

2017

## **The State of Utah, Plaintiff/Appellee vs. Lewis Rene Judd, Defendant/Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

<p>THE STATE OF UTAH,          Plaintiff/APPELLEE,</p> <p>vs.</p> <p>LEWIS RENE JUDD,          Defendant/APPELLANT.</p>	<p>BRIEF OF APPELLANT</p> <p>(ANDERS BRIEF)</p> <p>District Court # 151500451          Appeals Case No. 20160666-CA</p>
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ANDERS BRIEF OF APPELLANT LEWIS RENE JUDD

This is an appeal from the Judgment and Sentence filed on or about July 29, 2016 by the Fifth Judicial District Court of Iron County, State of Utah, Judge Keith C. Barnes presiding and following jury trial. Counsel for Appellant files an Anders' Brief in compliance with *State v. Wells*, 2000 Utah App. 304, 13 P.3d 1056. The **Appellant is not incarcerated**, having already served the sentence imposed by the trial court.

APPELLATE COURTS  
 POSTMARKED

FEB 01 2017

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**IN THE UTAH COURT OF APPEALS**

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**THE STATE OF UTAH,**  
Plaintiff/APPELLEE,

vs.

**LEWIS RENE JUDD,**  
Defendant/APPELLANT.

**BRIEF OF APPELLANT**  
  
**(ANDERS BRIEF)**

District Court # 151500451  
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**IN THE UTAH COURT OF APPEALS**

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<b>THE STATE OF UTAH,</b> Plaintiff/APPELLEE,  v.  <b>LEWIS RENE JUDD,</b> Defendant/APPELLANT.	<b>APPELLANT'S BRIEF</b> <b>(Anders Brief)</b>  District Court # 151500451 Appeals Case No. 20160666-CA
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**JURISDICTION**

This appeal comes under the jurisdiction of the Utah Court of Appeals pursuant to Utah Code Ann., §78a-4-103(2)(e)(1953 as amended) in that it involves an appeal from a court of record in a criminal case which is not a first degree felony or capital felony. Counsel for Appellant was appointed to represent him on appeal.

This is an appeal from a court of record in a criminal case that includes a Third Degree FELONY (Retail Theft); and one Class B Misdemeanor (Contributing to the Delinquency of a Minor). The convictions were pursuant to a jury verdict.

Mr. Judd is represented by the current Public Defender Appellate Attorney for Iron County. Mr. Judd is not incarcerated, having served the sentence imposed upon him in the trial court. This appeal is Mr. Judd's first appeal of right.

This case does not involve multiple parties or multiple claims requiring certification pursuant to Rule 54(b) Utah Rules of Civil Procedure and Rule 9(c)(5) is not applicable.

### **ISSUES PRESENTED FOR APPEAL**

Issues presented for appeal in this case by Appellant are as follows:

ISSUE No. 1: Was trial counsel ineffective for failing to move to suppress or otherwise exclude Judd's alleged confession to the crimes obtained in an unrecorded interrogation?

ISSUE No. 2: Was trial counsel ineffective for failing to remove jurors who evidenced a potential bias or conflict of interest?

ISSUE No. 3: Was the evidence insufficient to support the jury verdict of guilty against Judd?

### **STANDARD OF REVIEW**

On behalf of Mr. Judd, his former counsel prepared and filed the Docketing Statement for this appeal. For purposes of this brief being prepared by subsequent public defender appellate counsel, the Standards of Review for the issues stated in the Docketing Statement are as follows:

For Issue No.1, the Standard of Review is: “It is the duty of an appellate court to examine the entire record and make an independent determination of the ultimate issue of voluntariness” of the statements made by the defendant. *Beckwith v. United States*, 425 U.S. 341, 348, 96 S.Ct. 1612, 1617, 48 L.Ed.2d 1 (1976)(citation omitted); see also *United States v. Hawkins*, 823 F.2d 1020, 1022-23 (7<sup>th</sup> Cir. 1987); *United States v. Wolf*, 813 F.2d 970, 974 (9<sup>th</sup> Cir. 1987); cf *United States v. McConney*, 728 F.2d 1195 (9<sup>th</sup> Cir. 1984)(*en banc*)(generally mixed questions of fact should be treated as questions of law and reviewed de novo by the appellate court), *cert denied*, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

For issue No. 2, the Standard of Review is: “To prevail on a claim of error based on the failure to remove a juror for cause, a defendant must demonstrate prejudice, viz show that a member of the jury was partial or incompetent.” *State v. Menzies*, 889 P.2d 393, 398 (Utah 1994); see *Ross v. Oklahoma*, 487 U.S. 81, 89, 108 S.Ct. 2273, 2278, 101 L.Ed. 2d, 80 (1988)

For issue No. 3, the Standard of Review for challenging the jury verdict is: Because an appellate court owes broad discretion to the fact finder, its power to review a jury verdict challenged on the grounds of insufficient evidence is limited. See *State v. Boss*, 2005 UT App 520, ¶ 9, 127 P.3d 1236. In reviewing the jury verdict, the appellate court reviews “the evidence and all reasonable inferences



drawn therefrom in a light most favorable to the verdict. *State v. Tanner*, 2009 UT App, ¶ 14, 221 P.3d 901 (quoting *State v. Rowley*, 2008 UT App 233, ¶ 15, 189 P.3d 109); *see also State v. Fedorowicz*, 2002 UT 67, ¶ 40, 52 P.3d 1194 (stating that court must assume jury believed evidence that supported verdict); *State v. Buck*, 2009 UT App 2 ¶ 9, 200 P.3d 674; *State v. Arave*, 2009 UT App 278, ¶ 8, 220 P.3d 182. A trial court abuses its discretion if its decision is beyond the limits of reasonableness. *See State v. Clopten*, 2009 UT 84 ¶ 6, 223 P.3d 1103; *State v. Alfatlawi*, 2006 UT App 511, ¶ 20, 153 P.3d 804. If the actions of the trial court are inherently unfair, it has also abused its discretion. *See State v. Valdez*, 2008 UT App 329, ¶ 4, 194 P.3d 195 (mem.), *cert denied*, 200 P.3d (Utah 2010).

The exercise of discretion “necessarily reflects the personal judgment of the trial court,” and an appellate court can properly find abuse only if “no reasonable [person] would take the view adopted by the trial court.” *State v. Butterfield*, 2001 UT 59, ¶ 28, 27 P.3d 1133, abrogated by *State v. Clopten*, 2009 UT 84, 223 P.3d 1103 (alteration in original) (*quoting State v. Brown*, 948 P.2d 337, 340 (Utah 1997)); *accord State v. Hight*, 2008 UT App 118, ¶ 2, 182 p.3d 922.

In this *Anders* type brief, counsel for Mr. Judd does not ascertain an appropriate complaint against trial counsel, the procedures of the court, facts or law involved in this case. There appears to be no evidence of judicial abuse of discretion and the defects listed in the Docketing Statement. The record does not

demonstrate even a *de minimis*<sup>1</sup> amount of evidence that will sustain the issues raised on appeal, nor does the record show that any error did adversely affect the outcome of the verdict.

There is no citation to the record demonstrating that the issues raised on appeal were in fact raised at the time of trial where the trial court could have weighed and considered them and corrected them.

The ineffective assistance of counsel claim, although not raised at the trial court level at any time, can be raised for the first time in this appeal. The Standard of Review for this claim is: “[I]neffective assistance of counsel claims that arise for the first time on appeal can only be reviewed in ‘unusual ... peculiar, narrow circumstances.’ *State v. Cook*, 881 P.2d 913, 915 n.3 (Utah App 1994)(quoting *State v. Humphries*, 818 P.2d 1027, 1029 (Utah 1991)(omission in original).” “Those circumstances exist when there is new counsel on appeal and there is an adequate record” for this Court to review defendant’s allegations of ineffective assistance of counsel. *State v. Johnson*, 823 P.2d 484, 487 (Utah App. 1991).

### **STATUTORY PROVISIONS**

There are no statutory provisions that counsel for Mr. Judd believes are applicable to the issues raised in this appeal.

### **STATEMENT OF THE CASE**

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<sup>1</sup>Correctly identified, the de minimis doctrine is “de minimis non curat lex.” Defined, the

Mr. Judd was convicted by jury after full trial, and the sentence was pronounced and filed in the court's record on July 29, 2016. The jury returned a verdict of guilty for Count 1, Retail Theft (shoplifting), a Third Degree Felony; and Count 2, Contributing to the Delinquency of a Minor, a Class B Misdemeanor.

A preliminary hearing was held on January 6, 2016 and Mr. Judd was bound over on the charges. There were no motions filed prior to the trial.

A jury trial was held on June 16, 2016. The jury was summoned and sworn prior to vore dire. The Jury was selected with no irregularities. Two jurors were excused for cause, 2 others dismissed by agreement of counsel and 8 jurors remained after preemptory challenges. Trial began (R.182 Line 3).

At sentencing, Mr. Judd was sentenced to the statutory maximum for the offenses, but was given credit for time served against the Class B Misdemeanor, and his maximum Third Degree sentence was stayed except for 180 days. Mr. Judd has served the sentence imposed by the court.

### **STATEMENT OF FACTS**

On the 13th day of August 2015, in Iron County, State of Utah, Mr. Judd was in the company of two other persons<sup>2</sup> who were shopping at the Cedar City Walmart store. An asset protection employee<sup>3</sup> was watching the three carefully as they went through the store adding things to the shopping basket they were

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<sup>2</sup> Tanisha and her mother, Krystal.

<sup>3</sup> Mr. Stewart is the employee's name.

pushing. One of the other shoppers (Tanisha) was observed selecting items and filling up the cart. (R. 193 Line 24.)

The employee testified “I stay for a minute to watch as she [Tanisha] selected items from the shelf as well as the Defendant taking items off the shelf and placing them in her shopping cart, his shopping cart.” (R. 196 Lines 4). He also testified “... I started following them, Tanisha and the defendant out the north doors. They went almost to the doors<sup>4</sup> before I came out and stopped them and pulled them aside, introduced myself as asset protection, and asked them if there was anything on the person or in the cart that hadn’t been paid for. They told me yes, that none of it had been paid for.” Tanisha was with Mr. Judd. (R. 199 Line 25.) The employee also testified that in his opinion, Tanisha was not by herself, but was with Mr. Judd. (R. 199 Line 25.)

After being pulled aside by the asset protection employee, “[t]hen we ask the individuals if there is anything that they have that they have not paid for at that time. And the individuals ultimately said yes, the items in the cart have not been paid for, they could not provide a receipt for those items. The defendant was one of those individuals.” (R. 202 Lines 2-4.)

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<sup>4</sup> Mr. Stewart stopped them 5 feet from the door. T at 201 Line 2.

Soon thereafter, a police officer<sup>5</sup> arrived. When he questioned the other two suspects<sup>6</sup> they each stated to him that they “had planned to come into the store and commit the theft that day. They each stated that they did not have money with them in order to purchase all the items that were in the carts. And that they had planned on committing the theft.” (R. 222 Lines 14-18.)

The following interchange is then described by the arresting officer.

Question: “Did the defendant make any statements about involving Tanisha and having three other children there? Answer: Yes, both Mr. Judd and Krystal stated that they were very sorry. They apologized to the children several times. And they stated to me as well that they were sorry and they knew they shouldn’t have broken the law with the children there.” (R. 222 Line 24.)

Officer Topham was questioned: “Officer Topham, at any time did the defendant say, deny that he was involved in the theft or tell you it was a big misunderstanding? Did he make any statements like that?” Answer: “Not to my knowledge, no sir. Not to my recollection.” (R. 222 Lines 17-21.) The officer stated that “at the time, I believed they were all very honest and open with me.” (R. 228 Lines 1-2.)

The Defendant testified in his own defense. He said “I just remember him tapping me on the shoulder, explaining who he is. I think I had to reach out and

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<sup>5</sup> Officer Matt Topham is his name.

<sup>6</sup> Krystal and Tanisha

grab Tanisha to get her to stop. I remember him asking if there was anything that was not paid for. And I looked at Tanisha, like, did you pay for this? I didn't say nothing. She had stated that there was stuff that she didn't pay for." (R. 234 Line 21 – R. 235 Line 1.) Then the defendant denied that he stated that the items were not paid for, contrary to other testimony. (R. 235 Line 7.)

The defendant next testified that he did not know that she was putting items inside the ottoman.<sup>7</sup> (R. 235 Line 15.) The defendant states in his testimony that he got his Miranda warning and then asked for counsel. (R. 236 Line 15 through R. 237 Line 2.) He denied that he made statements amounting to a confession. (R. 237 Line 19-24.)

One rebuttal witness was called (the asset protection employee) and testified that "I remember there was a discussion that they admitted to Officer Topham that they didn't have the money to pay for the goods, that they planned on stealing those."

### **SUMMARY OF ARGUMENTS**

Counsel for Appellant submits an *Anders* (*Anders v. California*, 386 U.S. 783, 87 S.Ct. 1397, 1811 L.Ed.2d 493 (1967)) brief, concluding that the appeal is non-meritorious. The first and second issues regarding ineffective assistance of counsel are defective. The jury had before it two witnesses and it most likely was

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<sup>7</sup> A larger item in the cart.

their statements from the encounter at Walmart that they chose to believe over the opposing testimony of the defendant.

The third issue, whether there was sufficient evidence to support the jury verdict of guilty against the defendant, is answered in the affirmative. The jury could have believed the witnesses and disregarded the testimony of the defendant. In any event, there is sufficient evidence to support the jury's verdict.

Mr. Judd raised no issue at the time of trial. He raises for the first time on appeal the issue of jury selection objections. That was too late. *State v. Dean*, 2004 UT 63, ¶13, 95 P.3d 276 (concluding defendant must preserve issue for appeal by sufficiently raising issue to district court). The issue should have been raised at the time of trial to be preserved for this appeal.

## **ARGUMENT**

### **SUBMISSION OF ANDERS BRIEF PURSUANT TO THE REQUIREMENTS OF STATE v. WELLS, 2000 Utah App. 304, 13 P.3d 1056**

Counsel for Appellant files this brief after the manner of *Anders v. California*, 386 U.S. 783, 87 S.Ct. 1397, 1811 L.Ed.2d 493 (1967), having furnished to this Court the details which counsel submits should be considered in the light that might arguably support an appeal. Counsel submits that the Certificate of Mailing will confirm that a copy of this brief was furnished to Appellant by mail after Appellant had sufficient opportunity to discuss, review and

provide comments or commentary. Counsel also submits the following considered points in reaching his determination that the appeal of Appellant is non-meritorious.

There is no basis for the claim of ineffective assistance of counsel within the record of the case.

In this case, appointed counsel provided an appropriate defense. The evidence within the case, established that the conviction for the offense charged in the Information would be properly sustained against Appellant. It was within the providence of the jury to believe, disbelieve and weigh testimony and evidence before it.

To determine whether Appellant received ineffective assistance of counsel at trial, it must be shown first that the representation fell below the objective standard of a reasonable professional, overcoming two presumptions: 1) that counsel rendered adequate assistance; and 2) exercised reasonable professional judgment; and second, then must show that counsel's errors were prejudicial. *See Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2052, 2056, 80 L.Ed. 2d674 (1984). The record shows no defect in the representation.

In *State v. Valdez*, 2004 UT App. 200, this Court noted that "Appellate review of counsel's performance must be highly differential, otherwise, the distorting effects of hindsight would produce too great a temptation for courts to



second-guess trial counsel's performance on the basis of an inanimate record. (Citations omitted.) Furthermore, we will not second-guess trial counsel's legitimate strategic choices, however flawed those choices might appear in retrospect." (Id. at ¶ 3.) The record fails to disclose prejudicial error or indicate that the result might have more likely been successful had the course chosen by counsel been a different one.

This Court has stood firm in requiring a showing of prejudicial harm, a difficult burden on its own to overcome when the record is silent such as in this case. When no prejudice is demonstrated in the record, it will not likely rely upon the general and conclusory statements from the Appellant. *See State v. Skidmore*, 2002 UT App. 51 ¶ 8.

The record here fails to demonstrate grounds upon which inadequacy of representation might be more closely scrutinized. *See State v. Parker*, 2000 UT 51. ¶ 10, 4 P.3d 778.

This Court has stated that it must sustain the trial court's judgment unless it is against the great weight of the evidence. *State v. Hartman*, 2004 UT App. 175 ¶ 1. *See also State v. Larsen*, 2000 UT App. 106 ¶ 10. There is also the requirement of marshalling the evidence in support of the trial court's findings or judgment and then demonstrating that the evidence and all reasonable inferences drawn therefrom is insufficient to support such a ruling. As has been demonstrated above, the

evidence was sufficient to sustain the jury verdict.

The remaining consideration is whether the convictions are supported by a quantum of evidence concerning each element of each crime as charged from which the fact finder may base its conclusion of guilt beyond a reasonable doubt. *See State v. Andreason*, 2001 UT App. 395. As has been demonstrated above, although there may have been a choice for the jury to make between which witness and what evidence to believe, they chose not to believe the statements of the defendant. The jury acted properly in this case. The weight of the evidence supports their verdict.

In an attempt to analyze the case for additional issues, the issue of sentencing becomes relevant for the appeal. Sentencing in this case was within the trial court's reasonable discretion. *See State v. Smith*, 842 P.2d 908 (Utah 1992).

This Court has recognized that as a limitation on the discretion of the trial court judge. *See State v. Howell*, 707 P.2d 115 (Utah 1985). This Court has also recognized that the sentencing judge may not exceed statutory or constitutional limits, he must consider all the legally relevant factors and his actions must not be so inherently unfair as to constitute an abuse of discretion. *See State v. Sotogondo*, 2003 UT App. 214 ¶ 3.

It appears from a consideration of the circumstances of the case that the judge gave full consideration to the Appellant when the court sentenced the

Appellant to the maximum sentence allowed by Utah law, and then stayed imposition of the full impact of the sentence by ordering jail time and giving credit for previous time served.


Most importantly, the record does not include any circumstance where the trial court exercised judgment or authority beyond the bounds of his discretion. The record is void of any evidence that the court relied on any unreliable information or any information that would have been inappropriate for him to consider. Consequently, the trial court's judgment in sentencing appears to have been proper. Therefore, counsel for Appellant finds and believes that any claim to the contrary to be non-meritorious.

### CONCLUSION

On the grounds and for the reasons set forth above, counsel for Appellant, having submitted this brief in the fashion of *Anders* as required by *State v. Wells*, 2000 Utah App. 304, 13 P.3d 1056, having exercised due diligence in attempting to support Appellant's appeal to the best of his ability, having performed a thorough examination of the record and transcripts in the case and having set forth those point and authorities disclosing a basis which might arguably support the appeal, having furnished the Appellant with a copy of this brief and providing him with an opportunity to augment or change the same. In other words, counsel for Appellant requests that action be taken by the Court of Appeals to either dismiss the appeal or

proceed to a decision on the merits together with such other further relief as appears equitable and proper.

DATED this 1<sup>ST</sup> day of February, 2017.

  
Dale W. Sessions, Esq.  
Counsel for Appellant

**MAILING CERTIFICATE**

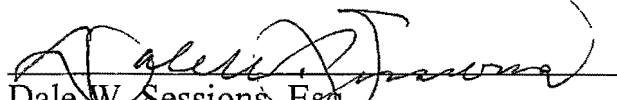
I certify that on the 1<sup>ST</sup> day of February, 2016, a true and complete photocopy of the foregoing *Anders* Brief was mailed by way of the U.S. Mail, postage fully pre-paid to:

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Dale W. Sessions, Esq.

# **ADDENDUM**

## **TRIAL TRANSCRIPT**

***MOUNTAIN WEST COURT REPORTING***

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IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR IRON COUNTY, STATE OF UTAH

_____	)	
STATE OF UTAH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 150500451
	)	
LEWIS RENE JUDD	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE KEITH C. BARNES  
FIFTH DISTRICT COURT  
CEDAR CITY HALL OF JUSTICE  
40 NORTH 100 EAST  
CEDAR CITY, UTAH 84720  
REPORTER'S TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL

JUNE 16, 2016

Transcribed by: Russel D. Morgan

000126

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EXAMINATION INDEX

JOSEPH L. STEWART

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OFFICER MATTHEW TOPHAM

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P R O C E E D I N G S

THE COURT: Good morning. And welcome to Fifth District Court. It's always an interesting process on jury trials watching prospective jurors come in. Sometimes you spread out throughout the courtroom, other times it's other ways. And right now it looks like we are all heavy to the right side. But there is no right or wrong way of doing that. It's just an observation.

The court appreciates you being here. This is a wonderful service that you are willing to provide. The court recognizes you being subpoenaed to be here but, nevertheless, the court recognizes that this is a service. And it's one that's greatly appreciated by this court as well as certainly from this community.

This is the time set for a trial in the matter of State of Utah vs. Lewis Judd. Case number 131500561.

Mr. Romeril, is the state ready to proceed in this matter?

MR. ROMERIL: Yes.

THE COURT: Thank you. Mr. Slack, is the defense ready to proceed?

MR. SLACK: We are.

THE COURT: Thank you. We have asked you to come and assist us in a jury trial here today. This is a criminal case in which the State has alleged that the

1 defendant has committed the crimes of retail theft and  
2 contributing to the delinquency of a minor. The defendant  
3 in this matter has entered a not guilty plea to these  
4 charges. At this time, I am going to ask our clerk, Miss  
5 Dawn, to read the jurors, the roll call of the jurors. And  
6 when your name is called, if you could kindly just raise  
7 your hand and state here or present, that will be  
8 appreciated.

9 THE CLERK: Jared Anderson.

10 MR. ANDERSON: Present.

11 THE CLERK: Katy Barnes.

12 MR. BARNES: Here.

13 THE CLERK: Monica Brunson.

14 MS. BRUNSON: Here.

15 THE CLERK: Breanne Clark.

16 MS. CLARK: Here.

17 THE CLERK: Victoria Colon.

18 MS. COLON: Here.

19 THE CLERK: Raymond Conger.

20 MR. CONGER: Here.

21 THE CLERK: Tiffany Copeland.

22 MS. COPELAND: Here.

23 THE CLERK: Kimberly Dunn.

24 MS. DUNN: Here.

25 THE CLERK: Jordan Earl.

1 MS. EARL: Here.

2 THE CLERK: Geraldine Fodren.

3 MS. FODREN: Here.

4 THE CLERK: Shirley Gubler.

5 MS. GUBLER: Present.

6 THE CLERK: Gary Hickman.

7 THE COURT: Is Gary Hickman present? Contempt  
8 citation.

9 THE CLERK: McKenzie Hyde.

10 MS. HYDE: Here.

11 THE CLERK: Mark Leavitt.

12 MR. LEAVITT: Here.

13 THE CLERK: Marci Lyles.

14 MS. LYLES: Here.

15 THE CLERK: Shauna Manchester.

16 MS. MANCHESTER: Here.

17 THE CLERK: Patricia McKittrick.

18 MS. MCKITTRICK: Here.

19 THE CLERK: Pamela Milk.

20 MR. MILLER: Here.

21 THE CLERK: Whitney Mitchell.

22 THE COURT: Is Whitney Mitchell present? Contempt  
23 citation.

24 THE CLERK: Karen Myers.

25 MS. MYERS: Here.

1 THE CLERK: She missed the video.

2 THE COURT: Okay. Thank you.

3 THE CLERK: Ryan Petersen.

4 MR. PETERSON: Here.

5 THE CLERK: Teresa Petty.

6 MS. PETTY: Here.

7 THE CLERK: Jeremy Roberts.

8 MR. ROBERTS: Here.

9 THE CLERK: Jeremiah Scheme.

10 MR. SCHEME: Here.

11 THE CLERK: James Terry. I'm sorry. He was  
12 excused. And Haylee Wilburn.

13 THE COURT: Is Haylee Wilburn present? Contempt  
14 citation. Thanks, Miss Dawn.

15 At this time, the court is going to ask all of you  
16 whose names have been read to stand. And please raise your  
17 right hands. The clerk of the court is going to administer  
18 two oaths to you. If you could please stand and raise your  
19 right hands. Thank you.

20 MS. PETTY: (Jury pool sworn twice.)

21 THE COURT: Thank you. You may be seated. There  
22 are certain qualifications that must be met before each of  
23 you could be considered or qualified to be a juror on this  
24 case. And the court is going to ask you four questions. If  
25 any of these apply, please let the court know. Are any of

1 you not citizens of the United States? No hands raised.

2 Are any of you not residents of Iron County? No  
3 hands raised.

4 Are any of you not able to read, speak and  
5 understand the English language? No hands are raised.

6 Are any of you under 18 years of age? No hands  
7 raised.

8 Have any of you ever been convicted of a felony?  
9 No hands raised.

10 There are certain reasons why you could be excused  
11 from today's proceedings. If there is an undue hardship,  
12 health concerns or whatnot. Do any of you or do any of you  
13 think that you would be incapable of participating in  
14 today's proceeding, and do any of you have any kind of  
15 physical or mental disability that would make it difficult  
16 to sit through trial? It is anticipated that this would be  
17 a one day trial. Please raise your hand if any of you feel  
18 you would not be able to participate here today for any of  
19 these reasons. Thank you. No hands raised.

20 Mr. Tyler Romeril is the prosecutor that  
21 represents the State of Utah. I'm going to give Mr. Romeril  
22 an opportunity to introduce himself as well as introduce his  
23 witnesses.

24 MR. ROMERIL: Good morning, ladies and gentlemen.  
25 My name is Tyler Romeril. I am employed by the Iron County

1 Attorney's Office. I am a prosecutor (inaudible) for a good  
2 eight years now. I have two witnesses today. I have  
3 Matthew Topham. He's an officer with the Cedar City Police  
4 Department. And Joseph Stewart. He's a teacher at SEA. He  
5 also works for Wal-Mart in the loss prevention department.

6 THE COURT: Thank you, Mr. Romeril.

7 Mr. Jeffrey Slack represents Mr. Judd. Mr. Slack  
8 is defense attorney, practices primarily in southern Utah.  
9 Mr. Slack, I would like to give you the opportunity to  
10 introduce yourself to the potential jurors as well as  
11 introduce your client.

12 MR. SLACK: Thank you. Like he said. I am  
13 attorney Jeff Slack. I practice here in Cedar City. My  
14 client's name is Lewis Judd. I have been here in Cedar City  
15 since about 2001, whether as a prosecutor like Mr. Romeril  
16 or a couple years later, becoming an attorney, just a local  
17 regular attorney here in town. Thank you.

18 THE COURT: Thank you, Mr. Slack.

19 At this time, the clerk is going to read off 20 of  
20 your names. When your names are called, the bailiff up here  
21 will instruct you on where to sit. If you could start on  
22 the back row farthest to my right, and if we could just go  
23 one, two, three down the back row, then we'll go to the  
24 middle row then the front row until we have 20 names called.  
25 These are randomly selected. Thank you.

1 THE CLERK: Jordan Earl. Jeremiah Scheme. Marci  
2 Lyles. Pamela Milk. Tiffany Copeland. Teresa Petty.  
3 Raymond Conger. Shirley Gubler. Patricia McKittrick.  
4 Jared Anderson. Breanne Clark. Kimberly Dunn. Monica  
5 Brunson. Geraldine Fodren. Ryan Peterson. Jeremy Roberts.  
6 Victoria Colon. Katy Barnes. McKenzie Hyde. Mark Leavitt.

7 THE COURT: Thank you, Miss Dawn. Thank you.  
8 Previously to your names being called out, you heard the  
9 attorneys introduce themselves to you as well as potential  
10 witnesses that the State and the defense may be calling.  
11 Again, Mr. Tyler Romeril represents the State of Utah. Mr.  
12 Jeffrey Slack represents Mr. Judd. And Mr. Romeril stated  
13 that Officer Topham, seated to his right, and Mr. Joseph  
14 Stewart may be testifying for the State. And then Mr. Slack  
15 introduced his client, Mr. Judd. Are any of you acquainted  
16 with any of these individuals? If so, could you please  
17 raise your right hand? Thank you.

18 First we will go to the back row. I didn't see  
19 many hands that went up, correct? Thank you. Mr. Anderson,  
20 who do you know?

21 MR. ANDERSON: I may have met Mr. Slack as a  
22 client and as a fundraiser. I don't know him personally.

23 THE COURT: Okay. You would say then that your  
24 association and/or dealings with Mr. Slack would have been  
25 an acquaintance?



1 MR. ANDERSON: Yeah. I work for a veterinary  
2 office. And some of our clients had the last name Slack. I  
3 think his wife has been in. And I may have met him at a  
4 fundraiser.

5 THE COURT: Okay. Would having that limited  
6 contact with Mr. Slack, would it make you feel uncomfortable  
7 if you were called as a juror here today?

8 MR. ANDERSON: No, sir.

9 THE COURT: Would you see any reason why you might  
10 give more weight or less weight to Mr. Slack's side because  
11 of those dealings?

12 MR. ANDERSON: No, sir.

13 THE COURT: And you could be impartial and listen  
14 to both sides?

15 MR. ANDERSON: Yes.

16 THE COURT: Thank you. Anyone else?

17 MR. ANDERSON: Not to my knowledge.

18 THE COURT: Okay. Thank you. Miss Clark, did you  
19 raise your hand as well?

20 MS. CLARK: Yeah.

21 THE COURT: Thank you. Who do you know?

22 MS. CLARK: Well, (inaudible) I see Mr. Stewart.

23 THE COURT: Okay.

24 MS. CLARK: Mr. Slack's client.

25 THE COURT: Okay.

1 MS. CLARK: Just (inaudible) my work.

2 THE COURT: It's the court's understanding that  
3 Mr. Stewart works for Wal-Mart. And are you also employed  
4 at Wal-Mart?

5 MS. CLARK: No.

6 THE COURT: And may I ask, when you said your  
7 work, what dealings would you have had?

8 MS. CLARK: I am a bank teller.

9 THE COURT: A bank teller at the Wal-Mart State  
10 Bank?

11 MS. CLARK: Um-hmm.

12 THE COURT: Thank you. Will counsel approach,  
13 please?

14 (Whereupon, a sidebar conference was held off the record.)

15 THE COURT: I'm just wondering maybe to ask how  
16 she might have dealings with your client or if I just asked  
17 it merely as a customer or should I just pose it that way  
18 and (inaudible)? Are you fine with that?

19 MR. SLACK: (Inaudible.)

20 THE COURT: Okay. Miss Clark, you mentioned that  
21 you -- are you still gainfully employed by State Bank?

22 MS. CLARK: I am.

23 THE COURT: And State Bank is simply a lessee out  
24 of that facility? Meaning, State Bank doesn't have any ties  
25 to Wal-Mart, certainly, as far as you are concerned,

1 correct?

2 MS. CLARK: Yes.

3 THE COURT: And you have, Mr. Stewart is someone  
4 who you have seen or you know?

5 MS. CLARK: (Inaudible.)

6 THE COURT: Okay. Have you had any more dealings  
7 with him as far as social dealings like at parties or  
8 anything like that?

9 MS. CLARK: No.

10 THE COURT: No? Thank you. And Mr. Judd, is he a  
11 client of State Bank?

12 MS. CLARK: (Inaudible.)

13 THE COURT: Okay. Any other dealings that you  
14 have had with Mr. Judd?

15 MS. CLARK: No.

16 THE COURT: Okay. If you were seated on the jury  
17 here today, would you feel uncomfortable if either Mr.  
18 Stewart or Mr. Judd, if they took the witness stand and you  
19 were a juror?

20 MS. CLARK: No.

21 THE COURT: Do you feel that going in that you  
22 would, you wouldn't feel any kind of loyalty or anything to  
23 one side or the other?

24 MS. CLARK: No.

25 THE COURT: Do you think you could be impartial

1 and listen to whatever evidence is presented and base your  
2 decision based on what you hear and not based on maybe who  
3 is saying it?

4 MS. CLARK: Yes.

5 THE COURT: Okay. Thank you. Anyone else as far  
6 as knowing any of the witnesses other than those two, Miss  
7 Clark?

8 MS. CLARK: Oh. No.

9 THE COURT: Okay. Thank you.

10 MS. CLARK: Sorry.

11 THE COURT: No, that's all right. Miss Dunn, did  
12 you raise your hand? Anyone else on the middle row?

13 MR. CONGER: Your Honor?

14 THE COURT: Yes.

15 MR. CONGER: I failed to recognize the fact that I  
16 do know Mr. Stewart.

17 THE COURT: Mr. Stewart?

18 MR. CONGER: Yes.

19 THE COURT: Okay. Thank you. Mr. Conger, is he  
20 an acquaintance? A friend?

21 MR. CONGER: He's a friend, fellow ward member.  
22 We have been associated for a while.

23 THE COURT: Okay. So, you've had various dealings  
24 with him?

25 MR. CONGER: Yeah.

1 THE COURT: Well, you have heard Mr. Romeril state  
2 that Mr. Stewart, may be a witness here today. So, he's  
3 going to testify and answer various questions. Do you think  
4 that by your association with Mr. Stewart that that would,  
5 you would put undue weight on what he would tell the court  
6 here today?

7 MR. CONGER: No. I'll remain unbiased.

8 THE COURT: Okay. The fact that you know him, and  
9 if he was to state something and the evidence didn't support  
10 that, you would feel comfortable, you know, going with what  
11 your mind tells you?

12 MR. CONGER: Yes.

13 THE COURT: Is there any reason why you think that  
14 if you were seated in this instance in Mr. Judd's shoes,  
15 that you would feel comfortable if you were called as a  
16 juror here today that you would look at the facts from both  
17 sides and you would make the decision based on what you  
18 think the evidence would support?

19 MR. CONGER: Well, I can't say for Mr. Judd, but I  
20 would (inaudible) listen to the facts and make my decision  
21 based on the facts and representations (inaudible).

22 THE COURT: Okay. Thank you, Mr. Conger. Front  
23 row, please. Okay. Mr. Peterson.

24 MR. PETERSON: Yes.

25 THE COURT: Who do you know?

1 MR. PETERSON: I know both Mr. Romeril and Mr.  
2 Slack just from my work. And my wife's cousins with Mr.  
3 Topham.

4 THE COURT: Okay. So, you have had some frequent  
5 dealings with Mr. Topham?

6 MR. PETERSON: Yeah, I have seen him at family  
7 functions and stuff so --

8 THE COURT: Okay. Do you think that with Mr.  
9 Topham, the fact that (inaudible) look at it, you are  
10 related to a certain extent, would it make it, would you  
11 feel uncomfortable if you were to see Mr. Topham, if you  
12 were seated as a juror after today, and maybe you went a  
13 different direction or didn't necessarily support what Mr.  
14 Topham says? Would you feel uncomfortable in that?

15 MR. PETERSON: No.

16 THE COURT: No? And as far as your dealings with  
17 Mr. Slack and Mr. Romeril, tell me a little bit more about  
18 that matter.

19 MR. PETERSON: I'm a postman here in town, so I  
20 have delivered to both their offices. I currently deliver  
21 to the Attorney General's Office. I don't see them  
22 necessarily on a regular basis, but --

23 THE COURT: Certain pleasantries would be given  
24 back and forth?

25 MR. PETERSON: (Inaudible.)

1 THE COURT: Okay. Anything from your work related  
2 contact with Mr. Slack or Mr. Romeril that would make you  
3 feel uncomfortable if you were seated as a juror here today?

4 MR. PETERSON: No.

5 THE COURT: If you were in Mr. Judd's shoes,  
6 should he feel comfortable having someone like yourself, if  
7 you were seated as a juror, that you would listen to the  
8 evidence and the facts from both sides before you would make  
9 any kind of decision?

10 MR. PETERSON: I think he should.

11 THE COURT: Okay. Anyone else? Thank you. Mr.  
12 Roberts?

13 MR. ROBERTS: I don't know if he remembers or not,  
14 but I went to Richfield High School and was on the wrestling  
15 team with Officer Topham.

16 THE COURT: Did you pin him a lot of times?

17 MR. ROBERTS: I don't remember. And more  
18 recently, my college days I was friends with his wife, Tori  
19 Lynn, so --

20 THE COURT: Okay. Thank you. Went to school.  
21 Did you guys hang around the same -- hang around each other  
22 in school or different friends?

23 MR. ROBERTS: No. Pretty much different friends.  
24 (Inaudible) team.

25 THE COURT: Okay. Would that past affiliation,

1 association would that sway you if you were seated as a  
2 juror?

3 MR. ROBERTS: No.

4 THE COURT: No? You could listen to Mr. Topham  
5 maybe testify. And you would base your decision based on  
6 what you hear here in court and not because of being on a  
7 wrestling team from a number of years ago?

8 MR. ROBERTS: No.

9 THE COURT: Can you think of any reason why you  
10 would not be fair if you were seated?

11 MR. ROBERTS: No.

12 THE COURT: Okay. Thank you. Anyone else? Okay.  
13 Thank you. Front row? Miss Hyde.

14 MS. HYDE: So, I know Officer Topham. He was in  
15 one of my old wards.

16 THE COURT: So, in a church setting?

17 MS. HYDE: Um-hmm.

18 THE COURT: Okay. Thank you.

19 MS. HYDE: I also know --

20 THE COURT: Mr. Slack?

21 MS. HYDE: -- Mr. Slack from church.

22 THE COURT: From church as well? Okay. In the  
23 church setting, did you, other than the normal, I guess it  
24 was not really a normal, but as far as that church setting,  
25 was it more acquaintances.



1 MS. HYDE: Yeah.

2 THE COURT: Any time any more closer affiliation,  
3 parties at each other's house anything like that?

4 MS. HYDE: I mean, yeah, Officer Topham, his wife  
5 and I are friends, but I don't see a lot of him.

6 THE COURT: Okay. As far as friends, do you go  
7 out at times together?

8 MS. HYDE: We did.

9 THE COURT: You did?

10 MS. HYDE: We haven't since they moved, but --

11 THE COURT: Okay. Would you feel uncomfortable if  
12 you were seated as a juror and Mr. Topham testified?

13 MS. HYDE: No.

14 THE COURT: You would be able to listen to the  
15 evidence and listen to the witness testimonies here today.  
16 And you would base your decision based on what you hear and  
17 what the evidence supports?

18 MS. HYDE: Yes.

19 THE COURT: Any reason why you think you could not  
20 be seated and be a fair juror?

21 MS. HYDE: No.

22 THE COURT: Okay. Anyone else?

23 MS. HYDE: No.

24 THE COURT: Okay. Thank you. Miss Lyles?

25 MS. LYLES: So, I work at a pediatric office. And

1 some of the children who come to the office. But I haven't  
2 really dealt with any of the parents. But I do know,  
3 (inaudible).

4 THE COURT: Okay. And that would be with Mr. --

5 MS. LYLES: Topham.

6 THE COURT: -- Topham? Okay.

7 You are a popular man today, Mr. Topham. I'm not  
8 saying he's usually not popular. I don't want it to sound  
9 like he's not a popular guy. But with that professional  
10 relationship, would that make you feel uncomfortable if you  
11 were seated as a juror? No? And would you be able to be  
12 fair to both sides? Yes? And listen to all the evidence  
13 and the testimonies that would be presented, and you would  
14 base your decision based on what you hear in court and not  
15 because of any past or current association?

16 MS. LYLES: Yes.

17 THE COURT: Okay. Thank you. Anyone else? Okay.  
18 Miss Fodren?

19 MS. FODREN: Yes.

20 THE COURT: I want to make sure, are you hearing  
21 everything okay?

22 MS. FODREN: Yes. Some words I kind of, I don't  
23 understand or miss. I don't know how to describe it.

24 THE COURT: Okay. Are you hearing everything that  
25 I am saying?

1 MS. FODREN: Kind of. Yeah, the first part when  
2 you first started, I couldn't get this on good. But I have  
3 a hard time hearing.

4 THE COURT: Okay. Right now I'm just asking you  
5 and your other fellow potential jurors questions.

6 MS. FODREN: Yes.

7 THE COURT: And I just want to find out if any of  
8 you know any of the attorneys.

9 MS. FODREN: No.

10 THE COURT: And any potential witnesses.

11 MS. FODREN: No.

12 THE COURT: And you were able to get their names  
13 and so you know, who I am referring to?

14 MS. FODREN: See, I missed that part. Can you  
15 repeat that again?

16 THE COURT: Yes, I can. You don't know the  
17 attorneys, correct?

18 MS. FODREN: No.

19 THE COURT: And you don't know Mr. Topham?

20 MS. FODREN: No.

21 THE COURT: A Mr. Joseph Stewart?

22 MS. FODREN: No.

23 THE COURT: And you don't know Mr. Judd as well,  
24 who is Mr. Slack's client? Okay. Thank you. If there is  
25 anything that you missed just raise your hand, okay? And

1 I'll try to do a little better job of speaking a little  
2 louder and more clear. Okay? Thank you.

3 My next question has to do with looking at you  
4 there in the jury box. And that is the other fellow  
5 potential jurors. I realize we live in a small community.  
6 In small communities, we know a lot of people, we are  
7 friendly. In my opinion, in nature, will greet people, say  
8 hello. But the court wants to find out if any of you have  
9 more than just an acquaintance relationship with anyone else  
10 that could possibly be seated as a juror. For example,  
11 there might be a neighbor. You might be close friends with  
12 some of the potential jurors here.

13 So, let me ask you, are any of you affiliated or  
14 know any of the other potential jurors here more than just  
15 say an occasional hello? Okay. Thank you. I'm going to  
16 start on the back row with you, Mr. Scheme. Who do you  
17 know?

18 MR. SCHEME: Kinsey Hyde really well.

19 THE COURT: Okay. And how do you know Miss Hyde?

20 MR. SCHEME: Several ways.

21 THE COURT: Okay.

22 MR. SCHEME: Her husband and I are very closely  
23 affiliated at work. She and my wife are very good friends,  
24 work out together. Same ward, same neighborhood.

25 THE COURT: Okay. If you were seated as a juror

1 and Miss Hyde was seated as a juror, and Miss Hyde viewed  
2 the facts one way and you viewed the facts another way, the  
3 fact that she views it differently, would that make you feel  
4 uncomfortable to advocate for your position over her's?

5 MR. SCHEME: Probably not, no. I don't believe  
6 so.

7 THE COURT: Okay. I need to find out a little bit  
8 about the probably not, you don't believe so. I realize  
9 that very well can mean no, I would think for myself.

10 MR. SCHEME: Generally, yeah. I have never been  
11 put in that situation. But I don't believe it would make a  
12 difference though.

13 THE COURT: Would it make you possibly feel  
14 uncomfortable after an experience if you thought this way  
15 and Miss Hyde felt another way, would you feel uncomfortable  
16 seeing Miss Hyde after this?

17 MR. SCHEME: No.

18 THE COURT: Okay. Thank you. Anyone else on the  
19 back row? Yes, Miss Milk.

20 MS. MILK: Patty McKittrick. We worked together  
21 at Bryan head for several years. Formed a relationship. I  
22 see her at Smith's all the time. And we know each other  
23 well enough that we would ask about each other, you know,  
24 friends that we have known over the years and whatnot. And  
25 do we go out and socialize? No.

1 THE COURT: Okay. If you were seated on the jury  
2 with Miss McKittrick, would it make you feel uncomfortable?

3 MS. MILK: No.

4 THE COURT: If you, during potential jury  
5 deliberations, if you found that she thought differently  
6 than you, would you feel because of that you might lean her  
7 way or lean the other way for that matter?

8 MS. MILK: I hope not.

9 THE COURT: Okay. When you say hope not, explain  
10 a little bit about that. Could you possibly feel  
11 uncomfortable?

12 MS. MILK: I honestly can't tell you one way or  
13 the other.

14 THE COURT: Okay. So, it's possible that you  
15 might think one way and Miss McKittrick may think another  
16 way, and it's possible that you might lean going her way  
17 because she is advocating one position?

18 MS. MILK: I honestly don't know how (inaudible)  
19 in that situation.

20 THE COURT: Okay. All right. Court appreciates  
21 you being candid. That's what the court wants you to be.  
22 Anyone else on the top row? Okay. Miss McKittrick, you  
23 have heard Miss Milk state how she knows you. Same question  
24 to you. If you were both seated on the jury, and you both  
25 saw things differently, would you feel like you would want

1 to concede to how Miss Milk's thinking because of your  
2 knowing her?

3 MS. MCKITTRICK: I would not.

4 THE COURT: And would you feel comfortable  
5 advocating for a position because of what you heard and  
6 because of what you think is right?

7 MS. MCKITTRICK: Yes.

8 THE COURT: Regardless of what Miss Milk would  
9 say?

10 MS. MCKITTRICK: Yes.

11 THE COURT: Okay. Thank you. Is there anyone  
12 else? Yes.

13 MS. MCKITTRICK: I also, I can't think of --

14 THE COURT: Miss Copeland.

15 MS. MCKITTRICK: Yes.

16 THE COURT: Do you know Miss Copeland?

17 MS. MCKITTRICK: Not personally -- I work at the  
18 grocery store. And I have known them for years.

19 THE COURT: Okay. So, on a, more on a  
20 acquaintance friend basis as far as hello, how are you?

21 MS. MCKITTRICK: Yes, not socially.

22 THE COURT: But not socially; is that correct?

23 MS. MCKITTRICK: Correct.

24 THE COURT: Would you feel uncomfortable if Miss  
25 Copeland was also a fellow juror?

1 MS. MCKITTRICK: No.

2 THE COURT: You would be able to listen to, again,  
3 the facts and evidence and base your decision based on what  
4 you hear and not a position maybe that Miss Copeland may  
5 have different than yours?

6 MS. MCKITTRICK: Absolutely.

7 THE COURT: Okay.

8 MS. MCKITTRICK: Go on my own.

9 THE COURT: Okay. Thank you. Anyone else on the  
10 second row? Yes, Miss Brunson?

11 MS. BRUNSON: I know Breanne.

12 THE COURT: Okay. How do you know Miss Clark?

13 MS. BRUNSON: We lived near each other  
14 (inaudible).

15 THE COURT: Okay. And more of acquaintance  
16 neighbors?

17 MS. BRUNSON: Yes.

18 THE COURT: Nothing more than maybe what you've  
19 just stated, correct? Yes?

20 MS. BRUNSON: Yes.

21 THE COURT: Would you feel uncomfortable if you  
22 were seated as a juror with Miss Clark?

23 MS. BRUNSON: No.

24 THE COURT: And similar question what I pose to  
25 others along these lines, if you advocated for one position



1 and Miss Clark was advocating for another, would you feel  
2 swayed because of your past affiliations with Miss Clark?

3 MS. BRUNSON: No, I would not.

4 THE COURT: Okay. Miss Clark, you know, Miss  
5 Brunson?

6 MS. CLARK: Yes.

7 THE COURT: And if you both were seated on a jury,  
8 would you feel comfortable advocating for what you think the  
9 evidence would show?

10 MS. CLARK: Yes.

11 THE COURT: Would there be any reasons this court  
12 should have if you were both seated that you would not be  
13 able to look at the evidence and advocate for what you  
14 think?

15 MS. CLARK: No, I would (inaudible) what I think.

16 THE COURT: Okay. Thank you. Anyone else on the  
17 second row? Thank you. Front row? Oh.

18 MS. HYDE: Just me.

19 THE COURT: Okay. I noticed that earlier. So,  
20 let me talk about Mr. Scheme for a minute. Okay? It sounds  
21 like you, you know, Mr. Scheme fairly well?

22 MS. HYDE: Yes.

23 THE COURT: So, it sounds like you will definitely  
24 see both, if you were seated as jurors today, you would see  
25 him again certainly?

1 MS. HYDE: Yes.

2 THE COURT: The court doesn't know what  
3 discussions or maybe, the court doesn't know if both of you  
4 were seated how you would view the evidence or how Mr.  
5 Scheme would view the evidence. But do you feel that you  
6 would be able to listen to the evidence here today,  
7 regardless of how Mr. Scheme would see things, that you  
8 would base your decision and you would advocate for what you  
9 hear and what you think?

10 MS. HYDE: Yes.

11 THE COURT: And is there any reason why you think  
12 that you and Mr. Scheme, you can only speak for you, that  
13 you could not be seated if Mr. Scheme was seated as well?  
14 Okay. Thank you. Anything else? Thank you. May counsel  
15 approach, please?

16 (Whereupon, a sidebar conference was held off the record.)

17 THE COURT: Any concerns? Or move for cause on  
18 any of them?

19 MR. SLACK: (Inaudible.)

20 THE COURT: Okay. I had a note by her, just that  
21 there's a possibility where, you know, and I think we are,  
22 number-wise, not that that should be a reason, but she did  
23 open, but she did give the indication that she might be  
24 swayed or go that way. So, I think the court would grant  
25 that request and have her removed for cause. Okay?

1 MR. SLACK: (Inaudible.)

2 THE COURT: So, the concern is on, I forgot, which  
3 (inaudible)? Okay. Yeah. Okay. Do you want to weigh in  
4 on that?

5 MR. ROMERIL: (Inaudible.)

6 THE COURT: And they are not, I don't know how one  
7 looks at it. They are not related as far as literally  
8 related. In Utah we always refer to as relatives but they  
9 are not. Okay. I think you are -- okay. Well, could be I  
10 don't know if it's getting picked up, but I think it  
11 probably is -- so, I think that your concerns are noted on  
12 these two witnesses here, Jeremy Roberts and Ryan Peterson,  
13 that the court's not going to find that they should be  
14 removed for cause. However, the court is going to grant  
15 your request on Miss Pamela Milk. Okay? Thank you.

16 Miss Milk. Thank you. I didn't mean to startle  
17 you. Sorry. The court appreciates your being here today.  
18 And the court greatly appreciates your being honest and your  
19 candor about the questions that the court posed to you. The  
20 court is going to thank you for your service here today and  
21 ask that you be removed today. And you are free to go. But  
22 thank you for being here. Okay? Just so you know, it's not  
23 a pass/fail. You did just fine.

24 MS. MILK: Pardon?

25 THE COURT: I just said it's not a pass/fail. I

1 don't want you to think you have done something wrong, you  
2 haven't. Thanks again.

3 The evidence today will include the testimony of  
4 one or more police officers. Are you or is any member of  
5 your family or any close friend involved in any type of law  
6 enforcement activity? Please raise your hand. Okay. Thank  
7 you. Start on the back row. Miss Petty?

8 MS. PETTY: My son-in-law is a highway patrol  
9 officer.

10 THE COURT: Great. And where is he a highway  
11 patrol officer?

12 MS. PETTY: Cedar City.

13 THE COURT: Yes. And you will hear testimony  
14 today of Mr. Topham, who is employed at the Cedar City  
15 Police Department. And he will answer various questions  
16 both, posed by both attorneys. The fact that he is in law  
17 enforcement, would that give undue weight or undue influence  
18 to answers that he would give because he is a police  
19 officer?

20 MS. PETTY: No.

21 THE COURT: No? You would be able to listen to  
22 Mr. Topham and listen to what he says and based on the  
23 evidence that is presented that is what you would base your  
24 opinion or ultimate decision on, not that the fact Mr.  
25 Topham is law enforcement?

1 MS. PETTY: Yes.

2 THE COURT: Thank you. Anyone else on the back  
3 row? Miss Lyles?

4 MS. LYLES: I have known a lot of ward members  
5 that are in law enforcement.

6 THE COURT: Okay. Here locally?

7 MS. LYLES: Um-hmm.

8 THE COURT: And with the Cedar City P.D.,  
9 Sheriff's Department?

10 MS. LYLES: Highway patrol.

11 THE COURT: Okay. I guess you are a protected  
12 person in your neighborhood, huh? Miss Lyles, would any of  
13 them be considered close friends of yours?

14 MS. LYLES: Just acquaintances in the ward.

15 THE COURT: Okay. And with those acquaintances  
16 that you have, would you feel that if Mr. Topham takes the  
17 witness stand here today, because of those relationships,  
18 acquaintances that you have, that you would give undue  
19 weight to his testimony because he's law enforcement? No?

20 MS. LYLES: (Inaudible.)

21 THE COURT: And you would be able to listen to the  
22 evidence, listen to the answers that Mr. Topham would give,  
23 and you would base your opinion or decision based on what  
24 you hear and not because Mr. Topham being law enforcement?

25 MS. LYLES: Right.

1 THE COURT: Thank you. Anyone else on the top  
2 back row? Thank you. Middle row? Okay. Thank you.

3 Miss McKittrick, who do you know in law  
4 enforcement?

5 MS. MCKITTRICK: My boyfriend's son is a police  
6 officer in Vegas. I don't know if that matters.

7 THE COURT: Okay. Well, it may matter. It may  
8 not matter. Because Mr. Topham will be testifying here  
9 today, he is a officer with the Cedar City Police  
10 Department, because your boyfriend's son is an officer in  
11 the Las Vegas P.D., would you find yourself wanting to  
12 believe Mr. Topham because of your boyfriend's son being law  
13 enforcement?

14 MS. MCKITTRICK: No.

15 THE COURT: And you would be able to listen to the  
16 evidence, listen to the testimony and base your decision  
17 based on what you hear here today?

18 MS. MCKITTRICK: Yes.

19 THE COURT: Thank you. Any reservations you would  
20 have if you were seated as a juror because of that?

21 MS. MCKITTRICK: No.

22 THE COURT: Thank you. Anyone else? Yes, Mr.  
23 Anderson?

24 MR. ANDERSON: No longer a close acquaintance, but  
25 my ex-wife's father was a police officer in Moscow, Idaho.

1 THE COURT: Thank you. Would that affiliation,  
2 association, would that make you biased if Mr. Topham takes  
3 the witness stand and you are called as a juror?

4 MR. ANDERSON: No.

5 THE COURT: And you would be able to listen to  
6 what Mr. Topham would say, and you would base your decision,  
7 or your opinion would be made up because of what was said  
8 and what evidence was presented not because of Mr. Topham  
9 being law enforcement?

10 MR. ANDERSON: Yes.

11 THE COURT: Thank you. Yes, Miss Dunn?

12 MS. DUNN: I (inaudible).

13 THE COURT: Okay. That's okay. Is he here in the  
14 Cedar City P.D.?

15 MS. DUNN: Enoch.

16 THE COURT: Enoch? And do you know Officer Topham  
17 then?

18 MS. DUNN: I don't think so. I have heard the  
19 name I think, maybe, but I don't know.

20 THE COURT: Okay. Well, your husband, being that  
21 his profession is law enforcement, your husband probably,  
22 you know, he testifies at various hearings and that quite  
23 often, the fact that a fellow law enforcement person would  
24 be taking the witness stand here today, even though you  
25 don't know Officer Topham, but would you think that because

1 he is in law enforcement that everything he says must be the  
2 truth?

3 MS. DUNN: Is that a trick question?

4 THE COURT: It's not a trick question. It may  
5 sound like a trick question. It may not have --

6 MS. DUNN: Can you repeat the question?

7 THE COURT: Yes, I'll rephrase it. Would you  
8 think that because Officer Topham is in law enforcement, if  
9 he answered questions that everything that would be, that  
10 you would believe, you would think that his position that  
11 may be different from someone's else's position, but because  
12 he's in law enforcement you are going to say automatically,  
13 well, he's in law enforcement so that's probably exactly  
14 what the truth is? Yes?

15 MS. DUNN: I would agree with that.

16 THE COURT: Okay. Thank you. Anyone want to  
17 remove for cause?

18 MR. SLACK: I would.

19 THE COURT: Okay. Any objection from the State?

20 MR. ROMERIL: No.

21 THE COURT: Okay. Miss Dunn, thank you for being  
22 here today. And the court appreciates your answering the  
23 questions. And you may be excused.

24 MS. DUNN: Okay.

25 THE COURT: Thank you. Is there anyone else?



1 Yes.

2 LADY JUROR: (Inaudible) housing association, like  
3 UHP officers, just friends and everything.

4 THE COURT: Okay. Just acquaintances?

5 LADY JUROR: (Inaudible.)

6 THE COURT: Okay. Anything from those  
7 associations or dealings that would make it uncomfortable if  
8 you were seated as a juror?

9 LADY JUROR: No.

10 THE COURT: That you would feel more inclined to  
11 give more weight to a law enforcement's testimony?

12 LADY JUROR: No.

13 THE COURT: Okay. Thank you. Front row? Yes,  
14 Mr. Peterson.

15 MR. PETERSON: My connection with Matt that we  
16 spoke of earlier. And I also have a separate cousin that  
17 works as a sheriff's deputy.

18 THE COURT: Okay. Sheriff's deputy --

19 MR. PETERSON: In our county.

20 THE COURT: Because of those associations and  
21 friendships, do you think you would give undue weight to  
22 testimony of a law enforcement officer over someone else  
23 just because they are in law enforcement?

24 MR. PETERSON: Absolutely not.

25 THE COURT: You could be fair and listen to

1 whatever the evidence is and that's what you would base your  
2 decision on?

3 MR. PETERSON: Yes.

4 THE COURT: Okay. Thank you. Mr. Roberts?

5 MR. ROBERTS: I have two friends that are deputies  
6 on the Sevier County Sheriff's Department. And I have one  
7 that's a police officer in Nephi City. Then one with a  
8 highway patrolman up on the Wasatch Front.

9 THE COURT: Okay. Because your friends are in law  
10 enforcement, and a fellow law enforcement individual like  
11 Mr. Topham, if he takes the witness stand here today, and  
12 you are a juror, would you give weight to the fact that he's  
13 in law enforcement, more weight than to someone else just  
14 because Officer Topham is in law enforcement?

15 MR. ROBERTS: No.

16 THE COURT: You would be able to listen to --

17 MR. ROBERTS: Both sides.

18 THE COURT: And that's what you would base your  
19 decision on, based on what the evidence --

20 MR. ROBERTS: Right, on the evidence and  
21 (inaudible).

22 THE COURT: Okay. Thank you. Anyone else? Yes,  
23 Miss Hyde, Miss Colon?

24 MS. COLON: Am I first?

25 THE COURT: Yes.

1 MS. COLON: My uncle was the Washington County  
2 Sheriff. And, plus, my husband and I have a handful of  
3 close friends that are on different police departments in  
4 the area.

5 THE COURT: Okay. Would those friends and people  
6 that you know who have been in law enforcement or currently  
7 in law enforcement, would you feel comfortable if you were  
8 seated as a juror?

9 MS. COLON: Yes.

10 THE COURT: If you were in Mr. Judd's shoes, would  
11 you feel that he should feel comfortable if you are a juror  
12 that you would listen to the evidence and listen to the  
13 testimony of the witnesses and regardless of what their  
14 position as law enforcement or lay witness, that you would  
15 listen to the facts, and you would base your decision based  
16 on what you hear here today and not because of someone's  
17 title?

18 MS. COLON: Yeah.

19 THE COURT: Okay. Thank you. Miss Hyde.

20 MS. HYDE: I just have a couple friends that are  
21 on the Cedar City Police Department, including Mr. Topham,  
22 that are acquaintances, neighbors, do things with sometimes.

23 THE COURT: Okay. Would you feel uncomfortable if  
24 you were a juror? Would you be able to base your decision  
25 based not on title but on what the evidence presents?

1 MS. HYDE: Yes.

2 THE COURT: And if that was contrary to law  
3 enforcement, you could do that?

4 MS. HYDE: Yes.

5 THE COURT: Okay. Thank you. Anyone else? Yes,  
6 Mr. Leavitt?

7 MR. LEAVITT: I have some friends in my  
8 neighborhood. One that is a part-time officer for Brian  
9 Head. I have a highway patrolman that is in our  
10 neighborhood that I know. I know the SUU police department  
11 real well. I have a brother-in-law in Monticello that was  
12 the chief of police. You know, police officers in San Juan  
13 County. I know most of them real well. That's where I used  
14 to live.

15 THE COURT: Okay. Thank you, Mr. Leavitt. Would  
16 you feel comfortable being seated as a juror if you were  
17 selected?

18 MR. LEAVITT: Yes.

19 THE COURT: And would you listen to all the  
20 evidence from all the witnesses?

21 MR. LEAVITT: Yes.

22 THE COURT: And because Mr. Topham is an officer,  
23 the fact that he's an officer, would you just assume that  
24 you would make a decision based before he even takes the  
25 witness stand?

1 MR. LEAVITT: No.

2 THE COURT: And if you were Mr. Judd, do you think  
3 he should feel comfortable knowing that you would listen to  
4 all the evidence and you would base your decision based on  
5 what's presented?

6 MR. LEAVITT: Yes. If I was him, I wouldn't worry  
7 about it.

8 THE COURT: Okay. Thank you. Anyone else? Have  
9 any of you ever been selected or been on jury duty before?  
10 Thank you. Mr. Conger, you were, been on jury trial before?

11 MR. CONGER: Yes.

12 THE COURT: Was it a civil or a criminal matter?

13 MR. CONGER: I think it was a criminal matter. A  
14 matter of intoxication, driving under the influence.

15 THE COURT: Okay. Do you remember approximately  
16 how many years ago?

17 MR. CONGER: About four years ago.

18 THE COURT: And do you remember what the verdict  
19 was, guilty or not guilty?

20 MR. CONGER: It was guilty.

21 THE COURT: Is there anything from that experience  
22 that would -- maybe I can ask you, was it a positive  
23 experience? It may not have been what you wanted to do, but  
24 was it a negative experience of your serving on the jury?

25 MR. CONGER: No, I enjoyed the time spent there.

1 It was interesting, you know, weighing out the facts and  
2 evaluating the evidence. You know, there was -- there was a  
3 pretty fine line between guilty and not guilty. And there  
4 were a certain few things that just, you know, steered us  
5 all towards the -- you know, it took us a little while to  
6 deliberate.

7 THE COURT: Okay. Thank you. Have you served on  
8 a jury other than that?

9 MR. CONGER: No.

10 THE COURT: Okay. Thank you. Anyone else on the  
11 back row? On the middle row, please? Yes. Mr. Anderson,  
12 you served on a jury before?

13 MR. ANDERSON: Yes, civil case.

14 THE COURT: What county was that in?

15 MR. ANDERSON: It was in Ada County, Idaho.

16 THE COURT: How many years ago was that,  
17 approximately?

18 MR. ANDERSON: Fifteen.

19 THE COURT: Fifteen years ago? Do you remember  
20 the facts of that case? Was it a personal injury? Was it  
21 a --

22 MR. ANDERSON: It was an insurance fraud. Breach  
23 of contract. Insurance company was claiming the plaintiff  
24 was, had submitted a false claim.

25 THE COURT: Do you remember what the verdict was?

1 MR. ANDERSON: Yeah. They -- we found against the  
2 insurance company and for the plaintiff.

3 THE COURT: Okay. Was it a negative experience  
4 serving on the jury?

5 MR. ANDERSON: No.

6 THE COURT: Was there any concerns the court  
7 should have because you had already served as a juror if you  
8 were to serve as a juror here today?

9 MR. ANDERSON: I don't believe so.

10 THE COURT: Okay. Thank you. Anyone else on the  
11 middle row? On the front row? Yes, Miss Copeland.

12 MS. COPELAND: I served on the jury in Washington  
13 County. It's been about 15 years ago. It was a criminal  
14 case. A restraining order issue. And we found the  
15 gentleman guilty.

16 THE COURT: Okay. Was it a negative experience  
17 that you had serving as a juror?

18 MS. COPELAND: No.

19 THE COURT: Anything from that experience that  
20 would make it so you feel you won't be qualified here today  
21 if you were chosen as a juror?

22 MS. COPELAND: No.

23 THE COURT: Okay. Thank you. Anyone else? The  
24 purpose of this process, we call it the voir dire process,  
25 is to try to gather information from you so that the court

1 can feel comfortable on knowing that you can be fair-minded,  
2 and you can be seated as a qualified juror, and you can  
3 listen to the evidence that would be presented, and that  
4 this will be a fair process.

5 When you were seated, the bailiff provided you  
6 with a sheet of paper that has some questions on that. And  
7 this is an opportunity now where the court, as well as the  
8 attorneys, are able to get to know you a little bit, a  
9 little bit better. So, beginning with you, Miss Earl, if  
10 you could stand and answer those questions, state your name,  
11 and then we'll just go down in numerical order, please.  
12 Thank you.

13 MS. EARL: My name is Jordan Earl. (Inaudible.)  
14 And I am a student. And I don't have a spouse or  
15 occupation.

16 THE COURT: Thank you. Are you a student at  
17 Southern Utah University?

18 MS. EARL: Yeah.

19 THE COURT: And what are you studying?

20 MS. EARL: Elementary Ed.

21 THE COURT: Elementary Ed? Thank you, very much.  
22 Mr. Scheme.

23 MR. SCHEME: My name's Jeremiah Scheme. I live  
24 here in Cedar City. I am a branch manager of Mountain  
25 America here on Main Street. My wife's name is Hailey



1 Scheme. And she is an RN for IHC Home Care Hospice.

2 THE COURT: Thank you very much. Miss Lyles?

3 MS. LYLES: My name is Marci Lyles. I live here  
4 in Cedar. I work at Color Country Pediatrics. My spouse is  
5 Gary Lyles. And he works at Western (inaudible).

6 THE COURT: Thank you. Miss Copeland?

7 MS. COPELAND: My name's Stephanie Copeland. I  
8 live here in Cedar. I am shift manager at McDonald's. My  
9 husband's name is Chris Copeland. And he is a foreman at  
10 Mortenson.

11 THE COURT: Thank you. Miss Petty?

12 MS. PETTY: My name is Teresa Petty. I live in  
13 Enoch. And I work as a special needs bus aid. My husband's  
14 name is Donald Petty. And my spouse's occupation, he's  
15 retired.

16 THE COURT: Thank you. What is he retired from?

17 MS. PETTY: He was a cabinet builder.

18 THE COURT: Thank you. Miss Conger?

19 MR. CONGER: My name is Raymond Conger. I live  
20 here in Cedar City. I (inaudible) ago. My wife's name is  
21 Sherry Conger. And she works for Dr. (inaudible) as  
22 assistant (inaudible).

23 THE COURT: Thank you. Miss Gubler.

24 MS. GUBLER: My name is Shirley Diane. That's why  
25 I didn't answer right away, because I thought my mother must

1 be here. But my name's Diane Gubler. And I live here in  
2 Cedar City. I am retired. I was in property management.  
3 My husband's name is Joseph Gubler. He's retired. He is a  
4 CPA.

5 THE COURT: Thank you. Miss McKittrick.

6 MS. MCKITTRICK: My name is Patricia McKittrick.  
7 I live in Brian Head, Utah. I am a cashiers at Smith's. I  
8 am single. No spouse.

9 THE COURT: Thank you. Mr. Anderson?

10 MR. ANDERSON: My name is Jared Anderson. I live  
11 out in the county. I am an office manager for a veterinary  
12 clinic. And I don't have a spouse.

13 THE COURT: Thank you. What veterinarian clinic,  
14 please?

15 MR. ANDERSON: Cedar Veterinarian Clinic.

16 THE COURT: Thank you very much. Miss Clark?

17 MS. CLARK: My name is Breanne Clark. I live in  
18 Cedar City. I am a teller at State Bank. And I am not  
19 married.

20 THE COURT: Thank you. Miss Brunson?

21 MS. BRUNSON: My name is Monica Brunson. And I  
22 have live in Enoch. I am a mom. My husband is Kenny  
23 Brunson. And he works at Valley View Medical Center in the  
24 maintenance department.

25 THE COURT: Thank you. Miss Fodren?

1 MS. FODREN: Geraldine Fodren. And I live here in  
2 Cedar. And I am retired and single or divorced, whatever.

3 THE COURT: Okay. What are you retired from,  
4 please?

5 MS. FODREN: State Bank. I was a teller there.

6 THE COURT: Thank you. Mr. Peterson?

7 MR. PETERSON: I am Ryan Peterson. I live here in  
8 Cedar City. I work for the United States Post Office as a  
9 letter carrier. My wife is Stacy K. Peterson. And she is  
10 the office manager for one of the State Farm Insurance  
11 branches.

12 THE COURT: Thank you. Mr. Roberts?

13 MR. ROBERTS: I am Jeremy Roberts. I live out in  
14 Enoch. I am owner of a small trucking company. My wife's  
15 name is Julie Roberts. And she's a payroll specialist for  
16 The Leavitt Group.

17 THE COURT: Thank you. Name of your trucking  
18 company, please.

19 MR. ROBERTS: Double J Transport.

20 THE COURT: Thank you. Miss Colon?

21 MS. COLON: My name is Victoria Colon. I live in  
22 Enoch. I am a cook at the GPA school. My husband's name is  
23 Oscar Colon. And he works for UDOT.

24 THE COURT: Okay. Thanks, Miss Colon. Miss  
25 Barnes?

1 MR. BARNES: My name is Katy Barnes. I live here  
2 in Cedar City. And I am working at JD Property Management.  
3 Then (inaudible), attorneys at law in St. George.

4 THE COURT: Thank you. And you are single?

5 MR. BARNES: I am single.

6 THE COURT: Okay. Thank you. Miss Hyde?

7 MS. HYDE: My name is McKenzie Hyde. I live in  
8 Cedar City. I work in the advancement office at SUU. My  
9 husband's name is Steve Hyde. He is a another branch  
10 manager of the Mountain America by Wal-Mart.

11 THE COURT: Thank you. Mr. Leavitt.

12 MR. LEAVITT: Mark Leavitt. I live 4 miles west  
13 of town. I am a math instructor at Southern Utah  
14 University. My spouse's name is Cindy Leavitt. She's a  
15 clerk at the Shell down the road here.

16 THE COURT: Thank you, Mr. Leavitt.

17 Instructions on the law. My duty is to preside  
18 over the trial and see that laws and procedures are  
19 followed. That includes the duty to determine the  
20 applicable law and to instruct you on that law so that you  
21 can apply it to the facts and arrive at a just verdict. I  
22 don't choose what the law is. And you don't choose what the  
23 law is. Are you willing to accept and follow my  
24 instructions on the law even if you think the law is  
25 different or should be different?

1           Is there anyone who would not follow my  
2 instructions about the law? No hands raised.

3           The presumption of innocence is the most basic and  
4 important principal of criminal law in this country. A  
5 defendant in a criminal case is presumed to be innocent  
6 until proven guilty beyond a reasonable doubt. The burden  
7 of proving guilt beyond a reasonable doubt is upon the  
8 plaintiff. The presumption of innocence benefits the  
9 defendant throughout the trial unless the plaintiff meets  
10 this burden. The burden never shifts to a defendant to call  
11 any witness, produce any evidence or disprove any  
12 allegation. All presumptions of law are in favor of  
13 innocence.

14           Do any of you have any disagreement with the  
15 principal of the presumption of innocence or any hesitance  
16 about applying it in this case? No hands raised.

17           Miss Dawn, could I please have you read the  
18 information in this case?

19           MS. PETTY: (Information read by clerk.)

20           THE COURT: Thank you, Miss Dawn. The defendant  
21 has entered a plea of not guilty to these charges. The  
22 information or charge is not evidence of his guilt. He is  
23 presumed to be innocent and that presumption of innocence  
24 attends him at every stage of this proceeding unless the  
25 jury finds beyond a reasonable doubt every element of the

1 crime charged has been proven beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is required in  
3 this type of case. It means that if after you have heard  
4 all the evidence and my instructions you have a reasonable  
5 doubt that Mr. Judd committed this crime, it is your  
6 responsibility and duty to find him not guilty. On the  
7 other hand, if after that has occurred, you have no reason  
8 to doubt, then it is your duty to find him guilty of the  
9 charges. Are any of you familiar with the facts or  
10 circumstances of this case? No hands raised? Have you or a  
11 member of your family or a close personal friend ever been  
12 charged as a defendant in a similar case? Yes, Miss Colon.

13 MS. COLON: My sister has a charge (inaudible).

14 THE COURT: Okay. That experience, would that  
15 experience make it difficult for you to sit as a juror on a  
16 case like this?

17 MS. COLON: No.

18 THE COURT: And would you feel inclined to go in  
19 to being a juror on a case like this that you would be  
20 leaning one way or the other?

21 MS. COLON: No.

22 THE COURT: You would be able to listen to the  
23 evidence, and at the end of the, after the evidence has been  
24 submitted to this court, you would be able to view that  
25 evidence and be fair about it?

1 MS. COLON: Um-hmm.

2 THE COURT: Thank you.

3 MR. ROMERIL: Your Honor, could I ask just a  
4 couple questions on that?

5 THE COURT: Yes, you may.

6 MR. ROMERIL: Miss Colon, was your sister, do you  
7 feel that she was dealt with fairly by the criminal justice  
8 system?

9 MS. COLON: She didn't ever go to court. Well,  
10 she did go to court, but she pled guilty. So, there wasn't  
11 really much dealing with it.

12 MR. ROMERIL: Did she complain about how she was  
13 dealt with by law enforcement or the store?

14 MS. COLON: (No audible answer.)

15 MR. ROMERIL: Okay. Thank you.

16 THE COURT: Is there anyone else? Yes,  
17 Miss McKittrick?

18 MS. MCKITTRICK: (Inaudible.)

19 THE COURT: Okay.

20 MS. MCKITTRICK: (Inaudible.) Something that he  
21 did.

22 THE COURT: Okay. Maybe a follow-up question that  
23 Mr. Romeril might have, did you feel that from your  
24 perspective he was dealt fairly?

25 MS. MCKITTRICK: Yes.

1 THE COURT: And that law enforcement and/or anyone  
2 else, did they treat him unfairly, did you think?

3 MS. MCKITTRICK: No.

4 THE COURT: Okay. Thank you. Anyone else? Thank  
5 you. Considering the nature of the charges, would you be  
6 unreasonably troubled about listening to evidence of these  
7 allegations? No hands raised.

8 Is there any reason best known to yourself why you  
9 could not try this case fairly and impartially upon the  
10 evidence and without any bias or prejudice for or against  
11 either party? No hands raised.

12 If you were a party, either the State or the  
13 defendant, would you be fully satisfied to have your case  
14 tried by a person with your present attitude and frame of  
15 mind towards this case? Thank you.

16 Are there any additional voir dire questions, Mr.  
17 Romeril?

18 MR. ROMERIL: No.

19 THE COURT: Mr. Slack?

20 MR. SLACK: No, Your Honor.

21 THE COURT: Mr. Romeril, do you pass for cause?

22 MR. ROMERIL: I do.

23 THE COURT: Mr. Slack?

24 MR. SLACK: Yes.

25 THE COURT: Thank you. May I have counsel



1 approach, please?

2 (Whereupon, a sidebar conference was held off the record.)

3 THE COURT: As you know, I had 20 come up. Two  
4 have been excused for cause. Any objection if we cross off  
5 the last two, and then that would be down to 16 and then  
6 peremptory? Okay. Thanks.

7 At this time, the attorneys and I are going to get  
8 an opportunity to select the jury. There are, in essence,  
9 16. The first 16 who are qualified, those names will be  
10 presented to both camps. Each party has the right to strike  
11 off four of you for no reason, just for reasons that they  
12 may individually have.

13 So, at this time, I am going to give the attorneys  
14 an opportunity to go through what we call peremptory  
15 challenges. And then, at the conclusion of that, I'll have  
16 the clerk read the names of the eight that will be asked to  
17 sit on the jury here today. Thank you.

18 MS. PETTY: Miss Dawn, could you please read the  
19 eight jurors that have been selected?

20 THE CLERK: Jeremiah Scheme. Marci Lyles. Teresa  
21 Petty. Shirley Diane Gubler. Patricia McKittrick. Breanne  
22 Clark. Monica Brunson. Victoria Colon.

23 THE COURT: Thank you. That is the jury that has  
24 been, has been selected. For those of you whose names have  
25 not been, were not read as well as the individuals that are

1 out in the gallery, court wants to thank you for being here  
2 today. Thank you for your willingness to serve and  
3 participate in this process. You are now excused to leave.  
4 You are welcome to stay if you would like. But you are  
5 excused to leave. And, again, thank you very much. Thank  
6 you.

7 I probably first should have asked Mr. Romeril,  
8 does this constitute the jury as selected?

9 MR. ROMERIL: Yes.

10 THE COURT: And Mr. Slack as well.

11 MR. SLACK: What if it's not?

12 THE COURT: Well, then I would have a problem.  
13 No, I would have the bailiff run out right now is what I  
14 would do.

15 MR. SLACK: I believe it is, yes, Your Honor.

16 THE COURT: Okay. Thank you. Could I have you  
17 take one more oath? If you could please rise and raise your  
18 right hands. And, Miss Dawn?

19 (Eight jurors sworn.)

20 THE COURT: Thank you very much. You maybe  
21 seated. We are going to take various breaks throughout the  
22 day. And at one point you are going to have an opportunity  
23 that you are going to be able to visit together with each  
24 other back in jury deliberations. And, at that time, you  
25 are going to be able to speak with one another freely about

1 what the evidence and what you heard here today. From now  
2 until that time though, the court is going to place each of  
3 you with an admonition. And that is that you are not to  
4 discuss this case with any of your fellow jurors. And that  
5 also includes anyone else. So, when we come to the lunch  
6 hour and you go out to lunch, for example, and you may see a  
7 friend or spouse or acquaintance, whatnot, oh, you sat on a  
8 jury today. Can you tell me a little bit about the case?  
9 You can't talk about the case. And you can't discuss who  
10 else is on the jury. You can't discuss anything about the  
11 case.

12 But, at some point today, the court will lift that  
13 admonition, and you'll be able to speak freely on the case.  
14 Do any of you have any questions with that admonition? Is  
15 there anyone here that would not be able to follow that  
16 admonition? Thank you.

17 At this time, we are going to take a, oh, maybe a  
18 ten minute recess. And that will give you an opportunity  
19 that you can make whatever telephone calls that may be  
20 necessary to let loved ones or employers know that you are  
21 going to be in a jury trial for the remainder of the day.  
22 And when you come back, I'll just ask that you fill out --  
23 should we have them come through that door or is this door  
24 the easiest? Okay. So, if you can just come to the front,  
25 there's the open area. And the bailiffs will be able to

1 take you back here to the jury room.

2 Miss Colon, I'm not going to let you just have to  
3 sit there by yourself on the front. So, if it's okay, when  
4 you come back, may I have you shift. I am going to have  
5 Miss Clark, the three of you, shift down, if you would. Let  
6 me see. Miss Gubler. Okay. When you come back, may I  
7 please have you sit up there on the top row?

8 MS. GUBLER: In the corner?

9 THE COURT: Yeah, that's where you were seated.

10 MS. GUBLER: I am freezing up there.

11 THE COURT: You are freezing up there?

12 MS. GUBLER: I'll sit up there. Sorry. I'll get  
13 pneumonia.

14 THE COURT: Okay. Maybe we can turn down the  
15 temperature to ice. We certainly don't want you to catch  
16 pneumonia. Is everyone fine if I put Miss Colon up on the  
17 top?

18 MR. SLACK: That's fine. No problem.

19 THE COURT: I'll have you sit up there. And then  
20 everyone else will stay to where you are at. Okay? Any  
21 questions? Okay. Thank you. We'll take a ten minute  
22 recess.

23 (Whereupon, a brief recess was taken.)

24 THE COURT: Any housekeeping matters, Mr. Romeril  
25 or Mr. Slack?

1 MR. ROMERIL: No.

2 THE COURT: Ready to proceed?

3 MR. SLACK: We are.

4 THE COURT: Thank you. Bring in the jury, please.

5 (Whereupon, the following proceedings were held

6 in open court in the presence of the jury.)

7 THE COURT: Thank you. Okay. No, that is quite  
8 all right. Miss Brunson, you are going to think that I am  
9 very anal in nature, I don't want you to think so, but could  
10 I have you, do you mind if you sit on the other side of Miss  
11 Gubler?

12 MS. BRUNSON: I don't mind.

13 THE COURT: Perfect. That's how I have my little  
14 chart. Thank you very much. One of the bailiffs have just  
15 handed you what's a document, which is for purposes of for  
16 me is Titled Preliminary Jury Instructions 1 through 8.

17 LADY JUROR: I've got to get my glasses.

18 THE COURT: Okay.

19 LADY JUROR: So sorry.

20 THE COURT: No, that's okay.

21 LADY JUROR: I just remembered when I looked at it  
22 that I couldn't see it.

23 THE COURT: Okay. Thank you. I'm going to read  
24 to you jury instructions, the first eight jury instructions,  
25 then later in the proceedings there will be final jury

1 instructions that I will read to you at that time as well.  
2 (Preliminary Jury Instructions 1 - 8 being read by court.)

3 THE COURT: Now is the opportunity for the  
4 attorneys to give their opening statements.

5 Mr. Romeril, is the State ready to proceed?

6 MR. ROMERIL: Yes, Your Honor.

7 THE COURT: Thank you.

8 MR. ROMERIL: Good morning, ladies and gentlemen.

9 I just want to at first thank you for being here. I know  
10 you had no choice in the matter. I know you got subpoenaed.  
11 And you came to court. And many of you probably had other  
12 things planned today. Maybe some of you are happy to be  
13 here and enjoy this process. But my advice before we really  
14 get started is that you are here. You are not going  
15 anywhere, so just be here. I am going to encourage you to  
16 listen. Take notes.

17 I want you to do the best job you can, not only  
18 for the State but for the defendant as well. He deserves to  
19 have a jury that really listens to the facts, that really  
20 weighs out what's true and what's not true so that the  
21 decision you come to is something that the criminal justice  
22 system is comfortable with.

23 We live in a country that has a system that has  
24 been modeled over and over again because of how effective it  
25 is and how fair it is and how efficient. So, I would

1 encourage you just to take the opportunity to enjoy this  
2 occasion and realize what a great country we are a part of  
3 because of this criminal justice system.

4           So, the opening statements, this is a chance where  
5 both parties get to stand up and kind of give the big  
6 picture of what this case is about. So, I want you to view  
7 this big picture as a jigsaw puzzle. When you look at a  
8 jigsaw puzzle there are a lot of different pieces. And  
9 depending on how you do it depends on how those pieces kind  
10 of come together to form the big picture. I am going to  
11 have two witnesses, right, two pieces of the puzzle. They  
12 are going to come up and testify. Some of them will add  
13 pieces at sometime and the other one will come in and add  
14 pieces later. So, it's important that you know the big  
15 picture now so that you understand what that means when all  
16 the evidence is brought before you.

17           So, I want to take you back to August 13, 2015.  
18 So, not too long ago. That's a Thursday. And it's about  
19 7:30 at night. My first witness, Joseph Stewart, he is, so  
20 he's a teacher first and foremost. But on the side he also  
21 works in asset protection for Wal-Mart. So, he's one of  
22 those individuals who's in plain clothes that you never  
23 really notice, but he's watching, right, to make sure that  
24 no one's stealing from the store.

25           So, as he is walking through the store, he walks

1 by the footwear section. I am sure all of you have been to  
2 Wal-Mart before so you will have a general idea of this.  
3 And I'll have him draw the store on the board when he comes  
4 up. But he walks through the footwear store. And he sees a  
5 person of interest. Her name is Tanisa. She's 14 years  
6 old. So, he pays a little attention to her then follows her  
7 as she goes to the sportswear part of the store, sporting  
8 goods.

9 As she goes to sporting goods, Mr. Stewart then  
10 sees the defendant and another female by the name of Krystal  
11 Koehl. And he sees these two putting a lot of items into  
12 the cart. There are some camo gear and a few things like  
13 that. Those two parties, they never really made contact,  
14 but, you know, it's just something that he notices. So,  
15 Tanisha is by herself. Then you have the defendant, Krystal  
16 Koehl. And there is three children with them. Miss, or  
17 Tanisa, she then goes to the front of the store by the  
18 pharmacy, she gets a plant, a couple other things. And then  
19 she has an ottoman in her basket as well. And he sees her  
20 rolling up clothes. And it's one of those ottomans that you  
21 put your feet on but it's hollow inside, with a blanket,  
22 she's putting clothes in there. She stuffs like a doggy bed  
23 in the very bottom. And then she sees her start to leave.  
24 So, you can imagine in your mind's eye, she's now walking  
25 from the north end of the store past the pharmacy, which



1 would be on her left, and she's headed to the cashiers.  
2 Then she stops at the last aisle. And that's when the  
3 defendant comes up with Krystal Koehl. And they bring their  
4 cart. It's not as full. Tanisha's cart is full. Their  
5 cart isn't as full. But then they start swapping items from  
6 cart to cart.

7 Mr. Stewart positions himself in an aisle. And  
8 you are going to see surveillance video of this. You'll see  
9 his head. And you can see where he's watching do this. And  
10 then the defendant then goes with Tanisha. And they take  
11 that cart. And you got the hair salon. And they are  
12 walking out. They pass the registers where you pay. In  
13 fact, the aisle they go down there is no register at all.  
14 They go past the hair salon into where the shopping carts  
15 are, where they are stored. And that's where you'll see Mr.  
16 Stewart beeline to them and catch them right there. He then  
17 talks to them. You know, he gets kind of a real quick side  
18 of their story. And then he takes them to his office, which  
19 is on the other side of the store by Wal-Mart. So, he  
20 brings them in that office.

21 And that's when Officer Topham comes in. On  
22 Officer Topham was on duty that day. He just happens to be  
23 in Wal-Mart on an unrelated situation. He brings -- Officer  
24 Topham goes in, meets with the defendant, Mr. Krystal Koehl  
25 and Tanisha and his three other children. At that time, the

1 defendant admits that they were stealing these goods. He  
2 admits that he didn't have the money to pay for it. And  
3 you'll hear those, those admissions through the officer and  
4 Mr. Stewart. They are both in the room.

5           There was no -- there's no audio recording of that  
6 interview. That was just an interview done with the two of  
7 them. At that point in time, they took all the goods, and  
8 they found out that total value was \$1,825.64. And that  
9 was, that's before tax. So, that's the value that was taken  
10 in that cart.

11           The second cart that was with Krystal, that really  
12 isn't a part of this case. You'll see on the video that  
13 Krystal attempted to leave but then saw the defendant and  
14 Tanisha with Mr. Stewart by those carts. And you'll see her  
15 push, see them, then walk out, well, she would walk behind  
16 the registers, and where there is a glass optometrist, the  
17 bathrooms, you'll see her walk that way. That is the case  
18 in a nutshell.

19           Because of those facts, because of the evidence  
20 you are going to see today and the video and the testimony  
21 and the admissions, it's for all these reasons that at the  
22 conclusion of this trial the State's going to ask you to  
23 find the defendant guilty of these charges. Thank you.

24           THE COURT: Thank you, Mr. Romeril.

25           Mr. Slack, do you wish to proceed at this time?

1 MR. SLACK: Yes.

2 THE COURT: Mr. Slack.

3 MR. SLACK: And ladies and gentlemen, what I am  
4 going to tell you right now in my opening and what Mr.  
5 Romeril just told you in his opening, none of that is  
6 evidence. The only evidence that you are to consider is  
7 when the individuals get up here and speak to you under  
8 oath. Perhaps the video that you'll see will get put into  
9 evidence as well. But what I have to say and what he has to  
10 say, we are just kind of painting a picture, so it's kind of  
11 like doing a puzzle. And you see a puzzle. And it's kind  
12 of a pain to do a puzzle when all you got is pieces. You  
13 kind of look at the picture. That's the whole point of what  
14 we are here for giving these opening statements.

15 My client, Mr. Judd, was at Wal-Mart. There is no  
16 bones about that. But what he will tell you is that he was  
17 there, that he was shopping with his girlfriend, Miss Koehl.  
18 That he was there with these children, Tanisha. And he's  
19 not necessarily going to be responsible for what Tanisha  
20 does. He will testify that there are certain aspects of law  
21 enforcement's version of events that are different from his.  
22 And, ultimately, when it's said and done, you will have the  
23 opportunity to hear that evidence again and to weigh that  
24 out. And, ultimately, you guys are the deciders of this.  
25 He has a right, he has a presumption of innocence. He is

1 innocent of these charges until you folks have taken your  
2 time and made a decision. And you'll ultimately decide he's  
3 either guilty of these or not guilty. And I am asking that  
4 you take the time, give it the time that's needed. That's  
5 why we took those hour and-a-half of mundane questions.  
6 Probably seemed really weird that we would go through that.  
7 But we wanted to get to know you as best we could and get  
8 eight individuals who we felt we were as reasonable, as  
9 common a person that we are used to here in Cedar City so  
10 that this decision can be made.

11 But when it's all said and done, we are going to  
12 ask that you review this evidence. And, again, at this  
13 time, I am going to ask that you find my client not guilty.  
14 But, ultimately, like I said, doesn't matter what I just  
15 said, doesn't matter what Mr. Romeril said, you guys hear  
16 the evidence and make a decision. Thank you.

17 THE COURT: Thank you, Mr. Slack. Mr. Romeril,  
18 you may call your first witness.

19 MR. ROMERIL: State calls Joseph Stewart.

20 MR. SLACK: For purposes, it doesn't make any  
21 difference right now because Mr. Stewart is going to be  
22 called to testify, but, ultimately, I am going to invoke the  
23 exclusionary rule. So, in effect, the invocation of that  
24 would mean simply Mr. Stewart once he's done with his  
25 testimony would be required to leave until the presentation

1 just to preserve the record and whatnot. So, I want to do  
2 that at this time.

3 THE COURT: Thank you. The exclusionary rule has  
4 been invoked. Mr. Stewart, if you'll come forward, please.  
5 And, at the conclusion of your testimony, you'll just be  
6 asked to be excused from the proceeding. Okay, sir?

7 THE WITNESS: Yes, sir.

8 THE COURT: Would you please raise your right  
9 hand.

10 JOSEPH L. STEWART,  
11 called by Plaintiff, having been duly  
12 sworn, was examined and testifies as follows:

13 THE COURT: Thank you. Mr. Stewart, could you  
14 please have a seat up here at the witness stand. Once you  
15 are seated, sir, and you have pulled your chair up to the  
16 microphone, please state your name for the record, and  
17 please spell your last name.

18 THE WITNESS: My name is Joseph Levi Stewart.  
19 S-t-e-w-a-r-t.

20 THE COURT: Thank you. Mr. Romeril.

21 DIRECT EXAMINATION

22 BY MR. ROMERIL:

23 Q Mr. Stewart, you are a resident here in Iron  
24 County?

25 A Yes, sir.

1 Q And what do you do for a living?

2 A I have taught school for the Iron County School  
3 District for 13 years. And on the side I work asset  
4 protection for Wal-Mart Corporation here in Cedar City.

5 Q And how long have you been with Wal-Mart?

6 A A little over a year.

7 Q And in order to do this asset protection, do you  
8 attend any training courses at first or anything like that?

9 A Yes. We have an individual that will send us  
10 through training at Wal-Mart. And they are kind of like a  
11 mentor. They usually do that for about three months.

12 Q Okay. Did you go through that?

13 A Yes, I did.

14 Q And I assume since you are still employed there  
15 you successfully got through that?

16 A Yes.

17 Q I want to take you back to the date of  
18 August 13th, 2015. Were you working that day?

19 A Yes, I was.

20 Q And tell us, tell the jury what your average  
21 responsibilities are on your shift at Wal-Mart?

22 A My responsibilities are to monitor shopping, make  
23 sure that items in the store stay in the store until they  
24 are paid for. Asset protection, as far as associates,  
25 customers, anybody that enters the store.

1 Q Okay. So, you also deal with employees as well or  
2 just the customer side?

3 A Yes, employees as well.

4 Q Okay. So, what does that entail? Are you just  
5 walking around the store? Are you viewing surveillance  
6 camera? What do you do to ensure that property stays on the  
7 store -- in the store?

8 A We use all of the above. I walk around plain  
9 clothes most of the time, watching. And we also have a very  
10 good video surveillance system in the store.

11 Q Okay. So, on this date, August 13th, 2015, were  
12 you working that day?

13 A Yes, I was.

14 Q And, approximately, 7:30 that night, did you view  
15 anything that caught your eye?

16 A Yes. I was walking in the area of footwear and  
17 menswear in the back of the store, observed a female that  
18 was involved in an incident, a previous incident. And it's  
19 somebody that we wanted to watch. I watched her select  
20 several items, shop through the store, fill up a shopping  
21 cart. It's one of the elements that we need to see, observe  
22 in Wal-Mart, is a customer actually physically take an item  
23 from a shelf and put it in their possession, whether it's a  
24 shopping bag, shopping cart, purse on their person.

25 Q Okay. Now, before we get any further, I'm going

1 to put your artistic skills to test. If I could have you  
2 come to the board here, I would just want you to draw a  
3 large box of what Wal-Mart looks like. And then we'll get  
4 into a little more detail after that.

5 MR. SLACK: Your Honor, can I suggest a white --  
6 instead of the whiteboard, because, obviously, the jury  
7 isn't going to be able to take that back. Is there -- I  
8 know that we have had in the past an easel with a sheet of  
9 white paper.

10 You okay with that? They are not going to be able  
11 to take that.

12 THE COURT: Just wait one minute while it's  
13 retrieved. It's a fat or a skinnier one. Do you care  
14 which? Is that pretty skinny? Okay. Do you have paper?  
15 They said they have the easel but they don't have the paper.

16 MR. SLACK: I'm -- I just -- if counsel --

17 MR. ROMERIL: We are not going to get into much  
18 detail. I just want to --

19 THE COURT: Okay. Let's proceed on the, using the  
20 board. Thank you.

21 BY MR. ROMERIL:

22 Q So, if you could just kind of draw a large box of  
23 the shape of Wal-Mart, a large rectangle? Okay. So, what  
24 you -- maybe just describe what you are drawing here.

25 A This is what we watch in Wal-Mart as we have our



1 north doors and we have the south doors. Then we have our  
2 registers up front. Have the pharmacy, then sporting goods  
3 and (inaudible) --

4 Q Okay.

5 A -- registers McDonald's down here, hair salon.

6 Q Okay. Maybe queue put a box of just where the  
7 hair salon is?

8 THE COURT: Mr. Stewart, could you speak a little  
9 louder while you are doing that? We are making a record.  
10 Okay.

11 THE WITNESS: Sure. So, we have the pharmacy on  
12 this end. And the hair salon here. Then we have, we call  
13 it the vestibule where the carts are stored. Then the north  
14 doors. We have the south doors. McDonald's down here.  
15 Then we have the registers up front.

16 Q Okay. Now, you started off by testifying that you  
17 are in the shoe department. Can you just show where that's  
18 at in the store?

19 A It's located somewhere back in here.

20 Q Okay.

21 A Then sporting goods would be, this is kind of an  
22 approximate (inaudible).

23 Q Okay.

24 A So, as I follow Tanisa around, was through several  
25 of these aisles as she shopped, selecting items and filling

1 up the shopping cart.

2 Q Okay. Now, specifically next to that top register  
3 there on the north side of the building, you drew a line  
4 there. What's that line on the other side?

5 A This one?

6 Q Or the one below that. Just right there. Yep.  
7 What's that line?

8 A There's an aisle with items for sale here, items  
9 for sale here.

10 Q Okay. All right. And the main entrance or the  
11 north entrance, how would you enter the building with that  
12 aisle coming through that door?

13 A As far as going out the store?

14 Q No, coming into the store.

15 A Coming in, you come in this way.

16 Q Okay. And then is there an optometrist glass  
17 store in there as well?

18 A Yes. Vision Center.

19 Q Okay. All right. And then could I just get you  
20 to label front on where the front of the building is that  
21 faces the main parking lot there? Okay. All right.  
22 Nothing further on that. You can take a seat.

23 All right. So, you start off by seeing Tanisa  
24 over here in the shoe section; is that correct?

25 A That is correct.

1 Q Okay. Then where do you follow her to?

2 A Eventually, we end up in the back by Pets.

3 Q Okay. And where is Pets located on this?

4 A It would be probably off the board up above

5 pharmacy.

6 Q So, kind of right in there?

7 A A little bit higher.

8 Q A little bit higher?

9 A Yeah.

10 Q At any time from when she goes from the shoe

11 department to the Pets, does she make contact with the

12 defendant?

13 A No. She doesn't make contact. As she's going by,

14 I see the defendant with Krystal at the sporting goods

15 section of the store.

16 Q Okay. So, as Tanisa is walking from shoes up to

17 here to Pets, that's when you see the defendant?

18 A Yes, that is correct.

19 Q Okay. And he's in the sporting goods, is that

20 what you said?

21 A Yes, that's correct.

22 Q And who is he with?

23 A He's with Krystal. She was involved in an

24 incident with the same female I was following in a prior

25 incident.

1 Q And so, is that why -- is that what catches your  
2 eye then about her?

3 A Yes. That's what caught my eye. And, of course,  
4 we need to establish elements. I stay for a minute to watch  
5 as she selected items from the shelf as well as the  
6 defendant taking items off the shelf and placing them in her  
7 shopping cart, his shopping cart.

8 Q Do you remember what kind of items the defendant  
9 was putting in the cart?

10 A They were looking at the camo clothing. I wasn't  
11 close enough to see which items it may have been. We have  
12 camo tape for bows that they can tape up, camo jackets,  
13 shirts, hats.

14 Q Okay. So, at this point in time, you've got  
15 someone of interest in the supporting goods. And you have  
16 someone of interest in the Pet part of the store. What do  
17 you do having two interested parties in different parts?

18 A I started with following the first female. And  
19 there was more items in that cart. It got up over a hundred  
20 items in that cart, which is, it's different. It's unique  
21 in Wal-Mart when you have approximately a 14 year-old  
22 pushing a cart full of high dollar merchandise and there are  
23 several items in the cart. So, I stayed with that cart.

24 Q Okay. So, when Tanisa is up here, you then go to  
25 a general location over there so you can watch her?

1           A     That is correct. There was a fire alarm that went  
2 off. When you hit the fire alarm handle, it will go off.  
3 And then the assistants respond to that alarm. While I was  
4 back there, the assistant manager came by. And I informed  
5 her of the situation, advised her that I am going to need  
6 some assistance if the individual does not pay for the  
7 items. And while I was there I was watching as Tanisa  
8 selected a pet bed, placed it under the cart. At that time,  
9 she opened the ottoman, was on the ground rolling clothing  
10 and tucking it inside the ottoman at that time.

11          Q     Okay. After viewing that, where do you go next?

12          A     I continued to follow her as she was making her  
13 way to the front of the store. At that time, I noticed that  
14 the defendant and Krystal were, they were coming up the  
15 aisle at the same time. Tanisa was behind them. They went  
16 into the last aisle of pharmacy.

17          Q     So, let's identify that. So, with this marker  
18 here, we talking right there?

19          A     Yes.

20          Q     Okay.

21          A     So, the three individuals with the three children  
22 meet up. I'm standing across the aisle looking through some  
23 items, watching them there. And it appeared at that time  
24 that they were trying to decide what to put in the full  
25 cart. They were taking things back and forth. And you

1 could see them looking at items in one cart, putting them in  
2 the other one. Then they would transfer them back and  
3 forth, filling up the cart that Tanisa was pushing to, in my  
4 opinion, max capacity. She had two of the ottomans that  
5 were completely full of items. She lifted the lids so. And  
6 they are fairly large furniture items.

7 Q Okay.

8 A Underneath was full. So, I kind of watched that.

9 Q Okay. And where are you watching this? Are you  
10 in one of these aisles here?

11 A Yes. Maybe right in there at the end of that  
12 aisle.

13 Q Okay.

14 A There are some, I believe, some white items on the  
15 end that I was looking through.

16 Q Do you have an unobstructed view of them?

17 A Yes, I did.

18 Q Okay. And when you said you saw the three  
19 individuals transferring items back and forth, was the  
20 defendant one of those individuals?

21 A I don't recall. I recall seeing the three milling  
22 around in there. I don't recall seeing who actually  
23 transferred the items.

24 Q Okay.

25 A It was just, kind of, they were milling around in

1 there with product and transferring back and forth.

2 Q Okay. So, approximate time of them sitting there  
3 going through stuff, is it ten minutes? Is it two minutes?

4 A minute?

5 A I don't recall. It's not very long though.

6 Q Okay. And then what happens next?

7 A So, I continue watching them as Tanisa takes the  
8 full cart around the aisle, goes towards the front doors. I  
9 believe I was using my cell phone. I was contacting Officer  
10 Topham in the office that we had a possible theft in  
11 progress, advising the assistant manager that I will need  
12 assistance if the cart is taken towards the entrance. At  
13 that time, after advising the two individuals, I started  
14 following the, Tanisa and the defendant out the north doors.  
15 They went almost to the doors before I came out and stopped  
16 them and pulled them aside, introduced myself as asset  
17 protection, and asked them if there was anything on the  
18 person or in the cart that hadn't been paid for. They told  
19 me yes, that none of it had been paid for.

20 Q Okay.

21 A At that time, we escorted them to the AP office  
22 where Officer Topham was waiting.

23 Q Okay. So, just to back up a little bit. When  
24 they are approximately here, going through property, Tanisa  
25 getting to that point, is she by herself or is she with

1 someone else?

2 A No. She was with Mr. Judd.

3 Q Prior to getting there?

4 A Prior to getting there --

5 Q Yeah.

6 A -- she was by herself.

7 Q Okay. And once getting there she joins the  
8 defendant, correct?

9 A Correct.

10 Q And Krystal Koehl?

11 A Correct.

12 Q And when you describe Tanisa pushing the cart out,  
13 is she by herself again or is she with someone else?

14 A No. She is being, she is with the defendant, Mr.  
15 Judd.

16 Q Okay. And do they leave through what you have  
17 labeled the north door exit?

18 A That's where they are going to, yes.

19 Q Okay. And so, do they come down, on your drawing  
20 here, do they come down this aisle?

21 A Yes, that is correct.

22 Q Is there any cashiers that are accessed, any  
23 registers that are accessible down that aisle?

24 A No, there are not.

25 Q Now, you say you -- well, approximately, where did



1 you stop them at?

2 A It was approximately, maybe 5 feet before the  
3 door, before -- they were headed straight towards the door.  
4 And I came around to the side and pulled them back to where  
5 the carts are stored.

6 Q Okay. Now, on this, this entrance into the  
7 building, is it fair to say that at the front of the  
8 building there is a set of doors right there?

9 A Yes.

10 Q And is there any, is there a second set?

11 A No. It's an open doorway that's open.

12 Q That's open. Okay. So, with my laser here, were  
13 they stopped somewhere in here then?

14 A Yes, that would be correct.

15 Q Okay. Did they stop of their own or did you get  
16 them to stop?

17 A I had to stop them.

18 Q Okay. Now, you said you talked to them about the  
19 items. What did they tell you?

20 A There's a specific dialogue that we use. We have  
21 to introduce ourselves as asset protection, our name. Then  
22 we ask the individuals if there is anything that they have  
23 that they have not paid for at that time. And the  
24 individuals ultimately said yes, the items in the cart have  
25 not been paid for, they could not produce a receipt for

1 those items.

2 Q You said individuals. Was the defendant one of  
3 those individuals?

4 A Yes.

5 Q So, I assume both of them spoke to you, both  
6 Tanisha and the defendant?

7 A I was speaking to both of them, yes.

8 Q Was there -- did you go back and look at  
9 surveillance footage of this event?

10 A Yes, I did.

11 MR. ROMERIL: And let's see, Your Honor, could I  
12 have this marked as State's Proposed Exhibit 1?

13 THE COURT: You may.

14 BY MR. ROMERIL:

15 Q Feel free to take that out. Do you recognize that  
16 CD?

17 A Yes, this is definitely.

18 Q Did you view the content that's on that?

19 A Yes, I did.

20 Q Did you also watch the original surveillance  
21 footage at Wal-Mart of this event?

22 A Yes, I did.

23 Q And what you viewed on this DVD, does that match  
24 with what you viewed at Wal-Mart on the surveillance?

25 A Yes, it does.

1 Q As far as you are concerned, does this accurately  
2 depict then what occurred that day?

3 A Yes, it does.

4 MR. ROMERIL: State's going to move to enter  
5 State's Exhibit 1 into evidence.

6 THE COURT: Any objection?

7 MR. SLACK: No.

8 THE COURT: Received.

9 (State's Exhibit No. 1  
10 was received into evidence.)

11 MR. SLACK: Assuming that's what it is ultimately.  
12 But, no.

13 MR. ROMERIL: Your Honor, if I could have one  
14 minute to pull this up?

15 THE COURT: You may.

16 (Whereupon, a discussion took place off the record.)

17 BY MR. ROMERIL:

18 Q Can you see that from where you are?

19 A Yes.

20 Q So, if I can hand you this laser, can you just  
21 kind of point out where, what we are looking at here at  
22 Wal-Mart?

23 A Okay. Over here is the pharmacy.

24 Q Okay.

25 A And this is one of the aisles that is at the end.

1 Then this is the action alley, comes from sporting goods.  
2 And Pets department is over here.

3 Q Okay. So, just so I am clear, you said this is  
4 one of the aisles that they went here --

5 A Yes, that's correct.

6 Q -- is that correct? Then what's on this side of  
7 the aisle?

8 A There's items for sale on both sides.

9 Q So, if I were to walk down this aisle, does that  
10 take you to the north door?

11 A Trying to recall where her video is. We have  
12 them -- there's another aisle that doesn't show that. And I  
13 believe it's right here.

14 Q Okay.

15 A And then as you go around this way it goes out.

16 Q Okay. So, the exit to that, the straight exit,  
17 straight path to that northbound door is somewhere down  
18 here?

19 A Yes.

20 Q Okay. All right. So, at this point in time, in  
21 the video, are you in there at all or any of the people you  
22 are watching?

23 A I don't believe so. If we can play it forward  
24 I'll see.

25 Q So, when you see either yourself or someone of

1 interest, if you can just point them out with the laser.

2 A Okay. I'm right there. Okay. Right here, the  
3 defendant's coming down with Krystal with a cart.

4 Q What colored shirt is the defendant wearing?

5 A The defendant is wearing a red shirt.

6 Q What colored shirt is Krystal wearing?

7 A Green. You are going to see -- they are going to  
8 go into this aisle here. And then here is Tanisa. And I am  
9 following that cart.

10 Q And so, this is Tanisa walking up here?

11 A Yeah. It's right here.

12 Q Okay. Now, where are you at? Can you see  
13 yourself?

14 A Yes. I'm over here.

15 Q Sorry. Can you point --

16 A You are going to see -- this is where I am looking  
17 at as they are doing, swapping there.

18 Q Now, is this the location where you said they  
19 stopped to meet and exchange goods in between carts?

20 A Yes, it is. There's -- there's another aisle  
21 right here. And so, if you go around the corner you'll go  
22 out the door this way.

23 Q Okay.

24 A And I am up here observing.

25 Q Now, are you on the phone?

1 A Yes. You see me on my cell phone at the time.

2 Q And is this when you are calling for help?

3 A Yes, it is.

4 Q Now, is that Tanisa that just popped back into the  
5 frame?

6 A Yes.

7 Q At any time can you hear anything that they are  
8 saying?

9 A No.

10 Q And the individual that's back in the frame now in  
11 the green, is that Krystal again?

12 A Krystal, yes, that's correct.

13 Q The individual back in the frame in red, who's  
14 that?

15 A That's the defendant.

16 Q Now, what are you viewing -- strike that. Okay.  
17 So, why are you walking now?

18 A Okay. They are starting to leave that aisle.

19 Q And where are they leaving to?

20 A They were going around the corner towards the  
21 north exit.

22 Q Okay. So, they were headed down that aisle that's  
23 the straight shot to the door?

24 A Right. Exactly.

25 Q And no registers in that section, correct?

1           A     No, there are not.

2           Q     Okay. And now playing you a second video. Okay.  
3 Before we get too far into this, can you just describe to  
4 the jury what area this camera's pointing towards?

5           A     Yes. This is pointing towards the north exit.  
6 You can see the hair salon on the left.

7           Q     You maybe just point that out with the laser?

8           A     You bet. So, we have the hair salon here. The  
9 last register is right here. And then it goes over to the  
10 bathrooms this way or out the doors this way. Carts are  
11 stored over here.

12          Q     Okay. Now, you stated there was a register  
13 approximately in this area?

14          A     Yes, that's correct.

15          Q     What's in between this register and this pathway  
16 here?

17          A     There's a solid aisle of product.

18          Q     Okay. So, any way to access that register while  
19 you are in that walkway?

20          A     No, there is not.

21          Q     All right. So, when -- do you recognize anyone  
22 here?

23          A     Yes. Tanisa is right here, defendant's here, as  
24 they are going out the door.

25          Q     Okay. And where are you at?

1           A     I'm walking alongside this way.

2           Q     All right.

3           A     And I go to the other side of them, and then right  
4 before the door ask them to talk to me.

5           Q     Okay. And so, are they -- so, you take them to  
6 the side. Are they over now where the carts are stored?

7           A     Yes, they are.

8           Q     All right. Would it be fair to say if someone was  
9 walking down here would not be able to see them then because  
10 they are over kind of in that area?

11          A     They would be able to if they were about right  
12 here. I pulled them off to the side just as far as a  
13 courtesy to get out of other people's way and give them a  
14 little more privacy. So, we pulled off into the, by the  
15 wall, the far wall.

16          Q     Okay. And is that when you had that initial  
17 conversation with them then?

18          A     Yes. That's where we, we discussed the items in  
19 the cart.

20          Q     And is that where they made the statements that  
21 they didn't pay for them?

22          A     Yes, that's correct. The assistant manager, she's  
23 going out right there. And she's there to make sure  
24 everything, she helps out and assists if needed.

25          Q     Okay. Now, I am going to hit play. And if you



1 could identify Krystal for us.

2 A Yes. There's Krystal coming through.

3 Q Okay. So, after having, making contact with them  
4 then in that vestibule area, where do you take them?

5 A We take them back to our office, the security  
6 office, where the officer, Officer Topham was waiting.

7 Q And are you able to, I don't know what Wal-Mart's  
8 parameters are with your job. Are you able to search these  
9 people or is that turned over to law enforcement?

10 A That's turned over to law enforcement.

11 Q Okay. So, you bring them into your office?

12 A Yes.

13 Q And where is that located?

14 A It's over across from McDonald's by the south  
15 entrance.

16 Q So, who do you have in your office then?

17 A I have Officer Topham. I have the three small  
18 children. I have the defendant, Krystal and Tanisa and the  
19 assistant manager, Amber.

20 Q Okay. And do you engage in any further  
21 conversation with them then?

22 A Not until they are Mirandized.

23 Q Okay. So, any further conversation, that's done  
24 by Officer Topham?

25 A Yes, that's correct.

1           Q     All right. Did you take custody of that shopping  
2 cart?

3           A     Yes, I did.

4           Q     And did you go through that shopping cart and  
5 identify all the items?

6           A     I turned it over to a CSM, to the assistant  
7 manager. And they have the expertise to scan all the items  
8 and bring us a receipt, a total.

9           Q     Okay. Your Honor, I'm going to have this marked  
10 as State's Proposed Exhibit No. 2.

11                   Do you recognize that item?

12          A     Yes, I do.

13          Q     What is that?

14          A     That's the receipt that we had made of the items  
15 in the shopping cart.

16          Q     All right. And you viewed the items that were in  
17 the shopping cart; is that correct?

18          A     Yes, I did.

19          Q     And did you photograph them as well?

20          A     Yes, they were photographed as well.

21          Q     And the receipt that, you've had a chance to look  
22 at that?

23          A     Yes.

24          Q     Does that accurately reflect all the items that  
25 were in that shopping cart?

1           A     In the one shopping cart, yes, it does.

2                   MR. ROMERIL: Your Honor, State's going to move to  
3 enter State's Exhibit 2 into evidence.

4                   THE COURT: Any objection?

5                   MR. SLACK: No.

6                   THE COURT: Received.

7                           (State's Exhibit No. 2  
8   was received into evidence.)

9 BY MR. ROMERIL:

10           Q     What is the total value of the items that were in  
11 that one shopping cart?

12           A     The total without tax is \$1,825.68.

13           Q     Okay. And so, there's two shopping carts, that  
14 second shopping cart that Krystal had, was anyone, was that  
15 included in this value?

16           A     No, it was not. We did a separate total. But  
17 that was not a stop that we made.

18           Q     And why was that not included?

19           A     It was not included because we wait until we have  
20 no doubt. When they are heading towards the door, we let  
21 them pass all registers. Wal-Mart's very strict on when we  
22 can stop individuals. And if it looks like they are going  
23 for another cart, we back off. If they are almost to the  
24 door and it looks like they are not going to stop, that's  
25 when we make the stop.

1 Q Okay. At any time did the defendant or Tanisha,  
2 did they look like they were going to get a second cart?

3 A No. When I stopped them, they were actually  
4 almost to the door. And turned around to look at me when I  
5 interrupted them, introduced myself.

6 Q Okay. So, because Krystal kind of veered off and  
7 (inaudible) entering there, the property in that cart was  
8 not included as part of the theft. Is that accurate?

9 A That is accurate in this case, yes.

10 Q Okay. Now, this Wal-Mart, could you just give us  
11 the address?

12 A Yes. It's 1330 South Providence Center Drive,  
13 here in Cedar City.

14 Q And that's here in Iron County, state of Utah?

15 A Yes, it is.

16 MR. ROMERIL: Nothing further, Your Honor.

17 THE COURT: Thank you. Cross?

18 CROSS-EXAMINATION

19 BY MR. SLACK:

20 Q Thank you. So, just to be clear on your  
21 testimony, you can't recall seeing who's transferring the  
22 items, recall from the video where you are standing across  
23 the way, and on the video you can kind of see snippets of  
24 you on your phone just standing there. I want to make it  
25 clear that your testimony was that you don't recall seeing

1 who was transferring the items? You can't recall seeing Mr.  
2 Judd transferring items? Is that (inaudible) depict your  
3 testimony there?

4 A Yeah. They were milling around. I could see  
5 their backs from where I was standing. And there was a lot  
6 of items. On the video it shows. But as far as me  
7 observing, I couldn't see, and I don't recall, you know.

8 Q Okay. But do you recall seeing items being  
9 transferred or you just recall them milling around?

10 A Yes, I do recall seeing them moving items around.  
11 Because they actually came out of, you know, I could see  
12 them, then they would turn this way. I could see individual  
13 items as they would move them back and forth.

14 Q All right. But, again, as to Mr. Judd, you can't  
15 say whether that's him or not him. You just know that he  
16 was there in that party, and there was milling about, and  
17 there was transferring, but you can't say that he was one  
18 that was transferring?

19 A I don't recall at this time.

20 Q Okay. And you had stated, for example, the things  
21 that stand out for whatever reason are the ottomans, the two  
22 ottomans. You watched those ottomans being placed into the  
23 cart, correct?

24 A I did see them in the cart. I do not recall her  
25 placing them in the cart. When I watched video, I made sure

1 that she came in with an empty cart and didn't go to a  
2 register. We don't have a good shot down that aisle.

3 Q And, again, Tanisa was by herself at that time?

4 A At that time, yes.

5 Q So, she goes in with an empty cart. She goes, you  
6 first see, I'm assuming you see her over in the footwear  
7 area, and you begin the surveillance that you talked about?

8 A Correct.

9 Q And you see her go over. Obviously, she's heading  
10 north in the store and gets over to that ottoman section,  
11 and next thing you know there's two ottomans there?

12 A I am trying to recall if she had the ottomans in  
13 the cart. There were items in the cart when I saw her. And  
14 she may have had them already in the cart. I don't recall.

15 Q All right. But as far as the video where we saw  
16 Tanisa come up and then, obviously, we see Krystal and we  
17 see Mr. Judd --

18 A Yes.

19 Q -- that's the first time in the store when they  
20 are together to your knowledge?

21 A To my knowledge, yes.

22 Q Okay. Do you recall whether in the preliminary  
23 hearing, obviously, it's been held a handful of months back,  
24 whether or not it was stated that they were detained and  
25 held in the vestibule on the north side or the south side?

1 Do you remember that testimony?

2 A I don't recall. I just remember it was in the  
3 vestibule by the carts.

4 Q Is there not a door, as you are leaving the north  
5 side, the one in question, right, at least the one where you  
6 stop them --

7 A Yes.

8 Q -- isn't there a doorway in some kind of closet  
9 area right there as well?

10 A If you go around and take a left, you go clear  
11 down by the pop machines and there is another door there.

12 Q Okay. Not closer to the ice machine there. Is  
13 there not a door there where people could be detained and  
14 held? Is that a location where that could occur?

15 A There is a door there, but it's a little closet I  
16 store brooms and I think things there, but we don't ever use  
17 it for detaining.

18 Q So, as far as in the preliminary hearing, it was  
19 never -- it was never stated, to your knowledge, that that's  
20 where they were detained and interviewed by the Officer  
21 Topham and yourself?

22 A No. It would be in the AP office.

23 Q Okay. So, to get them over there, do you go out  
24 through the front of the store? Do you go out, outside and  
25 go over to that other room?

1           A     No. We are not allowed to go out. We bring them  
2 back in across by the front rest rooms and then take a left  
3 to the AP office.

4           Q     Okay. All right. Thank you. That's all I have.

5           THE COURT: Thank you. Any other questions, Mr.  
6 Romeril?

7           MR. ROMERIL: No, Your Honor.

8           THE COURT: Thank you. May the witness be  
9 excused?

10          MR. ROMERIL: Yes.

11          THE COURT: Thank you, Mr. Stewart.

12          THE WITNESS: Thank you, Your Honor.

13          MR. ROMERIL: Your Honor, my second witness, I  
14 imagine his testimony for my side will take 10, 15 minutes  
15 at the most. So, I'll leave that to the discretion of the  
16 court, if you would like me to finish with him or take lunch  
17 now?

18          THE COURT: Okay. I think what the court would  
19 like to do is take the lunch recess now. The court does  
20 have another matter at 1:15. So, the court would like to  
21 start back up at 1:30. Please, 1:30.

22          Again, the admonition is still in place. Please  
23 don't discuss this with anyone over the lunch hour. You are  
24 excused until 1:30. When you come back, one of the bailiffs  
25 will be in front of the (inaudible) and can escort you to



1 the jury deliberation room. Thank you.

2 LADY JUROR: 1:30.

3 THE COURT: 1:30, yes, ma'am. You can leave your  
4 items here if you would like or you can put it in the room,  
5 whatever you would like to do.

6 (Whereupon, the following proceedings were held  
7 in open court outside the presence of the jury.)

8 THE COURT: Thank you. Anything else, gentlemen?  
9 Court will be in recess.

10 MR. ROMERIL: There are Exhibits 1 and 2 there. I  
11 want to take them.

12 THE COURT: Thank you.

13 (Whereupon, a lunch recess was taken.)

14 THE COURT: Mr. Romeril, is the State ready to  
15 proceed?

16 MR. ROMERIL: Yes.

17 THE COURT: Mr. Slack?

18 MR. SLACK: Yes.

19 THE COURT: Bring the jury in, please.

20 (Whereupon, the following proceedings were held  
21 in open court in the presence of the jury.)

22 THE COURT: Thank you. You may be seated. Hope  
23 the jury had a nice lunch break. Is there any one of you  
24 who did not follow the admonition of the court? Thank you.  
25 No hands were raised.

1 Mr. Romeril, your next witness, please?

2 MR. ROMERIL: Be Officer Matt Topham.

3 THE COURT: Officer Topham, if you would come  
4 forward, please. Please raise your right hand.

5 OFFICER MATTHEW TOPHAM,  
6 called by Plaintiff, having been duly  
7 sworn, was examined and testifies as follows:

8 THE COURT: Please be seated. Officer, once you  
9 are seated if you could please state your name into the  
10 microphone for the record.

11 THE WITNESS: Officer Matthew A. Topham.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. ROMERIL:

15 Q Officer Topham, who is your employer?

16 A Cedar City Police Department.

17 Q And how long have you been employed by them for?

18 A Just over ten years.

19 Q Are you a fully certified category one peace  
20 officer?

21 A Yes, sir.

22 Q Could you tell the jury what that means?

23 A That means I have full police authority 24/7 in  
24 the state of Utah.

25 Q Are you allowed to do arrests?

1 A Yes, sir.

2 Q Are you allowed to issue citations?

3 A Yes, sir.

4 Q Okay. I want to take you back to the date of  
5 August 13, 2015. Do you remember that day?

6 A Yes, sir.

7 Q Were you working a shift that day?

8 A Yes, sir.

9 Q Acting in your official capacity?

10 A Yes, sir.

11 Q Approximately 7:30 that night, were you at  
12 Wal-Mart?

13 A Yes, sir.

14 Q And what were you doing there?

15 A I was there on an unrelated incident.

16 Q Okay.

17 A I believe I was picking up some paperwork. I  
18 don't recall exactly what that unrelated incident was.

19 Q Okay. And while you were there, what happens?

20 A I was notified by one of the asset protection  
21 officers that they may have a shoplifting in progress. And  
22 they asked me if I would hold on for just a minute to see  
23 how that turned out.

24 Q Okay. So, where are you at when this occurs?

25 A I was in or near the asset protection office on

1 the south side, on the south doors.

2 Q Okay. So, over by the McDonald's?

3 A Yes, sir.

4 Q And do you eventually have contact with the  
5 defendant?

6 A Yes, sir.

7 Q And where is that at?

8 A Again, at that same asset protection office.

9 Q Okay. And who else do you have contact with?

10 A With Joseph as well.

11 Q Okay. Were there any other individuals?

12 A Yes. There was also Nate Ellis was there as well,  
13 I believe. He's also an asset protection officer.

14 Q Okay. And was there anyone that came in with the  
15 defendant?

16 A Yes. It was the defendant seated here as well as  
17 Krystal Koehl. I believe her daughter, Tanisha Koehl. Then  
18 there were three other small children.

19 Q Okay. Now, do you have a discussion with the  
20 defendant, Krystal, Tanisha and the three children?

21 A Yes, sir.

22 Q Are you able to find out if these parties know  
23 each other?

24 A Yes, sir. I am familiar with Tanisha and Krystal  
25 from a prior incident. I was the school resource officer.

1 And I know them just as a student and a parent at the  
2 school.

3 Q Okay. So, is Krystal Tanisha's mother then?

4 A Yes.

5 Q And how old is Tanisa?

6 A I believe she was 14 at the time.

7 Q Now, how about the defendant? Were you able to  
8 determine whether he knew Krystal and Tanisha?

9 A Yes. I believe they said that he was either an  
10 ex-husband or an ex-boy friend of Krystal. I don't recall  
11 for sure which.

12 Q Okay. So, when you -- do you make contact with  
13 Tanisha?

14 A Yes, sir.

15 Q And do you search her?

16 A When they, asset protection officer, Joseph,  
17 brought the individuals to asset protection office, I began  
18 by speaking to the two adults and also Tanisha, as she had  
19 been implicated in the retail theft as well. I advised them  
20 of their rights as per Miranda and asked if they would be  
21 willing to answer some questions for me to which all three  
22 stated individually that they would.

23 Q Okay.

24 A Given them the nature of the allegation of the  
25 theft, I asked if I could search their persons real quick to

1 make sure they didn't still have any additional items on  
2 them. Inside Tanisha's purse I found several items of what  
3 I believe were hygiene and cosmetic related items.

4 Q Okay. And those items identified as being stolen  
5 or purchased?

6 A Stolen.

7 Q Okay. Do you talk with the defendant about what  
8 was happening that day?

9 A Yes, sir.

10 Q And what did he tell you?

11 A If I can refer to my notes for a moment?

12 Q If that will refresh your memory.

13 A I asked each of them about the theft. They each  
14 stated that they had planned to come into the store and  
15 commit the theft that day. They each stated that they did  
16 not have money with them in order to purchase all the items  
17 that were in the carts. And that they had planned on  
18 committing the theft.

19 Q Okay.

20 A When they came in.

21 Q Do they admit, then, to like working together to  
22 do this?

23 A Yes.

24 Q Did the defendant make any statements about  
25 involving Tanisha and having three other children there?

1           A     Yes. Both Mr. Judd and Krystal stated that they  
2     were very sorry. They apologized to the children several  
3     times. And they stated to me as well that they were sorry  
4     that they knew they shouldn't have broken the law with the  
5     children there.

6           Q     Okay. When, was there a specific made concerning  
7     Tanisha herself?

8           A     Talking about all of the children together, yes.  
9     And I believe Tanisha specifically, yes, as well, that they  
10    were upset that she had been so involved in the theft as  
11    well.

12          Q     So, do you have your report in front of you?

13          A     Yes, sir.

14          Q     I want to refer you to -- so, my report, it's  
15    page 1.

16          A     Unfortunately, this one doesn't have page numbers,  
17    but I believe I know which page you are talking about.

18          Q     Okay. The very last sentence of that page that  
19    begins, They also stated, and then the sentence carries over  
20    to the next page?

21          A     Where it says "Lewis also stated? Or they also  
22    stated? I don't think I see where you are talking about,  
23    sir.

24          Q     Okay. If I may approach?

25                THE COURT: You may.

1           A     Oh, yes. It's a different format, but it's the  
2 same. It's the same report, just in a different format.

3 BY MR. ROMERIL:

4           Q     Okay. The paragraph that I am looking for says  
5 Lewis and Krystal stated --

6           A     Yes.

7           Q     That they knew they should not -- would you go the  
8 next sentence?

9           A     They also stated --

10           MR. SLACK: Your Honor, I'm going to ask that --  
11 all he should be doing is refreshing his memory and then  
12 testifying after it's been refreshed, not just simply  
13 reading a report.

14           THE COURT: Sustained.

15 BY MR. ROMERIL:

16           Q     Will you just read that sentence and see if that  
17 refreshes your memory?

18           A     Yes. They stated that they should not have had  
19 Tanisha assist them in the theft.

20           Q     Okay. And when you say they, did those statements  
21 come from the defendant?

22           A     Yes. And also Krystal as well.

23           Q     Okay. Do you recognize -- well, did you identify  
24 Mr. Lewis that day?

25           A     Yes, sir.



1 Q And is he here in the courtroom?

2 A Yes, sir.

3 Q Is he sitting next to Mr. Slack?

4 A Yes, sir.

5 Q And was he the individual that was wearing the red  
6 shirt in the video?

7 A Yes, sir.

8 Q Now, Officer Topham, it kind of goes without  
9 saying that the defendant was charged that day, correct?

10 A Yes, sir.

11 Q Was anyone else charged in the incident?

12 A Yes, sir. Krystal was also charged for the retail  
13 theft and for contributing to the delinquency of a minor, as  
14 was Mr. Judd. And Tanisha, the 14 year-old, was charged  
15 with the retail theft as well.

16 MR. ROMERIL: Okay. Nothing further, Your Honor.

17 THE COURT: Thank you, Mr. Romeril.

18 Mr. Slack, cross-examination.

19 CROSS-EXAMINATION

20 BY MR. SLACK:

21 Q When you are testifying, it sounds like a lot of,  
22 there's a lot of just collectively they said, collectively  
23 they said. Do you have individual notes or at least for  
24 each, what each individual did and said for this incident?

25 A Yes. In the report it was written as the

1 collective. But at the time it was individual. They were  
2 all three together in the same room. It's a very small  
3 room. And there was all three. Tanisha, I know I am  
4 mispronouncing her name and I apologize, Tanisa, Krystal,  
5 Mr. Judd and the other three small children along with the  
6 other two small asset protection officers and myself. It  
7 was a very crowded room.

8 Q Okay.

9 A And so, as I was speaking to them, it was like a  
10 combined conversation, if that makes sense. However, each  
11 time there was something specific that came up as far as  
12 admission to Tanisha being involved or to the theft taking  
13 place, I made sure and spoke to each one and got an  
14 affirmative answer from each one individually, much as we do  
15 when we do the Miranda warnings. I give them Miranda  
16 warnings. I read them once where all three can hear, then I  
17 ask each one individually if they understood and if they had  
18 any questions.

19 Q Now, it's fairly common that when you interview  
20 somebody you'll give them, basically, a piece of paper, a  
21 statement that says I was given Miranda and you agreed to  
22 talk. Did that occur in this instance?

23 A No, it did not.

24 Q Did, was there any audio or video surveillance of  
25 your conversation in the, I forget the room, what you are

1 calling the room.

2 A Asset protection office.

3 Q Yes, asset protection room there in Wal-Mart. Was  
4 there any audio or video surveillance?

5 A There was not. Unfortunately, it was prior to  
6 when we had our body cameras as well, so I don't have any  
7 audio or video on that.

8 Q Okay. And there certainly wasn't something that  
9 was drawn up after the fact and had them sign acknowledging  
10 their statement? Nothing of that nature either, correct?

11 A No, sir.

12 MR. SLACK: That's all I have.

13 THE COURT: Thank you, Mr. Slack. Any further  
14 questions?

15 REDIRECT EXAMINATION

16 BY MR. ROMERIL:

17 Q Officer Topham, at any time did the defendant say,  
18 deny that he was involved in the theft or tell you it was a  
19 big misunderstanding? Did he make any statements like that?

20 A Not to my knowledge, no, sir. Not to my  
21 recollection.

22 Q Okay. Was he fairly compliant then with what  
23 happened that night?

24 A Yes, sir.

25 Q Okay.

1           A     At the time, I believed that they were all very  
2 honest and open with me.

3           MR. ROMERIL:   Okay.   Nothing further, Your Honor.

4           THE COURT:   Thank you.   Anything else?

5           MR. SLACK:   No.

6           THE COURT:   Thank you, officer.   Does the State  
7 have any other witnesses?

8           MR. ROMERIL:   No, Your Honor.   If I could just  
9 take one second here?

10          THE COURT:   You may.

11          MR. ROMERIL:   Your Honor, the State has no further  
12 witnesses.   At this point in time, the State would rest.

13          THE COURT:   Thank you, Mr. Romeril.

14          State has officially rested.   Mr. Slack, do you  
15 have any witnesses or any evidence you want to produce to  
16 the court?

17          MR. SLACK:   Lewis Judd would like to testify, Your  
18 Honor.

19          THE COURT:   Thank you.   Mr. Judd, if you would  
20 come forward, please.   Please raise your right hand.

21                       LEWIS JUDD,  
22           called by Defendant having been duly  
23           sworn, was examined and testifies as follows:

24          THE COURT:   Thank you, Mr. Judd.   Mr. Judd, please  
25 have a seat here on the witness stand.   And once you are

1 seated, Mr. Judd, if you could please state into the  
2 microphone your full name.

3 THE WITNESS: My name is Lewis Rene Judd.

4 THE COURT: Thank you.

5 DIRECT EXAMINATION

6 BY MR. SLACK:

7 Q Mr. Judd, where do you reside? I don't need the  
8 address. Just, Iron County?

9 A Iron County.

10 Q Perfect. And how long have you been residing here  
11 in Iron County, Cedar City area?

12 A Twenty -- what am I, 38? Thirty-six years.

13 Q Perfect. And so, we are talking about, today we  
14 have been talking, hearing testimony about an incident of  
15 August 13, 2015. Do you remember that day?

16 A Lots of it.

17 Q Okay. Do you recall, did you go to Wal-Mart that  
18 day?

19 A We did.

20 Q Okay. And we just watched a video a couple hours  
21 ago that depicts you and I think Krystal and I think your  
22 kids. Do you remember going on this shopping trip in  
23 question?

24 A I do.

25 Q Okay. I guess explain what was going on. What

1 were you doing there at Wal-Mart that day?

2 A We were going to pick up some archery supplies for  
3 the deer hunt. It was coming up in a couple weeks, plus or  
4 minus. I don't know exactly when. But we needed some  
5 supplies. I had been watching the kids. And Krystal wanted  
6 to get me something to go hunting with, I guess.

7 Q Okay. Now, there in the video it shows you and  
8 Krystal walking. And there were balloons on your cart. Why  
9 were there balloons?

10 A Krystal's girlfriend, her birthday was coming up  
11 or the anniversary of her death or something, and was  
12 wanting to take balloons to her parents.

13 Q Okay. And you are walking around the store with  
14 Krystal. What, did you not go there with Tanisha?

15 A We all ended up going to the store. I drove there  
16 with Tanisa and Krystal and Payton and McKenda and Trinity.

17 Q Okay. So, I have been calling her Tanisha and  
18 everybody else. So, it's Tanisa?

19 A Correct.

20 Q Okay. And you get into the store. You separate,  
21 obviously, because there's testimony about Tanisa being over  
22 in the shoe section while you and Krystal were somewhere  
23 else. What's going on?

24 A Krystal had just got her tattoo worked on. So,  
25 she was hungry. So, me and Krystal and the kids, minus

1 Tanisa, went to McDonald's and got some food. Krystal ended  
2 up going and getting balloons while we were eating at  
3 McDonald's. Then we proceeded to go shopping.

4 Q Okay. And Tanisa's on her own, and you are with  
5 Krystal?

6 A Yes.

7 Q Okay. And how long had you been there in the  
8 store?

9 A An hour or so. 45 minutes, an hour. I lose track  
10 of time.

11 Q And we, obviously, you were separated from, you  
12 and Krystal were separated from Tanisa the majority of that  
13 time, the shopping time?

14 A Yes. I don't remember ever seeing Tanisa until we  
15 were in the pharmacy.

16 Q Okay. And when you say in the pharmacy, are you  
17 talking about what, the portion we were watching the video  
18 of?

19 A Yes.

20 Q Okay. And so, obviously, you may recall the video  
21 where you and Krystal come down the aisle, and you stop  
22 there at the pharmacy. You didn't see Tanisa prior to that  
23 time, I mean, maybe when you are getting food or when you  
24 pulled in, but while she's out shopping, you don't see her  
25 at that point?

1           A     No.

2           Q     So, you get to the pharmacy area, like we kind of  
3 see in the video. You don't really see a lot. We just see  
4 little snippets of it. What's going on at that point where  
5 you, Krystal and Tanisa and the kids are all right there?  
6 Obviously, we can't see much. We have heard what Mr.  
7 Stewart has said. What's your version?

8           A     We are looking at the medical tape. Krystal had  
9 just got her tattoo worked on and was wanting to wash it and  
10 rewrap it as the tattoo artist had wrapped it up to protect  
11 it for her. So, we were basically on our way out the store.  
12 And, as we were going to check out -- oh, we needed medical  
13 tape, so we were looking at that.

14          Q     Okay. Mr. Stewart talks about seeing shuffling of  
15 items between one cart and another cart. Are you aware of  
16 any of that?

17          A     I didn't see any of that.

18          Q     What were you doing?

19          A     I was looking at medical tape, Band-Aids to  
20 protect a tattoo that had just got worked on.

21          Q     Okay. Then, obviously, that video ends and we  
22 move to the next one. And they appear to be quite a  
23 succession. Explain. Tanisa starts walking out. What do  
24 you do?

25          A     I was, we were still trying to figure out what



1 medical tape to get. I was asked to go help unload the  
2 ottoman.

3 Q Asked by who?

4 A Krystal had asked me to go.

5 Q So, how does that conversation go?

6 A Do you want to go help unload that ottoman, unlock  
7 the truck? All right.

8 Q So, when was that in relation to when Tanisa is  
9 taking that out there?

10 A A minute, 30 seconds.

11 Q Okay. Because you have seen the video, right?

12 A Yes.

13 Q I mean, sitting here. You appear to be walking.  
14 Tanisa is pushing the cart. And you appear to be behind her  
15 maybe from here to the end of the desk at the very most.  
16 Does that, the minute, 30 seconds still seem right?

17 A It -- yes. I don't know when they cut that tape  
18 where she was at. I -- it seemed like longer because I had  
19 time to like try and figure out what tape we wanted to get.  
20 And then asked to go.

21 Q Okay. So, she's -- she's walking out. And  
22 your -- what are you thinking about what's in her cart as  
23 far as whether that merchandise is paid for, not paid for?  
24 Explain your story at this point.

25 A I seen an ottoman and a dog bed. I roughed it out

1 in my head, \$50 or something, half a day's work, a day's  
2 worth of work for her. She had a full time job. No big  
3 deal. They are not going to bag a dog bed and an ottoman.  
4 I thought -- I didn't think twice of it.

5 Q Well, how do you explain the fact that she came in  
6 behind -- again, we are watching the video. You are coming  
7 from the Pet section?

8 A I didn't think -- I just thought she was looking  
9 for us, getting ready to go. I -- let us know that she  
10 needed the keys to the vehicle. I never even thought twice  
11 about it.

12 Q Okay. So, she's walking out. And you are behind  
13 her. Again, we all saw the video. And so, again, let's be  
14 honest, the minute doesn't appear to make a lot of sense.  
15 But that's your memory of it, minute to 30 seconds?

16 A Yes.

17 Q But we saw the video. And, nevertheless, the  
18 officer -- not the officer. But when the Wal-Mart, Mr.  
19 Stewart stops you, do you say anything to him? Or first  
20 off, what do you remember him saying to you?

21 A I just remember him tapping me on my shoulder,  
22 explaining who he is. I think I had to reach out and grab  
23 Tanisa to get her to stop. I remember him asking if there  
24 was anything that wasn't paid for. And I looked at Tanisa,  
25 like, did you pay for this? I didn't say nothing. She had

1 stated that there was stuff that she didn't pay for.

2 Q So, it's insinuated or it's been stated, I guess,  
3 not insinuated, but it's been stated that you and Tanisa  
4 said, again, it's one of those collectives they said, that  
5 there were items in the cart that were not paid for. Did  
6 you say those things?

7 A I did not.

8 Q Okay. But you looked at Tanisa for that answer?

9 A I did. It's her cart.

10 Q And that's the same cart that she was wheeling  
11 around all throughout Wal-Mart?

12 A Correct.

13 Q Were you there or were you aware that she was  
14 sticking things in the ottoman portion?

15 A I was not.

16 Q So, after Mr. Stewart has stopped you and asked  
17 you to stay behind because of the, what's in the cart, what  
18 happens next? Where do you go?

19 A We went to the south end of the building into  
20 their little room.

21 Q And consistent with how, basically, you go through  
22 past the ice machine and past the customer service to that  
23 section?

24 A Yes.

25 Q Okay. You get into that, to that room. Who's in

1 that room?

2 A I think it was just Officer Topham there when we  
3 got there. I don't know who went in ahead of me or behind  
4 me.

5 Q All right. And so, do you go in first and then  
6 Krystal's behind? Explain the process.

7 A I don't know what order we went in.

8 Q Okay.

9 A But, in the end, there was the theft prevention  
10 officer's name?

11 Q Okay. Mr. Stewart's there?

12 A Mr. Stewart, me, Krystal, Tanisa and McKenda,  
13 Trinity, Payton and Officer Topham. Then outside the door  
14 eventually other Wal-Mart employees showed up.

15 Q Okay. Do you recall Officer Topham giving you  
16 what we have been saying, giving you Miranda and Mirandizing  
17 you? Do you recall a time when Officer Topham ever stopped  
18 everything and said before we talk I need to give you your  
19 rights, you have the right to remain silent, et cetera, et  
20 cetera, et cetera. Do you remember that happening?

21 A I do.

22 Q And you understood that admonition that he gave  
23 you, correct?

24 A Yes.

25 Q What was your response to that?

1           A     I would like counsel. I don't want to say  
2 anything at this time.

3           Q     Okay. Did you say anything at that time about --  
4 well, did you admit to taking items that didn't belong to  
5 you?

6           A     I did not.

7           Q     Did you say anything at all about the situation or  
8 the circumstances in that particular meeting, that room?

9           A     I remember at one point I asked, what are you  
10 going to do with me, like as far as what's happening. I  
11 got kids --

12          Q     Why were you asking that?

13          A     I just wondered if they were going to let me know.  
14 They are writing Tanisa a ticket. I was just wondering what  
15 was happening. He said he was probably going to write me a  
16 ticket and release me, waiting for -- they ended up going  
17 and totaling up what had been in the cart, and eventually  
18 got took to jail instead.

19          Q     Okay. Besides saying what's going to happen to  
20 me, questions of that nature, did you say anything that  
21 resembled a confession to -- well, to planning on going  
22 there without money, going in there, taking items that  
23 didn't belong to you. Was there anything else that was  
24 stated that would maybe come across as a confession?

25          A     No.

1 Q And I am talking about you specifically, just you,  
2 correct?

3 A Yes.

4 Q Okay. Where does Tanisa -- I'm sorry. Tanisa?

5 A Tanisa.

6 Q Where does Tanisa work?

7 A She worked at Color Country Painting with her  
8 mother.

9 Q And what would one do at Color Country Paint?  
10 Like, is that house painting or is it --

11 A Velocity. They are doing a lot of new homes for  
12 Velocity --

13 Q I see.

14 A -- of new homes. So, they do a lot of the prep  
15 work and painting.

16 Q Painting of the walls. Okay. I got it.

17 A Tanisa was doing prep work.

18 Q All right. And that's where she was working at  
19 the time?

20 A Yes.

21 Q And that's what made you believe she perhaps had  
22 the money to purchase these items?

23 A Yes.

24 Q Okay. And, again, she's 14 at the time, right?

25 A Yes.

1 Q And that's where she worked at 14?

2 A Yes. She had got in trouble prior, had some  
3 restitution, was able to work out a deal to be able to go to  
4 work for, I don't know what it was, 40 hours a week, 38  
5 hours a week.

6 Q Okay. Were you aware that Tanisa was going to  
7 steal these items?

8 A I was not.

9 MR. SLACK: Okay. That's all I have, Your Honor.

10 THE COURT: Thank you. Mr. Romeril?

11 CROSS-EXAMINATION

12 BY MR. ROMERIL:

13 Q So, Tanisa is your daughter; is that correct or is  
14 she --

15 A Stepdaughter.

16 Q Stepdaughter? Okay. How long have you been in  
17 her life?

18 A Nine years. Eight years.

19 Q And at 14 years of age, you believe walking out of  
20 that Wal-Mart, Tanisa had the ability to pay for \$1,825.68  
21 as a 14 year-old? That was your honest belief at the time?

22 A My honest belief was she had the ability to pay  
23 for an ottoman and a dog bed.

24 Q Okay. But that cart was full when you walked out.  
25 I mean, you saw the video?

1           A     I seen an ottoman and a dog bed. I wasn't  
2 paying -- I looked over when I was looking at the Band-Aids.  
3 And I seen an ottoman and a dog bed.

4           Q     The three of you show up at Wal-Mart together.  
5 You said you drove them, correct?

6           A     I did.

7           Q     And you put items in that cart, is that correct,  
8 camo and some hunting gear, you said Krystal was going to  
9 purchase for you?

10          A     In Krystal's cart I did.

11          Q     Okay. Then the three of you meet up at the front  
12 of the store, correct?

13          A     Tanisa came and found us when we were on our way  
14 to go pay for --

15          Q     And you knew when she found you she hadn't been  
16 through the register, right?

17          A     I did not know that.

18          Q     So, you thought she had gone through the register,  
19 gone back into the store and went out the north, because she  
20 came up behind you, right? So, she went to the north side  
21 of the store and came through again, that was your  
22 understanding?

23          A     I did not see her come up -- I didn't know that  
24 she was behind us. I was looking forward. We were  
25 headed --



1           Q     Well, did she come to you from your direction,  
2     where you were looking forward?

3           A     I was looking at Band-Aids, medical tape when she  
4     appeared. I was oblivious to where she was at.

5           Q     And those Band-Aids, did you say you opened up  
6     some of that tape to put on Krystal?

7           A     I don't think we did.

8           Q     Okay. When you walk out of the store, you are  
9     with Tanisha, right?

10          A     I was behind her.

11          Q     But you were walking out together, right. You  
12     opened the car for her?

13          A     Well, I was asked after she left to go help her.

14          Q     Okay. But, I mean, you are literally, we saw the  
15     video. You are just right here. And at the very end when  
16     you walk out of the store you are almost right next to her.  
17     So, are you saying you weren't walking out with her?

18          A     I was walking out.

19          Q     Okay. And you knew at the time that this was  
20     stolen property, right? That's why Krystal stayed behind?

21          A     I did not know that. Krystal had a whole 'nother  
22     shopping cart of things that needed to be paid for that I  
23     knew weren't paid for.

24          Q     Yet, the 14 year-old pushed the cart through  
25     didn't she, instead of you, just in case you got caught,

1 right?

2 A No.

3 Q And Krystal had her daughter, 14 year-old push the  
4 cart through just in case she got caught because she could  
5 come up behind, and if she saw you get caught then she could  
6 take off and leave you and your daughter to fend for  
7 yourselves, is that correct?

8 A No.

9 Q And once you got caught, you are good character  
10 man, you just said, yeah, we didn't pay for any of this. We  
11 don't have the money for it; isn't that correct?

12 A That is not correct.

13 Q Then when they took you back to the AP office over  
14 by Wal-Mart, and they read you Miranda, and you were read  
15 Miranda, you then admitted to taking the property, and it  
16 was part of the plan; isn't that correct?

17 A That is not correct.

18 Q And then after you felt a little guilty and you  
19 know, man, we shouldn't have had this 14 year-old girl help  
20 us out, that was wrong, and you said this was wrong, we  
21 shouldn't have included the 14 year-old? That's correct,  
22 isn't it?

23 A That is not correct either.

24 Q So, this is all just one big misunderstanding?

25 A Yes.

1           Q     At any time in that video did you stop and say,  
2 hey, Tanisa have you paid for this stuff?

3           A     I didn't ask. I didn't think twice of it.

4           Q     At any time in the AP office, did you say, whoa,  
5 Officer Topham. This is a big misunderstanding. I thought  
6 she paid for the items?

7           A     I did not say anything to him. I kept quiet about  
8 it.

9           MR. ROMERIL: Your Honor, could Mr. Slack and I  
10 approach?

11          A     You may.  
12 (Whereupon, a sidebar conference was held off the record.)

13          MR. ROMERIL: Nothing further.

14          THE COURT: Thank you. Any further questions, Mr.  
15 Slack?

16          MR. SLACK: No.

17          THE COURT: Thank you. Mr. Judd, you may be  
18 seated.

19          Mr. Slack, do you have any other evidence you wish  
20 to --

21          MR. SLACK: The defense has no further witnesses,  
22 Your Honor. The defense rests.

23          THE COURT: Thank you. Defense rests. Any  
24 rebuttal evidence?

25          MR. ROMERIL: Yes, Your Honor. The State's going

1 to call back Mr. Stewart.

2 THE COURT: Thank you. Good afternoon, Mr.  
3 Stewart. Mr. Stewart, if you would please come forward.  
4 Court will remind you you are still under oath, sir. Please  
5 have a seat.

6 JOSEPH L. STEWART,  
7 called by Plaintiff, having been duly  
8 sworn, was examined and testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. ROMERIL:

11 Q Mr. Stewart, just a couple more questions. Were  
12 you -- you testified earlier you were in the AP room when  
13 the defendant was brought in there, correct?

14 A Yes, that is correct.

15 Q And do you remember if Officer Topham read his  
16 Miranda rights?

17 A Yes, I do remember.

18 Q You heard those?

19 A Yes.

20 Q And do you remember if the defendant said I don't  
21 want to answer questions, I want an attorney?

22 A No, I do not recall that.

23 Q Were you present when Officer Topham asked him if  
24 he was aware that the goods were stolen? Were you present  
25 when those questions were being asked?

1           A     Yes, I was.

2           Q     Do you remember what the defendant said?

3           A     The only thing I remember is there was a  
4 discussion about not having money to pay for the items.

5           MR. ROMERIL: Okay. All right. Nothing further,  
6 Your Honor.

7           THE COURT: Thank you. Mr. Slack?

8                     RECROSS-EXAMINATION

9 BY MR. SLACK:

10          Q     When you say there was a discussion of not having  
11 money to pay for the items, it's kind of been the habit here  
12 as we have said that, and it's hard to know who is saying it  
13 specifically because we have kind of been collective they,  
14 talking to a group of four people, and they said  
15 specifically, do you recall the conversation between Officer  
16 Topham and Mr. Judd and what, you know, counsel asked you to  
17 elaborate, elaborate what you heard Mr. Judd say, just so we  
18 are clear.

19          A     Okay. I don't recall specifically, because they  
20 were both being arrested. And they were talking about bail  
21 money. And I remember there was a discussion between the  
22 two. I don't recall specifics. Just remember there was a  
23 discussion between the two of where they were going to come  
24 up with the bail money because they didn't have money to  
25 pay. They said we don't have money to pay for the items.

1 So, there was a discussion between the two where they were  
2 going to come up with the bail money.

3 Q Okay. Was there ever -- and I am not saying you  
4 have to remember this. I am just making sure. Was it ever  
5 stated or do you ever recall hearing Mr. Judd say, what's  
6 going to happen to us? Something like that? As far as,  
7 what do you plan to do with us now that we are here in this  
8 room and we have gone through this ordeal, what's going to  
9 happen to us? Do you ever recall that?

10 A What I recall is, there was talk of, okay, it was  
11 over a certain amount. So, they were going to have to be  
12 booked. And the discussion was about where to find the  
13 money to come up for the bail. And if I remember specifics,  
14 it was Krystal mentioned there was a safe because they  
15 talked to her parents when they got there. And that's where  
16 they had the money.

17 Q Okay. And so, being specific, that's what you  
18 remember with specificity about the conversation, this  
19 conversation and your -- I'm sorry, I keep forgetting the  
20 loss prevention office there in Wal-Mart.

21 A Yes. I couldn't quote specifics.

22 Q Okay. Thank you.

23 A Specific quotes.

24 THE COURT: Any other questions?

25 REDIRECT EXAMINATION

1 BY MR. ROMERIL:

2 Q So, bail aside, do you remember statements about  
3 not having money for the what they had in the cart, for what  
4 they stole?

5 A No. They were -- I remember there was a  
6 discussion that they admitted to Officer Topham that they  
7 didn't have the money to pay for the goods, that they  
8 planned on stealing those.

9 Q Okay. And when you say they, who are you talking  
10 about?

11 A All three.

12 Q All three?

13 A Um-hmm.

14 Q So, Tanisha, Krystal and the defendant?

15 A Yes.

16 Q Okay. Nothing further.

17 THE COURT: Thank you. Thank you, Mr. Stewart,  
18 you may be excused. Any other rebuttal?

19 MR. ROMERIL: No, Your Honor.

20 THE COURT: Thank you. We have now come to a  
21 point in the trial where the state has rested, defense has  
22 rested. The court is going to take a short recess to  
23 finalize the final jury instructions then the jury will back  
24 into the courtroom. I will read those jury instructions to  
25 you. And then we will proceed to closing argument. Thank

1 you. You may go back into the jury deliberation room,  
2 please.

3 (Whereupon, the following proceedings were held in  
4 open court outside the presence of the jury.)

5 THE COURT: Thank you. You may be seated.  
6 Anything else, Mr. Romeril? Mr. Slack?

7 MR. SLACK: Do you need us back there to finalize  
8 anything?

9 THE COURT: I think that early this morning you  
10 had gone through the jury instructions. If you would like  
11 to take a look at it again before -- it's the same from this  
12 morning. The only thing that I did is on some of them did  
13 not have a number, I just proceeded to number those. But  
14 what you reviewed this morning the both of you had agreed  
15 to. That's what, I plan on making copies, then we'll  
16 proceed.

17 MR. SLACK: Perfect.

18 THE COURT: Are we okay?

19 MR. ROMERIL: Thank you.

20 THE COURT: Okay. Thank you. We'll take maybe a  
21 ten minute recess. Thanks.

22 (Whereupon, a brief recess was taken.)

23 THE COURT: Thank you, Mr. Bailiff. Is the state  
24 ready to proceed?

25 MR. ROMERIL: Yes, Your Honor.



1 THE COURT: Defense.

2 MR. SLACK: Yes.

3 THE COURT: Thank you. Jury please.

4 (Whereupon, the following proceedings were held  
5 in open court in the presence of the jury.)

6 THE COURT: Thank you. You may be seated. The  
7 bailiff has handed you a document with jury instructions 9  
8 through 18. At this time, the court is going to read these  
9 jury instructions to you and give you an opportunity to  
10 follow along as I read those.

11 (Court reading final Jury Instructions 9 through 18.)

12 THE COURT: Mr. Romeril, are you ready to proceed  
13 with closing statement?

14 MR. ROMERIL: Yes, Your Honor.

15 THE COURT: Thank you.

16 MR. ROMERIL: Well, first off, I would just like  
17 to say thank you for being here and paying attention as  
18 questions were asked, answers were given. I just want to  
19 thank you for, I saw notes when you were taking -- I could  
20 tell you were taking this seriously. And that as you  
21 should. So, the purpose of my closing statement or a  
22 closing statement is to wrap up State's evidence and give  
23 you some direction on where we think this evidence points.

24 Obviously, I have what I feel, Mr. Slack has what  
25 he feels. That doesn't really matter. It matters what you

1 feel the evidence dictates to you, whether it's guilt or  
2 innocence.

3           So, the state is required to prove the two crimes.  
4 And the two crimes are listed in your instructions,  
5 instruction number 11 and instruction number 12. So, if I  
6 could have you turn to instruction 11. So, we are going to  
7 go through this crime, which is the crime of retail theft.  
8 And we'll talk about each element. So, you'll see here that  
9 in your instruction they are listed one through four. So,  
10 the State's required to prove each and every single one of  
11 those.

12           So, I would, I would suggest that when you go back  
13 in and you deliberate, that one of you has a pencil, and you  
14 just start going through each element to see if it's been  
15 proven. So, number 1, that the defendant, okay, we are  
16 claiming the defendant is Mr. Judd sitting here at the  
17 table. I would suggest that you could beyond a reasonable  
18 doubt decide that the State proved that Mr. Judd was the one  
19 who was there that day at Wal-Mart. He was the one pushing  
20 the cart. We have video, we have testimony from Officer  
21 Topham and Mr. Stewart claiming that was the individual.

22           Then the next part, acted knowingly and  
23 intentionally. Okay. So, we need to prove that on that  
24 day, what he did wasn't a mistake. That it wasn't just by  
25 happenstance that that cart got pushed out with him and a 14

1 year-old girl that he's known for nine years. Need to prove  
2 that he actually intended to do what he did. Well, there's  
3 the evidence that supports that is one that he was putting  
4 items into those carts. We know that he was putting items  
5 into the one cart earlier, shopping goods. We know that  
6 they came up to the front of the store. We know that Tanisa  
7 came up behind them. And they started, I think the  
8 testimony was that they were all three kind of around going  
9 through the property, and the property was going from one  
10 cart to another. And from what Mr. Stewart could see, it  
11 looked like they were loading up one cart, because it was  
12 completely full.

13 Now, there was no testimony that Mr. Stewart  
14 specifically saw the defendant take Item A and put it in the  
15 cart, but that he was there. He was involved. All three of  
16 them were working together. And then, instead of walking  
17 out to a register, we know from video, and from the  
18 defendant's testimony, that they walked straight out of the  
19 building, they didn't go by a register. He can't provide no  
20 real good explanation of why they did do that other than he  
21 thought, again, putting blame on a 14 year-old, other than  
22 he thought she already went up and paid for it.

23 Again, \$1,825.64. You know, we have jurors sit  
24 here, other than having the attorneys or judges because we  
25 like people that come in with different backgrounds. And

1 they have common sense. And you all have different jobs  
2 that, you know, establish what you know to be good and what  
3 you know to be true and what you can think of as false or a  
4 lie. And so, I would suggest that all of you have been  
5 around a 14 year-old before. And know that most 14  
6 year-olds don't carry that kind of cash. Most 14 year-olds  
7 don't have a credit card to pay for something like that.

8 For some reason on this day, Mr. Judd felt that  
9 this 14 year-old girl that he's known for nine years had  
10 that kind of money, had already paid for it, then came back  
11 in the store and came back around, that story makes no  
12 sense. That shows to me intent, knowledge, that we better  
13 get out of here.

14 No one else shows intent and knowledge. The fact  
15 that mom, Krystal, decides to stay behind, right? She don't  
16 want to get caught. Let's have the 14 year-old go. And  
17 we'll have my ex-husband or ex-boy friend, whatever their  
18 relationship is, we'll have them go and see what happens.  
19 And then what happened? Well, she started pushing that  
20 cart. The second she saw they got caught, she beelined it  
21 the other direction. Even though we know their vehicle was  
22 out that door because Mr. Judd was going out that door to  
23 open it. There was a reason why she took off. The video is  
24 very clear about that.

25 So, I think that proves that the defendant

1 knowingly and intentionally did it. And that's just based  
2 on actions on the video.

3 Now, we take in admissions, admission to Mr.  
4 Stewart right there at the spot when he was stopped, they  
5 knew what they were doing was wrong and they didn't have  
6 money and sorry they got caught. Not sorry they got caught,  
7 but they were sorry that what they were engaged in. Then  
8 they go back into the AP office. The officer gives them  
9 Miranda. And, again, yeah, all three of us were involved.  
10 Yeah, we never should have included the 14 year-old. They  
11 knew what they were doing. The State believes that evidence  
12 is clear.

13 Now, what do we have to prove that they, that he  
14 knowingly did, is that he took possession or carried or  
15 carry away or transferred or caused to be carried away any  
16 merchandise that was displayed or held for sale. So, I  
17 think the key language there in this case, because I can't  
18 prove he had the property on his person. The State can't  
19 prove that. What we can prove, though, is he caused it to  
20 be carried away. They had the 14 year -- they put all the  
21 property into the 14 year-old's cart, and then had her push  
22 it out with him right behind. And we know he was involved  
23 with this, again, because he admitted to it.

24 Number three. That the value of the property was  
25 or exceeded \$1,500 but was less than \$5,000. Well, there's

1 proof beyond a reasonable doubt there's been no evidence to  
2 say that the value of the property was less than 1500. It's  
3 that \$1,825.64. So, I believe that element's been proved.

4 Then the last one. That the events occurred on  
5 August 13, 2015, here in Iron County, state of Utah. Again,  
6 I believe you can sit firmly convinced that this was the  
7 date it happened. And it happened at Wal-Mart here in  
8 Cedar, which is in Iron County, state of Utah.

9 So, now we flip over to instruction number 12.  
10 Instruction number 12 contains what's required to be proven  
11 for the crime of contributing to the delinquency of a minor.  
12 So, you can see there is two elements here. Number one is  
13 that the defendant commit an act or engaged in conduct which  
14 the defendant knew or should have known, would have had the  
15 effect of causing or encouraging a minor to commit an act,  
16 which would have been a misdemeanor or an infraction, a  
17 violation of state law. Well, the violation of state law  
18 would be the retail theft. And the defendant committed this  
19 act of theft with her. They worked together.

20 Unfortunately, I believe the evidence is pretty  
21 clear, it was the defendant, Krystal and Tanisa. They were  
22 all together, acting together. And, unfortunately, Tanisa  
23 is the one who takes the blow of this, right? I mean,  
24 that's the easiest case. I mean, she's the one actually  
25 pushing the cart. And State's argument would say that Mr.

1 Judd knew exactly what he was doing. Krystal, her own mom,  
2 they knew what she was doing. They had her push the cart  
3 out.

4 And then also there was that evidence found in her  
5 purse when Officer Topham searched them in the AP office.  
6 So, the underlying charge would be a theft. And the state  
7 would argue that the defendant engaged in conduct helping  
8 her transfer property, helping her walk out which helped her  
9 commit that crime. Again, these events occurred here  
10 August 13, 2015, here in Iron County, state of Utah.

11 So, in the State's case, I believe the evidence is  
12 quite clear. The admissions make it even clearer, right?  
13 And, technically, you just take the admissions out of it, in  
14 my opinion, well, what the evidence I believe shows, is that  
15 these three were working together to commit a theft, a  
16 pretty large scale theft, that amount of money, that amount  
17 of property.

18 So, then the question you have to decide is, do we  
19 believe Mr. Stewart and Mr. Topham, Officer Topham or do we  
20 believe the defendant? Because they both have different  
21 stories on if there was an admission or if Miranda was  
22 given. Well, I would -- and that comes down to you. And  
23 there is an instruction, I believe it's number seven. It  
24 talks about how you have to give weight to different  
25 witnesses, and you can believe one and you believe others.

1 And you look at bias, and why someone would testify one way.  
2 I'll submit to you that Mr. Stewart, he's just doing his  
3 job. He's just there looking for people to make sure they  
4 are not committing thefts. He has no bias, no reason to  
5 lie. He doesn't get paid if he catches more people. He's  
6 just here to tell the truth of what happened.

7 Officer Topham, there's been nothing that's been  
8 brought into go against his credibility. He's a pretty  
9 respectful officer. You heard him testify. They read him  
10 Miranda. They admitted they shouldn't have had the kids  
11 involved. They admitted they didn't have the money to take  
12 it. They admitted they were working together.

13 I would suggest that you can believe the State's  
14 witnesses over the defendant himself. For these reasons, I  
15 believe the evidence is clear, I would ask that you find him  
16 guilty of both counts. Thank you.

17 THE COURT: Thank you, Mr. Romeril. Mr. Slack?

18 MR. SLACK: Again, as counsel reiterated, and I am  
19 reiterating again, given the synopsis now, I am going to  
20 give my synopsis. Ultimately, you have heard it all. I'm  
21 just going to come and push you in the direction that I  
22 think they ought to go.

23 We are all aware that Mr. Judd, Krystal, Tanisa,  
24 and the children went to Wal-Mart. Obviously, they were  
25 there. You heard testimony that they got there, got hungry,



1 went into McDonald's, separated. Tanisa is in her own  
2 cart -- has her own cart, excuse me, and is off doing her  
3 thing. We heard testimony that she was seen about the shoe  
4 section and slowly made her way based on what was in her  
5 cart after the fact. Obviously, there was an ottoman, there  
6 was some kind of pet bed and just various other items. But  
7 she made her way throughout. Meanwhile, Krystal, Mr. Judd,  
8 they are doing their thing. They are shopping. And,  
9 ultimately, we see the video where they kind of meet up.  
10 And I say meet up like it was a plan. I didn't hear  
11 testimony there was a plan. I mean, obviously, the State  
12 wants you to think that this is a big elaborate plan to come  
13 to Wal-Mart and steal items from Wal-Mart.

14 But they meet up there. My client testified, Mr.  
15 Judd testified that while they were there, Tanisa comes up  
16 behind them. And he is kind of doing his thing, looking at  
17 Band-Aids. Krystal had just gotten a tattoo and for  
18 whatever reason they were interested in looking at tattoos.  
19 I don't have any tattoos. I don't know why you would need a  
20 Band-Aid. But that's what they were doing. That's what he  
21 said, looking at Band-Aids. And they are using, loss  
22 prevention language, Mr. Stewart's they are milling about.

23 They, Mr. Stewart talks about from the vantage  
24 point that we could see from the video he's across the  
25 aisle. And he can't really see that well. And we can't see

1 that well from the video either. But they are milling  
2 about. And he sees what he believes to be some moving about  
3 of items. But when we got very specific about it, he does  
4 not, and I am doing my best to be in quotations, so does not  
5 recall seeing who transfers items. I'm not, just not  
6 entirely positive what he sees. And I don't think he does  
7 either. But he certainly sees them there. And we can seem  
8 see them there and, again, milling about.

9 Mr. Judd testified that he wasn't really paying  
10 attention to what was in the cart. He's there. He sees  
11 what he thinks is it a pet bed. And he sees what is an  
12 ottoman. And counsel's very quick to point out, well, how  
13 in the world do you stand there and not see 1,850  
14 whatever -- \$1,825 worth of merchandise in the cart? How in  
15 the world could she possibly have paid that out of her own  
16 wages. And, again, all he recalls is looking over at a cart  
17 and seeing, again, a pet bed and an ottoman. Totals that in  
18 his head, thinks 80 bucks, whatever, must have paid for it.  
19 Whatever it is. So, again, kind of on auto pilot, just kind  
20 of sitting there figuring out what's going on. And she  
21 begins to walk out of the store.

22 We see in the video that she is in front, he's  
23 behind. His memory was a minute, 30 seconds. That just  
24 doesn't appear right to me. And that's why I questioned him  
25 about it. But he's behind her. And he's behind her because

1 he's reminded, hey, she's going to need help putting that in  
2 the car. So, he's behind her, walking behind her. And we  
3 see from the video that loss prevention Officer Stewart kind  
4 of stops them. And we see their feet stop. That's what we  
5 see on the video.

6 So, Mr. Judd talks about the differing stories  
7 that we heard. Obviously, Mr. Stewart indicates when they  
8 are stopped, is there anything in your cart that you didn't  
9 pay for that they said yes. Mr. Stewart indicates in his  
10 testimony that that's not in fact the way he recalled it  
11 happening, that he stopped, didn't say anything, looked at  
12 Tanisa for the answer. That would be consistent with not  
13 being aware about what was in the cart or, you know,  
14 anything of that nature. He's just simply there along for  
15 the ride to get the stuff into the cart.

16 Why else would he, again, look at her if he would  
17 have not thought that she had already paid for it? And, you  
18 know, counsel's pointed out the holes in that story. And,  
19 you know, why would she be coming from behind? And, again,  
20 his testimony was that he doesn't know whether she's paid  
21 for it and gone back into the store looking for them or  
22 whatever it is that she might be doing. Frankly, it sounds  
23 like, again, I used the word already before, he's on auto  
24 pilot and not paying much attention. So, that's what his  
25 testimony was there.

1           Once in the loss prevention office, it's stated  
2   that Miranda was given and that he confessed to everything.  
3   And to me there are some inconsistencies there. First and  
4   foremost is it would be very helpful if there was some kind  
5   of a confession to this, that there would be something that  
6   would be written up by law enforcement that said Miranda was  
7   given, and Mr. Judd understood Miranda, and he indicated the  
8   following, and had him sign it. Seen it before. Could have  
9   easily been done here. It wasn't.

10           There could have been some audio. There could  
11   have been some video just to confirm exactly what had been  
12   stated any time there is a one-on-one. It seems like that  
13   would make a lot of sense. But in this case there wasn't  
14   any of that.

15           Coupled with the testimony that we heard from Mr.  
16   Stewart where -- well, Mr. Stewart or Mr. Judd. Mr. Judd  
17   testified that he did ask questions that perhaps maybe gave  
18   the impression that he was confessing in some way, shape or  
19   form because he's asking about what's going to happen to the  
20   kids. There is a discussion about bail money, stuff like  
21   that. He knows he's going to jail. She knows she's going  
22   to jail. They are having this conversation. That's not an  
23   admission of guilt.

24           Mr. Stewart recalls that. And when asked about  
25   specific questions or specific statements, that's what he

1 talked about in there. On redirect he talked about the  
2 question of being able to pay for it. Being able to pay for  
3 money, safe in a house, something to that effect. So, it  
4 kind of coincides with what we believe Mr. Judd was saying  
5 in that room. That being said, Mr. Judd did not know that  
6 as he's walking behind Tanisa that he's walking behind  
7 somebody who has not paid for items. He testified that he  
8 did not know that. He assumed they were paid for. It was  
9 not his intent. It needs to be knowingly and intentionally.  
10 And he did not have that knowledge.

11 To further press that point home, again, when  
12 Tanisa is searched, when they get into that room, there's  
13 the purse. Further evidence to show that she is, she's  
14 doing her thing. She's, obviously, been walking through the  
15 store and putting items, we heard in the ottoman and,  
16 obviously, in her purse. In the purse we find various items  
17 that have been stolen from Wal-Mart. Mr. Judd didn't know  
18 about those items.

19 To prove this case beyond a reasonable doubt, the  
20 State has to show that he knowingly and intentionally did  
21 these things. And I would submit that he did not knowingly  
22 and intentionally do these things. I appreciate your time.  
23 This has actually gone a lot quicker than a lot of juries  
24 go. So, you can be grateful in that regard. But thank you  
25 for your time.

1 THE COURT: Thank you, Mr. Slack. Mr. Romeril?

2 MR. ROMERIL: So, we spent a lot of time on what  
3 we have seen and heard. But let's talk for a second about  
4 what we have not seen and not heard. You haven't heard the  
5 defendant at one point say that he told the officer, whoa,  
6 whoa, this is a misunderstanding. I didn't -- I had no clue  
7 Tanisa was going to do this. He didn't say any of that.  
8 You didn't hear him tell Mr. Stewart at the entrance, I  
9 don't know what you are talking about. Tanisa paid for this  
10 stuff. You didn't hear him go back and after being given  
11 Miranda or when he was looking for bail say, hey, I'm  
12 innocent. Why are you doing this to me? There is no  
13 evidence of that.

14 Now, again, you bring in this reasonable  
15 perspective of what a reasonable person would do. And  
16 that's how you judge character. That's how you judge  
17 honesty, is what you think someone in that situation would  
18 do. Now, if you are Mr. Judd, if you are the defendant, at  
19 least at one point in time in your innocence don't you  
20 pronounce your innocence? Or, sorry, don't you least at one  
21 time during this entire incident don't you pronounce your  
22 innocence? Don't you say it's a mistake? Don't you say I  
23 have no clue what was going on? I was just here for the  
24 ride. I was told to go open the truck? None of that. None  
25 of that comes out. He doesn't proclaim anything. He's more

1 worried about getting his bail together for the charges that  
2 are coming. There is a reason for that. He just admitted.  
3 There was a reason that he admitted. It's because all three  
4 of them went together to do this.

5 Under instruction number, I believe it's seven --  
6 sorry, instruction number eight. If you could pull out  
7 number eight. This is the instruction of proof beyond a  
8 reasonable doubt. So, I'll refer you to the second  
9 paragraph. I believe it's the third sentence. Kind of the  
10 middle there. It says proof beyond a reasonable doubt.  
11 Instruction number eight. About, it's the fourth line down  
12 in that second paragraph. Proof beyond a reasonable doubt  
13 is proof that leaves you firmly convinced of the defendant's  
14 guilt. There are very few things in this world that we know  
15 with absolute certainty. And in criminal cases the law does  
16 not require proof that overcomes every possible doubt.

17 So, essentially, when you go back in that jury  
18 room, and you deliberate and you make a decision, whether  
19 it's guilty or not guilty, you need to feel firmly  
20 convinced. You need to feel comfortable with the decision  
21 you are making. You can feel comfortable and firmly  
22 convinced because of the video that you are going to be able  
23 to watch, because of the admissions, and because of all the  
24 things that just don't add up about the defendant's story  
25 when he took the stand. It just doesn't make sense. That's

1 not how an innocent person would act. An innocent person  
2 wouldn't admit to guilt or not proclaim his innocence when  
3 he's being accused of something. It's these little things  
4 that give us the big picture. It's not one of them. It's,  
5 you know, all five, six, seven or eight, however many there  
6 are, when you can put that together it points us in one  
7 direction. And that is guilt. And that is because the  
8 proof is beyond a reasonable doubt. And I ask that when you  
9 go back there and you deliberate, you find that, and you  
10 find the defendant, Mr. Topham guilty of these charges.  
11 Thank you.

12 THE COURT: Thank you, Mr. Romeril. If I could  
13 have the bailiffs come forward and have the clerk place you  
14 under oath. After this, the time has now come where the  
15 court is going to lift the admonition that the court earlier  
16 gave to you. And you now are going to be able to deliberate  
17 in the jury deliberation room. You are able to speak freely  
18 amongst yourselves. The bailiff will provide you with a  
19 jury verdict form as well as the two state exhibits that  
20 were admitted into evidence.

21 (Bailiff sworn.)

22 THE COURT: Thank you. The court is going to ask  
23 that as far as telephones, bags, purses, if you could please  
24 leave those here in the courtroom. There will be a bailiff  
25 here that will protect your items. If there is something



1 that you need during the deliberation, you may make the  
2 request of the bailiff. Thank you.

3 (Whereupon, the jury retired to deliberate.)

4 THE COURT: Is that still in? Is it still in  
5 there or has he -- (inaudible) yeah. They have it.

6 VOICE: They have it.

7 THE COURT: Part of what I said is if they want to  
8 view it they can let the, us know. And then --

9 VOICE: (Inaudible.)

10 THE COURT: Okay.

11 VOICE: (Inaudible.)

12 THE COURT: Okay. Thank you. Be seated.

13 Anything else? Mr. Slack? Mr. Romeril?

14 MR. SLACK: No.

15 THE COURT: Okay. Court will be in recess.

16 (Whereupon, a brief recess was taken.)

17 THE COURT: Thank you, Mr. Bailiff. The jury has  
18 reached a verdict; is that correct?

19 Mr. Romeril, anything from the State?

20 MR. ROMERIL: No.

21 THE COURT: Mr. Slack?

22 MR. SLACK: No.

23 THE COURT: Thank you. Please get the jury.

24 (Whereupon, the following proceedings were held  
25 in open court in the presence of the jury.)

1 THE COURT: Thank you. You may be seated. Mr.  
2 Scheme, it appears that you were elected the foreperson; is  
3 that correct?

4 MR. SCHEME: Yes, sir.

5 THE COURT: Have you reached a verdict?

6 MR. SCHEME: We have.

7 THE COURT: A unanimous verdict?

8 MR. SCHEME: Yes, sir.

9 THE COURT: Thank you. Would you please retrieve,  
10 Mr. Bailiff? Thank you.

11 Miss Dawn, could you please read that?

12 Mr. Judd, could you please stand? Thank you.

13 THE CLERK: Count one. We, the jury, duly  
14 impaneled in the above-entitled case, find the defendant,  
15 Lewis Judd, guilty of the offense of retail theft.

16 Count two. We, the jury, duly impaneled  
17 independent above-entitled case, find the defendant, Lewis  
18 Judd, guilty of the offense of contributing to the  
19 delinquency of a minor.

20 Signed by the jury foreperson, Jeremiah Scheme.

21 THE COURT: Thank you. You may be seated. Mr.  
22 Slack, do you wish to have the jury polled?

23 MR. SLACK: No.

24 THE COURT: Thank you. This concludes your jury  
25 service today. Allow me to thank you for being here, for

1 your attentiveness and for your willingness to serve. The  
2 court appreciates your time. And the community appreciates  
3 your time and, certainly, those who have participated here  
4 today.

5 As previously stated on the admonition that's been  
6 lifted, it's now been lifted, so you may speak freely if you  
7 would like with whoever you would like to visit with. If  
8 you wanted to visit with any of the attorneys or myself  
9 afterwards, you are welcome to do that. Or you certainly  
10 are excused. So, again, the court thanks you. And you may  
11 leave at this time. Thank you very much.

12 (Whereupon, the following proceedings were held in  
13 open court outside the presence of the jury.)

14 THE COURT: Thank you. Please be seated. Mr.  
15 Slack, would it be appropriate for a presentence  
16 investigation report in this case?

17 MR. SLACK: Yes.

18 THE COURT: Mr. Romeril, would you agree?

19 MR. ROMERIL: Yes.

20 THE COURT: Mr. Judd, are you familiar with what a  
21 presentence report is?

22 THE DEFENDANT: I did it once a long time ago.

23 THE COURT: Okay. That is a report that will be  
24 prepared by Adult Probation & Parole. There will be an  
25 agent assigned to your case. It will be your responsibility

1 to cooperate with Adult Probation & Parole, to provide the  
2 necessary information and to show up at any times that they,  
3 that's needed for them to visit with you. Okay?

4 THE DEFENDANT: (Defendant nodded head  
5 affirmatively.)

6 THE COURT: Court would like to have this matter  
7 for sentencing, if it works for the attorneys, Tuesday  
8 July 26th. Tuesday, July 26 at 9 a.m. Is that a good date  
9 for you, Mr. Romeril?

10 MR. ROMERIL: Yes.

11 THE COURT: And Mr. Slack?

12 MR. SLACK: I believe so.

13 THE COURT: Is there anything further that's  
14 needed?

15 MR. ROMERIL: Your Honor, I would just ask that  
16 pending sentencing that the defendant just be trespassed  
17 from Wal-Mart.

18 THE COURT: Okay. Thank you. Under the  
19 circumstances, that would seem a reasonable request. Mr.  
20 Slack, do you want to weigh in on that?

21 MR. SLACK: Submit.

22 THE COURT: Okay. Mr. Judd, for now until  
23 sentencing, you'll be trespassed on going onto the Wal-Mart  
24 premises. Okay?

25 Court appreciates Mr. Slack, Mr. Romeril your

1 presentation today. And I appreciate the efficiency that  
2 both of you did and the presentation. If there is nothing  
3 else, then the court will be in recess.

4 MR. SLACK: Thank you.

5 THE COURT: Thank you.

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CERTIFICATE

STATE OF UTAH

COUNTY OF WASHINGTON

THIS IS TO CERTIFY THAT THE FOREGOING  
PROCEEDINGS WERE TAKEN BEFORE ME, RUSSEL D. MORGAN, A  
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF  
UTAH, RESIDING AT WASHINGTON COUNTY, UTAH;

THAT THE PROCEEDINGS WERE TAKEN BY ME  
IN STENOTYPE FROM AN ELECTRONIC RECORDING, AND  
THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO  
TYPEWRITING, AND THAT A TRUE AND CORRECT TRANSCRIPTION  
OF SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST  
OF MY ABILITY IS SET FORTH IN THE FOREGOING PAGES  
NUMBERED FROM 5 TO 144 INCLUSIVE.

Russel D. Morgan

RUSSEL D. MORGAN, CSR  
LICENSE #87-108442-7801

September 19, 2016

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