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2
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4 Electronically Filed
5 Apr 17 2012 08:49 a.m.
6 Tracie K. Lindeman
Clerk of Supreme Court

6 LUIS A, HIDALGO, JR.

7 Appellant,

CASE NO. 54209

8 vs.

9 THE STATE OF NEVADA

10 Respondent.

**APPELLANT'S EMERGENCY
SUPPLEMENTAL MOTION TO
RECONSIDER SUBMISSION FOR
DECISION WITHOUT ORAL
ARGUMENT**

11
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13 **COMES NOW** Appellant, Luis A. Hidalgo, Jr., by and through counsel, Dominic P.
14 Gentile, Esq., of the law firm of Gordon Silver, and pursuant to Rule 27 of the Nevada Rules of
15 Appellate Procedure hereby files his emergency supplemental motion for reconsideration of this
16 Court's Order of March 9, 2012 submitting the above-entitled matter for decision without oral
17 argument. This emergency Motion is made and based on all pleadings and papers on file herein,
18 the attached declaration of Dominic P. Gentile, Esq.; the exhibits appended hereto, and the
19 following Memorandum of Points and Authorities.

20 Dated this 16th day of April, 2012.

21 GORDON SILVER

22
23 DOMINIC P. GENTILE, ESQ.
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26 Attorneys for Appellant
LUIS HIDALGO, JR.
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Rule 34(f)(1) of the Nevada Rules of Appellate Procedure ("NRAP") provides that "[t]he
4 court may order a case submitted for decision on the briefs, without oral argument." The Nevada
5 rule does not prescribe any standards or criteria for consideration by this Court in making a
6 determination to order an appeal submitted for decision without oral argument. However, its
7 federal counterpart does. Thus, Rule 34(a)(2) of the Federal Rules of Appellate Procedure
8 ("FRAP") provides, *inter alia*, that oral argument is appropriate, and "must" be allowed, in
9 "every" case where "the decisional process would . . . be significantly aided by oral argument."

10 Appellant Luis Hidalgo, Jr. has previously moved for reconsideration of the above-
11 referenced Order by motion dated March 30, 2012, which motion remains pending as of the
12 filing of the instant supplemental Motion. And Appellant hereby respectfully reiterates by
13 reference the arguments set forth therein in support of the relief hereby requested.

14 Appellant hereby further respectfully submits that submission of the instant appeal for
15 decision without oral argument is inappropriate for the additional reasons hereinafter stated,
16 which are based upon the oral arguments made by counsel for the Appellant and Respondent,
17 respectively, in the companion case of *Luis Hidalgo III, Appellant v. The State of Nevada,*
18 *Respondent, Case No. 54272* concerning issues which are common to both the appeal in that case
19 and the instant appeal of this moving Appellant, which were heard by this Court on April 11,
20 2012 at Las Vegas, Nevada. And accordingly, based upon the following additional grounds,
21 Appellant Luis Hidalgo, Jr. reiterates his request that this Court reconsider its Order of March 9,
22 2012 submitting his appeal on the record and the briefs on file without oral argument.

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ARGUMENT

I.

DURING HIS ORAL ARGUMENT BEFORE THIS COURT IN THE COMPANION CASE OF *LUIS HIDALGO III, APPELLANT V. THE STATE OF NEVADA, RESPONDENT*, CASE NO. 54272, COUNSEL FOR THE STATE MISREPRESENTED THE RECORD ON APPEAL IN SEVERAL SIGNIFICANT RESPECTS HAVING AN IMPORTANT BEARING UPON THE MERITS OF THE INSTANT APPEAL OF THIS MOVING APPELLANT, WHICH SHOULD NOT BE PERMITTED TO STAND WITHOUT PROVIDING THIS APPELLANT AN OPPORTUNITY FOR INDEPENDENT ORAL ARGUMENT.

Introduction

Appellant Luis Hidalgo, Jr. maintains that the State deliberately and selectively avoided the recordation or other memorialization of the pre-trial evidentiary proffer provided by cooperating accomplice-witness Anabel Espindola to police and prosecutorial authorities, in a calculated effort to purposefully frustrate the meaningful exercise of his state and federal constitutional rights to due process, fair trial, cross-examination and confrontation.¹ See *Sheriff v. Acuna*, 107 Nev. 664, 819 P.2d 197 (1991); *Leslie v. State*, 114 Nev. 8, 952 P.2d 966 (1998).² During the presentation of its oral argument in the companion appeal of co-appellant Luis Hidalgo III, counsel for Respondent, State of Nevada made several substantial misrepresentations of the record on appeal, particularly with respect to the trial testimony of Attorney Christopher Oram, counsel for cooperating accomplice-witness Anabel Espindola

¹ Espindola was the only one of the State's four cooperating witnesses in this case whose pretrial evidentiary proffer was not memorialized by police and prosecutorial authorities. And this is of critical importance with respect to the instant appeal in that her testimony was the *sine qua non* of any arguable hypothesis of culpability on the part of this moving Appellant. Indeed, the State has affirmatively acknowledged that, without Espindola, it did not have sufficient evidence to even charge this moving Appellant in this matter. 14 ROA 2724; 15 ROA 2837-2838; 16 ROA 3119; 17 ROA 3281, 3286.

² See Appellant's Opening Brief at pages 48-52; Appellant's Reply Brief at pages 25-27.

1 which directly undermine the substantive merits of this argument.³ These misrepresentations and
2 the oral argument of the State related thereto were not challenged by counsel for co-appellant
3 Luis Hidalgo III during the presentation of his rebuttal oral argument. Instead, Mr. Arrascada
4 elected to focus on those issues on appeal which are unique to the appeal of his client. And
5 therefore, this moving Appellant respectfully submits that absent an opportunity for independent
6 oral argument by his counsel, the State's misrepresentations and related oral argument will be
7 unfairly permitted to stand without challenge, to his substantial prejudice.

8 A.

9 Counsel For The State Misrepresented The
10 Record On Appeal, And In Particular, The Trial
11 Testimony Of Attorney Christopher Oram,
12 Counsel For Accomplice-Witness Anabel
13 Espindola.

14 In his oral argument on April 11, 2012, counsel for the State argued, *inter alia*, as follows
15 with reference to the briefs of counsel on appeal for *both* Luis Hidalgo III *and* Luis Hidalgo, Jr.:

16 “[T]hey have an area in *their* brief[s] that relates to Anabelle and
17 her proffer and *the record reflects that the reason that the proffer*
18 *wasn’t recorded was at the request of her lawyer, Mr. Oram,*
19 *Christopher Oram, it wasn’t our request.*

20 But if you were to follow the defense’s suggestion that every
21 proffer needs to be recorded, *what we would be doing is harming*
22 *defendants who wish to have a communication with the state*
23 *about what it is that they know without having us report it and*
24 *Mr. Oram was afraid we wouldn’t be able to reach a negotiation.*

25 So *there was a proffer letter, Mr. Oram said I don’t want it*
26 *recorded.* Immediately after the proffer there was an arrest report
27 written by Detective Wildman, there was grand jury testimony by
28 Anabelle Espendolla.

And what *they* failed to mention is that Mr. Oram got on the stand
and Anabelle Espendolla waived her privilege to her lawyer and
Mr. Oram testified that the story she told to the police, the story
that she testified here, the story from the grand jury, all the
truths consistent was the same thing she told me from day one as
her lawyer and that’s exactly what she always said her story is.”

³ This argument is one of three arguments on appeal which are common to the appeals of both co-appellant Luis Hidalgo III and this moving Appellant.

1 Unofficial Transcript of Audio Recording of Oral Argument before
2 the Southern Panel of the Nevada Supreme Court on April 11,
3 2012, pages 6-8, (Argument of Clark County Deputy District
4 Attorney Mark DiGiacomo), (appended hereto and incorporated
5 herein by reference as Exhibit "A"). (Emphasis added.)⁴

6 Thus, by means of the foregoing representations with respect to the record on appeal, the
7 State purported to interject the following claims bearing upon the merits of this moving
8 Appellant's legal argument as set forth *supra*:

- 9 1. That Ms. Espindola did not want her pretrial proffer to be recorded;
- 10 2. That Ms. Espindola's attorney, Christopher Oram did not want her pretrial proffer to
11 be recorded;
- 12 3. That Mr. Oram was afraid that the recordation of Ms. Espindola's pretrial proffer
13 might preclude Ms. Espindola and the State from reaching a negotiated resolution of
14 her case;
- 15 4. That the failure to record Ms. Espindola's pretrial proffer was therefore not at the
16 behest of the State but was rather pursuant to the request of Mr. Oram ; and
- 17 5. That Mr. Oram testified at trial that the story privately conveyed to him by his client
18 regarding the alleged events pertinent to the instant case was consistent in all respects
19 with the story to which she testified before the grand jury, the story to which she
20 testified at trial, and the story that she told to the police pursuant to her pretrial
21 proffer, all of which versions were consistent with one another.

22 However, the record on appeal in fact reflects that these representations of Mr.
23 DiGiacomo are either untrue or inaccurate.

24 Thus, in truth and in fact, Ms. Espindola actually testified at trial that she would have had
25 no objection whatsoever to the recordation of her pretrial proffer to State authorities in this case,
26 but it was never requested by the prosecutor. Transcript of trial testimony of Anabel Espindola,

27 ⁴ As time is of the essence in this matter, Movant has commissioned a certified court reporter to transcribe the audio
28 recording of the Oral Argument in case #54272 found on this Court's website as an aid to the Court in locating the
challenged arguments of counsel for Respondent in that case. See Declaration of Dominic P. Gentile, attached.

1 ROA, Jury Trial-Day 10, February 9, 2009, pages 117-118, (appended hereto and incorporated
2 herein by reference as Exhibit "B").

3 Secondly, contrary to the representation of Mr. DiGiacomo at oral argument in case
4 #54272, the record does not in fact reflect any of the following: that the State's failure to record
5 Ms. Espindola's pretrial proffer was at the request of her lawyer rather than at the behest of the
6 State, (Declaration of Dominic P. Gentile, appended hereto and incorporated herein by reference
7 as Exhibit "C" page 1, paragraph 5(a)); that Mr. Oram did not want Espindola's proffer to be
8 recorded (Exhibit "C" page 1, paragraph (b)); or that Oram was afraid that recordation of
9 Espindola's proffer might preclude Ms. Espindola and the State from reaching a negotiated
10 resolution of her case. Exhibit "C" page 1, paragraph 5(c).

11 Furthermore, in contradistinction to the representations of Mr. DiGiacomo at oral
12 argument in case #54272, Mr. Oram never in fact testified at trial in this case that the story to
13 which Espindola testified before the grand jury, the story to which she testified at trial, and the
14 story that she told to the police pursuant to her pretrial proffer were consistent with one another.
15 Exhibit "C" page 2, paragraph 5(d); Transcript of trial testimony of Christopher Oram, ROA, Jury
16 Trial-Day 12, February 11, 2009, pages 284-319, (appended hereto and incorporated herein by
17 reference as Exhibit "D").⁵

18 ...

19 ...

20 ⁵ Moreover, the trial testimony of Attorney Jerome DePalma and investigator Don Dibble shows
21 that at an in-person meeting, Espindola provided them with a pretrial version of relevant events
22 that was completely exculpatory of this moving Appellant and was irreconcilably inconsistent
23 with her testimony against him at trial. 19 ROA 3702-3704, 3710-3721, 3723-3725, 3731-3732,
24 3736-3738. Mr. De Palma's notes of this meeting were produced to the district attorney in
25 advance of his trial testimony, (19 ROA 3708), and were admitted in evidence as Exhibit 241. 19
26 ROA 3730. The testimony of DePalma and Dibble further belies Espindola's trial testimony that
27 she never even participated in any substantive debriefing with either of those defense witnesses.
28 Indeed, despite the detailed testimony of both De Palma and Dibble to the contrary, Espindola
denied ever speaking with them about the events at issue in this case, (16 ROA 3058, 3065,
3069-3072, 17 ROA 3290), and claimed that if Attorney De Palma were to testify that she had
done so (as he later did) he would be lying. 17 ROA 3239-3240, 3306-3309.

B.

The State's Misrepresentations And Related Argument Directly Undermine The Substantive Merits Of This Moving Appellant's Argument That The State Deliberately And Selectively Avoided The Recordation Of Espindola's Pretrial Proffer In Violation Of Appellant's Rights To Due Process, Fair Trial, Cross-Examination And Confrontation But Were Not Challenged By Counsel For Co-Appellant Luis Hidalgo III.

The above-identified misrepresentations of the record on appeal by appellate counsel for the State at oral argument in the companion appeal of co-appellant Luis Hidalgo III, that the pretrial evidentiary proffer of Anabel Espindola was not memorialized by recordation at the request of Espindola's attorney and because Espindola herself objected thereto, and not at the behest of State authorities, directly undermine the substantive merits of this moving Appellant's argument that the selective failure to record only the pretrial evidentiary proffer of Anabel Espindola was the function of a deliberate and calculated determination of the *State* to frustrate the meaningful exercise of his state and federal constitutional rights to confront and cross-examine Espindola at trial; and that that deliberate effort on the part of prosecutorial authorities was undertaken in violation of Luis Hidalgo, Jr.'s state and federal constitutional rights to due process and a fair trial. ⁶ See *Sheriff v. Acuna*, 107 Nev. 664, 819 P.2d 197 (1991); *Leslie v. State*, 114 Nev. 8, 952 P.2d 966 (1998).

However, it did not become manifest that the State intended to rely upon the foregoing misrepresentations until such time as Mr. DiGiacomo delivered his oral argument in the companion appeal of co-appellant Luis Hidalgo III. See *Davis v. US Bank, National Association*, ___ Nev. ___, ___ P. 3d ___, 2012 WL 642544, note 7 (February 24, 2012) ("Not until oral argument were we able to confirm that appellant's contention was actually false"). The

⁶ The pretrial evidentiary proffers of cooperating witnesses Deangelo Carroll, Ronte Zone, and Jason Taoipu were each video and audio recorded by State officials. So was the pre-arrest statement of Anabel Espindola. Only the proffer of Anabel Espindola – occurring after she was incarcerated for 32 months – was not, notwithstanding the singular importance of it to the State's case against this moving Appellant.

1 contentions at issue here appeared nowhere in any of the State's briefs in these related appeals so
2 as to provide an opportunity to contradict them by means of a reply brief. Yet, counsel for co-
3 appellant Luis Hidalgo III did not challenge the relevant misrepresentations and related oral
4 argument of the State during the presentation of his rebuttal oral argument, but rather, focused on
5 those issues which are unique to his client's appeal. And whereas Espindola's testimony was
6 essential to any arguable hypothesis of culpability on the part of this moving Appellant, it would
7 be profoundly prejudicial and fundamentally unfair to Appellant Luis Hidalgo, Jr. to permit these
8 misrepresentations and related oral argument to stand without opportunity for his counsel to
9 challenge the same by independent oral argument.

10 **II.**

11 **DURING HIS ORAL ARGUMENT BEFORE THIS COURT**
12 **ON APRIL 11, 2012 IN CASE NO. 54272, COUNSEL FOR**
13 **LUIS HIDALGO III FOCUSED ON THOSE ISSUES ON**
14 **APPEAL WHICH ARE UNIQUE TO HIS CLIENT AND DID**
15 **NOT REBUT THE STATE'S ARGUMENT IN OPPOSITION**
16 **TO THE MUTUAL CONTENTION OF BOTH**
17 **APPELLANTS THAT JURY INSTRUCTION #40 WAS**
18 **UNCONSTITUTIONALLY PREJUDICIAL TO THE**
19 **DEFENSE, AND THE STATE'S ARGUMENT IN**
20 **OPPOSITION THERETO SHOULD NOT BE PERMITTED**
21 **TO STAND WITHOUT PROVIDING COUNSEL FOR THIS**
22 **MOVING APPELLANT AN OPPORTUNITY FOR**
23 **INDEPENDENT ORAL ARGUMENT.**

24 During his oral argument on behalf of the State in the companion appeal of co-appellant,
25 Luis Hidalgo III, Mr. DiGiacomo also delivered the following argument in opposition to the
26 common contention of *both* this moving Appellant and his son, Luis Hidalgo III, that jury
27 instruction number 40 (regarding "slight evidence" of conspiracy), which was given by the trial
28 court over the objection of counsel for *both* appellants, was unconstitutionally prejudicial to the
defense by unfairly confusing the jury as to the State's ultimate burden of proving their guilt of
the offense of conspiracy with which they were both charged in this case beyond a reasonable
doubt:⁷

29 "[A]nother issue *and I know it's in Mr. H's brief as well* as it

30 ⁷ See Appellant's Opening Brief pages 32-42; Appellant's Reply Brief pages 1-14.

1 relates to the slight evidence of a conspiracy.

2 The difference between the federal rules of evidence and the
3 Nevada rules are 104 in the federal rules says that it's the judge's
4 determination and only the judge's determination.

5 NRS 47.070 which Rodriguez discusses says that if there's any
6 question of a condition of the precedent of the admissibility of the
7 evidence it should be submitted to the jury and as such under the
8 Nevada rules it is why the court must allow the jury to make that
9 determination.

10 If they hadn't allowed the jury to make that determination, you'd
11 have a brief on the opposite side saying the court violated 47.070.

12 And when I went through *their* briefs – *their* cases in the opening
13 brief every one of *their* cases stands for the proposition that
14 instructing the jury you give them that second bite of the apple
15 actually is a benefit to the defendant, it's not required. It's never a
16 case that says it's a harmful error to the defendant to instruct the
17 jury on this.

18 The court says, hey, we told the jury I think nine times the
19 reasonable doubt standard, there's no way on Earth this is confused
20 of the reasonable doubt standard, it's not even in the area that talks
21 about the elements of the offense in the area that goes to evidence.

22 And in *their* reply brief *they* cite you a number of cases in which
23 *they* claim that the slight evidence standard was found to be
24 harmful error but if you actually read the cases, they are not talking
25 about the evidentiary, they are talking about the federal law that
26 says once a conspiracy is established slight connection, a slight
27 evidence of a connection to that conspiracy makes the defendant
28 liable under the conspiracy.

That instruction was never given to the jury and I'm not even sure
that that instruction applies in the State of Nevada but what those
cases stand for is that if you say slight evidence of *their*
involvement that might be used to hurt *them*.

It doesn't talk at all about evidentiary requirements that the jury
must find that there is the existence of a conspiracy before they are
allowed to use the statement for the coconspirator in the
furtherance of the conspiracy." Exhibit "A" pages 12-15.
(Emphasis added.)

It is clear from the emphasized portions of the above-quoted remarks of Mr. DiGiacomo

1 that the foregoing argument is intended by the State to apply in opposition to the common
2 challenge of *both* Luis Hidalgo III, as well as this moving Appellant, to the constitutionality of
3 jury instruction number 40. Mr. DiGiacomo's argument misperceives or misstates the holdings
4 and import of the cases cited in this moving Appellant's briefs in that regard.

5 Moreover, the State's argument regarding jury instruction number 40 highlights the need
6 to resolve the issue both for this particular case and for the jurisprudence of this Court. As given,
7 the language of this instruction required the jury to weigh identical evidence under two different
8 standards for two different purposes: (1) admissibility and (2) liability.

9 The admissibility decision regarding out of court statements by alleged co-conspirators
10 rests not upon "conditional relevance" but upon **a proper foundation being demonstrated** to
11 the trial court alone by proof independent of the statements themselves, as judged by the "slight
12 evidence" standard, of the existence of a conspiracy and the speaker and defendant's
13 membership in it. By contrast, the jury must find that the existence and the membership of the
14 conspiracy were proven beyond a reasonable doubt. In the aftermath of the rejection of the
15 *Pinkerton*⁸ doctrine by this Court in *Bolden v. State*, 121 Nev. 908, 124 P.3d 191 (2005), to so
16 use the statements, the jury must have first found beyond a reasonable doubt the conspiracy and
17 its membership. Those are the "conditions" that make the statements "relevant." The alleged co-
18 conspirators statements are "conditionally relevant" for the jury only **after being admitted into**
19 **evidence, after the jury has determined guilt beyond a reasonable doubt as to a defendant's**
20 **conspiratorial status** and only as to vicarious liability for substantive offenses committed by
21 others found to be co-conspirators. See *United States v. Martinez de Ortiz*, 907 F. 2d 629, 634-
22 635 (7th Cir. 1990) (once jury determines guilt beyond a reasonable doubt of defendants
23 membership in conspiracy, the condition is fulfilled and the statements then are relevant to show
24 whether defendant is vicariously liable for the crimes committed by co-conspirators); *United*
25 *States v. Collins*, 966 F.2d 1214, 1223 (7th Cir. 1992).

26 However, counsel for co-appellant Luis Hidalgo III did not rebut or otherwise address
27

28 ⁸ See *Pinkerton v. United States*, 328 U.S. 640 (1946).

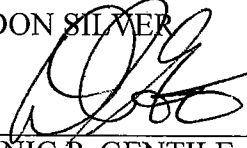
1 this common challenge to jury instruction 40 or these distinctions at any time during his oral
2 argument; but elected instead to focus both his opening and rebuttal oral argument upon those
3 issues which are unique to the appeal of his client alone. Thus, it would likewise be prejudicial
4 and fundamentally unfair to this moving Appellant to permit the State's oral argument in
5 opposition to his constitutional challenge to jury instruction number 40 to stand without
6 opportunity for his counsel to rebut the same by independent oral argument.

7
8 **CONCLUSION**

9 **THEREFORE**, for all the foregoing reasons, Appellant Luis Hidalgo, Jr. respectfully
10 prays that this Court: (1) reconsider its Order of March 9, 2012 submitting the instant appeal for
11 decision without oral argument; (2) set oral argument in the instant appeal; and (3) grant such
12 further and other relief as the Court deems fair and just in the premises.

13 Respectfully submitted this 16th day of April, 2012.

14 GORDON SILVER

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21 Attorneys for Appellant
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1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of Gordon Silver, hereby certifies that on the 16th day of
3 April, 2012, she served a copy of the Motion to Reconsider Submission for Decision Without
4 Oral Argument, by Electronic Service, in accordance with the Master Service List as follows:

5 Nancy A. Becker
6 Chief Deputy District Attorney
7 Regional Justice Center
8 200 Lewis Avenue
9 Las Vegas, NV 89155

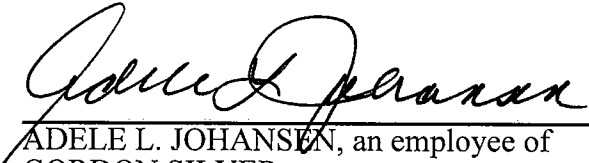
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ADELE L. JOHANSEN, an employee of
11 GORDON SILVER
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EXHIBIT “A”

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
)
 Plaintiff,)
)
 vs.)
)
 LUIS HIDALGO, III,)
)
 Defendant.)
 _____)

ORAL ARGUMENT
BEFORE THE SOUTHERN PANEL
OF THE NEVADA SUPREME COURT
Taken on Wednesday, April 11, 2012
At 10:16 o'clock a.m.
Las Vegas, Nevada

Reported by: Katherine M. Silva, CCR #203
LST JOB NO.: 159704



1 MR. DIGIACOMO: May it please the
2 Court, my name is Mark Digiacomo, I'm a Deputy
3 District Attorney, I represent the State of
4 Nevada.

5 I want to start with the fact that the
6 defense attorneys in the Carroll case which is a
7 wire transcript and the statement of DeAngelo
8 Carroll in its entirety is a conversation between
9 DeAngelo Carroll and Anabelle Esendolla where
10 they are talking about two witnesses, Bronte and
11 Jason, having witnessed the shooting, going back
12 to the Palomino, getting the money for the
13 payment and then leaving the Palomino, something
14 to which the State of Nevada has always taken the
15 position Little Lou wasn't there or part of that
16 particular part of it.

17 During the course of this recording
18 Little Lou made the statement that is unrecorded
19 or that's unintelligible, DeAngelo says huh.
20 Little Lou says something else and response from
21 DeAngelo Carroll is you are not going -- what the
22 fuck are you talking about, don't worry about it,
23 you didn't have nothing to do with it.

24 What was said before that he was
25 responding to is unintelligible and nobody has

1 any idea what he has said.

2 The State took the position and
3 throughout the record that, Judge, make a ruling.
4 If this comes in for the truth of the matter
5 asserted, then under NRS 51.069 we have the right
6 to impeach his statement if it comes in.

7 And DeAngelo Carroll gave a full
8 statement and in that statement the explanation
9 for why he would have said that was in there.

10 Little Lou and him engaged in a
11 conspiracy to commit the murder. Little Lou from
12 there tried to force his father to do it. Little
13 Lou called him to get the baseball bats and
14 garbage bags and come down.

15 And it was only when DeAngelo got to
16 the Palomino Club that Mr. H was worried about
17 having his son involved in this murder that Mr. H
18 said I want you to do this by yourself, I don't
19 want Little Lou out there and I don't want Little
20 Lou involved.

21 And our position was look, Judge, you
22 let it in for the truth, if that's what you want
23 to do, we should be entitled to impeach him or as
24 accurate in all those case laws say, this is a
25 statement, it is not -- it is not a declaration

1 against interest in any way against DeAngelo
2 Carroll, he had nothing to worry about these
3 recordings because he was at the time working
4 with the police, not the State but the police and
5 he gave this statement in response -- and we
6 don't know what it is he was making it in
7 response to or what it said.

8 She ultimately rules that it could be
9 an adopted admission and this does not -- it
10 precludes the State from explaining what this
11 means and why it is this is in here and we'll
12 talk about it later on but Little Lou clearly
13 acknowledges what DeAngelo Carroll had said all
14 along which is he was the impetus behind the
15 murder.

16 What happens is that during closing
17 argument Mr. Arrascada and his co-counsel start
18 arguing the truth of this matter asserted. Even
19 DeAngelo Carroll said he didn't do it and we
20 object, Judge, the violation of your prior
21 ruling, she overrules the objection.

22 So they got the best of both worlds;
23 they got to argue this for the truth of the
24 matter to a jury and we didn't get to dispute it
25 or give context to what he was saying.

1 The defense in their brief also fails
2 to -- I don't want to say they were somewhat
3 disingenuous but they claim the court did not
4 hear Little Lou's acknowledgement that he had had
5 a prior conversation with DeAngelo Carroll about
6 the harming of TJ and that statement was made by
7 Little Lou after they are talking about how
8 Kenneth Counts did this and why in the heck would
9 you grab Kenneth Counts, why would you put
10 another person in the middle of this, how do you
11 know who this Kenneth Counts or KC they are
12 calling him, you know, why is this all happening.

13 And Little Lou says next time you do
14 something stupid like that, I told you you should
15 have taken care of -- and then there was an
16 argument, did he say this or did he say TJ and
17 that's what the court wouldn't make a
18 determination but clearly said I told you you
19 should have taken care of and then he makes the
20 statement.

21 The State's position was and the jury
22 ultimately made the determination it wasn't
23 necessarily dispositive whether he said TJ or
24 this but clearly he's indicating, look, I told
25 you, DeAngelo, to do this, and then he goes on to

1 say you do this stuff all the time. KC, how do
2 you know this guy, why did you use KC and he's
3 clearly upset that KC is the one that they
4 enlisted to do this.

5 And so the jury heard directly out of
6 Little Lou's mouth everything that Bronte Zone
7 said and everything Anabelle Espendolla said was
8 confirmed by the wire recording.

9 They are taking one line in DeAngelo
10 Carroll which is open to many interpretations to
11 assert that somehow this defendant didn't get a
12 fair trial. The trial in which you have every
13 ruling that the State won in front of you right
14 now.

15 I never had a trial in which so many
16 discretionary rulings went against the State.
17 This is one in which I think the State was
18 actually harmed by the ruling of the court.

19 That if the court was going to allow
20 this in, she should have allowed us to explain it
21 with the statement of DeAngelo Carroll and she
22 didn't.

23 And additionally the defense fails to
24 note that Anabelle Espendolla was more than
25 corroborative -- I know they have an area in

1 their brief that relates to Anabelle and her
2 proffer and the record reflects that the reason
3 the proffer wasn't recorded was at the request of
4 her lawyer, Mr. Oram, Christopher Oram, it wasn't
5 our request.

6 But if you were to follow the defense's
7 suggestion that every proffer needs to be
8 recorded, what we would be doing is harming
9 defendants who wish to have a communication with
10 the State about what it is that they know without
11 having us report it and Mr. Oram was afraid we
12 wouldn't be able to reach a negotiation.

13 So there was a proffer letter, Mr. Oram
14 said I don't want it recorded. Immediately after
15 the proffer there was an arrest report written by
16 Detective Wildman, there was grand jury testimony
17 by Anabelle Espendolla.

18 And what they failed to mention is that
19 Mr. Oram got on the stand and Anabelle Espendolla
20 waived her privilege to her lawyer and Mr. Oram
21 testified that the story she told to the police,
22 the story that she testified here, the story from
23 the grand jury, all the truths consistent was the
24 same thing she told me from day one as her lawyer
25 and that's exactly what she always said her story

1 is.

2 So suggestion that the State of Nevada
3 provided her the information when in fact she
4 does not provide us a slam dunk, yeah, there was
5 an order to kill, yeah, it all came back. No,
6 she provides little bits and pieces about what
7 she knew about the underlying conspiracy.

8 That leads the question of the
9 reliability of the statement under Chia. Even if
10 you were to accept the rank hearsay under Chia
11 should be admissible somehow, this is an
12 individual who is being sent into a situation.

13 You don't know what Little Lou knows
14 Anabelle knows about this conspiracy. You don't
15 know what Anabelle knows what Little Lou knows
16 about the conspiracy and you don't know because
17 Anabelle, the only knowledge she had of Little
18 Lou, is when Little Lou tries to force his dad to
19 issue the order and the last thing she knows the
20 order wasn't issued and Little Lou leaves from
21 the Sonoma Auto Plaza.

22 And they say in their brief, well, PK
23 was present for the only phone call between
24 Little Lou and DeAngelo Carroll. Well, that's
25 not true. PK is at the club and he claims that

1 conversation that he overheard was at the club.

2 But the phone call happened while
3 Little Lou was driving according to cell phone
4 records after he gets into the place, at the
5 Sonoma Auto Plaza with his father. As he's
6 driving north, he calls DeAngelo Carroll and
7 Bronte Zone says I overhear a phone call with
8 DeAngelo Carroll talking about this conspiracy of
9 I don't know whose on the other end.

10 Well, he doesn't need to because the
11 phone records show it's Little Lou calling
12 DeAngelo Carroll and it's from there that they
13 get told to get dressed in black and come to the
14 club and they go to the club and Mr. H ultimately
15 issues the order at the club.

16 The entire trial of both defense
17 counsels spent an abundant amount of time with
18 Mr. H's testimony that DeAngelo Carroll is the
19 most untrustworthy person that they know. They
20 presented a whole ton of evidence on the
21 trustworthiness of DeAngelo Carroll and you can't
22 believe anything that DeAngelo Carroll ever said.

23 This is an individual who the State of
24 Nevada didn't have as a witness, he was a
25 defendant, he was a defendant who got convicted

1 of first degree murder with use of a deadly
2 weapon in this particular case.

3 You can't hold me to the reliability of
4 DeAngelo Carroll that somehow I'm vouching for
5 the credibility of a murderer, no. He said, hey,
6 I can get you more information about that, okay,
7 they set him in a room but are we going to
8 suggest that somehow he's reliable because he has
9 the motivation to lie or told to lie? We have no
10 idea what's going through DeAngelo Carroll's mind
11 or why is it DeAngelo Carroll is saying what he
12 said.

13 I want to jump to the testimony of
14 Jason Tiuga as well because that's once again a
15 situation where I heard Mr. Arrascada say the
16 court had a duty to issue a severance.

17 Well, there was never a request for a
18 severance by either counsel that I'm aware of and
19 I didn't see it referenced in their brief, I
20 didn't read the entire record from beginning to
21 end last night but I don't recall and I also
22 don't ever recall a request by them for a
23 mistrial because the court issued the ruling that
24 the court issued.

25 And so ultimately the court was left

1 with this position; you have a statement by Jason
2 Tiuga in the trial of Kenneth Counts in which he
3 makes a statement as wholly irrelevant to the
4 issue at hand of Kenneth Counts. It didn't
5 matter who issued the order of the baseball bat
6 and garbage bags in Kenneth Counts's trial.
7 Kenneth Counts was the shooter and ultimately it
8 was the last question asked on direct examination
9 of Jason Tiuga there was an abundant amount of
10 evidence that was available to dispute it, he
11 gave taped statements to the police, his talked
12 in pretrial conferences with an investigator
13 present in which he made a mistake, witnesses
14 make mistakes, they say lawyers make mistakes,
15 yeah, he made a mistake and as lawyers in a
16 tactical position, why go up there and impeach
17 him on an irrelevant fact.

18 And ultimately that was the ruling of
19 the court, that that one line out of the prior
20 testimony of Jason Tiuga is totally irrelevant to
21 the Counts trial and because of that, it wasn't a
22 substantive issue in the trial and as such it
23 didn't qualify as prior testimony by itself.

24 THE COURT: What about this recent case
25 that is referred to here as the Justices Douglas

1 and Parraguirre, have you had a chance to look at
2 that?

3 MR. DIGIACOMO: I did. In fact I read
4 Rodriguez from a totally different point and I'll
5 tell you this that they argued with me -- in that
6 case it says that an adoptive admission is
7 admissible but it's an adoptive admission of the
8 person that adopts it.

9 DeAngelo Carroll said that Little Lou
10 adoption and Anabelle Esendolla adoption and
11 their adoption can be utilized for any purpose
12 whatsoever. It does not mean that DeAngelo
13 Carroll -- well, it doesn't make any difference
14 because it's now admissible to argue as an
15 adoptive admission and the court instruction
16 doesn't preclude that.

17 The only thing it says is that it
18 wasn't offered -- DeAngelo Carroll wasn't offered
19 for the truth of the matter asserted but if it
20 becomes an adoptive admission it can be argued
21 for substantive evidence.

22 Rodriguez also said this which is
23 important to another issue and I know it's in
24 Mr. H's brief as well as it relates to the slight
25 evidence of a conspiracy.

1 The difference between the federal
2 rules of evidence and the Nevada rules are 104 in
3 the federal rule says that it's the judge's
4 determination and only the judge's determination.

5 NRS 47.070 which Rodriguez discusses
6 says that if there's any question of a condition
7 of the precedent of the admissibility of the
8 evidence it should be submitted to the jury and
9 as such under the Nevada rules it is why the
10 court must allow the jury to make that
11 determination.

12 If they hadn't allowed the jury to make
13 that determination, you'd have a brief on the
14 opposite side saying the court violated NRS
15 47.070.

16 And when I went through their briefs --
17 their cases in the opening brief every one of
18 their cases stands for the proposition that
19 instructing the jury you give them that second
20 bite of the apple actually is a benefit to the
21 defendant, it's not required. It's never a case
22 that says it's a harmful error to the defendant
23 to instruct the jury on this.

24 The court says, hey, we told the jury I
25 think nine times the reasonable doubt standard,

1 there's no way on earth this is confused of the
2 reasonable doubt standard, it's not even in the
3 area that talks about element of defense in the
4 area that goes to evidence.

5 And in their reply brief they cite you
6 a number of cases in which they claim that the
7 slight evidence standard has found to be harmful
8 error but if you actually read the cases, they
9 are not talking about the evidentiary, they are
10 talking about the federal law that says once a
11 conspiracy is established slight connection, a
12 slight evidence of a connection to that
13 conspiracy makes the defendant liable under the
14 conspiracy.

15 That instruction was never given to the
16 jury and I'm not even sure that that instruction
17 applies in the State of Nevada but what those
18 cases stand for is that if you say slight
19 evidence of their involvement that might be used
20 to hurt them.

21 It doesn't talk at all about
22 evidentiary requirements that the jury must find
23 that there is the existence of a conspiracy
24 before they are allowed to use the statement for
25 the coconspirator in the furtherance of the

1 conspiracy.

2 And so I would say that Rodriguez does
3 absolutely nothing to further this court other
4 than for the standards that the court had to give
5 the instruction that they gave on slight evidence
6 but it is irrelevant to the determination as to
7 DeAngelo Carroll.

8 That statement was heard by a jury, it
9 was argued to the jury as substantive evidence
10 and the State was the one who was actually
11 precluded from explaining what that statement
12 meant.

13 Throughout their brief they say in
14 there that he had nothing to do with it and they
15 put in little parentheses the murder of TJ
16 Hefner. I don't know where they are getting that
17 from. That's solely speculative argument. It is
18 not listed from DeAngelo Carroll in one of his
19 statements to the police and it's certainly up to
20 question as to what it is he's referring to with
21 Little Lou during the course of the transcript.

22 But the jury had the entire recording
23 and I recall that the argument from codefendant
24 was that the jury relied upon DeAngelo Carroll
25 despite the court's instruction to the truth of

1 the matter asserted. It was the State is damned
2 if we did or damned if we didn't.

3 The court ultimately changed the ruling
4 at the very end and allowed them to argue the
5 truth. So I submit it on that.

6 Thank you.
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1 CERTIFICATE OF REPORTER

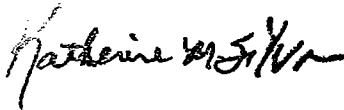
2 STATE OF NEVADA)

SS:

3 COUNTY OF CLARK)

4 I, Katherine M. Silva, certified court
5 reporter, do hereby certify that I took down in
6 shorthand (Stenotype) the selected proceedings
7 had in the before-entitled matter; and that
8 thereafter said shorthand notes were transcribed
9 into typewriting at and under my direction and
10 supervision and that the foregoing transcript is
11 a full, true and accurate record of the selected
12 proceedings had.

13 IN WITNESS WHEREOF, I have hereunto
14 affixed my hand this 12th day of April, 2012.

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18 KATHERINE M. SILVA, CCR #203
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EXHIBIT “B”

COPY
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
NOV 24 2009
John J. Blum
CLERK OF COURT

STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C212667/C241394
)	DEPT NO: XXI
vs.)	
)	
LUIS ALONSO HIDALGO, aka)	
LUIS ALONSO HIDALGO, III, and)	Transcript of
LUIS ALONSO HIDALGO, JR.,)	Proceedings
)	
Defendants.)	

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

MONDAY, FEBRUARY 9, 2009

APPEARANCES:

FOR THE STATE:	MARC DiGIACOMO, ESQ. Chief Deputy District Attorney GIANCARLO PESCI, ESQ. Deputy District Attorney
FOR LUIS ALONSO HIDALGO, JR.:	DOMINIC P. GENTILE, ESQ. PAOLA M. ARMENI, ESQ.
FOR LUIS ALONSO HIDALGO, III:	JOHN L. ARRASCADA, ESQ. CHRISTOPHER ADAMS, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARReporting and Transcription Services

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1 Q -- am I right?

2 A Yes.

3 Q All right. And there were -- and you knew that

4 a lot -- most, if not all, of the statements that had been

5 given by witnesses had been recorded somehow; am I right?

6 A Yes.

7 Q Okay. But when you met with the District

8 Attorneys and the District Attorneys' investigator and the

9 police officers on that Saturday, what you said to them was

10 not recorded, was it?

11 A No.

12 Q And that was at your request, was it not?

13 A I personally didn't request it, no.

14 Q So the District Attorney insisted upon it?

15 A No.

16 Q You don't know how that came about?

17 A No.

18 Q Am I right?

19 A Yes.

20 Q Okay. But it wasn't you that said that?

21 A I don't recall saying I didn't want to be

22 recorded. I would have -- if they wanted me to go ahead and

23 make a recorded statement, I would have.

24 Q All right. But you didn't, and you weren't

25 asked to. Is that what you're saying?

1 A I don't recall being asked.

2 Q And you have no idea why they didn't want to

3 record what you were saying that day; am I right?

4 A Correct.

5 Q But we can agree that that meeting took a

6 couple of hours?

7 A Yes.

8 Q Okay. Do you remember how long that meeting

9 took?

10 A No.

11 Q But at least a couple of hours?

12 A Yes.

13 Q So we can agree that it did not take place at

14 the jail?

15 A Correct.

16 Q Took place at the District Attorney's office?

17 A Yes.

18 Q And Mr. DiGiacomo was there; right?

19 A Yes.

20 Q And Mr. Pesci was there?

21 A Yes.

22 Q And Mr. Falkner, that fellow back there in the

23 blue shirt, he was there, wasn't he?

24 A I don't remember Mr. Falkner.

25 Q Do you remember Detective Kieger being there,

EXHIBIT “C”

DECLARATION OF DOMINIC P. GENTILE

DOMINIC P. GENTILE, ESQ., having first been duly sworn, deposes and states that:

1. I am an attorney licensed to practice before all of the courts of the State of Nevada and represent Appellant Luis Hidalgo, Jr. in the matter entitled *Luis A. Hidalgo, Jr., Appellant v. The State of Nevada, Respondent, Case No. 54209*, presently pending before this Court;

2. I am over the age of 18 years; I am competent to attest to all of the matters set forth herein; and if called upon to do so, I am prepared to testify to all of the matters set forth in this Declaration;

3. I have had the partial transcript of the oral argument before this Court of Case #54272 prepared by a licensed certified court reporter as an aid to this Court in deciding this motion. I was also present for the oral argument in that case on April 11, 2012 and have compared the audio recording of that event contained on this Court's website with the transcript. It appears to me that the transcript is accurate and faithful as to the live argument and the audio recording and, as a bystander to the argument itself, I so declare to this Court.

4. I was trial counsel for Appellant Luis A. Hidalgo, Jr. in the matter entitled *State of Nevada, Plaintiff v. Luis A. Hidalgo, Jr. and Luis A. Hidalgo, III, Defendants, Case No. C212667/C241394* before the Eighth Judicial District Court in and for the County of Clark, State of Nevada, Dept. XXI;

5. I prepared the Appellant's Opening Brief and the Appellant's Reply Brief in the above-entitled, presently pending appeal before this Court;

6. I have personally conducted a thorough review of the entire record on appeal in the matter entitled *Luis A. Hidalgo, Jr., Appellant v. The State of Nevada, Respondent, Case No. 54209* and do thereupon attest that nowhere does the record on appeal reflect in any manner or to any extent whatsoever any of the following:

a. That the State's failure to record the pretrial evidentiary proffer of Anabel Espindola to law enforcement authorities was at the request of her lawyer rather than at the behest of the State;

b. That Anabel Espindola's attorney, Christopher Oram, did not want

1 Espindola's proffer to be recorded;

2 c. That Mr. Oram was afraid that recordation of Espindola's proffer
3 might preclude Ms. Espindola and the State from reaching a negotiated resolution
4 of her case; or

5 d. That Mr. Oram ever in fact testified at trial in this case that the
6 story to which Espindola testified before the grand jury, the story to which she
7 testified at trial, and the story that she told to the police pursuant to her pretrial
8 proffer were consistent with one another.

9 I declare under penalty of perjury that the above and foregoing is true and correct. Dated
10 this ____ day of April, 2012.



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13 DOMINIC P. GENTILE
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EXHIBIT “D”

1 TRAN

COPY

FILED

NOV 24 2009

DISTRICT COURT

Alfonso J. Blum
CLERK OF COURT

CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 LUIS ALONSO HIDALGO III and LUIS

10 HIDALGO, JR.,

11 Defendants.

CASE NO. C212667/ C241394
DEPT. XXI

13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 WEDNESDAY, FEBRUARY 11, 2009

15 RECORDER'S TRANSCRIPT OF HEARING RE:

16 JURY TRIAL

17 APPEARANCES:

18 FOR THE STATE:

MARC P. DIGIACOMO, ESQ.

19 GIANCARLO PESCI, ESQ.

Deputy District Attorneys

20 FOR LUIS HIDALGO III:

JOHN L. ARRASCADA, ESQ.

21 CHRISTOPHER W. ADAMS, ESQ.

22 FOR LUIS HIDALGO, JR:

DOMINIC P. GENTILE, ESQ.

23 PAOLA M. ARMENI, ESQ.

24
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER

JRP TRANSCRIBING
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1 CHRISTOPHER ORAM

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

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

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

6 DIRECT EXAMINATION

7 BY MR. DIGIACOMO:

8 Q Sir, how are you employed?

9 A I'm an attorney.

10 Q How long have you been an attorney?

11 A Since 1991, about 17 years.

12 Q And what is your main area of practice?

13 A Exclusively criminal law.

14 Q Exclusively criminal law?

15 A Yes.

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

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

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

21 A I've had many, many.

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

24 A Yes, 1991.

25 MR. GENTILE: May we approach?

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.

1 CROSS-EXAMINATION

2 BY MR. GENTILE:

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

5 A No.

6 Q Okay.

7 A I don't have that.

8 Q Let me give you 281.

9 MS. ARMENI: 241.

10 Q 241.

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

12 THE WITNESS: No, I don't.

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

14 THE WITNESS: No.

15 THE COURT: -- notes all?

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

18 BY MR. GENTILE:

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

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

21 Q Okay. Can you see up at the top here where he has the date,
22 5/231/05?

23 A Yes.

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

25 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.