

1 A That's correct.

2 Q You denied any knowledge that Mr. Malone was  
3 involved in any crimes?

4 A That's correct.

5 Q Okay. And according to what you're testifying to  
6 now, all those are lies?

7 A Yes.

8 Q Okay. So they're talking to you on the way to  
9 Choices and they get you out of Choices; correct?

10 A That's what they told -- that's what they tell me.  
11 They went inside, I stayed in the car. They said they talked  
12 to the counselor and they said that it was taken care of.

13 Q Okay. So you never got out of the car. They took  
14 care of that Choices because they needed to keep talking to  
15 you; correct?

16 A Correct.

17 Q Okay. And during this first statement that you'd  
18 given to the police would it be fair to say that they're  
19 applying some pretty fair pressure on you --

20 A Yes.

21 Q -- regarding this case?

22 A They are. Yes, that's correct.

23 Q I mean, they knew that you knew something, and they  
24 wanted you to give it to them; right?

25 A Yes.

1 Q But you looked at them and you lied to them?

2 A Yes.

3 Q Okay. And they also talked to you that you have a  
4 choice whether you can be in a position of a witness or a  
5 suspect. Do you remember that?

6 A Yes.

7 Q Okay. It's always better to be in the position of a  
8 witness, as opposed to a suspect; correct?

9 A Yes.

10 Q Okay. And they told you per their conversations,  
11 things go bad, you could become a suspect in this case; right?

12 A Yes.

13 Q Because at that point in time you were still not  
14 under arrest; right?

15 A Correct.

16 Q And you told them you'd rather be a witness?

17 A Actually, I believe I did say that, yes.

18 Q Okay. And as you were having the conversation with  
19 them and you were making all these denials of knowledge, they  
20 told you to stop bullshitting them; correct?

21 A Yes.

22 Q But you kept lying to them?

23 A Yes.

24 Q And you continue lying to them throughout that  
25 entire statement that you gave to them?

1           A     The first statement, yes.

2           Q     Okay. Because you didn't want to go to jail?

3           A     Yes.

4           Q     You didn't want to admit anything to them that would  
5 make you go to jail?

6           A     Yes.

7           Q     And when they asked you point blank, what do you  
8 know about the murders, you said, I don't really know  
9 anything.

10          A     That's correct.

11          Q     And when they put more pressure on you after that  
12 about saying that their flags were going up and they knew you  
13 knew stuff, you still didn't tell them about the murders, did  
14 you?

15          A     No.

16          Q     You still didn't tell them about McCarty's  
17 involvement?

18          A     No.

19          Q     Or what you claim Mr. Malone's involvement is in it?

20          A     No.

21          Q     Okay. They actually were changing subjects, talking  
22 about picking up Romeo at the Sportsman's, things of that  
23 nature?

24          A     I don't recall exactly what the whole conversation  
25 was.

1 Q Would it be fair to say you weren't answering their  
2 questions directly?

3 A Yes.

4 Q And they put more pressure on you during that  
5 conversation; correct?

6 A Yes.

7 Q And they were asking you about where to locate  
8 Romeo?

9 A Yes.

10 Q And you didn't give them any of that information?

11 A No.

12 Q You told them you hadn't seen them for a little bit  
13 of time?

14 A That's correct.

15 Q Okay. But you were -- but that's not true; right?

16 A No.

17 Q You're actually in almost daily contact with him?

18 A That's correct.

19 Q You either see him every day or talk to him on the  
20 phone?

21 A Yes.

22 Q Okay. And when they were asking you about the  
23 girls, you kind of denied any knowledge about even knowing  
24 these girls at that point in time?

25 A Actually, yes, at first, because they asked for

1 them, like I said, by their given names, and I don't know  
2 given names.

3 Q All right. Now, let's talk about -- a little bit  
4 about that car usage. Told police that you would be swapping  
5 cars in and out?

6 A That's correct.

7 Q The green Alero for the white Honda; right?

8 A That's correct.

9 Q And at that point in time you had like temporary  
10 tags on your white Honda?

11 A That's correct.

12 Q Because you're trying to get it smogged?

13 A Right.

14 Q And you said there was some issues with the exhaust  
15 on it?

16 A That's correct.

17 Q Right. So when you weren't able to drive that car  
18 you'd switch it out and drive the other car; correct?

19 A No. I would drive the white car, he would drive the  
20 green car.

21 Q But you would switch out cars?

22 A Sometimes, yes.

23 Q Sometimes. Okay. And that was during this April,  
24 May time frame of 2006?

25 A Actually -- well, April and May, and January,

1 February, and March, as well.

2 Q Okay. So throughout the whole time that you had  
3 lent the car to Mr. McCarty from December of '05 you would  
4 regularly switch out vehicles with him?

5 A I wouldn't say regularly, but on occasion, yes.

6 Q Now, you told the police originally in your  
7 voluntary statement, the first one at 6:30, that you had  
8 actually seen Romeo, Christina, and Domonic. Do you recall  
9 that?

10 A Seen them when, where? I don't recall exactly what  
11 you're talking about, sorry.

12 Q You -- I think you told them you saw them on Friday  
13 and Saturday.

14 A That might be true. I'd have to see the statement.

15 Q That's when like you were picking them up from the  
16 Sahara. Remember that?

17 A Okay. I might have said that. Again, I don't  
18 recall.

19 Q And they asked you specifically what day it was that  
20 you picked them up from Sahara, and you kept assuring them  
21 that you're pretty sure it was Friday.

22 A That's correct.

23 Q And they were trying to get you to say like another  
24 day, but you weren't wavering from Friday, you were saying  
25 you're pretty sure it was Friday; correct?

1 A Pretty sure it was Friday, yes. That's what I said.

2 Q And they asked you if Romeo was a pimp point blank?

3 A I think they did. I'm not sure.

4 Q And you said, I don't know.

5 Q That could be correct. Once again, I don't know.

6 Q That's different from what you testified today,  
7 though, isn't it?

8 A I don't believe so. I don't think --

9 Q On direct testimony didn't you call --

10 A -- I ever said Romeo was a pimp today.

11 THE COURT: Hang on.

12 BY MR. CANO:

13 Q -- Mr. McCarty a pimp?

14 THE COURT: Hang on. Let Mr. Cano finish his  
15 question and he'll let you finish your answer.

16 You guys are starting to talk over each other again,  
17 okay. So let's -- Mr. Cano, re-ask the question.

18 MR. CANO: Thank you, Your Honor.

19 BY MR. CANO:

20 Q On direct testimony didn't you call Mr. McCarty a  
21 pimp?

22 A I do not believe I called him a pimp, no.

23 Q Okay. On direct testimony didn't you say that  
24 Victoria was working for him?

25 A Yes, I did.

1 Q In prostitution?

2 A Actually, no. Mr. Lalli asked me when I said  
3 turning tricks if that meant prostitution. I never said Mr.  
4 McCarty was a pimp.

5 Q Okay. So are you testifying right now that Mr.  
6 McCarty is not a pimp?

7 A I did not say that, either. Once again, you're  
8 putting words in my mouth. I never said he wasn't a pimp,  
9 either. I only answered his direct question that answered  
10 [sic] me and that was it.

11 Q You're very precise at that, to only answering the  
12 direct questions; correct?

13 A Yes, sir.

14 Q Okay. You actually told the police that to your  
15 knowledge Victoria was his girl?

16 A Yes.

17 Q Meaning his girlfriend?

18 A Yes.

19 Q Okay. And then after they were talking to you about  
20 Mr. McCarty being a pimp or whatnot they were putting more  
21 pressure on you, telling them -- to tell them the truth, come  
22 on, tell us what's really going on?

23 A Yes, they did.

24 Q Do you recall that? And you kept lying to them?

25 A Yes.



1           Q     You didn't tell them about anything that you knew;  
2 right?

3           A     That's correct.

4           Q     So you were able to look at them kind of like in the  
5 eye and the face throughout this two-hour interrogation and  
6 lie to them question after question after question?

7           A     No.

8           MR. LALLI: Objection, Your Honor. Asked and  
9 answered now about five times, looking them in the eye.

10          THE COURT: Sustained.

11 BY MR. CANO:

12          Q     They asked you who was dead?

13          A     I believe so, yes.

14          Q     You said, I don't know.

15          Q     That's correct.

16          Q     That was a lie?

17          A     No. That was the truth.

18          Q     Would it be fair to say that you were pretty  
19 concerned at that point in time during that first interview  
20 regarding your involvement in this case?

21          A     Yes.

22          Q     Fair to say that when you were talking to the police  
23 during that first interview the topic of whether or not this  
24 case was a death penalty case or there was -- could be a death  
25 sentence on this case came up?

1           A     I believe so.

2           Q     Okay.  So you were aware of the severity of that  
3 case; correct?

4           A     Yes, sir.

5           Q     So at that point in time they leave; right?

6           A     That's correct.

7           Q     They finish talking to you?

8           A     Yes.

9           Q     Fair to say you thought that was a close one, they  
10 didn't arrest you?

11          A     Yes.

12          Q     But then they came back?

13          A     Yes.

14          Q     Things changed when they came back, didn't they?

15          A     Yes.

16          Q     Okay.  When they came back there wasn't just two  
17 officers, was it?

18          A     No.  I don't think so.

19          Q     I think originally there was a female detective that  
20 came.  Do you remember her?

21          A     She was in the ride to Drug Court.  Yes, I remember  
22 her.

23          Q     Okay.  And another gentleman with her; correct?

24          A     Yes.

25          Q     Those two detectives came back the second time?

1           A     That's correct.

2           Q     And then there was another detective, Detective  
3 Collins that came?

4           A     I believe so. Three of four of them. I'm not sure  
5 exactly.

6           Q     Okay. But three of them at least have this  
7 conversation with you the second time?

8           A     That's correct.

9           Q     All right. And that was just several hours after  
10 the first conversation?

11          A     Yes, sir.

12          Q     Now, fair to say that through that second interview  
13 the tone was different?

14          A     Yes.

15          Q     They knew that you were more involved in this  
16 case --

17          A     That's correct.

18          Q     -- than you were letting on?

19          A     Yes.

20          Q     But initially you weren't being honest with them?

21          A     No.

22          Q     So you kept lying to them even after the second time  
23 they came?

24          A     Yes.

25          Q     Okay. And then they told you a little story. Do

1 you recall that little story they talked to you about?

2 A Not exactly.

3 Q They told you, do you know where Romeo is right now?

4 A I don't recall that.

5 Q That he was in jail?

6 A They did tell me he was in jail, yes.

7 Q Okay. And they told you a little story about what  
8 they believed happened here?

9 A I believe so. They did, yes.

10 Q About that you and D-Roc and Victoria and Christine  
11 drove up to the Sahara Hotel to pick up Romeo and Red?

12 A Okay. It sounds right.

13 Q Okay. And that these girls were in the front seat,  
14 everybody else was in the backseat. Do you remember that?

15 A Vaguely. I'm not sure.

16 Q Okay. Then they tell you -- and they said, hey,  
17 tell me if we've got this wrong along the way. Because he's  
18 telling you the story; right?

19 A I believe he did say something to that effect, yes.

20 Q Okay. And then that they went and they ended up  
21 going back to the Sportsman's a little bit after that  
22 incident. Do you remember that?

23 A I'm not sure.

24 Q After picking them up from the Sahara?

25 A No. I don't remember that.

1 Q Would it help to refresh your recollection if I  
2 showed you that statement?

3 A Yes.

4 MR. CANO: Page 28, Counsel

5 BY MR. CANO:

6 Q Why don't you go ahead and read from line 14 down to  
7 yourself. Page 28 is right down here. Does that help?

8 A I recall them saying that, yes. But --

9 Q Did that help refresh your recollection?

10 A Yeah, a little bit.

11 Q Okay. So they told you that, you know, everybody  
12 went back down to the Sportsman's Pub; right?

13 A That's correct. That's what they said.

14 Q And that was in the green car?

15 A Yes.

16 Q And you agreed with that?

17 A I don't know if I agreed with it or not. I doubt I  
18 did, because we didn't go back to the Sportsman's. So if  
19 you'd show me the transcript again.

20 Q Would it help to refresh your recollection if I  
21 showed you your answer?

22 A Yes.

23 THE COURT: Same page, Counsel?

24 MR. CANO: Same page.

25 THE COURT: All right. Thank you.

1 BY MR. CANO:

2 Q Very last line at the bottom of the page.

3 A Well, all I said was okay in response to his  
4 question, okay. He's telling me the story. I didn't say that  
5 -- whether his story was correct or not.

6 Q Okay. And they kept going on with this little story  
7 about driving down Boulder Highway and --

8 MR. LALLI: Your Honor, I'm going to object at this  
9 point as to what the police said. That's hearsay. Detective  
10 Collins is going to be here. Mr. Cano can ask Detective  
11 Collins what he said. But at this point it's hearsay.

12 MR. CANO: It goes to the effect on the listener and  
13 his response to it, and it goes to his credibility, Your  
14 Honor.

15 THE COURT: I'm going to sustain the objection.

16 BY MR. CANO:

17 Q All right. Now, Detective Collins is telling you  
18 this story; correct?

19 A I believe so. I'll take your word for it.

20 Q About what he believes happens in this case?

21 A Like I said, I didn't see on there if it said that  
22 was Collins talking. So I'll just take your word for it. I'm  
23 not sure.

24 Q Okay. One of the detectives were telling you a  
25 story as to what they believe happened in this case.

1 A Yes.

2 Q Correct?

3 A Correct.

4 Q And it came to a point in time when they had you  
5 taking the girls from the South Cove with Domonic.

6 A Okay. I remember that, yes.

7 Q And you told him, no, no, that's not what happened?

8 A Yes.

9 Q So you didn't like that story?

10 A No.

11 Q Because if you had taken the girls from the South  
12 Cove that would have meant you were involved in the murders?

13 A I guess so.

14 Q Right?

15 A Like I said, I guess so.

16 Q Okay. So they kept talking to you about your  
17 involvement in that case; correct?

18 A Yes.

19 Q And they were telling you that Romeo flipped on  
20 them.

21 MR. LALLI: Objection. Hearsay.

22 THE COURT: Sustained.

23 BY MR. CANO:

24 Q All right. Was it your impression that your best  
25 friend or one of your close friends, Romeo, had told the

1 police you were involved in this case?

2 MR. LALLI: Objection. Hearsay. Calls for  
3 speculation.

4 MR. CANO: Goes to his impression, Your Honor, what  
5 he -- his belief was from the conversation of the police.

6 MR. LALLI: Relevance.

7 THE COURT: Well, for various reasons I'm going to  
8 sustain the objection. It does call for speculation, hearsay.  
9 BY MR. CANO:

10 Q All right. What was your impression after the  
11 conversation with the police of Romeo's involvement in this  
12 case?

13 MR. LALLI: Objection. Hearsay. Calls for  
14 speculation.

15 MR. CANO: I'm asking for his impression, Your  
16 Honor.

17 MR. LALLI: Unless he spoke to Romeo about it, it's  
18 going to be hearsay, because he learned it from somebody else.

19 THE COURT: I'm sustaining the objection.

20 MR. CANO: All right.

21 THE COURT: Someone would have had to tell him  
22 something for him to have that impression, which is calling  
23 for hearsay.

24 BY MR. CANO:

25 Q Would it be fair to say after the conversation



1 regarding the story of what the police believed happen your  
2 story started changing?

3 A Yes, it did.

4 Q And it started changing because you were trying to  
5 emphasize to the police that you were not involved in the  
6 murders.

7 A That's correct.

8 Q Let's talk a little bit about your relationship with  
9 Romeo, okay.

10 A All right.

11 Q You said you had [unintelligible] for two or three  
12 years.

13 A Yes.

14 Q Him and his wife, actually; right?

15 A That's correct.

16 Q Children, too?

17 A Yes.

18 Q You had known him for four or five years --

19 A Yes.

20 Q -- at that point in time?

21 A That's correct.

22 Q All right. You had gotten him a job where you  
23 worked over at Creel Printing?

24 A That's correct.

25 Q You used drugs with him?

1 A Yes.

2 Q You'd used cocaine with him?

3 A No.

4 Q Marijuana?

5 A Yes.

6 Q Methamphetamine?

7 A No.

8 Q You would sell drugs with him?

9 A Yes.

10 Q You would actually let him drive your car?

11 A Yes.

12 Q Because you knew he needed it for his family?

13 A That's correct.

14 Q You would actually -- actually, he bailed you out of

15 jail one time.

16 A I don't recall that.

17 MR. CANO: Court's indulgence, Your Honor.

18 BY MR. CANO:

19 Q Would it help to refresh your recollection if you

20 looked at your statement that you gave to the police?

21 A Sure.

22 MR. CANO: The first voluntary statement, page 35,

23 Counsel. Actually 34 and 35.

24 BY MR. CANO:

25 Q Just to put it in perspective, why don't you read it

1 to yourself, starting down here. This is 34, this is 35.

2 A Okay.

3 Q Did it help refresh your recollection?

4 A Uh-huh.

5 Q So he bailed you out of jail.

6 A Actually he didn't, but I did say that, yes.

7 Q He did not bail you out of jail, then?

8 A No.

9 Q But you told that to the police?

10 A Of course. Yes.

11 Q So one of the other lies that you told the police,  
12 then, I guess.

13 A Just another lie in the statement -- already said.

14 Q And were you staying out with him every day pretty  
15 much?

16 A Pretty much every day, yeah.

17 Q Talked to him every day?

18 A Yes.

19 Q Okay. When you would hang out you'd be with him,  
20 you know, an hour or two, fair to say?

21 A Sometimes an hour or two, sometimes four or five.  
22 Just depends.

23 Q Okay. Actually, because of his situation, you knew  
24 he needed a vehicle, you actually went out and purchased the  
25 white Honda?

1 A That's correct.

2 Q And you were going to give him that.

3 A Yes.

4 Q Because you had actually I guess got him a rental  
5 car; right?

6 A Yes.

7 Q And it was cheaper to buy a car than to him keep  
8 renting a car?

9 A That's correct.

10 Q All right. So it was that kind of a close  
11 relationship that you had with him that you would kind of  
12 extend your credit for him and purchase him things?

13 A That's correct.

14 Q Okay. Fair to say you guys were best friends?

15 A Yes.

16 Q Okay. And fair to say you trusted him?

17 A Yes.

18 Q And after you had a conversation with the police,  
19 the second one I'm talking about, the later one --

20 A Okay.

21 Q -- after you had a conversation with the police fair  
22 to say that you stopped trusting him?

23 A That's correct.

24 Q And because of that broken trust between you and  
25 him, fair to say that the police suspected you were deeply

1 involved in this case?

2 A I assume that's fair to say.

3 MR. LALLI: I'm going to object and -- it calls for  
4 speculation.

5 THE COURT: Mr. Cano?

6 MR. CANO: Well, I'll rephrase.

7 THE COURT: I'm going to sustain the objection.

8 BY MR. CANO:

9 Q Fair to say after that broken trust is when you  
10 started talking to police about your involvement in this case?

11 A Yes, that's correct.

12 Q Now, you -- I want to ask you a question. Did you  
13 ever hear anybody call you White Boy?

14 A Yes.

15 Q Where would they call you White Boy at?

16 A A lot of different places.

17 Q Did they call you White Boy at the Sportsman's?

18 A They might have.

19 Q They might have? Did anybody refer to you as White  
20 Boy, as opposed to a nickname?

21 A Well, actually one of the investigators told me that  
22 was the nickname they called me. They asked me if I knew  
23 that.

24 Q And is it?

25 A It is now. Not then it wasn't.

1 Q Okay. You were called White Boy from people that  
2 you sold drugs to?

3 A Yes.

4 Q Okay. And people that you would deal drugs with?

5 A Yes.

6 Q Okay. Now, let's go back to that statement, the  
7 second statement after things have changed. You started  
8 telling the police about how you -- Mr. McCarty had told you  
9 lots of things regarding this case; correct?

10 A That's true.

11 Q Fair to say that the majority of information that  
12 you gathered from this case was from Mr. McCarty?

13 A That's true.

14 Q You didn't know Domonic very long at that point in  
15 time?

16 A No. I didn't know him that long, no.

17 Q I think you told the police you had known him maybe  
18 a couple weeks.

19 A Actually, I think at that time it was a couple  
20 months, but yes.

21 Q But you told the police a couple weeks?

22 A I believe I might have said a couple weeks.

23 Q Okay. But it was more than that?

24 A Probably about two months, something like that.

25 Q So that was another lie you told the police?

1           A     Yeah. Once again, as I already stated, I lied all  
2 through Statement 1.

3           Q     Okay. I'm talking about the second statement.

4           A     And I already told you --

5           Q     You lied in the second one, too; right?

6           A     At the beginning, yes, I did. I told you that.

7           Q     Okay. And you told the police you didn't really  
8 talk to Domonic much.

9           A     Not too much, no.

10          Q     Okay. You don't really hang out with him?

11          A     No.

12          Q     Okay. Fair to say that your relationship with Romeo  
13 was a lot closer than your relationship with Domonic?

14          A     That's true.

15          Q     Okay. And that the only person who admitted to you  
16 of killing anybody came from the mouth of Mr. McCarty?

17          A     That's correct.

18          Q     Now, in the second voluntary statement --

19          A     Okay.

20          Q     -- when you're supposedly telling the truth now, you  
21 told the police that D-Roc had used his fists.

22          A     I don't recall that.

23          Q     You don't recall that?

24          A     No, I don't.

25          Q     Help refresh your recollection if I showed you that?

1 A Yes.

2 MR. CANO: Court's indulgence.

3 Page 35 of the second statement, Counsel.

4 If I could approach, Your Honor.

5 THE COURT: Yes.

6 BY MR. CANO:

7 Q Read line 16 to yourself. Page 35 is right here.

8 A Okay.

9 Q Does that help refresh your recollection?

10 A Yes.

11 Q So you told the police that D-Roc used his fists?

12 A I told him I believed he used his fists --

13 Q Okay.

14 A -- to beat them up and leave them in the desert.

15 Q And then they asked another question, whether they  
16 used anything to beat these girls up, and you said no, no  
17 weapons were used?

18 A That's correct.

19 Q Okay.

20 MR. LALLI: Where, Counsel?

21 MR. CANO: He answered the question. He -- but it's  
22 on page 45, actually, of his statement.

23 BY MR. CANO:

24 Q But then at a later time you told the police that I  
25 guess a rock was used; correct?



1 A Yes.

2 Q And a golf club?

3 A That's correct.

4 Q And a knife?

5 A Yes.

6 Q Now I want to talk a little bit about this working  
7 relationship you guys had.

8 A Okay.

9 Q And when I mean "you guys," I'm referring to  
10 specifically yourself, Romeo, and Domonic, okay?

11 A Okay.

12 Q All right. Fair to say that you consider yourself I  
13 guess a drug dealer; correct?

14 A Yes.

15 Q And that you considered Romeo to be a drug dealer?

16 A Yes.

17 Q Okay. And you knew Domonic to sell drugs, as well?

18 A That's correct.

19 Q You were introduced to Domonic through Romeo?

20 A That's correct.

21 Q And that was at the Sportsman's?

22 A I believe so.

23 Q Had you been anywhere else with Domonic, other than  
24 the Sportsman's?

25 A He's been to my house with Mr. McCarty before. As

1 I've said, I've driven him to his house. So, I mean, we met a  
2 few other places besides the Sportsman's.

3 Q Well, you named two. Is there anywhere else?

4 A Like I believe we were at Denny's together, you know  
5 what I mean. I don't -- can't tell you all of them. I don't  
6 remember.

7 Q All right. I'm talking about selling drugs, though.

8 A Those weren't all just selling drugs. Mostly  
9 selling drugs at the Sportsman's.

10 Q Okay. That's [unintelligible] relationship here,  
11 okay. In direct testimony you described you guys --  
12 yourselves -- you know when I'm talking yourselves I'm talking  
13 about Mr. Malone, Mr. McCarty, and yourself, as like  
14 independent drug dealers?

15 A Yes.

16 Q Independent meaning what you sold was for yourself,  
17 your own profit?

18 A Correct.

19 Q Is that a fair description?

20 A Yes.

21 Q Okay. When you sold the drugs that you had, whether  
22 it be methamphetamine or cocaine, you would not give your  
23 money to Domonic?

24 A No.

25 Q Potentially you might give your money to Mr.

1   McCarty?

2           A     No.   No.

3           Q     But you didn't.   Okay.   So the drug business was  
4   completely independent, every person for themselves?

5           A     Correct.

6           Q     But you also said that you associated together.

7           A     Correct.

8           Q     I guess safety in numbers?

9           A     Correct.

10          Q     But that was so that in case there was a drug  
11   transaction that may have gone awry, if there were more people  
12   around, hopefully that situation wouldn't come up.   Would that  
13   be a fair statement?

14          A     That'd be a fair statement.

15          Q     Like safety in numbers?

16          A     Yes.

17          Q     Okay.   You wouldn't pay Mr. McCarty if a drug  
18   transaction went awry and he was there to assist you, would  
19   you?

20          A     No.

21          Q     Okay.   And you wouldn't pay Mr. Malone any money if  
22   a drug transaction went awry and he was there to assist you,  
23   would you?

24          A     No.

25          Q     Okay.   And there were no drug actions during the

1 time frame when you guys were independents that a situation  
2 went awry?

3 A No.

4 Q Okay. So even though there was safety in numbers,  
5 that situation never came up?

6 A Correct.

7 Q So it would be a fair description to say that you  
8 guys just more or less hung out and sold drugs independently  
9 but were not really associated with each other?

10 A Right.

11 Q Yes?

12 A Yes.

13 Q Now, Mr. Malone, you didn't know him to be a pimp?

14 A No.

15 Q Okay. And you never knew him to give you any  
16 proceeds from prostitution; correct?

17 A No.

18 Q As a matter of fact, Mr. Malone never gave you any  
19 of his proceeds whatsoever?

20 A That's correct.

21 Q Either be it from drugs or anything else?

22 A Correct.

23 Q And, to your knowledge, you never knew him to do  
24 that with Romeo, either?

25 A Correct.

1           Q     Now, prior to the girls missing, I guess, or  
2     sometime during that week would it be fair to say that you  
3     told the police that you were looking for these girls?

4           A     Yes, I believe I did say that.

5           Q     Okay. And I think you said that you were looking  
6     for them on Saturday, Sunday, and Monday.

7           A     I believe so.

8           Q     Okay. And when you said "we," you're referring to  
9     yourself and Mr. McCarty?

10          A     I was referring to all three of us, actually, but  
11     yes.

12          Q     Okay. And so -- and that was prior to the girls  
13     being found?

14          A     That's correct.

15          Q     Okay.

16          A     I believe so at this --

17          Q     Well, I'm asking you was that prior --

18          A     I think -- I think I'm following your questions  
19     correctly, yes. So yes.

20          Q     Did you try to give the inference that after the  
21     girls had disappeared that you were looking for them, as well?

22          A     Which time?

23          Q     Well, were you looking for them more than one  
24     occasion?

25          A     Yes.

1 Q On how many occasions were you looking for these  
2 girls?

3 A Twice.

4 Q Twice?

5 A Twice.

6 Q Okay. So one would be after the Hard Rock  
7 situation?

8 A That was the second time.

9 Q That was the second time. And you were looking for  
10 them prior to the Hard Rock situation?

11 A That's correct.

12 Q And you say "we." You mean yourself, Mr. Malone,  
13 and Mr. McCarty?

14 A That's correct.

15 Q On both occasions?

16 A Correct.

17 Q Okay. So after the Hard Rock situation Mr. McCarty  
18 enlisted your aid in helping him try to find Victoria?

19 A I would not say that, no.

20 Q Well, you were with them.

21 A No, I wasn't with them like that after the Hard Rock  
22 situation.

23 Q Answer my question, sir.

24 A I just did.

25 Q After the Hard Rock --

1 MR. LALLI: He just -- I object, Your Honor. He  
2 just answered the question. This is argumentative, answer my  
3 question. He just answered it.

4 MR. CANO: He did not, Your Honor. It was  
5 nonresponsive to my question.

6 MR. LALLI: No.

7 THE COURT: Okay. Well, then --

8 MR. CANO: I'll ask the question again.

9 THE COURT: Right. We'll bring that up and say,  
10 Your Honor, I move to strike as nonresponsive, so we --

11 MR. CANO: Yes, Your Honor.

12 THE COURT: So, sir, listen to this next question,  
13 okay.

14 BY MR. CANO:

15 Q After the Hard Rock situation --

16 A Okay.

17 Q -- you just stated you went to look for the girls.

18 A No, I didn't.

19 MR. LALLI: Objection. Assumes facts not in  
20 evidence. That's not what he said.

21 MR. CANO: You know, it's going to be the jury's  
22 memory as to what he said, Your Honor, but that's my  
23 recollection of what he just testified to about two minutes  
24 ago.

25 THE COURT: All right. Well, I'm going to sustain

1 the objection. If he said that two minutes ago, the jury will  
2 have that in their notes or their recollection, but --

3 MR. CANO: Okay.

4 THE COURT: -- I think it's appropriate to sustain  
5 the objection at this point to this question.

6 BY MR. CANO:

7 Q You stated you looked for these girls on two  
8 occasions.

9 A Correct. I said they were missing on two occasions.

10 Q Okay.

11 A I never --

12 Q You went looking for these girls on two different  
13 occasions?

14 A I never actually went and looked for anybody on any  
15 occasion.

16 Q So you were just asking about the missing girls, but  
17 you never went looking for them?

18 A More -- more like I was told about the missing girls  
19 and we conversated about it. I never actually went physically  
20 looking for anybody.

21 Q I see.

22 MR. CANO: Court's indulgence, Your Honor.

23 Okay. Page 144 of the preliminary hearing, Counsel.

24 BY MR. CANO:

25 Q Do you remember the preliminary hearing?



1 A Yes, vaguely I do.

2 Q Back in Henderson?

3 A Yes. Vaguely.

4 Q And you were sworn to tell the truth. You were  
5 asked the question, "Okay. I wrote down and you said, 'We'd  
6 been asking questions for three days at the Sportsman's about  
7 the girls.'" Answer, "Yeah. We asked other people if they  
8 were missing. Other people didn't talk about them missing."

9 So you were at the Sportsman's, asking questions  
10 whether these girls were missing?

11 A Yes.

12 Q Okay. So then you were out looking for them?

13 A No. I didn't actually go out anywhere and look for  
14 anybody, once again.

15 Q Is the Sportsman's your home?

16 A No.

17 Q Okay.

18 A I had a room there, though.

19 Q Now, in that second interview, the 10:00 p.m. one --

20 A Okay.

21 Q -- be fair to say that the police were talking to  
22 you again about being a suspect or witness?

23 A Yes.

24 Q They brought that up again from -- they brought it  
25 up in the first one, as well as in the second?

1 A Yes.

2 Q Okay. And you told them, I'm not a suspect?

3 A Probably did.

4 Q Okay. You told him, I'll be a witness?

5 A I probably stated that, as well.

6 Q Okay. But when you told them, I'll be a witness,  
7 that was after you had already been arrested on this case?

8 A I don't think I was arrested at that point yet. I'm  
9 not sure, though.

10 MR. CANO: Court's indulgence, Your Honor.

11 THE COURT: All right.

12 BY MR. CANO:

13 Q Do you recall being arrested at some point in time?

14 A At the end of that -- at the end of that second  
15 interview.

16 Q Okay. Would it help to refresh your recollection as  
17 to when you told them you'd be a witness?

18 A Sure.

19 MR. CANO: If I could approach, Your Honor.

20 THE COURT: Yes.

21 MR. CANO: Page 76, Counsel.

22 MR. LALLI: I'm sorry. What page?

23 MR. CANO: Page 76.

24 MR. LALLI: Thank you.

25 BY MR. CANO:

1 Q Page 76. I want you to read the bottom, line 16, to  
2 yourself, please.

3 A This right here?

4 Q You know, you could -- actually line 12, probably  
5 start reading right there.

6 A Okay.

7 MR. CANO: And then page 88, Counsel.

8 THE WITNESS: Page 88?

9 BY MR. CANO:

10 Q Yes.

11 A Okay. Yes.

12 Q Does that help refresh your recollection?

13 A Uh-huh.

14 Q Okay. So on page 76 you were being told you were  
15 being arrested and you were actually read your Miranda rights?

16 A That's correct.

17 Q And [unintelligible] page 88 you said, "I'll testify  
18 -- I'll testify whatever"; correct?

19 A Correct. Q

20 Q Okay. So you would do anything you could to try to  
21 stay out of jail?

22 A Yes.

23 Q Do you remember the police talking to you about your  
24 involvement in this case?

25 A Can you clarify that, please?

1 Q Sure. Talking to you about you being an accessory.  
2 A Yes, I do recall something to that effect.  
3 Q Right. And they asked you to fill in the blanks.  
4 Q Okay. Yes, I do remember that.  
5 Q And what were the blanks that you filled in?  
6 A "After the facts."  
7 Q Okay. So they said, accessory, and you filled in,  
8 "After the fact"?  
9 A That's correct.  
10 Q Okay. And would it be fair to say that you admitted  
11 to the police that you lied because you wanted to cover up  
12 Romeo's involvement in this case?  
13 A Yes.  
14 Q And you weren't happy after they put those cuffs on  
15 you and took you away, were you?  
16 A No. Of course not.  
17 Q Because you knew how serious this case was?  
18 A Yes.  
19 Q And originally they were charging you with murder?  
20 A Yes.  
21 Q Two counts of murder.  
22 A That's correct.  
23 Q Along with kidnapping?  
24 A Yes.  
25 Q Along with pandering?

1 A Yes.

2 Q Along with I think --

3 A Assault with grievous bodily harm, robbery with a  
4 deadly weapon, conspiracy to commit all that, and maybe a  
5 couple others.

6 Q Conspiracy in connection with everything; correct?

7 A Something to that nature, yes.

8 Q Fair to say about like 16, 17 charges?

9 A I believe it was 16.

10 Q Okay. And you knew that you were in trouble at this  
11 point in time?

12 A Yes.

13 Q Now, while you're taken to the Henderson Police  
14 Department, they booked you into custody, you made quite a bit  
15 of phone calls from there?

16 A Yes.

17 Q You called bail bonds people?

18 A Yes.

19 Q Got a hold of an attorney, actually?

20 A Yes.

21 Q You called your brother?

22 A Yes.

23 Q Eventually you spoke to your father?

24 A Yes.

25 Q Be fair to say you made at least 10, 12 phone calls

1 from the jail?

2 A Probably at least that.

3 Q Okay. Fair to say that you were very anxious about  
4 your situation?

5 A I guess I would say that, yes.

6 Q Were you upset about being in jail?

7 A Yes.

8 Q Were you scared about being in jail?

9 A I wasn't scared about being in jail, no.

10 Q Okay. Were you scared about this case and the  
11 charges?

12 A Yes.

13 Q And were you desperate to try to get out of the  
14 situation?

15 A I guess you would say that's a fair statement.

16 Q Okay. You spoke to your brother about gathering  
17 money so that he could pay for an attorney?

18 A That's correct.

19 Q Okay. You spoke to him whether or not he had  
20 discussed this case with your parents?

21 A I believe I did ask him that, yes.

22 Q Do you remember telling him that you had some stuff  
23 in your room that you wanted him to get rid of, as well?

24 A No. That's not the words I used.

25 Q What were the words that you used?

1           A     I believe I told him, if I told you flush everything  
2 you know what I'm talking about. He said yes.

3           Q     Okay. So you wanted him to get rid of some type of  
4 evidence?

5           A     I guess I could call it evidence, yes.

6           MR. CANO: I don't know if you wanted to do the  
7 lunch hour break, or if I'm going to keep continuing on, Your  
8 Honor.

9           THE COURT: No. Keep going. We'll take a break  
10 about noon.

11 BY MR. CANO:

12          Q     All right. I want to talk to you a little about  
13 your second statement when you started telling the truth,  
14 okay.

15          A     Okay.

16          Q     Do you recall telling the police that, "They said  
17 they got rid of everything"?

18          A     I believe so.

19          Q     Okay. And then when they asked you where it was you  
20 said, "Somewhere out that way. I mean, they didn't tell me  
21 exactly."

22          A     I probably said that.

23          Q     But that wasn't true?

24          A     No.

25          Q     You also told them that, "They said they drove

1 farther out and got rid of the stuff and drove over here."

2 A Excuse me?

3 Q You said -- you also told the police that, "They  
4 drove out further and got of if the stuff and then drove  
5 here."

6 A You're going to have to clarify that. Drove out  
7 farther where, and where is here?

8 Q That's the statements that you told the police when  
9 they were asking you about the weapons or whatever they were  
10 getting rid of.

11 A I don't recall saying they drove here. Not to my  
12 knowledge.

13 Q Would it refresh your recollection of I showed  
14 you --

15 A Yes.

16 Q -- your statement?

17 MR. CANO: Page 51, Counsel.

18 THE WITNESS: Which statement is this?

19 BY MR. CANO:

20 Q The second statement. Does that refresh your  
21 recollection?

22 A Uh-huh.

23 Q So you told them they drove to you?

24 A It looks -- yes, I said that.

25 Q And then they asked you, "They drove out further and



1 got rid of the stuff?" You responded, "Towards the lake, I  
2 guess."

3 A Uh-huh.

4 THE COURT: Is that a yes?

5 THE WITNESS: Yes. Sorry.

6 THE COURT: Okay. Thank you.

7 BY MR. CANO:

8 Q And you said, "That's the only thing in that  
9 direction"?

10 A That's correct.

11 Q Okay. And you told them they told you that  
12 information?

13 A That's correct.

14 Q So you're implying to the police that you weren't  
15 out there with them; correct?

16 A That's correct.

17 Q And this is when you're supposed to be telling them  
18 the truth?

19 A Actually, I think I'm just starting to tell them the  
20 truth.

21 Q But that wasn't true?

22 A No.

23 Q And you actually said, "That's pretty the whole  
24 story"; correct?

25 A Yes, I did say that.

1           Q     And then you said -- you actually told them that you  
2 met up with them out there by the Railroad Pass Casino.

3           A     That's correct.

4           Q     But then later, on page 55, you tell the police,  
5 "The only thing I didn't tell -- I didn't say -- I didn't  
6 really meet them at the Railroad Pass."

7           A     I guess I said that. I don't recall.

8           Q     You don't recall? Would it help to refresh your  
9 recollection?

10          A     Sure.

11               MR. CANO: Okay. If I can approach, Your Honor.

12               THE COURT: Yes.

13               MR. CANO: Page 55, Counsel, line 20.

14               THE WITNESS: Okay.

15 BY MR. CANO:

16          Q     So on page 51 you're telling them, that's the whole  
17 truth, then on page 55 you're telling them that you didn't  
18 really meet them at the Railroad Pass?

19          A     Actually, on page 51 I told them that was the whole  
20 story, not the whole truth. And on page 55 I did say I didn't  
21 meet them at Railroad Pass, I met them just past that, the  
22 spot where we were parked on the side of the road where you I  
23 showed you where the evidence is at.

24          Q     So on page 55 you did tell them that you lied about  
25 not [sic] meeting them at Railroad Pass?

1 A That's correct.

2 Q And this is after you're telling them the whole  
3 story?

4 A After I supposedly told them the whole story.

5 Q Now, you also told the police that you'd never been  
6 alone with D-Roc in the car.

7 A Yes, I did tell them that.

8 Q But then I guess you've testified that you did drive  
9 him home alone.

10 A Yes.

11 Q Now -- so I guess that wasn't true, what you told  
12 the police, that you hadn't been alone with the car with Mr.  
13 Malone; correct?

14 A Correct. As I stated, we were lying through that  
15 whole -- that whole statement. So, yes, that was a lie.

16 Q Now, you said you went home and you wanted to turn  
17 off the alarm.

18 A Yes.

19 Q Because you had left at 1:30 in the morning?

20 A Yes.

21 Q And that was after you got a phone call from Mr.  
22 McCarty?

23 A Yes.

24 Q To come out, to meet him?

25 A That's correct.

1 Q And when you got that phone call from Mr. McCarty he  
2 actually called you a couple times?

3 A Yes, sir.

4 Q You testified that you didn't -- that the first time  
5 you said you weren't going to go out there; correct?

6 A Yes, sir.

7 Q And about 10, 15 minutes later you decided to go out  
8 to meet him?

9 A That's correct.

10 Q And your main concern at that point in time was your  
11 car?

12 A Yes.

13 Q Okay. And according to your testimony you knew that  
14 Mr. McCarty had the girls with him?

15 A Yes.

16 Q But the fact that he had the girls with him wasn't  
17 your concern, your car was your main concern?

18 A Yes.

19 Q So you left at, you said, 1:30 in the morning.

20 A Around there.

21 Q Okay. And you went out to meet Mr. McCarty?

22 A Yes.

23 Q And you were in communications with him  
24 telephonically on the way out there to meet him?

25 A Yes.

1 Q And you family -- you didn't wake up your father at  
2 1:30 in the morning and tell him you were leaving?

3 A No.

4 Q Or your mother?

5 A No.

6 Q Or your brother?

7 A No.

8 Q Or your son?

9 A No.

10 Q Nobody in the house knew that you left?

11 A No.

12 Q But you wanted to get back to your house prior to  
13 your alarm going off?

14 A Well, yes.

15 Q Because you didn't -- you didn't want the alarm to  
16 wake up anyone else in the house.

17 A Correct.

18 Q Because then they would know that you weren't there.

19 A It wasn't -- it wasn't the fact that they would know  
20 I wasn't there. Just that I didn't want to wake everybody  
21 else in the house. That's common courtesy.

22 Q But if you weren't there to turn off your alarm,  
23 then the whole family would know you had been missing?

24 A I wouldn't say I was missing. I'm regularly not  
25 home all the time.

1 Q Okay. The question was, if you weren't there to  
2 turn off the alarm, the family would know that you were not  
3 there.

4 A Yeah, they would know I wasn't there.

5 Q And you didn't want that to happen?

6 A No.

7 Q So went home to turn off that alarm, make sure that  
8 alarm got turned off; right?

9 A Yes.

10 Q And then you went about your business; correct?

11 A Yes.

12 Q And you said you took Mr. Malone to his home.

13 A Yes.

14 Q And then after you took Mr. Malone home you said you  
15 went to go pick up your friend Lenny?

16 A Correct.

17 Q Because you take Lenny to work every day.

18 A Yes.

19 Q Where does Lenny live?

20 A Off of Alta and Antelope.

21 Q Alta and Antelope?

22 A Yes.

23 Q Okay.

24 A Actually Rainbow, like right past Rainbow.

25 Q Okay. What streets did you take to get there?

1           A     That morning I believe I went straight down Lake  
2 Mead. I don't think I went back to the freeway. I think I  
3 went straight down Lake Mead all the way to Rainbow, and then  
4 down Rainbow to Alta, then down Alta to Antelope.

5           Q     And at one point in time you actually called Lenny?

6           A     I might have. I don't know.

7           Q     To let him know you were coming to pick him up;  
8 right?

9           A     I don't know if I did or not.

10          Q     You may have called him, though?

11          A     I may have called him.

12          Q     And you dropped off Mr. Malone over on Martin Luther  
13 King?

14          A     Actually, I dropped him off on I think it's -- I  
15 don't know the actual name. I think it's Bartlett or  
16 something. It's like two or three streets north of Lake Mead  
17 on MLK.

18          Q     Okay. But on MLK?

19          A     Yeah.

20          Q     And you're supposed to get to work before  
21 5:00 o'clock?

22          A     I believe it was, yeah, 5:00 to 5:00, so --

23          Q     That was your work hours?

24          A     5:00 a.m. to 5:00 p.m. is the work schedule.

25          Q     Okay.

1           THE COURT: Excuse me, Mr. Cano. It sounds like  
2 you're going to a different area right now.

3           So, ladies and gentlemen, let's take our lunch  
4 break. I have a hearing at 1:00 o'clock unrelated to this  
5 case that I have to resolve. It'll only take about 15  
6 minutes, but let's come back at 1:30 so you don't have to wait  
7 out there. So we'll recess until 1:30.

8           During this recess it is your duty not to converse  
9 among yourselves or with anyone else on any subject connected  
10 with this case, or to read, watch, or listen to any report of  
11 or commentary on the trial by any person connected with the  
12 trial or by any medium of information, including, without  
13 limitation, newspaper, television, radio, or the Internet.  
14 You're not to form or express an opinion on any subject  
15 connected with this case until this matter is submitted to  
16 you.

17           We'll see you back at 1:30.

18           (Court recessed at 12:00 p.m. until 1:35 p.m.)

19           (In the presence of the jury)

20           THE MARSHAL: All right. You may be seated, ladies  
21 and -- I'm missing somebody. You may be seated. Make sure  
22 your cell phones are turned off. I'll be right back.

23           (Pause in the proceedings)

24           THE COURT: All right. Mr. Herb, do you understand  
25 you are still under oath?



1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Go ahead, Mr. Cano.

3 MR. CANO: Thank you, Your Honor.

4 BY MR. CANO:

5 Q Do you recall on your second statement you gave to  
6 the police on May 25th, that you told them that you received a  
7 phone call from Mr. McCarty around 8:00 o'clock, 9:00 o'clock?

8 A Yes.

9 Q Okay. And at that point in time, you told the  
10 police that Mr. McCarty indicated to you that he had the girls  
11 with him?

12 A Not at 8:00 o'clock, I didn't.

13 Q Okay. Would it help to refresh your recollection --

14 A Sure.

15 Q -- if I showed you your statement?

16 MR. CANO: Pages 38 and 39, counsel, of the second  
17 statement.

18 BY MR. CANO:

19 Q And the bottom of 21 on 38, down there. Or  
20 actually, maybe 17, until the top of page 39.

21 A Okay, I've read it all.

22 Q Did that help to refresh your recollection?

23 A That refreshes my memory.

24 Q Okay. So, you told the police initially, at 8:00  
25 o'clock, when you -- 8:00 or 9:00 o'clock when received that

1 phone call from Mr. McCarty --

2 A Okay.

3 Q -- that he wanted you to come out and play, correct?

4 A That's correct.

5 Q And that you told the police that at that point in  
6 time, he indicated to you that he had the girls with him?

7 A That's not correct.

8 Q That's not what you told the police?

9 A That's not what I told the police.

10 Q Okay. Question, "Yeah, he said he had the girls" --  
11 okay, hold on. Let me back up here a little bit.

12 Question, on page 38, "He did? About" -- question,  
13 "He did? How about before 1:30, did you talk to them?"

14 Answer, "Probably 8:00 or 9:00 o'clock at night,  
15 maybe. I was there writing sentences all night, had to write  
16 sentences for the drug court; 3,000."

17 Question, "8:00 o'clock, had to write sentences for  
18 drug court?"

19 Answer, "Say, I will never use drugs again. I was  
20 sitting right there on the couch, writing them all night long.  
21 My parents here, right there watching TV with this."

22 Question, "He called, wanting to talk to you. What  
23 did he say to you -- what did he say to you, you know, before  
24 they went out and did this?"

25 Answer, "He said the first time he called me, they

1 were on the freeway, I think he said on the way out there."

2 Question, "Yeah, he said he had the girls?"

3 Answer, "Yeah."

4 Question, "Did he say he had the girls?"

5 Answer, "Yeah, he said he had the girls with them."

6 A That's what the statement --

7 Q That's what you told the police, correct?

8 A Keep reading the statement, and you'll see it says  
9 -- he asked me again, and I say at 1:30 --

10 Q Mr. --

11 A -- he called me -- let me finish answering --

12 MR. CANO: Non-responsive, Your Honor.

13 THE WITNESS: -- your question.

14 THE COURT: Well, hang on.

15 MR. CANO: I'm going to ask to strike.

16 MR. LALLI: Your Honor --

17 THE COURT: Well, hang on. Actually, it's -- I  
18 think the witness is saying that that answer is out of  
19 context. That he --

20 THE WITNESS: Thank you.

21 MR. LALLI: That is what he's saying.

22 THE COURT: Okay.

23 MR. LALLI: And if you read on on that page --

24 THE COURT: Well, I'm going to -- I'm going to let  
25 him testify. Because if he's saying it's out of context, I

1 mean, we have to give the complete picture to the jury. Go  
2 ahead, sir.

3 THE WITNESS: Like I was saying, keep reading where  
4 you were reading at, you'll see where it says, at 1:30, he  
5 called me and had the girls. At 8:30, he called me and said,  
6 am I going to come out and play. The last sentence on that  
7 page that you're reading right now.

8 BY MR. CANO:

9 Q You told the police that at the first call, Mr.  
10 McCarty indicated he had the girls with him?

11 A I said at the first call. But keep reading where  
12 you're reading at.

13 Q My question to you --

14 A Keep going down.

15 Q My question to you --

16 A I'm answering your question.

17 THE COURT: All right. Hang on, hang on. Ask the  
18 next --

19 BY MR. CANO:

20 Q My question to you -- and listen to my question very  
21 carefully.

22 A I did.

23 THE COURT: Sir, hang on. Let's -- go ahead, Mr.  
24 Cano.

25 BY MR. CANO:

1           Q     You told the police that when you received the first  
2 call from Mr. McCarty, he indicated to you he had the girls  
3 with them?

4           MR. LALLI: I'm going to object, Your Honor. That's  
5 not what this page says. That's not --

6           MR. CANO: It's completely what this page says.

7           MR. LALLI: -- what it says, and that's what this  
8 witness is saying.

9           THE COURT: Okay. First off, one at a time. Mr.  
10 Lalli was speaking. Let me see the statement. Which page are  
11 you on? For the record, it's on page 39. I'm going to read  
12 page 38, 39, and 40 to make sure I understand the proper  
13 context. Mr. Lalli -- can you put it on the static, please?

14          THE CLERK: Yes, Judge.

15          MR. LALLI: Especially if you --

16                                 (Bench conference)

17          THE COURT: All right. Here. Here.

18          MR. LALLI: Your Honor, if -- especially if you go  
19 to page 41, it -- I'm not sure how far the Court [inaudible].

20          THE COURT: I didn't go to 41. I did not.

21          MR. LALLI: I mean, it clarifies the fact that he  
22 has two phone calls, one about 8:00 or 9:00 o'clock. And then  
23 he has one at 1:00 --

24          MR. CANO: Keep your voice down.

25          MR. LALLI: I'm sorry. Or 1:30, and that's the

1 conversation that he says Mr. McCarty tells him he's got the  
2 girls.

3 MR. CANO: And my question was to him, at 8:00 -- he  
4 told them in the first call that he told the police that he  
5 had the girls with them. That was my question, and that's  
6 what that page reflects. Then he clears it up later as a  
7 different question.

8 THE COURT: I'm going to allow the question. I'm  
9 going to instruct the jury that -- I'm assuming on redirect,  
10 you're going to -- I don't want to talk for you. But I'm  
11 assuming you were going to address this issue. And I'll say  
12 it will be up to the jury to put it in the proper context.

13 MR. LALLI: But he doesn't -- he doesn't say at 8:00  
14 o'clock, I was with the girls -- or McCarty says --

15 THE COURT: Well, he can just ask him question by  
16 question, whatever. But I'm going to say that, you know, I'm  
17 going to let the jury decide what the proper context is.  
18 Okay?

19 MR. LALLI: Okay.

20 (Bench conference ended)

21 THE COURT: Ladies and gentlemen, as you know, there  
22 was an objection here by the State on this particular issue.  
23 I'm going to leave it up to the jury to put the proper context  
24 of the various questions and answers. That will be your job.  
25 Go ahead, Mr. Cano.

1 MR. CANO: Thank you.

2 BY MR. CANO:

3 Q So, in your statements to the police, you told them  
4 at one point in time, that Mr. McCarty indicated to you -- and  
5 this is regarding the 8:00 or 9:00 o'clock phone call -- Mr.  
6 McCarty indicated to you that the girls were with him?

7 A No, I did not.

8 Q Okay. So, you're saying that the transcript here is  
9 wrong?

10 MR. LALLI: I object to the transcript being wrong,  
11 Your Honor. That's not what the --

12 THE COURT: I'm going to --

13 MR. LALLI: -- transcript says.

14 THE COURT: I'm going to sustain the objection.  
15 Again, it's up to the jury to decide the proper context.

16 MR. CANO: Okay.

17 BY MR. CANO:

18 Q When you were asked regarding the phone call about  
19 8:00 or 9:00 o'clock by the police, you respond to them when  
20 they asked you, "They had the girls?" You responded, "Yes?"

21 A No, I did not.

22 Q Okay. Would it be fair to say that at some point  
23 later, you indicated to them that -- Mr. McCarty indicated to  
24 you the girls were with them at 1:30?

25 A At 1:30, yes.

1 Q Okay. Despite the fact that you told the police at  
2 8:00 or 9:00 o'clock, the girls were with him?

3 A I did not tell the police that, once again.

4 Q Okay. Let's go through this again then. You were  
5 asked -- okay. "He did? How about before 1:30? Did you talk  
6 to them?"

7 Answer, "Probably 8:00 or 9:00 o'clock at night,  
8 maybe. I was there, writing sentences all night long. Had to  
9 write sentences for drug court; 3,000."

10 Question, "8:00 o'clock, had to write sentences for  
11 drug court?"

12 Answer --

13 A That was a question?

14 Q Say, I will never --

15 MR. CANO: Your Honor, I'm going to ask the Court  
16 to, you know, address him regarding --

17 THE WITNESS: You're losing me.

18 MR. CANO: -- his commentary.

19 THE WITNESS: I don't have a copy of this transcript  
20 to look at. I can't --

21 THE COURT: Do you have an extra copy so he can  
22 follow along, or does someone have an extra copy he can follow  
23 along?

24 MR. CANO: I did not bring an extra copy --

25 THE COURT: Okay.



1 MR. CANO: -- for him, Your Honor.

2 MR. LALLI: Your Honor, I would also interpose an  
3 objection. It's improper for counsel to just start reading a  
4 transcript. I mean, if there's a question, he can ask the  
5 question. But it's improper for counsel to just start reading  
6 a transcript.

7 THE COURT: I wait for the objections.

8 MR. LALLI: Okay.

9 THE COURT: Okay?

10 MR. LALLI: Well, I'm going to interpose an  
11 objection at this point, Your Honor.

12 THE COURT: Okay.

13 MR. CANO: Your Honor, this is proper impeachment.  
14 He denied that he made the statement, he denies that that's  
15 what the statement says.

16 THE COURT: All right. I think he's already done  
17 that, hasn't he?

18 MR. CANO: Yes, and I'm just clarifying for the  
19 record, Your Honor.

20 THE COURT: Well, he -- well, I think his answer was  
21 later or the next page, he talks about a different time.  
22 That's his answer. I'm not -- whether it's true or not,  
23 that's his answer, correct?

24 MR. CANO: Well, Your Honor, I think that's what  
25 you're reading into the context of this. I think his answer

1 was saying that he did not tell them at 8:00 o'clock or 9:00  
2 o'clock that Mr. McCarty indicated he had the girls with him.  
3 That's what his answer was.

4 THE COURT: Okay.

5 MR. CANO: And in his statement to the police, he  
6 told them that during that phone call at 8:00 or 9:00 o'clock,  
7 that he had the girls with him.

8 MR. LALLI: Your Honor --

9 THE COURT: Well, you can show him that, and you can  
10 -- and he can read it. You can show him that and say, "Does  
11 it say that?" And if he says "no" or "yes" --

12 MR. CANO: Okay.

13 THE COURT: -- then we go from there.

14 MR. CANO: If I can approach, Your Honor?

15 THE COURT: Yes.

16 MR. CANO: All right.

17 THE COURT: So, just listen to the question very  
18 carefully sir, okay?

19 BY MR. CANO:

20 Q Why don't we follow along together, Mr. McCarty?

21 A I'm not Mr. McCarty.

22 Q Oh, I'm sorry. Mr. Herb.

23 THE COURT: Well, counsel, I don't want -- Mr. Cano,  
24 I don't want either counsel to hover over a witness --

25 MR. CANO: I'm trying to stay out of --

1 THE COURT: -- whether it's defense or State.

2 MR. CANO: I only have one statement, Your Honor.

3 Where would you like me to stand, sir?

4 THE COURT: Is it just two pages? Can we get them  
5 copied real quick here?

6 MR. LALLI: Your Honor, they can --

7 THE COURT: Do you have an extra copy?

8 MR. LALLI: They can use --

9 THE COURT: Do you have a hard copy, Mr. Lalli?

10 MR. LALLI: -- my statement. My statement's going  
11 to have notes and highlights on it, but they're welcome to use  
12 my statements.

13 THE COURT: Okay. Well, if you don't have an  
14 objection.

15 MR. CANO: Well, if I could just see his statements  
16 first, Your Honor.

17 THE CLERK: Judge, put it on the overhead.

18 THE MARSHAL: Put it on the overhead, and that  
19 way --

20 MR. LALLI: Well, it's --

21 THE MARSHAL: -- everybody can see it.

22 MR. LALLI: Well, it's not --

23 THE COURT: No, it's not coming in.

24 MR. LALLI: -- an exhibit.

25 THE CLERK: Okay.

1 MR. DiGIACOMO: Can't we --

2 MR. LALLI: If I can just show Mr. Cano my  
3 statement.

4 THE COURT: Sure. I mean, if you have -- I don't  
5 want you to divulge your work product if it --

6 MR. LALLI: It's more highlights than notes, Your  
7 Honor.

8 THE COURT: Okay. Well, do you have any objection  
9 to --

10 MR. LALLI: No.

11 THE COURT: -- or giving -- give Mr. Cano that one,  
12 and then Mr. Cano, if you can give your copy --

13 MR. CANO: Yeah, that's fine.

14 THE COURT: -- to the witness.

15 (Pause in the proceedings)

16 THE COURT: Okay. Actually, I was just advised by  
17 our court staff here that Mr. Cano, you can put it on the  
18 monitor.

19 MR. CANO: Okay.

20 THE COURT: And it will only show up on Mr. Herb's  
21 monitor, so she can cut it off --

22 MR. CANO: Okay.

23 THE COURT: -- from the other monitors around the  
24 courtroom.

25 MR. CANO: Fair enough, Your Honor.

1 MR. DiGIACOMO: Don't counsel table keep theirs  
2 though, in this process?

3 THE COURT: You can put it on counsel table's as  
4 well? Yes, but the jury will not see it on their two  
5 monitors, correct?

6 THE CLERK: Yes, Judge.

7 THE COURT: Okay. If you can center that a little  
8 bit to the right. Mr. Cano, is there a --

9 MR. CANO: I can't -- I don't have a way of --

10 THE COURT: -- did you try the focus button?

11 MR. CANO: -- seeing. I'd have to --

12 THE COURT: Yeah.

13 MR. CANO: -- look at the monitor.

14 THE COURT: Or, can you see the focus? Because it's  
15 a little blurry on my screen as well.

16 MR. CANO: Is that better, Your Honor?

17 THE COURT: Can you see it, Mr. Herb?

18 THE WITNESS: Yes, [inaudible].

19 THE COURT: Okay. Go ahead.

20 MR. CANO: Is that better?

21 (Pause in the proceedings)

22 MR. CANO: Is that better?

23 THE COURT: Can you read it, Mr. Herb?

24 THE WITNESS: Um-hum.

25 THE COURT: Okay.

1 THE WITNESS: Yes, sir.

2 BY MR. CANO:

3 Q You were asked -- at the bottom of page 38, line 23,  
4 you were asked a question, "He did? How about before 1:30?"

5 A Excuse me, one second. I need to -- I can't read  
6 the bottom of that page where you're talking about. It only  
7 goes down to 20 on mine.

8 THE COURT: Right there is fine.

9 THE WITNESS: There you go. Thank you.

10 BY MR. CANO:

11 Q On line 23, you were asked a question, "He did? How  
12 about before 1:30, did you talk to them?"

13 Answer, "Probably, about 8:00 or 9:00 o'clock at  
14 night maybe. I was here writing sentences all night. I had  
15 to write to sentences for drug court; 3,000."

16 THE COURT: And if you can push it down, because now  
17 we're into the next --

18 MR. CANO: Okay.

19 THE COURT: Okay. Just -- there you go.

20 THE WITNESS: Okay.

21 BY MR. CANO:

22 Q That was your response to the police to that  
23 question, correct?

24 A Yes.

25 Q Okay. You were also asked, "8:00 o'clock, had to

1 write sentences for drug court?"

2 Your response was, "Say I will never use drugs  
3 again. And I was sitting right there on the couch, writing  
4 them all night long. My parents here, right there watching TV  
5 with this."

6 That was your response to that question, correct?

7 A Yes.

8 Q You were asked, "He called, wanting to talk to you.  
9 What did he say to you, you know, before they went out and did  
10 this?"

11 Answer, "He said the first time he called me they  
12 were on the freeway, I think he said on their way out there."

13 That was your response to that question, correct?

14 A I believe so. But this question is in response to  
15 the 1:30 time here on the first page you showed.

16 Q Mr. Herb, my question was, that was your response to  
17 the previous question, correct?

18 A Yes.

19 Q The next question, "Yeah, he said he had the girls?"  
20 Your response to that question was, "Yeah."

21 THE COURT: Well, read the whole -- read the whole  
22 answer.

23 MR. CANO: I did, Your Honor.

24 THE COURT: Oh, I'm sorry.

25 MR. CANO: To line 11.

1 THE COURT: Oh, I was looking at line 12. 12 and  
2 13.

3 MR. CANO: Okay.

4 THE COURT: Go ahead, I'm sorry.

5 BY MR. CANO:

6 Q That was your response to that answer, correct?

7 A Yes.

8 Q Question, "Did he say he had the girls?"

9 Answer, "Yeah, he said he had the girls with him,"  
10 and then there was something inaudible.

11 A Um-hum.

12 Q That was your response to that answer?

13 A That question, yes.

14 Q Yes. Okay.

15 MR. LALLI: Counsel can't stop there.

16 MR. CANO: Yes, I can. You can do what you --

17 THE COURT: Okay.

18 THE WITNESS: It is --

19 MR. CANO: -- want on redirect.

20 THE COURT: Okay. I'm going to let you go  
21 [inaudible].

22 THE WITNESS: [Inaudible].

23 MR. CANO: [Inaudible] --

24 MR. LALLI: Your Honor, he takes it out of --

25 THE MARSHAL: Guys, come on. One at a time.



1 THE COURT: Okay.

2 MR. LALLI: Your Honor, I object. It's taking the  
3 statement out of context.

4 THE COURT: Well, whether --

5 MR. CANO: How is it taking it out of context, Your  
6 Honor?

7 THE COURT: Whether it does or doesn't, Mr. Lalli,  
8 I'm going to allow you to go on redirect.

9 MR. LALLI: Very well, Your Honor.

10 THE COURT: And if you --

11 MR. LALLI: That's fine.

12 THE COURT: If it's out of context --

13 MR. LALLI: Understood. We'll do it on redirect.  
14 That's fine.

15 THE COURT: Okay.

16 MR. LALLI: Thank you, Your Honor.

17 BY MR. CANO:

18 Q So, those were your answers to the police on May  
19 25th, correct?

20 A Yes.

21 THE COURT: Well, it's --

22 BY MR. CANO:

23 Q And the later --

24 THE COURT: To be fair, I think to that point --

25 MR. CANO: To that point.

1 THE COURT: -- those are his answers.

2 MR. CANO: Yes.

3 THE COURT: Okay.

4 BY MR. CANO:

5 Q At a later point in time, you told them that you  
6 received a phone call at 1:30?

7 A I told them the same thing at that time as well.

8 THE COURT: Sir, listen to the question.

9 BY MR. CANO:

10 Q Listen to the question I'm asking you, Mr. Herb. At  
11 a later point in time during your conversation with the  
12 police, you told them that you received a phone call at 1:30?

13 A Yes, I did.

14 Q Okay. And during that phone call, you said you  
15 received that from Mr. McCarty?

16 A Yes.

17 Q And during that phone call, you indicated that he  
18 indicated he had the girls with them at that point in time?

19 A Yes.

20 Q Okay. Now, do you recall testifying earlier that  
21 you said after the disposal of the weapons, you stopped over  
22 at a gas station, a 76 gas station --

23 A Yes, I do.

24 Q -- on direct testimony?

25 A Yes.

1 Q And you testified that Mr. McCarty washed his hands  
2 with a bottle of water that you gave him?

3 A That's correct.

4 Q Okay. At a previous trial, when asked regarding  
5 that question, you never indicated that he washed his hands  
6 with a bottle of water?

7 A I believe I did. I'm not following.

8 Q Okay. Would it help to refresh your recollection if  
9 I showed you that?

10 A Yes. Yes, it would.

11 MR. CANO: It's preliminary hearing, page 30.

12 MR. LALLI: Is he talking about the prior trial, or  
13 the preliminary hearing?

14 THE COURT: Actually, I think your question was at  
15 the trial, and now you're showing him --

16 MR. CANO: Okay.

17 THE COURT: -- preliminary hearing. So, let's reask  
18 the question.

19 MR. CANO: All right, let me ask the question.

20 BY MR. CANO:

21 Q At a preliminary hearing, you never -- when you were  
22 asked about that question, you never said that Mr. McCarty  
23 washed his hands of blood?

24 A I don't know. On that, I'm not sure.

25 Q Okay. Would it refresh your recollection if you saw

1 your statement?

2 A Sure. Yes, it would.

3 THE COURT: I'm sorry, counsel. Is this the  
4 statement to the police, or is this the preliminary hearing  
5 testimony?

6 MR. CANO: His response -- his testimony at the  
7 preliminary hearing.

8 THE COURT: Okay. All right. I just wanted to make  
9 sure --

10 MR. CANO: Page 30, counsel.

11 THE COURT: -- everyone understood.

12 BY MR. CANO:

13 Q Go ahead and read it to yourself, starting on line  
14 10.

15 A Okay. Okay.

16 Q Okay. Did that help to refresh your recollection?

17 A Yes.

18 Q At the preliminary hearing, when asked regarding  
19 what happened at the [inaudible], you did not indicate that  
20 Mr. McCarty washed his hands with a bottle of water?

21 A No, I did not.

22 Q Okay. Do you recall the questions that you were  
23 asked regarding Corrina and Lynn?

24 A Excuse me?

25 Q Do you recall the questions asked to you on direct

1 examination regarding Corrina and Lynn?

2 A Oh, yeah. Sorry.

3 Q Okay. You were asked, who was present when the  
4 situation regarding what happened to the girls was discussed.

5 A Okay.

6 Q And you responded that you were present, correct?

7 A Yes.

8 Q That Lynn was present?

9 A I think that's what I said, yes.

10 Q That Corrina was present?

11 A Um-hum.

12 Q That Mr. McCarty was present?

13 A Yes.

14 Q And that Mr. Malone was present?

15 A Yes.

16 Q Was there anyone else that was present?

17 A I don't recall. I don't think so.

18 Q Okay.

19 A Not that I recall.

20 Q All right. And during that conversation, you  
21 indicated on direct testimony that Mr. McCarty and Mr. Malone  
22 were talking to you regarding their involvement in the  
23 situation?

24 A Yes.

25 Q Okay. And you indicated that Mr. McCarty was

1 talking to you about some type of alibis?

2 A Okay. Yes.

3 Q Okay. And I believe you said Mr. Malone was talking  
4 about something to that nature as well?

5 A I believe so, yes.

6 Q Okay. And that Mr. Malone participated in this  
7 conversation?

8 A Yes.

9 Q Okay. Do you recall at the preliminary hearing when  
10 you testified regarding that situation, you indicated that Mr.  
11 Malone didn't say anything?

12 A I don't recall.

13 Q Would it help to refresh your recollection if I  
14 showed you your transcript?

15 A Sure. Yes, it would.

16 Q Okay.

17 MR. CANO: And counsel, this is preliminary hearing,  
18 page 38, 39.

19 BY MR. CANO:

20 Q That's page 38.

21 A Okay.

22 Q Does that refresh your recollection?

23 A Yes.

24 Q Okay. When you were asked regarding who said what,  
25 and what happened during that conversation, you actually

1 indicated at a previous hearing, that Mr. Malone was asleep?

2 A Okay. Yes, I did in that statement.

3 Q Okay. I want to talk to you a little bit about some  
4 relationships here --

5 A Okay.

6 Q -- amongst some of the players that we have here.  
7 You're familiar with Red?

8 A Yes.

9 Q But you didn't know her real name?

10 A No.

11 Q You just knew her by Red?

12 A Yes.

13 Q Okay. You knew that Red sold drugs?

14 A Yes.

15 Q And you knew this because you saw her do this at the  
16 Sportsman's?

17 A Yes.

18 Q Okay. Did -- to your knowledge, did Red get any of  
19 her drugs from Mr. McCarty?

20 A From Mr. McCarty, no. Not that I know of.

21 Q Okay. Did you ever give any drugs to Red?

22 A No.

23 Q Okay. Do you know a person by the name of Trey?

24 A I don't know.

25 Q You don't know? Or you --

1           A     I don't know.

2           Q     -- you do know?

3           A     I don't know.

4           Q     You do not know a person named Trey?

5           A     I do not know a person named Trey.

6           Q     Okay. Would there be any reason why your father  
7 would know a person named Trey?

8           A     I don't know.

9           MR. LALLI: Objection, assumes facts not in  
10 evidence.

11           MR. CANO: That's completely in evidence. They  
12 asked that from his father, Your Honor.

13           THE COURT: Well it's his --

14           MR. LALLI: His testimony was he didn't -- he did  
15 not know a person -- the name Trey did not ring a bell to him.  
16 He wasn't sure about that.

17           MR. CANO: No. The father's testimony said he was  
18 familiar with that name. He doesn't know if he met the  
19 person.

20           THE COURT: But also you're asking him why his  
21 father -- you're asking him to speculate. So, I'm going to  
22 sustain the objection.

23 BY MR. CANO:

24           Q     Do you know Victoria's cell number?

25           A     No. Not to --



1 Q Did you ever call --

2 A I don't remember.

3 Q Did you ever call Victoria on her cell phone?

4 A I don't recall. It's possible.

5 Q How would you call her on her cell phone if you  
6 didn't know her number?

7 A I said I don't know her number now. I thought  
8 that's what you asked me. I do not remember the number.

9 Q So, you did know her number?

10 A I probably did. I don't know.

11 Q Okay. And you do -- you did know Victoria, correct?

12 A Yes.

13 Q And you knew Victoria sold drugs?

14 A Yes.

15 Q And you know that she got some of those drugs that  
16 she sold from Mr. McCarty?

17 A That's correct.

18 Q And you yourself had given her some drugs to sell?

19 A Actually, I didn't give her any drugs.

20 Q Okay. You knew a person named Black?

21 A I've heard the name. I don't know the person.

22 Q Did you know Christina to be known as "Island girl?"

23 A No.

24 Q Did you ever give drugs to Christina to sell?

25 A No, I don't believe I gave her any to sell.

1 Q Did you sell drugs to Christina?

2 A I believe I have, yes.

3 Q Did you know that Mr. McCarty ever -- if -- to your  
4 knowledge, do you know if Mr. McCarty ever gave Christina  
5 drugs to sell?

6 A I do not know.

7 Q During the time frame in question, we're talking May  
8 of 2006, you were working at Creel Printing, correct?

9 A That's correct.

10 Q On that Wednesday, May 15th, you didn't go to work?

11 A Actually, I did go to work.

12 Q You did go to work?

13 A Yes, I clocked in. And then I believe I clocked out  
14 right after that.

15 Q So, to your knowledge, you believe you clocked in,  
16 and you clocked right back out?

17 A I believe so.

18 Q Okay.

19 A It was like -- I'm not sure.

20 Q Would it help to refresh your recollection if you  
21 saw a time sheet from your work over at Creel?

22 A Yes, it would.

23 MR. CANO: I don't know if you have this, counsel.

24 MR. LALLI: Yes.

25 MR. CANO: May I approach, Your Honor?

1 THE COURT: Yes.

2 THE WITNESS: No. According to that, I didn't.

3 BY MR. CANO:

4 Q Does that help to refresh your recollection now,  
5 sir?

6 A Yeah.

7 Q So, on Wednesday, May 17th, you didn't go to work?

8 A Apparently not.

9 Q Okay. But on Thursday, May 18th, you did go to  
10 work, and I think as you indicated, you clocked in, and you  
11 clocked out?

12 A That's possible. I don't remember looking at the  
13 date on that one. But I did on the one you seen.

14 Q Would it help to refresh your recollection if I  
15 showed you this again?

16 A Sure.

17 MR. CANO: If I could approach again, Your Honor.

18 THE COURT: Yes.

19 THE WITNESS: Okay.

20 BY MR. CANO:

21 Q Did that help to refresh your recollection?

22 A Yes.

23 Q You clocked in at 4:38?

24 A Yes.

25 Q Clocked out at 5:14 a.m.?

1 A Yes.

2 Q So, you went to work for approximately 45 minutes  
3 that morning?

4 A That's correct.

5 Q Or maybe even a little bit less?

6 A Something like that.

7 Q Okay. Now, when you went to Creel -- you started  
8 working there, I believe it was in 2003, correct?

9 A 2004, I believe.

10 Q Okay.

11 A April 2004.

12 Q 2004. You -- they gave you their procedures and  
13 policies, correct?

14 A That's correct.

15 Q And the procedures and policies of how the company  
16 works?

17 A Yes.

18 Q All right. You had to sign off on some forms that  
19 you received these procedures and policies, correct?

20 A Yes, that's correct.

21 Q Actually, you did drug testing?

22 A They didn't drug test.

23 Q They didn't drug test?

24 A No.

25 Q Okay. So, you never took a drug test from Creel?

1 A Not to my knowledge -- my memory, no.

2 Q Did you remember signing off on any forms saying  
3 that they had like a zero tolerance -- zero tolerance policies  
4 regarding drugs or drug usage?

5 A I don't remember. But most likely, yes.

6 Q Okay.

7 A That's pretty standard for any employer.

8 MR. CANO: Court's indulgence, Your Honor.

9 THE COURT: Sure.

10 BY MR. CANO:

11 Q Part of the policies and procedures were if you got  
12 injured on the job, to report those injuries, correct?

13 A Yes.

14 Q And you didn't report any injuries to your job at  
15 Creel Printing?

16 A No.

17 Q Okay. The day that you interviewed with the police  
18 back on May 25th, you had an injury to your hand, correct?

19 A That's correct.

20 Q They even indicated to you that you had a cut on  
21 your hand?

22 A Yes.

23 Q Okay. Now, earlier on direct testimony, you were  
24 asked by Mr. Lalli whether or not you had inflicted any  
25 injuries on Victoria Magee in this case, correct?

1 A I believe so.

2 Q And you denied that?

3 A Yes.

4 Q Okay. If you had admitted that, would it be fair to  
5 say that you would have been held responsible for her death?

6 A I don't know.

7 Q Okay. But you never -- okay. And you also denied  
8 any injuries to Charlotte Combado, correct?

9 A Yes.

10 Q But if you would have admitted that to police, that  
11 you hurt them or injured them out in the desert, fair to say  
12 that you would have been liable for her death as well?

13 A Yes.

14 Q Now, you said before that your freedom was very,  
15 very important to you, correct?

16 A Yes.

17 Q Okay. And you realize that in this case, you were  
18 originally charged with murder counts?

19 A Yes.

20 Q Along with conspiracy to commit murder counts?

21 A That's correct.

22 Q Along with a robbery count?

23 A Yes.

24 Q Kidnapping counts?

25 A Yes.

1 Q Battery with substantial bodily harm, things of that  
2 nature, correct?

3 A Yes.

4 Q But as a result of your cooperation in this case,  
5 you actually pled guilty to something substantially less than  
6 what you were originally charged with, correct?

7 A Yes.

8 Q You actually pled guilty to accessory after the  
9 fact?

10 A That's correct.

11 Q Okay. Kind of like how you filled in the words to  
12 the police, after the fact, correct?

13 A Yes.

14 Q And that charge that you plead guilty to, it's a  
15 felony, correct?

16 A Yes.

17 Q So, that would have been your third felony, correct?

18 A Yes.

19 Q And that charge that you pled guilty to, there is a  
20 penalty between one and five years?

21 A That's correct.

22 Q And that charge that you pled guilty to also is  
23 probationable?

24 A That's correct.

25 Q So, you could potentially get probation resulting

1 from this case?

2 A That's correct.

3 Q Okay. And you haven't been in custody since about  
4 maybe three months after this incident; is that a fair  
5 statement?

6 A That's correct, yes.

7 Q So, sometime in, I don't know, the summer, July,  
8 August, somewhere around there, you were released from  
9 custody?

10 A Well, I was released from county jail on house  
11 arrest.

12 Q Okay. You were released from county jail on house  
13 arrest sometime in that summer, July or August?

14 A End of September.

15 Q September?

16 A The end of August, halfway -- and most of September,  
17 until I went to the first sentencing date.

18 Q Okay. And at that point in time were you released  
19 from house arrest?

20 A Yes.

21 Q Okay. So, we're talking at the end of September,  
22 early October, you were no longer on house arrest?

23 A That's correct.

24 Q Okay. And since that point in time, you've not been  
25 in custody on this case?



1 A That's correct.

2 Q You've been able to spend time with your family?

3 A That's correct.

4 Q You've been able to spend time with your son?

5 A Yes.

6 Q Your father and your mother?

7 A Yes.

8 Q As well as your brother?

9 A Right.

10 Q Okay. You haven't been sitting in jail, in custody?

11 A No.

12 Q You haven't been shackled and taken into courtrooms  
13 for whatever reasons, in shackles, correct?

14 A No.

15 Q Okay. You haven't had to sit for the last five  
16 years and eat food that they would feed you at the jail?

17 A No, I didn't.

18 Q Okay. You've been able to go out and eat whatever  
19 food you want?

20 A That's correct.

21 MR. LALLI: I'm going to object as to relevance at  
22 this point, Your Honor.

23 THE COURT: I think it's a little cumulative at this  
24 point. I'm going to sustain the objection.

25 BY MR. CANO:

1 Q So, it's fair to say that you've been free for the  
2 last five years?

3 MR. LALLI: Objection, asked and answered.

4 THE COURT: Sustained.

5 BY MR. CANO:

6 Q And in order to maintain that freedom, you had to  
7 testify for the State in this case?

8 A That's correct.

9 MR. CANO: No further questions at this time.

10 THE COURT: All right. Any redirect?

11 MR. LALLI: Yes, Your Honor. We may already have  
12 this in evidence. But if not, I would like to mark this, the  
13 Agreement to Testify. I think it's in evidence.

14 (Pause in the proceedings)

15 MR. CANO: If we could approach, Your Honor.

16 THE COURT: All right.

17 (Bench conference)

18 MR. CANO: He's going to try to admit the Agreement  
19 to Testify at this point in time. I'm going to be objecting  
20 to that. I think it's -- he's trying to vouch for the  
21 witness. Because I know -- if I can anticipate his argument,  
22 I think contained in there is like whether or not he's going  
23 to testify truthfully or not. I don't think it's proper for  
24 him to admit that Agreement to Testify.

25 MR. LALLI: A couple of things. Number one,

1 whenever you have a witness that testifies pursuant to an  
2 Agreement to Testify, the statute requires that the agreement  
3 be admitted into evidence, and that the jury be allowed  
4 inspect it.

5           Number two -- and I have Sessions, if the Court  
6 would like to see it. But when defense counsel attacks the  
7 credibility of a witness based upon that agreement, we are  
8 allowed to enter the entire unredacted agreement, including  
9 the portion that discusses their requirement to testify  
10 truthfully. And so that's what I'm going to do pursuant to  
11 the statute, and pursuant to Sessions.

12           THE COURT: Anything else?

13           MR. CANO: If the Court is going to allow him to  
14 introduce it, I would suggest that we redact the part about  
15 him testifying truthfully as to what his understanding is on  
16 it.

17           MR. LALLI: Well, based upon --

18           THE COURT: I'm going to overrule the objection.

19           MR. LALLI: Thank you.

20                           (Bench conference ended)

21                           REDIRECT EXAMINATION

22 BY MR. LALLI:

23           Q     Mr. Herb, I wanted to talk to you first about your  
24 obligations in this case, pursuant to the agreement that you  
25 entered with the State of Nevada, okay?

1           A     All right.

2                   MR. CANO: Your Honor, I'm going to object at this  
3 point in time, pursuant to the conversation we had at the  
4 bench.

5                   THE COURT: All right.

6                   MR. LALLI: Your Honor --

7                   THE COURT: I'm going to overrule the objection.

8                   MR. LALLI: Thank you. And I would just note for  
9 the record the Sessions case, Your Honor.

10 BY MR. LALLI:

11           Q     There was an agreement, a written agreement that was  
12 prepared, and signed by you and your attorney, as well as I  
13 believe Mr. DiGiacomo, on behalf of the State; is that  
14 correct?

15           A     I believe that's correct.

16                   MR. LALLI: May I approach the witness, Your Honor?

17                   THE COURT: Yes.

18 BY MR. LALLI:

19           Q     I'm going to show you what we've marked as State's  
20 proposed Exhibit No. 222. Just have a look at that, Mr. Herb,  
21 if you would. You don't have to read it, but just kind of  
22 thumb through it. And my question is going to be whether that  
23 appears to be a fair and accurate copy of the agreement signed  
24 by you, your attorney, and a representative of the State of  
25 Nevada?

1 A Yes, it is.

2 MR. LALLI: Your Honor, I would move for the  
3 admission of that exhibit.

4 MR. CANO: Objection, Your Honor.

5 THE COURT: All right. It will be admitted.

6 (State's Exhibit 222 is admitted)

7 BY MR. LALLI:

8 Q The agreement requires certain things of you; is  
9 that true?

10 A That's correct.

11 Q One of those is an obligation to be truthful?

12 A That's correct.

13 Q And it says, "Abiding all else, it is understood  
14 that this agreement requires from Donald J. Herb an obligation  
15 to do nothing other than to tell the truth."

16 A That's correct.

17 Q Is that what it says?

18 A Yes, it is.

19 Q And who determines under this agreement whether  
20 you've been truthful?

21 A To my knowledge, the Court.

22 Q The Judge does?

23 A Yes.

24 Q So, that's not something that the State can do, or  
25 anybody else can do; it's up to His Honor to determine whether

1 you've been truthful?

2 MR. CANO: Objection as to speculation, Your Honor.

3 MR. LALLI: Your Honor, that's what the agreement  
4 says.

5 THE COURT: I'm going to overrule --

6 MR. LALLI: It's not speculation.

7 THE COURT: I'm going to overrule the objection.

8 BY MR. LALLI:

9 Q I just want to go back and clarify a few things with  
10 you.

11 During cross-examination, Mr. Cano asked you some  
12 questions about the girls being missing. And you had made  
13 some reference to, there were two times when the girls were  
14 missing. Do you recall that?

15 A Yes, I do.

16 Q Were the girls missing on more than one occasion?

17 A Yes, they were.

18 Q What was the first occasion that the girls were  
19 missing?

20 A The first occasion, I would -- to my knowledge,  
21 would be that Friday, Saturday, and Sunday, the three days  
22 prior to -- or four days prior to the incident in question.

23 Q So, that wasn't related to their ultimate  
24 disappearance and being found dead?

25 A No.

1 Q So, there were actually two times. This trial is  
2 about the second occasion; is that true?

3 A That's correct.

4 Q Mr. Cano asked you about some of the statements that  
5 you had made to the police. Do you recall those questions?

6 A Yes.

7 Q Specifically, he had asked you about the point in  
8 time in your second statement to the police when you tell the  
9 police that you would provide them with information, with  
10 truthful information about what had occurred out on the  
11 evening when you show up to that area in Henderson; do you  
12 recall that?

13 A Yes.

14 Q Do you remember -- do you remember what you told the  
15 police at that point with respect to your involvement, or lack  
16 of involvement? Do you remember exactly what you said?

17 A No, I do not.

18 Q Would it refresh your recollection to review your  
19 statement?

20 A Yes, it would.

21 MR. LALLI: Mr. Cano, it's the second statement, and  
22 it's page 88.

23 BY MR. LALLI:

24 Q What I'd like you to do, Mr. Herb, is start reading  
25 to yourself at page 11.

1 A 11?

2 Q Line 11, I'm sorry. I'm on page 88. And read down.  
3 What are you telling the police at that point with respect to  
4 your involvement in murders?

5 A I tell them, "I didn't kill anybody. I'll testify,  
6 whatever, but I didn't murder anybody."

7 Q So, you're telling them, "I'll testify, I didn't  
8 murder anybody," correct?

9 A That's correct.

10 Q And what is the question that preceded that  
11 statement? "What we've established, we've established that  
12 you kind of helped them out a little bit?" That's the  
13 question, correct?

14 A Yes, that's the question.

15 Q And the answer is, "Right."

16 A Yes.

17 Q So, you made it pretty clear to the police that you  
18 weren't responsible for murdering anybody?

19 A That's correct.

20 Q Mr. Cano asked you questions about conversations you  
21 had with family members, bail bondsmen, several individuals  
22 while you were in custody at the Henderson Police Department.  
23 Do you remember --

24 A Yes.

25 Q -- that?



1 A Yes, I do.

2 Q And Mr. Cano asked you about a conversation that you  
3 had with your brother about getting rid of some evidence?

4 A Yes.

5 Q Do you remember that conversation?

6 A Yes, I do.

7 Q Can you explain to the jury what you were talking  
8 about?

9 A I was telling my brother to flush the drugs that he  
10 had in his car down the toilet.

11 Q Whose drugs were those?

12 A Mine.

13 Q The drugs that you used during this period of time  
14 to sell to other individuals?

15 A Yes, that's correct.

16 Q What was your concern in getting rid of the drugs?

17 A Just that they would come search the house for  
18 evidence in the murder case, and they would find the narcotics  
19 and charge me for that.

20 Q Who's they?

21 A The police.

22 Q So, you -- your concern was that the police come  
23 back, they're going to find your drug stash?

24 A That's correct.

25 Q And you were telling your brother, get rid of the

1 drug stash, basically?

2 A That's correct.

3 Q Was that evidence related in any way to the murder  
4 of Victoria Magee or Christina Combado?

5 A No, it was not.

6 Q There were a lot of questions related to the  
7 telephone calls, and the sequence of telephone calls that you  
8 had with Jason McCarty. Do you remember those questions?

9 A Yes, I do.

10 Q In the transcript of that second statement that you  
11 gave to the police?

12 A Yes.

13 Q Do you remember that?

14 A Yes, I do.

15 Q Explain to the jury how that transcript reads with  
16 respect to the times.

17 A It starts out at the top of the page, before the  
18 page he showed me, they're asking me about the 1:30 phone  
19 calls. And I'm telling them about the 1:30 phone calls, and  
20 how many there are. Then I'm not sure if it's the same  
21 detective, or another detective jumps in with the thing about  
22 -- something about 8:30. I tell him I talked to him at 8:30.

23 And at the bottom of the second page, he referred to  
24 it -- tells right on there, at 8:30, I said he called me and  
25 asked if I was going to come out to play. I said, no, I have

1 to write sentences.

2           It was -- they're asking about two different phone  
3 conversations. And the line that he was taking out of context  
4 was talking about the 1:30 conversation. The first time he  
5 called me at 1:30, not the first time he called me at 8:30.

6           Q     So, you explained to the police that the call when  
7 Mr. McCarty tells you that the girls are with him, that's  
8 clearly the conversation that you have with him at 1:00 or  
9 1:30 in the morning?

10          A     That's correct.

11          Q     You make it pretty clear for them, don't you?

12          A     Yes, I do.

13          Q     Mr. Cano also asked you about your testimony from  
14 the preliminary hearing with respect to alibis. Do you recall  
15 that?

16          A     Yes.

17          Q     Do you remember having a discussion with Domonic  
18 Malone with respect to an alibi?

19          A     Yes, out at the side of the road by the Hoover Dam  
20 area, where we got rid of the evidence at.

21          Q     Do you recall whether you testified about that at  
22 the preliminary hearing?

23          A     I do not recall.

24          Q     Would it refresh your recollection to review the  
25 transcript?

1 A Yes, it would.

2 MR. LALLI: Preliminary hearing, page 36. May I  
3 approach the witness?

4 THE COURT: Yes.

5 BY MR. LALLI:

6 Q If you would read to yourself line 23 on that page.

7 A Okay.

8 Q Did you in fact testify about Mr. Malone and an  
9 alibi?

10 A Yes, I did.

11 Q And what he told you?

12 A Yes, I did.

13 Q What did you say?

14 A I said exactly what I just said, that he was -- his  
15 wife was at home, she was going to say he was home with her  
16 all night.

17 Q He told you that his wife was going to be his alibi?

18 A That's correct.

19 Q And you testified to that at the preliminary  
20 hearing?

21 A That's correct.

22 Q You didn't say that Mr. Malone was asleep?

23 A I believe I said he was asleep at a conversation at  
24 the Sportsman's, is what Mr. -- was --

25 Q Correct.

1 A -- referring to.

2 Q Correct. But with respect to Mr. Malone talking  
3 about an alibi, he told you that?

4 A Yes.

5 Q And you testified to that at the preliminary  
6 hearing?

7 A Yes, I did.

8 MR. LALLI: Your Honor, that concludes redirect.

9 THE COURT: Any recross?

10 MR. CANO: Oh, yeah.

11 RECCROSS-EXAMINATION

12 BY MR. CANO:

13 Q Let's talk a little bit about your Agreement to  
14 Testify.

15 A All right.

16 Q Prior to your Agreement to Testify, you're in  
17 custody at the Henderson Police Department jail?

18 A That's correct.

19 Q Prior to that, you're trying to contact your family  
20 to try to get yourself an attorney?

21 A That's correct.

22 Q And at that point in time, you requested the  
23 assistance of an attorney?

24 A Oh, excuse me?

25 Q At that point in time while you're in custody in

1 jail and making phone calls to your family, you had already  
2 requested the assistance of an attorney?

3 A That's correct.

4 Q And the police were not allowed to talk to you at  
5 that point in time?

6 A That's correct.

7 Q Okay. And so you did get the assistance of an  
8 attorney?

9 A Actually, I hired my own. But yes, I did.

10 Q Okay. And that person happened to be Mr. Durham  
11 [phonetic]?

12 A That's correct.

13 Q Okay. And with Mr. Durham's assistance, you were  
14 able to negotiate yourself plea negotiations, correct?

15 A Yes. He negotiated me a plea agreement. That's  
16 correct.

17 Q And also as part and parcel of that plea  
18 negotiation, you also signed an Agreement to Testify, correct?

19 A That's correct.

20 Q You signed that Agreement to Testify on July 19th of  
21 '06?

22 A I believe so. I'm not exactly sure of the date.

23 MR. CANO: If I could approach, Your Honor?

24 THE COURT: Was there a stipulation, State? Do you  
25 know the date it was signed?

1 MR. LALLI: That sounds right, Your Honor. We'll  
2 agree that it was signed on that date.

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

4 MR. CANO: All right.

5 MR. LALLI: That was the date.

6 BY MR. CANO:

7 Q On the 19th, you signed an Agreement to Testify?

8 A Okay.

9 Q According to the State, they agree with us that on  
10 the 19th, you signed an Agreement to Testify. Would you  
11 disagree with that?

12 A No. I was just waiting for you to ask me a  
13 question.

14 Q Okay. And you also signed a Guilty Plea Agreement?

15 A That's correct.

16 Q And that was on the 19th as well?

17 A Yes, it was, I believe.

18 Q And it was in conjunction with this Agreement to  
19 Testify, correct?

20 A Yes.

21 Q All right. So, you had your deal in place before  
22 you ever got up to testify at the preliminary hearing?

23 A That's correct.

24 Q Okay. Now, if you had told the police that you knew  
25 about the girls at 8:30, that would have made you more

1 involved with this case than if you had learned about them  
2 being with Mr. McCarty and Malone at 1:30; is that a fair  
3 statement?

4 MR. LALLI: I'm going to object to the nature of the  
5 question. It's compound and confusing.

6 THE COURT: Restate your question, Mr. Cano.

7 MR. CANO: Okay.

8 BY MR. CANO:

9 Q If you told the police that you knew that the girls  
10 were with McCarty and Mr. Malone at 8:30, that would have made  
11 you more involved in this case, than as opposed to them being  
12 with Mr. McCarty or Malone at 1:30 in the morning?

13 MR. LALLI: I'm going to object --

14 THE WITNESS: I don't know.

15 MR. LALLI: -- as to --

16 THE COURT: Hang on, sir.

17 MR. LALLI: -- the nature of the question, Your  
18 Honor. What date are we talking about? When? During what  
19 conversation?

20 THE COURT: So, foundation?

21 MR. LALLI: The question is vague.

22 THE COURT: Foundation? All right, I'm going to  
23 sustain the objection.

24 BY MR. CANO:

25 Q During the conversation that you had with the police



1 on May 22nd -- I mean, May 25th, the second one, of 2006.

2 A Okay.

3 Q If you had told the police that you knew that the  
4 girls were missing since 8:30 p.m., as opposed to 1:30 a.m.  
5 the following day, that would have made you a little bit more  
6 involved in this case, correct?

7 A I believe so. But once again, you confuse me with  
8 your question. You just --

9 Q So, your answer is, you believe so?

10 A Hold on. Can I finish what I was saying, please?

11 THE COURT: No. He said, "I believe so, but I'm  
12 confused by the question." I think that --

13 MR. CANO: Okay.

14 THE COURT: -- was his answer. So, if he's --

15 MR. CANO: All right, well let me see if I can't  
16 clarify the question.

17 BY MR. CANO:

18 Q On May 25th at 10:00 p.m. when you're talking to the  
19 police for the second time --

20 A All right.

21 Q -- if you had admitted to them that you had known  
22 about the girls being with Mr. McCarty and Mr. Malone at 8:30  
23 in the evening, that would have made your involvement in this  
24 case greater?

25 MR. LALLI: I'm going to object.

1 THE WITNESS: I don't think so.

2 MR. LALLI: That calls for --

3 THE COURT: Hang on, sir.

4 MR. LALLI: -- speculation.

5 THE COURT: I'm going to sustain the objection.

6 BY MR. CANO:

7 Q When you get off that stand, you're going to be able  
8 to be free and walk out of this courtroom, aren't you?

9 A I don't know. I can't say I'll be free, but I'll be  
10 able to walk out of this courtroom until I go to sentencing,  
11 yes.

12 Q All right. And you haven't been sentenced until you  
13 finish testifying, correct?

14 A That's correct.

15 Q And you expect that you're going to get probation  
16 for your cooperation in this case?

17 A I would hope so, but I don't expect anything.

18 MR. CANO: Nothing further, Your Honor.

19 THE COURT: Anything further?

20 FURTHER REDIRECT EXAMINATION

21 BY MR. LALLI:

22 Q Have you ever been promised probation by either Mr.  
23 DiGiacomo or myself?

24 A No, I have not.

25 MR. LALLI: Nothing else.

1 THE COURT: Any on that issue, Mr. Cano?

2 MR. CANO: Nothing, Your Honor.

3 THE COURT: Any questions by any of the jurors?

4 Yes.

5 THE MARSHAL: Yes.

6 THE COURT: We have a question or two, a couple.

7 Counsel, approach.

8 (Bench conference)

9 THE COURT: We're waiting for the two questions,  
10 maybe three. And this is it for today? We have three. Maybe  
11 four. I don't know if I understand the first question. Maybe  
12 you guys will understand, but I don't.

13 MR. CANO: As to the first one, I think it's  
14 speculative. As to the second one, I have no objection.

15

16 MR. LALLI: We have no objection to that.

17 MR. CANO: But it goes to [inaudible] else's intent.

18 THE COURT: Let me look at it. The problem is, the  
19 way the question is written makes it -- our constraints are I  
20 can't change the question. It says, "To your knowledge, was  
21 the intent always to murder?" I don't think it's appropriate  
22 for me to ask that question. And it says, "Where did you get  
23 your drugs that you would sell?" Any objection to that  
24 question?

25 MR. LALLI: No.

1 THE COURT: Okay, I'll ask that one. Was there any  
2 emotions for --

3 MR. LALLI: Okay, no objection.

4 MR. CANO: [Inaudible] his demeanor?

5 MR. LALLI: Or did he say anything about it  
6 [inaudible].

7 MR. CANO: [Inaudible] expressing emotions.

8 THE COURT: I'll ask it as is. Here's the next one.  
9 There's three parts to this question. Actually, it's --  
10 Cliff, for -- we have a note here from Juror No. 14. And it's  
11 not clear to me as whether or not the top question has been  
12 x'd out or not.

13 JUROR NO. 14: Yeah, it [inaudible]. I decided I  
14 didn't --

15 THE COURT: Okay. Do you --

16 JUROR NO. 14: -- want to ask it.

17 THE COURT: No, it's up to you.

18 (Bench conference ended)

19 THE COURT: Do you want that question asked?

20 JUROR NO. 14: Sure. Ask it.

21 THE COURT: Okay.

22 JUROR NO. 14: Let's clarify.

23 THE COURT: All right.

24 (Bench conference)

25 THE COURT: I wonder if he wants us to read them in

1 that order. Okay.

2 MR. DiGIACOMO: [Inaudible].

3 UNKNOWN MALE SPEAKER: [Inaudible].

4 THE COURT: Okay. All right.

5 (Bench conference ended)

6 THE COURT: Is that it?

7 MR. LALLI: Yeah, no objection.

8 THE COURT: Okay. All right. All right, sir, we  
9 have a couple questions by some of our jurors for you. As I  
10 had previously mentioned before that I have to make a legal  
11 determination as to whether or not all the questions can be  
12 answered. And one of the questions, I'm not going to ask this  
13 witness.

14 "Sir, where did you get your drugs that you would  
15 sell?"

16 THE WITNESS: From some people I know in town.

17 THE COURT: "On your way home with Mr. Malone in the  
18 car, did he express any emotions about what had happened with  
19 the girls in the desert?"

20 THE WITNESS: No.

21 THE COURT: "What did McCarty say his reason was for  
22 leaving your car in Arizona?"

23 THE WITNESS: He said they were leaving town, they  
24 weren't coming back. They were just going to leave it right  
25 there. He didn't really give me another reason besides that.

1 THE COURT: "Why did you drive out to get your green  
2 car alone?" And in parenthesis, "Without a second driver."

3 THE WITNESS: Oh, because I was going to leave the  
4 white car there and get the green car.

5 THE COURT: "Why after knowing the girls were dead  
6 did you still follow them and help get rid of evidence?"

7 THE WITNESS: At the time, I thought they were my  
8 friends, so I was just helping them out. There wasn't any --  
9 I don't know what you call it, like motive for helping them or  
10 anything like that. Just, they asked me to help, I helped  
11 them.

12 THE COURT: Any follow up by the State?

13 MR. LALLI: Just two areas.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. LALLI:

16 Q Mr. Herb, why would you exchange out -- or why would  
17 you want to exchange out the white car for the green car?

18 A Because the white car doesn't mean anything to me.  
19 It's paid for, it's a piece of junk. But the green car is  
20 more important. I'm making payments on it. That's on my  
21 credit report and all that. So, I need the green car more  
22 than I need the white car.

23 Q It had more value to you?

24 A Yes.

25 Q With respect to who you -- who you were buying drugs

1 from at this period of time, did you know an individual by the  
2 name of Ramaan Hall?

3 A No.

4 Q Trevon Hall?

5 A Not to my knowledge.

6 Q Trey?

7 A No.

8 Q Trey Black?

9 A No.

10 Q Assuming I'm talking about all of those names being  
11 associated with the same person, did you ever purchase drugs  
12 from that individual?

13 A No.

14 Q All right. Thank you.

15 MR. LALLI: Nothing else.

16 THE COURT: Anything further, Mr. Cano?

17 MR. CANO: Yeah.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. CANO:

20 Q So, the green car -- the green Alero had more value  
21 to you than what had happened out -- to the girls in the  
22 desert?

23 MR. LALLI: Objection, Your Honor.

24 THE COURT: It's sustained.

25 MR. CANO: Nothing further, Your Honor.

1 THE COURT: Any additional question by any of the  
2 jurors? No additional questions.

3 Thank you, sir, for your testimony. You are  
4 excused.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen, due to the  
7 scheduling issues, as well as the length of Mr. Herb's  
8 testimony today, I think we are done for the day; is that  
9 correct, State and defense?

10 MR. LALLI: That's correct, Your Honor.

11 MR. PIKE: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. CANO: Yes, Your Honor.

14 THE COURT: Usually, I try to give you a better idea  
15 of the time frame. But we just -- things went a little faster  
16 than expected. And so we're going to adjourn for the evening,  
17 and we're going to have you come back tomorrow at 10:00  
18 o'clock.

19 So during this -- and again, we do expect to leave  
20 no later than 5:00 tomorrow. Maybe earlier, but no later than  
21 5:00 tomorrow. And if it does look like we will go past that,  
22 I will tell you as soon as possible. But right now, 10:00  
23 o'clock to 5:00 o'clock for tomorrow. And I will tell you,  
24 probably Wednesday, we will adjourn at 3:30 as opposed to  
25 5:00. Wednesday, more than likely, 3:30.



1 Ladies and gentlemen, during this recess, it is your  
2 duty not to converse among yourselves, or anyone else on any  
3 subject connected with the trial, or to read, watch or listen  
4 to any report of or commentary on the trial by any person  
5 connected with the trial, or by any medium of information,  
6 including without limitation, newspaper, television, radio, or  
7 the Internet. You are not to form or express an opinion on  
8 any subject connected with this case until this matter is  
9 submitted to you.

10 And one other thing, ladies and gentlemen.  
11 Initially, when you were called for jury service, we advised  
12 you that this trial should take approximately six weeks. The  
13 attorneys have told me that they are right on schedule for  
14 this case, if not a little ahead of schedule. But things  
15 change, but we are on schedule. All right? Have a good  
16 evening.

17 (Jury recessed at 2:37 p.m.)

18 (Outside the presence of the jury)

19 THE COURT: Mr. Cano, it may have been you, or  
20 perhaps Mr. Lalli. On one of the juror's questions that you  
21 -- it may have been you, or Mr. Lalli. So, one of you may  
22 have wanted one of the questions that the Court did not give.  
23 I'm not sure. Was that you, Mr. Cano, or?

24 MR. CANO: Yeah, that was Mr. Lalli.

25 THE COURT: Okay. Do you want to put that on the

1 record, Mr. Lalli?

2 MR. LALLI: Well, we didn't oppose it. It's not --  
3 I don't quibble with the Court's ruling on that.

4 THE COURT: Okay.

5 MR. LALLI: If the Court wants to make a record on  
6 it, I mean we're -- certainly, we don't oppose that. But I'm  
7 not going to quibble over which questions the Court has  
8 decided are appropriate or are not.

9 THE COURT: I'll just put it on the record. It was  
10 from Juror number 10. "To your knowledge, was the intent  
11 always to murder the two girls?"

12 And the Court felt that that was not an appropriate  
13 question because it would call for speculation of this  
14 witness. So, I did not ask that question.

15 MR. LALLI: And I would just say that we do not  
16 necessarily disagree with the Court's analysis on that, Your  
17 Honor.

18 THE COURT: All right. And I will need --

19 MR. CANO: Nor do we, Your Honor.

20 THE COURT: Okay. Great. Okay. And I will need --  
21 before this case is submitted to the jury, and the Agreement  
22 to Testify, I'll need to personally review that, because I do  
23 need to see if there's any irrelevant information contained  
24 within the Agreement to Testify.

25 MR. LALLI: Your Honor, on that point, Mr. Cano had

1 interposed an objection, and had requested that the  
2 information related to the truthfulness requirement be  
3 removed. And in response to that, I would just cite the Court  
4 to Sessions vs. State, which is cited at 111 Nevada 328. It  
5 is a 1995 case.

6 And it talks about the District Court's discretion  
7 to allow information regarding the requirement of truthfulness  
8 in response to a defense attack on the witness's credibility  
9 attributed to the plea agreement, which was precisely what Mr.  
10 Cano did on cross-examination of Mr. Herb.

11 So, in response to that, we included the portion on  
12 truthfulness in the Agreement to Testify. And that was based  
13 upon Sessions.

14 THE COURT: And I think that's found --

15 MR. CANO: And --

16 THE COURT: -- in head note 4 of Sessions. Yes, Mr.  
17 Cano?

18 MR. CANO: Yes, Your Honor. And as I think State --  
19 the State, and I think the Court might agree, it's at the  
20 Court's discretion. Our position is that that section of  
21 agreement is witness vouching. That's improper. That's why  
22 we asked that it be redacted.

23 THE COURT: Okay. All right. Thank you. Anything  
24 else before tomorrow at 10:00?

25 MR. DiGIACOMO: Only -- I talked to Mr. Pike.

1 Because we're moving along so fast, we have our DNA expert,  
2 who's unavailable until Friday. We think that Gerry Collins,  
3 our last witness, will be on the stand on Thursday afternoon.

4 I think that the defense has agreed that if that  
5 happens, and he's still on the stand Thursday afternoon, that  
6 we can call the DNA expert Friday morning, and then go back to  
7 -- Detective Collins is the last witness, because Detective  
8 Collins will be very lengthy. And the analyst is from Bexar  
9 County, Texas. So, he's going to fly in late Thursday,  
10 testify Friday, and then we can get him out back on a plane  
11 for the weekend.

12 THE COURT: Is that correct, Mr. Pike?

13 MR. PIKE: That's correct, Your Honor. And I  
14 believe at that point in time, all of the exhibits that will  
15 be relevant to the testimony will have been admitted. If  
16 they're not, they'll be admitted for purposes of the testing  
17 that was done on them. So, I think that that would keep us on  
18 schedule, as well as avoid additional expense to the State.  
19 And it does not prejudice the defense case in any way, so.

20 THE COURT: I appreciate the accommodation between  
21 the parties on this particular issues. And the parties were  
22 going to exchange jury instructions today or tomorrow?

23 MR. PIKE: We had two secretaries call in sick, and  
24 we only have four. And so I went in during the lunch break,  
25 since we had an additional half hour. I put in a couple more.

1 I will send them to the Court before 5:00 o'clock tonight, as  
2 well as email them to the prosecuting attorneys.

3 THE COURT: And is there some way -- this is  
4 directed to both sides -- that State, when you look at the  
5 defendant's, if you can just email my law clerk again, CC the  
6 defense, as far as saying, we object to instruction 1, 7, and  
7 9, whatever it may be, or the one dealing -- you know,  
8 somehow, identify the ones you object to. And Mr. Pike, you  
9 do the same, so I can start looking at it and looking at the  
10 case law that you've cited.

11 MR. LALLI: We'll do that, Your Honor.

12 MR. PIKE: Thank you. And I think we're both  
13 operating off of the Court's instructions from the previous  
14 trial. I have a proposed Verdict form. Should I include that  
15 in the proposed?

16 THE COURT: Yes, please.

17 MR. PIKE: Thank you.

18 THE COURT: Well, I mean, you know, please make your  
19 objection, because you know, the Supreme Court could say the  
20 instruction I gave is wrong, so.

21 MR. PIKE: Right. And I anticipate making the  
22 objections contemporaneous with the decision, and then the  
23 Court will go through each of the proposed ones, and we'll  
24 follow the format that I've done with Your Honor before.

25 THE COURT: I don't assume anything. Okay.

1 MR. PIKE: Okay.

2 MR. DiGIACOMO: Judge, I have a question about  
3 Wednesday. You said you wanted to finish about 3:30 on  
4 Wednesday?

5 THE COURT: Right.

6 MR. DiGIACOMO: Assuming our schedule holds, that  
7 will be two witnesses. We have the expert, the cell phone  
8 expert that we both want. So, we're going to call them. And  
9 then there's somebody else that has to go up on Wednesday. I  
10 can't remember. Oh, the fingerprints. And so are you  
11 planning on starting at 9:30?

12 THE COURT: 9:30 on Wednesday.

13 MR. DiGIACOMO: So, basically 9:30 to 11:30. All  
14 right. That should be plenty of time to get those two  
15 witnesses done and then we'll have some on --

16 THE COURT: When you said 11:30 -- you said 9:30 to  
17 11 --

18 MR. DiGIACOMO: 9:30 -- I'm sorry. 9:30 to 3:30.

19 THE COURT: Yes.

20 MR. DiGIACOMO: We should have that time, with an  
21 hour and 15 minutes for Charlie for lunch, we should be  
22 perfect.

23 (Pause in the proceedings)

24 MR. CANO: Your Honor, just for the Court, I have a  
25 couple appearances in the morning, but they should be done

1 before we start at 10:00.

2 THE COURT: Do you think I should contact them, or  
3 do you think you have enough time?

4 MR. CANO: No, we'll have plenty of time.

5 THE COURT: If you ever need me, I'll do it.

6 MR. CANO: All right. Thanks, Your Honor.

7 MR. PIKE: Thank you.

8 THE COURT: Thank you.

9 (Pause in the proceedings)

10 (Court recessed at 2:43 p.m., until the following day,  
11 Tuesday, January 24, 2012, at 10:00 a.m.)

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25

INDEX

WITNESSES

| <u>NAME</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|-------------|---------------|--------------|-----------------|----------------|
|-------------|---------------|--------------|-----------------|----------------|

STATE'S WITNESSES:

|                 |   |    |                     |             |
|-----------------|---|----|---------------------|-------------|
| Donald Jay Herb | 2 | 62 | 169,<br>184,<br>188 | 179,<br>189 |
|-----------------|---|----|---------------------|-------------|

\* \* \* \* \*

EXHIBITS

| <u>DESCRIPTION:</u> | <u>ADMITTED</u> |
|---------------------|-----------------|
|---------------------|-----------------|

|                                |     |
|--------------------------------|-----|
| Exhibits 170 and 179 . . . . . | 35  |
| Exhibit 171 . . . . .          | 39  |
| Exhibit 222 . . . . .          | 171 |



**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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1-24-12  
DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

DOMONIC MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 61006

Electronically Filed  
Jan 14 2013 04:18 p.m.  
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Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 12

Direct Appeal From A Judgment of Conviction  
Eighth Judicial District Court  
The Honorable Michael Villani, District Court Judge  
District Court No. C224572

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## I N D E X

| <u>Volume</u> | <u>Document Name/File Date</u>  | <u>Page No.</u> |
|---------------|---|-----------------|
| 1             | AMENDED INFORMATION (8/30/06)   | 046-053         |
| 18            | COURT EXHIBITS ADMITTED AT TRIAL<br>(UNFILED)   | 3652-3695       |
| 19            | CRIMINAL COURT MINUTES (UNFILED)  | 3780-3927       |
| 7             | DOCUMENTS PER COURT ORDER (6/22/11)   | 1312-1347       |
| 7             | EX PARTE COMMUNICATIONS (DEFENDANT<br>MEMORANDUM TO COURT) (PRO PER) (6/29/11)            | 1348-1353       |
| 5             | EX PARTE MOTION FOR EXPENSES FOR<br>PRIVATE INVESTIGATORS (PRO PER) (2/1/10)              | 977-978         |
| 1             | INFORMATION (8/2/06)  | 001-008         |
| 17            | INSTRUCTIONS TO THE JURY (1/31/12)  | 3431-3492       |
| 1             | JOINDER WITH CO-DEFENDANT JASON<br>McCARTY'S MOTION TO SEVER (10/25/06)                   | 116-117         |
| 6             | JUDGMENT OF CONVICTION (JURY TRIAL)<br>(McCARTY) (4/6/11)                                 | 1287-1291       |
| 18            | JUDGMENT OF CONVICTION (JURY TRIAL)<br>(MALONE) (5/8/12)                                  | 3772-3776       |
| 7             | JURY LIST (1/13/12)   | 1487            |
| 14            | MALONE'S OBJECTIONS TO THE STATE'S<br>PROPOSED TRIAL PHASE JURY INSTRUCTIONS<br>(1/26/12) | 2971-2984       |

| <u>Volume</u> | <u>Document Name/File Date</u>  | <u>Page No.</u> |
|---------------|---|-----------------|
| 7             | MOTION FOR COMPLETE ROUGH DRAFT<br>TRANSCRIPT OF (CASE NO. C224572-1) (PRO PER)<br>(6/29/11)  | 1365-1452       |
| 2             | MOTION FOR DISCOVERY OF INSTITUTIONAL<br>RECORDS AND FILES NECESSARY TO A FAIR TRIAL<br>(5/24/07)   | 292-299         |
| 7             | MOTION FOR DISCOVERY OF PROSECUTION<br>RECORDS FILES AND INFORMATION NECESSARY<br>TO A FAIR TRIAL (PRO PER) (6/29/11)                         | 1354-1364       |
| 6             | MOTION FOR (FULL TRANSCRIPTION) DISCOVERY<br>OF PROSECUTION RECORDS, FILES AND<br>INFORMATION NECESSARY TO A FAIR TRIAL<br>(PRO PER) (1/8/11) | 1276-1277       |
| 5             | MOTION FOR JUDICIAL DETERMINATION OF<br>STANDBY COUNSELS OBLIGATIONS PURSUANT<br>TO HOLLOWAY V. STATE (5/2/10)                                | 990-997         |
| 6             | MOTION FOR PARALEGAL; FINANCIAL ASSISTANCE;<br>MEDICAL; PRIVATE INVESTIGATORS(S) (PRO PER)<br>(7/8/10)  | 1110-1113       |
| 6             | MOTION FOR PARALEGAL - (REHEARING) (PRO PER)<br>(8/9/10)  | 1149-1152       |
| 5             | MOTION FOR TRIAL (SPEEDY) AND OR IN THE<br>ALTERNATIVE MOTION TO WITHDRAW<br>COUNSEL (PRO PER) (12/3/09)                                      | 876-878         |
| 2             | MOTION IN LIMINE TO BAR IMPROPER<br>PROSECUTORIAL ARGUMENT (5/24/07)  | 265-287         |
| 2             | MOTION IN LIMINE TO PROHIBIT ANY<br>REFERENCES TO THE FIRST PHASE AS THE<br>"GUILT PHASE" (5/24/07)   | 259-261         |

| <u>Volume</u> | <u>Document Name/File Date</u>  | <u>Page No.</u> |
|---------------|---|-----------------|
| 4             | MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF HEARSAY STATEMENTS MADE BY CO-DEFENDANT MCCARTY AND OTHERS THAT REFERENCE DEFENDANT MALONE AT THE TIME OF TRIAL (8/20/09)                                    | 641-660         |
| 5             | MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF HEARSAY STATEMENTS MADE BY CO-DEFENDANT MCCARTY AND OTHERS THAT REFERENCE DEFENDANT MALONE AT THE TIME OF TRIAL (3/25/10)                                    | 1021-1041       |
| 2             | MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (5/24/07)                                | 288-291         |
| 3             | MOTION TO DISMISS COUNSEL (PRO PER) (1/7/09)  | 607-608         |
| 3             | MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, OR, IN THE ALTERNATIVE, MOTION FOR CORRECTIVE INSTRUCTION (1/31/08)   | 572-577         |
| 5             | MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT GROUNDS BRADY VIOLATION OR IN THE ALTERNATIVE THE JURY TO BE INSTRUCTED ON MALONE'S EXACT WHEREABOUTS DURING THE TIME OF THE MURDER(S) (PRO PER) (11/1/10) | 1240-1257       |
| 6             | MOTION TO DISMISS STAND-BY COUNSEL (PRO PER) (1/8/11)   | 1278            |
| 2             | MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (5/24/07)  | 262-264         |

| <u>Volume</u> | <u>Document Name/File Date</u>   | <u>Page No.</u> |
|---------------|--|-----------------|
| 5             | MOTION TO PRESERVE AND PRODUCE EVIDENCE INCLUDING POTENTIALLY EXCULPATORY EVIDENCE (PRO PER) (2/1/10)  | 957-976         |
| 18            | MOTION TO RECUSE THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE (2/6/12)  | 3698-3702       |
| 3             | MOTION TO RECUSE THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY CO-DEFENDANT HERB AT THE TIME OF TRIAL (1/12/09)        | 609-616         |
| 1             | MOTION TO SEVER (McCARTY) (10/9/06)  | 054-071         |
| 1             | MOTION TO SEVER (MALONE) (10/25/06)  | 092-115         |
| 5             | MOTION TO SUPPRESS STATEMENTS OF CORRENA PHILLIPS OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY STATE WITNESSES "PHILLIPS" AT THE TIME OF TRIAL (PRO PER) (8/2/10) | 1140-1148       |
| 4             | MOTION TO SUPPRESS STATEMENTS OF DEFENDANT, OR IN THE ALTERNATIVE, MOTION IN LIMINE (9/18/09)  | 696-703         |
| 2             | MOTION TO SUPPRESS STATEMENTS OF DONALD HERB, OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY CO-DEFENDANT HERB AT THE TIME OF TRIAL (5/25/07)                       | 300-317         |
| 4             | MOTION TO WAIVE TRIAL BY JURY ON ALL COUNTS ALLEGING THE NAMED VICTIM MELISSA ESTORES (10/1/09)  | 755-763         |
| 18            | NOTICE OF APPEAL (6/5/12)  | 3777-3779       |

| <u>Volume</u> | <u>Document Name/File Date</u>   | <u>Page No.</u> |
|---------------|--|-----------------|
| 4             | NOTICE OF DEFENDANT'S WITNESSES (10/6/09)  | 775-783         |
| 4             | NOTICE OF EXPERT WITNESSES (9/21/09)   | 704-744         |
| 7             | NOTICE OF EXPERT WITNESSES (11/16/11)  | 1469-1470       |
| 1             | NOTICE OF INTENT TO SEEK DEATH PENALTY<br>(8/30/06)  | 017-045         |
| 4             | NOTICE OF WITNESSES (10/02/09)   | 765-771         |
| 5             | OPPOSITION TO DEFENDANT MALONE'S MOTION<br>FOR RECONSIDERATION OF WRIT OF HABEAS<br>CORPUS (4/9/10)  | 1045-1093       |
| 3             | OPPOSITION TO DEFENDANT MALONE'S MOTION<br>TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE,<br>OR IN THE ALTERNATIVE, MOTION FOR<br>CORRECTIVE INSTRUCTION (2/25/08)   | 578-592         |
| 2             | OPPOSITION TO DEFENDANT MALONE'S MOTION<br>TO SUPPRESS STATEMENTS OF DONALD HERB,<br>OR IN THE ALTERNATIVE MOTION IN LIMINE<br>TO PROHIBIT INTRODUCTION OF THE STATEMENT<br>MADE BY THE CO-DEFENDANT HERB AT THE TIME<br>OF TRIAL (6/14/07)    | 337-351         |
| 2             | OPPOSITION TO DEFENDANT'S MOTION TO<br>FEDERALIZE ALL MOTIONS, REQUESTS AND<br>OTHER APPLICATIONS FOR THE PROCEEDINGS<br>IN THE ABOVE ENTITLED CASE (6/6/07)   | 320-323         |
| 3             | OPPOSITION TO DEFENDANT'S MOTION TO RECUSE<br>THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE,<br>OR IN THE ALTERNATIVE, MOTION IN LIMINE TO<br>PROHIBIT INTRODUCTION OF STATEMENTS MADE<br>BY CO-DEFENDANT HERB AT THE TIME OF TRIAL<br>(1/28/09) | 622-625         |

| <u>Volume</u> | <u>Document Name/File Date</u>  | <u>Page No.</u> |
|---------------|---|-----------------|
| 2             | ORDER (DENYING PETITION FOR WRIT OF HABEAS CORPUS) (1/18/07)  | 257-258         |
| 2             | ORDER (COURT RULINGS ON MOTIONS) (7/24/07)  | 410-414         |
| 3             | ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, OR IN THE ALTERNATIVE, MOTION FOR CORRECTIVE INSTRUCTION (3/27/08)            | 599-600         |
| 4             | ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS STATEMENTS OF DEFENDANT (10/22/09)   | 874-875         |
| 5             | ORDER GRANTING DEFENDANT'S MOTION (2/26/10)   | 988-989         |
| 5             | ORDER GRANTING DEFENDANT'S MOTION FOR ACCESS TO LAW LIBRARY (PRO PER) (9/27/10)   | 1201-1202       |
| 18            | ORDER GRANTING DEFENDANT'S MOTION TO PRECLUDE EVIDENCE OF OTHER BAD ACTS EVIDENCE ENTITLED MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT (2/3/12) | 3696-3697       |
| 1             | PETITION FOR WRIT OF HABEAS CORPUS (11/6/06)  | 118-152         |
| 16            | POINTS AND AUTHORITIES IN OPPOSITION TO THE INTRODUCTION OF THE NON-TESTIFYING CO-DEFENDANT'S RECORDED TELEPHONE CALL (1/27/12)                             | 3173-3200       |
| 16            | POINTS AND AUTHORITIES IN REPLY TO DEFENDANT'S OPPOSITION TO THE INTRODUCTION OF THE NON-TESTIFYING CO-DEFENDANT'S RECORDED TELEPHONE CALL (1/27/12)        | 3201-3206       |
| 5             | RENEWED MOTION TO SEVER (McCARTY) (3/18/10)   | 929-956         |
| 4             | REPLY TO OPPOSITION TO MOTION (8/27/09)   | 683-689         |



| <u>Volume</u> | <u>Document Name/File Date</u>                                  | <u>Page No.</u> |
|---------------|---|-----------------|
| 3             | REPLY TO STATE'S OPPOSITION (1/30/09)                           | 626-630         |
| 1             | REPORTER'S TRANSCRIPT OF HEARING<br>AUGUST 16, 2006 (5/7/08)    | 009-016         |
| 2             | REPORTER'S TRANSCRIPT OF HEARING<br>NOVEMBER 21, 2006 (6/6/08)  | 218-237         |
| 2             | REPORTER'S TRANSCRIPT OF HEARING<br>NOVEMBER 30, 2006 (6/6/08)  | 238-241         |
| 2             | REPORTER'S TRANSCRIPT OF HEARING<br>DECEMBER 12, 2006 (6/6/08)  | 242-256         |
| 2             | REPORTER'S TRANSCRIPT OF HEARING<br>JUNE 22, 2007 (6/6/08)      | 352-409         |
| 3             | REPORTER'S TRANSCRIPT OF HEARING<br>SEPTEMBER 11, 2007 (6/6/08) | 415-419         |
| 3             | REPORTER'S TRANSCRIPT OF HEARING<br>NOVEMBER 29, 2007 (6/6/08)  | 420-571         |
| 3             | REPORTER'S TRANSCRIPT OF HEARING<br>MARCH 13, 2008 (6/6/08)     | 593-598         |
| 3             | REPORTER'S TRANSCRIPT OF HEARING<br>JUNE 24, 2008 (7/2/08)      | 601-606         |
| 3             | REPORTER'S TRANSCRIPT OF HEARING<br>JANUARY 20, 2009 (2/17/09)  | 617-621         |
| 3             | REPORTER'S TRANSCRIPT OF HEARING<br>FEBRUARY 5, 2009 (2/17/09)  | 631-640         |
| 4             | REPORTER'S TRANSCRIPT OF HEARING<br>SEPTEMBER 1, 2009 (9/9/09)  | 690-695         |

| <u>Volume</u> | <u>Document Name/File Date</u>                                  | <u>Page No.</u> |
|---------------|---|-----------------|
| 4             | REPORTER'S TRANSCRIPT OF HEARING<br>SEPTEMBER 29, 2009 (3/5/10) | 744-754         |
| 4             | REPORTER'S TRANSCRIPT OF HEARING<br>OCTOBER 6, 2009 (3/5/10)    | 784-797         |
| 4             | REPORTER'S TRANSCRIPT OF HEARING<br>OCTOBER 8, 2009 (3/5/10)    | 847-862         |
| 4             | REPORTER'S TRANSCRIPT OF HEARING<br>OCTOBER 12, 2009 (3/5/10)   | 865-873         |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>OCTOBER 27, 2009 (3/5/10)   | 879-886         |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>DECEMBER 15, 2009 (3/5/10)  | 887-892         |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>JANUARY 8, 2010 (3/5/10)    | 893-928         |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>FEBRUARY 16, 2010 (3/5/10)  | 979-987         |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>MARCH 18, 2010 (4/12/10)    | 998-1005        |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>MARCH 25, 2010 (4/12/10)    | 1006-1020       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>APRIL 13, 2010 (4/14/10)    | 1094-1104       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>APRIL 29, 2010 (5/18/10)    | 1105-1109       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>JULY 20, 2010 (9/22/10)     | 1124-1128       |

| <u>Volume</u> | <u>Document Name/File Date</u>                                   | <u>Page No.</u> |
|---------------|--|-----------------|
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>JULY 27, 2010 (9/22/10)      | 1129-1139       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>AUGUST 12, 2010 (9/22/10)    | 1153-1164       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>AUGUST 26, 2010 (9/22/10)    | 1170-1172       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>AUGUST 31, 2010 (9/22/10)    | 1173-1183       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>SEPTEMBER 14, 2010 (9/22/10) | 1186-1194       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>SEPTEMBER 21, 2010 (9/22/10) | 1195-1200       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>SEPTEMBER 30, 2010 (10/8/10) | 1203-1213       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>OCTOBER 5, 2010 (10/8/10)    | 1214-1237       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>OCTOBER 26, 2010 (1/12/11)   | 1258-1268       |
| 5             | REPORTER'S TRANSCRIPT OF HEARING<br>NOVEMBER 9, 2010 (1/12/11)   | 1269-1275       |
| 6             | REPORTER'S TRANSCRIPT OF HEARING<br>JANUARY 25, 2011 (2/28/11)   | 1279-1286       |
| 6             | REPORTER'S TRANSCRIPT OF HEARING<br>JUNE 9, 2011 (7/25/11)       | 1292-1297       |
| 6             | REPORTER'S TRANSCRIPT OF HEARING<br>JUNE 21, 2011 (7/25/11)      | 1298-1311       |

| <u>Volume</u> | <u>Document Name/File Date</u>                                    | <u>Page No.</u> |
|---------------|---|-----------------|
| 7             | REPORTER'S TRANSCRIPT OF HEARING<br>JULY 19, 2011 (7/25/11)       | 1453-1459       |
| 7             | REPORTER'S TRANSCRIPT OF HEARING<br>AUGUST 9, 2011 (9/21/11)      | 1460-1468       |
| 7             | REPORTER'S TRANSCRIPT OF HEARING<br>DECEMBER 15, 2011 (12/30/11)  | 1473-1480       |
| 7             | REPORTER'S TRANSCRIPT OF HEARING<br>JANUARY 3, 2012 (1/9/12)      | 1481-1486       |
| 8             | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 17, 2012 (1/18/12) | 1488-1732       |
| 9             | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 18, 2012 (1/19/12) | 1734-2013       |
| 10            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 19, 2012 (1/20/12) | 2014-2273       |
| 11            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 20, 2012 (1/23/12) | 2274-2485       |
| 12            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 23, 2012 (1/24/12) | 2486-2684       |
| 13            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 24, 2012 (1/25/12) | 2685-2896       |
| 14            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 25, 2012 (1/26/12) | 2897-2970       |
| 15            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 26, 2012 (1/27/12) | 2985-3172       |
| 16            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 27, 2012 (1/30/12) | 3207-3397       |

| <u>Volume</u> | <u>Document Name/File Date</u>   | <u>Page No.</u> |
|---------------|--|-----------------|
| 17            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 30, 2012 (1/31/12)  | 3406-3430       |
| 17            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>JANUARY 31, 2012 (2/1/12)   | 3493-3630       |
| 18            | REPORTER'S TRANSCRIPT OF JURY TRIAL<br>FEBRUARY 1, 2012 (2/2/12)   | 3631-3645       |
| 18            | REPORTER'S TRANSCRIPT OF PENALTY PHASE<br>FEBRUARY 10, 2012 (2/15/12)  | 3703-3717       |
| 18            | REPORTER'S TRANSCRIPT OF HEARING<br>APRIL 10, 2012 (5/24/12)   | 3743-3747       |
| 18            | REPORTER'S TRANSCRIPT OF HEARING<br>APRIL 12, 2012 (5/24/12)   | 3748-3750       |
| 18            | REPORTER'S TRANSCRIPT OF HEARING<br>APRIL 24, 2012 (5/24/12)   | 3751-3771       |
| 5             | RESPONSE TO STATE'S OPPOSITION TO<br>DEFENDANT'S MOTION TO SUPPRESS STATEMENTS<br>(8/19/10)  | 1165-1169       |
| 1             | RETURN TO WRIT OF HABEAS CORPUS (11/22/06)   | 178-217         |
| 4             | RECEIPT OF COPY (RAMAAN HALL'S "LYRICS<br>AND ADDITIONAL DISCOVERY) (10/8/09)  | 800-846         |
| 18            | SPECIAL VERDICT (2/10/12)  | 3718-3742       |
| 4             | STATE OPPOSITION TO DEFENDANT MALONE'S<br>MOTION IN LIMINE TO PROHIBIT INTRODUCTION<br>OF HEARSAY STATEMENTS MADE BE CO-DEFENDANT<br>MALONE AT THE TIME OF TRIAL (8/26/09) | 661-682         |
| 1             | STATE'S OPPOSITION TO DEFENDANT MALONE'S<br>MOTION TO SEVER (11/13/06)   | 153-177         |

| <u>Volume</u> | <u>Document Name/File Date</u>  | <u>Page No.</u> |
|---------------|---|-----------------|
| 1             | STATE'S OPPOSITION TO DEFENDANT MCCARTY'S MOTION TO SEVER (10/23/06)  | 072-091         |
| 2             | STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILES NECESSARY TO A FAIR TRIAL (6/6/07)  | 330-333         |
| 2             | STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF PROSECUTION RECORDS, FILES AND INFORMATION NECESSARY TO A FAIR TRIAL (6/6/07)   | 324-326         |
| 2             | STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT (6/6/07)  | 327-329         |
| 2             | STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE" (6/6/07)  | 318-319         |
| 2             | STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (6/6/07) | 334-336         |
| 4             | STATE'S RESPONSE TO DEFENDANT'S MOTION TO WAIVE TRIAL BY JURY ON ALL COUNTS ALLEGING THE NAMED VICTIM MELISSA ESTORES (10/5/09)   | 772-774         |
| 5             | STATE'S OPPOSITION TO MCCARTY'S RENEWED MOTION TO SEVER (4/9/10)  | 1042-1044       |
| 4             | SUPPLEMENTAL NOTICE OF WITNESSES (10/7/09)  | 798-799         |
| 4             | SUPPLEMENTAL NOTICE OF WITNESSES (10/9/09)  | 863-864         |
| 5             | SUPPLEMENTAL NOTICE OF WITNESSES (9/10/10)  | 1184-1185       |

| <u>Volume</u> | <u>Document Name/File Date</u>              | <u>Page No.</u> |
|---------------|---|-----------------|
| 5             | SUPPLEMENTAL NOTICE OF WITNESSES (10/7/10)  | 1238-1239       |
| 7             | SUPPLEMENTAL NOTICE OF WITNESSES (11/30/11) | 1471-1472       |
| 17            | THIRD AMENDED INFORMATION (1/30/12)         | 3398-3405       |
| 18            | VERDICT (2/1/12)                            | 3646-3651       |

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CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                         |   |                      |
|-------------------------|---|----------------------|
| THE STATE OF NEVADA,    | . | CASE NO. C-224572    |
|                         | . |                      |
| Plaintiff,              | . | DEPT. NO. XVII       |
|                         | . |                      |
| vs.                     | . |                      |
|                         | . | <b>TRANSCRIPT OF</b> |
| DOMONIC RONALDO MALONE, | . | <b>PROCEEDINGS</b>   |
|                         | . |                      |
| Defendant.              | . |                      |
| .....                   | . |                      |

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 9**

MONDAY, JANUARY 23, 2012

APPEARANCES:

FOR THE PLAINTIFF:                      MARC DiGIACOMO, ESQ.  
   CHRISTOPHER LALLI, ESQ.  
   *Chief Deputy District Attorneys*

FOR THE DEFENDANT:                      RANDALL H. PIKE, ESQ.  
   CHARLES A. CANO, ESQ.  
   *Assistant Special Public*  
   *Defenders*

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| District Court    |                                 |

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1       LAS VEGAS, NEVADA, MONDAY, JANUARY 23, 2012, 9:22 A.M.

2                   (Court was called to order)

3                   (In the presence of the jury)

4               THE COURT: Good morning, ladies and gentlemen. I  
5 hope your weekend was pleasurable. We're going to start up  
6 today. And State, please call your next witness.

7               MR. LALLI: Your Honor, the State calls Donald Herb.

8                   DONALD JAY HERB, STATE'S WITNESS, SWORN

9               THE CLERK: Please be seated. And state and spell  
10 your name for the record.

11               THE WITNESS: My name is Donald Jay Herb.  
12 D-o-n-a-l-d. Middle name, J-a-y. Last name, H-e-r-b.

13               THE COURT: Go ahead, State.

14               MR. LALLI: Thank you, Your Honor.

15                               DIRECT EXAMINATION

16 BY MR. LALLI:

17       Q     Mr. Herb, how old are you?

18       A     I'm 35.

19       Q     Do you work?

20       A     Right now, no.

21       Q     What have you -- what is your -- what was your most  
22 recent job?

23       A     I worked for Southwest Linen Company.

24       Q     What did you do for Southwest Linen?

25       A     Basically, an engineer and maintenance.

1 Q So, you're in between jobs right now?

2 A Yes, sir.

3 Q I want to direct your attention to May of 2006.

4 Were you living in Las Vegas at the time?

5 A Yes, I was.

6 Q Where did you live?

7 A At my parents' house.

8 Q Who are your parents?

9 A Kelly and Jay Herb.

10 Q Okay. Do you recall the address that you were  
11 staying at?

12 A 140 Sirnoble Street.

13 Q Can you explain for our jury approximately where  
14 that is in Las Vegas?

15 A Off of Charleston and Nellis, on the east side of  
16 Las Vegas.

17 Q And if you could just slow down just a little bit so  
18 that the jury can hear you and understand what you're saying.

19 Back in May of 2006, did you own any vehicles?

20 A Yes, I did.

21 Q Can you describe those for us?

22 A I had a green Oldsmobile Alero, I believe it was a  
23 2002, 2003. And I had a white four-door 1993 Honda Accord.

24 Q I'm going to show you what has been admitted as  
25 State's Exhibit No. 69. Do you recognize that vehicle?

1 A Yes, that's my Alero.

2 Q And what about State's Exhibit 153?

3 A That's my Honda Accord.

4 Q Now, I'm going to talk about the Alero. When  
5 approximately did you get this vehicle?

6 A I believe it was in the summer of 2005. I'm not  
7 exactly sure.

8 Q All right. Sometime certainly before May of 2006?

9 A Yes.

10 Q In that time frame, the May, April of 2006, who was  
11 driving this Alero?

12 A Mainly, my friend, Mr. McCarty, was driving the  
13 Alero.

14 Q Who is Mr. McCarty?

15 A Jason McCarty, the co-defendant in this trial.

16 Q You said that he was a friend of yours?

17 A Yes, he was.

18 Q Can you explain to the jury how it is that Mr.  
19 McCarty was driving the green Alero?

20 A At this time, I was on -- or just getting off house  
21 arrest. And so I wasn't allowed to leave the house, except  
22 for to go to work or anything. So, I let Mr. McCarty use the  
23 car so he could take his kids to school and pick them up, take  
24 care of whatever other business he needed to take care of.

25 Q When approximately did you give -- or allow Mr.

1   McCarty to use your Alero?

2           A     It started in December of 2005.

3           Q     So, he had had it exclusively through May? Or  
4 describe for the jury how that worked.

5           A     I would say -- I wouldn't say exclusively. I used  
6 the car every now and then when I needed it. But for the most  
7 part, he had it day and night for approximately two to three  
8 months, including that time frame.

9           Q     Explain for the jury -- I'm going to show them  
10 State's Exhibit 153. When did you obtain this white vehicle?

11          A     I believe I bought the Accord in January or February  
12 of 2006.

13          Q     Why did you get that vehicle?

14          A     At the time, Mr. McCarty was renting a vehicle in my  
15 name so that he could drive around. And so, I told him it  
16 would be cheaper for me to purchase the Accord for \$1,000 or  
17 \$1,500, and just pay me the rental fee every week until the  
18 car is paid off. That way he wouldn't have to have anything  
19 rented in my name.

20          Q     In April and May of 2006, who was driving the white  
21 vehicle?

22          A     Mainly, I was.

23          Q     Had you been off of house arrest at that time?

24          A     I believe I got off house arrest the first week in  
25 May.

1 Q Where was the white vehicle housed?

2 A At my house.

3 Q You described for us essentially giving Mr. McCarty  
4 one vehicle, and purchasing another vehicle, really for him.  
5 Can you explain for the jury your relationship with Mr.  
6 McCarty?

7 A Prior to this time, we had been roommates for  
8 approximately two to three years, from I believe about  
9 sometime in 2001 until about 2003, 2004. I was placed on  
10 probation, so I moved back to my parents' house. And that's  
11 where I was living probably about a year prior to the time --  
12 this time frame here.

13 Q Did you and Mr. McCarty work together?

14 A I did get him a job where I worked.

15 Q Which was where?

16 A At Creel Printing Company.

17 Q Where is Creel Printing Company?

18 A At that time it was 6330 West Sunset, I believe.  
19 Like Sunset and Rainbow, Sunset and Jones, right there.

20 Q What did you do at Creel Printing?

21 A I ran a perfect binder.

22 Q With respect to Mr. McCarty, was he known by another  
23 name in -- amongst your circle of friends?

24 A His street name was Romeo.

25 Q Romeo?

1 A Yes.

2 Q Were you known by a nickname amongst your circle of  
3 friends?

4 A As far as I know, they just called me by my name, or  
5 my first initial, D.

6 Q Did Romeo, or Mr. McCarty, did he have any physical  
7 disabilities?

8 A He had cerebral palsy. So his -- I forget which  
9 arm. I believe it was his left arm, the tendon in his arm is  
10 no good. So, he would have the arm in this position, and --

11 Q And for the record, you've just held your wrist kind  
12 of down, putting --

13 A Correct.

14 Q -- your arm at your chest; is that correct?

15 A Correct.

16 MR. CANO: Your Honor, I'm going to object as to his  
17 conclusion as to the medical. He's not an expert in that  
18 area. I ask that it be stricken.

19 THE COURT: So, more an objection on foundation  
20 perhaps?

21 MR. CANO: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. LALLI: Okay.

24 THE COURT: You can lay the foundation.

25 BY MR. LALLI:

1 Q Over the course of living with Mr. McCarty, I think  
2 you said two years?

3 A Yes, sir.

4 Q Did you have the opportunity to observe the  
5 condition of his arm?

6 A Yes.

7 Q You're not a medical doctor. So, I mean, you can't  
8 say if there was a tendon issue with it. But you knew that he  
9 suffered from cerebral palsy?

10 A Yes, sir.

11 Q Okay. Did Mr. McCarty have any difficulty walking,  
12 or did he walk -- was his walking impaired in any way from his  
13 cerebral palsy?

14 A I would say not really. His left leg would drag  
15 sometimes, you know, once in a while. Like he had a heavy  
16 foot once in a while if he got tired or whatever.

17 Q As a result of the cerebral palsy?

18 A To my knowledge, yes.

19 Q Okay. Did you know an individual by the name of  
20 Domonic Malone?

21 A Yes, I do.

22 Q How did you know Mr. Malone?

23 A I met Mr. Malone -- Malone through Mr. McCarty. He  
24 introduced us.

25 Q Where?

1           A     I believe the first time was the Sportsman's. I  
2     can't say for sure.

3           Q     What was the relationship between Mr. McCarty and  
4     Mr. Malone?

5           A     To my knowledge --

6           MR. CANO: I'm going to object as to foundation,  
7     Your Honor.

8           THE COURT: Sustained.

9     BY MR. LALLI:

10          Q     Have you ever observed the two of them interact?

11          A     Yes.

12          Q     Had you also interacted with Mr. Malone?

13          A     Yes.

14          Q     Based upon those interactions, what was the nature  
15     of the relationship between Mr. McCarty and Mr. Malone?

16          A     They would hang out at the Sportsman's together, and  
17     do whatever it is they did there at the Sportsman's.

18          Q     Was Mr. Malone known by another name in -- amongst  
19     your friends?

20          A     Yes, he was known by D-Roc.

21          Q     Do you see Mr. Malone in the courtroom?

22          A     Yes, sir. He's sitting at this table to my left in  
23     the center with the glasses on.

24          MR. LALLI: Your Honor, may the record reflect that  
25     the witness has identified the defendant?



1 THE COURT: Yes, it will.

2 BY MR. LALLI:

3 Q Mr. Herb, did you know an individual by the name of  
4 Melissa Estores, or a woman known as Red?

5 A Yes.

6 Q How did you know Red?

7 A I met her in the Sportsman's as well, through Mr.  
8 Malone.

9 Q What was the nature of the relationship between Red  
10 and the --

11 MR. CANO: Objection as to foundation again, Your  
12 Honor.

13 MR. LALLI: Did you --

14 THE COURT: I'm going to sustain the objection.

15 BY MR. LALLI:

16 Q Did you see Red and the defendant interact together?

17 A Yes.

18 Q On more than one occasion?

19 A Yes.

20 Q What -- based upon what you observed, and things  
21 that the defendant told you what was the relationship between  
22 Red and the defendant?

23 MR. CANO: Your Honor, I'm going to object as to the  
24 hearsay.

25 MR. LALLI: It's on --

1 MR. CANO: As to what he was told by Mr. Malone.

2 MR. LALLI: It's a -- first of all, I'm not  
3 eliciting any hearsay. Number two, if I choose to, it's a  
4 statement of a party opponent and an exception to the hearsay  
5 rule.

6 THE COURT: I'm going to overrule the objection.  
7 BY MR. LALLI:

8 Q Based upon what you personally observed and what the  
9 defendant told you, what was the nature of the relationship  
10 between the defendant and Red?

11 A To my knowledge, Red was his girlfriend, or one of  
12 the females that he had a relationship with.

13 Q Did you know a young woman by the name of Victoria  
14 Magee?

15 A Yes.

16 Q How did you know her?

17 A I met her through Mr. McCarty.

18 Q What was the nature of the relationship between  
19 Victoria and Mr. McCarty?

20 A She was Mr. McCarty's girlfriend, and she worked for  
21 him.

22 Q What did she do for Mr. McCarty?

23 A She would turn tricks or sell dope.

24 Q When you say "turn tricks," are you referring to  
25 prostitution?

1 A Yes.

2 Q So, she would prostitute herself, and proceeds would  
3 go back to Mr. McCarty?

4 A Yes.

5 Q You also said that she would sell drugs?

6 A Yes.

7 Q For whom?

8 A For Mr. McCarty and myself.

9 Q And for you, as well?

10 A Yes.

11 Q At any point, did you and Mr. McCarty discuss  
12 Victoria Magee and where she would live?

13 A At the time, we discussed that they were going to  
14 move to the Oasis Motel. She was going to live with Mr.  
15 McCarty.

16 Q Where had she been previous to staying at the Oasis?

17 A To my knowledge, she was in the Sportsman's.

18 Q Where is the Oasis located?

19 A Las Vegas Boulevard and, I believe, it's St. Louis.

20 Q Would it be near the -- roughly near the  
21 Stratosphere?

22 A Yes.

23 Q And so, Mr. McCarty told you that he was going to  
24 move Victoria to the Oasis?

25 A That's correct.

1 Q For what purpose?

2 A Well, it's a different type of clientele on Las  
3 Vegas Boulevard. It's still a track for prostitution and drug  
4 sales, but it's more of an upscale clientele, I guess you  
5 would say.

6 Q Did you know a young lady by the name of Christina  
7 or Christine Combado?

8 A Yes.

9 Q Who was that?

10 A Another young lady that hung would with Red and  
11 Victoria that I met through Mr. McCarty and Mr. Malone.

12 Q What was the nature of her relationship with Mr.  
13 McCarty and Mr. Malone?

14 A At the time, I believe she was trying to start  
15 working for I guess the three of us, you know, selling drugs  
16 like the other two were. And she said she doesn't really  
17 prostitute, but she does what's known as a trick roll, where  
18 it's like, rob the John's.

19 Q When you say she would work for the three of you,  
20 can you explain that relationship for the jury?

21 A Well, she wasn't really -- I wouldn't say she was a  
22 girlfriend to any of us, but she would hang out with us. And  
23 if she knew somebody that needed some drugs or -- and or a --  
24 you know, a trick or whatever, she would pass on the  
25 information or make the arrangements.

1 Q And I guess the relationship that I'm -- that I'm --  
2 that I would like you to explain to the jury is the  
3 relationship that you had with Mr. McCarty and Mr. Malone in  
4 terms of people working for you. Can you describe that for  
5 us?

6 A Well, basically, to my knowledge, the three of us  
7 decided that we were mainly by ourselves in the Sportsman's,  
8 so that we would -- I guess you would call click together, or  
9 hang out together for more of a protection, to have a group,  
10 instead of being one -- you know, being an individual by  
11 yourself.

12 Q And what was the -- I mean, what was the purpose of  
13 this relationship? What would you do, what was your business?

14 A Well, we would sell drugs. You know, hang out and  
15 drink in the bar.

16 Q Back in May of 2006, do you remember giving members  
17 of law enforcement Romeo's cell phone number?

18 A I believe so.

19 Q Was that number 237-3308?

20 A Yes.

21 Q Do you recall what your cell phone number was at the  
22 time?

23 A Not off the top of my head. I believe it was a 408  
24 number, but I'm not sure.

25 Q Did you tell the police that your cell phone number

1 was 408-2845?

2 A That sounds correct.

3 Q Do you recall your home phone number at the time?

4 A I believe that was 453-9274.

5 Q I want to direct your attention to May 16th of 2006,  
6 which was a Tuesday.

7 A Okay.

8 Q Do you remember that day?

9 A Vaguely. Not specifically.

10 Q Do you recall at some point, Romeo, D-Roc and  
11 Christine coming to your house in the green Alero to pick you  
12 up?

13 A I do recall that. Mid to early afternoon, early  
14 evening.

15 Q Where did you -- did you eventually go somewhere?

16 A When we left my house, we went to the Denny's across  
17 the street from the Oasis Motel, right there by the  
18 Stratosphere.

19 Q What vehicle were you in?

20 A The green Alero.

21 Q Do you recall who was driving?

22 A On the way there, I was driving.

23 Q On the way from your house to the Denny's?

24 A Yes.

25 Q Where did you go after you went to the Denny's?

1           A     At the Denny's, Mr. McCarty and Red stayed there,  
2 and we went back to my house.

3           Q     So, at some point, you meet up with Red?

4           A     Yeah, we met up with Red and -- down there by the  
5 Denny's. We were in the parking lot, we seen the police roll  
6 by. We all got in the car, myself, Mr. Malone, and Christina  
7 and Victoria. And then we leave and go to my house. Mr.  
8 McCarty goes to meet Red down there in that same area.

9           Q     When you're talking about this area, what's over  
10 there? You talked about a Denny's. What area of Las Vegas  
11 are we talking about?

12          A     By Las Vegas Boulevard, right by the Stratosphere on  
13 the Strip.

14          Q     The Oasis Hotel?

15          A     Yes.

16          Q     So, you leave Romeo and Red there and the rest of  
17 you go somewhere else?

18          A     Yes, we went back to my house.

19          Q     Why do you go back to your house?

20          A     I had to go pick something up and make a delivery to  
21 one of my clients.

22          Q     What did you pick up?

23          A     Cocaine.

24          Q     And you at this time had stored that cocaine at your  
25 house?

1 A Yes.

2 Q At some point later that same evening, did you  
3 receive a phone call from Romeo?

4 A Yes, I did.

5 Q Tell us about that call. What was he asking for?

6 A He just called me and asked if I was coming out to  
7 play tonight.

8 Q I want to back up a little bit. Earlier in that  
9 evening, did he ask you to come pick him up at a hotel?

10 A Actually, yes. They called and said -- him and Red  
11 called and said they were at the Sahara Hotel at the valet  
12 entrance off of Paradise, will I come get them.

13 Q Where were you when you received that phone call?

14 A I believe I was at the 7-Eleven on Tropicana and  
15 Nellis.

16 Q So, what did you do upon receiving that phone call  
17 from Romeo?

18 A We proceeded to drive to the Sahara Hotel and pick  
19 up Romeo and Red.

20 Q Where do you go after you pick Romeo and Red up from  
21 the Sahara?

22 A Went back to my house.

23 Q Do you recall who was with you at that point?

24 A Oh, we were all in the car at that point.

25 Q When you say "we were all," can you explain who was



1 in the car for the jury?

2 A I was driving. I believe Mr. Malone, Christina, Red  
3 were in the backseat. And Romeo and the other lady were up  
4 front, in the front passenger seat.

5 Q Where do you go?

6 A We go to my house.

7 Q What happens when you get to your house?

8 A They drop me off. I tell them -- I go in the house.  
9 And they leave and said they were going out.

10 Q Did you go out with them?

11 A No.

12 Q All right. Now, I want to move to May 17th of 2006,  
13 a Wednesday. Were you -- did you attend Drug Court on that  
14 day?

15 A Yes, I did.

16 Q Can you explain for the jury what Drug Court is?

17 A Drug Court is a program they put you in when you  
18 have drug related offenses. And it's basically like a rehab  
19 program where they test you three times a week, and they try  
20 to keep -- to help you stay clean.

21 Q Why were you in Drug Court?

22 A Because I had a couple of drug cases for possession  
23 of cocaine and methamphetamine.

24 Q Have you, in fact, been convicted of drug offenses?

25 A Yes, I have.

1 Q On May 15th of 2006, were you adjudged guilty of  
2 possession of controlled substance, a felony?

3 A Yes.

4 Q And on February 24th of 2005, were you adjudged  
5 guilty of possession of controlled substance, a felony?

6 A Yes.

7 Q And so as part of your sentence on, I believe it was  
8 the earlier, the --

9 A The second case.

10 Q -- 2005 case --

11 A The second case.

12 Q Okay. Oh, it was the second case. You were --

13 A 2006.

14 Q -- attending Drug Court?

15 A Yes.

16 Q Were -- do you recall -- do you recall getting in  
17 trouble by Judge Lehman that night?

18 A Yes, I do.

19 Q Explain to the jury what happened. Judge Lehman  
20 presides over Drug Court?

21 A That's correct.

22 Q Or at the time he was; is that correct?

23 A That's correct.

24 Q And what did you do that caused Judge Lehman to  
25 become annoyed with you?

1           A     I tested positive on two drug tests that previous  
2 Friday and that Monday.

3           Q     So, what happened as a result of that?

4           A     He ordered me to, I believe it was four weekends in  
5 jail; 3,000 sentences, "I will not do drugs, drugs are bad,"  
6 or something to that effect. And he sent me to Relapse, which  
7 means you have to go to like extra Drug Court classes every  
8 day of the week because you tested positive.

9           Q     So, he actually ordered you to write sentences?

10          A     Yes, sir.

11          Q     3,000 sentences?

12          A     I believe it was 3,000 sentences.

13          Q     When you attended Drug Court, was it in the morning,  
14 in the day, or in the evening, do you recall?

15          A     It was in the afternoon. I believe it usually  
16 starts around 1:30. And then it just depends on -- you go in  
17 order of seniority. So, if you're new to Drug Court, you  
18 might be there for a few hours. If you're farther along,  
19 you'll be quick.

20          Q     Were there times that you attended Drug Court in the  
21 afternoon?

22          A     Yes.

23          Q     Were there times that you attended Drug Court in the  
24 evening as well?

25          A     Yes.

1 Q Now, on that same day, at some point, do you make  
2 your way to the Sportsman's?

3 A Yes.

4 Q Do you know two individuals, Corrina and Lynn?

5 A Yes, I do.

6 Q Who are Corrina and Lynn?

7 A Two young ladies that lived together in the  
8 Sportsman's and are, I guess, girlfriends. And we used to  
9 stay at their apartment, and sell drugs from their apartment,  
10 and hang out there when we were at the Sportsman's.

11 Q When you say "we," who are you referring to?

12 A Myself, Mr. McCarty, and Mr. Malone.

13 Q Were -- you said that Corrina and Lynn had a  
14 relationship between themselves?

15 A Yes, sir.

16 Q How were they referred to by the other people in the  
17 Sportsman's?

18 A The lesbians.

19 Q So, if somebody is referring to the lesbians' house  
20 or the lesbians, they're talking about Corrina and Lynn?

21 A Yes, most likely.

22 Q Do you recall a conversation that you heard at  
23 Corrina and Lynn's on that day about the girls being missing?

24 A Yes.

25 Q Explain -- tell the jury what you heard.

1           Q     Okay. On that afternoon, Mr. McCarty and Mr. Malone  
2 told me that they had dropped the girls off at the Hard Rock  
3 Hotel the night before, that Tuesday night, to go to work.  
4 And once they dropped them off, the girls disappeared and  
5 never came back. They didn't know where they were at, they  
6 hadn't heard from them.

7           Q     Was there any discussion about money, or money being  
8 owed?

9           A     I was told that the girls were given approximately  
10 \$300 in dope, and that they were supposed to be out selling  
11 dope and turning tricks. And when they disappeared, they  
12 didn't come back with any money, or any drugs, or anything  
13 else.

14          Q     Who was telling you this?

15          A     Mr. McCarty and Mr. Malone.

16          Q     Both of them together?

17          A     Yes, sir.

18          Q     Do you recall their demeanor or their affect when  
19 they were telling you this? Were they angry, were they calm,  
20 were they, who cares? I mean, can you give us some sense of  
21 what you recall?

22          A     I guess I would say mainly irritated. I wouldn't  
23 say completely mad or, you know, screaming or yelling or  
24 anything. But they seemed agitated that this had happened.

25          Q     At some point that evening, do you return to your

1 parents' house?

2 A Yes.

3 Q Do you recall that evening watching television with  
4 your dad?

5 A Um-hum. Yes, I --

6 Q Is that yes?

7 A -- do. Yes, sir.

8 Q Describe that evening for us as best you recall.

9 A I remember getting back to the house. I heated up a  
10 plate of food and I sat down. I think my dad was already in  
11 the middle of watching a TV show. I don't know, like just 15  
12 minutes into it or something of that nature. I sat down to  
13 eat and I was writing my sentences. And we just watched TV  
14 and talked back and forth about the shows we were watching.

15 Q You were writing the sentences that Judge Lehman had  
16 ordered you to write?

17 A Yes, sir.

18 Q Do you recall receiving a phone call from Jason  
19 McCarty that evening?

20 A Yes.

21 Q Tell us what you remember about that phone call?

22 A To my knowledge, once again, he asked, was I coming  
23 out to play tonight. I told him, no, I'm not coming out, I'm  
24 writing sentences.

25 Q Do you remember about what time that phone call was?

1           A     I believe about 8:30 at night, somewhere right  
2 around there.

3           Q     And the call was to ask if you would come out and  
4 play?

5           A     Yes, sir.

6           Q     What -- I mean, how did you take that? What did  
7 that mean?

8           A     Just, am I going to come hang out. Am I going to,  
9 you know, go to the Sportsman's and drink or sell drugs, or  
10 whatever that night.

11          Q     What did you tell him?

12          A     I told him, no, I can't, I have to write sentences  
13 for Drug Court.

14          Q     Tell us what else happens that evening?

15          A     After that I write sentences until about 11:00  
16 o'clock. My father goes to bed, and then I go upstairs and go  
17 to bed probably around 11:30, 12:00 o'clock.

18          Q     And then what happens?

19          A     Then, I receive a phone call at about 1:00, 1:30 in  
20 the morning from Mr. McCarty. He tells me they found the  
21 girls, that they're on the freeway on the way to a spot where  
22 they put in some work, did I want to come out there.

23          Q     Okay. Let's back up just a little bit. He said  
24 that he was on the freeway going to a spot where they had put  
25 up some work?

1 A Putting in some work, yes.

2 Q Put in some work. What did that mean?

3 A To me, that meant that they were referring to the  
4 spot where they had told me about, where they had taken Red  
5 before and beat her up.

6 Q So, let's back up even more. At some point, was  
7 there a discussion where you learned that Red had been taken  
8 out to the desert and beaten up?

9 A Yes.

10 Q Who told you that?

11 A Mr. McCarty and Mr. Malone were both there. I  
12 believe Mr. McCarty was the one that actually told me.

13 Q When was that?

14 A I don't recall exactly. I can't really say for  
15 sure.

16 Q Was it within a day or two? Was it a week earlier?  
17 Can you give us some --

18 A I'd probably say a couple days earlier, prior to  
19 this.

20 Q So, you had learned that Red had been taken out to  
21 an area in the desert and beaten up?

22 A Yes, sir.

23 Q And you took the conversation that you had with Mr.  
24 McCarty as telling you that the girls had been found and they  
25 were going out to that same location?



1 A Correct.

2 Q What did he -- why was he calling you and telling  
3 you that?

4 A He said to me that he knew I was upset, as well,  
5 about the drugs being missing or whatnot, that I might want to  
6 see them get beat up or whatever, or I think the words he used  
7 were "dealt with."

8 Q Were you upset?

9 A Not really.

10 Q And what else happened? What was your response to  
11 him at asking you if you wanted to come out there?

12 A I told him, no. That it was 1:30 in the morning,  
13 and I was getting ready to go to work soon and I can't come  
14 out there.

15 Q Did that conversation eventually conclude?

16 A Yeah.

17 Q Was -- were there more conversations that you had  
18 with Mr. McCarty?

19 A Yes, sir.

20 Q Was there a conversation that you had with respect  
21 to your vehicle?

22 A Yes, there was.

23 Q Tell us about that conversation.

24 A Mr. McCarty called me back, told me they were going  
25 to leave my car across the Hoover Dam in Arizona, and either

1 ship it back on a flatbed truck or I could come and pick it  
2 up.

3 Q Which car?

4 A The green Alero.

5 Q The one that he would drive during this period of  
6 time?

7 A Yes.

8 Q Were you concerned about that?

9 A Yes.

10 Q Why?

11 A It was a new car. I was still making payments on  
12 it. I told him he wasn't taking it anywhere across state  
13 lines.

14 Q So, what happened?

15 A I eventually decided to go pick it up.

16 Q So, you make the decision to leave your parents'  
17 house?

18 A Yes.

19 Q Tell us what you did.

20 A I left my parents house, I can't say for sure, about  
21 1:30, 1:45, somewhere in there. I went to the gas station on  
22 the corner of Charleston and Nellis, stopped and got gas. Got  
23 on the 95 freeway, headed southbound, where I proceeded to  
24 have two or three more phone calls with Mr. McCarty to get  
25 directions exactly to where they were at.

1 Q I want to talk about getting gas. Where did you get  
2 gas?

3 A There's a Terrible's Gas Station on the corner of  
4 Charleston and Nellis, the northwest corner.

5 Q Explain for the jury what you did when you went  
6 there.

7 A I pulled up to the gas pump, got out of the car,  
8 walked inside. I believe I purchased \$10 in gas, I think, I'm  
9 not sure. Walked back out, pumped the gas, and left.

10 Q So, you actually went into the store portion of that  
11 Terrible's, or --

12 A Yes, sir.

13 Q What car were you driving?

14 A The white Accord.

15 Q I'm going to show you State's Exhibit 153. That's  
16 the vehicle that you were driving?

17 A Yes, sir.

18 Q What was the -- what was the condition of the motor  
19 of this vehicle at the time?

20 A It ran. But because it was more set up toward like  
21 a racing car because, you know, around that time that's what  
22 was big. The exhaust had a -- it would puff like black or  
23 gray smoke sometimes. And it would not -- sometimes it  
24 wouldn't start right and it would stall out.

25 Q Did you have any concerns about this car making it

1 out to where Mr. McCarty eventually indicated to you that he  
2 was?

3 A No.

4 Q But there were some mechanical issues, I guess it's  
5 fair to say, with the vehicle?

6 A Yes.

7 Q Okay. Do you remember how long you were at that  
8 Terrible's for?

9 A No, I don't.

10 Q Just long enough to get gas?

11 A Yes.

12 Q Okay. Now, you mentioned that there were other  
13 conversations that you had with Mr. McCarty that evening,  
14 explaining to you where he was; is that correct?

15 A That's correct.

16 Q Explain for the jury kind of how that happened.  
17 Explain those telephone calls.

18 A Well, he called me. He told me they were at -- I  
19 believe it was Exit 76A, out there by Wagonwheel. So, when I  
20 got out there, I didn't see the exit he was talking about. I  
21 had exited on the next exit. There was a 76 Station right  
22 there.

23 Q So, you passed the exit?

24 A Yes. I'm talking to Mr. McCarty on the phone. He's  
25 telling me, you know, you passed it, you need to turn around

1 and come back. So, I basically get to Railroad Pass, the  
2 Railroad Pass Casino out there, go in that casino, turn  
3 around, come back. I get off the freeway again at Exit 76 --  
4 one of the Exit 76's, either A or B, I forget. And then get  
5 back on the freeway going southbound again, and I make the  
6 first right turn.

7 He calls me when I'm back on the freeway, because we  
8 had hung up, and says, "I think I see your highlights right  
9 now. Make this right turn, I see you." I make a right turn  
10 on the access road, and pull and park right there where Mr.  
11 McCarty instructs me to.

12 Q Describe that area for us.

13 A When I first made the right turn onto the street,  
14 I'd say it goes about, maybe 30 yards, and curves to the  
15 right. There's a construction trailer right there on the  
16 right hand side. It looked like they were starting to build  
17 another housing project or whatever. On the other side of the  
18 street was a desert lot, where it looked like they were  
19 starting to flatten out the land. And they had like a pile of  
20 dirt where they were moving the dirt out of the way, off to  
21 the left.

22 Q I'm going to show you State's Exhibit number 39. Do  
23 you recognize that?

24 A Yes, that's the construction trailer right there.

25 Q So, when you pull to the area that Mr. McCarty

1 directs you to, you're in the area of this construction  
2 trailer?

3 A Yes, sir.

4 Q And I'm going to show you State's Exhibit No. 43.  
5 Do you recognize that?

6 A That's the dirt lot across the street from the  
7 trailer.

8 Q Do you eventually pull your car in, the white  
9 vehicle, and stop in that area?

10 A Yes, sir. I turned that right corner where that  
11 fire hydrant is at, I flip a U-turn, and park right in front  
12 of the fire hydrant right there on the corner.

13 Q Describe for us what's going on as you're sitting  
14 there, parked at that location.

15 A I'm just sitting there waiting on them. It's pitch  
16 black at night. Mr. McCarty calls me back again. He tells  
17 me, "Do you realize that you're not involved in a beating this  
18 time? You're involved in two murders now."

19 Q He told you that, "Now you're involved in two  
20 murders?"

21 A That's what he said to me, yes.

22 Q And this is Mr. McCarty talking?

23 A Yes. He also tells me -- I forget, there's a little  
24 bit of conversation in there. And then he tells me, "She's  
25 dead." I'm like -- and he doesn't tell me who, or what. He

1 just says, "She's dead." So I'm like, "Okay." You know, I'm  
2 telling him, "Hurry up, let's go. You guys -- you know,  
3 you're out there taking forever. I don't even know what  
4 you're doing. But hurry up, let's get out of here."

5 I hear Mr. Malone's voice in the background. He  
6 tells Mr. McCarty, "She's not dead yet." Mr. McCarty tells  
7 him, "Hit her with a club or something." And I hear Mr.  
8 Malone say, "The club's broken, we only brought one." Mr.  
9 McCarty then says, "Just hit the bitch in the head with a  
10 rock. Let's go." And that was the end of that conversation.

11 Q So, as you're on the phone with Mr. McCarty, he's  
12 having a conversation with Mr. Malone?

13 A That's correct.

14 Q How long did that conversation occur?

15 A I'd probably say it was about -- I would actually  
16 say it was about four or five conversations, lasting anywhere  
17 from five to eight minutes apiece, something right around  
18 there. Not very long.

19 Q So, what happened after the conversation where he's  
20 talking about hitting her with a rock, or hitting her in the  
21 head, or words to that effect?

22 A We hang up again. And then Mr. McCarty calls me  
23 back probably about five minutes later. He asks me, can I see  
24 the trunk lights or the taillights from the green Alero, that  
25 they're cleaning up, they're be out in a minute. And then

1 they proceed to pull out that desert lot right there, where  
2 you can see the -- and pull out in front of me and tell me to  
3 follow him.

4 Q Could you -- when he asked you, could you see the  
5 headlights, could you see where he was?

6 A No, I couldn't.

7 Q But at some point, what do you see? What's the  
8 first thing you see of another vehicle out there?

9 A I see their headlights pulling out towards me, as I  
10 said, right where I put that green line. They pulled out  
11 right there.

12 Q What happens when they get to that point?

13 A They pull up right in front of me and they say,  
14 "Follow me." And they wave me on. And I proceed to -- they  
15 pulled out on the freeway and I followed behind them.

16 Q When you say "they," who was talking to you?

17 A Mr. McCarty was in the driver's seat, waving me on.  
18 Mr. Malone was in the passenger seat.

19 Q So, when they're -- when someone is saying "follow  
20 me," it's Mr. McCarty who's saying that?

21 A Right.

22 Q Where do you go when they ask you to follow them?

23 A We proceed south on the 95 freeway. We go through  
24 Boulder City. And then drive through Boulder City, and then  
25 we drive up towards Hoover Dam, past the Hacienda Hotel and



1 Casino out there.

2 Q During the course of driving out there, is there any  
3 conversation between you and Mr. McCarty?

4 A I don't believe on the drive there, no.

5 Q So, you're just following them basically?

6 A Yes.

7 Q At some point, do you stop?

8 A Yes. We -- as soon as we passed the Hacienda Hotel  
9 and Casino out there, we probably drive another 50 feet or so,  
10 and flip a U-turn and park on the shoulder of the road there.

11 Q Can you describe that area?

12 A On the one side, on the -- well, on the south side  
13 of the street, I guess I would say, there's a guardrail with a  
14 culvert, with some rocks and dirt, and a freeway overpass  
15 right out there.

16 And on the side of the street we parked on there's a  
17 hill, looking similar to this hill right here, but with a  
18 barbed wire fence and some signs that say like, so many miles  
19 to Hoover Dam, so many miles back to Las Vegas, whatever.  
20 And --.

21 Q All right.

22 MR. LALLI: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 BY MR. LALLI:

25 Q Mr. Herb, I'm going to show you two photos. One is

1 170, the other is 179. Do you recognize what's depicted in  
2 those photos?

3 A Yes, sir. This is the culvert with the overpass and  
4 the guardrail --

5 Q And --

6 A -- on the south side of the street.

7 Q And you're referring to 179?

8 A And then the picture on top there is the one where  
9 we parked -- that's the side of the street we parked the cars  
10 on, with the signs.

11 Q And you're referring to 170?

12 A That's correct.

13 Q With the exception of the vehicle that's shown in  
14 170, are those fair and accurate depictions of that area of  
15 Clark County near the Hoover Dam?

16 A Yes, they are.

17 MR. LALLI: Your Honor, I'd move for the admission  
18 of State's proposed 170 and 179.

19 MR. CANO: No objection, Your Honor.

20 THE COURT: All right. They will be admitted.

21 (State's Exhibits 170 and 179 are admitted)

22 THE COURT: You may publish.

23 BY MR. LALLI:

24 Q Mr. Herb, with respect to 170, can you explain for  
25 the jury what that is?

1           A     That's a picture of the side of the road where we  
2 parked the cars at, where some of the evidence was getting  
3 [sic] rid of. The Lake Mead information sign was actually  
4 right in front of me. That's where I parked the white car,  
5 and the green Alero was parked right behind me, by that sign  
6 right there.

7           Q     What are we seeing in State's Exhibit 179?

8           A     That's the overpass and the guardrail with the rocky  
9 culvert there, on the other side of the street from the last  
10 picture.

11          Q     So, you indicated for the jury that you in the white  
12 car, and Mr. Malone and McCarty in the green car, stopped in  
13 this area. Describe for us what happened when you got there.

14          A     Once they pulled in behind me, Mr. Malone and Mr.  
15 McCarty got out of the car. They popped the trunk on the  
16 Alero. And they went back to the Alero, and Mr. Malone  
17 proceeded start pulling some rocks out of the car, and  
18 throwing them over this guardrail on that side by the street.

19          Q     Okay. What -- describe the rocks. I mean, were  
20 they big boulders, small? Give us a sense of --

21          A     I would say, not boulder -- like giant boulders, but  
22 you know, nice sized rocks.

23          Q     And you're indicating something about --

24          A     Takes like two hands to hold. I don't know how you  
25 would judge that.

1 Q Maybe ten inches? Your hands were about maybe ten  
2 inches apart?

3 A Maybe. Possibly about that, eight to ten inches  
4 about.

5 Q And where were these rocks coming from?

6 A Out of the trunk of the Alero.

7 Q Do you recall how many rocks Mr. Malone was  
8 removing?

9 A No, not exactly. I would say probably about three.  
10 But I'm not positive.

11 Q What was he doing with the rocks?

12 A He was throwing them over the guardrail that you see  
13 in this picture here.

14 Q What was Mr. McCarty doing?

15 A He walked up to the Accord, and was talking to me in  
16 the window, telling me to get out the car. And I was like,  
17 "No, I'm just going to sit right here." He said, "Stop acting  
18 like a bitch and get out the car." So, I got out the car and  
19 talked to him.

20 He told me that Mr. Malone had wanted to kill me as  
21 well, because I was a loose end. But that he had talked him  
22 out of it, because he said I was down for them, I was a rider,  
23 I wasn't going to tell on them or snitch or anything. And  
24 then, I walked to the trunk of the Alero with Mr. McCarty. He  
25 proceeded to take I guess what looked like a serrated edge,

1 wood-handled steak knife out of the trunk.

2 Q When you say "he", who are you referring to?

3 A Mr. McCarty. And he walked into the desert in the  
4 other picture on the other side of the street behind the hill.  
5 And I couldn't see him. He was gone for, I don't know, five  
6 to eight minutes, something of that nature.

7 Mr. Malone handed me the copper head of a golf club,  
8 it looked like a putter, and told me to get rid of this. I  
9 told him I was not touching it. I wasn't putting fingerprints  
10 on anything. He grabbed what looked like a white camisole  
11 shirt or cloth out of the trunk, wrapped it around the golf  
12 club head and handed it to me and said, "Here, get rid of it."

13 Q So, you're describing a different area? Not over  
14 the guardrail area, but an area --

15 A No.

16 Q -- on the other side of the other side --

17 A Right behind this, yes.

18 Q --of the road?

19 A It was to the right of this picture you're showing  
20 me now.

21 MR. LALLI: May I approach?

22 THE COURT: Yes.

23 BY MR. LALLI:

24 Q Mr. Herb, I'm going to show you what we've marked as  
25 State's proposed 177 for identification purposes. Is that

1 what the other side of the street looks like?

2 A Yes, it is.

3 Q Is that a fair and accurate depiction?

4 A Yes, it is.

5 MR. LALLI: Your Honor, move for the admission of  
6 State's proposed 171.

7 MR. CANO: No objection, Your Honor.

8 THE COURT: It will be admitted.

9 (State's Exhibit 171 is admitted)

10 BY MR. LALLI:

11 Q So, let's back up a little bit. You had talked  
12 about Mr. McCarty taking a knife; is that correct?

13 A That's correct.

14 Q Did you see where Mr. McCarty went with the knife?

15 A He walked off -- in this picture here, he walked off  
16 in the desert this way, out here. There's like a -- there's a  
17 three-strand or four-strand barbed wire fence out there. And  
18 a good section of it is down where you can walk through it, or  
19 even drive a car through it. They walked up that way and went  
20 behind this hill you see up here. And I didn't see what he  
21 did after that.

22 Q Out in the desert, and he took this knife with him?

23 A Yes, he did.

24 Q When he came back, did he have the knife with him?

25 A No, he didn't.

1           Q     Now, you indicated that the defendant handed you a  
2 golf club? Or a --

3           A     That's correct.

4           Q     Describe for us what you did with that.

5           A     I walked off in this same direction out in the  
6 desert, and threw it towards the barbed wire fence, off to the  
7 left.

8           Q     Do you have a discussion about clothing, and  
9 clothing that the girls were wearing?

10          A     Yes.

11          Q     What do you remember of that?

12          A     I remember Mr. McCarty and Mr. Malone telling me  
13 they were going to burn the clothes.

14          Q     Whose clothes?

15          A     The girls' clothes.

16          Q     Where does this -- where do you have this  
17 conversation?

18          A     I believe the first time, we were out here on the  
19 side of the road.

20          Q     While you were out there in that location, do you  
21 have a discussion about alibis?

22          A     Yes, we do.

23          Q     Explain for the jury that discussion.

24          A     Mr. McCarty asked me to say that he was at my house  
25 all night long with me. I told him that my parents wouldn't

1 lie for him. They wouldn't even lie for me. So, he said he  
2 would figure out another alibi.

3 Q So, he wanted you to -- or your parents to say that  
4 he, Mr. McCarty, had been with them for the evening?

5 A Correct.

6 Q And you told him that wasn't going to work?

7 A No, that wasn't going to work at all.

8 Q So, what did he say he would do as a result of that?

9 A He said he would figure something else out. He  
10 didn't say at that time.

11 Q What about the defendant, Mr. Malone? Was there any  
12 discussion of alibi with him?

13 A Yes, there was.

14 Q What do you recall of that?

15 A Mr. Malone made the comment that his wife would be  
16 his alibi. She would say he was with her all night.

17 A How long do you recall being out in this desert area  
18 that evening?

19 A Probably -- maybe 20, 30 minutes.

20 Q At some point, do you both -- all three of you  
21 actually, get back in your vehicles and start heading back to  
22 Las Vegas?

23 A Yes, we do.

24 Q Explain for us who gets in which vehicle.

25 A I'm in the Accord. Mr. Malone and Mr. McCarty are



1 still in the Alero.

2 Q Where do you go?

3 A We drive back to the freeway entrance. We get a  
4 little lost at first, then we get on the freeway, headed back  
5 to town. And we get off the freeway, I believe it was right  
6 there by 76A again, that 76 Station, I mentioned earlier, and  
7 we stopped right there.

8 Q What happens at the 76 Station?

9 A I believe Mr. Malone throws a grocery bag tied in a  
10 knot into a dumpster right there. Mr. McCarty asked me to go  
11 get a bottle of water from the store so that he can wash his  
12 hands off.

13 Q Let me just stop there for a second. You indicated  
14 that Mr. Malone threw something away?

15 A Yes.

16 Q Did you see -- did you see what it was that he had?

17 A I did not see what was in the bag. It was like a  
18 Smith's grocery bag, like double-bagged and tied in a knot,  
19 and he threw it in the dumpster.

20 Q Where did he get it from?

21 A Out of the Alero.

22 Q Do you know where, with more specificity? Was it in  
23 the trunk? Was it in the --

24 A I'm not positive.

25 Q So at some point, he gets out of the Alero, and he's

1 got this bag with him?

2 A Um-hum.

3 Q Is that yes?

4 A Yes.

5 Q And he throws it where?

6 A In the dumpster right there at the 76 Station.

7 Q You indicated that Mr. McCarty asked you to do  
8 something?

9 A At that time, Mr. McCarty asked me to go in the  
10 store, buy a bottle of water so he can wash his hands off. I  
11 do that for him. When I come back out, he tells me that he  
12 needs money to change the tires on the Alero so that the tires  
13 don't match the tire prints at the crime scene.

14 Q With respect to Mr. McCarty washing his hands off,  
15 did you see his hands?

16 A Somewhat. It was pretty dark out there, but you  
17 could still see.

18 Q What did you see?

19 A He had some blood splatter on his hands. Not a lot.  
20 When he rinsed it off, it fell on his shoes.

21 Q At -- what fell on his shoes?

22 A The water drops and the blood drops fell on his --  
23 he had some white tennis shoes on.

24 Q You talked about a conversation regarding tires?

25 A Yes, sir.

1 Q Who was a participant in that conversation?

2 A Myself and Mr. McCarty.

3 Q Tell us about that conversation.

4 A As I stated, he said that we needed to change the  
5 tires on the Alero so that the tire prints wouldn't match the  
6 tire tracks in the desert at the crime scene.

7 Q So, what did he want you to do?

8 A He wanted me to give him the money to purchase new  
9 tires.

10 Q So, what happened?

11 A I gave him \$200 to purchase the new tires, and to  
12 get a new pair of shoes and some clothes to match what he had  
13 on.

14 Q Where -- did you produce some money right then?

15 A Yes.

16 Q So, you had \$200 on your person?

17 A Oh, yes.

18 Q And you gave it to Mr. McCarty?

19 A That's correct.

20 Q You said that he wanted clothing to match. Just,  
21 explain that for us.

22 A Because he was wearing a polo shirt and some blue  
23 jeans. And I think the shoes were white, and I believe they  
24 had red trim on them. You know, like red little trim on them,  
25 shoe lace trim and all that. And because the blood spattered

1 on the clothes, so he needed a new outfit.

2 Q You said that he was concerned with the clothing  
3 matching. Explain that for us.

4 A Just having the same -- basically the same outfit.  
5 That way they can't say that whatever clothes that witnesses  
6 seen him in or what might have you, that they can't say he got  
7 rid of that outfit, he don't have it anymore.

8 Q How was Mr. Malone dressed?

9 A At that time -- at the start of the night, I believe  
10 he was wearing some black, long shorts, like I guess you call  
11 them Bermuda shorts, like down past your knee a little bit.  
12 And he had on some -- I think they were work boots, or like  
13 construction boots of some kind. And he had a -- I want to  
14 say a white long-sleeved shirt, and another shirt over the top  
15 of that.

16 Q What color was the shirt on top?

17 A I think it was black. I'm not positive though.

18 Q And at the time that you were having this  
19 conversation with Mr. Malone and Mr. McCarty at this gas  
20 station, how is Mr. Malone dressed?

21 A I believe at this time, he had no shirt on at all.

22 Q What had happened to his shirt?

23 A I can't say for sure.

24 Q But his shirt was off?

25 A Yes.

1 Q Do you know why?

2 A Not to my knowledge, no.

3 Q What happens next, after you have these discussions  
4 about the tires on the vehicle, Mr. Malone is throwing  
5 something away? What happens -- what happens next?

6 A After that point, Mr. McCarty asked me to give Mr.  
7 Malone a ride home. And Mr. McCarty takes the Alero, and says  
8 he's going back to the Sportsman's. He leaves --

9 Q Do you actually see Mr. McCarty leave?

10 A Yes.

11 Q So, now what happens with you and Mr. Malone?

12 A Mr. Malone and myself get into the white car. It  
13 doesn't want to start right away, it takes a few minutes to  
14 start. And then myself and Mr. Malone drive back to my house,  
15 because I had my alarm clock on because I was going to work in  
16 the morning. So, I get to my house. I go turn the alarm  
17 clock off. Come back out, and take Mr. Malone to his house.

18 Q When you go back to your house, and you need to go  
19 inside to turn your alarm clock off, does Mr. Malone go in  
20 with you?

21 A No.

22 Q Where does he --

23 A He stays in the white car.

24 Q How long do you -- so, how long are you -- describe  
25 for us what happens when you're inside; how long you're there,

1 what do you do, that sort of thing.

2 A I was probably there maybe five minutes. I run  
3 upstairs. My alarm clock's going off already, I turned it  
4 off. I'm already pretty much dressed. I can wear what I have  
5 on at work, so I don't have to change clothes or anything like  
6 that. Then I go back to the car, and take Mr. Malone to his  
7 house.

8 Q Was anyone awake in your house?

9 A Not yet. They were just starting to wake up to get  
10 ready for work. So, no. No one was awake yet.

11 Q So, you indicate that you take Mr. Malone to his  
12 house?

13 A That's correct.

14 Q Where approximately was that?

15 A Off of Lake Mead and Martin Luther King.

16 Q Do you actually drive up to his house?

17 A Yes.

18 Q And do you remember what his house looked like?

19 A It looks like a small, one-story apartment complex.  
20 Like duplexes almost, you know, like apartment homes.

21 Q What happens when you get to Mr. Malone's house?

22 A I pulled up right in front. There's a dumpster  
23 right here against the building, close to the street. He  
24 throws the bag in that dumpster, and then he goes in the  
25 house. I leave, and go to McDonald's right down the corner.

1           Q     With respect to the bag that you see Mr. Malone  
2 throw away, tell us about that. Where did that come from?

3           A     He had got that out of the green car, and brought it  
4 with him in the white car. And to my knowledge, he had said  
5 it was his shoes, that he was throwing -- getting rid of his  
6 shoes.

7           Q     What kind of shoes did he have on as he's sitting in  
8 your car?

9           A     I believe they were some sort of sandals or  
10 flip-flops, something. I don't remember exactly.

11          Q     But he indicated that there were shoes in the bag?

12          A     Yeah, the work boots, I assume. I didn't actually  
13 see inside the bag, so I can't say for sure.

14          Q     So, you don't actually know what he was throwing  
15 away, other than what he was telling you?

16          A     Correct.

17          Q     He threw these things away there at his apartment  
18 complex?

19          A     That's correct.

20          Q     You indicate that you go to McDonald's?

21          A     Yes.

22          Q     Where is the McDonald's located?

23          A     Right on the corner of MLK and Martin Luther King.

24          Q     Where do you go from there?

25          A     I go to Rainbow and Alta to pick up my friend Lenny,

1 who I give a ride to work every day.

2 Q Where do you go after you get Lenny?

3 A We go to work at Creel Printing.

4 Q All right. When -- after this happened, do you  
5 learn that Mr. McCarty is beaten up?

6 A Yes.

7 Q How do you learn that?

8 A From Mr. McCarty.

9 Q Where are you when you learn that?

10 A I believe I was at my house when he first told me  
11 about it.

12 Q Is -- was he at your house also? Or --

13 A No, he was on the phone.

14 Q So, he explains to you that he had been beaten up?

15 A Actually, I think what he told me was he had been  
16 jumped at the Sportsman's.

17 Q You mentioned Corrina and Lynn?

18 A Yes.

19 Q Were -- was there ever any conversation about  
20 Corrina and Lynn related to the evening that you had met Mr.  
21 McCarty and Mr. Malone in the desert, and gone out to Boulder  
22 City?

23 A Not at that time. Not at that time or prior to that  
24 time, no.

25 Q At some point thereafter, is there some discussion



1 about Corrina and Lynn?

2 A Yes.

3 Q And an alibi?

4 A Yes. They were going to be Mr. McCarty's new alibi,  
5 since I couldn't be his alibi.

6 Q Explain how that came about. Where were you when  
7 you learned that?

8 A We were there at --

9 Q Where are you getting that information from?

10 A We were at Corrina and Lynn's house. Mr. McCarty  
11 had told me that the girls were going to be his new alibi.  
12 They were going to say he was there, and that he had kept  
13 telling them what times to say and everything so they'd have  
14 the time frames right and all that.

15 Q Were you -- so, you're having this conversation with  
16 Mr. McCarty?

17 A That's correct.

18 Q And where are you when you're having this  
19 conversation?

20 A We're at Corrina and Lynn's house.

21 Q Are Corrina and Lynn present?

22 A I believe so.

23 Q And so Mr. McCarty's having a conversation with  
24 them?

25 A He was actually having a conversation with me. They

1 were just in the room.

2 Q And he was talking about the girls being his alibi?

3 A That's correct.

4 Q At some point, are you at Corrina and Lynn's  
5 apartment with both Mr. McCarty and Mr. Malone, where they  
6 kind of talk about what happened to the girls?

7 A Yes.

8 Q When was that?

9 A I believe that was a couple days -- I want to say  
10 like Thursday or Friday. It was a couple days after the  
11 incident.

12 Q You indicate that Mr. Malone and Mr. McCarty are  
13 both present?

14 A That's correct.

15 Q Who else was present?

16 A I believe Corrina and Lynn were both there.

17 Q Explain that conversation -- describe that  
18 conversation for us.

19 A Basically, we were just discussing what's going on.  
20 And we were telling each other not to talk about it on the  
21 cell phones, or in the cars, or anywhere else.

22 Q Who's saying that?

23 A Myself, Mr. McCarty, and Mr. Malone.

24 Q You were all saying, "Let's not talk about this?"

25 A Right.

1 Q And what else is being discussed?

2 A They're discussing some other alibis. And they're  
3 also discussing -- he was saying that he had changed the  
4 tires, and that he was going to -- because he had beaten up,  
5 he had paperwork from the ambulance driver saying that he was  
6 beat up and he was bloody. That that was going to be his  
7 alibi, that he had gotten beat up, that's why his clothes were  
8 bloody, and he was with the girls at their house.

9 Q Who was saying that?

10 A Mr. McCarty.

11 Q Was there any discussion about what had happened to  
12 the girls, how Mr. McCarty and Mr. Malone had encountered the  
13 girls, or where they had encountered the girls?

14 A The only thing I was told to my knowledge was they  
15 found the girls, had called them, and they were at some  
16 guy's --

17 MR. CANO: Your Honor, if we can get a little  
18 clarification --

19 THE WITNESS: -- house named Black.

20 MR. CANO: -- as to who's speaking.

21 THE COURT: I agree. Go ahead.

22 MR. LALLI: We will.

23 THE COURT: All right.

24 BY MR. LALLI:

25 Q So, you were about to say that they had found the

1 girls somewhere. Where?

2 A At some guy named Black's house, down on Fremont  
3 Street.

4 Q Who was telling you this?

5 A Mr. McCarty.

6 Q Was Mr. Malone present?

7 A He was there, yes.

8 Q So, Mr. McCarty's doing the talking?

9 A That's correct.

10 Q And they -- he told you that they had found the  
11 girls at some guy named Black's apartment?

12 A Yes.

13 Q Do you know Black?

14 A No.

15 Q Do they describe what happened to the girls when  
16 they were out in that desert area?

17 A No, they do not.

18 Q Was there any talk about clothing?

19 A The only other talk about clothing at that time was  
20 that they had said they took the girls' clothes from them so  
21 they couldn't leave the desert.

22 Q Who said that?

23 A I believe Mr. McCarty said that as well.

24 Q The girls' clothing was taken so that they couldn't  
25 leave the desert?

1 A That's correct.

2 Q How would that work?

3 A They were out there naked, so that they would just  
4 be out there for a while. They couldn't, you know, go  
5 anywhere or get help, I guess.

6 Q Now, at some point, the fact that these girls'  
7 bodies were discovered out in the desert in Henderson, was  
8 that a matter of something in the news?

9 A Yes. There was a -- I believe the news -- that  
10 weekend after the incident, my first weekend in jail, the news  
11 made a mention that they had found two females, or two girls  
12 out in the desert. They didn't say who, or when, or any of  
13 that. Just that they had found two females in the desert.

14 Q After that story is on the news, do you have a  
15 discussion with Mr. McCarty and Mr. Malone about the fact that  
16 it was reported on the news?

17 A I do. I don't remember if Mr. Malone was there or  
18 not. I think he was. But I did have a conversation with Mr.  
19 McCarty about this, yes.

20 Q Where were you when you were having the discussion?

21 A I was just getting -- I think he was picking me up  
22 from getting released from county jail, from my weekend in  
23 jail.

24 Q And what sort of a conversation is it?

25 A Just I believe he said -- he picks me up. And he

1 says something to the effect of, "Did you hear the girls were  
2 found?" And I was like, "Huh?" He's like, "Yeah, like it was  
3 on the news. The girls were found." And that's all the  
4 information. They didn't really give any other information.

5 Q At some point, are you contacted by members of law  
6 enforcement?

7 A Yes.

8 Q Where?

9 A They come to my house, actually.

10 Q Your parents' house?

11 A Yes, my parents' house.

12 Q Do you recall who came?

13 A I don't know their names, but it was two detectives  
14 from Henderson.

15 Q Do you remember when it was?

16 A I believe the first time was early in the afternoon,  
17 1:00 or 2:00 o'clock, something of that nature. I don't  
18 remember exactly.

19 Q Was it a week after this happened, two weeks after  
20 this happened?

21 A I believe it was a week, week and a half.

22 Q So, what happens when the detectives come to your  
23 parents' house?

24 A They question me for about two hours. Their initial  
25 statement to me is they want to question me about a beating,

1 or an assault case of some nature. And they start to ask me  
2 if I know the girls. And they ask me by their government --  
3 by their full names, and I don't know their full names. So, I  
4 was just -- you know, I don't know them. And I didn't really  
5 cooperate with them at all at first. I was like, I don't know  
6 anything.

7 Q You said you didn't cooperate with them. Why didn't  
8 you cooperate with them?

9 A Just because in the nature of my business and what  
10 we used to do then, you don't talk to the police.

11 Q Did you, in fact, deny knowing anything? Flat out  
12 just --

13 A Yes.

14 Q -- just lie to them, and say, "I don't know anything  
15 about this," at some point?

16 A Yes.

17 Q Do the police have another conversation with you?

18 A Yes. Actually, they leave. And they come back I  
19 want to say about three hours later, and question me again for  
20 another two or three hours.

21 Q And what happens at that point?

22 A After that I start to give them a little more  
23 information. And then they -- after that conversation for  
24 three hours, they arrest me as an accessory.

25 Q They arrest you?

1 A Yes.

2 Q And you said as an accessory?

3 A Yes.

4 Q Do you know if -- is that the charge they told you  
5 that they were arresting you for, or were you actually  
6 arrested for more serious charges than that?

7 A Initially, they arrested me for all the charges that  
8 the defendant is charged with -- or was charged with at the  
9 time. I don't know, you know. And they charged me with  
10 everything.

11 Q And what happens?

12 A They take me to jail. I contact my lawyer. I guess  
13 the police -- or the DA and the lawyer communicate. And then  
14 my lawyer talks to me, and tells me to cooperate.

15 Q With who?

16 A And that's what I do.

17 Q The police?

18 A Yes.

19 Q Do you eventually cooperate with the police?

20 A Yes, I do.

21 Q Did you -- in cooperating with the police, did you  
22 take them somewhere?

23 A Yes, I do.

24 Q Where were you -- let's talk about that. Where were  
25 you when you took the police somewhere? Obviously, you were



1 with them. But at the time just immediately prior to that,  
2 where were you?

3 A I was in Henderson County Jail.

4 Q So, you're sitting in jail. Your lawyer has told  
5 you, you know, cooperate with the police. So, what happens?  
6 What do you do?

7 A They put me in chains and in the back of the car,  
8 and I proceed to take the police out to this location here,  
9 the two pictures you just showed me.

10 Q So, right now, you're looking at State's Exhibit  
11 number 171. You take them out to this area of the desert in  
12 Boulder City, or just beyond Boulder City?

13 A Yes, sir.

14 Q What happens when you get out there?

15 A They ask me to basically tell him what you asked me  
16 to describe, you know, what happened here. And they leave me  
17 in the car, and they proceed to walk around that area, looking  
18 for evidence.

19 Q How many police officers are out there, do you  
20 remember?

21 A There was, I believe, three total.

22 Q Do they find any evidence?

23 A Yes, they do.

24 Q What do they find?

25 A One officer goes to the other side of the street

1 with the overpass, where the rocks and stuff are at. They  
2 find a shaft of a golf club, and they find what appears to be  
3 some rocks with blood spots on them. The other detective  
4 walks out on this side, goes up by the fence, and sees where  
5 the gold or copper putter's head of the golf club is at, and  
6 ties a white handkerchief to the fence to mark the spot.

7 Q Where do you go after being out there?

8 A They take me back to Henderson Jail.

9 Q Do you eventually -- you had talked about accessory.  
10 Do you eventually enter a plea --

11 A Yes.

12 Q -- of guilty?

13 A That's correct.

14 Q And as part of your plea, do you have any agreement  
15 with respect to your responsibility in this case?

16 A To my knowledge, the agreement was that I have to  
17 testify to the truth here and, you know, full cooperation.  
18 And then if I do that, my probation -- at the time I was on  
19 probation -- were reinstated. And then the State would retain  
20 the right to argue at my sentencing.

21 Q So, what did you plea to?

22 A Accessory to murder after the fact.

23 Q Is that a felony?

24 A Yes, it is.

25 Q Have you been sentenced in that case yet?

1 A No, I have not.

2 Q So, at the conclusion of this trial, you will be  
3 sentenced?

4 A That's correct.

5 Q Did you ever beat or harm Melissa Estores, Red?

6 A No.

7 Q Were you responsible for any injury inflicted upon  
8 Victoria Magee?

9 A No.

10 Q Christine Combado?

11 A No.

12 Q You did, however, assist McCarty and Malone in  
13 disposing the implements that were involved in their murders?

14 A That's correct.

15 Q And for that, you've entered a plea of accessory?

16 A That's correct.

17 MR. LALLI: Your Honor, that concludes direct  
18 examination.

19 THE COURT: Mr. Cano, before you start -- I'm  
20 assuming you're doing the cross, let's take a quick recess at  
21 this point.

22 MR. PIKE: Thank you, Your Honor.

23 THE COURT: Ladies and gentlemen, during this  
24 recess, it is your duty not to converse among yourselves, or  
25 with anyone else on any subject connected with this case., or

1 to read, watch or listen to any report of or commentary on the  
2 trial by any person connected with the trial, or by any medium  
3 of information, including without limitation, newspaper,  
4 television, radio, or the internet. You are not to form or  
5 express an opinion on any subject connected with this case  
6 until this matter is submitted to you.

7 We'll see you back in a few minutes.

8 THE MARSHAL: All rise for the jury.

9 (Jury recessed at 10:36 a.m.)

10 (Outside the presence of the jury)

11 MR. DiGIACOMO: Judge, I don't think the witness has  
12 [inaudible] up or down.

13 THE WITNESS: Um-hum.

14 MR. DiGIACOMO: Oh, have you? Okay, he has.

15 THE WITNESS: The bailiff took care of that when he  
16 seen me in the hallway.

17 THE COURT: Okay. All right. Counsel, I forgot, I  
18 have a 1:00 o'clock hearing in this courtroom here on a --  
19 obviously, an unrelated matter. And so whenever we take the  
20 lunch break, we won't come back until 1:30.

21 MR. CANO: Okay.

22 THE COURT: I'm assuming the hearing's going to take  
23 15 minutes, but I don't want to cut it too short. So,  
24 whenever we take the break, we're going to come back at 1:30.  
25 All right? See you back in a few minutes.

1 (Court recessed at 10:37 a.m. until 10:46 a.m.)

2 (In the presence of the jury)

3 THE COURT: Mr. Herb, do you understand you're still  
4 under oath?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Go ahead, Mr. Cano.

7 MR. CANO: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. CANO:

10 Q Mr. Herb, if I understood your direct examination  
11 here, I guess you're a liar?

12 A I'm a liar?

13 Q Well, you lied to the police; right?

14 A Yes, I did.

15 Q Okay. You also have two prior convictions?

16 A Yes.

17 Q The first one you picked up, it was in 2004, I think  
18 or 2005?

19 A Yes.

20 Q Right? And that was for possession of a controlled  
21 substance?

22 A Correct.

23 Q When you're put on probation that time, it was for a  
24 significant amount of years, I think up to five years;  
25 correct?

1 A At first it was three years.

2 Q Okay. Up to three years? And you had to sign terms  
3 and conditions of probations?

4 A That's correct.

5 Q Do you remember going into the probation  
6 officer's --

7 MR. LALLI: Objection, relevance.

8 MR. CANO: It goes with credibility, Your Honor.

9 THE COURT: I'm going to go ahead -- I'm going to  
10 allow it. Go ahead, Mr. Cano.

11 BY MR. CANO:

12 Q Do you remember you had to sign a sheet that you  
13 would agree to follow certain rules while you're on probation?

14 A That's correct.

15 Q Right. Part of those rules were that you were not  
16 supposed to participate -- or have in your possession any kind  
17 of narcotics?

18 A That's correct.

19 Q Right? Also, that you're not supposed to consume  
20 any kind of narcotics?

21 A That's correct.

22 Q Or alcohol?

23 A I could have alcohol the first time.

24 Q I'm sorry?

25 A I was allowed to have alcohol --

1 Q Okay.

2 A -- the first probation.

3 Q But part of the conditions you were -- you're not  
4 supposed to have -- consume or to have any possessions of  
5 narcotics; correct?

6 A That's correct.

7 Q But you did actually have narcotics in your  
8 possessions at a later point in time?

9 A That's correct.

10 Q And got violated for that probation; correct?

11 A Correct.

12 Q All right. So that wasn't being very honest with  
13 the probations office, was it?

14 A I don't understand the question.

15 Q Well, you didn't go to your probation officers and  
16 tell them, hey, I'm selling drugs?

17 A He never asked.

18 Q He never asked. So you didn't volunteer that?

19 A No.

20 Q Okay. But you did get arrested for another crime,  
21 again selling narcotics?

22 A Not selling, no. Possession.

23 Q For possession of narcotics; correct?

24 A Correct.

25 Q Okay. And that was your second conviction of '06;

1 correct?

2 A That's correct.

3 Q And again, under that arrest you were given  
4 probation?

5 A Correct.

6 Q You had to sign that form again?

7 A Correct.

8 Q That you did like on the first probation?

9 A Correct.

10 Q Again, saying that you weren't going to consume  
11 alcohol?

12 A Correct.

13 Q Right? You weren't going to associate with people  
14 that were committing crimes?

15 A Correct.

16 Q You weren't going to have in possession narcotics?

17 A Correct.

18 Q You weren't going to consume any narcotics?

19 A Correct.

20 Q Okay. But you were doing all those things during  
21 the time period between April and May of 2006; correct?

22 A That's correct.

23 Q Okay. That wasn't being very honest with the  
24 probation officers, as well?

25 A Once again, they never asked any of that.



1 Q Okay.

2 A They never asked for -- I never lied to any of them.

3 Q But you never told them, either?

4 A No.

5 Q Now, as a condition of your probation on the second  
6 felony that you picked up, you had your Drug Court?

7 A That's correct.

8 Q Okay. Part of the Drug Court -- Drug Court you said  
9 was like a rehabilitation type of --

10 A Basically, yeah.

11 Q -- type of a program; correct?

12 A Correct.

13 Q Run by the courts?

14 A Actually, it's run by Choices.

15 Q It's run by Choices, but in associations with the  
16 court. Judge Lehman presides over the Drug Court?

17 A Correct.

18 Q Right? Part of the terms and conditions of being in  
19 that program is you're not supposed to consume narcotics?

20 A That's correct.

21 Q Not supposed to have those in your possession, as  
22 well?

23 A That's correct.

24 Q But you were -- you had them in your possessions and  
25 you were consuming them during that time period?

1           A     No, I wasn't consuming them. I had them in my  
2 possession, yes.

3           Q     You said you had -- had two dirty UA's.

4           A     Correct.

5           Q     Do you remember that?

6           A     Yes, I do.

7           Q     So what were the dirty UA's for, cocaine?

8           A     Sacking cocaine, yes.

9           Q     And?

10          A     Sacking cocaine.

11          Q     Sacking cocaine. So --

12          A     When you bag up cocaine and get it on your hands it  
13 soaks into your blood system, you still test positive. It  
14 doesn't mean I was using drugs.

15          Q     Okay. But you tested positive for cocaine twice  
16 though?

17          A     Correct.

18          Q     Okay. And that was against the rules of the Drug  
19 Court programs?

20          A     Yes, it was.

21          Q     Fair to say that selling drugs is against the spirit  
22 of being in the Drug Court program?

23          A     Yeah. I would say that, yes.

24          Q     All right. So that's kind of being dishonest with  
25 the Drug Court program?

1           A     Once again, I don't see the correlation. They never  
2 asked me if I'm still selling drugs. They only test me and  
3 ask if I'm doing drugs. I never lied to them either.

4           Q     You didn't lie to them, because they didn't ask you?

5           A     Correct.

6           Q     Okay. So it's not a lie if they don't ask you the  
7 questions?

8           A     Yeah. I never told them I wasn't, so that's not a  
9 lie.

10          Q     All right. Now, you were dealing crack; right?

11          A     Yes.

12          Q     You were dealing powder cocaine, as well?

13          A     Yes.

14          Q     Were you dealing meth?

15          A     Yes.

16          Q     You're dealing marijuana?

17          A     Yes.

18          Q     Okay. You were using drugs, as well?

19          A     No.

20          Q     No? Do you remember testifying at preliminary  
21 hearing in Henderson?

22          A     Yes.

23          Q     Do you remember getting up on the stand just like  
24 you did right now?

25          A     Yes.

1           Q     Held out your hand and said you're going to tell the  
2 truth and nothing but the truth?

3           A     That's correct.

4           Q     Okay. And at that preliminary hearing you're asked  
5 -- and you swore to tell the truth at that preliminary  
6 hearing; correct?

7           A     Uh-huh.

8           Q     Like you did today?

9           A     Yes.

10           MR. CANO: And that's preliminary hearing, page 46,  
11 counsel of the preliminary hearing.

12 BY MR. CANO:

13           Q     You were asked question, "When is the last time you  
14 ingested drugs?" Answer, "Probably about two weeks prior to  
15 the incident in question." "What kind of drugs were they?"  
16 "Cocaine."

17           A     That's the two drug tests I tested positive for. I  
18 already told you that.

19           Q     Okay. But you were asked what you ingested, and you  
20 said, cocaine.

21           A     Okay.

22           Q     Okay. That's a little bit different than what you  
23 just testified to right now, isn't it?

24           A     A little bit. I never -- I didn't use the word,  
25 ingested. I don't believe I used ingested in there either.

1 That was your question, not mine.

2 Q You -- no. The question was asked to you what you  
3 ingested. And you said, cocaine?

4 A That's true, yes.

5 Q Okay. And you were also drinking alcohol during  
6 that time period?

7 A No. They breathalyze in Drug Court, as well.

8 THE COURT: Sir, wait for the next question, okay.

9 BY MR. CANO:

10 Q Okay. Were you also taking marijuana?

11 A No.

12 Q No?

13 MR. CANO: Court's indulgence, Your Honor.

14 BY MR. CANO:

15 Q Do you remember testifying at a previous trial?

16 A Yes.

17 Q Where you got up there and put your hand up and said  
18 you were going to tell the truth just like you did today?

19 A Yes.

20 Q Okay.

21 MR. CANO: Page 66 of the second transcript of the  
22 previous trial, counsel.

23 BY MR. CANO:

24 Q You were asked, question, "Were you using  
25 marijuana?" Answer, "Yes."

1           A     Was I using marijuana when?  You're not being --  
2     that's a vague question, can you explain it further, please.

3           Q     Where you were asked at the trial during this time  
4     period --

5           A     I was asked at the trial, was I smoking --

6           Q     -- if you were using marijuana.

7           THE COURT:  Hang on, hang on.  Sir, sir, hang on.  
8     Hang on, hang on.  Let Mr. Cano finish the question and he'll  
9     let you finish your answer.  Then we'll go to the next  
10    question, okay.

11   BY MR. CANO:

12          Q     And let me put into context for you.  The time of  
13    the --

14          MR. CANO:  We'll go back to page 65, counsel.

15   BY MR. CANO:

16          Q     At the time of the -- when this event was occurring,  
17    does that put it more in perspective for you?

18          A     When these events -- okay.

19          Q     When the event was occurring, April, May of 2006.  
20    Okay?

21          A     Okay.

22          Q     "Were you a drug dealer?"  Answer, "Yes."  "Were you  
23    using cocaine?"  Answer, "Yes."  "Were you using marijuana?"  
24    Answer, "Yes."  "And were you drinking alcohol?  Answer,  
25    "Yes."

1           A     Okay. I'm going to answer that, I don't recall.

2           Q     Okay. But that's obviously different than what you  
3 just testified to today, correct, that you weren't drinking  
4 and you weren't using marijuana?

5           A     I guess according to that transcript, yes. But  
6 once, you know, like I said --

7           Q     Okay.

8           A     -- I've been drug tested three times a week in Drug  
9 Court.

10          Q     The answer -- you answered the question.

11          A     I didn't test positive.

12          Q     It's different from what you answered today?

13          A     Yes.

14          Q     Okay. And you were sworn to tell the truth when you  
15 testified at that previous trial; correct?

16          A     Correct.

17          Q     All right. Now, you also said that Romeo would sell  
18 drugs, but he would use your meth; correct?

19          A     He would use my meth?

20          Q     Your methamphetamines, your meth, your drugs.

21          A     As ingest himself or use to sell? Would you please  
22 verify that question, as well, please.

23          Q     Use to sell.

24          A     Yes, he would.

25          Q     Okay. All right. And you also said that you would

1 go to the Sportsman's almost every day?

2 A That's correct.

3 Q And that you were selling drugs pretty much every  
4 day?

5 A That's correct.

6 Q Okay. And you said that you -- that you knew Lynn  
7 and Corrina?

8 A Yes.

9 Q And that you'd go to their apartments practically  
10 every day?

11 A Yes.

12 Q And that's where you would be selling drugs out of,  
13 their apartment?

14 A Yes.

15 Q Okay. And that you'd sell to them --

16 A Yes.

17 Q -- drugs almost every day?

18 A That's correct.

19 Q About 20 to \$40 worth?

20 A That's correct.

21 Q Okay. The girls, Lynn and Corrina, they would smoke  
22 crack?

23 A Yes.

24 Q Almost every day?

25 A Yes.



1 Q Okay. I think you said that Corrina would also use  
2 marijuana?

3 A Yes.

4 Q Almost every day? Drink alcohol?

5 A That's correct.

6 Q All right. And Lynn, the same thing, she would  
7 smoke crack?

8 A That's correct.

9 Q Almost every day?

10 A That's correct.

11 Q And marijuana, as well?

12 A Yes.

13 Q Almost every day? And also drink almost every day?

14 A Yes.

15 Q Okay. And you were in this environment; correct?

16 A Correct.

17 Q And being in this environment selling drugs with  
18 these people that were consuming drugs, that would be against  
19 your probation?

20 A Yes.

21 Q The terms and conditions of your probation?

22 A That's correct.

23 Q Okay. And you never told your probation officers --

24 A No.

25 Q -- that you were in this environment?

1 A No.

2 Q Even though you signed a form that said that you  
3 knew you're not supposed to be in this environment?

4 A Yes.

5 Q Okay. So you wouldn't say that's being dishonest  
6 with them, would you?

7 A No, not really.

8 Q Now, if got arrested on any of these violations that  
9 you were committing on almost an everyday basis you'd go to  
10 jail, wouldn't you?

11 A Yes.

12 Q And potentially go to prison?

13 A Yes.

14 Q For violating the conditions of probations?

15 A That's correct.

16 Q And you didn't want any of that, did you?

17 A No.

18 Q Okay. You don't like jail?

19 A No.

20 Q And you don't like prison either?

21 A No.

22 Q All right. Now, as a mater fact, I think you value  
23 your freedom quite a bit, don't you?

24 A Yes.

25 Q You had a conversation with that regarding your

1 freedom with the police officers, didn't you?

2 A Yes, I believe so.

3 Q All right. Where you told them your freedom was  
4 everything to you?

5 A Yes.

6 Q And it's like the most important thing that you have  
7 -- that you can have?

8 A Yes.

9 Q Okay. Now, you were living with your parents at the  
10 time; right?

11 A That's correct.

12 Q Over on Sirnoble?

13 A Yes.

14 Q Okay. Living at the house with your father?

15 A Uh-huh.

16 Q Harold Herb?

17 A Yes.

18 Q Your mother, Kelly?

19 A Yes.

20 Q Your brother, Dave?

21 A Yes.

22 Q Your son, Brendan?

23 A Yes.

24 Q Okay. But your father has adopted your son now?

25 A That's correct.

1           Q     Okay. And while you were at that residence you were  
2 selling out of that residence?

3           A     Actually, not out the residence, but I did have them  
4 in that location, yes.

5           Q     You did have drugs at that location?

6           A     Yes.

7           Q     Okay. With your nine-year-old son there?

8           A     Yes.

9           Q     Okay. And your parents there, as well?

10          A     Yes.

11          Q     You didn't tell your parents you had drugs at that  
12 location, did you?

13          A     No.

14          Q     You didn't tell your parents that you were selling  
15 drugs, were you?

16          A     No.

17          Q     You didn't tell them what you were doing on a  
18 practically almost everyday basis as far as going to the  
19 Sportsman's and selling drugs, did you?

20          A     No.

21          Q     Okay. Would you say that was not being dishonest  
22 with them?

23          A     No.

24          Q     Because they didn't ask I guess; right?

25          A     Correct.

1           Q     Okay. You were worried about your Drug Court  
2 situation, because you didn't want to get too many violations,  
3 right, at Drug Court?

4           A     That's correct.

5           Q     Because if you fail Drug Court, that would have been  
6 a violation of your probation; correct?

7           A     That's correct.

8           Q     So if you fail Drug Court, you would have gone to  
9 prison --

10          A     That's correct.

11          Q     -- potentially; right?

12          A     Yes, sir.

13          Q     Okay. As a matter of fact you had that -- the first  
14 time you spoke to the police -- do you remember, you spoke to  
15 them twice?

16          A     That's correct.

17          Q     And that was on May 25th?

18          A     Yes.

19          Q     Okay. While we're talking about that, let's talk  
20 about the statements that you gave. There were those two  
21 recorder statements that you gave; correct?

22          A     Yes, sir.

23          Q     All right. You also testified at a previous  
24 preliminary hearing; right?

25          A     That's correct.

1 Q And a previous trial; correct?

2 A That's correct.

3 Q And you also I guess had a conversation with the  
4 police while you were taking them out to where the weapons  
5 were located?

6 A I would imagine so, yes.

7 Q Okay. Well, you had to tell them how to get there,  
8 didn't you?

9 A Yes.

10 Q All right. So I imagine there was some conversation  
11 in the car?

12 A Yes.

13 Q Okay. And so you had a chance to review your  
14 previous statements that you gave to the police before your  
15 testifying today?

16 A I haven't reviewed them in a while, so --

17 Q Have you had that opportunity to review them?

18 A Yes, I have.

19 Q Okay. And who were you -- who gave those to you?

20 A The district attorney did.

21 Q Which one?

22 A I believe Mr. Lalli did.

23 Q I'm sorry. Mr. who?

24 A Mr. Lalli.

25 Q Mr. Lalli? Okay. Did you have an opportunity to

1 discuss with him your testimony?

2 A Yes.

3 Q Okay. Prior to your preliminary hearing?

4 A Yes.

5 Q Okay. And prior to your trial?

6 A Yes.

7 Q Okay. Would it surprise you to know that Mr. Lalli  
8 was not even on this case at the preliminary hearing?

9 A Actually, that's true. That's true, he was not.

10 Q Okay. Now, you also went to their office to discuss  
11 this case with them; correct?

12 A Yes.

13 Q You went there actually with you're parents one  
14 time?

15 A Yes.

16 Q Okay. In total, how many hours do you think you've  
17 spent discussing this case with the district attorney's  
18 office?

19 A At -- on all different -- from prelim and all the  
20 things from back then?

21 Q From everything, yeah.

22 A I can't really say.

23 Q Fair to say about maybe four to six hours?

24 A Yeah, at least four to six hours.

25 Q Okay. At least. So maybe even more?

1 A Maybe a little bit more than that.

2 Q More than that, okay. Now, Let's talk a little bit  
3 about that first contact you had with the police, okay?

4 A Okay.

5 Q That was on May 25th; correct?

6 A Yes.

7 Q And according to what you testified to earlier, you  
8 were aware of the girls' disappearance from previous week?

9 A Yes.

10 Q All right. And you never -- saying that that  
11 happened on that Wednesday or Thursday evening, that date, the  
12 16th or the 17th -- the 17th or the 18th, you never went to  
13 the police and called them to let them know you had  
14 information regarding this case, did you?

15 A Now.

16 Q Not on the 17th?

17 A No.

18 Q Not on the 18th?

19 A No.

20 Q Not on the 19th?

21 A No.

22 Q Not on the 20th?

23 A No.

24 Q Not on the 21st?

25 A No.



- 1 Q And actually, you said you went to jail I think on  
2 that weekend?
- 3 A Yes.
- 4 Q Right?
- 5 A That's correct.
- 6 Q So that would have be the 19th, Friday?
- 7 A I believe so.
- 8 Q Until like Sunday?
- 9 A Yes.
- 10 Q You know, the 21st? So you're surrounded by  
11 officers, correction officers, access to police; correct?
- 12 A Correct.
- 13 Q For that entire weekend?
- 14 A Yes.
- 15 Q You're on 24-hour lockdown?
- 16 A Well, not 24-hour lockdown, but --
- 17 Q You were in custody for 24 hours a day?
- 18 A Yes.
- 19 Q And you never talked to the police regarding any of  
20 these incidences?
- 21 A No.
- 22 Q Okay. And you never talked to them on the 2nd  
23 either?
- 24 A No.
- 25 Q Or the 23rd?

1 A No.

2 Q Or the 24th?

3 A No.

4 Q It wasn't until they actually came to you that you  
5 wanted to talk to them; correct?

6 A Correct.

7 Q All right. And then they came to you twice?

8 A Yes.

9 Q Came to you one time -- I think you said it was like  
10 1:00 or 2:00 in the afternoon?

11 A Something like that, yes.

12 Q Okay. But would it surprise you the transcript said  
13 about 6:30 in the evening?

14 A Well, that might have been true. I don't know  
15 exactly what time it was.

16 Q Okay. And then they came later around 10:00  
17 o'clock?

18 A Okay. That sounds all right.

19 Q All right. And you said each one of those  
20 interviews took a couple hours?

21 A Yes, sir.

22 Q Okay. Now, your first -- your first interview with  
23 them, they came to you -- and at that point in time, according  
24 to your direct testimony, you already had knowledge of the  
25 crimes; correct?

1 A Yes.

2 Q They came to you to discuss these crimes?

3 A Yes.

4 Q And you looked at them and you lied to them?

5 A Yes.

6 Q They asked you specifically if you were involved in  
7 this case?

8 A Yes.

9 Q And you looked at them and you lied to them and said  
10 you weren't?

11 A That's correct.

12 Q Okay. They asked you -- and at this point in time  
13 you knew how serious this case was. Fair to say that?

14 A Yes.

15 Q Okay. I mean, they had ceased your cars; right?

16 A Yeah. In between -- after the -- I think after the  
17 first time -- the first --

18 Q The first time; right?

19 A -- interview. Yeah.

20 Q They had ceased your cars and they wanted to look  
21 inside your cars; right?

22 A Well, they didn't actually cease them, they asked if  
23 they can have them. I surrendered them. But they took them,  
24 yes.

25 Q Okay. Well, they took them that day; right?

1 A Yes.

2 Q As a matter of fact, they wanted to talk to you so  
3 much that they gave you a ride to Drug Court that day?

4 A Yes, they did.

5 Q Right? Because they told you, hey, you're free to  
6 go, you're not under arrest at this point in time; right?

7 A Correct.

8 Q So you're like oh, if that's the case I've got to go  
9 to Drug Court; right?

10 A Yes.

11 Q But they didn't let you go asset that point in time,  
12 did they?

13 A No, they didn't.

14 Q They said, hey, why don't we take you to Drug Court;  
15 right?

16 A Yes.

17 Q Okay. This is real important that we talk to you?

18 A That's correct.

19 Q Right? And then they sit in the car and they drive  
20 you up to Drug Court?

21 A Yes.

22 Q Correct? Because they want to talk to you regarding  
23 this case?

24 A That's correct.

25 Q And asking you questions along the way to Drug

1 Court; right?

2 A That's correct.

3 Q And as you -- they were asking you questions along  
4 to the Drug Court, you were being dishonest with them?

5 A I can't say.

6 Q Well, you --

7 A I don't remember the conversation. So I can't tell  
8 you if I was being dishonest or not.

9 Q Well, would it be fair to say that the first  
10 statement that you gave to the police you didn't have any  
11 knowledge of involvement in this case?

12 A That's correct.

13 Q You denied any knowledge of anything that happened  
14 to Red?

15 A That's correct.

16 Q You denied any knowledge of anything that happened  
17 to Victoria?

18 A That's correct.

19 Q You denied any knowledge of anything that happened  
20 to Christina?

21 A That's correct.

22 Q You denied any participation in any crimes?

23 A That's correct.

24 Q You denied any knowledge that Mr. McCarty was  
25 involved in any crimes?