

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS A, HIDALGO, JR.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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CASE NO.: 54209

On Appeal from a Final Judgment of
Conviction entered by The Eighth Judicial
District Court

APPELLANT'S APPENDIX

Volume 21 of 25

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DOMINIC P. GENTILE
Nevada Bar No. 1923
PAOLA M. ARMENI, ESQ.
Nevada Bar No. 8357
GORDON SILVER
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Telephone: (702) 796-5555

ATTORNEYS FOR THE APPELLANT LUIS A. HIDALGO, JR.

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² Id.

³ Id.

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1 LAS VEGAS, CLARK COUNTY, NV, WEDNESDAY, FEB. 11, 2009

2
3 THE MARSHAL: All rise and come to order. Department 21 is now
4 in session. The Honorable Valerie Adair presiding.

5 THE COURT: All right. Let's start.

6 THE MARSHAL: You may be seated.

7 MR. GENTILE: Your Honor, before I put Obi Perez on the stand --

8 THE COURT: Okay.

9 MR. GENTILE: -- I'd like to be heard outside the presence of the
10 jury.

11 MR. PESCI: I apologize Mr. Dominic, we have your witness still
12 here. If he can step out.

13 THE COURT: Sir, would you mind going and having a seat in the
14 vestibule.

15 MR. GENTILE: Oh, you want to say something?

16 MR. PESCI: No, but --

17 MR. GENTILE: Oh, no, that's fine.

18 MR. PESCI: -- whatever you want to say --

19 MR. GENTILE: I'm not going to do -- say anything about --

20 MR. PESCI: Oh, I thought you were going to --

21 THE COURT: Oh, okay.

22 MR. GENTILE: I'm ready now.

23 MR. DIGIACOMO: Oh, okay.

24 MR. GENTILE: I was just saying before she gets on the stand I want
25 to --

1 THE COURT: Okay.

2 MR. GENTILE: -- I want to address something with the Court.

3 THE COURT: Do you want to do it now, or do you think he's
4 going --

5 MR. GENTILE: We can do it now.

6 THE COURT: -- to take enough time to go to the break?

7 MR. GENTILE: Wait outside for a few minutes.

8 (Witness exits courtroom)

9 MR. GENTILE: Obi Perez is going to come in and testify to having
10 been in the Clark County Detention Center last year --

11 THE COURT: Uh-huh.

12 MR. GENTILE: -- and having been in the same module as Anabel
13 and having spoken with Anabel one day when Anabel came back from court and
14 was silent. Clearly, because she was in jail, it's self-evident that she did
15 something to cause her to be in jail. Okay? And she's going to testify that she
16 was in there having been convicted of a gross misdemeanor. All right? Or she's
17 not going to testify with respect to any reason as to why she was in there. Okay?
18 It doesn't really matter.

19 THE COURT: Right. Because the last gal with the card was in jail
20 and nobody asked her --

21 MR. GENTILE: Right.

22 THE COURT: -- what she was doing in jail.

23 MR. GENTILE: But my concern is that the conviction that she was in
24 for (a) it was not a felony, and (b) it was not a gross that goes to the question of
25 credibility.

1 THE COURT: Her voracity.

2 MR. GENTILE: Right.

3 THE COURT: It wasn't a --

4 MR. GENTILE: She was in --

5 THE COURT: -- moral turpitude.

6 MR. GENTILE: She was in there for a really bad thing. She was in

7 there for essentially child -- child neglect and abuse of some sort. But it was a

8 gross -- the reason she was in is because she -- she came up dirty once and

9 then the second time she moved without --

10 THE COURT: They revoked --

11 MR. GENTILE: -- reporting it.

12 THE COURT: -- her probation.

13 MR. GENTILE: That's what I'm told anyhow. And so what I'm

14 doing, essentially, is asking the Court to rule in limine that the prosecutor cannot

15 go into what the basis of the conviction was.

16 MR. DIGIACOMO: I wasn't going to ask her about the conviction

17 itself. I'm certainly allowed to ask her are you a drug user, do you have drug

18 problems, and all those other -- because I have evidence to suggest that's true --

19 THE COURT: Okay.

20 MR. DIGIACOMO: -- and that leads directly to her credibility --

21 THE COURT: Anything --

22 MR. DIGIACOMO: -- and there's a lot of case law --

23 THE COURT: Well --

24 MR. DIGIACOMO: -- related to that.

25 THE COURT: Okay. Here's my feeling without knowing exactly

1 what she's going to testify on that. If she was in drug for -- in jail, if her
2 perceptions go to what was happening in jail, she's pretty much drug free if she's
3 been there a few days.

4 MR. DIGIACOMO: No, no, no, no. That wouldn't be the subject of
5 my question. There's case law that says that an addict is less credible than
6 somebody who is not an addict.

7 THE COURT: No, no. I think --

8 MR. DIGIACOMO: You give addict instructions all the time. If I can
9 establish her addiction, I'm not going to ask her about her conviction or anything
10 else.

11 THE COURT: Isn't the basis, without having the cases in front of
12 me, the basis of that would be there -- if you're under the influence or you're a
13 chronic user your ability to perceive and whatever.

14 MR. GENTILE: That is the basis. There's -- there's a second basis.

15 THE COURT: And if she's out, okay, if she's talking about stuff that
16 happened when she's out of jail, then you can ask her because she could've
17 been using. But as far as I -- I know, the Clark County Detention Center is pretty
18 drug free, and so if she was in -- in the detention center --

19 MR. DIGIACOMO: It's actually prescription, so I'm not so sure.

20 THE COURT: Well, I mean, if she was in there for awhile, then
21 she's probably not under the influence while she's at the detention center and the
22 basis of her revocation, coming up dirty wouldn't really, to me, be relevant.

23 MR. DIGIACOMO: Well, I'm not going to ask her about that either.
24 I'm not going to ask her a single thing about what her case was or what kept her
25 in jail.

1 THE COURT: Yeah, you just want to portray her as a drug addict.
2 The cases that say just the virtue of the fact that you're a drug user or drug addict
3 makes you less credible, that it's not about your ability to perceive and recall
4 events, do -- are you familiar with what cases those might be so I can --

5 MR. DIGIACOMO: Not off the top of my head because I didn't know
6 this --

7 THE COURT: Yeah.

8 MR. DIGIACOMO: -- was coming, but I'll certainly look it up. But --

9 THE COURT: Because like I just said --

10 MR. DIGIACOMO: -- if I can't tie it to a specific thing related to her
11 testimony in this case, I will agree with the Court and you can preclude it.

12 THE COURT: Okay. Because like I said, yeah, that goes to was --
13 you know, if you use every day and somebody says, oh, I wasn't using that day,
14 but they're a daily user, then obviously the inference is that, well, if you use every
15 day you were prob -- you know, you were probably using on the day you're
16 perceiving these events and I think that the door is open then.

17 MR. GENTILE: The only other time you --

18 THE COURT: Yeah, go ahead.

19 MR. GENTILE: The only -- and you know what, this isn't law school,
20 but the only other time that you can use addiction is when a witness is on the
21 stand and you're trying to discredit them because they're afraid of going to jail so
22 that they are separated from their drugs.

23 THE COURT: Right. And obviously if she's using now and is an
24 addict now, that goes to her testimony now and so it's relevant as to that.

25 MR. GENTILE: Well, that -- that foundation should really be laid

1 outside the presence of the jury.

2 THE COURT: Okay. But I mean -- what I'm saying is her use prior
3 to -- to going to jail isn't relevant. If she's using today, of course it's relevant. I
4 agree with you.

5 MR. GENTILE: Of course. If she's using today, I -- you've got no --

6 THE COURT: Yeah, or --

7 MR. GENTILE: -- argument from me

8 THE COURT: -- she's an addict today and then says, oh, I wasn't
9 using today, but she used yesterday.

10 MR. GENTILE: Well, an addict can be a recovering addict. That's
11 the point. A drug user, somebody who is --

12 THE COURT: Right.

13 MR. GENTILE: -- using today in the verbal --

14 THE COURT: A chronic --

15 MR. GENTILE: -- sense.

16 THE COURT: -- drug user.

17 MR. GENTILE: Right. That's different.

18 THE COURT: There is a -- right. I mean -- All right. Can we --

19 MR. DIGIACOMO: We understand the Court's ruling.

20 THE COURT: Okay.

21 THE MARSHAL: Jury is coming in.

22 (Jury enters at 10:08 a.m.)

23 THE COURT: All right. Court is now back in session. The record
24 will reflect the presence of the State through the deputy district attorneys, the
25 presence of the defendants and their counsel, the officers of the court, and the

1 members of the jury.

2 And, Mr. Gentile, would you recall your last witness please.

3 MR. GENTILE: Just a moment, Your Honor.

4 THE COURT: Sir, just remain standing, and our clerk will administer
5 the oath to you.

6 PEE-LAR HANDLEY

7 Having been called as a witness and being first duly sworn testified as follows:

8 THE CLERK: Thank you. Please be seated.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. GENTILE:

11 Q All right. Mr. Handley, you were on yesterday and you're back this
12 morning.

13 A Yes, I am.

14 Q Okay. Yesterday I asked you questions about the -- your
15 involvement with the ultimate firing of TJ Hadland from the Palomino Club. Do
16 you recall that?

17 A Yes, I do.

18 Q Okay. After Mr. Hadland was fired -- excuse me -- did you have an
19 encounter with Deangelo Carroll regarding Mr. Hadland's being fired.

20 A Excuse me. Yes, I did.

21 Q Okay. Can you tell the ladies and gentlemen of the jury about -- to
22 the best of your memory, about how long after Mr. Hadland was fired that you
23 had this encounter with Mr. Carroll?

24 A Exactly how many days after I don't recall. I know that Deangelo
25 was off when the firing occurred, when the firing of TJ occurred. But the very first

1 time, I guess, that he was back, I pulled in in my car in the normal parking spot
2 that I pulled into, and he came rushing out to me and said --

3 MR. DIGIACOMO: Objection.

4 MR. GENTILE: It's his state of mind. It's not offered for the truth.

5 THE COURT: Well, it would still indicate that that was -- he was
6 being truthful as to his state of mind.

7 MR. GENTILE: Not if you hear the content.

8 THE COURT: Okay. Well, lay more of a foundation then.

9 BY MR. GENTILE:

10 Q Did he make any factual assertions at all with what he said to you, or
11 was it a command that he made to you?

12 A He made a statement to me.

13 Q Right.

14 MR. GENTILE: Can I approach?

15 THE COURT: Sure.

16 (Conference at the bench)

17 BY MR. GENTILE:

18 Q When -- without saying anything else that Deangelo said to you,
19 okay --

20 A Okay.

21 Q -- did Deangelo say to you don't put me in with TJ?

22 A Yes.

23 Q Now, yesterday you were talking about -- and, frankly, our notes
24 stink about it and so that's the reason I have to ask you. You testified about the
25 use of plan B and what plan B meant.

1 A Correct.

2 Q Okay. And I think you got -- basically that's about where we ended
3 and we got cut off at that point in time. What did plan B mean?

4 A Plan B meant --

5 Q The way that you understood it.

6 A The way that I understood plan B was the -- the whole -- the whole
7 thing with plan B was to clean the slate, start with paying the cabs across the
8 board no matter whether they had VIP passes or no, you know, no VIP passes.
9 And the other portion of it was that with what had gone on with the cabs and all
10 the other stuff that had gone on was wiping the slate clean and starting over as
11 far as all the way from office manager down through everybody, floor, everybody.

12 Q And replacing personnel?

13 A Replacing personnel and starting -- that's what I meant by wiping the
14 slate clean and starting just straight up, it doesn't matter if it's, you know, as far
15 as the cabs go, it's -- if you -- if you came in a cab, they're going to pay.

16 Q Okay.

17 A And that was the discussion that I had had with -- with Mr. H.

18 Q Now, let's -- let's get back to the night of the 19th. I think when we
19 finished yesterday you were showing us in that photo about the meeting that you
20 had -- about the time that you visited Mr. H's office and Anabel, you, and Mr. H
21 were in it.

22 A Correct.

23 Q The last visit that night.

24 A Correct.

25 Q And you said that was a little after 11:00.

1 A I'd say it was around there. It was after -- after my clients got picked
2 up and they were -- they were dropped off and set up. By meaning set up, I
3 mean put in a -- put in a booth and taken care of as far as drinks and all that
4 stuff.

5 Q Did you -- after that meeting with Mr. H and Anabel, did you see
6 Deangelo again that night?

7 A Yes, I did.

8 Q Okay. And can you tell the ladies and gentlemen of the jury -- first of
9 all, to the best of your memory, how much after -- how long after that meeting
10 with Mr. H and Anabel that you put at some time after 11:00, how long after?

11 A I would say it was after midnight. The exact time I couldn't be sure.
12 But I know -- I'm almost positive it was after midnight.

13 Q Okay. And where within the Palomino -- here, I'll tell you what, let
14 me get this chart. So that I don't have to use two easels, do you remember
15 which floor you encountered Deangelo at?

16 A The first floor.

17 Q Okay. So let's just use the first one.

18 MR. GENTILE: Your Honor, can we have the handheld microphone
19 so that Mr. Handley can use it?

20 THE COURT: Sure. Janie's going to get it.

21 Mr. Gentile, would you mind just approaching my court
22 recorder and she'll hand that to you.

23 BY MR. GENTILE:

24 Q Mr. Handley, you're looking at Exhibit D-1, which is in evidence and
25 it has been identified by at least two people as a graphic overlay of the Palomino

1 Club. Does it look like that to you?

2 A Can I look at it for just a second?

3 Q Yeah, go ahead. As it existed in 2005.

4 A Okay. Yes. That is correct then.

5 Q Okay, as it existed in 2005. Now, would you show the ladies and
6 gentlemen of the jury -- in fact, let me get another --

7 MR. GENTILE: Do we have any other colors? Are there any other
8 colors? Do we have a red pen maybe.

9 MS. ARMENI: You used red yesterday.

10 MR. GENTILE: Okay.

11 THE COURT: There -- I think there's a green one up there too.

12 MR. GENTILE: We'll use green.

13 BY MR. GENTILE:

14 Q Would you please write your initials and Deangelo's initials where
15 you saw Deangelo after you finished your meeting with -- well, according to you,
16 sometime after midnight, which would be the morning of the 20th of May; am I
17 correct?

18 A Correct.

19 Q Okay. Would you just write your initials and his initials in terms of
20 where you had this encounter?

21 A Yeah, I was right here by this entrance. And Deangelo was right
22 here.

23 Q Okay. And, you know what, while you're at it, the one thing that isn't
24 marked on there is what you described as the shoeshine booth.

25 A Correct.

1 Q Why don't you enter your initials -- actually, just write down
2 shoeshine booth.

3 A The -- this looks like the representation for it right there.

4 Q Okay. And that's where you saw Mr. TJ Hadland on the night that
5 you --

6 A That is correct.

7 Q You've already testified about that. Okay. Now, tell the ladies and
8 gentlemen of the jury what occurred -- first of all, what did Deangelo Carroll look
9 like when he came into the Palomino Club after midnight on the 20th?

10 A The closest thing I can acquaint it to is he looked like Don King. His
11 hair was standing straight up and it was wild. And he just -- he looked like he
12 had -- he looked like he had woken up from a bad -- from a bad dream or a bad
13 trip or something like that. He was wild and kind of out of it.

14 Q Was his demeanor his usual demeanor?

15 A No, he was -- he was kind of panicky and he said to me, he goes I
16 need to see Anabel, I need to see H, I -- pardon my language.

17 Q No, you got to say it.

18 A He says I fucked up.

19 Q And did you respond to that?

20 A Yes, I did.

21 Q And what did you think he was talking about?

22 A I thought he was talking about my pick up, about picking my clients
23 up, and I was more than a little pissed off at him. And my response to him was
24 you're damn right you fucked up. You -- you did it again.

25 Q All right.

1 A And he said -- he said I need to talk to H, I need to talk to Anabel,
2 you know, and I'm like, I got nothing -- he goes just come outside I want to talk to
3 you. And I said, no, I -- I got nothing to say to you, get out of my face.

4 Q Okay. And then do you know where he went from there? Did you
5 actually see him go anywhere from there?

6 A I saw him walk back outside initially, and then I believe he came
7 back in. I -- I was done with him.

8 Q All right. And is that the last time you've seen the man?

9 A I believe it is.

10 Q Okay. Could you retake the stand please. Thank you.

11 MR. GENTILE: If I may have a moment.

12 THE COURT: That's fine.

13 BY MR. GENTILE:

14 Q Did you ever attend any -- let me lay a foundation. Are you aware of
15 the existence of -- in 2005 of an organization made up of owners and operators
16 of, we'll call them gentlemen's clubs, strip clubs, in the Las Vegas -- in Las
17 Vegas?

18 A Was I aware of one?

19 Q Yes.

20 A Yes, I was.

21 Q Okay. And how did you become aware of them?

22 A Through Mr. H.

23 Q All right. And did you ever attend any meetings?

24 A I don't recall if it was in 2005 or earlier. I believe it may have been
25 earlier. But I went with Mr. H to a meeting. I didn't physically attend the meeting.

1 I escorted him there.

2 Q So you didn't go into the meeting?

3 A I didn't go into the meeting itself.

4 Q Okay. Are -- are -- did you ever become aware of Luis Hidalgo Jr.
5 owning a bullet proof vest?

6 A When you say Junior, are you talking about Mr. H.

7 Q I'm talking Mr. H, yes.

8 A Mr. H.

9 Q You don't know him as Junior.

10 A Yes, I do. I do recall him getting a bulletproof vest.

11 Q And what do you know about how that came about? Did you have a
12 hand in that?

13 A Yes, I did.

14 Q How did that happen?

15 A From the beginning?

16 Q Well, if I ask you what time it is, I don't want you to tell me how to
17 build a watch, but, yeah, I guess from the beginning.

18 A There was an incident when I first met him at the Satin Saddle where
19 someone came in that was with the Perry's, that was a friend of the Perry's. And
20 he brought a gentleman in with him and I noticed the gentleman had a -- had a
21 firearm on him. And I approached him, I took the firearm away from him, and
22 sent him on his way, told him he couldn't have it there. And shortly -- I believe --
23 actually I think that was after there was a shooting in the club already, and I had
24 voiced my concerns to Mr. H that --

25 Q Let me stop you.

1 A Okay.

2 Q The shooting that you're talking about that occurred in the Palomino
3 Club, did that occur during the period of time that Luis Hidalgo either managed or
4 owned the club?

5 A I don't recall because I hadn't met him before.

6 Q Okay.

7 A And didn't spend much time at the Palomino at that time.

8 Q Okay. So this is when the Perry's owned it?

9 A Correct. It was when the Perry's owned it.

10 Q All right. Did there come a time when you discussed with Mr. H the
11 wisdom of him owning a bulletproof vest?

12 A Yes.

13 Q Okay. And do you remember about when that was?

14 A I -- I want to say it was shortly after they took over everything. After
15 the -- after 9/11 and all that, and there was a discussion of an association of club
16 owners and so on and so forth. And I said, you know, this is a crazy business,
17 you know. I've done bodyguard work, etcetera. I have a bulletproof vest. I
18 loaned it to him. He didn't like it that much because it was big and bulky, and I
19 suggested that he go see a gentleman at American Shooters and go get fitted for
20 one.

21 Q Okay. Now, did -- let me ask you, have you ever seen him actually
22 wear it?

23 A That I recall? No.

24 Q One more question because I don't think I asked it yesterday, but
25 I've got it circled twice.

1 A Okay.

2 Q What is your cell phone number?

3 A My cell phone number is area code, 7-0-2-2-3-9-2-3-5-0.

4 Q Thank you.

5 MR. GENTILE: Nothing further.

6 THE COURT: Mr. Adams, any questions?

7 MR. ADAMS: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MR. ADAMS:

10 Q Mr. Handley, what do your friends call you?

11 A My friends call me PK.

12 Q And you just gave us your telephone number. Was that -- what was
13 your cell phone number in May of 2005?

14 A The same, 2-3-9-2-3-5-0.

15 Q Let me show you defendant's Exhibit DD. Do you see your number
16 on this sheet of paper?

17 A Yes, I do.

18 Q With your permission may I write in PK next to your number to
19 identify it?

20 A Sure.

21 Q And we'll do it in green. Were you on the same cell service as the
22 Simone's? Did they pay for your phone?

23 A No.

24 Q Did you have the push to talk Nextel service?

25 A I had one at one point, but not then, no.

1 Q So if you were to contact Anabel Espindola, Luis Hidalgo, Jr., Mr. H,
2 or Little Louie, Luis Hidalgo III, how would you do that if you were calling them?

3 A If I was calling them I'd have to call them from my cell phone.

4 Q All right. And on the 19th did you call them?

5 A I -- if my memory serves me correctly, I did call Little Lou.

6 Q Did you call Anabel Espindola at 3:51 p.m.?

7 A At --

8 Q Let me ask this, if the phone records show a call from 2-3-9-2-3-5-0
9 at 3:51 p.m. on the 19th to Anabel Espindola, would you be the person who used
10 that phone?

11 A Yes.

12 Q If the records show that at 8:07 p.m. there was a call to Little Louie
13 from 2-3-9-2-3-5-0, would you be the person who used the phone?

14 A Yes, I would.

15 Q All right. And, again, at 8:42, if the records show that you received a
16 call -- or that number, 2-3-9-2-3-5-0, received a call from Anabel Espindola that
17 was 80 seconds long, would you be the person who had the phone?

18 A Yes, I would.

19 MR. ADAMS: Your Honor, at this point, I move these two
20 professionally done, hand crafted, Exhibit CC and DD into evidence.

21 THE COURT: I thought they were already admitted.

22 MR. DIGIACOMO: I thought they were too.

23 MR. ADAMS: They were marked for demonstrative purposes.

24 THE COURT: Oh, all right.

25 MR. DIGIACOMO: I have no objection.

1 THE COURT: All right. CC and DD will be admitted.

2 (Defense Exhibits CC and DD admitted)

3 MR. ADAMS: Thank you.

4 BY MR. ADAMS:

5 Q Mr. Gentile asked you, Mr. Handley, if you were involved in the
6 termination of -- of TJ from the club.

7 MR. GENTILE: I object to the form of the question. I said the firing.

8 MR. ADAMS: The firing.

9 THE COURT: Oh.

10 MR. GENTILE: In this case termination has a different meaning.

11 BY MR. ADAMS:

12 Q The firing of TJ Hadland at the club. Were you there when he was
13 told his services would no longer be needed?

14 A Yes, I was.

15 Q And I believe Mr. Gentile, and I'm certain he will correct me if I'm
16 wrong, I believe he asked you why you were there.

17 A Correct.

18 Q Do you have a martial arts background?

19 A Yes, I do.

20 Q And what is that background?

21 A I'm a black belt in Yoshimi Shingan-ryu Jujitsu, and I'm an instructor.

22 MR. ADAMS: I have no idea how to spell that and I don't know --

23 THE COURT: I'm sure it'll be phonetic or Janie can look it up.

24 Would you say again the type of Jujitsu you do?

25 THE WITNESS: Yoshimi Shingan-ryu.

1 THE COURT: All right. Thank you.

2 BY MR. ADAMS:

3 Q Can you give us about a 15 to 20 second idea of what Shoshami
4 Do --

5 A Yoshimi --

6 Q -- Jujitsu is?

7 A -- Shingan-ryu. It's close combat, quick take down, subduing, and
8 debilitating techniques at very close range.

9 Q How long have you been studying and practicing this form of martial
10 arts?

11 A That particular form since about the age -- I started in, I think around
12 12, and got -- got real serious in it and have been practicing ever since.

13 Q And you'd never actually gotten into a physical altercation with TJ?

14 A No.

15 Q You did exchange words with him?

16 A If you want to --

17 Q Well, you guys had disputes about the shoeshine and him being on
18 his job at the right place.

19 A If you want to call it a dispute.

20 Q But certainly no punches were thrown.

21 A No.

22 Q And he never came up and -- and tried to start any physical
23 altercation with you ever; did he?

24 A No.

25 Q And he was aware of your martial arts background?

1 A I would assume so.

2 Q You indicated that you believe TJ and Deangelo Carroll were doing
3 something together with VIP passes.

4 A They were both doing the same thing.

5 Q And that was selling the passes?

6 A Correct.

7 Q And that was causing problems at the club?

8 A Correct.

9 Q Because the cab drivers were unhappy because they weren't getting
10 paid the full amount?

11 A Correct.

12 Q And then after Mr. Hadland was fired from the club -- you were
13 asked a question this morning about Deangelo Carroll. It was after Mr. Hadland
14 was gone that Deangelo Carroll came up and asked or made this statement to
15 you about don't lump me in with TJ.

16 A Correct.

17 Q And you saw -- and -- and you met with these guys last year; didn't
18 you?

19 A Correct.

20 MR. GENTILE: And the record reflect --

21 Q The prosecutors?

22 MR. GENTILE: Yes. Thank you.

23 Q The prosecutors?

24 THE COURT: These two same prosecutors?

25 Q Also known as these guys.

1 A Correct, I believe so.

2 THE COURT: All right. Thank you.

3 Q And they had other -- they had other people with them?

4 A Correct.

5 Q Investigators, detective types?

6 A They had people with them. Exactly -- it was -- it was awhile, it was
7 over a year ago.

8 Q And you talked with them about this encounter with Deangelo
9 Carroll?

10 A Correct.

11 Q When you saw Deangelo around midnight on the 19th or in the early,
12 early morning hours of the 20th, you said I need to -- he came up to you when
13 you saw him and he said I messed up, I f-ed up, I need to talk to H, I need to talk
14 to Ms. Anabel.

15 A Correct.

16 Q And that was all he said to you?

17 A That's what I recall. It was -- he was looking for them.

18 Q Not find me Little Louie?

19 A He never said find me Little Louie.

20 Q Thank you.

21 THE COURT: All right.

22 Cross?

23 MR. DIGIACOMO: Thank you, Judge.

24 THE COURT: And we've got some juror questions.

25 MR. GENTILE: Your Honor, did we have one last night that we

1 didn't address? At the end of the night last night I think there was a question.

2 THE COURT: Yeah, I've got -- oops. You made me spill my water.

3 We've got them all stacked up here --

4 MR. GENTILE: Okay.

5 THE COURT: -- so I'm going --

6 MR. GENTILE: Perfect.

7 THE COURT: -- to do them all together. I'm going to let Mr.

8 DiGiacomo do his cross and then we'll do the jury questions.

9 CROSS-EXAMINATION

10 BY MR. DIGIACOMO:

11 Q Good morning. How are you?

12 A Okay.

13 Q Prior to coming in last year and talking to us, somewhere February
14 8th of last year, does that sound about right to you?

15 A It was on my birthday. It was February 8th.

16 Q Okay. Well, then we know the date. Prior to that had you talked to
17 the defense?

18 A Yes.

19 Q Who?

20 A I talked with Mr. Gentile.

21 Q On how many other occasions did you talk with them?

22 A I think it was two that I recall.

23 Q Now, on both of those occasions did they go over the information
24 that you had?

25 MR. GENTILE: Objection to they.

1 Q I'm sorry. Did Mr. Gentile go over the information that you had about
2 this case?

3 A They asked me what I recalled.

4 Q All right. That's -- I mean, that's what I'm asking you. Did they ask
5 you questions about what you recalled?

6 A Yes.

7 Q And then you told them what you recalled.

8 A Yes.

9 Q Did you notice at that time whether or not it was recorded in any
10 manner?

11 A I don't remember whether or not there was a tape recorder there. I
12 know they asked, I think it was for me to sign -- sign a statement.

13 Q Now, do you recall signing a statement or an affidavit or do you
14 remember?

15 A I remember signing something. I'm not sure if it was an affidavit or a
16 statement or which.

17 Q And did you review it before you signed it, making sure all the
18 information was correct?

19 A Yeah, I -- I glanced over it to see if it all made sense --

20 Q Right.

21 A -- to me.

22 Q You wouldn't sign an affidavit saying, hey, this is what's true if that
23 wasn't what's true; right?

24 A Correct.

25 Q Okay. Let's talk a little bit about some of the information, and a lot of

1 it was brought out on direct. One of your first contacts with the Hidalgo family is
2 when you had this encounter with a guy coming to the club with a gun; right?

3 A Correct.

4 Q And -- and when you say you took it away from him, you used your
5 Jujitsu to --

6 A Correct.

7 Q -- pretty much take it away from him before he even knew what was
8 going on.

9 A Correct.

10 Q And based upon that at some point the family safe when you were
11 around; right?

12 MR. GENTILE: Objection. How -- I mean --

13 THE COURT: Right. As to their --

14 MR. GENTILE: -- unless he can lay a foundation.

15 THE COURT: All right.

16 MR. DIGIACOMO: Let me rephrase.

17 THE COURT: As to their state of mind.

18 BY MR. DIGIACOMO:

19 Q Mr. H felt safe when you were around him; correct?

20 MR. GENTILE: Same objection.

21 MR. DIGIACOMO: Let me --

22 THE COURT: That's sustained.

23 MR. DIGIACOMO: -- rephrase.

24 BY MR. DIGIACOMO:

25 Q Mr. H told you he felt safe when you were around?

1 A I would say that was kind of understood.
2 Q Okay. But you wouldn't disagree with that statement, would you?
3 A Not personally, no.
4 Q Okay. You also became pretty close friends with the whole family;
5 right?
6 A Correct.
7 Q You were friends with Mr. H; correct?
8 A Correct.
9 Q You were friends with Anabel?
10 A Correct.
11 Q You were -- you knew Little Lou. Would you call him a friend?
12 A I would.
13 Q Okay. And you -- you had conversations with Little Lou. And so we
14 know who Little Lou is, do you see him in court here today?
15 A Yes, I do.
16 Q Okay. And he's the guy who just stood up, or one of the guys who
17 just stood up?
18 A Correct.
19 THE COURT: All right. Well, the record will --
20 Is he the tall guy on the end, or the shorter man in the middle?
21 THE WITNESS: He's the shorter one in the middle.
22 THE COURT: All right. Record will reflect.
23 MR. ADAMS: May we approach, please?
24 THE COURT: You may.
25 (Conference at the bench)

1 BY MR. DIGIACOMO:

2 Q And you spent time with Little Lou; correct?

3 A Correct.

4 Q And you were at the club a lot in those days?

5 A Correct.

6 Q Little Lou was at the club a lot; right?

7 A Correct.

8 Q Okay. And you saw Deangelo Carroll at the club a lot?

9 A Correct.

10 Q And you saw the interaction between Little Lou and Deangelo
11 Carroll; correct?

12 A Correct.

13 Q Okay. Little Lou and Deangelo were friends; correct?

14 A Correct.

15 Q Okay. Deangelo -- Little Lou had a bunch of cars; right?

16 A He had a few, yes.

17 Q Okay. What kind of cars did he have?

18 A At what time?

19 Q Okay. Well, May it 2005. Do you remember what he had?

20 A May of 2005, to the best of my recollection, he had the -- I believe
21 it's called and SSR Chevy pickup truck. He also had a Camaro, an older
22 Camaro. Those are the two that I know that he -- that -- that I know that he
23 owned.

24 Q What about a Mitsubishi? Did he own a Mitsubishi too?

25 A A white Mitsubishi truck. I don't know exactly who owned that one.

1 That was something that was used -- used by quite a few people.

2 Q And you would agree with me that Little Lou would let Deangelo
3 drive his car?

4 A Yes.

5 Q Okay. Often; correct?

6 A I -- I don't know what you would consider often.

7 Q Well, enough it would cause you to have concern?

8 A I was concerned anytime Deangelo operated anything.

9 Q Okay. That's a fair -- that's a fair characterization. And so that we
10 have this right, you were close with Little Lou, but you didn't ever borrow his car;
11 correct?

12 A No. We went on a joy ride in some of his new cars.

13 Q Right.

14 A But I never -- I never took his cars myself, no.

15 Q Okay. Let's talk a little bit about the firing of TJ. And I want to back
16 up just a little bit. I don't remember specifically what you said plan A was
17 yesterday. What did you say plan A was yesterday?

18 A Plan A was keep everything the way it was.

19 Q Okay. And then you said yesterday -- do you remember what you
20 said yesterday about plan B?

21 A Plan B was, as far as the cab was concerned, to pay -- to pay all the
22 cabs irregardless.

23 Q And then today you added a little bit more and I didn't quite catch
24 what you were saying today.

25 A The full thing was to -- if the -- if we were having problems with

1 personnel like selling -- selling stuff and they're selling the tickets and everything
2 else, then just wipe the whole thing clear, start over, whole new staff from the
3 top -- from the top down with the -- well, from -- I should say from the office
4 manager down, they weren't -- he wasn't going to replace family.

5 Q Okay. So there was problems with TJ?

6 A Correct.

7 Q There was problems with Deangelo?

8 A Correct.

9 Q There was problems with Ariel?

10 A There was nothing that anybody could necessarily prove.

11 Q Okay. Well, have you ever told anybody about Ariel stealing the
12 chips and money from the chips for the dancers?

13 A I had discussed that there were times when they didn't add up.

14 Q And who did you tell about, hey, there's a problem with these chips?

15 A I usually talk to Mr. H.

16 Q And who did you tell him that you thought the problems were related
17 to stealing those chips?

18 A There -- the chips went through so many people's hands, it was --
19 whoever -- whoever was involved with collecting money and that kind of stuff in
20 general.

21 Q But when -- do you remember ever saying it was Ariel and Jerry that
22 you specifically told Mr. H, hey, these people are a problem along with Deangelo
23 and TJ? Do you remember making those statements?

24 A I said I didn't trust -- I didn't trust them and I thought they were up to
25 something.

1 Q Okay. And then have you ever told anybody that plan A was to one
2 at a time get rid of the employees?

3 A Plan A was to go with -- go with, you know, go with the status quo
4 and at the same time, if somebody screwed up, write them up.

5 Q Okay. Do you remember talking -- well, have you ever told anybody
6 what plan A was we're going to one at a time take, first TJ and then Deangelo
7 and then the rest of the people one at a time? Do you remember ever describing
8 that before?

9 A It was -- I believe it was something to the effect of we're going to
10 weed them out. If they're -- you know, if they're -- if they're messing up you have
11 to document it. And so it's documented, and then if documented, then you can
12 get rid of them. And if we went to plan B it would just be wipe it across the board.

13 Q Everybody goes at one time.

14 A Correct.

15 Q Okay. And then you talked a little bit about the firing of TJ. You said
16 that you caught him stealing; correct?

17 A I -- I'd seen him, yes.

18 Q All right. And you told Mr. H, Anabel, and Little Lou, all three of them
19 in a single meeting about this; right?

20 A Not all three of them. Not all three of them together about it.

21 Q You don't recall telling us that you went up there and had a meeting
22 with all three of them?

23 A I had many meetings with all three of them, but I do not recall talking
24 to them about TJ and Deangelo stealing.

25 Q Okay.

1 A I -- I do recall explaining to them about -- about him not being out
2 there, you know, and not being out there with the cabs.

3 Q You don't remember ever saying that when you told them this you
4 wanted to fire him immediately, and they said because of wrongful termination
5 you have to figure a way to document a way to get rid of him as opposed to just
6 firing him?

7 A The only person that I recall making that statement as far as
8 documentation, etcetera, and firing somebody was Mr. H.

9 Q Okay. So when Mr. H made that statement, were Anabel and Little
10 Lou in the room?

11 A I don't recall. I don't recall.

12 Q Okay. If you -- if a year ago you had said that, would your memory
13 have been better back then?

14 A It might've been.

15 Q Let's talk a little bit about the pickup. This pickup was actually
16 planned for a couple days; right? For your customers; correct?

17 A Yes, it was.

18 Q All right. And it was a big deal to you.

19 A Yes, it was.

20 Q All right. It was something that you really wanted to see happen
21 because not only is it good for the club, but it's good for you personally?

22 A Correct.

23 Q And so you made plans and made sure that -- that people were
24 aware of what those plans were so that the pickup went down correctly?

25 A Correct.

1 Q And you had concerns that Deangelo may not do this right?
2 A Yes, I did.
3 Q Okay. Can you tell me -- can you tell me approximately what time it
4 was that you first realized that there was a problem, that you thought maybe
5 Deangelo was going to screw up? Do you remember about what time that is?
6 A When I thought Deangelo might screw up?
7 Q Well, let me -- that was a terrible question. You probably always
8 thought that.
9 A This is true.
10 Q Let me -- let me rephrase. What time do you go outside and see
11 that the Astro van is gone, but the van that's supposed to -- the limo that's
12 supposed to go pick up your customers is still there?
13 A I would say with the -- with the phone records and everything else, it
14 was probably around 8:00.
15 Q Okay. And then do you recall the first person you go to to find out
16 where Deangelo is?
17 A I would've -- I recall calling Little Louie.
18 Q Okay. What about Cheryl? Do you remember her?
19 A Yes, I do.
20 Q Okay. Who's Cheryl?
21 A Cheryl worked in the cage.
22 Q Okay. Did you ask her about where Deangelo was at?
23 A I would say yes. I -- I would have.
24 Q Does that sound right?
25 A Yeah.

1 Q Okay.

2 A She -- she has a slip that has the pickup schedule and I -- if I
3 remember correctly, I think I walked in and said do you got my pickup scheduled
4 for tonight? And she said yes.

5 Q And then -- were you -- you stayed there while you watched Cheryl
6 try and chirp Deangelo and he didn't answer?

7 A I believe so.

8 Q Okay. And when that happened, did -- you -- you said it was about
9 8:00. Would you agree with my in 2008 last year you said it was about 8:30, but
10 we're in that range; correct?

11 A We were in that range.

12 Q All right. And you said after that you thought you called Louie on his
13 Nextel?

14 A Correct.

15 Q Okay. You didn't go up to the office?

16 A I went to the office later.

17 Q Okay. So between the time that you initially -- Cheryl doesn't
18 answer or Cheryl can't get Deangelo, you remember that you actually chirped
19 Louie?

20 A I didn't chirp -- I couldn't chirp Louie.

21 Q I'm sorry. Called Louie on his cell phone.

22 A Correct.

23 Q And you talked to him?

24 A Correct.

25 Q Okay. Do you know where Louie was when you talked to him on the

1 phone?

2 A Not exactly. No, I don't.

3 Q Do you remember telling us that immediately upon Cheryl telling you
4 she couldn't get a hold of Deangelo Carroll, you went up to the office and Anabel,
5 Little Lou, and Mr. H were all in the office?

6 A I do recall saying that I went up to the office.

7 Q Okay. And when you got up there, were all three of them up there?

8 A To the best of my memory, yes.

9 Q Okay. And at that point you're pretty hot.

10 A Yes.

11 Q Okay. You're not happy at all with Deangelo.

12 A No.

13 Q Okay. And you're telling them this?

14 A Yes.

15 Q You're telling them this guy needs to get fired?

16 A Pretty much, yeah.

17 Q Right. I mean, you don't like Deangelo, he's obviously not a good
18 employee, and you think he needs to go.

19 A I voiced my concerns with his -- with his character.

20 Q And at that point the decision is made among the group of the four of
21 you that Little Lou is going to call Deangelo at this point because he's kind of the
22 lowest in the hierarchy of the chain who is present and you want to start at the
23 lowest level. Do you remember making those statements?

24 A I believe so.

25 Q And then you sat in the room and you watched Luis -- Little Lou.

1 chirp Deangelo and he didn't answer?

2 A I think I recall -- I -- I think that's how it went, how it happened.

3 Q That sounds about right; right?

4 A That sounds about right.

5 Q And then after that happened, you watched Anabel try and chirp
6 from her Nextel.

7 A I do recall that.

8 Q And it kept going out of range. I think the way you put it was blah,
9 blah, blah, blah, but basically they couldn't get in contact with him.

10 A Correct.

11 Q Okay. And then you left the office at that point?

12 A After -- after a little bit, yeah.

13 Q And after a short period of time do you go back up to the office
14 again. Do you remember that?

15 A I don't -- I don't recall going back up shortly thereafter. I -- I'm trying
16 to recall exactly how -- you know, how everything transpired. The -- the things
17 that I remember most and clearly was the -- the incident where they tried to call
18 him, he wasn't answering, and we had to figure out what to -- you know, what we
19 were going to do.

20 Q If you told us last year that you left the office and you came back
21 shortly thereafter, would you dispute making that statement?

22 A I wouldn't dispute making the statement. I -- you know, I'm trying
23 to --

24 Q No, I understand.

25 A I'm trying to be as -- as -- as forthright as I can be. It -- it may have

1 been I walked out for a second and walked back in, or it may have been I was up
2 there and it was a continuation of the first meeting.

3 Q Okay. And if you told us you came back and now they're all fighting,
4 arguing about whether or not Deangelo should be fired or not, do you remember
5 making those statements?

6 A I remember them -- them arguing about how he was irresponsible,
7 etcetera, but I want to say it sound -- it would have made, in the -- in the timeline
8 of things, that that would've happened right after they would've called, right after
9 they couldn't get a hold of him.

10 Q Okay. So if you had left the office, it would've been just for a short
11 period of time as opposed for any lengthy period of time?

12 A I would say yes.

13 Q Okay. And -- and while there's arguments going on, you decided --
14 I'm sorry, let me rephrase. As a group it's decided that you're going to pay a limo
15 driver to go get your clients.

16 A Something had to happen to -- to save face, yes.

17 Q And so that happens; right?

18 A Yes, it did.

19 Q And -- and that point Ariel's called into the office; right?

20 A I want to say that she may have -- I want to say she was up there
21 when the -- when the initial call was made.

22 Q Which initial call?

23 A The call to get a hold of Deangelo.

24 Q You want to say she was up there then?

25 A I -- I remember -- I do remember Ariel being up there.

1 Q Do you remember her getting chewed out because Deangelo is not
2 doing his job right and she doesn't know where he's at?

3 A I do recall that.

4 Q Okay.

5 A I recall a lot of people got chewed out that night because Deangelo
6 didn't do his job.

7 Q Okay. Who is a lot of people? Ariel is one of them.

8 A Ariel, Little Lou, and Anabel was -- was reprimanded for not -- for not
9 being able to -- to deal with it.

10 Q Mr. H was reprimanding Anabel?

11 A He was mad at her. He said, you know, what the -- you know, what
12 the hell, why don't we know where he's at? He was basically coming down on
13 everybody. How is it we don't know where's he at?

14 Q And what was the response from Anabel?

15 A I don't remember exactly her -- her words, but I know nobody was
16 happy.

17 Q Okay. Well, I mean, was she fighting back, was she saying -- what
18 was she saying? I mean, do you remember generally what's her demeanor
19 when he's yelling at her, hey, why don't you know where Deangelo is?

20 A Everybody just kind of threw their hands up as -- you know, as kind
21 of like, well, what -- what the heck.

22 Q At some point after that meeting upstairs where everybody's kind of
23 in a fight, your clients actually arrive.

24 A Correct.

25 Q And then you feel some responsibility to go down there and take

1 care of them.

2 A Correct.

3 Q After you get your clients situated, you buy them a bottle of liquor or
4 you give them a free bottle of liquor or something; right?

5 A I didn't. The club did.

6 Q The club did.

7 A Correct.

8 Q Okay. Just kind of take care of them, hey, sorry for the mess up,
9 hope you enjoy your time kind of thing?

10 A Uh-huh.

11 Q After that you go back to the office; don't you?

12 A Yes, I do.

13 Q Okay. And Anabel and Mr. H are there at this point?

14 A Correct.

15 Q Okay. And Anabel and Mr. H are leaving?

16 A I believe they were getting ready to leave.

17 Q Okay. And, in fact, you walk them out of the Palomino Club;
18 correct?

19 A I believe so.

20 Q Well, do you remember telling us that?

21 A I -- I recall -- I recall saying something along those lines that -- that
22 we sat down, we talked, and then they -- I believe they left.

23 Q Okay. Didn't you tell us you had walked them out and when they got
24 out to the car you say to them, hey, when Deangelo comes back do you want me
25 to say anything to him?

1 A I -- that sounds -- that sounds familiar. Like I said, I'm trying to recall
2 everything --

3 Q I mean --

4 A -- and that's --

5 Q -- you were trying to tell us the truth back then; right?

6 A Yeah, I -- I've always tried to tell the truth.

7 Q Right. And so you would agree with me that if you told us you
8 walked out with Mr. H and Anabel and you had this conversation about Deangelo
9 Carroll that you had no reason to lie to us then; right?

10 A No, I didn't.

11 Q Okay. And you actually watched Anabel and Mr. H drive off in
12 Anabel's Hummer. Do you remember saying that?

13 A I believe so.

14 Q Okay. And then you say later, after they're already gone, Deangelo
15 Carroll comes back to the club.

16 A Correct.

17 Q Okay. And it's late.

18 A Correct.

19 Q Late at night.

20 A Correct.

21 Q Really it's sometime on May 20th, you'd agree with me on that?

22 A Correct.

23 Q Okay. And Deangelo actually came in a different door than where
24 you -- where you put on -- on that note. Do you remember saying he came in the
25 side door?

1 A No.

2 Q You don't remember saying that?

3 A I don't remember that because I remember specifically seeing him
4 out front.

5 Q Okay. And then you got there and his hair is wild; correct?

6 A Correct.

7 Q And you see a person that at the time you don't recognize; correct?

8 A Correct.

9 Q With him?

10 A Correct.

11 Q And then after you see the news you come to realize that's Kenneth
12 Counts?

13 A Correct.

14 Q And at some point you wind up outside, you see two kids sitting on a
15 park bench?

16 A Correct.

17 Q Okay. And you recognize one as somebody Deangelo once
18 described as a cousin of his, but they're basically two African American juveniles
19 that aren't really allowed in the club?

20 A That sounds correct.

21 Q Okay. That's what you remember telling us; right?

22 A If that's what I -- if that's what I -- what I said.

23 Q Okay. And you had previously seen these kids in the club and you
24 had had some words with Deangelo because they're underage and there's liquor
25 in the club. Do you remember telling us about that story?

1 A I believe so. I've had many run-ins with people that Deangelo
2 brought into the club.

3 Q Do you remember talking about how these kids would be in there
4 getting fliers and he'd be saying, well, we're not even open yet, we're just getting
5 fliers? Do you remember that conversation with Deangelo and you saying it
6 doesn't matter, we have a liquor license, people are going to get in trouble if they
7 find underage kids in here?

8 A That sounds -- that sounds familiar.

9 Q That sounds familiar; right? Something you might've said to us in
10 2008?

11 A That's -- yeah.

12 Q Okay. You also indicated that today you said Deangelo was saying
13 to you, you know, I need to talk to Mr. H and Anabel. Do you remember ever
14 using Anabel's name last year?

15 A I thought I did.

16 Q Okay. Any he's saying stuff like I -- I fucked up, basically.

17 A Correct.

18 Q Okay. Excuse the language, but, I mean, that's what he said.

19 A Correct.

20 Q And you're not happy with him because you think he has.

21 A Absolutely.

22 Q And you tell him -- and he says to you, I need to see Mr. H.

23 A He said I need to see Mr. H, I need to see Anabel. I remember
24 him -- I remember him saying Anabel, and the reason that I'm -- that I'm saying
25 that is he -- he -- Anabel kind of had a soft side for him.

1 Q Okay. And do you remember telling him they're gone, they're not
2 even here anymore.

3 A That sounds about -- that sounds -- that sounds correct.

4 Q So as far as you know, by the time Deangelo Carroll gets back to the
5 club on the early morning hours of May 20th, Mr. H and Anabel aren't -- isn't even
6 there.

7 A I believe that's what I recall.

8 Q Okay. And then you stay around for some time at the club; correct?

9 A I don't remember how long I actually stayed. I know -- I know I made
10 sure that my clients were good, so on and so forth, and I don't remember what
11 time it was I left.

12 Q Well, you'd agree with me it's early morning hours of the 20th?

13 A Oh, yes, absolutely, that it was early morning hours.

14 Q And you'd agree with me that when you had talked to us in February
15 of 2008 you told us that Anabel and Mr. H were gone for the night.

16 A Now, it seems like that -- that -- that sounds correct.

17 Q Thank you very much.

18 MR. DIGIACOMO: Judge, I have nothing further.

19 THE COURT: All right. Counsel approach.

20 Any remaining juror questions? No.

21 (Conference at the bench)

22 THE COURT: Let's just take -- let's take eight minutes.

23 All right. And, ladies and gentlemen, once again, of course
24 you guys can probably all recite the admonishment. Just to remind you that it is,
25 obviously, in effect during the break. Notepads in your chairs and follow Jeff

1 through the double doors.

2 (Jury recessed at 10:59 a.m.)

3 THE COURT: Sir, you can take a break.

4 THE WITNESS: Okay.

5 THE COURT: I'm sorry. I didn't mean to just ignore you. Don't talk
6 about your testimony with anyone else who may be a witness.

7 THE WITNESS: Okay.

8 (Recess taken at 11:00 a.m.)

9 MR. GENTILE: I have a request.

10 THE COURT: Yes.

11 MR. GENTILE: On the record.

12 THE COURT: Oh, all right. Yes?

13 THE RECORDER: Okay. We're ready.

14 THE COURT: Yes?

15 MR. GENTILE: All right. This witness has now testified.

16 THE COURT: Yes.

17 MR. GENTILE: The State took a statement from the witness. The
18 State has cross-examined the witness. We are now making a demand for the
19 statement that the State took from the witness. They used it for their cross-
20 examination.

21 MR. ADAMS: We join the demand.

22 MR. DIGIACOMO: All right. Judge, there is -- and I'll explain this a
23 long way, but there is no basis until I put Mr. Faulkner on the stand to require me
24 to turn over the information I have on PK Handley for cross-examination. There
25 is nowhere in the status sheet that that basis is it.

1 And let me explain to you how this happened in this case.
2 Anabel Espindola is on the stand after we've been requesting for months any
3 statement of any of their witnesses that they're going to put on in their case in
4 chief. They cross her on Jerome DePalma and say we don't have any
5 statements, and then they come in with Jerome DePalma and, boom, they hit us
6 with the notes they have of the interview. That's how it worked.

7 Until we put the witness on, we're not required to turn it over.
8 They didn't do anything wrong. They weren't required to turn it over. Well,
9 actually, they were because it was their case in chief, but this is rebuttal. And if
10 we call a witness in rebuttal, we will turn over the notes. There is certainly
11 nothing in there that's exculpatory that somehow we have some duty to turn over
12 to them.

13 Their access to the witness, they've interviewed the witness
14 before, they are not entitled to redirect the witness with the statement until we
15 have an opportunity to put our witness on to describe the statement that's
16 inconsistent. And there's no rule that says otherwise.

17 MR. GENTILE: If the finger that he's pointing at me for the last two
18 minutes is loaded, I want him arrested.

19 Here's the deal. Number one -- I have a great idea.

20 THE COURT: All right.

21 MR. GENTILE: How about they turn it over to the Court and the
22 Court examines it for -- for Brady material. Okay?

23 THE COURT: That's fine.

24 MR. GENTILE: That's legitimate.

25 THE COURT: Mr. DiGiacomo, do you have a problem with that?

1 MR. DIGIACOMO: I don't have --

2 THE COURT: Just to make sure there's nothing exculpatory in it. I
3 mean, to me, if there's something exculpatory in it, since this witness is clearly
4 cooperating with the defense and is fond of the defendants as he's indicated, he
5 would've disclosed that --

6 MR. DIGIACOMO: Right.

7 THE COURT: -- to the defense. So I don't think it's very likely that
8 there's some exculpatory information in there that he hasn't communicated. I'm
9 happy to look at it and see if there's anything else in there that he may have
10 forgotten that you can ask him about.

11 MR. GENTILE: There's more to it than that.

12 THE COURT: All right.

13 MR. GENTILE: Okay? He has confronted this man with what he
14 contends this man said a year ago. Okay? We are entitled to that material now
15 because he has been confronted with it. And -- and over and above that, getting
16 back to the DePalma situation, I confronted Anabel Espindola. She could've
17 admitted it. If she had admitted it, there was no need to even call Jerry
18 DePalma. All right? So, I mean, you can't -- this is apples and oranges. We're
19 not even talking about the same thing.

20 MR. ADAMS: Judge, we believe that prior consistent statements,
21 and there was a lot of talk, a lot of reference to this statement a year ago when
22 he remembered better, anything that's a prior consistent statement we believe
23 we're allowed to, at this point in time, so we can re-cross him on his prior
24 consistent statement --

25 THE COURT: Well, can't you --

1 MR. ADAMS: -- since he was impeached.

2 THE COURT: -- go ask him.

3 MR. GENTILE: No. Wait. Their investigator is in there talking to the
4 witness while the witness is still on the stand.

5 MR. DIGIACOMO: My investigator has been sitting in that room. I
6 don't know.

7 MR. GENTILE: Well, get him out --

8 THE COURT: Jeff, go --

9 MR. GENTILE: Get PK out of there.

10 THE COURT: -- get the investigator. Get --

11 Here's the deal. You're certainly free to ask him if there is
12 anything consistent with what he --

13 MR. GENTILE: How would he know? How would he know?

14 MR. ADAMS: He wasn't given --

15 MR. GENTILE: How is he --

16 MR. ADAMS: -- a copy, Judge.

17 MR. GENTILE: -- going to remember?

18 MR. ADAMS: He was not given a copy of his statement.

19 THE COURT: All right. I'm going to look at.

20 MR. GENTILE: Okay.

21 THE COURT: Mr. DiGiacomo, do you have any opposition to the
22 Court looking at it?

23 MR. DIGIACOMO: I don't. I mean, I have my markings and
24 highlights on it. I think Mr. Pesci might be able to get it electronically emailed
25 from our secretary to your secretary.

1 THE COURT: Can you do that, Mr. Pesci?
2 MR. DIGIACOMO: But I don't --
3 MR. PESCI: I'll try.
4 MR. DIGIACOMO: -- have an electronic --
5 THE COURT: Make yourself --
6 MR. DIGIACOMO: -- copy of it.
7 THE COURT: -- useful.
8 MR. PESCI: I don't know that I can try now, Judge.
9 THE COURT: Would you do that, then I'll look at it, and if there's
10 anything -- otherwise, I mean, based on when it's just -- if it is disclosed to you --
11 I mean, to me, I agree with -- that I think it is analogous to the Jerome DePalma
12 situation. So --
13 MR. GENTILE: Well, the record is clear that I gave the statement to
14 the State before Mr. DePalma testified.
15 THE COURT: Right. And so --
16 MR. DIGIACOMO: About ten minutes.
17 THE COURT: -- if Mr. Faulkner --
18 MR. GENTILE: No --
19 THE COURT: -- is going --
20 MR. GENTILE: -- not ten minutes. The day be -- the morning
21 before.
22 THE COURT: Right.
23 MR. DIGIACOMO: If Mr. Faulkner is going to be called --
24 THE COURT: I expect you --
25 MR. DIGIACOMO: -- and we'll have to talk after the testimony of --

1 of --

2 THE COURT: Okay. If you know --

3 MR. DIGIACOMO: -- Mr. Handley --

4 THE COURT: -- I would ask you to extend the same courtesy,
5 whether you need to or not, to the defense side of the room and give them the
6 statement ahead of time so they can read it and be prepared. Because just to
7 hand it to them as Mr. Faulkner is testifying is not going to help them when
8 they're trying to listen and do everything else. So that's what --

9 MR. DIGIACOMO: I agree.

10 THE COURT: -- I instruct the State.

11 MR. DIGIACOMO: But Mr. Handley seemed to accept most of the
12 things that I was saying to him, so I'm not even sure that we have to call Mr.
13 Faulkner. I mean, he seems to acknowledge these things.

14 THE COURT: Okay. Well, I'm just saying if you do, I expect you to
15 give them the statement ahead of time so they can have some meaningful time
16 to review it.

17 Yes?

18 MR. ADAMS: I -- I do believe that technically this is Mr. Hidalgo,
19 Jr.'s witness. We were cross-examining him. And now if there's an additional
20 statement out there that he's been crossed on, which he was crossed on
21 repeatedly by Mr. DiGiacomo, we're entitled in our re-cross to point out any prior
22 consistent statements if we choose, and the only way we can do that is to review
23 the document or to have the Court review it for prior consistencies.

24 It -- we -- we're prejudiced if he's released, he's gone, we get
25 it later today with Faulkner or tomorrow, and there's some key prior consistent

1 statements and we're not -- we don't have the witness here to ask.

2 MR. GENTILE: Well, I can tell the Court this, that depending upon
3 how you rule, there is no way that I want this case to end without me having an
4 opportunity to have that statement and then bring Mr. Handley back if that's
5 what's got to be. And you know that he's not going to be sitting around this
6 courtroom and nor does he need to. Okay? That's very unfair and very
7 prejudicial.

8 THE COURT: Okay.

9 MR. GENTILE: And it seems to be that --

10 THE COURT: Mr. --

11 MR. GENTILE: -- for purposes of expedition, if nothing else, it ought
12 to be turned over.

13 THE COURT: All right. Mr. Pesci, are you having your secretary
14 email that to me?

15 MR. PESCI: I called my secretary.

16 THE COURT: All right.

17 MR. PESCI: She was not there. I left a message --

18 THE COURT: Mr. DiGiacomo, is --

19 MR. PESCI: -- and I called the other secretary.

20 THE COURT: -- there anything in your highlighted copy, comments,
21 or anything I can't see?

22 MR. DIGIACOMO: Oh, no. Most of mine is actually --

23 THE COURT: I mean, I can understand why you might not want the
24 defense to get that copy, but is there anything that I can't get in the copy?

25 MR. DIGIACOMO: No, there's -- you're right. It's only handwritten --

1 I mean, it's only highlighting. And it's my first two -- that first two pages is my
2 notes, Judge, but --

3 THE COURT: Oh, this is quite long.

4 MR. DIGIACOMO: Yeah.

5 THE COURT: All right. Well, I'm not going to be able to sit up here
6 and -- and get this all. I mean, how many pages is this?

7 MR. DIGIACOMO: Well over 25.

8 MR. GENTILE: Which I would say underscores the need for it to be
9 produced at this point.

10 THE COURT: There's really -- I mean, I just obviously have time to
11 read Mr. DiGiacomo's summary, a little page and a half. There's nothing in that
12 that I think is different than what he's already testified to.

13 MR. DIGIACOMO: A good portion of it has to do with background
14 material on Mr. Handley and his -- and his -- and his relationship to the club
15 which almost neither side -- I mean, they went into it a little bit, but I didn't go into
16 practically at all.

17 THE COURT: I mean, here's what I 'm going to do. After -- well, I
18 mean, you've -- I'm going to have the witness --

19 Sir?

20 THE WITNESS: Yes?

21 THE COURT: Would you mind just going back out in the vestibule.

22 (Mr. Handley exits the courtroom)

23 THE COURT: Here's the deal.

24 THE MARSHAL: Do you want him separated from --

25 THE COURT: Not if you stand there. They're not going to talk about

1 anything.

2 Here's the deal. You've done the cross-examination. You
3 know what the juror questions are. I think you can sort of anticipate what the
4 redirect examination is. As you stand here right now, do you anticipate calling
5 Investigator Faulkner?

6 MR. DIGIACOMO: The -- the only question will be is -- and,
7 truthfully, I might be able to answer that question by the end of Mr. Handley's
8 testimony.

9 THE COURT: Well, what I'm saying --

10 MR. DIGIACOMO: There's a couple --

11 THE COURT: -- is I think --

12 MR. DIGIACOMO: -- of things that he said on the stand that I recall
13 from the statement may be different. And so what I was going to do was -- you
14 have my only copy right now -- is I was going to go through and look because
15 there were some things that I didn't note in my notes initially. And so I need to do
16 that still, and I was planning on doing that during the juror questions, to be --

17 THE COURT: Because --

18 MR. DIGIACOMO: -- truthful to you.

19 THE COURT: -- here's the thing. If you're intending on calling
20 Investigator Faulkner, I'm going to make you give the defense this statement
21 right now so we don't have to waste PK's time, as well as possibly waste the
22 jury's time in sitting around again and recalling a witness. So I expect you to tell
23 me one way or the other before we excuse PK as to whether or not you're going
24 to call Investigator Faulkner. If you say no, then you're precluded from calling
25 him. If you say yes, then you're giving them the statement prior to the lunch

1 break.

2 MR. DIGIACOMO: Okay. But my concern is that they're going to be
3 able to go through my statement line by line with the witness, which is
4 inappropriate.

5 THE COURT: They're not going to do that. Because if it's -- okay.
6 For a prior consistent statement, it has to be that you've suggested a recent
7 fabrication. So only on those statements that you've suggested are different from
8 what he was saying initially will they be able to point out prior consistent
9 statements, and you can make contemporaneous objections just like you would
10 with any other statement or -- or testimony.

11 MR. ADAMS: And -- and he did do that about, you would remember
12 a lot better a year ago; right? You're not disputing you said this a year ago;
13 right? Your memory would've been fresher? He did that on a number of points.

14 THE COURT: Right. And so, like I said --

15 MR. ADAMS: Very effectively.

16 THE COURT: -- anything that shows a recent is different than what
17 he testified to today that they want to say, well, wait a minute, you did say this in
18 your statement to the DA's office, that's fair game. Anything beyond that that you
19 didn't attack or contradict, no, they can't go over it line by line. So that's basically
20 the ruling.

21 And are we ready to bring them back in and do the juror
22 questions?

23 THE MARSHAL: Are we ready, Your Honor?

24 THE COURT: Yes.

25 Sir, come on back to the witness stand --

1 THE MARSHAL: Jury is coming in.

2 THE COURT: -- and just have a seat

3 (Jury enters at 11:27 a.m.)

4 THE COURT: All right. Court is now back in session.

5 And before we turn it back over for redirect examination, I
6 have some juror questions that I'm going to ask you.

7 THE WITNESS: Okay.

8 THE COURT: All right. You testified that you went inside the first
9 time to talk to Anabel and Mr. H and Little Lou. What was discussed at that
10 time?

11 THE WITNESS: When I went to the office?

12 THE COURT: Right.

13 THE WITNESS: The first time I believe is when we were discussing
14 the pickup and why it wasn't happening and where Deangelo was at.

15 THE COURT: Okay. Did anyone, Mr. H and/or Anabel, ever give
16 you the authority to supervise the employees?

17 THE WITNESS: Not exactly supervise them. I would --

18 THE COURT: I guess what authority were you given with respect to
19 the other employees or to the employees?

20 THE WITNESS: The only time that I was given any type of authority
21 was the night that -- the night that I was dealing with TJ, and that was just simply,
22 you know, I asked him to do his job, he didn't do his job, I said, okay, fine.

23 THE COURT: In -- were your dealings with the Palomino
24 management primarily with Mr. H or Anabel?

25 THE WITNESS: As far as management, it would've been with

1 Anabel.

2 THE COURT: Okay. And was that 100 percent of the time or some
3 percent of the time or what?

4 THE WITNESS: I -- I wouldn't know how to put it percentagewise.
5 Anabel was usually in the office, and sometimes H was there, sometimes he
6 wasn't.

7 THE COURT: Okay. Was there ever any situation that you are
8 personally aware of where Anabel overrode a decision made by Mr. H?

9 THE WITNESS: Not that I'm aware of.

10 THE COURT: Okay. I'm going to ask you the converse of that. Are
11 you personally aware of any situation where Mr. H overrode a decision that had
12 been made by Anabel?

13 THE WITNESS: Not that I'm aware of.

14 THE COURT: Now, the second time when you went back in to
15 speak with Mr. H and Anabel, did you actually then speak with them --

16 THE WITNESS: Yes.

17 THE COURT: -- that second time?

18 THE WITNESS: Yes, I did.

19 THE COURT: And what was discussed in that meeting?

20 THE WITNESS: To the best of my memory it was more of I was
21 upset with the fact that it cost the club for my clients to come in and it cost a
22 bottle of liquor for them to come in, whereas if we would have picked them up
23 in -- in the limo, it would've been no cost to the club. And I was sorry. You know,
24 I told them, I said I'm sorry about that, you know, blah, blah, blah, but he did it
25 again. You know, it was basically about, you know, how I was unhappy with the

1 fact that Deangelo had screwed up the exact same thing he had done before and
2 that I was sorry that my clients ended up costing them money.

3 THE COURT: Okay. What time did Mr. H and Anabel leave the
4 club, if you know?

5 THE WITNESS: I don't recall the exact time. And, like I said, I tried
6 to recall everything. I -- I don't remember the exact time.

7 THE COURT: Okay. Now, we've heard testimony that sometime in
8 2006 Mr. H was no longer involved in owning or managing the Palomino Club.
9 Since that time have you continued to use the Palomino as a showcase for your
10 business?

11 THE WITNESS: I did for awhile, but they made some changes there
12 so, no, I don't anymore.

13 THE COURT: Okay. And so you don't -- you don't have any -- or do
14 you have any association today?

15 THE WITNESS: If they were to call and need something I would
16 help them out, but I don't have any -- anything ongoing right now.

17 THE COURT: If you had a problem or a situation -- well, first of all,
18 did you ever have a problem or a situation other than what you've already talked
19 about that you had to bring to the attention of the management of the Palomino?

20 THE WITNESS: There were -- I was there all the time, so if I saw
21 something, I would -- I would bring it up to them. So that --

22 THE COURT: Okay. And then that dovetails into my next question.
23 Who would you bring it up to? Would it be Anabel or Mr. H?

24 THE WITNESS: They used a chain of command. So the chain of
25 command would dictate that it goes to usually Ariel.

1 THE COURT: Ariel first. Okay.

2 THE WITNESS: Correct.

3 THE COURT: And then --

4 THE WITNESS: Unless -- unless --

5 THE COURT: -- after Ariel?

6 THE WITNESS: Unless it involved her. If it involved her, then it
7 would go to Anabel.

8 THE COURT: Okay. Have you ever seen Mr. H and Anabel argue?

9 THE WITNESS: Have disagreements. I wouldn't say argue. Not --
10 it was somebody would voice an opinion about one thing, the other person would
11 voice their opinion, and then eventually they would come to -- come to some
12 understanding.

13 THE COURT: Okay. Based on your interaction with Mr. H and
14 Anabel, which of them had more say and direction in the running and
15 management of the club on a day to day basis, if you know?

16 THE WITNESS: It would be Anabel.

17 THE COURT: Okay. How would you characterize the leadership,
18 management style, and demeanor of Mr. H and then for Anabel? Just in terms of
19 what you observed in your direct interactions with them. Don't, you know,
20 speculate or talk about what other people may have told you. Just, you know,
21 your own interaction and observations.

22 THE WITNESS: The leadership style of the two of them was almost
23 like a -- kind of like a mother/ father thing, I guess, kind of is the way I would look
24 at it. Mr. H was more of the -- the face, for lack of a better term of -- of the club.
25 He was the owner and he -- he was there to make sure everybody was -- was,

1 you know, happy and so on and so forth. And Anabel was there to make sure
2 that everything ran the way it was supposed to. So their styles were -- he was
3 more hands off, she was more hands on.

4 THE COURT: Okay. And did you wind up losing money from the
5 Palomino project that you discussed yesterday?

6 THE WITNESS: Me personally lose any money?

7 THE COURT: Uh-huh.

8 THE WITNESS: No.

9 THE COURT: All right. Thank you.

10 Mr. Gentile, redirect and addressing the juror questions as
11 well.

12 MR. GENTILE: I can't remember them all.

13 REDIRECT EXAMINATION

14 BY MR. GENTILE:

15 Q I'm only concerned about one thing. Mr. DiGiacomo examined you
16 about things you said a year ago.

17 A Correct.

18 Q Okay? But he did not ask you as to today, whether you're satisfied
19 that your memory today is accurate. Do you recall that?

20 A Do I recall that ask -- that he didn't ask me?

21 Q He didn't ask you that?

22 A I don't recall him asking me that.

23 Q All right. So here's what I want to get at. A year ago when you were
24 in a room with six people or so, including prosecutors and law enforcement
25 people, were you -- were you placed under oath?

1 A I don't recall.

2 Q How long did that interview last?

3 A It was awhile. I don't -- I don't recall exactly.

4 Q And today you are under oath; am I correct?

5 A Yes, I am.

6 Q Also, how long have you known that you're going to be a witness?

7 And I don't mean like how many years, but prior to this trial actually taking place,
8 when did you first become aware in terms of approximately when you would
9 actually be a witness date-wise?

10 A Not too long ago.

11 Q A week or two?

12 A I think that was it.

13 Q Well, I'm asking you.

14 A I -- I'd say maybe two weeks ago.

15 Q All right. Have you thought about what you've testified to here today
16 more in the last two weeks than you did before you gave the statement to Mr.
17 DiGiacomo on your birthday last year?

18 A I would say yes.

19 Q And are you satisfied that your testimony in court this morning with
20 respect to Deangelo arriving at the Palomino Club before Mr. H and Anabel left is
21 accurate?

22 A Before they left?

23 Q Yes. Or do you remember?

24 A I don't -- I -- I honestly don't remember the timeline on that. As far
25 as I remember, I don't remember seeing them after --

1 Q You don't remember seeing them?
2 A After Deangelo got there I don't recall seeing them after that point.
3 Q All right.
4 A That's the only thing I'm 100 percent sure of --
5 Q So -- so they --
6 A -- is I did not see them after that point.
7 Q So you're not sure as to whether they were there or not, but you are
8 sure that you didn't see them?
9 A I'm sure I did not see them after Deangelo arrived.
10 Q Okay. You no longer saw Deangelo. You haven't seen Deangelo
11 since that moment --
12 A No, I haven't.
13 Q -- if I understand you correctly.
14 A No, I haven't.
15 Q Okay.
16 MR. GENTILE: If I may have a moment.
17 THE COURT: That's fine.
18 MR. GENTILE: Nothing further.
19 THE COURT: Mr. Adams.
20
21
22
23
24
25

BY MR. ADAMS:

Q Very briefly, Mr. Handley. A year ago you met with those guys, the prosecutors.

A Correct.

Q Have you reviewed any notes or statements that you gave to them a

1 year ago?

2 A No.

3 Q Well, they questioned you about some minor discrepancies, I guess,
4 between --

5 MR. DIGIACOMO: Objection as to minor.

6 THE COURT: Well --

7 BY MR. ADAMS:

8 Q They questioned you a lot about what you said a year ago. Would it
9 have been helpful to you to be able to review any notes that they would've made
10 a year ago?

11 A I would say probably so.

12 Q Yeah. So you'd have a fair chance to explain to them how your
13 memory is better or different today?

14 MR. DIGIACOMO: Objection as to fair chance.

15 THE COURT: Well --

16 MR. ADAMS: I think fair chance is a fair statement.

17 THE COURT: Ask your -- ask your question a different way.

18 MR. ADAMS: Well --

19 THE COURT: I mean, had he reviewed the transcript would that
20 have been helpful to him in preparing for your testimony today.

21 BY MR. ADAMS:

22 Q Would you have liked the opportunity to review that, any notes or
23 statements that they have of the meeting a year ago?

24 A Yeah, I would say that would --

25 Q And you've not been provided that opportunity by them, have you?

1 A No.

2 MR. ADAMS: Hold one moment.

3 MR. ARRASCADA: Please.

4 THE COURT: Do you know if your statement with the prosecutors
5 and their investigators and -- or whoever was there was tape recorded?

6 THE WITNESS: I don't recall. I -- it was kind of a last minute, you
7 know --

8 THE COURT: Okay. So you don't know whether it was taped or
9 not?

10 THE WITNESS: I don't remember.

11 THE COURT: All right.

12 And, Jeff, go retrieve the juror question, please.

13 And, Mr. Adams, go on.

14 MR. ADAMS: Thank you.

15 BY MR. ADAMS:

16 Q Mr. Handley, have -- without having an opportunity to review it, you
17 don't even know if what they were asking you about in their -- their documents
18 were even accurate as to what you might've said a year ago; do you?

19 A I can't say 100 percent.

20 Q Right. And you would not be able to say unless you actually were
21 extended the courtesy of getting the chance to review that document.

22 MR. DIGIACOMO: Objection as to the characterization of extended
23 the courtesy.

24 THE COURT: Well --

25 MR. DIGIACOMO: Anabel didn't get it.

1 BY MR. ADAMS:

2 Q Did you ever --

3 THE COURT: Well, Mr. DiGiacomo, the question is had you been
4 given a copy of the transcript then --

5 Q Well, if you'd been given a copy of the transcript, would you have
6 reviewed it?

7 A Yes.

8 Q Have you ever been given the opportunity to review it?

9 A No.

10 Q Thank you.

11 THE COURT: All right. I have a juror question.

12 MR. DIGIACOMO: Okay.

13 THE COURT: I'm just going to ask this now.

14 Don't speculate or guess, only if you have personal knowledge
15 answer this question. Do you know if Deangelo knew what plan B was?

16 THE WITNESS: Do I know?

17 THE COURT: Yes.

18 THE WITNESS: No.

19 THE COURT: Okay. And, you know, based on your -- who, to your
20 knowledge, again, don't speculate or guess, was familiar with what plan A was
21 and plan B was?

22 THE WITNESS: Mr. H.

23 THE COURT: All right. And do you know if anyone else was
24 familiar? Again, don't guess or speculate.

25 THE WITNESS: No.

1 THE COURT: All right. Thank you.

2 Follow up to the juror question?

3 MR. GENTILE: No.

4 MR. ADAMS: No.

5 THE COURT: All right.

6 Mr. DiGiacomo.

7 CROSS-EXAMINATION

8 BY MR. DIGIACOMO:

9 Q When you met with Mr. -- well, let me ask you this. Before your
10 testimony did they show you any notes or recordings of the conversations you
11 had with them?

12 A No.

13 Q With Mr. Gentile, I'm sorry. I shouldn't say them. It was Mr. Gentile;
14 correct?

15 A No.

16 Q And they haven't given you anything to refresh your memory as to
17 what you told them; correct?

18 A No.

19 Q Not even the affidavit or whatever you signed. You haven't even
20 seen that before your testimony; have you?

21 A No.

22 Q There were some questions asked about you -- what you know to be
23 true versus what you -- what you don't remember to be true. Do you remember
24 the questions just now by Mr. Gentile?

25 A Yes.

1 Q Okay. You said as you sit here today you know you didn't see them
2 after you saw Deangelo.

3 A Correct.

4 Q Just Anabel and Mr. H; correct?

5 A Correct.

6 Q As you sit here today, do you remember having a conversation with
7 Anabel and Mr. H as they're getting into Anabel's silver Hummer about when he
8 comes back do you want me to tell -- and you used a term for him, but, I mean,
9 do you remember telling them when he -- when this guy comes back, do you
10 want me to say anything to him? Do you remember that conversation as you sit
11 here today?

12 A As you mention it, it sounds -- it sounds familiar. Again, I -- there are
13 many, many times that I walked them out. There is many, many times that, you
14 know, a lot of it's routine or was routine at the time. So it -- it's hard to -- you
15 know, it's hard to say specifically. And I don't want to assume, you know, that --
16 assume anything. And, again, I'm here to tell you guys exactly, you know, the
17 truth.

18 Q That's what I want to know. I guess the question is then how many
19 times did you walk them out and have a conversation about Deangelo, what do
20 you want -- do you want me to say -- I mean, how many times have you been
21 mad at Deangelo and asked them to have this conversation with him?

22 A Do you really want to know?

23 Q Yes. Absolutely.

24 A Every single night he was there.

25 Q Okay. So what you're saying is it might have been a different night

1 that you had this conversation?

2 A It could -- it could well be, and that's being perfectly honest. It could
3 well be.

4 Q Okay. Now, let's talk about one other thing. Mr. Gentile said in the
5 last couple weeks you've been getting prepared for your testimony; correct? Or
6 at least you've known that you're going to come down here and testify?

7 A Yes.

8 Q Okay. And when we talked to you a year ago, that was within days
9 of when Ms. Anabel -- Ms. Espindola's and Little Lou's trial date last time;
10 correct?

11 MR. ADAMS: Objection to relevance on that, Your Honor.

12 MR. DIGIACOMO: Well, they're talking about his preparation for
13 trial.

14 THE COURT: Well, over -- overruled.

15 MR. DIGIACOMO: Thank you.

16 BY MR. DIGIACOMO:

17 Q Right? That was within -- it was within a couple days of when that
18 trial was supposed to start; right?

19 THE COURT: Which didn't, ultimately.

20 Q Which didn't actually go forward.

21 A Honestly, I -- I don't know. I -- I haven't followed when their trial
22 dates or any of that stuff was -- was supposed to be coming up. I figured that if
23 somebody wanted -- wanted me I would get a subpoena.

24 THE COURT: Let me ask you this. When you went and spoke with
25 the prosecutors, did you have a subpoena for trial at that point?

1 THE WITNESS: No.

2 THE COURT: Okay. So you didn't --

3 BY MR. DIGIACOMO:

4 Q So defense hadn't subpoenaed you for the -- for that trial setting
5 back in --

6 A No.

7 Q -- February?

8 A The only subpoena I have ever received was, I think, two weeks
9 ago.

10 Q So you never got a subpoena. Did they -- did they ever tell you that
11 they put you on their witness list five days before that trial?

12 A I haven't been --

13 MR. ADAMS: Judge, objection.

14 THE COURT: Yeah, that's sustained.

15 MR. DIGIACOMO: Well, let me --

16 THE COURT: Well, it's stricken because --

17 MR. ADAMS: May we approach?

18 THE COURT: -- this may have been --

19 MR. ADAMS: Judge, may we approach?

20 THE COURT: It's making a suggestion that I don't know is fair
21 because I don't know where this trial may have been on the stack and what not.

22 Do you still need to approach?

23 MR. ADAMS: Yes, ma'am.

24 THE COURT: All right.

25 (Conference at the bench)

1 THE COURT: Before -- basically the objection is sustained. And,
2 ladies and gentlemen, you're to disregard anything about the trial dates. Some --
3 this is the first time this matter has been tried with respect to these defendants.
4 And often there are a number of trial settings before a case actually goes due to
5 various factors including the Court's very congested calendar involving the stack
6 and number of trials.

7 But before I let Mr. DiGiacomo finish up, I want to ask this
8 juror question that just came in.

9 Did you ask the prosecutors for a copy of your statement from
10 a year ago?

11 THE WITNESS: No.

12 THE COURT: Okay. Were you aware that there had been a
13 transcription of your statement to the prosecutors?

14 THE WITNESS: I didn't -- I wasn't privy to any of the information.

15 THE COURT: Okay. Thank you.

16 THE WITNESS: I have no idea.

17 THE COURT: Mr. DiGiacomo.

18 MR. GENTILE: Your Honor, I have an objection really to your
19 question because we're still not aware that there's a transcript. We don't know
20 that.

21 THE COURT: All right. Thank you.

22 MR. GENTILE: I apologize --

23 THE COURT: Do you know --

24 MR. GENTILE: -- to the Court --

25 THE COURT: All right.

1 MR. GENTILE: -- for having --

2 THE COURT: Do you know --

3 MR. GENTILE: -- to do that.

4 THE COURT: -- whether or not there was a transcript or notes or
5 anything like that for you to review?

6 MR. GENTILE: No.

7 THE COURT: All right.

8 MR. DIGIACOMO: Thank you.

9 BY MR. DIGIACOMO:

10 Q A couple of jurors asked about the relationship between Mr. H and
11 Anabel. Do you remember those questions the Court just asked you about?

12 A Yes.

13 Q Until -- well, for a long period of time you thought Anabel was Mr. H's
14 wife; correct?

15 A No, I didn't.

16 Q You didn't?

17 A No.

18 Q You always knew she wasn't his wife?

19 A Yes.

20 Q Okay. At some point you didn't find out about Yolanda much later
21 on?

22 A No.

23 Q Really? Okay. What was your understanding of the relationship
24 between Anabel and Mr. H?

25 A I didn't get involved in their -- in their personal relationship.

1 Q Have you ever made the statement I thought she was his wife?

2 A Not that I'm aware of. That -- that wouldn't have -- I know Little
3 Louie. I know Little Louie has a mother. I know that that mother is not -- not
4 Anabel. And I know that Anabel and Lou weren't married.

5 Q Mr. H?

6 A Yeah.

7 Q Okay.

8 A And Mr. H.

9 Q Yeah. So -- Lou gets the record a little confused. And did you know
10 that they had more than just a business relationship?

11 A I -- you could speculate, but I never, you know -- I didn't -- I didn't go
12 there.

13 Q And it's your testimony you never said that you thought she was his
14 wife?

15 A That would be so far off base, no.

16 Q Okay.

17 A I didn't --

18 Q Thank you.

19 A There would -- there would never have been a time I thought -- and
20 that's -- that's the God's honest truth. I would never have thought that that was
21 his wife.

22 Q Thank you very much.

23 THE COURT: All right. Any other questions, Mr. Gentile?

24 MR. GENTILE: Not at this time.

25 THE COURT: All right.

1 MR. GENTILE: Subject to review.

2 THE COURT: All right.

3 And Mr. Adams, any other questions at this time?

4 MR. ADAMS: Not at this time.

5 THE COURT: Do we have any other juror questions at this time?

6 All right. I'm going to go ahead and excuse you at this point,
7 but you are -- you may be recalled. And so go ahead and have a seat in the
8 vestibule for right now, and my bailiff, as soon as he gets back, will direct you at
9 what time you may be needed again.

10 THE MARSHAL: Will that be today or --

11 THE COURT: Oh, yes, definitely today.

12 THE WITNESS: Okay.

13 THE COURT: I sent him in the back to make photocopies, and as
14 soon as he comes back out I'll have him talk to you in the vestibule.

15 THE WITNESS: Okay.

16 THE COURT: All right. Thank you. It won't be long.

17 THE WITNESS: Okay.

18 THE COURT: All right. Thank you, sir.

19 MR. GENTILE: I have a short witness that I can put on.

20 THE COURT: Yeah, I was going to ask you to --

21 MR. GENTILE: Yeah.

22 THE COURT: -- call your next witness.

23 MR. GENTILE: Yeah, we have a character witness.

24 THE COURT: All right.

25 Sir, just come on up here, please, to the witness stand right up

1 here, over here by me, and it's just up a couple of stairs there. And then, sir, just
2 remain standing facing our court clerk who will administer the oath to you.

3 CARLOS D CORDON

4 Having been called as a witness and being first duly sworn testified as follows:

5 THE CLERK: Thank you. Please be seated. And please state and
6 spell your name.

7 THE WITNESS: What's that?

8 THE CLERK: Please state and spell your name.

9 THE WITNESS: Carlos D Cordon; C-O-R-D-O-N.

10 THE COURT: All right. Thank you.

11 Mr. Gentile.

12 DIRECT EXAMINATION

13 BY MR. GENTILE:

14 Q Mr. Cordon, where do you live?

15 A Daly City, California.

16 Q Okay. And Daly City is near what major city?

17 A It's close to San Francisco.

18 Q Okay. How long have you been living there?

19 A Since 40 -- 43 years.

20 Q Are you married?

21 A Yes.

22 Q Do you have children?

23 A Yes.

24 Q How long are you married?

25 A 46, 47 years.

1 Q Okay. And what do you now do for a living?
2 A I am retired.
3 Q And what did you do before you retired?
4 A I used to write estimates for cars, body damage.
5 Q How long did you do that?
6 A About 25 years.
7 Q During that 25 year time period that you did that, did there come a
8 time that you met Luis Hidalgo, Jr., Mr. H?
9 A We --
10 Q The man who's standing up, do you know him?
11 A Yeah, no, I know him.
12 Q Oh.
13 A We worked together.
14 Q You worked together. Okay. When did you first meet him?
15 A About 50 years ago.
16 Q 50 years ago?
17 A Yes.
18 Q How old were you -- how old was he when you met him?
19 A Probably was about eight years old, something like that.
20 Q And how did you come to meet him?
21 A You know, we are family friends, you know, I knew his father, his
22 mother, his grandmother.
23 Q You know all of them?
24 A Pretty much, yes.
25 Q Okay.

1 MR. GENTILE: Where's that photo?

2 Can I have this marked next in order?

3 Can I approach the witness?

4 THE COURT: You may.

5 BY MR. GENTILE:

6 Q I want to show you what's been marked defendant Luis Hidalgo, Jr.'s
7 Exhibit H, proposed Exhibit H, and ask you if you recognize the persons that are
8 portrayed in that photograph.

9 A There's --

10 Q First you say that you do or you don't. Do you recognize them?

11 A Yes.

12 Q Okay. And there are four people in there; am I correct?

13 A Yes.

14 Q And who are the four people that are in that photograph?

15 A His father, his grandmother, and his son, I guess.

16 Q And him?

17 A And Louie.

18 Q Okay.

19 MR. GENTILE: I'd move it into evidence at this time.

20 THE COURT: Any objection?

21 MR. GENTILE: No.

22 THE COURT: All right. Exhibit H is admitted.

23 (Defense Exhibit H is admitted)

24 BY MR. GENTILE:

25 Q Do you know where this photograph was taken? It's in front of you

1 right now. You can look at it -- you can look at it on the screen.

2 A No, I don't.

3 Q Have you ever been in Simone's Auto Body Repair?

4 A No.

5 Q All right. Tell the ladies and gentlemen of the jury -- I'm going to
6 point to them and we'll go from left to right. The person on the far left is?

7 A That's Louie.

8 Q Okay. The person that he has his arm around?

9 A That's his grandmother.

10 Q What's her name?

11 A Her name is -- I forgot. It's been so long. I'm sorry.

12 Q Okay. And who is this man?

13 A That's his father.

14 Q All right. And what's his father's name?

15 A Luis Hidalgo.

16 Q And who is this man? His son? Do you know his son?

17 A I knew him when he was little.

18 Q He's bigger in this photo; is that it?

19 A Yeah.

20 Q Okay. In the 50 years that you have known Louie Hidalgo, have you
21 formed an opinion as to whether he is a truthful person or not?

22 A Yes.

23 Q And what is your opinion?

24 A He's very truthful.

25 Q Okay. Did you ever work with him?

1 A Yes.

2 Q For how long?

3 A For about 15 years.

4 Q 15 years? And when you worked with him for 15 years, how often
5 would you see him at the -- how often would you see him?

6 A Every day.

7 Q Every day?

8 A Yes.

9 Q Did you speak with him a lot over those years?

10 A All the time.

11 Q All the time. Did you ever find him to not be truthful with you?

12 A No.

13 MR. GENTILE: I don't have any further -- anything further.

14 THE COURT: All right. Thank you.

15 Mr. Adams.

16 MR. ADAMS: No questions.

17 THE COURT: Mr. Pesci.

18 MR. PESCI: Thank you.

19 CROSS-EXAMINATION

20 BY MR. PESCI:

21 Q Sir, if I've understood correctly, you worked with Mr. H for how many
22 years?

23 A About 15 years.

24 Q Is it 15?

25 A Yeah, 1-5.

1 Q Okay. And was that in California?

2 A Yes.

3 Q Was that at the auto body shop in California?

4 A In San Bruno, California.

5 Q Was Anabel Espindola working there while you were there?

6 A Yes.

7 Q Did you know the relationship between Anabel Espindola and Mr.
8 Hidalgo at that time when you worked with him?

9 MR. GENTILE: Objection. That's outside the scope. He was called
10 for -- for purposes of character.

11 THE COURT: It is outside the scope.

12 MR. PESCI: Can we approach?

13 THE COURT: Uh-huh.

14 (Conference at the bench)

15 MR. PESCI: May I proceed, Your Honor?

16 THE COURT: Go ahead.

17 BY MR. PESCI:

18 Q Sir, in the time period that you knew Mr. H, Mr. Hidalgo, working in
19 San Bruno together, you just testified that you knew Anabel Espindola, she was
20 an employee at that -- at that location?

21 A Yes.

22 Q Okay. Did you know at that time if Mr. H was married?

23 A Yes.

24 Q Was he married -- who was he married to? Did you ever meet his
25 wife?

1 A Yes, I met his wife.

2 Q What was his wife's name?

3 A Yolanda.

4 Q At that time period when you knew him there, did you know the
5 relationship that Mr. H had with Anabel Espindola?

6 A Just friends working together.

7 Q As far as you know was that the extent of their relationship?

8 A Yes.

9 Q Okay. Thank you.

10 THE COURT: Mr. Gentile, go ahead.

11 MR. GENTILE: Sure.

12 THE COURT: And then if you would just grab that juror question.

13 Jeff is downstairs getting the jurors' lunches.

14 JUROR: I've got another one.

15 THE COURT: Oh, we've got another one.

16 Thank you, Mr. Gentile.

17 REDIRECT EXAMINATION

18 BY MR. GENTILE:

19 Q Mr. Cordon.

20 A Yes.

21 Q Mr. Pesci asked you a question about during the time that you
22 worked with Luis Hidalgo and Anabel Espindola did you know about the nature of
23 their relationship. Do you remember him asking you that question?

24 A Yes.

25 Q Okay. When did you stop working with Luis Hidalgo, Jr. and Anabel

1 Espindola? What year?

2 A 1997.

3 Q 1997. Thank you.

4 MR. GENTILE: Nothing further.

5 THE COURT: May I see counsel at the bench please.

6 (Conference at the bench)

7 THE COURT: All right. We've got questions from the jury.

8 THE WITNESS: Okay.

9 THE COURT: How long did you know Anabel Espindola -- or how
10 long have you known Anabel Espindola?

11 THE WITNESS: I would say maybe three -- between three and five
12 years, you know.

13 THE COURT: When she was working in --

14 THE WITNESS: When she was working --

15 THE COURT: In San Bruno?

16 THE WITNESS: -- in San Bruno.

17 THE COURT: Okay. Has it been that long since you've seen
18 Anabel Espindola?

19 THE WITNESS: It's been longer than that, probably, since I saw
20 her.

21 THE COURT: Okay. Can you maybe -- and don't -- how long has it
22 been since you've seen her or talked with her?

23 THE WITNESS: Let's see, in '97 I went to work someplace else.

24 And after I left the shop, maybe I see her once in awhile, you know. Maybe once
25 a month, you know, I would see her, you know, until they move here, then I didn't

1 see her at all.

2 THE COURT: Okay. And when you would see Anabel Espindola,
3 was she with Mr. H or by herself after she left the shop?

4 MR. GENTILE: Your Honor, he doesn't know who Mr. H is.

5 THE COURT: Oh, I'm sorry. Luis Hidalgo.

6 THE WITNESS: Yeah. Well, I used to see them at the shop
7 because I used to stop by the shop.

8 THE COURT: Okay. So you saw her in the workplace.

9 THE WITNESS: Yeah, I saw him, I saw her, you know.

10 THE COURT: Okay. Now, after you left the shop, when you would
11 stop by, what was the purpose of visiting the shop?

12 THE WITNESS: We'd been friends for a long time.

13 THE COURT: Okay. So it was to see Mr. Hidalgo, Jr.

14 THE WITNESS: Yeah, and his father.

15 THE COURT: Okay. Do you have an opinion as to Anabel's
16 truthfulness?

17 THE WITNESS: I -- I would say yes. What do you mean, what
18 would --

19 THE COURT: No, no, no. Do you have an opinion as to it? Or if
20 you don't, that's fine, you can say, you know, whatever --

21 MR. GENTILE: Your Honor, in terms of now?

22 THE COURT: Right.

23 THE WITNESS: Now I don't know. When we were working
24 together, you know, I guess she was okay.

25 THE COURT: All right.

1 Mr. Gentile, do you want to follow up?

2 MR. GENTILE: No.

3 THE COURT: Mr. Adams, any follow up?

4 MR. ADAMS: No, ma'am.

5 THE COURT: Mr. Pesci, any follow up?

6 MR. PESCI: Yes.

7 RECROSS-EXAMINATION

8 BY MR. PESCI:

9 Q You said now you're not sure. What are you basing that information
10 on?

11 A I haven't seen her in so long, you know, that --

12 Q Have you seen Mr. Hidalgo since '97?

13 A No.

14 Q So when you came in you said your opinion is that he's truthful. Is
15 that up to '97?

16 A Up to, you know, when you know somebody for 50 years, you know,
17 you know that person very well, you know.

18 Q Okay. So up to '97 at least?

19 A Is after '97? What -- what -- what do you mean by --

20 Q Right. What I'm trying to understand is you're telling this jury that
21 you're not sure about Anabel since 1997 because you haven't seen her or talked
22 to her; right?

23 A Yeah.

24 Q Okay. And I think you just said that you haven't seen or talked with
25 Mr. Hidalgo since 1997?

1 MR. GENTILE: Objection. He didn't say talk. He never addressed
2 talk.

3 THE COURT: He said see.

4 BY MR. PESCI:

5 A Yeah.

6 Q Okay. So have you seen him since 1997?

7 A No.

8 Q Thanks.

9 THE COURT: Mr. Gentile, any follow up?

10 MR. GENTILE: Nothing.

11 THE COURT: Mr. Adams, any follow up?

12 MR. ADAMS: No, ma'am.

13 THE COURT: Any other juror questions?

14 All right.

15 THE WITNESS: When -- when he asked me if I haven't seen him
16 since 1997, yeah, I saw him after '97 when he was in San Bruno, but I don't know
17 how many -- '98, '99, you know.

18 THE COURT: Okay. Have you seen him since he moved here to
19 Vegas?

20 THE WITNESS: Since he moved here to Vegas, no, I haven't seen
21 him.

22 THE COURT: Any follow up on that?

23 MR. GENTILE: No.

24 THE COURT: Anything from the State?

25 MR. PESCI: No.

1 THE COURT: Any other juror questions?

2 Sir, thank you for your testimony. Please don't discuss your
3 testimony with anyone else who may be called as a witness in this case and you
4 are excused at this time.

5 THE WITNESS: Okay.

6 THE COURT: Mr. Gentile, does -- do you have another witness
7 available?

8 MR. GENTILE: I don't think so. I'm quite sure I don't, but I know
9 that my next one is going to be a long one, so --

10 THE COURT: Okay. Because the food isn't here yet. It's almost
11 here.

12 MR. GENTILE: If the Court -- if the Court wants to take a long
13 witness that I think will be on --

14 THE COURT: I was thinking we could just start and then take our
15 lunch break whenever the food is here.

16 MR. GENTILE: Well, I don't know if she's -- I'll find --

17 THE COURT: If she's not here, we'll just have a little --

18 MR. GENTILE: We need to be heard in advance of that as well.

19 THE COURT: Okay. Well --

20 MR. GENTILE: Or have we done that already?

21 THE COURT: I'll see counsel at the bench on the prior witness.

22 (Conference at the bench)

23 THE COURT: All right. Ladies and gentlemen of the jury, we're
24 going to go ahead and take our lunch break at this point, there being no
25 witnesses in the hallway.

1 Even though you'll all be in the back together, the admonition,
2 obviously, is still in place that during the lunch break you're not to discuss this
3 case or any subject matter relating to the case with each other or anyone else.
4 You're not to read, watch, or listen to any reports of or commentaries on any
5 subject relating to the case. Don't do any independent research. Don't visit the
6 location at issue. And please don't form or express an opinion on the trial.

7 You still have to leave your notepads in your chairs, but this
8 time you get to exit and follow --

9 THE MARSHAL: Actually, I'm going to put them [inaudible].

10 THE COURT: Okay. Well, never mind. You're going to go through
11 the double doors, and then Jeff is going to get you and bring you in the back.

12 (Jury recessed at 12:14 p.m.)

13 MR. DIGIACOMO: Can we do something outside the presence?

14 THE COURT: Somebody better catch him.

15 MR. GENTILE: We have -- we have a couple things that I think we
16 need to cover outside the presence.

17 THE COURT: All right.

18 MR. GENTILE: First of all, we have read the -- well, I can't say that
19 Mr. Adams has.

20 THE COURT: I'm sorry?

21 MR. ADAMS: I have 13 pages to go.

22 MR. GENTILE: Okay.

23 MR. ADAMS: I am reading. I have been reading as I was eating.

24 THE COURT: We have a couple things out of the presence before
25 you bring them back in.

1 MR. GENTILE: We do have --
2 THE COURT: All right. Well, Mr. Gentile has read the statement of
3 PK --
4 MR. GENTILE: PK Handley.
5 THE COURT: Thank you. Handley.
6 MR. GENTILE: I've read it and I don't see any need to ask any
7 additional questions --
8 THE COURT: All right.
9 MR. GENTILE: -- of Mr. Handley.
10 MR. DIGIACOMO: Should we do something else then?
11 MR. GENTILE: We also have Obi Perez.
12 THE COURT: Okay.
13 MR. GENTILE: And Al Lasso is here. He's her attorney.
14 THE COURT: I see Mr. Lasso.
15 MR. GENTILE: And without -- I think he can clarify this -- well, I'm
16 assuming he can clarify this drug issue.
17 THE COURT: Okay.
18 MR. LASSO: Well, I wasn't in the courtroom when that was
19 discussed, but Ms. Perez currently has a charge pending in justice court for
20 burglary and acquire or obtain or attempt to obtain or acquire possession of a
21 controlled substance, Lortab, by fraud. She has a prescription for Lortab. She
22 broke her back about three years ago, and she -- she takes Lortabs as needed.
23 THE COURT: Okay.
24 MR. LASSO: I just don't know the relevance of that. My biggest
25 concern is getting into the facts of this case.

1 THE COURT: They're not allowed to ask her about --

2 MR. GENTILE: But in any case, apparently it was July --

3 THE COURT: I mean, they can ask her if she's taken Lortab or she
4 takes anything for pain.

5 MR. DIGIACOMO: I can't ask the witness about fraudulent activity
6 while she's on the stand? I absolutely can too.

7 MR. GENTILE: It's only charged.

8 MR. DIGIACOMO: I can't ask her the rest. I can -- I can ask her
9 isn't it true you did this fraudulently, isn't it true --

10 THE COURT: Well, except now she has a fifth amendment issue
11 about admitting in this case to -- well, first of all, if you know she's going to invoke
12 it, you can't ask the question.

13 MR. DIGIACOMO: Well, I don't know --

14 THE COURT: And I'm assuming Mr. Lasso --

15 MR. DIGIACOMO: I didn't know she --

16 THE COURT: Mr. Lasso, I'm assuming, is going to advise her that
17 until the case is resolved, she's not to address the underlying issue of the case,
18 which is fraud. I will grant you, if she has a fraud conviction or a theft conviction
19 or a petty larceny, even if it's a misdemeanor, you know, maybe you can ask her
20 about that, but not on impending charges.

21 You can, however, ask her that whether or not she, you know,
22 uses Lortab, uses other prescription pills. If she says no, then you can say, well,
23 aren't there some pending charges involving Lortab against you?

24 MR. DIGIACOMO: I was -- I was not going to ask her about pending
25 charges. I was certainly going to ask her you committed fraudulent acts. If she's

1 going to invoke on the stand, then there has to be a determination of whether or
2 not you're going to strike her testimony. Because if a witness invokes on the
3 stand and she's not subject now to the cross-examination, then there's a
4 determination by the Court as to whether or not to strike the testimony. It's not,
5 oh, well, she just gets to invoke and the State doesn't get to cross her on the fact
6 that makes her look really un-credible. That's not the rules.

7 THE COURT: Well, no, except the rule is this is tangential, Mr.
8 DiGiacomo. If it was the substance of her testimony, she has a pending charge
9 against her. So I can't very well say that the defense in this case can't call her as
10 a witness unless she waives her fifth amendment right on a case that's pending
11 against her, which I think is what you're asking me to do.

12 Or if she refused to waive, I think what I'm hearing from you
13 that you're asking me to do is to say, oh, well, sorry, Mr. Gentile, you can't call
14 this witness because she doesn't want to waive her fifth amendment rights as it
15 relates to a pending charge. Is that what you're asking me?

16 MR. DIGIACOMO: It's -- it's my belief that she is going to invoke as
17 to the majority of the questions asked on cross-examination. And if that
18 happens, yes, it's my position that -- if we don't have any --

19 THE COURT: Okay.

20 MR. DIGIACOMO: -- cross-examination --

21 THE COURT: No, if you have no meaningful cross-examination,
22 that's entirely different than the Court saying she can invoke on the issue of a
23 pending charge that hasn't been resolved yet. If there is an agreement that she's
24 pleading guilty in district court or something like that, there may not be any
25 prejudice. But if it's still pending in justice court and there is no negotiation in

1 place that she's entered into yet, then I can't tell her she has to waive on it.

2 So if -- if you can't conduct meaningful cross-examination
3 because she keeps invoking, then that's a different matter and that's not what
4 we're talking about right now. What we're talking about right now is the isolated
5 situation of the pending charge, which, as I said, you can ask her. If she denies
6 Lortab use or prescription drug use, then --

7 MR. DIGIACOMO: You don't think she's going to invoke on those
8 questions?

9 MR. GENTILE: Judge, the only --

10 THE COURT: No. I mean, her attorney has come in here and
11 admitted that she has a prescription --

12 MR. LASSO: Yeah.

13 THE COURT: -- for Lortab --

14 MR. LASSO: That's correct.

15 THE COURT: -- and that she's a Lortab user, so I suspect she
16 won't. Now, if she does invoke, we have a problem.

17 MR. LASSO: The only issue --

18 THE COURT: But I don't think --

19 MR. LASSO: -- she'd be invoking on --

20 THE COURT: -- Mr. Lasso is going to come in here and publicly on
21 the record make representations to something that his client isn't willing to admit
22 to.

23 MR. LASSO: That's correct, Judge. The only issue she'd invoke on
24 that she's been advised to invoke on is the facts and circumstances surrounding
25 this pending charge.

1 THE COURT: And I think that's fine. But anything else, like I said,
2 you can ask to strike her testimony if you can't conduct meaningful cross. But
3 I'm finding that your failure to inquire into a pending charge -- or your inability, I
4 shouldn't say failure, to inquire into a pending charge is not sufficient to say at
5 this point in time that you cannot conduct meaningful cross-examination.

6 MR. DIGIACOMO: Thank you.

7 MR. GENTILE: Your Honor, I -- again, this witness is being called
8 for a very narrow purpose, and that's with respect to specific conversations, a
9 specific conversation really, with Anabel Espindola.

10 THE COURT: All right.

11 And you don't wish to recall Mr. Handley?

12 MR. GENTILE: I do not. I would move -- I see Mr. Oram in the back
13 of the courtroom. I know that he's on the witness list and --

14 MR. DIGIACOMO: Well, I -- I have him here for something outside
15 the presence, Mr. Gentile. I just didn't know if you were done with yours.

16 MR. GENTILE: Yeah, I'm done.

17 THE COURT: Okay. Mr. DiGiacomo, next up.

18 MR. DIGIACOMO: Judge, it's my belief, although I'm having Ms.
19 Anabel -- Ms. Espindola transported to the courtroom because I think that she
20 needs to waive on the record on her own case. That's why Mr. Oram is here.
21 But it's my belief that Mr. Gentile told me that he did the research, and if she
22 waives that they believe that they're entitled to notes that Mr. Oram took as it
23 relates to the conversations he had with Ms. Espindola.

24 To speed things up, I asked Mr. Oram to come to court, bring
25 those notes to submit to you in camera, to you, so that if she waives you can

1 make a determination as to whether or not they receive any of those items. And
2 so that's why he's here.

3 THE COURT: Mr. Oram, what's your position on whether or not
4 they're entitled to your notes?

5 MR. ORAM: Your Honor, first of all, I don't think without her waiver
6 that I can really discuss --

7 THE COURT: Okay.

8 MR. ORAM: -- anything. But after that, with regard to her -- her
9 notes, if she waives --

10 THE COURT: You mean her notes or your notes?

11 MR. ORAM: My notes. I'm sorry. My notes in this are very, very
12 brief.

13 THE COURT: Okay.

14 MR. ORAM: And you'll see that, so I have no problem showing that
15 to the Court.

16 MR. GENTILE: Now, these are the notes from the -- from the
17 debriefing meeting?

18 MR. ORAM: No, no, no. I did --

19 THE COURT: Just from your interview with her, or is it the
20 debriefing?

21 MR. ORAM: I had apparently -- it's -- it's notes sometime during
22 when I'm visiting her in preparation for mitigation.

23 MR. GENTILE: Mitigation for sentencing?

24 MR. ORAM: Yes, mitigation for sentencing. And -- or it could be
25 character witnesses to. It -- it's circled and it appears in my handwriting to say

1 things like known for 15 years, known for eight years, things like that. Otherwise
2 there's almost no other notes that I can locate regarding my interview.

3 THE COURT: And this was a meeting that you and she had in
4 preparation for her trial if it went to a penalty phase?

5 MR. ORAM: Correct.

6 THE COURT: Okay.

7 MR. ORAM: Okay. Or perhaps character --

8 MR. GENTILE: We --

9 MR. ORAM: -- witnesses too.

10 MR. GENTILE: We -- if -- if -- before you leave, we got another
11 wrinkle. Okay? And, frankly, I don't know the answer. I have to be honest. I've
12 tried to learn it. Mr. Adams thinks he knows it. But there was a period of time,
13 and certainly prior to Anabel Espindola changing her plea, that there was a joint
14 defense agreement.

15 And I'm not sure -- I -- I really don't know and I don't want to --
16 I don't want to cause a problem, but I really don't know what the effect of that
17 agreement would be with respect to anything that took place while it was still
18 alive, okay, in terms of his notes. And my concern about that is that I know for a
19 fact that that's something I think she probably has to waive on the record.

20 MR. ORAM: And, Judge --

21 MR. GENTILE: If -- if --

22 MR. ORAM: My concern about -- about that, I went and looked for
23 my joint defense agreement. The only one I have, Mr. Gentile or someone else
24 in his office may have the original --

25 MR. GENTILE: I have the original.

1 MR. ORAM: Okay. Because -- because my -- it doesn't make
2 sense to me my date. Mine is -- I can show that to defense counsel if they want
3 to look. Mine is signed in my original signature. I remember signing this at Mr.
4 Gentile's in his conference room. It's possible I signed original, and then signed
5 my own just so I could see the date.

6 MR. GENTILE: Yeah.

7 MR. ORAM: But my date says June 26, '06.

8 MR. DIGIACOMO: So that's a year and some odd period --

9 MS. ARMENI: Right.

10 MR. DIGIACOMO: -- of time --

11 MS. ARMENI: But the defense agreement --

12 MR. GENTILE: Yeah, but if you --

13 MS. ARMENI: -- refers back to --

14 MR. GENTILE: -- look at the narrative, I think it --

15 MS. ARMENI: -- the beginning of May of '05.

16 MR. ADAMS: I object to discussing the formation of the defense
17 agreement in open court and in front of the prosecution. I think that's protected
18 matter.

19 MR. DIGIACOMO: We're just talking about the date.

20 MR. ADAMS: I understand.

21 THE COURT: Yeah, we're talking about the date. I mean --

22 MS. ARMENI: It refers back to the beginning.

23 MR. GENTILE: Yeah, I know it does. It refers back.

24 THE COURT: Okay. Well --

25 MR. GENTILE: It refers back to the time --

1 THE COURT: -- for purposes --

2 MR. GENTILE: -- of the arrest.

3 THE COURT: -- of right now --

4 MS. ARMENI: Correct.

5 THE COURT: -- Mr. Adams, do you know whether or not you wish
6 to have PK recalled?

7 MR. ADAMS: Judge, I do not believe I do, but I -- I really read this
8 entire time and I'm not done reading the document. But at this point I don't
9 anticipate it.

10 THE COURT: Well, I mean, do we make him stay or do we excuse
11 him? I mean, we're going to move on to a witness at this point because the jury
12 is out in the hallway. So we can make PK stay while your read over that as we
13 go forward with the next witness, or if you don't think you're going to need him,
14 we'll just excuse him at this point in time.

15 MR. ADAMS: I don't believe we'll need him. Can we excuse him
16 with his cell phone number subject to recall if something changes in the last --

17 MR. DIGIACOMO: We all know his cell phone number.

18 MR. GENTILE: I was going to say that.

19 THE COURT: All right. If that's -- that's --

20 MR. ADAMS: I mean, I don't anticipate that anything is going to
21 change.

22 THE COURT: All right. Jeff, would you bring in PK?

23 (Mr. Handley enters courtroom)

24 THE COURT: Mr. Handley, it doesn't look at this point like we're
25 going to need you to testify any further in this case. However, that -- I don't think

1 it'll change, but if that changes, you need to have your cell phone on so that you
2 can be reached and told to come back to court. But for right now I'm not going to
3 make you wait in the hall. You're free to -- you're free to go.

4 MR. HANDLEY: Okay. I put my business and everything else on
5 hold. I pushed meetings and everything else back and I've got to reschedule
6 those. And these are -- I'm in the production business, so if it doesn't happen, I
7 lose the business. So I kind of --

8 THE COURT: Go about your business. I mean, you can wait in the
9 hall another 25 or 30 minutes and we'll -- we'll know for sure.

10 MR. HANDLEY: I don't have a problem coming back today because
11 I pushed everything off.

12 THE COURT: That's fine. It would be today.

13 MR. ADAMS: It would be today.

14 THE COURT: It would be today. It'll be today. Just keep your cell
15 phone on today so if they need you to come back this afternoon or early evening
16 you'll get the call.

17 MR. HANDLEY: Okay.

18 THE COURT: Okay.

19 MR. HANDLEY: It shouldn't take me more than hour probably to get
20 back if I have to then.

21 THE COURT: All right.

22 All right. Are we ready to bring in the next -- to get started?

23 (Mr. Handley exits courtroom)

24 THE COURT: Ready?

25 MR. GENTILE: Yeah.

1 THE COURT: All right. We'll bring in the jury.

2 (Jury enters at 1:36 p.m.)

3 THE COURT: All right. Court is now back in session. The record
4 will reflect the presence of the State through the deputy district attorneys, the
5 presence of the defendants and their counsel, the officers of the court, and the
6 members of the jury.

7 And, Mr. Gentile, would you please call your next witness.

8 MR. GENTILE: Obi Perez.

9 THE COURT: Ma'am, just come on up here, please, to the witness
10 stand. And then just please remain standing facing our court clerk.

11 OBI PEREZ

12 Having been called as a witness and being first duly sworn testified as follows:

13 THE CLERK: Thank you. Please be seated. And please state and
14 spell your name.

15 THE WITNESS: Obi Perez; O-B-I P-E-R-E-Z.

16 DIRECT EXAMINATION

17 BY MR. GENTILE:

18 Q All right. Obi, you need to -- excuse me, Ms. Perez, you need to
19 either get closer to that microphone --

20 A Okay.

21 Q -- or increase the volume of your voice.

22 A Okay.

23 Q Okay? How old are you?

24 A I'm 28.

25 Q Do you have any kids?

1 A Three.

2 Q How old are they?

3 A Eleven, nine, and two.

4 Q Okay. What city and state do you live in?

5 A Las Vegas, Nevada.

6 Q You need to speak up.

7 A Las Vegas, Nevada.

8 Q Okay. And how long have you lived in Las Vegas?

9 A For about 17, 18 years now.

10 Q Okay. Now, Obi, do you have a medical condition?

11 A Yes.

12 Q And what is it?

13 A I have scoliosis and I broke my back in a car accident in '04.

14 Q 2004?

15 A Yes, 2004.

16 Q And do you take medication for it?

17 A Yes.

18 Q And what type of medication?

19 A Right now I take Lortab.

20 Q Okay. And are you currently, right now as you're sitting here

21 testifying, are you taking any kind of -- of medication or Lortab?

22 A No, I didn't today.

23 Q When was the last time you took a Lortab?

24 A Yesterday morning.

25 Q Okay. So you're okay --

1 A Yes.

2 Q -- right now? Okay.

3 A A little nervous, but --

4 Q A little nervous. Well, that happens. Where do you work now?

5 A At Obsession.

6 Q And what is Obsession?

7 A Obsession is a new afterhours club that recently opened up --

8 Q All right.

9 A -- owned by Penthouse.

10 Q All right. But is it a gentlemen's club or is a regular --

11 A No, it's an afterhours club.

12 Q Well, you know what, I have to tell you something. After hours to me

13 is about 10:00.

14 A Okay.

15 Q Okay? So why don't you tell us what an afterhours club is.

16 A Well, like nightclubs close, you know, around 3:00 a.m., so

17 afterhours basically runs from about 2:00 a.m. 'til noon.

18 Q All right. But it's -- people have their clothes on there; right?

19 A Yes.

20 Q Oh, okay. All right. And how long have you been working there?

21 A We opened up three weeks ago.

22 Q And what is your job there?

23 A I'm a promoter --

24 Q Okay.

25 A -- and a host.

1 Q Okay. What does a promoter and a host at Obsession do?
2 A I basically sell liquor bottles and comp VIP tables and bring in guests
3 to the club.
4 Q Okay. And do you have a Sheriff's card?
5 A I don't need one for that.
6 Q You don't need one for that. Okay. Prior to this job, what other jobs
7 have you held since moving to Las Vegas?
8 A I -- right before this job I worked at Cat House as a VIP host.
9 Q Okay. Now, again, it's a provocative name --
10 A I know.
11 Q -- Cat House.
12 A But it's -- okay.
13 Q But -- but -- but -- what is Cat House and where is it located?
14 A Okay. Cat House is a night club inside the Luxor.
15 Q It's a nightclub. So it's not a whorehouse, it's a --
16 A No.
17 Q It's a nightclub inside the Luxor.
18 A Yes.
19 Q And what did you do there?
20 A I was a VIP host.
21 Q How long did you work there?
22 A About six months.
23 Q Six months?
24 A Yeah.
25 Q Okay.

1 A About six months.

2 Q And we're going to get to the fact that you were in jail for awhile.

3 A Uh-huh.

4 Q But let's talk about what you did for a living before that.

5 A Okay. I -- I was a bartender for eight years.

6 Q And where did you tend bar?

7 A The place I was at prior was at Lupo, it's a Wolfgang Puck restaurant

8 inside Mandalay Bay.

9 Q And what about before that?

10 A Champagne's Café, BJ's Cocktail Lounge, Hard Rock, New York

11 New York, yeah.

12 Q Big Dogs?

13 A Big Dogs. I'm sorry. Yeah, Big Dogs for three years.

14 Q Okay.

15 A Yeah.

16 Q Now, I want to call your attention to the period of time between --

17 well, let's just go right to the year 19 --excuse me, 2007.

18 A Okay.

19 Q Okay?

20 A Not a very good year, but --

21 Q It wasn't a good year for you. Were you in jail?

22 A Yes.

23 Q Okay. And here at the Clark County Detention Center?

24 A Uh-huh.

25 Q You have to say --

1 A Yes. Yes. Yes.

2 Q Okay. Do you remember how long you were in jail?

3 A Yes. I had to do 270 days.

4 Q 270 days?

5 A Yes.

6 Q So you weren't convicted of a felony?

7 A No.

8 Q All right. And while you were in jail did you have an occasion to
9 meet a woman by the name of Anabel Espindola?

10 A Yes.

11 Q How did that come about?

12 A We were in the same module.

13 Q Okay. Now, I'm pretty sure, at least hopeful, that most of the people
14 on this jury have never experienced a module, so perhaps you need to explain
15 what a module is.

16 A A module has 24 cells in it, divided into two tiers, 12 at the bottom,
17 12 at the top. It's closed custody, so the bottom tier doesn't even interact with
18 the top tier.

19 Q And which of the two -- you say you were in the same module. Were
20 you also on the same tier?

21 A Yes.

22 Q With Ms. Espindola?

23 A Yes.

24 Q Okay. And did you develop a relationship with her?

25 A Yes.

1 Q Tell the ladies and gentlemen of the jury the nature of the
2 relationship that you developed with her.

3 A She and I became very close. She was like a sister to me.

4 Q And do you still feel that way about her?

5 A Yes.

6 Q I want to call your attention to an episode in the Spring of 2007.
7 Was there an unusual event that happened one day with respect to Anabel and
8 you?

9 A Yeah. Yes, she --

10 Q What -- what was it?

11 A She came back from court. She was in her -- in her cell crying. It
12 was -- I was a worker. Okay?

13 Q You need to explain that. What is a worker?

14 A I was a trustee, a worker, that meant that I had to clean up after
15 everybody and feed them, you know, pass their trays of food and clean the
16 module and stuff so I had a little bit more access to being in and out of my cell a
17 little bit more --

18 Q And did --

19 A -- than other people.

20 Q When you say Anabel sobbing did you approach her?

21 A Yes, it was free time for the bottom tier. And when it's free time for
22 the bottom tier, they can click their doors from the inside because they can come
23 in and out, or they can come out and then they have to, you know, waive to get
24 clicked back into their cells.

25 Q And did she allow you to come into her cell?

1 A Yeah, she clicked her door.

2 Q Okay. And what happened after that?

3 A I came in her cell and I sat, you know, like Indian style in front of her.
4 She was crying and I hugged her and I talked to her. I let her -- I listened and I
5 let her talk.

6 Q Did she say anything to you at that time -- I asked her specific
7 questions, so I'm going to ask you the same language. Okay? Did she say to
8 you at that time that Deangelo Carroll -- strike that. That she contacted
9 Deangelo Carroll because she was mad at the guy that got killed?

10 A Yes, she started opening up to me. You know, first she said she
11 was afraid, you know, that they were going to give her the death penalty and she
12 started telling me a little bit about her case, bits and pieces.

13 Q So she was crying because she was afraid of the death penalty?

14 A Right.

15 Q And then she started telling you bits and pieces.

16 A Right.

17 Q Did she also say to you that she doesn't know why -- excuse me.

18 Did she tell you that Deangelo Carroll had his own issues with the guy that had
19 been killed?

20 A Yes.

21 Q Did she tell you what they were?

22 A No.

23 Q Did she even mention any involvement of either Luis Hidalgo, Jr.,
24 who you know, and we'll get into that in a second, or Luis Hidalgo III?

25 A No.

1 Q Did she say that they, meaning Deangelo Carroll and his fellas,
2 were -- were only supposed to fuck them up and they went too far?

3 A Yes.

4 Q Did she say to you anything about -- that the guy that went camping
5 went to the same location frequently?

6 A Right. That he had been there before.

7 Q The he had been there.

8 A And that's why she knew where he was going to be.

9 Q Did she say to you that she told -- she told Deangelo Carroll to fuck
10 him up and it turned out that they killed him?

11 A Right.

12 Q Did she say to you that Deangelo contacted her afterwards, told her
13 TJ had died, and Anabel then said to him what the fuck did you guys do?

14 A Right.

15 Q And those are her words?

16 A Yeah.

17 Q Now, did there come a time in the -- do you remember when you got
18 out of jail?

19 A Yes.

20 Q I'll bet you do. What day was that?

21 A August 29, 2007.

22 Q August 29, 2007. After you got out of jail did you visit Anabel?

23 A Yes.

24 Q On how many occasions? Do you recall?

25 A Four.

1 Q Four?

2 A Uh-huh.

3 Q All right. And did there ever come a time when Anabel expressed to
4 you that she was concerned that Mr. H -- I'm calling him Mr. H for -- do you -- do
5 you know him as Mr. H?

6 A No, I call him Lou.

7 Q You call him Lou?

8 A Uh-huh.

9 Q Okay. That Mr. H was basically unfaithful to her?

10 A Yes.

11 Q Okay. And how did that come about?

12 A She had, you know, her suspicions, I guess.

13 Q Okay.

14 A Yeah.

15 Q Did she ever tell you that she was sending people that she had been
16 in jail with to go -- for Lou -- Louie to help -- or Mr. H --

17 A Yes.

18 Q I'm going to call him Mr. H even though you don't know him by that.

19 A That's fine.

20 MR. DIGIACOMO: I'm going to object to that, that statement of
21 Anabel, because, one, it's not inconsistent.

22 THE COURT: It's not inconsistent. I think --

23 MR. GENTILE: Okay.

24 THE COURT: -- you may be --

25 /////

1 BY MR. GENTILE:

2 Q Did she send --

3 MR. DIGIACOMO: And he's leading.

4 Q Did she send you -- excuse me. When you got out of jail, did Anabel
5 do anything to help you get back into normal life?

6 A Yes.

7 Q What was it?

8 A She lent me her -- her truck.

9 Q What kind of a truck was it?

10 A It's a Ford F350.

11 Q What color is it?

12 A White.

13 Q Okay. And how did you go and get it?

14 A Lou picked me up from -- from County when I got released. Lou
15 went back to his house, he gave me her car keys, and I got in that truck and I
16 went to my kids' house.

17 Q Did there come a time that you lived in the same house as Luis
18 Hidalgo, Jr.?

19 A Yes.

20 Q Okay. Was that relationship a boyfriend girlfriend relationship?

21 A No. No.

22 Q No? Okay. Then why were you there?

23 A I wanted to help Anabel out and he -- she wanted to help me out as
24 well.

25 Q Okay. And how was it that living with Mr. H was helping Anabel out?

1 A She would ask me things that were going on while I lived there, and
2 nothing was ever going on.

3 Q Okay. But were you spying?

4 A I don't know what to call it.

5 Q Okay.

6 MR. GENTILE: Let me have a moment.

7 THE COURT: That's fine.

8 MR. GENTILE: Thank you, Ms. Perez. I don't have anything further.

9 THE COURT: Anything from Mr. Adams or Mr. Arrascada?

10 MR. ADAMS: No questions, Your Honor.

11 THE COURT: All right. Thank you.

12 Mr. DiGiacomo.

13 MR. DIGIACOMO: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. DIGIACOMO:

16 Q Good afternoon. How are you?

17 A I'm okay. How are you?

18 Q You're okay?

19 A Yeah.

20 Q I'm all right too.

21 A Okay.

22 Q I want to see if I can get the timeline straight in my head. Okay?

23 You said 2007 was a bad year for you. You told me -- or you told the jury you got
24 out August 29 of 2007.

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes. Sorry.

3 Q And I'm sorry. Everything is being recorded so you got to speak out
4 loud.

5 A Sorry. I'm not used to this.

6 Q When did you go into jail?

7 A I went in -- not sure if it was like February or March. I had credit for
8 time served from the time I had been in there before.

9 Q Okay. So this wasn't the first time, I'm guessing, you've been in
10 there?

11 A No, no.

12 Q Okay. And when you're in there, you said you were a module
13 worker. Were you always assigned to Anabel Espindola's -- when you get there
14 in, what is it, February or March, are you moved right into the module that has
15 Ms. Espindola?

16 A Yes.

17 Q Okay. And do you recall what module that was at the time?

18 A At the -- the very first one was F.

19 Q Okay. And do you remember what floor?

20 A Three.

21 Q Three? Okay. So you go into 3F, and you're there how long before
22 you meet Ms. Espindola?

23 A She was in F as well.

24 Q So you meet her immediately?

25 A Yes.

1 Q Okay. And do you talk to her?

2 A Yes.

3 Q Okay. How long is it before you come back -- well, did you
4 immediately become a worker the moment you walked into the jail?

5 A No. You have to wait to get sentenced, you know.

6 Q Oh, no. All right. By this point you've already been sentenced --

7 A Right.

8 Q -- when you go back in.

9 A Right.

10 Q Okay. So were you immediately a worker because you had been
11 sentenced, or does --

12 A As soon as I --

13 Q -- does it take a period of time?

14 A As soon as I got sentenced, I became a worker within a few days, a
15 week.

16 Q A couple days.

17 A Uh-huh.

18 Q And then workers have more kind of free access over there at the jail
19 than other people; right?

20 A Yes.

21 Q When other people are on lock down, you get to walk around and
22 do -- do whatever you need to do?

23 A Right. Like clean the toilets and things like that.

24 Q And during that time period you -- you talked to some of the other
25 inmates through the doors; right?

1 A Right.

2 Q Okay. And you knew Ms. Espindola had a single cell; right?

3 A Correct.

4 Q How long between the time you would say you became a worker to

5 the time you had this conversation with Ms. Espindola that you talked about?

6 A I would say two, three months.

7 Q Two to three months.

8 A Yes.

9 Q So now we're talking May/June?

10 A Right.

11 Q Okay. Is that the only conversation you ever had with Ms. Espindola

12 about --

13 A No.

14 Q -- this particular event?

15 A No.

16 Q Okay. And so I get this straight, she tells you this May/June-ish,

17 initially, this is the first time I guess.

18 A Right.

19 Q And so then she tells you other stuff subsequent to that?

20 A Yes.

21 Q Okay. And then before yesterday you had never talked to the State;

22 correct?

23 A No.

24 Q You had a conversation yesterday with an investigator for my office?

25 A Yes.

1 Q And you provided him the information you were going to testify to;
2 right?

3 A Yes.

4 Q And one of the things that -- well, let me ask you this. Did Ms.
5 Espindola tell you that she gave Deangelo the location of where they -- that they
6 were camping and he and his girlfriend had camped there before?

7 A Yes. She told me that's how -- well, her words were that that's how
8 she knew where they were going to be.

9 Q Okay. Didn't you tell my investigator she didn't say how she knew
10 where they were camping?

11 A No. She said that that's -- to me that's how she knew where they
12 were going to be.

13 Q Okay.

14 A Because they had been there before with his girlfriend.

15 Q Now, you also talked about after you get out in August of 2007, on
16 August 29th.

17 A Yes.

18 Q You said you visited her four times. Do you remember specifically
19 it's four times, or it could've been three?

20 A No, I think it's four times.

21 Q Okay. Have you looked at the visiting records?

22 A I did yesterday.

23 Q Would you agree with me that the last time you went in there was
24 October of '07?

25 A The 30th, yes.

1 Q October 30th of '07.

2 A Uh-huh.

3 Q So you haven't seen -- or you haven't talked to Anabel -- let me
4 rephrase that. You haven't visited her since October of 2007?

5 A Yes. I haven't visited her since then.

6 Q Have you talked to her on the phone?

7 A Yes.

8 Q When -- did you ever talk to her about her deal in this case?

9 A Yes.

10 Q Okay. And when did you have that conversation?

11 A Not her recent deal, like this last deal, but she would tell me about
12 deals that were brought to her.

13 Q She told you there was offer of negotiation prior to the one she
14 accepted?

15 A Right, but didn't tell me the details of it. She would come back
16 sometimes from court, she would talk to me about, you know, sometimes she'd
17 be crying, sometimes she'd be upset, sometimes she was stressed out, and I
18 would listen to her. Sometimes she would tell me that her deal still consisted of
19 her going to prison. She never went into details about it, but --

20 Q But she's talking to you for a period of time while you're still in jail
21 about the possibility of what the negotiations are going to be?

22 A Right.

23 Q Okay. And did she also tell you that Deangelo Carroll had turned
24 State's evidence?

25 A Yes.

1 Q She told you that fact too?

2 A Yes.

3 Q Okay. Now, you said that when you got released from jail that Ms.

4 Espindola asked Mr. H to give you a place to stay.

5 A Yes.

6 Q Did you need a place to stay?

7 A No, not need. I could've stayed, you know, at my ex-husband's

8 house with my kids.

9 Q You could've stayed at your ex-husband's house with your kids did

10 you just say?

11 A [nods head yes].

12 Q So you moved into Mr. H's house without your three children?

13 A Yes.

14 Q Okay. And you spent a period of time there checking out as to

15 whether or not he was having an affair?

16 A Right. She asked me to stay there for a little while and -- and see if

17 she was doing the right thing.

18 Q So what do you mean see if she was doing the right thing?

19 A You know, she wanted to know what was going on, if he was having

20 an affair or not.

21 Q Well, you just said see if she's doing the right thing. What do you --

22 what was the right thing for her to be doing?

23 A By staying, I guess, in the relationship with him.

24 Q Staying with Mr. H?

25 A Uh-huh.

1 Q She wanted to know whether or not --

2 MR. GENTILE: Was the answer yes?

3 Q Was that a yes?

4 A Yes. Sorry.

5 Q And she wanted to know whether or not it was appropriate for her to
6 stay in the relationship?

7 A Right.

8 Q And, in fact, at some point in time you tell her, hey, there's no
9 evidence this -- I don't think this guy is having an affair on you.

10 A Right.

11 Q Right?

12 A Yes.

13 Q And as far as you're concerned, that -- that wasn't happening?

14 A I've never seen him have an affair or be with anybody.

15 Q Did you know Christa McCullah?

16 A Yes.

17 Q How did you know her?

18 A She was an inmate at CCDC.

19 Q Okay. Was she one of the people that was living there when --
20 when -- by the time you get out and was living at Mr. H's house?

21 A No.

22 Q Okay. When did you know -- what period of time did you know
23 Christa?

24 A Her stay, during her stay at Clark County Detention Center.

25 Q And did you know -- did you have any contact with Christa from the

1 time you get out until today?

2 A I -- she called a couple times while I lived there, to the house, to
3 Lou's house. She called the house a couple times. I've seen her recently, like I
4 saw her yesterday here in court.

5 Q Okay.

6 A Other than that I don't talk to her.

7 Q Okay. And when you saw her you learned that she's now married to
8 Mr. H?

9 A News to me.

10 Q You didn't find that out yesterday?

11 A I think your -- your investigator said something, but I think it was he
12 wasn't for sure. It's still news to me.

13 Q You talked a little bit about you'd been in jail in before. And I'm
14 going to ask you just some very basic questions.

15 A Uh-huh.

16 Q Okay? Talk about in 2004.

17 A Uh-huh.

18 Q Okay? Did you attempt to acquire a controlled substance by fraud?

19 A No, my ex-husband did.

20 Q Did you plead to a charge related to that?

21 A I don't --

22 MR. LASSO: Judge, I'm going to object. I believe --

23 Now, you said 2004?

24 MR. DIGIACOMO: That's correct. 2004.

25 MR. LASSO: I just wanted to make that clear for the record.

1 THE COURT: Okay. Yeah. 2004.

2 MR. DIGIACOMO: Correct.

3 THE COURT: Have you previously pled guilty to that 2004 charge?

4 THE WITNESS: I don't remember exactly what it was. I had some
5 Lortabs like that weren't in my -- that were in my purse. I don't remember what
6 the charge was. I -- I paid a fee.

7 BY MR. DIGIACOMO:

8 Q Okay. And then in 2006 you wrote some checks on an account you
9 knew didn't have any money in it?

10 A Yeah. I had some NSF checks.

11 Q And then in April of 2008 you wrote \$900 worth of checks to the
12 Montana Meat Company on an account that was closed?

13 MR. LASSO: Judge, again, this is -- these are what we talked --

14 THE COURT: All right.

15 MR. DIGIACOMO: That was not.

16 THE COURT: I'll see counsel up here, please.

17 (Conference at the bench)

18 BY MR. DIGIACOMO:

19 Q Ma'am, I'm going to rephrase my question. Do you have any
20 pending bad check cases that you're paying off currently?

21 A Yes.

22 Q Okay. How many?

23 A Well, it's -- I'm not sure exactly how many checks there is because
24 it's like one payment that you make, but it's one court.

25 Q Okay. Can you tell me what year that was created?

1 A Well, you just told me it was '08; right?

2 Q Oh, so that's what we're talking about. You're currently paying off
3 the \$900 to the Montana Meat Company on the -- on the checks written on the
4 closed account?

5 A Right.

6 Q Okay. And, ma'am, the person that just spoke to you, that's Al
7 Lasso; correct?

8 A Yes.

9 Q Okay. Do you know the relationship of Al Lasso to Dominic Gentile?

10 A Yes.

11 Q Okay.

12 MR. GENTILE: We're both Italian.

13 THE COURT: Well, other than me and Mr. Adams, pretty much
14 everybody is Italian in here.

15 Mr. Lasso is your attorney; is that right?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Thank you.

18 BY MR. DIGIACOMO:

19 Q What's his relationship to Mr. Gentile, if you know?

20 A They used to work together a couple years ago.

21 Q Now, from the time you made contact with Anabel, Ms. Espindola,
22 did there come a point in time that you wrote her a letter?

23 A Yes.

24 Q How many do you think you've written?

25 A I couldn't -- I couldn't say how many.

1 Q More than one, ten, twenty?

2 A I'm not very good at writing letters, so I don't think 20, but definitely
3 more than one.

4 Q Okay.

5 MR. GENTILE: Your Honor, we'll want to approach, but --

6 MR. DIGIACOMO: I'll lay a foundation first.

7 MR. GENTILE: May we approach?

8 THE COURT: Yes.

9 MR. DIGIACOMO: Can I ask the question first?

10 THE COURT: Well, it's only a matter of time, Mr. DiGiacomo, so just
11 get it over with.

12 (Conference at the bench)

13 BY MR. DIGIACOMO:

14 Q Ma'am, do you recall writing a card to Anabel in September 29,
15 2007?

16 A Sure.

17 Q Okay. And do you recall telling her basically jail is not a very nice
18 place?

19 A I -- I would have to see the card to --

20 Q Would it refresh your recollection to see the card?

21 A Yeah.

22 THE COURT: Okay. Go ahead -- Mr. DiGiacomo is going to hand
23 you a copy of the card. Read it to yourself and let us know if that refreshes your
24 memory as to what you wrote to Ms. Espindola back in --

25 Was it September of '07?

1 MR. DIGIACOMO: September 29th of '07.

2 BY MR. DIGIACOMO:

3 A Okay. Yeah.

4 Q Does that --

5 THE COURT: Does that refresh your memory?

6 THE WITNESS: Yes.

7 THE COURT: All right. Mr. DiGiacomo.

8 BY MR. DIGIACOMO:

9 Q Did you basically tell her that jail is basically hell?

10 A Yeah.

11 Q Okay.

12 A Yes.

13 Q And you told her that basically she didn't deserve to be there; right?

14 A Right.

15 Q Right?

16 A Yes.

17 Q Are you telling this jury that several months before she confessed to
18 being involved in the killing of the guy --

19 A Right.

20 Q -- but you're writing her a letter telling her she didn't deserve to be in
21 jail?

22 A My opinion isn't -- doesn't matter. I don't think that she deserved --

23 Q So even if she killed a guy it didn't matter? She shouldn't -- she
24 shouldn't be in jail?

25 A To my -- you know, she didn't mean for that to happen. Like she told

1 me, they were just supposed to fuck him up. And I don't think that's what she
2 deserves. But that's not -- my opinion.

3 Q All right. Let -- let me back up then. If she was -- if -- if she was
4 guilty of just having a guy fucked up, you don't think she should be in jail?

5 MR. GENTILE: Objection.

6 A Well --

7 THE COURT: Yeah, sustained.

8 Q I'll rephrase the question. If she didn't -- let's say it was something
9 short of a killing and a guy just got beat.

10 A Right.

11 Q Do you think she deserved to be in jail then?

12 A Not for three years, no.

13 MR. DIGIACOMO: Nothing further, Judge.

14 THE COURT: Any juror questions?

15 All right. Mr. --

16 MR. GENTILE: It looks like there's one coming. Maybe not.

17 THE COURT: No?

18 MR. GENTILE: Nope. Okay.

19 THE COURT: All right.

20 MR. GENTILE: I have a couple.

21 THE COURT: All right.

22 REDIRECT EXAMINATION

23 BY MR. GENTILE:

24 Q Counsel, Mr. DiGiacomo, said something to you about did you tell
25 the investigator that Anabel told you that he -- Deangelo Carroll turned State's

1 evidence, and you said, yes, she did tell you.

2 A Uh-huh.

3 Q And -- and -- did you say yes?

4 A Yes. Yes.

5 THE COURT: It's all being recorded. That's why.

6 THE WITNESS: I know. I know.

7 BY MR. GENTILE:

8 Q These things that you're saying to us about what Anabel told you,
9 you don't know if it's -- what she told you was true, you only know that she told
10 you.

11 A Correct.

12 Q Okay. And did she tell you that Deangelo Carroll turned State's
13 evidence like immediately when he was first contacted by the police?

14 A Yes.

15 Q Okay. She didn't say that he's currently a State witness; did she?

16 A No.

17 Q In fact, you know that she -- that Deangelo Carroll was in jail at the
18 same time.

19 MR. DIGIACOMO: Objection. Leading.

20 Q Was Deangelo --

21 THE COURT: All right.

22 MR. DIGIACOMO: Still leading.

23 THE COURT: Well, what do you know about Deangelo's custody
24 status at the same time?

25 THE WITNESS: I thought he was in custody.

1 BY MR. GENTILE:

2 Q Okay. But she told you that originally, right away, as soon as he got
3 contacted by police --

4 A Yes.

5 Q -- he turned State's evidence.

6 A Yes.

7 Q Okay. Now, he also said -- he meaning Mr. DiGiacomo -- that --
8 you -- you said you visited Anabel four times and he said are you sure it wasn't
9 three. Remember?

10 A Yes.

11 Q And you said that you reviewed the jail records --

12 A Yes.

13 Q -- yesterday, I think.

14 A Yes.

15 Q Okay. I'm going to show you the jail records and --

16 A Okay.

17 Q -- I want to ask you to take a look at these --

18 A Okay.

19 Q -- particularly the highlighted yellow parts. Okay? And see if --

20 MR. DIGIACOMO: Can I see them first?

21 MR. GENTILE: They're yours, sir.

22 MR. DIGIACOMO: Well, have them marked so that we have a
23 record of them.

24 MR. GENTILE: I'm just refreshing her memory.

25 /////

1 BY MR. GENTILE:

2 Q Accuracy does mean something; doesn't it?

3 A Yes.

4 Q Okay. Would you take a look at that and tell the ladies and
5 gentlemen of the jury if it refreshes your memory as to when you visited Anabel
6 Espindola.

7 A September 8th --

8 Q Of what year?

9 A -- of '07.

10 Q No, wait a minute. Stop.

11 THE COURT: Yeah. I think what Mr. Gentile wants you to do is to
12 look at the document, just read it to yourself, and then tell us if you now
13 remember --

14 MR. GENTILE: Right.

15 THE COURT: -- exactly or more specifically when you visited.

16 BY MR. GENTILE:

17 Q But you can do that one page at a time. Let me ask you this
18 question. Did you visit Anabel in September of 2007?

19 A Yes.

20 Q How many times?

21 A Three.

22 Q What were the dates that you visited Anabel in September of 2007?

23 A The 8th, 18th, and 27th.

24 Q All right. Now, the 8th, how -- how long were you out of jail when you
25 went to visit?

1 A I was out from the 29th to the 8th, so that was nine, ten days.

2 Q All right. And so you visited your three times within the first 30 days
3 that you were out?

4 A Yes.

5 Q All right. And then did you also visit her in October?

6 A Yes.

7 Q When?

8 A October 30th.

9 Q That's Halloween?

10 A Right before, yes.

11 Q Okay. And also counsel said something to you about you had been
12 in jail more than once. And that's literally true --

13 A Yes.

14 Q -- am I correct? But it was all for one case; right?

15 A Yes.

16 Q All right. Why don't you tell the ladies and gentlemen of the jury why
17 you were in jail twice for the same case?

18 A For a probation violation.

19 Q Okay. But did there come a time when you interrupted your jail
20 sentence to do something and then had to go back?

21 A Oh, to give birth.

22 Q You had to have a baby.

23 A Yes.

24 Q And so they made you go back after you had the baby?

25 A Unfortunately they do that.

1 MR. GENTILE: I don't have anything further. Thank you.

2 THE COURT: Thank you, Mr. Gentile.

3 Mr. Adams, anything?

4 MR. ADAMS: No, Thank you.

5 THE COURT: Do we have a juror question?

6 THE MARSHAL: Yes.

7 THE COURT: All right. Mr. DiGiacomo, while Jeff is retrieving that,
8 do you have any questions?

9 RECROSS-EXAMINATION

10 BY MR. DIGIACOMO:

11 Q Mr. Gentile just said you -- you've been in jail twice and it was
12 always for the same case?

13 A Yes.

14 Q So you've gone to jail four times?

15 A No, but he asked me for the same case.

16 Q Oh, for one case you went twice. You went two other times.

17 A Yes.

18 Q Oh, okay. Lastly, when's the first time you told anybody what Anabel
19 told you?

20 MR. GENTILE: That's beyond the scope of the --

21 A A few days ago.

22 MR. GENTILE: -- redirect.

23 THE COURT: Overruled.

24 BY MR. DIGIACOMO:

25 A A few days ago.

1 Q A few days ago?

2 A Just recently, yes.

3 Q Thank you very much.

4 THE COURT: All right. I have a question from a juror, or do you
5 want to go next, Mr. Gentile?

6 MR. GENTILE: No, I'm fine.

7 THE COURT: All right. I'll ask the juror question.

8 A juror wants to know are you and Anabel still friends.

9 THE WITNESS: I haven't spoken to her since January of last year.
10 I -- at all. But I love her very much.

11 THE COURT: Okay. And that was the juror's next question is when
12 was the last time you spoke to her. When you spoke to her in January of last
13 year, did you go see her in person at the jail or was it on the phone?

14 THE WITNESS: On the phone.

15 THE COURT: All right. Thank you.

16 Mr. Gentile.

17 MR. GENTILE: I do have one question.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. GENTILE:

20 Q Why did you only tell somebody -- actually, let's talk about who you
21 told.

22 A Yes.

23 Q Who did you tell?

24 A You.

25 Q Okay. And when did you tell me?

1 A Just a few days ago.

2 Q And why did you wait so long?

3 A Well, I -- I told you because I thought it would be the right thing to
4 do.

5 Q Were you concerned about maybe if you did that it might affect
6 Anabel?

7 A Yes.

8 Q In what way?

9 A I didn't want to hurt her.

10 Q And in what way might it hurt her?

11 A I knew she made a deal and I didn't want to hurt her deal.

12 Q But you thought it was the right thing to do.

13 A But I thought it was the right thing to do.

14 Q Thank you.

15 THE COURT: Mr. Adams, anything?

16 MR. ADAMS: No, Your Honor.

17 THE COURT: Mr. DiGiacomo, anything?

18 MR. DIGIACOMO: No, Judge.

19 THE COURT: Any other juror questions?

20 All right. I'm about to excuse you, but before I do I must
21 admonish you that you're not to discuss your testimony with anybody else who
22 may be a witness in this case. Thank you, and you are excused.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Mr. Gentile, please call your next witness.

25 MR. GENTILE: My next witness is a recording, and audio recording,

1 and I think -- I don't know if we need -- I don't know the technology end of this, so
2 I don't know what we need to do to set up to play it.

3 THE COURT: Any objection to just playing the recording? Do we
4 have it authenticated or --

5 MR. DIGIACOMO: I believe, although I haven't heard what they've
6 dropped to the disc, but I believe that it's a -- between 4:22 and six minutes of a
7 single phone call between Deangelo Carroll and his wife to 7-0-2-6-4-3-0-4-6-2, I
8 can't remember, whatever that number is to his home. I don't know the date and
9 time of the call if Mr. Gentile can put that on the record.

10 MR. GENTILE: Actually, Mr. Dibble knows the date and time.

11 MR. DIBBLE: I'm not sure that he [inaudible]. Where's the disc?

12 THE COURT: Do we have the disc? I believe --

13 MR. DIGIACOMO: If you have the disc I can plug it into my
14 computer with the speaker.

15 THE COURT: Okay.

16 Janie, how do you want to play that?

17 THE RECORDER: They have to play it off theirs.

18 THE COURT: Okay. They're going to play it off theirs. Thank you,
19 Mr. DiGiacomo.

20 THE MARSHAL: Mr. Gentile, are they going to need any headsets,
21 or is it clear?

22 MR. GENTILE: Well, my -- Mr. West, Andrew -- Andrew West who
23 is our lawyer, slash, technician, he'd ask if he could do a sound check. And
24 unfortunately that's going to take a few minutes. But it probably does make
25 some sense, although we can maybe just wing it and if it works it does, and if it

1 doesn't, it doesn't.

2 THE COURT: All right. Let's -- let's wing it because I don't think
3 we're ready for a break yet.

4 MR. GENTILE: Okay.

5 THE COURT: No, we're --

6 MR. GENTILE: Then I would like --

7 THE COURT: -- not ready --

8 MR. GENTILE: -- to mark this --

9 THE COURT: -- for a break and so --

10 MR. GENTILE: I would like --

11 THE COURT: -- we'll just sit here and then if we're really
12 experiencing technical difficulties, we'll take a break. But if not we'll just sit here
13 patiently while we get the tape ready.

14 I'll see counsel up here please while we're getting that done.

15 (Conference at the bench)

16 THE COURT: Do we have a date?

17 MS. ARMENI: Yes, Your Honor.

18 THE COURT: All right. And does this --

19 MR. DIGIACOMO: February 23, 2007, at 2200 and change hours.

20 THE COURT: And the State does not oppose the admission?

21 MR. DIGIACOMO: That correct.

22 THE COURT: All right.

23 All right, ladies and gentlemen. I think we've solved the
24 problem.

25 Are we ready to play the tape?

1 MR. GENTILE: Well, it depends on who you mean by we because
2 I'm afraid --

3 THE COURT: All right. We're going to let --

4 MR. GENTILE: Mr. West is capable.

5 THE COURT: Mr. West is going to play the tape. And just so the
6 ladies and gentlemen of the jury know the date of the tape or the date the
7 conversation occurred, that date is when, Mr. Gentile?

8 MR. GENTILE: February 23, 2007.

9 THE COURT: All right. And tell them what we're --

10 MR. GENTILE: And it's a --

11 THE COURT: -- listening to.

12 MR. GENTILE: You're listening to a recording made of a phone call
13 made from the jail because they don't take incoming calls to -- by Deangelo
14 Carroll to his wife.

15 THE CLERK: And this will be Exhibit I.

16 MR. DIGIACOMO: It'll be --

17 MS. ARMENI: It'll be next defense exhibit.

18 THE COURT: Next defense exhibit is Exhibit I.

19 (Defense Exhibit I is admitted)

20 MS. ARMENI: And it's at 22:37, Your Honor.

21 THE COURT: All right.

22 (Exhibit I, phone call recording played)

23 THE COURT: Is that it?

24 MR. GENTILE: Okay. That's it. It is in evidence at this point?

25 Okay.

1 THE COURT: Right. Well, we probably should have taken a break
2 before because we need to take a break now. We're just going to take a quick
3 10 minute break until 2:40.

4 Ladies and gentlemen, once again, you're reminded of the
5 admonishment which is, of course, still in place, not to talk about the case or do
6 anything else relating to the case during our brief break.

7 Notepads in your chairs. Follow Jeff through the double
8 doors.

9 (Jury recessed at 2:30 p.m.)

10 THE COURT: Mr. Hidalgo, Jr., I'm going to give you your fifth
11 amendment admonishment.

12 If every -- I'm doing this from memory, so if everybody could
13 please listen and make sure I cover everything. Someone stole mine from my
14 book, and so I just do it from what I remember.

15 All right. Mr. Hidalgo, are you aware of your right to take the
16 stand and testify on your own behalf?

17 THE DEFENDANT HIDALGO JR.: Yes, Your Honor.

18 THE COURT: Do you also understand that if you choose to take the
19 stand and testify, the deputy district attorneys will have the opportunity to cross-
20 examine you?

21 THE DEFENDANT HIDALGO JR.: Yes, Your Honor.

22 THE COURT: And Mr. Adams and Mr. Arrascada, the counsel for
23 your son, will also have the opportunity to question you.

24 THE DEFENDANT HIDALGO JR.: Yes, Your Honor.

25 THE COURT: And you will also be subject to questioning from the

1 jury and the Court, obviously subject to the rules of evidence. Do you
2 understand that?

3 THE DEFENDANT HIDALGO JR.: Yes, I do, Your Honor.

4 THE COURT: And if you choose to take the stand and testify,
5 anything you say, whether it be on direct examination, cross-examination, or in
6 response to a question from the jury or your son's counsel will be the subject of
7 fair commentary by the deputy district attorneys in their closing arguments. Do
8 you understand that?

9 THE DEFENDANT HIDALGO JR.: I understand that.

10 THE COURT: If you choose to take the stand and testify --

11 Does he have any prior felony convictions?

12 MR. GENTILE: He's never been arrested.

13 THE COURT: Okay. All right. Then I don't need to cover the
14 impeachment with a -- with a conviction.

15 You also have the right not to take the stand and testify. Do
16 you understand that?

17 THE DEFENDANT HIDALGO JR.: I understand that.

18 THE COURT: If you choose to invoke your right not to testify, the
19 deputy district attorneys will be precluded, excuse me, from commenting on that
20 during their closing remarks. Do you understand that?

21 THE DEFENDANT HIDALGO JR.: I understand.

22 THE COURT: Similarly, or also, if you choose not to take the stand
23 and testify, the Court will give an instruction if asked to do so by your counsel,
24 which I do not have in front of me.

25 Does anyone want me to read directly the instruction?

1 But it says, essentially, that the decision of a defendant and
2 whether or not to testify is -- is his decision upon the advice of his counsel and
3 that the jury is not to speculate about that or make any inferences, nor should
4 that be a factor in their deliberations in any way. Do you understand that?

5 THE DEFENDANT HIDALGO JR.: I understand that.

6 THE COURT: And, Mr. Gentile, do you want me to read directly --

7 MR. GENTILE: No, no.

8 THE COURT: -- from the instruction?

9 MR. GENTILE: He understands it.

10 THE COURT: All right. Now, having had a full opportunity to
11 discuss your right to testify as well as your right not to testify with your attorneys,
12 Mr. Gentile and Ms. Armeni, did you talk to them about whether or not you're
13 going to testify and about your rights?

14 THE DEFENDANT HIDALGO JR.: [nods head yes].

15 THE COURT: Okay. Do you have any questions you would like to
16 ask the Court about these rights?

17 THE DEFENDANT HIDALGO JR.: No, ma'am.

18 THE COURT: And my understanding is you have decided to take
19 the stand and testify; is that right?

20 THE DEFENDANT HIDALGO JR.: That's right, Your Honor.

21 THE COURT: Did I cover the admonishment to the satisfaction of
22 you, Mr. Gentile?

23 MR. GENTILE: You did, Your Honor.

24 THE DEFENDANT HIDALGO JR.: Did I cover it to the satisfaction
25 of the State?

1 MR. DIGIACOMO: Yes, Your Honor.

2 THE COURT: All right. Should I admonish Mr. Hidalgo III now, or
3 do you want to wait until our next break?

4 THE DEFENDANT HIDALGO JR.: Why not, let's do it now.

5 THE COURT: All right.

6 All right. Mr. Hidalgo, you understand that you have the right
7 to take the stand and testify on your own behalf?

8 THE DEFENDANT HIDALGO III: Yes, I do.

9 THE COURT: If you choose to take the stand and testify on your
10 own behalf, the attorneys for your father, Mr. Gentile or Ms. Armeni will have the
11 opportunity to also ask you questions. Do you understand that?

12 THE DEFENDANT HIDALGO III: Yes, I do.

13 THE COURT: And the deputy district attorneys will have the
14 opportunity to cross-examine you. Do you understand that?

15 THE DEFENDANT HIDALGO III: Dang. Yes.

16 THE COURT: Okay. And you will also be subject to questioning
17 from the jurors, subject, of course, to the rules of evidence and any questions the
18 Court may ask. Do you understand that?

19 THE DEFENDANT HIDALGO III: Yes, I do.

20 THE COURT: And if you choose to take the stand and testify,
21 anything you say, whether it be on direct examination, cross-examination, or in
22 response to a question from your father's attorneys, or from the Court, or from
23 the jury will be the subject of fair comment by the deputy district attorneys in their
24 closing remarks.

25 THE DEFENDANT HIDALGO III: Yes, I do.

1 THE COURT: Okay. You understand that.

2 And does he have any prior felony convictions?

3 MR. ADAMS: No prior arrest.

4 THE COURT: All right. Then I don't need to cover impeachment
5 with a felony conviction. You also have the right to choose not to take the stand
6 and testify. Do you understand that?

7 THE DEFENDANT HIDALGO III: Yes.

8 THE COURT: If you choose to invoke that right, the deputy district
9 attorneys will be precluded from commenting on that during their closing
10 remarks. Do you understand that?

11 THE DEFENDANT HIDALGO III: Yes.

12 THE COURT: Also, if you choose not to take the stand and testify,
13 the Court will give an instruction to the jury if asked to do so by your counsel
14 which essentially tells the jury that the decision of whether or not to testify is left
15 to a defendant upon the advice of his counsel and that the jury is not to make any
16 inference from this or to have that factor -- have the fact that a defendant did not
17 testify factor into their deliberations in any way. Do you understand that?

18 THE DEFENDANT HIDALGO III: Yes, I do.

19 THE COURT: And does counsel or the defendant, Mr. Hidalgo, wish
20 me to read exactly from the instruction?

21 MR. ADAMS: No, ma'am.

22 THE COURT: All right. Have you had a full opportunity to discuss
23 your right to testify as well as your right not to testify with your attorneys, Mr.
24 Arrascada and Mr. Adams?

25 THE DEFENDANT HIDALGO III: Yes.

1 THE COURT: Is there anything you would like to ask me about your
2 right to testify or about your right not to testify.

3 THE DEFENDANT HIDALGO III: Not at this time.

4 THE COURT: All right. Thank you.

5 And my understanding is at this time he's decided not to
6 testify; is that right?

7 MR. ADAMS: Pending a final decision.

8 THE COURT: Okay. Right.

9 MR. ADAMS: But we do not anticipate.

10 THE COURT: Right. You don't have to tell me now. You can -- you
11 can tell me later.

12 Did I cover that admonishment to the satisfaction of the
13 defense, Mr. Adams --

14 MR. ARRASCADA: Yes, Your Honor.

15 THE COURT: -- and Mr. Arrascada?

16 Did I cover the admonishment to the satisfaction of the State?

17 MR. DIGIACOMO: Yes, Judge.

18 THE COURT: All right. Mr. Hidalgo, you can come up here to --

19 MR. GENTILE: Can I have five minutes to look through the exhibits
20 because there might be a couple I want to use and we can save a lot of time if I
21 can do it now.

22 THE COURT: All right.

23 MR. DIGIACOMO: Judge, there is a legal argument that needs to
24 take place based upon a representation the defense has not made.

25 THE COURT: Okay. Let's --

1 MR. DIGIACOMO: Not Mr. Gentile. I don't know if you want to do
2 that now or you want to wait until after Mr. H finishes his testimony and then
3 make --

4 THE COURT: Okay. Just --

5 MR. DIGIACOMO: -- the argument.

6 THE COURT: -- give me a heads up. What is it?

7 MR. DIGIACOMO: The heads up is that they represented at least
8 that they weren't calling any witnesses. Now at the bench they just said, well,
9 we're going to read in one portion of Jason Taoipu's statement. Unfortunately,
10 NRS 47.120 would make the entire relevant testimony of Jason Taoipu
11 admissible.

12 THE COURT: Right.

13 MR. DIGIACOMO: The other problem with that is Mr. Gentile would
14 have to waive the confrontation rights because you can't put in Jason Taoipu's
15 statement and -- and have it used against Mr. H. So there's a number of legal
16 issues related to that.

17 Second of all, I don't think it's legal admissible. Because in
18 order for them to offer it against us, the issue had to be the same in the case and
19 we didn't care less who made the phone call in that trial. That trial was about the
20 guilt of Kenneth Counts. There was no allegation in that case.

21 And so when Jason Taoipu made the statement, we didn't
22 impeach him like we would've had he been in some other trial in -- in -- if he had
23 been in this trial. It clearly was not the issue in the case which is required under
24 the statute. And so, one, it's no admissible period, but, two, if they do it, it all
25 comes in.

1 THE COURT: Right. I agree. I mean, they don't all have to read
2 it -- have it all read in, but then it opens the door for you guys to have the entire
3 portion read in.

4 MR. ARRASCADA: Actually, Judge, that's incorrect.

5 THE COURT: All right.

6 MR. ARRASCADA: Your Honor, under 47.120, it's they're entitled to
7 have read into the record any relevant part.

8 THE COURT: Well, right, relevant --

9 MR. ARRASCADA: But --

10 THE COURT: -- but what we're saying is --

11 MR. ARRASCADA: Judge --

12 THE COURT: -- if you only want --

13 MR. ARRASCADA: -- let me get --

14 THE COURT: -- a portion --

15 MR. ARRASCADA: -- to the single issue.

16 THE COURT: -- read in, they can --

17 MR. ARRASCADA: No, it's -- it's actually -- it's six lines, Judge.

18 And what it is is Mr. Pesci, on his direct examination of Mr. Taoipu, and I have a
19 certified transcript somewhere. Court's indulgence.

20 MR. DIGIACOMO: It would also be my position we're not going to
21 do it by transcript. I think we would play the video from the trial, which we have
22 access to.

23 MR. ARRASCADA: But it would be just that clip, Your Honor.

24 THE COURT: Well, actually, the video from the trial is not the official
25 court record. If you have -- this is -- I mean, here's my position. On rare

1 occasions I will allow people to have the clip of the video for teaching and other
2 purposes. I do not distribute those. In my view, that is not the official record.
3 The official record is the official printed transcript, number one. Number two, for
4 Janie to find that may take -- would take awhile.

5 MR. DIGIACOMO: That may be true, but it would be the position of
6 the State that we have access to things like demeanor --

7 THE COURT: Right. Well, and --

8 MR. DIGIACOMO: -- all kinds of things --

9 THE COURT: I mean --

10 MR. DIGIACOMO: -- that are relevant.

11 THE COURT: -- I have a uniform position on this for many reasons,
12 which I don't feel I need to explain to you and I will not explain to you, but it is my
13 position that we could be either a court recording department or a court reporting
14 department, and that either way the official record is the written transcript. Just
15 because we've elected to go court recording does not mean that we are required
16 to use the recording even though it's available.

17 So, I mean, you wouldn't have -- that's just my position. It's
18 uniform. You wouldn't -- and, again, I'm not going to go -- I have -- there are a
19 number of reasons I have that position. But you, if this was a court reporting
20 department, you wouldn't have access to the demeanor and all that stuff.

21 MR. ARRASCADA: Your Honor, if I could have the Court's
22 indulgence.

23 THE COURT: Sure.

24 MR. ARRASCADA: Here is it, Your Honor.

25 Your Honor, if I could?

1 THE COURT: I'm listening.

2 MR. ARRASCADA: Thank you. Your Honor, in the Taoipu -- in the
3 Counts trial Mr. Pesci asked Mr. Taoipu -- and I've never seen anything this
4 clean, concise, and succinct. And it's not brought up anywhere else and it wasn't
5 the subject of the cross-examination. But here is the question by Mr. Whipple.

6 THE COURT: Well, because Mr. Whipple may not have cared.

7 MR. ARRASCADA: The question was by Mr. Pesci, All right, going
8 back, just kind of backtracking a little bit, do you ever hear any conversation
9 about baseball bats or garbage bags. Answer by Taoipu, Yes, sir. Question by
10 Mr. Pesci, Tell us what you heard, when you heard it, and who you heard it from.
11 Answer, We heard it before we went to pick up KC. Deangelo told us that he
12 called Anabel and Anabel was talking about baseball bats and trash bags.

13 If you recall in the Rontae Zone testimony, he said that --

14 THE COURT: Deangelo.

15 MR. ARRASCADA: -- Deangelo said Little Lou said bring baseball
16 bats and bags. He said he heard that when he was sitting there with Rontae
17 Zone. And the only relevant portion to this transcript, because it was such a well
18 formulated question, very narrow and succinct, was who said it, when they say it,
19 and where'd you hear it. And he lays all -- all of that out in that one short answer,
20 Judge.

21 There's no prior inconsistent statements from Mr. Taoipu's
22 taped interview. And this is the only time that he mentions it and it's significant.
23 But, Your Honor, they can impeach or bring in other relevant information from the
24 transcript, but there's no other relevant information regarding that very narrow
25 question.

1 THE COURT: Okay. Here's the way I read the statute. They can --
2 if you introduce it, then they can bring in any part of -- well, I'm reading the
3 statute, any part of it which is relevant to the part introduced or any other relevant
4 parts. So if there's something else that's relevant in it that isn't relevant to the
5 part introduced but is relevant to your client, Mr. Hidalgo III, then the State can
6 bring in that part.

7 They can't bring in the whole transcript, but anything that's
8 relevant. I mean, obviously can't -- you know, we've got abundant evidence of
9 the killing and all of that, you know, the only issue here that we're --

10 MR. DIGIACOMO: No, no, no.

11 THE COURT: -- going to cloud the waters with.

12 MR. DIGIACOMO: No, I think what's relevant is his perceptions in
13 that evening. So pretty much everything that he testifies to that happens on May
14 19th through the time that he gets contacted with the police, all of that is relevant
15 to determine, all right, does he know it, did he actually hear it, what does he
16 actually know, is he clear as to -- concise as to the time period. That whole thing
17 comes in. And the case law is really clear. Once they waive their confrontation
18 right, that entire statement, under the statute, is now admissible.

19 THE COURT: Any relevant --

20 MR. DIGIACOMO: The statute says --

21 THE COURT: -- part of -- of --

22 MR. DIGIACOMO: -- that it's prior transcript, Your Honor. No, no,
23 no. No, no. This isn't just a written or recorded statement.

24 THE COURT: Right.

25 MR. DIGIACOMO: This is now a prior transcript testimony subject to

1 cross-examination. Under the statute, once they waive their confrontation rights,
2 the entire transcript is now admissible. So it would be our position --

3 MR. ARRASCADA: The relevant, Your Honor --

4 MR. DIGIACOMO: -- we read --

5 MR. ARRASCADA: -- the relevant portion.

6 MR. DIGIACOMO: No, it's not. It's not --

7 MR. ARRASCADA: Judge, you can read the --

8 MR. DIGIACOMO: -- by 47.120.

9 MR. ARRASCADA: You can --

10 MR. DIGIACOMO: That's not just a written or recorded statement,
11 it's now testimony. And once they waive their confrontation rights, the prior
12 testimony is read. When have we ever been able to offer the portion of the prior
13 testimony we like of a witness, and exclude the portions we don't like in a case?
14 Has that ever happened?

15 THE COURT: Well, what other -- okay.

16 MR. ARRASCADA: Judge --

17 THE COURT: What other parts of the testimony -- I mean, are you
18 asking to introduce the whole testimony --

19 MR. ARRASCADA: Yes.

20 THE COURT: -- or are you asking to just introduce just parts of the
21 testimony? And then obviously it only goes -- I mean, if Mr. Gentile doesn't want
22 it in, we can say this isn't being offered as evidence against Mr. Hidalgo, Jr.

23 MR. ARRASCADA: Judge, they can only offer in the relevant parts
24 to Little Luis Hidalgo, and there's nothing else in the transcript. This is it.

25 MR. DIGIACOMO: No, it's the prior testimony. They've offered the

1 prior testimony.

2 THE COURT: Okay.

3 MR. DIGIACOMO: This isn't like they're offering the taped
4 statement of --

5 THE COURT: No, I get it. You guys are going back and forth with
6 the same thing.

7 Do you have the transcript? How many pages is it?

8 MR. ARRASCADA: Your Honor, the entire transcript --

9 THE COURT: Of just Jason Taoipu.

10 MR. ARRASCADA: Of Jason Taoipu is 130 pages. The relevant
11 part is right here.

12 THE COURT: Okay. I'm not going to necessarily let them read the
13 whole 138 pages of the stuff that goes over what's not disputed in this case,
14 which, frankly, we could've stipulated to and had a week-long trial. I mean, that
15 Kenneth Counts was the shooter, nobody is disputing that in this trial.

16 MR. DIGIACOMO: Mr. Gentile early on did, but I think -- now I think
17 he's giving up.

18 THE COURT: I don't think anybody cares if it's, you know --

19 MR. DIGIACOMO: We offered to stip to Fred Boyd, but they didn't
20 want that. I mean, there --

21 THE COURT: Right.

22 MR. DIGIACOMO: -- was offers out there --

23 THE COURT: Okay. I'm just saying --

24 MR. GENTILE: -- they just didn't --

25 THE COURT: -- I mean, there's a lot of things that, you know, are

1 part of painting the whole picture that really isn't germane to the issue. I mean,
2 obviously you have to prove that there was a murder and all that stuff, but you
3 know what I'm saying. It doesn't really cut to what the issue here is, is there
4 enough evidence against these two.

5 So everything in that transcript that's just going to the killing
6 and all of that stuff, we're not going to waste more time going over what's already
7 been testified to ad nauseam. If there is something in the transcript that would
8 suggest his ability to perceive was compromised like he was smoking marijuana
9 or something like that, then --

10 MR. DIGIACOMO: What about all the other things he says bad
11 about Little Lou in there as to his involvement. Because they're going to offer
12 this to say, hey, he -- Jason Taoipu said that Little Lou didn't have anything to do
13 with it. And the jury is going to go off with the impression --

14 THE COURT: Right.

15 MR. DIGIACOMO: -- that that's the thing.

16 THE COURT: Well, if there's --

17 MR. DIGIACOMO: So everything --

18 THE COURT: -- other things --

19 MR. DIGIACOMO: -- that he says about Little Lou --

20 THE COURT: Well, depending --

21 MR. DIGIACOMO: -- could come in --

22 THE COURT: -- on whether they would be otherwise admissible
23 because --

24 MR. DIGIACOMO: Why? It's part of the transcript.

25 THE COURT: Well, except they didn't --

1 MR. DIGIACOMO: True v State says --

2 THE COURT: No, no, no.

3 MR. DIGIACOMO: -- once they waive --

4 THE COURT: No, no, no.

5 MR. DIGIACOMO: -- confrontation --

6 THE COURT: Let's just --

7 MR. DIGIACOMO: -- it comes in.

8 THE COURT: No, no, no. Let's just say that they, like they said,
9 asked for a hearsay statement and prior counsel doesn't object because they
10 don't care if it comes in. That doesn't make inadmissible evidence otherwise
11 admissible just because it's in a transcript. That's what I'm saying. You would
12 agree with that; wouldn't you?

13 MR. DIGIACOMO: I would. I mean, if there's -- if there's --

14 THE COURT: Right.

15 MR. DIGIACOMO: -- a legitimate objection to --

16 THE COURT: Of course. That's all I'm saying. That's why we have
17 to look at it.

18 MR. DIGIACOMO: I mean, he said everything I know I learned from
19 Deangelo Carroll. So I'm -- I'm assuming any hearsay statement in there is
20 going to be a basis for a hearsay exception.

21 THE COURT: Well, I don't know. I used hearsay because it came
22 to the top of my --

23 MR. DIGIACOMO: Well, I know, but --

24 THE COURT: -- of my mind.

25 MR. DIGIACOMO: -- while Mr. H is testifying, I will go through and

1 highlight everything that I want out of the transcript and then I'll give it to the
2 Court.

3 THE COURT: Thank you.

4 All right. Are we otherwise ready to go?

5 MR. DIGIACOMO: Can I have a minute to find it, the transcript?

6 THE COURT: Well, Mr. --

7 All right. Bring them in.

8 MR. ARRASCADA: Your Honor, you have the condensed that I
9 provided. I -- I just -- it's right there on the -- do you want me to hold on to that?

10 THE COURT: No, you can hold on to that.

11 We're never going to finish.

12 THE MARSHAL: Jury is coming in.

13 (Jury enters at 2:57 p.m.)

14 THE COURT: All right. Court is now back in session.

15 And, Mr. Gentile, you've called as your witness your client, Mr.
16 Hidalgo, Jr.; is that right?

17 MR. GENTILE: That's right, Your Honor.

18 THE COURT: All right. Mr. Hidalgo, Jr., if you would please just
19 face this lady right here would will administer the oath to you.

20 LUIS HIDALGO, JR.

21 Having been called as a witness and being first duly sworn testified as follows:

22 THE CLERK: Thank you. Please be seated. And your name is Luis
23 Hidalgo, Jr.?

24 THE WITNESS: It is Luis Alonso Hidalgo, Jr.; that's L-U-I-S A-L-O-
25 N-S-O H-I-D-A-L-G-O, Junior.

1 THE COURT: All right. Thank you.

2 Mr. Gentile.

3 MR. PESCI: Judge, if I can just Mr. Gentile to move over to the right
4 or the left so I can see the witness, please. Thank you.

5 MR. GENTILE: Is that okay?

6 MR. PESCI: That's great. Thanks.

7 MR. GENTILE: Good.

8 DIRECT EXAMINATION

9 BY MR. GENTILE:

10 Q Good afternoon, Mr. Hidalgo.

11 A Good afternoon.

12 Q How old are you?

13 A I'm 58.

14 Q What was your date of birth?

15 A 11/28/1950.

16 Q And where were you born?

17 A I was born in San Salvador in Central America.

18 Q Obviously there came a time when you came to the United States.

19 When was that?

20 A 1957 and a half, somewhere around there.

21 Q Okay. And are you a citizen?

22 A Yes, I am.

23 Q How long have you been a citizen of the United States?

24 A Since 1973, '74, somewhere around there.

25 Q All right. When you came to the United States, what part of the

1 country did you move to?

2 A San Francisco Bay area.

3 Q And how long did you -- that would be in what, '57? 1957?

4 A Yes.

5 Q Okay. And how long did you live in the San Francisco Bay area?

6 A Since 1957, '58, to just prior to 2000.

7 Q Now, Mr. Hidalgo, what's your current medical condition?

8 A I'm trying to recuperate from two strokes that I had.

9 Q And when did the strokes occur?

10 A The last one was just a little bit over a year ago.

11 Q Okay. The one before that?

12 A About seven months prior to that, roughly.

13 Q Do you take medication?

14 A Yes, I do.

15 Q Would you tell the ladies and gentlemen of the jury the kind of
16 mediations you take?

17 A I take about nine pills, I call it a cocktail. I take Toprol, Avalide, I take
18 a heart medicine, I take Asprins, I take Avandaryl, and I can't remember the other
19 name. It's a new one that I'm taking.

20 Q Okay.

21 A But it's about nine.

22 Q Tell us, if you will -- you live -- where do you live now?

23 A Las Vegas, Nevada.

24 Q Okay. And, you know, some of the ladies and gentlemen of the jury
25 are interested in this bracelet that you have on your ankle, so let's talk about it.

1 What's that all about?

2 A That is the bracelet that they put on you downstairs when you qualify
3 for house arrest, thanks to the Judge.

4 Q And how long have you been on house arrest?

5 A Almost a year.

6 Q Okay. When you started out on house arrest, were you facing the
7 death penalty?

8 A Yes, I was.

9 Q Okay. You're not anymore?

10 A No.

11 Q Am I correct? Okay. Tell us about your employment history.

12 A I don't recall the year, but I was an intern at South San Francisco
13 Police Department. From the internship I went to work for Chevron Company.

14 Q Chevron?

15 A Chevron.

16 Q The oil company?

17 A Yes.

18 Q For which we are so grateful?

19 A Yes. From Chevron I went ahead and attended the College San
20 Mateo in San Mateo, California. Then there was an opportunity to join, or I was
21 one of the first community service officers in the State of California, and that was
22 basically a liaison position between the police department and the general public.
23 And my position there was basically go to junior high schools, elementary
24 schools, colleges. I even attended, you know, a few times Stanford University.
25 I've given speeches on searches and seizures. From there I