

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS A, HIDALGO, JR.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO.: 54209
Electronically Filed
Feb 07 2011 03:00 p.m.
Tracie K. Lindeman

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

APPELLANT'S AMENDED APPENDIX

Volume 22 of 25

(Pages 4062 - 4142)

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

ATTORNEYS FOR THE APPELLANT LUIS A. HIDALGO, JR.

ALPHABETICAL INDEX OF APPELLANT'S AMENDED APPENDIX

Document	Date Filed	Vol.	Page No.
Amended Indictment (Hidalgo Jr.)	05/01/08	5	00836-00838
Amended Judgment of Conviction (Jury Trial) (Hidalgo Jr.)	08/18/09	25	04665-04666
Amended Notice of Evidence in Support of Aggravating Circumstances (Espindola)	01/09/08	3	00530-00533
Amended Notice of Intent to Seek Death Penalty (Hidalgo Jr.)	06/18/08	5	00846-00849
CD: State's Exhibit 191 ¹	02/04/09	15	02749
CD: State's Exhibit 192A ²	02/04/09	15	02750
CD: State's Exhibit 192B ³	02/04/09	15	02751
CD: Defense Exhibit 1 ⁴	02/11/09	22	04142
Court's Exhibit 2: Transcript of fBird CD	02/05/09	15	02912-02929
Court's Exhibit 3: Transcript of Hawk CD	02/05/09	15	02930-02933
Court's Exhibit 4: Transcript of Disc Marked as Audio Enhancement, 050519-3516, Tracks 1 & 2, Track 2	02/05/09	15	02934-02938
Court's Exhibit 5: Transcript of Disc Marked as Audio Enhancement, 050519-3516, Tracks 1 & 2, Track 1	02/05/09	15	02939-02968
Criminal Complaint (Hidalgo III)	05/31/05	1	00001-00003
Criminal Complaint (Hidalgo Jr.)	02/07/08	3	00574-00575
Emergency Motion for Stay of District Court Proceedings (State)	02/20/08	4	00775-00778
Fourth Amended Information (Hidalgo III)	01/26/09	5	01011-01014
Guilty Plea Agreement (Espindola)	02/04/08	3	00549-00557
Indictment (Hidalgo Jr.)	02/13/08	4	00724-00727
Information (Hidalgo III)	06/20/05	1	00005-00008
Instructions to the Jury	02/17/09	24	04445-04499
Judgment of Conviction (Jury Trial) (Hidalgo Jr.)	07/10/09	25	04656-04657
Minutes (Preliminary Hearing)	06/13/05	1	00004
Minutes (Change of Plea)	02/04/08	3	00558
Minutes (All Pending Motions)	02/05/08	3	00559
Minutes (Trial by Jury)	02/06/08	3	00576

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.

Document	Date Filed	Vol.	Page No.
Minutes (Sentencing)	02/12/08	3	00577
Minutes (All Pending Motions)	02/14/08	4	00728
Minutes (Arraignment)	02/20/08	4	00779
Minutes (Sentencing)	03/20/08	4	00787
Minutes (Sentencing)	03/25/08	4	00788
Minutes (Decision: Bail Amount)	04/01/08	4	00789
Minutes (All Pending Motions)	04/15/08	4	00799
Minutes (All Pending Motions)	04/17/08	5	00834-00835
Minutes (All Pending Motions)	05/01/08	5	00839-00840
Minutes (All Pending Motions)	06/17/08	5	00844-00845
Minutes (State's Request for Status Check on Motion to Consolidate)	11/20/08	5	00850
Minutes (All Pending Motions)	01/16/09	5	00916
Minutes (Calendar Call)	01/22/09	5	00973-00974
Minutes (Decision)	01/23/09	5	01009
Minutes (State's Request for Clarification)	01/26/09	5	01010
Minutes (Defendant's Motion for Own Recognizance Release for House Arrest)	02/24/09	24	04505
Minutes (Status Check re Sentencing)	06/02/09	24	04594
Minutes (Minute Order re Judgment of Conviction)	08/11/09	25	04664
Minutes (Sentencing)	10/07/09	25	04667
Motion for Judgment of Acquittal Or, In the Alternative, a New Trial (Hidalgo III and Hidalgo Jr.)	03/10/09	24	04506-04523
Motion in Limine to Exclude the Testimony of Valerie Fridland (State)	01/13/09	5	00905-00915
Motion to Conduct Videotaped Testimony of a Cooperating Witness (State)	04/09/08	4	00792-00798
Motion to Strike Notice of Intent to Seek Death Penalty (Hidalgo III and Espindola)	12/12/05	1	00026-00187
Motion to Strike the Amended Notice of Intent to Seek Death Penalty (Hidalgo Jr.)	1/09/09	5	00851-00904
Notice of Appeal (Hidalgo III and Hidalgo Jr.)	07/18/09	25	04658-04659
Notice of Intent to Seek Death Penalty (Hidalgo III)	07/06/05	1	00009-00013
Notice of Intent to Seek Death Penalty (Espindola)	07/06/05	1	00014-00018
Notice of Intent to Seek Death Penalty (Carroll)	07/06/05	1	00019-00023
Notice of Intent to Seek Death Penalty (Counts)	07/06/05	1	00024-00025
Notice of Intent to Seek Death Penalty (Hidalgo Jr.)	03/07/08	4	00784-00786

Document	Date Filed	Vol.	Page No.
Opposition to Defendant Luis Hidalgo, Jr.'s Motion for Judgment of Acquittal Or, In the Alternative, a New Trial (State)	03/17/09	24	04524-04536
Opposition to State's Motion to Conduct Videotaped Testimony of a Cooperating Witness (Hidalgo III)	04/16/08	5	00800-00833
Opposition to State of Nevada's Motion in Limine to Exclude Testimony of Valerie Fridland (Hidalgo III and Hidalgo Jr.)	01/20/09	5	00919-00972
Order Denying Defendants Motion for Judgment of Acquittal Or, In the Alternative, Motion for New Trial	08/04/09	25	04660-04663
Order Denying Defendants Motion to Strike Notice of Intent to Seek Death Penalty	10/03/06	1	00188-00192
Order Directing Answer	10/20/06	3	00514-00515
Order Dismissing Petition	04/09/08	4	00790-00791
Order Granting Motion for Stay	02/21/08	4	00780-00781
Order Granting the State's Motion to Consolidate C241394 and C212667	01/16/09	5	00917-00918
Order Withdrawing Opinion, Recalling Writ, and Directing Answer to Petition for Rehearing	02/21/08	4	00782-00783
Opinion	12/27/07	3	00516-00529
Petition for Writ of Mandamus Or, In The Alternative, Writ of Prohibition (Hidalgo III and Espindola)	10/16/06	2-3	00193-00513
Proposed Jury Instructions Not Used	02/12/09	24	04389-04436
Proposed Verdict Forms Not Used	02/17/09	24	04502-04504
Reply to State's Opposition to Motion for Judgment of Acquittal Or, In the Alternative, a New Trial (Hidalgo III and Hidalgo Jr.)	04/17/09	24	04537-04557
Sentencing Memorandum (Hidalgo III and Hidalgo Jr.)	06/19/09	24	04595-04623
State Petition for Rehearing	01/23/08	3	00534-00548
Supplemental Points and Authorities to Defendant, Luis A. Hidalgo, Jr.'s Motion for Judgment of Acquittal Or, In the Alternative, a New Trial (Hidalgo III and Hidalgo Jr.)	04/27/09	24	04558-04566
Transcript (Defendant, Luis Hidalgo III's Motion for Acquittal Or, In the Alternative, a New Trial; Defendant Luis Hidalgo, Jr.'s Motion for Judgment of Acquittal)	05/01/09	24	04567-04593
Transcript (Defendant's Motion to Amend Record)	01/11/11	25	04668-04672
Transcript (Defendant's Motion for Audibility Hearing and Transcript Approval)	02/05/08	3	00560-00573

Document	Date Filed	Vol.	Page No.
Transcript (Motions)	02/14/08	4	00729-00774
Transcript (Sentencing)	06/23/09	25	04624-04655
Transcript (Calendar Call)	01/22/09	5	00975-01008
Transcript (Grand Jury)	02/12/08	4	00578-00723
Transcript (Jury Trial Day 1: Jury Voir Dire)	01/27/09	6	01015-01172
Transcript (Jury Trial Day 2)	01/28/09	7-8	01173-01440
Transcript (Jury Trial Day 3)	01/29/09	9	01495-01738
Transcript (Jury Trial Day 4)	01/30/09	10-11	01739-02078
Transcript (Jury Trial Day 5)	02/02/09	12	02079-02304
Transcript (Jury Trial Day 6)	02/03/09	13	02305-02489
Transcript (Jury Trial Day 7)	02/04/09	14-15	02490-02748
Transcript (Jury Trial Day 8)	02/05/09	15	02752-02911
Transcript (Jury Trial Day 9)	02/06/09	16	02969-03153
Transcript (Jury Trial Day 10)	02/09/09	17-18	03154-03494
Transcript (Jury Trial Day 11)	02/10/09	19-20	03495-03811
Transcript (Jury Trial Day 12)	02/11/09	21-22	03812-04141
Transcript (Jury Trial Day 13)	02/12/09	23	04143-04385
Transcript (Jury Trial Day 13 (Excerpt))	02/12/09	23	04386-04388
Transcript (Jury Trial Day 14: Verdict)	02/17/09	24	04437-04444
Trial Memorandum (Hidalgo Jr.)	01/29/09	8	01441-01494
Verdict (Hidalgo Jr.)	02/17/09	24	04500-04501
Writ of Mandamus (Hidalgo III)	06/03/08	5	00841-00843

Transcript of Jury Trial Day 12

Continued

1 THE WITNESS: Small little meetings every day, a little every day
2 event type of thing.

3 THE COURT: Okay. And were those like sit down in the office
4 meetings, or was that just more you run into each other at the club and discuss
5 business?

6 THE WITNESS: No, it was just more like in the office type of thing,
7 you know. But at least two or three times a week we would have something a
8 little bit more major, you know. Little small, knickknack type of conversations,
9 you know, yeah, on a daily basis, you know, I'm going to make my rounds, we
10 got to get to this, you know, the popcorn didn't get made, the coffee is not ready.
11 That type of meeting. That's what I call petty.

12 THE COURT: Okay. And then the major meetings about the -- or
13 more significant meetings about the club, how often?

14 THE WITNESS: Correct. About two or three times, maybe, a week,
15 ma'am.

16 THE COURT: Two or three times a week. And would those also
17 occur in your office or her office or where?

18 THE WITNESS: It would've occurred in my office because I want to
19 say that it was more private. You know, everybody, you know, because not only
20 those two chairs were there, Your Honor, but there was also another couch that
21 was like eight feet long, you know, on the side of the wall before you -- when you
22 come in. It was -- like I said, it's an eight foot couch. I still have that couch. And
23 then plus the two chairs. So we can actually hold, three, four, five, you know, six,
24 seven individuals.

25 THE COURT: Okay. Now, I'm assuming -- you testified you were

1 not told of TJ's firing.

2 THE WITNESS: Correct.

3 THE COURT: I'm assuming other employees during the time that
4 you and Anabel were running the Palomino Club were fired; is that fair to say?

5 THE WITNESS: Put it to me again, Judge.

6 THE COURT: Well, do you -- and I'm going to ask it the way it was
7 written. Do you know, and don't speculate, do you know why you were not told
8 of TJ's firing right after he was fired?

9 THE WITNESS: No, I don't know why I was never told.

10 THE COURT: Okay. What about when other employees were --
11 were fired? Were you told?

12 THE WITNESS: Some, Your Honor. I guess it depends on the
13 significance of the person at that particular post, I would say, you know, and a
14 backup payout type of person who you're used to making sure, you know what I
15 mean, that got the money, some people, you know -- Ariel had firing authority,
16 she had hiring authority. Anabel had the same thing, you know, that type of
17 thing. The only thing I requested that there would be two people there, two
18 supervisors or two managers when they did that.

19 THE COURT: Okay. And then during this period of May 2005, who
20 owned the Palomino?

21 THE WITNESS: May of 2005? I did, Your Honor.

22 THE COURT: Okay. Did you own it by yourself or did anyone else
23 own it with you?

24 THE WITNESS: No, I owned it by myself.

25 THE COURT: Up until May 24, 2005 -- this is a two part question.

1 What was Anabel Espindola to you first in regards to your business life, and
2 second in regards to your personal life?

3 THE WITNESS: As far as business life, she was a percent owner of
4 Simone's Auto Plaza. Is that what you're asking?

5 THE COURT: Well, it's a juror's question.

6 THE WITNESS: Is that the question?

7 THE COURT: So just try to explain what your business relationship
8 was to them.

9 THE WITNESS: Okay. She obviously still had the title. She was a
10 business owner at Simone's Auto Plaza. And she was the GM and the key
11 employee of the Palomino Club.

12 THE COURT: All right. And did you rely on her for business
13 decisions and business operations, would you say?

14 THE WITNESS: I would say so, Your Honor, yes.

15 THE COURT: Okay.

16 THE WITNESS: Yes.

17 THE COURT: And then the juror now wants to know what was
18 Anabel Espindola to you in -- up until May of 2 -- May 24, 2005, with respect to
19 your personal life.

20 THE WITNESS: She was my girlfriend.

21 THE COURT: Okay.

22 THE WITNESS: She was my girlfriend.

23 THE COURT: If Anabel set up TJ or was part of a plan to set up TJ
24 to be beaten up to deal with him, would you be surprised by -- by that? Would
25 that surprise you if Anabel was involved in a plan, a scheme, to have TJ beat up,

1 beaten up?

2 THE WITNESS: Would I be surprised? I don't know how to answer
3 that question, Judge. You know, I -- I know if I had known that, you know what I
4 mean, I would have stopped it immediately because I don't -- I don't go there.
5 Okay? Now, her -- yeah, I would have to say I would be surprised. I would be
6 kind of shocked, you know. Yeah.

7 THE COURT: All right. And has Anabel ever in your experience or
8 during the length of time that you have known her, has she been a mean or
9 hateful person to anyone?

10 THE WITNESS: I would say there were a few occasions, Your
11 Honor, that I cannot say what it is because that's not part of the proceeding here
12 in this court. But has she done something? Yes.

13 THE COURT: Okay. And how long ago -- well, let me ask you that.
14 I'll let that -- has she ever been revengeful to someone in any way? Has she
15 shown any characteristics of being revengeful?

16 THE WITNESS: Somewhat, yes.

17 THE COURT: Okay.

18 THE WITNESS: Yes.

19 THE COURT: And have you ever known her to physically hurt
20 anybody?

21 THE WITNESS: Physically hurt anybody? No.

22 THE COURT: All right. If you are not guilty, why are you worried
23 about or why were you worried about being under surveillance?

24 THE WITNESS: It was more of a note taking part, I guess, to remind
25 me and mostly probably also to remind her, you know. That's what was

1 discussed in the meeting, you know, that's what I wrote.

2 THE COURT: Okay.

3 THE WITNESS: It was not I did it for anything else other than, hey,
4 Anabel, you know, or, you know, that kind of thing. To me, that's -- I mean, I
5 could get into other things, but it's not --

6 THE COURT: And then if you -- if you -- I guess the question is why
7 did you run to a lawyer kind of immediately or contact a lawyer -- run was the
8 word used by the juror -- contact a lawyer immediately if you weren't involved?

9 THE WITNESS: Well, I don't think it was so much my worrying
10 about the person involvement, but I knew that I already had a problem. The
11 moment that -- that the gesture that came from me to Anabel, okay, fine, you
12 know, this man is demanding this money, my license was at stake. I mean, it
13 took me 11 months to get it. It was three licenses. You're talking about millions
14 of dollars in the license. I knew that -- I knew that I had screwed up by doing it.
15 And, you know, I was looking for help and obviously someone else said call the
16 lawyer, you better talk to your attorney. And at that point I decided to go ahead
17 and do that.

18 THE COURT: Okay. Were you a part of any plan to harm TJ?

19 THE WITNESS: No.

20 THE COURT: Were you a part of any plan to help cover up what
21 happened to TJ?

22 THE WITNESS: I don't think that I was in any plans to cover what
23 had happened. I was, like I said, in shock and in fear. And when I reach a
24 level -- I don't want to misuse the word satisfaction or satisfied that, maybe that I
25 was safe or something like that, that's when I talked to Mr. -- Mr. Gentile and I

1 said I need to step to the plate now that, you know, I feel more comfortable about
2 the situation. I offered and I went ahead and offered to talk to Mr. DiGiacomo
3 and Mr. Pesci and also another DA, and they wouldn't do it.

4 THE COURT: Okay. Were you part of any plan to harm the flier
5 boys or promoters known as Rontae Zone and Jason Taoipu?

6 THE WITNESS: No. I -- I never had no contact with -- with them at
7 all. I didn't know them. I -- I was not privy to that type of information. It was part
8 of a conversation that was going to take place and it didn't about him having
9 other people in the van. I know that I've heard that it was under -- supposedly
10 that was something under my division, but in reality it wasn't under my division,
11 you know.

12 All I ever said to everybody else and the staff was, hey, I think
13 tonight we should go to the limo stands, hey I think that we should go to the
14 taxicab stands, I think that we should go someplace else. That was pretty much
15 the direction that I gave them, you know.

16 But I never specifically mentioned, you know, directly do this,
17 do this, do that. No. Because I guess it would depend how the business was at
18 the time, what needed to be done. You know, if more taxicabs needed to be
19 contacted, we had to do that.

20 THE COURT: Now, do you know if Anabel and Deangelo had a
21 social relationship outside the Palomino Club, outside their work relationship?

22 THE WITNESS: You said not to speculate?

23 THE COURT: Right. If -- only if you know.

24 THE WITNESS: I would say yes.

25 THE COURT: Yes, a little relation -- what is --

1 THE WITNESS: I would say they did have some type of a
2 relationship outside of the Palomino Club.

3 THE COURT: Okay. And do you know if they ever smoked pot
4 together?

5 THE WITNESS: No, I don't. That I do not know.

6 THE COURT: Okay. In the interview with Mr. DePalma, was Anabel
7 in the room?

8 THE WITNESS: Yes.

9 THE COURT: What was the seat -- what were the seating
10 arrangements in the interview with Mr. DePalma?

11 THE WITNESS: I don't think that that would be an honest answer
12 on my part because I've heard it already four times in here.

13 THE COURT: Okay. Do you independently remember, as you sit
14 here today, have any independent memory of the seating arrangements?

15 THE WITNESS: Well, I know that the detective, Mr. Dibble, he was
16 further away from us, Mr. DePalma was in front, and I want to say that she was
17 here and I was there.

18 THE COURT: Okay. And were you sitting -- excuse me. Were you
19 sitting in front of the desk or in front of a table?

20 THE WITNESS: It was kind of a funny looking desk, you know, not
21 the kind I'm used to, you know what I mean, but I would -- I would call it a desk, a
22 table.

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

24 Mr. Gentile.

25 /////

1 BY MR. GENTILE:

2 Q Mr. Hidalgo, I'm thinking maybe you misunderstood a question. I
3 think one of the jurors asked you if you were ever a part of a plan to harm any of
4 the flier boys, Rontae Zone or Jason Taoipu.

5 A No, I thought I answered that. I said no.

6 Q Okay.

7 A I didn't even know them.

8 MR. GENTILE: I don't have anything else.

9 THE COURT: All right.

10 Mr. Adams, anything?

11 MR. ADAMS: Yes, ma'am.

12 RECROSS-EXAMINATION

13 BY MR. ADAMS:

14 Q You indicated something about some vindictiveness or -- or
15 problems Ms. Espindola had had with some other people in the past?

16 A Yes.

17 Q Where -- where she and somebody else had a disagreement?

18 A Yes.

19 Q All right. Is it -- is it fair to say that your ex-wife and Ms. Espindola
20 were not on the best of terms?

21 A Correct.

22 Q Thank you.

23 THE COURT: Mr. Pesci --

24 MR. PESCI: Thank you.

25 THE COURT: -- anything else?

RECROSS-EXAMINATION

BY MR. PESCI:

Q Sir, who told you that we wouldn't meet with you?

A I believe that I asked that question to Mr. Gentile. I waited --

Q No, no. Who told you that we wouldn't meet with you?

MR. GENTILE: He didn't say that. He said --

A I didn't say that you --

MR. GENTILE: -- you wouldn't meet with him unless he pled guilty
to murder.

MR. DIGIACOMO: That's what --

MR. GENTILE: That's what he said.

BY MR. PESCI:

Q Who told you --

MR. DIGIACOMO: Who told you that?

Q That was the question. Who told you --

THE COURT: Well, it was a part of the question.

So who told you that the DA's wouldn't meet with you unless
you pled guilty to murder, I think, was --

A Mr. Gentile.

Q Who is Mr. Gamage?

A Bill Gamage?

Q Yeah.

A He's an attorney.

Q Is -- was he working with Mr. Gentile back at this time?

A I believe so, yes.

1 Q Did you ever talk to Mr. Gamage about the possibility of giving a
2 statement and speaking with the prosecutors?

3 A I don't recall, Mr. Pesci.

4 Q You don't have any recollection of --

5 A No.

6 Q -- discussions about ground rules, about you talking with us with Mr.
7 Gamage?

8 A No, Mr. Pesci, I don't remember.

9 Q Thanks.

10 THE COURT: Mr. -- any other juror questions? All right. Okay.

11 I'll see counsel up here please.

12 (Conference at the bench)

13 THE COURT: All right. A couple of juror questions here. At the --
14 there was testimony about the association of night club owners or strip club
15 owners. At the club owner's monthly meetings, did you participate in the
16 meetings?

17 THE WITNESS: Yes, I did.

18 THE COURT: And how did you participate in the meetings?

19 THE WITNESS: Offered ideas, offer what I felt, you know, should be
20 done in the industry. A couple times I offered the idea of how to handle the tip
21 money that was left behind for the -- let me see if I could put it in a better term. A
22 cashier cage would get tips sometimes. We -- people that escorted people would
23 get tipped sometimes. And basically some of the other clubs, what they were
24 offering was to go ahead and put it in a pool jar and somebody at night would
25 take out the money and distribute it.

1 And the attorney firm that I had at that time said that we were
2 getting into a grey area of liability issues, and I don't want to say, but I know that
3 one of the clubs was doing that and that's what got them into trouble with the
4 IRS.

5 THE COURT: Okay. And who got the Palomino to be able to pay
6 more to the cab drivers than the other clubs were able to pay to the cab drivers?
7 Who got that through at the meeting?

8 THE WITNESS: I think it was a joint conversation, Your Honor. I
9 can't recall exactly who was the one who originally said it, but obviously I
10 motioned it. But it was said that prior to me that they had considered that the
11 Palomino, since it was the furthest on the strip, that we should be allowed to pay
12 a little bit more. So that's how the introduction came, and when they came down
13 for the voting, they said, okay, we'll go.

14 THE COURT: Okay. How involved was Little Lou in running the
15 Palomino?

16 THE WITNESS: Little Lou -- Little Lou assisted a lot with the
17 dancers, the liquor, taking the liquor orders, taking sometimes money, where it
18 was short in one of the cages, over to the bars, collected money from the bars,
19 brought it in the office to Anabel.

20 He basically did also some type of scheduling for pickups. He would
21 talk to the front cage person who would obviously get the call, he would schedule
22 that. Sometimes went into the cab office in the back section, you know, where
23 we had the coffee and donuts, he would take care of that. So, yeah, I want to
24 say that he was pretty much involved.

25 THE COURT: Okay. And then when you say he assisted with the

1 dancers, what did that entail?

2 THE WITNESS: Making sure that the little bank had sufficient
3 money for the girls to cash in their chips at night. And sometimes, I can't say
4 often, but a few times he paid out, you know, we were shorthanded or something
5 like that and so he would take the chips.

6 THE COURT: You mean, when the dancers would take the chips
7 and he would actually convert the chips to cash for them?

8 THE WITNESS: That is correct. Yes.

9 THE COURT: Okay. And when you say he was involved in -- in the
10 liquor orders, do you mean he would decide, okay, we need a case of scotch or a
11 case of merlot or whatever?

12 THE WITNESS: Yes, and -- excuse me. Yes, he would basically
13 take the inventory and find out what we had and what we needed, you know.
14 Everything had to be done by Monday or Tuesday so the liquor order would
15 come in on Thursday or Friday at the very latest in case of an emergency
16 because we knew that we had the weekend coming.

17 But you got to understand also that we also had two other
18 clubs that we were considering. You know, Satin Saddle which is a whole
19 complete place, so we had to take beer back and forth so he would do that, and
20 so he was -- he did assist in a lot of things.

21 THE COURT: Okay. Did Little Lou attend business meetings for the
22 Palomino Club?

23 THE WITNESS: Your Honor, I don't remember, but I want to say
24 maybe once, maybe. And that's -- that's a stretch, maybe.

25 THE COURT: Okay. Other than what you've already testified to, did

1 Little Lou make any decisions in -- regarding any business decisions for the
2 Palomino Club?

3 THE WITNESS: I would say some, Your Honor, but very minimum.

4 THE COURT: Okay. And did he have -- this is related. Did he have
5 any input into the operation of the Palomino Club, other than what you've already
6 told us about?

7 THE WITNESS: Just suggestions, Your Honor. I mean, you know,
8 there was nothing specific, you know what I mean, where he actually had a voice
9 to say, no, this is the way I want it done period. No, it was not like that.

10 THE COURT: Okay. And a juror asks didn't you have security
11 downstairs at the club the night Deangelo requested the \$5,000 to tackle, I
12 guess, Deangelo while you could've waited for police to come?

13 THE WITNESS: I don't recall how many people on the staff were
14 there. I don't, Your Honor. I don't recall.

15 THE COURT: Okay.

16 THE WITNESS: It could've been maybe one person and one
17 outside, and then the person in the back office. And one time, so you know, yes,
18 we did have security, but that was a long time ago.

19 THE COURT: Okay. As of May 2005, did you have security at the
20 Palomino?

21 THE WITNESS: No, ma'am.

22 THE COURT: Okay. So you definitely didn't have armed security --

23 THE WITNESS: No.

24 THE COURT: -- security with sidearms --

25 THE WITNESS: No.

1 THE COURT: -- or anything like that?

2 THE WITNESS: No. No, we did not.

3 THE COURT: Okay.

4 THE WITNESS: No.

5 THE COURT: All right. Mr. Gentile, any follow up?

6 MR. GENTILE: No, Your Honor.

7 THE COURT: Mr. Adams, anything else?

8 MR. ADAMS: No, Your Honor.

9 THE COURT: Mr. Pesci, anything else?

10 MR. PESCI: No, Your Honor. Thank you.

11 THE COURT: Any other juror questions?

12 All right. Mr. Hidalgo, thank you. You may return to counsel
13 table next to Ms. Armeni.

14 MS. ARMENI: Excuse me, Your Honor?

15 THE COURT: I didn't -- I don't --

16 MS. ARMENI: Oh.

17 THE COURT: -- believe there were any other questions, so I told
18 him to go sit down back next to you.

19 All right. Mr. Gentile.

20 MR. GENTILE: Your Honor, I believe that we have moved
21 everything that we've submitted into evidence. I'd like the clerk to confirm that.

22 Have we done that? I think we don't have that many exhibits,
23 but I think we've moved them all in.

24 THE COURT: Anything outstanding on behalf of --

25 THE CLERK: They're all in.

1 THE COURT: All right.

2 MR. GENTILE: Okay.

3 THE COURT: They're all admitted.

4 MR. GENTILE: Then Luis Hidalgo, Jr. rests.

5 THE COURT: All right.

6 Mr. Arrascada.

7 MR. ARRASCADA: Your Honor, we rest subject to a ruling by the
8 Court tomorrow.

9 THE COURT: All right. Thank you.

10 All right. Ladies and gentlemen, let's go ahead and take a
11 quick five minute break and leave your notepads in your chairs. And you're
12 reminded of the admonition not to discuss anything or do anything relating to the
13 case on the break.

14 Follow Jeff through the double doors. Actually, it's probably
15 going to be closer to ten minutes.

16 (Jury recessed at 6:07 p.m.)

17 THE COURT: Okay. Where is Mr. Hidalgo?

18 Sir, go ahead and have a seat there at counsel table.

19 And Mr. Gentile --

20 Now we're on the record.

21 Mr. Gentile, had indicated that he may have an objection to
22 the rebuttal evidence because he doesn't know what it's rebutting.

23 MR. GENTILE: Well, that's the point. For a rebuttal case there has
24 to be something specific in the defense --

25 THE COURT: It's rebutting.

1 MR. GENTILE: -- case in chief that it contradicts.

2 THE COURT: Okay. So what's Mr. Oram going to rebut?

3 MR. DIGIACOMO: The claim during the defense case of recent
4 fabrication by Anabel Espindola. They asked her questions on cross-
5 examination, but there was no inconsistent statement of her that was admitted.
6 During their case in chief they played --

7 THE COURT: Yeah, they did.

8 MR. DIGIACOMO: -- different --

9 THE COURT: When did you first --

10 MR. DIGIACOMO: -- inconsistent statements.

11 THE COURT: -- tell this. Okay. Then Ms. Espindola, what's she
12 going to say?

13 MR. DIGIACOMO: What? I'm not calling Ms. Espindola. I had her
14 brought up so she could waive the privilege so that --

15 THE COURT: Oh.

16 MR. DIGIACOMO: -- Mr. Oram --

17 THE COURT: Right, right, right.

18 MR. DIGIACOMO: -- could testify to it.

19 THE COURT: Okay. And then who's your next rebuttal witness?

20 MR. DIGIACOMO: We have Bill Faulkner to put in certain
21 statements of PK Handley that he either would not admit or then later backed off
22 and says I don't remember it that way when he was very specific in his
23 statement.

24 THE COURT: Okay.

25 MR. DIGIACOMO: Faulkner was also going to do potentially some

1 impeachment of -- I'm getting tired.

2 THE COURT: Is Ms. Espindola up here?

3 MR. DIGIACOMO: She is. She's in the back room. She's prepared
4 to come out here.

5 THE COURT: All right.

6 MR. DIGIACOMO: I intend to give the way.

7 MR. PESCI: Ms. Perez, Obi Perez.

8 MR. DIGIACOMO: Obi Perez. I don't think we're actually going to
9 ask him questions relating to Obi Perez. And then we have Martin Wildemann
10 here, but that depends on what your ruling is as to the thing that they -- I mean,
11 he was a basis of rebuttal for what they were going to offer from the statement.

12 THE COURT: And basically --

13 MR. DIGIACOMO: Because if they offer it --

14 THE COURT: -- all Wildemann was going to say that would be
15 relevant is when I interviewed Jason Taoipu, he referred to the boss as Little Lou.

16 MR. DIGIACOMO: No, that's not what he'll say. He'll say when I
17 interviewed Jason Taoipu he informed me of two phone calls prior to getting the
18 order. The first phone call was Anabel, and Anabel said come get fliers for
19 promoting. The second phone call was from a person named Lou who I thought
20 was the boss and we went to the Palomino Club.

21 And the third phone call, the only thing he overheard about
22 that phone call was Deangelo telling Anabel basically we're out at the lake. And
23 then he never once said anything about baseball bats and garbage bags coming
24 out of Anabel or that Deangelo told Anabel or anything like that during his
25 statement to Detective Wildemann.

1 MR. GENTILE: Well, you know, that --

2 MR. ADAMS: That's the key --

3 MR. GENTILE: We are on --

4 MR. ADAMS: -- point, Judge. They've asked it one time of Jason
5 Taoipu directly, and it was a crystal clear question under oath, and he gave an
6 answer that they don't like. They didn't stop the tribunal and say, whoa, we think
7 they've injected improper evidence into the Counts trial. They didn't do that.
8 Now, a year later, they're coming in and complaining any answer that they
9 elicited.

10 THE COURT: All right.

11 MR. GENTILE: And -- and there's a serious --

12 MR. DIGIACOMO: But we're allowed to.

13 MR. GENTILE: Under Moore versus Illinois, a United State
14 Supreme Court case, and I -- I do not cast aspersions in the sense of
15 intentionally, but under Moore versus Illinois, a prosecutor, and really only a
16 prosecutor, when a witness testifies, especially their own witness testifies in a
17 way that the prosecutor deems to be perjurious, the prosecutor has a duty to
18 correct it.

19 MR. DIGIACOMO: [inaudible].

20 MR. GENTILE: He lied. You're saying he lied.

21 MR. DIGIACOMO: I'm not saying he lied. How much credibility do
22 you deal with when it relates to a witness? Witnesses --

23 THE COURT: Okay. Wait a minute.

24 MR. DIGIACOMO: -- don't usually lie.

25 MR. GENTILE: What -- so what was it you gave him, probation?

1 THE COURT: Jeff, bring Anabel Espindola in.

2 THE MARSHAL: Yes, Judge.

3 MR. GENTILE: What is it you gave, probation to him?

4 MR. DIGIACOMO: I didn't give it to him.

5 MR. GENTILE: Oh, the Judge did. Okay.

6 THE COURT: After they stood silent and came into chambers
7 asking me to give them --

8 MS. ARMENI: It's all you, Judge.

9 THE COURT: -- probation.

10 And, by the way, I was hoping someone would point out that
11 Mr. Hidalgo was on \$650,000 bond --

12 MR. PESCI: We were going to ask for a jury instruction based on --

13 THE COURT: -- so that I didn't look like a big schmuck putting him
14 on house arrest.

15 MR. DIGIACOMO: Well, we actually wanted a jury instruction. We
16 were going to address that with the Court --

17 MR. PESCI: Right.

18 MR. DIGIACOMO: -- related to the inappropriateness of -- of that.

19 THE COURT: Well, there was a juror question, but that left it out
20 there that he just got house arrest --

21 MR. GENTILE: You said that you were going to address it, which is
22 the only reason I didn't.

23 THE COURT: -- and on OR. But I think there needs to be
24 something both to benefit Little Lou --

25 THE DEFENDANT HIDALGO III: Yeah, I got screwed.

1 THE COURT: -- and to clear the record that he was actually on
2 bond. Because otherwise it looks like, oh, Mr. H gets out on house arrest, and
3 this other guy is still sitting in jail and it's not an issue of money, which is really
4 what the issue is.

5 Ms. Espindola, come on up here, please, to the witness stand.

6 MR. DIGIACOMO: We should have Oram here when this happens.

7 THE COURT: Yeah.

8 MR. DIGIACOMO: Let me grab him.

9 THE COURT: Go ahead and have a seat.

10 All right. Mr. DiGiacomo, why don't you just state again on the
11 record the area of conversation you're going to be asking Mr. Oram about.

12 MR. DIGIACOMO: I am planning on asking Mr. Oram questions
13 related to a defense claim of recent fabrication. Based upon that, it is my
14 understanding that Mr. Espindola is willing to waive the privilege that she had as
15 to communications she had with Mr. Oram related to this case.

16 THE COURT: All right.

17 MR. DIGIACOMO: And I think that the Court needs to canvass her
18 on the record. She needs to be able to say it on the record.

19 THE COURT: Okay. Basically, Mr. Espindola, do you understand
20 what Mr. DiGiacomo intends to do?

21 MS. ESPINDOLA: Yes.

22 THE COURT: Okay. And you understand that any communications
23 that you had with your attorney, Mr. Oram, would be, as long as there weren't
24 third persons there, would be subject to the attorney/client privilege?

25 MS. ESPINDOLA: Yes.

1 THE COURT: And as a result of that, if -- unless the privilege is
2 waived, Mr. Oram would be prevented from testifying or even telling other people
3 about things that you may have told him within the scope of your attorney/client
4 privilege. Do you understand that?

5 MS. ESPINDOLA: Yes.

6 THE COURT: Okay. And now you've heard Mr. DiGiacomo indicate
7 the areas he wants to inquire about in order to refute what he perceives to be the
8 defense's sort of claim that you have recent -- and based on some of their
9 questions, that you have recently fabricated or told a version of events for the
10 first time. Do you understand that?

11 MS. ESPINDOLA: Yes.

12 THE COURT: Okay. Now, do you wish to waive and give up your
13 privilege, your attorney/client privilege so that Mr. Oram can be questioned about
14 just those communications?

15 MS. ESPINDOLA: Yes.

16 THE COURT: And do you wish to waive that privilege so that Mr.
17 Oram will be allowed to answer Mr. DiGiacomo's questions about those
18 communications, as well as any questions relating to those that the defense may
19 have?

20 MS. ESPINDOLA: Yes.

21 THE COURT: Okay. Other communications not relating to that I
22 think would still be covered.

23 MR. GENTILE: Your Honor, here's the problem. The -- the State
24 has not identified the specific area.

25 THE COURT: The questions, right.

1 MR. GENTILE: And I don't think you can canvass her adequately
2 until the State discloses what it is --

3 THE COURT: What -- what are --

4 MR. DIGIACOMO: I don't --

5 THE COURT: -- the questions --

6 MR. DIGIACOMO: Well --

7 THE COURT: -- you're going to ask?

8 MR. DIGIACOMO: Wait a second, Judge. I don't think Mr. Gentile
9 has the real interest in the legal rights of Anabel Espindola. Maybe we should
10 ask Mr. Oram if he feels that the canvass is appropriate.

11 MR. ORAM: The privilege is hers. It's no one else's. She's waived
12 it. And it seems like --

13 THE COURT: All right. But, Mr. Oram, do you feel comfortable with
14 your client's knowing and intelligent waiver of the privilege?

15 MR. ORAM: Yeah. I did explain it to her.

16 THE COURT: Okay.

17 MR. ORAM: And she understands.

18 THE COURT: And you have had an opportunity to privately discuss
19 the privilege with her and explain what she's waiving and giving up; is that right?

20 MR. ORAM: Yes, and we've had time in the back of the court, Your
21 Honor, for some time and I've talked to her about it.

22 THE COURT: Okay. And so, just to reiterate, you are comfortable
23 with your client's knowing waiver of the privilege at this time?

24 MR. ORAM: Yes, Your Honor.

25 THE COURT: Anything else the State wants me to cover?

1 MR. DIGIACOMO: No, Judge.

2 MR. ORAM: I have one question.

3 THE COURT: Yes.

4 MR. ORAM: With regard to any -- they're just going to question me
5 regarding communication in the jail, or are they going to question me regarding
6 communication, joint defense communication?

7 THE COURT: I think it's just communication --

8 MR. DIGIACOMO: I can only question him, on my understanding of
9 the law --

10 THE COURT: Communication at the --

11 MR. DIGIACOMO: -- is that when it's a joint defense
12 communication, I can only question Mr. Oram about communications with his
13 client --

14 THE COURT: Right.

15 MR. DIGIACOMO: -- during the course of his representation. I
16 cannot question him about communications he had with --

17 THE COURT: The whole group.

18 MR. DIGIACOMO: -- Mr. H --

19 THE COURT: Right.

20 MR. DIGIACOMO: -- or Little Lou. But it's also my understanding
21 that -- that -- I don't know when that agreement went into effect or not. I've never
22 seen a copy of the agreement and don't know what the agreement says.

23 MR. ORAM: Well, Judge, my concern is that she talked to an
24 attorney and it -- he was part of Mr. Gentile's, or beginning to be a part of Mr.
25 Gentile's law firm. If he was able to say what Anabel Espindola supposedly said,

1 it seems like they, to me, just from a reading of it, that they breached the
2 agreement. See, I thought that would've been privileged based on the
3 agreement that I -- the way I had read the joint defense agreement.

4 THE COURT: But I guess just with respect to communications just
5 between the two of you --

6 MR. ORAM: Yes, okay.

7 THE COURT: -- you have no problem answering those questions.

8 MR. ORAM: No, I do not.

9 THE COURT: And my understanding is that's all Mr. DiGiacomo is
10 going to ask you about, communications just involving the two of you privately.

11 Is that right, Mr. DiGiacomo?

12 MR. DIGIACOMO: As it relates to her privilege, yes, Judge.

13 THE COURT: Okay.

14 And, Ms. Espindola, that -- you understand that's what you're
15 sort of giving up, your --

16 MS. ESPINDOLA: Yes.

17 THE COURT: -- your privilege with respect to that?

18 MS. ESPINDOLA: Yes.

19 THE COURT: Anything else I need to cover?

20 MR. DIGIACOMO: If I can ask Mr. Oram to make sure that -- are
21 you comfortable with everything that --

22 MR. ORAM: Am I comfortable with what's been said? Yes.

23 MR. DIGIACOMO: Yeah.

24 MR. ORAM: Yeah.

25 MR. DIGIACOMO: Okay.

1 THE COURT: Any other -- you know, I'm just doing this --

2 MR. DIGIACOMO: As long as he's fine.

3 THE COURT: -- off the top of my head.

4 MR. DIGIACOMO: I mean, I'm -- I'm more concerned about the
5 legal rights of Ms. Espindola than anything else, so --

6 THE COURT: All right.

7 Anything else the defense, other than what Mr. Gentile has
8 just said, I need to cover?

9 MR. ADAMS: I'm interested in finding out the scope of this so we
10 can know how broad of the records we should be asking the Court to have
11 produced to us now so that we can cross-examine Mr. Oram. So I think this is --
12 this is a bit of a --

13 THE COURT: You mean --

14 MR. ADAMS: -- sticky area.

15 THE COURT: -- Mr. Oram's notes?

16 MR. GENTILE: Well, Mr. Oram is going to refresh his memory with
17 his notes, and we're entitled to those notes once --

18 THE COURT: And I think --

19 MR. GENTILE: -- he refreshes them.

20 THE COURT: -- Mr. Oram has indicated earlier that he has no
21 problem providing all of his notes to the defense.

22 And, Ms. Espindola, you understand that Mr. Oram has
23 agreed to provide his notes to the defense?

24 MS. ESPINDOLA: Yes.

25 THE COURT: All right. Have you looked at those notes and seen

1 what's in them?

2 MS. ESPINDOLA: Mr. Oram, when he came to visit me did not take
3 notes. He, in the room, showed me what exhibit was. But --

4 THE COURT: And, Mr. Oram, for the record, are you now showing
5 those notes to Ms. Espindola?

6 MR. ORAM: I am. And I'll show that to the defense. The reason I
7 did that is because I see my handwriting on there, and it apparently is
8 handwriting from someone else.

9 MS. ESPINDOLA: It's my handwriting. I went ahead and gave this
10 to Mr. Oram. He asked me for --

11 MR. ORAM: Mitigation or character witnesses.

12 MS. ESPINDOLA: -- character references.

13 MR. ORAM: I've circled them.

14 THE COURT: Okay.

15 MS. ESPINDOLA: So --

16 MR. ORAM: I've circled them and I've written years, how -- how
17 long she knew these people.

18 THE COURT: Okay. And do you have any problem with giving
19 those notes --

20 MS. ESPINDOLA: No.

21 THE COURT: -- to the defense?

22 MS. ESPINDOLA: No.

23 THE COURT: And, Mr. Oram, based on your review of the file as
24 well as your independent recollection, are those the only notes that you have?

25 MR. ORAM: The -- the only --

1 THE COURT: Germane to this.

2 MR. ORAM: To me discussing with her?

3 THE COURT: Right.

4 MR. ORAM: There are some minor things, very, very minor. There
5 was one where Mr. Gentile had asked me to ask her about a particular individual.
6 I think it was a pretty innocuous situation. I remember writing it on the back of
7 my calendar, and it's just the name of a witness or somebody potentially that Mr.
8 Gentile wanted to know about. But other than that, I don't recall anything.

9 THE COURT: Okay. Can -- do you care if we have a photocopy
10 made so they can look at it?

11 MR. ORAM: No.

12 THE COURT: All right. Jeff, go in the -- well, in a minute. Well, I
13 guess you have to do it now.

14 MR. DIGIACOMO: Well, we have to take Ms. Espindola out.

15 THE COURT: Martin, make yourself useful. Go in the back and
16 make two photocopies, or three photocopies. We'll give you one.

17 MR. DIGIACOMO: Thanks.

18 (Off-record colloquy)

19 THE COURT: All right. I think we're done with Ms. Espindola. I
20 don't know that there's anything else.

21 You can go ahead and take Ms. Espindola.

22 MR. DIGIACOMO: And then you can just get up there, Chris.

23 THE COURT: And you can just get -- get up there.

24 MR. GENTILE: I don't remember raising it, but let's take a shot.

25 THE COURT: What? Okay. Go ahead. Take a shot.

1 MR. GENTILE: Oh, no.

2 THE COURT: Oh.

3 MR. GENTILE: I don't really recall recent fabrication. My -- my --
4 my examination went to --

5 THE COURT: Somebody -- because I remember it. Somebody
6 said, well, you waited all this time and the first time you ever said this was --

7 MR. GENTILE: For the State.

8 THE COURT: -- was basically --

9 MR. DIGIACOMO: You were afraid of the death penalty so you
10 made --

11 THE COURT: You were afraid --

12 MR. DIGIACOMO: -- this story up --

13 THE COURT: Right.

14 MR. DIGIACOMO: -- because they filed --

15 THE COURT: I got --

16 MR. DIGIACOMO: -- the death penalty --

17 THE COURT: I got --

18 MR. DIGIACOMO: -- on you.

19 THE COURT: -- a sense of recent fabrication. I mean, I think a
20 reasonable jury, juror, certainly could've believed that that's where you were
21 going with that.

22 All right. Let's bring them back.

23 MR. ADAMS: Judge, are we not going to deal with the scope of this
24 outside the presence of the jury?

25 THE COURT: Scope of what?

1 MR. ADAMS: Well --

2 THE COURT: I mean, you can --

3 MR. ADAMS: -- of an attorney testifying about his communications
4 with a client.

5 THE COURT: What else do you want me -- what else do you want
6 to deal with?

7 MR. ADAMS: I'd like to find out what it is because I think --

8 MR. DIGIACOMO: He's not entitled to that.

9 MR. ADAMS: Well --

10 THE COURT: I mean, if --

11 MR. ADAMS: -- rebuttal is very limited.

12 THE COURT: Well, okay. If you think --

13 MR. ADAMS: I mean, I --

14 THE COURT: -- it exceeds --

15 MR. ADAMS: -- want to make sure it's --

16 THE COURT: -- the scope --

17 MR. ADAMS: -- proper rebuttal.

18 THE COURT: -- of direct, then just object, exceeds the scope of
19 direct. And I'll try to -- I mean of -- right, of your case in chief, and I'll try to make
20 a ruling based on what I remember.

21 MR. GENTILE: Excuse me. Before we go any further, I just want to
22 make sure I got [inaudible]. There's a date, there's a date on here and the date
23 is 2008, but I can't see the month or the day.

24 MR. ORAM: Do you want the day that --

25 MR. GENTILE: No, here, this part Chris.

1 MR. ORAM: Okay. Yeah, I can tell you that right now.

2 MR. GENTILE: Well, I'd like to get the copy --

3 MR. ORAM: Sure.

4 MR. GENTILE: -- is what I'm saying.

5 MR. ORAM: Okay. It just didn't come out?

6 MR. GENTILE: This copy is not good enough, Judge.

7 MR. ORAM: Okay. Here you go.

8 MR. GENTILE: There needs to be a date on it.

9 THE COURT: Who made the copy?

10 MR. GENTILE: I am not calling anybody.

11 MR. ORAM: It's January 23rd.

12 MR. GENTILE: Okay. But I do need the copy.

13 MR. ORAM: Yeah. Sure thing.

14 MR. GENTILE: We might want to do that again.

15 THE COURT: You want to make it a Court's exhibit?

16 MR. GENTILE: No, I might want to do what the State did. The State
17 used Jerry DePalma's notes as their exhibit, so I might want to do it.

18 THE COURT: Okay.

19 MR. DIGIACOMO: Okay.

20 MR. ADAMS: Your Honor, Judge, we'd also like to point out that it's
21 not rebuttal against Luis Hidalgo III if we did not call Obi Perez or question Obi
22 Perez about the content of her statement. We'd request a limiting instruction.

23 MR. ARRASCADA: To the jury.

24 MR. DIGIACOMO: It's still going to be admissible.

25 MR. ADAMS: Not as to us. Not as to us.

1 MR. DIGIACOMO: It's testimony now admissible as --

2 THE COURT: No, because they didn't call, they didn't present a
3 case, and so you wouldn't be able to do this. If you had just rested, they haven't
4 presented anything --

5 MR. DIGIACOMO: So you're --

6 THE COURT: -- so we would just go to argument because they
7 haven't --

8 MR. DIGIACOMO: So you're going to instruct that Obi Perez's
9 testimony is not admissible against Luis Hidalgo III?

10 MR. ARRASCADA: No.

11 MR. DIGIACOMO: I wouldn't be -- if -- I mean --

12 THE COURT: Oh, I see what you're saying.

13 MR. DIGIACOMO: So that's the rule because they told her now it's
14 not admissible against the Third, and since it's not admissible against the Third, I
15 don't have a rebuttal.

16 THE COURT: Well, they didn't -- I mean --

17 MR. DIGIACOMO: Right. But, I mean, in a joint trial the rule is --

18 THE COURT: Right.

19 MR. DIGIACOMO: -- that suddenly it's not admissible.

20 THE COURT: No, no, no. I mean, I'm just saying, you know, in a
21 joint trial they may have made decisions not to call people and just then you've
22 rested and that's all there is, whereas Mr. Gentile made decisions to call people,
23 and so does that really then --

24 MR. DIGIACOMO: Right. But, I mean --

25 THE COURT: But if it's --

1 MR. DIGIACOMO: -- this would impeach --

2 THE COURT: -- rebutting --

3 MR. DIGIACOMO: -- Obi Perez.

4 THE COURT: If it's just rebutting her and it's not evidence involved
5 with you anyway, what do you care?

6 MR. ADAMS: We would not care. The problem is --

7 THE COURT: You know what I'm saying? You can't have your
8 cake and eat it too. You can't benefit from her testimony and then allow it to go
9 unrefuted.

10 MR. ARRASCADA: Judge, I guess it's they're having their cake and
11 eating it because they're the ones that pushed for the joint trial.

12 MR. DIGIACOMO: Are they literally telling the Court that they
13 wouldn't have called Obi Perez in a second trial, a separate trial to impeach --

14 THE COURT: Where did my bailiff go?

15 MR. DIGIACOMO: -- Anabel Espindola.

16 MR. ADAMS: We weren't forced to make that decision.

17 MR. ARRASCADA: Yeah.

18 THE COURT: Where is he?

19 MS. ARMENI: Didn't he go back to try and make a --

20 MR. ARRASCADA: Judge, do you still need this transcript for
21 tomorrow?

22 THE COURT: Yes.

23 While we're looking -- while we're look --

24 MR. ARRASCADA: I'm handing her the certified transcript --

25 MR. DIGIACOMO: Oh, okay.

1 MR. ARRASCADA: -- of Jason Taoipu.

2 THE COURT: It's part of the record anyway. I mean, I just don't feel
3 like digging it out.

4 MR. ARRASCADA: It's certified. It has the magic stamp on it.

5 THE COURT: It's just the first 35 pages?

6 MR. ARRASCADA: Oh, no, that's the -- that's the direct of Mr.
7 Pesci.

8 THE COURT: Well, you said that most of it was just fighting back
9 and forth.

10 MR. ARRASCADA: Well, it was fabrication type stuff. There was no
11 real -- it's -- it's a quick read after --

12 THE COURT: Okay.

13 MR. ARRASCADA: -- 43 pages, Judge.

14 THE COURT: Okay.

15 All right. Let's bring them in.

16 THE MARSHAL: Jury is coming in.

17 (Jury enters at 6:31 p.m.)

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

19 The defense having rested, does the State wish to call any
20 rebuttal witnesses?

21 MR. DIGIACOMO: Yes, Judge. The State calls Christopher Oram.

22 THE COURT: Mr. Oram.

23 MR. ORAM: Hello, Judge.

24 THE COURT: Ms. Husted is going to administer the oath to you.

25 /////

CHRISTOPHER ORAM

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

THE CLERK: Thank you. And please state and spell your name.

THE WITNESS: My name is Christopher Oram. My last name is spelled O-R-A-M, M as in Mary.

DIRECT EXAMINATION

BY MR. DIGIACOMO:

Q Sir, how are you employed?

A I'm an attorney.

Q How long have you been an attorney?

A Since 1991, about 17 years.

Q And what is your main area of practice?

A Exclusively criminal law.

Q Exclusively criminal law?

A Yes.

Q Is there a particular type of criminal law that you have recently been -- well, not recently, that you specialize in?

A Right. I don't specialize. I handle a tremendous amount of murder cases.

Q Okay. You've had a lot of them.

A I've had many, many.

Q Okay. And I'm sorry, how long have you been an attorney? You said 17 years? Since '91 you said?

A Yes, 1991.

MR. GENTILE: May we approach?

JRP TRANSCRIBING
702.635.0301
-284-

1 THE COURT: Of course.

2 (Conference at the bench)

3 BY MR. DIGIACOMO:

4 Q Did there come a point in time when you represented, or I guess still
5 do, an individual by the name of Anabel Espindola?

6 A Yes. Shortly after her arrest I was retained on this case, and I have
7 represented her until today.

8 Q And how is it that you came to know Anabel Espindola? How did
9 that work?

10 A I was contacted by Dominic Gentile who asked me if I would be
11 willing to take the case. I had --

12 MR. ADAMS: Objection. Relevance, Your Honor.

13 THE COURT: That's sustained.

14 BY MR. DIGIACOMO:

15 Q Well, after whatever conversation you had, did you eventually meet
16 Ms. Espindola?

17 A I did.

18 Q And where did you meet her at?

19 A The Clark County Detention Center.

20 Q And do you recall of the top of your head the day you met her?

21 A No, I -- I don't. I've had a chance to review my visitation records,
22 and I believe somewhere approximately May 24th, I believe.

23 Q Okay. And how many times do you -- did you count off how many
24 times you visited her between then and the end of the records that were provided
25 to you?

1 A I did. I don't know if I did it accurately. I would say -- I counted
2 approximately 85. It could be between 80 and 90 times I saw her.

3 Q Specifically did you go back and look to see how many times you
4 met her in the first couple of days she was in the Clark County Detention Center?

5 A I believe I meet her the 24th, 25th, 26th, 27th, 28th, I believe.

6 Q And during that time period do you have any conversations with Ms.
7 Espindola?

8 A Yes, and the conversations are lengthy.

9 Q And do those conversations ever entail her describing to you the
10 circumstances of why she wound up in jail?

11 A Yes, of course. I mean, that's going to be the first thing I do, pretty
12 close to the first thing I do when I go in and I speak to somebody.

13 Q Okay. So you want to know what it is that's going on; correct?

14 A Yes, and we talk about the case, you know, different techniques on
15 talking about a case, but, yes, you address the case pretty much right away.

16 Q And during this initial time period did you get a story as to -- or her
17 version of events as to what happened to cause her to wind up in jail?

18 A Yes.

19 Q And I don't want to go too specific in this, but you're her lawyer. You
20 were here in court when she testified; correct?

21 A Yes, I was.

22 Q Okay. And let me ask the question this way. Was the story she told
23 in court on direct examination consistent with the story she told you in the first
24 couple days you met with her?

25 MR. ADAMS: Objection, Your Honor. May we approach?

1 THE COURT: Okay.

2 (Conference at the bench)

3 BY MR. DIGIACOMO:

4 Q During the course of your early representation of Ms. Espindola, did
5 she describe for you a phone call between Mr. Carroll and herself?

6 A Yes.

7 Q On May 19th?

8 A I -- I don't recall the date of the phone call right off -- right off hand,
9 but I remember. Is this the one where -- plan B?

10 Q No, I want to talk about Deangelo Carroll's phone call.

11 A Okay.

12 Q All right? Do you remember Ms. Espindola testifying to Deangelo
13 Carroll calling her while she's at Simone's Auto Plaza --

14 A Correct.

15 Q -- early in the day that TJ's is --

16 A Correct.

17 MR. GENTILE: I object.

18 MR. ADAMS: Your Honor, I object.

19 MR. GENTILE: This is not rebuttal. We're -- we're saying that that
20 call did happen.

21 THE COURT: Right. That's sustained.

22 MR. DIGIACOMO: Well, I'm -- I got to -- that's my foundational
23 question for the next question.

24 THE COURT: Well, just ask the next question. I mean --

25 MR. DIGIACOMO: Okay. Well, I'll ask the next question.

1 BY MR. DIGIACOMO:

2 Q Did she tell you during the course of this that she relayed the
3 information she got from Deangelo Carroll to Mr. H and Little Lou at Simone's?

4 A Yes.

5 Q Okay. During the course of your representation of her early on, did
6 she tell you that her relaying that information to Mr. H and Little Lou caused an
7 argument between the two of them?

8 A She said that there was an argument, sort of what she described
9 here where they're talking about Rick Rizzolo. Is that the one you're talking
10 about? Yes, that -- that occurred.

11 Q Okay. Did she -- and I don't want to go through every single thing
12 that she testified to, so I'm going to cut to some of the, kind of the points. Later in
13 the evening on the 19th, did she describe for you a conversation with Mr. H
14 involving plan B?

15 MR. GENTILE: Your Honor, I have to have an objection with respect
16 to time predicate. I mean, this whole thing is about a time predicate. If he has
17 notes that he's reflected on from a specific day, we're entitled to those notes. But
18 he has to establish a time predicate.

19 THE COURT: Meaning when the conversation between Ms.
20 Espindola and Mr. Oram occurred?

21 MR. GENTILE: That's correct.

22 THE COURT: All right.

23 MR. GENTILE: If it's un-refreshed recollection, then, you know, it's
24 almost four years old. So if there's -- if there's notes, we should have them.

25 THE COURT: All right.

1 BY MR. DIGIACOMO:

2 Q Let me back you up. Prior to -- well, let me ask you this first of all.
3 Are there notes to this?

4 A The notes that I was -- that I had in this case from any discussion I
5 had with Ms. Espindola I have provided to the Court and to the defense.

6 Q Okay. So they have everything, all the notes that you took in this
7 case?

8 A Yes.

9 THE COURT: And -- and those don't reflect the early meetings that
10 you're testifying about now?

11 THE WITNESS: There -- there would be no notes from any single
12 meetings.

13 THE COURT: Okay.

14 MR. DIGIACOMO:

15 Q Why not?

16 THE COURT: Now, let me ask you this. Mr. DiGiacomo referenced
17 a time period of early May when you first met with Ms. Espindola --

18 THE WITNESS: Yes.

19 THE COURT: -- at the jail.

20 THE WITNESS: Yes.

21 MR. DIGIACOMO: Late May.

22 THE COURT: I'm sorry, late May of 2005. I want you at this point in
23 time, if he asks you about a statement, to reference just that timeframe of late
24 May 2005. Any conversations that may have occurred later than that, if she
25 didn't tell you in early May, then just indicate that wasn't something in early May.

1 THE WITNESS: Or late May?

2 THE COURT: Or, sorry, late May.

3 THE WITNESS: Okay.

4 THE COURT: It's been a long day.

5 THE WITNESS: No, I understand.

6 THE COURT: It's been a long three weeks, frankly.

7 THE WITNESS: I can see that.

8 BY MR. DIGIACOMO:

9 Q And I think I was at the -- plan B conversation. You know what
10 conversation I'm talking about?

11 A I do.

12 Q Okay. And does Ms. Espindola describe for you in late May of 2005
13 a conversation between herself and Mr. H where the subject of plan B came up?

14 A Yes.

15 Q And did she tell you what it is that Mr. H told her to do related to plan
16 B?

17 A To go and make a phone call and say to go to plan B, and then to
18 return to where he was.

19 THE COURT: When did she tell you this?

20 MR. ORAM: She told me that in the very first meetings.

21 THE COURT: The late May meetings?

22 MR. ORAM: Yes, the late May meetings --

23 THE COURT: Okay.

24 MR. ORAM: -- and she would have told me numerous times after
25 that point.

1 THE COURT: Okay.

2 BY MR. DIGIACOMO:

3 Q And I was going to get to that. Right now I'm going to focus on you
4 she tells you a story, basically, or she gives you a version of events in late May
5 and we'll talk about the progression thereafter. Does she describe for you a
6 situation where Deangelo Carroll comes back to the office with Mr. H present
7 saying it's done. Did she describe that for you?

8 A Yes.

9 Q And did she describe for you the discussion that she just testified to
10 related to the money that was paid?

11 A Putting \$5,000 down?

12 Q Yes.

13 A Yes.

14 Q Did she at any point during this five day or the late May period ever
15 tell you that Mr. H paid the money because he was scared of Deangelo or any
16 other person?

17 A No.

18 Q Okay. Did she thereafter describe for you kind of the events of
19 Friday, Saturday, Sunday, leading into the Monday wire?

20 A Yes, she described that in detail.

21 Q Okay. Specifically in this first five day period, did you learn that she
22 wound up at Jerome DePalma's law office?

23 A I learned that she had been at Dominic Gentile's office on two
24 occasions.

25 Q Okay.

1 A Okay.

2 Q So you knew that she had been to Dominic's office on two
3 occasions. Did you know that she had met with Jerome DePalma on one of
4 those occasion?

5 A I knew that she had met just briefly and there was no discussion, but
6 that there had been something that had occurred with Dominic which had -- there
7 was quite a bit of discussion about.

8 Q Okay.

9 A But almost nothing with Mr. DePalma.

10 Q So in her discussions with you, this is in late May, she's telling you
11 she didn't talk substantively to Jerome DePalma?

12 A She doesn't say it that way. She talks about how she met with an
13 attorney, and that she went into the attorney's office and she talked all about this
14 statute, this funny statute. Well, I knew what she was talking about because I
15 had seen this statute. Okay? And she said that there was the discussion, which
16 she has described, with Mr. Gentile where she plays with the TV or breaks the
17 TV, and I'd heard that story numerous times.

18 Q Okay. What about the day before? Had you ever heard the story
19 about Jerome DePalma's office?

20 A Yes, I had heard what she had said. But when I sat in the back of
21 the courtroom and heard was there a lengthy discussion with Jerry DePalma, I
22 had never heard such a thing.

23 Q You never had heard any of that?

24 A Never.

25 Q At some point -- I'm showing you, and this is a copy.

1 MR. DIGIACOMO: If I can have State's proposed exhibit -- or
2 State's Exhibit 241.

3 Q Did you receive a copy of that, I guess it was today?

4 A Yes.

5 Q Had you ever seen that before?

6 A No.

7 Q Okay. Have you had a chance to read through it?

8 A I have.

9 Q Have you ever -- well, I guess we can go by line by line, but is that
10 information consistent whatsoever with the information that Anabel Espindola
11 provided you in the first couple -- the first -- the last days of May?

12 A This is --

13 Q Or is that too broad of a question?

14 A Yeah, I couldn't -- I looked over the six pages. There were certain
15 things I was looking for, but there was some stuff that I saw in there that -- in
16 other words where she counted out money. There's something in there about
17 how she counted out money. And I had never heard that that she counted out
18 money, just simply got it. And she was always very accurate, I placed it on the
19 table.

20 Q I'm going to show you a couple of things, Counsel. It appears to be
21 a -- see the star there in front of you? It says Luis said to Deangelo Carroll to tell
22 TJ to stop spreading shit.

23 A Okay.

24 Q Did Ms. Espindola ever explain that to you?

25 MR. GENTILE: Your Honor --

1 MR. ARRASCADA: We object.

2 MR. ADAMS: Objection.

3 MR. GENTILE: How is this rebuttal?

4 THE COURT: Yeah, that's sustained.

5 MR. DIGIACOMO: Well, what do you mean how is it not rebuttal?

6 This is their witness, Jerome DePalma. I am entitled to ask --

7 THE COURT: Well, and Mr. Oram was not Jerome DePalma's
8 attorney, nor did he have any conversations with Jerome DePalma, nor --

9 MR. GENTILE: This happened five days before he got involved in
10 the case. This was the first statement she ever made.

11 MR. DIGIACOMO: My question is what she never told her lawyer.

12 THE COURT: Well, how does he know?

13 MR. ARRASCADA: Well, how --

14 MR. ADAMS: That should be --

15 MR. ARRASCADA: -- would he know?

16 MR. ADAMS: That's a question for her, Your Honor.

17 THE COURT: I mean, he can't speculate as to why she didn't tell
18 him unless she said I'm not telling you what I told Jerome DePalma, but
19 according to him, she didn't tell Jerome DePalma anything. So --

20 MR. GENTILE: No.

21 MR. DIGIACOMO: That's --

22 MR. GENTILE: No, no, no. He didn't say that.

23 THE COURT: Oh, okay, you're right.

24 MR. GENTILE: He said that she didn't tell him that she told Jerome
25 DePalma. She said she didn't tell Jerome DePalma anything.

1 THE COURT: Thank you, Mr. Gentile. You're correct.
2 MR. GENTILE: Thank you. I just want the record to be clear.
3 THE COURT: You're correct. I misspoke.
4 MR. GENTILE: Thank you.
5 THE COURT: The Court misspoke. Not the first time, not the last
6 time.
7 BY MR. DIGIACOMO:
8 Q I'm going to ask it a different way. Would having this information
9 have been helpful to you in your defense early on in this case?
10 A I did a bail hearing in Boulder City where I had to argue --
11 THE COURT: I think that was just a --
12 MR. ARRASCADA: Objection.
13 MR. ADAMS: Objection to --
14 THE COURT: -- yes or a no question.
15 MR. ADAMS: -- improper.
16 THE WITNESS: Yes.
17 MR. GENTILE: Yeah, I mean --
18 THE WITNESS: Yes, it would have been helpful.
19 MR. ADAMS: What is it rebutting, Your Honor? I don't -- I'm
20 confused.
21 THE COURT: That's sustained.
22 MR. DIGIACOMO: So I can't rebut --
23 THE COURT: Well, I mean, what --
24 MR. DIGIACOMO: The fact that --
25 THE COURT: -- would've been help --

1 MR. DIGIACOMO: -- they're claiming she --

2 THE COURT: No, no, no. What would've been helpful to Mr. Oram
3 and what he could've utilized in Boulder City or in this Court or in Judge Mosley's
4 department or anywhere else isn't really relevant to what Ms. Espindola told him
5 or didn't tell him. The only thing you're allowed to rebut is what Ms. Espindola
6 told him. What he would've liked to know, what he would've done with it, how
7 could it could've benefited his case, you know, that's -- if we were -- Mr. Oram,
8 you know --

9 MR. DIGIACOMO: Let me rephrase the question.

10 THE COURT: Okay.

11 BY MR. DIGIACOMO:

12 Q During the time period that you were representing Ms. Espindola,
13 this is before the preliminary hearing or leading up to the preliminary hearing, you
14 had discussions with her; correct?

15 A Yes.

16 Q And some of those discussions -- well, do any of those discussions
17 relate to give me evidence that helpful to you?

18 A Do I ask her that?

19 Q Yes.

20 A Yes, if there's helpful evidence, obviously that the most important
21 thing that, as a defense attorney, we need.

22 MR. ADAMS: And objection --

23 MR. ARRASCADA: And, again --

24 MR. ADAMS: -- as to relevance, Your Honor.

25 MR. ARRASCADA: Judge, again, this is improper rebuttal.

1 MR. DIGIACOMO: This is not improper rebuttal.

2 THE COURT: Well, okay, Mr. DiGiacomo, once again, you know, if
3 she made statements to him prior to the preliminary hearing that have been
4 called into question by the defense, you may ask Mr. Oram about those
5 statements.

6 MR. DIGIACOMO: Well, how about the lack of her making those
7 statements when she has a really good motive to?

8 MR. ARRASCADA: Judge, he's not --

9 THE COURT: That's not what I was allowing, so that is sustained as
10 to that.

11 MR. DIGIACOMO: May we approach?

12 THE COURT: You may, but --

13 (Conference at the bench)

14 THE COURT: Mr. Oram, I have a couple of juror questions here.
15 You testified that up until today you were Anabel Espindola's attorney.

16 We're -- we're in session guys. Oh, I'm sorry. My fault. My
17 bad. Mr. DiGiacomo --

18 (Conference at the bench)

19 THE COURT: All right. Mr. Oram, a juror wants to know when
20 you -- initially when Mr. DiGiacomo was questioning you stated that you are
21 Anabel's attorney up until today. Do you anticipate being Ms. Espindola's
22 attorney through her sentencing?

23 THE WITNESS: Oh, yes. And I'm sorry, when I said that I meant
24 that I have represented her continuously from late May when this occurred until
25 this very day, and I will continue on representing her until the case is finished.

1 THE COURT: All right. Thank you. That was it.

2 Go ahead.

3 MR. DIGIACOMO: Now, am I allowed to continue?

4 THE COURT: Subject to what I already -- what I already told you.

5 MR. DIGIACOMO: Thank you.

6 BY MR. DIGIACOMO:

7 Q Would exculpatory information be helpful to you in preparation to
8 that bail hearing?

9 MR. GENTILE: I have the same objection.

10 THE COURT: All right. I'll let him just answer that one question and
11 then that's it.

12 MR. ADAMS: For the record, Judge, joined --

13 THE COURT: All right.

14 MR. ADAMS: -- objection joined by the Third.

15 BY MR. DIGIACOMO:

16 A Could you repeat it?

17 Q Would exculpatory information be helpful to you for the bail hearing
18 in Boulder City?

19 A Yes.

20 Q And did Ms. Espindola provide you any of the exculpatory
21 information that is contained in State's proposed Exhibit --

22 MR. GENTILE: Objection.

23 MR. ADAMS: Objection.

24 THE COURT: Sustained.

25 MR. DIGIACOMO: [inaudible].

1 THE COURT: Mr. DiGiacomo, move on.

2 MR. DIGIACOMO: Okay.

3 BY MR. DIGIACOMO:

4 Q Did she provide you -- all right. Without referencing 241, did she -- I
5 guess -- I guess --

6 MR. GENTILE: I fail to see the humor here. This is supposed to be
7 rebuttal.

8 MR. DIGIACOMO: And I'm -- we're rebutting Jerome DePalma.

9 THE COURT: Right. But Mr. Oram was permitted to be called to
10 rebut --

11 MR. GENTILE: How could he rebut Jerome DePalma --

12 THE COURT: -- Anabel --

13 MR. GENTILE: -- when he wasn't there?

14 THE COURT: -- Anabel Espindola's -- the charge by the defense of
15 Anabel Espindola's recent fabrications. And so as to those statements, he
16 certainly can -- can testify.

17 And we have more juror questions, Jeff.

18 MR. GENTILE: And, Your Honor, for the record, he's rebutting Mr.
19 DePalma and Mr. Dibble who corroborated Mr. DePalma at this trial.

20 MR. DIGIACOMO: And he -- he can give that closing argument
21 later, but I appreciate that.

22 THE COURT: All right. A juror wants to know what is it -- well, you
23 know what, I'll -- we'll explain that later.

24 Go on, Mr. DiGiacomo.

25 /////

1 BY MR. DIGIACOMO:

2 Q Why would exculpatory information be helpful to you?

3 A Because exculpatory information is something I could try to present
4 to a judge to say, listen, this is the bail that you've got it set at, please lower the
5 bail, we have this information, in the end we'll prevail on this case, and judge's
6 will listen to something like that.

7 Q And during the time of your representation of Ms. Espindola, did you
8 ever receive a copy of 241, other than what I gave you?

9 A No.

10 Q Let's talk about a few other things that Ms. Espindola told you in that
11 early May period -- I'm sorry, late May period. During the course of her
12 conversations with you did she describe for you what Mr. H said to her to that
13 caused her to go into the room on -- on -- or caused her to call Deangelo Carroll
14 to Simone's Auto Plaza on -- on May 23rd, that Monday?

15 A I -- I -- yes, she did. She described -- she described what she
16 testified in here over and over again.

17 Q Early on in the case?

18 A Early on.

19 Q Now, the jury has heard some testimony that sometime in July the
20 State of Nevada filed what's known as a notice of intent to seek the death
21 penalty.

22 A Okay.

23 Q Correct?

24 A I don't know if it was July, but I'll take your word for it.

25 MR. GENTILE: Can we have a year?

1 MR. DIGIACOMO: 2006.

2 MR. GENTILE: 2005 maybe?

3 BY MR. DIGIACOMO:

4 Q July of 2005; correct?

5 A I know that you filed your notice of intent to seek the death penalty. I
6 do not know what month.

7 Q And that's -- that notice cannot be filed prior to the preliminary
8 hearing; correct?

9 A Right.

10 Q Okay. And --

11 MR. GENTILE: How is this rebuttal?

12 THE COURT: Sustained.

13 MR. ADAMS: How is it --

14 THE COURT: Sustained.

15 MR. ADAMS: -- rebuttal?

16 THE COURT: Sustained. Thank you.

17 MR. DIGIACOMO: Well, isn't that the basis of the fabrication? Don't
18 I have to establish the timing?

19 THE COURT: Well, please approach.

20 (Conference at the bench)

21 MR. DIGIACOMO: Judge, I pass the witness.

22 THE COURT: Cross.

23 MR. GENTILE: Can I have this marked please.

24 THE CLERK: It's J.

25 MR. GENTILE: Thank you.

CROSS-EXAMINATION

BY MR. GENTILE:

Q Mr. Oram, you have been given a copy of -- is that 281 that you have there? Is that the number of Mr. DePalma's notes?

A No.

Q Okay.

A I don't have that.

Q Let me give you 281.

MS. ARMENI: 241.

Q 241.

THE COURT: Is that 241? You don't have --

THE WITNESS: No, I don't.

THE COURT: -- a copy of Mr. DePalma's --

THE WITNESS: No.

THE COURT: -- notes all?

THE WITNESS: Oh. You know what, I'm sorry. I do. It's a copy. I have that.

BY MR. GENTILE:

Q All right. Well, I'm going to put it up here anyway.

A Okay. Do you want me to look at the --

Q Okay. Can you see up at the top here where he has the date, 5/231/05?

A Yes.

Q Okay. His testimony in this case was that this being --

MR. DIGIACOMO: Well, objection as to what his testimony was and

1 telling --

2 MR. GENTILE: Okay.

3 MR. DIGIACOMO: -- the witness it.

4 MR. GENTILE: That's okay.

5 THE COURT: Okay.

6 BY MR. GENTILE:

7 Q However long this meeting took, Mr. DePalma made one, two, three,
8 four, five, six pages of notes. Do you see that?

9 A Yes.

10 Q Okay. And you've been given a copy of this?

11 A I have.

12 Q Okay. Now, if I understand you correctly, and I'm just looking at the
13 jail records here, you -- you've seen a copy of the jail records.

14 A I have. Today, Mr. Gentile.

15 Q Just today only?

16 A Today. I may have seen them a long time ago, but in terms of --

17 Q All right.

18 A -- a total one today.

19 Q I'm going to -- I'm going to see if you recall these visits. Okay?

20 A Sure.

21 Q According to these records you met with Anabel on the 25th of May
22 at 6:18 -- of 2005, at 6:18 p.m. Now, that's pretty close to 45 months ago by the
23 way I'm counting.

24 A It's a long time. It's a long time ago.

25 Q And then you met the next day at 8:37 a.m. That would be the 26th.

1 A Okay.

2 Q And then the 27th at 1:09 p.m.

3 A Yes.

4 Q And then the 28th --

5 A Isn't that in the late evening?

6 Q Wait a minute, wait a minute.

7 A It's in the evening. 6:57?

8 Q 6:57 p.m. on the 28th.

9 A Right.

10 Q And then on the 31st at 6:22.

11 A Okay.

12 Q All right. And you're saying that those were lengthy meetings?

13 A They were. Most of --

14 Q Most of them. Okay.

15 A Yes, I can --

16 Q That's just May. We just finished May. Okay? Now, do you have

17 notes from those meetings?

18 A I -- I never take notes from a meeting at the Clark County Detention

19 Center.

20 Q Okay. Well, now, let me ask you something. In the year 2005, May,

21 was this the only the case that you had?

22 A No, no, no. I have many, many, many cases, many murders.

23 Q Many, many?

24 A Many murder cases.

25 Q Tell me. Just in the year 2005 how many?

1 A Closed, convictions, appeals, everything?

2 Q Well, no, I don't even want to go there. Okay. How many clients did
3 you have between -- in the last 45 months?

4 A Mr. Gentile, if I -- if I estimate, I just know it's not --

5 Q Hundreds?

6 A In the last 45 months, I would think so.

7 Q You probably couldn't make a living if you didn't have at least a
8 couple hundred clients; right?

9 A Yes, but I couldn't tell you with any degree --

10 Q Right.

11 A -- of certainty.

12 Q No, I understand. I understand. And I don't want you to -- I'm not
13 looking for one.

14 A Okay.

15 Q Okay?

16 A This was one of the big ones, though. One of the --

17 Q I understand. And because it was a big one it was important to you;
18 right?

19 A Very.

20 Q Right. And you certainly didn't want to get one case mixed up with
21 another --

22 A I don't.

23 Q -- am I right?

24 A I don't let that happen.

25 Q Right?

1 A Not murder cases.

2 Q And if I understand you correctly then, you're giving us testimony
3 that you don't make notes whenever you're interviewing any client at any time?

4 A No, that's not true.

5 Q That's not true?

6 A That's inaccurate.

7 Q All right.

8 A Okay.

9 Q Then thank you. Is it just this case that you did not make any notes
10 on?

11 A No. No, that's an -- that's an inaccurate statement. I take notes --

12 Q I didn't ask you anything else.

13 A Okay.

14 Q Okay? But on these dates --

15 A Yes, sir.

16 Q -- you didn't take any notes?

17 A No.

18 Q All right. I'm correct?

19 A You're correct.

20 Q Okay. Now, let's talk about June. You saw her --

21 MR. GENTILE: And will the Court take judicial notice that the notice
22 of death in this case was filed on July 6, 2005.

23 THE COURT: As against Anabel Espindola?

24 MR. GENTILE: As against Anabel Espindola.

25 MR. DIGIACOMO: I haven't checked, but it's probably close.

1 THE COURT: Okay. You know, I don't have it in front of me in my
2 file, but the Court certainly can take judicial notice of the date in which the notice
3 of death was filed.

4 BY MR. GENTILE:

5 Q Okay. Then July -- June 10, 2005, you met with Anabel at 8:32 in
6 the morning. June 15th -- am I correct?

7 A If it says that, I would presume so.

8 Q Okay. June the 15th you met with her at 1:48 in the afternoon.

9 A If that's what the records reflect.

10 Q On June the 18th you and I both met with her at 2:28 in the
11 afternoon.

12 A Very possible.

13 Q You know, I -- never mind. On June the 22nd you met with her at
14 2:00 in the afternoon.

15 A Yes.

16 Q On June the 24th you met with her at 8:30 in the morning.

17 A Mr. Gentile, I presume the times and stuff. I'm saying that because
18 that's what it says. I know I saw her many times, so I'm -- I'm saying that's
19 accurate because that's what the record says.

20 Q You don't --

21 THE COURT: But you don't independently --

22 THE WITNESS: No.

23 THE COURT: -- remember --

24 THE WITNESS: When he's --

25 THE COURT: -- these dates?

1 THE WITNESS: -- saying these things, I couldn't tell you, Mr.
2 Gentile.

3 BY MR. GENTILE:

4 Q No, I understand that.

5 A Okay.

6 Q But you don't have any particular reason to doubt that these were
7 logged in. Now, when it says you -- you met with her at 8:30 in the morning,
8 clearly it took you some time to get processed at the jail, to go over to where her
9 unit was, go upstairs, wait for her, then bring her -- then bring her to you?

10 A Right.

11 Q So, I mean, you might not have actually seen her until maybe as late
12 as 9:00?

13 A And -- and visiting ends at 10:00.

14 Q Correct.

15 A Right.

16 Q All right. But the point is that that's when you go to the jail.

17 A Correct, sir.

18 Q And that's when you logged in.

19 A Yeah, when they -- when they do the sign in and stuff.

20 Q Right. And then that's the only times you saw her in jail. So you
21 only saw her one, two, three, four -- four times in jail; right?

22 A Yes.

23 Q Okay. And so you don't have any notes of those either?

24 A I don't have any notes of any.

25 Q All right. And now July. Actually, you didn't see her in July until after

1 the notice of death. So you saw her one, two, three, four, five, six, seven, eight,
2 nine, ten, eleven times prior to the notice of intention to seek death.

3 A If that's when it was filed, yes.

4 Q Well -- yeah, well --

5 A I have no dispute that that -- that's when it was filed.

6 Q Now -- and you said, I think, that you saw her maybe 85 or 90 times
7 overall.

8 A Between 80 and 90. I think I counted 85.

9 Q Okay. Between 80 and 90. Let's say it's 80. Let's say it's just 80.

10 A Sure.

11 Q And in all of those 80 times that you saw her --

12 A Yes, sir.

13 Q -- you only have two pages of notes?

14 A I don't even have two pages of notes. They're notes she took and I
15 circled them.

16 Q I see. And this has been marked proposed Exhibit J.

17 A Yes, sir.

18 Q Is that -- do you recognize that document?

19 A Yes.

20 Q Okay. And what is that document?

21 A It appears that it's Anabel Espindola's writing about in preparation
22 for trial, perhaps character witnesses or mitigation witnesses. And it appears that
23 she's written names and addresses, phone numbers. And then what I have done
24 in several areas is I have circled the name and said known 15 years, four or five
25 years.

1 Q All right. So essentially those markings on those -- on those two
2 pages are the only markings that you have made on paper of your
3 communications with Anabel Espindola?

4 A Correct.

5 Q In a minimum of 80 visits?

6 A Correct.

7 Q In preparation for a case, a murder case --

8 A Yes, sir.

9 Q -- that once carried the death penalty for her?

10 A Yes, sir.

11 MR. GENTILE: I move these into evidence at this time.

12 MR. DIGIACOMO: No objection.

13 THE COURT: All right.

14 (Defense Exhibit J is admitted)

15 BY MR. GENTILE:

16 Q Now, you've had hundreds of cases in that period?

17 A Yes, sir.

18 Q And are you telling us that you have independent recollection of
19 everything that was said to you by your hundreds of clients in the last 45 months
20 so that you don't need to refresh your recollection?

21 A No, I don't have independent recollection of everything my clients
22 have said to me. My -- no, not a chance.

23 MR. GENTILE: Nothing further.

24 THE COURT: Anything, Mr. Adams?

25 /////

1 CROSS-EXAMINATION

2 BY MR. ADAMS:

3 Q Let me show you what's been marked as Defendant's J for
4 identification purposes.

5 A Yes, sir.

6 Q Jerry DePalma's name is not on there anywhere; is it?

7 A You know, I didn't -- I didn't look at it.

8 Q Sure. Look away.

9 A There's so many names. I'll take your word for it. Have you looked
10 at it?

11 Q I -- well, I did very briefly because we just got it. But they're your full
12 notes in the case, so don't let me put words in your mouth.

13 A No, they're not my full notes from the case.

14 Q Well, they're your full notes related to anything from the client.

15 A Yes, that's correct.

16 Q All right. Because you have all these other notes.

17 A And I have a lot back in my office too.

18 Q All right. But related to anything she said to you, and you wrote
19 down contemporaneously or at the same time, that's it.

20 A Yes, with the exception of -- the -- there was some other little
21 witness that was written that I talked about previously.

22 Q Right. So, on there is Jerry DePalma's name mentioned? And I'll
23 tell you if you find it, I'll be surprised.

24 A Okay, then, no.

25 Q Take your time.

1 A No, no, no. I'll take your word for it.

2 Q How about Don Dibble?

3 A No. Don Dibble was the investigator for the two gentlemen.

4 Q Right. And just so we're clear, because apparently you're here
5 testifying about Anabel Espindola, on May the 19th you weren't at the -- 2005,
6 were you at the Palomino Club?

7 A No, sir.

8 Q Were you back in the office?

9 A No, and if I was, I wouldn't admit it.

10 Q All right. You might've been downstairs where the nice people have
11 pole; is that what you're saying?

12 A No.

13 Q All right. Well, on the 21st --

14 THE COURT: Are you taking the Fifth on that?

15 THE WITNESS: I'm taking the Fifth on that. Can I leave?

16 BY MR. ADAMS:

17 Q On the 21st of May, 2005, you weren't at Mr. DePalma's office; were
18 you?

19 A Was I at Mr. DePalma's office? No, sir.

20 Q And do you know Don Dibble?

21 A I do. I know Don Dibble.

22 Q Have you worked with him?

23 A I -- yes.

24 Q Do you know him to be an honest person or do you have an opinion
25 on him?

1 A You know what, with regard to -- do you want to know my history
2 with him?

3 Q I want to know if you --

4 A I haven't -- I haven't --

5 Q -- know him well enough to know if the man is honest.

6 A I have not really had -- he did the Sapphires case with me a couple
7 of years ago with Mr. Gentile and Ms. Armeni, but I have not had many dealings
8 with Mr. Dibble over the last ten years.

9 Q Is Mr. Dibble dishonest?

10 A I -- sir, I just haven't had enough dealings to make --

11 THE COURT: So you don't have an opinion --

12 THE WITNESS: Yes, I don't --

13 THE COURT: -- one way or the other?

14 THE WITNESS: -- have an opinion is what I'm saying.

15 THE COURT: All right. Thank you.

16 Move on.

17 BY MR. ADAMS:

18 Q Were you at Mr. Gentile's office on the 22nd?

19 A No.

20 Q Were you at Simone's on the 23rd when I a body wire was done that
21 I suspect you've listened to on more than one occasion.

22 A Ad nauseam, yes, and I was not there.

23 Q You were not there.

24 A No.

25 Q Your first meeting was several days after this meeting at Jerry

1 DePalma's office?

2 A Yes, sir.

3 Q Now, you said you have had 80 meetings with Anabel Espindola and
4 you have these notes?

5 A Correct. And I'm relying upon the printout from the jail for the --

6 Q But you said you do write down notes in other people's cases, other
7 client's cases.

8 A And in this one.

9 Q Well, notes from the client.

10 A Just --

11 Q Do you have clients that you take notes when you meet with them?

12 A Yes, but it's very, very brief. Name, address, social security number,
13 prior record.

14 Q You wouldn't have something as comprehensive and thorough as
15 six pages of notes from a single meeting?

16 A I think it would be absolutely foolish to do that.

17 Q All right. And that's -- that's -- but when you're taking down notes,
18 do you intentionally put the wrong information in the notes?

19 A Do I put misinformation in the notes?

20 Q Yeah. Do you write in some sort of code that no one else would
21 understand if they say your notes?

22 A I -- I suppose if I was trying to hide something.

23 Q Right. But you don't try to hide something when the notes are made
24 for yourself; right?

25 A Yeah, I don't try to hide things.

1 Q Right. And if you were meeting with a client and writing down notes,
2 you would want them to be accurate notes; right?

3 A Yes, sir.

4 Q So if you picked up a file 18 months later the notes would help you
5 remember the case and the person and the circumstance; right?

6 A You would want notes to be accurate yes.

7 Q Right. So you could provide the best representation for the client.

8 A Not on notes with dis -- you mean notes with discussions with the
9 client?

10 Q Yeah.

11 A No. No, you wouldn't do that.

12 Q So you wouldn't put down accurate information?

13 A I just wouldn't put it down ever.

14 Q All right.

15 A Ever.

16 Q All right. You don't know 00 you have no firsthand knowledge what
17 was said in Mr. DePalma's office on May the 21st?

18 A I wasn't there.

19 Q All right. Thank you.

20 THE COURT: Redirect.

21 MR. DIGIACOMO: Just very, very briefly.

22 REDIRECT EXAMINATION

23 BY MR. DIGIACOMO:

24 Q You -- there was a bunch of questions about Don Dibble; correct?

25 A Yes, sir.

1 Q Okay. You said you worked with him on a Sapphires case; correct?

2 A Yes.

3 Q Okay.

4 A I didn't really work with him. He had had the co-defendant. I -- I
5 didn't -- he was there like he is here today, but he was not my client's
6 investigator. He did some work.

7 Q Okay. During the 33 months that you represented Anabel Espindola
8 prior to the entry of her plea, did you have contact with Don Dibble that related to
9 this case?

10 A Yes.

11 Q You didn't know anything about the DePalma meeting?

12 A No.

13 MR. DIGIACOMO: Nothing further.

14 THE COURT: Mr. Gentile, anything else?

15 RECROSS-EXAMINATION

16 BY MR. GENTILE:

17 Q Did you ever ask?

18 A Yes, as a matter of fact, I asked all the meetings and attorneys that
19 she had met with in --

20 Q No, no, no. I didn't mean did you ask your client.

21 A Oh, I'm sorry.

22 Q I didn't mean that.

23 A I'm sorry.

24 Q Did you ever ask Mr. Dibble?

25 A I -- I talked to Mr. Dibble about --

1 Q No, did you ever ask Mr. Dibble if he had had any meetings with
2 Anabel Espindola prior to your getting into the case?

3 A Yes, sir.

4 Q And he told you, no, he did not?

5 A No, he didn't say it that way. He just told me that there had been
6 brief -- there had been brief things, but that he didn't have -- he didn't tell me
7 anything substantive whatsoever.

8 Q So he --

9 A Nothing.

10 Q -- didn't discuss what was revealed at those things, at those
11 meetings?

12 A No, Mr. Gentile, that's not accurate. I was given briefings of what my
13 client had said, what my client had told people, including you, and I was never
14 told of this.

15 Q You were given briefings by Mr. Dibble?

16 A I was told by Mr. Dibble, Ms. Armeni, you. What had happened
17 when I came into the case, I had to know something about the case and I was
18 sort of briefed on what had happened, and I remember specifically some things
19 that Mr. Dibble told me.

20 Q Okay. But he did not tell you about the meeting at DePalma's
21 office?

22 A No, sir.

23 Q Now, you're not -- you're not saying that that meeting did not
24 happen?

25 A I wasn't -- I wasn't there. I couldn't --

1 Q You wouldn't call Mr. Dibble a liar in this courtroom; would you, sir?

2 A Sir, I wasn't there. And unless I could have proof of what happened,
3 I couldn't say whether anybody was a liar.

4 Q You know Mr. Dibble's reputation in this community. That you do
5 know. You may not have worked with him, but you do know his reputation.

6 A Well, I -- I don't mean to -- I worked with Don a lot when I was a
7 baby lawyer.

8 Q Right.

9 A For a few years, yeah.

10 Q For a few years.

11 A Yes.

12 Q You formed an opinion at that point in time as to his truthfulness; did
13 you not? As a matter of fact, Mr. Oram --

14 MR. DIGIACOMO: Hold on, Judge. I'd ask -- I -- let him answer the
15 question.

16 THE COURT: Are you talking about when Don Dibble was a
17 homicide detective and you were a new --

18 THE WITNESS: No.

19 THE COURT: -- criminal defense attorney?

20 THE WITNESS: No. That --

21 THE COURT: Okay. That was just a yes or a no question.

22 Mr. Gentile or -- I don't know if there is a question.

23 MR. DIGIACOMO: Can he answer the question as to whether or not
24 he has an opinion?

25 /////

1 BY MR. GENTILE:

2 Q Do you have an opinion as to Don Dibble's character for
3 truthfulness?

4 A No.

5 MR. GENTILE: Nothing further.

6 THE COURT: Mr. Adams, anything else?

7 MR. ADAMS: We request a limiting instruction as to Luis Hidalgo III.

8 THE COURT: All right. That's overruled.

9 Mr. DiGiacomo, anything else?

10 MR. DIGIACOMO: No, Judge.

11 THE COURT: Any juror questions?

12 All right. Mr. Oram, thank you for your testimony.

13 THE WITNESS: Thank you very much.

14 THE COURT: Please don't discuss your testimony with anyone else
15 who may be a witness in this case. You are excused at this time.

16 Ladies and gentlemen, we are going to go ahead and take our
17 evening recess. But before I tell you what time to come back I need to see
18 counsel at the bench.

19 (Conference at the bench)

20 THE COURT: State?

21 MR. DIGIACOMO: The State rests, Judge.

22 THE COURT: Any surrebuttal?

23 MS. ARMENI: No, Your Honor.

24 MR. ADAMS: We just have an issue --

25 MR. GENTILE: There was no rebuttal.

1 MR. ADAMS: We just have an issue for the record --

2 THE COURT: All right.

3 MR. ADAMS: -- at the appropriate time.

4 THE COURT: All right. Thank you.

5 Ladies and gentlemen, that concludes the presentation of
6 evidence in this case. As I told you, if you can even remember that far back in
7 the beginning, the next step is the instructions on the law which will be followed
8 by the closing arguments from the attorneys. Because the State has the burden
9 of proof in this case, they will have the opportunity to address you twice in the
10 arguments.

11 So tomorrow when we begin I will read to you the instructions
12 on the law. Then the State will open the closing arguments, the defense may at
13 that time, if they choose to, make their closing arguments, which can be followed
14 by the rebuttal argument from the State. And at that time, once the arguments
15 are over, the case will be submitted to you for your deliberations which will
16 happen tomorrow.

17 I want to make sure that you -- there are very legal issues that
18 still need to be resolved and so we're going to have you come back at 11:00
19 tomorrow. The Court will read the instructions at 11:00. That normally takes
20 about 20 minutes which will be followed by the State's first closing argument.

21 We'll order in lunch for you folks. We'll take our lunch break,
22 and then finish up with the closing statements, and then you'll get the case to
23 begin your deliberations in the jury deliberation room where you'll have written
24 copies of the instructions on the law and all of the many exhibits that have been
25 admitted during this trial.

1 So let's go ahead and take our evening recess. We'll see you
2 back here tomorrow morning at 11:00. Once again, I must remind you that
3 during the evening recess you're not to discuss this case, any person or subject
4 matter relating to the case with each other or with anyone else. Do not read,
5 watch, or listen to any reports of or commentaries on any subject matter relating
6 to the case. Do not do any independent research on any subject connected with
7 the trial. Don't form or express an opinion. Don't visit any of the locations at
8 issue. That's all I can think of.

9 And right before you leave, I'm going to see Officer Wooten at
10 the bench, please.

11 (Conference at the bench)

12 THE COURT: Any questions that any of you may have, I was going
13 to say take them in the hall with Jeff. Is it anything that you need from the Court
14 or is it scheduling and other issues that Jeff can address?

15 Okay. I -- Jeff should know, and if not, he'll leave you out in
16 the hallway and come find out from me. So any questions you may have, just go
17 ahead and ask Jeff. Notepads in your chairs, and we'll see you all back here at
18 11:00 a.m. tomorrow.

19 (Jury recessed at 7:27 p.m.)

20 THE COURT: All right. Here's what I ask. I'm speaking.

21 Mr. DiGiacomo probably knows the drill. We ask that you
22 provide written copies of the instructions like on a disc or by email or whatever to
23 my JEA, Penny. It's probably easier for the defense just to bring in a disc. We're
24 on the Word system. Are you guys on the Word system?

25 MS. ARMENI: Yes.

1 THE COURT: Okay. So that way if she -- if we modify any, she can
2 quickly do it and make a change in a word or two, she doesn't have to retype
3 everything. And of the ones that the -- we like them all to be -- obviously look the
4 same, so make sure the defense brings in copies that are not annotated, that
5 aren't on letterhead, things like that, so that if we use any -- believe it or not
6 sometimes people don't do this.

7 MR. DIGIACOMO: Theirs are pretty clean that they gave us.

8 MR. GENTILE: She wants unlined paper, plain paper, unlined?

9 THE COURT: No.

10 MR. DIGIACOMO: Pleading paper.

11 THE COURT: Pleading paper.

12 MR. GENTILE: Pleading paper. Okay.

13 THE COURT: Pleading paper, and it should say instruction number
14 and then a blank so that when we, you know --

15 MR. ADAMS: Does it matter what era of Word?

16 MR. GENTILE: What font also?

17 THE COURT: Oh, please, I don't know.

18 MR. GENTILE: No, seriously, what font?

19 THE COURT: What do you use? Times New Roman?

20 MR. DIGIACOMO: Or Arial. I can't remember.

21 MR. GENTILE: I use Arial.

22 MR. DIGIACOMO: There's a big fight in our office, but it's real easy
23 to select all and select a new font, so --

24 MR. ARRASCADA: Judge, they're using 13 point, Times New
25 Roman.

1 MR. GENTILE: They are?

2 MR. ARRASCADA: Yes.

3 MR. DIGIACOMO: Wow.

4 THE COURT: What do you use, 12?

5 MR. DIGIACOMO: Nobody made fun of you in high school.

6 THE COURT: 12 point. Most people use 12 point Times New
7 Roman.

8 MR. DIGIACOMO: I don't know how you read 12 point. That's why I
9 go to 13 or 14 or --

10 THE COURT: You know, although --

11 MR. DIGIACOMO: -- I can't possibly read it.

12 THE COURT: -- I recently needed distance glasses, I still have
13 perfect, let me just tell you, close up vision.

14 MR. DIGIACOMO: Judge, I guess my only request is if they have
15 anything that they want to identify of ours that they object to, obviously we both
16 know the conspiracy one. We've got Crue (phonetic), they've got some Federal
17 law, but if there's anything specifically that they object in ours that they want cites
18 to -- because, you know, most of these were -- are stock from like Counts and
19 stuff like that.

20 THE COURT: And can you guys help me out here on anything that
21 you think is going to be contested and you cited case law, if you can, you know,
22 in the many hours you'll have tonight, if you can have a copy of the case,
23 particularly Federal cases, for me to look at when I'm deciding the instructions.
24 Because, otherwise, there'll be a delay with my law clerk having to print it out.
25 Not a big delay, but if you can do that, that would be great. If you don't do it,

1 that's fine. I'll just have my law clerk pull up cases as it becomes an issue.

2 MS. ARMENI: Okay.

3 MR. DIGIACOMO: And if they could just identify for me sometime
4 before we get here at 9 a.m. which ones they want to object to so we can find the
5 case law that we need for them.

6 MR. GENTILE: The ones that have ink on the page.

7 MR. DIGIACOMO: The ones that have what?

8 THE CLERK: Ink on the page.

9 THE COURT: Well, maybe we should start at 8:30.

10 MR. GENTILE: No, no, no. 9:00.

11 MR. DIGIACOMO: Judge, we're out of bed before 8:00. I don't want
12 to do that to you though.

13 THE COURT: I can -- I have been to work -- let me just tell you. I
14 have been here many days at 8:00 a.m.

15 MR. ARRASCADA: May we make a record?

16 THE COURT: Yes.

17 MR. ARRASCADA: Your Honor, you asked -- asked if we would be
18 putting on a case in chief defense on behalf of Luis Hidalgo III. We advised the
19 Court that we were and that it would be transcript testimony from Jason Taoipu.
20 We've provided to the Court an affidavit of Don Dibble outlining the efforts made
21 to locate Mr. Taoipu.

22 THE COURT: Do you want me to make this a Court's exhibit?

23 MR. ARRASCADA: I'd ask that it be made a Court exhibit.

24 THE COURT: Court exhibit.

25 MR. ARRASCADA: I'd also supplement that with the fact that we

1 have called the Clark County Detention Center and/or the division of parole and
2 probation on a daily basis since this trial, before this trial has begun to see if Mr.
3 Taoipu was in custody.

4 I've also been informed by the Court that the Court signed a
5 warrant for his arrest for violating his probation. With that we -- the basis for
6 bringing in the transcript is that Mr. Taoipu is an unavailable witness. I believe
7 the Court's already made that ruling and that finding.

8 THE COURT: That's true.

9 MR. ARRASCADA: We move to have admitted through his
10 transcript testimony from page 39 regarding what he heard, what Jason Taoipu
11 heard regarding a conversation about baseball bats and garbage bags.

12 And the specific question from Mr. Pesci is tell us what you
13 heard, when you heard it, and who you heard it from. Mr. Taoipu stated that he
14 heard it from when we he went to pick up KC, Deangelo told us that he, Anabel --
15 and Anabel was talking about baseball bats and trash bags. This is exculpatory
16 evidence for our client, Luis Hidalgo III.

17 Your Honor, it's my understanding you are not going to be
18 permitting us to put on this information and we would make in our record that we
19 do believe it needs to be placed on. There is an entire transcript, but the parts of
20 the transcript that are relevant under 47.120 would be nominal as related to Little
21 Luis Hidalgo or Luis Hidalgo III, and we believe that it's proper to have this
22 admitted and read to the jury and placed into evidence.

23 MR. DIGIACOMO: Somewhat briefly, first of all, there's a recent
24 Nevada Supreme Court case, and while I don't remember the name of the case, I
25 remember the judge because it was Justice Hardesty who wrote it. He said in

1 order for that to be fulfilled the motion must be filed 15 days prior to trial. And if
2 it's filed later than that, and as of yet it has never been filed in this case, they
3 have to establish what good cause that they -- what they did to find Jason Taoipu
4 prior to the 15 day time period that they were required to do so. That never
5 happened in this case.

6 The next thing that is required under this statute is that the --
7 that the -- the -- not only are the parties the same, and I will agree that the parties
8 are the same, but the issue in the trial has to be the same, and that's it. There
9 was no issue in that -- in counsel's trial as to who cares who said it. It is the fact
10 that it was said. And Mr. Pesci and I certainly didn't attempt to impeach Mr.
11 Taoipu on an issue that was clearly --

12 THE COURT: I was thinking --

13 MR. DIGIACOMO: -- unrelated to Counts.

14 THE COURT: -- I wish this was like the senate. You know, I could
15 just leave and you could just talk and then you guys could just talk because we're
16 just making a record. And I say that somewhat facetiously, but we all know how
17 senators stand up to an empty room for their face time.

18 MR. DIGIACOMO: Correct. And I -- and I do know that. But I also
19 recognize that this will be an issue.

20 THE COURT: Right. You need to make a record and they need to
21 make a record.

22 MR. DIGIACOMO: Make sure that the record completely reflects
23 that the statute does not allow for this to be admitted. And then on top of that,
24 the request isn't to admit the entire preliminary hearing transcript as through the
25 admission of a portion of it.

1 And under the statute for prior testimony, the -- the -- it says
2 the testimony becomes admissible. And there's a line of cases, and I won't cite
3 them for the Court, that says once the defendant waives his confrontation rights,
4 everything that that person -- all the confrontation rights are waived and at that
5 point it's the testimony of the witness will be admissible. They don't want that.
6 They want just a portion of it.

7 There's a third problem as well, which because the portions
8 which would be used to impeach that are twofold, both of which are open to
9 interpretation as to who he's speaking to whether -- whether he's talking about
10 Mr. H or Little Lou and Mr. H has his own confrontation rights. And I believe that
11 that will make Mr. Gentile --

12 THE COURT: Mr. Gentile invoked those.

13 MR. DIGIACOMO: -- on behalf of Mr. H, object to the admissibility of
14 the entire transcript, Judge. So I think -- not -- you have the absolute right to
15 exclude it on that basis, but also when you look at what Mr. Gentile has been
16 repeatedly saying, which is a 48.035 analysis as to whether or not it confuses the
17 issues and is more prejudicial than probative. I would submit to the Court that
18 you would have that basis as well to exclude it. And I'll submit it.

19 MR. GENTILE: As long as my name is going to be sullied, I would
20 like to at least say that my objection does not go to the use of the inconsistent --
21 actually, it's not even an inconsistent statement, it's contradiction. It's being used
22 as contradiction.

23 THE COURT: It's a contradiction to --

24 MR. ARRASCADA: Rontae Zone.

25 THE COURT: -- to Rontae Zone's testimony.

1 MR. GENTILE: Right. It's -- it's -- it's affirmative --

2 THE COURT: It's not an inconsistent --

3 MR. GENTILE: -- contradiction. And -- and that affirmative
4 contradiction, of course, is -- does not damage in any way Luis Hidalgo, Jr., and
5 so I would not object to that.

6 What I do object to is this -- is the Crawford violation that
7 comes into this situation for Luis Hidalgo, Jr. because he is not seeking the
8 introduction of the contradiction. And if the Court were -- were to rule that more
9 than the contradiction, and in fact the entire transcript, much of which is definitely
10 cumulative and not subject to cross-examination by Luis Hidalgo, Jr.'s attorney
11 and not beneficial to him. And that would be a constitutional violation.

12 And so were you to allow in only the limited contradictory
13 evidence, I would not have an objection. But if the Court's inclination is to let the
14 rest of it in, then I do, and it's constitutionally based and I would move for a
15 mistrial if you were to allow that to come in.

16 THE COURT: Anything else?

17 MR. ARRASCADA: Yes, Your Honor. My -- the statute is clear that
18 they -- testimony into rule of completeness of 47.120 says you can allow in
19 relevant evidence. We provided the Court with citations to what would, in our
20 perception, be relative evidence regarding the statement that Anabel called for
21 the bats and bags.

22 I'm somewhat dumbfounded that the State is now saying a
23 witness that they put on in the case they're going to impeach. I guess the State's
24 taking the position that their witness that they put had perjured testimony.

25 THE COURT: Well, or mistaken testimony.

1 MR. ARRASCADA: Which they have an obligation to have cured
2 during that trial, Your Honor.

3 THE COURT: Well, here's the Court's analysis. Basically there's
4 other very damning evidence against, if you take it in the context of other
5 statements, against Luis Hidalgo III, which isn't now going to be subject to cross-
6 examination by you or questioning by you.

7 So if you let in the statement that's inconsistent with what
8 Rontae Zone testified to, or contradictory, then, to me, that opens the door to
9 other statements that Jason Taoipu made in his trial testimony that indicate that
10 Little Lou was involved and gave the order. So, to me, you can't just take the
11 one exculpatory statement without looking and at least having part of the
12 transcript in that pertains to Little Lou's involvement. And so, to me, it opened
13 the door to at least that, even if you didn't go through the whole -- the whole
14 transcript.

15 And even if you put on Detective Wildemann, even if I were to
16 allow that, to say, no, that's Little Lou, if they don't believe that, then it's still
17 prejudicial as to Mr. Hidalgo, Jr. But I don't think you can just say, well, this is not
18 consistent with what Rontae Zone testified and not open the door to his
19 testimony that says Little Lou was involved, Deangelo told me Little Lou, or the
20 boss --

21 MR. ARRASCADA: Judge --

22 THE COURT: -- put the thing out. So I'm going to let you say
23 whatever else you want, and then that's it.

24 MR. ARRASCADA: I appreciate your ruling. With all due respect I
25 disagree with your analysis --

1 THE COURT: Of course you do.

2 MR. ARRASCADA: -- of the transcript. I'd ask that it be made a
3 Court exhibit also.

4 THE COURT: Well, actually, the -- oh.

5 MR. ARRASCADA: It's a certified copy of the transcript.

6 THE COURT: Okay. Well, it can be. I mean, it's part of the official
7 record in this case anyway because it's --

8 MR. ARRASCADA: No, it's part --

9 THE COURT: -- the trial transcript.

10 MR. ARRASCADA: -- of the Counts trial transcript.

11 THE COURT: I know, but it's all part of the --

12 MR. ARRASCADA: Well, I would just --

13 THE COURT: It's all part of --

14 MR. ARRASCADA: -- ask that that --

15 THE COURT: That's fine. I don't care. That's -- I mean, all I'm
16 saying is it's all part of the overall record in the --

17 MR. ARRASCADA: Judge, also, this file is our client's due process
18 and rights of a right to a fair trial.

19 (Proceedings adjourned at 7:40 p.m.)


20 -oOo-

21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23

24

25


JULIE POTTER
TRANSCRIBER

JRP TRANSCRIBING
702.635.0301
-330-

CD

Defense Exhibit 1

Admitted February 11, 2009