

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,)	
)	
Plaintiff,)	Case No. 08-07-K-789
)	
vs.)	
)	
Charles Blunt,)	
)	
Defendant.)	

**TRANSCRIPT OF
PRETRIAL CONFERENCE HEARING**

Before
The Honorable Bruce A. Romanick
District Judge

Monday, November 3, 2008
Burleigh Courthouse
Bismarck, North Dakota

APPEARANCES:

FOR THE PLAINTIFF: MS. CYNTHIA FELAND, and
MR. LLOYD SUHR, Assistant
Burleigh County State's Attorneys
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, North Dakota 58501

FOR THE DEFENDANT: MR. MICHAEL HOFFMAN
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1 MR. HOFFMAN: Actually, Your Honor, there are
2 two motions to dismiss before you.

3 Let me back up. The very first motion to
4 dismiss information, you have ruled upon. I did -- I
5 believed I had time yet on the Rule 3.2 to file a reply
6 brief, and I did that. So I would ask you to
7 reconsider your ruling on that motion.

8 There is a Motion to Dismiss the Amended
9 Information following the bill of particulars of the
10 State where the State is contending they can add these
11 other items in for prosecution, and we contest that.
12 Not only do we contest it, we have asked you to dismiss
13 the Information because the Information fails to
14 delineate the property. And I've set out the law and
15 the facts of that, I think, sufficiently. I'm not
16 going to belabor that.

17 The final motion to dismiss the Amended
18 Information is the one that's in the binder. What I
19 would say about the State's response to that is, they
20 do not address the underlying argument that there is a
21 denial of due process here based upon the City of
22 Belfield case and that line of reasoning. They simply
23 argued that we're trying to do a motion for summary
24 judgment in a criminal case. That's really not the
25 point of this motion.

1 The point of the motion is a denial of due
2 process. We did highlight some facts which show our
3 argument that we believe that there is a denial of due
4 process here.

5 No motion is strictly one based in law;
6 you've got law and you've got fact. And what we're
7 contending in this motion to dismiss is a contention of
8 law that this prosecution, in fact, denies Mr. Blunt
9 due process by failing to give him proper notice of how
10 he was acting in a fashion that was not authorized.

11 Venue, I'm not going to argue anymore. It's
12 before you. I would ask you -- I know you have made a
13 decision not to do a jury questionnaire, and the
14 defense believes that would be appropriate to get a
15 feel for the community before we even get to Court; but
16 that's your call.

17 That's what we're asking you to do, Your
18 Honor.

19 THE COURT: Okay. Ms. Feland, any comments?

20 MS. FELAND: I guess, just briefly. Your
21 Honor, with respect to the position that the defense
22 has taken that they are being denied due process, the
23 State would take exception to that.

24 There was a request for bill of particulars
25 which the State did respond to and outlined in some

1 detail exactly the types of illegal conduct that the
2 defendant engaged in in this case for which he is being
3 charged. And that clearly puts the defendant on notice
4 as to what he can expect at trial and what he should
5 prepare to defend against at trial. The rules require
6 that we provide sufficient information, which we did by
7 responding and providing detailed information in that
8 response to the bill of particulars.

9 As far as the allegations that have been made
10 concerning the evidence that the defense is trying to
11 keep out. One of the things that, I guess, I look at
12 now that wasn't in there is that the information that
13 he alleges was provided, the late date, I would agree
14 that it wasn't provided until August. However, it was
15 gathered during the time preceding and subsequent to
16 the preliminary hearing that we had had.

17 As the Court is well aware, the State's
18 Attorney's Office continues to work on a case. There
19 is ongoing investigation. If there are other little
20 details that come up pertaining to the charges against
21 the defendant, that the State follows up on, and that's
22 exactly what the State did in this case. The
23 information that was provided shows that it was
24 actually collected back in '07. So the defense has not
25 only been given the information, but has specifically

1 been provided to what the State intends to bring forth
2 at trial and has been given time to adequately prepare.

3 We have over a month before trial is to take
4 place. There is clearly sufficient time to accomplish
5 that, and I don't see where the defense has any claim
6 of due process violation in light of the fact that all
7 of that information has been provided. I have had no
8 additional requests from Mr. Hoffman that he is somehow
9 missing information or seeking any additional
10 information from our office. So that seems pretty
11 clear to me that he has a pretty good understanding of
12 where we are at as far as what evidence the State
13 intends to present.

14 I would point out to the Court that there
15 have been a lot of arguments that not all of that
16 information was specifically brought out in detail at
17 the preliminary hearing. And, I guess, I would stand
18 on the fact that, Your Honor, a preliminary hearing is
19 for purposes of determining probable cause, and the
20 State is only required to bring forth sufficient
21 evidence to establish probable cause, not all of the
22 evidence.

23 In this case, the State did that. The
24 Supreme Court affirmed it, and here we are prepared to
25 go to trial. As far as I said, any issues that the

1 defense had, those were alleviated once the State
2 provided its response to the bill of particulars.

3 THE COURT: So is the Motion to Amend the
4 Information adding witnesses? And, I guess, my concern
5 is, cases go along where witnesses aren't added but
6 they're known from the get-go through discovery. Now
7 this appears to be new information, and are these
8 witnesses going to bring forth new information?

9 MS. FELAND: I wouldn't call it new
10 information, Your Honor. Basically, what had happened
11 is at the time that the preliminary hearing was
12 conducted, these witnesses were known. They could have
13 been placed on the Information. It does sometimes
14 happen with the litany of witnesses that some of them
15 get overlooked. Most of the witnesses were on there.
16 There were a couple that we discovered were missing and
17 I, basically, did that when we went through to issue
18 subpoenas in this case to make sure that everything was
19 provided there and realized that a couple of its
20 witnesses hadn't made it onto the Information, which is
21 why I was seeking that.

22 But as far as the Information, information
23 pertaining to these witnesses has been provided to the
24 defense so that the defense is aware of the type of
25 testimony and the type of information that they would

1 be providing.

2 THE COURT: Am I safe to say -- and I'm
3 looking at dates from Mr. Hoffman's motion, so you know
4 I'm using his brief to ask you these questions.

5 MS. FELAND: Okay.

6 THE COURT: It indicates, you know, discovery
7 information is provided August 28th -- or August 25th,
8 2008; September 23, and then September 7. My concern
9 is, and with the information involved here, is this new
10 information from this new audit?

11 MS. FELAND: No.

12 THE COURT: That now we're going to say
13 should be included? That's my concern.

14 MS. FELAND: No.

15 THE COURT: I don't want that. My concern
16 here is that Mr. Hoffman and Mr. Blunt have been able
17 to prepare adequately for a defense and not that all of
18 a sudden we say, 30 days out, well, here's another
19 150,000 dollars when the case has been in the mill for
20 a year.

21 MS. FELAND: No.

22 THE COURT: I don't want that.

23 MS. FELAND: No. Some of the information
24 that was provided, and I can give the Court one
25 example. There were reports that I received from

1 Special Agent Quinn that were dated October 15th of
2 2007 that contained some additional information. Some
3 of that was not provided to the defense right away. We
4 were actually waiting to see what the Supreme Court was
5 going to do with the case. And then once the Supreme
6 Court ruled indicating that there was sufficient
7 evidence to find probable cause, then I had our staff,
8 basically, go back through and make sure that all of
9 the discovery had been provided. There were some of
10 the things, as I said, from October of '07 that we had
11 been doing continuing with the investigation and the
12 prosecution, that weren't provided to him until August
13 of this year. But they were actually collected around
14 the time that the preliminary hearing was conducted.

15 MR. HOFFMAN: Well, Your Honor, they can
16 collect information for years and years, but if it's in
17 their office and not disclosed to us, I mean, that's --
18 the problem is when we did the preliminary hearing and
19 when the case went up on appeal, I mean, we dealt with
20 gift certificates, bonuses, and those meeting expenses.
21 I have outlined those, spelled those out in the
22 paperwork.

23 August comes along of this year and all of a
24 sudden the State attempts to add all of these three
25 items. I guess, they are involving Mr. Dave Spencer,

1 and then also the firemen's -- there was some money
2 promised to --

3 THE COURT: The grant?

4 MR. HOFFMAN: Yeah, grant to the firemen.
5 That was all new information disclosed starting in
6 August of '08 and it was never part of the case before,
7 as far as the defense was concerned. That's my problem
8 with the Amended Information.

9 And the purpose of the Motion to Dismiss the
10 Information is because we even have a state statute
11 that says, if you're going to charge a property crime,
12 you have to delineate the property in the Information.
13 They never did that.

14 As I said, we went through the preliminary
15 hearing thinking we were dealing on one case, and now
16 we're getting closer to trial and we're dealing with a
17 completely different case. I guess, my question
18 becomes, what are we going to do when we get to trial?
19 Are there going to be all kinds of different
20 information they're going to attempt to put into
21 evidence? I don't know the answer to that. But I just
22 think that Mr. Blunt's rights are protected by, at a
23 minimum, limiting this case to what we dealt with at
24 the preliminary hearing. I still think the Amended
25 Information violates state statute. I think he's

1 entitled to have more specific notice of the property
2 that is alleged against him.

3 MS. FELAND: If I could make one comment?

4 THE COURT: I want to be perfectly clear.
5 That's my concern is that -- I don't necessarily agree
6 with Mr. Hoffman that every detail has to be done at a
7 preliminary hearing, you know. We may have a
8 disagreement on that point. But I have a problem with
9 bringing up new information when we're a month out from
10 trial, and then the defense hasn't been given any of
11 that beforehand. I'm going, if this wasn't brought out
12 a year ago, why is it being brought up today? And
13 what's going to stop it from two weeks from now more
14 information being brought up or being brought out and,
15 you know, I want to amend the Information. That's my
16 concern.

17 MS. FELAND: No. I can tell the Court that
18 the information pertaining to this was part of the
19 original audit that was conducted. The information
20 pertaining to sick leave, the information pertaining to
21 the relocation expense, the information pertaining to
22 grant funds, that was part of the original. There were
23 additional details that I had requested follow up on.
24 Some of those we had immediately prior to the
25 preliminary; some we had after. Those were always part

1 of what we were looking at as far as the case as a
2 whole. But as far as all of the detailed statements
3 and things from people, we did not have those.

4 I'll also tell the Court that Special Agent
5 Quinn was given a specific directive to get additional
6 information. I have not received his reports. They
7 are all the same people involved. There are no new
8 people that we're talking about, but I had asked for
9 some more detailed statements, which I had asked that
10 he be able to provide by today.

11 Now, I saw that there was a note on my desk
12 that he had kind of some handwritten notes of things,
13 but he hadn't gotten those full statements dictated,
14 but I would anticipate that we would have those for
15 sure by the middle of next week. But it isn't new
16 information. It's supplemental information. So this
17 isn't like we're creating a new case. This is
18 supplemental information to what was originally
19 charged, and it's all part of that original pattern of
20 conduct that was charged.

21 THE COURT: Well, I understand that. But
22 you -- when we add Mr. Spencer, Mr. Spencer is the
23 prime person. It seems strange to me that that wasn't
24 done on the front-end knowing here is a part of this
25 crime we're charging, and here's our main witness, and

1 here's why we're going along with it and we're adding
2 it now. That is what concerns me.

3 MS. FELAND: I guess, I can do the case
4 without Mr. Spencer. I have other witnesses that were
5 already listed on the Information that can provide, you
6 know, details pertaining to it. But as I said, I
7 didn't have all the other information until after we'd
8 already filed that when I caught that that name had
9 been omitted. It shouldn't have been. It should have
10 been on the original Information. That was why I went
11 through trying to make sure, and I know that his name
12 had been previously provided in information to
13 Mr. Hoffman. So it's not a surprise that all of a
14 sudden we want to bring in Mr. Spencer as a surprise
15 witness.

16 THE COURT: Is the audit one of the exhibits
17 in the Court's file?

18 MS. FELAND: I think portions of it, but not
19 the whole audit. My recollection was that the issues
20 that we were arguing about on that particular day, I
21 think those portions, only, were put in rather than the
22 whole audit. Because the whole audit, Your Honor, is a
23 couple of inches of paper. And so there were just
24 parts of it that -- I think the defense had requested
25 that parts of it be put in and then the prosecution

1 wanted the full excerpt of those sections put in, and I
2 think the Court, ultimately, put in the full excerpt.

3 MR. HOFFMAN: Your Honor, if I may?

4 THE COURT: Sure.

5 MR. HOFFMAN: The audit covered many, many
6 different things. I mean, for the State to say, well,
7 we had the audit. I mean, that doesn't meet the test
8 here. I mean, there is a lot of information out there,
9 and how are we supposed to know what is going to be
10 part of the criminal case and what's not? I mean, to
11 say that we had had the audit we should -- that would
12 be sufficient for us to give us notice, I find that to
13 be unacceptable.

14 THE COURT: But you have notice now. Your
15 argument is that it should have been at the preliminary
16 hearing and you could dispute it then. But yet one of
17 these witnesses showing over \$500 or over \$10,000 would
18 be enough to move on to trial. And I think you
19 disagree with me, but they don't have to bring in
20 everybody. All they've got to bring in is enough to
21 move over that probable cause hurdle.

22 MR. HOFFMAN: Well, it's a question of notice
23 to this defendant and his -- to have knowledge of what
24 you're charged with and what you need to do to defend
25 yourself.

1 I cited U.S. Supreme Court case law. It
2 talks about changing the theory of the prosecution, and
3 that's exactly what's going on here is changing the
4 theory of the prosecution.

5 There is --

6 THE COURT: Say to me how you think the
7 theory has been changed. I guess, I'm not --

8 MR. HOFFMAN: Well, by adding Mr. Spencer.
9 Not as a witness, but the theory of we're paying him
10 moving expenses, illegal moving expenses. That's the
11 theory. I mean, there is a lot of money involved there
12 that he's -- it's a completely different set of facts.

13 THE COURT: You're arguing that's brand new
14 to you?

15 MR. HOFFMAN: It's brand new. It's not a
16 matter of him just being a witness or not, it's the
17 theory of the prosecution that's changing.

18 You know, when we got the original discovery
19 in this case, I would have to say that the State in
20 terms of either BCI, law enforcement doing an
21 investigation before they brought charges, was next to
22 nothing. It was based upon them meeting with state
23 auditors and state auditors saying these things are
24 questionable, and then charging. I think the
25 discovery, those they talked to -- well, Angie

1 Scherbenske was one, Tammy Dolan was another at the
2 time of bringing the charges. These are witnesses that
3 are named on the Information. But most of the names on
4 the Information, in terms of discovery of law
5 enforcement going and talking to witnesses and making a
6 report, it doesn't exist. These are all names of
7 people. Yeah, we're familiar with them because they're
8 involved with WSI. We have knowledge of who they are
9 and what potentially they might say. But in terms of
10 the State doing an investigation where they go out and
11 talk to the people and here is the report of what this
12 person says, it doesn't exist except for Angie
13 Scherbenske, Tammy Dolan, and maybe another one. The
14 other isn't coming to my mind right now. But all of
15 this Dave Spencer is brand new. It changes the theory
16 of the prosecution.

17 And to be honest with you, I have never seen
18 anything like it. Maybe that's because this is a more
19 complicated case. But if you go charge a defendant
20 with breaking into a building and stealing, you know, a
21 1972 Oldsmobile, and when you come to trial they also
22 want to add five other automobiles that you've never
23 learned about or never knew about before, I mean, that
24 is just ridiculous, and it doesn't happen. But it's
25 happening here.

1 And I'm asking you to make some rulings here
2 that's going to protect Mr. Blunt from what the State's
3 attempting to do.

4 THE COURT: It kind of sums up my concern,
5 Ms. Feland. It's not that it didn't come up in the
6 preliminary, but now we're going to have crimes that
7 really weren't focused on up until August and it's a
8 year later. I mean, I want to know why this is even
9 happening.

10 MS. FELAND: Mr. Hoffman is right. This is a
11 complicated case. We're talking about a lot of illegal
12 conduct that went on.

13 THE COURT: Alleged.

14 MS. FELAND: Alleged illegal spending, that
15 it's the State's position shouldn't have happened.

16 For us to bring in all of that evidence at a
17 preliminary hearing, I mean, the preliminary hearing as
18 it was took a day just to deal with --

19 THE COURT: Okay. Okay. I want to stop you
20 on that. I don't want to argue with you, but I'm
21 not -- as my statement earlier, in the preliminary you
22 have to get over a hurdle and that's it.

23 MS. FELAND: Right.

24 THE COURT: What I'm getting at is we are now
25 close to trial. And if this is a theory that's added

1 onto the crime, new evidence, new theory, then they
2 don't have the opportunity, and, you know, two things
3 can happen: I say we're going to trial, this
4 information is not coming in. Or I have to give
5 Mr. Hoffman time to assimilate the information, which
6 means continuing matters, which I don't like to do.
7 But, you know, that's where I find myself if this stuff
8 was not part of the case from the get-go.

9 MS. FELAND: State's position, this was
10 always the case from the get-go. No, we didn't bring
11 it forth during the preliminary hearing. Yes, just
12 like in any other case, there have been additional
13 pieces of supplemental information. But to say that
14 suddenly we generated all of this stuff here on the eve
15 of trial, is incorrect.

16 As I stated to the Court, the interview that
17 was conducted of Mr. Spencer took place back in '07.
18 No, I'll be candid with the Court, it wasn't my intent
19 to necessarily not provide it, but while we were
20 waiting for the Supreme Court, there wasn't really any
21 ongoing discovery that went out at that point. We
22 didn't know where the case was going to be. As soon as
23 the Supreme Court came back indicating, yes, there was
24 sufficient evidence for probable cause, then as I
25 indicated, we went through the file and anything that

1 we had had in there that had not been sent, we made
2 sure that was sent out. At that same time we started
3 going through things in preparation for trial to make
4 sure that, you know, we had all of our ducks in a row,
5 if you will. If all of the witnesses were properly
6 listed, if all of the exhibits and things that we were
7 looking at had been provided to Mr. Hoffman. And we
8 have been continuing to provide that information.

9 However, I would point out to the Court
10 again, in that bill of particulars which he's had
11 notice and he has had time to prepare for, he may not
12 like it, but he knows what he needs to prepare for
13 trial. And, clearly, the amount of time that he's been
14 given is sufficient. And, yes, I agree with the Court
15 that if he hasn't had sufficient time, one of the
16 remedies he can request, he can request a continuance.
17 He can request more time to look at it. And, yes, this
18 Court case is an older case. I mean, it was,
19 basically, languishing at the Supremes for almost a
20 year, so it has gotten age on it. But the fact remains
21 that this is all part of one course of conduct.

22 And while, technically, I guess, the State
23 could charge out each one of these things as separate,
24 it doesn't make sense to do that. It made sense to
25 charge them all at the same time, which is what the

1 intent of the State was to do.

2 THE COURT: Okay.

3 MR. HOFFMAN: Your Honor? Again, may I?

4 THE COURT: Go ahead. That's fine.

5 MR. HOFFMAN: You know, I don't mean to be
6 flippant here, but it's almost like the movie where
7 they're on double-secret probation. We don't even --
8 it goes back to the issue of the original charging
9 document is not sufficient. If you have a charging
10 document that says we're charging you with
11 misapplication of this entrusted property: Gift
12 certificates, bonuses, moving expenses, and then you
13 come along and you want to change the theory, as the
14 prosecution, you have to make a motion to amend that
15 document to include other items. Then you're looking
16 to the question of an amendment. Is it -- can there be
17 an amendment when you're charging it as an additional
18 or a different offense? And that's what this is all
19 coming down to. I made the argument in my papers.
20 This amounts to a constructive amendment. And
21 amendments are not appropriate if you're adding charges
22 or if you're charging somebody with a different
23 offense, and that's what they're doing.

24 For them to say, well, we had the big picture
25 all along here. We knew it, but now we're going to

1 give it to you. That borders on the ridiculous. And
2 they're changing the theory of the prosecution.
3 They're adding an offense. They're making it a
4 different offense. And you just can't do that.

5 And one final thing. We made a motion for a
6 bill of particulars, yes, asking for two things. Their
7 response to the motion for bill of particulars were
8 they added these items. It was not even responsive to
9 what we were asking for. If we were questioning the
10 items at that point in time, I would have specifically
11 put that in the bill of particulars. I thought I knew
12 what we were dealing with. I thought we were dealing
13 with the things I have delineated quite clearly.

14 If this case now went up to the Supreme
15 Court, they would sit there and they would say, well,
16 this is completely different than what we had to look
17 at before. And it is completely different. It's a
18 different offense. It's an amendment in an attempt to
19 amend this charge, and that's why I filed then the
20 Motion to Dismiss is because, okay, if that's the way
21 they're going to play this game, then I want a proper
22 charging document. One that delineates the property.
23 They have not done that from the get-go.

24 We have timely filed our motions. I can't
25 help it that the probable cause issue of the

1 preliminary hearing issue took so long. That's the way
2 it worked out. But we have timely filed our motions
3 attacking this Information, and I am going to go back
4 to square one. The Information is defective from
5 square one, and should be dismissed.

6 We shouldn't even have to stand up here now
7 30 days before trial and be talking about what it is
8 that we have to defend against.

9 THE COURT: All right. Well, I will take
10 that under advisement.

11 Venue. I don't know, Ms. Feland, if you
12 wanted to make any comments? Your motion's filed.

13 MS. FELAND: My motion is filed, and I guess
14 I just stand on the response in the motion.

15 THE COURT: All right.

16 I have another question. I know there were
17 other charges filed in this investigation. I don't
18 know if any of them are still standing?

19 MS. FELAND: No.

20 THE COURT: I want to make sure we're not in
21 trial, if we get there, and somebody needs an immunity,
22 because I know you have to go to the A.G. I want to
23 make sure everything is lined up for that type of thing
24 just so we're not all sitting around waiting while
25 something like that is happening. So fair warning,

1 that if there is something like that out there. I
2 don't know.

3 Mr. Hoffman, I know you're kind of wondering
4 what I'm thinking, if there is folks out there that are
5 going to invoke their right not to testify, and the
6 State intends to force that. The A.G. has to be
7 involved and that means somebody needs to be on-call or
8 standby to get that done, if that's your intention. So
9 I just want to make sure that's ready to go.

10 I know I sent out a letter e-mail in regards
11 to I just didn't think -- it's my call. I'm not going
12 to send out a questionnaire. We're going to start by
13 me questioning everybody, and it'll be pretty intensive
14 as to publicity, number one. Number two, just WSI
15 itself. Obviously, there will be people that have
16 either worked there in this jurisdiction or filed
17 claims there, or businessmen that have to deal with it.
18 There's just no way around that. That's just part of,
19 you know, what we're dealing with.

20 So my intent is to focus on that. And I will
21 do a lot of the questioning, and then, obviously, give
22 the attorneys the opportunity to question, as well.
23 And just in an attempt to find folks that, you know, if
24 it's possible, haven't heard about it, haven't dealt
25 with the organization. Or if they have, you know, a

1 positive or negative, you know, evaluation and will
2 that carry over into a trial to Mr. Blunt personally,
3 basically. And that's what we're going to do. And we
4 have the two days to do it, if we can get a jury. I
5 don't think there will be a problem getting it in that
6 time frame if we can get a jury. If we can't, then the
7 decision, well, I'll have to make that call. We'll
8 move the case to some other location if it can't be
9 done. But I have had a lot of high-profile cases that
10 have worked but they haven't had the added ingredient
11 of, I guess, the operation right here in Bismarck is
12 kind of what I see could be a problem. But we'll see
13 what happens there.

14 I really don't have anything else in regards
15 to pretrial matters. I told you in that letter we have
16 50 jurors. In that number we have a like number
17 on-call. If we start getting through them, we'll bring
18 the other batch in that afternoon, if we get that far.

19 So, parties have anything other than that?
20 I'll rule on these couple of motions. My thought is,
21 basically, I'm going to look at the information
22 closely, then I'll look at whether or not certain parts
23 have been adequately disclosed and what we're trying
24 here on the trial date. And if I have to narrow it
25 down, it might mean I will put an order in limine in or

1 then if I swing to the extreme with what Mr. Hoffman is
2 asking for. I need to do a little looking into the
3 file a little closer before I make a ruling on that.
4 Those are the only notes I had to take care of today.

5 So, is there anything else? Mr. Hoffman?

6 MR. HOFFMAN: I have one request, Judge.

7 THE COURT: Sure.

8 MR. HOFFMAN: I would like the State's
9 exhibits at least a certain amount of days before trial
10 rather than a large stack of exhibits being handed
11 piecemeal during the course of the trial. At least I
12 would have an opportunity to be able to see all of the
13 exhibits and frame objections. I mean, it's done in
14 civil cases all the time. I just think if there is
15 going to be a large number of exhibits, we should have
16 the opportunity to see them beforehand.

17 THE COURT: Ms. Feland?

18 MS. FELAND: Well, I guess, my first response
19 would be he's got any document that we would use as an
20 exhibit. As far as, I guess, we can indicate to him
21 within a week of trial as to which of the documents
22 that we provided we intend to be offering. I think
23 that seems --

24 THE COURT: What is helpful, what Mr. Hoffman
25 is getting at, if I have a copy of them beforehand and

1 as you're going through them you have your set, he has
2 his set, the trial moves a lot quicker if you have
3 voluminous documents. You know, a bag of marijuana,
4 the syringe, that comes in quickly. But when you have
5 a trail of documents, it's if I have them, you mention
6 them, I can look at it and we will know exactly what
7 we're dealing with at the time. So, you know, if you
8 can do that -- well, let's put it this way. I'm going
9 to require it, being it is a complicated case. Do you
10 have a ball park figure? Do you have 50 exhibits? A
11 hundred exhibits? Two exhibits?

12 MS. FELAND: You know, it's hard to say at
13 this point. And I say that to the Court because some
14 of what I would consider an exhibit would have multiple
15 pages to it. So I'm not real sure right now the exact
16 number. I would say that within maybe three weeks I'll
17 have a much better idea as to the number of exhibits.
18 And, clearly, the week before trial I will know exact
19 number.

20 THE COURT: All right. Let's do this. I'm
21 going require you provide an exhibit list to
22 Mr. Hoffman and myself. I don't have any problem if
23 you have a multiple-page exhibit and that's Exhibit 1
24 consisting of 23 pages. That way everybody knows where
25 they can go; it's Exhibit 1 page seven. Everybody

1 knows what we're talking about. That's helpful.

2 If you're going to be using electronics to
3 show exhibits, you know, make sure that's in order and
4 ready to go. I know we're both familiar with how I
5 like to try cases, and that means let's move it along
6 so the Jury isn't sleeping while we're doing other
7 things.

8 MS. FELAND: Is a week before sufficient?

9 THE COURT: A week should be sufficient if
10 all you're doing is -- as long as he's already got
11 every document, letting him know what you expect to
12 introduce into evidence. So seven days prior.

13 MS. FELAND: Okay.

14 THE COURT: Mr. Hoffman, any other comments?

15 MR. HOFFMAN: Do we know what courtroom we
16 will be in?

17 THE COURT: I don't. It'll either be here or
18 301. I mean, I don't know if there is any others. You
19 know, 301 is better for getting the bulk of jurors, but
20 that's going to be two days before. That doesn't
21 really matter.

22 MR. HOFFMAN: No. I thought maybe you knew.

23 THE COURT: No. Usually we don't know until
24 the day before, which is kind of scary.

25 But, Ms. Feland, anything the State wants to

1 put on the record before we adjourn?

2 MS. FELAND: I guess, just one last comment
3 to Mr. Hoffman. You know, the Information is required
4 to put him on notice. But the bill of particulars
5 really is intended to clarify, I guess, those details.
6 And, I guess, the bill of particulars has been very
7 clear. And if the Court prefers, the State has no
8 problem with amending the Information to basically
9 reiterate everything that's in the bill of particulars,
10 but I'm not sure that -- I think that that meets the
11 spirit of the rule.

12 We've tried to be very forthcoming in all of
13 the information which is why I did the bill of
14 particulars the way that it was done. And, you know,
15 the whole thing here is about ensuring that the entire
16 case gets done. It doesn't make sense to do it
17 piecemeal. I mean, we could have clearly charged each
18 one of these as a separate document, done it in a
19 separate case in and of itself. But a lot of the
20 witnesses overlap, in fact, a majority of witnesses
21 overlap, and it wouldn't make sense for the Court's
22 time or the defense's time or anybody else's to do it
23 in that fashion.

24 So, I guess, in this case I would just point
25 out to the Court that if the defendant feels he hasn't

1 had adequate time to prepare, fine. Then that's the
2 issue we need to address. But it doesn't make sense to
3 me to start separating the case and looking at starting
4 over with additional charges when the intent was to
5 charge a course of conduct, and that course of conduct
6 involving the spending of monies, not the extending of
7 gift certificates, not expending of bonuses, but the
8 expending the monies in specific categories. And I
9 think the State is very clear with that regard.

10 THE COURT: All right. Thank you. I'll take
11 it, like I said, under advisement and I will issue a
12 ruling here this week yet. That shouldn't be a
13 problem. Okay.

14 Thanks for your appearances and your
15 information.

16 (Adjourned at 9:36 a.m., Monday, November 3,
17 2008.)

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CERTIFICATE OF COURT REPORTER

STATE OF NORTH DAKOTA)
)
COUNTY OF BURLEIGH)

I, Lisa E. Soma, a duly appointed official court reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing and attached 29 typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at Bismarck, North Dakota, this 10th day of November, 2008.

Lisa E. Soma, RMR, CRR
District Court Reporter

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