

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

DOMONIC MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 61006

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APPELLANT'S APPENDIX

VOLUME 15

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 (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 MEMORANDUM TO COURT) (PRO PER) (6/29/11)	1348-1353
5	EX PARTE MOTION FOR EXPENSES FOR 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 McCARTY'S MOTION TO SEVER (10/25/06)	116-117
6	JUDGMENT OF CONVICTION (JURY TRIAL) (McCARTY) (4/6/11)	1287-1291
18	JUDGMENT OF CONVICTION (JURY TRIAL) (MALONE) (5/8/12)	3772-3776
7	JURY LIST (1/13/12)	1487
14	MALONE'S OBJECTIONS TO THE STATE'S PROPOSED TRIAL PHASE JURY INSTRUCTIONS (1/26/12)	2971-2984

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
7	MOTION FOR COMPLETE ROUGH DRAFT TRANSCRIPT OF (CASE NO. C224572-1) (PRO PER) (6/29/11)	1365-1452
2	MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILES NECESSARY TO A FAIR TRIAL (5/24/07)	292-299
7	MOTION FOR DISCOVERY OF PROSECUTION RECORDS FILES AND INFORMATION NECESSARY TO A FAIR TRIAL (PRO PER) (6/29/11)	1354-1364
6	MOTION FOR (FULL TRANSCRIPTION) DISCOVERY OF PROSECUTION RECORDS, FILES AND INFORMATION NECESSARY TO A FAIR TRIAL (PRO PER) (1/8/11)	1276-1277
5	MOTION FOR JUDICIAL DETERMINATION OF STANDBY COUNSELS OBLIGATIONS PURSUANT TO HOLLOWAY V. STATE (5/2/10)	990-997
6	MOTION FOR PARALEGAL; FINANCIAL ASSISTANCE; MEDICAL; PRIVATE INVESTIGATORS(S) (PRO PER) (7/8/10)	1110-1113
6	MOTION FOR PARALEGAL - (REHEARING) (PRO PER) (8/9/10)	1149-1152
5	MOTION FOR TRIAL (SPEEDY) AND OR IN THE ALTERNATIVE MOTION TO WITHDRAW COUNSEL (PRO PER) (12/3/09)	876-878
2	MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT (5/24/07)	265-287
2	MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "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 (8/30/06)	017-045
4	NOTICE OF WITNESSES (10/02/09)	765-771
5	OPPOSITION TO DEFENDANT MALONE'S MOTION FOR RECONSIDERATION OF WRIT OF HABEAS CORPUS (4/9/10)	1045-1093
3	OPPOSITION TO DEFENDANT MALONE'S MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, OR IN THE ALTERNATIVE, MOTION FOR CORRECTIVE INSTRUCTION (2/25/08)	578-592
2	OPPOSITION TO DEFENDANT MALONE'S MOTION TO SUPPRESS STATEMENTS OF DONALD HERB, OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF THE STATEMENT MADE BY THE CO-DEFENDANT HERB AT THE TIME OF TRIAL (6/14/07)	337-351
2	OPPOSITION TO DEFENDANT'S MOTION TO FEDERALIZE ALL MOTIONS, REQUESTS AND OTHER APPLICATIONS FOR THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (6/6/07)	320-323
3	OPPOSITION TO DEFENDANT'S 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 (1/28/09)	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 AUGUST 16, 2006 (5/7/08)	009-016
2	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 21, 2006 (6/6/08)	218-237
2	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 30, 2006 (6/6/08)	238-241
2	REPORTER'S TRANSCRIPT OF HEARING DECEMBER 12, 2006 (6/6/08)	242-256
2	REPORTER'S TRANSCRIPT OF HEARING JUNE 22, 2007 (6/6/08)	352-409
3	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 11, 2007 (6/6/08)	415-419
3	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 29, 2007 (6/6/08)	420-571
3	REPORTER'S TRANSCRIPT OF HEARING MARCH 13, 2008 (6/6/08)	593-598
3	REPORTER'S TRANSCRIPT OF HEARING JUNE 24, 2008 (7/2/08)	601-606
3	REPORTER'S TRANSCRIPT OF HEARING JANUARY 20, 2009 (2/17/09)	617-621
3	REPORTER'S TRANSCRIPT OF HEARING FEBRUARY 5, 2009 (2/17/09)	631-640
4	REPORTER'S TRANSCRIPT OF HEARING 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 SEPTEMBER 29, 2009 (3/5/10)	744-754
4	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 6, 2009 (3/5/10)	784-797
4	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 8, 2009 (3/5/10)	847-862
4	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 12, 2009 (3/5/10)	865-873
5	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 27, 2009 (3/5/10)	879-886
5	REPORTER'S TRANSCRIPT OF HEARING DECEMBER 15, 2009 (3/5/10)	887-892
5	REPORTER'S TRANSCRIPT OF HEARING JANUARY 8, 2010 (3/5/10)	893-928
5	REPORTER'S TRANSCRIPT OF HEARING FEBRUARY 16, 2010 (3/5/10)	979-987
5	REPORTER'S TRANSCRIPT OF HEARING MARCH 18, 2010 (4/12/10)	998-1005
5	REPORTER'S TRANSCRIPT OF HEARING MARCH 25, 2010 (4/12/10)	1006-1020
5	REPORTER'S TRANSCRIPT OF HEARING APRIL 13, 2010 (4/14/10)	1094-1104
5	REPORTER'S TRANSCRIPT OF HEARING APRIL 29, 2010 (5/18/10)	1105-1109
5	REPORTER'S TRANSCRIPT OF HEARING 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 JULY 27, 2010 (9/22/10)	1129-1139
5	REPORTER'S TRANSCRIPT OF HEARING AUGUST 12, 2010 (9/22/10)	1153-1164
5	REPORTER'S TRANSCRIPT OF HEARING AUGUST 26, 2010 (9/22/10)	1170-1172
5	REPORTER'S TRANSCRIPT OF HEARING AUGUST 31, 2010 (9/22/10)	1173-1183
5	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 14, 2010 (9/22/10)	1186-1194
5	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 21, 2010 (9/22/10)	1195-1200
5	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 30, 2010 (10/8/10)	1203-1213
5	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 5, 2010 (10/8/10)	1214-1237
5	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 26, 2010 (1/12/11)	1258-1268
5	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 9, 2010 (1/12/11)	1269-1275
6	REPORTER'S TRANSCRIPT OF HEARING JANUARY 25, 2011 (2/28/11)	1279-1286
6	REPORTER'S TRANSCRIPT OF HEARING JUNE 9, 2011 (7/25/11)	1292-1297
6	REPORTER'S TRANSCRIPT OF HEARING 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 JULY 19, 2011 (7/25/11)	1453-1459
7	REPORTER'S TRANSCRIPT OF HEARING AUGUST 9, 2011 (9/21/11)	1460-1468
7	REPORTER'S TRANSCRIPT OF HEARING DECEMBER 15, 2011 (12/30/11)	1473-1480
7	REPORTER'S TRANSCRIPT OF HEARING JANUARY 3, 2012 (1/9/12)	1481-1486
8	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 17, 2012 (1/18/12)	1488-1732
9	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 18, 2012 (1/19/12)	1734-2013
10	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 19, 2012 (1/20/12)	2014-2273
11	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 20, 2012 (1/23/12)	2274-2485
12	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 23, 2012 (1/24/12)	2486-2684
13	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 24, 2012 (1/25/12)	2685-2896
14	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 25, 2012 (1/26/12)	2897-2970
15	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 26, 2012 (1/27/12)	2985-3172
16	REPORTER'S TRANSCRIPT OF JURY TRIAL 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 JANUARY 30, 2012 (1/31/12)	3406-3430
17	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 31, 2012 (2/1/12)	3493-3630
18	REPORTER'S TRANSCRIPT OF JURY TRIAL FEBRUARY 1, 2012 (2/2/12)	3631-3645
18	REPORTER'S TRANSCRIPT OF PENALTY PHASE FEBRUARY 10, 2012 (2/15/12)	3703-3717
18	REPORTER'S TRANSCRIPT OF HEARING APRIL 10, 2012 (5/24/12)	3743-3747
18	REPORTER'S TRANSCRIPT OF HEARING APRIL 12, 2012 (5/24/12)	3748-3750
18	REPORTER'S TRANSCRIPT OF HEARING APRIL 24, 2012 (5/24/12)	3751-3771
5	RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS (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 AND ADDITIONAL DISCOVERY) (10/8/09)	800-846
18	SPECIAL VERDICT (2/10/12)	3718-3742
4	STATE OPPOSITION TO DEFENDANT MALONE'S MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF HEARSAY STATEMENTS MADE BE CO-DEFENDANT MALONE AT THE TIME OF TRIAL (8/26/09)	661-682
1	STATE'S OPPOSITION TO DEFENDANT MALONE'S 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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JAN 27 2012

BY _____
CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-224572
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	TRANSCRIPT OF
DOMONIC RONALDO MALONE,	.	PROCEEDINGS
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

JURY TRIAL - DAY 12

THURSDAY, JANUARY 26, 2012

APPEARANCES:

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 Chief Deputy District Attorneys

FOR THE DEFENDANT: RANDALL H. PIKE, ESQ.
 CHARLES A. CANO, ESQ.
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COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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Englewood, CO 80110

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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 26, 2012, 10:59 A.M.

2 (Court was called to order)

3 (In the presence of the jury)

4 THE COURT: Welcome back, ladies and gentlemen.
5 Sorry for our late start. My morning calendar went
6 exceptionally late this morning. It was unexpected by all
7 parties concerned.

8 Will the State please call your next witness?

9 MR. LALLI: Thank you, Your Honor. The State calls
10 Correna Phillips.

11 THE MARSHAL: Ms. Phillips, if you will remain
12 standing. Please raise your right hand and face the clerk.

13 CORRENA PHILLIPS, STATE'S WITNESS, SWORN

14 THE MARSHAL: You can have a seat, please. Slide
15 the chair up to the microphone. And ma'am, if you would,
16 please state and spell your name for the record.

17 THE WITNESS: Correna Phillips. C-o-r-r-e-n-a,
18 P-h-i-l-l-i-p-s.

19 THE COURT: Go ahead, counsel.

20 MR. LALLI: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. LALLI:

23 Q Ms. Phillips, do you currently live in Las Vegas?

24 A No.

25 Q Was there a time that you did live in Las Vegas?

1 A Yes.

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

3 THE COURT: Yes.

4 MR. LALLI: Thank you.

5 BY MR. LALLI:

6 Q When did you move from Las Vegas?

7 A 2006, I think.

8 Q Where were you living when you did live in Las
9 Vegas?

10 A The Sportsman's Royal Manor.

11 Q All right. And if you could just speak up a little
12 bit. Are you a little nervous this morning?

13 A Yes.

14 Q Okay. Try to speak into the microphone if you can
15 so that everybody over there can hear you, okay?

16 A Okay.

17 Q When approximately was it that you were living in
18 the Sportsman's Manor?

19 A 2005, 2006. Somewhere around there.

20 Q Can you explain what was going on in your life at
21 that period of time? If you could explain that to the jury.

22 A I was a drug addict.

23 Q What sorts of drugs were you involved in?

24 A Crack and pot.

25 Q Did you -- did you work?

1 A Yes, I did.

2 Q Where did you work?

3 A I worked at the Roadrunner Casino.

4 Q What did you do there?

5 A I was a waitress.

6 Q I want to ask you if you knew some individuals back
7 during the time that you lived at the Sportsman's, okay?

8 A Okay.

9 Q Did you know an individual by the name of Romeo?

10 A Yes, I did.

11 Q Did you know Romeo's actual name?

12 A No, I didn't.

13 Q Who is Romeo?

14 A Romeo was one of my connections and a friend at the
15 time.

16 Q What do you mean by, connection?

17 A He was one of my dealers.

18 Q Somebody who sold you drugs?

19 A Yes.

20 Q Can you -- did you ever notice any physical
21 disability that Romeo had?

22 A Yeah, his arm.

23 Q Can you explain the difficulty with his arm to the
24 jury?

25 A It was like smaller, and his hand was messed up, and

1 he always held it close to his chest.

2 Q And for the record, you just kind of held your
3 hand --

4 A Yeah, that's how he always was.

5 Q You kind of held it up into the middle of your
6 chest?

7 A Yeah.

8 Q Would he hold his hand there?

9 A Yeah.

10 Q Was he able to use his hand a lot?

11 A He did sometimes, but it was difficult for him. But
12 he still used it.

13 Q Did you know an individual by the name of D-Roc?

14 A Yes, I did.

15 Q Who is D-Roc?

16 A D-Roc was a gentleman that used to hang out with
17 Romeo.

18 Q What was their relationship?

19 A I think they were partners in the --

20 MR. CANO: Objection as to foundation --

21 THE WITNESS: -- business.

22 MR. CANO: -- Your Honor.

23 THE COURT: Sustained.

24 BY MR. LALLI:

25 Q Did you observe them hang out together?

1 A Yes, I did.

2 Q On more than one occasion?

3 A Yes.

4 Q Over the course of weeks?

5 A The whole time that I've known -- that I knew Romeo,
6 yeah.

7 Q All right. Based upon that, what was the nature of
8 their relationship?

9 A I think they did business together.

10 Q Which is what, doing business?

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

12 She just said --

13 THE COURT: Sustained.

14 MR. CANO: -- she thought --

15 THE WITNESS: Drugs.

16 THE COURT: Wait, hang on. I sustained the --

17 THE WITNESS: Oh, sorry.

18 THE COURT: -- objection, ma'am.

19 THE WITNESS: Sorry.

20 THE COURT: The jury is instructed to disregard the
21 last statement of the witness, because the witness said, "I
22 think." We have to get a definitive answer from her.

23 MR. LALLI: Understood, Your Honor.

24 BY MR. LALLI:

25 Q Did you ever observe the two of them engage in the

1 drug trade together?

2 A Yes.

3 Q Did you actually see it?

4 A Yes.

5 Q On more than one occasion?

6 A Yes.

7 Q Do you -- do you see D-Roc in the courtroom?

8 A Yes.

9 Q Can you please point to him and tell us what he's

10 wearing today?

11 A Blue.

12 Q Can you point -- where -- you're looking over to my

13 right.

14 A I'm --

15 Q I'm sorry?

16 A I don't know. I couldn't even remember what he

17 looks like right now.

18 Q Okay. But you said blue?

19 A Yeah.

20 Q Who's wearing blue?

21 A The gentleman in the center right there.

22 Q In the center, between the two attorneys there?

23 A Um-hum.

24 MR. LALLI: Your Honor, may the --

25 BY MR. LALLI:

1 Q Is that yes?

2 A Yes.

3 MR. CANO: Your Honor --

4 MR. LALLI: Your Honor, may the --

5 MR. CANO: I know she's going to try to say that she
6 recognized him, but she also says she doesn't remember him.

7 THE COURT: Okay. Is this the gentleman --

8 THE WITNESS: He looks --

9 THE COURT: Hang on. Is this the gentleman you know
10 as D-Roc?

11 THE WITNESS: Yes.

12 THE COURT: Are you sure?

13 THE WITNESS: Yeah.

14 THE COURT: Okay.

15 THE WITNESS: He's just thinner.

16 THE COURT: Is that a yes? You said, yeah.

17 THE WITNESS: Yes. Yes.

18 THE COURT: Okay, thank you.

19 MR. LALLI: Your Honor, may the record now reflect
20 that the witness has identified the --

21 THE COURT: Yes, it will.

22 MR. LALLI: -- the defendant?

23 BY MR. LALLI:

24 Q You say that he looks different?

25 A Yeah, he's a little bit thinner.

1 Q Did you know an individual by the name of Donny
2 Herb?

3 A Yes, I did.

4 Q Who was Donny Herb?

5 A He was the White Boy.

6 Q Was he -- did he -- based upon your own personal
7 observations, did you know his relationship to Romeo and
8 D-Roc?

9 A Him and Romeo were always together, Donny.

10 Q How about D-Roc?

11 A D-Roc was with Romeo on different occasions.

12 Q Of the three of those individuals, who were closer?

13 A Donny and Romeo.

14 Q Did you know a young woman by the name of Victoria?

15 A Yes, I did.

16 Q Can you describe what she looked like?

17 A She was skinny, blonde hair -- blonde'ish hair.

18 About -- a little bit taller than me, but real thin. Had a
19 tattoo on her ankle.

20 Q Do you recall what the tattoo was?

21 A No, I don't remember. I just know she had one
22 there.

23 Q How was it that Victoria -- what did she do for a
24 living?

25 A I believe she was a prostitute.

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

3 THE COURT: Sustained.

4 BY MR. LALLI:

5 Q Based upon personal observation -- and I'm not
6 suggesting that you actually saw any acts of prostitution, but
7 based upon what you observed of her, and of her interaction
8 with Romeo, what did she do?

9 A She was a prostitute.

10 Q Was she a friend of yours?

11 A I met her through Romeo, and then we became friends.

12 Q Did you know an individual by the name of Christine
13 Combado?

14 A I met her one time in my apartment.

15 Q Can you describe what she looked like?

16 A She was Hawaiian, short, a little bit more stout.
17 And that's about all I got. She was in and out of my
18 apartment.

19 Q Did you know a woman who was known in the
20 neighborhood as Red?

21 A No.

22 Q Did you know who she was?

23 A I didn't, no.

24 Q What about a girl who was known as Nickel?

25 A Not to my memory, no.

1 Q All right. Did you know a woman by the name of Lynn
2 Nagel?

3 A Yes, that was my ex-girlfriend.

4 Q Your ex-girlfriend?

5 A Correct.

6 Q Your partner?

7 A Yes.

8 Q How long did -- were you in a relationship with
9 Lynn?

10 A Five years.

11 Q Are you currently in a relationship with her?

12 A No.

13 Q Would the two of you live together at the
14 Sportsman's?

15 A Yes.

16 Q And can you give the jury a sense of the kinds of
17 things that would happen in your apartment there?

18 A We got high a lot.

19 Q You and Lynn?

20 A Yeah. And then, Romeo, and D-Roc, and Donny would
21 come by on different occasions quite often. They would
22 sometimes cook in my apartment.

23 Q Cook what?

24 A Crack. And they would give me pieces for letting
25 them cook in there. It was a lot of getting high.

1 Q A lot of drugs back then?

2 A Yes.

3 Q Are you clean now?

4 A I have been for four years.

5 Q I want to talk about some specific incidents back in
6 May of 2006. And I want to specifically direct your attention
7 to Tuesday, May 16th of 2006. Was there a time on -- well,
8 let me ask you this. Do you remember that day?

9 A Yeah.

10 Q Was there a time that you went to a Wal-Mart?

11 A Yes.

12 Q Who went with you?

13 A It was Lynn, D-Roc, Romeo, and I.

14 Q So, the four of you?

15 A Yes.

16 Q Why do you go to Wal-Mart on that day?

17 A Romeo had mentioned he needed new shoes. And then I
18 said, well, can I ride with, because I needed a new belt for
19 work. So, we went up to Wal-Mart.

20 Q Who do you get to the Wal-Mart?

21 A In the green car.

22 Q Whose car was that?

23 A Romeo, I believe, because he was always driving it.

24 Q I'm going to show you what we've admitted as State's
25 Exhibit No. 69. You should be able to see it right there on

1 your monitor. Do you recognize that?

2 A Yeah, that was the car.

3 Q Do you recall who drove to the Wal-Mart?

4 A Romeo.

5 Q What happened when you arrived there?

6 A He took his shoes off. He walked into Wal-Mart
7 barefoot, which was odd.

8 Q When you say he, who are you talking about?

9 A Romeo.

10 Q Romeo took his shoes off?

11 A Um-huh.

12 Q Is that yes?

13 A Yes.

14 Q You have to say "yes" or "no".

15 A Sorry.

16 Q That's okay. Only because they're making a
17 transcript of this.

18 A Yes.

19 Q So, Romeo takes his shoes off before he enters the
20 Wal-Mart?

21 A Yes.

22 Q Can you explain for us what happened when you went
23 into the Wal-Mart?

24 A We went into the Wal-Mart. And he grabbed a pair of
25 shoes, I got a belt. And D-Roc had a black sweater, and he

1 asked me if the black sweater looked okay. And I thought it
2 looked fine, he was wearing black jeans. Black goes with
3 everything.

4 Q Where -- did he actually put the black sweater on?
5 Or the sweatshirt?

6 A I --

7 Q Do you remember, was it a sweatshirt or a sweater?

8 A It was a sweatshirt.

9 Q Did he actually put it on, or?

10 A Yeah. Yes.

11 Q And he -- he asked you what?

12 A If it looked okay with what he was wearing. And I
13 said it looked fine, it was black jeans.

14 Q This was May of 2006?

15 A Um-hum.

16 Q Is that, yes?

17 A Yes.

18 Q Did it strike you as odd that he was wearing black
19 pants and a black sweatshirt during this time of year?

20 MR. CANO: Objection as to relevance.

21 THE COURT: Mr. Lalli?

22 MR. LALLI: Your Honor, the relevance is that there
23 was some planning that occurred prior to actually murdering
24 the two victims in this case.

25 MR. CANO: Your Honor, if he's going to do this kind

1 of a --

2 THE COURT: Yeah. Counsel, approach.

3 (Bench conference)

4 THE COURT: I just don't want to discuss all of it.
5 I didn't know it was going to be that in-depth.

6 MR. CANO: I didn't either.

7 MR. LALLI: Well, it's just -- I mean, they're going
8 there, they're lying, they're concerned about their clothes.
9 They're buying clothes that are dark clothes. And then you
10 will recall the testimony of Donald Herb testifying about how
11 they were concerned about their clothing, how they had
12 purchased clothing that kind of looked similar to what they
13 had before. So, this is just the front end of that.

14 THE COURT: Okay. Well, I'm going to allow that
15 question, Mr. Cano.

16 (Bench conference ended)

17 THE COURT: I'm going to overrule the objection. I
18 don't know if the witness answered the question yet, Mr.
19 Lalli. I don't know if you want to rephrase it -- or restate
20 the question.

21 BY MR. LALLI:

22 Q Did it strike you as unusual to be purchasing
23 clothing like that in May --

24 A Yes.

25 Q -- in Las Vegas?

1 A Yes, it did. It was hot.

2 Q Did Romeo purchase anything?

3 A Shoes. A pair of shoes.

4 THE COURT: Actually, Mr. Lalli, I want a
5 clarification for the jury. The question was, did it strike
6 her -- did it seem unusual to her --

7 MR. LALLI: Correct.

8 THE COURT: -- that -- I may have misunderstood the
9 objection here.

10 As far as this witness's impression, or emotional
11 impression of, did it strike her unusual, I'm going to sustain
12 the objection.

13 The jury is instructed to disregard her answer as
14 far as, if it struck her unusual. That's the only thing I'm
15 asking -- I'm telling you to disregard.

16 BY MR. LALLI:

17 Q Was it unusual to purchase that sort of clothing in
18 May?

19 A Yeah.

20 Q Is that a yes?

21 A Yes.

22 Q At some point, do you then return to your apartment
23 at the Sportsman's?

24 A Yes.

25 Q Can you explain for us what happens back at your

1 apartment?

2 A I believe -- I believe they left. I think they hung
3 out for a little bit and left, if I remember correctly.

4 Q Let me ask you this. Did you have a land line in
5 your --

6 A Yes.

7 Q -- apartment?

8 A Yes, I did.

9 Q Did there come a time when you saw D-Roc using that
10 land line?

11 A Yes.

12 Q Did you overhear any part of his conversation?

13 A He was a real mumblor, very low talker. "I got
14 shoes, no clothes, desert." That's about all I got out of it.

15 Q Did he say anything specifically about girls, that
16 you recall?

17 A No. As far as I remember, they were looking for the
18 girls. They couldn't find the girls, they didn't know where
19 they were. And then he was upset with the girls, him and
20 Romeo.

21 Q Okay. I want to back up just a little bit. We were
22 talking earlier about going to Wal-Mart.

23 A Yeah.

24 Q And you had testified that it was yourself --

25 A Lynn, Romeo, and D-Roc.

1 Q Right. When they come over to your apartment, are
2 Christine and Victoria with them?

3 A I think -- I met them one -- they came into my
4 apartment. And I met Victoria quite a few times. But those
5 two, and there was one person left in the car. I can't
6 remember if that was a Tuesday night or not.

7 Q Okay. At some point, do you remember Christina and
8 Victoria at your apartment where they were both doing --

9 A Yes, yes.

10 Q -- work, doing their livelihood?

11 A Yes.

12 Q Do you believe that that was Tuesday night, or you
13 just aren't sure?

14 A If I recall, it probably was Tuesday night.

15 Q What were they doing?

16 A Christine -- Christine was in and out of my
17 apartment. I think she was selling. Victoria was sitting
18 down with me for a little bit. Then she ended up leaving to
19 go upstairs, which, if I remember correctly, it was either
20 Romeo or D-Roc had mentioned to me that they sent her up to go
21 take care of somebody.

22 Q To engage in an act of prostitution?

23 A Yes. Yes.

24 Q Was -- you had mentioned D-Roc being on the
25 telephone, and saying -- mumbling, but talking about no shoes,

1 no clothes. Do you -- what was he doing at the time? What
2 was he actually doing? Did you see something spread out on
3 your table there?

4 A Oh, all kinds of drugs. It was all kinds.
5 Marijuana, crack, everything.

6 Q Whose were those?

7 A I believe it was both of theirs.

8 Q Both of whose?

9 A Romeo and D-Roc.

10 Q Was there any discussion that evening about the Hard
11 Rock that you recall?

12 A They were supposed -- they said that they were going
13 to take the girls down to the Hard Rock and drop them off.

14 Q When you say "they", who was talking?

15 A Romeo and D-Roc.

16 Q They were both talking?

17 A It came out of Romeo's mouth, but D-Roc was right
18 there. They were supposed to go together.

19 Q And they were going to go to the Hard Rock?

20 A They were taking the girls to the Hard Rock.

21 Q What girls were they going to take?

22 A Victoria and Christine.

23 Q Do you that evening ever hear D-Roc and Romeo
24 talking with each other about going to the desert?

25 A Yes, I did. And I tried to ignore it, because they

1 told me I paid too much attention to what they were talking
2 about. But yes, I did hear them say that.

3 Q What do you remember them saying about the desert?

4 MR. CANO: Your Honor, if we could get a
5 clarification as to who's saying what.

6 THE COURT: I agree. Can you get the --

7 MR. LALLI: Well if --

8 THE COURT: -- witness to characterize --

9 MR. LALLI: Sure.

10 THE COURT: -- who said what.

11 MR. LALLI: Sure. If -- what I'd like to do, Your
12 Honor, is just indicate what she remembers having heard, and
13 then who said it, if that's acceptable to the Court.

14 THE COURT: As long as you follow up immediately
15 with that.

16 MR. LALLI: I will do that.

17 THE COURT: Okay.

18 BY MR. LALLI:

19 Q So, what do you remember in terms of this
20 conversation between Romeo and D-Roc about going to the
21 desert?

22 A They were in my kitchen -- well, it's real small,
23 but they were in my kitchen by the table. And they were
24 talking about being upset with the girls, and that they wanted
25 to take them to the desert. And they were both -- they were

1 both saying it, D-Roc and Romeo. And then I looked over, and
2 I says, "I don't want to hear it. I don't want to know what
3 you guys are talking about." And they said, "Well, you pay
4 attention too much anyways." And so --

5 Q Who said, "You pay attention too much anyway?" Do
6 you remember --

7 A D-Roc.

8 Q It was D-Roc who said that?

9 THE COURT: Is that --

10 MR. LALLI: And --

11 THE COURT: You just -- the witness just shook her
12 head up and down.

13 MR. LALLI: Thank you.

14 THE COURT: Is that a "yes"?

15 THE WITNESS: Yes, yes.

16 THE COURT: Okay. Thank you.

17 THE WITNESS: I apologize.

18 BY MR. LALLI:

19 Q Was there any discussion -- or did you hear either
20 D-Roc or Romeo utter the letters "PT"?

21 A Yes, I did. But at that time, I didn't know what it
22 meant. You know, I thought it was something else.

23 Q Who said "PT", or who was talking about "PT"?

24 A Romeo -- Romeo initially said it. And then D-Roc
25 shook his head, yes.

1 Q And tell us about that discussion of PT.

2 A They said that they were going to -- they needed to
3 take the girls out to the desert, teach them a lesson, and
4 teach them what PT time was, or PT something. And I thought
5 it was pimp training.

6 Q Pimp training?

7 A Because they were pimps. That's what Romeo always
8 told me that's what they did, and the girls worked for them.

9 Q So, did everyone leave your apartment at some point
10 that evening?

11 A Yes.

12 Q Now, I want to move to Wednesday, May 17th of 2006.
13 You indicated that at the time these events were occurring,
14 you worked at the Roadrunner?

15 A Correct.

16 Q On Wednesday, do you recall what your shift was on
17 Wednesdays?

18 A I worked swing shift.

19 Q Which is what, roughly?

20 A It would either be 3:00 to 11:00, or 5:00 to 11:00.

21 Q Do you remember how you got to work on that May
22 17th?

23 A I usually took the bus. But I came out of my
24 apartment, was going to catch the bus. And I ran into Donny
25 and Romeo at the Shell Station, and I asked them if they could

1 give me a lift, and they said they would.

2 Q The Shell Station; is that the Shell Station at the
3 Sportsman's?

4 A Correct.

5 Q And you indicated that Romeo and Donny Herb were
6 there?

7 A Yes.

8 Q Did they, in fact, drive you to work?

9 A Yes.

10 Q What vehicle did they use?

11 A That one right there, the green one.

12 Q The green one you just pointed to, State's Exhibit
13 No. 69; is that correct?

14 A Correct.

15 Q Who drove you; do you remember?

16 A I think -- I think Romeo was driving.

17 Q So, you go to work?

18 A Uh-huh.

19 Q Is that, yes?

20 A Yes.

21 Q And then at the end of your shift, were you picked
22 up from work?

23 A Yes.

24 Q By whom?

25 A D-Roc and Romeo.

1 Q In what vehicle?

2 A The green one.

3 Q The same one?

4 A Um-hum.

5 Q Yes?

6 A Yes. Sorry.

7 Q And when -- do they -- tell us what you remember of
8 that. Do they come in and get you, or are you waiting outside
9 for them? How does that happen?

10 A I think they came in. I can't remember if they came
11 in, or if I was waiting outside. I might have been outside
12 smoking a cigarette, waiting on them.

13 Q All right.

14 A Or they might have came in. I don't -- I honestly
15 don't remember.

16 Q But eventually, they pick you up --

17 A Yeah.

18 Q -- in the green vehicle?

19 A Yes.

20 Q Where do you go?

21 A We ended up back at -- we ended up going back to the
22 Sportsman's.

23 Q Back to your apartment?

24 A Yes. I believe that was the night my girlfriend
25 made -- my ex-girlfriend made spaghetti.

1 Q What was going on that night?

2 A Oh, I -- Romeo and Lynn were playing the Play
3 Station. D-Roc was on the couch. She offered everybody
4 spaghetti. Told everybody they had to make it themselves,
5 they had to heat it up. Romeo didn't want any. D-Roc ate,
6 and he started nodding off at the couch. And I thought he was
7 on some pills, and I asked him, why are you holding out?

8 Q What does that mean?

9 A Why -- you know, can you give me some, too? Yeah, I
10 was bad then. And then Romeo said, "Well, don't worry about
11 it, I'll get him out of here. We're going to go home because
12 he's passing out." And I believe they got up and they left
13 around -- I think it was like 11:30.

14 Q Was Victoria or Christina there that night?

15 A No.

16 Q Were the defendant, D-Roc and Romeo, interested in
17 finding them, or looking for them?

18 A Yeah, they said they had to look for the girls, that
19 the girls were missing.

20 Q What was the -- what do you recall of their
21 demeanor? Were they -- not really care, but the girls just
22 happened to be missing? Were they angry, were they sad? Can
23 you give us some sense --

24 A They seemed --

25 Q -- of what you remember?

1 A They seemed a little more upset, because I think
2 they owed them money or something, from --

3 Q Who owed who money?

4 A The girls.

5 Q Owed who money?

6 A Romeo and D-Roc.

7 Q And --

8 A That's why they were looking for them.

9 Q That's why D-Roc and Romeo were looking for the
10 girls?

11 A Yes.

12 Q And you indicated that they left, I think you said
13 somewhere around 11:30?

14 A Yeah, I believe so.

15 Q Where do -- how do they leave? Do you see them
16 leave?

17 A They left out my door, and I believe they got into
18 the green car, because that's the car they were always in.

19 Q Was Donald Herb with them?

20 A No. He had drug court or something. He always had
21 to go to drug court, and then turn himself in on the weekends
22 or something like that.

23 Q Turn himself in, like, go to jail on weekends?

24 A Yeah. Yes.

25 Q Based upon his poor performance?

1 A Yeah, whatever he was in trouble for. I have no
2 idea.

3 Q I'd like to now move to the next day, which was
4 Thursday, May 18th. In the early morning hours, does somebody
5 come to your apartment carrying shoes?

6 A Yes, Romeo did. I was up drinking, and my door was
7 open.

8 Q What was going on? Why did he -- why was he holding
9 these shoes?

10 A I don't know. He looked all distraught. Like
11 scared, worried, freaked out. And he had shoes in his hand.
12 And it was just weird.

13 Q Did he tell you why he was shocked, or worried, or
14 concerned?

15 A No. He never said anything about it.

16 Q What happened? Did he stay there for a time?

17 A He ended up -- yeah, he ended up staying with me for
18 like a week.

19 Q Well, I'm still talking about that evening.

20 A Oh, that evening? No. He ended up coming, and he
21 seen that we were drinking. And then he was like, "Well, I
22 got to go. Do you guys want me to bring you back some beer?
23 I'll be back." I said, "Sure." And I waited up for awhile,
24 and he never came back. And then somebody had called me. One
25 of his friends --

1 Q Well, don't tell us what anybody else might have
2 said to you?

3 A Oh, okay.

4 Q Okay? But at some point, do you see Romeo again?

5 A Yeah. Later on -- early in the morning, like later
6 on Thursday, like in the afternoon or something, I believe.
7 He showed back up at my door and he looked beat up.

8 Q Okay. Describe what you saw of Romeo at that time?

9 A He had a black eye, a fat lip. I don't know, he was
10 all beat up looking.

11 Q When Romeo came to your apartment, do you recall
12 what time it was? The first time now, I'm talking, when he
13 had that shocked look on his face.

14 A Oh, God, it was late. Let's see here. 3:00. Maybe
15 2:30, 3:00 o'clock in the morning.

16 Q And when he came back after he had been beaten up,
17 about -- you said it was later, almost in the afternoon?

18 A Somewhere around there. About 11:00, maybe 12:00.
19 I mean, I'm not sure. I just know it was daylight, and it was
20 past early morning. I know that.

21 Q When -- on that occasion, when Romeo had returned,
22 either the first time when he was shocked and concerned, or
23 the time when he had been beaten up, was D-Roc with him?

24 A No.

25 Q I want to move ahead now to February -- I'm sorry,

1 Friday, May 19th of 2006. Did you normally work on Fridays?

2 A Yes, I did. I worked day shift.

3 Q Which is when?

4 A I would go in at like 7:00 in the morning, get off
5 at 3:00 in the afternoon.

6 Q On that particular Friday, were you -- how did you
7 get home? Were you picked up?

8 A I don't remember.

9 Q Would it refresh your recollection to review your
10 preliminary hearing transcript? Okay.

11 MR. LALLI: Counsel, I'm going to page 37. May I
12 approach the witness, Your Honor?

13 THE COURT: Yes.

14 (Pause in the proceedings)

15 BY MR. LALLI:

16 Q Do you want to read, starting at line 18? If you
17 want to just --

18 A "Yeah, this was that Friday when they had picked me
19 up from work at 3:00 in the afternoon, because I worked 7:00
20 to 3:00 on Friday." Okay. "When we got to the room" --

21 Q Well, no, no, no.

22 A Okay.

23 Q Just read it to yourself.

24 A Oh. Okay.

25 Q So, when you say you were picked up from work, who

1 picked you up from work?

2 A D-Roc and Romeo.

3 Q And they pick you up at the Roadrunner?

4 A Yes.

5 Q At some point, were the two of them looking at a
6 newspaper together?

7 A Yes, they were. I was in the front seat. Romeo was
8 driving and D-Roc was in the back.

9 Q Explain to the jury what was going on.

10 A We were on our way home and D-Roc was looking at the
11 paper in the backseat. And Romeo had said something like,
12 "Well, did you read anything? Was there anything in there?"
13 And he said, "No, nothing's in there. Don't worry about it."

14 Q Who said, "Nothing's in there. Don't worry about
15 it."

16 A D-Roc.

17 Q And it was Romeo who was asking D-Roc if there was
18 anything in the newspaper?

19 A Yes.

20 Q Do you eventually go back to your apartment?

21 A Yes.

22 Q Back at your apartment, do you recall D-Roc being on
23 the telephone?

24 A Yes, I do.

25 Q Do you remember what he was talking about?

1 A He was mumbling, as usual.

2 Q What did you -- what were you able to hear?

3 A What I had mentioned earlier, but I guess I had the
4 day wrong. It was the "no shoes, no clothes, desert," and
5 that's all I got. Because he was a real low talker, he
6 mumbled a lot.

7 Q But you remember him talking about no shoes, no
8 clothes?

9 A Yeah, I heard those.

10 Q Talking about the desert?

11 A Yes.

12 Q I want to now move to Saturday, May 20th of 2006.
13 Did you normally work on Saturdays?

14 A I believe so. I believe I worked day shift on
15 Saturdays, too.

16 Q At some point, are you picked up --

17 A Yes.

18 Q -- at work?

19 A Yes.

20 Q By whom?

21 A D-Roc and Romeo.

22 Q Does something happen near the trash dumpsters at
23 the Roadrunner?

24 A Yes, D-Roc took his pants off and threw them in the
25 trash.

1 Q Explain what happened to the jury.

2 A They pulled up to pick me up. I believe I was at --
3 this time I was outside waiting for them. And they pulled up
4 in the back park -- parking lot, and there's a dumpster over
5 there. And I walked up to the car, and he come walking around
6 from the dumpster.

7 Q When you say "he", who are you talking about?

8 A D-Roc. And he had boxer shorts on, and that was it.
9 And I was like --. And he had apparently thrown his pants
10 into the dumpster.

11 Q Do you know that for certain, or is --

12 A Yes, I seen it.

13 Q You saw him throw his pants into the dumpster?

14 A Yes.

15 Q Do you know why he did that?

16 A No. I asked him and he told me, "Don't worry about
17 it."

18 Q Was there a time that you had a discussion with
19 Romeo and D-Roc regarding the tires that were on the green
20 Alero?

21 A Oh, yeah.

22 Q When -- what is your recollection of when that
23 occurred?

24 A That I remember clear as day. We were standing
25 outside. I just came home from work. And he told me -- he

1 asked me, Romeo did. And he says, "Are you" -- and he goes,
2 "I know you're --

3 MR. CANO: Your Honor --

4 THE WITNESS: -- tired, but can you do me a favor?"

5 THE COURT: Yes?

6 MR. CANO: Your Honor, that was non-responsive. He
7 asked for when it happened, and she's going into the
8 conversation.

9 THE COURT: All right. What date -- or what date in
10 relationship to --

11 THE WITNESS: That was Saturday after I got off
12 work, if I'm not mistaken.

13 THE COURT: On the same day that you saw --

14 THE WITNESS: Yes.

15 THE COURT: -- you say you saw something by the
16 dumpster? The same day?

17 THE WITNESS: Yes.

18 THE COURT: Okay, thank you.

19 BY MR. LALLI:

20 Q So, you get back to your house, back to the
21 Sportsman's? Is that yes?

22 A Yes.

23 Q And D-Roc and Romeo were there?

24 A Yes.

25 Q And there was some discussion about the tires?

1 A Yes.

2 Q Tell us about that, and who was saying what.

3 A Romeo had asked me -- he said, "I know you're tired,
4 you just got off work." He goes, "But I need you to do us a
5 big favor." And I said, "Okay, what's that?" And he goes, "I
6 need you to run down and get my tires changed, I need new
7 tires." I said, "All right, no problem."

8 So, he sent me down to this little tire place on
9 Boulder Highway. It's a little Mexican-run place. And told
10 me to get them changed. I went there --

11 Q Let me ask you something about before you actually
12 go there. Does he give you any additional instructions, or
13 are you --

14 A Yeah.

15 Q -- given additional instructions?

16 A Yes. Only pay cash, no receipt, don't ask
17 questions.

18 Q Who gave you these instructions?

19 A Romeo.

20 Q Where was D-Roc at the time?

21 A Standing right behind him at my doorway.

22 Q So, you say that -- did he give you money?

23 A Yes, he did.

24 Q Do you remember how much money he gave you?

25 A I believe it was 140 bucks. It might have been 160.

1 Because he told me it was -- I think he said it would be
2 anywhere from 25 to \$30 a tire if I went down to the Mexican
3 place.

4 Q So, you had started to tell the jury how you had
5 actually gone down to this place, correct?

6 A Yes.

7 Q Where was it located, roughly?

8 A Boulder Highway, kind of by Sam's Town, I think, if
9 I remember correctly, on the left hand side.

10 Q And what happened when you -- do you actually drive
11 the green Alero there?

12 A Yes, I did. And Lynn and I went together.

13 Q What happens when you get there?

14 A I get there, I pull in. I ask them if they have the
15 four tires, if they could change it. They said, yes. They
16 went ahead and they put them all on. By the time they got to
17 the last tire, the tire wouldn't go onto the rim.

18 So, they came back, and they said, "Sorry, we don't
19 have all the tires." I said, "Well" -- I kind of gave them an
20 attitude, and they were going to still charge me \$25. Well,
21 they put all the tires back on, the original tires. And I
22 skirted out of there and came back to the hotel room -- or to
23 my apartment.

24 Q The Sportsman's?

25 A Yes. And told Romeo and D-Roc I wasn't able to do

1 it, explained to them. And I told them that they might have
2 got your license plate, because I didn't pay them the \$25 for
3 going through the trouble, because they didn't have all the
4 tires. And then --

5 Q Let me ask you this. When -- as -- when you left
6 the Sportsman's to go do this, were D-Roc and Romeo at your
7 apartment?

8 A Yes.

9 Q When you returned, were they still there?

10 A Yes.

11 Q And when you returned, is that when you told them
12 that you weren't successful in getting the tires changed?

13 A Yes.

14 Q Who were you telling that to?

15 A D-Roc and Romeo.

16 Q Where were they in your apartment?

17 A They were sitting on the couch.

18 Q And tell us how that conversation goes at that
19 point.

20 A Romeo told me not to worry about it, that they had a
21 buddy -- him and D-Roc had a buddy down on the west side that
22 they could get the tires changed through. And that's when I
23 gave him his money back and they left.

24 Q Did you ever meet Jason McCarty's parents? I'm
25 sorry, Romeo's parents?

1 A Oh, yes.

2 Q When in relation to these events was that?

3 A This was later on. I can't tell you exactly the
4 day. But it was after the tire thing, I know that. And I had
5 to be at work, because he had offered me to stay for dinner
6 with his parents. But he brought me over there, introduced me
7 to his parents. Explained to his mom and dad that he was
8 being framed for a murder or something, and that he needed
9 some advice. And then, that's when they told me that --

10 Q Don't tell me anything that his parents might have
11 said. I'm just interested --

12 A No, this was from Romeo.

13 Q Okay, what did he tell you?

14 A Romeo had told me not to worry about it, not to say
15 anything. But if I needed any -- you know, to speak to his
16 attorney only. If I -- you know, not to talk to anybody else
17 but his attorney.

18 Q Just to talk to his lawyer?

19 A Yeah.

20 Q Did he have a lawyer at the time?

21 A Not that I knew of. If he did, I didn't know about
22 it. I was freaked out by then.

23 Q Why were you freaked out? Had the news been
24 reporting something?

25 A Yeah, and I had recognized Victoria's and

1 Christine's name. And then I was freaked out when -- then he
2 brought up all this, and I'm at his parents' house, and I'm
3 freaking out now.

4 Q At some point, does somebody come to you to talk
5 about any information that you might know?

6 A Yes.

7 Q Do members of law enforcement come?

8 A Yes.

9 Q Did you speak with members of law enforcement on
10 more than one occasion?

11 A Yes, I did.

12 Q I want to talk just very briefly about the first
13 occasion. Do you remember that?

14 A Yes.

15 Q Where were you when you were approached by law
16 enforcement?

17 A They came to my apartment.

18 Q Who was at your apartment at the time?

19 A I believe it was a young lady and a gentleman. I
20 don't remember their names.

21 Q Those were the detectives?

22 A Yes.

23 Q Were you at your -- aside from the detectives who
24 came there, were you at your apartment by yourself, or was
25 somebody else there with you?

1 A Lynn was.

2 Q And tell us what happens. Don't tell us anything
3 that they say to you. But do you eventually give a statement
4 to them?

5 A I did, but not really -- I was trying to avoid them.
6 I was scared. I didn't really talk to them. I started
7 talking later on when other detectives came because --

8 Q I understand. But I want to just talk about that
9 first conversation that you had with them. Did you provide
10 them with information that was not truthful?

11 A I might have, because I was scared. You know. I --

12 Q Scared of what?

13 A The whole situation. I didn't want to be involved.
14 And then --

15 Q Had you ever had a conversation with Romeo about
16 things you should or should not say to the police?

17 A Yes.

18 Q What did he tell you?

19 A He just told me not to speak to anybody.

20 MR. CANO: Objection to foundation, Your Honor.

21 BY MR. LALLI:

22 Q When was that?

23 THE COURT: Okay.

24 THE WITNESS: That was the day at his parents'.

25 BY MR. LALLI:

1 Q So, from that same conversation?

2 A Yes.

3 Q So, eventually do the members of law enforcement
4 leave?

5 A Yes, they do.

6 Q Do they come back and do you have subsequent
7 conversations with them?

8 A Yes.

9 Q Eventually, do you begin to tell them some of the
10 things that you know?

11 A Yes, I did.

12 Q Why? What changed? How did that come about?

13 A Well, I was -- I actually spoke with my mother, to
14 tell you the truth. And she told me that I needed to do --

15 Q Don't tell us what your mother said.

16 A Well --

17 Q But after you had spoken to your mother --

18 A Then I realized I needed to do what was right. So,
19 I broke down and I was crying, and I started telling them
20 everything that I knew.

21 MR. LALLI: Your Honor, that concludes direct
22 examination.

23 THE COURT: All right. Cross-examination. Mr.
24 Lalli and Mr. Cano, can you approach on a scheduling issue?

25 (Bench conference)

1 MR. LALLI: Judge Kishner's hearing starts at 12:30.
2 And so, she will call him, make sure he's called first, and
3 then send him here.

4 MR. LALLI: Okay. Thank you.

5 (Bench conference ended)

6 CROSS-EXAMINATION

7 BY MR. CANO:

8 Q Good morning, Ms. Phillips.

9 A Good morning.

10 Q We've actually had the occasion to speak before?

11 A Yes.

12 Q Do you remember that?

13 A Yes.

14 Q That was back in Henderson?

15 A Um-hum.

16 Q A long time ago?

17 A Yes, it was.

18 Q It was in 2006, I believe, correct?

19 A Yes.

20 Q Now, I'm going to talk to you about your lifestyle
21 back then, okay?

22 A Okay.

23 Q You were living at the Sportsman's you said with
24 Lynn?

25 A Yes.

1 Q And that would be Lynn Nagel?

2 A Yes.

3 Q And she was your girlfriend at the time?

4 A Yes.

5 Q Okay. And at the Sportsman's, were you and Lynn
6 known by any name?

7 A The gay girls.

8 Q The gay girls? Lesbians? Would people refer to you
9 as, the lesbians?

10 A Yeah.

11 Q Okay. Not to be offensive, but that's just how they
12 kind of how they referred to you, correct?

13 A Yeah.

14 Q All right. And you had been staying at the
15 Sportsman's, you said, from 2005 to 2006?

16 A Somewhere around there. It might have been only --
17 it was anywhere from six to eight months. It wasn't a full
18 year.

19 Q Okay. So, six to eight months that you're living at
20 the Sportsman's. And you said at that point in time, you were
21 a drug addict?

22 A Yes, I was.

23 Q That you were addicted to crack cocaine?

24 A Yes, I was.

25 Q You were smoking marijuana as well?

1 A Um-hum. Yes.

2 Q Were you smoking meth as well?

3 A No.

4 Q Okay. Just crack and marijuana?

5 A Yes.

6 Q Okay. And you were also drinking?

7 A Yes.

8 Q Would you consider yourself to be an alcoholic?

9 A No.

10 Q Okay. So, your addictions was marijuana and crack?

11 A Yes.

12 Q Okay. And at that point in time in your lifestyle,

13 would it be fair to say that you were smoking crack on a daily

14 basis?

15 A Not daily, but quite a bit.

16 Q Would you be smoking crack every other day?

17 A Yeah. Yes.

18 Q Okay. And can you tell the jury how much crack you

19 would be smoking when you did smoke crack?

20 A I don't know. About a gram a day, maybe.

21 Q Okay. A gram a day. And that would be the average

22 of it?

23 A Um-hum.

24 THE COURT: Is that a yes?

25 THE WITNESS: Yes.

1 THE COURT: Okay, thank you.

2 MR. CANO: Thank you, Your Honor.

3 BY MR. CANO:

4 Q What would be the most you would smoke in a day?

5 A I don't know, I never kept track.

6 Q Would there be occasions where you would smoke more
7 than a gram, I would imagine?

8 A Yes.

9 Q And there would be other occasions where you would
10 smoke less than a gram?

11 A Yes.

12 Q So, the gram a day would be the average?

13 A Yes.

14 Q Okay. And at that point in time when you're smoking
15 crack, you're not really paying attention as to which day
16 you're smoking more than a gram, right?

17 A No.

18 Q And which day you were smoking less than that?

19 A Correct.

20 Q Okay. So, would it fair to say that during this
21 time period when all these events are going on, you're smoking
22 crack cocaine?

23 A Yes, I was.

24 Q Okay. And you actually told the jury, I think in
25 direct examination, that you were doing drugs, smoking weed,

1 at least with Romeo, correct?

2 A Yes.

3 Q All right. And I imagine if you had the crack
4 cocaine in front of you, you would be smoking that as well?

5 A More than likely.

6 Q Okay. So, it would be fair to say that during this
7 time frame when all of this is going on, the use of the crack
8 cocaine and marijuana, and the occasional drinking that you
9 were having, that would affect your perception as to what was
10 happening?

11 A No.

12 Q It wouldn't affect it at all?

13 A Just because I was high didn't mean that I didn't
14 know what was going on in my surroundings.

15 Q So, is what you're saying is when you smoke crack
16 cocaine, it doesn't affect your perception at all?

17 A No, I know what's going on.

18 Q Okay. And smoking marijuana wouldn't affect your
19 perception at all I guess either?

20 A No.

21 Q So, you were such a frequent user of drugs, of crack
22 and marijuana that it couldn't affect your perception as to
23 what was happening?

24 A No.

25 Q It wouldn't confuse you as to the times and days as

1 to -- you know --

2 A No.

3 Q -- sequence of events?

4 A No.

5 Q No? Okay. Now, by the way, do you have any felony
6 convictions for the drug usage that you were having?

7 A Nope.

8 Q Okay. And you were never charged with any crimes in
9 this case?

10 A No.

11 Q Okay. Now, but you do remember talking to the
12 police officers about your concerns regarding that?

13 A No.

14 Q Did you remember having a conversation with Officer
15 Collins -- or Detective Collins?

16 A Oh, yeah. He was cool.

17 Q Okay. Well, let's talk a little bit about that. I
18 think counsel -- or the District Attorney, Mr. Lalli, asked a
19 couple questions. You were interviewed quite a few times in
20 this case; would that be a fair --

21 A Yes, I was.

22 Q If you'd let me finish the questions.

23 A Oh, I'm sorry.

24 Q Because they're transcribing all of this, so we have
25 to -- one has to speak at a time, okay? So we're not on top

1 of each other. Thank you, ma'am.

2 There were several interviews conducted by the
3 police department, correct?

4 A Yes.

5 Q Okay. You talked to them on May 30th --

6 A Yes.

7 Q -- of 2006, do you remember that?

8 A Yes.

9 Q Okay. And it was actually on three different
10 occasions, correct?

11 A Yes.

12 Q And some of those conversations were alone, and some
13 of them were with your partner, Lynn?

14 A Yes.

15 Q Okay. And it would be fair to say that the course
16 of speaking with them on May 30th, you were with the Henderson
17 Police Department throughout the entire day? Or they would
18 come back to you, or you had spoke to them several times that
19 same day?

20 A Yes.

21 MR. LALLI: I'm going to object, just to the
22 compound nature of the question. I would just ask counsel
23 to --

24 THE COURT: Sustain the objection.

25 MR. LALLI: -- break it down.

1 MR. CANO: Okay.

2 BY MR. CANO:

3 Q Would it be fair to say that on the 30th when you
4 spoke to the Henderson Police Department, you spoke to them
5 several times that day?

6 A I don't recall, but probably.

7 Q Okay. Do you recall speaking to them at 10:00 in
8 the morning?

9 A Yes.

10 Q Okay. Do you recall going to Starbucks with some of
11 the officers?

12 A Yes, I did.

13 Q Do you recall coming back to the Sportsman's after
14 that Starbucks, and speaking with the detectives later on in
15 the evening?

16 A Yes.

17 Q Okay. So, then it would be fair to say that you
18 kind of spent a long period of time throughout that day
19 speaking with detectives, correct?

20 A Yes.

21 Q Okay. And then after that, they came back to you on
22 the 1st, June 1st?

23 A Yes.

24 Q Okay. And they spoke to you that day in the
25 evening, I believe?

1 A Yes.

2 Q All right. And that actually took place at your
3 work?

4 A Yes, it did.

5 Q Okay. And then after that, they wanted to speak to
6 you some more, and they came back to you on the 16th?

7 A Yes.

8 Q Okay. Have you had a chance to review all of those
9 transcripts of those meetings with police officers?

10 A A little bit.

11 Q Were you given -- were they provided to you prior to
12 your testimony?

13 A No.

14 Q They were not?

15 A Oh, yes, yes. Prior to this testimony?

16 Q Yes.

17 A Yes.

18 Q Who provided them to you?

19 A Chris.

20 Q Chris? Okay. That would be Mr. Lalli?

21 A Yes.

22 Q Okay. So, you know him by his first name? Okay.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

1 MR. CANO: All right.

2 BY MR. CANO:

3 Q And you also testified at the preliminary hearing;
4 do you remember that?

5 A Yes.

6 Q We talked about how we met there, right?

7 A Yes.

8 Q Okay. And you were on the stand for a couple days
9 at the preliminary hearing, right?

10 A Yes.

11 Q So, you were provided those transcripts as well?

12 A Yes.

13 Q And did Chris provide those for you as well?

14 A No, I believe it was -- I don't remember who it was,
15 but it wasn't him.

16 Q Okay. When were those given to you?

17 A I don't remember.

18 Q Okay. But you've had those in your possession for
19 quite a while?

20 A Not for quite a while. I think it was given to me
21 that day.

22 Q The preliminary hearing transcripts?

23 A Yeah, I don't remember. But, yes.

24 Q But you were given them?

25 A Yes.

1 Q Okay. How long ago were you given your prior
2 interviews or statements and your preliminary hearing
3 transcript?

4 A Say that again?

5 Q How long have you had those in your possession?

6 A I don't know. A couple days. Three days.

7 Q A couple days, three days? Okay. And you are no
8 longer living in Las Vegas, correct?

9 A No.

10 Q Okay. So, have you been in Las Vegas for the last
11 two, three days?

12 A As of yesterday, yes.

13 Q As of yesterday. Okay. So, they were provided to
14 you prior to your arriving to Las Vegas then?

15 A Yes.

16 Q Okay. How much time would you say that you've spent
17 reviewing all these statements and transcripts?

18 A Twice. And they were both with Chris.

19 Q Okay.

20 A I never actually sat down and read them like I was
21 supposed to.

22 Q You never did sit down and read them?

23 A No.

24 Q But you did review them, or actually had like an
25 interview, I guess, with Chris?

1 A Yes.

2 Q Regarding what you were going to speak about today?

3 A Yes.

4 Q And the areas that you were going to cover today?

5 A Yes.

6 MR. CANO: Court's indulgence.

7 BY MR. CANO:

8 Q And would it be a fair statement to say that prior
9 to speaking with the police on the 30th, you had a general
10 idea of Christina and Victoria being missing?

11 A Yes.

12 Q Okay. Would it be a fair statement to say that
13 during that time frame while you were living at the
14 Sportsman's, there would be a lot of rumors flying around?

15 A No.

16 Q Were there any rumors flying around about these
17 girls disappearing?

18 A No. The only time I heard about that was through
19 D-Roc and Romeo.

20 Q Okay. Do you remember telling the police that you
21 heard things from a crack head named Sugar Hill (phonetic)?

22 MR. LALLI: I'm going to object to any hearsay.

23 MR. CANO: I'm not asking what the content of it, if
24 she's had a conversation with this person named Sugar Hill.

25 MR. LALLI: Fair enough, Your Honor.

1 THE COURT: Okay.

2 BY MR. CANO:

3 Q Do you remember that?

4 THE COURT: Go ahead and answer the question.

5 THE WITNESS: I don't recall. It was a long time
6 ago.

7 BY MR. CANO:

8 Q Okay. Do you remember a person named Sugar Hill
9 living at the Sportsman's?

10 A Yes.

11 Q Okay. And was that person a drug user?

12 A Yes.

13 Q Would you describe him as a crack head?

14 A More of a dealer.

15 Q Okay. But a person that you know to use crack or
16 deal crack?

17 A He was one of my other dealers.

18 Q Okay. Do you recall having a conversation with him
19 regarding this issue?

20 A No.

21 Q Okay. Now, describe for me a little bit about --
22 let's talk a little bit about the Sportsman's, and about when
23 you're living there. It's a weekly?

24 A Yes.

25 Q So, temporary type residents live there?

1 A Yes.

2 Q Sometimes, people -- you know, they're not so
3 temporary, kind of stay there for extended periods of time?

4 A Yes.

5 Q Like yourself, you said you were there six to eight
6 months?

7 A Yes.

8 Q All right. Would it be fair to say that that was an
9 area that was -- there was a lot of drug trafficking going on
10 in that area?

11 A I didn't know that at the time, but yes.

12 Q Okay. You said that you had gotten your drugs from
13 Romeo?

14 A Yes.

15 Q Okay. And this other person that we've described as
16 Sugar Hill?

17 A Yes.

18 Q All right. How many other drug dealers did you know
19 over at the Sportsman's?

20 A Just those two.

21 Q Just those two? Okay. Did you receive any of your
22 drugs from White Boy?

23 A I received a lot of it from Donny, D-Roc and White
24 Boy, because all three of them worked together.

25 Q Okay.

1 A They were all three in my apartment constantly.

2 Q Okay. Listen to my question, and answer my
3 question. My question was, did you receive any drugs from
4 White Boy?

5 A Yes.

6 Q Okay. And White Boy, as you said, is Donny?

7 A Yes.

8 Q All right. Donald Herb? Okay. So, you said you
9 also received drugs from Domonic?

10 A Yes.

11 Q Okay. And you also mentioned that they had been
12 cooking drugs in your house?

13 A Yes.

14 Q Okay. And that would be crack cocaine?

15 A Yes.

16 Q Okay. And that would be all three of them, Domonic,
17 White Boy, and Romeo?

18 A D-Roc and Romeo. Donny was -- Donny, I don't
19 remember him being there when they cooked.

20 Q Okay. So, when they were cooking drugs, it was only
21 Domonic and Romeo?

22 A D-Roc and Romeo.

23 Q Okay. Do you know Domonic to be D-Roc?

24 A Yes.

25 Q Okay. So, Domonic and Romeo would cook drugs at

1 your house?

2 A D-Roc and Romeo, yes.

3 Q Yes?

4 A Yes.

5 Q How many times would they have cooked?

6 A Quite a few times.

7 Q Well, can you give me a number?

8 A No, because it was constant.

9 Q Constant. So, it would be on a daily basis that
10 they would cook in your house?

11 A Every other day.

12 Q Every other day? And would that be for the entire
13 six to eight-month period that you were living there?

14 A No. This would be within the -- about a month that
15 I met them.

16 Q Okay. And so prior to this incident happening in
17 May, are you saying that you've only known them for a month
18 prior to that?

19 A Yeah.

20 Q So, from I guess mid-April?

21 A A little bit earlier than that, because it was
22 before my birthday that I met them. So, I would say about the
23 beginning of April.

24 Q So, what day is your birthday in April?

25 A Maybe March, I don't know, I can't remember. But,

1 what? April 30th.

2 Q So, your birthday's in -- at the end of April?

3 A Um-hum.

4 Q So you know you met them before that?

5 A Yeah.

6 Q So, you think in the beginning of April, but you're
7 not really sure, it could have been the end of March?

8 A It could have been even earlier. I'm not sure.

9 Q Okay. So --

10 A I know I didn't know them for six months though.

11 Q Okay. So, for the entire month period of April,
12 would it be fair to say that you knew them?

13 A Yes.

14 Q Okay. And that they were cooking drugs in your
15 house?

16 A Yes.

17 Q On a daily basis?

18 A Not --

19 MR. LALLI: Objection, asked and answered, Your
20 Honor.

21 MR. CANO: I'm asking about the month of April, Your
22 Honor. She said on several occasions.

23 THE COURT: I'm going to allow the question.

24 MR. CANO: Okay.

25 BY MR. CANO:

1 Q Were they cooking this crack --

2 A I don't --

3 Q -- on a daily basis?

4 THE COURT: And this is for the month of April?

5 MR. CANO: For the month of April.

6 THE COURT: Okay.

7 THE WITNESS: I don't know if it was April, May,
8 June. I just know they did it.

9 BY MR. CANO:

10 Q Okay. So, now they're cooking drugs in April, May,
11 and in June?

12 A I don't know. I'm just making -- I was just being
13 smart. I don't know when they did it. I just know they
14 cooked in my apartment. I can't tell you what day, what exact
15 date, what time. I just know they cooked in my apartment and
16 I know they did it several times.

17 Q Do you know how serious this case is, ma'am?

18 MR. LALLI: Objection, Your Honor. Argumentative.

19 THE COURT: Sustained.

20 MR. CANO: All right.

21 BY MR. CANO:

22 Q So, do you think it's appropriate to be smart alec
23 with me?

24 MR. LALLI: Objection, argumentative.

25 THE COURT: Sustained.

1 MR. CANO: Now -- Court's indulgence, Your Honor.

2 THE COURT: Sure.

3 MR. CANO: Okay.

4 BY MR. CANO:

5 Q So, do you recall telling --

6 MR. CANO: And this is on page 27 of the May 30th
7 statement. I believe it's the -- counsel, it's -- I think
8 it's the second one.

9 MR. LALLI: Okay.

10 MR. CANO: It's the second one, right?

11 MR. LALLI: Yeah. Thank you.

12 BY MR. CANO:

13 Q Do you remember telling the police officers that
14 D-Roc had only been to your apartment twice?

15 A I might have said that, because I was scared. But
16 he had been there a lot more than twice.

17 Q Okay. But would it refresh your recollection if I
18 showed you your statement that you told the police?

19 A Yeah.

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

21 THE COURT: Yes.

22 MR. LALLI: Your Honor, I don't think she's denying
23 having made the statement.

24 MR. CANO: She said, she may have.

25 THE COURT: I'm going to let you go ahead and show

1 her the statement.

2 BY MR. CANO:

3 Q And this is page 27. Read it to yourself, starting
4 on line 19, and the answer.

5 MR. LALLI: I'm sorry, what page, counsel?

6 MR. CANO: It's page 27.

7 THE COURT: And he directed the witness to go to
8 line 19.

9 THE WITNESS: Yeah, I did say that. But that was my
10 first statement, so I was scared.

11 BY MR. CANO:

12 Q There's not a question in front of you, but I'm
13 going to ask you one now. So, you told the police that he had
14 only been to your apartment twice?

15 A Yes.

16 Q And you told the police that you did not like him,
17 and you didn't want -- and you told Romeo never to bring him
18 back?

19 A Yeah, but I never really --

20 Q After [inaudible] --

21 A -- said that though. But I said it to the police,
22 but I never said that to Romeo.

23 Q Okay. So, you lied?

24 A Yeah. I was scared.

25 Q Okay. The question was, you lied?

1 A Yes.

2 Q Okay. Now, when you spoke to the police the first
3 occasion, on your statement --

4 MR. CANO: It's the first statement, counsel.

5 BY MR. CANO:

6 Q You told the police that you knew White Boy, and you
7 knew Romeo, but you didn't know anyone else? Do you remember
8 telling them that?

9 A No. But if I said it, then I probably said it. I
10 was scared when he interviewed me the first time.

11 Q Okay. Do you remember -- do you remember, or do you
12 not remember saying that to the police?

13 A No.

14 Q Okay.

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

16 THE COURT: Yes.

17 MR. CANO: On page 4, counsel. Line 5.

18 BY MR. CANO:

19 Q Read it to yourself there. Page 4 [inaudible].

20 Okay. Does that help tp refresh your recollection
21 whether you said that to police or not?

22 A If it's there, I said it. Yes.

23 Q So, it does help to refresh your recollection?

24 A Yeah.

25 Q So, you told the police that you didn't know anyone

1 else?

2 A No.

3 Q Correct?

4 A Yes.

5 Q Okay. But that was a lie, too?

6 A Yeah, I was scared.

7 Q Okay. I asked you if it was a lie.

8 A Yes.

9 Q So, it was a lie?

10 A Yes.

11 Q Okay. Would it be a fair statement that along with
12 D-Roc and -- or you know, Domonic here, and Romeo coming to
13 your apartment, that Donny would frequent your apartment?

14 A Donny was there when he wasn't at drug court and
15 didn't have to go to jail on the weekends. Yeah, he was
16 there.

17 Q Excuse me? I didn't hear that answer.

18 A Yes, he would be there if he wasn't at drug court or
19 in jail for the weekends like he had to do.

20 Q Okay. Would it be a fair statement to say that
21 Donny would be at your apartment almost every day?

22 A Not every day. I mean, Romeo was -- Romeo was there
23 a lot, D-Roc was there a lot. And Donny would be there every
24 so often, like I said, when he wasn't in drug court or doing
25 his weekend jails.

1 Q Okay. And were you -- when you were with Domonic
2 and Romeo and White Boy, on the occasions they would be there,
3 would it be fair to say that you were consuming drugs?

4 A Not all the time. I had to work. I didn't do it
5 when I went to work.

6 Q Okay. Other than the times that you were at work,
7 when you were at home at the Sportsman's, and Domonic would be
8 with you, as well as Romeo, and on occasions White Boy, would
9 you be using drugs?

10 MR. LALLI: Your Honor, I'm going to object. This
11 has been asked and answered many times now, the amount of
12 drugs that she's using at this time.

13 THE COURT: Mr. Cano, have you covered this before,
14 or is this a different question?

15 MR. CANO: I think it's a different question, Your
16 Honor, but.

17 THE COURT: Okay. I'll allow it this last time
18 here.

19 MR. CANO: Okay.

20 BY MR. CANO:

21 Q Would it be fair to say that you were using drugs in
22 their presence?

23 A Yeah, they were my dealers.

24 Q Now, do you remember talking about Christina coming
25 over to your apartment?

1 A Christina and Victoria were together.

2 Q Okay. Well, I'm talking about Christina. Do you
3 remember talking about Christina coming over to your
4 apartment?

5 A Yes.

6 Q Okay. And you said that you weren't as familiar
7 with Christina as you were with some of the other people
8 involved; is that --

9 A Correct.

10 Q -- a fair statement?

11 A Correct.

12 Q Okay. I believe she had only been to your apartment
13 that one occasion?

14 A That I remembered, yes.

15 Q That you could remember. And you described her as
16 being the Hawaiian girl, correct?

17 A Yes.

18 Q All right. Did you know her to be known as "Island
19 Girl?"

20 A No.

21 Q Okay. But that was just your description of her?

22 A Um-hum.

23 Q Okay.

24 A Yes.

25 Q And on that occasion that she came to your

1 apartment, she was with Victoria?

2 A Yes.

3 Q And also at your apartment on that day was your
4 girlfriend, Lynn?

5 A Yes.

6 Q Okay. And I believe you said that Romeo was there?

7 A Yes.

8 Q Okay. And I think you said that Domonic was there?

9 A Yes.

10 Q Okay. And that they needed to take these girls over
11 to the Hard Rock Hotel?

12 A Correct.

13 Q Okay. This person that was mentioned to you by the
14 State known as Red, you don't know Red?

15 A No. Never met her.

16 Q Never met her in your life?

17 A Not --

18 Q So, she wasn't in your apartment on that night?

19 A Not that I recall, no.

20 Q Okay. And they were taking -- and to your memory,
21 when the girls were going to be going to the Hard Rock, that
22 was Romeo that was going to be taking them there?

23 A Romeo and D-Roc.

24 Q Okay. If you could answer my questions, then I'll
25 get to the next one, okay?

1 A Yes.

2 Q That was Romeo that was going to be --

3 MR. LALLI: Your Honor, she answered the question
4 appropriately.

5 THE COURT: Right. No, I'm -- I know you haven't
6 objected --

7 MR. LALLI: I would just object to the argumentative
8 nature of the --

9 THE COURT: I don't know that's argumentative.

10 MR. LALLI: -- subsequent question.

11 THE COURT: But I think you're saying -- you're
12 asking, did Romeo take her, but that's not completely --

13 MR. CANO: Well, I can follow up with another
14 question --

15 THE COURT: Okay.

16 MR. CANO: -- Your Honor. I'm the one that's asking
17 the questions here.

18 THE COURT: Right. I understand. But we can't have
19 it misleading for the witness here.

20 MR. CANO: I'm not trying to be misleading
21 whatsoever, Your Honor, and I don't --

22 THE COURT: I don't think you were trying to. I
23 think she may have misunderstood, okay?

24 MR. CANO: Thank you, Your Honor.

25 BY MR. CANO:

1 Q So, on that occasion that these girls were going to
2 go to the Hard Rock, Romeo was going to be taking her,
3 correct?

4 A Yes.

5 Q Okay. And I think you've testified that Domonic was
6 going to go as well?

7 A Yes.

8 Q Okay. On this occasion within your apartments, were
9 there any injuries that you could see to Victoria?

10 A No, not that I recall.

11 Q In her face? Did she look like she had been beaten
12 up?

13 A Not that I recall, no.

14 Q Was it red at all, whatsoever?

15 A No.

16 Q Okay. What about Christine? Was Christina -- did
17 she look like she was beat up?

18 A Not that I recall.

19 Q Was her face scratched up, or did it look like, you
20 know, she had [inaudible] a fight.

21 A Not that I recall. She was in and out. I don't --

22 Q Okay. How long were they at your apartment prior
23 to going to the Hard Rock?

24 A I don't know, maybe an hour or two. Christine was
25 in and out. And then they sent Victoria upstairs to engage in

1 whatever she was doing up there. And then they came back
2 down, and then they left. So, however long that took for
3 that.

4 Q Okay. And you're saying that this happened on
5 Tuesday?

6 A Correct.

7 Q Okay. Because Mr. Lalli, or Chris, spoke to you
8 about Tuesday, Wednesday, Thursday. Remember, he went --

9 A Yeah.

10 Q -- day by day? Okay. And back then your work
11 schedule, if I recall, you worked on Mondays over at the
12 Roadrunner Casino, correct?

13 A Yes.

14 Q You had split days off?

15 A Yes. I had Tuesdays, Thursdays off.

16 Q Tuesdays, Thursdays off? And you worked on
17 Wednesdays, correct, and then Fridays obviously? And to your
18 recollection, were you working day shift on Mondays, or
19 evening shifts, or swing?

20 A I believe I was swing. I think I only worked on the
21 weekends day shift, if I remember correctly.

22 Q Okay. And the hours when you would be working the
23 day shifts, what were they?

24 A 7:00 to 3:00.

25 Q 7:00 to 3:00, okay. And when you worked swing, it

1 would be, you said, like from either 3:00 to close, or 5:00 to
2 close?

3 A Um-hum, yes.

4 Q Okay. And what time would the Roadrunner Casino
5 close?

6 A It wasn't the casino part that closed, it was the
7 restaurant. It depended. I think it was either 10:00 or
8 11:00 if -- I can't remember. 10:00 or 11:00.

9 Q Okay. And how far is Roadrunner Casino from where
10 you were staying at the Sportsman's?

11 A It's off of Major and Boulder Highway. Boulder and
12 Trop, I don't know, a couple miles.

13 Q Okay. And you said you would take the bus to get
14 down there?

15 A Yes.

16 Q Okay. So, how long would it take for you to get to
17 work on the bus?

18 A It depended on traffic. I don't remember. I think
19 I would leave -- I'd catch the bus, and I'd get to work
20 usually if I took the bus, 15 minutes early. So, I would say
21 probably about 20, 30 minutes on the bus.

22 Q I'm sorry, 20?

23 A 20 or 30 minutes. I don't remember.

24 Q So -- okay. So, when you had to go to work, you'd
25 give yourself about 30 minutes to get to work if you were

1 taking the bus?

2 A Yes.

3 Q Okay. And obviously if you had a ride, you'd be
4 able to get there quicker, correct?

5 A Yes.

6 Q Okay. So, fair to say if you had a ride, maybe 15
7 minutes?

8 A Yes.

9 Q Okay. And on the occasions when you would go to
10 work, sometimes you would get a ride, sometimes you wouldn't,
11 right?

12 A Yes.

13 Q And it would take about the same amount of time to
14 get home, either by bus or by, you know, private vehicle?

15 A No.

16 Q It would take less time?

17 A Yes. Because you don't -- you're not stopping every
18 bus stop to let people off.

19 Q Okay.

20 A You were just driving straight through, so it was
21 always quicker in a vehicle.

22 Q Okay. So on a bus, when you're getting home, would
23 it take about 30 minutes to get home as well?

24 A It would take anywhere from 30 to 45 minutes. In a
25 vehicle, it would take 10, 15 minutes, because it's right down

1 the road. Major is right there.

2 Q Okay. Now, when they were taking them to the Hard
3 Rock, do you know about what time of day that was?

4 A It was in the evening.

5 Q Okay. But you don't recall specifically as to what
6 time it was?

7 A It could have been anywhere from 8:00 to 10:00
8 o'clock, I'm not sure. I just know it was evening.

9 Q Okay. And that was your day off on that Tuesday,
10 correct?

11 A Yes.

12 Q Okay. How much drugs had you ingested that day off?

13 A I actually only smoked a joint with Romeo and
14 Victoria that day.

15 Q That day, in the entire day?

16 A Um-hum.

17 Q Okay.

18 THE COURT: Is that a yes?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Thank you.

21 BY MR. CANO:

22 Q But you didn't tell that to the police, that you had
23 been smoking with Victoria and Romeo that day?

24 A Yeah, I don't remember if I did or not.

25 Q Okay.

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

2 (Pause in the proceedings)

3 BY MR. CANO:

4 Q Do you recall telling the police that Donny was with
5 Romeo and the girls on that Tuesday night?

6 A He was. He was there for a short period of time,
7 and then he left.

8 Q Okay. And that was prior to them going to the Hard
9 Rock?

10 A That was before that.

11 Q So, Donny had been there with them earlier that day?

12 A Way earlier, yeah. I think he had to turn himself
13 into drug court that night or something. Or he had to go to
14 drug court, he had to do something, because he had left.

15 Q Okay. So, do you recall telling them that he was
16 actually there that Tuesday night?

17 A If -- no. But I might have.

18 Q Would it refresh your recollection if I showed you
19 your statement?

20 A Yeah.

21 Q Is that a yes?

22 A Yes.

23 MR. CANO: Counsel, it's the first statement I
24 believe, on the 30th, pages 6 and 7. It's the one from the
25 [inaudible].

1 MR. LALLI: Thank you.

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

3 THE COURT: Yes.

4 BY MR. CANO:

5 Q Could you just read that? This is page 6, and this
6 is page 7, okay? So, if you could read to yourself down here,
7 let's say from line 22, down. Okay.

8 A So then, yeah, if I said it, then he was probably
9 there. But I know he wasn't there long.

10 Q Okay. If I -- let me ask you this question and
11 maybe it will help put it in perspective here. So, you told
12 the detectives on Tuesday night that Donny and Romeo was
13 there, along with Victoria?

14 A Yes.

15 Q And it was the three of them, correct?

16 A Yes.

17 Q All right. And that was on Tuesday night?

18 A If -- yeah, but it was earlier though that -- that
19 was earlier.

20 Q But you told the detectives it was at nighttime?

21 A Yes.

22 Q That Donny, Romeo, and Victoria were at your
23 apartment?

24 A Yes.

25 Q Okay. And that was prior to them going over to the

1 Hard Rock?

2 A No.

3 Q Okay. Tuesday night is when the girls went over to
4 the Hard Rock, correct?

5 A Yes.

6 Q Okay. Now, would it be fair to say that your
7 description to the police of what had happened on that Tuesday
8 night the first time you spoke to them, was that it was Donny
9 and Romeo, and Victoria and Christina, that went to the Hard
10 Rock, and then later, it changed to Domonic and Romeo that
11 took the girls to the Hard Rock?

12 A I don't know. I know he was in my apartment that
13 night, Tuesday night, with the girls. Donny had left. Donny
14 had drug court.

15 Q Okay. That's not what you told the police though,
16 right?

17 A No.

18 Q You told the police that Donny was there, along with
19 Romeo and Victoria on Tuesday night?

20 A Yes.

21 Q And you didn't tell the police that he went to drug
22 court that night?

23 A No.

24 Q Okay. Now, you said you knew Victoria?

25 A Yes.

1 Q How long had you known Victoria during this period
2 of time?

3 A I knew her for a few weeks through Romeo. She had
4 come by a couple times with Romeo.

5 Q Okay. And when you would see her, would she only be
6 with Romeo?

7 A She was a couple times. And then she was there with
8 Donny, and then she was there with D-Roc as well.

9 Q Okay. So, when she was there with Donny, she's
10 there alone with Donny, or was she along with everyone else
11 there?

12 A No. She -- the only person I ever really seen her
13 alone with was Romeo, and they would come by every now and
14 then.

15 Q Okay. So --

16 A And I'd seen her walking up and down Sportsman's. I
17 offered her to stay with me.

18 Q Okay. So, you've known her about three weeks prior
19 to this -- dates that we're talking about, the middle of May,
20 correct?

21 A Yes.

22 Q All right. And on several occasions, it seems like
23 you've seen her with Romeo alone?

24 A A couple of times, yes.

25 Q All right. And you also said you saw her with Donny

1 or White Boy?

2 A She -- Donny and D-Roc, all three of them.

3 Q Okay.

4 A But she -- had been alone with Romeo a couple of
5 times at my place, yes.

6 Q All right. That's what I was trying to clear up.
7 So, when you saw her, it would be with Domonic, White Boy, and
8 Romeo on some occasions?

9 A Yes.

10 Q And then the other occasions would be just with
11 Romeo alone?

12 A Yes.

13 Q Okay. How many occasions would you say you would
14 see her around -- that they would come over to your apartment?

15 A It was quite a few times. And then I would see her
16 around the Sportsman's. I couldn't give you number of times.

17 Q Okay. Would you see her on a daily basis?

18 A Yes.

19 Q Okay. Did she ever tell you herself that she was a
20 prostitute?

21 MR. LALLI: I'm going to object as to hearsay.

22 THE COURT: Sustain the objection.

23 MR. CANO: Okay.

24 BY MR. CANO:

25 Q Now, you've never seen her -- I'm talking about

1 Victoria, okay? You've never seen Victoria actually engage in
2 prostitution personally yourself?

3 A No.

4 Q Okay. Now, when Victoria would be at your apartment
5 on those occasions, that she would be either with Romeo or
6 with the other gentleman, would she be using drugs?

7 A We smoked pot a couple times together, but that's
8 all I ever really seen her do.

9 Q Okay. Do you recall describing to the police that
10 she was a crack addict?

11 A I believe she was.

12 Q Okay. Did you ever see her use crack?

13 A One time.

14 Q Okay. How did you get to the impression that she
15 was a crack addict?

16 A Through D-Roc, and Romeo, and Donny.

17 Q Okay. Did you know if she sold drugs?

18 A No.

19 Q Okay. And you said that you knew Christina to be a
20 seller of drugs?

21 A Yes.

22 Q Okay. And that she was coming in and out of your
23 house on one occasion, selling drugs?

24 A Yes.

25 Q Okay. And that was -- was that that occasion, that

1 Tuesday night that she was at your house?

2 A Yes.

3 Q That only time that she came to your house?

4 A Yes.

5 Q Okay. And you said she was doing that for what
6 period of time?

7 A I don't know how long it was. She was in and out,
8 and I got upset, asked them to quit.

9 Q Okay. Did she actually tell you that she was
10 selling drugs, or did you just assume?

11 A It was all over my table, and she was grabbing it
12 and running out.

13 Q Okay.

14 A They were sending her out, D-Roc and Romeo.

15 Q Okay. Now, you said that there were all kinds of
16 drugs on that table? There was crack, marijuana?

17 A Yes.

18 Q Was there any methamphetamine?

19 A Not that I seen, no.

20 Q Okay. Were those just the two drugs that were on
21 the table?

22 A Yes.

23 Q Okay. And had they been cooking those drugs earlier
24 that day?

25 A No. I think it was the night before. -I'm not sure,

1 I can't remember.

2 Q Okay. And who was cooking those drugs the night
3 before?

4 A Romeo usually -- Romeo usually cooked it, if he was
5 cooking.

6 Q Romeo would be? Okay. And when he cooked it, would
7 he use both of his hands?

8 A No, the one.

9 Q Just one hand?

10 A (Witness nods head in the affirmative).

11 Q Okay. But you said he had an issue with one of his
12 hands, but you said he could also use it?

13 A Yeah, to a limited extent. I mean, I don't know. I
14 didn't really study it. But he would use it here and there.

15 Q How would you see him use it?

16 A I don't know. He always had it up here and then he
17 would grab something, like this, or do whatever he was doing.
18 But it was always up like this.

19 Q Okay, so --

20 MR. LALLI: For the record, Your Honor, the witness
21 was just holding her wrist up to her mid-chest area.

22 THE COURT: Do you agree, Mr. Cano?

23 MR. CANO: Yes, I would agree with that.

24 THE COURT: All right. The record would reflect
25 that.

1 BY MR. CANO:

2 Q So he would use that arm to grab things?

3 A Certain things. I mean, I didn't really study it.

4 Q Okay. Would you ever see him hold an object as
5 small as a pen in his hand?

6 A Yeah, like -- but it would still be up like this. I
7 mean, he couldn't really bend too far that I could remember.
8 I mean, it was -- I don't -- I don't know.

9 MR. CANO: Your Honor, and for the record, to show
10 -- to reflect that she was holding it up against her chest
11 again and that he would bend that arm forward and backwards.

12 MR. LALLI: That's correct, Your Honor.

13 THE COURT: All right. The record will reflect
14 that.

15 BY MR. LALLI:

16 Q Would you ever see him have a cell phone in it?

17 A Yes.

18 Q Okay. So he could use it, he could grip things with
19 it?

20 A Yeah.

21 Q But you just wouldn't see him use it that often?

22 A Correct.

23 Q All right. And so these drugs that were on the
24 table, they were selling drugs, Christina was going in and
25 out?

1 A Correct.

2 Q Correct? All right. Had you used some of that
3 crack that was on that table that day?

4 A No.

5 Q You had just smoked some weed, I think you said?

6 A Yes.

7 Q Okay. And "weed", you mean marijuana?

8 A Correct.

9 Q All right. How much marijuana had you smoked?

10 A I believe Romeo had rolled a -- they call it a
11 blunt, but it was cigar paper. And it was -- my
12 ex-girlfriend, him, Victoria and I that had smoked on it.

13 Q Okay. So Domonic didn't participate in smoking the
14 marijuana?

15 A (No audible response).

16 Q Okay. And so when you're saying a blunt, you're
17 saying like a cigar paper filled with marijuana as opposed to
18 regular tobacco?

19 A Correct.

20 Q Okay. It was a little bit bigger than a normal
21 joint?

22 A Correct.

23 Q Okay. And that evening, Donny, you said was there
24 as well?

25 A That's what I said in the police statement. He was

1 there earlier, but he had left, like I said.

2 Q Now, you said earlier in your testimony that you had
3 overhead a phone call from Domonic to someone?

4 A Correct.

5 Q Okay. Do you recall telling the police that you
6 couldn't hear it clearly, because Domonic was mumbling?

7 A Correct.

8 Q Okay. And do you recall telling the police that you
9 really couldn't remember what was being said because you were
10 getting stoned while he was making this phone call?

11 A If I said it, then that's probably what I said.

12 Q Okay. Would it help to refresh your recollection,
13 if I showed you your statement?

14 A (No audible response).

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 MR. CANO: The second statement on the 30th,
19 counsel, page 12.

20 If I may approach, Your Honor?

21 MR. LALLI: Page 12?

22 MR. CANO: Yes.

23 MR. LALLI: Thank you.

24 BY MR. LALLI:

25 Q Read it to yourself, probably from line 11 through

1 your answer.

2 Did that help to refresh your recollection?

3 A Yes.

4 Q So would it be fair to say that while this
5 conversation was being had, you were getting stoned, so you
6 don't -- weren't really paying attention to it?

7 A Correct.

8 Q Okay. And that fact that you were getting stoned
9 was maybe affecting some of what you were hearing, or your
10 memory of it?

11 A Maybe what -- maybe because I was just too busy
12 getting high I didn't want to really pay all that mind to it.

13 Q Okay. Now --

14 MR. CANO: Your Honor? I'm going to switch topics a
15 little bit and I don't know if you wanted to break for lunch,
16 or how long you wanted me to keep going.

17 THE COURT: Is the jury okay for the next 15 minutes
18 or so?

19 THE JURY: Yes.

20 THE COURT: Anyone not okay raise your hand, you're
21 not okay.

22 All right. We'll stop about 12:30, Mr. Cano.

23 MR. CANO: Okay.

24 BY MR. CANO:

25 Q Now, I want to talk to you a little bit about when

1 you're talking to the cops. You talked to them on several
2 occasions, correct?

3 A Yes.

4 Q Okay. By the time you talked to them on the 30th,
5 would it be fair to say that you had known that the girls were
6 out in the desert?

7 A Yes.

8 Q It was on the news, right?

9 A Um-hum. Yes.

10 Q Do you recall hearing about it from the news?

11 A No, I heard about it way before that when they were
12 looking through the newspaper.

13 Q Okay. So I think you testified that heard them
14 talking about something in the newspaper.

15 A Correct.

16 Q Correct? But you never heard the words, "Oh, we
17 left these girls out in the desert," during the newspaper
18 conversation, did you?

19 A No.

20 Q Okay. So would it be fair to say then you maybe
21 suspected something was going on from that newspaper
22 situation?

23 A Yes.

24 Q Okay. But you actually heard about it maybe even
25 after that point?

1 A Yes.

2 Q Okay. And the situation with these girls being
3 found in the desert related back to being Christina and
4 Victoria; that was on the news, correct?

5 A Yes.

6 Q Okay. And do you remember telling the police
7 officers that you believed that the girls -- the bodies were
8 chopped up?

9 A No.

10 Q You don't recall anything like that?

11 A No.

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

13 THE COURT: Sure.

14 BY MR. CANO:

15 Q Would it refresh your recollection if I showed you
16 your statement?

17 A Yeah, because I don't remember saying that.

18 MR. CANO: On page 13, counsel.

19 MR. LALLI: Which statement?

20 MR. CANO: I'm sorry. It's the 30th one, I believe
21 it's the one after this [inaudible].

22 MR. LALLI: The third one?

23 MR. CANO: On this --

24 MR. LALLI: Third?

25 MR. CANO: -- [inaudible] the second one, I think?

1 MR. LALLI: Third statement?

2 MR. CANO: The second one.

3 MR. LALLI: The second statement?

4 MR. CANO: [Inaudible]. Yes.

5 MR. LALLI: What page are we [inaudible]?

6 MR. CANO: 13.

7 MR. LALLI: Thank you.

8 MR. CANO: Okay. You're welcome.

9 BY MR. CANO:

10 Q You can just read the [inaudible] to yourself.

11 Did that help refresh your recollection somewhat?

12 A Yeah, I guess if he said that and -- then I said it,
13 because that's what I had heard around the Sportsman's then,
14 yeah.

15 MR. LALLI: Well, I'm going to object to foundation
16 as to whether that's something that she said, or if she's --

17 THE WITNESS: Thank you.

18 MR. LALLI: -- repeating something that was heard
19 and if it is, I'd ask that it be stricken.

20 THE COURT: Okay. I'm going to sustain the
21 objection. And, ma'am, when Mr. Lalli is speaking, don't make
22 a comment.

23 THE WITNESS: Sorry.

24 THE COURT: Okay?

25 THE WITNESS: Sorry.

1 THE COURT: And so I'm sustaining the objection.
2 Lay a better foundation.

3 MR. CANO: I'm going to lay a foundation here.
4 BY MR. CANO:

5 Q Okay. Do you remember talking to the police -- this
6 is the second interview that you had with them when you went
7 to the Starbucks, okay? Do you remember that --

8 A Yes.

9 Q -- conversation?

10 A Yes.

11 Q Do you remember telling the police that you heard
12 that the body -- the girls' bodies were chopped up?

13 A Yes.

14 Q Okay. Now, you didn't have --

15 MR. LALLI: Your Honor, I'm --

16 BY MR. CANO:

17 Q -- personal knowledge of that --

18 MR. LALLI: I'm sorry. I would just ask for
19 foundation as to where she heard that from, whether she heard
20 it from the defendants or whether it was rumor going around
21 the Sportsman's, subject to my motion to strike it, if it's
22 just rumor that's going around.

23 THE COURT: Can you clarify that Mr. --

24 MR. CANO: I will.

25 THE COURT: -- Cano?

1 BY MR. CANO:

2 Q Did you have personal knowledge of that yourself?

3 A No.

4 Q You weren't present when these bodies were chopped
5 up?

6 A No.

7 Q Okay. It's just something that you --

8 MR. LALLI: Your Honor --

9 MR. CANO: If I could just go forward --

10 MR. LALLI: Well, I would move to strike it then.

11 MR. CANO: -- and ask my --

12 THE COURT: Okay. Because --

13 MR. LALLI: I'd move to strike it if it's just rumor
14 or something that she heard around the Sportsman's.

15 THE COURT: Okay. Do you have any other information
16 that it was just anything beyond rumor?

17 MR. CANO: Well, I'm asking, where did you get this
18 knowledge of information from?

19 THE COURT: Okay. Well, did you get it -- it should
20 be, did you get it from either one of the defendants?

21 THE WITNESS: No.

22 THE COURT: Okay. Then I'm going to instruct the
23 jury to disregard her statement in this regard.

24 Go ahead, Mr. Cano.

25 BY MR. CANO:

1 Q Remember earlier when I asked you if you had heard
2 anything about these girls through the -- you know, through
3 the rumor mill at the Sportsman's and you said, no? Remember
4 I asked you that earlier?

5 A Yes.

6 Q Like maybe a half an hour ago?

7 A I don't remember. It was a long time ago.

8 Q Okay. Remember my question asking you if you had --

9 A Yes.

10 Q -- heard anything through the rumor mill and you
11 said you did not?

12 A Correct.

13 Q Okay. Would it be fair to say that you did hear
14 things about these girls through the rumor mill?

15 A Yes.

16 Q Okay.

17 A Now that you reminded me.

18 Q All right. And do you remember when you said you
19 didn't know Red, you'd never met her before?

20 A Correct.

21 Q You actually did know Red, didn't you?

22 A No, I honestly never met her until that preliminary
23 hearing in the jury room.

24 Q Okay. And is that when you were guys were drinking,
25 before you had to testify in court?

1 A That one little shot, yes.

2 Q That was alcohol that you were drinking
3 [indiscernible]?

4 A Yes.

5 Q Okay. Was it bourbon or Crown Royal, something like
6 that?

7 A Crown, this big (witness indicating).

8 Q So your statement is that you never discussed this
9 case with Red, prior to meeting her at the preliminary
10 hearing?

11 A Correct.

12 Q Okay. So, now do you remember talking to the
13 District Attorney, Mr. Lalli, about some clothes being thrown
14 away?

15 A Correct.

16 Q Okay. Now, do you remember talking to the police
17 about that situation as well?

18 A Yes.

19 Q Okay. That they were, I think, picking you up from
20 work?

21 A Correct.

22 Q And that was over by some CPS office, I believe,
23 that was close to your work?

24 A The Roadrunner Casino?

25 Q Yeah.

1 A I don't know if it was by -- I don't remember where
2 -- I just know it was the casino. It was in the parking lot.

3 Q Okay. So when he threw away his clothes in the
4 parking lot of the place where you worked?

5 A His pair of pants, yes.

6 Q Okay. And was -- where was the area that they were
7 picking you up from? Was it the front of the casino, the rear
8 of the casino, on the side?

9 A It was behind -- when you go in through the front
10 door you come off to the side and there's a parking lot right
11 here, and there's a dumpster over here. I was standing
12 outside smoking a cigarette waiting for them, and I walked
13 over and seen him do it.

14 Q Okay. All right. And you remember this because he
15 had thrown away his pants and he came back in just boxers?

16 A Yeah, like gray boxer shorts.

17 Q And you told the -- you told on direct examination
18 that this happened on that Saturday?

19 A If I remember correctly, yes.

20 Q And then Domonic got back into the car just in his
21 boxers?

22 A Correct.

23 Q Right? And then from there you said that they went
24 back to your apartment?

25 A Yes.

1 Q And so he was just sitting in your apartment in his
2 boxers for how long?

3 A I don't know if he even put on different clothes or
4 not. I don't remember. I think they just dropped me off.
5 They might have left right after that. I don't know. I just
6 know I seen him throw his pants away.

7 Q And those black pants that you were describing, he
8 just took the pants that he was wearing on his person and
9 threw those away?

10 A Yes.

11 Q It wasn't a package, or -- and it wasn't inside
12 anything?

13 A His pants.

14 Q It wasn't inside any kind of plastic wrapping or
15 plastic bag, or anything like that?

16 THE COURT: I'm sorry, you were shaking your head.

17 THE WITNESS: No. I'm sorry.

18 BY MR. CANO:

19 Q That's a no, for the record?

20 A (No audible response).

21 Q And Romeo was in the car as well?

22 A Yes.

23 Q And were they the only three people in the vehicle
24 at that point in time?

25 A D-Roc and Romeo.

1 Q And just yourself?

2 A And me.

3 Q Okay. Now, I want to talk to you a little bit about
4 the Wal-Mart incident, okay?

5 A Okay.

6 THE COURT: Mr. Cano, since we are getting into a
7 new area now and it's 12:30, we'll take our lunch break now.

8 Ladies and gentlemen, let's come back at 1:45, an
9 hour and 15 minute lunch.

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

19 We'll see you back at 1:45.

20 (Court recessed at 12:31 p.m. until 1:44 p.m.)

21 (Outside the presence of the jury)

22 THE COURT: All right. We're outside the presence
23 of the jury panel and we're on the record right now. There's
24 a matter that we need to resolve before they come in?

25 MR. DiGIACOMO: Yes, Judge. This morning we

1 provided the redactions that we intended to make to a phone
2 call that we admitted at the last trial. It's a phone call,
3 and so the Court has some awareness, it's a phone call that
4 occurs on June 8th of 2006. It's a phone call from the
5 co-defendant, Mr. McCarty, to an individual that's identified
6 as an Erion Robinson.

7 So the Court kind of has a sequence of events, all
8 the defendants get arrested in May. It's not until June 7th,
9 2006, that our office files charges. And our office files
10 charges, charging Mr. McCarty and Mr. Malone with all the
11 murder, conspiracy, everything else, and they charge only Mr.
12 Herb with the accessory to commit murder.

13 The moment we charged them, that next day they get
14 transported up to the Clark County Detention Center and Mr.
15 McCarty makes a phone call to an individual, Erion Robinson.

16 Mr. Robinson is an individual that this jury hasn't
17 heard about yet, who not only are there phone calls during the
18 relevant time period between Mr. Malone and Mr. Robinson, but
19 during the relevant time period -- in fact, when they're out
20 by the bodies, Mr. McCarty's phone calls Erion Robinson's
21 phone.

22 When Mr. Lalli and I were prepping the case, the
23 phone call is immediately upon Mr. McCarty learning that Donny
24 Herb has only been charged as an accessory. He immediately
25 makes a phone call to -- to Erion Robinson from jail. It's

1 recorded. And it starts off with, you know, after "this is a
2 free call," the male, Mr. Robinson, answers the phone.

3 And Jason says, Fat Boy, Fat Boy, what up? Jason
4 says, It's homie, what's going on. And Jason says, Check this
5 out. That white boy, that fuckin' -- and Erion Robinson tells
6 him, Hey, don't talk on this phone, essentially. And the
7 response is, No, I -- and then he proceeds to tell him
8 essentially, cut off contact with White Boy. White Boy has
9 rolled on us. If we all kept our mouths shut we all walk
10 away, me and -- he uses a pejorative term to refer to Mr.
11 Malone.

12 And he goes through -- and if you notice on the
13 transcript I've just provided to the Court and previously
14 provided to the defense, we cut the phone call off at
15 essentially -- and the whole thing was, you know -- you know,
16 they would charge us all with the same shit, homie, 11 counts
17 of bullshit, you know, keep your mouth shut, we all walk.
18 But, you know, the worst part about it is that, you know, he
19 didn't have any part of it.

20 And that's important for one of the grounds for
21 admissibility. He -- he was only there for the ass end of it.
22 And then Mr. Lalli, in order for the jury not to know that it
23 was redacted, then cut it just to very end where they hang up
24 the phone so it doesn't look like there's a whole bunch of
25 things that's been removed.

1 So if you go to the very last page it says, resumed
2 here, where he says, Okay, I'm going to go ahead and get off
3 this phone, and the phone call ends.

4 When Mr. Lalli and I were prepping the case our
5 intent was to offer this statement as a co-conspirator during
6 the course or in furtherance of the conspiracy. And I had
7 actually done some research for the Court in order to make
8 that argument. The law is that a conspiracy does not end, but
9 continues to affirmative acts of concealment.

10 Mr. McCarty is clearly a conspirator and he's
11 clearly attempting to distance Mr. -- White Boy from having
12 contact to Erion Robinson. And I will tell the Court that
13 they finally find Erion Robinson. They attempt to interview
14 Erion Robinson and he's uncooperative during the course of the
15 interview. I believe Detective Collins testified to that at
16 the last trial.

17 And White Boy is Donny Herb, as we've heard
18 throughout this trial. And I went through -- and I was going
19 to do an analysis, and so I want to make the record, but I
20 don't think that's now the only basis for its admissibility.
21 But I want to make the record as to a statement by a co-
22 conspirator in the course and furtherance of the conspiracy.

23 The U.S. Supreme Court has specifically excluded
24 from Crawford non-testimonial statements. And so there is no
25 confrontation clause issue to be addressed by the Court.

1 Clearly, this statement by Mr. McCarty, by its very nature,
2 isn't something that he wants admitted in a courtroom.

3 And so it is not a confrontation clause problem,
4 it's a hearsay problem. And the hearsay issue is, is it a co-
5 conspirator, is he making the statement, and is that statement
6 in furtherance of the conspiracy. And I went and I found case
7 law that talks about how the Court's supposed to interpret
8 statements of a conspirator and how it is that the Court is
9 supposed to make the analysis.

10 And I'm going to roll down here to a variety of
11 cases that the Court talks about in assessing whether or not
12 something can be considered in the course of a -- in
13 furtherance of the conspiracy.

14 First, the Eighth Circuit in 1993 indicated that the
15 furtherance requirement is to be interpreted broadly, which
16 means for the most part if you find a defendant making the
17 statement during the course, and it's related to the
18 conspiracy, that that statement is likely to be in
19 furtherance.

20 Moreover, when defendants have asserted, you know,
21 basically, this is just gossip, or it's just chatter and not
22 really in furtherance of anything, the Court in United States
23 v. Haldeman, which is actually the Watergate case, in 1976,
24 says that if the -- that if the statements were made about
25 future activities of anybody, that those are in furtherance of

1 the conspiracy.

2 And moreover, if the statements were made to what
3 the U.S. Supreme Court -- well, no it was the Haldeman case,
4 still the -- the United States v. Haldeman case. What has
5 taken place to identify and shore up loose ends are considered
6 statements in furtherance of a conspiracy, are to simply keep
7 people abreast of current developments and problems facing the
8 group. That's been held in United States v. Massa, an Eighth
9 Circuit case in 1984, quote, "Explain events important to the
10 conspiracy or give directions to facilitate it."

11 And based upon all of those, I believe that the
12 Court can make a finding that this was a statement in
13 furtherance of the conspiracy because he's trying to exclude
14 Mr. Herb from having contact with individuals that should
15 have, or do have knowledge of the underlying facts.

16 However, my entire analysis changed on January 23rd
17 of 2010, during the testimony of Donny Herb. And so I want to
18 read that into the record, because there is now an independent
19 basis, independent of the co-conspirator statement for
20 admissibility of the statement.

21 Mr. Cano, on cross-examination, talked about -- told
22 -- said to Donny, essentially, you told him you had nothing to
23 do with it, and then they told you a little story. And he
24 went through the story, they told you basically where Romeo
25 was right now, that he was in jail. This is page 97 and 98 of

1 his testimony, Judge. He's --

2 MR. CANO: So we've got clarification there, that
3 was -- I was referring to what the detective was talking to
4 him about.

5 MR. DiGIACOMO: Right. This is what the detective
6 is talking about.

7 THE COURT: Okay.

8 MR. DiGIACOMO: And he says, [inaudible] where Romeo
9 is right now. They told me he was in jail. And then he told
10 you about what -- a story about what they believed happened,
11 and then he went through the story. And I'm not going to
12 share it all with you, but essentially it's the same story,
13 except for instead of McCarty being at the South Cove, it's
14 Donny and D-Roc being at the South Cove taking these victims
15 down to the place where they are murdered.

16 And, in fact, Mr. Lalli objected to essentially,
17 look, this isn't appropriate to cross-examine Donny on that.
18 After that objection, Mr. Cano went on further. And hearsay
19 isn't just what Detective Collins says. He made it clear that
20 what that story that Detective Collins said, is Jason
21 McCarty's story.

22 And he did so, it starts at the bottom of page 100,
23 where he says, "Okay. One of the detectives were telling you
24 a story as to what you believed happened in this case?"
25 "Yes." "Correct?" "Correct." "And it came to the point in

1 time where you got to the South Cove," and then if you keep
2 rolling down here, "All right. Was it your impression that
3 your best friend or one of your close friends, Romeo, had told
4 the police you're involved?"

5 The objection was, "Hearsay, calls for speculation."
6 There's a big argument back and forth. "What was your
7 impression after the conversation with police of Romeo's
8 involvement in this case?" "Objection, hearsay." There's a
9 bunch more.

10 Someone would've had to tell him something for him
11 to have had that impression, which is calling hearsay. And so
12 Mr. Cano says, "Would it be fair to say after the conversation
13 regarding the story of what the police believed happened, and
14 your story started changing?" "Yes." "And it started
15 changing because you were trying to emphasize to the police
16 you were not involved in the murders?" "That's correct."

17 "Let's talk about your relationship with Romeo."
18 "All right." "You said for two or three years," and then he
19 goes through all of this. And essentially, when you get to, I
20 think it's the bottom of -- I get there -- essentially, at the
21 end of -- of this line of questioning, he makes it clear that
22 the story that is being told to Donny Herb, is the story --
23 and it's now at 106 -- where he says, "And after you had a
24 conversation with the police, the second one I'm talking
25 about, the later one, okay? And after you had that

1 conversation with the police, is it fair to say that you
2 stopped trusting him," talking about Romeo.

3 "That's correct." "And because of that broken trust
4 between you and him, fair to say that the police suspected you
5 were deeply involved in this case?" "I assume that's fair to
6 say."

7 And essentially, Mr. Lalli tries to object again,
8 and he says, "Fair to say that the broken trust is when you
9 started to talk to the police about your involvement in this
10 case?" "Yes, that's correct."

11 And so through the course of questioning, what he
12 has, what is in front of this jury now, is Detective Collins
13 telling Donny what Jason McCarty said about the night in
14 question. And that was clear from the transcript, because I
15 went through the entire transcript to read that, to make sure
16 I heard him correctly.

17 As the Court is well aware, there's a statute on
18 point. It's at NRS 51.069. That states, "When a party offers
19 a hearsay statement," and as the Court knows, it's not just
20 one level of hearsay, but there are two levels of hearsay.
21 There is the hearsay that Gerry Collins said it, but also what
22 is included in that hearsay statement which is, Romeo said it,
23 that the law allows the State of Nevada, or the opposing
24 party, to attack that party if he's testified.

25 Now, I could've gone through the six various

1 statements and gone through each and every one of those
2 statements and pulled out individual ones that were
3 inconsistent. But when I went back to the Erion Robinson
4 phone call, essentially, what his statement in that phone call
5 is, is Donny didn't have anything to do with it. He was only
6 there for the ass end of it, which is inconsistent completely
7 with the story of Mr. McCarty relayed to this jury through the
8 questioning of Donny Herb.

9 And so as such, it's admissible on two grounds.
10 It's a statement of a co-conspirator in the course and
11 furtherance of the conspiracy, but there is absolutely no
12 question the State is entitled to rebut the hearsay offered by
13 the defense during the course of that questioning. And as
14 such, we offer just the first small portion of the recording,
15 which clearly rebuts the implication and the hearsay statement
16 that was offered by the defense.

17 THE COURT: Mr. Pike?

18 MR. PIKE: Thank you very much, Your Honor.

19 Let's go through this and if the Court bear with me
20 for a second, imagine me trying to go in and explain to the
21 jury, all right, ladies and gentlemen of the jury, what does
22 "ass end" mean? Does "ass end" mean after you go to take the
23 girls to the Hard Rock Casino, and the "ass end" is when you
24 take them out to the casino?

25 Is the "ass end" if you pick them up at the

1 apartment and take them out to the casino? Is the "ass end"
2 that you meet me out there, transfer them from one car to
3 another, and you come out with them? What is -- what does the
4 "ass end" mean? I can't articulate that. They can't
5 articulate it. It calls for speculation.

6 So it is not of such a certainty that that can be
7 used to impeach a witness that I can't call. Jason McCarty is
8 sitting up on death row. He's not going to come in here and
9 testify. I can't say what -- I can't get him on the stand,
10 the declarant, to determine what he means. And the scope of
11 what he means, although I understand the interpretation of how
12 the State views it -- and I appreciate the fact that that's
13 how they view it.

14 But it is not sufficient enough. And we discussed
15 this argument before. You could clearly impeach somebody that
16 is a non-declarant with certain items of evidence if they are
17 of the nature, and a probative, and are admissible. We ran
18 into that when we tried to introduce a Certified Judgement of
19 Conviction as to a witness at a hearsay -- or statement was
20 declared in the Coleman case. The Court found that that was
21 attenuated or not -- and if I'm interpreting what the Court
22 felt in that case, because that's the same statute I cited in
23 that case, it was a clear impeachment by a Judgement of
24 Conviction, which is always allowed.

25 And this is an attempt to impeach a line of

1 questioning and not a statement. It's an attempt to bolster a
2 statement of a witness. And so it's not really brought in for
3 purposes of strict impeachment. It is hearsay. It is a co-
4 defendant's statement. And is the conspiracy over with? Are
5 they attempting to conceal anything?

6 The conspiracy involves the group that's involved.
7 There is no telephone calls from Mr. Malone. The Court heard
8 day after day after day of conversations from Mr. McCarty
9 where he would call up individuals to try and get them to do
10 things for him. You know, I think there was -- he talked
11 about hidden money, drugs, the rest of that. And he would
12 talk his mouth off.

13 So now the -- if this comes in the only way I can
14 attempt to try to impeach that is cull through phone call
15 after phone call after phone call and bring them in. So we're
16 bringing in hearsay to impeach hearsay that was brought in to
17 corroborate a theory -- or bolster a witness.

18 So the other thing is, is that it never really
19 identifies Domonic Malone as the other individual. It just
20 refers to him as he -- and this is the -- this is, I think,
21 where they're really wanting to go. He just -- he flipped the
22 script and testified against me and the other nigger and then
23 -- and -- on page two, but then the cold part about it is he
24 didn't have no parts of it, bro, no parts at all, period,
25 except for the ass end of it, the very ass end trying to help

1 me do something. That's it. But he put more on it than what
2 -- I mean what he put there. That was --

3 MR. DiGIACOMO: Well, I mean, he put that in there,
4 but that was enough because without they -- he went and showed
5 them something that they didn't have, homie, period.

6 MR. PIKE: I was -- I was getting there.

7 MR. DiGIACOMO: Sorry. No, no, no, I mean, you just
8 misread the part --

9 MR. PIKE: Okay.

10 MR. DiGIACOMO: -- after the badge [sic].

11 MR. PIKE: Okay. All right. And so it really comes
12 down to that he took it right there and he gave it to him.
13 Well, you know, who'd been out there giving him the other part
14 of it. He'd been out there giving the other part of it to
15 them. So it's not -- it's not trustworthy, it's hearsay, and
16 they're offering it for the improper -- for an improper
17 purpose.

18 THE COURT: As far as the issue, what's your
19 position on that these statements fit within the extension of
20 a conspiracy where it's an act of concealment?

21 MR. PIKE: At that point in time the conspiracy is
22 over. McCarty has already given a complete statement
23 incriminating Mr. Malone and Donald Herb. Donald Herb has
24 given a statement incriminating Domonic Malone and Jason
25 McCarty.

1 If they are all pointing the finger at each other
2 and my client is just sitting there taking the brunt of them
3 pointing the finger at him, and they have gone out and have
4 disclosed where these weapons are at to the police, that
5 conspiracy is over with. They are no longer concealing
6 anything. All he's doing is warning his -- his friend, his --
7 this other individual not to be involved with White Boy at all
8 because he's unreliable and he'll testify against you.

9 The conspiracy is over. They've all been arrested
10 and there is no evidence that there's any agreement to destroy
11 any evidence, hold anything, or do anything else.

12 MR. DiGIACOMO: Judge, just briefly in response.
13 Well, two things as to speculation.

14 I don't know how on earth you could call that
15 speculation. I think the Court knows. I think the defense
16 knows. I think everybody knows. When Jason McCarty says,
17 "But then the cold part about it is he didn't have no parts of
18 it, bro, no parts of it, period, except for the ass end of it,
19 the very ass end of it trying to help me do something. That's
20 it. He put more on it than what it -- I mean, he put that in
21 there, but that was enough, because without that they -- he
22 went and showed them something they didn't have, homie,
23 period."

24 So what is he saying? He didn't have anything to do
25 with it except for at the end, dumping the weapons. I don't

1 know how it is that the argument that it could be speculation.

2 As to the conspiracy, what is it that he's
3 preventing -- what is he doing here? He's preventing this
4 individual from having contact with Donny. In other words, we
5 don't have the ability to utilize Donny in a surreptitious
6 fashion, or the police, or whoever, to go in there and gather
7 information from Erion Robinson as to what he does and does
8 not know about the phone calls that he's getting at the time
9 the girls are getting killed.

10 That's clearly the intent of what Jason McCarty does
11 here. And the conspiracy, when he says, "It's over," the
12 conspiracy extends to affirmative acts of concealment. This
13 is an affirmative act of concealment. There's no question
14 that that's what this is, an affirmative act of concealment.

15 And so it's admissible on both grounds as it relates
16 to one -- we didn't get into, hey, the cops told you what
17 McCarty said. That was them. They've put in front of this
18 jury the McCarty's story is, he did it with Domonic. And so
19 we're entitled to rebut that, and that paragraph at the bottom
20 rebuts that.

21 And we're entitled to put in the statements of the
22 co-conspirator in course and furtherance of the conspiracy
23 which is that -- and that's why we elminited [sic] this call
24 and we've provided them the transcript saying, is there
25 anything else in there that you want.

1 I don't think 51.069 now entitles them to go cull
2 through other jail calls, or utilize other hearsay. We are
3 entitled to impeach the hearsay they offered as if the guy
4 testified. That's what the statute says.

5 THE COURT: But -- I mean -- I mean was trying to
6 read while you're talking. I am listening to everybody. But
7 I have to find that the statements were an act of concealment.
8 And what I've heard is, he's telling -- I'm sorry, this guy's
9 name is -- what's his name?

10 MR. PIKE: Erion Robinson.

11 THE COURT: Erion Robinson. Don't --

12 MR. DiGIACOMO: Under --

13 THE COURT: -- talk to her [sic]. He's not saying,
14 get rid of him, or tell him don't talk to the police, or he's
15 -- he's just saying, don't talk to him, he can't be trusted.
16 Right? Is that the gist of the conversation?

17 MR. DiGIACOMO: Yeah, but I mean, it's two separate
18 analyses. That's the conspiracy. And obviously that's the
19 issue for the Court. I mean, is that an affirmative act of
20 conspiracy --

21 THE COURT: Concealment.

22 MR. DiGIACOMO: -- of concealment and if it is, then
23 you're entitled to find it admissible. But whether or not
24 it's an act of concealment or not, it's clearly inconsistent
25 with what they put in it. And so 51.069 allows it -- they're

1 two independent bases for admission.

2 So I don't know that, you know, you could make a
3 finding, I don't find it's concealment, so I'm not going to
4 allow it in as a statement of a co-conspirator in course and
5 furtherance of the conspiracy. But I do find it's
6 inconsistent with the hearsay they admitted and therefore I'm
7 going to let in -- or I'm going to let in just the portion if
8 that's what you think, you know, just that portion for -- from
9 where Jason says, you know, I did it, and just went to court
10 the other day. Well, I mean, you have to put kind of the
11 beginning part in where he says he flipped the script and
12 testified against me.

13 If you want to take -- and the other "n" word out, I
14 mean, you could do that. But, I mean, I think you have to
15 allow in that Jason -- that Jason McCarty's statement here is
16 that Herb had nothing to do with it, which is what we're
17 intending to impeach.

18 And so, I mean, we could redact it in such a way
19 where it says, you know, where it starts off with exactly the
20 same way, up until, "I'm telling you some good shit. He
21 flipped the script and testified against me." And then it
22 goes, "Shit, man, when it comes down to it, you know what I'm
23 saying, when it really comes down to it, that's when you find
24 out -- really out, though, you know." And then Jason, "I just
25 did and we just did the other day in court, homie, we went to

1 court."

2 And then trying to save his mother f'ing life. And
3 then Jason saying, "Well then the cold part about it is he
4 didn't have no parts of it, bro." And just going through the
5 end of that. "He went and showed them something they didn't
6 have, period, and that's it."

7 And you could find that that is just the part that's
8 admissible under 51.069. But we're certainly entitled to
9 rebut the hearsay that McCarty claimed that Donald Herb was
10 involved in the murder. And that's what we're attempting to
11 do with the 51.069, Judge.

12 THE COURT: Is this going to come through Collins,
13 or who's going to --

14 MR. DiGIACOMO: Detective Collins. We'd admit it
15 through Detective Collins.

16 MR. PIKE: Well --

17 MR. DiGIACOMO: At the rate -- at the rate we're
18 going, I mean, I don't know that it happens before tomorrow
19 morning, particularly since we're going to have to do the
20 redactions.

21 THE COURT: Well, what I -- I'm not -- again, I've
22 just glanced at it. I'm not seeing the concealment at this
23 point, okay? And I need to look at it very thoroughly.

24 On the other issue, I need to look at the testimony
25 that you've cited. And if you can just write it down on a

1 post-it or something the page numbers you want me to review,
2 defense, do the same, specifically addressing this issue. And
3 then I'll review those portions of the transcript to see if it
4 fits in within 51.069.

5 MR. PIKE: Thank you very much, Your Honor.

6 THE COURT: But I just can't -- I haven't memorized
7 all the testimony, so I'm not going to shoot from the hip
8 right now.

9 MR. PIKE: Was that --

10 MR. DiGIACOMO: 98 to 107, on Day 9, which was
11 Monday.

12 MR. PIKE: I appreciate that, Your Honor.

13 THE COURT: Any other pages you want me to look at,
14 Mr. Pike, besides 98 through 107?

15 MR. PIKE: No, it would just be that it's my
16 recollection that the Court kept out the hearsay and said --
17 and it was limited, well, you were given information and then
18 your story changed. His story did change. That was the
19 testimony. It changed from interview, to interview, to
20 interview.

21 And then -- and it was not -- we were not allowed to
22 introduce any hearsay to say what the statements were. But
23 the pressure, or the -- an interrogation technique in order to
24 elicit additional information, and additional information.

25 This, again, so the record's clear, there is no

1 reference to Domonic Malone by name. And there -- this is not
2 a telephone call that was made by Mr. Malone out of the -- or
3 out of the Clark County Detention Center. And I don't have a
4 date for the time of the telephone --

5 THE COURT: Okay.

6 MR. PIKE: -- call, but it appears after the
7 preliminary hearing.

8 MR. DiGIACOMO: It was not after the preliminary.
9 It was June 8th of 2006, the day after their -- they went to
10 court and got their charging document.

11 MR. PIKE: All right.

12 MR. DiGIACOMO: Or the day they went to court and
13 got their charging document. We filed the 6th, and on June
14 8th, 2006, they go to court and then they get transported back
15 to CCDC.

16 MR. PIKE: Okay.

17 THE COURT: And, Mr. Pike, do you have -- do you
18 think those pages, 98 to 107, covers this issue?

19 MR. PIKE: I believe they do. I'll review that
20 while [inaudible].

21 THE COURT: And then tell me at the next break.
22 I'll have those copied. I'll review them tonight.

23 MR. PIKE: Right. The only hearsay statement we
24 anticipate bringing in through the detective is during the
25 time when they're out looking for the knife, Mr. McCarty

1 describes it as being about the size of my hand, or that he
2 can hold it in his hand. And the State brought that out in
3 the last trial. I don't know if they have an objection to
4 that or not.

5 MR. DiGIACOMO: Well, if they're going to keep
6 offering statements of Mr. McCarty, we're going to keep
7 offering rebuttal to it.

8 MR. PIKE: No, I'm -- all I'm doing is offering,
9 because --

10 MR. DiGIACOMO: But I -- I don't know what the legal
11 basis --

12 MR. PIKE: -- he was describing what they were
13 looking for.

14 MR. DiGIACOMO: -- for the admission of that
15 statement would be.

16 MR. PIKE: It -- it shows what they were looking
17 for, the size of it, and they're going to tie it into
18 [inaudible].

19 THE COURT: No, but specifically are you saying it
20 comes in as a co-conspirator statement for concealment, or are
21 you -- coming in under some other basis?

22 MR. PIKE: It's --

23 THE COURT: I understand why you want it in.

24 MR. PIKE: Right.

25 THE COURT: Under what --

1 MR. PIKE: A statement against interests, because he
2 -- the way he articulates it -- he articulates it, it has been
3 in his hands and he has held it.

4 THE COURT: But it's not a trial against McCarty.
5 So, I mean, is it going to come in as a co-conspirator
6 statement?

7 MR. PIKE: No, a statement against interest.

8 THE COURT: Okay.

9 MR. PIKE: And it doesn't matter if it's his trial.
10 If it's a statement against his interests, then all you have
11 to do is determine whether or not it's reliable and whether or
12 not it's relevant.

13 Similarly, if we were trying to have a third party
14 say they confessed to committing this through another party,
15 you'd have to determine the circumstances, whether or not it
16 was reliable, because the defense, we have that obligation.
17 If they could just bring it in, we don't think they're going
18 to, but we have a different standard to bring that statement
19 in.

20 MR. DiGIACOMO: A couple things, Judge. There's a
21 slippery slope, I mean, I might have let them do it. But from
22 a pure legal analysis -- and I wouldn't fight them on the
23 unavailability, although I think technically in order to
24 establish he's unavailable, you'd have to bring him down here,
25 have him say he's not going to talk. But besides that point,

1 I think we could all agree that would happen.

2 THE COURT: Right. Okay.

3 MR. DiGIACOMO: The next step for the Court would
4 be, is it clearly a statement which only a person who is
5 guilty would make? And then you've got to remember, and
6 because the Court heard this, he makes that statement
7 claiming, I wasn't the doer, I was the guy who just hid the
8 weapons.

9 So the reliability of anything that -- and you heard
10 Mr. McCarty -- the reliability of anything Mr. McCarty said is
11 not something that the Court will rely upon. But then there's
12 a third section in which the defense, when they offer these
13 things, never seem to indicate, which is, if it's offered by
14 an accused to exculpate him in the crime, then the Court has
15 to go look to see if there's other indicia of reliability as
16 to the nature of the -- of the statement.

17 And so I would submit to the Court, one, a defendant
18 in a case cannot use the confrontation clause as a sword and a
19 shield in the same case. If they want in, Mr. McCarty says,
20 the knife fit in my hand, well, then let's put that whole
21 statement in, where he says, D-Roc's the killer, all right?
22 But they're not going to agree to that, right? Under the --
23 under the totality of the circumstances, or in the Complete
24 Story Doctrine.

25 But on the flip side of that, if they're going to

1 offer the fact that Mr. McCarty admitted that he had the knife
2 in his hand, then I think that opens the door to telling the
3 jury, yeah, and he's been convicted of the crime, as well.

4 And so it's a very slippery slope that they're going
5 to offer a minor portion of one statement that Mr. McCarty
6 made, because the Court would then have to make a number of
7 rulings as to what other statements were going to be coming
8 in.

9 And I don't think the Court needs to get there,
10 because I don't think it qualifies as a statement against
11 interest, because he's not making it against his interests.
12 He's making it to get out of something, not to -- to get into
13 something.

14 THE COURT: All right. Well, we'll hear when it
15 comes up. Is that going to come up today or tomorrow?

16 MR. PIKE: I'll hold off until my cross-examination.

17 THE COURT: Okay.

18 MR. PIKE: I don't think we're going to reach my
19 cross-examination this afternoon.

20 MR. DiGIACOMO: I think it's unlikely that we get to
21 even finish Gerry Collins's direct today.

22 THE COURT: Okay. And then tomorrow we're going to
23 start at 10:00.

24 MR. PIKE: Okay. That'll be great, Your Honor.

25 MR. DiGIACOMO: That'll be fine.

1 THE MARSHAL: Are we ready?

2 THE COURT: And we still had Ms. Phillips on; is
3 that correct?

4 MR. DiGIACOMO: That's correct.

5 MR. PIKE: Yes.

6 MR. DiGIACOMO: She's in the witness room, Judge.

7 THE COURT: Is this my copy? I can mark on this
8 transcript?

9 MR. PIKE: Yes.

10 MR. DiGIACOMO: It is, Judge.

11 THE COURT: Okay.

12 (Pause in the proceedings)

13 MR. PIKE: I'm just filing in open court the items
14 that I forwarded to the parties last -- yesterday evening.

15 THE MARSHAL: Officers and gentlemen of the Court,
16 Department 17 jurors.

17 (Jury reconvened at 2:14 p.m.)

18 (In the presence of the jury)

19 THE MARSHAL: Please be seated, ladies and
20 gentlemen. Let's make sure our cell phones are turned off,
21 please.

22 THE COURT: Welcome back, ladies and gentlemen.

23 Ms. Phillips, do you understand you're still under
24 oath?

25 THE WITNESS: Yes.

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

2 MR. CANO: Thank you.

3 CROSS-EXAMINATION (RESUMED)

4 BY MR. CANO:

5 Q Before I move onto the Wal-Mart, the day you went to
6 Wal-Mart, I think we were going to go into that. I think we
7 just finished talking about throwing some black jeans into a
8 dumpster.

9 A Yes.

10 Q Okay. Do you recall testifying regarding that
11 incident at the preliminary hearing in Henderson?

12 A Yes.

13 Q Okay. Now, your testimony earlier today was that
14 Romeo and Domonic came to pick you up from work.

15 A Yes.

16 Q And then when they picked you up from work, Domonic
17 got out of the vehicle, walked around the corner of the
18 building, threw away his pants and then came back in his
19 boxers?

20 A Well, they were gray shorts, but yeah.

21 Q Or his shorts -- some shorts, correct?

22 A Yes.

23 Q Okay. Now, at the --

24 MR. CANO: And this is the preliminary hearing from
25 the 24th, counsel, starting on page 144.

1 BY MR. CANO:

2 Q I asked you questions regarding that incident back
3 at the preliminary hearing; do you recall that?

4 A Yes.

5 Q Okay. I asked you, "Did they pull up to you and
6 pick you up?" You answered, "Yeah, they pulled up. They
7 picked me up. I got in the car. They pulled in. Romeo went
8 into the smoke shop." Then I asked you, "The car parked
9 diagonally?" You said, "No."

10 Straight in -- question, "Straight in? And then you
11 were saying, Romeo went to the smoke shop and Mr. Malone went
12 around the corner. You stayed in the car?" You answered,
13 "Correct. I do believe Mr. Malone was still in the car. Then
14 he came out of the smoke shop and drove the car around to the
15 dumpster. That's when Romeo had the shorts" --

16 MR. LALLI: Your Honor, I'm sorry. I want to
17 interpose an objection to counsel just reading the transcript.

18 THE COURT: All right. I mean --

19 MR. CANO: I'm impeaching her with a prior
20 inconsistent statement, Your Honor.

21 THE COURT: Well, you can ask her if she said that.
22 And then ask her if she -- and then let her review it and then
23 see if she's -- recalls making the statement at all. And then
24 you can impeach her. But, I mean, this other issues -- we're
25 getting a little farther than some of her testimony, aren't

1 we?

2 MR. CANO: No, she testified -- I'm going directly
3 to her testifying regarding throwing the jeans into the
4 dumpster.

5 THE COURT: Okay. But I think you should let her
6 review it and then ask her --

7 MR. CANO: I'll --

8 THE COURT: Let's do that.

9 MR. CANO: Okay.

10 THE COURT: And which pages for the State to follow
11 along.

12 MR. CANO: It's on page 144, on the 24th, transcript
13 of the preliminary hearing.

14 BY MR. CANO:

15 Q And start reading at I guess around -- read around
16 line 6, all the way down, following it into the next page.

17 Did that help refresh your recollection?

18 A Yeah.

19 Q Okay. Now, at the preliminary hearing in Henderson
20 you testified that it was Romeo was the person who threw away
21 the shorts -- are --

22 A That's what I said. I mean, this is six years ago.
23 I'm trying to remember. But all I know is they were thrown
24 away in a dumpster and it was odd.

25 Q Okay. But the point is, you told -- at the

1 preliminary hearing you said that Romeo was the person who
2 throw away the clothing item, and you actually referred to
3 them as shorts, blue shorts, I believe, correct?

4 A Yes.

5 Q Okay. And that Domonic stayed in the car the entire
6 time, to the best of your recollection?

7 A Yes, and then he took -- yes.

8 Q All right. And then for some reason you turned
9 around and noticed that he was in --

10 A He was in --

11 Q -- his boxers?

12 A Yes.

13 Q Okay. Now --

14 THE COURT: Just [indiscernible] you said, "He was
15 in the boxers." Who is he?

16 THE WITNESS: D-Roc.

17 THE COURT: Okay.

18 BY MR. CANO:

19 Q On direct examination you testified that -- now
20 let's go over to Wal-Mart, okay?

21 A Okay.

22 Q That was on, I think you testified, the Tuesday, May
23 16th.

24 A Yes.

25 Q Correct? That you needed to go get a belt --

1 A Yes.

2 Q -- for work. Domonic was with you --

3 A Yes.

4 Q -- correct? As well as Romeo?

5 A Yes. And Lynn.

6 Q And Lynn?

7 A Yes.

8 Q Okay. And you went over to Wal-Mart to get some
9 items. And that you thought it was odd that Romeo had took
10 his shoes off and went in barefoot to Wal-Mart to buy some
11 shoes?

12 A Yes.

13 Q Okay. And you also said that Domonic bought a
14 sweatshirt?

15 A A black sweater, yes.

16 Q Right? Was it a sweater or a sweatshirt?

17 A Sweatshirt, if I remember correctly.

18 Q Okay.

19 A I know it was long sleeve, it was heavy.

20 Q Long sleeve, heavy. But do you recall describing it
21 as a sweater to the police?

22 A No. I probably did.

23 Q Would it refresh your recollection if I showed you
24 your statement?

25 MR. CANO: And this is the June 1st statement,

1 counsel, on page 40.

2 BY MR. CANO:

3 Q Down at the bottom.

4 A Okay.

5 Q Does that help refresh your recollection, ma'am?

6 A Yes.

7 Q Okay. So you told the police it was a black
8 sweater?

9 A Yeah. Yes.

10 Q And there's a difference between sweatshirt and
11 sweater, correct?

12 A Yes.

13 Q Now, do you recall talking about Romeo coming to
14 your house with a pair of shoes?

15 A Yes.

16 Q And that you thought it was unusual?

17 A Yes.

18 Q Okay. Do you recall having a conversation with the
19 police regarding Romeo wanting to give a pair of Air Jordans
20 to Lynn?

21 A Yes.

22 Q Okay. And he was asking what size her shoes were --

23 A Yes.

24 Q -- things of that nature?

25 A Yes.

1 Q And then he came over with the pair of shoes?

2 A Yes.

3 Q Correct?

4 A Yes.

5 Q And gave those to Lynn?

6 A Yes.

7 Q Okay. Fair to say that you were closer with Romeo
8 during this period of time than you were with Domonic?

9 A Yes.

10 Q Okay. And as a matter of fact, you turned over some
11 pants that belonged to Romeo to the police, the Henderson
12 Police?

13 A Yes.

14 Q Right? And they were at your home?

15 A Yes.

16 Q Okay. So they confiscated from your apartment at
17 the Sportsman's?

18 A Yes.

19 Q Okay. Now, do you remember testifying to, earlier,
20 that Domonic, Romeo and -- and White Boy, or Donny, were like
21 all in partnership together with the drug trade?

22 A Yes.

23 Q Okay. At the previous preliminary hearing I think
24 you described Donny and Romeo kind of being more in
25 partnership as opposed to Domonic?

1 A Yeah.

2 Q Okay. And you actually described Domonic as being
3 independent?

4 A Yes.

5 Q Okay. And that Donny and Romeo would share their
6 profits?

7 A Yes.

8 Q But Domonic would not share his profits with them?

9 A I am not sure about that. I couldn't answer that
10 honestly --

11 Q Would it help to refresh --

12 A -- because I have no --

13 Q -- your recollection if I showed you the preliminary
14 hearing statement?

15 MR. CANO: And it's the 24th, page 94 to 95, I
16 believe, counsel.

17 BY MR. CANO:

18 Q If you'll start reading right in here. And then
19 going into the next page. To yourself, please.

20 Did that help refresh your recollection?

21 A Yeah.

22 Q Okay. So, as far as you were aware of, Romeo and
23 White Boy or Donny, were more in a partnership, sharing their
24 drugs and their profits from that?

25 A Yes.

1 Q Domonic was more independent?

2 A Yes.

3 Q Not sharing any with Romeo --

4 A No.

5 Q -- or Donny? Okay. Do you remember talking about
6 on direct testimony the day when Victoria was there, and
7 Christina was there at your apartment?

8 A Yes.

9 Q And so was Domonic, as well as Romeo?

10 A Yes.

11 Q And then you testified that they, referring both to
12 Domonic and Romeo, were sending Victoria out to do acts of
13 prostitution?

14 A Yes.

15 Q Do you remember saying at the preliminary hearing
16 that you had no personal knowledge of Domonic telling Victoria
17 to conduct any acts of prostitution?

18 A Yes.

19 Q So you recall saying that at the preliminary
20 hearing?

21 A Yes.

22 Q Okay. So that's different than what you've said
23 today in court, correct?

24 A Yes.

25 Q All right. And you also testified at the previous

1 preliminary hearing that any -- that you had no knowledge
2 whatsoever that Domonic had ever engaged in any type of
3 pimping actions, or any work of that nature?

4 A I don't know. I don't recall.

5 Q Okay.

6 MR. CANO: The same transcript, the 24th, counsel,
7 page 217.

8 BY MR. CANO:

9 Q Would it help to refresh your recollection if I
10 showed you this?

11 A Yes.

12 Q Okay.

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

14 THE COURT: Yes.

15 MR. LALLI: Did you say 217?

16 MR. CANO: Yes.

17 MR. LALLI: Thanks.

18 THE WITNESS: It all helps. It's been six years, a
19 long time.

20 BY MR. CANO:

21 Q All right. Starting like [inaudible].

22 A Right here?

23 Q Yeah.

24 A Okay.

25 Q All right. So at the preliminary hearing you

1 testified that any knowledge that you have regarding Mr.
2 Malone being a pimp, they were actually like blatant lies, or
3 they were made up?

4 A I don't know if they were blatant lies. It's just I
5 don't -- I wouldn't know for sure.

6 Q You didn't have any knowledge of him ever --

7 A Exactly.

8 Q -- being a pimp?

9 A Yes.

10 Q Okay. And that's different than what you've
11 testified to earlier today, correct?

12 A I guess. I don't -- no idea.

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

14 (Pause in the proceedings)

15 Nothing further, Your Honor.

16 THE COURT: All right. Any redirect?

17 MR. LALLI: Court's indulgence.

18 (Pause in the proceedings)

19 REDIRECT EXAMINATION

20 BY MR. LALLI:

21 Q Ms. Phillips, we had talked about the various
22 statements that you had given to the police. Do you recall
23 that?

24 A Yes.

25 Q You had given the first statement to them and I

1 believe you conceded on direct examination when I was asking
2 you questions earlier, that you were not completely truthful
3 to the police?

4 A Correct.

5 Q And you still obviously maintain that --

6 A Yes.

7 Q -- would that be fair? Do you recall that at some
8 point during the second interview that you had with the
9 police, something in you changed?

10 A Yes.

11 Q Do you remember -- do you remember what you said to
12 the police when that happened?

13 A I just said --

14 Q Do you remember?

15 A No, I just --

16 Q Or would it refresh your recollection to look at the
17 transcript?

18 A I remember crying, that's about as much as I can
19 remember.

20 Q Describe your demeanor. You said you remember
21 crying. What else do you remember?

22 A I was shaky. I was scared.

23 MR. LALLI: Page 15, of the second statement.

24 MR. CANO: Was that the Sportsman's?

25 MR. LALLI: It's the second statement.

1 MR. CANO: In the vehicle?

2 MR. LALLI: Yes.

3 MR. CANO: Of the officers'? Okay.

4 BY MR. LALLI:

5 Q If you would read -- start at page 19.

6 A Okay.

7 Q Just to yourself.

8 Do you remember what you said now? What did you
9 say?

10 A I said I was scared and that -- I don't know.

11 Q You said, "I don't want to end up like these."

12 A Yes.

13 Q Like who?

14 A Victoria and Christine.

15 Q You didn't want to end up dead out in the desert?

16 A Yep.

17 Q And it would've been easier for you to just --

18 A Let it --

19 Q -- pretend none of this happened?

20 A Exactly.

21 Q Were you emotional through the entire interview?

22 A Yes.

23 Q Mr. Cano just asked whether you had said anything
24 about D-Roc being a pimp before, or words to that effect. Do
25 you recall that area --

1 A Yes.

2 Q -- that area of questioning?

3 A Yes.

4 Q And I think your response to him was, well, I'm just
5 not sure.

6 Do you remember what you said at the preliminary
7 hearing with respect to Victoria being sent out to do acts of
8 prostitution on the Tuesday that they came over to your home?

9 A Correct.

10 Q Do you remember what you said?

11 A No.

12 Q Would it refresh your recollection to look at this?

13 MR. LALLI: It's page 12, of the first day of the
14 preliminary hearing.

15 BY MR. LALLI:

16 Q Right here.

17 What did you testify to at the preliminary hearing?

18 A I said that either Romeo or D-Roc, one of them two,
19 sent her up.

20 Q Which is what you've said today?

21 A Yes.

22 Q You testified on direct examination about hearing
23 D-Roc talk about girls in the desert, no shoes, no clothes.
24 Is that something you told the police?

25 A Yes.

1 Q You testified today hearing D-Roc on the telephone
2 talking about the girls being taken out to the desert. Is
3 that something you told the police?

4 A I believe so, yes.

5 Q Would you like to see your statement, where you told
6 them that, just --

7 A Yeah.

8 Q -- so you're certain? Okay.

9 MR. LALLI: It's the fourth statement, counsel, at
10 line 32.

11 MR. CANO: Is that the --

12 MR. LALLI: Which would be June 1st.

13 MR. CANO: June 1st? Okay. At line 42? What page?

14 MR. LALLI: Page 42.

15 MR. CANO: Oh, page 42.

16 Counsel? I'm not sure if my 42 is your 42.

17 MR. LALLI: Oh. May I approach, Your Honor?

18 THE COURT: Yes. Yes.

19 (Pause in the proceedings)

20 MR. CANO: Thank you, counsel.

21 BY MR. LALLI:

22 Q Right here.

23 Do you remember that?

24 A Yeah.

25 Q Do you remember telling the police -- you were

1 asked, "Who's the one that said, take the girls to the
2 desert?" "D-Roc." Do you remember saying that?

3 A Yes.

4 Q It's probably hard for you to remember --

5 A It's a long time ago --

6 Q -- in all fairness, but.

7 A -- but.

8 Q Do you remember telling the police that you heard
9 both the defendant and Romeo talking about taking the girls
10 out to the desert for PT time?

11 A Yes.

12 Q It's been quite some time since these events have
13 happened; is that true?

14 A Yes.

15 Q Mr. Cano asked some questions about our interaction
16 together. Some weeks ago, or probably some weeks ago, did I
17 ship to you a rather large package, or cause to be shipped to
18 you a rather large box full of all the statements that you had
19 given?

20 A Yes.

21 Q And were your preliminary hearing transcripts in
22 that packet as well?

23 A Yes.

24 Q And I think you mentioned that on -- in cross-
25 examination you really didn't go through all of those?

1 A Not all of them, no.

2 Q Did you and I chat on the telephone perhaps last
3 week at some point, one night?

4 A Yes.

5 Q And did we go through your statements together?

6 A Yes.

7 Q And did we also talk about your statements last
8 night in my office?

9 A Yes.

10 Q And was that the first time you and I ever met?

11 A That I recall, yes, I think it was. I don't think
12 I've --

13 Q I wasn't involved --

14 A Yeah.

15 Q -- with this case back at the --

16 A Yeah.

17 Q -- preliminary --

18 A No.

19 Q Another Chris, old white-haired guy --

20 A Yes.

21 Q -- right? Okay.

22 A Yes.

23 Q Don't tell Mr. Owens I said that.

24 THE COURT: All right. Any recross?

25 MR. CANO: Yes, Your Honor.

1 RECROSS-EXAMINATION

2 BY MR. CANO:

3 Q Do you remember talking to Mr. Lalli about being
4 scared in this case?

5 A Yes.

6 Q Okay. Do you remember talking to the police that
7 you were scared because they had threatened you with accessory
8 to murder?9 A No, I was scared because somebody broke into my
10 house.11 Q Okay. Would it refresh your recollection if I
12 showed you that conversation with the police?

13 A Sure.

14 Q Okay.

15 MR. CANO: On the June 1st statement, counsel, pages
16 16 going into 17.

17 BY MR. CANO:

18 Q Read this to yourself down here, and [inaudible]
19 page 16.

20 A Right here?

21 Q Yeah. And this is page 17 up here.

22 A Okay.

23 Q Does that help to --

24 MR. LALLI: Mr. Cano, I'm sorry, did you say page 7?

25 MR. CANO: 17.

1 MR. LALLI: Oh, 17. Thank you.

2 BY MR. CANO:

3 Q Did it help to refresh your recollection?

4 A Yeah.

5 Q Thank you. So, that does help refresh your
6 recollection, that you were threatened by the police and you
7 were scared because they had threatened you with accessory to
8 murder?

9 A Yeah, if that's what it says, then yeah.

10 Q Well, that's what you told the police, correct?

11 A Yes.

12 Q All right.

13 A That's what it says.

14 Q And at that point in time you had knowledge that the
15 girls were deceased?

16 A Yes.

17 Q And that you had tried to assist Mr. McCarty or
18 Romeo to try to change the tires on his cars?

19 A Yes, I did.

20 Q Remember the questions that Mr. Lalli was asking you
21 about prostitution, that you didn't know whether it was
22 Domonic, or whether it was Romeo that had sent Victoria up to
23 do prostitution?

24 A Correct.

25 Q The day she was at your house?

1 A Yes.

2 Q And you said you don't know who it was -- you didn't
3 know which one it was, correct?

4 A Yes. It was one of them. It's in the statement.

5 Q Do you remember me asking you directly, Did you ever
6 hear Mr. Malone order Victoria to go prostitute herself?

7 A Say that again?

8 Q Do you remember me asking directly at the
9 preliminary hearing --

10 MR. CANO: Page 97, counsel.

11 BY MR. CANO:

12 Q My question to you is, "Did you ever hear Mr. Malone
13 order Victoria to go prostitute herself?" And your answer
14 was, "I didn't hear him say that, no."

15 A If that's what I said, then yeah.

16 Q Okay.

17 MR. CANO: Nothing further, Your Honor.

18 MR. LALLI: Nothing else, Your Honor.

19 THE COURT: Any question by any jurors? We do have
20 a question by one of our jurors. Counsel, approach.

21 (Bench conference)

22 THE COURT: I think she has asked the most questions
23 of all the jurors.

24 MR. CANO: Yeah, she's really paying attention.
25 I've got to agree with that.

1 THE COURT: She just wants to know when they went to
2 Wal-Mart. Mr. Cano?

3 MR. LALLI: No objection.

4 (End of bench conference)

5 THE COURT: All right. Ms. Phillips, we have a
6 question by one of our jurors for you. I'll just read it word
7 for word.

8 "Just trying to get the time line straight. Was the
9 trip to Wal-Mart on Tuesday or Wednesday, or more like
10 Thursday or Friday? What was the exact day you recall doing
11 that?"

12 THE WITNESS: The trip to Wal-Mart, Tuesday.

13 THE COURT: Any follow-up by the State to this
14 question

15 MR. LALLI: No, Your Honor.

16 THE COURT: Any follow-up by the defense to this
17 question?

18 MR. CANO: No, Your Honor.

19 THE COURT: Any additional questions by any of the
20 jurors? No additional questions. Ms. Phillips, thank you for
21 your testimony. You are excused.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness for the State?

24 MR. DiGIACOMO: May I have a moment?

25 THE COURT: Sure.

1 MR. DiGIACOMO: May we approach?

2 THE COURT: Yes.

3 (Bench conference)

4 THE CLERK: [Inaudible] Mr. Collins [inaudible] and
5 he's still in the courtroom [inaudible].

6 MR. DiGIACOMO: And I sent him a text to come down
7 and I just received a text back saying he's being recalled for
8 rebuttal.

9 THE COURT: Oh, he's being -- I actually just got a
10 e-mail saying he's done --

11 MR. DiGIACOMO: Right.

12 THE COURT: -- waiting for the [inaudible].

13 MR. DiGIACOMO: Then I --

14 THE COURT: [Inaudible] tell us.

15 MR. DiGIACOMO: Then he's got rebuttal, so I think
16 he just went on. He's not avoiding us, he's just [inaudible]
17 in another hearing.

18 THE COURT: Do you have any other witness, or should
19 we just wait -- take a break now?

20 MR. DiGIACOMO: Let's take a break now.

21 THE COURT: Okay.

22 MR. DiGIACOMO: Just let them know that [inaudible].

23 THE COURT: I'll just say the witness is en route.
24 Okay.

25 (End of bench conference)

1 THE COURT: Okay. Ladies and gentlemen, before the
2 -- the State's next witness is en route to the courtroom at
3 this time. Instead of having you sit there for a period of
4 time, let's just take a break and as soon as the witness shows
5 up we'll resume court. So just hang by somewhat close here.

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

15 We'll see you back in just a few minutes here.

16 (Court recessed at 2:41 p.m. until 3:28 p.m.)

17 (In the presence of the jury)

18 THE COURT: All right. Let's have our next witness
19 sworn in.

20 GERARD COLLINS, STATE'S WITNESS, SWORN

21 THE MARSHAL: Sir, if you would, please state and
22 spell your name for the record.

23 THE WITNESS: My name is Gerard Collins.

24 G-e-r-a-r-d, C-o-l-l-i-n-s.

25 THE COURT: Go ahead, State.

1 MR. DiGIACOMO: Thank you.

2 DIRECT EXAMINATION

3 BY MR. DiGIACOMO:

4 Q Sir, how are you employed?

5 A I'm employed with the City of Henderson as a police
6 detective.

7 Q And before we get into the case today, earlier
8 today, or while we've been waiting, were you in another
9 courtroom on a separate hearing on a separate situation?

10 A Yes, I was.

11 Q Okay. During the course of your career as a
12 detective, how many -- have you ever worked a homicide case?

13 A Yes.

14 Q How many do you think you've worked?

15 A Directly been involved with? Probably around 50 or
16 so.

17 Q And how many years are you a homicide detective?

18 A 14 years.

19 Q I'm going to direct your attention to May 20th of
20 2006. Did you become involved in the investigation of a
21 homicide -- homicides, that ultimately, the individuals -- the
22 victims were identified to you as a Charlotte Christine
23 Combado, and a Victoria Magee?

24 A Yes.

25 Q And did you go to the crime scene on May 20th of

1 2006?

2 A Yes, I did.

3 Q And can you describe for the ladies and gentlemen of
4 the jury what your initial impressions were when you went to
5 the scene?

6 A My initial impressions when I arrived at the scene,
7 of course there was already a police presence there. There
8 was some tape up, and some vehicles around, police vehicles.
9 It was in a desert area, somewhat west of Boulder Highway. It
10 was quite a ways off of Boulder Highway. It was fully -- you
11 could fully see it from Boulder Highway, but it was a ways
12 off.

13 On my approach, we -- there was a designated parking
14 area that we went to. I got out. And I could see that there
15 was two bodies -- two naked bodies laying in the desert.

16 Q And we've kind of had Jennie Ayers come in and
17 testify generally to the location of the scene. At some
18 point, because you have naked bodies, do you engage in a
19 search of kind of the outlying area to document any clothing
20 you might find in the desert area?

21 A Yeah. Crime scene, what they do is they come in,
22 and we coordinate a search, how far out we're going to go,
23 basically what the search is going to entail, and exactly what
24 it is we're going to do.

25 Q And when you go to a crime scene -- and I'm assuming

1 at the point that you're standing there, you don't know that
2 this is Victoria and Christine?

3 A No, I -- I don't know who it is.

4 Q And other than that somebody has located these
5 bodies, do you have any facts as to, you know, who, what,
6 when, where, why; those type of things? Or are you now
7 standing there and have no real information as to what's
8 going --

9 A Right. We --

10 Q -- what happened?

11 A I had no idea who they were, or why they ended up
12 there, or what reasons, or anything like that.

13 Q Because you don't have that information, do you have
14 to make some sort of decisions as to how much you're going to
15 collect, what appears to be, or may not be -- or to be
16 relevant to the investigation?

17 A Yes.

18 Q Okay. And based upon that, how far do you go out --
19 or either on this day or other days, looking for potential
20 clothing for these two women?

21 A Well, it all depends on the area. I mean,
22 obviously, this is an open area, this is an open desert area.
23 So, it's not like we're just going to go 15 feet out, or 20
24 feet out. So we're going to take a vast amount of space to
25 kind of like see what it is we can find. So, the initial area

1 that was searched, or I should say the area that was searched
2 was pretty vast.

3 Q Did there even come a point in time when there was
4 clothing collected by Crime Scene Analyst Farrell that was
5 even across 93? Was it that far out, or did you limit
6 yourself to just one side of 93?

7 A No. There was actually -- there did come a time
8 where we searched the other side of 93 -- or 95.

9 Q 95?

10 A 93, 95.

11 Q Okay.

12 A Boulder Highway.

13 Q In addition, at the time that -- well, let me ask
14 you this. At the time that the clothing was found away from
15 the scene, when you were standing there, did you initially
16 think it was related?

17 A Probably not thinking it was initially -- it was
18 related, but we didn't know if it was not related. So, I
19 mean, it's kind of like if we don't know -- if we can't say
20 it's not related, as far as we're concerned, it's possibly
21 related, so we're going to take it.

22 Q In addition, somewhat away from the scene was there
23 a used condom laying next to a shoe?

24 A Yes.

25 Q Why did you take that?

1 A It possibly could be related. We don't know.

2 Q Subsequent to kind of the crime scene investigation
3 on May 20th of 2006, before Melissa Estores comes to the
4 police department, do you really have much information as to
5 what happened, why Victoria and Christine wind up out there?

6 A No, we really don't have a lot of information. All
7 we know is that we have two bodies out there that are deceased
8 at this point in time.

9 Q Eventually, on the 21st, well, do you go to the
10 autopsy of Christine and Charlotte?

11 A Yes. The morning of the 21st, I go to the
12 autopsies.

13 Q While you're at the autopsy, do you receive any
14 information that something has happened back at the office?

15 A I get a call from a Sergeant who --

16 MR. PIKE: Objection, Your Honor. Calls for a "yes"
17 or "no" response.

18 THE COURT: I'm going to sustain the objection.
19 Your question was, did you get a call.

20 BY MR. DiGIACOMO:

21 Q Did you receive the information?

22 A Yeah, I received the information that two people had
23 showed up at the Henderson Police Department and wanted to
24 talk to the police about two missing persons. Two friends
25 that were -- that they believed were missing.

1 Q And eventually did you learn those two people were
2 Melissa Estores and Ryan Noe?

3 A Yes.

4 Q And Melissa Estores is commonly referred to on the
5 street as Red?

6 A Yes.

7 Q Based upon the information that Mr. Noe and Ms.
8 Estores provides, do you begin to follow up on the information
9 they provided you?

10 A Yes.

11 Q And what is it that you do to begin following up on
12 that information?

13 A Well, we needed to establish the identities of the
14 deceased persons and that was eventually established with the
15 persons they gave us and they names, we started looking for
16 these people. We started identifying these people, exactly
17 who they were.

18 Q Do you respond to a location called the South Cove
19 Apartments?

20 A Yes.

21 Q And can you describe that for the ladies and
22 gentlemen of the jury? Where is it located?

23 A South Cove Apartment is on the corner of -- I
24 believe it's 15th Street and Fremont. And it's on the
25 northeast corner -- yeah, northeast corner. It's multiple

1 buildings that are there. It's kind of like -- in each
2 building, there are small apartments, maybe like studio
3 apartments, or maybe one-bedroom apartments, things along that
4 line.

5 Q And based upon the information that you had received
6 from Ms. Noe and -- or Mr. Noe and Ms. Estores, did you want
7 to conduct a search of both room 217 and room 222?

8 A Yes, we eventually wanted to do that. Yes.

9 Q Were you present during the search of room 217?

10 A I was present -- I was present towards the end of
11 the search, yes.

12 Q And at the end of the search, did you take
13 possession of a particular cell phone?

14 A Yes.

15 Q Can you describe for the ladies and gentlemen of the
16 jury what you did with the phone?

17 A What I did with it?

18 Q Yeah. I mean, you took possession of it. Why did
19 you take possession of it?

20 A Well, I eventually impounded it.

21 Q And did you do anything with it to determine if it
22 had a phone number? Could you associate it to a phone number
23 or anything like that?

24 A Yeah. We did a -- basically did a search of the
25 phone. We tried to do an electronic search. Also look at it,

1 see if any names came up on it. What we found is that the --

2 MR. PIKE: Objection as to "we." I'd request a
3 foundation, if there's more than one person handling the
4 evidence, and that the evidence be produced for a chain of
5 custody.

6 THE COURT: Detective, at this point, just identify
7 what you saw, what you did.

8 THE WITNESS: I came in possession of the phone. On
9 the phone -- there was a name on the phone. It said like
10 "Island girl," or "Pacific Island Girl." And then what I did
11 is when I took it into possession, I brought it into some
12 people that could look at it electronically to see what was
13 it.

14 BY MR. DiGIACOMO:

15 Q Okay. And I'm showing you now what's been marked as
16 State's proposed Exhibit No. 151. Is that the phone you took
17 possession of?

18 A Yes.

19 Q And it said "Island Girl" and "Christine" on it?

20 A Yes.

21 Q During the course of your investigation, have you
22 ever been able to determine a phone number for that particular
23 phone?

24 A No.

25 Q During the course of your investigation, were you

1 ever able to figure out if there's any contacts, or anything
2 else out of that phone?

3 A No, nothing.

4 Q During the course of your investigation, did you
5 ever -- were you ever supplied any information that Christine
6 or Charlotte Combado was in possession of this phone between
7 May 16th and May 18th of 2006?

8 MR. PIKE: Objection, Your Honor, calls for hearsay,
9 calls for speculation. And -- well, that's two out of many,
10 but.

11 MR. DiGIACOMO: My question is, is did he ever come
12 into any information that she was in possession of this phone.
13 I didn't ask him did anybody -- I'm just asking, is there any
14 information in the case that she ever was in possession of
15 this phone during that three-day period.

16 MR. PIKE: And that calls for --

17 THE COURT: Will counsel approach?

18 (Bench conference)

19 MR. DiGIACOMO: Defense has repeatedly suggested
20 that Christine had this phone, that it was left in 217, and
21 that obviously is evidence that she is guilty. I'm not asking
22 to say, who told you what. I'm just asking him, hey, during
23 the course of your investigation, have you recovered any
24 information from any source that this particular phone was in
25 her possession.

1 MR. PIKE: But that includes hearsay. We know that
2 that name identifies to her. We know that there's messages on
3 it. Now, he says he turned it over to some people. And there
4 is -- it's such a broad -- I don't have him saying, did you
5 check it for fingerprints and see if there were any of her
6 fingerprints on it? Did you determine --

7 MR. DiGIACOMO: That's cross.

8 MR. PIKE: -- [inaudible] -- well, I'll do the
9 cross.

10 THE COURT: Okay.

11 MR. PIKE: But I just don't want -- you know, if
12 there's going to be -- it just begs for a hearsay response.

13 MR. DiGIACOMO: No --

14 MR. PIKE: [Inaudible].

15 THE COURT: Okay, restate your question.

16 MR. DiGIACOMO: My question is, during the course of
17 your investigation, have you received any information that
18 Christine, Charlotte Combado, was in possession of this phone
19 from May 16th to May 18th of 2006. His answer is no. I'm not
20 going to ask him, well, what information do you have, or what
21 do you base that on. I mean, that's the question, Judge.
22 [Inaudible] doesn't call hearsay.

23 It's the suggestion [inaudible] that she's been in
24 possession of the phone. I'm asking, in the course of your
25 investigation, did you have any information she was. It's

1 clearly an appropriate question to ask in response to the
2 questions being asked, saying --

3 THE COURT: Do you have any -- or [inaudible] --

4 MR. DiGIACOMO: [Inaudible] testified she didn't
5 have it. So, I mean, there's no -- I mean, I have non-hearsay
6 [inaudible] just testimony. The testimony from Red, she
7 didn't have it. Every live witness who testified never
8 testified Christine had a phone in her possession, or in this
9 time period.

10 There's no phone records to establish it. And so
11 that's why I asked the questions, do you have a phone number,
12 did you get any contact from it, did you have any information
13 she was in possession of this phone during that time period.
14 I don't know what the objection is.

15 MR. PIKE: Because I'm just waiting for the witness
16 is going to respond, I think he'll respond with hearsay
17 statements. I don't know if he's going to say that
18 [inaudible] --

19 THE COURT: Well then object, and I'll --

20 MR. DiGIACOMO: [Inaudible] yes or no.

21 THE COURT: -- strike it.

22 MR. DiGIACOMO: Right.

23 MR. PIKE: Okay. But you know, rather than --

24 THE COURT: Do you have any --

25 MR. PIKE: -- rather than un-ring the bell

1 [inaudible] --

2 THE COURT: Do you have any personal knowledge that
3 [inaudible] --

4 MR. PIKE: -- [inaudible].

5 MR. DiGIACOMO: As the lead detective, do you have
6 any information -- in his personal knowledge, he knows the
7 case file. So, I can ask him --

8 THE COURT: Right, yeah.

9 MR. DiGIACOMO: -- is there any information in the
10 case file that indicates to you that she was in possession of
11 the phone.

12 MR. PIKE: I mean, I can do my cross-examination.

13 THE COURT: Okay.

14 MR. PIKE: But, you know, I --

15 THE COURT: Well, I'm going to allow the question.

16 MR. PIKE: The witness overly responds --

17 THE COURT: Okay.

18 MR. PIKE: -- to questions.

19 THE COURT: Immediately object, and we'll
20 [inaudible].

21 MR. PIKE: Okay.

22 (Bench conference ended)

23 THE COURT: I'm going to overrule the objection. Go
24 ahead, Mr. DiGiacomo.

25 BY MR. DiGIACOMO:

1 Q Detective, I will repeat the question for you.

2 Well, let me ask you this, are you the lead detective in this
3 particular case?

4 A Yes.

5 Q And are you from -- I see you brought your case file
6 here. Are you familiar with your case file?

7 A Pretty much, yeah.

8 Q I mean, as much as you can be, considering how many
9 notebooks are there now?

10 A Right.

11 Q To your knowledge, do you have any information that
12 indicates that Charlotte Christine Combado was in possession
13 of this phone either between May 16th and May 18th of 2006?

14 A No.

15 Q In addition to wanting to go to the South Cove
16 Apartments, based upon what Ms. Estores had told you, did you
17 make some efforts to locate an individual that she identified
18 to you as D-Roc, or Domonic Malone?

19 A Yes.

20 Q And on May 23rd of 2006, did you come into contact
21 with Mr. Malone at the Texas Station?

22 A Yes.

23 Q Do you see Mr. Malone here in court today?

24 A Yes.

25 Q Can you point him out and describe something he's

1 wearing?

2 A He's wearing a gray or black sweater with a blue
3 shirt and blue tie, glasses.

4 MR. DiGIACOMO: May the record reflect
5 identification of the defendant, Judge?

6 THE COURT: Yes, it will.

7 BY MR. DiGIACOMO:

8 Q At the time you came into contact with him at the
9 Texas Station, did he have a gray Nissan Stanza?

10 A Yes.

11 Q And did you impound that vehicle as well?

12 A Yes.

13 Q On May 23rd, when you booked Mr. Malone, what crime
14 did you book him for?

15 A Booked him for battery with substantial bodily harm.

16 Q Upon who?

17 A Upon Melissa Estores.

18 Q Okay. For what date?

19 A That would have been for the date of May 16th.

20 Q The Tuesday night?

21 A Yes.

22 Q And when you arrest somebody, I think witnesses have
23 used the term "charged," and so I want to make this clear. Do
24 you have the ability to formally charge anybody with any
25 crime?

1 A Formally charge?

2 Q Yes.

3 A No.

4 Q Okay. What authority do you have?

5 A The authority that I have is when I arrest somebody,
6 I can take them into custody and book them. The formal charge
7 comes in when we present our case to the District Attorney,
8 and the District Attorney formulates a Complaint out of that.
9 And then, at some point in time after the arrest, and while
10 the subject is in custody, he is brought into court and he is
11 formally charged by the District Attorney.

12 Q So, I want to make sure that we're clear when I'm
13 using these questions. You arrested Mr. Malone for battery
14 with substantial bodily harm on May 23rd, for the incident
15 with Red on Tuesday night out at the desert?

16 A Yes.

17 Q Subsequent to that, on May 25th of 2006, did you
18 come into contact with an individual identified to you as
19 Jason McCarty?

20 A Yes.

21 Q That the jury's been known as Rome, correct?

22 A Pardon me?

23 Q Rome, or Romeo?

24 A Yes.

25 Q Subsequent to your conversation with Romeo, did you

1 also come into contact with an individual that was identified
2 to you as Donny Herb?

3 A Yes.

4 MR. DiGIACOMO: May I approach, Judge?

5 THE COURT: Yes.

6 MR. PIKE: Is that on the same day?

7 MR. DiGIACOMO: Yes, on --

8 BY MR. DiGIACOMO:

9 Q Is that May 25th, 2006, as well?

10 A Yes.

11 MR. PIKE: Okay. Thank you.

12 BY MR. DiGIACOMO:

13 Q Showing you what's marked as State's proposed
14 Exhibit number 134. Is that the way that Mr. Malone generally
15 looked back in May of 2006?

16 A Yes.

17 MR. DiGIACOMO: Move to admit 134, Judge.

18 MR. PIKE: No objection, Your Honor.

19 THE COURT: All right, it will be admitted.

20 (State's Exhibit 134 is admitted)

21 BY MR. DiGIACOMO:

22 Q Prior to speaking to Mr. Herb, do you initially
23 arrest Mr. McCarty for any particular crime?

24 A Yes.

25 Q What was that?

1 A Battery with substantial bodily harm, and
2 conspiracy, and --

3 Q Kidnapping?

4 A Yeah, I believe I charged him with kidnapping also.
5 Yes.

6 Q And that, once again, is for the incident with
7 Melissa Estores on Tuesday night out in the desert?

8 A Yes. May 16th.

9 Q The May 16th incident?

10 A Yes.

11 Q After talking to Mr. McCarty, you indicated you had
12 contact with Donny Herb?

13 A Yes.

14 Q And subsequent to your conversation with Mr. Herb --
15 well, let me ask you this. During the course of your
16 conversation with Mr. Herb, did he voluntarily provide you a
17 buccal swab for DNA purposes?

18 A Yes, he did.

19 Q Okay. Subsequent to your conversation with Mr.
20 Herb, did you arrest him?

21 A Yes, I did.

22 Q And then, what did you do after you -- what did you
23 arrest him for?

24 A I arrested him for a plethora of things; murder,
25 conspiracy, kidnapping.

1 Q So, you arrested Mr. Herb for basically all the
2 charges between May 16th through May 18th of 2006?

3 A I can't remember if I arrested him -- I'd have to
4 look at the paperwork again, for the 16th. But there's a
5 possibility I could have arrested him for the 16th.

6 Q Okay. And then afterwards, what did you decide to
7 do as it related to Mr. McCarty?

8 A I charged him with everything, too.

9 Q And then what did you do as it related to Mr.
10 Malone?

11 A I charged Mr. Malone with everything, too.

12 Q So, at this point all three defendants have been
13 charged with -- well, Mr. Herb may not have been arrested for
14 the May 16th, but at least all three of them had been charged
15 for the incidents that -- the murders, essentially?

16 A Yes, everything that occurred on May 18th.

17 Q During the course of the next several days, on June
18 1st of 2006, did you take a trip with Mr. Herb somewhere?

19 A What day was that in --

20 Q June 1st of 2006?

21 A Yes.

22 Q And can you describe for the ladies and gentlemen
23 how that came about?

24 A We were speaking to Mr. Herb, and he basically said
25 that he could --

1 MR. PIKE: Objection, Your Honor. Hearsay.

2 THE COURT: I'm going to sustain the objection as it
3 relates to what Mr. Herb told you.

4 MR. DiGIACOMO: I'll rephrase.

5 BY MR. DiGIACOMO:

6 Q At some point, were you contacted -- or through the
7 course of Mr. Herb and his lawyer, eventually, was it your
8 understanding that Mr. Herb was going to try and take you
9 somewhere?

10 A Yes.

11 Q Okay. And did you wind up in a vehicle with Mr.
12 Herb?

13 A Yes.

14 Q Describe for the ladies and gentlemen of the jury
15 kind of the trip that you took with Mr. Herb.

16 A We entered into a vehicle. He was giving me
17 directions on how to get to a certain location. There came a
18 time in the trip where he was somewhat confused, he wasn't
19 quite sure. But we continued on. And then ultimately, we did
20 -- he did remember his way. And we ultimately ended up at the
21 location where he wanted us to be.

22 Q When you reached that location, did you find any
23 evidence of -- or anything of evidentiary value out there?

24 A Yes, we did.

25 Q What did you find?

1 A Found a putter head on a golf club, a putter head.
2 And then sections of the shaft, of the golf club shaft.

3 Q Were you looking for any other items that you
4 weren't able to locate?

5 A Yeah. We were looking for rocks that might have
6 contained blood on it, and some other item that was buried.

7 Q At that time did you know exactly what that item
8 was?

9 A No.

10 Q On June 2nd of 2006, did you receive information
11 that Mr. McCarty wanted to take a trip?

12 A Yes.

13 Q And did you take a trip with Mr. McCarty?

14 A Yes.

15 Q Describe for the ladies and gentlemen of the jury
16 how this trip -- the course of this trip with Mr. McCarty?

17 A Put Mr. McCarty in a car, and we started out with
18 the trip. This time, I basically was doing the driving. He
19 was not really giving me any direction. And so we just -- we
20 continued to drive until I came to the same exactly location
21 and then we stopped.

22 Q On your way to that location with Mr. McCarty in the
23 car, did you pass the scene where the two bodies were found
24 off of Route 95?

25 A Yes, because we were on -- we were going south on

1 95.

2 Q Did you see any reaction by Mr. McCarty as you
3 passed that location?

4 A Yes. Mr. McCarty's reaction was basically --
5 remember, he was -- he was sitting in the front seat. And as
6 we were driving by, he saw the location coming up and he
7 started following the location as we were driving by. So, as
8 we were driving by, his head was turning to the back, and
9 turning to the back, and just continually locked onto that
10 location.

11 Q Before the District Attorney's office filed formal
12 charges in this particular case, did you receive a variety of
13 cell phone information for Donny Herb, Domonic Malone, and
14 Jason McCarty?

15 A Yes.

16 Q And did you review that information with the
17 District Attorney's office?

18 A Yes, I did.

19 Q At the conclusion of the review of the
20 information --

21 MR. PIKE: Excuse me, counsel. I'm sorry. Just for
22 purposes of the record, those items were received pursuant to
23 a subpoena or a search warrant?

24 MR. DiGIACOMO: I guess he could ask that on --

25 THE COURT: Right.

1 MR. DiGIACOMO: -- cross-examination.

2 MR. PIKE: Okay.

3 THE COURT: Is there an objection?

4 MR. PIKE: As to foundation, I would just ask that
5 -- where the records came from that they were reviewing. If
6 you want me to do it on cross-examination, I'll do it on
7 cross-examination.

8 THE COURT: Yeah, let's do it on cross. Unless you
9 want to get into it, Mr. DiGiacomo, but just handle it on
10 cross-examination.

11 MR. PIKE: Thank you, Your Honor.

12 BY MR. DiGIACOMO:

13 Q Eventually, do you receive the phone records for
14 those three individuals?

15 A Yes.

16 Q And based upon the review of that information, do
17 the three individuals each get charged with a crime?

18 A Yes.

19 Q And what crimes were Domonic Malone and Jason
20 McCarty charged with?

21 A What the DA charged them with?

22 Q Yes.

23 A Formally charged them with? They were charged with
24 murder with use of a deadly weapon -- two counts of murder
25 with use of a deadly weapon, conspiracy to commit murder,

1 kidnapping, battery with substantial bodily harm.

2 Q Essentially, all the charges between -- that
3 happened to --

4 A I believe there was a burglary in there also.

5 Q But essentially, all the charges between May 16th
6 and May 18th of 2006?

7 A Yes.

8 Q What about Donald Herb? What did he get formally
9 charged with, do you recall?

10 A I don't recall exactly what he got charged with.

11 MR. DiGIACOMO: Judge, I'd ask the Court to take
12 judicial notice from your file that on June 7th of 2006, the
13 only charge that Donny Herb was charged with was accessory to
14 commit murder.

15 THE COURT: Mr. Pike?

16 MR. PIKE: I have no objection. That's correct.
17 The Court --

18 THE COURT: All right. The Court will take judicial
19 notice of that fact.

20 BY MR. DiGIACOMO:

21 Q So, let's talk a little bit about the phone records.

22 MR. DiGIACOMO: Mr. Pike and I have agreed to
23 stipulate to those phone records that are no longer in
24 evidence.

25 So, Judge, at this time, I would move to admit

1 State's proposed Exhibit 231, which is both the request from
2 Sprint Nextel, as well as the phone records for the phone
3 number 237-8919, which both parties stipulate is Victoria
4 Magee's cell phone, as well as State's Exhibit number 236,
5 which is the same one, but has all the columns on the same
6 page so they're more easily readable.

7 THE COURT: Mr. Pike?

8 MR. PIKE: That's correct, Your Honor. We have a
9 number of telephone records that we've stipulated to prior to
10 this time.

11 THE COURT: Okay. It will be admitted.

12 (State's Exhibits 236 and 231 are admitted)

13 MR. DiGIACOMO: I also offer State's proposed
14 Exhibit number 232, which is the direct connect records for
15 both 237-3308 and 237-7001. 237-3308 both parties stipulate
16 is the cell phone of Jason McCarty, and 237-7001 both parties
17 stipulate is the cell phone used by Domonic Malone.

18 THE COURT: Is that correct, Mr. Pike?

19 MR. PIKE: That's correct, Your Honor.

20 THE COURT: All right. They will be admitted.

21 (State's Exhibit 232 is admitted)

22 MR. DiGIACOMO: Judge, I also have State's proposed
23 Exhibit number 229, which is all of the actual phone call
24 records with cell sites on them for Jason McCarty's cell
25 phone, 237-3308. I move to admit.

1 MR. PIKE: Court's indulgence. Let me just check
2 this one.

3 (Pause in the proceedings)

4 MR. PIKE: No objection, Your Honor.

5 THE COURT: It will be admitted.

6 (State's Exhibit 229 is admitted)

7 MR. DiGIACOMO: And then 230, State's proposed
8 Exhibit 230, which is the actual telephone calls for Domonic
9 Malone's cell phone, 237-7001.

10 MR. PIKE: No objection.

11 THE COURT: It's admitted.

12 (State's Exhibit 230 is admitted)

13 MR. DiGIACOMO: And finally, at least for right now
14 anyways, 233 -- State's proposed 233, which is a list of every
15 cell tower in the -- actually, Southern California, at least
16 locations 1 and 2 from Verizon, which encompass all the cell
17 towers contained in the records themselves with their location
18 by GPS. And that's 233, I'd move to admit.

19 THE COURT: Did you say California?

20 MR. DiGIACOMO: It is.

21 THE COURT: Okay.

22 MR. DiGIACOMO: It's the Southern California --

23 THE COURT: Okay.

24 MR. DiGIACOMO: They do it by zones, but they have
25 two zones. Southern California 1 and 2.

1 THE COURT: All right. Thank you.

2 MR. PIKE: No objection, Your Honor.

3 (Exhibit 233 is admitted)

4 BY MR. DiGIACOMO:

5 Q Now, Detective, I'm going to approach and show you
6 two items. You've testified at a previous proceeding in this
7 particular case; is that correct?

8 A Yes.

9 Q Okay. And these are all records that you testified
10 to last time; is that correct?

11 A Yes.

12 Q And of all the records that I just mentioned, do all
13 of them, with the exception of Victoria Magee, have cell site
14 data on them?

15 A Yes.

16 Q Did you -- did you and I last time together put
17 together a spreadsheet that includes all of the cell site
18 phones, including where their cell site was, and the party
19 numbers that we had, onto one document, which has been marked
20 as State's proposed Exhibit 235?

21 A Yes.

22 MR. DiGIACOMO: Move to admit 235, Judge.

23 MR. PIKE: No objection, Your Honor.

24 THE COURT: It will be admitted.

25 (State's Exhibit 235 is admitted)

1 BY MR. DiGIACOMO:

2 Q And finally, State's proposed Exhibit number 234, is
3 that the exact same thing, however, now it's color-coded, and
4 then the names that are associated with the particular cell
5 phones -- or the particular phones that we have numbers for
6 are included in that record?

7 A Yes.

8 MR. DiGIACOMO: Move to admit 234, Judge.

9 MR. PIKE: Admit the coloring is for ease of use by
10 the jurors, and is demonstrative evidence. No objection to
11 the admission.

12 MR. DiGIACOMO: That's correct.

13 THE COURT: Okay. It will be admitted.

14 (State's Exhibit 234 is admitted)

15 MR. DiGIACOMO: Thank you, Judge.

16 BY MR. DiGIACOMO:

17 Q Now, Detective, I don't know if you're going to be
18 able to see it on that screen. So, let me know if you need to
19 come down. But I want the jury to be able to read both the
20 original records, and then also these records, so that they
21 have an understanding, if they want to go in the back room, to
22 make sure that they understand the records themselves. Okay?

23 A All right.

24 Q I'm going to start with -- we'll do the Direct
25 Connect in a second. I'm going to start with -- and I'm just

1 going to put one of these up here, and whichever one is first.
2 So, that's Mr. McCarty's cell phone. So, State's proposed
3 Exhibit -- or State's Exhibit 229. Looking at State's Exhibit
4 number 229, that is the first page of the record, correct?

5 A Yes.

6 THE COURT: Can we -- Cliff, can you tilt the
7 monitor so -- more towards the jurors?

8 Ladies and gentlemen, I don't know if it's easier,
9 there's another monitor to your right. All right. Go ahead,
10 Mr. DiGiacomo.

11 MR. DIGIACOMO: Thank you.

12 BY MR. DIGIACOMO:

13 Q And then I'm going to put up on the overhead for
14 just a second, 234. And so that the jury knows what we're
15 looking at here, is we began 234 at May 16th. So, from the
16 first calls on May 16th, and they run through the last calls
17 on May 18th of 2006. And so the first phone call on this
18 particular record, which is 229, is at 12:48 a.m. on May 16th.
19 12:48 a.m., there's an inbound call. Indicates that the call
20 was not forwarded.

21 The originating cell site is
22 NNV8329RISWesternSCAL-225 5037. It's the same for the
23 terminating, the duration, the customer PIN number, meaning
24 the call that was being made from is Mr. McCarty's phone. And
25 then that last column that wasn't included in these pages is

1 to 235-1932.

2 A I don't see that.

3 Q Oh, oh. I see it. You guys don't. It's the last
4 call, since it's the second column up. The last call is
5 235-1932?

6 A Yes.

7 Q Let me go to the first phone call. It's May 16th.
8 I guess I should zoom in a little bit more. The first phone
9 call shown on this, May 16th, 12:48 a.m. It's an inbound
10 call, no call forward. It's the same cell tower, the same
11 terminating cell tower. Time of call. The customer number is
12 Mr. McCarty's cell.

13 MR. DiGIACOMO: And tomorrow morning, Mr. Pike and I
14 over the break, we have agreed on the phone numbers and whose
15 phone is whose. Ramaan Hall's cell phone is the -- going to
16 be the stipulation between the party in the morning.

17 THE COURT: Is that correct, Mr. Pike?

18 MR. PIKE: That's correct, Your Honor. We're
19 preparing a spreadsheet for these for the jury.

20 THE COURT: All right, great. Thank you.

21 BY MR. DiGIACOMO:

22 Q And Ramaan Hall is also known as Trey Black?

23 A Yes.

24 Q So now, to find where that phone was, or what tower
25 it hit, you'd have to find in this big list of things --

1 MR. DiGIACOMO: It's actually page 34, counsel, of
2 233.

3 BY MR. DiGIACOMO:

4 Q The cell tower, which was 5037, I believe. 5037.
5 It is the Western tower on SCAL 2. And it provides both a --

6 A You've got to go long.

7 Q -- a GPS latitude and longitude for that location of
8 that tower, correct?

9 A Yes.

10 Q We'll move this up for just a second. Well, I'll
11 take it off. Now, the Direct Connects are slightly different,
12 correct?

13 A Yes.

14 Q And now, Direct Connect information -- explain the
15 difference between a phone call and a Direct Connect. They've
16 sort of heard that, but what's the difference between them?

17 A A phone call is when you take a phone, and dial a
18 number, and you get somebody on the end. They answer the call
19 that rings. You know, they answer the call, hello, and all
20 that.

21 Direct Connect is basically like -- I kind of think
22 of it as a walkie-talkie type thing. You have to initiate the
23 contact, the number. And then what happens is the phone kind
24 of chirps or makes a sound, and it's just like talking on a
25 walkie-talkie. So, that's the difference between a -- or I

1 should say, a Direct Connect and a telephone call.

2 Q So, let's go to State's Exhibit number 232, and go
3 to the phone records, that this phone record is for -- there's
4 a little hole there, but 3308. And if you go later in the
5 records, much later in the records, you'll see 001. So, this
6 is for Mr. McCarty, as for Mr. Malone on the Direct Connects,
7 correct?

8 A Yes.

9 Q And on this record, the first one is May 16th 2006,
10 at 12:27:48 a.m. There's actually no duration. There is an
11 urban area code, network code, but then the important number
12 is from AGLD. And that's, in fact, the reference to the cell
13 tower in this particular case; is that correct?

14 A Yes.

15 Q And then the destination UMFI, that's kind of like
16 the opposite Direct Connect phone number?

17 A Yes.

18 Q And for some of the phones in this particular case,
19 we have the UFMI. And for some of these UFI's, we just don't
20 know who they are?

21 A Yes.

22 Q So now, let's go back to, first, State's Exhibit
23 234. The very first entry, May 16th, 2006. The time is the
24 same, indicates it's a Direct Connect instead of a phone call.
25 There is a tower, it's 2241. And it comes from Mr. McCarty's

1 cell phone, but we don't know who the opposite party is?

2 A Correct.

3 Q And if we go back here, in case there's any question
4 that that's the same cell tower, on State's Exhibit No. 233,
5 we are back at 47 5037. There is the Western tower that I'm
6 not going to completely read in. There's the SCAL 2. There's
7 the latitude, the longitude. It shows number 2241 as the --
8 at the front here, or the ACG number?

9 A Yes.

10 Q That's how you read these records to determine the
11 location of what tower a particular cell phone attached to?

12 A Yes.

13 Q Now, in addition to putting all of this information
14 together in a spreadsheet, did you confirm --

15 MR. DiGIACOMO: May I approach, Judge?

16 THE COURT: Yes.

17 BY MR. DiGIACOMO:

18 Q -- the location where all the cell towers that are
19 on those records between that time were located here in the
20 Valley for both Sprint/Nextel, as well as for AT&T?

21 A Yes.

22 Q I'm going to show you what's been marked as State's
23 proposed Exhibits -- and these are going to be not in an
24 order.

25 So, it's 110, 111, 112, 113, 14, 15, 16, 17 -- maybe

1 not, 18, 119, 180, 191, 120, 124, 126, and 132. And ask you
2 to flip through those, and tell me if those appear to be
3 aerial photographs that have the GPS location with the name of
4 each and every one of the towers that are on those records.

5 A Yes.

6 MR. DiGIACOMO: I move to admit -- and Judge, I
7 believe it's 110 to 120, 124, 126, 132, 180 and 191.

8 THE COURT: Mr. Pike?

9 MR. PIKE: Those locations have been confirmed by
10 the defense as being accurate. We have no objection.,

11 THE COURT: They will be admitted.

12 (State's Exhibits 110 to 120, 124, 126, 132, 180 and
13 191 are admitted)

14 BY MR. DiGIACOMO:

15 Q Detective, just to start this out, State's proposed
16 Exhibit No. 272, or I think it's -- it's admitted Exhibit 110,
17 I apologize.

18 And some of these the -- well, I guess the physical
19 location of places is written in blue; is that correct?

20 A Yes.

21 Q Like 140 Sirnoble Street is Donny Herb's house --
22 home?

23 A Yeah, his residence. Yes.

24 Q All right. And then there is like the Hard Rock.
25 Some of them are pretty self-explanatory, correct?

1 A Yes.

2 Q Okay. What is -- the jury hasn't heard much about
3 this, but what is -- do you know what the location 1165
4 Blankenship is?

5 A 1165 Blankenship?

6 Q Yes.

7 A Yes, that's Mr. Malone's residence.

8 Q And the various tower listing here, they're all in
9 yellow. And is yellow the towers for the Sprint Nextel
10 towers?

11 A I didn't hear the beginning of that. What's listed
12 in yellow?

13 Q The various towers, are they in yellow?

14 A Yes.

15 Q And those towers are the Sprint/Nextel towers; is
16 that correct?

17 A Yes.

18 Q And then so the jury understands, 287, the only
19 difference being is that these towers are in red, and those
20 are the AT&T towers; is that correct?

21 A Yes.

22 Q So if we were to go through these records, we could
23 essentially follow the phones when they're connecting as to
24 what location those phones would be in; is that correct?

25 A Yes.

1 Q I'm going to give you back 234. And I'm not going
2 to go through each and every one of these phone calls, but
3 what I would like to do is for some relevant time periods, I'd
4 like to go through a few of those relevant time periods and
5 show the jury where certain locations are.

6 So, first I'm going to put up on the overhead 272,
7 which is the -- the drawn out one. And then I'm going to back
8 up and start off with State's proposed Exhibit -- State's
9 Exhibit No. 113. And I will zoom in a little bit for the jury
10 here.

11 Then I'm going to ask you to look at your 235. And
12 I want you to jump down and --

13 A I have -- I have 234 here.

14 Q Your 234, my 235.

15 A Okay.

16 Q Okay. Your 234, I'm going to ask you to go to May
17 16th, 2006, and I'm going to ask you to go -- well let's start
18 at about 8:43, which is going to be, I'm going to say, 6 pages
19 in, the very last entry on the bottom of that page, 8:43 a.m.

20 A And 07 seconds?

21 Q Correct. And I guess I could put this up for the
22 jury. It might be hard for them to read. I don't want to be
23 zooming in and out.

24 But that's a phone call. It's a direct connect at
25 8:43 a.m. And the tower is this East Tropicana tower, and

1 it's from Mr. McCarty's phone, and it's to Victoria McGee's
2 phone; is that correct?

3 A Yes.

4 Q And I'll tell you what, since they're looking at
5 that, you're looking at -- why don't you give me that back and
6 they can at least see the color codes as I have them on there.

7 And so if we go to 8:47 on our current map, or
8 8:43:07 East Tropicana on our current map, this is the
9 Sportsman's; is that correct?

10 A Yes.

11 Q And I have 113 still up. And that's the East
12 Tropicana cell tower. Is that --

13 A What you're pointing to, yes.

14 Q What I'm pointing to now, is the East Tropicana cell
15 tower.

16 A Yes.

17 Q And the next -- very next phone call -- or the next
18 two phone calls are at 8:44 a.m., or they're both -- the next
19 two direct connects are 8:44 a.m. by Mr. McCarty, and he's
20 still pinging off that East Tropicana tower?

21 A Yes, he is.

22 Q And at 8:45, he pings off the Sam's Town tower; is
23 that correct?

24 A Yes.

25 Q And eventually, by 8:54, he is pinging off the East

1 Las Vegas tower?

2 A Yes.

3 Q And that is actually a phone call at 8:54 a.m. It's
4 an outbound phone call for only .02, from Mr. McCarty's cell
5 phone to an individual that eventually was identified as Erion
6 Robinson, correct?

7 A Yes.

8 Q Now, Erion Robinson -- let me ask you this. During
9 the course of your investigation did you learn of a guy name
10 Leonard Robinson?

11 A Yes.

12 Q And Leonard Robinson is Leonard Black?

13 A Yes.

14 Q And did you eventually locate Mr. Black, so you've
15 seen him before?

16 A I -- I did not personally talk to him, or locate
17 him.

18 Q Okay. Did you see a booking photo of him?

19 A Yes.

20 Q Okay. And do you eventually locate an individual
21 identified as Erion Robinson as well, correct?

22 A Yes.

23 Q My question is, essentially, Erion Robinson is
24 different than Leonard Robinson, a/k/a Leonard Black?

25 A Yes.

1 Q They're two --

2 A Two --

3 Q -- different people?

4 A Two completely different people.

5 Q So from 8:54 a.m., on the morning -- Tuesday
6 morning, May 16th, until 10:03 a.m., Mr. McCarty's cell phone
7 always pings off the East Las Vegas tower next to the
8 Sportsman's; is that correct?

9 A Until what time, 10:03?

10 Q 10:03 a.m.

11 A On the 16th?

12 Q Yes.

13 A Yes, they're all from East Las Vegas, East Las Vegas
14 tower.

15 Q By 10:28 a.m., has Mr. McCarty's cell phone moved to
16 north in the Valley?

17 A Yes. It's moved to Western.

18 Q Showing you State's Exhibit No. 112. And it's
19 somewhat hard to see on this. But this is -- is this an
20 overhead that has the Sahara Hotel, the Stratosphere and
21 basically the Oasis Motel on it?

22 A Yes.

23 Q And so at 10:28 in the morning, is -- Mr. McCarty's
24 cell phone is pinging off a Western tower; is that correct?

25 A Yes.

1 Q I'm going to jump forward on Tuesday. I want you to
2 go to a phone call on Tuesday, May 16th, 2006, at 5:59 p.m.

3 A Okay.

4 Q Are you there? Does Mr. McCarty make a cell phone
5 call at that particular time?

6 A Yes.

7 Q Showing you State's Exhibit No. 118. I have a
8 little bit of a glare there, but that's the 1165 Blankenship
9 identified on the map; is that correct?

10 A What you're pointing to, yes.

11 Q And that's Mr. Malone's home?

12 A Mr. Malone's residence, yes.

13 Q Residence. Okay. And what tower is Mr. McCarty
14 hitting off of when he makes that phone call at 5:59 p.m. on
15 Tuesday?

16 A He's hitting off the Owens tower.

17 Q And as he's hitting off the Owens tower, at what
18 number is he calling, or who is he calling?

19 A He's calling the 702-458-7071.

20 Q And during the course of your investigation did you
21 learn that that's the Royal Sportsman's Manor main line?

22 A Yes.

23 Q Now, when someone lives at the Royal Sportsman's,
24 did you make a determination whether each individual room has
25 a phone number, or it always has to go through the main

1 switchboard?

2 A It goes through the main switchboard.

3 Q At the same -- at 6:03, just four minutes after that
4 phone call from Mr. McCarty that's bouncing off Owens --
5 starts at Owens and ends at Cheyenne; is that correct?

6 A Yes.

7 Q So it starts on this tower and ends on that tower,
8 correct?

9 A Yes.

10 Q 6:03, does Mr. Malone make a phone call on his cell
11 phone?

12 A Yes, he did.

13 Q And does it begin on the Cheyenne tower and end on
14 the Owens tower?

15 A Yes, it does.

16 Q So it appears that within that four minute time
17 period, those two phones are near each other?

18 A Yes.

19 Q At 6:08, do both Mr. McCarty and Mr. Malone's cell
20 phones make a phone call -- and one we have seconds for, and
21 one we don't, so somewhere within a minute of each other?

22 A Well, one's a phone call and another one's a direct
23 connect call.

24 Q And do they both make a phone call at that
25 particular point in time?

1 A Yes, both phones are utilized.

2 Q Showing you State's Exhibit No. 117, at 6:08 in the
3 evening on Tuesday evening, does Mr. McCarty's phone start at
4 the Moulin Rouge and end at the Leer Steads [phonetic] cell
5 tower?

6 A Yes.

7 Q And the direct connect that was utilized during that
8 time period, or near that time period, did a ping off the
9 Spaghetti Bowl tower, that was done by Mr. Malone.

10 A Yes.

11 Q So it appears that during that time period the
12 phones were near each other as well?

13 A Yes.

14 Q Jump to 6:36 p.m. on Tuesday night, May 16th, 2006.

15 MR. PIKE: I'm sorry, the date again, counsel?

16 MR. DiGIACOMO: May 16th, Tuesday night, 6:36 p.m.

17 MR. PIKE: Thank you.

18 BY MR. DiGIACOMO:

19 Q I'm sorry. I've got to find the right one
20 [inaudible].

21 At 6:36 p.m., does Domonic Malone make a cell phone
22 -- or yeah, does he make a cell phone call?

23 A Um --

24 Q 6:36 --

25 A Yes.

1 Q -- p.m.?

2 A Yes.

3 Q And at 6:37 p.m., does Mr. McCarty do two direct
4 connects?

5 A He does three, at 6:37.

6 Q At 6:37? The first two --

7 A Yeah.

8 Q -- are they hitting off the same tower that Mr.
9 Malone's cell phone is hitting off of at 6:36 p.m.?

10 A Yes.

11 Q And that's the -- let me zoom in here a little bit.
12 It's all the way down here at the Hatcher [phonetic] tower?

13 A Yes.

14 Q I want you to jump to May 16th at 8:36 p.m.

15 A Okay.

16 Q At 8:36 p.m., does Mr. McCarty call Donald Herb's --
17 I'm sorry, does Donald Herb call Mr. McCarty's cell phone?

18 A Yes.

19 Q And at the time that Donald Herb calls that
20 particular cell phone, is Mr. McCarty's phone pinging off the
21 Nellis Boulevard tower near the 140 Sirnoble Street address?

22 A Yes.

23 Q At the same time, Donald Herb -- go to the next
24 page, detective -- that phone call, Donald Herb's phone call,
25 Donald Herb's phone pinging off the tower at Stuart

1 [phonetic]?

2 A Yes.

3 Q And approximately four minutes later, does Domonic
4 Malone's cell phone make an outbound call, and during that
5 call, does his phone ping off both the Bonanza and the Nellis
6 -- whoops -- the Bonanza and the Nellis Boulevard Tower?

7 A Yes.

8 THE COURT: Excuse me. Who's handling the cross for
9 the defense?

10 (Mr. Pike raises his hand)

11 THE COURT: Mr. Pike, Mr. DiGiacomo approach,
12 please.

13 (Bench conference)

14 THE COURT: It's late in the day. I see some glossy
15 eyes. I mean, just -- normally if it was at 10:00 in the
16 morning, it'd be okay. But I think we need to take a break,
17 because --

18 MR. PIKE: [Inaudible] also, Your Honor, we
19 discussed the testimony, the way this was going to go, and I
20 haven't objected to any of the leading because we thought this
21 would be the most direct way --

22 THE COURT: Okay.

23 MR. PIKE: -- to get the information out so that we
24 can make it clear to the jury, because we're just arguing
25 interpretation, so.

1 THE COURT: Right. Oh, no, that's fine. I think
2 we'd --

3 MR. PIKE: [Inaudible].

4 THE COURT: -- we'd be in a different boat if it was
5 10:00 in the morning with this.

6 MR. PIKE: Okay. That's fine.

7 THE COURT: So let's take -- let's adjourn for the
8 day, come back at 10:00.

9 MR. PIKE: All right. That's fine, Your Honor.

10 MR. DiGIACOMO: Okay.

11 THE COURT: Okay?

12 (End of bench conference)

13 THE COURT: Ladies and gentlemen, it's late in the
14 afternoon at this time. And so we're going to adjourn for the
15 evening. And again, I assure you we are on schedule, if not
16 ahead of schedule. So don't worry, we're not -- we're not
17 behind schedule. All right? So -- and we're going to come
18 back tomorrow at 10:00.

19 During the recess, it is your duty not to converse
20 amongst yourselves or with anyone else on any subject
21 connected with this case, or to read, watch, or listen to any
22 report of or commentary on the trial, by any person connected
23 with the trial, or by any medium of information, including
24 without limitation, newspapers, television, radio or Internet.
25 You're not to form or express an opinion on any subject

1 connected with this case until this matter is submitted to
2 you.

3 We'll see you back tomorrow at 10:00.

4 (Jury recessed at 4:25 p.m.)

5 (Pause in the proceedings)

6 THE COURT: Anything by the State tonight before we
7 leave?

8 MR. DiGIACOMO: No. You told them 10:00, Judge, and
9 I am -- I don't know how long this is going to take, but I
10 have a few more questions for the Detective. But I intend to,
11 once I get to the portion where I establish the Erion Robinson
12 connection, I intend to offer that.

13 So I don't know if you want us to come back at like
14 9:45 to address that issue, because if the Court does redact
15 more than we've already redacted --

16 THE COURT: Okay.

17 MR. DiGIACOMO: -- I'm going to have to Mr. Lalli do
18 a little quick redaction while we -- while I finish up some
19 phone calls.

20 THE COURT: We do need Mr. Malone here dressed out
21 at the table at 9:45, so.

22 THE CORRECTIONS OFFICER: Yes, sir.

23 THE COURT: I don't know if that means 9:30, but he
24 needs to be at the table at 9:45. And so I'll have counsel
25 come back at 9:45. Anything else by the State or by the

1 defense tonight?

2 MR. DiGIACOMO: No, Judge.

3 MR. PIKE: No, Your Honor.

4 THE COURT: All right. Have a good day.

5 MR. PIKE: Thank you.

6 MR. DiGIACOMO: Thank you.

7 (Court recessed at 4:27 p.m., until the following day,
8 Friday, January 27, 2012, at 10:00 a.m.)

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INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

STATE'S WITNESSES:

Correna Phillips	2	41/118	128	135
Gerard Collins	141			

* * * * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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Exhibits 110 to 120, 124, 126, 132, 180 and 191	173
Exhibit 134	156
Exhibit 229	165
Exhibit 230	165
Exhibit 232	164
Exhibit 233	166
Exhibit 234	167
Exhibit 235	166
Exhibits 236 and 231	164

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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JULIE LORD, TRANSCRIBER

1-27-12

DATE