

1 A Yes, I was.

2 Q And what did he do?

3 A He was tried to -- he was trying to simulate how  
4 maybe they -- how they may have tried to break into --

5 MR. HART: Objection, it's speculation.

6 BY MS. DIGIACOMO:

7 Q Okay. Tell me what he was doing with the tool, not  
8 what he might have been trying to do?

9 A Okay.

10 THE COURT: What did you see him do?

11 BY MS. DIGIACOMO: .

12 Q Yeah.

13 A He was tried to open, open the door with that tool.

14 Q What kind of doors did you have on your business?

15 A The one with the deadbolt, you know, the bolt that  
16 turns.

17 Q Were they glass doors, two glass doors?

18 A Glass door. Two glass doors.

19 Q And on the inside it had a deadbolt or something --

20 A Yeah.

21 Q -- you turned?

22 A Yes.

23 Q To lock it?

24 A Yes.

25 Q All right. And so when he used this tool, were you

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1     able to see whether or not he could unlock the door?

2           A     Yeah, he was tried to go through the little opening  
3     and tried to open it.

4           Q     Okay, he tried to open it. Did he open it?

5           A     He did. He did.

6           Q     All right. After this, when you saw that happen,  
7     did you do anything to change your locks?

8           A     I did.

9           Q     What did you do?

10          A     I took away the deadbolt and then replaced it with  
11     the one that you lock it with your key.

12          Q     All right. The store where your store's located, is  
13     it in Clark County, Nevada, where it was located?

14          A     Yes.

15          Q     You didn't give anyone permission to have your  
16     belongings when you got to that car stop, did you?

17          A     I did not.

18          Q     Or to take your belongings in this -- in the middle  
19     of the night?

20          A     No.

21          MS. DIGLIACOMO: Nothing further.

22          THE COURT: This tool that was in question, it could  
23     unlock the door, right?

24          THE WITNESS: Yes.

25          THE COURT: Could it lock the door also from the outside,

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1 or you didn't see that?

2 THE WITNESS: I didn't see that.

3 THE COURT: Okay.

4 THE WITNESS: I didn't see that.

5 THE COURT: Okay. Right. Thanks. That was the  
6 question. They wanted to know if it could lock it and unlock  
7 it. All right.

8 MR. HART: Okay.

9 THE COURT: Go ahead, Mr. Hart.

10 CROSS-EXAMINATION

11 BY MR. HART:

12 Q Very quickly, Mr. Hung. When you originally asked  
13 for the police you told 'em you had a hundred dollars taken  
14 out of the petty cash?

15 A I didn't tell them any amount, no.

16 Q So if the officer wrote that down he'd have got it  
17 wrong?

18 A I'm sorry?

19 Q If the officer had written that down he would have  
20 been mistaken?

21 A Yeah. Yeah.

22 Q But you did get back --

23 A I got all of the petty cash back.

24 Q Approximately \$300?

25 A \$300 approximately.

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1 Q How long were you at your -- you were shown where  
2 you were taken in the car. How long were you around your  
3 office or your store before you were transported?

4 A I was there for about, I want to say about 20  
5 minutes. I was going through the items, the police and the  
6 security personnel. And then I got a call -- they got a call,  
7 so they decided to take me to the location where the van.

8 Q Did you go do that with the guy from the --

9 A With one of the police officers.

10 Q Oh, so -- the alarm guy?

11 A No. No. The security guy did not go with me.

12 Q Okay.

13 A He was watching the store for me, actually.

14 Q And he hadn't spoken really --

15 MR. HART: Nothing further, Your Honor.

16 THE COURT: Okay, thanks. Anything else?

17 MS. DIGIACOMO: No.

18 THE COURT: Mr. Hung, you're excused. Thanks very much  
19 for your time, sir.

20 THE WITNESS: Thank you.

21 MS. DIGIACOMO: Next we have Roger Moss.

22 THE COURT: Moss? That relate to a count?

23 MS. DIGIACOMO: It does. It relates to Count XII.

24 THE COURT: Okay.

25 [Counsel Confer]

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1 THE COURT: Come up here, Mr. Moss. Right up here, sir.

2 ROGER MOSS, STATE'S WITNESS, SWORN

3 THE COURT: Mr. Moss, state your name and spell your name  
4 for the Court Recorder.

5 THE WITNESS: Roger Earl Moss, Jr. R-o-g-e-r E-a-r-l M-  
6 o-s-s.

7 MS. SMALL: Thank you, Judge.

8 DIRECT EXAMINATION

9 BY MS. SMALL:

10 Q Mr. Moss, what do you do for a living, sir?

11 A I'm the branch manager for a ice machine  
12 manufacturing company.

13 Q And what exactly does that company do?

14 A We manufacture commercial ice machines and  
15 refrigeration equipment.

16 Q Okay. And then -- and you manufacture. Do you sell  
17 them to anyone in particular?

18 A Yes. We sell them here locally to casinos,  
19 hospitals, chain restaurants.

20 Q Okay. And do you have a main office located here in  
21 Las Vegas, Clark County, Nevada?

22 A Yes, we do.

23 Q And where is that located?

24 A Currently we are -- it's located now at 6225 South  
25 Valley, but we have moved in the last six months. We were

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1 located at 5160 South Valley View, Building Number -- I forget  
2 the building number.

3 Q Okay.

4 A But that's where we were located at.

5 Q Thank you, so that would be back in June?

6 A Back in, back in -- we recently moved in January of  
7 2008.

8 Q So drawing your attention to June 13th of 2005, were  
9 you at that location?

10 A Yes, we were, 5160. Uh-huh.

11 Q And did anything happen that you recall unusual on  
12 that day?

13 A Yes. We did have a break-in on that day.

14 Q Can you describe what took place or what you  
15 witnessed?

16 A As I came in that morning, I noticed there was some  
17 equipment in our warehouse that was moved around, that didn't  
18 look right. So I really didn't pay it no mind since we do  
19 have some -- service technicians that work on our equipment  
20 also. As I looked around in the office more, I noticed that  
21 our place where we keep the money at, our safe, was broken  
22 into also, and that's when I figured out that we'd been  
23 robbed.

24 Q Okay. Did you notice anything else missing from the  
25 store at that time?

1           A     I noticed, as I looked through the inventory of our  
2 equipment, there was a few pieces, a few ice machines that  
3 were missing also.

4           Q     Okay, and you say that you went through your  
5 inventory. Does that inventory list those items by a serial  
6 number?

7           A     Serial number and model numbers, correct.

8           Q     Okay. And do you also keep the value of those  
9 items?

10          A     Yes, we do --

11          Q     -- as part?

12          A     Yes, we do, uh-huh.

13          Q     Thank you.. Did you give anybody permission to come  
14 into the store and take those items out of the store at that  
15 time?

16          A     It's not a storefront, it's more of a warehouse.  
17 No. No one has permission to enter our building.

18          Q     Okay. At some point after that were you able to  
19 locate any of the items that had been taken from the store?

20          A     No.

21          Q     Did you get -- were you contacted by anyone with the  
22 possibility that they had located some of the items from the  
23 store?

24          A     I was contacted by the police department.

25          Q     Okay.

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1 A Yes.

2 Q And what did you do with regard to what the police  
3 department told you?

4 A Well, they came down. I've been doing this for a  
5 few years now, so they came down and showed me pictures of the  
6 product, showed me serial numbers. I came -- I showed -- they  
7 asked me to show proof that this is our -- that we do own the  
8 product, I needed to show proof of purchase orders, so on and  
9 so forth, and I showed all that proof to them and it was all  
10 correct.

11 Q Okay. Drawing the Court's attention to State's  
12 proposed Exhibit 172, State's proposed Exhibits 173 through  
13 177.

14 [Counsel Confer]

15 BY MS. SMALL:

16 Q Sir, if you can just look at this and tell me  
17 whether or not you recognize it?

18 A Yes. That's a AM 50, 50-pound ice machine.

19 Q Okay. And looking at State's 172, how do you  
20 recognize it?

21 A I just -- by the look of the machine. And I could  
22 also see the name plate on the side here, it says our company  
23 name, and then you can actually see the model number right  
24 here in the corner. It says AM 50 right there.

25 Q Okay. And does this picture fairly and accurately

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1 depict that particular ice machine that came from your  
2 location?

3 A Yes.

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

5 THE COURT: Objection?

6 MR. HART: No objection.

7 THE COURT: Admitted.

8 [State's Exhibit 172 Admitted]

9 BY MS. SMALL:

10 Q This particular picture that we're looking at, do  
11 you recall where this was taken?

12 A It was taken from our building. Oh, I'm sorry.

13 Q This particular picture that we're looking at right  
14 now.

15 A It was taken at your facility.

16 Q Okay. So later, at a later date did you go down and  
17 view?

18 A Yes.

19 Q Okay.

20 A Uh-huh.

21 Q Looking at State's 173, 177, do you recognize what's  
22 depicted in these pictures?

23 A Well, yes.

24 Q Okay.

25 A That's me.

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1 Q And does it fairly and accurately depict that  
2 particular ice machine and you?

3 A Yeah -- yes.

4 Q When you went down to the viewing vault to view it?

5 A Yes, uh-huh.

6 MS. SMALL: Move to enter.

7 THE COURT: Objection?

8 MR. HART: No objection.

9 THE COURT: Admitted

10 [State's Exhibits 173 and 177 Admitted]

11 BY MS. SMALL:

12 Q Can you tell us, sir, the approximate value,  
13 wholesale, retail cost, of that ice maker?

14 A Yeah, about \$1,500.

15 Q Thank you.

16 A Retail.

17 MS. SMALL: Nothing further.

18 THE COURT: Questions?

19 MR. HART: No questions for this.

20 THE COURT: Thank you, Mr. Moss. Appreciate your time.

21 THE WITNESS: Thank you.

22 THE COURT: You're excused. Call your next witness.

23 MS. SMALL: Kevin Pelter or Peltier.

24 THE COURT: Peltier.

25 MS. DIGIACOMO: It's --

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1 MS. SMALL: Count XIII.

2 THE COURT: Over here, sir.

3 KEVIN PELTIER, STATE'S WITNESS, SWORN

4 THE COURT: Sir, state your name and spell your name for  
5 the Court Recorder.

6 THE WITNESS: Kevin Peltier, spelled K-e-v-i-n P-e-l-t-i-  
7 e-r.

8 THE COURT: Go ahead.

9 MS. DIGIACOMO: Thank you.

10 DIRECT EXAMINATION

11 BY MS. DIGIACOMO:

12 Q How are you employed?

13 A I'm the co-owner of HP Media Group.

14 Q And who do you own that with?

15 A Michael Heck. He's my business partner.

16 Q Now, at some point did you have a burglary at your  
17 establishment?

18 A Yes, ma'am.

19 Q And when was that?

20 A It was in 2005.

21 Q Do you remember what month?

22 A Believe it was May.

23 Q And you're looking at something to refresh your  
24 memory?

25 A Yeah. It was, would have been May.

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1 Q May of 2005?

2 A Yeah.

3 Q And what did you look at there?

4 A Hold on, I'm looking at your -- I'm sorry, that was  
5 your subpoena date for today. Hold on.

6 Q Oh.

7 THE COURT: Do you know the date, Ms. Digiacomo?

8 MS. DIGIACOMO: I do.

9 THE WITNESS: It's April, I'm sorry.

10 BY MS. DIGIACOMO:

11 Q Thank you.

12 MS. DIGIACOMO: What -- I'm sorry?

13 THE COURT: Why don't you lead him on the date and --

14 BY MS. DIGIACOMO:

15 Q It was in April --

16 A Yeah, sorry.

17 Q It was April of 2005.

18 THE COURT: All right, go ahead.

19 BY MS. DIGIACOMO:

20 Q Now, what happened -- all right, does April 23rd,  
21 2005, sound right?

22 A I believe so.

23 Q All right. And what happened on that date?

24 A One of my employees had called me on Saturday  
25 morning. He'd come in to catch up on some work and told me

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1 that we'd been broken into.

2 Q And did you go down to the store?

3 A I did.

4 Q And what did you see when you got there?

5 A I saw that someone had broken through the wall into  
6 our warehouse. They'd come from the building next to me, the  
7 unit next to me, because it's a suite of warehouses, and they  
8 broke through the wall, came in, took off our alarm panel, and  
9 then essentially cleared out our warehouse of all the TVs and  
10 other audiovisual equipment we had inside the unit.

11 Q Now, what exactly is your business? You had a  
12 warehouse? Do you sell this equipment?

13 A Yeah. What we do is we design home theaters and  
14 home automation systems. And so my space consists of a small  
15 office space in front. You go through the door and then  
16 there's a large warehouse. And the warehouse is just a  
17 concrete shell, and we just have equipment stacked up -- TVs,  
18 amplifiers, speakers, subwoofers, that we have staged going  
19 into jobs that we're getting ready to install. And --.

20 Q So you don't keep it stocked like for retail. As  
21 you get orders --

22 A No.

23 Q -- you order it?

24 A Yes, exactly.

25 Q And it comes into the warehouse --

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1 A Correct.

2 Q -- and they group it to take it for the install?

3 A Yeah, we'll group it, we'll put the client's name so

4 we know this job is going to this area, and so forth.

5 Q Now, in the time that the burglary occurred, how was

6 your warehouse? Was it full or empty?

7 A It was very full. We were getting ready to do two

8 large jobs, one in the Summerlin Ridges area and one in Anthem

9 Country Club.

10 Q And then do you remember the names of those

11 customers?

12 A Yes. One was Dr. Todd Swanson and the other one was

13 Dr. William Sukow [phonetic].

14 Q Sukow. So when you got there, what was missing?

15 A We were missing essentially all of the equipment for

16 both of those jobs, as well as some computer equipment in the

17 front of our office.

18 Q All right. Now, all of the equipment for the Sukow

19 and the Swanson jobs, what would that consist of?

20 A Consisted of plasma TVs, amplifiers, speakers,

21 audio, subwoofers.

22 Q Now, did you know the serial numbers of those items

23 that were taken?

24 A On some, but not all.

25 Q At some point did you get a call from the police or

1 something, someone about recovering some of your property  
2 possibly?

3 A Yes, we did.

4 Q And who was that?

5 A Who called us?

6 Q Yes.

7 A I think it was Jerome.

8 THE COURT: He got a call from the police. As a result  
9 of that call, what did he do?

10 Did they ask you to go someplace or --

11 THE WITNESS: Yes, sir. They asked me to come down and  
12 identify the equipment.

13 THE COURT: What location did you go to to do that?

14 THE WITNESS: Initially I came here to see photographs of  
15 it. And then --

16 BY MS. DIGIACOMO:

17 Q Okay, so when you came to --

18 A To this building.

19 Q Okay, and you were shown photographs?

20 A Correct.

21 Q Were you able to pick out any of the photographs?

22 A Yes, I was.

23 Q And -- let me approach. I'm gonna show you two  
24 photographs. I don't know, they're kind of dark, if you can  
25 see, but I've got State's proposed Exhibits 178 and 179. Can

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1 you see any of your equipment in there?

2 A This one would be this Marantz amps receiver here.

3 Q And so in 178 you pointed to a black box underneath  
4 a silver box --

5 A Uh-huh.

6 Q -- as a Marantz receiver?

7 A Correct.

8 Q Okay. And I know it's kind of dark in here, but --

9 A No, I wouldn't be able to identify any of those.

10 Q Okay, you can't see anything --

11 A Correct.

12 Q -- in 179? All right. Now, at some point after  
13 coming here and looking at photographs were you actually asked  
14 to go to the evidence vault?

15 A Yes, ma'am.

16 Q And were you able to provide the police -- and let  
17 me -- so they're not looking at your back -- were you able to  
18 provide the police --

19 UNIDENTIFIED SPEAKER: It's a beautiful back.

20 BY MS. DIGIACOMO:

21 Q -- with serial numbers or other items that you were  
22 -- did you give 'em a list of the --

23 A Yes.

24 Q -- items missing basically?

25 A We gave them a large list of all the items that were



1 missing. Here's a copy of that list with all of the items.

2 Q And the serial numbers and values?

3 A And serial numbers and values of the ones that I --  
4 you know, where I did have serial numbers. And so from that  
5 we were able to match the serial numbers. And on other items  
6 that did not have serial numbers, I was able to match the fact  
7 that we had written the name of the client on the box.

8 Q Okay.

9 A And that was there. There were other items there,  
10 though, that did not have serial numbers. TVs that were the  
11 exact same make and model number of what was on our list, but  
12 I did not have a corresponding serial number for.

13 MR. HART: I'm gonna object to some of these exhibits,  
14 Your Honor.

15 THE COURT: Well, she hasn't moved to admit anything yet.  
16 BY MS. DIGIACOMO:

17 Q All right, sir. Now, I'm gonna ask you to flip  
18 through these and just flip through 'em all quickly, let me  
19 know if you recognize -- the ones that you recognize, put in  
20 one pile, and the ones you don't, put in another pile.

21 A This is ours. Okay. This is ours, there's a wiring  
22 diagram on the back.

23 Q Okay, no, you can flip through quickly. I'll go  
24 back over 'em with you.

25 A All right. [Indiscernible] with the serial number,

1 [indiscernible] with the serial number, these are all our  
2 JBLs, we have serial numbers for each of those. That's the  
3 same item, the same item, shows the client's name on it,  
4 there's a serial number for that item, once again there's some  
5 serial numbers for each of these items --

6 Q And for instance, you're looking at --

7 A I'm looking at the fact it's the JBL S4A speaker.  
8 It's specifically shown on my list of stolen items with this  
9 identifying serial number.

10 Q But this is an evidence tag.

11 A This is the evidence tag that's on the box.

12 Q And did you see -- it's on the box. Okay.

13 A It's on the box. That's the serial number of the  
14 box. Basically the evidence tag is a copy, that's the DVD  
15 player from our unit, Marantz DVD player with the serial  
16 number, it's the Marantz receiver, Marantz receiver with the  
17 serial number, Sonance power amplifier with the client's  
18 identifying name on it, same item, amplifier with the serial  
19 number, another receiver with the client's identification.  
20 Serial number for that item. Serial number for that item.  
21 The JBL subwoofer, I did not have a serial number for this but  
22 I'm the only dealer in Las Vegas for this. Here's the  
23 carrier's information showing it was shipped to me.

24 Q Well, just let me know if you recognize --

25 A Got 'em.

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1 Q We'll go back over it.

2 A Okay.

3 Q Sorry.

4 A That's that same JBL subwoofer, here's a list of all  
5 of those items that were identified.

6 Q Okay. So do you recognize all of these exhibits --

7 A Every one.

8 Q -- in 180 through 209, and they fairly and  
9 accurately depict the evidence you viewed and the property  
10 that belonged to you?

11 A Very accurately.

12 Q All right.

13 MS. DIGIACOMO: Your Honor, I move for admission of  
14 State's 180 through 209.

15 THE COURT: Objection?

16 MR. HART: Your Honor, I'd object to anything that is not  
17 on the indictment. I don't --

18 THE COURT: Well, he can identify any of this as his  
19 property. However, the jury's only gonna consider whether or  
20 not the State's proved what the charge is in the indictment.  
21 The other stuff is superfluous and I don't need him to value  
22 anything that wasn't listed in the indictment.

23 MS. DIGIACOMO: I understand that. I understand that,  
24 but it ties in with the fact that they're found at two  
25 locations.

1 THE COURT: Okay. They won't value anything that's not  
2 listed in the indictment --

3 MS. DIGIACOMO: Right.

4 THE COURT: -- but he can identify it. Go ahead.

5 MS. DIGIACOMO: They are admitted?

6 THE COURT: They're all admitted.

7 MS. DIGIACOMO: Yes.

8 THE COURT: 180 to 209.

9 [State's Exhibits 180-209 Admitted]

10 BY MS. DIGIACOMO:

11 Q Now, first of all, I'm gonna show you State's 178.  
12 And you can use -- there's a little stylus that you can use on  
13 the computer screen. Which item in here did you pick out?

14 A This item appears to be one of the receivers that --  
15 [Counsel Confer]

16 THE COURT: She hasn't moved to admit those.

17 MS. DIGIACOMO: Oh. I did move to admit 178.

18 THE COURT: No, you showed him both, he identified 178 --

19 MS. DIGIACOMO: And I moved to admit --

20 THE COURT: -- 179 was too dark, you didn't move -- and  
21 you now move -- any objection?

22 MR. HART: No.

23 THE COURT: 178'll be admitted, 179 won't. Go ahead.

24 MS. DIGIACOMO: Thank you.

25 [State's Exhibit 178 Admitted]

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1 BY MS. DIGIACOMO:

2 Q All right, so this black box you recognize. You  
3 don't recognize the location or any of the other items,  
4 though?

5 A I do not. And I --

6 Q Go ahead. Okay. I'm showing you State's 180. What  
7 are we looking at here?

8 A Looking at an amplifier, two amplifiers. That's the  
9 boxes that they were contained in.

10 Q Okay, what kind of amplifiers are these?

11 A Sonance Power Amplifiers.

12 Q Now, okay. And showing you -- now, did you have the  
13 serial number for these to match up?

14 A I did not. The client's name is written on that  
15 box.

16 Q Okay, now I'm gonna show you State's Exhibit 181.

17 A Okay. That's our wiring diagram, showing how it's  
18 wired.

19 Q Okay, so you recognize this on --

20 A Yeah.

21 Q -- and it's on one of the boxes in 180?

22 A Correct.

23 Q All right. And then showing you 182, what are we  
24 looking at there?

25 A We're looking at the same set of boxes, it shows the

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1 client's identification is Swanson, sub amplifier.

2 Q That's written on the top?

3 A Correct.

4 Q Now showing you State's Exhibit 185.

5 A I do have serial numbers for each of those items.

6 Q Okay, and that's on that document that you had --

7 A I'm looking at it right in front of me.

8 Q Okay, if you could -- the document that you have,  
9 are you the one that put that together?

10 A Actually a gentleman in my office put it together.

11 Q At your direction?

12 A Yes, ma'am.

13 Q And it's based upon records that you keep in the  
14 ordinary course of your business?

15 A Yeah.

16 Q The invoices and whatnot from ordering?

17 A We were looking through -- we have supporting  
18 purchase orders for each of these items.

19 Q Okay, so this is just a compilation of your records?

20 A Correct.

21 Q All right. What are the security -- excuse me, the  
22 serial numbers for these, would you call 'em JBL?

23 A Yes, JBL -- the product's called S4A surround  
24 speaker.

25 Q Okay. So what are the four serial numbers for these

1 items?

2 A 02309, 02311, 02414, 02415.

3 Q And that's -- are you reading the entire serial  
4 number?

5 A I'm not reading the entire serial, I'm must reading  
6 the last five digits.

7 Q Okay.

8 A I can give you the -- the first number is --

9 THE COURT: We don't need it.

10 THE WITNESS: -- HA0091 in front of each.

11 MS. DIGIACOMO: I'm sorry?

12 THE COURT: I said we don't need it all.

13 MS. DIGIACOMO: Right.

14 THE COURT: Okay? They got it.

15 BY MS. DIGIACOMO:

16 Q Now, what is the approximate value of these four JBL  
17 speakers? Or not just the approximate, what'd you pay for  
18 'em?

19 A \$8,000 was their retail value.

20 Q So that's what you were charging Mr. Sukauer  
21 [phonetic] and Mr. Swanson?

22 A Correct.

23 Q Or Sukow, sorry.

24 A Correct. And at the time we had paid approximately  
25 \$3,800 for them.

1 Q All right. And now I'm gonna show you -- this is  
2 State's Exhibit 186. You recognize this?

3 A Yeah, it's the same device.

4 Q All right, and this is just the side of the box --

5 A Correct.

6 Q -- the JBL?

7 A Uh-huh.

8 Q Of one of 'em. And what does it say on there?

9 A Parts for all four in this box.

10 Q Okay, so all four of these speakers went together?

11 A No, each one of those boxes contained an individual  
12 speaker. Upon examination of the box I picked it up, it was -  
13 - it had been damaged so. I think someone had put the pieces  
14 back together and threw it in the box, and --

15 Q Oh.

16 A -- someone else wrote that on there.

17 Q Okay, so you -- it wasn't from your business?

18 A It was not -- that was not our notation. But that  
19 particular model of speaker, the JBL S4A, is a very unique  
20 product that's only sold through us in the City of Las Vegas.

21 Q Okay. Now, directing your attention back to 186,  
22 over here there's something written on the side. Can you see  
23 that?

24 A That's the gentleman's name again. That's the  
25 client that we were selling it to, that was Mr. Sukow.

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1 Q Okay, and State's 187 was just a close-up of that?

2 A Yes. And that is from our office.

3 Q And it looks like 188 they took pictures of the  
4 serial number on the outside of the box as well?

5 A Correct.

6 Q On all of them? Okay.

7 A Uh-huh.

8 Q Did you give anyone permission to have these items?

9 A No.

10 Q Other than Mr. Sukow or Mr. Swanson?

11 A He only gets them after we install them.

12 Q And pays for 'em?

13 A And pays for them, correct.

14 Q Okay. Now showing you State's Exhibit 196. What  
15 are we looking at here?

16 A That's a Marantz DVD player.

17 Q Did you also have the serial number for this?

18 A Let me take a look. Yes, I did.

19 Q And what is that serial number?

20 A That serial number is MZ00050902592.

21 Q What is the value or what is the retail value of  
22 this?

23 A \$650.

24 Q And what is your cost, do you know?

25 THE COURT: I think they got it.

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1 MS. DIGIACOMO: Okay.

2 BY MS. DIGIACOMO:

3 Q Now, on top of this is a white sticker. Was that  
4 from you?

5 A No. That was your evidence vault.

6 Q All right. And showing you 197, is that just a copy  
7 of what is on top of that?

8 A Yes. Corresponding to this serial number I just  
9 read.

10 Q Okay. And then showing you State's Exhibit Number  
11 198, what is that?

12 A That's the Marantz surround receiver.

13 Q Is that the same thing that you believe is pictured  
14 in 178?

15 A I do.

16 Q What is the serial number on this?

17 A There's two. I can't tell which one it is. It's  
18 either MZ0005060015 -- 1583, or it's MZ000507004989.

19 Q Now, let me -- on top of it is another white  
20 sticker?

21 A Correct.

22 Q Right. And I'm gonna show you 199. Is that the  
23 sticker that was on top of that?

24 A Yes, so that means that's the second serial number I  
25 read.

1 Q Okay, which is the 4989?

2 A Correct.

3 Q All right. Showing you State's Exhibit 200. What  
4 are we looking at here?

5 A That's the 12-Channel Power Amplifier, from Sonance.

6 Q Okay.

7 A I did not have a serial number for that. I lost two  
8 of those. One was found, and the identifying characteristic  
9 is the client's name, once again, on the box.

10 Q Okay. And it's Mr. Sukow?

11 A Correct.

12 Q Okay. Now, showing you State's 201. What is this?

13 A Same thing.

14 Q All right, this states -- that's just a different  
15 side of what we just saw --

16 A Correct, uh-huh.

17 Q -- in 200?

18 A Yep.

19 Q Showing you State's Exhibit 203.

20 A That's the Marantz receiver, SR5100 that we saw --  
21 no, this is the second one, the first one I read to you.  
22 That's the 8500, and it has serial number MZ000506001583.

23 Q And actually you can see that in the picture,  
24 correct?

25 A Yeah, and you'd also see the other client's name

1 written on it, Swanson.

2 Q All right. What is the value of what we're looking  
3 at in State's 203?

4 A That unit has a value of \$1,600.

5 Q That's what you'd charge for it retail?

6 A Correct. That previous Sonance amplifier was  
7 \$2,100.

8 Q Okay. And the other Marantz digital receiver that  
9 ended at 4989, did I ask you the value of that?

10 A You did not. It had a retail value of \$1,000. It's  
11 just a lower wattage unit.

12 Q Okay. Now, showing you 206. What are we looking at  
13 here?

14 A That's a JBL subwoofer. I did not have the serial  
15 number, but I'm the only authorized dealer in Las Vegas to  
16 sell that product. On the box is the shipper's  
17 identification.

18 Q Oh, and that's 207?

19 A Correct. Showing the origination date from Phoenix  
20 to Las Vegas to us.

21 Q All right --

22 A With a corresponding date.

23 Q -- and you're the only one that would receive it in  
24 Vegas?

25 A Correct.

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1 Q And I'm showing you, lastly, State's 209.

2 A That's what they had retrieved.

3 Q All right, so this is a picture of you with all the  
4 property you identified as being yours when you went to the  
5 vault?

6 A Yes, ma'am.

7 Q Now, you're also holding something, a piece of  
8 paper, in front of you. What is that?

9 A I can't read it. I don't know.

10 Q Let me approach. See if you can see it a little  
11 better not on the screen.

12 A Oh. It's the list that I have right here in front  
13 of me.

14 Q All right. So it's the same list you've been  
15 referring to that they --

16 A Yes.

17 Q -- took a picture with you?

18 A Yep.

19 MS. DIGIACOMO: I have nothing further.

20 THE COURT: Questions?

21 CROSS-EXAMINATION

22 BY MR. HART:

23 Q You were able to give a pretty good list of  
24 everything that was taken from your office, or your place,  
25 correct?

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1 A Yes, sir.

2 Q Okay. When you -- at one point you believed a  
3 Zenith TV was yours?

4 A We discovered that after we had submitted the  
5 insurance claim, that there was a large Zenith 60-inch plasma  
6 monitor that was missing as well, but unfortunately I'd  
7 already sent in my insurance claim so I kind of got left out  
8 on that one. We also had documentation, though, of a 23-inch  
9 Zenith TV.

10 Q Okay.

11 A That was taken.

12 Q So you had a pretty good inventory, you gave  
13 everything, and later at the viewing you claimed a Zenith TV?

14 A Later, yes. I did notice -- because I found out  
15 from my own records, going through more diligently afterwards,  
16 we were trying to get the insurance claim processed as quickly  
17 as possible because we were out of a lot of inventory, over  
18 \$100,000 worth of equipment.

19 Q But you were not able to -- you never provided any  
20 proof?

21 A I did not --

22 Q To the DA's office?

23 A I did not have a serial number for that.

24 Q Okay. And that wasn't similar to any of the other  
25 equipment that had been taken that day, and didn't notice

1 anything that came up Zenith, correct?

2 A I wasn't showing any Zenith products. There were  
3 Sony TVs that were shown there in that photo, but I did not  
4 have serial numbers for those.

5 Q And generally speaking you said, the way you set up  
6 your warehouse, is when you got a couple jobs going you fill  
7 it up, correct?

8 A We do. But what happens is when they found the  
9 evidence, the TVs were not in the box. So the names that  
10 would have been on the boxes were not there.

11 MR. HART: Nothing further, Your Honor.

12 MS. DIGIACOMO: Nothing else.

13 THE COURT: Thanks, Mr. Peltier.

14 THE WITNESS: Thank you.

15 THE COURT: Appreciate your testimony. Call your next  
16 witness.

17 MS. DIGIACOMO: Janet Kennedy.

18 THE COURT: Related to a count?

19 MS. DIGIACOMO: I'm sorry, it relates to XVII.

20 THE COURT: Come up here, Ms. Kennedy. Right up here,  
21 please. Thanks.

22 JANET KENNEDY, STATE'S WITNESS, SWORN

23 THE COURT: State your name, please, ma'am, and spell  
24 your name for the Court Recorder.

25 THE WITNESS: Janet Kennedy. J-a-n-e-t K-e-n-n-e-d-y.

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1 THE COURT: Go ahead.

2 MS. DIGIACOMO: Thanks.

3 DIRECT EXAMINATION

4 BY MS. DIGIACOMO:

5 Q How are you employed? How are you employed?

6 A Self-employed.

7 Q All right. Do you and your husband own a business?

8 A Yes.

9 Q What is that?

10 A Grand Canyon Construction.

11 Q And what exactly do you do with Grand Canyon?

12 A General contracting.

13 Q Do you build houses or commercial?

14 A Both.

15 Q Now, I'm gonna direct your attention to August 26 of  
16 2004. Do you recall doing a house or houses on Todd Nail  
17 [phonetic] Court?

18 A Yes..

19 Q All right. Did you ever go out to the site?

20 A Yes.

21 Q All right. So you know where it was located?

22 A Yes.

23 Q Do you recall which house it was -- or, well, tell  
24 us exactly what that was you were building.

25 A Eight homes, eight custom homes.

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1 Q And it was on a cul-de-sac?

2 A Yes.

3 Q I'm gonna show you what's been marked as State's  
4 Exhibit Number 1 for identification, and it's proposed. Let  
5 me know, do you recognize that? It's an aerial view, but do  
6 you recognize that?

7 A Yes.

8 Q And how do you recognize it?

9 A Because those are the eight homes on Todd Nail Court  
10 that we built.

11 Q Okay, so does that fairly and accurately depict --

12 A Yes.

13 Q -- Todd Nail Court?

14 A Yes.

15 MS. DIGIACOMO: Your Honor, at this time I would move for  
16 admission of State's proposed Exhibit Number 1.

17 THE COURT: Objection?

18 MR. HART: No objection.

19 THE COURT: Admitted.

20 [State's Exhibit 1 Admitted]

21 MS. DIGIACOMO: Okay.

22 BY MS. DIGIACOMO:

23 Q Okay, putting this up on the DOAR equipment, can you  
24 just circle the houses that you were building? Oh, there  
25 should be a stylus.

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1 A All the houses?

2 Q Yeah. Okay, so you were doing eight homes on --

3 A Yes.

4 Q -- that cul-de-sac. Now, one of 'em was

5 burglarized, or more than one? What happened?

6 A One was burglarized.

7 Q Do you know which one it was?

8 A Yes, I do. Be Lot 3, right here.

9 Q So the third one on the north side?

10 A Yes.

11 Q What was taken?

12 A A refrigerator and a cook top.

13 Q What kind of refrigerator?

14 A Viking.

15 Q A Viking? And when you reported that, that was the

16 only two things taken?

17 A Yes.

18 Q Can you -- was it reported to the police?

19 A Yes.

20 Q And when you reported it to the police, were you

21 able to give 'em serial numbers or information such like that?

22 A We gave 'em information but we didn't give 'em

23 serial numbers at that time.

24 Q Where did you get them?

25 A Um --

1 Q Did you give them the product number --

2 MR. HART: Objection, leading.

3 BY MS. DIGIACOMO:

4 Q -- or anything else?

5 A I couldn't tell you because my husband was out there  
6 at the time.

7 Q Okay. The things that were taken, you said it was a  
8 cook top and a refrigerator?

9 A Correct.

10 Q What was the brand?

11 A Viking.

12 Q And what was the size of the refrigerator?

13 A Oh my.

14 Q Do you have your paperwork with you?

15 A Let me see.

16 MR. HART: Your Honor, I'm gonna ask what she's using to  
17 refresh her recollection.

18 THE COURT: Sure.

19 THE WITNESS: Pardon?

20 THE COURT: He wanted to know what you were looking at to  
21 refresh your recollection. No big deal.

22 THE WITNESS: My deposition.

23 THE COURT: Oh. Do you have any objection?

24 MR. HART: Uh --

25 THE COURT: Did you get these from Econ Appliance?

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1 THE WITNESS: Yes.

2 THE COURT: All right.

3 MR. HART: Objection, Your Honor.

4 THE COURT: Okay.

5 BY MS. DIGIACOMO:

6 Q Okay, go ahead. Do you recall what the --

7 A It was a 42-inch built-in refrigerator.

8 Q Okay. So how would it look? I mean, is it a side-  
9 by-side, is it top and bottom?

10 A Hmm, this particular one? I don't recall.

11 Q Okay. And then also you said there was a cook top  
12 taken?

13 A Yes.

14 Q And what was that?

15 A That would have been a Viking.

16 Q And do you recall the size?

17 A Umm --

18 MR. HART: Objection. If she needs to read it, I'd ask  
19 that --

20 MS. DIGIACOMO: If she needs to look at her prior  
21 testimony to refresh her recollection that's proper.

22 THE COURT: Her question is, do you recall without  
23 looking at anything the size?

24 THE WITNESS: No.

25 THE COURT: Is there something you could look at that

1 would help you refresh your recollection?

2 THE WITNESS: Yes.

3 THE COURT: Go ahead.

4 THE WITNESS: I don't have it in here.

5 BY MS. DIGIACOMO:

6 Q Okay. Now, when you say a cook top, is it the kind  
7 of just like goes into a counter, or is it -- does it have an  
8 oven attached to it?

9 A The cook top that goes -- that sits down on the top  
10 of the counter.

11 Q Okay. Now, you purchased these from Econ  
12 Appliances?

13 A Yes.

14 Q All right. When -- how does it work with the  
15 transfer? When you purchase it, when does it become your  
16 responsibility?

17 A When it's actually installed. And these two  
18 particular items were not installed at the time.

19 Q All right. So you called the police and you report  
20 the burglary, but actually even though you had ordered 'em and  
21 they were at your job site, they didn't technically belong to  
22 you? Is that fair?

23 A Correct.

24 Q All right. So what did you do based upon the fact  
25 that those two items, the cook top and the Viking fridge, were

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1 taken?

2 A I don't understand.

3 Q Did you get 'em replaced?

4 A Yes, we did.

5 Q And who had to pay for their replacement?

6 A Econ.

7 Q All right. So it was their loss?

8 A Correct.

9 Q But nobody had permission to take those from anyone  
10 from Grand Canyon Construction?

11 A Correct.

12 Q Eventually, were you contacted regarding the Viking  
13 refrigerator being found?

14 A Yes.

15 Q And when you were contacted, was it actually  
16 released to you?

17 A It was released to us, but we had Econ Appliance  
18 there to pick it up.

19 Q Okay. So it was --

20 A It was a joint.

21 Q -- it was released to you because you were the  
22 listed victim?

23 A Correct.

24 Q But you turned that back over to Econ?

25 A Correct.

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1 Q And they took it back?

2 A Correct.

3 Q Now, with regard to the cook top, if that was  
4 recovered, you would not -- it wouldn't be yours, it would be  
5 Econ's as well?

6 A Correct.

7 Q But you never gave anyone permission?

8 A Correct.

9 Q Do you know how much you had to pay for the cook top  
10 and the Viking refrigerator?

11 A It was \$8,800 for the cook top and approximately  
12 5,400 for the refrigerator.

13 Q That was your cost?

14 A Correct.

15 MS. DIGIACOMO: Nothing further.

16 THE COURT: Questions?

17 MR. HART: Nothing of this witness, Your Honor.

18 THE COURT: Thanks, Ms. Kennedy. Appreciate your time.

19 Call your next witness.

20 [Counsel Confer]

21 MS. DIGIACOMO: Your Honor, the other witnesses I feel  
22 would be cumulative, so that's it for this --

23 THE COURT: Want to go to lunch now?

24 MS. DIGIACOMO: Yes.

25 THE COURT: Okay. All right, we'll take a lunch break.

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1 [Court admonishes Jury]

2 We'll be in recess until 1 o'clock. Have a nice lunch.

3 [Jury out]

4 [Outside the Presence of the Jury]

5 THE COURT: Okay, the record should reflect the jury has  
6 exited.

7 Mr. Hart, did you look at the proposed -- I'm not  
8 ready to settle them, but did you look at the proposed jury  
9 instructions?

10 MR. HART: Yes, Your Honor. We wanted to get an issue  
11 with --

12 THE COURT: Yeah, but are you gonna have any addition to  
13 submit?

14 MR. HART: Yes, I'll have 'em --

15 THE COURT: Additional ones to submit?

16 MR. HART: Yes, I will.

17 THE COURT: Okay. And --

18 MR. HART: And I'd like --

19 THE COURT: Explain to me on the value and then maybe I  
20 can just fix it.

21 MS. DIGIACOMO: That's from the statute. What I put in  
22 there.

23 THE COURT: Okay, but what's your issue?

24 MR. HART: Well, this is used products, but --

25 THE COURT: Oh, well, okay, and you can certainly argue

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1 that. You can certainly argue it.

2 MR. HART: So when it says the greatest value as --

3 MS. DIGIACOMO: I used the [indiscernible] that's word  
4 for word from our statute.

5 MR. HART: And then the other question I had was on  
6 conspiracy, wasn't it? I'll show you the section.

7 THE COURT: So if you're gonna submit any, would you  
8 bring 'em in in the morning, then we can kind of get them --

9 MR. HART: Yes.

10 THE COURT: -- straightened away?

11 MS. DIGIACOMO: Uh-huh.

12 THE COURT: Not a problem. Okay, anything else? How we  
13 coming on witnesses? We only got four or five more victims,  
14 right?

15 MS. DIGIACOMO: No.

16 THE COURT: No?

17 MS. DIGIACOMO: I don't know. I'd have to look.

18 MS. SMALL: We've been cutting a lot of them out.

19 MS. DIGIACOMO: Yeah --

20 THE COURT: We did 12, 13, 17?

21 UNIDENTIFIED SPEAKER: You got any questions?

22 THE COURT: We did.

23 MS. DIGIACOMO: Because we had like another four people  
24 stacked up and we --

25 THE COURT: We did 2, 3, 5, 6, 7 --

1 MS. DIGIACOMO: But then we have all the detectives that  
2 found it -- .

3 THE COURT: -- 8, 9 -- I'm just talking about victims.

4 MS. DIGIACOMO: Oh, yeah, yeah, yeah.

5 MS. SMALL: Yeah, we're trying to get through them.

6 THE COURT: Got three or four more victims.

7 MS. DIGIACOMO: We have one that's not available until  
8 Monday.

9 THE COURT: Two, 3, 5, so we're missing Number 4, we got  
10 6, 7, 8, 9, 10, 11, 12, 13, 17, 15, 16 -- we got 4, 14, and  
11 18, 19, 20, 21, 23, 24, 25, 26 -- about eight of 'em.

12 MS. DIGIACOMO: Yeah, we'll take care of that. I think  
13 we'll only have one victim tomorrow, and then one on Monday --

14 MS. SMALL: We tried to stack all the victims.

15 MS. DIGIACOMO: Yeah. I think all the rest are today.

16 THE COURT: And the detectives are gonna what, this is  
17 where I found what?

18 MS. DIGIACOMO: All of the property, yeah. What  
19 location.

20 THE COURT: We don't need to look at all the pictures.  
21 The jury's not --

22 MS. DIGIACOMO: No, no, what -- they're gonna look at  
23 the --

24 THE COURT: Here's where I was --

25 MS. DIGIACOMO: Judge, they're gonna look at the pictures

1 in the victims --

2 THE COURT: Okay.

3 MS. DIGIACOMO: That, you know, the ones that they've  
4 already gotten in, they're just gonna say yes, it was at this  
5 location. That's all.

6 THE COURT: Good. All right. Have a good lunch.

7 MS. DIGIACOMO: That's why I did it by victim.

8 [Recess]

9 [Outside the Presence of the Jury]

10 THE COURT: -- 52, State of Nevada versus Daimon Monroe.  
11 Let the record reflect the presence of Mr. Monroe with his  
12 counsel, Ms. Tramel and Mr. Hart; Ms. Digiacomo for the State.

13 MR. HART: Your Honor?

14 THE COURT: Mr. Hart, yes.

15 MR. HART: I would like to renew the motion to suppress.  
16 I understand that the jury's gonna be coming in shortly, now  
17 that we're done with the last car stop --

18 [Counsel Confer]

19 THE COURT: Go ahead, Mr. Hart.

20 MR. HART: Okay. I would like to preserve my right to  
21 make the motion to renew the stop and the suppression issues.  
22 I'd suggest we do it at the end of Court now, since we got the  
23 jury waiting and we're two minutes over, I know how this Court  
24 moves.

25 THE COURT: All right, well.

1 MR. HART: So if we can do it at the end of the day?

2 THE COURT: Sure. You know, the record will reflect  
3 you're bringing this to the Court's attention at this time.  
4 At the end of the day you make your pitch, and Ms. Digiacomo  
5 can make hers, and we'll go from there.

6 Bring 'em in.

7 MS. DIGIACOMO: Wait, wait, wait. Sorry.

8 THE COURT: Okay, sorry.

9 [Counsel Confer]

10 THE COURT: All right.

11 [Jury In]

12 THE COURT: Okay, back on the record in Case C228752,  
13 State of Nevada versus Daimon Monroe. Let the record reflect  
14 the presence of Mr. Monroe with his counsel, Ms. Tramel and  
15 Mr. Hart; Ms. Digiacomo and Ms. Small for the State. All the  
16 ladies and gentlemen of the jury are back in the box.

17 Call your next witness.

18 MS. SMALL: David McQueen.

19 THE COURT: McQueen.

20 MS. SMALL: Yes, Your Honor, that is --

21 MS. DIGIACOMO: XIX.

22 MS. SMALL: XIX, yes.

23 THE COURT: XIX, okay. Mr. McQueen, come on up here,  
24 sir.

25 DAVID MCQUEEN, STATE'S WITNESS, SWORN

1 THE COURT: Mr. McQueen, will you state your name and  
2 spell your name for the Court Recorder, please.

3 THE WITNESS: David McQueen. D-a-v-i-d M-c-q-u-e-e-n.

4 THE COURT: Go ahead, Ms. Small.

5 MS. SMALL: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. SMALL:

8 Q Mr. McQueen, what do you do for a living, sir?

9 A I'm a food -- in the food business.

10 Q Okay, and do you presently own a business?

11 A Yes.

12 Q And what's the name of that business?

13 A Tukys, T-u-k-y-s.

14 Q Okay. And I'm gonna draw your attention to March of  
15 2004. Did you have a different business at that time?

16 A Yes, the Plaza Cafe.

17 Q Okay. And where was that Plaza Cafe located?

18 A 3199 Warm Springs.

19 Q Okay, and what did that cafe do?

20 A We made sandwiches and coffee.

21 Q Okay. Specifically March 28th, of 2004, did  
22 something happen --

23 [Counsel Confer]

24 A Yes, we had a break-in.

25 Q You had a break-in?

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1 A Yes.

2 Q And did you show up to the cafe on that morning?

3 A It was on the weekend.

4 Q Okay.

5 A And we just came down to do some cleaning.

6 Q And what did you notice when you came down?

7 A And noticed things missing.

8 Q Okay. What was missing?

9 A Well, the meat slicer, all the Cokes and all the  
10 orange juice and things like that. Lot of food was missing.

11 Q Could you describe your business for us? I mean, as  
12 far as the way it was laid out, the way it looked? Like, the  
13 front of the building. How was -- what were the doors like?

14 A It was just like a regular office building out in  
15 front. They came in the side door, which was kind of open to  
16 the parking.

17 Q And you saw damage to the side door?

18 A Yes.

19 Q Of the establishment?

20 A Yeah.

21 Q What kind of damage did you see?

22 A They broke the lock.

23 Q Okay, and went in?

24 A Of the --

25 Q Now, you mentioned a meat slicer was taken?

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1 A Yes.

2 Q Okay. Actually, let me go on from there. Did you  
3 call the police once you got into the store?

4 A Yes, we did.

5 Q And you saw that something was missing? Did they  
6 come out?

7 A Yes.

8 Q Okay. Did you give 'em a report as to what was  
9 missing?

10 A Yes, we gave 'em a list of what was missing.

11 Q Okay. And then after that, around November 6 of  
12 2006, did you get called or did you receive a telephone call  
13 about someone possibly obtaining some of that stolen property  
14 that was taken out of that cafe?

15 A Yes, from the detectives. They told me to come and  
16 get it.

17 Q Told you to come and get it.

18 A Yeah.

19 Q So where did you go to get it?

20 A Cutler Street.

21 Q You went to Cutler, and what was on Cutler Street?

22 A Well, they had my meat slicer.

23 Q Did you go to a house or an apartment?

24 A Yeah, it was a regular tract house.

25 Q Okay. So you get to the house, you drive up to the

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1 house, what did you see?

2 A The front lawn and the garage was open, and there  
3 was a lot of merchandise there.

4 Q Okay. You get out of your car, you go up to the  
5 house? Did you speak with someone at that point?

6 A Well, I got to the driveway and spoke to somebody,  
7 yes.

8 Q Okay. And what did you see when you got there  
9 pertaining to what was taken from your business?

10 A I didn't see any of my material. They went in and  
11 got it and brought it out.

12 Q Okay, and what was it?

13 A A meat slicer.

14 Q Okay. Drawing the Court's attention to what's been  
15 pre-marked as State's proposed Exhibit 327 to 328.

16 Sir, I'm showing you State's proposed 327 and 328.  
17 If you'd just look at that and tell me if you recognize what's  
18 depicted in those two pictures?

19 A That's me holding the slicer and the slicer.

20 Q And so how do you know that that's your particular  
21 slicer?

22 A They had the serial numbers from the police report.  
23 That's how they knew to call me.

24 Q And when you called in and told them that something  
25 had been taken, you gave them the serial number to the meat

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1 slicer that had been taken?

2 A When they came out and did the report in the very  
3 beginning, they took down the, the serial number --

4 Q Serial number?

5 A -- because we had 'em.

6 Q And so the serial number matched --

7 A Matched. Correct.

8 Q -- the serial number on the meat slicer that you got  
9 from Cutler?

10 A That's correct.

11 Q Okay, and do these pictures fairly and accurately  
12 depict that meat slicer as you retrieved it from the Cutler  
13 house on November 6, 2006?

14 A Yes, it does.

15 MS. SMALL: Move to enter.

16 THE COURT: Objection?

17 MS. TRAMEL: No objection.

18 THE COURT: Admitted.

19 [State's Exhibits 327 and 328 Admitted]

20 BY MS. SMALL:

21 Q And sir, is this the meat slicer that we're talking  
22 about?

23 A Correct.

24 Q Okay. And is that the meat slicer that you got from  
25 Cutler?

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1 A That's correct.

2 Q Okay. And what are we looking at there?

3 A In front of the driveway at Cutler, me picking up  
4 the meat slicer.

5 Q Okay. Did you purchase this meat slicer for your  
6 business or for sale or what?

7 A No, for the business for Plaza Cafe, to slice meat  
8 on.

9 Q Okay. And what did you pay for that meat slicer?

10 A About \$1,200.

11 Q Okay. And you didn't give anybody permission to  
12 take this meat slicer out of your cafe, did you?.

13 A No.

14 Q Thank you.

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

16 THE COURT: Questions?

17 CROSS-EXAMINATION

18 BY MS. TRAMEL:

19 Q Mr. McQueen, you don't know who took that meat  
20 slicer from your property, do you, correct?

21 A No. I do not.

22 Q And when did you purchase that meat slicer?

23 A October of the previous year.

24 THE COURT: So it was taken on March of '04, you bought  
25 it in October of '03?

1 THE WITNESS: Affirmative.

2 THE COURT: There you go.

3 BY MS. TRAMEL:

4 Q So it was in a used condition at the time it was  
5 taken, correct?

6 A Yes.

7 Q Do you remember what kind of condition it was in  
8 before it was taken? Did it have any scratches, dents, that  
9 kind of a thing?

10 A No, it was relatively new. It's pretty heavy  
11 machinery.

12 Q And how often did you use the meat slicer?

13 A Every day, and it was torn down and cleaned every  
14 day.

15 MS. TRAMEL: Court's indulgence.

16 [Counsel Confer]

17 BY MS. TRAMEL:

18 Q And it had been missing for about two and a half  
19 years, correct, by the time you recovered it?

20 A Yes.

21 MS. TRAMEL: Nothing further. Thank you.

22 THE COURT: Anything else?

23 MS. SMALL: One question, Your Honor.

24

25

## REDIRECT EXAMINATION

BY MS. SMALL:

Q What type of meat did you slice on that slicer?

A Pastrami, roast beef, cheese, ham.

Q So those would be like big meat products?

A Yes. Yeah, it was a 12-inch blade.

Q Thank you.

MS. SMALL: Nothing further.

THE COURT: Thanks, Mr. McQueen. Appreciate your  
testimony.

THE WITNESS: Thank you, sir.

THE COURT: You're excused. Next witness.

MS. DIGIACOMO: Phyllis Paulson.

THE COURT: Does this relate to a count or not?

MS. DIGIACOMO: Yes, it does, and it's Count -- I'm sorry  
-- XXV.

THE COURT: Come on up here, Ms. Paulson.

PHYLLIS PAULSON, STATE'S WITNESS, SWORN

THE COURT: Ms. Paulson, state your name and spell your  
name for the Court Recorder, please.

THE WITNESS: Phyllis Paulson. P-h-y-l-l-i-s  
P-a-u-l-s-o-n.

THE COURT: Go ahead, Ms. Digiacomo.

MS. DIGIACOMO: Thank you, Your Honor.

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## DIRECT EXAMINATION

BY MS. DIGIACOMO:

Q Do you own a business?

A Yes.

Q And what is the name of that business?

A Furniture Markdowns.

Q And who do you own it with?

A Now I own it by myself, but at the time I owned it with my husband --

Q All right.

A -- who has since passed away.

Q And do you have any other family members that work for you?

A My son and my daughter.

Q And what's your son's name?

A Michael.

Q And which one of them is responsible for the inventory and purchasing?

A He is. I mean, he would know more than anyone what is, what we carry.

Q Michael?

A Yes.

Q All right. At some point did you have a burglary of your business?

A Yes.

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1 Q Do you recall exactly when that was?

2 A It was in '02. April, I believe.

3 Q April of 2002?

4 A Uh-huh.

5 Q And how was it that you discovered that your place  
6 had been burglarized?

7 A We came to work and noticed that the back door had  
8 been pried open, and then when we came in drawers were dumped  
9 over and things were not in its place.

10 Q And you said "we." Who was with you?

11 A My husband.

12 Q Do you recall specifically what things were missing?

13 A There were several pictures off the wall, a chest of  
14 drawers, a couple nightstands. Just real odd selection of  
15 merchandise and not very much.

16 Q They didn't take a lot?

17 A No.

18 Q Just had things missing from here and there around  
19 the store?

20 A Exactly.

21 Q Now, were you contacted by a detective that came to  
22 see you --

23 A Yes.

24 Q Initially?

25 A It actually was several years later he called me on

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1 the phone and asked me about two pictures that he had  
2 knowledge of. And then in his conversation with me it became  
3 more evident that they could be our pictures.

4 Q All right, and was that in the, like, November or  
5 December of 2002?

6 A I would --

7 Q I mean, excuse me, 2006?

8 A Yes. I was gonna say.

9 Q Okay.

10 A Uh-huh.

11 Q All right. Let me approach and show you a few  
12 photographs...

13 A Sure.

14 Q First of all I'm gonna show you State's proposed  
15 Exhibits 45 -- no, I'm sorry, 459 and 460.

16 A Uh-huh?

17 Q Do you recognize these?

18 A Yes.

19 Q Okay. Do they fairly and accurately depict two  
20 photographs that were taken from your Furniture Markdown  
21 business in 2002?

22 A Correct.

23 MS. DIGIACOMO: I'd move for admission of 459 and 460.

24 THE COURT: Objection? Hearing none, they'll be  
25 admitted. Go ahead.

1 [State's Exhibits 459 and 460 Admitted]

2 MS. DIGIACOMO: All right, thank you.

3 BY MS. DIGIACOMO:

4 Q And are these two -- in 459 and 460, are these the  
5 two photographs that you were contacted about --

6 A Yes.

7 Q -- by the detective?

8 A Yes.

9 Q All right. And showing you 459, what are we looking  
10 at there?

11 Oh, and it should be in the screen in front of you,  
12 I'm sorry.

13 A It's a Martini glass. It's just done on a lacquered  
14 piece of wood and lacquered over. It's just a print.

15 Q And you sold this in your store?

16 A Yes.

17 Q And it was hanging for sale when it was taken in  
18 2002?

19 A Correct.

20 Q Do you recall what the approximate price was on it?

21 A 220, I believe. \$220.

22 Q Okay, and then showing you 460. What is this?

23 A Same type of art, just a Picasso that they reprint  
24 and put it on the wood and put lacquer on it, and, I say,  
25 again 220 would be the pricing on that one also.

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1 Q And this was hanging for sale at the time it was  
2 stolen in 2002?

3 A That's correct.

4 Q All right. Now, did you eventually get these  
5 photographs back?

6 A Yes, I did.

7 Q All right, from the detectives?

8 A Yes.

9 Q And what did you do with them?

10 A I -- through his knowledge, a woman had possession  
11 of them --

12 MR. HART: Objection. Hearsay.

13 THE COURT: The question was, what did you do with them  
14 after you got them back?

15 THE WITNESS: I gave them back to the lady who he had  
16 gotten them from.

17 THE COURT: You gave 'em to somebody? I'm not sure who's  
18 what, where, but you gave 'em to somebody else?

19 THE WITNESS: Yes.

20 THE COURT: All right.

21 BY MS. DIGIACOMO:

22 Q And the reason that you gave them to this person was  
23 that -- was it because -- could you sell these, resell these  
24 pictures?

25 A No, they had -- looked worn, and one of 'em had a

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1 crushed corner on it, so it really wasn't salable as new  
2 merchandise.

3 Q Now, showing you State's Exhibits 461, 462 -- just  
4 461 and 462. Do you recognize this location in these  
5 photographs I'm showing you? Do you recognize where these  
6 were taken?

7 A No.

8 Q Do you recognize anything in them that was stolen  
9 from you in 2002?

10 A The chest of drawers here in the center.

11 Q In 461? And what about 462?

12 A The nightstand.

13 Q All right. And so they fairly and accurately depict  
14 the way they were when you last saw them in 2002?

15 A Condition-wise, or --?

16 Q Well, just what they look like?

17 A Yeah, what they look like, yes.

18 Q Okay.

19 MS. DIGIACOMO: And so at this time I'd move for  
20 admission of 461 and 462.

21 THE COURT: Any objection?

22 MR. HART: No objection.

23 THE COURT: Be admitted.

24 [State's Exhibits 461 and 462 Admitted]  
25

1 BY MS. DIGIACOMO:

2 Q And while I'm up here, I'm gonna also show you  
3 State's proposed Exhibit 465 and 466. Do you recognize what's  
4 depicted in these two photographs?

5 A Yes. Again, merchandise that we had on our walls.

6 Q That was stolen in 2002?

7 A Yes.

8 Q All right, fairly and accurately depict the way it  
9 looked when you last saw it?

10 A Yes.

11 MS. DIGIACOMO: I'd move for admission of 465 and 466.

12 THE COURT: Any objection?

13 MR. HART: No objection.

14 THE COURT: Admitted.

15 [State's Exhibits 465 and 466 Admitted]

16 BY MS. DIGIACOMO:

17 Q All right. Showing you State's Exhibit 461. There  
18 was a chest of drawers that you said in this photograph that  
19 was stolen from your store in 2002?

20 A Correct.

21 Q There's a stylus in front of you. Why don't you  
22 just circle on the computer screen so the jury can see which  
23 one you're talking about?

24 Now, how was it that you came to realize that this  
25 might be your property?

1           A     Well, we only had such little furniture taken. So -  
2     - and it's a pretty recognizable company that does this  
3     particular chest and nightstands. They were curved fronts and  
4     then they generally have, on the nightstand, it looks like  
5     there's three drawers, but when you go to actually look at it,  
6     you have two drawers, one huge drawer at the bottom, and then  
7     -- so to me, they were recognizable as merchandise that we  
8     sold.

9           Q     All right. Now, you looked at it originally in a  
10    photo, is that correct?

11          A     That's correct.

12          Q     If we were to confirm that this was yours would  
13    there be some sort of marking or what's the name of the  
14    company --

15          A     Yes.

16          Q     There'd be something on it?

17          A     On the back side of it would say Good Companies, and  
18    then they always designated either a B or a G as the first  
19    letter on their numbers, and then this particular group would  
20    be a 5800 series. And then the chest would be 09 and the  
21    nightstands would be 11.

22          Q     All right.

23          A     Would be the --

24          Q     Now showing you State's Exhibit 462. You said the  
25    nightstand and then [indiscernible] photograph would be a part

1 of that same grouping?

2 A Yes. Yes.

3 Q So would it match the chest we just --

4 A Yes.

5 Q -- saw?

6 A Yes.

7 Q Now, the drawers aren't in it, but you can see how  
8 many drawers --

9 A Uh-huh.

10 Q -- this stand has?

11 A Uh-huh.

12 Q And how many is that?

13 A Two.

14 Q Now showing you -- oh, and I'm sorry. I guess I  
15 should ask you too, how much does the chest in 461 -- how much  
16 would you sell that for?

17 A \$450.

18 Q And in 462, the nightstand, how much would one  
19 nightstand be?

20 A 189.

21 Q Out of this grouping that was stolen in 2002, how  
22 many nightstands were stolen? Was it just the one, or was  
23 there more than one?

24 A There were two.

25 Q Two. Okay. Showing you State's Exhibit 465. Do

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1 you recognize this picture?

2 A Yes.

3 Q And what is this?

4 A It's a palm tree, just a graphic art in a frame.

5 Q And how much did -- was this hanging for sale --

6 A Yes.

7 Q -- when it was stolen?

8 A Yes.

9 Q How much do you sell that for?

10 A 199.

11 Q And showing you State's Exhibit 466, what is this?

12 A It's a resin mirror with a goldish frame around the  
13 outside and approximately \$250 if I can remember correctly.

14 Q All right. Now, these items that we've been looking  
15 at, did you give anyone permission to have them between 2002,  
16 when your place was burglarized, until the fall of 2006?

17 A No.

18 MS. DIGIACOMO: Pass the witness.

19 THE COURT: Questions?

20 MR. HART: Briefly.

21 CROSS-EXAMINATION

22 BY MR. HART:

23 Q These items that you were just describing in the  
24 exhibits. They're not unique. You sold numerous copies of  
25 those?

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1 A Yes.

2 Q And when was your -- when were they taken originally  
3 again?

4 A In 2002. I believe April.

5 Q Okay. So four years later was when you saw them  
6 again, saw these items?

7 A Correct.

8 Q There was no unique markings on any of these  
9 particular items that would say these were the particular  
10 items --

11 A No.

12 Q -- that were taken?

13 A No.

14 Q And you've told us what you would sell them for new  
15 in your store, correct?

16 A Correct.

17 Q In the condition you found -- or saw these items at  
18 that house, would you be able to sell 'em for those amounts?

19 A Like I say, I never physically saw these particular  
20 items since then, so I don't know the condition.

21 Q Okay. As used furniture would you be able to sell  
22 it for the same amounts?

23 A No.

24 MR. HART: Nothing further from this witness, Your Honor.

25 THE COURT: Anything else?

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1 MS. DIGIACOMO: I do.

2 REDIRECT EXAMINATION

3 BY MS. DIGIACOMO:

4 Q The chest and the two nightstands and all these  
5 pictures we've talked about, they were all taken at one time?

6 A Correct.

7 Q And how many of the pictures did you have hanging,  
8 like of the palm tree, did you have like ten --

9 MR. HART: Your Honor? I'm gonna object to this line of  
10 questioning based on prior rulings.

11 MS. DIGIACOMO: He just asked about how unique they were.  
12 I'm just getting in the fact that one -- that there wasn't ten  
13 of them that they sold at a time.

14 THE COURT: Well, what his point was was this didn't have  
15 a serial number, it may not be that they're the only exclusive  
16 lister; that, you know, this is consistent with what they had  
17 and --

18 MS. DIGIACOMO: Well, no, I understand --

19 THE COURT: -- the jury can decide whether they believe  
20 it is what she sold or what was stolen from her or not.

21 MS. DIGIACOMO: Okay, but may I?

22 THE COURT: I understand his objection; it's sustained.

23 MS. DIGIACOMO: Well, Your Honor, may I be heard? What  
24 I'm trying to --

25 THE COURT: Yeah.

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1 MS. DIGIACOMO: -- establish is if there was more than  
2 one of 'em at the store at the time that all these items that  
3 she's identified as hers were taken. She says --

4 THE COURT: You can ask that.

5 MS. DIGIACOMO: -- they were all taken at the same time.

6 THE COURT: You can ask that.

7 MS. DIGIACOMO: Okay, thank you.

8 BY MS. DIGIACOMO:

9 Q At the time of the burglary how many of these palm  
10 tree photographs or pictures did you have in the store?

11 A I'm not 100% sure but that would be the only one  
12 that there could have been two, but generally they have a  
13 variation of the picture, you know, like it may be a grouping  
14 of two palm trees or it may be -- have something else in the  
15 picture, and it would be considered a set. And that's the  
16 only thing I'm not sure of. But the other items we only had  
17 one of each of them.

18 Q So one of the martini, one of the Picasso, and one  
19 of the mirror?

20 A That's correct.

21 MS. DIGIACOMO: Nothing further.

22 THE COURT: Good. Thanks, Appreciate your testimony.

23 MR. HART: Just to cover that up.  
24  
25

## RE CROSS-EXAMINATION

BY MR. HART:

Q You're not the only distributor from those items?

A No.

Q Numerous stores can sell those items?

A That's correct.

Q And you sold numerous copies of each one?

A Correct.

Q Just one at a time?

A That's correct.

MR. HART: Nothing further.

THE COURT: Okay, thanks Ms. Paulson. Appreciate your testimony.

THE WITNESS: Okay.

THE COURT: You're excused. Call your next witness.

THE WITNESS: Thank you.

MS. SMALL: Richard Groom. Count XVIII.

RICHARD GROOM, STATE'S WITNESS, SWORN

THE COURT: Sir, state your name, spell your name for the Court Recorder.

THE WITNESS: Richard Groom. R-i-c-h-a-r-d, last name G-r-o-o-m.

THE COURT: Go ahead.

MS. SMALL: Thank you, Your Honor.

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## DIRECT EXAMINATION

BY MS. SMALL:

Q Mr. Groom, what do you do for a living, sir?

A I'm a physician, an obstetrician-gynecologist.

Q And do you have an office here in Las Vegas?

A Yes, I do. I have an office at 1950 Pinto Lane.

Q How long have you had that office?

A Since about 1993.

Q Okay. And that's located here in Clark County, Nevada?

A Yes, it is.

Q Okay. I'm gonna draw your attention to May 30th of 2004. Did anything happen to your office on that day?

A Yes, I was doing rounds and I walked in the side entrance to my building and walked into my office to get a chart, and noticed that my computer was missing and a piece of art was missing from the wall.

Q Okay. Will you describe the front entrance to your office for the ladies and gentlemen of the jury?

A The front entrance, I entered from the east side. The front entrance is around on the north side. And when I found that the items were missing, of course, I walked through the building to look at the building. And we have a set of double doors as our front entrance on the north side. Two aluminum framed doors containing glass, and there's little pin

1 that locks them in the middle and someone had pried the doors  
2 open. The pin was still in the locked position, but the doors  
3 had swung out.

4 Q Okay. What did you do at that point?

5 A I called the police and walked through the office to  
6 look around and see if there were other things missing.

7 Q And did the police come out to take a report?

8 A Yes, they did.

9 Q And what, if anything, did you report to them as  
10 missing from the store?

11 A Well, there were multiple items. Again, there as a  
12 limited lithograph print from my wall, a computer in my  
13 office, they had stolen our safe from the office manager's  
14 room, they had broken into the nurses' cupboard and taken some  
15 medication. We also have a locked storage room where they had  
16 broken in, taken a cash box and tools and other supplies.

17 Q Had you given anyone permission to come into your  
18 office and take those items out of there?

19 A Absolutely not.

20 Q Okay. At some point did you get a call as to  
21 possible items being recovered?

22 A Yes, I did.

23 Q Okay. And I'm gonna draw the Court's attention to  
24 what's been pre-marked as Exhibit 320, 321, 322 to 326.

25 [Counsel Confer]

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1 BY MS. SMALL:

2 Q I'm showing you what's been marked as State's 321  
3 and -- 320, 321. Just look at those and tell me if you  
4 recognize what's depicted in those?

5 A Yes, this is the limited lithograph print that was  
6 stolen from my wall. .

7 Q Okay. And 321, do you recognize that?

8 A Yes. I know at one point I received a call to come  
9 and identify my item, I'm just looking through here to see if  
10 I can see the item in the -- yeah, right over here is the same  
11 item so yeah, that's my lithograph print in the picture.

12 Q Okay. And what is this lithograph print of? .

13 A It's by artist Jane Wooster Scott, it's entitled  
14 "Doc's Race with the Stork." I got it shortly after I went  
15 into the practice of medicine, and had reframed the print  
16 myself and put it on my wall with another picture, which was  
17 far less expensive and was not taken.

18 Q I understand. Do these pictures fairly and  
19 accurately depict that lithograph?

20 A Absolutely. I reframed it myself, purchased the  
21 frame with the white border, the wood frame with the white  
22 border, and did kind of an unconventional framing job with  
23 some tape on the back. When I identified it, I'm 100% sure  
24 that that's my photograph -- or my lithograph print, rather.

25 Q Thank you, Doctor.

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1 MS. SMALL: I move to enter 320 through 321.

2 THE COURT: Objection?

3 MR. HART: No objection.

4 THE COURT: Admitted.

5 [State's Exhibits 320 and 321 Admitted]

6 BY MS. SMALL:

7 Q . Looking at 322 to 326, if you could just glance  
8 through those and when you're finished tell me if you  
9 recognize what's depicted in those pictures?

10 A Yes, this is the same limited edition lithograph  
11 print. And this is a close-up of the signature of the same  
12 print.

13 .Q Okay, and so you recognize all of these pictures?.

14 A Definitely. I -- because I reframed the print  
15 myself and when I inspected it and identified it I would stake  
16 my life on the fact that that is indeed my print.

17 Q So these pictures fairly and accurately depict the  
18 print?

19 A Absolutely.

20 Q Thank you. I'm just gonna draw your attention --

21 MS. SMALL: Move to enter State's 322 to 326?

22 THE COURT: Objection?

23 MR. HART: No objection.

24 THE COURT: Admitted.

25 [State's Exhibits 322-326 Admitted]

1 BY MS. SMALL:

2 Q Looking at 326, what's depicted in that picture?

3 A That's the same lithograph print that I previously  
4 identified.

5 Q Is that you in the picture?

6 A Yes, it is.

7 Q Okay. And where are you?

8 A It was a warehouse somewhere on the east side of  
9 town where I was called to inspect the item to ensure that it  
10 was my stolen item.

11 Q So you went to a viewing, would that be correct?

12 A Yes, I did.

13 Q At the Metropolitan Police Department, and viewed  
14 this painting at that location?

15 A Correct.

16 Q Okay. I'm just gonna show you one other picture,  
17 321. Now, could you mark on your screen where your picture  
18 was in this grouping?

19 A Yes, I can.

20 Q You can go on and touch it right on the screen. Do  
21 you recognize that place where the picture is?

22 A I don't.

23 Q Okay. Doctor, could you please tell us what the  
24 price of that lithograph is or what you paid for it when you  
25 bought it?

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1           A     I believe the original purchase price was around  
2     \$400, but it was, again, a limited edition and it sells for  
3     about twice that now.

4           Q     Okay. Have you gotten this picture back yet?

5           A     No, I have not.

6           Q     Okay. You had mentioned something about the frame.  
7     Was that not the original frame that was on the lithograph?

8           A     That's correct. It previously had a plain wooden  
9     frame and at one point I went down to an art store and  
10    purchased a couple of very unique wooden frames, because I had  
11    two prints in my office and I wanted to frame them so that  
12    they would match each other. So I took it out of the original  
13    frame and reframed it myself.

14          Q     And what did that frame cost you?

15          A     I believe it's around \$150, \$200.

16          Q     Thank you.

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

18          THE COURT: Questions? Of Dr. Groom?

19                   CROSS-EXAMINATION

20          BY MR. HART:

21          Q     You said you received this as a gift?

22          A     No, I purchased it.

23          Q     Okay, when you first became a doctor?

24          A     Near that time.

25          Q     And you're not an art appraiser, correct?

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1 A That's correct.

2 Q And you took it out of its original framing or  
3 matting and did your own framing or matting?

4 A I know it was in another frame earlier. I'm not  
5 sure if it was the original frame it came in, but I know at  
6 one point I took it out of one frame and put it in a different  
7 frame.

8 MR. HART: Nothing further for this witness.

9 THE COURT: Thanks, Dr. Groom. Appreciate your time. I  
10 know you're busy. You're excused. Call your next witness.

11 MS. DIGIACOMO: Mae, and I'm gonna say this wrong --  
12 Mae,

13 THE COURT: Mae. Mae it is.

14 [Counsel Confer]

15 THE COURT: This relate to a count?

16 MS. DIGIACOMO: It does. It's gonna relate to Count XV.

17 THE COURT: Come on up here, ma'am.

18 MAE FAFALEOS, STATE'S WITNESS, SWORN

19 THE COURT: Ma'am, will you please state your name and  
20 spell your name for the Court Recorder.

21 THE WITNESS: Mae Fafaleos. Mae F like Frank-a-f again  
22 a-l-e-o-s.

23 THE COURT: Okay. Go ahead.  
24  
25

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## DIRECT EXAMINATION

BY MS. DIGIACOMO:

Q How are you employed?

A I'm sorry, I didn't hear the question.

Q How are you employed?

A How am I employed?

Q Yes, where do you work?

A I work for Steppin' Out See America.

Q And who's your employer?

A Robert Colton.

Q All right. Now, did you have a burglary at the See America office back -- at some point back, I don't recall the exact date. Do you recall being burglarized at the See America office?

A Yes.

Q Do you remember when that was?

A It was in February of, I believe it was 2005.

Q Okay. During that time -- hold on a second. Let me just confirm this. Okay. That's correct. Sorry.

When you -- well, did you go to work that day? After the burglary?

A I was called in. I supposed to have the day off.

Q Okay. So you were called in because of it?

A Yes.

Q And when you got there, did you notice what was

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1 missing?

2 A Yes.

3 Q And what was missing?

4 A All of our pictures that were hung up on the wall.

5 Q Now, how long have you worked for See America?

6 A Fourteen years.

7 Q Fourteen years. And did you only work in Las Vegas?

8 A No.

9 Q Okay, where'd you come from?

10 A Baltimore, Maryland.

11 Q And is that where Mr. Colton originally had his  
12 offices?

13 A Yes.

14 Q So you've been with him a long time?

15 A Yes, I have.

16 Q And the pictures that were hanging in the office,  
17 had they been with the business since coming from Maryland?

18 A He brought them out with the move, yes.

19 Q All right. And did you have a pretty good idea of  
20 all the pictures that were taken?

21 A I actually hung 'em myself.

22 Q Okay. And at some point was Mr. Colton asked to go  
23 down to the evidence vault and review some photographs?

24 A Yes.

25 Q Were you present with him?

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1 A Yes, I was.

2 Q And so everything that was identified as being See  
3 America's, you confirmed, yep, those are our things?

4 A Yes.

5 Q Right. Now I'm gonna show you just one particular  
6 photograph. I'm gonna show you State's proposed Exhibit 244.  
7 Do you recognize this?

8 A Yes, I do.

9 Q And how do you recognize this?

10 A This one was hung in my office, believe it or not.

11 Q Oh, okay. And did it belong to Mr. Colton or  
12 yourself?

13 A Belongs to Mr. Colton.

14 Q All right, so would it surprise you if he didn't  
15 remember having this picture?

16 A Yeah.

17 Q Okay. It wouldn't surprise you or it would?

18 A It would -- it doesn't surprise me.

19 Q Okay, why not?

20 A Well, his age, number one. And he pays no attention  
21 what's on the walls.

22 Q Okay. So, but this was in your office?

23 A Yes.

24 Q And do you know the approximate value or --

25 THE COURT: He related to me.

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1 BY MS. SMALL:

2 Q -- how much was paid for it?

3 A This was bought before I started working for him.

4 Q And it was -- so it was one of the collection that  
5 he had --

6 A Yeah, there were four of 'em, actually three were  
7 taken with the same frame.

8 Q The same kind of picture?

9 A They were a set -- no, different type pictures.

10 Q Okay.

11 A But they all had the same frame.

12 Q Okay. Do you know if you had found it -- were asked,  
13 to look at any others that matched this or had the same frame  
14 that were in your office?

15 A Yes.

16 Q Okay. I'm just gonna skip ahead to show you -- I'm  
17 gonna show you on the screen so you can show the jurors. This  
18 is State's Exhibit 265. Can you circle the picture that we're  
19 talking about that's in State's proposed 244? On the screen.  
20 Next to you. Sorry.

21 A Okay, don't --

22 Q There's a screen.

23 A I'm circling what now?

24 Q The State's proposed --

25 A Oh.

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1 Q -- 244 in front of you, is it on --

2 A It's this one right here.

3 Q All right. And this State's 44 -- 2 -- oh, is it?

4 THE COURT: 244.

5 UNIDENTIFIED SPEAKER: 244.

6 BY MS. SMALL:

7 Q 244. This fairly and accurately depicts the photo  
8 that was in your office?

9 A Yes.

10 MS. SMALL: I move for admission of 244, Your Honor.

11 THE COURT: Objection?

12 MS. TRAMEL: No objection.

13 THE COURT: Admitted.

14 [State's Exhibit 244 Admitted]

15 BY MS. SMALL:

16 Q Okay. And I'm gonna show you State's Exhibit --  
17 proposed Exhibit 255. Does that look familiar?

18 A Uh-huh.

19 Q And what is that?

20 A That's the same picture.

21 Q Okay. Is this the picture in 255 that you reviewed  
22 with Mr. Colton at the evidence vault?

23 A Yes.

24 Q And confirmed it was yours?

25 A Uh-huh.

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1 Q Is that a yes, for the record?

2 A Yes, I'm sorry.

3 MS. SMALL: Then I would move for admission of State's  
4 255 as well.

5 THE COURT: Objection?

6 MS. TRAMEL: No objection.

7 THE COURT: Admitted.

8 [State's Exhibit 255 Admitted]

9 MS. SMALL: I'll pass the witness.

10 THE COURT: Questions, Ms. Tramel?

11 CROSS-EXAMINATION

12 BY MS. TRAMEL:

13 Q You don't know who took that property from the  
14 business, do you?

15 A I was not there when the office was broken into, no.

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

17 THE COURT: Ms. Falalias [phonetic].

18 THE WITNESS: Fafaleos.

19 THE COURT: Fafaleos, okay. You're excused, thanks.

20 THE WITNESS: Thank you.

21 THE COURT: You're very charming. Who we got next?

22 MS. SMALL: Troy Benson.

23 THE COURT: Troy Benson.

24 [Counsel Confer]

25 THE COURT: What count is this one?

1 MS. DIGIACOMO: Okay, Your Honor, this is a detective.

2 THE COURT: Okay.

3 MS. DIGIACOMO: It's gonna relate to multiple counts, so  
4 it might be easier as I go through.

5 THE COURT: Okay. Come up here, Detective Benson.

6 TROY BENSON, STATE'S WITNESS, SWORN

7 THE COURT: Detective, please state your name, spell your  
8 name for the Court Recorder.

9 THE WITNESS: Detective Benson -- correction, Detective  
10 Troy Benson, T-r-o-y B-e-n-s-o-n.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MS. DIGIACOMO:

14 Q How are you employed?

15 A I'm a detective with the Las Vegas Metropolitan  
16 Police Department.

17 Q Now, how long have you been with Metro overall?

18 A For about seven years.

19 Q And how long have you been a detective?

20 A Going on four years.

21 Q On November 6, 2006, were you so employed and  
22 working?

23 A I was.

24 Q And you were in Property Crimes at that time?

25 A Yes.

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1 Q And did you and your squad get called to a scene by  
2 other detectives?

3 A Yes.

4 Q And what was that scene?

5 A It was a search warrant by another unit, that they  
6 recovered a bunch of property from.

7 Q Now, at the point that you got there what was going  
8 on when you got to that house?

9 A A search warrant -- entry had already been made by  
10 the officers, and property was starting to be removed from the  
11 house.

12 Q So did you take part in the search of the house?

13 A No..

14 Q What did you take part in?

15 A Correction. Partly. Not -- I wasn't assigned to  
16 the search of the house. This was later on during the whole  
17 deal, I was there with that.

18 Q Initially what was your job?

19 A Basically to identify some of the property that the  
20 other detail was finding. To determine whether or not it  
21 matched any of our cases that we had ongoing.

22 Q All right. So are you able, in your office or on  
23 your detail, Property Crimes, to pull up stolen property  
24 reports from all of the incidents that have been reported?

25 A Yes.

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1 Q And so can you do searches by property, et cetera,  
2 to try and determine whether or not a piece you have in front  
3 of you might have been reported stolen?

4 A Yes.

5 Q And so is that mainly what your squad was doing, was  
6 trying to just identify some of the property that was being  
7 found?

8 A Initially it was to identify the property.

9 Q All right. Now, did you have any luck with  
10 identifying some of that?

11 A Some of the officers that were identifying it did,  
12 yes.

13 Q All right. And so if they identified the property,  
14 what were you doing with it?

15 A Releasing it back to the victims or trying to  
16 schedule how to impound it.

17 Q Now, do you recall who the first victim was or the  
18 first person that you released property to?

19 A I don't.

20 Q How many different people did you release property  
21 to?

22 A You know, on the scale that we were on it's hard for  
23 me to tell how many people we actually released property to.  
24 We broke it down into little incremental parts. I generally  
25 looked at the property, put a lot of it on the proper report,

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1 and then another officer would take that and get it back to  
2 that victim.

3 Q All right. Now, but it was confirmed that this  
4 property belonged to them by, you know, other event numbers  
5 before it was released?

6 A Yes. That's how it was supposed to be, yes.

7 Q Now, why would you release this property that you  
8 determined, you find the victim for, instead of just  
9 impounding it into evidence?

10 A Well, a lot of it was just the mass amount that was  
11 there. So -- and in a number of cases we will release it back  
12 to the victim as well, but there's really no set on that,  
13 whether we impound it or we release it back to the victim.

14 Q Well, if you found, let's say, I think there was a  
15 meat slicer that was found at the house or a picture, what  
16 would be the purpose, if you know who it belongs to,  
17 impounding it, would there be a reason you'd impound it  
18 instead of just release it to the victim?

19 A Picture would be sufficient for evidence, and the  
20 meat slicer would go back to the owners so they wouldn't be  
21 deprived of their property any longer.

22 [Counsel Confer]

23 THE COURT: Come on, hurry up. You know, there's only  
24 1,200 of them.  
25

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1 BY MS. DIGIACOMO:

2 Q Okay, sir. Now, were you involved with a furniture  
3 company that came out there?

4 A Yes.

5 Q Okay. Tell us about that.

6 A Furniture company came out and identified a number  
7 of pieces -- actually, a lot of pieces of furniture that was  
8 taken from their store.

9 Q And what were -- did you have anything to do with  
10 walking them through the house or --

11 A I did walk with them through the house. They  
12 started pointing out different pieces of property. My  
13 station, again, was to be out listing the property, and that  
14 officer, then another officer relieved me to finish that.

15 Q Okay. So now do you recall releasing property to  
16 the furniture store?

17 A Yes.

18 Q All right. Do you recall how much property you  
19 released?

20 A I couldn't tell you how much. There was an awful  
21 lot. I believe there was two box trucks full.

22 Q All right. And actually showing you State's Exhibit  
23 127, does that look familiar?

24 A Yes. That's the truck that was there, picking up  
25 the property.

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DEFENDANT'S:

None

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1                    WEDNESDAY, MAY 14, 2008, 9:53 A.M.

2                    [Outside the Presence of the Jury]

3                    [Audio Begins]

4                    THE COURT: Let's go on the record in Case Number  
5                    C228752, State of Nevada versus Daimon Monroe. Let the record  
6                    reflect the presence of Defendant and his counsel, counsel for  
7                    the State, absence of the jury.

8                    Anything before we bring 'em in? Okay, bring 'em  
9                    in.

10                   MS. DIGIACOMO: Oh, wait.

11                   THE COURT: Well, that's what I said, anything before we  
12                   bring 'em in?

13                   MS. DIGIACOMO: Yes. I just want to clarify because I  
14                   have one of my ROP detectives here. He can say he's with the  
15                   ROP detectives --

16                   THE COURT: Yes.

17                   MS. DIGIACOMO: -- but I'm not gonna explain what it is,  
18                   or --

19                   THE COURT: You can say what does that mean, it means  
20                   repeat offenders, because -- but don't go into the fact --  
21                   nothing in terms of record --

22                   MS. DIGIACOMO: No, no, no, I understand that.

23                   THE COURT: -- because they didn't start following him  
24                   until he got picked up for the one burglary.

25                   MS. DIGIACOMO: Right.

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1 THE COURT: So as far as the jury knows, they're  
2 thinking, okay, they get picked up for a burglary, now we  
3 start following him to see if they're gonna be a repeat  
4 offender.

5 MS. DIGIACOMO: Okay. I'm gonna go ahead --

6 THE COURT: I'm also gonna instruct them on the value  
7 thing. We didn't, and I think they're -- you know, they're  
8 trying to figure out whether this is 22,000 or 18,000 or why  
9 the hell you're asking 'em, and I'm just gonna tell 'em, you  
10 know, it's 2,500 up, 2,500 down. Geez.

11 [Jury In]

12 THE COURT: Okay, back on the record in Case Number  
13 C228752, State of Nevada versus Daimon Monroe. Let the record  
14 reflect the presence of the Defendant, his counsel, counsel  
15 for the State, all ladies and gentlemen of the jury are back  
16 in the box. Sorry for the delay. We really try hard not to  
17 do that, but let's make it up.

18 Ms. Digiacomo, call your next witness.

19 MS. DIGIACOMO: Darryl Johnson.

20 THE COURT: Well, let me tell you one more thing that I  
21 think would make this easier for you. In stolen property  
22 cases, it becomes relevant if the amount of the value of the  
23 property stolen is over or under 2,500 bucks. All the rest of  
24 the stuff is meaningless. So whether it's 20,000 or 200,000  
25 or 2 million doesn't really mean anything, but it does mean a

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1 difference if it's 1,500 or 3,500. So now that you know that,  
2 that's the only thing you'll have to keep in mind. I probably  
3 should have told you the other day, and once we make it clear  
4 that it is either above or below, we don't have to get too  
5 specific.

6 MS. DIGIACOMO: Well, above 250 or above 2,500.

7 THE COURT: Right. Anything under 250 the State's not  
8 bothering with here. Go ahead.

9 MS. DIGIACOMO: Darryl Johnson.

10 THE COURT: Mr. Johnson, come on up here, sir.

11 DARRYL JOHNSON, STATE'S WITNESS, SWORN

12 THE COURT: Mr. Johnson, state your name and spell your  
13 name for the Court Recorder.

14 THE WITNESS: Darryl Johnson, D-a-r-r-y-l Johnson, J-o-h-  
15 n-s-o-n.

16 THE COURT: Go ahead, Ms. Digiacomo.

17 MS. DIGIACOMO: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q Sir, how are you employed?

21 A I'm a detective with the Las Vegas Metropolitan  
22 Police Department.

23 Q And how long have you been with Metro overall?

24 A Nineteen years.

25 Q And how long have you been a detective with Metro?

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1 A About 14 years.

2 Q Directing your attention to September 20th, 2006,  
3 through November 2006, what was your assignment on those  
4 dates?

5 A I was a detective with the Repeat Offender Program.

6 Q Okay. Is there a common term that's used for that?

7 A We call it the Rope Program.

8 Q All right.

9 A Or the Rope Detail.

10 Q Did you participate in a search warrant that was  
11 executed on November 6, 2006?

12 A Yes, I did.

13 Q And where was that executed?

14 A I don't recall the exact address.

15 Q Do you recall the street?

16 A It was in the area of Cimarron and Charleston.

17 Q Okay.

18 A It escapes me right now.

19 Q All right. If I was to show you a report, would  
20 that refresh your recollection?

21 A Yes, it would.

22 Q All right. Sir, I'm gonna show you an officer's  
23 report. I don't think you did this, but are you familiar with  
24 it? That's by Brad Nichol?

25 A Yes, I am.

1 Q Okay. And looking at this first page, does that  
2 refresh your recollection as to what the exact address was of  
3 the search warrant that was executed?

4 A Yes.

5 Q What was that?

6 A 1504 Cutler.

7 Q Do you recall what time you all met there to execute  
8 the search warrant?

9 A What time the actual search warrant was executed?  
10 It was -- I think it was about 6:00 a.m.

11 Q 6:00 a.m.?

12 A Oh-huh.

13 Q And what role did you have in executing the search  
14 warrant?

15 A I was located in the SWAT Bearcat.

16 Q Okay. Let me back up a little bit. Did SWAT --  
17 explain to the jury how search warrants are executed and how  
18 SWAT gets involved.

19 A Well, we have different levels of search warrants,  
20 and with this search warrant we felt that it would be best if  
21 SWAT executed the -- not execute the search warrant, but make  
22 the entry into the house. That way it's the most safest for  
23 the officers.

24 Q And you said that there's a Bearcat? What's a  
25 Bearcat?

1 A It's an armored vehicle. It's an armored police  
2 vehicle, I'm sorry.

3 Q And it's a SWAT vehicle?

4 A Yes.

5 Q And how many were there?

6 MR. HART: Objection, Your Honor, to this line of  
7 testimony. I don't think it's relevant.

8 THE COURT: Overruled. Let's just get to the search or  
9 whatever.

10 MS. DIGIACOMO: Okay.

11 BY MS. DIGIACOMO:

12 Q How many Bearcats were -- participated in this?

13 A There were two vehicles.

14 Q And you were inside one of them when the initial  
15 entry was gonna be made for the house?

16 A Yes.

17 Q Now, how was it that the entry is made? Do you rush  
18 in or do you try and get the occupants to come out?

19 A Try and get the occupants to come out first.

20 Q All right. In this case was somebody on a bullhorn?

21 A Yes.

22 Q All right. And did an occupant in the house come  
23 out?

24 A Yes.

25 Q And how long did it take between when you first got

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1 the -- somebody first got on the bullhorn until the occupant  
2 came out?

3 A In the area of 5 to 10 minutes, I believe.

4 Q And the person that came out, do you recall what  
5 they looked like?

6 A Yes, it was a white male.

7 Q All right. Did you know who this white male was  
8 before you went in for the search warrant?

9 A Yes.

10 Q All right. And who was this male that came out of  
11 the house?

12 A Daimon Hoyt. Or Monroe.

13 Q All right. And do you see that same person in the  
14 courtroom here today?

15 A Yes, I do.

16 Q Will you point to the person you're referring to and  
17 describe an article of clothing that he's wearing right now?

18 A Dark jacket and the light-blue tie.

19 THE COURT: The record will reflect the identification of  
20 the Defendant Daimon Monroe.

21 MS. DIGIACOMO: Thank you.

22 BY MS. DIGIACOMO:

23 Q Now, what was his demeanor when he came out of the  
24 house?

25 A Well, he was very -- first of all, he didn't have

1 any clothes on. And he was very -- had a very lackadaisical  
2 kind of attitude, cavalier maybe.

3 Q Okay. And then after he's taken out of the house,  
4 what happens next? Or next when he comes out of the house,  
5 what happens at that point?

6 A SWAT takes him into custody.

7 Q Okay, and then --

8 A SWAT officers.

9 Q Is that when SWAT would go in and then clear the  
10 house and see if anyone else is in there?

11 A Yes.

12 Q Eventually does SWAT turn over the house to  
13 detectives?

14 A Yes, they do.

15 Q And at that point did you go in the house to execute  
16 the search with your fellow detectives?

17 A Yes.

18 MS. DIGIACOMO: Court's indulgence.

19 [Counsel Confer]

20 BY MS. DIGIACOMO:

21 Q Sir, I'm gonna show you a series of photographs.  
22 The first is State's proposed Exhibits 616 through 626. If  
23 you can just flip through those and let me know if you  
24 recognize what you're looking at in all of those photographs?

25 A This is the front door of the Cutler address.

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1 Q Well, just flip through 'em all first.

2 A Okay.

3 Q And see if you recognize 'em all?

4 Sir, do you recognize all the photographs in State's  
5 Exhibit -- proposed Exhibits 616 to 626?

6 A Yes, I do.

7 Q And how do you recognize those?

8 A That was the 1504 Cutler address, the residence  
9 of --

10 Q Now, do all of these photographs that I've shown you  
11 fairly and accurately depict the exterior of 1504 Cutler?

12 A Yes.

13 MS. DIGIACOMO: Your Honor, I'd move for admission of 616  
14 through 626.

15 THE COURT: Any objection?

16 MR. HART: No objection.

17 THE COURT: Admitted.

18 [State's Exhibits 616-626 Admitted]

19 BY MS. DIGIACOMO:

20 Q Okay, sir. Now, next I'm gonna show you State's  
21 proposed Exhibits 627 through 635. If you could flip through  
22 those and let me know if you recognize what room that depicts?

23 A That appears to be the sound room that was located  
24 on the northwest part of the residence.

25 Q And do State's proposed Exhibits 627 through 635

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1 fairly and accurately depict the sound room, as you call it,  
2 when officers initially made entry on September -- excuse me,  
3 November 6, 2006?

4 A Yes.

5 MS. DIGIACOMO: Your Honor, I'd move for admission of 627  
6 through 635.

7 THE COURT: Objection?

8 MR. HART: No objection.

9 THE COURT: Admitted.

10 [State's Exhibits 627-635 Admitted]

11 BY MS. DIGIACOMO:

12 Q Next I'm gonna show you State's proposed Exhibit 636  
13 through 643. If you could flip through those?

14 All right, sir, after looking at these do you  
15 recognize State's proposed Exhibits 636, 637, 638, 639, 641  
16 and 642?

17 A Yes --

18 Q Excuse me, and 643?

19 A Yes.

20 Q Okay. And do these all fairly and accurately depict  
21 different items that were located in the house when officers  
22 first went in?

23 A Yes.

24 Q Okay. But, for the record, you don't recognize  
25 State's proposed Exhibit 640?

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1 A No, I don't remember that.

2 Q All right.

3 MS. DIGIACOMO: And so then, Your Honor, I would move for  
4 admission of State's proposed Exhibits 636 through 639, and  
5 641 through 643.

6 THE COURT: Objection?

7 MR. HART: No objection.

8 THE COURT: Those will be admitted, and 640 will not be  
9 admitted unless somebody else lays a foundation.

10 [State's Exhibits 636-639 and 641-643 Admitted]

11 MS. DIGIACOMO: Thank you.

12 BY MS. DIGIACOMO:

13 Q Showing you next State's proposed Exhibits 644  
14 through 647, if you recognize those?

15 Sir, after looking at these proposed exhibits do you  
16 recognize State's proposed Exhibit 644 and 647?

17 A Yes.

18 Q And what room of the house do these photographs  
19 depict?

20 A The family room.

21 Q And do they fairly and accurately depict the way the  
22 family room looked on November 6, 2006, when officers went  
23 into the residence?

24 A Yes, it does.

25 MS. DIGIACOMO: Your Honor, I'd move for admission of

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1 State's Exhibits 644 through 647.

2 MR. HART: No objection.

3 THE COURT: Admitted.

4 MS. DIGIACOMO: Thank you.

5 [State's Exhibits 644-647 Admitted]

6 BY MS. DIGIACOMO:

7 Q Okay, next we're showing you State's proposed  
8 Exhibits 648 through 657. Flip through those?

9 Sir, after looking at these, 648 through 651, do you  
10 recognize these photos?

11 A Yes.

12 Q And which room do these depict?

13 A The kitchen area.

14 Q All right, and these fairly and accurately depict  
15 the way the kitchen looked when officers went in on that  
16 morning of November 6, 2006?

17 A Yes.

18 MS. DIGIACOMO: All right, Your Honor, I'd move for  
19 admission of State's 648 through 651.

20 MR. HART: No objection.

21 THE COURT: Admitted.

22 [State's Exhibits 648-651 Admitted]

23 BY MS. DIGIACOMO:

24 Q And, for the record, you do not recognize 652 or  
25 653?

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1           A     I don't recognize 6-5 -- I don't remember 652. I'm  
2 not 100% sure on 653. I think I remember seeing it, but I  
3 don't remember where it was located in the kitchen.

4           Q     Okay. Now, but you do recall State's Exhibits 654  
5 through 657?

6           A     Yes.

7           Q     And, for the record, these fairly and accurately  
8 depict different items that were located in the kitchen on  
9 that day when you were executing your search?

10          A     Yes.

11          MS. DIGIACOMO: I'd move for admission of 654 through  
12 657.

13          MR. HART: No objection.

14          THE COURT: Admitted.

15          [State's Exhibits 654-657 Admitted]

16          BY MS. DIGIACOMO:

17          Q     Showing you State's proposed Exhibits 665 through  
18 673, if you could flip through those and let me know if you  
19 recognize those.

20          THE COURT: Is there going to be any objection to any of  
21 those that he actually recognizes?

22          MR. HART: No. As long as he recognizes them.

23          THE COURT: All right. You just take out the ones you  
24 don't recognize, and Ms. Digiacomo can read us the numbers of  
25 the ones that are going to be admitted.

1 MS. DIGIACOMO: Thank you, Your Honor.

2 THE WITNESS: Okay.

3 MS. DIGIACOMO: And for the record, this is the stairs  
4 and loft area that he's looking at right now.

5 MR. HART: Actually, would it be okay if I just  
6 approached, went up there with them, Your Honor?

7 THE COURT: Sure.

8 MR. HART: Thanks. Might actually -- it can't hurt.

9 THE COURT: 665 through 673. Any taken out?

10 MS. DIGIACOMO: No.

11 THE COURT: They'll be admitted.

12 MS. DIGIACOMO: Thank you.

13 [State's Exhibits 665-673 Admitted]

14 THE COURT: Bring the next batch and let Mr. Hart look at  
15 that batch.

16 MS. DIGIACOMO: Okay.

17 BY MS. DIGIACOMO:

18 Q Now showing you State's proposed Exhibits 674  
19 through 682. Okay, flip through those and let me know if you  
20 recognize what room that depicts in there?

21 A These are photos of the master bedroom.

22 THE COURT: You recognize all of them?

23 THE WITNESS: Yes, sir.

24 THE COURT: 674 through 682 will be admitted.

25 [State's Exhibits 674-682 Admitted]

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1 MR. HART: No objection.

2 BY MS. DIGIACOMO:

3 Q Showing you State's proposed Exhibits 683 through  
4 697.

5 These are the two you don't remember?

6 A Yes.

7 Q Okay. Now, State's proposed Exhibits 683 and 688,  
8 what are these depicting?

9 A The master bathroom.

10 Q All right. And they fairly and accurately depict  
11 the way the master bath looked on that day of November 6,  
12 2006?

13 A Yes.

14 Q Okay. But you didn't take part in the search of the  
15 master bathroom?

16 A No.

17 Q All right.

18 MS. DIGIACOMO: So at this time, Your Honor, I'm only  
19 moving for admission of 683 and 688.

20 THE COURT: Be admitted.

21 [State's Exhibits 683 and 688 Admitted]

22 [Counsel Confer]

23 THE COURT: You're gonna pull 'em out?

24 MS. DIGIACOMO: Yeah. They're in a different direction.

25 MR. HART: Do you want me to pull mine, Your Honor, or --

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1 MS. DIGIACOMO: No.

2 THE COURT: No, I want to go through this so that the  
3 jury will have something to listen to. Right now, they're  
4 just looking at your backs and nothing's going on, so.

5 BY MS. DIGIACOMO:

6 Q All right, now showing you State's Exhibits 698  
7 through 704.

8 UNIDENTIFIED SPEAKER: It's a pretty back.

9 THE COURT: He ain't talking about you, Mr. Hart.

10 MR. HART: Thank you, Your Honor.

11 BY MS. DIGIACOMO:

12 Q You don't remember?

13 A No, I think that was one of the bedrooms I really  
14 didn't go into.

15 Q All right. One of the -- did you go into any of the  
16 kids' bedrooms?

17 A I went into one of 'em briefly. The one that after  
18 you come up the staircase was on the right. I know --

19 Q Let me just show you State's proposed 705, and let  
20 me know if you recognize that room. It's 705 through 707.

21 MS. DIGIACOMO: So, for the record, I'm not moving for  
22 admission, Your Honor, of --

23 THE COURT: I got it.

24 MS. DIGIACOMO: -- 698 through 707.

25 THE COURT: It'll be a different detective, though.

1 MS. DIGIACOMO: Right. Okay.

2 BY MS. DIGIACOMO:

3 Q I'm showing you State's proposed Exhibits 711  
4 through --

5 MR. HART: 737?

6 BY MS. DIGIACOMO:

7 Q 737. Flip through those and let me know if you  
8 recognize those.

9 All right, sir, do you recognize State's proposed  
10 Exhibits 711 through 738?

11 A Yes

12 Q And what do these fairly and accurately depict of  
13 the Cutler residence?

14 A The garage area.

15 MR. HART: No objection.

16 THE COURT: They'll be admitted.

17 [State's Exhibits 711-737 Admitted]

18 THE COURT: Do you want to pass those around or something  
19 so the jury can look at 'em while we're doing this? As long  
20 as they keep them in order?

21 MS. DIGIACOMO: That's fine. All of 'em or just --

22 THE COURT: Well, just pass around that packet. They can  
23 look at the garage for starters, just --

24 THE CLERK: It was 711 through 737 --

25 THE COURT: 38.

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1 MS. DIGIACOMO: 37.

2 THE COURT: 37.

3 BY MS. DIGIACOMO:

4 Q Now, did you look at the attic at all over the  
5 garage?

6 A No.

7 Q Okay. Did you take part in anything up there in  
8 State's proposed Exhibit 742?

9 A No.

10 THE COURT: You can pass 'em one at a time, just kind of  
11 pass 'em around and then they'll end up --

12 BY MS. DIGIACOMO:

13 Q The outside of the residence?

14 THE COURT: -- at the other end --

15 THE WITNESS: No.

16 THE COURT: -- in the same order.

17 BY MS. DIGIACOMO:

18 Q Did you do anything with the [indiscernible]?

19 A No.

20 Q Did you take part -- or, did you see the items that  
21 were outside the residence when you were searching just a  
22 certain area?

23 A Primarily in the garage area and in the dining room  
24 area.

25 Q I'm gonna show you what's already been marked and

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1 admitted as State's Exhibits 4 through 8, it shows only  
2 equipment. I'm showing you State's Exhibit Number 4. Do you  
3 recognize this picture there?

4 A Yes.

5 Q What is it we're looking at?

6 A We're looking at sleeping bags and hiking and  
7 camping sort of equipment that was taken out of the attic area  
8 of the home.

9 Q Now, of the home? Inside the residence?

10 A No. The attic area, the entry -- well, from the  
11 garage.

12 Q Okay. So you could get to the attic from the  
13 garage?

14 A Yes, from the inside of the garage.

15 Q Was there a detective that actually was searching  
16 that area or getting the stuff out, or how did that come  
17 about?

18 A Yes. Detective Mike Mauntel was searching the attic  
19 area.

20 Q All right, and did you pull these items that we're  
21 looking at in State's Exhibit 4 from there?

22 A Yes, he did.

23 Q All right, and --

24 MR. HART: I'm curious about the foundation. If he was  
25 doing it after --

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1 THE COURT: Were you working on the garage at the same  
2 time and you saw him do that?

3 THE WITNESS: Yes. He was --

4 THE COURT: Overruled. Go ahead.

5 BY MS. DIGIACOMO:

6 Q Go ahead. What were you gonna say?

7 A Detective Mauntel was up in the attic area and  
8 passing things down, and I was down in the garage area  
9 receiving -- not all of the items, but some of the items.

10 Q All right. Well, with regard to what we're looking  
11 at, the sleeping bags and the camping equipment in 4, did he  
12 hand those down to you?

13 A You know, I can't remember if he actually handed  
14 those items to me, but at some point I was going through those  
15 items.

16 Q Okay. So you -- did you see him pull it out of the  
17 attic?

18 A Yes.

19 Q All right. So you said you went through these  
20 items. What did you do?

21 A I just started -- well.

22 Q Let me show you State's Exhibit Number 6. Do you  
23 recognize what that is?

24 A Yes.

25 Q Okay. So what did you do with the items?

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1           A     Well, all the items were stuffed into one sleeping  
2     bag, so I started taking the sleeping bags out and looking at  
3     all the items. And I was trying to see if there was a store  
4     tag on any of the items, and actually all of them had been  
5     pulled off and I found one of the items, I can't remember  
6     which exact item it was, but it had a partial tag still left  
7     on it.

8           Q     Could you read any of it?

9           A     Yes. All I could see were the letters E-R-T on that  
10    tag.

11          Q     So did that give you any indication of where it  
12    might have come from?

13          A     Well, I knew Desert Rock Sports was a short distance  
14    from this location, and I got the number to Desert Rock Sports  
15    and called there myself. And I wanted to see if they had been  
16    the victim of a burglary recently.

17          Q     All right. And did you ask them to describe the  
18    items that had been missing?

19          A     Yes, I did.

20          Q     All right. And based upon the information you got  
21    from them, what did you do?

22          A     I had called my -- one of the secretaries back in  
23    the office to see if they could locate a report number in  
24    conjunction with this burglary. That -- I can't remember the  
25    individual that I talked to on the telephone. But if I could

1 connect the two, if there was a report on file listing these  
2 items as being stolen in a burglary.

3 Q And were you able to get a report?

4 A Yes, I was.

5 Q All right. And so based upon the fact you have this  
6 report and they told you what items had been taken, what did  
7 you do?

8 A What did I do after that?

9 Q Well, with this equipment, yes.

10 A Well, eventually, you know, we listed all these  
11 items on a property report and they were subsequently returned  
12 to the store, but I also remember that when I was searching  
13 the dining room area, in one of the drawers in there there was  
14 a large amount of --

15 Q Well, but where -- well, I'm gonna show you State's  
16 Exhibit 7 and State's Exhibit 8; 7's on top, 8's on the  
17 bottom. Do you recognize what's depicted in these  
18 photographs?

19 A Yes, I do.

20 Q Okay, what's this?

21 A Socks.

22 Q All right. And where were these socks found in --  
23 I've got 8 up, but 7 and 8?

24 A In the dining room area.

25 Q And you were the one that actually found these

1 socks?

2 A Yes.

3 Q Okay. And what did you do with those socks?

4 A Well, I listed -- those items were eventually  
5 returned back to Desert Rock Sports.

6 Q Okay. Were you the one that released it to them?

7 A Myself and Detective Britt went back to Desert Rock  
8 Sports that evening.

9 Q All right, so you actually took these items to  
10 Desert Rock Sports?

11 A Yes.

12 Q And when you brought these items to them, the person  
13 you talked to, were they able to recognize 'em?

14 A Yes.

15 Q All right. So would you have released the property  
16 to them if it wasn't their property?

17 A No, I wouldn't have. When I spoke to the individual  
18 on the phone, I believe it was the owner. I'm not sure. But  
19 he was fairly accurate what was stolen from that burglary.

20 Q Okay. And so that that's why you released the  
21 property to him, you believed it was theirs?

22 A Yes.

23 Q Now, did you take part in the searches of any other  
24 properties in conjunction with this case?

25 A Yes, I did.

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1 Q And what --

2 A Well, I -- I didn't -- I take that back. I helped  
3 in the inventory of some of the stuff. I didn't actually  
4 search any of the storage units themselves, but I helped in  
5 the inventory of some of the property that was found there.

6 Q All right, and which locations were that?

7 A One of the storage units on West Sahara, and the --  
8 I believe it was a storage unit off of Buffalo.

9 MS. DIGIACOMO: Nothing further.

10 THE COURT: Questions, Mr. Hart?

11 CROSS-EXAMINATION

12 BY MR. HART:

13 Q You said that you returned the property to Desert  
14 Rock Sports?

15 A Yes.

16 Q Don't you normally get a Court order to return  
17 property?

18 A No.

19 Q You realize there's laws stating that you should get  
20 a Court order to return property, correct?

21 A Excuse -- can you repeat that?

22 Q You realize that quite often it requires a Court  
23 order to return property?

24 MS. DIGIACOMO: Objection. Speculation.

25 THE COURT: You have something to show me? I don't know

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1 that that's correct.

2 MR. HART: 179 -- well.

3 THE COURT: Objection sustained.

4 BY MR. HART:

5 Q So the actual items are not available at this time  
6 then, correct?

7 A Correct.

8 Q Merely the photos? And Desert Rock Sports should  
9 clarify that?

10 MR. HART: Nothing further from this witness.

11 THE COURT: Detective, appreciate your time. You're  
12 excused.

13 Call your next witness, Ms. Digiacomo.

14 MS. DIGIACOMO: Detective Archer.

15 THE COURT: Archer. Is he gonna be photo foundation,  
16 more of it?

17 MS. DIGIACOMO: No. This is just --

18 THE COURT: Okay.

19 MS. DIGIACOMO: -- he released some of that property to  
20 one victim --

21 THE COURT: Okay.

22 MS. DIGIACOMO: Oh, wait. It is. There'll be --

23 THE COURT: All I was gonna suggest is --

24 MS. DIGIACOMO: There'll be two photographs he's looking  
25 at to lay the foundation.

1 THE COURT: That's fine. I was gonna suggest if you have  
2 a lot of that then some of those that are admitted, you can  
3 pass 'em around and we can be doing two things at the same  
4 time.

5 MS. DIGIACOMO: Okay. You want me to --

6 THE COURT: That's all right. Detective Archer, come on  
7 up. Right here.

8 CHRIS ARCHER, STATE'S WITNESS, SWORN

9 THE COURT: Detective, state your name and spell your  
10 name for the Court Recorder.

11 THE WITNESS: Yes, Chris Archer. A-r-c-h-e-r.

12 THE COURT: Go ahead.

13 MS. DIGIACOMO: Thank you.

14 DIRECT EXAMINATION

15 BY MS. DIGIACOMO:

16 Q Where are you employed?

17 A Las Vegas Metro.

18 A And how long have you been employed with Metro?

19 A Ten years.

20 Q And what is your current assignment?

21 A I'm a Property Crimes detective.

22 Q How long have you been with Property Crimes?

23 A About two years.

24 Q How long have you been a detective overall at Metro?

25 A Two years.



1 Q Okay. On November 6, 2006, did you take part in a  
2 search warrant that was a Cutler residence?

3 A Yes, I arrived a little bit later.

4 Q And how is it that you got called to go there?

5 A They needed more people. So they had our squad  
6 respond out there.

7 Q Now, and with regard to Property Crimes, what is it  
8 that you do normally in your job?

9 A Recover property.

10 Q Right, stolen property?

11 A Stolen property?

12 Q All right. When you got to the Cutler residence,  
13 what did you do while you were there? What was your part in  
14 the search?

15 A I approached a group of detectives that were already  
16 there and I said, what can I do to help?

17 Q And what did they assign you?

18 A They said -- one of them, I think it was Detective  
19 Benson but I'm not 100% positive, he pointed to a group of  
20 property and said release this property to that individual, so  
21 I did.

22 Q So you weren't taking part in actually trying to  
23 find the stolen reports or anything like that?

24 A No, ma'am, it was just release this group of  
25 property to this person.

1 Q And I'm gonna show you State's Exhibits 494 through  
2 496, and let me know if you recognize those.

3 A Yes.

4 Q Look through all --

5 A Oh. Yes, I do.

6 Q You recognize these?

7 A Yes, ma'am.

8 Q How do you recognize 'em?

9 A I remember seeing them at the scene.

10 Q Okay. Was this one of the groups of property that  
11 you were asked to release to a certain victim?

12 A Yes, ma'am.

13 Q Right. Do you remember what the victim's name was?

14 A No, ma'am, I don't.

15 Q Would that be notated in your report?

16 A Yes, ma'am.

17 Q But do these fairly and accurately depict what you  
18 released on one?

19 A Yes, I remember some guitars and I do remember those  
20 movie posters.

21 Q All right.

22 MS. DIGIACOMO: I'd ask for admission of State's Exhibits  
23 494 through 496.

24 THE COURT: Any objection?

25 MR. HART: No objection.

1 THE COURT: Admitted.

2 [State's Exhibits 494-496 Admitted]

3 BY MS. DIGIACOMO:

4 Q Okay, sir, I'm gonna show you a -- I think it's a  
5 two-page report. Do you recognize this report?

6 A Yes, ma'am.

7 Q What kind of a report is this?

8 A It's a property report.

9 Q And is this your signature as being the person that  
10 released it?

11 A Yes, everything here is mine. Someone attached my  
12 name to it but, yes, the rest of it is all mine.

13 Q Okay, so where it says released by --

14 A Yes.

15 Q -- you wrote your name?

16 A Yes, ma'am.

17 Q Now, who did you release it to?

18 A Says Keith Velton [phonetic].

19 Q Okay.

20 A Or.

21 Q Can you read your handwriting?

22 A No, I can't. Unfortunately.

23 Q Okay. Did you name the business in your --

24 A Yes --

25 Q -- report, as well?

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1 A -- it's Platinum Collectibles.

2 Q Okay. How many detectives were out at the house,  
3 doing the search?

4 A Several.

5 MS. DIGIACOMO: Pass the witness.

6 THE COURT: Any questions?

7 CROSS-EXAMINATION

8 BY MR. HART:

9 Q It's my understanding somebody told you to release  
10 it and you released it, correct?

11 A Yes, sir.

12 Q You didn't save it for any future inspection by the  
13 Defense?

14 A No, sir. They told me to release it, so I did.

15 MR. HART: Nothing further.

16 THE COURT: Thanks, you're excused, call your next  
17 witness.

18 MS. DIGIACOMO: I have one thing, Your Honor.

19 THE COURT: Oh.

20 REDIRECT EXAMINATION

21 BY MS. DIGIACOMO:

22 Q On this property release, when you released it will  
23 you notate whether or not it's connected to another crime  
24 report?

25 A Yes, ma'am, these connecting reports.

1 Q Okay. So these connecting reports would be where  
2 they had filed a crime report for these items?

3 A Typically, yes.

4 Q You don't release property without having some basis  
5 to believe it's theirs, do you?

6 A That's correct, we.

7 MS. DIGIACOMO: Nothing further.

8 THE COURT: All right. Detective Archer, you're --

9 MR. HART: Actually --

10 THE COURT: Go ahead, sure. Excuse me, Mr. Hart.

11 RECROSS-EXAMINATION

12 BY MR. HART:

13 Q It's safe to assume from what we were just told you  
14 didn't read the other reports?

15 A No, sir, I didn't.

16 Q So you have no idea what they said?

17 A They -- I was just told to do something, they were  
18 there before me so I did it.

19 MR. HART: Nothing further, Your Honor..

20 THE COURT: You're excused. Please call your next  
21 witness. Thank you, Detective.

22 Who's next?

23 MS. SMALL: James Vincent.

24 THE COURT: James Vincent. Up here, Mr. Vincent.

25 JAMES VINCENT, STATE'S WITNESS, SWORN

1 THE COURT: Sir, state your name and spell your name for  
2 the Court Recorder.

3 THE WITNESS: James Vincent. J-a-m-e-s V-i-n-c-e-n-t.

4 THE COURT: Go ahead.

5 MS. SMALL: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. SMALL:

8 Q James, what do you do for a living?

9 A I work for a company called Econ Appliance. I'm the  
10 Vice President and Chief Operating Officer.

11 Q And can you explain to us what Econ is?

12 A Sure. Econ is a builder distributor that sells  
13 appliances. We have some retail business, as well.

14 THE COURT: Does this relate to a specific count?

15 MS. SMALL: Yes, Your Honor. I'm sorry.

16 THE COURT: Want to share that with him?

17 MS. SMALL: It relates to Count IX.

18 THE COURT: Go ahead.

19 BY MS. SMALL:

20 Q And where exactly is your main office located?

21 A We have two offices. Our main office is at 6630  
22 Arroyo Springs, Las Vegas, Nevada, and our second location  
23 showroom is in Henderson, Nevada. It's 245 North Stephanie  
24 Street.

25 Q Okay. And that showroom, as you called it?

1           A     Yeah.

2           Q     That's here in Clark County, Nevada?

3           A     That is correct.

4           Q     Okay. What is in your showroom?

5           A     We have appliances of many brands on display for  
6 customers to come in and look at, different types of packages,  
7 displays, like refrigerators, wall ovens, dishwashers, laundry  
8 equipment.

9           Q     And as far as the appliances go, what type of  
10 appliances? Are they high-end types of appliances, or less  
11 than that, or how would you describe it?

12          A     Sure. In our showroom in Henderson they're all  
13 high-end appliances, all built-in, high-end appliances,  
14 correct.

15          Q     Okay. And as the chief operating officer, would you  
16 have access to what appliances were at that location at a  
17 specific time?

18          A     Yes.

19          Q     And would you also have access to the cost of what  
20 those appliances were, the retail and wholesale values on  
21 those appliances?

22          A     Yes, I do.

23          Q     Okay, and those records would be kept in the  
24 ordinary course of your business, correct?

25          A     Correct.

1 Q Okay. I'm gonna draw your attention now to  
2 specifically the date of April 10th, 2006. Did you become  
3 aware of something happening at the showroom location in  
4 Henderson?

5 A Yes, I did.

6 Q And what happened?

7 A Our sales individuals that work at that location  
8 called me to let me know there was a break-in, a forced entry  
9 in the rear, and that appliances had been taken out through  
10 the front door.

11 Q Did you eventually go to that location?

12 A Yes, I did.

13 Q And when you got to the location, what did you  
14 discover?

15 A I discovered that somebody in fact did break in  
16 through the back entrance, either with a crowbar or something,  
17 and then took appliances off our showroom floor.

18 Q And did you do an inventory to find out what was  
19 taken from the store?

20 A Yes, we did.

21 Q And what was taken?

22 A We had various icemakers, refrigeration, laundry  
23 equipment.

24 Q Okay. Did you look around at the entire store? Was  
25 there anything else missing?



1 A Not that I noticed, no.

2 Q Okay.

3 A No.

4 Q And at some point were you able to recover those  
5 items?

6 A Yes, we were.

7 Q Okay, how --

8 A Not all of 'em, but some of 'em.

9 Q How did that happen?

10 A We were notified by the police department that they  
11 had recovered some appliances in a residence and wanted us to  
12 come down and in fact see if they were ours. We had provided  
13 the police department with models and serial numbers and  
14 makes, and they said that they thought they had found 'em.  
15 Then we came down to check 'em out and in fact they were.

16 Q Had you given anybody permission to take that  
17 property out of the Henderson store at any time?

18 A No, we did not.

19 Q Okay. Now, you said that you'd -- you had given a  
20 police report with the serial numbers, makes and models of the  
21 equipment that was taken out of there. What did you do in  
22 order to recover it physically?

23 A We sent a couple of our employees down in a delivery  
24 truck, got with the police officers, checked in fact that the  
25 serial --

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1 MR. HART: Objection, this is calling for hearsay. I  
2 don't know if he has personal knowledge.

3 THE COURT: Okay. You sent two people down there to  
4 provide proof of ownership and recover 'em, is that right?

5 THE WITNESS: That is correct.

6 THE COURT: All right. Beyond that, the hearsay  
7 objection's sustained. Go ahead.

8 MS. SMALL: Okay.

9 BY MS. SMALL:

10 Q And eventually did you recover that particular  
11 equipment?

12 A Yes, we did.

13 Q And when you recovered that particular equipment,  
14 did you check the serial numbers on it?

15 A Yes, we did.

16 Q And did those serial numbers --

17 MR. HART: Objection, it says yes, we did. I'm not sure  
18 that he did this personally at all.

19 THE COURT: Was this done by you or in your presence  
20 under your control?

21 THE WITNESS: Yes, it was.

22 THE COURT: Overruled. Go ahead.

23 MS. SMALL: Yes, Your Honor.

24 BY MS. SMALL:

25 Q And once you checked the serial numbers and found

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1 that -- did they correlate with the serial numbers of the  
2 equipment that had been taken from your shop?

3 A Yes, they did.

4 Q Okay. I'm gonna draw the Court's attention to  
5 what's been pre-marked as State's proposed Exhibits 79 to 90,  
6 showing opposing counsel.

7 If you can flip through these and look them over,  
8 and when you're done look up at me.

9 MR. HART: May I approach, Your Honor?

10 THE COURT: Sure. I'm sure, Mr. Hart, that pursuant to  
11 the rules you were provided copies of every one of these  
12 pictures before trial, right? It's just a matter of which  
13 ones go in which folders? Is that right?

14 MR. HART: It seems to me I've got it.

15 BY MS. SMALL:

16 Q Thank you. Now, after looking at those pictures do  
17 you recognize what's depicted in those pictures as far as the  
18 appliances?

19 A Yes, I do.

20 Q Okay. And do those pictures fairly and accurately  
21 depict the appliances that had been taken from your shop?

22 A Yes, they do.

23 MS. SMALL: Move to enter.

24 THE COURT: Any objection?

25 MR. HART: No objection.

1 THE COURT: Admitted

2 MS. SMALL: Thank you.

3 [State's Exhibits 79-90 Admitted]

4 BY MS. SMALL:

5 Q Looking at State's 79, can you tell us what in this  
6 picture was taken from your store?

7 A The black -- it's an icemaker, it's a Scotsman 15-  
8 inch icemaker.

9 Q And if you can just circle what you're talking  
10 about?

11 A Right here.

12 Q Great. This was recovered, turned back to your  
13 store?

14 A Correct.

15 [Counsel Confer]

16 BY MS. SMALL:

17 Q Looking at State's 81. Can you just go ahead and  
18 circle what was recovered and brought back to your store that  
19 was stolen previously?

20 A This is a Sub-Zero 48 -- 48-inch refrigerator.  
21 Okay. And this is a Sub-Zero 30-inch -- 36-inch refrigerator.  
22 Or, actually it's a freezer, I'm sorry.

23 Q Okay. And let me just back up really quick to a --  
24 can you tell us what the price of that -- what the retail  
25 price and the wholesale price of that particular item would

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1 be?

2 A Sure. That's -- it's probably around \$1,100 cost,  
3 retail 1,500 to 1,600.

4 Q Thank you. And looking at State's 82, if you could  
5 tell us what we're looking at in that picture?

6 A This is a 48-inch refrigerator-freezer, Sub-Zero,  
7 and this is a 36-inch freezer, Sub-Zero.

8 Q And was that depicted in State's 81 that I showed  
9 you prior to that?

10 A Yes.

11 Q What would be the value -- wholesale, retail -- of  
12 each of those items?

13 A The refrigerator-freezer is approximately about  
14 \$6,800, costs around 5,000. The Sub-Zero freezer unit itself  
15 is around 3,500, and would sell approximately 4,800.

16 Q Thank you. Looking at State's 84, what are we  
17 looking at?

18 A That's the Sub-Zero freezer.

19 Q Okay, that's the separate one that we just already  
20 talked about?

21 A Yes.

22 Q And here's the refrigerator? Okay, looking at 80 --  
23 let's see what this is, 87. If you can tell us what we're  
24 looking at in that picture and what the value would be?

25 A Sure. That is a Whirlpool dryer, ensemble dryer.

1 With a pedestal at the bottom.

2 Q And so what would be the value, wholesale, retail?

3 A Roughly around 800 cost, 1,100 sale.

4 Q Okay. Obviously I don't do a lot of laundry,  
5 because I'm looking and trying to distinguish which one's the  
6 dryer and which one's the washer. Looking at 89, if you could  
7 tell us what we're looking at there?

8 A Yeah, that's the washer and, again, the pedestal  
9 that it sits on. They're two separate components, and roughly  
10 around the same cost and sale price.

11 Q Okay.

12 THE COURT: Anything else, Ms. Small?

13 MS. SMALL: The Court's indulgence, yes.

14 [Counsel Confer]

15 BY MS. SMALL:

16 Q And later on, after this particular incident when  
17 you got this equipment back, did you recover anything else?

18 A From this?

19 Q From the theft of your store in Henderson?

20 A Not that I recall, no.

21 Q Okay. Did you recover anything else that had been  
22 missing from your -- from Econ?

23 Court's indulgence.

24 [Counsel Confer]

25 MR. HART: Your Honor, I think I'm gonna object if it's

1 not part of this case.

2 THE COURT: I don't know that it is or isn't. I'm  
3 guessing that they're thinking that they did the thing at the  
4 house and then later they did another unit or something.

5 MS. DIGIACOMO: No, I'm sorry, I think I confused her.  
6 This -- what she's gonna ask him relates to Count XVII, which  
7 is another count that Econ is linked to.

8 THE COURT: Okay. Go ahead, Ms. Small.

9 MS. SMALL: Thank you, Your Honor.

10 BY MS. SMALL:

11 Q Econ, is it a -- is there another division of Econ  
12 that, like a subdivision or like Absco [phonetic] -- could you  
13 explain to me how that works?

14 A Oh, Absocold Corporation, is our parent company.  
15 They're in a totally different business than we are. We're a  
16 builder-distributor for the Clark County market of appliances.

17 Q Okay, and you said you were a distributor?

18 A Yeah.

19 Q Do you distribute to other companies in the Las  
20 Vegas area?

21 A Well, we work with builders.

22 Q Okay --

23 A Yeah.

24 Q -- with builders.

25 A Yeah.

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1 Q Would Grand Canyon Construction be a builder that  
2 you work with?

3 A Yes, they are.

4 Q Okay. And at any point after this incident did you  
5 recover something from Grand Canyon?

6 A Yes, we did.

7 Q And what would that be?

8 A We recovered a Viking refrigerator and a Viking cook  
9 top.

10 Q Okay. And I guess -- I'm obviously a little  
11 confused here.

12 A Sure.

13 Q How would these two things work? How does a  
14 construction -- how do you supply to the construction company,  
15 how do they collect from you, how does all of that work?

16 A Sure. The builder will come to our showroom, pick  
17 out the appliances that they want for that particular home  
18 they're building. They'll order it through us. They'll buy  
19 it through us, and then we as a company will go out and  
20 actually do the installation of those appliances in those  
21 particular homes.

22 Q Okay. And at some point had Grand Canyon  
23 Construction purchased those particular items that you just  
24 spoke of from you?

25 A Yes, they did.



1 Q And had you gone out and put them into a location  
2 for them at some point?

3 A Yes.

4 Q Okay.

5 A Yes, we did.

6 Q And when you go ahead -- explain that to us. When  
7 you go ahead and put something into a location, is it then  
8 released to them? Do they now own it or do you still own it?  
9 How does that work?

10 A Well, the agreements that we have with our builders  
11 is that we -- they take possession of it once it's been  
12 installed. In this particular case, all the appliances -- I  
13 believe they got a refrigerator, a dishwasher, a cook top and  
14 a hood or a microwave. We were only able to install the  
15 dishwasher and the microwave at that time. The refrigerator  
16 and cook top could not be installed because the cutout  
17 dimensions for those two items were not properly done.

18 Q So they were left at a location?

19 A They were left at the location which then remained  
20 our responsibility.

21 Q And what was that location?

22 A It was a Grand Canyon Construction job site. I  
23 cannot recall the address off the top of my head.

24 Q That was here in Las Vegas --

25 A Yes, it was.

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1 Q Clark County, Nevada?

2 A Yes.

3 Q Okay. At some point you said that you recovered  
4 those two items?

5 A Yes, Grand Canyon Construction notified us that they  
6 had recovered them through --

7 MR. HART: Objection, hearsay.

8 THE COURT: Sustained. So they were your responsibility  
9 and at some point they apparently went missing and then they  
10 came back, sort of like the other stuff, right?

11 THE WITNESS: Correct.

12 THE COURT: All right.

13 BY MS. SMALL:

14 Q All right. So what would be the value of those two  
15 items that you had gotten back from Grand Canyon Construction  
16 that was still --

17 MR. HART: Objection.

18 BY MS. SMALL:

19 Q -- your responsibility --

20 MR. HART: Strike.

21 BY MS. SMALL:

22 Q -- and still your property?

23 THE COURT: Well, he knows what the value of 'em is.

24 BY MS. SMALL:

25 Q Right.

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1 A Approximately \$8,000.

2 Q Is that retail, wholesale?

3 A That would be a wholesale price.

4 Q And what would the retail value of those two items  
5 be?

6 A About 12,000 -- 12,000 to 13,000.

7 Q You know, I guess I'm finally getting the whole  
8 picture here.

9 A Sure.

10 Q Those items had been sent out to the job site and  
11 taken from that job site?

12 A Correct.

13 Q What happens when that happened -- what happens? I  
14 mean, what is your responsibility as far as items that are  
15 taken from a job site? Did you have to replace those items at  
16 some point?

17 A Yes, the builder contacted us, let us know that the  
18 items were now -- there was a break-in and the items were  
19 missing and that it would be our respons --

20 MR. HART: Objection, hearsay again.

21 THE COURT: Well. They're not proving that they were  
22 taken. I mean, the idea -- at some point you had to go in and  
23 replace those items because you hadn't installed them and they  
24 were still on your nickel, is that right?

25 THE WITNESS: That's correct.

1 THE COURT: All right. That's cool.

2 BY MS. SMALL:

3 Q So you actually went ahead and replaced those items,  
4 then?

5 A That is correct.

6 Q And what was the cost to you?

7 THE COURT: He just said it, 8 to 12.

8 THE WITNESS: Right.

9 MS. SMALL: Thank you.

10 THE COURT: Questions? Cross?

11 CROSS-EXAMINATION

12 BY MR. HART:

13 Q Very briefly. Do you sell any used merchandise?

14 A Yes, we do.

15 Q Okay. Your market for a used Sub-Zero is markedly  
16 lower than new, correct?

17 THE COURT: You mean the market or the price?

18 BY MR. HART:

19 Q The price.

20 A We don't sell it below what we pay for it.

21 Q Okay. But if it's sold to a private party?

22 A If it's out of the box then we tend to reduce it a  
23 little. If they've been -- items that have been used, we  
24 cannot resell.

25 Q Okay. So you're not familiar with the prices are on

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1 the -- for used Sub-Zero used refrig --

2 A No.

3 Q Washers, dryers? Okay, and you testified that was a  
4 Whirlpool washer and dryer, correct?

5 A That's correct.

6 MR. HART: Nothing further.

7 THE COURT: Okay. Thanks. Appreciate your testimony.

8 MS. DIGIACOMO: Your Honor, I'm sorry, but we're gonna  
9 have to move to reopen.

10 THE COURT: What's the problem?

11 [Counsel Confer]

12 THE COURT: These are just the pictures that relate to  
13 the --

14 MS. DIGIACOMO: It is, that relate to Count XVII. I  
15 apologize.

16 BY MS. SMALL:

17 Q Later past this time did you actually go down to the  
18 Metropolitan Police Department and do an evidence view on some  
19 of the items that we spoke about; in particular, the cook top?

20 A Yes, I did.

21 Q Okay.

22 THE COURT: What's the numbers, Ms. Small?

23 MS. SMALL: Sorry, Your Honor. State's proposed Exhibit  
24 316 to 319, and State's Exhibit 315, proposed.

25

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1 BY MS. SMALL:

2 Q If you can just look at that and tell me if you  
3 recognize what's depicted in that picture?

4 A Yes.

5 Q And if you can look at this one and tell me if you  
6 recognize this picture?

7 A Yes, I do.

8 Q Okay. And looking at State's proposed Exhibit 316  
9 through 319, do you recognize what's depicted in there?

10 A Yes, I do.

11 Q All of those? Okay. And what is it?

12 A It is a Viking 36-inch electric cook top.

13 Q How do you recognize it?

14 A By the design, the look, the model, the serial  
15 number.

16 Q Thank you. And does it fairly and accurately depict  
17 that cook top that you recovered from that viewing?

18 A Yes, it does.

19 MS. SMALL: Move to enter.

20 MR. HART: No objection.

21 THE COURT: Admitted.

22 [State's Exhibits 316-319 Admitted]

23 BY MS. SMALL:

24 Q Looking at State's 315, do you recognize that?

25 A Yes, I do.

1 Q How do you recognize it?

2 A By the make, the model, and the picture itself.

3 It's a Viking side-by-side refrigerator.

4 Q And does that picture fairly and accurately depict  
5 the Viking side-by-side refrigerator that you recovered later?

6 A Yes, it does.

7 Q From the viewing. Thank you.

8 MS. SMALL: Move to enter.

9 MR. HART: No objection.

10 THE COURT: Admitted.

11 [State's Exhibit 315 Admitted]

12 THE COURT: That it?

13 MS. DIGIACOMO: Court's indulgence.

14 [Counsel Confer]

15 BY MS. SMALL:

16 Q And just to clarify. The Viking cook top, did you  
17 actually recover that cook top at any point?

18 A Oh, it's still in, I believe, custody of the police  
19 department.

20 Q Thank you. And looking -- and, excuse me, talking  
21 about the refrigerator that we just talked about, did you  
22 recover that refrigerator?

23 A Yes, we did.

24 Q Thank you.

25 THE COURT: Okay. Thanks, Mr. Vincent. Appreciate it.

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1 THE WITNESS: Thank you very much.

2 THE COURT: Call your next witness.

3 MS. SMALL: Mark Chernine.

4 THE COURT: Okay. Up here, sir.

5 MS. DIGIACOMO: And Your Honor, for the record, this is  
6 gonna be Count VIII.

7 THE COURT: Okay.

8 MARK CHERNINE, STATE'S WITNESS, SWORN

9 THE COURT: Sir, state your name and spell your name for  
10 the Court Recorder.

11 THE WITNESS: Mark Chernine. C-h-e-r-n-i-n-e.

12 THE COURT: All right, counsel.

13 DIRECT EXAMINATION

14 BY MS. DIGIACOMO:

15 Q Sir, how are you employed?

16 A I'm a manager at Land Baron Investments.

17 Q All right, and the nature of your business? Do you  
18 have an office in town?

19 A We have an office.

20 Q Where is that located?

21 A At 5275 South Durango Drive.

22 Q And what are the cross streets close to there?

23 A South Durango and West Hacienda.

24 Q Thank you. Directing your attention back to --

25 [Counsel Confer]

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1 BY MS. DIGIACOMO:

2 Q Okay, May 8, 2006. Did your business have a break-  
3 in?

4 A Yes.

5 Q All right. Now, who else works at your office?

6 A Well, we have about 16 employees.

7 Q All right. And when the break-in occurred, were you  
8 present afterward?

9 A When we came in to work that day, yes.

10 Q Okay, well, tell us what you discovered when you  
11 went to work?

12 A Well, we discovered that there was a entrance from  
13 one of the back electrical doors into an electrical room, and  
14 from there there was a hole in the wall, in the drywall, where  
15 there was an entry made. There were footprints on a desk and  
16 the ceiling above was open. And then various articles were  
17 missing.

18 Q Do you recall -- can you list out some of the  
19 articles that were missing?

20 A Flat-screen TVs, a computer monitor, computer tower,  
21 and various sports memorabilia items, and some art.

22 Q The sports memorabilia and the art. Who did they  
23 belong to in the business?

24 A Different employees.

25 Q Okay. Do you recall --

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1           A     Russ Jacobi, Randy Black, Jr., Mike Chernine,  
2     myself.

3           Q     Do you recall what some of it looked like?

4           A     Russ Jacobi had some type of a Disney piece of art,  
5     I think a Bugs Bunny item and some type of a Rock 'n' Roll  
6     memorabilia item. Randy Black, Jr. had another item that I'm  
7     not -- I don't remember.

8                     I had -- my son had a display of, oh, 50-year-old  
9     baseball cards and also a display of old casino chips.

10          Q     All right. I'm gonna show you a couple of  
11     photographs.

12          MR. HART: Can I approach, Your Honor?

13          THE COURT: Sure.

14     BY MS. DIGIACOMO:

15          Q     First of all, I'm gonna show you what's been marked  
16     for identification as State's Exhibits 68 and 69.

17          A     Okay.

18          Q     Now, do you recognize the location --

19          A     Yes.

20          Q     -- of these items?

21          A     Yes.

22          Q     Okay, where is this taken?

23          A     That was at the -- I don't know if you want to use  
24     the term crime scene or, it was the residence where the police  
25     had notified us that they had found some of our merchandise

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1 that was stolen from our office.

2 Q Now, did you personally go to this scene?

3 A Yes.

4 Q All right. And who else went with you?

5 A J.W. Beller; my son, Mike Chernine; Chad North.

6 Q Okay. So these two pictures you were present when  
7 they were taken?

8 A Yes.

9 Q Do they fairly and accurately depict the items that  
10 were yours from your business that were missing --

11 A Yes.

12 Q -- from that burglary?

13 MS. DIGIACOMO: Your Honor, I'd move for admission of  
14 State's proposed Exhibits 68 and 69.

15 MR. HART: No objection.

16 THE COURT: Admitted.

17 [State's Exhibits 68 and 69 Admitted]

18 BY MS. DIGIACOMO:

19 Q So next I'm gonna show you what's been marked for  
20 identification as State's Exhibits 70, 71, 72, and 73. And if  
21 you could just flip through those and let me know if you  
22 recognize anything in those photographs?

23 A Yeah, the baseball card collection.

24 Q Okay, now, you're looking at 70. What about 71?

25 A The casino chip collection and --

1 Q And -- okay. And you were gonna say something else,  
2 I think?

3 A And the baseball card collection is on both those  
4 photographs.

5 Q Right. And 72?

6 A Casino chip collection.

7 Q And 73?

8 A And casino chip collection and baseball card  
9 collection.

10 Q Okay. Now, you don't know this location where they  
11 were taking -- or, did you go there?

12 A No.

13 Q Okay. But these two items that you've identified,  
14 they're fairly and accurately depicted in these photographs?

15 A Correct.

16 MS. DIGIACOMO: I'd move for admission of State's  
17 Exhibits 70 through 73.

18 MR. HART: No objection.

19 THE COURT: Admitted.

20 [State's Exhibits 70-73 Admitted]

21 BY MS. DIGIACOMO:

22 Q And lastly, sir, let me show you State's proposed  
23 Exhibits 74 through 78, and could you just flip through 'em  
24 quickly and just let me know which ones you recognize.

25 A All right. The baseball card collection.

1 Q 74.

2 A I'm not familiar with that one.

3 Q Okay.

4 A The poker chip collection.

5 Q 76.

6 A I'm not familiar with that. And that's a photograph  
7 of myself with the poker chip collection and the baseball card  
8 collection.

9 Q And that would be 78.

10 MS. DIGIACOMO: So I'd move for admission of 74, 76 and  
11 78, Your Honor.

12 MR. HART: No objection.

13 THE COURT: Admitted.

14 [State's Exhibits 74, 76 and 78 Admitted]

15 MS. DIGIACOMO: Okay.

16 BY MS. DIGIACOMO:

17 Q Showing you State's Exhibit Number 78. You're being  
18 photographed with two of the items?

19 A Yes.

20 Q Okay. Now, explain to the jury where you were and  
21 how you viewed the items and what happened?

22 A I was in a location on East Las Vegas at what I  
23 believed to be the Metropolitan Evidence Vault, and I'd  
24 identified those items as items that I had given to my son as  
25 gifts.

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1 Q All right. Now, so you were the one that actually  
2 had these made or bought them?

3 A Yes. I collected the baseball cards as a child and  
4 I had them mounted in a frame and gave 'em to my son. And the  
5 poker -- the casino chips I collected over the years, and I  
6 had them mounted and gave them to my son as a gift.

7 Q Now, these poker chips. Do they have a value within  
8 themselves?

9 A They were all dollar casino chips.

10 Q Okay. Now, how much did it cost you to frame these  
11 items?

12 A The casino chips I think I spent about \$150 framing  
13 it.

14 Q And what about the baseball cards?

15 A Baseball cards, it was about the same amount.  
16 However, the baseball cards have a different value.

17 Q Okay. Well, what's the value of the baseball cards?

18 A I would say, adding them up all together, probably  
19 \$3,000 or \$4,000.

20 Q And the poker chips themselves, do they have a  
21 value?

22 A I don't know.

23 Q Okay. I'm gonna show you State's Exhibit Number 73,  
24 if you can see that. Now, you don't recognize the location?

25 A Correct.

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1 Q All right, but you do recognize two of your items  
2 being there?

3 A Yes.

4 Q If you can -- you can use the pen there to circle on  
5 the screen for the jury which items you're referring to.  
6 Well, not -- not your pen, I'm sorry. There's supposed to be  
7 a pen up there.

8 UNIDENTIFIED SPEAKER: It's in front of her.

9 MS. DIGIACOMO: Oh. Thank you.

10 THE WITNESS: This pen?

11 BY MS. DIGIACOMO:

12 Q Yes.

13 A Oh.

14 THE COURT: Like Madden Sports, it'll just --

15 BY MS. DIGIACOMO:

16 Q Yeah. You can give us a play by play.

17 THE COURT: -- you draw it there, and it shows up all  
18 over. There you go.

19 BY MS. DIGIACOMO:

20 Q All right now, the first one you circled, what is  
21 that?

22 A That's the poker chip display.

23 Q And the second one you circled?

24 A Is the baseball card display.

25 Q Okay. And lastly showing you State's Exhibit 68, if

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1 you could show the jury what's located there?

2 A Well, this one is a Master's golf flag that's  
3 autographed by various former Master champions.

4 Q Do you know who that belongs to?

5 A That was given to me by my son for a Father's Day.

6 Q Okay, do you know the value of that or what he paid  
7 for it?

8 A Yeah, I looked it up on the Internet. It's  
9 approximately \$3,000.

10 Q All right. And what else do you recognize in that?

11 A I --

12 MR. HART: Objection, I believe that's hearsay, that he  
13 looked it up on the Internet. I don't know if you can  
14 compare.

15 THE COURT: Oh, he can -- overruled. I mean, you can  
16 look up baseball card values in the back of the book. I mean,  
17 there are sources to get these and they're generally worth  
18 what those sources will tell you.

19 THE WITNESS: This item is the Disney art item that  
20 belonged to Russ Jacobi.

21 BY MS. DIGIACOMO:

22 Q And it's got Bugs Bunny in it?

23 A Correct.

24 Q Okay, and then what about what's next to it?

25 A And this one I cannot say for sure who that belonged

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1 to.

2 Q Okay. But it did come from your office, the -- I  
3 think it's Eric Clapton?

4 A Yes.

5 Q Is that right? Yeah. And then this one back here,  
6 it looks like Austin Powers?

7 A This one, the Austin Powers, belonged to Randy  
8 Black, Jr., and it was in his office.

9 Q All right. Now, I'm gonna show you State's Exhibit  
10 Number 69. Do you recognize who's in that photograph?

11 A Yes.

12 Q And who is that?

13 A That's J.W. Beller.

14 Q All right, and he was president with you and had his  
15 photograph with the items?

16 A Correct.

17 Q Now, is there a computer -- you said a computer and  
18 a monitor was taken, as well? Did you get those back?

19 A Yeah, they're -- I believe -- it's that tower and  
20 that monitor.

21 Q All right. And do you know the approximate value of  
22 the computer monitor?

23 A The monitor was 3,000 -- the tower was \$3,000, and I  
24 don't know the amount of the monitor.

25 Q Thank you. Now, these items were released to Mr.

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1 Beller in your presence. Do you know whether or not you still  
2 have that computer tower? In the office?

3 A I can only state what I was told by Mr. Beller,  
4 which was --

5 MR. HART: Objection, hearsay.

6 THE COURT: Sustained.

7 BY MS. DIGIACOMO:

8 Q Thank you. With regard to all of these items and  
9 the break-in that you had, did you ever give anyone permission  
10 to have any of these memorabilia or your computer or your  
11 monitor?

12 A No.

13 MS. DIGIACOMO: Nothing further.

14 THE COURT: Questions?

15 CROSS-EXAMINATION

16 BY MR. HART:

17 Q Did you do the original police report?

18 A No.

19 Q Okay. And the monitor that was there that was  
20 returned to you, do you know what brand that was?

21 A No.

22 Q And that wasn't your -- that was not your monitor  
23 that was returned, correct?

24 A Correct.

25 [Counsel Confer]

1 MR. HART: May I approach, Your Honor?

2 THE COURT: Yeah, you don't have to ask. Just go ahead.

3 BY MR. HART:

4 Q You were given a -- when you return property, did  
5 you get a little form showing it was returned?

6 A No. I didn't.

7 Q You didn't get it, your --

8 A I didn't receive it.

9 Q Okay. Mr. Beller did, or? Does this look like the  
10 items that were returned to you?

11 A Yes.

12 Q And what kind of computer monitor was returned to  
13 you, can you tell by looking at this?

14 A No.

15 Q You can't tell the brand or anything else?

16 A Well, I can see that it's written Sony, but I was  
17 not aware of what brand it was.

18 Q Okay. If I was to tell you that there was no Sony  
19 monitor on the original police report listed, would that  
20 surprise you?

21 A I wasn't -- I had no knowledge of the monitor  
22 myself. I was only aware of some of the other items.

23 Q Okay.

24 THE COURT: Anything else for Mr. Chernine?

25 MR. HART: Court's indulgence for just a moment.

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1 [Counsel Confer]

2 MR. HART: And -- I'll pass, Your Honor.

3 THE COURT: Thanks, you're excused.

4 THE WITNESS: Okay, Your Honor.

5 THE COURT: Have a good day. Call your next witness.

6 MS. DIGIACOMO: George Hung.

7 [Counsel Confer]

8 THE COURT: Come on up here, sir.

9 MS. DIGIACOMO: And this doesn't relate to a count, it  
10 relates to the car stop.

11 THE COURT: Okay.

12 GEORGE HUNG, STATE'S WITNESS, SWORN

13 THE COURT: Sir, state your name and spell your name for  
14 the Court Recorder.

15 THE WITNESS: George Hung, G-e-o-r-g-e, last name Hung,  
16 H-u-n-g.

17 THE COURT: Okay.

18 DIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q Mr. Hung, I want to direct your attention back to  
21 September of 2006. Did you own a business at that time?

22 A Yes.

23 Q And what was the name of that business?

24 A Anku Crystal Palace.

25 Q Where was the location of that?

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1           A     It's at the Southwest area.

2           Q     Was that upper Fort Apache?

3           A     Yes.

4           Q     And I'm gonna show you State's Exhibit 548. Is that

5     your store?

6           A     Yes.

7           Q     All right. Now, on September 24th, 2006, did

8     something happen that you were called to the store in the

9     middle of the night?

10          A     Yeah, the store was broken into.

11          Q     All right. And so how were you informed of that?

12          A     My security company called me.

13          Q     And did you respond to the store?

14          A     Yes.

15          Q     When you got there, did you walk through?

16          A     I did. With the security personnel.

17          Q     All right, and were there items missing?

18          A     Yes.

19          Q     And what were they?

20          A     Wooden sculptures and crystal pieces and bracelet.

21          Q     All right. Anything else?

22          A     Computer, laptop computers.

23          Q     Okay.

24          A     And videogame for my kids.

25          Q     All right. I'm showing you State's Exhibit 549.

1 Where would the wood carving pieces be kept in your store?

2 A You mean the missing pieces?

3 Q Yes.

4 A The ones, one up here, there's a piece that's on  
5 this side.

6 Q And here, let me show you 550, to show you the other  
7 side of the store. And then you said you had some crystal  
8 missing as well?

9 A Yeah.

10 Q All right. Now, what kind of crystal pieces were  
11 missing?

12 A It's what they call rutilated crystal piece. It's  
13 like a hair piece inside, inside the crystal. It's a pretty  
14 unique piece.

15 Q Is it an expensive piece?

16 A Yes.

17 Q Now, I'm showing you 553. What are we looking at  
18 here?

19 A That missing piece is actually right up -- right  
20 behind this, right here.

21 Q That crystal, that rutilated crystal?

22 A Yeah. Yes.

23 Q And then showing you 552. What is this picture  
24 depicting?

25 A Okay, that -- one of the wooden pieces. The night

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1 dragon is actually right here.

2 Q All right. And when that wood piece would have been  
3 sitting here, did it have this glass or crystal globe in front  
4 of it?

5 A Yes.

6 Q Okay, so nothing else was disturbed but that wood  
7 piece missing?

8 A No, I believe they probably picked it up and lifted  
9 it up.

10 Q Okay. But the wood pieces, are they heavy or?

11 A Yeah, got some weight to it, yes.

12 Q And then showing you State's Exhibit 556. What were  
13 we looking at here?

14 A Crystal bracelet and necklace.

15 Q All right. Is there anything missing from cabinet?

16 A Yeah, mostly this portion right here.

17 Q Okay, and what was missing?

18 A A crystal bracelet just like one I'm, like the one  
19 I'm wearing.

20 Q Okay.

21 A Similar to this.

22 Q Okay, and showing you 557, is there one in there as  
23 an example?

24 A Yes. Just like --

25 Q All right. So was there anything else missing from

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1 the store?

2 A Yeah. In the office we kept a laptop computer and  
3 videogame for the kids.

4 Q Okay. Did you keep any money in the store?

5 A We did have petty cash.

6 Q How much did you have in petty cash then?

7 A About 300, you know, like two --

8 Q Do you remember the exact amount?

9 A No, I don't. I'm sorry.

10 Q Do you remember what it looked like or what  
11 denominations?

12 A \$5, \$20. Yes.

13 Q After you got there and you realized all these  
14 things were missing, did the police arrive?

15 A Later. Later.

16 Q And so did you tell them these are the items I'm  
17 missing?

18 A Yes.

19 Q Okay. Were you asked to go to a different location?

20 A Yes, I was taken to a different location.

21 Q All right. I'm gonna show you State's Exhibit 502.  
22 Do you recognize this?

23 A Yes.

24 Q And what is this?

25 A I believe that's the van that where they have all my

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1 stuff inside.

2 Q Okay. How do you know -- I mean, when you got  
3 there, did you look in the van?

4 A Yeah, they opened the door for me and put a  
5 flashlight so I can see what's inside.

6 Q And what did you see inside that was yours?

7 A I see my crystal bracelet on the floor.

8 Q Anything else?

9 A And the laptop computers. On the back of the truck,  
10 it was the wooden pieces, the sculptures.

11 Q Okay. I'm gonna show you State's Exhibit 516. Is  
12 that the door you looked in?

13 A Yes. Yes.

14 Q And so that's your laptop and your crystal pieces?

15 A Uh-huh.

16 Q Okay. Now, did you get everything released to you  
17 that belonged to you at the scene?

18 A It wasn't released to me. It was -- they had to  
19 take a picture and it was released to me later.

20 Q Okay, so after they pictured it?

21 A Uh-huh.

22 Q Or photographed the car and whatnot?

23 A Uh-huh.

24 Q So that -- is that a yes, for the record?

25 A Yes.

1 Q Okay. And so that night the pieces that you left  
2 with from the car stop, were you missing any other pieces that  
3 were taken from your store?

4 A No, I think I recover everything.

5 Q So you got back the laptop? Yes?

6 A Yes.

7 Q The game?

8 A Yes.

9 Q The wood sculptures?

10 A Uh-huh, yes.

11 Q And the crystal bracelets?

12 A Yes.

13 Q And did you get your petty cash money back, as well?

14 A Yes, I did.

15 Q So after this night was over, were you missing any  
16 property from your store?

17 A No.

18 Q Later, after this night, did a detective come to  
19 your business?

20 A Yes.

21 Q All right. Did he come with this kind of weird  
22 looking tool?

23 A Yes, he did.

24 Q Okay, were you present when he tried to do something  
25 with it?

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Feb 02 2015 10:19 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. II**  
**(Pages 0251-0500)**

MICHAEL H. SCHWARZ, ESQ.  
Law Office of Michael H. Schwarz  
626 S. 7<sup>th</sup> Street, Ste. 1  
Las Vegas, Nevada 89101  
(702) 598-3909

Attorney for the Appellant

STEVEN B. WOLFSON, D.A.  
DISTRICT ATTORNEY'S OFFICE  
200 Lewis, 3<sup>rd</sup> Floor / App.Div.  
Las Vegas, Nevada 89155  
(702) 671-1600

Attorney for the Respondent.

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1 A Well, we carried some brands that were exclusive to  
2 us, and some of those were in this case that little or no one  
3 else in the region had them.

4 Q Okay. Could you mark the guitars that were  
5 exclusive to your store only? There's a little --

6 A Oh.

7 Q -- marker right there. You can go ahead and mark  
8 the screen.

9 A [No verbal response]

10 Q Okay. So those four particular guitars?

11 A Actually, it's five.

12 Q Okay. So you had exclusive rights to selling that  
13 particular guitar --

14 A Yes.

15 Q -- here in the Las Vegas area? Okay. I'm going to  
16 go ahead and show you 360. Who's depicted in that picture?

17 A That would be me.

18 Q And that's you in front of those guitars that were  
19 located at the Cutler residence?

20 A Yes.

21 Q Looking at 361, can you tell us if anything is  
22 depicted in that picture?

23 A Yes. The guitar that's in the background is one  
24 that's recovered there.

25 Q Okay. Now after you went and identified these items

1 at the Cutler residence, were these items released to you?

2 A Yes.

3 Q Okay. So a police officer at that location went  
4 ahead and let you take these instruments back?

5 A Correct.

6 Q Okay. Looking -- or actually, drawing your  
7 attention to November 13, a little while after that, did you  
8 go down to Metropolitan Police Department viewing, and did  
9 they call you to come down and possibly ID other items that  
10 they had gotten from one of the locations?

11 A Yes.

12 Q Okay.

13 [Counsel Confer]

14 BY MS. SMALL:

15 Q I'm showing you what's been pre-marked for  
16 identification as State's Proposed Exhibit 362 to 392.  
17 Looking at State's 362, do you recognize that?

18 A Yes.

19 Q And looking at State's 363. You can just flip  
20 through here and look at these. We have to keep them in  
21 order.

22 A Oh.

23 Q I'm sorry. Look at it. Okay. Do you recognize  
24 State's 363 --

25 THE COURT: I have 362 through 392.

1 MS. SMALL: Yes, Your Honor. Sorry. Through --  
2 actually, I think 362, 366, 67, 70, 370, 371 -- I apologize,  
3 Your Honor.

4 BY MS. SMALL:

5 Q Do you recognize Exhibits 362 to 392?

6 A Yes.

7 Q How do you recognize it?

8 A They were items that were at one time for sale in  
9 Family Music Centers.

10 Q And do these pictures fairly and accurately depict  
11 those items that were for sale at Family Music Center and had  
12 later been taken in a burglary?

13 A Yes.

14 Q Or did these items fairly and accurately depict the  
15 items that you went down to the viewing vault and recovered?

16 A Yes.

17 MS. SMALL: Move to enter.

18 THE COURT: Objection?

19 MR. HART: No objection.

20 THE COURT: Admitted.

21 [State's Exhibits 362 through 392 Admitted]

22 BY MS. SMALL:

23 Q Looking at 362, can you tell us what's depicted in  
24 that?

25 A That is a blade style electric guitar.



1 Q Okay. And this is an item that you recovered from  
2 the viewing vault, all of these items that I'm showing you,  
3 correct?

4 A Yes.

5 Q Okay. What would be the approximate value of that?

6 A That one, \$1200.

7 Q Okay. How were you able to identify this?

8 A Serial number.

9 Q Okay. And looking at State's 363, is that a  
10 photograph of the serial number?

11 A Yes.

12 Q Okay. Did you take -- in the ordinary course of  
13 your business, do you keep records based on the guitar serial  
14 numbers?

15 A Yes.

16 Q And the make and model?

17 A Correct.

18 Q And do you have access to that information from your  
19 store in your ordinary course of business at the store?

20 A Yes.

21 Q Okay. Looking at State's 366, can you tell us  
22 what's depicted in that?

23 A G&L strat style guitar --

24 Q And how much --

25 A -- or a blade strat style guitar.

1 Q Okay. And how much would that cost?

2 A Similar value, 12-1500 today.

3 Q Okay. And how were you able to identify that?

4 A Serial number.

5 Q And looking at State's 367, is that a picture of the  
6 serial number on that guitar?

7 A Yes.

8 Q Looking at State's 370, can you tell me what we're  
9 looking at in that picture?

10 A G&L or blade strat style guitar.

11 Q Okay. How much did that cost?

12 A Same value, 12-1500.

13 Q How were you able to identify that as belonging to  
14 the Family Music Center?

15 A Serial number.

16 Q And looking at State's 371, is that a copy of the  
17 serial number?

18 A Yes.

19 Q Looking at State's 374, what are we looking at in  
20 that picture?

21 A A G&L strat style guitar.

22 Q Okay. What would be the value of that?

23 A 12-1500.

24 Q Okay. How do you --

25 THE COURT: If you looked at this whole stack of stuff,

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1 they're all guitars that you could identify by serial number  
2 that were taken in the --

3 THE WITNESS: Correct.

4 THE COURT: -- burglary in '02, correct?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 MS. SMALL: Thank you, Your Honor.

8 BY MS. SMALL:

9 Q And how many guitars did you recover from that  
10 viewing?

11 A We actually didn't recover them. I think there were  
12 eight in that viewing.

13 Q Okay. You actually haven't gotten them back yet?

14 A Right.

15 Q Okay. I'm just going to throw you back to the  
16 original burglary, okay, when it took place. Do you know, to  
17 your knowledge, had anybody been given permission to take all  
18 of those guitars out of the store at that time?

19 A Certainly not.

20 Q Thank you.

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

22 THE COURT: Questions?

23 CROSS-EXAMINATION

24 BY MR. HART:

25 Q Yeah. How long were you working for Family Music

1 Center?

2 A At that time, approximately 10 days.

3 Q Oh. So you'd just started at that time?

4 A Correct.

5 Q Okay. And you -- no police reports were given as to  
6 the items that were taken at that time, correct?

7 A Well, there was a police report done for us.

8 Q The back door was pretty much jammed in and pried  
9 in?

10 A Yes.

11 Q Actually, I think you said it looked like it was  
12 kicked then handle it. Is that how it appeared to you?

13 A Yes.

14 Q And you're saying the value of those guitars is  
15 \$12-1300 a piece. Would that have been closer to 797.50 back  
16 in 2002 by your standards?

17 A 7,900?

18 Q No. \$797.50.

19 A As far as wholesale cost or retail value?

20 Q I'm just looking at the value reported on the  
21 incident report. I was just wondering what was used then at  
22 that time?

23 A The numbers between 12 and 1500 retail value were  
24 used.

25 Q Okay.

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1 A Some of them were higher than that, and a few that  
2 were lower.

3 Q And there was a first batch of about five or six  
4 guitars. Do those look like Samicks, or what kind were they?

5 A It was a combination of Samick, Alvarez, and  
6 Heritage.

7 Q Okay.

8 A And G&L.

9 Q I'm just looking at the original incident reports.  
10 The Samicks could go as low as \$80 depending on --

11 A Some items that they carry do.

12 Q Okay.

13 A Most of the ones that we carry were higher end.

14 Q Okay. And those were missing since 2002, correct?

15 A Correct.

16 MR. HART: Nothing further from this witness, Your Honor.

17 THE COURT: Anything else?

18 MS. SMALL: One question, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. SMALL:

21 Q The first six guitars, six or seven guitars that you  
22 recovered from the Cutler residence, what was the cumulative  
23 value of all of those guitars? Was it over \$2500?

24 A Yes.

25 Q Thank you.

1 MS. SMALL: Nothing further.

2 THE COURT: All right. Mr. Holec, you're --

3 MR. HART: Let me -- can I follow up on that real quick?

4 THE COURT: Of course.

5 RECROSS-EXAMINATION

6 BY MR. HART:

7 Q Would that a be a retail value or a wholesale value?

8 A Wholesale value and retail value both would be over  
9 2500.

10 Q That is as a new guitar or as old guitars?

11 A As new.

12 Q As new. They were not new guitars when you picked  
13 them up at the Cutler residence, correct?

14 A Some were new. Some had been played. Some looked  
15 like they had been played very little. So --

16 Q Okay. So that's based on if you were to sell them  
17 new at that time?

18 A Correct.

19 Q Thank you.

20 MS. SMALL: Just one more, Your Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. SMALL:

23 Q When those items had been taken from your store,  
24 were they new?

25 A Yes, absolutely.

1 Q Thank you.

2 MS. SMALL: Nothing further.

3 THE COURT: All right. You're excused. Thanks for your  
4 testimony. Appreciate it, sir. Call your next witness.

5 MS. SMALL: Scott Michels, Count 11.

6 [Pause]

7 THE COURT: Come on up here, sir. Please remain standing  
8 for just a second so she can swear you in, and then we'll get  
9 going here.

10 SCOTT MICHEL'S, STATE'S WITNESS, SWORN

11 THE COURT: Sir, state your name and spell your name for  
12 the court recorder.

13 THE WITNESS: Scott Michels, S-c-o-t-t M-i-c-h-e-l-s.

14 THE COURT: Okay.

15 DIRECT EXAMINATION

16 BY MS. SMALL:

17 Q Mr. Michels, what do you do for a living, sir?

18 A I am currently the wholesale manager for Cal Spas.

19 Q And how long have you been the wholesale manager?

20 A Well, I just transferred from the one out here to my  
21 one back in Minnesota, but the one out here, I was there for  
22 three years.

23 Q Okay. I'm going to draw your attention to July 4th  
24 of 2005. Were you working for Cal Spas at that time?

25 A Yes, I was.

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1 Q Okay. And where were you working? What was the  
2 location?

3 A 7770 South Industrial Road.

4 [Counsel Confer]

5 BY MS. SMALL:

6 Q That's here in Clark County, Nevada?

7 A Yeah, Las Vegas.

8 Q Okay. And at that time, were you an operations  
9 manager?

10 A Yes, I was.

11 Q Okay. What would your job duties be as an  
12 operations manager?

13 A Just kind of oversee the day-to-day operations of  
14 the company.

15 Q So would you be privy to the stock that's within a  
16 particular store or in that store, in particular?

17 A Absolutely.

18 Q Okay. And would you be privy to the cost of the  
19 items that were in that store?

20 A Yes.

21 Q I'm going to draw your attention to July 4th of  
22 2005. Did you go into work that day?

23 A Yes, I did.

24 Q Okay. And when you got into work, what did you  
25 notice? Was there anything unusual?

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1           A     We noticed that our front door had been -- some pry  
2 marks on the lock, and noticed that that had been broken into,  
3 and also noticed a cart pass through the carpet, showing that  
4 something was lifted up and moved out the front door.

5           Q     Oh. There was a car pass, like wheel carts?

6           A     Like a four-wheel dolly --

7           Q     Okay.

8           A     -- in the carpet.

9           Q     What did you notice when you got into the store  
10 other than the marks on it?

11          A     We then began to look through out inventory book and  
12 noticed that a spa was missing off our floor.

13          Q     A spa?

14          A     Hot tub.

15          Q     Hot tub.

16          A     Yeah.

17          Q     How big was it?

18          A     About 78 inches by 68 inches. It's triangular in  
19 shape.

20          Q     So a big hot tub spa was missing from the store?

21          A     Correct.

22          Q     Was anything else missing?

23          A     No.

24          Q     Okay. Do you keep paperwork or a list of the items  
25 that are within your store?

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1 A Yes.

2 Q And on that paperwork, you would have the make or  
3 model number or serial number that would be in your store?

4 A All of those, yes.

5 Q Along with the cost?

6 A Yes.

7 Q This is kept in the ordinary course of the business?

8 A Yes.

9 Q Okay. At any point, did you get the spa back?

10 A Yes, we did.

11 Q Let me back you up. Did you call the police at that  
12 time?

13 A Yeah. The day of July 4th, we called the police and  
14 filed a police report with Metropolitan.

15 Q Did you give them the serial number to the spa that  
16 was missing?

17 A Yes, we did.

18 Q Okay. So going back to the other question, did you  
19 get the spa back at some point?

20 A Yes, we did.

21 Q And how did you get the spa back?

22 A I got a call from one of the detectives, and he said  
23 that they have possibly found our spa, asked me to verify it  
24 via the serial number over the phone. I went into my  
25 inventory control book, looked up the serial number of the spa

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1 that was stated to be missing, and they matched up.

2 Q And what did you do after that, after you gave him  
3 the number of the spa?

4 A He said to come and pick it up, so I called my  
5 delivery company to go and pick it up at the house where they  
6 found it.

7 Q Okay.

8 MS. SMALL: Drawing the Court's attention to what has  
9 been pre-marked as State's Proposed Exhibit 169 to 171.

10 BY MS. SMALL:

11 Q I'm showing you what's been pre-marked as State's  
12 Proposed Exhibits 169 to 171. If you can flip through there.  
13 Look at those real quickly. Okay. Do you recognize what's  
14 depicted in those photographs?

15 A Yes.

16 Q And what's depicted in those photographs?

17 A The spa that was stolen from our floor.

18 Q Okay. And it is -- do these pictures fairly and  
19 accurately depict the spa that was stolen from your store?

20 A Yes, they do.

21 MS. SMALL: Move to enter.

22 THE COURT: Objection?

23 MR. HART: No objection.

24 THE COURT: Admitted.

25 [State's Exhibits 169 to 171 Admitted]

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1 BY MS. SMALL:

2 Q Looking at 169, what are we looking at?

3 A The spa that was stolen off the floor.

4 Q Do you recognize where the spa is in that picture?

5 A No, I do not.

6 Q Okay. Looking at 170.

7 A That is the serial tag on the spa.

8 Q Okay. So that has a serial number on it?

9 A Yes.

10 Q Is that correct? Okay. And did -- you said you got  
11 the spa back.

12 A Yes.

13 Q Who brought the spa back to your store?

14 A It was Bryan with A&G Pools and Spas [phonetic].

15 Q So he went out, picked the spa up, brought it back  
16 to you?

17 A Yes.

18 Q When it was brought back to you, did you check the  
19 serial number to make sure it was the right spa?

20 A Yes, we did.

21 Q And it was?

22 A Yes, it was.

23 Q Looking at 171.

24 A That is Bryan with A&G Pools and Spas and one of his  
25 employees.

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1 Q And is that the spa that you got back?

2 A Yes, it is.

3 Q thank you.

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

5 THE COURT: Mr. Hart, any questions?

6 CROSS-EXAMINATION

7 BY MS. TRAMEL:

8 Q Mr. Michels, the doors were not pried the day you  
9 noticed that the store had been burglarized, correct?

10 A There were pry marks on the door. They weren't  
11 pried wide open, but they were -- you could see a screwdriver  
12 or something had been wedged in there.

13 [Counsel Confer]

14 BY MS. TRAMEL:

15 Q So if the officer had written in the original police  
16 report that there were none, that would incorrect, correct?

17 A I would assume. I don't -- I didn't see the police  
18 report.

19 Q And you don't know who stole your property; is that  
20 correct?

21 A No.

22 Q Okay.

23 MS. TRAMEL: Court's indulgence.

24 [Counsel Confer]

25 MS. TRAMEL: That's all I have. Thank you, Mr. Michels.

1 Pass the witness.

2 THE COURT: Anything else, Ms. Small?

3 MS. SMALL: Just one more question.

4 REDIRECT EXAMINATION

5 BY MS. SMALL:

6 Q You didn't anyone permission to that spa out of your  
7 store, did you?

8 A No, we did not.

9 Q Thank you.

10 MS. SMALL: Nothing further, Your Honor.

11 THE COURT: Okay. Thanks. You're excused. Call your  
12 next witness.

13 MS. DIGIACOMO: Kirk Sullivan.

14 THE COURT: What count does this relate to?

15 MS. DIGIACOMO: It relates to --

16 MR. HART: KDS.

17 MS. DIGIACOMO: No. No.

18 MR. HART: No. I mean --

19 MS. DIGIACOMO: Family Music, which was -- I don't know  
20 what count that was. And Furniture Markdown --

21 THE COURT: Family Music was 22.

22 MS. DIGIACOMO: 22. And Furniture Markdowns I believe is  
23 24.

24 THE COURT: The guy coming in relates to 24?

25 MS. DIGIACOMO: Both. It's a detective.

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1 THE COURT: Oh, okay. Come on up, detective.

2 KIRK SULLIVAN, STATE'S WITNESS, SWORN

3 THE COURT: Detective, state your name and spell your  
4 name for the court recorder.

5 THE WITNESS: Kirk Sullivan, S-u-l-l-i-v-a-n.

6 THE COURT: Go ahead, Ms. Digiacomo.

7 MS. DIGIACOMO: Thank you.

8 DIRECT EXAMINATION

9 BY MS. DIGIACOMO:

10 Q Are you employed right now?

11 A Self-employed. I'm retired from the Metro Police  
12 Department.

13 Q All right. And when you retired, where was your  
14 last assignment?

15 A In the tourist crimes detail.

16 Q As a detective?

17 A Yes.

18 Q Now directing your attention to November 6th, 2006,  
19 do you remember getting called out to a house on Cutler Drive?

20 A I do.

21 Q And what was the reason you were called out there?

22 A To help with a large amount of property impound.

23 Q All right. It wasn't a case that you were actively  
24 working on your squad?

25 A No, it wasn't.

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1 Q You just went out to help?

2 A Yes.

3 Q All right. And when you were out there, did you --  
4 did the detectives divide up certain areas? Or how was it  
5 that you did what you did there?

6 A That's exactly what happened. I don't remember  
7 which detail was overseeing the investigation who had asked  
8 for our help. But when we got there, as I recall, it was most  
9 of our tourist crimes detail, which at the time constituted 70  
10 detectives on dayshift. And we just received an assignment to  
11 take a certain section of the property and do the impound  
12 report for that property.

13 Q All right. Now did you ever see the impound report  
14 from this address?

15 A Yes, I have.

16 Q Okay. And how many pages is it?

17 A It's many. I don't remember exactly how many, but  
18 it is several.

19 Q Now do more than one person -- did more than one  
20 person fill it out?

21 A Yes, ma'am.

22 Q Okay. So did you each like take some sheets and  
23 everybody go to their own areas and do the impound?

24 A Yes.

25 Q And did you actually write some out yourself?

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1 A I did.

2 [Counsel to Clerk]

3 THE COURT: 22 is Family Music.

4 MS. DIGIACOMO: I'm sorry. Apparently, I'm wrong. It's  
5 going to be Count 22, and I don't know what the other count  
6 is.

7 BY MS. DIGIACOMO:

8 Q What were some of the things that you impounded, if  
9 you recall?

10 A Guitar and ornamental things. It's been a while. I  
11 don't remember specifically, but I remember a shed that there  
12 was a large amount of property in. I'm not going to be real  
13 good at remembering specific items.

14 Q Okay. Do you just remember that -- was there a lot  
15 of different kinds of items that was being impounded?

16 A There was.

17 Q Okay. Now do you specifically recall each and every  
18 item that you wrote down as being impounded?

19 A Yes, I do.

20 Q All right. And do you recall --

21 THE COURT: I don't think he answered the question you  
22 asked. I think he understood you to ask did he recall that  
23 he, in fact, wrote down every item. And I think you were  
24 asking do you remember each and every separate item.

25 MS. DIGIACOMO: Oh.

1 THE COURT: But maybe I heard that wrong.

2 MS. DIGIACOMO: I'm sorry.

3 THE WITNESS: The question I understood was did every  
4 item that I impounded make it onto the truck and get into the  
5 evidence vault, and my answer to that is yes.

6 BY MS. DIGIACOMO:

7 Q Right. But did you -- do you remember seeing here  
8 today every piece of property that you were writing down --

9 A I don't remember.

10 Q -- as being impounded? Is it because of the volume  
11 of stuff or --

12 A The volume and the passage of time.

13 Q All right. But if I was to show you your document  
14 -- I mean as you're impounding these items, you're writing it  
15 down as you're seeing it go onto the truck, correct?

16 A That's correct.

17 Q All right. So if I was to show you a page from the  
18 impound report, would you be able to identify if it wasn't  
19 truly, in fact, yours?

20 A Yes. I could recognize my handwriting.

21 Q All right, sir. First of all, I'm going to show you  
22 -- it is a 22-page impound report. Do you recognize all of  
23 this?

24 A I do.

25 Q And specifically, I want to direct your attention to

1 page 18. Do you recognize the handwriting on this page?  
2 A I do.  
3 Q I want to go to -- you're on 17. I want to go to  
4 18.  
5 A Okay.  
6 Q Is that your handwriting?  
7 A That is my handwriting.  
8 Q Was your handwriting on 17 as well?  
9 A Yes, it was.  
10 Q All right. Directing your attention to package 273,  
11 item 353.  
12 A Heritage Sweet 16 electric guitar. I'm sorry,  
13 guitar.  
14 Q Okay. And is there a serial number or some sort of  
15 number associated with it as well?  
16 A R, as in Robert, 05502.  
17 Q Okay. Now do you specifically recall what that  
18 guitar looked like?  
19 A I'm sorry. I don't. I remember guitars, but I  
20 don't remember anything specific about it.  
21 Q But you do recall actually writing down the serial  
22 number on guitar on your property report?  
23 A Yes, I do. I do.  
24 Q Okay. Now I want to direct your attention to page  
25 23.

1 A That's my handwriting also.

2 Q All right. And then it's package 328, item 414.

3 A It's a silver pineapple leaf sculpture.

4 Q Okay. Now do you recall what that looks like?

5 A I recall something, kind of leafy sculpted item that

6 came from the shed, but specifically, no.

7 Q All right. Well, now I'm going to show you what's

8 been marked for identification as State's Proposed Exhibit

9 464. Do you recognize what's depicted in that photograph?

10 A I do.

11 Q And what is this?

12 A Well, back here on the top left corner is the

13 pineapple type of sculpture. I remember that. This is the --

14 a shed.

15 Q Does it fairly and accurately depict the way the

16 shed looked before you began impounding property?

17 A Yes, it does.

18 MS. DIGIACOMO: Your Honor, I'd move for admission of

19 State's Proposed Exhibit 464.

20 THE COURT: Any objection?

21 MR. HART: No objection.

22 THE COURT: Admitted.

23 [State's Exhibit 464 Admitted]

24 MS. DIGIACOMO: Thank you.

25

1 BY MS. DIGIACOMO:

2 Q Sir, I'm going to put this on the equipment. And if  
3 you could just circle what you were referring to as the  
4 pineapple sculpture.

5 A [No Verbal Response]

6 MS. DIGIACOMO: Thank you. I'll pass.

7 THE COURT: Any questions, Mr. Hart, of Detective  
8 Sullivan?

9 [Counsel Confer]

10 CROSS-EXAMINATION

11 BY MR. HART:

12 Q So it's safe to assume your memory is what was  
13 written down on that piece of paper and -- well, it was just  
14 refreshed showing you a picture, right?

15 A Refreshed.

16 MR. HART: Nothing further.

17 THE COURT: Okay. Thanks, detective. All right. Let's  
18 take our regular afternoon recess at this time. Don't read,  
19 watch, or listen to any report on the case by any medium of  
20 information. Don't talk about the case. Don't form or  
21 express. We'll be in recess until 3:30. And we'll pick up  
22 and go from there..

23 [Jury Out]

24 [Outside the Presence of the Jury]

25 [Bench Conference Not Transcribed]

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1 [Recess]

2 [Within the Presence of the Jury]

3 THE COURT: Okay. Back on the record in case number  
4 C228752, State of Nevada versus Daimon Monroe. The record  
5 reflect the presence of the Defendant with his counsel,  
6 counsel for the State. All ladies and gentlemen of the jury  
7 are back in the box. Okay.

8 MS. SMALL: The State recalls Scott Michels, Your Honor.

9 THE COURT: Recalling Scott Michels?

10 MS. SMALL: Thank you, Your Honor.

11 THE COURT: Just briefly.

12 MS. SMALL: Yes, Your Honor.

13 THE COURT: Yes. Get him.

14 MR. HART: Objection for the record, Your Honor.

15 THE COURT: Got it. Mr. Michels, you have been called as  
16 a witness previously. The State wants to call you back for  
17 some reason. I'm not sure why, but you're still under oath

18 SCOTT MICHELS, STATE'S WITNESS, PREVIOUSLY SWORN

19 THE COURT: Go ahead, Ms. Small.

20 DIRECT EXAMINATION (Recalled)

21 BY MS. SMALL:

22 Q Mr. Michels --

23 A Yes.

24 Q -- the spa -- you work for Cal Spas. You said the  
25 spa was taken from your store. What was the value of that spa

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1 that had been taken from your store and you recovered?

2 A \$2,310.

3 MS. SMALL: Nothing further, Your Honor.

4 THE COURT: Good. Thank you, sir. Call your next  
5 witness. Who's next?

6 MS. DIGIACOMO: We're going to call Michael Lantsberger.

7 THE COURT: Lantsberger. Is he a victim that relates to  
8 a count?

9 MS. DIGIACOMO: He does. He relates to Count 3.

10 THE COURT: Number 3. Okay. Come up here, Mr.  
11 Lantsberger.

12 MICHAEL LANTSBERGER, STATE'S WITNESS, SWORN

13 THE COURT: Sir, state your name, spell your name for the  
14 court recorder.

15 THE WITNESS: Mike Lantsberger, L-a-n-t-s-b-e-r-g-e-r.

16 THE COURT: Go ahead.

17 MS. DIGIACOMO: Thank you.

18 DIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q Sir, at one point, did you have a business called  
21 The Touch of Vegas?

22 A Yes.

23 Q And what was that business?

24 A It was a day spa.

25 Q A day spa?

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1 A Yeah.

2 Q And when was it in operation?

3 THE COURT: During the day.

4 THE WITNESS: We weren't open very long. It was  
5 probably --

6 BY MS. DIGIACOMO:

7 Q I'm sorry. When was it open?

8 A I think it was opened around 2006, from like April  
9 through June, middle of June.

10 Q All right. Now on August 2nd, 2006, did you not  
11 have that business?

12 A We still had it, but the business was closed.

13 Q Okay. Now on that date, did something happen to  
14 your business?

15 A Yes. It was broken into.

16 Q And how was it broken into?

17 A It was broken in through the front door.

18 Q How so? Was there like broken glass or --

19 A Somehow they popped the locks.

20 Q Okay. So did -- was there any visible signs of  
21 damage?

22 A Yes. Yes, there was on the door.

23 Q All right. Was it a glass door or just a regular --

24 A It was a glass door, regular business type door.

25 Q And on the inside, did you have any items that were



1 missing after?

2 A Yes.

3 Q Okay. What was missing?

4 A There was kind of -- we had a lot of rock and roll  
5 memorabilia, and I think there was like 25 pictures --

6 Q That were taken?

7 A -- that were taken.

8 Q Now when you originally -- did you have one that was  
9 a Woodstock?

10 A Yes.

11 Q All right. And were you originally contacted  
12 regarding that photograph?

13 A Yeah.

14 Q Or that picture of Woodstock picture?

15 A Yes.

16 Q All right. And then when you came in, did you view  
17 other photographs and find more of your property?

18 A We found a couple others, I believe.

19 Q And actually, did you then go to the evidence vault  
20 here and view all of them to confirm whether or not they were  
21 yours?

22 A Yes.

23 [Counsel Confer]

24 BY MS. DIGIACOMO:

25 Q All right. I'm going to show a series of photos.

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1 THE COURT: What's the range of the numbers?

2 BY MS. DIGIACOMO:

3 Q This first one is going to be State's Proposed  
4 Exhibits 9 through 12. And if you can flip through those and  
5 let me know if you recognize anything in those photographs?

6 A This one here.

7 Q Okay.

8 A That one. That one. I believe that one. That one.

9 Q All right, sir. And in State's Proposed Exhibits 9  
10 through 12, the photographs that you identified, do they  
11 fairly and accurately depict the photographs that you had  
12 taken from your business in --

13 A Yes.

14 Q -- August of 2006? All right.

15 MS. DIGIACOMO: I move for admission of State's Proposed  
16 Exhibits 9 through 12.

17 THE COURT: Objection?

18 MR. HART: No, Your Honor.

19 THE COURT: Admitted.

20 [State's Exhibits 9 through 12 Admitted]

21 THE COURT: Go ahead.

22 MS. DIGIACOMO: Next, I have State's Proposed Exhibits 13  
23 through 18, Your Honor.

24 BY MS. DIGIACOMO:

25 Q If you could please look through those and let me

1 know if you recognize what's depicted in the photographs or  
2 any of your photos in there.

3 A This one. That's the Woodstock.

4 Q Okay.

5 A And that's the Woodstock there. I don't know if  
6 that's the same. I think there was two of them in the vault.

7 Q Okay. Anything here?

8 A That one. I might -- these could be.

9 Q Okay.

10 A Possible.

11 Q The ones that you viewed at the vault though you  
12 agree were --

13 A Yeah. That's, you know, I -- you know, a couple of  
14 these I'm not totally sure, because, you know, I think there  
15 was quite a few made of them, you know, but --

16 Q But they are identical to the ones you had stolen?

17 A Yeah. They're identical.

18 Q Okay. So --

19 A Yeah. They're identical.

20 Q The photographs that you're looking at are marked  
21 for identification State's Proposed Exhibit 17 and 18, and  
22 it's two -- is it Bob Dylan?

23 A It looks like Bob Dylan, and that's Led Zeppelin.

24 Q. Okay. But these look identical to the ones you had  
25 in your store?

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1 A Correct.

2 Q Okay. And but these all fairly and accurately  
3 depict photographs or pictures that you have taken from your  
4 spa?

5 A Correct.

6 MS. DIGIACOMO: I'd move for admission of State's  
7 Proposed Exhibits 13 through 18?

8 THE COURT: Objection?

9 MR. HART: No.

10 THE COURT: Admitted.

11 [State's Exhibits 13 through 18 Admitted]

12 BY MS. DIGIACOMO:

13 Q Okay. Now, sir, I'm going to show you State's  
14 Exhibits 19 through 13. If you could flip through these and  
15 let me know if you recognize what's depicted?

16 A This one here, the Woodstock. That one. This one.  
17 This one. That one. That one. Oops, sorry. And I believe  
18 all of these.

19 Q Of the photographs that you identified, do they  
20 fairly and accurately depict your property or your pictures  
21 that were taken from your spa?

22 A Yes.

23 MS. DIGIACOMO: Your Honor, I'd move for admission of  
24 State's Proposed Exhibit 19, 21, 23, 25, 27, 29, and 31.

25 THE COURT: Objections to those?

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1 MR. HART: No objection, Your Honor.

2 THE COURT: Admitted.

3 [State's Exhibits 19, 21, 23, 25, 27, 29, and 31  
4 Admitted]

5 MS. DIGIACOMO: Thank you.

6 BY MS. DIGIACOMO:

7 Q Now, sir, I'm also going to show you what's already  
8 been marked and admitted as State's Exhibit Number 546. You  
9 talked about two Woodstock photos. Does that look familiar?

10 A Yes, it does. It's the same. They were both the  
11 same.

12 Q Okay. Now showing you State's Exhibit Number 19  
13 versus State's Exhibit Number 546. How are you able to identify  
14 one or the other?

15 A I think because the ticket was a shade or color.

16 Q Okay. So you pick out as yours State's Exhibit  
17 Number 19 because it's a darker ticket color?

18 A Yes. Yes.

19 Q But when you went to the evidence vault, you did  
20 view two Woodstock pictures?

21 A Correct. Correct.

22 Q Okay. All right, sir. Showing you State's Exhibit  
23 Number 10. What's depicted in this photograph?

24 A The Beatles, Ed Sullivan.

25 Q All right. With Ed Sullivan. And it's signed as

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1 well?

2 A Yes.

3 Q Now how much did you pay for this?

4 A This was not a real expensive. I think it's just  
5 photocopy. I think some of those we paid \$60-80.

6 Q Okay. So this would be roughly \$60-80?

7 A Correct.

8 Q And showing you State's Exhibit Number 12.

9 A That's be around the same price.

10 Q All right. And this is the Rolling Stones?

11 A Correct.

12 Q And it'd be \$60-80?

13 A Correct.

14 Q I'm showing you State's Exhibit Number 14. Which  
15 picture do you recognize as being yours in this?

16 A The center one, the Woodstock one.

17 Q You can actually circle the screen, so that --

18 A Oh, okay. And that one we paid I think around 1000.

19 Q 1000 for it? And I'm showing you State's Exhibit  
20 Number 15. Do you recognize this?

21 A [No Verbal Response]

22 Q The big INXS?

23 A Correct.

24 Q All right. Now how much did you pay for that?

25 A I think that one we paid -- I think it was around

1 2000.

2 Q Now showing you State's Exhibit Number 18, the Bob  
3 Dylan and the Led Zeppelin.

4 A Those were probably 60, 80 bucks.

5 Q 60 to 80 a piece?

6 A Correct.

7 Q Now when you went down to the evidence vault and  
8 viewed all the property, did they take a picture of you with  
9 all the property you identified as being yourself?

10 A Yes.

11 Q All right. I'm going to show you State's Exhibit  
12 Number 31. Is that that picture?

13 A Yes.

14 Q All right. And who's standing with you?

15 A That's a lady friend of Laura Bongiorno [phonetic].

16 Q Okay. Now between the time that you got burglarized  
17 in August of 2006 until November 2006, did you give anyone  
18 permission to have your memorabilia pictures?

19 A No.

20 MS. DIGIACOMO: Pass the witness.

21 THE COURT: Any questions?

22 MR. HART: Briefly.

23 CROSS-EXAMINATION

24 BY MR. HART:

25 Q You previously testified at a grand jury, correct?

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1 A Yes.

2 Q And at that time you picked out your Woodstock  
3 ticket and frame and said that was yours, correct?

4 A Correct.

5 Q And then, later, at a viewing, you saw a different  
6 one and said no, the one I saw at the grand jury isn't quite  
7 right because the color is different, correct?

8 A Well, the ticket -- there was a shade color  
9 difference in the ticket. And I had an old picture of our  
10 store that --

11 Q Okay. So you couldn't -- you identified the wrong  
12 item at grand jury as being yours?

13 A Not -- I -- that I can't say. I can't remember back  
14 which one they showed -- I don't think they showed me any  
15 pictures. Or they showed me some pictures, but --

16 Q Okay. Well, I got your grand jury testimony here.  
17 Do you remember testifying in front of a grand jury?

18 A Yes.

19 Q Okay. Do you remember testifying at that time that  
20 the INXS exhibit was between 12 and \$1400?

21 A I could have. Like I say, I'm kind of going back on  
22 reflection. I didn't go back over the invoices.

23 Q Okay. I just noticed today you said it was \$2000.  
24 Do you --

25 A Well, I kind of -- just kind of -- you know, I'm not

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1 exactly sure. I haven't looked over that paperwork in a couple  
2 years.

3 Q Okay. So you don't really remember?

4 A Not -- I don't remember the accurate -- deady  
5 accurate figure.

6 Q Okay. And you were shown a Rolling Stone photo.  
7 That wasn't in your original police report, was it?

8 A Like I said, there was 24 to 26 pictures that were  
9 taken. And I can't say for sure without seeing the -- it was  
10 quite a few taken.

11 Q It's safe to assume you don't remember listing the  
12 Bob Dylan picture in your original police report either,  
13 correct?

14 A Well, you know, that possibly could -- you know,  
15 like I say, there was quite a few pictures taken. They  
16 weren't high ticket items. Maybe I didn't --

17 Q Matter of fact, you had your attorney send  
18 transmissions to your -- Laura Bongiorno, your manager.

19 A Okay..

20 Q And you expressed, when you originally reported  
21 this, you were concerned, because your son had stolen a  
22 computer from there and you thought they'd taken the property?

23 A I, at one time, thought that. But you know, that  
24 was before all of this came about.

25 Q Okay.

1 MR. HART: Nothing further from this witness.

2 THE COURT: Anything else?

3 MS. DIGIACOMO: No, Your Honor.

4 THE COURT: Thank you, Mr. Lantsberger. Appreciate your  
5 time. You're excused. Call your next witness.

6 MS. DIGIACOMO: Travis Graves.

7 THE COURT: The last name is?

8 MS. DIGIACOMO: Graves. And it relates to count?

9 THE COURT: Count 2. Come on up, sir.

10 TRAVIS GRAVES, STATE'S WITNESS, SWORN

11 THE COURT: State your name, sir. Spell your name for  
12 the court recorder.

13 THE WITNESS: Travis Graves.

14 DIRECT EXAMINATION

15 BY MS. DIGIACOMO:

16 Q Sir, how are you employed?

17 A I am one of the owners of Desert Rock Sports.

18 Q And what is Desert Rock Sports?

19 A It's a backpacking, rock climbing, mountaineering  
20 store here in Las Vegas.

21 Q All right. Now I want to direct your attention to  
22 August of 2006. Did you have a burglary at Desert Rock  
23 Sports?

24 A Yes, we did.

25 Q Now where is Desert Rock Sports located?

1           A     8221 West Charleston Boulevard, so Charleston and  
2     Cimmaron on the west side of town.

3           Q     All right. Now what happened? How did you find out  
4     that there was a burglary? Did you have an alarm on your  
5     business?

6           A     We did have an alarm. I was actually in Pocatello,  
7     Idaho, and received a phone call from Steve Mallory, one of  
8     the other owners of the store, who alerted me to the fact that  
9     we had been broken into either that night or that morning  
10    before we opened.

11          Q     Now did you ever see the store or see what was  
12    missing? Or what happened there?

13          A     I received -- when Steve called me, he had told me  
14    that Bill Hobbins, our employee, was working there, who was  
15    opening the store that day, came to the store, realized it was  
16    broken into after he entered the store, alerted Steve, who  
17    called me and, actually, our alarm security company in  
18    addition to the police. And Steve was the first person to  
19    contact me. And I'd asked him if he knew what was missing.  
20    He wasn't actually, I think at the time, at the store when it  
21    happened. But I knew Bill was there, so I asked him to have  
22    Bill and, actually, Dre, another one of our employees, to  
23    start kind of making an inventory of what they believed to be  
24    missing, because obviously I was out of state. So --

25          Q     And did you ever come up with a number or a list of

1 items of what was taken?

2 A We had a list of items that we put together based  
3 on, you know, areas of the store where it looks like, you  
4 know, stuff had been noticed to be missing. And yes, we did  
5 put a list of items together.

6 Q All right. What was on the list?

7 A We had sleeping bags.

8 Q Were they special kind of sleeping bags?

9 A Higher end specialty sleeping bags for sure. And  
10 we're kind of a high-end nitch kind of backpacking outdoor  
11 store. So we're missing socks, sleeping bags, camping related  
12 items like water purification items, small backpacking  
13 lanterns, headlamps. It looked like we had some sandals  
14 missing, some clothing in areas off of a couple of our racks.

15 Q Now did you give anyone permission to go into your  
16 store and take these items?

17 A No.

18 Q What kind of front door do you have to your  
19 business?

20 A We have a -- it's a two-door I guess like kind of  
21 double glass door.

22 Q And if you -- did -- if you were to lock the door,  
23 how would you do it?

24 A If you're inside the store, there's a manual turn  
25 lock. And if you leave the store at night, you have to lock

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1 it with a key from the outside.

2 Q All right, sir. I'm going to show you what's been  
3 marked for identification as State's Exhibits 4 through 8. If  
4 you could flip through those and let me know if you recognize  
5 any of the items in there.

6 A Yeah. I mean I definitely recognize the sleeping  
7 bags in the first --

8 Q Actually, flip through them all.

9 A Yeah. I recognize pretty much all of the items.

10 Q All right. And are they items that came from your  
11 store?

12 A Yeah. For sure, I can say the sleeping bags and the  
13 socks had to have come from our store, because I believe at  
14 that time we're the only dealers for those particular  
15 companies in Las Vegas at that time. And the other items were  
16 consistent with what was taken from the store, what items we  
17 were missing.

18 Q All right. So the items that are in the sleeping  
19 bag, all these lights and what night -- what not, you had  
20 these identical items missing and --

21 A Yes.

22 Q Okay. And do these all kind of fairly and  
23 accurately represent the way they looked on November -- or  
24 excuse me, before your store was burglarized as well as when  
25 you received the items back on November 6th?

1 MR. HART: Objection, compound.

2 THE COURT: Sustained. I mean when you got things back  
3 on November 6th, did they look any different than pretty much  
4 they looked the day they were stolen?

5 THE WITNESS: Definitely, especially in the -- well,  
6 there were tags -- some tags ripped off of items that we  
7 received back. And also, especially with the socks. The  
8 socks all came -- were in packaging on a display at the store,  
9 and there were no packaging with the socks.

10 BY MS. DIGIACOMO:

11 Q Now, did you get a call on November 6th, 2006,  
12 regarding possibly finding some of your stuff?

13 A I can't remember the exact date, but yeah. About  
14 that time, yeah.

15 Q And were you the only one working in the store that  
16 day

17 A Yes.

18 Q And what happened?

19 A I received a call from -- it was obviously one Metro  
20 officer or detective on the phone who had asked me -- you  
21 know, I can't remember the exact details of the conversation,  
22 but if it was Desert Rocks Sports and that we were backpack  
23 and hiking relating, and that I think probably if we'd been  
24 victim of a burglary, and if we were missing items. And then,  
25 I remember him asking me to explain some of the items that

1 were taken, and I explained sleeping bags and socks and  
2 headlamps. And at that point, they were like okay, this seems  
3 like it's most likely your stuff.

4 Q Did they ask you to come down to view it to see if  
5 it was yours?

6 A They asked me if I could come down, and I was unable  
7 because I was the only person at the store.

8 Q All right. So did detectives bring the stuff to  
9 you?

10 A Yes.

11 Q All right. Now the pictures I'm being shown [sic],  
12 do you recognize the items in it but not necessarily the  
13 background?

14 A Definitely the items that are the sleeping bags and  
15 in the sleeping bag I recognize. But I don't recognize the  
16 background at all. No.

17 Q Okay. And with regard to the socks, you recognize  
18 the socks but not necessarily where they are located?

19 A Yeah. I don't -- no.

20 Q But do these all fairly and accurately depict the  
21 way these items looked when you -- they were brought to your  
22 store on November 6th, 2006 by detectives?

23 A Yes.

24 Q And when they brought these items to your store, did  
25 you -- were you able to identify them as yours?

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1 A Pretty much immediately. Yeah.

2 Q All right.

3 MS. DIGIACOMO: I'd move for admission of State's  
4 Proposed Exhibits 4 through 8.

5 THE COURT: Any objection?

6 MS. TRAMEL: No, Your Honor.

7 THE COURT: Be admitted.

8 [State's Exhibits 4 through 8 Admitted]

9 MS. DIGIACOMO: Thank you.

10 BY MS. DIGIACOMO:

11 Q I'm showing you State's Exhibit Number 4. Can you  
12 see what's depicted there?

13 A Yes.

14 Q Well, actually, let me change that. This shows it  
15 better. State's Exhibit Number 5. Does that show the items  
16 that generally -- besides the socks that the detectives  
17 brought back to you?

18 A Yes.

19 Q And these sleeping bags, how many did you get back?

20 A I believe only those four are the ones that actually  
21 came back to us.

22 Q And what are the approximate value of these? I mean  
23 how much do you sell one of these sleeping bags for?

24 A The sleeping bags in that picture range in price  
25 from \$250-350 each.

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1 Q And what about like all the headlamps and all the  
2 other gear that's in here?

3 A I would -- you know, it would be -- without, you  
4 know, being able to count them individually in that photo, I  
5 would probably say there's several hundred dollars between the  
6 lanterns, the headlamps, and the water purification items at  
7 retail value wise.

8 Q And with regard to the socks -- I've got State's  
9 Exhibit 7 here. You said that there was a brand that was  
10 specific to you?

11 A The ones that actually have the gizmo tags on it,  
12 yeah.

13 Q And with regard to -- how -- well, how much does a  
14 Gizmo sock go for?

15 A \$8-10 each.

16 Q How many do you think you got returned? Do you  
17 know?

18 A You know, I can't remember without looking at that  
19 list. I know between the Teko socks and the Gizmo socks, I  
20 think we were upwards of 30, 40, 50 pair. I can't remember.

21 Q All right. And State's Exhibit Number 8, what's  
22 depicted in here?

23 A It looks like there are still a few pair of Gizmo  
24 socks, looks like some hiking liner socks. And definitely,  
25 the Teko socks are the majority of the items in that picture.

1 Q Now did you give anyone permission to take your  
2 items from the store that day?

3 A No.

4 Q Did you give anyone permission to have your items,  
5 these camping items, on November 6th, 2006?

6 A No.

7 MS. DIGIACOMO: Pass the witness.

8 THE COURT: Questions?

9 CROSS-EXAMINATION

10 BY MS. TRAMEL:

11 Q Mr. Graves, do you sell those Gizmo socks -- socks  
12 at the store?

13 A Yes. Yes, we do.

14 [Counsel Confer]

15 BY MS. TRAMEL:

16 Q Are they decent sellers? Do you sell a lot of them?

17 A I think it's all relative. I think we do okay with  
18 them. It's not one of our best sellers in the store, but --

19 Q Okay. And are these the socks that you said you  
20 were exclusive retailer for the in the Las Vegas area?

21 A Not Gizmo, no.

22 Q Not Gizmo. Okay. And you testified that the  
23 sleeping bags and the socks had to come from your store; is  
24 that correct?

25 A Yes. The socks, more specifically Teko socks, would

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1 definitely --

2 Q The Teko socks. Okay.

3 A -- have been from the store.

4 Q And is it the Teko socks that you're the exclusive  
5 retailer for?

6 A Yes.

7 Q Okay. And that's only in the Las Vegas area,  
8 correct?

9 A Yes.

10 Q Other cities and other states sell those, correct?

11 A [No Verbal Response]

12 Q Okay. So is it your testimony that you can only  
13 positively identify as your items as the sleeping bags and  
14 those Teko socks; is that correct?

15 A That would be for 100 -- yeah. I would 100 percent  
16 confident the sleeping bags and Teko socks would have come  
17 from our store, yes.

18 Q Okay. But the rest you're not 100 percent it was  
19 actually your property?

20 A I mean rest it would be possible, but I mean it's  
21 consistent with what was taken from our store.

22 Q Okay. And so, was it two sleeping bags you could  
23 positively identify as yours?

24 A Actually, all four of them.

25 Q Four.

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1 A Yeah.

2 Q Okay. And you said the value of each ones of those  
3 was \$2-350 each?

4 A Correct.

5 Q Okay. And is that retail? Is that what you bought  
6 them -- is that what somebody could buy them for?

7 A That's retail value.

8 Q Okay. How much would used ones be worth then?

9 A I'm sorry? Used ones?

10 Q Used sleeping bags. What would be --

11 A I'm not even quite certain what a used value would  
12 even be.

13 Q And you don't know how took that property; is that  
14 correct?

15 MS. TRAMEL: Court's indulgence.

16 [Counsel Confer]

17 BY MS. TRAMEL:

18 Q And really quickly, Mr. Graves, back to the sleeping  
19 bags, you said it was \$200-350 each. Is that the normal  
20 selling price? What I'm asking is do those ever go on sale?  
21 Are they ever sold for less than that?

22 A We don't many sales at the store, but that's MSRP,  
23 so the manufacturer's suggested retail price. So that's  
24 dictated to us.

25 Q All right. That's all I have. Thank you very much.

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1 THE COURT: Anything, Ms. Digiacomo?

2 MS. DIGIACOMO: No.

3 THE COURT: Okay. Thank you, Mr. Graves. Appreciate  
4 your time. You're excused. Call your next witness.

5 MS. DIGIACOMO: Kay Friedrichs.

6 THE COURT: Can you spell the last name for me?

7 MS. DIGIACOMO: F-r-i-e-d-r-i-c-h-s. And it's going to  
8 be Count 5 or 6.

9 MR. HART: What is it?

10 MS. DIGIACOMO: Six.

11 MR. HART: I thought it was a girl.

12 THE COURT: Just so you can plan, ladies and gentlemen,  
13 this is one of the nights that the lawyers have some family  
14 event. They have to leave about 4:45. We usually go to about  
15 5:20 or so, give or take 15 minutes. But we're going to  
16 respect that and go at 4:45. But we're doing fine in terms of  
17 time. We'll end up with 18, 19 witnesses today, so that's  
18 pretty good. And stand, raise your right hand, please.

19 KAY FRIEDRICHS, STATE'S WITNESS, SWORN

20 THE COURT: Ma'am, state your name and spell your name  
21 for the court reporter, please.

22 THE WITNESS: My name is Kay Friedrichs, K-a-y-F-r-i-e-d-  
23 r-i-c-h-s.

24 THE COURT: Okay. Go ahead.

25 MS. DIGIACOMO: Thank you.

## DIRECT EXAMINATION

BY MS. DIGIACOMO:

Q How are you employed?

A I'm employed by See's Candies Incorporated.

Q And do you own a store? Do you manage a store?

A I'm a manager.

Q Okay. And what location do you manage?

A We're at 10300 West Charleston #27, in Las Vegas.

Q Charleston, and what would be the cross street?

A Town Center and Hualapai.

Q All right. Now directing your attention to June 15th of last year -- or excuse me -- 2006, did something happen in your store?

A Yes. We were burglarized or robbed.

Q All right. Now what happened? How did you find out?

A I closed the night before. When I left, everything was in order. I came in the next morning to open up and noticed that it was a lot of candy was missing, and our back door was broken into, and our alarm was askew at our back door.

Q How was your alarm askew?

A It's a panic button or panic lock, where we push the button to go out. Without turning it off, the alarm goes off. That was hanging off the door. It had been pried off the

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1 door.

2 Q Okay. And did you notice -- you said there was  
3 candy missing. How did you know what was missing from your  
4 store?

5 A Well, we had taken inventory the day before, and we  
6 know what was -- pretty much what we had in our store. And  
7 because I closed the night before, I had stocked. So I knew  
8 what was on the shelves and what was in the back room.

9 Q What was taken?

10 A There was five-pound boxes of assorted. There was  
11 three-pound boxes of assorted. There was a case of lollipops.  
12 There was a case of one-pound assorteds. There was 24 to a  
13 case. There was some bulk candy, which is what we use to hand  
14 pack, numerous things like that.

15 Q Was there anything unusual about what was taken?

16 A Yes, I thought there was, because we stock our cases  
17 in the back by first in first out, and the cases were moved so  
18 that the freshest candy was -- well, I should say the longest  
19 pull dates candy was taken and not the shortest pull dates.

20 Q So is it fair to say that instead of taking the  
21 stuff on top, they went underneath and took --

22 A Yes.

23 Q -- the fresher stuff?

24 A Yes.

25 Q Okay. Was there anything else missing from your

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1 store?

2 A There was some tip money that we had accumulated,  
3 approximately \$100 that was in a drawer that was buried under  
4 some signs and stuff like that. The money was taken out. The  
5 zip bag was put back in place, and the drawer was not askew or  
6 anything. Everything was in order in that drawer.

7 Q All right. Now did you give anyone permission to be  
8 in your store or to take the candy or the tip money?

9 A No.

10 Q Now what -- can you describe like what the candy  
11 would look like, what the boxes would look like or --

12 A The five-pounds and three-pounds at that time,  
13 because it was right around Father's Day, was wrapped in blue,  
14 either a dark blue or a light blue. The gold fancies that  
15 were taken are gold boxes. They were wrapped in a clear  
16 cellophane. Some of the boxes we had packed ourselves, and we  
17 had an NV5, which is our store number stamp, on the back of  
18 it. Unless you knew what you were looking for, you wouldn't  
19 know where that was.

20 Q Okay. And then like the lollipops, where were those  
21 kept in the store?

22 A Those were kept in the front under the bulk case  
23 where we hand pack our candy. And they're a box of 250  
24 lollipops. The tops are cut open, and the plastic bag that  
25 they come in is folded over the edge of the boxes.

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1 MS. DIGIACOMO: Court's indulgence.

2 [Counsel Confer]

3 BY MS. DIGIACOMO:

4 Q I'm going to show you what's been marked for  
5 identification as State's Proposed Exhibit 48. Do you  
6 recognize what's sitting on that table?

7 A Yes. That's our candy.

8 Q Okay. How do you know that's your candy?

9 A Because this is what the -- this is the See's  
10 patented trademark, the boxes are. This is the blue wrap that  
11 our candy comes in. And these are the gold seals that See's  
12 trademark also.

13 Q Okay. Now in this picture, there's some blue --

14 A Those are two pounds. I don't know if they're  
15 assorted or what they are, because all the two-pound boxes are  
16 the same. The retail value is the same on all two-pound boxes  
17 that are in the white boxes.

18 Q So how much is the retail value of a white -- excuse  
19 me -- a blue two-pound chocolate box?

20 A At that time, I believe it was \$28.

21 Q Okay. All right. And then, there's all these ones  
22 in gold.

23 A Yes. The gold at the bottom -- the two of them --  
24 the three of them at that bottom are \$67 a box. Okay. The  
25 two-pound ones are \$37, and there's three of them. And this

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1 one is \$20.

2 Q The little one on --

3 A Yes.

4 Q -- on top is \$20?

5 A Uh-huh.

6 Q Okay. And I'm going to show you State's Proposed  
7 Exhibit Number 49. Do you see what's at the top of the closet  
8 there?

9 A Yes.

10 Q Okay. What are those?

11 A This is a five-pound box and a three-pound box.  
12 This was the Father's Day wrap that we wrapped in.

13 Q In the dark blue?

14 A In the dark blue. And this is our three-pound that  
15 wrapped in the light blue.

16 Q Well, how much is the five-pound worth?

17 A The five-pound, you figure at 19- -- well, now it's  
18 \$19 a pound. Then I believe it was 8. No. Now it's \$15 a  
19 pound. But it was 14.50 at that time, so you multiply that  
20 times five. So every --

21 Q So 14.50 --

22 A Yes.

23 Q -- times five pounds?

24 A Uh-huh.

25 Q Okay. And then the light blue one, how much --

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1 A It would be the same, it'd be 14.50 times three.

2 Q Okay. And then is there anything -- I'm going to  
3 show you State's Proposed Exhibit Number 50. Is there  
4 anything in this photo that we haven't discussed the value of?

5 A The lollipops, the boxes of lollipops, those are  
6 about \$13 a box. Okay.

7 Q What about this one that's -- I'll show you in  
8 State's Exhibit Number 51. You can see it better.

9 A The strip is a sleeve that goes on for Father's Day.  
10 That was a decoration.

11 Q Okay. So the one that's light blue with the blue --  
12 the dark blue sleeve?

13 A It's just a sleeve. It slips on for Father's Day.  
14 And that's -- it looks like a three-pound box to me.

15 Q And then what's in this cardboard box?

16 A This is box of assorted that I was telling you about  
17 that was taken. Okay. If the box had turned around, across  
18 the back there is this -- what it is on the back of the box,  
19 what it is and how many there is in the case lot.

20 Q And that's the big cardboard box underneath the box  
21 of --

22 A Yes.

23 Q -- lollipops?

24 A And that holds 24 one-pounders.

25 Q And how much is that value of that?

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1 A Well, at \$14 a pound times 24.

2 Q Okay.

3 MS. DIGIACOMO: Nothing further.

4 THE COURT: Any questions?

5 CROSS-EXAMINATION

6 BY MR. HART:

7 Q You're not the only place selling See's Candy in  
8 town.

9 THE COURT: I didn't get this. I'm trying to keep track  
10 of the exhibits also. Is 48 and 49 come in, Tina?

11 THE CLERK: No. I have not move. The next witness is  
12 the one I'm going to move it with.

13 THE COURT: Okay.

14 [Counsel Confer]

15 THE COURT: They're not in.

16 THE CLERK: They're not.

17 BY MR. HART:

18 Q Is it safe to say you're not the only place selling  
19 See's Candy in town?

20 A Only a See's store can sell See's Candy, or a See's  
21 licensee.

22 Q How many See's stores and licensees?

23 A I believe there's one at the airport. It's the only  
24 licensee in Las Vegas, and then we have four stores in Las  
25 Vegas.

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1 Q Okay. And when this is all said and done and this  
2 is returned to do, what did you do with it?

3 A We destroyed it.

4 Q Do you know what you guys pay for the candy?

5 A I have no idea. It's manufactured by us, by See's  
6 factories in Los Angeles and San Francisco.

7 Q You don't know what the stores pay?

8 A I'm sorry?

9 Q You don't know what the stores pay for the candy?

10 A We're owned by the company.

11 Q Okay.

12 A Okay.

13 Q Father's Day, Easter, do you guys do sales around  
14 that time?

15 A Oh, yes, a lot of sales.

16 Q So these would be sometimes marked down for 14 --

17 A No. Our candy is never marked down, only our  
18 novelty things that -- like our Easter bunnies and things like  
19 that. Everything else is never marked down.

20 Q Thank you very much.

21 A Uh-huh.

22 THE COURT: Anything else?

23 MS. DIGIACOMO: No.

24 THE COURT: Thank you. Appreciate it, Ms. Friedrichs.

25 THE WITNESS: Thank you. Uh-huh.

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1 THE COURT: You're excused. Call your next witness.  
2 MS. DIGIACOMO: Christine Carter.  
3 THE COURT: Relate to a count?  
4 MS. DIGIACOMO: Yes, the same count.  
5 [Pause]  
6 THE COURT: Come on up here, ma'am.  
7 CHRISTINE CARTER, STATE'S WITNESS, SWORN  
8 THE COURT: Ms. Carter, state your name and spell your  
9 name for the court recorder.  
10 THE WITNESS: My name is Christine Carter,  
11 C-h-r-i-s-t-i-n-e C-a-r-t-e-r.  
12 THE COURT: Go ahead.  
13 DIRECT EXAMINATION  
14 BY MS. DIGIACOMO:  
15 Q How are you employed?  
16 A Yes, I am.  
17 Q I'm sorry?  
18 THE COURT: She thought you said are you employed.  
19 MS. DIGIACOMO: Oh.  
20 THE COURT: And she said yes, she is.  
21 MS. DIGIACOMO: I can't hear..  
22 BY MS. DIGIACOMO:  
23 Q And where are you employed?  
24 A See's Candies.  
25 Q What do you do for See's?

1 A I'm the assistant manager.

2 Q Did you work there on June 15, 2006, or back in  
3 June?

4 A Yes, I did.

5 Q And are you aware of a burglary that occurred in the  
6 store?

7 A Yes, I am.

8 Q Were you working that day?

9 A No. The was my first day of vacation.

10 Q On June --

11 A 15th.

12 Q -- 15th?

13 A Uh-huh.

14 Q Now on November 6th, 2006, did a call come into the  
15 See's Candy Store from detectives?

16 A Yes.

17 Q And based on that, what happened? What did you do?

18 A Basically, I was asked to come to a house and pick  
19 up candy that they believed that was in a burglary.

20 Q All right. Your -- when you -- when the burglary  
21 occurred at See's, a report was filed with Metro?

22 A Yes.

23 Q All right. I'm going to show you what's marked as  
24 State's Proposed Exhibits 48 through 52. If you could look at  
25 those and let me know if you recognize what's depicted in the

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1 photographs.

2 A Yes. This is the candy that I took back to my  
3 store.

4 Q So does State's Proposed Exhibits 48 through 52  
5 fairly and accurately depict the candy that you went to the  
6 house and picked up and took back to the store?

7 A Yes, ma'am.

8 MS. DIGIACOMO: Your Honor, I'd move for admission of  
9 State's Proposed Exhibits 48 through --

10 THE COURT: Objection?

11 MR. HART: No objection.

12 THE COURT: Admitted.

13 [State's Exhibits 48 through 52 Admitted]

14 MS. DIGIACOMO: Thank you.

15 BY MS. DIGIACOMO:

16 Q Now, showing you State's 48. What's on this table?

17 A Those --

18 Q You can mark on the screen too with the pen.

19 A Those are one-pound, two-pound gold fancies, gift of  
20 elegance, which are our four-pound boxes.

21 Q And that would be these, the gold ones?

22 A Yes, ma'am. And then, the other ones look like  
23 two-pound boxes of chocolates. I can't tell from the picture  
24 what they were exactly, but they're two pounds of candy.

25 Q All right. Does the price differ for two-pound

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1 candy?

2 A Yes, they do.

3 Q Okay. What would it be, more or less?

4 A Right now, the two-pound box of candy goes for \$30,  
5 where the two-pound gift of -- the two-pound gold fancy is --  
6 I think it's like \$39 right now.

7 Q Okay. Now I'm showing you State's Exhibit Number  
8 49. Do you recognize what's at the top of the closet?

9 A Yes. That's part of our candy too that I --

10 Q And do you know what size or what those were?

11 A I believe that's a five-pound box of candy, which is  
12 about \$75 right now.

13 Q Is that the blue or the little -- or the light blue  
14 one? The dark blue or the light blue one?

15 A The blue one that's standing up.

16 Q There's two. There's a dark blue and a light blue.

17 A The dark blue is a five-pounder, and the other one  
18 is a three-pounder.

19 Q Okay. And then showing you State's Exhibit Number  
20 52, what's depicted there?

21 A That was the candy that I and an officer hauled out  
22 of the house and put it out on the sidewalk, and they  
23 photographed me.

24 Q All right. And then, State's Exhibit Number 50, is  
25 that just a -- oops, I'm sorry, 51. Is that just a close-up

1 of the items that were released to you at the house that day?

2 A Yes, it is.

3 Q Now how did you know -- how could you tell whether  
4 or not that these actually came from your store?

5 A The dark blue boxes, which are the five-pound boxes  
6 there, are the boxes that I had wrapped a couple days before  
7 that. If we don't have certain candies in our -- in stock, we  
8 have to break down other candies and shift them into boxes --  
9 empty boxes we have. When we do that, we mark the bottom of  
10 the boxes, so that they know it is our store that had hand  
11 packed those, and we date them, because we don't use  
12 preservatives. So once they're out of date, we have to  
13 usually destroy them or send them back.

14 Q So you were able to recognize your own wrapping and  
15 your --

16 A Yes, ma'am.

17 Q -- own handwriting?

18 A Yes, ma'am.

19 Q And did everything that you recover fall in line  
20 with what was stolen from the store as you could tell?

21 A Yes. Yes.

22 MS. DIGIACOMO: Nothing further.

23 THE COURT: Questions?  
24  
25

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## CROSS-EXAMINATION

BY MR. HART:

Q You weren't there when the items were taken,  
correct?

A No, sir.

Q So you have no personal knowledge as to what was  
stolen from the store?

A No.

MR. HART: Nothing further.

THE COURT: Thanks, Ms. Carter. You're excused. Have a  
nice day. Call your next witness.

MS. DIGIACOMO: Estrella Delacruz.

THE COURT: And this relates to count?

MS. DIGIACOMO: Spa Depot, which is Count 4 or 5?

MR. HART: 6.

MS. DIGIACOMO: No. This was 6.

MR. HART: No. That was -- you're right, 5.

MS. DIGIACOMO: 5. It's 5.

THE COURT: Come on up here, Ms. Delacruz.

ESTRELLA DELACRUZ, STATE'S WITNESS, SWORN

THE COURT: Ma'am, will you state your name and spell  
your name for the court recorder.

THE WITNESS: Estrella Delacruz, E-s-t-r-e-l-l-a-D-e-l-a-  
c-r-u-z.

THE COURT: Go ahead, Ms. Digiacomo.

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1 MS. DIGIACOMO: Thank you.

2 DIRECT EXAMINATION

3 BY MS. DIGIACOMO:

4 Q Directing your attention to June 26th, 2006, where  
5 were you employed?

6 A Spa Depot.

7 Q And what is Spa Depot?

8 A It's a spa retailer that sells accessories, and  
9 spas, and barbecues.

10 Q And where is it located?

11 A 9350 West Tropicana Avenue.

12 Q Tropicana and what cross street?

13 A It's 215 and West Tropicana.

14 Q Okay. When you got to work on June 26th, 2006, did  
15 something catch your attention?

16 A I walk in there, and the shelves that I had stocked  
17 that Saturday was barren. They were all empty, and I had just  
18 restocked it. They couldn't have sold all of the stuff that I  
19 had on the shelf.

20 Q Is the Spa Depot, your store, open seven days a  
21 week?

22 A It's open seven days a week. Yes.

23 Q And you said you had stocked it? What's your title  
24 or what's your position?

25 A I'm the office manager.

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1 Q And so, you worked on Saturday and stocked  
2 everything?

3 A I worked on Saturday, half-day, yes.

4 Q And what specifically did you stock?

5 A The chemicals, the different spa chemicals that we  
6 need, like filter cleaners and chlorine, and all that stuff.

7 Q And where do you put them? Do they go on shelves?

8 A They're on shelves in the middle of the -- I mean in  
9 the back way. I mean when you first come in, the back part of.  
10 the store.

11 Q All right. Now the store would be open on Sunday,  
12 but you're not there?

13 A I'm not there.

14 Q Okay. And then come in Monday morning, and you  
15 discover -- you said the spa chemicals are missing.

16 A Chemicals are missing. And I look to my right where  
17 the roll up door is. It was partly open too. So I called the  
18 cop, because I didn't know what was going on in there. And  
19 they told me to check the bathrooms. I said no, I don't want  
20 to go in there. So I walked out and got in my car.

21 Q Okay. And did the police respond?

22 A The police said it's okay, wait in your car.

23 Q Were you the only one that was at work at that time?

24 A I was the only one. I open the store up in the  
25 morning.

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1 Q When the police arrived, did you walk through the  
2 store with them?

3 A Yes.

4 Q And did you discover what all was missing?

5 A Yes.

6 Q What was missing?

7 A There was a bunch of chemicals. And we had three  
8 barbecue islands, and all the barbecues were gone and the side  
9 burners. There was some cash that was in the cash register.  
10 Those were gone too.

11 Q Now when you caught -- came to work that day, how do  
12 you get into the business?

13 A I use the key.

14 Q Okay. So you have a key and front door. What does  
15 that front door look like?

16 A It's two glass doors, and you key one side and it  
17 opens.

18 Q All right. And if you were on the inside, do you  
19 need a key?

20 A You need to hold the -- I mean you need to lever --  
21 turn the lever.

22 Q Okay. It's like a little lock that you turn?

23 A Right.

24 Q You don't need a key?

25 A No.

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1 Q And when you got there it was locked?

2 A It was locked. Yes.

3 Q Okay. And were there any signs of forced entry?

4 A No. It -- that's what surprised me, because I  
5 couldn't figure out how they could have gotten through the  
6 roll up doors.

7 Q Okay. And you had these items missing. You made a  
8 police report?

9 A Yes.

10 Q Now did you ever get any of these items back?

11 A We got the chemicals back.

12 Q How did that come about?

13 A The delivery guy that delivers spas for us was at  
14 the residence.

15 Q Do you know his name?

16 A Bryan Kratz [phonetic]. And he says hey, your  
17 chemicals are here. And so, he says the cop is going to call  
18 you. So then, an investigator called me and he says come  
19 identify these items. So I did go to the residence, and --

20 Q And that was at -- basically, I think it was -- was  
21 it Charleston area? Cimmaron?

22 A Somewhere in there. Right.

23 Q Okay. Do you remember the street name?

24 A I don't recall the street name.

25 Q Was it a house on -- well, was a lot of --

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1 MR. HART: Objection, leading.

2 BY MS. DIGIACOMO:

3 Q -- detectives around?

4 A Yes. There was tons of detectives in there.

5 Q Okay. Now when you got there, did -- how did you go  
6 around? Or did you look through the house?

7 A Well, the cops told me to -- first of all, he says  
8 go identify the barbecue grill in the back, see if that's  
9 yours. And it wasn't ours, because it was just the grill  
10 itself is what they took, and it was an island -- I mean it  
11 was an island barbecue that was in the back. And then he says  
12 go to the garage, and that's when I went to all the garage.  
13 And all our chemicals were there.

14 Q Now how did you know that they were your chemicals?

15 A The chemicals are custom labeled to our name. It's  
16 Elite Spas.

17 Q No one else carries your label?

18 A No one else carries those chemicals.

19 Q All right. I'm going to show you what's marked for  
20 identification as State's Proposed Exhibits 41 through 47. If  
21 you could just flip through those quickly and let me know if  
22 you recognize what's depicted in those photographs.

23 A A bunch of chemicals in here, in this cabinet. It's  
24 more chemicals in that cabinet there. More chemicals. This  
25 is the chemicals that were -- we had counted and boxed, and

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1 the officer told me I can take them back.

2 Q That was 49?

3 A Yes. And the same one.

4 Q I'm sorry. That wasn't 49. It was --

5 A That's 44.

6 Q -- 44.

7 A The same. This is the boxes of chemicals that we  
8 had counted, and I -- they told me I could take it back.

9 Q So 44 and 45 were also boxes?

10 A Right.

11 Q And what's 47?

12 A And this is my truck where we loaded all the  
13 chemicals.

14 Q And you -- did you actually sign a release for  
15 these?

16 A Yes. Yes, I did.

17 Q And so, do these fairly and accurately depict the  
18 way the house looked and your chemicals looked when you got  
19 there and got them released to you in --

20 A Yeah.

21 Q -- November?

22 MS. DIGIACOMO: Your Honor, I'd move for admission of  
23 State's Proposed Exhibits 41 through 47.

24 THE COURT: Objection?

25 MS. TRAMEL: No, Your Honor.

1 THE COURT: Admitted.

2 [State's Exhibits 41 through 47 Admitted]

3 MS. DIGIACOMO: Thank you.

4 BY MS. DIGIACOMO:

5 Q Now this is State's Exhibit Number 41. If you could  
6 point out to the jury, and use that screen to write, which are  
7 your chemicals?

8 A Right here.

9 Q So are they the ones with the yellow and/or pink and  
10 blue?

11 A Yeah. They're yellow and blue, and pink and blue,  
12 and some of them are just white also.

13 Q Okay. And I'm showing you State's Exhibit Number  
14 42. Where in this picture did you see your chemicals?

15 A They're right here.

16 Q Okay. In the cabinet?

17 A Uh-huh.

18 Q And then State's Exhibit Number 43.

19 A More chemicals up here.

20 Q And all the pink and blue --

21 A The pink and blue, right.

22 Q -- and orange and blue? Okay. And then State's  
23 Exhibit 44, these are the ones you boxed up?

24 A We boxed up the chemicals.

25 Q State's Exhibit Number 45 have these kind of big

1       tubs. Were these yours as well?

2           A     They were -- yeah. Those are labeled Elite Spas  
3       also.

4           Q     And then, 47, is that you in front of your truck?

5           A     Yes.

6           Q     Now did you give anyone permission to have these  
7       items between the time you were burglarized until November of  
8       2006?

9           A     No.

10          Q     And the spa chemicals that were returned to you,  
11       what was the approximate value of all of them that were  
12       returned to you?

13          A     About \$2600.

14          Q     \$2600?

15          A     Uh-huh.

16       MS. DIGIACOMO: Nothing further.

17       THE COURT: Cross.

18       [Counsel Confer]

19                               CROSS-EXAMINATION

20       BY MS. TRAMEL:

21          Q     Ms. Delacruz, is the Spa Depot the only place that  
22       sells the Elite Spa chemicals?

23          A     Yes.

24          Q     Is that in Las Vegas or are they sold in other  
25       cities and states?

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1 A They're sold in other cities too. Yeah.

2 Q And these particular chemicals, they didn't have  
3 serial numbers on them; is that correct?

4 A No.

5 Q And these are chemicals that you sell regularly --

6 A Right.

7 Q -- in your business, correct? You sell a lot of  
8 them every day?

9 A Yes.

10 MS. TRAMEL: That's all I have. Thank you.

11 THE COURT: Anything else?

12 MS. DIGIACOMO: I do.

13 REDIRECT EXAMINATION.

14 BY MS. DIGIACOMO:

15 Q These chemicals, they're bottled, they're your  
16 brand?

17 A They're our brand. Yes.

18 Q And how many stores do you have?

19 A We have dealers all over the country that carry  
20 these -- they carry the labeled chemicals too, the Elite Spas.

21 Q But how many other stores in the Las Vegas area?

22 A We have just one store?

23 Q That's it?

24 A Uh-huh.

25 Q And you were -- the one store was burglarized?

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1 A Right.

2 MS. DIGIACOMO: Nothing further.

3 THE COURT: Thanks, Ms. Delacruz. You're excused. Have  
4 a nice day. Call your next witness.

5 MS. DIGIACOMO: Brittany Petersen.

6 THE COURT: And this relates to count? Come on up,  
7 Ms. Peterson. Does this relate to a specific count?

8 MS. DIGIACOMO: Yes, it does, Count 6.

9 THE COURT: Count 6, the candies?

10 MS. DIGIACOMO: Oh, sorry.

11 MR. HART: No.

12 THE COURT: Count 7.

13 MR. HART: Mountain Well Springs.

14 MS. DIGIACOMO: Yeah. Mountain Spring Wellness.

15 BRITTANY PETERSEN, STATE'S WITNESS, SWORN

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

18 THE WITNESS: Brittany Petersen, B-r-i-t-t-a-n-y,  
19 Petersen, P-e-t-e-r-s-e-n.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION

22 BY MS. DIGIACOMO:

23 Q Now where do you work?

24 A Mountain Springs Wellness.

25 Q And how long have you worked there?

1 A Since it was opened in June 2006.

2 Q When you opened the store in June 2006, who's the  
3 owner?

4 A Todd Waldren.

5 Q And are you related to him?

6 A Yes.

7 Q What's your relation?

8 A He's my father.

9 Q Okay. And so, did you open this store back in June  
10 2006 for the spa?

11 A Yes.

12 Q And did something happen right after you opened?

13 A Our office was broken into, and numerous items were  
14 stolen.

15 Q Now do you recall what was stolen?

16 A A hyperbaric oxygen chamber and the equipment that  
17 goes along with it, oxygen compressor, massage chair, 3-D flat  
18 screens, and two laptops.

19 Q The hyperbaric chamber, what do you use that for?

20 A It speeds healing. And the main thing we use it for  
21 is for children with autism.

22 Q And now, you said you had to have an oxygen tank and  
23 a compressor to go with it?

24 A Yes.

25 Q When the items are -- when the burglary occurred,

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1 did you actually see it? Were you there when it was  
2 discovered?

3 A Yes.

4 Q And who else was there with you?

5 A My father, Todd Waldren.

6 Q Did you call the police?

7 A He called the police.

8 Q He did, and made a report. Were you present?

9 A Yes.

10 Q Eventually, did your Mountain Springs Wellness get a  
11 call from detectives?

12 A Yes, in November.

13 Q November 2006?

14 A Yes.

15 Q And what happened with that call?

16 A They said that they had retrieved our hyperbaric  
17 oxygen chamber. They knew because of the serial numbers we  
18 had given them. And they said that we could come make sure it  
19 was ours and pick it up.

20 Q Do you remember where you picked it up from?

21 A I picked it up from a storage unit on Smoke Ranch, I  
22 believe.

23 Q When you arrived, how long did you get there after  
24 you got that call?

25 A Right away. I left immediately.

1 Q And when you got there, did you look and see if it  
2 really and, in fact, was your hyperbaric chamber?

3 A Yes.

4 Q I'm going to show you what's been marked for  
5 identification State's Proposed Exhibits 62 through 67. If  
6 you could just flip through those and let me know if you  
7 recognize what's depicted there. Just flip through all of  
8 them.

9 A Yes.

10 Q Do you recognize them?

11 A [No Verbal Response]

12 Q And what are these pictures of?

13 A It's hyperbaric chambers and all the elements that  
14 go with it, the compressor and the H- -- all the different  
15 elements that -- along with --

16 Q The oxygen?

17 A Uh-huh.

18 Q Okay. And do these fairly and accurately depict the  
19 way that the hyperbaric chamber and the components looked  
20 after you received them back from the police in November 2002  
21 -- 6?

22 A They've been cleaned up since then. They were in a  
23 storage unit, so they were kind of dirty and --

24 Q So other than cleaning the units?

25 A Uh-huh. It looks the same.

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1 Q All right.

2 MS. DIGIACOMO: Your Honor, I'd move for admission of  
3 State's Proposed Exhibits 62 through 67.

4 THE COURT: Objection?

5 MR. HART: No objection, Your Honor.

6 THE COURT: Admitted.

7 [State's Exhibits 62 through 67 Admitted]

8 BY MS. DIGIACOMO:

9 Q All right. Now after the burglary, did you replace  
10 the hyperbaric chamber?

11 A No.

12 Q And you -- when you got it back, you said it was  
13 dirty. Were you still able to use it?

14 A Yes.

15 Q And so, you got all the components back with it?

16 A Yes.

17 Q Now I'm going to show you State's Exhibits Number  
18 62. Do you see that on your screen?

19 A Yes.

20 Q Okay. What are we looking at here?

21 A This is the actual hyperbaric chamber.

22 Q And how would you get into it?

23 A You can kind of see where the zipper is on the back  
24 end. And you climb in and you just lay in it. You kind of  
25 climb in it like a sleeping bag or a tent, and it expands when

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1 the oxygen is going through.

2 Q And then, there's a tubing that comes off this front  
3 end. Does -- where does that lead to?

4 A That leads to the back. That's where the oxygen  
5 comes in.

6 Q All right. Now I'm showing you State's Exhibit  
7 Number 64. What's this?

8 A That's the compressor.

9 Q And what -- there's a lot -- there's tubing as well  
10 there. What does that go to?

11 A That -- it can -- it goes to where you just saw on  
12 the other front of the chamber.

13 Q It goes to where we -- so it goes right here --

14 A Uh-huh.

15 Q -- in 62?

16 A Yes.

17 Q Okay.

18 A Part of it goes there, and part of it goes onto the  
19 H- -- the oxygen compressor piece.

20 Q And then showing you State's Exhibit Number 66.  
21 What is this?

22 A That's the oxygen compressor.

23 Q And you said that you also had a massage chair  
24 taken?

25 A Yes.

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1 Q Do you recall what that massage chair looked like?

2 A It's brown, and it has a piece where the -- it pops  
3 out where the legs can -- your legs can rest. And it's  
4 leather. I don't know how much more to explain it.

5 Q Did you ever see photographs and believe that you  
6 had -- it was your massage chair in the photograph?

7 A Yes.

8 Q And where was that?

9 A That was at a --

10 Q Was that at court?

11 A Yeah.

12 [Pause]

13 BY MS. DIGIACOMO:

14 Q I'm going to show you State's Proposed Exhibit  
15 Number 57. Do you recognize anything in that photograph?

16 A This brown chair is our's.

17 Q That is yours?

18 A Uh-huh.

19 Q Okay. And does this fairly and accurately depict  
20 the way it looked when it left your establishment?

21 A Yes.

22 MS. DIGIACOMO: Your Honor, I'd move for admission of  
23 State's Proposed Exhibit 57.

24 THE COURT: Objection

25 MR. HART: No objection, Your Honor.

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1 THE COURT: Admitted.

2 [State's Exhibit 57 Admitted]

3 MS. DIGIACOMO: For the record, I'm putting State's  
4 Exhibit 57 on the DOAR equipment.

5 BY MS. DIGIACOMO:

6 Q And if you can point to the jury which chair is  
7 yours.

8 A The brown chair.

9 Q Now did this chair come back to your establishment  
10 as well?

11 A No.

12 Q Okay. Do you know if your father did anything to  
13 determine whether or not it was -- belonged to Mountain  
14 Springs Wellness?

15 MR. HART: Objection, speculation.

16 MS. DIGIACOMO: I said do you know.

17 THE COURT: Well, more foundation.

18 MR. HART: Foundation.

19 THE COURT: She might know by hearsay or she might know  
20 by being there, so more foundation.

21 BY MS. DIGIACOMO:

22 Q Okay. Were you with your father when he identified  
23 the chair?

24 A Yes.

25 Q Okay.

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1 THE COURT: Objection overruled.

2 BY MS. DIGIACOMO:

3 Q At the evidence vault?

4 A At the court. We just saw the picture.

5 Q Okay. Through the photograph.

6 A Yes.

7 Q Okay. Now did you give anyone permission to have  
8 the hyperbaric chamber or the massage chair and the all  
9 components of the hyperbaric chamber, you or your business,  
10 between the time it was taken in June 2006 until November  
11 2006?

12 A No.

13 Q And do you know the approximate value of the  
14 hyperbaric chamber and its components?

15 MR. HART: Objection, foundation.

16 THE COURT: She asked her if she knows. She can say yes  
17 or no. And if she says no, then your objection will be  
18 sustainable. If she says yes, then she's working in the  
19 business. Do you know about what it's worth?

20 THE WITNESS: It's about \$20,000.

21 BY MS. DIGIACOMO:

22 Q And the massage chair?

23 A It was about 2500.

24 Q Now after the burglary, you said you didn't replace  
25 the hyperbaric chamber. Did the massage chair get replaced?

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1 A No.

2 Q Well, where is Mountain Springs Wellness located?

3 A Spring Mountain and Torrey Pines.

4 MS. DIGIACOMO: Pass the witness.

5 THE COURT: Questions?

6 CROSS-EXAMINATION

7 BY MR. HART:

8 Q I have a question. You said the business is owned  
9 by your father?

10 A Yes.

11 Q Is he the one that wrote the checks?

12 A Yes.

13 Q Okay. So you didn't write the checks, so you don't  
14 have personal knowledge of the cost of the hyperbaric chamber.  
15 You didn't buy it, correct?

16 A I did not buy it.

17 MR. HART: I'll reiterate my objection, Your Honor.

18 THE COURT: Overruled. I think -- she's working there in  
19 the business with her father. She has access to this stuff.  
20 I think she knows. Overruled. Okay. Thanks for your  
21 testimony. Appreciate it. You're excused. Another one?

22 MS. DIGIACOMO: Your Honor, the other witnesses that we  
23 have outside, I think they'd be cumulative at this point. So  
24 for today, I think we're done.

25 THE COURT: Cumulative meaning --

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1 MS. DIGIACOMO: That they --

2 THE COURT: -- that whatever they would testify to you've  
3 been able to bring out in a broader fashion from other  
4 witnesses that you didn't expect.

5 MS. DIGIACOMO: That's correct.

6 THE COURT: Okay. Well, that's 18. That's pretty good.

7 MS. DIGIACOMO: I have three more out there though.

8 THE COURT: Three more out there, but -- well, we don't  
9 waste time here. So there's no sense in putting them on just  
10 to say something somebody else has said. Okay. Well, we were  
11 going to quit in about 10 minutes anyway.

12 All right. That was a good long day, but that's  
13 kind of what we expect. So you can see when there's 1000  
14 exhibits and 75 witnesses or something, that we're still  
15 pretty much on track for the time table that I gave you.

16 Please, do not talk about the case. I mean last  
17 night when you went home you didn't really know anything about  
18 the case. Now you do. Please don't talk about it with each  
19 other anyone else. Don't read, watch, or listen to any report  
20 by TV, internet, newspaper, or radio. I understood there was  
21 something on the late night news last night. So, again, just  
22 don't watch the TV news, please. And if you want to read the  
23 paper, have somebody look at it first. And don't form or  
24 express any opinion until the case is submitted to you.

25 9:30 tomorrow. We'll do our best. I got my work to

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1 day, and I got to do Judge Laura's work in the morning. So I  
2 think I'll be pretty close, right at 9:30, but it'll -- I'll  
3 have to be working. So we'll do our best. 9:30 in the  
4 morning. Give yourselves a little extra time, because the  
5 elevators sometimes are a problem in the morning.

6 JUROR: Do we take our notes with us or leave it?

7 THE COURT: You can just leave them right on their [sic]  
8 chair. And what happens is R.J. will pick them up, put them  
9 in order, keep them private, and then he will put them back on  
10 your chair so when you come in tomorrow they'll be sitting  
11 right on your chair.

12 MS., DIGIACOMO: Please leave the badges here --

13 THE COURT: Leave the badges here. When you come in --

14 MS. DIGIACOMO: -- on your clipboard.

15 THE COURT: Yeah, on your clipboard. And that way he'll  
16 know which is which. When you come in, then put on the badge  
17 and wear that when you're in the courthouse, whether you're at  
18 lunch or break, or whatever. Have a good evening.

19 JUROR: You too, Your Honor.

20 THE COURT: Okay.

21 [Jury Out]

22 [Outside the Presence of the Jury Panel]

23 THE COURT: Okay. The record should reflect the jury has  
24 exited. We've got a couple minutes. Let me admonish the  
25 Defendant, so that he can have these rights in mind and talk



1 to his counsel about it.

2 Mr. Monroe, you understand that under the  
3 Constitution of the United States and the Constitution of the  
4 State of Nevada, you cannot be forced to testify by the State.  
5 You understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And, however, if you wish, you and your  
8 counsel, if you make the decision, you can get up here and  
9 testify. But if you do testify, you'll be subject to  
10 cross-examination. And anything you say on direct or cross  
11 can be subject to comment in final argument.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And that's a decision that you and your  
14 counsel make. But ultimately, it's your decision. I mean  
15 they can only advise you. They can advise you one way. You  
16 get the ultimate decision. You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. If you choose not to testify, I  
19 will not allow the prosecution to make any comment about the  
20 fact that you have not testified. In other words, they can't  
21 say look at all this evidence we put on. And what did he do?  
22 He just sat there. They can't do that. They can't even  
23 mention that fact. The burden is all on them. You understand  
24 that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: If you elect not to testify, if your counsel  
2 requests, I will be glad to give an instruction that says you  
3 don't have any obligation to testify. They can't infer  
4 anything from that. And in fact, they're not even allowed to  
5 discuss it. The idea being that if they get that instruction  
6 and somebody starts to say something about that that they're  
7 not supposed to in the jury room, another juror is supposed to  
8 say wait a minute, the judge said we're not allowed to talk  
9 about that. You understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I'm not asking you to make a decision right  
12 now, Mr. Hart, but is that an instruction you generally want  
13 in the packet if --

14 MR. HART: I generally don't include it, but I'll discuss  
15 it with my client on this one.

16 THE COURT: When we settle instructions, you let me know.  
17 All right. And finally, if you have any felony convictions in  
18 less than 10 years that's elapsed from the date you were  
19 convicted, discharged in prison, parole, or probation,  
20 whichever is later, the last time sort of the system had  
21 anything to do with that conviction, then if you do take the  
22 stand, the State can ask you: Have you been convicted of a  
23 felony? What was the felony? And when did it occur? They  
24 can't go into details. Even if you take the stand, they  
25 cannot talk about felony arrests that didn't amount to a

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1 conviction. They cannot talk about gross misdemeanors, or  
2 misdemeanors. Do you understand that?

3 THE DEFENDANT: Yeah. What about the felonies that  
4 happened in '91 that were completed before the 10 years?

5 THE COURT: Okay. The way it works is we're right here  
6 in May 2008. So they can go back to May 1998. On the --

7 MR. HART: Actually --

8 THE COURT: I'm sorry.

9 MR. HART: I believe they can go back from the time this  
10 was filed, correct?

11 THE COURT: No. It's the time you testify.

12 MR. HART: Okay.

13 THE COURT: So, basically, let's say you got convicted in  
14 '91. If you got convicted, you were either on probation, or  
15 you went to prison, or you went to prison and were out on  
16 parole. Somehow, that lasted beyond '91. The question is did  
17 it last beyond '98, because if you were on parole until '99,  
18 then they can bring it up. If you clean that case -- you did  
19 two years and you cleaned it up in '93, then they can't talk  
20 about it.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. So that's kind of the way it  
23 works. Now if you don't take the stand, they can't bring any  
24 of that up.

25 THE DEFENDANT: Okay.

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1 THE COURT: So you'll just have to get together with your  
2 lawyers. They've looked at this. And you'll have to make an  
3 intelligent decision --

4 THE DEFENDANT: The only reason I'm asking is --

5 THE COURT: -- with the time comes. And here's the deal.  
6 Unless you give me the hi sign, I'm going to assume that you  
7 and your lawyers are on the same page. In other words, if I  
8 say, Mr. Hart, do you have a witness and he calls you to the  
9 stand, I'm going to assume that's your decision. If he says  
10 no, we don't have a witness, I'm going to assume that your  
11 decision. So I don't want you to, later, say wait a minute,  
12 that wasn't what I thought. You got to say at that point,  
13 Judge, excuse me, could I talk to my lawyer for a second..  
14 I'll stop -- I'll make sure that it's yours. But if nobody --  
15 you don't give me the hi sign, then whatever Mr. Hart or  
16 Ms. Tramel say, I'm going to assume that's your decision.  
17 Fair?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I did a trial. It's stupid. I did a trial,  
20 oh, about two months ago. We went through all that. The  
21 defense had -- there were two defendants, and one defendant  
22 had some witnesses, and they put on the witnesses. We  
23 instructed the jury. And the State did their first argument,  
24 and the defendant said, Judge, I want to testify. Now, you  
25 know, I don't like that because that's -- you know, that's

1 kind of disruptive to the process.

2 Truth be known -- I'll tell you the law, because I  
3 had to look it up. It's totally discretionary with the Court,  
4 and I said go ahead. I don't give a damn. Just go ahead.  
5 You might as well take -- have your shot. You know what he  
6 said? No, I really don't want to. I just wanted to see if  
7 you were going to give me the chance. So you know, when they  
8 do those things to me, I like to think that I'm at least in  
9 step, maybe a half a step ahead. You know, like when Holmes  
10 don't show up, I kind of figured out what's going on. You  
11 know. Okay.

12 THE DEFENDANT: Thank you, sir.

13 MR. HART: Your Honor, can we ask --

14 THE COURT: You've been advised of your rights. When the  
15 time comes, we'll deal with it.

16 MR. HART: Can we ask about shampoo, toothpaste?

17 THE COURT: Yeah. What's the deal with shampoo and  
18 toothpaste? Can he brush his teeth and get a hair -- get his  
19 hair washed?

20 CORRECTIONS OFFICER: They don't give shampoo. You got  
21 to buy it from the commissary.

22 MR. HART: He owes -- and I would put money on his books  
23 to do it except he owes for the tooth they pulled. So the  
24 first 120 bucks they put on there --

25 THE COURT: I know, but --

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1 THE DEFENDANT: About 100.

2 THE COURT: And I understand when you're sitting in jail  
3 you can sit in there with greasy hair and stuff. But it seems  
4 to me like when you come to trial we ought to be able to wash  
5 his hair. Do you think we can do that? I mean I don't want  
6 to get anybody in trouble and I don't want to overstep bounds,  
7 but it seems to me like he ought to be able to wash his hair  
8 tonight.

9 THE DEFENDANT: Maybe my sister or something. I don't  
10 know.

11 CORRECTIONS OFFICER: We can talk and ask. Any of your  
12 cell mates or anything like that?

13 THE COURT: Here's the deal. Mr. Hart is willing to go  
14 put 5 or 10 bucks on his books as long as they don't  
15 confiscate the money and he can buy -- you can't do anything  
16 about it.

17 CORRECTIONS OFFICER: There's nothing I can do in that  
18 one.

19 MR. HART: And I can't drop off shampoo and toothpaste  
20 and a toothbrush.

21 CORRECTIONS OFFICER: No. They won't let you do that  
22 either.

23 THE COURT: Let me ask you this. Does it cover your butt  
24 if you say the judge ordered us to do this? I don't want to  
25 get you in trouble, but I do think he ought to be able to wash

1 his hair if he wants.

2 CORRECTIONS OFFICER: Is there anybody you can borrow  
3 some from? I'm talking about --

4 MR. HART: He's in isolation.

5 THE DEFENDANT: No. I can't talk to nobody.

6 CORRECTIONS OFFICER: Oh. You have (indiscernible).  
7 Okay. Yeah, I understand.

8 THE COURT: Do this. Go back and say listen, the judge  
9 knows generally what happens in the jail is none of his  
10 business. He don't stick his business in. But is there any  
11 way we can give this guy, you know, a spot of shampoo?

12 CORRECTIONS OFFICER: We'll see if we can't one of the  
13 other officers to borrow a case from another inmate --

14 THE COURT: There you go.

15 CORRECTIONS OFFICER: -- and see if we get him some  
16 shampoo and some toothpaste. You got a toothbrush?

17 THE COURT: Just brush his teeth and wash his hair.

18 THE DEFENDANT: No.

19 CORRECTIONS OFFICER: He doesn't have a toothbrush.

20 THE DEFENDANT: See, like last night, we didn't get to  
21 come out at all, so we didn't even get to shower or nothing.

22 THE COURT: Here's the deal, Mr. Monroe. I'm doing the  
23 best I can.

24 THE DEFENDANT: I know you are. I appreciate that.

25 THE COURT: I don't run the jail. I can't tell them what

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1 to do. I'm willing to enter an order. I'm --

2 MR. HART: If I bring a toothbrush and toothpaste in --

3 THE COURT: You can't do that, because then he's going to  
4 make a --

5 MR. HART: Oh.

6 MS. DIGIACOMO: If he --

7 THE COURT: -- shiv out of it, and here we go ahead.

8 MS. DIGIACOMO: He [simultaneous conversation] though.

9 MR. HART: He can do it here?

10 MS. DIGIACOMO: Well, I was going to say you could do it  
11 here with kid's toothpaste, because you can swallow that.

12 THE COURT: They know how to run the jail. They're going  
13 to do it. They know that I think this is fair and whatever  
14 will work. We'll try to make it happen. That's about as much  
15 as I can do.

16 [Court to Clerk]

17 THE COURT: All right. See you guys tomorrow.

18 [Proceedings Concluded at 4:37 p.m.]

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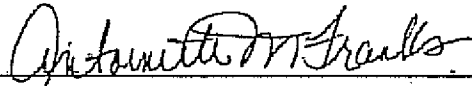
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1 ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video recording in the above-entitled  
3 case to the best of my ability.  
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13 ANTOINETTE FRANKS, Transcriber  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,  
Plaintiff,  
v.  
DAIMON MONROE,  
Defendant.

CASE NO. C-228752  
DEPT. VII

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

WEDNESDAY, MAY 14, 2008

REPORTER'S PARTIAL TRANSCRIPT  
TRIAL BY JURY  
DAY 3 - 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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