

1 possession of stolen property:

2 MS. DIGIACOMO: Again, it's less or included.

3 THE COURT: Okay. All right. See you at 1:15, I'll have
4 it already.

5 [Recess]

6 [Within the Presence of the Jury]

7 THE COURT: Okay. Back on the record in Case number
8 C228752, State of Nevada versus Bryan Fergason. Let the
9 record reflect the presence of Mr. Fergason, Ms. Dustin, Ms.
10 DiGiacomo, Ms. Small, ladies and gentlemen of the jury back in
11 the box.

12 It's my understanding you have the detective, but
13 you have one short witness that has to be someplace else, so -
14 -

15 MS. SMALL: Yes, Your Honor.

16 THE COURT: All right. We'll just hold the detective in
17 abeyance for a few minutes, bring that witness in and then
18 we'll come back and --

19 MS. SMALL: Thank you, Your Honor. David McQueen.

20 [Pause]

21 THE COURT: Which count does this relate to?

22 MS. SMALL: I'm sorry, Your Honor, Count 19.

23 THE CLERK: Please remain standing, raise your right
24 hand.

25 DAVID MCQUEEN, STATE'S WITNESS, SWORN

1 THE COURT: Please state your name and spell your name
2 for the court recorder.

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

4 THE COURT: Go ahead.

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 in the wholesale business, the food business.

10 Q Okay. And what exactly do you do in the wholesale
11 business?

12 A I sell Tequila.

13 Q Okay. And primarily that's what you sell?

14 THE COURT: Do you need any help?

15 THE WITNESS: Always. Yes.

16 BY MS. SMALL:

17 Q I'm going to draw your attention then back to March
18 of 2004. Were you in that same business, or were you in a
19 different business at that time?

20 A A different business, the food business.

21 Q And what was the name of this business?

22 A Classic Café.

23 Q Where was that located?

24 A 3199 Warm Springs Road.

25 Q Okay. Specifically on March 28th of 2004 did

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1 something happen at your business?

2 A We had a break-in over the weekend.

3 Q You did. And did you come in that -- you said "over
4 the weekend." Did you come in on a Monday morning then to the
5 --

6 A No. We were down there on the weekend just to clean
7 and do some things and we noticed everything amiss.

8 Q Okay. What did you notice?

9 A All the sodas were gone in the exterior part of the
10 store. There was trash cans missing. And then we went in the
11 back room and there was utensils and a slicer, and some
12 utility trays were missing.

13 Q Okay. Did you call the police?

14 A Yes.

15 Q And did they come out?

16 A Yes.

17 Q Did you get a report?

18 A Uh-huh.

19 Q Okay. And did you, to the best of your ability at
20 that time, list the items that you believe were missing from
21 your store at that point?

22 A Yeah. We started developing a list before the
23 police got there.

24 Q Okay. Had you given anybody permission to go in
25 your store and take, you know, the meat slicer, the utensils,

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1 and all those other things out of your store?

2 A No.

3 Q Okay. Did you get a call around November 6 of 2006
4 that gave you information that possibly some of the stuff that
5 had been taken from that burglary had been recovered?

6 A Yeah. They got the serial number from the police
7 report and they called me to come and pick it up.

8 Q Okay. What serial number off of what?

9 A Oh, one of the meat slicer.

10 Q Okay. So the meat slicer had a serial number?

11 A Correct.

12 Q And that was something that you kept in the ordinary
13 course of your business?

14 A Not necessarily, but it was brand new and we still
15 had the book, so we --

16 Q Yes. So you had --

17 A -- had the serial number.

18 Q -- the serial number and you were able to give that
19 information to the police?

20 A Right.

21 Q Okay. So in November 6, 2006 you get this phone
22 call. What did you do in response to the phone call?

23 A Talk to a detective. He told me to come down to a
24 street in northern part of Las Vegas and come to claim my
25 slicer.

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1 Q Was that 31504 Cutler?

2 A Cutler, yes.

3 Q And was it a house that you went to?

4 A Uh-huh, a residential house.

5 Q All right. And when you got to the house what did
6 you see?

7 A There was all kinds of items out there; televisions,
8 guitars, amps, paintings. My slicer wasn't out there. They
9 went in the garage and got it.

10 Q Okay. And the slicer that you saw at that location,
11 did the serial number on that slicer match the serial number
12 on the book that you had gotten, because you had just
13 purchased that slicer?

14 A I had actually taken a police report with me, asking
15 me to bring that and they matched up.

16 Q They matched up.

17 MS. SMALL: I'm drawing the Court's attention to State's,
18 which believe has already been entered into evidence; 327 to
19 328.

20 BY MS. SMALL:

21 Q I'm going to show you State's 327. When you got out
22 there and you retrieved the slicer, the meat slicer, tell us
23 what we're looking at there?

24 A That is the meat slicer.

25 Q Okay. What kind of a meat slicer is it? Is it like

1 a commercial or --

2 A Yes. It's a commercial grade. I can't remember if
3 it's a Globe or a Chef brand, or something like that. It
4 slices ten pounds of meat at a time, so it's pretty --

5 Q So it's used for -- would it be accurate to say it's
6 used for large pieces of meat to slice --

7 A Correct, meat and cheeses, yes.

8 Q That's something that you used in your business at
9 that time?

10 A Correct. We made sandwiches.

11 Q So did you purchase that particular item for the
12 store itself?

13 A Yes.

14 Q So the plan was not to resell that item; would that
15 be correct?

16 A That would be correct, yes.

17 Q Okay. And what did -- you said it was brand new
18 when you bought it. What did you pay for it?

19 A It was around \$1200.

20 Q Okay. And this was in 2004 that the burglary took
21 place, correct?

22 A Correct.

23 Q Okay. And then you got it back in 2006?

24 A That's correct.

25 Q Was it still valuable to you; could you still use it

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1 at your store?

2 A If we still had the store, yes.

3 Q Yes.

4 A Yeah, it's --

5 Q At that time when you retrieved it you no longer had
6 that store?

7 A That's correct.

8 Q Do you still have that meat slicer?

9 A Yes, I do.

10 Q Okay. And I'm going to show you State's 328. If
11 you can tell us what we're look at in that picture?

12 A That's me in the driveway of cutler, holding the
13 slicer.

14 Q Okay. If you were still in the same business and
15 you were going to go out and purchase a comparable meat
16 slicer, do you know what the approximate value would be if you
17 had to purchase a new one?

18 A I would say that much or a little bit more. We
19 bought that in November of '03, so it wasn't that used.

20 Q Okay. And so you would, based on your experience in
21 the food business, you would say it would be about \$1200?

22 A New. If I had to buy a used one it would probably
23 be about \$900.

24 Q About \$900?

25 A Yeah.

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1 MS. SMALL: Thank you. Pass the witness.

2 THE COURT: Questions.

3 MS. DUSTIN: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MS. DUSTIN:

6 Q You said that back when this occurred you were the
7 person who spoke with the police to help them fill out the
8 crime report?

9 A Actually, no. It was the manager, Michelle Simpson
10 that helped fill out the report, and I was writing down what
11 was missing.

12 Q Okay. But were you present when they were talking
13 to her, and when the officers were getting information for the
14 crime report, back when your business got broken into in 2004?

15 A Yes.

16 Q Okay. And were you the one that provided the
17 information to the officers as to the serial number and the
18 value of this meat slicer?

19 A I believe so, yes.

20 Q Okay. So if I looked at an incident report and
21 didn't see a serial number, that would be incorrect?

22 A No. I believe there was a serial number on it.

23 Q Okay. And you said that you went out to the Cutler
24 residence with a copy of this incident report?

25 A That's correct.

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1 Q Do you remember what that looked like?

2 A It was a yellow sheet of paper. It was second or
3 third generation copy.

4 Q Okay. Was it typewritten, or was it handwritten?

5 A It was handwritten. Okay.

6 Q And you didn't -- you never got a typewritten one
7 later on that just --

8 A Not to my knowledge.

9 Q -- kind of summarized? Okay. And then just going
10 back to the time that you gave the information to the police
11 officers, you didn't tell them that the meat slicer was only
12 roughly about \$780?

13 A Somebody could have given him that information. I'm
14 the one who purchased it, so I knew what it cost.

15 MS. DUSTIN: Nothing further.

16 THE COURT: Anything else?

17 MS. SMALL: Nothing, Your Honor.

18 THE COURT: Thanks, Mr. McQueen, you're excused.

19 THE WITNESS: Thank you.

20 THE COURT: I appreciate your time.

21 Recall Nickell?

22 MS. DIGIACOMO: Yes, Your Honor.

23 THE COURT: Detective Nickell, you're still under
24 oath.

25 THE WITNESS: Thank you, Your Honor.

1 DETECTIVE BRADLEY NICKELL, STATE'S WITNESS, PREVIOUSLY SWORN

2 DIRECT EXAMINATION (continued)

3 THE COURT: We were on number 25, were we not?

4 MS. DIGIACOMO: Right. And we are now the last disk,
5 which is 1189d, as in dog.

6 THE COURT: What are we going to hear, Detective Nickell?

7 THE WITNESS: October 13th, 2006, 20:37 hours. A call to
8 Tonya Trevarthen from Bryan Ferguson.

9 THE COURT: Thank you. That's the initial call, in a
10 three-way's outlet, like the last one?

11 THE WITNESS: Yes.

12 [25th Audio Tape Played in Courtroom]

13 THE COURT: Next.

14 THE WITNESS: October 16, 2006, 22:01 hours. Call to
15 Tonya Trevarthen from Bryan Ferguson.

16 [26th Audio Tape Played in Courtroom]

17 THE COURT: Next.

18 THE WITNESS: Next is October 17, 2006, 21:08 hours.
19 Call to Daimon Monroe from Bryan Ferguson.

20 [27th Audio Tape Played in Courtroom]

21 THE COURT: Next.

22 THE WITNESS: October 18, 2006, 19:40 hours. Call to
23 Tonya Trevarthen from Bryan Ferguson.

24 [28th Audio Tape Played in Courtroom]

25 THE COURT: Next.

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1 THE WITNESS: October 19th, 2006, 20:17 hours. A call to
2 Daimon Monroe from Bryan Ferguson.

3 [29th Audio Tape Played in Courtroom]

4 THE COURT: Next.

5 THE WITNESS: October 22nd, 2006, 21:13 hours. A call to
6 Daimon Monroe from Bryan Ferguson.

7 THE COURT: If we're really liking this, can we have the
8 other 200?

9 THE WITNESS: I saved the best two for last.

10 [30th Audio Tape Played in Courtroom]

11 THE COURT: Next.

12 THE WITNESS: October 23rd, 2006, 21:33 hours. A call to
13 Daimon Monroe from Bryan Ferguson.

14 [31st Audio Tape Played in Courtroom]

15 THE COURT: We've got one more, is that right?

16 THE WITNESS: Yes, sir. November 6, 2006, 18:59 hours.
17 A call to Bobby Holmes from Daimon Monroe.

18 [32nd Audio Tape Played in Courtroom]

19 THE COURT: One of the jurors had a question. They
20 wanted to know if you did any checking to see if Mr. Ferguson
21 had a regular job, or any apparent source of legitimate string
22 of income?

23 THE WITNESS: There was no extensive work for me to do in
24 checking to find out if he had a job. I mean, no, would be
25 the basic answer to that question. But from my extensive work

1 on the phone calls you're seeing only a fraction of the phone
2 calls here. There was never any mention of any legitimate
3 sources of income for these people. Except for when I could
4 tell that they were talking for the phones, trying to create
5 information, talking pressure washing. Which actually I would
6 later learn was -- was a code word for committing burglaries.

7 THE COURT: Go ahead.

8 MS. DIGIACOMO: Thank you.

9 BY MS. DIGIACOMO:

10 Q Well, when the search warrants were executed at Mr.
11 Ferguson's apartment at Pirates Cove, as well as the storage
12 units in his name, as well as the car that was parked at the
13 Cutler residence, if there had been paystubs or any other
14 information such as that in Mr. Ferguson's name, that would
15 have been impounded wouldn't it?

16 A Yes.

17 Q Okay. Now on the jail calls that we listened to,
18 you would say Bryan Ferguson called Tonya Trevarthen at home
19 and she would then do a three-way. On all of those calls who
20 was it that was actually a three-way, and speaking on those
21 calls?

22 A That was Daimon Monroe.

23 Q Now was any investigation done with regard to who
24 Engle was?

25 A Yes.

1 Q Was that Englebert Clemente?

2 A Yes, it is.

3 Q Did you ever find out where he lived or whether or
4 not he had any storage units?

5 A Yes.

6 Q Do you recall where the -- what you found out?

7 A We found out where he lived. And we found out that
8 there was a storage unit rented in his sister's name that she
9 had rented for him and his mother.

10 Q When did you get that information?

11 A The approximate date would be within a week or so
12 after the search warrants were served.

13 Q All right. So when you served these initial search
14 warrants you did not have any information regarding Mr.
15 Clemente?

16 A I knew who he was. I didn't do a lot of extensive
17 research into his background, because there was such little
18 amount of information coming through the phones about him. It
19 seemed like maybe he was not somebody that was real big in
20 this organization of people.

21 Q Now when -- okay, but you did find out that he had a
22 storage space rented in his sister's name?

23 A Yes.

24 Q Was that 1399 North Rainbow, Unit A-257?

25 A That's correct.

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1 Q All right. Was the search warrant executed there on
2 November 9, 2008?

3 A Yes.

4 Q Was anything taken from that storage unit?

5 A No.

6 Q Do you know why not?

7 A When we served that search warrant everything in the
8 -- in the storage unit appeared to be old items that were not
9 of high dollar value. It didn't appear to be the same kind of
10 stuff that we were finding at the other locations.

11 Q Okay. And just with regard to Tonya Trevarthen and
12 the statement you took from her, do you recall the first time
13 that you took a statement, the exact date?

14 A The first date I believe it would have been November
15 27th of 2006.

16 Q And that would be the Monday after the Thanksgiving?

17 A Correct.

18 Q And when was the second statement that you took from
19 her?

20 A The second statement I took was in January of 2007.

21 Q Do you recall the exact date?

22 A Off the top of my head I do not.

23 Q Do you have anything in front of you that you can
24 refer to?

25 A Yes. My notes have that on there.

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1 Q Okay. If you could just look at your notes and
2 refresh your recollection as to the exact dates that you took
3 both statements from Ms. Trevarthen?

4 A The second date was January 4th of 2007.

5 Q And was the first day confirmed --

6 A Yes.

7 Q -- November 27th --

8 A November 27th --

9 Q -- 2006?

10 A -- 2006.

11 Q Okay. Now Detective, after the victims were found,
12 at some point with regard to the victims that didn't have
13 their property released, did you do evidence views?

14 A Yes.

15 Q All right. Can you explain just briefly how these
16 evidence views were conducted?

17 A Victims that we had already identified were asked to
18 come down to the -- to the Metro evidence vault so that they
19 could view these pieces of property in person. Many of the
20 items of property that they had seen they'd only seen by
21 photograph, they never actually got to see the -- the item
22 itself. And we want it to be as conclusive as possible for
23 these people to see these things and say, yeah, that's mine, I
24 remember putting that mark on there, or I remember any number
25 of different ways that they could recognize the item as

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1 belonging to them.

2 Q When these evidence views were done did you do
3 anything to document what happened to the views?

4 A Yes.

5 Q And what did you do?

6 A I completed quite a lengthy officer's report, and I
7 took photographs of each item that was conclusively identified
8 by the owner, and took a photograph of the owner with the
9 items at the same time.

10 Q Okay. When you took these photographs did you do
11 anything on the photographs so that you knew who had viewed
12 it, or what person it went to?

13 A Yes.

14 Q Okay. What did you do?

15 A Basically what I did is I applied a digital tag to
16 each photograph, marking uniquely, the photograph, in sequence
17 of the order in which the individual saw the item, and whether
18 or not, you know, obviously, if it's got a tag on it, it means
19 they positively identified the item as belonging to them.

20 Q Okay. And I'm showing you State's Exhibit 74. Do
21 you see the tag that you're referring to?

22 A Yes.

23 Q All right. And where is that?

24 A Down here in the bottom corner.

25 Q Okay. And this tag that we're looking at, what does

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1 it say?

2 A LBI1.

3 Q Now what does that mean?

4 A Land Baron Investments, and it was the first
5 photograph I took for that view.

6 Q Okay. So the next in line would be LBI2?

7 A That's correct.

8 Q I'm now showing you State's proposed Exhibit number
9 75, do you recognize this?

10 A Yes, I do.

11 Q What is that?

12 A It's LBI2, and it's a photograph of the evidence tag
13 which is attached to the item depicted in the State's exhibit
14 that you have there in your hand.

15 Q 74?

16 A Correct.

17 Q Okay. So is it fair to say after you would
18 photograph a piece of property you would then photograph the
19 corresponding evidence tag that went with it?

20 A That's correct.

21 Q Okay. And does State's proposed Exhibit 75 fairly
22 and accurately depict the evidence tag that went with the
23 picture that's depicted in State's Exhibit 74, with the tag of
24 LBI1?

25 A Yes, it does.

1 MS. DIGIACOMO: Your Honor, I move for admission of
2 State's proposed Exhibit 75.

3 THE COURT: Any objection?

4 MS. DUSTIN: No objection.

5 THE COURT: Admitted.

6 [State's Exhibit 75 Admitted]

7 BY MS. DIGIACOMO:

8 Q I'm now showing you States proposed Exhibit number
9 77; do you recognize that?

10 A Yes.

11 Q Okay. And how do you recognize it?

12 A It has the tag on there that I placed. It's an
13 evidence tag that was -- that I photographed for the same view
14 with Land Baron Investments.

15 Q All right. And does this evidence tag correspond
16 with the photograph that's already been admitted in State's
17 Exhibit 76?

18 A Yes, it does.

19 Q Okay. And actually State's Exhibit 76 has LBI3, and
20 State's proposed Exhibit 77 has LBI4?

21 A Correct.

22 Q So that's how you know it goes with this one?

23 A Because they're in sequence.

24 MS. DIGIACOMO: Okay. Your Honor, I would --
25

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1 BY MS. DIGIACOMO:

2 Q And so State's proposed Exhibit 77, that fairly and
3 accurately depicts the evidence tag that goes with the picture
4 that's shown in State's Exhibit 76?

5 A Correct.

6 MS. DIGIACOMO: I'd move for admission of State's
7 proposed Exhibit 77, Your Honor.

8 MS. DUSTIN: No objection.

9 THE COURT: Admitted.

10 [State's Exhibit 77 Admitted]

11 BY MS. DIGIACOMO:

12 Q And is it fair to say that the way you did what we
13 looked at for Land Baron Investments, you did for all the
14 evidence used?

15 A That is correct.

16 Q With the same tags?

17 A Exactly.

18 Q All right. And --

19 A Well, with a similar tag that has the initials that
20 I assigned that particular entity that was making the view.

21 Q Okay. Now I'm showing you State's Exhibit 345 that
22 has been admitted. The tag on this, what does it say?

23 A DVDU1.

24 Q All right. And so this would correspond with?

25 A DVD Unlimited.

1 Q Okay. I'm showing you State's proposed Exhibit 347.
2 What are we looking at there?

3 A This is a photograph of the evidence label, versus a
4 tag of labels placed on a large evidence container, either a
5 bag or a box. This is the evidence label that would
6 correspond with the item that you have there in your hand.

7 Q And you're referring to State's Exhibit 345, that's
8 already been admitted?

9 A Yes.

10 Q Okay.

11 A That's correct.

12 Q And so State's 347 fairly and accurately depicts the
13 evidence label that goes with the item depicted in 345?

14 A That is correct.

15 MS. DIGIACOMO: Okay. Your Honor, I move for admission
16 of State's Exhibit 347.

17 THE COURT: Objection?

18 MS. DUSTIN: No, objection.

19 THE COURT: If she goes through all of these, is it going
20 to be the same?

21 THE WITNESS: Yes, they will.

22 THE COURT: This is what I did. This is the number. The
23 label is the next number and you've looked at them and they're
24 all good?

25 THE WITNESS: Precisely.

1 THE COURT: Are you going to have any objection to any of
2 these?

3 MS. DUSTIN: Only two exhibits, 19 through 31, and we
4 would need to approach regarding those.

5 THE COURT: They why don't you --

6 MS. DIGIACOMO: I haven't gotten to those yet.

7 THE COURT: Okay. Well, go through the numbers that she
8 doesn't object to and we'll admit them.

9 MS. DIGIACOMO: All right, Your Honor. I would move for
10 admission of State's proposed Exhibit 350.

11 THE COURT: Admitted.

12 [State's Exhibit 350 Admitted]

13 MS. DIGIACOMO: 352.

14 THE COURT: Admitted.

15 [State's Exhibit 352 Admitted]

16 MS. DIGIACOMO: 415.

17 THE COURT: Admitted.

18 [State's Exhibit 415 Admitted]

19 MS. DIGIACOMO: 419.

20 THE COURT: Admitted.

21 [State's Exhibit 419 Admitted]

22 MS. DIGIACOMO: 422.

23 THE COURT: Admitted.

24 [State's Exhibit 422 Admitted]

25 MS. DIGIACOMO: 424.

1 THE COURT: Admitted.
2 [State's Exhibit 424 Admitted]
3 MS. DIGIACOMO: 427
4 THE COURT: Admitted.
5 [State's Exhibit 427 Admitted]
6 MS. DIGIACOMO: 430.
7 THE COURT: Admitted.
8 [State's Exhibit 430 Admitted]
9 MS. DIGIACOMO: 433.
10 THE COURT: Admitted.
11 [State's Exhibit 433 Admitted]
12 MS. DIGIACOMO: 436.
13 THE COURT: Admitted.
14 [State's Exhibit 436 Admitted]
15 MS. DIGIACOMO: 439.
16 THE COURT: Admitted.
17 [State's Exhibit 439 Admitted]
18 MS. DIGIACOMO: 442.
19 THE COURT: Admitted.
20 [State's Exhibit 442 Admitted]
21 MS. DIGIACOMO: 445.
22 THE COURT: Admitted.
23 [State's Exhibit 445 Admitted]
24 MS. DIGIACOMO: 447.
25 THE COURT: Admitted.

1 [State's Exhibit 447 Admitted]
2 MS. DIGIACOMO: 452.
3 THE COURT: Admitted.
4 [State's Exhibit 452 Admitted]
5 MS. DIGIACOMO: 455.
6 THE COURT: Admitted.
7 [State's Exhibit 455 Admitted]
8 MS. DIGIACOMO: And 457.
9 THE COURT: Admitted.
10 [State's Exhibit 457 Admitted]
11 MS. DIGIACOMO: 472.
12 THE COURT: Admitted.
13 MS. DIGIACOMO: Oh, I'm sorry, 470.
14 THE COURT: Admitted.
15 [State's Exhibit 470 Admitted]
16 MS. DIGIACOMO: 476.
17 THE COURT: Admitted.
18 [State's Exhibit 476 Admitted]
19 MS. DIGIACOMO: 479.
20 THE COURT: Admitted.
21 [State's Exhibit 479 Admitted]
22 MS. DIGIACOMO: 482.
23 THE COURT: Admitted.
24 [State's Exhibit 482 Admitted]
25 MS. DIGIACOMO: 484.

1 THE COURT: Admitted.

2 [State's Exhibit 484 Admitted]

3 MS. DIGIACOMO: 486.

4 THE COURT: Admitted.

5 [State's Exhibit 486 Admitted]

6 MS. DIGIACOMO: 488.

7 THE COURT: Admitted.

8 [State's Exhibit 488 Admitted]

9 THE COURT: And you were watching those as we went
10 through, Detective, and each one of those was just the tag
11 that corresponded with the picture you took?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Okay.

14 BY MS. DIGIACOMO:

15 Q Detective, I'm going to show you what's been marked
16 at State's proposed Exhibits 19 through 31. If you could
17 please flip through these and let me know if you recognize
18 them.

19 MS. DUSTIN: And these are the ones that I would have
20 objection.

21 [Bench Conference Not Transcribed]

22 THE COURT: Okay. Objection sustained, 19 through, what
23 number?

24 MS. DIGIACOMO: I believe it was 31.

25 THE COURT: Okay, 19 through 31, objection sustained.

1 MS. DIGIACOMO: Pass the witness.

2 CROSS-EXAMINATION

3 BY MS. DUSTIN:

4 Q Detective, just going back a little bit you did say
5 that there were some other people that you learned names of
6 that might have been acquaintances or people that were on some
7 of these phone calls. Do you recall that? Particularly I
8 think you talked about Mr. Engle?

9 A Yes.

10 Q And I think that there was a discussion of whether
11 you looked into whether he had a storage unit, and that you
12 went and did a search warrant of the storage unit?

13 A Yes.

14 Q Did you also search his house?

15 A No.

16 Q Were there other people that you obtained search
17 warrants for that you heard them talking to on the phone?

18 A No.

19 Q What about Mr. Foreman. Did you ever get a search
20 warrant with Mr. Foreman's house or any of his possessions?

21 A No.

22 Q Did you ever look into or investigate Mr. Foreman?

23 A Yes.

24 Q What about Ms. Terry. Did you ever look into or
25 investigate Ms. Terry?

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1 A No.

2 Q Did you ever ask for a search warrant regarding Ms.
3 Terry's possessions or her house?

4 A No.

5 Q You said that through the phone calls that you made
6 a determination that there was no discussion for legitimate
7 work; is that correct?

8 A Correct.

9 Q And is that just based upon the phone calls, or did
10 you find something else that would support that inference?

11 A Most of my inference, in fact probably all of my
12 inference was made from what I was learning through the
13 phones. There were so many phone calls that -- that I was
14 listening to, that I was really getting a pretty good insight
15 into the -- the private lives of these people, because they
16 talked about everything. And never once did I hear somebody
17 say, "Hey, I need to call your boss and tell him you're not
18 going to be at work next week."

19 Q Okay. Now is it fair to say that you were kind of
20 the lead detective on this entire investigation --

21 A Sure.

22 Q -- on the surface?

23 A Yes.

24 Q And so you're familiar with, you know, all the items
25 that were seized, impounded, looked at, considered, recovered?

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1 A I would say no to that.

2 Q Okay. Were there certain -- well let me ask you
3 this: were you made aware of any documents or paperwork that
4 officers found, that had Mr. Fergason's name on it?

5 A Yes.

6 Q Okay. And you -- did you examine those items?

7 A I don't have any memory of examining those items at
8 the scene, but I believe I've seen those items since then.

9 Q Okay. So subsequently, so not at the scene, but
10 subsequently you had an opportunity to kind of review those
11 particular items?

12 A I'm familiar with them.

13 Q Okay. Would it be fair to say that there was a very
14 limited paperwork in Mr. Fergason's name every recovered?

15 A I would say that's fair to say.

16 Q Okay. Did you ever see a utility bill in his name?

17 A No.

18 Q Did you ever see a telephone bill in his name?

19 A I did not.

20 Q Did you ever see a cell phone bill in his name?

21 A No.

22 Q Did you -- so would it be fair to stay -- well, I'll
23 strike that. Would it be fair to say that you never were able
24 to view -- well, let me rephrase that.

25 So based upon the fact that you never saw a utility

1 bill in his name, phone bill in his name, or cell phone bill
2 in his name, would it also be fair to say that perhaps you
3 never were able to view all the paperwork that would be
4 associated with Mr. Ferguson?

5 MS. DIGIACOMO: Objection; vague.

6 THE COURT: Well, I think I know where she's going. Is
7 it something you can answer?

8 THE WITNESS: I believe I can answer that.

9 THE COURT: Go ahead.

10 THE WITNESS: I think if -- if there had been any
11 significant documents found with Mr. Ferguson I would have
12 seen them by now.

13 BY MS. DUSTIN:

14 Q Okay. So would it also be fair to say that if you
15 didn't see a utility bill, or a phone bill, or another bill in
16 his name, that that doesn't necessarily mean that it doesn't
17 exist?

18 A That's correct.

19 MS. DUSTIN: The Court's indulgence.

20 [Pause]

21 MS. DUSTIN: Nothing further.

22 THE COURT: Anything else?

23 MS. DIGIACOMO: Yes.
24
25

REDIRECT EXAMINATION

BY MS. DIGIACOMO:

Q You were asked whether or not you had searched Englebert Clemente's house and you said no?

A Correct.

Q Why didn't you?

A It was my belief that when we searched the storage unit that we knew was his, rented in someone else's name and it turned up without finding anything that appeared to be stolen, I believe that that -- that weakened our probable cause to try and get any search warrant for his house.

Q All right. So at the time that the search warrant was executed on that storage unit, that was three days after the house, or all the search warrants executed at Cutler and the other places that Monday?

A Correct.

Q And you attempted to search the storage unit for Mr. Clemente that was rented in someone else's name, before you were going to go to his house?

A Yes.

Q Now did you continue to listen to the phone calls you took after the arrests on November 6, 2006?

A Yes.

Q Do you know if Mr. Munroe or Mr. Hoyt ever call Englebert Clemente after that day, before you went to the

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1 storage unit on the 9th?

2 THE COURT: You mean between the 6th and the 9th?

3 BY MS. DIGIACOMO:

4 Q Yes.

5 A I don't recall.

6 Q All right. Now you were asked whether or not you
7 looked into Steve Foreman?

8 A Yes.

9 Q That was the owner of the Cutler residence?

10 A Correct.

11 Q And did you ever execute a search warrant for his
12 residence, or any storage units, or anything in his name?

13 A No.

14 Q And why not?

15 A I didn't feel we had any probable cause.

16 Q You didn't have an information through your
17 investigation that he was possessing stolen property at that
18 time?

19 A Correct. I suspected that maybe Mr. Foreman at
20 least had knowledge of what was going on, and may even be in
21 possession of some things, but I didn't have anything that I
22 could demonstrate probable cause with to get a search warrant.

23 Q And what about Amanda Terry, did you ever get a
24 search warrant for her residence, or anything?

25 A No.

1 Q Why not?

2 A I didn't even know Amanda Terry existed until after
3 she contacted the police and surrendered a piece of property
4 that Daimon Monroe's girlfriend, Tonya, had given to her. I'd
5 never heard any -- I think I'd heard mention of Amanda Terry
6 one time on the phone calls, and at that time it was just by
7 first name. So I didn't even know who Amanda was until she
8 came forward.

9 Q So you didn't have any belief that she was involved
10 in what you were investigating?

11 A No.

12 Q All right. And with regard -- I believe you said
13 that you listened to approximately 200 phone calls between --
14 September 24, 2006 and the end of November; is that fair?

15 A That would be fair to say.

16 Q All right. And you said there was no discussion of
17 legitimate work regarding Mr. Ferguson?

18 A Correct.

19 Q Now when you interviewed Tonya Trevarthen on
20 November 27, 2006, did you ask her about whether or not Mr.
21 Munroe or Mr. Ferguson were employed?

22 A Yes.

23 MS. DUSTIN: I'm going to object as to hearsay.

24 MS. DIGIACOMO: I just asked if he asked her.

25 THE COURT: Okay. So far it's not hearsay.

1 BY MS. DIGIACOMO:

2 Q I'm sorry, what was your answer?

3 A My answer was, yes, I did ask.

4 Q All right. Now did you learn anything from Ms.
5 Trevarthen that gave you any leads to investigate whether or
6 not Mr. Ferguson was employed anywhere?

7 MS. DUSTIN: And I'll object, because that's boot
8 strappin' hearsay.

9 THE COURT: Well, the jury may have a different
10 recollection, but I recollected that she testified that
11 neither one of them had a job during this entire period. I
12 think that's what she testified to?

13 MS. DUSTIN: I think she testified that -- no. Actually,
14 Your Honor, that is a misstatement, because she did testify
15 about where Mr. Ferguson had had employment, she basically
16 testified that Mr. Monroe was not employed for a period --

17 THE COURT: Yeah, but --

18 MS. DIGIACOMO: No, no. During this time period that Ms.
19 Trevarthen said that -- that at one point, like the year
20 before or something Mr. Ferguson had employment for a couple
21 of months, but not the time period that's charged here.

22 THE COURT: Well the jury will have to recall upon their
23 own memory what Ms. Trevarthen said and make that decision.
24 But she's here and testified, so I don't see any problem with
25 this. Go ahead.

1 BY MS. DIGIACOMO:

2 Q All right. Now with regard to Mr. Ferguson's
3 evidence at Pirates Cove, the apartment, how did you learn
4 that that was his apartment?

5 A As I recall I ran a DMV check on Mr. Ferguson, and
6 that returned that he had a Ford Explorer registered to him,
7 and the Ford Explorer was registered at the Pirates Cove
8 address. That Pirates Cove address on his Explorer was the
9 most recent address that we had. We have some other databases
10 and things that showed a different address for him, so I took
11 it that the most recent address was probably where he lived.

12 I then did some follow-up investigation on that,
13 contacted the management and found out that in fact the
14 apartment 220 I believe it was, was rented to Mr. Ferguson.

15 MS. DIGIACOMO: Nothing further.

16 THE COURT: Anything else?

17 MS. DUSTIN: No, Your Honor.

18 THE COURT: Thanks, Detective. Appreciate your
19 testimony.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Any other witnesses, State?

22 MS. DIGIACOMO: Not at this time.

23 THE COURT: Does the State rest?

24 MS. DIGIACOMO: With the caveat that I'd like to check
25 with the Clerk to make sure all of my exhibits I want in are

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1 in.

2 THE COURT: Okay. Ms. Dustin?

3 MS. DUSTIN: Your Honor, the Defense is not going to call
4 any witnesses at this time.

5 THE COURT: Okay. Thanks.

6 All right. Ladies and gentlemen that's the
7 evidence. Now here's kind of about the way this goes. I had
8 hoped to be at five o'clock today with having gotten all the
9 evidence in and given you the instructions, which I'm going to
10 do. But we're going to actually be a little ahead of
11 schedule. We're going to be about 3:30 and we're going to go
12 home.

13 And the reason for that is this: after I give you
14 the instructions we hear argument. And the argument, the
15 final argument in this case is going to be probably two and a
16 half, three hours total, because they're summing up a fairly
17 large case. It's not good practice to do what they call split
18 argument here; part of it one day and then part of it the
19 other day. And so my plan all along was to have this done by
20 five o'clock today, if we could get it. Come in tomorrow
21 morning, hear argument. Hear argument all the way through.
22 It'll be 12:30, 12:45, 12:15, somewhere in there, one o'clock,
23 and then send you to lunch and let you deliberate, and you'll
24 have as long as you need.

25 But there is one very smart collateral benefit with

1 that, and that is if you happen to be deliberating when lunch
2 comes around the County buys you lunch. So kind of the way it
3 would work is, we'll take about a ten minute break now. Come
4 back, I'll read you these instructions, it'll take about a
5 half hour.

6 We'll send everybody home. We can't start until
7 10:00 because Ms. Dustin has an important appearance in
8 another Court; is that right?

9 MS. DUSTIN: That's correct, Your Honor.

10 THE COURT: So we'll start at ten o'clock, you know, eat
11 a little bit late breakfast, so that -- we plan to go until
12 we're done, you know, 12:30ish. And if you come in at quarter
13 to 10:00 Officer Moon and Charmane will take your lunch orders
14 and will them available for you right while you deliberate so
15 you won't waste any of your time, and we'll get you the case
16 about 12:30 tomorrow. But we're actually about an hour and a
17 half ahead of schedule from the point that we started this
18 last Wednesday.

19 So let's take a ten minute break and listen to me
20 read for a half hour.

21 [Court Admonished Jury]

22 THE COURT: We'll pick up at three o'clock, and you'll go
23 home when I'm done reading.

24 [Jury Out]

25 [Recess]

1 [Outside the presence of jury]

2 THE COURT: Well I'm surprised it hasn't been released
3 already.

4 MS. DIGIAMOCO: Well there was a court order in place
5 from Justice Court that said we were not allowed to release
6 anymore property from the inception of this case.

7 THE COURT: And who got that order?

8 MS. DIGIAMOCO: Judge, it was Mr. Monroe and Ms. Dustin
9 and all the counsel got it from Judge Bennett. And so we
10 haven't made an issue of it but now obviously with the trial -
11 -

12 THE COURT: I wouldn't have entered that order. I think
13 that's silly these people would do -- you know, the baseball
14 cards --

15 MS. DIGIAMOCO: Okay.

16 THE COURT: -- the baseball cards, you know --

17 MS. DIGIAMOCO: Right.

18 THE COURT: Why don't you file --

19 MS. DIGIAMOCO: Can we do a motion?

20 THE COURT: -- to -- yeah. And it's only fair to serve
21 everybody. Serve Marty and serve Sean and serve everybody.
22 And they're going to have to tell me some good reason they
23 aren't because these pictures are just fine and there's no
24 reason that these people are -- particularly the property
25 that's, you know, like the AV property and stuff that's going

1 down in value dramatically just year-by-year because of the
2 changes. I mean, the art isn't a big deal or some of the
3 other, but that AV property, you know, that guy's getting
4 screwed.

5 So just file a motion saying here's what happened,
6 blah, blah, blah. You know, they've had their trial so I
7 don't suppose they're going to have too much of an objection.
8 And Sean's guy doesn't have much standing since he is in the
9 wind.

10 MS. DUSTIN: I think when it was originally done it was a
11 mentioned by prior counsel that --

12 THE COURT: Well --

13 MS. DUSTIN: --I joined into. And it was --

14 MS. DIGIAMOCO: But it was still the court --

15 THE COURT: If I were in the Defense at looking at this
16 case early on because there was one or two incidents and
17 surprisingly there weren't two dozen incidents where, you
18 know, a couple of things were released and appeared to go to
19 one place. They sent a couple things back to that one place
20 that said they were ours. And they were theirs at one time
21 but it turned out they'd sold -- I mean, you know, with all
22 this mass amount of property --

23 MS. DUSTIN: There was more about that --

24 MS. DIGIAMOCO: Well there's going to be --

25 MS. DUSTIN: Yeah.

1 MS. DIGIAMOCO: -- more abuse, much more victims.

2 THE COURT: Understand. But the point is I think it
3 might have been a reasonable thing for the Defense to do to
4 say, wait a minute, I mean, when I have some -- but at this
5 juncture now knowing what everybody knows I don't see any
6 reason to hold it.

7 MS. DUSTIN: I think it got videotaped, didn't it?

8 THE COURT: He's got a picture of everything.

9 MS. DUSTIN: Yeah. I mean, he's got pictures.

10 MS. DIGIAMOCO: No there isn't a picture of everything
11 that was impounded. There's over 5,000 pieces --

12 THE COURT: No, no. But the stuff you're talking about,
13 the baseball cards and, you know, the match collection and the
14 slice of --

15 MS. DIGIAMOCO: But the majority of it there are
16 pictures, some of it there's not.

17 THE COURT: Well here's the deal, I wouldn't allow
18 anything to be released that wasn't photographed just because
19 we need to know.

20 MS. DIGIAMOCO: Okay.

21 THE COURT: So if you're going to put the motion on I'll
22 say, hey there needs to at least be a photograph so later you
23 may charge one of these guys or somebody else for something
24 else.

25 MS. DIGIAMOCO: Well --

1 THE COURT: You're going to need the evidence.

2 MS. DIGIAMOCO: Well and that will be most definitely --

3 THE COURT: And that's their practice. Look at it,
4 they've got photographs of everything. So --

5 MS. DIGIAMOCO: Yeah. Right.

6 THE COURT: -- you put on a motion, I'm sure it's going
7 to be granted and then we can get releasing these people's
8 property and get it back where it belongs. And we'll make
9 sure that everybody has an opportunity to make sure they have
10 a fair trial about it when push comes to shove.

11 Are they bugging you Detective? I bet they would
12 be.

13 MS. DIGIAMOCO: Oh I've -- it's gotten to be --

14 MR. NICKELL: For a couple years almost now.

15 MS. DIGIAMOCO: Yeah. But -- and it's gone to Dave
16 Rogers. There's some unhappy people with us.

17 THE COURT: Well they probably should be but Dave Rogers
18 can't do anything if the judge has entered an order.

19 MS. DIGIAMOCO: Yeah, I mean, at this point because we're
20 still have to do all the evidence, and then it just made sense
21 to make sure the trial was over. So --

22 THE COURT: But just put a one and a half page motion on.
23 You don't need any authority. This is what it is and this is
24 what it is. We've got these two, the other guys in the wind.
25 We don't know if we're ever going to have another trial.

1 Blah, blah, blah. People are clamoring and we'll get it done.
2 I mean, you can put it on Monday or Tuesday. We'll get it on
3 next week anytime you want to get it on. And if they call you
4 Detective, you can tell them that the DA's putting that on.
5 We should have a resolution within a week or so.

6 MR. NICKELL: Yes, Your Honor.

7 [Off the record]

8 [In the presence of jury]

9 THE COURT: Okay. Back on the record in case number
10 C228752 State of Nevada versus Bryan Ferguson. Let the record
11 reflect the presence of Mr. Ferguson, his counsel, counsel for
12 the State, all ladies and gentlemen of the jury back in the
13 box.

14 This is the time that we give you the law that
15 applies to in theory any potential conclusion you could reach
16 about the facts of this case. Understand this, I'm just the
17 messenger. I don't make the laws, I just go to the books and
18 pull out the ones that seem to apply to all the potential ways
19 you could view the evidence. And the law says I have to read
20 them to you. But I found after years and years and years of
21 doing this is the best way to do it is to give you each a
22 copy. When I read it, it kind of makes more sense when you
23 read it to yourself. You don't have to try to take notes.

24 Then the lawyers argue tomorrow. They may say, look
25 at instruction 17 or 23 or 5 or some number you'll have it

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1 right in front of you. Maybe most importantly when you go to
2 deliberate instead of having one set that you pass around
3 you'll each have your own set and it expedites things. I know
4 you can all read. My preference would be to just say raise
5 your hand when you're done but that ain't the way it works.
6 So bear with me. It'll take about 30 minutes.

7 The third instruction is always the information and
8 by law it has to be read, that one in and of itself takes
9 awhile in this case.

10 MS. DIGIAMOCO: And, Your Honor, can we approach just
11 real quick?

12 THE COURT: Uh-huh.

13 [Bench Conference Not Transcribed]

14 [Jury Instructions Not Transcribed]

15 MS. DIGIAMOCO: Your Honor, can we approach again?

16 [Bench Conference Not Transcribed]

17 THE COURT: Thank you.

18 [Jury Instructions Continued Not Transcribed]

19 THE COURT: Okay. I'm going to stop there for the night.
20 Again, we're not going to go until 6:30 or 7:00. And it's
21 just not good practice to split argument. And I actually
22 thought we'd be right here at five o'clock tonight. So we'll
23 get out just a little bit early. Please, just one more day.

24 [Court Admonishes Jury]

25 THE COURT: Ten o'clock?

1 MS. DUSTIN: Yes, sir.

2 THE COURT: Ten o'clock. We'll start ten o'clock sharp.
3 If you'll get here about quarter two, give yourself a little
4 time for the elevators, Officer Moon and Charmane. We will
5 take your lunch orders. We'll have lunch delivered around
6 12:30 and I think that we'll get the case to you sometime
7 between say, 12:15 and one o'clock. So you can go right in,
8 eat your lunch, work while you're eating and get our job
9 finished by tomorrow.

10 Have a nice evening. Thanks for your patience.

11 Yeah. Leave your instructions here. Don't take
12 them home with you. Just put them on your clipboards with
13 your other stuff and they'll be there when you get there
14 tomorrow.

15 (Jury Out)

16 THE COURT: The record should reflect that the jury's
17 exited.

18 So Ms. DiGiacomo, I take it you've led me astray
19 again in that when you gave me the original one it said
20 property valued over 2500 and over 250, and it should have
21 said 2500 or more --

22 MS. DIGIAMOCO: Yes.

23 THE COURT: -- and 250 or more.

24 MS. DIGIAMOCO: Yeah. That's correct. And that was --

25 THE COURT: So then we sort of tried to match that and --

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1 MS. DIGIAMOCO: And it was wrong.
2 THE COURT: -- two wrongs make three wrongs.
3 MS. DIGIAMOCO: Exactly. So --
4 THE COURT: I'll fix it.
5 MS. DIGIAMOCO: Yeah. And I would ask that the -- yeah.
6 The instruction's wrong with regard to all of them.
7 THE COURT: Instruction number 10?
8 MS. DIGIAMOCO: Yeah. Because it says if you find it's
9 2500 or more your verdict should be guilty of over 2500, which
10 is incorrect. We fixed the last one, and I was looking,
11 they're all three wrong. I apologize. And then the verdict
12 form needs to be fixed.
13 THE COURT: I think that could be read to say, "If you
14 find it 2500 or more it's over 2500," --
15 MS. DIGIAMOCO: Okay.
16 THE COURT: -- would mean including. I think -- I don't
17 think we have to change 10, we just have to change all these.
18 MS. DIGIAMOCO: The verdict form.
19 THE COURT: And on the verdict form --
20 MS. DIGIAMOCO: Well then the verdict form it would just
21 be the last one that needs to be changed.
22 THE COURT: Guilty of possession of stolen property value
23 2500 or more. Guilty of possession of stolen property value
24 \$250 or more. Guilty of possession of stolen property value
25 less than --

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1 MS. DIGIAMOCO: Less than --
2 THE COURT: -- \$250.
3 MS. DIGIAMOCO: That's correct, that's correct.
4 THE COURT: All right. I'll change that on all those.
5 MS. DIGIAMOCO: Thank you. Sorry about that, Judge.
6 THE COURT: Okay.
7 MS. DUSTIN: One last matter --
8 THE COURT: I've been led astray by --
9 MS. DIGIAMOCO: Sorry.
10 MS. DUSTIN: One last matter, Your Honor, I'd ask just --
11 THE COURT: Or devious.
12 MS. DUSTIN: -- to be having a complete record, I'd ask
13 that the Defense's proposed jury instructions be marked and
14 put into the record for purposes of appeal, and I think the
15 State --
16 MS. DIGIAMOCO: As well as the State's proposed exhibit
17 with regard to value.
18 THE COURT: You know, here's the deal, I'll be glad to do
19 that if you bring me some. Because what happened is after we
20 did it today and I wrote one, I said, this okay with you, and
21 this okay with you, and does this encompass all your stuff, I
22 thought we'd sort of reached an agreement and there wasn't
23 anything you were proposing that I hadn't solved so I threw
24 them away.
25 But to the extent that I was mistaken, if you will

1 actually give me a copy of anything you want, I'll make the
2 whole package, I'll make the State's proposed instructions --

3 MS. DIGIAMOCO: And I have my copy.

4 THE COURT: -- Court Exhibit A, and I'll make Ms.
5 Dustin's package Court Exhibit B.

6 THE CLERK: Judge, you're going to actually need a
7 coversheet --

8 THE COURT: Oh okay. Tina knows how to do it. And
9 they'll be part of the record for whatever it's worth.

10 MS. DIGIAMOCO: Thank you.

11 THE COURT: What else?

12 MS. DUSTIN: I think we've got everything I think cleaned
13 up.

14 MS. DIGIAMOCO: You admonished the Defendant, right?

15 MS. DUSTIN: You already rested and we did the --

16 THE COURT: Admonished the Defendant? Yes.

17 MS. DIGIAMOCO: Last week?

18 THE COURT: I did that early, yes.

19 MS. DIGIAMOCO: Yeah. Okay. I just wanted to make sure.

20 THE COURT: And I told him that, you know, when Ms.

21 Dustin doesn't call him to the stand --

22 MS. DIGIAMOCO: I'm sorry. That is mine.

23 THE COURT: Mr. Ferguson, you agree with Ms. Dustin's
24 decision that you didn't want to testify, correct? .

25 THE DEFENDANT: Yes, Your Honor.

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1 THE COURT: Okay. That was the understanding I thought
2 we had and I usually don't bother to ask. But we're good.

3 MS. DIGIAMOCO: It's been so long I can't remember what
4 we've done --

5 THE COURT: Well, you know, a lot of people do it late on
6 but I like to do it kind of early in the case usually because
7 I have an opportunity. And secondly, I want the Defendant
8 thinking about that as he's listening to the evidence and make
9 an informed decision. So I guarantee you it's there.

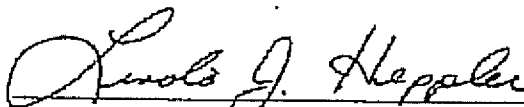
10 Okay. One more day.

11 [Proceedings Concluded at 3:34 p.m.]
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video recording in the above-entitled
3 case to the best of my ability.
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12 LINDA J. HEPPLER, Transcriber
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3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,)

6 Plaintiff,)

7 v.)

8 DAIMON MONROE,)

9 Defendant.)
10

CASE NO. C-228752

DEPT. VII

11
12 BEFORE THE HONORABLE STEWART BELL, DISTRICT COURT JUDGE

13 MONDAY, MAY 19, 2008

14 REPORTER'S PARTIAL TRANSCRIPT

15 TRIAL BY JURY

16 DAY 6 - VOLUME I

17 APPEARANCES:

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

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

23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

CLERK OF THE COURT

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476, 479, 482, 484, 486 and 488 175

DEFENDANT'S:

None

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1 MONDAY, MAY 19, 2008 AT 9:42 A.M.

2 [Within the Presence of the Jury]

3 THE COURT: Okay. We're back on the record in case
4 C228752, State of Nevada versus Daimon Monroe. Let the record
5 reflect the presence of the Defendant, his counsel, counsel
6 for the State. All ladies and gentlemen of the jury are back
7 in the box.

8 Ms. Small, you ready to go?

9 MS. SMALL: Todd Waldron, Your Honor.

10 THE COURT: Todd Waldron.

11 MS. SMALL: And we're at Count 7.

12 THE COURT: I understand they got two or three more of
13 these sort of mundane witnesses and then they've got some
14 interesting stuff. So we'll see.

15 Come on up here, sir.

16 THE CLERK: Please remain standing and raise your right
17 hand.

18 TODD WALDRON, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: Sir, state your name spell your name for the
21 court recorder.

22 THE WITNESS: It's Todd Waldron. T-o-d-d, W-a-l-d-r-o-n.

23 THE COURT: Go ahead.
24
25

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DIRECT EXAMINATION

BY MS. SMALL:

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

A I'm a chiropractor.

Q Okay. And do you have a business here in Las Vegas, Clark County, Nevada?

A Yes.

Q And where's that business located?

A That is at 6480 Spring Mountain Road.

Q Okay. I'm going to draw your attention specifically sir to June 8th, 2006. Did anything happen to your business on that day?

A Yes. It had been broken into.

Q And did you go to your office after you had heard or gotten news that it had been broken into; how did you learn about that?

A No. I came to my office and I noticed that -- I come in the front door and I noticed there was some pieces of drywall and things all over the floor. And I started kind of looking around and then I noticed that -- that some flat panel monitors had been torn off the wall. And then when I went to the backdoor I could see that the backdoor had been kicked in.

Q Did you call the police at that time?

A Actually there was a notice that had been left there by the police. A little yellow slip that they had obviously

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1 been there. And so I ended up just going down to the
2 substation and filing a report there.

3 Q You did. And when you filed that report did you
4 indicate what had been taken out of your business?

5 A Yes.

6 Q And what had been taken?

7 A We had a hyperbaric chamber that had been stolen, a
8 massage chair. We had a couple computers, a PC and then a
9 laptop computer. And then there were three monitors that had
10 been taken off the wall.

11 Q At some point after that did you go down and do a
12 viewing as to possible items that had been recovered from that
13 burglary?

14 A I did. They had called -- they had called me and
15 first my daughter Brittany had gone over there to identify it.
16 And then I met her there and identified the hyperbaric chamber
17 which was at a warehouse.

18 And then later they had some pictures of some other
19 items and I recognized the massage chair. They had me go down
20 to a -- to a warehouse later and identify that as well.

21 MS. SMALL: I'm drawing the Court's attention to what has
22 been pre-marked as State's proposed Exhibit 53 to 57, and 58
23 to 61.

24 THE COURT: Okay.
25

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1 BY MS. SMALL:

2 Q Sir, if you could just look through these pictures
3 and see if you recognize anything in the picture. You don't
4 have to say anything yet.

5 A Sure.

6 Q Just flip it over --

7 A Sure.

8 Q -- if you recognize something that's depicted in the
9 picture.

10 A Okay. I do see what looks like the massage chair,
11 just kind of --

12 Q Okay.

13 A -- like the top part of it. Nothing in there. This
14 would be the massage chair in this one.

15 Q Okay.

16 A The brown -- the light brown one. That one as well.

17 Q That's -- obviously I'll admit it. Okay. Do these
18 pictures fairly and accurately depict the massage chair that
19 was taken from your establishment?

20 A Yes.

21 MS. SMALL: Move to admit State's proposed Exhibits 53,
22 54, 56 and I believe 57 is already into evidence.

23 THE COURT: It is. Any objection?

24 MR. HART: No, Your Honor.

25 THE COURT: Admitted.

1 [State's Exhibits 53, 54 and 56 Admitted]

2 BY MS. SMALL:

3 Q And I'm going to have you look at State's proposed
4 58 to 61. And if you can just tell me if you recognize what
5 I'm showing you in these pictures.

6 A Yes. Yes.

7 Q Yes. Yes.

8 A Yes. And --

9 Q Do you recognize that person?

10 A -- that's me. Yes.

11 Q Do these pictures fairly and accurately depict the
12 chair as you recall, that had been taken from your
13 establishment?

14 A Yes.

15 MS. SMALL: Move to admit State's 58, 59, 60 and 61, Your
16 Honor.

17 THE COURT: Objection?

18 MR. HART: No.

19 THE COURT: Admitted.

20 [State's Exhibits 58 to 61 Admitted]

21 BY MS. SMALL:

22 Q I'm going to show you State's Exhibit 53. And the
23 first thing I'd like to ask you is, do you recognize the
24 location?

25 A No, I don't.

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1 Q Okay. And do you recognize something in the picture
2 that belonged to you?

3 A I can see the corner of the massage chair in that
4 lower left corner there.

5 Q Could you just circle what you're indicating is the
6 massage chair? Yes, exactly. Thank you.

7 And let's just look at one more picture. This is
8 State's Exhibit 56. Looking at that picture, do you recognize
9 the surrounding area, or where the chair is in this picture?

10 A No, I do not.

11 Q Okay. And could you just circle again the chair
12 that you say that was taken from your establishment?

13 Now what would be the value of that particular
14 chair? Like, what was the wholesale and the retail value of
15 that chair, if you could tell us?

16 A Wholesale would have been \$995, retail's \$1500.

17 Q Were you going to sell this chair or is this for
18 your business itself?

19 A No. That was for use at my business, yes.

20 Q Okay. As far as the items that were taken, and I'm
21 going to go ahead and show you what's already been admitted as
22 the State's 62; do you recognize that?

23 A Yes, I do.

24 Q And what is that?

25 A That is a hyperbaric chamber.

1 Q Okay. And can you tell us what the wholesale/
2 retail value of that would have been?

3 A The retail is \$20,000. I actually paid just over
4 \$17,000. I've got the exact amount here, receipt, if you need
5 that.

6 Q Certainly, if that would refresh your memory.

7 A I paid \$17,715.

8 Q Thank you. Mr. Waldron, did you give anybody
9 permission to go into your business and take these items out
10 of it?

11 A No.

12 Q Had you had any intention of selling these items out
13 of your business or giving these items away, at any time?

14 MR. HART: Object.

15 THE WITNESS: No.

16 MS. SMALL: Thank you. Pass the witness, Your Honor.

17 THE COURT: Questions?

18 CROSS-EXAMINATION

19 BY MR. HART:

20 Q So you contacted your insurance company after it was
21 taken?

22 A I did not have insurance at the time, no.

23 Q Now it has been returned to you, correct?

24 A Yes. The -- well the hyperbaric chamber has, yes.

25 Q And you have no idea who broke into your office that

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1 night?

2 A No.

3 Q You have no idea who possessed it?

4 A No.

5 MR. HART: Nothing further from this witness.

6 THE COURT: Okay. Thanks, Mr. Waldron. Appreciate your
7 testimony.

8 Call your next witness.

9 MS. SMALL: The State calls Andrew [sic] Hines.

10 THE COURT: Hines.

11 MS. SMALL: It's Count 4.

12 THE COURT: Who will be after Mr. Hines?

13 Come on up, Mr. Hines. Right up here, Mr. Hines.

14 THE CLERK: Please remain standing, raise your right
15 hand.

16 ANDRE HINES, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Sir, state your name, spell your name for the
19 court recorder.

20 THE WITNESS: My names Andre Hines. A-n-d-r-e, last name
21 Hines, H-i-n-e-s.

22 THE COURT: Go ahead.

23 MS. SMALL: Thank you, Your Honor.

24

25

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DIRECT EXAMINATION

BY MS. SMALL:

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

A Actually I'm a graphic designer and an artist. And I work for Annie Lee's Art Gallery.

Q You work for Annie Lee's Art Gallery?

A Correct.

Q You said you were a graphic designer. Did you design your own art also?

A Yes. I do -- my degree's in graphic design. I'm the graphic designer for her gallery, and I'm also an artist. So I'm also able to display my original artwork at the gallery.

Q Okay. Where is the Annie Lee Gallery located?

A 4030 East Post Road, and that's Henderson.

Q That's in Henderson here in Las Vegas, --

A Uh-huh.

Q -- Clark County Nevada?

A Yes.

Q Okay. I'm going to draw your attention to July of 2006. Were you working at the Annie Lee Gallery at that time?

A Yes.

Q And can you tell us if anything happened to the gallery?

A What happened -- I had actually gotten a call that

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1 the gallery had been broken into. So I actually went down to
2 the gallery because there were officers already there on the
3 scene. So I just actually just had to go down to the gallery
4 and actually see what was going on because my artwork was
5 there also.

6 Q You had artwork in that gallery at that time?

7 A Correct.

8 Q Was anything -- any of your art gallery missing?

9 A Yes.

10 Q Okay. And what was missing?

11 A There was a piece -- it was actually two original
12 canvas pieces that were missing. And then there were some of
13 the owner who is Annie Lee, a lot of her originals were
14 missing. And there was a third artist named Lonnie Gordon,
15 she had some of her original artwork missing.

16 Q Okay. Did you give a report as to what was missing
17 from the gallery?

18 A Yeah. I actually gave the -- everything to Annie
19 herself, because she's the owner, and had worked with the
20 officers to supply them with pictures of the artwork that was
21 missing.

22 Q Okay. I'm going to show you State's 32. Do you
23 recognize what's depicted in that picture?

24 A Yes. Those are Annie's original pieces.

25 Q And how do you know those are Annie's?

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1 A Well I put them up on the website, plus I have a
2 file of all those picture on file also.

3 Q Okay. I'm going to show you -- and just for
4 reference, do you recognize the area where the paintings are;
5 the background area?

6 A No.

7 Q Okay. And looking at State's 33, do you recognize
8 what's depicted in that?

9 A Yes. That's Annie's piece, My Cup Runneth Over.

10 Q And do you know what the value was for this
11 particular painting?

12 A I don't know. I think it was -- I'm not sure. So I
13 don't want to say -- yeah.

14 Q I'm not real familiar with art galleries, but when
15 you put art up in a gallery do you post the value or the price
16 that you're trying to sell that particular piece of art for?

17 A We don't -- at our gallery we don't post it at all,
18 especially on originals, because some pieces she may work with
19 a client on and come down on the price of what the original
20 is.

21 Q Okay.

22 A So we -- we do have a list of the prices.

23 Q You do?

24 A Uh-huh.

25 Q And roughly do you know what approximately she would

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1 be charging for this piece is?

2 A The original for that one -- her originals start at
3 10,000 and go up.

4 Q And it would go up from 10,000?

5 A Uh-huh

6 Q So the least amount that she would sell this
7 particular piece of art for would be 10,000?

8 A Right.

9 Q Okay. And I think we actually have a picture of
10 this particular artwork with a -- it looks like a price tag on
11 it, for --

12 A Yeah, 16,000.

13 Q -- 16,000. So that would be kind of in the ballpark
14 of what you're talking about?

15 A Right.

16 Q Okay. And this is State's Exhibit 34. I'm going to
17 show you State's Exhibit 35. Can you tell us who's depicted
18 in this picture?

19 A That's Annie, Annie Lee.

20 Q That's Annie Lee --

21 A Uh-huh.

22 Q -- the woman who owned that particular
23 establishment?

24 A Correct.

25 Q Okay. That is 35 if I didn't already say. And I'm

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1 going to show you State's 36. Do you recognize what's
2 depicted in this?

3 A Yes.

4 Q And what is it?

5 A That's the original for, I forgot the name of that
6 one, I think it's -- I forgot the name of that one.

7 Q Okay. Is this one of Annie Lee's paintings?

8 A Yes. That was actually -- when I actually started
9 that was one of the pieces that she had just finished. So it
10 was a newer piece that had went up.

11 Q Okay. And so this would be basically the same
12 thing, it would start at about \$10,000 and up?

13 A Correct.

14 MR. HART: Objection; hearsay. He said there was no
15 price tags posted --

16 MS. SMALL: He --

17 MR. HART: -- and it's also leading.

18 MS. SMALL: He stated, Your Honor that --

19 THE COURT: It is leading. Don't lead in the future.
20 Hearsay objection's overruled.

21 MS. SMALL: Thank you, Your Honor.

22 THE COURT: I mean, he's working in the business, he
23 knows the price of all these, he sells them daily, he's got a
24 list.

25 MS. SMALL: Thank you, Your Honor.

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1 BY MS. SMALL:

2 Q Looking at 37, can you tell us what's depicted right
3 here?

4 A That's the piece, it's called Steepin'N Soakin. And
5 that's one of her original pieces.

6 Q And again, the value?

7 A It's a little bit over 10,000.

8 Q Thank you. And looking at 38. If you look at this
9 picture right here.

10 A Uh-huh.

11 Q I believe the other one is the one we just looked
12 at.

13 A Yes. Do you need the names of those also?

14 Q Sure, if you know them.

15 A The one on the far left is called Steepin'N Sleepin.
16 And the one in the middle with the black frame is Graffiti
17 Bridge.

18 Q And what would be the price of those?

19 A Anything over 10,000.

20 Q And that would be a piece, correct?

21 A Correct.

22 Q Okay. And I think there was one more here. Looking
23 at State's 40.

24 A Yes. That's Market Place. And that one again the
25 value's a little bit over 10,000 for that one.

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1 Q Thank you, sir. Now did you give any permission --
2 was anyone given permission to come in and take the artwork
3 out of the Annie Lee Gallery?

4 A No. One of the reasons why -- we had just had a
5 show. So everything was up, that's why everyone's art was up
6 at the time, because we just happened to have other artists up
7 because I had put on a show for that time.

8 So normally what we do is, I have the artist sign a
9 contract that says they have a specific day to come in and
10 pick up their art. And since we had just had the show we were
11 wait -- that's why they called me down because I had the
12 contracts for these people's art. So I had to go in and find
13 out what pieces were taken and start putting it together.

14 So no one had access to actually come -- or
15 permitted to come into the gallery to take anything.

16 Q So you actually itemized all the items that had been
17 taken from the gallery?

18 A Correct.

19 MS. SMALL: Court's indulgence. Pass the witness, Your
20 Honor.

21 THE COURT: Questions for Mr. Hines?

22 MR. HART: Yeah. Very briefly.

23 CROSS-EXAMINATION

24 BY MR. HART:

25 Q So the prices you just quoted were retail value?

1 A Correct.

2 Q Now there was a guy named Bernard Elliston that the
3 police were concerned about or you were concerned about?

4 A I don't know that name at all.

5 Q He wasn't an artist that had just removed all his --
6 was there an artist that removed all his artwork two days
7 before this happened?

8 A Yes. There were a couple artists.

9 Q Okay. Would one of them been Bernard Elliston?

10 A Well there -- for Elliston, there -- his name wasn't
11 Bernard -- well he -- he goes by his first name which is
12 Marvin.

13 Q Okay. And you guys were concerned about that,
14 correct?

15 A Well Marvin had already picked up his artwork the
16 day after the -- the actual show. So he came in early to pick
17 his art up.

18 Q And that was something that the police were
19 interested and you guys were interested in. You specifically
20 told the police about that, correct?

21 A Correct.

22 Q Okay. There were four different employees that had
23 the alarm codes to get in there?

24 A Right.

25 Q And was there another artist that removed his stuff

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1 right beforehand or was it only Bernard -- Marvin that you
2 guys were worried about?

3 A That was actually the only person that we know of.

4 MR. HART: Nothing further from this witness.

5 THE COURT: Thanks, Mr. Hines. Appreciate your
6 testimony.

7 THE WITNESS: Okay.

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

9 MS. SMALL: Michael Paulson, Your Honor.

10 THE COURT: Michael?

11 MS. SMALL: Paulson.

12 THE COURT: Paulson. Come on up Mr. Paulson. Right up
13 here, sir.

14 THE CLERK: Please remain standing and raise your right
15 hand.

16 MICHAEL PAULSON, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Sir, state your name, spell your name for the
19 court recorder.

20 THE WITNESS: Michael Paulson, P-a-u-l-s-o-n.

21 THE COURT: Go ahead.

22 MS. SMALL: This is Count 25.

23 THE COURT: Okay.
24
25

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DIRECT EXAMINATION

BY MS. SMALL:

Q Mr. Paulson, can you tell us what you do for a living, sir?

A Manage furniture markdowns.

Q You manage it?

A Yes.

Q Okay. And how long have you been the manager there?

A Twelve years.

Q Okay. Where's it located?

A Off the corner of Eastern and Patrick.

Q I'm going to draw your attention specifically to May 8th of 2006. Do you recall something happening to the store at that time?

A Yes.

Q And can you tell us what happened?

A I was told when the --

MR. HART: Objection; as to hearsay.

THE COURT: Just what happened?

THE WITNESS: We had a break-in at the store.

BY MS. SMALL:

Q And did you go into the store?

A Later that afternoon, yes.

Q Okay. And when you went into the store later that afternoon what did you see?

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1 A Several missing pieces of furniture, some missing
2 artwork. We had, you know, I guess that was the majority of
3 the stuff that was missing.

4 Q Okay. And you were very familiar with the items
5 that were in the furniture markdown store?

6 A Yes.

7 Q Okay. Did you keep records as to what was in the
8 store, the value of the items that were in the store and so
9 forth?

10 A Yes.

11 Q Okay. And that was kept in the ordinary course of
12 your business?

13 A Yes.

14 Q Okay. At some point were you contacted as to some
15 of the evidence being possibly recovered?

16 A Yes.

17 Q And what did you do in response to that?

18 A Went down to the evidence room to take a look at
19 some of the items.

20 Q Okay.

21 MS. SMALL: Drawing the Court's attention to State's
22 proposed 463, 467, 468 and -- Court's indulgence. 469 to 489.

23 THE COURT: Yes.

24 BY MS. SMALL:

25 Q Okay. I'll just have you look through them. First

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1 I'm going to have you look at 469 to 489. I just need for you
2 to look at it. If you recognize it, just flip it over this
3 way.

4 A Okay.

5 Q If you don't recognize it put it in a separate pile.
6 [Pause].

7 Q Now after looking at these Exhibits does 469 --
8 let's go ahead and do that, 471, 473, 474, 475, 477, 478, 480,
9 481, 483, 485, this is fun, isn't it, 487 and 489, fairly and
10 accurately depict the items that have been taken from
11 Furniture Markdowns?

12 A Yes.

13 MS. SMALL: Move to admit.

14 THE COURT: Objection?

15 MR. HART: No objection.

16 THE COURT: Admitted.

17 THE CLERK: I'm sorry. I did not get all those numbers.

18 THE COURT: 69, 71, 73, 74, 75, 77, 78, 80, 81, 83, 85,
19 87, 89; is that what you have, Ms. Small?

20 MS. SMALL: That's correct, Your Honor.

21 THE COURT: Okay.

22 [State's Exhibits 469, 471, 473, 474, 475, 477, 478, 480,
23 481, 483, 485, 487 and 489 Admitted]

24 BY MS. SMALL:

25 Q Looking at 463, do you recognize something in that

1 picture?

2 A Yes. The animation artwork in the back.

3 Q Looking at 467?

4 A The table base.

5 Q And looking at 468?

6 A The table base.

7 Q And do these pictures fairly and accurately depict
8 some of the items that had been taken from your store?

9 A Yes.

10 MS. SMALL: Move to admit.

11 THE COURT: Objection?

12 MR. HART: No objection.

13 THE COURT: 467, 68 and 63 will all be admitted.

14 MS. SMALL: Thank you, Your Honor.

15 [State's Exhibits 463, 467 and 468 Admitted]

16 BY MS. SMALL:

17 Q The first thing I want to show you is 463. Do you
18 recognize something in that picture that belonged to Furniture
19 Markdowns?

20 A Yes.

21 Q And could you take, there's a little -- yeah,
22 exactly, thank you. And if you could just circle what it is
23 that you're looking at that you recognize? And can you tell
24 us what that is?

25 A It's a limited edition animation cell done by the

1 art director Friz Freeling. It was a limited edition sold
2 through a number of galleries. I used to sell a lot of
3 artwork. I had over a hundred pieces in the back room. It
4 was something that was not apparently missing on the original
5 report, but later I recognized it.

6 Q And when you say later you recognized it, what are
7 you talking about?

8 A When I came down to view evidence that was stolen
9 from our store, then it was one of the pieces that I was
10 missing.

11 Q Okay. And what would be the retail or wholesale
12 value of that particular item?

13 A Retail at the time I think it was almost \$800.
14 Wholesale usually half of that. Nowadays probably a little
15 bit more.

16 Q Is that something that would go up in value?

17 A Yes.

18 Q Okay. And I'm going to show you State's 487, is
19 that just a close-up of that?

20 A Yes.

21 Q Okay. Looking at 467. Do you recognize anything in
22 that picture that belonged to Furniture Markdowns?

23 A Yes. The table base.

24 Q Could you just circle what you're looking at as far
25 as the table base? Thank you.

1 And 468,, is that a close-up of that table base?

2 A Yes, it is. There was --

3 Q What would be the wholesale or retail value of the
4 table base?

5 A Retail value of the base was probably about three or
6 \$400.

7 Q Okay. Wholesale?

8 A Probably two to 300. It was --

9 Q Looking at 469. Do you recognize what we're looking
10 at there?

11 A Yes. Just a piece of artwork.

12 Q Okay. And that was something that had been taken
13 from Furniture Markdowns?

14 A Yes.

15 Q What would be the retail or wholesale value of that
16 particular artwork?

17 A I think Phyllis said it was around 300 --

18 MR. HART: Objection; hearsay.

19 THE COURT: Don't tell us what Phyllis said.

20 THE WITNESS: Yeah.

21 THE COURT: Just tell us if you know what the value was,
22 tell us. If you don't know, I don't know is okay.

23 BY MS. SMALL:

24 Q Based on your own knowledge..

25 A Okay. I don't know.

1 Q Looking at 471, can you tell us what we're looking
2 at there?

3 A Yes. A mirror.

4 Q Okay. Is that something taken from Furniture
5 Markdowns?

6 A Yes.

7 Q What would be the value of that particular item?

8 A \$250.

9 Q For wholesale?

10 A That's the retail.

11 Q Retail. So wholesale would be?

12 A We paid actually 175.

13 Q And I'm going to show you 474. Do you recognize
14 what's depicted in that?

15 A Yes.

16 Q And what is that?

17 A It's a five-drawer chest from Good Companies.

18 Q Okay. And do you know the retail or wholesale value
19 of that?

20 A A long time ago. About 200, \$300. That was a long
21 time ago.

22 Q And I think --

23 A A matching nightstand too.

24 Q Do you recall if there was one or two matching
25 nightstands?

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1 A I thought there were two?

2 Q Okay. And looking at State's 489. Is that we're
3 looking at there is two --

4 A Yes.

5 Q -- nightstands? Do you know the approximate retail/
6 wholesale value of those two items?

7 A About \$130.

8 Q A piece?

9 A Yes.

10 Q Thank you. And do you recognize what -- what are we
11 looking at in this picture?

12 A I believe the one on the left is the dining room
13 table base. The one on the right is the coffee table base.

14 Q Okay. So there was two of these table bases; is
15 that correct?

16 A Yes.

17 Q I think we looked at the larger one, didn't we?

18 A Yes.

19 Q The smaller one, what would be the retail or
20 wholesale value of that?

21 A With the glass about \$300.

22 Q Okay. And is that you in the picture there?

23 A Yes.

24 Q Okay. Where are you in this picture?

25 A On the left hand side do I say or in the physical

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1 evidence room of the police --

2 Q You're in the viewing --

3 A -- viewing area?

4 Q Okay. Did you give anybody permission to go into
5 the Furniture Markdowns and take all of this --

6 MR. HART: Object to that question, Your Honor. There's
7 no burglary charge here.

8 THE COURT: Overruled.

9 MS. SMALL: Thank you. Pass the witness.

10 THE COURT: He has to prove that the properties stolen.
11 If he gives the permission to somebody to have it, it wouldn't
12 be stolen, would it?

13 THE COURT: Go ahead, Mr. Hart.

14 BY MS. SMALL:

15 Q If you could answer the question, I'm sorry.

16 A I'm sorry.

17 THE COURT: Did you give anybody permission to have that
18 property?

19 THE WITNESS: No.

20 THE COURT: Go ahead, Mr. Hart.

21 CROSS-EXAMINATION

22 BY MR. HART:

23 Q Yes. You gave costs and values of stuff, correct?

24 A Yes.

25 Q And that was wholesale or retail as of 2002?

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1 A Right.

2 Q When the items were taken?

3 A Yes.

4 Q And I'm looking at your incident report here which
5 is a list of items you report were stolen.

6 A Yes.

7 Q Did you not list -- we were looking at the bases
8 there for the tables. You didn't list those, you didn't
9 realize they were stolen at the time?

10 A We actually had a number -- the store is fairly
11 large and there are thousands of items in the store. We knew
12 that some things as far as pictures and wall arts, mirrors and
13 other nick-knack accessories had been taken. But to list the
14 major items at the time that's what they found were the --
15 they listed, was the chest of drawers and the two night
16 stands.

17 Q Okay.

18 A That was the most obvious.

19 Q So you didn't originally tell the police about the
20 table bases there?

21 A I didn't tell them anything actually.

22 Q Okay. They were not originally told about any
23 cartoon cell?

24 A I have actually no idea. I was not there.

25 Q Okay. You were not there but you were identifying

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1 these as items that were taken then. What's your --

2 A I appeared -- I showed up later in the day for my
3 shift and that was part of a complete bedroom set where we had
4 a headboard set up, where we had the dresser, where we had the
5 nightstands all on the floor and there were empty spaces
6 there. So that's what made --

7 Q So it was pretty much one setup that was taken?

8 A -- it the most obvious. Right. Right.

9 Q Well I thought you were -- the palm bases and stuff
10 were --

11 A Those were bases that we have in the back of the
12 store in our accessories area. It wasn't as obvious I guess
13 at the time.

14 Q Okay. And as you look at those can you say
15 definitively those came from your store, or do those get sold
16 at different stores in town also?

17 A I would imagine they have to be sold at other stores
18 also. The Howard Miller Mirror was very unique. We were one
19 of the first ones to order that. And I know that was always a
20 good seller for us that we had on the floor; that was the
21 round mirror.

22 Q It was a good seller, so you'd assume it was a good
23 seller for other people also?

24 A Yes. Yes.

25 Q Okay. And back then you had it down as \$119?

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1 A Yes. I mean, that's a long time ago. I know their
2 mirrors were expensive though.

3 Q And just to clarify, your store's loss happened in
4 2002?

5 A 2002.

6 Q So it was almost four years later before you're
7 identifying these things?

8 A Yes.

9 Q They're obviously used at this point?

10 A Yes.

11 Q Okay.

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

13 MS. SMALL: Just a quick questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. SMALL:

16 Q Looking at 464, you were asked a lot of questions
17 about those table bases.

18 A Yes.

19 Q Looking at 464 do you recognize anything in this
20 picture that belonged to Furniture Markdowns?

21 A Well there -- it looks like there's another base.
22 There was also a matching lamp that went with the set that --
23 it possibly could be that.

24 Q Okay. And do you recognize where that base table
25 is?

1 A As far as?

2 Q The area that it's in. Do recognize --

3 A It looks like it's in somebody's shed.

4 Q Do you recognize who's shed it is or what location
5 it is or --

6 A No.

7 Q Thank you.

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

9 THE COURT: Thanks Mr. Paulson, you're excused.
10 Appreciate your testimony. Call your next witness.

11 MS. SMALL: James Beller.

12 THE COURT: Come on up here, Mr. Beller.

13 THE CLERK: Please remain standing and raise your right
14 hand.

15 JAMES BELLER, STATE'S WITNESS, SWORN

16 THE CLERK: Thank you. You may be seated.

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

19 THE WITNESS: James Beller, J-a-m-e-s, B-e-l-l-e-r.

20 THE COURT: Go ahead, Ms. DiGiacomo.

21 MS. DIGIACOMO: And for the record this is regarding
22 Count 8.

23 THE COURT: Okay.
24
25

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DIRECT EXAMINATION

BY MS. DIGIACOMO:

Q Sir, how are you employed?

A I'm employed by Land Baron Investments.

Q And what is your job there?

A I'm a real estate broker.

Q How long you been working for Land Baron?

A It's coming up on three years.

Q Now were you -- did you work for Land Baron when there was a break-in at the business?

A Yes.

Q Okay. Do you know approximately when that was?

A It was about a year and a half ago maybe.

Q Does May 8th of 2006 sound familiar?

A Yeah.

Q Okay. Now at some point were you working and a call came in that possibly some of the items missing were found?

A Yes.

Q Do you recall what those items were?

A Yes. That was a computer screen, computer tower, some baseball cards, Austin Powers signed picture and some Bugs Bunny lithographs, and some Tiger Wood's photos that were signed I think.

Q Now did you actually go down to a house on Cutler when you were contact by police?

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1 A Yes.

2 Q I'm showing you State's Exhibit 69. Is this you
3 with the property taken in from Land Baron?

4 A Yes.

5 Q All right. Now behind you here on the ground, can
6 you tell the jury what this is?

7 A That's the computer tower.

8 Q And that was taken from the office?

9 A Yes.

10 Q And this right here down at the bottom of the
11 picture?

12 A That looks like the computer screen.

13 Q Okay. Now were you involved in the purchase of this
14 computer screen and monitor?

15 A I wasn't but Chad North was. And I was involved in
16 the day-to-day operations of that computer.

17 Q All right. Well I guess what I'm asking is, do you
18 know from the records or from being in the business
19 approximately how much the office paid for that computer
20 screen and CPU tower?

21 MR. HART: Objection; speculation, Your Honor.

22 THE COURT: Well if he knows, he knows. If he doesn't
23 know then just say, I don't know.

24 THE WITNESS: I know approximates.

25 BY MS. DIGIACOMO:

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1 Q -- State's Exhibit 593, does that look like the
2 other one?

3 A Yes.

4 Q All right. Now showing you State's Exhibit 579, do
5 you recognize anything in this photograph as being yours?

6 A Yes. The monitors, speakers.

7 Q Okay. The speakers we were just discussing, the
8 Alesis?

9 A Yes.

10 Q Are they in this picture?

11 A Yes.

12 Q Oh, and you circled one. Are there two or one?

13 A Right. The other one's right here.

14 Q Okay. Now showing you State's Exhibit 596. What
15 are we looking at here?

16 A It's a AKG microphone.

17 Q What is an AKG microphone?

18 A It is a high-end microphone, it's been used for
19 probably over 25 years. It's a very popular brand of
20 microphone. It's mainly for vocals, recording vocals.

21 Q All right. So this was identified by serial number
22 on that same 579?

23 A Yes.

24 Q Okay. Showing you State's Exhibit 599. What are we
25 looking at here?

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1 A That's an Ensoniq DP4. It's an effects processor,
2 mainly for vocals. It does all the reverbs and delays and all
3 the stuff to enhance the vocal recording.

4 Q All right. Now, were you able to identify this by
5 serial number?

6 A We had two of 'em. One of 'em was, I believe,
7 identified by serial number and the other one was scratched
8 off, so we never identified it with serial number, they were
9 both sitting in the evidence area.

10 Q All right, now, this one that we're looking at, this
11 is the back of it in State's Exhibit 600, and this is where
12 it's scratched off?

13 A Right, this area right here, there's a plate with a
14 serial number and it was removed.

15 Q All right. Did you have more than one of these in
16 your --

17 A Yes.

18 Q -- in your studio?

19 A Now, what is the value of an effects sonic
20 processor?

21 A That was about \$750.

22 Q Right, and how many did you have in your studio?

23 A Two.

24 Q Now showing you State's Exhibit 602. Do you
25 recognize this?

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1 A Yes, that's the same machine.

2 Q All right, this is another one of the Ensoniqs?

3 A DP4s, yes.

4 Q All right. And then 603 is the back of that one as
5 well?

6 A Uh-huh.

7 Q Is the plate missing here?

8 A Yes, it looks like it.

9 Q So both of those would cost the same?

10 A Yes.

11 Q All right. Now showing you State's Exhibit 605.
12 What are we looking at there?

13 A This is the stuff that I identified at the evidence
14 vault.

15 Q Okay. Did you go to the evidence vault more than
16 once?

17 A No.

18 Q Okay. After you took this picture, did they
19 actually look at another piece of property?

20 A Yes, I was getting ready to leave and they said
21 something looked very similar to something I had described,
22 and they called me back into another room and we identified,
23 via serial number, another machine of mine.

24 Q All right. Now, this is State's Exhibit 606. Is
25 that what you're talking about?

1 A Yes.

2 Q And what is this?

3 A I think that's the drum station.

4 Q Okay. And was this identified by serial number?

5 A Yes.

6 Q And is that the serial number right there?

7 A Yes.

8 Q Okay, and I'm looking at State's 607. What's the

9 serial number, for the record?

10 A 008485.

11 Q And State's Exhibit 609, that's you with the drum

12 station?

13 A Correct.

14 Q Okay, now you said one was a drum station and one

15 was a bass station?

16 A So now the other one we seen previously was the bass

17 station.

18 Q Okay. Because you're -- and this actually --

19 A Because that one identifies it on the back, yeah.

20 Q Right, it says drum station rack on there. Okay.

21 Now, what is -- how much is the cost of the drum station?

22 A About \$600.

23 Q All right. What about the bass station?

24 A \$600.

25 Q Okay. And then you didn't give anyone permission to

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1 have your items that were stolen from you in 2002, from 2002
2 until you were spoken to in 2006, did you?

3 A No.

4 MS. DIGIACOMO: I don't have anything further.

5 THE COURT: Questions?

6 CROSS-EXAMINATION

7 BY MR. HART:

8 Q Now, this was missing for six years? Or five years?

9 A Yeah, about four and a half years.

10 Q Oh yeah. And the numbers you gave on price were
11 back in 2002?

12 A Yes.

13 Q And it was not new equipment at that time, was it?
14 It'd been used?

15 A Most of that stuff was fairly new at that time,
16 yeah.

17 Q But used equipment goes for less than new equipment,
18 correct?

19 A Yeah, this stuff depreciates quite a bit.

20 Q And so it's four years later.

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

22 REDIRECT EXAMINATION

23 BY MS. DIGIACOMO:

24 Q Yes. You said it depreciates quite a bit. I mean,
25 in four years' time is it because new things are invented and

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1 it gets better and better with like --

2 A The technology is so fast that something that was a
3 great unbelievable item four years ago is obsolete because of
4 the technology and stuff that comes out.

5 Q At the time that these items were stolen from you in
6 2002, were they not obsolete?

7 A No. No, they were --

8 Q So they were --

9 A They were the best of the best stuff for that time,
10 yeah.

11 Q All right. And I apologize, I forgot to show you
12 one photograph, State's Exhibit 578. And this is the one that
13 you said you possibly might recognize something from the back?

14 A Uh-huh.

15 Q Can you just circle that from the jury?

16 A These two bottom items are facing the wrong way so I
17 can't tell what type of rack items they are, so..

18 Q Okay.

19 MS. DIGIACOMO: Now I'll pass the witness.

20 MR. HART: Just briefly.

21 RECROSS-EXAMINATION

22 BY MR. HART:

23 Q Time that you went and viewed 'em out there, pretty
24 much obsolete at that point?

25 A When I viewed 'em?

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1 Q Yes.

2 A Usable but not to the standards of what they were
3 four years ago.

4 Q Thank you.

5 THE COURT: Okay, thanks. Appreciate your testimony,
6 Mr. Hathcock. You're excused.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MS. DIGIACOMO: Bob Cayne. And it's gonna be Count
10 Number XXIV.

11 THE COURT: Come on up here, Mr. Cayne.

12 ROBERT B. CAYNE, JR., STATE'S WITNESS, SWORN

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

15 THE WITNESS: Robert B. Cayne, Jr., C-a-y-n-e.

16 THE COURT: Go ahead.

17 MS. DIGIACOMO: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q All right, sir. Do you have a business in town?

21 A Yes, I do.

22 Q And what's the name of your business?

23 A Global Entertainment Group, Inc.

24 Q And do you work with any other family members?

25 A My wife.

1 Q All right, and what does your business do?

2 A I do booking for different entertainment projects,
3 "Lord of the Dance." I work with Blue Man Group a little bit,
4 some miscellaneous investments like that in entertainment
5 things.

6 Q Now, I want to direct your attention to March of
7 2005. Did you have a burglary at your business?

8 A Yes, I did.

9 Q And what was taken?

10 A Very -- a large amount of gold records that were
11 mementoes from some past jobs I had when I was a tour
12 accountant for different bands, back in the late '80s and
13 early '90s. And they belonged to me. My wife had some there
14 as well from when she worked as a travel agent with different
15 entertainers. They also took some artwork, a Map of the
16 World, and some other miscellaneous pieces like that off the
17 wall.

18 Q All right. Did they take anything else besides your
19 -- basically your memorabilia?

20 A They broke down all the doors, they ripped open
21 drawers of desks, they stole some petty cash.

22 MR. HART: Objection, Your Honor. Relevance.

23 THE COURT: I'm sorry? Explain it to me.

24 MR. HART: It's possession of stolen property, I'm not
25 sure where we're going.

1 THE COURT: Isn't he talking about what was taken in the
2 burglary?

3 MS. DIGIACOMO: Yes.

4 THE COURT: Okay. Is that -- some of that stuff
5 ultimately recovered that relates to this case?

6 MS. DIGIACOMO: Yes.

7 THE COURT: Overruled.

8 BY MS. DIGIACOMO:

9 Q All right. Sir, I'm gonna show you a series of
10 photographs.

11 A Okay.

12 Q And what I want you to do is just to flip through
13 them, and if you recognize 'em just let me know and then we'll
14 go through 'em more in depth at a later time.

15 A Okay.

16 Q First of all I'm gonna show you State's proposed
17 Exhibits 397 to 399, and I would just ask you to look at each
18 one and let me know if you see any of your property that was
19 taken from you in there.

20 A I see records right here.

21 Q Okay.

22 A That's the only one I think I see in this one.

23 Q In State's 397?

24 A Yes.

25 Q All right, and then 398?

1 A Yes, this is one of our gold records.

2 Q Okay. And then 399?

3 A This is one of my wife's records from the band
4 Chicago.

5 Q Okay, do State's proposed Exhibits 397, 398 fairly
6 and accurately depict your items in these photographs --

7 A Yes, they do.

8 Q -- that were taken from you?

9 MS. DIGIACOMO: I'd move for admission of 397 to 399.

10 MR. HART: No objection.

11 THE COURT: Admitted.

12 [State's Exhibits 397-399 Admitted]

13 BY MS. DIGIACOMO:

14 Q Next I'm gonna show you State's proposed Exhibits
15 400 to 412. If you could flip through each of those and let
16 me know if you recognize something in 'em.

17 A This is my record here from the Scorpions.

18 Q We'll go into in depth just if you --

19 A Okay.

20 Q -- if you recognize something.

21 A Yes, I recognize items in here.

22 Q Okay.

23 A Yes, I recognize items here. Yes, I recognize items
24 here. Here. Here. Here. Here. This one, this one, this
25 one, this one, probably that one. Map of the World. This

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1 record, that record. Map of the World again, this record.
2 Map of the World. Stone Temple Pilots records. It's
3 Watercolor right here. These records here. This record here.

4 Q Okay, so in State's proposed Exhibits 400 through
5 412, in every picture you picked out one of your items that
6 were stolen from you. Are they fairly and accurately depicted
7 in these photographs?

8 A Yes, they are.

9 Q Now, you don't recognize the location where they
10 are, do you?

11 A No.

12 Q All right.

13 MS. DIGIACOMO: I'd move for admission of State's 400 to
14 412.

15 MR. HART: No objection.

16 THE COURT: Admitted.

17 [State's Exhibits 400-412 Admitted]

18 BY MS. DIGIACOMO:

19 Q Lastly, were you asked to go to the evidence vault
20 to view these items, to in fact see if they were yours?

21 A Yes, I was.

22 Q All right. And I'd ask you to flip through all of
23 these and just pull aside the ones that you can recognize, but
24 keeping them in order.

25 A I recognize this one. And there's that one. That.

1 Yes, I recognize that. I recognize that. Not sure about
2 that.

3 Q [Indiscernible] proposed [indiscernible].

4 A Oh, yes, that would look like the damage on that,
5 yes. And that's one in there. My name on it. That's mine
6 with my name on it. This is from my office. This is mine
7 with my name on it. My name on that one. That's my wife's.
8 My wife's, I recognize it. That's mine with my name on it.
9 Same one with my name. Mine with my name on it. Same one, my
10 name. That's my wife's with her name on it. There's her
11 name. Maiden name. That's my wife's. My wife's name. This
12 is my wife's. My wife's maiden name and our name on it.
13 There's my Map of the World. This is me standing next to the
14 property from my office. This is me standing next to the
15 property from my office. This is my wife's from Chicago, the
16 band Chicago. That's the Scorpions, this is mine. My name on
17 it. This is the watercolor that was in the back office.

18 Q Sorry.

19 A Excuse me. That's my wife and I with the watercolor
20 and the gold records.

21 Q All right, now. In these photographs that you have
22 identified, do they all fairly and accurately depict your
23 property that you identified at the evidence vault?

24 A Yes, they do.

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

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1 State's proposed Exhibits 413, 414, 416, 417, 418, 420 --
2 THE COURT: Okay, you're going too fast.
3 MS. DIGIACOMO: Oh, I'm sorry.
4 THE COURT: 418 and 420. You there, Tina?
5 MS. DIGIACOMO: 421. 423. 425. 426. 428. 429. 431.
6 432. 434. 435. 437. 438. 440. 441. 443. 444. 446.
7 448. 449. 450. 451. 453. 454. 456. 458.
8 THE COURT: Objection?
9 MR. HART: No objection, Your Honor.
10 THE COURT: Get those, Tina?
11 THE CLERK: In the beginning, this 413, 14, 16, 17 --
12 THE COURT: 17, 18 -- 18, 20, 21.
13 MS. DIGIACOMO: Yeah. 17 and 18.
14 THE CLERK: 20, 21, 23?
15 MS. DIGIACOMO: No.
16 THE COURT: 23, 25, 26, 28, 29, 31, 32, 35, 37, 38, 40,
17 41, 43, 46, 48, 49, 50, 51, 53, 54, 56, 58, is that you?
18 MS. DIGIACOMO: I did not get 422, though.
19 THE CLERK: 421 or --
20 THE COURT: No, 21 or 23.
21 MS. DIGIACOMO: 421.
22 MR. HART: 422 --
23 MS. DIGIACOMO: But not 422.
24 THE COURT: Correct.
25 MS. DIGIACOMO: It skipped to 423, okay.

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1 THE COURT: All right, we're good. Any objection?

2 MR. HART: No, Your Honor.

3 THE COURT: Be admitted.

4 [State's Exhibits 413-414, 416-418, 420-421, 423,
5 425-426, 428-429, 431-432, 434-435, 437-438, 440-441, 443-444,
6 446, 448-451, 453-454, 456 and 458 Admitted]

7 BY MS. DIGIACOMO:

8 Q All righty. First of all, sir, let me show you
9 State's Exhibit 397. You can touch the screen with the stylus
10 and circle for the jury the item that you recognized here.
11 And 398, what are we looking at here? Kind of dark.

12 A I think that's the Stone Temple Pilots record. I
13 can't read it on there.

14 Q Let me show it to you up close, 398.

15 A Thank you. Yes, Stone Temple Pilots.

16 Q All right, does 398 appear to be the item that you
17 see in 397 that you circled?

18 A Yes.

19 Q Okay. And then throwing you -- throwing you --
20 showing you 399. Do you recognize this?

21 A Yes.

22 Q And what is this?

23 A That's my wife's record from Chicago.

24 Q Showing you State's Exhibit 400. If you could
25 circle for the jury what you see in this photograph what are

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1 yours?

2 A Scorpions record there. Map of the World here.
3 These are kind of dark, but there's gold records over here.
4 There may be more, but this is kind of over on the left side
5 of --

6 Q But that's what you can see?

7 A Yes.

8 Q Okay. Now showing you 401, if you'd circle what's
9 yours in this photograph?

10 A Stone Temple Pilots here, Paul Abdul is mine, these
11 two records in the back, Great White. The one on the right I
12 can't exactly see what the name is on it.

13 Q Okay.

14 A Might be a Scorpions.

15 Q Okay. But you recognize it as yours --

16 A Yes.

17 Q -- still the same? Now, showing you 402.

18 A Stone Temple Pilots here, Paula Abdul here, one in
19 the back that we can't see what it is.

20 Q State's Exhibit 403?

21 A Scorpions down here, Map of the World, part of it,
22 right here.

23 Q Begin with the Map of the World, how much did you
24 pay for that?

25 A \$950.

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1 Q All right. Now showing you State's 404.
2 A Bon Jovi records here.
3 Q 405, is that just a close-up?
4 A Same Bon Jovi records.
5 Q 406?
6 A Great White. Scorpions. Paula Abdul. Another one
7 in the back here. Same ones we looked at, here are Stone
8 Temple Pilots --
9 Q Showing you 408.
10 A This photo here. And that's --
11 Q Oh, I'm sorry.
12 A And the Map of the World's back over again on the
13 right.
14 Q Showing you State's 410.
15 A Stone Temple Pilots, another one. The six records
16 there.
17 Q Now, do you recognize this location where your
18 pictures are?
19 A No.
20 Q Okay. Showing you 411.
21 A It's six records there, the Stone Temple Pilots.
22 Q All right. And now showing you State's 412.
23 A Watercolor here, record here. I think that's it.
24 Q And then you said you went to the evidence vault and
25 you were able to identify some items that were yours?

1 A Yes.

2 Q All right. Now showing you State's 448. Did you go
3 to the evidence vault more than once?

4 A I went once alone and I went once with my wife.

5 Q All right. So showing you 448. Do you recognize
6 these?

7 A Yes.

8 Q And they're all --

9 A They're all -- it's all my property here.

10 Q All right, now, there's one here in the middle
11 that's got -- it's marijuana? I can't see what --

12 A Logs.

13 Q Logs, okay. And do you recognize that?

14 A Yes.

15 Q And that's yours as well, that we didn't see at one
16 of the scenes?

17 A Yes. That's just a little poster from a little off-
18 Broadway show I invested in.

19 Q All right. Now, what's the value of the items that
20 we're looking at in 448?

21 A The gold records, it's hard to say because they're
22 gifts from the bands that they give us. They could run
23 anywhere from a few hundred dollars to I guess \$500, \$600,
24 \$700 in terms of retail value.

25 To me they're priceless because they're a part of my

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1 past, they're a gift from someone I worked with that was very
2 special in my life, and I don't know how to value that .

3 Q All right. Now, what about the one that's got
4 Switzerland or something? Is that the Scorpions one?

5 A That's a little Scorpions one from Switzerland.

6 Q And was that a gift as well?

7 A That is a gift as well. I thought that was a nice
8 little special one that I got over there that was a complete
9 surprise to me.

10 Q All right. And the Paula Abdul, that was a gift as
11 well?

12 A That was a gift from her at the end of her tour in
13 1992.

14 Q Now, the one with the -- the one that you had the
15 show, what would that value be?

16 A Not very much. It's merely a poster that we put in
17 a frame, so it wouldn't be very much money at all.

18 Q Okay.

19 A Fifty bucks, 20 bucks, something.

20 Q And you said that the gold records would be anywhere
21 from 100 to 600. Would that be each, or for the picture of,
22 like, the six of 'em?

23 A I would estimate that that would be each.

24 Q Okay.

25 A The value of each of 'em, with the plaques and the

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1 personalized plaques and everything.

2 Q And the frames, as well?

3 A Yes.

4 Q All right. Now showing you State's 449.

5 A Is this you with the rest of your property
6 identified?

7 A This is me with property as well. The Bon Jovi you
8 can see, Map of the World, Stone Temple Pilots. I'm not sure
9 what these ones are, but I'm -- because I can't read 'em.

10 Q Okay.

11 A But they're certainly mine, because I've picked them
12 up.

13 Q And now, you said when you were flipping through,
14 did a lot of these actually have your name on them?

15 A Basically all of 'em had either my name or they had
16 my wife's name on if they belonged to her.

17 Q Such as, I'm gonna show you 414.

18 A That's my wife's maiden name, Ash, Phyllis Ash.

19 Q All right, and so all of 'em have sort of plaque on
20 'em? Like --

21 A Yeah.

22 Q -- I'm gonna show you the Switzerland one. This is
23 420. Guess it goes like that. You see your name on that one?

24 A Yes, my name's on that one.

25 Q So that helps you identify 'em as well?

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1 A Yes, it did.

2 Q Okay. Now, looking back at 449, the value would be
3 the same for each of those gold records?

4 A I believe, yes.

5 Q And then the second time that you went back, I'm
6 gonna show you State's 458, when you went with your wife? And
7 you said her maiden name was Ash?

8 A Yes, it was.

9 Q Her married name is Cayne?

10 A Yes, it is.

11 Q What's the approximate value of the three in this
12 photograph? The gold --

13 A The two gold records. I would say are the same as my
14 estimates before, a few hundred dollars for just a single
15 record, tape, CD, instead of the multi -- the larger pieces.
16 The watercolor I actually don't know, she purchased that
17 before I actually went out with her.

18 Q Okay. And did you give anyone permission to have
19 all of these items you've identified as yours since the time
20 you were burglarized until 2006?

21 A No, I didn't.

22 MS. DIGIACOMO: Pass the witness.

23 THE COURT: Questions?
24
25

CROSS-EXAMINATION

BY MR. HART:

Q You said they were valuable to you because they're uniquely plagued to you?

A Yes.

Q Or your wife, correct?

A Yes.

Q They're not something you bought or purchased, they're --

A No, they're not.

Q -- all gifts.

A They're all gifts.

MR. HART: Nothing further.

THE COURT: Thank you, Mr. Cayne. Appreciate your time.

THE WITNESS: Thank you.

THE COURT: You're excused. Have a nice day. Call your next witness.

MS. DIGIACOMO: Your Honor, could I just have Court's indulgence for a moment?

THE COURT: Sure.

MS. DIGIACOMO: Phyllis Ash Cayne.

THE COURT: Okay. Phyllis Cayne. Come on up here, Ms. Cayne.

PHYLLIS CAYNE, STATE'S WITNESS, SWORN

THE COURT: State your name and spell your name for the

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1 Court Recorder.

2 THE WITNESS: Phyllis Cayne. P-h-y-l-l-i-s C-a-y-n-e.

3 DIRECT EXAMINATION

4 BY MS. DIGIACOMO:

5 Q And what's your maiden name?

6 A Ash.

7 Q All right. Now, do you own a business with your
8 husband or Global Entertainment?

9 A Yes.

10 Q Did a burglary occur where many of the memorabilia
11 you had hanging were stolen?

12 A Yes.

13 Q Did you also have a watercolor print that was
14 stolen?

15 A Yes.

16 Q Okay, showing you State's Exhibit 456, do you
17 recognize this?

18 A Yes.

19 Q Okay, and actually 458, you went down to the vault
20 with your husband and identified it?

21 A Yes.

22 Q What is the value of that picture? How much did you
23 pay for it?

24 A Probably around \$200.

25 MS. DIGIACOMO: Nothing further.

1 THE COURT: Any questions?

2 CROSS-EXAMINATION

3 BY MR. HART:

4 Q Is it safe to say at this time you don't really
5 remember what you paid?

6 A I got it when I lived in Los Angeles, probably in
7 the late '80s, at a Beverly Hills art fair, so I -- you know,
8 I don't remember.

9 Q Okay.

10 MR. HART: No further questions.

11 THE COURT: Thanks, Ms. Cayne. Appreciate your time.
12 You're excused. Call your next witness.

13 MS. DIGIACOMO: Anthony Holly. And just for the record,
14 Your Honor, this is our last witness for today.

15 THE COURT: Okay.

16 MS. DIGIACOMO: And then we've run out.

17 THE COURT: Well, this is witness number 40, so we're
18 doing pretty good for two days.

19 Mr. Holly, come on up.

20 MS. DIGIACOMO: Oh, it is Count --

21 [Counsel Confer]

22 ANTHONY HOLLY, STATE'S WITNESS, SWORN

23 THE COURT: Mr. Holly, state your name and spell your
24 name for the Court Recorder.

25 THE WITNESS: My name is Anthony Holly. My first name's

1 A-n-t-h-o-n-y, last name is H-o-l-l-y.

2 THE COURT: Count Number?

3 MS. DIGIACOMO: XXI.

4 THE COURT: All right.

5 DIRECT EXAMINATION

6 BY MS. DIGIACOMO:

7 Q Sir, directing your attention to May of 2003, did
8 you have a business?

9 A I did.

10 Q And what was it called?

11 A DVD Unlimited.

12 Q What kind of a business was that?

13 A It's a video production studio.

14 Q Do you still have it today?

15 A No, I don't.

16 Q Did you have a burglary that occurred in May of
17 2003?

18 A Yes, I did.

19 Q How was it that you discovered the burglary?

20 A I got a call from one of the neighbors that told me
21 that my back door was suspiciously open at a time that
22 normally it would not have been open. I rushed to the studio
23 upon hearing that news, to discover that my business had been
24 burglarized.

25 Q What kind of items were missing?

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1 A Video cameras, video tape recorders, speakers, music
2 production equipment, just a host of electronic music
3 equipment that you need to run a production studio.

4 Q Right. Did it affect your running a studio, then,
5 by not having it?

6 A Oh, it was detrimental.

7 Q All right, now, did you get a call in the fall of
8 2006 about possibly some of your items being found?

9 A Yes, I did.

10 Q I'm gonna show you a series of photographs. First
11 of all, I'm gonna show you State's proposed Exhibits 340 to
12 342. You don't have to explain what's in 'em, just flip
13 through 'em and let me know if you recognize anything in these
14 photographs as being from your burglary or your studio?

15 A Okay, those studio --

16 Q Well, if it's yes just flip it. We'll go back and
17 we'll discuss it.

18 A Okay. I think those were the speakers there.

19 Q Okay.

20 MS. DIGIACOMO: And Your Honor, for the record he's
21 identified 340 and 342.

22 BY MS. DIGIACOMO:

23 Q And the items that you see in here, do they fairly
24 and accurately depict the way they looked when you last saw
25 them, before your burglary?

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1 A Yes.

2 MS. DIGIACOMO: I'd move for admission of 340 and 342.

3 THE COURT: Objection?

4 MR. HART: No objection.

5 THE COURT: Admitted.

6 [State's Exhibits 340 and 342 Admitted]

7 BY MS. DIGIACOMO:

8 Q Next I'm gonna show you State's proposed Exhibits
9 343 and 344. If you could look at both of those and let me
10 know if you recognize anything in them.

11 A Yes, I recognize that piece of equipment, the MPC
12 2000.

13 Q All right. And they fairly and accurately depict
14 the way that this MPC 2000 looked when you last saw it before
15 your burglary?

16 A Yes.

17 MS. DIGIACOMO: I'd move for admission of 343 and 344.

18 MR. HART: No objection.

19 THE COURT: They'll be admitted.

20 [State's Exhibits 343 and 344 Admitted]

21 BY MS. DIGIACOMO:

22 Q Now, with regard to I guess 340 -- 340 and 3 --
23 well, I'm sorry, which ones did you identify, 340 and 342?

24 The locations where you recognized some of your
25 equipment, did you recognize the locations? In these two

1 photographs did you recognize where they were taken? Have you
2 ever seen those? Locations?

3 A Have I ever seen that location?

4 Q Yes.

5 A No.

6 Q Okay. And with regard to 343 and 344, have you ever
7 seen this location?

8 A No.

9 Q Okay. And then were you asked to go to the evidence
10 vault to do a viewing?

11 A Yes.

12 Q All right. First of all I'm gonna show you State's
13 proposed Exhibits 345 through 351. Flip through those and let
14 me know which photographs you recognize, or just flip over the
15 ones you do recognize?

16 A Don't remember that one, so.

17 Q Recognize State's -- these exhibits and they fairly
18 --

19 A Yes, I do. I recognize all of those pictures there
20 that I flipped over.

21 Q Now, do they fairly and accurately depict some of
22 your property that was taken from you ?

23 A Yes, it does.

24 MS. DIGIACOMO: Your Honor, I'd move for admission of
25 345, 346, 348, 349, and 351.

1 THE COURT: Any objections? They're admitted.

2 [State's Exhibits 345-346, 348-349, 351 Admitted]

3 BY MS. DIGIACOMO:

4 Q Now, on a different day, did a detective bring you a
5 piece of equipment to look at?

6 A Yes, he did.

7 Q And now showing you State's proposed Exhibits 353,
8 354, 355 and 356, let me know -- just flip through those and
9 let me know if you recognize 'em.

10 A Recognize that, recognize that, recognize that, I
11 recognize that.

12 Q Okay.

13 MS. DIGIACOMO: So, Your Honor, I'd move -- or -- .

14 BY MS. DIGIACOMO:

15 Q Do they fairly and accurately depict you and the
16 property that you looked at that was taken from your burglary?

17 A Yes, they do.

18 MS. DIGIACOMO: Your Honor, I'd move for admission of 353
19 through 356.

20 THE COURT: Objection?

21 MR. HART: No objection.

22 THE COURT: Admitted.

23 [State's Exhibits 353-356 Admitted]

24 BY MS. DIGIACOMO:

25 Q All right, sir, first of all I'm gonna show you

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1 State's Exhibit 340. Do you recognize this? Do you recognize
2 any of your pieces of property in 340?

3 A Yes.

4 Q Okay, if you can -- you can touch the screen,
5 there's a stylus in front of the microphone -- yeah, you can
6 touch the screen and draw circles.

7 And what is that that you just circled?

8 A Those are studio monitors. They're speakers.
9 They're used in the production of music.

10 Q Okay. And showing you 342, do you see those same
11 speakers?

12 A Same speakers are sitting right there.

13 Q Okay. But you don't know this location where they
14 are?

15 A No, I've never seen that location before.

16 Q Now showing you State's proposed -- or, excuse me,
17 State's Exhibit 343. What is it that you recognize in that
18 picture?

19 A MPC 2000 right there.

20 Q And the State's 344 is just a close-up of that?

21 A Yes, that's correct.

22 Q Now, with regard to the speakers, how are you able
23 to identify them?

24 A We're able to identify 'em from the serial number on
25 the speakers.

1 Q Okay. Do you know what that serial number is?

2 A I don't know it by heart.

3 Q Okay.

4 A But I had it on receipt and documentation on the day
5 of the robbery that we filled out the police report with.

6 Q And when you went down to the evidence vault and
7 viewed it, did you confirm the serial number on there?

8 A Yes. Yes, we did.

9 Q All right, now showing you first of all State's 345.
10 Is that one of the speakers?

11 A Yes, it is.

12 Q And then State's 346, is that the back of the
13 speaker?

14 A Yes, it is.

15 Q And what's the serial number on that?

16 A 29 S as in Sam P as in Paul 5 B as in Boy 1129-1.

17 Q All right, now, do both of the speakers have pretty
18 much the same -- and I'm gonna show you 349 -- the same serial
19 number?

20 A They have the same serial number except for the last
21 number. The other speaker's -2.

22 Q All right. And then showing you 348, is that the
23 other speaker?

24 A Yes.

25 Q And then 351, is that you with the speakers in the

1 evidence vault?

2 A Yes, it is.

3 Q All right. Now showing you 353. What is this?

4 A That's an MPC 2000.

5 Q Now, how were you able to identify this?

6 A From one of my music producers, R.B., put that label
7 on it, that Rob B Entertainment.

8 Q Can you circle that for the jury? There you go,
9 okay. And then showing you 354, is that a close-up of that?

10 A That is a close-up of it.

11 Q All right. And then, so Rob B put that label? He
12 worked for you?

13 A Yes, he did.

14 Q And then 356?

15 A Me again.

16 Q Who's that handsome man?

17 A That's me.

18 Q With your MP --

19 A MPC 2000.

20 Q 2000, all right. Now, did you give anyone
21 permission to have these items from the time that you were
22 burglarized in 2005 until you saw them again?

23 A No, I did not.

24 Q And now, what is the value or what is the cost of
25 the speakers?

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1 A The cost of the speakers new was I think roughly
2 around \$500, \$600.

3 Q And then what did you pay for the --

4 THE COURT: Excuse me, is that each or collectively?

5 THE WITNESS: Collectively.

6 BY MS. DIGIACOMO:

7 Q And then what did you pay for the MPC 2000?

8 A I want to say \$1,400.

9 MS. DIGIACOMO: Pass the witness.

10 THE COURT: Questions, Mr. Hart?

11 MR. HART: Very briefly.

12 CROSS-EXAMINATION

13 BY MR. HART:

14 Q You originally -- could you have originally told the
15 officers that you paid 224.50 apiece for the speakers?

16 A I could have. It's been such a long time ago.

17 THE COURT: It's pretty much what he said. He said about
18 500 collectively.

19 MR. HART: Yes, well I'm just --

20 THE COURT: So it'd be 450.

21 MR. HART: I'm getting there, Your Honor.

22 BY MR. HART:

23 Q And that was back in 2005, correct?

24 A That's correct.

25 Q Advances in stereo equipment, advances in mixing

1 equipment, decrease the value of electronics?

2 A Absolutely. Absolutely. Just like computer
3 equipment.

4 Q Okay. So what you paid for it in two thousand and -
5 - actually, 2003 is when this originally -- the reports were
6 originally done, correct?

7 A That's correct.

8 Q It would be a reduced value in two thousand --

9 A Well, actually, our studio was very new at that
10 time. The equipment that was taken from our property was, I
11 mean, used for 90 days, less than four months. So our
12 equipment was in fairly, fairly brand-new condition when it
13 was stolen.

14 Q I'm asking about when it was returned to you. At
15 that point it was four years later?

16 A It's never been returned to me yet, sir.

17 Q At the time you viewed it. It was over four years
18 later?

19 A Yes.

20 Q Okay. And the value would have gone down by then?

21 A Absolutely.

22 Q Thank you. Nothing further.

23 THE COURT: Anything else?

24 MS. DIGIACOMO: No, Your Honor.

25 THE COURT: Mr. Holly, thanks for your time.

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1 THE WITNESS: Thank you.

2 THE COURT: Appreciate it. That it for the day?

3 MS. DIGIACOMO: That's it, Your Honor, for today.

4 THE COURT: All right. Well, this is a little earlier
5 than we usually quit, but we did 22 witness today so that's a
6 good long day, believe me. The State planned to put in 22 and
7 got 22 in, they did nine hours' work in six hours, so.

8 All right, well we're right on time. The rest of
9 the scheduled witnesses, there's three that can't come till
10 Monday but the rest of 'em we'll be done with by Friday and
11 we're doing fine. Appreciate your attentiveness. It gets a
12 little bit rote and seemingly the same thing over and over,
13 but you know, it's important to Mr. Holly and it's important
14 to each of these people, so thanks.

15 All right.

16 [Court admonishes Jury]

17 THE COURT: Again, I got double duty in the morning.
18 There's a judges convention this week. I bet 20 out of 25
19 judges are off at the convention, so I'm doing double duty in
20 the morning. I'm guessing 9:45. I don't like you to wait one
21 minute if I don't have to. I looked at it, it's pretty hefty
22 this morning, but I think it'll be about like it was this
23 morning when I had double duty, so why don't we start at 9:45.
24 Have a nice breakfast and we'll try to get started and get
25 going on time.

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1 [Jury out]

2 [Outside the Presence of the Jury]

3 THE COURT: Okay, the record should reflect the jury has
4 exited.

5 Mr. Hart, you wanted to make a motion. Go right
6 ahead. Do we need -- yeah, here we go. Go right ahead.

7 MR. HART: Okay. Yes, Your Honor, I wanted to renew my
8 motion for suppression. On the car stop we had the testimony
9 come in from Officer Hardeman the other day that when he got
10 there the doors were all opened, which was different than
11 Officer Salisbury testified. Additionally, Officer Salisbury
12 -- and you've seen this in the motion where we cited the
13 original preliminary transcript.

14 THE COURT: Both sides did nice work in outlining their
15 positions.

16 MR. HART: Okay. He had originally said he didn't see
17 anything that caught his eye. His testimonies have morphed
18 with time into saw the crystal in the Anku Crystal Palace.
19 Today at the hearing, yesterday with Officer Hardeman we got
20 out of him that he told them that there was nothing going on
21 at Just For Kids Dentistry, said there was no burglary, and
22 then he drove on to Anku Crystal Palace, which time they
23 called --

24 THE COURT: I'm not quite sure I agree with that. I'm
25 not sure they said there was no burglary. I think they said

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1 there was nothing taken. That could be different. You can
2 enter with the intent to commit something and you don't see
3 shit in there that you like and so, you know, that doesn't
4 mean that there isn't a burglary.

5 But I think he said that, you know, didn't appear to
6 be anything taken. But any event.

7 MR. HART: I believe he testified that it appeared that
8 there was no burglary. It took him to go back and he was at
9 least 20 minutes after he got back before he contacted Officer
10 Salisbury.

11 THE COURT: Uh-huh?

12 MR. HART: At which time the case -- after he got back
13 and was speaking with Mr. Hung. Mr. Hung testified that he
14 was there for a while with the officer before he was ever
15 transported.

16 Your Honor, there was no basis for the stop based on
17 the fact that -- or officer that had gone to Just For Kids
18 Dentistry had looked and said that there was no indicia of any
19 openings, no -- he had reported to Officer Salisbury that
20 there was no burglary.

21 Additionally, Officer Salisbury's testimony that,
22 oh, we had not looked at anything, had not seen anything -- I
23 mean, when he originally testified at a preliminary -- in his
24 original report, it was just a traffic stop. Then it morphed,
25 during the preliminary hearing, to start adding, oh, I saw

1 something. He started adding in, the crystal caught his
2 attention later. Tell you from the first trial over at, with
3 Judge Wall, he didn't know anything about that tool being able
4 to open the door, but he got a lot more knowledgeable this
5 time after the end of the trial that he could talk about how
6 that works the lock.

7 MS. DIGIACOMO: Well, based on his training and
8 experience now, he now knows how a tool like that can be used.

9 THE COURT: Did Judge Wall suppress that evidence?

10 MS. DIGIACOMO: No.

11 MR. HART: No. It was not --

12 MS. DIGIACOMO: In fact, this motion has been brought to
13 suppress in front of Judge Wall twice.

14 THE COURT: Well, you know, he's -- I know this. Wall's
15 a lot smarter than me. I mean, some of the judges around here
16 aren't, but Wall is.

17 MR. HART: Well, we are -- as this is coming forward the
18 testimony is changing and morphing, and that's why I'm
19 renewing it, Your Honor.

20 THE COURT: Okay. Well. Obviously conflicting testimony
21 is conflicting testimony.

22 Go ahead.

23 MS. DIGIACOMO: Well, Your Honor, it's not morphing.
24 What he's leaving out is the testimony that came out at the
25 trial, which was different and more on point. Hardeman

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1 testified the reverse this time. Before, he said he stopped
2 by, went to the Crystal Palace, and then came -- when he came
3 back is when everything was open and he saw it.

4 They can detain him for 16 minutes, he was arrested
5 -- and the arrest records are clear -- within I think a half-
6 hour or 40 minutes, so.

7 THE COURT: Actually, I think it's better for the State
8 even than that.

9 They can make a Terry stop if they have reason to
10 believe foul play is afoot. When they get a call there's a
11 burglary in progress and there's only one car in the lot, I
12 think that's a basis for a Terry stop. They stop that car
13 immediately, and after the people exited, according to
14 Salisbury, he makes a sweep for officer safety and turns the
15 light in and sees both a crystal piece and some tools commonly
16 used in burglaries. He was on his way to a burglary of the
17 Crystal Palace.

18 I think at that juncture he has probable cause, and
19 so the ticking clock of Terry morphing into probable cause, I
20 think went down in 5 minutes. You know, at some juncture in
21 here they say traffic stop but, again, I reiterated that the
22 other day. I don't think there's anybody said they talked to
23 him for a traffic violation. I think they're saying traffic,
24 meaning vehicular as opposed to pedestrian -- I pulled a car
25 over. But they certainly had a Terry basis for pulling the

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1 car over, and I think once you see crystal and tools, if you
2 knew that the Anku Crystal Palace had been burglarized in the
3 same area, you know, a half hour to an hour earlier, I think
4 they had probable cause right then.

5 Now, they bring the person over later and he says,
6 gee, none of that stuff is mine. What was probable cause may
7 disappear, they may change their mind and say, okay, you're
8 un-arrested. But I don't see this as a Terry stop. And the
9 timing is certainly even questionable. The owner of the
10 Palace got there and then came over in 20 minutes, I mean,
11 it'd be fairly close anyway, but I think they got probable
12 cause within 5 minutes.

13 That motion is denied.

14 MR. HART: Thank you, Your Honor.

15 THE COURT: Okay.

16 MS. DIGIACOMO: And Your Honor, lastly, because I'm gonna
17 have to get the jail calls redacted tomorrow. I believe
18 Mr. Hart and I, he indicated we're gonna have some
19 disagreements about what comes out?

20 MR. HART: Oh, yeah. We always do.

21 THE COURT: There's gonna be less now than there would be
22 if Holmes was here, because you've got a situation where, you
23 know, it may adversely reflect on another person than a Bruton
24 situation. So certainly any --

25 MS. DIGIACOMO: Well, we don't have that issue here.

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1 THE COURT: Right. Right. So, I mean, the only thing --
2 have you got any where he's talking about his own prior record
3 or anything like that? What's gonna be --

4 MS. DIGIACOMO: Well, that would come out.

5 MS. SMALL: Yeah.

6 MS. DIGIACOMO: That's not in dispute.

7 THE COURT: What, what --

8 MR. HART: Yeah, there's also talk about possible
9 future --

10 MS. DIGIACOMO: Well, I think that's part of the
11 conspiracy. At one point he tells --

12 THE COURT: Yeah, the future would come in. We're gonna
13 do this, that and the other. That would come in. .

14 But anything where he says, you know, I hope I don't
15 go back to prison, for example, that would have to come out --

16 MR. HART: And there's --

17 THE COURT: --because it would mean that he'd been there
18 before.

19 MR. HART: There's some testimony about the Chinaman, I
20 hope the Chinaman doesn't show up. And --

21 MS. DIGIACOMO: Well, about trying to kill him or he
22 doesn't show up.

23 THE COURT: Well, that's --

24 MR. HART: And so I think --

25 THE COURT: -- consciousness of guilt. That's like

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1 flight or --

2 MR. HART: I think the language is more prejudicial than
3 probative as to racial, racial --

4 THE COURT: Okay, so I'll tell you -- I'll tell you a
5 story. Now that you mention that, I'll tell you a story.

6 Here we are --

7 MS. DIGIACOMO: See what you did, Marty?

8 THE COURT: Last year -- I mean, last --

9 [Counsel Confer]

10 THE COURT: No, no, no. Now this is a good story. Last
11 week, I went to mediation up at the Judicial College for a
12 week, and Bonaventure went and Brennan and Lippis and Thompson
13 and Menuchin and -- well, there were eight of us anyway.
14 Eight of us.

15 And so you get this role playing and, for the
16 mediation, and I get -- there's a mediator person and there is
17 a potential plaintiff, a potential defendant, and then there's
18 the observer, the grader. And in this case I'm the defendant,
19 and I'm supposed to play the operator of a Chinese restaurant
20 named Mr. Gu. And I get in a beef with the plaintiff that's a
21 senior citizen because he wants the discount and either we've
22 got a language barrier and there's, you know, racism and all
23 this going on, and so in any event the mediator is supposed to
24 mediate this, you know, we're supposed to be really beefing,
25 and.

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1 So we get done, you know, we've played those parts,
2 and Brennan's doing the evaluation and he says, well, you
3 know, the old man, you know, he did this or that. Then he
4 comes to me and he says, you know, as far as the Chinaman's
5 concerned -- and I said, that would be Asian-American to you,
6 butthead.

7 It really -- you'd had to been there, it was really
8 in the moment, it was great.

9 So you know, it really didn't offend me but I
10 pretended it offended me when they said Chinaman, you know
11 what I mean?

12 MR. HART: Yes.

13 THE COURT: There you go.

14 MS. DIGIACOMO: Well, that's in this case, I mean --

15 THE COURT: So you know what I mean? I don't think it's
16 a big deal.

17 MS. DIGIACOMO: Well, there's a --

18 THE COURT: Judge Brennan used the term.

19 MR. HART: So you're telling me -- I just want to lay my
20 record here --

21 THE COURT: I'm telling you that I don't find the use of
22 profanity or some of, you know, Chinaman or some of those
23 things, as a basis to redact. I don't find that to be
24 particularly prejudicial. People don't expect people in this
25 situation to talk like they were in church.

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1 But anything that refers to his record or I hope I
2 don't go back to prison, that would be out. Any other
3 statements of people when he is not on the phone, if for
4 example Holmes is talking to Ferguson and they attribute
5 criminal conduct to him that you can't cross-examine, that's
6 out.

7 MS. DIGIACOMO: Well, what about there's a call that is
8 made the day that they get the search warrants, there's a call
9 made because the Defendants do not have --

10 THE COURT: Made by whom to whom?

11 MS. DIGIACOMO: Well, the Defendant did not have any
12 phone rights, so it is a call from some random inmate to
13 Holmes that says Dinky has a message for you, which that's his
14 nickname, and he passes on the message. So basically it was
15 indicating he needed to clear out something in his storage
16 unit.

17 THE COURT: I don't think that can come in. I think that
18 there's no way that Mr. Hart is gonna be able to cross-examine
19 that inmate. I mean, how do we know that --

20 MS. DIGIACOMO: But isn't it, isn't it -- well, couldn't
21 it be viewed as an admission? It's an adoptive admission by
22 him.

23 THE COURT: Well, it might be if he's present. If you
24 can prove that he was present at the time and he doesn't take
25 any action to the contrary, that's an adoptive admission. But

1 what if he's not present? What if the two guys -- but we
2 don't even know that he --

3 MS. DIGIACOMO: How else would this inmate get the
4 information that tied into the case and knew his name and made
5 a random call to --

6 THE COURT: If he got it from Ferguson.

7 MS. DIGIACOMO: -- somebody he doesn't -- Ferguson was
8 already in custody. He wasn't in booking, it came from
9 looking.

10 THE COURT: Nah. You know, if you show me the specific
11 thing I'll be glad to look at it, but it seems to me like this
12 is a call which he is not privy and you're, in essence --

13 MS. DIGIACOMO: But made on his behalf.

14 THE COURT: Well, maybe. Attributing -- apparently
15 there's some attribution of guilt as far as that's concerned
16 isn't it?

17 MS. DIGIACOMO: Well, yeah, because the storage unit
18 they're --

19 MR. HART: Yes.

20 MS. DIGIACOMO: -- referring to wasn't found until the
21 next day.

22 THE COURT: Okay. I think that probably is a violation
23 of Bruton and it's -- I mean, you can show it to me and I'll
24 look at it, but as I sit here today I think that that doesn't
25 come in.

1 MS. DIGIACOMO: Anything else?

2 MR. HART: Right now?

3 MS. DIGIACOMO: Well, no. I mean, I need to know because
4 I have to redact 'em, so anything else that you have a problem
5 with in the calls?

6 THE COURT: Anything that is a reference to his prior
7 record, that's not fair.

8 MS. DIGIACOMO: Well, that's a given, Your Honor.

9 THE COURT: Anything that is where he's not a party to
10 the conversation --

11 MS. DIGIACOMO: No, he's in all of the other ones.

12 THE COURT: -- and it attributes guilt to him.

13 MR. HART: Okay, yeah, the --

14 THE COURT: Well, then, you know, unless he's talking
15 about his own prior record, anything he's talking about doing
16 in the future or anything he's talking about covering up the
17 crime or any of that --

18 MR. HART: Well --

19 THE COURT: -- he got to live with those.

20 MR. HART: The first few calls go in, and this is, we
21 litigated this previously, there is no warning at the
22 beginning of the call that this is subject to monitoring.

23 MS. DIGIACOMO: Well, Your Honor --

24 MR. HART: And they're --

25 MS. DIGIACOMO: -- he's using a phone that's got a --

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1 THE COURT: Yeah, there's signs all over the jail, isn't
2 there?

3 MS. DIGIACOMO: -- a sign on the wall and every phone has
4 a sign that it is.

5 THE DEFENDANT: There was no signs on the wall, Your
6 Honor.

7 MS. DIGIACOMO: And this was the basis of his motion to
8 suppress you already denied.

9 THE COURT: . Okay.

10 MR. HART: We're just trying to clarify --

11 THE COURT: Well, he can make his record that, you know,
12 I didn't see the sign on the wall.

13 On the other hand --

14 MS. DIGIACOMO: But there's also throughout the
15 recordings he references he knows people are listening.

16 THE COURT: Nothing personal, but I'm guessing Mr. Monroe
17 knows the drill down there better than the Kierkegaard that
18 runs the jail. Just a guess. So it isn't exactly like, you
19 know, we took somebody off the street, never been to jail, and
20 then they screw up because they're a little mouthy.

21 MR. HART: Your Honor, I, I, I would --

22 THE COURT: I'm thinking Monroe knows the drill and so he
23 already has this code set up so that, you know, he's passing
24 on the message without alerting the rest of the world. I'm
25 thinking. That's just my guess.

1 MR. HART: Your Honor, based on that statement, I'm not
2 sure you'd be a good judge for this case due to your --

3 THE COURT: Listen.

4 MS. DIGIACOMO: Oh, I think the judge is not a good
5 juror.

6 THE COURT: Listen. I didn't ask for it. It was
7 Michelle's case. They threw it on me --

8 MS. DIGIACOMO: You know what?

9 THE COURT: -- that's the way it is. I do what I'm told.

10 MS. DIGIACOMO: Judge, I didn't --

11 THE COURT: I'm not the boss here.

12 MS. DIGIACOMO: Yeah, I didn't hear Mr. Hart ask for a
13 bench trial on this.

14 THE COURT: Unh.

15 MS. DIGIACOMO: We would have been done already.

16 MR. HART: Well, based on that statement I think it was
17 probably a very wise decision of mine not to ask for a judge
18 to --

19 THE COURT: It just ain't my first rodeo, Martin, that's
20 all it is. It ain't my first rodeo, you know.

21 All right, have a good night.

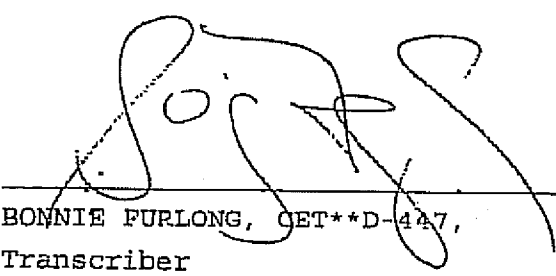
22 COUNSEL: Good night, Your Honor.

23 [Proceedings Concluded at 4:09 p.m.]
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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

THURSDAY, MAY 15, 2008

REPORTER'S PARTIAL TRANSCRIPT
TRIAL BY JURY
DAY 4 - 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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00618

1 THURSDAY, MAY 15, 2008, 10:19 A.M.

2 [Outside the Presence of the Jury]

3 [Audio Begins]

4 THE COURT: All right, bring them in, Charmaine.

5 [Counsel Confer]

6 [Jury In]

7 [Within the Presence of the Jury]

8 THE COURT: Good morning. I have bad news and okay news.

9 Mr. Hart's got the flu. He's throwing up, and --

10 THE MARSHAL: Judge, we're short one juror.

11 THE COURT: Okay, well, we'll tell 'em when they get in
12 here. And they --

13 [Counsel Confer]

14 THE COURT: Here we go. I have some bad news and some
15 okay news. Mr. Hart has the flu, he's throwing up and --

16 MS. DIGIACOMO: Got a fever.

17 THE COURT: Yeah, he's -- he's just sick and he can't go,
18 and we can't go without him.

19 The good news is, these two ladies have promised me
20 that they will take today and pare down some of the witnesses
21 so we'll still get this done on time. They're gonna just cut
22 through some of the stuff that would be maybe duplicative and
23 that they figure you can figure out on your own even if we
24 lose a day.

25 Which is -- I know it's unfair to you, and it's, you

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1 know, I got another trial starting Wednesday, we got to get
2 this done. But we can't do it today without Mr. Hart. And I
3 didn't know. I literally found out five minutes ago, or we
4 would have called you. You know, we have a procedure where
5 the marshal will get on the phone, call you, and we get the
6 phone number from the Jury Commissioner and tell you so you
7 don't waste your time coming down. I'm very, very sorry, but
8 I don't know. Nothing I can do.

9 So we're gonna have to pick up tomorrow, 9:15 is --
10 I can do it tomorrow at 9:15. I mean, I --

11 MS. DIGIACOMO: We're ready. I've told my witnesses.

12 THE COURT: Mr. Westbrook really irritated me today
13 because all these people were waiting, and he kind of
14 blindsided me with that, but tomorrow all we got is overflow
15 so we'll be good at 9:15. I really appreciate it if you guys
16 can pare this down in a way that tomorrow and Monday we get
17 the evidence in.

18 MS. DIGIACOMO: That's fine, Your Honor.

19 THE COURT: Sorry. Nothing I can do. See you tomorrow
20 at 9:15. Have a nice day. We're paying you for today.

21 MS. DIGIACOMO: Judge?

22 THE COURT: We're paying you for today.

23 MS. DIGIACOMO: Admonishment?

24 THE COURT: Yes.

25 [Court Admonishes Jury]

1 THE COURT: See you tomorrow. Yeah, take the day off, go
2 shopping, do whatever -- we're paying you.

3 [Jury Out]

4 [Outside the Presence of the Jury]

5 MS. DIGIACOMO: Judge, did we make a record about the
6 waiver, or --

7 THE COURT: We're gonna -- he's coming in.

8 MS. DIGIACOMO: Oh, Okay.

9 UNIDENTIFIED SPEAKER: Yeah, but he's in there.

10 THE COURT: Now, bring him in.

11 UNIDENTIFIED SPEAKER: Okay. Oh, he's not here?

12 THE MARSHAL: He's still not here yet, Judge.

13 THE COURT: Okay. Since -- just -- you can come in now
14 as soon as he gets here they'll bring him in and you guys stay
15 and we'll tell him what's happening.

16 [Counsel Confer]

17 [Court and Clerk Confer]

18 THE COURT: Come on in. Here's what's happening, Mr.
19 Monroe. Mr. Hart's barfing. He's got the flu. So I don't
20 expect you to go with Ms. Tramel; she's a good lawyer, but she
21 hasn't been on the case for a year, so we're just picking it
22 up tomorrow. He thinks like he'll be okay tomorrow, and the
23 jury came in before you got here, I explained to it and sent
24 them home so they didn't wait around for you, and then I got
25 them out so they didn't see you come in from the outside, but

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1 I don't know what else to do.

2 THE DEFENDANT: Okay.

3 THE COURT: So. You don't get to wear the tie today, but
4 tomorrow you can again.

5 THE DEFENDANT: Okay.

6 THE COURT: All right, see you tomorrow.

7 THE DEFENDANT: Thank you.

8 THE COURT: We're gonna start at 9:15 sharp.

9 THE DEFENDANT: Thank you, sir.

10 THE COURT: All right.

11 MS. DIGIACOMO: Judge?

12 THE COURT: What?

13 MS. DIGIACOMO: Did you ever admonish the jury that none
14 of us are allowed to talk to them?

15 THE COURT: Yes. Sure. Right in the opening I say, you
16 know --

17 MS. DIGIACOMO: Okay, because I wasn't -- well, I always
18 pay attention --

19 THE COURT: I said, you know, ladies and gentlemen --

20 MS. DIGIACOMO: -- but they always try and say hi and
21 stuff, and like --

22 THE COURT: It goes like this, I say ladies and
23 gentlemen, during the course of the trial none of the
24 participants in the trial are allowed to talk to you except
25 the marshal, R.J., so if --

1 MS. DIGIACOMO: Yeah, right, you did. Well, they just
2 always --

3 THE COURT: If you, you know, need to know where the
4 restroom is or what to eat or if there's something --

5 MS. DIGIACOMO: That's right.

6 THE COURT: -- you need to bring to my attention you tell
7 R.J. and he'll give it to me and that's the way we -- yeah, I
8 always do.

9 MS. DIGIACOMO: Okay. Yeah, weird. Okay.

10 THE COURT: Why? Did you walk by 'em in the hallway and
11 they --

12 MS. DIGIACOMO: Well, I mean, like when they walk out
13 they're like, have a good day, or -- I mean, they say things,
14 so.

15 THE COURT: They've been saying that to me too. They
16 don't usually do that but, you know what? My jurors are
17 usually -- jury trials are usually so short that they -- we're
18 not -- you know, we're like old buddies now.

19 MS. DIGIACOMO: Right.

20 THE COURT: And so they say have a good day, and all you
21 do is nod, you're -- you're cool.

22 MS. DIGIACOMO: That's all I have been doing, I just
23 thought it was weird this jury tries to say a lot.

24 THE COURT: Well, that's -- they've been doing that with
25 me too.

1 MS. DIGIACOMO: Okay.

2 THE COURT: Okay, Judge, blah blah blah. They've been
3 told and they're not gonna be offended if you just nod.

4 MS. DIGIACOMO: Okay. Okay.

5 THE COURT: All right, get that pencil sharp.

6 MS. DIGIACOMO: Huh?

7 THE COURT: Get the pencil sharp and cut out a couple of
8 phone calls and a couple of bullshit cops, and -- you got --
9 according to me, you got three victims left. You got 4, 23
10 and 26.

11 MS. DIGIACOMO: No, there's more than that. Oh, I gave
12 her my list. There's --

13 THE COURT: I got victim 4, 23 and 26.

14 MS. DIGIACOMO: Right, but we have two more witnesses --
15 I believe they're storage, I don't know. I think we still
16 have about -- no, it's landlord so, you're right, maybe it is
17 only about three victims.

18 THE COURT: I think there's three victims left --

19 MS. DIGIACOMO: But I've got -- I've got another three
20 that are storage and/or landlord.

21 THE COURT: Okay, and three victims.

22 MS. DIGIACOMO: I have another one on one count for
23 value, because the guy yesterday didn't know. And I think
24 that's it. And then there's cops.

25 THE COURT: Oh. Oh, by the way.

1 MS. DIGIACOMO: Yeah.

2 THE COURT: While you're both here -- oh, okay. No, it's
3 good. I thought that we didn't have the verdict form
4 consistent with the information. I thought all of 'em said 25
5 250 or not guilty, but no, there are some of 'em that are just
6 250. So we're good.

7 MS. DIGIACOMO: Okay, all right. Thanks Judge.

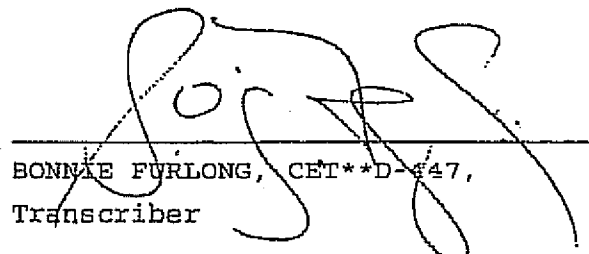
8 THE COURT: See you tomorrow, ladies.

9 [Proceedings Concluded at 10:26 a.m.]
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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

BRYAN FERGASON,

Defendant.

CASE NO. C-228752

DEPT. VII

BEFORE THE HONORABLE STEWART BELL, DISTRICT COURT JUDGE

WEDNESDAY, MAY 28, 2008

REPORTER'S PARTIAL TRANSCRIPT
TRIAL BY JURY
DAY 5 - VOLUME 1

APPEARANCES:

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

For the Defendant: CYNTHIA L. DUSTIN, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

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Bradley Nickell..... 6, 50

David McQueen..... 42

Defendant's Witness(es):

None

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1 WEDNESDAY, MAY 28, 2008 AT 9:24 A.M.

2 [Jury Out]

3 THE COURT: Okay. The State of Nevada versus Bryan
4 Ferguson, Case C228752, Ferguson present with Cynthia Dustin,
5 Sandra DiGiacomo and Ms. Small for the State.

6 Okay. There's an issue that came up last night
7 about the call number 3, the one from --

8 MS. DIGIACOMO: Daimon Monroe to Engle.

9 THE COURT: Daimon Monroe to Engle. You know, it's kind
10 of a catch 22 situation. It's hard to rule on it until you
11 hear it, and then you hear it and it's already played.

12 I mean, the good news is, it was almost a
13 meaningless conversation and the things that were talked
14 about, well I think they technically violate the Bruton Rule,
15 are things that I know the Defendant himself is going to talk
16 about dozens of times over the next bunch of phone calls. But
17 the rules, are the rules, are the rules, and we still need to
18 apply them.

19 So I've given this some more thought and I'm
20 convinced I need to strike that, tell the jury not to consider
21 it. I didn't see anybody writing any notes during any of
22 these phone calls, so I don't think it will indelibly
23 impressed on their mind. But that's my position at this
24 juncture now. I know you both want to --

25 MS. DIGIACOMO: And, Your Honor, I just want to make a

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1 record. I have a bench memorandum that's I'd like to file.

2 THE COURT: Yeah. I read it. I read it.

3 MS. DIGIACOMO: Okay.

4 THE COURT: I read it.

5 MS. DIGIACOMO: And basically the State's position is,
6 that telephone call is not a Bruton issue, and the reason
7 being is, in Bruton it dealt with a confession by one co-
8 defendant that was played in court during the trial of the
9 other co-defendant, and --

10 THE COURT: Why isn't that what this is? Why is --

11 MS. DIGIACOMO: Because if I can finish, Your Honor, I'll
12 be glad to tell you. Because in Bruton there was no way that
13 that co-defendant's confession was admissible against the
14 other defendant. Okay.

15 In this case there is. There's a co-conspirator
16 that's non-hearsay under the rules. And even Bruton in
17 footnote 3 said:

18 "We emphasize that the hearsay statement inculcating
19 the petitioner was clearly inadmissible against him
20 under traditional rules of evidence. There is not
21 before us therefore any recognized exception to the
22 hearsay rule insofar as petitioner is concerned, and
23 we intimate no view whatever that such exceptions
24 necessarily raise questions under the confrontation
25 clause."

1 You say, I understand your position is Bruton trumps
2 co-conspirator, however under the reading of Bruton and under
3 the reading of Crawford the State would disagree. First of
4 all this isn't a confession to a police officer. There's no -
5 - nothing testimonial about a call from one Defendant to one
6 of his buddies. And it does come in under the co-conspirator.

7 So I understand the Court's ruling, but I just want
8 the record clear --

9 THE COURT: I think --

10 MS. DIGIACOMO: -- because this will be an issue.

11 THE COURT: Think about this: let's assume Munroe gets
12 on the phone and he talks to Engle and he says, you know, that
13 damn-Ferguson, you know, he's always messing up that's why we
14 got caught. In fact after the time that he killed that old
15 man with the axe handle I should have just cut him loose as my
16 partner.

17 Now they try Ferguson for killing the old man with
18 the axe handle, do you think that can come in? Even if it's
19 theoretically in furtherance of their theft conspiracy?

20 MS. DIGIACOMO: Well, no, it had to be in furtherance of
21 the conspiracy. The conspiracy here is possession of stolen
22 property. So the axe murder wouldn't be allowed to come in.
23 That would be another act that's not admissible. It has to be
24 a statement in furtherance of the conspiracy, and his
25 statements to Engle are in furtherance.

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1 He even talks about, "Oh, they got all your tools?"
2 "Yeah, man." "Are you going to be able to replace them?"
3 "Yeah."

4 THE COURT: That part is admissible. I think the part
5 that isn't admissible is when he sort of confesses that he and
6 Fergason did the Anku Crystal Palace and the Just For Kids
7 Dentistry, and then that's useable against Fergason, in the
8 case where a Count 1 charge with conspiracy to do that and he
9 can't cross-examine Munroe.

10 MS. DIGIACOMO: Well --

11 THE COURT: But I've got your bench memo, it's filed,
12 you've made your record. I know you're going to argue this --

13 MS. DIGIACOMO: Well, I took --

14 THE COURT: -- on appeal, but I think --

15 MS. DIGIACOMO: Yeah, I know. But just for the record,
16 the statement between the two gentlemen on the phone is not
17 testimonial. It's not a proper violation. There's no right
18 to confrontation violation.

19 THE COURT: Okay. Ms. Dustin. I understand. I'm still
20 going to rule --

21 MS. DIGIACOMO: And also --

22 THE COURT: -- in your favor, but I understand you have
23 something to say too.

24 MS. DIGIACOMO: And also, Judge, you just stated that
25 part of that conversation could have come in. That was at

1 your ruling last night. You didn't allow me to be able to
2 redact it.

3 THE COURT: Well --

4 MS. DIGIACOMO: You said strike the whole thing.

5 THE COURT: Okay. Here's the deal: I think it could
6 have been redacted in a way that would have allowed some of it
7 to come in, but I'm not going to now, now that we've -- tell
8 them, well, we're going to play it again for you and we're
9 only going to play part. I mean, I think all that does is
10 highlight whatever we took out.

11 It is a meaningless piece of this puzzle. If this
12 puzzle is 10,000 pieces, this is one piece, and with 9,999
13 believe me, they're going to be able to figure out the puzzle
14 whatever way it is. This is going to be irrelevant.

15 Go ahead, Ms. Dustin.

16 MS. DUSTIN: Your Honor, I think just based upon, and I
17 know Ms. DiGiacomo's position, but I think when the
18 conversation goes on to talk about, they've been talking about
19 the Anku Crystal Palace and he basically says that my client
20 just had to have those items, and that's why they have them.

21 THE COURT: I'm not sure that's what was said. My
22 hearing was that Munroe was the one that wanted those items.
23 But I guess you could put either spin on it.

24 MS. DUSTIN: Well anyway, I think that unfortunately that
25 coupled with Tonya Trevarthen testifying that they'd been

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1 doing burglaries in the past. Considering that I brought this
2 very issue to the Court in my motion to suppress any evidence
3 regarding other burglaries, and the Court said, well the stuff
4 regarding Anku Crystal Palace and Just For Kids could come in
5 they couldn't be bringing in all these other ones for the
6 burglaries.

7 I think the bell has been unfortunately sufficiently
8 run. I have to move for mistrial at this particular juncture.
9 I just don't think any instruction to the jury is going to
10 cure this. They've heard it and this issue is -- it shifts
11 the burden too much. We've got possession of stolen property,
12 and even Your Honor discussed one of the elements that is
13 whether you know it has been stolen.

14 And if I have somebody sitting up here saying that
15 they've been doing burglaries, which they're not even charged
16 with, that suggests and shifts the burden that now I've got to
17 disprove that. And it shifts the burden to suggest that my
18 client was doing the burglaries that led to the theft of these
19 items, so therefore he would know that they're stolen.

20 And I think it's -- the bell's been rung and it
21 can't be fixed, so I think there's actually no other recourse
22 but mistrial.

23 THE COURT: Well, I don't think it has been rung much and
24 I certainly think it can be fixed. And I'm going to instruct
25 them to take -- to disregard phone call 3 to Engle, and we'll

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1 play the rest and we'll take it off the table.

2 Are we ready to go? Ready to go? Bring them in.

3 MS. DIGIACOMO: Do you want me to make the record in
4 front of the jury?

5 THE COURT: I'll do it.

6 MS. DIGIACOMO: Or do want me to -- well I need to switch
7 the disks now --

8 THE COURT: I'll just --

9 MS. DIGIACOMO: -- because I have the new list.

10 THE COURT: Yeah. I'll just tell them what happened and.
11 we argued this after-the-fact and it's kind of a catch 22, and
12 I've done this, and strike it from your mind, strike it from
13 the thing, and --

14 MS. DIGIACOMO: So then it's going to be the other taken
15 out as 1189 and 1189a, and these are submitted in its place?

16 THE COURT: You can leave 1189 that's had the list, I'm
17 assuming.

18 MS. DIGIACOMO: No, because we're going to take off
19 today.

20 THE COURT: Why don't you put it next in order, then 1189
21 will be an out, and 1189a will be out, and these two will be
22 in as the next in order.

23 MS. DIGIACOMO: So E and F.

24 THE COURT: Yeah. Good. Everybody.

25 [Within the Presence of the Jury]

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1 THE COURT: Okay. Back on the record in Case number
2 C228752, State of Nevada versus Bryan Ferguson. Let the
3 record reflect the presence of the Defendant, his counsel,
4 counsel for the State, all ladies and gentlemen of the jury
5 back in the box.

6 One little thing, ladies and gentlemen, after you
7 left there was some argument, an issue raised by Ms. Dustin on
8 behalf of her client about one of the phone calls. And I
9 agree that she's right, the third phone call, the one from Mr.
10 Munroe to Mr. Engle probably is not admissible for the reasons
11 that we -- keeping the playing field level. But it's kind of
12 a catch 22. I can't tell until I hear the phone call and so -
13 - what the law provides is that if that is the case I just
14 tell you to strike it. If you wrote anything down about it
15 take it out of there, don't discuss it.

16 In the instructions I'll give you -- tell you that
17 you, by your oath, are bound to comply with that. So whatever
18 weight that was set on that phone call is out, everything else
19 is in. You're still under oath, Detective.

20 DETECTIVE BRADLEY NICKELL, STATE'S WITNESS, PREVIOUSLY SWORN
21 DIRECT EXAMINATION (Continued)

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Ms. DiGiacomo. And what we've done is we've
24 actually changed the DVD so that we've taken it out, so you'll
25 have the right to take these back and play them. By the time

1 you get there you may have heard so much of them you never
2 want to hear them again. But you still have that right, and
3 it won't be there, so there won't be any accidental playing of
4 it.

5 Go ahead.

6 MS. DIGIACOMO: All right. And for the record, Your
7 Honor, 1189 and 1189a that were moved into evidence yesterday
8 have been withdrawn.

9 THE COURT: Yeah.

10 MS. DIGIACOMO: And in its place we have 1189e, which is
11 the disk, and 1189f which is the new list.

12 THE COURT: Okay. We just heard the first phone call
13 between Ferguson and Monroe. So it would be on the second
14 phone between Ferguson and Monroe --

15 MS. DIGIACOMO: Right. So we're on call number five,
16 Your Honor.

17 THE COURT: Okay.

18 THE WITNESS: September 24th, 2006, 22:18 hours. Call to
19 Daimon Monroe from Bryan Ferguson.

20 THE COURT: And this is military time, so that would be
21 10:00 something at night?

22 THE WITNESS: That's correct.

23 MS. DIGIACOMO: For the record, you just subtract 12,
24 correct?

25 THE WITNESS: That is correct.

1 [5th Audio Tape Played in Courtroom]

2 THE COURT: Next.

3 THE WITNESS: The next call is September 25th, 2006,
4 00:51 hours. A call to Daimon Monroe from Bryan Fergason.

5 [6th Audio Tape Played in Courtroom]

6 THE COURT: Next.

7 THE WITNESS: The next call is September 25th, 2006,
8 17:54 hours. A call from Daimon Monroe -- I'm sorry, a call
9 to Daimon Monroe from Bryan Fergason.

10 [7th Audio Tape Played in Courtroom]

11 THE COURT: Next.

12 THE WITNESS: September 25th, 2006, 18:23 hours. A call
13 to Daimon Monroe from Bryan Fergason.

14 [8th Audio Tape Played in Courtroom]

15 THE COURT: Next.

16 THE WITNESS: September 25th, 2006, 23:07 hours. A call
17 to Daimon Monroe from Bryan Fergason.

18 [9th Audio Tape Played in Courtroom]

19 THE COURT: Next.

20 THE WITNESS: The next, September 25th, 2006, 23:17
21 hours. A call to Daimon Monroe from Bryan Fergason.

22 THE COURT: All right.

23 [10th Audio Tape Played in Courtroom]

24 THE COURT: Next.

25 THE WITNESS: September 26th, 2006, 00:50 hours. A call

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1 to Daimon Monroe from Bryan Fergason.

2 MS. DIGIACOMO: And for the record, this is now starting
3 with 1189b, the second disk.

4 THE COURT: Go ahead.

5 [11th Audio Tape Played in Courtroom]

6 THE COURT: Next.

7 THE WITNESS: September 26th, 2006, 19:26 hours. A call
8 to Daimon Monroe from Bryan Fergason.

9 [12th Audio Tape Played in Courtroom]

10 THE COURT: Next.

11 THE WITNESS: The next call is September 25th, 2006,
12 09:51 hours. A call to Daimon Monroe from Bryan Fergason.

13 [13th Audio Tape Played in Courtroom]

14 THE COURT: Has any of these calls from Fergason to
15 Monroe, were any of them to the 408-2616 cell number, or were
16 they all over the land line, or is it a mixture?

17 THE WITNESS: It appears that all the calls that are
18 being presented were made to the house.

19 THE COURT: Okay.

20 MS. DIGIACOMO: If I can just follow-up.

21 BY MS. DIGIACOMO:

22 Q Were there other calls that aren't being presented
23 that were to that number?

24 A Yes. But let me also add, I'm sorry, there may be a
25 mixture in here where a phone call is made from the jail to

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1 the house, and then Tonya at the house forwards the call to
2 the cell phone.

3 THE COURT: Okay. Next.

4 MS. DIGIACOMO: I think you're on number 13.

5 THE WITNESS: Thank you. September 26, 2006, 19:37
6 hours, a call to Daimon Monroe from Bryan Fergason.

7 [13th Audio Tape Played in Courtroom]

8 THE COURT: Next.

9 THE WITNESS: September 26th, 2006, 22:00 hours. A call
10 to Daimon Monroe from Bryan Fergason.

11 [14th Audio Tape Played in Courtroom]

12 THE COURT: Next.

13 THE WITNESS: September 28th, 2006, 09:30 hours. A call
14 to Daimon Monroe from Bryan Fergason.

15 [15th Audio Tape Played in Courtroom]

16 THE COURT: Next.

17 THE WITNESS: September 30th, 2006, 14:56 hours. A call
18 to Daimon Monroe from Bryan Fergason.

19 [16th Audio Tape Played in Courtroom]

20 THE COURT: Next.

21 THE WITNESS: October 1st, 2006, 15:19 hours. A call to
22 Daimon Monroe from Bryan Fergason.

23 [17th Audio Tape Played in Courtroom]

24 THE COURT: Next.

25 THE WITNESS: October 3rd, 2006, 20:17 hours. A call to

1 Daimon Monroe from Bryan Fergason.

2 [18th Audio Tape Played in Courtroom]

3 THE COURT: Next.

4 THE WITNESS: October 7, 2006, 19:35 hours. A call to
5 Daimon Monroe from Bryan Fergason.

6 [19th Audio Tape Played in Courtroom]

7 THE COURT: Next.

8 THE WITNESS: October 8th, 2006, 22:38 hours. A call to
9 Daimon Monroe from Bryan Fergason.

10 MS. DIGIACOMO: Just for the record, now using disk 1189c

11 [20th Audio Tape Played in Courtroom]

12 THE COURT: Next.

13 THE WITNESS: October 11, 2006, 21:11 hours. A call to
14 Daimon Monroe from Bryan Fergason.

15 [21st Audio Tape Played in Courtroom]

16 THE COURT: Next.

17 THE WITNESS: October --

18 MS. DIGIACOMO: I'm sorry. If I could interject here, I
19 realized that there was something I forget ask Detective Julie
20 Holl called last Friday. And so Defense counsel, instead of
21 my recalling her we'll stipulate that if Detective Julie Holl
22 was recalled she would testify that on October 12th, 2006, she
23 arrested Bobby Holmes, or Robert Holmes for possession of
24 stolen property regarding property that was taken out of his
25 house on September 28th, 2006.

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1 THE COURT: And he was arrested and taken to the
2 detention center.

3 MS. DIGIACOMO: Yes.

4 THE COURT: All right. When there's a stipulation, as
5 you'll see in the instructions later, that you just have to
6 accept that as a fact. So that's what happened.

7 What's next?

8 THE WITNESS: October 12th, 2006, 23:33 hours. A call to
9 Daimon Monroe from Bobby Holmes.

10 THE COURT: Okay.

11 [22nd Audio Tape Played in Courtroom]

12 THE COURT: Next.

13 THE WITNESS: October 13th, 2006, 14:52 hours. A call to
14 Daimon Monroe from Bobby Holmes.

15 [23rd Audio Tape Played in Courtroom]

16 THE COURT: 23 down, 9 to go. Next.

17 THE WITNESS: October 13, 2006, 20:26 hours. A call to
18 Tonya Trevarthen from Bryan Ferguson.

19 [24th Audio Tape Played in Courtroom]

20 THE COURT: All right. One more and we'll go to lunch.

21 MS. DIGIACOMO: Your Honor, I have to start a new disk.

22 Do you want me to --

23 THE COURT: Well let's just go to lunch now, then.

24 MS. DIGIACOMO: Okay.

25 THE COURT: We've got seven or eight to go, but we've got

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1 way the bulk of them in.

2 MS. DIGIACOMO: There's eight more to go.

3 THE COURT: Okay.

4 [Court Admonishes Jury]

5 THE COURT: We have to do some haggling, the lawyers and
6 myself on the instructions, which we'll be getting to this
7 afternoon. So we're going to pick up with the trial about
8 1:15. That'll give you an extra 15 minutes for lunch, because
9 everybody else, all the staff has to have lunch too.

10 So 1:15 sharp, have a good lunch.

11 [Jury Out]

12 THE COURT: Okay. We'll get this settled and then we'll
13 go to lunch.

14 MS. DIGIACOMO: Okay.

15 THE COURT: The record shall reflect that the jury has
16 exited.

17 We've got the packet the State issued, and then I
18 have some instructions from counsel for the Defendant.

19 MS. DUSTIN: Do you want to start with the State's
20 packet, Your Honor?

21 THE COURT: Sure. Well the packet I gave you actually is
22 my packet that I took the State's and took one or two out, and
23 maybe wrote one or two myself, but basically it's what they
24 submitted. Which ones do you want to object to, Ms. Dustin?

25 MS. DUSTIN: We didn't get a number of them, but it's --

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1 THE COURT: I don't number them to the end, because I've
2 got to insert --

3 MS. DUSTIN: Right.

4 THE COURT: -- yours in and we have to type them to get
5 the same font on them --

6 MS. DUSTIN: Sure.

7 THE COURT: -- and then I'll number there, but --

8 MS. DUSTIN: It's the one that starts off: "Any person
9 who for his own gain, or to prevent rightful owner from again
10 possessing the property shall by receive." It's the one that
11 talks about the value of the property.

12 THE COURT: Right.

13 MS. DUSTIN: 2500 or more.

14 THE COURT: Right.

15 MS. DUSTIN: 250 or more.

16 THE COURT: Right.

17 MS. DUSTIN: I'd ask that the full -- that \$250 or less,
18 "less or included" be added to that.

19 THE COURT: "A person is guilty of possession of stolen
20 property over \$250."

21 MS. DUSTIN: But the one that --

22 MS. DIGIACOMO: But she's saying if it's less than 250 it
23 would be a petty larceny misdemeanor.

24 THE COURT: But you're not even asking for that, right?

25 MS. DUSTIN: Oh, Yeah. I am. I'm asking for the third

1 one on --

2 THE COURT: I was going to tell them if it's under 250
3 that you find him not guilty. Wouldn't you rather have that
4 than a petty larceny?

5 MS. DUSTIN: I think --

6 THE COURT: It's up to you.

7 MS. DUSTIN: I would ask that the 250 be -- the under 250
8 be in there.

9 THE COURT: On every verdict count?

10 MS. DUSTIN: Please.

11 THE COURT: All right. So let's see how -- I suppose
12 they're entitled to do that. I don't know that there's any
13 that's going to be close, but --

14 MS. DIGIACOMO: Well, no, no. It's a less or included.

15 THE COURT: Right.

16 MS. DIGIACOMO: The way we normally would do it then, the
17 next line would be, "If the value of the property is less than
18 250 a person is guilty of possession of stolen property" --

19 THE COURT: Possession of stolen property.

20 MS. DIGIACOMO: -- "no value." And then on all the
21 verdict forms --

22 THE COURT: Okay.

23 MS. DIGIACOMO: -- you have to add a box, "possession of
24 stolen property."

25 THE COURT: If the value of the property is less than

1 \$250, a person is guilty of possession of stolen property.

2 MS. DUSTIN: And I think it's what, possession of stolen
3 property, no value?

4 MS. DIGIACOMO: No, it's just -- do it plain. Possession
5 of stolen property.

6 MS. DUSTIN: Okay.

7 THE COURT: Just possession of stolen property, that'll
8 do it. All right.

9 MS. DUSTIN: And then --

10 THE COURT: I'll do that. And then I'll change the
11 verdict form and put that in on each one.

12 MS. DUSTIN: Then the very next one is the one that we're
13 probably going to have to argue back and forth over.

14 THE COURT: Let's do it right now.

15 MS. DUSTIN: And that's the one that Your Honor typed up
16 the --

17 THE COURT: Well you gave me several.

18 MS. DUSTIN: I gave -- well I gave --

19 THE COURT: And I tried to take the concepts of those
20 several and put it into one instruction, and then, you know,
21 we went back and forth and Ms. DiGiacomo pointed out the
22 statute was after the Bryant case, and blah, blah, blah.

23 So why don't make your argument and let's get a good
24 record and we'll kind of go for there.

25 MS. DIGIACOMO: Do you want me to go first, or do you

1 want Ms. Dustin to go first?

2 THE COURT: I don't care, go ahead.

3 MS. DIGIACOMO: Okay. Your Honor, I have looked at this
4 and I actually spoke to the person that actually wrote the
5 Romero versus State opinion. This is the state of the law,
6 Your Honor. Back in 1997 before the statute was changed, the
7 theft statute, let me find it --

8 THE COURT: Well, I know that that --

9 MS. DIGIACOMO: But basically what happened, Your Honor -
10 -

11 THE COURT: -- that statute just had the word "value".

12 MS. DIGIACOMO: No, no. No, what I'm saying is, there
13 was one statute within all the gambit of that statute and the
14 large-named statutes, there's one that was changed back in the
15 '80s that reflected the same language that's in our
16 instruction. "The value of the property involved shall be
17 deemed to the highest value attributable to the property by
18 any reasonable standard."

19 THE COURT: Correct. But at --

20 MS. DIGIACOMO: Now, in --

21 THE COURT: -- that time this one just said "of a value
22 of".

23 MS. DIGIACOMO: Right. So all the other statutes of
24 possession of stolen vehicle, possession of stolen property, I
25 believe the grand larceny, all of those just said "value" and

1 it wasn't define.

2 The Supreme Court then steps in and basically
3 defines it as fair market value, at that time when you're
4 caught possessing it or whatnot. In 1997 the legislature went
5 through all those other statutes that didn't have the highest
6 attributive value that was defined in the one statute and put
7 it across the board.

8 THE COURT: Well they didn't get all of them, because
9 they didn't get, for example, I know that's what they tried to
10 do, but they didn't get the one on the malicious destruction
11 of private property.

12 MS. DIGIACOMO: Right, right. But they didn't try on
13 that one. And that's different, that's a public defend, a
14 public defense. But I'm talking about within 205 up through
15 the possession of stolen property charges, that's when the
16 legislature did go through it.

17 THE COURT: They did.

18 MS. DIGIACOMO: They did not put in the malicious
19 destruction of private property, which is 206 --

20 THE COURT: Six.

21 MS. DIGIACOMO: -- 130. But throughout 205 --

22 THE COURT: 310.

23 MS. DIGIACOMO: Sorry, 310. Without -- I'm sorry,
24 throughout 205 chapter they were all changed in 1997. When
25 the case came out that Ms. Dustin provided you -- well, first

1 of all, Bryant versus State, when it's discussed, that was
2 specifically relating back to a 1995 crime in the previous
3 statute where value wasn't defined.

4 THE COURT: It was. And the statute then just said "the
5 value of". And I might point out at least, so far as you're
6 concerned, in both the Bryant case and the Romero case, you've
7 got situations where the value is just right on the line and
8 arguably replacement value is more, fair market value is less,
9 unlike, for example, most of the counts here where it isn't
10 close.

11 MS. DIGIACOMO: Right. But with regard to Romero versus
12 State, Your Honor, that is specifically referring to a statute
13 where they have to determine what value is, because it does
14 not have the language that is in 205.275 that specifically
15 says: "For purposes of this statute the value of the property
16 involved shall be deemed to be the highest value attributable
17 to the property by any reasonable standard."

18 So in the Romero case they're looking at the
19 malicious destruction of private property and the --

20 THE COURT: They are, I agree.

21 MS. DIGIACOMO: -- public offense in trying to determine
22 the value there. In no way does it reflect just because they
23 looked at Bryant, that fair market value still applies to
24 205.275. And in fact, if you look at one part of the Romero
25 case, it even says, you know, that arguing what the State was

1 trying to say, that the court said, you know, what's in this
2 statute has a broader meaning than the language contained in
3 the larceny statutes at issue in Bryant.

4 Which specifically acknowledges the statutes of
5 Bryant are possibly different than the statutes now. They
6 don't address the new language of our statute in the Romero
7 case.

8 THE COURT: Have you found any case that does address it?

9 MS. DIGIACOMO: I did a search of 205.270 throughout
10 Nevada case law. There has been no cases on this point,
11 published opinion, with regard to the value of 205.275 since
12 the law has changed in 1997. What I would suggest, Your Honor

13 --

14 THE COURT: Wait. Let me answer the question. Let me
15 give you an example. Let's say you take something that
16 depreciates rapidly. I buy my house eight years ago. When I
17 buy I buy a brand new top of the line washing machine that was
18 then eight or \$900. I still have that same washing machine.

19 I couldn't get \$75 for it if I tried to sell it on
20 the open market. Replacement cost today would be about \$1500.
21 If somebody comes in and steals my washing machine, which is
22 literally, fair market value, 75. Original cost years ago was
23 800. What it's going to cost me to replace it is 1500.

24 What the insurance is going to give me is 75. What
25 is the number that applies if somebody's found in possession

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1 of that washing machine?

2 MS. DIGIACOMO: Well, Your Honor, and that's where I
3 think it's up to the jury. According to what the statute has
4 been changed, it's the highest value attributable to the
5 property by any reasonable standard.

6 Now I don't think the fair market value, you know,
7 in that term comes into play here, but certainly the
8 principles behind it. If you wanted to add to our instruction
9 where it says value may be shown as evidence, as to purchase
10 price, price tag of our replacement cost, certainly you can
11 throw in there as well that the jury can consider items that
12 depreciate, items that appreciate.

13 You know, certainly the condition the property is
14 found in --

15 THE COURT: But wouldn't it be great if it was stolen on
16 Thursday and the person arrested and charged was arrested and
17 charged on Friday, the value that the jury would have to
18 decide would be the value of that item on that Friday, not the
19 value eight years ago before, when I bought it, correct?

20 MS. DIGIACOMO: Yes. It would be -- but it would be the
21 value at the time that it was possessed.

22 THE COURT: All right. So --

23 MS. DIGIACOMO: However, I --

24 THE COURT: So what is the standard for the value on
25 Friday, of the item?

1 MS. DIGIACOMO: It is exactly what the statute says:
2 "The highest value will be attributed to the property by any
3 reasonable standard," and it's up the jury to consider all the
4 factors, consider what evidence came out as to, you know, what
5 they paid for it, would it be used now, what the condition was
6 in, and it's up to the jury --

7 THE COURT: Okay.

8 MS. DIGIACOMO: -- to determine that.

9 THE COURT: I don't know that I disagree with you, but
10 I'm not sure that that's too much different than what she
11 says. What I was trying to do was put one together that had
12 all the language of the statute in it, but reflected, "Look,
13 you're talking about this property on this day, not this
14 property four years ago today the day it was stolen.

15 And so the way I wrote it was, value of property is
16 determined by fair market value of the item, not the value of
17 an item, a value an item may have to a particular individual;
18 i.e. sentimental value doesn't count. Fair market value is
19 the property could be sold for in the open market, if neither
20 the buy nor seller is under any urgent necessity to sell;
21 that's Bryant.

22 The value of property involved shall be deemed to be
23 the highest valuable attributed to the property by any
24 reasonable standard. That's the statute, i.e. if a guy says:
25 my property, I don't know, somewhere between two and 3,000,

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1 under the law technically they would apply the 3,000. And if
2 market value, as herein defined cannot be reasonably
3 determined, I mean, it's really hard to find what's the fair
4 market value of the Maytag washer that's eight years old,
5 fair market value maybe determined by reference to other
6 evidence such as purchase price, price tag or replacement
7 cost; i.e. they can take these into consideration and come to
8 their own conclusion as to what the value of the property was
9 on November the 6th.

10 MS. DIGIACOMO: Right. But I think you're putting a
11 burden on the State that is no longer required after the
12 statute. You're referring to the Cleveland Place it's
13 referred to in Bryant, that said basically the value that has
14 to be shown by the fair market value, however, if the State
15 shows as to why the fair market value can't be shown, then you
16 can look to these other resources. However, that's not what
17 the statute says.

18 THE COURT: Okay. Ms. Dustin?

19 MS. DUSTIN: With all due respect, Your Honor, I think
20 the statute is not saying you can't use fair market value,
21 it's using a reasonable standard, and it has to be construed
22 actually, and it's been historically that it's got to be
23 construed liberally in favor of the Defendant. And I think
24 your instruction does that.

25 THE COURT: Well, except that I'm not sure the

1 legislature isn't saying, wait a minute, we're going to
2 construe this favorably, liberally in favor of the government,
3 by saying it's the highest value attributed to the property.
4 I mean if there's these, we're not going to give the thief the
5 benefit of the doubt.

6 MS. DUSTIN: Right, Your Honor. And --

7 THE COURT: But --

8 MS. DUSTIN: -- so that's why I printed out literally all
9 the committee minutes from when they changed this --

10 THE COURT: And it didn't say a thing.

11 MS. DUSTIN: -- and it was completely --

12 MS. DIGIACOMO: It didn't say anything.

13 MS. DUSTIN: -- silent on it.

14 THE COURT: It did say that there was, you know, Ben
15 Graham, or people like that of his elk saying, we're trying to
16 get these all reconciled. Exactly what Ms. DiGiacomo is
17 saying.

18 MS. DUSTIN: Right. So unfortunately because it's silent
19 we can't infer -- I mean, historically it's been told, if we
20 have to infer something we've got to construe it back towards
21 the Defendant on construing the statute not towards the State.
22 And I think that's what you -- you're hitting the happy medium
23 on here, because there's nothing that's come back and said
24 fair market value is no longer, you know, a reasonable method
25 of determining value. And that's --

1 THE COURT: Well --

2 MS. DUSTIN: -- and I think --

3 THE COURT: -- it certainly is the method in those
4 statutes that just use the word value, such as malicious
5 destruction of private property.

6 MS. DIGIACOMO: Right. And, Your Honor, then if that's
7 the case, then, it should be evaluated shown by evidence as to
8 purchase price, price tag, replacement cost, or fair market
9 value.

10 THE COURT: I had that written in there.

11 MS. DIGIACOMO: It's not the standard is fair market
12 value and then you get to the statute to relinquish.

13 THE COURT: Well, I think the standard --

14 MS. DIGIACOMO: Fair market value is --

15 THE COURT: -- is what's it worth on that day, and you
16 could prove, have an appraiser appraise it, that would be one
17 way. But if it can't reasonably be determined maybe there's
18 no market for this kind of thing. Then the jury has to figure
19 it out and they can do that by reference to other evidence
20 such as purchase price, price tag, or replacement cost.

21 MS. DIGIACOMO: Right. But there has been no evidence,
22 because you're doing this at the end, there's been no evidence
23 and we're relying on the instructions, we just used the --

24 THE COURT: Okay. .

25 MS. DIGIACOMO: We've had no evidence that shows, oh, we

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1 couldn't show what the fair market value was.

2 THE COURT: Well some of this stuff will be tough.

3 MS. DIGIACOMO: So you're -- but you're hindering us on a
4 lot of the counts.

5 THE COURT: I understand what you're saying.

6 Ms. Dustin, you submitted half a dozen different
7 things, but they're all -- I thought I embodied them all in
8 the one that I proposed, would you agree that that's sort of
9 true?

10 MS. DUSTIN: Yes, Your Honor. The only thing that wasn't
11 in there was the standards that the State, since I think we
12 all agree that value is a material element to this crime, that
13 they --

14 THE COURT: The State has to prove each and every element
15 of the crime --

16 MS. DUSTIN: Beyond a reasonable doubt.

17 THE COURT: -- beyond a reasonable doubt. But I have a
18 general instruction that says that. So I have --

19 MS. DUSTIN: Well I think I'm entitled to have the jury
20 be instructed that value must also be proven beyond a
21 reasonable doubt, because it is a material element. And if
22 you want to put that --

23 THE COURT: There's a whole bunch of material elements.
24 And the instruction says every material element must be proved
25 beyond a reasonable doubt. And there's an instruction that

1 says, you know, the elements include the value of the
2 property.

3 MS. DIGIACOMO: And obviously, from the jury verdict form
4 it's obvious that you have to prove beyond a reasonable doubt.

5 THE COURT: Okay. Let me tell you what I think. I think
6 you're right, Ms. DiGiacomo. I think there is an intent to
7 change the legislature. I'm not 100 percent sure the Supreme
8 Court's going to agree with that.

9 If I give the instruction that you want and they
10 disagree, we're trying this again. If I give the instruction
11 that I drafted, kind of putting everything together, then I
12 think the Defense certainly has no gripe in terms of the issue
13 on appeal. And I don't think that it makes a difference in
14 the context of this case, because, you know, 90 percent of
15 these aren't even close to 25. I mean, the furniture --

16 THE COURT: Right, Your Honor --

17 THE COURT: -- the art, the McNeely's, the guitars, I
18 mean, they're all thousands and tens of thousands.

19 MS. DIGIACOMO: But I don't that instruction is fair to
20 the State.

21 THE COURT: I understand.

22 MS. DIGIACOMO: I don't. And if you put the statutory
23 language first and you expand upon fair market value that's
24 one thing. But you're basically telling him, it's fair market
25 value, but if the State can't show that, and then you have

1 these other options, and that's what the legislature overruled
2 with regard to Cleveland and Bryant. And I think --

3 THE COURT: I think you're right.

4 MS. DIGIACOMO: -- the order is wrong.

5 THE COURT: I think you're right. I just don't see any
6 downside to the State and I see a big downside to the State if
7 even though I think you're right --

8 MS. DIGIACOMO: We have one shot, Your Honor, so there is
9 a downside to this.

10 THE COURT: What do you mean you have one shot?

11 MS. DIGIACOMO: Well, if he's acquitted we don't get to
12 come back again. If the --

13 THE COURT: I understand.

14 MS. DIGIACOMO: -- Supreme Court disagrees with us, then
15 fine we'll come back and retry it. But I think you are
16 hindering the State and it's not fair to the State, that
17 instruction.

18 THE COURT: I know you think that. And I think you're
19 right on your interpretation. You know, if he gets convicted
20 on some of these he's going to appeal. He should do a cross-
21 appeal and the Supreme Court should straighten it out, but
22 without any cases I'm going to do it that way.

23 All right. You also submitted one --

24 MS. DIGIACOMO: I'm sorry, I don't have that in front of
25 me. Can you read it again?

1 THE COURT: I'm going to read it to you. "The value of
2 property is determined by the fair market value of the item,
3 not the value of an item may have to a particular individual,"
4 not someone --

5 MS. DIGIACOMO: So you're telling us right now, when they
6 testify as to their opinion as to what it was worth, that's
7 out window. That's --

8 THE COURT: No.

9 MS. DIGIACOMO: -- what it's saying; yes, it is.

10 THE COURT: I'm talking about sentimental value to it.
11 I'll put in sentimental.

12 MS. DIGIACOMO: Well if you put sentimental value in.

13 THE COURT: Sure. "And not the sentimental value an item
14 may have to a particular individual." You know, this is my
15 grandma's, that's why it's valuable to me.

16 "Fair market value is the value of the property it
17 could be sold for on the open market if neither the
18 buyer nor seller was in an urgent necessity to sell.
19 The value of the property involved shall be deemed
20 to be the highest value attributable to the property
21 by any reasonable standard;"

22 i.e. you know the person can say what he thinks it's worth,
23 is what I paid.

24 "If fair market value is herein defined cannot be
25 reasonably be determined fair market value may be

1 determined by you, ladies and gentlemen of the jury,
2 by reference to other evidence, such as purchase
3 price, price tag or replacement cost."

4 MS. DIGIACOMO: But when you're saying --

5 THE COURT: In other words use your common sense and come
6 up with what this property's worth.

7 MS. DIGIACOMO: But what you're interpreting, your
8 language is, is not the way the jury is going to read it. And
9 that's why the State has a problem with it. Because you're
10 saying if fair market value can't be determined then you can
11 look at this other stuff --

12 THE COURT: That's probably a reasonable --

13 MS. DIGIACOMO: -- well there's been no evidence we can't
14 determine the fair market value of this certain property.
15 You're hindering us with that.

16 MS. DUSTIN: Well, I think it's not -- I think it
17 actually says that it can still be shown by other evidence.

18 MS. DIGIACOMO: Well, yeah. But it says that we have to
19 meet this burden before we can go to that.

20 THE COURT: I'm listening to you, Ms. DiGiacomo. What if
21 it says this:

22 "Property may be determined by the highest of the
23 value of the attributable property by any reasonable
24 standard. Fair market value may be determined by
25 reference to other evidence such as purchase price,

1 price tag or replacement cost."

2 MS. DIGIACOMO: I'm fine.

3 THE COURT: Okay. Nobody's ever going to be fine. But
4 we need the Supreme Court to decide that this will be the case
5 that will decide it, because this wasn't argued last week sort
6 of this way. Can you live with that?

7 MS. DUSTIN: I'll live with it.

8 THE COURT: Okay. That's the one I'm going to give them,
9 and again, they'll need to straighten it out. I think what
10 they're going to do is say that the statute the way it is, as
11 all of us have to give, but I can't predict it.

12 Now, Ms. Dustin, anything else in terms of the
13 original pack that you want to object to?

14 MS. DUSTIN: No, Your Honor. The only other thing that I
15 did present to the Court today, was I did give, and I gave a
16 copy to the State, two cautionary instructions --

17 THE COURT: It's sort of a bad acts' instruction, even
18 though we kind of had had that?

19 MS. DIGIACOMO: But it's --

20 MS. DUSTIN: The second one --

21 MS. DIGIACOMO: It's termed differently than our normal
22 bad acts.

23 MS. DUSTIN: And then the second one I think is
24 confusing, so I'll withdraw that. That's the one you may hear
25 evidence in relation to one defendant, which does not deal

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1 with one of the other defendants. But --

2 THE COURT: Well, I'm willing to give the bad acts'
3 instruction.

4 MS. DIGIACOMO: Right.

5 THE COURT: Is there some particular language --

6 MS. DIGIACOMO: Right. The way --

7 THE COURT: -- that gives you some heartburn?

8 MS. DIGIACOMO: Yeah. The way this is written I do have
9 a little bit of an issue.

10 THE COURT: Tell me what it is.

11 MS. DIGIACOMO: But, Your Honor, I would also ask to
12 remove the instruction that says: "The fact that a witness
13 has been convicted of a felony, if such a fact may be
14 considered by you only for the purpose of determining
15 credibility of that witness."

16 THE COURT: Okay.

17 MS. DIGIACOMO: No one here has testified that they've
18 been convicted of a felony --

19 THE COURT: That's true.

20 MS. DIGIACOMO: -- so we don't need that. The next one
21 obviously we need with regard to somebody being induced --

22 THE COURT: Have we had any expert testimony?

23 MS. DUSTIN: We have not had any expert testimony, so I
24 think --

25 MS. DIGIACOMO: Not in this trial, we did in the last

1 one.

2 THE COURT: Okay. I'll take out the expert and I'll take
3 out the felony. Go ahead. Which other one do you not want?

4 MS. DIGIACOMO: Well, we need the one with regard to the
5 inducement in exchange for cooperation.

6 THE COURT: Yes, we do.

7 MS. DIGIACOMO: But that's that.

8 MS. DUSTIN: And then just as an over abundance of
9 caution. I just want to make --

10 THE COURT: I'm going to take out the name. I'm just
11 going to -- "you may hear evidence" -- "you may have".

12 MS. DIGIACOMO: Well, Your Honor, if I could read you
13 what the stock one says.

14 THE COURT: What's it say?

15 MS. DIGIACOMO: It says:

16 "Evidence that the Defendant committed offenses other
17 than that for which he was on trial, if believed was
18 not received and may not be considered by you to
19 prove that he is a person of bad character, or to
20 prove that he has a disposition to commit crimes,
21 such evidence was received and may be only considered
22 by you for the limited purpose of proving the
23 Defendant's,"

24 you know, blame, here we acknowledge that the property was
25 stolen.

1 And then it says, the last sentence says: "If you
2 must weigh this evidence in the same manner as you do all of
3 their evidence like this."

4 THE COURT: Any problem with that language?

5 MS. DUSTIN: No. I mean, I just --

6 THE COURT: Can you print it out?

7 MS. DIGIACOMO: I'll email it to Charmane.

8 THE COURT: All right. Now here's --

9 MS. DUSTIN: And just because I want it -- I've been
10 flipping through here and maybe I'm just blind, but I will
11 say, I just want to make sure that when we get to the
12 possession of stolen property in closing argument, that I'm
13 not going to be drawing an objection for saying the State has
14 to prove the material elements of possession of the stolen
15 property, which are blank, blank, and blank, beyond a
16 reasonable doubt.

17 THE COURT: You certainly can say that.

18 MS. DIGIACOMO: That's our burden.

19 MS. DUSTIN: Okay.

20 THE COURT: Yes, you do.

21 MS. DIGIACOMO: The material elements.

22 THE COURT: One of the elements is he knew it was stolen.
23 One of the elements is value. You know, get this value on
24 this, and he was on vacation, and blah, blah, blah. I know
25 where that's going to go.

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1 Okay. Here's the order we'll be in. Number 1
2 obviously, 2 or 3 is the indictment. It's --

3 MS. DIGIACOMO: Well, Your Honor, you're going to be
4 adding some. Maybe can Charmane just number them?

5 THE COURT: I'm going to tell you so you can -- yes, she
6 will number them. But do you want to --

7 MS. DIGIACOMO: I just want a new copy.

8 MS. DUSTIN: Yeah, we're going to --

9 THE COURT: We'll give you a new copy of it.

10 MS. DUSTIN: Yeah. And the only reason why that becomes
11 an issue, is because when we have to do this on direct appeal,
12 I have to -- we have to actually have the formulated type and
13 --

14 THE COURT: All right. I'll give it to you. Okay. all
15 right, I'm going to change the instruction on value to add the
16 under 250. I'm going to put in the instruction we sort of
17 haggled out on value, and I'm going to stick the bad acts'
18 instruction after, whenever there's slight evidence that a
19 conspiracy exists. And you would like the instruction on the,
20 "he doesn't have to testify," correct?

21 MS. DUSTIN: That's correct, Your Honor.

22 THE COURT: Okay. All right. With those in mind any
23 other objections? Any objections to the verdict form that we
24 have, if I add on each one of Counts 2 through to the end, the
25 misdemeanor. I won't use the word misdemeanor, but just

IN THE SUPREME COURT OF THE STATE OF NEVADA

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DAIMON MONROE,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

DOCKET NO.: 65827

D.Ct. Case No.:

APPELLANT'S APPENDIX

Vol. III
(Pages 0501-0750)

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1 Q And what about 128?

2 A Yes.

3 Q So the property that was released to them was enough
4 to fill those two trucks?

5 A Yes.

6 Q Do you recall all the different types of property
7 that was released?

8 Q There was couches, chairs, pictures, ornamental
9 things, you know, little statue type deals.

10 Q Now, before you released it to 'em you made some
11 sort of record of what you actually released?

12 A We listed it on a property report.

13 Q All right. So as they're bringing items out of the
14 house before it's put on the truck, are you listing out
15 specifically what they're taking?

16 A The property'd come out of the house, we told 'em,
17 you know, just confirm that it is theirs, I would write it
18 down on a property report, and then it would go on the truck.

19 Myself and another officer was there doing the
20 property reports.

21 Q All right. Do you also, when you're doing that
22 property report, put a connecting event number or, you know,
23 for their burglary or when it was stolen?

24 A Sometimes that can be confusing. So we'll either
25 use the event number of the search warrant or we'll use the

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1 event number of the actual burglary. But they're all tied
2 together in our system, so it can be cross-referenced.

3 Q And now I'm gonna direct your attention to State's
4 Exhibit 360. Would you recognize what's in this photograph?

5 A Guitars.

6 Q All right, and you recognize this person?

7 A I do.

8 Q All right. And did you release those guitars to
9 this person?

10 A Yes.

11 Q All right. And again, it was confirmed that it was
12 stolen by them?

13 A I believe --

14 MR. HART: Objection, specula -- calls for speculation on
15 his part.

16 THE COURT: Well, as a matter of practice before you
17 release anything you have to confirm that you're satisfied
18 they're the owner, right?

19 THE WITNESS: Correct.

20 THE COURT: That's habit and practice?

21 THE WITNESS: Correct.

22 THE COURT: Okay. Overruled.

23 [Counsel Confer]

24 BY MS. DIGIACOMO:

25 Q All right, now, do you recall releasing some spa

1 chemicals?

2 A Yes.

3 Q And do you recall who you released it to?

4 A Somebody who owned a spa company, slips my mind. I
5 don't know.

6 Q All right. Well, I'm gonna show you State's Exhibit
7 47. Does that look familiar?

8 A Yes.

9 Q Is that the woman you released it to?

10 A Yes.

11 Q Okay, I'm gonna show you State's Exhibit 44. Does
12 that look familiar?

13 A Yes.

14 Q Okay. Would the items have been counted or, again,
15 documented before being released?

16 A Yes.

17 Q What about some candy? Do you recall that?

18 A Yes.

19 Q And what was that?

20 A See's Candy.

21 Q Okay, were you the one that released that candy, as
22 well?

23 A Yes.

24 Q Showing you State's Exhibit 52, does that look
25 familiar?

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1 A Yes.

2 Q And what are we looking at?

3 A A bunch of boxes of candy.

4 Q All right. And --

5 A With the gal from See's Candy that we released to.

6 Q Okay. Gonna show you State's proposed Exhibit 32
7 through 35. If you could flip through those and let me know
8 if you recognize them.

9 A I do.

10 Q And how do you recognize these?

11 A The things were kind of unique and I remember the
12 gal that came and picked 'em up.

13 Q Okay. So do these fairly and accurately depict the
14 paintings and the person that you released them to?

15 A Yes.

16 MS. DIGIACOMO: Your Honor, at this time I'd move for
17 State's Exhibits -- proposed Exhibits 32 through 35.

18 THE COURT: Objection?

19 MR. HART: No objection, Your Honor.

20 BY MS. DIGIACOMO:

21 Q Okay, this relates to Count IV. Showing you State's
22 Exhibit Number 32. What are we looking at there?

23 A Looking at a bunch -- at a few pictures that are,
24 look like hand painted-type pictures.

25 Q Did they look like they were, like, as ink -- or,

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1 not ink, you know, oil paintings? Or were they like --

2 A They're unique.

3 Q -- they're photographs?

4 A They're unique. They're not something that looked
5 to be mass-produced. They'd be unique, only certain people
6 would have 'em.

7 Q Okay. And then 33, is that a close-up of one of
8 'em?

9 A Yes.

10 Q Now showing you State's proposed Exhibit 35 -- or,
11 excuse me, State's Exhibit 35. Do you recognize this?

12 A I do.

13 Q Okay. And are these the paintings with the person
14 that you released them to?

15 A Yes.

16 Q Do you know the -- do you recall the person's name?

17 A If I heard it I probably would remember it, but no.

18 Q Would it be on your property report if I showed you
19 that?

20 A Oh, yes.

21 Q I'm going to show you -- you did several property
22 reports, or property releases, correct?

23 A Yes.

24 Q I'm gonna show you a one-page document. Do you
25 recognize this?

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1 A Yes. Annie Lee.

2 Q Okay. Would --

3 A I'm sorry.

4 Q Okay, that's fine. This document that you're
5 looking at, does this refer to those paintings that we just
6 looked at in the photographs 32 through 35?

7 A Yes.

8 Q All right. And do these -- after reviewing this,
9 does it refresh your recollection as to the name of the person
10 that you released them to?

11 A Yes.

12 Q And what is that name?

13 A Annie Lee.

14 Q Now, do you recall a meat slicer?

15 A I do.

16 Q Okay, did you release it to a person as well, the
17 meat slicer?

18 A Yes.

19 Q All right. Did you see that same person when you
20 were sitting outside, outside the courtroom? That you
21 released it to?

22 A No.

23 Q All right.

24 [Counsel Confer]

25

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1 BY MS. DIGIACOMO:

2 Q All right, well, let me show you a photograph.
3 State's Exhibit Number 328, does that look familiar?

4 A Yes.

5 Q Okay, and what are we looking at here?

6 A A gentleman, it looks like with a chef's shirt on,
7 with the meat slicer that we were releasing to him.

8 Q Okay, so you're the one that released that meat
9 slicer?

10 A Yes.

11 Q Do you recall his name?

12 A I don't.

13 Q Okay. All right, and this last one goes to Count
14 XIV. If I may approach.

15 Do you recall releasing items to a person named Kurt
16 Saliger?

17 A I don't, I don't know the names.

18 Q All right. We'll look at your property reports.
19 Okay, showing you a one-page property report. Do you
20 recognize this?

21 A I do.

22 Q Okay, and are you the one that did the release down
23 here?

24 A Yes.

25 Q Okay. And the person's name on this that you

1 released it to is?

2 A Kurt Saliger.

3 Q All right. Now, what did you release to him?

4 A A matchbook collection and a Norman Rockwell metal
5 set, or steel -- silver set.

6 Q All right. Now, I'm gonna show you State's proposed
7 Exhibit 212. Do you see one of those two items in this
8 picture?

9 A I do. On the lower right corner of the picture on
10 the wall.

11 Q All right, and does that fairly and accurately
12 depict where it was found in the house at Cutler?

13 A I wouldn't know that.

14 Q Okay.

15 A I was outside.

16 Q Does it fairly and accurately depict the framed
17 silver set that you released to Mr. Saliger?

18 A Yes.

19 MS. DIGIACOMO: Your Honor, I move for admission of 212.

20 THE COURT: Objection?

21 MR. HART: No, Your Honor.

22 THE COURT: 212 will be admitted.

23 [State's Exhibit 212 Admitted]

24 BY MS. DIGIACOMO:

25 Q All right, the other one was Norman Rockwell print?

1 I'm showing you State's proposed Exhibit 210, yeah, State's
2 proposed Exhibit 210. In that photograph do you see one of
3 the other items released?

4 A Looks like a matchbook set that's in a frame. In
5 fact behind another picture.

6 Q Oh, it was a matchbook set? Oh.

7 A Yes.

8 Q Okay. So that's not in 210, I'm sorry.

9 A That -- no.

10 Q Okay. You did release a matchbook set?

11 A A matchbook set and the silver set.

12 Q Oh, I'm sorry, you know, I just realized I showed
13 you the wrong photograph.

14 Let me show you State's proposed Exhibit 214.

15 A Yes, that's the matchbook set.

16 Q All right. Now, also the matchbook set -- and
17 there's a picture of the other item that you released, the
18 silver set?

19 A Correct.

20 Q And these fairly and accurately depict what you
21 released to Mr. Saliger?

22 A Yes.

23 MS. DIGIACOMO: All right, I move for admission of
24 State's proposed Exhibit 214.

25 THE COURT: Any objection?

1 MR. HART: No objection.

2 THE COURT: Admitted.

3 [State's Exhibit 214 Admitted]

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

5 THE COURT: Questions?

6 CROSS-EXAMINATION

7 BY MR. HART:

8 Q So you said you didn't verify these items as you
9 released them then?

10 A No.

11 Q The reports?

12 A No.

13 Q You relied on the hearsay of somebody else? To say
14 they were --

15 A . Relied on the reliable information from other
16 officers that are verified.

17 Q Well, you didn't review the reports yourself,
18 correct?

19 A No.

20 Q And Mr. Saliger, he had some items. Did he contact
21 you about some items that he thought were his that may have
22 already been released?

23 A I didn't handle any of that. You mean after the
24 search warrant?

25 Q Yes.

1 A I didn't handle any of that.

2 Q Okay. Are you -- did he have concerns about any of
3 the other things that were around at that time when you --

4 MS. DIGIACOMO: Objection, hearsay.

5 THE COURT: The question is, did Mr. Saliger have
6 concerns, is that your --

7 MR. HART: Yeah, about any other items.

8 MS. DIGIACOMO: Well, objection, speculation as well.

9 THE COURT: Now, how is he gonna know?

10 MR. HART: If you asked him.

11 THE COURT: I don't even think -- you have any idea?

12 THE WITNESS: I never talked to Saliger or -- as far as
13 after the search warrant.

14 THE COURT: Okay.

15 MR. HART: Court's indulgence for just a moment, Your
16 Honor.

17 [Counsel Confer]

18 BY MR. HART:

19 Q Did you release items to a gentleman who can play
20 ball also?

21 MS. DIGIACOMO: I'm sorry, what?

22 THE COURT: Play ball.

23 BY MR. HART:

24 Q Play ball. A Mr. Nera [phonetic]?

25 A I believe I may have. I would have to see the

1 report to reflect the names of what business and what people I
2 released to.

3 [Counsel Confer]

4 MR. HART: Sorry, Your Honor.

5 THE COURT: Okay.

6 MS. DIGIACOMO: And Your Honor, can we talk to you on
7 this first?

8 [Bench Conference Not Transcribed]

9 THE COURT: Mr. Hart, I'll give you a little leeway on
10 this. I'm not sure whether it's relevant, but I'm gonna let
11 you do it anyway. Go ahead.

12 BY MR. HART: . .

13 Q You can review this. I'm not gonna enter it as an
14 exhibit, but if you can look it over very briefly?

15 Do you recognize the handwriting? The name on
16 there?

17 A The name on the report as far as --

18 Q Your name?

19 A Yes.

20 Q Okay.

21 A Yes, sir.

22 Q Based on reviewing that, does that give you -- does
23 that refresh your recollection as to whether or not you
24 returned --

25 A Yes.

1 Q Would that be approximately 32 items of different
2 sports memorabilia?

3 A Yes.

4 [Counsel Confer]

5 BY MR. HART:

6 Q And once again, you never personally compared
7 incident reports on what was originally reported taken as to
8 what was given back to different individuals, correct?

9 A No.

10 MR. HART: Nothing further from this witness.

11 THE COURT: Okay. Anything else?

12 MS. DIGIACOMO: No questions.

13 THE COURT: Thanks, Detective. Appreciate your time.
14 Call your next witness.

15 MS. SMALL: Stephen Gordon.

16 THE COURT: Related to a count or is this a policeman?

17 MS. SMALL: It's -- oh, it's related to Count XX.

18 THE COURT: Count XX. Mr. Gordon, come on up.

19 STEPHEN GORDON, STATE'S WITNESS, SWORN

20 THE COURT: Sir, have a seat. State your name and spell
21 your name for the Court Recorder.

22 THE WITNESS: My name is Stephen Gordon. S-t-e-p-h-e-n
23 Gordon, G-o-r-d-o-n.
24
25

DIRECT EXAMINATION

BY MS. SMALL:

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

A I'm a plastic surgeon.

Q Do you have a office here in Las Vegas?

A Yes, ma'am.

Q And where is that located?

A It's located at 7710 West Sahara.

Q That's here in Las Vegas, Clark County, Nevada?

A Las Vegas, Nevada, yes.

Q And did you have business back in June of 2003?

A Yes, ma'am.

Q Okay.. And drawing your attention specifically to June 21st, 2003, did anything happen to your business at that time?

A Well, that Saturday morning I came into my office early to find that the alarm system had been disarmed or dis -
- had been made not to work.

Q How so?

A Well, it was a blank screen when I walked in the office, and so it had been dis -- it had been -- well, actually, part of my alarm system had been removed, come to find out as I investigated it further.

And a lot of the office property was scattered about in the hallways of my office.

1 Q So once you noticed the scattered property, what did
2 you do?

3 A I was very -- well, I realized that I had been
4 burglarized and I looked around. It was daylight by that time
5 and I didn't think that there were anybody in the office, so I
6 did look around and I found that I had indeed been
7 burglarized.

8 Q And what was missing, sir?

9 A Television-VCR combinations, all of our computers
10 were missing, all the flat-screen computers. Two large
11 tapestries and other artwork was removed from my waiting room
12 area. Drugs had been removed. They had managed to break into
13 the cabinets in the surgery center. My office is a
14 combination of a office with an accredited surgery center, and
15 they had broken into the narcotics cabinet and taken a cabinet
16 off the wall and finally broken into the cabinet and stolen
17 narcotics and other drugs.

18 They had taken skin care products. They had just
19 been throughout the -- they must have been there Friday night
20 for most of the night, because they just -- they were
21 everywhere. They had gone over all parts of the office. They
22 had taken some cash out of our cash register.

23 Q How much cash did they take, do you know?

24 A I don't know.

25 Q Okay. Did you call the police?

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1 A Yes, we called the police.

2 Q Did they come out?

3 A Yes, they did.

4 Q And did you give them a report as to what was
5 missing from your office?

6 A Yes, we did.

7 Q Okay. Drawing the Court's attention to what has
8 been pre-marked as State's proposed Exhibit 329 to 333, and
9 334 to 339.

10 After you called the police out and you made the
11 report, did you get a telephone call as to possible items that
12 may have been recovered?

13 A Well, many -- I think it was maybe even greater than
14 a year later I got a phone call about some items that had been
15 recovered, yes.

16 Q Okay. And looking at 329, 330, 331, 332 and 333,
17 can you tell me if you recognize anything in these
18 photographs?

19 A Yes.

20 Q And what do you recognize?

21 A I recognize tapestries that I bought when I was in
22 Thailand in the year 1991.

23 Q And do these pictures fairly and accurately depict
24 those tapestries?

25 A Yes.

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1 Q And these are the tapestries that were taken from
2 your business?

3 A Yes, ma'am.

4 MS. SMALL: Move to enter.

5 THE COURT: Any objection?

6 MR. HART: No objection.

7 THE COURT: Admitted. Is that 29 through 33?

8 MS. SMALL: Yes, Your Honor.

9 THE COURT: All right, 329 through 333.

10 [State's Exhibits 329-333 Admitted]

11 BY MS. SMALL:

12 Q Looking at 334 through 339, do you also recognize
13 these photographs?

14 A Yes, I do.

15 Q And how do you recognize these?

16 A Well, I recognize -- this is another picture of the
17 tapestry that was stolen. Art Encounter is the name of the
18 company that actually framed these tapestries in special
19 Plexiglas boxes. And this -- these are evidence tags that are
20 associated with these tapestries as presented, and I was asked
21 to identify in a police holding area.

22 Q So you went down and viewed --

23 A Yes.

24 Q -- these tapestries?

25 A Yes, ma'am.

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1 Q Okay, and do these pictures fairly and accurately
2 depict those tapestries as you viewed 'em at the vault?

3 A Yes, ma'am.

4 MS. SMALL: Move to enter.

5 THE COURT: Objection?

6 MS. SMALL: State's 334 to 339.

7 MR. HART: No objection.

8 THE COURT: Admitted.

9 [State's Exhibits 334-339 Admitted]

10 BY MS. SMALL:

11 Q I'm gonna just show you a few of these, Doctor, if I
12 may. 329, can you tell us what's shown in this picture? I
13 mean, what do you recognize in that picture?

14 A This isn't a great picture over here, but this is
15 one of the tapestries that I had, and it's like a 3-D
16 representation of a southeast Asian typical sort of a handmade
17 woven tapestry.

18 Q Can you circle on your screen what you're looking at
19 as the tapestry?

20 A Right here, it's right here. And it's framed. A
21 gold frame that is in turn encased in a --

22 JUROR NUMBER 9: He didn't touch it.

23 THE WITNESS: Right here?

24 BY MS. SMALL:

25 Q Yeah, you can touch it with your hand, sir.

1 A Oh.

2 Q The screen with it, or the -- the hand --

3 THE COURT: It's like John Madden football, you can
4 just --

5 THE WITNESS: Oh. Oh, really?

6 THE COURT: There you go.

7 THE WITNESS: Oh, okay. I gotcha.

8 BY MS. SMALL:

9 Q Thank you, Doctor.

10 A Okay, right. Right.

11 Q So, and it's -- out of curiosity, do you recognize
12 where the tapestry is?

13 A No.

14 Q Okay. And you're sure that's one of the tapestries
15 that was taken --

16 A Definitely.

17 Q -- from your office?

18 A Yes.

19 Q Okay. Can you tell us how much value of this
20 particular tapestry is?

21 A I believe that one is worth -- well, I think it's
22 worth more than the insurance company wants to appraise it
23 for, but --

24 Q Well, let me stop you right there. You had these
25 items appraised afterwards?

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1 THE COURT: That's quite a surprise, Doc.

2 THE WITNESS: Well, the insurance company --

3 MR. HART: An objection, would be hearsay.

4 THE WITNESS: The insurance company appraised these after
5 the robbery, and they appraised them based on photographs.

6 BY MS. SMALL:

7 Q Okay.

8 A And based on a brief conversation with the people
9 from Art Encounter about 'em, and they appraised one for 2,300
10 and the other one for 2,700.

11 Q Okay. I think I'll show you State's 339, and if you
12 could just sort of tell us what we're looking at in this
13 picture?

14 A This is a picture of me standing besides both of
15 these tapestries in the police holding area where I was asked
16 to come and identify them.

17 Q Okay. Doctor, I know this is gonna sound like a
18 silly question, but at any time did you give anyone permission
19 to take these tapestries out of your shop, out of your office?

20 A No, ma'am.

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

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. HART:

25 Q You said you paid about \$750 apiece for the

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1 tapestries when you bought 'em? In your prior testimony?

2 A Well, no. Actually I paid more like 150 for one and
3 like 225 for the other. But these are, these are --

4 MR. HART: No further questions, Your Honor.

5 THE WITNESS: Okay.

6 REDIRECT EXAMINATION

7 BY MS. SMALL:

8 Q Why don't you go ahead and explain what you were
9 trying to explain just then?

10 A Well, these are tapestries that I found in a dusty
11 antique dealer's basement in Thailand, and bargained for. And
12 they were valued -- they're clearly valued at more than that
13 here in the United States, and I had them carefully restored,
14 framed, and then framed a second time in the Plexiglas, so I
15 realize that I got them at a good price, but that was my
16 fortune.

17 Q What was the value of the frames that you had put on
18 them? I mean, how much did you pay for the frames?

19 A Oh, I paid close to \$1,000 for a frame.

20 Q Okay.

21 A Yeah.

22 Q And you had 'em appraised for considerably more than
23 you purchased 'em for, correct?

24 A Yes.

25 Q Thank you.

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1 MS. SMALL: Nothing further.

2 THE COURT: Thanks, Doc. Appreciate your time, I know
3 you're busy.

4 THE WITNESS: Okay. Thank you.

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

6 MS. DIGIACOMO: Kurt Saliger.

7 THE COURT: Which count?

8 MS. DIGIACOMO: It's gonna be Count XIV.

9 THE COURT: All right, Mr. Saliger. Right here, sir.

10 KURT SALIGER, STATE'S WITNESS, SWORN

11 THE COURT: Sir, state your name, please, and spell your
12 name for the Court Recorder.

13 THE WITNESS: My name is Kurt Saliger. First name is K-
14 u-r-t, last name S as in snow a-l-i-g-e-r.

15 THE COURT: Go ahead.

16 MS. DIGIACOMO: Thank you.

17 DIRECT EXAMINATION

18 BY MS. DIGIACOMO:

19 Q Mr. Saliger, do you have a business or an office?

20 A I'm a certified public accountant in Las Vegas.

21 Q All right, and where's your office located?

22 A 1601 South Rainbow Boulevard, Suite 220b.

23 Q What are the nearest cross streets?

24 A That's Rainbow, Oakey -- between Oakey and
25 Charleston.

1 Q All right. Now --

2 A Kind of kitty-corner from Ethan Allen Furniture.

3 Q Now, did you have any burglaries of your business?

4 A I've had eight total.

5 Q Okay, well, directing your attention to two, and one
6 in May of 2005 and one in August of 2005?

7 A Well, the first one was March 12th, 2005; the second
8 one was August 22nd, 2005.

9 Q Okay. Well, regarding those, the first one, do you
10 recall exactly what was taken during the first one?

11 A That was sports memorabilia that I have used to
12 cover my walls, the sports-themed, football, autographed
13 jerseys.

14 Q And who specifically did you have?

15 A Joe Montana, Joe Namath, Roger Staubach --

16 MR. HART: And, Your Honor, for the record, I believe
17 he's using something to refresh his recollection.

18 MS. DIGIACOMO: Well, no, he's picking up something.

19 THE WITNESS: These are the --

20 MS. DIGIACOMO: He hasn't used it yet.

21 THE WITNESS: This is my insurance claim that I submitted
22 for my insurance.

23 THE COURT: Well, her question is if you recall, without
24 looking at that, can you tell her, and then if you can't
25 they'll let you look at it, so try to do it without it first

1 and go from there.

2 THE WITNESS: Joe Namath was an autographed jersey, Joe
3 Montana. Then I have to look at the other ones.

4 BY MS. DIGIACOMO:

5 Q Okay. That would -- if the list for your insurance
6 company would refresh --

7 THE COURT: Go ahead.

8 BY MS. DIGIACOMO:

9 Q -- your recollection, go ahead.

10 A I mean, it was quite extensive. Joe Namath, jersey;
11 Joe Montana, Jersey; Roger Staubach, jersey; Nolan Ryan;
12 Mickey Mantle; Jack Nicklaus; Ted Williams, Jersey; and those
13 were just the autographed jerseys that were framed in my
14 office.

15 Q Did you have more sports memorabilia that was taken?

16 A Other similar stuff were like Super Bowl tickets and
17 then pictures of famous athletes with their autographs.

18 Q All right, now, what about the August 2005 burglary?
19 What kind of items were taken during that?

20 A By that time I'd replaced all the sports memorabilia
21 with more casino chip-type items, historical casino chips and
22 then some Norman Rockwell-type items.

23 Q All right. Now, I'm gonna show you --

24 MR. HART: If I can just follow you up?

25 MS. DIGIACOMO: Yeah.

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1 BY MS. DIGIACOMO:

2 Q All right, sir. First of all, I'm going to show you
3 State's proposed Exhibit 210 and State's Exhibit two -- well,
4 let me show you State's proposed Exhibit 210. Do you
5 recognize anything in that photograph as being yours?

6 A This was one of the second replacement items on
7 there, Norman Rockwell. That's a CPA print with stamps
8 underneath there, proof stamps, called "Meeting the Deadline."

9 Q Okay, and so does this fairly and accurately depict
10 your photograph that was taken in the August 2005 burglary?

11 A Yeah, that was the one taken on August 22nd, yes,
12 ma'am.

13 Q Okay. But you don't recognize where it's located,
14 do you?

15 A It's right there.

16 Q No, I meant like the location where it's --

17 A Oh, no, no, no.

18 Q -- the picture.

19 A I have no idea where it's at right -- right -- in
20 that room, no.

21 Q All right.

22 MS. DIGIACOMO: Your Honor, I'd move for admission of
23 State's proposed Exhibit 210.

24 THE COURT: Any objection?

25 MR. HART: No objection, Your Honor.

1 THE COURT: Admitted.

2 [State's Exhibit 210 Admitted]

3 BY MS. DIGIACOMO:

4 Q Now showing you what's been marked for
5 identification State's proposed Exhibits 215 through 217, if
6 you could just flip through 'em and just let me know if you
7 recognize them and I'll ask --

8 A This is, this is the same, Norman Rockwell, "Meeting
9 the Deadline." This is the Joe Namath autographed jersey.
10 That's a different Joe Namath, but that's not mine. This is a
11 Mickey Mantle and a Norman Rockwell --

12 Q All right. So do State's 215 through 217 fairly and
13 accurately represent some of your items that were taken?

14 A Yes, ma'am, correct.

15 Q But looking at 217, do you recognize the location in
16 the picture?

17 A I believe that was the warehouse on Sahara and
18 Cimarron, where I had to go and identify some items.

19 Q Okay.

20 MS. DIGIACOMO: At this time, Your Honor, I'd move for
21 admission of State's Exhibits -- proposed 215 through 217.

22 THE COURT: Any objection, Mr. Hart?

23 MR. HART: No objection.

24 THE COURT: 215 to 217 be admitted.

25 [State's Exhibits 115-217 Admitted]

1 BY MS. DIGIACOMO:

2 Q All right, now I'm just gonna ask you to just
3 quickly flip through them and just -- you can wait till the
4 end to discuss 'em, but just flip through 'em and tell me
5 which ones you recognize.

6 A This is the -- this is --

7 Q No, no, I mean, just pull aside the ones you
8 recognize and we'll go through 'em --

9 A Okay.

10 Q -- separately. All right, sir, do you -- all these
11 that you looked through, do they fairly and accurately depict
12 some of your items and you, as well, when you went to the --

13 A Yes, they do.

14 Q -- evidence view?

15 A Yes, they do.

16 MS. DIGIACOMO: Your Honor, I'd move for admission of
17 218, 220, 221, 223, 224, 225, 226, 227, 228, 229, 231, 232,
18 233, and 235.

19 THE COURT: Any objection?

20 MR. HART: No, Your Honor.

21 THE COURT: Admitted.

22 MS. DIGIACOMO: Thank you.

23 : [State's Exhibits 218, 220-221, 223-229, 231-233, and 235
24 Admitted]
25

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1 BY MS. DIGIACOMO:

2 Q All right. Sir, first of all, on November 6, 2006,
3 did you get a call by the Metropolitan Police Department?

4 A Yes, I did.

5 Q Okay, and based on that call did you -- is there
6 somewhere you went first?

7 A I went to a house. I think the street address was
8 Culver.

9 Q Okay.

10 A And they had quite a bit of things out in the yard,
11 sports memorabilia, pictures, musical guitars, that type of
12 stuff, that were supposedly stolen-type articles.

13 Q All right. And did you actually see two of the
14 things that were stolen from you in one of your burglaries?

15 A Those were -- at that time they released to me the
16 Joe Namath jersey and the Norman Rockwell silver proof set.

17 Q All right. Now, was the Joe Namath jersey at the
18 house or a different location?

19 A That was the second time. It happened twice that
20 day. The second -- Joe Namath jersey was at the second
21 location, in the mini-warehouse storage unit on Cimarron and
22 Sahara.

23 Q Okay, so when you went to the house did you have
24 more than one -- well, let me show you State's Exhibit 214.
25 Do you recognize what's depicted in these photographs?

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1 A Yeah, the top two are the Norman Rockwell limited
2 edition silver proof set, proofs of his famous artworks. The
3 second one is the matchbook covers that I used on the second
4 replacement for my artwork in my office. After the first
5 burglary?

6 Q Okay, so these -- it's four pictures, but it's two
7 different items, correct?

8 A Correct.

9 Q And these were taken during the burglary of the
10 second --

11 A Correct.

12 Q -- of the second burglary?

13 A Correct.

14 Q In August?

15 A That's what I've used to replace the sports
16 memorabilia that was stolen.

17 Q All right. Now, did you get these items back?

18 A Yes, I did.

19 Q All right. And these are your photographs of them,
20 correct?

21 A I don't know whose photos they are.

22 Q Okay, but they are --

23 A I did not take photos. But they're my -- they're my
24 items.

25 Q All right. And so were these released to you at the

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1 house?

2 A I'm not sure they were released to my house, but I
3 went several times to the police evidentiary vault.

4 Q No, I'm sorry. Let me clarify. You went to a house
5 on a street where there was a bunch of property?

6 A Correct. Correct.

7 Q Okay.

8 A That was called Culver Street.

9 Q All right. And you had some property released to
10 you?

11 A Correct.

12 Q Do these show the two items that you had released to
13 you, the silver -- the Norman Rockwell --

14 A Yes, they do, ma'am.

15 Q Okay.

16 A Yes, they do.

17 Q All right. And then, if I got this correct, you
18 went to a different location?

19 A Later on that day I got another call.

20 Q Okay. And so when you went to this other location
21 -- I'm gonna show you State's Exhibit Number 215, does that
22 show both of the items released to you at that time?

23 A At that time I got the Norman Rockwell "Beating the
24 Deadline" back with the stamps, and then also the Joe Namath
25 jersey.

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1 Q Okay. And then showing you 216, is that your Joe
2 Namath jersey?

3 A Correct. Correct.

4 Q Oh, I guess -- no, that's not. Okay. I've got two
5 different ones. I'm sorry. I didn't realize there was more
6 than one.

7 In 215, there's a different Joe Namath jersey than
8 in 216, or is it the same?

9 A That's the same.

10 Q It is?

11 A His autograph's upon the one.

12 Q Oh, okay. We can tell I know sports memorabilia.
13 All right. So, showing you 216, this is your jersey as well?

14 A Correct, yeah. I had that since 1992.

15 Q All right, and they were both returned to you?

16 A Yes.

17 Q Now, the ones that we saw in 214, the silver Norman
18 Rockwell and then the matchbook, what are the values of those
19 or what did you pay for those items?

20 A I've got a receipt here where I paid \$1,031 for the
21 Norman Rockwell value, but that was when silver was like \$8 an
22 ounce, so it's doubled. That's worth \$4,000 now.

23 Q Okay, but you paid a thou --

24 MR. HART: Objection, speculation, Your Honor.

25 THE COURT: No, I think he can testify as to what he --

1 the value of his own property is, in his opinion.

2 THE WITNESS: Three years ago silver was \$4, \$5, \$6; it's
3 18 today. These were silver proofs, there's ten coins in
4 there. That has to have doubled.

5 BY MS. DIGIACOMO:

6 Q Okay. And then what about the matchbook collection
7 in 214?

8 A Those were all worth \$10 to \$50 each. Those are all
9 antique matchbook covers from the 1940s, '20s, '30s and
10 earlier -- early, early.

11 Q And then did you frame them? Or did --

12 A Correct.

13 Q -- they come framed?

14 A Correct.

15 Q They -- okay. And how much did you pay for the
16 framing?

17 A I think about \$500.

18 Q Now, with regard to State's Exhibit 215 and 216,
19 with the Joe Namath jersey, how much did you pay for that?

20 A I think that's \$500. The Norman Rockwell stamp
21 collection-type thing.

22 Q The Norman Rockwell's 500?

23 A Uh-huh.

24 Q Okay, and then what about the Joe Namath jersey?

25 A That's worth \$1,000.

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1 Q All right, now, you got those items released to you
2 and then you still went down to the evidence vault to view
3 more property? Is that fair?

4 A Several times, yes, sir. Yes, ma'am.

5 Q And what -- I've got twice here, so let's look at
6 the first time. State's Exhibit Number 231 shows you with a
7 bunch of different items?

8 A Those were all unused Super Bowl tickets with the
9 appropriate quarterbacks and members of the various teams. I
10 believe that was the first Super Bowl ever played, the second
11 Super Bowl ever played, the fifth and the eighth Super Bowl,
12 with unused tickets.

13 Q . And then how were you able, when you went down to
14 the vault, to identify these as your property? And I'm
15 assuming, since this is the sports memorabilia, was this from
16 the first burglary?

17 A Correct. Correct.

18 Q Okay.

19 A Those were part of my -- my theme was winning Super
20 Bowl quarterbacks, autographed jerseys. That was the theme of
21 my office, and these kind of supplemented the themes.

22 Q All right. And then you went back to the vault a
23 second time?

24 A Correct.

25 Q Showing you State's Exhibit 235. What's depicted in

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1 this photograph?

2 A This is a Ted Williams autographed jersey with a
3 Super medallion coin in the middle.

4 Q Okay. And actually, I think the sticker might have
5 gone over the coin. But there was also a picture of this
6 coin?

7 A Correct. Correct.

8 Q That's in 233?

9 A Correct. Correct.

10 Q All right. And you were able to identify these as
11 yours, as well?

12 A Yes.

13 Q And this would be from the first break-in?

14 A Yeah. Since he's dead, that's worth \$5,000.

15 Q Okay. Which is?

16 A Ted Williams. Autograph.

17 Q And now, you didn't give anyone permission to have
18 any of your belongings that we've been --

19 A No, ma'am.

20 Q -- talking about?

21 A No, ma'am.

22 MS. DIGIACOMO: Pass the witness.

23 THE COURT: Questions?
24
25

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CROSS-EXAMINATION

BY MR. HART:

Q Now, you said got called out to a couple different locations?

A That one day, yes. I went to two different locations, sir.

Q When you went to the house can you kind of describe the setting there? Was it pretty much a free-for-all?

A It was, uh -- several --

Q Organized chaos, would that be a good word?

A It wasn't chaotic, because there were so many policemen there. They prevented the chaos. But there was several, several detective cars there, maybe eight or ten. They had everything kind of roped off. At the time I was there I was the only there identifying items of value.

Q Okay. Did other people come by, come and go?

A No, I was the only one there.

Q Did you later view some of this in the media?

A I was not aware of any media coverage, no.

Q Did you later --

A I just don't watch TV.

Q Did you later have a concern that some of the stuff -- some of your stuff was not returned that had been identified?

A Quite a bit of it was, yes.

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1 Q Okay. And were they -- as you understand it, did
2 the police later contact somebody else that had received items
3 to return to you?

4 MS. DIGIACOMO: Objection, hearsay, foundation.

5 THE COURT: Well, he could ask it, did you later get
6 other items from the police returned to you?

7 THE WITNESS: I've only gotten the two items. I've
8 gotten the Joe Namath jersey and the Norman Rockwell stamp
9 print.

10 BY MR. HART:

11 Q Did you later find out about items that were
12 initially not available for you to view, that came back for
13 you to be able to view later?

14 A At the police evidentiary vault, yes.

15 Q Okay. Did you have to show receipts for anything --
16 when you retrieved your items back did you have to show
17 receipts?

18 A They had already called Centaur Gallery and gotten
19 my name and address, and the fact that I'd already purchased
20 some of these things, so they just put two and two together,
21 the detectives.

22 Q Okay.

23 A So that's why they let me have some of that stuff.

24 Q Okay. So you didn't have any other paperwork -- any
25 paper proof?

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1 A No, not on me. Not like today, no.

2 Q And you were the only person there viewing at the
3 time that you were there?

4 A As I recall it, yes, sir.

5 MR. HART: Nothing further from this witness.

6 THE COURT: Thank you, sir. Appreciate your testimony.

7 MS. DIGIACOMO: Actually, I just had a follow-up.

8 THE COURT: Go ahead.

9 REDIRECT EXAMINATION

10 BY MS. DIGIACOMO:

11 Q You said you got two items released to you? Didn't
12 you actually get two at each location, for a total of four?
13 Two from the house and two from the storage unit?

14 A Yeah, because -- the Norman Rockwell was two items,
15 the silver proof set and then the "Beating the Deadline," the
16 stamp-issued thing. And then I got my Joe Namath jersey and
17 --

18 Q All right, and then --

19 A -- and the matchbooks.

20 Q All right.

21 A Four total.

22 Q Okay.

23 A Items. And that's all I've received.

24 Q And then just to show you -- there was two of those
25 Norman Rockwells, right? One that was released to you and

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1 then one that you haven't gotten back? That you viewed at the
2 evidence vault?

3 A Correct.

4 Q Okay. And then the one that you didn't get back,
5 I'm gonna show you State's Exhibit 210. I didn't put this on
6 before. Is it in this picture?

7 A It's right there.

8 Q Can you circle it for the jury on the screen?

9 A It's in the corner here, over here.

10 Q You can touch the screen.

11 A Right there.

12 THE COURT: It's just like Madden and the Super Bowl, you
13 know, you can do that?

14 THE WITNESS: Right there.

15 BY MS. DIGIACOMO:

16 Q Right. But this is the one you don't recognize this
17 location that -- I mean, you didn't see this?

18 A I've never been in that house or location or never
19 saw my --

20 Q You never saw this one when you went anywhere?

21 A Correct. Correct. I don't know where that is.

22 MS. DIGIACOMO: Nothing further.

23 THE COURT: Thanks. Appreciate it, Mr. Saliger. Call
24 your next witness.

25 MS. DIGIACOMO: Brad Walker.

1 THE COURT: This relate to a count?

2 MS. DIGIACOMO: It relates to a storage facility.

3 THE COURT: He's with the police department?

4 MS. DIGIACOMO: No, no, he's with the storage units. And
5 I don't --

6 THE COURT: Come on up here, Mr. Walker.

7 BRAD ALLEN WALKER, STATE'S WITNESS, SWORN

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

10 THE WITNESS: Brad Allen Walker.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MS. DIGIACOMO:.

14 Q Sir, do you work at a storage unit?

15 A Alarmed Mini Storage.

16 Q Where is that located?

17 A Smoke Ranch & Jones.

18 Q All right, what's the specific --

19 A 5900 Smoke Ranch & Jones.

20 Q Okay. Now, let me ask you about a unit rented to a
21 Tanya Trevarthan?

22 A Yes.

23 Q Okay, did you rent that unit to her?

24 A I did not rent that unit. I took over the property
25 in August of 2005. She rented the unit 699 in June the 26th,

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1 2001.

2 Q Okay. So when you took over the storage place, are
3 all of the records regarding the rentals and the leases --

4 MR. HART: I --

5 BY MS. DIGIACOMO:

6 Q -- kept in the ordinary course of business?

7 A Most of 'em are. We had a computer failure and some
8 of the paper records are missing.

9 Q All right.

10 MR. HART: I would object as to foundation for what
11 happened prior to him, and also based on that answer, Your
12 Honor.

13 THE COURT: He can't testify because he doesn't know, but
14 he can say what the business records that were turned over to
15 him say. And that's all he --

16 MS. DIGIACOMO: Right.

17 THE COURT: -- he doesn't know anything more than that.

18 MS. DIGIACOMO: Right. Now --

19 THE COURT: So the objection is sustained in part. Go
20 ahead.

21 BY MS. DIGIACOMO:

22 Q All right, sir. With regard to Unit 174, were there
23 records for that when you took over the business?

24 A Yes.

25 Q All right, and when did you take over the business?

1 A August 2005.

2 Q All right. Now I'm gonna show you what's been
3 marked for identification, it's three pages, and it's State's
4 proposed Exhibit 974. Can you look at that and let me know if
5 you recognize what that is a copy of?

6 A A copy of the lease that I have with me.

7 Q Okay. You brought the original lease --

8 A Right.

9 Q -- with you? So if you could look at each page and
10 just make sure that it adequately --

11 A That's it.

12 Q All right, and then -- there's also a photograph
13 attached?

14 A We take -- if they don't have a photo I.D. we always
15 take a picture of 'em so that when they come back, should my
16 relief manager be there, they can give 'em access to the unit.

17 Q Okay.

18 A Security is really a point at our property.

19 Q Okay. So now, looking at State's proposed Exhibit
20 974, it's a fairly and accurate copy of the originals you've
21 got --

22 A Yes.

23 Q -- sitting right there?

24 MS. DIGIACOMO: Your Honor, I'd move for admission of
25 974.

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1 THE COURT: Objection?

2 MS. DIGIACOMO: And the Defense has been provided --

3 MR. HART: No, Your Honor.

4 MS. DIGIACOMO: -- a copy of this document as well.

5 THE COURT: Be admitted.

6 [State's Exhibit 974 Admitted]

7 BY MS. DIGIACOMO:

8 Q All right. Now, sir, can you tell me -- okay, so

9 we're looking at -- what unit was this?

10 A They originally rented 699 in June 2001. They --

11 Q What size was was 699?

12 A Looks like a 5 by 10.

13 Q Okay.

14 A And they transferred up to a 10 by 10, which -- 620,

15 and then they transferred to 174, January -- approximately

16 January of 2006.

17 Q Okay, so were you there when they transferred up to

18 a --

19 A I was, I was working there, yes.

20 Q You were the property manager, okay, but you're not

21 the one that actually did the transaction?

22 A We could've done that over the phone. Existing

23 tenant, if they needed to move up we're real accommodating.

24 Q Okay, now, so who was the tenant on this? The last

25 unit?

1 A Tanya Tres --

2 Q You could spell it.

3 A T-r-e-u-a-r-t-h-e-n. Tanya Michelle.

4 Q Is it possible that's a V, not a U? It's not your
5 handwriting, right?

6 A No.

7 Q Okay.

8 A Could be.

9 Q All right. And what was the last unit that they had
10 rented, or she had rented, I should say?

11 A 174.

12 Q All right. And it's actually signed, as well?

13 A Right.

14 Q Now, when was this lease signed?

15 A June 26, 2001.

16 MS. DIGIACOMO: I don't have any further questions.

17 THE COURT: Questions?

18 MS. DIGIACOMO: Oh. Oh. No, I guess I just have one.

19 BY MS. DIGIACOMO:

20 Q The storage unit on Smoke Ranch, what are the cross
21 streets?

22 A Smoke Ranch and Jones.

23 Q And that's in Clark County, Nevada?

24 A Right.

25 MS. DIGIACOMO: Nothing further.

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1 THE COURT: Questions, Mr. Hart?

2 CROSS-EXAMINATION

3 BY MR. HART:

4 Q Just for the record. So the unit was in Tanya
5 Trevarthen's name?

6 A Yes.

7 MR. HART: Nothing further.

8 THE COURT: Okay. Thanks, Mr. Walker. Appreciate your
9 testimony. Call your next witness.

10 MS. DIGIACOMO: Claire Winters.

11 THE COURT: Come up, Ms. Winters. This is another
12 storage?

13 MS. DIGIACOMO: Yes.

14 THE COURT: Right here, please.

15 CLAIRE WINTERS, STATE'S WITNESS, SWORN

16 THE COURT: Ms. Winters, state your name and spell your
17 name for the Court Recorder.

18 THE WITNESS: It's Claire Winters, C-l-a-i-r-e, last name
19 is W-i-n-t-e-r-s.

20 THE COURT: Okay, you have a very nice soft voice, but we
21 need to make sure they hear, so speak loud and speak in that
22 direction, please. Go ahead.

23 DIRECT EXAMINATION

24 BY MS. DIGIACOMO:

25 Q Where are you employed?

1 A At Storage West.

2 Q And what do you do?

3 A I'm the facilities manager.

4 A What is the address of that storage unit?

5 A 8265 West Sahara Avenue.

6 Q I'm gonna show you a couple of documents. And you

7 can look at both of these, State's proposed Exhibit 1090 and

8 State's proposed Exhibit 1089. Let me know if you recognize

9 'em.

10 A They're contracts from our facility that are filled

11 out by Ashton.

12 Q Okay. Ashton who? Who rented this unit?

13 A Ashton L. Monroe.

14 Q And what date was that unit rented on?

15 A October 6, 2006.

16 Q And do you know what unit number was rented?

17 A It was B106.

18 Q All right, now, when you rent a unit to somebody do

19 you take anything, such as I.D. or --

20 A We require a driver's license or a driver's -- the

21 I.D. that you get from DMV. Or, if they don't have that, then

22 we take a passport or -- if they have a driver's license from

23 overseas like Italy or whatever, but yes, it has to be a photo

24 I.D. with a picture on it.

25 Q Okay. Now showing you State's proposed Exhibit

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1 1090, the fourth page, do you recognize what's that?

2 A It's a Texas driver's license.

3 Q And what's the name?

4 A I believe. It's Ashton Monroe.

5 Q Now, can you see the picture on that?

6 A Well, I know what the picture was, but no I can't
7 see the picture on this.

8 Q Because it's a photocopy?

9 A That is correct.

10 Q All right. I'm gonna show you the last page, where
11 it's lightened up, the photograph? Do you recognize that
12 photograph?

13 A Yes.

14 Q Is that the same photograph that was on the Texas
15 I.D. that was shown to you?

16 A Yes.

17 Q All right. And that was the same person that was
18 standing in front of you and rented the unit?

19 A That is correct.

20 Q All right. Do you think you'd recognize this person
21 if you saw him again?

22 A Uh-huh.

23 Q Do you see this same person that rented the unit in
24 the courtroom today?

25 A Well, he's got darker hair, but.

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1 Q You do see him?

2 A Yes.

3 Q All right, if you'd just point and just tell me what
4 that person you're describing is wearing right now?

5 A He's wearing a black suit coat and a white shirt.

6 Q All right, and he's got darker hair now than he did?

7 A Uh-huh.

8 Q Is that a yes, for the record?

9 A Yes, I'm sorry.

10 Q Other than that --

11 A Yes, it is.

12 Q Other than that, he looks the same?

13 THE COURT: Is it this gentleman sitting down next to the
14 blonde?

15 THE WITNESS: Yes, it is, sir.

16 THE COURT: All right, the record will reflect the
17 identification of the Defendant, Daimon Monroe.

18 Go ahead.

19 MR. HART: Thank you, Your Honor.

20 BY MS. DIGIACOMO:

21 Q What color was his hair at the time?

22 A It was a dishwater blond --

23 Q Color.

24 A -- color. Kind of a reddish blondish. It was
25 lighter. It was dishwater blond.

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1 Q All right. Now, State's proposed Exhibit 1090, does
2 that fairly and accurately depict -- is it a good copy of the
3 actual storage lease and I.D. that was used for the rental?

4 A Yes.

5 MS. DIGIACOMO: Your Honor, I'd move for admission of
6 State's proposed Exhibit 1090.

7 THE COURT: Any objection?

8 MS. TRAMEL: No objection, Your Honor.

9 THE COURT: Admitted.

10 [State's Exhibits 1090 Admitted]

11 BY MS. DIGIACOMO:

12 Q All right now, showing you State's proposed Exhibit
13 1089. It's only a two-page document instead of a four-page,
14 but it has some other items attached with it.

15 A That is correct. This states that the -- on this
16 one, the addendum to a lease stating that we are not
17 responsible for the contents of the unit, that we require that
18 the tenants be self-insured, get their own insurance, usually
19 a homeowner's insurance will cover property off-site of their
20 home.

21 Q And did Ashton Monroe sign it in front of you?

22 A Yes.

23 Q Okay. And the two pieces attached to it, those
24 aren't the entire document? That's just part of the lease
25 copies?

1 A There is a white copy, a yellow copy, and a pink
2 copy.

3 Q Okay, and Ashton Monroe signed this as well?

4 A Yes.

5 Q Okay. And then the fourth page on this is blank,
6 but on the other side is a copy of the driver's license?

7 A That is correct.

8 Q All right. And then the last two sheets are an
9 activity log? Can you tell me what this is?

10 A The activity log shows how many times a client comes
11 in and out of our gate. Because you have to key in a code to
12 get in and you have to key a code to get out.

13 Q Now, do these -- all of these documents I show you,
14 fairly and accurately represent the activity and the rental
15 agreement of this unit to Ashton Monroe?

16 A Yes.

17 MS. DIGIACOMO: Your Honor, I move for admission of
18 State's proposed Exhibit 1089.

19 MR. HART: No objection.

20 THE COURT: Admitted.

21 [State's Exhibit 1089 Admitted]

22 BY MS. DIGIACOMO:

23 Q So now I'm gonna show you, on the equipment, this
24 activity log, and it should be there on your screen. Do you
25 see that?

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1 A Yes.

2 Q Okay, so now you said everyone has a code so every
3 time they key in and out you have an activity log of that?

4 A That is correct.

5 Q Now, can you have more than one code for a unit, or
6 is it just one code?

7 A No, it's just one code.

8 Q All right. So even though somebody keys in and it
9 comes up Monroe, it's not necessarily Monroe that's going in,
10 that's who it's rented to?

11 A It could be -- when people come in, if they give the
12 code and the key to anyone else, that is, like their business.
13 They gave them the key, they gave them the code, they can
14 access the unit.

15 Q Okay, so just because it says Monroe, that's not
16 necessarily who went in, that's just who it's rented to?

17 A That is correct.

18 Q Okay. Now, with regard to this unit, do you recall
19 if anyone else ever went into it?

20 A Yes.

21 MR. HART: Objection, speculation of her basis. Not sure
22 she was actually in the buildings at the time.

23 THE COURT: And you recall this because you saw it?

24 THE WITNESS: The people who come in and out have to come
25 in right where I sit at my -- like I'd be sitting here at my

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1 desk, they'd be driving in right in front of me.

2 THE COURT: Objection overruled. Go ahead.

3 BY MS. DIGIACOMO:

4 Q Okay, so who else do you remember going for this
5 unit?

6 A I don't know the gentleman's name. He was African-
7 American, and he drove a white Cadillac. Cream colored,
8 white.

9 Q Okay, and do you think you'd recognize him again if
10 you saw him?

11 A Uh-huh.

12 Q Now, I'm gonna show you a photograph that's been
13 marked as State's proposed Exhibit 994.

14 A Uh-huh.

15 Q Do you recognize the person in that photograph?

16 A He was the gentleman that drove the white Cadillac.

17 Q Okay.

18 MS. DIGIACOMO: Your Honor, at this time I'd move for
19 State's proposed Exhibit 994.

20 MR. HART: I don't believe there's any foundation.

21 THE COURT: She's identified him, but we don't know who
22 he is.

23 MS. DIGIACOMO: We don't know a name.

24 MR. HART: Yeah. So --

25 THE COURT: The objection at this juncture is sustained.

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1 If you tie it up with somebody else that can identify the
2 picture so it would give some relevance to this proceeding,
3 I'll consider it at that time.

4 BY MS. DIGIACOMO:

5 Q Okay, but the person depicted in 994, you did see
6 going in and out of that unit as well?

7 A In and out of the gate.

8 Q Oh, in and out of the gate, I'm sorry.

9 MR. HART: And I would renew the objection because never
10 seen at the unit.

11 MS. DIGIACOMO: That's fine, Your Honor. I'll tie it up
12 with other witnesses.

13 THE COURT: Okay. Objection sustained at this time.

14 BY MS. DIGIACOMO:

15 Q Now, you don't have the document in front of you,
16 but do you require information on a second person, like if
17 somebody's renting the unit do you require additional
18 information on someone else?

19 A We ask that if they would give us somebody else's
20 name in case we can't get a hold of them, then we have a
21 second party that we may contact in case we -- you know, their
22 rent runs out or if there is a problem on the facility, then
23 we can contact somebody. We don't -- it's not mandatory, but
24 we ask that they do.

25 Q Now, at the time that the Defendant rented this unit

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1 From you, was he alone? Or did he have somebody with him in
2 the office?

3 A There was nobody in the office. There was somebody
4 in the car. I don't know who that person was because it was
5 reclining seats, but he would go out and speak to somebody in
6 the car, but I could not tell you who it was.

7 Q Do you remember what kind of car that person was in?

8 A It was just an older car with Texas license plates.
9 I don't know.

10 Q Did you recall the person that the Defendant put
11 down on here as being the contact person or the second person?

12 Well, oh, are you looking at --

13 A I'm sorry?

14 Q -- the lease agreement?

15 A Yeah, you don't want me to?

16 Q I can show you -- I can show you --

17 THE COURT: We start with your recollection, and if you
18 can recall fine, and if you can't then you're entitled to
19 refresh your recollection because that's why we make notes
20 about things.

21 THE WITNESS: He did put somebody down as an alternate.

22 BY MS. DIGIACOMO:

23 Q And I'll show you State's Exhibit 189 --

24 A Right.

25 Q -- 1089. And who was his alternate?

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1 A It's just a name. I don't know, I don't know if
2 it's a --

3 Q What does the name say?

4 A Oh, I'm sorry, it's Robert A. -- I can't pronounce
5 the last name. Litter [phonetic].

6 Q How do you spell it?

7 A L-e-i-a-n-d-e-r.

8 Q And what was the address he gave for this person?

9 A 1109 Virgil.

10 Q Did you ever see -- well, strike that.

11 MS. DIGIACOMO: Nothing further.

12 THE COURT: Cross? Any questions of Ms. Winters?

13 CROSS-EXAMINATION

14 BY MR. HART:

15 Q So your knowledge is two people had come to the
16 gate. You don't see where people go when they come through
17 the gate, correct? Generally speaking?

18 A Generally speaking.

19 THE COURT: R.J. Gentleman up here has a question. Go
20 ahead, Mr. Hart.

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

22 THE COURT: Just a second because we may have a question
23 from one of our jurors.

24 The storage room, the last one at issue, the one
25 that they rented, what size is that?

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1 THE WITNESS: It's 7 and a half feet by 10 feet.

2 THE COURT: Okay. All right. Thanks. You're excused.
3 Appreciate your testimony. Call your next witness.

4 MS. DIGIACOMO: Daniel Ives.

5 THE COURT: What is it?

6 MS. DIGIACOMO: Storage unit.

7 THE COURT: Ives, I-v-e-s?

8 MS. DIGIACOMO: I-v-e-s.

9 THE COURT: Come on up here, sir.

10 DANIEL J. IVES, STATE'S WITNESS, SWORN

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

13 THE WITNESS: Daniel J. Ives, I-v-e-s.

14 THE COURT: Go ahead, Ms. Digiacomo.

15 MS. DIGIACOMO: Court's indulgence.

16 [Counsel Confer]

17 DIRECT EXAMINATION

18 BY MS. DIGIACOMO:

19 Q Sir, where are you employed?

20 A I'm employed at Maximum Security Self-Storage.

21 Q What do you do there?

22 A I'm the manager there.

23 Q And how long have you been the manager there?

24 A Been close to seven years now.

25 Q All right. I want to direct your attention to a

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1 rental by Tanya Trevarthen. You remember that?

2 A Yes, I do.

3 Q All right. And you recall what unit that she
4 rented, off the top of your head?

5 A I don't recall the exact unit. I know it was in A
6 Building.

7 Q Okay. Sir, I'm gonna show you what's been marked
8 for identification as 874, and it's a stapled document with
9 multiple pages. If you could flip through each page and just
10 let me know if you recognize it?

11 A Yes. These are our contracts we use.

12 Q Okay, can you keep looking at all the rest of the
13 documents, as well, attached?

14 A Okay.

15 MS. DIGIACOMO: And Your Honor, for the record, the last
16 page I don't believe was supposed to be attached to this. I
17 think that was a mistake.

18 MR. HART: May I approach? Now I'm a little curious,
19 Your Honor.

20 THE COURT: And how would you prefer to handle that? The
21 last page apparently was inadvertently stapled to proposed --
22 [Counsel Confer]

23 THE COURT: -- 874, but they haven't admitted it. It's
24 okay if she takes it off?

25 THE CLERK: I think it'll be easier just to take it

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1 off --

2 THE COURT: Tina says as long as it's not been
3 admitted --

4 MS. DIGIACOMO: It hasn't.

5 THE COURT: -- you can take it off and then move to admit
6 it that way. If it was admitted, we can't do it.

7 MS. DIGIACOMO: All right, for the record I'm gonna take
8 off the last page.

9 THE COURT: All right.

10 MS. DIGIACOMO: That was inadvertently left attached.

11 THE COURT: All right.

12 BY MS. DIGIACOMO:

13 Q All right, sir, so after reviewing State's proposed
14 Exhibit 874, these all fairly and accurately depict, you know,
15 fair copies of the rental agreements and the paperwork that
16 went with the storage unit for Ms. Trevarthen?

17 A Yes.

18 Q All right.

19 MS. DIGIACOMO: I'd move to admit 874 at this time, Your
20 Honor.

21 THE COURT: Any objection?

22 MR. HART: No objection, Your Honor.

23 THE COURT: Admitted.

24 [State's Exhibit 874 Admitted]
25

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1 BY MS. DIGIACOMO:

2 Q All right, sir. Now, can you tell us the date that
3 Ms. Trevarthen rented this unit?

4 A October 20th, '06, 2006.

5 Q And what unit did she rent?

6 A The rental unit was A-138.

7 MS. DIGIACOMO: Pass the witness.

8 THE COURT: Questions, Mr. Hart?

9 CROSS-EXAMINATION

10 BY MR. HART:

11 Q Just again, that name was not in the name of Daimon
12 Monroe, correct?

13 A I'm sorry, sir?

14 Q It was not rented to a Daimon Monroe, correct?

15 A No, it was not.

16 MR. HART: Nothing further.

17 THE COURT: Okay, Mr. Ives, you're --

18 MS. DIGIACOMO: I'm sorry, just one more.

19 REDIRECT EXAMINATION

20 BY MS. DIGIACOMO:

21 Q Did you take a photo I.D. of the person that rented
22 it as well?

23 A Yes, we do.

24 MS. DIGIACOMO: Nothing further.

25 THE COURT: Okay, Mr. Ives, you're excused. Thanks for

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1 your time. Appreciate it.

2 THE WITNESS: Thank you.

3 THE COURT: Call one more short one, and we'll take a
4 break.

5 MS. DIGIACOMO: A short one? They're not short.

6 MR. HART: Can we take a break right now?

7 THE COURT: They're not short? I think people are
8 probably tired, they probably need a break now. You good for
9 that?

10 MR. HART: I'm great for that.

11 THE COURT: Okay.

12 [Court admonishes Jury]

13 THE COURT: Let's take a break till -- oh, let's take a
14 nice break. Let's take a break till about 5 after, recharge
15 your batteries, and then we'll -- we've done pretty well.
16 Five after.

17 [Jury out]

18 [Recess]

19 [Within the Presence of the Jury]

20 THE COURT: Okay, back on the record in Case Number
21 C228752, State of Nevada versus Daimon Monroe. Let the record
22 reflect the presence of Mr. Monroe with his counsel, Ms.
23 Tramel, Mr. Hart; Ms. Small, Ms. Digiacomo for the State, all
24 ladies and gentlemen of the jury are back in the box.

25 MS. DIGIACOMO: Robert Hathcock.

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1 THE COURT: Every time we take a break I try to touch
2 bases with the lawyers, make sure we're kind of on track.
3 What they've told me today is we went very fast today, they've
4 maybe got another hour or so they think, and a few victims,
5 but we're well on track of getting done.

6 Tomorrow we have a number of police officers --
7 dozen, 15, something like that -- that had something to do
8 with it. And then I understand we have a detective Friday
9 who's gonna be quite lengthy, and three witnesses Monday, one
10 of whom will be pretty lengthy. So we're still right exactly
11 on track in terms of our projected time, so.

12 Sir, will you stand and raise your right hand?

13 ROBERT HATHCOCK, STATE'S WITNESS, SWORN

14 THE COURT: State your name, sir; spell your name for the
15 Court Recorder.

16 THE WITNESS: Robert Hathcock. R-o-b-e-r-t
17 H-a-t-h-c-o-c-k.

18 THE COURT: Go ahead.

19 MS. DIGIACOMO: Thank you.

20 DIRECT EXAMINATION

21 BY MS. DIGIACOMO:

22 Q Sir, back in -- a few years ago, did you own a
23 production study called Right on Beat Productions?

24 A Yes.

25 Q And what time period did you actually have that

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1 business?

2 A At that location it was from '96 till the date of
3 the burglary, which is the 15th of April, 2002.

4 THE COURT: What count does this relate to?

5 MS. DIGIACOMO: XXVII, I apologize.

6 THE COURT: Go ahead.

7 BY MS. DIGIACOMO:

8 Q And sir, what exactly did you do at Right on Beat
9 Productions?

10 A It was a professional recording studio, recording
11 artists from record labels and local acts, and was just a
12 high-end digital recording studio.

13 Q And what was taken during the burglary in April
14 2002?

15 A A majority of all equipment was stolen that day.
16 All the high-end equipment. It was over \$40,000 worth of
17 equipment.

18 Q Well, let me ask you. You said that day. When is
19 it that you learned about the burglary?

20 A On the 15th of April, 2002.

21 Q So would that -- you called in, did you just walk
22 back into work and it was gone? What happened?

23 A My partner, who works there with me, called me and
24 said you need to come down here, the place is gutted out. So
25 I immediately drove down there and was astonished what it

1 looked like, and we called the police, made a report and went
2 through the motions from there.

3 Q What was your partner's name?

4 A His name was Jose Gutierrez.

5 Q All right. And you said you were completely gutted?

6 A Yes.

7 Q Was everything taken?

8 A I'd say about 99% of everything. The only thing
9 that was left was all the wiring, because the stuff was yanked
10 so hard that they just left the wires on the floor, but over
11 50 items were taken [sic].

12 Q All right, and so is that why your business shut
13 down?

14 A Yes.

15 Q All right, sir, I'm gonna show you some photographs.
16 Did you ever get a call about possibly some of your stuff
17 being return -- or, found?

18 A Yes, surprisingly, about a year and a half ago,
19 because I had gave up. It's been like four years since the
20 burglary, and a detective called me and said they identified
21 some items from my report four years ago and that they
22 recognized the names and the serial numbers, and said that
23 they possibly found some of my stuff.

24 Q So you were able, when you reported the burglary, to
25 give the police serial numbers of your items that were

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1 missing?

2 A That day, we had some of the serial numbers on file
3 in the filing cabinet at the studio, and then they gave me a
4 form to take back to finish out all the stuff I had at home
5 with serial numbers, and I provided them with that later that
6 week.

7 Q All right. Now, first of all, I'm gonna show you
8 some photographs, State's proposed Exhibits 497 through 500.
9 Now, you can just flip through them quickly and let me know if
10 you recognize any of your property in these photographs.

11 A Yes, I notice --

12 Q Well, just --

13 A Go ahead?

14 Q -- if you do, I'll come back and --

15 A Okay.

16 Q -- let you explain what.

17 A In each of those pictures I see items.

18 Q All right, and do they -- do you recognize the
19 location where your items are in any of these?

20 A No.

21 Q All right. But they fairly and accurately depict
22 items that you had taken in your burglary in 2002?

23 A Correct.

24 MS. DIGIACOMO: Your Honor, I'd move for admission of 497
25 through 500.

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1 THE COURT: Objection?

2 MR. HART: No objection.

3 THE COURT: Admitted.

4 [State's Exhibits 497-500 Admitted]

5 BY MS. DIGIACOMO:

6 Q Now, I'm gonna show you State's proposed Exhibits
7 578 to 579. Can you look through these and let me know if you
8 see anything of yours in there?

9 A These are turned around so I can't tell --

10 Q But it's possible those items are?

11 A Uh-huh, uh-huh.

12 Q Okay.

13 A And definitely on that picture.

14 Q All right. Do they fairly and accurately depict --

15 A Uh-huh.

16 Q -- the way they look?

17 MS. DIGIACOMO: I'd move for admission of State's
18 proposed Exhibits 578 to 579.

19 THE COURT: Mr. Hart, any objection?

20 MR. HART: No objection as long as they're in the
21 information or the indictment.

22 THE COURT: Admitted.

23 [State's Exhibits 578-579 Admitted]

24 BY MS. DIGIACOMO:

25 Q Now, sir, at some point were you asked to go down to

1 the evidence vault?

2 A Yes.

3 Q All right. I'd ask you to look at each one of these
4 and let me know if you -- which ones you recognize, and the
5 ones you don't, like the evidence tags, you can hand back to
6 me.

7 A Okay.

8 Q So just flip through them quickly. So these all
9 fairly and accurately depict the items that you viewed at the
10 evidence vault?

11 A Yes.

12 Q And they were all yours?

13 A Yes.

14 Q Okay. And did you base that upon -- were all these
15 based upon serial number?

16 A Yes.

17 MS. DIGIACOMO: Your Honor, I'd move for admission -- I'm
18 sorry -- of State's proposed Exhibits 580 to 609.

19 THE COURT: Objection?

20 MR. HART: Same objection, anything not in the
21 indictment, Your Honor. Otherwise no objection.

22 THE COURT: Well, he can identify them as his, but he
23 can't value anything that's not specifically listed, or, if
24 it's generally listed then it won't matter.

25 All right.

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1 THE CLERK: Sorry, the numbers were 580 through?

2 THE COURT: 601.

3 THE CLERK: Thank you.

4 MS. DIGIACOMO: Is that right? Oh, 609.

5 THE COURT: 601?

6 MS. DIGIACOMO: 609.

7 THE COURT: I'm sorry. I didn't hear you right.

8 BY MS. DIGIACOMO:

9 Q Okay, sir, first of all -- well, actually, let's do
10 this backwards since yours are unique items.

11 All right, first of all, what you went down to the
12 evidence vault to view, I'm gonna show you State's 580 on the
13 screen. Do you see that in front of you?

14 A Uh-huh.

15 Q Okay, now, what is it that we're looking at right
16 now?

17 A It is a CDR recorder. It's where you put blank CDs
18 in and it records whatever you input through it. It's a high-
19 end version of a consumer one.

20 Q Showing you State's Exhibit 582. What's this?

21 A That is a DAT player, which means Digital Audio
22 Tape, and that's what a lot of the record companies use as the
23 master format for recording.

24 Q Okay. Showing you State's Exhibit Number 584.
25 What's this?

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1 A That is a rack stand by a company called Omni Racks,
2 and that's where you put all your rackable type of recording
3 equipment. Rackable meaning stuff that you can bolt in and
4 tier it all up and holds it all together.

5 Q All right. And actually, like, showing you State's
6 Exhibit 582, the sizes look like there's, like, an extra plate
7 on the side with a hole. Is that so they can be bolted in?

8 A Correct.

9 Q And when you had what's depicted in 584 in your
10 recording studio, did you have a lot of equipment bolted in?

11 A Yes. That complete rack was loaded with equipment.

12 Q Now, I'm gonna show you, from one of the locations,
13 State's Exhibit 497. Now, what was it in this photograph that
14 you recognized?

15 A That exact stand.

16 Q Okay, the -- can you point to the jury where it is?

17 A On the right, the black narrow stand with equipment
18 in it.

19 Q You can play on the computer all you want and make
20 circles.

21 A Right here? This black rack stand. Oh, that's
22 neat.

23 Q All righty. And then if you touch the bottom right,
24 it'll clear it.

25 Do you see any of your other items in State's

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1 Exhibit 497?

2 A Possibly that CDR recorder, which is mounted in
3 there right now.

4 Q And can you circle that that you're referring to?

5 A Uh-huh.

6 Q Now, how was it that you recognized the rack stand
7 in 584?

8 A When I went to the evidence place this is actually a
9 piece of furniture, so there wasn't a serial number on it, but
10 I looked at the top and there's these pieces of Velcro, and
11 that's what made me recognize that as mine, because I actually
12 had more equipment than would allow to fit in there, and I had
13 one other module that I put Velcro on the bottom of that
14 machine and I put it on there so it wouldn't topple over,
15 because the top of that's very narrow, so that's what made me
16 recognize that.

17 Q All right. Now showing you State's 585. Is that
18 the Velcro you're referring to on the top?

19 A Correct.

20 Q Now showing you State's Exhibit 587. What are we
21 looking at here?

22 A That is the drum station, I believe. Or the bass
23 station. They look very similar, but.

24 Q All right, now, I'm gonna show you the serial number
25 that was -- is this the picture of the serial number on the

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1 back of State's 587?

2 A Yes.

3 Q And what is that serial number, for the record?

4 A 020914.

5 Q All right, so this is, you said, either a bass
6 station or a drum station?

7 A Right.

8 Q All right, they look similar?

9 A Yeah, they're made by the same company and laid out
10 basically the same, and it's so blurry that I don't know which
11 one that is, but --.

12 Q All right, what is a bass station versus a drum
13 station, do you know?

14 A Drum station is all drum percussion sounds, made to
15 emulate the sounds of all kinds of drum equipment. The bass
16 station is more of a synthesizer for bass synthesizer-type
17 sounds.

18 Q Okay. All right. Now, showing you State's Exhibit
19 Number 590. What's depicted there?

20 A That's Alesis Monitor One studio monitor, which is
21 basically a speaker. There was a pair of those.

22 Q Okay, so there's more than one?

23 A Yeah. Those are made in a pair.

24 Q Okay, and actually --

25 A Left and right.

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