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The Honorable Valerie Adair  
Eighth Judicial District Court, Dept. XXI  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
Fax Number: 671-4451

BECKER/english

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO RESHAWN CARROLL,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE VALERIE ADAIR  
DISTRICT JUDGE

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Case No. 50576

Dist. Ct. No. C212667

**FILED**

JAN 10 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**RESPONDENT'S EXHIBITS TO  
PETITION FOR WRIT MANDAMUS  
VOLUME 1**

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JAN 10 2008

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CLERK OF SUPREME COURT  
DEPUTY CLERK

Counsel for Appellant

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Counsel for Respondent

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08-00085

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TRAN  
CASE NO. C212667

IN THE JUSTICE COURT OF BOULDER CITY TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
KENNETH COUNTS, LUIS ALONSO HIDALGO, ANABEL ESPINDOLA and DEANGELO RESHAWN CARROLL,  
Defendants.

CASE NO. 05FB0052ABCD

**ORIGINAL**

REPORTER'S TRANSCRIPT  
OF  
PRELIMINARY HEARING  
BEFORE THE HONORABLE VICTOR L. MILLER  
JUSTICE OF THE PEACE  
JUNE 13, 2005  
8:35 A.M.

APPEARANCES:  
For the State: GIANCARLO PESCI, ESO.  
MARC DIGIACOMO, ESO.  
DEPUTY DISTRICT ATTORNEYS  
For Defendant Counts: KRISTINA M. WILDEVELD, ESO.  
For Defendant Hidalgo: ROBERT M. DRASKOVICH, ESO.  
For Defendant Espindola: CHRISTOPHER R. ORAM, ESO.  
For Defendant Carroll: DAYVID J. FIGLER, ESO., and  
DANIEL M. BUNIN, ESO.  
For Witness Ronta Zone: RANDALL H. PIKE, ESO.

Reported by: MARCIA HARNES, CCR 204

MARCIA HARNES, CCR 204 417-3047

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COUNTY CLERK



BOULDER CITY, CLARK COUNTY, NEVADA,  
JUNE 13, 2005, 8:35 A.M.  
PROCEEDINGS

THE COURT: Okay. We've gathered for the time set for the preliminary hearing in Case 05FB052A through E, Kenneth Counts, Luis Alonso Hidalgo, Anabel Espindola?

MR. ORAM: Yes, Espindola.

THE COURT: And Jayson Taoipu.

MR. PESCI: Judge, for the record, first of all, I don't see Mr. Carroll in the courtroom.

MR. FIGLER: Your Honor, they were keeping everyone separate. David Figler representing Mr. Carroll with Dan Bunin.

I think we could bring him into the room. I think he needs to be here for this proceeding.

THE COURT: Mr. Carroll?

In that case, let me see counsel about this.

(Thereupon, a brief discussion was held at the bench.)

MR. ORAM: Your Honor, we would invoke the exclusionary rule on behalf of Ms. Espindola.

MR. DRASKOVICH: As well as Mr. Hidalgo.

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MS. WILDEVELD: As well as Mr. Counts.

MR. PESCI: State's witnesses have been told not to come in.

THE COURT: Anyone who's been called here to testify or anticipates testifying in these proceedings, please wait in the hall. Do not discuss your testimony, what happened in the courtroom with the other witnesses until the case is concluded.

MR. DIGIACOMO: I apologize, Judge.

Judge, I would like to raise one other issue that relates to the exclusionary rule. There is an Irene Counts in the courtroom. There is going to be jail phone calls admitted into evidence during the course of this hearing.

Now, I didn't subpoena her as a witness as she is the wife of a potential defendant; however, there is evidence that relates to her. I anticipate that she may at some point become a witness, either for the defense or for the State. Judge, I would ask you to exclude her from this particular hearing.

MS. WILDEVELD: Your Honor, she is my client's wife, and I would prefer her be in the courtroom. It's his support, however. I understand that if she would become a witness. I haven't had the opportunity to read through these documents to see

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where she would become a witness. And as of right now, I don't anticipate her being a witness.

THE COURT: I would -- Ms. Irene Counts, when we get to that witness where we're discussing the tapes, then you'll need to leave the courtroom.

I won't exclude her throughout the testimony, but on that issue I will.

MS. WILDEVELD: Thank you, your Honor.

MR. DIGIACOMO: Thank you, Judge.

Judge, I have in my hand State's Proposed Exhibit Number 1, as well as State's Proposed Exhibit Number 2.

Number 1 is a copy of the autopsy report done by Dr. Telgenoff on May 20th of the year 2005 on a person identified to him as Timothy Hadland. I move to admit it based on the agreement of counsel, Judge.

THE COURT: Okay. Any objection?

MR. DRASKOVICH: And that's for the purposes of preliminary hearing only. No, there is no objection.

THE COURT: Okay.

MR. FIGLER: That is correct.

MR. ORAM: No objection, your Honor.

MS. WILDEVELD: That's correct, your Honor.

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THE COURT: It will be admitted.

(Thereupon, State's Exhibit 1 was admitted into evidence.)

MR. DIGIACOMO: Thank you, Judge.

State's Exhibit 1 establishes that the cause of death is multiple gunshot wounds to the head, as well as the manner of death being homicide.

Also, based upon the same agreement, the identity of Mr. Hadland as the victim of this particular crime has been agreed to, and we have State's Exhibit Number 2, which is an autopsy photograph of Mr. Hadland, which I would move to admit too.

MR. DRASKOVICH: No objection.

MR. ORAM: No objection.

MS. WILDEVELD: No objection.

MR. FIGLER: With that same limitation, that's fine, your Honor.

THE COURT: It will be admitted.

(Thereupon, State's Exhibit 2 was admitted into evidence.)

MR. DIGIACOMO: Your Honor, the State calls Ronta Zone.

Judge, as Mr. Zone's coming up, I don't know that a record has been made, but an arrest warrant

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1 was issued for Jayson Taoipu, who was the fifth  
 2 co-conspirator in this particular case.  
 3 Based upon the arrest warrant, the  
 4 Criminal complaint was amended to add a fifth  
 5 individual. There is no language which changed or  
 6 allegations which changed against the other four  
 7 co-defendants in the Amended Criminal Complaint, but  
 8 there is a Second Amended Criminal Complaint.  
 9 THE COURT: Okay. That's what I have  
 10 before me is a second amended. So that's what we're  
 11 proceeding on.  
 12 THE CLERK: Please remain standing and  
 13 raise your right hand.  
 14 Do you swear the statements that you are  
 15 about to make are the truth, the whole truth, and  
 16 nothing but the truth, so help you God?  
 17 THE WITNESS: I do.  
 18 THE CLERK: I need you to state your name  
 19 for the record and spell your name, please.  
 20 THE WITNESS: R-O-N-T-A, Z-O-N-E.  
 21 THE COURT: You can be seated.  
 22 MR. FIGLER: Your Honor, at this point,  
 23 Mr. Carroll's intention is to waive his preliminary  
 24 hearing and to face the charges that he's been given in  
 25 the Complaint in District Court.

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1 doesn't have to agree that that argument will succeed  
 2 in District Court, but certainly that that played into  
 3 his determination as to whether or not he would waive  
 4 his preliminary hearing, Judge.  
 5 MR. FIGLER: Thank you, your Honor. The  
 6 opportunity to cross-examine or to be in the position  
 7 to cross-examine is one which has been litigated for a  
 8 very long time. Whether or not that would apply in  
 9 this particular case if Mr. Zone were not to be  
 10 available to testify at the time of trial is going to  
 11 be a matter of legal discourse between the parties and  
 12 the district court judge as to the admissibility or  
 13 limited admissibility of anything that might come in.  
 14 Certainly I have discussed that with  
 15 Mr. Carroll, and his intention today is to waive his  
 16 preliminary hearing and approach these charges at the  
 17 time of trial. So whether or not Mr. Zone or any other  
 18 witness is going to have preserved testimony, and  
 19 whether or not that's going to be able to come in if  
 20 they are not available, and his rights of  
 21 cross-examination, I think are going to be a matter of  
 22 litigation, and he understands that.  
 23 So, I have never seen the waiver when he  
 24 just kind of waives up and wants to face the charges at  
 25 trial where he has to specifically or expressly waive

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1 THE COURT: Okay.  
 2 MR. DIGIACOMO: Judge, just for the  
 3 record, my understanding -- well, there is a number of  
 4 reasons why an individual may waive his preliminary  
 5 hearing without forcing the State to go through the  
 6 testimony as it relates to proving a preliminary  
 7 hearing.  
 8 One of those is to prevent the  
 9 preservation of certain testimony, in particular the  
 10 preservation of the witnesses against him. Now,  
 11 Crawford and the other case law that relates to  
 12 testimony and whether or not I can use prior testimony  
 13 at a future proceeding, should Mr. Zone become  
 14 unavailable between now and then, or any other witness  
 15 for that matter, relates to whether or not they had the  
 16 prior opportunity to cross-examine the witness.  
 17 I just want to put on the record that they  
 18 are making this waiver with an understanding that later  
 19 the State will be arguing, should we have to use the  
 20 prior testimony of Mr. Zone, that this is their  
 21 opportunity for cross-examination. They have waived  
 22 that opportunity, and I will be seeking to use any  
 23 prior testimony should it become necessary.  
 24 So I just ask the Court to canvass counsel  
 25 that he's aware that I'm making the argument. He

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1 his legal rights to challenge the admissibility of  
 2 evidence in the future, but I appreciate what  
 3 Mr. Digiacomo is saying.  
 4 THE COURT: Certainly you wouldn't have to  
 5 do that at this point. I would note that the waiver  
 6 came after the witness was called and sworn.  
 7 MR. DIGIACOMO: Thank you, Judge.  
 8 Lastly, there was an offer outstanding for  
 9 Mr. Carroll. At this time, the State revokes the offer  
 10 and doesn't intend to re-offer it.  
 11 Thank you, Judge.  
 12 THE COURT: Okay. Mr. Carroll, if you  
 13 will stand. Do you understand what is going on here?  
 14 THE DEFENDANT: Yes.  
 15 THE COURT: Okay. You have a right to  
 16 have a preliminary hearing in a criminal case as  
 17 charged in the State of Nevada when it's either a  
 18 felony or a gross misdemeanor. The charges against you  
 19 are felony charges.  
 20 You have the right to have a preliminary  
 21 hearing, which means to have a magistrate determine  
 22 whether or not there is probable cause or a reasonable  
 23 belief that a crime has been committed and that you  
 24 have committed the crime.  
 25 If the State meets that burden, then

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1 you're then bound over to the District Court to go to  
 2 trial on those charges. If the State does not meet  
 3 that burden at the preliminary hearing, then the  
 4 charges against you would be dismissed.  
 5 Now, do you understand that if you waive  
 6 your preliminary hearing we're not going to have one  
 7 today for you?  
 8 THE DEFENDANT: Yes.  
 9 THE COURT: Also, do you understand that  
 10 at the preliminary hearing you have certain valuable  
 11 rights that go along with any court proceeding. The  
 12 rights include being represented by counsel, as you  
 13 are.  
 14 Also, the right to be -- confront the  
 15 witnesses against you. That means to have the  
 16 witnesses testify right here in court in your presence,  
 17 and then have your attorney be able to cross-examine  
 18 them.  
 19 You can also present evidence on your own  
 20 behalf at your preliminary hearing and even testify, if  
 21 you wanted to. You have the subpoena powers of the  
 22 Court to compel people to testify.  
 23 If you waive your preliminary hearing,  
 24 you're also waiving those rights. Is that okay?  
 25 THE DEFENDANT: (Witness nods head.) Yes,

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1 sir.  
 2 THE COURT: All right. Now, your waiver  
 3 is also unconditional, which means that it's a waiver  
 4 not only for today, but it's a waiver for forever.  
 5 So if you go down to District Court and  
 6 change your mind, then you wouldn't have an opportunity  
 7 to come back here for preliminary hearing. The waiver  
 8 is for today. And then it's forever. Is that okay?  
 9 THE DEFENDANT: Yes.  
 10 THE COURT: Okay. All right. I find your  
 11 waiver of your right to a preliminary hearing is being  
 12 voluntarily given, knowledgeably given and is  
 13 unconditional.  
 14 Okay. For the bind over, the clerk will  
 15 now give you a time and date that you will next appear  
 16 in District Court to answer for these charges.  
 17 Based upon the review of the Complaint and  
 18 your waiver, I am finding reasonable cause to believe  
 19 that a crime has been committed, the crimes of  
 20 conspiracy to commit murder, murder with use of a  
 21 deadly weapon and solicitation of murder were committed  
 22 and were committed by you --  
 23 MR. FIGLER: Your Honor, the solicitation  
 24 didn't apply to my client.  
 25 THE COURT: Okay. Count IV does not apply

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1 to Mr. Carroll. Counts --  
 2 MR. FIGLER: I and II, your Honor.  
 3 MR. DIGIACOMO: I and II.  
 4 THE COURT: I and II.  
 5 MR. DIGIACOMO: That's correct.  
 6 THE COURT: There are two solicitations?  
 7 MR. FIGLER: That's correct. Neither have  
 8 anything to do with my client.  
 9 THE COURT: All right. So it's conspiracy  
 10 to commit murder and murder with use of a deadly  
 11 weapon. Therefore, you will be bound over to answer to  
 12 those charges.  
 13 The clerk will give you the date and time  
 14 you next appear in District Court to answer to those  
 15 charges.  
 16 THE CLERK: June 27th, 9:00 a.m.,  
 17 District Court No. XIV.  
 18 MR. DIGIACOMO: Thank you, Judge.  
 19 MR. FIGLER: Thank you, your Honor.  
 20 THE COURT: You may proceed with your  
 21 witness.  
 22 MR. DIGIACOMO: Thank you, Judge.

23  
 24 RONTA ZONE,  
 25 having been first duly sworn, did testify as follows:

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1 DIRECT EXAMINATION  
 2 BY MR. DIGIACOMO:  
 3 Q. Mr. Zone, I need you to sit forward and  
 4 speak right into that microphone so everybody can hear  
 5 you. I know you have a soft voice. Pull that  
 6 microphone a little closer to you.  
 7 How old are you?  
 8 A. Nineteen.  
 9 MR. DIGIACOMO: Is that on, Judge?  
 10 BY MR. DIGIACOMO:  
 11 Q. Just speak up as much as you can.  
 12 A. I just turned 19.  
 13 Q. You just turned 19 years of age?  
 14 A. Yeah.  
 15 Q. I want to direct your attention back to  
 16 middle of May of this year, 2005. Okay. Did you know  
 17 an individual named Deangelo Carroll?  
 18 A. Yes, I did.  
 19 Q. Do you see Mr. Carroll here in court  
 20 today?  
 21 A. Yes, I do.  
 22 Q. Can you point him out and describe  
 23 something he's wearing?  
 24 A. He's wearing a jail outfit.  
 25 Q. Okay. There is a number of people wearing

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- 1 jail outfits. Just tell the Court where is he sitting  
2 in the courtroom?  
3 A. Sitting in the back.  
4 Q. The back row of the jury box?  
5 A. Yes, sir.  
6 MR. DIGIACOMO: May the record reflect the  
7 identification of Defendant Carroll, Judge?  
8 THE COURT: Record will so reflect.  
9 BY MR. DIGIACOMO:  
10 Q. Did there come a point in time in May when  
11 you began working with Mr. Carroll?  
12 A. Yes, I did.  
13 Q. Tell the Court how it is that started.  
14 A. I was a flyer boy.  
15 Q. A flyer boy for who?  
16 A. For the Palomino.  
17 Q. For the Palomino Club?  
18 A. Yes.  
19 Q. What does that mean you did?  
20 A. Passed out flyers.  
21 Q. What kind of flyers were they?  
22 A. Pamphlets, flyers that represents the  
23 club.  
24 Q. Who did you pass these things out to?  
25 A. To cab places, you know, cab stops.

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- 1 Q. Were these flyers color or were they  
2 photocopies?  
3 A. They were pink, and they were all kind of  
4 colors.  
5 Q. Okay. And how many times did you do this  
6 type of work with Mr. Carroll?  
7 A. For about four to five days.  
8 Q. Okay. The first time you worked with  
9 Mr. Carroll, who else worked with you?  
10 A. My cousin.  
11 Q. What was his name?  
12 A. Michael.  
13 Q. Okay. So it was you, Michael and  
14 Mr. Carroll?  
15 A. Yes.  
16 Q. What kind of car were you in?  
17 A. We were in the van.  
18 Q. What kind of van?  
19 A. A white Astro van.  
20 Q. White Chevy Astro van?  
21 A. (Witness nodded.)  
22 Q. Whose van was it?  
23 A. I'm not really sure.  
24 Q. Was it Deangelo's van?  
25 A. No.

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- 1 Q. Okay. Did it relate at all to the  
2 promoting or passing out flyers?  
3 A. Yeah.  
4 Q. Okay. That first night did you get paid  
5 for your services?  
6 A. Yes, I did.  
7 Q. How much did you get paid?  
8 A. I got paid \$20 for my services.  
9 Q. How long before the incident that we're  
10 here to talk about was it the first time that you went  
11 out promoting with Deangelo?  
12 A. Yeah.  
13 Q. How long before the incident, the murder?  
14 A. About three days.  
15 MR. DRASKOVICH: Objection, calls for a  
16 conclusion. Moreover, it assumes facts not in  
17 evidence.  
18 BY MR. DIGIACOMO:  
19 Q. Are you aware that there was a homicide  
20 that occurred on May 19th, 2005?  
21 A. Yes, I was.  
22 Q. Okay. Now, how long prior to May 19th,  
23 2005, did you start promoting?  
24 A. About three days before.  
25 Q. So that first night you work with Deangelo

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- 1 and Michael. Where did you go when you were done  
2 working?  
3 A. I went to Deangelo's house.  
4 Q. Okay. Where is Deangelo's house located?  
5 A. On Yale Street.  
6 Q. Yale? Okay.  
7 And who else lived at Deangelo's house?  
8 A. Just his wife and son.  
9 Q. Okay. And what about, did you have  
10 anybody that was related to you that stayed there?  
11 A. Just Deangelo.  
12 Q. Just Deangelo.  
13 Are you related at all to Deangelo?  
14 A. No, but we are good friends.  
15 Q. You're good friends.  
16 Let's talk about the next day. Did you go  
17 out and promote again?  
18 A. Yes, we did.  
19 Q. Okay. Who did you go out with this time?  
20 A. It was me, it was just me and Deangelo.  
21 Q. Just you and Deangelo.  
22 And after -- were you in the white van  
23 again?  
24 A. Yes.  
25 Q. After you were done promoting, where did

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1 you go.  
 2 A. We went back to the house.  
 3 Q. To Deangelo's house?  
 4 A. (Witness nods head.)  
 5 Q. Did you get paid for that?  
 6 A. No, I didn't.  
 7 Q. Let's talk about the third day. Who did  
 8 you go out with?  
 9 A. With JJ.  
 10 Q. JJ. So it was JJ, you and who else?  
 11 A. JJ, me and Deangelo.  
 12 Q. And you were promoting again?  
 13 A. Yes.  
 14 Q. And this is, once again, for the Palomino  
 15 Club?  
 16 A. Yes.  
 17 Q. Did there come a point in time where a  
 18 discussion occurred between you and Deangelo concerning  
 19 doing violence to anybody?  
 20 A. Yes.  
 21 Q. Okay. Describe for the Court the nature  
 22 of that conversation.  
 23 MR. ORAM: Your Honor, I'm going to object  
 24 to anything Deangelo may have said. It's not -- I  
 25 think they are going to argue co-conspirator rule;

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1 a violation of the Bruton rule because Bruton applies  
 2 to statements made by a defendant confessing to an  
 3 officer that implicates a co-defendant.  
 4 It's not a violation of Crawford because  
 5 Crawford requires that the statement, the declarant  
 6 believed that it's going to be used for future  
 7 testimony. In other words, he has to believe that the  
 8 statement is like a transcription of a statement to a  
 9 police officer. Crawford does not apply to a statement  
 10 by a co-conspirator in the course and in the  
 11 furtherance of the conspiracy.  
 12 There is no confrontation clause problem.  
 13 MR. ORAM: And they have to establish that  
 14 there is a conspiracy beforehand, which they have not  
 15 done. In order to get in any conspirator statement  
 16 they are going to have to establish by a scintilla of  
 17 evidence that there is a conspiracy, which they haven't  
 18 done.  
 19 MR. DRASKOVICH: That there is a  
 20 conspiracy, that it was made in furtherance of the  
 21 conspiracy, and a co-conspirator made it. There are  
 22 actually three things that they need to establish, and  
 23 they have established none of the three.  
 24 Moreover, I would disagree with the  
 25 State's summary of the applicable case law in that

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1 however, it's going to be a confrontation clause  
 2 violation.  
 3 Now, I have no problem as long as my  
 4 client's name is not mentioned or in there because I  
 5 have no proof that my, that we're going to hear  
 6 anything about my client. But I don't want to hear  
 7 something right now that means that Deangelo Carroll is  
 8 saying something to him that is somehow going to  
 9 implicate my client.  
 10 First of all, it's a Bruton violation.  
 11 Second of all, it violates Crawford versus Washington  
 12 where the U.S. Supreme Court has said we have a right  
 13 to confront.  
 14 Now, maybe Mr. Digiacomo is going to tell  
 15 us that it has nothing to do with my client, in which  
 16 case I'm going to withdraw the objection.  
 17 MR. DRASKOVICH: And on behalf of  
 18 Mr. Hidalgo, I would make the same objection for the  
 19 same purposes.  
 20 MS. WILDEVELD: And on behalf of  
 21 Mr. Counts, I would as well.  
 22 MR. DIGIACOMO: Judge, as you will find  
 23 throughout the testimony, the testimony of a  
 24 co-conspirator in the course or in the furtherance of a  
 25 conspiracy is not a violation of the hearsay rule, not

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1 Crawford deals with right to confrontation, which they  
 2 are attempting to circumvent. Right now it's not  
 3 narrowly tailored to testifying at trial.  
 4 The rules of evidence apply at a  
 5 preliminary hearing here in Nevada. And they are now  
 6 attempting to circumvent the United States Supreme  
 7 Court case through this young man's testimony. For  
 8 that reason, it's inappropriate.  
 9 MS. WILDEVELD: We would second all that  
 10 for Mr. Carroll.  
 11 MR. DIGIACOMO: Judge, just two last  
 12 things. One, you're going to hear a lot of testimony  
 13 concerning a conspiracy. If he wants me to go through  
 14 everything about what the evidence of the conspiracy is  
 15 and then go back, this is a court, the Court can decide  
 16 what evidence is admissible or not admissible, allow  
 17 the evidence in subject to connection up.  
 18 Second of all, if the confrontation clause  
 19 applied to the preliminary hearing purposes, then we  
 20 would never have a Grand Jury because I have yet to see  
 21 a defense attorney allowed to cross-examine anybody  
 22 during a Grand Jury.  
 23 So to the extent that Crawford applies,  
 24 which it doesn't because it's a confrontation clause  
 25 case, it certainly doesn't apply to preliminary

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1 hearing, Judge.  
 2 MS. WILDEVELD: Your Honor, there are  
 3 different rules in a preliminary hearing than there are  
 4 in a Grand Jury hearing. And this case wasn't Grand  
 5 Juried. We're at a preliminary hearing.  
 6 THE COURT: I agree. I think the  
 7 confrontation clause does apply at preliminary hearing,  
 8 but I am going to reserve my ruling to see if you can  
 9 tie it in. And I'll see if the testimony is  
 10 testimonial or the statements are testimonial because I  
 11 think that's what Crawford goes to.  
 12 MR. DIGIACOMO: Thank you, Judge.  
 13 BY MR. DIGIACOMO:  
 14 Q. Describe the nature of this conversation  
 15 that you had with Mr. Carroll.  
 16 A. Excuse me?  
 17 Q. You said that you had a conversation with  
 18 Mr. Carroll about hurting somebody. Can you describe  
 19 that conversation?  
 20 MS. WILDEVELD: Objection, I don't think  
 21 that hurting someone has ever come into the record.  
 22 MR. DIGIACOMO: Wasn't that my last  
 23 question to the witness before the objection?  
 24 THE COURT: Doing violence to.  
 25

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1 Q. When Deangelo told you that Mr. H wanted  
 2 him to kill somebody, what was your response?  
 3 A. Well, my response I wasn't even in it.  
 4 You know, that was my response was no.  
 5 Q. You told him no?  
 6 A. Yeah.  
 7 Q. Was there anybody else present when  
 8 Mr. Carroll was talking about Mr. H wanting to kill  
 9 somebody?  
 10 A. Yes.  
 11 Q. Who was that?  
 12 A. JJ.  
 13 Q. JJ. And what's JJ's full name, do you  
 14 know?  
 15 A. Jayson Taoipu.  
 16 Q. Jayson Taoipu?  
 17 A. Yes.  
 18 Q. How long before the events of May 19th did  
 19 this first conversation between you and Mr. Carroll  
 20 occur?  
 21 A. Well, earlier that day.  
 22 Q. Earlier in the day that Mr. Hadland died?  
 23 A. No, earlier in the day before.  
 24 Q. Before Mr. Hadland was killed?  
 25 A. Yes.

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1 BY MR. DIGIACOMO:  
 2 Q. Doing violence to.  
 3 A. Well, Deangelo told me that he was, that  
 4 Mr. H had wanted him to kill somebody.  
 5 Q. Okay. And Deangelo said Mr. H. Did you  
 6 know who Mr. H was?  
 7 A. No.  
 8 Q. Okay. Do you now know who Mr. H is?  
 9 A. Yes, I do.  
 10 Q. Who is Mr. H?  
 11 A. Mr. Hidalgo.  
 12 Q. Now, there is a number of Mr. Hidalgos in  
 13 this particular case. What did Mr. H, what does he do  
 14 for a living?  
 15 MR. DRASKOVICH: Objection, lack of  
 16 foundation.  
 17 THE WITNESS: If I'm right, he owns the  
 18 club.  
 19 THE COURT: Overruled.  
 20 BY MR. DIGIACOMO:  
 21 Q. He owns the club?  
 22 A. (Witness nods head.)  
 23 Q. That's the Palomino Club we're talking  
 24 about?  
 25 A. Yes, sir.

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1 Q. Okay. What was JJ's response to what  
 2 Mr. Carroll had said?  
 3 A. Well, you know, he was supposed to be  
 4 down, but --  
 5 Q. What do you mean by supposedly be down?  
 6 A. He was with it, you know.  
 7 Q. What did he say?  
 8 A. He was in it. He was like I want to do  
 9 it, but he didn't.  
 10 Q. Okay. But JJ indicated that he was  
 11 willing to do it?  
 12 A. Yeah.  
 13 Q. At any point in time, did you see JJ with  
 14 a weapon?  
 15 A. That night.  
 16 Q. Okay. What kind of gun was it?  
 17 A. .22 revolver.  
 18 Q. Okay. Where did JJ get the gun, if you  
 19 know?  
 20 A. He got it from Deangelo.  
 21 Q. He got it from who?  
 22 A. Deangelo.  
 23 Q. Deangelo.  
 24 Did there ever come a point in time when  
 25 Deangelo tried to give you anything?

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- 1 A. No.  
 2 Q. What about some bullets?  
 3 A. Yes.  
 4 Q. Okay. Describe to the Court that  
 5 interaction.  
 6 A. Well, he gave me the bullets, but I gave  
 7 them to JJ.  
 8 Q. Okay. Why is it that you gave them to JJ?  
 9 A. Because I didn't want nothing to do with  
 10 it.  
 11 Q. You didn't want anything to do with it?  
 12 A. No.  
 13 Q. Let's talk about Thursday, May 19th,  
 14 2005. Did there come a point in time when you went out  
 15 promoting with JJ and Deangelo?  
 16 A. Yes.  
 17 Q. And how long did you guys promote for?  
 18 A. For like two hours, two or three hours.  
 19 Q. What time did you start about?  
 20 A. About 8 o'clock.  
 21 Q. Eight o'clock at night?  
 22 A. (Witness nods head.)  
 23 Q. Is that a yes?  
 24 A. Yes.  
 25 Q. I'm sorry, she's going to type down

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- 1 everything you say. Okay?  
 2 A. (Witness nods head.)  
 3 Q. All right. So a couple hours. What  
 4 happened after that couple hours? Where did you go?  
 5 A. We went back home.  
 6 Q. To whose house?  
 7 A. Deangelo's house.  
 8 Q. Who was at Deangelo's house when you were  
 9 there?  
 10 A. His wife.  
 11 Q. His wife?  
 12 A. His wife and son and my baby's mother.  
 13 Q. Your baby's mother?  
 14 A. (Witness nods head.)  
 15 Q. Okay. What about JJ, was he there?  
 16 A. Yes, he was.  
 17 Q. How long do you stay at Deangelo's house?  
 18 A. For about four days.  
 19 Q. Okay. I'm talking about after the couple  
 20 of hours that you went out promoting, you went back to  
 21 Deangelo's house. How long did you stay at Deangelo's  
 22 house that night?  
 23 A. For about three hours, and then we went  
 24 back out to promote.  
 25 Q. Okay. When you were going back out, did

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- 1 Deangelo tell you what you were going back out to do?  
 2 A. No, he said that we were going to promote.  
 3 Q. He said that you're going to promote and  
 4 you said okay?  
 5 A. Yes. Because my baby's mother asked me  
 6 where I was going when I left.  
 7 Q. What did you tell her?  
 8 A. I didn't tell her nothing. Deangelo told  
 9 her we were going to promote.  
 10 Q. So did you and JJ and Deangelo then leave?  
 11 A. Yes, we did.  
 12 Q. And where did you, JJ and Deangelo go?  
 13 A. We went to pick up KC.  
 14 Q. Where was KC at?  
 15 A. West side.  
 16 Q. The west side.  
 17 Do you know what street it is?  
 18 A. E Street.  
 19 Q. E Street.  
 20 And did there come a point in time that  
 21 Deangelo had a conversation with you concerning  
 22 anything that Mr. H's son said?  
 23 A. Yes.  
 24 Q. Okay. What is it that Deangelo told you?  
 25 MS. WILDEVELD: Objection, against --

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- 1 MR. DRASKOVICH: Clearly, Judge, this is  
 2 hearsay. I think they have basically far exceeded your  
 3 Honor's prior ruling. We basically have an evidentiary  
 4 free for all here where you can say what other people  
 5 are saying that he hasn't heard and what he's being  
 6 told.  
 7 We have a party that's not now a party to  
 8 this preliminary hearing whose testimony is being  
 9 bootstrapped through this young man, and this is wholly  
 10 inappropriate.  
 11 MR. DIGIACOMO: Judge, first of all, I  
 12 have now established the conspiracy. He's present for  
 13 the formation of the conspiracy, at least through JJ  
 14 and Deangelo. And any statement thereafter related to  
 15 the conspiracy would go against the co-conspirator.  
 16 If I later cannot come up with independent  
 17 evidence that establishes that Luis or that Luis  
 18 Hidaigo, III, was part of the conspiracy, that may be  
 19 an argument, but it's not an evidentiary argument as to  
 20 the statement related to a co-conspirator's statement  
 21 in furtherance of the conspiracy.  
 22 MR. DRASKOVICH: My second objection is  
 23 that of leading in that he is now pulling out names and  
 24 feeding names to this particular witness, and that's  
 25 wholly inappropriate as well.

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1 If Mr. DiGiacomo has any personal  
2 knowledge and would like to go under oath, I would be  
3 happy to hear him testify, but this young man did not  
4 mention anybody's name outside of those names that  
5 Mr. DiGiacomo is now stating to him in this courtroom.  
6 THE COURT: Let's see if we can not  
7 suggest answers.  
8 MR. DIGIACOMO: I will try, Judge. I  
9 think that I just said son, but okay.  
10 BY MR. DIGIACOMO:  
11 Q. Tell me about this conversation between --  
12 what did Deangelo tell you about a conversation or what  
13 did he tell you about Mr. H's son?  
14 MR. DRASKOVICH: Objection, leading.  
15 THE COURT: What did he tell you? How  
16 could that possibly be leading?  
17 MR. DRASKOVICH: About so and so's son.  
18 Once again, we have him suggesting answers, suggesting  
19 names and suggesting identities of people this young  
20 man has not stated, so clearly the answer is contained  
21 within the question that Mr. DiGiacomo is presenting to  
22 this witness.  
23 THE COURT: I don't think so. I'll  
24 overrule that.  
25 MR. DIGIACOMO: Thank you.

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1 A. It's a house.  
2 Q. And this house, is it near anybody who is  
3 related to Deangelo?  
4 MS. WILDEVELD: Objection, leading.  
5 MR. DRASKOVICH: Join in that objection.  
6 THE WITNESS: Across the street from his  
7 mom.  
8 MR. DIGIACOMO: How can that be leading,  
9 Judge?  
10 THE COURT: Overruled.  
11 THE WITNESS: Across the street from his  
12 mom.  
13 BY MR. DIGIACOMO:  
14 Q. Across the street from his mother. Okay.  
15 When you get up there, does everybody get  
16 out of the van or does anybody get out of the van?  
17 A. Deangelo gets out of the van.  
18 Q. Where does Deangelo go?  
19 A. Goes to KC.  
20 Q. Does he go inside the house?  
21 A. Yes, he does.  
22 Q. How long was Deangelo inside the house?  
23 A. About a maximum of ten minutes.  
24 Q. Eventually, does Deangelo leave the house?  
25 A. Yes.

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1 BY MR. DIGIACOMO:  
2 Q. What did Deangelo tell you about Mr. H's  
3 son?  
4 A. Well, that he wanted to have him dead  
5 also.  
6 Q. Okay. Did he tell you anything else?  
7 A. He told me that, that he was supposed to  
8 grab baseball bats and a trash can -- I mean, trash  
9 bags.  
10 Q. Okay. What was the baseball bat and trash  
11 bags for?  
12 A. Murder.  
13 Q. Okay. Eventually -- are you now on the  
14 night of the 19th, are you still in the white van with  
15 JJ and Deangelo?  
16 A. Yes.  
17 Q. Eventually, do you wind up on the west  
18 side?  
19 A. Yes.  
20 Q. Do you wind up on E Street?  
21 A. Yes.  
22 Q. When you get there, where do you go?  
23 A. We pick up KC and we leave.  
24 Q. What kind of place does KC live in? Is it  
25 a house, is it an apartment, what is it?

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1 Q. Does he have anybody with him?  
2 A. He has KC with him.  
3 Q. Does KC get in the van with Deangelo?  
4 A. Yes, he does.  
5 Q. Do you see KC here in court today?  
6 A. Yes, I do.  
7 Q. Can you point him out and describe  
8 something he's wearing?  
9 A. Sitting in the front.  
10 Q. Okay. Is he white, black or Hispanic?  
11 A. Black.  
12 Q. Black?  
13 A. Yes.  
14 Q. What kind of clothes is he wearing?  
15 A. Jail outfits. I mean, I don't really know  
16 what to call them.  
17 Q. Jail outfits, that's what he's wearing  
18 today?  
19 A. Yes, sir.  
20 MR. DIGIACOMO: May the record reflect the  
21 identification of Defendant Counts, Judge?  
22 THE COURT: In the front row there are  
23 three people, which of the three?  
24 THE WITNESS: Person on the right.  
25 THE COURT: The record will so reflect.

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1 MS. WILDEVELD: I'm having a hard time  
2 hearing him, your Honor, if you can ask him to speak  
3 up, please.  
4 THE WITNESS: Person on the right.  
5 BY MR. DIGIACOMO:  
6 Q. When KC gets in the van, is there any  
7 discussion about what's going to happen?  
8 A. No.  
9 Q. Where does the van go?  
10 A. Van goes to Lake Mead.  
11 Q. During the time the van is going to --  
12 well, do you know why the van was heading towards Lake  
13 Mead?  
14 A. When we got out there, I knew.  
15 Q. When you got out there you knew.  
16 How did you know?  
17 A. Because I'm like we ain't just going to  
18 Lake Mead just to go.  
19 Q. Do you ever -- does anybody in the car  
20 have any conversations by way of any phone?  
21 A. Yes.  
22 Q. What?  
23 A. Yes.  
24 Q. Who?  
25 A. Deangelo.

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1 The van drives out there, and then what happens?  
2 A. It drives out there, and Deangelo didn't  
3 get no service on his phone. He had no service on his  
4 phone, so he turned around.  
5 Q. Where did the van drive back to?  
6 A. Back, back towards the city to where he  
7 can get a connection on his phone.  
8 Q. When he got the connection on his phone,  
9 what happened at that point?  
10 A. When he got the connection on his phone,  
11 he turned back around.  
12 Q. Okay. Did he make a phone call now that  
13 he has a connection on his phone?  
14 A. Yes, he did.  
15 Q. What was he saying on the phone?  
16 A. He just said, he turned Timothy, but  
17 Timothy never answered.  
18 Q. So then the van turned back around?  
19 A. No, he don't turn back around twice.  
20 Q. So I got this straight, you drive out  
21 there, there is no cell phone service, Deangelo turns  
22 back around until he gets cell phone service?  
23 A. And then he turns around.  
24 Q. And then he turns around a second time.  
25 A. But then he doesn't turn around no more.

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1 Q. Who does he talk to that you're aware of?  
2 MR. ORAM: Objection. How would he know  
3 who he's going to talk to by phone?  
4 THE COURT: Sustained.  
5 BY MR. DIGIACOMO:  
6 Q. Did you hear Deangelo talking to somebody?  
7 A. Yes.  
8 Q. What is Deangelo saying to this person?  
9 A. He was supposed to meet Timothy.  
10 Q. He was supposed to meet Timothy?  
11 A. (Witness nods head.)  
12 Q. Was it your understanding that he's  
13 talking to Timothy?  
14 A. (Witness nods head.)  
15 Q. Is that a yes?  
16 A. Yes, sir.  
17 Q. Okay. Where is it that the van goes?  
18 A. It goes to, it goes to Lake Mead by the  
19 highway road to where you have no direction but to turn  
20 left or right.  
21 Q. Okay. Do you ever have to pass any  
22 checkpoints or anything else to get out there?  
23 A. I'm pretty sure that you do.  
24 Q. Okay. The car goes out there the first  
25 time. Describe for the Court what you do in the van.

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1 Q. And then he drives back down the road?  
2 A. Correct.  
3 Q. Correct?  
4 A. Right.  
5 Q. Where are you seated in the van?  
6 A. Left back seat.  
7 Q. So behind the driver?  
8 A. Yes.  
9 Q. Who is driving?  
10 A. Deangelo.  
11 Q. Who is in the front passenger seat?  
12 A. JJ.  
13 Q. Who is in behind the front passenger?  
14 A. KC.  
15 Q. KC.  
16 Do you have any conversations with KC on  
17 the way out to Lake Mead?  
18 A. No, we smoked a blunt. That was about it.  
19 Q. When you say smoked a blunt, what kind  
20 of -- what is a blunt?  
21 A. Marijuana.  
22 Q. Marijuana.  
23 And after smoking the blunt --  
24 MR. DRASKOVICH: I object to this part.  
25 We have this kid admitting to crimes now before this

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1 Court, which I think is actually within this Court's  
2 jurisdiction if they are on their way to Lake Mead and  
3 they're in this area.  
4 Obviously, he probably should consult with  
5 a lawyer but that's the Court's call. This is --  
6 MR. DIGIACOMO: Judge, we have people,  
7 witnesses testify to drug use in preliminary hearings  
8 every day, and I have never seen a judge instruct a  
9 witness in a murder case that he needs to be worried  
10 about the fact that he said that there was marijuana  
11 being smoked. I don't have any corpus to establish the  
12 crime.  
13 MR. DRASKOVICH: I have represented many,  
14 many people for much lesser crimes, even having pipes  
15 or drug paraphernalia that the District Attorney's  
16 office sees fit to charge.  
17 MS. WILDEVELD: Additionally, your Honor,  
18 I see nothing more than another co-conspirator sitting  
19 on the stand, and he is not even represented by  
20 counsel.  
21 I have represented numerous people who are  
22 passengers in a vehicle and have done much less than he  
23 did being charged with murder.  
24 MR. DIGIACOMO: Judge, as far as I am  
25 aware, there is nothing he's said so far that would

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1 allow me to charge him with murder. There is nothing  
2 that any other witness in any other discovery has said  
3 that he's been involved in a murder.  
4 In fact, the only other witness who's  
5 given a statement related to the murder or any other  
6 defendant is Mr. Carroll, and Mr. Carroll specifically  
7 says that Ronta Zone had absolutely nothing to do with  
8 this crime. There is not a single shred of evidence to  
9 establish that Ronta Zone was involved in this murder.  
10 MS. WILDEVELD: Judge, JJ Taoipu is also a  
11 co-defendant in this case. Unfortunately, he's not  
12 here today, but he's facing the same charges as these  
13 men are.  
14 MR. DRASKOVICH: And we have had testimony  
15 that we have, according to this young man, they are  
16 headed out to the lake to commit a murder, he is  
17 present, he is in the car. He has not left, and he's  
18 going with them knowing what they are doing. He's  
19 clearly present when these conversations or alleged  
20 conversations occur.  
21 MS. WILDEVELD: And before he got in the  
22 car, he's already testified that he knew. They said we  
23 were going to take care of him and collected baseball  
24 bats and bags.  
25 MR. DRASKOVICH: And his getting into the

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1 car is an outward act that would obviously establish  
2 his participation, his presence, directly or  
3 indirectly, to quote the State in their Complaint, of  
4 the commission of a crime.  
5 THE COURT: Well, I appreciate very much  
6 your concern for this gentleman's constitutional  
7 rights, but --  
8 Mr. Zone, you have the right against  
9 self-incrimination. It's a constitutional right. And  
10 anything that you say can be used against you later on.  
11 Because you have that right, you also have  
12 a right to be represented by an attorney. If you could  
13 not afford to hire an attorney, the Court would appoint  
14 an attorney to represent you.  
15 Do you understand you have those rights?  
16 THE WITNESS: Yes, sir.  
17 THE COURT: You also have, because they  
18 are your rights, you have the right to waive those  
19 rights and proceed without an attorney and answer  
20 questions that the District Attorney asks you, so it's  
21 entirely up you to.  
22 If you want to have an attorney and  
23 consult with an attorney before you answer questions, I  
24 would provide one for you. Or if you want to go  
25 forward and answer questions without an attorney, you

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1 can do that.  
2 THE WITNESS: Yes.  
3 THE COURT: What would you like to do?  
4 THE WITNESS: With an attorney.  
5 THE COURT: With an attorney? Okay.  
6 MR. DIGIACOMO: Can we take a break then  
7 Judge. We need to get an attorney here.  
8 THE COURT: All right. Why don't we take  
9 a five-minute break.  
10 (A brief recess was taken.)  
11 THE COURT: Okay. Do we have counsel  
12 coming for Mr. Zone? So we can interrupt his testimony  
13 until he discusses the proceedings with his attorney.  
14 In the meantime, is there another witness  
15 that we can proceed with?  
16 MR. PESCI: Yes, Judge, the State calls  
17 Pajit, P-A-J-I-T, I'm sorry, P-A-I-J-I-T, Karlson.  
18 THE COURT: Ms. Karlson?  
19 MR. PESCI: She's just right outside.  
20 THE COURT: Okay. Come over here. When  
21 you get up here, remain standing and raise your right  
22 hand.  
23 THE CLERK: Raise your right hand, please.  
24 Do you swear the statements that you are  
25 about to make are the truth, the whole truth, and

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1 nothing but the truth, so help you God?  
 2 THE WITNESS: I do.  
 3 THE CLERK: I need you to state your name  
 4 for the record and spell your name, please.  
 5 THE WITNESS: My name is Pajit Karlson,  
 6 P-A-I-J-I-T. Karlson, K-A-R-L-S-O-N.  
 7 THE COURT: Have a seat.  
 8 MR. PESCI: May I proceed, your Honor?  
 9 THE COURT: Yes, please.  
 10 MR. PESCI: Thank you.  
 11  
 12 PAIJIT KARLSON,  
 13 having been first duly sworn, did testify as follows:  
 14  
 15 DIRECT EXAMINATION  
 16 BY MR. PESCI:  
 17 Q. Ma'am, where are you from?  
 18 A. Island.  
 19 Q. Do you speak English?  
 20 A. Not fully.  
 21 Q. If you have any questions or something  
 22 don't make sense, please stop and ask a question. Is  
 23 that okay?  
 24 A. (No audible response.)  
 25 Q. This woman right in front of you is taking  
 everything down, so we have to give an answer out loud

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1 so she'll know what was said. Is that okay?  
 2 A. Okay.  
 3 Q. All right. You have to speak loud enough  
 4 so everybody can hear you.  
 5 A. All right.  
 6 Q. Thank you.  
 7 Ma'am, did you know a Timothy Hadland?  
 8 A. Yes.  
 9 Q. What did you call him? What was your name  
 10 for him?  
 11 A. T.J.  
 12 Q. T.J?  
 13 A. (Witness nods head.)  
 14 Q. And I want to focus your attention on May  
 15 the 19th of 2005. We're going to talk about that day.  
 16 Before that, though, when did you first  
 17 meet T.J?  
 18 A. I met him on November 25 of Christmas Eve.  
 19 Q. Would that be in 2004?  
 20 A. Yes.  
 21 Q. And were you in a dating relationship with  
 22 T.J?  
 23 A. Not after three months. Three months  
 24 after that.  
 25 Q. So three months after you met, you started

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1 dating?  
 2 A. Yes.  
 3 Q. Okay. Thank you.  
 4 And looking at May the 19th of 2005, did  
 5 you and T.J. decide to go somewhere?  
 6 A. Yes.  
 7 Q. Where did you decide to go?  
 8 A. To the lake.  
 9 Q. When you say "lake," are you referring to  
 10 Lake Mead?  
 11 A. Lake Mead, yes.  
 12 Q. Did anybody go with you?  
 13 A. Just us.  
 14 Q. When you say "us," who do you mean?  
 15 A. Just T.J. and I.  
 16 Q. All right. And what were you going to do  
 17 at the lake?  
 18 A. We just go camping.  
 19 Q. Had you ever been camping before?  
 20 A. No.  
 21 Q. Whose idea was it to go camping?  
 22 A. T.J.  
 23 Q. Did you actually get out to the lake?  
 24 A. We get out to the lake.  
 25 Q. Was there a camping area that you stopped

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1 in?  
 2 A. Yes, they have a small camping over there.  
 3 Q. And how long were you -- about what time  
 4 do you think you got out to the camping area at the  
 5 lake?  
 6 A. About 7:30 about.  
 7 Q. Is that 7:30 at night?  
 8 A. Yes, about. It's kind of late, about  
 9 7:30, something like that. And 8 o'clock when we set  
 10 up the camping.  
 11 Q. Did you set up your camp?  
 12 A. Yes.  
 13 Q. At about 8 o'clock?  
 14 A. (Witness nods head.) Yes.  
 15 Q. Thank you.  
 16 And did you have a phone with you?  
 17 A. Yes.  
 18 Q. Was it your cell phone?  
 19 A. Yes.  
 20 Q. Did T.J. have a phone or something to  
 21 communicate with him?  
 22 A. Yes.  
 23 Q. What was that, do you recall?  
 24 A. Walkie-talkie.  
 25 Q. Had you seen that walkie-talkie before?

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- 1 A. I have, yes.  
 2 Q. Was that something that he had from work?  
 3 A. He just have. He just bought a new one,  
 4 so yes, he have.  
 5 Q. All right. And did you know where did TJ  
 6 work?  
 7 A. At the Palomino Club.  
 8 Q. How long ago had he worked at the Palomino  
 9 Club?  
 10 A. About three months.  
 11 Q. Now, at the time that you were camping,  
 12 was TJ still working at the Palomino?  
 13 A. No.  
 14 Q. Had he stopped working there?  
 15 A. Yes.  
 16 Q. About how long before you went camping had  
 17 TJ stopped working at the Palomino?  
 18 A. About two-and-a-half weeks.  
 19 Q. Two-and-a-half weeks?  
 20 A. Yes.  
 21 Q. While you were out there, were you  
 22 spending some time together, you and TJ?  
 23 A. Yes.  
 24 Q. That was a bad question.  
 25 Did you have any drinks while you were out

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- 1 at the lake?  
 2 A. Not me.  
 3 Q. Did TJ have any drinks?  
 4 A. Yes.  
 5 Q. Did TJ get a phone call while you were  
 6 together at the lake?  
 7 A. Yes.  
 8 Q. And do you recall was it on his  
 9 walkie-talkie?  
 10 A. Yes.  
 11 Q. Did you hear the person that was making  
 12 the call?  
 13 A. I heard he talked too, but not to when he  
 14 in conversation. He tell me.  
 15 Q. Okay. So if I understand correctly, you  
 16 heard the phone call come in?  
 17 A. Yes.  
 18 Q. You were not able to hear the voice of the  
 19 person making the call?  
 20 A. No.  
 21 Q. Were you able to hear TJ as he was on that  
 22 phone call with the other person?  
 23 A. Yes.  
 24 Q. Did you hear TJ talking on the phone?  
 25 A. Yes.

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- 1 Q. Was he standing near you or did he move  
 2 around during this phone call?  
 3 A. He move around.  
 4 Q. And was he still in an area where you  
 5 could hear him?  
 6 A. I can hear him talk but not, you know,  
 7 like every word.  
 8 Q. Okay. Did that phone conversation end?  
 9 A. Yes.  
 10 Q. And did TJ come back and speak with you?  
 11 A. Yes.  
 12 Q. Did TJ explain who it was or what he was  
 13 going to do based on that phone conversation?  
 14 A. Yes.  
 15 Q. What was he going to do?  
 16 A. He say he going to meet someone.  
 17 Q. Did he say who he was going to meet?  
 18 A. Yes.  
 19 Q. Who did he say he was going to meet?  
 20 A. Deangelo.  
 21 Q. Do you see Deangelo here in court today?  
 22 A. Yes.  
 23 Q. Could you point to him and describe  
 24 something he's wearing here in court today?  
 25 A. Just sitting there by himself.

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- 1 Q. And what is he wearing?  
 2 A. The blue.  
 3 MR. PESCI: Would the record reflect  
 4 identification of Deangelo Carroll, your Honor?  
 5 THE COURT: The record will so reflect.  
 6 MR. PESCI: Thank you.  
 7 BY MR. PESCI:  
 8 Q. Now, when he had this conversation with  
 9 Deangelo, what did he do after that conversation?  
 10 A. He just talk, and he say I'm going to get  
 11 Angelo.  
 12 Q. And did you say something to him about  
 13 that idea?  
 14 A. I said why? You know, supposed to be us  
 15 for camping, that's why I coming. I coming. Because  
 16 it's supposed to be us.  
 17 Q. Did he explain why he was going to go meet  
 18 Deangelo?  
 19 A. Yes.  
 20 MR. ORAM: Your Honor, this is getting  
 21 into a little bit of hearsay with the victim in this  
 22 case. We've heard that he's going to meet Deangelo  
 23 Carroll. I let that go, but I don't think anything  
 24 further.  
 25 It's a not a dying declaration, so I'm not

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1 sure how they think they can get this into evidence.  
2 It would be hearsay.

3 MR. PESCI: Well, Judge, notwithstanding  
4 his kindness, there is a statute that actually allows  
5 for it, 51.105, which talks about the future intent,  
6 talks about present sense impression, and it  
7 specifically highlights State v. Lyle.

8 It was a homicide case in which the victim  
9 of a homicide said that he was going to meet some  
10 people and, in fact, for a drug deal. And that was  
11 allowed by the State Supreme Court as an exception to  
12 the hearsay rule.

13 MR. DRASKOVICH: And he's already gotten  
14 to ask why he is going so, therefore, he's now  
15 exceeding the ruling in that Nevada Supreme Court case  
16 with these further questions.

17 MR. PESCI: I believe, I think that I just  
18 asked her what he said as to why he was going to meet,  
19 not just he was going to meet, but why he was going to  
20 meet them.

21 MR. ORAM: And just for the record,  
22 Crawford versus Washington specifically states that the  
23 State has traditionally been trying to get in hearsay  
24 through many different exceptions. They say now you  
25 can't do it that way. You have to call the witnesses.

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1 So as long as we're just carrying just a  
2 quick explanation regarding Deangelo Carroll, but I  
3 would be concerned if there was anything to do with my  
4 client on this.

5 MR. DRASKOVICH: I'd join in with that.

6 THE COURT: This isn't testimony. I don't  
7 think that Crawford applies. I am going to overrule  
8 the objection.

9 MR. PESCI: Thank you, Judge.

10 BY MR. PESCI:

11 Q. Ma'am, you can answer the question. Did  
12 TJ explain why he was going to meet Deangelo?

13 A. Yes.

14 Q. What did he say?

15 A. Deangelo have weed for him.

16 Q. Did you say weed?

17 A. Yes.

18 Q. And did TJ eventually leave?

19 A. I don't want him to leave, but he say he  
20 going to be met him in half hour, you know. That's  
21 what he say.

22 Q. Now, how did you get out to the lake?

23 What did you drive to get out to the lake?

24 A. What?

25 Q. What kind of a car did you drive?

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1 A. A Kia Sportage.

2 Q. And when Deangelo left, did he leave in  
3 that car?

4 A. I don't see him.

5 Q. When TJ left, did you see which car he  
6 went in?

7 A. When he left, it's my car.

8 Q. In your car?

9 A. My car.

10 Q. How was TJ dressed when he left you?

11 A. He left without no shirt. Just the jean.

12 Q. Did he have a hat with him, do you  
13 remember?

14 A. He have hat, yes. But I don't believe he  
15 wear that.

16 Q. Okay. After he left, did you hear from  
17 him again?

18 A. No.

19 Q. Did you become concerned?

20 A. Yes.

21 Q. Did you make some phone calls based on  
22 your concern?

23 A. Yes.

24 Q. Who did you contact?

25 A. I call my friend, and I call his mom on

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1 the phone.

2 Q. Were you able to talk to his mother?

3 A. Yes.

4 Q. And from talking to his mother, were you  
5 able to find out where he was?

6 A. (Witness shakes head.)

7 Q. Did you ever see TJ again after he left?

8 A. No.

9 Q. Eventually, did some people come and talk  
10 to you?

11 A. Yes, in the morning.

12 Q. In the morning.

13 Did you stay at the campsite?

14 A. Yes.

15 Q. And when the people came, did some police  
16 or some investigators come and speak with you?

17 A. Yes.

18 Q. Did you tell them what you recall that  
19 happened that day? Did you tell them what had  
20 happened?

21 A. Yes.

22 Q. Okay.

23 MR. PESCI: I pass the witness, your  
24 Honor.

25 THE COURT: Thank you.

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1 MR. ORAM: On behalf of Ms. Espindola,  
2 nothing.  
3 MR. DRASKOVICH: I have no questions for  
4 this young lady.  
5 MS. WILDEVELD: I have no questions, your  
6 Honor.  
7 THE COURT: Okay. Ms. Karlson, thank you  
8 very much. You are excused.  
9 MR. DIGIACOMO: May I approach, Judge?  
10 THE COURT: Yes.  
11 (Thereupon, a brief discussion was held  
12 at the bench.)  
13 THE COURT: All right. While we wait for  
14 Mr. Zone's attorney to come from Las Vegas, we will be  
15 in recess until 10:30.  
16 (A recess was taken.)  
17 THE COURT: Okay. Back on the record in  
18 Case 05FB0052A through E. We had broke so that  
19 Mr. Zone could consult with counsel. And I had the  
20 Special Public Defender's office to represent Mr. Zone.  
21 I believe that he's had an opportunity to talk with  
22 counsel; is that right, Mr. Zone?  
23 THE WITNESS: Yes, sir.  
24 THE COURT: Okay. And Mr. Pike is present  
25 from the Special Public Defender's office.

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1 Mr. Pike, you had a chance to confer with  
2 Mr. Zone?  
3 MR. PIKE: I did, your Honor. I had an  
4 opportunity to meet with him, go over everything with  
5 his mother. And so in reference to this, I can accept  
6 the appointment to be his attorney, and he will be  
7 testifying today.  
8 THE COURT: Okay.  
9 Mr. Zone, we had broke before we had  
10 indicated that you have the right to be represented by  
11 counsel and you chose to do that. And now that you  
12 are, are you prepared to go ahead and answer questions  
13 for me?  
14 THE WITNESS: Yes, sir.  
15 THE COURT: Okay. Then we can proceed.  
16  
17 RONTA ZONE,  
18 having been previously duly sworn, did testify as  
19 follows:  
20 DIRECT EXAMINATION (Resumed)  
21 BY MR. DIGIACOMO:  
22 Q. Okay, Ronta, I want you to slide back up  
23 and get close to that microphone again. Okay?  
24 I think we left off when you said that you  
25 were smoking blunt with KC. Do you remember that?  
A. Yes.

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1 Q. Okay. This was on the way out to Lake  
2 Mead?  
3 A. Yes.  
4 Q. Did you have any conversations at all with  
5 KC concerning anything?  
6 A. Yes.  
7 Q. Okay. What did KC say to you?  
8 A. He asked me if I had a gun.  
9 Q. He asked you if you had a gun.  
10 Did he use the term gun or did he use a  
11 different word?  
12 A. Burner.  
13 Q. What was that?  
14 A. A burner.  
15 Q. A burner.  
16 So to you that meant a gun?  
17 A. Yes.  
18 Q. What was your response to KC?  
19 A. I didn't have one.  
20 Q. Okay. Did you tell him that?  
21 A. Yes, I did.  
22 Q. Okay. Did KC ask anybody else in the car  
23 if they had a burner?  
24 A. Well, he asked JJ.  
25 Q. He asked JJ, and did you hear JJ's

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1 response?  
2 A. No.  
3 Q. You didn't hear JJ's response?  
4 A. No, I didn't.  
5 Q. Okay. Did you have any other  
6 conversations with KC?  
7 A. No, I didn't.  
8 Q. No.  
9 Describe -- now, the car is going back  
10 down north shore, down the road out to Lake Mead one  
11 last time.  
12 As you approach the area where the murder  
13 actually occurred, tell the Court what happened.  
14 A. Well, we approached it. And as we was  
15 coming to Timothy was coming, and he seen us. And he  
16 turned around because he was on the other side.  
17 Q. So Timothy turned around?  
18 A. Yes, so he turned around. And he parked  
19 in the front.  
20 Q. Did you guys park before Timothy parked?  
21 A. We stopped before he stopped.  
22 Q. You stopped on the side of the road?  
23 A. Yeah.  
24 Q. Did anybody exit the vehicle when you  
25 first stopped?

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- 1 A. Yes.  
 2 Q. Who?  
 3 A. Deangelo did.  
 4 Q. Deangelo did?  
 5 A. Yes.  
 6 Q. What did Deangelo do when he got out of  
 7 the vehicle?  
 8 A. He used the bathroom.  
 9 Q. He was using the restroom out on the side  
 10 of the road?  
 11 A. Yes, sir.  
 12 Q. Did there come a point in time when  
 13 Deangelo got back to the car?  
 14 A. Yes, he did.  
 15 Q. Now, was Deangelo back to the car by the  
 16 time Timothy drove up, or was he outside of the car  
 17 when Timothy first drove up?  
 18 A. Before he drove up.  
 19 Q. Before he drove up?  
 20 A. Yes, sir.  
 21 Q. Okay. Timothy, you said, drove by you.  
 22 Did he do anything to indicate that he saw you, saw the  
 23 van?  
 24 A. He seen Deangelo.  
 25 Q. What makes you think that he saw Deangelo?

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- 1 A. Because he don't know none of us.  
 2 Q. But did he do anything, wave, yell, do  
 3 anything?  
 4 A. Yeah, he waved.  
 5 Q. He waved. And then he turned the car  
 6 around?  
 7 A. Yes, he did.  
 8 Q. Where did he park his car in relationship  
 9 to where the van was?  
 10 A. In front, but not right in front.  
 11 Q. How far would you say that Timothy's car  
 12 was from the van?  
 13 A. It was far, but not as far.  
 14 Q. Okay. We talking the distance between me  
 15 and you, you and the wall, you and somewhere farther  
 16 than the wall?  
 17 A. A little more from the wall.  
 18 Q. It was a little bit farther than that back  
 19 wall.  
 20 MR. DIGIACOMO: Judge, what's that back  
 21 wall distance, if you know?  
 22 THE COURT: About 30 feet.  
 23 MR. DIGIACOMO: About 30 feet.  
 24 BY MR. DIGIACOMO:  
 25 Q. So he parked a little bit farther ahead of

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- 1 you than right in front of you?  
 2 A. Yes, sir.  
 3 Q. Was Timothy's vehicle parked in the same  
 4 direction as the van or a different direction?  
 5 A. Same direction.  
 6 Q. When Timothy parked his vehicle, did  
 7 Timothy, what did Timothy do when he parked his  
 8 vehicle?  
 9 A. He parked his Kia and he got out.  
 10 Q. He got out of the vehicle?  
 11 A. Yes.  
 12 Q. You said it was a Kia? What kind of Kia  
 13 was it?  
 14 A. I think a Sportage.  
 15 Q. Sportage.  
 16 Is that a regular sedan? Is it a SUV?  
 17 What is it?  
 18 A. SUV.  
 19 Q. An SUV?  
 20 A. Yes, sir.  
 21 Q. Timothy got out of the vehicle, and what  
 22 did Timothy do?  
 23 A. He waved at Deangelo.  
 24 Q. He waved at Deangelo.  
 25 Was Deangelo already back in the passenger

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- 1 seat, I mean, the driver's seat by now?  
 2 A. Yes.  
 3 Q. What did Deangelo do?  
 4 A. He don't do nothing. He sat in the  
 5 driver's seat.  
 6 Q. What did Timothy do?  
 7 A. Timothy got out and walked towards the  
 8 van.  
 9 Q. Describe Timothy for me. Is he white,  
 10 black or Hispanic?  
 11 A. White.  
 12 Q. White?  
 13 A. (Witness nods head.)  
 14 Q. What was he wearing?  
 15 A. He was wearing, I think, a little t-shirt,  
 16 like a little vacation t-shirt and shorts. And I think  
 17 some sandals.  
 18 Q. Anything on his head?  
 19 A. Yeah, a hat.  
 20 Q. Okay. Can you describe the hat at all for  
 21 me?  
 22 A. It was like made of straw or -- I wasn't  
 23 really sure. It was late.  
 24 Q. Okay. Was there any lights on this road?  
 25 A. No, except for ours.

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- 1 Q. Except for yours. The headlights of your  
2 vehicle were on, of the van?  
3 A. (Witness nods head.) And Timothy's.  
4 Q. And Timothy's lights were in front of him?  
5 A. Yes, sir.  
6 Q. Now, Timothy is walking back towards the  
7 van. Is he walking into the headlights?  
8 A. No, he's walking towards the driver's  
9 side.  
10 Q. But back from his car towards the driver's  
11 side?  
12 A. Yes, sir.  
13 Q. Okay. What happens when Timothy winds up  
14 at the driver's side of the van?  
15 A. He goes to the driver's side. And then  
16 after he goes to the driver's side, he's talking to  
17 Deangelo. And then after meeting at the time, KC was  
18 getting out of the van.  
19 Q. All right. Let's talk about that. You  
20 said KC was in the back behind the passenger, so he was  
21 on the right side of the van?  
22 A. Yes.  
23 Q. That's where he was sitting?  
24 A. Yes.  
25 Q. How did he get out of the van?

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- 1 A. He sneaked out of the van.  
2 Q. Through what door?  
3 A. Through the sliding door.  
4 Q. How many sliding doors does this van have?  
5 A. Just one.  
6 Q. Which side is it on?  
7 A. On the right side.  
8 Q. The passenger side?  
9 A. Yes, sir.  
10 Q. Okay. Can you describe for the Court how  
11 KC -- well, let me ask you this.  
12 Before KC got out of the van, did you see  
13 him with anything in his hands?  
14 A. Yes.  
15 Q. What was that?  
16 A. .357.  
17 Q. A .357?  
18 A. Yes, sir.  
19 Q. A gun?  
20 A. Yes, sir.  
21 Q. Can you describe the gun any more than  
22 that?  
23 A. All I can tell you is that it was black.  
24 Q. Black. Okay.  
25 Was it a -- do you know the difference

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- 1 between a revolver and a semiautomatic?  
2 A. No, sir.  
3 Q. Okay. So he got out with a black gun.  
4 Describe for the Court, if you would, how  
5 it is he got out of the van.  
6 A. He snuck out. He like crept, he crept  
7 out. Quiet.  
8 Q. You say crept out. Can you just show  
9 the Court, if that opening right there is the van, can  
10 you show the Court how it is he crept out?  
11 A. Slide the door, went down like this and he  
12 slid out.  
13 Q. And he slid out?  
14 A. Yeah, like crept out.  
15 Q. He crept out?  
16 A. Yes.  
17 Q. From anything you saw, did you ever see TJ  
18 see KC or acknowledge KC's presence?  
19 A. No, he didn't see him.  
20 Q. When KC slid out, where did he go?  
21 A. He went to the back of the van. But after  
22 he went to the back, he thought Timothy was going to  
23 see him, so I guess he went to the front.  
24 Q. Then as he went to the front, tell us what  
25 happened.

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- 1 A. He snuck around slowly. He snuck around  
2 real low and raised up and he shot him.  
3 Q. Okay. I want you to describe for the  
4 Court the way he snuck around the front of the vehicle.  
5 And if you want to demonstrate it, you can demonstrate  
6 it. How did he sneak around the vehicle?  
7 A. He snuck and he went low. He was low.  
8 And he snuck around. He snuck around the van. And he  
9 leaped up and he shot him.  
10 Q. And you put your hand up, your right hand.  
11 Do you think KC used his right hand or his left?  
12 A. I can't tell you which hand.  
13 Q. Did you see the gun in his hand?  
14 A. Yeah.  
15 Q. When you say he shot him, did you actually  
16 see him shoot Timothy?  
17 A. I seen it, but it was so dark to where you  
18 couldn't really see nothing.  
19 Q. What did you see?  
20 A. All I seen was a spark.  
21 Q. A spark from the gun?  
22 A. Yes.  
23 Q. Where was Timothy standing when he got  
24 shot?  
25 A. On the driver's side.

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- 1 Q. So he's facing the driver's side window?  
 2 A. Yes, sir.  
 3 Q. Okay. Where was the gun pointed?  
 4 A. At his head.  
 5 Q. So KC came around the front of the  
 6 vehicle, raised the gun and pointed the gun at his  
 7 head?  
 8 A. Yes, sir.  
 9 Q. How many times did he shoot while Timothy  
 10 was standing?  
 11 A. Once.  
 12 Q. Did he shoot -- how many times did he  
 13 shoot total?  
 14 A. Twice.  
 15 Q. Okay. When did he shoot the second time?  
 16 A. When he was on the floor.  
 17 Q. So Timothy fell after the first shot?  
 18 A. Yes, sir.  
 19 Q. And then another shot occurs?  
 20 A. Yes, sir.  
 21 Q. What happens after Timothy shoots -- I'm  
 22 sorry -- KC shoots Timothy?  
 23 A. He gets back in the van, and we leave.  
 24 Q. Does KC say anything when he first gets in  
 25 the van?

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- 1 A. He tells Deangelo to hurry up.  
 2 Q. Now, in this van, is this the same van you  
 3 were using to promote on the previous occasions?  
 4 A. Yes, sir.  
 5 Q. Was there any of the stuff that you were  
 6 using, any of the flyers or anything that were inside  
 7 the van?  
 8 A. Yes.  
 9 Q. Okay. Is there anything else that was  
 10 inside the van that you are aware of?  
 11 A. There was like a canister.  
 12 Q. A canister. What kind of canister was it?  
 13 A. Like something you get from a medical  
 14 place.  
 15 Q. Like a --  
 16 A. A little tube.  
 17 Q. A tube?  
 18 A. Yeah.  
 19 Q. Did you ever see -- well, let me ask  
 20 you -- strike that.  
 21 KC got back in the van. KC told Deangelo  
 22 to drive. Did Deangelo drive?  
 23 A. Yes, he did.  
 24 Q. Where did he go?  
 25 A. He drove back to the club.

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- 1 Q. Okay. Did he drive away straight, did he  
 2 turn, what did he do?  
 3 A. Well, straight.  
 4 Q. Okay. And did you feel the van hit  
 5 anything as it was driving away?  
 6 A. Yes.  
 7 Q. What did you feel?  
 8 A. Like a bump.  
 9 Q. A bump?  
 10 A. Just a bump.  
 11 Q. Now, you said that KC told Deangelo to  
 12 drive. Did he say anything to JJ?  
 13 A. He asked if he had a gun.  
 14 Q. He asked JJ again if he had a gun?  
 15 A. Yes.  
 16 Q. Did he use the word gun?  
 17 A. No.  
 18 Q. What exactly did KC say?  
 19 A. A burner.  
 20 Q. What exact words did he say to JJ?  
 21 A. He asked him did he have a burner, and JJ  
 22 said yeah.  
 23 Q. Then what did he say in response?  
 24 A. He asked JJ why he didn't shoot.  
 25 Q. What was JJ's response?

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- 1 A. That he was going to, he was going to  
 2 shoot him, but Deangelo was in the way.  
 3 Q. He was going to shoot him through the  
 4 window or something?  
 5 A. Through the window.  
 6 Q. Okay. And what was KC's reaction to that?  
 7 A. He didn't really have no reaction. Just  
 8 he didn't say nothing.  
 9 Q. When KC got back in the van, did he say  
 10 anything to you?  
 11 A. He asked me where I lived.  
 12 Q. Did you tell him?  
 13 A. No.  
 14 Q. You said that the van drove back to the  
 15 Palomino Club. Did you go directly back to the  
 16 Palomino Club?  
 17 A. Yes, we did.  
 18 Q. Were all four of you still in the van?  
 19 A. Yes, we were.  
 20 Q. Once you got to the Palomino Club, did  
 21 anybody get out of the van?  
 22 A. We all did.  
 23 Q. Who is we all?  
 24 A. Me, KC and JJ and Deangelo.  
 25 Q. Okay. Did anybody go into the Palomino

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1 Club?  
 2 A. KC and Deangelo.  
 3 Q. What did you and JJ do?  
 4 A. We sat outside.  
 5 Q. How long did you stay outside?  
 6 A. For about an hour, 30 minutes tops.  
 7 Q. Who first left the Palomino Club, KC or  
 8 Deangelo?  
 9 A. KC.  
 10 Q. And what did you see KC do when he left  
 11 the Palomino Club?  
 12 A. He left in a cab.  
 13 Q. Okay. He left in a cab?  
 14 A. Yes.  
 15 Q. How long after KC came out did Deangelo  
 16 come out?  
 17 A. About 45 minutes later.  
 18 Q. When Deangelo came out, what happened?  
 19 A. Nothing. When he left, he said that KC  
 20 was tripping because he wasn't getting paid. I mean, I  
 21 don't really know about what went on in there because I  
 22 wasn't there. I wasn't up there at the time.  
 23 Q. Did he tell you eventually that KC got  
 24 paid?  
 25 A. Yeah.

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1 they a co-conspirator statement or are they in the  
 2 course of any furtherance.  
 3 The foundation is a self-authenticating  
 4 statement. Once you hear the statements and the rest  
 5 of the conversations, you can make a determination as  
 6 to whether or not it is or is not a statement in the  
 7 course of furtherance of the conspiracy, Judge.  
 8 MR. DRASKOVICH: As part and parcel of  
 9 that, the case law is very clear that the statements,  
 10 while they themselves can be considered, they can't  
 11 self-authenticate. There has to be some independent  
 12 corroboration, which the State has failed to provide.  
 13 THE COURT: All right. I'm gathering that  
 14 they are saying that's coming, so I will reserve on the  
 15 understanding that that is coming.  
 16 MR. DIGIACOMO: Thank you, Judge.  
 17 BY MR. DIGIACOMO:  
 18 Q. What did Deangelo tell you about KC  
 19 getting paid?  
 20 A. He just told me that he got paid. He  
 21 didn't say how much. He didn't even tell me the  
 22 amount. He just said that he got paid.  
 23 Q. Did anybody ask about anybody else getting  
 24 paid?  
 25 A. No.

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1 Q. What did he tell you about that?  
 2 MR. ORAM: I would object to all of this.  
 3 Again, so far as I can tell, my client has not been  
 4 mentioned in this case at all. And so now we're  
 5 hearing what KC was telling Deangelo, which is now  
 6 being brought through this witness. It's not just  
 7 hearsay, it's double hearsay. And I would ask that it  
 8 be stricken as to my client.  
 9 MR. DRASKOVICH: Moreover, when we  
 10 discussed this matter previously, it was the State's  
 11 position that these were somehow co-conspirator  
 12 statements. As the Court is well aware, in order for  
 13 it to qualify under that exception, or that that  
 14 exception still exists, is that it must be made by a  
 15 co-conspirator in furtherance of the conspiracy. And  
 16 there has been no foundation laid concerning that.  
 17 So I would join with his objection, and  
 18 also add an objection as to foundation.  
 19 THE COURT: What is your response to that?  
 20 MS. WILDEVELD: We would join as well.  
 21 MR. DIGIACOMO: Deangelo was telling him  
 22 what happened inside the club, not what KC said  
 23 happened, Deangelo telling him what happened inside the  
 24 club. And I think the Court has to hear all the  
 25 statements before it can make a determination as to are

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1 Q. Okay. What about Deangelo, did he tell  
 2 you about what he got paid?  
 3 A. No.  
 4 Q. What happened at that point?  
 5 A. At that point, we went back to Deangelo's  
 6 house.  
 7 Q. When you got to Deangelo's house, how long  
 8 did you stay there?  
 9 A. I stayed there the whole night.  
 10 Q. Eventually, do you leave with Deangelo  
 11 ever again?  
 12 A. Yes, we did.  
 13 Q. Who went with you?  
 14 A. JJ.  
 15 Q. Where did you go?  
 16 A. We went and we got rid of the tires.  
 17 Q. Did Deangelo tell you why you needed to  
 18 get rid of the tires?  
 19 A. No, because I already knew why.  
 20 Q. Okay. Why did you need to get rid of the  
 21 tires?  
 22 A. Because, I guess, they didn't want no  
 23 evidence.  
 24 Q. Who is they?  
 25 A. Mr. Hidalgo, one of them.

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- 1 Q. So it wasn't clear on who told him to get  
2 rid of the tires?  
3 A. No.  
4 Q. What kind of tires were they that you got  
5 rid of?  
6 A. I'm not sure.  
7 Q. Okay. Where did you go to get rid of  
8 these tires?  
9 A. To a Mexican mechanic place.  
10 Q. Who was driving the van to the mechanic's  
11 place?  
12 A. JJ.  
13 Q. All right. And how else, did you take  
14 more than one car or was it just in the van?  
15 A. We took two cars.  
16 Q. Two cars?  
17 A. (Witness nods head.)  
18 Q. Who was in the second car?  
19 A. Me and Deangelo.  
20 Q. You and DeAngelo.  
21 Who was driving that vehicle?  
22 A. The vehicle, Deangelo.  
23 Q. Now, before you got to the tire shop, did  
24 anybody do anything to the tires?  
25 A. Yes.

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- 1 Q. What was that?  
2 A. Deangelo stabbed the tires.  
3 Q. Okay. And then did you eventually get to  
4 the tire shop?  
5 A. Yes, we did.  
6 Q. And were additional tires purchased for  
7 the van?  
8 A. Yes.  
9 Q. And who changed the tires?  
10 A. The mechanic people did.  
11 Q. Who paid for that?  
12 A. I'm not sure.  
13 Q. Did you pay?  
14 A. No.  
15 Q. Did you see JJ pay?  
16 A. Deangelo paid.  
17 Q. Okay. But did Deangelo tell you who gave  
18 him the money to do that?  
19 MR. ORAM: Objection. The question was  
20 asked and answered. Who paid? He just said Deangelo.  
21 Now the question by the prosecutor is, did he tell you  
22 who gave -- we heard that it was Deangelo gave the  
23 money. If he doesn't know, he shouldn't be permitted  
24 to answer.  
25 THE COURT: Well, he knows.

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- 1 BY MR. DIGIACOMO:  
2 Q. If you know, did Deangelo tell you?  
3 A. Deangelo told me Anabel gave him a hundred  
4 dollars to change the tires.  
5 Q. After the tires were changed off the  
6 vehicle, what happened to these cut up tires?  
7 A. We got rid of them.  
8 Q. When you say "we," where did you go?  
9 A. Two tires went in the trash can and two  
10 tires went another place.  
11 Q. Two tires went into a trash can where?  
12 A. About around the corner from, around the  
13 corner from the Mexican mechanic's place.  
14 Q. Who actually threw the tires out?  
15 A. JJ.  
16 Q. Okay. And who was driving the van at this  
17 point?  
18 A. JJ.  
19 Q. And who was driving the vehicle, the other  
20 vehicle?  
21 A. Deangelo was.  
22 Q. Okay. And were you familiar with the  
23 business in the area where these tires were thrown  
24 away?  
25 A. No, I wasn't.

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- 1 Q. Okay. Eventually, do you wind up at a  
2 7/Eleven?  
3 A. Yes, we do.  
4 Q. Were the tires thrown away anywhere near  
5 the 7/Eleven?  
6 A. No.  
7 Q. Who works at the 7/Eleven?  
8 A. My father-in-law works there.  
9 Q. Okay. Did there come a point in time when  
10 you wound up going --  
11 MS. WILDEVELD: Objection, leading.  
12 BY MR. DIGIACOMO:  
13 Q. Did you ever enter the 7/Eleven?  
14 A. Yes.  
15 Q. Okay. What were Deangelo and JJ doing  
16 when you went into the 7/Eleven?  
17 A. Deangelo had went in the 7/Eleven to  
18 purchase some cigars. And he came out, and we were  
19 leaving, but a North Las Vegas trooper had pulled JJ  
20 over.  
21 Q. What was JJ in?  
22 A. He was in a white van.  
23 Q. What did Deangelo do?  
24 A. Deangelo helped him.  
25 Q. What do you mean helped him? What did

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- 1 Deangelo actually do?
- 2 A. He talked to the officer. I don't know
- 3 what words were said because I wasn't over there when
- 4 he were talking to the officer.
- 5 Q. What did you do when Deangelo went and
- 6 talked to the officer?
- 7 A. Yes.
- 8 Q. What did you do when Deangelo talked to
- 9 the officer?
- 10 A. Went in the store.
- 11 Q. You went back in the store?
- 12 A. Yes, I did.
- 13 Q. Eventually, was the situation resolved?
- 14 A. Yes, it was.
- 15 Q. And then did you leave the store?
- 16 A. Yes, I did.
- 17 Q. Where did you go?
- 18 A. I went back to Deangelo's house.
- 19 Q. Did you ever -- did you leave -- well, on
- 20 the way back to Deangelo's house, did all of you go to
- 21 the house together?
- 22 A. Yes, we did.
- 23 Q. Okay. And when you got there, who was at
- 24 the house?
- 25 A. My baby's mother and Deangelo's wife and

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- 1 son.
- 2 Q. Eventually, did the group -- well, did
- 3 anybody decide to leave to do anything else?
- 4 A. No, we left to eat breakfast.
- 5 Q. Okay. Who went to go to breakfast?
- 6 A. Me, JJ, Deangelo, my baby's mother and his
- 7 wife, his son, a few more friends.
- 8 Q. Okay. Where did you go to eat?
- 9 A. We went to IHOP.
- 10 Q. So you're at a big table, I'm assuming,
- 11 with that many people?
- 12 A. Yes.
- 13 Q. Does everybody order food?
- 14 A. Yes.
- 15 Q. Eventually, does the check come?
- 16 A. Yes.
- 17 Q. What happens when the check comes?
- 18 A. Deangelo pays for it.
- 19 Q. What do you mean, how did he pay for it?
- 20 What did he do?
- 21 A. The check, like usually you pay after the
- 22 check comes, but he paid before it came. Like he paid
- 23 right when it came, right when the bill came, he paid
- 24 for it.
- 25 Q. So you guys were still eating and he

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- 1 decided to pay for the bill?
- 2 A. No, the food hadn't even come yet.
- 3 Q. So the receipt comes with the bill, the
- 4 food hadn't even come yet, and Deangelo is going to go
- 5 pay?
- 6 A. (Witness nods head.)
- 7 Q. Did he say anything to the group when he
- 8 was going to pay?
- 9 A. No.
- 10 Q. Did he ever tell you -- strike that.
- 11 Do you know how much money the bill was,
- 12 approximately?
- 13 A. The bill was about 47, 50 bucks estimate.
- 14 Q. And do you know if he used a credit card
- 15 or any other method to pay?
- 16 A. No.
- 17 Q. Okay. After breakfast, what happened?
- 18 A. We go back to Deangelo's. No, we went to
- 19 a barber shop.
- 20 Q. Okay. Then what happened?
- 21 A. Deangelo was getting his hair cut. After
- 22 that, we went into a store.
- 23 Q. What kind of store?
- 24 A. To like a Dollar store, Family Dollar
- 25 store.

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- 1 Q. What happened there?
- 2 A. And he bought a fan and a mop and some
- 3 housing material.
- 4 Q. Did you see how he paid for any of those
- 5 items?
- 6 A. No.
- 7 Q. After the Dollar store, did you go
- 8 anywhere else?
- 9 A. We went home.
- 10 Q. When you say "home," you're back to
- 11 Deangelo's place, right?
- 12 A. Yes.
- 13 Q. And how long did you remain at Deangelo's
- 14 place?
- 15 A. I remained there until the next morning.
- 16 Q. Okay. And did Deangelo stay there the
- 17 whole time?
- 18 A. Yes. He went to sleep for a minute, but
- 19 before he went to sleep, he went to Simone's Auto
- 20 Plaza.
- 21 Q. So before Deangelo goes to sleep for that
- 22 night, after breakfast, you go to Simone's Auto Plaza?
- 23 A. Yes.
- 24 Q. Who goes with you?
- 25 A. Me and JJ and Deangelo.

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1 Q. And whose car are you in?  
 2 A. The white van.  
 3 Q. Who is driving?  
 4 A. Deangelo is driving.  
 5 Q. Eventually, you get down to Simone's Auto  
 6 Plaza. Tell me what happens.  
 7 A. Well, we get down there. And we was  
 8 waiting, we just waited in the car.  
 9 Q. For how long did you -- when you say "we,"  
 10 who waited in the car?  
 11 A. Me and JJ.  
 12 Q. Where is Simone's Auto Plaza generally  
 13 located?  
 14 A. I think by the airport.  
 15 Q. Somewhere down by the airport. Okay.  
 16 You and JJ waited in the car and Deangelo  
 17 got out?  
 18 A. Yes, Deangelo went in Simone's Auto Plaza.  
 19 Q. On the way down there, did Deangelo tell  
 20 you why you were going to Simone's?  
 21 A. No, he didn't.  
 22 Q. Okay. Eventually, you said Deangelo got  
 23 out of the car. Did he come back to the car or did you  
 24 and JJ get out?  
 25 A. We got out.

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1 Q. Where did you go?  
 2 A. And we went in.  
 3 Q. Where did you go into?  
 4 A. We went into Simone's Auto Plaza.  
 5 Q. Now, describe the area of Simone's Auto  
 6 Plaza that you went into. Was it an office area? Was  
 7 it a work area?  
 8 A. It was an office area.  
 9 Q. When you went in the door, what did you  
 10 do?  
 11 A. We sat on the couch.  
 12 Q. What were you doing while you were sitting  
 13 on the couch?  
 14 A. We were waiting for Deangelo.  
 15 Q. Is there any sort of entertainment there  
 16 for you?  
 17 A. We was watching TV, and I went to the  
 18 bathroom. And we seen, that's when Deangelo came. He  
 19 had to use the bathroom too, so we seen him at the  
 20 bathroom.  
 21 Q. While you were in the bathroom, did  
 22 Deangelo talk to you at all?  
 23 A. Yes.  
 24 Q. What did he tell you?  
 25 MR. ORAM: Judge, objection to this. How

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1 is this in furtherance of a conspiracy? The man has  
 2 been shot. He's been killed. Now, all of a sudden, we  
 3 apparently can't get Deangelo Carroll to testify and  
 4 the State's upset about it, so they're going to ask  
 5 this man everything that Mr. Carroll said.  
 6 I don't understand how this could be in  
 7 furtherance of a conspiracy. I don't -- since this man  
 8 didn't even mention what he's now testifying to in his  
 9 statement, this whole accident at Simone's, I'm very  
 10 concerned about what's going to come out.  
 11 I really think we need an offer of proof  
 12 from the State what they intend to elicit so that we  
 13 can make the appropriate objections because I have no  
 14 idea what this man is going to say. I think this is  
 15 all into hearsay, and I don't think it's an exception  
 16 under Crawford whatsoever.  
 17 MR. DIGIACOMO: Judge, the conspiracy  
 18 continues so long as the co-conspirators are trying to  
 19 get away from the crime, which means if they are down  
 20 at Simone's Auto Plaza in the course of the conspiracy,  
 21 and Deangelo comes in there and starts talking about  
 22 them keeping their mouths shut, that statement's made  
 23 in furtherance of the conspiracy, Judge.  
 24 I think that the Court -- there is no jury  
 25 here, and I appreciate Mr. Oram's getting up a lot to

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1 object to it, but I think the Court can make a  
 2 determination at the end was there a conspiracy  
 3 established and what statements, if any, am I going to  
 4 allow in as a statement by a co-conspirator in the  
 5 course and in furtherance.  
 6 And if you make a determination that a  
 7 particular statement wasn't, then you can move -- they  
 8 can move to strike that. But certainly if we're going  
 9 to object, and I have an offer of proof as to every  
 10 statement Deangelo made over a four-day period, we're  
 11 going to be here forever. And there is no jury to  
 12 worry about prejudicing by the statements.  
 13 MR. DRASKOVICH: Just in response,  
 14 apparently Mr. Zone now is a co-conspirator because  
 15 that's what I glean from Mr. Digiaco's response. I  
 16 guess Mr. Zone now is a co-conspirator, and he's acting  
 17 in participation with other co-conspirators. Is that  
 18 not what he just stated?  
 19 MR. DIGIACOMO: No. I'm not asking about  
 20 his statements being statements of a co-conspirator in  
 21 the course and furtherance. I'm talking about  
 22 Deangelo's statements being statements by a  
 23 co-conspirator in the course and furtherance.  
 24 MR. DRASKOVICH: So it's my understanding  
 25 then that not only did he go to the lake, but then he

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1 went to this auto shop or wherever with these same  
2 people, they're getting rid of evidence, yet this young  
3 man is not a co-conspirator. Is that the State's  
4 position?

5 MR. DIGIACOMO: That's a legal argument.  
6 I appreciate Mr. Draskovich asking me what my position  
7 is, but I have yet to hear this witness testify that he  
8 physically did any act in furtherance of the  
9 conspiracy.

10 MR. DRASKOVICH: And we have heard very  
11 little testimony concerning what anybody else did,  
12 other than perhaps Deangelo and perhaps Mr. Counts. So  
13 obviously my question is to clarify because they are  
14 attempting to bring in hearsay statements under this  
15 apparently growing hearsay exception, that of a  
16 statement of a co-conspirator. Yet the State is still  
17 unclear as to whether or not Mr. Zone is a  
18 co-conspirator.

19 And, apparently, they don't want to be  
20 nailed down at this point as to whether or not he was a  
21 co-conspirator because obviously that may erase this  
22 exception or somehow limit it. And obviously that  
23 concerns me.

24 They are wanting to throw everything at  
25 the Court, and then have the Court somehow determine

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1 later on if it applies or if not. Yet, they  
2 themselves, and this kind of went to what my co-counsel  
3 brought up, we need some showing of proof and an offer  
4 made by the State concerning the statements that they  
5 are attempting to elicit from Mr. Zone.

6 MR. ORAM: Additionally, your Honor,  
7 Crawford, it sounds to me like the State needs, with  
8 all due respect, perhaps they need to go back and look  
9 at some of the language that Crawford said, that these  
10 exceptions under the hearsay rules are completely  
11 limited by that ruling.

12 And it just seems that just ignoring that,  
13 let's just go ahead, co-conspirator, everything is  
14 coming in because we can't get Deangelo Carroll to come  
15 in and say what we need him to say.

16 MR. DIGIACOMO: In response, Judge, first  
17 of all, McDowell v. State, 103 Nevada 527, 1987, "a  
18 co-conspirator statement does not violate the  
19 confrontation clause."

20 How could these possibly be testimonial?  
21 If he's a co-conspirator by definition, he doesn't want  
22 these in a courtroom.

23 MS. WILDEVELD: Your Honor, it's hearsay.  
24 If he's not a co-conspirator. It's hearsay.

25 MR. ORAM: And it's also well before

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1 Crawford. He's quoting a Nevada Supreme Court case  
2 where Crawford then came out, what, two years ago.

3 MR. DRASKOVICH: March 2004. And  
4 obviously changed the lay of the land in reference to  
5 hearsay and exceptions to the hearsay and non hearsay.

6 MR. DIGIACOMO: As a confrontation clause  
7 issue, if the confrontation clause isn't an issue, it  
8 can't possibly be relevant to a Crawford. Crawford  
9 talks about testimonial statements. A co-conspirator  
10 statement, by its very definition, is not testimonial.

11 MR. ORAM: It's impossible for us to  
12 cross-examine anyone. I might as well not be here from  
13 what I can tell. I'm not going to be able to  
14 cross-examine an accuser. Deangelo Carroll is the  
15 accuser. We're not going to be able to cross-examine  
16 him.

17 And so now I'm just sitting here listening  
18 to this gentleman. I don't know what he's going to say  
19 next. If he says something that Deangelo Carroll told  
20 me your client did something really bad, how do I  
21 cross-examine that? That's the purpose of the  
22 confrontation clause.

23 What's the point in having me here if I  
24 can't cross-examine the speaker, who is sitting right  
25 back here?

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1 THE COURT: So where are we going? I need  
2 to know that too.

3 MR. DIGIACOMO: Judge, Mr. Carroll is  
4 going to make statements to JJ and Ronta about keeping  
5 their mouth shut. This is going to dovetail into a  
6 surreptitious wire that Deangelo Carroll has with Luis  
7 Hidalgo, III, and Anabel Espindola where they discuss  
8 the killing of Ronta and Jayson Taoipu. It's all  
9 relevant to that particular issue.

10 MR. ORAM: Which we're not going to hear  
11 today because they don't have Deangelo Carroll to talk  
12 about the surreptitious statements. And as Mr. Pesci  
13 is well aware, the Nevada Supreme Court has  
14 specifically heard this issue, and if it comes to that,  
15 and they try to play these CDs, I'll fax the decision  
16 over. It was one Mr. Pesci and I did ourselves where  
17 they tried to play CDs without calling the witness, so  
18 they are not going to be able to do that. And if --

19 MR. DRASKOVICH: And if they're intending  
20 this to be the independent corroboration of this  
21 supposed conspiracy or ongoing conspiracy, they are not  
22 going to be able to provide that. Therefore, all of  
23 these statements should be stricken.

24 THE COURT: Okay. Where we're at is, I  
25 think motions at the end. We need to get it in, so I

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1 know what it is and can rule one way or another.  
 2 MR. DIGIACOMO: Thank you, Judge.  
 3 BY MR. DIGIACOMO:  
 4 Q. When Deangelo comes into the bathroom at  
 5 Simone's Auto Plaza, what does he say to you and JJ?  
 6 A. He said you're just going to act like it's  
 7 a regular day. Like nothing happened.  
 8 Q. What was your response to that?  
 9 A. And there was nothing I could say.  
 10 Q. What about JJ?  
 11 A. He didn't have no response either.  
 12 Q. So he tells you to act like it's just  
 13 another day?  
 14 A. Yes.  
 15 Q. What did you and JJ then do?  
 16 A. We sat on the couch watching TV.  
 17 Q. Did you see anybody else that you  
 18 recognized inside Simone's Auto Plaza?  
 19 A. I seen Mr. H.  
 20 Q. Okay. How did you know it was Mr. H?  
 21 A. I don't know. I just knew.  
 22 MR. DRASKOVICH: Objection, calls for  
 23 clairvoyance on the part of the -- it's speculation and  
 24 calls for clairvoyance on the part of the testifying  
 25 witness.

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1 A. He was short.  
 2 Q. Did you see this person after he talked to  
 3 Deangelo where he went inside Simone's Auto Plaza?  
 4 A. He went in his office.  
 5 Q. Which office was it?  
 6 A. It was the office to the right side.  
 7 Q. The farthest right office?  
 8 A. Yes, because it was glass. It was a glass  
 9 office, and then it was another office on the other  
 10 side.  
 11 Q. Okay. So there are two offices?  
 12 A. Yeah.  
 13 Q. That are on the right side of where you  
 14 are sitting?  
 15 A. Yes, sir.  
 16 Q. He went into the farthest right office  
 17 after talking to Deangelo?  
 18 A. Yes, sir.  
 19 Q. Eventually, did Deangelo come back to you?  
 20 A. Yes, he did.  
 21 Q. Did you and JJ and Deangelo leave?  
 22 A. Yes, we did.  
 23 Q. Did Deangelo make any statements  
 24 thereafter concerning the crime that you witnessed the  
 25 night before?

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1 MR. DIGIACOMO: Let me clarify.  
 2 BY MR. DIGIACOMO:  
 3 Q. What made you believe that it was Mr. H?  
 4 A. Because it's just like I was told to stop  
 5 and go in and look for a man. That he was a  
 6 Salvadorian-looking man, and he looked like a  
 7 Salvadorian-looking man to me.  
 8 MR. DRASKOVICH: Judge, once again I'd  
 9 object --  
 10 THE COURT: Wait until he's done.  
 11 THE WITNESS: He was the man talking to  
 12 Deangelo, so I figured it was him.  
 13 BY MR. DIGIACOMO:  
 14 Q. He was the man talking to Deangelo. How  
 15 old was this individual?  
 16 A. He looked elderly.  
 17 Q. When you say elderly --  
 18 A. Not old, but old.  
 19 Q. I mean, are we talking 30, 40, 50, 60, 70?  
 20 A. Like in his 40s or 50s.  
 21 Q. I guess for a guy who is 19 that is old.  
 22 What kind of hair, do you remember his  
 23 hair color?  
 24 A. I think it was gray.  
 25 Q. And how tall was he?

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1 A. Yes.  
 2 Q. What did he say?  
 3 A. He said that they were investigating  
 4 Mr. H, and Mr. H had told them that --  
 5 MR. ORAM: Now, objection. Objection.  
 6 Now, we're hearing it --  
 7 THE COURT: Sustained.  
 8 MR. DIGIACOMO: Thank you.  
 9 BY MR. DIGIACOMO:  
 10 Q. Deangelo provided you information from  
 11 Mr. H?  
 12 A. Yes.  
 13 Q. And then did Deangelo tell you anything  
 14 else?  
 15 A. No.  
 16 Q. What happened, where did you go from  
 17 there?  
 18 A. Well, he had the Palomino shuttle, so we  
 19 drove by the house.  
 20 Q. So you left in the Palomino shuttle?  
 21 A. Yes.  
 22 Q. So you went in the white Chevy Astro van,  
 23 but you left in the Palomino shuttle?  
 24 A. Yes.  
 25 Q. Can you describe the Palomino shuttle?

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- 1 A. It's a shuttle with naked women on it.  
 2 Q. It's a shuttle with naked women on it?  
 3 A. Yes.  
 4 Q. Does it say anything on the sides that  
 5 identifies the Palomino Club?  
 6 A. It says PC.  
 7 Q. PC?  
 8 A. (Witness nods head.)  
 9 Q. Where did you go?  
 10 A. We were driving on the way home, and when  
 11 we were driving on the way home, Deangelo dropped us  
 12 off about around the corner from his house.  
 13 Q. Okay. And why is it that -- did he tell  
 14 you why he was dropping you off there?  
 15 A. Yeah, because he didn't want to seem  
 16 suspicious.  
 17 Q. Okay. So you dropped you and JJ off, or  
 18 he dropped you and JJ off, and then did he continue  
 19 down towards his house?  
 20 A. Yes.  
 21 Q. What did you do?  
 22 A. We walked to his house.  
 23 Q. Okay. Why did you go directly to his  
 24 house?  
 25 A. Because my baby's mother is there.

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- 1 Q. And why did that concern you?  
 2 A. Because it's my baby's mother. She has my  
 3 son.  
 4 Q. If you had shown up at a different time  
 5 than Deangelo, would that have caused an issue?  
 6 A. With my baby's mother, it would cause an  
 7 issue.  
 8 Q. Why?  
 9 A. Because she would have asked, she would  
 10 ask questions.  
 11 Q. And why is that a problem?  
 12 A. No, it's not a problem. But when we  
 13 walked, after he dropped us off, we walked to his  
 14 house. We was just there.  
 15 Q. Okay. So does Deangelo eventually go to  
 16 sleep?  
 17 A. Yes, he does.  
 18 Q. Does anybody leave that house after that?  
 19 A. JJ left.  
 20 Q. Okay. After JJ left, did Deangelo ever  
 21 leave?  
 22 A. No.  
 23 Q. Okay.  
 24 A. He was sleeping too. He was going to  
 25 work.

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- 1 Q. So then eventually Deangelo went to work?  
 2 A. Yes.  
 3 Q. Did you go with Deangelo this time?  
 4 A. No, I didn't go.  
 5 Q. You stayed at the house?  
 6 A. I stayed at his house.  
 7 Q. When is the next time you saw Deangelo  
 8 after that?  
 9 A. When he was getting off work, and that's  
 10 when the homicide detectives was with him.  
 11 Q. So he showed up the next time with a  
 12 homicide detective?  
 13 A. Yes.  
 14 Q. Did you have any conversations with  
 15 Deangelo at that point?  
 16 A. He told me, all he told me was just to  
 17 tell the truth or we're going to jail.  
 18 Q. Okay. Did you go with the homicide  
 19 detectives?  
 20 A. Yes, I did.  
 21 Q. Did you eventually provide a statement to  
 22 the homicide detectives?  
 23 A. Yes, I did.  
 24 Q. After that statement, where did you go?  
 25 A. I went back to Deangelo's house.

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- 1 Q. Okay. How long did you stay there for?  
 2 A. Just the night. And I left early that  
 3 morning because my grandmother, my grandma -- my baby's  
 4 mama's grandma just came back from a cruise. She  
 5 wasn't back yet. We didn't have no ride. So I waited  
 6 until she got back. She came the next morning and  
 7 picked us up.  
 8 Q. Okay.  
 9 MR. DIGIACOMO: Thank you, Judge.  
 10 BY MR. DIGIACOMO:  
 11 Q. I want to clarify an issue that was raised  
 12 right before we took a break and you had counsel.  
 13 When you left before Timothy's murder the  
 14 last time Deangelo's house, what did you think you were  
 15 going to do?  
 16 A. Really I wanted to go.  
 17 Q. Go where?  
 18 A. I wanted to leave.  
 19 Q. Let me back up. I think I am confusing  
 20 you with the question.  
 21 You said earlier in the day that Timothy  
 22 was killed you went promoting and then you wound up  
 23 back at Deangelo's house?  
 24 A. Yes.  
 25 Q. Eventually, Deangelo told you it's time to

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1 go. Did you -- and you testified you asked him where  
2 you're going, what you're going to do. What was his  
3 response?  
4 A. Before or after?  
5 Q. Before the murder of Timothy.  
6 A. He said we're going to promote.  
7 Q. Okay. Had you known that they were going  
8 out to kill Timothy Hadland, would you have ever gotten  
9 into that vehicle?  
10 A. No, I wouldn't have.  
11 MR. DIGIACOMO: Thank you. I pass the  
12 witness, Judge.  
13 MR. ORAM: I will go first, your Honor.  
14 I'll be the quickest.

15  
16 CROSS-EXAMINATION

17 BY MR. ORAM:  
18 Q. Good morning. Do you know the people that  
19 are employed at the Palomino Club? Do you know them  
20 all?  
21 A. No.  
22 Q. You mentioned a lady named Anabel. Do you  
23 know her last name?  
24 A. No. I know by, the only way I knew her  
25 was by the news.

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1 Q. So prior to the day this murder happened,  
2 you had never seen her, correct?  
3 A. No.  
4 Q. You did not know what she looked like?  
5 A. No.  
6 Q. Correct?  
7 A. Correct.  
8 Q. You had never seen Deangelo speak with  
9 her, correct?  
10 A. No. See, the auto plaza --  
11 Q. In fact, you don't know how many people by  
12 the name of Anabel would work at the Palomino Club?  
13 A. No.  
14 Q. It could be five, right? You just don't  
15 know.  
16 A. Yeah. I don't really know nobody that  
17 works for Palomino. Only person I knew was Deangelo.  
18 Q. And there was no lady out there at the  
19 desert with you, correct?  
20 A. No.  
21 MR. ORAM: Nothing further, your Honor.

22  
23 CROSS-EXAMINATION

24 BY MR. DRASKOVICH:  
25 Q. Following up on co-counsel's questions,

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1 you said you do not know anybody else at the Palomino  
2 Club other than Deangelo, correct?  
3 A. Yes. And one more person.  
4 Q. Who is that other person?  
5 A. Luie.  
6 Q. You do know Luie?  
7 A. Yes.  
8 Q. How do you know Luie?  
9 A. Well, I have been knowing him like ever  
10 since I've been kicking with Deangelo. I would see  
11 Louie from time to time. I never knew he worked at the  
12 club, but I knew him before I even knew he worked at  
13 the club.  
14 Q. You never had a conversation with him, did  
15 you?  
16 A. No.  
17 Q. So you would agree that you did not know  
18 him well then?  
19 A. No.  
20 Q. You and he had never gone out and hung out  
21 together, correct?  
22 A. No.  
23 Q. You never attempted any projects together?  
24 A. No.  
25 Q. You never went to any clubs together?

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1 A. Except for his.  
2 Q. Okay. Never talked to him on the phone,  
3 did you?  
4 A. No.  
5 Q. Now, you had testified about some  
6 statement that you had given to the police, correct?  
7 A. Yes.  
8 Q. And that statement occurred May 21st?  
9 A. Yes.  
10 Q. Of this year.  
11 A. Yes, sir.  
12 Q. The statement that you made was tape  
13 recorded?  
14 A. Yes, sir.  
15 Q. There was you and two other detectives  
16 during this statement, correct?  
17 A. Yes.  
18 Q. One was a Detective Wildemann?  
19 A. Yes.  
20 Q. And one was a Detective McGrath?  
21 A. Yes.  
22 Q. And you knew these detectives wanted to  
23 talk to you from Deangelo, correct?  
24 A. Yes.  
25 Q. He told you that they were coming?

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- 1 A. No, he didn't.  
 2 Q. Okay. But you knew they were coming from  
 3 Deangelo?  
 4 A. Yes.  
 5 Q. Okay. Now, after, and we're going to talk  
 6 about this statement somewhat, but after this  
 7 conversation or interview that you had with the police,  
 8 did you have another one with the police after  
 9 May 21st?  
 10 A. Yes.  
 11 Q. When was the next time that you had spoken  
 12 with the police?  
 13 A. Well, that was with the DA.  
 14 Q. Okay. Was that today?  
 15 A. No.  
 16 Q. When was this, and this was the second  
 17 meeting that you had or the second time that you told  
 18 your story?  
 19 A. This was a week and a half. This was a  
 20 week and a half from prior to today.  
 21 Q. Okay. So it wasn't last week but the week  
 22 before?  
 23 A. Yes.  
 24 Q. And you went to the district attorney's  
 25 office?

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- 1 A. Yes, I did.  
 2 Q. And you went with a detective?  
 3 A. Yes, I did.  
 4 Q. Which detective did you go with?  
 5 A. I went with Detective Falkner.  
 6 Q. Falkner?  
 7 A. Yes, sir.  
 8 Q. I see. You went inside the DA's office?  
 9 A. Yes, I did.  
 10 Q. Do you remember what floor you went to?  
 11 A. Floor 10.  
 12 Q. Floor 10. And there you met with the  
 13 district attorney?  
 14 A. Yes.  
 15 Q. Did you meet with Mr. DiGiacomo, the one  
 16 who has been asking you the questions?  
 17 A. Yes, I did.  
 18 Q. So it was you, Mr. DiGiacomo and a  
 19 detective?  
 20 A. Yes.  
 21 Q. You gave a statement, you went over your  
 22 story that you went over today, correct?  
 23 A. Yes, sir.  
 24 Q. And during this time that you gave this  
 25 statement, was the detective writing notes?

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- 1 A. Yes, he was.  
 2 Q. I see. So Detective Falkner was taking  
 3 notes on what you were saying?  
 4 A. Yes.  
 5 Q. Approximately how long did this  
 6 conversation take place, or how long were you there  
 7 talking to this detective and to this district  
 8 attorney?  
 9 A. About an hour-and-a-half, two hours.  
 10 Q. I see. Did you take a break during this  
 11 hour-and-a-half to two hours or was it straight  
 12 talking?  
 13 A. It was just talking.  
 14 Q. So you did a lot of talking during that  
 15 hour-and-a-half to two hours, didn't you?  
 16 A. Yes.  
 17 Q. During this whole time, this detective was  
 18 writing down notes, correct?  
 19 A. Yes, sir.  
 20 Q. Did you see the same detective here today?  
 21 A. Yes.  
 22 Q. You saw him in the back?  
 23 A. Yes.  
 24 Q. And you also discussed with him what you  
 25 had discussed with him before for that hour-and-a-half

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- 1 to two hours, didn't you?  
 2 A. Yes.  
 3 Q. He wrote more notes too, didn't he?  
 4 A. Yes.  
 5 Q. And he went over the notes that he had  
 6 written that you had given to him the last time you and  
 7 he met, correct?  
 8 A. Yes.  
 9 Q. Okay.  
 10 MR. DRASKOVICH: Judge, at this time, I  
 11 would like to -- could we approach for a second?  
 12 THE COURT: Sure.  
 13 (Thereupon, a brief discussion was held  
 14 at the bench.)  
 15 BY MR. DRASKOVICH:  
 16 Q. In reference to this -- let me ask you  
 17 this. After those two times that you met after the  
 18 meeting with Detective McGrath and Wildemann, have you  
 19 met with any other detectives and told him your story?  
 20 A. No.  
 21 Q. So we have three times then; is that  
 22 correct?  
 23 A. No, we have two times.  
 24 Q. Plus the time today before you took the  
 25 stand?

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- 1 A. Yes.  
 2 Q. Correct?  
 3 A. Yes.  
 4 Q. And when you spoke to this other detective  
 5 or whoever he was, he went over what you needed to say  
 6 today, didn't he?  
 7 A. No, he asked me, he asked me questions.  
 8 And then he went over it with me.  
 9 Q. What questions did he ask you?  
 10 A. He asked me, he asked me -- he just told  
 11 me to tell the truth. That's it.  
 12 Q. I see. He went over names of people that  
 13 you had talked about with him?  
 14 A. Oh, no.  
 15 Q. Okay. The prior time that you were in the  
 16 office talking to him, okay, a week and a half ago, you  
 17 went over names with people at that time, didn't you?  
 18 A. Yes.  
 19 Q. He had told you people's names, didn't he?  
 20 A. No, I had knew. They knew what I had knew  
 21 too.  
 22 Q. You had been following this matter in the  
 23 news, haven't you?  
 24 A. Yes, I have.  
 25 Q. You have read the newspapers?

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- 1 A. Yes, I have.  
 2 Q. You have watched TV?  
 3 A. Yes, I have.  
 4 Q. And you would agree with me in reading the  
 5 newspaper and watching the TV that's helped you put  
 6 things together, correct?  
 7 A. Yes.  
 8 Q. Names?  
 9 A. Yes, sir.  
 10 Q. In fact, you would agree with me that by  
 11 watching the TV and reading the newspaper it's helped  
 12 you fill in blanks that you had before, correct?  
 13 A. Yes. No, as a matter of fact, no. It  
 14 just told me things that I didn't know about the club.  
 15 Q. Okay. So you have learned more about the  
 16 club by watching TV, correct?  
 17 A. Yes, sir.  
 18 Q. And you would agree with me that by  
 19 learning these things, it's affected your ability to  
 20 remember and say thing today in this court?  
 21 A. No.  
 22 Q. I see. Now, when you gave this first  
 23 statement to the cops, it was back on the 21st of May,  
 24 correct?  
 25 A. Yes, sir.

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- 1 Q. It was early in the morning, wasn't it?  
 2 A. No, it wasn't.  
 3 Q. In the afternoon.  
 4 A. It was around -- yeah. Yeah, it was in  
 5 the morning.  
 6 Q. About 1:00 a.m.  
 7 A. But it was like at night in the morning.  
 8 Q. Okay. You wanted to be as truthful as you  
 9 could?  
 10 A. Yes, and I was.  
 11 Q. You wanted to be as complete as you could?  
 12 A. Yes.  
 13 Q. Hey, this was a homicide investigation,  
 14 wasn't it?  
 15 A. Yes, it was.  
 16 Q. It was important, wasn't it?  
 17 A. Yeah.  
 18 Q. And you were scared when you talked to  
 19 them, correct?  
 20 A. Yes and no.  
 21 Q. You wanted to give them everything you  
 22 possibly could at that point, didn't you?  
 23 A. I didn't have a choice. They already knew  
 24 that I knew.  
 25 Q. And did they tell you how they knew that

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- 1 you knew?  
 2 A. Yes, he did.  
 3 Q. They told you that they had spoken to  
 4 Deangelo, correct?  
 5 A. Yes.  
 6 Q. Now, in this statement that you gave to  
 7 them on May 21st, it was tape recorded?  
 8 A. Yes.  
 9 Q. If you had questions, you would stop them,  
 10 correct?  
 11 A. Yes.  
 12 Q. And they had talked about a number of the  
 13 things that you have testified to today, correct?  
 14 A. Yes.  
 15 Q. There came a time in which they discussed  
 16 why this guy named TJ got shot, correct?  
 17 A. Yes.  
 18 Q. And at the time, being honest and wanting  
 19 to be truthful, you told the police you didn't know who  
 20 wanted TJ shot, correct?  
 21 A. Yes, I did. But when they, when they had  
 22 already, they had already knew that I was lying at  
 23 first, but then that's when I told them.  
 24 Q. I see. So you first told them that you  
 25 did not know?

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- 1 A. Yes, I did.  
 2 Q. So then you lied to the police, didn't  
 3 you?  
 4 A. Yes, I did.  
 5 Q. At the time that you lied to the police,  
 6 you lied because you thought it might help you,  
 7 correct?  
 8 A. No, I lied because I was scared.  
 9 Q. Okay. And then you thought that if you  
 10 told the truth, you would get into trouble, correct?  
 11 A. No.  
 12 Q. But you lied because you were scared?  
 13 A. Yes.  
 14 Q. I see. So you didn't tell the truth  
 15 because you were scared?  
 16 A. Yes. And but then I did tell the truth  
 17 because it was either that or jail.  
 18 Q. I see. So they told you that if you  
 19 didn't name other people you were going to jail,  
 20 correct?  
 21 A. Yeah, because I was going to be, I was  
 22 going to be in the midst of the conspiracy with the  
 23 murder.  
 24 Q. I see. So they told you then that if you  
 25 gave other people's names you weren't going to be in

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- 1 this mix for this conspiracy?  
 2 A. No, he didn't tell me that.  
 3 Q. I see. There was a time in which one of  
 4 those police officers swore at you, didn't he?  
 5 A. Yes.  
 6 Q. He told you to smarten up or you were  
 7 going in jail, correct?  
 8 A. Yes.  
 9 Q. He told you that you were making him  
 10 fucking mad, correct?  
 11 A. Yes.  
 12 Q. And that you didn't want to see a mad man,  
 13 correct?  
 14 A. Yes.  
 15 Q. And that scared you, didn't it?  
 16 A. No, it didn't.  
 17 Q. That didn't?  
 18 A. No.  
 19 Q. I see.  
 20 A. It just, he just told me, he told me that  
 21 I knew what I had to do.  
 22 Q. I see. And that you knew that you had to  
 23 finger other people, correct?  
 24 A. I'm the one that had to deal the truth.  
 25 Q. I see. So you knew you needed to finger

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- 1 other people?  
 2 A. I told the truth.  
 3 Q. Now, when he asked you about -- let me  
 4 back up just a little bit.  
 5 Earlier in this day of May 19th, you  
 6 testified and you stated later to the detective that  
 7 Deangelo said somebody needed to be dealt with,  
 8 correct?  
 9 A. Yes.  
 10 Q. And those were your words?  
 11 A. No, those wasn't my words.  
 12 Q. Those were Deangelo's words?  
 13 A. Yes.  
 14 Q. Okay. And on May 21st, you told the  
 15 police that you didn't know who it was that wanted TJ  
 16 to be dealt with, correct?  
 17 A. Yes, I did.  
 18 Q. You didn't, did you?  
 19 A. I did, but -- I did, but I didn't. It's  
 20 like, okay, I was told something and then I was told  
 21 something else.  
 22 Q. Okay. But at the time, earlier in the day  
 23 of May 19th, you didn't know why they wanted this guy  
 24 taken care of, correct?  
 25 A. No, I didn't.

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- 1 Q. You didn't even know who this guy was, did  
 2 you?  
 3 A. No.  
 4 Q. You had never met this TJ, had you?  
 5 A. No.  
 6 Q. You knew that Deangelo knew him, correct?  
 7 A. Yes.  
 8 Q. But you personally had never seen him  
 9 before, had you?  
 10 A. No.  
 11 Q. Never gone out with him, correct?  
 12 A. Or if I have seen him, I probably didn't  
 13 recognize him because, I mean, I don't know the guy.  
 14 Q. Okay. You had never done anything  
 15 socially with him?  
 16 A. No.  
 17 Q. Never talked to him on the phone?  
 18 A. No.  
 19 Q. Basically, you didn't know him from Adam,  
 20 correct?  
 21 A. I didn't know him from a can of paint.  
 22 Q. You didn't know him from a can of paint?  
 23 A. Yes.  
 24 Q. But you knew Deangelo knew him, correct?  
 25 A. Yes.

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- 1 Q. And you didn't know if anybody else knew  
2 him, did you, that was in the car with you?  
3 A. No, I didn't.  
4 Q. Now, you had told these detectives at the  
5 beginning of the interview that you didn't know who  
6 wanted TJ taken care of?  
7 A. Yes, I did.  
8 Q. Is that correct?  
9 A. Yes.  
10 Q. And then you had this conversation where  
11 this cop told you to smarten up and you were making him  
12 mad, correct?  
13 A. Yes.  
14 Q. Then you and he still talked about who  
15 wanted this TJ taken care of, correct?  
16 A. Yes.  
17 Q. And even at that time, after he told you  
18 to smarten up or you were going to jail, you still told  
19 him that you didn't know who wanted TJ taken care of,  
20 correct?  
21 A. Yes, I did.  
22 Q. I see.  
23 A. I did tell him who did.  
24 Q. So when you told him on page 35 of your  
25 statement that you didn't know who wanted TJ taken care

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- 1 you, correct?  
2 A. Yes, I did.  
3 Q. And you also had to rely upon what the  
4 police told you as they were questioning you, correct?  
5 A. Yes.  
6 Q. And you would agree with me that today as  
7 you are testifying you had to rely somewhat upon what  
8 the police had told you, correct?  
9 A. Yes.  
10 Q. Concerning this Luie Hidalgo, correct?  
11 A. Yes.  
12 Q. You never got paid any money in this case,  
13 did you?  
14 A. No.  
15 Q. In fact, when the detectives asked you  
16 about Deangelo getting paid, after they told you to  
17 smarten up and to tell them the truth, even then you  
18 told them you did not know whether or not Deangelo had  
19 gotten paid, correct?  
20 A. Still today I don't know if Deangelo got  
21 paid.  
22 Q. And you don't know if KC got paid either,  
23 do you?  
24 A. No, I don't.  
25 Q. So, once again, you're having to rely upon

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- 1 of, that wasn't true, was it?  
2 A. No.  
3 Q. No, it wasn't?  
4 A. No, no.  
5 Q. So then you lied to the police again  
6 concerning what you knew or what you didn't know?  
7 A. No, I didn't lie to the police. I lied to  
8 them the first time. Then he told me I better smarten  
9 up or I'm going to jail, and that's when I told him  
10 what I knew.  
11 Q. Okay. But then, again, in order to tell  
12 him what you knew --  
13 A. And I did tell them who, and I did tell  
14 him that I knew who wanted Tim to be done.  
15 Q. Backing up just a little bit, though.  
16 Once again, you had to rely on what Deangelo told you,  
17 didn't you?  
18 A. Part of it.  
19 Q. Okay. You never spoke with this Mr. H,  
20 did you?  
21 A. No.  
22 Q. You never spoke with this Luie or Hidalgo  
23 the third, did you?  
24 A. No.  
25 Q. So you had to rely upon what Deangelo told

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- 1 what the police may have told you, correct?  
2 A. No, I'm going by what Deangelo told me.  
3 Q. Okay. And Deangelo alone; isn't that  
4 right?  
5 A. Yes.  
6 Q. There came a time on this day that you  
7 were being interviewed the first time with the police,  
8 that you thought that TJ had been ratting on somebody,  
9 correct?  
10 A. I wasn't really told why. I wasn't told  
11 why he was going to get done or any reason. That's all  
12 I was told.  
13 Q. Okay. But, sir, I'm asking you what you  
14 said. You told the police on May 21st that you thought  
15 the reason TJ had gotten shot was because he was  
16 ratting?  
17 A. Yeah, I guess. He had to be talking or  
18 something.  
19 Q. You also told the police that you thought  
20 he was snitching, correct?  
21 A. Yeah.  
22 Q. And when you say snitching, you mean maybe  
23 he was telling the police on somebody, correct?  
24 A. Yes.  
25 Q. Because you had learned from Deangelo that

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1 TJ was into weed, correct?  
 2 A. No. I didn't learn nothing about TJ.  
 3 Q. I see.  
 4 A. I didn't learn whether he was with weed or  
 5 nothing. I told the cops, I told the cops I don't know  
 6 nothing about this guy.  
 7 Q. You knew Deangelo smokes weed, correct?  
 8 A. Yes, of course.  
 9 Q. You have smoked marijuana with Deangelo  
 10 before, correct?  
 11 A. Yes.  
 12 Q. And you knew that he would get, and I'm  
 13 talking about Deangelo, he would get marijuana from TJ?  
 14 A. No.  
 15 Q. I see. But you smoked the weed with him,  
 16 correct?  
 17 A. Yes.  
 18 Q. Did you bring the weed when you and he  
 19 would smoke together?  
 20 A. Me and Deangelo?  
 21 Q. Yes.  
 22 A. Yes.  
 23 MR. DIGIACOMO: Okay. You clarified it  
 24 for us.  
 25 MR. DRASKOVICH: I pass the witness.

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## CROSS-EXAMINATION

1  
 2 BY MS. WILDEVELD:  
 3 Q. Mr. Zone, when you were talking with the  
 4 detective, you, in fact, didn't know Mr. Counts' name  
 5 either, did you?  
 6 A. No.  
 7 Q. In fact, the detective had to tell you  
 8 what his name was?  
 9 A. Yes.  
 10 Q. When you were at Deangelo's apartment, you  
 11 never spoke with Kenneth Counts, did you?  
 12 A. No.  
 13 Q. Kenneth Counts wasn't present at  
 14 Deangelo's apartment?  
 15 A. No.  
 16 Q. It was you, JJ and Deangelo, correct?  
 17 A. Yes.  
 18 Q. So Kenneth was never a part of any of the  
 19 conversations about this guy needs to be taken care of,  
 20 correct?  
 21 A. No.  
 22 Q. And when you went out promoting, Kenneth  
 23 Counts wasn't present, was he?  
 24 A. No.  
 25 Q. Have you ever seen Kenneth Counts before?

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1 A. No.  
 2 Q. And you were staying at DC's house, or I'm  
 3 sorry, Deangelo's house. Kenneth Counts wasn't staying  
 4 there, was he?  
 5 A. No.  
 6 Q. In fact, when they, when the detectives  
 7 asked you where you picked up Kevin Counts from or  
 8 Kevin, excuse me -- strike that.  
 9 Kenneth Counts from, you didn't know where  
 10 you picked up Kenneth Counts from, did you?  
 11 A. Yes, but that's when I told them before  
 12 the officer said what he said.  
 13 Q. I'm sorry?  
 14 A. I said that before the officer said, I  
 15 said that before the officer said what he said.  
 16 Q. You said what?  
 17 A. That's when I told him that I didn't  
 18 really know where he lived.  
 19 Q. Right, but you're not from Las Vegas, are  
 20 you?  
 21 A. No, I'm not.  
 22 Q. How long have you been in Las Vegas?  
 23 A. Eight, nine years.  
 24 Q. So you've been here long enough that you  
 25 would know east side, west side, correct?

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1 A. Yes.  
 2 Q. But when the officer said the west side,  
 3 you didn't know where Kenneth Counts lived, did you?  
 4 A. No.  
 5 Q. So you had never had contact with Kenneth  
 6 Counts before?  
 7 A. Never.  
 8 Q. And the only people that got in that van,  
 9 according to you, according to what your statement is,  
 10 is you, JJ, Deangelo Carroll and then Kenneth Counts  
 11 you say you picked up?  
 12 A. Yes.  
 13 Q. And all of you drove out to Lake Mead?  
 14 A. Yes.  
 15 Q. And you have had two conversations with  
 16 the police?  
 17 A. I had one with homicide, and two with,  
 18 twice with the DA.  
 19 Q. And then once again this morning?  
 20 A. Yes.  
 21 Q. Have you been made any promises?  
 22 A. No.  
 23 Q. Have they promised you that they are not  
 24 going to take away your child maybe?  
 25 A. No, they didn't say nothing about my

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1 child.  
 2 Q. Have they ever talked about pressing  
 3 charges against you?  
 4 A. They said, police said I ain't, I wasn't  
 5 being charged with nothing.  
 6 Q. Why are you testifying here today?  
 7 A. I'm testifying here today because it's my  
 8 choice. It's either that or I'm supposed to be on the  
 9 run.  
 10 Q. Why would you be on the run?  
 11 A. Because they think that I'm in the mix  
 12 with this murder.  
 13 Q. So if you're not testifying here today,  
 14 you would be in the mix with this murder?  
 15 A. Yes, I would.  
 16 Q. And did the police tell you that if you  
 17 weren't testifying here today you would have to be on  
 18 the run because you would be in the mix with this  
 19 murder?  
 20 A. No. They told me exactly this. They  
 21 said, if you don't testify, you either have something  
 22 to do with the crime.  
 23 Q. So you're testifying here today to show  
 24 that you did not have something to do with the crime?  
 25 A. Yeah, to show them that I did not.

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1 Q. What were his words?  
 2 A. His words, his words, he -- see, that was  
 3 earlier, that was earlier even before the time. He had  
 4 left and came back. He left and came back. And then  
 5 he was like come on, we're fixing to go to work. He  
 6 didn't say come on, we're fixing to go kill a guy,  
 7 let's go. He said we're fixing to go to work, and  
 8 that's the only reason that I got up and left.  
 9 Q. And at that point, it was you, JJ and  
 10 Deangelo, correct?  
 11 A. Yes.  
 12 Q. And there was no Kenneth Counts present?  
 13 A. No.  
 14 Q. Kenneth Counts didn't work with you guys?  
 15 A. No.  
 16 Q. You said you had been promoting a couple  
 17 other times. Was Kenneth Counts ever present with you  
 18 guys?  
 19 A. No.  
 20 Q. And then when you find out that TJ needs  
 21 to be taken care of, you were in the van at that point  
 22 or were you still in the apartment?  
 23 A. It wasn't in the van. It was at the  
 24 apartment.  
 25 Q. So it was at the apartment, and you

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1 Q. And you're testifying here today so that  
 2 you won't get charged with this crime, correct?  
 3 A. Yes, exactly.  
 4 Q. Because if you don't testify today, do you  
 5 think you're going to get charged with this crime?  
 6 A. Yes.  
 7 Q. And when you were at Deangelo's house and  
 8 Deangelo said he needs to get taken care of, it was  
 9 you, in fact, that offered the information to the  
 10 police that get taken care of meant to kill him, right?  
 11 A. Yes.  
 12 Q. And when initially the time comes to get  
 13 baseball bats and garbage cans, garbage bags, did you  
 14 collect some baseball bats and garbage bags?  
 15 A. I didn't collect nothing.  
 16 Q. Did Deangelo collect garbage bags and  
 17 baseball bats?  
 18 A. I didn't see any.  
 19 Q. When you walked out of his apartment and  
 20 got into the car, was anyone carrying a baseball bat or  
 21 garbage bags?  
 22 A. No.  
 23 Q. But when he said this person needs to get  
 24 taken care of, come on, let's go, you went, right?  
 25 A. No, he didn't say come on, let's go.

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1 learned that TJ needed to be taken care of?  
 2 A. Yes.  
 3 Q. And you still got in the van and went with  
 4 Deangelo and JJ, correct?  
 5 A. You're trying to mix it up. He told me,  
 6 he would like, yeah, he's going to get taken care of or  
 7 whatever. And he asked me did I want a part, and I  
 8 said no. That's it. I said flat no. I said no. I  
 9 got a son. No. All right.  
 10 And then after that, he left and he came  
 11 back. And he was like you ready to go promote? And  
 12 I'm like yeah. I mean, why not? I mean, I've been  
 13 doing this for about a week. We've been promoting for  
 14 like a week, so I figure we're going out to promote.  
 15 Q. And so when the police officer asked you,  
 16 when the detective asked you the question, "So when you  
 17 thought, hey, he needs to be taken care of, what did  
 18 you think he meant?" Your answer was, "I already knew  
 19 what it meant," right?  
 20 A. Yes.  
 21 Q. And it was it meant murder, right?  
 22 A. Yes.  
 23 Q. So when Deangelo then said come on, let's  
 24 go, you thought you were going to promote?  
 25 A. No. He said, he was like come on, let's

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- 1 go. I'm sitting at the house with my baby's mama and  
 2 his wife. And my baby's mama asked me where I was  
 3 going. She said where are you all going? He said  
 4 we're going to promote. So I'm thinking we're going to  
 5 promote and we leave.
- 6 Q. But you don't tell your baby's mama  
 7 everything, right?
- 8 A. Yes, I do, as a matter of fact.
- 9 Q. Well, you got dropped off by the Palomino  
 10 shuttle so your baby's mama wouldn't ask you questions,  
 11 right?
- 12 A. No, it didn't have anything to do with my  
 13 baby's mama asking questions. It had something to do  
 14 with homicide or a detective being suspicious. It  
 15 didn't have nothing to do with my baby's mama saying  
 16 anything.
- 17 Q. So you got in the van and you were driving  
 18 out to Lake Mead. Was there any talk about what was  
 19 going to occur in the van on the way out there?
- 20 A. No, there wasn't.
- 21 Q. You had no idea why you were going out to  
 22 Lake Mead?
- 23 A. I didn't know until we got to Hollywood  
 24 Boulevard.
- 25 Q. Okay. And then when you were out at

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- 1 Lake -- when you were out at Lake Mead and TJ drove up  
 2 to the car, did you ever scream stop, something is  
 3 going to happen? Did you ever warn him?
- 4 A. No.
- 5 Q. You never did that?
- 6 A. No.
- 7 Q. Why not?
- 8 A. So I can be a dead man?
- 9 Q. Why would you be a dead man? Were they  
 10 going to be taking care of you?
- 11 A. All right. Let's say this. You sitting  
 12 next to a man that's willing to kill somebody. You  
 13 mean to tell me you're going to tell that man to stop  
 14 and he's sitting right next to you?
- 15 Q. He wasn't. He was out of the car, right?
- 16 A. How am I going to tell the man to stop  
 17 when I can be just as dead as him or my baby's mama  
 18 could be harmed.
- 19 Q. Well, you told me that you were out at  
 20 Lake Mead, right?
- 21 A. Yes.
- 22 Q. And somebody slid out of the car?
- 23 A. Yeah.
- 24 Q. And they went around and they were  
 25 standing by the car, so they were out of the car at

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- 1 that point, right?
- 2 A. He was out of the car at that point.
- 3 Q. And Deangelo is your friend, right?
- 4 A. Yes.
- 5 Q. Are you saying that Deangelo would never  
 6 have put you in this situation if you did not know what  
 7 you were getting yourself into?
- 8 A. I'm not sure. I can't really be sure.  
 9 It's for him to say for himself.
- 10 Q. But you yourself never screamed stop, get  
 11 away?
- 12 A. No.
- 13 Q. He has a gun?
- 14 A. No.
- 15 Q. You never said anything like that?
- 16 A. No.
- 17 Q. And on the way out to the lake, was there  
 18 any talk about what was going to occur?
- 19 A. No.
- 20 Q. So you never heard -- if Kenneth Counts  
 21 was, in fact, in the van, he never participated in any  
 22 communication about what was going to happen on the way  
 23 out to the lake?
- 24 A. No, he didn't.
- 25 Q. And then the next day, when you went and

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- 1 you switched the tires on the van, was Kenneth Counts  
 2 with you?
- 3 A. No.
- 4 Q. And did you take part in any of the  
 5 stabbing of the tires or anything like that?
- 6 A. No.
- 7 Q. And you knew why the tires needed to be  
 8 switched though, right?
- 9 A. Yes.
- 10 Q. Did you help lift the tires and put them  
 11 into the trash can or anything?
- 12 A. I didn't touch nothing.
- 13 Q. Did you see Kenneth Counts at all that  
 14 day?
- 15 A. No.
- 16 Q. And when you went to the Palomino Club --  
 17 I'm sorry, let me back up.  
 18 After you left Lake Mead and you went back  
 19 to the Palomino Club, you got out of the van to go into  
 20 the Palomino Club with Deangelo, correct?
- 21 A. No.
- 22 Q. You never got out of the van?
- 23 A. I didn't get out of the van and go in the  
 24 club.
- 25 Q. What did you get out of the van for?

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- 1 A. We were left in the van.  
 2 Q. Did you initially get in the van and  
 3 Deangelo said no, don't come in?  
 4 A. No. He said that he just, he was like you  
 5 all wait here.  
 6 Q. So you waited in the van for two hours?  
 7 A. No. I got out and I waited on the, on  
 8 some little seats.  
 9 Q. How far does Deangelo -- how far is  
 10 Deangelo's apartment from the Palomino Club? Was it in  
 11 walking distance?  
 12 A. Yes.  
 13 Q. Have you walked from the Palomino Club to  
 14 Deangelo's apartment before?  
 15 A. No.  
 16 Q. You never have?  
 17 A. No.  
 18 Q. But it was in walking distance?  
 19 A. Yes.  
 20 Q. You knew how to get home?  
 21 A. Yes.  
 22 Q. But you stayed in the van for two hours?  
 23 A. You mixing it up. I told you I didn't  
 24 stay in the van for two hours.  
 25 Q. What did you do?

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- 1 A. I got out. I got out, and I sat on the  
 2 seats that they have at the Palomino. They have like a  
 3 little table that's outside by where the cabs come up  
 4 and you sit there. I got out and we sat there.  
 5 Q. So you just didn't go in the club?  
 6 A. No.  
 7 Q. But you didn't stay in the van?  
 8 A. No, I didn't go in the club.  
 9 Q. And what were you waiting for?  
 10 A. I didn't have no choice but to wait. I  
 11 have a baby's mother at his house. I have to do what I  
 12 have to do to take care of my son.  
 13 Q. What was it that you were doing then  
 14 waiting at the Palomino Club?  
 15 A. I was waiting so I could go back to his  
 16 house.  
 17 Q. Were you waiting to get paid?  
 18 A. No.  
 19 Q. Did you have an expectation of payment?  
 20 A. I didn't get paid for nothing. I don't  
 21 want nothing to do with nothing. That's the reason I  
 22 didn't get paid.  
 23 Q. Were you getting paid for waiting there?  
 24 A. No.  
 25 Q. So what were you waiting for then?

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- 1 A. I was waiting on Deangelo.  
 2 Q. But you weren't getting paid to wait  
 3 there?  
 4 A. No, I wasn't.  
 5 Q. But you still waited two hours?  
 6 A. Yeah, I still waited for Deangelo, but I  
 7 didn't get paid. I didn't get paid no money. I didn't  
 8 receive no money. That's because I didn't have nothing  
 9 to do with nothing.  
 10 Q. Okay. And when Deangelo came out, you  
 11 mentioned that you do not know whether or not he got  
 12 paid, correct?  
 13 A. Yes. I don't know if he got paid because  
 14 I didn't go in the club with him. And he didn't tell  
 15 me.  
 16 Q. But you told the detective that you  
 17 wondered whether or not he got paid, right?  
 18 A. Yeah, I was wondering, but what's  
 19 wondering?  
 20 Q. Wondering if he got paid for driving the  
 21 car out to the lake?  
 22 A. Yeah, but I don't know who got paid. As a  
 23 matter of fact, at the time I didn't want to know who  
 24 got paid.  
 25 Q. Okay. And it was your understanding, it

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- 1 was your understanding that you didn't know if anyone  
 2 was getting paid, correct?  
 3 A. No, I didn't. I knew that KC got paid.  
 4 Q. How did you know that?  
 5 A. Because I was told, I was told that a  
 6 person to person --  
 7 MR. ORAM: I would object. I would object  
 8 to my co-defendant's attorney's question asking,  
 9 eliciting hearsay.  
 10 MS. WILDEVELD: I'll strike that, your  
 11 Honor.  
 12 BY MS. WILDEVELD:  
 13 Q. But you didn't get paid?  
 14 A. No, I didn't.  
 15 Q. But you had breakfast the next morning and  
 16 Deangelo paid?  
 17 A. Yes, I had breakfast the next morning.  
 18 Q. You do not know where Deangelo got that  
 19 money from?  
 20 A. No.  
 21 Q. And he took your whole family out to  
 22 breakfast?  
 23 A. No. Why would I ask questions?  
 24 Q. Okay. Were you getting paid the next  
 25 morning for promoting when you drove the van to get the

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1 tires changed?  
 2 A. No, I didn't.  
 3 Q. Are you really just being loyal to --  
 4 A. I only got paid for one night.  
 5 Q. And that was for promoting?  
 6 A. That was promoting, my first night of  
 7 promoting. That's the only time I got paid.  
 8 Q. But yet you continued to work without  
 9 expectation of payment?  
 10 A. Yeah. Yes, because he's my friend. And I  
 11 figured he was going to pay me sooner or later, so I  
 12 wasn't really tripping at the time.  
 13 MS. WILDEVELD: Thank you, your Honor.  
 14 That's it.  
 15 MR. DIGIACOMO: Judge, before I take my  
 16 opportunity to redirect, I just wanted to make the  
 17 record clear that Deangelo Carroll is still sitting in  
 18 the courtroom, both of his attorneys are in the  
 19 courtroom, and I invite them, if they want to, to take  
 20 their cross-examination now. If they choose not to,  
 21 that's fine. I'll continue with redirect.  
 22 MR. DRASKOVICH: I would object to that.  
 23 They waived up. They are welcome to watch.  
 24 THE COURT: They are welcome. Then  
 25 apparently the DA says they are welcome to cross if

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1 A. Yes.  
 2 Q. How did you, how did you know once you got  
 3 to Hollywood Boulevard that the murder was going to  
 4 occur?  
 5 A. Because there is no cab place on Hollywood  
 6 Boulevard?  
 7 Q. So you knew then that you had to be  
 8 somewhere other than going to cabs?  
 9 A. Yes.  
 10 Q. Do you remember a discussion from  
 11 Mr. Draskovich, who is the lawyer in the middle here,  
 12 concerning Little Lu?  
 13 A. Yes.  
 14 Q. Right, Luie?  
 15 A. Yes.  
 16 Q. You had seen and met Luie before?  
 17 A. Yes.  
 18 Q. Okay. And you had talked to Deangelo  
 19 about Luie before?  
 20 A. Yes.  
 21 Q. Okay. Do you see the individual that  
 22 Deangelo referred to as Little Lu or Luie here in court  
 23 today?  
 24 A. Yes.  
 25 Q. Can you point him out and describe

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1 they want.  
 2 MR. FIGLER: Your Honor, do you want to  
 3 let me cross-examine the witness and I'm not even a  
 4 party to the proceedings?  
 5 THE COURT: I think you have stand to  
 6 cross-examine if you wanted to, yes.  
 7 MR. FIGLER: That's interesting. Can I  
 8 consult with counsel for a second? I didn't really  
 9 know that I had a standing.  
 10 (Brief pause in proceedings.)  
 11 MR. FIGLER: Your Honor, Mr. Carroll has  
 12 waived his preliminary hearing so that he may face  
 13 these charges in district court. So as a result, he  
 14 doesn't believe that we have any need to go forward  
 15 because we'll be challenging the State's evidence at  
 16 trial and that's our position.  
 17 THE COURT: Redirect?  
 18 MR. DIGIACOMO: Redirect.  
 19  
 20 REDIRECT EXAMINATION  
 21 BY MR. DIGIACOMO:  
 22 Q. Couple of brief questions. You said you  
 23 did not know that the murder was going to occur until  
 24 you got to Hollywood Boulevard. Do you remember that  
 25 question you answered on cross-examination?

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1 something he's wearing?  
 2 A. He's over there.  
 3 Q. White, black or Hispanic?  
 4 A. Hispanic.  
 5 Q. Hispanic.  
 6 And is he male?  
 7 A. Yes.  
 8 Q. Where is he sitting in the front row  
 9 there?  
 10 A. Second seat.  
 11 MR. DIGIACOMO: May the record reflect the  
 12 identification of Luis Hidalgo, III, Judge?  
 13 MR. DRASKOVICH: I would object to that  
 14 unless the Court gives me just a brief voir dire.  
 15 THE COURT: Sure.  
 16 MR. DRASKOVICH: Thank you.  
 17  
 18 VOIR DIRE EXAMINATION  
 19 BY MR. DRASKOVICH:  
 20 Q. Mr. Zone, the courtroom is full of people,  
 21 correct?  
 22 A. Yes.  
 23 Q. And you know who is being prosecuted today  
 24 for this matter, correct?  
 25 A. Yes.

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1 Q. You know that these people are in custody,  
2 correct?  
3 A. Yes.  
4 Q. There are only four people sitting in the  
5 box right now that are in custody, correct?  
6 A. Yes.  
7 Q. Two of them are black, and one of them is  
8 a woman, correct?  
9 A. Yes.  
10 Q. So you would agree that pointing out to  
11 this Lule it helps knowing that he's in custody right  
12 now, correct?  
13 A. Yes.  
14 Q. Because he's the only Latin male sitting  
15 in the box, isn't he?  
16 A. Yes.  
17 Q. Now, if you'd been given a lineup, you  
18 probably wouldn't have been able to pick him out,  
19 correct?  
20 A. Yes, I would.  
21 Q. I see. But you said you didn't really  
22 know him, though, did you?  
23 A. I know a face.  
24 Q. I see. And when was the last time that  
25 you saw this face?

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1 A. Simone's Plaza.  
2 Q. And before that, it was a long time  
3 before, correct?  
4 A. Yes.  
5 MR. DRASKOVICH: Thank you. I have no  
6 further questions.  
7 MR. DIGIACOMO: May the record reflect the  
8 identification of Mr. Hidalgo, III?  
9 THE COURT: That's correct, the record  
10 will so reflect.  
11  
12 REDIRECT EXAMINATION (Resumed)  
13 BY MR. DIGIACOMO:  
14 Q. And you said, in response to  
15 Mr. Draskovich's questions, the last time you saw him  
16 was at Simone's Plaza?  
17 A. Yes.  
18 Q. Is that the day after the murder?  
19 A. Yes.  
20 Q. Where in Simone's Plaza did you see  
21 Mr. Hidalgo?  
22 A. He was leaving.  
23 Q. He was leaving?  
24 A. Yes.  
25 Q. And what, did you see what vehicle he got

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1 into or you saw him leaving the store?  
2 A. Sports car. Convertible.  
3 MR. DIGIACOMO: Okay. Thank you, Judge.  
4 I have nothing further.  
5 MR. DRASKOVICH: I have further.  
6  
7 RECROSS-EXAMINATION  
8 BY MR. DRASKOVICH:  
9 Q. Simone's place, that's a business, isn't  
10 it?  
11 A. Yes.  
12 Q. It's a car shop, isn't it?  
13 A. Yes.  
14 Q. It's in a plaza?  
15 A. Yes.  
16 Q. There is more than one business in this  
17 plaza, correct?  
18 A. Well, if it is, I'm not sure.  
19 Q. It's got a parking lot?  
20 A. Yes.  
21 Q. Cars in the parking lot?  
22 A. Yes.  
23 Q. People coming and going?  
24 A. Yes.  
25 Q. So you didn't see him inside, and I'm

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1 referring to Lule inside the building, did you?  
2 A. No.  
3 Q. You saw him just outside in the parking  
4 lot, correct?  
5 A. I saw him leave.  
6 Q. You saw him leave?  
7 A. Yes.  
8 Q. This place of business where it's common  
9 for people to come and go, correct?  
10 A. Yes.  
11 MR. DRASKOVICH: No further questions.  
12 THE COURT: Okay. Are we going to need  
13 Mr. Zone anymore?  
14 MR. DIGIACOMO: No, your Honor. He's free  
15 to go.  
16 MR. DRASKOVICH: We don't intend on  
17 calling him.  
18 THE COURT: All right. It's five to noon.  
19 I'd say it's a good time to take our lunch recess.  
20 We'll start about a quarter after one.  
21 (A brief lunch recess was taken.)  
22 THE COURT: Okay. Next witness.  
23 MR. DIGIACOMO: Before we call the next  
24 witness, can we approach for a moment?  
25 THE COURT: You bet.

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1 (Thereupon, a brief discussion was held  
2 at the bench.)  
3 MR. DIGIACOMO: State calls Detective  
4 Michael McGrath.  
5 THE CLERK: Do you swear the statements  
6 that you are about to make are the truth, the whole  
7 truth, and nothing but the truth, so help you God?  
8 THE WITNESS: I do.  
9 THE CLERK: I need you to state your name  
10 for the record and spell your name, please.  
11 THE WITNESS: Michael S. McGrath,  
12 M-C-G-R-A-T-H.  
13  
14 MICHAEL S. McGRATH,  
15 having been first duly sworn, did testify as follows:  
16  
17 DIRECT EXAMINATION  
18 BY MR. DIGIACOMO:  
19 Q. Good afternoon, Detective. How are you  
20 employed?  
21 A. I'm currently employed with the Las Vegas  
22 Metropolitan Police Department.  
23 Q. How are you employed?  
24 A. I'm a detective in the homicide section.  
25 Q. How long have you been a detective with  
the homicide section?

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1 divided up in any particular manner?  
2 A. Yes. Basically, when we're dispatched,  
3 prior to us going, we have decided one person is going  
4 to be in charge with documenting a crime scene, taking  
5 notes and working with the crime scene analyst at the  
6 scene, and the other detectives will split up to  
7 interview witnesses.  
8 Q. What was your responsibility that night?  
9 A. My responsibility was the crime scene  
10 investigation.  
11 Q. And when you first responded, describe for  
12 the Court the course of your initial investigation.  
13 When you arrived on the scene, what did you first do?  
14 A. Basically, when you drive through the toll  
15 booth on East Lake Mead, over the mountain, over the  
16 saddle and go through the toll booth. Once you get to  
17 approximately two miles past the toll booth, it  
18 intersects with North Shore Road. If you take a left  
19 there, that's what we're referring to. I called it  
20 .33 miles east of that intersection.  
21 Q. Is the scene where the homicide occurred?  
22 A. Is the scene where the homicide occurred.  
23 Q. And that's here in Clark County, Nevada?  
24 A. Yes, it is.  
25 Q. And when you got there, describe what you

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1 A. Three-and-a-half years now.  
2 Q. How long have you been with Metro?  
3 A. Almost 13 years.  
4 Q. I want to direct your attention to  
5 May 19th of the year 2005. Did you have an opportunity  
6 to respond out to North Shore Road near Lake Mead  
7 concerning a homicide of an individual identified as  
8 Timothy Hadland?  
9 A. Yes, I did.  
10 Q. Approximately what time did you get the  
11 call?  
12 A. The call came out before midnight,  
13 however, sometime after midnight, I would say 12:30ish,  
14 a.m., which would be the 20th, is when they called me  
15 to respond.  
16 Q. Okay. When you responded, did you respond  
17 by yourself or were there other members of the homicide  
18 unit that responded with you?  
19 A. Our whole squad responded at that time.  
20 Q. Who is your whole squad?  
21 A. Detective Jimmy Vaccaro, who is the acting  
22 sergeant, Detective Marty Wildemann, my partner,  
23 Detective Teresa Kyger, and myself responded.  
24 Q. Now, when homicide group or a squad  
25 responds out to a homicide scene, are the duties

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1 saw for the Court.  
2 A. When I got there, there was -- there were  
3 the, there was Metro police vehicles on each side of  
4 the roadway. There was also park service officers, you  
5 know, stopping the traffic in both directions. The  
6 crime scene analysts were already arrived on the scene  
7 when I got there.  
8 Q. Now, do the crime scene analysts do their  
9 work before you get there, or do they wait for you to  
10 make a determination on the course of your  
11 investigation?  
12 A. They wait for us, but they were working  
13 already on their regular shift, and we responded from  
14 our residences because it's during the nighttime.  
15 Q. When you say that you're responsible for  
16 working with the crime scene analysts and documenting  
17 the scene, what does that mean you do?  
18 A. Basically, what that means is myself, they  
19 make their notes and diagrams, and I also make my notes  
20 and diagrams as to what I see. And then we come  
21 together and talk about different items that they see.  
22 Do we want this particular item impounded? What do you  
23 think about this? You know, things like that.  
24 Q. Prior to disturbing the scene, do crime  
25 scene analysts do anything to document the scene before

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1 anything is disturbed?  
 2 A. Yes.  
 3 Q. What is that?  
 4 A. Photographs are taken of the overall area  
 5 exactly the way that it is. Then items of evidence,  
 6 which we've both seen, the crime scene analysts and  
 7 myself put item numbers, which they are going to  
 8 impound later, and then they are photographed in place.  
 9 MR. DIGIACOMO: May I approach, Judge?  
 10 THE COURT: Yes.  
 11 BY MR. DIGIACOMO:  
 12 Q. Showing you what's been marked for  
 13 purposes of identification as State's Proposed 6  
 14 through 17, if you could just briefly flip through  
 15 those and tell me if you recognize what's depicted in  
 16 those photographs?  
 17 A. One at a time or do you want me to go  
 18 through all of them?  
 19 Q. Flip through all of them and see if you  
 20 recognize all of them.  
 21 MS. WILDEVELD: Your Honor, the victim's  
 22 family members are in the courtroom if you wanted to  
 23 let them know in case they want to leave the courtroom  
 24 when they are being described.  
 25 THE COURT: Okay. If you heard that, I

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1 don't know who you are, but if you don't want to be  
 2 here when they describe this, it's your opportunity to  
 3 know what's going to be happening.  
 4 BY MR. DIGIACOMO:  
 5 Q. Do you recognize all 6 through 17?  
 6 A. Yes, all of the pictures accurately  
 7 depict. One picture is from the morning, so you can  
 8 see the time difference with the sun coming up.  
 9 Q. But they all accurately depict either the  
 10 scene or items of evidence collected from the scene  
 11 that night on May 19th into the early morning hours of  
 12 May 20th of 2005?  
 13 A. Yes, they do.  
 14 MR. DIGIACOMO: Judge, I move to admit 6  
 15 through 17.  
 16 MR. ORAM: No objection.  
 17 MR. DRASKOVICH: No objection.  
 18 MS. WILDEVELD: No objection.  
 19 THE COURT: They will be admitted.  
 20 (Thereupon, State's Exhibits 6 through  
 21 17 were admitted into evidence.)  
 22 BY MR. DIGIACOMO:  
 23 Q. I'm just going through these slowly with  
 24 you. Could you just describe what we see in State's  
 25 Exhibit Number 6?

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1 A. This is the body of Timothy Hadland. He's  
 2 lying on his back face up. He has on brown sandals, a  
 3 blue bathing suit and there is a white hat resting on  
 4 his chest.  
 5 Q. Is he wearing a shirt?  
 6 A. He is not wearing a shirt. There's  
 7 visible blood on his left side of his chest, as well as  
 8 on the pavement here.  
 9 Q. Okay. And then showing you State's  
 10 Exhibit Number 7, will you describe what's depicted  
 11 there?  
 12 A. On this photograph here, we have the  
 13 shoulder of the roadway, which is actually south of  
 14 Mr. Hadland's body. We have several Palomino flyers,  
 15 VIP flyers, on the ground. And also here we have a, we  
 16 called it a plastic pneumatic tube, which is used at  
 17 the bank or at drugstores to take items from the  
 18 outside into the inside of the store.  
 19 Q. Now, the blood we see on State's Exhibit  
 20 Number 7, is that the same blood that appears to be  
 21 coming from the head and body area of Timothy Hadland?  
 22 A. Yes, the body would be further towards me,  
 23 and the blood would have trickled down towards the  
 24 shoulder of the road.  
 25 Q. Side of the road.

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1 And then State's Exhibit Number 8, is that  
 2 just a close-up of the VIP cards?  
 3 A. Yes, and you can also see the plastic tube  
 4 here also in this photo.  
 5 Q. State's Exhibit Number 9?  
 6 A. It's a close-up of the plastic tube here  
 7 on the, really close to the shoulders, actually near  
 8 the sidewalk.  
 9 Q. State's Exhibit Number 10?  
 10 A. This is the back of the vehicle that  
 11 Mr. Hadland was driving. It's a silver Kia Sportage.  
 12 Q. And that was parked in the position when  
 13 you arrived where it's at right now?  
 14 A. Yes, that has not been moved.  
 15 Q. Now, the body of Timothy Hadland, is it  
 16 behind the vehicle or is it in front of the vehicle?  
 17 A. It was behind the vehicle approximately  
 18 30 feet.  
 19 Q. State's Exhibit Number 11, is that just  
 20 the front view of the vehicle?  
 21 A. Yes. You can see in this photo of the  
 22 front of the vehicle that the lights are on also.  
 23 Q. Then State's Exhibit number 13, describe  
 24 what's being depicted in that photograph.  
 25 A. In the morning hours, this is a photograph

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- 1 of, from a higher elevation up the side of the mountain  
2 down towards where the vehicle was.
- 3 Q. And then State's Exhibit Number 14?
- 4 A. This is -- this is the overall picture,  
5 which we've already discussed, the body of Mr. Hadland  
6 is in the roadway, and you can see further south from  
7 him the VIP cards, and then the vehicle, which is in  
8 front of him.
- 9 And you can see also in this photo, you  
10 can see the park services vehicle, which I have talked  
11 about, and the Metro vehicle on the east side.
- 12 Q. Then, finally, showing you State's Exhibit  
13 Number 12, what's depicted in that photograph?
- 14 A. This is Mr. Hadland's cell phone, which  
15 is, which was on the driver's side floorboard of the  
16 vehicle.
- 17 Q. Was there any other communication device,  
18 other than Mr. Hadland's cell phone, that was located  
19 at the crime scene itself?
- 20 A. Not that I can recall.
- 21 Q. Okay. Fair enough.
- 22 Did you do any investigation as it relates  
23 to that cell phone?
- 24 A. Yes.
- 25 Q. What is it that you did?

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- 1 A. I particularly went through, I took the  
2 cell phone out of the car and went through the call  
3 history of the cell phone.
- 4 Q. And did you identify the last call? Did  
5 you find the last call received inside that phone?
- 6 A. Yes.
- 7 Q. And did it have any information that  
8 eventually became important in your investigation?
- 9 A. Yes.
- 10 Q. What was that?
- 11 A. At 11:27, which would have been on the --  
12 on the 19th, there was a phone call to Mr. Hadland's  
13 phone from a Nextel direct connect, that meaning that  
14 the one, two, three star number's in there and not the  
15 regular phone number was in there, and also at that  
16 time, it said the name Deangelo.
- 17 Q. Did you eventually or members of the unit  
18 eventually go down to the lake and contact  
19 Mr. Hadland's girlfriend?
- 20 A. Yes, Detective Wildemann and Detective  
21 Kyger contacted her.
- 22 Q. And based upon her statement, did you have  
23 an idea of who Deangelo was?
- 24 A. Yes.
- 25 Q. Who was that?

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- 1 A. Mr. Deangelo Carroll that was a co-worker  
2 at one time of Mr. Hadland.
- 3 Q. I noticed you pointed -- have you  
4 personally met Mr. Carroll?
- 5 A. Yes, I have.
- 6 Q. Do you recognize him here in court today?
- 7 A. Yes.
- 8 Q. Can you point him out and describe  
9 something he's wearing?
- 10 A. He's seated against the wall in the back  
11 row here. He has got on a blue shirt with blue pants.
- 12 MR. DIGIACOMO: May the record reflect  
13 identification of the defendant, Judge?
- 14 THE COURT: The record will so reflect.
- 15 MR. DIGIACOMO: Of Defendant Deangelo  
16 Carroll. I guess it should be clear.
- 17 Thank you, Judge.
- 18 BY MR. DIGIACOMO:
- 19 Q. The next day, May 20th, did you respond  
20 to and/or did you go to the medical examiner's office,  
21 the Coroner's office here in Clark County for the  
22 autopsy of Mr. Hadland?
- 23 A. Yes.
- 24 MR. DIGIACOMO: May I approach, Judge?
- 25 THE COURT: You may.

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- 1 BY MR. DIGIACOMO:
- 2 Q. Showing you what's been marked as State's  
3 Proposed 3 through 5, will you briefly flip through  
4 those and see if you recognize those.
- 5 Those appear to be photographs taken  
6 during the autopsy --
- 7 A. Yes.
- 8 Q. -- of Mr. Hadland?
- 9 A. Yes, they are.
- 10 Q. And they are true, fair and accurate  
11 depictions of Mr. Hadland at that time?
- 12 A. Yes.
- 13 MR. DIGIACOMO: Move to admit 3, 4 and 5.
- 14 MR. ORAM: No objection.
- 15 MR. DRASKOVICH: No objection.
- 16 MS. WILDEVELD: No objection.
- 17 THE COURT: They will be admitted.
- 18 (Thereupon, State's Exhibits 3, 4 and 5  
19 were admitted into evidence.)
- 20 BY MR. DIGIACOMO:
- 21 Q. Would you describe the wounds you saw at  
22 the scene, as well as at the autopsy?
- 23 A. At the scene, it was apparent that there  
24 was a gunshot wound to the left side of the head closer  
25 to, you know, the cheek area. What isn't done is an

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1 inspection of the entire body where we, where I could  
2 see the second bullet strike to the ear. So at the  
3 scene, all we can see was that he had a gunshot wound  
4 to the head.

5 Q. During the autopsy, did you learn that  
6 there was a second wound to Mr. Hadland?

7 A. Yes.

8 Q. And that was to the ear?

9 A. Yes.

10 Q. What did you do after learning that  
11 Deangelo or the cell phone said Deangelo was the last  
12 call to Mr. Hadland, and after having officers speak to  
13 Pajjit Karlson, how did you investigation progress from  
14 there?

15 A. Well, the way the events unfolded, we had  
16 been up all night into the next day, and I attended the  
17 autopsy. Detective Wildemann and Detective Kyger went  
18 back to the lake to speak with the girlfriend, and then  
19 they came back. We all met together.

20 We had the direct connect number from the  
21 cell phone and we sent out a request for the subscriber  
22 of the direct connect number, and we didn't have the  
23 phone number, but we knew it was a Nextel direct  
24 connect.

25 Q. Did you receive information back that

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1 furthers your investigation?

2 A. Yes.

3 Q. What information did you receive?

4 A. The subscriber to the cell phone was a  
5 Anabel Espindola, and the address that was used was  
6 Simone's Auto Plaza, which is the 6770 Bermuda is the  
7 address of that.

8 Q. Where approximately in the valley is 6770  
9 Bermuda?

10 A. That's down Sunset and Bermuda. Actually  
11 south of the airport.

12 Q. Is it near the airport?

13 A. Yeah, Sunset and the airport is -- a half  
14 a mile from the airport.

15 Q. Good enough.

16 Once you found out this information,  
17 Simone's Auto Plaza, Deangelo, Anabel Espindola, what  
18 did you do?

19 A. We used our regular resources, what we  
20 describe as suspectology and victimology where we punch  
21 things into our regular computer, which we have in our  
22 office, and try to determine who these people are and  
23 where they work.

24 So we punched in this Miss Anabel  
25 Espindola and found out that she was also a key

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1 employee at the Palomino Club. And one of the other  
2 detectives just randomly started throwing names,  
3 Deangelo into the computer and came up with Deangelo  
4 Carroll. And that's how we came up with his name.

5 Q. Okay. Now, eventually, did you meet  
6 Anabel Espindola?

7 A. Yes.

8 Q. Have you had contact with her?

9 A. Briefly, yes.

10 Q. Okay. Do you recognize Miss Espindola  
11 here in court today?

12 A. Yes.

13 Q. Will you point her out and describe  
14 something she's wearing?

15 A. She's sitting in the front row here  
16 furthest, fourth seat from me. She has the dark hair,  
17 and she has on blue with a blue top on.

18 MR. DIGIACOMO: May the record reflect the  
19 identification of the defendant, Anabel Espindola,  
20 Judge?

21 THE COURT: The record will so reflect.

22 MR. DIGIACOMO: Thank you, Judge.

23 BY MR. DIGIACOMO:

24 Q. So now that you have this information and  
25 you have plugged it all into the computers and you have

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1 learned that she's related to the Palomino Club, what  
2 did you guys decide to do?

3 A. Detective Wildemann and Detective Kyger  
4 contacted Mr. Hidalgo, Jr.

5 Q. What relationship does Mr. Hidalgo have to  
6 the Palomino Club, if any, if you're aware?

7 A. He's the owner.

8 Q. Now, let me jump ahead a little bit. Had  
9 you ever had an opportunity to come into contact with a  
10 Luis Hidalgo, III?

11 A. Yes.

12 Q. What is Luis Hidalgo, III, relationship to  
13 Mr. Hidalgo, Jr.?

14 A. He's his son.

15 Q. Do you see Mr. Hidalgo, III, here in court  
16 today?

17 A. Yes.

18 Q. Will you point him out and describe  
19 something he's wearing.

20 A. He's sitting in the second seat here. He  
21 also has on the blue top. He's has dark hair and a  
22 slight beard.

23 MR. DIGIACOMO: May the record reflect the  
24 identification of Defendant Luis Hidalgo, III, Judge?

25 THE COURT: The record will so reflect.

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1 MR. DIGIACOMO: Thank you.  
 2 BY MR. DIGIACOMO:  
 3 Q. Let me back up. So now Detective  
 4 Wildemann and Detective Kyger went down and had contact  
 5 with Mr. H or Mr. Hidalgo. Did you eventually learn  
 6 another name for him?  
 7 A. Luis --  
 8 Q. Luis Hidalgo?  
 9 A. -- Hidalgo, Jr., or they called him Mr. H.  
 10 Q. That's my question. So people referred to  
 11 him as Mr. H?  
 12 A. Yes.  
 13 Q. Did you learn a name that was used for  
 14 Luis Hidalgo, III, that people used?  
 15 A. Yes.  
 16 Q. What was that?  
 17 A. Little Lu.  
 18 Q. Little Lu?  
 19 A. Yes.  
 20 Q. So we're not confused during the course of  
 21 our testimony, if we can talk about Mr. H versus Little  
 22 Lu so that we can keep ourselves straight, okay?  
 23 A. That sounds great.  
 24 Q. So after detectives spoke to Mr. H, what  
 25 further in the investigation occurred?

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1 A. The detectives were told to come back  
 2 after 7:00 p.m. that evening and speak with a woman  
 3 known to us as Arial (phonetic) at the time.  
 4 Q. Did you eventually go and have an  
 5 interview with Arial?  
 6 A. Yes, I spoke with her and Detective  
 7 Wildemann spoke to her and we actually interviewed her.  
 8 Q. Where did this interview take place?  
 9 A. At the Palomino Club.  
 10 Q. And this interview took place at the  
 11 Palomino Club. And did you ask her certain questions  
 12 concerning the individuals that you had questions  
 13 about?  
 14 A. Yes.  
 15 Q. After the interview with -- well, did you  
 16 learn Arial's real name?  
 17 A. Yes.  
 18 Q. Do you know it off the top of your head?  
 19 A. Michelle -- I don't recall her last name.  
 20 She has a lengthy last name.  
 21 MR. DIGIACOMO: Court's indulgence, Judge.  
 22 BY MR. DIGIACOMO:  
 23 Q. Did you eventually have a transcription  
 24 made of the taped statement she provided you?  
 25 A. Yes.

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1 Q. Would that taped statement refresh your  
 2 recollection as to her last name?  
 3 MR. ORAM: Your Honor, we have no  
 4 objection to leading for purposes of the last name.  
 5 BY MR. DIGIACOMO:  
 6 Q. Was it Michelle Schwanderlik,  
 7 S-C-H-W-A-N-D-E-R-L-I-K.  
 8 A. Yes, it was.  
 9 Q. What was her position at the Palomino  
 10 Club?  
 11 A. She was a floor manager.  
 12 Q. Did you interview her concerning the  
 13 information concerning Deangelo and/or Anabel or  
 14 anything else?  
 15 A. Yes, I interviewed her. She provided  
 16 employee records of Mr. Carroll and some of the other  
 17 people.  
 18 Q. Okay. Did she also provide you  
 19 information as it relates to Timothy Hadland?  
 20 A. Yes.  
 21 Q. Did she provide you employment records  
 22 related to Mr. Hadland also?  
 23 A. Yes.  
 24 Q. Thereafter how did your investigation  
 25 progress?

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1 A. During the interview with her, Mr. Carroll  
 2 showed up at the club, so Detective Wildemann broke off  
 3 from the interview that I was conducting with Michelle  
 4 and he went with Mr. Carroll. So we split up at that  
 5 time because Mr. Carroll had just, you know, walked up  
 6 on us inside the club.  
 7 Q. Eventually, was Mr. Carroll asked to come  
 8 down to the homicide section?  
 9 A. Yes.  
 10 Q. Did he voluntarily do so?  
 11 A. Yes, he did.  
 12 Q. Did you eventually take a tape recorded  
 13 statement from him?  
 14 A. Yes.  
 15 Q. Approximately how long was that statement?  
 16 A. Four hours maybe.  
 17 Q. Okay. At the conclusion of the statement,  
 18 without telling us what Mr. Carroll said to you, what  
 19 did you decide to do in the course of your  
 20 investigation?  
 21 A. We decided to follow up on some of the  
 22 information that he provided us in his statement.  
 23 Q. How did you do that?  
 24 A. We got together as a group and formulated  
 25 a plan as to how we were going to continue our

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1 investigation into other suspects.  
 2 Q. What was the eventual decision as to how  
 3 the plan was going to work?  
 4 A. We were interested in first getting a  
 5 person identified who was only known to us as KC  
 6 identified at the time, and then executing a search  
 7 warrant at his residence. That was our first course  
 8 that we wanted to do.  
 9 Q. Prior to executing that search warrant,  
 10 did you have an opportunity to come into contact with  
 11 either a Ronta Zone or a Jayson Taoipu?  
 12 A. Yes.  
 13 Q. How did that occur?  
 14 A. During the conversation with Mr. Carroll,  
 15 Mr. Zone was mentioned, as well as this Jayson Taoipu.  
 16 When we went to Mr. Carroll's residence, Mr. Zone was  
 17 there at the time. So he came back to the office with  
 18 us and was interviewed also on the 20th.  
 19 Q. Were you present when Deangelo went back  
 20 to his house that night and when you found Mr. Zone at  
 21 his house?  
 22 A. Yes, I drove him.  
 23 Q. Okay. And did you go to the door at  
 24 Deangelo's, or did you allow him to go up to the door  
 25 by himself?

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1 knew where the address was though. It was 1676 E  
 2 Street, and that was provided by Mr. Carroll.  
 3 So the next Saturday I started drafting  
 4 the search warrant for the residence, and during the  
 5 day, as I was preparing the search warrant, Mr. Taoipu  
 6 came into our office to be interviewed.  
 7 Q. Are you aware of how Mr. Taoipu wound up  
 8 coming down to the office?  
 9 A. Mr. Carroll drove him down to our office.  
 10 Q. Now, you said the next Saturday, so we  
 11 have Thursday is the 19th, you don't get to the  
 12 homicide scene until May 20th, right, Friday?  
 13 A. Yes.  
 14 Q. So this would be the next Saturday you're  
 15 talking about, Saturday, May 21st?  
 16 A. Yes.  
 17 Q. So you're drafting a search warrant for  
 18 the 1676 E Street?  
 19 A. Yes.  
 20 Q. Okay. Now, you identified -- how was it  
 21 that you were able to identify 1676 E Street as the  
 22 residence of KC?  
 23 A. Mr. Carroll, as well as Mr. Zone,  
 24 described the residence where they picked up KC at  
 25 prior to driving out to the lake. It was also

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1 A. He walked up with Detective Long and  
 2 Wildermann, and I stayed in the vehicle.  
 3 Q. Eventually, does Ronta then come out?  
 4 A. Yes.  
 5 Q. With who?  
 6 A. With Mr. Carroll.  
 7 Q. Okay. Where were Detectives Long and  
 8 Wildermann at that point?  
 9 A. We came in two separate vehicles, so  
 10 Mr. Carroll was with me and Mr. Zone went with  
 11 Detective Long.  
 12 Q. Okay. Eventually, did you come back and  
 13 have an interview with Mr. Zone?  
 14 A. Yes.  
 15 Q. And based upon that interview, did you  
 16 decide that you needed to speak to a Jayson Taoipu?  
 17 A. Yes.  
 18 Q. Did that interview occur before you  
 19 decided to identify -- well, not decided to identify,  
 20 is it before you ever had contact with an individual  
 21 that was identified to you as KC?  
 22 A. Yes, that happened before.  
 23 Q. Okay. How did that come about?  
 24 A. We had, we had identified the residence  
 25 of -- who we only knew at that time of as KC. We had

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1 kitty-corner to Mr. Carroll's mother's house.  
 2 Q. Okay. Eventually, a search warrant was  
 3 drafted for an execution at 1676 E Street?  
 4 A. Yes.  
 5 Q. And how was that search warrant served?  
 6 A. By utilizing the SWAT team.  
 7 Q. I want to back up a little bit because I  
 8 forgot a question or I forgot --  
 9 Did there come a point in time prior to  
 10 the execution of the search warrant where you had an  
 11 opportunity to go find and recover some tires?  
 12 A. Yes.  
 13 Q. Okay. When in this whole series of events  
 14 did that occur?  
 15 A. During our interview with Mr. Carroll  
 16 prior to us picking up Mr. Zone, Mr. Carroll told us  
 17 about --  
 18 MR. ORAM: Objection, your Honor, hearsay.  
 19 MR. DIGIACOMO: Judge, it's not offered  
 20 for the truth of the matter asserted. It's only  
 21 offered to explain why this detective went to where he  
 22 went to and did what he did.  
 23 MR. DRASKOVICH: Obviously, it's not  
 24 offered for the truth, unless perhaps it's offered for  
 25 the falsehood of what was stated. That doesn't make a

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1 lot of sense, Judge. We would object it's hearsay.  
 2 THE COURT: There is an exception when  
 3 it's for the state of mind or why somebody did  
 4 something, so I'll allow it.  
 5 MR. DIGIACOMO: Thank you.  
 6 THE COURT: But not for the truth of the  
 7 matter asserted.  
 8 MR. DIGIACOMO: Thank you.  
 9 BY MR. DIGIACOMO:  
 10 Q. Why is it that you responded to these  
 11 particular two locations to recover tires?  
 12 A. Mr. Carroll, in his interview, told me  
 13 where that the tires were changed on the van that they  
 14 drove out to the lake.  
 15 Q. And based upon the information he provided  
 16 you, did you, in fact, go out to those locations and  
 17 recover tires?  
 18 A. Yes. Mr. Carroll was with me at the time.  
 19 Q. When you recovered those tires?  
 20 A. Yes.  
 21 Q. So he directed you into these tires?  
 22 A. Yes.  
 23 Q. Did you, in fact, recover -- how many  
 24 tires did you recover?  
 25 A. Four tires.

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1 behind them, Judge. He's not saying anything anyone  
 2 told him. He's saying what he's observed.  
 3 THE COURT: It's only observations.  
 4 BY MR. DIGIACOMO:  
 5 Q. Right? You were actually able to observe  
 6 the SWAT team approach, and then you approached the  
 7 residence; is that correct?  
 8 A. Yes, I was on the street behind the SWAT  
 9 team.  
 10 Q. Okay. During the execution of the search  
 11 warrant, was KC found at 1676 E Street?  
 12 A. No.  
 13 Q. Based upon -- during the course of the  
 14 searching or the execution of the search warrant, did  
 15 you receive additional information on the location of  
 16 KC?  
 17 A. Yes.  
 18 Q. Who actually from your unit received that  
 19 information?  
 20 A. Detective Wildemann.  
 21 Q. And how was it that he returned to see  
 22 that? Were you present when he received the  
 23 information?  
 24 A. Yes.  
 25 Q. Okay. And where was he located when he

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1 Q. What kind of tires were they?  
 2 A. They were whitewall tires. Detective  
 3 Vaccaro is more of a tire person than me.  
 4 Q. Were they straight black tires or were  
 5 they whitewall tires?  
 6 A. They're whitewalls on the tires.  
 7 Q. Okay. After collecting those, and I'm  
 8 going to direct you back forward now, we're in the  
 9 nighttime of May 21st and you have drafted the search  
 10 warrant, and there is going to be an execution of the  
 11 search warrant at 1676 E Street, how was that search  
 12 warrant executed? Who initially executes the warrant  
 13 for you?  
 14 A. The SWAT team.  
 15 Q. Okay. SWAT team is called, and then how  
 16 far behind the SWAT team are you in execution of the  
 17 search warrant?  
 18 A. The SWAT team meets and briefs, and we're  
 19 there during the briefing. They roll up to the  
 20 residence and start executing the search warrant.  
 21 We're waiting on the street for them to call us in.  
 22 MS. WILDEVELD: Objection, your Honor,  
 23 this is hearsay. It's all -- he didn't do any of these  
 24 things. It's the SWAT team who did these things.  
 25 MR. DIGIACOMO: He's following right

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1 received it, if you recall?  
 2 A. Detective Wildemann and myself were in  
 3 Detective Wildemann's vehicle.  
 4 Q. Okay. And how did he receive information  
 5 as to the location of KC?  
 6 A. He received a telephone call from  
 7 Mr. Carroll.  
 8 Q. Based upon the conversations he had with  
 9 Mr. Carroll, an additional search warrant was created?  
 10 A. Yes.  
 11 Q. Where was that search warrant for?  
 12 A. 1677 E Street.  
 13 Q. Where in relationship to 1676 E Street is  
 14 1677 E Street?  
 15 A. Across the street.  
 16 Q. Now, prior to the execution of the search  
 17 warrant, was efforts made to contact KC inside 1677  
 18 prior to having to actually execute the search warrant?  
 19 A. Yes.  
 20 Q. Were those efforts successful?  
 21 A. No.  
 22 Q. Eventually, a duly authorized search  
 23 warrant was issued, and then who actually entered the  
 24 house to search for KC?  
 25 A. SWAT team.

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1 Q. Where were you positioned in relationship  
2 to the house while the SWAT team was inside?  
3 A. Across the street.  
4 Q. And do you have some sort of communication  
5 ability to listen to the information being provided by  
6 SWAT during the execution of the warrant?  
7 A. Yes.  
8 Q. How is it that you are listening in on the  
9 SWAT team's activities?  
10 A. We have radios with their channel on them.  
11 Also, during particular times, they would come across  
12 the street and ask us any further updates or, so there  
13 was communication verbally, as well as over the radio.  
14 Q. Did there come a point in -- well, let me  
15 ask you this. How long did the search by SWAT take  
16 place inside 1677 E Street, approximately?  
17 A. From the time that they were there calling  
18 people out of the residence until the time that they  
19 actually went in was several hours.  
20 Q. Okay. And then once they went in, how  
21 long were they actually in the house trying to get KC  
22 out of the house?  
23 A. It seemed like a long time. I mean --  
24 Q. During the course --  
25 MS. WILDEVELD: Your Honor, I'm going to

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1 object. We have no foundation as to who KC is or  
2 what -- where they are.  
3 MR. DIGIACOMO: All right. Let me get a  
4 little further. I'll jump forward and back up, Judge,  
5 to clarify.  
6 BY MR. DIGIACOMO:  
7 Q. Eventually, was somebody pulled out of  
8 that house?  
9 A. Yes.  
10 Q. And this person, what was his name?  
11 A. Kenneth Counts.  
12 Q. And do you see Mr. Counts here in court  
13 today?  
14 A. Yes, Mr. Counts is seated right here.  
15 Q. Describe something he's wearing.  
16 A. He's wearing the blue top and bottom.  
17 Also, he's the first person in the first row here.  
18 MR. DIGIACOMO: May the record reflect the  
19 identification of the Defendant Counts?  
20 THE COURT: The record will so reflect.  
21 MS. WILDEVELD: Your Honor, I would also  
22 like to make a record that he has identified Mr. Counts  
23 as being someone that Deangelo Carroll called him while  
24 he was executing a search warrant and told him where he  
25 was, so we have a Bruton issue, as well.

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1 MR. DIGIACOMO: Bruton issue?  
2 THE COURT: Say that again.  
3 MS. WILDEVELD: Deangelo Carroll notified  
4 the detective when they were executing the search  
5 warrant and told this detective where Kenneth Counts  
6 was. Deangelo Carroll is a co-defendant in this.  
7 MR. DIGIACOMO: I'm not offering anything  
8 Deangelo Carroll said for the truth of the matter  
9 asserted. I'm offering to explain why it is he got a  
10 search warrant for 1677 E Street.  
11 MS. WILDEVELD: Based on what Deangelo  
12 Carroll said, he got a search warrant for another  
13 residence.  
14 MR. DIGIACOMO: Okay. But it's not  
15 offered for the truth of the matter asserted, so it  
16 can't obviously be a Bruton problem.  
17 THE COURT: It's just why they were over  
18 at that house. Whether it was true, whether he was  
19 there or not, it just explains why they were over  
20 there.  
21 BY MR. DIGIACOMO:  
22 Q. Can you describe for the Court the types  
23 of sound that you were hearing, as well as the radio  
24 traffic that you're listening to during the time that  
25 they are, SWAT is actually inside 1677 E Street?

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1 A. Numerous loud bangs. Lots of yelling.  
2 Q. What kind of yelling?  
3 A. "Police, come out."  
4 Q. Eventually, over the radio, did you hear  
5 that there was an individual somewhere in that house  
6 that SWAT had contained?  
7 A. Yes.  
8 Q. Where was he contained?  
9 A. He was in the attic.  
10 Q. Okay. And were you able to hear both on  
11 the radio, as well as orally while outside that house,  
12 the type of efforts it took to get Mr. Counts out of  
13 that house?  
14 A. I didn't hear those efforts at that time.  
15 Q. Okay. What about the explosions you were  
16 hearing?  
17 A. I mean, there was a loud, a lot of  
18 explosions.  
19 Q. Okay. Eventually, are you aware how  
20 Mr. Counts was extracted from the attic at 1677 E  
21 Street?  
22 A. I know he was removed from the attic. I  
23 didn't get into the actual how he was removed.  
24 Q. Did you eventually go inside 1677 E Street  
25 to execute the rest of the search warrant that was

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1 issued?

2 A. Yes. I was involved in the search phase

3 of the residence.

4 Q. Showing you what's been marked as State's

5 Proposed Exhibit Number 18, do you recognize what's

6 depicted in that photograph?

7 A. Yes.

8 Q. What is that?

9 A. That's the attic area, which is in the

10 hallway, and there is also a ladder here in the

11 hallway.

12 Q. Okay. And there is an attic entrance, and

13 next to the attic entrance, what appears to be right

14 here in this photograph?

15 A. There is a, it looks like there's another

16 hole in the attic.

17 Q. And that hole, did it appear to be fresh

18 to you?

19 A. Right. There was a hole in this portion

20 of the attic, the hallway, which was, which is recently

21 made, and there was another one in another room in the

22 ceiling also.

23 Q. And based upon the information that you

24 are hearing on the radio, as well as the sounds you're

25 hearing from outside, are you aware how eventually

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1 those holes got put in the ceiling?

2 A. Yes, the SWAT officers put the holes in

3 the ceiling.

4 Q. Eventually, did you come into contact with

5 Mr. Counts?

6 A. I didn't speak with Mr. Counts.

7 Q. Did you --

8 A. I saw him.

9 Q. You saw him being brought out of the

10 house?

11 A. Yes. I saw him at the homicide office.

12 Q. Did you actually see him physically still

13 at the residence at 1677 E Street?

14 A. Yes, I saw him placed into Detective

15 Vaccaro's vehicle.

16 Q. Did he have anything on him other than

17 just clothing? I mean any debris or anything else that

18 you recall?

19 A. I didn't really look at him that good. I

20 just saw that he got, they put him in the car.

21 Q. Eventually, Mr. -- what is your

22 responsibility once Mr. Counts is taken from the scene

23 at 1677 E Street?

24 A. 1677.

25 Q. E Street?

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1 A. Basically, I was going to, I was in charge

2 with the search of the residence, controlling the other

3 detectives that were there to assist us with the search

4 of the residence.

5 Once the detectives found an item of

6 evidence or something that was located, photographs

7 were taken of it in place, and then they were

8 impounded.

9 MR. DIGIACOMO: May I approach, Judge?

10 THE COURT: Yes.

11 BY MR. DIGIACOMO:

12 Q. Showing you State's Proposed Exhibits 19

13 through 28, do you recognize what's depicted in those

14 photographs?

15 A. Yes.

16 Q. Do they all fairly and accurately depict

17 what's being depicted in the photographs?

18 A. Yes.

19 MR. DIGIACOMO: Move to admit 19 through

20 28.

21 MR. ORAM: No objection.

22 MR. DRASKOVICH: For the purpose of

23 prelim, no objection.

24 MS. WILDEVELD: No objection.

25 MR. DRASKOVICH: We have no objection for

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1 the purpose of the prelim.

2 THE COURT: Admitted.

3 (Thereupon, State's Exhibits 19 through

4 28 were admitted into evidence.)

5 BY MR. DIGIACOMO:

6 Q. Showing you State's Exhibit Number 19, can

7 you describe where in 1677 this particular picture was

8 taken?

9 A. This is the back of the residence, which

10 is basically a TV room, and you can't really see it,

11 but there is a big screen TV, which is in this room.

12 And this is a couch where you would watch television,

13 and there is a sliding glass door in the back of the

14 residence, which opens up to the backyard.

15 Q. Now, this couch, was it in this position?

16 Is that a non seating position I guess I should ask?

17 A. Yes, the couch is tipped over.

18 Q. Okay. Based upon your understanding of

19 what SWAT did -- strike that.

20 Did you eventually have that item of

21 evidence collected?

22 A. Yes. These items were collected.

23 Q. And showing you what's been admitted as

24 State's Exhibit Number 27, do you recognize what's

25 depicted in that photograph?

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1 A. Yes. This is a photograph which was taken  
2 back at the lab of -- I called it a leather, a black  
3 satchel, which you can see is on the little footstool  
4 here in this room.

5 Q. And is there an identification in State's  
6 Exhibit Number 27?

7 A. Yes. What we have here is -- I'm in this  
8 picture a holding open the satchel, and you can see  
9 Mr. Counts' Nevada identification, which was inside  
10 this black satchel.

11 Q. Right on top of Mr. Counts' Nevada ID, was  
12 there any currency?

13 A. Yes. There was several hundred dollar  
14 bills and some other money there.

15 Q. Okay. Now, behind this couch, State's  
16 Exhibit Number 22, behind this couch, was there items  
17 of evidence that were located?

18 A. Yes.

19 Q. What was that?

20 A. Behind the couch, on the floor, was some  
21 VIP cards to the Palomino Club. There was also some  
22 U.S. currency also on the floor there behind the couch.

23 Q. Was there also a cigarette pack or  
24 cigarillo pack?

25 A. Yes, there were peach cigars also on the

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1 floor.

2 Q. Showing you -- can you tell me between  
3 State's Exhibit Number 19 and State's Exhibit Number  
4 22, the approximate relationship between where that  
5 satchel is and where those items of evidence are, the  
6 VIP cards to the Palomino, as well as the money and the  
7 cigarillos?

8 A. Basically, what we have here is the couch  
9 is turned up on the side, and you have -- the dark  
10 portion here is the bottom of the couch. The couch  
11 would have been resting against the wall, the back of  
12 the room, and those items would have been underneath  
13 the couch.

14 Q. Now, showing you State's Exhibit 26, are  
15 those close-ups of those items?

16 A. Yes. Those are the VIP cards for the  
17 Palomino.

18 Q. And there are approximately six of them?

19 A. There's two, four, six, six of them, yes.

20 Q. After the search of 1677 E Street,  
21 describe to the Court the course of the investigation.

22 A. After executing the search warrants, our  
23 next course was to meet with Mr. Carroll and to take  
24 some of the other information that he provided to us  
25 and try to work that towards other possible suspects in

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1 the case.

2 Q. Eventually, what did you decide as a  
3 group, as a squad to do with Mr. Carroll, or what did  
4 he agree to do?

5 MR. ORAM: Objection as to what he agreed  
6 to do, your Honor. That's not in furtherance of a  
7 conspiracy. It's not a furtherance of anything. Under  
8 their own exception, that doesn't come in.

9 If they are trying to bring out that he  
10 was wired, then I think they could say that they put a  
11 wire on him, but not what he agreed to do.

12 MR. DRASKOVICH: Second that objection.

13 MS. WILDEVELD: Again, your Honor, I  
14 object to it as well along with the other Bruton  
15 issues.

16 MR. DIGIACOMO: I'm going to ask him if he  
17 agreed to wear a wire. It's essential that it was not  
18 a hearsay issue. Did he consent to wear the wire and,  
19 as such, was there any violation of anybody's rights.  
20 It's a one-party consent. If he consents, hence I have  
21 got my foundation.

22 THE COURT: That's the foundation.

23 MR. DIGIACOMO: Correct.

24 THE COURT: You can ask that question.  
25

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1 BY MR. DIGIACOMO:

2 Q. Did Mr. Carroll agree to do anything?

3 A. Yes, he agreed to wear a body recorder.

4 Q. This is a surreptitious recording, so that  
5 the other individuals in the course of the conversation  
6 don't know that it's being recorded?

7 A. Yes, it's a body recorder, not a  
8 transmitter.

9 Q. So the information is actually recorded  
10 directly on the body?

11 A. Yes.

12 Q. Approximately, or what day was it that you  
13 first used the body recorder with Mr. Carroll?

14 A. That would have been Monday, the 23rd.

15 Q. Okay. And what is it that you decided as  
16 the homicide squad to do with Mr. Carroll?

17 A. Well, I mean, the body recorder was from  
18 the FBI, so we met with Special Agent Shields, who  
19 provided us with the body recorder. Then we put the  
20 body recorder on Mr. Carroll, and we surveilled him to  
21 Simone's Auto Plaza.

22 MR. DRASKOVICH: Object here as to  
23 foundation too. We're hearing put the body wire on.  
24 We don't know where, when, how.

25 MR. DIGIACOMO: First of all, that's not

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1 relevant to any particular issue. And I do not believe  
2 that the FBI, certain issues as it relates to do we  
3 want all the criminal defendants in the camera to know  
4 exactly how it is that a body recorder works for  
5 purposes of prelim. The mere fact that it recorded is  
6 all that's relevant.

7 MR. DRASKOVICH: No, it's not. And I  
8 think anytime anyone is subject to any kind of  
9 recording, they should know when, how and why.

10 THE COURT: It's a subject for  
11 cross-examination.

12 MR. DIGIACOMO: Thank you, Judge.

13 BY MR. DIGIACOMO:

14 Q. So your unit surveilled Mr. Carroll down to  
15 Simone's Auto Body?

16 A. Yes.

17 Q. Were there units specifically at Simone's  
18 Auto Body that could watch Mr. Carroll go in and out of  
19 Simone's Auto Body?

20 A. Yes.

21 Q. Did that, in fact, occur on May 23rd of  
22 2005?

23 A. Yes.

24 Q. After he came out of Simone's Auto Body,  
25 where did Mr. Carroll go?

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1 A. He met myself and Special Agent Shields at  
2 a meet location.

3 Q. And did you eventually take -- did you  
4 actually do an interview of Mr. Carroll concerning the  
5 events that occurred inside Simone's Auto Body?

6 A. Yes.

7 Q. After having that interview, or at least  
8 understanding the nature of that interview, did you  
9 check the body recorder to see if there was information  
10 on there which was consistent with what Mr. Carroll --

11 MR. ORAM: Objection.

12 MR. DRASKOVICH: It calls for a  
13 conclusion. It's hearsay. It affirms or denies  
14 hearsay.

15 MR. ORAM: Your Honor, my concern is that  
16 if he wants to say did you talk to Mr. Carroll after he  
17 went in on wire, that's fine. Okay. Did you talk to  
18 him, yes.

19 But if he starts saying yes, he told us  
20 something, and we confirmed it, he can't say that.  
21 That's hearsay. There is no exception for this.  
22 And -- well, I'll get to that when they try to play the  
23 surreptitious tape.

24 MR. DRASKOVICH: Moreover, it goes to his  
25 perception, unless this officer can see through walls.

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1 It also goes to his ability. Obviously, he's a lay  
2 witness. He can only testify to what he has personal  
3 knowledge of.

4 So Mr. DiGiacomo's question requires him  
5 to rely upon what someone else has told him, and it  
6 goes beyond his ability to perceive, testify and  
7 recount to this Court.

8 THE COURT: Well, there was not a request  
9 for any information. It was just whether his opinion  
10 it was consistent. He can give us that.

11 BY MR. DIGIACOMO:

12 Q. Was there information that was consistent  
13 with the information Mr. Carroll provided you about  
14 what happened in Simone's Auto Body?

15 A. Yes.

16 Q. Based upon that, did you decide to  
17 conduct -- well, after that first wire at first, I'm  
18 sorry, body recorder at Simone's Auto Body, what did  
19 you -- did you decide to do another body recording that  
20 day of Mr. Carroll?

21 A. Yes.

22 Q. And where was that for?

23 A. That was at the Palomino Club.

24 Q. And what was the purpose of you sending  
25 Mr. Carroll into the Palomino Club, or did you send

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1 Mr. Carroll into the Palomino Club?

2 A. Mr. Carroll was instructed to go to the  
3 Palomino Club to resign.

4 Q. And did you, in fact, put a body recorder  
5 on him to see if that actually occurred?

6 A. Yes.

7 Q. And did that occur?

8 A. Yes.

9 MR. ORAM: Objection, Judge. Objection as  
10 to what was said on the recorder. He cannot testify to  
11 what was said, and he overheard. He's now telling us  
12 or the prosecutor just elicited did he resign and --

13 MR. DIGIACOMO: If I can stop you for a  
14 second, Judge. I don't need to use the recording in  
15 fact because the recording only has Palomino music on  
16 it. There's other information, which has already been  
17 provided in the discovery, that the detective can  
18 testify to that Deangelo Carroll resigned.

19 MR. ORAM: If he's just saying that  
20 Deangelo Carroll --

21 THE COURT: Do you want different  
22 foundation?

23 MR. ORAM: Yes, I do. I want different  
24 foundation so that this man is not relying upon what he  
25 hears on a wire. If he is just relying on the fact

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1 that the man resigned, that's fine, but not on what he  
 2 heard from the wire.  
 3 MR. DIGIACOMO: For foundational purposes,  
 4 I think I can clear this up.  
 5 THE COURT: Okay.  
 6 BY MR. DIGIACOMO:  
 7 Q. The next day were you involved in the  
 8 execution of a search warrant at the Palomino Club?  
 9 A. Yes.  
 10 Q. And during the course of that search  
 11 warrant, did you personally see the resignation papers  
 12 of Deangelo Carroll be impounded?  
 13 A. Yes.  
 14 Q. Thank you.  
 15 Backing up now. After the 23rd, was  
 16 Mr. Carroll surveilled going into the Palomino Club?  
 17 A. Yes.  
 18 Q. And was he surveilled coming out of the  
 19 Palomino Club?  
 20 A. Yes.  
 21 Q. Was the body recorder recovered at that  
 22 time?  
 23 A. Yes.  
 24 Q. Describe for the Court the course of the  
 25 investigation thereafter?

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1 A. We wanted to send him back in to speak  
 2 with other persons at that time the following day, so  
 3 we met with him again the next day, which would have  
 4 been the 24th.  
 5 Q. Now, when you say you wanted him to speak  
 6 to other persons, did you want him to speak to other  
 7 persons than persons that he allegedly spoke to on the  
 8 23rd or the same people that he spoke to on the 23rd?  
 9 A. The same people and to see if he can get  
 10 any other possible suspects.  
 11 Q. Okay. And so, once again, a body recorder  
 12 was placed upon him?  
 13 A. Yes.  
 14 Q. And was he surveilled going inside the  
 15 Simone's Auto Body?  
 16 A. Yes.  
 17 Q. And was, after he left Simone's Auto Body,  
 18 was the recording taken from him, the body recording  
 19 taken from him and reviewed?  
 20 A. Yes.  
 21 Q. After that, were search warrants drafted  
 22 for both Simone's Auto Body, as well as -- Auto Plaza,  
 23 I'm sorry, and the Palomino Club?  
 24 A. Yes.  
 25 Q. And was there something that the

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1 detectives or your squad waited for before you actually  
 2 executed those search warrants at Simone's Auto Body,  
 3 Auto Plaza, as well as the Palomino Club?  
 4 A. I mean, we were waiting for them, you  
 5 know, to leave.  
 6 Q. Who were you waiting to leave?  
 7 A. Luis, III, and Anabel Espindola to leave  
 8 the plaza so we could talk to them.  
 9 Q. So who left first?  
 10 A. Mr. Luis Hidalgo, III, left first.  
 11 Q. Little Lu?  
 12 A. Little Lu.  
 13 Q. So surveillance was conducted at Simone's  
 14 until Little Lu left Simone's Auto Plaza?  
 15 A. Yes. And this was the entire day. The  
 16 search warrants were prepared and signed, you know,  
 17 everything happened that same day.  
 18 Q. On the 24th?  
 19 A. Yes.  
 20 Q. Okay. So the wire was gotten, the search  
 21 warrants were being drafted, the second wire, or the  
 22 second body recording was collected, and then you  
 23 waited for the suspects or certain individuals to leave  
 24 Simone's Auto Plaza in order to have contact with them  
 25 before the execution of the warrants?

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1 A. Exactly.  
 2 Q. And you said that Little Lu left first?  
 3 A. Yes.  
 4 Q. Were you involved at all in coming into  
 5 contact with Little Lu?  
 6 A. Yes.  
 7 Q. Describe how that occurred.  
 8 A. He left and started -- he headed out  
 9 towards Sunset. And Detective Wildemann contacted a  
 10 patrol unit. Myself and Special Agent Shields were  
 11 tasked with speaking with Little Lu once he was stopped  
 12 by patrol.  
 13 Q. What kind of vehicle was he driving?  
 14 A. He was driving a black Hummer H2.  
 15 Q. Okay. And that black Hummer left from  
 16 Simone's Auto Plaza?  
 17 A. Yes.  
 18 Q. Where was Mr. -- Little Lu stopped?  
 19 A. He was stopped in the area of Patrick and  
 20 Pecos.  
 21 Q. And this was by a patrol officer?  
 22 A. Yes.  
 23 Q. And then after the stop by the patrol  
 24 officer, who approaches him to speak to him?  
 25 A. The patrol officer contacted him at the

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1 door and asked him to step out of the car. Myself and  
 2 Special Agent Shields walked up and spoke with Little  
 3 Lu.  
 4 Q. What did you say to Little Lu?  
 5 A. We told him that we wanted to speak with  
 6 him, and we asked him if he would come voluntarily to  
 7 the homicide office.  
 8 Q. Did he consent to do so?  
 9 A. Yes.  
 10 Q. Did you ask him about his leaving his  
 11 vehicle, or was there some discussion about leaving his  
 12 vehicle there on Patrick?  
 13 A. We discussed with him parking it in the  
 14 parking lot there and just securing it there at the  
 15 scene, and then bringing him back afterwards. He asked  
 16 us if we could drive it to our office so he would have  
 17 it when he was done talking to us.  
 18 Q. Did you, in fact, agree to have somebody  
 19 drive that vehicle up there?  
 20 A. Yes.  
 21 Q. Who did?  
 22 A. One of the FBI agents. I believe his name  
 23 is Mike Brewer.  
 24 Q. Okay.  
 25 A. Drove it to the office.

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1 Q. And then you and Special Agent Brett  
 2 Shields took Mr. -- Little Lu Hidalgo, III, to the  
 3 homicide offices here in, the Las Vegas Metropolitan  
 4 Police Department's homicide office?  
 5 A. Yes.  
 6 Q. When you got there, where did you put  
 7 Mr. -- or where did you ask Mr. Hidalgo to go?  
 8 A. He went into an interview room in our  
 9 office.  
 10 Q. Is this interview room surreptitiously  
 11 recorded?  
 12 A. Yes.  
 13 Q. Did you eventually have a conversation  
 14 with Little Lu?  
 15 A. Yes.  
 16 Q. How much time do you think that you spent  
 17 with Little Lu?  
 18 A. Hours.  
 19 Q. During the course of the time that you  
 20 spent with him, did you notice anything about his  
 21 health?  
 22 A. He had what I described as a chest cough.  
 23 Q. Okay. And how -- because he had a chest  
 24 cough, I mean, was it a constant thing, was it  
 25 periodic, what was going on?

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1 A. It was a constant cough that he had during  
 2 the interview. He was provided and went through an  
 3 entire box of Kleenex during the interview.  
 4 Q. At some point, did Mr. Hidalgo ask you to  
 5 speak to his father?  
 6 A. Yes.  
 7 Q. What specifically did he say?  
 8 MR. DRASKOVICH: I would have to object  
 9 here. We're getting into issues of Miranda and things.  
 10 If the Court would allow me to briefly  
 11 take this detective on voir dire, I do have some --  
 12 MR. DIGIACOMO: I have no objection to  
 13 that, Judge.  
 14 THE COURT: Go ahead.  
 15 MR. DRASKOVICH: Thank you.  
 16  
 17 VOIR DIRE EXAMINATION  
 18 BY MR. DRASKOVICH:  
 19 Q. Detective, you stated that you stopped  
 20 Little Lu while driving his car, correct?  
 21 A. I didn't stop him. He was stopped.  
 22 Q. Thank you. By a patrol car, correct?  
 23 A. Yes.  
 24 Q. And the stop was made by the patrol car  
 25 turning on its sirens, correct?

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1 A. Lights or sirens? Lights and siren.  
 2 Q. So both the lights and the siren were  
 3 blaring, correct?  
 4 A. Yes.  
 5 Q. His vehicle stopped?  
 6 A. Yes.  
 7 Q. If the vehicle had left, you assumed that  
 8 the police car, patrol car would have chased it,  
 9 correct?  
 10 A. Yes.  
 11 Q. So his vehicle, once the lights and siren  
 12 were on, obviously was not free to continue driving,  
 13 correct?  
 14 A. Yes, he was stopped.  
 15 Q. He was stopped.  
 16 A. Yes.  
 17 Q. And that was at your request?  
 18 A. Yes.  
 19 Q. He was then taken out of his vehicle,  
 20 correct?  
 21 A. He exited his vehicle. He was not taken  
 22 out.  
 23 Q. He was asked to leave his vehicle,  
 24 correct?  
 25 A. He was asked to exit his vehicle. Is that

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- 1 what you are asking me?
- 2 Q. Yeah, he was commanded to leave his
- 3 vehicle, correct?
- 4 A. He was asked. There is a difference
- 5 between asked and commanded.
- 6 Q. And had he not, you would have taken him
- 7 out, correct?
- 8 A. I wouldn't have taken him out.
- 9 Q. Patrol officer would have taken him out,
- 10 correct?
- 11 A. They would have spoke with us, and I don't
- 12 believe that he would have been pulled out of the car.
- 13 Q. So he could have just remained in his car
- 14 and there would have been no problem, based upon your
- 15 understanding?
- 16 A. Basically, you're going -- you are
- 17 escalating the situation. If the situation gets
- 18 escalated, you know, further on down the line, then
- 19 maybe I would have walked up and spoke with him and
- 20 asked him to exit the car. Maybe. But it didn't get
- 21 that far.
- 22 Q. Okay. And you were in control of the
- 23 situation, weren't you?
- 24 A. In what regard? I mean, I was in control
- 25 of the patrol officers.

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- 1 Q. You were in control of the stop, correct?
- 2 A. The patrol officer was in control of the
- 3 stop.
- 4 Q. And the patrol officer stopped because you
- 5 requested him to make the stop, correct?
- 6 A. Yes.
- 7 Q. So you were in control of the situation?
- 8 A. Well, if something happened, I wouldn't be
- 9 in control. Is that what you are asking me?
- 10 Q. No, I'm going you if you ordered the stop,
- 11 and the stop occurred because of your order, and it
- 12 did, correct?
- 13 A. Yes. Then you're asking me if I was in
- 14 control of the stop, but I'm obviously not in control
- 15 of the stop.
- 16 Q. Moving on.
- 17 He was requested to get out of his
- 18 vehicle, correct?
- 19 A. He was requested to exit the vehicle.
- 20 Q. Because you wished to take him with you to
- 21 interview him, correct?
- 22 A. Because we wished to speak with him.
- 23 Q. Okay. Now, once he was taken out of the
- 24 black Hummer, he was handcuffed, correct?
- 25 A. He was eventually handcuffed before he was

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- 1 placed in the car, yes.
- 2 Q. So this is out on the street, handcuffs
- 3 were put on him, right?
- 4 A. Out on the street, handcuffs?
- 5 Q. Before he's put in your car, he was
- 6 handcuffed, wasn't he?
- 7 A. He was handcuffed prior to being put in
- 8 the car, yes.
- 9 Q. And this was out on Patrick where the stop
- 10 was made, correct?
- 11 A. Yes.
- 12 Q. His handcuffs were, his hands were cuffed
- 13 behind him, weren't they?
- 14 A. Yes.
- 15 Q. And then he was placed in the patrol car,
- 16 correct?
- 17 A. No.
- 18 Q. He stood outside for sometime then
- 19 handcuffed before being placed in the patrol car?
- 20 A. No.
- 21 Q. I see. But he was handcuffed, correct?
- 22 A. He was handcuffed.
- 23 Q. He was handcuffed on the drive from out on
- 24 the street on Patrick up until the time he was in the
- 25 Metro office, correct?

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- 1 A. The homicide office?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. And those handcuffs remained on him once
- 5 inside the homicide office, correct?
- 6 A. I don't know if they -- I believe they
- 7 were removed in the homicide office.
- 8 Q. I see. He was actually -- you recall
- 9 generally there is a policy in reference to bringing in
- 10 handcuffs into the, bringing in handcuffed individuals
- 11 into the homicide office, correct?
- 12 A. A policy?
- 13 Q. Yes, office policy?
- 14 A. No.
- 15 Q. This isn't the first time that you've
- 16 handcuffed somebody on the street and brought them into
- 17 the homicide office, is it?
- 18 A. Yes.
- 19 Q. Generally, you would agree with me, when a
- 20 person is brought in in handcuffs, they are then cuffed
- 21 to a bar or something inside of an interview room,
- 22 correct?
- 23 A. Sometimes.
- 24 Q. And that's what happened in this case,
- 25 didn't it?

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1 A. I'm not sure if he was, if he was  
 2 unhandcuffed at some time or his one hand was  
 3 handcuffed to the pole and one was on his body.  
 4 Q. It's very possible that one hand was  
 5 handcuffed to the pole, correct?  
 6 A. Maybe. I mean, I'm not positive of that.  
 7 Q. So you can't remember?  
 8 A. Well, let's look at the video.  
 9 Q. So you have a video of this?  
 10 A. I believe there is a video.  
 11 Q. Have you provided this video to the  
 12 District Attorney's office?  
 13 A. Yes.  
 14 MR. DIGIACOMO: Yes, Judge.  
 15 MS. WILDEVELD: Your Honor, we haven't  
 16 seen the video.  
 17 MR. ORAM: Nor have we. I haven't seen  
 18 the video either.  
 19 MR. DIGIACOMO: May we approach for a  
 20 second?  
 21 (Thereupon, a brief discussion was held  
 22 at the bench.)  
 23 BY MR. DRASKOVICH:  
 24 Q. During all this course of time that you  
 25 were in contact with Mr. Hidalgo, Luie, Little Luie,

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1 using your term, he was not free to go, was he?  
 2 A. No, he was not free to go.  
 3 Q. So this was a custodial interrogation,  
 4 correct?  
 5 A. Yes.  
 6 Q. It was a custodial interrogation that  
 7 occurred without Miranda having been read, correct?  
 8 A: Miranda was read. He signed the card.  
 9 Miranda was read.  
 10 Q. And you provided this signed card to the  
 11 District Attorney's office?  
 12 A. The card, we have the card. Would you  
 13 like to see the card?  
 14 Q. Yes, I would.  
 15 A. Okay.  
 16 Q. Can you provide that? If we could see  
 17 that?  
 18 A. Yes, I think that it's important.  
 19 MR. DIGIACOMO: It's in the room back  
 20 there. I have to bring the books out for you.  
 21 THE WITNESS: That's all right.  
 22 MR. DRASKOVICH: And the record should  
 23 reflect we have a black binder that's just been  
 24 provided to the detective that's 4 inches thick.  
 25 THE WITNESS: For the record, I believe

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1 that's about five-inch, 5-inch black binder.  
 2 MR. DRASKOVICH: One of two.  
 3 THE WITNESS: Would you like me to find  
 4 the card?  
 5 MR. DRASKOVICH: Please.  
 6 THE WITNESS: Okay. Flipping through the  
 7 book here.  
 8 MS. WILDEVELD: Your Honor, for the  
 9 record, our discovery is about that thick. And I see  
 10 two notebooks there that are about 5 inches each.  
 11 MR. DIGIACOMO: No way, Judge. I  
 12 personally photocopied, right before taking my wife to  
 13 a hospital, discovery that thick.  
 14 MS. WILDEVELD: I've only got one book.  
 15 MR. DRASKOVICH: On behalf of Mr. Hidalgo,  
 16 I would be happy to stipulate that his folder is bigger  
 17 than mine.  
 18 MR. DIGIACOMO: If you noticed, I don't  
 19 know why hers is smaller, but that one seems a lot  
 20 bigger to me, Judge. I photocopied everything I had in  
 21 my possession. Now, the homicide officers always have  
 22 more than what I have in my possession, but I'm  
 23 required to give them copies of what I have in my  
 24 possession, and I gave it to them.  
 25 MR. DRASKOVICH: It was a Nevada Supreme

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1 Court, Jimenez v. State, 1996, states that obviously  
 2 anything that is in Metro's custody is in constructive  
 3 possession and control of the District Attorney.  
 4 MR. DIGIACOMO: For purposes of discovery  
 5 issues at trial, not preliminary hearing. In fact, the  
 6 statute is specific at preliminary hearing that I have  
 7 to give them photocopies of my documents prior to the  
 8 preliminary hearing and give them access to anything  
 9 else they want to have access to. But I do not have to  
 10 go to the detective and make him photocopy his whole  
 11 book because stuff is coming in at this short period of  
 12 time.  
 13 THE COURT: We have a two-week date to  
 14 have a prelim, and I understand.  
 15 THE WITNESS: Would you like to see the  
 16 card? The card is here.  
 17 MR. DRASKOVICH: Thank you.  
 18 THE WITNESS: You're welcome.  
 19 BY MR. DRASKOVICH:  
 20 Q. Did you read this card to Mr. Hidalgo?  
 21 A. Special Agent Shields read the card while  
 22 I was sitting in the room. It was read to him. He  
 23 signed it. Special Agent Shields put the exact time on  
 24 there and signed it. I signed it as a witness and put  
 25 the corresponding LVMPD event number on that card.

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1 Q. And this is approximately at 4:15 p.m.?  
 2 A. Yes.  
 3 Q. Was he informed that he was allowed to  
 4 have an attorney present at that time?  
 5 A. He was read that card right there.  
 6 Q. Okay. And I'm asking you was he  
 7 specifically asked if he was allowed to have an  
 8 attorney present with him at that time, at 4:15 p.m.?  
 9 A. He was read that card right there. He  
 10 checked it, I understand, and he signed it.  
 11 Q. Okay. And the question I'm asking you,  
 12 Detective, is, was he advised at that time he could  
 13 have an attorney present?  
 14 MR. DIGIACOMO: Asked and answered because  
 15 the card itself tells him he has a right to an attorney  
 16 being present.  
 17 MR. DRASKOVICH: But he's not answering my  
 18 question.  
 19 THE COURT: I don't think I understand  
 20 your question either, then.  
 21 BY MR. DRASKOVICH:  
 22 Q. Was he advised that he could have an  
 23 attorney there at 4:15 in a homicide office present?  
 24 A. He was read that card, said that he could  
 25 have a lawyer present, he signed the card.

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1 than what is on the card?  
 2 MR. DRASKOVICH: That's correct.  
 3 BY MR. DRASKOVICH:  
 4 Q. And your answer is no, correct?  
 5 A. No.  
 6 Q. So he was not told anything other than  
 7 what was on that card, correct?  
 8 A. He was read the card.  
 9 MR. DRASKOVICH: I have no further  
 10 questions. I think that the record is clear.  
 11 MR. DIGIACOMO: Let me go back. I  
 12 apologize. I skipped the Miranda warnings. Everybody  
 13 gets upset.  
 14 THE COURT: That was a 20-minute detour.  
 15 MR. DIGIACOMO: I apologize, Judge.  
 16  
 17 DIRECT EXAMINATION (Resumed)  
 18 BY MR. DIGIACOMO:  
 19 Q. Let me back up a little bit. So he was  
 20 asked if he would accompany you voluntarily down to the  
 21 homicide office?  
 22 A. Yes.  
 23 MR. DRASKOVICH: Voluntarily handcuffed  
 24 just so he --  
 25

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1 Q. So then your answer to my question then is  
 2 no, he was not told at that time, at 4:15 p.m., he  
 3 could have an attorney come and be present then?  
 4 A. That's what he was told right there on  
 5 that card. Right there.  
 6 MR. DIGIACOMO: If I can impose an  
 7 objection because it turns out, it appears to me he's  
 8 badgering the witness. Is there a disagreement as to  
 9 what the card says? Maybe Mr. Draskovich could read  
 10 the card into the record so we can all be clear as to  
 11 exactly what Mr. Hidalgo was or was not told.  
 12 MR. DRASKOVICH: It states that he has the  
 13 right to have an attorney present. And I'm asking if  
 14 he was informed that he was allowed to have an attorney  
 15 present at that time during questioning, during  
 16 interrogation. It's a fair question.  
 17 I keep asking the question. He keeps  
 18 saying read the card. Obviously, I'm not reading the  
 19 card, I'm asking if he was told that he could  
 20 specifically have an attorney present at that time  
 21 during questioning.  
 22 THE COURT: Okay. What does this mean,  
 23 Mr. Draskovich? The card speaks for itself. Let me  
 24 photocopy it. We'll put it into evidence. I guess  
 25 that your question is, did he tell him anything more

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1 BY MR. DIGIACOMO:  
 2 Q. Prior to being handcuffed, was he asked to  
 3 come down to the homicide office?  
 4 A. Yes.  
 5 Q. Prior to being handcuffed, did he agree to  
 6 come down to the homicide office?  
 7 A. Yes.  
 8 Q. Prior to being handcuffed, did he ask for  
 9 someone to drive his truck down to the homicide office?  
 10 MR. DRASKOVICH: Objection, leading.  
 11 THE COURT: Sustained.  
 12 BY MR. DIGIACOMO:  
 13 Q. Was he handcuffed when he was asked, when  
 14 he made the request to have his truck driven down?  
 15 A. No.  
 16 Q. Why is it that you put handcuffs on  
 17 somebody when you're going to put them into a police  
 18 vehicle?  
 19 A. Special Agent Shields policy was that they  
 20 couldn't transport him without being in handcuffs, so  
 21 he was placed in handcuffs.  
 22 Q. And the vehicle that he was transported in  
 23 wasn't a patrol vehicle, it was Special Agent Shields'  
 24 vehicle?  
 25 A. Yes.

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1 Q. And that's an unmarked U.S. government  
2 vehicle?  
3 A. Yes.  
4 Q. And he was driven down to the homicide  
5 office, and when you got to the homicide office, he was  
6 read his Miranda warnings as reflected on the card,  
7 which will be marked the next State's in order?  
8 A. Yes.  
9 Q. And then after being read those rights, he  
10 indicated he understood those rights and agreed to  
11 speak with you?  
12 MR. DRASKOVICH: Objection, leading.  
13 MR. DIGIACOMO: Just foundational, Judge.  
14 THE COURT: Well, ask the question.  
15 BY MR. DIGIACOMO:  
16 Q. After reading him the Miranda warnings,  
17 what did he do on the card?  
18 A. He signed the card, stating that he  
19 understood, and he spoke with us.  
20 Q. Thereafter he spoke with you?  
21 A. Yes.  
22 Q. You spent some time speaking with him?  
23 A. A long time.  
24 Q. Did he mention anything about his father  
25 clarifying the situation, something to that effect?

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1 A. Yes.  
2 Q. What did he say?  
3 A. He said, "Call my father, tell him to come  
4 down here, and he'll clear this whole thing up."  
5 Q. Okay. Did he eventually agree to provide  
6 any sort of statement?  
7 A. Yes.  
8 Q. Was this a written statement, an oral  
9 statement, tape recorded statement, what type of  
10 statement was he willing to provide?  
11 A. He asked if he could write his statement  
12 out on a notepad.  
13 Q. During the time that he's writing out his  
14 statement on the notepad, or maybe shortly before that,  
15 does he inform you about a problem he has with the  
16 Palomino Club and the keys?  
17 A. Yes.  
18 Q. What was that problem?  
19 A. He said that he was scheduled to open the  
20 business and that no one else had a key to open the  
21 business. And that the business couldn't be opened  
22 unless he was there.  
23 Q. Did he eventually provide you the keys?  
24 A. Yes.  
25 Q. And what was done with those keys?

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1 A. Those keys we used to enter the business  
2 prior to executing the search warrant.  
3 Q. At the Palomino Club?  
4 A. At the Palomino Club, yes.  
5 Q. Let me back up. After Little Lu was taken  
6 and put into an interview room, eventually do you ever  
7 come into contact or ever see Anabel Espindola?  
8 A. Yes.  
9 Q. How does that occur?  
10 A. Same scenario as before, however, I am  
11 interviewing Little Lu in the office, when Miss  
12 Espindola and Mr. H leave the business.  
13 Q. Okay. Are you in communication with other  
14 officers at the scene so you're aware of the situation  
15 as it progresses?  
16 A. I'm in the interview room, so when I come  
17 out of the interview room, contact is made with them.  
18 And then Miss Espindola is brought to the office.  
19 Q. When Miss Espindola is brought to the  
20 office, I guess I'll get ahead of myself, was she in  
21 custody? Did a custodial interrogation of Miss  
22 Espindola occur?  
23 A. Yes.  
24 Q. Was it subject to Miranda warnings?  
25 A. Yes.

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1 Q. And were you actually physically in the  
2 interview with Anabel Espindola?  
3 A. No, I was not.  
4 Q. Were you watching it in any manner?  
5 A. Yes, I was monitoring the interview.  
6 Q. How were you doing so?  
7 A. Cameras set up, and it's what do you  
8 call --  
9 Q. A live feed?  
10 A. A live feed on a television.  
11 Q. With sound?  
12 A. Yes, with sound.  
13 Q. Do you recall who read the Miranda  
14 warnings to Miss Espindola?  
15 A. Special Agent Shields.  
16 Q. Is there a card in there, once again, for  
17 Miss Espindola?  
18 A. Yes, there is.  
19 MR. DIGIACOMO: May I approach?  
20 THE COURT: Yes.  
21 MR. DIGIACOMO: Judge, if I could request  
22 to have a photocopy made of this one, too, so I don't  
23 have to put his original into evidence. And,  
24 eventually, we'll have that marked next in order.  
25

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1 BY MR. DIGIACOMO:  
 2 Q. Is this card similar to the card or the  
 3 same card, same type of card that was used with Little  
 4 Lu, Mr. Hidalgo, III?  
 5 A. Yes, the exact same card.  
 6 Q. And after being read the rights that were  
 7 on that card, did Miss Espindola sign the card?  
 8 A. Yes.  
 9 Q. Was it witnessed by an officer or a  
 10 detective?  
 11 A. It's signed by Special Agent Shields.  
 12 Q. And did Miss Espindola check off that she  
 13 understood her rights?  
 14 A. Yes.  
 15 Q. And, thereafter, did she speak to you, or  
 16 did she speak to Special Agent Shields and Detective  
 17 Wildemann?  
 18 A. Yes.  
 19 Q. Was Miss Espindola asked about her or any  
 20 sort of relationship she had with Mr. Carroll, Deangelo  
 21 Carroll?  
 22 A. Yes.  
 23 Q. And what was her response?  
 24 MR. ORAM: Your Honor, could I just  
 25 briefly voir dire this witness, just very briefly as to

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1 Miranda and whether she eventually invoked and was this  
 2 before or after she invoked?  
 3 THE COURT: Okay.  
 4 VOIR DIRE EXAMINATION  
 5 BY MR. ORAM:  
 6 Q. Did you ever hear Miss Espindola invoke  
 7 her right to counsel?  
 8 A. Yes, she did.  
 9 Q. Was the conversation the prosecutor's  
 10 referring to before or after that?  
 11 A. Before.  
 12 Q. It was before that?  
 13 A. Yes.  
 14 MR. ORAM: Nothing further.  
 15  
 16 DIRECT EXAMINATION (Resumed)  
 17 BY MR. DIGIACOMO:  
 18 Q. What did Miss Espindola say prior to  
 19 invoking counsel concerning any relationship that she  
 20 had had or knowledge she has of Mr. Carroll?  
 21 A. She was asked when the last time that she  
 22 saw Mr. Carroll and she told us that.  
 23 Q. Which was?  
 24 A. Which was earlier that day. And then the  
 25 day before.

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1 Q. Did she tell you where that she saw him?  
 2 A. She said at Simone's Auto Plaza.  
 3 Q. And she told you that day, so we're  
 4 talking May 24th?  
 5 A. Yes.  
 6 Q. She also told you that she had spoken to  
 7 him on May 23rd also at Simone's?  
 8 A. Yes.  
 9 Q. Did she -- well, describe the course of  
 10 the interview at that point.  
 11 A. Those questions came out and a brief  
 12 interview up to that point, and then she was provided  
 13 with some of the evidence that, the strong evidence  
 14 that we had.  
 15 MR. ORAM: Judge, I would object as to  
 16 strong evidence.  
 17 THE COURT: Sustained.  
 18 MR. DIGIACOMO: All right. Let me  
 19 rephrase.  
 20 BY MR. DIGIACOMO:  
 21 Q. What did Special Agent Shields do? What  
 22 did he say to her?  
 23 A. He leaned over and whispered to her some  
 24 of the things that were overheard on the body recorder.  
 25 Q. Let me back up. As it relates to her

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1 conversations at Simone's on the 24th and the 23rd, did  
 2 she specifically tell you where in Simone's she had  
 3 these conversations or did she just say Simone's?  
 4 A. I didn't review the statement. Just  
 5 before today, I didn't even read it today.  
 6 Q. Is there a transcribed statement in there  
 7 for Anabel or Little Lu?  
 8 A. I don't know.  
 9 Q. Will you check?  
 10 A. Yes.  
 11 Q. Because they are going to want it if there  
 12 is.  
 13 MS. WILDEVELD: Your Honor, I haven't  
 14 received either of those.  
 15 MR. ORAM: Nor have I.  
 16 MR. DIGIACOMO: Nor have I, Judge, and  
 17 that's the reason I'm asking. I don't believe there's  
 18 been one created, Judge.  
 19 THE WITNESS: There isn't.  
 20 BY MR. DIGIACOMO:  
 21 Q. Eventually, were you involved in the  
 22 search warrant at the Palomino?  
 23 MR. ORAM: Okay. Judge, if their only  
 24 question was whether Special Agent Shields whispered  
 25 into her ear, first of all, it's hearsay.

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1 And second of all, it had nothing to do  
2 with her. He can whisper whatever he wants to. He can  
3 whistle Dixie if he wants to, but it's not relevant in  
4 this courtroom.

5 I don't even know quite why that question  
6 was asked, or what the purpose of it was and what the  
7 relevance of it is. What is the relevance of what  
8 Special Agent Shields, that he whispered something to  
9 her and she doesn't react? I don't understand why they  
10 are bringing that up.

11 MR. DIGIACOMO: She did react, but based  
12 on her reaction, actually he's right. I should  
13 probably have that answer stricken as she invoked her  
14 right to a lawyer; is that correct?

15 THE WITNESS: That's correct.

16 MR. DIGIACOMO: So I don't want to offer  
17 that as evidence of guilt in any way.

18 THE COURT: All right.

19 BY MR. DIGIACOMO:

20 Q. Later were you involved in a search  
21 warrant executed at the Palomino Club?

22 A. Yes.

23 Q. While you were involved in that search  
24 warrant at the Palomino Club, let me grab a few of  
25 these pictures.

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1 Showing you what's been marked as State's  
2 Proposed Exhibit 29 through 38 --

3 MR. DRASKOVICH: If I could approach the  
4 witness as these are gone through?

5 THE COURT: Yes.

6 MR. DRASKOVICH: Thank you.

7 BY MR. DIGIACOMO:

8 Q. If you'd just flip through all those and  
9 tell me if they appear to be the Palomino Club on the  
10 night you did the search?

11 A. Yes. Yes, they're all photos from there.  
12 However, this is a photo I don't --

13 Q. Recognize? State's Exhibit Number 30 you  
14 don't recognize?

15 A. I don't recognize that photo.

16 Q. Okay. So let's do State's Exhibit 29, and  
17 then 31 through 38 I move to admit, Judge.

18 MR. ORAM: No objection.

19 MR. DRASKOVICH: No objection.

20 MS. WILDEVELD: No objection.

21 (Thereupon, State's Exhibits 29, 31, 32,  
22 33, 34, 35, 36, 37 and 38 were admitted  
23 into evidence.)

24 BY MR. DIGIACOMO:

25 Q. As a result of the search warrant at the

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1 Palomino, was there eventually found paperwork that  
2 both showed Mr. Carroll and Mr. Hadland had been  
3 employees at that particular place?

4 A. Yes.

5 Q. I believe you already answered that you  
6 collected paperwork establishing that Deangelo Carroll  
7 did resign on May 23rd, 2005?

8 A. Yes.

9 Q. Did you also go through a couple one of  
10 these other pictures.

11 During the course of your investigation,  
12 did you learn whose office this was in State's Exhibit  
13 Number 31?

14 A. Yes, this was Mr. H's office.

15 Q. How were you able to verify that  
16 information?

17 A. It was paperwork in his name. Also,  
18 photos of him.

19 Q. Inside that particular office?

20 A. Inside that office, yes.

21 Q. Off of Mr. H's office, State's Exhibit  
22 Number 34, what's depicted in there?

23 A. Off the office was a small kitchenette  
24 that went to a back closet.

25 Q. And then when you go through the small

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1 kitchenette and you wind up in the back closet, is  
2 there something in that back -- oh, here we go.  
3 State's Exhibit Number 35. Is that a picture of the  
4 kitchenette?

5 A. Yes.

6 Q. And then behind the kitchenette, when you  
7 say the back closet, did you find something of  
8 evidentiary value?

9 A. There was a large -- I described it as a  
10 large safe in the office.

11 Q. State's Exhibit Number 37, is that a  
12 picture of that safe?

13 A. Yes.

14 Q. And there is money sitting on top of that  
15 safe. Was that money there before?

16 A. Yes, it was.

17 Q. Was the safe locked or unlocked, at least  
18 the outer door, initially?

19 A. The outer door was unlocked. There was an  
20 inner door, which was locked.

21 Q. The outer door, when you opened it, were  
22 you able to find more money, State's Exhibit Number 38?

23 A. Yes.

24 Q. And then you said there was a second door  
25 inside that safe that had a smaller safe that was

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1 locked?  
 2 A. Right. At the bottom of the safe was a  
 3 smaller safe, which was locked, which had to be drilled  
 4 by Liberty Lock and Key.  
 5 Q. Was that eventually opened?  
 6 A. Yes.  
 7 Q. Was there money located in that particular  
 8 location?  
 9 A. Yes, there was.  
 10 Q. Do you know approximately, I'm not asking  
 11 for a specific dollar amount, how much cash was found  
 12 in that room slightly behind Mr. Hidalgo's office?  
 13 A. In the bottom safe, there was \$105,500 in  
 14 the bottom portion of the safe. I believe there was  
 15 more than 50,000 on the shelves, as well as on top.  
 16 Q. Were there other safes located throughout  
 17 the Palomino Club?  
 18 A. Yes, there was.  
 19 Q. And how many other safes, do you recall?  
 20 A. There was two in an office downstairs.  
 21 And two more -- one, two, three, I believe there were  
 22 four safes total, but some of the safes had safes  
 23 located within the safe, so --  
 24 Q. And there was money found throughout in  
 25 those safes?

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1 A. There was money found throughout the  
 2 business and recorded.  
 3 MR. DIGIACOMO: May I approach, Judge?  
 4 THE COURT: Yes.  
 5 BY MR. DIGIACOMO:  
 6 Q. Eventually, you provided copies to the  
 7 District Attorney's office of three body recordings  
 8 that occurred with Deangelo Carroll; is that correct?  
 9 A. Yes.  
 10 Q. Showing you what's been marked as State's  
 11 Proposed Exhibit 69 and 70 and 71, do you recognize  
 12 those?  
 13 A. Yes.  
 14 Q. And do those appear to be the three  
 15 recordings that you provided to my office concerning  
 16 the three surreptitious or, I'm sorry, three body wires  
 17 that were conducted with Deangelo Carroll?  
 18 A. Yes.  
 19 Q. And there is one on the 23rd -- there is  
 20 two on the 23rd and one on the 24th, correct?  
 21 A. That's correct.  
 22 Q. Did you become aware that efforts were  
 23 made to enhance the audio of the relevant portions of  
 24 the two Simone conversations? Were you aware that  
 25 someone tried to enhance them?

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1 A. Yes.  
 2 Q. Did you have an opportunity then to listen  
 3 to the enhanced recordings this morning so to compare  
 4 them to the original recordings to see if they were the  
 5 same ones?  
 6 A. Yes.  
 7 Q. And were they the same? As to the two  
 8 Simone recordings, were track one, the 5/23 Simone  
 9 recording, and track two, the 5/24 Simone recording?  
 10 A. Yes, those are the two tracks that are on  
 11 this enhanced.  
 12 Q. State's Proposed Exhibit 68?  
 13 A. Yes.  
 14 MR. ORAM: Your Honor, could I ask a  
 15 question of the Court, have we been provided the  
 16 enhanced ones because I've been listening for a couple  
 17 weeks now, and it's been very difficult. And I just  
 18 wanted to know is this the enhanced ones that we've  
 19 been provided are or they the originals?  
 20 MR. DIGIACOMO: No, I have the originals  
 21 marked, and I got the enhanced on Friday afternoon. I  
 22 have a copy. I have headphones for all counsel to  
 23 listen to the enhanced ones, but they have both the  
 24 originals, and now I'll get them copies of the  
 25 enhanced, but we didn't have time before Monday's

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1 prelim.  
 2 MS. WILDEVELD: And this will be my first  
 3 time hearing them because the copies that I was  
 4 provided were inaudible.  
 5 MR. DIGIACOMO: Well, you were able to,  
 6 right? And they were all copies of the same thing.  
 7 MR. DRASKOVICH: We received the  
 8 unenhanced versions of these three disks and one could  
 9 hear very little of them.  
 10 THE COURT: There was a transcript made  
 11 though?  
 12 MR. DIGIACOMO: They are in the process of  
 13 attempting to transcribe from the enhanced one the  
 14 conversation now, but that wasn't available for today  
 15 yet.  
 16 THE COURT: Do we have a transcript?  
 17 MR. DIGIACOMO: Those are of jail phone  
 18 calls.  
 19 MS. WILDEVELD: Which I appreciate, but I  
 20 would also like the transcription of these other things  
 21 that we're trying to hear and were unable to hear.  
 22 THE COURT: Often in these cases evidence  
 23 is developing as the case goes on, so I'll provide  
 24 everything as it becomes available to you.  
 25 MS. WILDEVELD: I would ask that they be

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1 transcribed, though.  
 2 MR. DIGIACOMO: I've already asked the  
 3 same company that did the enhancement to do the  
 4 transcript, and when it becomes available, I will  
 5 provide it.  
 6 BY MR. DIGIACOMO:  
 7 Q. Were you able to listen this morning to  
 8 that enhanced recording?  
 9 A. Both recordings, yes.  
 10 Q. Both recordings. It's all on one disk,  
 11 though, State's Proposed --  
 12 A. Yes, one disk, two tracks.  
 13 Q. Let's talk about track one. Did you  
 14 recognize Deangelo Carroll's voice on track one?  
 15 MR. ORAM: Judge, I'm going to object. If  
 16 he's just going to -- this may be the good time to make  
 17 the argument. I believe he's going to start now trying  
 18 to get into these CDs, if I'm not correct.  
 19 MR. DIGIACOMO: Well, until I move to  
 20 admit them, it's not really an issue. I need to lay a  
 21 little bit more foundation as to who is on the CD.  
 22 THE COURT: Wait for the foundation.  
 23 BY MR. DIGIACOMO:  
 24 Q. Were you able to recognize Deangelo  
 25 Carroll's voice on these particular CDs?

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1 A. Yes.  
 2 Q. In listening to both CDs and talking to  
 3 Anabel Espindola or listening in on her interview, were  
 4 you able to recognize Anabel's voice?  
 5 A. Yes.  
 6 Q. And then, finally, in listening to or  
 7 being in the interview with Luis Hidalgo, III, as well  
 8 as the coughing and the other items or other  
 9 indications from that particular, from the two  
 10 recordings, were you able to identify Luis Hidalgo,  
 11 III, voice?  
 12 A. Yes.  
 13 MS. WILDEVELD: Objection. Your Honor,  
 14 this gentleman isn't a voice expert, he's a detective.  
 15 MR. DRASKOVICH: I would join in that  
 16 objection.  
 17 THE COURT: I'm just accepting it as lay  
 18 opinion.  
 19 MR. DIGIACOMO: Which is proper under the  
 20 statute for the foundation.  
 21 Thank you, Judge.  
 22 Well then, Judge, I guess I'm going to  
 23 move to admit all three originals --  
 24 MR. DRASKOVICH: I would object as to lack  
 25 of foundation.

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1 MR. DIGIACOMO: -- as well as the --  
 2 THE COURT: Okay. Now, let's start here  
 3 and come over. We've been anticipating this.  
 4 MR. ORAM: Judge, this is a little bit  
 5 lengthy, and the reason being because this issue has  
 6 been, it's an identical issue that's been before the  
 7 Supreme Court. Mr. Pesci is getting up because he  
 8 knows that he tried the case against me. What took  
 9 place, your Honor, is there was a case --  
 10 THE COURT: It's the Ross case?  
 11 MR. ORAM: Yeah, I had it faxed because I  
 12 didn't realize this was going to be an issue. But the  
 13 Supreme Court decision in front of you really lays out  
 14 this issue. What happened is we were in trial --  
 15 MR. PESCI: Can I interrupt for one  
 16 second? Your Honor, may I inquire, do you have Renee  
 17 Ross' only or do you also have Avery Church's?  
 18 THE COURT: Just Ross.  
 19 MR. PESCI: You didn't send over Church's?  
 20 MR. ORAM: I don't have Church's. That's  
 21 the co-defendant.  
 22 MR. PESCI: Okay. Thank you.  
 23 MR. ORAM: I represented Renee Ross, your  
 24 Honor, and there was a trial with Mr. Pesci and  
 25 Mr. Owens. In the middle of trial, they decided they

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1 wanted to play surreptitious tapes.  
 2 I say they're surreptitious because they  
 3 were jail calls between Mr. Ross on some of the calls,  
 4 the co-defendant Avery Church, and two people the State  
 5 on appeal tried to say were unindicted co-conspirators.  
 6 We've been hearing a lot about unindicted  
 7 co-conspirator exception today. That's exactly what  
 8 the State argued to the Supreme Court. Oh, we get to  
 9 play these CDs because there is all these exceptions  
 10 under the co-conspirator rule, and all these people are  
 11 conspirators, you see, Judge Bonaventure, and so we get  
 12 to play these.  
 13 And I objected and said, Judge, where are  
 14 your witnesses? If you're going to play phone calls, I  
 15 am going to be able to cross-examine someone. And  
 16 Judge Bonaventure said no, I'm afraid we're going to  
 17 play CDs, and you're going to be stuck with it. And it  
 18 was horrendous, Judge.  
 19 Obviously, I had no one to cross-examine.  
 20 I could confront no one, and eventually my client was  
 21 convicted. I took it up on appeal, and it was a very  
 22 lively appeal I would say. Ugly appeal in some of the  
 23 things that were written by both sides.  
 24 Eventually, the Nevada Supreme Court, it  
 25 seems, thought it was pretty obvious, pretty obvious a

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1 violation of numerous rules. The Court, the Court  
2 actually goes through, one, that there should have been  
3 severance if the State wanted to do this.

4 Two, violated Bruton because I could not  
5 call Avery Church, so at the end, I'm going to be  
6 calling that man to the witness stand if they play  
7 these and say, get up on that witness stand and let me  
8 cross-examine you. And that's not going to happen  
9 because his attorney back here are going to invoke his  
10 right to counsel.

11 That's what they said about Avery Church,  
12 so I couldn't do anything with Avery Church. I  
13 couldn't ask Avery Church what were you talking about  
14 when you were referring to Renee Ross? What were these  
15 other unindicted co-conspirators talking about? Who  
16 are these people? What do they mean when they are  
17 having these conversations?

18 The Supreme Court agreed not on one level,  
19 not just on severance, not just on Bruton, but on  
20 confrontation. They said absolutely not, and they  
21 threw this case so far back to the district court,  
22 which is now pending for trial. But the co-defendant  
23 also came back, which I thought was relatively weak  
24 because it really sort of was hitting my client. And  
25 that's exactly what's going on here.

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1 This detective is going to try to tell us  
2 what that man back there, Deangelo Carroll, means, what  
3 he was saying, what they were talking about, and they  
4 are not going to put this guy on the witness stand to  
5 let me confront him, then what exactly, I said it  
6 today, and I don't mean to repeat it, Judge, but what  
7 am I doing here?

8 I don't get to confront the accusers  
9 against my client. The accuser is not that police  
10 officer. That police officer was not in there. He  
11 doesn't know what was being said, what the demeanor of  
12 people, what the motives for Mr. Carroll to lie or make  
13 things up are.

14 This is the whole reason why we have a  
15 confrontation clause, so we don't have a detective who  
16 comes in and says well, I don't know if Mr. Carroll was  
17 telling the truth. He seemed like he was telling the  
18 truth. Put your witness on the witness stand. If you  
19 don't have your witness, then you don't play the CDs.

20 The decision is very clear. Mr. Pesci  
21 knows this, and I think the argument they are going to  
22 make is it's unpublished, like somehow the Supreme  
23 Court, their words don't matter if it's unpublished.  
24 Even though these prosecutors are well aware of that  
25 decision in front of you, it doesn't really matter.

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1 And they are going to go ahead and do this again.

2 Because hey, we'll get the Judge to hear  
3 this, but that's not what the Supreme Court ruled, and  
4 in the end, if it is let in, I get to cross-examine no  
5 one, no one in this case.

6 I don't know what I'm going to say to this  
7 detective. I don't think he's going to say yeah, you  
8 know what, I really think Deangelo was in there lying  
9 about this, lying about that, telling the truth about  
10 this, telling the truth about that. He's not the  
11 witness. It's all hearsay.

12 And based upon the Ross ruling, I don't  
13 see, with a violation of the confrontation clause, with  
14 a violation of Bruton because that man is a  
15 co-defendant, and he's essentially saying that my  
16 client is involved. That's Bruton issues. These are  
17 all problems. And I think that case is right on point,  
18 I think it's clear, and I think these prosecutors  
19 should be held to it.

20 With that, I would ask that these not be  
21 admitted.

22 THE COURT: I guess -- what about the  
23 other people on it? People are here, right?

24 MR. ORAM: Well, the people that are heard  
25 allegedly on it, are briefly, I believe, Little Lu.

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1 MR. DRASKOVICH: We don't know. There is  
2 whispering, and the second part of the objection  
3 concerned that of foundation. They are trying to  
4 authenticate these by saying you spoke with them, you  
5 heard their voices, et cetera, et cetera.

6 I can represent to the Court that the very  
7 little that I could hear on these disks is whispering.  
8 And I don't believe that Detective McGrath whispered  
9 back and forth with Mr. Hidalgo during the course of  
10 his interview.

11 Were you whispering to each other? He's  
12 making a face. So, Judge, I mean, I would like to  
13 dovetail my arguments with Mr. Oram's in that obviously  
14 we have a confrontation clause, we have a right to  
15 cross-examination issue, which applied, because a  
16 preliminary hearing is a very important step in the  
17 criminal process. Defendant has a right to a plenary  
18 hearing during a preliminary hearing.

19 My objections concern issues of  
20 authentication, which go again to foundation in that we  
21 don't know. This detective was not present when these  
22 recordings were made. He was not in the room where  
23 they were allegedly made. We have no video. We don't  
24 know.

25 So in order to allow them to play these

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1 tapes that we can do nothing concerning  
2 cross-examination that he's brought up, or in order to  
3 properly authenticate them, would be inappropriate, and  
4 this should not be allowed to occur.

5 MR. ORAM: Your Honor, one thing I would  
6 also like to say. Did you hear how they said the  
7 relevant portions? To me, that really worries me any  
8 time I hear a prosecutor saying the relevant portions.

9 You know, your Honor, if I said to you,  
10 "You killed the clerk," and you said, "I killed the  
11 clerk?" Oh, well, look at that, the relevant portion,  
12 he admitted he killed the clerk. And if you don't put  
13 it into context, you don't show what was said  
14 beforehand, you only take the little relevant portions  
15 out.

16 You thought that was funny? You only take  
17 the relevant portions out of it as they are saying,  
18 then it really causes me concern, as well as the fact  
19 that they know from the Supreme Court they cannot do  
20 this.

21 MR. DRASKOVICH: Any time that the State  
22 intends to present a document, obviously opposing  
23 counsel has a right to introduce the rest of the  
24 document in order to put it in the appropriate context,  
25 and that's the argument that Mr. Oram is making.

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1 If we only have the quote/unquote,  
2 "relevant portions" of this that have been enhanced,  
3 obviously we cannot introduce the rest of it, so it's  
4 inappropriate, once again.

5 MS. WILDEVELD: Your Honor, I have already  
6 stated that I haven't had the opportunity to listen to  
7 these disks because the disks that I were provided were  
8 inaudible. And I would join in Mr. Oram's and  
9 Mr. Draskovich's arguments.

10 MR. DIGIACOMO: Judge, if I can address  
11 some issues, and I think that Mr. Pesci wants to  
12 address the issue that relates to Ross and Church,  
13 which is totally not relevant to this particular  
14 situation.

15 But if I can start first with Mr. Carroll,  
16 the statements that he makes on these tapes are not  
17 being offered for the truth of the matter asserted,  
18 which is the major distinction from that particular  
19 case.

20 By the time Mr. Carroll gets sent into  
21 that room, he is provided, and the detective will tell  
22 you, certain information to say to get people to start  
23 talking. And he is not, he is not being offered for  
24 anything he said, it is not being offered to say hey,  
25 that actually happened. It's only to give context to

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1 the response of those other people.

2 So to the extent that there is a hearsay  
3 problem, it no longer exists as it relates to  
4 Mr. Carroll.

5 As it relates to Anabel or Little Lu, the  
6 fact of the matter is anything they say during the  
7 course of those particular wires are co-conspirator  
8 statements that are allowed in against both in course  
9 and in furtherance --

10 If you can let me finish. I let you  
11 finish.

12 MR. DRASKOVICH: I'm not interrupting you.  
13 I'm raising my finger. I can raise my finger all I  
14 want.

15 THE COURT: Why don't you sit down and  
16 raise it.

17 MR. DIGIACOMO: Thank you, Judge.

18 Now, as to this context issue, I'm sorry,  
19 I wasn't very clear. I have actually marked and asked  
20 to be admitted the originals, and they are free to  
21 listen to the originals. These recordings are such  
22 that Brett Shields comes on and puts a little lead on  
23 exactly what this is.

24 Then Deangelo gets into a car, drives for  
25 some 20 minutes while he's being surveilled going into

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1 Simone's, and then the moment he gets out of the car,  
2 which he's in by himself, to the moment he gets back in  
3 the car, I had enhanced. And then he drives and the  
4 FBI agent -- I didn't think they wanted the music  
5 tastes of Deangelo Carroll enhanced and transcribed  
6 because they weren't relevant to anything.

7 What I transcribed or what I have enhanced  
8 is the moment he gets out of the car to the moment he  
9 gets back into a car, and the two times he went into  
10 Simone's. So to say that they want to put the whole  
11 thing in, great, go transcribe it. We can sit here and  
12 listen for an hour to rap music. But, otherwise, there  
13 is nothing of substance that is in between there. You  
14 will hear the entire conversation.

15 I know that Mr. Pesci wants to talk about  
16 a Bruton issue, but there is also the foundation issue  
17 too. This detective is, based upon his entire  
18 investigation, being able to tell you that this is  
19 Little Lu's voice, this is Anabel's voice.

20 One, Anabel says I'm in Simone's talking  
21 to the guy. When you listen to the tape, you're going  
22 to hear hey, Miss Anabel this, Miss Anabel that, and  
23 she's responding back to him. The conversation occurs  
24 in Little Lu's room, and you're going to be able to  
25 establish that through a chain of circumstances.

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1 The next detective who hits the stand is  
2 going to testify as an offer of proof, in case you need  
3 more than just this officer's testimony, that they were  
4 surveilling the place, watched to make sure Little Lu  
5 and Anabel were in the place when Deangelo went in, and  
6 then he left.

7 And even on the 24th, when the warrant was  
8 executed, only two people had left or three people had  
9 left prior to the warrant, Mr. H, Sr., Little Lu and  
10 Anabel. And then the only other people that were  
11 inside that place were some workers back in the  
12 workroom, which is like the big garage area.

13 Mr. Hidalgo, Sr., who is present, I  
14 believe, in the courtroom today, was there, as well as  
15 a receptionist at the front, and that the only people  
16 that left were Little Lu, Anabel and Mr. H, Judge, so  
17 based upon the entire investigation, he is able to  
18 formulate an opinion, as well as in speaking to the  
19 people who are on the wire, that they are on there.  
20 There is no foundational problems.

21 Now, as to the Bruton slash Ross issue,  
22 I'm going to let Mr. Pesci respond to that.

23 MR. PESCI: Judge, if I could, could you  
24 tell me what the date is on that report, the decision  
25 that you have in front of you?

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1 THE COURT: December --

2 MR. PESCI: Maybe counsel will stipulate  
3 to the fact that it's post Crawford?

4 THE COURT: They talk about Crawford here

5 MR. PESCI: Right, so Crawford was, in  
6 fact, discussed in this case.

7 THE COURT: Yes. It's December the 23rd.

8 MR. PESCI: Thank you.

9 So it's after the Crawford decision that  
10 the Supreme Court analyzes what occurred in this case  
11 of Renee Ross and Avery Church. And I've got to go  
12 over a little bit of history because I think we have a  
13 little bit of revisionistic history from defense  
14 counsel.

15 What we had in that case, Judge, were two  
16 individuals charged with, among other things, robbery.  
17 The victim's name was Jack Battle. He was beat, he was  
18 punched, he was stabbed. He had a laptop computer and  
19 a gold medallion stolen from him.

20 After that was done, the co-defendants,  
21 specifically Avery Church's girlfriend, Annette Manso,  
22 was caught on phone calls. And for the record, those  
23 are not surreptitious phone calls. Those are phone  
24 calls at the jail where each and every single time a  
25 defendant is told that this is a tape recording, this .

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1 is subject to monitoring, so there is nothing  
2 surreptitious about it.

3 On those phone calls, the girlfriend of  
4 the defendant talks about pawning the very proceeds of  
5 the robbery. That's what we had going on in that case.  
6 Now, at the time we were going to get those in, there  
7 was arguments made by defense counsel.

8 The very witness who could have been  
9 cross-examined, Annette Manso, had been sitting in the  
10 gallery, much as we have witnesses in here today. When  
11 it was known that she was going to be subject to  
12 cross-examination, she got up and she ran out. And we  
13 didn't have her anymore and couldn't find her so that  
14 she would be subject to cross-examination. Much akin  
15 to Mr. Deangelo Carroll, who is sitting over there  
16 right now, who is not subject to cross-examination.

17 So there is this kind of twisting of the  
18 law, making it such that we can't cross-examine him,  
19 but this person was here. The State can't control him  
20 waiving up. But you set that aside, what the Supreme  
21 Court said in that particular case is that Annette  
22 Manso was not a co-conspirator. They said that the  
23 opportunity to go outside the hearsay to the exception  
24 was not available to us because she was not a  
25 co-conspirator.

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1 Now, let's see. She pawned the proceeds  
2 of the robbery. We have Mr. Carroll sitting there --

3 THE COURT: We don't need to reargue the  
4 case because the Court decided she wasn't a  
5 co-conspirator.

6 MR. PESCI: And I'm trying to make the  
7 connection. I'm trying to make the connection to this  
8 case that we have before you, your Honor. Mr. Carroll  
9 sitting there today is a co-conspirator. He sits there  
10 almost a hub within this conspiracy. We have Mr. H and  
11 the people at the Palomino. We have the dead body.

12 Who is in the middle? Who is the person  
13 that's the go-to guy, to get the shooter and to go out  
14 there and get the deed done? He's well beyond somebody  
15 who pawned the proceeds of a robbery. He is a  
16 co-conspirator. Therefore, the exception to the  
17 hearsay rule, even with Crawford out there, applies.

18 Specifically, in McDowell, even though it  
19 predates Crawford, it says, and I quote, "According to  
20 NRS 51.035, subsection 3, an out-of-court statement of  
21 a co-conspirator made during the course and in the  
22 furtherance of the conspiracy is admissible as non  
23 hearsay against another co-conspirator."

24 There sits a co-conspirator, Judge. We're  
25 not offering it for the truth of the matter asserted,

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1 but we have an exception, even in the face of Crawford,  
2 because Crawford is talking about a testimonial  
3 statement. We have an exception. It clearly can come  
4 into this case.

5 And therefore, the unpublished opinion,  
6 which, of course, I wasn't going to cite because it is  
7 unpublished, but since defense counsel brought it up,  
8 we can respond to it, does not apply to preclude us  
9 from getting in this very evidence.

10 As far as Bruton, the same case talks  
11 about how, if it is a statement by a co-conspirator,  
12 Bruton does not apply. It is not a concern. That's  
13 the risk you run as a co-conspirator involved in these  
14 types of activities and, therefore, this is all  
15 admissible.

16 MR. ORAM: Your Honor --

17 THE COURT: Before you -- here is my  
18 concern, so when you respond you'll know. I don't  
19 think Bruton applies because I'm not a jury. I am  
20 capable of sorting out what, who is saying what and  
21 applying it to just that person. So I am not as  
22 concerned as the Supreme Court would be if there is a  
23 jury.

24 But, and we've got the statement -- I'm  
25 not inclined to anything that Mr. Carroll would say on

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1 this to have any bearing on what this proceeding is all  
2 about.

3 The issue is, if I've got statements by a  
4 defendant here, Mr. Hidalgo or Miss Espindola, and they  
5 are on the tape, that's their own statements. I don't  
6 see how that's a concern, other than how they would  
7 interact with each other.

8 In other words, statements made on the  
9 tape by Mr. Hidalgo, you know, there is concern that,  
10 that's where I see -- I'm coming into a Crawford issue.  
11 Would I have, you know, would I need to disregard any  
12 statements that may incriminate Mr. Hidalgo made by  
13 Miss Espindola and vice versa, because they are not  
14 available for cross-examination?

15 MR. ORAM: Your Honor, the thing that  
16 causes me concern is that in order to understand, or  
17 they are going to try to say Miss Espindola is saying  
18 this or that. The only way it could be in context is  
19 based upon what Mr. Deangelo Carroll is saying. And  
20 therein lies the problem.

21 What are his motives to get her to say  
22 things? Has he asked her to say things? Are they  
23 talking in some kind of code beforehand? There may be  
24 other things in the business they are talking about.

25 In other words, a person can get someone

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1 to say something that may sound suspicious when they  
2 are not talking about those type of things at all. If  
3 that makes sense. You know, you can actually have  
4 conversations where, like where did you put that? And  
5 what were they talking about?

6 It almost sounds like that is a very  
7 suspicious thing, and it's only in context by that  
8 gentleman over there. It just causes me so much  
9 concern that Renee Ross is pretty much right on point.

10 If I could also just respond to that  
11 ruling, the State has cleverly gotten around this  
12 twice. I think if they stand up long enough and say  
13 co-conspirator exception, that that kind of works, but  
14 it doesn't work, and the Supreme Court told them it  
15 doesn't work, and they've got to put Deangelo Carroll  
16 on the witness stand to get this information in. They  
17 have to.

18 I don't see how under that ruling they can  
19 not put him on the stand, unless they are going to --  
20 they just want to play the CD of nothing he says, just  
21 my client's words, my client's words and that's all  
22 they want to do. Well then, I think that may be a  
23 different scenario.

24 But they are saying we're not using it for  
25 the truth of the matter asserted. Good. Then don't

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1 play it. Don't play anything to do with him. If the  
2 Court wants to make that ruling that we'll hear from  
3 Anabel, what she says, but in no context to what  
4 Deangelo Carroll is saying, then that's fine too.

5 MR. DRASKOVICH: He made the argument  
6 was going to make.

7 THE COURT: Okay. What I'm saying is, I  
8 can do that filtering so we can get it done today.

9 MR. DIGIACOMO: If I can just respond.  
10 Deangelo Carroll, if they are just for context, they  
11 are not hearsay statements. I'm not asking you to say  
12 hey, Deangelo says, you'll hear on the wire, Deangelo  
13 says something like hey, I'm worried about Ronta and JJ  
14 flipping on us and then telling the story.

15 Well, he knows Ronta and JJ has already  
16 flipped on us. That's not offered for the truth of the  
17 matter asserted. It's only context to say well, when  
18 Anabel and Luis talk about putting strychnine in gin  
19 and asking him to give it to JJ and Ronta, it explains  
20 the situation. It's not offered for the truth of the  
21 matter asserted, so there is not a hearsay problem  
22 here, hence not a confrontation clause problem.

23 Now, the Court was right saying you could  
24 separate what Little Lu says versus what Anabel says  
25 and just use Little Lu against Little Lu and Anabel

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1 against Anabel, but wait, those are statements made by  
2 co-conspirators. Clearly, they have no idea that the  
3 conspiracy is over.

4 In fact, you will hear the formation of a  
5 second conspiracy, which is charged in Count I, which  
6 is the solicitation to commit murder on both JJ and  
7 Ronta. And those statements are made by  
8 co-conspirators in the room together having a  
9 conversation which is surreptitiously recorded, Judge.

10 How are those statements by one not  
11 admissible against another? How could they possibly be  
12 testimonial if they are made trying to kill somebody?  
13 Those people don't ever want anything in a courtroom.  
14 They can't possibly be testimonial.

15 The only issue for the defense here is  
16 Deangelo Carroll's statement, but I'm asking the Court  
17 not to take anything he says for the truth of the  
18 matter asserted. I'm only asking the Court to  
19 understand the context of the conversation based upon  
20 not what he said so much, but the reaction it had on  
21 the hearers. It goes to their state of mind as the two  
22 defendants and explains why it is their next statement  
23 is relevant to this Court's statements.

24 THE COURT: Well, as I see it from  
25 Mr. Carroll and I'll let defense counsel share their

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1 thoughts on this, too, but his statements would be the  
2 same as if I'm listening to an interrogation by a  
3 police officer. They oftentimes will bend the truth or  
4 misrepresent. I don't consider anything that the  
5 officer says as being true, and that would be my  
6 position as to Mr. Carroll.

7 MR. PESCI: Correct.

8 MR. DRASKOVICH: Briefly, just two points.  
9 Mr. DiGiacomo says that these are not testimonial.  
10 Well, if a man wears a wire at police direction, that  
11 person becomes an agent for the State. Therefore,  
12 anything that is said to that person or response to  
13 that person falls under State, therefore, under  
14 Crawford that is testimonial. So in that sense,  
15 Mr. DiGiacomo's argument fails.

16 As to the second argument, what concerns  
17 me is that of authentication. They are attempting to  
18 bring in these CDs through Detective McGrath, who was  
19 not there. He was not listening to these conversations  
20 at the same time. It's my understanding he listened to  
21 recordings afterwards.

22 So, once again, we have a foundation  
23 problem and an authentication problem. Mr. DiGiacomo  
24 can say all he wants that this was Anabel speaking,  
25 this is Luis Hidalgo speaking. They are in there. No

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1 one left, et cetera, et cetera. He wasn't there. He  
2 wasn't inside the building, nor was Detective McGrath.

3 THE COURT: The authentication, I think,  
4 is a question of fact. I think they have met the  
5 preliminary foundation for me to hear it. And then  
6 whether, after I hear it, I determine that it's clearer  
7 or unclear, we'll make a determination.

8 So, you know, I'm inclined to hear them so  
9 that I can determine the authentication and take  
10 statements if they are, if I determine that they are  
11 made by Miss Espindola against Miss Espindola and  
12 statements made by Mr. Hidalgo against Mr. Hidalgo.

13 My concern, I still have this Crawford  
14 concern as it goes to using the statements between the  
15 two of them or one against the other. I have read  
16 this, and even though it's an unpublished opinion, my  
17 reading of Crawford and in reading the numerous  
18 interpretations of Crawford that have come out since  
19 then, I think the Supreme Court has a different  
20 understanding or opinion of what testimonial is from  
21 what I would determine is testimonial.

22 They were saying that these statements  
23 made by Annette, whoever the other lady was in this  
24 case, were testimonial. I wouldn't say they are  
25 testimonial. So, obviously, the Supreme Court has a

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1 different feeling as to what is testimonial, so I'm  
2 going to have to, I'm going to rely on their definition  
3 here as I'm hearing these to determine if this is  
4 testimonial.

5 So we can set up this, but I think it's  
6 time we take our afternoon break.

7 MR. DIGIACOMO: Judge, for whatever  
8 reason, after hearing it, you feel that there should be  
9 more foundation, we have actually two more witnesses  
10 who can lay additional foundation to the speakers.

11 (A brief recess was taken.)

12 THE COURT: Okay. You may proceed.

13 MR. DIGIACOMO: Judge, I have had placed  
14 in the computer here State's Exhibit Number 68. There  
15 is two recordings, two tracks recording. I don't know  
16 that you can clearly identify when it goes to track one  
17 or track two like a normal CD. It just goes from one  
18 to two. I don't know if we're going to need to stop.

19 We'll just stop it after track one, and we  
20 can make a record that now we're starting track two.  
21 Track one is the 5/23 body recording of Deangelo  
22 Carroll at Simone's, and track two is the 5/24 body  
23 recording of Deangelo Carroll at Simone's.

24 I am not going to play the originals for  
25 the Court. If the Court wants to hear the originals at

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1 some later point in time, you're free to listen to  
2 them, but the enhancements are a lot clearer to listen  
3 to.

4 MR. ORAM: I'd also like the record to  
5 reflect what the DA has told me at the break, and that  
6 is, apparently, there is 20 minutes approximately of  
7 conversation where the wire is supposed to be working  
8 but isn't, or is put in another place, and so we don't  
9 hear what is said. And I just want that to be on the  
10 record that we're not going to hear about that.

11 MR. DIGIACOMO: Yes, Judge, and, in fact,  
12 on track two, and, you know, for purposes of, for  
13 evidentiary, foundational and admittance, Judge, you  
14 don't have to, you actually suspend the rules of  
15 evidence, so what I tell you can be taken into account  
16 if you want to.

17 But during an interview subsequent with  
18 Mr. Carroll, he tells us that during that second time  
19 period Mr. Hidalgo, III, took the device that was  
20 actually using it, locked it in a bathroom, later after  
21 the conversation was done, he then collects the device,  
22 which you will hear on the tape, and let him walk out  
23 and get back into the vehicle, so I was going to stop  
24 the recording. Once it starts going blank we don't  
25 have to sit here and listen to 20 minutes of dead air.

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1 But I'm only offering those portions,  
2 which are caught on the body wire. To the extent that  
3 there is no conversation on the body wire, it's not  
4 being offered.

5 MR. DRASKOVICH: And it's obviously during  
6 this time that we don't have when the two people that  
7 are supposedly Anabel and Luis are asking this Deangelo  
8 what the hell are you talking about? So we would just  
9 like to make that part of the record.

10 MR. ORAM: Well, actually, Judge, we'll  
11 actually hear that from Anabel. She actually does say  
12 I told you to talk to the man, not hurt him. You will  
13 hear that portion.

14 MR. PESCI: Is that in context?

15 MR. ORAM: Is that in context? I hope the  
16 State has kept it in context.

17 THE WITNESS: If that's audible.

18 MR. ORAM: It's audible.

19 MALE SPEAKER: Here is how you turn it on  
20 and off.

21 (Exhibit being played.)

22 BY MR. DIGIACOMO:

23 Q. Detective, that was the first phone call  
24 at 5:23 at Simone's Auto Plaza --

25 A. Yes.

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1 Q. -- first body recording?

2 A. Yes.

3 Q. Were you the agent and, you along with  
4 Detective -- along with Agent Brett Shields the  
5 individual who next contacted Deangelo after he leaves  
6 Simone's Auto Plaza?

7 A. Yes.

8 Q. When you did that, did you collect any  
9 items of evidence off of him?

10 A. Yes.

11 Q. What did you collect?

12 A. A Tangueray bottle of, I think it was a  
13 1.5 liter. I'm not positive.

14 Q. Was it a traditional Tangueray or was it a  
15 high line Tangueray, what kind of --

16 A. It was a high line Tangueray.

17 Q. Tangueray, okay.

18 What else did you collect off of him?

19 A. And a quantity of money.

20 Q. Do you know approximately how much money  
21 that was?

22 A. \$1400.

23 Q. Were they in hundred dollars bills, or  
24 were they in 20s, how were they denominated?

25 A. Hundred dollar bills.

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1 Q. Were those items collected and preserved  
2 for later processing?

3 A. Yes, they were.

4 Q. Thereafter, did you do an interview of  
5 Deangelo Carroll to determine what happened, or to  
6 determine what happened during the wire or during the  
7 recording?

8 A. Yes.

9 Q. And then you testified earlier that you  
10 made a determination to send Deangelo back to Simone's  
11 Auto Plaza; is that correct?

12 A. Yes.

13 Q. And that was on May 24th?

14 A. Yes.

15 Q. And, once again, he was surveilled going  
16 in and out of the building?

17 A. Yes.

18 MR. DIGIACOMO: Judge, if we can play  
19 track two.

20 MS. WILDEVELD: Your Honor, before we have  
21 them play that other one, if it's just like this, I  
22 find very little evidentiary value in this. It's so  
23 hard to hear. You can't hear anything. You can only  
24 hear words here and there and bits of pieces. I find  
25 it very useless.

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1 MR. DRASKOVICH: I hear a lot of  
2 scratching too. There is something --  
3 MS. WILDEVELD: I mean, I can't hear a  
4 full conversation. I can't hear a full sentence out of  
5 one person's mouth.  
6 MR. DIGIACOMO: Is the defense actually  
7 stating to the Court that it doesn't appear there is  
8 any relevant information on these particular wires?  
9 MS. WILDEVELD: Yes.  
10 MR. ORAM: Maybe the second one. I think  
11 there may be something that we're about to hear.  
12 MR. DIGIACOMO: That they didn't hear a  
13 female on the wire who repeatedly got called Miss  
14 Anabel say something about killing him, and we can wait  
15 for KC. They didn't hear something on the wire.  
16 MR. ORAM: That somebody being killed, and  
17 that somebody being killed, and apparently that man  
18 back there was responsible.  
19 MR. DIGIACOMO: JJ and Ronta, the female  
20 said that we wanted him beat. Why didn't you turn  
21 around? There was too many witnesses in the car to  
22 kill him.  
23 MS. WILDEVELD: Your Honor, I didn't hear  
24 any of that. I didn't hear any of that. There's very  
25 little evidentiary value in this.

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1 MR. ORAM: Why don't we just hear the next  
2 thing, and then we argue.  
3 THE COURT: How long is this one?  
4 MR. DIGIACOMO: Approximately the same  
5 length. Oh, it's a little bit shorter because we're  
6 going to cut the last 20 minutes off. So it's really  
7 the first 15 minutes or so; is that correct?  
8 THE WITNESS: You enhanced it, so you know  
9 how long it is, correct?  
10 MR. DIGIACOMO: Correct. There is a  
11 20-minute blank, though, and we know the entire length  
12 of the --  
13 MALE SPEAKER: Thirty-four minutes and 36  
14 seconds.  
15 MR. DIGIACOMO: But there's approximately  
16 20 minutes which is blank, and then just him walking to  
17 the car. I was only going to publish up to the time it  
18 goes blank.  
19 (Exhibit being played.)  
20 MR. ORAM: Judge, can we stop this for a  
21 second? Can we stop it? Can you stop that?  
22 MALE SPEAKER: Yes, I can.  
23 MR. ORAM: I find it hard to believe,  
24 Judge, that their original, I could hear my client  
25 saying perfectly on that original, and I think the

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1 police officer said it was audible. Now, it's not  
2 audible what she's saying.  
3 MR. DIGIACOMO: I just heard it. I just  
4 heard her say talk to the guy, not kill him. You  
5 should have gone out. We told you to beat him.  
6 MS. WILDEVELD: I didn't hear that.  
7 MR. ORAM: I didn't hear that either. It  
8 was very clear on the last one.  
9 THE WITNESS: You know, as you move it  
10 closer and further away from microphones, it has some  
11 interruption here. So as I move around here, I can  
12 hear it clearer in spaces and not around here.  
13 MR. ORAM: Did you hear that clearly? Did  
14 you hear her say --  
15 THE WITNESS: I leaned forward and heard  
16 that.  
17 MR. ORAM: Clearly?  
18 THE WITNESS: Yes.  
19 (Overlapping speakers.)  
20 MS. WILDEVELD: I didn't hear any of that,  
21 and I think I'm hearing --  
22 MR. ORAM: Can we just replay that? I  
23 just want to --  
24 MR. DIGIACOMO: Is the Court hearing stuff  
25 being said?

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1 MR. DRASKOVICH: I couldn't hear it.  
2 MR. FIGLER: No, I couldn't say. It was  
3 going in and out.  
4 MR. ORAM: In the original, you can hear  
5 it clearly. And just like when I said it to the Court  
6 before, the detective said yeah, that's right, it's  
7 audible. And he's saying he can hear it now, but I  
8 could barely hear that.  
9 MR. DIGIACOMO: You're free to play during  
10 your cross-examination the originals if you want to,  
11 but --  
12 THE COURT: Let's back up.  
13 THE WITNESS: If you move, like I move  
14 right here, I don't get any static. If I move over  
15 here --  
16 MR. ORAM: So there's no rhyme or reason,  
17 just some play.  
18 THE WITNESS: Just move until you can hear  
19 it.  
20 MS. WILDEVELD: Can you restart the whole  
21 thing?  
22 (Exhibit being played.)  
23 MR. DIGIACOMO: We are at the 20 minutes  
24 of silence and then the wire gets -- the recording  
25 device gets picked back up, and I disagree, you'll hear

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1 Deangelo leaving the establishment.  
 2 MALE SPEAKER: I will just turn these off.  
 3 BY MR. DIGIACOMO:  
 4 Q. Detective, after this interaction between,  
 5 well, inside Simone's Auto Plaza, once again, was  
 6 Mr. Carroll contacted?  
 7 A. Yes.  
 8 Q. And did you recover any items of  
 9 evidentiary value off of him then?  
 10 A. Yes.  
 11 Q. What was that?  
 12 A. A quantity of money.  
 13 Q. Do you know approximately how much?  
 14 A. I believe \$800. Seven or \$800. I don't  
 15 know exactly. I didn't count it at the time.  
 16 Q. And, once again, what denomination was  
 17 this money?  
 18 A. Hundreds.  
 19 Q. And those were collected to preserve them  
 20 for later forensic testing; is that correct?  
 21 A. Yes.  
 22 MR. DIGIACOMO: Court's indulgence.  
 23 I pass the witness, Judge.  
 24  
 25

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1 looking for more sinister objects, weapons, something  
 2 like that?  
 3 A. Yes.  
 4 Q. Okay. This wire that we heard, it came  
 5 from the FBI?  
 6 A. Are we saying a body recorder or are you  
 7 saying a wire?  
 8 Q. I'm sorry, the body recorder.  
 9 A. Yes.  
 10 Q. Is this something that was from the last  
 11 20 or 30 years or, I mean, how old is this device, do  
 12 you know?  
 13 A. How old is it? I have no idea how old it  
 14 is.  
 15 Q. Well, I mean, we've heard an enhanced  
 16 version of a CD, correct?  
 17 A. Yes.  
 18 Q. And a lot of fuzziness in the background.  
 19 Did you hear that?  
 20 A. I definitely heard that.  
 21 Q. And then there's 20 minutes apparently  
 22 where we're not going to hear from because it doesn't  
 23 pick anything up for one reason or another?  
 24 A. Did we hear 20 minutes? We didn't hear 20  
 25 minutes.

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1 CROSS-EXAMINATION  
 2 BY MR. ORAM:  
 3 Q. Good afternoon, Detective.  
 4 A. Good afternoon.  
 5 Q. Detective, was Mr. Carroll searched prior  
 6 to entering the business on both occasions?  
 7 A. Yes.  
 8 Q. Who searched him?  
 9 A. Myself and Detective Shields.  
 10 Q. What was he searched for?  
 11 A. To make believe he didn't have any  
 12 contraband or any items on him.  
 13 Q. Was that a strip search?  
 14 A. No.  
 15 Q. So he had clothing on?  
 16 A. Yes.  
 17 Q. So you searched him just sort of for  
 18 weapons and things like that?  
 19 A. Yes.  
 20 Q. You didn't take his socks off, did you?  
 21 A. Socks off, no.  
 22 Q. So money can be put in socks, can't they?  
 23 A. Yes.  
 24 Q. And a search, so a thorough search, you  
 25 weren't looking for anything like money. You were

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1 Q. No, I'm saying to you that there are 20  
 2 minutes that we're not going to hear from because of  
 3 one reason or another it doesn't pick up voices,  
 4 correct?  
 5 A. There was a portion on the tape which we  
 6 didn't hear. None of us heard. Okay? Is that what  
 7 you are asking?  
 8 Q. Yes, that's what I'm asking.  
 9 A. Yes.  
 10 Q. Okay. So there is 20 minutes where we  
 11 just don't hear anything, right? That's what I'm  
 12 asking.  
 13 A. There is 20 minutes which we didn't listen  
 14 to.  
 15 Q. Well, is there something in that 20  
 16 minutes that would be important?  
 17 A. Well, there is obviously something after  
 18 that and something before that, right?  
 19 Q. No, that's not my question, Detective.  
 20 Here is my question.  
 21 A. Okay.  
 22 Q. On the 20 minutes that we haven't heard  
 23 today, okay? You know what 20 minutes I'm talking  
 24 about?  
 25 A. Yes, the 20 minutes on track two.

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1 Q. Is there anything audible in that?  
 2 A. I haven't listened to this, the 20 minutes  
 3 to say that nothing is audible.  
 4 Q. So you don't know is the answer to my  
 5 question?  
 6 A. Yes, that's correct.  
 7 Q. Did you notice that a lot of this stuff  
 8 was inaudible, a lot of what you heard was inaudible?  
 9 A. Yes, some of the stuff was inaudible.  
 10 Q. Some?  
 11 A. Yes.  
 12 Q. And where was the wire on the 23rd? Where  
 13 was it placed on his body? You can answer my question,  
 14 sir. Where was it?  
 15 MR. DIGIACOMO: I pose an objection Judge  
 16 And if we need to approach, that's fine. But clearly  
 17 it's not relevant where on his body this particular  
 18 wire is.  
 19 I know defense counsel would love to know  
 20 where surreptitious recording devices are, and the  
 21 criminals would love to know where surreptitious  
 22 devices are so that they can check for those in the  
 23 future.  
 24 It's a public policy argument --  
 25 MR. ORAM: Is this a privilege?

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1 MR. DIGIACOMO: That information should  
 2 not be provided to the defense as it's not relevant.  
 3 MR. ORAM: Is this a privilege? Is this  
 4 some kind of privilege? This is the surreptitious  
 5 device you don't get to know, counsel.  
 6 In fact, they put in reports, Judge, that  
 7 this man was stripped down to his underwear, which  
 8 makes it very suspicious. He was stripped down to his  
 9 underwear where this item was. And the fact that they  
 10 put in reports that he was stripped down to his  
 11 underwear causes me concern as to where this wire was.  
 12 THE COURT: They stripped him?  
 13 MR. DIGIACOMO: Anabel and Lu.  
 14 MR. DRASKOVICH: Moreover, I had addressed  
 15 this previously, and your Honor had made a ruling  
 16 already that we would be allowed to delve into this on  
 17 cross-examination. We are to address this --  
 18 MR. DIGIACOMO: Then if it's relevant, how  
 19 is it relevant the nature of the recording device?  
 20 THE COURT: Approach.  
 21 (Thereupon, a brief discussion was held  
 22 at the bench.)  
 23 THE COURT: Okay. We can proceed on that.  
 24 BY MR. ORAM:  
 25 Q. Detective --

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1 A. Yes.  
 2 Q. -- without saying where a wire was or body  
 3 recording device or anything like that, is it possible  
 4 that whatever this device would be, could it be  
 5 covered, could it be played with in such a way by the  
 6 user so that it would be more difficult to pick up what  
 7 was being said?  
 8 A. Well, you can hear on the recording device  
 9 when the person wearing it is walking, so it's rubbing  
 10 against clothing, so part of that filters some of the  
 11 communication both ways.  
 12 Q. Okay. But here is my real question. If  
 13 whatever this recording device is, okay, let's say it  
 14 was a ring, okay? And assuming that I am trying to  
 15 pick up a conversation we're having right now, my  
 16 question, is it possible that whatever this device was  
 17 could be, I could put my hand over it so you couldn't  
 18 hear clearly what you were saying?  
 19 A. I don't know if, if that would be one of  
 20 the things. I know in the amount of time that I use  
 21 these devices that there is a certain, if someone is in  
 22 one room and someone is in the other, it won't pick up  
 23 someone that's having a communication over there, but  
 24 they are very sensitive to people talking, but back and  
 25 forth. Like me and you were talking here, we would

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1 hear the entire conversation.  
 2 Q. My point, Detective, is a little more  
 3 sinister, okay? What I'm asking you is, if I was  
 4 trying to record what you had to say, but for whatever  
 5 reason, I didn't want the recording to pick up now what  
 6 you were going to say, could I cover the device to make  
 7 it so that it didn't pick up?  
 8 In other words, could I play with this  
 9 device or whatever this device is, play with it in such  
 10 a manner so that perhaps the recording would not be as  
 11 clear?  
 12 A. The device, once the device is turned on,  
 13 it does never turns off, so it always picks up  
 14 something. Can they put it in and cover it up? I  
 15 mean, I would assume so. I mean, put it in water or  
 16 something like that?  
 17 Q. Or just cover a mike?  
 18 A. I don't believe that -- I believe that you  
 19 could cover it with something to filter it, but I think  
 20 that would have been picked up as to moving something  
 21 around because it's sensitive.  
 22 Q. Detective, there was a portion of the CD,  
 23 the second CD on the 24th, where I believe the person  
 24 who the State is claiming is Anabel states, "I told you  
 25 to talk to him, not F'ing hurt him or kill him."

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1 Did you hear that?  
 2 A. Yes.  
 3 Q. Did you notice that the question before,  
 4 that is not by Anabel, is quite clear, but her answer  
 5 is very difficult to hear? Did you notice that?  
 6 A. I mean, I hear the person that's wearing  
 7 the wire clearly because it's on their body, and then  
 8 there is a -- there is another person speaking that is  
 9 farther away, so it's going to be harder to hear the  
 10 other person that's not closest to where the voice is,  
 11 of course.  
 12 Q. Did you hear her make the statement, "I  
 13 told you to talk to him"? Did you hear that statement?  
 14 A. I heard that, and I heard other things,  
 15 yes.  
 16 Q. Okay. But you heard that?  
 17 A. Yes.  
 18 Q. Okay. And the fact that this is  
 19 supposedly a surreptitious device or recording means  
 20 that Anabel, if that's who it was, should not have been  
 21 able to know that this was being recorded, right?  
 22 That's the whole purpose.  
 23 A. Yes, that's the purpose of it.  
 24 Q. So it would be something where you would  
 25 expect somebody to say "I told you to kill him" as

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1 opposed to "I told you to simply talk to him."  
 2 Do you see what I'm saying?  
 3 A. I know exactly what you're saying.  
 4 Q. Did you also notice a statement supposedly  
 5 by Anabel that money was to maintain yourself? Did you  
 6 hear that statement?  
 7 A. There was some communication in there that  
 8 I heard about amount of time where that would go by and  
 9 he would be getting paid.  
 10 Q. Okay. Detective, did Mr. Carroll have  
 11 conversations with his employers prior to this device  
 12 being placed on him?  
 13 A. Of course, he was an employee there.  
 14 Q. So they would have many things that they  
 15 would discuss that you would not be privy to  
 16 beforehand, right? Does that make sense?  
 17 A. No, it doesn't make sense.  
 18 Q. Okay. He had a relationship with these  
 19 people beforehand, right?  
 20 A. Yes.  
 21 Q. And that they probably have things they  
 22 talk about that you wouldn't have known about? In  
 23 other words, just perfectly innocent things connected  
 24 with the club?  
 25 A. Yes.

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1 Q. And sometimes innocent things can sound  
 2 sinister if you really don't understand the context of  
 3 what is being said, correct?  
 4 A. I suppose so. I mean, some things can  
 5 sinister, yes.  
 6 Q. Okay. You weren't in the places when this  
 7 recording was occurring, correct?  
 8 A. That's correct.  
 9 Q. You don't know what the expressions of the  
 10 people were, correct?  
 11 A. That's correct.  
 12 Q. For example, somebody may say something  
 13 but have a smile on their face where it would be  
 14 obvious to the listener that they were kidding, right,  
 15 because you could see a smile?  
 16 Does that make sense?  
 17 A. I mean, it makes sense, yes. I was not in  
 18 the business and didn't see any facial expressions.  
 19 Q. And it's fair to say that you knew that  
 20 man back there as -- you learned he was a liar, right?  
 21 Fair to say?  
 22 A. Yes.  
 23 Q. Habitual liar, fair to say?  
 24 A. He lied many times, yes.  
 25 Q. And he lied to you?

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1 A. Yes.  
 2 Q. You had no difficulty informing him that  
 3 you thought he was a liar, did you? Did you tell him  
 4 you thought he was lying or was it Detective Vaccaro?  
 5 I think BS me. Do you remember something?  
 6 A. Something along the lines of that. During  
 7 the four-hour interview, I would say that is accurate.  
 8 Q. Okay. Something along the -- because  
 9 it -- without getting into what he said, would it be  
 10 fair to say that he had several different stories of  
 11 what the motive for the plot was?  
 12 A. Yes.  
 13 Q. And he blamed several different people and  
 14 then would change, wouldn't he?  
 15 A. Yes.  
 16 Q. And, again, without going into what he  
 17 said, it was late and this statement was, you described  
 18 it as four hours, but, in fact, 128 pages, if I showed  
 19 it to you?  
 20 A. I believe 128. That would be accurate, I  
 21 believe.  
 22 Q. And it wasn't until very late into this  
 23 statement that he started to try to blame Anabel, isn't  
 24 that fair to say?  
 25 A. It was later in the statement, yes.

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1 Q. It was like story three or four, if you  
2 recall?  
3 A. Three or four would be pretty close to  
4 accurate.  
5 Q. Okay.  
6 MR. ORAM: Court's indulgence.  
7 Nothing further, your Honor.  
8  
9 CROSS-EXAMINATION  
10 BY MR. DRASKOVICH:  
11 Q. Just to follow up, you would agree that  
12 this device that was used, the recording device was  
13 open to manipulation, correct, just like any microphone  
14 would be?  
15 A. There isn't a particular way that a person  
16 would be able to manipulate it.  
17 Q. They could scratch it, correct? Would you  
18 agree with me that that would affect its ability to  
19 record?  
20 A. I'm not positive scratching it would  
21 affect its ability to record.  
22 Q. Okay. However, you used it on many prior  
23 occasions, correct?  
24 A. Yes.  
25 Q. And there have been times where it has

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1 been covered up or scratched or somehow manipulated so  
2 it becomes difficult to hear. Would you agree with  
3 that based upon your experience with this device?  
4 A. I believe that this recording device that  
5 we used has an extremely good track record and doesn't  
6 really act the way you're asking me.  
7 Q. I see. You would agree with me that this  
8 recording that we have just finished listening to is  
9 difficult to hear the voices?  
10 A. Some things are difficult, yes.  
11 Q. Detective McGrath, was this in your  
12 opinion a complete investigation?  
13 A. In what regards?  
14 Q. What part of my question -- do you not  
15 understand my question?  
16 A. I don't understand your question.  
17 Q. Was it complete?  
18 A. Are you asking my opinion?  
19 Q. Please, yes.  
20 A. I don't think that it is complete.  
21 Q. Is the investigation ongoing?  
22 A. Yes.  
23 Q. Okay. Detective or, I mean, Special Agent  
24 Shields was involved previously in this case, correct?  
25 A. Yes.

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1 Q. Is he still involved, to your knowledge,  
2 in this case?  
3 A. In what regards? I mean, I can explain  
4 it, if you want me to explain it.  
5 MR. DIGIACOMO: Well, Judge, I'm going to  
6 object to relevance. What's the relevance of what the  
7 future investigation of the case has to do with what  
8 the evidence now shows concerning the evidence or  
9 considering the various defendants?  
10 I don't think they should be divulging  
11 what the future investigation should be, particularly,  
12 if there's more individuals who are being investigated.  
13 MR. DRASKOVICH: And, obviously, that's a  
14 different take on my question than was intended.  
15 This is a probable cause hearing as to  
16 whether or not the investigation concerning my client  
17 or any of the other defendants, whether or not this  
18 detective feels it's complete is clearly relevant to  
19 this Court's determination of probable cause.  
20 MR. DIGIACOMO: Well, didn't he already  
21 answer that, that it's ongoing?  
22 THE COURT: Yes.  
23 MR. DRASKOVICH: We're talking about  
24 recording devices. I'm asking if Special Agent Shields  
25 is involved currently in this case. And, obviously, if

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1 the Court --  
2 THE COURT: It's a yes or no.  
3 THE WITNESS: I mean, I'll say yes, but I  
4 don't think that's the question that you are asking me.  
5 I can explain it.  
6 BY MR. DRASKOVICH:  
7 Q. Let me ask you this. There was a  
8 five-page arrest report generated by yourself --  
9 A. Yes.  
10 Q. -- concerning this investigation, correct?  
11 A. Yes.  
12 Q. In addition to that five-page arrest  
13 report, have you authored any other reports in  
14 conjunction with this investigation?  
15 A. Have I authored?  
16 Q. Yes.  
17 A. I haven't authored.  
18 Q. How about members of law enforcement that  
19 are working with you on this case, are you aware of  
20 other reports that have been authored in reference to  
21 this investigation?  
22 A. Yes.  
23 Q. By whom?  
24 A. Well, my partner is -- has a report still  
25 working at this time.

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1 Q. Okay. Your partner, meaning Detective  
2 Vaccaro?  
3 A. No. Detective Teresa Kyger is authoring a  
4 report right now.  
5 Q. And this report that she's authoring is in  
6 reference to the investigation for which you're here  
7 today and you're testifying, correct?  
8 A. Yes.  
9 Q. In addition to her, are there other  
10 reports that have been generated in reference to this  
11 investigation?  
12 MR. DIGIACOMO: Judge, can I interpose an  
13 objection as to relevance? I mean, he has a report,  
14 and you can ask any detective up there if they have  
15 written a report that is completed that you would like  
16 a copy of, but this particular detective has told you  
17 he has no other reports.  
18 MR. DRASKOVICH: No, he hasn't. He said  
19 that he himself has not authored, but I'm asking him  
20 now if there are other reports, and I think I should be  
21 given them if there are.  
22 MR. DIGIACOMO: He has both homicide books  
23 in front of him if he wants to flip through them to see  
24 if he's missing anything. I don't have an objection to  
25 that.

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1 MR. DIGIACOMO: Currently drafted.  
2 THE COURT: Right, not reports from the  
3 future.  
4 MR. DRASKOVICH: And, thank you, that is  
5 my question.  
6 BY MR. DRASKOVICH:  
7 Q. Are there any other reports that you're  
8 aware of?  
9 A. No.  
10 Q. Okay. In reference to your stopping Luis  
11 Hidalgo, III, on May 24th, did you generate a report in  
12 reference to that stop?  
13 A. No.  
14 Q. Okay. Did anybody else working with you  
15 generate a report in reference to that stop?  
16 A. That part of the report is still being  
17 worked on. That's in Detective Kyger's report.  
18 Q. Okay. You had stated that he was  
19 ultimately taken handcuffed to the homicide office,  
20 correct?  
21 A. Yes.  
22 Q. And you testified that he was interviewed?  
23 A. Yes.  
24 Q. And it was a custodial interrogation?  
25 A. Yes.

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1 BY MR. DRASKOVICH:  
2 Q. Are there reports in addition to the  
3 reports that are contained within the two 5 inch  
4 binders in front of you?  
5 A. Yes, there will be more reports to come.  
6 Q. And who are authoring those reports?  
7 A. I know that the computers haven't been  
8 looked at yet that we impounded, which the detective  
9 that works in the cyber crimes unit will author a  
10 report as to what he found on the computer. So that's  
11 to come.  
12 Q. Okay. Who else?  
13 A. I'm not aware of detective, any other  
14 detectives doing surveillance reports or surveillance  
15 reports that have not been turned into me, so --  
16 MR. DIGIACOMO: Judge, this is a way for  
17 him to try and get to the fact that there is additional  
18 things that may be done during the course of the  
19 investigation. I don't see how that's possibly  
20 relevant. Moreover, he shouldn't have to disclose what  
21 future investigation is going to occur.  
22 THE COURT: Well, actually, I don't think  
23 that was the question. I think actually the detective  
24 has gone beyond the question. The question was, are  
25 there any other reports?

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1 Q. And that it was recorded?  
2 A. Yes.  
3 Q. Has there been a transcript, to your  
4 knowledge, of that recording?  
5 A. No.  
6 Q. Okay. Do you have a copy of the tape or  
7 CD or whatever it was that recorded it?  
8 A. I do not have a copy with me here right  
9 now. Mr. DiGiacomo has a copy, I believe.  
10 MR. DRASKOVICH: Oh, he does?  
11 MR. DIGIACOMO: I brought the copy down  
12 here with me in case defense counsel wanted to view it.  
13 I told them that at the bench earlier. I have all the  
14 videotapes of all the interviews here in case they feel  
15 the need to look at any of those because we didn't have  
16 time to make copies for them.  
17 THE COURT: You got them Friday?  
18 MR. DIGIACOMO: I got this Friday. I  
19 actually got these earlier in the week, but I was out  
20 of the office until Friday.  
21 BY MR. DRASKOVICH:  
22 Q. So there is a videotape?  
23 A. Yes.  
24 Q. Any audio tapes or just a videotape that  
25 contains audio with it?

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- 1 A. You mean the portion that you are asking  
2 me about your client is a video and audio, and the  
3 audio will have to be pulled off to the video so we  
4 send that down to our technical analytical section that  
5 will separate the two and that will be transcribed.  
6 Q. Okay. And that's pending right now?  
7 A. Yes.  
8 Q. Okay. Through the course of your  
9 Interrogation of Luis Hidalgo, III, did he invoke his  
10 right to counsel?  
11 A. No.  
12 Q. Okay. Turning your attention now to your  
13 interview of Deangelo Carroll. You had testified that  
14 there was approximately four hours that you spent with  
15 him in an interview room, correct?  
16 A. I would say that's, that's pretty close.  
17 Q. And that was around May 20th of this year?  
18 A. Yes, that was the 20th.  
19 Q. Then you had interviewed him or spoken to  
20 him prior to going on tape, correct?  
21 A. Yes.  
22 Q. Approximately how long did you spend with  
23 him prior to his going on tape?  
24 A. He goes on tape, he goes on videotape as  
25 soon as we go in the room. And then we go audio right

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- 1 away with him.  
2 Q. Okay. However, you did discuss the facts  
3 of this case with him prior to going on tape, correct?  
4 A. I don't believe that we did. I think that  
5 we just went in the room, talked to him real quick and  
6 then went right to audio.  
7 Q. Okay. There came a time during your  
8 interview with him in which you stopped the audio tape,  
9 correct?  
10 A. Yes, there was a few times.  
11 Q. Okay. And you have already covered, and I  
12 don't want to belabor the point, but he gave you  
13 various version of what he say happened out at Lake  
14 Mead, correct?  
15 A. Yes.  
16 Q. And you testified that he lied to you  
17 repeatedly, correct?  
18 A. Yes.  
19 Q. You would agree with me that he lied to  
20 you when it appeared to suit his needs, correct?  
21 A. Yes.  
22 Q. So you would agree with me that your  
23 conclusion based upon your interview with him was that  
24 he could lie quickly, correct?  
25 A. I don't agree that he could lie quickly.

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- 1 Q. Okay. He could come up with many stories  
2 in a short period of time, correct?  
3 A. He had a story.  
4 Q. I see. But that story changed into  
5 various versions through the time that you sat with  
6 him, correct?  
7 A. Yes.  
8 Q. And it appeared to you that these various  
9 versions would change when they suited him, correct?  
10 A. When he got caught in something that he  
11 didn't know how to explain, then he changed his story.  
12 Q. And he changed it quickly, correct?  
13 A. Sometimes quickly and sometimes not  
14 quickly.  
15 Q. Depending, of course, upon the context in  
16 which you were speaking with him, correct?  
17 A. Yes.  
18 Q. He appeared to be intelligent to you,  
19 didn't he?  
20 A. Yes.  
21 Q. He appeared to be shrewd, didn't he?  
22 A. I don't know if shrewd.  
23 Q. How about sneaky?  
24 A. Somewhat in the beginning, yes.  
25 Q. Okay. He appeared to be untrustworthy to

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- 1 you, didn't he?  
2 A. In the beginning, yes.  
3 Q. Obviously, you felt that he was somewhat  
4 untrustworthy because you searched him, you testified,  
5 before he went into this auto body store, correct?  
6 A. Yes.  
7 Q. And you searched him because you did not  
8 trust what he told you, correct?  
9 A. We sent him in there.  
10 Q. But you searched him before you did?  
11 A. Yes.  
12 Q. And you searched him because you couldn't  
13 take his word, correct? You had to see for yourself --  
14 A. Yes.  
15 Q. -- what he had or what he didn't have?  
16 A. Yes, I agree with that. I agree with  
17 that.  
18 Q. So, obviously, you would agree that then  
19 you needed to see for yourself what he had on his body,  
20 you couldn't take his word for it, correct?  
21 A. I didn't take his word for it, yes.  
22 Q. Okay. So you made a credibility  
23 determination on your own in reference to Mr. Deangelo  
24 Carroll?  
25 A. Yes.

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1 MR. DRASKOVICH: If I could have the  
2 Court's indulgence for one moment?  
3 I pass the witness.

4  
5 CROSS-EXAMINATION

6 BY MS. WILDEVELD:

7 Q. Good afternoon, Detective.  
8 A. Good afternoon.  
9 Q. More than a liar, you also found  
10 Mr. Carroll to be a storyteller, correct?  
11 A. More than a liar, a storyteller. I don't  
12 understand.  
13 Q. He told you different versions of the same  
14 story?  
15 A. Yes. We already discussed that.  
16 Q. Right. So he made up things as he went  
17 along?  
18 A. He changed things as he went along.  
19 Q. He made up, you say changed, is there a  
20 difference?  
21 A. Of course there is a difference.  
22 Q. What's the difference?  
23 A. He's telling us one story and then he  
24 changes it to something else.  
25 Q. So he's making it up as he's going along.

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1 changing things?

2 A. He's changing things as he's confronted  
3 with some of the questions we were asking him.

4 Q. Okay. Much like you don't know the  
5 relationship between Mr. Carroll and Anabel or  
6 Mr. Hidalgo, you don't know the relationship between  
7 Mr. Carroll and Mr. Counts, do you?

8 A. What do you mean relationship?

9 MR. DIGIACOMO: I'll object because I'm  
10 not sure that there was testimony that he doesn't know  
11 the relationship between Mr. Carroll and Mr. Hidalgo  
12 and Miss Espindola.

13 MS. WILDEVELD: Let me rephrase that.  
14 Strike that.

15 BY MS. WILDEVELD:

16 Q. When Mr. Oram was asking you questions  
17 about the conversations that were caught on the tape,  
18 the parts and bits of conversations that we could make  
19 out on the audio tape we all listened to, we all  
20 painfully listened to, when he was talking about those  
21 audio tapes, there were certain things that we couldn't  
22 pick up. There is only words that came about, and we  
23 don't know if they were taken out of context or not,  
24 correct?

25 A. I don't believe that is accurate. They

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1 were not just words. I heard way more than just words  
2 in there.

3 Q. Okay. But there were a lot of  
4 disjunctive sentences that we didn't know what  
5 context they were being brought in, right?

6 A. I mean, I listened to it. I understand  
7 what context the stuff was asked and answered.

8 Q. You don't know the history between  
9 Mr. Carroll and Mr. Counts, if any, do you?

10 A. Yes, I do.

11 Q. Do you know since they were born, or do  
12 you know that they just lived across the street from  
13 each other?

14 A. Are you asking -- which question would you  
15 like me to answer? I knew they lived across the street  
16 from each other.

17 Q. So that's the history you know is that  
18 they live across the street from each other? I mean,  
19 we can make this as difficult as you want.

20 A. I have no problem. Okay?

21 MR. DIGIACOMO: I interpose an objection.  
22 If she can just ask a question and wait for him to  
23 answer the question before we start again with the next  
24 question.

25 THE COURT: One question at a time.

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1 MR. DIGIACOMO: Right. One question at a  
2 time.

3 BY MS. WILDEVELD:

4 Q. So at one point, Mr. Carroll told you that  
5 Mr. Counts was going to buy weed from TJ, correct?

6 A. At one point -- say that again. I'm  
7 sorry. You were jumping back to the conversation that  
8 these guys had and --

9 Q. I'm --

10 A. You're asking about their relationship.

11 Q. I'm staying exactly with the statement.

12 A. Okay. Ask me again, please?

13 MR. PESCI: If there's a page reference,  
14 can we get that?

15 MS. WILDEVELD: I don't have a page  
16 reference. I'm sorry.

17 MR. PESCI: Do you need a copy of the  
18 statement?

19 MS. WILDEVELD: No, I don't need a copy of  
20 the statement.

21 BY MS. WILDEVELD:

22 Q. Okay. Detective, you did an interview  
23 with Deangelo Carroll, correct?

24 A. I did a four-hour interview. A large  
25 portion of it was myself, and some portion of it was

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1 two other detectives.

2 Q. And during that interview, he told you  
3 numerous stories, correct?

4 A. Yes. He changed his story and told me  
5 numerous stories.

6 Q. And at one point, he had Mr. Counts coming  
7 along to buy weed, correct?

8 A. I believe that at some part of the  
9 interview that was mentioned.

10 MR. ORAM: Your Honor, I would just state  
11 for the record that I was very careful on behalf of  
12 Miss Espindola to stay away from the actual context of  
13 what was in the statements. I did say, you know,  
14 without telling me what he said, did he change his  
15 story?

16 I am concerned that the State will then  
17 argue based on my co-defendant's attorney's questions  
18 that they will say that somehow they can bring in the  
19 whole statement, which they can't because it would be  
20 hearsay. They would have to put him on the witness  
21 stand.

22 MR. DRASKOVICH: And we waive no hearsay  
23 objections. And I also discussed his impressions as to  
24 his credibility. We didn't get into questions of  
25 actual what he did, where he went, because we don't

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1 want to waive any hearsay objections that we had  
2 addressed previously before your Honor.

3 MR. DIGIACOMO: Well, that's an  
4 interesting story to have now, but they specifically  
5 addressed questions concerning the content of the  
6 statement. I intend, when I stand up, to offer that  
7 statement so the Court can review the context of the  
8 questions that they are asking.

9 They specifically said when I played those  
10 wires that you can't just put a portion of a statement  
11 in and say hey, that's not the whole thing because you  
12 got to understand the context in which we're talking.

13 If they want to talk about he provided  
14 four stories, the Court needs to know the four stories  
15 that he was providing in order to make an assessment as  
16 to the strength of their cross-examination. I'm  
17 certainly going to offer the whole thing.

18 MR. ORAM: Do you know what, Judge, I'm  
19 not so sure that I don't agree with Mr. DiGiacomo. The  
20 Court -- this is the most entertaining 128 pages of  
21 changed testimony, of him admitting he's a liar, having  
22 detectives turn off tapes and having to talk to him and  
23 giving him a chance to change his story. And it takes  
24 him about 60, 70 pages before detectives, after turning  
25 off the tape, finally discover that I need to start

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1 blaming these people.

2 So if the Court wants to read it, I  
3 actually think maybe it's a good idea.

4 MR. DIGIACOMO: I have a video camera. I  
5 intend to play it on the videotape for the Court. I'll  
6 play the whole darn videotape.

7 MR. ORAM: And we're going to call  
8 Deangelo Carroll. We're going to have to put this guy  
9 on the witness stand.

10 THE COURT: Now everybody is agreeing,  
11 Mr. Draskovich?

12 MR. DRASKOVICH: No, I'm not agreeing. We  
13 have made several objections concerning independent  
14 corroboration of what the State has alleged as a  
15 co-conspirator. We have yet to find any independent  
16 corroboration of these statements. That's required  
17 under NRS 52.035.

18 MS. WILDEVELD: And, your Honor, that's  
19 all I'm getting at is trying to find some corroboration  
20 here.

21 MR. DIGIACOMO: Well, hold on a second.  
22 Corroborating who? Have I offered a statement of  
23 Deangelo Carroll?

24 MS. WILDEVELD: Right.

25 MR. DRASKOVICH: Oh, he has. We heard --

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1 MS. WILDEVELD: Other than Deangelo  
2 Carroll --

3 MR. DIGIACOMO: What about Ronta Zone,  
4 does he not testify, and he was not a co-conspirator?

5 MR. ORAM: He didn't mention my client.

6 MR. DRASKOVICH: He had mentioned my  
7 client, but that was it. We had made --

8 MR. DIGIACOMO: He mentioned both your  
9 clients.

10 MR. DRASKOVICH: We had made several  
11 objections. Your Honor was going to reserve ruling  
12 until your Honor heard subsequent evidence because  
13 under the rule it's required that for a co-conspirator  
14 statement to come in there must be independent  
15 corroboration.

16 MR. DIGIACOMO: There has to be evidence  
17 of a conspiracy independent of the statements  
18 themselves. The fact that Deangelo -- I mean, the fact  
19 that Ronta Zone testified to three people involved in  
20 the conspiracy, and then Deangelo Carroll and the whole  
21 truck going to and fro, and oh, by the way, there is a  
22 wire with two people who clearly aren't Jayson Taoipu  
23 or Kenneth Counts on it.

24 You have listened to both those wires. I  
25 think everybody can agree they weren't in Simone's Auto

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1 Body Shop on 5/23 or 5/24. Are they saying that there  
 2 is not independent evidence that there is more than one  
 3 person involved in the killing of Timothy Hadland?  
 4 MR. DRASKOVICH: That's a misapplication  
 5 of the law. I mean, are we arguing now, or are we  
 6 objecting?  
 7 MR. ORAM: It seems like we are going far  
 8 afield.  
 9 THE COURT: I think maybe we should save  
 10 this for argument, but I was going to say I reserved  
 11 and it's still reserved.  
 12 MR. ORAM: So is the State saying that  
 13 they are actually going to bring in a whole video of  
 14 Mr. Carroll and play it?  
 15 MR. DIGIACOMO: Yes.  
 16 MR. DRASKOVICH: I'd object to that.  
 17 MS. WILDEVELD: Me too.  
 18 MR. DRASKOVICH: That's why we stood up  
 19 and made this objection because I very carefully didn't  
 20 get into the context of the statement.  
 21 MR. DIGIACOMO: Well, I don't think it  
 22 becomes relevant until I offer it, but I mean, you can  
 23 let her finish her question.  
 24 MS. WILDEVELD: I'll withdraw my question.  
 25 THE COURT: All right. Anything else?

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1 BY MS. WILDEVELD:  
 2 Q. From Mr. Counts' house, you recovered  
 3 certain things, correct?  
 4 A. Yes.  
 5 Q. And one of those things was a gun?  
 6 A. No.  
 7 Q. You did not recover a gun from Mr. Counts'  
 8 house?  
 9 A. I did not recover a gun from Mr. Counts'  
 10 house.  
 11 Q. Did you recover a gun from where he was  
 12 arrested?  
 13 A. Yes.  
 14 Q. And did you do testing on that gun?  
 15 A. Yes.  
 16 Q. And was that gun found not to be the  
 17 murder weapon?  
 18 A. Unofficially, I mean, I know it's not.  
 19 The reports aren't in though.  
 20 Q. Right. I'm asking you.  
 21 A. It's not. It's not the murder weapon.  
 22 Q. Okay.  
 23 MS. WILDEVELD: Thank you very much. I  
 24 have nothing further.  
 25 MR. DIGIACOMO: I've had it marked, if

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1 Madam Clerk could tell me the statement that I had  
 2 marked.  
 3 THE CLERK: 74.  
 4 MR. DIGIACOMO: Judge, I'm going to offer  
 5 statement 74.  
 6 Mr. Oram specifically stood up there with  
 7 the statement and thumbed through it and said he went  
 8 three-quarters of the way before he finally told you  
 9 the story concerning my client.  
 10 And then Mr. Draskovich got up and, once  
 11 again, asked him about the number of stories that he  
 12 told during the course of the interview.  
 13 And then I know that she withdrew her  
 14 questions, but she elicited questions concerning KC  
 15 going to buy weed or marijuana from Timothy Hadland.  
 16 All three of them have addressed this  
 17 statement. I never once addressed the contents of that  
 18 statement, Judge. They are trying to utilize the  
 19 statement to attack his credibility without allowing  
 20 you to actually see the statement, and that's not  
 21 appropriate, Judge.  
 22 They opened the door to this. It should  
 23 come in. I offer the statement.  
 24 MR. ORAM: Judge, I think it's interesting  
 25 that they are really getting away with all sorts of

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1 stuff. They got away with playing their CD, and they  
 2 did it so that we couldn't -- the whole problem's come  
 3 in we can't cross-examine that man. That's the whole  
 4 problem. I don't need to ask those questions of a  
 5 detective if that guy gets up on the witness stand.  
 6 They get everything their own way. Put on  
 7 the CDs, handcuff them so I have nobody to ask  
 8 questions of. I can't say hey, Mr. Carroll, you're a  
 9 liar. So I have to do it through the detective who  
 10 freely admits yeah, the guy is a liar, you know. And  
 11 all of a sudden now, we've opened the door --  
 12 THE COURT: What I don't understand is,  
 13 you know, Mr. Carroll has waived. He's not part of  
 14 these proceedings. Why did you guys want to talk to  
 15 the detective about Mr. Carroll and his interview with  
 16 him?  
 17 MS. WILDEVELD: Well, they played his  
 18 video. They played his audio.  
 19 THE COURT: Yeah, but I already said I  
 20 wasn't going to consider any of his statements.  
 21 MR. ORAM: Well, it goes to his motive to  
 22 lie. It goes to his motive to want to cover up. It  
 23 goes to his motive to want to blame other people for  
 24 the crime. It goes to his motive to change things  
 25 around so that he would deceive the police to the point

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1 where it would be nothing for him to go in there and  
2 play with the microphone and do things so that we can't  
3 hear exactly what's being said.

4 Take the microphone off wherever it may be  
5 and put it away for 20 minutes so you can't hear them  
6 saying "What are you talking about?" Or cover it up at  
7 a time when Anabel is clearing saying "I only told you  
8 to talk to the guy, not F'ing hurt him." And this is  
9 what causes me concern.

10 And we tried to stay away from -- I never  
11 once asked him a specific question from in here. There  
12 is a lot -- I had taken a tremendous amount of notes to  
13 prepare for, and I never once said on page 55 he says  
14 this or says that. I never went into what the context  
15 of the stories are.

16 MR. DRASKOVICH: Nor did I, your Honor.  
17 And my primary concern with that is there is a great  
18 deal of objections concerning the previous witness,  
19 Ronta Zone. And he went on and on about what Deangelo  
20 Carroll had said. At one point he'd admitted that  
21 everything he knew came from Deangelo Carroll.

22 THE COURT: Well now, he was in the van.

23 MR. DIGIACOMO: He witnessed a heck of a  
24 lot.

25 MR. DRASKOVICH: In reference to third

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1 party's, third-party's involvement, he had testified  
2 that he had to rely upon what -- and I don't know why  
3 we're making this. I mean, this is more of a closing  
4 than anything else. I didn't open any doors. I  
5 discussed his credibility and whether or not --

6 THE COURT: You didn't open doors. I got  
7 it.

8 MS. WILDEVELD: Right. My question was  
9 withdrawn.

10 THE COURT: Anything else you want to say?

11 MR. PESCI: Judge, I'm just going to say  
12 that right now as I'm speaking this wonderful lady here  
13 is taking everything down. It's being transcribed  
14 immediately. Sometimes we don't have that benefit.

15 I'm sure if you go back, there's a quick  
16 find to three-quarters, because three-quarters is  
17 specifically what Mr. Oram said as he advanced on the  
18 witness with the statement in his hand and thumbed  
19 through, indicating after he had attacked his  
20 credibility, the very thing he says he can't do, after  
21 he attacked it with the detective, and then says it's  
22 not until three-quarters of the way through that he  
23 gets to this story. So I think they have been specific  
24 about that.

25 Mr. Draskovich also said specific

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1 statements about during this interview numerous stories  
2 were told. They have referenced that, so we then get  
3 to follow it up and put it in the context that they've  
4 been asking for.

5 THE COURT: Basically, what it's being  
6 offered for is for impeachment.

7 MR. DIGIACOMO: Well, they've offered it  
8 as impeachment. You have to actually see the statement  
9 to determine what --

10 THE COURT: Whether it's impeachment  
11 aside, it's not evidence for the truth of the matter  
12 asserted, so it's not going to go to the real issue  
13 that we're here about anyway. So I'm going to admit  
14 it, but I'm not going to look at it. I'm not going to  
15 read it because I don't have time to do that.

16 It will be part of the record, but so the  
17 record is also clear, I am not going to read it. So my  
18 decision will not be based upon what's in it.

19 MR. DIGIACOMO: Do you have a time period  
20 for how long this is going to go? Are we going to go  
21 until we finish because I have at least two more  
22 witnesses?

23 THE COURT: And two more witnesses will be  
24 how long?

25 MR. DIGIACOMO: Well, it all depends on

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1 defense counsel questioning, but I imagine -- they are  
2 both officers, but they need to go through the search  
3 at Simone's, the search of Room 6 at Simone's, the  
4 surveillance on there to establish that Little Lu and  
5 Anabel are in Simone's during the wire. It's lengthy  
6 testimony.

7 MR. ORAM: Well, perhaps we can have an  
8 offer of proof as to what they would get out. Maybe we  
9 could make some stipulations if this is something that  
10 we could all agree. If they are simply going to say,  
11 we got from Simone's earphones, and we could look at it  
12 and say yeah, okay, you got it. Maybe we could do it  
13 that way just to speed the process along.

14 MR. DIGIACOMO: I have the pictures.

15 THE COURT: Before we do that, let's  
16 finish with our witness here, and then I am willing,  
17 I'll have to talk to my staff, but I'm willing to go  
18 until we're done if it's reasonable, like not past  
19 bedtime.

20 MR. DIGIACOMO: It's already past my  
21 bedtime. Let's finish.

22 THE COURT: So let's finish up with  
23 Detective McGrath.

24 MR. DIGIACOMO: Well, Judge, I have no  
25 further questions for Detective McGrath.

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1 MR. ORAM: Nothing further.  
 2 MR. DRASKOVICH: Nor do I, Judge.  
 3 MR. DIGIACOMO: Judge, they weren't sure  
 4 whether or not you admitted 68 and the other three  
 5 original ones. I have offered them. You reserved the  
 6 ruling. It depends on who I call next and what I ask  
 7 them, depending on what the ruling is.  
 8 The actual recording you listened to, you  
 9 said I'm going to listen to it, but you didn't actually  
 10 say it's admitted.  
 11 THE COURT: Okay. They are admitted. And  
 12 it goes to the weight.  
 13 (Thereupon, State's Exhibit 68 was  
 14 admitted into evidence.)  
 15 MR. DIGIACOMO: Thank you, Judge.  
 16 MR. PESCI: Does defense counsel have  
 17 anymore questions?  
 18 MS. WILDEVELD: No.  
 19 THE WITNESS: I'm going to leave this  
 20 here.  
 21 MR. DIGIACOMO: What is that?  
 22 THE WITNESS: These are the recordings.  
 23 MR. DIGIACOMO: Oh, yeah, put those up  
 24 there for the judge.  
 25 THE COURT: The good ones and the bad

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1 ones.  
 2 MR. DIGIACOMO: Those are the bad ones,  
 3 and this is the good one.  
 4 THE WITNESS: I'm not involved if it's  
 5 good or bad anymore.  
 6 MR. PESCI: Judge, the State calls  
 7 Detective Bob Rogers.  
 8 MR. DIGIACOMO: Well, let's just -- if you  
 9 want to enter into a stipulation.  
 10 THE COURT: Do you want to take five  
 11 minutes to talk about what the -- that way we do not  
 12 have to put it on the record.  
 13 (A brief recess was taken.)  
 14 THE COURT: All right. Where are we at?  
 15 MR. DIGIACOMO: Judge, I believe the  
 16 defense is going to stipulate to the testimony of  
 17 Detective Bob Rogers. I will put that stipulation on  
 18 the record, and then if there is anything I say that is  
 19 wrong, I will allow them to correct me.  
 20 Detective Rogers will testify that he is a  
 21 detective with the Las Vegas Metropolitan Police  
 22 Department homicide division.  
 23 That after Little Lu, Anabel and Mr. H  
 24 left Simone's Auto Plaza that he, along with other  
 25 members of his team, executed a search warrant on

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1 Simone's Auto Plaza down on 6770 Bermuda.  
 2 That when he did so, him and other  
 3 officers cleared the individuals that were out in the  
 4 working bays of the office area of the plaza, and then  
 5 brought them inside and identified those individuals.  
 6 That when he walked into the office area,  
 7 there was a receptionist there. And the only other  
 8 person there inside the office area was an individual,  
 9 which he identified as Luis Hidalgo, Sr., who I believe  
 10 has been in the courtroom all day during the testimony  
 11 here, who turns out to be the father or grandfather of  
 12 this particular defendant.  
 13 That, thereafter, he went back down a long  
 14 hallway in the office area to Room Number 6. That Room  
 15 Number 6 appeared to be a bedroom. He would  
 16 authenticate several pictures, and that during that  
 17 time period he searched Room Number 6, and inside Room  
 18 Number 6 he found a variety of pieces of evidence,  
 19 which were relevant to his investigation, that being a  
 20 number of identifications in the name of Little Lu or  
 21 Luis Hidalgo, III, including his original birth  
 22 certificate or a certified copy thereof, his original  
 23 Social Security card was in that room, checkbooks in  
 24 the name of Luis Hidalgo, III, were in that room and  
 25 other paperwork clearly establishing that was Little --

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1 Luis Hidalgo, III, room.  
 2 In addition, he found a bundle of U.S.  
 3 savings bonds inside that room, each and every one of  
 4 which were in the name of Luis Hidalgo, III, as well as  
 5 down on the floor to the right side, he found order  
 6 forms for more U.S. savings bonds.  
 7 And I believe the other parts of his  
 8 testimony he would object to as not being relevant  
 9 since Deangelo didn't testify; is that correct?  
 10 MR. DRASKOVICH: That is correct. And,  
 11 obviously, we're not going to be stipulating that this  
 12 was Luis Hidalgo, III, room, but that these items were  
 13 found within this particular room.  
 14 So, obviously, we would not stipulate to  
 15 the conclusions that the State wishes to draw, but  
 16 merely that these particular items were found in this  
 17 particular room.  
 18 MR. DIGIACOMO: Then I would state one  
 19 other thing, and that is that the room looks very lived  
 20 in, and it appeared to be -- oh, I'm sorry, there was  
 21 one other thing, that he found numerous bottles of  
 22 liquor throughout the room.  
 23 MR. DRASKOVICH: Yes, and we're not going  
 24 to be stipulating as to who those belonged to or not,  
 25 but yes, that various bottles of liquor were found

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1 within this particular room.  
 2 THE COURT: And then the photos, are we  
 3 stipulating to those?  
 4 MR. DIGIACOMO: Yes, Judge, I didn't pull  
 5 them all out. It's photos 51, 52 -- I messed up my  
 6 order, Judge -- 53, 54, 55, 56, 57, 58, 59 and 60,  
 7 Judge.  
 8 MR. DRASKOVICH: And just so we're clear,  
 9 this stipulation, obviously, applies for the purposes  
 10 of preliminary hearing only. I don't think the State  
 11 has any problem with that.  
 12 MR. DIGIACOMO: That's correct, Judge.  
 13 THE COURT: Okay. They will be admitted.  
 14 MR. DIGIACOMO: As to all defendants?  
 15 MR. PESCI: We just want to hear from  
 16 Mr. Oram and Ms. Wildeveld as far as whether they are  
 17 stipulating to the same facts, your Honor.  
 18 MR. ORAM: Yes, your Honor.  
 19 MS. WILDEVELD: Yes, your Honor, for  
 20 purposes of preliminary hearing only.  
 21 MR. PESCI: Thank you.  
 22 (Thereupon, State's Exhibits 51 through  
 23 60 were admitted into evidence.)  
 24 MR. DIGIACOMO: If you could grab  
 25 Detective Marty Wildemann.

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1 THE CLERK: Raise your right hand.  
 2 Do you swear the statements that you are  
 3 about to make are the truth, the whole truth, and  
 4 nothing but the truth, so help you God?  
 5 THE WITNESS: I do.  
 6 THE CLERK: I need you to state your name  
 7 for the record and spell your name, please.  
 8 THE WITNESS: Marty Wildemann,  
 9 W-I-L-D-E-M-A-N-N.  
 10  
 11 MARTY WILDEMANN,  
 12 having been first duly sworn, did testify as follows:  
 13  
 14 DIRECT EXAMINATION  
 15 BY MR. DIGIACOMO:  
 16 Q. Good afternoon, Detective. How are you  
 17 employed?  
 18 A. With the Las Vegas Metropolitan Police  
 19 Department.  
 20 Q. I guess I should say good evening.  
 21 A. Yeah, almost.  
 22 Q. How long have you been so employed?  
 23 A. Seventeen-and-a-half years.  
 24 Q. And what is your current assignment?  
 25 A. With homicide.  
 26 Q. How long have you been with them?

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1 A. Three-and-a-half years.  
 2 Q. I'm going to direct your attention back to  
 3 May 19th of the year 2005. Did you become involved in  
 4 the investigation of Timothy Hadland?  
 5 A. Yes, I did.  
 6 Q. Without going into it, did you go to the  
 7 scene?  
 8 A. Yes.  
 9 Q. And then eventually pursued the  
 10 investigation with the other members of your squad?  
 11 A. Yes, I did.  
 12 Q. I want to direct your attention to the  
 13 evening of 5/21 into the early morning hours of 5/22  
 14 out at 1676 E Street. Were you present during the  
 15 execution of the search warrant at 1676 E Street?  
 16 A. Yes, I was.  
 17 Q. Okay. During the course and time you were  
 18 outside at 1676 E Street, did you receive a phone call  
 19 from anybody?  
 20 A. Yes, I did.  
 21 Q. Who did you receive that phone call from?  
 22 A. Deangelo Carroll.  
 23 Q. Where was Deangelo Carroll when he made  
 24 that phone call to you?  
 25 A. He was inside his mother's house across

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1 the street.  
 2 Q. And in relationship to 1676 E Street,  
 3 where was across?  
 4 A. A little bit south and a little bit east.  
 5 Q. Based on the information that he provided  
 6 to you, did you get a warrant for 1677 E Street?  
 7 A. Yes, I did. Actually, Detective Vaccaro  
 8 got the warrant, but with my information.  
 9 Q. Then after SWAT made entry, eventually  
 10 Mr. Counts was taken -- I'm sorry.  
 11 Was an individual taken into custody?  
 12 A. Yes, he was.  
 13 Q. Do you see the individual who was taken  
 14 into custody here in court today?  
 15 A. Yes, I do.  
 16 Q. Can you point him out and describe  
 17 something he's wearing?  
 18 A. He's wearing the blue jail attire in the  
 19 first seat in the front row.  
 20 MR. DIGIACOMO: May the record reflect the  
 21 identification of Defendant Counts, Judge?  
 22 THE COURT: Record will so reflect.  
 23 BY MR. DIGIACOMO:  
 24 Q. When you took Mr. Counts into custody,  
 25 describe his physical condition?

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1 A. He was very short of breath. He was very  
2 hot, very sweaty. He was very dirty from being in  
3 insulation and had a hard time speaking.  
4 Q. During the course, did you eventually  
5 drive him down to the homicide office?  
6 A. Yes, I did, with Detective Vaccaro.  
7 Q. During the time that he's being driven  
8 down to the homicide office, did you have chitchat or  
9 conversations related to his health, those kinds of  
10 things?  
11 A. Yes, we did.  
12 Q. Did you ask him any questions concerning  
13 the case at all during that drive?  
14 A. No, we did not.  
15 Q. Eventually, did you conduct an interview  
16 with Mr. Carroll?  
17 A. Yes.  
18 Q. I'm sorry, Mr. Counts?  
19 A. Mr. Counts, yes.  
20 Q. And during the course of this interview,  
21 did he speak for a short period of time before he  
22 eventually terminated the interview?  
23 A. Very short.  
24 Q. I want to direct your attention forward to  
25 5/23. Were you an individual what's known as, one of

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1 the individuals known as the "eye" on Simone's Auto  
2 Plaza at 6770 Bermuda?  
3 A. I was one of the detectives there, yes.  
4 Q. What does it mean to be the "eye"?  
5 A. It just means that we have a clear view of  
6 the business and are able to see what's happening  
7 there.  
8 Q. Prior to Deangelo Carroll entering  
9 Simone's Auto Plaza with the body wire, did you have  
10 any information or were able to confirm whether or not  
11 either Luis Hidalgo, III, or Anabel Espindola was  
12 inside the Simone's?  
13 A. Which date are you talking about?  
14 Q. The first day, 5/23.  
15 A. No, we didn't have information regarding  
16 that. We saw vehicles that were there.  
17 Q. What vehicles did you -- first of all,  
18 have you now seen Luis Hidalgo, III.  
19 A. Yes.  
20 Q. And do you see him in court today?  
21 A. Yes, I do.  
22 Q. Can you point him out and describe  
23 something he's wearing?  
24 A. Wearing blue jail attire, middle seat in  
25 the first row.

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1 MR. DIGIACOMO: May the record reflect  
2 identification of Luis Hidalgo, III?  
3 THE COURT: The record will so reflect.  
4 MR. DIGIACOMO: Thank you.  
5 BY MR. DIGIACOMO:  
6 Q. Now, had you seen Anabel Espindola; is  
7 that correct?  
8 A. Today.  
9 Q. Well, have you seen her previously?  
10 A. Yes.  
11 Q. Do you recognize her here in court today?  
12 A. Yes, I do.  
13 Q. Can you point her out and describe  
14 something she's wearing?  
15 A. Blue jail attire, four seats, first row.  
16 MR. DIGIACOMO: May the record reflect the  
17 identification of Anabel Espindola?  
18 THE COURT: The record will so reflect.  
19 BY MR. DIGIACOMO:  
20 Q. What cars did you see at Simone's Auto  
21 Plaza before Deangelo entered into the plaza with the  
22 body wire or the body recorder?  
23 A. There is a number of cars. I saw the  
24 black Hummer H2 vehicle with the Nevada personalized  
25 plates. I saw a -- I'm not going to know the make of

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1 this vehicle, but it's that new Chevy truck. It's the  
2 SS, the very small two-seater truck. That was parked  
3 along the side of the vehicle to the north.  
4 So I saw a number of vehicles that we  
5 believed that Anabel might be driving, a brown van.  
6 MR. ORAM: Objection as to "we" believe.  
7 First of all, it's "we." Second of all, it's pure  
8 speculation. He said we believed could be driving.  
9 BY MR. DIGIACOMO:  
10 Q. Did you ever see a vehicle there that  
11 Anabel was driving?  
12 A. Yes.  
13 Q. Okay. And what vehicle was that?  
14 A. The black H2.  
15 Q. Okay. After Deangelo entered into  
16 Simone's Auto Plaza, eventually he leaves Simone's Auto  
17 Plaza; is that correct?  
18 MR. DRASKOVICH: Object, this assumes  
19 facts not in evidence. He said that he didn't see them  
20 specifically go in. He just saw vehicles parked  
21 outside. So that mischaracterizes his prior testimony.  
22 MR. DIGIACOMO: Didn't I say Deangelo?  
23 After Deangelo went in, he saw Deangelo come out. That  
24 doesn't mischaracterize his prior testimony.  
25 THE COURT: Well, he asked him about

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1 whether he knew who was already in there, and he said  
2 he didn't know who, just the vehicle.

3 MR. DRASKOVICH: Just so that's clear.

4 Thank you.

5 BY MR. DIGIACOMO:

6 Q. Eventually, Deangelo went in, and  
7 eventually Deangelo left; is that correct?

8 A. Yes.

9 Q. After Deangelo left, did you continue  
10 surveillance on 6770, the Simone's Auto Plaza?

11 A. Yes.

12 Q. Eventually, did you see an individual that  
13 you now know as Anabel Espindola leave?

14 A. Yes.

15 Q. And what vehicle did she leave in?

16 A. The black H2 Hummer.

17 Q. Did you remain on site? Well, how is it  
18 that you were able to see her?

19 A. I was parked in a location across the  
20 street where I could see the front door and see the  
21 vehicle.

22 Q. Was her driving away in this vehicle  
23 documented in any manner?

24 A. Yes, it was.

25 Q. How was that?

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1 A. Several of the detectives out there took  
2 notes and a brief synopsis was written up, and it's  
3 being authored into another report.

4 Q. Was there photographs I guess is my  
5 question?

6 A. I believe that some of the CAT detectives  
7 did have their camera and were taking photos. I have  
8 never seen those photos, but they were saying that they  
9 were taking photos.

10 Q. CAT detectives are -- what does CAT stand  
11 for?

12 A. I'm sorry. Criminal Apprehension Team,  
13 and that's a group of detectives that helped us with  
14 our surveillance.

15 Q. Okay. Did you remain on -- after Anabel  
16 left inside the black H2, did you remain on the scene  
17 to see if Luis Hidalgo, III, would leave?

18 A. Yes.

19 Q. And did he eventually leave or not?

20 A. He did eventually leave, yes.

21 Q. You saw him leave Simone's Auto Plaza on  
22 May 23rd?

23 A. Yes.

24 Q. What kind of vehicle was he driving?

25 A. I can't be specific on that vehicle right

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1 now. He was with a group of people. They split up.  
2 One went into, I believe, it was a green SUV. And that  
3 might have been the vehicle that he got into. I can't  
4 recall that exact vehicle at that time, but I know --

5 Q. But needless to say, he left in a vehicle?

6 A. Yes.

7 Q. I'm going to jump ahead. On May 24th of  
8 2005, were you also in a position called quote/unquote  
9 the "eye" on Simone's Auto Plaza during the body wire  
10 or the body recorder incident where Deangelo was sent  
11 in a second time?

12 A. Yes.

13 Q. And did you, in fact, watch Deangelo  
14 enter?

15 A. Yes.

16 Q. Prior to him entering, were you able to  
17 confirm whether or not any of the suspects were on the  
18 scene at that particular time?

19 A. I did not see them personally, but another  
20 detective relayed to me that they were in there.

21 Q. How did that work?

22 A. Surveillance was set up earlier by the CAT  
23 detectives. And when I arrived out there, I was  
24 informed that Anabel and Mr. H. Hidalgo, Jr., had  
25 arrived in the pewter H2 Hummer, another vehicle that

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1 is driven by them, and had walked into the business.  
2 The black H2 Hummer was already there, was already  
3 parked there when they arrived on their surveillance.

4 Q. Based on the black H2 Hummer arriving  
5 there, what conclusions did you draw?

6 A. We believed from all the information that  
7 we had collected that Luis, III, was already in there.

8 Q. All right. Did you continue surveillance  
9 until Deangelo Carroll left?

10 A. Yes, we did.

11 Q. Did you remain on site until at least one  
12 of the suspects left on the scene?

13 A. Yes, I did.

14 Q. Who was the first suspect?

15 A. The first suspect was Luis Hidalgo, III,  
16 exited the business, got into the black H2. We did a  
17 surveillance on him taking him out of the area and  
18 orchestrated a traffic stop with a patrol unit in the  
19 area of Patrick and Pecos.

20 Q. Thereafter, did you resume your position  
21 on the eye on Simone's Auto Plaza?

22 A. Yes, I did.

23 Q. Did you wait for any other suspects to  
24 leave Simone's Auto Plaza?

25 A. Yes. Shortly after arriving back there,

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1 Anabel and Hidalgo, Jr., Hidalgo, Jr., excuse me,  
 2 exited the business and entered the pewter H2 and  
 3 drove, left the area. We surveilled all the way to  
 4 Carson and Sixth Street where I had a vehicle stop done  
 5 and contacted them there.  
 6 MR. DIGIACOMO: May I approach, Judge?  
 7 THE COURT: Yes.  
 8 BY MR. DIGIACOMO:  
 9 Q. After interviews take place, do you  
 10 eventually make it back to Simone's Auto Plaza during  
 11 the course of the search warrant that's being executed  
 12 there?  
 13 A. Yes, I did.  
 14 Q. Now, by the time you got there, had Bob  
 15 Rogers and the crime scene analysts already searched  
 16 Room 6 in the back?  
 17 A. Yes.  
 18 Q. However, did you see other evidence and  
 19 find other evidence during the course of the search?  
 20 A. Yes.  
 21 Q. Showing you what's been marked as State's  
 22 Proposed 39 through 50. If you could flip through  
 23 those.  
 24 MR. DRASKOVICH: If I can approach just  
 25 briefly?

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1 THE COURT: Okay.  
 2 BY MR. DIGIACOMO:  
 3 Q. Do those fairly and accurately depict  
 4 Simone's Auto Plaza when you were there during the  
 5 search warrant?  
 6 A. Yes.  
 7 Q. I'm not going to go through all of them,  
 8 but let me back up slightly. Showing you what's been  
 9 marked as State's Proposed Exhibit --  
 10 MR. DIGIACOMO: Oh, I guess I should move  
 11 to admit, Judge. Did I move to admit?  
 12 THE COURT: No.  
 13 MR. DIGIACOMO: I'll move to admit them.  
 14 MR. ORAM: No objection.  
 15 MR. DRASKOVICH: No objection.  
 16 MS. WILDEVELD: No objection.  
 17 THE COURT: They will be admitted.  
 18 (Thereupon, State's Exhibits 39 through  
 19 50 were admitted into evidence.)  
 20 BY MR. DIGIACOMO:  
 21 Q. State's Exhibit 44, do you recognize  
 22 what's depicted in that photograph?  
 23 A. Yes, I do.  
 24 Q. What is that?  
 25 A. Well, it's a pool table in what I would

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1 say was a gaming area that has a bulletproof vest on  
 2 it. And in the background, there is three chairs. One  
 3 of the chairs has an Outdoors magazine on it and on top  
 4 of that magazine is a note.  
 5 Q. Showing you 47, can you read to the Court  
 6 what is stated on that note?  
 7 A. It's torn in half, and it says, "Maybe we  
 8 are being under surveil. Keep your mouth shut." And  
 9 two exclamation points.  
 10 Q. Eventually, did you become involved in the  
 11 search that was conducted in the front office area of  
 12 Simone's Auto Plaza?  
 13 A. Yes.  
 14 Q. Showing you State's Exhibit Number 41, do  
 15 you recognize what's depicted there?  
 16 A. That's the lobby/waiting room for the Auto  
 17 Plaza and the doors into the main offices.  
 18 Q. And that room right there is where the TV  
 19 is with the couches?  
 20 A. Yes.  
 21 Q. And to the right there, or if you are  
 22 facing it, there is two offices, one to the right and  
 23 one to the left?  
 24 A. Right.  
 25 Q. Did you determine during the course of

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1 your investigation who owned or who occupied the office  
 2 on the far right all the way to the front of the  
 3 building?  
 4 MR. DRASKOVICH: Object, calls for  
 5 speculation.  
 6 MR. DIGIACOMO: Well, I'll ask him this  
 7 question.  
 8 BY MR. DIGIACOMO:  
 9 Q. What did you do to confirm who stayed in  
 10 that particular or who utilized that particular office?  
 11 MR. DRASKOVICH: I would have to object as  
 12 to that. He could testify as to what he found, but as  
 13 to who lived there or anything like that, it calls for  
 14 speculation, unless he saw someone going to bed,  
 15 getting up, living there.  
 16 MR. DIGIACOMO: It's not lived. I'm  
 17 sorry. This is the office. This is the front office  
 18 area. I'm not asking him about the bedroom in the  
 19 back.  
 20 MR. DRASKOVICH: Okay.  
 21 MR. DIGIACOMO: If I said lived, I  
 22 apologize.  
 23 MR. DRASKOVICH: I thought I heard lived.  
 24 I don't know, maybe --  
 25 THE COURT: You didn't.

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1 MR. DRASKOVICH: Okay.  
 2 BY MR. DIGIACOMO:  
 3 Q. The front right office, whose office --  
 4 did you find evidence of whose office that was?  
 5 A. Detective Harvey searched that office,  
 6 walked in there and there was evidence that Luis  
 7 Hidalgo, Jr., used that office.  
 8 Q. Mr. H?  
 9 A. Mr. H.  
 10 Q. Now, what about the office to the left  
 11 with the glass windows? Did you conduct a search of  
 12 that particular office?  
 13 A. Yes.  
 14 Q. Were you able to identify at least one of  
 15 the occupants of that office?  
 16 A. Yes.  
 17 Q. Who was that?  
 18 A. Anabel Espindola.  
 19 Q. Showing you Number 42, do you recognize  
 20 what's depicted in that photograph?  
 21 A. Yes, I do. That's the second office that  
 22 we spoke of.  
 23 Q. During the course of the search of that  
 24 office, did you find what's depicted in State's Exhibit  
 25 Number 43?

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1 A. Yes.  
 2 Q. What is that?  
 3 A. It is a paycheck to Deangelo R. Carroll,  
 4 and the return address on it is the Palomino Club, LLC.  
 5 Q. This morning were you asked to make a  
 6 photocopy of that particular check and have it brought  
 7 here to court?  
 8 A. Yes.  
 9 Q. Did you do so?  
 10 A. Yes.  
 11 Q. Showing you what's been marked as State's  
 12 Proposed Exhibit Number 66, can you identify that?  
 13 A. Yes.  
 14 MR. DRASKOVICH: We stipulate to its  
 15 admission.  
 16 MR. DIGIACOMO: Thank you.  
 17 THE COURT: It will be admitted.  
 18 (Thereupon, State's Exhibit 66 was  
 19 admitted into evidence.)  
 20 MR. DIGIACOMO: Thank you, Judge.  
 21 BY MR. DIGIACOMO:  
 22 Q. If you could, could you please tell me the  
 23 number of hours that's earned on this check dated  
 24 May 27th, 2005, to Deangelo Carroll?  
 25 A. Twenty-four.

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1 Q. Twenty-four hours?  
 2 A. Yes.  
 3 Q. During the search of Simone's Auto Plaza,  
 4 did you locate a white Chevy Astro van?  
 5 A. Yes.  
 6 Q. And had you previously been identified --  
 7 had this van previously been identified by other  
 8 witnesses?  
 9 A. Yes.  
 10 Q. One of those witnesses was Ronta Zone?  
 11 A. Yes.  
 12 Q. Showing you State's Exhibit Number 61 to  
 13 64, do you recognize what's depicted in those  
 14 photographs?  
 15 A. Yes, I do.  
 16 Q. What is that?  
 17 A. It is the -- I believe it's the 1995 white  
 18 Chevy Astro van with Nevada plates 363-NKS.  
 19 Q. And on that van, are there four non  
 20 whitewall tires?  
 21 A. Yes.  
 22 Q. Okay. And the van, how many sliding doors  
 23 does it have?  
 24 A. One on the passenger side.  
 25 MR. DIGIACOMO: Judge, I move to admit

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1 them.  
 2 MR. ORAM: We have no objection to the  
 3 admission.  
 4 MR. DRASKOVICH: Nor do I.  
 5 MS. WILDEVELD: Nor do I.  
 6 THE COURT: They will be admitted.  
 7 THE CLERK: What numbers?  
 8 MR. DIGIACOMO: 61 through 64.  
 9 (Thereupon, State's Exhibits 61 through  
 10 64 were admitted into evidence.)  
 11 BY MR. DIGIACOMO:  
 12 Q. Now, you were present -- let me back up a  
 13 little bit -- you were present outside during the  
 14 execution of the search warrant at 1677 E Street in  
 15 which Mr. Counts was eventually taken into custody,  
 16 correct?  
 17 A. Yes, I was.  
 18 Q. And you eventually learned the  
 19 circumstances under which he was taken into custody;  
 20 correct?  
 21 A. Yes, I did.  
 22 Q. Did you learn from being outside the  
 23 residence and listening to the communications through  
 24 the SWAT officers that Mr. Counts actually received  
 25 several Tases of a Taser or shocks of some sort?

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1 A. Yes.  
 2 Q. Did you also learn that he was cut out of  
 3 an attic?  
 4 A. Yes.  
 5 Q. Eventually, did you have an opportunity to  
 6 listen to phone calls from the jail which involved  
 7 Mr. Counts?  
 8 A. Yes.  
 9 Q. And did you sit and listen to all eight  
 10 phone calls that were provided to you?  
 11 A. Yes.  
 12 Q. Did you also see a document from the jail  
 13 called the call detail, which delineates where the call  
 14 is from or who the call is to, from what part of the  
 15 jail, the time that it's done, date and time that it's  
 16 done?  
 17 A. Yes.  
 18 MS. WILDEVELD: I don't have that piece of  
 19 paper.  
 20 MR. DIGIACOMO: It's on the CD we gave  
 21 you. You can look at mine. That's the only copy I  
 22 have right now. I can print out another one.  
 23 BY MR. DIGIACOMO:  
 24 Q. Showing you what's been marked as State's  
 25 Proposed Exhibit Number 67, does that appear to be a

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1 course of that conversation from basically KC on the  
 2 top to KC where he says okay, okay.  
 3 A. "KC: They was nice and comfy?  
 4 Irene: Yes.  
 5 KC: Everything?  
 6 Irene: Uh-huh or huh-huh (affirmative), I  
 7 thought I was. They was gonna be really flat.  
 8 KC: Uh-huh.  
 9 Irene: But both my pillows and everything  
 10 was still in there.  
 11 KC: Okay, okay, so that mean you cool?  
 12 Irene: Uh-huh."  
 13 KC -- I'm sorry, and that was where you  
 14 wanted me to stop. I'm sorry.  
 15 Q. Well, you can finish KC's line there.  
 16 A. "Okay, all right, I'm glad, I'm glad  
 17 that."  
 18 Q. Moving on through the conversations,  
 19 Detective, if you could turn to your page -- well, let  
 20 me ask you this.  
 21 During the time period that you talked to  
 22 Kenneth Counts, the entire time period from the time  
 23 you drove him down to the homicide office to the very  
 24 short interview that you had with him, did you ever  
 25 provide him the names of any of the people -- do you

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1 transcript of all eight phone calls?  
 2 A. Yes.  
 3 Q. Now, the very first phone call, did you  
 4 recognize Mr. Counts' voice on that phone call?  
 5 A. Yes.  
 6 Q. And in there he describes the  
 7 circumstances of his arrest?  
 8 A. On the first phone call?  
 9 Q. Yes.  
 10 A. Yes.  
 11 Q. And it appeared to be consistent with the  
 12 information that you had concerning his arrest?  
 13 A. Yes.  
 14 Q. Ask you just a few questions concerning --  
 15 there has been a lot of talk here that's probably not  
 16 completely -- on page 7, Detective, if you can turn to  
 17 page 7. And I apologize, counsel. You have to look  
 18 over my shoulder because your numbering is slightly  
 19 different.  
 20 A. Okay.  
 21 Q. On page 7 at the top, do you hear  
 22 Mr. Counts have a conversation with his wife Irene?  
 23 A. Yes.  
 24 Q. And during the course of that  
 25 conversation, if you could just read to the Court the

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1 ever provide him the names of any of the people that  
 2 were involved in this particular case?  
 3 A. No, I didn't.  
 4 Q. Okay. What information did you provide  
 5 him in order to attempt to elicit information from him?  
 6 A. We said that, we told him what he was  
 7 being charged with. We said that we would like to hear  
 8 his side of the story, and we said that we had three  
 9 guys that are telling us a whole different story.  
 10 Q. Okay. You never identified to him who  
 11 those three guys were, correct?  
 12 A. No.  
 13 Q. Go down to Page 19, if you could.  
 14 A. Okay.  
 15 Q. Starting at KC, four lines up from the  
 16 bottom, if you can read that through page 21, line 5.  
 17 A. Okay. So four lines up from the bottom,  
 18 KC?  
 19 Q. Yes. It says why would.  
 20 A. Why would they -- KC -- excuse me.  
 21 "KC: Why would they do that? They mess  
 22 your drugs up?  
 23 Irene: No, but they just went in there  
 24 and left all that stuff sitting in the sink.  
 25 KC: That's it?

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1 Irene: Uh-huh.  
 2 KC: That's all they want?  
 3 Irene: Huh?  
 4 KC: That's all they want?  
 5 Irene: No, they want (inaudible) white  
 6 one and just dumped all that stuff out that cart and  
 7 didn't put it back.  
 8 KC: Oh.  
 9 Irene: But, other than that, you know,  
 10 everything is okay (inaudible).  
 11 KC: What'd you say?  
 12 Irene: I said, other than that, you know,  
 13 everything is (inaudible) in the halls.  
 14 KC: Right, but you got that to go with  
 15 what I gave you.  
 16 Irene: Huh?  
 17 KC: I said, but you got that to go with  
 18 what I gave you.  
 19 Irene: Uh-huh or huh-huh (negative), my  
 20 purse.  
 21 KC: It's in your purse?  
 22 Irene: Uh-huh.  
 23 KC: Everything?  
 24 Irene: Huh-huh (negative)."  
 25 Keep going? I'm sorry.

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1 Q. Keep going until line 5 of the next page.  
 2 A. "KC: Oh, you got (inaudible).  
 3 Irene: (Inaudible) Yep, I had to have my  
 4 cool.  
 5 KC: Okay.  
 6 Irene: 'Cause I don't even feel  
 7 comfortable. I have to go and to send Ashley over  
 8 there to get my pillow. They went in and while my  
 9 daddy and got it.  
 10 KC: (Inaudible).  
 11 Irene: Huh?  
 12 KC: You know what I'm trying to ask you,  
 13 right?  
 14 Irene: Uh-huh (affirmative).  
 15 KC: So (inaudible) you straight?  
 16 Irene: Uh-huh.  
 17 KC: Okay."  
 18 Q. Flip forward to page 23 and read from the  
 19 last two lines from Irene down to when Irene says my  
 20 daddy stayed over there on page 24.  
 21 A. Okay. The last two lines Irene.  
 22 "Irene: Somebody got killed on  
 23 (inaudible) last night. Shot in the head. Mm, mm, mm.  
 24 KC: Hey, uhm.  
 25 Irene: Huh?

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1 KC: Ah, ah, house arrest boy.  
 2 Irene: Uh-huh (affirmative).  
 3 KC: You seen him?  
 4 Irene: Huh-huh (negative).  
 5 KC: Seen his car?  
 6 Irene: That little white one?  
 7 KC: Uh-huh (affirmative).  
 8 Irene: I think it stayed in the driveway.  
 9 KC: Might need -- pause -- might need see  
 10 what's going on with that, or you know what I'm saying?  
 11 Irene: Uh-huh, yep. Already know that.  
 12 KC: Huh?  
 13 Irene: I already know that.  
 14 KC: Uh-huh."  
 15 Q. Okay. You can stop there.  
 16 Now, did you know the type of vehicle that  
 17 Deangelo Carroll personally drove?  
 18 A. Yes.  
 19 Q. What type is that?  
 20 A. It's a small, it's a small white vehicle,  
 21 and I don't know the make off the top of my head.  
 22 Q. Okay. Now, house arrest, did you know  
 23 through your investigation that Deangelo Carroll was  
 24 placed on house arrest for his probation that he was  
 25 currently on at the time of the crime?

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1 A. I didn't know that specifically, but one  
 2 of the detectives had mentioned that.  
 3 Q. Okay. So you eventually learned that  
 4 through the course of your investigation?  
 5 A. Yes.  
 6 Q. We can keep going, Detective. I'm going  
 7 to direct you to page 38.  
 8 A. Okay.  
 9 Q. Page 38, if you can go to the fifth one  
 10 that starts off with KC.  
 11 MS. WILDEVELD: Can I just ask, why are  
 12 my -- if I have the same copies that you do, why are my  
 13 numbers off?  
 14 MR. DIGIACOMO: Judge, this morning at  
 15 7:30 what I did was, hers goes through each hello call,  
 16 hello call, hello call. They weren't broken up by  
 17 page, so what I did was taped the call number and put  
 18 it on the back of the one that I provided to them, and  
 19 a single copy is all I had, so that the detective could  
 20 read that and know which call number we're talking  
 21 about, if she wants to cross-examine him on that.  
 22 So I turned over the transcripts, but the  
 23 transcripts have a slight pagination change, so I told  
 24 Ms. Wildeveld to be reading mine as we talked about it  
 25 because hers are going to be slightly off on the page

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1 numbers.  
 2 So that's why she's having confusion here  
 3 because my page numbers, which she's free to use when  
 4 we're done, they are highlighted as to exactly which  
 5 one we're using to cross-examine him.  
 6 THE COURT: Okay.  
 7 BY MR. DIGIACOMO:  
 8 Q. Page 38, Detective, and I want you to  
 9 start at Irene when she's -- it's the fourth line down,  
 10 it says Irene, and she goes and conspiracy to commit  
 11 murder. And then what I want you to do is go all the  
 12 way through page 40, and I will stop you on page 40  
 13 when I think it's appropriate.  
 14 A. Okay.  
 15 "Irene: And conspiracy to commit murder  
 16 with a deadly weapon. How they going to say it's  
 17 conspiracy? Is that because they don't have a weapon?  
 18 KC: I guess. They don't have nothing.  
 19 All they got is they said, they said they have three  
 20 people saying I did this.  
 21 Irene: Yeah.  
 22 KC: You know, did you see the boy?  
 23 Irene: N, N, number disconnected.  
 24 KC: What number?  
 25 Irene: The one 355.

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1 KC: For real?  
 2 Irene: Yeah.  
 3 KC: Okay, uhm, you need to call, call  
 4 this number.  
 5 Irene: Uh-huh.  
 6 KC: 642-0893.  
 7 Irene: Okay, that's it?  
 8 KC: I mind, 'cause all I really want you  
 9 to find out --  
 10 Irene: Uh-huh.  
 11 -- is you know what I'm saying." KC said  
 12 that. Excuse me.  
 13 "Irene: Yeah. When they took you and  
 14 they said that you were under arrest, did they tell you  
 15 you were under arrest for supposedly murdering?  
 16 KC: No.  
 17 Irene: They didn't tell you that?  
 18 KC: No.  
 19 Irene: Oh.  
 20 KC: And they didn't tell you" -- excuse  
 21 me.  
 22 "KC: And they didn't tell me who the  
 23 three dudes was that was supposedly telling on me.  
 24 Irene: Uh-huh.  
 25 KC: And then the three dudes that they

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1 supposedly telling on me I was supposed.  
 2 Irene: You was supposed to what?  
 3 KC: They told ah, ah, what did the three  
 4 dudes I was with in the van with said that I did it.  
 5 Irene: Said that you did, said that you  
 6 did it?  
 7 KC: Yeah. And I'm saying to myself if it  
 8 was a possibility that I was in the van with these  
 9 three dudes, and something like that happened.  
 10 Irene: Yeah.  
 11 KC: Why they ain't in jail too.  
 12 Irene: Right.  
 13 KC: Or are they? I don't know.  
 14 Irene: That don't make no sense. No, I  
 15 don't think so.  
 16 KC: You know?  
 17 Irene: They was down there for a  
 18 questioning the other day, three (inaudible). After  
 19 that, you know, they were gone.  
 20 KC: Ah, that's what they say they was  
 21 down there for questioning?  
 22 Irene: Yeah.  
 23 KC: Huh. And what made them have to go  
 24 down there for questioning?  
 25 Irene: I don't know. I don't know.

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1 KC: Well, that what I want you to ah,  
 2 check on me for when you call that number.  
 3 Irene: Uh-huh.  
 4 KC: Or could you call this number?  
 5 Irene: Uh-huh.  
 6 KC: Which is, which is ah, next door.  
 7 Irene: Uh-huh.  
 8 KC: 633-  
 9 Irene: Uh-huh (affirmative).  
 10 KC: 6170.  
 11 Irene: Okay.  
 12 KC: 'Cause ah Mom's.  
 13 Irene: Mom?  
 14 KC: (Inaudible).  
 15 Irene: Uh-huh. Okay. And the other one  
 16 is what?  
 17 KC: What?  
 18 Irene: Direct?  
 19 KC: Six, yeah."  
 20 Q. I'm going to stop you there, Detective.  
 21 Were you able to confirm the number 633-6170, who that  
 22 number went to?  
 23 A. That is Deangelo Carroll's mother.  
 24 Q. That's Deangelo Carroll's mother's house?  
 25 A. Yes.

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1 Q. You never told Kenneth Counts that  
2 Deangelo Carroll was involved in this particular case?  
3 A. No.  
4 Q. Did you ever tell Kenneth Counts that, or  
5 Kenneth Counts' wife, that the three people had come  
6 down for questioning and were not booked into the jail?  
7 A. No.  
8 MR. DIGIACOMO: We can continue on, Judge.  
9 BY MR. DIGIACOMO:  
10 Q. Sorry. You don't have to continue  
11 reading. Page 44. I'm going to start at Irene talking  
12 about "I don't know. They just said on the paper that  
13 they --" That's about dead center.  
14 A. I have it. Start there?  
15 Q. Start there, and we can go right till she  
16 says I love you at the end of the call.  
17 A. Okay.  
18 "Irene. I don't know. They just said on  
19 the paper that they --  
20 KC: 'Cause uhm is Dennis a jacket there?  
21 Irene: Huh?  
22 KC: Is Dennis jacket there?  
23 Irene: That black hoody?  
24 KC: Yeah.  
25 Irene: No, I don't think so.

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1 KC: No Dennis jacket?  
2 You have one minute left.  
3 Irene: (Inaudible) jacket?  
4 KC: The jacket.  
5 Irene: I don't know.  
6 KC: The one the pants got burnt?  
7 Irene: The one the pants got burnt?  
8 KC: On the heater.  
9 Irene: Oh, I don't know.  
10 KC: Go see.  
11 Irene: Ah, but Babe, I can't, my our  
12 house is, they got the two rooms straightened up, but  
13 our room is just dumped upside down.  
14 KC: Yeah, I really need to know that. I  
15 really need to know that though.  
16 Irene: Okay. Okay.  
17 KC: Okay? I will call you back. I'll  
18 call back later.  
19 Irene: All right.  
20 KC: Love ya'll.  
21 Irene: I love you too."  
22 Q. Then we can go to 46, which is the very  
23 next phone call. The first thing after the recording  
24 about this is a collect call from the inmate at the  
25 Clark County Detention Center. I want you to start

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1 with the very first thing KC says after that recording.  
2 A. Okay.  
3 "KC: Hello.  
4 Mom. Hey.  
5 KC: All right. I just wanted to know did  
6 ah, my wife get that little information for me?  
7 Mom: Yeah.  
8 KC: Yeah?  
9 Mom: Yes.  
10 KC: Okay. Are you saying yeah, they did?  
11 Mom: Yeah, they did. No, we did, we do.  
12 KC: Oh, ya'll.  
13 Mom: Yeah, we do.  
14 KC: Oh, okay, that's good.  
15 Mom: All right.  
16 KC: So, hey, I, okay, yeah, that's good."  
17 Q. Okay. Let me stop you. I will skip ahead  
18 to page 49 in the middle.  
19 MS. WILDEVELD: Your Honor, I'm a little  
20 confused. This means nothing, and I don't know where  
21 we're going at here. Can we have a proffer as to what  
22 we're talking about? I mean, I read this whole thing,  
23 and I got a CSI two-hour episode out of it where they  
24 are talking about the house arrests boy and shooting  
25 someone, and we just keep going on. I don't know what

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1 this is about.  
2 MR. DIGIACOMO: Well, the fact that  
3 Deangelo Carroll happens to be on house arrest, happens  
4 to drive a little white car, and he happens to give his  
5 mother's phone number to contact to find out what's  
6 going on with his murder case when he should have  
7 absolutely no reason to know that Deangelo Carroll is  
8 involved in this murder case seems to be particularly  
9 relevant to this.  
10 As to the statements related to, and if  
11 you will let the Detective finish, the very last thing  
12 they ask him on page 49 is during the course of the  
13 search warrant, and if you want to read the whole  
14 thing, you can tell that that's what they are talking  
15 about.  
16 Clearly, the officers missed some piece of  
17 evidence that Mr. Counts is concerned about and is  
18 saying, "Oh, good, we've got that, you know what to do  
19 with it." It's clearly a consciousness of guilt type  
20 of comments, Judge, and that's what's being offered.  
21 MR. DRASKOVICH: Judge, I think we heard  
22 Ronta Zone testify that Mr. Counts and Mr. Deangelo  
23 Carroll were in the car together, so I object to this  
24 whole line of questioning. It's duplicative. It's  
25 redundant. And I move to strike.

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1 MR. DIGIACOMO: In case some Court or this  
 2 Court, and I'm sure they are going to be arguing that  
 3 Ronta is an accomplice as a matter of law, and as such,  
 4 then need corroboration to his testimony. I don't  
 5 think that is even remotely possible, but I certainly  
 6 need to put in all the corroboration I have. But one  
 7 last section of quotes to put in, and then I'm actually  
 8 done with the witness.  
 9 THE COURT: Okay. Let's get the last one  
 10 in.  
 11 MR. DRASKOVICH: Fine. We'll argue at the  
 12 end. I agree.  
 13 BY MR. DIGIACOMO:  
 14 Q. The middle of page 49 where it starts  
 15 Irene. Hello.  
 16 A. Hello. There is a couple, so I'll just go  
 17 to the top one.  
 18 "Irene: Hello.  
 19 KC: Yeah.  
 20 Irene: Hello.  
 21 KC: Yeah.  
 22 Irene: Yeah.  
 23 KC: So, you got the ah --  
 24 Irene: Uh-huh.  
 25 KC: -- burnt pants?

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1 Irene: Uh-huh.  
 2 KC: Okay. And uhm, so that means, uhm,  
 3 okay, uhm, the ah, the ah bottoms that go with the  
 4 burnt pants?  
 5 Irene: Yeah.  
 6 KC: They still in there?  
 7 Irene: Uh-huh (affirmative).  
 8 KC: Oh, okay.  
 9 Irene: Yep.  
 10 KC: Okay, ah, tell ah --  
 11 Irene: I already know what to do.  
 12 KC: All right.  
 13 Irene: Yeah."  
 14 Q. And you can stop there.  
 15 MR. DIGIACOMO: Judge, I have marked the  
 16 actual disk in evidence. If anybody ever needs it for  
 17 the record, the actual speaking by Kenneth Counts on  
 18 the eight phone calls, it's marked as State's Exhibit  
 19 Number 75. I offer it.  
 20 THE COURT: Okay. Any objection?  
 21 MR. DRASKOVICH: This transcript with all  
 22 the uh-huh negatives and uh-huh positives?  
 23 MS. WILDEVELD: I think uh-huh and huh-huh  
 24 are spelled the same.  
 25 THE COURT: They didn't offer the

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1 transcript. He offered the --  
 2 MR. DIGIACOMO: I was going to offer the  
 3 transcript next, so I guess we should offer the  
 4 transcript, too, just so that some Court doesn't have  
 5 to sit down and listen to the wires if they want to  
 6 dispute you. They'll have both the wire itself and the  
 7 transcript.  
 8 As we all know, the transcript is not  
 9 actual evidence. It is just, you know, the hearer  
 10 listens to that and decides whether or not it was  
 11 actually said. The transcript is just a help for the  
 12 hearer.  
 13 MR. DRASKOVICH: I think I follow that. I  
 14 mean, obviously, this is being admitted against  
 15 Mr. Counts. There is nothing concerning the other  
 16 codefendants in this. Obviously, the Court is going to  
 17 consider this for whatever reason it's going to concern  
 18 Mr. Counts alone. And I have no objection to it being  
 19 admitted.  
 20 MS. WILDEVELD: I would have objections to  
 21 just the parts being admitted because, again, they are  
 22 taken so out of context. They are talking about a CSI  
 23 finale episode that was two hours, and they get all  
 24 this out of it. To me, it seems like a story here  
 25 that -- I read the whole thing and didn't get any of

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1 that.  
 2 MR. DIGIACOMO: Well, that's why I offered  
 3 the whole thing.  
 4 MS. WILDEVELD: So just not those parts  
 5 are let in, the entire conversation is let in?  
 6 THE COURT: Yes.  
 7 MR. DIGIACOMO: And what is -- I'm sorry,  
 8 Detective, what is that transcript marked as?  
 9 THE WITNESS: I'm sorry, say that --  
 10 MR. DIGIACOMO: The transcript, what was  
 11 it marked as?  
 12 THE WITNESS: 67.  
 13 MR. DIGIACOMO: 67 too, Judge.  
 14 THE COURT: All right. What about  
 15 Mr. Draskovich saying against just Mr. Counts, or are  
 16 you going to address that?  
 17 MR. DIGIACOMO: Well, it's an interesting  
 18 argument. The fact that there is information to  
 19 corroborate Ronta that Kenneth Counts is involved in  
 20 this, should it ever become an issue, and I don't think  
 21 it ever becomes an issue because it's a question of  
 22 fact for a jury. And the jury will be instructed on  
 23 whether or not they find him an accomplice or not.  
 24 But the fact that any corroboration of  
 25 Ronta, should you make a determination that he is an

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1 accomplice as a matter of law, which I'm assuming based  
 2 upon the fact that he testified, and based upon his  
 3 testimony, you can't find that way, but any  
 4 corroboration of Ronta would be admissible to establish  
 5 corroboration.  
 6 MR. ORAM: Against Mr. Counts. Not  
 7 against --  
 8 MS. WILDEVELD: Can I have a chance to  
 9 cross-examine this witness?  
 10 THE COURT: We're just doing the  
 11 admission.  
 12 MR. DRASKOVICH: And, obviously, I'd  
 13 appreciate his trying to lay some basis for seeking to  
 14 have this admitted, but I think he was addressing the  
 15 arguments that I had made and Mr. Oram had made  
 16 concerning independent corroboration as co-conspirator  
 17 statements, and that has nothing to do with the basis  
 18 for my objections.  
 19 MR. ORAM: Under Hegelmeyer, the Nevada  
 20 Supreme Court made it very clear you have to have  
 21 independent evidence linking the defendant, in my case  
 22 would be Miss Espindola, so I don't believe this has  
 23 any relevance, so I have no objection to it.  
 24 MR. DRASKOVICH: Nor do I for the very  
 25 same reason concerning Mr. Hidalgo.

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1 THE COURT: Okay. Cross-examination?  
 2 MR. ORAM: Nothing.  
 3 MR. DRASKOVICH: I have none.  
 4  
 5 CROSS-EXAMINATION  
 6 BY MS. WILDEVELD:  
 7 Q. Detective Wildemann, you said that you  
 8 arrested Mr. Counts at 1677 E Street?  
 9 A. I took custody of him. SWAT actually took  
 10 him in to put the handcuffs on him, but yes, that's  
 11 right.  
 12 Q. At that time, did you make a determination  
 13 of whose house that was?  
 14 A. I had not, no.  
 15 Q. Do you now know whose house that was?  
 16 A. I don't know the name. I couldn't tell  
 17 you the name specifically.  
 18 Q. Did you know it was his relatives?  
 19 A. I got that from reading these phone calls.  
 20 Q. So they have relatives that live across  
 21 the street from where Mr. Counts lives, correct?  
 22 A. I couldn't tell you if they are blood  
 23 relatives, but that's what I got out of the phone  
 24 calls.  
 25 Q. During your ride to the police station

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1 with Mr. Counts, did you come to learn that he actually  
 2 has asthma?  
 3 A. Yes.  
 4 Q. And he suffers from very severe asthma?  
 5 A. I don't know that it was very severe, but  
 6 I do know that he said he had asthma.  
 7 Q. So when he was huffing and puffing, and I  
 8 think Mr. DiGiacomo made a point of saying that when he  
 9 was arrested he was sweating and having a hard time  
 10 breathing. Did Mr. Counts ask to go to the hospital?  
 11 A. No, he did not.  
 12 Q. Do you know now that he's been to the  
 13 hospital a couple times since being incarcerated?  
 14 A. I had no idea. I know that Detective  
 15 Vaccaro asked him if he needed a puffer, and I think  
 16 that's the exact terminology that he used, and he said  
 17 no.  
 18 Q. While he was at the detectives' office,  
 19 didn't he -- wasn't he transported to the hospital at  
 20 one point?  
 21 A. No.  
 22 Q. Were you with him the entire time?  
 23 A. Yes.  
 24 Q. You're also aware that he was shocked  
 25 twice by a Taser gun?

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1 A. I didn't know that it was two. I knew  
 2 that it was more than once.  
 3 Q. And would that cause him also to be out of  
 4 breath?  
 5 A. It could.  
 6 Q. And if he had asthma, it would only  
 7 exacerbate that problem?  
 8 A. I'm not a medical doctor. I don't know.  
 9 I know that we offered him anything that we could.  
 10 Detective Vaccaro asked if he needed a puffer. He said  
 11 no.  
 12 Q. So the first conversation that we went  
 13 through described the circumstances of his arrest,  
 14 correct?  
 15 A. Say that again?  
 16 Q. First conversation with his wife that you  
 17 went through so nicely with Mr. DiGiacomo described the  
 18 circumstances of his arrest, correct?  
 19 A. Yes.  
 20 Q. And he was saying that he was shocked by a  
 21 Taser?  
 22 A. Yes.  
 23 Q. And there was nothing incriminating in  
 24 that first phone conversation, was there?  
 25 A. In the whole conversation, I don't know.

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1 I would have to read through it all again.  
 2 Q. In the part that you read, Detective?  
 3 MR. DIGIACOMO: I didn't actually have him  
 4 read that first part. I just wanted him to confirm,  
 5 based on the voice and the fact that it's consistent  
 6 with his arrest, that he knows that this is, in fact,  
 7 KC on the phone or Defendant Counts on the phone.  
 8 I don't think I actually had him read  
 9 anything out of the first part. In fact, it might have  
 10 been the entire first phone call that I didn't have him  
 11 read anything out of.  
 12 BY MS. WILDEVELD:  
 13 Q. Okay. The first conversation was starting  
 14 with KC, "They was nice and comfy." "Yes, uh-huh. I  
 15 thought that they were going to be really flat?"  
 16 A. Can you tell me what page you're on?  
 17 Q. My pages are different. It's the first  
 18 conversation that you had to read.  
 19 A. That's several pages, so give me a minute.  
 20 I'll try to find it for you. All right?  
 21 Okay, that will be on page 7 at the top.  
 22 Q. Okay. "So they was nice and comfy?"  
 23 A. Yes.  
 24 Q. "Everything. Uh-huh. I thought I was.  
 25 They was going to be really flat. Uh-huh. Both my

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1 pillows and everything was still in there. KC, Okay,  
 2 okay, so that mean you cool? Uh-huh. All right, I'm  
 3 glad, I'm glad of that."  
 4 Do you have any idea what they're talking  
 5 about there?  
 6 A. I believe I do, yes.  
 7 Q. Could they be talking about a new mattress  
 8 or a bed or sheets?  
 9 A. They could be.  
 10 Q. But you don't know, do you?  
 11 A. I believe I do.  
 12 Q. You believe you do, or do you actually  
 13 know?  
 14 A. I believe I do.  
 15 Q. I believe I do too. They're talking about  
 16 a bed.  
 17 A. Okay.  
 18 Q. And in the next conversation, they were  
 19 talking about mess up your drugs. Did you find drugs  
 20 in Mr. Counts' house when you did your search?  
 21 A. I didn't know what that is talking about  
 22 because I did not search that area that they are  
 23 talking about.  
 24 Q. Have you had an opportunity to look at the  
 25 return from Mr. Counts' house?

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1 A. I haven't today, no.  
 2 MS. WILDEVELD: Your Honor, may I approach  
 3 the witness?  
 4 THE COURT: Yes.  
 5 BY MS. WILDEVELD:  
 6 Q. You signed your name to a return that was  
 7 done, executed on 5/21/05 --  
 8 A. Okay.  
 9 Q. -- of Mr. Counts' house?  
 10 A. Yes.  
 11 Q. And I'm showing you a return that's dated  
 12 5 -- executed on 5/21/05, and it was a copy of an  
 13 inventory of Mr. Counts' house.  
 14 A. Okay.  
 15 Q. Can you tell me if there were drugs listed  
 16 on that inventory?  
 17 A. No, there is not.  
 18 Q. And if you did a search of his house and  
 19 you found drugs, and they were illegal drugs, would you  
 20 have confiscated them?  
 21 A. Yes.  
 22 Q. So that conversation was not about  
 23 anything either, correct?  
 24 A. I don't know.  
 25 MS. WILDEVELD: I would ask the Court to

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1 strike that conversation from the record. It seems  
 2 that Mr. DiGiacomo is trying to get some other  
 3 incriminating evidence against my client in by using  
 4 these phone conversations with his wife of 15 years  
 5 where they are talking about a house that's being torn  
 6 up after a search warrant was executed and some drugs  
 7 that were being found.  
 8 And now it seems that he's trying to say  
 9 that Mr. Counts had drugs in the house, or I mean, he  
 10 read a very short paragraph.  
 11 MR. DIGIACOMO: Judge, the reason -- it  
 12 wasn't a short paragraph, it was two pages. The reason  
 13 I started putting in there why they mess up your drugs,  
 14 no, and they left all the stuff in the sink, is to  
 15 confirm that they are talking still about the search  
 16 warrant.  
 17 It's later in there where they start going  
 18 through everything, and then she goes back to the  
 19 pillow and needing to get the pillow because everything  
 20 is cool, and they got your purse, and we know we got  
 21 some of the money out of the purse but not all of the  
 22 money out of the purse. And that's the reason for that  
 23 information.  
 24 MS. WILDEVELD: And, your Honor, this is  
 25 all --

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1 MR. DIGIACOMO: I didn't ask the detective  
2 what his opinion is. The Court can take it for what  
3 it's worth.  
4 MS. WILDEVELD: This is not evidence.  
5 It's scant. There is nothing in this that can be used  
6 as evidence with any evidentiary value.  
7 THE COURT: Okay. Which means it goes to  
8 the weight. So the tapes and/or the CDs and  
9 transcripts are admitted for whatever weight they have  
10 got.  
11 BY MS. WILDEVELD:  
12 Q. And you don't know what the  
13 relationship -- you don't know any relationship between  
14 Mr. Counts and Mr. Carroll, do you?  
15 A. Mr. Carroll?  
16 Q. Yes.  
17 A. Any relationship?  
18 Q. You don't know if they have a relationship  
19 at all, do you?  
20 A. I know what Mr. Carroll told me.  
21 Q. You only know what Mr. Carroll told you,  
22 correct?  
23 A. Yes.  
24 Q. And Mr. Counts never spoke to you, did he?  
25 A. No.

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1 Q. And Deangelo didn't -- Deangelo's house  
2 was not, in fact, across the street from Mr. Counts'  
3 house, was it?  
4 A. The house that Mr. Counts is in is  
5 peculiar. I don't know if you've been down there.  
6 Q. Just answer the question.  
7 A. I'm trying to answer.  
8 Q. Then strike the question. Does  
9 Mr. Counts -- strike the question. It's my turn now.  
10 THE COURT: Let him finish answering.  
11 MR. DIGIACOMO: Thank you, Judge.  
12 THE WITNESS: The house is almost on a  
13 corner. Instead of one street's going north, one  
14 street is going east/west, north/south. And instead of  
15 facing either north or east or south or west, the house  
16 faces actually northeast.  
17 So when I described it to Mr. DiGiacomo, I  
18 said that it was actually to the east, slightly to the  
19 south. To me, it was across the street.  
20 BY MS. WILDEVELD:  
21 Q. Okay. Does Mr. Counts -- does  
22 Mr. Carroll's mother live across the street from  
23 Mr. Counts' house?  
24 A. Yes.  
25 Q. And that is not the apartment that

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1 Mr. Carroll lives in with his wife and son, is it?  
2 A. No.  
3 Q. So it's not Mr. Carroll's house, is it?  
4 A. It's his mother's house.  
5 Q. Thank you.  
6 MS. WILDEVELD: I have nothing else for  
7 this witness, your Honor.  
8 MR. DIGIACOMO: One question.  
9  
10 REDIRECT EXAMINATION  
11 BY MR. DIGIACOMO:  
12 Q. What were they talking about when they are  
13 talking about the pillow and it being plaid?  
14 MR. DRASKOVICH: Objection, speculation.  
15 MR. DIGIACOMO: First of all, we already  
16 decided it doesn't go against --  
17 MS. WILDEVELD: Objection, speculation.  
18 MR. DIGIACOMO: But you opened the door by  
19 saying do you know what it is? And he says yes. And  
20 she won't ask the next question. What do you know?  
21 THE COURT: He said that he believes so.  
22 Let's see what he believes.  
23 BY MR. DIGIACOMO:  
24 Q. What do you know they're talking about.  
25 A. I believe it to be the money.

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1 Q. Did we ever find the rest of the money?  
2 A. No.  
3 Q. Okay. And later on during the subsequent  
4 conversation when she's talking about my pillows are  
5 still fluffy, and only some of it was in the purse,  
6 does that bring you back to why it is they are talking  
7 about the money?  
8 A. Yes.  
9 Q. Thank you.  
10 MS. WILDEVELD: Objection, your Honor. I  
11 would like to strike that. That was leading, and in  
12 addition --  
13 MR. DIGIACOMO: Well, objection to leading  
14 has to happen before the answer occurs, Judge.  
15 THE COURT: I understand what you are  
16 saying, and it's his supposition as to what it is.  
17 MS. WILDEVELD: I just have a brief  
18 question then.  
19 THE COURT: All right.  
20  
21 RECROSS-EXAMINATION  
22 BY MS. WILDEVELD:  
23 Q. When you do, when you execute a search  
24 warrant on someone's house, you leave quite a mess,  
25 don't you?

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1 A. It totally depends.  
 2 Q. You turned over a couch, correct?  
 3 A. We very well might have. I'm not going to  
 4 tell you we didn't.  
 5 Q. You undid the mattresses, correct?  
 6 A. Yes.  
 7 Q. And you're a seasoned veteran of executing  
 8 search warrants, aren't you?  
 9 A. Yes.  
 10 Q. So you would have looked in the bed and  
 11 looked around the bed, correct?  
 12 A. I would have done the best job I could  
 13 have, yes.  
 14 Q. So if a pillow seemed a little heavier  
 15 than it should, you would have noticed, wouldn't you?  
 16 A. If it had a gun in it, I would have  
 17 noticed.  
 18 Q. Which would have made it a little bit  
 19 heavier, correct?  
 20 A. Yes.  
 21 Q. There is no evidence of a gun in a pillow?  
 22 A. No.  
 23 MS. WILDEVELD: Nothing further.  
 24 MR. DIGIACOMO: I have nothing further,  
 25 Judge.

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1 Judge, if I may consult with your clerk to  
 2 make sure everything is offered and admitted that we  
 3 intended to offer.  
 4 MR. PESCI: Before we consults her, could  
 5 we ask specifically, there were in the Miranda cards,  
 6 the copies of, your Honor, had those marked. We did  
 7 not hear from both defense counsel as to whether they  
 8 were taking any position.  
 9 I believe Mr. Draskovich did not take a  
 10 position as to the admission, but I would like to hear  
 11 for the record from all three counsel as to those two  
 12 Miranda cards.  
 13 THE COURT: I admitted them under my, as  
 14 my exhibits.  
 15 MR. DIGIACOMO: Oh, you did.  
 16 THE COURT: I believe I did.  
 17 MR. DIGIACOMO: Okay. I apologize, Judge  
 18 I didn't know the record was clear on that.  
 19 Judge, I'm going to offer 69, 70 and 71,  
 20 which are the original unenhanced so that the record  
 21 can be clear as to what is the enhanced versus the  
 22 unenhanced.  
 23 THE COURT: They will be admitted.  
 24 (Thereupon, State's Exhibits 69, 70 and  
 25 71 were admitted into evidence.)

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1 MR. DRASKOVICH: Is the State resting?  
 2 MR. PESCI: We're just trying to wait and  
 3 see what we have.  
 4 THE COURT: So the record can be clear,  
 5 and this will be transferred with the file so the clerk  
 6 doesn't have to try and find an unpublished decision.  
 7 I will mark the Ross versus State of Nevada order of  
 8 reversal as an exhibit in the case as the Court's third  
 9 exhibit.  
 10 MR. DIGIACOMO: Judge, the only thing we  
 11 didn't offer was State's Exhibit Number 30 because  
 12 there wasn't someone who could testify to its  
 13 authenticity.  
 14 Other than that, my understanding is that  
 15 all the exhibits have been offered, as well as  
 16 admitted. And at this time, the State would rest.  
 17 Oh, there is one thing before I rest. I  
 18 guess, it's a very brief thing. I don't think anybody  
 19 is going to object. On Count IV, Deangelo -- on  
 20 Count IV, Deangelo Carroll's name is misspelled. It  
 21 needs to be an "O" on line 11 at the last,  
 22 C-A-R-R-O-L-L.  
 23 THE COURT: Okay. That will be amended to  
 24 reflect and add by interlineation at this point.  
 25 MR. DIGIACOMO: And other than that, the

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1 State would rest, Judge.  
 2 MR. ORAM: Your Honor, I have advised my  
 3 client of her right to testify, her right to call  
 4 witnesses. At this time, we're going to waive those  
 5 rights.  
 6 MR. DRASKOVICH: Your Honor, I, as well,  
 7 have counseled with my client, Mr. Hidalgo, III. I  
 8 have informed him of his right. I have informed him of  
 9 the standard that is applied at this juncture. I have  
 10 advised him to not take the stand and testify, nor will  
 11 we be calling witnesses. He's going to be following my  
 12 advice, and we will not be presenting any evidence this  
 13 afternoon.  
 14 MS. WILDEVELD: Your Honor, I have also  
 15 counseled with my client, and Mr. Counts will not be  
 16 appearing, taking the stand this afternoon nor will we  
 17 be offering any evidence.  
 18 THE COURT: Okay.  
 19 MR. DIGIACOMO: Do I dare reserve for  
 20 rebuttal?  
 21 MR. DRASKOVICH: Well, we still have some  
 22 issues concerning that of Ronta Zone. Your Honor was  
 23 reserving the ruling concerning that. Does your Honor  
 24 want to hear argument briefly at this time?  
 25 THE COURT: No, I want to hear -- you can

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1 include that in your closing. I think we can do -- my  
2 experience is counsel will get two arguments that will  
3 be essentially the same, and so we'll lump it all  
4 together, and I'll make a decision before I rule on the  
5 bind over.

6 MR. ORAM: Are you reserving?

7 MR. DIGIACOMO: I think I'm just going to  
8 say a little something because I know you guys are  
9 going to go forever.

10 THE COURT: I would like, in addition to  
11 addressing the issue of the hearsay matters and  
12 Mr. Zone, when all counsel, if you can address each  
13 count, that makes it much easier for the Court to  
14 follow.

15 MR. DIGIACOMO: Judge, I want to start  
16 with something very briefly. I don't know if the  
17 defense is even going to raise it, is whether or not  
18 Ronta Zone is an accomplice as a matter of law.

19 The law says in order to be an accomplice  
20 as a matter of law that their personal testimony from  
21 the stand taken by itself, whether or not that makes  
22 them liable for the crime for which the defendants are  
23 charged.

24 And there was nothing said by Ronta Zone  
25 which makes him liable to conspiracy to commit murder,

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1 murder with use of a deadly weapon, solicitation to  
2 commit murder two times over, one of which he's the  
3 victim of.

4 Obviously, he can't be a co-conspirator or  
5 an accomplice for that particular crime, Judge, and as  
6 such, once you make a determination that he's not an  
7 accomplice as a matter of law, the case law is very  
8 clear, it becomes an issue for a jury.

9 And as such, he does not need to be  
10 corroborated. He only needs to be corroborated at the  
11 preliminary hearing stage, should he be an accomplice  
12 as a matter of law.

13 And that being said, that means that  
14 Kenneth Counts we're done because what did he say? I  
15 saw Kenneth Counts shoot that guy in the head, and I  
16 know that Deangelo was talking about killing him.  
17 Jayson said he was willing to kill him. And that  
18 Deangelo went in the house, spent some time with  
19 Deangelo in the house.

20 And I would note that his attorney made it  
21 quite clear that there was no conversation in the car  
22 thereafter. So there must have been some discussion  
23 inside that house between Deangelo Carroll and Kenneth  
24 Counts to make it so that he would get out of the car  
25 and pop this guy in the back of the head twice or the

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1 ear, and then on the face when he's down on the ground.

2 As such, Judge, certainly the conspiracy  
3 to commit murder as it relates to Kenneth Counts is  
4 covered just by Ronta's testimony by itself. Murder  
5 with use of a deadly weapon is covered by Ronta, his  
6 testimony by itself.

7 However, out of an abundance of caution,  
8 and knowing that a Court is going to sometime later on  
9 look at the evidence that was presented, and there may  
10 be a writ on the issue whether or not that's  
11 appropriate, was he corroborated?

12 Corroboration doesn't, first of all, for  
13 preliminary hearing, it probably is slight or marginal.  
14 I couldn't find any case law that says exactly what  
15 corroboration at preliminary hearing is necessary, but  
16 probably just slight or marginal evidence, since that  
17 is the standard for everything in a preliminary  
18 hearing.

19 Just merely the fact that a guy gets  
20 charged with conspiracy to commit murder and murder  
21 with use of a deadly weapon where the guy accusing him  
22 is a guy by the name of Deangelo Carroll, and nobody  
23 has ever told him that, goes to jail and asks his wife  
24 to call Deangelo Carroll's mother's house to find out  
25 what's going on with my case, says to me that he must

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1 have known something about the crime because how else  
2 would he know that Deangelo Carroll is involved.

3 What possibility was there that he would  
4 call to find out about his case to another  
5 co-conspirator? Is that a random chance? I would  
6 think not.

7 Moreover, there is additional  
8 corroboration, and I know the Court is going to have  
9 lengthy argument on what exactly those surreptitious  
10 recordings, and it's going to be the State's position,  
11 and the Court is going to take whatever position it  
12 ultimately decides.

13 I know you have read Ross and, you know,  
14 if you read Ross, you just wonder what the Supreme  
15 Court was talking about when they said testimonial.  
16 You wonder what it is that they really should have  
17 said, which was you can't use that girl's testimony  
18 against the other guy who is not on the phone call.  
19 You can't use the other guy on the phone call against  
20 the other guy because it's a Bruton problem, and oh, by  
21 the way, the conspiracy is over.

22 They are talking about an act that  
23 occurred a long time ago in the conspiracy when she  
24 pawned this necklace. So there is no conspiracy here.  
25 The State did the wrong thing -- sorry, Mr. Pesci --

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1 but you shouldn't have been able to use all of those  
2 things.

3 When they wrote that opinion, you know,  
4 it's my personal theory that it's an unpublished  
5 opinion because it doesn't make any sense. And hence,  
6 why it may be some persuasive authority, but I don't  
7 think it's binding, that language on this case because  
8 it's different.

9 You have two co-conspirators. Forget  
10 Mr. Carroll, first of all. You have two  
11 co-conspirators talking about the crime, talking about  
12 covering up the crime. Clearly, the conspiracy is  
13 ongoing.

14 And if you have two co-conspirators  
15 talking in furtherance of the crime, and I know there's  
16 going to be a lot of discussion about what exactly you  
17 heard on that tape, and if the Court feels the need,  
18 listen to that tape a hundred times.

19 I've listened to it a number of times, and  
20 every time you listen you get more and more familiar  
21 like you would do with any bad recording, which this is  
22 not the greatest recording on earth.

23 But certainly the discussion between those  
24 two individuals, and Anabel says at one particular  
25 point, "Then don't worry about KC, he's the shooter.

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1 Don't worry about him."

2 Now, that's a statement by a  
3 co-conspirator during the course and in furtherance of  
4 the conspiracy, and I submit to the Court that you can  
5 use that as corroboration as to Ronta Zone because it  
6 is evidence against KC because it is a statement of a  
7 co-conspirator in furtherance.

8 I would also submit to the Court as to  
9 that conversation that occurred back there, nothing  
10 that Deangelo said is relevant to the truth of the  
11 matter asserted because you heard Deangelo make many  
12 statements in there that were obviously something to  
13 cause the conversation to go forth.

14 And I'm going to talk just a little bit  
15 briefly about that, and then I'm going to let them yell  
16 about what's on the wire or not.

17 But, one -- several times he made  
18 statements that if a normal person was having a  
19 conversation, if I were talking to you and called you  
20 Miss Anabel, you would correct me. If Miss Anabel  
21 turned to Luis and called him something else, Luis  
22 would have corrected him, but you can clearly hear  
23 Anabel use Luis's name. Deangelo uses Miss Anabel's  
24 name. Luis uses Miss Anabel's or Anabel. They all  
25 talk intermixably between each other and not a single

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1 person gets up and --

2 MR. ORAM: I would briefly object. I  
3 thought they didn't use that tape for the truth of the  
4 matter asserted. Now, all of a sudden, when he uses  
5 Miss Anabel, it's for the truth of the matter asserted.

6 So I just want that to be on the record  
7 that that is completely inapposite to what he told this  
8 Court he was using the tape for.

9 MR. DRASKOVICH: And they, he argues -- I  
10 would just like to join in this objection because it's  
11 inappropriate.

12 Once again, they say it's not for the  
13 truth of the matter asserted, and at the same time,  
14 they want your Honor to use it in order to bind over a  
15 defendant on murder charges. So, once again, they have  
16 it both ways, and I would object and I think it's an  
17 inappropriate argument.

18 THE COURT: Go ahead. This is closing  
19 argument.

20 MR. DIGIACOMO: If the Court says to me,  
21 you know what, I'm worried about the Crawford issue.  
22 I'm only going to use Luis against Luis. I'm only  
23 going to use Anabel against Anabel, and I'm just going  
24 to completely excise Mr. Carroll.

25 You will still have a bind over, but I

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1 don't think that is the appropriate way to use the  
2 evidence. I believe that the evidence is admissible  
3 for these various purposes.

4 And I'm not using Deangelo's statements  
5 for the truth of the matter asserted in any manner,  
6 however, but if someone says something and a normal  
7 person would have corrected that individual, it's not  
8 the statement of the declarant that's a hearsay  
9 statement, it's the mere fact that the other person  
10 doesn't correct them, it's an adoptive admission. It's  
11 their statement, not Deangelo Carroll's statement.

12 The fact that when he opens the door he  
13 says Room 6, she told me to go to Room 6. The guy  
14 doesn't go hey, you're in the wrong room. Go to a  
15 different room. How do we know what happened in  
16 Room 6? Well, you have a whole bunch of circumstantial  
17 evidence to establish it happened in Room 6.

18 At the end of the first phone call, you  
19 can hear Luis Hidalgo, III, say, "See these bonds on  
20 the floor. I will buy you these, and they'll be  
21 \$25,000 in a year." And lo and behold, in the search  
22 of Simone's Auto Plaza, in Room 6 we happen to find a  
23 whole bunch of bonds, and you can look at them. The  
24 stack has got to be this big.

25 There has got to be a hundred, maybe

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1 \$25,000 worth of savings bonds there in the name of  
2 Luis Hidalgo, III, and more order forms on the floor.  
3 How do you know it happened in Room 6? Because the  
4 circumstances of the case tell you that it happened in  
5 Room 6.

6 What else did you hear Little Lu do? He  
7 coughed numerous times throughout that time, and you  
8 heard the detective testify to that. He says, "Put  
9 something in the food, rat poisoning. We need to get  
10 KC last. Drink the Gatorade. You know what you have  
11 to do. Talk about it. Buy a nice condo and a car."

12 They are talking about, and he talks about  
13 what's this? And he says, "This is gin. Put the rat  
14 poisoning in gin," and Miss Anabel says, "That's not  
15 going to kill him." "Okay. Smoke him a blunt," or  
16 smoke a marijuana cigarette. I don't know the exact  
17 term that she used.

18 But if you listen to these statements, it  
19 is clear that when Deangelo Carroll happened to leave  
20 Simone's with what, a bottle of gin in his hands and  
21 \$1400 in cash, which despite the best efforts of the  
22 defense, he didn't have on his person. \$1400 doesn't  
23 just sit in your pockets, and when you're patted down,  
24 hey, you're missing, you know, you got ten bucks in  
25 your pocket. That's \$1400. That's a big chunk of

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1 change.

2 What else do we know from Little Lu?  
3 Little Lu in both wires, and you actually can hear his  
4 voice better on the second wire, I guess, because he  
5 doesn't believe that he's wired any longer. In all  
6 those statements, you can hear him in the room coughing  
7 and hacking every time Miss Anabel is talking about the  
8 case, about we're all going to be dead.

9 And then what do you know from Miss  
10 Anabel? I'm going to go to track two last because I  
11 know that defense counsel is going to spend a long time  
12 on that. But, one, she's whispering. Why are all  
13 these people whispering?

14 MR. ORAM: Well, we wouldn't know if they  
15 put a witness on the stand to answer the question,  
16 Judge. I was very upset by that.

17 THE COURT: We'll get to that.

18 MR. DIGIACOMO: Why is everybody  
19 whispering if that is not evidence that they are  
20 involved in something?

21 She says to Deangelo Carroll, "Where is  
22 your head? If we have to get to that point, we have to  
23 stick together. Just say what I already told you, that  
24 I want to speak to a lawyer. I am going to give you  
25 some money," to Deangelo Carroll.

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1 Tells Deangelo Carroll he needs to say  
2 that he needs to spend more time at home. "Why didn't  
3 you turn around to Deangelo Carroll? All I'm telling  
4 you is stick to your story. Have your wife look for an  
5 attorney. We're all going to be under the trailer. If  
6 I lose the shop or club, I can't help you or your  
7 family. You had too many eyes on your ass. You should  
8 have turned back. What the fuck were you thinking?  
9 Keep your mouth shut. We will give you a check and  
10 extra cash. I will give you a prepaid number."

11 What else did she say during that? She  
12 says, "We're going to give you a check for 24 hours."  
13 And lo and behold, during the search warrant at  
14 Simone's office, there is a check for 24 hours made out  
15 to Deangelo Carroll.

16 What, are these circumstances not  
17 circumstances the Court needs to consider on what's  
18 going on on that tape? I would also know on the very  
19 first track she says, "I -- we told you to beat him."  
20 And I'm going to discuss the individual counts in just  
21 a moment.

22 She says, "We told you to beat him." And  
23 then later, Mr. Oram made a big to-do about the fact  
24 she said, "Told you to talk to the guy, you know, not  
25 kill the guy." And there was a big to-do on that

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1 second, but if you listen to the whole thing she says  
2 there, "Yeah, I talked to you on the phone. When I  
3 found out," or I can't say that this is specific, but  
4 if you listen to it, what she's essentially saying is  
5 "When I found out you had to go out to the lake and  
6 there is four people in the car, I told you to go to  
7 plan B."

8 Well, does that not tell you that there  
9 has got to be a plan A? And that is not a withdrawal  
10 from the conspiracy. You cannot just call up the guy  
11 who is supposed to commit the murder and go, "You know  
12 what, go to plan B, just beat the guy and be done with  
13 it." Now, what else did she say? I told you "No, you  
14 turned your phone off. I don't know shit, and that's  
15 how I have to play it."

16 What else do you have? You have Ronta  
17 Zone telling you that Deangelo Carroll said Mr. H  
18 wanted a guy hit. That Little Lu said come down here  
19 with baseball bats and garbage bags.

20 Now, conspiracy to commit murder. Is  
21 there evidence, either slight or marginal, that there  
22 is a conspiracy to commit murder? Well, was there a  
23 murder, yes. Was there clearly a conspiracy, yes. As  
24 to Kenneth Counts, absolutely. As to Deangelo Carroll,  
25 though he's not, we don't have to argue that issue,

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1 absolutely.

2 What about Luis Hidalgo, is there slight  
3 or marginal evidence of Luis Hidalgo as conspiracy to  
4 commit murder? What are you bringing baseball bats and  
5 garbage bags for? What is that for? And then later on  
6 when he talks about killing the witnesses, and that's  
7 absolutely clear because he says, "We're going to have  
8 to kill KC last."

9 When he's talking about that, is that not  
10 evidence that that was what their intent was? Is that  
11 not evidence that the murder occurred, and the  
12 conspiracy occurred and the conspiracy was for killing?

13 As to Count II, murder with use of a  
14 deadly weapon. Well, here is where I will make a  
15 little bit of an argument to the Court. Let's assume  
16 for sake of argument that it was merely a conspiracy to  
17 commit a battery, a battery with a deadly weapon, a  
18 battery with substantial bodily harm.

19 Let's say you enter into that conspiracy  
20 and then your co-conspirator decides to take it to the  
21 next level. What crime are you guilty of? Well, it  
22 depends on how it is that the State alleges the  
23 charges, so let's go through them.

24 Did you directly or indirectly commit the  
25 acts with premeditation and deliberation and/or lying

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1 in wait? Well, no, if you solely said that, maybe not.  
2 However, you have to worry about the conspiracy theory,  
3 which will bring that back in.

4 By aiding and abetting the commission of a  
5 crime, right, where they have to have the specific  
6 intent. Now, whether or not intent, if you go out to  
7 beat somebody, and you are aiding and abetting in a  
8 beating with substantial bodily harm, a beating with a  
9 deadly weapon, probably based solely on the aiding and  
10 abetting theory, you're guilty of second degree murder  
11 with use of a deadly weapon because you are only  
12 allowed to get to your level of intent.

13 Your general intent then in that  
14 particular case is just malice aforethought and not  
15 premeditation and deliberation, but you still have to  
16 deal with the conspiracy theory.

17 If you enter into a conspiracy to commit a  
18 battery, a battery with a deadly weapon, a battery with  
19 substantial bodily harm, you're on the hook for the  
20 foreseeable act of your co-conspirator.

21 And if the foreseeable act of your  
22 co-conspirator is such that -- well, let me ask you  
23 this? Is it so unforeseeable that if you send someone  
24 out to beat somebody with bats, that they wind up dead?  
25 Are you not on the hook for everything that your

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1 co-conspirator did?

2 And the fact that the guy got shot twice  
3 in the head clearly establishes that the crime  
4 committed was first degree murder with use of a deadly  
5 weapon.

6 In other words, even if you believe that  
7 they just ordered a beat down, as opposed to a murder,  
8 they are liable for a murder if a murder occurs under a  
9 conspiracy theory.

10 The solicitation to commit murder. You  
11 can clearly hear Luis and Anabel and Deangelo is in  
12 there a little bit, but it's mostly Luis and Anabel  
13 talking about putting the strychnine inside the gin,  
14 having them drink the gin.

15 And Anabel at one point says, "Well,  
16 that's not even going to work." And Luis says, "Okay.  
17 We'll smoke them out, or smoke some marijuana with  
18 strychnine in it. That will do it to them. We need to  
19 get rid of them."

20 And then Luis says, "We have to kill KC  
21 last." Well, who does that mean else they are killing?  
22 The other two co-conspirators, which is established as  
23 Jayson and Ronta.

24 As such, Judge, our standard is very low  
25 for a preliminary hearing, and I would think that based

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1 upon the amount of evidence that was submitted to the  
2 Court, we're certainly past any threshold of slight or  
3 marginal evidence for all four of the crimes, and I  
4 will submit it to the Court.

5 MR. ORAM: Your Honor, I agree with  
6 Mr. DiGiacomo that they have slight burden, and they  
7 proved it in this case. They have a very light burden,  
8 and they can really present whatever they want to  
9 present, according to their own rules.

10 They -- Judge, who did I get to  
11 cross-examine today in terms of an accuser? I don't  
12 mean somebody that came in and said I don't know,  
13 that's what they told me. Who was her accuser today?  
14 Who?

15 I mean, they put on Mr. Zone. I asked  
16 Mr. Zone, do you know her? No. No. The accuser  
17 doesn't know her and has nothing to offer against her.  
18 He didn't know of anything beforehand. He doesn't say  
19 that she told him to go out there. There was no  
20 evidence that she instructs anybody to go out there.

21 Then they call a detective. That was the  
22 other accuser because that was the only other person I  
23 really got to ask questions of. Why? Because they  
24 can't put an accuser on the witness stand.

25 And I don't think that the Court has a

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1 great deal of experience, and I would ask the Court to  
2 consider the Court's experience. How many times have  
3 you seen a situation where a lawyer could argue who was  
4 the accuser, Judge? The accuser is sitting back over  
5 there silent, just silent. And there is nothing I can  
6 do about that.

7 And then it is just frustrating to have a  
8 case so on point as Ross, and have what I would  
9 consider as the prosecutors arguing oh, no, it doesn't  
10 apply, exception. That's what they argued over and  
11 over and over to Judge Bonaventure. That's what they  
12 argued over and over and over in the Supreme Court.  
13 And they got whacked.

14 And you know what else is funny, Judge,  
15 they sit here and say what is the Supreme Court doing.  
16 Why didn't they file a motion for reconsideration if  
17 they didn't like the decision? It overturned two  
18 people's trials. Two. And they don't ask for  
19 reconsideration, but they stand here as though the  
20 Supreme Court doesn't know something.

21 Quite frankly, the people that don't  
22 understand the law were the people on the other side of  
23 that case. They don't understand Bruton. They don't  
24 seem to understand the confrontation clause. How do  
25 you play a CD without the witness on the stand to say

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1 yeah, that was me. I was in the room.

2 There was nobody sleeping, that's why, you  
3 know, where there were people sleeping, that's why we  
4 were whispering or we weren't whispering for that  
5 reason, or this person left the room, or this person,  
6 when they said strychnine, had a big smile on their  
7 face. That's the whole purpose of confrontation.  
8 There is nothing for me to confront.

9 Do I dare ask the detective was that stuff  
10 truthful? What's he going to say? Of course, it was,  
11 counsel, the parts that nail your client were. What  
12 parts? What parts were on there, Judge, that are very  
13 incriminating?

14 I can barely hear 5 percent of that, and  
15 I'm not not trying to hear it, I just can't hear it.  
16 The portion that I thought was the most interesting is  
17 when, apparently where we're not allowed to really  
18 consider it because I made the objection, but, quite  
19 frankly, that man confronted Anabel.

20 And he said, "I did what you told me to  
21 do." And what did she say? "No. I told you to talk  
22 to him, not --" and I think she says the word "fucking  
23 hurt him or kill him." She knows what he has done  
24 because he's in there confessing to everybody. But  
25 she's telling him right to his face, when she doesn't

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1 know that it's being recorded, "I never told you that.  
2 I told you that to talk to the man."

3 Now, what the Court didn't get was in his  
4 statement. First of all, he just wants to buy some  
5 marijuana from the guy and then he never sees the guy  
6 again. And, second of all, it's KC, and KC wants to  
7 commit a robbery, and then he shoots him and then he  
8 points the gun at poor Mr. Carroll over here. And then  
9 oh, no, that's not a good story.

10 He goes to a third story, and then  
11 eventually he's like, you know what, I think they want  
12 Anabel, points the finger. And that's what we've got.  
13 That's their case? Nobody for me to cross-examine. No  
14 one, Judge, and I cannot recall a situation where that  
15 has ever happened. Only in Ross have I ever had a  
16 situation where a major portion of the case through  
17 those CDs came in and I couldn't cross-examine someone.

18 I thought it was blatantly obvious. I  
19 thought every attorney would know what the  
20 confrontation clause was, and you can't put on a prelim  
21 by CD, you can't put on trial by CD. And that's what I  
22 got hit with today. Prelim by CD where I have no one  
23 to cross-examine. They have no evidence. They have no  
24 admissible evidence. None whatsoever should come in  
25 against Anabel because where was it, Judge? Where?

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1 You asked us to address the counts  
2 individually. Conspiracy to commit murder. Where from  
3 their admissible evidence do they have Anabel saying,  
4 "Yes, we would like you to go out and kill someone."  
5 An agreement between two people.

6 Even Mr. DiGiacomo got up and what I would  
7 call did some bar review intellectual exercise in  
8 explaining there is somebody, and I think they are  
9 pointing at Anabel, wants somebody beaten up because  
10 that's when she said, "I told you to talk to him," they  
11 really want to interpret another portion of it no,  
12 beaten up, she said he wanted beaten up. Conspiracy to  
13 commit murder. Where do they have that? They don't  
14 have conspiracy to commit murder.

15 Then they talk about murder. What, so  
16 that she told him I told you to talk to him. But they  
17 are all whispering, so this must be suspicious, so you  
18 will get a bind over because you don't need much  
19 evidence. In fact, you don't need any real admissible  
20 evidence because you can't get a witness to come in and  
21 testify against her. Where was the evidence of murder,  
22 your Honor? I don't see that.

23 Then solicitation to commit murder. There  
24 is something on there about strychnine or whatever the  
25 State -- I don't disagree that there is something on

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1 those CDs about that. But what's their demeanor when  
2 they are saying that?

3 Why can I not cross-examine people's  
4 demeanor? How often -- I bet the Court can even  
5 remember laughing or saying something just absolutely  
6 ridiculous like put strychnine in a blunt. How does  
7 that get a bind over on solicitation to commit murder?

8 That is just, it just seems this case is  
9 so weak. It is so weak against her. Specifically,  
10 against her. This case is horribly weak. I don't  
11 understand, first of all, how they got certain evidence  
12 in or want the Court to consider certain evidence.

13 Second of all, I don't see under  
14 Hegelmeyer, Nevada Supreme Court said there must be  
15 independent evidence linking a defendant to a crime.  
16 So what we do is we take out the co-conspirator  
17 statements.

18 That's what the jury instructions actually  
19 tell us. They tell the jury take out the  
20 co-conspirator statements. That's Deangelo Carroll.  
21 And what links the person to the crime then? What  
22 links her to this crime? Nothing.

23 The State is not going to argue she was  
24 out there. They have nothing beforehand. All they  
25 have is the word of Deangelo Carroll. That's it. The

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1 word that the detective told us was not worth very much  
2 because he changes all the time.

3 And I asked him if he was an habitual  
4 liar, and I'm not sure if his response was yes, but I  
5 think it was, Judge, that he was an habitual liar. And  
6 that's their case.

7 And my client has no bail. And I don't  
8 understand how they get a bind over on this. I don't  
9 think that there is corroboration of this under  
10 Hegelmeyer, and I would ask that you dismiss this case  
11 in its entirety as to all of the counts against Anabel.

12 MR. DRASKOVICH: This Court is well aware  
13 the standard that is supplied to a preliminary hearing  
14 is that of probable cause. All's we have heard today  
15 is basically imaginary cause. I have heard statements  
16 by Mr. DiGiacomo that I didn't hear, and I'm assuming  
17 the Court didn't hear either, that was going on in this  
18 recording that my client was supposedly a part of.

19 The Court wanted us to address Ronta  
20 Zone's rendition of what supposedly occurred and what  
21 Deangelo Carroll supposedly told him. Under  
22 NRS 52.035, there is basically three things that have  
23 to be shown. A statement made by a co-conspirator  
24 during the course and scope of a conspiracy and,  
25 obviously, that there is a conspiracy.

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1 There has been no independent evidence  
2 whatsoever to show, which is required in the progeny of  
3 case law that's interpreted that statute, of any  
4 independent corroboration of what Ronta Zone said that  
5 Deangelo Carroll told him.

6 You heard on my cross, I began with it and  
7 then I closed with it, everything that Ronta Zone was  
8 doing, and everything that they were supposedly  
9 carrying out, it all came from Deangelo Carroll. It  
10 was his word and his word alone.

11 They heard nothing from anyone else to  
12 corroborate that there was this -- what was the word  
13 they said -- take care of somebody or put a hit on  
14 somebody? It was imaginary because they couldn't show  
15 any corroborating evidence for that. They must show  
16 corroborating evidence independent of the statement  
17 itself. They have shown nothing.

18 In reference to Count I, conspiracy to  
19 commit murder, obviously, this conspiracy has to occur  
20 before the murder occurs; otherwise, there wouldn't be  
21 a conspiracy to commit a murder. It may be some sort  
22 of a conspiracy to cover up a murder or something like  
23 that.

24 We have heard no evidence whatsoever that  
25 Luis Hidalgo, III, conspired to murder TJ. We haven't.

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1 We haven't whatsoever. It's amazing, and it's actually  
2 kind of frightening that we have the State stating that  
3 Ronta Zone, who was in the car when this man was shot,  
4 and who was later with those that changed the tires,  
5 isn't a co-conspirator. He was there.

6 He testified that they went out to the  
7 lake, but he's not a co-conspirator. Nonetheless, Luis  
8 Hidalgo, who never crosses the mountains, never goes to  
9 the lake, never fires a gun, never handles a gun, never  
10 handles bullets, nothing, he is somehow now a  
11 co-conspirator. That's inappropriate. It's  
12 frightening. And the State of Nevada should not make  
13 that argument in this case or any other.

14 We have heard no evidence whatsoever that  
15 Luis Hidalgo conspired to have Timothy Hadland shot.  
16 Nothing. Directly, indirectly, there is absolutely  
17 nothing.

18 In reference of murder with use of a  
19 deadly weapon, we heard from Ronta Zone, that KC shot  
20 TJ twice. Deangelo was there, according to Ronta Zone.  
21 Deangelo knew everybody. We have heard no evidence  
22 whatsoever that Luis Hidalgo killed anybody.

23 That Luis Hidalgo with premeditation and  
24 deliberation, this is Count II, and/or lying in wait  
25 committed a murder. Aiding and abetting the commission

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1 of the crime by directly, indirectly counseling,  
 2 encouraging, hiring, commanding, inducing or otherwise  
 3 procuring each other to commit the crime. We have  
 4 heard nothing that Luis Hidalgo did any of these  
 5 things.

6 We heard a great deal concerning Deangelo  
 7 Carroll. We heard a great deal concerning Mr. Counts.  
 8 We heard nothing in reference to Luis Hidalgo. There  
 9 was one uncorroborated statement that Mr. Zone said  
 10 something about trash bags, but he didn't hear it  
 11 himself. That's what Deangelo Carroll told him.

12 There was no evidence and no testimony  
 13 whatsoever concerning any garbage bags. In fact, he  
 14 contradicted that very statement when he said that they  
 15 left and got in the van. There was no baseball bat.  
 16 There was no trash bags. We don't know what that  
 17 statement, if it ever, in fact, was made, was  
 18 concerning.

19 It's wholly inappropriate for the  
 20 government to now ask the Court to rely upon that to  
 21 bind a man over to face murder with use of a deadly  
 22 weapon. There is no evidence whatsoever, and I'm still  
 23 arguing as to Count II, that Luis Hidalgo, III,  
 24 conspired to commit battery or battery with use of a  
 25 deadly weapon on Timothy J. Hadland. There is nothing.

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1 anybody of any real substance concerning the testimony.  
 2 I felt that same frustration.

3 We heard some CDs that were tough to hear,  
 4 and we couldn't cross-examine the person who supposedly  
 5 wore this wire and supposedly met with the other two  
 6 people.

7 The State would have you believe oh, we  
 8 heard whispering, they must be guilty of a conspiracy.  
 9 Well, if that were the standard, I think I and my  
 10 co-counsel, we're all guilty of conspiracy to commit a  
 11 crime because there has been a great deal of whispering  
 12 going on throughout the course of this preliminary  
 13 hearing.

14 We can't put that whispering in context  
 15 because the person that was supposedly there was not  
 16 called as a witness. You hear whispering. That's  
 17 sometimes the polite thing to do if a person is  
 18 sleeping, if you don't want to interrupt somebody,  
 19 something like. To now say oh, they were whispering,  
 20 hold them to answer for murder, that's not only  
 21 inappropriate but that's frightening. And that's what  
 22 they are asking you to do today.

23 There has been a great deal of talk  
 24 concerning for the truth of the matter asserted  
 25 consider this evidence. Consider this evidence not for

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1 Nothing that's admissible, and nothing that has been  
 2 shown to hold him over to answer to those counts.

3 We know, once again, that Ronta Zone was  
 4 in the car, and apparently he was present when they  
 5 went to the lake, and he was present when they changed  
 6 the tires but, of course, he's not a co-conspirator.  
 7 So if that's not enough to hold Ronta Zone to answer,  
 8 it should be nowhere near close enough to hold Luis  
 9 Hidalgo, III, to answer for this charge.

10 As far as Counts III and IV, Judge, I was  
 11 breaking my head to try and understand what is being  
 12 said on that CD. I have a real concern because any  
 13 time evidence is presented to a Court, that's not even  
 14 good enough for the court reporter to take down, it's  
 15 highly questionable for that evidence to be good enough  
 16 to hold a man to answer for solicitation to commit  
 17 murder, murder with use of a deadly weapon and  
 18 conspiracy to commit murder. You can't do it.

19 That evidence, which was of such horrid  
 20 quality, Number 1. I couldn't hear anything on that.  
 21 I'm assuming the Court couldn't either because it was  
 22 bad. It was a bad, bad recording.

23 I don't really want to get redundant, but  
 24 Mr. Oram laid out a very good argument concerning how  
 25 frustrated he was that he couldn't cross-examine

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1 the truth. That's frightening, as well, because at the  
 2 very same time, they asked you to -- whatever it is  
 3 they've been trying to present to you, they want you to  
 4 consider it, consider it to be truthful, and then hold  
 5 a man over to answer to murder charges on that, and on  
 6 that alone, that's inappropriate and that is scary.

7 But I have never, and I have had a number  
 8 of prelims in front of you, I have never had a  
 9 preliminary hearing like the one that I have witnessed  
 10 today. This is some tortured beast of something that  
 11 the State, in their best efforts, tried to present to  
 12 this Court and the defense as a case. It's not. It's  
 13 not.

14 Obviously, quantity has nothing to do with  
 15 quality. Because we have heard a bunch of things that  
 16 were disjointed, unrelated and actually, frankly,  
 17 didn't make any sense. That's what this hearing has  
 18 been today.

19 My client has been in custody now since  
 20 May 24th. He's had no bail. And this is it. This is  
 21 what the State has got. Nothing better with their best  
 22 efforts, all of their witnesses, this is it.

23 Your Honor, to hold Luis Hidalgo, III,  
 24 hold him over to answer to Count I, conspiracy to  
 25 commit murder, that of TJ, there is no evidence. You

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1 can't do that.

2 Count II, murder with use of a deadly  
3 weapon, Judge, we really can't do that. Based on  
4 everything that's been presented, there is nothing  
5 there.

6 I did hear something as to Counts III and  
7 IV, but as Mr. Oram had argued, I don't know what they  
8 were talking about, and I represent the man. It was  
9 tough to hear what they were talking about. We don't  
10 even know if it was Luis Hidalgo that had supposedly  
11 said those things.

12 See, the State also wants you to take one  
13 statement from one person, Miss Anabel Espindola, take  
14 another statement from another person, Luis Hidalgo, or  
15 an admission because Luis Hidalgo I couldn't hear him  
16 say anything, and then somehow put that together and  
17 combine that to make it into whatever it is that they  
18 want it to be, and that's why we have courts. That's  
19 why the judiciary is independent of the executive  
20 branch because these things shouldn't be allowed to  
21 happen.

22 For all of these reasons, and for all the  
23 trying that the Court has done to try and understand,  
24 they haven't presented any evidence, especially  
25 admissible evidence for Counts I and II.

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1 As to Counts III and IV, there may be  
2 something that someone had said. We don't know what  
3 context it was, and we don't even know really who said  
4 it.

5 I submit to the Court that it would be  
6 wholly inappropriate to have Luis Hidalgo, III, answer  
7 to Counts III and IV, as well, for the reasons that I  
8 have stated, and the reasons that I would like to adopt  
9 by admission what Mr. Oram has stated, as well. For  
10 those reasons, I would urge the Court to dismiss all  
11 four counts this afternoon.

12 MS. WILDEVELD: Your Honor, I will adopt  
13 by reference the arguments made by my co-counsel. As  
14 to the -- I will just address the two counts that my  
15 client is facing today.

16 As to the conspiracy count, there is  
17 nothing in the evidence that Mr. Counts ever entered  
18 into a conspiracy with any of the named people on this  
19 Criminal Complaint. There is no evidence he's ever  
20 even met Mr. Hidalgo or Miss Espindola, Jayson Taoipu,  
21 Reshawn Carroll. The only person that -- I'm sorry,  
22 Jayson Taoipu or Reshawn Zone.

23 The only person who did offer any kind of  
24 testimony as to any relationship between Mr. Counts and  
25 Mr. Carroll was Reshawn Zone, and I would submit that

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1 he's a co-conspirator and nothing that he has to offer  
2 should go toward Mr. Counts anyway.

3 Mr. Counts, there is no evidence he has  
4 ever even met the two people sitting next to him. Yet,  
5 the State has charged him with conspiracy to commit  
6 murder, which, again, just quite simply, there is  
7 nothing to hold Mr. Counts for conspiracy to commit  
8 murder.

9 Even if we went with the testimony of  
10 Mr. Zone, Mr. Zone said Mr. Counts, if he was in the  
11 van, never said anything about a murder. Never said  
12 anything about killing anyone. There was never any  
13 conversation about a murder that was going to take  
14 place if, in fact, Mr. Counts was even in that van,  
15 which we don't have any evidence that he was in the  
16 van.

17 I didn't hear any fingerprint evidence  
18 today. I didn't hear any evidence of Mr. Counts  
19 leaving his house. All we know is that Deangelo  
20 Carroll, who is a notorious liar, his mother lives  
21 across the street from Kenneth Counts. That's all we  
22 know.

23 We don't know what the relationship is  
24 between these two men. We don't know if Mr. Carroll  
25 has a reason for framing Mr. Counts for this murder and

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1 bringing him in on this. All we have is Mr. Deangelo  
2 Carroll, who never took the stand today, dragging my  
3 client into this.

4 My client doesn't know all of Deangelo's  
5 friends that were supposedly in this van. He has no  
6 familiarity with them. He has no knowledge of them,  
7 besides what Mr. Carroll, who we didn't get to hear  
8 from today, and Ronta Zone said on the stand today.

9 As to Count I, conspiracy to commit  
10 murder, I would urge your Honor to dismiss that count  
11 as to my client, Kenneth Counts, because there is no  
12 evidence of any conspiracy to commit murder as to  
13 Mr. Counts.

14 As to Count II, murder with use of a  
15 deadly weapon, again, all we have is some silly phone  
16 conversations that he had with his wife of 14 years  
17 where they share four kids together, talking about a  
18 fluffy pillow.

19 I would submit they were talking -- he was  
20 saying I'm away, hug the pillow like it's me. Is it  
21 fluffy enough? Because he's a big guy. I mean, it's  
22 silly to take all these phone conversations.

23 It was painstakingly tough to sit through  
24 these phone conversations and get what the detective  
25 and the State got out of those telephone conversations.

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1 I read the entire thing and never got anything like  
 2 that. They talked about a CSI finale, season finale  
 3 and all that stuff. And yet, they are saying that that  
 4 is enough to bind him over on murder charges.  
 5 It's scant. Scant evidence is all we have  
 6 against Mr. Counts and testimony of an uncharged  
 7 co-conspirator, which again, as counsel has mentioned,  
 8 it's unbelievable that he's not charged. So, I would  
 9 submit that anything that he would have to say is  
 10 equally unbelievable.  
 11 He's doing whatever he can so that he can  
 12 escape this charge, and he said that the stand today as  
 13 well. He would pretty much say whatever those  
 14 detectives wanted him to say so that he wasn't sitting  
 15 facing the same charges that these people over here are  
 16 facing.  
 17 They say that my client knew things. Knew  
 18 that this case had to do with Deangelo Carroll.  
 19 Deangelo Carroll is a big mouth. He tells, he told,  
 20 probably told everyone in the neighborhood. He was  
 21 going around and telling everybody about this.  
 22 This case was on the news. My client's  
 23 face was shown all over the jail once he was arrested.  
 24 I mean, he's watching the news counts. He knows what  
 25 he's in there for because everyone is telling him what

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1 he's in there for. It's all over the news. It made  
 2 the front page.  
 3 So, to say that just because he had  
 4 telephone conversations with his wife where they get  
 5 these little blips and blurbs out of these  
 6 conversations, worrying about whether or not his wife's  
 7 family's house across the street was in an okay  
 8 condition. If they ruined the hallway by getting him  
 9 out.  
 10 I mean, it's ridiculous to say that he  
 11 should stand murder charges on this until they have --  
 12 and the weapon that they supposedly thought was the  
 13 murder weapon, which wasn't even presented here, I had  
 14 to elicit the testimony from the detective, wasn't even  
 15 a murder weapon. They did the testing on it. No  
 16 murder weapon.  
 17 They had Mr. Counts days after this. Did  
 18 they test his hands for gunpowder residue, no. Because  
 19 they would have found out that he had nothing to do  
 20 with it, but instead they wanted to tightly knit up the  
 21 case and use the only witnesses they could to bring in  
 22 evidence and they did so.  
 23 And with that, your Honor, I would ask  
 24 that the conspiracy to commit murder charge and the  
 25 murder with use of a deadly weapon, as well as using

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1 all of the arguments that co-counsel made regarding the  
 2 co-defendants and the uncharged co-conspirator's  
 3 statements, and the awful audios that we had to listen  
 4 to be brought in with that as well, and ask that both  
 5 those counts against my client be dismissed.  
 6 MR. DIGIACOMO: I'm going to try to be  
 7 brief. I just want to actually go over the law because  
 8 I know the Court has done many cases, but I can't  
 9 imagine the number of legal issues as it relates to  
 10 evidentiary rulings, and counsel in all their closing  
 11 have confused the actual issues.  
 12 Let's talk first, there's accomplice  
 13 testimony. If you find Ronta's an accomplice, you have  
 14 to find he's corroborated. If he doesn't, then you  
 15 don't have to find he's corroborated. In order to  
 16 establish independent --  
 17 THE COURT: Isn't there a difference  
 18 between an accomplice out-of-court statement and an  
 19 accomplice statement in the courtroom when we have  
 20 cross-examination.  
 21 MR. DIGIACOMO: Correct, that's what I'm  
 22 getting to.  
 23 Conspiracy, you have to have independent  
 24 evidence of a conspiracy in order for co-conspirator  
 25 statements to come into -- in the course and in

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1 furtherance of the conspiracy to come in as evidence.  
 2 Those are two separate rules, and they want to combine  
 3 the two rules together.  
 4 If you decide that Ronta is not an  
 5 accomplice, right, as a matter of law, which I submit  
 6 to the Court they didn't even argue that as a matter of  
 7 law they have to be, because they know the case law is  
 8 against them. It's based solely on his testimony, and  
 9 his testimony does not make him an accomplice.  
 10 While I appreciate their argument about  
 11 him being an accomplice, any one of them represented  
 12 him would clearly, would be the only guy that wasn't a  
 13 bind over in this particular case because he's the only  
 14 guy there is no evidence actually he was involved in  
 15 the crime itself.  
 16 His testimony, as well as all the other  
 17 evidence, establishes that he was not a co -- or he was  
 18 not an accomplice to the crime, hence his testimony is  
 19 not accomplice testimony.  
 20 Now, co-conspirator statements only come  
 21 in if there is independent evidence of a conspiracy.  
 22 No one argued that there is not evidence of a  
 23 conspiracy. I mean, obviously -- well, I guess --  
 24 MR. DRASKOVICH: I did.  
 25 MR. DIGIACOMO: Ms. Wildeveld didn't.

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1 There is evidence of a conspiracy. They  
2 don't dispute that four guys got into a car or three  
3 guys, I guess, because JJ, Deangelo and Kenneth Counts,  
4 three guys drove out to the lake and then committed a  
5 murder.

6 MR. DRASKOVICH: I seem to be misquoted.  
7 I was arguing that there was no evidence that  
8 Mr. Hidalgo was part of this conspiracy. And,  
9 obviously, the statements that I was, were Mr. Deangelo  
10 Carroll's statements that were allowed to come in  
11 through Ronta Zone. So I'm a little frustrated that  
12 counsel is misstating the law and misstating my  
13 arguments.

14 MR. DIGIACOMO: I'm trying not to, but I  
15 didn't stop him, Judge.

16 The independent evidence of a conspiracy,  
17 which means the Court needs to find that there is  
18 evidence of a conspiracy before you can take in  
19 statements of a co-conspirator in the course and in  
20 furtherance of that conspiracy.

21 It has nothing to do with the accomplice  
22 testimony rule. Accomplice testimony rule is something  
23 totally different, which means once you have  
24 independent evidence of a conspiracy, and he's not  
25 arguing there is independent evidence of a conspiracy.

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1 What he's arguing is there is not  
2 independent evidence of my client being involved in the  
3 conspiracy, which is not the rule. The rule is, is  
4 there independent evidence of a conspiracy?

5 Once there is, all statements by  
6 co-conspirators in the course and in furtherance come  
7 in, which means once you establish there is a  
8 conspiracy, then the statements of the co-conspirator,  
9 "Mr. H wants a hit. Little Lu wants us to bring a bat  
10 and bags. Anabel gave me a hundred bucks to change the  
11 tires on the car." All of those statements come in  
12 once there is independent evidence of a conspiracy.

13 There doesn't have to be independent  
14 evidence of each individual person being involved in  
15 the conspiracy. But now you go back to well, what  
16 evidence do you need other than merely statements of a  
17 co-conspirator for purposes of a bind over?

18 I would agree with defense counsel that  
19 merely the statements of Deangelo Carroll cannot cause  
20 this Court to bind anybody over for any charges. There  
21 has to be something more than just co-conspirator  
22 statements in the course and in furtherance of a  
23 conspiracy.

24 And that is what they cannot get away from  
25 no matter how hard they try, which is the two

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1 surreptitious recordings that occurred in Simone's Auto  
2 Plaza. I ask the Court to look at the exhibit with the  
3 picture that says, of a note that's found in Simone's  
4 Auto Plaza. "Shut your mouth. We're under  
5 surveillance."

6 Ask yourself what it is that they were  
7 having a conversation about if that's not evidence.  
8 Ask yourself what it is these people were talking  
9 about, and ask yourself what possibly is the motive to  
10 solicit the murder of two individuals, which as I hear  
11 Mr. Draskovich say, hey, you know, that one's actually  
12 a close one. There is actually evidence my client  
13 solicited the murder of two of the people that are in  
14 the van.

15 What possible motive is it that he would  
16 do that if he wasn't actually involved in the original  
17 conspiracy? What is his possible motive for that?  
18 What is his possible motive for paying off all the  
19 money? What is the possible motive for him to be  
20 talking about taking care of Deangelo and giving him  
21 \$25,000 in bonds inside the room? What is the possible  
22 motive for him and Anabel to be behaving on that wire?

23 And I guess the last question for this  
24 Court is, why isn't Mr. H sitting there? And the  
25 answer is simple. You have seen the evidence that was

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1 presented so far. There isn't Mr. H on a wire  
2 somewhere. If there was, there would be no question  
3 Mr. H would be sitting next to his son and his  
4 girlfriend over there because there would be  
5 independent corroboration.

6 They cannot get away from those two wires.  
7 Those two wires establish what happened out there. It  
8 establishes that Ronta's testimony is truthful, and it  
9 corroborates the co-conspirator's statement that came  
10 in, Judge. And I would ask the Court to bind them over  
11 on all charges.

12 THE COURT: I know you want to talk again,  
13 but you don't get to.

14 MR. DRASKOVICH: When I'm misquoted, that  
15 hurts.

16 THE COURT: All right. Having heard the  
17 testimony presented and reviewing the evidence on file  
18 herein, having heard the arguments and objections with  
19 respect to various evidence, and whether it be  
20 considered against both defendants or individual  
21 defendants or no defendants, and finding that the --  
22 and let me just address the tape or the CDs that we  
23 have listened to in that regard.

24 They are not the best. You would think  
25 our federal government, the FBI, could get, you know,

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1 they do on the movies.

2 MR. DIGIACOMO: There is only CSI, Judge.

3 THE COURT: Yeah. They get better  
4 recordings or better enhancements, and perhaps if I had  
5 listened to it several times, maybe I would have a  
6 different -- I would still have the feeling it's not  
7 very good quality.

8 However, I did get enough from that to  
9 make a decision with respect to two things I was going  
10 to decide on. One was authentication. Those tapes,  
11 together with the testimony of the detectives who was  
12 leaving, following those, has led me to believe that  
13 the voices that I heard on those were that of Mr. Luis  
14 Alonso Hidalgo, III, and Anabel Espindola, together  
15 with Deangelo Carroll.

16 I discounted anything Mr. Carroll said on  
17 that as not to be asserted for the truth. In other  
18 words, I didn't believe anything in there as it goes to  
19 making any decision. And, again, I did not take what  
20 one defendant said against the other defendant because  
21 of my concerns with the Crawford case.

22 Notwithstanding that, I think we still  
23 meet the burden that we have here in a preliminary  
24 hearing for each of those defendants to have been  
25 involved in the solicitation of the two individuals

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1 mentioned in Counts III and IV. And that's really only  
2 for a preliminary hearing standard. It's not real  
3 strong. I will state that.

4 The statements of Mr. Carroll, I have the  
5 transcript of the interview, again, I have not reviewed  
6 that. It was submitted into evidence as for  
7 impeachment purposes, and I have not considered those  
8 statements against any of the three defendants that are  
9 now before me.

10 However, based upon the evidence  
11 presented, I find that all three defendants, there is  
12 sufficient evidence to believe that they participated  
13 in a conspiracy and a murder with a deadly weapon in  
14 Counts I and II.

15 Consequently, I guess where I'm going with  
16 this is, from reviewing the Complaint on file herein,  
17 and hearing the testimony and evidence presented, I  
18 find that there is reasonable cause to believe that  
19 Kenneth Counts, Luis Alonso Hidalgo, III, and Anabel  
20 Espindola have committed the crimes of conspiracy to  
21 commit murder and murder with use of a deadly weapon.

22 And that the defendants, Luis Hidalgo and  
23 Anabel Espindola, there is reasonable cause to believe,  
24 they are defendants in Count III and IV, conspiracy to  
25 commit murder, and Count III, Jayson Taoipu, and

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1 Count IV, Ronta Zone, solicitation to commit murder,  
2 the defendants will be bound over on all four counts.

3 And the clerk's going to give you the time  
4 and date to appear in district court.

5 MR. ORAM: Your Honor, would you entertain  
6 a bail motion? We had asked at the end of the bail  
7 motion last time -- at the end of the preliminary  
8 hearing, whether you would consider it. I'll be very  
9 brief. I know the court is late.

10 If I could just remind the Court that my  
11 client has no criminal history. And when the Court  
12 previously denied bail, I went back, one thing that was  
13 of great concern is at the time none of us had the CDs  
14 or the transcripts, except for the State.

15 And I want to remind the Court of  
16 something that was said in the bail motion that has  
17 caused me concern approximately the day after I started  
18 listening to the CDs. They are talking about the  
19 May 24th surreptitious recording, and they say on  
20 page 5 of their brief, during this conversation, Anabel  
21 can be heard on the tape acknowledging that Mr. H,  
22 Anabel, and defendant, that would be Luis, hired  
23 Deangelo, who, in turn, hired Counts to kill Hadland.

24 I don't think anybody could argue they  
25 heard that on the tape. That wasn't on the tape. She

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1 never confessed to being involved and Mr. H was  
2 involved. That was never said, but boy, it kept her,  
3 it was a good argument to make to a Court where, you  
4 know, even I was sitting there, I read that at the  
5 time, and I thought oh, boy, they've got my client  
6 confessing, and the Court, I imagine, relied upon that  
7 to a certain extent.

8 It wasn't true. We've heard the tapes  
9 now, and it just simply wasn't true. In fact, it's  
10 sort of the opposite. At least one portion of my  
11 argument you have heard is that she said that she told  
12 him to talk to him.

13 Without belaboring the point, your Honor,  
14 she has no prior record. I think the Court can see  
15 that this is a case that can be fought. And I would  
16 ask the Court to consider that this woman is a, she was  
17 a general manager there at the club. I believe very  
18 high up in Simone's.

19 And I would ask you to set bail somewhere  
20 around \$50,000, put her on house arrest, something so  
21 that she can go out, fight the case, but still not be a  
22 flight risk, not be a danger to the community.

23 And if they argue she is a flight risk or  
24 a danger to the community, I'll remind the Court it  
25 seems to me they've got some problems being a danger to

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1 the community where they say somebody confesses and  
2 they haven't. I'd ask for a reasonable bail.

3 THE COURT: That was in the transcript.

4 MR. ORAM: No, this was actually in their  
5 bail motion.

6 MR. DRASKOVICH: It was in their bail  
7 motion, page 5. I was going to make the same argument.

8 MR. ORAM: It caused me grave concern,  
9 your Honor.

10 MR. DIGIACOMO: If I can address that?

11 THE COURT: Yeah.

12 MR. DIGIACOMO: I'll be happy to.

13 If you actually had Deangelo Carroll's  
14 taped statement, and then you had Deangelo Carroll's  
15 statements, which are certainly admissible for a bail  
16 hearing but not admissible for a preliminary hearing,  
17 you got what Anabel said completely out of context  
18 from -- if you understood the case from the statements  
19 that we had from Deangelo Carroll.

20 They originally believed that Timothy  
21 Hadland would have been at his house and the conspiracy  
22 was to have him killed at the house. When Anabel  
23 learns during a phone call the drive out to the lake  
24 that Mr. Hadland was not at the house, and he would not  
25 be alone, there is a conversation between Mr. Carroll

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1 and Mr. -- Miss Espindola, in which they talk about the  
2 fact that, "Hey, if he's alone, go through with it. If  
3 not, I want you to go to plan B," as Deangelo Carroll  
4 puts it.

5 And then when you listen to the tape, and  
6 I know that they jump up and said, "We told you to talk  
7 to the guy," you have to back up just a few minutes  
8 before that. She is talking about "When I learned that  
9 you were going out to the lake and you had all those  
10 people with you, I told you to talk to the guy, not  
11 F'ing kill the guy." And then she goes on to, "I told  
12 you to go to plan B."

13 And he goes, "No, you didn't. You told me  
14 to kill him if he's alone." And then she says, "But I  
15 tried to call you back but you turned your cell phone  
16 off." And that was clear as day.

17 Now, how else do you interpret that when  
18 someone says to you, "Hey, but you told me to kill him  
19 if he's alone," and she goes, "But I tried to call you  
20 back and your cell phone was off." Is that not a  
21 confirmation of what was said there, then what are we  
22 talking about here?

23 I mean, they are arguing that she told him  
24 to not go do the killing when she found out they went  
25 to the lake. I don't dispute that she made that

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1 statement to them. She told them to go to plan B if  
2 he's not alone. I never disputed that statement.

3 But certainly her statement when he says,  
4 "You told me to kill him if he was alone," and she  
5 says, "But I tried to call you back," what other  
6 implication do you take from that particular statement,  
7 other than it's a confirmation that she was, in fact,  
8 involved?

9 MR. ORAM: Judge, they are taking this out  
10 of context. I'm not so concerned about that. Listen  
11 to what they are saying in there. They are saying that  
12 she can be heard on tape acknowledging that Mr. H and  
13 the defendant. Now, they are not -- now, they are  
14 saying oh, it was her. It's incriminating against her.  
15 No, that's not what they said to you.

16 MR. DIGIACOMO: I said on the tape.

17 MR. ORAM: I'm sorry.

18 MR. DIGIACOMO: When she says Mr. H, "if  
19 Mr. H goes down for this, we're all dead." What is she  
20 saying? Is she not confirming that Mr. H did it? And  
21 Little Luis is in the room.

22 I'm sorry, maybe they are interpreting it  
23 different than I am, but the fact is that I'm taking  
24 the statements as a whole to say that confirms what she  
25 did, which the Court already found that there is

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1 corroboration for a bind over on conspiracy to commit  
2 murder. If that's not what she was confirming on that  
3 tape, why did we have the bind over?

4 MR. DRASKOVICH: Judge, if I could be  
5 heard concerning bail, as well.

6 We have just heard Luis Hidalgo, III, was  
7 in the room while Ronta Zone was in the car, so it's  
8 obviously good for one argument and not good for the  
9 other.

10 I would ask the Court to set bail at  
11 \$50,000 for my client, Luis Hidalgo, because what the  
12 State had said at our bail hearing simply wasn't so.  
13 Luis Hidalgo, III, has been a six-year resident of Las  
14 Vegas. He has very strong family ties here in the  
15 community. He owns a two-story home in Las Vegas,  
16 Nevada, located at 4037 Overbrook Drive. He's employed  
17 full-time. He has no prior criminal history. And he  
18 has no failures to appear.

19 Based upon the very, very tenuous, teased  
20 and tortured evidence that you have heard today, and  
21 based upon his complete lack of failures to appear and  
22 his very strong ties to the community, I would urge the  
23 Court that \$50,000 is an appropriate bail, in addition  
24 to any and all other conditions that the Court may so  
25 impose to release him at this juncture.

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1 MS. WILDEVELD: Your Honor --  
2 MR. DIGIACOMO: Do you want to make an  
3 argument?

4 MS. WILDEVELD: Yes, but I would also ask  
5 that Mr. Counts' bail be reduced to \$50,000, which is  
6 actually a huge stretch for Mr. Counts, given that he  
7 doesn't have the financial resources that perhaps other  
8 co-defendants have.

9 Mr. Counts has been an outstanding member  
10 of the community, save for a previous record of  
11 nonviolent crimes all having to do with drugs or  
12 smoking marijuana. Nothing to do with any kind of  
13 violence.

14 He was a Doolittle coach. And if he was  
15 good enough to be a Doolittle coach, he would be good  
16 enough to be back out in the community. He's a member  
17 of the Mountaintop Church, a strong member of the  
18 Mountaintop Church and a very active member of the  
19 church. He would have many people to vouch for him.

20 He's held two jobs. He has four kids  
21 under the age of 11. He's been with the same woman for  
22 14 years. He has a house at 1676 E Street. He has  
23 family that lives across the street. He's not going to  
24 go anywhere. His family is very established there.  
25 He's not going to pick up and leave his four kids and

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1 his wife.

2 He has too much to lose by running after  
3 these counts. I think the evidence against him was  
4 very scant. I think that he's gotten himself or  
5 somebody has gotten him rolled up into this whole  
6 situation. And I think that it's going to come to  
7 light why he's -- what, if any, role he actually did  
8 play in this. And I would think that that would be a  
9 no role, if any.

10 And I don't think -- there is no evidence  
11 that he was involved in any conspiracy or that he would  
12 ever see these people again. Mr. Carroll would be in  
13 custody. And I would ask that his bail be set at  
14 something like \$50,000 that maybe he could potentially  
15 afford.

16 MR. FIGLER: Your Honor, as long as  
17 everyone is making bail motions.

18 THE COURT: Can we approach on another  
19 issue or kind of a related issue before we finish the  
20 bail argument?

21 (Thereupon, a brief discussion was held  
22 at the bench.)

23 THE COURT: All right. In making a  
24 decision with respect to the bail, I have two  
25 obligations, one is to determine whether the defendants

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1 will continue to appear in court, and the second is  
2 there a danger to the community.

3 In making that decision, I have the  
4 opportunity to rely on more information than what we  
5 would have legally before the Court and at preliminary  
6 hearing.

7 So for purposes of the bail motion, I am  
8 going to review Mr. Carroll's statement for whatever  
9 it's worth. And so I get a feel for the case as to  
10 whether there is more concerns that I am not aware. I  
11 will review that over the evening. I will make a  
12 decision tomorrow. I'll just probably tomorrow  
13 afternoon after court we'll send it down to everybody.

14 MR. DIGIACOMO: Do you have the criminal  
15 history of Kenneth Counts when you make this decision?

16 THE COURT: I do.

17 MR. DIGIACOMO: Okay.

18 MS. WILDEVELD: And, your Honor, I would  
19 just ask that Mr. Counts be thought of separately when  
20 you're addressing bail issue for the other  
21 co-defendants. He does have four children.

22 MR. DRASKOVICH: We would ask that as  
23 well.

24 THE COURT: And, frankly, from what I  
25 heard today, they would want me to consider them

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1 separately.

2 MS. WILDEVELD: I disagree.

3 MR. DIGIACOMO: So we're going to wait  
4 till tomorrow to have the bind over date?

5 THE COURT: No, I'll give you the bind  
6 over date now. Whether they are in jail or not, they  
7 need to be there. I'm going to give you the date as if  
8 they were in custody, but this is a case that should --

9 MR. FIGLER: Your Honor, in all  
10 seriousness, if I could complete the record just really  
11 quickly. The prosecution had graciously offered for us  
12 to be able to cross-examine one of the witnesses.

13 Your Honor, I affirmed that Mr. Carroll  
14 wanted to fight the charges in district court and that  
15 was the reason for his waive up. I did note for the  
16 record that we weren't offered the opportunity to  
17 object during the course of Mr. Zone's testimony. And  
18 I think it was kind of an empty gesture, although I do  
19 appreciate your Honor finding that we would have  
20 standing.

21 Additionally, you know, much maligned  
22 through these proceedings, Mr. Carroll has had to sit  
23 by silently. Certainly there was some evidence of his  
24 cooperation with the police department during the  
25 course of events. Additionally, a lot of references to

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1 Mr. Carroll, I think, in assisting the prosecution  
2 today.

3 And he would like to be considered as well  
4 for a reasonable bail motion. As everyone else has  
5 been bound over, and he is now bound over as well by  
6 his waiver, I think it would be appropriate for your  
7 Honor to be able to determine a bail for Mr. Carroll.

8 And because of a number of concerns in the  
9 case, he certainly wants to stay and fight this as  
10 well. So I would just submit it to your Honor on that.

11 THE COURT: Okay. I will consider him  
12 with respect to bail. With respect to Mr. Carroll's,  
13 since that was brought up, is there anything from the  
14 State, particularly a criminal history or anything?

15 MR. PESCI: Judge, yes. I'm not sure if  
16 you have his criminal history.

17 THE COURT: With Mr. Carroll I don't know  
18 because I haven't looked.

19 MR. FIGLER: I will represent, your Honor,  
20 that he does have a felony conviction upon which he was  
21 given probation and house arrest. And there is no  
22 allegation that he wasn't able to comply with those  
23 court orders.

24 MR. DIGIACOMO: Well, actually, he went  
25 through two revocation proceedings, and Judge McGroarty

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1 put him back on probation both times.

2 And while there is a dispute between  
3 counsel and I, Mr. Carroll told the detectives that he  
4 was still on paper for the crime of conspiracy to  
5 commit robbery when the murder occurred. Mr. Figler  
6 seems to tell me that he believes he may have gotten  
7 off a day or two before.

8 MR. FIGLER: There's a possibility that he  
9 was done with probation.

10 MR. DIGIACOMO: A day or two before, but  
11 either way, Judge --

12 MR. PESCI: He has a failure to appear,  
13 and the nature of his priors are conspiracy to robbery,  
14 so there is violence, there is conspiracy, which we  
15 have here today before your Honor. We have failure to  
16 appear.

17 And you have indicated you do have the  
18 criminal history of Mr. Counts to consider?

19 THE COURT: I do have that.

20 MR. PESCI: Thank you, Judge.

21 THE CLERK: June 27th, 9:00 a.m., District  
22 Court Department XIV.  
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3 ATTEST: Full, true and accurate transcript.  
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