

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 AMENDED APPENDIX

Volume 11 of 25

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¹ This CD is a copy of the original. The copy was prepared by a Clark County employee at the Regional Justice Center in Las Vegas Nevada. Eight hard copies of the CD are being mailed to the Nevada Supreme Court.

² Id.

³ Id.

⁴ Id.

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Ms. Ling.

PROSPECTIVE JUROR NO. 020: Yes.

MR. ARRASCADA: Good afternoon.

PROSPECTIVE JUROR NO. 020: Good afternoon.

MR. ARRASCADA: When you were summoned for jury duty, I believe you received a questionnaire and -- that you had mailed back in. Does that sound accurate?

PROSPECTIVE JUROR NO. 020: No.

MR. ARRASCADA: Well, there's all -- we received this document here and it has your name on it. And there are some areas that would be -- should -- should be filled out and were left blank. Do you remember filling out any document?

PROSPECTIVE JUROR NO. 020: No.

MR. ARRASCADA: Okay. There are some blanks here and maybe you can help me fill them in. And they're very generic questions. Is that okay?

PROSPECTIVE JUROR NO. 020: Yeah, go ahead.

MR. ARRASCADA: One is the -- your years in the county as a resident. You said 18?

PROSPECTIVE JUROR NO. 020: 18 years.

MR. ARRASCADA: Okay. And you have served on a jury previously?

PROSPECTIVE JUROR NO. 020: I have.

MR. ARRASCADA: And I'm sorry if I missed this, but your marital status, ma'am?

PROSPECTIVE JUROR NO. 020: I am married.

MR. ARRASCADA: What does your husband do for a living?

1 PROSPECTIVE JUROR NO. 020: He is a VP of a big electronical
2 company here in town.

3 MR. ARRASCADA: And you mentioned you worked for -- and I couldn't
4 hear you, I think it was right before you had your microphone -- Bank Mark?

5 PROSPECTIVE JUROR NO. 020: Bake. Bake Mark.

6 MR. ARRASCADA: Okay.

7 PROSPECTIVE JUROR NO. 020: Cooking and baking.

8 MR. ARRASCADA: Bake Mark. Okay. Thank you. And that's in -- what
9 type of company? I mean, I know it's cooking and baking, but --

10 PROSPECTIVE JUROR NO. 020: It's a distribution warehouse.

11 MR. ARRASCADA: Is it primarily internet based or -- no?

12 PROSPECTIVE JUROR NO. 020: No.

13 MR. ARRASCADA: Distribution of baked goods throughout the area?

14 PROSPECTIVE JUROR NO. 020: Uh-huh.

15 MR. ARRASCADA: Okay.

16 PROSPECTIVE JUROR NO. 020: Baking ingredients throughout the
17 area.

18 MR. ARRASCADA: Baking ingredients. Okay. Thank you. You
19 mentioned, and I'd like to talk to you a little bit about this, you said I grew up in a
20 drug house. And then you referred to your -- your mother. Is that the only
21 person that was in the home that -- that --

22 PROSPECTIVE JUROR NO. 020: No, we had several different types of
23 people come through my home as I grew up.

24 MR. ARRASCADA: Okay. And were they all people involved with
25 narcotics?

1 PROSPECTIVE JUROR NO. 020: I'd have to say a large majority of
2 them.

3 MR. ARRASCADA: And what -- was there a drug of choice?

4 PROSPECTIVE JUROR NO. 020: Usually methamphetamines and
5 marijuana.

6 MR. ARRASCADA: Did the police ever come?

7 PROSPECTIVE JUROR NO. 020: Yes, they did.

8 MR. ARRASCADA: And do you have any opinions on your experiences
9 watching the police come to the home?

10 PROSPECTIVE JUROR NO. 020: No, not any negative feelings. No.
11 People are -- they're there to do their job.

12 MR. ARRASCADA: And did -- did you feel or do you feel as if the system
13 has functioned properly with -- regarding the people that are coming and going
14 from the house and the police coming?

15 PROSPECTIVE JUROR NO. 020: Well, you're kind of putting it all in one
16 group. It wasn't --

17 MR. ARRASCADA: Differentiate it for me --

18 PROSPECTIVE JUROR NO. 020: Right.

19 MR. ARRASCADA: -- please. Help me out.

20 PROSPECTIVE JUROR NO. 020: Well, through my life there's been a
21 lot of different types of people in our house. The police weren't in our house all
22 the time, so they really weren't able to bring justice to each person who came
23 into my house. Not everybody in my house was involved in any raid or police
24 action that has happened in my house. What the police did when they'd come to
25 my house, or when I was a child, was what they were supposed to do.

1 Do I think that everything is -- was done the way I would've done it?
2 Probably not. But, you know, that's -- that was all determined by the police and
3 then the other law enforcement agencies that were behind it.

4 MR. ARRASCADA: Eventually the courts too?

5 PROSPECTIVE JUROR NO. 020: Probably the court too.

6 MR. ARRASCADA: How would you have liked to have seen it?

7 PROSPECTIVE JUROR NO. 020: I wouldn't change anything that had
8 happened. It happened all the way it was supposed to, I'm guessing. You
9 aren't -- you aren't sat down and, you know, told that these are the procedures of
10 what happens when you grow up in this type of environment.

11 MR. ARRASCADA: Those are your life experiences and I appreciate
12 that. Are your life experiences that you're sharing with us, have they create --
13 created in your mind a bias regarding people charged with crimes?

14 PROSPECTIVE JUROR NO. 020: No.

15 MR. ARRASCADA: So because someone is charged do you feel that
16 they're not -- they had to have done something wrong to be charged?

17 PROSPECTIVE JUROR NO. 020: I think if they would -- I think if certain
18 people didn't put themselves in certain situations they may not be involved in
19 things that they're involved with.

20 MR. ARRASCADA: Does that lead you to believe that before they have
21 a trial that they're guilty?

22 PROSPECTIVE JUROR NO. 020: No, that wouldn't lead me to believe
23 that.

24 MR. ARRASCADA: You -- you -- you stated when you were referring to
25 yourself as open-minded, but you used a qualifier at the beginning. You said I

1 believe I'm pretty open-minded. Could -- could you explain what you mean by
2 pretty open-minded? Is there something that closes you off a little bit?

3 PROSPECTIVE JUROR NO. 020: No. No. Probably just a mis -- I -- I've
4 had a lot of different experiences in my life and I've done a lot of things so far,
5 even though I'm not that old, I don't think. And so, you know, I think it gives me
6 the ability to look at a lot of different situations, I wouldn't say all, but a lot of
7 different situations and a lot of different views.

8 MR. ARRASCADA: And are your life experiences something that you
9 would be able to reflect upon and apply to this jury if you're -- you're chosen to
10 participate?

11 PROSPECTIVE JUROR NO. 020: Not necessarily. I mean, I may reflect
12 on some of the things that have happened in my life, but I think that I would have
13 to see all the details of each individual situation to come up with the conclusion.

14 MR. ARRASCADA: Facts and evidence?

15 PROSPECTIVE JUROR NO. 020: Probably, yeah. That would be more
16 useful than my personal experiences.

17 MR. ARRASCADA: Okay. I'd like to talk to you about gangs. Is that
18 okay?

19 PROSPECTIVE JUROR NO. 020: Sure.

20 MR. ARRASCADA: Okay. What -- what comes to your mind when --
21 when the word gangs or gang is said to you?

22 PROSPECTIVE JUROR NO. 020: What comes up? What comes to
23 mind about gangs?

24 MR. ARRASCADA: Yes.

25 PROSPECTIVE JUROR NO. 020: Like organized crime? I mean,

1 honestly, I don't -- I mean, they're just -- like a gang, like kid -- like a bunch of
2 kids hanging out and being mischievous gang?

3 MR. ARRASCADA: Street gangs.

4 PROSPECTIVE JUROR NO. 020: Yeah, I don't know a lot about them.
5 I -- I think that you determine where you want to be in life, and I just -- I don't -- I
6 would not choose to be in that type of life or even be associated with people who
7 choose to do those things.

8 MR. ARRASCADA: Do any names of -- and I mean, talk -- talking
9 generically about gangs, do any names of gangs pop into your mind as we -- we
10 talk about gangs?

11 PROSPECTIVE JUROR NO. 020: Well, it's funny because gangs didn't
12 start in my school or in my environment until after I was out of that. So I've never
13 had a lot of time with gangs. All I can go with, with TV like the Crips and the
14 Bloods. I don't even know if they exist anymore, you know. I don't know. They
15 don't -- they don't directly affect my life, so I don't have much of an opinion about
16 them. I don't -- I don't think highly of what I do know of gangs.

17 MR. ARRASCADA: Can the whole concept of these Crips and Bloods, is
18 that -- would that be a scary or fearful concept to you?

19 PROSPECTIVE JUROR NO. 020: It could be, but it hasn't -- I don't have
20 anything to go on other than what you hear about like gang shootings. And
21 honestly, just the whole -- the whole concept of a gang is just so negative and it's
22 so -- I would think it's so negative. And I don't think it -- it's just I don't know why
23 people would put themselves into those situations and not try to better
24 themselves in the world. You know?

25 MR. ARRASCADA: Okay.

1 PROSPECTIVE JUROR NO. 020: I -- I -- my opinion is -- is the way it is
2 because the way I grew up, you know, I ended up a young mother and I put
3 myself through school and I got out of the environment and I disassociated from
4 that life. And I think it isn't that -- it wasn't that hard to do that. And I think people
5 who want to stay in that gang environment with violence, drugs, guns, and things
6 like that, I think it -- I think basically it's a copout. So I guess I do have kind of an
7 opinion about gangs.

8 MR. ARRASCADA: It sounds like you do.

9 PROSPECTIVE JUROR NO. 020: I mean, honestly. I mean, I think that
10 it doesn't take much to take responsibility for your actions and, you know, move
11 on, move up.

12 MR. ARRASCADA: Have you had a time in your life when you've heard
13 someone talk about breaking the law and they don't really mean and you know it
14 because how it's -- have you ever had that experience?

15 PROSPECTIVE JUROR NO. 020: Yeah, of course. Of course.

16 MR. ARRASCADA: And how do you know that they don't mean it?

17 PROSPECTIVE JUROR NO. 020: Because you -- I mean, it --
18 depending on who says it. It depends on how well you know a person. I mean,
19 if -- if it's your best friend and you've known them for years and, you know, you
20 guys kind of think alike because you hang around people you think alike, you
21 know. That -- that's what attracts you to people. And I think that you just know.
22 You just know they're joking. I'm not really going to go rob that bank. I'm
23 really - you just know in jest.

24 MR. ARRASCADA: And they have to say that, really I'm not going to to
25 you?

1 PROSPECTIVE JUROR NO. 020: No, but if they're paranoid enough
2 they will.

3 MR. ARRASCADA: Okay. And what if the person is a stranger to you
4 that you don't know? How would you know whether they're being serious or they
5 don't really intend it?

6 PROSPECTIVE JUROR NO. 020: Well, then you don't know. You have
7 to go on your instinct.

8 MR. ARRASCADA: What goes into your instincts? Expand on that if you
9 could.

10 PROSPECTIVE JUROR NO. 020: I don't understand.

11 MR. ARRASCADA: Well, what are your instincts?

12 PROSPECTIVE JUROR NO. 020: If I was sitting next to someone and
13 they said I'm going to hurt somebody else or I'm going to rob something, I would
14 not feel comfortable with that if I didn't know the person.

15 MR. ARRASCADA: Okay.

16 PROSPECTIVE JUROR NO. 020: Because that may as well be their
17 intentions.

18 MR. ARRASCADA: How could you tell if they were not serious?

19 PROSPECTIVE JUROR NO. 020: You wouldn't --

20 MR. DIGIACOMO: Judge --

21 PROSPECTIVE JUROR NO. 020: -- be able to tell.

22 MR. DIGIACOMO: -- at this point I have to impose an objection.

23 THE COURT: I'll see counsel up here.

24 (Conference at the bench)

25 THE COURT: Ma'am, do you remember the last question?

1 PROSPECTIVE JUROR NO. 020: Do I remember the last question?

2 THE COURT: Uh-huh.

3 PROSPECTIVE JUROR NO. 020: Yeah. If somebody was sitting next
4 to me.

5 MR. ARRASCADA: That's right.

6 PROSPECTIVE JUROR NO. 020: If a stranger was sitting next to me,
7 yeah, I wouldn't be able to determine if they were -- if they would go through or
8 they were just saying in jest unless I had some type of knowledge of them.

9 MR. ARRASCADA: Would you require them to explain themselves?

10 PROSPECTIVE JUROR NO. 020: If they were talking directly to me or if
11 I heard -- overheard them? Because if I overheard them, I wasn't involved in
12 their conversation and I wouldn't probably get involved in that conversation. I
13 wouldn't want to be a part of that.

14 MR. ARRASCADA: Okay. And if it was said to you?

15 PROSPECTIVE JUROR NO. 020: I may ask them to -- I may ask if
16 they're serious. And how I would react, I don't know.

17 MR. ARRASCADA: If they don't respond to you at all, they don't say
18 anything, could you reach the determination by, say, their actions and their
19 movements, things of that nature, your senses as you see?

20 PROSPECTIVE JUROR NO. 020: If they don't respond to me asking
21 them if they're serious?

22 MR. ARRASCADA: Yes.

23 PROSPECTIVE JUROR NO. 020: I think that at that point it might be a
24 very uncomfortable situation.

25 MR. ARRASCADA: I appreciate it.

1 PROSPECTIVE JUROR NO. 020: I may just scoot over a seat or two at
2 that point.

3 MR. ARRASCADA: I appreciate that. And the question is when you
4 talked about with the prosecutor and the burdens of proof and they asked you
5 would you require to hear from my client, Louis Hidalgo III, to explain himself or
6 tell his side of the story, if you were picked on this jury, would that be a
7 requirement you would need to reach a verdict?

8 PROSPECTIVE JUROR NO. 020: No, because you're representing him
9 and I would assume that he's given you all that information and you should be
10 able to present it for him.

11 MR. ARRASCADA: Okay. And if he does not testify, would you still be
12 able to find him not guilty or would that cause some lingering problems for you?

13 PROSPECTIVE JUROR NO. 020: No, it wouldn't have any effects at all
14 of -- of my opinion if he was guilty or not. Like I said, he's given you all that
15 information. He's hired you and given you that information and you're
16 representing him. So I would hope that you represent -- represent him well
17 enough to determine how the outcome comes.

18 MR. ARRASCADA: Court's indulgence.

19 Excuse me just one moment.

20 Those are all the questions I have. Thank you very much.

21 THE COURT: Ms. Ling, thank you. In a moment I'm going to have you
22 follow Officer Wooten back out into the hallway and to have a seat out there with
23 the other prospective jurors. They may ask you what did we ask you and what
24 did we talk about. Please don't discuss anything that's transpired, any of our
25 questions or your answers with the other prospective jurors.

1 PROSPECTIVE JUROR NO. 020: Absolutely.

2 THE COURT: All right. Thank you. You can just put the microphone
3 down in chair one or chair two, and just follow Jeff, Officer Wooten there through
4 the double doors.

5 (Prospective juror No. 20 exits courtroom)

6 THE COURT: All right. Everybody pass for cause?

7 MR. DIGIACOMO: Yes, everybody's passed, Judge.

8 MR. GENTILE: Yes.

9 THE COURT: All right. Defendants' ninth.

10 MR. GENTILE: Can we have -- first of all, I need a bathroom break,
11 candidly. Okay? But can we have ten minutes? This is it. This is the last one.

12 THE COURT: Right.

13 MR. GENTILE: And then from this point forward -- and we kind of need
14 to -- candidly, we're stuck on a fence between a couple of people here.

15 THE COURT: Okay.

16 MR. GENTILE: Okay. Thank you. Can we go into the anteroom?

17 THE COURT: To talk privately? Yes.

18 MR. GENTILE: Oh, I guess Louis can.

19 THE COURT: No, he can't. I mean, here's the deal. I'm going to leave.

20 MR. GENTILE: if you'll leave, that's fine.

21 THE COURT: I'm going to leave, they're going to leave. They COs have
22 to stay in here. Janie will leave.

23 THE RECORDER: I'll leave.

24 (Recess taken at 3:14 p.m.)

25 THE COURT: Do you have a decision?

1 MS. ARMENI: Yes, Your Honor, we do.

2 THE COURT: All right. Back on the record.

3 MS. ARMENI: Your Honor, the -- the defense is going to excuse Ms.
4 Ling, badge No. 20.

5 THE COURT: All right. Jeff, would you go get Ms. Ling please.

6 THE MARSHAL: Ling?

7 THE COURT: Yeah, this last gal.

8 THE MARSHAL: Okay.

9 MR. DIGIACOMO: Are you guys kidding me? I'm just -- I'm scared to
10 death that -- that -- well, I can't believe you guys really did that. Okay.

11 (Off-record colloquy)

12 THE MARSHAL: Juror is coming in.

13 THE COURT: Ms. Ling, I want to thank you very much for being here
14 and your willingness to serve as a juror. You are, however, excused at this time.

15 PROSPECTIVE JUROR NO. 020: Nice.

16 THE COURT: Thank you very much, and Jeff will direct you from the
17 courtroom.

18 (Prospective juror No. 20 exits courtroom)

19 THE COURT: And then, Jeff, if you would bring in Larry Dodson please.

20 THE MARSHAL: I didn't hear that, Judge.

21 THE COURT: Larry Dodson.

22 THE MARSHAL: Dodson?

23 THE COURT: Dodson.

24 MR. DIGIACOMO: We're still on nine; right? Position nine?

25 THE COURT: Right. Yeah, this --

1 MR. DIGIACOMO: We're still on the last juror?

2 THE COURT: -- would fill --

3 MR. GENTILE: Yeah, but this is it.

4 THE COURT: -- the last juror. Right.

5 MR. DIGIACOMO: Okay.

6 THE COURT: Mr. Dodson, come on down and have a seat in the jury
7 box, please, sir. Anywhere that feels comfortable.

8 Good afternoon. What do you do for a living, sir?

9 PROSPECTIVE JUROR NO. 021: I'm a bellman at Planet Hollywood.

10 THE COURT: Okay. And are you married?

11 PROSPECTIVE JUROR NO. 021: Yes.

12 THE COURT: What does your wife do?

13 PROSPECTIVE JUROR NO. 021: Human resource manager at Las
14 Vegas Hilton.

15 THE COURT: Okay. And do you have any children?

16 PROSPECTIVE JUROR NO. 021: Yes, all grown.

17 THE COURT: How many children do you have?

18 PROSPECTIVE JUROR NO. 021: Three.

19 THE COURT: Okay. And you heard a little bit about what the case is
20 about. Do you think you have read, heard, or seen anything about this case prior
21 to coming to court today?

22 PROSPECTIVE JUROR NO. 021: Yes, I remember it being, you know,
23 on the television about two, three years ago.

24 THE COURT: Okay. And is there a particular news channel that you
25 watch?

1 PROSPECTIVE JUROR NO. 021: No, not particularly.

2 THE COURT: So you're not like loyal to channel three or channel --

3 PROSPECTIVE JUROR NO. 021: No.

4 THE COURT: -- eight or anything --

5 PROSPECTIVE JUROR NO. 021: No, I'm not.

6 THE COURT: -- like that? Do you remember what channel you saw it
7 on?

8 PROSPECTIVE JUROR NO. 021: 13.

9 THE COURT: Okay. And how is it that -- or what do you remember
10 seeing about this case on the news?

11 PROSPECTIVE JUROR NO. 021: It's been awhile, but what little I can
12 recall that it just said that a young man that, the deceased, was taken out
13 somewhere and murdered. That's all I remember.

14 THE COURT: Okay. Now, sometimes the media reports things
15 incompletely and inaccurately. Do you think that's fair?

16 PROSPECTIVE JUROR NO. 021: That's true.

17 THE COURT: Okay. So if you're selected as a juror, can you put aside
18 anything you may remember hearing or seeing about this case and base your
19 verdict solely on the evidence that's presented during the trial? And by that I
20 mean the testimony from the witnesses and the exhibits that are admitted.

21 PROSPECTIVE JUROR NO. 021: Yes.

22 THE COURT: Okay. Have you ever been a juror before?

23 PROSPECTIVE JUROR NO. 021: Years ago in another state.

24 THE COURT: Okay. How many years ago? Awhile?

25 PROSPECTIVE JUROR NO. 021: 25, 30.

1 THE COURT: Okay. What state was that?

2 PROSPECTIVE JUROR NO. 021: Georgia.

3 THE COURT: All right. And was that a criminal case or a civil case?

4 PROSPECTIVE JUROR NO. 021: Civil.

5 THE COURT: All right. Don't tell us what the verdict was, but did the
6 jury reach a verdict?

7 PROSPECTIVE JUROR NO. 021: Yes.

8 THE COURT: Were you the foreperson of that jury?

9 PROSPECTIVE JUROR NO. 021: No.

10 THE COURT: Okay. Now, as a bellman -- how long have you worked as
11 a bellman at Planet Hollywood?

12 PROSPECTIVE JUROR NO. 021: Since 2000.

13 THE COURT: Okay. What did you do before that?

14 PROSPECTIVE JUROR NO. 021: Bus driver.

15 THE COURT: Okay. For the CAT bus or tourist bus?

16 PROSPECTIVE JUROR NO. 021: Tour busses.

17 THE COURT: Tour busses. Okay. Here in town?

18 PROSPECTIVE JUROR NO. 021: Yes, locally.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 021: I mean, over the road and locally.

21 THE COURT: Okay. Now, as a bellman, do you ever interact with cab
22 drivers in terms of -- I mean, I --

23 PROSPECTIVE JUROR NO. 021: Yes.

24 THE COURT: I guess -- okay. And do you ever have occasion to talk to
25 guests of the Planet Hollywood? Do they ever ask you about strip clubs or for

1 recommendations for strip clubs or anything like that?

2 PROSPECTIVE JUROR NO. 021: All the time. All the time.

3 THE COURT: All right. And do you have any relationship or have you
4 ever with any strip clubs where they try to get you to recommend them or
5 anything --

6 PROSPECTIVE JUROR NO. 021: Yes.

7 THE COURT: -- like that? Okay. Tell me about that a little bit.

8 PROSPECTIVE JUROR NO. 021: Well, they have these offers that they,
9 you know, if you get people to come to their house, then they give you a
10 kickback. And, you know, we load them on taxis and what have you when
11 people want to go.

12 THE COURT: Okay. And so -- do you, as a bellman, do you sometimes
13 get some -- a little bit of compensation on the side for maybe directing customers
14 to a particular location?

15 PROSPECTIVE JUROR NO. 021: Yes, you do.

16 THE COURT: And what locations are popular there at the Planet
17 Hollywood to send customers to?

18 PROSPECTIVE JUROR NO. 021: Right now Sapphire seems to be the
19 hotspot.

20 THE COURT: Okay. Have you ever had any interaction with the
21 Palomino Club to send business there?

22 PROSPECTIVE JUROR NO. 021: No.

23 THE COURT: Have you yourself ever been to the Palomino Club?

24 PROSPECTIVE JUROR NO. 021: In 1988.

25 THE COURT: Okay. Just one time or --

1 PROSPECTIVE JUROR NO. 021: One time.

2 THE COURT: All right. And what did you think of it?

3 PROSPECTIVE JUROR NO. 021: It was different.

4 THE COURT: Okay. Different how?

5 PROSPECTIVE JUROR NO. 021: Totally nude.

6 THE COURT: Okay. Do you go to other types of clubs that are just
7 topless or partially nude?

8 PROSPECTIVE JUROR NO. 021: A long time ago.

9 THE COURT: Okay. So that's not -- nothing you're involved with now?

10 PROSPECTIVE JUROR NO. 021: No.

11 THE COURT: Okay. What is your opinion or what are your feelings
12 about strip clubs?

13 PROSPECTIVE JUROR NO. 021: Each to his own.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 021: If you like them, then that's your
16 business.

17 THE COURT: Okay. Have you or anyone close to you ever been the
18 victim of a crime?

19 PROSPECTIVE JUROR NO. 021: Yes.

20 THE COURT: Tell me about that.

21 PROSPECTIVE JUROR NO. 021: I've had a -- my -- one of my brothers
22 was killed defending a woman in a domestic violence. And the person that killed
23 him waited for him, you know, outside and shot him in the back.

24 THE COURT: Okay. I -- I'm sorry. How long ago did that happen?

25 PROSPECTIVE JUROR NO. 021: 1976.

1 THE COURT: And where did that happen?

2 PROSPECTIVE JUROR NO. 021: Nashville, Tennessee.

3 THE COURT: Okay. Where were you living at the time?

4 PROSPECTIVE JUROR NO. 021: Rome, Georgia.

5 THE COURT: All right. And was anyone ever arrested in connection
6 with that shooting?

7 PROSPECTIVE JUROR NO. 021: Yes.

8 THE COURT: Did you follow that case through the court system at all?

9 PROSPECTIVE JUROR NO. 021: Yes.

10 THE COURT: Okay. And was the person convicted?

11 PROSPECTIVE JUROR NO. 021: Yes.

12 THE COURT: Do you have any opinion about how the case involving
13 your brother was handled by the police or by the court system or just kind of in
14 general?

15 PROSPECTIVE JUROR NO. 021: They did. You know, they had
16 witnesses, so they did, they, you know, they caught him and put him -- put him
17 away.

18 THE COURT: Okay. Let me ask you the flip of that, sort of the
19 converse. Have you or anyone close to you ever been arrested or charged with
20 a crime?

21 PROSPECTIVE JUROR NO. 021: No.

22 THE COURT: I think that's all the questions I have.

23 Yes, sir?

24 PROSPECTIVE JUROR NO. 021: I just have -- earlier when we were all
25 together in here and you asked something about the district attorneys?

1 THE COURT: Uh-huh.

2 PROSPECTIVE JUROR NO. 021: Is that including that entire DA office,
3 or just the gentlemen sitting here?

4 THE COURT: Well, do you know somebody at the DA's office?

5 PROSPECTIVE JUROR NO. 021: William Kephart.

6 THE COURT: You know Bill Kep -- William Kephart. How do you know
7 Bill Kephart?

8 PROSPECTIVE JUROR NO. 021: He's a friend. His childhood friend
9 and I work together at Planet Hollywood and we socialize.

10 THE COURT: Okay. So you've actually socialized with Mr. Kephart?

11 PROSPECTIVE JUROR NO. 021: [inaudible].

12 THE COURT: Now, is there anything about your friendship with Mr.
13 Kephart that would impact your ability to be fair to -- and impartial to both sides in
14 this case?

15 PROSPECTIVE JUROR NO. 021: No.

16 THE COURT: Okay. And there's going to be an admonition -- well, does
17 Bill Kephart ever talk to you about his job at the DA's office, or is it more you just
18 know he works there?

19 PROSPECTIVE JUROR NO. 021: I know he works there.

20 THE COURT: Okay. Does he ever talk to you about individual cases?

21 PROSPECTIVE JUROR NO. 021: No.

22 THE COURT: Nothing like that. All right. All right. Thank you. I'm
23 going to let the State follow up. Thank you very much.

24 MR. PESCI: Thank you, Judge.

25 When's the last time you remember going out with Bill?

1 PROSPECTIVE JUROR NO. 021: Not going out. We had a barbeque at
2 his friend's house back in the summer, say July, when he was getting to run for
3 the office of judge.

4 MR. PESCI: Okay. Since then have you interacted very much?

5 PROSPECTIVE JUROR NO. 021: I haven't seen him since --

6 MR. PESCI: All right.

7 PROSPECTIVE JUROR NO. 021: -- the election.

8 MR. PESCI: Would it be easy for you, then, to not talk to him for the few
9 weeks if you're selected?

10 PROSPECTIVE JUROR NO. 021: Right.

11 MR. PESCI: All right. This friendship or relationship with Mr. Kephart,
12 there wouldn't be anything that -- that you would just give us the benefit because
13 we work with him?

14 PROSPECTIVE JUROR NO. 021: No.

15 MR. PESCI: All right. Could you hold us to our standard of proof beyond
16 a reasonable doubt?

17 PROSPECTIVE JUROR NO. 021: Exactly.

18 MR. PESCI: There'll be some talk about gangs in this case. There's no
19 allegation that these defendants are tied to any gang, but there'll be reference to
20 other individuals that might be referenced in the case about being involved in
21 gangs. What is your general thoughts about gangs?

22 PROSPECTIVE JUROR NO. 021: I'll be honest. I don't like gangs.

23 MR. PESCI: Okay. I don't think anybody does.

24 PROSPECTIVE JUROR NO. 021: I mean, you know.

25 MR. PESCI: But I guess the follow up question is your feelings about

1 gangs and not liking them, would that make you automatically find guilt or not
2 guilty because of those feelings?

3 PROSPECTIVE JUROR NO. 021: No.

4 MR. PESCI: Could you restrict your decision based on the facts in this
5 case?

6 PROSPECTIVE JUROR NO. 021: Yes, I could.

7 MR. PESCI: You'll also be hearing something, maybe, about drugs.
8 What are your thoughts generally about drugs?

9 PROSPECTIVE JUROR NO. 021: I had a relative, close relative, that
10 was hooked on crack, so --

11 MR. PESCI: You've seen that kind of up close?

12 PROSPECTIVE JUROR NO. 021: Yes.

13 MR. PESCI: What -- what affects it can have?

14 PROSPECTIVE JUROR NO. 021: Yes.

15 MR. PESCI: All right. Do you think you can be fair to both sides?

16 PROSPECTIVE JUROR NO. 021: Yes.

17 MR. PESCI: All right.

18 We pass for cause.

19 THE COURT: All right. Thank you.

20 Who -- Mr. Adams, would you like to go next?

21 MR. ADAMS: I would. Thank you, Your Honor.

22 Hello, Mr. Dodson.

23 PROSPECTIVE JUROR NO. 021: Hello. How are you?

24 MR. ADAMS: I'm fine. How are you?

25 PROSPECTIVE JUROR NO. 021: Good. Thank you.

1 MR. ADAMS: I didn't hear the last part and I was trying to listen real
2 carefully. Tell me about the situation with the crack again.

3 PROSPECTIVE JUROR NO. 021: Just a relative in my family got
4 hooked on the drug when it was, you know, widespread.

5 MR. ADAMS: 10 -- 10 years ago or so, 10 or 15 years ago?

6 PROSPECTIVE JUROR NO. 021: Yes, it was back in the '80s.

7 MR. ADAMS: And what happened with that relative?

8 PROSPECTIVE JUROR NO. 021: They got care. I mean, they went to a
9 rehab center and they're doing fine now.

10 MR. ADAMS: Were you involved with that person? I mean, closely --

11 PROSPECTIVE JUROR NO. 021: Yeah.

12 MR. ADAMS: -- or was this a distant relative?

13 PROSPECTIVE JUROR NO. 021: No, it was a close relative.

14 MR. ADAMS: Were you trying to help them get into rehab and get
15 straightened out?

16 PROSPECTIVE JUROR NO. 021: Yes, we did that.

17 MR. ADAMS: Did this person end up changing?

18 PROSPECTIVE JUROR NO. 021: Before or after?

19 MR. ADAMS: Changing from who they were before, the person you
20 knew --

21 PROSPECTIVE JUROR NO. 021: Oh, yes.

22 MR. ADAMS: -- into who they were when they were hooked on drugs?

23 PROSPECTIVE JUROR NO. 021: Right. They changed.

24 MR. ADAMS: And how'd they -- how'd they change?

25 PROSPECTIVE JUROR NO. 021: From being a kind of a bubbly, good-

1 natured person to a withdrawn, sneaky --

2 MR. ADAMS: Deceitful.

3 PROSPECTIVE JUROR NO. 021: -- stealing --

4 MR. ADAMS: Yeah.

5 PROSPECTIVE JUROR NO. 021: -- stealing, that type of thing, and --

6 MR. ADAMS: Steal from you?

7 PROSPECTIVE JUROR NO. 021: Well, not from me, but from --

8 MR. ADAMS: People close?

9 PROSPECTIVE JUROR NO. 021: -- people close.

10 MR. ADAMS: Family?

11 PROSPECTIVE JUROR NO. 021: Family. And, you know, lost weight. I

12 mean, like really lost weight. From say 140, 150 pound woman to about 100,

13 well, less than 100 pounds at one time.

14 MR. ADAMS: I thank you for sharing that. Let me ask you this. You had
15 mentioned to the Judge that you had a brother who was killed in Nashville and
16 you were in -- in Rome.

17 PROSPECTIVE JUROR NO. 021: Right.

18 MR. ADAMS: Were you at Berry or Shorter at the time?

19 PROSPECTIVE JUROR NO. 021: No, I'm -- actually I'm native of Rome,
20 Georgia.

21 MR. ADAMS: Okay. When did you leave?

22 PROSPECTIVE JUROR NO. 021: 1983.

23 MR. ADAMS: Which high school did you go to?

24 PROSPECTIVE JUROR NO. 021: Pepperell High School, Lindale,
25 Georgia.

1 MR. ADAMS: What year did you get out?

2 PROSPECTIVE JUROR NO. 021: 1968.

3 MR. ADAMS: You indicated that you went to the Palomino in 1988. How
4 do you remember the year?

5 PROSPECTIVE JUROR NO. 021: Well, I --

6 MR. ADAMS: Or what is significant about that?

7 PROSPECTIVE JUROR NO. 021: I moved here in 1986. I started work
8 at a company called Ray and Ross Transport in '87. And it was down the street
9 as Ray and Ross was on Owens and the Palomino was on the Boulevard across
10 from the -- the -- the casino. And after work one day the guys said let's go to
11 Palomino Club, and I said let's go. And that was that only one time.

12 MR. ADAMS: And you said you'd been to some other clubs since then,
13 but that now you're not involved with them?

14 PROSPECTIVE JUROR NO. 021: Right.

15 MR. ADAMS: Why is -- why is that?

16 PROSPECTIVE JUROR NO. 021: Older and wiser, and my wife doesn't
17 like them.

18 MR. ADAMS: I thought we might get --

19 THE COURT: The truth --

20 MR. ADAMS: -- to the real --

21 THE COURT: -- comes out.

22 MR. ADAMS: -- reason. All right. Fair enough. Did you help Mr.
23 Kephart at all when he was running for office?

24 PROSPECTIVE JUROR NO. 021: I put up some signs.

25 MR. ADAMS: Okay. And was that based on any beliefs in his

1 philosophy, or is that just based -- or friendship or what?

2 PROSPECTIVE JUROR NO. 021: Just on his friendship, and I like his --
3 I like, you know, his thoughts, some of the things, his political ideas.

4 MR. ADAMS: What political ideas did you like?

5 PROSPECTIVE JUROR NO. 021: Well, not -- okay. You know, like in
6 some cases they say everything is black and white? Well, there are some grey
7 areas in some matters. Like you see a child that's bad, when he's in his early
8 years, you can actually change that child if you have him involved in something,
9 things like that. Not everyone needs to go to jail. There are other ways of putting
10 people back into society without saying, okay, you know, you're bad, you're
11 always going to be bad, that type of thing. So I just agree with him on that.

12 MR. ADAMS: Your prior jury service was in Rome? Was it --

13 PROSPECTIVE JUROR NO. 021: Yeah.

14 MR. ADAMS: -- in Rome 30 years ago?

15 PROSPECTIVE JUROR NO. 021: Yeah. Rome, Floyd County, civil
16 matter.

17 MR. ADAMS: All right. How was that -- and I'm not asking you --
18 apparently we don't want to ask for the verdict, so I'm not going to ask you for the
19 verdict, but what -- how was that processed, the deliberation?

20 PROSPECTIVE JUROR NO. 021: They had just like here. The plaintiff,
21 the defendant, the judge, lawyers, they presented both sides of the issues, and
22 the jury decided.

23 MR. ADAMS: Let me ask it this -- or let me ask it a step further. How did
24 you feel about the experience of deliberation? Did you feel like it worked or it --

25 PROSPECTIVE JUROR NO. 021: It worked.

1 MR. ADAMS: -- didn't work so well --

2 PROSPECTIVE JUROR NO. 021: It worked.

3 MR. ADAMS: -- or what?

4 PROSPECTIVE JUROR NO. 021: It worked. For the -- you know, for
5 the person that was involved, it worked for them.

6 MR. ADAMS: All right. Did it work for both people involved?

7 PROSPECTIVE JUROR NO. 021: No. Just --

8 MR. ADAMS: Just for the side that won.

9 PROSPECTIVE JUROR NO. 021: That's right.

10 MR. ADAMS: All right. Well, in this situation we've taken -- we've been
11 here all week selecting a jury and -- and we're getting close to being done and
12 we have people from all different walks of life. Are you the kind of person who
13 will let your life experience and your voice be heard back in deliberation?

14 PROSPECTIVE JUROR NO. 021: You know, whereas will I talk about
15 my past experience or --

16 MR. ADAMS: Not so much -- not so much that. The Judge will tell you
17 your common sense in your life experience is something you can rely on in
18 assessing the evidence and the credibility of witnesses. But are you -- I guess
19 what I'm trying to ask is are you somebody who makes up your own opinion after
20 listening to others, or are you more sort of go along with the group?

21 PROSPECTIVE JUROR NO. 021: No, I make up my own mind.

22 MR. ADAMS: And you're comfortable with and sharing where you're
23 coming from?

24 PROSPECTIVE JUROR NO. 021: I am.

25 MR. ADAMS: Well, I thank you very much.

1 PROSPECTIVE JUROR NO. 021: You're welcome.

2 THE COURT: All right. Thank you.

3 Is it going to be you, Mr. Gentile?

4 MR. GENTILE: It's me, Judge.

5 Mr. Dodson, how are you?

6 PROSPECTIVE JUROR NO. 021: How are you doing?

7 MR. GENTILE: Good. Just a couple questions because we all want to
8 go home, to tell you the truth. I need to hear from you that you don't have a
9 moral issue with strip clubs.

10 PROSPECTIVE JUROR NO. 021: I don't have a moral issue.

11 MR. GENTILE: You don't?

12 PROSPECTIVE JUROR NO. 021: No.

13 MR. GENTILE: Okay.

14 PROSPECTIVE JUROR NO. 021: Well, I mean, as I said, I used to go.

15 MR. GENTILE: Right. Okay. Well, I mean, I know you're getting paid a
16 little bit now and then from a strip club and that's a good sign, I guess, in terms of
17 moral issues because you wouldn't be taking the money if you had a moral issue,
18 but I needed to hear it from you anyway.

19 PROSPECTIVE JUROR NO. 021: Okay.

20 MR. GENTILE: Okay? How about the ownership of a strip club? I
21 mean, those are the guys that are paying you, but when you hear that somebody
22 owns a strip club, and you've been around Las Vegas a long time now so it's not
23 like you haven't run into people in the industry, what's your response to that? I
24 mean, do -- do you have a view, a generalization, a stereotype about somebody
25 who owns a strip club?

1 PROSPECTIVE JUROR NO. 021: No.

2 MR. GENTILE: No?

3 PROSPECTIVE JUROR NO. 021: I don't know anyone and never met
4 anyone that owns a strip club.

5 MR. GENTILE: All right. Would you treat them as a businessman?

6 PROSPECTIVE JUROR NO. 021: Well, just -- if you come to the hotel, if
7 you tell me your name, you're checking in or you're just going to gamble or
8 whatever, I'd treat you just like the thousand people I see every day.

9 MR. GENTILE: That's how you make a living.

10 PROSPECTIVE JUROR NO. 021: That's how I do it.

11 MR. GENTILE: Lawyers, did you ever hire a lawyer?

12 PROSPECTIVE JUROR NO. 021: Accident.

13 MR. GENTILE: 8-7-7-1-5-0-0?

14 PROSPECTIVE JUROR NO. 021: No, not that one. When my wife and I
15 was involved in an accident and we had an attorney because she had some
16 minor injuries.

17 MR. GENTILE: Can you set aside what -- that experience?

18 PROSPECTIVE JUROR NO. 021: Yes.

19 MR. GENTILE: Did she get well?

20 PROSPECTIVE JUROR NO. 021: Yes.

21 MR. GENTILE: All right. Good. You know, I really think that that's about
22 all that I need to know from you. Thank you very much.

23 PROSPECTIVE JUROR NO. 021: You're welcome.

24 THE COURT: All right, Mr. Dodson. Thank you very much. Please don't
25 discuss what we've discussed and what's transpired with the other prospective

1 jurors. And you can go out and have a seat in the hallway. Follow Officer
2 Wooten.

3 And Officer Wooten, would you bring in Mr. Rivera. Wait a couple --
4 a couple minutes.

5 (Prospective juror No. 21 exits courtroom)

6 THE COURT: All right. For the record, both sides pass for cause?

7 MR. DIGIACOMO: Yes, Judge.

8 MR. GENTILE: Yes, Judge.

9 THE COURT: All right. Bring in Mr. Rivera.

10 And this is to fill chair 15, which will become the third alternate.

11 THE MARSHAL: Rivera?

12 MR. DIGIACOMO: And now everybody has one perempt left.

13 THE COURT: Right. One perempt for just --

14 (Off-record colloquy)

15 THE COURT: Sir, come on down and just have a seat anywhere there in
16 the jury box that you feel comfortable. So you're from Oahu, you said.

17 PROSPECTIVE JUROR NO. 023: Yes.

18 THE COURT: And how long have you been here in Clark County?

19 PROSPECTIVE JUROR NO. 023: Five years.

20 THE COURT: Five years. All right. What do you do for a living?

21 PROSPECTIVE JUROR NO. 023: I work for an entity and make -- a low
22 voltage company here in Las Vegas.

23 THE COURT: You work for what?

24 PROSPECTIVE JUROR NO. 023: A low voltage company.

25 THE COURT: A low voltage company. And what do you do for them.

1 PROSPECTIVE JUROR NO. 023: CAD manager.
2 THE COURT: Okay. And are you married, sir?
3 PROSPECTIVE JUROR NO. 023: Yes, Your Honor.
4 THE COURT: What does your wife do?
5 PROSPECTIVE JUROR NO. 023: Claims adjuster.
6 THE COURT: She's a claims adjuster?
7 PROSPECTIVE JUROR NO. 023: Yes.
8 THE COURT: For an insurance company?
9 PROSPECTIVE JUROR NO. 023: Yes.
10 THE COURT: Which one?
11 PROSPECTIVE JUROR NO. 023: ESIS.
12 THE COURT: Okay.
13 PROSPECTIVE JUROR NO. 023: Workman's comp.
14 THE COURT: I'm sorry?
15 PROSPECTIVE JUROR NO. 023: ESIS. ESIS.
16 THE COURT: Okay. And do you have any children?
17 PROSPECTIVE JUROR NO. 023: Yes, Your Honor.
18 THE COURT: How many and the ages?
19 PROSPECTIVE JUROR NO. 023: Three. A ten year old, a six year old,
20 and an eight month old baby.
21 THE COURT: Okay. Have you ever been a juror before?
22 PROSPECTIVE JUROR NO. 023: No.
23 THE COURT: No. Have you or anyone close to you ever been the
24 victim of a serious crime?
25 PROSPECTIVE JUROR NO. 023: No.

1 THE COURT: What about arrested or charged with a crime? You or
2 anyone close to you ever been arrested or charged with a criminal offense?

3 PROSPECTIVE JUROR NO. 023: Not that I know of.

4 THE COURT: Not that you know of. Okay. What are your feelings
5 about strip clubs?

6 PROSPECTIVE JUROR NO. 023: You mean me?

7 THE COURT: Do you ever go to them?

8 PROSPECTIVE JUROR NO. 023: Yes, I do.

9 THE COURT: Okay. Here in town have you been to some of the strip
10 clubs?

11 PROSPECTIVE JUROR NO. 023: Back in Hawaii. I've been a good boy
12 here, so --

13 THE COURT: Oh, okay. Were you married back in Hawaii.

14 PROSPECTIVE JUROR NO. 023: Yes. Yes, Your Honor.

15 THE COURT: Okay. Since you've been here in town have you been to
16 any strip clubs?

17 PROSPECTIVE JUROR NO. 023: Just a couple.

18 THE COURT: My bailiff is from Hawaii. He claims there were no strip
19 clubs.

20 MR. GENTILE: What?

21 THE MARSHAL: No, no, Your Honor. On Oahu, where he's from, there
22 is.

23 THE COURT: All right. Are you familiar with the Palomino Club?

24 PROSPECTIVE JUROR NO. 023: Yes, Your Honor.

25 THE COURT: Okay. How is it that you're familiar with it?

1 PROSPECTIVE JUROR NO. 023: When I used to work valet.
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 023: And we'd send people there.
4 THE COURT: All right. Where'd you work valet?
5 PROSPECTIVE JUROR NO. 023: At the Aladdin.
6 THE COURT: Oh.
7 PROSPECTIVE JUROR NO. 023: It used to be --
8 THE COURT: At the Aladdin. Now it's --
9 PROSPECTIVE JUROR NO. 023: Planet Hollywood.
10 THE COURT: -- Planet Hollywood. Okay. And how long ago did you
11 work there?
12 PROSPECTIVE JUROR NO. 023: '04 to '05.
13 THE COURT: Okay. Now, you said you, meaning the valet parkers
14 would send customers to --
15 PROSPECTIVE JUROR NO. 023: Yeah, if they ask where to --
16 THE COURT: Okay. Tell me -- tell me what that set up was whereby
17 you would agree to send people to the Palomino Club.
18 PROSPECTIVE JUROR NO. 023: I mean, I guess they had employees
19 passing out cards and saying this is a -- take some of your guests, I mean, just
20 give them to the -- give the cards to -- to your guests.
21 THE COURT: Okay. Did you ever get any money or any -- anything of
22 value for doing that?
23 PROSPECTIVE JUROR NO. 023: No, Your Honor.
24 THE COURT: You never did?
25 PROSPECTIVE JUROR NO. 023: No.

1 THE COURT: What about other clubs? Did any other clubs ask you to
2 pass out things or send customers their way?

3 PROSPECTIVE JUROR NO. 023: They did. They did kick back some
4 money. Not -- not the Palomino, but they did.

5 THE COURT: Other clubs gave money, but not the Palomino.

6 PROSPECTIVE JUROR NO. 023: Yeah.

7 THE COURT: Okay. What were some of the other clubs that gave
8 money to valet parkers at the Aladdin?

9 PROSPECTIVE JUROR NO. 023: Spearmint Rhino, just -- all I know
10 Spearmint Rhino was one of the top ones.

11 THE COURT: Okay. Did you ever send customers to the Spearmint
12 Rhino?

13 PROSPECTIVE JUROR NO. 023: Send them meaning refer?

14 THE COURT: Right, refer them.

15 PROSPECTIVE JUROR NO. 023: Yeah.

16 THE COURT: Okay. All right. I don't have any other questions, but the
17 State, Mr. DiGiacomo may have some questions for you.

18 MR. DIGIACOMO: You said you worked the -- the valet at the Aladdin
19 '04/'05?

20 PROSPECTIVE JUROR NO. 023: Yes, sir.

21 MR. DIGIACOMO: And during that time period you had some like VIP
22 passes or something like that --

23 PROSPECTIVE JUROR NO. 023: Yes.

24 MR. DIGIACOMO: -- for the Palomino? You passed those --

25 PROSPECTIVE JUROR NO. 023: Yes.

1 MR. DIGIACOMO: -- out to people who wanted them.

2 PROSPECTIVE JUROR NO. 023: Yes.

3 MR. DIGIACOMO: Okay. And the Palomino wasn't one of those clubs
4 that kicked back to you; right?

5 PROSPECTIVE JUROR NO. 023: No.

6 MR. DIGIACOMO: There were other clubs that --

7 PROSPECTIVE JUROR NO. 023: Yeah.

8 MR. DIGIACOMO: -- did though?

9 PROSPECTIVE JUROR NO. 023: Yeah.

10 MR. DIGIACOMO: How -- if you had ten -- let's just -- hypothetically, you
11 ten customers come to you. How many of them would you send to the Palomino
12 versus some other strip joint?

13 PROSPECTIVE JUROR NO. 023: Can you -- can you ask the question
14 again?

15 MR. DIGIACOMO: What I'm --

16 PROSPECTIVE JUROR NO. 023: Sorry.

17 MR. DIGIACOMO: -- basically trying to figure out is were you feeding
18 people to the Palomino --

19 PROSPECTIVE JUROR NO. 023: Not --

20 MR. DIGIACOMO: -- or were you feeding them to --

21 PROSPECTIVE JUROR NO. 023: Not a lot.

22 MR. DIGIACOMO: -- the other places or --

23 PROSPECTIVE JUROR NO. 023: I think they were still new I think. I
24 think they were still new. I mean, they were passing out cards. I remember the
25 logo. I don't know if it's the Palomino Restaurant or the -- the strip club.

1 MR. DIGIACOMO: Okay. By the way, the Aladdin is now the Planet
2 Hollywood --

3 PROSPECTIVE JUROR NO. 023: Yes.

4 MR. DIGIACOMO: -- right?

5 PROSPECTIVE JUROR NO. 023: Yeah.

6 MR. DIGIACOMO: Okay. Do you know Larry Dodson that was in here
7 right before you?

8 PROSPECTIVE JUROR NO. 023: Yeah, because he used to be a
9 bellman. He was like, I know you.

10 MR. DIGIACOMO: Yeah. He was --

11 PROSPECTIVE JUROR NO. 023: Yes.

12 MR. DIGIACOMO: -- a bellman there --

13 PROSPECTIVE JUROR NO. 023: Yes.

14 MR. DIGIACOMO: -- at that time period? Okay. The fact that you know
15 him, would that affect you at all sitting on a jury with him?

16 PROSPECTIVE JUROR NO. 023: No.

17 MR. DIGIACOMO: No. I mean, you can listen to your own opinion and
18 he could have his opinion and the fact that you guys used to work together
19 wouldn't matter?

20 PROSPECTIVE JUROR NO. 023: He was bellman, I was -- it was totally
21 separate -- separated, so it's not --

22 MR. DIGIACOMO: Okay.

23 PROSPECTIVE JUROR NO. 023: Yeah.

24 MR. DIGIACOMO: It was weird. Ten people in a box and two of them
25 know each other. You also said you grew up in Hawaii?

1 PROSPECTIVE JUROR NO. 023: Yes.

2 MR. DIGIACOMO: How long did you live in Hawaii?

3 PROSPECTIVE JUROR NO. 023: All my life. I moved -- I moved to
4 Phoenix in '88, moved back to Hawaii in '90, came here in '03.

5 MR. DIGIACOMO: And since you've been here in '03 you said you were
6 a valet. And anything else you've done?

7 PROSPECTIVE JUROR NO. 023: That was it.

8 MR. DIGIACOMO: Okay. And now, I'm sorry, I don't have it in front of
9 me, but what did you say you do now?

10 PROSPECTIVE JUROR NO. 023: A low voltage company, we do
11 construction documents. I'm a CAD operator and manager of my department.

12 MR. DIGIACOMO: Oh, okay. How many -- you're a manager too?

13 PROSPECTIVE JUROR NO. 023: Yeah. I'm the -- I'm the head guy in
14 the department.

15 MR. DIGIACOMO: You're the head guy in the department? How many
16 people do you got underneath you? How many people do you have underneath
17 you?

18 PROSPECTIVE JUROR NO. 023: I only got three.

19 MR. DIGIACOMO: Three people.

20 PROSPECTIVE JUROR NO. 023: It's a small company.

21 MR. DIGIACOMO: You every have disputes among those people that
22 you have to figure out and figure out what happened and make a decision?

23 PROSPECTIVE JUROR NO. 023: Yeah.

24 MR. DIGIACOMO: Okay.

25 PROSPECTIVE JUROR NO. 023: I've got [inaudible].

1 MR. DIGIACOMO: You've done that before?

2 PROSPECTIVE JUROR NO. 023: Yeah.

3 MR. DIGIACOMO: All right. During this case -- let me start this off with
4 there is no allegation that Mr. Hidalgo, Jr. or his son, Mr. Hidalgo III, either one of
5 them were involved in criminal gangs, but there may be some testimony related
6 to gangs. So we want to ask you if you have any familiarity whatsoever with
7 gangs. Either if you watch -- some people have talked about watching it on TV
8 versus going to school with them or working with them or something like that.
9 Have you have any contact?

10 PROSPECTIVE JUROR NO. 023: No, no affiliations.

11 MR. DIGIACOMO: Okay. Do you have -- what did you say? I'm sorry. I
12 missed your answer there. I was talking over you.

13 PROSPECTIVE JUROR NO. 023: No affiliations, nothing.

14 MR. DIGIACOMO: No -- no affiliations. Okay. Do you have a -- visceral
15 is probably a bad word for this. Do you have some sort of reaction to the word
16 gang?

17 PROSPECTIVE JUROR NO. 023: Now. Nowadays, yeah.

18 MR. DIGIACOMO: Nowadays?

19 PROSPECTIVE JUROR NO. 023: Yes.

20 MR. DIGIACOMO: Okay. And what is that reaction?

21 PROSPECTIVE JUROR NO. 023: Like a bunch of just one big family
22 watching out for each other, taking care of a territory, you can't mess with them.

23 MR. DIGIACOMO: Okay. Is it different from what it used to be?

24 PROSPECTIVE JUROR NO. 023: Yes, totally. Especially Vegas. It's
25 different here.

1 MR. DIGIACOMO: Yeah, particularly Vegas is different. What's different
2 about it?

3 PROSPECTIVE JUROR NO. 023: I think they can get away with it. I
4 don't know. That's my opinion.

5 MR. DIGIACOMO: Okay.

6 PROSPECTIVE JUROR NO. 023: Like the old school days.

7 MR. DIGIACOMO: All righty. I don't think I probably have anything else
8 to ask. Is there any reason that you think -- well, let me ask you this, do you
9 think you'd be a good juror?

10 PROSPECTIVE JUROR NO. 023: I don't think so.

11 MR. DIGIACOMO: Why not?

12 PROSPECTIVE JUROR NO. 023: I can't sit still that long, I get bored,
13 sometimes my attention span is not good. I got -- I guess I'm a hyper guy, so --

14 MR. DIGIACOMO: A hyper guy?

15 PROSPECTIVE JUROR NO. 023: -- it's not going to be fair for -- for the
16 defendants.

17 MR. DIGIACOMO: You're what?

18 PROSPECTIVE JUROR NO. 023: It's not going to be fair, I guess. It's
19 not going to be a fair trial if I can't even focus.

20 MR. DIGIACOMO: So what you're saying to us is that if you were in this
21 room and witnesses came in and --

22 PROSPECTIVE JUROR NO. 023: I might get distracted.

23 MR. DIGIACOMO: -- if you get distracted you wouldn't listen,
24 necessarily, to the evidence?

25 PROSPECTIVE JUROR NO. 023: Right.

1 MR. DIGIACOMO: And then --

2 PROSPECTIVE JUROR NO. 023: I can't pay attention. I'm not -- I got
3 hyper.

4 MR. DIGIACOMO: And then at the end of the day when you make it to
5 that back room you wouldn't be able to deliberate because you wouldn't know
6 what the heck was said --

7 PROSPECTIVE JUROR NO. 023: Especially --

8 MR. DIGIACOMO: -- in the courtroom.

9 PROSPECTIVE JUROR NO. 023: -- if I'm tired it's not going to be fair.

10 MR. DIGIACOMO: So ultimately you think that probably this isn't the
11 best situation for you?

12 PROSPECTIVE JUROR NO. 023: No.

13 MR. DIGIACOMO: If, for whatever reason, the Judge tells you you have
14 to do it, would you sit here and listen to the evidence or would you say, oh well,
15 they told me I had to do this, but I'm just going to sit here?

16 PROSPECTIVE JUROR NO. 023: I'll try my best.

17 MR. DIGIACOMO: Okay. Well, unfortunately, it's our last chance to talk
18 to you, so when you say you'll try your best, only you know you. Would it happen
19 or wouldn't it happen? Would you say I'll try and, you know, a couple days in
20 suddenly start getting jittery, not paying attention, and suddenly not hearing all
21 the evidence?

22 PROSPECTIVE JUROR NO. 023: Like I said, I'll just try my best.

23 MR. DIGIACOMO: Okay. Well, unfortunately, I -- I -- we kind of need to
24 know. You know you. Is the answer to that question, yes, I think I could do it if
25 the Judge orders me, or I don't think it's very likely I could do it even if the Judge

1 orders me?

2 PROSPECTIVE JUROR NO. 023: The second one, yes.

3 MR. DIGIACOMO: The second one?

4 PROSPECTIVE JUROR NO. 023: Yeah.

5 MR. DIGIACOMO: Thank you.

6 Judge, may we approach?

7 THE COURT: Yeah.

8 (Conference at the bench)

9 THE COURT: All right. Mr. Rivera, thank you for being here. I'm going
10 to excuse you, but I do need to tell you you're not to discuss what's transpired,
11 what's happened in the courtroom. If anybody, like the other jurors ask you what
12 we asked you or what you said, you're not to discuss it with them. You
13 understand me?

14 PROSPECTIVE JUROR NO. 023: Yes, Your Honor.

15 THE COURT: All right. Thank you. Jeff is going to escort you from the
16 courtroom.

17 And next up is Mr. Douglas Harmon.

18 (Prospective juror No. 23 exits courtroom)

19 THE MARSHAL: Your Honor, I missed the name.

20 THE COURT: Douglas Harmon, please.

21 I didn't want to get to -- can we skip Kimberly Lenahan?

22 MR. ADAMS: Yes.

23 MR. DIGIACOMO: Well, they would love to.

24 THE COURT: Oh, I would like to because it's like bad karma for her to
25 be on the jury.

1 MS. ARMENI: Why?

2 THE COURT: Those are my doctors.

3 MS. ARMENI: Oh.

4 THE COURT: Sir, come on in and have a seat there anywhere in the
5 jury box that you feel comfortable. What do you do for a living?

6 PROSPECTIVE JUROR NO. 025: I work in the order entry department
7 of [indecipherable] Incorporated.

8 THE COURT: You work in the what?

9 PROSPECTIVE JUROR NO. 025: Order entry department.

10 THE COURT: Order entry department.

11 PROSPECTIVE JUROR NO. 025: Yeah, I get the orders from all
12 engineers and then make sure they're all entered properly and get them off to
13 the -- to the vendors of [indecipherable].

14 THE COURT: Okay. And are you married?

15 PROSPECTIVE JUROR NO. 025: I am not married.

16 THE COURT: Do you have any children?

17 PROSPECTIVE JUROR NO. 025: No.

18 THE COURT: Now, you've heard some talk about what this case is
19 about this afternoon. Did any of that ring a bell? Do you think you may have
20 read, seen, or heard anything about this case prior to coming into court today?

21 PROSPECTIVE JUROR NO. 025: No.

22 THE COURT: Okay. Nothing familiar about it?

23 PROSPECTIVE JUROR NO. 025: No.

24 THE COURT: All right. Have you ever been a juror before?

25 PROSPECTIVE JUROR NO. 025: I haven't.

1 THE COURT: Have you or anyone close to you ever been the victim of a
2 serious crime?

3 PROSPECTIVE JUROR NO. 025: No.

4 THE COURT: What about the converse of that, arrested or charged with
5 a crime?

6 PROSPECTIVE JUROR NO. 025: No.

7 THE COURT: Okay. Do you have any feelings or opinion about strip
8 clubs?

9 PROSPECTIVE JUROR NO. 025: I wouldn't go to any of them. I just --
10 but, no, not really.

11 THE COURT: Okay. When you say I wouldn't go to any of them, why is
12 that?

13 PROSPECTIVE JUROR NO. 025: It's against my principles.

14 THE COURT: Okay. And -- and why -- why is that? Do you feel like
15 they're immoral or --

16 PROSPECTIVE JUROR NO. 025: Yes.

17 THE COURT: You do? Okay. Can you kind of elaborate or expound
18 upon that?

19 PROSPECTIVE JUROR NO. 025: Well, it's just that's the way I was
20 raised, that the -- that -- that -- it was disrespectful of women, disrespectful of --
21 you know, basically women shouldn't have to perform in a place like that and
22 men shouldn't be enjoying it, basically.

23 THE COURT: Okay. And are those -- was that religious teaching or just
24 general moral teaching when you grew up?

25 PROSPECTIVE JUROR NO. 025: Religious teaching growing up, and

1 moral afterwards once I got to studying what I -- studying my own principles.

2 THE COURT: Okay. Where -- where did you grow up?

3 PROSPECTIVE JUROR NO. 025: I -- my dad was in the Air Force, and
4 so for the first 16 years of my life I bounced around and then I finished up in
5 Utah, and I spent most of my life in Utah until about eight years ago.

6 THE COURT: Okay. Where in Utah?

7 PROSPECTIVE JUROR NO. 025: Southern Utah, well, four years -- four
8 years in Salt Lake City, and then another -- the rest of it in southern Utah in the
9 St. George area.

10 THE COURT: St. George area. Okay. Now, this case, as you heard,
11 involves people who owned at the time the Palomino Club. Is that fact, given
12 your moral upbringing and your religious upbringing, is that something that is
13 going to preclude you from giving the defense, the defendants, a fair and
14 impartial consideration?

15 PROSPECTIVE JUROR NO. 025: No.

16 THE COURT: Okay. Because obviously that's what we're concerned
17 with. Can you set that aside and just base the -- your decision, if you're selected,
18 on the evidence in this case?

19 PROSPECTIVE JUROR NO. 025: Certainly.

20 THE COURT: Okay. Have you, yourself, ever at any time been to a strip
21 club?

22 PROSPECTIVE JUROR NO. 025: No.

23 THE COURT: Never in your life?

24 PROSPECTIVE JUROR NO. 025: Never in my life.

25 THE COURT: And, you know, a lot of people work in that, or a number

1 of people work in that industry in this town. Do you know anybody, have you
2 ever met anybody in your job place or, I guess, anywhere that's worked in the
3 strip club industry?

4 PROSPECTIVE JUROR NO. 025: Not that I'm aware of.

5 THE COURT: Okay. All right. Thank you.

6 The State may question you.

7 MR. PESCI: Thank you, Judge.

8 Sir, I wanted to ask a couple of questions. The Air Force for your
9 first 16 years all over the place, where -- where were you?

10 PROSPECTIVE JUROR NO. 025: My earliest memories are in
11 Germany. And then after that we spent four years in Omaha, finished up with
12 four years in Salt Lake City and before that -- well, before that we were also in
13 Salt Lake City and New Mexico, but I was too young to remember that.

14 MR. PESCI: Okay. You talked about your religious or moral feelings
15 about strip clubs. The defendants were one time owners, or at least the father a
16 one-time owner of the strip club and the son worked at the strip club. And the
17 question really boils down to you have your feelings about them, does that mean
18 to you that they're necessarily guilty of these charges just because they engage
19 in that kind of behavior?

20 PROSPECTIVE JUROR NO. 025: No.

21 MR. PESCI: Okay. Are you willing to follow the law of the land?

22 PROSPECTIVE JUROR NO. 025: Yes.

23 MR. PESCI: And whatever the law of the land is we're subject to?

24 PROSPECTIVE JUROR NO. 025: That's correct.

25 MR. PESCI: Okay. Are you willing to follow the law the Court gives in a

1 sense of you won't hold it against the defendant if he chooses not to testify?

2 PROSPECTIVE JUROR NO. 025: No.

3 MR. PESCI: Okay. You know, and this is kind of a separate instance.

4 Sometimes if people ask you if there's some dispute would you want to hear both
5 sides. Can you accept the concept that in a court of law there's no duty for both
6 sides to be brought forth, only the State has the duty?

7 PROSPECTIVE JUROR NO. 025: Yes.

8 MR. PESCI: You're all right with that?

9 PROSPECTIVE JUROR NO. 025: Yes.

10 MR. PESCI: Do you think you're -- generally speaking, a fair person?

11 PROSPECTIVE JUROR NO. 025: I'd like to think so.

12 MR. PESCI: You think you could be fair to both sides?

13 PROSPECTIVE JUROR NO. 025: I think so.

14 MR. PESCI: Thank you very much.

15 We pass for cause.

16 THE COURT: All right.

17 Who would like to go next?

18 MS. ARMENI: Yes, Your Honor.

19 Good afternoon.

20 PROSPECTIVE JUROR NO. 025: Good afternoon.

21 MS. ARMENI: Just to follow up a little bit on some of the questions Mr.

22 Pesci was asking you, these -- it's a moral thing I believe you said, a moral
23 standing about strip clubs and that -- you were honest with us. We definitely
24 appreciate that. Do you think -- I mean, if Mr. Hidalgo decides to take the stand,
25 as he takes the stand, would you look at him and say, that's a strip club owner

1 and I think strip clubs are bad?

2 PROSPECTIVE JUROR NO. 025: No.

3 MS. ARMENI: Is this --

4 PROSPECTIVE JUROR NO. 025: No.

5 MS. ARMENI: Okay. So you -- your -- you believe that although this is
6 your moral -- kind of you're moral person, the person you are, that you're going to
7 be able to put that aside --

8 PROSPECTIVE JUROR NO. 025: Yeah.

9 MS. ARMENI: -- for this trial?

10 PROSPECTIVE JUROR NO. 025: Yeah, the -- the -- it has no bearing
11 on whether or not he actually committed the crime.

12 MS. ARMENI: Okay. Do you -- the business you work for, tell me again
13 your position there.

14 PROSPECTIVE JUROR NO. 025: I'm in the order entry department. I
15 enter the orders that I receive from the -- from the sales associates
16 [Indecipherable] get entered properly and get sent off to the vendors correctly.

17 MS. ARMENI: And what kind of special skills do you have to have to do
18 what you do?

19 PROSPECTIVE JUROR NO. 025: Mainly attention to detail, primarily
20 making the -- that's actually the main point right there. Just making sure --

21 MS. ARMENI: Okay.

22 PROSPECTIVE JUROR NO. 025: -- all the information is actually
23 received and actually entered -- and we actually have all the parts. That's the
24 primary skill needed I would say.

25 MS. ARMENI: Okay. Drugs. When I throw out the word drugs, what do

1 you think of?

2 PROSPECTIVE JUROR NO. 025: Recreational drugs is --

3 MS. ARMENI: Anything specific? I mean, that's kind of a large group
4 within itself, I guess.

5 PROSPECTIVE JUROR NO. 025: Well, it's a large word, so --

6 MS. ARMENI: Yeah. What specifically in that group do you think of?

7 PROSPECTIVE JUROR NO. 025: Primarily marijuana.

8 MS. ARMENI: Now, have you ever had experience to be around
9 anybody on marijuana?

10 PROSPECTIVE JUROR NO. 025: Nope.

11 MS. ARMENI: Any other recreational drugs?

12 PROSPECTIVE JUROR NO. 025: No.

13 MS. ARMENI: No. Okay. And, sir, can you remember a time in your life
14 that you've been fearful or scared?

15 PROSPECTIVE JUROR NO. 025: Yes.

16 MS. ARMENI: And do you believe during that time period that you were
17 able to -- or do you think you would, if you were fearful or scared, that you'd be
18 able to make decisions the same way you'd be able to make decisions if you
19 weren't scared?

20 PROSPECTIVE JUROR NO. 025: I'd say, yeah, probably.

21 MS. ARMENI: Okay. Do you believe -- so whether you're --

22 PROSPECTIVE JUROR NO. 025: It's --

23 MS. ARMENI: Go ahead.

24 PROSPECTIVE JUROR NO. 025: No, go ahead.

25 MS. ARMENI: So just so I'm clear, you think that fear -- in your -- in your

1 life, fear or being scared would not pay -- have an impact on your thinking?

2 PROSPECTIVE JUROR NO. 025: It would probably have an impact on
3 my thinking. I just -- I'd probably be able to work through it.

4 MS. ARMENI: Okay. Do you think everybody would be like you?

5 PROSPECTIVE JUROR NO. 025: Probably not. [inaudible].

6 MS. ARMENI: That's fair. Lawyers, do you know any lawyers?

7 PROSPECTIVE JUROR NO. 025: No.

8 MS. ARMENI: No? And if you had an issue with the law or just an issue
9 that you needed some guidance with, what -- how would you -- would you get a
10 lawyer?

11 PROSPECTIVE JUROR NO. 025: I would probably ask around from my
12 own family and acquaintances first and get their advice and their suggestions
13 and see if they've been in similar situations, and maybe -- maybe get a lawyer
14 that's -- that they had done for themselves.

15 MS. ARMENI: Okay. If you -- since you don't know a lawyer, how would
16 you go about getting one if you needed one?

17 PROSPECTIVE JUROR NO. 025: Again, I'd probably see who my own
18 acquaintances and friends and associates and family that they had used in the
19 past and how they had done and -- and probably go to one that they -- that they
20 had done well with.

21 MS. ARMENI: So like a recommendation maybe?

22 PROSPECTIVE JUROR NO. 025: Yeah.

23 MS. ARMENI: And then gangs, when I say gangs what do you think of?

24 PROSPECTIVE JUROR NO. 025: Street gangs, juvenile gangs.

25 MS. ARMENI: Is there a particular gang that comes to mind?

1 PROSPECTIVE JUROR NO. 025: No.

2 MS. ARMENI: No.

3 Court's indulgence.

4 Thank you, sir.

5 THE COURT: All right. Mr. Adams.

6 MR. ADAMS: Thank you.

7 Hello, Mr. Harmon.

8 PROSPECTIVE JUROR NO. 025: Hello.

9 MR. ADAMS: You indicated that you came up with your opinions and
10 views about strip clubs first from religious teachings?

11 PROSPECTIVE JUROR NO. 025: Uh-huh.

12 MR. ADAMS: And then based on your own studies?

13 PROSPECTIVE JUROR NO. 025: Uh-huh.

14 MR. ADAMS: And what -- what were those studies?

15 PROSPECTIVE JUROR NO. 025: They're a mixture of -- of theology
16 and philosophy, started -- you know, starting out of college and doing all my own
17 studies afterwards.

18 MR. ADAMS: All right. And what have you ended up -- what is your view
19 after all the study on strip clubs?

20 PROSPECTIVE JUROR NO. 025: They -- my -- my view is that they
21 have the -- the people should have the right to have them, to own, people should
22 have the right to work in them, but the -- I'd rather they didn't exist, but it's not --
23 it's not -- that they should be free to exist [indecipherable].

24 MR. ADAMS: Why do you wish they should not exist?

25 PROSPECTIVE JUROR NO. 025: I think that they're immoral. I think it's

1 actually destructive to -- to the lives of people who can be -- are involved in them.

2 MR. ADAMS: TO everyone involved in them?

3 PROSPECTIVE JUROR NO. 025: Yes.

4 MR. ADAMS: The men and the women?

5 PROSPECTIVE JUROR NO. 025: Men and women, as we -- to all
6 involved. I just basically think it's not a good way to live.

7 MR. ADAMS: Okay. So why do you think we should -- or people should
8 be allowed to have them?

9 PROSPECTIVE JUROR NO. 025: That's -- they should have the
10 freedom to make their own choice on how to live their life.

11 MR. ADAMS: Do you think -- you think they're immoral?

12 PROSPECTIVE JUROR NO. 025: Yes.

13 MR. ADAMS: And do you think people who are attracted to them are
14 immoral people?

15 PROSPECTIVE JUROR NO. 025: I'd say yeah. Yes and no. Yes to the
16 fact that they're engaging in an activity that's not correct, but everybody has --
17 nobody is perfect.

18 MR. ADAMS: Right.

19 PROSPECTIVE JUROR NO. 025: Everybody's got flaws.

20 MR. ADAMS: Do you think that -- that this is a flaw of people who -- who
21 are attracted to make a buck off of nudity and grind dancing and that sort of
22 stuff?

23 PROSPECTIVE JUROR NO. 025: Yeah, I do think -- I do think it's a
24 flaw. It's -- it's --

25 MR. ADAMS: Yeah.

1 PROSPECTIVE JUROR NO. 025: It's their --

2 MR. ADAMS: It's a weakness for people?

3 PROSPECTIVE JUROR NO. 025: Weakness. You can say it's sinful, a
4 weakness.

5 MR. ADAMS: A character flaw.

6 PROSPECTIVE JUROR NO. 025: Not necessarily. It could just be that's
7 the way they grew up thinking there was nothing wrong with it and they just don't
8 know any better.

9 MR. ADAMS: In this situation I'm representing Louis Hidalgo III whose
10 father is the club owner. And so Louis Hidalgo III has made a choice to go work
11 for his dad at the strip club. Do you understand why I'd be a little concerned --

12 PROSPECTIVE JUROR NO. 025: Uh-huh.

13 MR. ADAMS: -- with -- with the views that you've been kind enough to
14 share with us. Do you understand that?

15 PROSPECTIVE JUROR NO. 025: I understand.

16 MR. ADAMS: Do you think it's a sin?

17 PROSPECTIVE JUROR NO. 025: Do I think what's a sin?

18 MR. ADAMS: Working in a strip club making good money off of -- off of
19 the activities in a strip club?

20 PROSPECTIVE JUROR NO. 025: Yes, I do.

21 MR. ADAMS: And if there were character evidence presented on behalf
22 of -- of Mr. Hidalgo III, Little Louis, saying, oh, he's a great guy, he's very truthful,
23 this and that and the other, you'd be less likely to embrace or accept that
24 evidence just based on the fact that he's chosen this immoral path to make a
25 buck?

1 PROSPECTIVE JUROR NO. 025: Not necessarily.

2 MR. PESCI: Can I -- can we approach?

3 THE COURT: All right.

4 (Conference at the bench)

5 THE COURT: Mr. Harmon, at the conclusion of the case I'm going to
6 give you, if you're selected to serve as a juror, the instructions on the law. Okay?
7 And the way it works then is the jury gets the instructions on the law, and you'll
8 actually have, if you're selected, have written copies back in the jury room. And
9 then collectively the jury applies the evidence as they understand it and
10 remember it to be to the law and in that way, you know, reaches a verdict after
11 discussion and deliberation and what have you.

12 Now, let's say I read something in the instruction in the law that
13 maybe differs from your understanding as to what the law ought to be, would you
14 have any problem following the instructions as I give them to you?

15 PROSPECTIVE JUROR NO. 025: You're asking if I would prefer your
16 understanding of the law over my own understanding of the law.

17 THE COURT: Well, not if you would prefer it, but if you would follow it.

18 PROSPECTIVE JUROR NO. 025: I would -- I would probably go with my
19 own understanding of what the law --

20 THE COURT: Really?

21 PROSPECTIVE JUROR NO. 025: -- what the law --

22 THE COURT: Even if I -- even if you're supposed to follow the
23 instructions on the law that I give you?

24 PROSPECTIVE JUROR NO. 025: I understand -- I understand isn't
25 the -- isn't the part of the purpose of the jury is to determine just how the law

1 should be applied in the case?

2 THE COURT: Okay. Well, I guess maybe what I kind of wanted to get
3 into is of course there's two laws. There's sort of a moral law or religious law --

4 PROSPECTIVE JUROR NO. 025: Oh.

5 THE COURT: -- and then there is the law that is enacted by the
6 legislature --

7 PROSPECTIVE JUROR NO. 025: Okay.

8 THE COURT: -- and comes down --

9 PROSPECTIVE JUROR NO. 025: Okay.

10 THE COURT: -- through case law. And that's the law --

11 PROSPECTIVE JUROR NO. 025: Okay.

12 THE COURT: -- I deal in. And let's say I give you an instruction on the
13 law and maybe that differs from something in your moral code, would you --
14 would you follow the law I give you?

15 PROSPECTIVE JUROR NO. 025: I would follow the law.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 025: I would follow the law.

18 THE COURT: Now, you said though, well, your understanding of the law
19 versus my understanding of the law. What did you mean by that?

20 PROSPECTIVE JUROR NO. 025: One of the things I've been -- I've
21 studied on my own time is constitutional law and the way that different people
22 can have different understandings of the same -- of how the same law is
23 supposed to work. And that was what I was referring. I wasn't actually referring
24 to, no, not imposing my own moral code on what the law should be.

25 THE COURT: Okay. Let's go with that then. If you had an

1 understanding -- because basically it's the province of the Court to make the
2 determination of what the law is, and it's the province of the jury, not me, a lot of
3 people think the Court does it, to listen to the evidence and make a determination
4 of what the facts are and the credibility of the witnesses. That's the jury's job.

5 Now, let's say I give instructions on the law and you think, well, that's
6 different from something I may have read or studied. Will you set aside
7 something that you may have read or studied and follow the law that I give you?

8 PROSPECTIVE JUROR NO. 025: I -- yes, I would think I would -- I
9 would do that. Yeah. I just don't know enough about the law on my own, the
10 details of the law on my own to actually have a real valid opinion.

11 THE COURT: Okay. And you understand that the law -- you know,
12 there's federal law and there's state law, and that may differ in some regards.
13 And there's differences in the law between one state and the next state. So even
14 something you may have learned may be right in -- in another state --

15 PROSPECTIVE JUROR NO. 025: Yes.

16 THE COURT: -- but it may not be --

17 PROSPECTIVE JUROR NO. 025: Yes.

18 THE COURT: -- right here.

19 PROSPECTIVE JUROR NO. 025: Yes, I understand that.

20 THE COURT: Okay.

21 Go on, Mr. Adams.

22 MR. ADAMS: Thank you, Your Honor.

23 Mr. Harmon, the first question the Judge asked you, which was a
24 good question, and you said you would follow, you think, your law, and then
25 you -- over hers, and then you explained that, well, in some areas of the

1 constitution there's some differences.

2 PROSPECTIVE JUROR NO. 025: Yeah.

3 MR. ADAMS: What is -- what are the hot button issues for you?

4 PROSPECTIVE JUROR NO. 025: I -- I'm not sure just how -- how you --
5 actually, there's -- there's two ways to look at -- one of the ways I wish -- the way
6 I wish the laws actually were, and then there's the way -- the way that the law
7 should be applied by the con -- by the constitution itself.

8 For instance, there was a case a number of years ago where the
9 courts over -- where the Supreme Court overturned some anti-sodomy laws in
10 Texas which I have no problem with. I don't like those law at all. I don't think any
11 state should have them. But I don't think that the Supreme Court was correct in
12 its decision to overturn the laws. I thought the state -- the states actually had the
13 right to make laws if they chose to do so.

14 MR. ADAMS: Is it a federalism matter, or state's rights matter?

15 PROSPECTIVE JUROR NO. 025: Federal, yes. That's a big -- that's a
16 big part of it.

17 MR. ADAMS: How -- what's the other part of it?

18 PROSPECTIVE JUROR NO. 025: The other part is mainly -- well, the
19 two forms of judicial activism, one form where the court overturns a previous
20 ruling, and then the other form where the court chooses to impose its own
21 understanding of it rather than going and following -- follow what the constitution
22 really should be.

23 MR. ADAMS: Okay.

24 PROSPECTIVE JUROR NO. 025: I have no problem with the first one,
25 the first type. I have a big problem with the second type.

1 MR. ADAMS: What if there were some evidence in this case and you
2 were asked or told by the judge that you could use it against one of the
3 defendants, but not against the other defendant and you just thought that was
4 wrong, that you should be able to use it against both, that that's a wrong
5 interpretation?

6 PROSPECTIVE JUROR NO. 025: I -- I would -- I don't -- I probably
7 don't -- wouldn't know enough of the details of the law to actually be able to make
8 a valid judgment in that case.

9 THE COURT: Well, I guess it -- would you follow that and say, okay --

10 PROSPECTIVE JUROR NO. 025: Yes.

11 THE COURT: -- I'm only going to consider it against --

12 PROSPECTIVE JUROR NO. 025: I would --

13 THE COURT: -- defendant A, but not against defendant B, or vice
14 versa?

15 PROSPECTIVE JUROR NO. 025: I would do my best to follow that.

16 THE COURT: Okay. Let me ask you this. You know, you probably
17 talked about the sodomy law, and while you don't personally agree with that law,
18 you respect the right of the legislature to enact it.

19 PROSPECTIVE JUROR NO. 025: Yes.

20 THE COURT: Okay. Now, there may be instructions on the law in this
21 case that differ from your personal view as to what the law ought to be.

22 PROSPECTIVE JUROR NO. 025: Yes.

23 THE COURT: There may be one, there may be none, there may be
24 more than one. If I give you an instruction that differs from your personal belief
25 as to what the law ought to be, would you set aside your personal belief as to

1 what the law ought to be and follow the instructions that I give you?

2 PROSPECTIVE JUROR NO. 025: Yes, I would.

3 THE COURT: Okay. At this point I need to take a brief break, sir. We're
4 going to go until about 4:30. I'm going to ask you to return to the hallway and
5 have a seat out in the hallway with the other prospective jurors. But, sir, please
6 don't discuss what we've discussed, our questions, your answers, anything --

7 PROSPECTIVE JUROR NO. 025: Certainly.

8 THE COURT: -- like that with the other prospective -- excuse me -- the
9 other prospective jurors.

10 PROSPECTIVE JUROR NO. 025: Certainly.

11 THE COURT: All right. Go ahead and follow Officer Wooten through the
12 double doors.

13 (Prospective juror No. 25 exits courtroom)

14 THE COURT: I really needed to take a break. I don't think we're going
15 to get a for cause on this guy. If you know you're going to perempt him, let's --

16 MR. ADAMS: Judge, I assess this man as 100 percent substantially
17 impaired. He's going to say he follows the law all day long, but underneath
18 that -- and underneath he's substantially impaired in his ability. Now, I believe I
19 can show that to the Court. It may take a little more time than the Court wants to
20 spend, but I assess this man based on his complete demeanor as a substantially
21 impaired juror.

22 MR. PESCI: I have no understanding what a substantially impaired juror
23 is. The answers that he's given to you is that he'll follow the law. If substantially
24 impaired means he doesn't like him, then I guess that qualifies, but that's not
25 what it was.

1 THE COURT: I mean, here's the problem. You know, his answers have
2 been correct, I mean, correct in the sense that he says he'll follow the law, he
3 says he'll keep an open mind, he says he's not going to hold it against the
4 defendants that they're strip club operators. I don't think I can sort of say, well,
5 because -- you know, he's not clearly lying, he doesn't seem to be impaired,
6 meaning impaired mentally in any way that he's confused. I don't think that I can
7 sort of say, well, I don't believe him.

8 Obviously -- I mean, the other people we didn't believe that said the
9 right answers to get excused, we excused them. So at some point in time what
10 we have to do is basically accept that people are -- are telling the truth and not
11 say, well, this one's lying, that one's not lying. I mean, you know, most people
12 want to get out of it.

13 And he's saying, you know -- and I think he's -- he's studied the law
14 to some extent. He's probably smart enough to know what not to say. I mean, I
15 just -- I guess what I'm saying in a really, really long winded way is I don't see
16 anything here to -- to -- that I can find, yeah, this guy is lying, this guy has a --
17 has an agenda and is trying to cover it up.

18 MR. ADAMS: Here's the issue with this juror. And I cited to the Morgan
19 versus Illinois case yesterday which is a 1992 Supreme Court decision that says
20 follow the law questions, it does not say is -- I hope I didn't represent, and maybe
21 I did, that you can't ask them. What it does say is that's not sufficient to get to
22 the answer of whether a juror is actually qualified or not.

23 Because a lot of jurors are going to come in here and when they're
24 asked by the Judge, will you follow the law, they're going to say, you betcha, I'll
25 follow the law, absolutely. And when you delve into their views, they can't. And

1 in this case, on our witness list are numerous, numerous character witnesses to
2 put up good character evidence, lack of violence, truthfulness, appropriate
3 character evidence that this man is ever, ever going to be able to give weight to
4 for strip club owner and son. He's not going to be able to do that.

5 He can tell you all day he'll follow the law, but this guy just cannot do
6 it because he thinks these guys are profiting in immoral and illicit actions.

7 MR. PESCI: Judge, when the defense counsel asked a specific question
8 about whether he would listen to that evidence, he said he would. So, again, it
9 goes back to the fact that they --

10 THE COURT: All right.

11 MR. PESCI: -- don't like him.

12 THE COURT: I'm going to ask another question. I really did need a
13 break. And we'll go into that a little bit. I'll go into what does listen mean, you
14 know, will you consider, will you weigh it, not just will you hear it. And then we're
15 going to move on.

16 (Recess taken at 4:26 p.m.)

17 THE COURT: Are we ready?

18 MR. ADAMS: Yeah.

19 THE COURT: Bring him back.

20 THE MARSHAL: The same guy?

21 THE COURT: Yeah.

22 THE MARSHAL: What was his name, Your Honor?

23 THE COURT: I'm beat down.

24 MR. PESCI: Harmon.

25 THE COURT: Douglas Harmon.

1 MR. DIGIACOMO: Harmon.

2 THE MARSHAL: Harmon.

3 (Off-record colloquy)

4 THE COURT: Sir, you were asked by Mr. Adams a question about he
5 said, well, there might be some character evidence about the defendants, about
6 their truthfulness and character and business and what not. And he asked you if
7 you would listen to it.

8 I'm going to ask you something more because it's not just listen to it
9 and stay awake and pay attention, but would you give that meaningful
10 consideration, or do you feel that because the defendants are involved in this
11 strip club, the Palomino Club, that that's something that you kind of have your
12 mind made up about their character already as you sit here?

13 PROSPECTIVE JUROR NO. 025: No, I don't --

14 THE COURT: And just be honest.

15 PROSPECTIVE JUROR NO. 025: Yes.

16 THE COURT: There's no right or wrong answer.

17 PROSPECTIVE JUROR NO. 025: Yes.

18 THE COURT: It's just your opinion.

19 PROSPECTIVE JUROR NO. 025: Yeah, I'd listen to it. There's no
20 reason why they can't be perfectly honest in their dealings with everybody even if
21 they are engaged in that kind of business.

22 THE COURT: Okay. What about other types of -- I mean, we talked
23 about honesty and business dealings, but what about other types of people's
24 character, good character. Is there any aspect or facet of an individual's
25 character that you kind of have your mind made up about simply because that

1 person operates or owns a strip club? I mean, do you -- do you make any, I
2 guess, conclusions about a person's character just by virtue of that -- of that fact?
3 And just be honest.

4 PROSPECTIVE JUROR NO. 025: I would -- I would -- I would say
5 probably yes to an extent. The -- the -- it doesn't mean they can't be honest, but
6 I would say that it's not a good sign of character.

7 THE COURT: Okay. And when you say not a good sign of character,
8 can you elaborate as to what conclusions you might draw just based on that
9 information alone?

10 PROSPECTIVE JUROR NO. 025: Well, I would have some doubts
11 about their views on -- on women and on their views on how proper interaction --
12 yeah, on how they should treat -- treat women.

13 THE COURT: Okay. So you might assume that maybe they look down
14 on women or don't respect women?

15 PROSPECTIVE JUROR NO. 025: That would be my -- that would be
16 part of -- I'd lean towards that for a default assumption. It wouldn't necessarily
17 mean it would stay that way, but that would be -- that would be my -- just drawing
18 just from that, yes.

19 THE COURT: Any other assumptions you might make?

20 PROSPECTIVE JUROR NO. 025: I don't know. It would depend.

21 THE COURT: Okay. Can you think of any other assumptions that -- that
22 you -- well, as you sit here right now, assumptions that you're making just
23 because we've told you that these individuals were involved in the strip club
24 business?

25 PROSPECTIVE JUROR NO. 025: I don't -- I don't -- I don't really have

1 any. I don't know a whole lot about the business.

2 THE COURT: Okay.

3 Mr. Adams, do you want to follow up on anything?

4 MR. ADAMS: No, ma'am, I'm satisfied with the -- the answers and the
5 state of the record.

6 THE COURT: All right. Thank you.

7 Sir, thank you. I'm going to ask you again to go back out in the
8 hallway and just have a seat out there. And once again, please don't discuss
9 anything that's transpired with the other prospective jurors.

10 PROSPECTIVE JUROR NO. 025: Okay.

11 (Prospective juror No. 25 exits courtroom)

12 THE COURT: All right. Is the door shut, Jeff?

13 And, Mr. Adams, you're challenging for cause on the grounds of
14 substantial impairment?

15 MR. ADAMS: Yes, ma'am. You asked him if he could factor it in. He
16 said he could listen was his answer. And also you raised the issue of what other
17 things come to mind, and he talked about taking advantage of women. And in
18 this situation we have a woman who was a codefendant who the State's cut a
19 deal with that we believe is the main actor in the death of Timothy Hadland.

20 And I believe he is likely to be biased and in the -- and view this as
21 the Hidalgo -- male Hidalgos taking advantage of this woman in a strip club
22 context due to their profession in a club they owned. And, again --

23 THE COURT: No, she was never a dancer or anything like that in the
24 club, was she?

25 MR. ADAMS: No, ma'am.

1 THE COURT: Because I sort of thought he meant using the gals as
2 dancers and exploiting them like physically, I mean, their bodies.

3 MR. ADAMS: Well, he views them as -- his starting point is that they're
4 exploiting people of females.

5 THE COURT: Women.

6 MR. ADAMS: Women. So based on that I think that's an additional
7 ground of the substantial impairment of Mr. Harmon, and we move that he be
8 excused for cause.

9 MR. DIGIACOMO: As a legal analysis, the defendants are not entitled to
10 12 people who think that it's morally okay to be a stripper. It's just like a gang
11 member is not entitled to 12 people who think it's okay to be gang members.
12 The question is can they set aside any preconceived notions, review the
13 evidence, and make the determination.

14 They've been asking that all the time. People have been setting
15 aside the fact that they don't like people who have affairs when that's a fact and
16 issue in the case. They've been setting aside their thoughts on gang
17 membership which is helpful to them in a particular case. That's not the test.
18 The test is simply can they look at the evidence and make a determination, and
19 certainly his answers have said so.

20 THE COURT: All right.

21 Mr. Adams has satisfied --

22 Just for the record, Mr. Gentile, what is your position on behalf of Mr.
23 Hidalgo, Jr.?

24 MR. GENTILE: I join Mr. Adams position.

25 THE COURT: All right. It's overruled, but I think you've made, as you

1 stated, an adequate record.

2 State, you --

3 MR. DIGIACOMO: We waive.

4 THE COURT: -- may exercise your challenge.

5 MR. DIGIACOMO: We waive.

6 THE COURT: I figured.

7 Defense.

8 MR. GENTILE: We don't waive.

9 THE COURT: All right.

10 MR. DIGIACOMO: I figured.

11 THE COURT: You're going to excuse Mr. Harmon?

12 MR. GENTILE: Yes.

13 THE COURT: All right.

14 Jeff, bring Mr. Harmon in.

15 MR. PESCI: Welcome to picking a jury in St. George.

16 THE COURT: I'm so glad that I sent that jury home and didn't think we
17 were going to get to openings.

18 Mr. Harmon, thank you very much for your participation and your
19 willingness to serve. You are, however, excused, and Officer Wooten will direct
20 you from the courtroom. Thank you very much, sir.

21 And Officer Wooten, bring in Ms. Lenahan.

22 THE MARSHAL: Lenahan?

23 THE COURT: Yeah.

24 (Prospective juror No. 25 exits courtroom)

25 THE COURT: Ms. Lenahan, just have a seat there in the jury box

1 please, ma'am, anywhere that you're comfortable. And you stated earlier that
2 you work for Advanced Cardiovascular Associates; is that right?

3 PROSPECTIVE JUROR NO. 027: Yes, Your Honor.

4 THE COURT: What do you do for them.

5 PROSPECTIVE JUROR NO. 027: I'm a nationally certified medical
6 assistant. I'm also a lab assistant and a cardiovascular technician.

7 THE COURT: Okay. And you said you're nationally certified?

8 PROSPECTIVE JUROR NO. 027: Yes.

9 THE COURT: Okay. Did you have to -- I'm assuming, obviously, you
10 had to have training and education and then you took a --

11 PROSPECTIVE JUROR NO. 027: I have an --

12 THE COURT: -- test of something?

13 PROSPECTIVE JUROR NO. 027: -- associates degree and took
14 national boards.

15 THE COURT: Okay. And where did you receive your associate's
16 degree?

17 PROSPECTIVE JUROR NO. 027: High Tech Institute here in Las
18 Vegas.

19 THE COURT: Okay. And are you married?

20 PROSPECTIVE JUROR NO. 027: No, I'm divorced.

21 THE COURT: And do you have any children?

22 PROSPECTIVE JUROR NO. 027: I have two children.

23 THE COURT: And the ages?

24 PROSPECTIVE JUROR NO. 027: 27 and 24.

25 THE COURT: Okay. Have you ever served as a juror before?

1 PROSPECTIVE JUROR NO. 027: No, I haven't.

2 THE COURT: Okay. Have you or anyone close to you ever been the
3 victim of a crime?

4 PROSPECTIVE JUROR NO. 027: I have been.

5 THE COURT: Okay. Tell me about that.

6 PROSPECTIVE JUROR NO. 027: I am a victim of rape.

7 THE COURT: Okay. Was -- where did that happen? Where did that
8 occur?

9 PROSPECTIVE JUROR NO. 027: When I was in the Navy in 1978.

10 THE COURT: Okay. And where -- what location was it? Was it on a
11 base of --

12 PROSPECTIVE JUROR NO. 027: I'm sorry. It was '79 or '80, I think.
13 And it -- I was in San Diego.

14 THE COURT: Okay. Is that where you were stationed?

15 PROSPECTIVE JUROR NO. 027: South Base San Diego.

16 THE COURT: Okay. And did it happen in the community at large, or did
17 it happen --

18 PROSPECTIVE JUROR NO. 027: It happened on the base.

19 THE COURT: On the base. Okay. And was it someone you knew or a
20 stranger?

21 PROSPECTIVE JUROR NO. 027: It was actually someone that I knew.

22 THE COURT: Okay. And I -- and I don't mean to pry. And I --

23 PROSPECTIVE JUROR NO. 027: I'm sorry. I didn't expect that.

24 THE COURT: And, you know, we just need to find out what contacts
25 people have had with law enforcement and the system that could impact their

1 ability to be fair and impartial.

2 PROSPECTIVE JUROR NO. 027: That's fine.

3 THE COURT: So that's why we ask these questions. And I appreciate --
4 you know, I'm not going to delve into it too much, but I appreciate that it's difficult.

5 Now, was this person also in the military?

6 PROSPECTIVE JUROR NO. 027: Yes.

7 THE COURT: Okay. And did -- I'm assuming you reported it?

8 PROSPECTIVE JUROR NO. 027: Yes, ma'am.

9 THE COURT: Okay. And did that result in a court martial proceeding?

10 PROSPECTIVE JUROR NO. 027: Yes, it did.

11 THE COURT: Okay. And what was the finding, I guess, of the court
12 martial proceeding?

13 PROSPECTIVE JUROR NO. 027: He was found guilty and he was --
14 lost all his rights. He was kicked out of the service dishonorably.

15 THE COURT: Okay. Were you satisfied with the outcome of that
16 proceeding?

17 PROSPECTIVE JUROR NO. 027: Yes, I was.

18 THE COURT: Okay. Anything else in your family background or your
19 own personal background relating to being the victim of a crime?

20 PROSPECTIVE JUROR NO. 027: No.

21 THE COURT: Okay. What about the flip side of that? Have you or
22 anyone close to you ever been arrested or charged with a crime?

23 PROSPECTIVE JUROR NO. 027: No.

24 THE COURT: Okay. How long were you in the Navy for?

25 PROSPECTIVE JUROR NO. 027: Four years.

1 THE COURT: Okay. And what are your feelings about strip clubs.

2 PROSPECTIVE JUROR NO. 027: It's your choice.

3 THE COURT: Okay. Have you ever been to a strip club?

4 PROSPECTIVE JUROR NO. 027: No, ma'am.

5 THE COURT: Okay. And do you know people who go to them?

6 PROSPECTIVE JUROR NO. 027: Yes.

7 THE COURT: And do you have any -- make any assumptions or have
8 any opinions about the kinds of people that go to strip clubs as customers?

9 PROSPECTIVE JUROR NO. 027: No, Your Honor, to each their own.

10 THE COURT: Okay. What about people who work in strip clubs? I
11 know in this community there are a number of those. Do you know anyone
12 personally that's a strip club employee or operator, dancer, anything like that?

13 PROSPECTIVE JUROR NO. 027: I don't know anyone personally.
14 When I worked -- when I first came here ten years ago I worked at Flamingo
15 Hilton and I worked in human resources. And I interviewed a lot of young ladies
16 that were strippers that were trying to get into cocktail waitressing or something
17 better.

18 THE COURT: Okay. And did you form an opinion about any of these
19 women?

20 PROSPECTIVE JUROR NO. 027: No, ma'am.

21 THE COURT: Nothing?

22 PROSPECTIVE JUROR NO. 027: Huh-uh.

23 THE COURT: Okay. All right. Thank you. I'm going to let the State
24 question you now.

25 MR. DIGIACOMO: I'm going to try and be very brief. Let's see, went

1 over strip clubs. There's been an issue that's been discussed, and you haven't
2 been here for three days, so one of the issues that's been discussed -- and let
3 me preface this, there's going to be no allegation that Mr. Hidalgo or Mr. Hidalgo
4 III, his son, are members or affiliated or associates of a criminal gang. But there
5 will be some testimony about -- there may be some testimony that one person
6 involved in this case has gang ties. Do you have any reaction when you hear the
7 word gang?

8 PROSPECTIVE JUROR NO. 027: I think of the word corruption and I
9 think that it -- that it's in every city. It's a way of life. I mean, it's involved in life
10 and that's just the way it is.

11 MR. DIGIACOMO: Okay. Whatever preconceived notions that you bring
12 in about gangs, the question is is at the end of the day can you set aside those
13 notions and look at the evidence that's presented in the courtroom and make a
14 determination from the evidence here in court?

15 PROSPECTIVE JUROR NO. 027: Yes, I can.

16 MR. DIGIACOMO: Okay. Some of the other things, let's talk a little bit
17 about the law. There are times that as individuals we may not necessarily agree
18 with what the law is. Okay? But in a court jurors must -- well, you take an oath
19 to follow the law. Do you think you could follow the law despite whether or not
20 you believe necessarily that the law is correct or not correct?

21 PROSPECTIVE JUROR NO. 027: Yes, I can.

22 MR. DIGIACOMO: Let's talk about some of the rules, reasonable doubt.
23 The burden in a criminal case is beyond a reasonable doubt. That means that
24 Mr. Pesci and myself have a duty to present the case, and we have to do it
25 beyond a reasonable doubt. Any problem with the fact that -- that it's our burden

1 and that we hold the burden?

2 PROSPECTIVE JUROR NO. 027: I understand that.

3 MR. DIGIACOMO: Okay. And based upon that burden and some other
4 constitutional rights, these people over here have no duty to do anything
5 whatsoever. Can you accept that?

6 PROSPECTIVE JUROR NO. 027: Yes.

7 MR. DIGIACOMO: Okay. And on top of that, both of these individuals
8 over here have an absolute duty to sit there and not take the stand or testify at
9 all. Can you accept that?

10 THE COURT: I think the term -- the word you meant --

11 MR. GENTILE: I think he misspoke.

12 THE COURT: -- was right, not duty.

13 MR. DIGIACOMO: Absolute right, excuse me.

14 THE COURT: They have a right. They -- they don't -- that they don't
15 have to take the stand and testify.

16 MR. DIGIACOMO: Right. They have an absolute right not to take the
17 stand and testify.

18 PROSPECTIVE JUROR NO. 027: I understand that.

19 MR. DIGIACOMO: Okay. And you can accept that as part of our system
20 of justice?

21 PROSPECTIVE JUROR NO. 027: Yes, that's the way it is.

22 MR. DIGIACOMO: Okay. And you wouldn't hold that against them?

23 PROSPECTIVE JUROR NO. 027: No.

24 MR. DIGIACOMO: Any reason -- well, let me ask you this. Do you think
25 you'd be a good juror?

1 PROSPECTIVE JUROR NO. 027: I think I'd be an excellent juror.

2 MR. DIGIACOMO: Why?

3 PROSPECTIVE JUROR NO. 027: Because I'm a stickler for details and
4 procedures and guidelines and I'm a perfectionist. And so I think that I would pay
5 very close attention and take really good notes and I know how to make an
6 informed decision.

7 MR. DIGIACOMO: Okay. Anything whatsoever that you think we need
8 to know about your qualifications or your background or your history as it relates
9 to you being a juror?

10 PROSPECTIVE JUROR NO. 027: Like in what matter?

11 MR. DIGIACOMO: Well, I guess -- I get from that the answer is no. I
12 mean, there is no reason in your mind that you think you couldn't do this; right?

13 PROSPECTIVE JUROR NO. 027: No.

14 MR. DIGIACOMO: Well, then thank you very much.

15 Judge, we pass for cause.

16 THE COURT: All right. Thank you.

17 Who would like to go next? Mr. Gentile?

18 MR. GENTILE: Ms. Lenahan, how are you?

19 PROSPECTIVE JUROR NO. 027: Hello.

20 MR. GENTILE: Do you see that man over there with the blue striped
21 shirt?

22 PROSPECTIVE JUROR NO. 027: Yes.

23 MR. GENTILE: His name is Louis Hidalgo, Jr.

24 PROSPECTIVE JUROR NO. 027: Uh-huh.

25 MR. GENTILE: You don't know anything about him right now, do you?

1 PROSPECTIVE JUROR NO. 027: No.

2 MR. GENTILE: But you do know that once upon a time he owned a strip
3 club; right?

4 PROSPECTIVE JUROR NO. 027: According to what I've learned today?

5 MR. GENTILE: Right.

6 PROSPECTIVE JUROR NO. 027: Uh-huh.

7 MR. GENTILE: That's what you know.

8 PROSPECTIVE JUROR NO. 027: Yes.

9 MR. GENTILE: Okay. And you know that strip clubs are euphemistically
10 called adult entertainment places, but in reality they -- they prey on sex in a -- in
11 a sense. Okay? Women get naked, men get naked, they even have naked male
12 dancers there, people drink alcohol, and they basically vacuum money out of
13 their pockets. That's what those clubs are about; right?

14 PROSPECTIVE JUROR NO. 027: Yeah.

15 MR. GENTILE: All right. Now, knowing that -- all right. I mean, but isn't
16 it the truth? That's what --

17 PROSPECTIVE JUROR NO. 027: Yes.

18 MR. GENTILE: That's the business. Let's face it. Now, what do -- do
19 you think badly of him for that?

20 PROSPECTIVE JUROR NO. 027: No.

21 MR. GENTILE: That he owned that club?

22 PROSPECTIVE JUROR NO. 027: No, not at all. Everybody has a right
23 to make a living.

24 MR. GENTILE: All right. And -- and if he testifies, are you going to like
25 say to yourself, oh, my God, this guy was in that industry, you know, is that going

1 to have any impact on you and the way that you either believe him or don't
2 believe him, just that fact alone?

3 PROSPECTIVE JUROR NO. 027: No, I -- I don't believe so.

4 MR. GENTILE: No?

5 PROSPECTIVE JUROR NO. 027: Huh-uh.

6 MR. GENTILE: You promise?

7 PROSPECTIVE JUROR NO. 027: I swear.

8 MR. GENTILE: Okay. That's all I need.

9 THE COURT: All right. Thank you, Mr. Gentile.

10 Mr. Arrascada.

11 MR. ARRASCADA: Court's indulgence.

12 Your Honor, I -- I have no questions.

13 THE COURT: I know. How does one top that?

14 MR. ARRASCADA: I -- I --

15 PROSPECTIVE JUROR NO. 027: Is that bad?

16 MR. DIGIACOMO: No.

17 THE COURT: No.

18 MR. GENTILE: No, no, no.

19 MR. ARRASCADA: Actually, ma'am, I -- I do.

20 PROSPECTIVE JUROR NO. 027: Okay.

21 MR. DIGIACOMO: Now you talked him into it.

22 PROSPECTIVE JUROR NO. 027: Did I talk you into this?

23 MR. ARRASCADA: No, but thank you for your honesty. Okay?

24 PROSPECTIVE JUROR NO. 027: You're welcome.

25 MR. ARRASCADA: Thanks.

1 Just a statement, not a question.

2 THE COURT: Oh, it wasn't a question.

3 All right. Jeff, would you --

4 MR. ARRASCADA: May I thank you for your honesty.

5 THE COURT: All right. I'm going to just have you exit the courtroom
6 with Jeff.

7 And then, Jeff, in about a minute bring them all back in.

8 THE MARSHAL: All right.

9 (Prospective juror No. 27 exits courtroom)

10 THE COURT: I'm assuming everybody passed for cause?

11 MR. DIGIACOMO: Yeah.

12 THE COURT: And I read Mr. -- well, actually, I didn't read your lips, I
13 heard you. You like her.

14 MR. ADAMS: Who?

15 THE COURT: This gal, Ms. Lenahan.

16 MR. ADAMS: That's why I cover my mouth. That's why I've been trying
17 to cover my mouth.

18 THE COURT: I know. And you said I like it, she's a stickler.

19 Jeff, bring them all in.

20 MS. ARMENI: We got a jury.

21 MR. ADAMS: Judge, I do -- do you know her from the -- from the
22 doctors?

23 THE COURT: No. I recognized her, and I don't think she recognized
24 me. I don't know her beyond that.

25 THE MARSHAL: The jury is coming in.

1 (Prospective jury panel enters at 4:53 p.m.)

2 THE COURT: Just wherever.

3 PROSPECTIVE JUROR: We're not in order anymore.

4 THE COURT: No. No, you're not. You're out of order. You're all out of
5 order.

6 All right. As you know, we previously had gone through jury
7 selection for a number of days. All of the lawyers' challenges have now been
8 fully exercised or waived, and the two additional members of our jury are Mr.
9 Dodson and Ms. Lenahan.

10 The rest of you, thank you for being here and you are excused at
11 this time. And Officer Wooten will direct everyone except for Mr. Dodson and
12 Ms. Lenahan from the jury room -- or from the courtroom.

13 (Remainder of prospective jury panel recessed at 4:54 p.m.)

14 THE COURT: All right. Mr. Dodson and Ms. Lenahan, in a moment I'm
15 going to excuse you for the weekend. The other men and women who were
16 selected to be on this jury were sent home at lunchtime because we knew we
17 needed more people. The entire jury is going to be here, including both you, at
18 9:00 a.m. Monday morning, and we will begin the trial at 9:00 a.m. on Monday
19 morning.

20 Now, obviously you two haven't hear any evidence in this case, but
21 you have heard discussion as to what the case is about. You've been introduced
22 to the lawyers, you've been introduced to the defendants.

23 Over our weekend recess, and this is very, very important, I must
24 admonish you that you're not to discuss this case, any person relating to the
25 case, the lawyers relating to the case with each other or with anyone else.

1 Anyone else includes members of your family and your friends. You may tell
2 them that you've been selected to serve as a juror in a criminal case, but please
3 don't tell them anything else like who the lawyers are or what courtroom it's in or
4 anything else. Okay?

5 Additionally, do not read, watch, or listen to any reports or
6 commentaries on any subject or person relating to this case. Don't do any
7 independent research on any subject connected with the trial. Don't visit the
8 locations at issue. And please don't form or express an opinion on the case.

9 I'm going to have you exit the courtroom with Officer Wooten. He'll
10 tell you where to meet up Monday morning at 9:00 a.m. And then, as I said
11 before, we'll begin the trial. So have a good weekend and we'll see you back
12 here Monday.

13 PROSPECTIVE JUROR NO. 027: Thank you, Judge.

14 PROSPECTIVE JUROR NO. 021: Thank you.

15 (Jurors recessed at 4:56 p.m.)

16 THE COURT: All right. I guess we have to resolve the issue of the
17 transcripts.

18 MR. DIGIACOMO: Yes, and then they were supposed to answer the
19 question as to whether or not they want Deangelo Carroll's one line in there for
20 the truth of the matter asserted or -- or not because --

21 THE COURT: I think they -- they said yesterday they did not.

22 MR. DIGIACOMO: No, they said they wanted to think about it overnight.

23 THE COURT: Oh, I'm sorry. Okay.

24 And the outcome is?

25 MR. ADAMS: Well, are you ruling on the transcript issue now, Your

1 Honor?

2 THE COURT: Well, let's do the other one first.

3 MR. ADAMS: Okay.

4 THE COURT: Who's going to address that?

5 MR. ARRASCADA: I will.

6 THE COURT: All right.

7 MR. ARRASCADA: Court's indulgence.

8 Your Honor, we believe it's admissible for the truth of the matter.

9 THE COURT: All right. And so, Mr. DiGiacomo, the State's position is?

10 MR. DIGIACOMO: Well, my position is that I can't offer it for that
11 purpose and they can't argue it for that purpose. However, based upon the fact
12 that they are going to assert in their opening that that is a statement which is
13 offered for the -- which may be considered for the truth of the matter asserted, I
14 am going to explain to the jury that I think that there will be an explanation during
15 the course of the trial. And if ultimately the Court rules that that's not offered for
16 the truth of the matter asserted, at least I had a good faith basis to make a
17 statement.

18 THE COURT: All right. That's fine.

19 MR. GENTILE: That's fair.

20 THE COURT: That's fair.

21 Okay. So we're all kind of on the same page on that one.

22 Direct my attention, please, to the portion of the transcript that has
23 the basically contested sentence.

24 MR. DIGIACOMO: I believe it's page 15. I can count it out right now
25 because I forgot to number these last night. One, two, three, four, five, six,

1 seven, eight, nine, ten -- it's actually page 11. And I think when you say
2 contested, you need to probably pull up theirs as well because I know I gave you
3 my copy of theirs.

4 THE COURT: Well, I'm talking about the one that you just had and --

5 MR. DIGIACOMO: I -- I know, but part of what we changed is from
6 theirs.

7 THE COURT: Okay. So -- and it is?

8 MR. DIGIACOMO: Little Lou line -- it reads now: Next time you do
9 something stupid like that, I told you you should've taken care of TJ, but, space,
10 all the fuckin' time, space, KC, space, priors, how do know this guy?

11 THE COURT: Okay.

12 MR. DIGIACOMO: If you see the part that is lined out, it used to read:
13 Doing something stupid like that, I told you to take care of this, space, all the
14 fuckin' time, KC priors, how do you know this guy?

15 And the defense's version read: space, you do something stupid
16 like that, I told you you should have taken care of this, space, all the fuckin' time.

17 And then I don't remember what happens afterwards. But the -- that
18 is the extent of the argument --

19 THE COURT: I don't --

20 MR. DIGIACOMO: -- that we're having.

21 THE COURT: I'm sorry. I don't see that the import or the impact of this
22 is really markedly different between the State's new version and the old version.
23 I mean, it's obvious they're talking about the same thing. I don't know what the
24 big -- other than this or TJ, I don't really know what the big -- the big change is, I
25 mean, to make it more prejudicial or more probative or anything else. I mean, I

1 think the content -- the content is essentially the same whichever version you
2 look at.

3 MR. DIGIACOMO: That's -- that's kind of what I thought too, but --

4 THE COURT: That's how I read it. I mean, I'm -- I guess the defense
5 disagrees with that, but whether it's you do something stupid like -- I mean, if you
6 look through the whole content, it's the -- it's the -- it's not like they're -- looks like
7 they're talking about anything different other than TJ and this. But I still think if
8 you go through the content, it's not that -- I mean, it's obvious they're talking
9 about the same thing. I just don't get what's so different, in my view.

10 MR. ARRASCADA: Your Honor, it's the reference. You can listen to that
11 tape 100 times and come to 100 different conclusions regarding taking care of
12 this TJ, but you cannot -- Judge, you've listened to the tapes. You can't hear.

13 And now they're going to be overly suggestive to this jury regarding
14 TJ Hadland, that our client is referring to him by name in this statement. You
15 don't see it as being any different, so what's the harm of just giving the one that
16 everyone agreed on and not the contested one? And they -- obviously they're
17 going to argue it, Judge.

18 MR. PESCI: Judge, that's just --

19 MR. ADAMS: But if you're going --

20 MR. PESCI: -- the misrepresentation. We didn't all agree to that.

21 MR. ARRASCADA: Judge, if I --

22 MR. PESCI: We agreed to have --

23 MR. ARRASCADA: You know --

24 MR. PESCI: -- two separate --

25 MR. ARRASCADA: -- please instruct --

1 MR. PESCI: -- ones.

2 MR. ARRASCADA: -- the prosecutor --

3 THE COURT: Let -- let --

4 MR. ARRASCADA: -- not to --

5 THE COURT: Mr. Pesci --

6 MR. ARRASCADA: -- interrupt.

7 THE COURT: -- first of all, don't double team. And second of all, Mr.
8 Arrascada is speaking and wait until he's done speaking and then you can
9 speak. Well, whoever wants to take this one.

10 MR. ARRASCADA: I believe Mr. DiGiacomo had the lead on this, and
11 the Court just ruled no double teaming.

12 Your Honor, the point being now in the 11th hour they have come up
13 with this new miraculous transcript that has the name TJ within it. And it's
14 prejudicial to our client because it gets put in front of the jury that this is the
15 context and it's overly suggestive. And the prior two transcripts were both blank
16 in that area.

17 MR. DIGIACOMO: Judge, if I may be heard now in response to that,
18 there was never an agreement as to the content of the transcript. They filed an
19 audibility hearing in which they said, look, Judge, either you go through and you
20 write a transcript, or we will accept that the State can offer one version and we'll
21 offer another.

22 What they are essentially now claiming is there is some sort of
23 discovery violation related to a demonstrative piece of evidence. That's what the
24 argument is --

25 THE COURT: Yeah, that is what --

1 MR. DIGIACOMO: -- before the Court.

2 THE COURT: -- in my view, what it is.

3 MR. DIGIACOMO: And there -- there can't be a discovery issue related
4 to the original tape. One, two, they know two weeks ago I specifically said that
5 says TJ in that exact spot when they were in my office. I made that
6 representation.

7 THE COURT: Well, that was not -- Mr. Gentile wasn't involved in that.

8 MR. DIGIACOMO: No, Mr. Gentile wasn't. But actually, I think that
9 statement is somewhat exculpatory to Mr. H when I think all of the -- the things
10 play out. In fact, there's another line that Mr. Gentile this morning said, oh,
11 thanks for giving me that, I didn't hear that on there either. We didn't make stuff
12 in there to help our case. We added other stuff that we could find, some of which
13 was in their transcript itself.

14 Now they're saying one word, this versus TJ. That's it. That's what
15 they're arguing to the Court. And to suggest that we have to stick with a word
16 that we don't believe is correct in our transcript, they're free to put this in their
17 transcript and they're free to argue let's do it again, it's this, and we're free to
18 argue, listen again, he says TJ.

19 What's the difference? What possible prejudice could they have
20 that -- that they would've done differently with their case had they known that that
21 word was TJ versus this? What prejudice?

22 We've been here now five days for jury selection -- or four days for
23 jury selection. What's changed in the entire -- what couldn't they have done in
24 preparation of their case? I mean, what possible difference does it make?

25 MR. GENTILE: May I be heard?

1 THE COURT: Uh-huh.

2 MR. GENTILE: It's really not by beef because --

3 THE COURT: Right. You don't have a dog in the fight.

4 MR. GENTILE: I don't have a dog in it. But I was the person who argued
5 it and -- and we were the ones who filed the --

6 THE COURT: Right.

7 MR. GENTILE: -- audibility hearing motion, at the time representing Mr.
8 Hidalgo III. I will tell you that when I saw the transcript that the government
9 proposed at that time my feeling was that there was nothing in it that would
10 create a need for you to have to go through and listen to it all and make the
11 decision.

12 My feeling was that whether a jury believed the one that existed at
13 that time or the one that existed that -- that I had or believed neither of them,
14 which is really what they're supposed to do. They're supposed to believe neither
15 of them, that it didn't matter, and, candidly, I wanted the tape played twice
16 because I thought it was really good for Mr. Hidalgo III, okay, especially on that
17 issue.

18 This does change things, and I will tell you that had this been the
19 transcript that had been offered at that time, I would've forced the Court to at
20 least make an effort to --

21 THE COURT: You would've asked --

22 MR. GENTILE: I would've --

23 THE COURT: -- the Court.

24 MR. GENTILE: No, actually, Judge, I think there's a right to it.

25 THE COURT: All right.

1 MR. GENTILE: Okay?

2 THE COURT: Here --

3 MR. GENTILE: But -- but in the end -- in the final analysis --

4 THE COURT: If it wasn't the weekend -- I mean, I'm -- I'm happy to take
5 the tape and listen to it and then make a finding one way or the other. If I think it
6 says TJ or if it says this or I can't tell what the heck it says, my only concern is
7 then in Mr. DiGiacomo's PowerPoint. I mean, in terms of these other words, I
8 don't think anybody really cares if Mr. DiGiacomo uses this new transcript. The
9 only issue is whether or not it says TJ this or nothing.

10 MR. GENTILE: And I will tell you on the record that but for --

11 THE COURT: Is that fair?

12 MR. GENTILE: That's absolutely true --

13 THE COURT: Mr. DiGiacomo --

14 MR. GENTILE: -- but for TJ thing.

15 THE COURT: -- if, let's say, Monday morning at 8:00 you were to be
16 told, you know what, the Court said she didn't hear TJ, take the TJ out, just leave
17 a blank there, how long would that take you to revise in your PowerPoint?

18 MR. DIGIACOMO: I'll tell you what, for purposes of my PowerPoint --
19 because I mean certainly I'm entitled to put up on -- on the --

20 THE COURT: You're --

21 MR. DIGIACOMO: -- thing with -- with the case not playing saying you
22 will hear this. For purposes of my PowerPoint that'll make no difference. And if
23 you rule right now that for purposes of my opening I don't play the audibility
24 portion where -- and -- and the jury have a transcript that says TJ, then we're
25 fine.

1 THE COURT: Right. I mean, you can say, obviously, in your
2 PowerPoint -- I'm sorry, not in your PowerPoint, in your opening you can say
3 you're going to listen to the tape and hear that he's talking about TJ, and then the
4 defense can say that's not what the tape says, you're going --

5 MR. ARRASCADA: Not only --

6 THE COURT: -- to hear --

7 MR. ARRASCADA: Not only that's not what the tape says, but that's not
8 what their transcript in the beginning said.

9 THE COURT: I know. I get it.

10 MR. ARRASCADA: And then their transcript --

11 THE COURT: I mean, I still think -- I still think that they can say what
12 they think the evidence is going to show. It's up to the jury what the evidence
13 shows. I mean, I can listen to this over the weekend and make a comparison
14 and then make a finding one way or the other if it's not going to impact --

15 MR. DIGIACOMO: I'll take it --

16 THE COURT: -- the openings.

17 MR. DIGIACOMO: -- out of my closing, and then that way --

18 THE COURT: I mean your opening.

19 MR. DIGIACOMO: -- I mean, it's already late on Friday. We'll get you a
20 clean copy with good headphones for you listen before it actually comes into
21 evidence.

22 THE COURT: So I don't have to do it this weekend?

23 MR. DIGIACOMO: So you don't have to do it --

24 THE COURT: Okay.

25 MR. DIGIACOMO: -- this weekend, one.

1 Two, they keep saying that somehow that there's some evidentiary
2 basis to make an argument as to a transcript. Unless they're going to -- they've
3 already said they don't want a witness to authenticate it. Unless they're going to
4 find a witness that originally authenticated or -- or created the transcript, how is it
5 that they're going to impeach and say, well, this -- the government gave us a
6 transcript that didn't have this in it and now they did.

7 Now, certainly they can -- they can ask -- I guess they can ask
8 witnesses that question, but they're not allowed to just stand up there and go,
9 well this is what the government gave us in discovery --

10 THE COURT: Right.

11 MR. DIGIACOMO: -- and it doesn't count.

12 THE COURT: I mean --

13 MR. ARRASCADA: Judge, we -- we wouldn't do that.

14 THE COURT: Right. You can comment on whatever, I mean, that, you
15 know, they're going to see two transcripts and the govern -- and the State is
16 putting in stuff that they're just not going to hear on the tape.

17 MR. ARRASCADA: Judge, if you're going to let in that transcript, then
18 their original transcript -- transcript should be --

19 THE COURT: No, it's one transcript or the other. It's not going to be an
20 issue about who prepared what transcript and whether they first -- I mean, the
21 Court's going to make a determination of what transcript they're entitled to give,
22 whether it's the first, whether it's the second, or it's the second with a slight
23 redaction of the TJ, which seems to be the big issue.

24 Then you're going to make a Court exhibit of the first transcript, and
25 the second transcript will be a Court exhibit as well. But there's not going to be a

1 bunch of arguing and fighting in front of the jury, oh, well, this transcript and that
2 transcript. For appellate purposes, the transcripts, like I said, are Court's exhibits
3 that don't, obviously, go back to the jury.

4 But, no, we're not going to get into that because there's no witness
5 to that. How are you going to put it on? Then you're going to be the witness
6 then arguing about a discovery violation and you're not a witness. So who's
7 going to tell about what transcript and who did it? There's nobody to tell.

8 MR. ADAMS: Judge, I --

9 THE COURT: So it's not evidence.

10 MR. ADAMS: Judge, may I be heard momentarily --

11 THE COURT: Yes.

12 MR. ADAMS: -- please. I'm doing the opening statement for Mr. Hidalgo
13 III. And Mr. DiGiacomo has referenced that he told us a couple of weeks ago in
14 a part of a conversation that was off the record, and he asked us to be off the
15 record on that. And there were other parts of that which I feel bound by the off
16 the record part so I'm not going to go into those.

17 I think there is a process where he thought he heard something on
18 the tape and he thinks now a witness has confirmed that. And I think he will ask
19 this witness -- I think he'll ask Ms. Espindola about it.

20 THE COURT: That's okay.

21 MR. ADAMS: I think we are entitled to talk about the prior transcript
22 before Ms. Espindola --

23 THE COURT: Okay.

24 MR. ADAMS: -- became a --

25 THE COURT: Here's the deal.

1 MR. ADAMS: -- State's witness.

2 THE COURT: If Ms. Espindola was not -- here's my ruling. Okay? Right
3 or wrong. If Ms. Espindola was not involved in the making of the first transcript,
4 which she was not, what difference -- how is she going to comment on the first
5 transcript versus the second transcript?

6 Now, you can ask her, okay, as part of your agreement to cooperate
7 in this -- in this case you met with the prosecutors and you listened to the tape,
8 and you told them what was in the tape, or something like that, and you didn't do
9 that until after. She can testify to that, but she can't comment on the first
10 transcript why something --

11 MR. ADAMS: She would've reviewed the first transcript to come up with
12 the additional stuff.

13 THE COURT: Yeah, but she doesn't know -- you know what, I'm not
14 going to fight with you. That's my ruling. She doesn't know why something is in
15 or not in the first transcript because she wasn't there and she didn't do it.

16 She can say I was given the first transcript and I filled in the blanks
17 or I was given a transcript that was incomplete and I filled in the blanks and I put
18 TJ in there. But beyond that she doesn't have any personal knowledge of
19 anything relating to the first transcript, so what the heck is she going to comment
20 on? I mean, all she can say is what she knows.

21 And, you know, anything else would be speculation. Well, why is
22 this, or not this in the transcript? She doesn't know. She wasn't -- she wasn't
23 cooperating at that time. She wasn't there. How does she know why somebody
24 put or didn't put something in a transcript? I mean --

25 MR. GENTILE: May I address the Court?

1 THE COURT: Are you sure you want to?

2 MR. GENTILE: Yes, I do. It seems to me that, and with all due respect
3 to everybody, we're getting kind of far afield. The transcript is nothing more than
4 an aid --

5 THE COURT: An aid.

6 MR. GENTILE: -- for the jury. That's it.

7 THE COURT: Right.

8 MR. GENTILE: That's all it is. No witness should be talked to about the
9 creation of a transcript. All right? Whether they assisted in it or whether they
10 didn't assist in it. It doesn't matter. It's done for the aid to the jury. The jury
11 should be instructed that it is not to be suggestive. We are not certifying that this
12 is --

13 THE COURT: Didn't I say --

14 MR. GENTILE: -- what's on the tape.

15 THE COURT: -- that that was the instruction I intended to --

16 MR. GENTILE: Okay.

17 THE COURT: Didn't I say at the bench? Did I not say at the bench that
18 that's what I was going to tell them, that we're --

19 MR. GENTILE: I don't know if you did --

20 THE COURT: -- not saying this --

21 MR. GENTILE: -- or you didn't.

22 THE COURT: -- is accurate or not accurate? There are two versions,
23 they're going to listen and it's their determination, and this may help them, it may
24 not help them.

25 MR. GENTILE: And when they go into -- when they go into deliberations

1 they're not going to have the transcript and --

2 THE COURT: Of course.

3 MR. GENTILE: -- you know, if they don't hear it, they don't hear it. But
4 that's the reason you have to tell them that the transcript is only there to help
5 them right now, and it does not -- it's not intended --

6 THE COURT: Okay.

7 MR. GENTILE: -- to be suggestive.

8 THE COURT: Mr. Gentile, you may not have heard me at the bench the
9 other day, but I did say that that would be the admonition and that I tell them in
10 every case that they don't get the transcript. You're not getting the transcript, it's
11 not an exhibit, it's not going back in the jury room with you, it's just to aid you at
12 this point in time. And then when we're done we collect the transcripts and -- and
13 that's it.

14 MR. GENTILE: Right.

15 THE COURT: So that's part of my standard instruction and this
16 instruction is going to be a little bit broader because there is a dispute as to
17 what's in the transcript. I'm going to tell them there's a dispute as to what's in the
18 transcript, it's up to you. The Court is not making a determination as to the
19 accuracy of these transcripts. They may help you or not help you.

20 If anyone wants me to add anything to that general spiel, I will. But
21 beyond that -- I mean, to me, we're really just fighting over a word.

22 MR. GENTILE: Well, and -- and the biggest problem with that is that
23 because the transcript isn't in evidence, you -- you really can't comment, no
24 lawyer can comment on the accuracy of the transcript. It's just not -- essentially
25 it's a hearsay document. And it's a -- and it's a fugitive document because it's

1 not an exhibit.

2 MR. DIGIACOMO: Mr. Gentile and I are somewhat on the same page.

3 MS. ARMENI: Twice.

4 MR. DIGIACOMO: In one day.

5 THE COURT: All right then. I think we're dissecting this dead horse.

6 MR. DIGIACOMO: See you, guys.

7 MS. ARMENI: Have a good weekend.

8 (Proceedings adjourned at 5:13 p.m.)

9 -oOo-

10 ATTEST: I hereby certify that I have truly and correctly transcribed the
11 audio/video proceedings in the above-entitled case to the best of my ability.

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14 JULIE POTTER
15 TRANSCRIBER
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