged instrument, larceny, and/or obtain property by
4 false pretenses therein by entering with the intent to
5 fraudulently obtain one or more coffee pots and/or scout
6 pricing information related to said merchandise, and/or
7 did aid and abet Brett Bowman in the commission of said
8 burglary by providing him with a fictitious UPC bar code
9 label to affix to said merchandise, by providing him with
10 U.S. currency to fraudulently purchase said merchandise,
11 by driving him to and/or from the scene, by acting as a
12 lookout, by counseling, encouraging, inducing or
13 otherwise procuring him to enter said store and
14 fraudulently obtain said merchandise with said fictitious
15 UPC bar code label;

16 Count V. Burglary, a violation of NRS
17 205.060, a felony, committed as follows:

18 That the said defendant on the 28th day of
19 September, A.D., 2001, or thereabout, at the County of
20 Washoe, State of Nevada, did willfully and unlawfully
21 enter a certain Wal-Mart located at 4855 Kietzke Lane,
22 Reno, Washoe County, Nevada, with the intent then and
23 there to commit theft, forgery, uttering a forged
24 instrument, larceny and/or obtaining property by false

1 pretenses therein by entering to obtain UPC label and/or
2 other pricing information to be used for an unlawful
3 purpose;

4 Count VI. Burglary, a violation of NRS
5 205.060, a felony, committed as follows:

6 That the said defendant on the 5th day of
7 October, A.D., 2001, or thereabout, in the County of
8 Washoe, State of Nevada, on one or more occasions did
9 willfully and unlawfully enter a certain Lowe's Home
10 Improvement store located at 5075 Kietzke Lane, Reno,
11 Washoe County, Nevada, with the intent then and there to
12 commit theft, forgery, uttering a forged instrument,
13 larceny and/or obtaining property by false pretenses
14 and/or unlawful possession, making, forging or
15 counterfeiting of inventory pricing labels therein, by
16 entering with the intent to fraudulently obtain one or
17 more wool rugs and/or scout pricing information related
18 to said rugs, and/or said defendant did aid and abet
19 Brett Bowman in the commission of said burglary by
20 providing him a fictitious UPC bar code label to affix to
21 said merchandise, by providing him with U.S. currency to
22 fraudulently purchase said merchandise, by driving him to
23 and/or from the scene, by acting as a lookout, by
24 counseling, encouraging, inducing or otherwise procuring

1 him to enter said store and fraudulently obtain said
2 merchandise with said fictitious UPC bar code label;

3 Count VII. Burglary, a violation of NRS
4 205.060, a felony, committed as follows:

5 That the said defendant on or between the 30th
6 day of August, A.D., 2001, and the 13th day of October,
7 A.D., 2001, or thereabout, at the County of Washoe, State
8 of Nevada, on one or more occasions did willfully and
9 unlawfully enter a certain Wal-Mart located at 2863
10 Northtowne Lane and/or 155 Damonte Ranch Parkway, Reno,
11 Washoe County, Nevada, with the intent then and there to
12 commit theft, forgery, uttering a forged instrument,
13 larceny and/or obtaining property by false pretenses
14 and/or unlawful possession, making, forgery, or
15 counterfeiting of inventory pricing labels therein by
16 entering with the intent to fraudulently obtain a
17 Panasonic home theater system, Emerson TV-DVD combo,
18 KDSRAE-5 15-inch monitor, surger sewing machine and/or a
19 Hewlett Packard printer and/or scout pricing information
20 related to said merchandise and/or said defendant did aid
21 and abet Brett Bowman in the commission of said burglary
22 or burglaries by providing him a fictitious UPC bar code
23 label to affix to said merchandise, by providing him with
24 U.S. currency to fraudulently purchase said merchandise,

1 by driving him to and/or from the scene, by acting as a
2 lookout, by counseling, encouraging, inducing or
3 otherwise procuring him to enter said store and
4 fraudulently obtain said merchandise with said fictitious
5 UPC bar code label;

6 Count VIII. Burglary, a violation of NRS
7 205.060, a felony, committed as follows:

8 That the said defendant on or between the 30th
9 day of August, A.D., 2001, and the 17th day of October,
10 A.D., 2001, or thereabout, at the County of Washoe, State
11 of Nevada, on one or more occasions did willfully and
12 unlawfully enter a certain Shopko located at 5150 Mae
13 Anne Avenue and/or 6139 South Virginia Street, Reno,
14 Washoe County, Nevada, with the intent then and there to
15 commit theft, forgery, uttering a forged instrument,
16 larceny and/or obtaining property by false pretenses
17 and/or unlawful possession, making, forgery, or
18 counterfeiting of inventory pricing labels therein by
19 entering with the intent to fraudulently obtain a
20 Sonicare electric toothbrush and/or one or more Willow
21 Bay comforters;

22 Count IX. Burglary, a violation of NRS
23 205.060, a felony, committed as follows:

24 That the said defendant on the 17th day of

1 October, A.D., 2001, or thereabout, at the County of
2 Washoe, State of Nevada, did willfully and unlawfully
3 enter a certain Wal-Mart located at 155 Damonte Ranch
4 Parkway, Reno, Washoe County, Nevada, with the intent
5 then and there to commit theft, forgery, uttering a
6 forged instrument, larceny, and/or obtaining property by
7 false pretenses and/or unlawful possession, making,
8 forgery or counterfeiting of inventory pricing labels
9 therein by entering with the intent to fraudulently
10 obtain a Mongoose bicycle and/or scout pricing
11 information related to said bicycle, and/or said
12 defendant did aid and abet Brett Bowman in the commission
13 of said burglary by affixing a fictitious UPC bar code
14 label to said merchandise, by providing Bowman with U.S.
15 currency to fraudulently purchase said merchandise, by
16 driving him to and/or from the scene, by acting as a
17 lookout, by counseling, encouraging, inducing or
18 otherwise procuring him to enter said store and
19 fraudulently obtain said merchandise with said fictitious
20 UPC bar code label;

21 Count X. Unlawful possession, making,
22 forgery or counterfeiting of inventory pricing labels, a
23 violation of NRS 205.965, Subsection 2 and 3, a felony,
24 committed as follows:

1 That the said defendant on the 17th day of
2 October, A.D., 2001, or thereabout, at the County of
3 Washoe, State of Nevada, did willfully, unlawfully and
4 with the intent to cheat or defraud a retailer, possess,
5 make, forge or counterfeit 15 or more inventory pricing
6 labels, commonly known as UPC bar code labels, in a motor
7 vehicle located at 9400 block of South Virginia Street,
8 Reno, Washoe County, Nevada.

9 Dated this 11th day of June, 2003, Richard A.
10 Gammick, District Attorney, by Cheryl Heir-Johnson,
11 Deputy District Attorney, to which indictment the
12 defendant entered a plea of not guilty as charged.

13 THE COURT: Those charges will again be read
14 to the jury by me during the course of reading you the
15 jury instructions. And Mr. Bartlett did such an
16 outstanding job with such a lengthy, the wordiness of the
17 charges, I wish you could do that again because I don't
18 think I could do it that well.

19 Anyway, I am wondering, since it's now less
20 than 15 minutes to 12:00, if you'd like just to let the
21 jury go and come back at 1 o'clock. We had expected that
22 we would get the opening statements done before our
23 break, but this would allow the jurors to get kind of a
24 jump on the lunch rush, I'm thinking.

1 Does counsel have any objection to just
2 letting the jury go and coming back at 1:00?

3 MS. RIGGS: State will have no objection,
4 Your Honor.

5 MR. VAN RY: No objection.

6 THE COURT: All right. I think that's best
7 to do. That way you can take care of some of your
8 affairs again avoiding the lunch rush.

9 I'm going to give you some special
10 instructions and these are instructions that I will be
11 giving to you at every recess during the course of the
12 trial. And that is that you are not to discuss this case
13 among yourselves or with anyone else. You are not to
14 read, watch or listen to any media account of this
15 proceeding and you are not to form or express any opinion
16 on any matter connected with this trial until the matter
17 is submitted to you for your deliberations. There are
18 some other instructions that I will give to you as well,
19 and that is that you are not to do any, any independent
20 research into the law that applies to this case or
21 research as to the scene of any event or, you know, other
22 research that you might do to prove or disprove any fact
23 in the case. All the information you need to determine
24 the case will be provided here in open court and we want

1 you to use that information, not information that you
2 might investigate and discover outside of this courtroom.

3 And with that, court will stand in recess,
4 then, until 1 o'clock this afternoon. Court will stand
5 in recess.

6 THE BAILIFF: All rise.

7 (Midday recess taken at 11:51 a.m.)

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1 RENO, NEVADA, WEDNESDAY, NOVEMBER 11, 2003, 1:16 P.M.

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3
4 THE BAILIFF: All rise. This Court is again
5 in session.

6 THE COURT: You may be seated.

7 The record will reflect that we are meeting
8 outside the presence of the jury and we would like to
9 take up any issues of stipulations that our parties may
10 enter at this time. And Ms. Riggs.

11 MS. RIGGS: Your Honor, the parties have
12 stipulated to the admissibility of most of the exhibits,
13 or State's exhibits in this case. Parties have
14 stipulated to the admissibility of State's 1 through 10
15 and 12 through 43. As I understand, defense's only
16 objection will be to State's Exhibit 11 entitled
17 Transpositions.

18 THE COURT: And is that correct?

19 MR. VAN RY: That's correct, Your Honor.

20 THE COURT: All right. Thanks Mr. Van Ry.

21 MS. RIGGS: And Your Honor, I do have one
22 more matter. If I may have leave to approach witnesses
23 with the exhibits rather than asking each time I go up,
24 since we do have 43 exhibits, it will probably save quite

1 a bit of time.

2 THE COURT: Does the defense have any
3 objection to that?

4 MR. VAN RY: No objection, Your Honor.

5 THE COURT: All right. Ms. Riggs, I will
6 give you the court leave, then, to approach witnesses
7 with exhibits.

8 MS. RIGGS: Thank you, Your Honor.

9 The COURT: I guess we can bring the jurors
10 in.

11 Well, all those exhibits that Ms. Riggs has
12 stated are stipulated exhibits, that is, all the exhibits
13 we have up through 43 with the exception of No. 11 are
14 admitted.

15 MS. RIGGS: Thank you, Your Honor.

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

17 THE BAILIFF: All rise for the jury.

18 Your Honor, I believe we have one in the
19 restroom.

20 THE COURT: You may be seated.

21 I don't want to say anything of consequence
22 outside the presence of Ms. White, but we are lucky that
23 at least the weather is good today. I went out strolling
24 and I saw some of you walking along the river today.

1 That's pretty nice. Let's hope it stays that way for the
2 rest of the week.

3 And now that we're all present, I'm going to
4 ask Ms. Riggs if she would like to present the opening
5 statement on behalf of the State.

6 MS. RIGGS: Thank you, Your Honor.

7 Ladies and gentlemen, as you heard from the
8 reading of the indictment in this case, this is a very
9 serious case. The defendant is charged with eight counts
10 of burglary, one count of conspiracy, conspiracy to
11 commit several crimes including theft and larceny, and
12 one count of possession for counterfeiting of inventory
13 pricing control labels or commonly known as UPC codes.

14 At the end of the State's case, State will
15 have proven all of these charges to you beyond a
16 reasonable doubt and at that point I will ask you to find
17 this man, Ferrill Joseph Volpicelli, guilty of all ten
18 counts.

19 The State will show you that between June and
20 October of 2001, this defendant conceived of a scheme to
21 defraud local retail stores in Washoe County out of
22 thousands of dollars. Now, he did this knowing two
23 pieces of information that the general public may or may
24 not know.

1 First piece of information. This defendant
2 knows about UPC bar codes. UPC bar codes are the
3 square stripy bar codes on anything, or just about
4 everything you can purchase. For instance, I'm showing,
5 for the record I'm showing you the bottom of a tissue box
6 from off of counsel table. That square with the stripes,
7 that's the UPC bar code.

8 And you'll notice it has a series of numbers
9 under it. Retailers use these bar codes for everything
10 from shipping to tracking to inventory control to pricing
11 information. Just about every aspect of a piece of
12 merchandise from the time it is manufactured to the time
13 it leaves the store in your hand is tracked by UPC bar
14 code. Retailers depend upon the information generated
15 from these UPC bar codes and this defendant knows it.

16 Second thing this defendant knows is that
17 cashiers at checkout registers at almost every superstore
18 are extremely busy. A cashier at your basic superstore
19 does not have time to scan an item, make sure that the
20 item on the receipt matches the item that they just
21 scanned. They just don't have time for it. Their job is
22 to get that line moving as quickly as possible and get
23 the people out as quickly as possible.

24 Defendant knows this as well and he exploited

1 those two facts. Knowing those two facts he developed a
2 scheme, and this is how it worked.

3 The defendant would enter a retail store,
4 picked out something that he liked. For instance, the
5 State will show you that one of these things was a DVD
6 and a very expensive home theater system and the kind you
7 hook up a TV to make it go into Sensurround so you can
8 listen to your favorite movies in very high-quality
9 sound. He would pick out an item such as that. Then he
10 would leave that item and go and find a lower end item in
11 the same category, for instance, the State will show you
12 in this case he found a CD player, one of those little CD
13 players that you put in, it holds up to three CDs. Very
14 much less expensive than the large ticket item.

15 The defendant would then collect the bar code
16 information from that lower end product, either by
17 looking right on the shelves, some stores list those
18 right on the shelf right in front of the product, or by
19 examining the item itself and recording that bar code
20 number, because it's the number that's important here.
21 He doesn't have to copy the stripes or the bars, it's the
22 number is what is the tool or his tools in this case.

23 So, for example, the DVD system costs around
24 \$500, the CD player costs around 70. Then the defendant

1 would turn, would return to his vehicle where he had a
2 bar code maker. Now, it's not a specialized piece of
3 equipment. It's a simple item that can be bought at any
4 store, a label maker that made UPC bar code numbers.

5 And by the way, when I told you that he
6 recorded some of these bar codes, he would use them again
7 and again. Anyway, he'd go back to his vehicle, make the
8 bar code. Then he would take that sticker, the new
9 sticker, and either himself or his accomplice would go
10 back into the store, stick that bar code that came from
11 the lower end item onto the higher end item. Then he
12 would take, or his accomplice would take the large end
13 item out to the register, hand it to the checker who
14 would just scan it in the normal place that they are used
15 to scanning it, because he would place that bar code
16 right over the normal bar code, scan, it would show up on
17 the register tape CD player. But does the checker have
18 time to check that? No. Checker doesn't notice.

19 Then either the defendant or his accomplice
20 would hand \$60 or another form, another amount of cash,
21 \$100 to the clerk, gets his change back and walks out
22 with a \$500 DVD system for 60 bucks, 70 bucks.

23 Then the defendant would either take this to
24 a storage unit, this item to a storage unit and store it

1 for some future purpose or he would take off the UPC
2 code, the new UPC code from the lower end item, bring it
3 back to the store where he got it from and say, hey, I
4 need to return this. Here you go sir, here's your \$500.
5 There you go. He pays \$70, that's \$430 profit.

6 In this way the defendant was able to
7 accumulate thousands of dollars of merchandise attained
8 at a fraction of its actual price from local merchants
9 all over Washoe County.

10 At the end of the State's case you will see
11 overwhelming evidence of the defendant's guilt on all the
12 counts charged in the criminal indictment. I mentioned
13 to you that he was also charged with conspiracy, working
14 with another in pursuit of a criminal scheme, which is
15 what he did, and we will show you that. Also we are
16 going to be showing you that he had in his possession at
17 least 15 of these UPC bar codes at the time of his
18 arrest, which is what is charged in Count X.

19 So at that time, ladies and gentlemen, I'm
20 going to be asking you to find him guilty. Now, due to
21 some scheduling issues, the State is going to be
22 presenting some of these witnesses slightly out of order,
23 but we believe you will have no, no confusion as to, as
24 far as what is going on here and we believe you will find

1 him guilty of all counts. Thank you.

2 THE COURT: Mr. Van Ry, you can either make
3 an opening statement at this time or reserve it for
4 later. Would you like to make it at this time?

5 MR. VAN RY: I would, Your Honor. Thank you.
6 May I approach?

7 THE COURT: You may proceed.

8 MR. VAN RY: Good afternoon. Thank you for
9 bearing with us this morning.

10 This case is about reasonable doubt. We're
11 here because there exists reasonable doubt. We're here
12 because from our viewpoint the evidence will show that
13 there's reasonable doubt. And I will talk about that in
14 a minute, but first let me thank you for your service.

15 Service on a jury is a sacrifice, it's a
16 hardship, it's trouble, it's time-consuming. It takes
17 you away from your family, friends, job, occupation,
18 hobbies, et cetera. We recognize that imposition. But
19 you are fulfilling an important purpose. There's a
20 dispute between the State and my client and you are here
21 to help resolve that dispute. So we thank you for that
22 and want you to recognize it's important. Your duty here
23 is important.

24 There are numerous counts against

1 Mr. Volpicelli, as has been stated and has been read to
2 you, and there are going to be many items of evidence
3 documentary. There's also going to be many witnesses.
4 But the reasonable doubt in this case does not
5 necessarily arise from the documents that you are going
6 to see. And it doesn't necessarily arise from all of the
7 State's witnesses. It will arise from one witness,
8 namely Brett Bowman. You heard him referred to in voir
9 dire as a coconspirator. That's what the State believes
10 he is. We believe the evidence will not show that he's a
11 coconspirator, that he acted solely in his best interest.
12 And there are a lot of, a lot of things that we will go
13 into to demonstrate that he is not credible and that he
14 has much to gain by pinning this elaborate scheme upon
15 Mr. Volpicelli. But I want you to pay very careful
16 attention when he testifies, because that's where
17 reasonable doubt exists in this case.

18 There really will be no other witness, the
19 evidence will not show that Mr. Volpicelli was engaged in
20 criminal activity. Walking into a store, writing down
21 pricing information is not a crime. Possessing the label
22 maker, it's sold over the counter. It's not a crime. So
23 there will be a lot of evidence to demonstrate that
24 Mr. Volpicelli's actions were not criminal. Were not

1 criminal.

2 And as a result I will ask you, at the end of
3 the evidence I will ask you to find him not guilty under
4 all the counts, under all the counts charged. Thank you.

5 THE COURT: Ms. Riggs, you may call your
6 first witness.

7 MS. RIGGS: Thank you, Your Honor. The State
8 will call Dave Della.

9 MR. VAN RY: Your Honor, defense would invoke
10 the rule of exclusion.

11 THE COURT: All right. You have the right to
12 do that, and that means that all witnesses in the case,
13 other than a party to the case, would have to be excluded
14 during the course of testimony.

15 And, sir, if you'll please step right up into
16 this area, Mr. Bartlett will administer the oath.

17

18 DAVID DELLA,

19 having been first duly sworn by the court clerk,

20 was examined and testified as follows:

21

22 THE COURT: Please have a seat in the witness
23 chair.

24 THE WITNESS: Thank you.

1 ^.^ DIRECT EXAMINATION ^.^

2 BY MS. RIGGS:

3 Q Would you please state your name and spell it
4 for the record?

5 A David Della, D-e-l-l-a.

6 Q And what agency employs you, please?

7 A The City of Reno Police Department.

8 Q What's your rank at RPD?

9 A Detective sergeant.

10 Q And Detective, do you prefer to be called
11 Detective or Sergeant or both?

12 A Whichever you prefer.

13 Q How about Detective Della?

14 A That's fine.

15 Q Detective Della, what is your current
16 assignment?

17 A I am assigned to the detective division, I'm
18 in a unit that gathers intelligence and conducts
19 surveillances on persons suspected of criminal activity.

20 Q So you supervise a group of detectives?

21 A Yes, I do.

22 Q And can you tell me, what kind of activities
23 do the detectives in your unit typically perform during
24 the investigation?

1 A The initial part that we do would be the
2 intelligence gathering and that can be from both public
3 and private sources. Get as much intelligence as we can
4 on individuals and then we conduct surveillances as
5 needed on that individual up to and including arrest, if
6 appropriate.

7 Q And can you tell me what the detectives in
8 your unit are typically wearing when they are on duty?

9 A It oftentimes depends on the assignment, but
10 we're never in uniform. It's always in one form of
11 civilian attire or another. Could be anywhere from jeans
12 to a suit.

13 Q Depending on where they are and what they are
14 doing?

15 A Exactly.

16 Q Detective, in 2001 did you and the detectives
17 in your unit become involved in investigating the
18 activities of a person named Ferrill Joseph Volpicelli?

19 A Yes, we did.

20 Q Do you recall when that investigation began?

21 A I assigned that file to Detective Thomas on
22 September 4th, 2001.

23 Q And did you have any personal participation
24 in the investigation?

1 A Subsequent to the assignment of the file,
2 yes, I did.

3 Q Did you and the detectives in your unit
4 observe the defendant over a period of time?

5 A Yes, we did.

6 Q Do you recall approximately what that period
7 of time was?

8 A It would have started shortly after September
9 4th. I believe it was probably like three or four days
10 prior that we actually started the surveillance portion
11 where the entire unit would be assisting and that would
12 have gone up through and including October 17th of the
13 same year.

14 Q And at some point in time in that period did
15 you become familiar with what Ferrill Volpicelli looks
16 like?

17 A Yes, I did.

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

19 A Yes, I would.

20 Q Do you see him in the courtroom today?

21 A Yes.

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

24 A Sure. Certainly. He's seated at the defense

1 table next to Mr. Van Ry in a white, long-sleeved,
2 collared shirt and a tie.

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

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

8 MS. RIGGS: Thank you, Your Honor.

9 BY MS. RIGGS:

10 Q Detective, do you recall participating in
11 surveilling the defendant on September 26, 2001?

12 A Yes, I do.

13 Q And do you recall what general area or what
14 city or cities that surveillance was occurring?

15 A Reno-Sparks, primarily in Sparks in the
16 morning.

17 Q And, sir, is that in Washoe County?

18 A Yes, it is.

19 Q Do you recall approximately what time of day
20 you began watching him?

21 A I believe it was between 8:00 and 9:00 in the
22 morning.

23 Q And did you follow him somewhere? Did he go
24 somewhere that morning?

1 A Yes, he did.

2 Q Where did he go?

3 A To a business called Aussie Self-Storage on
4 East Victorian Avenue in Sparks.

5 Q And can you tell me how he was traveling that
6 day? By foot, vehicle, how?

7 A He was driving a gold color, light color
8 Mazda MPV van.

9 Q Now, you said you followed him to Aussie
10 Self-Storage. That's a business establishment, correct?

11 A Yes, it is.

12 Q And is the name of that business
13 establishment self-explanatory for the kind of business
14 it conducts? In other words, is it a storage facility?

15 A It is, those mini storage rentals.

16 Q Did you follow the defendant all the way into
17 the storage facility?

18 A Not into the business itself. Traditionally
19 what we would do is not follow the vehicle in, but drive
20 by and just continue to watch where the vehicle went
21 into, and there's also trailing units that would also see
22 where it went. So we saw it go in, but I did not follow
23 it in.

24 Q But were you able to maintain eye contact

1 with him from some other vantage point?

2 A I went to the restaurant next door after I
3 saw his vehicle pull into the self-storage unit. Could
4 not see actually where he was at that time, so I drove
5 back onto the street across the front of the business
6 which is open with one of those, just like wrought iron
7 gates and I could see through that as to where he was.

8 Q And you saw his van?

9 A I did.

10 Q You saw him?

11 A I did.

12 Q Can you describe where the defendant went
13 once he was inside the storage unit complex?

14 A Over to the east side of this actual storage
15 complex where several of the garages are located. He had
16 parked his van there and there was one open garage door
17 when I drove back by in front.

18 Q From your vantage point -- And by the way,
19 Detective, can you tell me approximately how many feet
20 you were away from him?

21 A When I drove by the front of the business I
22 would estimate that to probably be, probably 60 yards.

23 Q Did you have an unobstructed view of what he
24 was doing?

1 A Yes, I did.

2 Q Could you see what he was doing in front of

3 the storage unit?

4 A He was actually going in and out of the

5 storage unit with boxes in his hand like he was putting

6 stuff in the unit.

7 Q At some point, Detective, did you determine

8 exactly which storage unit it was --

9 A Yes.

10 Q -- that he was moving in and out of?

11 A Yes.

12 Q Do you recall which number it was?

13 A It was B, as in boy, 114.

14 Q Now, Detective, I'm showing you State's

15 Exhibit 1. Do you recognize what's depicted in that

16 photograph?

17 A Yes, I do.

18 Q What is that?

19 A This is the east side of the mini storage

20 unit that I was mentioning a moment ago where the garages

21 were that his vehicle was parked in front of.

22 Q And can you take my pen, please, and mark

23 with an X the unit that he was parked in front of?

24 A As I recall it was the fifth one in from the

1 left and that's where I have placed the X.

2 Q Thank you. May I have the exhibit, please?

3 A Certainly.

4 Q Thank you.

5 Detective, I am now showing you what's been
6 marked as State's Exhibit 2. Can you tell me what that
7 exhibit is, please?

8 A This is a photograph that depicts the numbers
9 on front of the actual storage unit, B, as in boy, 114.

10 Q And is that, is that the unit that you saw
11 him in front of, Detective?

12 A Yes.

13 Q Thank you.

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

16 THE COURT: Yes, you may publish them to the
17 jury.

18 MS. RIGGS: Thank you.

19 BY MS. RIGGS:

20 Q Now, Detective, did you also participate in
21 surveilling the defendant on October 17th, 2001?

22 A Yes, I did.

23 Q In what general area were you watching him?

24 A Again, Reno-Sparks located within Washoe

1 County.

2 Q Was the defendant traveling by vehicle that
3 day?

4 A Yes, he was.

5 Q Was he driving the same van that you had
6 observed him in earlier?

7 A Yes, he was.

8 Q Detective, do you recall whether he had
9 anyone else with him that day?

10 A I do recall. Initially he did not, however,
11 I observed him on Third Street pick up another
12 individual, so there were then two in the, in the van.

13 Q Was that person identified later that day?

14 A Yes, he was.

15 Q And who was that person?

16 A Brett Bowman.

17 Q Detective, where did the defendant and Bowman
18 go from this Third Street location where you observed him
19 pick him up?

20 A To the Wal-Mart on South Damonte Parkway in
21 south Reno.

22 Q Now, once they got there, did you observe
23 either the defendant or Bowman go into the Wal-Mart?

24 A Yes, I did.

1 Q Which one, or both?

2 A I did not observe the Defendant Volpicelli go
3 into the Wal-Mart. I did not have eyes on at that time.
4 Someone else in my unit would have. Shortly after that I
5 did observe Mr. Bowman go inside.

6 Q Detective, did you follow Bowman?

7 A I did.

8 Q Where did he go once he was inside the store?

9 A Directly to the bicycle rack inside of
10 Wal-Mart.

11 Q Now, were you able to keep your eyes on him
12 while he was in the bicycle section?

13 A Yes, I was.

14 Q Describe to me what your vantage point was.

15 A When I went in the west doors to the store,
16 which as you are facing Wal-Mart would be to the left,
17 when I went in those doors, the bicycle racks are just
18 inside those doors to the left. Again, you almost come
19 across them right away. So as soon as I came through the
20 door I could see where he was.

21 Q And what did you do at that point? Were you
22 standing there watching him? Were you doing something
23 else?

24 A I went to an aisle right across from where he

1 was, almost like I was shopping, and just peered over the
2 top and watched what he was going.

3 Q What did he -- And what was he doing there as
4 you observed him.

5 A He was having one of the store clerks remove
6 a bicycle off the rack.

7 Q Now, were you close enough to observe what
8 kind of bicycle it was?

9 A Yes.

10 Q And do you remember it well enough to
11 describe it?

12 A I do. I could see it was a mountain bike
13 when they were taking it off the rack. When he wheeled
14 it toward the front of the store I could see it was a
15 Mongoose mountain bicycle.

16 Q So with the assistance of someone else he was
17 able to get that bicycle down?

18 A Yes.

19 Q What did he do with it once he had it down?

20 A Took it to the first register that he would
21 have come to inside the store. Again, if you went inside
22 those same west doors to Wal-Mart, it would be the
23 register right in front of you, the first one.

24 Q Once he got to the cashier or the register,

1 what did he do?

2 A He handed the tag to the cashier and paid for
3 the bicycle and then exited the store with the bicycle.

4 Q What did you do at that point?

5 A While he was at the cash register, I went
6 over to where the bicycle rack is and took a look at the,
7 they have tags in there, when you buy a bicycle normally
8 in those stores you pull out a little tag and take that
9 to the front and usually they send you around back or
10 something to get the box. But I looked at the tag on it
11 to see how much the bicycle was. After he exited the
12 store, I went to the cashier, he being Mr. Bowman. He
13 exited the store, I went to the cashier to see how much
14 was paid for the bicycle.

15 Q And you brought the cashier one of those tags
16 that you were talking about or one of the price tags?

17 A Yes, I did.

18 Q Okay. Detective, I'm showing you State's
19 Exhibit 3. Can you describe what that is, please?

20 A This is the tag that is located at the
21 bicycle rack that's for a 26 Mongoose XR 350, which is
22 the model number of the Mongoose bicycle, for 249.66.

23 Q And that was the sale price of the bicycle at
24 the time that you saw it, correct?

1 A Yes, it was.

2 MS. RIGGS: Your Honor, may I show this

3 exhibit to the jury?

4 THE COURT: Ask which number is that?

5 MS. RIGGS: This would be State's Exhibit 3.

6 THE COURT: Yes, you may publish Exhibit 3 to

7 the jury.

8 MS. RIGGS: Thank you, Your Honor.

9 BY MS. RIGGS:

10 Q Now, when you went up to the cashier, what

11 specifically did you ask the cashier?

12 A I asked the cashier how much that person had

13 just paid for the bicycle.

14 Q Now, during the time that you were watching

15 that register, did anybody else approach the register

16 between the time that Bowman left and the time that you

17 got there?

18 A No.

19 Q Was the clerk able to assist you --

20 A Yes, she was.

21 Q -- in getting that price?

22 A Yes, she was.

23 Q Did you watch her produce a document?

24 A She printed a receipt right out of the cash

1 register and handed that to me.

2 Q And was it any particular type of receipt?
3 Was it a special kind of receipt?

4 A I'm not sure. It was a Wal-Mart receipt for
5 the purchase that had just been made.

6 Q Detective, I'm showing you what's been marked
7 as State's Exhibit 4. Do you recognize this item?

8 A Yes, I do.

9 Q And what is that item that I just showed you?

10 A This is the receipt that I just mentioned
11 that the cashier printed up. It's the previous
12 transaction printout for what he had paid for the
13 bicycle.

14 Q What time is printed on that, sir?

15 A 17:09:41.

16 Q So approximately ten after 5:00 or nine after
17 5 p.m.?

18 A Correct.

19 Q On what date?

20 A October 17th, '01.

21 Q What price is indicated on the receipt that
22 the previous purchaser had bought that item for?

23 A \$74.96.

24 Q What happened, sir, after the, after Bowman

1 left the Wal-Mart?

2 A I radioed the information about what had been
3 paid for the bicycle to the units outside and
4 subsequently a traffic stop and arrest was effected.

5 MS. RIGGS: Your Honor, may I show State's
6 Exhibit 4 to the jury, please?

7 THE COURT: Yes, you may do so.

8 BY MS. RIGGS:

9 Q Now, again, Detective, you got a good look at
10 the bicycle that Bowman took off the rack that day,
11 correct?

12 A Yes.

13 Q I'm showing you State's Exhibit 5. Do you
14 recognize that item, sir?

15 A Yes, I do.

16 Q What is that item?

17 A It is a photograph depicting the Mongoose
18 mountain bicycle that was taken at the place of the
19 traffic stop.

20 Q Thank you.

21 MS. RIGGS: May I show State's Exhibit 5 to
22 the jury, Your Honor?

23 THE COURT: Yes, you may.

24 /////

1 BY MS. RIGGS:

2 Q Now, you said a traffic stop was effected
3 upon the gold van, correct?

4 A Yes.

5 Q At that time were both the defendant and
6 Mr. Bowman in the van?

7 A Yes.

8 Q Do you recall where that vehicle was stopped?

9 A It was a used car sales lot probably about a
10 mile or so north of the Wal-Mart. The exact address I
11 don't --

12 Q Were they arrested?

13 A Yes.

14 Q And was a search conducted of the Mazda MPV?

15 A It was inventoried, yes.

16 Q And can you describe to the jury what an
17 inventory search is, please?

18 A Actually it would be two different things.
19 One is an inventory where anytime -- We have a policy in
20 the Reno Police Department, anytime we are towing a
21 vehicle, to protect both the city and the person who owns
22 or is driving the vehicle, we conduct an inventory of
23 everything located within that vehicle. Just so, one of
24 two things, somebody says something was in there that

1 wasn't, or vice versa, if they say something wasn't in
2 there and it was and they didn't get it back, then the
3 City needs to take a look at that also. So every vehicle
4 we conduct an impound and is being towed we do an
5 inventory on.

6 Q And that's the reason why the vehicle was
7 inventoried, correct?

8 A Yes.

9 Q Was the bicycle I showed you in State's
10 Exhibit 5 recovered during that time, sir?

11 A It was.

12 Q It was in the van?

13 A Yes, it was.

14 MS. RIGGS: State has nothing further for
15 this witness. Thank you.

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

18 MR. VAN RY: I do. If I may approach.

19 THE COURT: All right.

20 MR. VAN RY: If I may move the lectern over
21 so counsel can see the witness?

22 THE COURT: Yes, you may.

23 /////

24 /////

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^.^ CROSS-EXAMINATION ^. ^

BY MR. VAN RY:

Q Good afternoon, Mr. Della.

A Good afternoon.

Q I think it only fair the jury know that you
and I know each other.

A Yes, we do.

Q And how do we know each other?

A A few years ago we went to high school
together.

Q And played football together?

A Yes, we did.

Q And you understand that I have a duty to my
client to cross-examine you to the best of my ability; is
that correct?

A Oh, yes.

Q Sounds like there were two distinct personal
events that involved you and my client, that of September
26th and on October 17th; is that correct?

A There were actually more than that, sir.

Q There were more, but you actually testified
to those two today?

A That is correct.

Q Okay. Let's talk about the September 26th

1 testimony that you gave earlier. When you were situated
2 so you could see what Mr. Volpicelli was doing, you
3 testified that he was moving boxes in and out of the
4 unit; is that correct?

5 A No, I believe I testified he was moving them
6 in. I don't recall seeing him taking anything out.

7 Q Okay. But you recall him putting something
8 into the unit?

9 A Yes.

10 Q Could you specifically say what that was?

11 A No.

12 Q Was it boxes?

13 A Yes.

14 Q Big boxes, little boxes, mixture of both?

15 A I don't recall. I didn't see him long enough
16 to see multiple trips inside. Like I said, I drove by
17 the front, it wasn't like I was sitting somewhere in that
18 whole time to see everything that he did.

19 Q Oh, okay, so you really saw a snapshot as you
20 drove by?

21 A Right.

22 Q Would you drive around and come back every
23 minute or so or was it just one time you drove by?

24 A For me specifically it was just the one time.

1 Well, two. One when he pulled in I drove past, and,
2 secondly, when I drove back westbound, then I saw where
3 the van was parked.

4 Q And that's when you saw him taking something
5 from the van into the storage unit?

6 A Yes.

7 Q It's not a crime to put something in a
8 storage unit, is it?

9 MS. RIGGS: Objection, it calls for a legal
10 conclusion.

11 THE COURT: The objection is overruled.

12 THE WITNESS: Just to put something in a
13 storage unit, no.

14 BY MR. VAN RY:

15 Q Let's go to October 17th. And I believe you
16 testified that you saw my client pick up Mr. Bowman
17 around Third Street; is that correct?

18 A Yes.

19 Q And then you testified that he went down to
20 Wal-Mart; is that correct?

21 A Yes.

22 Q Did they drive directly to Wal-Mart?

23 A I believe they did. It's -- I'm trying to
24 recall since it's been two years, but I believe he did.

1 Q Did -- And I'm sorry I cut you off.
2 A I was done.
3 Q I was thinking. I'm sorry.
4 Did Mr. Volpicelli give Mr. Bowman a ride to
5 another place before they went to Wal-Mart?
6 A Yes, I believe they went to, to --
7 MS. RIGGS: Objection. I'm going to have to
8 object to this line of questioning, Your Honor. May we
9 approach?
10 THE COURT: Yes, you may approach.
11 (A discussion was held at the bench off the
12 record.)
13 THE COURT: Mr. Van Ry, you may proceed.
14 MR. VAN RY: Thank you, Your Honor.
15 BY MR. VAN RY:
16 Q To kind of clarify that question, when
17 Mr. Volpicelli picked up Mr. Bowman, he took Mr. Bowman
18 to a place; is that correct?
19 A Yes, they went to a place.
20 Q Okay. It's very -- This is important. And
21 isn't it true that Mr. Bowman went to that place?
22 A Yes.
23 Q And that place was the Division of Parole and
24 Probation?

1 A Yes.

2 Q Now, you testified later that evening on
3 October 17th that Mr. Volpicelli did not go into Wal-Mart;
4 is that correct?

5 A No, sir, I did not testify to that.

6 Q I'm sorry?

7 A I did not see him go in.

8 Q Got it.

9 A Was that -- Okay.

10 Q Got it. You did not see Mr. Volpicelli go
11 into Wal-Mart, you observed Mr. Bowman go into Wal-Mart?

12 A Correct.

13 Q Now, Mr. Volpicelli dropped off Mr. Bowman,
14 Mr. Bowman went into Wal-Mart; is that what you saw?

15 A No.

16 Q That's not what you saw?

17 A No, sir.

18 Q What did you see?

19 A The vehicle was parked in the parking lot at
20 the point I was asked to come forth to the front of the
21 building by other detectives, was when Mr. Bowman went
22 in.

23 Q And that's when you observed Mr. Bowman go
24 in?

1 A Yes.

2 Q So you can't say for sure whether
3 Mr. Volpicelli went into Wal-Mart this night or not based
4 upon what you observed?

5 A Based upon my actual observation, no.

6 Q So Bowman goes into Wal-Mart, and it's Bowman
7 who takes the bicycle off the rack; is that correct?

8 A I believe he has the clerk do it for him.

9 Q But Mr. Volpicelli is not around at this
10 time?

11 A He's outside the store.

12 Q I mean, you didn't observe him in the bicycle
13 area at this time?

14 A No, out -- No.

15 Q And Mr. Bowman is the one who takes the tag
16 out of wherever the tag was and presents that along with
17 the bike to the cashier; is that correct?

18 A I'm not sure where he got the tag from, but
19 he is the one that presented it to the cashier.

20 MR. VAN RY: Let me have a moment, Your
21 Honor.

22 BY MR. VAN RY:

23 Q Did you observe Mr. Bowman at the time he was
24 in the bicycle area place a different UPC label on this

1 tag?

2 A No, I did not.

3 Q And you certainly didn't observe
4 Mr. Volpicelli put a UPC label on this bicycle tag, did
5 you?

6 A I did not observe him in the store, sir.

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

8 Thank you.

9 THE COURT: Ms. Riggs, anything else?

10 MS. RIGGS: State will have nothing further
11 for this witness, Your Honor.

12 THE COURT: All right. Detective Della, you
13 may be excused.

14 THE WITNESS: Thank you, Your Honor.

15 MS. RIGGS: Your Honor, State will call
16 Karinah Prevost, please. Also, Your Honor, may I collect
17 the previous exhibits from the jury, please?

18 THE COURT: Oh, yes, you may collect the
19 exhibits from the jurors.

20 Ma'am, please step right into this area.

21 Mr. Bartlett will administer the oath.

22

23 KARINAH PREVOST,

24 having been first duly sworn by the court clerk,

1 was examined and testified as follows:

2

3 THE COURT: Please have a seat in the witness
4 chair.

5 THE WITNESS: Okay.

6

7 ^.^ DIRECT EXAMINATION ^.^

8 BY MS. RIGGS:

9 Q Would you please state your name and spell
10 your last name for the record?

11 A Karinah Prevost,, last name P-r-e-v-o-s-t.

12 Q Are you employed, ma'am?

13 A Yes.

14 Q And are you self-employed?

15 A Yes.

16 Q Can you tell me what your business is?

17 A I own a self-storage facility in Sparks.

18 Q What is the name of it?

19 A Aussie Self-Storage.

20 Q Can you tell me where in Sparks that business
21 is located?

22 A 30 East Victorian Avenue.

23 Q Is that in Washoe County?

24 A Yes, it is.

1 Q Can you describe the business activities of
2 Aussie Self-Storage, please?

3 A We rent storage space.

4 Q And are you full owner of that business?

5 A Part owner.

6 Q Who else owns that business with you?

7 A Dale Prevost.

8 Q And is that person related to you?

9 A Yes, my father.

10 Q Ms. Prevost, were you employed at Aussie
11 Self-Storage as of August 2001?

12 A Yes, I was.

13 Q And are you responsible for renting or
14 leasing these storage spaces or units to customers?

15 A Yes, I am.

16 Q Do you also maintain records at Aussie
17 Self-Storage?

18 A Yes, I do.

19 Q And do you personally maintain those records?

20 A Yes, I do.

21 Q Are you familiar with Unit B-114 --

22 A Yes.

23 Q -- at Aussie Self-Storage?

24 A Yes.

1 Q Can you describe what sort of storage unit
2 that is, please?

3 A It's a 10-by-20 storage with about an
4 eight-foot standard roll-up garage style door.

5 Q Are you familiar with the rental history of
6 that unit from August 2001 to October 2001?

7 A Yes, I am.

8 Q And do you recall who rented Unit B-114
9 during that period?

10 A Ashley Schilling.

11 Q Did Ashley Schilling complete a contract for
12 renting that unit?

13 A Yes, she did.

14 Q Now, Ms. Prevost, in addition to a standard
15 contract, is there other documentation that your renters
16 are required to fill out prior to their renting a unit
17 from you?

18 A Yes, there is.

19 Q What kind of documentation?

20 A An occupant information sheet.

21 Q Ms. Prevost, I'm showing you State's Exhibit
22 6. Could you -- First of all, are you familiar with that
23 exhibit?

24 A Yes, I am.

1 Q Can you tell me what it is?

2 A It's an additional information sheet that we

3 ask the occupants to fill out.

4 Q And Ashley Schilling filled that form out,

5 correct?

6 A Yes.

7 Q Ma'am, is there a section in that form that

8 indicates other persons, in addition to the renter, in

9 this case Ashley Schilling, who are allowed access to

10 that storage unit?

11 A Yes.

12 Q And did Ms. Schilling indicate on that form

13 whether anyone was allowed access to the storage shed

14 besides her?

15 A Yes, she did.

16 Q Who was allowed access to Unit B-114 besides

17 Ashley Schilling?

18 A Ferrill Joseph Volpicelli, Travis Volpicelli

19 and Shanell Volpicelli.

20 Q Thank you.

21 MS. RIGGS: May I show this exhibit to the

22 jury, Your Honor, Exhibit 6?

23 THE COURT: Yes, you may.

24 MS. RIGGS: Thank you, Ms. Prevost. I don't

1 have any further questions.

2 THE COURT: Mr. Van Ry, do you have
3 questions?

4 MR. VAN RY: No questions, Your Honor.

5 THE COURT: All right. Then Ms. Prevost, you
6 may be excused.

7 THE WITNESS: Thank you.

8 MS. RIGGS: Your Honor, at this time State
9 will call John David Ellis, Jr.

10 THE COURT: Please step into this area.
11 Mr. Bartlett will administer you the oath.

12
13 JOHN DAVID ELLIS,
14 having been first duly sworn by the court clerk,
15 was examined and testified as follows:

16
17 THE COURT: Please have a seat in the witness
18 chair.

19
20 ^.^ DIRECT EXAMINATION ^.^

21 BY MS. RIGGS:

22 Q Sir, would you please state your name and
23 spell your last name for the record?

24 A John David Ellis, E-l-l-i-s.

1 Q And, sir, who employs you?

2 A Lowe's Home Improvement Warehouse.

3 Q What's your position with Lowe's?

4 A It's a district loss prevention manager.

5 Q Was this your position as of January 2002?

6 A Yes, it was.

7 Q Do you work out of the same area now as you

8 did in January 2002?

9 A No, I don't.

10 Q Can you describe the area that you cover now,

11 please?

12 A I cover the Southern California districts,

13 just the Orange County area, for those of you who know

14 the area.

15 Q And in January of 2002 what was your area of

16 coverage?

17 A All of Northern California, Northern Nevada.

18 Q Can you describe your duties as loss

19 prevention manager?

20 A Inventory control primarily. By that I mean

21 we focus on conducting audits for things like review of

22 receiving pricing, inventory integrity checks from the

23 vendors, that type of work.

24 Q Now, sir, in November 2001 through January

1 2002, were you in charge of loss prevention at the Lowe's
2 store on Kietzke Lane in Reno?

3 A Yes.

4 Q Did you happen to be in the Reno store on
5 November 6, 2001?

6 A Yes.

7 Q At that time, sir, on that date do you recall
8 being contacted by Reno Police Detective Reed Thomas?

9 A Yes, I do.

10 Q Did he make a request from you on that date?

11 A Yes, he did.

12 Q What was that request?

13 A He asked that I validate a UPC code on a
14 purchase against the actual product in the building and
15 the surveillance tapes, the CCTV tapes that we have on
16 file.

17 Q Do you recall what product from Lowe's he was
18 specifically asking you about?

19 A It was a rug.

20 Q When he came to speak to you, did he come to
21 the Lowe's?

22 A Yes, he did.

23 Q Did he bring that rug with him?

24 A I want to say, yeah, I'm pretty sure he did,

1 yes.

2 Q Okay. Sir, I'm showing you State's Exhibit
3 7. Do you recognize that, sir?

4 A It's a packaged rug.

5 Q Is that the rug that Detective Thomas brought
6 to show you that day?

7 A I would believe so, yes.

8 Q Now, what condition is that rug in that you
9 see in the photograph?

10 A Looks to be in its original vendor packaging.

11 Q Is it rolled up?

12 A Yes, it is.

13 Q Sir, I'm showing you State's Exhibit 8. Do
14 you recognize what is depicted in that photograph,
15 please?

16 A It's a bar code, specifically on the outside
17 of the packaged rug.

18 Q Sir, before we go on further with this
19 exhibit, would you mind explaining to the jury what a bar
20 code is, specifically a UPC bar code and what it is used
21 for in your business?

22 A It's kind of like a fingerprint for each
23 product inside of the building. All bar codes that come
24 in from a vendor have a certain series of numbers that

1 correspond specifically to products in our stores so that
2 our computer recognizes it when you scan it. Is that --

3 Q In -- Well, we'll get a little bit more
4 specific. What does UPC stand for, first of all?

5 A Universal product code.

6 Q And does Lowe's only use UPC codes for
7 pricing?

8 A Yes.

9 Q Okay. Are there other uses that UPC codes
10 have related to merchandise?

11 A It does contain things like the pricing, the
12 product information, it tells you specifically what the
13 product is as well.

14 Q So when you say that a UPC code is scanned,
15 what does that mean? What happens during the scan?

16 A Well, it captures the UPC information, it
17 tells you what the product is, the specifics of the
18 product as well, something that's very verifiable by
19 simply looking at the product, you know, in question.
20 For instance, it may be something tan and it may be 15
21 inches long and it will say 15 inches tan and whatever
22 that item may be. And it captures the price of that item
23 in the system that our system has it set at.

24 Q So when you are saying "it," you are talking

1 about the register?

2 A The register. I'm sorry, yes.

3 Q Where is the register getting that
4 information from?

5 A There's a central database from our corporate
6 office.

7 Q And, sir, do you recognize the UPC codes as
8 the codes that were on the rug that day?

9 A Yes.

10 Q Bar codes? I'm sorry, I didn't hear your
11 answer.

12 A Yes.

13 Q Sir, can you explain how those UPC codes are
14 arranged on the actual package of the rug?

15 A Can you clarify that?

16 Q Certainly. You see one or more than one UPC
17 bar code in that photograph?

18 A There's technically two UPCs on there.

19 Q So can you tell me how they are arranged on
20 that package?

21 A Well, it's obvious that there is, one UPC is
22 overlaid on the original UPS that's there, the vendor's
23 UPC.

24 Q Now, sir, do you know whether Lowe's rugs

1 normally contain yet another UPC code attached to them?

2 A Typically no.

3 Q Is there one that would be rolled up inside
4 or stapled to the inside?

5 A In, specifically with our rugs they come
6 packaged from the vendors with a vendor packaging on the
7 outside so it's scannable, but if for some reason the rug
8 was taken out of its package, on the inside of the rolled
9 rug there's a tag, much like you have on any other fabric
10 type item you would buy, that has a UPC that's scannable
11 on the inside as well.

12 Q Now, sir, I'm showing you State's Exhibit
13 8.1. Do you recognize that, that document that I'm
14 showing you?

15 A That looks like that came off of the inside
16 of the rug.

17 Q And would you mind looking at the document I
18 just showed you, 8.1, State's Exhibit 8.1, compare it to
19 the photograph, State's Exhibit 8, and verify whether
20 those have the same information on them?

21 A It is in fact the same rug; however, the UPC
22 that has been placed over this is not the UPC from the
23 inside of the rug.

24 Q Sir, in your position as the loss prevention

1 manager, district loss prevention manager at Lowe's, are
2 you familiar with the format that Lowe's uses for its UPC
3 bar code labels?

4 A I'm sorry, you'll have to clarify that.

5 Q Okay, sure. Let's try it another way.

6 Sir, you allude to the fact that it looks
7 like the outside UPC bar code was placed there?

8 A Um-hum.

9 Q What makes you say that?

10 A Well, typically, we are a large company, we
11 wouldn't have vendors come into 900 stores and stick
12 labels on top of existing product. Our computer systems
13 are such that we simply can go into them from our general
14 law offices, if we need to make any changes to the
15 information in the computer system, we just change the
16 information already associated with the existing UPC. So
17 it's rare, that I know of, that we would have someone
18 come in and place new UPCs on top of existing UPCs. We
19 simply do that in the computer and it would automatically
20 update everything associated with the normal UPC.

21 Q Sir, do you recall checking that UPC code
22 that was on the outside of that rug for Detective Thomas?

23 A Yes.

24 Q And do you recall whether the Lowe's computer

1 database returned a Lowe's item corresponding with that
2 UPC code that appears to have been supplied there?

3 A If I recall, and, you know, forgive me
4 because it has been some time, but I do believe it
5 scanned as another item inside the building. But when,
6 in fact, when you match the descriptions up, it wasn't
7 the same item at all.

8 MS. RIGGS: May I have the Court's indulgence
9 for one moment, Your Honor?

10 THE COURT: Yes.

11 BY MS. RIGGS:

12 Q Sir, I am now showing you State's Exhibit 34.
13 Do you recognize that document?

14 A Yes, that's a, what we call a project
15 estimate. Something we would typically ring up just to
16 give to a customer. If they were thinking about
17 purchasing something and they wanted to see what the
18 total price with tax and that type of thing would be.

19 Q Did you produce that document, sir?

20 A Yes. It contains the two different universal
21 product code numbers. We also call them item numbers or
22 sku's and it has two separate item numbers. One is for
23 the UPC that was placed on the outside of the package rug
24 and the other is for the actual rug itself from the

1 interior tag.

2 Q What is the price indicated which you call
3 the actual price from the interior tag on that project
4 estimate?

5 A 499.

6 Q And, sir, can you tell me what price
7 corresponded with the exterior tag that you classified as
8 being previously -- or applied consequently?

9 A \$74.

10 Q Thank you.

11 MS. RIGGS: Your Honor, may I show these four
12 exhibits to the jury? This would be State's 7, 8, 8.1
13 and 34?

14 THE COURT: Yes, you may publish those to the
15 jury.

16 MS. RIGGS: Thank you.

17 BY MS. RIGGS:

18 Q Sir, are you familiar with Lowe's carpet
19 inventory and the prices that Lowe's normally charges for
20 its Orient products?

21 A Pretty intimately, yes.

22 Q And based on your knowledge of Lowe's
23 inventory and their pricing policies, do you know whether
24 Lowe's would ever charge \$74 for the rug that was brought

1 in to you by Detective Thomas on that day?

2 A Not through a scannable UPC code, no.

3 Q Oh, I'm sorry, sir. I didn't hear your full
4 answer. Would you repeat that, please?

5 A Not through a scannable UPC code. If
6 something was ever marked down that drastically it would
7 be because of a product defect, a rip or tear and it may
8 be -- And we have in-store labeling we would use at that
9 point which is handwritten with the manager's signature
10 written on it. So a markdown that extreme, to answer
11 your question, no.

12 Q So that UPC code that had been applied did
13 not have any kind of manager's initial on it?

14 A No.

15 Q In fact, did it look to you like the package
16 had even been opened?

17 A I don't -- At the time I don't think that it
18 did.

19 Q Sir, does the Reno Lowe's store have a
20 videotape system for the purposes of security?

21 A Yes.

22 Q And I believe you testified earlier that
23 Detective Thomas had asked about a, any kind of security
24 tape for this transaction, correct?

1 A Yes.

2 Q Did the detective inform you of the date and
3 time of the rug purchase?

4 A Yes, he did.

5 Q And is that the way you were able to pull the
6 security tape?

7 A Yes, it was.

8 Q Are they filed by date and time?

9 A Yes, they are.

10 Q You were able to provide a copy to Detective
11 Thomas?

12 A Yes, a copy was provided to him.

13 Q Thank you, sir.

14 MS. RIGGS: State has no further questions
15 for this witness, Your Honor.

16 THE COURT: Mr. Van Ry, do you have
17 questions?

18 MR. VAN RY: Yes, I do.

19

20 ^.^ CROSS-EXAMINATION ^.^

21 BY MR. VAN RY:

22 Q Mr. Ellis, hello.

23 A Hi.

24 Q You appear to be a little uncomfortable. Are

1 you a little nervous?

2 A A little bit, sir.

3 Q I understand. I understand. If you don't
4 understand a question, please let me know.

5 A Okay.

6 Q I believe you testified just a few minutes
7 ago that it's rare that a UPC label might be produced
8 in-store and then placed over the existing UPC label; is
9 that correct?

10 A Yes, it is.

11 Q Well, if it's rare, it may not be likely but
12 it's possible; is that correct?

13 A Yes, sir.

14 Q And that would also mean that in-store you,
15 as Lowe's own and possess a label maker, to make such UPC
16 labels?

17 A No.

18 Q You do not?

19 A No, we do not.

20 Q How would you do that?

21 A We wouldn't do that. As I was stating
22 earlier, if we need to change information in the UPC we
23 do it through the computers where we don't have to
24 actually put a new UPC on the outside of the product.

1 Q Okay. So I guess I need to backtrack. How
2 would a UPC label in a rare occasion get a new one to be
3 placed upon the old existing UPC label?

4 A In my experiences in the past, sometimes UPCs
5 come in defaced from the vendors, smudges or blurs, and
6 we will request that they come out to the entire shipment
7 area that they sent the shipment to and place new UPCs on
8 the outside of all those blurred, you know, so that they
9 are scannable. That's typically how you would probably
10 get a new UPC on the outside.

11 Q Would that happen before it got to you?

12 A In many cases, I say in many cases, I've been
13 with Lowe's eight years and I can probably think of two
14 or three times that I've had to contact a vendor to come
15 out and do it specifically for a district, maybe eight,
16 ten, twelve stores, something of that size, so it has
17 been pretty rare. But we would contact the vendor after
18 the product has arrived, someone has notified us that
19 none of these UPCs are scanning at the point of sale and
20 we would ask that they would come in and put new UPCs on
21 those items.

22 Q Okay. So the vendor would come into the
23 store?

24 A Yeah.

1 Q Okay. Thank you.

2 As you sit here you have no personal
3 knowledge as to who actually placed this other UPC label
4 over the existing label, do you?

5 A No, sir.

6 Q So you can't say for certain that it was my
7 client that did that?

8 A No, sir.

9 MR. VAN RY: Thank you.

10 Nothing further, Your Honor.

11

12 ^.^ REDIRECT EXAMINATION ^.^

13 BY MS. RIGGS:

14 Q Sir, you just testified that it's a rare
15 event to have to have a vendor come in and have to
16 reapply a UPC code, correct?

17 A Yes.

18 Q Is this event so rare that you would know
19 about it if it happened?

20 A Typically I would be the one to make the call
21 or someone else would let me know that it was happening.

22 Q Between June and November of 2001, do you
23 recall receiving any kind of phone call or making a phone
24 call to the vendor of that carpet that I just showed you

1 regarding the UPC codes?

2 A No.

3 MS. RIGGS: Thank you. State has nothing
4 further, Your Honor.

5 THE COURT: Anything else?

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

7 THE COURT: Mr. Ellis, you may be excused.

8 And we'll go ahead and take our first recess
9 at this point. And I will instruct the jurors that you
10 are not to discuss this case among yourselves or with
11 anyone else. Do not read, watch or listen to any media
12 account of this proceeding and do not form or express any
13 opinion on any subject of this trial before the matter is
14 submitted for your deliberations. And we will take about
15 a ten-minute recess.

16 THE BAILIFF: All rise.

17 (Recess taken from 2:24 p.m. to 2:42 p.m.)

18 THE BAILIFF: All rise. This Court is again
19 in session.

20 THE COURT: You may be seated.

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

22 MS. RIGGS: Thank you, Your Honor.

23 State will call Brett Bowman.

24 THE COURT: Sir, if you'll please step into

1 this area, Mr. Bartlett will administer the oath.

2
3 BRETT BOWMAN,

4 having been first duly sworn by the court clerk,
5 was examined and testified as follows:
6

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

10 ^.^ DIRECT EXAMINATION ^.^

11 BY MS. RIGGS:

12 Q Sir, would you please state your name and
13 spell it for the record.

14 A Brett Bowman, B-r-e-t-t, B-o-w-m-a-n.

15 Q Sir, you live in Nevada?

16 A Yes, I do.

17 Q How long have you lived in Nevada?

18 A Since '99, November of '99.

19 Q Sir, are you currently incarcerated?

20 A Yes, I am.

21 Q Where are you incarcerated?

22 A The Northern Nevada Restitution Center.

23 Q Is that in Reno?

24 A Yes, it is.

1 Q Sir, can you tell me how long you've been at
2 the Northern Nevada Restitution Center?
3 A Since October of last year.
4 Q Upon what charge are you serving time now?
5 A Burglary.
6 Q When were you convicted of that crime?
7 A February of 2001, I believe.
8 Q Do you recall perhaps in 2002, sir?
9 A 2002, could have been.
10 Q Could it have been May 2002?
11 A Yes.
12 Q Do you recall what day you were arrested on
13 the charge of burglary?
14 A October 17th.
15 Q And what year was that?
16 A 2001.
17 Q Was someone else arrested with you on that
18 date?
19 A Yes, there was.
20 Q And who was that?
21 A The defendant.
22 Q And what was, what is his name?
23 A Mr. Volpicelli.
24 Q Is that Ferrill Volpicelli?

1 A Yes, it is.

2 Q Is Ferrill Volpicelli seated in the courtroom
3 today?

4 A Yes, he is.

5 Q Would you please point him out and describe
6 briefly what he is wearing?

7 A (Indicating) white shirt, blue tie.

8 MS. RIGGS: Your Honor, may the record
9 reflect that the witness has identified the defendant in
10 this case?

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

13 MS. RIGGS: Thank you, Your Honor.

14 BY MS. RIGGS:

15 Q Now, on the date of October 17th, 2001,
16 Mr. Bowman, do you recall where you were arrested?

17 A Down the street from Wal-Mart on Del Monte,
18 South Virginia.

19 Q You were on South Virginia Street when you
20 got arrested?

21 A Yes, we were.

22 Q Prior to your arrest on that date, do you
23 recall how long you had been acquainted with the
24 defendant?

1 A Six months, in that area. Maybe about a
2 year.

3 Q Six months to a year?

4 A Yes.

5 Q At some point during your acquaintance, sir,
6 did the two of you discuss a scheme to defraud retail
7 stores?

8 A Yes, we did.

9 Q And did that scheme include obtaining
10 merchandise at drastically reduced prices --

11 A Yes.

12 Q -- from those stores?

13 Do you recall about what time of year during
14 2001 that topic first came up?

15 A The spring of 2001.

16 Q Who brought up the topic?

17 A The defendant did.

18 Q Did the defendant describe the scheme to you?

19 A Yes, he did. Over a period of time he did,
20 yes.

21 Q Did he ask you to participate in it?

22 A Yes, he did.

23 Q And when he asked you to participate, did you
24 jump on the chance, did you think about it for a while;

1 what did you do?

2 A I thought about it for a while.

3 Q Did there come a time when you took him up on
4 his offer?

5 A Yes, there was.

6 Q Do you recall when that was?

7 A June of 2001.

8 Q As a general overview, Mr. Bowman, so I'm
9 asking you to answer very generally, what did he ask you
10 to do?

11 A He asked me to go into different stores
12 and --

13 Q And I'm going to have you stop there for a
14 second. I'm having a difficult time hearing you, sir, so
15 would you please bring the microphone to your mouth a
16 little bit more and speak up a little bit. And I'll ask
17 the question again.

18 What generally did he ask you to do?

19 A To buy the merchandise after he placed a
20 fraudulent bar code on the merchandise.

21 Q Did he ask you to do that with your own
22 money?

23 A Pardon?

24 Q Did he want you to use your own money to buy

1 that merchandise?

2 A No, he did not.

3 Q Whose money did he want you to use?

4 A I used his.

5 Q Was that your idea or his?

6 A His.

7 Q And when you finally made the agreement with

8 the defendant, was part of the agreement who would

9 actually be making those UPC codes?

10 A Yes, there was.

11 Q Who was to be making the UPC codes?

12 A The defendant.

13 Q And during the time, between the time you

14 were arrested in October 2001 back to June of 2001, sir,

15 did you ever produce or make a single bar code?

16 A No, I did not.

17 Q Who made those bar codes?

18 A The defendant did.

19 Q Did you ever see him make those?

20 A Yes, I did.

21 Q How did he make those bar codes?

22 A With a label maker.

23 Q Was it, did this appear to be a specialized

24 piece of equipment to you?

1 A No.

2 Q Did he tell you where he got the label maker?

3 A Yes.

4 Q Where did he get the label maker?

5 A At Office Depot.

6 Q When you saw him making those UPC bar codes,
7 where specifically was he producing those?

8 A In the van.

9 Q What van are you talking about?

10 A It was a Mazda MPV.

11 Q Sir, did your original agreement include who
12 would actually place those fraudulent UPC codes on
13 merchandise that you were to obtain?

14 A Originally, yes.

15 Q And what was the original agreement?

16 A The original agreement was that he'd go in
17 the store, place the UPC bar code on an item and I'd come
18 in the store afterwards or a day later and purchase the
19 item.

20 Q And how would you know which item to
21 purchase?

22 A He would tell me where it was at and what
23 it was -- well, what was it and where was it at.

24 Q And this obviously was after he had placed

1 the bar code?

2 A Yes.

3 Q Now, did that arrangement change during the
4 course of this scheme, sir?

5 A Yes, it did.

6 Q How did that arrangement change?

7 A It changed to the point where he would make
8 the label and I would take it in and place it on the
9 item.

10 Q And then what would you do?

11 A I'd place it on the item and purchase the
12 item.

13 Q Again, where did you get the money to
14 purchase the item?

15 A From the defendant.

16 Q At any time, sir, did you use your own money
17 to make any of the purchases during this scheme?

18 A No.

19 Q Now, you, I believe you previously testified,
20 sir, that you began carrying out the scheme in June 2001;
21 is that correct?

22 A It is.

23 Q Sir, did you participate in this scheme
24 continuously between June 2001 and the time of your

1 arrest in October 2001?

2 A Yes.

3 Q Did your activity escalate at some point
4 during that time?

5 A Yes, it did.

6 Q Could you describe that escalation, please?

7 A It started off maybe two or three stores to
8 as many as ten in a night.

9 Q Now, when generally would you go out to the
10 stores?

11 A It was mostly on my days off.

12 Q Which were when?

13 A Wednesday. Mainly Wednesdays.

14 Q Is there any particular time of day that you
15 usually went?

16 A Early. It would be early evening.

17 Q And why did you go in the early evening?

18 A Because he had to deal with his boys.

19 Q When the defendant went into a store to place
20 a bar code on an item, you came in after him to purchase
21 the item, correct?

22 A That's correct.

23 Q Where generally had he placed the UPC bar
24 code that he had produced?

1 A On top of the original bar code on the
2 merchandise.
3 Q Did he tell you the reason for that was?
4 A It was to cover up the original bar code.
5 Q Sir, do you recall on approximately how many
6 evenings total, not stores, but evenings, you
7 participated in this scheme?
8 A Roughly around 12.
9 Q And on these approximately 12 evenings, do
10 you recall which stores you entered and obtained
11 merchandise from?
12 A Yes, I do.
13 Q Can you tell me which stores were involved,
14 please?
15 A Wal-Mart, Kmart, Shopko, PETSmart, CompUSA,
16 Bed & Bath. Right off the top of my head. I'm sure
17 there's more than that.
18 Q Do you recall going into Target to obtain
19 merchandise --
20 A Yes.
21 Q -- fraudulently, sir?
22 A Yes.
23 Q Do you recall going into Lowe's improvement
24 warehouse?

1 A Yes.

2 Q Do you recall going into Home Depot?

3 A Yes.

4 Q Do you recall going into Office Depot?

5 A Yes.

6 Q Do you recall going into Office Max?

7 A Yes.

8 Q Do you recall going into Best Buy?

9 A Yes.

10 Q And do you recall going into Toys 'R Us?

11 A Yes.

12 Q Now, in all the stores that I just mentioned,

13 sir, did you carry out the scheme that you just

14 described?

15 A Yes, ma'am.

16 Q All those stores that I just described,

17 Mr. Bowman, are those stores all located in Washoe

18 County?

19 A Yes, they are.

20 Q Now, who is the one who decided which stores

21 you were going to be going to when you would get together

22 with the defendant for the night?

23 A The defendant did.

24 Q Did you ever discuss, did you tell him you

1 ever wanted to go someplace different tonight or --

2 A No.

3 Q -- how did that work?

4 A No. We always went where he wanted to go.
5 We bought what he wanted to purchase.

6 Q So he was the one who also -- Did he tell you
7 what you were going to be buying that night, or buying in
8 quotation marks?

9 A Usually not until we got to the store. When
10 he picked me up in the afternoon, earlier in the evening,
11 he'd discuss which stores. And sometimes, right, he
12 would tell me what he planned on buying that night. But
13 for the most part, when he got to the store, he would
14 tell me what he wanted when he got to the parking lot.

15 Q And what would happen to the merchandise
16 after you obtained it?

17 A Obtain it, put it in the van.

18 Q Did you ever keep it and take any of it home?

19 A No. Just -- Let me back up here. A couple
20 items, yes.

21 Q What were those couple items?

22 A One was a shaver, a bronze shaver, a coffee
23 maker.

24 Q Those were the two items that you obtained

1 for yourself during the entire course of the scheme?

2 A Yes. Yes, it is.

3 Q And, again, going toward the end of the
4 period, you are hitting up to ten stores per night,
5 right?

6 A Yeah.

7 Q Well, sir, if all you got in merchandise out
8 of this scheme was a coffee maker and a shaver, what was
9 the benefit to you?

10 A He was paying me cash.

11 Q How much was he paying you?

12 A Roughly around \$200 a night.

13 Q Sir, I know you described this a little bit
14 earlier, but now I would like you to go into a little
15 more detail and tell the jury on a particular night after
16 Mr., after the defendant had told you what you were going
17 to get, how the scheme would work from there. Can you
18 tell -- Describe to the jury typically how it worked
19 after he had decided what he wanted to get for that
20 night.

21 A After he decided what he wanted, right, what
22 he would do, he would pull out a --

23 Q And again, sir, I'm going to have to ask you
24 to speak up a little bit into the microphone because I'm

1 having a hard time hearing you.

2 A What would happen, we'd pull into a parking
3 lot, he'd pull out the master sheet.

4 Q And I'm sorry, let's stop there. You said a
5 market sheet?

6 A Yes.

7 Q What do you mean by master sheet?

8 A It would be a sheet of paper with different
9 stores with merchandise and the price of items with the
10 bar codes.

11 Q He had a list of those?

12 A Yes, he did.

13 Q Did you -- And where did he normally keep
14 that; do you know?

15 A With, in a black pouch with a label maker and
16 receipts. They were all contained in a little carry bag.

17 Q Okay. And I'm sorry to interrupt, sir. Go
18 on. After he would pull out the master sheet what would
19 happen?

20 A He would go down the list, find what he
21 wanted. Then he'd either make up the label or he already
22 had the labels made. He had an organizer right where he
23 would make the labels. Tell me where the stuff was
24 located at in the store. After that I would go in the

1 store with the cash, adhere the label to the merchandise
2 over the original bar code. If the bar code was too big,
3 he would hand me another label, right, to place over the
4 original bar code. And I'd adhere the bar code to the
5 box and then walk up to the cashier line, right, picked
6 out a cashier that looked dumb to me and I'd buy the
7 merchandise.

8 Q And you'd buy the merchandise using whose
9 money?

10 A The defendant's.

11 Q Now, you say that if the UPC code on the
12 original package was too big he'd give you some kind of
13 label to cover that?

14 A Right.

15 Q Does this mean that he would have already
16 scouted the area where you were going before you got
17 there or would he typically get out of the van after you
18 got there, do his scouting and come back to talk to you?

19 A For the most part, right, it was already
20 pre-scouted. Once or twice, a couple times, right, he
21 scouted the store while I was in it.

22 Q What happened with the change after -- Say,
23 you said the defendant would give you money to make the
24 purchase, correct?

1 A Correct.

2 Q Would he have you pay with a credit card?

3 A No, always cash.

4 Q Always cash?

5 A Always cash.

6 Q What happened with the change if there was

7 change?

8 A With the change, right, I kept ahold of the

9 change, right, until we got to the next store. And if I

10 had enough from the previous, buy, right, I'd just buy

11 it, if not he would add more to it.

12 Q And what happened with the spare change at

13 the end of the night?

14 A The end of the night, right, I kept it and

15 then he, if it was a small amount, right, then he would

16 give me more money.

17 Q Did you typically have a lot of change left

18 at the end of the night?

19 A No.

20 Q Now, describe to me how you and the defendant

21 typically would get to the stores themselves.

22 A We'd drive.

23 Q And who would drive?

24 A The defendant.

1 Q Do you have a vehicle or did you have a
2 vehicle at this time?

3 A No, I did not.

4 Q Is there one vehicle in particular that the
5 defendant would be driving or did he drive various
6 vehicles?

7 A It was always the same.

8 Q What vehicle was that?

9 A It was the van.

10 Q Mr. Bowman, I'm showing you State's Exhibit
11 10. Do you recognize what's depicted in that photograph,
12 please?

13 A That's the van he drives.

14 Q That's the van that Mr., or the defendant
15 would drive during the course of this scheme?

16 A Yes, it is.

17 Q Is that the vehicle he always drove?

18 A Yes, it is.

19 Q At least when he was with you?

20 A Yes.

21 Q Thank you.

22 MS. RIGGS: Your Honor, may I show this
23 Exhibit 10 to the jury?

24 THE COURT: Yes, you may publish Exhibit 10

1 to the jury.

2 MS. RIGGS: Thank you, Your Honor.

3 BY MS. RIGGS:

4 Q Now, Mr. Bowman, we talked earlier about a
5 label maker that the defendant would use to produce the
6 UPC bar codes in question, correct?

7 A Yes.

8 Q I'm showing you what's been marked as State's
9 Exhibit 9. Sir, do you recall what that exhibit is?

10 A Yes, I do.

11 Q What is that exhibit?

12 A It is the label maker, ma'am.

13 Q Is that the device that the defendant would
14 use to produce these labels?

15 A Yes, it is.

16 Q And, again, where did he typically keep that?

17 A With everything else in a black carry bag.

18 Q And do you know where he kept the black carry
19 bag?

20 A It was always in the van when he was with me,
21 but where he actually kept it when we weren't together, I
22 have no clue.

23 Q So when he was with you it was always in the
24 van?

1 A Yes, it was.

2 Q Thank you.

3 MS. RIGGS: May I show State's Exhibit 9 to
4 the jury, Your Honor?

5 THE COURT: Yes, you may.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q Now, sir, you said that you did not own a
9 vehicle during the period of this scheme between June
10 2001 and October 2001, correct?

11 A Yes.

12 Q Did you have access to a vehicle that you
13 could drive?

14 A No, I did not. I don't have a driver's
15 license.

16 Q So do you drive at all?

17 A No, I do not.

18 Q Now, you testified that -- Well, let's back
19 up to make sure this is what you testified to. You said
20 that the defendant would sometimes pull out a trans --
21 pardon me, a sheet of paper, what you call the master
22 sheet, correct?

23 A Yes.

24 Q Did the defendant tell you how the

1 information got onto the master sheet or where that
2 information came from?

3 A Yes.

4 Q Where did that information come from?

5 A It came from each individual store. He would
6 go into a store, looked for something he wanted.

7 Q I'm sorry, I can't hear you.

8 A I'm sorry. He'd go into a store, look for an
9 item that he wanted, okay, he'd find the item and then
10 he'd look for an alike item only cheaper and he'd take
11 the bar code off that item and write it down.

12 Q And did you ever see him do this?

13 A Once or twice, yes.

14 Q Did he tell you that that's how that
15 information got into the, to that master sheet?

16 A Yes.

17 Q And I believe you testified earlier that he
18 kept that master sheet in the bag with the label maker,
19 correct?

20 A Yes.

21 Q Was the master sheet in the van on the
22 evening of October 17, 2001?

23 A Yes, it was.

24 Q To your knowledge did he use any of the UPC

1 code numbers from the master sheet more than once to make
2 fraudulent UPC codes?

3 A Yes, he did.

4 Q How do you know this, sir?

5 A Because I'd buy several, several items of the
6 same item.

7 Q And would the same item keep appearing on the
8 cash register tape?

9 A Yes.

10 Q Even though you were buying different things?

11 A Yes.

12 Q Now, regarding the master sheet, sir, did you
13 produce it?

14 A No, I did not.

15 Q Do you know who produced it?

16 A The defendant did.

17 Q Sir, I'm showing you what has been marked for
18 identification as State's Exhibit 11. Do you recognize
19 that piece of paper, sir?

20 A Yes, I do.

21 Q How do you recognize it?

22 A This is the master sheet.

23 Q The master sheet you were just discussing?

24 A Yes, it is.

1 Q Is that the master sheet that was in the
2 Mazda MPV vehicle on October 17th, 2001?

3 A Yes, it is.

4 MS. RIGGS: State moves to admit State's
5 Exhibit 11, Your Honor.

6 MR. VAN RY: Objection, lack of foundation.
7 Improper, inadequate authentication, Your Honor.

8 MS. RIGGS: Your Honor, this has been
9 authenticated. This defendant knows exactly what it is.
10 He knows where it came from, he knows where it was when
11 it was found and he knows where the information in it
12 came from.

13 THE COURT: Well, I'm just wondering, are
14 there any voir dire questions you would like to ask?

15 MR. VAN RY: Let me approach, Your Honor.

16 (A discussion was held at the bench off the
17 record.)

18 THE COURT: The objection will be overruled
19 and Exhibit 11 will be admitted.

20 MS. RIGGS: Thank you, Your Honor.

21 BY MS. RIGGS:

22 Q Now, again, Mr. Bowman, can you describe to
23 the jury what is in that sheet or how that sheet is
24 organized?

1 A It's organized by store and the items in the
2 store and the UPC bar codes and then the price of each
3 item.
4 Q And is that the actual price of each of those
5 items?
6 A It's the price that shows up for the bar
7 code.
8 Q Do you also see a series of handwritten notes
9 on the, in the margins?
10 A Yes, I do.
11 Q Do you have any personal knowledge of what
12 those indicate?
13 A Yes, I do.
14 Q What are they?
15 A The ones that I can read are his, for
16 instance, DVD theater system and the bar code numbers
17 underneath it, then there's a video of the bar codes.
18 What BB is I have no clue, but I recognize the number,
19 the series of numbers. They are bar code numbers.
20 Q Sir, do you recognize the handwriting on, in
21 those notes?
22 A I know it's not mine.
23 Q So do you recognize whose it is?
24 A No, I do not.

1 Q Thank you.

2 MS. RIGGS: May I show State's Exhibit 11 to
3 the jury, Your Honor, please?

4 THE COURT: Yes, you may publish that to the
5 jury.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q Mr. Bowman, the scheme you just described
9 that you participated in with the defendant, did that
10 scheme ever involve returning items to retail stores?

11 A Yes, it did.

12 Q So when you returned those items, did you
13 return them for the price that you originally paid, that
14 is, the discounted price?

15 A No, I did not.

16 Q Well, how did you return them if you weren't
17 returning them for the price that you paid for them?

18 A The label that I saw was removed and returned
19 for the original.

20 Q Could you repeat the answer to my question,
21 please?

22 A The label would be removed from the item and
23 then it would be returned at the full price.

24 Q Who would remove that label?

1 A The defendant.

2 Q Did you ever remove fraudulent UPC bar codes?

3 A No.

4 Q Sir, did you obtain printed receipts for the

5 purchases you made at the various stores?

6 A Yes, I did.

7 Q So when you went, for instance, let's say to

8 Wal-Mart, you would walk out with an item, you would have

9 a receipt in your hand, correct?

10 A That's correct.

11 Q What would you do with these receipts when

12 you returned to the defendant's vehicle?

13 A I gave them to the defendant.

14 Q Were you able to see what he did with them?

15 A He'd either put them on the visor or he'd put

16 them in the organizer.

17 Q Did you ever see where he kept the organizer?

18 A It was with the label maker and the master

19 sheet.

20 Q Sir, I'm now showing you what's been marked

21 State's Exhibit 12. That actually is admitted as State's

22 Exhibit 12. Can you tell me what that is?

23 A It's the organizer.

24 Q Is that the organizer that the defendant

1 would typically put your receipts in?

2 A Yes, it is.

3 Q Sir, would you mind opening that exhibit and
4 taking a quick look inside. What is contained inside
5 State's Exhibit 12, please?

6 A Receipts and bar codes.

7 Q Thank you.

8 MS. RIGGS: Your Honor, may I show State's
9 Exhibit 12 to the jury?

10 THE COURT: Yes, you may.

11 MS. RIGGS: Thank you.

12 BY MS. RIGGS:

13 Q Now, again, sir, you testified that you
14 didn't keep any of the merchandise except for a shaver
15 and a coffee pot, correct?

16 A That's correct.

17 Q So what would typically happen after you
18 would be done for the evening with your activities?

19 A He would give me some cash and drop me back
20 off at my apartment.

21 Q So he didn't --- He paid you after you were
22 done, correct?

23 A That's correct.

24 Q Did he keep all the rest of the merchandise

1 with him?

2 A Yes, he did.

3 Q Did he ever tell you what he did with it?

4 A He told me he kept it in a storage unit.

5 Q Did you ever go to the storage unit?

6 A No, I did not.

7 Q Sir, do you have access to a storage unit at

8 all?

9 A I don't.

10 Q Did the defendant ever drop you off anywhere

11 else besides at home after you were finished?

12 A Sometimes he'd drop me off at Sierra Sid's

13 before he took me home to drop things off at the storage

14 unit before he went home himself.

15 Q So is it fair to say, Mr. Bowman, that the

16 defendant wouldn't allow you to go to the storage shed

17 with him?

18 A Yes.

19 Q You weren't allowed to see where all the

20 stuff was kept?

21 A No.

22 Q Did the defendant tell you whether the

23 storage unit was somewhere in Sparks?

24 A I assumed that, but, no. Like I said, he'd

1 drop me off at Sierra Sid's, tell me he was going to the
2 storage unit and he'd be back, pick me back up.

3 Q Now, sir, you testified that on about 12
4 occasions you participated in this scheme, about 12
5 evenings, hitting up to ten stores at a time. Thinking
6 back on those evenings, were there any particular
7 transactions that you remember better than others?

8 A Yes, I do.

9 Q Can you tell me about one of them, please?

10 A One of them was late in the evening, right,
11 we went to a Wal-Mart. He told me what he wanted, which
12 was a Panasonic theater system, and that while I was in
13 the store he was going to go across the street and get
14 fuel for the van. I went in the store, purchased the
15 item, came back out and he was nowhere in sight. I ended
16 up waiting 30, 35 minutes out in front of the store
17 before he finally showed up.

18 Q How did that make you feel, Mr. Bowman?

19 A I was hot. I was mad.

20 Q Why were you angry?

21 A Because here I am sitting in front of a store
22 with a theater system in a shopping cart just freshly
23 bought. I had previously told him, "Don't leave me
24 stranded. Always be somewhere where I can see you when I

1 come out of the store."

2 Q And why did you always want him there out
3 front in front of the store when you came out?

4 A So I wasn't spending time in the parking lot
5 looking for him.

6 Q So when you are here spending time in the
7 parking lot, Mr. Bowman, is it fair to say that security
8 has more chances to notice you?

9 A Exactly.

10 Q Well, tell me this, then. Did the scheme
11 ever work in reverse? Did you ever become the one to
12 wait in the van and have the defendant go in and come out
13 with merchandise?

14 A No.

15 Q So he never had to be exposed to that kind of
16 risk, did he?

17 A Exactly.

18 Q You just testified about an incident that
19 occurred at Wal-Mart. Sir, do you recall approximately
20 when this incident occurred?

21 A Late September, early October of 2001.

22 Q Sir, did you obtain any other Panasonic DVD
23 theater systems using this same method during this period
24 of time?

1 A Yes.

2 Q Do you recall how many?

3 A Maybe four or five.

4 Q Sir, do you recall what Wal-Mart was selling

5 those items for?

6 A Roughly 4- to \$500.

7 Q Do you recall what you paid for those?

8 A \$60.

9 Q Apiece?

10 A Apiece.

11 Q When you obtained those or when you purchased

12 those theater systems, did you obtain receipts for them?

13 A Yes, I did.

14 Q For those Panasonic DVD home theater systems,

15 sir, do you recall what item was printed on the register

16 receipt when the tape came out?

17 A Yes, I do.

18 Q What item was that?

19 A An Emerson CD player.

20 Q Sir, I'm showing you State's Exhibit 13. Do

21 you recognize what is depicted in that photograph?

22 A Yes, I do.

23 Q What is depicted in that photograph?

24 A The Panasonic DVD theater system.

1 Q That's one of the --
2 A Yes.
3 Q -- several that you --
4 A Yes.
5 Q -- that you obtained?
6 A Yes, it is.
7 Q Thank you.
8 MS. RIGGS: May I show this exhibit to the
9 jury, Your Honor?
10 THE COURT: Yes, you may.
11 MS. RIGGS: Thank you.
12 BY MS. RIGGS:
13 Q Sir, did you and the defendant purchase all
14 the theater systems from the same Wal-Mart store?
15 A No.
16 Q Did you ever purchase more than one on the
17 same date?
18 A Yes.
19 Q Were those from the same Wal-Mart store?
20 A No.
21 Q From different stores, correct?
22 A Yes.
23 Q Sir, I'm showing you Exhibit 14. Do you
24 recognize those, please?

1 A Yes.

2 Q What are those receipts that I just handed
3 you?

4 A They are the receipts for the theater system.

5 Q What item is present or is indicated on the
6 receipts?

7 A Three-CD Emerson.

8 Q Now, sir, would you mind looking at the back
9 of the top receipt in that exhibit, please. What do you
10 see there?

11 A It's a bar code.

12 Q Sir, is that typical of the bar code that you
13 would normally place on an item --

14 A Yes, it is.

15 Q -- when going into a store?

16 A Yes, it is.

17 Q Is that typical of the bar codes that the
18 defendant would make using the Brother label maker?

19 A Yes, it is a label that, it's the same tape
20 that the label maker does make.

21 Q Thank you.

22 A White on black.

23 MS. RIGGS: Your Honor, may I show Exhibit 14
24 to the jury?

1 THE COURT: Yes, you may.

2 MS. RIGGS: Thank you.

3 BY MS. RIGGS:

4 Q Are there any other purchases or
5 transactions, sir, that stand out in your mind?

6 A Yeah, there is. I had bought a lot of
7 computer monitors.

8 Q Okay. Sir, regarding the computer monitors,
9 do you recall about how many of those you obtained?

10 A Right around ten, 11, somewhere, maybe more.

11 Q And over what kind of time period did you
12 obtain these?

13 A Couple weeks.

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

16 A Yes, those are the monitors.

17 Q Those are the monitors you were just speaking
18 of you obtained eight or nine of?

19 A Yes.

20 Q Mr. Bowman, why would those computer monitor
21 transactions be particularly memorable to you?

22 A It was the fact that I'd go into stores,
23 right, and I'd keep going into stores until they were
24 completely gone off the shelf so there was no more left

1 on the shelf at all.

2 Q What store would that be?

3 A It would be Wal-Mart.

4 Q So you would keep perpetuating this scheme
5 until Wal-Mart didn't have any of these left?

6 A Exactly.

7 Q Thank you.

8 MS. RIGGS: May I show State's Exhibit 15 to
9 the jury, Your Honor?

10 THE COURT: Yes, you may.

11 BY MS. RIGGS:

12 Q By the way, Mr. Bowman, did you ever
13 participate in this activity by yourself?

14 A No, I did not.

15 Q Even though the defendant had shown you how
16 to do this?

17 A Exactly.

18 Q At all times when you participated in this
19 scheme you were in the personal presence of the
20 defendant?

21 A Yes.

22 Q Sir, do you recall the approximate posted
23 price or Wal-Mart's posted price for those computer
24 monitors?

1 A \$377, approximately, I believe.

2 Q Do you recall what you were paying for them?

3 A 177.

4 Q And, sir, who placed those bar codes on the
5 computer monitors?

6 A I did.

7 Q Who made the bar codes?

8 A The defendant.

9 Q Do you recall, sir, what showed up on the
10 register tape when you made the purchases for those
11 computer monitors?

12 A Seventeen-inch computer monitor.

13 Q Sir, I'm showing you State's Exhibit 16. Do
14 you recognize the items in that exhibit?

15 A Yes, I do.

16 Q Can you explain to me what those items are,
17 please?

18 A A 17-inch monitor and some personal items.

19 Q Do each of those receipts contain an entry
20 for a 17-inch monitor?

21 A Yes, they do.

22 Q Are each of those receipts for a Wal-Mart
23 store?

24 A Yes, they are.

1 Q Are they for various Wal-Mart stores at
2 various times?

3 A Yes, they are.

4 Q Thank you, Mr. Bowman.

5 MS. RIGGS: May I show State's Exhibit 16 to
6 the jury, Your Honor?

7 THE COURT: Yes, you may.

8 MS. RIGGS: Thank you.

9 BY MS. RIGGS:

10 Q Sir, did you and the defendant ever
11 fraudulently obtain any DVD-TV combos at Wal-Mart?

12 A Yes, we did.

13 Q And can you briefly describe what that is, a
14 DVD-TV combo?

15 A It's a DVD player built into a small TV.

16 Q Do you happen to recall the brand name on
17 those items?

18 A Yes, Emerson.

19 Q Do you recall how many you obtained?

20 A Four or five.

21 Q And did you, you and Mr. -- or you and the
22 defendant obtain those from Wal-Mart using a fraudulent
23 UPC bar code?

24 A Yes, we did.

1 Q Can you tell me who made the bar codes that
2 were applied to those --
3 A The defendant.
4 Q -- please? Who affixed them to the TV boxes?
5 A I did.
6 Q Do you happen to recall the approximate price
7 that Wal-Mart was asking for those items?
8 A I believe \$250, somewhere in that area.
9 Q Do you recall what you were paying for them?
10 A 120.
11 Q Did you obtain a receipt for each of these
12 TVs?
13 A Yes, I did.
14 Q And do you recall what item appeared on each
15 receipt that you received?
16 A Yes. A nine-inch TV.
17 Q Did you purchase the TVs at the same time?
18 A No, I did not.
19 Q Did you purchase them all at the same store?
20 A No.
21 Q I'm showing you State's Exhibit 17. Do you
22 recognize those, sir?
23 A Yes.
24 Q And can you tell me or tell the jury what

1 those are, please?

2 A They are the receipts for the TV-DVD combos.

3 Q And what item appears on those receipts?

4 A Sanyo color TV.

5 Q Can you tell me on what date those receipts
6 were printed, please?

7 A 9/24/01, 9/21/01, 9/24/01, 9/26.

8 Q Thank you, sir.

9 MS. RIGGS: Your Honor, may I have permission
10 to show Exhibit 17 to the jury?

11 THE COURT: Yes, you may.

12 BY MS. RIGGS:

13 Q Sir, I'm now showing you State's Exhibit 18.
14 Do you recognize what's depicted in that photograph?

15 A I do.

16 Q What is depicted in that photograph?

17 A The TV-DVD player.

18 Q Is that one of the items that you obtained?

19 A Yes, it is.

20 Q Thank you.

21 MS. RIGGS: Permission to show State's
22 Exhibit 18 to the jury, Your Honor?

23 THE COURT: Permission granted. You may show
24 it to the jury.

1 MS. RIGGS: Thank you, Your Honor.

2 BY MS. RIGGS:

3 Q Sir, do you ever recall fraudulently
4 obtaining with the defendant any sewing machines at
5 Wal-Mart?

6 A Yes, I did.

7 Q And would you proceed as you previously
8 described to the jury here today?

9 A Yes.

10 Q Did you ever have an occasion to return one
11 of those sewing machines to Wal-Mart?

12 A Yes, I did.

13 Q Did you return that sewing machine for the
14 price you paid for it or for the full retail price?

15 A For the price we paid for it.

16 Q So you testified earlier that you would
17 normally return things for the higher retail price --

18 A Right.

19 Q -- is that correct?

20 A That's correct.

21 Q What happened in this case?

22 A The defendant forgot to take the fraudulent
23 bar code off the item.

24 Q So it ended up getting returned for the lower

1 price?

2 A Yes, it did.

3 Q What did the defendant do about this

4 particular transaction, sir?

5 A He waited for it to come back under the shelf

6 and when it came back on the shelf, we had to go back in

7 and buy it.

8 Q So he kept watching and waiting to --

9 A Yes.

10 Q -- make sure he got that sewing machine --

11 A Exactly.

12 Q -- for the reduced price?

13 A Exactly. They didn't take the bar code off

14 of it. They left the same bar code on it.

15 Q So Wal-Mart never noticed that the new

16 fraudulent bar code was on it?

17 A No, they did not.

18 Q And you went back in and repurchased that

19 sewing machine?

20 A Yes, I did.

21 Q Do you recall how much you paid for the

22 sewing machine?

23 A \$99.

24 Q Do you recall about how much Wal-Mart was

1 asking for those?

2 A Roughly 300.

3 Q Sir, I'm showing you Exhibit 19. Do you
4 recognize this?

5 A Yes, I do.

6 Q And can you tell the jury what that is,
7 please?

8 A They are the receipt for the sewing machine.
9 And one of the receipts is for the machine that went
10 wrong.

11 Q Thank you, sir.

12 MS. RIGGS: Your Honor, may I have permission
13 to show Exhibit 19 to the jury?

14 THE COURT: Yes, you may.

15 BY MS. RIGGS:

16 Q Sir, I'm now showing you State's Exhibit 20.
17 Do you recognize what that is?

18 A Yes, I do.

19 Q What is that?

20 A This is the sewing machine.

21 Q Is that the sewing machine that you bought,
22 returned and then rebought again?

23 A It very well could be.

24 Q Is that the type of sewing machine that was

1 involved in that transaction?

2 A It is the type, yes. Yes, it is.

3 Q Thank you.

4 MS. RIGGS: Your Honor, may I have permission
5 to show State's Exhibit 20 to the jury?

6 THE COURT: Yes, you may.

7 MS. RIGGS: Thank you.

8 BY MS. RIGGS:

9 Q Sir, on the day that you were arrested,
10 October 17th, 2001, did you engage in a fraudulent
11 transaction at Wal-Mart?

12 A Yes, I did.

13 Q Do you remember which Wal-Mart?

14 A The one on Del Monte.

15 Q Would that be Del Monte or Damonte?

16 A Del Monte. The brand-new one.

17 Q It's the new one down on South Virginia
18 Street --

19 A Yes.

20 Q -- off of Arrowcreek Parkway?

21 What merchandise did you obtain that day,
22 sir?

23 A I bought a mountain bike.

24 Q Was the bicycle obtained using a fraudulent

1 UPC bar code label?

2 A Yes, it was.

3 Q On October 17th, 2001, sir, who made that

4 label?

5 A The defendant did.

6 Q Did you watch him make that label that day?

7 A That label, no. It was already made.

8 Q It was made when?

9 A It was made when -- I have no idea when he

10 made it. It was already made when he picked me up.

11 Q So by the time you arrived at Wal-Mart it had

12 already been made?

13 A Yes.

14 Q Do you recall about approximately what time

15 of day you went to Wal-Mart?

16 A It was roughly around 4 o'clock.

17 Q And who placed the UPC bar code on that

18 bicycle, sir?

19 A The defendant did.

20 Q So during this transaction it was actually

21 the defendant who went into the store, correct?

22 A Correct.

23 Q Did you meet him inside the store or did you

24 meet him outside the store?

1 A I waited outside the store for him.

2 Q Where approximately were you?

3 A I was in the van, roughly in the middle of

4 the parking lot.

5 Q And what were you doing while you were

6 waiting for him?

7 A I was smoking a cigarette.

8 Q And did the defendant eventually come out of

9 the store?

10 A Eventually, yes.

11 Q And what was his conversation with you?

12 A Conversation with me was that he had placed

13 the label on a Mongoose mountain bike, he told me where

14 it was at and handed me the money and told me to go get

15 it.

16 Q And did you go into the store?

17 A Yes, I did.

18 Q And where did you go?

19 A I went around to the electronics shop, the

20 electronic section of the store and worked my way to the

21 bicycle display and found it on the rack. Couldn't get

22 it off the rack by myself. I had one of the store clerks

23 help me get it off the rack and then I wheeled it up to

24 the cashier.

1 Q Okay.

2 MS. RIGGS: And, Your Honor, I apologize at
3 this time, it looks like the jury is beginning to
4 accumulate some exhibits. I believe that the court clerk
5 will have no objection if they want to, when they are
6 finished looking at them, put them in the spare chair up
7 at the top, if you have no objection to that.

8 THE COURT: No. I see that Mr. Christiansen
9 is placing them in the extra chair there in the corner
10 and that's a fine place for them for the time being.

11 MS. RIGGS: Okay. Thank you, Your Honor.

12 BY MS. RIGGS:

13 Q Sir, you said that Mr. Volpicelli did place
14 the UPC tag on this bike. Where was that located
15 specifically?

16 A It was located specifically on the bar that
17 holds the seat to the bike.

18 Q So what happened when you got to the
19 register?

20 A I wheeled it up to the register, right, I
21 proceeded to tear the UPC bar code off and handed it to
22 the cashier. I told her it would be a lot easier if I
23 handed it to her than if she scanned it.

24 Q And did she go ahead and scan the bar code?

1 A Yes, she did.

2 Q Sir, do you recall what Wal-Mart's asking
3 price was for that bicycle?

4 A \$249.

5 Q Do you recall what price you paid for it?

6 A \$80.

7 Q Where did you get the money to pay for it?

8 A From the defendant.

9 Q And what did you do with the bike after
10 paying for it?

11 A I put it in the van.

12 Q Now, sir, do you ride a bicycle?

13 A No, I don't.

14 Q Even though you don't drive you don't ride a
15 bicycle?

16 A No, I take the bus wherever I go, or I walk.

17 Q Do you have any children?

18 A Not in this state, no.

19 Q No small children that would be using a
20 bicycle?

21 A No.

22 Q So did you, at any time did you intend to
23 retain the bicycle?

24 A No, I did not.

1 Q And, again, where did you put the bicycle
2 when you came out of the store?

3 A In the back of the van.

4 Q And you received a receipt when you purchased
5 the bicycle, correct?

6 A Yes, I did.

7 Q I'm showing you State's Exhibit 21. Can you
8 tell me what's, what I have just handed you, please?

9 A It's a receipt for the bike.

10 Q And can you tell me what date is printed on
11 that, please?

12 A October 17th, 2001.

13 Q And what is indicated on that receipt,
14 please?

15 A 26-inch mountain bike.

16 Q And what is the price indicated?

17 A 74.96.

18 Q \$74.96?

19 A Yes, it is.

20 Q Now I'm showing you State's Exhibit 3,
21 Mr. Bowman. Can you tell me what that is or do you
22 recognize it?

23 A It's the price for the 26-inch Mongoose.

24 Q And is that the actual price that was posted

1 at Wal-Mart?

2 A Yes, it is.

3 Q And I'm showing you State's Exhibit 5. Do
4 you recognize what that is, sir?

5 A That's the bicycle.

6 Q That's the bicycle that you took down from
7 the rack and obtained with a UPC bar code that the
8 defendant gave you?

9 A It is.

10 Q And with the defendant's money, correct?

11 A That's correct.

12 Q Thank you.

13 MS. RIGGS: Your Honor, may I have permission
14 to show State's Exhibit 21 to the jury?

15 THE COURT: Yes, you may.

16 MS. RIGGS: Thank you.

17 BY MS. RIGGS:

18 Q Sir, you mentioned that you obtained some
19 expensive rugs -- Oh, I'm sorry, you did not say that.
20 Did you have occasion to go to Lowe's?

21 A Yes.

22 Q Did you ever purchase anything at Lowe's
23 using a fraudulent UPC bar code?

24 A Yes.

1 Q What did you purchase at Lowe's?
2 A Rugs, high-end rugs.
3 Q Okay. When you say high-end rugs, what do
4 you mean by that?
5 A Rugs that retailed for \$500 apiece.
6 Q How many times did you do this; do you
7 recall?
8 A Twice.
9 Q And who made the bar codes that you used when
10 you went into Lowe's?
11 A The defendant.
12 Q Who placed the bar codes on the rugs?
13 A I did.
14 Q Do you recall whether those rugs had any
15 packaging when you --
16 A Yes, they were in a white fiberglass
17 packaging, fiberglass mesh packaging.
18 Q And were the rugs flat, were they rolled up;
19 do you recall?
20 A They were rolled up.
21 Q Where on the rugs, sir, specifically did you
22 place the bar codes?
23 A Over the original bar code at the end of the
24 package.

1 Q You said how many of these did you purchase?
2 A Two.
3 Q Were they bought at the same time?
4 A No, they were not.
5 Q Approximately how far apart were they bought?
6 A A week.
7 Q And you said earlier, you had mentioned
8 earlier what the store's purchase price or list price was
9 for those rugs; do you recall?
10 A They were listed at \$500 apiece.
11 Q Do you recall what you were paying for those
12 rugs?
13 A \$80.
14 Q And, sir, do you recall receiving receipts
15 for the rug transactions?
16 A I do.
17 Q Sir, I'm showing you State's Exhibit 22, can
18 you tell me what this is?
19 A It's a receipt for an area rug.
20 Q What is the price indicated on that rug?
21 A \$74.
22 Q Do you recognize that as one of the receipts
23 you obtained during one of these two fraudulent
24 transactions?

1 A Yes, it is.

2 Q Thank you.

3 MS. RIGGS: Your Honor, may I have permission
4 to show State's Exhibit 22 to the jury?

5 THE COURT: Yes, you may.

6 MS. RIGGS: Thank you.

7 BY MS. RIGGS:

8 Q Now, sir, what happened to the rugs after you
9 obtained them?

10 A I put them in the van.

11 Q Did you ever see them again after that?

12 A I did not.

13 Q 'Sir, did you ever have occasion to go into
14 Home Depot?

15 A Yes, I did.

16 Q Do you remember a particular transaction at
17 all that you conducted in Home Depot?

18 A Yeah, I bought a toilet for the price of a
19 one-horsepower garbage disposal.

20 Q So did the -- Am I to assume from that
21 statement, did the register tape read out one-horsepower
22 garbage disposal when a toilet was rung up?

23 A Yeah, it rung up as a garbage disposal.

24 Q Do you recall what time of day that was, sir?

1 A It was in the morning.

2 Q Do you recall approximately how much Home

3 Depot was charging for that toilet?

4 A Roughly 3- or \$400, I believe.

5 Q Was the toilet obtained using a fraudulent

6 UPC code label?

7 A It was.

8 Q Again, who made that label?

9 A The defendant.

10 Q And was, how was the toilet packaged?

11 A A big box.

12 Q And you checked out at the register; is that

13 correct?

14 A That's correct..

15 Q Do you recall receiving a receipt?

16 A Yes, I do.

17 Q Did the clerk ask you any questions when here

18 you are with this big box obviously containing a toilet

19 and a one-horsepower or a garbage disposal appears on the

20 register tape?

21 A No. All he asked was the money.

22 Q Nobody at Home Depot picked up on it?

23 A No.

24 Q How did you pay for the toilet, sir?

1 A Cash.

2 Q And where did you get that cash?

3 A From the defendant.

4 Q I'm showing you what's been marked as State's

5 Exhibit 23. Can you tell me what that is or do you

6 recognize it?

7 A It's a receipt for the toilet.

8 Q What is indicated on the receipt?

9 A One-horsepower disposal.

10 Q And how much is, what's the price as

11 indicated on the receipt?

12 A 194.

13 Q And, again, that's far less than what Home

14 Depot was asking for the toilet?

15 A A lot less.

16 Q Thank you.

17 MS. RIGGS: Permission to show State's

18 Exhibit 23 to the jury, Your Honor?

19 THE COURT: Yes, you may.

20 MS. RIGGS: Thank you.

21 THE COURT: We're headed towards a recess

22 again since it appears this witness will be still a bit

23 longer from what I can tell. But if we have a recess, I

24 don't want the actual exhibits to go into the jury room

1 at this time. I don't think that's appropriate. So
2 perhaps, since you keep giving these items to the jury
3 and they are still looking at them, perhaps I can let the
4 last receipt be placed in the chair and then we'll take a
5 recess.

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

7 THE COURT: Now, during the course of this
8 upcoming recess, I will admonish the jurors that you are
9 not to discuss this case among yourselves, with anyone
10 else, do not read, watch or listen to any media account
11 of this proceeding, and do not form or express an opinion
12 on any subject connected with this trial until the matter
13 is submitted to you for your deliberation.

14 And perhaps we could just pass the last of
15 the receipts and have them placed in the chair there
16 since we want to preserve the integrity of these
17 exhibits.

18 Court will stand in recess.

19 THE BAILIFF: All rise.

20 (Recess taken from 3:46 p.m. to 4:08 p.m.)

21 THE BAILIFF: Court is again in session.

22 THE COURT: You may be seated.

23 Ms. Riggs, you may continue.

24 MS. RIGGS: Thank you, Your Honor.

1 BY MS. RIGGS:

2 Q Sir, before the break we were talking about
3 the purchase of a toilet at Home Depot. Do you recall
4 that?

5 A Yes, I do.

6 Q And you recall your testimony that you had
7 purchased that toilet with a bar code that had come from
8 a garbage disposal, correct?

9 A Exactly.

10 Q Sir, I'm showing you State's Exhibit 24. Can
11 you tell me what that is, if you recall?

12 A It's the toilet.

13 Q That's the toilet that you purchased?

14 A Yes, it is.

15 Q Thank you.

16 MS. RIGGS: Your Honor, may I show the jury
17 State's Exhibit 24?

18 THE COURT: Yes, you may.

19 MS. RIGGS: Thank you.

20 BY MS. RIGGS:

21 Q Mr. Bowman, do you also recall in conjunction
22 with the defendant making fraudulent purchases at a bed
23 and bath store?

24 A Yes, I do.

1 Q Do you recall the name of that store?
2 A Bed & Bath Beyond.
3 Q Okay. Do you recall what merchandise you
4 obtained at that store?
5 A Two coffeemakers.
6 Q Did you use fraudulent UPC bar codes to
7 obtain those two items?
8 A Yes, I did.
9 Q Who made those bar codes, sir?
10 A The defendant.
11 Q Who placed those on the coffeemakers?
12 A I did.
13 Q Do you recall what Bed Bath & Beyond was
14 charging for those coffeemakers?
15 A A hundred dollars apiece.
16 Q And how much were you paying for them, if you
17 recall?
18 A \$30.
19 Q Did you receive a receipt for each of these
20 transactions?
21 A Yes, I did.
22 Q I'm showing you what's been marked as State's
23 Exhibit 25. Do you recognize that, sir?
24 A Yes, I do.

1 Q And what is it?

2 A It's for the coffeemakers.

3 Q And they were -- How many coffeemakers were
4 purchased during that transaction?

5 A Two.

6 Q And that's the -- Can you tell me what date
7 that was, please?

8 A 9/21/01.

9 Q September 21, 2001?

10 A Yes.

11 Q Thank you.

12 MS. RIGGS: Permission to show State's
13 Exhibit 25 to the jury, Your Honor?

14 THE COURT: Yes, you may.

15 MS. RIGGS: Thank you.

16 BY MS. RIGGS:

17 Q Now, sir, the two coffeemakers that you
18 bought, you did mention earlier that you kept a coffee
19 maker. Did you keep one of these coffeemakers purchased
20 at Bed Bath & Beyond?

21 A Yes, I did.

22 Q What happened to the other one?

23 A I gave it to the defendant.

24 Q Sir, I'm showing you State's Exhibit 26. Do

1 you recognize what's depicted in this paragraph?

2 A Yes, I do.

3 Q And what is that?

4 A It's one of the coffeemakers.

5 Q And that's one of the coffeemakers that was
6 purchased on this night in question?

7 A Yes, it is.

8 Q Thank you.

9 MS. RIGGS: Your Honor, may I show State's
10 Exhibit 26 to the jury?

11 THE COURT: Yes, you may.

12 MS. RIGGS: Thank you.

13 BY MS. RIGGS:

14 Q We're going to return your attention now,
15 Mr. Bowman, to the night you were arrested. And before
16 we do go on, can you tell me if you have a job now?

17 A I do.

18 Q Where do you work now?

19 A I work at Baldini's Grand Pavilion.

20 Q What are your work hours?

21 A From 8:30 at night to whenever I get off,
22 usually by 7:00 a.m.

23 Q Do you work graveyard shift?

24 A Yes, I am.

1 Q So did you get any sleep right now?

2 A About an hour.

3 Q So you are running on one hour sleep right

4 now, correct?

5 A That's correct.

6 Q We'll move through this as fast as we can,

7 Mr. Bowman.

8 Returning your attention to October 17th,

9 2001, you testified that you just obtained a Mongoose

10 bicycle, correct?

11 A That's correct.

12 Q After you returned to the vehicle, did the

13 two of you, meaning you and the defendant, leave

14 Wal-Mart?

15 A Yes, we did.

16 Q How far did you get?

17 A Just down the street.

18 Q Why did you get just down the street?

19 A We were pulled over.

20 Q By whom?

21 A The police.

22 Q And how did you become aware that the police

23 were trying to stop the two of you?

24 A By the red and blue flashing lights.

1 Q And who was driving at this point?
2 A The defendant.
3 Q What vehicle was he driving?
4 A The Mazda MPV.
5 Q Now, did the defendant stop the vehicle
6 immediately when it became apparent that the two of you
7 were being pulled over by the police?
8 A No, he did not.
9 Q He kept driving?
10 A He did.
11 Q Did either -- Do you recall whether either of
12 you had a cellular telephone with you that day?
13 A He did.
14 Q Did you?
15 A I did not.
16 Q Did Mr. -- or did the defendant attempt to
17 make any phone calls before the vehicle was pulled to the
18 side of the road?
19 A Just one.
20 Q And you could hear him speaking?
21 A I could.
22 Q Could you tell from what he was saying who he
23 was speaking, or who he was speaking to?
24 A One of his boys.

1 Q One of his children?

2 A Yes.

3 Q What was the defendant saying to his child?

4 A He was apologizing to him.

5 Q Apologizing saying what?

6 A That he had screwed up, that he was headed

7 back to jail.

8 Q Did the defendant eventually pull the car

9 over?

10 A He did.

11 Q Did you have to do anything to convince him

12 to pull that car over?

13 A No. It was a big -- As we went down the

14 road, right, the bigger the police car procession got

15 behind us.

16 Q So you got down to, what, the 9000 block of

17 Virginia Street?

18 A I truly don't remember how far. It wasn't

19 very far, a couple lights.

20 Q Would you say it was about the same -- You

21 got to about where the Winco store is now, maybe not

22 quite that far?

23 A To be honest with you I don't remember.

24 Q Okay.

1 A I know it was a used car lot at the time.

2 Q Sir, when the officer stopped the two of you,

3 was any of the evidence that you described today in the

4 van?

5 A Yes.

6 Q Can you tell me what was in the van?

7 A The bike. There was a comforter. The label

8 maker, the carry -- all the equipment to, to make the bar

9 codes, the bar code receipts, everything.

10 Q So the little plastic organizer, the

11 accordion folder was in there?

12 A Yes, it was.

13 Q And, again, the label maker?

14 A Yes.

15 Q Do you have any personal knowledge about how

16 all that stuff, discounting the bicycle, got into the

17 van?

18 A No.

19 Q Did you put any of that stuff in the van?

20 A I did not.

21 Q Sir, was the defendant arrested that evening?

22 A He was.

23 Q Were you arrested that evening?

24 A I was.

1 Q Were you charged with any crimes resulting
2 from your participation in the scheme that you have just
3 described to the jury?

4 A Yes, I was.

5 Q What was the charge?

6 A Burglary.

7 Q During the police investigation of this
8 defendant, did you cooperate with the police?

9 A I did.

10 Q How did you cooperate?

11 A By answering the questions truthfully.

12 Q Did you give statements to the police
13 regarding dates, times, stores, items obtained, methods
14 that you used, things like that?

15 A I did.

16 Q What's the status of your criminal case now,
17 sir?

18 A I'm currently incarcerated, coming towards
19 the end of it.

20 Q When is your incarceration going to be over?

21 A February 9th of next year.

22 Q Do you anticipate being on parole at that
23 time?

24 A I do.

1 Q Did you plead guilty pursuant to a plea
2 bargain in this case, sir?

3 A I did.

4 Q Were any other charges dismissed by the
5 district attorney in exchange for your plea of guilty to
6 one count of burglary?

7 A Yes, there was.

8 Q Has anyone told you what to say here today?

9 A No.

10 Q Were you threatened or promised anything in
11 exchange for your plea or your testimony here today?

12 A No.

13 Q Sir, during -- between June and October 2001,
14 did you have a job?

15 A I did.

16 Q And how many hours per week do you, did you
17 work during that time?

18 A Forty to 56.

19 Q Up to 56 hours per week?

20 A Up to 56 hours per week.

21 Q During the time you were acquainted with the
22 defendant, did you have any personal knowledge as to
23 whether he had a job?

24 A Yes, I do.

1 Q Did he have a job or didn't he?
2 A He did not.
3 Q Did he ever inform you about whether he had
4 any other source of income since he wasn't working?
5 A Just his credit cards from what I know.
6 MS. RIGGS: State has nothing further for
7 this witness. Thank you, Your Honor.
8 THE COURT: Mr. Van Ry, you may ask questions
9 of the witness.
10 MR. VAN RY: I do. Thank you. May I
11 approach?
12
13 ^.^ CROSS-EXAMINATION ^.^
14 BY MR. VAN RY:
15 Q Mr. Bowman, I note that you are, you appear
16 to be very tired; is that correct?
17 A I am tired, yes.
18 Q Is that tiredness the result of any
19 medication you might be taking?
20 A No, it is not.
21 Q So your testimony is you are not taking any
22 medication?
23 A None.
24 Q You are not taking any Xanax?

1 A No.

2 Q No Paxil?

3 A No.

4 Q You testified that you did plead guilty in
5 this matter, that there were charges dismissed; is that
6 correct?

7 A That is correct.

8 Q How many charges were dismissed?

9 A Six.

10 Q And were those six also burglary charges?

11 A Some were burglary, some were conspiracy.

12 Q When you agreed to plead guilty to one count,
13 was there a stipulation or an agreement as to the
14 possible sentence you would receive?

15 A Yes.

16 Q And what was that?

17 A A one-to-ten.

18 Q So you gave up six, at least six other
19 charges in return for an agreed one-to-ten sentence; is
20 that correct?

21 A That's correct.

22 Q And in fact when you were sentenced, the
23 sentence was even better than a one-to-ten; is that
24 correct?

1 A That's correct.

2 Q The judge gave you a lighter sentence. What
3 was that sentence that he gave you?

4 A Sixteen to 48, 16 months to 48 months.

5 Q So instead of the six charges you may have
6 had as felonies, you ended up with a 16 to, 16-month to
7 four-year sentence; is that correct?

8 A That's correct.

9 Q What other felonies, if any, do you have in
10 your background?

11 MS. RIGGS: Objection. Objection, Your
12 Honor. Prior bad acts.

13 THE COURT: I am just wondering, is this
14 something that would fall into the category of statutory
15 prior convictions? Is this what you are after?

16 MR. VAN RY: That's correct.

17 THE COURT: Well, that would be limited to
18 felony convictions within the past ten years.

19 MR. VAN RY: That's correct, Your Honor. I
20 can clarify that question.

21 THE COURT: All right.

22 I would overrule the objection insofar as
23 we're only talking about statutory convictions.

24 /////

1 BY MR. VAN RY:

2 Q In the last ten years have you been convicted
3 of any other felony?

4 A Yes, I have.

5 Q What was that?

6 A Burglary and forgery.

7 Q And was that here in Nevada?

8 A Yes, it was.

9 Q When you say forgery, was that forging of
10 checks?

11 A It was forging of checks.

12 Q In effect during the time that you allege
13 that you were involved with Mr. Volpicelli in this
14 scheme, you were on parole and probation for those
15 charges; is that correct?

16 A That's correct.

17 Q And in fact Mr. Volpicelli gave you rides
18 because you didn't have a car to check in to your parole
19 and probation officer; is that correct?

20 A One time, yes, and then we were arrested.

21 Q Did Mr. Volpicelli give you rides to other
22 places, like to purchase culinary items for your work?

23 A That was on the way back from doing our
24 scheme.

1 Q So that would be a yes, he did?

2 A Yes.

3 Q Did he ever drop you off at the Gold Dust

4 West?

5 A Yes, he did.

6 Q Did he ever drop you off at the Silver

7 Legacy?

8 A Yes, he did.

9 Q Did the detectives in this case ever assist

10 you in obtaining a paycheck from the Sands?

11 A No.

12 Q So your testimony is you never received

13 assistance from the detectives in this matter to receive

14 your paycheck from the Sands?

15 A To receive my paycheck?

16 Q Right.

17 A That's correct.

18 Q So that would be a no, it didn't happen?

19 A It didn't happen.

20 Q Okay. This case has been pending for quite

21 some time in terms of my client and when these actions

22 allegedly occurred. How many conversations have you

23 personally had with detectives?

24 A Several.

1 Q Pardon?

2 A The actual number I couldn't say. There's
3 been several.

4 Q Would it have been more than five?

5 A Yes.

6 Q And, again, additionally in preparing for
7 your role in this, because it was understood pursuant to
8 the agreement that you would, you might be called upon to
9 testify against Mr. Volpicelli; is that correct?

10 A That's correct.

11 Q During the course of the preparation for
12 that, have you spoken with the district attorney or any
13 district attorneys?

14 A Yes, I have.

15 Q How many times?

16 A Twice.

17 Q Now, you testified earlier that you did keep
18 a shaver and a coffee maker in your apartment; is that
19 correct?

20 A That's correct.

21 Q Isn't it also true that you kept a CD player?

22 A Not to my knowledge.

23 Q Isn't it also true that you kept an alarm
24 clock?

1 A Don't recall.

2 Q Is it also true that you kept one of those
3 home theater systems we talked about?

4 A No, it is not.

5 Q Have you ever purchased a Brother label maker
6 at a Staples in California?

7 A No, I have not.

8 Q During this time in the summer to the fall of
9 October, excuse me, of 2001, did you have access to a
10 computer?

11 A No, I did not.

12 Q You did not?

13 Now, you testified that on most occasions you
14 claim that you would go in separate from Mr. Volpicelli
15 into the store that, whatever the place was; is that
16 correct?

17 A That's correct.

18 Q What dates and what times were there when
19 Mr. Volpicelli entered the store at the same time you
20 did?

21 A There's too much of a time in between to give
22 you those exact dates for sure.

23 Q You are not sure of those exact dates?

24 A No.

1 Q Were there times when Mr. Volpicelli would
2 walk in by himself without you and then you would follow
3 him?

4 A There was times, yes.

5 Q And what dates and times would those be?

6 A I, again, it's been too long of a time to
7 recall that.

8 Q You don't recall for sure?

9 A No.

10 Q And were there also times when you walked
11 into the store on your own without Mr. Volpicelli
12 entering at all?

13 A That's correct.

14 Q And what dates and times were those?

15 A Again, just the times when I had gone in,
16 right, to do the purchase or he'd stay out in the van.
17 But to remember dates and times, again --

18 Q So the answer -- I'm sorry to interrupt. The
19 answer would be you don't recall?

20 A I don't know.

21 MR. VAN RY: If I may have a moment, Your
22 Honor.

23 THE COURT: Yes.

24 /////

1 BY MR. VAN RY:

2 Q Let's go back to your plea agreement. During
3 the course of the negotiations of your plea agreement,
4 which means that where you were to enter a plea in return
5 for some agreement by the State, was there a discussion
6 of the habitual criminal statute?

7 A For me?

8 Q Um-hum.

9 A No.

10 Q That didn't come up?

11 A No.

12 Q You testified at one point that you became
13 angry at Mr. Volpicelli because he didn't arrive soon
14 enough to pick you up, you had to wait for 30, 35
15 minutes. Do you remember that testimony?

16 A Yes, I do.

17 Q Is that the only time you became angry with
18 Mr. Volpicelli?

19 A Yes, it is.

20 Q So your testimony is you never at any time
21 during this summer and fall escapade, you only became
22 angry with him once?

23 A Only one time. It's the only time he left me
24 standing out in front of the store for a half hour.

1 Q Are you angry with him because you were with
2 him when you were arrested?

3 A I was mad, sure.

4 Q Yes?

5 A I was upset I was going back to jail.

6 MR. VAN RY: If I may have a moment, Your
7 Honor.

8 BY MR. VAN RY:

9 Q Did you ever ask Mr. Volpicelli if you could
10 use his vehicle for the purpose of you going on a date?

11 A No, I did not.

12 Q Did Mr. Volpicelli give you money to help you
13 go to Salt Lake City for the funeral of your father?

14 A Only after when I did the service for him.

15 Q But he did give you some money for that?

16 A Yes, he did.

17 Q So you could go to Salt Lake for the funeral
18 of your father?

19 A That's correct. But like I said, the prior
20 day, right, we went on three or four stores.

21 Q This is a broad question, but I need some
22 clarification on this point. Is it your testimony that
23 you never actually saw Mr. Volpicelli affix these
24 fraudulent UPC labels to any item that you purchased?

1 A That's correct.

2 Q So the only way you know that he put those on
3 those items is based upon what you claim he told you; is
4 that correct?

5 A That's correct.

6 Q Just one further moment, Your Honor, if I
7 may.

8 MR. VAN RY: Nothing further, Your Honor.
9 Thank you.

10 THE COURT: Ms. Riggs, you may ask additional
11 questions, if you wish.

12 MS. RIGGS: Thank you, Your Honor, I just
13 have a couple.

14

15 ^.^ REDIRECT EXAMINATION ^.^

16 BY MS. RIGGS:

17 Q Mr. Bowman, you had indicated to defense
18 counsel that you were angry with Mr. Volpicelli on, at
19 the time of your arrest, correct?

20 A That's correct.

21 Q Do you have a reason for that, sir?

22 A Yes, I was headed back to jail. I know I was
23 headed back to jail. I had been caught, he wouldn't pull
24 over.

1 Q And you were angry at him because he wouldn't
2 pull over?

3 A Mainly because I was going back to jail
4 because I was mad. I was more mad at myself than him.

5 Q Did the defendant indicate to you that he
6 knew he was being followed?

7 A Yes, he did.

8 Q By the police?

9 A Yes.

10 Q Didn't bother to tell you this during the
11 time of your scheme with him, did he?

12 A No, he didn't.

13 Q And let's go into this a little more. You
14 said that you were angry at yourself. Mr. Bowman, why,
15 if you had just gotten out of prison, you said, why did
16 you start participating in this particular scheme?

17 A At the time I was making \$7 an hour. I
18 just -- and garnishment for half my pay before taxes.

19 Q What was the purpose of that garnishment?

20 A Child support. And I hadn't really had a
21 chance to get on my feet and I was sinking.

22 Q Sinking, is that the --

23 A Yeah, I was losing everything.

24 Q And did that \$200 a night seem attractive to

1 you?

2 A Very attractive.

3 Q And, again, you were working 40 to 56 hours
4 per week at this time --

5 A Per week.

6 Q -- at this time, correct?

7 A That's correct.

8 Q As far as you know the defendant wasn't
9 working at all, correct?

10 A No.

11 Q So what are you doing now? What is -- You
12 have testified that you are working, correct?

13 A That's correct.

14 Q And what is your job again?

15 A I cut donuts.

16 Q And where is this?

17 A The Grand Pavilion at Baldini's.

18 Q And how many hours per week do you work?

19 A Close to 66.

20 Q Since you've been at the Northern Nevada
21 Restitution Center, sir, have you maintained a steady
22 job?

23 A I have.

24 Q What's your plans for when you get out of

1 that facility?

2 A To maintain work, get an apartment, get on my
3 feet. The facility has actually offered me an
4 opportunity where I can get a good start, to where when I
5 do get the garnishment, which is coming, I guarantee a 50
6 percent garnishment when I got out, but this time I'll
7 have money in my pocket to weather the storm. And if I
8 have to I'll go get a second part-time job to maintain
9 it.

10 Q So Mr. Bowman, you sound like you are
11 determined to make it out on the outside this time?

12 A I've had enough. Enough's enough.

13 Q Okay. Now, you testified to defense counsel
14 that sometime during the duration of this scheme your
15 father died in Utah, correct?

16 A That's correct.

17 Q At that time did the defendant approach you
18 and say, "Hey, Brett, you know, I'm sorry to hear your
19 bad news, I know you are short, here's some money, go
20 see, you know, go do what you got to do in Utah?" Was
21 the conversation anything like that?

22 A Nothing like that at all.

23 Q So you sound like or it sounds like by the
24 testimony you gave you basically had to work for it,

1 correct?

2 A That's correct.

3 Q After -- Well, let me ask you this.

4 On the day that the defendant gave you some
5 money to go to Utah, you said that was after you had
6 completed the work or the scheme for the day before,
7 correct?

8 A That's correct.

9 Q Did you tell him about your father before or
10 after you started that work?

11 A It was after.

12 Q So, so now I'm a little confused. Was he
13 aware prior to when you started doing the job or hitting
14 the stores that your dad had died?

15 A He was aware that my father was deathly ill
16 in the hospital at the time, and over the course of a
17 12-hour period he had passed away. And then I had
18 informed him, right, that I might have to go back to Utah
19 for a couple of days.

20 Q What was his response when you said that?

21 A Sorry to hear basically.

22 Q But no "here's some money"?

23 A No.

24 Q You did the work first?

1 A Did the work first.

2 Q Then he --

3 A I went out and worked for it. He didn't pay
4 me that day. He paid me the following day before I left.

5 Q Now, why didn't he pay you that day?

6 A Because he didn't have enough money in his
7 pocket to pay me after we got done doing what we did.

8 Q Did he tell you that before you hit the
9 stores that night?

10 A No.

11 Q He didn't tell you he didn't have enough
12 money to pay you that night?

13 A No.

14 Q So then what happened?

15 A At the end of the day, "I'll get with you
16 tomorrow and I'll pay you tomorrow." And I said that
17 would be fine.

18 Q Okay. And then --

19 A It happened like that a few times, which was
20 okay with me because he was always good for the money.

21 Q But not always good the day that you --

22 A Right, that's correct.

23 Q And to finish my question, I was going to say
24 that the day you hit the stores, sometimes he would not

1 pay you right away, you would have to wait for a day or
2 so?

3 A Right.

4 Q Okay. Thank you.

5 MS. RIGGS: State has nothing further, Your
6 Honor.

7 THE COURT: Anything else?

8 MR. VAN RY: Your Honor, I do have a matter
9 we need to consider outside the presence of the jury.

10 THE COURT: Would you, in general, though, be
11 finished with this witness?

12 MR. VAN RY: Yes, Your Honor. Well, may I
13 approach?

14 THE COURT: Yes, you may approach the bench.

15 (A discussion was held at the bench off the
16 record.)

17 THE COURT: Mr. Bowman, you may be excused.
18 And we will be excusing the jury for the day as well.

19 I will admonish the jury that you are not to
20 discuss this case amongst yourselves or with anyone else.
21 Do not read, watch or listen to any media account of this
22 proceeding and do not form or express any opinion on any
23 subject connected with this trial until the matter is
24 submitted to you for your deliberation.

1 Now, on Tuesday and Thursday mornings this
2 department has some summary criminal matters, so we have
3 that at 8:30 tomorrow morning as well. I'm informed we
4 have 19 matters and eight of those are sentencings, so I
5 am going to anticipate that it will take a while to work
6 through that morning docket, so we'll be in recess until
7 10:30 tomorrow. So if you would be back here at 10:30,
8 we'll start up then. I would imagine the morning
9 criminal matters will be over. So with that we'll all
10 rise for the exit of the jury.

11 And Mr. Bowman, you are excused.

12 THE WITNESS: Thank you, Your Honor.

13 MR. VAN RY: For the record, defense reserves
14 the right to recall Mr. Bowman.

15 MS. RIGGS: And also the State, Your Honor.

16 Thank you.

17 THE COURT: All right.

18 MS. RIGGS: Thank you.

19 THE WITNESS: No problem.

20 (The following proceedings were had in open
21 court, defendant present, out of the presence
22 of the jury.)

23 MR. VAN RY: Your Honor, I think it would be
24 appropriate that I speak, unless you have something you

1 wanted to direct me to do.

2 THE COURT: I just want to make sure
3 Mr. Bowman had exited the room before we get into any
4 other matter. And I was informed, Mr. Van Ry, that you
5 wish to put something on the record outside the presence
6 of the jury.

7 MR. VAN RY: Yeah, thank you, Your Honor.
8 After cross-examination of several witnesses, and
9 particularly Mr. Bowman, my client indicates a desire to
10 do further cross-examination of the witness by himself.
11 And that's where we're at. And we bring that to the
12 Court's attention because I know that I am currently
13 counsel of record and I believe strategic questioning is
14 within the domain of my skill, expertise and my
15 representation in this matter.

16 THE COURT: Well, Mr. Volpicelli, is it true
17 that you wanted to ask additional questions of the
18 witness?

19 THE DEFENDANT: Your Honor, I have a slurry
20 of questions which I would like to address to each of the
21 witnesses. And in the event that the questions are not
22 in line with the protocol of the Court, I would be glad
23 to consult with counsel to modify those questions to suit
24 the Court's needs.

1 THE COURT: Well, Mr. Volpicelli, you are
2 represented by counsel and your side does not get two
3 attorneys, so to speak, to ask questions of the witness.
4 As long as you are represented by counsel, questions will
5 be asked by Mr. Van Ry and no one else for the defense
6 side. And if you are dissatisfied with the services of
7 your attorney, you know, that's something that can be
8 brought up, you know, after the trial. But we're not
9 going to disturb the way the trial is proceeding in this
10 matter in that you did make a motion to represent your,
11 yourself and we are proceeding with you being represented
12 by counsel. But we do have the record that, you know,
13 you wanted to ask additional questions.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: But your attorney is the one
16 asking the questions and representing you in this matter.
17 He's the trained legal expert and has to make those
18 strategic decisions as to what is going to be most
19 favorable for you in the eyes of the jury.

20 And with that we will stand in recess
21 until --

22 MS. RIGGS: Your Honor, I apologize. May I
23 bring one more matter to the Court's attention?

24 During Mr. Van Ry's cross-examination of

1 Mr. Bowman, he went into the fact that Mr. Bowman has a
2 felony conviction and that he was going to his parole
3 officer. I believe that -- and that was specifically
4 interested his character at part -- or specifically gone
5 into as character evidence. What I believe that does is
6 it opens up the door for the State to show where
7 Mr. Bowman met Mr. Volpicelli, which was in prison.
8 Mr. Volpicelli, or the defendant has now attacked Brett
9 Bowman's character with a felony conviction. The State
10 should have right to say, okay, so how did you two meet.
11 If he's going to be characterized as an ex-felon person
12 who was recently in prison, State has a right to present,
13 well, where did they meet in June 2001 if Mr. Bowman was
14 recently in prison. They met in prison, Your Honor.

15 THE COURT: And Mr. Van Ry, do you have
16 anything to say as to this?

17 MR. VAN RY: Yeah, I do. I think that's a
18 ridiculous leap. Mr. Bowman is the one who is testifying
19 for the State, and as a defense we have a right to
20 examine his motives, his bias, his interests, and that
21 does not open the door to my client's potentially prior
22 bad acts and/or location. I think that may be a
23 different story if my client chooses to testify, however,
24 but I don't think inquiring about Mr. Bowman's prior

1 previous felony convictions opens any door as to
2 Mr. Volpicelli's location at the time they met.

3 THE COURT: Well, I see that NRS 50.095 talks
4 about impeachment by evidence of conviction of crime, and
5 that's where we get the evidence of a felony conviction
6 within the preceding ten years. And that simply goes to
7 the issue of the credibility of the witness, not to other
8 issues. And so long as Mr. Volpicelli does not himself
9 take the stand and his personal credibility come into
10 play here, I would not authorize the State to go into
11 testimony with regard to Mr. Bowman concerning, well,
12 where did you meet the defendant, in prison. I don't
13 feel that's appropriate. The cross-examination by
14 Mr. Van Ry simply went into the prior offenses which are
15 admissible pursuant to NRS 50.095. And that's as far as
16 it would go at this point.

17 And then with that we will be in recess until
18 10:30 tomorrow.

19 THE BAILIFF: All rise.

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

21 (The proceedings adjourned for the day at
22 hour of 4:50 p.m.)

23 -oOo-

24

1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

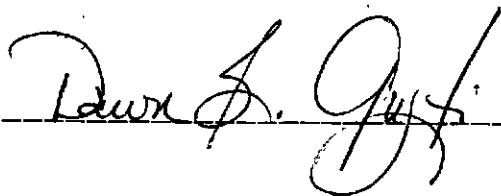
4 I, DAWN B. GUSTIN, Certified Court Reporter
5 in and for the State of Nevada, do hereby certify:

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

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

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

20 Dated this 30th day of June, 2004.

21 
22 _____
23
24

Dawn B. Gustin, CCR #253

ORIGINAL
FILED

FERRILL T. VOLPICELLI
78565 HDSA BOX 650
INDIAN SPRINGS, NV 89018
DEFENDANT PRO PER

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

RONALD A. LONOTIN, JR.
DEPUTY

IN ~~AND FOR~~ THE COUNTY OF WASHOE

STATE OF NEVADA,
PLAINTIFF,

CASE: CR-03-1263

DEPT A-10

FERRILL T. VOLPICELLI,
DEFENDANT,

REQUEST FOR ORDER TO
SHOW CAUSE REGARDING
CONTEMPT OF COURT - AND
ORDER TO COMPEL

DEFENDANT, FERRILL T. VOLPICELLI, IN PROPER
PERSON AND ~~FOR~~ PAUPERS, MOVES THE COURT
TO ISSUE AN ORDER TO SHOW CAUSE WHY BRADLEY
VAN RY ESQ., DEFENDANT'S COUNSEL OF RECORD
UNTIL NOTICE OF WITHDRAWAL OF ATTORNEY, DATED
16 APRIL 2004, SHOULD NOT BE HELD IN
CONTEMPT OF COURT FOR DELIBERATELY AND
WILLFULLY VIOLATING THE REQUEST IN A SUBPOENA
PURSUANT TO NRCP 34 AND 35, DATED 4
MAY, 2004. A COPY OF THE RELEVANT
PORTION OF THE SUBPOENA DUCES TECUM
IS ATTACHED AS EXHIBITS A & B. ACCORDING
TO SAID SUBPOENA, THE FOREGOING INDIVIDUAL,

1 OR BUSINESS WAS REQUIRED TO PROVIDE
2 THE DEFENDANT, WITHIN TEN (10) DAYS OF THE
3 DATED SUBPOENA, WITH ALL PAPERS, EVIDENCE,
4 LETTERS, VINYL FOLDERS AND EXHIBITS RELEVANT TO
5 CASE # 03-1263 RECEIVED FROM FERRILL J
6 VOLPICELLI, OFFICE OF TALK ALAN ESK, RENO
7 POLICE DEPT. AND THE WASHOE COUNTY DISTRICT
8 ATTORNEY'S OFFICE. SAID COPIES OF SAME ARE
9 TO BE ORGANIZED AND DESIGNATED AS TO THEIR
10 RESPECTIVE SOURCE, AND ACCOMPANIED BY A
11 LETTER OF AFFIDAVIT PURPORTING SUCH. SAID
12 LETTER OF AFFIDAVIT IS ALSO TO INCLUDE
13 WHETHER OR NOT COUNSEL EVER RECEIVED, AS
14 PART OF THE COURT ORDERED DISCOVERY, COPIES
15 OF THE TRANSCRIPTS PERTAINING TO ALL TAPED
16 CONVERSATIONS AT WASHOE COUNTY SHERIFF'S
17 OFFICE AND RENO POLICE DEPT. BETWEEN THE
18 DETECTIVES AND DEFENDANTS FERRILL VOLPICELLI
19 AND BRET BOWMAN.

20 THAT TO DATE, AND ALMOST TWO (2) MONTHS
21 SUBSEQUENT TO THE MAILING OF SAID SUBPOENA,
22 AS CERTIFIED UNDER PENALTY OF PERJURY, BRADLEY
23 VAN RY ESK HAS NOT RESPONDED. EXHIBIT 'C'
24 SAID DOCUMENTATION IS CRITICAL FOR THE
25 DEFENDANTS' PURSUIT OF POST CONVICTION RELIEF.
26
27
28

POINTS AND AUTHORITIES

1 NEVADA REVISED STATUTE 1.210(3) STATES THAT
2 THE COURT HAS THE POWER TO COMPEL OBEDIENCE
3 TO ITS ORDER AND NEVADA REVISED STATUTE
4 22.010(3) PROVIDES THAT "REFUSAL TO OBEY
5 BY A LAWFUL ORDER ISSUED BY THE COURT IS
6 CONTEMPT"

7 HUMANA INC. v EIGHTH JUDICIAL DISTRICT COURT
8 COUNTY OF CLARK, 110 NV 124, 867 P2d 1147
9 CONCLUSION

10 DEFENDANT, THEREFORE, RESPECTFULLY REQUESTS
11 THAT BRADLEY VAN RY ESQ BE ORDERED TO
12 APPEAR IN COURT TO SHOW WHY HE SHOULD
13 NOT BE HELD IN CONTEMPT OF COURT.

14
15 DATED THIS 28 DAY OF JUNE, 2004

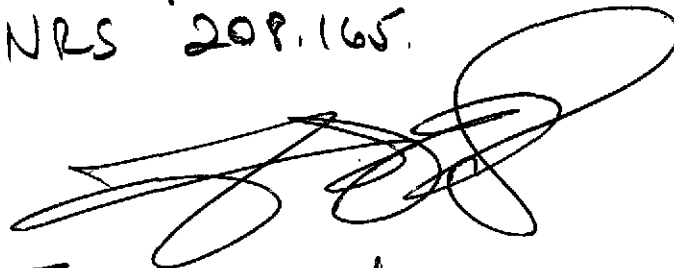
16
17
18 FERRILL T. VOGLIEN
19 DEFENDANT PWS SE

20 AFFIDAVIT
21 DEFENDANT, FERRILL T. VOGLIEN, HEREBY
22 DECLARES UNDER PENALTY OF PERJURY THAT
23 THE FACTS AND ALLEGATIONS IN THIS PLEADING
24 ARE TRUE AND CORRECT TO THE BEST OF HIS
25 KNOWLEDGE AND BELIEF. (PURSUANT TO NRS 204.165)
26

27
28 FERRILL T. VOGLIEN / DEFENDANT PWS SE
3

CERTIFICATE OF MAILING

DATED AND COPY MAILED ON THIS 2ND
DAY OF JUNE, 2004, TO WISITE
COUNTY DISTRICT ATTORNEY AND BRADLEY
VAN RY ESQ, AS CERTIFIED UNDER
PENALTY OF PERJURY PURSUANT TO
NRS 209.165.



FERRILL J. VALICENTI
DEFENDANT PRO SE

1 CODE 4055

FERRILL VOLPICELLI
79565 NVCC
BOX 7000
CARSON CITY, NV 89202
DEFENDANT & APPELLANT
IN PRO PER

2
3
4
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7 STATE OF NEVADA

8 Plaintiff,

9 vs.

10 FERRILL T. VOLPICELLI

11 Defendant.

Case No. CR-03-1263

Dept. No. 10

12
13
14 **SUBPOENA**

To: BRADLEY VAN RY ESQ

(Name)

15 SEE ACCOMPANYING DOCUMENT ON CANARY LEGAL PAPER

16 ~~You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe~~
17 ~~County, at the courtroom of said court, Department _____ at Reno, Nevada, on the _____ day of~~
18 ~~_____, at _____ m, to testify on the part of _____~~

19 Any person failing to appear may be deemed in contempt of court, and shall be liable to the party
20 injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such
neglect or refusal.

21 Dated this 4th day of MAY, 2004

22 RONALD A. LONGTIN, JR., CLERK OF THE COURT

23 by [Signature]

Deputy Clerk

24 STATE OF NEVADA
25 COUNTY OF WASHOE

26 I received the within Subpoena on the 4th day of MAY, 2004 and
27 personally served a copy of the same upon BRADLEY VAN RY ESQ

MAILED

28 Subscribed and sworn to before me
this _____ day of _____

Notary Public

UNDER PENALTY OF PERJURY
PURSUANT TO NRS. 208.165

[Signature]
Signature of Person Making Service

FERRILL
VOLPICELLI
79565
BOX 7000

SPRING CITY
NEVADA
89702
DEFENDANT
PRO PER

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

STATE OF NEVADA,
PLAINTIFF,

CASE # CR-03-1263
DEPT # 10

FERRILL T. VOLPICELLI,
DEFENDANT,

SUBPOENA DUCES
TECUM ADDENDUM

THE STATE OF NEVADA SENDS GREETINGS TO: BRAD VAN RYCOO,
WE COMMAND YOU, THAT ALL SINGULAR, BUSINESS AND EXCUSES
BEING SET ASIDE, TO SUBMIT BY SENDING TO THE DEFENDANT ABOVE
NAMED, AT THE ABOVE NOTED ADDRESS: ALL PAPERS, LETTERS, EXHIBITS
& VINYL FOLDERS RELEVANT TO CASE CR03-1263 RECEIVED FROM
FERRILL VOLPICELLI, OFFICE OF JACK ALANESQ, RENO POLICE
DEPT, AND THE WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE.
SAID COPIES OF SAME ARE TO BE ORGANIZED AND DESIGNATED
AS TO THEIR RESPECTIVE SOURCE, AND ACCOMPANIED BY A LETTER
OF AFFIDAVIT PURPORTING SUCH, SAID LETTER OF AFFIDAVIT IS
ALSO TO INCLUDE WHETHER OR NOT COUNSEL EVER RECEIVED AND
REVIEWED, AS PART OF THE COURT ORDERED DISCOVERY, COPIES OF
THE TRANSCRIPTS PERTAINING TO ALL TAPED CONVERSATIONS AT THE
WASHOE COUNTY SHERIFF'S OFFICE BETWEEN DEFECTIVES AND THE
DEFENDANTS, FERRILL VOLPICELLI AND BRETT BOWMAN.
THE ABOVE REQUESTED DOCUMENTATION IS TO BE IN A SEALED
ENVELOPE OR BOX ADDRESSED AND DELIVERED AS NOTED HEREIN,
IN A SEALED ENVELOPE OR BOX, MARKED 'LEGAL DOCUMENTS',
WITHIN TEN (10) DAYS OF THE ABOVE FILING DATE.
AND FAILURE TO ABIDE BY THIS SUBPOENA, YOU WILL BE
DEEMED GUILTY OF CONTEMPT OF COURT AND LIABLE TO PAY
ALL LOSSES AND DAMAGES SUSTAINED THEREBY TO THE PARTIES
AGGRIEVED AND FORFEIT ONE HUNDRED (\$100) DOLLARS IN ADDITION
THEREON.

IN WITNESS WHEREOF, I HEREBY SET MY HAND AND AFFIXED SEAL OF
SAID COURT THIS DAY OF APRIL, 2004.

SEE COVER PAGE

A-1

DEPUTY CLERK OF THE COURT

1 MAY, 2004

FERRILL T. VOLPICELLI

79565 @ NN

BOX 7000

CARSON CITY, NV 89702

APPELLANT PRO PER

(43203) (03-1263)

RE: CASE FILE AND ACCOMPANYING VINYL FOLDERS

DEAR MR. VAN RY,

THE ACCOMPANYING VINYL LEGAL FOLDERS ARE PART OF THE EVIDENCE BEING RELEASED BY THE RENO POLICE DEPT. THROUGH THE CITY ATTORNEYS OFFICE IN RENO. I AM REQUESTING THAT YOU INCLUDE THESE LABELED LEGAL FOLDERS WITH MY CASE FILE.

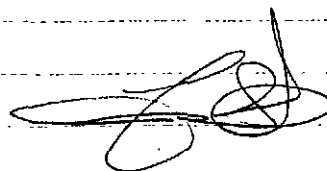
YOU WILL ALSO NOTE FROM THE ENCLOSURE(S) THAT I AM BELEFT OF COUNSEL, AND THAT I AM CURRENTLY FURTHERING MY APPEAL ~~WIT~~ IN PROPER PERSON.

CONSEQUENTLY, YOUR UNAUTHORIZED PLAN TO DELIVER MY CASE FILE TO THE WASHOE COUNTY PUBLIC DEFENDERS OFFICE WAS PREMATURE. IN VIEW OF THIS, I MUST INSIST THAT YOU REMOVE MY CASE FILE IN ITS ENTIRETY AND FORWARD SAME, ALONG WITH THE VINYL FOLDERS TO MY PLACE OF INCARCERATION WHEN I TRANSFER TO NSP.

INCIDENTALLY, I REVIEWED NEVADA SUPREME COURT Rule 46, AND I AM LED TO BELIEVE THAT YOU MISREPRESENTED ME REGARDING THE NECESSITY OF YOUR WITHDRAWAL FROM MY CASE BASED ON THE NATURE OF MY JUDGMENT AND CONVICTION. ACCORDINGLY, IT MERELY DEMONSTRATES ANOTHER BREACH OF THE CLIENT-ATTORNEY FIDELITY; WHICH I WAS TO BE AFFORDED UNDER THE SIXTH AMENDMENT.

HENCE, IN VIEW OF THE FOREGOING, YOUR FAILURE TO COOPERATE WITH THIS REQUEST WILL ONLY COMPEL ME TO PURSUE THIS MATTER THROUGH THE SUBSEQUENT PROCESS. I ANTICIPATE THAT THIS LETTER WILL PROMPT YOUR COOPERATION IN THIS MATTER.

G-
GOVERN YOURSELF ACCORDINGLY,



FERRIN VOLPICELLI
79565 HOSP
BOX 650

INDIAN SPRINGS, NV 89070

2 JUNE, 2004

LAW
OFFICE
OF
BRAD
VAN RY
ESQ

RE: CASE # CWS-1263 / SUBPOENA
Dear Mr. VAN RY,

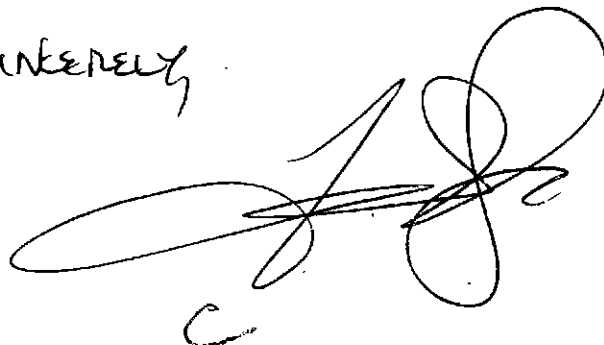
By now, you are likely in receipt of
the SUBPOENA Duces Tecum filed last
month.

As a follow up, I placed a call to the
STATE PUBLIC DEFENDERS OFFICE, MR. CHAMPAGNE
purported to me that the case file has
been retrieved by your office, and, your
receptionist is supposedly forwarding
the items referenced in the subpoena to me.
In view of this, I anticipate receipt of
the case file by no later than 6/11/04,
at which time I will be compelled to
file a request for order to show cause
regarding contempt and order to compel.
So as to avoid this action, please provide
me with the items referenced in the
subpoena by 6/11/04.

Thank you for your concerns and
cooperation with this matter.

cc: fve

Sincerely,



ORIGINAL

FERRIL VOLPICELLI 79065
Box 650 Hoof

FILED SPRINGS, NV 82017

Defendant Pro Se
2004 AUG - 3 PM 2:37

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
JEN AND FOR THE COUNTY OF WASHOE
BY: RONALD A. LONGHIN, JR.
DEPUTY

CR03-1263
DC-9900025179-036
STATE VS FERRIL JOSEPH VOL 6 Pages
District Court 08/03/2004 08:32 AM
Washoe County 12490
JMS

STATE OF NEVADA,
Plaintiff,

CASE: 03-1263

DEPT: 10

MOTION FOR RETURN

OF PROPERTY AND -

REQUEST FOR HEARING

REGARDING RESTITUTION AMOUNT

FERRIL T. VOLPICELLI,
Defendant,

Comes Now Defendant FERRIL T. VOLPICELLI, in
proper person and in personam PAUPER'S moving
the Court for an order RETURNING ANY AND
ALL PROPERTY SEIZED IN THE 2001 INVESTIGATIONS,
(RELEVANT TO RPD #101-246321) AND NOT SPECIFICALLY
CITED IN THE CRIMINAL WRITENS OF DISTRICT COURT
(02-0145, 02-0146 AND 03-1263)

STATEMENT

THAT ON OCTOBER, 2001, DEFENDANT WAS
ARRESTED FOR A PAROLE VIOLATION WITH CHARGES
ADDED THROUGHT EARLY DECEMBER OF 2001,
THAT ON OR ABOUT 17 & 18 OCTOBER, 2001,
AUTHORITIES SEIZED PROPERTY BELONGING TO
BRETT A. BOWMAN, FERRIL T. VOLPICELLI, TRAVIS
A. VOLPICELLI, ASHLEY SCHUENGER, CHANEL A VOLPICELLI
AND LOGAN R. VOLPICELLI.

REFER
TO
EXHIBIT
A

THAT SAID PROPERTY WAS SEIZED PURSUANT TO
MULTIPLE SEARCH WARRANTS FROM DEFENDANTS'
RESIDENCE, DEFENDANTS' BROTHERS MARK VAN,
ASTLEY SCHUENEG'S STORAGE UNIT AND THE
REFER DEFENDANT'S DAUGHTER'S SAFE BOX. (CHANEL VOLACCA)

TO THAT SAID WARRANTS WERE NEVER RETURNED TO
EXHIBIT THE MAGISTRATE FOR ENDORSEMENT PURSUANT TO
B N.R.S. 179.085 (4)

THAT INITIALLY, THE AFOREFERENCED RPD CASE
CULMINATED IN DISTRICT COURT CASES 02-0145 &
02-0146 - SPECIFICALLY CITING BURGLARY RELATED

REFER COUNTS INVOLVING A WALMART BIKE, A SHOPKOS
TO COMFORTER, A LOWE'S RUG AND A WALMART
EXHIBIT HOME THEATER SYSTEM.

C THAT SUBSEQUENT TO THIS, AND SOME TWENTY
MONTHS AFTER THE OCTOBER, 2001 ARREST,
REFER THE DEFENDANT WAS INDICTED ON SAME
ALLEGED CRIMINAL ACTIVITY CULMINATING IN
EXHIBIT CASE 03-1263. (11 JUNE, 2003)

D THAT CONCOMITANT WITH SAID INDICTMENT,
CASES 02-0145 & 02-0146 WERE STAYED,
THAT SAID INDICTMENTS BURGLARY RELATED
COUNTS INCLUDED THE SAME OFFENSES AND
PROPERTY CITED IN 02-0145 & 02-0146, BUT
ALSO NEW ALLEGED CHARGES: REFERENCE AN
ELECTRIC SONICARE TOOTHBRUSH, A KDS 15" MONITOR, A
HEWLETT-PACKARD PRINTER, A SINGER SEWING MACHINE,
AN EMERSON 19" DVD-TV COMBO, 2 COFFEE POTS, AND
ANOTHER COMFORTER. JA V. I. PP 159-9687

REFER
TO
EXHIBIT
E

THAT ON 14 NOVEMBER, 2003, DEFENDANT WAS FOUND GUILTY OF ALL COUNTS IN THE 10 COUNT INDICTMENT.

THAT ON 1 APRIL, 2004, DEFENDANT WAS SENTENCED IN THE MATTER WITH THE JUDGMENT REFLECTING IN EXCESS OF \$10,339.16 AS RESTITUTION.

ARGUMENT.

DEFENDANT RESPECTFULLY REQUESTS THAT THE RPD EVIDENCE DEPARTMENT RETURN ANY AND ALL PROPERTY SEIZED IN THE FOREMENTIONED CASES, NOT SPECIFICALLY CITED IN SAME &/OR FOUND TO BE FRUITS OF ALLEGED CRIMINALITIES WITH COUNTS II-IX OF 03-1263. THE TRIAL COURT HELD THAT ONLY THOSE ARTICLES WHICH WERE PROVEN IN A COURT OF LAW TO BE 'FRUITS OF THE CRIME(S)' IN WHICH APPELLEES WERE INVOLVED COULD BE WITHHELD FROM THE APPELLEES 572 P2d 480

FURTHER, THAT 'IN RECOGNITION OF THE DUE PROCESS REQUIREMENT, NEVADA CRIMINAL PROCEDURES PROVIDE THAT AN AGGRIEVED PERSON MAY MOVE THE DISTRICT COURT FOR THE RETURN OF THE SEIZED PROPERTY WHERE THE RETENTION IS UNLAWFUL. 572 P2d 481

AND AS FAR AS THE HYPERINFLATED RESTITUTION FIGURE REFERENCED IN THE JUDGMENT IS CONCERNED, 'IN 1967

44
ORDINARY CASE A CITIZEN HAS A RIGHT TO
A HEARING TO CONTEST THE FORFEITURE OF
HIS PROPERTY, (INCLUDING THE IMPOSITION OF
RESTRICTION); A RIGHT SECURED BY THE DUE
PROCESS CLAUSE. 116 Sct 1777 / 114 Sct 492
92 Sct 1983

FINALLY, THE FIFTH AND FOURTEENTH AMENDMENTS
COMMAND THAT NO PERSON SHALL BE DEPRIVED
OF PROPERTY WITHOUT DUE PROCESS OF LAW,
572 P2d 410. AND, IT HAS ALWAYS BEEN
PUBLIC POLICY THAT FORFEITURES ARE NOT
FAVORED IN THE LAW, AND MAY BE ENFORCED
ONLY WITHIN THE LETTER AND SPIRIT OF THE
LAW. 95 Sct 656.

CONCLUSION

WHEREFORE, DEFENDANT RESPECTFULLY MOVES
THE COURT FOR AN ORDER FOR A
PROMPT RETURN OF ANY AND ALL PROPERTY
TO THE VOLPELLI FAMILY - NOT SPECIFICALLY
CITED IN THE RESPECTIVE COUNTS OF THE
INDICTMENT - AND ADJUDICATED BY THE COURT
JURY AS BEING INVOLVED IN ANY OFFENSE.
THAT THE COURT ALSO ORDER AN
IMMEDIATE HEARING IN THE MATTER AS TO
THE CONTROVERTED RESTRICTION FINE
REFERENCED IN THE JUDGMENT OF THIS CASE.

DECLARATION

I, FERRIL T. VOLPICELLI, UNDER PENALTY OF PERJURY
DEPOSE AND SAY THAT:

I AM THE AFFIANT IN THIS DECLARATION AND THE
DEFENDANT IN CASES 02-0145, 02-0146 & 03-1263.
I AM CURRENTLY IN CUSTODY AT HDSP WHICH IS
CURRENTLY ON 'LOCK-DOWN' STATUS FOR THE FORESEEABLE
FUTURE. THAT SAID CUSTODY SITUATION PRECLUDES
ANY ACCESS TO TELEPHONE, CANTEN FOR WRITING
MATERIALS, AND LAW LIBRARY FOR LEGAL RESOURCES.
THAT THIS ALSO INCLUDES MY INABILITY TO DUPLICATE
DOCUMENTS I.e. EXHIBITS FOR THIS PENDING.

AND FINALLY, THAT SAID EXHIBITS REFERENCED HEREIN
REFER TO: EXHIBIT 'A' - SEARCH WARRANT RETURNS
FOR RPD 01-246321 / AUSSIE STORAGE; LAKESIDE CONDO;
MAZDA VAN AND WELLS FARGO SAFE BOX.

EXHIBIT 'B' - PAGES 3 OF RESPECTIVE
SEARCH WARRANTS FOR THE ABOVE SEIZURE LOCATIONS

EXHIBIT 'C' - COMPLAINTS AND AMENDED
COMPLAINTS FOR CASES 02-0145 AND 02-0146

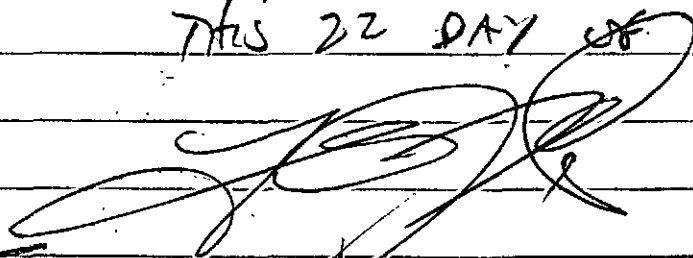
EXHIBIT 'D' - INDICTMENT BY GRAND JURY
DATED 11 JUNE, 2003 FOR CASE 03-1263

EXHIBIT 'E' - JUDGMENT OF CONVICTION
DATED 1 APRIL 2004

ALL EXHIBITS ALREADY PART OF COURT RECORD.
DATED THIS 28 DAY
OF JULY, 2004

FERRIL T. VOLPICELLI
DEFENDANT VS 969 SE

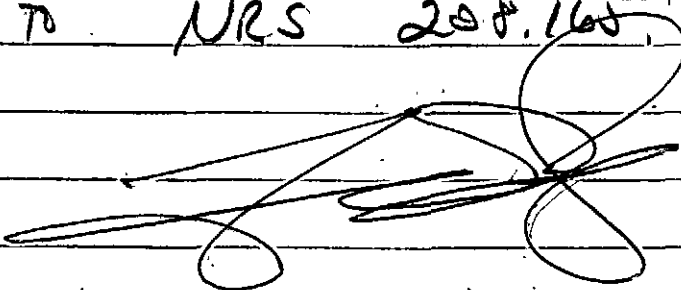
6-6
RESPECTFULLY SUBMITTED AND DATED
THIS 22 DAY OF JULY, 2004.



FERRUCCIO VOLPICELLI
DEFENDANT PRO SE

CERTIFICATE OF MAILING

DATED AND COPY MAILED THIS 22ND
DAY OF JULY, 2004, TO THE
WASHOE COUNTY DISTRICT ATTORNEY,
CITY OF RENO ATTORNEY MS. KAREN
FRACEY AS CERTIFIED UNDER THE
PENALTY OF PERJURY PURSUANT
TO NRS 204.165.



FERRUCCIO VOLPICELLI
DEFENDANT PRO SE

ORIGINAL
FILED

FERRILL VOLPICELLI
79565 HOSP BOX 650
ENO SPRINGS, NV 89018
DEFENDANT PRO SE

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

2004 AUG -3 PM 2:30
RONALD A. LONGHORN, JR. CLERK

STATE OF NEVADA,
Plaintiff,

BY [Signature]
DEPUTY
CASE: CR 03-1263

DEPT: 10

Request
For

Ferrill T. Volpicelli,
Defendant,

Submission of Motion
For Transcripts
(Second Request)

DEFENDANT, HAVING FILED NOTICE OF APPEAL, A
REQUEST FOR COURT PROCEEDINGS TRANSCRIPTS, A
SUBSEQUENT REQUEST FOR SUBMISSION OF SAME,
TOGETHER WITH AN ORDER TO FULFILL HIS POST
CONVICTION REVIEW FORMS PAPERS, HEREBY
SUBMITS A SECOND REQUEST FOR SUBMISSION AND
DECISION IN THIS MATTER.

WHEREFORE, DEFENDANT MOVES THE COURT FOR AN
IMMEDIATE REVIEW AND DETERMINATION IN THIS REQUEST.

DATED this 26th DAY
OF JULY, 2004

Ferrill T. Volpicelli
Defendant Pro Per

CERTIFICATE OF MAILING
DATED & COPY MAILED TO
WCDN'S OFFICE ON 7/26/04
AS CERTIFIED UNDER THE
PENALTY OF PERJURY PURSUANT
TO NRS 208.165

ORIGINAL

FERRILL VOLPICELLI
70565 HOSP BOX 650
INDIAN SPRINGS NV 89018
DEFENDANT PRO SE

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

2004 AUG -3 PM 2:37

RONALD A. LOMBARDI, JR.
CASE NO. 03-1263

BY [Signature]
DEPUTY

STATE OF NEVADA,
Plaintiff,

✓
FERRILL J. VOLPICELLI,
Defendant,

RECEIVED FOR
SUBMISSION OF REQUEST FOR
ORDER TO SHOW CAUSE
REGARDING CONTEMPT OF
COURT - AND ORDER TO COMPEL

10
11
12 DEFENDANT, HAVING FILED A REQUEST FOR ORDER TO
13 SHOW CAUSE REGARDING CONTEMPT OF COURT - AND
14 ORDER TO COMPEL ON JULY, 2004, HEREBY
15 MOVES THE COURT FOR SUBMISSION OF SAID
16 MOTION FOR THE COURT'S REVIEW & DETERMINATION.
17 WITNESSE, BRADLEY VAN RY ESQ. HAS NOT
18 RESPONDED TO THIS ORDER AS OF THIS DATE, AND
19 DEFENDANT REQUESTS IMMEDIATE REC'D WITH ORDER.

20
21 DATED THIS 26th DAY
22 OF JULY, 2004
23
24
25

26 FERRILL J. VOLPICELLI
27 DEFENDANT PRO SE
28

CERTIFICATE OF MAILING
DATED & COPY MAILED
ON 7/24/04 TO VAN RY &
WCOA AS CERTIFIED
UNDER PENALTY OF
PERJURY PURSUANT TO
N.S. 205.165

ORIGINAL

FERRILL VOLPICELLI
79565 HOSP BOX 650
IN SPRINGS, NV 89018
DEFENDANT PRO SE

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

RONALD A. LONGTIN, JR.

STATE OF NEVADA,
Plaintiff.

CASE BY: [Signature]
CASE: DEPUTY 3-1263
DEPT 110

FERRILL T. VOLPICELLI,
Defendant,

Request for
Submission of Request
For Order to Show Cause
Regarding Contempt of
Court and Order to Compel.

DEFENDANT, HAVING FILED A REQUEST FOR ORDER TO
SHOW CAUSE REGARDING CONTEMPT OF COURT - AND
ORDER TO COMPEL ON 21 JUNE, 2004, HEREBY
MOVES THE COURT FOR SUBMISSION OF SAID
MOTION FOR THE COURT'S REVIEW & CONSIDERATION.
WHEREFORE, BASED ON THE FACTS AND AS OF THIS DATE, AND
DEFENDANT REQUESTS IMMEDIATE RELIEF w/ AN ORDER.

DATED THE 26 DAY
OF JULY, 2004

FERRILL T. VOLPICELLI
DEFENDANT PRO SE

CERTIFICATE OF MAILING
DATED & COPY MAILED
ON 7/26/04 TO LINDSAY &
WODA AS CERTIFIED
UNDER PENALTY OF
PERJURY PURSUANT TO
NRS 258.165

V5.973

CR03-1263
DC-9900025179-039
STATE VS FERRILL VOLPICELLI
District Court 08/03/2004 08:35 AM
Washoe County 3860
JAN 11 2005