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LUIS A. HIDALGO, III,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

RESPONDENT'S APPENDIX
VOL. IV

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 12, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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1 Silverton, later in that day. Anabel said this is
2 when Little Lou said something about, Don't worry about
3 Deangelo. If you look at the cell phone records, Deangelo had
4 been calling Little Lou. Little Lou called him multiple
5 times, multiple times the night he was arrested. Deangelo
6 wasn't at work and Lou was chirping him. There's a number,
7 and Mr. DiGiacomo may very well have those in his rebuttal
8 argument. I don't -- I don't recall off the top of my head
9 how many there were. There were a number of calls between
10 7:30 a.m. and about 1:00 in the morning from Little Lou to
11 Deangelo that weren't answered.

12 There were other calls later that were talked about,
13 and Deangelo was out and about coming around. He didn't work
14 his shift, but he certainly wasn't in hiding and the police
15 didn't have him, you know, not at home at all. There's no
16 evidence of that.

17 So then we get to the 23rd, which is the big day.
18 McGrath putting the wire on him so it's concealed so only
19 Deangelo knows it's there, and he works with him on lies to
20 tell, lies to tell. This is how we need to get information.
21 And who did McGrath say they were trying to get information
22 on? Anabel, Mr. H. Anabel and Mr. H. Didn't say Little Lou.
23 And they sent him in, prepped him with lies, and the lies were
24 these two guys are going to snitch and Kenneth Counts is
25 threatening to kill him. Said, That will get him talking,

1 that will get us some evidence. Go.

2 And boy, you know, they were really concerned about
3 Deangelo Carroll and his well being because they had the old
4 exit strategy for him, run like mad and waive at the door, you
5 know, and McGrath, in full candor, said, well, what was your
6 concern? And I think -- I believe he said, My concern was if
7 something happened to him, we wouldn't be able to get the
8 evidence. You know, he was not the biggest fan in the world
9 of Deangelo Carroll and he said he didn't find him
10 trustworthy.

11 But at any rate, he sent him in wired up and there's
12 talk about the rat poisoning. I told you, we told you in
13 opening statement that that tape is critical. The tape and
14 the phone records are critical. There's certainly parts of
15 that CD that we wish weren't on there, absolutely, but the CD
16 speaks for itself. And on that CD there are no questions from
17 Deangelo Carroll about, Why'd you ask me to bring those bats
18 and bags? That's not on there. Why'd you get me into this?
19 Why did you tell me to go meet up with your father about doing
20 this? Those questions aren't on there. Why not?

21 He's going there to get evidence for the police in a
22 murder investigation. Why aren't those questions on there?
23 Because McGrath didn't know to prep him to get that sort of
24 information. The other officer -- and he's the one officer
25 not from Metro who's at one of the other police departments

1 who was part of the team that was working with the FBI, and he
2 said they were there and he remembers having the photos of
3 Mr. H and Anabel. Doesn't remember having any about Little
4 Lou. He said he might have, but doesn't remember. It's
5 pretty doggone clear from all the evidence Little Lou was not
6 a suspect, was not anybody's target until his mouth made him a
7 target. But when you listen to the whole tape, not just the
8 rat poison, when you listen to the whole tape, they want to
9 tell you this stuff about TJ and I'm going to talk about that
10 in a few minutes in a little bit of depth -- they want you --
11 or to listen to parts of it. I want you -- or ask you to
12 listen to it all.

13 What would you expect Little Lou Hidalgo to say if
14 he'd been at the center of this thing? What would you expect
15 to hear on that tape on May 23rd if he had called Deangelo
16 Carroll and said, Bring bats and bags, we've got to go take --
17 you've got to take care of Hadland for my old man? You
18 haven't known him, by listening to the tape, looking at him in
19 court, hadn't known him to be a really shy shrinking violet
20 type. I suspect you would find -- you may find when you
21 review this evidence and the whole tape that you'd find a lot
22 of comments that would be there if you really thought Lou
23 Hidalgo had been involved with this thing before then.

24 On the 24th -- and the rat poison comments, there's
25 no doubt about that. I can't run from it if -- I could, but I

1 can't. We get to the 24th. They come back -- Deangelo comes
2 back to the club. He's -- or back to Simone's. He's again
3 wearing a body wire. He comes in and there's additional talk
4 and then the wire's taken off. And Anabel doesn't know how
5 that wire was taken off. Deangelo wasn't here to tell you how
6 the wire was taken off. The wire's taken off.

7 The first five or six minutes you hear on there,
8 there's no part about, Man, I told you yesterday, what do you
9 mean those guys got on the bus? I told you to deal with those
10 guys. I told you to get rat poison. There wasn't those
11 follow-up kind of talks. And if he was serious, if he was
12 serious, wouldn't you have expected something more the very
13 next day, something more?

14 We can skip ahead. They're arrested shortly after
15 that. Everybody talked about Little Lou was always on time,
16 always up in that club like he was supposed to, got the
17 popcorn going, got the bar stocked, got all his jobs done. He
18 didn't that day. People were lined up -- the dancers were
19 lined up outside the club and couldn't get in because he'd
20 been pulled over and arrested.

21 On July the 6th, Anabel Espindola had a death notice
22 filed on her by these prosecutors. It's kind of interesting
23 these prosecutors -- Mr. DiGiacomo said in opening statement
24 she's, worse case scenario, probably only guilty of murder
25 two. They knocked that down. Well, that's not death penalty

1 eligible. She was death penalty eligible --

2 MR. DIGIACOMO: Objection to this argument, Judge.

3 THE COURT: Overruled.

4 MR. ADAMS: She was death penalty eligible in their
5 eyes on July the 6th, 2005 and remained that way until the day
6 she pled. And they said, Well, she wasn't under the
7 penalty -- the death penalty wasn't hanging over her head that
8 day. But, boy, that testimony was clear, they'd come into
9 court the very day before she went back to cut her deal
10 saying, We're going to file a new death notice, we're going to
11 move ahead with this. She didn't have any guarantee she
12 wouldn't be executed until that plea was entered. That
13 started February 6th.

14 Then we get down to sometime around May of '07 when
15 she and OB Perez became pretty close, and OB Perez testified
16 she was in jail, heard her sobs, went in and talked to her.
17 And she said Deangelo had this thing going on with TJ. I had
18 this thing with TJ. I told him to handle it. He wasn't
19 supposed to die. Nothing, nothing about Little Lou being
20 involved, nothing.

21 They cross-examined. You know, they're the State.
22 They have resources. They have investigators. They've got
23 investigators sitting here the entire trial. Nobody came up
24 with any evidence that OB Perez has been, you know, secretly
25 writing Little Lou Hidalgo. They're in love. I mean, there's

1 nothing like that. There's nothing to suggest that she is
2 inviting trouble into her life to somehow help Little Lou
3 Hidalgo, but she did. Anabel was involved, according to
4 Anabel, with Deangelo in something and Mr. Hadland was not
5 supposed to end up dead. And Little Lou wasn't involved in
6 it. She pled last year.

7 I'd like to talk to you for a couple of minutes
8 about the government's opening statement. And I'm saying this
9 not to -- because truly, you know, we lawyers argue and fuss
10 and bicker with each other, but at the end of the day we go
11 home. At the end of the day this isn't a game between
12 lawyers. It's not about jousting between lawyers. There's a
13 lot on the line. Mr. Hadland's daughter left but is -- her
14 mother, Jennifer's mother, is here, Timothy's ex-girlfriend.
15 It's important to them. It's important to them not to convict
16 anybody. It's important to them for justice to be done and
17 you know how important it is to this side of the room that
18 justice be done.

19 So my next comments about what they promised in
20 opening statement is not to get into some sort of lawyer
21 jousting thing because obviously we are prone to do that, but
22 this really is about what they promised versus what the proof
23 was. And maybe to get you to think, why didn't the proof come
24 in like they promised? Why? If they feel so good about their
25 case, why'd they oversell it in the opening statement?

1 And I'd like to talk to you first about this --
2 Mr. DiGiacomo said, Well, Deangelo Carroll kept looping around
3 the guard shack on the way out to the lake. He passed by it a
4 couple of times. Rontae Zone said there was never a guard
5 shack, doesn't remember a guard shack. He said -- you'll hear
6 testimony from this witness stand that Dr. Stertz, the
7 original owner who sold the club to Mr. Hidalgo on basically a
8 rent-to-own kind of deal, a personal loan to him, said he gets
9 \$10,000 a month from the Palomino. Anabel Espindola testified
10 it was \$10,000 a week.

11 Now, I started with two very petty minor points and
12 I concede that to you. It's not -- those two points aren't
13 significant in this case, but perhaps they reflect the quality
14 of the evidence, the consistency of the evidence.

15 Mr. DiGiacomo's a smart guy. He's going to say it in a way
16 that he knows it to be true and expects it to be true, which
17 leads me to suspect perhaps the witness changed her story.

18 MR. DIGIACOMO: Objection, Judge, as to what I know
19 or don't know.

20 THE COURT: Sustained.

21 MR. ADAMS: That's an --

22 MR. DIGIACOMO: That's not a proper one. It's not
23 what I know.

24 MR. ADAMS: All right. I'll move on.

25 THE COURT: All right.

1 MR. ADAMS: Mr. DiGiacomo said -- and I'll move on
2 to a couple of more important things. Mr. DiGiacomo told
3 you -- I have his opening statement here. He told you, You
4 keep following those, meaning the phone records, and you'll
5 see that at 12:24 Mr. H called Anabel and Anabel calls Little
6 Lou. And interestingly, and this is May the 20th, right after
7 the meeting, the payment of money, interestingly, at 1:48 a.m.
8 Mr. H direct connects with Deangelo Carroll. The evidence,
9 the phone records, show that never happened.

10 Deangelo Carroll used KC -- he told us Deangelo
11 Carroll used KC's phone to call Anabel Espindola. Not
12 according to Kenneth Counts, not according to Deangelo
13 Carroll, not according to Rontae Zone who said no phone was
14 passed and not according to Anabel. I mean, she tried to call
15 that number back. She didn't say, Yeah, it was some un --
16 strange number. I didn't know who it was. I called him right
17 back, tried to talk to him again. We weren't done with our
18 little plan B conversation. Somewhere on here, there it is,
19 after an 84-second call, I tried to call right back. They
20 didn't get that information.

21 They told you in their opening statement that you'll
22 hear on the tape, and we'll make a big deal out of the fact
23 that Deangelo Carroll said on that body wire Little Lou had
24 nothing to do with this. Mr. DiGiacomo went on to say, You'll
25 learn Deangelo Carroll knows nothing about conspiracy law. I

1 thought that point good. We get to hear from Deangelo
2 Carroll, find out how much he knows about conspiracy law and
3 also how much he can help and tell the truth about Little Lou.
4 We did not hear that. And now they're asking you to believe
5 us, believe us. When you the tape the first time, you didn't
6 have a transcript, and I was watching -- as you guys were
7 listening very intently, I was watching you very intently.
8 And I hope that's okay. You can watch Little Lou very
9 intently all you want and I'm happy for you to.

10 I was watching you intently and about halfway
11 through that 34 minute and 56-second tape, I thought every one
12 of you would be snoring because it's hard to listen, it's hard
13 to make sense of it. It's a lot easier when the transcript's
14 up. You know, once you had the transcript, boy, everybody was
15 awake and could follow along with all the language. That's
16 how we all process information. But when we're trying to
17 listen to that the first time, did any of you hear TJ? Any of
18 you?

19 When you had the State's transcript, I bet none of
20 you heard TJ then either because, as you recall, at 22:15, it
21 was not in the State's transcript. And when you were forced
22 to listen to it a third time with the defense's almost
23 identical transcript, you didn't see it there either. They
24 started off this case, Mr. DiGiacomo's first sentence out of
25 his mouth was, I told you you should have taken care of TJ.

1 Second sentence, Those are the words of Luis, Little Luis
2 Hidalgo, III, the son, on May 23rd, 2005. He talks about it
3 later. The next time you do something stupid like that, I
4 told you, you should have taken care of TJ. And then
5 Mr.Adams, Objection to that, Your Honor. That was not in the
6 transcript.

7 The Court, That's sustained. Sustained.

8 MR. DIGIACOMO: Objection, Judge. He can't read the
9 objections.

10 THE COURT: Right. Well, if it's objected to and
11 it's sustained, they're not supposed to consider it.

12 MR. DIGIACOMO: Right.

13 MR. ADAMS: Well, you heard the CD now multiple
14 times. You heard them play it a few more times. What is not
15 on there, even when they're putting it on the screen, is, I
16 told you to take care of TJ, to go up to the lake, to kill
17 him, to do this or that. That's not on there. Even the
18 inference they're trying to argue is not -- is not an
19 inference that points automatically towards guilt. But it's
20 important or else we wouldn't be spending this much time
21 talking about it. But you didn't hear -- I'm confident you
22 did not hear it the first time.

23 And I promise you you did not hear it when you were
24 reviewing their transcript or our transcript. And now their
25 case is such that it depends on you to find TJ's initials

1 mentioned in that tape -- on that tape when their court
2 reporter couldn't find it. That's their case, ladies and
3 gentlemen, a case that was perhaps overpromised in opening
4 statement and didn't come through like they told you it would.

5 I'd like to talk to you now, and I think I have
6 about ten minutes left with you, for those of you who might be
7 thinking of the rest room or other more interesting things in
8 life. In about ten minutes, I'll be done, and I don't know
9 how long you're going to work tonight, but I sure hope you, at
10 least, handle our part of the case as soon as you can.

11 I'd like to talk to you about the conspiracy to
12 murder Mr. Hadland. And somewhere up here I have the
13 actual --

14 Andy, I think I forgot you again, didn't I? Could
15 you please play --

16 I skipped over this, but it's a part of the tape
17 that we'd like you to focus on that actually was in the
18 transcript.

19 Could you play that part for me, please, Andy.

20 (Playing tape)

21 MR. ADAMS: Well, at least according to the
22 transcript, that wasn't the clearest version, but it's at
23 13:26 to about 13:34 on the CD that -- if it's the full CD of
24 34 minutes and 56 seconds, 13:26. I'd like to talk to you
25 first about the first charge in the Information.

1 I think that's about as big as I can get that one.

2 Louie Hidalgo, along with coconspirators Kenneth
3 Counts, Anabel Espindola, Deangelo Rashaun Carroll and Jayson
4 Taoipu, on or around May the 19th, on or around, not exactly
5 sure about when this supposed meeting takes place, but on or
6 around, in the ballpark, they meet with each other and/or
7 Louie Hidalgo, Jr. and between themselves -- this is a little
8 confusing, isn't it?

9 Now, in the opening statement Mr. DiGiacomo told us
10 several times that this is a very complex case. Perhaps it's
11 really a very simple case. It is a very long case. Perhaps
12 it's a long case because of the holes in the evidence. But
13 this says, These people, maybe along with Mr. Hidalgo, between
14 themselves conspire and agree to commit a crime; to wit, the
15 murder of Timothy J. Hadland.

16 Ladies and gentlemen, where, where in any of the
17 evidence where is an agreement, any agreement, any agreement
18 at all that Little Lou Hidalgo entered into related to
19 Mr. Hadland? Where is that? Somewhere on here -- and it gets
20 smaller because I really wanted it on one sheet. We'll go
21 through these later. When was there an agreement? What was
22 the agreement? When did Little Lou talk to Mr. Counts? When
23 did he talk to Anabel Espindola? Anabel Espindola is the only
24 person who talks about any kind of agreement. And I told you
25 this line in opening and I thought for sure it was going to

1 get a laugh and it got nothing. So I'll try it again.
2 Hopefully you're a -- maybe we've spent a little more time
3 together.

4 There's nothing but disagreement, nothing but
5 disagreement, according to Anabel Espindola. She said there
6 was an argument, a fight, not an agreement. I mean, an
7 agreement is, Hey, dad, want to do something about this? Yes,
8 son, what are your ideas? I don't know, let's go through the
9 possibilities. We could do nothing. We could beat him. We
10 could beat him up real bad and try to hospitalize him. We
11 could kill him. What do you think, dad? Oh, son, I think the
12 only way to handle this is to kill him. Good. Let's agree to
13 it.

14 I mean, that never happened. And I'm being a
15 little -- you know, a little over the top on how I describe
16 what is necessary for an agreement, but the truth of the
17 matter is there's no evidence of any agreement, none. It
18 doesn't exist in this case. I suspect they will argue once I
19 sit down that, boy, use your common sense, this never would
20 have happened, there had to have been an agreement. Almost
21 like the Salem witch trials. You know, boy, they must be
22 witches because they can't prove they're not.

23 How are we supposed to come into court and prove
24 there was never an agreement? How? I mean, Anabel said there
25 was an argument. She said she was with Mr. Hidalgo the rest

1 of the day, father and son were never together, and then they
2 see Deangelo after it happened. Where in this time line of
3 their witness is there room, is there space, is there an inch
4 for any agreement? It's not there.

5 And certainly the bats and bags comments, super
6 questionable. When was this bats and bags thing supposed to
7 have happen? For that to have happened, for that to have made
8 sense, Rontae Zone would have to be lying. I don't think
9 they're going to say Rontae's lying. Rontae would have to be
10 lying. And Mr. H would have had to have a conversation with
11 Little Lou about, Get Deangelo to the club with bats and bags,
12 sometime around 7:00, 8:00 o'clock at night, and Anabel would
13 have to be lying because she said they were together. Their
14 two star witnesses would have to be lying for there to be a
15 conspiracy. Not really the best way to build a conspiracy
16 case, it seems to me.

17 Actually, before I move on to the next charge, I'd
18 like to talk to you for a second kind of generally about how
19 to view this. We talked earlier about if there's more than
20 one way to view the evidence. I think this is a pretty easy
21 charge, the easiest. They charged it first. I was happy to
22 start with it first in talking to you. Let me tell you this,
23 in all fairness. If you think they've proven Little Lou
24 Hidalgo had an agreement with any or all of those people,
25 you've got a duty, you've taken an oath, you've got to convict

1 him. You've got to convict his butt of that, no doubt about
2 it. And I say that in full confidence that you're not going
3 to find an agreement.

4 We believe -- we -- our position is he's been proved
5 innocent of that charge. And like the Judge instructs, if
6 they don't meet their burden of proof, we're entitled to an
7 acquittal on that charge. Some of you may go back and say,
8 yeah, but what if, couldn't he have -- what if he did this,
9 what if his dad texted him or something, and we don't have
10 text records, it's fair game. Turn to your neighbor and say,
11 whoa, remember the government has the burden of proof. If
12 there's a text record, and there's no testimony about nothing
13 to suggest there is, if there is, the government's got to
14 bring that to us. We can use our common sense, but we can't
15 pull up a backhoe and try to fill in these holes in their
16 case. That's not right. We took an oath not to do that.

17 This is this first part of the murder charge, and
18 I'll deal with the second one first. They have charged Little
19 Lou under 22 theories where they think it makes him guilty of
20 murder. The second one -- and I know it's small print, but
21 you'll have this document with you in the back. The second
22 one is guilty by conspiring to commit the crime of battery
23 and/or battery with use of a deadly weapon, and/or battery
24 resulting in substantial bodily injury, and/or murder and/or
25 to kill Mr. Hadland. A complex case or a really simple case.

1 There's no evidence of any agreement. We just talked about
2 that. I'm not going to run back through that, but there's
3 none.

4 The first theory that they have really, I think, is
5 what they believe their case is now, aiding and abetting by
6 the commission of the crime directly, indirectly, aiding and
7 abetting -- aiding, we know what it means, abetting means
8 assisting. Aiding and assisting and to wit -- or otherwise
9 procuring. I should have circled procuring. Procuring's
10 maybe not a word you use every day. Maybe you have friends in
11 the military, some people have been procurement officers in
12 the military or procurement positions in businesses. Those
13 are people that get stuff, you know, like in Mash, Radar
14 O'Riley would have been a procurement person, you know, he
15 gets things. Procure.

16 So he either aided and abetted by procuring Luis
17 Hidalgo, III and/or Luis Hidalgo, Jr. Well, this is a big
18 deal. And makes Little Lou guilty or makes Little Lou
19 innocent. Right? I mean, he has to be involved in this.
20 Little Lou, III and/or Mr. Hidalgo procured defendant Deangelo
21 Carroll to beat and/or kill Timothy J. Hadland; thereafter,
22 Carroll did all this stuff.

23 Well, there are two ways that they can try to argue
24 they've proved that to you. One way is the bats and bags
25 call, 7:42, had to be the bats and bags call. Zone must be

1 wrong. It could've happened at noontime. Zone has to be
2 wrong, smoking pot all day. Their witness. Reasonable doubt
3 right there. Zone said the call's at noontime. The 7:42 call
4 is about coming back to work.

5 The other way, the other horse they can try to ride
6 to prove this murder case to you is that somehow what Anabel
7 said about arguing with the dad, making the dad so mad that he
8 stewed and he simmered and later he called Deangelo Carroll
9 about doing a hit. That's the other way to do it. How is
10 that aiding? How is that assisting? I mean, even if that's
11 true, even if that, by random flight of fancy, is truthful,
12 how is that aiding or assisting? Is that driving him over to
13 meet with Deangelo? I mean, there's not an a -- there's not a
14 meeting of the minds.

15 And what else does Anabel tell us? Anabel says, her
16 version to get the deal, her version to have a shot at
17 probation, her version is that there was talk about Rizzolo
18 and Gilardi and that one of these two gentlemen had a customer
19 beat up. They know how to handle their business. And
20 because -- if that comment were made, does that mean that
21 Little Lou Hidalgo must have, in his heart, wanted Timothy
22 Hadland dead? And that's what they're trying to get. Two
23 plus two doesn't equal 25. I mean, it just doesn't.

24 The solicitation for murder, we all know about free
25 speech in this country, and usually it's free political

1 speech. Certainly any of you could go across to the park, say
2 whatever you want about the government, and one of the
3 things -- and I think a lot of us, after 9-1-1 and the years
4 after that, have thought a lot about really what it means to
5 be an American. And one of the things that makes us different
6 is we do believe in free speech. And sometimes that speech is
7 abused, sometimes it's offensive, sometimes people don't like
8 it when people are burning flags and that type of stuff. But
9 free speech is protected and it always has been.

10 John Adams, no relation, when he was president in
11 1800, he was going up to New Hampshire to dedicate a cannon, a
12 new cannon that was in some courthouse, and somebody yelled
13 out when he was about to dedicate it, I hope it burns your
14 britches off. That guy was prosecuted. The judge who
15 presided over that trial was almost impeached by the U.S.
16 Senate because we protect the right to say disagreeable
17 things. That's in public parks and that's also in private
18 bedrooms.

19 MR. DIGIACOMO: I apologize, Judge, but at some
20 point that is jury nullification. I object.

21 MR. ADAMS: There's no jury nullification. I'll --
22 I'm moving on, but --

23 THE COURT: All right.

24 MR. ADAMS: -- that's certainly not jury
25 nullification, Your Honor.

1 Why is that important? Well, you can have a
2 solicitation to murder without any further act. You can.
3 Your words alone can do it. What do you think of when you
4 hear solicitation of murder? If you watch enough cable TV,
5 you might think of some diner out in the desert somewhere,
6 nobody's there, a couple of people at the bar, and somebody
7 who doesn't smoke cigarettes, chain smoking with nervous hands
8 waiting to meet some guy who shows up in all leather who walks
9 in and they never show the face. He's an undercover police
10 officer and he walks in and they sit down and this guy either
11 has pictures of his spouse or he has pictures of his business
12 partner. And in either one of those situations, those
13 partnerships are ending. And it's about money and here's the
14 schedule, here's the bag of money. I want you to do it
15 Thursday at 2:00 p.m., and then they arrest the guy for
16 solicitation of murder. That's when you have a real good idea
17 of the intent. When it's something like that, you have a real
18 good idea that somebody really wants somebody dead.
19 Unfortunately, they found an undercover officer, not a hit
20 man.

21 This is a situation where a guy -- you can hear him
22 hacking on the tape, a guy who's sick, who's in his bedroom,
23 and it's not his bedroom because he's a near do-well. He's
24 got a rental -- he's got a house. He's renting it out. You
25 heard that testimony. He's living at Simone's trying to save

1 money, trying to get ahead. He's living there and who knocks
2 on his door? Deangelo Carroll. And why is that important?
3 Because Little Lou didn't get out of his bed to go find
4 Deangelo Carroll with a bottle of gin to say, Kill these guys.
5 I found out at the Silverton. I found out that my old man
6 might be in trouble. Anabel might be in trouble. I love
7 these people. We've got to not let anything happen to them.
8 We can't have the business license in trouble or whatever. He
9 didn't go looking for Deangelo to fix the problem. Deangelo
10 came to him.

11 If Little Lou wanted those two guys dead, or let's
12 say Little Lou wanted those three guys dead, including Kenneth
13 Counts, don't you think he would have left his bedroom to try
14 to make that happen, try to find Deangelo, say, You've got to
15 take care of this problem?

16 What happened after he left? Nothing. Nothing.
17 Nothing at all. Little Lou was arrested the next day 24, 26,
18 28 hours later the afternoon of the 24th. There was another
19 conversation with Deangelo that was wired, not another
20 conversation about harming anybody. Wouldn't you expect that?
21 This is not the same thing as the guy out in the desert with
22 the bag of money and all the pictures.

23 Now, they want to say, Well, on this tape he's
24 talking about \$25,000. Well, you've got in evidence \$10,100
25 of U.S. Savings Bonds by Little Lou in his room in a booklet

1 all organized. He didn't hand that to Deangelo and say, Here,
2 man, let me pay you in advance. He didn't do that. He was
3 talking about if you get arrested -- or Anabel was actually
4 talking about, You need a lawyer. If you get arrested, stick
5 to your story. And basically he was saying, If that happens,
6 I'll take care of your wife. I mean, what are you talking
7 about, conspiracy, a year? I mean, come on, man, I'll do
8 these savings bonds things for you. I'll say in -- do you
9 think if Deangelo would have gone to jail for a year, he'd
10 have gotten out and had \$25,000? Very unlikely.

11 If that had really been a plan perhaps those \$10,000
12 right there would have been given to him. They weren't. It
13 was a kid who ran his mouth and didn't think. And how do we
14 know that? Anabel Espindola's known the little guy since he
15 was eight years old. They were there together every day.
16 They were working together. He was living at Simone's. She
17 was running Simone's as part owner. He was an assistant
18 manager. It sounds like the job -- you know, he had -- you
19 know, he's a younger guy whose father owns a club. He was
20 working hard, but he wasn't upper management. He is, I guess,
21 on the letterhead, but he was stocking the bar and that sort
22 of stuff. She was the general manager there. She'd been very
23 involved in this young man's life. They have terms of
24 endearment for each other.

25 He wrote her. They introduced into evidence a

1 couple of letters Little Lou wrote to her before Christmas
2 this year asking about her mother. You have that in evidence.
3 Her mother -- she said her mother's been sick for a long time.
4 Little Lou wrote -- knew she was going to be a witness against
5 the father. Didn't write a threatening letter. He wrote a
6 letter of concern about the mother. I mean, their
7 relationship goes a long way back. Anabel Espindola who --
8 has every reason in the world to make these guys happy.

9 I think Mr. Arrascada said, Was she upset or you've
10 known him when he's happy, sad, mad, glad, you know, he
11 started a rhyme and he said, Well, look, let's just cut to it.
12 You know him when he's serious? Yes. You know him when he's
13 just stupid? Yes. Was he just stupid when he said that?
14 Yes. And was he just stupid because you thought you'd handled
15 the problem? Absolutely. I was paying money to Deangelo,
16 problem solved. You know, Lou was yapping. Those guys didn't
17 get hurt, thank God, but when you evaluate all of this, all of
18 you, all of you said in jury selection that you've heard
19 people say these kind of things.

20 They haven't all been taped and on wires and been
21 presented in court, but you've all heard people say that. And
22 you said, Well, I need to know the person. Well, what if you
23 didn't know the person? Well, I'd either get to know the
24 person or you need to hear from people that knew the person.
25 Anabel Espindola, State's star witness number one, knows the

1 person. It was stupid.

2 I want to talk to you for a second about strip clubs
3 and then I want to just leave you with a couple of thoughts
4 and then I'll be done. I think I've gone a lot longer -- I've
5 gone -- I feel like I've gone a lot shorter than you do. I
6 know that, but I'm about done.

7 In this country, at least in parts of this country
8 and in my part of the country, the last 40 years or so, we've
9 really believed in equal education. Every kid has a right to
10 quality education. And that's important because I remember in
11 high school we went on a field trip to another school. It was
12 a school in Cave Springs, Georgia. Cave Springs is a little
13 town where Mike Glen of -- the Stinger, for any of you who
14 watch basketball, old Hawk player, played at Auburn, greatest
15 Auburn player before Charles Barkley came along. The Stinger
16 was there and there's a Georgia School for the Deaf and we
17 went out there. And it was just amazing to me that these kids
18 were getting a great education.

19 That was important to me because I left and said,
20 you know, that's fair. It doesn't cost the same, but we're
21 all entitled to an equal chance in this country. And I went
22 off to law school finally later, had no idea I'd end up being
23 a lawyer. I went to law school in Washington, D.C., and it
24 was wonderful living up by Capital Hill. You'd walk by the
25 Supreme Court building. It's right across the street from the

1 U.S. capital, etched up in the marble on the Supreme Court
2 building is equal justice under law. And that's meant a lot
3 to me. It's a principle worth fighting for, fighting for in
4 the courtroom, fighting for in a career.

5 And a lot of times that's about fairness between
6 rich and poor. That's not really the case here in this
7 courtroom. In this courtroom, it's about can a kid who's a
8 manager in a strip club get the same shake as a kid who was
9 running a body shop. My dad didn't shove me in the strip club
10 business at 20. I might have been very happy to be there, but
11 he didn't. Little Lou was working there. It was an honest
12 job. It was paying the bills. He was building a life. He
13 was not -- on the 19th of May or on the 23rd of May, he wasn't
14 trying to end lives. That's the evidence in this case.

15 He wasn't present. He didn't pay. He didn't
16 participate. Since May 24th, 2005, three years and almost
17 nine months ago, Little Lou's been waiting for lawyers to quit
18 talking about his situation and have you guys, not people of
19 common sense, but I think the 12 of you, 14 of you together,
20 people with uncommon sense to decide was there an agreement,
21 was he involved? I think the answer's clear and we hope, we
22 pray that at the end of this you give him another shot.

23 Thank you.

24 THE COURT: All right. Thank you, Mr. Adams.

25 Mr. DiGiacomo.

1 MR. DIGIACOMO: Thank you, Judge. Judge, if we
2 could just take down the pieces.

3 MR. ADAMS: Would you like me to take them all down?

4 MR. DIGIACOMO: Yeah, just take them all down.

5 STATE'S CLOSING ARGUMENTS

6 MR. DIGIACOMO: The one thing I will promise to you
7 is this is going to be significantly shorter because every
8 given trial, every trial that's done in the State of Nevada
9 and the country, civil, criminal, doesn't matter, it's about
10 one thing. It's about the truth. That's it. That's -- at
11 the end of the day when you go back to that room, the only
12 thing the State of Nevada cares about is finding the truth.
13 But I'm going to dispute a few things that were said by
14 counsel, and the last one I just can't resist talking about.

15 This case isn't about rich and poor? It is. All
16 the poor people did this and the rich people who were the
17 puppet masters are going to walk away from it. No doubt this
18 case is about rich and poor. Let's talk about what was said
19 by Mr. Gentile early on. I'd like to address Little Lou for a
20 little bit too, but one thing he said was, What wasn't enough?
21 And then he said, What do they have now?

22 And Mr. Gentile tried to, at the end of his
23 argument, kind of mute this, but Wednesday, this is a
24 corroboration case; Thursday, there isn't a corroboration case
25 because when you read all those instructions, they say one

1 fact or act which tends to connect you to a crime. Their own
2 client, Mr. H, says, I paid the money. This isn't a
3 corroboration case the moment those words came out of his
4 mouth. That's it, end of the day. In fact, at the end of
5 this case, I'm going to explain that you can set aside -- you
6 don't even need Anabel Espindola right now to determine that
7 man's guilt, at all, no way, no how.

8 And the other thing as it relates to Little Lou
9 Hidalgo is the only evidence, exculpatory evidence, that
10 they -- and I've used exculpatory before -- the only evidence
11 that exonerates this individual is a statement by a person
12 that they tell you never to believe. And it's the exact same
13 defense that Mr. H has. Don't ever believe Deangelo Carroll.
14 And, hey, we're prosecuting him. Good. Don't ever believe a
15 word he says.

16 But if you're going to listen to the wire and you're
17 going to follow the law, you can't listen to what he says
18 because the law tells you that the statements made by someone
19 after he's withdrawn from the conspiracy, ie: Deangelo Carroll
20 wearing a wire, can't be offered against the defendants for
21 the truth of the matter asserted. It's only the statements of
22 Anabel and Little Lou that are relevant.

23 So let's look at what you hear Little Lou saying
24 before Deangelo made the statement and what you hear him say
25 after the statement. There is zero context to the statement

1 whatsoever. When you listen, I don't care how close you get
2 your ear to that speaker, I don't care how far you turn it up,
3 ask for headphones, I don't know what you do, you cannot hear
4 what Little Lou says that prompts the response from Deangelo
5 Carroll.

6 And that statement that Deangelo Carroll, was it --
7 You had nothing to do with this whole situation with TJ, you
8 have no idea in what reference that is. And when you combine
9 that with the fact that the moment they walk in the door he's
10 whispering, which tells you what? That on May 23rd, the
11 moment that Deangelo Carroll walked through the door, this man
12 knew about the murder. And they keep calling him kid and the
13 little guy and all -- he's a 27-year-old man. At what point
14 do you take some responsibility in your life?

15 He knew the moment they walked through the door that
16 a crime was committed. And how could he possibly have known?
17 They went over the phone records. I noticed they wanted to
18 skip some really important stuff. They did May 19th up until
19 right around the murder time and then they started up on
20 May 20th and they skipped the part with all the communications
21 between Mr. H and Little Lou and then Little Lou with Deangelo
22 Carroll. Go back and look at those and ask yourself, what?

23 The only person who has contact with Deangelo
24 Carroll after he leaves the police department on those cell
25 phone records is Little Lou. He's the only person. And you

1 remember what the detective said? The only person we told
2 about flyers being on the ground, and you heard about how dark
3 it was out there. They had no idea they left the Palomino
4 flyers out there. They would have picked them back up. The
5 only person we told was Deangelo Carroll. And it's clear by
6 the time of those recordings that the coconspirators know
7 about the flyers. And the only person who had contact with
8 Deangelo Carroll after that is Little Lou. That's it.

9 MR. ADAMS: Objection, Your Honor. There are a
10 number of calls from Anabel Espindola.

11 MR. DIGIACOMO: Not after -- you can go back to
12 those records.

13 THE COURT: All right. And again, ladies and
14 gentlemen, the records -- it's your interpretation of the
15 records that count.

16 MR. DIGIACOMO: After Deangelo Carroll leaves that
17 interview room, find yourself the calls between Deangelo
18 Carroll and Anabel Espindola. Those calls that you see are
19 right around the time period on the 20th right around the time
20 period when Mr. H gets the call saying, I want to talk to
21 Deangelo Carroll -- or the police want to talk to Deangelo
22 Carroll. Right? We need you to come down to the club and
23 talk to us.

24 And when we get to Mr. H, I want you to pay close
25 attention to those cell records. We haven't pulled that chart

1 out, and you can utilize that chart, but you find the time
2 when Mr. H and Anabel aren't at the same place at the same
3 time when anything relevant and important happens in this
4 case. Ask yourself how it's possible that Mr. H and Anabel
5 are in the building together when the phone call comes from
6 Marty Wildemann. They're still in the building together when
7 Anabel's crossing back and forth with Deangelo -- Anabel's
8 phone, because I know we keep talking about Anabel -- Anabel's
9 phone, his mistress of 18 years, crossing back and forth with
10 Deangelo Carroll. And then, and only then, after those phone
11 calls are over, will you see Mr. H drive northbound on I-15
12 and wind up at the Palomino Club.

13 And then the very first thing he does is cover up
14 for Deangelo Carroll. That's it. That's the first thing he
15 does. He won't admit it on the stand. And while we talk
16 about that, I know they put the accomplice instruction up
17 there and, wow, when you read that accomplice instruction, oh,
18 my God, you should never, ever, ever believe an accomplice.
19 They have so much motivation to lie. That was basically the
20 argument.

21 But look at that instruction and say to yourself,
22 isn't that the same motivation that the defendant has? With
23 the exception of the part where he wants leniency from me, now
24 he wants leniency from you. So when you analyze the
25 defendant's testimony, don't you have to analyze it under the

1 same analysis you do of Anabel Espindola? Absolutely.

2 MR. GENTILE: Your Honor, I object to that. That is
3 not the state of the law.

4 THE COURT: All right. Well, that's sustained as to
5 the state of the law, but he certainly can argue what the
6 motivation would be and et cetera.

7 So go on, Mr. DiGiacomo.

8 MR. DIGIACOMO: Thank you.

9 Mr. Gentile made an argument to you about, They
10 don't have my guy on the tape, but he's the first guy to admit
11 to you that before the tape occurs he told his client not to
12 talk to Deangelo Carroll. He wants you to benefit from the
13 fact that he gave him good legal advice. Anabel Espindola,
14 had she not loved Mr. H, wouldn't be sitting in that chair
15 either. Had anybody -- if Little Lou had listened to his
16 father when he got Don Dibble's card wouldn't be sitting in
17 that chair right now because you wouldn't have those wires.

18 And the funny thing about it is they want to talk to
19 you about the witnesses in this case. They ignore the wires.
20 And most importantly, they ignore the testimony of Mr. H.
21 Mr. M claims, and this is the instruction -- well, I guess it
22 was Mr. Gentile that said it to you, he's an accessory after
23 the fact. Not if you read how accessory after the fact was
24 defined. He was extorted, according to him, but he didn't do
25 anything to help them conceal the crime, according to his

1 testimony. He's not an accessory after the fact.

2 I talked about this already a little. I wrote this
3 down, though. Mr. Gentile said, You can't place Mr. H
4 anywhere in any relevant period of time. Well, we can. We
5 can place him with Anabel Espindola on those phone records at
6 every critical juncture in the case. You won't be able to
7 place him anywhere else than with Anabel Espindola.

8 There were a number of things they talked about
9 during the course of their argument that said -- that I said
10 certain things in opening statement that didn't come true.
11 And I guess, you know, one of things I thought we agreed
12 during trial was there was a mistake on there. Mr. H didn't
13 call. It was Little Lou, not that I necessarily think that
14 that helps them in any manner whatsoever.

15 But then they said, You're not going to hear any
16 evidence the coconspirators were upset that they used KC. And
17 I want you to think back to that because I want you to listen
18 to the wires. And I know it's brutal listening to those
19 wires, and all of us in this room have listened to those wires
20 hundreds of times, thousands of times probably, and without
21 the transcript, it is a painstaking and brutal experience, and
22 while I understand and I reflect that this is about equal and
23 exact justice and I appreciate the defense counsel telling the
24 family of Mr. Hadland that they feel bad for them, they're
25 entitled to justice too. Mr. Hadland is entitled to justice

1 too. Go back in that room and listen to the evidence and ask
2 yourself -- when you listen to that evidence, the first thing
3 you ask yourself is, Well, was there a conspiracy? And you
4 can't answer that question any differently, right? There has
5 to be a conspiracy.

6 Now, they're claiming, I think, although at times I
7 think they're saying there's not a conspiracy as it relates to
8 Anabel Espindola, like she's not innocent, but she's not
9 guilty, she's just innocent and put in a bad situation so she
10 pled guilty anyway. There's times when I kind of hear that
11 argument from the defense, but the fact of the matter is she's
12 guilty. There's a train coming to send her to prison had she
13 gone to trial because when you listen to that evidence -- and
14 there's no question she conspired with somebody, no doubt
15 about it. There is no question that there is a conspiracy.

16 The question then becomes who is involved in the
17 conspiracy? And what they want you to do, and it's funny
18 because Mr. H -- Mr. H's lawyer wants you to not believe
19 Rontae and I think Mr. Hidalgo -- or Little Lou's lawyer wants
20 you to believe Rontae. One thing that Rontae has been
21 consistent about the entire time and nobody can impeach him
22 with is that the day of the 19th, the very first thing that
23 happens is Little Lou is saying that Mr. H wants somebody
24 dealt with.

25 MR. GENTILE: Objection. Objection. Deangelo

1 Carroll is saying that.

2 MR. DIGIACOMO: Deangelo Carroll --

3 THE COURT: All right. That's sustained. Rontae
4 testified that Deangelo Carroll said it.

5 MR. DIGIACOMO: Correct, right.

6 So Deangelo Carroll, this guy that you can't ever
7 believe, that is so -- thinks himself so far in advance, yeah,
8 okay, I have the ability -- or I'm going to right now tell
9 Rontae, if he's telling the truth, and if he's lying, then
10 they made it up later on and the rest of the defendants in
11 here are just so stupid as to get -- falling into the middle
12 of this during a wire. He has the forethought ahead of time
13 to not mention Anabel. He says, Look -- and when Rontae first
14 comes in and gives his statement to the police, he's got to
15 not mention Anabel.

16 Anabel's name -- when they said Little Lou wasn't a
17 suspect early on in the case, what are you talking about? Of
18 course Little Lou was a suspect. Is he the top of the food
19 chain? No. And we'll talk just a moment about Mr. H's
20 testimony was brutal for his son. Brutal. If he doesn't talk
21 to his son in that time period, then his son's involved in a
22 conspiracy without him. How does a father do that to a son?

23 So after you have the testimony of Rontae that says
24 Little Lou wants -- or Little Lou says Mr. H wants a person
25 dealt with, you have the testimony of Anabel Espindola. You

1 could completely reject the testimony whatsoever. I would
2 submit to you that your duty requires you to look at it. And
3 when you look at it, here's the thing you need to ask
4 yourself: Why? Why is she minimizing? Neither Mr. Pesci or
5 I are going to stand up here and tell you that Anabel
6 Espindola is telling the full truth. It can't be possible.
7 She hears on the phone, because on May 24th you've got to know
8 she hears from Deangelo Carroll. If he's alone, kill him. If
9 he's with somebody else, just beat him. Why won't she admit
10 that?

11 Because as we're going to get to, she has the
12 perfect, perfect defense to first-degree murder. And the
13 reason she has a perfect defense to first-degree murder is
14 because when you listen to the May 24th, 2005 wire, you will
15 know that beyond any doubt that's the first time she knows
16 about it. What she won't admit is that she heard Deangelo
17 Carroll's statement. She told him to go to plan B anyways and
18 then thereafter she was involved in the coverup. Once she
19 said plan B and the killing occurred, she's on the hook for
20 second-degree murder, no doubt, end of story for her. None of
21 us is standing up here and telling you that.

22 But then the question becomes, do we just go to
23 trial and convict Anabel Espindola or do you get the guy who's
24 been using her as a puppet, the puppet master? I heard the
25 word puppet being used, the family man who had his -- who has

1 a strip club and a mistress for 18 years, the family man, that
2 guy. The guy who wants to write her a Christmas card uses a
3 woman to write the Christmas card so it can't be traced back
4 to him. The guy who doesn't do anything for himself. The
5 bump on the log during the interview with Jerome DePalma. The
6 bump on the log who was taking notes that nobody noticed.

7 Did you hear Mr. Dibble say, No, he wasn't talking,
8 he was sitting there writing things down? Where did that --
9 when did that happen? I didn't hear Mr. Dibble say that. Did
10 you hear Jerome DePalma say he was doing anything other than
11 sitting there looking down at his feet? Did you hear him say
12 he was taking notes as Anabel was doing the talking? And then
13 you saw the demeanor of the guy on the stand. You think that
14 guys sits in a room and doesn't talk, ever, at any point in
15 time? He's a bump on a log. That's it.

16 Oh, and, oh, by the way, I am scared to death of
17 Kenneth Counts, but I don't tell my son. You don't tell your
18 son? You don't tell your son you're scared -- that's the
19 reason you're scared? No, I don't. Why won't he admit that?
20 Why won't he admit that? And it comes back to the
21 May 24th wire. And I'm going to get to that at the very end.

22 So what else do you have after that? Nobody
23 disputes the facts of what when on out there. I don't think
24 anybody says that Kenneth Counts is not the shooter. What
25 else do you know? Well, they said, well -- Anabel's the one

1 that said TJ was out at the lake. Really? Look at the phone
2 records. When does she have the ability to find out that TJ
3 was out at the lake? Is that anything even remotely
4 reasonable to make a conclusion? Here's what happened.
5 Little Lou and Deangelo are talking about this, they're mad
6 about TJ's behavior. Deangelo calls Anabel and Anabel tells
7 Mr. H in front of Little Lou and Little Lou is the one who's
8 mouthing off to his dad. Obviously he knew about it
9 beforehand because he said to him, You won't do anything about
10 it.

11 There has clearly been discussions about TJ earlier
12 than that between Little Lou and his father. It's the first
13 time Anabel heard it, but obviously Little Lou's mouthing off,
14 encouraging, as the law requires, Deangelo Carroll,
15 encouraging his father. And ultimately, whether or not he's
16 aware or not --

17 MR. ARRASCADA: Judge, I have to object to this.
18 This is not inferences from the evidence, but it's just gross
19 speculation by the prosecutor.

20 THE COURT: Overruled.

21 MR. DIGIACOMO: Thank you.

22 It is patently clear that by that night the order is
23 issued by somebody, and it isn't Anabel Espindola. The
24 question is, can you determine it's Mr. H? And here's what
25 you have to ask yourself: If Mr. H paid the money because he

1 was scared, you have to believe Deangelo Carroll. I know
2 Mr. Pesci's cross-examination of Mr. H was short, but how do
3 you get around that fact? Here's a man who doesn't believe a
4 word Deangelo Carroll says. He's a complete screwup. He
5 doesn't do anything right. And Deangelo Carroll walks into
6 his office and says, Hi, Mr. Rich Guy, who has \$155,000 in a
7 club that apparently has no security whatsoever, apparently
8 anybody can walk in there and rob them of \$155,000, and I know
9 you have multiple guns up here, you have a CCW, you have a
10 Glock, I just killed the guy for you and there's somebody
11 downstairs and he wants the money and Mr. H, the savvy
12 businessman, owner that runs the club doesn't have the
13 audacity to walk around to at least the cameras to look to see
14 if there's some other guy downstairs? Are you kidding me?
15 Are you kidding me?

16 And then the reason that he doesn't tell his son is
17 because -- or the reason he testifies that he doesn't tell his
18 son is because it's clear his son doesn't know anything about
19 Kenneth Counts trying to hurt anybody.

20 So I'm going to close this case and hope that you
21 people go back there and actually look at the evidence. I
22 hope you listen to the wires. I hope you consider the
23 evidence and just do this, take the phone records, place them
24 next to the recordings, and look at what Mr. H says and ask
25 yourself, can this guy be telling the truth, because if he

1 paid the money because he was scared, that's one thing. If he
2 paid it for any other reason, it's because he's involved in a
3 murder.

4 Can you stick this on me, Janie?

5 THE COURT RECORDER: Sure. It's on.

6 MR. DIGIACOMO: There it is.

7 (Playing tape)

8 MR. DIGIACOMO: That's May 24th, Anabel Espindola.
9 What is she saying? What is she saying? I tried to call you.
10 Remember -- earlier in the conversation, Deangelo says,
11 Remember, I told you if he's alone, I should kill him. And
12 what was the answer to that? I didn't say yeah. She doesn't
13 say, no, you never told me that. She says, I didn't say yeah.
14 And if he's with somebody else, I should just beat him up?
15 And what was the response to that? I said plan B, Deangelo.
16 I said, Fucking no. And he goes, You didn't say no. And she
17 says, Well, I tried to call you. As soon as I found out where
18 you were, I tried to call you and I couldn't get ahold of you.

19 That's not accomplice testimony. That is a
20 coconspirator testimony. That's coconspirator statements.
21 How is it that she knew before that moment that I had spoken
22 and I knew where you were? Ask yourself that question. And
23 if you can say to yourself that means something other than, I
24 figured it out when you were talking to me on the phone and I
25 told you to go to plan B, just like Mr. H told me to, if you

1 could come up with an explanation better than that that
2 involves her being guilty -- or involves her giving the order
3 and nobody else knowing about it, ask yourself how you can
4 come to that conclusion. How is it that on the first wire she
5 tells -- and they say she uses "I" 57 times. Yeah, but it's
6 20 minutes before she says any "I" that she's worried about
7 for her. It's always Louie and you have to stick together,
8 you and Louie, you and Louie, you and Lou.

9 Two things: That one section of the wire and the
10 other times that they kind of talked about, you know, KC F'd
11 up, why did KC F up? What went wrong? And if you listen to
12 it all, beginning to end, beginning to end, it's because it
13 should have been plan B. His wife was out there. There's
14 eyes on your ass, as to quote Anabel. They should have gone
15 to plan B. And he says, I know, but KC F'd up and just did
16 plan A. That's it. It's that simple.

17 And then ask yourself this: The reason Mr. H had to
18 say he didn't tell his son that he loves, that he believed
19 they'd be in danger from Kenneth Counts is this.

20 (Playing tape)

21 MR. DIGIACOMO: That's why Mr. H had to testify the
22 way he did because if he got up there and said, Yeah, I told
23 my son that Kenneth Counts was going to kill us all or
24 Deangelo's homey or whatever it is, then his son would have
25 been caught on the wire on May 24th worried still about

1 snitching, and that isn't the only example of it. When you
2 listen to that wire, every time that there is a mention about
3 something related to people involved in this case, every time
4 the concern of the coconspirators is to go to the cops. How
5 on earth could the reason for paying the money be anything
6 other than because of the concern about going to the cops?
7 And you're not concerned about going to the cops, you're not
8 worried about surveillance, you're not running to your lawyer
9 if you're not guilty.

10 Thank you.

11 THE COURT: Thank you. The clerk will now swear the
12 officer to take charge of the jury.

13 (Officer sworn)

14 THE COURT: All right. Ladies and gentlemen, in a
15 moment, I'm going to have all 14 of you get your personal
16 belonging as well as your notepads and follow Jeff through the
17 rear door.

18 As you may know, a criminal jury is composed of 12
19 members. Two of you are the alternates who are seated in
20 predesignated alternate seats. Those are chairs 7 and 15. So
21 our alternates are Mr. Patterson and Ms. Lenahan.

22 Before you leave, though, to the alternates, before
23 you leave, please give phone numbers where we can reach you
24 tonight as well as tomorrow and so forth because if, God
25 forbid, one of the 12 jurors becomes ill or something happens

1 before they can fulfill their duty of reaching a verdict, we
2 will call in an alternate.

3 So the prohibition on speaking about the case still
4 pertains to the alternates until you learn that a verdict has
5 been reached and we'll take your numbers. But again, before
6 you leave tonight, please give phone numbers to Jeff where we
7 can contact you if we need to call one of the alternates in.

8 Having said that, I'm going to have all 14 of you
9 collect your belongings and your notepads and follow Jeff
10 through the rear of the courtroom.

11 (Jury recessed for deliberation at 6:11 p.m.)

12 THE COURT: One of the jurors had an appointment at
13 6:00, which she probably has now missed, so they were going to
14 leave and come back, but I don't know now if they're going to
15 want to deliberate or what. We're not planning on ordering
16 dinner, so that may have some determinative effect on their --
17 I'm going to let them do what they want, though, because -- I
18 hope they come back tomorrow but...

19 MR. GENTILE: I'm not feeling well. My voice is
20 gone, my -- I've got chills.

21 THE COURT: Well, leave numbers -- don't -- why
22 don't you do this. Don't leave the courtroom yet because as
23 soon as Jeff gets them in the room, I'm going to find out what
24 they want to do and we can, you know, let you -- so everybody
25 just wait.

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(Court adjourned at 6:12 p.m.)

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


KIMBERLY LAWSON
TRANSCRIBER