

1 ju -- judgments of conviction out of New Jersey.

2 THE COURT: All right. In reviewing the photographs
3 it's clear to this Court that the person depicted in the
4 photographs are, in fact, the Defendant in -- in court today.

5 In accordance with the law of the state of Nevada
6 this Court does now sentence you, sir, on Count I to life in
7 prison with the possibility of parole after 10 years;

8 Count II, life in prison with the possibility of
9 parole after -- after 10 years, Count II to run concurrent to
10 Count I;

11 On Count III through VII, life in prison,
12 possibility of parole after 10 years, and that would -- III
13 through VII inclusive. Counts III through VII to run
14 consecutive to Counts I and II.

15 This is under the large habitual statute. And does
16 someone have -- and also restitution in the amount of \$270.
17 Does someone have a correct credit for time served?

18 MS. RINETTI: I have that according to the PSI most
19 of his credit for time served was given to Judge Bixler's
20 case. I have a credit for time served of 145 days.

21 THE COURT: Mr. Jorgenson?

22 MR. JORGENSEN: I don't think Judge Bixler has
23 sentenced him yet.

24 THE COURT: Actually, he didn't. That sentencing is
25 set for --

1 MS. RINETTI: Judge Bixler, in 404, has already --
2 he already sentenced him back on May 22nd of 2007.

3 THE COURT: Okay.

4 MR. JORGENSEN: Well, he -- and --

5 THE DEFENDANT: (Indiscernible) I got 200 days
6 credit --

7 MR. JORGENSEN: And he --

8 THE DEFENDANT: -- as far as that --

9 MR. JORGENSEN: -- cleaned that up --

10 THE DEFENDANT: -- sentence in September.

11 MR. JORGENSEN: September when?

12 THE DEFENDANT: September 15th.

13 MR. JORGENSEN: Yeah. I think he gets credit from
14 September 15th as which -- when that Bixler case flattened out
15 and he's been held only on our cases. So how many days did
16 you have from Sep --

17 THE DEFENDANT: Two hundred.

18 MR. JORGENSEN: Two hundred even?

19 THE DEFENDANT: (No audible response.)

20 MR. JORGENSEN: I think that's what it is, Judge.

21 THE COURT: All right. I'll give him 200 days
22 credit for time served. Also, he's ordered to pay a \$25
23 administrative assessment fee, a \$150 DNA fee, and submit to
24 DNA testing.

25 (The proceedings ended at 8:58:32 a.m.)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the video proceedings in the above-
entitled case to the best of my ability.

Sean Rowley

Sean Rowley, Transcriptionist

1 TRAN

FILED

JUN 26 2009

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3
4 EIGHTH JUDICIAL DISTRICT COURT *CLERK OF COURT*
5 CRIMINAL DIVISION
6 CLARK COUNTY, NEVADA
7

8 STATE OF NEVADA,)
9 Plaintiff,)
10 vs.) CASE NO. C236169
11 RONALD ROSS,) DEPT. XVII
12 Defendant.)
13)
14)

15 BEFORE THE HONORABLE MICHAEL P. VILLANI,
16 DISTRICT COURT JUDGE

17
18 TRANSCRIPT RE: JURY TRIAL - VOL. II

19 WEDNESDAY, NOVEMBER 13, 2008

20 APPEARANCES:

21
22 For the Plaintiff: JESSICA WALSH, ESQ.
23 DENA RINETTI, ESQ.
24 For the Defendant: CRAIG JORGENSEN, ESQ.
25

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CLERK OF THE COURT

2 P R O C E E D I N G S

3 (The proceedings began at 11:12:23 a.m.)

4
5 THE COURT: All right. This is Case Number C236169,
6 State of Nevada versus Ronald Ross. Mr. Ross is present with
7 his attorney, Mr. Jorgenson. And we have Ms. Walsh, Ms.
8 Rinetti for the State.

9 We previously met in chambers to go over some of the
10 jury instructions, and we have instructions one through 28.
11 Does the State have any objection to the giving of those
12 instructions?

13 MS. WALSH: No, Your Honor.

14 THE COURT: Does the State request any additional
15 instructions?

16 MS. WALSH: No, Your Honor.

17 THE COURT: And are you satisfied with the verdict
18 form actually that your office prepared?

19 MS. WALSH: Yes, Your Honor.

20 THE COURT: All right. Mr. Jorgenson, you're
21 familiar with instructions one through 28?

22 MR. JORGENSEN: Yes, Judge.

23 THE COURT: Any objection to those instructions?

24 MR. JORGENSEN: No, Judge.

25 THE COURT: Request for any additional instructions?

1 MR. JORGENSEN: No, Judge.

2 THE COURT: All right. And you're satisfied with
3 the verdict form?

4 MR. JORGENSEN: Yes, Judge.

5 THE COURT: Okay. Again, I just want to just
6 double-check that you've discussed with your client the jury
7 instruction that advises the -- the jury that it is a
8 constitutional right for your client not to testify and not be
9 compelled to testify and the State cannot make any comments;
10 you've discussed that instruction with your client?

11 MR. JORGENSEN: Right.

12 THE COURT: And based upon your discussion with him
13 it's -- a decision has been made not to -- for the Court not
14 to give that instruction; is that correct?

15 MR. JORGENSEN: Right.

16 THE COURT: All right. We'll give the instructions
17 before opening. We'll come back at 1 o'clock. And like I
18 said before please -- if there's any PowerPoints please have
19 those up and running, double-check with Michelle to make sure
20 every -- everything's compatible. And then we'll start
21 promptly at 1 o'clock.

22 Mr. Ross, did you have a question?

23 MR. JORGENSEN: He's asking about what the verdict
24 forms look like.

25 THE COURT: Okay. All right.

1 MS. WALSH: Thanks, Judge.

2 THE COURT: See everybody back at 1:00.

3 (Off record)

4 THE COURT: Everybody have a pen and notepad? All
5 right. This is Case Number C236169, State of Nevada versus
6 Ronald Ross. Mr. Ross is present with Mr. Jorgenson. We have
7 Ms. Walsh, Ms. Rinetti for the State of Nevada.

8 Ladies and gentlemen, this is the time set to resume
9 the trial. The presentation of the evidence was concluded
10 yesterday, as -- as you recall. You're now ready for closing
11 argument. Before we start the closing arguments I will read
12 to you the jury instructions which are the -- the law and the
13 laws that apply to this particular case.

14 I will identify the jury instructions and they are
15 numbered. You can take notes regarding the jury instructions
16 -- some of the attorneys may refer you to some of the
17 instructions -- but understand you will have your own separate
18 packet of jury instructions to take back with you to the jury
19 room, so you don't have to -- if you want to take notes that's
20 fine, but, again, you'll have your own packet to -- to go back
21 there with you. So at this time I will read the jury
22 instructions to you.

23 It is your duty as jurors to follow these
24 instructions and to apply the rules of law to the facts as you
25 find them from the evidence. You must not be concerned with

1 the wisdom of any rule of law stated in these instructions
2 regardless of any opinion you may have as to what the law
3 ought to be. It would be a violation of your oath to base a
4 verdict upon any other view of the law than that given in the
5 instructions by the Court.

6 Instruction number 2: If in these instructions any
7 rule, direction, or idea is repeated or stated in different
8 ways no emphasis thereon is intended by me and none may be
9 inferred by you. For that reason you are not to single out a
10 certain sentence or any individual point or instruction and
11 ignore the others, but you are to consider all the
12 instructions as a whole and regard each in light of all the
13 others. The order in which the instructions are given has no
14 significance as to their relative importance.

15 Instruction number 3: An information is but a
16 formal method of accusing a person of a crime and is not of
17 itself any evidence of his guilt. In this case it is charged
18 in an information that on or between March 17th, 2007, and
19 March 31st, 2007, Defendant committed the offense of burglary,
20 felony, NRS 205.060; larceny from a person, felony, NRS
21 205.270; possession of credit card without cardholder's
22 consent, felony, NRS 205.690; fraudulent use of a credit card,
23 felony, NRS 205.760; theft, felony, NRS 205.0835 and 205.0832;
24 and conspiracy to commit larceny, gross misdemeanor, NRS
25 205.220, 205.222, and 199.480. It is the duty of the jury to

1 apply the rules of law contained in these instructions to the
2 facts of the case and determine whether or not the Defendant
3 is guilty of one or more of the offenses charged.

4 Count I, burglary: did on or about March 17, then
5 and there wilfully, unlawfully, and feloniously, enter with
6 the intent to commit larceny that certain building occupied by
7 the Tropicana Hotel and Casino located at 3801 Las Vegas
8 Boulevard South, Las Vegas, Clark County, Nevada.

9 Count II, larceny from the person: did on or about
10 March 17, 2007, then and there wilfully, unlawfully, and
11 feloniously, under circumstances not amounting to robbery,
12 with intent to steal or appropriate to his own use, take from
13 the person of another, to wit, Georgia Stathopoulos, without
14 her consent, personal property, to wit, wallet and contents.

15 Count III, burglary: did on or about March 17,
16 2007, then and there wilfully, unlawfully, and feloniously,
17 enter with the intent to commit a felony, to wit, obtaining
18 property under false pretenses and/or felony theft and/or
19 forgery that certain building occupied by Sheikh Shoes located
20 at 3525 South Maryland Parkway, Las Vegas, Clark County,
21 Nevada.

22 Count IV, possession of credit or debit card without
23 cardholder's consent: did on or about March 17, 2007, then
24 and there wilfully, unlawfully, feloniously, have in his
25 possession without consent of the cardholder a credit or debit

1 card, to wit, a Visa credit card issued in the name of Georgia
2 Stathopoulos, with intent to circulate, use, sell, or transfer
3 said card with the intent to defraud said Georgia Stathopoulos
4 and/or the issuer of said credit or debit card.

5 Count V: did on or about March 17th, 2007, then and
6 there wilfully, unlawfully, feloniously, with intent to
7 defraud, use a credit or debit card, to wit, by presenting a
8 Visa credit card issued in the name of Georgia Stathopoulos to
9 Deja Jarmin at Sheikh Shoes, 3525 South Maryland Parkway, Las
10 Vegas, Clark County, Nevada, for the purpose of obtaining
11 merchandise, Defendant not being the cardholder, nor being
12 authorised by the cardholder to use said card.

13 Count VI, theft: did on or about March 17, 2007,
14 then and there knowingly, feloniously, and with -- without
15 lawful authority, commit theft by obtaining personal property
16 in the amount of \$250 or more, lawful money of the United
17 States, of Sheikh Shoes, 3525 South Maryland Parkway, Las
18 Vegas, Clark County, Nevada, by a material misrepresentation
19 with the intent to deprive the person of the property in the
20 following manner, to wit, by said Defendant falsely
21 representing that he was in lawful possession of a Visa card
22 -- credit card and that he had authorization to use said card,
23 thereby obtaining the personal property of Sheikh Shoes by a
24 material misrepresentation with intent to deprive the --
25 deprive them of the property.

1 Count VII, conspiracy to commit larceny: did on or
2 about March 17, 2007, then and there meet with another and
3 between themselves and each of them with the other wilfully
4 and unlawfully conspire and agree to commit a crime, to wit,
5 larceny, and in furtherance of said conspiracy Defendant
6 committed the acts as set forth in Counts IV through VI, said
7 acts being incorporated by this reference as though fully set
8 forth herein.

9 Instruction 4: To constitute the crime charged
10 there must exist a union or joint operation of an act
11 forbidden by law and an intent to do the act. The intent
12 which -- with which an act is done is shown by the facts and
13 the circumstances surrounding the case. Do not confuse intent
14 with motive. Motive is what prompts a person to act. Intent
15 refers only to the state of mind with which the act is done.
16 Motive is not an element of the crime charged, and the State
17 is not required to prove a motive on the part of the Defendant
18 in order to convict. However, you may consider evidence of
19 motive or lack of motive as a circumstance in the case.

20 Instruction number 5: The Defendant is presumed
21 innocent until the contrary is proved. This presumption
22 places upon the State the burden of proving beyond a
23 reasonable doubt every material element of the crimes charged
24 and that the Defendant is the person who committed the
25 offenses. A reasonable doubt is one based on reason. It is

1 not mere possible doubt but is such a doubt as would govern or
2 control a person in the more weighty affairs of life. If the
3 minds of the jurors, after the entire comparison and
4 consideration of all the evidence, are in such a condition
5 that they can say they feel an abiding conviction of the truth
6 of the charges there is not a reasonable doubt. Doubt to be
7 reasonable must be actual, not mere possibility or
8 speculation. If you have a reasonable doubt as to the guilt
9 of the Defendant he is entitled to a verdict of not guilty.

10 Instruction 6: Every person who, by day or night,
11 enters any building with the intent to commit a larceny and/or
12 a felony therein is guilty of burglary. Force or breaking as
13 such is not a necessary element of the crime.

14 Instruction 7: The intention with which entry was
15 made is a question of fact which may be inferred from the
16 Defendant's conduct and all other circumstances disclosed by
17 the evidence.

18 Instruction number 8: Larceny is defined as the
19 stealing, taking, and carrying away of personal goods or
20 property of another with the intent to permanently deprive the
21 owner thereof. In the state of Nevada the following crimes
22 are a felony: larceny from a person; fraudulent use of a
23 credit or debit card; and theft of \$250 or more.

24 Instruction 9: It is not necessary that the State
25 prove that the Defendant actually committed a larceny and/or a

1 felony inside the building after he entered in order for you
2 to find him guilty of burglary. The gist of the crime of
3 burglary is the unlawful entry with a criminal intent.
4 Therefore, a burglary was committed if the Defendant entered
5 the building with the intent to commit a larceny and/or felony
6 regardless of whether or not the crime occurred.

7 Instruction 10: A person who enters an
8 establishment with the intent to commit a larceny and/or a
9 felony therein is guilty of burglary even though the entry was
10 made through the public entrance during business hours. The
11 authority to enter a building -- a building open to the public
12 extends only to those who enter with a purpose consistent with
13 the reason the building is open. An entry with intent to
14 commit a larceny and/or a felony therein cannot be said to be
15 within the authority granted customers of a business
16 establishment. The fact, therefore, that the establishment is
17 open to the general public is not a defense to the charge of
18 burglary so long as the Defendant is shown to have made the
19 entry with the intent to commit a larceny and/or a felony
20 therein.

21 Instruction 11: Every person who, in the commission
22 of a burglary, commits any other crime may be prosecuted for
23 each crime separately.

24 Instruction 12: Every person who, under
25 circumstances not amounting to robbery with intent to steal or

1 appropriate to his own use, takes from the person of another
2 without his consent any money, property, or thing of value is
3 guilty of larceny from the person.

4 Instruction number 13: For the purpose of larceny
5 property is deemed taken from the person of the victim if the
6 property was within the victim's reach, inspection,
7 observation, disposition, or control so the victim could
8 dispose of it if the victim's willpower was not overcome.

9 Instruction 14: The term taking, as that term is
10 used as an element of the crime of larceny, means that the
11 personal goods or property of another are taken from the
12 possession of the person who is entitled to them and into the
13 possession of the person accused of the crime. The term
14 carrying away, as that term is used as an element of the crime
15 of larceny, means that the taking is followed by an
16 asportation or carrying away of the property so as to
17 supercede the possession of the owner. The taking element is
18 separate and distinct, and taking, which is not followed by a
19 carrying away or asportation, cannot itself support a larceny
20 conviction. In order to constitute an asportation or carrying
21 away it is not necessary that personal property be removed
22 from the building in which it is located. But any removal of
23 the property from its original status, such as would
24 constitute a complete severance from the possession of the
25 owner, constitutes an asportation or carrying away even though

1 the transfer of possession existed for only a brief period of
2 time. What constitutes sufficient asportation to support a
3 conviction for larceny is a question of fact for the jury.

4 Instruction 15: Any person who possesses a credit
5 card without consent of the cardholder and with the intent to
6 circulate, use, sell, or transfer the credit card with intent
7 to defraud is guilty of possession of credit card without
8 cardholder's consent.

9 Instruction 16: A person who, with the intent to
10 defraud, use a credit card where the person possesses the
11 credit card without the consent of the cardholder, is guilty
12 of fraudulent use of credit card.

13 Instruction 17: Any person who, without lawful
14 authority, knowingly obtains property of another person of a
15 value greater than \$250 by a material misrepresentation with a
16 specific intent to permanently deprive the other property --
17 the other -- the other -- deprive the -- the other of the
18 property is guilty of theft. Material misrepresentation means
19 the use of any pretense or the making of any promise,
20 representation, or statement, a present, past, or future fact,
21 which is fraudulent and which, when used or made, is
22 instrumental in causing the wrongful control or transfer of
23 the property. The pretense may be verbal or it may be a
24 physical act. The amount involved in a theft shall be deemed
25 to be the highest value by any reasonable standard of property

1 which is obtained.

2 Instruction 18: Conspiracy is an agreement or
3 mutual understanding between two or more persons to commit a
4 crime. To be guilty of conspiracy a Defendant must intend to
5 commit or to aid in the commission of the specific crime
6 agreed to. The crime is the agreement to do something
7 unlawful. It does not matter whether it was successful or
8 not.

9 Instruction 19: It is not necessary in proving a
10 conspiracy to show a meeting of the alleged conspirators or
11 the making of an express or formal agreement. A formation and
12 existence of a conspiracy may be inferred from all
13 circumstances tending to show a common intent and may be
14 proved as the same way as any other fact may be proved either
15 by direct testimony of the fact or by circumstantial evidence
16 or by both direct and circumstantial evidence.

17 Instruction 20: Each member of a criminal
18 conspiracy is liable for each act and bound by each
19 declaration of every other member of the conspiracy if the act
20 or the declaration is in furtherance of the object of the
21 conspiracy. The act of one conspirator pursuant to or in
22 furtherance of a common design of the conspiracy is the act of
23 all the conspirators. Every conspirator is legally
24 responsible for an act of a coconspirator that follows as one
25 of the probable and natural consequences of the object of the

1 conspiracy even if it was not intended as part of the original
2 plan and even if he was not present at the time of the
3 commission of such act.

4 Instruction number 21: You are here to determine
5 the guilt or innocence of the Defendant from the evidence in
6 this case. You are not called upon to return a verdict as to
7 the guilt or innocence of any other person. So if the
8 evidence in this case convinces you beyond a reasonable doubt
9 of the guilt of the Defendant you should so find even though
10 you may believe one or more persons are also guilty.

11 Instruction 22: The evidence which you are to
12 consider in this case consists of the testimony of the
13 witnesses, the exhibits, and any facts admitted or agreed to
14 by counsel. There are two types of evidence: direct and
15 circumstantial. Direct evidence is the testimony of a person
16 who claims to have personal knowledge of the commission of the
17 crime which has been charged, such as an eyewitness.
18 Circumstantial evidence is the proof of a chain of facts and
19 circumstances which tend to show whether a Defendant is guilty
20 or not guilty. The law makes no distinction between the
21 weight to be given either direct or circumstantial evidence.
22 Therefore, all of the evidence in the case, including the
23 circumstantial evidence, should be considered by you in
24 arriving at your verdict. Statements, arguments, and opinions
25 of counsel are not evidence in the case. However, if the

1 attorneys stipulate to the existence of a fact you must accept
2 the stipulation as evidence and regard that fact as proved.
3 You must not speculate to be true any insinuation suggested by
4 a question asked a witness. A question is not evidence and
5 may be considered only as it supplies meaning to the answer.
6 You must disregard any evidence to which an objection was
7 sustained by the Court and any evidence ordered stricken by
8 the Court. Anything you may have seen or heard outside the
9 courtroom is not evidence and must also be disregarded.

10 Instruction number 23: The credibility or
11 believability of a witness should be determined by his manner
12 upon the stand, his relationship to the parties, his fears,
13 motives, interests, or feelings, his opportunity to have
14 observed the matter to which he testified, the reasonableness
15 of his statements, and the strength or weaknesses of his
16 recollections. If you believe that a witness has lied about
17 any material fact in the case you may disregard the entire
18 testimony of that witness or only a portion of his testimony
19 which is not proved by other evidence.

20 Instruction number 24: Although you are to consider
21 only the evidence in this case in reaching your verdict you
22 must bring to the consideration of the evidence your everyday
23 common sense and judgment as reasonable men and women. Thus
24 you are not limited solely to what you see and hear as the
25 witnesses testify. You may draw reasonable inferences from

1 the evidence which you feel are justified in the light of
2 common experience, keeping in mind that such inferences should
3 not be based on speculation or guess. A verdict may never be
4 influenced by sympathy, prejudice, or public opinion. Your
5 decision should be the product of sincere judgment and sound
6 discretion in accordance with these rules of law.

7 In your deliberations you may not discuss or
8 consider the subject of punishment as that is a matter which
9 lies solely with the Court. Your duty is confined to the
10 determination of the guilt or innocence of the Defendant.

11 Instruction 26: When you retire to consider your
12 verdict you must select one of your number to act as
13 foreperson who will preside over your deliberations and will
14 be your spokesperson here in court. During your deliberations
15 you will have all of the exhibits which were admitted into
16 evidence, these written instructions, and forms of verdict
17 which have been prepared for your convenience. Your verdict
18 must be unanimous. As soon as you've agreed upon a verdict,
19 have it signed and dated by your foreperson and then return
20 with it to this room.

21 Instruction number 27: If, during your
22 deliberations, you should desire to be further informed on any
23 point of law or hear again portions of the testimony you must
24 reduce your request to writing signed by the foreperson. The
25 officer will then return you to court where the information

1 sought will be given to you in the presence of and after
2 notice to the District Attorney and the Defendant and his
3 counsel. Playbacks of testimony are time-consuming and are
4 not encouraged unless you deem it a necessity. Should you
5 require a playback you must carefully describe the testimony
6 to be played back so that the court recorder can arrange her
7 notes. Remember, the Court is not at liberty to supplement
8 the evidence.

9 Now you will listen to arguments of counsel who will
10 endeavor to aid you to reach a proper verdict, refresh in your
11 minds the evidence, and by showing the application thereof to
12 the law. But whatever counsel may say you will bear in mind
13 that it is your duty to be governed in your deliberations by
14 the evidence as you understand it and remember it to be, and
15 by the law as given to you in these instructions with the sole
16 fixed and steadfast purpose of doing equal and exact justice
17 between the Defendant and the State of Nevada.

18 State, your closing, please.

19 MS. RINETTI: Please the Court, Counsel, ladies and
20 gentlemen of the jury. There are two things that the State
21 must prove in every criminal trial. The first one is that a
22 crime has been committed, and the second is that the Defendant
23 committed that crime. So I'm going to go through each count
24 and describe what facts have been presented -- in fact, not
25 only the point that a crime was committed but the Defendant

1 committed that crime.

2 So let's start with burglary. Burglary. Every
3 person who, by day or night, enters any building with the
4 intent to commit larceny or -- and/or a felony therein is
5 guilty of burglary. And in this case we've charged two counts
6 of burglary: one for the Tropicana casino and one for the
7 Sheikh shoe store. Now, what we have to prove on both of
8 those counts both for the Tropicana casino as well as the
9 Sheikh shoe store is that the Defendant entered that
10 establishment with the intent to commit a larceny and/or a
11 felony. So let's go through them.

12 Count I, burglary. Defendant entered the Tropicana.
13 Well, we saw it on the video and we saw the Defendant and --
14 and then an unidentified man approach the victim, Georgia.
15 Detective Flenner recognized Ronald Ross, the Defendant, on
16 that video. You also heard testimony from Georgia who on the
17 stand point to the Defendant and said that's the man that sat
18 next to me on that slot machine. And you saw the video of
19 that gentleman over there sitting next to Georgia.

20 And it's with intent to commit a larceny. And
21 unfortunately, we can't get into the mind of the Defendant, so
22 we have to look at his actions and see whether or not he
23 intended to commit a felony or a larceny when he entered the
24 Tropicana Hotel. Well, all we have to do is look at his
25 actions within the video. You see him approach the victim

1 with an unidentified man, starts distracting her, the wallet
2 is taken, the -- the handoff is made, the unidentified male
3 goes one direction, and the Defendant goes the other way.

4 And that's all about at 1 o'clock. It's interesting
5 to note that in 40 minutes the Defendant has left the
6 Tropicana but had shopped around in the shoe store for at
7 least 20 to 30 minutes according to the witnesses at the shoe
8 store and was able to purchase items at the shoe store, all
9 within 40 minutes, which means that the Defendant left the
10 Tropicana casino soon after taking Georgia's wallet thereby
11 inferring that the Defendant entered the Tropicana casino with
12 the intent to commit a larceny.

13 Count III is with the shoe store. The Defendant
14 entered the shoe store. We saw -- the Defendant was seen on
15 video by Off -- Detective Flenner, and also Kevin Hancock came
16 in and said they both reviewed the video from the shoe store,
17 and they both recognized that it was the Defendant that
18 entered that shoe store.

19 And you also have the tran -- the previous
20 transcript of Deja Jarmin, who was actually the salesperson
21 that dealt with the Defendant. And she said in that testimony
22 the Defendant is the one that I helped on March 17th, 2007,
23 and the Defendant's the one that gave me the credit card. And
24 you also have Luis Valadez who is the -- present and working
25 on that day and said yes, the Defendant came in and he made a

1 purchase.

2 And you also remember when Kevin got up on the
3 stand, and he said that Deja had told him that Phillie was
4 looking for him that day. And you heard from Detective
5 Flenner that the Defendant is from Philadelphia. Phillie was
6 looking for Kevin on March 17th, 2007, within that shoe store.

7 Then it's with the intent to commit a felony, and in
8 this case it's fraudulent use of a credit card and theft. And
9 again, you can't look into the mind of the Defendant, so we
10 have to look at his actions. So what was the purpose of him
11 entering the shoe store? Was it to get a bite to eat, was it
12 talk (indiscernible) friends? No. The only purpose of going
13 into that shoe store was to use the stolen credit card. And
14 he bought \$490 worth of merchandise about 40 to 45 minutes
15 after he stole Georgia's wallet. There was no other reason
16 for him to go into that shoe store other than to use that
17 stolen credit card, and he did so soon after he stole that
18 credit card.

19 The other charge that we've -- that is alleged is
20 larceny from a person. Larceny from a person. Every person
21 who, under circumstances not amounting to robbery with the
22 intent to steal or appropriate to his own use, takes from the
23 person of another without his consent any money, property, or
24 thing of value.

25 So what does the State have to prove?

1 (Indiscernible) there are circumstances not amounting to
2 robbery. And when you think about robbery you think of, you
3 know, some kind of a violent act. Larceny doesn't amount to
4 robbery because there's no force used. Then we have to have
5 the intent to steal. Taking of a -- from another, without
6 consent, money, property, or thing of value.

7 So let's go through each element. Circumstances not
8 amounting to robbery. Obviously, you all saw the video
9 yesterday of the Defendant and the unidentified man and the --
10 the handoff and the jacket and the wallet underneath the
11 jacket. There was no actual force used. Georgia didn't, you
12 know -- you know, didn't say there was a struggle for the
13 wallet.

14 And you saw the video; there was only some slight,
15 you know, crouching with the -- the victim in order to kind of
16 distract her. And Georgia didn't realize her wallet was taken
17 until several minutes later when she went up to her room. And
18 then again, because there wasn't any forced used it was just
19 pickpocket.

20 With the intent to steal. And what you also have to
21 do is to look at the video. What did the Defendant do? He
22 walked towards the victim, saw her, walked past her, and then
23 turned around and said ah, got my target, older lady, playing
24 slot machines, this is it. And you could see as he was
25 turning he actually put the jacket over his arm, draped it

1 over his arm, and then proceeded to go towards Georgia with
2 the unidentified man.

3 And you heard from Detective Flenner that there was
4 some -- they used a common distract method as far as blocking
5 people so they couldn't see the exchange was going to be made,
6 the fact that there's two people, the fact that they were kind
7 of diverting Georgia's attention upwards so she wouldn't
8 notice what was happening right at her side.

9 And you also heard from Georgia that when the
10 Defendant approached her he asked two things: one, what she
11 had won; and two, how to play the machine. But you saw in the
12 video that soon after the handout -- handoff Defendant left.
13 He never played the machine. It was just one of -- of his
14 methods of distracting the victim.

15 The taking from another. A taking from another is
16 defined in your jury instructions as if the property was
17 within the victim's reach, inspection, disposition, or
18 control. And you heard from her Georgia that her purse was
19 right at her side and that she had her wallet -- she'd taken a
20 dollar out to play the -- the machine, and she had laid the
21 wallet right next to her; and that she last saw her wallet at
22 the slot machine -- she took the money out to play the
23 machines. So it was right in her control, her dominion and
24 control, right next to her.

25 And then you have to have without consent. And, of

1 course, you heard from Georgia she -- on the stand that the
2 Defendant did not have permission to take her wallet; never
3 said sure, go ahead, take my money and my credit cards. She
4 never said that.

5 And then money, property, or thing of value. And
6 Georgia explained it was her wallet that was taken as well as
7 some credit cards that were in there, driver's license, and
8 other things. I think she called her wallet her center of the
9 purse.

10 Now we're going to go to Count VII. I'm going to
11 switch it up a bit and talk about the conspiracy to commit
12 larceny. Conspiracy. Conspiracy is an agreement or mutual
13 understanding between two or more persons to commit a crime.
14 To be guilty of conspiracy a Defendant must intend to commit
15 or to aid in the commission of the specific crime agreed to.
16 Now, conspiracy's a difficult thing because Defendants or
17 people don't get together when they decide to commit crimes
18 and write down a contract like we're going to do this and
19 you're going to get 20 percent, I'm going to get 40 percent,
20 and this other guy's going to get the rest. Doesn't happ --
21 doesn't work like that.

22 So what we have to look at is their actions on that
23 day, their actions during that incident, to see whether or not
24 a conspiracy existed between the Defendant and the
25 unidentified man in that video. And when you saw on the video

1 is those two men, the Defendant and the unidentified man --
2 man, walk towards Georgia. You saw the Defendant see Georgia,
3 he took a couple of steps and then turned around adjusting his
4 jacket in order to use it as a prop. You saw both the
5 Defendant and the unidentified man approach Georgia.

6 And then as doctor -- Detective Flenner testified
7 to, they used some comic -- common distract methods as far as
8 making sure that Georgia was looking up. In fact, the
9 unidentified man was standing kind of behind Georgia and kind
10 of behind the Defendant in order to block passer-byers from
11 seeing what was going on.

12 And you also saw the handoff. And you also saw the
13 fact that after the handoff was made the unidentified man went
14 one way and the Defendant went another way. Another
15 interesting point is that 40 to 45 minutes later the Defendant
16 and that unidentified man meet back up and are seen in that
17 shoe store wearing the same clothing as what they were wearing
18 at the Tropicana.

19 The other -- another crime that's been charged is
20 possession of a credit card or -- a credit card or debit card
21 without cardholder's consent, which is defined as any person
22 who possesses a credit card without consent of the cardholder
23 and with the intent to circulate, sell, or transfer the credit
24 card with the intent to defraud. So let's go through the
25 elements of possession of credit card without cardholder's

1 consent.

2 The first one is the Defendant had to have
3 possession of the credit card. And you heard from -- through
4 the te -- the former testimony of Deja Jarmin, who was the
5 sales clerk at the shoe store, that the Defendant, who she
6 positively identified, was the person that approached her and
7 used Georgia's credit card. And I think one of the questions
8 was did he actually physically sign in blue ink for the -- the
9 purchases with that credit card, and Deja said yes.

10 And you're also going to (indiscernible) that the
11 Defendant presented the actual credit card because there's
12 that carbon copy and where they have to actually physically,
13 you know, swipe the credit card. I don't think they do that
14 much nowadays, but they swiped it back and forth so it makes
15 the imprint of the actual card and its numbers.

16 And you also heard through Deja's former testimony
17 that she physically swiped Georgia's credit card through the
18 credit card machine and that the transaction went through, and
19 that's how she got the -- that is how he got the credit card
20 receipt for the Defendant to sign. So the credit card was
21 actually presented by the Defendant to Deja.

22 And was -- did he possess -- did the Defendant
23 possess that credit card without consent of Georgia? And sure
24 enough you heard from Georgia that the Defendant, who she
25 doesn't know, didn't have permission to have her credit card.

1 Then you have to have with intent to use. Well,
2 here this is fairly easy because the Defendant actually uses
3 Georgia's credit card at the shoe store and purchases \$490
4 worth of items, and, in fact, afterwards signs up for one of
5 those VIP memberships using his name and number.

6 Well, it's also with the intent to defraud. Again,
7 the Defendant misrepresented that he was the actual
8 cardholder. And you saw when you looked at that credit card
9 receipt that blue ink he signed his name Georgia and you heard
10 from Georgia that's not her signature, and, in fact, her
11 name's spelled wrong; it's spelled with a K on the credit card
12 receipt, and there's no K in her last name.

13 So he intended to defraud by having that credit card
14 because he was going to use it. He mis -- misrepresented that
15 he was the credit card holder and would get some items from
16 the shoe store.

17 The other charge -- the crime charged is fraudulent
18 use of credit or debit card, which is defined as a person who,
19 with the intent to defraud, uses a credit card where the
20 person possesses the credit card without consent of
21 cardholder. And here, again, when you -- with the intent to
22 defraud and again within 40 min -- 40 to 45 minutes the
23 Defendant, seen on video at the Tropicana, is seen by three
24 people at the shoe store. Deja, Kevin, and Luis, they all see
25 him at the shoe using the Defendant -- using Georgia's credit

1 card. He used that credit card and he used it as the
2 cardholder. He signed his name as Georgia and he actually
3 spelled it wrong. He intended to defraud because he was -- he
4 -- he represented that he was the cardholder when, in fact, he
5 was not.

6 And he actually used that credit card. And you
7 heard through the former testimony of Deja that she positively
8 identified the Defendant as the person that came into the shoe
9 store, that she helped, that she rang up, and she used a Chase
10 Visa credit card. And you also saw the carbon copy of the
11 credit card, Georgia's credit card, that was used, as well as
12 the credit card receipt.

13 And you also heard from Detective Flenner as well as
14 the manager, Kevin Hancock, that when they reviewed the video
15 they both could positively identify the Defendant as the
16 person who was in the shoe store that day using the credit
17 card.

18 And then without cardholder's consent. Again,
19 Georgia testified she didn't -- she didn't allow the Defendant
20 to have her credit card let alone use it. In fact, she went
21 to great lengths to make sure, you know, like calling all her
22 credit card companies to make sure that no one used her credit
23 cards.

24 And then we have theft. Theft is any person who,
25 without lawful authority, knowingly obtains property of

1 another person of a value greater than \$250 by a material
2 misrepresentation with specific intent to permanently deprive
3 the other of the property.

4 First element is knowingly obtains property of
5 another. And again, we heard through Deja's testimony it was
6 the Defendant that went to the shoe store, bought \$400 -- \$490
7 worth of merchandise, and left with that merchandise. That
8 wasn't his merchandise because it wasn't his credit card.
9 That property belonged to the shoe store.

10 With a value greater than \$490. You saw the credit
11 card receipt for \$490. And you also heard from Kevin Hancock
12 who said yeah, I could tell this was the transaction because
13 I'm pretty good now -- I've been at the store a while -- with
14 all the boxes that it probably totaled about \$490.

15 And again, the element of by a material
16 misrepresentation. The fact the Defendant represented to
17 (indiscernible) that that was his credit card and then he
18 signed the name Georgia, that he was Georgia, and that they
19 could take the money out of the account, and then he spelled
20 the name wrong all goes to the fact that it was a material rep
21 -- misrepresentation on the part of the Defendant when he
22 entered that shoe store, used the credit card to take the
23 property that belonged to the shoe store.

24 And finally, with the intent to permanently deprive.
25 Defendant walks out with the -- with the items purchased. He

1 doesn't go oh, I'm sorry, this isn't my credit card, here you
2 go, here's the stuff back. Actually, in fact, I think some of
3 the -- the store employees say actually he came back a couple
4 times later. He didn't come back with the stuff saying oh,
5 sorry, guys, here's the stuff back, no harm no foul. No, he
6 came back to buy more stuff.

7 So those are the charge -- the -- the crimes that
8 we've alleged. And we're going to ask that now that you've
9 seen all the evidence, heard of all -- all of them, and now
10 all the arguments by counsel that you find the Defendant
11 guilty of every crime charged. Thank you.

12 THE COURT: Thank you, Ms. Rinetti.

13 Mr. Jorgenson?

14 MR. JORGENSEN: Ladies and gentlemen of the jury,
15 it's now my opportunity to address you concerning what you
16 heard yesterday and what you (indiscernible) embark on as you
17 go back into the jury room.

18 And when I was talking with the detective who had
19 viewed the videos I was asking him -- and I did at some length
20 -- what he could see looking into the shoe store video.
21 That's the video we don't have. And he said because of the
22 way it was zoomed out you couldn't discern facial features,
23 but you could tell what the person was wearing, the gender,
24 the skin color, clothing.

25 So I then ask him well then, what you're telling us

1 is the person who you saw at the shoe store video, even though
2 you can't make out a face, is the same person when comparing
3 physical shape, clothing, the hat, the jersey with a number 6
4 on it, and the pants, that's the same person you saw in the
5 Tropicana video, which is the one we do have. And he said
6 yes.

7 The prosecutor, when the prosecutor had a chance to
8 follow up with some questions after I sat down, said all
9 right, let me back you up a little bit, you know for sure that
10 the person in the Tropicana video is, in fact, Mr. Ross; is
11 that correct. And -- because I -- I asked the -- I asked the
12 detective that -- what he -- what he could only really say for
13 positive is the two people he -- the -- the -- the person he
14 saw is the (indiscernible) the subject of the -- of the shoe
15 video was the same person that was the object of the Tropicana
16 video. And the prosecutors had him add to that by saying that
17 may be true, but also I am -- and this is the detective -- I'm
18 positive that the person who was in the Tropicana video is, in
19 fact, Mr. Ross, the person who's here at trial.

20 Well, that then asks or brings to mind the question
21 of then what are you folks doing here. If we have the
22 detective who is certain, positive, that Mr. Ross is the
23 person we see in the Tropicana video and is the same person
24 who is seen using the stolen credit card 45 minutes later then
25 -- then why have we gone through a two-day trial, why are you

1 12 people sitting here or you 13 people sitting here -- why do
2 we go through all this trouble? We already know what
3 happened.

4 And the answer is it doesn't make a difference
5 ultimately if the detective knows or doesn't know. You are
6 the group of people who will decide what is, in fact -- what
7 -- what, in fact, happened. You're the one who have to be
8 satisfied, not the detective, not Georgia.

9 Georgia said yeah, the person who was sitting next
10 to me as I was playing that slot machine was Mr. Ross. I
11 asked her how tall was he. She wasn't sure. I said was he
12 wearing facial hair. She wasn't sure. How old was he look?
13 Gave me a range. She was understandably vague as to how this
14 person looked in terms of describing him because whoever this
15 person was she only saw him in a matter of minutes 20 months
16 ago. So -- but when I asked her she was positive the person
17 who she -- who was -- the person sitting next to her was Mr.
18 Ross.

19 Once again, then what's your -- what's your duty
20 here? Well, it's not whether or not -- the question isn't
21 whether or not the detective's convinced or whether Georgia's
22 convinced; it's whether you folks are convinced.

23 Now, you have that videotape to go back in your jury
24 room with. You watch the videotape. You'll have a chance to
25 watch it a dozen times or more if you want to. And I would

1 ask you to watch that and say to yourself are you, as 12
2 citizens, convinced beyond a reasonable doubt that the person
3 in that videotape is, in fact, Mr. Ross.

4 And if you can look at that videotape and say to
5 yourself you could be certain that it's anybody in particular
6 then you're able to see things that I can't see in there. But
7 that's what you have to decide. You look at that tape.
8 That's ultimately what you're going to have to make your
9 decision on. You have the videotape.

10 Now, I -- it's important to -- to remember the
11 detective wasn't there on the Tropicana casino floor. He's
12 not telling us yeah, at 1 o'clock on -- on March 17th of 2007
13 I was sitting in the Tropicana, I could see Georgia sitting
14 down the -- down the aisle, I saw her hit the -- the -- the --
15 the jackpot on the penny poker, and this videotape is an
16 accurate representation of what I saw on the ground.

17 He's not saying that. He's saying he watched the
18 videotape just like you and I watched the videotape, and he's
19 saying from looking at that yeah, he's positive that's Mr.
20 Ross. Well, you'll go back into the jury room, and you can
21 decide whether or not you think he's stretching or not or
22 whether or not that makes sense to you.

23 What we do know is that someone -- or -- is that
24 someone took Georgia's wallet at the casino. We don't know
25 how long that person had been inside the casino when it

1 happened, if it was a man or a woman who took the wallet. We
2 don't know if that person entered into the casino originally
3 intending to steal a wallet or was there, like Georgia and her
4 husband was there, getting something at the buffet and then
5 saw a wallet lying on the ground that had dropped out of the
6 purse between the buffet and the table or was sitting somehow
7 inside an elevator that she had taken up to the elevator cart.

8 She personally doesn't know where the -- where the
9 wallet came out of. She knows she -- she's pretty sure it --
10 she used it at the -- at the buffet, she thinks she pulled a
11 dollar out of it when she got to the slot machine, but she
12 doesn't know for sure that it's gone until she's in her hotel
13 room. Well, there is quite a bit of square feet between the
14 buffet, the slot machine, and her hotel room. She's in the
15 elevator, she's walking to the slots, she's walking to the
16 elevator, she's walking to her room.

17 So ultimately, we don't know. If you can look at
18 that video and say to yourself you see the wallet being taken
19 then I guess that's what you decide because you have a chance
20 to ultimately decide that.

21 So what we know is a wallet was taken. Or that her
22 credit card that was in that wallet was used about 45 minutes
23 later about a mile away or two miles away at a shoe store.

24 Now, what do we know about the person who actually
25 used that credit card? And the answer is not as much as you

1 might think. We know from listening to the detective, who
2 watched the videotape -- watched both videotapes, that the
3 person who, from the zoomed out picture at the shoe store
4 video, looking from the back, has a hat on, a -- a baseball
5 hat turned backwards, has a jersey on that's number 6, appears
6 to be male, appears to be black skinned, and has similar if
7 not identical shape and size as the person who's dressed the
8 same way as the Tropicana video.

9 He says he can -- he's seen the two videos and they
10 appear to be the same person. Now, he wasn't there when Mr.
11 Ross was in the shoe store on the 17th. He came a couple of
12 days later and watched the videotape with the -- with Kevin,
13 the manager. Kevin, on the other hand, says when he watched
14 the videotape he recognized on the videotape seeing a guy that
15 he had been acquainted with, Phillie. And how does he know
16 Phillie? Because Phillie -- he saw it was Phillie's hair.
17 Well, that suggests that when he saw a videotape of Mr. Ross,
18 Mr. Ross wasn't wearing a hat. You don't see someone's hair
19 in the picture that we saw because he's got a baseball cap on.

20 Kevin, who watched the videotape, says he sees Mr.
21 Ross come up to the counter. Now, how does he know for sure
22 that's the -- the credit card transaction in question? He
23 says well, he can look at the monitor and he can see what's
24 being rung up. Well, the detective who was watching the same
25 videotape at the same time said no, the screen was -- the

1 image is from the opposite side. It's -- you can see the back
2 of the customer and the front of the -- of the cashier, and
3 you can't see the screen. And you couldn't see what was being
4 rung up, nor could you see what was being handed over. All he
5 could see was a timestamp on the video.

6 Then you have Deja who indicates when he is talked
7 to maybe an hour after he does a transaction with a credit
8 card, a credit card that turns out to be stolen, he remembers
9 back and he says yeah, I saw Mr. Ross come in -- he didn't
10 call him Mr. Ross; he called him Phillie, which, according to
11 Kevin, he'd never heard the word Phillie before or he hadn't
12 told -- Kevin hadn't told him who Phillie was -- but the
13 indication is that Deja knows Kevin separately (indiscernible)
14 he says he comes in with a girl.

15 Well, the detective sees the person at 13:55, which
16 is when the card is being used in the system, the person who
17 he saw come in the front door and shop and approach the
18 cashier and pay with a stolen credit card, that has the hat
19 and the jersey and the pants that match up with the Tropicana,
20 came in with a man. We're talking about two separate people.
21 We're talking about two separate groups of people.

22 What we know is that someone used Georg -- somebody
23 took Georgia's card, probably from the Tropicana. Whether
24 that person went to the Tropicana intending to do that I don't
25 know and I'm not sure how anybody could know; that the person

1 who is in the videotape talking with Georgia appears to be
2 dressed exactly the same as the person who was later on in the
3 shoe store is what the detective says, and I don't see any
4 reason to doubt that, but is that Mr. Ross?

5 Deja indicates in a -- in a real sense no because
6 Deja says that Mr. Ross came in but he came in with a girl.
7 And he was telling that to Georgia an hour after it had
8 actually happened.

9 What Kevin is telling us is what he saw on a
10 videotape two or three days later, and he personally witnessed
11 none of it because he was on break.

12 What the detective is telling us is simply what he
13 saw in the videotape because he wasn't at the shoe store until
14 two or three days later himself because this happened on a
15 Saturday and, as you remember, the detective doesn't work on
16 Saturdays or Sundays.

17 So Mr. Ross comes into the shoe store anywhere from
18 a half a dozen to eight times during March. He makes friends
19 with Kevin to the point where he tells Kevin that he's from
20 Philadelphia. He probably makes friends with Deja because
21 Deja knows his nickname to be Phillie, and he knows that
22 independently of Kevin because Kevin said he never told him
23 about his nickname being Phillie until after this
24 investigation started.

25 And you remember that Deja is telling Georgia an

1 hour after it happened, prior to him talking with his
2 supervisor, that Phillie had come in -- a guy named Phillie
3 had come in and used the card.

4 Now, think of what Deja's facing. He's working five
5 days a week or whatever. The shoe store's been open a year --
6 a month or two. He's an employee. Someone comes up and uses
7 a credit card with a women -- woman's name on it, and he lets
8 that credit card go through. Look -- think about it. He
9 clearly must not have asked whatever person had that -- who
10 offered that credit did not ask for an ID because if --had he
11 asked for the ID it would have been quickly obvious that
12 whoever was holding that card was not Georgia Stathopoulos.

13 Independent of the fact that whoever signed this
14 card signed it misspelling the last name, whoever was standing
15 there, unless they had gone to the trouble in this 45 minutes
16 (indiscernible) obtaining a false ID with the name Georgia
17 Stathopoulos on there, who -- whenever at 12:53 or no, at --
18 yeah, I'm sorry, at 1:53, whenever he -- he -- he processed
19 that card -- and we know that Deja processed the card because
20 he's the person who is the -- he is the guy listed as being
21 the -- the clerk who processed this receipt -- he did not --
22 he didn't ask for ID, which is, as I asked him
23 at the preliminary hearing, are you supposed to ask for ID and
24 he said yes, in fact, I got in trouble for not asking for ID.

25 So an hour after during a Saturday day, busy or not

1 I'm not sure, he gets a call from a lady in a panic saying I
2 lost my credit card an hour ago, the credit card company says
3 it was -- it was used an hour ago in your store, my name is
4 Georgia whatever, and she might have said it was for card
5 amount so-and-so and gave him a credit card number. He then
6 went and -- went to the system and saw, number one, that it
7 was him that accepted it, and he's trying to think back to an
8 hour ago as to who was it who -- who prob -- who is it that
9 did that transaction.

10 Does he know for sure that it was Mr. Ross? He is
11 as sure as that he's -- that Mr. Ross was the person who used
12 the card as the fact that Mr. Ross came in with a girl. But
13 that doesn't match the person on the video. That Mr. Ross was
14 in that day sounds like that's uncontested. Whether or not
15 Mr. Ross is the one -- that actually is the one who tendered
16 the card, that's what you have to decide.

17 But Deja, you can imagine, is in a position of
18 realizing that \$500 worth of credit card things went through
19 on his watch, and he didn't do it properly, and so now he's
20 trying to come up (indiscernible) answer. He remembers Mr.
21 Ross coming in.

22 Now, I'll tell you what the one thing that if we had
23 would end up resolving the case one way or the other, and that
24 is if we would have got, if the -- if the detective would have
25 asked, some kind of handwriting analysis to take this

1 signature and match it up with Mr. Ross or anybody else. And
2 we could have, like a fingerprint, told whether or not this is
3 Mr. Ross's signature.

4 Well, the detective didn't do that. And I imagine
5 the detective didn't do that because he saw the Tropicana
6 video and he says oh, that's Mr. Ross in there. He sees the
7 shoe store video, and he says you can't tell by the face who
8 that person is but it's wearing the same clothes. And so he
9 doesn't decide he needs to go to the trouble of getting in a
10 handwriting analysis to see whether or not if this signature
11 is, in fact, Mr. Ross's signature. So you don't have that
12 when you go back into the jury room.

13 What we do know is whoever signed this was wearing a
14 red hat, had a jersey on with a number 6 on it, and entered
15 the store with a man. And that's not Mr. Ross. Mr. Ross
16 wasn't wearing a hat, as Kevin told us, and he came in with a
17 woman, as Deja told us who, if I remember right, is a man even
18 though he has a name that sounds like a woman. Deja is a man
19 if I'm -- if my memory of the preliminary hearing is correct.

20 The question ultimately, and in conclusion, the
21 question ultimately is not whether or not there was a -- a --
22 a larceny from the person, from Georgia, whether there was a
23 misuse of a credit card and obtaining shoes under false
24 pretenses at the shoe store. The question is who did it.

25 And I would suggest as you go back into the jury

1 room and look at the videotape, look at the -- the paperwork,
2 that you will decide that you're not nearly as positive as the
3 detective is that the person in that streaked, noisy videotape
4 that (indiscernible) the Tropicana if -- if you can tell
5 anything other than it appears to be a 20-something black guy
6 and that he's got a red -- that he's got a cap on and a long
7 jersey, looks like a basketball jersey, with a number 6 on it.
8 That you can tell.

9 Can you tell that's Mr. Ross? Can you go back into
10 the jury room and watch that videotape as many times as you
11 want and come and say to yourself I got an abiding conviction
12 that's Mr. Ross? Well, if you do then you'll believe that's
13 the same person that was in the shoe store because the
14 detective says they were dressed the same. Can't tell from
15 the face if it was the same but they're dressed the same.

16 What I would suggest is you go back in there and
17 take your obligation to study this case seriously. And
18 realize that not the detective and not anybody else, you are
19 the guys who decide what happened that day or you decide if
20 you're satisfied that you have been convinced beyond a
21 reasonable doubt; that you'll decide there is -- that -- that
22 the person who's in that Tropicana videotape is not Mr. Ross
23 or that you can't tell who it is; and that Mr. Ross, when he
24 came into the store -- the shoe store later on that day, came
25 in with a woman and wasn't wearing a hat and is not the person

1 in the videotape. And while we don't know who committed this
2 crime it wasn't Mr. Ross. Thank you.

3 THE COURT: Thank you, Mr. Jorgenson.

4 Ms. Walsh?

5 MS. WALSH: Thanks, Judge. Thank you, Judge.

6 Thank you, ladies and gentlemen. Mr. Jorgenson said
7 it doesn't make a difference what the detective says, it's all
8 up to you, you're the ones who decide. And that's true;
9 you're the finders of the fact, you're the jury, you decide
10 this case. But how do you decide?

11 You decide by listening to the evid -- to the
12 testimony in this case, by listening to the evidence. And
13 what is the evidence in this case? The evidence is the
14 detective's testimony. The evidence is Georgia's testimony.
15 The evidence is Deja's testimony. And it's your job to judge
16 their testimony and see if what they're saying does make sense
17 to you. And what you should know by now that it does. It
18 makes a lot of sense. It is the Defendant that committed
19 these crimes, and we know that for a number of ways.

20 How do we know that it's the Defendant? We have the
21 identification, identification in court by Georgia, Luis,
22 Kevin, Deja, the detective. All those people came in here,
23 got on this witness stand, and said that's the guy. The photo
24 lineups by Luis Valadez, Kevin Hancock, and Deja Jarmin all
25 separately independently of each other identify the Defendant

1 through the photo lineup.

2 And you heard the testimony of those witnesses.
3 They didn't talk about it amongst each other. You heard the
4 testimony from Detective Rader; he didn't do the photo lineup
5 where they're all together or they all know who each other one
6 picked. They all pick the Defendant, Ronald Ross, as the guy
7 who they saw in the store that day.

8 And you heard testimony from Luis, Kevin, and Deja
9 that the Defendant is a regular customer. They're not just
10 relying on their memory of this guy who came in who was just
11 one of random thousands of customers that they've probably
12 seen and were able to pick out this guy. They remember him
13 because they know him.

14 Is that all just the biggest coincidence ever that
15 all these people are able to identify the Defendant? Or is it
16 proof beyond a reasonable doubt that it's the Defendant
17 (indiscernible) talking about? Is it just a coincidence that
18 all of them -- Georgia, who has nothing to do with the people
19 at the shoe store, is able to identify the same guy who used
20 her credit card 40 minutes later? They all point to the same
21 guy. And not just to any guy; to the Defendant.

22 Now, Mr. Jorgenson also said it's up to you to see
23 if the detective's testimony about it being Mr. Ross on the
24 video, does it make sense. And we have a lot of testimony
25 about the video. You have the video from the Tropicana;

1 you've seen it. You know what the Defendant is wearing that's
2 (indiscernible). We have the testimony from Luis, Kevin, and
3 Deja and the detective about the video.

4 And there was some question is the video that
5 Detective Flenner is talking about, how do we know that's the
6 video that corresponds with this transaction. Well, first of
7 all, Deja said an hour after I got the information that a
8 fraudulent credit card was used we immediately went, we pulled
9 the video, my assistant manager, my regional manager, and we
10 showed that video to the detective. And he was asked is the
11 video that you show the detective a fair and accurate
12 description of what happened for that transaction. He said
13 yes, the transaction that I watched on the video that I showed
14 the detective is the same transaction.

15 And then Kevin Hancock later on watched a video, and
16 he said the angle that he watched -- because remember they
17 said they have a couple of different angles at the store which
18 common sense we know stores have more than one surveillance --
19 (indiscernible) he could see -- he was able to see the cash
20 register, he was able to see the transaction was \$490. He had
21 the receipt that the Defendant signed for what merchandise he
22 bought. The merchandise on a counter matched the receipt, and
23 the information that was coming up on the computer matched.

24 So we do know that the testimony from Kevin and the
25 testimony from Detective Flenner are coming from the

1 transaction that was signed for by the Defendant for the
2 credit card that you have in evidence.

3 And what did the detective say? The Defendant
4 enters the shoe store with same second suspect. And Mr.
5 Jorgenson talked a lot about testimony from Deja that he came
6 in with a woman. That wasn't the testimony of Deja -- and you
7 should be able to remember this. He was asked I want to turn
8 your attention again to that early afternoon of March 17th,
9 2007. Could you tell us your observations of the Defendant on
10 that day when he entered your store. The answer was I recall
11 that he had on -- I believe it was a T-shirt and a jersey when
12 he walked in with his friend. So he walked in with his
13 friend. And then he was asked to describe the friend. He
14 said no, he was a black -- a black guy. No mention in Deja's
15 testimony of a girl. Came in with a guy.

16 Where does this girl come from? This girl comes
17 from Georgia, this woman who, over two years ago, had her
18 credit card stolen who's now trying to remember the details of
19 what someone told to her two years ago about what he came in
20 -- who he came in with, did he come in with a man, did he come
21 in with a woman. Credibility of the witnesses. Which are you
22 going to believe? The clerk who actually waited on them or
23 our victim who's trying to recall minor details two years
24 later? That's up to you to decide.

25 So he enters this store with the same second

1 suspect, he's wearing the same clothing. It's clear that
2 we're talking about a guy wearing a jersey, number 6 on it,
3 has a jacket, has a hat. Kevin said he probably couldn't
4 remember what type of hair the Defendant had. Maybe that's
5 because he had the hat on.

6 Kevin Hancock is able to identify the Defendant off
7 the video immediately. He knows the Defendant. In fact, the
8 Defendant asked for Kevin when he initially came into the
9 store, but Kevin was on break, so that's why Luis waits on
10 him. But as soon as he goes back a few days later and watches
11 the same transaction he says I know that guy, that's Phillie,
12 and he picks him out of a photo lineup identifying the
13 Defendant, Ronald Ross.

14 And the Detective Flenner is able to identify the
15 Defendant off both the videos. He's able to identify the
16 Defendant off the Tropicana video saying yes, I know Ronald
17 Ross and this is Ronald Ross, and he's wearing the exact same
18 clothing 40 minutes later, using the credit card of a woman
19 that he just stole it from at the Tropicana. That's how we
20 know it's the Defendant on both videos.

21 And you also have the timing. The wallet's stolen
22 around 1:00, the transaction's completed around 2:00, the
23 store is about 15 minutes away from the Tropicana, he's in the
24 store for 20 to 30 minutes, and Georgia's credit card was
25 used.

1 How else could this have happened if it's not the
2 Defendant? He's identified as being the one who took the
3 credit card at the Tropicana. Who else could have picked up
4 the credit card, put on the same jersey that's the same
5 number, with the same hat, with the same coat, and then walks
6 into a store and uses her credit card?

7 We talked about reasonable doubt, and for doubt to
8 be reasonable it has to be actual, not mere possibility or
9 speculation. And is that just a mere possibility, a huge
10 speculation, that all of that could have occurred in that
11 short 20 minutes, 20, 25 minutes that we went from the time of
12 the card being taken to the time we get to the shoe store?

13 And then the Defendant introduces himself as
14 Phillie, the person that Kevin ID's off the video is Phillie,
15 and the Defendant is from Philadelphia. You heard that from
16 Detective Flenner, born and from Philadelphia. How we know
17 it's the Defendant.

18 So, ladies and gentlemen, ask you to really think
19 about and listen to what you remember about Deja's testimony
20 because Deja was the one who actually waited on the Defendant,
21 he's the one who remembered who bought these items, he's the
22 one who pulled the video and said yes, this is the
23 transaction. He says he comes in with a guy, wearing a
24 jersey, buys \$490 worth of merchandise -- you have the receipt
25 and you have the carbon copy -- he uses a credit card. He

1 didn't check the ID -- he got in trouble for it -- because he
2 was a known customer. He had seen Phillie in the store before
3 -- or, excuse me, he had seen this person in the store before
4 that he later -- Kevin identified as Phillie, he had
5 previously used a credit card, everything was fine there. He
6 didn't check it, got in trouble for it. The Defendant is the
7 one who signed the receipt, that blue ink that we have in
8 evidence.

9 And then one hour later he's called and informed
10 that it was a fraudulent transaction, and that's when he
11 watches the video. It's not like we're talking about three
12 weeks later where he's now waited on multiple customers
13 between the time that the Defendant came in. We're only
14 talking about a short hour.

15 Now, Mr. Jorgenson would have you believe -- and he
16 only talked about the crimes of burglary and larceny from the
17 person because this case really isn't about what crime was
18 committed; it's more about how we know it's the Defendant and
19 how we know it is the Defendant. He said we don't know when
20 the wallet was taken from Ms. Stathopoulos at the Tropicana.
21 We don't know. It could have fell on the floor or somebody
22 could have picked it out of her pocket. But we do know
23 because we have the video in evidence.

24 If we could play the video?

25 We have Detective Flenner's testimony about the

1 between Mr. Ross and -- and Georgia; is that correct?

2 A Yes, ma'am.

3 Q And is there any significance to you regarding that?

4 A (Indiscernible) where he's at right now he's
5 blocking what's happening from anybody walking behind. Behind
6 Georgia. And Mr. Ross.

7 Q (Indiscernible) also any significance as to how
8 close both the Defendant and the person he's working with are
9 to the victim?

10 A Yes.

11 MS. WALSH: And if we can pause it right here.

12 Okay.

13 BY MS. WALSH:

14 Q What's the significance of how close Mr. Ross and
15 this other individual were to that victim?

16 A Well, the -- the -- the second guy right here, he
17 actually gets close enough to where he almost looks like he
18 brushes her to where she feels something so she's not alarmed
19 to feel if she -- in case something else is being moved at the
20 same time. So he moved in so close to block anybody behind
21 and wedged into the side so she could -- if she did look over
22 all she'd see was him.

23 Q Okay. So kind of to just make her understand hey,
24 if you feel something here where -- where your left is, on
25 your left side where your purse is, it's just me because I'm

1 standing so close to you; is that correct?

2 A That's correct.

3 Q Okay.

4 MS. WALSH: And if we could rewind it just a few
5 seconds.

6 BY MS. WALSH:

7 Q And now, Officer, if you -- we're going to see some
8 type of handoff; is that correct?

9 A Yes, ma'am.

10 MS. WALSH: And if we could play it. And if we
11 could pause it here.

12 BY MS. WALSH:

13 Q And we're pausing it at 13:07:29; is that correct,
14 Officer?

15 A Yes, ma'am.

16 Q And this would be the point where Mr. Ross handed
17 off his coat and whatever else would be contained in the coat
18 to the second individual; is that correct?

19 A Yes, ma'am.

20 Q And is there anything significant to you as a
21 detective regarding exactly how the Defendant handed off this
22 property to this other person?

23 A The coat was partially concealing the wallet. And
24 then with the second guy walking away with the wallet, since
25 Ross is still there, if he gets confronted he's going to say I

1 have nothing on me, I don't know what you're talking about.

2 Q Now, just to be completely fair we don't absolutely
3 100 percent see the wallet in the video; is that correct?

4 A Yeah. You can see the black thing; it -- it's in --
5 it's in the jacket.

6 Q (Indiscernible) see a black thing inside the jacket?

7 A (Nodding head affirmatively)

8 Q Okay. So we see a jacket and something black being
9 handed off to the second individual.

10 A Yes, ma'am.

11 Q And the second individual's now walking up towards
12 the screen; is that correct?

13 A Away from the camera.

14 Q Away from the camera.

15 MS. WALSH: If we can play it here.

16 BY MS. WALSH:

17 Q And then Mr. Ross walks off in a different
18 direction; is that correct?

19 A Yes, ma'am.

20 Q Is there any significance to the fact that the two
21 who were initially walking in the same direction are now
22 walking separate ways?

23 A Just so they're not seen together. Walk off and
24 meet up later.

25 Q Okay. And is that something that's common in a

1 distract theft type of situation?

2 A Yes, ma'am.

3 Q And you indicated that it was significant that the
4 person who actually took the property hands off the other --
5 the property to somebody else so if he's questioned he's not
6 stopped with the property; is that correct?

7 A Yes, ma'am.

8 Q And to be clear, at the beginning of the video
9 they're originally walking in the same direction approaching
10 Ms. Stathopoulos.

11 A Yes, ma'am.

12 Q And is there a significance to the fact that this
13 was an elderly victim?

14 A It seems to be a trend.

15 Q Okay. Now, you indicated you were able to identify
16 Mr. Ross off the videotape; were you able to do that
17 immediately upon viewing the tape?

18 A It wasn't immediately.

19 Q But you were able to identify him from the
20 videotape?

21 A Yes, ma'am.

22 Q Recognized him off the tape?

23 A (No audible response.)

24 Q Now, you also viewed some video surveillance at
25 another store regarding this Defendant; is that correct?

1 A Yes, ma'am.

2 Q Had you been notified that one of the credit cards

3 that were taken from Georgia was used at the Sheikh shoe

4 store?

5 A Yes, ma'am.

6 Q And did you respond to that location?

7 A Yes, ma'am.

8 Q Did you review the surveillance tape at that

9 location?

10 A Yes, ma'am.

11 Q And was this actually surveillance on a computer --

12 A It --

13 Q -- computer system?

14 A Yes, ma'am.

15 Q Were you able to procure a copy of that video

16 surveillance?

17 A No, ma'am.

18 Q And why is that?

19 A They -- they didn't know how to operate the system.

20 I even talked to the general manager of -- regional manager,

21 and they were supposed to come do it, but they never figured

22 out how to get it from the computer to a DVD.

23 Q Okay. And from what we understand this was a

24 relatively new surveillance system.

25 A That's what they told me, yes, ma'am.

1 Q Okay. Now, when you reviewed the surveillance
2 system you were able to -- there was a date and timestamp on
3 the video; is that correct?

4 A Yes, ma'am.

5 Q And the surveillance you viewed was from March 17th,
6 2007?

7 A Yes, ma'am.

8 Q And it was from approximately 1:49 in the afternoon;
9 is that correct?

10 A The time the transaction took place.

11 Q Okay. Transaction was at 1:49?

12 A Approximately 1 -- yes.

13 Q Okay. So you started viewing the tape a few minutes
14 prior --

15 A Yes, ma'am.

16 Q -- to the date of the transaction?

17 A Yes, ma'am.

18 Q Okay. When you're able to view the surveillance
19 tape of the person who came into the store, was it Mr. Ross?

20 A It was -- it was far, distant view, but based on the
21 clothing, it had the number 6 on it, the hat, same hat, the
22 second subject had the same clothes, I figured that to be
23 Ronald -- Ronald Ross.

24 Q Okay. So on the videotape you see two individuals
25 walk into the store, and they're wearing the same clothing

1 that they were just wearing in this video right here.

2 A Yes, ma'am.

3 Q Okay. And that clothing was a jersey with the
4 number 6 on it?

5 A Yes, ma'am.

6 Q And that's what you saw in the videotape?

7 A Yes, ma'am.

8 Q That second person that was with the Defendant in
9 the Tropicana video had the same clothing on at the shoe
10 store?

11 A Yes, ma'am.

12 Q Okay. Did Mr. -- or excuse me, did the person with
13 the jersey also have a -- the coat?

14 A Yes, ma'am. Believe --

15 Q Okay.

16 A -- he was wearing it at this time.

17 Q Okay. So he's wearing the coat now; it's no longer
18 draped over his arm?

19 A Yes, ma'am.

20 Q Okay. And this was approximately half an hour to 40
21 minutes after the incident took place at the Tropicana that
22 you're -- the video time is, correct?

23 A Yes, ma'am.

24 Q And because it's within such a short time and the
25 clothing on both individuals the same you conclude that the

1 person in the video is Mr. Ross.

2 A Yes, ma'am.

3 Q From the Sheikh shoe store.

4 A Yes, ma'am.

5 Q Does the person in the video with the jersey with
6 the number 6 on it make a transaction?

7 A Yes, ma'am.

8 Q Do you see that transaction on the videotape?

9 A I -- I see him at the front making a transaction.

10 Q Okay. So were you able to just tell from the
11 surveillance that merchandise was put up and it was paid for
12 and he left with the merchandise?

13 A Don't remember who left with it, but I know he was
14 the only one at the counter making the transaction.

15 Q Okay. So the only person at the counter making a
16 transaction is the person in the jersey with the number 6 on
17 it.

18 A Yes, ma'am.

19 Q Okay.

20 MS. WALSH: Court's indulgence, Your Honor?

21 THE COURT: All right.

22 BY MS. WALSH:

23 Q Officer, how long does it take to get from the
24 Tropicana to Sheikh shoe store?

25 A That time of day, depending on traffic, could be 15

1 minutes.

2 Q Okay. Now, are you also familiar with the place
3 where Mr. Ross was born?

4 A Yes, ma'am.

5 Q Where was he born?

6 A Philadelphia, Pennsylvania.

7 Q And how tall is Mr. Ross?

8 A Approximately 5'8".

9 MS. WALSH: No further questions, Judge.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. JORGENSEN:

13 Q Detective, you were on a normal shift on March 17th
14 of '07.

15 A Yes, sir.

16 Q That shift started when?

17 A Actually, I don't know when March 17th was -- what
18 day it was.

19 Q In March of -- not this last March but the March
20 before you were a detective?

21 A Yes, sir.

22 Q With the same unit that you are with now?

23 A Yes, sir.

24 Q And do you remember what shift you were working back
25 then?

1 A A day shift.
2 Q Starting when and ending when?
3 A I start at 7:00 and end at 4:00.
4 Q And that would be Monday to Friday?
5 A At that time it was every other Monday off with
6 weekends off.
7 Q So (indiscernible) work on Saturdays?
8 A No, sir.
9 Q (Indiscernible) if March 17th is a Saturday you came
10 in doing ex -- overtime then?
11 A No, sir.
12 Q So your memory is March 17th is not a Saturday.
13 A I don't remember when March 17 -- what day it fell
14 on.
15 Q If it fell on a Saturday then it wouldn't have been
16 you because you weren't working on Saturdays?
17 A Correct.
18 Q All right. So you get -- how do you first -- how
19 does this case first come to your attention?
20 A It gets assigned by the sergeant.
21 Q And you're --
22 A (Indiscernible) --
23 Q -- told --
24 A -- we all have a -- a computer with what's called a
25 queue, and all the cases get sent to each detective by the

1 sergeant.

2 Q And you're told that a lady at the Tropicana thinks
3 that her card's been -- or her (indiscernible) her wallet's
4 been taken.

5 A Yes, sir.

6 Q Did you hear at that time that the card had been
7 used? Or when did you hear that -- when did you find that
8 out?

9 A It was shortly after, I believe, that she called in
10 and was desperately trying to get hold of a detective to go to
11 Sheikh Shoes to find -- and follow this up.

12 Q So when she actually called the police she at that
13 point already knew the card had been used?

14 A I don't be -- I don't remember. If -- if
15 (indiscernible) right at that time. I think that a report did
16 say that when she did realize it because it was a little bit
17 after the fact because she went to her room that when she did
18 finally call in she said it was used.

19 Q You first -- what did you do when you got the call?
20 Did you drive over to the Tropicana?

21 A I -- I called. I called the Tropicana investigator.

22 Q And did you go over there?

23 A No, sir.

24 Q Did you talk with her, the victim?

25 A I did end up talking to her sometime after.

1 Q Same day but later --

2 A No, no, no.

3 Q -- on in --

4 A It was -- it was when I came back to work.

5 Q On the day you got the call did you actually go
6 interview anybody in person?

7 A I may have went down to Sheikh Shoes. I don't
8 remember ex -- the time that -- you're talking about the
9 victim calling me or the time I get the case?

10 Q Get the case.

11 A I don't remember that specific day if I did or
12 didn't.

13 Q Did you get the case the same day the victim called
14 you?

15 A No, sir.

16 Q What came first?

17 A I would imagine the case probably came first and
18 then she would have made contact after.

19 Q All right. So it's possible the day the sergeant
20 gives you the case that prior to you finishing your shift you
21 went down and talked to somebody at the shoe store.

22 A Some point, yes, sir, I did go down there.

23 Q Maybe the same day, maybe a day after or --

24 A Could be, sir. I -- I don't remember.

25 Q Okay. And at that point that's when you watch this

1 videotape we're talking about?

2 A From Sheikh Shoes?

3 Q Yeah.

4 A Yes, sir.

5 Q When did you see the Tropicana tape? The day that
6 you got the case or a day later or a couple of days later?

7 A It was probably right after that. I don't know -- I
8 don't remember exactly when it was because I did not pick up
9 the tape. One of our swing shift detectives picked it up.

10 Q Where did you watch the tape at?

11 A That would be in our office.

12 Q So the Tropicana had already copied to a tape what
13 we just watched here a little bit earlier and shipped it over
14 or sent it over to your offices that your -- where your
15 detectives are at.

16 A Yes, sir.

17 Q You guys didn't go to the Tropicana to pick it up.

18 A Our swing shift detectives picked it up somehow. I
19 don't know if they went down there or -- I'm sure they went
20 down there.

21 Q I guess where I'm really trying to get to is you
22 didn't watch this originally in the Tropicana surveillance
23 room.

24 A No, sir.

25 Q Okay. And the tape looked like what we see now,

1 kind of, you know, streaks and not very clear.

2 A Yes, sir.

3 Q So you didn't -- what we watched today 20, 30
4 minutes ago or 15, 20 minutes ago -- is the -- is as good a
5 copy as you've ever seen yourself.

6 A That I don't remember because I don't know if I seen
7 the original. I received a copy. I don't take originals.

8 Q And --

9 A Or our -- or my -- our swing shift officers.

10 Q All right. But it was while you watched this tape
11 back in your office that you looked at it for a while, rewound
12 it, looked at it for a while, and then said hey, I think this
13 may be Ronald Ross?

14 A Yes, sir.

15 Q Now, it doesn't look very clear. You can't -- I --
16 looking at it I can't tell anybody's facial distinct -- facial
17 features. How are you able to pick that out?

18 THE COURT: Can I have counsel approach, please?

19 MS. WALSH: Yeah. Thank you, Judge.

20 (Bench conference as follows:)

21 THE COURT: If he answered (indiscernible) seen him
22 in other -- seen him in other cases --

23 MS. WALSH: We just went to a very dangerous place
24 because (indiscernible)

25 THE COURT: (Indiscernible) how do you know it's

1 him. And he says because (indiscernible) or something like
2 that.

3 MS. WALSH: He's going to say it's because of his MO
4 because he's been investigating this guy for two years.

5 THE COURT: I just wanted to prevent any mistrial.
6 It wouldn't -- actually, you asked the question.

7 MS. WALSH: He asked the question.

8 THE COURT: Okay. All right.

9 (End of bench conference)

10 THE COURT: Next question, Mr. Jorgenson.

11 BY MR. JORGENSEN:

12 Q You -- it's sometime afterwards -- maybe the same
13 day, maybe a later day -- you go over to the shoe store and
14 talk with the manager and look at a computer generated video.

15 A Yes, sir.

16 Q And what struck you is the person that we see in the
17 Tropicana video with a jersey and a baseball cap on backwards
18 is the -- identical to the person that we saw on this tape.

19 A Yes, sir.

20 Q Now, the tape that you watched at the shoe store was
21 a -- a more zoomed out shot than what we have here from the
22 Tropicana?

23 A Yes, sir.

24 Q When you're looking at this image of the shoe store
25 you can see quite a bit of the shoe store or how far zoomed

1 out is it? What can you see in the frame?

2 A You can see quite a bit.

3 Q But in the middle of it you can see the back of the
4 person running the register or the front?

5 A You see the front. You see the -- you're looking
6 from the front doors looking into the register area.

7 Q So whoever is the customer, the customer, whoever's
8 at the counter, you're seeing the back of them?

9 A Yes, sir.

10 Q And that's where you can see a jersey, a jacket, and
11 the same hat.

12 A Yes, sir.

13 Q And a person that's roughly the same height, the
14 same build, the same gender, the same race.

15 A Yes. And not just from the back there. You -- he
16 walks around, so --

17 Q Okay. And can you look at that and recognize by
18 that videotape alone which of the employees was helping him?

19 A No, sir.

20 Q Somebody had to tell you (indiscernible) this is the
21 name of the guy who was helping him.

22 A Yes, sir.

23 Q How could you tell that this videotape was the one
24 that you were interested in?

25 A The time.

1 Q How did you know what time to look for?
2 A Victim.
3 Q The victim told you her -- what?
4 A Her credit card was used at the Sheikh shoe store
5 and gave a time.
6 Q Do you remember what time that was?
7 A Approximately 1:49 p.m.
8 Q So when she told you that information you wrote it
9 into your notes or whatever so you could then later on go to
10 the shoe store and say pull up this date, that time, see who
11 was at the counter.
12 A Yes, sir.
13 Q I believe the victim actually called the shoe store
14 themselves and was speaking to somebody.
15 Q Before she talked to you?
16 A Yes, sir.
17 Q So she gave you the information already that not
18 only was her purse taken, her card was taken, but the -- the
19 people at the shoe store remembered that -- some transaction
20 of it.
21 A She -- well, she told me that her card was used
22 there at such and such a time, and that's what I went to look
23 for.
24 Q And she knew that because the shoe store people told
25 her that or do you remember?

1 A I believe it was her -- her bank.

2 Q Okay. But in talking with her you remember her
3 telling you that she had already talked with the shoe store
4 people.

5 A I believe so, yes, sir.

6 Q Who did you talk to at the shoe store? One person
7 or a couple of people?

8 A I talked to a couple of people.

9 Q Did you talk to the person who was actually doing
10 the transaction?

11 A Yes, I -- yes, I did.

12 Q What was his name?

13 A Believe it's Deja.

14 Q Could you tell after you met him that he was the
15 same guy who was the clerk?

16 A I'm sorry? Say again.

17 Q You said by looking at the tape you couldn't
18 immediately tell who the clerk was, correct?

19 A Yes, sir.

20 Q But did you meet the clerk in question after you
21 watched the tape or before you watched the tape?

22 A I believe it was after.

23 Q All right. When you saw the clerk then for the
24 first time could -- did you -- had -- had no one told you this
25 was the clerk would -- would you have been able to say all

1 right, here's the clerk because I already saw him on the tape,
2 or was the tape not that good (indiscernible).

3 A No. The tape was pretty good. It was --

4 Q So when you first saw the clerk you immediately
5 identified him or what?

6 A I don't remember.

7 Q Okay. The tape was good but it was in doubt.

8 A It was from a distance, yes.

9 Q Now, you indicated you saw the person with the
10 jacket, the -- what looks to be a basketball jersey, and a
11 baseball hat on backwards actually come into the store for the
12 first time.

13 A Yes, sir.

14 Q And that person came in with the same other guy who
15 we see in the Tropicana tape.

16 A Yes, sir.

17 Q So two what would you say, two black male adults in
18 their mid-20s?

19 A Thirties, 20 to 30.

20 Q Okay. Roughly the same height or is one taller than
21 the other?

22 A Roughly the same height.

23 Q One you don't recognize and one that you recognize
24 as being Mr. Ross.

25 A Yes, sir.

1 Q Never any luck at all in determining who the other
2 person was?

3 A No, sir.

4 Q When the transaction is actually happening at the
5 counter you can or can't tell if the person's paying with cash
6 or credit card or what kind of credit card.

7 A I cannot.

8 Q Partially because it's zoomed out and partially
9 because the person's blocking that portion of the counter?

10 A Yes -- yes, sir, the distance.

11 Q But being zoomed out it allows you to see who's
12 walking in the front door then, correct?

13 A Yes, sir.

14 Q This camera's probably positioned above the front
15 door?

16 A I don't remember exactly what position it was.

17 Q Okay. And you asked them to make you a copy like
18 you had the Tropicana copy, but they -- no one was there who
19 knew exactly how to do it.

20 A Yes, sir, that's correct.

21 Q And then even a couple of days or a week later you
22 were still expecting and hoping they'd make you a copy, but no
23 one actually was able to do it.

24 A Correct.

25 Q Were you present when a photo lineup was done?

1 A No, sir.

2 Q Do you know anything about that?

3 A I was given a photo lineup from Detective Rader.

4 Q After it had been shown?

5 A Yes, sir.

6 Q But you -- you weren't involved in going over to the
7 store and showing it to anybody.

8 A No, sir.

9 Q So you don't know what day that happened.

10 A No, sir.

11 Q The -- the video we watched is in black and white;
12 is that correct?

13 A Yes, sir.

14 Q Did you watch ever a Tropicana video that was in
15 color?

16 A No, sir.

17 Q But the video you watched from the shoe -- the shoe
18 store was in color or not?

19 A Yes, sir, it was in color.

20 Q Okay. And that's how you know it was a red hat and
21 the color of the jersey.

22 A Yes, sir.

23 Q And you could tell the jersey had a number 6 on it
24 because you could -- the video was good enough, even though it
25 was zoomed out, that you could see the -- the same 6 on it

1 that you see in the Tropicana video.

2 A Yes, sir.

3 Q Now, the Tropicana video you can't tell what color
4 it is, but it looks like the same -- the black and white photo
5 looks -- ends up looking the same shade roughly as the color
6 video?

7 A Well, what I've learned in this business is that
8 colors can look a lot different on videotapes than what you
9 think.

10 Q Then why do you think it's the same jersey?

11 A Just the overall build of the person, the number 6
12 is just the way it was, has a jacket now, the hat, the same.

13 Q Okay. And you're presuming it's the same color
14 then.

15 A Yes, sir.

16 Q Because the black and white video you can't
17 necessarily tell.

18 A Correct.

19 Q Did it end up being a yellow jersey? Do I have that
20 memory right? Or do you remember what color the jersey was?

21 A It's red.

22 Q And the hat was red too?

23 A Yes, sir.

24 Q Okay. Now, you don't remember what day you went
25 over to the shoe store, but it wouldn't have been on a weekend

1 because you weren't working weekends.

2 A Correct.

3 Q And whoever was in the two videos it's safe to say
4 they're the same person, the same two people.

5 A Yes, sir.

6 Q Was the other guy wearing the same clothes from both
7 -- from both tapes?

8 A Yes, sir.

9 MR. JORGENSEN: Nothing else.

10 THE COURT: Any redirect?

11 MS. WALSH: Just briefly.

12 REDIRECT EXAMINATION

13 BY MS. WALSH:

14 Q Well, it's not whoever was in the two videos because
15 you know it was Mr. Ross in the video at the Tropicana.

16 A Yes, sir -- I'm sorry, yes, ma'am.

17 Q That's okay. And you know that it's the same
18 individual in both videos?

19 A Yes, ma'am.

20 MS. WALSH: Nothing further, Judge.

21 THE COURT: Any recross?

22 MR. JORGENSEN: No, Judge.

23 THE COURT: Thank you, Officer. You're instructed
24 not to discuss your --

25 THE BAILIFF: Hold on. We've got a question.

1 THE COURT: Question. I'm sorry. Yes, sir?
2 Counsel, approach, please.
3 (Bench conference as follows:)
4 THE COURT: Right. Talk into the microphone.
5 MS. WALSH: Huh?
6 THE COURT: Talk into the microphone.
7 (Indiscernible) ask the question. Okay.
8 (End of bench conference)
9 THE COURT: And, Officer, we have a question or
10 actually two questions from a juror. Was the resolution of
11 the store tape better or worse or the same as the one from the
12 Tropicana?
13 A Better resolution.
14 THE COURT: So the store was better resolution?
15 A Yes, sir.
16 THE COURT: Okay. And did you see multiple angles
17 on the store tape or just a single static angle?
18 A (Indiscernible) all I remember now is the -- the
19 single angle.
20 THE COURT: All right. Thank you.
21 Any follow-up questions by the State to these two
22 questions here?
23 MS. WALSH: No, Your Honor.
24 THE COURT: Any follow-up by the defense?
25 MR. JORGENSEN: No, Judge.

1 THE COURT: Any other questions by the jurors? All
2 right. Thank you, Officer. Again, you're instructed not to
3 discuss your testimony with any other witness involved in this
4 case till this matter is finally resolved. Thank you for your
5 time, sir.

6 (Witness excused)

7 THE COURT: State, please call your next witness.

8 THE COURT: And, Judge, with a cleck -- check with
9 your clerk that all our exhibits have been admitted the State
10 would rest at this time.

11 THE COURT: Have they all been admitted?

12 THE CLERK: Yes.

13 THE COURT: All right. State rests at this time?

14 MS. WALSH: Yes, Judge.

15 THE COURT: Okay. Defense, do you have any
16 witnesses?

17 MR. JORGENSEN: No, Judge.

18 THE COURT: Does the defense rest?

19 MR. JORGENSEN: Yes, Judge.

20 THE COURT: All right. Ladies and gentlemen, we
21 have concluded the evidence portion of this case. As I
22 advised you earlier we would instruct you on the law, the jury
23 instructions, and also at that time -- or after then -- the
24 parties will submit their closing argument to you.

25 We're a few minutes before 5 o'clock, it's been a

1 long day for you. We have certain legal matters that we must
2 resolve before we have you back tomorrow, so we're going to
3 just start at 1 o'clock tomorrow afternoon. Again, we're
4 going to straight -- go straight into jury instructions and
5 closing argument, and then you'll be sent for deliberations,
6 all right. So we'll see you back at 1 o'clock tomorrow.

7 And during this --

8 THE BAILIFF: (Indiscernible)

9 THE COURT: I'm sorry?

10 THE BAILIFF: Go ahead.

11 THE COURT: And during this recess it is your duty
12 not to converse among yourselves or with anyone else on any
13 subject connected with this trial; or to read, watch, or
14 listen to any report of or commentary on the trial by any
15 person connected to the trial or by any medium of information
16 including without limitation newspaper, television, radio; and
17 you are not to form or express an opinion on any subject
18 connected with this case until this matter is finally
19 submitted to you.

20 We will see you back at 1 o'clock and we will start
21 promptly at 1 o'clock.

22 THE BAILIFF: Leave your notepads in your seat,
23 please.

24 (Jury excused)

25 THE COURT: Okay. Record reflect we're outside the

1 presence of the jury. Mr. Jorgenson, I think --

2 Ms. Walsh, you had a doctor's appointment tomorrow;
3 do you think you will be available around 11:00, 11:15 for us
4 to go over the jury instructions?

5 MS. WALSH: I -- I would assume so, Judge; if not,
6 I'm sure Ms. Rinetti can handle (indiscernible)

7 THE COURT: Okay. Mr. Jorgenson, do you think
8 you'll -- do you have many going tomorrow or --

9 MR. JORGENSEN: No. Although we have the DUI
10 calendar which doesn't start till 10:00, but normally since
11 they moved to moderate offender program from Thursday to
12 Friday we're done by 10:45.

13 THE COURT: All right. Why don't we see everyone
14 here at 11:00. If --

15 MS. WALSH: 11:00?

16 THE COURT: -- Ms. Walsh, if you're not back Ms.
17 Rinetti will take your place here, and then we'll work on the
18 jury instructions.

19 Mr. Jorgenson, do you have any jury instructions
20 that you wish to propose?

21 MR. JORGENSEN: No.

22 THE COURT: Okay. And have you had an opportunity
23 to review all of their instructions?

24 MR. JORGENSEN: Not quite.

25 THE COURT: Okay. All right. Well, I'd appreciate

1 it if everyone could be prepared to argue about the jury
2 instructions at 11:00. We can number them after we've gone
3 through them and made any changes, corrections, what have you.
4 And then we'll be -- let's start promptly at 1 o'clock
5 tomorrow. All right. We'll --

6 MS. WALSH: And --

7 THE COURT: -- see everybody back.

8 MS. WALSH: -- does the defense want the proposed
9 instruction about the Defendant has a right to testify or not
10 testify because I know I only gave you that in --

11 THE COURT: Right.

12 MS. WALSH: -- paper form. I didn't know if you
13 needed me to --

14 THE COURT: Do you wish to --

15 MS. WALSH: -- e-mail that.

16 THE COURT: -- have that one, Mr. Jorgenson?

17 MR. JORGENSEN: No.

18 THE COURT: You --

19 MR. JORGENSEN: No.

20 THE COURT: -- do -- you do not.

21 MS. WALSH: Okay.

22 THE COURT: Okay. Are you going to propose -- be
23 proposing your own instruction for as far as the Defendant not
24 testifying or you just don't want one at all?

25 MR. JORGENSEN: I don't want one at all.

1 THE COURT: Okay. And just for the record, I did
2 receive an e-mail from Ms. Walsh regarding the witness not
3 being able to testify and some case law. And, Mr. Jorgenson,
4 it says here that you received a copy of it, correct?

5 MR. JORGENSEN: (No audible response.)

6 THE COURT: What I'm going to do is print out
7 another copy of that, and I'll just have that marked as a --
8 as a court's exhibit.

9 MS. WALSH: Thank you, Judge.

10 THE COURT: All right. Thank you. We'll see you
11 back tomorrow.

12 MS. WALSH: Thanks, Judge.

13 (The proceedings ended at 4:55:36 p.m.)

14 * * * * *

15 ATTEST: I do hereby certify that I have truly and
16 correctly transcribed the video proceedings in the above-
17 entitled case to the best of my ability.

18
19 

20 Sean Rowley, Transcriptionist

21
22
23
24
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14

1 TRAN

FILED

JUN 26 2009

2 ORIGINAL

3
4 EIGHTH JUDICIAL DISTRICT COURT *Edith*
5 CRIMINAL DIVISION
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

CASE NO. C236169

11 RONALD ROSS,)

DEPT. XVII

12 Defendant.)
13)
14)

15
16 BEFORE THE HONORABLE MICHAEL P. VILLANI,
17 DISTRICT COURT JUDGE

18 TRANSCRIPT RE: SENTENCING

19 TUESDAY, APRIL 7, 2009

20 APPEARANCES:

21
22 For the Plaintiff:

DENA RINETTI, ESQ.

23 For the Defendant:

CRAIG JORGENSEN, ESQ.

24
25
C236169 STATE OF NEVADA v. ROSS 4/7/2009 TRANSCRIPT
VERBATIM REPORTING & TRANSCRIPTION, LLC
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JUN 26 2009

CLERK OF THE COURT

1 LAS VEGAS, NEVADA

TUESDAY, APRIL 7, 2009

2 PROCEEDINGS

3 (The proceedings began at 8:26:14 a.m.)

4
5 THE COURT: C236169, State of Nevada versus Ronald
6 Ross.

7 UNIDENTIFIED SPEAKER: Your Honor, this is Mr.
8 Jorgenson's case of our office.

9 THE COURT: This is the time set for sentencing.
10 Are you ready to proceed, Mr. Jorgenson?

11 MR. JORGENSEN: Yes, Judge.

12 THE COURT: All right. The jury returned a verdict
13 of guilty on Counts I through VII; based upon that he is
14 hereby adjudged guilty of those counts. Any argument by the
15 State?

16 MS. RINETTI: Yes, Your Honor. As you may remember
17 we were here about a month ago. The -- the State's seeking
18 habitual treatment in this case, and the Defendant had
19 contested the 18 prior felony convictions. And this Court had
20 asked us to get some booking photos or fingerprint cards in
21 order to establish identity, because the Defendant has used
22 about 21 different aliases both here as well as New Jersey as
23 well as Pennsylvania. And we were able to, in about a month,
24 find five different booking photos representing five different
25 felony convictions.

1 The first one would be -- first of all, he's not
2 contesting his identity in Case C219404, in which he was
3 adjudicated guilty on May 22nd, 2007, by Judge Bixler and was
4 given a 19- to 48-month sentence on an attempt larceny from
5 the person.

6 The next case that the State was going to submit as
7 part of our package for seeking habitual treatment is Case
8 92061676. It -- the certified judgment of conviction is
9 Exhibit S in our sentencing memorandum. If I could approach,
10 on -- on Exhibits 3, 4, and 5 we have various booking photos
11 that go along with that case, as well as Exhibit 4, which is
12 his presentence report investigation from that case, which not
13 only lists that -- that instant case but also the -- the other
14 14 prior felony convictions that were not contested at the
15 sentencing hearing in that case.

16 The next case would be Case 94071697. The certified
17 judgment of conviction is Exhibit O in our sentencing
18 memorandum that was previously filed in January. In that case
19 the Defendant was adjudicated guilty of one count of theft.
20 If -- Your Honor, if I could back to the first case I had
21 mentioned in New Jersey, 92061676, which is the Exhibit S
22 which I had provided also Exhibits 3, 4, and 5 to Your Honor
23 with the booking photos, the Defendant was adjudicated guilty
24 on July 21st, 1994, of two counts of theft, both felony
25 convictions. In case 94071697, which is Exhibit O in our

1 sentencing memorandum of the certified judgment of conviction,
2 the Defendant was adjudicated guilty on July 21st, 1994, for
3 one count of felony theft by unlawful taking.

4 Your Honor, if you look at Exhibit number 5 as well
5 there's a booking photo as well as inmate information that not
6 only lists the charge, the date of the booking, the commitment
7 number identified to this Defendant, as well as the indictment
8 number 94071697, which charges theft by unlawful taking.

9 The next felony conviction is 010601123. The
10 certified judgment of conviction is Exhibit N in our
11 sentencing memorandum. On August 23rd, 2002, the Defendant
12 was adjudicated guilty of one count of felony bail jumping.
13 And if you also look at Exhibit 3 that I handed you this
14 morning there's a booking photo that represents him being
15 booked into that case, 010601123. It also lists the
16 indictment number, the charge, and the sentencing date in that
17 case as well.

18 So based upon our limited resources, in the last
19 month we were able to come up five different felony
20 convictions that have booking photos. We do have other
21 information if the Court is not inclined just to go based upon
22 those five felony convictions. I was able to get fingerprint
23 cards, original fingerprint cards, for four different cases,
24 two coming out of New Jersey and two coming out of
25 Pennsylvania. If this Court's inclined I can always submit

1 those for a forensic request, but I didn't get those
2 fingerprint cards until yesterday, and it would take some time
3 in order to do a comparison with this Defendant.

4 But based upon what information we have right now
5 the State's going to ask you to adjudicate the Defendant
6 guilty under the large habitual statute under those five
7 felony convictions: the one case in Nevada and the three
8 cases in New Jersey. I think based upon that we have five
9 felony convictions, and the Defendant is -- is eligible for a
10 large habitual.

11 As far as my sent -- as far as my argument for
12 sentencing I'm going to ask that you adjudicate him guilty to
13 10 to life in this case. If you look at his presentence
14 report investigation in this case his adult record started in
15 1988 and has not stopped until the present time. He has 18
16 prior felony convictions. Granted we've only given you five
17 prel -- felony convictions that have booking photos, but
18 there's numerous other ones included in that presentence
19 report investigation from the case back in 1994.

20 Your Honor, he -- he -- his entire -- if you look it
21 up, all -- all of his charges that he's been adjudicated
22 guilty of, they're all very common in the fact that he goes to
23 casinos and robs elderly or disabled individuals. And if you
24 look back on the New Jersey case from 1994 in which he was
25 adjudicated guilty of two counts of theft, in one instance he

1 took the victim's money from a -- the Steamboat Casino in
2 Atlantic City, the victim was disabled and 52 years old; the
3 other victim in that case was 58 years old, and his wallet was
4 taken from the Sands Casino in Atlantic City. Then in 1994 he
5 also committed a larceny from the person, adjudicated guilty
6 of a theft at a Bally's where he stole a victim's wallet who
7 was 64 years old. Then in 2001 he was adjudicated guilty of
8 bail jumping for not making his sentencing dates in those two
9 cases.

10 Your Honor, what I'd like to highlight is the last
11 couple of years of the Defendant's life. In August 15th,
12 2005, he was charged with theft related to a -- a theft at a
13 casino; also on August 24th, 2005; as well as September 2nd,
14 2005. All of these cases are open cases in New Jersey. And
15 I'll approach with Exhibit number 6 that I've marked --
16 includes a booking photo as well as all the inmate information
17 from those three active cases. According to the District
18 Attorney's Office in New Jersey he has already entered a plea
19 of guilt and was waiting sentencing. He was -- according to
20 the District Attorney's Office the Defendant at -- entered a
21 plea of guilty to three -- on all three different cases, and
22 the plea agreement contemplated the Defendant spending four
23 years concurrent to each count.

24 He was out on bail as part of the negotiations in
25 New Jersey. Once released, he came here and committed Case

1 C220915, which is presently scheduled for sent -- for trial.
2 In that case the Defendant stole a wallet from a victim over
3 65 years of age at the New York, New York on January 6th --
4 9th, 2006.

5 And he's also alleged to have committed, on January
6 10th, 2006, a larceny from the person at the Fremont Hotel,
7 the victim being 78 years old.

8 Then he committed -- then while he was out on bond
9 on the case that he was adjudicated guilty in Case C219404 he
10 picked up two new cases. Case C220916, which went to trial in
11 front of Judge Herndon, and the Defendant was found guilty.
12 In that case the Defendant was found guilty of committing a
13 larceny from the person and burglary on January 11th, 2006,
14 wherein he stole a victim's wallet at JCPenney's, the victim
15 being 74 years old. He was also found guilty of a crime of
16 burglary and larceny from a person from a crime arising out of
17 January 16th, 2006, where he stole a victim's wallet at the
18 Golden Nugget, the victim being 84 years old.

19 Then, Your Honor, while out on bail on all those
20 cases he picks up this instant case where, on March 17th,
21 2007, he stole a victim's wallet at the Tropicana casino, the
22 victim being 57 years old.

23 Your Honor, it's just a pattern of behavior. This
24 Defendant -- preys on older individuals, some of them
25 disabled. He's [sic] goes in and out of these casinos. He's

1 been given at least four or five different grants of
2 probation, has never learned his lesson. I think under the
3 habitual statute this Defendant fits into the preview of why
4 we have the habitual statute. The Defendant has never learned
5 since 1988 to the present. The -- any chance of probation,
6 his periods of incarceration have never deterred his criminal
7 behavior. And so I'm going to ask that you adjudicate him
8 guilty of the large habitual senten -- as a large habitual,
9 and sentence him to 10 to life.

10 THE COURT: All right. Thank you. Actually,
11 Counsel, just so I'm clear, the Counts I and II in this
12 particular case dealt with the casino; is that correct? And
13 then the III through VII were -- was the shoe store?

14 MS. RINETTI: That's correct, Your Honor.

15 THE COURT: Okay. All right.

16 Mr. Ross, do you have anything to say before I
17 impose your sentence?

18 THE DEFENDANT: Yes. Thank you for allowing me to
19 speak. I had sent a letter to the courts in October -- I
20 think you were out on jury duty, and Judge (indiscernible)
21 received it, and he said it would be made a part of the
22 record. And I didn't know did -- did you have it?

23 THE COURT: I don't have it with me. We'll check
24 our file. It doesn't appear to be in the file.

25 THE DEFENDANT: He said that he -- he received it,

1 he read it; he said he would make it a part of the record. It
2 should be in the transcripts. The date was October 30th that
3 we had --

4 THE COURT: Do you have an --

5 THE DEFENDANT: -- the hearing.

6 THE COURT: -- extra copy of that, sir, or does your
7 attorney?

8 THE DEFENDANT: (Indiscernible) no. I sent it
9 straight to you in --

10 THE COURT: Do you have that, Mr. Jorgenson, a copy
11 of --

12 MR. JORGENSEN: I don't --

13 THE COURT: -- that letter?

14 MR. JORGENSEN: -- Judge.

15 THE COURT: Why don't you tell me what was in it,
16 sir?

17 THE DEFENDANT: There were some issues that I had
18 about pretrial leading up to the contesting of my case and
19 just some things I wanted to put on the record about my speedy
20 trial issues that I wanted -- several things that I wanted
21 done in my case that I don't think that was properly done --
22 and I wanted to make the Court aware of it. And he
23 acknowledged it; he said that he -- he would make the Court
24 aware of it.

25 THE COURT: Well, sir, it sounds like those items

1 may relate to any appeal issues or post-conviction relief. So
2 today we're here for sentencing. Do you --

3 THE DEFENDANT: All right.

4 THE COURT: -- have anything to say in mitigation --

5 THE DEFENDANT: Yes.

6 THE COURT: -- of your sentence?

7 THE DEFENDANT: Yes. The PSI report that was taken,
8 there was a lot of mistakes in there, and I wanted to know
9 (indiscernible) the Court correct it before sentencing, after
10 sentencing. There were some things in there that wasn't
11 correct. And --

12 THE COURT: Did you discuss those with your attorney
13 so he can highlight those for me, or do you --

14 THE DEFENDANT: Yes.

15 THE COURT: -- wish to do that?

16 THE DEFENDANT: Okay. Can I do (indiscernible)

17 THE COURT: Sure.

18 THE DEFENDANT: All right. Lastly, them cases that
19 she -- all the -- the cases that she uses -- ask for habitual
20 criminal, I'm not trying to mitigate them but they non-violent
21 cases; most of them are remote. And she asking for 10 to life
22 for -- a lot of stuff she's saying just not -- it's just not
23 true. It's not -- it's -- it's just simply not true. And I
24 don't think she got the -- she's saying it but she's probably
25 misled. It's just not true. It -- just you don't have the

1 evidence to support a lot of stuff that she's saying. And I'm
2 contesting a lot of the stuff that she's saying. That's about
3 it, so --

4 THE COURT: Well, sir, aren't these you in these
5 pictures here?

6 THE DEFENDANT: Yes. I'm not -- yeah, that's --

7 THE COURT: Okay.

8 THE DEFENDANT: -- me. I believe --

9 THE COURT: All right. Thank --

10 THE DEFENDANT: -- so.

11 THE COURT: All right. Thank you.

12 THE DEFENDANT: I see it from here.

13 THE COURT: Mr. -- Mr. Jorgenson --

14 THE DEFENDANT: But she was saying 18 felonies from
15 1988 and conviction in New Jersey at the Showboat casi -- I
16 never pleaded guilty to not -- no case in New Jersey
17 (indiscernible) was facing four years. There's no such thing
18 as a Steamboat casino in New Jersey. She's -- it's -- it's
19 just a lot of stuff that she's saying that it's not true.
20 Even in my PSI they -- they still -- it was two cases; on the
21 morning of trial she came in and dismissed a whole case, said
22 I finally looked at the video, and it's just not you, Mr.
23 Ross, so I'm going to dismiss this -- this -- this case. The
24 PSI, not only do they (indiscernible) any recommendation but
25 they also use that as for the -- for the -- restitution.

1 So it's -- the case never happened. She looked at
2 the video 19 months into the case and realized it wasn't me,
3 so she dismissed it. But the P & P's still referring to it;
4 they said it was in the original information, so they put it
5 down. But that weighed heavy into they recommendation, and if
6 I'm ever to seek parole, if it's in my PSI report, I'm going
7 to be sanctioned again for something that never happened.

8 THE COURT: Well, at this point, sir, I'm just
9 considering the five felonies that were mentioned, not -- I'm
10 not considering the 18.

11 THE DEFENDANT: And --

12 THE COURT: So you --

13 THE DEFENDANT: -- all the --

14 THE COURT: -- dispute those, I --

15 THE DEFENDANT: All the --

16 THE COURT: -- understand?

17 THE DEFENDANT: -- five felonies are non-violent.

18 Your Honor, I can remember one time where you was representing
19 a guy, he was alleged to have broken into a federal judge's
20 house, and you was his attorney at the time. And you was
21 arguing against a large habitual because you said they were
22 non-violent cases. And the guy was so messed up he kicked the
23 door in, and the door was open; he didn't even have to kick
24 the door. But you said when -- in one of your arguments and
25 you cited some cases -- Walker versus Dees (phonetic) -- you

1 cited several cases that was against large habitual for a non-
2 violent offender. Even though there's reprehensible his
3 record it still didn't warrant a large habitual.

4 And after -- after the argument was over with, as
5 you was leaving, I said that was a heartfelt argument that you
6 gave. And you said something to me, but you had left after
7 that. But I don't know how that guy [sic] case turned out in
8 the long run, but I can remember in this court building not
9 long ago where you, yourself, argued against a judge giving
10 somebody a large habitual for non-violent offenses.

11 And I'm just asking you now that you are on the
12 other side, I'm in the guy position, and you are on the side
13 as the judge, to -- maybe you remember the case or maybe you
14 don't; it happened a while ago. But I can -- I remember it
15 like it was yesterday, and I remember the words that you were
16 saying versus this guy receiving a life sentence for a non-
17 violent offense. I don't know what's your position on that,
18 but I just hope you can remember it, and maybe it'll weigh in
19 on my sentence.

20 THE COURT: All right. Thank you, sir.

21 Mr. Jorgenson?

22 MR. JORGENSEN: Judge, we're here to accomplish --
23 or the State's asking you in addition to finding him guilty,
24 which is based on the jury's verdict, to make a factual
25 finding of habituality and then proceed under the statute that

1 allows you to give him a different sentence if you have been
2 convinced that he fits the factual settings in two or more or
3 three or more prior convictions.

4 The -- our position last time we were here for
5 sentencing was that just as each and every element of the
6 crime charged has to be established beyond a reasonable doubt
7 by the State to sustain a conviction in front of the finder of
8 facts, each and every element of the factual allegation of
9 habitual criminality has to be proven by the State beyond a
10 reasonable doubt to the finder of fact. The difference here
11 is you're the finder of fact, not the jury.

12 And so my client's advice, he disp -- simply did not
13 -- he disputes all of his prior convictions or takes the
14 position that under the US and Nevada constitution he has a
15 right to not incriminate himself and to remain silent; he --
16 it's not his job to answer the question from either the State
17 or the bench saying Mr. Ross, aren't these really your
18 convictions anymore than in the middle of a trial can a jury
19 stand up and say Mr. Ross, didn't you really do this crime.

20 So we're here now, and the State has gone quite a
21 bit further than where we were in the past in terms of showing
22 proof beyond a reasonable doubt. There's two parts to
23 deciding whether or not there has been convictions for NRS
24 207, habitual criminal. One is does there exist out there a
25 felony conviction? In other words, is there a court case in a

1 county or a city or a state in which that it details-a- . . .
2 conviction?

3 Short of bringing the files from that county, if
4 it's out of state, we get -- or the procedure is to have
5 someone who works for that county, who is authorized to handle
6 those records, to copy the pertinent parts of a conviction,
7 usually the judgment of conviction, and then certifies it
8 saying I've looked at this copy that I'm sending you, and I've
9 looked at the copy that it's in -- I -- the original in the
10 file, they match up one to one, it's the same thing, and then
11 they emboss it or however their state provides for that,
12 saying it's a certified judgment of conviction. That makes
13 that document then competent.

14 It does not address the question is it relevant.
15 That next question is addressed by deciding if the person who
16 is mentioned in that certified judgment of conviction actually
17 happens to be the same person who is the Defendant at the
18 sentencing. And when we here originally we had convictions
19 with people with different names, different birth dates,
20 different states, and our objection was that there's simply no
21 link at all between these documents that come from different
22 courts talking about felony convictions and Mr. Ross.

23 So the State, in an -- in an effort to link these
24 two up to make them relevant, has brought photographs. Now, I
25 would suggest that ultimately to be able to establish whether

1 or not, for instance, this person who is in Exhibit O -- this
2 person who was arrested in New Jersey in 1994, booked in,
3 charged, and then convicted as outlined in Exhibit O -- if
4 that person is my client, the way it -- a way, not the only
5 way, but a certain way to resolve the issue would be to obtain
6 the prints of the person who was booked in, in July of 1994,
7 or whatever month that was, along with the booking photo
8 because -- but the photo is not usually left alone because
9 we're not, as humans, that good at matching up photographs.

10 We -- a photograph is great but it's not completely
11 dispositive. We have the unique identifiers of a set of
12 fingerprints, and then we compare that with the guy who is in
13 front of you. Now, the State says they do have some prints,
14 but I gather that it's not prints from these; it's from --
15 prints from a different state.

16 So the question is, to the trier of fact, as to the
17 existence of these prior convictions -- and that is this Court
18 -- does Exhibits S, N, O, and T, which is the ones we're
19 referring to, rise to the level of proof beyond a reasonable
20 doubt? Now, in S --

21 Which is the -- the local one?

22 MS. RINETTI: No. That's --

23 MR. JORGENSEN: T?

24 MS. RINETTI: T is the local one.

25 MR. JORGENSEN: In Exhibit T we have what is the

1 normal circumstance. And in the 20 years I've been doing this
2 and -- and fighting people -- fighting -- representing people
3 charged with habitual criminality, I would say 95 out of 100
4 prior convictions come out of Clark County. That -- out of
5 state convictions are really not that usual in determining
6 prior convictions.

7 If you include in-state convictions, convictions
8 from Reno or -- or Tonopah, you'd probably get 98 percent of
9 convictions. We just don't see very many out of state
10 convictions for habitual criminality, and I guess that's due
11 to the way a person who commits a crime normally doesn't move
12 around that much. It -- that's just -- factually, that's just
13 what happens.

14 Now, what happens if a person gets arrested and
15 brought down to the detention center tomorrow, they pull his
16 prints, they send them up to Carson City. Carson City runs
17 him through their analyzer and immediately sees if it matches
18 up with somebody already in the system, and, if he does, he'll
19 already have a state ID number; that's in -- in the scope.
20 And he'll also have a -- a Clark County number. And they will
21 then just know that's him because they have -- they'll -- the
22 process does that match, the match that I'm talking about.

23 So as to Exhibit T, Exhibit T, I would suggest,
24 appears to be competent, it appears to be relevant. But with
25 the other exhibits I think they're competent in the sense that

1 they're certified judgments. I think we're safe in saying
2 there is files somewhere in New Jersey that have these
3 convictions, and these are accurate copies of that. The
4 question is are they relevant to Mr. Ross? Are -- is the
5 person that got arrested in 1994, 2002, 2005, if -- or -- or
6 what -- if I got the dates wrong. The point is in those three
7 different years in New -- New Jersey, are they Mr. Ross or
8 not?

9 I would suggest that absent a match-up of the
10 fingerprints of the person who was booked in, in New -- in the
11 New Jersey jail in Newark or wherever it was, in Atlantic
12 City, if that matches up with my client. And absent that, I
13 don't think the Court can decide beyond a reasonable doubt
14 that these are relevant.

15 So I would ask the Court to rely on Exhibit T, not
16 accept Exhibits O, N, and S as being relevant in our case
17 because they're not proof beyond a reasonable doubt.

18 And I -- and I think that that really ultimately
19 does not hurt the state or hurt our community. My client has
20 a one to 10 felony on Count I, a one to four felony on Count
21 II, another one to four in Count III, another one to four in
22 Count V, a one to five in Count VI, and a gross misdemeanor.
23 By using the sentencing ranges in those sentences and running
24 them consecutive, running them concurrent, I think you can
25 keep our community safe without having to resort to the

1 habitual criminal statute and -- or, at the most, treating
2 this as a small habitual criminal and a five to 12 and a half
3 or a five to 15. I think that matches what happened where a
4 lady has her purse taken from her and then someone tries to
5 buy some shoes later on with a bad credit card.

6 Does that deserve -- does -- does the community need
7 to pay for a person's life in prison to make sure that they're
8 safe? I would suggest no. I think that you have plenty of
9 leeway in a one to 10 and a one to four and a one to five
10 running concurrent or running consecutive to walk away from
11 the bench this morning knowing that you have made Nevada safe
12 from people who commit property crimes.

13 So I'd ask the Court to not rely on Exhibits O, N,
14 and S as your role of -- as a fact finder, due to the fact
15 that they've not been proven beyond a reasonable doubt, and
16 sentence him under the normal guidelines. And I apologize; I
17 haven't done the calculation of his current credit for time
18 served.

19 THE COURT: Thank you. Anything else, Mr.
20 Jorgenson?

21 MR. JORGENSEN: No, Judge. Oh, one other thing. In
22 the restitution amount, my client was pointing out that Parole
23 and Probation was asking for restitution in that Santa Fe
24 case, and when we all looked at the -- the surveillance video
25 it was clear that that was a different person, and the State

1 dismissed those prior to the case -- the trial, so we didn't
2 use them at trial.

3 Parole and Probation, understandably, because they
4 -- they deal with, you know, dismissed counts, I don't fault
5 them from looking at it and treating it as if it's part of the
6 case because they wouldn't have known it was the unusual
7 circumstance of the State simply saying Counts XII to XV, or
8 whatever the Santa Fe counts were, that they simply don't
9 apply to us. But I would ask the Court when you're deciding
10 restitution to simply leave that Santa Fe portion out because
11 that really was nothing to do with this case.

12 THE COURT: Let me hear from the State on the Santa
13 Fe issue.

14 MS. RINETTI: Your Honor, that's fine. Before trial
15 the -- the State had voluntary -- voluntarily dismissed those
16 counts for the Santa Fe, so the State's not opposed to not
17 having any restitution regarding the Santa Fe case and
18 actually striking the language in the off -- of the offense
19 synopsis regarding the Santa Fe because, indeed, the vol --
20 the State voluntarily dismissed those counts.

21 THE COURT: So the restitution remaining will be
22 \$270; is --

23 MS. RINETTI: That's --

24 THE COURT: -- that correct?

25 MS. RINETTI: -- correct, Your Honor.

1 THE COURT: All right. Anything else, Mr. Jorgenson
2 or State?

3 MS. RINETTI: Your Honor, the only thing I would --
4 I would add, just for the record, the booking photos that were
5 given to -- to Your Honor as Exhibits 3, 4, and 5 --
6 specifically 3 and 5 -- with the booking photos, attached to
7 those booking photos are inmate printouts from New Jersey that
8 detail not only the inmate number, which is on the bottom of
9 the booking number, but also the date of the booking number.
10 And those inmate numbers correspond to the input -- the inmate
11 information printout that's behind the booking photo that
12 lists the charges that the Defendant was adjudicated guilty
13 of, and all those numbers are the same.

14 THE COURT: All right. The Court's going to receive
15 as exhibits State's proposed 3 through 6.

16 MS. RINETTI: Your Honor, and I also did 1 and 2.
17 Exhibit number 1 is just the cert -- the affidavit saying that
18 they were (indiscernible) that everything that was presented
19 to Your Honor was a certified copy, the booking photos as well
20 as the in -- inmate information. And in -- then Exhibit
21 number 2 is just another photograph of the Defendant -- and I
22 would ask that the State take judicial notice of that -- with
23 a different num -- name. I believe the name on Exhibit number
24 2 is Kevin Johnson. But the New Jersey inmate number is
25 46457B, which is the same inmate number in all the other ju --

1 testified; do you understand that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Was that -- did you pick that up? Was
4 that a yes?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. If you elect not to testify, the
7 Court will instruct the jury, only if your attorney
8 specifically requests, the following: -- this would be a jury
9 instruction that I would read to the jury, sir -- it is a
10 constitutional right of a Defendant in a criminal trial that
11 he may not be compelled to testify. Thus the decision as to
12 whether he should testify is left to the Defendant on the
13 advice and counsel of his attorney. You may not draw any
14 inference of guilt from the fact that he does not testify, nor
15 should this fact be discussed by you or enter into your
16 deliberations in any way.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Mr. Jorgenson, does he have a
20 felony conviction as far as you know?

21 MR. JORGENSEN: Yes.

22 THE COURT: Okay. Sir, if you do testify,
23 understand that the State can use any prior felony convictions
24 to impeach your credibility. That conviction must have been
25 -- take place within the last 10 years. Do you understand

1 that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. We'll be back in about five
4 or 10 minutes.

5 (Off record)

6 THE COURT: Let the record reflect we're in the
7 presence of the jury panel. State, please call your next
8 witness.

9 MS. WALSH: Thank you, Judge. State calls Kevin
10 Hancock.

11 THE BAILIFF: Please stand, please raise your right
12 hand and face the clerk.

13 THE CLERK: You do solemnly swear the testimony
14 you're about to give in this action shall be the truth, the
15 whole truth, and nothing but the truth, so help you God?

16 THE WITNESS: Yes.

17 THE CLERK: Thank you. Please state your full name
18 and spell your name for the record.

19 THE WITNESS: Kevin Gregory Hancock, K-e-v-i-n
20 G-r-e-g-o-r-y H-a-n-c-o-c-k.

21 THE COURT: Go ahead, Counsel.

22 MS. WALSH: Thank you, Judge.

23 KEVIN HANCOCK

24 having been called as a witness on behalf of the Plaintiff and
25 being first duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. WALSH:

3 Q Sir, I want to direct your attention to May 17th,
4 2007. Where were you working on that day?

5 A Sheikh -- Sheikh Shoes.

6 Q And which location?

7 A Boulevard Mall.

8 Q Okay. And I want to direct your attention now to
9 around 1 and 2 o'clock in the afternoon. Were you in the
10 store on that time -- day and time?

11 A I was on break.

12 Q Okay. Did it --

13 A Uh-huh (affirmative.)

14 Q -- come to your attention that someone had come in
15 and used another person's credit card fraudulently?

16 A Yes.

17 Q And based upon receiving that information did you
18 review any video surveillance at your store?

19 A Yes.

20 Q And did you do that on May 17th?

21 A I don't remember.

22 Q Okay. Now, do you know a person who had been coming
23 into your store regularly around that time that went by the
24 name of Phillie?

25 A Yes.

1 Q Do you see that person in court today?
2 A Yes.
3 Q Can you please point to him and describe an article
4 of clothing that he is wearing?
5 A (Pointing) A brown shirt.
6 MS. WALSH: Can the record reflect the witness has
7 identified the Defendant?
8 THE COURT: Yes, it will.
9 BY MS. WALSH:
10 Q And how is it that you know Phillie?
11 A Just he was -- he used to come in the store and
12 shop.
13 Q Okay. So just know him as a customer?
14 A Right.
15 Q And why is he called Phillie?
16 A He told me he was from Philadelphia.
17 Q Okay. Philadelphia, Pennsylvania?
18 A Right.
19 Q Okay. Now, when you reviewed the video surveillance
20 of the transaction with the stolen credit card did you
21 recognize anyone on the videotape?
22 A Yes.
23 Q Who was it?
24 A Phillie.
25 Q Okay. And that's the person you identified in court

1 today?

2 A Yes.

3 Q So the Defendant's the one you saw in the videotape
4 make the transaction with the stolen credit card?

5 A Yes.

6 Q Now, you later talked to detectives about this
7 incident; is that correct?

8 A Yes.

9 Q Did they show you some pictures?

10 A Yes.

11 MS. WALSH: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. WALSH:

14 Q Showing you what's been marked for identification as
15 State's proposed exhibit number 5; that's previously been
16 shown to the defense. Do you recognize this document?

17 A Yes.

18 Q Is that the photo lineup the detective showed you?

19 A Yes.

20 Q Now, when they showed it to you was it in black and
21 white like this or was it in color?

22 A It was in color.

23 Q Okay. And did they ask you to identify the person
24 you saw on the videotape?

25 A Yes.

1 Q And did you do that?
2 A Yes.
3 Q Which person did you pick?
4 A Number 4.
5 Q And did you circle and also initial number 4?
6 A Yes.
7 Q So the writing that's on this document right now,
8 that wasn't on there when the detective first gave this to
9 you; is that correct?
10 A That's correct.
11 Q And you wrote that on there indicating that you
12 identify number 4 as the person you know as Phillie.
13 A Yes.
14 Q And that's the same person sitting in the court
15 today.
16 A Yes.
17 MS. WALSH: State would move for the admission of
18 State's proposed exhibit number 5.
19 THE COURT: Any objection?
20 MR. JORGENSEN: No, Judge.
21 THE COURT: It will be admitted.
22 (State's Exhibit 5 admitted)
23 BY MS. WALSH:
24 Q Now, you're familiar -- what capacity were you
25 working at, at the shoe store?

1 A I'm assistant -- I was assistant manager at the
2 store.

3 Q Okay. You were assistant manager at the time?

4 A Right.

5 Q So are you familiar with the receipts that your
6 store's computers printed out?

7 A Yes.

8 Q And showing you what's been marked as -- marked and
9 admitted as State's Exhibit number 1. Just showing the first
10 -- showing you this first part of State's Exhibit number 1; is
11 this a credit card receipt that your credit card machine would
12 print out?

13 A Yes.

14 Q So this would be that piece of paper that when you
15 run a credit card through it comes out and this is what you
16 have the customer sign?

17 A Yes, ma'am.

18 Q And that's what you have done for every credit card
19 transaction; is that correct?

20 A Yes.

21 Q Showing you the second piece of paper of State's
22 Exhibit number 1; is this actually where you put the credit
23 card in the machine and you slide it, and it kind of makes a
24 carbon copy of the front of the credit card?

25 A Yes.

1 Q Okay. So when someone came in on this day and used
2 this credit card, the actual credit card they handed over to
3 the clerk would have been -- made a carbon copy of?

4 A That's right.

5 Q Okay. And then you keep these in the ordinary
6 course of business at your store --

7 A Yes.

8 Q -- these records?

9 A Yes.

10 Q And it shows on here at the top a number 4388 5270
11 0012 1281; would that be the actual credit card number that
12 was made a copy of from the actual credit card given to a
13 clerk?

14 A That's -- that's how it prints? Yes.

15 Q Okay.

16 A Yeah.

17 Q Now, showing you the last page, the full-length page
18 of State's Exhibit number 1; is this actually a computer
19 printout -- is this actually a computer printout of a receipt
20 detailing what was purchased?

21 A Right. Yes, it is.

22 Q Okay. And this is kept in your computer in your
23 store in the ordinary course of business?

24 A Right. Yes.

25 Q Now, showing up here on the top it shows the date of

1 3/17/08.

2 A Okay.

3 Q Is that --

4 A Yes.

5 Q Is that -- does that show that on the receipt?

6 A 3/17/08?

7 Q That's -- that's --

8 THE BAILIFF: Right in --

9 BY MS. WALSH:

10 Q -- what this --

11 THE BAILIFF: -- right in front of --

12 BY MS. WALSH:

13 Q -- Exhibit --

14 THE BAILIFF: -- you.

15 BY MS. WALSH:

16 Q -- says, right?

17 THE BAILIFF: Right in front of you.

18 THE COURT: On the screen --

19 A Oh. 3/17/07.

20 BY MS. WALSH:

21 Q Okay. I apologize. Thank you. 3/17/07. And it
22 has a time of 1349?

23 A Yes.

24 Q Okay. And then over here underneath the staples --
25 let's see if I can -- right over here it says salesperson, and

1 then it says deja vu?

2 A Yes.

3 Q And that would be Deja, the store clerk, that you
4 work with; is that correct?

5 A That is correct.

6 Q And this details what the person -- what the
7 Defendant purchased that day?

8 A Right. That's correct.

9 Q And the amount of the sale, 490.07?

10 A Yes.

11 Q And that amount corresponds with these credit cards
12 -- credit card receipts; is that correct?

13 A That's correct.

14 Q Now, your store also has a surveillance system,
15 correct?

16 A That's correct.

17 Q In March 17th of 2007 was this surveillance system a
18 new surveillance system?

19 A Yes, it was.

20 Q And is it a digital kind or an old kind that copied
21 onto a VCR?

22 A It's a digital.

23 Q Did anyone at the store really know how to work it
24 at this point in time?

25 A We knew how to view it, yes.

1 Q Okay. Did you know how to make a copy of it?

2 A No.

3 Q And take it off of the hard drive?

4 A No.

5 Q Okay. Does it have on it where you could save what
6 had been recorded for a certain length of time?

7 A It has a saving, but we didn't -- we didn't have it
8 saved. We didn't know how to save.

9 Q Okay.

10 A Yeah.

11 Q So you were able to pull the video surveillance of
12 what happened on March 17th with --

13 A Right.

14 Q -- the Defendant but only for a short amount of
15 time?

16 A Yes.

17 Q Okay. And then after that time passed the video
18 would have been deleted in the system; is that correct?

19 A That's correct.

20 Q And that's because you guys didn't know how to
21 operate it?

22 A Correct.

23 Q Have you since had someone from the company come out
24 and -- and figure out how to operate the system?

25 A Yes.

1 Q Okay. Did you make attempts -- in March of 2007 did
2 you make attempts to try and save or copy the surveillance
3 system?

4 A We contacted somebody to come out and do it, but we
5 weren't -- they didn't make it out. They -- they were
6 stationed out of California, so he didn't come out to do it --

7 Q Okay.

8 A -- you know, in time.

9 Q So you had some -- you had contacted someone from
10 the surveillance system company --

11 A Yes.

12 Q -- to come out and attempt to help you preserve the
13 video evidence?

14 A Right.

15 Q But they were unable to make it within the short
16 amount of time that the system keeps the video for; is --

17 A That's --

18 Q -- that correct?

19 A -- correct.

20 Q So you did make attempts to try and save the video
21 but --

22 A Yes.

23 Q -- you were unsuccessful?

24 A Yes.

25 MS. WALSH: I'll pass the witness, Judge.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. JORGENSEN:

4 Q So you were working as one of the managers of this
5 shoe store in March of last year.

6 A Yes, sir.

7 Q The manager or the second in charge or what?

8 A I'm second in charge.

9 Q You still work with the same shoe store?

10 A Yes.

11 Q When did you start working there?

12 A August 2005.

13 Q Now --

14 A I mean, not that location. I've been working for
15 Sheikh since 2005. And I transferred from Texas to here.

16 Q When?

17 A It was '06, August '06.

18 Q Okay. So you've been working at this shoe store
19 about nine months when this incident occurred.

20 A I'd been working there for two months at that
21 location. Before that, I was working at another one.

22 Q In Las Vegas?

23 A In Las Vegas.

24 Q Okay.

25 A Right. In Henderson actually. I'm sorry.

1 Q So you went from Texas to the Las Vegas Valley in
2 August of '06, but then you didn't get to this show -- this
3 store on Maryland Parkway until maybe January?

4 A Right. Around January.

5 Q Now, as a manager were you there weekdays, weekends,
6 what?

7 A I work six days a week. I'm only off on like
8 Mondays.

9 Q So you remember when the police came and showed you
10 those six pictures.

11 A Yes.

12 Q The date on there says March 24th of '07; does that
13 sound right?

14 A I'd have to see it again. I don't remember.

15 Q Showing you State's Exhibit 5; that looks like your
16 -- the paper you -- a copy of the paper you initialed; is that
17 correct?

18 A Yes.

19 Q And where it shows lineup, ID, and time or date it
20 says March 24th, '07; does that sound right?

21 A Yes.

22 Q Now, if I tell you that's -- well, can you remember
23 what day of the week that would have been?

24 A No.

25 Q But you were working Tuesday to Sunday.

1 A Right.

2 Q The whole time you've been there you've worked six

3 days a week?

4 A Yes, sir.

5 Q Still do now?

6 A Yes, sir.

7 Q Is the store closed on Monday or you just have --

8 you're just off Monday?

9 A I'm just off on Mondays.

10 Q Now, if the 20 -- so if the 24th is a Saturday

11 that's not unusual in the middle of a Saturday day that you're

12 going to be there because you're there every day.

13 A That's right.

14 Q Would you be -- were you there from open to close

15 every day?

16 A Usually on Saturdays open and close because we have

17 different like releases. So yeah.

18 Q How about during the week do you work from open to

19 close? Or do you switch off with your other manager?

20 A During the week I would come in like around 12

21 o'clock.

22 Q Okay. So do you remember how much earlier from when

23 the police came with these pictures did you have an indication

24 that somebody had used a credit card improperly to buy shoes?

25 A day? A week? A month?

1 A I don't remember (indiscernible)
2 Q Okay. Do I have this right in saying that you
3 remember clearly the police coming and showing you six
4 pictures?
5 A Right.
6 Q That doesn't happen every day or even every month.
7 A Right.
8 Q You remember talking with one of your employee --
9 well -- let me back up. What caused you to view the
10 videotape?
11 A The detectives came into the store and inquired --
12 somebody called. I'm sorry. Somebody called and inquired
13 about it. It was one of the detectives.
14 Q And talked to you?
15 A Yes.
16 Q Was that the same day it happened or a later day?
17 Or do you remember?
18 A I don't remember.
19 Q Okay. And it was before or after they showed you
20 these pictures?
21 A It was before.
22 Q But you don't remember if it was a week or a couple
23 of days right --
24 A It --
25 Q -- now?

1 A It was -- it was within that week. It was within
2 that week.

3 Q But could have been a Wednesday or -- or a Tuesday?

4 A Something like that, Tuesday or Wednesday, yeah.

5 Q But not Monday because you were off on Monday.

6 A I was off on Monday.

7 Q And when you viewed the videotape the detective was
8 with you to watch it?

9 A Yes.

10 Q Okay. Now, when the prosecutor asked you what you
11 were doing on March 17th when the guy who sits next to me came
12 to your store you said you were on break; how do you remember
13 that?

14 A Well, the person that actually rang him up, Deja,
15 Deja Vu it says on the receipt, said that the person
16 originally asked for me. He said he originally asked for me.
17 So --

18 Q And since you didn't remember helping him then you
19 -- you -- working backwards you figured out you must have been
20 not -- you were on a break when he came in then.

21 A Yeah. He said -- he told him that I was on break
22 and he went ahead and helped him. And he couldn't remember
23 who the person was and --

24 Q Who couldn't --

25 A -- yeah.

1 Q -- remember?
2 A Deja. Deja.
3 Q He couldn't remember that it was Phillie?
4 A No.
5 Q He -- did he know Phillie's name or did you were the
6 only one who knew his name?
7 A I don't remember him -- he told me it was one of my
8 customers, and I just didn't remember exactly who it was at
9 that time because I have a lot of customers. But --
10 Q Okay.
11 A -- when we watched --
12 Q Yeah. In that office. Is everybody (indiscernible)
13 your customer or is he referring to something different?
14 A He -- well, he said he asked for me. So I figured
15 that it was somebody that I worked -- that I -- I help a lot,
16 you know, or I've helped before.
17 Q And was Phillie somebody that you had actually built
18 up a relationship with or (indiscernible)
19 A Well, I'd talked to him before, you know.
20 Q Enough to know him by sight?
21 A Yes.
22 Q And know his nickname?
23 A Yes.
24 Q So you were not actually watching the front counter
25 when this credit card transaction got rang up?

1 A No.

2 Q So you have no idea how -- when Phillie was in the
3 store -- do you know if Phillie was in the store on the 17th?

4 A Just from what they told me.

5 Q Okay.

6 A Yeah.

7 Q Aside from what Deja told you and what you saw on
8 the tape, you personally were -- even though you were there on
9 the 17th you don't remember seeing Phillie during this --
10 anytime during the day on the 17th.

11 A No.

12 Q Now, on the videotape this thing was recording to a
13 computer?

14 A Yes.

15 Q And the computer could -- how much would the --
16 could the computer hold before it had to start erasing?

17 A I don't recall. I don't know.

18 Q Well --

19 A (Indiscernible) I don't -- I don't know exactly how
20 much it holds.

21 Q Until you --

22 A I don't know.

23 Q Until you fixed it so it would start to save it was
24 -- it would erase itself every day, every week, every month?

25 A It was like a week, a week or -- a week or two.

1 Something like that.

2 Q But personally you don't know?

3 A No. I don't remember exactly how much. Not at the
4 time I can't remember exactly.

5 Q You just know that you didn't know how to record
6 it --

7 A Right.

8 Q -- off the computer to something different.

9 A Right. Yeah.

10 Q And finally, someone came from California to set it
11 up so you could then pop a disc in or something and record
12 whatever you wanted to record for later use?

13 A Yes.

14 Q But that was a month or two later after this
15 happened?

16 A Yeah, I'd say a month or two.

17 Q You had seen this guy, Phillie, in the weeks prior
18 to this happening and the weeks after this happening.

19 A Yes.

20 Q How many times did -- did you see him altogether? A
21 dozen maybe?

22 A I wouldn't say a dozen. Afterwards I believe like
23 two times, and before, I don't know, maybe three or four times
24 or something like that.

25 Q All in March or do you remember?

1 A We opened the store -- we opened that store in
2 February, the beg -- the end of January, beginning of
3 February. I would say middle of February to middle of March
4 (indiscernible) he came in, something around that time, yeah.

5 Q Now, you -- you indicated that Deja did not know his
6 nickname. You -- you're the one who told him what his
7 nickname was.

8 A He didn't know who the person was at that time. I
9 mean, if you -- if -- when he came to the store that Saturday
10 he told me that somebody came in asking for me. I didn't know
11 who exactly who that person was. When the cop -- when the
12 detectives came and we looked at the tape, that's when I
13 realized who that was. But Deja, he didn't -- he -- he didn't
14 know his name at that time, I don't think. I don't remember
15 him saying --

16 MS. WALSH: And, Judge, I'm --

17 A -- that --

18 MS. WALSH: -- going to object at this point to the
19 -- the witness doesn't know what Deja knew, first of all; and
20 second of all, it's hearsay.

21 A Yeah, I don't know.

22 THE COURT: Sustained.

23 MS. WALSH: Thank you, Judge.

24 BY MR. JORGENSEN:

25 Q But you did not tell Deja who was on that -- who he

1 had helped out that Saturday while you were on break until
2 after you saw the videotape.

3 A Right.

4 Q And to the best of your knowledge Deja didn't know
5 who it was until you told him.

6 A I don't --

7 MS. WALSH: The same --

8 A -- know.

9 MS. WALSH: -- objection, Judge.

10 THE COURT: Sustained.

11 A I don't know.

12 THE COURT: Sir, hang on. Don't an -- when I
13 sustain objections don't answer the question, okay?

14 THE WITNESS: Okay.

15 BY MR. JORGENSEN:

16 Q And you watched that videotape a couple of days
17 later.

18 A Yes.

19 Q Probably Tuesday or Wednesday after your Monday
20 break.

21 A Probably.

22 Q And then it was the following Saturday that you saw
23 these six pictures and -- and initialed one.

24 A Yes.

25 Q Yes, you're sure, or yes, that sounds about right?

1 A I'm not actually sure. I think when they called me
2 on the phone I think when we pulled up the receipt I remember
3 going back and -- now I think about it I remember going back
4 and looking at the tape, and then I looked at it with them.

5 Q In other words, you looked at it the same day it
6 would have happened and --

7 A No.

8 Q -- then saw -- okay. Tell me what you mean then.

9 A That week, I'm thinking it was -- I believe -- I
10 can't remember exactly, but they called me and told me that
11 they were going to come up to the store, the detectives. So
12 when they told me that and they told me what the transaction
13 was, I went back and I looked up the transaction on the
14 computer and I found the transaction.

15 Q What were you looking for?

16 A The receipt that was \$490 --

17 Q Okay. So --

18 A -- that he --

19 Q -- you -- you're looking for 409 -- or 490.07.

20 A Right.

21 Q And you knew it happened on -- what day it happened
22 on.

23 A On the 17th.

24 Q Right. And so that's what you started to page
25 through transactions for the 17th until you found that day.

1 A Right.

2 Q At that point did you know who had done the -- who
3 had been the -- the clerk? Did you already --

4 A Yes.

5 Q -- (indiscernible)

6 A Yes.

7 Q Okay. Here's what I'm trying to find out. The day
8 this happened, did Deja say anything to you about it? In
9 other words, on the 17th? Or did you find out about it a
10 couple of days later?

11 A The 17th I remember he say somebody came looking for
12 me.

13 Q But at that --

14 A Because --

15 Q -- point did he -- was he saying somebody came
16 looking for you and he used a bad credit card, or he just said
17 somebody came looking --

18 A He just --

19 Q -- for you?

20 A -- said one of your customers came looking for you,
21 yes.

22 Q So when he took -- okay. And then it wasn't until a
23 couple of days later that you even knew that someone had try
24 -- had used a bad card?

25 A Right.

1 Q That's when they called you when you maybe after
2 Monday you had -- you had your break they called you and said
3 we're looking for \$490.07 on the 17th, can you pull up and see
4 if you can find a receipt like that.

5 A Right.

6 Q And then at the same time (indiscernible) the same
7 day you then review the videos.

8 A On that day, yes.

9 Q And then couple of days later or the next day or
10 whatever the detectives come and you show them what you had
11 already looked at.

12 A Yes.

13 Q Can you see this person who does this transaction?
14 Can you see him come in the front door?

15 A From where?

16 Q From outside.

17 A Oh, yes. Yes. You can see outside from inside the
18 store.

19 Q And did you -- could you see who he came in with, a
20 man or a woman?

21 A Oh, I don't -- I don't remember. I don't remember
22 that.

23 Q Because you couldn't see it or because you were
24 focusing mainly on the -- the action at the --

25 A At the --

1 Q -- register?

2 A -- register, yes.

3 Q And at the register you could see -- could you see
4 -- is it positioned in such a way that you can see both your
5 clerk's face and the person making the transaction, or just
6 one or the other?

7 A You could see the cash register, keyboard; you could
8 see the screen; and you can also see the customer standing in
9 front of the computer.

10 Q Was that customer with somebody else?

11 A No. Not that I can remember, no.

12 Q How do you know that that -- what you're watching on
13 the videotape actually matches this? Or can you tell that?

14 A When you're -- when you're looking at the video you
15 can see the register and you can see the items and you can
16 tell the amount, so that's how you -- that's how you -- you
17 know what you're looking at.

18 Q Now, when a person uses a credit card the credit
19 card receipt printer prints out one of these --

20 A Yes.

21 Q -- which you have as the top copy on State's Exhibit
22 1. And then you slide it across and have the person who has
23 gave you the card, he signs it.

24 A Yes.

25 Q And then you pull the card to a different place and

1 imprint it onto one of these old receipts?

2 A Well, when I actually do it I print it -- I print
3 the card first and then I run it and I check the ID.

4 Q Does this old receipt, is this the bottom part of a
5 two-part?

6 A Yes.

7 Q So you give the customer then a copy of the --

8 A I give them a copy of both. Well, all three
9 actually; there's three things that you give them: You give
10 them one that comes out of the register; one that you imprint;
11 and one that comes out of the machine.

12 Q And he sign -- and he or she signs two of them?

13 A Right.

14 Q The imprinted receipt and the computer generated
15 receipt.

16 A That's true.

17 Q Two different times though?

18 A Well, the way we -- the way we was trying to set it
19 up was you put the carbon copy underneath the copy that prints
20 out.

21 Q Could you tell if that's what happened this time?

22 A I don't remember. I'd have to see it.

23 Q Now, you indicated that after this had occurred you
24 saw the -- this guy in two other times the following week;
25 does that sound right?

1 A I'd -- I -- I remember seeing him two other times
2 after, after that.

3 Q Did you ask him about this?

4 A No.

5 Q Because you hadn't heard about it yet or you just --

6 A I just didn't.

7 MR. JORGENSEN: Court's indulgence?

8 BY MR. JORGENSEN:

9 Q How many cameras does your store have?

10 A Five or six, something like that.

11 Q And each one of them are being recorded all the
12 time?

13 A Yes. Well, when there is motion in the store.

14 MR. JORGENSEN: No other questions.

15 THE COURT: Any redirect?

16 MS. WALSH: Just -- just briefly, Judge.

17 REDIRECT EXAMINATION

18 BY MS. WALSH:

19 Q Just to clarify, you didn't witness the transaction
20 as it was happening live (indiscernible)

21 A No.

22 Q But you later at some point in time -- we're not
23 sure when; within a few days -- reviewed the surveillance
24 video.

25 A Yes.

1 Q And on the surveillance video you're able to see the
2 face of the person at the cash register.

3 A Yes.

4 Q Then the cash register itself, the screen.

5 A Yes.

6 Q And when you viewed the video that's when you were
7 able to recognize who it was who made that transaction?

8 A Yes.

9 Q Were you able to recognize right away that it was
10 this person that you knew as Phillie?

11 A Yes.

12 Q The -- the Defendant in this case?

13 A Yes.

14 Q And when you looked at -- Mr. Jorgenson asked you
15 how do you know that the credit card receipt you're looking at
16 right now and the incident in this case is the same one you
17 viewed on the videotape, is that because what was on that
18 screen matched up, it was the transaction of \$490 and some odd
19 cents?

20 A Yes.

21 Q So there's no question in your mind that you're --
22 were looking at the right video.

23 A No question, yes.

24 Q And there's --

25 A No.

1 Q -- no question in your mind that it was the
2 Defendant who made the purchase on that day.

3 A No question.

4 MS. WALSH: Pass the witness, Judge.

5 THE COURT: Any recross?

6 MR. JORGENSEN: Yeah.

7 RECROSS EXAMINATION

8 BY MR. JORGENSEN:

9 Q Just to make sure I got this one right. The video
10 that we're talking about is from behind the cash register
11 looking toward the front of the store.

12 A Yes.

13 Q So you see the back of whoever's running the
14 register.

15 A The top and the back, yes.

16 Q You can see the screen that he or she is typing
17 into.

18 A Right.

19 Q Can you see if it's a Mastercard or a Visa that's
20 being slid across?

21 A In the shot it's -- it's one shot that shows the
22 keyboard, and if you bring the card like this you can see it.

23 Q So you were -- you were not watching the same angle
24 the whole time?

25 A I remember we looked -- we focused on one particular

1 one, yeah.

2 Q And that was the one that's -- that shows the
3 keyboard up close or it shows the monitor and the customer and
4 the back of the clerk?

5 A That's -- the one that shows all -- the monitor, the
6 customer, that's the one we focused on, right.

7 Q And the monitor and the customer and the back of the
8 clerk fill up the whole frame, or do you -- can you see more?

9 A It fills up most of the frame.

10 Q Could you tell if the guy that was the customer, did
11 he have a -- a mustache?

12 A I believe so. I can't remember.

13 Q What color shirt did he have on?

14 A Don't remember.

15 Q How tall did he look?

16 A Maybe 5'7", 5'8".

17 Q You could tell that from the video, or that's from
18 your memory of what Phillie looks like?

19 A From my memory.

20 Q Did he have corn rows, or did he have a afro, or did
21 he have combed out hair or what, the guy on the video, not
22 Phillie?

23 A I -- I can't remember. I remember he had hair like
24 -- I can't remember if it was corn rows or not. I -- I don't
25 remember.

1 Q You could not in this -- what you were watching that
2 day a couple of days later and then with the detective, you
3 could not see actually who was -- whose name was on the card
4 and if it was a Visa card or not?

5 A On the video?

6 Q Right.

7 A No.

8 Q How you identified it as -- it was \$490 on the
9 monitor.

10 A Well, it's -- the product that he bought adds up to
11 490. I mean, you know, like if you're looking at the
12 receipt --

13 Q Uh-huh (affirmative.)

14 A -- it shows the SKU number and the amounts. And
15 then if you look at the video you can kind of tell if -- I
16 mean, I've been doing it for like a couple of years, so I
17 know, if I'm looking at the video, what boxes look like or
18 what the item might look like.

19 Q So the -- what the -- the video you watched looked
20 like it had on there the same listing of what's on that
21 printout that we have as State's Exhibit --

22 A Yes.

23 Q -- the same four of five boxes.

24 A Right. Not boxes. It was like couple of boxes and
25 some clothing or something.

1 Q Did the video tell you what time of day it was
2 supposed to be that -- that the video camera, did it have a
3 timestamp on it?

4 A Yes, the video does have that.

5 Q And what time was this supposed to be?

6 A I can't remember.

7 Q What day was it supposed to be?

8 A It was the 17th, March 17th.

9 Q You remember --

10 A I think it was like 12:53 or something, 12. I don't
11 know. It's been like two years. I can't remember because
12 it's been like a year and a half.

13 Q Okay.

14 A (Indiscernible)

15 Q Thank you.

16 THE COURT: Any follow-up from the State?

17 MS. WALSH: No, Judge.

18 THE COURT: Any question by the jury?

19 All right. Thank you, sir. You're excused. Please
20 do not discuss your testimony with any other witness involved
21 in this case till this matter is finally resolved. Thank you
22 for your time, sir.

23 THE WITNESS: Thank you.

24 (Witness excused)

25 THE COURT: Next witness for the State?

1 MS. RINETTI: Detective Rader is our next witness.

2 (Witness summoned)

3 THE BAILIFF: If you'll remain standing and please
4 raise your right hand and face the clerk.

5 THE CLERK: You do solemnly swear the testimony
6 you're about to give in this action shall be the truth, the
7 whole truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE CLERK: Thank you. Please be seated. Please
10 state your full name and spell your name for the record.

11 THE WITNESS: William Rader, it's W-i-l-l-i-a-m
12 R-a-d-e-r.

13 THE COURT: Counsel?

14 WILLIAM RADER

15 having been called as a witness on behalf of the Plaintiff and
16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. RINETTI:

19 Q How are you currently employed?

20 A I'm a detective with Las Vegas Metro police.

21 Q And how long have you been employed with the
22 Metropolitan Police Department?

23 A Eleven years.

24 Q And were you working back on March 24th of 2007?

25 A Yes.

1 Q And on that day what unit or division were you
2 assigned within Metro?

3 A Tourist safety unit.

4 Q And how long have you been with the tourist safety
5 unit?

6 A Four years.

7 Q And what does -- what is this tourist safety unit?

8 A We handle any crime related to a tourist. We
9 specialize in pickpockets and distract thieves.

10 Q Okay. And were you working with Detective Flenner
11 on an incident in -- at a -- at the Tropicana casino involving
12 a Ronald Ross?

13 A Yes.

14 Q And do you see Mr. Ross in the courtroom here today?

15 A I do.

16 Q And could you please point to him and describe an
17 article of clothing he's wearing?

18 A (Pointing) Like he has a tan shirt on.

19 MS. RINETTI: The record reflect the identification
20 of the Defendant?

21 THE COURT: Yes, it will.

22 MS. RINETTI: Okay.

23 BY MS. RINETTI:

24 Q On March 24 of 2007 did you go to the Sheikh shoe
25 store located at 3525 South Maryland Parkway?

1 A Yes.

2 Q And is that located here in Las Vegas, Clark County,
3 Nevada?

4 A Yes.

5 Q And why did you go to the Sheikh shoe store?

6 A To conduct a photo lineup with three of the clerks.

7 Q With three of the clerks?

8 A Correct.

9 Q Now, did you put together a photo lineup in
10 relationship to this case?

11 A Yes.

12 Q And can you describe briefly how you put together a
13 photo lineup?

14 A Well, we develop a -- a potential suspect, and then
15 we have a computerized system where we put in hair color, skin
16 color, things that we try and match closely to that
17 individual. There's usually at least six individuals in the
18 photo lineup. And then the photo lineup's given to the -- or
19 instructions are given and then the photo lineup's given to
20 the -- the witnesses or clerks in this case.

21 Q And did -- is that the process you used in this
22 particular case?

23 A That's correct.

24 Q And is there also not only -- now, when you show a
25 photo lineup to witnesses does it have the name of the person

1 underneath each individual picture?

2 A No.

3 Q Okay. Is there a separate lineup that may contain
4 like a key that has all the names of the individuals that are
5 contained in that photo lineup?

6 A Yes. You usually do two copies, one with --

7 MS. RINETTI: Permission to --

8 A -- one without.

9 MS. RINETTI: -- approach?

10 THE COURT: Yes.

11 BY MS. RINETTI:

12 Q I am showing you what's been marked as State's
13 proposed exhibit number 4; do you recognize it?

14 A Yes. That's the photo lineup that I did.

15 Q Okay. Is that a photo lineup you did in connection
16 to this case?

17 A That's correct.

18 Q Okay. And it fairly and accurately depicts the
19 photo lineup that you conducted on March 24th, 2007?

20 A That's correct.

21 MS. RINETTI: Move to admit State's proposed 4.

22 THE COURT: Any objection?

23 MR. JORGENSEN: No, Judge.

24 THE COURT: It will be admitted.

25 (State's Exhibit 4 admitted)

1 BY MS. RINETTI:

2 Q I'm now showing you State's proposed number 6; do
3 you recognize that?

4 A Yes, I do.

5 Q And what is it?

6 A It's the same photo lineup, but it gives you the
7 information on the -- the suspects that are in the pictures so
8 that you can relate back to them.

9 Q Okay. I think I referred to it as a key; is that
10 fair?

11 A Yes, that's fair.

12 Q Okay. And this fairly and accurately depicts the --
13 the key that was in -- that went along with this photo lineup
14 in this particular case?

15 A Yes.

16 MS. RINETTI: State moves to admit State's proposed
17 6.

18 THE COURT: Any objection?

19 MR. JORGENSEN: No objection.

20 THE COURT: It will be admitted.

21 (State's Exhibit 6 admitted)

22 MS. RINETTI: Thank you. Permission to publish?

23 THE COURT: Yes.

24 MS. RINETTI: All right.

25 BY MS. RINETTI:

1 Q Showing you what's been admitted State's 4, and
2 that's the photo lineup that you gave to the three clerks at
3 the Sheikh shoe store.

4 A Correct.

5 Q And which picture is Ronald Ross in?

6 A Four.

7 Q Can you point to it on the screen?

8 A Right -- oh, on that screen or this screen?

9 Q Is it this one?

10 A There we go. Okay.

11 Q Okay.

12 A I'm sorry.

13 Q All right. And then now showing you State's
14 admitted as number is this the key that is in relationship to
15 the photo lineup that you used with the Sheikh -- the Sheikh
16 shoe store?

17 A Correct. Yes, it is.

18 Q And Ronald Ross is in number 4?

19 A Yes.

20 Q With his name underneath?

21 A Yes.

22 Q Okay. Now, you said you showed these photo lineups
23 to three individuals; is that correct?

24 A Yes.

25 Q And did you show this photo lineup to a sales clerk

1 by the name of Luis Valadez?

2 A Yes.

3 Q And was Luis Valadez able to identify anyone in the
4 photo lineup?

5 A Yes, he was.

6 Q And who was he able to identify?

7 A He identified number 4, Ronald Ross.

8 Q And did you also show a lineup to a salesperson
9 named Deja Vu?

10 A Yes.

11 Q And was Deja able to identify anyone in the photo
12 lineup?

13 A Yes, he was.

14 Q And who was he able to identify?

15 A He also identified number 4 as Ronald Ross.

16 Q Did you also show a photo lineup to Kevin Hancock?

17 A Yes, I did.

18 Q And was he able to identify anyone?

19 A He did.

20 Q Okay. And when you conducted these three lineups
21 with these three separate individuals did you conduct them all
22 together or did you have each witness come in one at a time?

23 A They were done separately.

24 Q Okay. So each person viewed the lineup separately
25 apart from the two other witnesses?

1 A Correct.

2 Q And then on -- on all three lineups they were
3 aidable to individually and separately identify Ronald Ross?

4 A Yes, they were.

5 Q As the person that came into the shoe store?

6 A Yes.

7 MS. RINETTI: Pass the witness.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. JORGENSEN:

11 Q Your contact with this case is limited to -- to
12 coming up with this series of six pictures, taking them on the
13 24th of March of 2007, and showing it to the three individuals
14 and getting their statement.

15 A That's correct.

16 Q You didn't watch any videos or talk to anybody at
17 any casinos.

18 A No, sir.

19 MR. JORGENSEN: No other questions.

20 THE COURT: Any redirect?

21 MS. RINETTI: No, Your Honor.

22 THE COURT: Thank you, Officer, for your testimony.
23 You're instructed not to discuss your testimony with any other
24 witness involved in this case till this matter is finally
25 resolved. Thank you for your time, sir.

1 THE WITNESS: Thank you.

2 (Witness excused)

3 THE COURT: Next witness?

4 MS. WALSH: Detective Flenner.

5 (Witness summoned)

6 THE BAILIFF: Detective Flenner, if you'll remain
7 standing, please raise your right hand and face the clerk.

8 THE CLERK: You do solemnly swear the testimony
9 you're about to give in this action shall be the truth, the
10 whole truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes, I do.

12 THE CLERK: Thank you. Please be seated. Please
13 state your name and spell it for the record.

14 THE WITNESS: Darrell Flenner, D-a-r-r-e-l-l
15 F-l-e-n-n-e-r.

16 THE COURT: Go ahead, Counsel.

17 MS. WALSH: Thank you, Judge.

18 DARRELL FLENNER

19 having been called as a witness on behalf of the Plaintiff and
20 being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. WALSH:

23 Q Sir, how are you currently employed?

24 A With the Las Vegas Metropolitan Police Department.

25 Q And how long have you so been employed?

1 A Seventeen years.

2 Q What's your current capacity in the police
3 department?

4 A A detective.

5 Q How long have you been a detective?

6 A Seven years.

7 Q What unit are you currently assigned to?

8 A Tourist safety unit.

9 Q And what is the tourist safety unit?

10 A We handle tourist crimes that occur at hotels,
11 mainly certain burglaries, larcenies, pickpockets, distracts,
12 auto burg -- auto burglaries. Pretty much --

13 Q Have you had any training regarding the specific
14 type of crimes you investigate in the tourist safety unit?

15 A Yes, ma'am.

16 Q And what type of training did you receive?

17 A It's -- well, we watch videos and we actually just
18 by seeing the crimes occur we pretty much learn on the job.

19 Q A lot of on-the-job training?

20 A Yes.

21 Q Okay. A lot of training you receive from other
22 detectives on the unit who've been there longer than you?

23 A Prior to me getting there, yes.

24 Q Okay. Now, you mentioned that part of your duties
25 is to investigate what you call a distract theft; is that

1 correct?

2 A Yes, ma'am.

3 Q Can you explain to the ladies and gentlemen of the
4 jury exactly what you mean by the words distract theft?

5 A It's a -- a distract is -- usually it's [sic] can be
6 done with one person but it mostly is done with two people
7 where you'll have one person that actually does a distract on
8 somebody, diverting their attention away, however means, while
9 a second person is actually taking items.

10 Q Okay. Can you also have someone, a second person,
11 operating just as a cover to cover up what the first person is
12 doing?

13 A Yes, ma'am.

14 Q Okay. And so maybe the first person can be
15 distracting and taking an item, and the second person can be
16 covering it up from the other public's view?

17 A Yes. There's -- there's many ways.

18 Q Numerous ways to con -- to conduct distract thefts
19 and pickpockets here on the Strip.

20 A Yes, ma'am.

21 Q Okay. And you've investigated distract thefts
22 previously in the past; is that correct?

23 A Yes, ma'am.

24 Q Okay. Over the -- the number of years you've been
25 in the tourist safety unit?

1 A Yes, ma'am.

2 Q Now, are you familiar with a individual by the name
3 of Ronald Ross?

4 A Yes, ma'am.

5 Q And do you see Mr. Ross in court today?

6 A Yes, ma'am.

7 Q Can you point to him and describe an article of
8 clothing he is wearing?

9 A Sitting there in -- I can't really see -- V-neck
10 shirt (indiscernible) beige.

11 MS. WALSH: Can the record reflect the witness has
12 identified the Defendant?

13 THE COURT: Yes, it will.

14 BY MS. WALSH:

15 Q And were you familiar with Mr. Ross prior to March
16 17th of 2007?

17 A Yes, ma'am.

18 Q Okay. Now, I want to direct your attention to
19 around March 17th of '07 and the days and weeks following.
20 Did you have an occasion to be a detective assigned to
21 investigate a type of distract theft at the Tropicana Hotel
22 and Casino?

23 A Yes, ma'am.

24 Q And is the Tropicana at 3801 Las Vegas Boulevard
25 here in Clark County, Nevada?

1 A Yes, ma'am.

2 Q Okay. And in the course of your investigation you
3 learn that the victim in that case was a Georgia Stathopoulos;
4 is that correct?

5 A Yes, ma'am.

6 Q Did you have an occasion to review some surveillance
7 tapes regarding that incident?

8 A Yes, ma'am.

9 Q Did you get those surveillance tapes from the
10 casino?

11 A Yes, ma'am.

12 MS. WALSH: And, Judge, we have marked as State's
13 proposed exhibit number 2 the surveillance tape from the
14 Tropicana casino. We're going to move to admit by way of
15 stipulation through the parties.

16 THE COURT: Are you stipulating to that, Mr.
17 Jorgenson?

18 MR. JORGENSEN: Yes, Judge.

19 THE COURT: All right. It'll be admitted.

20 (State's Exhibit 2 admitted)

21 MS. WALSH: Yes. Permission to publish, Your Honor?

22 THE COURT: Yes.

23 BY MS. WALSH:

24 Q And, sir, State's exhibit number 2 that's playing
25 right now; is this the video surveillance from the Tropicana?

1 A Yes, it is.

2 Q Now, do you see anyone in view that is a person of
3 interest?

4 A Yes. Ronald Ross up -- is up on the top, and a
5 second unidentified subject is in the other shirt. Ronald
6 Ross is sitting down --

7 Q (Indiscernible)

8 A I'm sorry.

9 Q That's okay. Okay. Can you identify for the jury
10 where Mr. Ross is?

11 A He just sat down -- sitting down to the left of --

12 Q You can actually --

13 A -- Mrs. --

14 Q -- (indiscernible)

15 A Oh. This is Ms. Stoph -- I'm sorry, I can't
16 pronounce her name.

17 Q You can call her Georgia.

18 A Georgia. Sitting right here. She said her husband
19 was sitting to her right, so that corresponds, and then he is
20 sitting right here.

21 Q Okay. Would he have been that individual who we
22 initially saw walking towards the top of the screen in the
23 jersey?

24 A Yes, ma'am.

25 Q And that would be a jersey with the number 6 on it?

1 A Yes, ma'am.

2 Q And the second individual that he is with is
3 currently standing right behind him in this frozen frame; is
4 that correct?

5 A Yes, ma'am.

6 Q And this frame is frozen at 1:06:15 and 15 seconds?

7 A Yes, ma'am.

8 Q Now, based upon your training and experience as an
9 officer is there anything of significance of what we just saw
10 with the Defendant walking up past Ms. Stathopoulos doing
11 something with his jacket in his hand and turning around and
12 coming back (indiscernible)

13 A Yes, ma'am.

14 Q And what is the significance of that?

15 A He was setting up his prop.

16 Q And what do you mean by prop?

17 A Jackets are used in a matador style to cover the
18 hand so they can slide them over so you cannot see what the
19 hand is doing. So you've got a -- it -- it's concealed.

20 Q Okay. So it's a way for them to do -- be doing
21 something with their hand that's not redably -- redably --
22 redably [sic] viewable to the general public; is that correct?

23 A Yes, ma'am.

24 Q And this is something you've seen numerous times in
25 your investigation as an officer?

1 A Yes, ma'am.

2 Q Okay. Now, the presence of a second person; that's
3 also something you indicated is almost normal in this type of
4 distract theft situation.

5 A Yes, ma'am.

6 Q Thank you.

7 MS. WALSH: If we could play it?

8 BY MS. WALSH:

9 Q Now, in the videotape it appears that he's talking
10 to Georgia; is that correct?

11 A Yes, ma'am.

12 Q And it appears he's pointing, and the -- and the
13 second individual with him is pointing as well; is that
14 correct?

15 A Yes, ma'am.

16 Q Is that something of significance to you as an
17 officer?

18 A Yes, ma'am.

19 Q And what's the significance of that?

20 A Trying to divert her attention away looking -- to
21 look away from where they're at.

22 Q Okay. And would it also be to -- to draw her
23 attention away from where her purse is at?

24 A Yes.

25 Q Now, the second individual appears to be standing in

1 payment at lunch for that day.

2 Q But not if it was cash or a credit card?

3 A No, I can't remember.

4 Q Okay. You are walking back to the elevators to go
5 up to your room?

6 A Yes.

7 Q So you were staying, obviously, at the Tropicana
8 while you were here in town?

9 A Yes.

10 Q You come past one of the slot machines, you decide
11 to sit down at -- with -- you and your husband decide to sit
12 down.

13 A Yes.

14 Q Now, you -- you needed to use your wallet to get
15 cash, or you already had cash inside your wallet; what was it?

16 A As best as I can recollect, I -- I think I had a
17 dollar left; that's why I, you know, I was the one that made
18 the payment. I think I went back and put the tip on the
19 table, and I had a dollar left, and so we went by this
20 machine, it was just a -- the penny machine, and I said let's
21 stop a minute and play this machine.

22 Q And the dollar --

23 A That I used out of my wallet.

24 Q So you reached into your purse, pulled your wallet
25 out, and inside the wallet was a one dollar bill.

1 A Right.

2 Q But you don't remember if you had to unzip it or
3 not.

4 A I don't remember. In order to get the wallet I had
5 to unzip -- I mean, I had to get it out of the purse. But
6 whether it was --

7 Q Whether the purse was unzipped or not you're not
8 sure?

9 A No.

10 Q Okay. You just played the one dollar, and it then
11 starts to indicate that you've won something or another.

12 A Making a lot of noise, flashing.

13 Q Okay. And that's when two black guys came up and
14 started to talk to you.

15 A Yes. They were very friendly and came up to me
16 rather close.

17 Q How old did they appear?

18 A I didn't, you know, pay that close of attention, but
19 they seemed young and nicely dressed from what I recollect.

20 Q All right. What do you mean by young? Teenagers,
21 20s, 30s?

22 A You know, could be middle 20s, 30.

23 Q So out of high school by 10 years maybe?

24 A (No audible response.)

25 Q You don't -- by young you don't mean a teenage --

1 you don't mean a high school aged kid?

2 A No, I didn't think that they were that young, no.

3 Q Somebody in their mid-20s. Both of them appeared to
4 be in their mid-20s, maybe late 20s.

5 A I don't -- I -- I can't say, you know, I can't
6 remember that clearly, you know, if it was mid-20s. But
7 that's -- they were young -- two young men that approached me
8 very close, being very friendly.

9 Q One talked to you and the other one didn't or they
10 both talked to you?

11 A No. Just the one.

12 Q And you recall telling anybody how that person was
13 dressed? Or do you remember how that person was dressed?

14 A No, I don't remember. My -- my --

15 Q This is --

16 A -- concentration was focused on the machine.

17 Q Okay. This was March. Do you remember if it was
18 cold enough to wear a jacket outside or not that day?

19 A No, I do not.

20 Q How long (indiscernible) in town for?

21 A For about three days.

22 Q So you'd flown in from Illinois?

23 A We came over from Arizona.

24 Q Okay. So you drove up from Arizona up to Las Vegas?

25 A We flew into Arizona, and our son drove us up to --

1 to Las Vegas. It was our first trip out to Las Vegas.

2 Q And you spent the three days at the Tropicana?

3 A Yes.

4 Q (Indiscernible) this was your last day?

5 A We were leaving Sunday, the next day.

6 Q The -- the two black guys that came up that talked

7 to you -- or the one that talked to you and the one that

8 didn't, they were the same physical size and height or do you

9 remember?

10 A I don't remember.

11 Q Do you remember how tall either one of them were, or

12 the guy that did talk to you do you remember if -- if he was

13 short or tall?

14 A I can't remember.

15 Q How tall are you?

16 A I'm just a little over five feet.

17 Q So they all were taller than you. Yes?

18 A Yes.

19 Q Okay.

20 A I was sitting down.

21 Q Oh, so you were -- you never even stood next to one

22 (indiscernible) so --

23 A No.

24 Q -- you could even get a good idea what -- how tall

25 they were; is that right?

1 A Right.

2 Q Did the person you talked to speak with an unusual
3 accent or a southern accent?

4 A I can't remember that.

5 Q Have a beard or a mustache?

6 A I can't remember.

7 Q Were you later on showed pictures of people to pick
8 out who the person was that talked to you?

9 A Later on like when?

10 Q Anytime later by the police in particular? You
11 know, the next day, a week later, a month later.

12 A No.

13 Q Did you finally collect the money off your machine?

14 A I never won any money. I just got 20 some free
15 tries; that's all it was.

16 Q And did you use all of those free tries?

17 A Right.

18 Q And ended up with nothing?

19 A Right.

20 Q Then you walk to the elevator and go up the
21 elevator.

22 A Right.

23 Q And at the eleva -- well, in your room at some point
24 you're going through your purse and notice that your wallet's
25 gone.

1 A That is correct.

2 Q Did you notice that as soon as you got to the room
3 or you got up to the room and you were there for a little
4 while?

5 A It was very soon after we got into the room.

6 Q What caused you to look for your purse?

7 A Well, the -- the zipper was open, and I -- I put it
8 on the table, and I -- I think I glanced at it to see, and I
9 saw that my wallet wasn't there.

10 Q The wallet normally would have been on top of
11 everything.

12 A Right.

13 Q Then you went down to the buffet to see if it had
14 been left there?

15 A I was very frantic. I go my wallet's not here. So
16 my first inclination right away was to run back to the lunch
17 room where I know -- I remember, you know, I used it there,
18 and I -- that was my first inclination.

19 Q And you actually did go to the lunch room.

20 A Yes, I did.

21 Q Did you go over to the -- did you retrace your steps
22 from the lunch room over to where the machine was to see if it
23 was on the ground somewhere?

24 A No, I didn't do that.

25 Q Did you go to the slot machine itself to see if it

1 was sitting on the ground or next to the slot where you set
2 your purse down?

3 A No.

4 Q Why didn't you decide to look any of those places?

5 A (No audible response.)

6 Q You -- you went to the lunch room; why didn't you go
7 to the rest of the places once you found out it wasn't at the
8 lunch room?

9 A I just -- that -- that was the first thing that came
10 to my mind was I -- maybe I left it there and I went there,
11 and then I went back to my room, and I said it -- it wasn't at
12 the lunch room.

13 Q You didn't -- you're positive you didn't lose it at
14 the slot machine, or you just simply didn't think to go to the
15 slot machine to look there also?

16 A I didn't think to look there also.

17 Q All right. Now, it is the following day that you
18 called the credit card companies?

19 A No. It was right shortly after, like maybe 1:30,
20 1:45.

21 Q Okay. All right. And that's when they tell you
22 that there's already been a charge on it at the shoe store.

23 A Yes.

24 Q Is that right? And they told you the name of the
25 shoe store?

1 A I believe they did, yes.

2 Q So you could see if you'd made that own expense
3 yourself.

4 A Right.

5 Q And you said no, I don't recognize that --

6 A Right.

7 Q -- shoe store or that amount of money.

8 A Right.

9 Q Now, you called eight or nine different credit card
10 companies?

11 A I called several, and then I had to call home and
12 get a couple of numbers from my daughter because I didn't have
13 them; my husband didn't have the numbers either.

14 Q But it was just the one card where they actually
15 told you hey, it's been used already.

16 A Yes.

17 Q Now, you then contacted that shoe -- that store?

18 A Yes.

19 Q How did you have the number, the phone number?

20 A I -- I don't remember. I think maybe -- I don't
21 know if the credit card company gave it to me or did I -- I --
22 I looked it up or else I asked the front desk, but I got the
23 number.

24 Q So the -- the -- we're still talking about the same
25 afternoon.

1 A Right.

2 Q You call then and talk immediately or as soon as you

3 actually make the call, maybe 1:30 or 2:30, and you talk to

4 someone at the shoe store by the name of Deja.

5 A Yes.

6 Q How do you know what his name was?

7 A He told me his name.

8 Q All right. I mean, it may be an obvious question

9 but just so I understand. And he indicated that a guy came in

10 with a girl and used your credit card?

11 A Yes. He said someone had just been there, he -- a

12 regular customer, so he didn't check any IDs. And I said to

13 him well, the purchase he just made was not made by me or

14 authorized by me and it was a fraudulent purchase.

15 Q But you do remember him saying that -- that this guy

16 who was a regular customer who just came in and used the card

17 came in with a girl; is that right?

18 A I believe yes, he did say he came in with --

19 Q Do you remember writing that down on your statement

20 to the police, that he came in -- that Deja told you he came

21 in with a girl?

22 A I can't remember if I -- if -- if that's what I

23 wrote down. This was, you know, over a year and a half ago,

24 so --

25 MR. JORGENSEN: May I approach the witness, Judge?

1 THE COURT: Yes.

2 A -- whatever Deja had mentioned to me.

3 BY MR. JORGENSEN:

4 Q Just looking at that piece of paper does that look
5 like a copy of something that you recognize?

6 A I wrote that at the police station.

7 Q It -- so -- when? What day?

8 A That same afternoon. We walked down to the police
9 station.

10 Q So if the card was taken on the 17th this would have
11 been the 17th also.

12 A That is correct.

13 Q After you had called the credit card company and
14 talked to the shoe store person, right?

15 A Right.

16 Q And looking at that now do you rec -- does that help
17 you recall whether or not this Deja had told you who this guy
18 was with when he came into the store to use the -- your credit
19 card?

20 A No, I can't say I remember at this point.

21 Q Do you -- can you look at that and say what -- tell
22 the Court what you had written down that same day after
23 talking with Deja?

24 A What I wrote on here?

25 Q Right.

1 A Where I found my wallet was missing, and my -- and
2 my husband and I just thought well then, it was those two
3 young men that, you know, came very close to me and were very
4 friendly. And -- and as soon as -- we kind of thought that's
5 what had happened to my wallet. So then I -- we called the
6 credit card companies, we called security to come up and do
7 their report, and then we went down and filled out a police
8 report at the station.

9 Q Okay.

10 A Now, it says here I then started calling to cancel
11 my credit cards. Visa says someone had used my credit card at
12 Sheikh -- or Sheikh shoe store at 3520 South Maryland Parks,
13 we -- 1:22. They gave me the address and they gave me the
14 phone number by a salesperson, Deja. He said the person had a
15 girl with him and they were on the store video, and also the
16 salesman said he made several purchases in the shoe store with
17 a business card. And salesman, Deja, said his name is Phillie
18 (phonetic throughout) and his phone number, he gave me a phone
19 number that the person that used my card had given him.

20 Q Now, did you know what he meant -- the person you're
21 on the phone with -- what he meant when he said that this guy
22 had used to purchase with a business card? Was he referring
23 to your credit card or something different? Or do you know?

24 A I just thought that he meant that he was using a --
25 another card that was a business card.

1 Q Okay. All right. So you don't -- you don't think
2 he was referring at that point to your credit card; just he
3 had used -- he had bought something with your credit card and
4 with a business card?

5 A He had been in the store several different times,
6 and he was a regular kind of a customer that he recognized, so
7 he didn't check his IDs, because I questioned him and said
8 well, didn't you check his IDs, he goes no, he's a regular
9 customer of ours, he's come in with business card -- with a
10 business card and used it prior to the purchase he made with
11 my card. That's the way Deja explained it to me.

12 Q Now, this has -- it was written at 5:30 -- or 5:03
13 in the afternoon; does that sound about right?

14 A That sounds about right.

15 Q Sitting here today could -- do you know for sure
16 when your wallet became missing? Or do you look back and say
17 when -- when it's likely to have become missing?

18 A I know for sure. As soon we -- as soon as we got to
19 our hotel room, as soon as we walked inside and I put it on
20 the table and I looked and I saw that it wasn't there, I --
21 you know, that was when I -- as soon as we got into our hotel
22 room, which was shortly after when we left that, because we
23 only played that one dollar.

24 Q All right. So you used the card at -- you used your
25 wallet at the buffet and then you notice it missing when you

1 got to your hotel room.

2 A Yes.

3 MR. JORGENSEN: No other questions.

4 THE COURT: Any redirect?

5 MS. WALSH: No, Your Honor.

6 THE COURT: Thank you, ma'am. You're instructed not
7 to discuss your testimony with any other witness involved in
8 this case till this matter is finally resolved. Thank you for
9 your time.

10 (Witness excused)

11 THE COURT: State, please call your next witness.

12 MS. RINETTI: Deja Jarmin.

13 THE BAILIFF: Mr. Keeler, if you'll raise your right
14 hand, please.

15 THE CLERK: You do solemnly swear that you will well
16 and truly read the answers of the deponent as set forth in the
17 deposition in response to the questions therein asked by
18 counsel, so help you God?

19 MR. KEELER: I do.

20 THE CLERK: Thank you. Please be seated. Please
21 state your full name and spell your name.

22 MR. KEELER: My name is Brett Keeler, B-r-e-t-t,
23 last name K-e-e-l-e-r.

24 THE COURT: And just for the record it's not a
25 deposition; it'll be a preliminary hearing transcript. So.

1 MS. RINETTI: Thank you, Judge.

2 THE COURT: Go ahead, Counsel.

3 DEJA JARMIN

4 having been called as a witness on behalf of the Plaintiff and
5 being first duly sworn, testified at preliminary hearing as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. RINETTI:

9 Q Good morning, Mr. Jarmin. I want to direct your
10 attention to March 17th earlier this year, 2007. How were you
11 employed on that day?

12 A I'm a third key at Sheikh Shoes.

13 Q That's Sheikh, S-h-e-i-k-h; is that correct?

14 A That's correct.

15 Q And you said third key; what exactly is a third key?

16 A It's a supervisor. I don't have the responsibility
17 of the assistant manager; I'm under the assistant manager. I
18 do some supervising and some cashiering.

19 Q So your duties would include ringing people up as
20 well as supervising other employees; would that be accurate?

21 A Yes.

22 Q And that's -- Sheikh Shoes is located at 32 -- 3525
23 South Maryland Parkway here in Las Vegas, Clark County,
24 Nevada; is that correct?

25 A Right.

1 Q Now, I want to direct your -- I want to turn your
2 attention to the early afternoon of that same day, March 17th,
3 2007; were you on duty on that day?

4 A Yes, I was.

5 Q Do you see anyone on that day as you were on duty
6 that's present in the courtroom today?

7 A Yes. The Defendant in the blue shirt.

8 Q You made reference -- you pointing to an individual
9 in the courtroom; could you again point that individual out
10 and identify something he is wearing?

11 A The Defendant over here in the blue top with the
12 corn rows.

13 Q And that is at the table next to me?

14 A Yes.

15 Q May the record reflect the witness has identified
16 the Defendant?

17 THE COURT: And then the transcript says that the
18 Court did --

19 MS. RINETTI: Yes. That will be noted.

20 THE COURT: Yes.

21 BY MS. RINETTI:

22 Q Had you seen the Defendant prior to that day?

23 A Yeah. He had visited our store, I think, maybe
24 twice prior within a two- or three-week period.

25 Q On those prior occasions had you waited on him or

11 cashiered or anything of that sort?

12 A I spoke to him, but I never -- I hadn't actually
13 waited on him; someone else did.

14 Q And on those prior occasions were you aware of
15 whether he conducted transactions at your store or not?

16 A Yes. Well, on one occasion he did; that I remember.

17 Q Now I want to turn your attention again to that
18 early afternoon on March 17th of 2007. Could you tell us your
19 observations of the Defendant on that day when he entered the
20 store?

21 A I recall that he had on -- I believe it was a T-
22 shirt and maybe a jersey when he walked in with a -- with his
23 friend.

24 Q So he entered with a friend?

25 A Yes, he did.

26 Q And could -- and could you describe that friend?

27 A The friend, I don't remember exactly what he had on.

28 Q Was he white or --

29 A No. He was black. Black guy. A little shorter
30 than the Defendant.

31 Q Okay. And you -- and -- and could you describe what
32 they did when they entered the store?

33 A They came in, spoke to me and the assistant manager,
34 picked out a few items, and made a purchase.

35 Q Now, at the time that you indicated they came into

1 the store, picked out some items, how long were they in there
2 prior to finalizing their purchase?

3 A Maybe 20, 30 minutes.

4 Q Okay. And at the time that they finalized the
5 purchase were you involved in that at all?

6 A Yes, I was.

7 Q What was your involvement?

8 A Actually, the Defendant was the customer that I --
9 that I had, and I also rang up his purchase.

10 Q So he presented you with some merchandise he had
11 selected?

12 A Yes, he did.

13 Q And do you recall how the Defendant intended to pay
14 for the merchandise?

15 A He produced a credit card.

16 Q Okay. Now, do you have a normal procedure that you
17 go through when people present you with a credit card?

18 A We do.

19 Q What would -- what would the normal procedure be?

20 A With a credit card we usually check ID to match the
21 name of the -- of the ID on the credit card.

22 Q Did you do that in the -- in this case on March 17th
23 with the Defendant?

24 A No, I did not.

25 Q And why is that?

1 A Because he had been there prior and he also used a
2 credit card that last time -- the last time that he came in,
3 and this time I just overlooked it, and I didn't do it because
4 he's a regular customer.

5 Q So how did you use the credit card at the time to
6 ring up the sale?

7 A I swiped the credit card, and then I made a printout
8 of the credit card.

9 Q So you just sort of swiped it through a machine that
10 you have; is that right?

11 A Yes, it is.

12 Q All right. And as a result of you swiping the
13 credit card did the transaction ring up at that time?

14 A Yes. It went through.

15 Q Do you recall the amount of that transaction?

16 A I don't know off-hand, but I do have a receipt.

17 Q Did you bring some evidence with you today?

18 A Yes, I did.

19 Q What did you bring?

20 A This is actually a copy of the receipt and a
21 printout.

22 Q Okay. I'm showing you what has been marked as
23 State's proposed exhibit number 1; are these the documents
24 that you brought to court today?

25 A Yes.

1 Q And do those, in fact, document the sale that
2 occurred on this particular day of the Defendant?

3 A Yes, it does.

4 Q And what was the total amount of the sale?

5 A Four hundred and ninety, seven.

6 Q Four hundred ninety and some cents?

7 A Yes.

8 Q And you indicated that that was run on a credit
9 card; is that correct?

10 A Yes, it was.

11 Q And does that, in fact, document the credit card as
12 well?

13 A Yes, it does. It states to Visa.

14 Q Now, these particular documents, these are the
15 actual documents that were produced as a result of this sale;
16 is that correct?

17 A Yes, it is.

18 Q Okay. The State would move for the admission of
19 what's been marked as State's proposed exhibit 1.

20 THE COURT: It was admitted, correct? Yes?

21 MS. WALSH: Yes, it was, Your Honor.

22 BY MS. WALSH:

23 Q You indicated there was a credit card number on
24 there as well, a card that the Defendant used.

25 A Yes, there is the number.

1 Q And what is the credit card number?
2 A It is 4388 5270 0012 1281.
3 Q Okay. And what kind of card is that?
4 A It's a Visa card.
5 Q Now, after -- after ringing up this sale what
6 happens next?
7 A The Defendant -- we usually offer a reward type
8 thing for -- for our customers, our regular customers. We get
9 like a -- what is it called, like a favorite customer type
10 thing. So we'll write their number down and their name. He
11 gave me the name and the number, but I don't have that paper
12 with me -- with me here.
13 Q So you're not sure what that name and number might
14 have been that he gave you?
15 A No. I have a book but it's at my job.
16 Q Okay. Does the Defendant leave subsequent to
17 ringing up the transaction then?
18 A Yes, he does.
19 Q Okay. Do you have any other concern in regards to
20 this transaction that day?
21 A No.
22 Q Does anybody contact you in regards to that
23 transaction?
24 A Yes. Shortly after the purchase, maybe an hour or
25 so later, I got a call from Ms. -- I can't say her last name

1 but Georgia.

2 Q And that's the lady who just -- you -- that -- who
3 you just observed testify; is that correct?

4 A Yes, it is.

5 Q And did you have a conversation with her at that
6 time?

7 A Yes, I did.

8 Q And as a result of that conversation what did you
9 do?

10 A She mentioned that her card had been used at our
11 store, and it was a stolen card. I got her name and phone
12 number. She said that she had spoken to detectives and spoke
13 to the security at the hotel she was staying at, and she would
14 get in contact with me or have the detective get in contact
15 with me.

16 Q Based upon the information that she gave you in
17 regards to that card did you locate the information you've
18 just described?

19 A Yes, I did.

20 Q Did you do anything else?

21 A After I got the information I just waited for the
22 detective.

23 Q Do you have a surveillance system in your store?

24 A Yeah, we do.

25 Q And that surveillance system there is cameras in

1 your store; would that be accurate?

2 A Yeah, there is.

3 Q Now, you indicated that you are a manager there at
4 the store; is that correct?

5 A Yes.

6 Q Do you use the surveillance system in the course of
7 your duties from time to time?

8 A Yes, we do.

9 Q To what? Observe transactions?

10 A Yeah. Sometimes we have to check and make sure that
11 nobody is stealing merchandise, or, you know, we have to check
12 on if someone comes into the store and they're doing something
13 they're not supposed to.

14 Q On this particular day did you have occasion to
15 observe the video regards this transaction?

16 A Yeah. After I spoke to Georgia I spoke to my
17 district manager, who was present at the time, and the
18 assistant manager. We then went back to look at the video to
19 find out if it was the Defendant who made the purchase.

20 Q And did you -- did you subsequently observe that
21 video?

22 A Yes, we did.

23 Q And did the video depict a clear and accurate
24 depiction of what you have described for the Court as
25 occurring on that day?

1 A Yes.

2 Q At some point in time did the police talk to you in
3 regards to this incident?

4 A Yes, they did.

5 Q Do you recall a Detective Flenner?

6 A Yes, I do.

7 Q Did Detective Flenner talk to you specifically about
8 this incident at your store?

9 A Yes, he did.

10 Q Did you at any point in time talk about the video
11 within the store when you were talking to Detective Flenner?

12 A Yes, we did.

13 Q Did Detective Flenner have an opportunity to review
14 that video?

15 A Yes.

16 Q And that was the same video that clearly and
17 accurately depicts what you have just described as occurring
18 to the Court?

19 A Yes.

20 Q The State passes the witness.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. JORGENSEN:

24 Q You said you were the third key manager at the shoe
25 store?

1 A Yes, I am.

2 Q What does that mean?

3 A It's a supervisor. When the manager or the
4 assistant manager is not in then I'm the manager in charge.

5 Q So third key means you are third in charge?

6 A Exactly.

7 Q Got it. And on that day, the 17th, you were working
8 8:00 to 5:00?

9 A I worked the whole day from 9:00 until -- from 9:00
10 to 9:30.

11 Q Where is the store cross streets?

12 A Charleston. I'm sorry. Maryland Parkway in between
13 20 and Desert Inn at the Boulevard Mall.

14 Q Inside the mall?

15 A It's actually -- our store is on the outside of the
16 mall, but it's still part of it.

17 Q You waited on my client, the man that is standing to
18 the -- or sitting to the left of me, on the 17th in the
19 afternoon, correct?

20 A Yes.

21 Q Are the time stamps on these receipts right or are
22 they right but maybe off by an hour?

23 A I believe the one that's on the credit card machine
24 is off by an hour.

25 Q So if the credit card machine says 12:53, if it

1 hadn't been adjusted for Daylight Savings Time which had just
2 occurred a couple of days earlier on the date different than
3 it normally happens, would it really -- it really would say
4 13:53?

5 A Yeah.

6 Q Does that sound about right, almost 2 o'clock?

7 A Yeah.

8 Q Now, this last page you have here; this comes from
9 the computer, your inventory computer?

10 A Yes, it is.

11 Q It shows 13:49, and that's what you think is the --
12 the accurate time that the sale was generated?

13 A Exactly.

14 Q So things are being rung up at the register at about
15 10 minutes before 2 o'clock, and then the credit card
16 transaction goes through maybe seven minutes before 2 o'clock?

17 A Before 2 -- before 1 -- that's an hour. It should
18 -- it should be like an hour off.

19 Q Well, the credit receipt says 10 to 1, but it really
20 -- but it was really more accurately 10 to 2?

21 A I'm not understanding the question.

22 Q The big sheet is the one you say is more accurate.

23 A Right.

24 Q All right. The point is the person starts to hand
25 some shoes across the counter, it takes a little bit of time

1 to enter them into the computer, scan them, whatever, and then
2 finally a person hands over a card, you swipe the card, and
3 that's why the transaction time on the beginning of the
4 transaction is going to occur before the credit card sales
5 because that comes last.

6 A Right.

7 Q Now, you were asked later on to identify a picture
8 of my client?

9 A Yes, I was.

10 Q Though to be honest, you'd seen him in the past that
11 you -- is it a [sic] fair to say you didn't need to know who
12 to remember who it was?

13 A The picture? Actually, no, because we have it -- we
14 have a surveillance camera.

15 Q Well, aside from the surveillance camera, the fact
16 that you had seen him in your store often enough, you
17 recognized him as an ongoing customer.

18 A Exactly.

19 Q The guy -- was there a guy with him?

20 A Yes, there was.

21 Q And he was somebody you did not recognize?

22 A No. I hadn't seen -- I don't recall seeing him
23 before. But he made a purchase that day too; he paid cash.

24 Q Have you seen him before or since to your knowledge?

25 A No, I don't remember seeing him.

1 Q Now, my client comes in, slides across \$450 worth of
2 shoes and hands you a credit card that has a fail -- a female,
3 a lady's name on it. You don't know that -- but you don't
4 know that name (indiscernible) at all?

5 A I didn't observe the credit card at all. I just
6 took it out of his hand and swiped it.

7 Q Is that what you normally do?

8 A No.

9 Q You got in trouble for doing it that way?

10 A Yeah, I got in trouble for it.

11 Q And when the printout was signed with the lady's
12 name you similarly had already set aside in your mind that
13 this was a legitimate transaction, so you didn't look closer
14 at it either?

15 A No, I didn't.

16 Q But you are positive that these two receipts and
17 this printout comes from when you were seeing my client on the
18 17th of March around 2 o'clock when he came in and bought
19 almost \$500 worth of shoes?

20 A Yes.

21 Q And this blue ink signature is something the guy
22 sitting to my left put on this piece of paper?

23 A Yes, it is.

24 Q No question about that?

25 A No question.

1 Q Do you remember what kind of card he gave you,
2 whether it was a Master- or debit card?

3 A It was a Visa card.

4 Q How do you recall that?

5 A Because our statement shows that it is a Visa card.

6 Q If you didn't have the statement would you remember
7 what kind of card it was?

8 A From this date no, I wouldn't remember. I just
9 remember from what I have on the printout.

10 Q But you do remember he gave you some kind of credit
11 card?

12 A Yeah. He gave me --

13 Q And then by looking at the papers you know what kind
14 it is?

15 A Exactly.

16 Q How soon after you get -- you got the call from --
17 well, how soon after my client leaving your store did you get
18 a call from a lady saying hey, I think someone used my credit
19 card at your store?

20 A Be -- between one to two hours afterwards.

21 Q And when was it after that you talked to the police?

22 A Yeah. Well, I didn't talk to them that day. I
23 spoke -- I spoke to her. Several days later I was contacted
24 by the police.

25 Q All right. When in reference to the speaking to the

1 police or to your lady on the phone did you actually look at
2 the videotape.

3 A After I spoke to her, that's when we looked -- me
4 and the district manager and the assistant manager looked at
5 the tape.

6 Q So you found out -- or you heard a visitor to Las
7 Vegas calling you up and saying I think someone fraudulently
8 used my card at your place, and then you turned around and in
9 addition to looking up at it you contacted your supervisors?

10 A Yes.

11 Q And they all got together with you before your shift
12 ended?

13 A Yes.

14 Q And among other things you gathered up these papers
15 and ran the videotape for some -- for the time you remembered
16 him -- you remember the transaction possibly to have occurred
17 -- to --

18 A From --

19 Q -- have --

20 A -- the --

21 Q -- happened?

22 A -- time that's on the credit card machine, from the
23 time I talked to her. She called me and said that she had --
24 I'm sorry -- she called me and said that she had talked to her
25 -- her credit card company, and they reported that the

1 purchase was made for a certain amount on her card. She gave
2 me the number and that's when I found it. It was a match;
3 that's how I knew.

4 Q Okay. So that's how you got the papers. And that
5 is where this surveillance is running this surveillance it's
6 just continuous to take a picture?

7 A Yes.

8 Q More than one camera or one camera?

9 A There's cameras all over the store, but it's one
10 central unit in the back.

11 Q So then you get back to it -- back it up to the time
12 when you think this transaction was supposed to have occurred,
13 and watch the cameras that would have focused on wherever you
14 would have been standing, and that's when you said you looked
15 at it and showed what you remember to have happened a couple
16 of hours earlier?

17 A Right.

18 Q At this time it's like 3 or 4 o'clock in the
19 afternoon or what?

20 A (Indiscernible) my knowledge it's probably around
21 three something. Yeah, maybe around 3:00.

22 Q At that point you -- your two managers are with you?

23 A Yeah. They there [sic] at the time of the
24 transaction, but they were busy doing other things.

25 Q Okay. And something allows you to put in -- onto a

1 videotape whatever you're watching?

2 A Well, we just go back where the central computer is
3 and just rewind it to -- to -- back to the time.

4 Q How do you make a copy of it?

5 A I don't know because I never -- sorry -- I don't
6 know because I've never given them a copy. I don't know how
7 to make a copy.

8 Q Somebody else did?

9 A Yeah. That has to go through the district manager.

10 Q All right. So far as you know the police received
11 the copy, but you don't exactly have the details of -- of how
12 they made it?

13 A I don't know if they got a copy. I just know that
14 the police came to the store and they reviewed the tape. They
15 reviewed the screen because it's all digital, so they reviewed
16 the computer.

17 Q All right. Okay. And you were in with the
18 detective while you, for the second or third time, watch the
19 same scene, and he's watching the scene you've already looked
20 at and recognized as being an accurate picture of what you
21 remember happening at about 2 o'clock earlier that day?

22 A Yeah.

23 Q Nothing else.

24 THE COURT: And that concludes his testimony. Thank
25 you, sir.

1 THE WITNESS: Okay.

2 (Witness excused)

3 THE COURT: State, call your next witness.

4 MS. WALSH: Luis Valdez.

5 (Witness summoned)

6 THE BAILIFF: Mr. Valdez, if you'll remain standing,
7 please, raise your right hand and face the clerk.

8 THE CLERK: You do solemnly swear the testimony
9 you're about to give in this action shall be the truth, the
10 whole truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes, ma'am.

12 LUIS VALADEZ

13 having been called as a witness on behalf of the Plaintiff and
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. RINETTI:

17 Q Please state your full name and spell your name.

18 A My name is Luis Alverto Valadez, L-u-i-s.

19 Q And your last name, please?

20 A Valadez, V-a-l-a-d-e-z.

21 Q Thank you.

22 THE COURT: Go ahead, Counsel.

23 BY MS. RINETTI:

24 Q There's a black box in front of you, so if you can
25 just speak nice and loudly into it so everyone can hear you.

1 A No problem.

2 Q Okay. I'm going to direct your attention back to
3 March 17th of 2007. Were you working at Sheikh Shoes located
4 at 3525 South Maryland Parkway?

5 A Yes, ma'am.

6 Q And is that part of the Boulevard Mall?

7 A Yes, ma'am.

8 Q And is that located here in Las Vegas, Clark County,
9 Nevada?

10 A Yes, ma'am.

11 Q And how long had you been working (indiscernible)
12 Sheikh Shoes up until March 17th of 2007?

13 A For a year.

14 Q And do you currently work for Sheikh Shoes?

15 A No, ma'am.

16 Q Okay. Now, back on March 17th, 2007, you were
17 employed with Sheikh Shoes?

18 A Yes, ma'am.

19 Q And what position did you hold?

20 A I was sales -- sales.

21 Q And what does a salesperson do?

22 A I help customers out. Basically it. See what they
23 -- they need.

24 Q Do you help them pick out merchandise if they need
25 it?

1 A Yes, ma'am.

2 Q And do you ring customers up if they need to make a
3 purchase?

4 A When the cashier's not working, yes.

5 Q Okay. And were you working on March 17th of 2007?

6 A If I'm correct, yes.

7 Q And who were you working with?

8 A I was working with Kevin and I was working with
9 Deja.

10 Q Who's Kevin?

11 A He's my assistant manager.

12 Q And who's Deja?

13 A Another salesperson.

14 Q Okay. And do you see anyone on March 17th, 2007,
15 that is present in the courtroom here today?

16 A Yes, ma'am.

17 Q Can you please point to that person and describe
18 something he or she is wearing?

19 A (Pointing) It'd be him. He's wearing color shirt,
20 gray, cream color shirt. I can't really tell.

21 MS. RINETTI: Will the record reflect the
22 identification of the Defendant?

23 THE COURT: Yes, it will.

24 BY MS. RINETTI:

25 Q Have you seen the Defendant prior to March 17th of

1 2007 at the Sheikh shoe store?

2 A Have I seen him before at the --

3 Q Before March 17th, 2007, have you ever seen the
4 Defendant?

5 A No, ma'am.

6 Q Okay. And so the first time you had seen him was on
7 March 17th, 2007?

8 A Yes, ma'am.

9 Q Okay. And when you saw him at the store on March
10 17th do you remember what he was wearing?

11 A No, ma'am.

12 Q Okay. And can you describe what the Defendant did
13 when he entered the store?

14 A No. I don't remember.

15 Q But you remember him getting into the store; is that
16 correct?

17 A I do remember that.

18 Q And did -- did he eventually pick out any
19 merchandise in the store?

20 A Yes, ma'am.

21 Q Okay. And did he eventually go up to the counter to
22 get ring -- rung up for his purchase?

23 A Yes, ma'am.

24 Q And do you remember seeing that?

25 A Yes, I do.

1 Q And do you remember who was helping him to ring up
2 those purchases?
3 A If I'm correct, Deja.
4 Q Deja. And Deja's also a salesperson?
5 A Yes, ma'am.
6 Q And as part as your duty as a salesperson sometimes
7 you ring out customers?
8 A Yes, ma'am.
9 Q When the cashier's not available?
10 A Yes, ma'am.
11 Q And do you remember how the -- if you're aware, how
12 the Defendant paid for the merchandise that he was -- he was
13 purchasing?
14 A On credit -- with a credit card.
15 Q Credit card. So he had a card in his hand?
16 A Yes, ma'am.
17 Q Were you able to see what type of card it was?
18 A No, ma'am.
19 Q Is that because you were kind of farther away
20 from --
21 A I was actually working with other people.
22 Q Okay. So you weren't actually physically doing the
23 transaction; you just saw it?
24 A Yeah.
25 Q Okay. Now, have you seen the Defendants at the

1 store since March 17th, 2007?

2 A I've seen him before that day?

3 Q Since that, afterwards?

4 A No, ma'am.

5 Q Okay. So this is the only time you've seen him?

6 A Actually, I think I did seen him two more times
7 after that.

8 Q After the incident on March 17th?

9 A Yes, ma'am.

10 Q Okay. And now, on March 24th of 2007 were -- did
11 police contact you at the store?

12 A Yes, they did.

13 Q Okay. And did they show you a photo lineup?

14 A Yes, ma'am.

15 Q And do you remember reading some instructions prior
16 to viewing that photo lineup with the detective?

17 A Yeah. They made me fill out a statement.

18 Q Okay. And were you able to identify anyone?

19 A Yes, ma'am.

20 MS. RINETTI: Permission to approach?

21 THE COURT: Yes.

22 BY MS. RINETTI:

23 Q I'm showing you what's been marked as State's
24 proposed exhibit number 3; do you recognize it?

25 A Yes, ma'am.

1 Q And what is it?
2 A It's a picture (pointing) of him.
3 Q It's a picture of what?
4 A It's a picture (pointing at Defendant) of him and --
5 Q Are there other pictures in there as well?
6 A Yes, ma'am.
7 Q Okay. How many photos are depicted in that exhibit?
8 A There are six.
9 Q And does that fairly and accurately depict the photo
10 lineup that you observed back on March 24th of 2007?
11 A Yes, ma'am.
12 MS. RINETTI: Perm -- the State moves to admit
13 proposed 3.
14 THE COURT: Any objection?
15 MR. JORGENSEN: No, Judge.
16 THE COURT: It will --
17 MS. RINETTI: Permission --
18 THE COURT: -- be --
19 MS. RINETTI: -- to --
20 THE COURT: -- admitted.
21 (State's Exhibit 3 admitted)
22 MS. RINETTI: -- publish?
23 THE COURT: Yes.
24 BY MS. RINETTI:
25 Q And you said that's the photo lineup that you

1 observed.

2 A Yes, ma'am.

3 Q I see some writing in the bottom left-hand corner
4 under the first photograph under the first photo on the second
5 row.

6 A Yes, ma'am

7 Q Was that writing there when you first viewed the
8 photo lineup?

9 A No, ma'am.

10 Q And do -- do you see that writing under photograph
11 number 4?

12 A Yes, ma'am.

13 Q And did you place that writing there?

14 A Yes, I did.

15 Q Are those your initials?

16 A Yes, ma'am.

17 Q Is the initials LV?

18 A Yes, ma'am.

19 Q And why did you put your initials under photograph
20 number 4?

21 A To -- they told me to -- to see if the guy that --
22 that went to my store and used that card --

23 Q Okay. So --

24 A -- was.

25 Q -- the person depicted in number 4, the Defendant,

1 is the person you saw at the shoe store on March 17th of 2007?

2 A Yes, ma'am.

3 Q And at -- in which he conducted a transaction with
4 Deja Jarmin?

5 A Yes, ma'am.

6 Q Okay.

7 MS. RINETTI: Pass the witness, Your Honor.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. JORGENSEN:

11 Q You indicated already that you don't work at this
12 shoe store anymore?

13 A No, I don't.

14 Q When did you stop working there?

15 A I stop working there, if I'm correct, in December.

16 Q So --

17 A Because I've been working for my new company for --
18 I'm going on a year in December, so I quit in December of last
19 year.

20 Q This happened March of '07, and you stopped working
21 there in December of '07?

22 A Yes, sir.

23 Q How long had you been working at that company prior
24 to March of last year?

25 A I worked there for a year, if I'm correct.

1 Q So for the whole -- from January to December of 2007
2 you worked the whole year?

3 A Well, I worked a year for the company. I don't
4 really remember the day I got hired or the day that I left,
5 but I -- I -- practically like a year.

6 Q Now, the pictures that we saw, you looked at those,
7 according to the indication on that picture, you saw them at
8 about 4 p.m. on March 24th.

9 A Yes, sir.

10 Q Now, if I got that right that's a Saturday.

11 A I don't remember.

12 Q Were you working weekends, weekdays?

13 A I worked -- it depended on the schedule they -- they
14 wrote. I mean, I could work weekends, weekdays.

15 Q So you don't remember if the day you saw the -- the
16 police came and showed you the six pictures and you initialed
17 one, whether that was a Saturday or not?

18 A I don't remember that.

19 Q All right. Do you remember -- okay. Drawing your
20 attention to the day that the -- Mr. -- that my client came
21 into your store, was that the day before the police came in, a
22 week before, a month before?

23 A I don't remember.

24 Q You indicated to the police when they came in and
25 showed you those six pictures that you had seen this guy four

1 or five times during that month.

2 A If I'm corr -- I don't remember to tell you the
3 truth, but if --

4 Q The prosecutor had asked you if you had seen this
5 guy prior to the day he came in and used the credit card, and
6 you said yes.

7 A I seen him twice after the incident happened.

8 Q How about before?

9 A Before, I don't remember. But after that incident
10 happened I seen him twice, come in my store twice.

11 Q Now, you did see him before this incident happened
12 but you just don't remember how many times?

13 A I don't remember if I seen him to tell you the
14 truth. I seen him after the incident happened; I don't
15 remember if I seen him before the incident happened.

16 Q I'm showing you what is a photocopy of a paper; do
17 you recognize this piece of paper?

18 A Yes, sir.

19 Q Is this related to the piece of paper that had the
20 eight -- the six pictures on it?

21 A Yes, sir.

22 Q If I had this right, this is your instructions on
23 what to do when you looked at the six pictures, correct?

24 A Yes.

25 Q Has writing on there; do you recognize whose

1 handwriting that is?

2 A Yes, sir.

3 Q Whose?

4 A Mine.

5 Q All right. Now, this says the date and time that
6 you filled out this form and looked at the six pictures was
7 March 24th at 4:09.

8 A Yes, sir.

9 Q So that would not be 4:00 in the morning; that would
10 be 4:00 in the afternoon.

11 A 4:00 in the afternoon.

12 Q Now, can you just quickly just read to yourself this
13 statement that you wrote, and I want to ask you a question
14 about it. Can you just read that real quick?

15 A Yeah. I'm 100 percent sure that four --

16 THE COURT: Sir, read it to yourself first.

17 A Sorry.

18 THE COURT: It's okay.

19 A Yes.

20 Q In there you're -- you're indicating that you're
21 positive that number 4 is the guy that came in earlier.

22 A Yes, sir.

23 Q And that he'd been to the store how many times in
24 the last month?

25 A From what I wrote four or five times.

1 Q Thinking back on it now does that sound about right,
2 you saw him four or five times prior to him coming into this
3 incident?

4 A Yes, sir.

5 Q When did you first -- when did somebody first ask
6 you about somebody coming in and using a bogus credit card or
7 a bad credit card?

8 A When detectives came in.

9 Q The detectives came in on the 24th, right?

10 A Yes.

11 Q Or at least --

12 A From what the paper tells me, yes.

13 Q If you think about the day they came in with the
14 pictures, correct?

15 A Yes.

16 Q Had anybody discussed it with you in the days
17 leading up to it? Anybody at the store?

18 A I don't remember.

19 Q When the detectives came to you on the 24th did you
20 know why they were going to come ask you questions, or were
21 you surprised to see them?

22 A I don't remember if somebody told me to tell you the
23 truth.

24 Q You don't remember if somebody told you?

25 A Yeah, if somebody told me, you know, the detectives

1 were coming to the store.

2 Q When they were asking about this guy to pick out,
3 did you remember -- did you have to ask them or did you just
4 remember the -- the incident they were referring to?

5 A I mean, I remember the incident they were referring
6 to.

7 Q But sitting here today you don't remember if it was
8 a day earlier or a week earlier?

9 A Yeah, I don't remember that.

10 Q Okay. Sometime earlier?

11 A Yeah. I mean, I -- it had been over, if I'm
12 correct, over a year.

13 Q But you remember that it was not you that was
14 helping this person ring up the sale?

15 A Yes, sir. I --

16 Q Is this shoe store bigger inside than this room is?

17 A Yes, sir.

18 Q And it has a big open space to buy things at and
19 then rows and rows of shoes?

20 A It's actually an open area like this, just with
21 walls filled with shoes.

22 Q Okay. But bigger than this room?

23 A It was bigger than this room, yes.

24 Q What I want to know is you remember that you did not
25 help number 4 make his purchase and you remember that Deja had

1 helped him, correct?

2 A Yes, sir.

3 Q Why do you remember that he used a credit card as
4 opposed to -- I mean, how is it that you were looking at him
5 to see that he hands over a credit card if you're nowhere
6 close to him and you're not even looking at him?

7 A I don't remember if I was close to him to tell you
8 the truth. I could have been in the back. I -- I actually
9 don't remember the whole -- the whole day. I mean, I was in
10 the store, I did work with him and Kevin; that's the only
11 three people that were working that day if I'm correct.

12 Q So do you real -- do you honestly remember if he had
13 a credit card or not or just that he was in and bought some
14 stuff?

15 A I seen him buy the stuff. I seen my coworker
16 helping him out throughout the store; that's how I know it's
17 him.

18 Q Uh-huh (affirmative.) Yes. But do you remember
19 actually seeing him at the front desk sliding over a credit
20 card, or --

21 A Well, I -- I don't remember (indiscernible) I
22 remember that (indiscernible) well, when they made out the
23 printouts which the -- the detectives printed it out and made
24 our printout out of the store; that's how I -- I found out it
25 came, you know, a stolen credit card.

1 Q And they printed it out that day they showed you the
2 six pictures or a different day?

3 A I don't remember that.

4 Q But you do remember detectives coming in and -- and
5 printing out --

6 A They wanted to find out -- well, I guess, the
7 numbers of the credit card and it showed up to the receipt
8 that came out on Deja's name.

9 Q Who printed out that receipt for them? You or one
10 of the managers?

11 A No. A manager.

12 Q So when you -- when they printed it out you could
13 tell by looking at the receipt that a credit card had been
14 used.

15 A Yes, sir.

16 Q Because it says on there not cash transaction but it
17 says Visa and it has a number.

18 A Yes, sir.

19 Q Okay. On these four or five other times that this
20 guy had come in do you remember -- had you helped him at any
21 of these other times? You personally ring --

22 A No, sir.

23 Q -- him up? Do you know if he used credit cards or
24 cash the other times?

25 A If I'm correct, one time he used cash.

1 Q Because you actually were helping him?

2 A I wasn't helping him.

3 Q But one time you actually were close enough to see
4 them hand over cash?

5 A Yeah. I was at the register.

6 Q But the other times you saw him in the store but you
7 didn't actually help him, so you don't know what he --

8 A Yeah, I --

9 Q -- paid with.

10 A -- I didn't help him.

11 Q Was he someone's friend or just some guy who came in
12 all the time?

13 A I don't -- I don't -- I don't know. I don't -- I
14 don't think he was nobody's friend. I'm not sure to tell you
15 the truth.

16 Q Well, okay. Did you get the impression he was
17 Deja's friend?

18 A I'm not sure.

19 MR. JORGENSEN: No other questions. Thanks.

20 THE COURT: Any redirect?

21 MS. RINETTI: No, Your Honor.

22 THE COURT: All right. Thank you, sir, for your
23 testimony. You're instructed not to discuss your testimony
24 with any other witness involved in this case till this matter
25 is finally resolved. Thank you for your time, sir.

1 THE WITNESS: Thank you.

2 THE COURT: Ladies and gentlemen, we're going to
3 take a -- wait. You're released. Thank you, sir.

4 Ladies and gentlemen, we're going to just take a
5 short recess here, mid-afternoon recess. During this recess
6 it is your duty not to converse among yourselves or with
7 anyone else on any subject connected with the trial; or to
8 read, watch, or listen to any report of or commentary on the
9 trial by any person connected with the trial or by any medium
10 of information including without limitation newspaper,
11 television, radio, or the Internet; and you are not to form or
12 express an opinion on any subject connected with this case
13 till it's finally submitted to you.

14 See you back in a few minutes. And the marshal will
15 escort you out.

16 (Jury excused)

17 THE COURT: Let the record reflect we're outside the
18 presence of the jury panel. Ms. Walsh, how many more
19 witnesses do you have today?

20 MS. WALSH: Three, Judge. Hopefully, two will be
21 short and then one will be with the -- with the videotape.

22 THE COURT: All right. And assuming you're going to
23 be able to rest today?

24 MS. WALSH: We should, Judge. We should be able to
25 fit that in.

1 THE COURT: And do we have an instruct -- a proposed
2 instruction for the Defendant regarding his right to testify?

3 MS. WALSH: I did bring it, Judge, just in case he
4 did want it. I apologize it was not in the packet, but I have
5 sent over previously.

6 THE COURT: Let -- let me do that and let me go over
7 that right now for Mr. Ross.

8 (Discussion among counsel)

9 THE COURT: Mr. Ross, can you please stand up? You
10 have the right under the constitution of the United States and
11 under the constitution of the State of Nevada not to be
12 compelled to testify in this case; do you understand that,
13 sir?

14 THE DEFENDANT: Yes.

15 THE COURT: You may, if you wish, give up that right
16 to take the witness stand and testify. If you do so you will
17 be subject to cross-examination by one of the Deputy District
18 Attorneys, and anything you may say, be it on direct or cross-
19 examination, would be subject of fair comment by the Deputy
20 District Attorney when she speaks to the jury during their
21 final argument; do you understand that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: If you choose not to testify the Court
24 will not permit the Deputy District Attorneys to make any
25 comment to the jury concerning the fact that you have not

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 RONALD ROSS,

4 Appellant,

5
6 vs.

7 STATE OF NEVADA,

8 Respondent.
9

No. C236169

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11 **APPELLANT'S APPENDIX – VOLUME III – PAGES 500-749**

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1 going to be able to get this guy yet.

2 So the question then becomes is their request fit
3 within 171.198. And presuming that it does, I think a -- a
4 more fundamental question faces this Court, and that is does
5 my client's right to confrontation in the Nevada constitution
6 and the US constitution especially outlined recently in
7 Crawford, US Supreme Court case, whether or not the State's
8 following of criminal procedures that allows them to use a
9 preliminary hearing transcript makes no difference because my
10 client still has a stronger right to have -- to be able to
11 confront the -- this witness if he's going to testify against
12 him at trial.

13 And I think that -- well, first of all, I could not
14 find any Nevada Supreme Court case that directly addressed
15 this issue, which is if a witness testifies at preliminary
16 hearing and is unavailable at trial, and the State complies
17 with the statute that allows them to use the transcript,
18 whether or not Crawford still forbids them from using it.

19 There is, as we talked earlier, Hernandez versus
20 State, 124 Nevada, advanced report 60, that came out July 31st
21 of this year, which Judge Bell allowed in, over defense
22 objection, the testimony of an unavailable witness. He used
23 the prelim transcript of that unavailable witness. The
24 Supreme Court reversed it saying that they had not complied
25 with the -- it did not prove they had met the statute, the

1 state statute, in terms of unavailability.

2 I am suggesting that even if this Court decides they
3 have done due diligence that Crawford and my client's right to
4 confront and cross-examine all witnesses against him remains
5 the more important and the stronger right in this case.

6 The -- the theory or the fairness behind NRS 171.198
7 is premised on the fact that this is somebody who've [sic]
8 already questioned in the case. And while that's literally
9 true, that practically is not true. There -- what we do in
10 terms of deciding what the defense is, deciding how we're
11 going to prove the defense at preliminary hearing and at
12 trial, are substantially different things.

13 I don't question a person at preliminary hearing the
14 same way I question them at trial. I have -- here's a witness
15 who becomes the only person who can place recently stolen
16 property in the hands of the Defendant, property that he is
17 not seen to have taken except on a videotape that -- which --
18 which is not very clear.

19 I would -- I really say that this witness ties up
20 the whole State's case. This is a witness that the wholes --
21 the State's case revolves around, because if he can convince
22 the jury that my client an hour -- or maybe even shorter --
23 but an hour or so after a purse was taken at the Tropicana, a
24 card is being -- this -- a card taken out of this purse is
25 being used at a shoe store a mile or so away from the casino,

1 an hour or so after being taken, and the question is who is
2 the person that used that card?

3 There are other witnesses who can say my client was
4 in the shoe store at roughly the same time. The police don't
5 show up until a day or two later after the victim finds out
6 that somebody had been using her card when she gets --
7 contacts the card company. She tells Metro; Metro calls and
8 goes down to these people, and they say yes, two of the people
9 who the State still have will say yes, the Defendant was in
10 the store, I saw him come in and buy something. The only
11 person who can actually say not only did he come into the
12 store but he used the stolen credit card is this person who's
13 missing.

14 Now, I did not question this witness. There's --
15 there's a series of lines of inquiry that I didn't use at
16 preliminary hearing because, number one, it didn't occur to
17 me, and, number two, I would not use a preliminary hearing
18 examination that way anyway.

19 So to say that I already had a fair chance to
20 question him, and the jury will then read -- or listen to my
21 cutting cross-examination, and I'll be protected -- or my
22 client will be protected that way because I was able to cross-
23 examine this witness, and that would take the place of me
24 being able to cross-examine him today if he was here, I think
25 that's just simply not -- it's a fiction. It's not true. It

1 doesn't really reflect the way we do preliminary hearings as
2 defense attorneys and doesn't reflect the level of information
3 we have about the entire case prior to preliminary hearing as
4 opposed to just prior to trial or on the day of trial.

5 I think the proper moot -- the proper avenue the
6 State has is make a Bustos (phonetic throughout) motion. I
7 think they have made -- I'd be willing to concede that they
8 have made as many and any kind of attempt that I could imagine
9 making in terms of getting this guy here. He was working for
10 the store prior to the -- this -- well, when we had the
11 preliminary hearing, and evidently he worked for the store
12 until a week or so ago.

13 So I think that if the State -- I think we continue
14 the case or we do a Bustos motion because I do not think my
15 client's right to confront and cross-examine witnesses is
16 preserved at all by the State -- by the jury being able to
17 listen to the preliminary hearing transcript because it
18 doesn't contain a lot of what I would like to ask this witness
19 now that I have completed my investigation of the case. They
20 don't get a chance to see this witness. And I don't think
21 that he is a peripheral witness. I -- I honestly think he is
22 -- he's the witness that the case resolve -- revolves around
23 or at least one of the witnesses the case revolves around.
24 There's -- obviously the victim in the case is essential also.

25 So I -- I think the State is protected by making a

1 Bustos motion. I object to the using of the preliminary
2 hearing transcript because I think it violates my client's
3 Nevada constitutional right and US constitutional right to
4 confront and cross-examine the witnesses.

5 So I think either the Court continues the case,
6 resets the trial, gives the State a chance to find this guy in
7 San Bernadino and do the proper service to get him back here,
8 or simply not go forward on the counts that involve the shoe
9 store.

10 THE COURT: All right. Thank you.

11 Ms. Walsh?

12 MS. WALSH: Thank you, Judge. And the State's
13 request does fit within NRS 171.198 under two reason [sic].
14 It specifically talks about a witness being unavailable when
15 the witness is sick -- clearly Mr. Jarmin is sick; he's in a
16 hospital with some type of heart condition -- or when his
17 personal attendance cannot be had in court. His personal
18 attendance cannot be had because he's in the hospital because
19 he is sick.

20 Crawford isn't violated in this case. In fact, it
21 specifically talked about, in Hernandez versus State -- and,
22 for the record, that -- that is the 2008 case; it's 188
23 Pacific 3d. 1126 -- specifically at page 1131 after footnote
24 number 6 in the paragraph where it starts although NRS 171.198
25 6(b) lists a witness being out of state as a reason he or she

1 may be unavailable. And it goes on to say to protect a
2 Defendant's Sixth Amendment right to confront a witness
3 against him, the State must nonetheless prove that it
4 exercised reasonable efforts to procure the witness'
5 attendance.

6 So what Mr. Jorgenson is talking about saying that's
7 fine that the State followed the rules and the procedures in
8 order to get a preliminary hearing transcript used at trial,
9 my client's Crawford rights have been violated, the way that
10 we make sure the Crawford rights haven't been violated is by
11 following the rules and the standards. And you have the --
12 the three standards: that the witness was represented by --
13 or the Defendant was represented by counsel; that he had a
14 right to cross-examine the client; and then when the witness
15 is unavailable the State has to exercise due diligence and
16 make reasonable efforts to get the witness in here.

17 That's why we know that Crawford hasn't been
18 violated. Crawford is specifically thought about and
19 protected in the statute; that's why we can use a preliminary
20 hearing transcript but we can't use a grand jury transcript
21 because at the grand jury the Defendant doesn't have a right
22 to confront his witness, he doesn't get an opportunity to
23 cross-examine, and he's not represented by counsel.

24 So Crawford is specifically not violated when we're
25 talking about NRS 171.198 when we're talking about using a

1 preliminary hearing transcript when someone is sick or can't
2 be personally available to testify in court when all the
3 procedures have been followed. And from what it sounds like,
4 Mr. Jorgenson is saying that the procedures have been followed
5 in this case.

6 Mr. Jorgenson also talked about the fact that even
7 though he was at the preliminary hearing, he did cross-examine
8 Mr. Jarmin, he didn't ask him all the questions he would -- he
9 would like to have. And that's not the standard. The
10 standard is he had the opportunity to cross-examine him. And
11 there's actually been cases where witnesses were asked no
12 questions at the preliminary hearing and a preliminary hearing
13 transcript was allowed to be used during the trial because
14 it's about the opportunity to cross-examine. We can't have a
15 standard saying the State can only use the preliminary hearing
16 transcript when the defense asks all the questions they would
17 have asked at the prelim because that would be an impossible
18 standard; there's no way we could really follow that.

19 So the standard is did he have an opportunity to
20 cross-examine the witness. In this case he did; he more than
21 adequately cross-examined the witness at the preliminary
22 hearing. So the standard is met. The requirements of
23 Hernandez versus State are met. The requirements of NRS
24 171.198 are met because the witness is sick, he's unavailable;
25 the Defendant was represented by counsel, had the opportunity

1 to cross-examine and confront his witness. And we should be
2 allowed to proceed today with his preliminary hearing
3 transcript.

4 THE COURT: I think under the circumstance of this
5 case (indiscernible) just deal first with the timeliness of
6 this motion by the State. I think under the circumstances
7 good cause has been shown by the State, so that's the first
8 item we need to deal with. And also, I think the State has
9 shown reasonable diligence to have this person here, and I
10 specifically make that finding and under the totality of the
11 circumstance of this particular situation with this witness.

12 And so I'm going to allow the State to utilize the
13 preliminary hearing transcript during the trial --

14 MS. WALSH: Thank you, Judge.

15 THE COURT: -- in this matter. Do we have any other
16 issues before I call the jury in. I would like to --

17 THE DEFENDANT: Can I --

18 THE COURT: -- get them in as --

19 THE DEFENDANT: -- say something --

20 THE COURT: -- soon as possible.

21 THE DEFENDANT: -- Your Honor, for the record?

22 THE COURT: Talk -- ask your attorney --

23 THE DEFENDANT: I'm ask --

24 THE COURT: -- questions, sir.

25 MS. WALSH: And, Judge, I'll -- I'll go make copies

1 of the transcript right now so we don't need to take a break.

2 We do have a reader set up to come in.

3 THE COURT: Okay.

4 THE BAILIFF: Is that it?

5 THE COURT: Anything else?

6 MS. WALSH: Not for the State, Judge.

7 THE COURT: All right. Let's bring them in.

8 THE BAILIFF: (Indiscernible) department 17, juror
9 number 12.

10 THE COURT: Mr. Gonzalez?

11 JUROR NUMBER 12 (via interpreter): Yes.

12 THE COURT: Okay. Mr. Gonzalez, after you were
13 selected as a juror in this case I understand that you told my
14 marshal that you did not understand the English language; is
15 that correct?

16 JUROR NUMBER 12 (via interpreter): Yes.

17 THE COURT: Sir, we went through that process about
18 -- it took us about two hours. Is there a reason why you
19 didn't tell us during those two -- that two-hour time frame
20 that you didn't understand what I was saying or what any of
21 the attorneys were saying?

22 JUROR NUMBER 12 (via interpreter): Nobody asked.

23 THE COURT: Well, did you notice we were talking and
24 you didn't understand the words we were saying?

25 JUROR NUMBER 12 (via interpreter): No.

1 THE COURT: You didn't -- you didn't notice that we
2 were talking and --

3 JUROR NUMBER 12 (via interpreter): I understand
4 like 50 percent.

5 THE COURT: All right. Ms. Rinetti, do you have any
6 questions?

7 MS. RINETTI: No, Your Honor.

8 THE COURT: Mr. Jorgenson?

9 MR. JORGENSEN: No.

10 THE COURT: All right. Sir, we're going to release
11 you, but I'm going to direct you to go down to the jury
12 commissioner's chambers on the third floor and advise them of
13 your situation. All right. And perhaps you'll need the court
14 interpreter.

15 If -- Mr. Interpreter, if you have time, if you will
16 accompany him to the third floor.

17 THE INTERPRETER: I will do that.

18 THE COURT: All right. Thank you very much. Okay.

19 So we're going to excuse this juror. We'll utilize
20 the services of the alternate to sit in the jury box.
21 Hopefully, we won't have any other issues and -- because this
22 case is only scheduled a day and a half we should be able to
23 get through it without --

24 MS. RINETTI: Hopefully --

25 THE COURT: -- losing --

1 MS. RINETTI: -- Judge.
2 THE COURT: -- another juror.
3 MR. JORGENSEN: Judge?
4 THE COURT: Yes.
5 MR. JORGENSEN: Just one other thing. We'd talked
6 about but didn't --
7 THE COURT: With the juror?
8 MR. JORGENSEN: No, no, no.
9 THE COURT: Okay. All right. Go ahead.
10 MR. JORGENSEN: I have preliminary hearings tomorrow
11 morning. She has a doctor's appointment tomorrow morning. We
12 would like if we could just start in the afternoon tomorrow.
13 We really think we can get all the witnesses done today, if
14 not more.
15 THE COURT: Okay.
16 MR. JORGENSEN: But if it's okay with the Court it
17 certainly would be better for both of us if we don't start in
18 the morning.
19 THE COURT: Ms. Walsh?
20 MS. WALSH: And that's fine, Judge. I do have to go
21 to the hospital like I informed the Court last week. And I'm
22 not sure what --
23 THE COURT: All right. We'll start at 1:00 tomorrow
24 then.
25 MR. JORGENSEN: Okay.

1 THE COURT: Okay.
2 MS. WALSH: And if I --
3 THE COURT: Let's bring --
4 MS. WALSH: -- can approach, Judge, I do have the
5 transcript for you to follow --
6 THE COURT: Sure. Let's have the jury come on in.
7 (Jury recalled)
8 THE BAILIFF: Kristen, let's do a roll call, please.
9 (Clerk conducts roll call of jury panel)
10 THE CLERK: Here and accounted for.
11 THE BAILIFF: Anytime we leave the courtroom just
12 leave the books in the seats. Let's make sure all cell phones
13 are turned off, okay.
14 THE COURT: All right. Ladies and gentlemen, before
15 we start with some preliminary instructions and the opening
16 statements of the parties, the clerk now will swear in -- I
17 have a different oath here because you were -- since you have
18 been selected as the actual panel for this case. So the clerk
19 will now swear in the jury panel.
20 THE CLERK: Please stand and raise your right hand
21 to be sworn. You and each of you do solemnly swear that you
22 will well and truly try the case at issue and a true verdict
23 render according to the evidence, so help you God?
24 THE JURY: (Affirmative responses.)
25 THE CLERK: Thank you.

1 THE COURT: All right. Thank you, ladies and
2 gentlemen, for coming back. And as the judge I always try to
3 minimize our delays. As a former juror the delays are
4 frustrating, and oftentimes you're out in the hallway not
5 knowing what's going on. I can tell you the majority of the
6 time during our breaks, our delays, we're resolving legal
7 issues. We try to keep them to a minimum but they are
8 important that we resolve them so we don't keep stopping the
9 testimony, have to send you out in the hallway, resolve the
10 issue, come back in.

11 So we try to get them resolved as soon as possible
12 and as expeditiously as possible. So I'm very cognizant of
13 your time, and so we try to minimize your delays, minimize
14 your waiting time. So please bear with us and understand
15 we're all working to minimize that.

16 For various legal reasons we have lost our
17 alternate, and so at this point -- and I hope no one gets sick
18 in the next day and a half or doesn't make it because if you
19 do then this -- there'll probably be a mistrial and we'll have
20 to start over, okay. So hopefully no one's going to be sick
21 in the next day and a half. We don't have any other legal
22 issues that we have to resolve. So I'm sure all of you will
23 serve diligently as possible and work to resolve this case.

24 In the trial I will read to you -- I will provide
25 you a jury instruct -- packet of jury instructions, which are

1 the law that applies to this particular case. At this time
2 I'm going to read you some general instructions which will aid
3 you in your determination of the facts of this case and also
4 aid you in your deliberations. You will have a complete set
5 of the detailed instructions at the end of the trial when you
6 go to your deliberation room.

7 And so we'll start right now. This is a criminal
8 case brought by the State of Nevada against the Defendant.
9 This is based on an information, which is a charging document.
10 The clerk will now read the information and state the plea of
11 the Defendant.

12 THE CLERK: District Court, Clark County, Nevada.
13 The State of Nevada, Plaintiff, versus Ronald Ross, Defendant,
14 Case Number C236169. Department number 17. Third amended
15 information. State of Nevada, County of Clark, David Roger,
16 District Attorney within and for the County of Clark, State of
17 Nevada, in the name and by the authority of the State of
18 Nevada, informs the Court that Ronald Ross, the Defendant
19 above named, having committed the crimes of burglary, felony
20 NRS 205.060; larceny from the person, felony, NRS 205.270;
21 possession of credit card without cardholder's consent,
22 felony, NRS 205.690; fraudulent use of credit card, felony,
23 NRS 205.760; theft, felony, NRS 205.0835, 205.0832; and
24 conspiracy to commit larceny, gross misdemeanor, NRS 205.220,
25 205.222, 199.480, on or between March 17th, 2007, and March

1 31st, 2007, within the County of Clark, State of Nevada,
2 contrary to the form, force, and effect of statutes in such
3 cases made and provided, and against the peace and dignity of
4 the state of Nevada.

5 Count I, burglary: did on or about March 17th,
6 2007, then and there wilfully, unlawfully, and feloniously,
7 enter with intent to commit larceny that certain building
8 occupied by Tropicana Hotel and Casino located at 3801 Las
9 Vegas Boulevard South, Las Vegas, Clark County, Nevada.

10 Count II, larceny from the person: did on or about
11 March 17th, 2007, then and there wilfully, unlawfully, and
12 feloniously, under circumstances not amounting to robbery,
13 with intent to steal or appropriate to his own use, take from
14 the person of another, to wit, Georgia Stathopoulos, without
15 her consent, personal property, to wit, wallet and contents.

16 Count III, burglary: did on or about March 17th,
17 2007, then and there wilfully, unlawfully, and feloniously,
18 enter with intent to commit a felony, to wit, obtaining
19 property under false pretenses and/or felony theft and/or
20 forgery that certain building occupied by Sheikh Shoes located
21 at 3525 South Maryland Parkway, Las Vegas, Clark County,
22 Nevada.

23 Count IV, possession of credit or debit card without
24 cardholder's consent: did on or about March 17th, 2007, then
25 and there wilfully, unlawfully, feloniously, have in his

1 possession without the consent of the cardholder a credit or
2 debit card, to wit, a Visa credit card issued in the name of
3 Georgia Stathopoulos, with intent to circulate, use, sell, or
4 transfer said card with intent to defraud said Georgia
5 Stathopoulos and/or the issuer of said credit or debit card.

6 Count V, fraudulent use of credit or debit card:
7 did on or about March 17th, 2007, then and there wilfully,
8 unlawfully, feloniously, with intent to defraud, use, or
9 credit or debit card, to wit, by presenting a Visa credit card
10 issued in the name of Georgia Stathopoulos to Deja Jarmin at
11 Sheikh Shoes, 3525 South Maryland Parkway, Las Vegas, Clark
12 County, Nevada, for the purpose of obtaining merchandise,
13 Defendant not being the cardholder nor being authorised by the
14 cardholder to use said card.

15 Count VI, theft: did on or about March 17th, 2007,
16 then and there knowingly, feloniously, and without un -- and
17 without lawful authority, commit theft by obtaining personal
18 property in the amount of \$250 or more, lawful money of the
19 United States, of Sheikh Shoes, 3525 South Maryland Parkway,
20 Las Vegas, Clark County, Nevada, by a material
21 misrepresentation with intent to deprive that person of the
22 property in the following manner, to wit, by the said
23 Defendant falsely representing that he was in lawful
24 possession of a Visa credit card and that he had authorization
25 to use said card, thereby obtaining the personal property of

1 Sheikh Shoes by a material misrepresentation with intent to
2 deprive them of the property.

3 Count VII, conspiracy to commit larceny: did on or
4 about March 17th, 2007, then and there meet with another and
5 between themselves and each of them with the other wilfully
6 and unlawfully conspire and agree to commit a crime, to wit,
7 larceny, and in furtherance of said conspiracy Defendant did
8 commit the acts as set forth in Counts IV through VI, said
9 acts being incorporated by this reference as though fully set
10 forth herein.

11 David Roger, District Attorney, signed by Jessica
12 Walsh, Deputy District Attorney, to which the Defendant has
13 entered a plea of not guilty.

14 THE COURT: Thank you.

15 Ladies and gentlemen, you should distinctly
16 understand that the information just read to you is simply a
17 description of the charges filed against -- filed by the State
18 against the Defendant. It is not evidence of anything; it
19 does not prove anything. Therefore, the Defendant starts out
20 with a clean slate. The Defendant has pled not guilty and is
21 presumed innocent.

22 (Indiscernible) criminal case and there are two
23 basic rules you must keep in mind: First, the Defendant is
24 presumed innocent unless and until proved guilty beyond a
25 reasonable doubt. The Defendant is not required to present

1 any evidence or prove his innocence. The law never imposes
2 upon a Defendant in a criminal case the burden of calling any
3 witnesses or introducing any evidence;

4 Second, to convict, the State must prove beyond a
5 reasonable doubt that the crimes were committed and the
6 Defendant is the person who committed the crime.

7 It will be your duty to decide from the evidence to
8 be presented whether or not the Defendant is guilty or not
9 guilty. You are the sole judges of the facts. You will
10 decide what the facts are from the evidence which will be
11 presented. The evidence will consist of testimony of
12 witnesses, and documents, and other things received into
13 evidence as exhibits. You must apply the facts to the law
14 which I shall give you and that way reach a verdict. It is
15 important that you perform your duty of determining the facts
16 diligently and conscientiously. Ordinarily, there's no way of
17 correcting an erroneous determination of the facts by the
18 jury.

19 During the trial you should not take anything I may
20 say or do during the trial as indicating my opinion as to how
21 you should decide the case or to influence you in any way in
22 your determination of the facts. At times I may even ask
23 questions of the witnesses; if I do so, it is for the sole
24 purpose of bringing out matters which should be brought out
25 and not in any way to indicate my opinion about the facts or

1 to indicate the weight or value you should give to the
2 testimony of a witness.

3 Also, I would add during the trial you may notice
4 that I may take certain notes while someone is testifying. My
5 notes may be regarding the particular witness or may be just a
6 note for myself of some certain issues I need to discuss with
7 the attorneys, so you should not be influenced by any note
8 taken by the Court.

9 In deciding the facts of this case you may have to
10 decide which witnesses to believe and which witnesses not to
11 believe. You may believe everything a witness says or only
12 part of it or none of it. In considering the weight or value
13 of the testimony of any witness you may consider the
14 appearance, attitude, and behavior of the witnesses when
15 testifying, and a number of other things, including the
16 witness's ability to see or hear or know the things the
17 witness testifies to; the quality of the witness's memory; the
18 inclination of the witness to speak truthfully; whether or not
19 the witness has any interest in the outcome of the case or any
20 motive, bias, or prejudice; whether the witness is
21 contradicted by anything the witness said or wrote before
22 trial; and how reasonable is the witness's testimony when
23 considered with other evidence which you believe.

24 When deciding whether or not to believe a witness
25 keep in mind people sometimes forget things. You need to

1 consider whether a contradiction is an innocent lapse of
2 memory or an intentional falsehood, and that may depend on
3 whether it has to do with an important fact or with only a
4 small detail.

5 The weight or value of evidence does not necessarily
6 depend on the number of witnesses testifying for one side.
7 You must consider all the evidence, and you may decide the
8 testimony of a smaller number of witnesses on one side has
9 more weight or value than that presented by a larger number of
10 witnesses on the other side.

11 There are two kinds of evidence: direct and
12 circumstantial. Direct evidence is testimony about what the
13 witness personally saw, heard, or did. Circumstantial
14 evidence is indirect evidence. It is proof of one or more
15 facts from which you can find another fact. By way of
16 example, if you wake up in the morning and you see the ground,
17 the sidewalks, the streets are all wet, and water is running
18 down the gutter, you may find from those facts that it rained
19 during the night. It is proof of one or more facts from which
20 you can find another fact. If you were awake during the
21 evening and saw the rain fall, that would be direct evidence,
22 which -- which is something you personally saw. You may
23 consider both direct and circumstantial evidence in deciding
24 this case. The law permits you to give equal weight or value
25 to both, but it is for you to decide how much consideration to

1 give any evidence.

2 Certain things are not evidence, and you must not
3 consider them as evidence in deciding the facts of this case:
4 statements and arguments by the attorneys; questions and
5 objections of the attorneys; testimony I instruct you to
6 disregard; and anything you may see or hear if court is not in
7 session, even if what you see or hear is done or said by one
8 of the parties or by one of the witnesses. Remember, evidence
9 is sworn testimony by a witness while court is in session, and
10 documents and other things received into evidence as exhibits.

11 There are rules of law which control what can be
12 received into evidence. When a lawyer asks a question or
13 offers an exhibit into evidence, and the lawyer on the other
14 side thinks that it is not permitted by the rules, that lawyer
15 may object. If I overrule an objection the question may be
16 asked or the exhibit received. If I sustain the objection the
17 question cannot be answered and the exhibit cannot be
18 received.

19 Whenever I sustain an objection to a question,
20 ignore the question and do not guess what the answer might
21 have been. Sometimes I may order evidence stricken from the
22 record and tell you to disregard or ignore such evidence.
23 This means when you are deciding the case you must consider
24 the evidence which I have -- you must not consider the
25 evidence which I have told you to disregard.

1 It is a duty of a lawyer to object to evidence which
2 the lawyer believes may not be permitted under the rules. You
3 should not be prejudiced in any way against the lawyer who
4 makes objections on behalf of the party the lawyer represents.
5 Also, I may find it necessary to admonish a lawyer. If I do,
6 you should not be prejudiced towards the lawyer or the client
7 because I have found it necessary to admonish a lawyer.

8 During the trial you will be allowed to ask written
9 questions of any of the witnesses called in this particular
10 matter. After the witness has been questioned by both sides
11 -- and only at that time -- if you have a question for that
12 particular witness you're instructed to raise your hand. I'll
13 call upon you, you will write your question down on a piece of
14 paper, write your juror number on the witness [sic], the
15 marshal will pick that up and provide me with the question.

16 I will confer with counsel to see if your question
17 -- to make a determination if your question is a legally
18 proper question. If it is legally proper I will ask the
19 witness the question; if it is not legally proper then I will
20 not ask the question. No adverse inference should be drawn if
21 I do not ask a juror's question. Furthermore, no -- no -- no
22 undue weight should be given to a juror's particular question.
23 All evidence should be considered as a whole.

24 Until this case is submitted to you do not talk to
25 each other about it or about anyone who has anything to do

1 with it till the end of the case when you go to the jury room
2 to -- to decide on the verdict. Do not talk with anyone else
3 about the case or anyone has [sic] anything to do with it and
4 the trial has ended and you have been discharged as jurors.
5 Anyone else includes members of your family and your friends.
6 You may tell them that you're a juror in a criminal case, but
7 don't tell them anything about it till after you've been
8 discharged by me. Do not let anyone talk to you about the
9 case or about anything -- or about anyone who has anything to
10 do with it. If someone should try to talk to you please
11 report it immediately to me by contacting the court marshal.

12 Do not read any news stories, listen to any radio
13 broadcasts or watch any television, do any Internet research
14 about the case or about anyone who has anything to do with it.
15 Do not do any research or make any investigation about the
16 case on your own. You may be tempted to visit a location
17 identified in this case; please do not do so. In view of the
18 time that has elapsed since this case has come to trial
19 substantial changes may have occurred the [sic] location in
20 question. Also (indiscernible) making unauthorized visits
21 could lead you to an erroneous impression of the facts of this
22 case. Therefore, please avoid going near or past the location
23 till after this case has been completed.

24 The end of trial you will have to make your decision
25 based upon what you recall of the evidence. You will not have

1 a written transcript to consult, and it is difficult and time-
2 consuming for the court recorder to playback lengthy
3 testimony. I urge you all -- all of you to pay close
4 attention to the testimony as it is given.

5 If you wish, you may take notes to help you remember
6 what the witness said. If you do take notes please keep them
7 to yourself until you and your fellow jurors go to the jury
8 room and conduct your deliberation. Do not let note-taking
9 distract you so that you do not hear other answers of the
10 witness. You should rely upon your own memory of what was
11 said and not be overly influenced by the notes of other
12 jurors.

13 Do not make up your mind about what the verdict
14 should be until after you have gone to the jury room to decide
15 the case and you and your fellow jurors have discussed the
16 evidence. It is important that you keep an open mind
17 throughout the trial.

18 A juror may not declare to a fellow juror any fact
19 relating to this case of which the juror has knowledge. If
20 any juror discovers during the trial or after the jury has
21 retired that that juror or any other juror has personal
22 knowledge of any fact in controversy in the case, the juror
23 shall disclose such situation to me in the absence of the
24 other jurors.

25 This means if you learn during the course of the

1 trial that you have personal knowledge of any fact which is
2 not presented by the evidence in this case you must declare
3 that fact to me and communicate to me through the court
4 marshal.

5 During the course of the trial the attorneys for
6 both sides and all court personnel other than the marshal are
7 not permitted to converse with members of the jury. These
8 individuals are not being anti-social; they are bound by
9 ethics and the law not to talk to you. To do so might
10 contaminate your verdict.

11 The trial will proceed in the following manner: One
12 of the Deputy District Attorneys will make an opening
13 statement, which is an outline to help you understand what the
14 State expects to prove. Next, the Defendant's attorney may,
15 but does not have to, make an opening statement. Opening
16 statements serve as an introduction to the evidence which the
17 party making the statement intends to prove. The State will
18 then present its evidence, and counsel for the Defendant may
19 cross-examine the witnesses. Following the State's case the
20 Defendant may present evidence, and the Deputy District
21 Attorney may cross-examine the witnesses. However, as I have
22 said, the Defendant is not obligated to present any evidence.
23 After all of the evidence has been presented I will instruct
24 you on the law. After the instructions on the law have been
25 read to you, each side has the opportunity to present oral

1 argument. What is said in closing argument is not evidence.
2 The arguments are designed to summarize and interpret the
3 evidence. Since the State has the burden of proving the
4 Defendant guilty beyond a reasonable doubt the State has the
5 right to open and close the arguments. After the arguments
6 have been completed you will retire to deliberate your
7 verdict.

8 Ladies and gentlemen, at this time one of the Deputy
9 District Attorneys will present their opening statement.

10 MS. WALSH: Thank you, Judge.

11 Good afternoon, ladies and gentlemen. Plain and
12 simple is what this case looks like at first glance is a
13 simple pickpocket on the Strip. It's what we have in this
14 town, it's what we deal with. We're a tourist town when it
15 comes to talking about what happens on the Strip. But this
16 case goes a little deeper than just a simple pickpocket.

17 March 17th, 2007, Georgia Stathopoulos and her
18 husband were in town on vacation. Their son had something to
19 do in town. They had some business to do in Arizona. Just on
20 vacation, having fun. They were staying at the Tropicana
21 Hotel and Casino on the Strip. On this particular day around
22 1 o'clock they went down to the buffet, they had lunch, they
23 ate, they're walking back to the room, she has her purse on
24 her shoulder, they see a machine, she says let's just sit down
25 and put a couple of dollars in.

1 So what she does is she sits down at the machine,
2 has her purse right next to her, she opens it up, takes the
3 money out of her wallet, and just kind of sets her wallet
4 right there back in her purse, doesn't zip it up because it's
5 just going to be a couple of dollars, it's going to be real
6 quick. Puts the money in the machine.

7 All of a sudden something happens, and the machine
8 starts making lots of noises, and -- and people are looking,
9 and her husband's saying, you know, what's happening, and then
10 the Defendant walks by. You're going to see the surveillance
11 tape of what happened. You're going to see Georgia sitting at
12 the machine. You're going to see someone sitting next to her
13 on her right-hand side, her husband.

14 Then you're going to see the Defendant wearing a
15 jersey with, I believe, the number 6 on the back. He walks
16 by, has a coat in his hand, and he notices here's this elderly
17 woman with her purse next to her, open, and now she's got her
18 attention focused on this machine that's making all this noise
19 because we know machines in casinos make a lot of noise for
20 winning five cents.

21 So he walks by. You see him in the video take his
22 jacket and fold it over his right arm, and he walks by and he
23 turns around like this and comes back to her where she's
24 sitting, approaches her on her left side where her purse is
25 open where her wallet is. And he gets really close to her,

1 almost like he's touching her. And he starts pointing up at
2 the machine, hey, what happened, what did you win, and how
3 does this machine work. His coat's draped over his hand, so
4 you can't see what he's doing with his hand, but his hand's
5 extremely close to that purse that's open with the wallet
6 sitting right there (indiscernible).

7 He's working with someone else, with a friend. And
8 you're going to hear Detective Flenner talk about that they
9 call these distract thefts. They get someone to distract a
10 victim, someone to block the view of everyone else of what's
11 going on. This friend stands -- if Georgia's here, the
12 Defendant's right here, he stands right here, right in front
13 of that purse so passer-bys can't see what's going on with
14 that purse with that hand that's covered by that coat.
15 They're only there for a few minutes, talking, looking at the
16 machine, pointing.

17 And all of a sudden you see the Defendant turn, puts
18 his hand out, and his friend kind of very awkwardly takes the
19 coat and what is now Ms. Stathopoulos's wallet that's
20 underneath the coat, and he walks away this direction.
21 Defendant sticks around for only a few more seconds; he walks
22 away in another direction. He stole her wallet.

23 We also know that he stole her wallet because within
24 approximately about a half-hour to 45 minutes later he goes
25 into the Sheikh shoe store. Takes it one step further than

1 just a pickpocket distract theft, lifting her wallet from the
2 casino. And he goes and he uses her credit card at a Sheikh
3 shoe store. He comes in, selects some merchandise, takes
4 about 20 minutes to a half an hour picking out exactly what he
5 wants. He goes up to the counter to a clerk that he's seen
6 before. The clerk knows him, so he doesn't check the ID off
7 the credit card. He uses Ms. Stathopoulos's Chase credit card
8 to make a purchase of 490 some dollars of merchandise. He
9 then signs the credit card, takes the credit card that's not
10 his, he didn't have permission to use, that he stole from Ms.
11 Stathopoulos, the \$490 worth of merchandise, and he leaves the
12 store.

13 And those are the facts of this case, ladies and
14 gentlemen, plain and simple. Distract type theft. The
15 Defendant takes it one step further by immediately using her
16 credit card to purchase merchandise. And for that at the end
17 of this trial the State's going to ask that you find the
18 Defendant guilty.

19 THE COURT: Thank you, Ms. Walsh.

20 Mr. Jorgenson, do you wish to have your opening
21 statement at this time?

22 MR. JORGENSEN: Yes, Judge.

23 THE COURT: All right.

24 MR. JORGENSEN: Ladies and gentlemen of the jury, my
25 name's Craig Jorgenson. This will be a brief trial. You'll

1 have a chance to hear from the witnesses that the State's
2 outlined, and then you'll go back into the jury room and
3 decide amongst yourselves if the events that happened on the
4 17th of March do or do not involve Mr. Ross.

5 Now, the prosecutor just gave you a rundown of what
6 they intend to present to you by witness -- by way of
7 witnesses, and the only quibble I would have is if you take
8 out the word Defendant and put in the word suspect. Clearly
9 that's what these people will say. The question will
10 ultimately end up being though who is that person in the
11 videotapes or videotape.

12 You'll hear from the people who were at the shoe
13 store. There is three people you'll hear from: two that will
14 actually come and testify; one that we will hear from by way
15 of a transcript. But they'll tell you that Mr. Ross, in
16 March, came into the store once a week, couple of times a
17 week. He was there quite a bit, bought quite a few -- spent
18 quite a few -- spent quite a bit of money on shoes, and that
19 he was in the stores multiple times in the -- in the month of
20 March of 2007.

21 You'll hear that the -- the one man who wasn't --
22 who won't be here today but (indiscernible) his transcript,
23 that he -- well, you'll hear that the way that my client gets
24 brought into this scenario is that the lady who had her wallet
25 taken -- and she wasn't sure (indiscernible) if it was taken

1 at the -- if she lost it at the buffet or if she lost at the
2 slot machine.

3 She went a day or two later and contacted her credit
4 card companies to say these are missing, turn off the numbers
5 or, you know, report them as stolen so they don't get charged.
6 And they indicated to her that one of the cards had been used
7 that same day that she had it missing at about 1:00 p.m. on
8 the 17th of March, that there -- it was used at a shoe store.
9 Turns out -- she -- but turns out really quite close
10 (indiscernible) mile or so away from the Tropicana, and it
11 appears to have been used half an hour or 45 minutes after she
12 realized the card was taken or her wallet's been taken.

13 She then contacts the shoe store, and the person she
14 talks to at the shoe store says yeah, I remember Mr. Ross
15 coming in that day, he came in with a girl, and he bought some
16 stuff, and I think he used that card. This is Mr. Ross's
17 connection with the case. He comes into the store frequently
18 in the month of March, and the people who work there, the two
19 people who will show up today will say they're not sure who
20 actually used the card that belonged to this lady because they
21 weren't working the counter, but they know that Mr. Ross was
22 in that day or (indiscernible) understand this is -- they're
23 talking to the police the next -- the following week or three
24 or four days later. So they're asking to remember what
25 happened three or four days earlier.

1 And they'll say yeah, they're pretty sure Mr. Ross
2 came in here three or four days earlier, he was in two -- five
3 days after that, he was in five days after that, I've seen him
4 quite a bit for the last month.

5 The one man who wasn't here will indicate through
6 his transcript that there was a -- a video that the store had,
7 but it didn't get preserved for one reason or the other, and
8 it -- it appears to look in that video that the same kind of
9 person who was dressed in a certain way you'll see, in the
10 Tropicana video, also shows up at the shoe store. So the one
11 -- the questions you'll go back into the jury room to decide
12 is are they the same two people, but, more importantly, is
13 that -- those two people, are they, in fact, the same and are
14 they, in fact, my client.

15 And I think that after you'll have a chance to look
16 at the videotape yourself because Georgia will not say she
17 recognizes who took her -- her purse. She doesn't know who
18 took her purse. She doesn't remember -- she remembers two
19 black guys came up and talked to her while she was
20 (indiscernible) at the slot machine, but she's not going to
21 say she remembered particularly who they were. She didn't
22 recognize them.

23 And you'll have a chance to watch this videotape
24 (indiscernible) go back in there, and I think after you've
25 finished watching the videotape and listened to everything

1 you'll come to the conclusion that while somebody clearly took
2 her wallet and used it an hour -- a half an hour or so later
3 it simply wasn't Mr. Ross, and, therefore, you'll find him not
4 guilty on the charges.

5 THE COURT: Thank you, Mr. Jorgenson.

6 The State, please call your first witness.

7 MS. WALSH: Thank you, Judge. The State calls
8 Georgia Stathopoulos.

9 (Witness summoned)

10 THE BAILIFF: If you'll remain standing, please,
11 raise your right hand and face the clerk.

12 THE CLERK: You do solemnly swear the testimony you
13 are about to give in this action shall be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: (Indiscernible)

16 THE CLERK: Thank you. Please be seated.

17 GEORGIA STATHOPOULOS
18 having been called as a witness on behalf of the Plaintiff and
19 being first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. WALSH:

22 Q Please state your full name and spell your name for
23 the record.

24 A My name is Georgia Stathopoulos, and it's spelled
25 G-e-o-r-g-i-a, last name S-t-a-t-h-o-p-o-u-l-o-s.

1 THE COURT: Go ahead, Counsel.

2 MS. WALSH: Thank you, Judge.

3 BY MS. WALSH:

4 Q Ma'am, are you a resident here in Las Vegas?

5 A No.

6 Q Where do you currently live?

7 A I live in Itasca (phonetic), Illinois.

8 Q And I want to direct your attention now to March of
9 2007. Were you on vacation here in Las Vegas?

10 A Yes.

11 Q Where were you staying at?

12 A At the Tropicana.

13 Q And is that down on the Strip by all the casinos?

14 A Yes.

15 Q Okay. And who were you staying there with?

16 A My husband.

17 Q I want to direct your attention now just
18 specifically to March 17th of 2007 around 1 o'clock in the
19 afternoon. Had you eaten at the buffet at the Tropicana?

20 A Yes.

21 Q Once you finished eating at the buffet what did you
22 do next?

23 A We were going back to our hotel room, and we stopped
24 on the back row to play one of the machines.

25 Q Okay. And when you say we who are you referring to?

1 A My husband and I.

2 Q And the machines are just the slot machines in the
3 casino?

4 A Yes.

5 Q Okay. Do you have a purse with you?

6 A Yes.

7 Q Okay. What kind of purse did you have with you in
8 March?

9 A I had the same purse that I have here.

10 Q Okay. So the purse that's sitting on the table,
11 that's the exact same purse you had in March?

12 A Yes.

13 Q Okay. Did you have a wallet in your purse?

14 A Yes.

15 Q Okay. What kind of things did you have in your
16 wallet?

17 A I had everything I kept. That's the center of my
18 purse. I had my credit cards, my driver's license; I had my
19 insurance card. All my pertinent information would be in my
20 wallet.

21 Q Okay. Inside your wallet did you also have a Chase
22 credit card with the number 4388 5270 0012 1281?

23 A Yes.

24 Q Okay. And did your husband also have the same Chase
25 Visa?

1 A Yes.

2 Q And that was the same number; you both had the same
3 credit card with the same number?

4 A Yes.

5 Q Okay. And do you have any money in your wallet?

6 A Yes, I did. I had cash, about \$150, and \$50 gas
7 card.

8 Q Now, when you sit down -- I assume you sit down to
9 play at the slot machine?

10 A Yes.

11 Q Okay. When you sit down to play at the slot machine
12 what do you do with your purse?

13 A I had it over my shoulder on my left side, and I had
14 it right next to me right along my side.

15 Q Okay. Would it be sitting on the chair?

16 A It was right on the chair, on the edge of the chair,
17 right --

18 Q Same chair you're sitting in?

19 A That is correct.

20 Q Okay. So would it be just kind of like down then to
21 your left hip kind of almost touching your -- your hip?

22 A Yes.

23 Q Okay. Do you do anything with your wallet when you
24 sit down at the machine?

25 A I took out a dollar to play the machine, and then I

1 put it back in my purse.

2 Q Okay. So you take -- you remove your wallet from
3 your purse and put a dollar in the machine and then put your
4 wallet back in your purse?

5 A Right.

6 Q Okay.

7 A Yes.

8 Q When you put your wallet back in your purse do you
9 zip your purse?

10 A I did not zipper it.

11 Q Okay. How -- about how wide is your purse when you
12 don't have your purse zippered?

13 A It's --

14 Q Yeah. You can actually --

15 A -- it's --

16 Q -- probably --

17 A -- pretty wide.

18 Q You can probably just unzip it and show the ladies
19 and gentlemen of the jury.

20 A It's pretty much my wallet (indiscernible) wallet is
21 like (indiscernible)

22 Q Okay. And the wallet that you have in your purse
23 right now; is that a similar wallet to the one you had in
24 March?

25 A Yes.

1 Q Can you show that wallet to the jury, please, as
2 well?

3 A (No audible response.)

4 Q Thank you. Now, while you were playing that machine
5 were you approached by anybody?

6 A Yes.

7 Q And how were you approached?

8 A The machine was making a lot of noises, and -- like
9 I won something, and two young men approached me on my left
10 side, very friendly, asking what did I win and how did the
11 machine work.

12 Q Okay. Do you see one of those two men in court
13 today?

14 A Yes.

15 Q Can you please point to him and describe an article
16 of clothing that he is wearing?

17 A The gentleman over there with kind of a light tan
18 shirt, African American.

19 MS. WALSH: Can the record reflect the witness has
20 identified the Defendant?

21 THE COURT: Yes, it will.

22 MS. WALSH: Thank you.

23 BY MS. WALSH:

24 Q And now you also testified at a previous hearing in
25 this case; is that correct?

1 A Yes.

2 Q Okay. Did you also see the Defendant in court that
3 day?

4 A Yes.

5 Q And did you also identify him as the person who
6 approached you?

7 A Yes.

8 Q Okay. And it's the same person that you identified
9 today?

10 A Yes.

11 Q Okay. Now, where exactly did the Defendant approach
12 you at? You said on your left side, but can you just describe
13 it to the jury?

14 A As I was facing the machine in the back row, on my
15 left-hand side two young men came very close, very friendly,
16 and approached me on my left side.

17 Q Would he have been closer to you than it would have
18 been needed to be to play the machine next to you?

19 A Yes.

20 Q Did he ever touch you? Was he that close enough to
21 touch you?

22 A I can't say I remember that.

23 Q And your husband, you said, was off to your right-
24 hand side --

25 A That is --

1 Q -- correct?

2 A Yes.

3 Q Okay. Now, what types of things was the Defendant
4 asking you about?

5 A He just said what did you win since the machine was
6 making so much, you know, flashing and noise, and how, you
7 know, how -- how does it work, the game that you're playing.

8 Q So he asked you how the slot machine game you were
9 playing operated?

10 A (No audible response.)

11 Q And -- is that a yes?

12 A Say that again.

13 Q He asked you how the slot machine you were playing
14 operated, how you played that game?

15 A Right. Yes.

16 Q Okay. And where was your attention focused when the
17 machine was making all these noises?

18 A I was focused to the machine.

19 Q Okay. Now, in Vegas there's some slot machines
20 where the screen is right in front of you when you sit down,
21 and there's other machines that you have to look up and see a
22 screen. What type of machine was this that you were playing?

23 A I would have to say I was looking up.

24 Q All right. How long did the Defendant stay close to
25 you in talking to you?

1 A Just a couple of minutes.
2 Q And at some point did he leave?
3 A Yes.
4 Q Did the other gentleman that was with him leave at
5 that point in time as well?
6 A Yes.
7 Q How much longer did you play the game for after the
8 Defendant left you?
9 A We left shortly after.
10 Q You saying we meaning you and your husband?
11 A My husband and myself.
12 Q And then do you continue on to your hotel room?
13 A Yes.
14 Q Do you make any other stops along the way?
15 A No.
16 Q After the Defendant left you or really the entire
17 time you were playing was anybody else as close to you as the
18 Defendant was?
19 A No.
20 Q Was there anybody else really even in a close
21 proximity to you besides your husband?
22 A Just three machines over there was an Oriental lady
23 playing the end machine, but that's quite a bit over.
24 Q Now, when you're walking from the slot machine up to
25 your hotel room does anybody come within a close proximity to

1 you?

2 A No.

3 Q Okay. Once you get up to your hotel room what, if
4 anything, do you notice?

5 A I looked inside my purse, and I saw my wallet was
6 missing.

7 Q How long did it take you to make this realization?

8 A Shortly after we got into our room.

9 Q Okay. Once you noticed that your wallet was missing
10 what's the first thing that you do?

11 A I thought I had left it at the Tropicana, the lunch
12 -- where we had had lunch, and I ran back there to ask the
13 hostess and the waitress if they saw a wallet there.

14 Q Okay. And that's the first thing -- the first place
15 you thought of that you might have lost your wallet was the
16 buffet?

17 A Yes.

18 Q But now you remember actually using your wallet to
19 get money to play the machine; is that --

20 A Yes.

21 Q -- correct? Okay. Didn't find your wallet at the
22 buffet?

23 A No.

24 Q Okay. Did you make contact with security and police
25 at this time?

1 A Right away after that, yes.

2 Q Okay. Now, did you contact your credit card

3 companies regarding the cards that were in your wallet that

4 were stolen?

5 A Yes.

6 Q What day did you do that on?

7 A We did it shortly right then as we were waiting for

8 security to come to our room to take the report.

9 Q So the --

10 A We did it right then.

11 Q -- the same day, March --

12 A Yes.

13 Q -- 17th, you contact the credit card companies?

14 A Yes.

15 Q And did you become aware if your Chase Visa card had

16 been used after 1 o'clock when --

17 A Yes.

18 Q -- it was stolen? You were informed that your --

19 your card was used?

20 A Yes.

21 Q Okay. And were you informed that it was used at a

22 shoe store here in Las Vegas?

23 A Yes.

24 Q Okay. And did you report that to the detectives who

25 were working on your case?

1 A Yes.

2 Q Okay. Now, did you ever give the Defendant

3 permission to take your wallet out of your purse that day?

4 A No.

5 Q Did you give him permission to have any of your

6 credit cards, including that Chase credit card?

7 A No.

8 Q Give him permission to use it?

9 A No.

10 Q Give anybody permission to do any of those things?

11 A No.

12 Q Okay. Have you ever even been to the Sheikh shoe

13 store here in Las Vegas?

14 A Never.

15 Q Don't even know where it is?

16 A No.

17 Q Didn't make any type of purchase?

18 A No.

19 Q Okay.

20 MS. WALSH: May I approach the witness, Judge?

21 THE COURT: Yes.

22 BY MS. WALSH:

23 Q Ma'am, I'm showing you what's been marked for

24 identification as State's proposed exhibit number 6, and

25 specifically drawing your attention to the credit card

1 receipt. And before today have you ever seen this receipt
2 before?

3 A No.

4 Q Okay.

5 MS. WALSH: And, Judge, I did speak with Mr.
6 Jorgenson. The State would ask is that we conditionally admit
7 State's exhibit number 1 at this point in time. The complete
8 foundation will be laid with the next two witnesses.

9 THE COURT: Is that correct, Mr. Jorgenson?

10 MR. JORGENSEN: Yes, Judge.

11 THE COURT: It'll be conditionally admitted at this
12 time. Thank you.

13 (State's Exhibit 1 conditionally admitted)

14 MS. WALSH: Thank you, Judge. (Indiscernible)
15 publish?

16 THE COURT: Yes.

17 MS. WALSH: Thank you.

18 BY MS. WALSH:

19 Q Now, I'm directing your attention to the TV right
20 there in front of you. The -- written on this receipt is
21 Georgia Stathopoulos underneath where a person signs; is that
22 correct?

23 A Is that my signature?

24 Q No. I'm just asking you right here it has printed
25 your name (indiscernible)

1 A Yes, that is correct.

2 Q And this appears to be just a general credit card
3 receipt for a purchase; is that correct?

4 A Yes.

5 Q Is that your signature?

6 A No.

7 Q Okay. Specifically pointing you right to the G at
8 the beginning of Georgia, is that the way that you make your
9 Gs?

10 A I never make my Gs like that.

11 Q How do you make your Gs?

12 A The regular, you know, cursive G, the capital G that
13 is --

14 Q The usual way we're taught in third or fourth grade
15 with the two loops at the top?

16 A That is correct.

17 Q And this appears to be a lowercase cursive G?

18 A Yes.

19 Q Is that the way you even sign your first name, the
20 complete name?

21 A No --

22 Q Okay.

23 A -- that's not.

24 Q Now, specifically your last name; is it even spelt
25 correctly on this receipt?

1 A No.

2 Q Would you ever misspell your name?

3 A No.

4 Q You know how to spell it?

5 A Yes.

6 Q Learned it a long time ago?

7 A Yes.

8 Q Okay. And, just to clarify, you never purchased

9 anything for \$490 on March 17th, 2007, at the Sheikh shoe

10 store; is that correct?

11 A No, I never did.

12 MS. WALSH: Court's indulgence, Your Honor?

13 THE COURT: Sure.

14 MS. WALSH: State will pass the witness, Your Honor.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. JORGENSEN:

18 Q So you were at the Tropicana Hotel and Casino on

19 March 17th of 2007; is that correct?

20 A Yes.

21 Q So about 18 months ago?

22 A Yes.

23 Q And at about 12:30 in the afternoon you went over to

24 the buffet to get something to eat for lunch?

25 A Yes.

1 Q Person -- the purse you're referring to, if it is
2 unzipped or -- we asked you if it was zipped or unzipped; what
3 difference does that make in terms of the shape of the purse?

4 A It was unzipped. She --

5 Q If it's unzipped does it hang differently?

6 A No.

7 Q Okay. Do (indiscernible) -- if you unz -- do you
8 have to zip it up to make sure things don't come out of it?

9 A No. As you can see, it's this purse right here and
10 the wallet's in there. It's unzipped right now; it doesn't --
11 things don't fall out of it.

12 Q So you normally keep it unzipped?

13 A Sometimes.

14 Q Because right now it's unzipped.

15 A Right.

16 Q So you and your husband went and ate at the buffet.
17 And at the end of the buffet you or your husband paid for it?

18 A I did.

19 Q How?

20 A I don't remember. I think it was a credit card, but
21 I don't remember.

22 Q Why do you remember that you paid for it as opposed
23 to your husband?

24 A It just seems that I -- I paid for it that day. I
25 -- I think I can rec -- I recollect that I made -- made the