

2008

Layton City v. Michelle Lee Spurgers : Brief of Appellant

Utah Court of Appeals

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Clinton R. Drake; Layton City Prosecutor; Attorney for Appellee.

Scott L. Wiggins; Arnold and Wiggins, P.C.; Attorney for Appellant.

Recommended Citation

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IN THE UTAH COURT OF APPEALS

LAYTON CITY,)	
)	
Plaintiff / Appellee,)	Case No. 20081019-CA
)	
v.)	
)	
MICHELLE LEE SPURGERS,)	
)	
Defendant / Appellant.)	

BRIEF OF APPELLANT

Appeal from Sentence, Judgement, Commitment signed by the district court on January 13, 2009, and accordingly entered that same day in the Second District Court, Davis County, the Honorable David Connors, presiding

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Attorneys for Appellee

IN THE UTAH COURT OF APPEALS

LAYTON CITY,)	
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Plaintiff / Appellee,)	Case No. 20081019-CA
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CONSTITUTIONAL PROVISIONS CITED

None.

STATEMENT OF JURISDICTION

The Utah Court of Appeals is conferred with jurisdiction over the instant appeal pursuant to Utah Code Ann. § 78A-4-103(2)(e).

STATEMENT OF ISSUES / STANDARDS OF REVIEW

1. Whether the evidence at trial was insufficient to establish Ms. Spurgers' conviction for retail theft inasmuch as there was no evidence presented at trial that she took, carried away, or transferred any store merchandise. In the course of reviewing a claim of insufficiency of evidence in a bench trial, the appellate court "must sustain the trial court's judgment unless it is 'against the clear weight of the evidence or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made.'" *State v. Goodman*, 763 P.2d 786, 786-87 (Utah 1988) (quoting *State v. Walker*, 743 P.2d 191, 193 (Utah 1987)); *State v. Briggs*, 2008 UT 75, ¶10, 197 P.3d 628, *reh'g denied*. Further, "in those instances in which the trial court's findings include inferences drawn from the evidence, we will not take issue with those inferences unless the logic upon which their extrapolation from the evidence is based is so flawed as to render the inference clearly erroneous." *Glew v. Ohio Sav. Bank*, 2007 UT 56, ¶18, 181 P.3d 791 (citing *State v. Walker*, 743 P.2d at 193).

Preservation of Issue Citation or Statement of Grounds for Review:

Ms. Spurgers preserved this issue by way of her objections to the evidence throughout the course of the trial. See 10/16/08 Tr. Trans. 3-55 *in passim*.

DETERMINATIVE AUTHORITY

The constitutional provisions, statutes, ordinances, rules, regulations, or case law whose interpretation is determinative, if any, are set out verbatim, with the appropriate citation, in the body and arguments of the instant Brief of Appellant.

STATEMENT OF THE CASE

This case arises out of an incident in which the Loss Prevention Supervisor of Mervyn's allegedly observed both Ms. Spurgers and her mother conceal clothing items on their person on March 14, 2008. Notwithstanding the allegation, Ms. Spurgers and her mother were allowed to leave the premises without being detained in any manner. About a week later, Ms. Spurgers denied any involvement in the alleged retail theft when she was contacted by telephone by a Layton City Police Officer.

On April 18, 2008, Layton City charged Ms. Michelle Lee Spurgers with retail theft, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-602. Ms. Spurgers entered a not guilty plea to the charge.

The parties appeared for a bench trial on October 16, 2008, which took place in a little over an hour. During the trial, which consisted of three witnesses, including Ms. Spurgers, the court viewed the store's video camera surveillance recording of the alleged incident.

That same day, at the conclusion of trial, the district court found Ms. Spurgers guilty as charged. Based on the conviction of retail theft, a class B misdemeanor, the district court sentenced Ms. Spurgers to 180 days in the Davis County Jail, which the court suspended, placing Ms. Spurgers on probation for a period of eighteen (18) months.

The Sentence, Judgment, Commitment was signed by the district court on January 13, 2009, and accordingly entered that same day. Ms. Spurgers filed a timely pro se Notice of Appeal on December 10, 2008.

STATEMENT OF FACTS¹

1. On April 18, 2008, Layton City charged Ms. Michelle Lee Spurgers with retail theft, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-602 (R. 1-2). See R. 1-2, Information, a

¹Because the instant case involves a bench trial, the facts from the record are recited most favorable to the findings of the trial court. See *State v. Moosman*, 794 P.2d 474, 476 (Utah 1990).

true and correct copy of which is attached to this Brief as Addendum A.

2. Previously, on March 14, 2008, the Loss Prevention Supervisor of Mervyn's allegedly observed both Ms. Spurgers and her mother conceal clothing items on their person (R. 4).

3. Ms. Spurgers and her mother were allowed to leave the premises without being detained in any manner by the merchant (*Id.*).

4. The Layton City Police later identified Ms. Spurgers through a license plate number obtained by a store employee and the store's surveillance system (R. 4; 10/16/08 Tr. Trans. 17:14-25).

5. About a week after the alleged incident, a Layton City Police Officer contacted Ms. Spurgers by telephone and asked her about "the retail theft that occurred at Mervyn's", informing her that he had reviewed a recording made by the store's video surveillance camera (10/16/08 Tr. Trans. 36-37).

6. Mr. Spurgers "denied any involvement" in the alleged retail theft, insisting that "she didn't have anything to do with it." (10/16/08 Tr. Trans. 37:3-6).

7. The Officer then told Mr. Spurgers "that she had until noon the next day to return the items." (10/16/08 Tr. Trans. 37:13-14).

8. Upon being charged, Ms. Spurgers entered a plea of not guilty to the charge (07/29/08 Trans. 3:21-23).

9. The parties appeared for a bench trial on October 16, 2008 (R. 19).

10. The entire bench trial, which took place in a little over an hour, consisted of three witnesses: Ms. Teanna Anderson (Mervyn's Loss Prevention Supervisor); Layton City Police Officer Chad Jones; and Ms. Spurgers (R. 19-20). See 10/16/08 Tr. Trans., a true and correct copy of which is attached to this Brief as Addendum B.

11. In the course of Layton City's case-in-chief, the court viewed a video surveillance camera recording of the alleged incident offered and admitted as an Exhibit (10/16/08 Tr. Trans. 25:22).

12. At the conclusion of trial, the district court issued the following ruling:

I think I'm prepared to rule on this matter. I do think I understand the role of circumstantial evidence plays and the weight that it can have or might not have in a case. This time based on the evidence that's been presented to me, I am firmly convinced and I'm firmly convinced beyond a reasonable doubt that some items of clothing was [sic] taken from Mervyn's. What I don't know for sure is how much in terms of items that were taken from Mervyn's.

However, based on the evidence that's been presented to me, I do find that the Defendant did

commit -- did commit a theft in the city of Layton. Did in fact take possession of, conceal, carry away or cause to be carried away or transferred some merchandise from Mervyn's, at least one item. And that the value of that is less than \$300.

And therefore I find that the Defendant is guilty of the crime as charged by Mervyn's.

(10/16/08 Tr. Trans. 52:1-16).

13. At sentencing, contrary to the Presentence Investigation Report recommendation, Layton City requested jail time for Ms. Spurgers (01/06/09 Trans. 3-4).

14. Based on the conviction of retail theft, a class B misdemeanor, the district court sentenced Ms. Spurgers to 180 days in the Davis County Jail, which the court suspended, placing Ms. Spurgers on probation for a period of eighteen (18) months to be supervised by Alliance Probation (R. 29-30; 01/06/09 Trans. 4:14-19).

15. The Sentence, Judgment, Commitment was signed by the district court on January 13, 2009, which accordingly was entered that same day (R. 29-31). See R. 29-31, Sentence, Judgment, Commitment, a true and correct copy of which is attached to this Brief as Addendum C.

16. Ms. Spurgers filed a timely pro se Notice of Appeal on December 10, 2008 (R. 21).²

SUMMARY OF ARGUMENTS

1. The evidence at trial was insufficient to establish Ms. Spurgers' conviction for retail theft inasmuch as there was no evidence presented at trial that she took, carried away, or transferred any store merchandise. The evidence presented by Layton City in this case falls far short of proving that Ms. Spurgers committed the crime charged. Based on the evidence presented, the trial court, as the trier of fact, acting as a reasonable person, could not have found beyond a reasonable doubt that Ms. Spurgers committed the crime of retail theft. To affirm Ms. Spurgers' conviction would be to accept arguably the flimsiest of evidence.

The Loss Prevention Supervisor of Mervyn's was so unsure that Ms. Spurgers had taken or concealed any merchandise on her person that the Supervisor refused to detain either Ms. Spurgers or her mother prior to them leaving the store. This the Loss Prevention Supervisor chose to do in spite of several opportunities to detain Ms. Spurgers throughout the store. The store's video surveillance

²See Utah R. App. P. 4(c) ("A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.").

camera recording fails to demonstrate that any clothing was taken by Ms. Spurgers. Further, no clothing was ever recovered. Additionally, neither Ms. Spurgers nor her mother made any kind of confession to the alleged crime. Instead, Ms. Spurgers readily denied taking anything from the store both to the police officer and during her testimony at trial.

The evidence presented by Layton City at trial failed to prove each element beyond a reasonable doubt, as it is required to do. A review of the evidence allegedly supporting the retail theft conviction leads to the logical conclusion that Ms. Spurgers' conviction was based on conjecture or supposition, which does not constitute proof beyond a reasonable doubt. Reversal of the retail theft conviction for insufficiency of the evidence is therefore appropriate in the instant case.

ARGUMENTS

I. THE EVIDENCE AT TRIAL WAS INSUFFICIENT TO ESTABLISH MS. SPURGERS' CONVICTION FOR RETAIL THEFT INASMUCH AS THERE WAS NO EVIDENCE PRESENTED AT TRIAL THAT SHE TOOK, CARRIED AWAY, OR TRANSFERRED ANY STORE MERCHANDISE.

When reviewing a claim of insufficiency of evidence in a bench trial, the appellate court "must sustain the trial court's judgment unless it is 'against the clear weight of the evidence or if the appellate court otherwise reaches a definite and firm

conviction that a mistake has been made.'" *State v. Goodman*, 763 P.2d 786, 786-87 (Utah 1988) (quoting *State v. Walker*, 743 P.2d 191, 193 (Utah 1987)); *State v. Briggs*, 2008 UT 75, ¶10, 197 P.3d 628, *reh'g denied*. Further, "in those instances in which the trial court's findings include inferences drawn from the evidence, we will not take issue with those inferences unless the logic upon which their extrapolation from the evidence is based is so flawed as to render the inference clearly erroneous." *Glew v. Ohio Sav. Bank*, 2007 UT 56, ¶18, 181 P.3d 791 (citing *State v. Walker*, 743 P.2d at 193).

"However, before [the appellate court] can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the [factfinder] may base its conclusion of guilt beyond a reasonable doubt." *State v. Andreason*, 2001 UT App 395, ¶4, 38 P.3d 982 (citing *State v. Larsen*, 2000 UT App 106, ¶10, 999 P.2d 1252). "Criminal convictions cannot rest on conjecture or supposition; they must be established by proof beyond a reasonable doubt." See *State v. Workman*, 852 P.2d 981, 987 (Utah 1993) (noting that the State's argument that "speculative inferences can constitute proof beyond a reasonable doubt is to attack one of the most sacred constitutional safeguards at its core").

In the course of challenging the sufficiency of the evidence, a "[d]efendant has the burden of marshaling all the evidence that supports the [court's conviction], and then showing that, when viewed in the light most favorable to the [conviction], the evidence is insufficient.'" *State v Hayes*, 860 P.2d 968, 972 (Utah Ct. App. 1993) (quoting *State v. Vigil*, 840 P.2d 788, 793 (Utah Ct. App. 1992), *cert. denied*, 857 P.2d 948 (Utah 1993)). Consequently, Ms. Spurgers must marshal all of the evidence in support of the conviction, including all circumstantial evidence, and then demonstrate that, based upon this evidence, Layton City failed to prove that she was guilty of retail theft. See *State v. Scheel*, 823 P.2d 470, 472 (Utah Ct. App. 1991).

For purposes of this appeal, the relevant portion of Utah Code Ann. § 76-6-602 provides as follows:

A person commits the offense of retail theft when he [or she] knowingly:

(1) Takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of such merchandise; . . .

* * * *

Utah Code Ann. § 76-6-602(1).

The following is the marshaled evidence that supports the trial court's finding that Ms. Spurgers was guilty of retail theft: (1) The testimony of Teanna Anderson, Loss Prevention Supervisor for Mervyn's, concerning her observation of Ms. Spurgers during the incident in question (See 10/16/08 Tr. Trans. 6-33; (2) The testimony of Layton City Police Officer Chad Jones, concerning his investigation of the case, including his telephone contact with Ms. Spurgers (See 10/16/08 Tr. Trans. 34-39); (3) The testimony of Ms. Spurgers regarding the incident and her denial of taking anything (See 10/16/08 Tr. Trans. 39-45); (4) The trial exhibits admitted at trial, which included a photo of similar items allegedly taken (See Plaintiff's Exhibit 1 - 10/16/08 Tr. Trans. 19-20), a photo of tags allegedly found from missing items (See Plaintiff's Exhibit 2 - 10/16/08 Tr. Trans. 20-21), a bag of actual tags allegedly from missing items (See Plaintiff's Exhibit 3 - 10/16/08 Tr. Trans. 21-22); and (5) The store's video surveillance camera recording of the alleged incident (See Plaintiff's Exhibit 4 - 10/16/08 Tr. Trans. 19:1-22) Even when the aforementioned evidence is viewed in the light most favorable to the trial court's finding of conviction, there is insufficient evidence to establish or support the element that Ms. Spurgers took, carried away, or transferred any store

merchandise without paying retail value for the same. See Utah Code Ann. § 76-6-602(1).

The evidence presented by Layton City in the instant case falls far short of proving that Ms. Spurgers committed the crime charged. This court's duty, as the reviewing court, is to determine whether the trier of fact, acting as a reasonable person, could have found beyond a reasonable doubt that Ms. Spurgers committed the crime of retail theft. No such determination can be made in this case. Layton City, in the instant case, cannot simply prevail in a criminal case such as this, by simply putting on at least some evidence that is more convincing than that of Defendant. Layton City must prove its case beyond a reasonable doubt, irrespective of what the Defendant does. See Utah Code Ann. § 76-1-501.³ In light of the record and evidence presented at trial, there is insufficient evidence to

³Utah Code Ann. § 76-1-501 provides, in relevant part:

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted.

(2) As used in this part the words "elements of the offense" mean:

(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; or

(b) The culpable mental state required.

.

support Ms. Spurgers' conviction of retail theft. To affirm Ms. Spurgers' conviction would be to accept arguably the flimsiest of evidence.

So unsure was the Loss Prevention Supervisor in the instant case that Ms. Spurgers had taken or concealed any merchandise on her person, that the Supervisor refused to detain either Ms. Spurgers or her mother prior to them leaving the store. Cf. Utah Code Ann. § 76-6-603 (authorizing any merchant who has probable cause to believe that a person has committed retail theft to detain that person). This the Loss Prevention Supervisor chose to do in spite of several opportunities to detain Ms. Spurgers while she was shopping in the store. Quite frankly, the Loss Prevention Supervisor chose not to detain Ms. Spurgers because there simply was no evidence, let alone probable cause to believe, that she had taken or concealed any merchandise. The store's video surveillance camera recording fails to demonstrate that any clothing was taken by Ms. Spurgers. Further, no clothing was ever recovered. Moreover, neither Ms. Spurgers nor her mother confessed to the alleged crime. In fact, Ms. Spurgers readily denied taking anything from the store both when questioned on the telephone by Officer Jones and during her testimony at trial.

As is established by the foregoing evidence, or the lack thereof, at trial, Layton City failed to prove each element beyond

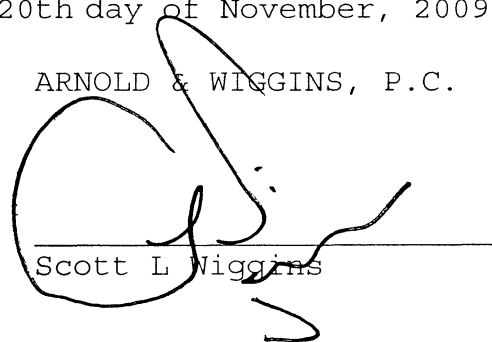
a reasonable doubt, as it is required to do. See Utah Code Ann. § 76-1-501. A review of the evidence supporting the retail theft conviction leads to the logical conclusion that Ms. Spurgers' conviction was based on conjecture or supposition, which does not constitute proof beyond a reasonable doubt. Reversal of the retail theft conviction for insufficiency of the evidence is therefore appropriate in the instant case.

CONCLUSION

Based on the foregoing, Ms. Spurgers respectfully requests that this Court reverse her conviction of retail theft and remand the case for further proceedings consistent with this Court's determination.

RESPECTFULLY SUBMITTED this 20th day of November, 2009.

ARNOLD & WIGGINS, P.C.

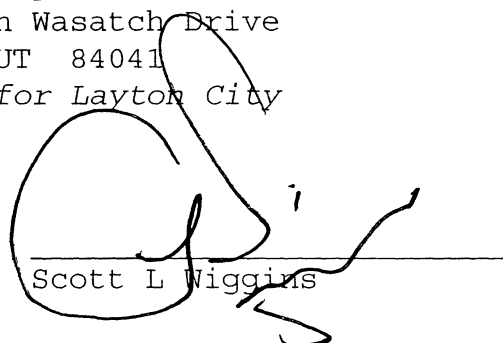


Scott L Wiggins

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First-Class Mail, postage prepaid, two (2) true and correct copies of the foregoing **BRIEF OF APPELLANT** to the following on this 24 day of November, 2009:

Mr. Clinton R. Drake
Layton City Prosecutor
437 North Wasatch Drive
Layton, UT 84041
Counsel for Layton City



Scott L Wiggins

ADDENDA

Addendum A: Information
Addendum B: 10/16/08 Trial Transcript
Addendum C: Sentence, Judgment, Commitment

FILED
UTAH APPELLATE COURTS

NOV 25 2009

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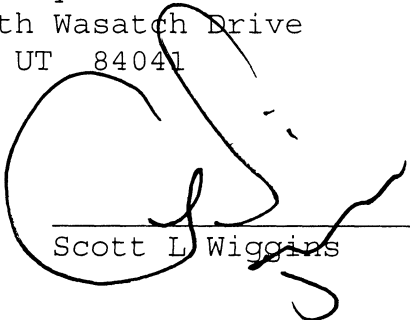
Counsel for Defendant / Appellant

IN THE UTAH COURT OF APPEALS

LAYTON CITY,)	
)	
Plaintiff / Appellee,)	AMENDED
)	CERTIFICATE OF SERVICE
v.)	
)	Case No. 20081019-CA
)	
MICHELLE LEE SPURGERS,)	
)	
Defendant / Appellant.)	

I, Scott L Wiggins, hereby certify that I personally caused to be mailed by First-Class Mail, postage prepaid, two (2) true and correct copies of the **BRIEF OF APPELLANT** and this AMENDED CERTIFICATE OF SERVICE to the following on this 25th day of November, 2009:

Mr. Clinton R. Drake
Layton City Prosecutor
437 North Wasatch Drive
Layton, UT 84041



Scott L Wiggins

Tab A

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 Layton, UT 84041
 Telephone: (801) 336-3590
 Fax: (801) 336-3595

FILED
APR 18 2008
Layton District Court

**IN THE SECOND DISTRICT COURT, STATE OF UTAH
 COUNTY OF DAVIS, LAYTON DEPARTMENT**

THE STATE OF UTAH, by and through,
LAYTON CITY, a municipal corporation

Plaintiff,

vs.

MICHELLE LEE SPURGER,
 DOB: 11/26/1983

Defendant.

INFORMATION

Case No. 081600406

The undersigned, Jason R. Rammell, under oath states on information and belief that the defendant committed the following crime(s):

Count 1: RETAIL THEFT 76-6-602, a class B misdemeanor as follows: That on or about March 14, 2008, at 1200 N. Hillfield Rd., Layton, Utah, the defendant did knowingly:

(1) take possession of, conceal, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of such merchandise; or

(2) alter, transfer, or remove any label, price tag, marking, indicia of value or any other markings which aid in determining value of any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempted to purchase such merchandise personally or in consort with another at less than the retail value with the intention of depriving the merchant of the retail value of such merchandise; or

(3) transfer any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the retail value of such merchandise; or

(4) under-ring with the intention of depriving the merchant of the retail value of the merchandise; or

(5) remove a shopping cart from the premises of a retail mercantile establishment with the intent of depriving the merchant of the possession, use or benefit of such cart; furthermore the value of the property was less than \$300.

Information



CD24258350

pages: 2

081600406 SPURGER, MICHELLE LEE

This information is based on evidence obtained from the following witness(es):

Officer C. Jones
Teanna N Anderson
Mervyn's

Authorized for presentment and filing:

4-16, 2008.



Jason R. Rammell
City Prosecutor

Tab B

IN THE SECOND JUDICIAL DISTRICT COURT

DAVIS COUNTY, STATE OF UTAH

LAYTON CITY,)
)
 PLAINTIFF,)
) VIDEO TRANSCRIPT
)
) CASE NO. 081600406
 MICHELLE LEE SPURGERS,)
)
 DEFENDANT.)

OCTOBER 16, 2008

BENCH TRIAL

HONORABLE DAVID CONNORS

APPEARANCES:

FOR THE PLAINTIFF: MR. JEFFREY R. HILL

FOR THE DEFENDANT: MR. BRUCE LARSEN

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OCTOBER 16, 2008.

THE COURT: MR. GARSIDE, IF YOU ARE READY TO
PROCEED.

MR. GARSIDE: WE WOULD LIKE TO JUST GIVE A BRIEF
OVERVIEW, YOUR HONOR.

OPENING STATEMENT.

MR. GARSIDE: YOUR HONOR, THIS IS A SHOPLIFTING CASE
HAPPENED AT MERVYN'S HERE IN THE MALL. BASICALLY GO BACK TO
MARCH 14 OF THIS YEAR IN THE AFTERNOON. YOU ARE GOING TO
HEAR FROM TEANNA ANDERSON. SHE'S THE LOSS PREVENTION
SUPERVISOR OF MERVYN'S, AND MONITORS. AND SHE'LL TESTIFY TO
IS THAT OBVIOUSLY SHE FOCUSES ON AREAS OF HIGH INSTANCE OF
SHOPLIFTING WHERE THEY EXPERIENCE THE RETAIL THEFT. AND AS
SHE'S MONITORING THAT AREA SHE SEES THE DEFENDANT PICKING UP
SOME TANK TOPS. AND SHE SEES THE DEFENDANT SCAN THE AREA.
SHE CONTINUES TO PICK UP TANK TOPS.

AND ABOUT THE TIME THAT THE DEFENDANT'S MOTHER
APPROACHES HER -- I'M ASSUMING THAT IT'S THE MOTHER, ANOTHER
FEMALE APPROACHES HER -- SHE, MISS ANDERSON, SEES A TAG
PULLED OFF OF ONE OF THE TANK TOPS AND THEN PLACED ON THE
SHELF. AS SHE CONTINUES TO MONITOR THEM, THEY CONTINUE GOING
THROUGH THE STORE SELECTING ITEMS, DRAPING THEM OVER THEIR
ARMS. SHE ALSO TAKES THE OPPORTUNITY TO NOTICE THEIR
HANDBAGS, THEIR PURSES, AND THE CONDITION OF THEM AS FAR AS
THE SIZE OF THEM. SHE SEES THIS GOING ON. SHE CALLS AND HAS

1 THE FITTING ROOMS CLEARED SO THERE IS NO ITEMS IN THE FITTING
2 ROOMS.

3 AS SHE CONTINUES TO MONITOR THEM AND SHE SEES BOTH
4 OF THEM THEN HEAD BACK INTO THE FITTING ROOMS WITH ITEMS
5 DRAPED OVER THEIR ARMS. THERE'S SEVERAL TANK TOPS. THERE'S
6 A HOODIE. THERE'S ANOTHER ITEM THAT'S PULLED OFF, HAS A
7 HANGER. AND THE DEFENDANT, JUST AS SHE'S GOING BACK TO THE
8 FITTING ROOM, PICKS UP A PAIR OF LEVIS, AND THEN THEY HEAD
9 BACK TO THE FITTING ROOMS.

10 MISS ANDERSON SAYS THAT SHE THEN LEFT WHERE SHE WAS
11 MONITORING, WENT IN TO SEE WHICH OF THE FITTING ROOMS THEY
12 WENT INTO, AND THAT THEY BOTH WENT IN THE SAME FITTING ROOM
13 TOGETHER.

14 SHE THEN WENT BACK TO THE MONITORING AREA AND
15 CONTINUED TO MONITOR OVER THE CAMERA. AND THEN AS THE
16 DEFENDANT AND THE FEMALE COMPANION, AS THEY LEFT THE AREA,
17 SHE WENT IN THE FITTING ROOMS TO SEE WHAT WAS LEFT IN THERE.
18 THE ONLY THING LEFT IN THE FITTING ROOM WAS A PAIR OF LEVIS
19 THAT WERE TAKEN LAST WITH THE TAGS OFF OF THE OTHER ITEMS
20 THAT THE DEFENDANT HAD SELECTED.

21 SHE ALSO LOOKED -- AS SHE WAS MONITORING SHE ALSO
22 LOOKED AND SAW THAT THE HANDBAGS, THE PURSES, OF THE TWO
23 WOMEN WERE SIGNIFICANTLY BULGING AS OPPOSED TO THE CONDITION
24 THAT THEY WERE IN BEFOREHAND.

25 THE DEFENDANT AND THE FEMALE COMPANION WITH HER WENT

1 OUT THE EAST DOORS OF MERVYN'S, AND BY THE TIME MISS ANDERSON
2 CHECKED THE FITTING ROOMS AND TRIED FOLLOWING THEM OUT, SHE
3 WENT OUT IN THE PARKING LOT AND COULDN'T SEE THEM AS THEY HAD
4 ALREADY GOTTEN IN THE CAR. MISS ANDERSON SEES THEM DRIVE
5 OFF. IS ABLE TO GET A LICENSE PLATE NUMBER, AND REPORTS THAT
6 TO OFFICER JONES WHO THEN DOES THE FOLLOW-UP INVESTIGATION.

7 THE OTHER THING OF NOTE IS THAT AS MISS ANDERSON WAS
8 MONITORING THE DEFENDANT, SHE ALSO PAID ATTENTION TO WHAT IT
9 WAS THAT SHE WAS WEARING. AND IT WAS ALSO APPARENT AS THE
10 DEFENDANT LEFT THE FITTING ROOM THAT SHE HAD ON AN ADDITIONAL
11 SHIRT THAT SHE HADN'T HAD ON BEFORE. AND AT NO TIME WERE ANY
12 OF THE ITEMS -- THEY HAD NEVER STOPPED AT THE CHECK STAND.
13 ALL THE ITEMS THAT THEY TOOK INTO THE FITTING ROOM, NONE OF
14 THEM WERE THERE EXCEPT FOR THE LEVIS, AND PRICE TAGS OF ALL
15 OF THE ITEMS THAT MISS ANDERSON WAS ABLE TO SEE FROM HER
16 LOCATION THAT SHE PICKED UP THAT WEREN'T THERE THAT MATCHED
17 THE INVENTORY THAT WAS GONE.

18 AND SO BASED ON THAT, YOUR HONOR, WE'LL PROCEED WITH
19 THE EVIDENCE.

20 THE COURT: MR. LARSEN?

21 MR. LARSEN: JUDGE, THIS CASE IS CIRCUMSTANTIAL AT
22 BEST, AND I'D BE INTERESTED TO HEAR THEIR EVIDENCE ABOUT THEM
23 CHECKING THE FITTING ROOMS, WHO ACTUALLY DID THAT. PEOPLE
24 ARE IN AND OUT OF THOSE FITTING ROOMS ALL THE TIME. PEOPLE
25 GO IN THE FITTING ROOMS, HER AND HER MOTHER. SHE DID PLACE

1 THEM ON THE RACK AND THERE'S (UNINTELLIGIBLE) PROBABLY SEE IN
2 THE VIDEO THAT PLACE TO PUT ITEMS THAT YOU DON'T WANT.

3 IT'S HER CONTENTION AND TESTIMONY THAT THOSE WERE
4 PLACED THERE. SHE DIDN'T TAKE ANYTHING. SHE WALKED OUT OF
5 THE STORE, AND WHY THEY DIDN'T STOP HER AS SHE WALKED OUT IS
6 A MYSTERY TO HER. AND THE CONCERN IS THAT THEY DIDN'T STOP
7 THEM THEN, THEY WOULD HAVE BEEN ABLE TO FIND OUT THEY DIDN'T
8 TAKE ANYTHING. DIDN'T STOP HER THEN. GOT IN THE CAR, HER
9 AND HER MOM, AND LEFT. THANK YOU.

10 **THE COURT:** MR. GARSIDE, YOUR FIRST WITNESS?

11 **TEANNA ANDERSON**

12 **DIRECT EXAMINATION**

13 **BY MR. GARSIDE:**

14 **Q.** STATE YOUR FULL NAME, PLEASE, SPELLING THE LAST.

15 **A.** TEANNA NICHOLE ANDERSON. A-N-D-E-R-S-O-N.

16 **Q.** AND MISS ANDERSON, WHAT IS YOUR EMPLOYMENT?

17 **A.** I AM A LOSS PREVENTION SUPERVISOR AT MERVYN'S.

18 **Q.** AND WHICH MERVYN'S?

19 **A.** AT THE LAYTON HILLS MALL.

20 **Q.** AND HOW LONG HAVE YOU BEEN EMPLOYED AT MERVYN'S?

21 **A.** I'VE BEEN EMPLOYED WITH MERVYN'S FOR THREE YEARS.

22 **Q.** AND HOW LONG HAVE YOU BEEN AT THE LAYTON LOCATION?

23 **A.** I'VE BEEN AT LAYTON FOR A YEAR AND THREE MONTHS.

24 **Q.** AND WHERE WERE YOU BEFORE THAT?

25 **A.** I WAS AT THE OGDEN NEWGATE MALL STORE.

1 Q. HOW LONG HAVE YOU BEEN A LOSS PREVENTION SUPERVISOR?

2 A. A YEAR AND THREE MONTHS, SINCE I TRANSFERRED TO
3 LAYTON.

4 Q. ANY LOSS PREVENTION EXPERIENCE AT THE OGDEN STORE?

5 A. YES, SIX MONTHS.

6 Q. AND AS FAR AS THE LOSS PREVENTION, DO THEY HAVE YOU
7 GO THROUGH ANY PARTICULARIZED TRAINING?

8 A. YES.

9 Q. AND IF YOU JUST BRIEFLY EXPLAIN TO THE COURT WHAT
10 THAT ENTAILS.

11 A. WE HAVE TO GO THROUGH A CERTIFICATION PROCESS WHERE
12 WE ARE REQUIRED TO MAKE STOPS WITH CERTIFIED LOSS PREVENTION
13 AS WELL AS COMPLETING ON-LINE TRAINING COURSES FOR THE FIELD,
14 AND THEN WE HAVE TO BECOME CERTIFIED.

15 Q. SO WHEN YOU MAKE STOPS DO THEY HAVE PEOPLE STAGING
16 LIKE SHOPLIFTING? HOW DOES THAT WORK?

17 A. YOU PRACTICE BOTH SCENARIOS AND REAL SITUATIONS.

18 Q. WANT TO DIRECT YOUR ATTENTION BACK TO MARCH 14,
19 2008. WERE YOU EMPLOYED AND WORKING AT THE LAYTON HILLS MALL
20 MERVYN'S ON THAT DAY, THAT AFTERNOON?

21 A. YES, I WAS.

22 Q. AND ON THAT DAY DID YOU HAPPEN TO SEE THE DEFENDANT?

23 A. YES.

24 Q. WOULD YOU DESCRIBE FOR THE COURT WHAT IT WAS THAT
25 FIRST ATTRACTED YOUR ATTENTION TO THE DEFENDANT IN HER

1 LOCATION?

2 A. THE DEFENDANT WAS STANDING IN ONE OF MY HIGH-THEFT
3 STORAGE AREAS, AND SHE DID A LOOK-AROUND.

4 Q. FIRST OF ALL, WHEN YOU SAY -- YOU USED THE
5 TERMINOLOGY HIGH-THEFT STORAGE AREA, PLEASE EXPLAIN WHAT THAT
6 MEANS.

7 A. BASED ON PAST INVENTORY RESULTS, THAT IS ONE OF THE
8 AREAS WHERE WE SEE THE MOST LOSS, THE MOST DIFFERENTIAL IN
9 OUR INVENTORY BETWEEN WHAT WE SHOULD HAVE AND WHAT WE
10 ACTUALLY HAVE.

11 Q. AND SO THAT IS THE AREA YOU MONITOR MORE FREQUENTLY?

12 A. YES. THAT'S AN AREA THAT I CONSTANTLY WATCH FOR
13 SHOPLIFTING.

14 Q. SO YOU WATCH THAT AREA. YOU SAID YOU SAW THE
15 DEFENDANT DO A LOOK-AROUND. WOULD YOU PLEASE DESCRIBE FOR
16 THE COURT WHAT THAT IS AND WHAT THAT MEANS TO DO THAT?

17 A. WELL, IT'S GENERALLY ONE OF THE STEPS WE LOOK FOR IS
18 WHEN THEY ARE KIND OF LOOKING AROUND IN THE DIRECTION OF THE
19 CEILING, AND SHE HAD DONE THAT.

20 Q. DID YOU NOTICE WHETHER ANYBODY WAS WITH HER AT THAT
21 TIME?

22 A. AT THAT TIME, NO.

23 Q. DID YOU THINK THAT SHE WAS ALONE AT THAT TIME?

24 A. YES.

25 Q. DESCRIBE THEN WHAT IT IS THAT YOU OBSERVED?

1 **A.** SHE BEGAN SELECTING TANK TOPS OFF OF THE TABLE IN
2 FRONT OF HER. AND THEN ANOTHER LADY WALKED UP TO THE TABLE.
3 THEY KIND OF EXCHANGED -- I DON'T KNOW IF IT'S CONVERSATION
4 OR JUST KIND OF LOOKED, RECOGNIZED EACH OTHER, OR IF THEY
5 RECOGNIZED EACH OTHER. AND THEN SHE RIPPED THE TAG OFF ONE
6 OF THE TANK TOPS SHE HAD PICKED UP.

7 **Q.** WHAT DID SHE DO WITH THE TAG?

8 **A.** SHE SET IT BACK ON THE TABLE.

9 **Q.** AND WHAT DID SHE DO WITH THAT TANK TOP?

10 **A.** DRAPED IT OVER HER ARM.

11 **Q.** NOW, EXPLAIN TO THE COURT WHERE IT IS THAT YOU ARE
12 MONITORING THIS?

13 **A.** FROM THE CAMERA ROOM, THE CENTRAL AREA IN THE STORE.
14 VIA C.C.T.V.

15 **Q.** CLOSED CIRCUIT T.V.?

16 **A.** YES.

17 **Q.** AND IS THERE ANY AUDIO WITH THAT?

18 **A.** NO.

19 **Q.** SO THIS IS JUST A VISUAL OBSERVATION THAT YOU ARE
20 MAKING?

21 **A.** CORRECT.

22 **Q.** SO AFTER SEEING THAT THEN, THEN WHAT IS IT THAT
23 YOU -- WHAT'S GOING THROUGH YOUR MIND? WHAT IS IT THAT YOU
24 NEED TO DO NOW AFTER MAKING THAT OBSERVATION?

25 **A.** WELL, SEEING HER TEAR THE TAG OFF, BECAUSE THAT'S

1 SOMETHING THAT'S A SIGN WE LOOK FOR FOR THEFT, I KIND OF
2 STARTED TO SEE WHAT MY NEXT STEP SHOULD BE. OBVIOUSLY ONE OF
3 THEM WOULD BE GETTING THE FITTING ROOM CLEANED OUT IN THE
4 EVENT THAT SHE WENT IN THERE.

5 Q. HOW BUSY WAS THE STORE THAT DAY?

6 A. IT WAS A FRIDAY AFTERNOON IN MARCH. SO I MEAN,
7 THERE WAS TRAFFIC IN THE STORE, BUT IT DEFINITELY WASN'T A
8 PEAK TIME. IT WASN'T BUSY SEASON IN THE STORE.

9 Q. AND HOW FAR FROM THE FITTING ROOMS IS YOUR
10 MONITORING LOCATION?

11 A. PROBABLY 25 FEET.

12 Q. FROM DOOR TO DOOR?

13 A. FROM DOOR TO DOOR.

14 Q. ALL RIGHT. AND SO CLEARING OUT FITTING ROOMS, AND
15 HOW IS THAT DONE?

16 A. UM, BASICALLY WE HAVE A CERTIFIED ASSOCIATE GO IN
17 AND TAKE ALL OF THE MERCHANDISE, HANGERS, TAGS, ANY GARBAGE
18 THAT WOULD BE IN THE STALLS OUT OF EACH OF THE FITTING ROOM
19 STALLS.

20 Q. AND HOW IS IT THAT YOU MADE CONTACT WITH THOSE
21 PEOPLE?

22 A. BY TELEPHONE.

23 Q. AND YOU DID THAT ON THIS OCCASION?

24 A. YES.

25 Q. ALL RIGHT. CONTINUE THEN. WHAT IS THE NEXT THING

1 THAT YOU NORMALLY DO?

2 **A.** I'M NOT SURE I UNDERSTAND. WHAT IS THE NEXT THING
3 THAT HAPPENED OR WHAT IS THE NEXT THING THAT I WOULD
4 TYPICALLY --

5 **Q.** WHAT IS THE NEXT THING THAT HAPPENED?

6 **A.** THEY CONTINUED SELECTING MERCHANDISE, BOTH SUBJECTS.
7 SELECTING ITEMS. SHE SELECTED A WHITE T-SHIRT. I DON'T
8 REMEMBER WHAT BRAND.

9 **Q.** YOU SAY SHE, YOU MEAN THE DEFENDANT?

10 **A.** YES. SELECTED A WHITE T-SHIRT. THEY WALKED OVER TO
11 A FIXTURE WHERE SHE REMOVED THAT T-SHIRT FROM ITS HANGER.

12 **Q.** OKAY. AND THEN WHAT DID YOU OBSERVE?

13 **A.** I OBSERVED HER SELECT A BLUE-FLOWERED EITHER A DRESS
14 OR A SHIRT. I'M NOT POSITIVE AT THAT POINT WHAT IT WAS. AND
15 THEY WALKED TOWARD THE FITTING ROOM LOOKING AT A COUPLE OF
16 OTHER ITEMS ON THEIR WAY. AND THEN FINALLY SHE PICKED UP A
17 PAIR OF JEANS AND WENT INTO THE FITTING ROOM.

18 **Q.** BACK TO WHERE YOU SAID SHE PICKED UP A WHITE
19 T-SHIRT, REMOVED IT FROM THE HANGER, IS THAT REMOVING FROM
20 THE HANGER, IS THAT SIGNIFICANT?

21 **A.** THAT'S SOMETHING THAT WE WOULD ALSO WATCH FOR WITH
22 THEFT. GENERALLY WHEN THEY REMOVED IT FROM THE HANGER AND
23 DISCARD THE HANGER ON THE FIXTURE, IT'S SOMETHING THAT WE
24 WATCH FOR.

25 **Q.** AND THE NEXT ITEM THAT SHE PICKED UP, YOU SAID A

1 BLUE-FLORAL THING, DO YOU RECALL WHETHER THAT WAS ON A
2 HANGER?

3 A. YES, IT WAS.

4 Q. DID SHE TAKE THAT ONE OFF THE HANGER?

5 A. NO.

6 Q. ALL RIGHT. AND YOU SAID SHE SELECTED THE JEANS
7 THEN?

8 A. YES.

9 Q. ALL RIGHT. AND THAT WAS RIGHT OUTSIDE THE FITTING
10 ROOM?

11 A. YES.

12 Q. AND THEN WENT INTO THE FITTING ROOM YOU SAID?

13 A. YES.

14 Q. WERE THE JEANS ON A HANGER?

15 A. THEY WERE HANGING JEANS, SO YES.

16 Q. DID SHE TAKE THEM OFF THE HANGER BEFORE SHE TOOK
17 THEM?

18 A. NO.

19 Q. ALL RIGHT. AND THEN WHAT DID YOU DO THEN?

20 A. THEN I EXITED THE CAMERA ROOM AND ENTERED THE
21 FITTING ROOM TO TRY AND DETERMINE WHICH STALLS THEY HAD GONE
22 IN. AT THAT TIME I WAS ABLE TO DETERMINE THEY HAD BOTH GONE
23 IN THE SAME STALL, THE BACK STALL ON THE RIGHT-HAND SIDE.

24 Q. AND HOW COULD YOU DETERMINE THAT?

25 A. BASED OFF OF THE SHOES THEY WERE WEARING. ALSO THE

1 FITTING ROOMS ONLY GO TO ABOUT THIS POINT AND SO YOU CAN SEE
2 THE TOPS OF THEIR HEAD, THEIR HAIR COLOR, THINGS LIKE THAT.

3 Q. SO YOU IDENTIFIED BOTH OF THEM FROM YOUR MONITORING
4 STATION THAT THEY WERE BOTH IN THE SAME FITTING ROOM?

5 A. YES.

6 Q. AND AFTER YOU MADE THAT DETERMINATION WHAT THEN --
7 HOW MANY FITTING ROOMS ARE THERE?

8 A. WELL, IT GOES BOTH -- IT GOES OFF TO THE LEFT AND
9 OFF TO THE RIGHT. OFF TO THE RIGHT-HAND SIDE, THERE'S EIGHT
10 STALLS, FOUR ON EACH SIDE. AND OFF TO THE LEFT I DON'T KNOW
11 EXACTLY HOW MANY STALLS THERE ARE, BUT THERE'S ANOTHER SIX TO
12 EIGHT STALLS BACK THERE.

13 Q. AND HOW LARGE ARE EACH OF THESE STALLS GENERALLY?

14 A. MOST OFTEN THEY ARE PROBABLY LIKE FOUR BY FOUR FEET.
15 THE BACK STALL THAT THEY ENTERED IN WAS CLOSER TO FOUR BY
16 EIGHT FEET.

17 Q. ALL RIGHT. AND AFTER YOU DETERMINED WHICH -- WHERE
18 THEY WERE, THEN WHAT DID YOU DO?

19 A. I EXITED THE FITTING ROOM AND RETURNED TO THE CAMERA
20 ROOM SO I COULD WAIT FOR THEM TO COME OUT.

21 Q. AND YOU DIDN'T GO ANYWHERE ELSE?

22 A. NO.

23 Q. SO THEN WHAT DID YOU OBSERVE AS THEY CAME OUT?

24 A. AS THEY EXITED THE FITTING ROOM THE OTHER SUBJECT
25 DISCARDED TWO ITEMS ON A -- JUST A BLACK RACK WE HAVE SITTING

1 IN THERE. AND THEN THEY BOTH EXITED. THEY HAD NO ITEMS IN
2 THEIR HANDS, AND BOTH PURSES APPEARED TO BE LARGER.

3 Q. SO YOU MADE OBSERVATIONS OF THE PURSES BEFOREHAND?
4 A. YES.

5 Q. AND THE PURSES AFTERWARDS YOU SAID WERE LARGER?
6 A. YES.

7 Q. OKAY. ANYTHING ELSE THAT YOU NOTICED?
8 A. NOT THAT I NOTICED, NO.

9 Q. CLOTHING-WISE?
10 A. NOT THAT I NOTICED, NO.

11 Q. OKAY. IF I CAN HAVE YOU -- IN FRONT OF YOU IS A
12 WRITTEN NOTE; IS THAT CORRECT? SOME NOTES?

13 A. THIS IS MY WITNESS STATEMENT.

14 Q. OKAY. ALL RIGHT. AND WHEN DID YOU MAKE THAT
15 STATEMENT?

16 A. SHORTLY AFTER THE INCIDENT HAPPENED AFTER I
17 CONTACTED THE LAYTON CITY POLICE DEPARTMENT.

18 Q. OKAY. SO IT WAS THE SAME DAY, CORRECT?
19 A. YES.

20 Q. SO YOU DON'T RECALL MAKING ANY NOTICE OF ANYTHING
21 DIFFERENT ON THE CLOTHING OF THE DEFENDANT FROM THE TIME THAT
22 SHE WENT INTO THE FITTING ROOM TO THE TIME SHE CAME OUT?

23 A. AT THE TIME WHEN THEY EXITED, NO. UPON REVIEWING
24 THE TAPE LATER --

25 Q. OKAY. WHAT OBSERVATION DID YOU MAKE WHEN YOU

1 REVIEWED THE TAPE LATER?

2 A. IT APPEARS --

3 MR. LARSEN: I'M GOING TO OBJECT. THAT'S BASICALLY
4 HEARSAY. WE'RE WATCHING THE TAPE, MADE THE OBSERVATION.
5 WATCH THE TAPE. THAT'S A HEARSAY ISSUE. SOMEBODY ELSE IS
6 REVIEWING THAT TO FORM HER OPINION OF WHAT SUPPOSEDLY
7 OCCURRED ON THAT OCCASION. I DON'T THINK THAT'S PROPER.

8 MR. GARSIDE: MY RESPONSE TO THAT, YOUR HONOR, WOULD
9 BE SIMPLY ALL SHE'S DOING -- IT'S NOT HEARSAY. IT'S NOT AN
10 OUT-OF-COURT STATEMENT. IT'S THE SAME THING THAT SHE WAS
11 LOOKING BEFORE. SHE IS JUST WATCHING IT AGAIN, MAKING AN
12 ADDITIONAL OBSERVATION. IT'S A DIRECT OBSERVATION THAT SHE
13 MADE.

14 THE COURT: WELL, I DON'T THINK IT'S A DIRECT
15 OBSERVATION IF SHE'S SAYING THAT SHE WATCHED THE TAPE TO GET
16 THAT OBSERVATION RATHER THAN WATCHING THE INDIVIDUAL AS SHE
17 WALKED OUT. THERE'S A DISTINCTION.

18 MR. GARSIDE: AND JUST FOR CLARIFICATION. I MEAN,
19 WHAT SHE'S WATCHING THROUGH THE MONITOR IS THE SAME THING
20 THAT SHE WOULD BE WATCHING AGAIN IF SHE REVIEWED IT. SO
21 BASICALLY SHE GOT TO SEE THE SAME THING OVER AGAIN. AND JUST
22 AS SHE REVIEWED --

23 MR. LARSEN: SO ALL OF IT SHOULD BE KICKED OUT.

24 THE COURT: I'M GOING TO OVERRULE THE OBJECTION. I
25 THINK SHE CAN TESTIFY AS TO WHAT SHE VIEWED, WHAT SHE VIEWED

1 ON THE VIDEO.

2 Q. (MR. GARSIDE) SO GO AHEAD AND TELL THE COURT WHAT
3 IT WAS THAT -- AFTER YOU VIEWED THE TAPE AGAIN, WHAT IT WAS
4 THAT YOU OBSERVED?

5 A. AFTER WATCHING THE TAPE AGAIN, UNDERNEATH HER OTHER
6 CLOTHING THERE APPEARED TO BE LIKE A WHITE -- WHAT APPEARED
7 TO BE THE WHITE TANK TOP LIEING UNDERNEATH IT THAT HAD NOT
8 BEEN THERE BEFORE, A LAYER OF CLOTHING.

9 Q. SO AFTER THEY EXITED THE FITTING ROOMS, WHAT DID YOU
10 DO THEN?

11 A. I CONTINUED WATCHING VIA CAMERA AS THEY EXITED THE
12 FITTING ROOMS AND HEADED TOWARDS THE EAST DOORS OF MY STORE
13 IN WHICH THERE ARE NO REGISTERS BETWEEN WHERE THEY EXITED THE
14 FITTING ROOM AND WHERE THE EAST DOORS ARE. THEY PASSED THE
15 ONLY REGISTER ON THE SIDE. AND THEN I EXITED THE CAMERA
16 ROOM, WENT INTO THE FITTING ROOM TO SEE WHAT WAS IN THE
17 STALL.

18 Q. OKAY. AND WHAT WAS IN THE STALL?

19 A. THERE WAS ONLY ONE ITEM IN THE STALL. IT WAS THE
20 PAIR OF PANTS, THE LAST PANTS SHE HAD SELECTED. AND IN THE
21 POCKET OF THOSE PANTS I FOUND TAGS MATCHING THE TANK TOPS AND
22 ONE OF THE JACKETS.

23 MR. LARSEN: I'M GOING TO OBJECT TO THE CONCLUSION
24 SHE MADE FROM THAT. (UNINTELLIGIBLE) WITHOUT THE PROPER
25 FOUNDATION. (UNINTELLIGIBLE) CONCLUSION (UNINTELLIGIBLE)

1 **MR. GARSIDE:** WE'LL COME BACK TO THAT, YOUR HONOR.

2 **THE COURT:** THE OBJECTION WILL BE SUSTAINED FOR NOW.

3 YOU WILL NEED TO LAY SOME FURTHER FOUNDATION.

4 **MR. GARSIDE:** WE'LL DO THAT, YOUR HONOR.

5 **Q.** SO WHEN YOU SAY YOU FOUND THE JEANS THAT SHE HAD

6 LAST SELECTED AND THE TAGS, WHERE WERE THE TAGS?

7 **A.** THE TAGS WERE IN THE BACK POCKET. I DON'T REMEMBER

8 WHICH BACK POCKET.

9 **Q.** NOW, YOU DIDN'T STOP AT THAT TIME TO TAKE TIME TO

10 MATCH THE TAGS TO ITEMS, DID YOU?

11 **A.** NO.

12 **Q.** WHAT DID YOU DO AFTER YOU SAW THE JEANS AND THE

13 TAGS?

14 **A.** UPON SEEING THAT THERE WAS NO OTHER MERCHANDISE IN

15 THE FITTING ROOM, I CONCLUDED I WAS MISSING QUITE A BIT OF

16 MERCHANDISE. SO I EXITED THE STORE OUT OF THE EAST DOORS IN

17 AN ATTEMPT TO LOCATE THEM. I WANTED TO STOP THEM AND ASK

18 THEM ABOUT THE MERCHANDISE, IF I COULD GET IT BACK.

19 **Q.** AND WHAT HAPPENED AS YOU EXITED THE DOORS?

20 **A.** I IMMEDIATELY COULDN'T -- THEY WEREN'T STILL

21 WALKING. AS I LOOKED OVER THEY WERE GETTING IN A CAR, AND SO

22 I GOT THE LICENSE PLATE OF THAT CAR.

23 **Q.** AND THEN WHAT DID YOU DO WITH THE LICENSE PLATE?

24 **A.** I RELAYED THE LICENSE PLATE NUMBER TO THE LAYTON

25 CITY POLICE DEPARTMENT.

1 Q. AND SO THEN -- THEN WHAT DID YOU DO? THEY WERE
2 GONE. YOU GO BACK TO THE STORE AND DO WHAT?

3 A. WAITED FOR THE OFFICER TO RESPOND. ONCE THE OFFICER
4 RESPONDED I SHOWED THEM MY EVIDENCE OF THE SITUATION AND
5 AFTER LOOKING AT THAT, WE TOOK THE TAGS AND MATCHED THEM TO
6 MERCHANDISE.

7 Q. OKAY. EXPLAIN TO THE COURT HOW IT IS THAT YOU DID
8 THAT. HOW DID YOU MATCH THE TAGS TO MERCHANDISE? WHAT
9 PROCESS DID YOU TAKE?

10 A. WELL, KNOWING WHAT TABLES THEY HAD BEEN SELECTING
11 ITEMS OFF OF, I WENT TO THOSE TABLES FIRST. I WAS ABLE TO
12 MATCH UP THE TAGS BASED ON THE BRAND, SIZE, AND STYLE,
13 DESCRIPTIVE STYLE WORD.

14 Q. AND WHAT OTHER -- WHAT OTHER -- WHAT ELSE DID YOU
15 USE TO MATCH THE ITEMS TO THE TAGS?

16 A. THE TAPE OF THE INCIDENT.

17 Q. SO YOU HAD THE TAGS FROM THE FITTING ROOM IN THE
18 BACK OF THE JEANS?

19 A. YES.

20 Q. THE AREAS WHERE THEY WERE, AND THEN YOU USED THE --
21 WENT BACK TO THE TAPE TO SEE WHAT ITEMS THEY HAD PICKED UP?

22 A. YES.

23 Q. IF I COULD APPROACH THE WITNESS, YOUR HONOR.

24 THE COURT: YES, YOU MAY.

25 Q. (MR. GARSIDE) I HAND TO YOU WHAT'S BEEN MARKED AS

1 PLAINTIFF'S EXHIBIT 1 AND ASK IF YOU CAN IDENTIFY THAT.

2 A. YES.

3 Q. WHAT IS THAT?

4 A. THOSE ARE THE ITEMS --

5 Q. IS THAT A PHOTOGRAPH OF SOME ITEMS?

6 A. YES.

7 Q. AND WHAT ITEMS ARE THOSE?

8 A. THOSE ARE ITEMS THAT I PICKED UP BASED ON MATCHING

9 THE TAGS. THOSE ARE THE SAME ITEMS, ONLY ONES THAT WERE

10 STILL IN THE STORE ON THE TABLE.

11 Q. USING THE TAGS AND VIDEO AS YOU TESTIFIED EARLIER?

12 A. YES.

13 Q. OKAY. AND IT LOOKS LIKE THERE'S EIGHT ITEMS; IS

14 THAT CORRECT?

15 A. YES.

16 Q. NOW, EARLIER YOU TESTIFIED THAT SHE ALSO TOOK IN A

17 BLUE FLORAL THING ON A HANGER?

18 A. YES.

19 Q. I DON'T SEE IT IN THE PHOTO.

20 A. I COULD NOT, BASED ON EVIDENCE, PROVE THAT SHE HAD

21 TAKEN THAT ITEM. SO WE DID NOT INCLUDE THAT IN THE SHOPLIFT

22 VALUE.

23 MR. GARSIDE: IF DEFENSE HAS NO OBJECTION, YOUR

24 HONOR, MOVE FOR EXHIBIT -- ADMISSION OF EXHIBIT 1.

25 MR. LARSEN: I HAVE NO OBJECTION. I'VE GOT THOSE

1 ARE NOT (UNINTELLIGIBLE) THE DEFENDANT (UNINTELLIGIBLE) THIS
2 PARTICULAR THING.

3 THE COURT: I THINK I UNDERSTAND WHAT THE PHOTO IS
4 INTENDED TO DEPICT. ANY OBJECTION TO THE AUTHENTICITY OF THE
5 PHOTO FOR WHATEVER IT IS?

6 MR. LARSEN: AUTHENTICITY OF THE PHOTO?

7 THE COURT: YES. IN OTHER WORDS, I UNDERSTAND NOT A
8 PHOTOGRAPH OF QUOTE STOLEN MERCHANDISE. I UNDERSTAND IT'S A
9 PHOTO OF MERCHANDISE THAT'S INTENDED TO REPRESENT WHAT THE
10 TAGS MIGHT CORRESPOND WITH. I UNDERSTAND THAT.

11 DO YOU HAVE ANY OBJECTION TO THE AUTHENTICITY OF THE
12 PHOTOGRAPH?

13 MR. LARSEN: NO. I THINK SHE'S LAID THE SUFFICIENT
14 FOUNDATION FOR THAT THEN.

15 THE COURT: OKAY. SO IT WILL BE ADMITTED THEN.

16 Q. (MR. GARSIDE) HAND YOU NOW WHAT'S BEEN MARKED AS
17 DEFENDANT'S EXHIBIT 2 AND ASK IF YOU CAN IDENTIFY THAT?

18 A. YES.

19 Q. AND WHAT IS THAT?

20 A. THAT IS A PICTURE OF TAGS.

21 Q. OKAY. AND WHERE -- WHAT TAGS ARE THOSE?

22 A. THOSE ARE THE TAGS I RECOVERED OUT OF THE PANTS
23 POCKET.

24 Q. OKAY.

25 A. IN THE FITTING ROOM.

1 Q. ALL RIGHT. AND ANYWHERE ELSE?

2 A. ONE OF THE TAGS WAS ON THE TABLE. THE TAG THAT SHE

3 TORE OFF PRIOR TO ENTERING THE FITTING ROOM WAS STILL ON THE

4 TABLE.

5 Q. OKAY. AND SO THOSE TAGS MATCHED THE ITEMS THAT ARE

6 IN EXHIBIT 1, CORRECT?

7 A. CORRECT.

8 Q. AND ON THOSE TAGS, IN ADDITION TO THE PRICE, THERE'S

9 A DESCRIPTION; IS THAT CORRECT?

10 A. CORRECT.

11 Q. AND SO IS THAT PART OF THE DESCRIPTION THAT YOU USED

12 TO MATCH THE ITEMS?

13 A. YES.

14 Q. SO AFTER YOU DID THAT, DID ALL OF THE TAGS MATCH

15 THOSE ITEMS THAT MATCHED WHAT YOU SAW IN THE VIDEO?

16 A. YES.

17 Q. ALL RIGHT. AND THIS FAIRLY AND ACCURATELY

18 REPRESENTS THOSE RECEIPTS?

19 A. I'M NOT SURE. THAT REPRESENTS THE TAGS THAT I

20 FOUND.

21 Q. I MAY HAVE SAID RECEIPTS INSTEAD OF TAGS?

22 A. OKAY.

23 Q. AGAIN, IF THERE IS NO OBJECTION.

24 THE COURT: EXHIBIT 2 WILL BE ADMITTED.

25 Q. (MR. GARSIDE) EXHIBIT 3. PLACED BEFORE YOU WHAT'S

1 BEEN MARKED EXHIBIT 3. CAN YOU TELL ME WHAT THAT IS?

2 **A.** THOSE ARE THE TAGS THAT I RECOVERED.

3 **Q.** SO THOSE ARE THE ACTUAL TAGS THAT ARE IN THE
4 PHOTOGRAPHS OF EXHIBIT 2?

5 **A.** YES.

6 **Q.** AND THEY HAVE BEEN IN YOUR CUSTODY SINCE THIS TIME,
7 THE TIME OF THE INCIDENT?

8 **A.** YES.

9 **MR. GARSIDE:** I DON'T KNOW WHETHER COUNSEL HAD A
10 CHANCE TO SEE THOSE. ANY OBJECTION?

11 **MR. LARSEN:** NO.

12 **THE COURT:** THOSE WILL BE ADMITTED.

13 **Q.** **(MR. GARSIDE)** AND SO BASED SOLELY ON THOSE ITEMS
14 THAT YOU WERE ABLE TO VERIFY AND MATCH, DO YOU RECALL WHAT
15 THE AMOUNT OF RETAIL VALUE OF THOSE ITEMS THAT WERE TAKEN?

16 **MR. LARSEN:** I WILL OBJECT. THE ITEMS WERE TAKEN,
17 THAT'S A CONCLUSION. SHE COULD SAY THE ITEMS THAT SHE'S PUT
18 TOGETHER THERE.

19 **THE COURT:** WILL YOU RESTATE?

20 **Q.** **(MR. GARSIDE)** SO WOULD THE DOLLAR AMOUNT OF THE
21 RECEIPTS AND THE ITEMS THAT YOU WERE INVESTIGATING AS FAR AS?

22 **A.** I BELIEVE THE VALUE WAS \$124 FOR THOSE ITEMS.

23 **Q.** SINCE THAT TIME HAVE YOU HAD ANY CONTACT WITH THE
24 DEFENDANT?

25 **A.** NO.

1 **Q.** THE PERSON THAT WE'VE BEEN REFERRING TO AS THE
2 DEFENDANT THAT YOU MONITORED THERE, IS THAT PERSON IN THE
3 COURTROOM TODAY?

4 **A.** YES.

5 **Q.** WOULD YOU IDENTIFY HER FOR THE COURT? SHE'S SEATED
6 RIGHT HERE?

7 **A.** YES.

8 **Q.** NOW, THE MONITORING SYSTEM THAT YOU USED, IT ALSO
9 RECORDS, CORRECT?

10 **A.** CORRECT.

11 **Q.** AND YOU'VE HAD A CHANCE TO REVIEW THOSE VIDEOS; IS
12 THAT CORRECT?

13 **A.** CORRECT.

14 **Q.** AND THE ONE THAT YOU AT LEAST PROVIDED A COPY TO
15 DETECTIVE JONES, IT'S THE COPY THAT DETECTIVE JONES HAS, IS
16 THAT FAIRLY AND ACCURATELY REPRESENT WHAT IT WAS THAT
17 HAPPENED THAT DAY IN YOUR STORE?

18 **A.** YES.

19 **Q.** IS THERE ANY --

20 AT THIS TIME, YOUR HONOR, WE'RE GOING TO MOVE TO
21 ADMIT THE VIDEO AND SHOW THAT, IF THE DEFENSE HAS NO
22 OBJECTION.

23 **THE COURT:** MR. LARSEN?

24 **MR. LARSEN:** I DON'T BELIEVE THERE'S SUFFICIENT
25 FOUNDATION. I'LL OBJECT ON FOUNDATION (UNINTELLIGIBLE).

1 **THE COURT:** MR. GARSIDE NEEDS TO ASK A FEW MORE
2 FOUNDATIONAL QUESTIONS; WHERE, AND WHEN--

3 **Q.** **(MR. GARSIDE)** ARE YOU TRAINED ON HOW TO OPERATE THE
4 VIDEO AND RECORDING SYSTEM; IS THAT CORRECT?

5 **A.** YES.

6 **Q.** AND ARE YOU THE ONE THAT PROVIDED THE TAPES FOR
7 OFFICER JONES?

8 **A.** YES.

9 **Q.** AND THE TAPES YOU PROVIDED HIM, ARE THEY THE
10 RECORDING OF THE INCIDENT OF WHICH YOU JUST TESTIFIED
11 CONCERNING?

12 **A.** YES.

13 **Q.** ALL RIGHT. AND THE DISC THAT -- YOU REVIEWED THE
14 DISC EARLIER TODAY; IS THAT CORRECT?

15 **A.** YES.

16 **Q.** AND IS THAT THE SAME DISC OR THE SAME VIDEO
17 INFORMATION YOU PROVIDED TO DETECTIVE JONES BACK IN MARCH?

18 **A.** ARE YOU ASKING IF THAT'S THE SAME --

19 **Q.** JUST THE CONTENT OF IT, NOT THE ACTUAL DISC ITSELF?

20 **A.** YES. THE CONTENT IS THE SAME, YES.

21 **MR. GARSIDE:** AT THIS TIME WE WOULD MOVE FOR ITS
22 ADMISSION, YOUR HONOR.

23 **MR. LARSEN:** SAME OBJECTION, JUDGE.

24 **THE COURT:** I'LL OVERRULE THE OBJECTION AND ALLOW IT
25 TO BE ADMITTED.

1 **Q.** **(MR. GARSIDE)** NOW WITH REGARD TO THIS, WATCHING
2 THIS VIDEO, IS THERE ANYTHING THAT THE COURT NEEDS TO BE
3 AWARE OF WITH REGARD TO YOUR SYSTEM AND WHAT THIS IS GOING TO
4 SHOW?

5 **A.** YES. THE SYSTEM HAS TWO OF WHAT WE CALL MULTIPLE
6 PLEXES THAT RECORD EVERY CAMERA IN THE STORE AT THE SAME
7 TIME. IN ADDITION, I HAVE MONITORS RECORDING ONLY THE CAMERA
8 THAT I AM DIRECTLY USING. THE TAPE THAT WE'RE GOING TO SEE
9 TODAY IS RECORDED OFF THOSE, THE MONITOR THAT I WAS DIRECTLY
10 USING. SO --

11 **Q.** SO YOU WERE ABLE TO MONITOR MORE THAN WHAT WAS JUST
12 ON THE DISC THEN?

13 **A.** YES.

14 **MR. GARSIDE:** IS THAT TOO MUCH OUT OR IS
15 THAT HELPFUL?

16 **THE COURT:** IT'S OKAY WITH ME.

17 **MR. GARSIDE:** IS IT YOUR PREFERENCE -- YOU WOULD
18 PROBABLY OBJECT TO THE NARRATION. JUST WATCH IT PLAY. LET
19 IT SPEAK FOR ITSELF?

20 **MR. LARSEN:** YEAH (UNINTELLIGIBLE).

21 **MR. GARSIDE:** OKAY.

22 (VIDEO PLAYED.)

23 **Q.** **(MR. GARSIDE)** IS THAT A FAIR DEPICTION OF WHAT
24 HAPPENED ON MARCH 18, 2008?

25 **A.** MARCH 14?

1 Q. PARDON? MARCH 14.

2 A. YES.

3 Q. THANK YOU. ON OCCASION ALL OF A SUDDEN THE CAMERA
4 WENT FROM WHERE YOU HAD IT THEN TO THE CASH REGISTER. CAN
5 YOU EXPLAIN WHY THAT HAPPENED?

6 A. YES. I WAS USING MULTIPLE CAMERAS TO COMPLETE MY
7 OBSERVATION. AND ALL OF MY CAMERAS ARE SET UP SO THAT AFTER
8 YOU HAVE NOT MOVED THEM FOR A MINUTE, I BELIEVE IT IS, THEY
9 AUTOMATICALLY GO BACK TO THEIR HOME POSITION WHICH IS WHERE
10 THEY WOULD USUALLY BE, IF NO ONE WAS OPERATING THEM.

11 Q. AS FAR AS PEOPLE GOING IN AND OUT OF THE FITTING
12 ROOMS, DID IT SHOW YOU GOING IN THERE?

13 A. YES, IT DID.

14 **MR. GARSIDE:** I HAVE NO FURTHER QUESTIONS OF THIS
15 WITNESS. WE WOULD MOVE ADMISSION OF THE VIDEO.

16 **MR. LARSEN:** OBJECTION, JUDGE. JUST FOUNDATIONAL
17 REASONS FOR PURPOSES OF -- FOR THE RECORD, WE OBJECT BASED ON
18 THAT (UNINTELLIGIBLE).

19 **THE COURT:** OBJECTION WILL BE OVERRULED. THE VIDEO
20 WILL BE ADMITTED. WE CALL IT EXHIBIT 4. I ASSUME MR. LARSEN
21 HAS A COPY.

22 **MR. LARSEN:** YES.

23 **CROSS-EXAMINATION**

24 **BY MR. LARSEN:**

25 Q. MISS ANDERSON, YOU SAID INITIALLY THAT YOU OBSERVED

1 THE DEFENDANT DO A LOOK-AROUND AND HER MOTHER WASN'T WITH HER
2 AT THE TIME SHE DID THIS LOOK-AROUND; IS THAT CORRECT?

3 A. CORRECT.

4 Q. SO SHE COULD HAVE BEEN LOOKING FOR HER MOTHER,
5 RIGHT?

6 A. I'M NOT GOING TO SPECULATE ON THAT.

7 Q. OKAY. BUT THAT DOESN'T MEAN WHEN PEOPLE LOOK AROUND
8 THEY ARE A THIEF, DOES IT?

9 A. NOT ALWAYS.

10 Q. YOU'VE SEEN PEOPLE LOOK AROUND AND NOT STEAL STUFF?

11 A. CORRECT.

12 Q. OKAY. VERY GOOD. BECAUSE PEOPLE ARE IN A
13 HIGH-THEFT INVENTORY AREA DOESN'T MEAN THEY ARE A THIEF, DOES
14 IT?

15 A. NO.

16 Q. OKAY. IS THERE SOMEBODY HERE TODAY EITHER IN THE
17 COURTROOM OR OUT IN THE HALL THAT CAN TESTIFY THAT THEY
18 WALKED THROUGH THAT AREA AND DID A SWEEP OF THAT AREA?

19 A. NO.

20 Q. YOU DIDN'T GO DOWN AND MAKE A SWEEP OF THAT AREA,
21 DID YOU?

22 A. NO.

23 Q. AND SO YOU DON'T HAVE ANY PERSONAL KNOWLEDGE THAT
24 THAT SWEEP WAS DONE OF YOUR OWN PERSONAL KNOWLEDGE, DO YOU?

25 MR. GARSIDE: CLARIFICATION. TALKING ABOUT THIS

1 SWEEP BEFORE THEY WENT INTO THE --

2 MR. LARSEN: YES. YES. BEFORE.

3 Q. YOU SAID THAT YOU CALLED DOWN AND SAID

4 (UNINTELLIGIBLE). NOBODY'S HERE TO TESTIFY THAT THEY DID

5 THAT SWEEP, IS THERE?

6 A. THERE'S NOT ANYBODY HERE, NO.

7 Q. AND YOU DIDN'T DO IT PERSONALLY?

8 A. NO.

9 Q. YOU DON'T KNOW WHEN -- WELL, I'M GOING TO ASK YOU.

10 DO YOU KNOW WHEN THE LAST PERSON WENT IN THAT STALL THAT THEY

11 WENT IN BEFORE THEY GOT THERE? HOW MANY MINUTES HAD PASSED

12 BEFORE THE LAST PERSON WENT IN?

13 A. NO.

14 Q. YOU DON'T HAVE ANY IDEA, DO YOU?

15 A. I DON'T KNOW.

16 Q. AND THERE'S SUFFICIENT PEOPLE THERE, YOU SAW THEM

17 GOING AND COMING IN THE VIDEO, THAT THOSE STALLS WERE BEING

18 USED ALL DAY AND PEOPLE WERE COMING AND GOING, CORRECT?

19 A. CORRECT.

20 Q. AND IT'S NOT UNCOMMON WHEN YOU -- WHEN PEOPLE GO

21 INTO THOSE STALLS TO LEAVE ITEMS OF CLOTHING IN THERE?

22 THAT'S NOT UNCOMMON, IS IT?

23 A. NO.

24 Q. AND OCCASIONALLY YOU'LL FIND TAGS AND VARIOUS THINGS

25 IN THERE; IS THAT CORRECT?

1 A. OCCASIONALLY.

2 Q. AND BECAUSE A PERSON REMOVES A HANGER, THAT DOESN'T

3 MEAN THAT THEY ARE A THIEF, DOES IT?

4 A. NOT ALWAYS.

5 Q. THERE WERE SOME RACKS BACK THERE BY THE FITTING

6 ROOM?

7 A. YES.

8 Q. WHAT ARE THOSE RACKS FOR?

9 A. THOSE RACKS ARE FOR PEOPLE TO DISCARD ITEMS THAT

10 THEY DON'T WANT TO TAKE WITH THEM, AND ALSO FOR THE

11 ASSOCIATES TO PLACE MERCHANDISE ON JUST TO KEEP THE ROOMS

12 CLEANED OUT.

13 Q. SO PEOPLE WILL DO THAT, AND I SAW PEOPLE TAKING

14 STUFF OFF THOSE RACKS.

15 A. YEAH. PEOPLE SHOP OFF OF THEM OCCASIONALLY.

16 Q. SO MERCHANDISE COMES AND GOES ON THOSE RACKS AS

17 PEOPLE WANT THEM OR NOT WANT THEM?

18 A. YES.

19 Q. AND THEY WERE RACKS EVEN BEHIND THAT WHERE I

20 COULDN'T SEE THE PICTURE WHERE THEY COULD LEAVE STUFF; IS

21 THAT RIGHT?

22 A. THERE IS A LITTLE ROOM BEHIND THAT COMPLETELY THE

23 DOORWAY. NO DOOR, BUT THERE'S A DOORWAY.

24 Q. AND STUFF IS LEFT THERE?

25 A. YES.

1 Q. DID YOU CHECK THAT AREA AT ALL?

2 A. YEAH.

3 Q. PERSONALLY?

4 A. YES. WHEN I WALKED BACK IN THE FITTING ROOM AFTER

5 THEY LEFT, I DID LOOK AT THOSE FIXTURES, THOSE RACKS.

6 Q. WHEN YOU WALKED BY? BECAUSE YOU WERE IN A PRETTY

7 BIG HURRY TO GET OUT AND GET THEM?

8 A. YES.

9 Q. SO YOU COULDN'T HAVE SPENT MUCH TIME AT THE RACKS.

10 A. NOT MUCH TIME, NO. BUT I DID LOOK AT THEM.

11 Q. AND THERE WAS STUFF ON THE GROUND. YOU SAW PEOPLE

12 PUT THE STUFF OUT FRONT AND CHUCK IT UNDER THE AREA.

13 A. YES.

14 Q. AND YOU WENT THROUGH ALL THOSE ITEMS METICULOUSLY.

15 A. DEFINE GO THROUGH. NO, I DID NOT REMOVE EVERY ITEM.

16 Q. YOU JUST DID A PRECURSORY LOOK AND HEADED TO GO,

17 CORRECT?

18 A. YES.

19 Q. AND THEN NEVER CAME BACK AGAIN TO FULLY CHECK. YOU

20 NEVER CAME BACK AGAIN. YOU DID JUST ONE PRECURSORY LOOK AND

21 LEFT?

22 A. AFTER WHEN -- WELL, WHEN MALL SECURITY CAME BACK WE

23 DID LOOK, BUT IT WAS LATER.

24 Q. HOURS LATER?

25 A. MINUTES LATER, BUT --

1 **Q.** IF YOU -- IF YOU SUSPECTED THAT THERE MIGHT BE A
2 SHOPLIFT GOING ON, IS THERE A REASON WHY YOU WOULDN'T HAVE
3 GONE OUT WITH THEM AND THEN WHEN THEY LEFT IMMEDIATELY
4 STOPPED THEM?

5 **A.** YES, THERE IS. MY COMPANY POLICY STATES THAT I NEED
6 TO VERIFY ALL OF MY STEPS. WE HAD TO HAVE CERTAIN CRITERIA
7 AND CERTAIN STEPS BEFORE WE GO OUT ON A STOP, AND ONE OF THEM
8 IS CHECKING THE FITTING ROOM.

9 **Q.** SO -- BUT DOING THAT AND COMING DOWN AND -- YOU
10 DIDN'T ALERT SOMEBODY TO GO OUT AND BE OUT FRONT TO PERCEIVE
11 THEM IF THEY HAPPENED TO LEAVE?

12 **A.** MY COMPANY POLICY STATES THAT ONLY CERTAIN
13 INDIVIDUALS WHO HAVE BEEN CERTIFIED ARE ABLE TO TALK TO
14 PEOPLE ABOUT SHOPLIFTING.

15 **Q.** AND SO ALL YOU NEEDED TO DO IS MAKE A QUICK CHECK OF
16 THE ROOM AND THEN YOU COULD HAVE STOPPED THEM?

17 **A.** YES.

18 **Q.** AND SO WHY DIDN'T YOU MAKE A QUICK CHECK OF THE ROOM
19 AND GO OUT THERE AND ATTEMPT TO STOP?

20 **A.** THEY WERE ALREADY ENTERING THE CAR, AND FOR MY
21 SAFETY I DID NOT.

22 **Q.** SO YOU DIDN'T TRY TO YELL AT THEM AND SAY HEY, STOP.
23 I WANT TO TALK TO YOU?

24 **A.** THEY WERE ALREADY IN THE CAR.

25 **Q.** BUT YOU DIDN'T GO OUT AND TRY TO MAKE ANY EFFORT TO

1 LET THEM KNOW THAT YOU WERE THERE AND WANTED TO TALK TO THEM?

2 A. NO. I DIDN'T -- FOR MY SAFETY I DIDN'T WANT TO STEP
3 OUT INTO --

4 Q. AND YOU DIDN'T -- I MEAN, DON'T THEY TEACH YOU FOR
5 YOUR SAFETY TOO, TO CALL AND ALERT SOMEBODY SO THEY KNOW WHAT
6 YOU WERE DOING AND SO THAT THEY CAN BE AWARE OF YOU AND --

7 A. THAT IS SOMETHING THAT THEY REQUEST, IF WE HAVE
8 TIME. THAT'S NOT SOMETHING WE HAVE TO DO EVERY TIME WE ARE
9 OUT THERE.

10 Q. SO YOU COULD HAVE HAD SOMEBODY DOWN THERE AVAILABLE
11 AND HELP YOU ON THIS SITUATION, RIGHT?

12 A. ALL THEY COULD HAVE DONE WAS KNOW THAT I WAS
13 OUTSIDE. THAT'S IT. THEY COULD NOT HAVE HAD ANYONE ELSE GO
14 OUT THERE.

15 Q. BUT YOU COULDN'T -- THE POINT IS -- HAVE SAID HEY,
16 I'M WATCHING SOMEBODY. THINK IT MIGHT BE A SHOPLIFT AND BE
17 AWARE, MAYBE STAND BY THE DOORS AND HELP ME OUT HERE?

18 A. ASSOCIATES IN THE STORE ARE NOT ALLOWED TO TALK TO
19 PEOPLE WHO MIGHT BE SHOPLIFTING. SO NO, I COULD NOT DO THAT.

20 Q. SO YOU ARE A ONE-MAN BAND?

21 A. YES.

22 Q. OKAY. WHAT ITEMS DID SHE HAVE IN HER PURSE?

23 A. THROUGH MY --

24 Q. NO. YOU TELL ME, WHAT ITEMS WERE IN HER PURSE?

25 A. I DID NOT PHYSICALLY SEE INSIDE HER PURSE.

1 CHAD JONES

2 DIRECT EXAMINATION

3 BY MR. GARSIDE:

4 Q. YOUR FULL NAME, PLEASE?

5 A. CHAD ALLEN JONES, J-O-N-E-S.

6 Q. YOUR EMPLOYMENT?

7 A. LAYTON CITY POLICE DEPARTMENT.

8 Q. HOW LONG HAVE YOU BEEN SO EMPLOYED?

9 A. SEVEN AND A HALF YEARS.

10 Q. AND YOUR CURRENT ASSIGNMENT?

11 A. ASSIGNED TO THE DETECTIVE DIVISION.

12 Q. HOW LONG HAVE YOU BEEN IN THE DETECTIVE DIVISION?

13 A. APPROXIMATELY A YEAR AND A HALF.

14 Q. AND HOW LONG HAVE YOU BEEN A DETECTIVE?

15 A. ABOUT A YEAR AND A HALF.

16 Q. I WANT TO DIRECT YOUR ATTENTION BACK TO MARCH 14,
17 2008, AND ASK YOU IF YOU WERE ON DUTY AND WORKING ON THAT DAY
18 IN YOUR CAPACITY AS A DETECTIVE?

19 A. I WAS WORKING. I WAS WORKING AN EXTRA PATROL SHIFT
20 IN WHICH WE CONTRACT WITH LAYTON HILLS MALL TO PROVIDE EXTRA
21 MANPOWER, I GUESS, FOR THEM. MY SHIFT THAT DAY STARTED AT
22 FOUR O'CLOCK IN THE AFTERNOON AND ENDED AT NINE O'CLOCK AT
23 NIGHT.

24 Q. AND WERE YOU CALLED BY MERVYN'S TO RESPOND TO THAT
25 LOCATION?

1 **A.** I WAS CONTACTED BY MALL SECURITY VIA THE RADIO THAT
2 THEY PROVIDE TO US INDICATING THEM THAT THEY HAD BEEN IN
3 COMMUNICATION WITH MERVYN'S LOSS PREVENTION AND REQUESTED WE
4 RESPOND TO THE STORE.

5 **Q.** DO YOU RECALL WHAT TIME THAT WAS?

6 **A.** I BELIEVE IT WAS ABOUT 1900 HOURS, SEVEN O'CLOCK AT
7 NIGHT.

8 **Q.** AND YOU MET WITH TEANNA ANDERSON WHO JUST TESTIFIED,
9 CORRECT?

10 **A.** CORRECT.

11 **Q.** SHE PROVIDED YOU WITH THE INFORMATION THAT SHE
12 TESTIFIED TO HERE TODAY?

13 **A.** CORRECT.

14 **Q.** AND YOU REVIEWED THE VIDEO AS WELL?

15 **A.** I DID.

16 **Q.** AND DID SHE PROVIDE YOU WITH A LICENSE PLATE NUMBER?

17 **A.** SHE DID.

18 **Q.** AND IN USING THAT LICENSE PLATE NUMBER YOU WERE ABLE
19 TO TRACK DOWN AN OWNER OF THE VEHICLE?

20 **A.** CORRECT.

21 **Q.** AND IN FINDING THE OWNER OF THE VEHICLE YOU WERE
22 ABLE TO DETERMINE WHO USED THE VEHICLE THAT DAY?

23 **A.** I DID. THE OWNER OF THE VEHICLE DID NOT -- IT CAME
24 BACK TO A MALE INDIVIDUAL. AFTER REVIEWING THE VIDEO,
25 KNOWING THAT BOTH OF THE SUSPECTS WERE FEMALE, AT THAT TIME I

1 DID NOT KNOW THE IDENTITIES OF THE FEMALES THAT WERE IN THE
2 VIDEO. AT A LATER DATE I WAS ABLE TO DETERMINE THAT BY USING
3 THE ADDRESS ON THE REGISTRATION OF THE VEHICLE.

4 Q. AND WHO WERE YOU ABLE TO IDENTIFY THE TWO FEMALES
5 AS?

6 A. THE FIRST ONE WAS MICHELLE SPURGER WHO'S SEATED AT
7 THE DEFENDANT'S TABLE, AND ALSO HER MOTHER, TONYA REMIREZ.

8 Q. THAT WAS THE FEMALE THAT WAS IN THE VEHICLE?

9 A. CORRECT.

10 Q. THE OTHER FEMALE?

11 A. CORRECT.

12 Q. AND DID YOU HAVE AN OPPORTUNITY TO HAVE A
13 CONVERSATION WITH THE DEFENDANT ABOUT THIS?

14 A. I DID SPEAK WITH HER APPROXIMATELY A WEEK AFTER THIS
15 INCIDENT HAD TAKEN PLACE. AFTER I HAD FOUND OUT THE LOCATION
16 OF WHERE SHE LIVED, I MADE A PHONE CALL TO HER AFTER SPEAKING
17 WITH HER GRANDFATHER AS FAR AS WHO MAY BE DRIVING THE
18 VEHICLE.

19 AND I INFORMED HER OF MY KNOWLEDGE OF THE THEFT FROM
20 THE STORE AND REQUESTED THAT SHE BRING THE CLOTHING TO THE
21 LAYTON POLICE DEPARTMENT BY NOON THE FOLLOWING DAY.

22 Q. IN YOUR CONVERSATION WITH -- RELATE TO THE COURT THE
23 CONVERSATION, THE BEST THAT YOU CAN RECALL.

24 A. I ADVISED HER WHO I WAS, AND I WAS CALLING TO TALK
25 TO HER ABOUT THE RETAIL THEFT THAT HAD OCCURRED AT MERVYN'S

1 AT THE LAYTON HILLS MALL AND INFORMED HER THAT I HAD REVIEWED
2 THE VIDEO --

3 Q. WHAT WAS HER RESPONSE WHEN YOU FIRST TOLD HER WHO
4 YOU WERE AND WHAT YOU WERE INVESTIGATING?

5 A. SHE DENIED ANY INVOLVEMENT WITH IT. SHE SAID SHE
6 DIDN'T HAVE ANYTHING TO DO WITH IT.

7 Q. AND IN RESPONSE TO THAT, WHAT DID YOU TELL HER?

8 A. I TOLD HER THAT I VIEWED THE VIDEO AND I OBSERVED
9 HER AND HER MOTHER SELECTING THE TANK TOPS FROM THE DISPLAY,
10 GOING INTO THE DRESSING ROOM AND LEAVING WITHOUT PAYING FOR
11 THE ITEMS THAT WERE MISSING FROM THE DRESSING ROOM.

12 Q. WHAT WAS HER RESPONSE TO THAT?

13 A. SHE WAS SILENT FOR A WHILE. AND THEN I TOLD HER
14 THAT SHE HAD UNTIL NOON THE NEXT DAY TO RETURN THE ITEMS.
15 SHE SAID SHE HAD TO CALL ME BACK AND HUNG UP THE PHONE.

16 Q. DID SHE EVER COME IN?

17 A. SHE DID NOT.

18 Q. DID YOU HAVE ANY OTHER CONVERSATION WITH HER?

19 A. I DID NOT.

20 Q. LAYTON HILLS MALL, IS THAT WITHIN THE CORPORATE
21 LIMITS OF LAYTON CITY?

22 A. IT IS.

23 MR. GARSIDE: NOTHING FURTHER, YOUR HONOR.

24 *****
25

CROSS-EXAMINATION

BY MR. LARSEN:

Q. SO YOU REVIEWED THAT VIDEO?

A. I DID.

Q. DID YOU SEE HER WALK OUT OF THE STORE WITH ANYTHING?

A. WALK OUT OF THE STORE?

Q. YES, WITH ANY -- ON THAT VIDEO?

A. I DID NOT SEE THE CLOTHING ITEMS, NO. I DID NOT SEE
HER CARRYING THEM.

Q. YET YOU ACCUSE HER OF THAT WHEN YOU TALKED ON THE
PHONE, RIGHT?

A. YES.

Q. AND SHE TOLD YOU THAT SHE DIDN'T HAVE ANY
INVOLVEMENT IN A THEFT, DIDN'T SHE?

A. THAT'S CORRECT.

Q. AND SO YOUR STATEMENT TO HER WAS ACCUSING HER OF
COMMITTING THIS THEFT AND BRING THE STUFF BACK?

A. CORRECT.

Q. AND IT NEVER SHOWED UP?

A. CORRECT.

Q. DID SHE EVER SAY, I DID IT? I'M SO SORRY.

A. NO.

Q. NEVER ADMITTED ANY CULPABILITY WHATSOEVER, DID SHE?

A. NO.

Q. SAID SHE DIDN'T HAVE ANY INVOLVEMENT.

1 **A.** CORRECT.

2 **Q.** AND SAID THAT BASICALLY DIDN'T ACKNOWLEDGE SHE
3 COMMITTED A THEFT, DID SHE?

4 **A.** CORRECT.

5 **MR. LARSEN:** NOTHING FURTHER.

6 **MR. GARSIDE:** NO REDIRECT, YOUR HONOR.

7 **THE COURT:** YOU MAY STEP DOWN.

8 **MR. GARSIDE:** THE CITY RESTS AT THIS TIME, YOUR
9 HONOR.

10 **MR. LARSEN:** CALL MICHELLE SPURGER TO THE STAND.

11 **DIRECT EXAMINATION**

12 **BY MR. LARSEN:**

13 **Q.** STATE YOUR NAME, PLEASE.

14 **A.** MICHELLE LEE SPURGERS.

15 **Q.** AND WHERE DO YOU RESIDE, MICHELLE?

16 **A.** 1648 EAST HILLSBOROUGH IN LAYTON.

17 **Q.** YOU UNDERSTAND YOU ARE THE DEFENDANT IN THIS MATTER?

18 **A.** YES.

19 **Q.** YOU DON'T NEED TO TESTIFY IF YOU DON'T WANT DO. YOU
20 UNDERSTAND THAT?

21 **A.** UH-HUH.

22 **Q.** DO YOU WANT TO TESTIFY IN THIS MATTER?

23 **A.** I DO.

24 **Q.** IF YOU DO TESTIFY, ANYTHING YOU SAY CAN BE USED BY
25 THE JUDGE TO DETERMINE THE OUTCOME AND SUBJECT TO

1 CROSS-EXAMINATION BY THE PROSECUTOR? DO YOU UNDERSTAND THAT?
2 A. I DO.
3 Q. NOW, ON THIS DATE OF MARCH 14, 2008, DO YOU REMEMBER
4 GOING TO MERVYN'S?
5 A. IT SHOWS ME ON THE VIDEO. I DON'T REALLY -- WASN'T
6 A SPECTACULAR DAY OR ANYTHING.
7 Q. WAS THAT YOU ON THE VIDEO?
8 A. YES, IT WAS.
9 Q. YOU AND YOUR MOM?
10 A. UH-HUH.
11 Q. TELL ME WHAT YOU DID THAT DAY.
12 A. ON THE VIDEO OR --
13 Q. AS IT RELATES TO GOING TO MERVYN'S.
14 A. I THINK THAT WAS THE SAME DAY I CAME BACK FROM
15 WENDOVER, AND THEN WE WENT SHOPPING. BUT I DON'T REALLY
16 REMEMBER.
17 Q. DID YOU SELECT SOME ITEMS THERE? WHAT WAS YOUR
18 PURPOSE IN GOING TO THE STORE?
19 A. SHOPPING, YEAH.
20 Q. DID YOU OFTEN GO SHOPPING AND NOT BUY ANYTHING?
21 A. YES. UH-HUH.
22 Q. THAT VIDEO SHOWS YOU GOING INTO THE DRESSING ROOM
23 AND SEVERAL ITEMS OVER YOUR ARM.
24 A. UH-HUH.
25 Q. DID YOU -- WHAT DID YOU DO WHEN YOU WENT IN THE

1 DRESSING ROOM?

2 A. TRIED THEM ON. THEY DIDN'T FIT, AND SO I DIDN'T BUY
3 THEM.

4 Q. DIDN'T FIT? YOU WEREN'T SATISFIED WITH THEM?

5 A. NO.

6 Q. YOU DIDN'T WANT THEM FOR WHAT THEY COULD DO FOR YOU?

7 A. NO.

8 Q. AND THEN DO YOU KNOW WHAT HAPPENED TO THOSE ARTICLES
9 OF CLOTHING?

10 A. I GUESS THEY WERE PUT BACK.

11 Q. DID YOU PUT THEM BACK OR DID YOUR MOM PUT THEM BACK?

12 A. WE WERE IN THE SAME DRESSING ROOM, SO SHE MIGHT HAVE
13 JUST GRABBED EVERYTHING.

14 Q. PUT THEM BACK?

15 A. UH-HUH.

16 Q. DID YOU STUFF YOUR PURSE WITH ANY OF THOSE ITEMS?

17 A. I DID NOT.

18 Q. THE VIDEO SHOWS THAT YOU TOOK A TAG OFF ONE OF THE
19 ITEMS. DO YOU REMEMBER SEEING THAT?

20 A. I DO.

21 Q. CAN YOU EXPLAIN WHAT HAPPENED THERE OR WHAT YOU WERE
22 THINKING OR --

23 A. I CAN'T EXPLAIN IT. FOR ALL I KNOW, IT WAS BUGGING
24 ME. THERE WAS TWO SHIRTS STUCK TOGETHER. I WAS TRYING TO
25 GET THEM APART. I REALLY HAVE NO EXPLANATION FOR THAT.

1 Q. WHEN YOU CAME OUT OF THE DRESSING ROOM IT APPEARED
2 THAT YOU REACHED INTO YOUR PURSE?
3 A. UH-HUH.
4 Q. TO GET YOUR KEYS? IS THAT WHAT HAPPENED?
5 A. I THINK IT WAS KEYS, YEAH. YEAH.
6 Q. AND SHOWS YOU GETTING THE KEYS, HANDING THEM TO YOUR
7 MOTHER?
8 A. UH-HUH.
9 Q. WHAT KIND OF STUFF DO YOU HAVE IN YOUR PURSE?
10 A. I'VE GOT DAY PLANNERS, CELL PHONE, MAKE-UP, JUST SO
11 MANY THINGS THAT I NEED. I CARRY AROUND SNACKS.
12 Q. DID YOU HAVE ANY OF MERVYN'S MERCHANDISE IN YOUR
13 PURSE WHEN YOU WALKED OUT OF THAT STORE?
14 A. I DID NOT.
15 Q. DID IT BOTHER YOU THAT NOBODY STOPPED TO TALK TO YOU
16 AT THE TIME YOU WERE THERE, EVEN WHEN YOU LEFT THE STORE?
17 A. IT BOTHERS ME NOW, YEAH.
18 Q. WHY DOES IT BOTHER YOU NOW?
19 A. BECAUSE I'M ON TRIAL FOR SOMETHING I DIDN'T DO.
20 Q. IF THEY HAD STOPPED YOU YOU COULD HAVE SHOWED THEM
21 YOUR PURSE AND SAID NO, THERE'S NOT -- ANYTHING THERE?
22 A. EXACTLY.
23 Q. NO MORE QUESTIONS.
24 *****
25

1 CROSS-EXAMINATION

2 BY MR. GARSIDE:

3 Q. MISS SPURGER, YOU STATED THAT YOUR ADDRESS IS
4 HILLSBOROUGH DRIVE?

5 A. YES.

6 Q. HOW LONG HAVE YOU LIVED THERE?

7 A. I'VE BEEN BACK THERE FOR JUST A FEW MONTHS NOW.

8 Q. A FEW MONTHS. SO WHEN DID YOU MOVE BACK THERE?

9 A. I THINK IT WAS PROBABLY THE END OF JULY OR AUGUST.

10 Q. SO YOU DON'T HAVE ANY DISTINCT RECOLLECTION OF THIS
11 SHOPPING TRIP OTHER THAN THE VIDEO THAT YOU SAW?

12 A. THAT'S CORRECT.

13 Q. ALL RIGHT. SO IT'S YOUR TESTIMONY THEN THAT WHAT
14 WAS IN YOUR PURSE WHEN YOU WENT INTO THE FITTING ROOM IS THE
15 EXACT SAME STUFF THAT WAS IN YOUR PURSE WHEN YOU LEFT. THERE
16 WAS NOTHING MORE IN YOUR PURSE FROM WHEN YOU WENT INTO THE
17 STORE AS WHEN YOU WENT OUT OF THE STORE; IS THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND. THAT YOU HAD NO ADDITIONAL CLOTHING ON WHEN
20 YOU LEFT THE STORE AS TO WHAT YOU HAD WHEN YOU WENT IN THE
21 STORE; IS THAT CORRECT?

22 A. THAT'S CORRECT.

23 MR. GARSIDE: NOTHING.

24 REDIRECT EXAMINATION

25 Q. AS YOU WERE TRYING CLOTHES ON, WOULD YOU TELL THE

1 COURT HOW YOU DRESSED SOMETIMES WITH DIFFERENT TYPES OF
2 T-SHIRT OR WHATEVER?

3 A. IT'S THE STYLE FOR LAYERED CLOTHING. I ALWAYS,
4 ALWAYS WEAR AN UNDERSHIRT.

5 Q. AND WHEN YOU GO INTO A FITTING ROOM, OBVIOUSLY YOU
6 ARE TAKING CLOTHES OFF AND PUTTING ON, TRYING NEW STUFF ON,
7 RIGHT?

8 A. UH-HUH.

9 Q. AND -- AND SO IF -- HOW WOULD YOU WEAR KIND OF WHITE
10 T-SHIRT TYPE OF THING?

11 A. IT IS. IT'S VERY COMMON FOR ME TO WEAR UNDERSHIRTS
12 AND I LIKE THEM TO BE LONGER THAN THE SHIRT I'VE GOT ON OVER
13 IT.

14 Q. AND SO IF IN THE VIDEO IT SHOWS COMING OUT OF THE
15 DRESSING ROOM WITH A WHITE THING THAT FALLS DOWN BELOW YOUR
16 REGULAR SHIRT?

17 A. UH-HUH.

18 Q. ARE YOU TELLING THE COURT THAT WAS YOURS YOU BROUGHT
19 INTO THE STORE BEFORE?

20 A. YES.

21 Q. AND IT WASN'T SHOWING BEFORE WHEN YOU WERE WALKING
22 AROUND BECAUSE YOU HAD IT COVERED BY YOUR TOP LAYER?

23 A. PROBABLY, YEAH.

24 Q. SO THAT'S NOT AN UNCOMMON THING FOR YOU TO LAYER
25 OUT?

1 **A.** NO.

2 **Q.** NOT UNCOMMON FOR YOU TO HAVE WHITE UNDERNEATH YOUR
3 DARK?

4 **A.** NO.

5 **Q.** AND ESPECIALLY SHOPPING WHEN YOU ARE CHANGING YOUR
6 CLOTHES?

7 **A.** EXACTLY.

8 **MR. LARSEN:** NOTHING FURTHER.

9 **MR. GARSIDE:** NOTHING FURTHER, YOUR HONOR.

10 **THE COURT:** YOU MAY STEP DOWN.

11 **MR. LARSEN:** THAT'S ALL, JUDGE.

12 **MR. GARSIDE:** THAT'S ALL, JUDGE.

13 **MR. LARSEN:** NO FURTHER WITNESSES.

14 **THE COURT:** DO YOU HAVE ANY REBUTTAL?

15 **MR. GARSIDE:** NO.

16 **THE COURT:** CLOSING ARGUMENT?

17 **MR. GARSIDE:** YES. THANK YOU, YOUR HONOR.

18 **CLOSING ARGUMENT**

19 **BY MR. GARSIDE:**

20 YOU KNOW, COUNSEL'S FIRST LINE TO THE COURT IN
21 OPENING STATEMENT WAS OUR CASE IS BASED ON CIRCUMSTANTIAL
22 EVIDENCE. AND, YOU KNOW, I WOULD THINK THAT THAT ARGUMENT
23 WOULD HAVE BEEN DONE A LONG TIME AGO. THERE IS ONLY TWO
24 KINDS OF EVIDENCE; DIRECT EVIDENCE AND CIRCUMSTANTIAL
25 EVIDENCE. THAT'S IT. AND WE HAVE A COMBINATION OF THAT HERE

1 TODAY.

2 IT REMINDS ME OF THE STORY OF THE MOTHER WHO'S
3 BAKING A CAKE FOR A SPECIAL EVENT. AND SHE TELLS HER
4 THREE-YEAR-OLD SON, STAY OUT OF THE KITCHEN. THE CAKE IS NOT
5 FOR YOU. DON'T TOUCH IT. A FEW MOMENTS LATER AS SHE'S
6 WALKING DOWN THE HALLWAY SHE SEES HER SON LEAVE THE KITCHEN
7 WITH HIS FINGER IN HIS MOUTH AND GOING. SHE GOES INTO THE
8 KITCHEN AND SURE ENOUGH IN HER FROSTING THERE'S A FINGER
9 SWIPE OUT OF IT. AND THEN AS SHE GOES TO CONFRONT HER SON HE
10 PULLS HIS FINGER OUT OF HIS MOUTH AND SAYS, I DON'T KNOW WHAT
11 YOU ARE TALKING ABOUT, MOM. FROSTING UNDERNEATH THE
12 FINGERNAIL. NO DIRECT EVIDENCE. CIRCUMSTANTIAL EVIDENCE.
13 AND THAT'S EXACTLY WHAT WE HAVE HERE TODAY.

14 THE UNDERSHIRT UNDERNEATH, A CONVENIENT EXCUSE THAT
15 SHE HAS COME UP WITH, BUT THE ENTIRE TIME SHOPPING IT WASN'T
16 VISIBLE, BUT THERE AFTERWARDS.

17 AGAIN THOUGH, ABSOLUTELY NO EXPLANATION AS TO THE
18 CONDITION OF HER PURSE. THE COURT HAS SEEN THE VIDEO. THE
19 INITIAL PART OF THE VIDEO, THE FLAP IS JUST HANGING DOWN
20 WITHOUT A PROBLEM AT ALL, RELATIVELY THIN. ON THE WAY OUT
21 IT'S BULGING. SAME WITH HER MOTHER'S. OKAY.

22 SO THE ITEMS GO INTO THE DRESSING ROOM. WE DON'T
23 HAVE ANY DIRECT EVIDENCE WHO HAD SWEPT IT BEFOREHAND. BUT
24 BASICALLY WHAT THAT MEANS IS THAT IF THERE WERE OTHER ITEMS
25 IN THAT DRESSING ROOM THEY COULD HAVE BEEN STOLEN AS WELL.

1 SO SWEEPS IN THIS CIRCUMSTANCE REALLY DOESN'T MATTER.

2 MISS ANDERSON GOES IN AND SEES THE PAIR OF JEANS
3 WITH OH, MY GOODNESS. IT'S THE SAME TAGS ON THE SAME ITEMS
4 THAT MISS SPURGERS TOOK OFF OF THE RACK. I ASK THE COURT TO
5 REVIEW THE VIDEO AGAIN. PULLED THE TAG OFF. IF THE TWO
6 SHIRTS WERE TANGLED. I THINK THE COURT WILL SEE SOMETHING
7 DIFFERENT THERE. AND THE COURT WILL SEE THE LOOK-AROUND THE
8 STORE.

9 MR. LARSEN WANTS TO SAY HEY, EVERYONE LOOKS AROUND.
10 WELL, YOU KNOW WHAT? IT'S THE SAME WHETHER IT'S A
11 SHOPLIFTING CASE OR WHETHER IT'S ANOTHER INVESTIGATIVE TYPE
12 OF CASE, NOT EVERYTHING HINGES ON ONE THING. WE HAVE
13 DIFFERENT PIECES OF THE PIE. WE HAVE THE LOOK-AROUND. WE
14 HAVE THE HANGER. WE HAVE THE LAST GRASP OF SOMETHING OF
15 VALUE. I CAN STASH THE TAGS. WE HAVE PEOPLE THAT ARE
16 LEISURELY GOING THROUGH THE STORE, BUT ONCE THEY LEAVE THE
17 FITTING ROOM, IT'S A BEELINE OUT THE DOOR. THEY ARE IN THE
18 CAR BY THE TIME MISS ANDERSON LEAVES, GOES 25 FEET FROM THE
19 MONITORING ROOM TO THE FITTING ROOM. THERE'S A CURSORY LOOK
20 OF THE RACK. SEES NOTHING OF THE ITEMS THAT THEY TOOK IN.
21 BY THE TIME SHE'S OUT, THEY ARE LEAVING IN THE CAR. AND THEN
22 SHE TESTIFIES THAT SHE WENT BACK WITH MALL SECURITY. THEY
23 WENT TO BOTH RACKS AT THE END.

24 AND I WOULD SUBMIT TO THE COURT THAT WITH THE NUMBER
25 OF ITEMS THAT THE DEFENDANT AND HER MOTHER TOOK BACK THERE,

1 IF THEY HAD ALL BEEN DISCARDED ON A RACK, THOSE WOULD HAVE
2 BEEN DISCOVERED. IT'S PRETTY COGENT EVIDENCE.
3 CIRCUMSTANTIAL YES, BUT PRETTY COGENT.

4 THE ITEMS WERE WITH THEM IN THE FITTING ROOM. THEY
5 WERE IN THE FITTING ROOM TOGETHER. THEY LEAVE. THE ITEMS
6 AREN'T THERE. ONE PAIR OF JEANS AND MATCHING TAGS WITH WHAT
7 SHE HAD DRAPED OVER HER ARM. SUBMIT TO THE COURT THAT WE'VE
8 MORE THAN ESTABLISHED OUR BURDEN OF PROOF AND THAT THE
9 DEFENDANT SHOULD BE FOUND GUILTY. THANK YOU.

10 **CLOSING ARGUMENT**

11 **BY MR. LARSEN:**

12 JUDGE, IT'S INTERESTING THAT THE VIDEO FROM TIME TO
13 TIME DOES NOT EVEN FOCUS ON HER AND DIFFERENT AREAS. WE DO
14 NOT KNOW, THERE'S NO EVIDENCE BEFORE THE COURT WHEN AND EVEN
15 IF THAT ROOM WAS ACTUALLY SWEEPED. AND FRANKLY, JUDGE, AND
16 CIRCUMSTANTIALLY, JUDGE, IF YOU ARE CONVINCED BEYOND A
17 REASONABLE DOUBT THAT SHE COMMITTED IT, WE EXPECT YOU TO FIND
18 HER GUILTY. BUT IF THERE'S REASONABLE DOUBT, WE EXPECT THIS
19 COURT TO FIND HER NOT GUILTY.

20 AND WHY DIDN'T THEY -- WHY DIDN'T SHE HAVE SOME HELP
21 AND GET A SECURITY GAL AND STOP THEM. WHY DIDN'T THEY GET
22 THEM STOPPED SO THAT THEY COULD FIND OUT. THAT WAS MY
23 CLIENT'S WHOLE IDEA. PLEASE STOP ME SO THAT I CAN SHOW YOU
24 THAT I DIDN'T HAVE THE STUFF IN MY PURSE. WHEN THE OFFICER
25 CALLED HER A WEEK LATER AND, GOING TALK TO HER. I DIDN'T

1 HAVE ANYTHING TO DO WITH IT. YOU BRING THE STUFF IN. DIDN'T
2 BRING IT IN BECAUSE SHE DIDN'T HAVE IT. THAT'S WHY IT DIDN'T
3 COME IN.

4 AND A LOOK-AROUND DOESN'T MEAN YOU ARE GUILTY OR YOU
5 ARE LOOKING FOR YOUR MOTHER OR LOOKING FOR WHATEVER. MOTHER
6 WASN'T EVEN WITH HER WHEN SHE WAS LOOKING AROUND. THE
7 SECURITY GALE TESTIFIES TAKES SOMETHING OFF THE HANGER
8 DOESN'T MEAN YOU ARE A THIEF. YOU STAND IN THE HIGH-THEFT
9 INVENTORY AREA DOESN'T MEAN YOU ARE A THIEF.

10 IT IS -- THE CASE IS CIRCUMSTANTIAL. THE DEFENDANT
11 TESTIFIED THAT SHE DIDN'T -- SHE DIDN'T TAKE THE CLOTHING.
12 ASK YOU TO FIND HER NOT GUILTY. TOO MANY QUESTIONS RAISES
13 REASONABLE DOUBT. ASK YOU TO FIND HER NOT GUILTY. THANK
14 YOU.

15 THE COURT: THANK YOU.

16 MR. GARSIDE?

17 REBUTTAL ARGUMENT

18 MR. GARSIDE:

19 JUST IN RESPONSE. YOU KNOW, IT'S INTERESTING THAT A
20 LOT OF MISS ANDERSON'S RESPONSE TO MR. LARSEN'S QUESTIONS
21 WERE COMPANY POLICY. AND I THINK THAT IT'S PRETTY APPARENT
22 WHAT HER MERVYN'S IS DOING HERE. THEY -- OBVIOUSLY THEY
23 DON'T WANT TO OFFEND THEIR CUSTOMERS, AND SO THEY ARE GIVING
24 THEIR CUSTOMERS BASICALLY THE BENEFIT OF A HUGE DOUBT ALL THE
25 WAY THROUGH. SHE CAN'T CONFRONT SOMEBODY AND SHE'S GONE TO

1 THE FITTING ROOM. AND SO SHE'S GOT SOME STRICTURES TO WHICH
2 SHE MUST ADHERE BEFORE SHE CAN CONFRONT SOMEBODY. AND AS SHE
3 SAID, JUST A REGULAR ASSOCIATE CAN'T DO THAT. BECAUSE SHE'S
4 RECEIVED THE SPECIFIC TRAINING NOT JUST TO BE ABLE TO DETECT
5 SHOPLIFTING, BUT IN CONFRONTING CUSTOMERS IN SUCH A WAY THAT
6 HOPEFULLY WE WERE NOT GOING TO CAUSE A SCENE OR OFFEND
7 EVERYBODY, AND LOSE CUSTOMERS AND THOSE TYPE OF THINGS. WE
8 ALL KNOW THAT ECONOMIC BALANCE OF THAT THAT STORES GO THROUGH
9 AS FAR AS PROTECTING MERCHANDISE AS OPPOSED TO OFFENDING A
10 CUSTOMER. SO I SUBMIT TO THE COURT THAT ALL OF THOSE THINGS
11 THAT MISS ANDERSON EMPLOYED WERE TO MISS SPURGERS'S BENEFIT
12 IN THE WAY THAT IT DID, AND BECAUSE OF THOSE RESTRICTIONS
13 THEY WERE ABLE TO GET AWAY WITH IT.

14 I THINK THE ONE THING THAT MISS SPURGERS SAYS, OF
15 COURSE, I DIDN'T DO IT. WELL, AS THE COURT IS AWARE, SHE HAS
16 A HUGE, A HUGE INTEREST IN THE OUTCOME OF THIS MATTER. AND
17 MISS ANDERSON, SHE'S GOING TO GO BACK TO WORK THIS AFTERNOON
18 ONE WAY OR THE OTHER. IT DOESN'T MATTER. THE PROBLEM WITH
19 MISS SPURGES IS SHE'S BEEN LESS THAN HONEST WITH THE COURT.
20 THE COURT LOOKS AT THAT VIDEO AND FOR MISS SPURGES TO SAY
21 THERE WAS NOTHING MORE IN MY PURSE WHEN I LEFT THAN WAS THERE
22 WHEN I CAME IS ABSOLUTELY DISHONEST. THE EVIDENCE THERE IS
23 OVERWHELMING. AND BASED ON THAT ALONE, THE COURT CAN
24 DISCREDIT MISS SPURGERS' TESTIMONY IN ITS ENTIRETY. AND FIND
25 THAT SHE DID STEAL THESE ITEMS FROM MERVYN'S.

1 AND MR. LARSEN'S CHARACTERIZATION OF THE
2 CONVERSATION WITH OFFICER JONES AND THE DEFENDANT, I SUBMIT
3 IS SIGNIFICANTLY DIFFERENT.

4 MISS SPURGERS, I NEED TO TALK TO YOU ABOUT A RETAIL
5 THEFT THAT HAPPENED IN MERVYN'S. I DON'T KNOW WHAT YOU ARE
6 TALKING ABOUT. I WASN'T INVOLVED IN ANY THEFT. MISS
7 SPURGERS, I REVIEWED THE VIDEO. I SAW WHAT IT WAS THAT
8 HAPPENED. DEAD SILENCE. I NEED YOU TO BRING THOSE MATERIALS
9 BACK TO ME BY NOON TOMORROW, THE THINGS YOU TOOK FROM
10 MERVYN'S. I'LL HAVE TO CALL YOU BACK. NEVER CALLS BACK.
11 THAT DOES NOT SOUND LIKE SOMEONE WHO'S DECRYING THEIR
12 INNOCENCE.

13 THE FITTING ROOMS. YOU LOOK IN THE VIDEO. A LOT OF
14 PEOPLE WENT IN AND OUT OF THE FITTING ROOMS. BUT IF YOU LOOK
15 CLOSE, THE MAJORITY OF THE PEOPLE WENT TO THE LEFT. THE
16 DEFENDANT WAS AT THE RIGHT. ONE CAME OUT AS THEY WERE GOING
17 IN. ANOTHER LADY CAME OUT A LITTLE BIT SHORTER. ALL RIGHT.
18 TWO PEOPLE THEN WENT IN. ONE OF THOSE WAS MISS ANDERSON.
19 THE OTHER ONE WAS THE LADY IN THE FULL-LENGTH DRESS. THAT
20 WAS IT.

21 AND SO THE CIRCUMSTANCES ARE EXTREMELY LIMITED. AND
22 THE CIRCUMSTANCES POINT TO ONE THING; AND THAT IS, MISS
23 SPURGES STOLE FROM MERVYN'S ON MARCH 14, 2008.

24 **THE COURT:** ANYTHING FURTHER BEFORE WE --

25 **MR. LARSEN:** NO, JUDGE. SUBMIT IT.

1 **THE COURT:** I THINK I'M PREPARED TO RULE ON THIS
2 MATTER. I DO THINK I UNDERSTAND THE ROLE OF CIRCUMSTANTIAL
3 EVIDENCE PLAYS AND THE WEIGHT THAT IT CAN HAVE OR MIGHT NOT
4 HAVE IN A CASE. THIS TIME BASED ON THE EVIDENCE THAT'S BEEN
5 PRESENTED TO ME, I AM FIRMLY CONVINCED AND I'M FIRMLY
6 CONVINCED BEYOND A REASONABLE DOUBT THAT SOME ITEMS OF
7 CLOTHING WAS TAKEN FROM MERVYN'S. WHAT I DON'T KNOW FOR SURE
8 IS HOW MUCH IN TERMS OF ITEMS THAT WERE TAKEN FROM MERVYN'S.
9 HOWEVER, BASED ON THE EVIDENCE THAT'S BEEN PRESENTED
10 TO ME, I DO FIND THAT THE DEFENDANT DID COMMIT -- DID COMMIT
11 A THEFT IN THE CITY OF LAYTON. DID IN FACT TAKE POSSESSION
12 OF, CONCEAL, CARRY AWAY OR CAUSE TO BE CARRIED AWAY OR
13 TRANSFERRED SOME MERCHANDISE FROM MERVYN'S, AT LEAST ONE
14 ITEM. AND THAT THE VALUE OF THAT IS LESS THAN \$300.
15 AND THEREFORE I FIND THAT THE DEFENDANT IS GUILTY OF
16 THE CRIME AS CHARGED BY MERVYN'S.
17 NOW, IF I HAVEN'T SAID IT, OF COURSE THERE'S NO
18 DISPUTE OVER THE DATE INVOLVED, MARCH 14, 2008. I DON'T
19 THINK THERE'S ANY DISPUTE OVER THE LOCATION. THERE HASN'T
20 BEEN ANY DISPUTE OVER THE IDENTITY OF THE DEFENDANT.
21 SO WITH THAT IN MIND, HAVING FOUND THE DEFENDANT
22 GUILTY, MR. LARSEN, THE DEFENDANT OF COURSE HAS THE RIGHT TO
23 RETURN HERE FOR SENTENCING AT A FUTURE DATE OR WE CAN WAIVE
24 THAT AND GO AHEAD WITH SENTENCING TODAY.
25 **MR. LARSEN:** JUDGE, THE DEFENDANT DOESN'T WANT TO BE

1 SENTENCED TODAY. SHE IS EIGHT MONTHS PREGNANT. ASK YOU TO
2 GRANT HER PROBATION. (UNINTELLIGIBLE.) THAT'S OUR REQUEST.

3 **THE COURT:** OKAY. MR. GARSIDE?

4 **MR. GARSIDE:** YOUR HONOR, THIS IS NOT -- THIS IS NOT
5 A FIRST OFFENSE. SHE DOES HAVE A PRIOR THEFT CONVICTION.
6 SHE ALSO HAS SOME DRUG AND PARAPHERNALIA CHARGES. THIS IS A
7 CASE WHERE WE WOULD BE REQUESTING JAIL TIME.

8 WHEN I EXPRESSED THAT TO MR. LARSEN WHO WAS
9 INDICATING THAT WITH THAT HE MAY BE REQUESTING TO HAVE A
10 PRESENTENCE REPORT. OBVIOUSLY WITH HER CONDITION MAYBE
11 SOMETHING THAT NEEDS TO BE STAYED. BUT JUST BASED ON THE
12 NATURE OF THIS AND ALSO THE HISTORY OF HER CO-ACTOR, IT'S THE
13 CITY'S POSITION THAT THIS WARRANTS ADDITIONAL PUNITIVE
14 ACTION.

15 **THE COURT:** OKAY.

16 MR. LARSEN? IT SOUNDS LIKE YOU ARE REQUESTING A
17 PRESENTENCE REPORT BE PREPARED AND --

18 **MR. LARSEN:** HER PRIOR CONVICTION BACK IN '03.
19 JANUARY OF '03, SO ALMOST '02. AND -- ON A CASE SUCH AS
20 THIS, I DISAGREE WITH COUNSEL ABOUT WARRANTING JAIL.
21 CIRCUMSTANTIAL MATTER WHERE ONE ITEM, AT LEAST ONE ITEM
22 INDICATED WAS TAKEN. I DON'T THINK SHE NEEDS JAIL. SHE
23 NEEDS TO PAY RESTITUTION FOR THAT ITEM. AND IF YOUR HONOR IS
24 WILLING TO GRANT HER PROBATION, I WOULD ASK YOU TO GRANT HER
25 THAT PROBATION. IF YOUR HONOR IS INCLINED TO PUT HER IN

1 JAIL, CERTAINLY WE WANT A PRESENTENCE REPORT. BUT I DON'T
2 THINK YOUR HONOR IS INCLINED TO PUT HER IN JAIL.

3 **THE COURT:** I'M NOT SURE WHAT I'M INCLINED TO DO.
4 WHAT I'M INCLINED TO DO, GIVEN THE FACT THAT THE CITY SEEMS
5 TO BE PRESSING FOR JAIL TIME, I'M INCLINED TO PUT THIS MATTER
6 ON HOLD, HAVE A PRESENTENCE INVESTIGATION REPORT PREPARED. I
7 WOULD ASK YOU BECAUSE OF THE DEFENDANT'S STATUS IN TERMS OF
8 HER BEING YOU DESCRIBE HER AS EIGHT MONTHS PREGNANT, WE'RE
9 GOING TO NEED I THINK AT LEAST, YOU KNOW, SIX WEEKS TO HAVE
10 THIS PREPARED. SO I WOULD ASK YOU TO WAIVE THE 45-DAY PERIOD
11 IT MAY TAKE. YOU KNOW, I DON'T WANT HER TO BE COMING BACK
12 FIVE DAYS AFTER GIVING BIRTH.

13 (OVERTALKING.)

14 **THE COURT:** SO, WE'LL SET THIS -- YOU KNOW, I'M
15 HAPPY TO SET THIS OUT HOWEVER LONG IT NEEDS TO BE SET OUT.
16 WE NEED AT LEAST SIX WEEKS I THINK TO GET THE REPORT
17 PREPARED.

18 **MR. LARSEN:** END OF NOVEMBER IS THE DUE DATE. SO
19 WHATEVER.

20 **MR. GARSIDE:** OBVIOUSLY IF THE COURT DOESN'T GRANT
21 ANY INCARCERATION, WE WOULD NOT OBJECT TO ANKLE MONITORING
22 AND HOUSE ARREST, THOSE TYPES OF THINGS.

23 **THE COURT:** OKAY. SO LET'S SET THIS OUT -- FRANKLY,
24 LET'S SET THIS OUT FOR FIRST COUPLE WEEKS OF JANUARY
25 SOMETIME. THAT WOULD GIVE US PLENTY OF TIME TO GET THE

1 PRESENTENCE INVESTIGATION REPORT. I DON'T MEAN TO BE
2 SIGNALING BY THIS AMONG ANY OF YOU OR ANOTHER ABOUT WHETHER
3 THERE SHOULD OR SHOULDN'T BE INCARCERATION. I JUST FEEL
4 GIVEN THE SITUATION I DON'T WANT TO RUSH INTO A DECISION ON
5 THIS FOR ANY PARTICULAR REASON.

6 LET'S GO AHEAD AND SET THIS OUT IN JANUARY 6, 9:30
7 IN THE MORNING. AND IF THERE'S AN ISSUE, YOU WILL LET US
8 KNOW. WE'LL ASK THE ALLIANCE PROBATION TO PREPARE THE
9 PRESENTENCE SENTENCE. YOU'LL MAKE ARRANGEMENTS FOR THE
10 DEFENDANT TO MEET WITH THEM.

11 MR. GARSIDE, ANYTHING FURTHER?

12 **MR. GARSIDE:** NO.

13 (END OF PROCEEDINGS.)

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Tab C

SECOND DISTRICT COURT- LAYTON
DAVIS COUNTY, STATE OF UTAH

LAYTON CITY,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 081600406 MO
	:	
MICHELLE LEE SPURGER,	:	Judge: DAVID CONNORS
Defendant.	:	Date: January 6, 2009

PRESENT

Clerk: linl

Prosecutor: GARSIDE, STEVEN L

Defendant

Defendant's Attorney(s): L BRUCE LARSEN

DEFENDANT INFORMATION

Date of birth: November 26, 1983

Video

Tape Number: LDMC 010609 Tape Count: 11:43

CHARGES

1. RETAIL THEFT (SHOPLIFTING) - Class B Misdemeanor
Plea: Not Guilty - Disposition: 10/16/2008 Guilty

SENTENCE JAIL

Based on the defendant's conviction of RETAIL THEFT (SHOPLIFTING) a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 180 day(s).

SENTENCE FINE

Charge # 1	Fine: \$350.00
	Suspended: \$300.00
	Surcharge: \$36.49
	Due: \$50.00

Total Fine: \$350.00
Total Suspended: \$300.00

Case No: 081600406
Date: Jan 06, 2009

Total Surcharge: \$36.49
Total Principal Due: \$50
Plus Interest

SENTENCE FINE PAYMENT NOTE

The total amount of fine, restitution, attorney fees and payment to Alliance Probation is to be taken out of the cash bail that was posted. The balance of the cash bail is to be returned to JOHN DOUGLAS JR, the person who posted the cash bail.

Attorney Fees Amount: \$150.00 Plus Interest
Pay in behalf of: ATTY FEE LAYTON CITY

Restitution Amount: \$150.00
Pay in behalf of: ALLIANCE PROBATION SERVICES

Restitution Amount: \$124.00
Pay in behalf of: MERVYNS

SENTENCE TRUST NOTE

The Court orders the defendant to pay \$150.00 to Alliance Probation for preparation of the pre-sentence report

ORDER OF PROBATION

The defendant is placed on probation for 18 month(s).
Probation is to be supervised by Alliance Probation.
Defendant is to pay a fine of 50.00 which includes the surcharge.
Interest may increase the final amount due.
Pay fine to The Court.

PROBATION CONDITIONS

No violations of law except minor traffic offenses.
Submit to drug testing as required by treatment program.
Obtain a GED or high school diploma.
File proof of treatment completion with the Court.

Case No: 081600406
Date: Jan 06, 2009

Restructuring course. Sign up within 30 days

Dated this 13th day of Jan., 2009.


DAVID CONNORS
District Court Judge

