

1. A No. There was no sign of forced entry.

2 Q All right. Now what about when you went to Just for
3 Kids?

4 A Well, when I went to Just for Kids, I was standing
5 out -- because the police were already at that location. They
6 were doing their investigation. So I was sort of standing in
7 the background, when I heard one of the officers was
8 mentioning to the dentist that there was no sign of forced
9 entry. So I happened to mention to him well, that's odd. I
10 just left the Crystal Palace, and there was no sign of forced
11 entry at that location either.

12 Q All right. And so -- and at that point, you'd
13 walked through the Just for Kids Dentistry and seen that there
14 was no damage?

15 A No. We were standing out front.

16 Q Okay. Had you -- at some point, did you walk
17 through Just for Kids?

18 A Right. That's when we all went inside to the dental
19 officer, and the officer got on his phone to call someone else
20 about the Crystal Palace.

21 Q Okay. But did you ever seen any signs of forced
22 entry or damage to the doors or the exterior of --

23 A No.

24 Q -- Just for Kids?

25 MS. DIGIACOMO: Nothing further.

1 THE COURT: Questions, Mr. Hart?

2 CROSS-EXAMINATION

3 BY MR. HART:

4 Q The officer you saw at Just for Kids Dentistry, was
5 that Officer Hardman who was here earlier today?

6 A I couldn't tell you. I didn't see him.

7 Q And you said it took you about nine minutes to get
8 from one place to the other?

9 A I believe it took about that long.

10 Q Okay. You'd look at your response log and --

11 A Yes.

12 Q You'd been sitting around at Anku Palace for quite a
13 while?

14 A About half-an-hour.

15 Q Now did officers come visit you up at Anku Palace
16 later?

17 A Oh. Once I told the officer about the Anku Palace,
18 he got on his phone, called someone, and then he and a couple
19 of other officers went over to Anku Palace.

20 Q Okay.

21 A And then I went back over there, because I told the
22 owner that I would come back.

23 Q Okay. And do you have any idea how long it took --
24 well, were the officers just finishing up by the time you got
25 back to Anku Palace?

1 A No. They were going to pick up Mr. Hung, I believe
2 his name was, and take him back over to the car to identify
3 his merchandise.

4 Q Okay. How long was that duration? How long were
5 you at the dentistry shop?

6 A I'd say no more than 15 minutes. Not that long.

7 Q Okay. And then another -- at least another nine, 10
8 minutes to get back to Anku Palace or --

9 A Yes.

10 Q And how long before they hauled away -- did Mr. Hung
11 eventually leave?

12 A He went back to identify his merchandise. I didn't
13 go back over there with him or anything.

14 Q And how long while you guys were around before they
15 took him?

16 A I would say only about five or 10 minutes.

17 Q Now you cleared the Just for Kids Dentistry, call it
18 -- well, please explain to me --

19 MR. HART: Where's your exhibits? Can I just approach,
20 Your Honor?

21 THE COURT: Yeah. It might be easier for him to see it
22 if he sees it live.

23 MR. HART: Thanks.

24 BY MR. HART:

25 Q Just for Kids. Can you tell me what these along the

1 top are?

2 A All right. This is the time that the alarm was
3 activated. It's 2:15.

4 Q Okay.

5 A The time assigned is -- that's when they told me
6 about it -- was 2:26. You go through 2:34 --

7 THE COURT: Sir, you've got to speak up so we can all
8 hear you.

9 THE WITNESS: Okay. The alarm went off at 2:15. I was
10 told about it at 2:26. I got there at 2:34, and then left at
11 3:03. So I was there about a half-an-hour.

12 BY MR. HART:

13 Q Okay. So it was 3:03 before you went back to Anku
14 Palace?

15 A Right.

16 Q And Mr. Hung was still there at Anku Palace when you
17 got back there?

18 A I believe so. Yes.

19 MR. HART: Nothing further from this witness.

20 THE COURT: Anything else, Ms. Digiacomo?

21 MS. DIGIACOMO: No, Your Honor.

22 THE COURT: Okay, thank you sir. Appreciate your
23 testimony.

24 THE WITNESS: Thank you.

25 THE COURT: You're excused. Okay. Ladies and gentlemen,

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1 we'll take our lunch break at this time. As I told you that
2 you're going to hear this every time, but please don't talk
3 about the case with each other or anyone else. Talk about
4 politics or the weather, or whatever.

5 Don't read, watch, or listen to any report by TV,
6 internet, newspaper, or radio. This may well be there.
7 Please keep it to yourself. And don't form or express any
8 opinion until the case is submitted to you. We'll pick up at
9 1:10. Okay.

10 Anything you need to know you can ask R.J. on the
11 way out. He'll tell you where to eat or what to do or
12 anything that you need. You can leave your stuff there. R.J.
13 is going to lock up the room, and I don't even have a key.
14 He'll make sure anything that you leave there is safe. Don't
15 leave your purse, but you can sure leave a sweater, or a book,
16 or anything like that.

17 [Jury Out]

18 [Outside the Presence of the Jury Panel]

19 THE COURT: Okay. The record reflect the jury has
20 exited. Okay. Mr. Hart, go ahead.

21 MR. HART: Your Honor, I would just like to make an
22 objection to Mr. Salisbury and his description of my client.
23 Of all the things to pick out, the orange socks. I think that
24 gives an indication -- an indicia that my client is in
25 custody. I think he'd be a little smarter than that.

1 THE COURT: You know, it might to me or you, because
2 we've seen these guys in orange, but every single one of these
3 people never been to jail. They don't know what people wear
4 in jail, what they do, how they're dressed. I don't think
5 that -- I mean every one of them was asked you ever been in
6 trouble, ever -- none of them have. I don't think it even
7 occurred to them that he was anything other than fashion
8 senseless. The objection is noted.

9 MR. HART: And for the record, there's a motion for
10 mistrial based on that, and I know my objection is noted.

11 THE COURT: Denied.

12 MR. HART: Thank you.

13 THE COURT: Okay. See you at 1:10. Anything,
14 Ms. Digiacomo, or you're good to go?

15 MS. DIGIACOMO: I'm good to go. I just need the
16 exhibits.

17 THE COURT: Tina will have that.

18 [Bench Conference Not Transcribed]

19 THE COURT: All right. I'll see you guys in a bit.

20 [Recess]

21 [Jury In]

22 THE COURT: Who is going to be your first witness,
23 Ms. Small?

24 MS. SMALL: It's actually going to be Michael McNeilly.

25 THE COURT: Bring him in and set up.

1 [Pause]

2 THE COURT: Up here, sir.

3 [Court to Clerk]

4 THE COURT: Just have a seat and relax. As soon as the
5 lawyer gets here, we'll get going.

6 [Recess]

7 [Within the Presence of the Jury Panel]

8 THE COURT: Okay. Let's go back on the record in case
9 number C228752, State of Nevada versus Daimon Monroe. Let the
10 record reflect the presence of the Defendant, his counsel,
11 counsel for the State. All ladies and gentlemen of the jury
12 are back in the box.

13 THE COURT: Sir, will you stand, raise your right hand,
14 and be sworn, please?

15 MICHAEL MCNEILLY, STATE'S WITNESS, SWORN

16 THE COURT: Sir, state your name and spell your name for
17 the court recorder.

18 THE WITNESS: Michael McNeilly. It's M-c-N-e-i-l-l-y.

19 THE COURT: Go ahead, Ms. Digiacomo.

20 MS. DIGIACOMO: Thank you.

21 DIRECT EXAMINATION

22 BY MS. DIGIACOMO:

23 Q Sir, do you have any property here in Las Vegas?

24 A Yes, I do.

25 Q Okay. Now back in January of 2005, where would that

1 have been located?

2 A On Diablo, I think it's drive.

3 Q All right. Is that in Clark County?

4 A I guess so, yes. Las Vegas.

5 Q Well, where do the cross streets [sic]? Do you know
6 what the cross streets are?

7 A I think at Decatur and Diablo.

8 Q All right. In January 2005, did something happen to
9 your unit?

10 A Yeah. We had a break-in in my warehouse at -- in
11 January of 2005.

12 Q All right. And you said warehouse. Can you
13 describe what it was?

14 A It was a brand new 11,000 square-foot tilt up cement
15 warehouse.

16 Q And what was the purpose of having that warehouse?

17 A I purchased it so I could store my artwork.

18 Q So you're an artist?

19 A Yes, I am.

20 Q And do you actually live in Las Vegas?

21 A I have a home in Las Vegas, but I live primarily in
22 Beverly Hills.

23 Q All right. And you said you had a break-in in
24 January 2005. How did you find out about that?

25 A I was called and told that we had a break-in. I cam

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1 out and found that my property was broken into to.

2 Q All right. Now you said you came out. Where'd you
3 have to come from?

4 A From Beverly Hill, from Los Angeles.

5 Q All right. And when you got there, the property was
6 broken into. How could you tell? Were there signs of forced
7 entry?

8 A The back door next to the loading door, there's a
9 man door, and that was broken into?

10 Q What's a man door?

11 A It's just a standard door. That's what I've been
12 told they call them. It's a -- it's next to the loading door.

13 Q So it's just a regular door not a rolling door?

14 A No. It's a steel door with hardware and stuff, but
15 it was definitely broken into. All the bolts were broken.

16 Q Did you actually make a police report?

17 A Yes, I did.

18 Q Were you able to tell them what was missing?

19 A Yes.

20 Q And can you just explain what was missing from your
21 warehouse?

22 A Well, quite a number of art pieces, sketches, framed
23 sketches, oil painting, sculptures. Pretty much, that's it.

24 Q And where were they located within the warehouse
25 when they were taken?

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1 A They were in the back. We had just built a new area
2 in the back with high-rise shelves, and they were on those
3 high-rise shelves in the back.

4 Q Now were you cleaned out of everything?

5 A No. No. They were -- it was almost like they were
6 cherry picked. There was probably a couple hundred pieces of
7 artwork in there. And they took a significant number of
8 pieces but not all of them.

9 [Counsel Confer]

10 BY MS. DIGIACOMO:

11 Q Sir, I'm going to show you what's been marked for
12 identification as State's Proposed Exhibits 298 through 312,
13 and then 312A through 312D, I'm guessing. Let me see.
14 Uh-huh, D. If you could just flip through all of those
15 quickly and let me know if you recognize some of the things
16 depicted in those photographs.

17 A Yes.

18 Q And then I'll ask you about them.

19 A Yes. Yes. Yes. Yes. Yes. All these are yes.
20 All of them.

21 Q Okay. You recognize all of these?

22 A Yes, I do.

23 Q And how do you recognize them?

24 A It's my artwork. A lot of them right on the front
25 have my signature.

1 Q All right.

2 A And yeah. They're mine.

3 Q And the photos that you've been looking at, State's
4 Proposed Exhibits 298 through 312 and 312A through 312D, are
5 these some of the artwork that was stolen in January 2005?

6 A Yes, they are.

7 Q Okay. All of them or some of them?

8 A All of them.

9 Q Okay. You never gave anyone else permission to have
10 this artwork?

11 A No, I didn't.

12 Q Not since January 2005?

13 A Not since January 2005, no.

14 Q And these all fairly and accurately depict your
15 artwork as it was when you saw it last in January 2005?

16 A Yes.

17 Q All right.

18 MS. DIGIACOMO: Your Honor, at this time, I'm move for
19 admission of State's Proposed Exhibits 298 through 312, 312A
20 through D.

21 THE COURT: Any objection?

22 MR. HART: No objection, Your Honor.

23 THE COURT: Admitted.

24 [State's Exhibits 298-312 and 312A-312D Admitted]

25 THE CLERK: What was the first number?

1 MS. DIGIACOMO: 298.

2 THE COURT: 298 to 312, 312A through D.

3 BY MS. DIGIACOMO:

4 Q All right. First of all, I'm going to show you
5 State's Exhibit 299. Do you recognize this?

6 A Yes, I do.

7 Q And this is a pretty unique piece of art?

8 A Yes.

9 Q And you actually created this?

10 A Yes, I did.

11 Q Does this have your signature on it that we can see?

12 A Possibly, it would have it on the back. A lot of
13 these 3-D sculptures like this, I signed then on the back.

14 Q I'm showing you State's Exhibit 300.

15 A That's definitely -- that's two life-size skeletons
16 in gold.

17 Q And again, your name would be on the back since it's
18 3-D?

19 A Yes.

20 Q And lastly of the 3-Ds, State's Exhibit 301.

21 A Yes..

22 Q Now I have a series of I believe sketches. I'm
23 going to show you one in 302.

24 A Yes.

25 THE COURT: Is there a specific count this relates to so

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1 they can follow along with their notes?

2 MS. DIGIACOMO: Oh. I'm sorry, Count 16.

3 THE COURT: Count 16. Go ahead.

4 BY MS. DIGIACOMO:

5 Q And this which -- again, the detectives -- this
6 location we're looking at now is West Charleston.

7 THE COURT: Okay. Well, he -- all he can do is identify
8 the artwork.

9 MS. DIGIACOMO: No. I understand, but --

10 BY MS. DIGIACOMO:

11 Q Looking at State's 302, is this yours?

12 A Yes, it is. My signature is on the sketch.

13 Q If you can actually circle on the screen for the
14 jury where your signature would be.

15 A [No verbal response]

16 Q And how many different sketches like this did you
17 have taken? Do you know?

18 A Well, I would think over a half-a-dozen or more.

19 Q All right. And how much are these valued at?

20 A They're generally between 1000 and \$1500 each for
21 original sketches.

22 Q All right. And there are several of these. There's
23 303, 304. There's multiple ones. They're all about 1000
24 each?

25 A Right.

1 Q What about the 3-D art we just saw?

2 A - They're valued around \$20,000 each, some more, some
3 -- that's pretty much the price.

4 Q Now your artwork, do you sell it as well?

5 A Yes.

6 Q And that's how you value it?

7 A Yes.

8 Q I'm going to show you State's Exhibit 310. Do you
9 recognize this?

10 A Yes.

11 Q And how do you recognize it?

12 A Well, there's my signature right there --

13 Q What kind --

14 A -- right on the sketch?

15 Q What kind of sketch would this be called?

16 A A sketch.

17 Q Okay.

18 A I don't know. It's -- that's pretty much it. It's
19 a pencil sketch.

20 Q A pencil sketch.

21 A Yeah.

22 Q Okay. And here's 311.

23 A Same thing. You've got the signature right here.

24 Q Now I'm showing you State's Exhibit 312A. What's
25 depicted here?

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1 A It's a negative of Marilyn. These works were done
2 probably in the early to mid-80s that I did.

3 Q And this was yours as well?

4 A Yeah.

5 Q Now did you sign these on the outside?

6 A You know, it's been -- like I said, it's been
7 probably over 25 years since I looked at these. I would have
8 to -- I'm not sure if I signed the back or not, but these are
9 definitely my works of art.

10 Q Okay. And 312B?

11 A Yes.

12 Q That looks approximately 25 years old?

13 A You can tell by the hairstyles and fashion at the
14 time?

15 Q Of the '80s. And 312C?

16 A Yes.

17 Q And 312D?

18 A Yes.

19 Q Okay. I'm also going to show you two more, State's
20 Proposed Exhibits 313 and 314. Do you recognize those?

21 A Yes, I do.

22 Q And how do you recognize them?

23 A Well, they're the oil paintings that I did, and they
24 also have my signature on the front of the paintings.

25 Q And do they fairly and accurately depict the way

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1 that they looked when you last saw them in January of 2005?

2 A Yes, they do.

3 MS. DIGIACOMO: Your Honor, I move to admission of
4 State's Proposed Exhibit 313 --

5 THE COURT: Objection?

6 MS. DIGIACOMO: -- and 314.

7 MR. HART: No objection.

8 THE COURT: Admitted.

9 [State's Exhibits 313 and 314 Admitted]

10 BY MS. DIGIACOMO:

11 Q I'm showing you 313. Are all of these your photos?

12 A They're paintings. Yeah. There's a signature
13 there, my signature there. And the other one is hiding by,
14 I'm sure -- it's the same frame.

15 Q Okay. So it's -- you recognize your frame --

16 A Right.

17 Q -- even though you can't see the photo?

18 A Right.

19 Q And these actual -- these photos in 313, do you know
20 -- or excuse me. These paintings in 313, what's the
21 approximate value there?

22 A 10 to \$20,000 each.

23 MS. DIGIACOMO: Court's indulgence. I'll pass the
24 witness.

25 THE COURT: Mr. Hart.

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CROSS-EXAMINATION

BY MR. HART:

Q And you have no idea who took these items from your warehouse?

A No, I don't.

Q And this was back in January of 2005 it was taken?

A Yes.

Q It's safe to say artwork varies greatly in price and value?

A Yes.

Q From the seller to the buyer?

A Yes, it varies.

Q Now you sell art for a living. Do you get -- it's safe to say that art is worth what somebody is willing to pay for it at any particular time?

A That's true.

Q And I -- you don't make your own frames, do you?

A Actually, sometimes we do.

Q Those frames we just saw?

A Those frames, no. Those three frames, no. On larger scale pieces we do, because it's hard to find frames like that. So --

Q Okay. On artwork, what's the word I want to use -- a trail of ownership is -- you'd say is difficult to follow quite often, unless it's a major Monet or something like that?

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1 A I don't know if that's true. I mean I know who I
2 would sell it to, and I know I didn't sell these works of art.

3 Q Okay. And so these were just extras laying around?

4 A They were in my warehouse for storage.

5 Q Okay. Some were produced in the '80s?

6 A Some were produced in the '80s and some in the '90s.
7 And some as late as -- 2001 I think is probably the most
8 recent ones there.

9 Q So these are things that you put back into storage
10 at this time?

11 A Right.

12 MR. HART: Nothing further from this witness.

13 THE COURT: Anything else?

14 MS. DIGIACOMO: Yeah.

15 REDIRECT EXAMINATION

16 BY MS. DIGIACOMO:

17 Q They were in storage, but you had -- you still would
18 sell them as well. Did you have a studio where you sell
19 artwork and you move it in and out? Or how did it work?

20 A I still sell artwork. And depending on -- some
21 pieces I keep to archive, and some pieces I sell that are
22 older pieces.

23 Q And the pieces that were in the warehouse, what are
24 those for?

25 A Some are archived and some of the pieces are for

1 sale.

2 Q Well, with regard to the 3-D ones or the skeletons,
3 are those for archive or to sell?

4 A Those are for sale.

5 Q All right. Thank you.

6 MS. DIGIACOMO: Nothing further.

7 THE COURT: Mr. McNeilly. Thank you very much. You're
8 excused.

9 THE WITNESS: Thank you.

10 THE COURT: Call your next witness.

11 MS. DIGIACOMO: Marcus Giannella.

12 THE COURT: Giannella. Okay.

13 [Pause]

14 THE COURT: Up here, sir.

15 MARCUS GIANNELLA, STATE'S WITNESS, SWORN

16 THE COURT: State your name, sir. Spell your name for
17 the court recorder.

18 THE WITNESS: Marcus Giannella, M-a-r-c-u-s-G-i-a-n-n-e-
19 l-l-a.

20 THE COURT: Go ahead, Ms. Small.

21 MS. SMALL: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. SMALL:

24 Q Mr. Giannella, what do you do for a living?

25 A I'm an interior designer.

1 Q And can you explain to us what an interior designer
2 does?

3 A I sell home furnishings, sell interior design
4 services, specify paint finishes, wall finishes, flooring,
5 drapery treatments.

6 Q Okay. And in the course of sellings these items, do
7 you become very familiar as to the cost?

8 A Absolutely.

9 Q Okay. And currently, who do you work for?

10 A Currently, I work Robb and Stucky Interiors.

11 Q Okay. And can you explain what type of an
12 establishment that is?

13 A It is a high-end home furnishing store with interior
14 design -- full interior design services incorporated into the
15 furniture store itself.

16 Q Okay. How long have you been in the interior design
17 business?

18 A Approximately 17 years.

19 Q 17 years. So you're very familiar with different
20 types of furniture and accessories, and so forth?

21 A Yes.

22 Q Drawing your attention to February of 2006, where
23 were you working at that time?

24 A At that time, I was working for Milton Homer Refined
25 Home Furnishing.

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1 Q And can you explain to the ladies and gentlemen of
2 the jury what type of furniture that they sold?

3 A At that establishment we also sold high-end
4 furnishings. We sold wall paper, carpeting. We did drapery
5 treatments, flooring. We worked with custom builders as far
6 as doing specifications for homes from the ground up, and
7 selling furniture out of the showroom as well.

8 Q And how would you classify the furniture that Milton
9 Homer would sell?

10 A Most of what we would have on our showroom floor
11 would be more formal. It would be more in a Tuscan vein. We
12 didn't sell a lot of contemporary furniture, although we had
13 access to that through the companies that we did business
14 with.

15 Q And based on your experience and working in that
16 field for the number of years that you've worked there, would
17 Milton Homer be considered a higher quality furniture?

18 A Yes.

19 Q Okay. And would the price reflect the quality of
20 that furniture?

21 A Yes.

22 Q Okay. I'm going to draw your attention specifically
23 to February 20th of 2006. Were you working at Milton Homer on
24 that day?

25 A Yes, I was.

1 Q Okay. And what were your hours on that day?

2 A The showroom was open from 9:00 to 5:00. We would
3 usually arrive at approximately 8:30.

4 Q And did you arrive at 8:30 on that day?

5 A Yes, I did.

6 Q When you arrived, did you notice anything unusual?

7 A Not at first. An associate of mine and I pulled
8 into the parking lot as we usually would do. He attempted to
9 get the back door open, and the back door seems to be a little
10 stuck. Often times, the lock itself would -- not the lock
11 itself. Excuse me. The door itself would swell and expand,
12 because it did face west. So due to the heat, we would have
13 some problems with the lock on occasion. We did manage to get
14 the door open. And when we walked in, the alarm system did
15 not go off. So we immediately thought something had
16 transpired. And when we did get into the showroom, we did
17 find that we had been burglarized.

18 Q Okay. Let me back you up.

19 A Yeah.

20 Q You said the alarm didn't go off. Did that unusual
21 to you?

22 A It did seem unusual, although it had happened on
23 occurrences before. The owners of the establishment sometimes
24 would have gone in over the weekend or would have gone in
25 earlier prior to normal business hours. And if they would

1 leave out the front door, they would sometimes not set the
2 alarm knowing that we would be there within about a half-hour
3 or so.

4 Q Okay. Would that be the case in this situation,
5 when you were showing up that morning? Was it a Monday
6 morning that you came in to work?

7 A It was a Monday morning, and the owners were out of
8 town.

9 Q Okay. So the owners were out of town. So that
10 scenario that you just explained to the ladies and gentlemen
11 of the jury probably wouldn't have happened on that
12 particular --

13 A Probably would not have happened. Absolutely.

14 Q Okay. Was the showroom open on Saturday and Sunday?

15 A No, we were not. We would have been open only by --
16 on Saturdays by appointment only, and there were no
17 appointments that were scheduled for that Saturday.

18 Q Okay. So the last time that you were in Milton
19 Homer was -- would that have been on Friday?

20 A That would have been on Friday. Yes, correct.

21 Q And what time did you lock up on Friday?

22 A I would imagine somewhere between 5:00 and 6:00 p.m.

23 Q Okay. So around 6:00 you leave on Friday. You come
24 back on the next Monday.

25 A Correct.

1 Q Okay. Around 8:30 in the morning, and you notice
2 that the alarm is not on. Did you check the alarm?

3 A There was no alarm to check.

4 Q Okay. Did you go and check the alarm device itself?

5 A There was no alarm device to check.

6 Q It just didn't go off. You didn't hear the normal
7 sound that you would hear?

8 A There was no alarm that went off. When we got into
9 the showroom, we then went to the breaker boxes like we
10 normally would do to turn on all of the lights in the
11 showroom, noticed that things were not thrown up. They were
12 placed about oddly. There were pieces of furniture that had
13 been knocked over. And when we went up to the telephone to
14 call the police and to call 9-1-1, the alarm system itself had
15 been completely removed from the wall, and there were just
16 wires sticking out of the wall.

17 Q Okay. So you said that items had been moved around.
18 I mean how did you know that? How was -- explain to us how
19 that showroom is set up.

20 A The showroom itself was approximately 10,000 square
21 feet. It was a long rectangle, so short on the window side,
22 which would be on the street facing side, and would go back.
23 It was divided up into approximately 16 vignettes, and we
24 would -- in one single vignette we would normally show a
25 bedroom, a dining room, and a living room scenario setup with

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1 a sofa, a loveseat, pair of end tables, chairs, artwork,
2 accessories, lamps. And there was just stuff all over the
3 place.

4 Q Okay. Why did you set it up like that?

5 A The retail customer usually has a lot of difficulty
6 envisioning situations or room settings. And we would do that
7 so that you could see how a specific living room that we were
8 trying to sell on the floor would relate to the dining room
9 that we would have in that same vignette.

10 Q So you took part in doing that, setting those little
11 vignettes up in the store?

12 A Oh, absolutely.

13 Q Right. So then, obviously, you were aware when
14 something was displaced, or moved, or missing?

15 A Absolutely.

16 Q Okay. So you saw things that were missing. What
17 did you do at that point?

18 A Patrick, the associate that I worked with at that
19 point in time, notified the police. We called 9-1-1. And
20 then after he got off the telephone with 9-1-1, he called
21 Milton Homer, the owner of the establishment.

22 Q Okay. At a certain point, did you do an inventory
23 as to the items that you thought were missing from the store?

24 A Patrick and I started to walk the floor, making, you
25 know, notes of what we knew was gone at that point in time.

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1 After we got off the telephone with Milton and June, they
2 notified us that they would be returning from California that
3 afternoon, and they notified us that we would need to remain
4 closed for the remainder of that day to comply with whatever
5 the law enforcement asked us to do, and that we would start be
6 given a -- start to begin a physical inventory on Tuesday
7 morning.

8 Q So did you give the report to the police officers
9 that you had?

10 A Yes, we did.

11 Q Okay. I'm going to draw your attention now to
12 November 6th of 2006. Did you receive a call on that day?

13 A Yes, I did.

14 Q And was that call in regard to possible items that
15 had been recovered from the store?

16 A Yes, it was.

17 Q What did you do in response to that call?

18 A I was asked by the detective on the telephone who
19 phoned me if we, indeed, had been burglarized in February,
20 which I said that yes, we had. He had informed me that they
21 were at a location that they believed could contain some of
22 the merchandise that would have been stolen from Milton Homer,
23 and asked if there was any way I could describe any of the
24 merchandise to him over the telephone.

25 Q Did you do that?

1 A I did.

2 Q Okay. And then what happened?

3 A He seemed a little bit vague and asked if I -- if
4 there was anything that I could specifically describe, so that
5 they would know for sure it was something that had come from
6 our location. At that point in time, Milton Homer was the
7 only business in town that sold a line of furniture by the
8 name of Marge Carson. I asked the detective on the phone if
9 he would go a sofa and lift up the seat cushion, and if there
10 was a label underneath the seat cushion on the decking of the
11 upholstery that said Marge Carson, that it most likely would
12 be from our store.

13 Q And did you remember the fact that a sofa -- a Marge
14 Carson sofa had been taken from --

15 A Yes.

16 Q -- that prior burglary? Okay. What did you do
17 after you gave him that information?

18 A I remained on the telephone. He came back and asked
19 me if I could come to the home as quickly as possible to
20 identify any of the merchandise that might be ours.

21 Q Did you do that?

22 A Yes, I did.

23 Q Do you recall what home you went to?

24 A It was on Cutter Street or Cutler Street.

25 Q Cutler, 1504, does that sound familiar to you?

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1 A Yes.

2 Q So you went to this home on Cutler. What did you
3 see when you got there?

4 A An amazing amount of merchandise.

5 Q Okay. Let me back you up. When you first, you
6 know, got to the location, what did the outside look to you?
7 I mean what did you see when you first got to the house?

8 A There were vehicles all over the place. There were
9 electric guitars, sinks, artworks --

10 MR. HART: Objection, Your Honor. I'd like him to
11 refrain to the items he's there to identify, if possible.

12 THE COURT: Well, he can say what he saw. Overruled.

13 MS. DIGIACOMO: Thank you, Your Honor.

14 THE WITNESS: There were, in fact, pieces of original
15 artwork that did belong to Milton Homer that were leaning
16 against the outside of the home when I arrived.

17 BY MS. SMALL:

18 Q Could you describe the house to us when you first
19 walked up to it, I mean as far as a one-story, two stories?
20 What did it look like?

21 A It was a two-story home. It seemed to be -- the
22 yard seemed to have been fairly kept up. I mean it didn't
23 seem like it would have been something that would have caused
24 any attention. Although, all of the windows were -- they had
25 rot iron on all of the windows, and all of the windows were

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1 completely covered from the inside with foil material, it
2 seemed.

3 Q Okay. How big would you say the house was square
4 footage wise?

5 A I would guess it was probably around 3,000 square
6 feet.

7 Q Okay. You went into the house?

8 A Yes, I did.

9 Q And when you went into the house, what did you see?

10 A Furniture, artwork, accessories, televisions,
11 computers, security cameras.

12 Q Okay. At some point, were you with the detective
13 that you were going around with to try to identify some of
14 your product that might have been in the house?

15 A Yes. I was asked to walk through the home with
16 them, and we were asked to put sticky notes -- or I was asked
17 to put sticky notes on the product that I could identify that
18 came from our store.

19 Q And did you do that? Did you put sticky notes on
20 those items?

21 A Yes, I did.

22 MS. SMALL: Drawing the Court's attention to what's been
23 pre-marked as State's 91 through -- wow.

24 MS. DIGIACOMO: It's on the outside of the folder.

25 MR. HART: 91 through wow?

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1 MS. SMALL: 165.

2 [Counsel Confer]

3 BY MS. SMALL:

4 Q I'm going to show you what's been marked as State's
5 Proposed Exhibits 91 through 165. If you could just sort of
6 flip through those. And when you're done, look up at me.

7 [Witness Reviews Documents]

8 MR. HART: Your Honor, can we approach very quickly?

9 [Bench Conference Not Transcribed]

10 BY MS. SMALL:

11 Q Do you recognize what's depicted in those
12 photographs?

13 A Yes.

14 Q How do you recognize?

15 A It was merchandise that was taken from our store in
16 the February burglary.

17 Q Okay. And do these pictures fairly and accurately
18 depict the stuff that was taken from Milton Homer back in
19 February of 2006?

20 A Yes, they do.

21 MS. SMALL: Move to enter, Your Honor.

22 THE COURT: Objection?

23 MR. HART: Not -- no, Your Honor, other than what was at
24 the bench.

25 THE COURT: Well, that was -- the record should reflect

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1 that you were suggesting that it was cumulative, and there's a
2 lot of it. But I think they're entitled to hear what it
3 is --

4 MR. HART: Okay.

5 THE COURT: -- and he's entitled to testify. It'll be
6 admitted. Go ahead.

7 MS. SMALL: Thank you, Your Honor. May I publish?

8 THE COURT: Yes.

9 BY MS. SMALL:

10 Q Looking at State's Exhibit 91, can you tell us what
11 in this picture belonged to Milton Homer, and describe what it
12 is?

13 A In that picture, it is the tree and the urn on the
14 right-hand side of the photograph, behind the clock.

15 Q And where did you locate that tree and urn?

16 A That was on the outside -- on the back patio of the
17 main level of the home.

18 Q Okay. What would be the value of that tree and that
19 urn?

20 A Probably about \$750 to \$900.

21 Q Okay. Looking at State's 92, if you can tell us
22 what belonged to Milton Homer in that picture.

23 A The two chairs, the two floor torchiere lamps that
24 are on either side, the two art -- pieces of artwork that are
25 on either side of the opening, the occasional table that's on

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1 the left-hand side, and the armchair that's on the right-hand
2 side.

3 Q And again, these are items that have been taken from
4 the Milton Homer store from the burglary from February 2006,
5 correct?

6 A Yes, that's correct.

7 Q Okay. And can you give us a value, collectively, of
8 what all those things might cost?

9 A I would say between 10 and 12,000.

10 Q Thank you. Looking at State's 93, this may just be
11 a close-up of one of the items that you picked out, I think,
12 in the previous picture.

13 A It is. It shows the upholstered chair, the floor
14 torchiere, and the artwork in the corner.

15 Q Looking at State's 94, is there anything new in that
16 picture that belonged to Milton Homer that we did not identify
17 in the previous picture?

18 A The matching armchair on the -- in the far left-hand
19 corner.

20 Q Okay.

21 A There was a pair of those that had been taken.

22 Q And what would be the value of those?

23 A Those were somewhere between 2500 and 3000 a piece.

24 Q And looking at 96, would that be a close-up of that
25 chair that you were speaking of in the other photograph?

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1 A Yes. The tree on the right-hand side was ours as
2 well --

3 Q And what --

4 A -- and the mirror that's hanging on the wall to the
5 right of the piano.

6 Q And what would be the value of those two items?

7 A Approximately 2000.

8 Q Looking at State's 98, can you tell us what we're
9 looking at in this picture?

10 A The two pieces of artwork that were hanging on
11 either side of the window, the dining room table, the dining
12 room chairs, the floral arrangement on the dining room table.

13 Q And those were all taken from the burglary back in
14 February from the Milton Homer?

15 A Yes.

16 Q What would be the value of those items?

17 A I would guess around 8 to 10,000.

18 Q Thank you. And just to clarify, are you giving us a
19 retail value or a wholesale value?

20 A This is a retail value.

21 Q Thank you. What would be the wholesale value or
22 maybe the cost?

23 A We would normally discount about 20 percent, and
24 that's what the tags would reflect on the showroom floor. And
25 that's what we would have as our value price. The

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1 manufacturer's wholesale pricing would reflect probably
2 anywhere between a 2.5 or a three-point deduction off of the
3 retail figures.

4 Q Okay. And just to go back to the dining room set
5 and the artwork and the armchairs, and all the things that we
6 just looked at.

7 A Yes.

8 Q If we were going to not give a retail value on those
9 things, but we were just going to give you the cost value on
10 them, what would it be, roughly?

11 A Roughly, a third.

12 Q Okay.

13 A Maybe a little less.

14 Q Looking at State's 100 -- actually, I'll use a
15 better picture of it. Let's look at 101. What are we looking
16 at there?

17 A A chest of drawers.

18 Q Okay. And was that a chest of drawers that was
19 taken from the Milton Homer store back in February of 2006?

20 A Yes, it was.

21 Q What would be the value of that?

22 A I would venture to guess about \$800.

23 Q Thank you. And that's retail? Wholesale? .

24 A Retail.

25 Q I believe this is probably a close-up of that table

1 that we were speaking about, the dining room table.

2 A Correct.

3 Q And the floral arrangement.

4 A Correct.

5 Q That was State's 102. Looking at State's 106, can
6 you tell us what we're looking at there?

7 A That was a tree, the occasional table, the lamp.

8 Q Okay. Those are all items taken from the Milton
9 Homer store from February of 2006?

10 A Correct.

11 Q And what would be the retail value of those three
12 items?

13 A Approximately 6,000..

14 Q Thank you. Looking at State's 108, what are we
15 looking at?

16 A The floral arrangement hanging on the wall and the
17 lamp.

18 Q It belonged to Milton Homer?

19 A Yes. There was a pair of each of them.

20 Q Okay. And those were from the Milton Homer back in
21 February of 2006?

22 A Yes.

23 Q Thank you. What would be the value of those?

24 THE COURT: They're all charged in one count, right?

25 MS. SMALL: Yes, Your Honor.

1 THE COURT: I don't think we need to do value on it.
2 Let's just identify the items.

3 MS. SMALL: Thank you, Your Honor.

4 THE COURT: I think the jury has got the flavor of the
5 value.

6 BY MS. SMALL:

7 Q Looking at State's 109, can you identify what
8 belonged to Milton Homer in that picture?

9 A The artwork above the fireplace, the mirror above
10 the sofa, the pair of lamps, the two end tables, the sofa, the
11 cocktail table, the two occasional chairs, the two florals
12 hanging on the wall, the chest underneath the television.

13 Q .Okay. Those are all taken from Milton Homer back in
14 February 2006?

15 A Yes.

16 Q Looking at State's 111, is there something in that
17 picture that belonged to Milton Homer?

18 A The chest under the television.

19 Q Okay. Also taken from --

20 A Yes.

21 Q Thank you. Looking at State's 112, what belonged to
22 Milton Homer that was taken in that burglary back in February
23 in 2006?

24 A The pieces of artwork.

25 Q Thank you. Looking at State's 113, what was taken

1 from the burglary back in February of 2006 from Milton Homer
2 that's depicted in this picture?

3 A The four pieces of artwork that you can see.

4 Q Looking at State's 114, what was taken from Milton
5 Homer back in 2006?

6 A The tulip artwork and the other piece of artwork
7 that's shown on the same wall with it.

8 Q Looking at 115.

9 A It's the same view. This also shows the little
10 accent table which is underneath the tulip artwork that was
11 also taken.

12 Q And that was also taken. Okay. Looking at 116, can
13 you tell us what we're looking at?

14 A The set of six pieces of artwork.

15 Q Okay. Taken from Milton Homer back in February of
16 2006?

17 A Yes.

18 Q Thank you. Looking at 117, the same question.
19 Anything that you see there that was taken from Milton Homer
20 back in February of 2006?

21 A Both pieces of artwork.

22 Q Okay. And we're looking at all of these pictures,
23 all of this collective furniture and artwork and accessories
24 and everything. This is stuff that you found at the Cutler
25 residence?

1 A Yes.

2 Q And where was all of this stuff? I mean was it in
3 one room, two rooms?

4 A No. It was in the entire house with the exception
5 of a room on the main floor that had been turned into a
6 recording studio.

7 Q Okay. But other than that, it was in every single
8 room in the house?

9 A Correct.

10 Q Okay. And this was a two-story house? Is that what
11 you said previously?

12 A Yes.

13 Q Okay. Looking at 118, can you point out anything
14 that you recovered at that location?

15 A The mirror on the right-hand wall, the game table
16 that's in the middle of the photograph.

17 Q Looking at 119, can you tell us what was recovered
18 from the Cutler house?

19 A The safe cabinet that the computer is sitting on.

20 Q Looking at 120, State's 120, can you tell us what
21 you recovered from the Cutler house?

22 A The chest of drawers that the television is sitting
23 on.

24 Q Looking at 121, first of all, can you tell me what
25 room -- do you recall what room this stuff was in?

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1 A It was a child's bedroom.

2 Q Okay. And looking at that particular picture, what
3 items belonged to Milton Homer that you recovered?

4 A The table that the computer, I guess it is, is
5 sitting on towards the left of the photograph, excuse me, and
6 the mirror that's hanging on the wall.

7 Q Thank you. And 122, what do you see in that picture
8 that belonged to Milton Homer?

9 A The piece of artwork that's hanging behind the
10 bedroom door and the occasional table that's underneath it.

11 Q And looking at 123 -- and I believe this is from the
12 same room. Do you recall what room these items were found in?

13 A This is in what would have been the master bedroom.

14 Q Okay.

15 A Same two pieces, the artwork and the little table
16 underneath it.

17 Q Thank you. Looking at 124.

18 A That's the close-up of the piece of artwork that was
19 behind the master bedroom door.

20 Q Looking at 125.

21 A That's a piece of artwork that was hanging also in
22 the master bedroom.

23 Q That belonged to Milton Homer?

24 A Yes.

25 Q And looking at 126.

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1 A That is one of a pair of pieces that was hanging in
2 the master bathroom.

3 Q Now at some point -- I mean this is an awful lot of
4 furniture, a lot this accessories and so forth. At some
5 point, did you -- did someone come out to collect all of the
6 items from the residence?

7 A Yes. We both of our delivery trucks pulled off of
8 deliveries that were scheduled for that day in order to come
9 and pick up the merchandise from the home.

10 Q Okay. And looking at 120- -- I think it's -- 7. Is
11 that the Milton Homer --

12 A That's one of --

13 Q -- truck that came out?

14 A Yes. That's one of them.

15 Q Okay. And 128 I would take it would be the second
16 truck that came out?

17 A Correct.

18 Q Okay. Now I'm going to show you 129. Can you
19 describe to us what we're looking at in this picture?

20 A This is looking into the back of the truck. It
21 shows merchandise that's loaded onto the truck, one of the end
22 tables that was in the family room that's turned upside down
23 in the truck. And it's a close-up of -- in one of the
24 photographs that showed the living or dining room area, there
25 were the large floral arrangements that were hanging on the

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1 wall. This shows the iron part of that wall sconce. The
2 black ribbon that's hanging off of it shows the manner in
3 which our tags were attached to the merchandise at the store.

4 Q Is that how you identified some of these objects
5 also? I mean besides the fact that you had knowledge of what
6 furniture was in the store, did you recognize some of it -- a
7 lot of it because it had these black tags attached to it?

8 A Yes.

9 Q Looking at 130, if you can describe what you see
10 there?

11 A It's a cocktail table. And one of our delivery
12 personnel is holding up the glass that sits into the cocktail
13 table.

14 Q And that belonged to Milton Homer. Obviously,
15 you're taking it back to the store.

16 A Correct.

17 Q Looking at 131.

18 A It's a mirror and a sofa.

19 Q Belonging to Milton Homer?

20 A Correct.

21 Q And actually, what I'm noticing on this, looking at
22 132, I notice there are those little yellow stickies, and you
23 place those on the furniture, correct, to identify them.

24 A Correct.

25 Q Okay. And what are we looking at here in 132?

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1 A This is the game table that was in the upstairs area
2 of the home.

3 Q Okay. 133.

4 A It's an occasional chest and a floral arrangement,
5 couple of accent tables and accent chests.

6 Q Looking at 134.

7 A It's a little trunk that sits on the iron base
8 that's in front of it, a swing arm lamp, and a little book
9 table.

10 Q Looking at 135.

11 A It's a close-up of the book table, and the sofa, and
12 a mirror that are on the tailgate of the truck to be loaded.

13 Q Looking at 137.. I think we saw the table before,
14 but what are we seeing in this picture?

15 A That's a little trunk. The table that's to the left
16 of it is one of the little tables that was in one of the
17 children's bedrooms upstairs.

18 Q Okay. And again, we're looking at all the stuff
19 that you were loading up at that time, that had been released
20 to you by police officers; is that correct?

21 A That is correct.

22 Q Okay. Looking at 138.

23 A That's the chest of drawers that had all the socks
24 in it.

25 Q Looking at 139.

1 A That's the crest, a piece of artwork that was
2 hanging in the master bedroom.

3 Q Looking at 140.

4 A It's the little occasional table that was in the
5 master bedroom.

6 Q Looking at 141.

7 A That's the safe cabinet that was in, I believe, one
8 of the bedrooms upstairs. I don't recall exactly which one.

9 Q And what's back here?

10 A The chest of drawers that have the socks in it.

11 Q Okay. 142.

12 A It's a bench that was at the foot of the bed of the
13 master bedroom.

14 Q Thank you. 143.

15 A A piece of artwork from the master bedroom.

16 Q I see the little sticky. 144.

17 A A mirror. I don't recall where it was hanging.

18 Q Okay. 145.

19 A That's the scales of justice statue that I don't
20 recall where it was sitting in the home.

21 Q Okay. But it did belong to Milton Homer, right?

22 A Yes, it did.

23 Q 146.

24 A It's one of the pair of end tables that was in the
25 downstairs family room of the home.

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1 Q 147.

2 A That's the chest that was in the family room of the
3 home that had the television on top of it.

4 Q Thank you. 148.

5 A It's another -- excuse me -- another occasional
6 chest. I don't recall where it was in the home.

7 Q Okay. 149.

8 A It's one of the panel pieces of artwork that I
9 believe was hanging in the dining room.

10 Q 150.

11 A It's an accent piece that was in the hallway under
12 the tulip artwork from one of the previous photographs.

13 Q 151.

14 A The dining room table.

15 Q 152.

16 A The tree that was to the right of the piano.

17 Q 153.

18 A That same tree, the floral arrangement that was on
19 the dining room table, and I believe the other tree was in the
20 family room area.

21 Q 154.

22 A It was one of two pieces of artwork that were
23 hanging, I think, in a hallway.

24 Q 155.

25 A That's the other piece that matches the previous

1 one.

2 Q Thank you. 156.

3 A That was one of two pieces of artwork that were
4 hanging, I believe, in a hallway.

5 Q 157.

6 A Again, two more pieces of artwork.

7 Q 158.

8 A A ceramic accessory.

9 Q 159.

10 A One of two of the chairs that were in the family
11 room area.

12 Q 164.

13 A It's a magazine rack.

14 Q Last but not least, 165.

15 A Dining room chairs.

16 Q Okay. All of these pictures, all of this furniture
17 that we just took a look at all belong to Milton Homer?

18 A That's correct.

19 Q All have been taken in the burglary from February of
20 2006?

21 A That's correct.

22 Q Okay. And all of that furniture was released to you
23 on November 6th, 2006 from the Cutler residence?

24 A That is correct.

25 Q Okay. How long would you say that you were at the

1 home at that time?

2 A I would guess probably three to four hours.

3 Q Okay. And what did you do after that?

4 A While I was there, I was asked to go to a storage
5 unit on West Charleston to possibly identify additional
6 merchandise.

7 Q And did you identify additional merchandise at that
8 location?

9 A I did. There were two bronze sculptures that were
10 recovered.

11 MS. SMALL: Drawing the Court's attention to what's been
12 premarked as State's Proposed Exhibit 166 to 168.

13 BY MS. SMALL:

14 Q I'm showing you State's Proposed 166 to 168. Do you
15 recognize those?

16 A Yes, I do.

17 Q And how do you recognize them?

18 A They belong to Milton Homer as well.

19 Q Okay. And do these pictures fairly and accurately
20 depict those statutes [sic] as you located them at the West
21 Charleston storage unit on November 6th, 2006?

22 A The first two do, yes.

23 Q Okay. And this third one? Oh. That was after it
24 was collected?

25 A That's correct.

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1 Q Okay. But does it fairly and accurately depict a
2 bigger picture of the urn that was located from the West
3 Charleston store?

4 A Yes, it does.

5 MS. SMALL: Move to enter.

6 THE COURT: Objection?

7 MR. HART: No objection.

8 THE COURT: Admitted.

9 [State's Exhibits 166 through 168 Admitted]

10 THE CLERK: And that was 160- --

11 THE COURT: 6 through 8.

12 BY MS. SMALL:

13 Q Looking at 166, can you describe what you see in
14 that picture?

15 A It's the bronze sculpture. It was called Bella
16 Donna.

17 Q Okay. And what would be the value of that?

18 A Approximately 3000.

19 Q And looking at 168, what are we looking at?

20 A It's a bronze urn with two cupids, approximately
21 \$2500.

22 Q Thank you. And both of those were located at that
23 Charleston storage unit that you went to?

24 A That's correct.

25 MS. SMALL: Pass the witness, Your Honor.

1 THE COURT: Questions, Mr. Hart?

2 CROSS-EXAMINATION

3 BY MR. HART:

4 Q Mr. Mr. Gionelli --

5 A Giannella.

6 Q Giannella. I apologize.

7 A It's okay.

8 THE COURT: I think between Mr. Hart, me, and you, you
9 probably got it right.

10 THE WITNESS: Somewhere along the line, yes.

11 BY MR. HART:

12 Q When you -- Milton Home Furnishings, are they a
13 producer or are they a retailer/reseller?

14 A We're a retailer. They are a retailer.

15 Q Okay. So you buy from different -- or they buy from
16 different suppliers?

17 A Yes.

18 Q Suppliers sell to other retailers besides Milton
19 Home Furnishings?

20 A Yes.

21 Q And safe to say the items that you recovered didn't
22 have any social security -- or excuse me -- serial numbers on
23 them?

24 A That would be correct.

25 Q Or social security numbers for that matter, correct?

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1 A That would be correct.

2 Q They are, more or less, mass produced type items,
3 correct?

4 A Some of them are. Some of the artwork was original.

5 Q Now it'd been missing for nine, 10 months before you
6 came and got it, correct?

7 A Yes.

8 Q But you give -- originally gave the reports, maybe
9 I'm missing something. You didn't give a inventory at the
10 time to the police, did you, when they came to visit?

11 A Did we give the -- an inventory to the police?

12 Q Yes.

13 A No.

14 Q And you mentioned something about black ribbon on a
15 couple items.

16 A Yes.

17 Q But there was no -- other than black ribbons on a
18 couple items, there was no identifiers, specifically -- I
19 don't mean to sound -- maybe I just don't have a good eye.
20 But I'm looking at a fake tree, and I'm sure I've got a couple
21 in my own house.

22 A Uh-huh.

23 Q Are they -- they are not from a unique provider,
24 correct?

25 A The trees were from a unique provider that came from

1 Salt Lake City, Utah.

2 Q Okay.

3 A Most of the other furniture that was there came from
4 suppliers that we had exclusives on in the Las Vegas
5 marketplace.

6 Q In the Las Vegas markets.

7 A Correct.

8 Q But not exclusive period?

9 A Correct.

10 MR. HART: Nothing further from this witness.

11 THE COURT: Anything else, Ms. Small?

12 MS. SMALL: Just a couple quick ones, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. SMALL:

15 Q The Milton Homer store, where was that located at?

16 A The store that I worked at --

17 Q Yes.

18 A -- was at 5455 South Valley View Boulevard.

19 Q And how long did it take you to get from the Milton
20 Homer store to the Cutler residence when you went over there?

21 A 15 minutes at most.

22 Q Would you say that those two locations were pretty
23 close in proximity?

24 A Fairly close, yes.

25 Q In that particular area, was there another Milton

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1 Homer store?

2 A Yes, there was.

3 Q And how close was it?

4 A It would have been maybe seven minutes away.

5 Q Okay. Thank you.

6 MS. SMALL: Nothing further, Your Honor.

7 THE COURT: Okay. Thank you, Mr. Giannella. I
8 appreciate your testimony. You're excused. Call your next
9 witness. Who's next?

10 MS. DIGIACOMO: Robert Colton.

11 THE COURT: Mr. Colton.

12 MS. DIGIACOMO: And it's going to be Count 15.

13 THE COURT: Count 15. Come on up here, Mr. Colton. Just
14 right up here, sir.

15 MR. COLTON: Oh, sorry.

16 THE COURT: That's all right. Right up here, sir.

17 [Pause]

18 THE CLERK: Please remain standing, sir.

19 THE COURT: You need to stand up and raise your right
20 hand.

21 MR. COLTON: Oh, I'm sorry.

22 ROBERT COLTON, STATE'S WITNESS, SWORN

23 THE COURT: Sir, state your name and spell your name for
24 the court recorder.

25 THE WITNESS: Certainly. Robert Colton, R-o-b-e-r-t-C-o-

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1 l-t-o-n.

2 THE COURT: Go ahead, Ms. Digiacomo.

3 MS. DIGIACOMO: Thank you.

4 DIRECT EXAMINATION

5 BY MS. DIGIACOMO:

6 Q Mr. Colton, do you have a business in the Las Vegas
7 valley?

8 A Yes, ma'am.

9 Q What is it?

10 A We're the second largest producers of national
11 coupon books in the U.S.A.

12 Q What's the name of your business?

13 A There's three names. One is called Steppin' Out.
14 One is called See America. And the third is called the
15 National Golfers Network.

16 Q Now where is See America located?

17 A 3140 South Durango, Suite 103.

18 Q Directing your attention back to February 1st, 2005.
19 Did something happen to See America, your business?

20 A Yes, ma'am.

21 Q What happened?

22 A On that Monday morning, when I arrived at the
23 office, I was shown that the window outside of the door was
24 broken into, and there was glass all shattered all over the
25 place. And we immediately notified the police department,

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1 and --

2 Q Now you said you were notified. Were you the first
3 person to come into the office that day?

4 A I was the third.

5 Q Who was the first?

6 A A gentleman by the name of Paul Stamatas.

7 Q All right. And who was the second?

8 A May Fafaleos.

9 Q How do you --

10 A F-a-f-a-l-e-o-s.

11 Q And how do you spell Stamatis?

12 A I believe it's S-t-a-m-a-t-i-s.

13 Q So how did -- how was it -- were you on your way to
14 work anyway or did you get called?

15 A Yes. Paul used to come in at 6:30, May 7:30, I
16 8:30, because we're a national company and we go coast to
17 coast, so we have to make long distance calls.

18 Q All right. Now when you got there, and you said
19 there was a broken window?

20 A That is correct. There was a sign. There's a
21 church that is in the same pavilion that we're in. And they
22 took the church sign and they blocked the window that they
23 cracked so, obviously, no one could notice that there was a
24 hole in the window.

25 Q From the outside?

1 A From the outside, yes.

2 Q So from the outside it covered the window, but on
3 the inside you could see broken glass?

4 A Yeah. The glass was all over the floor.

5 Q All right. When you got there and you saw the
6 broken glass, did you start looking to see if anything was
7 missing?

8 A Yes. Really, nobody really picked up on anything,
9 because the first thing we looked at were the computers and
10 the office equipment, and then all of a sudden somebody said
11 my God, everything that was hanging was missing, which were
12 all the pictures that we had in the offices that we've had for
13 over 25 years.

14 Q Well, how many --

15 A All we saw was nails.

16 Q Oh. Now what -- where were these pictures hanging
17 in your business?

18 A All through the different offices, through the
19 hallways, all through the 3500 square feet.

20 Q Okay. And do you know approximately how many were
21 taken?

22 A Guestimately [sic throughout], I would say about 20
23 total, counting -- maybe about 13 to 15 cells and maybe five
24 other pictures.

25 Q Now what do you mean by cells?

1 A Cells are basically cartoon characters like Disney,
2 or it could be anybody, and they were signed on the back.
3 Normally, the artist who designs the cells will have his
4 artwork on the back of it, and then he'll sign the back of it.
5 And that's what was removed.

6 Q All right.

7 A Various characters from Flintstones, et cetera, et
8 cetera. .

9 Q At some point, were you contacted by the police or
10 somebody regarding possibly finding some of your pictures?

11 A Yes. We were -- I think May was called by someone
12 from the District Attorneys Office, notifying us that the
13 pictures were found, and that they were being held, and that
14 they would eventually get back in contact with us, and they
15 would ask us to come down and identify them.

16 Q All right. Now, initially, were you shown
17 photographs and picked out some that way?

18 A That's how it started before it went to the grand
19 jury. I was -- myself and Mr. Stamatis, the first time, came
20 down. And we looked at the pictures. We identified the
21 pictures and the numbers with the grand jury, I did. And
22 then, at a later date, we were called again. And they found
23 some additional pictures, and they asked us to come down to
24 identify those as well. And at that time, Ms. Fafaleos came
25 with me.

1 Q All right. So did you actually -- when you said
2 that you were asked to come down and identify, did you go to
3 the -- I guess the Metro vault or --

4 A Yes, the one across --

5 Q -- some big warehouse?

6 A Yes.

7 Q And were you shown all of the pictures that you had
8 identified from the photographs as well as additional ones
9 or --

10 A The first time, whatever they showed us we
11 recognized. And then, we were called back a second time
12 because they found additional pictures -- photographs.

13 Q Okay. But they weren't additional to you. They
14 were just more for you to look at to confirm what you --

15 A That is correct.

16 Q -- testified to. All right. Now, first of all, I'm
17 going to show you four different sets of photos. The first
18 set is State's Proposed Exhibit 236 through 241. If you could
19 just flip through those and let me know if you recognize any
20 of the photographs in those pictures.

21 A I believe the only one --

22 THE COURT: Not. It's just a yes or no question, sir.

23 BY MS. DIGIACOMO:

24 Q No. Yeah. You just flip through them all and if
25 you -- just say yes or no.

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1 THE COURT: Do you recognize those pictures?

2 THE WITNESS: Yes.

3 BY MS. DIGIACOMO:

4 Q Keep them in order though.

5 A Yes. Yes. Yes. Yes. Yes.

6 Q Okay, sir. The photos that you looked at that you
7 recognize -- I mean there are other photos in here.

8 A Yeah. That's --

9 Q But did you see in each one a photo that belonged to
10 you?

11 A That is correct.

12 Q And they fairly and accurately depict the way the
13 photos looked the last you had seen them before viewing them
14 at the vault in February of, was it --

15 A Six.

16 Q 2006. Thank you.

17 A Yes, correct.

18 MS. DIGIACOMO: Your Honor, at this time, I move for
19 admission of State's Proposed Exhibit 236 to 241.

20 THE COURT: Yeah. I made a mistake one time or another,
21 because I wrote down February 2005.

22 MS. DIGIACOMO: Hold on. Let me check. I might have had
23 it wrong.

24 THE COURT: When was the burglary at your place?

25 THE WITNESS: Five.

1 MS. DIGIACOMO: It was.

2 THE COURT: 2005 was the burglary, and you didn't get
3 these until --

4 THE WITNESS: We got notified in, I believe --

5 THE COURT: Late in 2006.

6 THE WITNESS: No. We got notified, I think, in November.

7 THE COURT: Of 2006?

8 THE WITNESS: Yes, sir.

9 THE COURT: So it'd been 18, 20 months?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. Any objection.

12 MR. HART: No, Your Honor.

13 THE COURT: Admitted.

14 [State's Exhibits 236 to 241 Admitted]

15 BY MS. DIGIACOMO:

16 Q Sir, next I'm going to show you what's been marked
17 for admission as State's Proposed Exhibits 242 through 247.
18 If you could just, again, just flip through them all, and let
19 me know if you recognize what's depicted in there?

20 A Yes. Yes. No. Yes. Yes. Yes.

21 MR. HART: Could we get a record as to the no's?

22 MS. DIGIACOMO: I'll make it. Your Honor --

23 BY MS. DIGIACOMO:

24 Q Okay. Now I'm going to -- with regard to State's
25 Proposed Exhibits 242, 243, 245 through --

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1 THE COURT: Ms. Digiacomo, we need a quick five-minute
2 restroom break.

3 MS. DIGIACOMO: Okay.

4 THE COURT: So not a problem. Don't talk about the case.
5 Don't read, watch, or listen to report on the case by TV,
6 internet, newspaper, or radio. Don't form or express an
7 opinion on the case until it's submitted to you. Five-minute
8 restroom break.

9 [Recess]

10 [Within the Presence of the Jury]

11 THE COURT: Okay. Back on the record in case number
12 C228752, State of Nevada versus Daimon Monroe. Let the record
13 reflect the presence of Mr. Monroe with his counsel, counsel
14 for the State. The ladies and gentlemen of the jury are back
15 in the box.

16 [Pause]

17 THE COURT: Okay.

18 MS. DIGIACOMO: Are we back on the record?

19 THE COURT: Yeah. We're back on the record. My last
20 note. And 242 and 247, one of them --

21 MS. DIGIACOMO: I'm going to start it over right now.

22 THE COURT: All right. Why don't you pick up then
23 again?

24 BY MS. DIGIACOMO:

25 Q All right. Sir, with regard to State's Proposed

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1 Exhibits 242, 243, 245, 246, and 247, do these all fairly and
2 accurately depict the photographs that you had taken in
3 February 2005?

4 A That is correct.

5 Q Okay.

6 MS. DIGIACOMO: Your Honor, I'd move for admission of
7 244, 243, 245, 246, and 247.

8 THE COURT: Any objection, Mr. Hart?

9 MR. HART: No, Your Honor.

10 THE COURT: Those will be admitted. Exhibit 244, which
11 he did not identify will not be admitted.

12 [State's Exhibits 242, 243, and 245 to 247 Admitted]

13 THE COURT: Go ahead.

14 MS. DIGIACOMO: All right. Not at this time. Okay. And
15 then last -- no, not lastly. I take that back.

16 THE COURT: 242, 3 --

17 MS. DIGIACOMO: 244 is not --

18 THE COURT: -- 5, 6, and 7 are all in.

19 MS. DIGIACOMO: I'm not moving at this time.

20 THE COURT: 244, no foundation.

21 MS. DIGIACOMO: Okay.

22 BY MS. DIGIACOMO:

23 Q Now, showing you what's been marked for
24 identification as State's Proposed Exhibit 248. Do you
25 recognize anything in that photograph?

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1 A Yes, I do.

2 Q What do you recognize?

3 A The three huge cells.

4 Q All right. And these fairly and accurately depict
5 three of the cells that you had taken from your office back in
6 2005?

7 A Yes, they are.

8 MS. DIGIACOMO: I'd move for admission of State's
9 Proposed Exhibit 248.

10 THE COURT: Any objection, Mr. Hart?

11 MR. HART: No, Your Honor.

12 THE COURT: 248 will be admitted.

13 [State's Exhibit 248 Admitted]

14 BY MS. DIGIACOMO:

15 Q And now, lastly, I'm going to show you State's
16 Proposed Exhibits 249 to 297, keeping in mind that -- 255 is
17 another picture of the same one that you said you didn't
18 recognize?

19 A That is correct.

20 Q Okay. So I'm not going to ask you about that. I'm
21 going to ask you about State's Proposed Exhibit 249 through
22 254, and then 256 through 297.

23 A Okay.

24 Q If you could just -- actually, keep these separate.
25 Flip through these two piles and let me know what you

1 recognize.

2 A This one I recognize.

3 Q Okay.

4 A This one I recognize.

5 Q All right.

6 A This one I recognize.

7 Q And the three that you picked out, which are State's
8 Proposed Exhibits 249, 251, and 253, they fairly and
9 accurately depict your photographs?

10 A Positively.

11 Q All right.

12 MS. DIGIACOMO: I'd move for admission of those three.

13 THE COURT: Any objection?

14 MR. HART: No objection.

15 THE COURT: Admitted.

16 [State's Exhibits 249, 251, and 253 Admitted]

17 BY MS. DIGIACOMO:

18 Q Now, sir, if you could flip through these.

19 [Court to Clerk]

20 THE WITNESS: This one is correct. These are correct.
21 This is correct. This is correct. This is correct with the
22 exception of that one picture again in the middle --

23 BY MS. DIGIACOMO:

24 Q Okay.

25 A -- that I'm not privy to.

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1 Q Okay.

2 A These are correct. This is correct. This is
3 correct. This is not correct.

4 Q Okay.

5 A That is correct. This is correct. This is correct.
6 This is correct. This is correct. This is correct. These
7 are all correct in that photo.

8 Q With the exception of the one in the middle?

9 A Oh, no. I didn't see the bottom of it. No. That
10 is correct.

11 Q Okay. So --

12 A I didn't see the bottom.

13 Q That's okay.

14 A You only showed half of it. I apologize.

15 Q Let me go back.

16 MS. DIGIACOMO: And for the record, we are talking
17 about --

18 THE WITNESS: I just saw the top. I didn't see the
19 bottom.

20 MS. DIGIACOMO: We are talking about State's Exhibit 272.

21 THE WITNESS: That is correct.

22 BY MS. DIGIACOMO:

23 Q That is yours?

24 A Yes, it is.

25 Q Okay.

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1 A I didn't bottom. It was too dark.

2 Q Okay. So everything then in State's Proposed
3 Exhibit 286 is correct?

4 A 100 percent.

5 Q Okay.

6 A This is 100 percent correct. This is correct. This
7 is correct. This is correct. This is correct. And these are
8 all correct.

9 Q Okay. So now -- all right. All of the ones that
10 you just said were correct, they're correct photographs that
11 fairly and accurately depict the photographs that you --

12 A Those --

13 Q -- those that you had taken?

14 A Those came from our office.

15 Q Okay.

16 MS. DIGIACOMO: Your Honor, then I'm going to move for
17 admission of State's Proposed Exhibit 257, 259, 261, 263, 265,
18 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 287,
19 289, 291, 293, 295, and 297.

20 THE COURT: Any objection?

21 MR. HART: No, Your Honor.

22 THE COURT: Admitted.

23 [State's Exhibits 257, 259, 261, 263, 265, 266, 268, 270,
24 272, 274, 276, 278, 280, 282, 284, 286, 287, 289, 291, 293,
25 295, and 297 Admitted]

1 [Court to Clerk]

2 THE COURT: And then those that are not moved are
3 obviously not admitted. Go ahead.

4 MS. DIGIACOMO: Thank you, Your Honor.

5 THE COURT: Just pick out a representative sample and --

6 MS. DIGIACOMO: Oh, I will, Your Honor.

7 BY MS. DIGIACOMO:

8 Q Okay, sir. Showing you State's Exhibit 236. Can
9 you see that photograph?

10 A It's a little arduous. It's a little dark.

11 Q Let me show it to you off the screen.

12 A I think it's closer this way, I believe. Thank you.

13 Q Okay. Well, look -- pick out which one is yours,
14 and then I'll put it on the screen so you can point it out to
15 the jury.

16 A The one on the top left-hand corner, and possibly
17 that one. Other than -- the rest of them I don't believe are
18 ours.

19 Q Okay. So -- but the ones that you identified at the
20 evidence vault are definitely yours?

21 A Yes.

22 Q Okay. So putting 236 on the screen, you pointed to
23 this photograph here?

24 A That is correct.

25 Q Okay. And then, possibly, this one down here?

1 A I'm pointing here.

2 Q Can you touch the screen?

3 A Oh, I'm sorry.

4 Q If you touch the screen, the jury can see it too.

5 A Oh, okay. Excuse me.

6 Q Now this photograph, it's of a clown, I believe,
7 that's in the top left corner. Do you know how long ago you
8 got that?

9 A Can you bring me the picture, please? I'm sorry.
10 It's --

11 Q No. It's okay.

12 A It's difficult on there.

13 Q It's hard to see on the screen.

14 A Early '80s.

15 Q Okay. Do you remember how much you paid for it?

16 A Guestimately, about \$600 to -- five, \$600 at that
17 time.

18 Q Okay. And now, showing you State's Exhibit 237.
19 Can you point out to the jury in this photograph which are
20 your cells?

21 A Once again --

22 THE COURT: Those pictures are awful dark.

23 THE WITNESS: I beg the indifference. It's too dark on
24 this screen here.

25

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1 BY MS. DIGIACOMO:

2 Q It is.

3 A Oops.

4 Q Sorry.

5 A I believe every picture on this photograph is ours.

6 Q Okay. Is it fair to say that this one over here on
7 the right side is the same one we just looked at in the other
8 photograph, 236?

9 A Yes.

10 Q Okay. Now all of these cartoon cells that we're
11 looking at here, what are the -- what did you pay for those?

12 A Well, they were bought in the early '80s, so it's
13 over 20 years. I got them in Ellicott City, Maryland from a
14 store that was going out of business, and it was a cash
15 transaction for the whole minutia of pictures. And to the
16 best of my knowledge, it was somewhere around \$8-10,000 for
17 everything.

18 Q Okay. And then showing you 239. Was this included?
19 Can you see this with the --

20 A Yes.

21 Q Is this included in that?

22 A Yes.

23 Q Or is it fair to say all the cells were included?

24 A Yes.

25 Q Now showing State's Exhibit Number 41. This isn't a

1 picture of cells. It's a different kind of picture. Can you
2 see that or no? All right. I'll walk up.

3 A I'm sorry. It's just it's very dark on there. On
4 this particular picture, the only one that I believe is ours
5 is the eagle.

6 Q Okay.

7 [Counsel Confer]

8 BY MS. DIGIACOMO:

9 Q Is that better? Oh, that is better.

10 A Yeah. Just the --

11 Q So this eagle photograph?

12 A That's the only one.

13 Q Was that part of the group that you paid for?

14 A Yes. That's the only picture that I recognize.

15 Q I'm showing you State's Exhibit Number 242.

16 A Yes. I have three other pictures like that at home.
17 They're all done by an artist by the name of Cronus
18 [phonetic], and they're all artist proofs.

19 Q And how much did you pay for this one?

20 A Those were a little more expensive. They did not
21 come from the same source. They came out of New York. They
22 were just under \$1000 each about 20 some years ago.

23 Q Okay.

24 A And there were like four or five. I think I still
25 have two or three at home.

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1 Q And now, showing you 243. What's depicted here?
2 Another one of yours?

3 A Yes. Yes. That's a group we have. It's -- they're
4 all sort of gaming ones that -- some are different games.

5 Q And was this part of a group buy?

6 A This was not part of the originals.

7 Q And what was the cost of this? What did you pay?

8 A That was somewhere in that \$7-800 bracket, give or
9 take.

10 Q I'm showing you State's 245.

11 A That was purchased somewhere at an auction by me
12 back in Maryland. That would be somewhere around the \$4-600
13 bracket.

14 Q And here's State's 246.

15 A That's the same as -- the same artist.

16 Q That's the same at 242?

17 A That's Cronus. Yes.

18 Q Okay.

19 A That's the same artist.

20 Q And so, you -- I think you said just under 1000 is
21 what you paid for it?

22 A That's just under \$1000.

23 Q And then showing you these three cells that are in
24 248. Was this part of the package that you bought?

25 A Yes, positively.

1 MR. HART: Do you know the number on that?

2 THE COURT: 248.

3 MS. DIGIACOMO: 248. Do you want it?

4 MR. HART: No. I just didn't catch it.

5 MS. DIGIACOMO: Okay.

6 BY MS. DIGIACOMO:

7 Q Now, sir, you went down to the evidence vault and
8 you viewed all the photographs we've been talking about in
9 person, true? You went down to the evidence vault and you
10 viewed them all?

11 A Oh, yes. That is correct.

12 Q Okay.

13 A I was there twice.

14 Q And after you were done viewing them, did they take
15 your picture with all of them?

16 A Yes.

17 Q All right. Now you said that May went with you one
18 time?

19 A No. May went to the evidence vault with me twice.

20 Q She did go twice. All right. Now I'm going to show
21 you State's Exhibit Number 265. Was this the first time you
22 went?

23 A I can't honestly answer that for you --

24 Q Okay. But this --

25 A -- because there were photographs taken both times.

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1 Q Okay.

2 A So I have no way of being honest -- totally honest
3 with you about that.

4 Q Okay. But this is one of the times you went?

5 A Yes.

6 Q And you identified all of the pictures that are in
7 the picture with you with the exception, I believe, this
8 eclipse one you said that you don't recall.

9 A That is correct.

10 Q But is it possible May is the one that identified
11 that? Is that why it's in the photo?

12 A More than likely, yes.

13 Q Okay. And then lastly, I'm going to show you
14 State's Exhibit 297.

15 A Those are all ours.

16 Q Okay. So you went down a second time, and these are
17 the ones that you and May then identified?

18 A Yeah. I don't -- I think that may have been the
19 second time down, because the first time they didn't have the
20 eagle picture. So I believe it was the second -- that was the
21 second trip.

22 MS. DIGIACOMO: I'll pass the witness, Your Honor.

23 THE COURT: Questions, Ms. Tramel.
24
25

CROSS-EXAMINATION

BY MS. TRAMEL:

Q Mr. Colton, you hadn't seen all of these items for 18 months; is that correct?

A No, but I saw them for over 20 years.

Q And you don't know who took all of these items or property; is that correct?

A Have no idea.

Q And all of these items were purchased in the early '80s, correct?

A That is correct.

Q So all of the values you gave us were for what you paid for them in the early '80s, correct?

A Those were guesstimate numbers that were -- that I paid for them, approximately, in the early '80s.

Q And did you ever have them appraised since that time?

A No. We never thought much about it, because they were in Baltimore for 14 years, then they were in Vegas for -- before they were taken for 11 years.

Q Okay. So it's safe to say you don't remember exactly what you paid for any of these items, correct?

A No. I'd have to give you a round number. I'm very sorry.

MS. TRAMEL: Court's indulgence.

1 [Counsel Confer]

2 BY MS. TRAMEL:

3 Q Mr. Colton, you said that you had bought a group, a
4 cluster of items; is that correct? The cartoon cells, I
5 believe, were a part of that, the eagle picture.

6 A They all came from one resource in Maryland in a
7 city called Ellicott City.

8 Q Okay. And you said the value of all of those items
9 was 8 to 10,000, correct?

10 A That's what I paid, somewhere, I think my
11 recollection tells me.

12 Q Okay. And were there any items that were in that
13 cluster that you bought that weren't recovered?

14 A You know, to the best of my knowledge, I cannot give
15 you an honest answer.

16 MS. TRAMEL: That's all I have, Your Honor. Thank you.

17 THE COURT: Anything else?

18 MS. DIGIACOMO: I just --

19 BY MS. DIGIACOMO:

20 Q You said you could only estimate, you can't give a
21 solid answer as to how much you paid because it's been so
22 long. Is the total sum of all of these photos that you picked
23 out as being yours more than \$2500 that you paid for it?

24 A Oh, positively.

25 MS. DIGIACOMO: Nothing further.

1 THE COURT: Okay. Thank you, Mr. Colton. You're
2 excused. Appreciate your testimony.

3 THE WITNESS: You're welcome, Your Honor.

4 THE COURT: Call your next witness.

5 MS. SMALL: Phillip Holec.

6 THE COURT: Hollock [sic] or Pollock.

7 MS. SMALL: Holec with an H, Your Honor. It's Count 22.

8 THE COURT: Okay.

9 [Pause]

10 THE COURT: Come up here, Mr. Holec. Sir, remain
11 standing and raise your right hand, please.

12 PHILLIP HOLEC, STATE'S WITNESS, SWORN

13 THE COURT: Go ahead, Ms. Small. Sir, state your name
14 and spell your name for the court reporter.

15 THE WITNESS: Phillip Holec, P-h-i-l-l-i-p, H-o-l-e-c.

16 DIRECT EXAMINATION

17 BY MS. SMALL:

18 Q Phillip, who do you work for?

19 A Family Music Centers.

20 Q And how long have you worked for Family Music
21 Center?

22 A Five-and-a-half years.

23 Q Where's it located?

24 A 8125 West Sahara.

25 Q Okay. What do you do for them?

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1 A Music retail sales.

2 Q Okay. So you sell the items that are in the music
3 store; is that correct?

4 A Yes.

5 Q So you would know the value of the items that are in
6 the store?

7 A Correct.

8 Q Okay. I'm going to go ahead and draw your attention
9 to November 29th, 2002. Do you recall working on that day at
10 the Family Music Store?

11 A Yes.

12 Q And when you got in to work, what, if anything,
13 unusual had happened?

14 A There'd obviously been a break-in. There were a
15 large quantity of musical items missing, primarily guitars,
16 some keyboards, and other audio equipment.

17 Q Okay. And did you do an inventory at that time to
18 determine what exactly had been taken from the store?

19 A Yes.

20 Q Okay. Did you call the police?

21 A I did not personally. The storeowner, James Mason,
22 did.

23 Q Okay. And did police come out to the store?

24 A Yes.

25 Q Did you give the police a report based on what you

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1 had itemized had been missing from the store at that time?

2 A Yes.

3 Q Okay. I'm going to go ahead then and draw your
4 attention to November 6th of 2006. Did you receive a call
5 from someone at that time about, possibly, they had recovered
6 some items that had been taken from the store from that
7 burglary?

8 A Yes.

9 Q Okay. What did you do in response to that call?

10 A I went out to a home located off of Charleston and
11 Cimmaron, and identified about six instruments that had been
12 taken from the November 29th incident.

13 Q Okay. And was that -- the address 1504 Cutler?

14 A Yes.

15 Q Okay.

16 MS. SMALL: Drawing the Court's attention to what's been
17 pre-marked as State's Exhibits 357 to 361.

18 [Counsel Confer]

19 BY MS. SMALL:

20 Q I'm showing you what's going to be pre-marked as 357
21 to 361. If you can just flip through those, look at them, and
22 when you're done, look up at me.

23 [Pause]

24 BY MS. SMALL:

25 Q Do you recognize what's depicted in those photos?

1 A Yes.

2 Q What's depicted in those photos?

3 A Electric guitars and basses.

4 Q Okay. And how do you know that? I mean what
5 significance does that hold to you?

6 A Items that we sell in our store.

7 Q Okay. Were those items that had been taken from the
8 store?

9 A Yes.

10 Q Okay. And are those items that you recovered from
11 the Cutler residence?

12 A Yes, correct.

13 Q Do those pictures fairly and accurately depict the
14 guitars that you recovered from the Cutler residence?

15 A Completely.

16 Q Thank you.

17 MS. SMALL: Move to enter, Your Honor.

18 THE COURT: Any objection?

19 MR. HART: No objection.

20 THE COURT: Admitted.

21 [State's Exhibits 357 through 361 Admitted]

22 MS. TRAMEL: I'm sorry. The numbers again?

23 THE COURT: 357 through 361.

24 BY MS. SMALL:

25 Q Looking at State's 357, can you point out to us what

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1 in that picture was taken from your store?

2 A On the bottom left, that is a five-string bass
3 guitar. And I believe that is the only one in that picture.

4 Q Okay. And that is -- you recovered that from the
5 Cutler residence; is that correct?

6 A Yes.

7 Q Okay. And where did you recover it in the Cutler
8 residence?

9 A I don't remember the exact spot at the time. I
10 believe that they had them laid out in the garage for us to
11 look at.

12 Q Okay. Did you go into the --

13 A . And some outside.

14 Q Did you go into the house when you went out there?

15 A Yes.

16 Q Okay. How big was the house?

17 A Maybe around 2000 square feet.

18 Q Okay. Was it a one-story?

19 A Two-story.

20 Q Looking at State's 358, what's depicted in there if
21 you can tell us?

22 A Acoustic guitar, a bass guitar. I'm not sure if the
23 center one is electric. I think that's another bass guitar.

24 Q Okay. Are those items that have been taken from
25 your store --

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1 A Yes.

2 Q -- Family Music Center? And I'm going to show you
3 359. You were talking about that they were laid out for you.
4 Is this a depiction of that?

5 A Correct. Yeah, absolutely.

6 Q So what are we looking at? Are we looking at the
7 front of the house that you went to to --

8 A It's outside in the -- right in the front by the
9 driveway.

10 Q Okay. And that's the Cutler residence that you went
11 to identify --

12 A Yes.

13 Q -- the musical instruments? And looking at all of
14 those instruments, those instruments were taken from Family
15 Music Center, is that correct, out of that burglary that took
16 place?

17 A Correct.

18 Q What's the value of each one of those?

19 A Any -- ranging from wholesale cost of 500 to up to
20 2000. Retail value would be up to three times that, and that
21 was the value of it at the time, in 2002. That's obviously
22 probably increased by a bit by now.

23 Q Guitars can be kind of generic. How did you
24 determine that these guitars belonged to the Family Music
25 Center?

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 16 2015 09:03 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DAIMON MONROE,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

DOCKET NO.: 65827

D.Ct. Case No.:

APPELLANT'S APPENDIX

Vol. 1
(Pages 0001-0250)

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ORIGINAL

1 IND

2 DAVID ROGER
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FILED IN OPEN COURT
MAY 13 2008 20

CHARLES J. SHORT
CLERK OF THE COURT

BY  DEPUTY
TINA HURD

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

13 -vs-

15 DAIMON MONROE, aka
16 Daimon Devi Hoyt,
17 #0715429
18 Defendant(s).

Case No. C228752
Dept. No. VII

SECOND
AMENDED
INDICTMENT

19 STATE OF NEVADA }
20 COUNTY OF CLARK } ss.

21 The Defendant above named, DAIMON MONROE, aka Daimon Devi Hoyt, accused
22 by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO POSSESS STOLEN
23 PROPERTY AND/OR TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.275,
24 199.480); and POSSESSION OF STOLEN PROPERTY (Felony - NRS 205.275),
25 committed at and within the County of Clark, State of Nevada, on or between September 20,
26 2006 and November 27, 2006, as follows:
27
28

1 COUNT 1 – CONSPIRACY TO POSSESS STOLEN PROPERTY AND/OR TO COMMIT
2 BURGLARY

3 did then and there meet with BRYAN FERGASON, aka Bryan Michael Fergason,
4 and/or ROBERT HOLMES and between themselves, and each of them with the other,
5 wilfully and unlawfully conspire and agree to commit a crime, to-wit: possession of stolen
6 property and/or burglary, and in furtherance of said conspiracy, Defendants did commit the
7 acts as set forth in Count 1 through 27, said acts being incorporated by this reference as
8 though fully set forth herein, and/or by Defendants committing burglaries of Anku Crystal
9 Palace and Just for Kids Dentistry on September 24, 2007, and/or Defendants did continue
10 after committing said acts in Counts 1 through 27 to conceal and/or hide the proceeds and/or
11 stolen property of Defendants acts.

12 COUNT 2 - POSSESSION OF STOLEN PROPERTY

13 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
14 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
15 DESERT ROCK SPORTS, to-wit: sleeping bags, clothing and/or camping equipment, which
16 Defendant knew, or had reason to believe, had been stolen.

17 COUNT 3 - POSSESSION OF STOLEN PROPERTY

18 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
19 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from A
20 TOUCH OF VEGAS, to-wit: framed Woodstock picture and ticket, memorabilia and/or
21 artwork, which Defendant knew, or had reason to believe, had been stolen.

22 COUNT 4 – POSSESSION OF STOLEN PROPERTY

23 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
24 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
25 ANNIE LEE GALLERY, to-wit: original artwork and/or paintings, which Defendant knew,
26 or had reason to believe, had been stolen.

27 COUNT 5 – POSSESSION OF STOLEN PROPERTY

28 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a

1 value of \$250.00, or more, lawful money of the United States, wrongfully taken from SPA
2 DEPOT, to-wit: spa chemicals, which Defendant knew, or had reason to believe, had been
3 stolen.

4 COUNT 6 – POSSESSION OF STOLEN PROPERTY

5 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
6 value of \$250.00, or more, lawful money of the United States, wrongfully taken from SEE'S
7 CANDIES, to-wit: chocolate, lollipops and/or boxed candy, which Defendant knew, or had
8 reason to believe, had been stolen.

9 COUNT 7 – POSSESSION OF STOLEN PROPERTY

10 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
11 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
12 MOUNTAIN SPRINGS WELLNESS, to-wit: oxygen concentrator machine, hyperbaric
13 chamber, compressor and/or tan massage chair, which Defendant knew, or had reason to
14 believe, had been stolen.

15 COUNT 8 – POSSESSION OF STOLEN PROPERTY

16 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
17 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
18 LAND BARON INVESTMENTS, to-wit: computer, wide screen monitor and/or
19 memorabilia pictures, which Defendant knew, or had reason to believe, had been stolen.

20 COUNT 9 – POSSESSION OF STOLEN PROPERTY

21 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
22 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
23 ECON DIVISION OF ABSOCOLD CORP., to-wit: Sub-Zero commercial
24 refrigerator/freezer, Sub-Zero freezer, ice makers and/or Kitchenaid washer and dryer with
25 pedestals, which Defendant knew, or had reason to believe, had been stolen.

26 COUNT 10 – POSSESSION OF STOLEN PROPERTY

27 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
28 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from

1 MILTON HOMER FURNISHINGS, to-wit: furniture, lamps, plants, statues, artwork,
2 paintings and/or home accessories, which Defendant knew, or had reason to believe, had
3 been stolen.

4 COUNT 11 - POSSESSION OF STOLEN PROPERTY

5 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
6 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from CAL
7 SPAS, to-wit: spa, which Defendant knew, or had reason to believe, had been stolen.

8 COUNT 12 - POSSESSION OF STOLEN PROPERTY

9 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
10 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
11 HOSHIZAKI WESTERN DISTRIBUTION, to-wit: ice compressor, Serial No. Q04228D,
12 which Defendant knew, or had reason to believe, had been stolen.

13 COUNT 13 - POSSESSION OF STOLEN PROPERTY

14 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
15 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from H.P.
16 MEDIA GROUP, to-wit: Marantz Digial Receiver bearing Serial No. MZ000506001583,
17 Marantz Digial Receiver bearing Serial No. MZ000507004989, Marantz DVD player
18 bearing Serial No. MZ00050902592, JBL Surround Sound Speakers bearing Serial No.
19 HA009102309, JBL Surround Sound Speakers bearing Serial No. HA009102311, JBL
20 Surround Sound Speakers bearing Serial No. HA009102414, JBL Surround Speakers
21 bearing Serial No. HA009102415, which Defendant knew, or had reason to believe, had
22 been stolen.

23 COUNT 14 - POSSESSION OF STOLEN PROPERTY

24 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
25 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from KDS
26 CPA, to-wit: framed matchbook collection, framed Norman Rockwell silver proof set,
27 framed Norman Rockwell print with stamps and/or framed signed Joe Namath Jersey, which
28 Defendant knew, or had reason to believe, had been stolen.

1 COUNT 15 – POSSESSION OF STOLEN PROPERTY

NO EVALUATION

2 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
3 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from SEE
4 AMERICA, to-wit: cartoon cells and/or clown pictures/artwork, which Defendant knew, or
5 had reason to believe, had been stolen.

6 COUNT 16 - POSSESSION OF STOLEN PROPERTY

7 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
8 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
9 McNEILLY ART STUDIO, to-wit: original artwork, which Defendant knew, or had reason
10 to believe, had been stolen.

11 COUNT 17 – POSSESSION OF STOLEN PROPERTY

12 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
13 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
14 GRAND CANYON CONSTRUCTION and/or ECON DIVISION OF ABSOCOLD CORP.,
15 to-wit: Viking 30" electric cook top bearing Model No. DECU105-4BSB and/or 42" Viking
16 Refridgerator bearing Model No. DDSB423SS, which Defendant knew, or had reason to
17 believe, had been stolen.

18 COUNT 18 – POSSESSION OF STOLEN PROPERTY

19 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
20 value of \$250.00, or more, lawful money of the United States, wrongfully taken from DR.
21 RICHARD GROOM, to-wit: stork painting/artwork entitled "Docs Race with a Stork,"
22 which Defendant knew, or had reason to believe, had been stolen.

23 COUNT 19 – POSSESSION OF STOLEN PROPERTY

24 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
25 value of \$250.00, or more, lawful money of the United States, wrongfully taken from
26 PLAZA CAFE, to-wit: commercial meat slicer, which Defendant knew, or had reason to
27 believe, had been stolen.

1 COUNT 20 – POSSESSION OF STOLEN PROPERTY

2 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
3 value of \$250.00, or more, lawful money of the United States, wrongfully taken from
OK 4 COMPLETE COSMETIC SURGERY, to-wit: two (2) large framed original tapestries,
5 which Defendant knew, or had reason to believe, had been stolen.

6 COUNT 21 – POSSESSION OF STOLEN PROPERTY

7 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
8 value of \$250.00, or more, lawful money of the United States, wrongfully taken from DVD
9 UNLIMITED, to-wit: two (2) computer speakers bearing Serial No. 29SP5B1129 and/or
OK 10 AKAI MPC 2000 MIDI Production Center, which Defendant knew, or had reason to believe,
11 had been stolen.

12 COUNT 22 – POSSESSION OF STOLEN PROPERTY

13 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
OK 14 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
15 FAMILY MUSIC CENTER, to-wit: guitars, which Defendant knew, or had reason to
16 believe, had been stolen.

17 COUNT 23 – POSSESSION OF STOLEN PROPERTY

18 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
19 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
OK 20 BRADY INDUSTRIES, to-wit: commercial vacuum, floor scrubber and/or floor buffer,
21 which Defendant knew, or had reason to believe, had been stolen.

22 COUNT 24 – POSSESSION OF STOLEN PROPERTY

23 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
OK 24 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
25 GLOBAL ENTERTAINMENT, INC., to-wit: framed albums, posters and/or framed map of
26 world, which Defendant knew, or had reason to believe, had been stolen.

27 COUNT 25 – POSSESSION OF STOLEN PROPERTY

OK 28 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a

1 value of \$250.00, or more, lawful money of the United States, wrongfully taken from
2 FURNITURE MARKDOWNS, to-wit: artwork and/or furniture, which Defendant knew, or
3 had reason to believe, had been stolen.

4 COUNT 26 – POSSESSION OF STOLEN PROPERTY

5 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
6 value of \$2500.00, or more, lawful money of the United States, wrongfully taken from
7 PLATINUM COLLECTIBLES, to-wit: signed guitars, signed memorabilia and/or posters,
8 which Defendant knew, or had reason to believe, had been stolen.

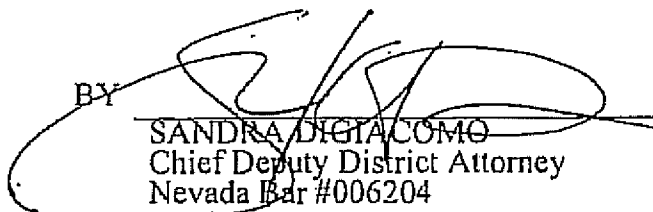
9 COUNT 27 – POSSESSION OF STOLEN PROPERTY

10 did wilfully, unlawfully, and feloniously, for their own gain, possess property of a
11 value of \$250.00, or more, lawful money of the United States, wrongfully taken from
12 RIGHT ON BEAT PRODUCTIONS, to-wit: Novation super base station, Serial No.
13 020914, Novation drum station, Serial No. 008485, Ensoniq effects processor, which
14 Defendant knew, or had reason to believe, had been stolen.

15 DATED this 13th day of May, 2008.

16
17 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

18
19
20 BY


21 SANDRA DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204
22
23
24
25
26
27
28

Names of witnesses testifying before the Grand Jury:

MICHAELS, SCOTT, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101

KRATZ, BRYAN, CAL SPAS, 2010 RED ROCK ST., LVN 89146

LEE, ANNIE, 4030 E POST RD, #101, LVNN 89120

MCQUEEN, DAVID, 3199 E. WARM SPRINGS, LVN 89120

GIANNEILLA, MARKOS, MILTON HOMER FURNISHINGS, 5955 VALLEY VIEW, LVN 89118

THOMPSON, JILL, MILTON HOMER FURNISHINGS, 5955 VALLEY VIEW, LVN 89118

COLTON, ROBERT, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101

KENNEDY, JANET, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101

VINCENT, JAMES, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101

SALINGER, KURT, KDS CPA, 1601 S. RAINBOW BLVD., #220/B, LVN 89146

WALDRON, TODD, MTN SPRINGS WELLNESS, 6480 SPRING MTN RD., #1, LVN 89103

BELLER, JAMES, 5275 S. DURANGO DR., LVN 89113

PELTIER, KEVIN, C/O CCDA, 301 E. CLARK PLACE, LVN 89101

TERRY, AMANDA, C/O CCDA, 301 E. CLARK PLACE, LVN 89101

GORDON, STEPHEN DR, ADDRESS UNKNOWN

DELACRUZ, ESTRELLA, SPA DEPOT, 8350 W. TROPICANA AVE., LVN 89147

CAYNE, ROBERT, GLOBAL ENTERTAINMENT, 6160 W. SAHARA AVE, LVN 89146

HOLEC, PHILLIP, 8125 W. SAHARA AVE., #210, LVN 89117

FRIEDRICHS, KATE, SEES CANDIES, 10300 W. CHARLESTON #27, LVN 89135

CARTER, CHRISTINE, 10300 W. CHARLESTON #27, LVN 89135

HOBBINS, WILLIAMS, 8221 W. CHARLESTON BLVD. #106, LVN 89117

GRAVES, TRAVIS, DESERT ROCK SPORTS, 8221 CHARLESTON BLVD #106, LVN 89117

DRUMMOND, DAVID, BRADY INDUSTRIES, 7055 LINDELL, LVN 89118

VELTRE, KEITH, PLATINUM COLLECTIBLES, 1172 SPENCER POINT DR.,
HENDERSON, NV 89074

1 GROOM, RICHARD DR., 1950 PINTO LN, LVN 89106
2 FOREMAN, STEPHEN, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
3 TREVARTHEN, TONYA, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
4 IVES, DANIEL, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
5 WINTERS, CLAIRE, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
6 WALKER, BRAD, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
7 ASHLEY, JUDI, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
8 DENNING, ANGEL, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
9 McNEILLY, MICHAEL, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
10 MP4896 KING, MICHAEL D
11 HATCHCOCK, ROBERT, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN 89101
12 MP4896 KING, MICHAEL D
13 LANTSBERGER, MICHAEL, 420 28TH AVE SE, WATERTOWN, SD 57201
14 MOSS, ROGER, HOSHIZAKI WESTER DIST., 5160 S. VALLEY IEW #108, LVN
89107
15 MP3957 BRITT, WESLEY G
16 MP3594 JOHNSON, DARRYL
17 MP3794 FRANC, DALE
18 MP3696 MORRIS, JON
19 MP4498 SCHOENING, TIMOTHY
20 MP6184 CHURCHES, JAMES M
21 MP3399 FLAHERTY, DANIEL P
22 MP4920 HANNERS, ALLEN
23 MP5318 MAUNTEL, MICHAEL
24 MP3594 JOHNSON, DARRYL
25 COLTON, ROBERT, C/O CCDA, MVU, 301 E. CLARK PLACE, LVN
26 MP3698 SIWY, JAMES
27 MP6004 HOLL, JULIE
28 PAULSON, PHYLLIS, FURNITURE MARKDOWN, 6000 S. EASTERN AVE., LVN

89120

MP4660 MACDONALD, JERRY

MP6225 GIANNONE, JOSEPH M

MP4311 NICKELL, BRADLEY J

Additional witnesses known to the District Attorney at the time of filing this Indictment:

MP2566 LEE, THEODORE B

MP2993 ELLIOTT, MARIA

MP3290 LEE, RUSSEL D

MP3400 SULLIVAN, KRIK L

MP3661 HOLMAN, WAYNE

MP3956 RIESSELMANN, THOMAS

MP4356 D'ANGELO, BARTHOLOMEW

MP4489 BRUTCH, ERIC

MP4722 WOOTEN, CYNTHIA

MP4757 MIZUSAKI, JAMES B

MP4784 DEPAULIS, RICHARD

MP4910 SUMMERS, STEVEN

MP4979 HESTAND, PAUL D

MP5099 JONES, EDWARD

MP5255 RADKE, TROY E

MP5290 LILIENTHAL, CRAIG

MP5789 ARCHER, CHRISTOPHER

MP5850 HERNANDEZHERNANDEZ, JOSE

MP5851 MORGAN, ERNEST E

MP6004 HAGER, JULIE

MP6930 SANTAROSSA, BRIAN

MP7414 BENSON, TROY J

MP7533 ARBOREEN, DAVID J.

1 MP8054 WEST, BOBBIE
2 MP8264 SALISBURY, KENNETH D
3 MP8459 VEGA, FRANCISCA
4 GALLARIES, ANNIE LEE, 4030 E POST RD. #101, LVN 89120
5 NARA, RICHARD, 5030 SPRING MTN RD. #3, LVN 89146
6 PETERSON, BRITTANY, MTN SPRINGS WELLNESS, 6480 SPRING MTN RD, #1,
LVN 89103
7 COR-DESERT ROCK SPORTS, 8221 W. CHARLESTON BLVD, #106, LVN 89117
8 COR-MTN SPRINGS WELLNESS, 6480 SPRING MTN RD., #1, LVN 89103
9 COR-FAMILY MUSIC CENTER, 8125 W SAHARA AVE#210, LAS VEGAS, NV 89117
10 RYE, HOWARD, FAMILY MUSIC CENTER, 8125 W. SAHARA AVE., #210 LVN 89117
11 COR-BRADY INDUSTRIES, 7055 LINDELL, LVN 89118
12 ENGELKE, JOHN, BRADY INDUSTRIES, 7055 LINDELL, LVN 89118
13 SIMPSON, MICHELLE, 3199 E. WARM SPRINGS RD., LVN 89120
14 MCNEILLY, MICHAEL, 1300 SUMMIT DRIVE, BEVERLY HILLS, CA 90210
15 VELTRE, BRIAN, PLATINUM COLLECTIBLES, 1172 SPENCER POOINT DR.,
16 HENDERSON, NV 89074
17 COR-SEES CANDIES, 10300 W. CHARLESTON #27, LVN 89135
18 KARNS, JASON, CAL SPAS, 7770 INDUSTRIAL RD #306, LVN 89139
19 COR-CAL SPAS, 2010 RED ROCK ST., LVN 89146
20 COR-LAND BARON INVESTMENT, 5275 S. DURANGO, LVN 89133
21 TANON, ANNETTE, 5275 S. DURANGO, LVN 89133
22 COR-ECON DIV OF ABSOCOLD, 245 N. STEPHANIE, HENDERSON, NV 89012
23 MCNEIL, DON, ECON DIV OF ABSOCOLD, 245 N. STEPHANIE, HENDERSON, NV
89012
24 DUENAS, JOSE, ECON DIV OF ABSOCOLD, 245 N. STEPHANIE, HENDERSON, NV
25 89012
26 COR-FURNITURE MARKDOWN, 6000 S. EASTERN AVE., LVN 89120
27 TERRY, AMANDA, BRASS HILL CT., LVN 89122
LAW, ROBERT, SEVEN STAR RENTALS, 7350 W. CHEYENNE, LVN 89129
28 HOLLY, ANTHONY, 5081 N. RAINBOW BLVD., #108, LVN 89130

1 KENNEDY, PAUL, GRAND CANYON CONSTRUCTION, 8208 TODD NEIL CT., LVN
89117

2 HECK, MICHAEL, HP MEDIA GROUP, 3725 W. TECO AVE #8, LVN 89118

3 COR-KDS CPA, 1601 S. RAINBOW BLVD. #220/B, LVN 89146

4 COR-HP MEDIA GROUP, 3725 W. TECO AVE., #8, LVN 89118

5 COR-GRAND CANYON CONSTRUCTION, 8208 TODD NEIL CT. LVN 89117

6 COR-RIGHT ON BEAT PRODUCT, 1500 E. TROPICANA AVE #101, LVN 89119

7 HATHCOCK, ROBERT, 3513 CAPTAIN KIRK, NLVN 89031

8 COR-SEE AMERICA, 3140 W. DURANGO #103, LVN 89117

9 COR-SEVEN STAR RENTALS, 7350 W. CHEYENNE, LVN 89129

10 COR-GLOBAL ENTERTAINMENT, 6160 W. SAHARA AVE, LVN 89146

11 COR-UPFRONT RECORDING STUDIO, 5329 S. CAMERON ST., LVN 89118

12 TORRES, JOHN, 102 MEDFORD CT., LONG BEACH, CA 90804

13 COR-DVD UNLIMITED

14 STAMATIS, PAUL, SEE AMERICA, 3140 W. DURANGO #103; LVN 89117

15 FAFELOS, MAE, SEE AMERICA, 3140 W. DURANGO #103, LVN 89117

16 COR-JONAS PRODUCTIONS, 6295 MCLEOD DR#14, LVN 89121

17 DODKIN, GREGORY, JONAS PRODUCTIONS, 6295 MCLEOD DR#14, LVN 89121

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25 06AGJ101ABCD/06F21801ABC/06F22662X/ts
26 LVMPD 061106-0453; 060709-0524;
27 0609202198; 0202021028; 0203240335;
0408261484; 0611062190; 9601231528
28 PSP; CONSP PSP/COMMIT BURG - F/GM

ORIGINAL

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

DAIMON MONROE,

Defendant.

CASE NO. C-228752

DEPT. VII

CLERK OF THE COURT

JAN 20 2 06 PM '09

FILED

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

MONDAY, MAY 12, 2008

REPORTER'S PARTIAL TRANSCRIPT
TRIAL BY JURY
DAY 1 - VOLUME I

APPEARANCES:

For the Plaintiff: SANDRA A. DIGIACOMO, ESQ.
SHELLY L. SMALL, ESQ.
Deputy District Attorneys

For the Defendant: MARTY HART, ESQ.
MICHAELA E. TRAMEL, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

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00013

1 MONDAY, MAY 12, 2008 AT 9:47 A.M.

2 THE COURT: Here we go.

3 MR. HART: Sorry, Your Honor.

4 THE COURT: It's all right. State of Nevada versus
5 Daimon Monroe also known as Daimon Hoyt, Bryan Fergason, and
6 Robert Holmes. Case number C228752. We have Shelly Small,
7 Sandy DiGiacomo for the State. We have Mr. Fergason present
8 with Cynthia Dustin. We have Mr. Monroe present with Marty
9 Hart. We have Sean Sullivan on behalf of Mr. Holmes who is
10 not here. I'll waive his presence for the purpose of arguing
11 the motions, because I don't think it's necessary.

12 MR. SULLIVAN: Thank you, Judge.

13 THE COURT: I told you what I'm going to do on the trial,
14 but we'll see. I'm going to give him, you know, a few minutes
15 to come, we get to the point of jury selection, and if he's
16 not here, I'm issuing a no-bail bench warrant. I'm not
17 quashing it if he walks in five minutes later. He's going to
18 jail, he'll stay in jail, and I'll try him with Fergason
19 starting Tuesday or Wednesday of next week. If he doesn't get
20 picked up then we'll -- I'll do this trial three times.
21 That'll be the way it is.

22 All-right. We have a plethora of motions. I can
23 assure you I have read every one, and I'm prepared on every
24 one. I don't feel like I need argument, although I have a
25 couple questions on some on them, but I am willing to

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1 entertain argument on anything anybody wants to argue, so.

2 Mr. Hart -- well, I am -- I am starting with
3 Monroe --

4 MR. HART: Can we start with your questions?

5 THE COURT: -- Fergason, Holmes.

6 MR. HART: Can we start with question to the specific --

7 THE COURT: It -- it -- yeah, it was on -- okay, let
8 me -- let me tell you my --

9 MR. HART: I need a little --

10 THE COURT: Let me tell you my questions.

11 MR. HART: Thank you.

12 THE COURT: Well, let -- let -- let's just take them, and
13 I'll tell you what my tentative ruling is, and if you want to
14 argue with me that's fine, fair enough?

15 MR. HART: That's great.

16 THE COURT: Motion in limine regarding the ROP
17 detectives, there's two aspects of this. One, is just using
18 ROP detectives language and the other is the flyers.

19 On the ROP detectives, I don't see that there is
20 much prejudice on this because the way this goes down is
21 Fergason and Monroe get arrested for the burglary, you know,
22 of stolen property stuff, then they get out of jail, ROP
23 starts following them, it could well be, as far as the jury
24 knows, that the reason they're following them is they're
25 concerned they're going to re-offend after that original

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1 arrest, so, I mean, I don't know that it -- it necessarily
2 causes an inference that they've been convicted of these
3 things in the past, so I didn't see that as a problem.

4 On the other hand, I didn't see any relevance to the
5 flyers. I sort of saw that as sort of a negative against
6 Monroe without some relevance as to his guilt or innocence.

7 If you could explain that to me I could be --

8 MS. DIGIACOMO: What --

9 THE COURT: I could go the other way, but I -- I -- I --
10 my inclination was to deny that -- the reference to ROP, but
11 grant the motion as to the flyers.

12 MR. HART: Well, it --

13 MS. DIGIACOMO: And that's fine, Your Honor. With regard
14 to -- to ROP, I mean, I think that if we use, in front of the
15 jury, the fact that they're called ROP, but don't explain why,
16 I don't think they're going to know --

17 THE COURT: Right.

18 MS. DIGIACOMO: -- but if that really is referenced in
19 the jail calls where Monroe refers to them repeatedly as ROP,
20 not detectives, that's what he calls them, so.

21 THE COURT: Right, but -- but repeat offender --

22 MS. DIGIACOMO: But without the wire --

23 THE COURT: -- could be, they do the -- the Just For Kids
24 Dentistry, whatever, burglary --

25 MS. DIGIACOMO: Right, right.

1 THE COURT: -- and then we're following them to make sure
2 that they don't repeat again, and then of course --

3 MS. DIGIACOMO: Right.

4 THE COURT: -- we develop this case, so I don't see that
5 it is necessarily inferable that they have prior convictions,
6 so I think using ROP is perfectly reasonable, but it seems to
7 me that making reference to Mr. Monroe putting up flyers has a
8 prejudicial affect on Mr. Monroe without any real relevance as
9 to his guilt or innocence on this case.

10 MS. DIGIACOMO: Well, I think it shows consciousness of
11 guilt. I mean, he's on the phone calls bragging about how
12 he's able to do camera surveillance, and catch ROP, and he's
13 putting up flyers. He's even talking with Mr. Ferguson about
14 when Ferguson gets out of jail, how they're going to meet up,
15 so that ROP can't follow them.

16 I just think it ties in with the whole thing, but
17 I'll submit it to you.

18 THE COURT: Mr. Hart?

19 MR. HART: They're doing a repeat offenders program --

20 THE COURT: But you consider --

21 MR. HART: -- for this entire --

22 THE COURT: -- that that doesn't necessarily imply that
23 he's been convicted when they don't start -- the repeat
24 offenders don't intervene until they've actually been
25 arrested, and they're concerned that they're going to continue

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1 to offend.

2 MR. HART: Well, it does lead a -- just -- in my opinion,
3 more than a slight inference to a history, Your Honor.

4 This -- this case is right --

5 THE COURT: Well, how -- how is it? I mean, how's the
6 jury going to know that they're not talking about, we're
7 putting these guys on guys that have been arrested, because
8 we're concerned they're going to re-offend?

9 MR. HART: Well -- well --

10 THE COURT: ROP doesn't get involved until their original
11 arrest.

12 MR. HART: Well, on ROP detectives, the ROP program's
13 been in the media though about one of the things they're
14 trying to do to keep down the crime rate, Your Honor, so
15 anybody that's savvy reading the newspaper, listening to the
16 media, and the news will know what the ROP program is.

17 THE COURT: Well, then I'll probably let out most of the
18 jurors, because, you know, when you come in here and you ask
19 them, you know, have you heard of Charlie Manson, only maybe
20 one or 2% says, yes.

21 They -- you know, people live their lives, and
22 they're oblivious.

23 All right. The --

24 MR. HART: Um --

25 THE COURT: The -- go ahead, I'm sorry.

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1 MS. DUSTIN: And I'm going to be real quick, because I'm
2 going to join in on Mr. Hart's motion. However, it just --

3 THE COURT: Okay, here's the deal. All the joinders,
4 there's three or four joinder motions, they're all granted.

5 Each of you can join in the others. Any ruling that
6 is made will be deemed, which will affect all Defendants, and
7 that will preserve anybody's right to appeal any of those
8 issues.

9 MS. DUSTIN: However, the problem is -- is that my
10 client's never been out of jail, Your Honor, so my client
11 could not have been one of them being followed. My client has
12 always been in jail since September --

13 THE COURT: No, I understand, but the point is -- what
14 Mr. Hart says is, look, if they make reference to the repeat
15 offender detectives it sort of implies that they have prior
16 convictions, but since the repeat offender detectives don't
17 get involved in the case until after they've actually been
18 arrested for some of these things, and they're concerned that
19 they're going to continue to do things, the only real thing
20 that they can infer is the arrest, which of course is going to
21 be part in parcel of this whole case.

22 MS. DUSTIN: Right, but I guess what -- where my position
23 is -- is, Your Honor, with Mr. Ferguson is that since he
24 wasn't out, the reference to repeat offenders, there's no way
25 that we can say, well, he got out and they were following him,

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1 because --

2 THE COURT: Well --

3 MS. DUSTIN: -- it's impossible.

4 THE COURT: -- except that --

5 MS. DUSTIN: Okay.

6 THE COURT: -- the State's theory is, you know, Monroe
7 and Ferguson are burglars, and Holmes is a fence, and they're
8 involved with one another, and after Monroe and Ferguson get
9 arrested we're concerned that this group is going to continue
10 to operate, and, so we follow Monroe and Holmes.

11 MR. HART: The only other question I have is, are they
12 going to refer to Holmes or -- or they're not going to explain
13 to jury what ROP is then, part of the repeat offenders
14 program?

15 THE COURT: Yeah, because they could be a repeat offender
16 from the original arrest, and then subsequent actions. It
17 doesn't necessarily mean that they have prior convictions.

18 MR. HART: But -- but your --

19 MR. SULLIVAN: I'm sorry, Judge, just briefly, but
20 you're -- you're assuming that they've been convicted of
21 offending. They're only alleged offenders. They're not
22 convicted offenders.

23 THE COURT: Well, I understand.

24 MS. DIGIACOMO: They're convicted of (**9:54:39).

25 MR. HART: That's not what --

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1 THE COURT: Well, but they don't know what ROP actually
2 does.

3 MR. SULLIVAN: If we don't explain ROP to them then
4 that's fine, I would think.

5 MS. DIGIACOMO: Well, I mean, it would be one thing if we
6 were using their other title, criminal unit, but we're not,
7 it's repeat offenders.

8 THE COURT: Not a problem. The -- the -- the motion to
9 exclude the reference to repeat offenders is denied.

10 I don't think that that necessarily implies any
11 prior convictions, and I think it does explain things, and the
12 redaction would be difficult.

13 The -- well, the evidence about the flyers and so
14 on, I find it that its relevance. It's marginally relevant in
15 the prejudicial affect to Defendant Monroe out weighs the
16 probative value, and as to that it's granted.

17 I don't want to -- I don't want to have the flyers
18 brought in. I don't want any of the -- any reference, or
19 calls reference the flyers.

20 Motion to disqualify that DA's office --

21 MR. HART: I think you've already ruled on this.

22 THE COURT: The motion is denied. I don't see any
23 conflict. I don't see the prosecution having done anything
24 wrong. I don't see any impliance of impropriety, or
25 appearance of impropriety on this case. I might rule

1 differently on one of the other cases, but I don't think it's
2 relevant on this case.

3 Motion to suppress telephone recordings, all right,
4 here's the way I see telephone recordings, I mean, I think
5 you're both right to some extent.

6 I mean, Ms. DiGiacomo is right, I believe, that if
7 these recordings by their very nature tend to demonstrate a
8 conspiracy, and that the conspiracy is ongoing, and these are
9 an in furtherance of the conspiracy, they're certainly
10 admissible.

11 However, that doesn't mean that there can't be
12 inadmissible content in those. For example, if Monroe gets on
13 the phone talking to Mr. X and he says, yeah, you know, our
14 operation is still going. I don't see any problem with it.
15 It's a shame that Holmes had to kill a guy in the last one.
16 That wouldn't be admissible against Holmes. That would be a
17 violation of Brewton.

18 Additionally, I think the -- that to the extent that
19 it is talking about other crimes, other than the future
20 conspiracy, things in the past, I think that would be a
21 violation of statute absent to having a hearing in advance,
22 so.

23 MS. DIGIACOMO: Things in the past? You mean --

24 THE COURT: Well, I mean --

25 MS. DIGIACOMO: -- before the date of the conspiracy

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1 that's charged?

2 THE COURT: Right. I mean, if we're talking about, you
3 know, five years ago, or 15 years ago we did this, that, and
4 the other. That's evidence of --

5 MS. DIGIACOMO: Right.

6 THE COURT: -- other crimes that we haven't had a ruling
7 on, and, so I think if it's inculpatory evidence as to a
8 defendant who is not on the phone, I mean, if it's Holmes and
9 Monroe talking, of course, it's admissible against both, but
10 if it's Holmes talking to Ferguson implicating Holmes, I think
11 Brewton trumps conspiracy.

12 So the truth is, I -- I need to see transcripts of
13 all of this. I know it's a lot.

14 MR. HART: You're an optimistic individual, Your Honor,
15 but --

16 THE COURT: I'll --

17 MR. SULLIVAN: You -- you can have mine.

18 THE COURT: Look, here's the deal, you know, I don't want
19 to do these things slow, and fair is fair, but everybody's
20 entitled to a fair trial, and I've got to rule on these
21 independently. If you think that you can do it with just
22 that, fine.

23 The -- the -- this -- the phone calls are generally
24 admissible to the extent that they're always admissible
25 against the person on the phone, and they are generally

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1 admissible to the extent that you can make the case they're
2 evidence of a conspiracy, but the specific content is not
3 admissible if it is talking about past crimes of which we
4 haven't had, or past bad acts of which we haven't had a
5 Petrucelli (phonetic) hearing as opposed to what this current
6 conspiracy is doing, and or if there is a specific reference,
7 or implication of guilt as to either of the other two
8 Defendants who aren't on the phone.

9 I mean, if Ferguson is talking he's got to eat his
10 own words, but if Ferguson calls saying, Monroe did this, or
11 Holmes did this, it can't be used against those guys, because
12 Brewton concept trumps the concept of conspiracy.

13 Now, if that's enough guidance I don't need to read
14 it all.

15 MS. DIGIACOMO: Your Honor, I can, since we're -- we're
16 going to be working on the exhibits this afternoon, I can
17 bring you -- I've got a notebook of all the transcriptions. I
18 can just bring them if you --

19 THE COURT: Okay.

20 MS. DIGIACOMO: -- want to look at it.

21 THE COURT: Or you can share them --

22 MS. DIGIACOMO: And I can --

23 THE COURT: You can share them with other Counsel, and
24 if --

25 MS. DIGIACOMO: Well, they have them.

1 MS. DUSTIN: Well, we've got them all.

2 THE COURT: -- they're sort of all in agreement that what
3 has been redacted, or what is not going to be used is
4 consistent with this, it's okay.

5 Now, here's the deal, if Holmes is on the lamb any -
6 - and a Defendant in this --

7 MS. DIGIACOMO: I know.

8 THE COURT: -- then there isn't any concern, because --

9 MS. DIGIACOMO: Right.

10 THE COURT: -- he's not on trial, and the only one that
11 we're concerned about would be Monroe, so the only thing you
12 couldn't use was Ferguson or Holmes' calls casting guilt upon
13 Monroe over which Monroe can not cross-examine them.

14 So it would be a lot simpler if he's not here. If
15 we end up doing these trials one at a time then it isn't any
16 big deal, because there isn't a guy on trial who's losing his
17 right to cross-examine.

18 MS. DUSTIN: And -- and real quickly, Your Honor, some of
19 the phone conversations deal with the Just For Kids and the
20 Anku Crystal Palace, which was Judge Wall's case.

21 MR. HART: That's --

22 THE COURT: Yeah, that's part of this conspiracy as I see
23 it.

24 MR. HART: Well, and, Your Honor, then can we address
25 that?

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1 THE COURT: Yeah.

2 MR. HART: That is a case that was done in another
3 courtroom.

4 THE COURT: Should have been -- should have been
5 consolidated with this, but neither here nor there.

6 MR. HART: Exactly, exactly. But it wasn't, Your Honor.

7 THE COURT: Okay, but --

8 MR. HART: So the State's trying to get it's cake and eat
9 it, too.

10 THE COURT: No.

11 MR. HART: They're bringing all -- they get two shots at
12 the apple.

13 THE COURT: Here's -- here's the deal, they're not going
14 to be able to reference the fact that they were convicted, but
15 the people are going to know. I mean, I would guess the first
16 witness out of the box is going to be somebody that talks
17 about them getting arrested that night, and the people are
18 going to know that they got arrested, the arrest resulted in
19 subsequent search warrants, the search warrants resulted in
20 this property, blah, blah, blah, blah, blah. The fact that
21 they were arrested is part in parcel of the conspiracy in the
22 case.

23 MR. HART: Thanks.

24 THE COURT: I will not let them say, and further, by the
25 way, they were just convicted. They will not be able to say

1 that.

2 MS. DUSTIN: Well, I guess, where our dilemma is --

3 THE COURT: And the jury isn't going to know whether
4 anything proceeded, whether there was a case, whether there
5 wasn't a case, they're not going to know what happened, but
6 surely, even if they didn't prosecute that case, the State can
7 put on the whole start to finish story here.

8 MS. DUSTIN: Well, I guess, and this is part of my motion
9 to Your Honor is, because part of our difficulty is, is up
10 until the amend -- the most recent amended indictment came in,
11 there has not been a single item in the possession of stolen
12 property that came from Just For Kids Dentistry or from Anku
13 Crystal Palace.

14 Now, I'm not going to say, oh, we can't put that
15 they were stopped and arrested. That's not what my issue is,
16 and we can't say that they found the, I think it's the -- is
17 it the map of the world, or the Woodstock picture in the car?

18 MR. HART: Woodstock.

19 MS. DUSTIN: The Woodstock picture in the van, but there
20 was other items found within the van. There is discussions --

21 THE COURT: Now, were those other items linked to any of
22 the 26 --

23 MS. DUSTIN: No.

24 THE COURT: -- PSP counts?

25 MS. DIGIACOMO: No, no.

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1 MS. DUSTIN: No.

2 MS. DIGIACOMO: It's linked to the burglary that had just
3 occurred right before they were arrested at a car stop.

4 THE COURT: Well, how is that not admissible?

5 MS. DUSTIN: Well, the problem is, is they're not charged
6 in this case with that.

7 THE COURT: All right, then --

8 MS. DUSTIN: That was Judge Wall's case, and that's, I
9 think --

10 THE COURT: That doesn't matter.

11 MS. DUSTIN: -- what our dilemma is.

12 THE COURT: I mean, they're not charged in this case with
13 the burglary itself, but certainly that is part of the
14 conspiracy, hey, Ferguson and Monroe are in a car together,
15 they're doing a burglary together, hell, that there's your
16 conspiracy right there if I don't put on anything else.

17 Now, they can -- they can bring that in. They can
18 not bring in --

19 MS. DIGIACOMO: The conviction.

20 THE COURT: -- the conviction, because that is evidence
21 which would be prejudicial, and has nothing to do with whether
22 or not they conspired with one another, but the fact that they
23 were arrested is material, and is relevant, and the jury isn't
24 going to know if they were ever prosecuted, or prosecuted
25 successfully, or got a -- they're not going to know any of

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1 that, but they can know these guys were arrested, because
2 that's the trigger for the search warrants.

3 Mr. Sullivan?

4 MR. SULLIVAN: Judge, while you're on track on that
5 point, can I get a ruling as to Mr. Holmes with the TITO
6 tickets? I don't know if I explained that to you, but --

7 THE COURT: Well, the answer is --

8 MR. SULLIVAN: He was arrested for TITO, TITO tickets --

9 THE COURT: Well, I know that. I got your motion. If
10 I -- what I did was I set a pad and went and researched each
11 Defendant by Defendant, and, so --

12 MR. SULLIVAN: Am I jumping the gun there?

13 THE COURT: Yeah.

14 MR. SULLIVAN: Okay, I'll stop.

15 THE COURT: I -- I -- I --

16 MR. SULLIVAN: It's kind of the same track though, right?

17 THE COURT: Right. Yeah.

18 MR. SULLIVAN: It's the same?

19 THE COURT: Everybody's -- all the motions to join are
20 granted --

21 MR. SULLIVAN: Yep.

22 THE COURT: -- so that everybody -- it affects everybody,
23 but just let me go through them, and we --

24 MR. SULLIVAN: You got it.

25 MS. DUSTIN: And then, I guess, Your Honor, that also

1 kind of overwhelms into my motion to strike the new
2 language --

3 THE COURT: Okay, well I --

4 MS. DUSTIN: -- in the indictment, unless you want to
5 finish Marty's first?

6 THE COURT: Right, I do. And I'm -- and I --

7 MS. DUSTIN: Okay.

8 THE COURT: I think there's a couple things there that
9 are relevant.

10 Motion to suppress evidence by a warrant, there
11 wasn't much substance of that. It was pretty general. I
12 didn't --

13 MR. HART: I'm sorry, the --

14 THE COURT: Am I missing something?

15 MR. HART: The overbroad warrant?

16 THE COURT: Yes.

17 MR. HART: Your Honor, the warrant was to -- well, that's
18 the -- it was, yeah, it was a very general warrant. Your
19 Honor, it listed retail goods, electronics, tools. They
20 didn't go get tools. I mean, other than, like I said,
21 gardening shears and pruning, etcetera, they took over soap,
22 they took over a sink, displays, everything.

23 Basically, it was -- there was no direction in that
24 warrant whatsoever other than, feel free, and have at.
25 There's supposed to be some specificity in a warrant as to

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1 what people are searching for.

2 THE COURT: I think --

3 MR. HART: To put a reasonable person on notice.

4 THE COURT: I think, given the information that the
5 police had and the observations that they made, and what they
6 knew was going to be there, and the dozens to hundreds of
7 burglaries they think these people did, and then the looking
8 at the storage unit, and whatever, that it was reasonably
9 specific. They didn't go out and take a whole bunch of stuff.
10 You know, they didn't take their water heater, they didn't
11 take this, that, and the other, and say, oh, well, this turns
12 out not to have been stolen we'll give it back.

13 MR. HART: Well --

14 THE COURT: I didn't think it was overbroad.

15 MR. HART: And I -- and I think it's one, because the
16 water heater was probably bolted in, Your Honor.

17 THE COURT: Do you have --

18 MR. HART: You've got furniture. You've got --

19 MS. DIGIACOMO: Which was all stolen.

20 MR. HART: Now, I'm not -- I'm just trying to --

21 MS. DIGIACOMO: You know, and -- and if we looked even --

22 THE COURT: Okay. I don't find it to be overbroad, so --

23 MS. DIGIACOMO: Okay. Well, initially --

24 THE COURT: -- I don't see it.

25 MS. DIGIACOMO: -- it was -- it was -- it was for Burke

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1 tools, and for elements to make the Burke tools, because there
2 was discussions on the phone call about making more mappings,
3 and, so they did find three more, or four more.

4 THE COURT: That motion is denied.

5 Motion to suppress, this is, in essence, saying that
6 the original arrest was unlawful, and hence the -- everything
7 that flows from that arrest is unlawful.

8 Anybody want to add anything?

9 MS. DUSTIN: Well, it's taught in -- when the police
10 officers go to academy there's a very large distinction
11 between a traffic stop and an investigatory stop, or a
12 probable cause stop, and for an officer to put, on the night
13 in question, that it was a traffic stop, and then change it to
14 try to fix it, we've got to go from at that point in time
15 for -- for when everything was happening, and, so his reports
16 from that night are the most indicative.

17 THE COURT: Not really. They are --

18 MS. DUSTIN: Basically, what happened is, is even if you
19 get to say, well, it was an investigatory probable cause stop,
20 the minute that they find out that Just For Kids Dentistry is
21 secure, the detention period ends. To keep them for any point
22 after that violates the fourth amendment, and that's what our
23 argument is, is -- and, I know, that State's going to say,
24 well, he was on the phone.

25 The problem is, is that I can't get the cell phone

1 records to verify that to challenge it, because I don't --
2 and -- and not only that, but that still exceeds, because all
3 of his phone calls were subsequent. That it still exceeds
4 the -- the basis for stopping in the first place, which was
5 whether Just For Kids Dentistry was broken into or not, and
6 once they get that that was secure, it ended, and they
7 couldn't keep him any longer. It violated the fourth
8 amendment, and it became an unreasonable detention to hold
9 them there, and that's what the gist of that particular motion
10 is.

11 THE COURT: I understood it. That motion is denied. I
12 think that it's pretty clear that there was reason to believe
13 foul play was afoot. That's the standard set by the Terry
14 case. Has been the standard for three, four decades now.

15 It did mention traffic stop, but I didn't
16 necessarily interpret it the way you did, that we pulled him
17 over for a traffic violation. I think traffic was used
18 interchangeably in their mind with the word, vehicular as
19 opposed to pedestrian. They were in a car, so we stopped the
20 car. That's what they're talking about, traffic stop. They
21 stopped it, because they had a report of a burglary in
22 progress at the Just For Kids Dentistry, and when they get
23 there to try to thwart a burglary in progress, there's only
24 one car in the lot, and that's the car these gentlemen are in.

25 Now, you start with a Terry stop, but reason to

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1 believe foul play is afoot, and then you have to move to
2 probable cause. As I understand it, they saw some things in
3 the car that look like they might not belong there, they were
4 aware that there was another burglary, and I'm not
5 unreasonable that these two guys might have been doing that.
6 They, as I understand it, call the owner of the other place,
7 who comes over and says, that's my stuff, and at that point
8 they get arrested. I think that's --

9 MS. DIGIACOMO: Actually, they get arrested before he
10 comes over. They get arrested based upon the stuff seen in
11 the car, and the descriptions over the phone.

12 THE COURT: Yeah, well --

13 MS. DIGIACOMO: And at that point they were arrested.

14 THE COURT: I think -- I think it's pretty clear that --
15 that they had a basis for a Terry stop that moved from there
16 to probable cause, and that the arrest was reasonable.

17 Monroe's motion to joinder in Ferguson's motion is
18 granted. All right, that's Monroe.

19 Ferguson, Ferguson has a motion to suppress that's
20 just the same as the last one we discussed, and that you
21 argued.

22 MS. DIGIACOMO: That is correct.

23 THE COURT: So that -- that is denied. Motion to strike
24 language in Count I and XIII. Okay, let me tell you how I see
25 it, and then either side of you can argue with me. I think as

1 to Count I, Ms. Dustin, you're not right. I think that there
2 is ample evidence in the preliminary hearing in the Court
3 below that -- and ties these guys into these two things that
4 occurred that night, and that that's just sort of a rhetorical
5 change without substance or prejudice.

6 On the other hand, as to Count XIII, I think you are
7 correct in this, it seems to me, and, Ms. DiGiacomo, correct
8 me if I'm wrong, that in the record below the specific items
9 they want to add now weren't mentioned, or found to be a basis
10 for the bind over on Count XIII.

11 Now, if the State were allowed to add these, and if
12 somehow the jury found reason to believe that these items were
13 stolen, the Defendants had control or dominion over them, and
14 that they knew it, the new items, but none of the old items,
15 then they could be convicted, in essence, on something that
16 they weren't bound over on, and you can't tell. There's no
17 way to impeach the jury's verdict. There's no way to know
18 what of the items in Count XIII they were convinced on. They
19 only have to be convinced on one, so it seems to me, this, if
20 you add the language in Count XIII, makes it impossible to
21 sustain a conviction against an appeal, so my inclination is
22 to deny your motion on Count I, grant it on Count XIII.

23 Now, either of you ladies can argue with me, because
24 you're both sort of one and one.

25 MS. DUSTIN: Real quick, Your Honor, just to clarify the

1 record, this was not a bind over, this was grand jury
2 testimony.

3 THE COURT: Okay, well, whatever. Well, it was -- my
4 understanding was that the items they want to add weren't
5 presented to, or discussed in the grand jury, right?

6 MS. DIGIACOMO: Yeah, it's that -- well, here, Your
7 Honor, now, if I can be heard?

8 THE COURT: Well, you can --

9 MS. DIGIACOMO: In this -- in this case --

10 THE COURT: -- but let Ms. Dustin finish.

11 MS. DIGIACOMO: Oh, I'm sorry.

12 THE COURT: She wants to argue why I'm wrong on one, and
13 then you want to argue why I'm wrong on 13 --

14 MS. DIGIACOMO: Oh, okay.

15 THE COURT: -- and I'll listen to both of you. Go ahead,
16 Ms. Dustin.

17 MS. DUSTIN: And -- and, realistically, Your Honor, the
18 Anku Crystal Palace language that was added in to Count I is
19 actually a substantive change. Prior to that there was just a
20 lot of testimony from a lot of people coming in and saying, my
21 place was broken into on X date, X items were taken, so --

22 THE COURT: But the Crystal Palace was that night. These
23 guys got their stuff in their car. How's that not a --

24 MS. DUSTIN: Because none of that --

25 THE COURT: -- part of the conspiracy?

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1 MS. DUSTIN: None of the evidence as to Anku Crystal
2 Palace was brought in before the grand jury. Just the basis
3 of the traffic stop was -- was raised. It was not that they
4 had items that belonged to Anku Crystal Palace in the car.
5 That was not part of the testimony before the grand jury. All
6 it was, was that they were stopped, and that one of the
7 pictures was found in the van, so to --

8 THE COURT: Well, I mean, look, they were just
9 burglarized. That these guys are in a van, they got their
10 stuff in the van, and the guy comes over and says, that's my
11 stuff.

12 Now, is that not reasonable basis to argue that they
13 conspired to burglarize the palace?

14 MS. DUSTIN: That wasn't the testimony before the grand
15 jury though, Your Honor.

16 THE COURT: Well --

17 MS. DUSTIN: That's the testimony in District Court 20's
18 case. In our case, basically, what happened is, is brought
19 the officer who stopped one -- there was two officers that
20 stopped the van that night. They brought him in to say, I
21 stopped them, and in the search, basically, what was
22 discovered was the Woodstock picture, which is associated with
23 a particular count.

24 The Woodstock picture didn't come from Anku or from
25 Just For Kids. That was not presented before the grand jury,

1 and that's what my issue is, is that didn't come before. You
2 didn't have the owner of Anku Crystal Palace coming before the
3 grand jury saying, hey, guess what, all the stuff in the car,
4 that was attributed to me.

5 THE COURT: I hear you. Ms. DiGiacomo, tell me about
6 number one. Why should I let you -- I mean, this to Count I.

7 MS. DIGIACOMO: Well, Your Honor --

8 THE COURT: I mean, I did let you amend, but why should I
9 not consider what she's saying? What was the testimony before
10 the grand jury?

11 MS. DIGIACOMO: Well, the grand jury, Your Honor -- it's
12 a different standard at grand jury.

13 THE COURT: I understand.

14 MS. DIGIACOMO: I did charge the whole time period, okay,
15 and I have every intent. At the grand jury we're -- we're
16 throwing up witnesses every five minutes, and we're tag-
17 teaming, so all I put in was the fact there was the stolen
18 Woodstock picture, and then that there was this car stop, and
19 just basic information about it.

20 THE COURT: And that was burglarized, that, just minutes
21 before?

22 MS. DIGIACOMO: No, the Woodstock photo came -- it --
23 it's separate, but we did bring in the fact that they were
24 stopped for the burglaries, and this car was found in there,
25 but I don't think that precludes the State now. It's noticed

1 pleading here. All I did -- I could have -- I have the
2 conspiracy charged that whole time to commit burglaries, and
3 or possess stolen property. I didn't have to give them the
4 specific that this was one thing that I'm going to show. I
5 could have just brought it in anyway.

6 THE COURT: Tell me on 13 why I'm wrong.

7 MS. DIGIACOMO: Okay. Here's why I -- I disagree with
8 the Court, Your Honor, if you look at -- at these other ones
9 that she's not complaining about, it's very general, sports
10 memorabilia, and or photos, and or whatever. What happened at
11 the grand jury is we have people coming down there for a
12 specific property, and then looking through the photos and
13 finding more and more. As we went down to the evidence vault
14 things were confirmed, and being we learned more of their
15 items --

16 THE COURT: Were these items that you want to add on 13
17 mentioned before the grand jury?

18 MS. DIGIACOMO: I -- no. I don't know specifically if
19 they were or not, but that they were items that were -- that
20 you've let me take out, because I'm not going forward on
21 those, but the only reason I'm getting deemed on 13 is because
22 these are specifically laid out with serial numbers. I got --

23 THE COURT: But -- but the grand jury didn't know that.

24 MS. DIGIACOMO: But it's -- it's found over on the
25 counts, Your Honor, not on each specific piece of property.

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1 Are you telling me then if I give --

2 THE COURT: Okay, so here's what I'm saying, what if the
3 jury were to decide --

4 MS. DIGIACOMO: It's, and, or. They don't even have to
5 agree on what stolen property they believe --

6 THE COURT: Okay, but what if all the jury believed that
7 this new property, that you're now listing, they were guilty
8 of, they had, they knew, they did, but they didn't find any of
9 the other property.

10 How would they not be convicting of something that
11 they weren't bound over on?

12 MS. DIGIACOMO: They are bound over. They're bound over
13 on the charge. If I had just said, speakers and digital
14 equipment, we wouldn't even be having this argument, because I
15 could bring in everything.

16 THE COURT: Okay. I've listened. I'm not persuaded on
17 either one. As to Count I, the motion is denied. You'll be
18 allowed to amend. As to Count XIII, the motion is granted,
19 and that language will be stricken.

20 MS. DIGIACOMO: Okay, Your Honor, then we have another
21 issue, because when they went down and viewed the evidence
22 it's in the picture.

23 THE COURT: They who?

24 MS. DIGIACOMO: All of these victims have gone --
25 they've -- they identified their property --

1 THE COURT: Okay, but -- but --

2 MS. DIGIACOMO: -- from photographs. That they have then
3 gone to the vault, and viewed all of this property to confirm
4 it was theirs.

5 THE COURT: Well, that's not a problem. I mean --

6 MS. DIGIACOMO: So in coming in --

7 THE COURT: -- you can say -- you can say, is it, yes,
8 this is mine, this is mine, this is mine, this is mine, this
9 is mine, but the jury will know that they're charged with that
10 this is mine one through four, and the State didn't throw in
11 this other stuff. That's no big deal.

12 MS. DIGIACOMO: Okay, so I can still bring in all the
13 evidence?

14 THE COURT: Oh, sure, that all this stuff is mine, but
15 the --

16 MS. DIGIACOMO: Okay.

17 THE COURT: But the jury has to decide they're guilty or
18 not guilty on the specific pieces that they're charged with,
19 and been bound over on, so the motion's granted as to 13.

20 We'll, again, amend the indictment to strike that
21 language before --

22 MS. DIGIACOMO: And specifically --

23 THE COURT: -- we read it to the jury tomorrow.

24 MS. DIGIACOMO: Just so I have this clear --

25 THE COURT: Just the new stuff you added that Ms. Dustin

1 pointed out.

2 MS. DIGIACOMO: Well, I'm -- well, I'm not sure what I
3 added. I don't have the old one, but it's from 22 to 25, note
4 taken, 22 to 24 is what's not right in those lines?

5 THE COURT: Right. Fergason's motion in limine to bar
6 expert testimony of value and property issues, have you named
7 an expert? Do you intend to call an expert?

8 MS. DUSTIN: No, I -- all of these people can testify to
9 value.

10 THE COURT: All right. As to the expert, the motion is
11 granted. The -- the -- the people can certainly value their
12 own property. That's clear to the law.

13 MS. DUSTIN: Well, here's my -- here's my only problem,
14 Your Honor, this is a -- we've got some really unique items,
15 and I'm not saying, you know, we've gotten evidence of, like
16 at Milton Home Furnishings what, you know, what their cost
17 was, and what their -- their price was, but there are a lot of
18 things such as the Annie -- I think it's Annie Lee Gallery.

19 When you look at the incident report from the
20 initial -- after she discovered that the gallery was broken
21 into, she notes four different items that are the same thing,
22 but in different sizes, and a value of anywhere between \$6,000
23 and \$16,000, so our dilemma is this, Your Honor, art is based
24 upon a very particularized value scheme, is it the original,
25 is it a reproduction, but --

1 THE COURT: Well, you can cross-examine on that.

2 MS. DUSTIN: That's right, Your Honor, but my problem and
3 my dilemma is, is that --

4 THE COURT: Well, you -- you don't dispute, do you, Ms.
5 Dustin, that it is the law that an owner can testify as to
6 value of their property as they understand it, and then the
7 jury has to decide whether they believe that testimony or not.

8 That's the law, isn't it?

9 MS. DUSTIN: It's -- yes, Your Honor. That is the law.

10 THE COURT: Okay.

11 MS. DUSTIN: I just didn't want on some things that we
12 got real -- we've got some stuff that their -- the owners did
13 not give any values at the time of the incident, and we've got
14 stuff that -- I mean, I -- I literally have incident reports
15 where I have a box taken of miscellaneous baseball cards.

16 THE COURT: Yeah.

17 MS. DUSTIN: I've got incident reports of -- and these
18 are commercial. This isn't like coming from somebody's house.
19 This is commercial where these are -- these are businesses
20 that would have invoices and receipts, and that's where our --

21 MS. DIGIACOMO: Well, and some of this stuff --

22 THE COURT: Well, cost isn't necessarily the basis of
23 value.

24 MS. DIGIACOMO: Well, and some of this stuff was their
25 personal belongings they had in their office.

1 THE COURT: As this is pretty clear, the motion as to the
2 State using an expert, and if they haven't named one, it's
3 granted.

4 The motion to try to preclude the owners from
5 testifying as to the value of their own property is denied.
6 You can cross-examine this if you wish. The jury has to
7 decide whether they believe the owner.

8 Motion to bar evidence that the Defendant committed
9 burglary in the instant case, I mean, that's -- I don't see
10 anything to discuss. That's --

11 MS. DUSTIN: Well, just real quick, Your Honor, here's my
12 dilemma, is that we've got allegations, and I'm not talking
13 Anku Crystal Palace, but we've got -- we've got burglaries
14 that date back years and years and years, and there has been
15 testimony by Ms. Trevarthen that my client was really
16 associated with them for about a year pre-dating the time that
17 she -- all the stuff started being discovered in November of
18 2006, so my issue is, is when we start going beyond probably
19 about a year and a half, to sit there and say -- try to elude
20 that my client committed these burglaries that happened five
21 or six years ago --

22 THE COURT: Well, wait a minute, time out. I mean, I
23 think you're probably right on that. I'm -- I'm -- I'm
24 talking about the State can talk about the Crystal Palace and
25 the kids thing that happened that night, as a burglary, they

1 were both burglarized, these guys had property, blah, blah,
2 blah, blah, blah, blah, blah, blah, blah. After that, they're
3 just charged with possession of stolen property. I mean, I
4 don't know that there's any evidence that they actually did
5 the burglaries. There's certainly an inference from the
6 course of conduct, but I'm not sure that the State can put on
7 somebody to say, he did that burglary, or he did this. That
8 would seem to me to be evidence of an uncharged act for which
9 we haven't had a Petrucelli hearing --

10 MS. DUSTIN: Well --

11 THE COURT: -- so I think I agree with you.

12 MS. DUSTIN: Well, this is where my dilemma is, is the
13 indictment charges underneath the conspiracy to possess stolen
14 property and a conspiracy to commit burglary for all those
15 counts.

16 THE COURT: But what they --

17 MS. DIGIACOMO: Well, for that time period though.
18 There's a specific time period alleged as well.

19 THE COURT: Then -- then let's do it this way. I -- I
20 kind of agree with Ms. Dustin. Any burglaries, or crimes pre-
21 dating that time period, the motion to bar that evidence is
22 granted. Within the time frame of the conspiracy charge --

23 MS. DIGIACOMO: We already --

24 THE COURT: -- you can talk about what's going --

25 MS. DIGIACOMO: Well, are you saying that I can't get out

1 to my victims that they were burglarized on a certain date?

2 THE COURT: No, you can say, I was burglarized in --

3 MS. DIGIACOMO: Yeah, I don't have any evidence that
4 they're the ones that did --

5 THE COURT: In 1999, and then in 2006 they got his stuff.
6 Of course, they can say that.

7 MS. DIGIACOMO: Right. And that's -- that's the only --

8 THE COURT: They're not saying they did the burglary.

9 MS. DIGIACOMO: No, the State does not have any intention
10 to do that.

11 THE COURT: Okay. Then I think we're all on the same
12 page.

13 MR. HART: Well, I -- I think the problem is by the
14 language of the indictment it says, conspired to commit
15 possession of stolen property, and or burglary --

16 THE COURT: Well, the burglary that they're talking
17 about --

18 MR. HART: -- for the other --

19 THE COURT: -- is --

20 MS. DIGIACOMO: But it's a specific time period.

21 THE COURT: -- on the night in question, and as it
22 relates to this -- within the frame work of this time period,
23 but a person can say, I was burglarized in 1951, and they
24 stole my Roy Campanella card, and Sean Sullivan had it in his
25 possession in 2007, and hence he's guilty of PSP, and then he

1 can say, hey, how the hell would I know it was stolen, it's
2 been gone for 50 years, and I bought it from a dealer. I
3 mean, that's the way it works.

4 Defendants motion for discovery, I didn't see the
5 motion, and I don't know what you want, Ms. Dustin.

6 MS. DUSTIN: Basically, we met with Ms. DiGiacomo
7 yesterday, and resolved that issue in its entirety, so it
8 would be moot.

9 THE COURT: Okay, so that motion's withdrawn. Okay. I'm
10 doing all the motions. That even if they're not scheduled for
11 today, because it's crazy to have them scheduled down the
12 road.

13 Defense motion to preclude evidence attributed to
14 co-defendants, i.e. Monroe's residence.

15 MS. DUSTIN: Well, basically, Your Honor, we got evidence
16 regarding the computer that was found at the Cutler residence,
17 and that there's been a lot of forensics done on it. As to
18 what was found on the computer, there's been, in my review,
19 there's a variety of things, but it doesn't appear to be that
20 my client -- my client didn't live there, so there's nothing
21 on there to suggest that he had access, or that it was his
22 computer, and I just, in an over abundance of caution, don't
23 want that coming in against my client.

24 THE COURT: That motion is denied. I think that if the
25 State convinces the jury that there was a conspiracy here,

1 then it's a general proposition except for specific intent.
2 The act of one is the act of all, and if they were part of the
3 conspiracy your client is responsible for all the property at
4 Monroe's house. Monroe's responsible for all the property at
5 your house, or Holmes' house. I mean, they're in for a penny,
6 they're in for a pound, if the jury believes that. If the
7 jury doesn't believe that -- that there is any conspiracy, of
8 course, you may be able to convince them that they're not
9 responsible.

10 Mr. Hart?

11 MR. HART: I just want to clarify, I joined. Mine would
12 be for the items found --

13 THE COURT: Right.

14 MR. HART: -- in possession of Mr. Holmes and Mr.
15 Ferguson.

16 THE COURT: It's the same with everybody. If they
17 believe that there's a conspiracy, then each of your clients
18 is responsible for any of the property that either of the
19 other two have. If they don't believe it's a conspiracy they
20 may acquit them on that.

21 There is a motion to dismiss possession of stolen
22 property. We don't really have a motion to dismiss in our
23 jurisdiction. This is sort of a writ of habeas corpus in
24 sheep's clothing, and is procedurally barred. I don't know
25 what -- what to say. Do you want to argue that? I mean,

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1 really you've got to bring this 21 days by way of writ.

2 MS. DUSTIN: Well, Your Honor --

3 THE COURT: Do you have a statute that says you can bring
4 a motion to dismiss?

5 MS. DUSTIN: Well, I -- I think I can raise --

6 THE COURT: I've never heard of such a thing.

7 MS. DUSTIN: -- a motion to dismiss of any time.

8 THE COURT: You can?

9 MS. DUSTIN: Well, the problem is, is that my habeas was
10 habeas, and or motion to dismiss. The Judge ruled --

11 THE COURT: Let's just treat it like a habeas, so.

12 MS. DUSTIN: Right. The problem is, is that in our
13 further discovery of this it appears that we've got some of
14 the possession of stolen property counts that are stale by the
15 statute of limitations.

16 Additionally, we've got issues regarding my client
17 through some of the evidence --

18 THE COURT: What am I missing? How can possession of
19 stolen property be stale by statute of limitations?

20 MS. DUSTIN: Well, because the --

21 THE COURT: The burglary could be, but --

22 MS. DUSTIN: Yes, and -- and -- and --

23 THE COURT: -- possession is the date that it's recovered
24 by the police.

25 MS. DUSTIN: Right, but here's my issue, Your Honor,

1 is -- is that we've got evidence that my client did not even
2 know these people for a lot of the counts that are over a year
3 and a half old, so that there would be no way if -- if these
4 items were taken, in let's say, 2002. We've got some items
5 that were taken in 2002 that were found in the Cutler
6 residence --

7 THE COURT: Why can't you argue that to the jury, my
8 client didn't know?

9 MS. DUSTIN: Okay. I will.

10 THE COURT: I think, if you -- first of all, I think, I
11 find, and I think it's procedurally barred, but secondly, I
12 think subsequently there is a basis that the jury could
13 convict. You've got Trevvarthen's testimony. You've got
14 Monroe and Ferguson arrested together in possession of stolen
15 property. You've got the storage surveillance. You got the
16 phone calls. I mean, if you add it up a jury could convict,
17 or the jury could acquit, so if it's a jury question, even if
18 I had jurisdiction, I would deny it.

19 Ferguson's motion to bar recorded phone calls, now,
20 this is the same as the other. You know, that generally --

21 MS. DUSTIN: Right.

22 THE COURT: -- they can come in. If they're in
23 furtherance of conspiracy the State can not put in a phone
24 call made by Holmes or Monroe that says Ferguson is guilty of
25 something even if that's generally in the course of a

1 conspiracy, because Brewton trumps the conspiracy law, and so
2 they'll either have to leave that phone call out, or redact
3 it.

4 MS. DUSTIN: And then my -- my motion was actually on a
5 little bit of a two prong. One, that since my client was in
6 custody, and since the search, that the main search occurred
7 on November 6th.

8 My other issue is, is to suppress calls that were
9 not -- where Mr. Ferguson wasn't a party at all from November
10 6th after. Mostly, because, Your Honor, the conspiracy was
11 ended at that point. He was in custody. He could never
12 further the conspiracy, and they've been doing all the search
13 warrants.

14 THE COURT: Well, of course he can. I mean --

15 MS. DUSTIN: Well, no, I'm saying after.

16 THE COURT: -- many a person in custody runs a criminal
17 operation. Hell, probably your client has. You know, people
18 can run them from inside a --

19 MS. DUSTIN: Right.

20 THE COURT: -- facility by getting on the phone and
21 talking to people that are outside the facility.

22 MS. DUSTIN: Right, Your Honor, and that's why I said the
23 November 6th date, because the November 6th date is when the
24 search warrant was executed at multiple storage units and at
25 the Cutler residence, and, so from that date onward the

1 conspiracy was over. All of the storage units had been
2 searched at that time.

3 THE COURT: Okay. I don't know that the conspiracy was
4 over. It may or may not be over. If -- if they are --
5 they've searched all the things, but these guys are still
6 saying, okay, tomorrow night we're going to hit the 7-up
7 bottling plant, da, da, da, da, da, da.

8 The conspiracy may be still going on today. I don't
9 know, but there's a range of time within the charge, and the
10 State can endeavor to prove things happening within this range
11 of charge. The jury's going to be instructed that, you know,
12 that they have to find as to somebody to have them vicariously
13 liable for the acts of another, that there was a conspiracy
14 during that time, and that they knew, and blah, blah, blah,
15 blah, blah, so. I don't -- I don't agree with you.

16 That motion is denied for both substantive and
17 procedural reasons.

18 Holmes, defendants motion to dismiss conspiracy and
19 possession of stolen property, again, we've got the procedural
20 bar issue --

21 MR. SULLIVAN: We never got a first reading, that's why
22 we filed it.

23 THE COURT: Okay. The motion is dismissed for the same
24 reasons, and for both of the reasons I just stated in regard
25 to --

1 MR. SULLIVAN: Judge, if -- if you had read that first,
2 just real quick, as to the spa or Jacuzzi, I mean, Mr.
3 Monroe's house had a spa or Jacuzzi with spa item -- spa
4 cleaning items. I mean, you would find that that count would
5 apply to Mr. Holmes?

6 THE COURT: It can, I think. If they think that these
7 guys are in this conspiracy, you know, you go back to that the
8 act of one is the act of all. I mean, I might not find that
9 if I were the trier of fact in a bench trial, but given the
10 margin on slight evidence requirement I would say that that
11 can go to the trier of fact who may or may not agree. In this
12 case it's going to be a jury.

13 MR. SULLIVAN: Fair enough. Just for future reference.

14 THE COURT: Motion in limine to exclude testimony of
15 criminal history, that looks to me like it should be granted.
16 Any objection?

17 MS. DIGIACOMO: No.

18 THE COURT: That motion is granted --

19 MS. DIGIACOMO: Well, unless they resort --

20 THE COURT: -- unless they testify. That motion is
21 granted. We didn't have a Petrucelli hearing, so there's no
22 basis for the State to put on prior bad acts. If any
23 Defendant testifies in his own trial, and as to any prior
24 felony convictions only, and less than ten years has elapsed
25 since they were convicted, released from prison, parole, or

1 probation, that would be admissible as to truth. Non-felony
2 convictions, arrests that don't amount to a conviction, would
3 not even be admissible under those circumstances, but absent a
4 Defendant taking the stand, none of it will come in.

5 MS. DIGIACOMO: Well, Your Honor, I -- I would disagree.
6 If he put -- they put their witness on the stand who got out,
7 Mr. Holmes' statements, I could impeach that.

8 THE COURT: Okay, I'm sorry, but --

9 MR. SULLIVAN: We've already discussed that issue, Judge,
10 and --

11 THE COURT: All right. Motion -- excuse me, Mr. Hart?

12 MR. HART: Sorry, Your Honor. Can I have Ms. Tramel step
13 up? I've got Mr. -- Judge Mosley -- I've got another one
14 going right now in that Court.

15 THE COURT: Yeah, sure. Sure, because --

16 MR. HART: Okay. Thank you.

17 THE COURT: -- I've dealt with your motions anyway, so
18 these are just --

19 MR. HART: Okay.

20 THE COURT: Okay. Michaela Tramel, I understand you're
21 going to sort of second chair this with Mr. Hart --

22 MS. TRAMEL: Yes, Your Honor.

23 THE COURT: -- and you'll be in and out, and you're
24 generally familiar with the case.

25 MS. TRAMEL: Yes.

1 THE COURT: Okay. Let's go forward on Mr. Holmes'
2 motion. There's two joinder motions, I've already granted
3 both of those.

4 Motion to suppress, this is the motion that says,
5 look, when they went in looking for X they saw primarily
6 musical instruments. The police say -- I don't know what
7 happened, because I wasn't there. The police say, we could
8 actually even see the serial numbers in plain sight. We made
9 a notation, so we didn't have to memorize them. Although,
10 there's -- the law's pretty clear, you can do both, and after
11 we found out that that was stolen property we -- we didn't go
12 back and seize it, we used that as a basis to get a second
13 and, actually, third warrant.

14 All right. I'm familiar with the arguments.
15 Anybody want to add anything?

16 MR. SULLIVAN: No --

17 THE COURT: Any of this --

18 MR. SULLIVAN: -- just the fact that you're -- I noted
19 that you're confused.

20 THE COURT: But, well, let me say this about that, there
21 may be Judges here that just rubberstamp warrants. I don't.
22 I want to know what's going on. I want to make sure there is
23 probable cause. I'll have a colloquy with an officer, and,
24 you know, I didn't quite understand the whole history, but
25 when it was all said and done what I understood was they found

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1 stolen property, they've done some further investigation,
2 there's more there, they want to go back and get it, and when
3 I understood that I said, okay. I think the law is pretty
4 clear that an officer who is where he is entitled to be, and
5 they were entitled to be in there, because of the first
6 warrant, has a right to, you know, he doesn't have to shut his
7 eyes, if he can see anything in plain site, I think the law is
8 clear, he doesn't even have to memorize what he sees. He
9 can -- he can right down, for example, serial numbers. When
10 that, compared to their investigative history, yields probable
11 cause, they have a basis for a second warrant.

12 We've also got the good faith aspect of the second
13 warrant, the Leon vs. United States kind of stuff. I don't
14 see any problem with these assuming, so the motion is denied,
15 but that is assuming that the jury believes the officer. If
16 the jury thinks the officer lied that he actually did a lot of
17 things to uncover these serial numbers, then I suppose you can
18 make the argument that they shouldn't have been able to do it
19 in the first place, but on motion calendar it's denied.

20 Defendants motion in limine to bar recorded
21 telephone calls, same ruling, basically. Generally, they're
22 admissible if they're in furtherance of conspiracy. I rule
23 that that is trumped by, both, prior bad acts with no
24 Petrucelli hearing, and Brewton kind of stuff, so in -- in
25 Holmes' trial anything -- any calls to Holmes will be

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1 admissible 100%. Any calls of the other people would be
2 admissible except, or unless they relate to Holmes' criminal
3 history, and or Holmes' guilt under circumstance where Holmes
4 can't cross-examine. And, again, if you guys can sort
5 of sort that out, I think, it -- that it is much less
6 problematic if we were trying this case three separate times,
7 which it is abundantly clear that we're going to be -- well,
8 maybe not.

9 If Holmes gets picked up in the next day or two
10 we'll be trying it twice, but Mr. Monroe's going to go forward
11 by himself, so I don't see it as a big thing, and -- but those
12 rulings apply.

13 The defense motion is granted to the extent that
14 we've got Brewton issues, or prior bad act issues, and if
15 there's some real legitimate concern in there I would tend to
16 resolve any ambiguity in favor of the Defendants making sure
17 they get a fair trial.

18 And -- and in terms of those Brewton issues, you not
19 only -- can't have a direct reference, you can't have an
20 inference. In other words, if you have a statement that says,
21 my next door neighbor, Michaela Tramel, did this, you can't
22 take out Michaela Tramel and say, my next door neighbor did
23 it, when everybody knows that your next door neighbor is
24 Michaela Tramel. I mean, you could maybe get it down to my
25 neighbor did this, which is a broader pool, or something like

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1 that, so. Okay.

2 Now, anything else to decide on the motion calendar?
3 Okay. It's 20 minutes to 11, and your client who was supposed
4 to be here at 8:30 is not here, and his wife said that they
5 had a fight, and he took off.

6 Having done this for 40 years my belief is they
7 didn't have a fight, and he did take off, but it's neither
8 here nor there. He ain't here, so as to you, Mr. Sullivan, a
9 no-bail bench warrant will be issued for the arrest of Holmes.
10 If he's arrested in the next seven or eight days we'll try him
11 with Ferguson. If he's not picked up in the next seven or
12 eight -- and he'll stay in jail during that trial. If he's
13 not picked up in the next seven or eight days, then we'll try
14 Ferguson as soon as we're done with Monroe, and we'll try
15 Holmes when we get him.

16 MR. SULLIVAN: Judge, because we had also partially
17 addressed another issue with Counsel present, do you want that
18 motion in writing?

19 THE COURT: The motion to withdraw?

20 MR. SULLIVAN: Yeah.

21 THE COURT: Yeah. I -- I -- I just think that given the
22 nature of this, and the exposure these people have that it's
23 preferable to do everything in writing, and we'll have an
24 affidavit as to what the concerns are, and I won't deal with
25 it until Holmes gets picked up, and then I'll give him an

1 opportunity to say, yes or no, or whatever, but I generally
2 don't expect retained Counsel to work for free. I didn't, and
3 I don't expect you to, so unless there is some dramatic
4 evidence of which I am unaware I will grant that at the
5 appropriate time. In the meantime, you don't have to do any
6 work.

7 MR. SULLIVAN: Judge, and -- and I will let the Court
8 know that -- that he did -- he's been fully compliant with
9 contacting me back and forth, and we talked last night, and
10 we -- I had indicated we were picking a jury today. He's been
11 down to my office numerous times to discuss the case. We've
12 been strategizing. I -- I don't know why he's not here. I'm
13 quite shocked, actually, so having --

14 THE COURT: I know why he's not here.

15 MR. SULLIVAN: I understand you -- you have a good belief
16 why.

17 THE COURT: And -- and -- and I might make this
18 observation. You know, I've known you for a long time, Mr.
19 Sullivan. I have ultimate respect for your integrity, and if
20 you tell me it's raining outside, I don't look. I just go get
21 my umbrella. With that said, the last three, four, five times
22 that this matter's been on Holmes generally hasn't been here,
23 and you've said, hey, I'm in touch with him, he's good to go,
24 and blah, blah, blah, and I've always said, okay, but it's two
25 hours and 15 minutes after he's supposed to be here. His wife

1 represented to you that he took off. He took off. So we'll
2 deal with it, you know, business is business.. We're going to
3 try Monroe and we're going to try Fergason if your guy --
4 well, here's the deal, we're going to tentatively try him with
5 Fergason, but if I grant your motion to withdraw it's going to
6 be impossible to try him with Fergason. I'm going to have to
7 appoint Counsel, and we'd have to try it five or six months
8 down the road after Counsel gets prepared, but before Ms.
9 DiGiacomo becomes a Judge, so I understand all that. We'll
10 deal with it when the time comes. There is substantial
11 prejudice to the State over Mr. Holmes not showing up. I
12 mean, that having to do this three times. I can't imagine a
13 circumstance under which I would seriously entertain a motion
14 for him to be released after he gets picked up. I guess -- I
15 guess, if he was hit by a car on the way in here, and he's
16 been in the hospital, and even his wife didn't know, I'd be
17 hard pressed, but it's a general proposition he's going to be
18 in jail pending this trial.

19 Okay. Now, we're going to pick a jury on Monroe,
20 and you can leave. You can leave. You're certainly free to
21 come and go.

22 MS. DUSTIN: Sure.

23 THE COURT: Not a problem.

24 MS. DUSTIN: And then just as a housekeeping matter, I
25 was going to submit, probably either today or tomorrow,

1 another interim billing before I started chomping on another
2 trial.

3 THE COURT: Listen, I know -- look, you guys have been
4 busting your ass. I mean, these three people have been very
5 well represented. There's a huge amount of work that you
6 should be paid. You submit it, I will signoff on it.
7 There's -- I got no problem with that.

8 MS. DUSTIN: Okay.

9 THE COURT: Okay. Anything else? Okay. Ferguson can go
10 back to jail, and stay there. Monroe's going to stay here,
11 and we need to go get a jury, and we're going to try Monroe.

12 THE CLERK: Our jury's here.

13 THE BAILIFF: Judge, can you give me a few minutes?

14 THE COURT: Absolutely.

15 THE BAILIFF: Because I'm by myself. All I'm going to do
16 is drop Ferguson by -- I'm going --

17 THE COURT: Understood.

18 THE BAILIFF: I've got to take him with me --

19 THE COURT: I -- I --

20 THE BAILIFF: -- but I'll be right back.

21 THE COURT: Not a problem. I understand your policy, and
22 that's a -- that's a good way to do it.

23 THE BAILIFF: Okay. I'll be right back.

24 THE COURT: Okay.

25 THE BAILIFF: Was it [indiscernible]?

1 THE CLERK: I think that's all.

2 THE BAILIFF: Is that all of them?

3 THE CLERK: Unless you --

4 MS. DIGIACOMO: Judge?

5 THE COURT: Yeah.

6 MS. DIGIACOMO: Just -- just what's referred to as the
7 number in the exhibit, I'm going -- depending on how long this
8 goes, I don't know how many I can get to Tina before the
9 afternoon. Well, because she might need some time before. I
10 don't know. We might work out --

11 THE BAILIFF: Okay, okay, so that's -- okay.

12 THE COURT: You know, this ain't the first time I've done
13 this. We'll just make it work. You know --

14 MS. DIGIACOMO: Okay, because --

15 THE COURT: -- when you've got a trial that's going to
16 go, you know, a day or day and a half you like to get a good
17 early start, you like to plow through the -- you know, this is
18 going to take what it's going to take. We've just got to
19 grind it out, and --

20 MS. DIGIACOMO: Okay.

21 THE COURT: -- you know, we -- we -- who would have
22 necessarily anticipate Holmes ain't going to be here, but
23 we're --

24 MS. DIGIACOMO: No, I --

25 THE COURT: -- changing the rules in the middle of the

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1 game, but we've all played the game before.

2 MS. DIGIACOMO: Well -- all I would ask is depending on
3 how long it takes us to get the jury, maybe we can discuss
4 what time tomorrow, because I'll be able to adjust how long
5 it's going to take me to get her the stuff depending on when
6 we get out of here.

7 THE COURT: Okay, take your time.

8 MS. DIGIACOMO: Thanks, Judge.

9 THE COURT: Okay.

10 THE BAILIFF: I'll be right back.

11 MR. SULLIVAN: Can I get my jury instructions back?

12 THE COURT: Yeah, but the instructions -- we're going to
13 need -- you -- you can have those.

14 MR. SULLIVAN: Okay. That -- that -- that jury
15 instructions -- no, I'm just kidding. I have them.

16 THE COURT: Well, I've got to take Holmes' name off of
17 them though.

18 MS. DUSTIN: Just appoint him hourly.

19 THE CLERK: Well, we're going to have to change them.
20 I'll have to change them.

21 MR. SULLIVAN: That instruction's going to be a --

22 MS. DUSTIN: It's going to be --

23 MR. SULLIVAN: That instruction's going to be tough on
24 the -- on the general intent of possession of stolen property
25 with the specific intent under --

1 [Off the record]

2 [Outside the Presence of Potential Jurors]

3 MR. HART: -- if you can believe that, Your Honor.

4 THE COURT: Well, I just -- I just don't want you to have
5 any trouble with Judge Mosley.

6 MR. HART: I know. I just --

7 THE COURT: Okay. This is time set for trial on case
8 number C228752, State of Nevada versus Daimon Monroe --

9 MR. HART: Yeah, just --

10 THE COURT: -- also known as Damion Hoyt. Any other
11 matters to come before the Court before we can bring the jury
12 in?

13 MR. HART: I guess not.

14 THE COURT: Are all three of you going to work on trial,
15 or --

16 MR. HART: No.

17 UNIDENTIFIED SPEAKER: I'm just watching.

18 MR. HART: He's just here trying to cover my case when I
19 go over there.

20 MS. DIGIACOMO: Your Honor, when I introduce the case do
21 you want me to say that a house was hit, and it was on the
22 news with all the stolen property, to kind of get it in their
23 mind?

24 THE COURT: If you want.

25 MS. DIGIACOMO: I mean, you know, there's nothing else,

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1 because --

2 THE COURT: If you want. I'm going -- I'm going to give
3 them strong admonitions about not watching, because I know
4 that this is going to be in the paper, and -- and I'm going
5 to -- I'm going to ask them if --

6 Marty, I'm going to ask them if anybody's heard the
7 name Damion Monroe or Damion Hoyt.

8 MR. HART: Okay.

9 THE COURT: Have either heard it, or know him, and if
10 they raise their hand I'll excuse them, because I don't want
11 to ask them how, or when, or why, and then have them blurt out
12 some of this other stuff.. I'm just going -- if they raise
13 their hand they're gone. That's the best way I can do it.

14 We're going to use 14 jurors, so you've got five
15 peremp's.

16 MR. HART: Sorry, I --

17 THE COURT: Blind moments. Anything else?

18 [Jury Selection Not Transcribed]

19 THE COURT: Okay. It went about as smoothly as it can
20 possibly go. Okay. Obviously, it takes more than 14 folks to
21 get a jury. It takes a whole bunch as you can see, because
22 people aren't a fit for a particular case for a particular
23 reason, so the way it works is those of you in the audience
24 that we just didn't get to, because you were sort of in the
25 back of the numbers game, you go back down, if they have

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1 another case starting they'll mix you up with a group, and
2 send you out, and you'll catch on with another jury hopefully.

3 If -- if they don't, and they don't have any other
4 cases for you to work on they'll just let you go, and you go
5 back to work tomorrow, but I don't know. I only run one
6 courtroom. There's 24 of them going at any given time, and I
7 don't know when they're starting and stuff, but the jury
8 commissioner is very organized, and she does.

9 So if you'll go back down there now, they'll
10 probably let you have lunch, and then they'll bring you back
11 if there's another case starting. Okay. Have a nice day.

12 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

13 THE COURT: Okay.

14 THE CLERK: [Indiscernible].

15 THE COURT: No, but I'm going to tell them a couple of
16 things.

17 THE CLERK: Okay. [Indiscernible].

18 THE COURT: No, I know. There -- there haven't been
19 many.

20 THE CLERK: Why?

21 THE COURT: Because of the [indiscernible] this morning.
22 And it's seven pages. Okay. The record will reflect that
23 those folks have left and we're now down to our jury, but the
24 way the trial's going to go is this, in about five minutes I'm
25 going to let you go home, and you're done for the day. We're

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1 not inefficient. We just don't take afternoons off and stuff,
2 but the truth is sometimes you have to go slow to go fast.

3 They have over 1000 exhibits. They're going to get up
4 here and get with Tina, and get them all marked and stuff.
5 Each one of which takes, you know, four or five minutes to do
6 if you do them one at a time. We're going try to get some
7 agreements on whether those can come in and out, and if they
8 can do that this afternoon, literally, it'll take this from an
9 eight or nine day trial down to six or seven days, so it's
10 just -- it's just smart business, and it really is a respect
11 overall for your time.

12 Now, but after that happens when you come in
13 tomorrow morning wear comfortable clothes. I'm going to give
14 you a little explanation of what you do, what your role is,
15 what to expect. You know, most of you haven't been jurors
16 before. My job is to usher you through this process to make
17 you as comfortable, and easy as far you can be to tell you
18 exactly what you do and don't do. It happens 10,000 times
19 everyday around the country, so don't be concerned that you
20 won't be able to do it. I have no doubt that you'll be able
21 to do it fine, and I'll kind of shepherd you through it as --
22 as you go along.

23 We'll have some opening statements where the parties
24 will explain kind of how the case lays out, and we'll get
25 right into the witnesses. They'll be some days when we can

1 move through and take a lot of witnesses. We are going to get
2 this done either Monday or Tuesday of next week, I'm not sure
3 which, trying to depend on how things go.

4 Now, every time we break, whether it's today or
5 tomorrow -- well, let me give you the schedule generally.
6 Generally, we start at 9:30. Why don't we start at 8 o'clock?
7 The answer is, that while each Judge is trying one case at one
8 time, each Judge manages about 1,000 cases, civil or criminal,
9 and in the morning between eight and 9:30 I handle motions or
10 issues that need to be decided pre-trial and post-trial, so.
11 In any given morning I may have anywhere from 20 to -- this
12 morning I had 55 things that I had to decide. Sometimes it's
13 sentencing people. Sometimes it's motions to dismiss.
14 Sometimes it's civil discovery issues. It could be anything,
15 and I prep those and decide those. I try to start as soon as
16 I can at 9:30, and I think other than today, because we had a
17 lot of business, that we will be able to start on time. We'll
18 go to about noon. We'll take an hour for lunch. We'll come
19 back, we'll go a couple of hours. We'll take a little break
20 for restroom, cigarette, glass of water kind of thing. We'll
21 go a couple more hours. We're going to finish most days
22 around 5:15 give or take a few minutes. There's one day Ms.
23 DiGiacomo has a graduation. She has to go to it. She has to
24 be out by five, so. But we're --

25 MR. HART: Well, I've got to be out that same day, so

1 it's not that --

2 THE COURT: Yeah, okay. So no big deal, but we'll get
3 good solid work days in, and we'll -- we'll get done on time.
4 Every time we break, whether it's at lunch, or in the
5 afternoon, or in the evening, I have to tell you three things,
6 and sometimes it's kind of just verbiage. In this case, it
7 is -- is very important.

8 Number one, do not talk about the case with each
9 other or anyone else. When you're together tomorrow, or the
10 next day talk about the weather, the ballgame, politics,
11 whatever. Don't talk about the case, please. If you go home
12 and your significant other wants to know what's going on you
13 can say, I'm a juror, it's a stolen property case, but, I'm not
14 allowed to talk about the specifics until after I'm done, then
15 you can share anything you want with them, but, please, and
16 every time I'm going to have to tell you that, and it would be
17 a violation of the rules if you did that, and if a juror
18 violates the rules, and, you know, it almost never happens, if
19 they do and it comes to the Court's attention it becomes a do-
20 over, very difficult, very expensive, very unfair to the other
21 jurors, so please don't do that.

22 Number two, don't read, watch, or listen to anything
23 about this case in the newspaper, television, internet, or
24 radio. It is a virtual certainty that there's going to be
25 some news on this case. It's a case that's been in the news

1 before. It probably will be again, so if you're going to read
2 the paper, have your spouse or your significant other go
3 through it first, and if there's an article about this tear it
4 out, or don't give you that page, set it aside, after the
5 trial you can read it and find out if the reporter was
6 watching the same trial you were. Just skip the 5 o'clock
7 news or the 6 o'clock news, because something could just come
8 on and you're not, you know, trying to break the rule, but it
9 could happen. Just get your -- get your news from the
10 newspaper or whatever is necessary, because that's an
11 important rule and we need everybody to strictly adhere to
12 that.

13 And, finally, don't form or express any opinion on
14 the case until it's submitted to you. You're going to hear
15 things that are going to register in your -- in your mind,
16 but, again, this Defendant is presumed innocent until this
17 trial is over, and, you know, there's sort of the two sides to
18 every story thing. Just keep an open mind.

19 Now, this is sort of a complex case, and there's
20 multiple counts. In order to make this easy for you, as easy
21 as possible, tomorrow when you come in we're going to give you
22 a clipboard with some pad and paper on it, and it'll have each
23 count delineated, and a place where you can make notes count
24 to count to speed things up.

25 All the evidence is going to be separated count to

1 count, and I think we've organized it in a way that'll make it
2 go expeditiously and make it easy for you to follow. So with
3 that in mind, don't talk about the case, don't read the
4 newspaper, or television about the case, radio, or internet.
5 Please do not do any independent investigation. Don't go out
6 to the scene at, you know, right now. Don't -- but you don't
7 know the scene, but don't -- don't go to any of these places.
8 Don't get on the internet and look things up. Again,
9 violation of the rules, do-over, not a good thing, so.

10 THE CLERK: Judge, I haven't sworn them in.

11 THE COURT: Well, they haven't been sworn in. What we'll
12 do is we're going to swear you in tomorrow morning, and we'll
13 get started. You may have one question, and that's, why is
14 there 14 of us? They probably told you in orientation that we
15 use 12. The truth is this, that under the law we have to have
16 12 people make a decision. We have to have 12 at the finish
17 line as it were. Even people that are willing to testify,
18 things happen, they get in wrecks, their kids get sick, they
19 have deaths in the family, and sometimes good people that
20 start through no fault of their own can't finish. Well, if we
21 started with 12 and we lost one through the course of a trial,
22 again, it'd be a do-over. We don't like to do anything twice.
23 It's expensive. It's difficult. So if this was going to be a
24 three day trial, we'd start with 13. Six, seven day trial,
25 14. If this were a six week trial we'd probably start with

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1 25, so that we know at the end we've got 12 there, and there's
-2 no possible waste of your time, so we're starting with 14. On
3 average, on a case like this, we'll probably lose one. I
4 don't know who it is, but we could lose none, we could lose
5 two. As long as we don't lose more than two, we're okay. If
6 we get to the end and we have more than 12, the clerk just
7 draws a number at random out of a cup, and that person acts as
8 an alternate, and fills in in the actual deliberation if
9 somebody gets sick, so it's just a system that's been devised
10 over a couple hundred years of doing this to make sure that we
11 don't waste time and money.

12 Okay. Anybody have any serious questions?
13 Otherwise, we'll start at 9:30 sharp. Keep this in mind, we
14 can't start until everybody's here, all the lawyers, all the
15 parties, all the jurors, so try to be on time. Our elevator
16 system is not the best particularly in the morning, because it
17 sometimes gets overloaded, so give yourself an extra amount of
18 time, wear something comfortable, and we'll try to get started
19 tomorrow at 9:30. Have a good day.

20 THE BAILIFF: And they'll report here?

21 THE COURT: Well, yeah, you can come just right here.
22 You don't have to go back to the jury office. The only time
23 you're going to have to go back downstairs is when we're all
24 done, and you get paid. You know, but other than that you
25 just come here everyday. R.J. will meet you out front. As

1 soon as everybody's ready to go we'll get started, and you
2 don't need to see them again until it's payday. Have a good
3 afternoon.

4 UNIDENTIFIED SPEAKER: You, too.

5 [Jury Out]

6 [Outside the Presence of the Jury]

7 THE COURT: Okay. The record should reflect the jury has
8 exited. Plan to take an hour for lunch, and then come back
9 and get with Tina, and just do the evidence until you get blue
10 in the face, or what?

11 MS. DIGIACOMO: Well, no, no, they -- no, Your Honor. I
12 was telling her, there's still about 400 photos I have to
13 print out, so I'm going to go get them printed out, finished
14 putting them in the files, and I'm going to bring her what
15 I've finished in order up until the end of the day, and then
16 the rest I might not have done until tomorrow. It's just -- I
17 don't know.

18 THE COURT: I understand. Marty, do you want to be here
19 when they do that?

20 MR. HART: I don't -- yeah.

21 MS. DIGIACOMO: I'm not going to be here. I'm just going
22 to leave them --

23 MR. HART: I wish I had copies of all of them, but --

24 MS. DIGIACOMO: -- and give them the number -- huh?

25 MR. HART: I know I've got copies of everything. I

1 just --

2 MS. DIGIACOMO: Yeah, I know, but it's all going to be in
3 different order, so we're taking, like where it was at the
4 crime scene, and putting it in the victim folder, so it's --
5 it's going to be kind of different.

6 THE COURT: So --

7 MS. DIGIACOMO: I'm going to do the best I can.

8 THE COURT: No, I understand, but I'll let -- Mr. Hart
9 can be here if he wants to, or do you have -- are you going to
10 have a master list then?

11 MS. DIGIACOMO: No, what I have --

12 THE COURT: Tina's going to have to develop --

13 MS. DIGIACOMO: -- is by file folder, in order, and then
14 she'll have a master -- I don't think I have time to do a list
15 and get it done.

16 MR. HART: All right.

17 THE COURT: So maybe we can do the -- the master list can
18 be, you know, Count I, one through eight, or something, and
19 then, you know, Tina can have a separate list where they're
20 specifically listed, but --

21 MR. HART: Yeah, if I can get a master list, so that when
22 they're coming up I can kind of mark down that --

23 THE COURT: We'll do our best.

24 MR. HART: -- what I'm looking at.

25 THE COURT: Tina, what do you need from them, and what

1 can we do to make it easier for you?

2 THE CLERK: Well, first of all, I think that Sandy's done
3 a lot that needs to be done already, getting it organized, I
4 have to make each one of those 1,000 stickers, but that'll
5 take time. Won't it, right now?

6 THE COURT: Well, can we get an -- can we get an
7 assistant for this afternoon? Could we get one of these
8 floaters to come in and just make stickers, and stuff?

9 THE CLERK: I probably can [indiscernible].

10 THE COURT: Yeah, well, that makes sense to me. If
11 you're in charge of organizing it, and the master list, and
12 they're making stickers, that'll make things go.

13 THE CLERK: Yeah.

14 THE COURT: We don't need anybody else here. We need him
15 dressed out at 9:30 tomorrow, and you know the drill. Okay.

16 MS. DIGIACOMO: Thanks, Your Honor.

17 THE COURT: See you tomorrow.

18 MR. HART: Okay. I need back --

19 UNIDENTIFIED SPEAKER: Thanks, Judge.

20 [Proceedings Concluded at 12:35 p.m.]

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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video recording in the above-entitled
3 case to the best of my ability.
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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

DAIMON MONROE,

Defendant.

CASE NO. C-228752

DEPT. VII

CLERK OF THE COURT

JAN 20 2:07 PM '09

FILED

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

TUESDAY, MAY 13, 2008

REPORTER'S PARTIAL TRANSCRIPT
TRIAL BY JURY
DAY 2 - VOLUME I

APPEARANCES:

For the Plaintiff: SANDRA A. DIGIACOMO, ESQ.
SHELLY L. SMALL, ESQ.
Deputy District Attorneys

For the Defendant: MARTY HART, ESQ.
MICHAELA E. TRAMEL, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

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DEFENDANT'S:

None

1 TUESDAY, MAY 13, 2008 AT 9:39 A.M.

2 [Outside the Presence of the Jury]

3 [Audio Begins]

4 THE COURT: State of Nevada versus Daimon Monroe, case
5 C228752, Monroe present with his counsel, Mr. Hart,
6 Ms. Tramel. Ms. Small and Ms. Digiacomo for the State.
7 Absent the jury. What's up?

8 MR. HART: One of the items that -- of evidence is they
9 downloaded a bunch of information from computers which had
10 alarm displays, you know, schematics for alarm systems as well
11 as listening devices, et cetera. As I understand it with the
12 rulings yesterday, the only burglary in question is the
13 conspiracy burglary on the Just for Kids and Anku, which has
14 already been --

15 THE COURT: That's the only burglaries they're going to
16 be allowed to sort of accuse him of.

17 MR. HART: Okay.

18 THE COURT: But that isn't --

19 MS. DIGIACOMO: But the fact that he's got all the stuff
20 and he's --

21 THE COURT: Yeah.

22 MS. DIGIACOMO: -- been charged with conspiracy.

23 THE COURT: That's relevant to whether he had knowledge
24 of this property stolen.

25 MR. HART: Okay. And I would -- and my argument is that

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1 would be going towards burglaries and other acts -- and
2 uncharged bad acts.

3 THE COURT: Probably did the burglaries, Mr. Hart, but
4 we're not going to talk about the burglaries. They can't be
5 proven. They're not going to say he's charged. They're not
6 going to allege it. They're not going to say about it. But
7 they can put in the schematics, because it goes to his intent.

8 MR. HART: Not bringing in --

9 THE COURT: Okay. Anything else?

10 MR. HART: Not bringing in the My Space.

11 THE COURT: Here's what I'm going to do. Normally, we
12 read the indictment to them. In this case, there's 26 counts
13 that are exactly the same that -- except for the date and the
14 person's name. And it would be mind numbing for 30 minutes
15 and difficult on Tina. Plus, I think it's hard for them to
16 understand it or keep track of it.

17 I'm going to give them each a copy of the indictment
18 and along with -- give them a blank set of papers that we've
19 provided that is a blank sheet as to each count, so that they
20 can kind of take notes count to count. I think it'll make it
21 a lot easier for them to decide. So that's the way we're
22 going to do it.

23 MS. DIGIACOMO: Your Honor, just --

24 THE COURT: R.J., we ready?

25 THE MARSHAL: Yes sir.

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1 MS. DIGIACOMO: For the record --

2 THE COURT: What?

3 MS. DIGIACOMO: -- I filed an amended information.

4 THE COURT: Yeah.

5 MS. DIGIACOMO: Or excuse me, second amended information
6 with the charge changes.

7 THE COURT: Indictment. Yeah.

8 MS. DIGIACOMO: Second -- yes, that. And also, Brett
9 Engle, who's one of our witnesses, I find out last night that
10 he's got cancer of a serious degree. He's in chemo and
11 radiation therapy. He's not available for trial. I have his
12 testimony from the prior trial regarding the car stop, and I'd
13 to be able to use that.

14 THE COURT: And that was an actual trial where the
15 Defendant was --

16 MS. DIGIACOMO: Yes.

17 THE COURT: -- present, represented by counsel, and --

18 MS. DIGIACOMO: Represented by Mr. Hart.

19 THE COURT: All right. And he had an opportunity to
20 cross-examine this witness?

21 MS. DIGIACOMO: Yes.

22 THE COURT: Any objection, Mr. Hart?

23 MR. HART: Your Honor, I would prefer that he's here, but
24 I understand what the Court's going to do.

25 THE COURT: Okay. The ruling will be that we'll use a

1 reader. And the way we'll do it is whoever the reader is will
2 read the witness' part. Ms. Digiacomo, you'll read your own
3 part. Mr. Hart, you'll read your own part, and I'll read the
4 judge's part. Okay.

5 MR. HART: Will we also be reading from co-counsel on
6 that?

7 THE COURT: Okay. We got those copies? Okay.

8 MS. DIGIACOMO: Your Honor, just --

9 THE COURT: I want -- bring them in. Let's go. You just
10 wait right here with them. And in about three minutes into my
11 speech I'm going to tell you you're going to pass them, and
12 you'll just pass them out. And you'll just pass them out.
13 And you're done, then we need to get the other stuff.

14 [Jury In]

15 THE COURT: Okay. Back on the record in case C228752,
16 State of Nevada versus Daimon Monroe. Let the record reflect
17 the presence of the Defendant, his counsel, counsel for the
18 State. All ladies and gentlemen for the jury are back in the
19 box.

20 Across the back it's Prince, Evans, Salmon, Devine,
21 Smith, Arnold, Taskoff [phonetic]. Across the front Boyd,
22 Alevus [phonetic], Brown, Amma [phonetic], Daniels, Ariscold
23 [phonetic], and Iglasias [phonetic]. Okay. All right. Good
24 morning.

25 THE JURY: Good morning [en masse].

1 THE COURT: Let me give you a few pointers, and we'll get
2 started right off.

3 [Court to Clerk]

4 THE COURT: First thing that happens is we actually swear
5 the jury. It's a different oath than the oath that you take
6 when we ask questions. That oath is you agree to tell the
7 truth. This oath is in doing your job you agree to apply the
8 law of the State of Nevada. Ms. Clerk, if you'll have
9 everybody stand and raise your right hand, please.

10 [Jury Sworn]

11 THE COURT: Okay. We are doing our best to make what
12 might otherwise seem complicated easy for you to follow. So,
13 next to your seat you'll find a clipboard. And there's a pad,
14 and it has all the counts sort of delineated, where you can
15 take notes on a count by count basis. Hopefully, that will be
16 less confusing. There's a pen. You get to take notes. You
17 get to take those notes with you to the jury room.

18 Also, there's a hard red badge which you've all
19 already dawned. And we'd ask that you wear that when you're
20 in the courthouse. There's a number of reasons for that, and
21 maybe most important is that if you go to lunch or you go out
22 on a break, and there's witness or investigators on the case
23 outside, they'll be sensitive not to talk about the case in
24 your presence which, as I told you, is important because,
25 ultimately, you have to base your decision on what we hear in

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1 court. You can't base it on something I [sic] heard out of
2 court or went to the scene, or any of that stuff.

3 As I told you during the trial, none of the
4 participants other than R.J. are allowed to talk to you. So
5 anything you need to know or anything you need to ask, go
6 through R.J.

7 This is a criminal case. It is commenced by the
8 filing of an indictment. Actually, this is the second amended
9 indictment. That document is no evidence of the guilt of the
10 Defendant. In fact, I already told you this Defendant is
11 entitled to be presumed innocent. As a general proposition
12 under the rules, what happens is I have Tina read you a copy
13 of the indictment. This indictment is 27 counts, and Count 2
14 through 27 are all exactly the same except for the name and
15 the place of the person and the property. And it would take a
16 good long time, and it would be very boring.

17 What I've decided to do, and I think it'll be easier
18 for you, is actually give you each a copy of the indictment.
19 Charmaine will give you one, and kind of read it to yourself.
20 And then you can kind of -- have the indictment with you as
21 you listen to the testimony, and you'll know what's charged in
22 Count 3 or charged in Count 16. And then, you've also got a
23 -- sort of a schematic pad to let you take notes count to
24 count. I think it will make it a lot simpler and a lot more
25 understandable, and it will expedite things in the jury room.

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1 I told you yesterday the schedule. Basically, the
2 way the trial goes is this. As soon as I'm done talking in a
3 couple of minutes, you'll hear the opening statement of the
4 State. The opening statement is not evidence. It is a
5 framework to help you understand evidence. I liken it to the
6 picture on the outside of the jigsaw box. If you pick up a
7 jigsaw puzzle and look at it, it doesn't look like anything.
8 But if you see it's got some red on it, and you look at the
9 big picture and the red is in the upper right-hand corner
10 where you kind of know where this goes, well, that's the idea
11 here. We've got several dozen witnesses. You're going to get
12 evidence from this one and that one, and a bit and a piece and
13 a drib and a drab. And the idea of the opening statement is
14 to give you the big picture so that everything sort of falls
15 in place, and you're not wondering -- or left wondering until
16 the end of the trial how this fits in.

17 Then Mr. Hart for the defense has three options. He
18 can make an opening statement as to what he believes the
19 evidence will or will not show, or he can wait until the State
20 has put on its witnesses to make an opening statement, or he
21 can waive opening statement. Those are just decisions he'll
22 have to make.

23 After that, the State will put on any and all
24 witnesses it has. The State has the burden of proof.
25 Mr. Hart has the right to cross-examine every witness called

1 by the State. After the State is done, if Mr. Hart has
2 witnesses, he has a right to put on any witnesses. He has no
3 obligation to put on any witnesses. Sometimes the witnesses
4 that either side would call are the same people. So when the
5 State calls them, the defense actually does their work during
6 their cross-examination. I don't know in this case how that's
7 going to shake down.

8 Trials are conducted under rules, and they are good
9 rules. They are not rules designed to keep things from
10 jurors. They are rules designed to keep the playing field
11 level, to make sure that both sides have a fair opportunity to
12 have their position concerned. They're no different than the
13 rules in the workplace or the rules of basketball. And you
14 have rules, and the rules are designed to make sure everything
15 goes the way they're supposed to.

16 My job is I'm the enforcer of the rules. I have no
17 stake in the case. I could care less whether the Defendant is
18 acquitted or convicted. I have two jobs. One is to enforce
19 the rules, so that both sides get a fair trial; and number
20 two, to manage the time of the trial to make sure that it goes
21 roughly the length that I told you it would, so that we don't
22 waste your time.

23 So during the course of the trial, you may hear an
24 attorney say objection, Your Honor, or I object. What that
25 means is they're saying Judge, under the rules you can't ask a

1 question that way or that's not a fair piece of evidence, and
2 it's my job to make those decisions.

3 As I told you yesterday, until the case is submitted
4 to you, you cannot discuss it with each other or anyone else.
5 Very important rule. Please adhere to that. There's some
6 water over there. You may certainly help yourself. Even, you
7 know, when people are testifying, if you're quiet, you can go
8 over there and get some water. If you go out at lunch or a
9 break, you want to bring back a bottle of water or a small
10 coke or something just to keep your mouth from getting dry,
11 that's perfectly fine.

12 You can't see or hear something, raise your hand. I
13 can't hear, Judge, or I can't see.. If you need a break,
14 somebody just has to go to the restroom or have to make a
15 call, just say Judge, can we have five minutes. I'll be glad
16 to do that. It will not elongate the trial at all.

17 And last but not least, for the last three years,
18 the Supreme Court has been conducting an experimental program
19 where they allow jurors to ask questions. If you think that
20 there is a question that needs to be asked that one of the
21 lawyers didn't ask, there's a procedure to allow you to submit
22 that question to the Court for potential consideration.

23 The way it works is this. While the witness is
24 still here, not after they go back to Cincinnati, while
25 they're still here, you got R.J.'s attention. Tear a sheet

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1 out of your pad -- they have the pads in addition to the
2 things we gave them, don't they, R.J.?

3 THE MARSHAL: [No verbal response]

4 THE COURT: Okay. Tear a sheet out of your pad. Write
5 your juror number and the question. Forget those old numbers.
6 It's 1 through 7 along the back, 8 through 14 along the front.
7 So, Juror number 14, you put 14, what color is the dog.
8 That's the question. You give that to the marshal. He'll
9 give it to me.

10 If it's a proper question under the rules, and we
11 don't expect you to know the rules, I'll ask it on your behalf
12 and regard the answer the same as if one of the attorneys had
13 asked the questions. If it's not allowable under the rules,
14 I'll just set it aside and don't give it another thought.
15 After we're done and we have the verdict, I'll go back. I'll
16 explain to you what the rule is and why that rule really does
17 tend to keep the playing field level. And I've never had --
18 not have anybody say okay, I understand, that makes sense. It
19 might be relevant. It might be a question that, you know,
20 common sense says this is reasonable information, but there
21 may be an overriding consideration in terms of people having a
22 fair trial.

23 So with that, Ms. Digiacomo, your opening statement.
24 Oh, one other thing. It's my understanding that one of the
25 State's witnesses is very sick with cancer. And so -- and

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1 can't be here today. So the rules say this. If you can't
2 have a witness live, you do the second-best thing. If that
3 witness has testified previously in a case, the Defendant was
4 present, the Defendant had a lawyer, and he was subject to
5 cross-examination, the rules say that you can use that prior
6 testimony in lieu of their live testimony. It's not as good
7 as live testimony, but it's better than not having the
8 information at all. And so, the way we do that, there would
9 be a witness this morning in that situation, is we get reader,
10 an actor as it were, who comes up and pretends they're the
11 witness. And Ms. Digiacomo plays her part, and Mr. Hart will
12 play his part, and I'll play the judge's part. And you
13 consider that testimony just the same as if that sick person
14 had been able to deliver it today. Ms. Digiacomo, your
15 opening statement.

16 MS. DIGIACOMO: Good morning, ladies and gentlemen. I'm
17 sure you-all are not sure what you're in for here, but it's
18 really not as bad as it sounds with the amount of exhibits and
19 the amount of counts.

20 Really, what we have here are a series of events
21 that lead to search warrants that were executed, and that was
22 where the stolen property was found. You're going to hear the
23 big picture in this case, because there is an overriding
24 conspiracy that's charged between four individuals.

25 The first one is Daimon Monroe, or sometimes you

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1 might hear him referred to as Hoyt, who is the Defendant in
2 court here today. He's also got another one of his buddies
3 that you're going to hear about, named Bryan Ferguson. The
4 two of them kind of started this ball rolling on September 24,
5 2006, when they were arrested for having some stolen property
6 on them, and it kind of snowballed from there. And we'll get
7 to that in a minute.

8 There's also Tanya Trevarthen. That is -- or was
9 Mr. Monroe's girlfriend and the mother of his children. She
10 was charged originally in this case. However, she is now
11 going to be a State's witness, and you're going to hear from
12 her in this trial.

13 And lastly, you have a person by the name of Robert
14 Holmes. And he's tied to this as well, because a lot of the
15 stolen property that you're going to see is found in different
16 residences. One of them is his residence as well as Mr.
17 Monroe and Ms. Trevarthen's residence, as well as the property
18 or the units that belong to Mr. Ferguson.

19 Now September 24, 2006, this is how the ball gets
20 rolling. At approximately 2:15 in the morning, an 9-1 walk --
21 excuse me -- a 9-1-1 call goes out for Anku Crystal Palace.
22 But what had happened is, actually, the burglary alarm had
23 activated at approximately an hour before, at 1:15. But by
24 the time the owner got there and the security guard got there,
25 and they realized that there were items missing, it was an

1 hour later before 9-1-1 was called.

2 Two officers went to respond to the Anku Crystal
3 Palace burglary, and that's Officers Jerry MacDonald
4 [phonetic] and Kenneth Salisbury [phonetic]. But on the way
5 to Anku Crystal Palace, they happened to be close to Just for
6 Kids Dentistry, which is not very far from where the Anku
7 Crystal Palace is.

8 And what happened was Brent Engle was in the parking
9 lot of the Timbers Bars that's right next to Just for Kids,
10 and he saw two gentlemen kind of circle the parking lot in a
11 white minivan, saw them go up to the door, go in the door, so
12 he called the police for a burglary in progress. And because
13 the two officers were on their way to Anku Crystal Palace,
14 happened to be right there, they see the only car in the
15 parking lot in front of Just for Kids, this white van, see it
16 exit, and they pull it over, and this is where the car stop
17 occurred.

18 They take both gentlemen out of the vehicle. As
19 they go to clear the vehicle -- because you can see there's
20 dark tinted windows, so you can't see. So they just clear the
21 vehicle for officer safety to make sure nobody else is in
22 there. When the officer looks in, he doesn't see anyone. But
23 he does see this big crystal piece that kind of sticks out in
24 his mind, because it's very unique, not something you'd see in
25 the car. As they investigate a little bit further, somebody

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1 else responds to the Anku Crystal Palace. The officers at the
2 car stop are in contact with them, and they learn that the
3 items in the car belong to the Anku Crystal Palace.

4 Now, initially, the Just for Kids Dentistry, when
5 the manager shows up, he walks through. The front door is
6 locked, same with the Anku Crystal Palace. Nothing is
7 disturbed inside. So, at first, no one was sure, you know, if
8 they'd really gotten in there.

9 Well, the detective assigned to these guys -- or
10 after the car stop, they get assigned a detective, they start
11 -- he starts listening to jail calls between these two
12 individuals, between Monroe and between Ferguson, and he hears
13 a lot of talk about Matthew, that no, we're cool as long as
14 they don't figure out Matthew. So he decides to go and check
15 out all the -- because they're also caught with a bunch of
16 burglary tools in the car.

17 So he checks out all the burglary tools, and he
18 photographs them, and he's trying to figure out what they're
19 talking about, Matthew, because it's something of a thing.
20 And he eventually figures out that Matthew is a bent
21 screwdriver. It's a long screwdriver that is welded down,
22 bent to a 90-degree angle, and very thin.

23 And what he discovered -- he went back out to Anku
24 Crystal Place and Just for Kids Dentistry, because they both
25 had glass doors with thumb locks on the inside. And what he

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1 discovered was when he took Matthew and he put it between the
2 door jam -- or between the doors where they came together, and
3 you can see it there in the photograph, that that screwdriver
4 will come up on the other side and can turn the thumb lock.
5 So he figured -- and he was able to open it. It took him a
6 minute or so, because he had never done it before, but he was
7 able to open both the doors with this tool.

8 So based upon that, detectives try and listen to
9 most phone calls. They're gathering information. And they
10 even do surveillance, and they do hear talk about Monroe
11 moving Mr. Ferguson's belongings out of his apartment because
12 his lease is up, and also about a box truck that's owned by
13 Robert Holmes. And detectives actually will follow the box
14 truck that's owned by Robert Holmes. And detectives actually
15 will follow the box truck from the Cutler residence, which is
16 where Monroe and Trevarthen lived, to a storage unit at West
17 Charleston, 8100 West Charleston, watch them unload items into
18 the storage unit, and then take the box truck and head back to
19 Cutler.

20 Eventually, this all rolls into search warrants
21 being executed early morning hours of November 6th, 2006, at
22 1504 Cutler, which is Monroe and Trevarthen's residence, at
23 Pirate's Cove, which is I think Canyon View Apartments, which
24 was where Mr. Ferguson had his apartment, at the storage unit
25 at West Charleston, as well as a storage unit at Smoke Ranch,

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1 which was in the name of Tonya Trevarthen.

2 But as the detectives got into the Cutler house the
3 morning of November 6th, 2006, they'll tell you they weren't
4 prepared for what they found. There was musical equipment,
5 even See's candy. There was sports memorabilia everywhere and
6 also high-end appliances, commercial grade appliances. There
7 was three in the garage alone. So, they hit the house. They
8 also, at the same, are going to the storage units. This is
9 West Charleston, Smoke Ranch. They found a hyperbaric chamber
10 there as well as a multitude of other items.

11 And then, they found paperwork when they executed
12 the search warrant at the Cutler residence. Mr. Ferguson's
13 car is parked on the side of the residence. They find
14 paperwork in Mr. Ferguson's car regarding another storage unit
15 at Smoke Ranch -- actually -- excuse me -- at North Buffalo,
16 two units in Mr. Ferguson's name. They get what's called a
17 piggy back search, wanted to get another search warrant to get
18 in there and in the house as well. They find paperwork for a
19 storage unit at West Sahara in the name of Ashton Monroe, and
20 they also find a fake Nevada I.D. in the name of Ashton
21 Monroe, with the Defendant's picture on it.

22 So, it kind of snowballs, and it grows and grows.
23 So, now they have the task of trying to find victims for all
24 of these, and they do. But here's the different locations
25 that are -- you're going to hear a lot about. You're going to

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1 hear about Cutler, which is the house. You're going to hear
2 about Pirate's Cove, which is the apartment Mr. Ferguson lived
3 at. Rise Pine [phonetic] is where Mr. Holmes lived, and there
4 was stolen property taking -- taken out of that residence as
5 well. 8100 West Charleston, storage unit that was in the name
6 of Tonya Trevarthen, but it was Bryan Ferguson's stuff that
7 was in there from moving him out of his apartment. Smoke
8 Ranch, that's where Tonya Trevarthen had a storage unit that
9 she had had for quite some time. The West Charleston was
10 rented in October of 2006. You're going to hear about North
11 Buffalo, and that's the two units that Mr. Ferguson had had
12 for a while. And then you're going to hear about West Sahara,
13 which is the storage in the name -- in the fake name of the
14 Defendant.

15 These are all the victims that you have in front of
16 you that are charged, everything from sports, See's candy as I
17 mentioned before, a lot of sports memorabilia, high-end
18 equipment, music equipment, speakers, surround sound, that
19 kind of thing, Brady Industries. It was floor buffers,
20 complete cosmetic surgery as well as Dr. Richard Brume
21 [phonetic]. Pictures were taken. See America [phonetic] was
22 broken into and only pictures off the wall taken. Art studios
23 were broken into. But the common theme throughout all of
24 these victims that you're going to hear about is that they're
25 all commercial businesses, and they were all broken into over

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1 the weekend.

2 When we get to the end of everything, the two -- the
3 charges that we have here are the conspiracy and possession of
4 stolen property for the property belonging to each one of
5 those victims. And at the end of everything, the State is
6 going to prove its case beyond a reasonable doubt and to ask
7 you to convict the Defendant.

8 THE COURT: Mr. Hart, do you wish to make an opening at
9 this time?

10 MR. HART: Yes, Your Honor, very briefly.

11 THE COURT: My two favorite words.

12 MR. HART: Mine are yes, dear. You've been instructed by
13 the jury -- or the judge about -- you are the jury -- that you
14 have a duty to follow Nevada State law, a couple of things you
15 may have deal -- have to pay close attention. You weren't
16 even admonished more than once. You're not to come to a
17 conclusion at this time. You're not to discuss the case.
18 You're supposed to wait and withhold your decisions until all
19 the evidence is in.

20 Now you've heard a list of 100 witnesses -- over 100
21 witnesses coming in, victims. Please keep in mind that the
22 State holds the burden of proving each and every count and
23 charge. You have 26 -- well, 27, actually, in which 26
24 different counts with different victims there in front of you.
25 It was described in this opening as a piece of the puzzle.

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1 Well, as you're well aware, and defined in the
2 instructions, but the standard of proof is beyond-a reasonable
3 doubt. The number of pieces -- you have to fill out that
4 puzzle, ladies and gentlemen. If the pieces aren't there, you
5 don't have beyond a reasonable doubt, and the State has not
6 met its burden in the case. Do not confuse quantity of the
7 information provided to you with quality of the information
8 provided to you. Keep in mind, there were items found in six
9 different places. My client's name is not on a number of
10 those places.

11 Probably the star witness in this case will be his
12 ex-girlfriend, who is, as you now know, the State's witness.
13 Please keep in mind where that could cause a possible
14 prejudice in her decisions to testify and how.

15 The requirement of the jurist is to hold the State
16 to their burden. Everybody deserves a fair trial. Everybody
17 upholds the standard. The standard is set over 200 years ago,
18 beyond a reasonable doubt. You must uphold that standard,
19 consider the (indiscernible) where items were kept, what items
20 were listed on reports that were later claimed to have been
21 found. You'll find some discrepancies here. You'll find that
22 somebody people testified under oath that that's might and
23 then said later no, that's not mine, that one is mine. Please
24 keep that in mind as you're going through this. Thank you.

25 THE COURT: Ms. Digiacomo, call your first witness.

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1 MS. DIGIACOMO: Your Honor, I have the -- I had planned
2 on reading the testimony of Brent Engle at this time.

3 THE COURT: Fine. Do you have a reader?

4 MS. DIGIACOMO: However, I can tell you we're missing the
5 last page, but we can start it. They're trying to bring the
6 last page over.

7 MR. HART: And can we approach very quickly?

8 THE COURT: Yeah.

9 [Bench Conference Not Transcribed]

10 THE COURT: Do you have a reader?

11 MS. DIGIACOMO: Yes, outside. I have a reader.

12 THE COURT: Mr. Brent Engle is the fellow that has cancer
13 and can't come in today. But he did testify at a prior
14 proceeding. And Mr. Monroe was present, and his counsel,
15 Mr. Hart, was present and had a chance to cross-examine. So,
16 under the rules, consider this as though Mr. Engle was
17 testifying himself.

18 MS. DIGIACOMO: Our reader left to go get the other page.

19 THE COURT: Ms. Small, would you like to read?

20 MS. SMALL: Certainly, Your Honor.

21 THE COURT: Come on up.

22 MS. SMALL: That works. I need a copy.

23 MS. DIGIACOMO: I don't have an extra copy. The reader
24 took the extra copy.

25 MS. SMALL: Or is it in that room maybe? Will you look

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1 in that?

2 MR. HART: Your Honor, may I run to your back real quick?
3 Back hall.

4 THE COURT: It's all right. You can have mine.

5 MS. SMALL: Thank you, Your Honor. We'll share. If the
6 judge has to say anything, just show it to him.

7 MS. DIGIACOMO: Okay.

8 THE COURT: Okay. Have a seat. You're Brent Engle.
9 You've already been sworn in a prior proceeding. Pick up
10 after the witness was sworn, Mr. Digiacomo.

11 MS. DIGIACOMO: Yes. And just for the record, it's Brent
12 Engle, E-n-g-l-e.

13 THE COURT: Go ahead.

14 [Transcript Read Into Record - Not Transcribed]

15 THE COURT: Anything else?

16 MS. DIGIACOMO: No, Your Honor.

17 THE COURT: Okay. Thank you, Mr. Smith.

18 MR. SMITH: No problem, Judge.

19 MS. DIGIACOMO: May I approach the clerk, Your Honor?

20 THE COURT: Yes. Call your next witness.

21 MS. DIGIACOMO: Lance Hardman.

22 THE COURT: It's my understanding that, you know,
23 normally, you do things chronologically, that some of these
24 witnesses live out of state, and the State has to kind of call
25 them when we can get them here, when the flights are. So

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1 things are a lot out of order. It's for the courtesy and
2 convenience of the witnesses. Come on up here, sir.

3 LANCE HARDMAN, STATE'S WITNESS, SWORN

4 THE COURT: Sir, state your name and spell your name for
5 the court recorder.

6 THE WITNESS: Officer Lance Hardman, L-a-n-c-e
7 H-a-r-d-m-a-n.

8 THE COURT: Go ahead, Ms. Digiacomo.

9 MS. DIGIACOMO: Thank you.

10 DIRECT EXAMINATION

11 BY MS. DIGIACOMO:

12 Q Sir, what is your occupation and assignment?

13 A I'm a police officer currently assigned to an
14 intelligence unit out of southwest area command.

15 Q Now I want to direct your attention back to
16 September 24th of 2006. What was your assignment then?

17 A I was on patrol.

18 Q And do you recall what shift you were working on
19 that day?

20 A Graveyard.

21 Q How long have you been with Metro overall?

22 A Eight years.

23 Q On that date, did you respond to a call either for
24 the Anku Crystal Palace or Just for Kids Dentistry?

25 A The dentistry.

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1 Q All right. What was the nature of that call?

2 A It was a burglary alarm.

3 Q What did you when the call went out?

4 A I responded, arrived, met a security guard, then
5 cleared the building.

6 Q All right. Now, you said you cleared the building.
7 What building?

8 A The Kids Dentistry.

9 Q How did you get into the Kids Dentistry?

10 A I believe the security guard let us in. He had a
11 key.

12 Q All right. Was the owner there?

13 A Not at the time I was there, but he eventually
14 showed.

15 Q All right. And did you do a walk-through with the
16 owner or the manager of the building --

17 A Yes.

18 Q -- or of the business?

19 A Yes.

20 Q At the time that you entered with the owner or the
21 manager, was there any indication that anything had been taken
22 or move, or disturbed at all within the Just for Kids
23 Dentistry?

24 A No.

25 Q At this point, do you stay there or do you go

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1 somewhere else?

2 A Once we determined that it was just an alarm, we
3 thought it was a malfunction, nothing was disturbed or taken,
4 so we cleared. As I was clearing, we learned from the
5 security guard there was a security guard there was a burglary
6 just down the street. As I was en route to that, because I
7 thought it could be correlated together, I noticed there was
8 this car stop. So I stopped by to see if my officers were
9 okay.

10 Q All right. Now the other burglary that you thought
11 might be related, where was that burglary?

12 A Approximately 1.5 miles from --

13 Q And do you recall the name of the business?

14 A It was a oriental shop that sold trinkets and wooden
15 statues and stones.

16 Q Okay. Does the Anku Crystal Palace sound familiar?

17 A Yes.

18 Q And you said that there was a car stopped as well.

19 Who was at the car stop?

20 A I'm sorry. Repeat your question.

21 Q You said on your way to the Anku -- or the oriental
22 shop that there was a car stop as well, that you stopped to
23 make sure the officers were okay?

24 A Yes, ma'am.

25 Q Okay. Where was that car stop?

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1 A Fort Apache and Tropicana, just east of.
2 Q Okay. And where was it in relation to the Just for
3 Kids Dentistry?
4 A Just east of maybe by not even half a mile.
5 Q Okay. So fairly --
6 A An eighth-of-a-mile.
7 Q So fairly close?
8 A Fairly close.
9 Q And who were the officers at that car stop?
10 A It was Officer Salisbury and Officer McDonald.
11 Q Do you recall what the car looked like?
12 A It was a minivan.
13 Q All right. And did you ever see any of the persons
14 that were in the minivan?
15 A Yes. They had them in front of the patrol car.
16 Q Okay. Any that you recognize as being in the
17 courtroom here today?
18 A No.
19 Q Okay. When you stopped by the car stop, how long
20 did you stay there?
21 A Approximately about seven to 10 minutes.
22 Q All right. And then what did you do?
23 A Headed on down to the Crystal Palace.
24 Q Did you ever look -- or not look. Did you see what
25 was in the car from when you stopped at the car stop?

1 A Yeah. The doors were opened. So was the back hatch
2 to the minivan. The items that I observed inside was a huge
3 wooden statue, oriental in nature, had a price tag on it, big
4 stone, big crystal stone, middle console, a bunch of
5 bracelets, some bananas, and a bunch of vintage pictures of
6 Woodstock.

7 MS. DIGIACOMO: Let me pass.

8 THE COURT: Questions, Mr. Hart.

9 CROSS-EXAMINATION

10 BY MR. HART:

11 Q So when you drove up, the van was there. You said
12 the back end was open?

13 A Yes, sir.

14 Q The rear hatch?

15 A Yes, sir.

16 Q And also the side hatch?

17 A The sliding door, sir.

18 Q Sliding door. Okay. And at that time, nobody had
19 been -- you'd not been dispatched to Anku Crystal Palace,
20 correct?

21 A No, sir.

22 Q Did you, later, call back those officers?

23 A Which officers, sir?

24 Q The ones at the car stop?

25 A Yes, sir. Once I made sure my officers were okay, I

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1 proceeded on down to Crystal Palace. Once I got there, I
2 figured out it was related.

3 Q How long did you [sic] take you to get to Anku
4 Crystal Palace?

5 A After clearing the car stop, two minutes, three
6 minutes.

7 Q How far is it?

8 A About 1.5 miles.

9 Q You got to go around, and some of the streets
10 weren't available at the time, right? That area is
11 developing, so you had to go down a ways towards, was it, Fort
12 Apache or Russell to come up Tropicana?

13 A I shot down -- straight down Fort Apache, made a
14 right. And from Russell, Fort Apache is not that far,
15 especially on graveyard in a cop car.

16 Q Okay. And the car had been stopped for a while by
17 the time you -- the van had already been stopped for a while
18 by the time you got to it?

19 A Yes, sir.

20 Q Windows in the van were tinted, correct?

21 A I do not recall.

22 MR. HART: Nothing further from this witness.

23 THE COURT: Any redirect?

24 MS. DIGIACOMO: Yeah.

25

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REDIRECT EXAMINATION

BY MS. DIGIACOMO:

Q I'm sorry. You said when you were at the store, you talked back with the officer on the phone, the officer at the car stop?

A The officer at the Crystal Palace?

Q Well, when you were at the Crystal Palace you talked to an officer on the phone that was at the car stop?

THE COURT: I thought his testimony was when he got to Anku, at some point, he later called back to the car stop.

MS. DIGIACOMO: Right.

THE COURT: Is that right?

THE WITNESS: Yes, Your Honor, that's correct.

THE COURT: All right.

MS. DIGIACOMO: Okay.

BY MS. DIGIACOMO:

Q Okay. At the time that you're calling them, are you describing what's missing from the Anku Crystal Palace?

A I asked them if it'd been broken into and if there's been anything taken, and they said yeah, there's a lot of things taken. And I said well, I think that the car that's been stopped, it has these items in it. Then I went down there and seen what was [sic] been taken.

Q Okay. So you went -- okay. That's fine. You clarified. Thank you.

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1 THE COURT: Anything else, Mr. Hart?

2 MR. HART: Yeah, briefly.

3 RECROSS-EXAMINATION

4 BY MR. HART:

5 Q When you got back to the Anku Crystal Palace, you
6 had to wait for the owner to arrive, correct?

7 A No, sir. There was already officers there with the
8 owner.

9 Q Oh. The owner was there when you got there.

10 A Yes, sir. I wasn't primary on that. I just showed
11 up.

12 Q Okay. How long were you around the Anku Crystal
13 Palace before you started calling back?

14 A 15, 20 minutes, maybe longer.

15 Q Okay. Thank you.

16 THE COURT: Thanks, officer. Appreciate your testimony.
17 You're excused. Call your next witness.

18 MS. DIGIACOMO: I'm not sure if she's to the exhibits
19 yet, Your Honor.

20 THE CLERK: I'm not.

21 MS. DIGIACOMO: Let me see if I have another witness,
22 because the next one is going to take all of the exhibits.

23 THE COURT: Yesterday, Tina marked I think 1,020, but
24 we'll go through them pretty quick. But it took her a long
25 time. But as I said to you yesterday, that'll save all of us

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1 two days when she does that in advance. But they didn't get
2 them all done. There were more than that, and she's working
3 on the last little batch.

4 MS. DIGIACOMO: Your Honor, the State will call Sam
5 Harris.

6 THE COURT: Come on up, Mr. Harris.

7 SAMUEL HARRIS-INMAN, STATE'S WITNESS, SWORN

8 THE COURT: Sir, state your name and spell your name for
9 the court record.

10 THE WITNESS: Samuel Trent Harris-Inman, S-a-m-u-e-l,
11 Trent, T-r-e-n-t, Harris, H-a-r-r-i-s, hyphen-I-n-m-a-n.

12 THE COURT: Ms. Digiacomo, go ahead.

13 MS. DIGIACOMO: Thank you.

14 DIRECT EXAMINATION

15 BY MS. DIGIACOMO:

16 Q Sir, I want to direct your attention to
17 September 24, 2006, approximately 2:00 in the morning. Do you
18 recall where you were?

19 A Yes, ma'am.

20 Q Where were you?

21 A Home sleeping.

22 Q All right. And did something awaken you?

23 A ADT Alarm Company called.

24 Q And what did they call about?

25 A There was alarms going off and sensors and

1 everything at the place of business, Just for Kids Dentistry.

2 Q And what is your relationship with the Just for Kids
3 Dentistry?

4 A I'm the office manager, and I was the first call
5 response for burglaries or the alarm system.

6 Q When you got the call, did you actually go down to
7 the dentist place?

8 A I did.

9 Q And approximately how long did it take you to get
10 there?

11 A About five minutes or less.

12 Q When you got there, what was the scene?

13 A There was some police cars out front, There was --
14 ADT Alarm truck was there, or vehicle. Just some people
15 standing out by Timbers, just a little bit of commotion I
16 guess, but that was about it.

17 Q When you got there, was the business still closed or
18 were there people in and out of the business?

19 A It was. I tried to get somebody's attention, but
20 everybody seemed to be pretty wrapped up with what they were
21 doing. So I unlocked the front door and went in, started to
22 walk around and disarmed the system. And then somebody popped
23 their head it and wanted to know who the heck I was.

24 Q All right. Now let's back up a little bit. You
25 said you went in. What -- is there -- how many doors are

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1 there on the front of Just for Kids Dentistry?

2 A There's three front doors. We only utilize one kind
3 of as the main entrance, which is to the far left.

4 Q And is that the one that you used your key to go in?

5 A Yes, ma'am.

6 Q Was the door locked?

7 A Yes, ma'am.

8 Q Can you describe the way the front door is, what it
9 looks like?

10 A It is your typical door. You have two doors that
11 you can open up. We typically just open up from the right,
12 and this one would stay shut.

13 Q They're glass doors?

14 A They're glass doors.

15 Q And on the inside -- if you were standing on the
16 inside and you wanted to lock the door --

17 A Uh-huh.

18 Q -- to keep the public out, how would you do that?

19 A It's got a little toggle switch.

20 Q Okay. And you've made this motion, this -- with
21 your wrist turning. Would you use a key to lock the door?

22 A Not from the inside.

23 Q Okay. Did it have a thumb lock?

24 A I'm not sure what a thumb lock is, ma'am.

25 Q Okay.

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1 A It's just --

2 Q I don't know what a toggle is.

3 A It's a switch lock. It's just -- it's got a little
4 apparatus, like a little bar, and you just twist it, and then
5 that activates the mechanism.

6 Q Okay. And actually, and did, later on, a detective
7 come to the Just for Kids and take photographs of the lock?

8 A Yes, he did.

9 Q So when you walked in, the door was locked. Is that
10 the normal way you go in and out of the business or are there
11 other exits?

12 A Normally, I go in through the rear door. But since
13 the alarm had been set off and that's what I was responding
14 to, and then there was commotion -- there was a police officer
15 in the back with two individuals, I think. So I just
16 proceeded around to the front. As I said, there was a few
17 other -- ADT was there. A couple other police cars were
18 there. They were doing their thing, so I went ahead and went
19 in through the front.

20 Q And so, was it another officer or was it a security
21 guard that popped their head in?

22 A There was two -- to be honest with you, I'm not
23 sure. Probably ADT is wanting to know who I was, and I
24 identified myself, at which point, then some other officers
25 had come in.

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1 Q At that point, what did you do inside the business?

2 A At that point, after we established who I was, we
3 went ahead and we went through the whole facility to see if
4 anything had been broken, or taken, or if anything had been
5 disturbed.

6 Q Did you make any discoveries or anything?

7 A Absolutely nothing.

8 Q So nothing was touched, nothing was taken?

9 A No.

10 Q Now did anyone have permission to be in your
11 business at approximately 2:15 in the morning on that morning?

12 A No, ma'am.

13 Q And you don't know the individual seated a counsel
14 table, the far end, do you, next to the woman?

15 A No, ma'am.

16 Q He didn't have permission to be in your business?

17 A No, ma'am.

18 Q When you went in, was the alarm -- did you have to
19 turn it off or had it --

20 A No. I had to turn it off at the keypad.

21 Q And did you eventually turn it back on and leave the
22 business?

23 A I did.

24 MS. DIGIACOMO: Nothing further.

25 THE COURT: Any questions, Mr. Hart?

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CROSS-EXAMINATION

BY MR. HART:

Q Were there some valuables, laptop and stuff, in your dentistry stop at the time?

A Yes.

Q And nothing was taken?

A Nothing.

MR. HART: Nothing further.

THE COURT: Thank you, sir. You're excused.

MS. DIGIACOMO: Actually, I'm sorry, Your Honor.

REDIRECT EXAMINATION

BY MS. DIGIACOMO:

Q I have one I forgot to ask you. Where exactly is your Just for Kids Dentistry located?

A It's at 9827 West Tropicana Avenue. We're actually suite 140, and it's like a little strip mall.

Q And what other businesses are in that strip mall?

A At that time, there's a Timbers Bar, which is located, if you're facing the facility, to the far right. There's a blinds company, Debbie's Blinds, who is immediate in between us. To the left, there is a salon. And on the corner, there is a -- like a fitness center thing for women. That was there briefly. And then there's a Midas shop in the back.

MS. DIGIACOMO: Nothing further.

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1 THE COURT: Thank you, sir. You're excused. Call your
2 next witness.

3 MS. DIGIACOMO: Kevin Salisbury.

4 THE COURT: Okay.

5 [Pause]

6 THE COURT: Sir, come on up here and raise your right
7 hand, please.

8 [Pause]

9 THE COURT: You can mark them while she's talking to him,
10 and then --

11 MS. DIGIACOMO: Then I'll go back.

12 THE COURT: -- we'll go back and show them after you've
13 got them all marked. You're in charge. We need to get him
14 sworn.

15 KENNETH SALISBURY, STATE'S WITNESS, SWORN

16 THE COURT: Officer, state your name and spell your name
17 for the court recorder.

18 THE WITNESS: Kenneth Salisbury, K-e-n-n-e-t-h
19 S-a-l-i-s-b-u-r-y.

20 THE COURT: Okay. Speak up and speak in that direction.
21 Ms. Digiacomo, go ahead.

22 MS. DIGIACOMO: Thank you.

23 DIRECT EXAMINATION

24 BY MS. DIGIACOMO:

25 Q Sir, how are you employed?

1 A With Las Vegas Metropolitan Police Department.

2 Q And what is your assignment?

3 A Currently, I'm in the traffic division.

4 Q Now directing your attention back to September 24,
5 2006, what was your assignment then?

6 A I was in the patrol division in southwest area
7 command.

8 Q What shift did you work?

9 A Graveyard.

10 Q When you work graveyard, what time do you start and
11 what time do you end?

12 A We start at 10:00, and we get off at 8:00 in the
13 morning.

14 Q So 10:00 p.m. to 8:00 a.m.?

15 A Yes, sorry.

16 Q So if you're working in the early morning hours of
17 September 24th, would you have gone to work on the evening of
18 September 23rd?

19 A I would.

20 Q Now at approximately 2:15 in the morning, did you
21 receive a dispatch to go to a certain business?

22 A I did.

23 Q What business was that?

24 A The Anku Crystal Palace.

25 Q And do you know the address?

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1 A At this point, I don't remember. I know about where
2 it's at but not the exact address.

3 Q What street was it on?

4 A It was on Fort Apache, I believe.

5 Q All right. And do you -- what were the nature --
6 and what was the nature of that call?

7 A The call came out that there was a burglary, that it
8 happened at the Anku Crystal Palace.

9 Q And do you, if you recall, approximately how far
10 away you were from that location when you went to respond?

11 A I don't remember exactly how far away I was when I
12 first started going to it. No.

13 Q Did you -- were you assigned by yourself or with
14 another officer?

15 A I was assigned with Officer Jerry McDonald.

16 Q As you were heading towards Anku Crystal Palace, did
17 something else happen?

18 A Yes.

19 Q What happened?

20 A Another call came out near the location we were
21 currently at, on the way to that burglary, at the Just for
22 Kids Children Dentistry. And that burglary was considerably
23 closer to us, and the details of that call came out that it
24 was in progress, that the burglary was happening right now.

25 Q What did you do at that point?

1 A We disregarded from the Anku Crystal Palace
2 burglary, and we headed to the Just for Kids Children
3 Dentistry burglary.

4 MS. DIGIACOMO: Your Honor, may I approach?

5 THE COURT: Yes. None of you need to ask.

6 MS. DIGIACOMO: Okay.

7 THE COURT: Free roam, and do the witnesses. We're going
8 to save time. Just show them what you need to show them.

9 MR. HART: Thank you, Your Honor.

10 MS. DIGIACOMO: Thank you, Your Honor.

11 BY MS. DIGIACOMO:

12 Q Sir, I'm showing you what's been marked for
13 identification as State's Proposed Exhibit Number 3. Do you
14 recognize this?

15 A I do.

16 Q How do you recognize this?

17 A It says the intersection of Tropicana and Grand
18 Canyon, which is the intersection where the business was
19 burglarized, the Just for Kids Dentistry.

20 Q And is this an aerial view of that location?

21 A It is.

22 Q Does it fairly and accurately depict the way this
23 location looked back in September 2006?

24 A Not accurately. This street, westbound Tropicana,
25 actually ended just after the Just for Kids Child Dentistry.

1 So this road did not go through. And on the southeast corner,
2 this parking lot was all dirt.

3 Q All right. But other than that, does it fairly and
4 accurately depict it?

5 A It does.

6 MS. DIGIACOMO: Your Honor, at this time, I'd move for
7 admission of State's Proposed Number 3 into evidence.

8 THE COURT: What's the number?

9 MS. DIGIACOMO: Three.

10 THE COURT: Any objection?

11 MR. HART: No objection, Your Honor.

12 THE COURT: All right. It'll be admitted.

13 [State's Exhibit 3 Admitted]

14 THE COURT: What that means is under the rules this is a
15 fair piece of evidence for you to consider. Sometimes they'll
16 put it on the screen. It'll show. Sometimes they'll pass it
17 around. Sometimes you don't see it during the trial, but
18 you'll have it to take back with you in the jury room, and all
19 the exhibits have been organized by count and by witness. And
20 they're put in folders so that if you want to look at
21 something particular, you don't have to go through a thousand.
22 You just find the folder and go right to it.

23 Go ahead, Ms. Digiacomo.

24 BY MS. DIGIACOMO:

25 Q All right. Sir, I'm going to put State's Exhibit

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1 Number 3 on the screen. You have that in front of you?

2 A Uh-huh.

3 Q All right.

4 A Yes.

5 Q Now you said that one of the streets ended at a
6 certain location. If you could show the jury what you were
7 talking about.

8 A Does this mark?

9 Q Yes, if you touch the screen.

10 A This West Tropicana ended right there. Everything
11 west of that, this was all dirt. That road did not go
12 through.

13 Q And that strip mall that's right there when you said
14 the road ended, what is in that strip mall?

15 A The Just for Kids Children Dentistry is right here,
16 and there's a Timbers, which is a bar, that is right there.

17 Q And then what's located back here on the back side.
18 Do you know?

19 A I couldn't tell you at this point.

20 Q Okay. And you said that there was another parking
21 lot or structure that was dirt back then?

22 A This entire square was all dirt.

23 Q Okay. Now where were you on this, like how did you
24 get to the Just for Kids Dentistry? Where were you coming
25 from?

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1 A Fort Apache is just east of here. We were at Fort
2 Apache and Tropicana, which is the next major streetlight.
3 And so, we were coming westbound on Tropicana.

4 Q You're saying we.

5 A Officer McDonald was directly behind me, following
6 me in his patrol car.

7 Q All right. And when you went westbound on
8 Tropicana, what happened?

9 A When we got to right about here, out in front of
10 this Smith's, I could see --

11 Q Wait. I'm sorry. Where's the Smith's?

12 A The Smith's is this circled area here. It's this --

13 THE COURT: Put the mark on it.

14 THE WITNESS: I did.

15 BY MS. DIGIACOMO:

16 Q And so, that would be just north of West Tropicana
17 before you get to Grand Canyon?

18 A Yes.

19 Q Okay.

20 A So we're right about there on Tropicana. And I've
21 -- in my mind, I already know in my head -- I know this area
22 well enough that I know which corner the Just for Kids
23 Dentistry is on. So, I'm already looking in this parking lot
24 as we're arriving. And from here, you could see it with a
25 straight shot. When I'm looking from Tropicana in the Just

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1 for Kids Dentistry, I see one car in this entire parking lot,
2 and --

3 Q Where was it?

4 A It was parked directly in front of the business.

5 Q Do you recall what it looked like?

6 A It was a white minivan.

7 Q Okay. So that's the only one anywhere near Just for
8 Kids?

9 A The only one.

10 Q So what do you do at that point?

11 A I immediately get on the radio, and I let dispatch
12 know that hey, we do have a vehicle in front of the business.
13 And that's more for my partner who is behind me. That way, he
14 knows what I see, which is hey, there's one vehicle in front
15 of the business. And I tell him we're going to take that
16 vehicle down first.

17 Q And what happens at this point, as you get closer to
18 Just for Kids?

19 A As we get to the intersection of Tropicana and Grand
20 Canyon, the vehicle starts moving. It starts backing up out
21 from in front of the children's dentistry.

22 Q All right. Did you see where it went?

23 A I did. Again, with this street being closed -- and
24 southwest has developed tremendously since then. But I know
25 there's not a whole lot south of here, and roads start to know

1 go through. I'm thinking he's going to come out on Tropicana
2 and come towards us. Just in case he doesn't, I made a
3 southbound turn onto Grand Canyon, and I want to come in this
4 driveway to the parking lot here. And Officer McDonald is
5 going to cover this side. In a way, we almost have a two-man
6 perimeter set up on that parking lot, so the vehicle can't
7 flee from us.

8 Q Where did the vehicle go?

9 A I guessed wrong. The vehicle did not come out the
10 south end. It did -- it reversed and came out the north
11 parking lot out onto eastbound Tropicana.

12 Q And what happened at that point?

13 A Again, Officer McDonald was already waiting there on
14 Tropicana, waited for the vehicle to pass, and swung a u-turn,
15 got behind the white minivan. I had to follow through the
16 parking lot and come back out to get behind it.

17 Q Now are you wearing -- when you were working that
18 night, are you wearing a uniform like you are today?

19 A I am, minus a different set of boots.

20 Q And what about Officer McDonald?

21 A Same thing, in a patrol represented uniform. From
22 the waist up, this is what we look like.

23 Q And what about the cars you were driving?

24 A They were both marked police cars, black and whites
25 with light bars.

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1 Q On the top?

2 A Yes.

3 Q All right. So you said Officer McDonald gets behind
4 the white car?

5 A Yes.

6 Q And what happens at that point?

7 A Right about here on Tropicana, he activates his
8 emergency equipment, his lights and siren, and the vehicle
9 pulls over right there. And by now, I've caught up behind
10 him, and I pull in right in behind Officer McDonald, offset.

11 Q So you pull the vehicle over going eastbound on
12 Tropicana, just east of Grand Canyon?

13 A Yes.

14 Q What happens at this point?

15 A At this point, Officer McDonald is approaching the
16 driver's side of the vehicle. I'm approaching the passenger's
17 side of the vehicle. And we're giving the driver and the
18 occupants verbal commands to --

19 Q To what?

20 A So we can see their hands. We do have knowledge
21 that a felony crime is in progress. We're getting control of
22 them. We want to identify the people involved. So we're
23 going to have them step out of an unknown environment, which
24 is inside their white minivan, and back to our patrol cars.

25 Q Now do you recall anything specifically about the

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1 white minivans and the windows, whether they were tinted or
2 not?

3 A Yes. They were tinted, and they were tinted dark
4 enough that I couldn't tell how many people were in the
5 minivan.

6 Q All right. Now when you gave the commands, did
7 anybody exit the minivan?

8 A Yes. We had the driver and the passenger in the
9 front passenger seat exit the vehicle.

10 Q All right. And which side of the vehicle were you
11 on?

12 A I was on the passenger side of the vehicle.

13 Q So Officer McDonald was on the driver's side?

14 A He was.

15 Q All right. Did you see who the driver was that got
16 out?

17 A I did.

18 Q And did that -- did -- was the driver cooperative
19 and stepped to the back of the patrol vehicle?

20 A He was.

21 Q All right. Did you see who the passenger was that
22 got out?

23 A I did.

24 Q And did you see where -- was he cooperative and goes
25 to the back of the -- to the front of the patrol car?

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1 A He was.

2 Q All right. Now do you see either the driver or the
3 passenger in the courtroom here today?

4 A I do. I see the driver.

5 Q All right. Would you point to the person you're
6 referring to and describe an article of clothing he's wearing?

7 A He's sitting right over there, and he has orange
8 socks on.

9 MS. DIGIACOMO: Your Honor, let the record reflect
10 identification of the Defendant.

11 THE COURT: Fashion statement of a sort. Yes. The
12 record will reflect the identification of the Defendant,
13 Daimon Monroe.

14 MS. DIGIACOMO: All right. Thank you.

15 BY MS. DIGIACOMO:

16 Q Now the other individual that was in the passenger,
17 did you identify who he was as well?

18 A I did.

19 Q And who is he? What was his name?

20 A Was it Bryan Ferguson?

21 Q Do you know?

22 THE COURT: I think he was saying it's Ferguson, I'm not
23 positive about the Bryan part. Is that what you're saying?

24 THE WITNESS: Yeah. I can't remember his first name.
25

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1 BY MS. DIGIACOMO:

2 Q Okay. But it was Ferguson?

3 A Yes.

4 Q All right.

5 A It's been a couple years. Sorry, ma'am.

6 Q That's fine.

7 MR. HART: Your Honor, I'd like to reserve an objection
8 for a little later. Okay.

9 BY MS. DIGIACOMO:

10 Q So at this point, you identified who these people
11 are?

12 A Yes.

13 Q And do you do anything to ensure whether or not
14 there's other people in the car? Did anyone else come out?

15 A As Mr. Monroe and Mr. Ferguson are walking back to
16 the patrol car with Jerry McDonald, I want to make sure nobody
17 is at our backs in the -- still in the minivan. Again, I said
18 there were tinted windows, so I couldn't see from the outside.
19 And as far as the officer safety thing, we're not going to go
20 stick our head in a window. The passenger door was open, so I
21 leaned into the passenger door and I'm checking --

22 Q With your gun drawn?

23 A Absolutely. Just to make sure there is nobody
24 ducking down behind the back seats and what not, make sure
25 nobody else is inside the van.

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1 Q Did you see anyone else in the van?

2 A No, I did not.

3 Q Did you notice anything unusual while you were
4 clearing the van?

5 A I did. As soon as I leaned in -- this is the front
6 passenger seat, and I'm looking towards the back of the
7 minivan. As soon as I lean in to a person sweep I see -- what
8 caught my off my light -- it reflected the light. At first,
9 for a split second I thought it was broken glass, and then I
10 looked and see it's like a polished glass object. And then it
11 just struck me as odd right away. It's like what's that doing
12 in a minivan right there? And then as I sweep the rest of the
13 car, I see eggs and sour cream, I believe, on the back seat.

14 Q All right. So at this point, there's no one else in
15 the car. What do you do?

16 A I go back up and I act as a cover officer, watching
17 Mr. Monroe and Ferguson in front of the car while Officer
18 McDonald is soliciting some information.

19 Q Okay. Now what kind of information were you trying
20 to solicit?

21 A First of all, we're just trying to get their names,
22 their birthdates, identify we are actually talking to who they
23 say they are.

24 Q Okay. And then do you try and ascertain why they're
25 in the area of what they're doing?

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1 A We did, and they didn't have an answer for us.

2 Q Okay. Did you ask them where they lived or --

3 A I did, in which Mr. Monroe said -- I can't remember
4 the exact address he said, but it was something on East Karen.
5 I think he said 1500 something East Karen, which is way on the
6 opposite side of town near -- I mean 30, 40 minutes away.

7 Q And the call that you were originally going to, the
8 Anku Crystal Palace, did you ever get there?

9 A No, I did not.

10 Q Did you know other officers were assigned to go
11 there?

12 A I did. While Officer McDonald is running Mr. Monroe
13 and Ferguson on his computer and they're standing, I -- you're
14 hearing radio traffic of what everybody else is doing, and I
15 hear two other officers get dispatched to the Anku Crystal
16 Palace over the radio. And I'm like Anku Crystal Palace, and
17 then I remember the glass crystalline object I found in the
18 minivan.

19 Q All right. So did you have contact with officers
20 that went to the Anku Crystal Palace?

21 A I did.

22 Q And who was that?

23 A A couple of different officers, one of which was
24 Officer Hardman.

25 Q All right. Now Officer Hardman, did you see him at

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1 your car stop location before he made that -- you talked to
2 him from the Anku Crystal Palace?

3 A He showed up right about the same time I was kind of
4 putting two and two together as far as the Anku Crystal Palace
5 and there being a crystal object in the minivan. He showed
6 up. He talked to me, asked me what I had. I told him as soon
7 as we arrived, the minivan -- basically, the same spiel we
8 just went through. And he was like well, hey, why don't I go
9 over to the Anku Crystal Palace and find out what they have
10 there?

11 Q At that point when he stopped, what did the car look
12 like? Were the doors still closed or how were they?

13 A The front door -- the front driver and passenger
14 doors -- I can't remember at this point if the front driver's
15 door was open. I know the front passenger door was open,
16 because I asked Mr. Ferguson to leave it open so I could that
17 cursory check. But as far as all the vehicle's doors and the
18 back hatch lifted up and everything, no. The vehicle was
19 still sealed.

20 Q So this time Officer Hardman stopped by, all you
21 knew was that weird crystal object that you had seen?

22 A Yes.

23 Q Okay. And then at some point, did you learn of the
24 -- get a description of the items that were missing from the
25 Anku Crystal Palace?

1 A Yes.

2 Q And based upon that, what did you do?

3 A I placed Mr. Monroe and Mr. Ferguson under arrest.

4 Q Now --

5 MS. DIGIACOMO: Your Honor, may I -- sorry?

6 [Counsel Confer]

7 THE COURT: What numbers?

8 MS. DIGIACOMO: 501 to 547, Your Honor.

9 THE COURT: 501 to 547.

10 BY MS. DIGIACOMO:

11 Q Sir, if you could look through State's Proposed
12 Exhibits 501 to 547 all quickly, and let me know if you
13 recognize what's depicted in these photographs.

14 A Yeah.

15 Q Collectively. Just look at all of them.

16 A Collectively, this is the minivan from the night in
17 question and photographs of the items contained within.

18 Q All right. So do these fairly and accurately depict
19 the minivan, the items, and the way the car stop was that
20 night on September 24, 2006?

21 A Yes.

22 MS. DIGIACOMO: Your Honor, at this time, the State would
23 move for admission of State's Proposed Exhibits 501 to --

24 THE COURT: Objection?

25 MS. DIGIACOMO: -- 547.

1 MR. HART: No objection, Your Honor.

2 THE COURT: They'll be admitted.

3 [State's Exhibits 501 to 547 Admitted]

4 MS. DIGIACOMO: Thank you.

5 BY MS. DIGIACOMO:

6 Q All right, sir. First I'm going to show you State's
7 501. Look at that for me. Can you explain to the jury what
8 we're looking at here?

9 A That's the front passenger side of the minivan that
10 I stopped that night.

11 Q All right. And is this the way it look after you --
12 as you cleared the car and began your investigation?

13 A No. It looks from this photo that that side sliding
14 door is open, and it was not when I did that cursory check.

15 Q All right. Showing you State's Exhibit 503. What's
16 depicted there?

17 A Sam thing. Again, this rear hatch was not opened
18 and the side door was not opened.

19 Q Right. So this is after you opened the doors?

20 A This is after we had the owner of the Anku Crystal
21 Palace come by the van and point out that hey, that is -- that
22 object in that car is from my business which was burglarized.

23 Q All right. Okay. I'm showing you 504. Explain to
24 the jury what we're looking at there?

25 A This is the rear door to the minivan. And when we

1 opened it up, you have a large -- I know it's not a very good
2 picture, but that's like a dragon carved out of wood, and it
3 still had a price tag on it.

4 Q And at the time that you're looking at it like this
5 does it -- do you know whether or not it's one piece or two
6 initially?

7 A I don't.

8 Q I'm showing you State's Exhibit 509. What are we
9 looking at there?

10 A Another part of that wooden sculpture.

11 Q How many wooden sculptures were actually in the
12 vehicle?

13 A' I would have to refer to the property sheet to tell.

14 Q Okay. Would the photos also be able to -- if it
15 shows it, able to refresh --

16 A If it showed it, yes.

17 MS. DIGIACOMO: Court's indulgence.

18 THE COURT: Without looking at the property sheet, was
19 there more than one? I mean were there some as opposed to
20 one?

21 THE WITNESS: There may have been two. Honestly, that
22 night with a scene this big and so much paperwork to do, I
23 didn't do the property sheet or inventory of the property
24 itself. So I'm not going to have as well of a recollection as
25 another officer might.

1 THE COURT: Okay.

2 BY MS. DIGIACOMO:

3 Q Well, I'm going to show you State's Exhibit 537.
4 Okay. The one that we looked at in the back of the car had,
5 as you described, dragons.

6 A Yes.

7 Q What are we looking at in 537?

8 A That looks like a fat wizard.

9 THE COURT: Fat wizard, he said.

10 BY MS. DIGIACOMO:

11 Q Oh, I'm sorry. And then over here on the side, on
12 the right side of this photograph, do you see another
13 sculpture?

14 A And I believe that was the end of the dragon, the
15 wooden dragon sculpture.

16 Q Okay. Now showing you State's Exhibit 510. What
17 are we looking at there?

18 A That, again, is through that rear door of the
19 minivan, and underneath the seat is a pry bar.

20 Q Showing you State's Exhibit 514. What is depicted?

21 A If you see here, this is what I was talking about
22 earlier. That's between your front and passenger driver seat
23 [sic] in the minivan. And so, if I'm the driver, that's right
24 here on the floorboard in between the two seats.

25 Q And 515. What's here?

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1 A A larger view of the same thing. And you also have
2 a pair of black gloves, and you have some jeweled bracelets
3 right -- that was one of the bracelets, and here's a few more,
4 all with price tags on them.

5 Q Do you recall -- you said a pair of black gloves.
6 Do you recall how many gloves were found in the car?

7 A I think there were two pair found in the car after
8 the evidence technician took everything out to photo them.

9 Q Okay. I'm showing you 516. What area of the car
10 are we looking at here?

11 A This is the second row of seats just behind the
12 driver and passenger, and those are the eggs and sour cream I
13 was talking about.

14 Q All right. Do you know what these items over here
15 are on the left side?

16 A I can't tell what that gray object is. I know that
17 these were video games.

18 Q All right. Now I'm showing you State's Exhibit 517.
19 What are we looking at there?

20 A This is just your common hammer. It's got tape
21 around the handle.

22 Q I'm showing you State's 590 -- 519. What are we
23 looking at here?

24 A If you can envision in your mind where that crystal
25 object was and those bracelets, this is where the back side of

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1 those bracelets is. This is the front passenger seat here,
2 and this is just behind -- here's where the sour cream was.
3 This is just behind the second row of seats and the first row
4 of seats on the floorboard.

5 Q Now I'm going to show you State's 522. What area of
6 the car is that?

7 A This is that second row of seats we were talking
8 about with the bananas and eggs is right there. These were
9 those video games pointed out in that prior photo. And this
10 is just -- this is where you'd walk in to get the third row of
11 seating on the passenger side.

12 Q Okay. Can you tell what this silver object is?

13 A It's a laptop, I believe. And there was Nintendo
14 Gamecube right behind it, that blue object.

15 Q And here, I'll show you 523. Is that it?

16 A Yes.

17 Q I'm showing you 525. What are we looking at here?

18 A Again, that's the side of the Gamecube. This is --
19 I don't know what originally that tool was intended for, but
20 it's bent in a way that it's not inherently made to use.

21 Q And the yellow handled --

22 A Those are bolt cutters.

23 [Counsel Confer]

24 BY MS. DIGIACOMO:

25 Q I'm showing you State's Exhibit 527. What's

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1 depicted here?

2 A This is the -- from the driver's side, that second
3 row of seats. And this is a big picture right here, like a
4 nice framed picture.

5 Q I'm showing you 528.

6 A That's underneath the driver's seat, and I believe
7 that was another hammer, again, with duct tape on the handle.

8 Q Let me show you a close up.

9 A There you go.

10 Q 529.

11 A Yes.

12 Q Are there other things under the seat as well, other
13 tools?

14 A There are. There's a screwdriver there, I believe,
15 and there may have been other stuff.

16 Q After they were arrested, Mr. Ferguson, was he
17 searched?

18 A He was.

19 Q His person?

20 A Search incident arrest. Yes.

21 Q Do you recall anything significant that you found on
22 his person?

23 A Mr. Ferguson had in his front pants pocket, as I'm
24 doing the search, I pulled out -- and there's more of those
25 same bracelets that were depicted in the photos earlier that

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1 still had price tags on them were actually in his pants
2 pocket.

3 Q And I'm going to show you 531.

4 A These are -- this was a separate photo of just the
5 bracelets that were taken out of his pocket.

6 Q And then was there any money recovered? Was there
7 money recovered?

8 THE COURT: Keep those in order. It'll be --

9 MS. DIGIACOMO: I'm trying.

10 THE COURT: I know. But both of you keep -- make sure
11 you keep them in order, because it'll be a nightmare for Tina
12 if we don't. Go ahead.

13 MR. HART: I'm trying also, Your Honor.

14 THE COURT: Just look at the numbers.

15 BY MS. DIGIACOMO:

16 Q Was there any money found on Mr. Ferguson?

17 A There was.

18 Q Can you describe that?

19 A Out of his other fronts [sic] pant pocket, he had a
20 small amount of cash. It was all like wrinkled up, nasty,
21 dirty, worn money. I'm like this is your cash? He said yes.
22 I'm like this is where you keep your cash? He said yes.

23 Q And so, did it look like somebody just crumbled it
24 and put it in a pocket?

25 A Yes.

1 Q All right. Was there any other money found on him?

2 A Yes, from his wallet.

3 Q All right. And do you recall approximately how much
4 was found on his wallet -- in his wallet?

5 A I would have to refer to the inventory.

6 Q Were photographs of the money taken?

7 A Yes, they were.

8 Q All right. Was there anything different about the
9 money in his wallet versus the crumbled up money in his front
10 pocket?

11 A Yes. The money taken from the wallet was stacked in
12 denominations accordingly and all faced the correct way. And
13 they were -- a large amount of the five-dollar bills were like
14 brand new crisp dollar bills. And it would be almost like you
15 took it out of a register as far as one, fives, twenties, and
16 stacked it all together. That's how the money was, folded
17 over.

18 Q All right. Now I'm going to show you State's
19 Exhibit 532. What are we looking at there?

20 A This is the twenties that were taken. And again, I
21 mean they're all faced the same exact way. They -- yeah, we
22 fanned them out like that, but that's how they were taken out
23 of his wallet was stacked, each facing the same way.

24 Q And 534.

25 A These are the tens taken from his wallet.

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1 Q And I've got two here, 535 and -- well, I'll do one
2 at a time. 535 and 536. What's depicted here in 535?

3 A The fives that were taken from his wallet.

4 Q And 536?

5 A The same.

6 Q Okay. What are these -- what denomination?

7 A These are five-dollar bills. And the reason this
8 photo was taken separately is the owner of Anku Crystal Palace
9 had told us that the petty cash from his change drawer had
10 been taken in the Anku Crystal Palace burglary. And he
11 specifically said, before I've retrieved this money from
12 Mr. Fergason, that all the money was stacked together and that
13 the -- specifically, the five-dollar bills were new crisp
14 five-dollar bills that were in his register that he had just
15 received from the bank.

16 Q All right. Now showing you State's Exhibit 538.
17 You talked about one of the wood objects having a price tag on
18 it?

19 A Yes.

20 Q All right. Is this a close up of that object?

21 A It is.

22 Q With the price tag?

23 A It is.

24 Q Can you read that?

25 A I can. I think that's \$3,600.

1 Q Now showing you State's Exhibit 539. Explain to the
2 jury what we're looking at here.

3 A This is one set of the gloves that were taken out of
4 the van. This is the other set that was depicted in the photo
5 earlier. This and this are both the hammers covered -- with
6 the handles covered in duct tape. This is a pry bar, bolt
7 cutters, pry bar. It's hard to tell. That's a screwdriver
8 that if the blade is 18 inches, half that blade is bent
9 completely around, not inherently made to do that.

10 Q Is it in a 90-degree angle? Would that be fair
11 or --

12 A They're close to it. This is a set of keys, all --
13 a large set of keys, not your normal pocket keychain. And
14 some of the keys, they're bent and twisted. This is that nice
15 framed photo we were talking about in the second row of
16 seating. This is another bar that, again, you can -- that's
17 an obvious bend there. You can see the bend on that.

18 Q Now based upon your training and experience, do all
19 of these items laid out like this collectively mean anything?

20 A Absolutely.

21 Q What is that?

22 A That they're burglary tools.

23 Q And why would you call them burglary tools?

24 A Based on my experience of arresting people who steal
25 or break into cars, they keep a large amount of keys that are

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1 either shaved down or bent and twisted. When you do that, you
2 can open up more locks than just the lock that that key was
3 made for.

4 In my investigation of investigating smash and grab
5 burglaries, an easy way to break through even safety glass is
6 a hammer. Well, the reason there's tape on the handles of
7 hammers, sometimes --

8 MR. HART: Objection, speculation.

9 THE COURT: Sustained.

10 BY MS. DIGIACOMO:

11 Q All right, sir. What about the pry tools and the
12 other tools that you said looked like they had been altered in
13 some way?. Do those have any significance in your -- based on
14 your training and experience?

15 A Yes. If somebody has a large tool that's bent like
16 that. It's very easy to take two swinging glass doors that
17 have a lock in the center, and that will fit between the two
18 doors. But because it's bent up back towards the door, you
19 twist it and undo the lock from the inside without any damage
20 to the door.

21 Q Okay. Now, lastly, showing you 547. What are we
22 looking at here?

23 A This is the registration certificate from the
24 minivan that night.

25 Q Okay. Who is it registered to?

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1 A To Tonya Trevarthen.

2 [Counsel Confer]

3 THE COURT: Anything else, Ms. Digiacomo?

4 MS. DIGIACOMO: Pass the witness.

5 THE COURT: All right.

6 THE WITNESS: Your Honor.

7 THE COURT: Yeah.

8 THE WITNESS: Is this your water?

9 THE COURT: No. It's yours.

10 THE WITNESS: Thank you, sir.

11 THE COURT: But I appreciate you letting me use it once
12 in a while.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Go ahead, Mr. Hart.

15 CROSS-EXAMINATION

16 BY MR. HART:

17 Q Officer Salisbury.

18 A Yes, sir.

19 Q You did a report originally, and this was a traffic
20 stop you did on the van leaving the parking lot, correct?

21 A This was a terry stop. Yes.

22 Q So in your report you wrote --

23 THE COURT: You said terry?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

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1 BY MR. HART:

2 Q In your report you wrote it as a traffic stop?

3 A And that's my inexperience of being a new officer
4 and not --

5 Q Okay.

6 A -- using the correct verbiage.

7 Q So you've been talking about your knowledge and
8 experience and all your training.

9 A Yes.

10 Q Fairly new officer at the time then?

11 A Absolutely, yes.

12 Q So not a lot of knowledge and training at that time
13 -- experience at that time, correct?

14 A I think that's relative, but okay.

15 Q Now you -- Officer Hardman --

16 A Yes.

17 Q -- he was an officer that had come and stopped by
18 the van, correct?

19 A Yes.

20 Q And at that time, he told you that there was no
21 burglary at the Just for Kids Burglary [sic], correct?

22 A At that point, I don't think he was the officer that
23 went to check the Just for Kids Dentistry.

24 Q Okay.

25 A I'm not sure.

1 Q So if he had just testified a little earlier, he'd
2 have been mistaken?

3 A Either I don't remember or yes.

4 Q Okay. Well, you do remember Officer Hardman
5 stopping by the van.

6 A Yes.

7 Q Okay. Where did you think he came from before he
8 stopped by the van?

9 A I'm not sure. He may have just come from the Just
10 for Kids Dentistry, or he may have just rolled up on our stop.
11 I'm not sure.

12 Q Okay. And you're pretty that when he rolled up,
13 just the front passenger door was open?

14 A Yes.

15 Q The back end wasn't open or anything else?

16 A Yes.

17 Q And when you did your protective sweep, you only
18 went in that front door and looked, correct?

19 A Yes.

20 Q Now, Officer Hardman, pretend he had gone to the
21 Just for Kids. How long was it after you had stopped before
22 you saw Officer Hardman?

23 A Between the -- us stopping the minivan and us seeing
24 Officer Hardman?

25 Q Yeah, where he came by, coming back up from behind

1 you.

2 A I'm not sure.

3 Q Okay. And after that, he went to Anku Crystal
4 Palace?

5 A He did.

6 Q And he was the one who contacted you with
7 information?

8 A Yes, over the phone.

9 Q And it was 20 or 30 minutes later? How long after
10 was it that he contacted you?

11 A I'm not sure. They're real close by. It's only a
12 mile, mile-and-a-half down the road.

13 Q If he told -- if he testified a little earlier that
14 it was 15, 20 minutes later before he got back after he
15 arrived there, does that sound accurate?

16 A Or close to. Yes.

17 Q Now was there a car alarm on the van?

18 A A car alarm?

19 Q Yeah.

20 A I have no relection [sic phonetic] of there being an
21 alarm at all.

22 Q You don't remember an alarm going off in the van?

23 A You know what? Now that you say so, I think the
24 alarm went off when the tow truck picked it up.

25 Q It didn't go off -- okay.

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1 A I think so.

2 Q It didn't go off previously?

3 A Not that I remember. Again, I have a vague
4 recollection of that going off.

5 Q Okay. And somebody had to help you with that,
6 correct?

7 A Help me with what?

8 Q Get the alarm off.

9 A Not me. I'm not worried about the alarm going off.

10 Q So it just went all the way down with the alarm
11 blaring?

12 A If that's what the tow truck driver chooses to do.

13 Q I just want to make sure. You're sure -- we're
14 looking as Exhibit 503. You're sure that the side door and
15 the back end weren't open prior to Officer Hardman coming and
16 visiting you?

17 A Without a doubt.

18 Q And at the time you did this protective sweep, you
19 didn't see any tools, correct?

20 A Yes. You could see between the front driver and
21 passenger seat into the second row of seating. If you show
22 those photos, you can --

23 Q I'm asking -- you said what got your attention
24 during the protective sweep, because you were only looking for
25 people, correct?

1 A Yes.

2 Q Was you saw something that looked like broken glass?

3 A Yes.

4 Q You never wrote in your reports about originally
5 seeing any tools ore testified earlier about ever seeing any
6 tools on that protective sweep.

7 A I didn't write that in my report, no.

8 Q Okay. Later, when you did the search, you found the
9 tools, correct?

10 A No. I saw the tools before then just like I saw the
11 eggs, and sour cream, and bananas.

12 Q Okay. Mr. Fergason and Mr. Monroe, safe to say
13 Mr. Fergason was the larger of the two, taller, thicker,
14 bigger of the two guys?

15 A I don't remember as far as a height comparison.
16 Mr. Fergason is heavier set than Mr. Monroe. Yes.

17 Q And you said the -- you had an exhibit there with
18 two bracelets, and they were both in --

19 A Mr. Fergason's pocket.

20 MR. HART: Court's indulgence. Just a moment.

21 [Counsel Confer]

22 BY MR. HART:

23 Q And the tools you saw during the initial protective
24 sweep, what tools were those?

25 A The ones on the floorboard between the front row

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1 seats and the second row of seats.

2 Q Did you actually -- well, I thought you never went
3 past the seats. You stayed in front of the van, correct?

4 A Yes.

5 Q

6 Q Okay. So you saw the hammer on the ground then by
7 the --

8 MS. DIGIACOMO: Sour cream.

9 BY MR. HART:

10 Q Sour cream.

11 MR. HART: Thank you.

12 THE WITNESS: Yes.

13 BY MR. HART:

14 Q If you listen to what I mean if we not what I say,
15 we could get along great.

16 A And I believe the yellow bolt cutters were right
17 there as well.

18 Q Okay.

19 MR. HART: Nothing further from this witness at this
20 time.

21 THE COURT: Anything else?

22 MS. DIGIACOMO: I do now that these others are marked. I
23 just want to --

24 THE COURT: Okay.
25

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1 BY MS. DIGIACOMO:

2 Q And also, I forgot to ask you. The items that were
3 found in the car, such as the wood statues, the crystal
4 bracelets, the money, the laptop, the Gamecube, what happened
5 to those that night?

6 A The petty cash was released back to the owner of the
7 Anku Crystal Palace. I believe the Nintendo Gamecube was also
8 released. He had said that that was his son's, to keep him
9 busy while he was at work. And some -- I think -- again, I
10 would have to refer to the property sheet to see exactly what
11 was impounded. I believe most of it was released back to the
12 owner of the Anku Crystal Palace, and then the burglary tools
13 and that evidence was impounded as evidence.

14 Q Okay. Now I'm going to show you what's been marked
15 for identification as State's Exhibits 991 and 993. Do you
16 recognize those?

17 A Absolutely.

18 Q Okay. The individuals that are pictured here, do
19 these fairly and accurately depict how they looked that night
20 of the car stop in September 24, 2006?

21 A Yes.

22 Q And do you recognize who's in these photos?

23 A Yes.

24 Q All right.

25 MS. DIGIACOMO: Your Honor, at this time, I'd move for

1 admission of State's Proposed Exhibit 991 and 993.

2 THE COURT: Any objection?

3 MR. HART: No objection.

4 THE COURT: Be admitted.

5 [State's Exhibits 991 and 993 Admitted]

6 MS. DIGIACOMO: Thank you.

7 BY MS. DIGIACOMO:

8 Q And just for the record, I'm going to show you 991.

9 Who's that?

10 A That's Mr. Monroe.

11 Q And that was the driver?

12 A Yes.

13 Q And 993?

14 A Mr. Ferguson.

15 Q And that was the passenger?

16 A Yes.

17 MS. DIGIACOMO: Nothing further.

18 THE COURT: Anything else, Mr. Hart?

19 MR. HART: No, Your Honor.

20 THE COURT: Thanks, officer. I appreciate your
21 testimony.

22 THE WITNESS: Thank you, sir.

23 THE COURT: You're excused.

24 THE WITNESS: Thank you for the water.

25 THE COURT: All your next witness.

1 MS. DIGIACOMO: Kim Humphreys.

2 THE COURT: Come on up here, Ms. Humphreys.

3 KIM HUMPHREYS, STATE'S WITNESS, SWORN

4 THE COURT: State your name please, and spell your name
5 for the court recorder.

6 THE WITNESS: Kim Humphreys, H-u-m-p-h-r-e-y-s.

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MS. DIGIACOMO:

10 Q How are you employed, Ms. Humphreys?

11 A I work for ADT Security.

12 Q And what specifically is your role?

13 A The alarm response coordinator.

14 Q All right. Now directing your attention to
15 September 24th, 2006, did ADT supply the alarm protection for
16 a business, Anku Crystal Palace?

17 A Yes.

18 Q What about another business, Just for Kids
19 Dentistry?

20 A Yes.

21 Q And do you know the approximate location of each of
22 those?

23 A Not offhand.

24 Q Would it be on your report?

25 A Yes, it would be.

1 Q First of all, I'm going to show you State's Proposed
2 Exhibit 576. It's a two-page document. Do you recognize both
3 pages of that document?

4 A Yes, I do.

5 Q What are we looking at here?

6 A The first page is the event history report from
7 September 24th, and the second page is the responding
8 officer's incident report for Anku Crystal Palace.

9 Q Now does -- oh. This is Anku Crystal Palace.

10 A Yes.

11 Q Okay. So this fairly and accurately depicts the
12 alarm activation and/or what happened with it on the night of
13 September 24th, 2006?

14 A Yes, it does.

15 Q Now with ADT, do you keep such records in the
16 ordinary course of your business?

17 A On our servers, yes, we do.

18 Q All right. And how long do you keep the records
19 for?

20 A Indefinitely.

21 Q When these records -- they look like a computer
22 printout.

23 A Yes.

24 Q The first page. Are they made like at the time it's
25 happening?

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1 A When I am given the request to print the report, I
2 can go into our database and print it.

3 Q Okay. But -- and on each one -- on this, it has a
4 different line with the time that's minutes, seconds, et
5 cetera.

6 A Uh-huh.

7 Q These entries I guess, as you will, are they done at
8 the time that it's happening?

9 A Yes, they are.

10 Q And then the computer stores that information, and
11 you can recall it?

12 A Correct.

13 MS. DIGIACOMO: Your Honor, I'd move for admission of
14 State's Proposed Exhibit 576.

15 THE COURT: Any objection?

16 MR. HART: No objection.

17 THE COURT: Admitted.

18 [State's Exhibit 576 Admitted]

19 BY MS. DIGIACOMO:

20 Q Now I'm going to show you State's Proposed Exhibit
21 577. It is a three-page document. Do you recognize all three
22 pages of that document?

23 A Yes, I do.

24 Q How do you recognize it?

25 A This would be the event history report for Just for

1 Kids Dentistry and the incident report from the responding
2 officer.

3 Q All right. And so, State's Proposed 577, that's
4 also kept in the ordinary course of business, and you can go
5 back and recall the incident history?

6 A Yes, I can.

7 Q All right. And in that -- is that what you did in
8 this case with 577?

9 A Yes.

10 Q All right.

11 MS. DIGIACOMO: Your Honor, I'd move for admission of
12 State's Proposed Exhibit 577.

13 THE COURT: Any objection?

14 MR. HART: Okay. And maybe I'm mistaken. Are you
15 admitting the history report or are you also admitting the
16 statement by the -- Officer Costello [phonetic].

17 MS. DIGIACOMO: All three -- both.

18 MR. HART: I would object to the statement by Officer
19 Costello as hearsay, Your Honor.

20 MS. DIGIACOMO: Well, he's next to testify.

21 THE COURT: In light of that, do you have any objection?

22 MR. HART: As long as he's here to testify, we're in
23 pretty good shape.

24 MS. DIGIACOMO: Yeah. He's here to testify.

25 THE COURT: It'll be admitted.

1 [State's Exhibit 577 Admitted]

2 MR. HART: Yeah. No problem.

3 THE COURT: I'm just going out of order.

4 THE COURT: Okay.

5 MR. HART: That's fine.

6 THE COURT: It's admitted.

7 MS. DIGIACOMO: Thank you.

8 BY MS. DIGIACOMO:

9 Q All right. Now let's start with the Anku Crystal
10 Palace first. And let me try and zoom in so you can see. Can
11 you see that?

12 A Yes.

13 Q All right. What happened at the Anku Crystal Palace
14 on September 24, 2006?

15 A Well, if you --

16 Q Is this backwards?

17 A Yes. It starts -- at the bottom is the earliest
18 time.

19 Q So let me move it up.

20 A There you go.

21 Q How's that? Is that better?

22 A Yes.

23 Q So this is -- it starts with the latest time of the
24 day and moves down to a earlier time?

25 A Correct.

1 Q Okay. So with regard to looking at your document,
2 how can you tell -- and you have a little pen there. You can
3 write on the screen.

4 A Okay.

5 Q How can you tell what happened at the Anku Crystal
6 Palace?

7 THE COURT: Can you read that or do you need to see the
8 original?

9 THE WITNESS: No. I can read this. Thank you.

10 THE COURT: Go ahead.

11 BY MS. DIGIACOMO:

12 Q Do you need this -- here. I can try it -- is that
13 better?

14 A Yes.

15 Q Okay.

16 A At 1:14:32, we received an alarm from zone number
17 nine, which is designated as the front door.

18 Q Okay. And what happened next? Or what can you tell
19 happened next?

20 A At 1:15:50, an operator accessed the account and
21 then dialed the premise. And then it --

22 Q Is that standard procedure?

23 A Yes, it is.

24 Q Then what happened?

25 A At 1:16:19, we received an alarm from zone one,

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1 which is a motion detector.

2 Q And then what happened?

3 A At that point, the operator reached the premise at
4 1:17:05 and received no answer. So we left a message.

5 Q Okay. And then what happened?

6 A And then the operator dialed the first person on the
7 contact list, George Hung [phonetic].

8 Q Okay. So the normal procedure is to actually call
9 the place that has the security alarm going off?

10 A Yes.

11 Q All right. And then, next you start with the
12 list --

13 A Correct.

14 Q -- of who is to be called? Okay. So George Hung is
15 called. Is there any other movement or anything else
16 happening with regard to the Anku Crystal Palace's alarm?

17 A At 1:17:42, we received an alarm from zone 10, which
18 is the rear door.

19 Q And that's up here?

20 A Yes.

21 Q Okay. Then what happens?

22 A And then the system sent was is considered to be a
23 restore signal. All of that -- all that means is that those
24 three zones went back into their natural state, zone 1, then
25 zone 10, and then zone 9.

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1 Q So does that mean like nobody is setting off the
2 motion detector or opening doors?

3 A Well, for example, with a door activation, what it
4 means is the door was opened, which would be the front door,
5 say zone 9. The door was opened, and then it was closed.

6 Q Okay. At some point, do -- does the company or call
7 take -- the call responder, or however you say it, keep trying
8 to contact somebody?

9 A At 1:19:03, we attempted to call George Hung. And
10 it looks like we had two telephone numbers for him.

11 Q Can you tell whether or not he was reached here?

12 A He was not reached at 1:20:14, answering machine,
13 message left.

14 Q At some point, when you don't get a response from
15 the owner or the person to be called, is a security officer
16 dispatched?

17 A At 1:21:13, the ticket was created and sent to our
18 dispatch center to notify the alarm response officer.

19 Q At 1:21:13, it says OAMM Non [phonetic].

20 A That stands for operator action Master Mind, which
21 is our database that we used, non-certified ASI, which is
22 alarm -- it's our alarm response.

23 Q Can you tell on here whether or not anyone from your
24 company did actually respond to the location?

25 A Not from this report.

1 Q All right. This just really talks about the alarm
2 going off and calls to the people?

3 A Correct.

4 Q At some point, can you tell when it's cleared, or
5 restored, or turned back on?

6 A The system was never turned off. When an alarm
7 happens, the system is still armed until someone physically
8 puts the code into the keypad.

9 Q Okay. Did anyone put a code into a keypad? Can you
10 tell from this?

11 A Up to the point where I can see, no.

12 Q I'm sorry.

13 A That's okay.

14 Q I'll move it down. How's that? Or did I miss it?
15 Oh, wow. Where --

16 A Oh, here it is. At 1:56:54, where we received an
17 open signal, someone responded and put the code into the
18 keypad.

19 Q Okay. And now let's discuss Just for Kids
20 Dentistry. Now if I have this one -- this goes the opposite.
21 This starts earlier and goes down to a later time?

22 A Correct.

23 Q Is there a reason why both reports are different?

24 A It is just the way that the report is requested,
25 either in ascending or descending order.

1 Q Okay. Now what happened with regard to Just for
2 Kids Dentistry?

3 A Sure, if you could move it down a little.

4 Q Oh, I'm sorry.

5 A That's okay.

6 Q How's that?

7 A There you go. At 2:15:28, we received a motion
8 detector, zone number one.

9 Q Okay.

10 A And then at 2:15:34, a motion detector from zone
11 two.

12 Q Okay.

13 A And at the same time, we received the entry/exit
14 door alarm. And 2:15:38, zone 13 motion detector and zone 18
15 motion detector.

16 Q So you had two motion detectors that went off before
17 an entry/exit door?

18 A Yes.

19 Q How is that possible?

20 A An entry/exit door is programmed with a delay to
21 give the customer time to get into their premise and turn the
22 alarm system off before it trips from the door.

23 Q Okay. So if no one turned it off within that
24 specified time, then it would activate?

25 A Correct.

1 Q All right. And after the motion sensors and the
2 front door activates, then what happens?

3 A Then at 2:17:16, zone 12, a perimeter door.

4 Q All right. So would the perimeter door be a
5 different door than the entry/exit door?

6 A Yes.

7 Q But from looking at this report, you can't tell
8 which door is which, can you, for the business?

9 A If you move it over a little to -- that way.

10 Q That way?

11 A There you go. No. There is not a description on
12 that.

13 Q And I can't see. I'm sorry. What happened -- did
14 -- when the alarm tripped the motion detectors and the doors,
15 did the procedure get followed where you're trying to call the
16 business and then start with the list?

17 A Yes, we did.

18 Q All right. And at some point, is this alarm turned
19 off?

20 A Yes. Here at 2:29:16, we received an open signal.

21 Q And that means the code was put in?

22 A Correct.

23 Q All right.

24 MS. DIGIACOMO: Court's indulgence.

25

1 BY MS. DIGIACOMO:

2 Q Now the codes on here -- you said OA is operator
3 access.

4 A Operation action.

5 Q Oh, action. I'm sorry. And what would BA be?

6 A Burglar alarm.

7 MS. DIGIACOMO: Pass the witness.

8 THE COURT: Any questions?

9 CROSS-EXAMINATION

10 BY MR. HART:

11 Q Now you're talked about the different zones and
12 different doors, correct?

13 A Correct.

14 Q You don't install these systems?

15 A No, I do not.

16 Q And you rely on whoever installed them to put them
17 with that number, correct?

18 A Correct.

19 Q So, in reality, any zone could be any different
20 type?

21 A It is a possibility.

22 Q And looking at --

23 [Counsel Confer]

24 BY MR. HART:

25 Q Looking at your event history for Anku Palace --

1 A Uh-huh.

2 Q I don't have my glasses, so I can't see any of that.
3 Can you tell anywhere when Mr. Hung arrived?

4 A The only thing I can tell is when somebody put a
5 code into the keypad to turn the alarm system off.

6 Q Okay. And how -- where would that be?

7 A Let's see. If you move it up a little bit for me,
8 please.

9 Q This way?

10 A Yes. There you go. At 1:56:26 --

11 Q Okay.

12 A -- when the open signal was received.

13 Q That, at least theoretically, would be Mr. Hung' who
14 did that code?

15 A Correct.

16 Q It's not uncommon to have false alarms in your --

17 A It does happen.

18 Q That's part of the reason you have the response to
19 the --

20 A Correct.

21 Q You didn't supply the history of the calls for the
22 week or the few days previous or after this for either?

23 A No. I did not.

24 MR. HART: Nothing further from this witness.

25 THE COURT: Anything else?

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1 MS. DIGIACOMO: No.

2 THE COURT: Do you have a real short one or do you want
3 to go to lunch?

4 MS. DIGIACOMO: It's short.

5 THE COURT: Okay. One more, and then we'll go to lunch.

6 MS. DIGIACOMO: Terence Costello.

7 THE COURT: Right up here, Mr. Costello.

8 TERENCE COSTELLO, STATE'S WITNESS, SWORN

9 THE COURT: Sir, state your name and spell your name for
10 the court recorder.

11 THE WITNESS: Terence Costello, T-e-r-e-n-c-e
12 C-o-s-t-e-l-l-o.

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION

15 BY MS. DIGIACOMO:

16 Q Mr. Costello, how are you employed?

17 A I work for ADT Alarm Services.

18 Q And how long have you been so employed?

19 A 27 years.

20 Q What specifically do you do for them?

21 A I'm the supervisor and also an alarm response --
22 responding officer at the same time.

23 Q What's an alarm responding officer?

24 A Well, ADT calls alarms, and then they monitor them.
25 And when they go off, they notify our response cars, and then

1 we respond to the location to verify if there's a problem or
2 not.

3 Q Okay. And on September 26th -- excuse me --
4 September 24, 2006, were you working in the alarm response?

5 A Yes.

6 Q Are you armed --

7 A Yes.

8 Q -- when you do that? Okay. Do you recall getting
9 dispatched to the Anku Crystal Palace?

10 A Yes, I do.

11 Q Okay. What happened with that?

12 A I got the call. I arrived in the parking lot. I
13 saw the -- a person standing in front of the location, which
14 turned out to be the owner of the store. We went inside.
15 There was no sign of any break-in. But once we got inside, he
16 noticed that the rear door, he usually had a bar that went
17 across --

18 MR. HART: Objection, hearsay.

19 MS. DIGIACOMO: That's fine. We'll --

20 THE COURT: Sustained.

21 [Counsel Confer]

22 BY MS. DIGIACOMO:

23 Q Sir, I'm going to show you some photographs that
24 have been marked for identification in State's Proposed
25 Exhibits 548 through 560. And you can just flip through all

1 of those and let me know if you recognize them..

2 THE COURT: What number, Ms. Digiacomio?

3 MS. DIGIACOMO: I'm sorry?

4 THE COURT: 548 through 5 what?

5 MS. DIGIACOMO: 60.

6 THE WITNESS: Yes, I recognize this.

7 BY MS. DIGIACOMO:

8 Q All right. So when you arrived at the Anku Crystal
9 Palace, did you actually walk through the store with the
10 owner?

11 A Yes.

12 Q All right. And the photographs that you just looked
13 at, State's Proposed Exhibits 548 through 560, do those fairly
14 and accurately depict the condition and the way the Anku
15 Crystal Palace looked on September 24, 2006, when you walked
16 through it with the owner?

17 A Yes, it does.

18 MS. DIGIACOMO: Your Honor, I'd move for admission of
19 State's Proposed --

20 THE COURT: Objection?

21 MS. DIGIACOMO: -- Exhibits 548 to 560?

22 MR. HART: No, Your Honor, no objection.

23 THE COURT: Admitted.

24 [State's Exhibits 548 through 560 Admitted]
25

1 BY MS. DIGIACOMO:

2 Q Okay. I'm showing you Exhibit 549. Can you see
3 that?

4 A Yes.

5 Q Okay. If you were in the store, what direction
6 would you be coming to get this view?

7 A I think you would have just come through the front
8 door and be heading into the store itself.

9 Q Okay. So this would be taken from where the front
10 door is?

11 A Yes.

12 Q I'm showing you State's Exhibit 554. Do you
13 recognize that area of the store?

14 A Yes.

15 Q Okay. What area is this?

16 A It's, I believe, where the cash register is. It's
17 midway through the store, I guess on the left side.

18 Q Okay. And I'm showing you State's Exhibit 555. Is
19 that the back side of that?

20 A Yes, it is.

21 Q When you went in there that night with Mr. Hung, was
22 the door open such as it is now?

23 A Yes, it was.

24 Q I'm showing you 558. Do you recognize what is
25 depicted in this photograph?

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1 A That's toward the rear of the store.

2 Q Would this be after you walk by that cash register

3 area?

4 A Yes.

5 Q And then State's Exhibit 559?

6 A That's the back door.

7 Q That's the back door?

8 A Yes.

9 Q Okay. Now is there a bar across it at this point?

10 A No. It's laying on the microwave.

11 Q Okay. After you walk through the store with

12 Mr. Hung, what happened at that point?

13 A Well, he noticed that some stuff was missing and

14 that the bar had been moved off the back door. So we -- I

15 told him we needed to go back outside and call Metro down to

16 take a report.

17 Q Okay. So did -- were the police called?

18 A Yes, they were.

19 Q Now did the police respond quickly?

20 A No. They hadn't gotten there by the time I got

21 another call and had to leave.

22 Q Okay. How long had you been at the Anku Crystal

23 Palace before you got another call?

24 A Approximately about a half-an-hour.

25 Q And where was that other call directing you to?

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1 A A location on Tropicana, at a Just for Kids dentist
2 office.

3 Q All right. And how far away was it from where you
4 were at the Anku Crystal Palace?

5 A Probably about a mile. It took me about nine
6 minutes to get there.

7 Q All right. And when you got there, what happened?

8 A Well, as soon as I got there I saw two Metro cars in
9 the parking lot of the dental office, and another Metro car
10 had a car stopped on the corner.

11 Q What did you do?

12 A I called into the dental office, and made contact
13 with the officers and I guess the dentist who was standing
14 there.

15 Q Okay. The person who was responsible for the Just
16 for Kids Dentistry?

17 A Yes.

18 Q It was a male?

19 A Yes.

20 Q Do you recall his name?

21 A Not off the top of my head, no.

22 Q Now when you went to Anku Crystal Palace, did you
23 notice anything regarding forced entry, like broken glass or
24 doors kicked in, or any kind of damage to the store to try and
25 get in it?