

IN THE SUPREME COURT FOR THE STATE OF NEVADA

DEANGELO R. CARROLL,
Appellant,
v.

THE STATE OF NEVADA,
Respondent.

No. 64757

Electronically Filed
Oct 29 2014 03:48 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court
Clark County
The Honorable Valerie Adair, District Judge

APPELLANT'S APPENDIX
(Volume 10)

MARIO D. VALENCIA
Nevada Bar No. 6154
1055 Whitney Ranch Dr., Ste. 220
Henderson, NV 89014
(702) 940-2222
Counsel for Deangelo R. Carroll

TABLE OF CONTENTS – Chronological

Title	Volume	Pages
Transcript – Preliminary Hearing (Carroll et al.) (2005-06-13)	1	1–133
Criminal Bindover (Carroll) (2005-06-17)	1	134–53
Information (Carroll, Counts, et al.) (2005-06-20).	1	154–57
Notice of Intent to Seek Death Penalty (Carroll) (2005-07-06).	1	158–61
Transcript – Preliminary Hearing (Taoipu) (2005-12-06).	1	162–201
Criminal Bindover (Taoipu) (2005-12-09)	1	202–20
Information (Taoipu) (2005-12-12)	1	221–23
Amended Information (Taoipu) (2007-06-06)	1	224–26
Transcript – Change of Plea (Taoipu) (2007-06-06)	1	227–39
Guilty Plea Agreement (Taoipu) (2007-06-06)	1	240–47
 Motion to Strike Death Penalty Aggravators (Carroll) (2007-08-16)	 2	 248–56
State’s Opposition to Motion to Strike Death Penalty Aggravators (Carroll) (2007-10-04)	2	257–95
Transcript – Hearing on Motion to Strike Death Penalty Aggravators (Carroll) (2007-10-09)	2	296–304
State’s Amended Notice of Evidence in Aggravation (Carroll) (2007-11-14)	2	305–13
Order Denying Motion to Strike Aggravators (Carroll) (2007-11-27)	2	314–15
State’s Amended Notice of Evidence in Support of Aggravating Circumstances (Carroll) (2008-01-09)	2	316–20
Second Amended Information (Counts) (2008-01-29)	2	321–23
Third Amended Information (Espindola) (2008-02-04)	2	324–25
Guilty Plea Agreement (Espindola) (2008-02-04)	2	326–333
Transcript – Change of Plea (Espindola) (2008-02-04)	2	334–41
Verdict (Counts) (2008-02-08)	2	342–43
Indictment (Hidalgo Jr.) (2008-02-13)	2	344–47
Transcript – Sentencing (Counts) (2008-03-20)	2	348–64

TABLE OF CONTENTS – Chronological

Title	Volume	Pages
Judgment of Conviction (Counts) (2008-03-31)	2	365–66
Judgment of Conviction (Taoipu) (2008-03-31)	2	367–68
State’s Motion to Consolidate Cases (Hidalgo Jr.) (2008-06-25) . . .	2	369–81
Amended Notice to Seek Death Penalty (Carroll) (2008-10-20)	2	382–85
Transcript – Motion Hearing re Death Penalty (Hidalgo Jr. & Hidalgo III) (2009-01-16)	2	386–93
Order Granting Motion to Consolidate Cases (Hidalgo Jr. & Hidalgo (III) (2009-01-16)	2	394–95
Fourth Amended Information (Hidalgo Jr.) (2009-01-26)	2	396–99
Transcript – Jury Trial, Day 9 (Hidalgo Jr.) (2009-02-06)	2	400–30
Transcript – Jury Trial, Day 14 (Hidalgo Jr.) (2009-02-17)	2	431–38
Verdict (Hidalgo III) (2009-02-17)	2	439–40
Motion for Own Recognizance Release, For House Arrest (Espindola) (2009-02-18)	2	441–46
Transcript – Sentencing (Hidalgo Jr. and Hidalgo III) (2009-06-23)	2	447–78
Judgment of Conviction (Hidalgo III) (2009-07-10)	2	479–80
Amended Judgment of Conviction (Hidalgo Jr.) (2009-08-18)	2	481–82
Seconded Amended Notice of Evidence in Aggravation (Carroll) (2010-04-19)	2	483–92
Motion to Suppress (Carroll) (2010-04-30)	3	493–634
State’s Opposition to Motion to Suppress (Carroll) (2010-05-04) . . .	3	635–46
Transcript – Motion Hearing re Motion to Suppress (Carroll) (2010-05-11)	3	646–54
Order Denying Motion to Suppress (Carroll) (2010-05-11)	3	655
Transcript – Jury Trial, Day 1, Part 1 (Carroll) (2010-05-17)	4	656–895
Transcript – Jury Trial, Day 1, Part 2 (Carroll) (2010-05-17)	5	896–958
Transcript – Jury Trial, Day 2 (Carroll) (2010-05-18)	5	959–1142

TABLE OF CONTENTS – Chronological

Title	Volume	Pages
Transcript – Jury Trial, Day 3, Part 1 (Carroll) (2010-05-19)	6	1143–382
Transcript – Jury Trial, Day 3, Part 2 (Carroll) (2010-05-19)	7	1382–420
Transcript – Jury Trial, Day 4 (Carroll) (2010-05-20)	7	1421–586
Fifth Amended Information (Carroll) (2010-05-21)	8	1587–90
Transcript – Jury Trial, Day 5 (Carroll) (2010-05-21)	8	1591–802
Transcript – Jury Trial, Day 6 (Carroll) (2010-05-24)	9	1803–945
Jury Instructions (Carroll) (2010-05-25)	9	1946–93
Transcript – Jury Trial, Day 7 (Carroll) (2010-05-25)	9	1994–99
Verdict – Guilt Phase (Carroll) (2010-05-25)	9	2000–01
Transcript – Penalty Phase, Day 1 (Carroll) (2010-06-02)	10	2002–213
Transcript – Penalty Phase, Day 2 (Carroll) (2010-06-03)	11	2214–401
Transcript – Penalty Phase, Day 3 (Carroll) (2010-06-04)	11	2402–07
Special Verdict – Mitigating Circumstances (Carroll) (2010-06-04)	11	2408–10
Special Verdict – Aggravating Circumstances (Carroll) (2010-06-04)	11	2411
Verdict – Penalty Phase (Carroll) (2010-05-25)	11	2412
Transcript – Sentencing (Carroll) (2010-08-12)	11	2413–18
Judgment of Conviction (Carroll) (2010-09-08)	11	2419–20
Transcript – Sentencing (Espindola) (2011-02-10)	11	2421–29
Judgment of Conviction (Espindola) (2011-02-17)	11	2430–31
Amended Judgment of Conviction (Carroll) (2011-03-23)	11	2432–33
Findings of Fact, Conclusions of Law and Order (Carroll) (2014-01-03)	11	2434–40
Notice of Appeal (Carroll) (2014-01-06)	11	2441

TABLE OF CONTENTS – Chronological

Title	Volume	Pages
State’s Exhibit 244 – Wire Transcript (2005-05-24)	12	2442–43
State’s Exhibit 245 – Wire Transcript (2005-05-23)	12	2444–62
State’s Exhibit 246 – Transcript of Carroll’s Statement (2005-05-24)	12	2463–577
Stills from State’s Exhibit 243 – Video of Carroll’s Statement (2005-05-24)	12	2578–80

TABLE OF CONTENTS – Alphabetical

Title	Volume	Pages
Amended Information (Taoipu) (2007-06-06)	1	224–26
Amended Judgment of Conviction (Carroll) (2011-03-23)	11	2432–33
Amended Judgment of Conviction (Hidalgo Jr.) (2009-08-18)	2	481–82
Amended Notice to Seek Death Penalty (Carroll) (2008-10-20)	2	382–85
Criminal Bindover (Carroll) (2005-06-17)	1	134–53
Criminal Bindover (Taoipu) (2005-12-09)	1	202–20
Fifth Amended Information (Carroll) (2010-05-21)	8	1587–90
Findings of Fact, Conclusions of Law and Order (Carroll) (2014-01-03)	11	2434–40
Fourth Amended Information (Hidalgo Jr.) (2009-01-26)	2	396–99
Guilty Plea Agreement (Espindola) (2008-02-04)	2	326–333
Guilty Plea Agreement (Taoipu) (2007-06-06)	1	240–47
Indictment (Hidalgo Jr.) (2008-02-13)	2	344–47
Information (Carroll, Counts, et al.) (2005-06-20).	1	154–57
Information (Taoipu) (2005-12-12)	1	221–23
Judgment of Conviction (Carroll) (2010-09-08)	11	2419–20
Judgment of Conviction (Counts) (2008-03-31)	2	365–66
Judgment of Conviction (Espindola) (2011-02-17)	11	2430–31
Judgment of Conviction (Hidalgo III) (2009-07-10)	2	479–80
Judgment of Conviction (Taoipu) (2008-03-31)	2	367–68
Jury Instructions (Carroll) (2010-05-25)	9	1946–93
Motion for Own Recognizance Release, For House Arrest (Espindola) (2009-02-18)	2	441–46
Motion to Strike Death Penalty Aggravators (Carroll) (2007-08-16)	2	248–56
Motion to Suppress (Carroll) (2010-04-30)	3	493–634
Notice of Appeal (Carroll) (2014-01-06)	11	2441
Notice of Intent to Seek Death Penalty (Carroll) (2005-07-06).	1	158–61

TABLE OF CONTENTS – Alphabetical

Title	Volume	Pages
Order Denying Motion to Strike Aggravators (Carroll) (2007-11-27)	2	314–15
Order Denying Motion to Suppress (Carroll) (2010-05-11)	3	655
Order Granting Motion to Consolidate Cases (Hidalgo Jr. & Hidalgo (III) (2009-01-16)	2	394–95
Second Amended Information (Counts) (2008-01-29)	2	321–23
Seconded Amended Notice of Evidence in Aggravation (Carroll) (2010-04-19)	2	483–92
Special Verdict – Aggravating Circumstances (Carroll) (2010-06-04)	11	2411
Special Verdict – Mitigating Circumstances (Carroll) (2010-06-04)	11	2408–10
State’s Amended Notice of Evidence in Aggravation (Carroll) (2007-11-14)	2	305–13
State’s Amended Notice of Evidence in Support of Aggravating Circumstances (Carroll) (2008-01-09)	2	316–20
State’s Exhibit 244 – Wire Transcript (2005-05-24)	12	2442–43
State’s Exhibit 245 – Wire Transcript (2005-05-23)	12	2444–62
State’s Exhibit 246 – Transcript of Carroll’s Statement (2005-05-24)	12	2463–577
State’s Motion to Consolidate Cases (Hidalgo Jr.) (2008-06-25) . . .	2	369–81
State’s Opposition to Motion to Strike Death Penalty Aggravators (Carroll) (2007-10-04)	2	257–95
State’s Opposition to Motion to Suppress (Carroll) (2010-05-04) . . .	3	635–46
Stills from State’s Exhibit 243 – Video of Carroll’s Statement (2005-05-24)	12	2578–80
Third Amended Information (Espindola) (2008-02-04)	2	324–25
Transcript – Change of Plea (Espindola) (2008-02-04)	2	334–41
Transcript – Change of Plea (Taoipu) (2007-06-06)	1	227–39
Transcript – Hearing on Motion to Strike Death Penalty Aggravators (Carroll) (2007-10-09)	2	296–304
Transcript – Jury Trial, Day 1, Part 1 (Carroll) (2010-05-17)	4	656–895

TABLE OF CONTENTS – Alphabetical

Title	Volume	Pages
Transcript – Jury Trial, Day 1, Part 2 (Carroll) (2010-05-17)	5	896–958
Transcript – Jury Trial, Day 14 (Hidalgo Jr.) (2009-02-17)	2	431–38
Transcript – Jury Trial, Day 2 (Carroll) (2010-05-18)	5	959–1142
Transcript – Jury Trial, Day 3, Part 1 (Carroll) (2010-05-19)	6	1143–382
Transcript – Jury Trial, Day 3, Part 2 (Carroll) (2010-05-19)	7	1382–420
Transcript – Jury Trial, Day 4 (Carroll) (2010-05-20)	7	1421–586
Transcript – Jury Trial, Day 5 (Carroll) (2010-05-21)	8	1591–802
Transcript – Jury Trial, Day 6 (Carroll) (2010-05-24)	9	1803–945
Transcript – Jury Trial, Day 7 (Carroll) (2010-05-25)	9	1994–99
Transcript – Jury Trial, Day 9 (Hidalgo Jr.) (2009-02-06)	2	400–30
Transcript – Motion Hearing re Death Penalty (Hidalgo Jr. & Hidalgo III) (2009-01-16)	2	386–93
Transcript – Motion Hearing re Motion to Suppress (Carroll) (2010-05-11)	3	646–54
Transcript – Penalty Phase, Day 1 (Carroll) (2010-06-02)	10	2002–213
Transcript – Penalty Phase, Day 2 (Carroll) (2010-06-03)	11	2214–401
Transcript – Penalty Phase, Day 3 (Carroll) (2010-06-04)	11	2402–07
Transcript – Preliminary Hearing (Carroll et al.) (2005-06-13)	1	1–133
Transcript – Preliminary Hearing (Taoipu) (2005-12-06).	1	162–201
Transcript – Sentencing (Carroll) (2010-08-12)	11	2413–18
Transcript – Sentencing (Counts) (2008-03-20)	2	348–64
Transcript – Sentencing (Espindola) (2011-02-10)	11	2421–29
Transcript – Sentencing (Hidalgo Jr. and Hidalgo III) (2009-06-23)	2	447–78
Verdict – Guilt Phase (Carroll) (2010-05-25)	9	2000–01
Verdict – Penalty Phase (Carroll) (2010-05-25)	11	2412
Verdict (Counts) (2008-02-08)	2	342–43
Verdict (Hidalgo III) (2009-02-17)	2	439–40

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 03 2010

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

DEANGELO RESHAWN CARROLL)

Defendant.)

BY Denise Husted
DENISE HUSTED, DEPUTY

CASE NO: C212007
DEPT NO: XXI

**Transcript of
Proceedings**

BEFORE THE HONORABLE SALLY LOEHRER, SENIOR JUDGE

PENALTY PHASE - DAY 1

WEDNESDAY, JUNE, 2, 2010

APPEARANCES:

FOR THE STATE:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorney

FOR THE DEFENDANT:

DANIEL M. BUNIN, ESQ.
THOMAS A. ERICSSON, ESQ

RECORDED BY JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARReporting, Inc.

KARR REPORTING, INC.

Volume 10 - 2002

I N D E X

OPENING STATEMENTS:

By Mr. DiGiacomo	60
By Mr. Ericsson	70

WITNESSES FOR THE STATE:

ALLANA HADLAND

Direct Examination By Mr. DiGiacomo	79
-------------------------------------	----

JENNIFER HADLAND

Direct Examination By Mr. Pesci	87
---------------------------------	----

STEVEN BLODGETT

Direct Examination By Mr. Pesci	96
---------------------------------	----

Cross-Examination By Mr. Ericsson	103
-----------------------------------	-----

ANABEL ESPINDOLA

Direct Examination By Mr. Digiacomo	110
-------------------------------------	-----

Cross-Examination By Mr. Bunin	132
--------------------------------	-----

Redirect Examination By Mr. Digiacomo	174
---------------------------------------	-----

Recross Examination By Mr. Bunin	180
----------------------------------	-----

MARTIN WILDEMANN

Direct Examination By Mr. Digiacomo	184
-------------------------------------	-----

Cross-Examination By Mr. Ericsson	203
-----------------------------------	-----

STATE'S EXHIBITS ADMITTED:

	PAGE
247, 248, and 249 Photos	91
228 Guilty Plea Agreement	178
250 Carroll's Criminal History Records	188

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 2, 2010, 11:19 A.M.

2 (Court was called to order)

3 (Outside the presence of the jury.)

4 THE COURT: Please be seated. Good morning.

5 (Pause in the proceedings)

6 THE COURT: Good morning. This is the State of
7 Nevada versus Deangelo Reshawn Carroll. It is the time set
8 for a penalty hearing. The State is represented by Mr. Pesci
9 and Mr. DiGiacomo, the defense is present in custody
10 represented by Dan Bunin and Tom Ericsson. I've been informed
11 that you've been advised that Judge Adair is ill and is not
12 able to be here today.

13 I've also been informed that, Mr. Bunin, you're
14 opposed to anybody other than the trial court hearing the
15 penalty hearing. And I've got to tell you I'm presently in a
16 murder case myself, sitting for Department 4, and I believe
17 that Judge Hardcastle is going to be back and is going to do
18 the penalty hearing on that one. So it's not unheard of and
19 it's not unknown that one judge does the trial and another
20 judge does the penalty hearing. And let me give you an even
21 better example of this. We get cases back from the Supreme
22 Court all the time where it went to a three-judge panel and
23 then we -- some other judge -- you know, the trial judge isn't
24 even around anymore, dead or retired, and we have penalty
25 hearings with totally new attorneys, totally new judges, and

KARR REPORTING, INC.

1 in fact totally new jury panels. So I would love to hear your
2 objection so that you've preserved your record.

3 MR. BUNIN: Appreciate that, Judge. And I would say,
4 number one, that dead or gone is very different than a judge
5 that's going to be back in a day or two. But in this
6 particular case -- and I'm -- Judge Adair has heard all of the
7 cases of all the codefendants. This is the last one. Three
8 of them went to trial, two of them resolved in ways where they
9 were testifying in other trials, and she has been the judge
10 that's been on every single one of these cases. She also --
11 it is obviously a death penalty case. She's heard the trial
12 -- the guilt phase of this case.

13 THE COURT: Now, you know defense counsel refuses call
14 it the guilt phase. So I would appreciate you, as being
15 defense counsel, to please mind your own rules. So it was the
16 trial. We have had a trial. You have had a trial, and
17 your --

18 MR. BUNIN: The trial phase, Your Honor.

19 THE COURT: -- and your client has been convicted, I
20 presume, of first degree murder.

21 MR. BUNIN: He has been, and that's obviously why
22 we're here today. And, Judge, I mean, certainly nobody is
23 saying that you're not a judge that's quite experienced and
24 competent to handle this. That's not the defense's position.

25 THE COURT: Oh, I understand that.

1 MR. BUNIN: It's just the comfort level. And we
2 spoke to our client about it, too, and co-counsel agrees,
3 also. But when we spoke to Mr. Carroll he was very worried
4 even though he's been convicted, obviously, in front of this
5 other judge, that we were very comfortable that she knows
6 these facts in very good detail. We understand where she's
7 leaning towards certain evidentiary rulings and what
8 objections we've won and what objections we've lost, and we
9 just have a comfort level and want to finish this case with
10 that judge. And it's very important to my client to do that.

11 THE COURT: Well, those are all very legitimate
12 reasons. But, you know, we do have scheduling problems. Mr.
13 DiGiacomo is in my trial, and we did evidentiary hearings
14 today. We picked a jury yesterday. And it's a capital case.
15 And the reason we're not in session today taking evidence is
16 because he's scheduled to be in a penalty hearing today. So,
17 I mean, we just can't keep extending these things and
18 extending these things.

19 Now, it's easy for you to say, well, he doesn't have
20 to be here and Pesci can do it, but, you know, it's just as
21 easy for them to say, well, let's do it today because Loehrer
22 can do it. We have to be mindful of the resources that we
23 have available to us. And I don't know if Judge Adair's going
24 to be back tomorrow or not. I certainly hope she is. But
25 she's not available today, and procedurally, procedurally

1 there is no prohibition statutorily. Statutorily it says the
2 same judge is supposed to unless it's not feasible. And by
3 her not being here today I don't think it's feasible for her
4 to hear the penalty hearing.

5 MR. DiGIACOMO: Judge --

6 THE COURT: How long is the penalty supposed to take?

7 MR. BUNIN: We didn't anticipate it being done until
8 towards the end of tomorrow. Now I don't know. We're getting
9 different information. Mr. Ericsson spoke to Mr. Pesci
10 yesterday, who told us that they would be at least a half a
11 day today. And since we weren't starting till 11:00, we
12 presumed we wouldn't get to our evidence today, it would just
13 be their case.

14 THE COURT: How many witnesses, Pesci, have you got
15 today? Mr. Pesci, excuse me.

16 MR. PESCI: Judge, I think we have, what, four or
17 five.

18 MR. DiGIACOMO: Five.

19 MR. PESCI: Five.

20 MR. DiGIACOMO: Five. Two of which are family
21 members. So they're very short.

22 MR. PESCI: What I indicated was I thought we would
23 be three to four hours is what we thought.

24 THE COURT: All right. And, Mr. Bunin, how many
25 witnesses do you have?

1 MR. BUNIN: We have five.

2 THE COURT: Are they scheduled to be here today?

3 MR. BUNIN: No. We've told them all to be here first
4 thing tomorrow morning. That's when we assumed we would go
5 forward and finish tomorrow. And we may have seven. But
6 we're not sure we're going to call them all.

7 THE COURT: What do the clerks recall about penalty?
8 How many days did they tell you the penalty hearing was going
9 to take?

10 THE CLERK: Two days.

11 MR. BUNIN: This was not an effort to extend
12 anything, Judge. This is what we believed would be the case
13 for tomorrow morning.

14 THE COURT: So, Mr. DiGiacomo, how come you thought
15 you were only going to be in a penalty hearing one day,
16 because you were only going to put the State's evidence on?

17 MR. DiGIACOMO: Well, Judge, my belief is -- and
18 honestly, if we were to start this right now, my belief is
19 that we would be done today. My understanding their witnesses
20 are family members that say the essential family things, and
21 they may have one expert. I can't comprehend how this could
22 take more than a day. But I guess theoretically it could.

23 THE COURT: Well, if Mr. Bunin doesn't have his
24 witnesses scheduled till tomorrow, I guess --

25 MR. DiGIACOMO: Well, I don't know why that --

1 THE COURT: Did you not envision them being --
2 testifying today?

3 MR. BUNIN: Based on what Mr. Ericsson was told by
4 Mr. Pesci, we didn't believe we would get to our witnesses
5 today. One of them is an expert that's going to take some
6 time.

7 THE COURT: Is that person here?

8 MR. BUNIN: No. That person we have coming --
9 Is it late morning or early afternoon tomorrow?

10 MR. ERICSSON: 1:00 o'clock tomorrow.

11 MR. BUNIN: It was based on the doctor's schedule, so
12 there was a little bit of difficulty with him.

13 THE COURT: Is that person local, or out of state?

14 MR. BUNIN: Local.

15 THE COURT: And that person's supposed to be
16 testifying tomorrow morning; correct?

17 MR. ERICSSON: Tomorrow at 1:00, Your Honor. We were
18 going to put on our other witnesses in the morning.

19 MR. BUNIN: Knowing the Thursday schedule of Judge
20 Adair, we didn't think we would start until around 10:30
21 tomorrow. So with our lay witnesses and then the doctor
22 around 1:00 o'clock, we'll be right on.

23 THE COURT: Well, it seems to me that we'd better
24 hear the State's witnesses today, then. And that's what we'd
25 better do. Yours is scheduled for tomorrow. We'd better hear

1 them today, because now you're telling me that we're not going
2 to hear the State's witnesses until tomorrow, which is
3 Thursday, and yours not till Friday, and then your doctor
4 probably isn't available and the whole thing gets blown up and
5 derailed. So we'd better do it today. We'd better hear the
6 State's witnesses today for convenience for your witnesses, as
7 well as for the scheduling of the Court.

8 MR. BUNIN: Well, Judge, certainly we would try to
9 reschedule him if that was necessary. And I know what Your
10 Honor is saying, but I still think it's feasible for the
11 defense to continue to finish this case with the same judge
12 based on my understanding of when she'll be available. And
13 that's still what the defense would request at this point.

14 MR. DiGIACOMO: Judge, I have another problem, which
15 is hugely prejudicial to the State. One of the daughters of
16 Mr. Hadland who's here to testify has cancer. She's been
17 going through radiation treatment, and she flew out here
18 solely to come in and testify and going straight back to go
19 back to her treatment. Any delay is problematic to her. The
20 fact that -- I can't imagine what the possible prejudice to a
21 defendant is. I've never heard of an argument that you
22 wouldn't be qualified to sit on this --

23 THE COURT: Or any other judge.

24 MR. DiGIACOMO: -- or any other judge, for that
25 matter. So my suggestion to the Court is -- and it doesn't

1 mean that you have to stay for the whole penalty hearing, but
2 at some point we have to start the penalty hearing. And if
3 Judge Adair is -- what if she's sick again still tomorrow? We
4 just don't know that fact. What if she's sick on Friday? We
5 have a jury sitting out there who's now been qualified for a
6 short period of time, some of which I believe have plans at
7 the end of this week. What if we don't get there? I think at
8 some point we need to start.

9 THE COURT: Well, it's going to be right now. So
10 your objection is overruled. Hopefully Judge Adair will be
11 back tomorrow.

12 Do you have -- does anybody have the preliminary
13 instruction, the book that we read when we say this is now the
14 penalty hearing, ladies and gentlemen, I think that you're
15 going to hear evidence from the State regarding aggravating
16 circumstances and then you're going to hear additional
17 witnesses from the defense regarding -- what do you want me to
18 tell them, mitigating circumstances?

19 MR. DiGIACOMO: Judge, my understanding the last time
20 I did a penalty hearing in Judge Hardcastle, she just said,
21 you know, as we've previously told you, now that you've
22 reached a verdict in the trial phase that, you know, you'll
23 now hear additional evidence, State, do you want to make an
24 opening. And just go from there.

25 THE COURT: Mr. Bunin, what's your -- what's your

1 pleasure regarding that?

2 MR. BUNIN: I can't disagree with that. I don't see
3 any harm there.

4 There is a second issue, and that's my client right
5 now, who's not dressed out and is still in handcuffs.

6 THE COURT: Well, you can take the handcuffs off,
7 Officer, before the jury comes in. But it's no big secret
8 that he's convicted of first degree murder. Do you think the
9 jury thinks he's wandering the streets?

10 MR. BUNIN: No. But I still think it makes a
11 difference.

12 THE COURT: Well, it's his choice, is it not? You
13 did have clothes over there for him.

14 Mr. Carroll, why did you not put your street clothes
15 on today?

16 THE DEFENDANT: Because I didn't feel good and I
17 didn't feel like it.

18 THE COURT: You didn't feel like it? Well --

19 MR. BUNIN: There wouldn't be -- I mean, from what
20 they're saying, they're easily going to be able to do their
21 entire case today, so it wouldn't be -- wouldn't cause any
22 extra delay if we gave him some time to go back down and
23 change. And that would be the defense's preference at this
24 point.

25 THE COURT: Did you bring his clothes over here,

1 guys, or are they over at the jail?

2 THE COURT SERVICES OFFICER: No, they're still at the
3 jail, Your Honor.

4 THE COURT: Well, if send you back, are you going to
5 put your clothes on?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. Take him back, put his
8 clothes on, and get him over just quick as possible. Thank
9 you.

10 MR. BUNIN: Thank you, Judge.

11 THE COURT: Let's go over -- while he's gone, let's
12 go over the proposed jury instructions.

13 MR. BUNIN: And we just received theirs right now, so
14 --

15 THE COURT: I've got -- I've the State's and the
16 defendant's set. And let's look at the State's set first.

17 First one is simply the cover sheet.

18 The next one is, "If in these instructions," which is
19 standard.

20 Then we go to, "The jury shall fix a punishment,"
21 we've got, "(a)" -- was it a first -- was it a first degree
22 with use conviction?

23 MR. DiGIACOMO: Yes, Judge.

24 MR. BUNIN: Yes.

25 THE COURT: All right. So a hundred years with

1 eligibility after 40, life with the possibility of parole
2 after 40, life in prison without, and death. Is that okay
3 with you guys? That one's fine?

4 MR. ERICSSON: Yes, Your Honor, that looks good.

5 THE COURT: And then the next one says, "A prison
6 term of a hundred years with eligibility for parole when a
7 minimum of 40 years has been served does not mean the
8 defendant would be paroled after 40, but only that he would be
9 eligible.

10 "Life imprisonment with the possibility of parol is a
11 sentence to life imprisonment which provides that he would be
12 eligible after a period of 40 years. This doesn't mean he
13 will be paroled.

14 "Life imprisonment without means exactly what it
15 says, that defendant shall not be eligible for parole.

16 "And if you sentence the defendant to death, you must
17 assume the sentence will be carried out."

18 Any objection to that one? Do you have an alternate
19 instruction?

20 MR. ERICSSON: Your Honor, we do. And it's just I
21 think one more sentence. And I don't --

22 THE COURT: Well, let me look to where you've got it
23 in here.

24 MR. DiGIACOMO: It's theirs -- they're not numbered.

25 THE COURT: Well, let me just look and see. Okay.

1 It's -- I've got 17 lines, "A prison term of a hundred years,"
2 blah, blah, blah, doesn't mean he would; life imprisonment
3 with, blah, blah, blah, doesn't mean he would be paroled, only
4 be -- life imprisonment without the possibly of parole means
5 exactly what it says, defendant shall never be eligible for
6 parole and will serve his entire life in prison.

7 It's slightly rewritten, but it's the same content.

8 "If you sentence Mr. Carroll to death, you're
9 instructed he will be executed. A sentence of death means
10 that Mr. Carroll will be executed by lethal injection unless a
11 different type of execution is mandated by the legislature, in
12 which case he will be killed by that method."

13 Well, I understand the emphasis that you want placed
14 on there; but, to tell you the truth, you and I and nobody on
15 the face of this Earth is confident any of these people are
16 ever going to be executed in the state of Nevada. I mean, we
17 have to tell the jury that, and they have to presume that, but
18 when is the last time the State of Nevada executed anybody?
19 Have they executed one in the last 20 years, 25 years?

20 MR. ERICSSON: Your Honor, I don't think that that is
21 the legal standard, you know, what -- I think that this
22 instruction certainly follows the law, and it is to place in
23 the jury's mind the significance of -- what this is trying to
24 do is combat the general perception that, oh, it doesn't ever
25 matter, no one's ever going to be killed. Because there are

1 people that are killed --

2 THE COURT: Well, in Huntsville, Texas --

3 MR. ERICSSON: -- and the jury needs to --

4 THE COURT: -- they do it daily. I think they've got
5 a waiting list.

6 MR. ERICSSON: So I think that adding that one -- the
7 rest of their instruction I think mirrors very closely what we
8 have.

9 THE COURT: Okay. Now --

10 MR. ERICSSON: But that last sentence I think --

11 THE COURT: And I don't -- you know, I don't have any
12 confidence myself that life imprisonment means exactly that,
13 that he shall never be eligible for parole and he will serve
14 his entire life in prison. Every time the legislature, you
15 know, changes direction, that one could be out the window. We
16 all believe that, we all like to believe that, and I don't
17 have any problem saying that he will serve his entire life in
18 prison.

19 So, Mr. DiGiacomo and Mr. Pesci, do you have any
20 opposition to the State -- or the Court giving the one that
21 the defense says, that if you sentence Mr. Carroll to death
22 you are instructed he will be executed, a sentence of death
23 means Mr. Carroll will be executed by lethal injection unless
24 a different type of execution is mandated by the legislature,
25 in which case he'll be killed by that method?

1 MR. DiGIACOMO: Yes.

2 THE COURT: And your objection is?

3 MR. DiGIACOMO: Well, there's a number of ones. I
4 have seen in penalty hearings that defense can call a witness
5 to describe the death chamber, how an execution occurs, if
6 they want to argue that to the jury. But this is a legal
7 instruction, and the caselaw says that you have to tell them,
8 if you sentence them to death you have to assume the sentence
9 is carried out. There's no legal basis, first of all, of
10 repeatedly called him Mr. Carroll, which doesn't happen in any
11 other jury instruction. But more importantly, the factual
12 statement as to what exactly is going to occur has never been
13 asserted as being appropriate in a jury instruction on what
14 the law is. If they want to present some evidence, they're
15 free to present evidence of that, as to what it means; but
16 they're not just going to be instructed on factual scenarios.

17 THE COURT: All right. Let me ask you this, Mr.
18 Ericsson and Mr. Bunin. Has the Supreme Court blessed your
19 final paragraph on this instruction? Which means you got
20 somebody to give it and the Supreme Court said it's
21 appropriate.

22 MR. ERICSSON: Your Honor, I am not aware of a case
23 blessing that instruction, but I do think that this --

24 THE COURT: Are you aware of any courts giving it
25 here in Reno [sic]?

1 MR. ERICSSON: That I do not know. This instruction
2 was taken from another set of instructions that was proposed
3 in a recent death penalty case. Whether or not it was
4 actually adopted by the court I do not know.

5 THE COURT: All right. Well, even if we were going
6 to give it, we wouldn't -- I would never allow a jury
7 instruction to be personalized, which would never allow the
8 defendant's name to be placed in there. So this is your
9 Appellate Issue Number 1. You've got to have appellate
10 issues. This is Appellate Issue Number 1. I'm going to give
11 the State's standard instruction, rather than the defense's
12 offered.

13 So would you give this one down. How do you mark
14 these? Do you mark these as "Defense offered and not given"?
15 We need to have a number. I don't know what number it'll be.
16 Let's see. So --

17 THE CLERK: [Inaudible] cover sheet [inaudible].

18 THE COURT: Okay. So this will be -- let's call this
19 one Defense Proposed Number 4 so that we're on the same page
20 with what the State's numbering system is. So that's
21 Instruction Number 4, Defense -- I'm going to put Defense
22 proposed -- I can write on these. "Defense proposed, not
23 given, as the instruction personalizes the law. State's
24 Proposed Number 4 given."

25 MR. ERICSSON: Your Honor, to make sure the record is

1 clear, if your ruling is based on his name being mentioned in
2 there, we certainly would agree to have "Mr. Carroll" replaced
3 with the word "the defendant." But the --

4 THE COURT: All right. And I'm also adding, "and for
5 the other objections made by the State." Okay. Here we go.

6 All right. Then the next one reads, "In the penalty
7 hearing evidence may be presented concerning aggravating and
8 mitigating circumstances relative to the offense and any other
9 evidence that bears on the defendant's character. Hearsay is
10 admissible in a penalty hearing."

11 Do you have a substitute for that instruction?

12 MR. ERICSSON: I do not, Your Honor. I would note
13 the apostrophe, possessive apostrophe on defendant's is in the
14 wrong place.

15 MR. DiGIACOMO: Oh.

16 THE COURT: Just take it out.

17 MR. DiGIACOMO: Well, no. It's supposed to be
18 apostrophe s. This was from a codefendant case.

19 THE COURT: All right. We'll move it where it
20 belongs. We'll move it where it belongs.

21 MR. DiGIACOMO: I did.

22 THE COURT: Okay. So do you have any objection to
23 that? We fixed the grammatical error.

24 MR. ERICSSON: No, Your Honor.

25 THE COURT: Okay. Now, the next one in the State's

1 pack says, "The jury must find the existence of each
2 aggravating circumstance, if any, unanimously and beyond a
3 reasonable doubt." Are these the Byfords and we kind of have
4 to use them word for word?

5 MR. DiGIACOMO: It's not Byford, it's Butler, I
6 think.

7 THE COURT: Butler. All right.

8 MR. DiGIACOMO: Butler and Geery.

9 THE COURT: Okay. All right. Yeah, yeah. My brain
10 is mystified. Sorry.

11 "The jurors need not find mitigating circumstances
12 unanimously. In determining the appropriate sentence each
13 juror must consider and weigh any mitigating circumstance or
14 circumstances which that juror finds."

15 And mitigating circumstances don't have to be beyond
16 a reasonable doubt, either. Shall we tell them that?

17 MR. DiGIACOMO: It happens --

18 THE COURT: You're telling them that later?

19 MR. DiGIACOMO: It happens later on when they discuss
20 mitigating.

21 THE COURT: All right. "The jury may impose a
22 sentence of death only if, one, the jurors find unanimously
23 and beyond a reasonable doubt that at least one aggravating
24 circumstance exists; two, each and every juror determines that
25 the mitigating circumstance or circumstances, if any, which he

1 or she has found do not outweigh the aggravating circumstance
2 or circumstances and the jurors unanimously determine that in
3 their discretion a sentence of death is appropriate."

4 Have you got a substitute for that one, or is this
5 one okay?

6 MR. ERICSSON: Your Honor, the only change that --
7 and this will probably apply to a number of these -- is that
8 the State only has one aggravating circumstance in this case.

9 THE COURT: Okay.

10 MR. ERICSSON: And I think that the here, where it
11 refers to or possible multiple circumstances, that that can
12 confuse the jury.

13 THE COURT: All right. Let's fix it, then. Is there
14 only one aggravating circumstance?

15 MR. DiGIACOMO: Yeah --

16 THE COURT: All right.

17 MR. DiGIACOMO: -- after years of litigation.

18 THE COURT: So, "The jury must find the existence of
19 an aggravating circumstance, if any, unanimously and beyond a
20 reasonable doubt.

21 "The jurors need not find mitigating circumstances
22 unanimously," blah, blah, blah. "If you find unanimously that
23 one --" not "at least," "-- that one aggravating circumstance
24 exists, each and every juror determines that the mitigating
25 circumstance did not outweigh the aggravating circumstance,"

1 strike "or circumstances," and "unanimously determine that in
2 their discretion a sentence of death is appropriate."

3 Is that okay, then, if we fix it that way?

4 MR. ERICSSON: Yes, Your Honor. Thank you.

5 THE COURT: The next one in the State's stack says,
6 "In deciding on an appropriate sentence for the defendant you
7 will consider three types of evidence, evidence relevant to
8 the existence of an aggravating circumstance, evidence
9 relevant to the existence of mitigating circumstances, and
10 other evidence presented against the defendant. You must
11 consider each type of evidence for its appropriate purposes.

12 "In determining unanimously whether an --" whether
13 an, not "any," "-- an aggravating circumstance has been proven
14 beyond a reasonable doubt you are to consider only evidence
15 relevant to that aggravating circumstance. You are not to
16 consider other evidence against the defendant.

17 "In determining individually whether any mitigating
18 circumstance exists you are to consider only evidence relevant
19 to that mitigating circumstance. You are not to consider
20 other evidence presented against the defendant.

21 "In determining individually whether any mitigating
22 circumstances outweigh any aggravating circumstance,"
23 singular, you are to consider only evidence relevant to any
24 mitigating and aggravating circumstance," singular. "You are
25 not to consider other evidence presented against the

1 defendant.

2 "If you find unanimously and beyond a reasonable
3 doubt that one -- that at least one aggravating circumstance
4 exists --" "that one," not "at least," "that one circumstance
5 exists and each of you determines that any mitigating
6 circumstances do not outweigh the aggravating, the defendant
7 is eligible for a death sentence.

8 "At this point you are to consider all three types of
9 evidence, and you still have the discretion to impose a
10 sentence less than death.

11 "You must decide on a sentence unanimously. If you
12 do not decide unanimously that at least one aggravating --"
13 "that one," strike "at least," "that one aggravating
14 circumstance has been proven beyond a reasonable doubt or if
15 at least one of you determines that the mitigating
16 circumstances outweigh the aggravating, the defendant is not
17 eligible for a death sentence.

18 "Upon determining that the defendant is not eligible
19 for death, you are to consider all three types of evidence in
20 determining a sentence other than death, and you must decide
21 on such a sentence unanimously."

22 Is that okay as we've revised it?

23 MR. ERICSSON: Yes, Your Honor.

24 THE COURT: "The law does not require the jury to
25 impose the death penalty under any circumstances, even when

1 the aggravating circumstance outweighs the mitigating
2 circumstances. Nor is the defendant required to establish any
3 mitigating circumstances in order to be sentenced to less than
4 death.

5 "You are instructed that the following factors are
6 circumstances by which murder of the first degree may be
7 aggravated --" so it would just be one, "that the following
8 factor --"

9 MR. DiGIACOMO: "...factor is a circumstance...."

10 THE COURT: "-- is a circumstance by which murder of
11 the first degree may be aggravated: the murder was committed
12 by a person for himself or another to receive money or any
13 other thing of monetary value."

14 Okay?

15 MR. ERICSSON: Yes, Your Honor.

16 THE COURT: Now, do you want your own mitigating
17 circumstance instruction given, or this one? "Mitigating
18 circumstances are those factors which, while they do not
19 constitute a legal justification or excuse for the commission
20 of the offense in question, may be considered in the
21 estimation of the jury in fairness and mercy as extenuating or
22 reducing the degree of the defendant's moral culpability. You
23 must consider any aspect of the defendant's character or
24 record and any of the circumstances of the offense that
25 defendant proffer -- proffers -- circumstances of the offense,

1 circumstances --" is that -- should it be "proffer," or
2 "proffers as a basis for a sentence less than death"? Which
3 is it?

4 MR. DiGIACOMO: "Proffers" doesn't give me a little
5 green line, so I'll go with "proffers."

6 THE COURT: "You must consider -- proffers --" with
7 an S.

8 MR. ERICSSON: Yeah, with an S.

9 THE COURT: "-- as a basis for a sentence less than
10 death. In balancing aggravating and mitigating circumstances
11 it's not the mere number --" well, because there's only one.
12 "In balancing aggravating and mitigating circumstances it is
13 not the number --"

14 MR. DiGIACOMO: I think that one has to be left
15 plural.

16 THE COURT: I think it's got to be the way it is.
17 "-- it's not the mere number of aggravating circumstances or
18 mitigating circumstances that controls." There isn't any
19 other way to write that that makes it sound right.

20 "In determining whether mitigating circumstances
21 exist jurors have an obligation to make an independent and
22 objective analysis of all the relevant evidence. Arguments of
23 counsel or a party do not relieve jurors of this
24 responsibility. Jurors must consider the totality of the
25 circumstances of the crime of the defendant as established by

1 the evidence presented in the trial --" "trial," we've had a
2 trial, gentlemen, "-- and penalty phases of the proceeding.
3 "Neither the prosecution's nor the defendant's insistence on
4 the existence or nonexistence of mitigating circumstances is
5 binding upon the jurors.

6 "Murder of the first degree may be mitigated by any
7 of the following circumstances even though the mitigating
8 circumstance is not sufficient to constitute a defense or
9 reduce the degree of murder."

10 Now, what do you want listed there? Do you want --
11 do you have a list? Have you guys got your mitigating
12 circumstances?

13 MR. DiGIACOMO: I haven't gotten a list yet as far as
14 I'm aware.

15 THE COURT: Well, let me look.

16 MR. DiGIACOMO: Oh. Wait. There is a list on one of
17 the verdict forms. Oh. There is an instruction, too.

18 MR. ERICSSON: Looks like it's seven or eight pages
19 from the back.

20 MR. DiGIACOMO: There's 27 of them, Judge. We can
21 have them typed up.

22 THE COURT: Hold on for a second. We've got a whole
23 bunch of stuff here. My God, there's three of them. Four of
24 them. Five of them.

25 MR. DiGIACOMO: There's five what? I only have one.

1 THE COURT: Hold on for a second.

2 MR. DiGIACOMO: I've got 27.

3 THE COURT: Who puts these things in order for you
4 guys, no one?

5 All right. Now, what I have is the defense stuff on
6 mitigation. So we're going to take the State's out. Now,
7 here's what the defense says. "Mitigating circumstances are
8 any factors which might serve as a basis for a sentence less
9 than death. The jurors may consider the defendant's character
10 and the defendant's record and circumstances of the offense,
11 the sentences received by the others who were involved in the
12 offense --" they're not told that, are they?

13 MR. DiGIACOMO: Well, yeah. Look, like think that
14 under Flanagan they can admit and I think we'll admit that the
15 sentences -- of course, none of them were convicted of first
16 degree murder, but I think that discussion can be had. But I
17 don't think they get instructed that they are allowed to
18 consider the sentences of the other codefendants. It's just
19 evidence.

20 MR. BUNIN: It's a mitigator, though. It's
21 proportionality.

22 THE COURT: Right. I would think --

23 MR. DiGIACOMO: It's not a mitigator, though.

24 THE COURT: I would think it's a mitigator.

25 MR. BUNIN: It is.

1 MR. DiGIACOMO: Well, I mean, they can list it as a
2 mitigator, the other defendants didn't get convicted of first
3 or the other defendants got this, but you don't get to
4 instruct them this is a mitigator. It's not one of the
5 mitigators that's in the statute.

6 THE COURT: Well, but anything else -- you know, the
7 statute's not --

8 MR. DiGIACOMO: Sure.

9 THE COURT: -- all inclusive.

10 MR. DiGIACOMO: Right. But I don't think the Court
11 needs to instruct the jury -- read what it says. And they
12 don't put anything else in there. They don't -- they can put
13 that in their list of 27 mitigators which they've provided,
14 the sentences of the other codefendants if they want that to
15 be a mitigator.

16 THE COURT: Well, let me just finish reading it,
17 okay. I didn't know that you told them the sentences of the
18 others.

19 "-- the sentences received by the others who were
20 involved in the offense, and any other matter which in the
21 estimation of the jurors in fairness and mercy suggest that a
22 sentence less than death is warranted.

23 "Mitigating circumstances need not be a legal
24 justification or excuse for the commission of the offense and
25 need not be connected to the crime itself."

1 Then another one reads, "In determining whether
2 mitigating circumstances exist jurors have an obligation to
3 make an independent and objective analysis of all relevant
4 evidence. Arguments of counsel or a party do not --" okay.
5 So that's exactly the same as -- that's exactly the same as
6 the State's. We've already given that one.

7 Another reads, "In determining whether mitigating
8 circumstances exist jurors have an obligation to make an
9 independent --" well, that's exactly the same as that one.

10 MR. ERICSSON: Yeah.

11 THE COURT: All right. Then another one reads, "The
12 mitigating circumstances which I have read for your
13 consideration are given only as examples of some of the
14 factors you may take into account. Any aspect of Mr.
15 Carroll's record or character -- character or record and any
16 of the circumstances of the offense, including any desire you
17 may have to extend mercy to Mr. Carroll, which any juror
18 believes is a basis for imposing a sentence less than death
19 may be considered a mitigating circumstance." And again --
20 okay, so which -- I got you. You gave me two copies of
21 everything. Okay. So --

22 MR. DiGIACOMO: Judge, I'm confused -- oh. Okay.

23 THE COURT: All right. So this is okay. Now we've
24 got, "Mitigating circumstances are any factors which --" the
25 one the State has is, "Mitigating circumstances are those

1 factors which, while they do not constitute a legal
2 justification or excuse, may be considered in the estimation
3 of fairness and mercy -- consider any aspect of character or
4 record or any circumstance -- proffers as the basis for the
5 sentence --"

6 All right. So what I'm going to do is behind that
7 State's deal --

8 MR. DiGIACOMO: Other than the fact that they want to
9 tell them the sentences of the others, the instruction is
10 essentially the same. And I would --

11 THE COURT: Yeah. But, you know --

12 MR. DiGIACOMO: -- suggest to the Court that that's
13 not an appropriate -- to put in the -- what the definition of
14 a mitigator is. The sentences of the other codefendants is
15 not a mitigator. They can argue to the jury, you know, hey,
16 that is a mitigator. But as a matter of law it's not a
17 mitigator. In fact, I think I might be arguing that it
18 actually makes his crime worse. But that's beside the point.
19 If they want to put in the sentences, that's fine. It's just
20 a piece of evidence. And they can list it in their mitigators
21 as these are the mitigators, but I don't think it should be in
22 the definition of what a mitigator is. The other sentences of
23 the codefendants is not a mitigator.

24 THE COURT: Since the legislature has not
25 exhaustively defined what is a mitigator --

1 MR. DiGIACOMO: But the Supreme Court has.

2 THE COURT: Well, where have they said this is
3 inappropriate?

4 MR. DiGIACOMO: They -- actually, the only time
5 they've said it is appropriate is in Flanagan, when the State
6 offered the codefendants, who were convicted of first degree
7 murder, their sentences of life without as non-doers, as
8 non-shooters. They offered their -- the non-shooters got life
9 without, these guys should get death. The defense actually
10 objected. Supreme Court said because they're convicted of
11 first degree murder they can get that.

12 No other defendant in this case has been sentenced of
13 first degree murder. To protect my record I was going to
14 allow them to get into the sentences of the other codefendants
15 even though none of them have been convicted of first degree
16 murder. But I don't think it's appropriate to say that those
17 sentences are a mitigator, because the only time it's ever
18 been used is actually an aggravation, and they've never said
19 that the other codefendants' statements [sic] is admissible to
20 establish mitigation, ever.

21 THE COURT: Mr. Ericsson.

22 MR. ERICSSON: Yes, Your Honor. And the case that
23 he's citing to is Flanagan versus State. It's 107 Nev. 243.
24 It's a 1991 case. It is still good law. It was reversed by
25 the U.S. Supreme Court on other grounds, not on this ground.

1 And it was the State that was -- that did introduce the
2 sentences of codefendants in a capital penalty. And I'm now
3 quoting from the decision. This is on page 248. Quote,
4 "Furthermore, the jury was instructed that it was not bound by
5 the previous sentences. We believe that it is proper and
6 helpful for the jury to consider the punishments imposed on
7 the codefendants," end quote.

8 Here --

9 MR. DiGIACOMO: It's not a mitigator, though.

10 MR. ERICSSON: In this case it certainly is a
11 mitigator, and, as Your Honor indicated, the legislature has
12 not articulated all of the mitigators. It says any other
13 evidence in mitigation. And here the fact that the shooter,
14 the higher ups who, you know, enlisted our client to organize
15 this killing got either second degree murder or less clearly
16 is a mitigator. And --

17 THE COURT: All right. I'm going to leave it in, Mr.
18 DiGiacomo.

19 MR. DiGIACOMO: May I request the Court that you give
20 me a separate instruction that says, you've heard the
21 sentences of the codefendant, you're not bound by those
22 sentences, not put it in the definition of a mitigator. What
23 you're telling the jury is this is a mitigator -- as opposed
24 to their argument to, hey, this is a reason that it is a
25 mitigator, I would suggest to the Court that what Flanagan

1 says is just give a separate instruction that says, you've
2 heard the codefendants' sentences, you are not bound by them,
3 exactly what Flanagan says. What I'm requesting of the Court
4 is not to tell this jury that's a mitigator, because I don't I
5 think it's a mitigator, Judge. And I'm certainly not going to
6 argue -- I'm going to argue actually that it's a reason to
7 enhance Mr. Carroll's sentence. And I think I'm entitled to
8 do that. And I don't think it's fair for the Court to say to
9 this jury that that's a mitigator. I don't think it's a
10 mitigator.

11 THE COURT: Well, it's listed on Number 26. Number
12 26 on the 27 list is "Other persons involved in the offense
13 received punishments significantly lower than that facing
14 Deangelo."

15 MR. DiGIACOMO: Right. So they could put it on that
16 list, but I don't want the Court saying, a mitigating
17 circumstance is the codefendants' statement [sic], because
18 that's not true. That's just simply not a correct statement
19 of law. What you can, if the evidence of a codefendant's
20 statement comes in is instruct the jury in a different
21 instruction that they can consider it but they're not bound by
22 it.

23 THE COURT: Well, this is what I'm going to do. I'm
24 between a rock and a hard place here. It seems to me that you
25 picked out one of 27 mitigators to put in a separate jury

1 instruction, and that gives it considerably more weight than
2 just having it be one of 27. So what your jury instruction
3 reads is, "Mitigating circumstances are any factors which
4 might serve as a basis for a sentence less than the death.
5 The jurors may consider the defendant's character, the
6 defendant's record, the circumstances of the offense."

7 Now, in considering the circumstances of the offense,
8 I think that the sentence that the others received is part of
9 the circumstances of the offense. So I'm going to strike "the
10 sentence received by the others who were involved in the
11 offense, and just end, "and any other matter which in the
12 estimation of the jurors in fairness and mercy suggest a
13 sentence less than death is warranted." I'm going to give
14 that one.

15 Now, that one will go behind the State's stock
16 instruction on mitigating circumstances don't -- blah, blah,
17 blah, character, record and circumstances -- less than death.
18 It's slightly different, but somewhere. And then the State
19 has, in determining whether they exist, they have an
20 obligation to make an independent and objective -- I'm going
21 to give that one. Then --

22 MR. ERICSSON: And, Your Honor, if I can just make a
23 little more record on that issue.

24 THE COURT: Certainly.

25 MR. ERICSSON: If you look at what is listed there,

1 the sentences which -- again, it was the State originally who
2 started this ball rolling, that you can introduce what the
3 codefendants got at a capital murder sentencing hearing.
4 Going to the sentence that you are modifying, it says, "Amay
5 consider the defendant's character --" that is stuff that is
6 listed, a lot of our mitigation is in reference to that "--
7 the defendant's record, the circumstances of the offense --"
8 the circumstances of the offense, that does not include the
9 sentencing that happened to the other codefendants.

10 THE COURT: I would suggest to you that that is part
11 of the offense. It's part of the history of the case.

12 MR. DiGIACOMO: On the next line it says --

13 THE COURT: It's part of the history of the case.

14 MR. DiGIACOMO: "-- and any other matter which in the
15 estimation of the jurors in fairness and mercy suggest a
16 sentence less than death is warranted." If they want to argue
17 that that's a matter, then that's covered by the mitigator
18 instruction.

19 THE COURT: Okay. Then we're going to give the 27.
20 "Mitigating circumstances asserted to exist by Mr. Carroll
21 include the following," and I don't know why you call him Mr.
22 Carroll in the first line and Deangelo throughout. I mean, I
23 know you want to humanize the guy, but it would seem to me you
24 should have it consistent, one or the other. But it's your
25 instruction. You're entitled to put your instructions in the

1 way you want them. So we'll give it the way you've got it.

2 MR. DiGIACOMO: Can I request that we just put,
3 defendant did not, defendant did not, defendant did not?

4 THE COURT: No. No.

5 MR. DiGIACOMO: Okay.

6 THE COURT: And then the next one says, "The
7 mitigating circumstances which I have read for your
8 consideration are given only as examples of some of the
9 factors you may take into account. Any aspect of Mr.
10 Carroll's character, record, any circumstances --"

11 MR. DiGIACOMO: Didn't we already say this?

12 THE COURT: Yeah. This has already been given.

13 MR. ERICSSON: Yeah. And, Your Honor, just so you
14 understand, we just received theirs, so we have not been able
15 to compare the two. So we're going through this for the first
16 time with you.

17 THE COURT: All right. I understand. So -- so I
18 don't think we need to give that, because that's duplicative.

19 Okay. Then we've got the special verdict form. Let
20 me see if there's any more stuff over here.

21 MR. DiGIACOMO: I think we have to go back to ours.
22 We have a reasonable doubt instruction in --

23 THE COURT: Wait. Now you're in -- credibility,
24 believability, all -- now we're into the stocks that we give.
25 Here's my question. Do you give a complete new set of

1 instructions to the jury, or do you give the old ones that you
2 already gave them?

3 MR. DiGIACOMO: They get the old ones, too, and they
4 get instructed they can rely upon the old ones, as well. We
5 have always put a reasonable doubt and a credibility. I don't
6 know why, because it is duplicitous [sic]. But there is one
7 witness in this penalty phase where the credibility may become
8 relevant, so I think it's just safe to do it, Judge.

9 THE COURT: All right. We've got Mr. Carroll back
10 with us, and he's dressed out.

11 And you look so much better, sir, in your dress shirt
12 and tie. Much better.

13 But it is five minutes of 12:00. Why don't we send
14 the jury away till 1:00 o'clock.

15 Who's the bailiff in here?

16 THE MARSHAL: Yes, ma'am.

17 THE COURT: Oh. There you are. I'm sorry. I
18 couldn't see you because of all the screens. Release the jury
19 until 1:00. Tell them to please be back upstairs at 1:00.
20 Thank you.

21 THE MARSHAL: Yes, ma'am.

22 THE COURT: We'll finish doing this, and then we'll
23 be in recess for the noon recess.

24 Now, then special verdict mitigating circumstances.
25 "Designate that one or more of the jurors have found the

1 mitigating circumstances which have been checked below." So
2 that's all the ones you've got. And then you have a place for
3 them to put any others. And there -- and then they sign it;
4 right? So that's -- that's fine. There's no problem with
5 that one.

6 "Verdict. We, the jury," blah, blah, blah,
7 "unanimously -- having unanimously and beyond a reasonable
8 doubt found that the aggravating circumstance outweighs any
9 mitigating, impose a sentence of," blah, blah, blah. That's
10 fine.

11 And then there's another one with only three on it.
12 "...have found that the mitigating circumstances outweigh the
13 alleged aggravating circumstance, impose a sentence of --
14 outweigh the --" I don't know we can put as "alleged
15 aggravating circumstance," because -- well, I guess so,
16 because they might not find it.

17 MR. DiGIACOMO: Right.

18 THE COURT: They might not find it. So the verdict
19 forms prepared by the defense are fine.

20 MR. DiGIACOMO: Whoa. I thought we were still -- I
21 thought we went back to mine. I'm confused, Judge. I thought
22 you were reading mine.

23 THE COURT: Oh, no. I was reading theirs.

24 MR. DiGIACOMO: I haven't even seen their verdict
25 form yet.

1 THE COURT: Oh. Well, I guess we can give yours.
2 "We, the jury, find --" the special verdict, "find the
3 aggravating circumstance outweighs the mitigating circumstance
4 or finds it --" okay. That's okay. We can give that special
5 one. And they want the ones -- absolutely, whatever. And
6 then --

7 MR. DiGIACOMO: Oh. I'll be happy to put theirs in
8 the jury -- I mean --

9 THE COURT: And then -- well, they have two verdict
10 forms. One of them simply says that -- they use one which
11 only has three on them if he's not death eligible, and then
12 one's got four on them, four choices if he's death eligible.
13 You've got some other verdict form that you --

14 MR. DiGIACOMO: Well, they have a special verdict
15 form that's not a correct statement of the law. But hold on.
16 No. Wait. They have a special verdict form that is
17 unnecessary, I've never seen before.

18 THE COURT: All right. Theirs isn't a special
19 verdict form.

20 MR. DiGIACOMO: Well, there is one of them.

21 THE COURT: If we use -- if we use this one -- did
22 you prepare this one?

23 MR. DiGIACOMO: No. That verdict form I've never
24 seen given before. I've seen a special verdict form, and then
25 I've seen the two that they have at the back, which one says

1 in its language, having found the aggravating outweighed the
2 mitigating, here's our sentence, and then a verdict form that
3 says, having the mitigators outweigh, and then here's the
4 three possibilities.

5 This verdict form I've never seen used before. I
6 don't know what the need for a fourth verdict for the jury to
7 fill out is.

8 THE COURT: Well, if it's a bifurcated proceeding,
9 which I used to do --

10 MR. DiGIACOMO: Well, maybe.

11 THE COURT: I used to do the bifurcated proceeding.
12 And in the bifurcated proceeding you have to determine whether
13 there's an aggravating circumstance before you give them all
14 the other bad crap about the defendant.

15 MR. DiGIACOMO: Well, they don't actually have a --
16 they don't actually have a verdict form finding an aggravating
17 circumstance. Do they have a verdict form that finds the
18 aggravating circumstance?

19 THE COURT: No.

20 MR. DiGIACOMO: They're missing that one.

21 THE COURT: Yeah. It's --

22 MR. DiGIACOMO: I suggest --

23 THE COURT: It is -- I thought you wanted this one,
24 Marc. I thought you wanted this one.

25 MR. DiGIACOMO: No.

1 THE COURT: I think the verdict forms are -- the
2 special verdict form and the two that you present, one with
3 three possibilities and one with four possibilities, I think
4 that -- I think that that's sufficient. I mean, I really
5 think it's sufficient.

6 MR. DiGIACOMO: One with four, one with three, one
7 for the mitigators, and one that actually has a finding of the
8 aggravator. I mean that has to have -- they have to have a
9 verdict form that --

10 THE COURT: Oh. Did you -- did you present one to
11 me? Do you have one of those?

12 MR. DiGIACOMO: Yes. You were in the middle of mine,
13 Judge, and then you started looking at theirs, and we started
14 finishing theirs and we never went back to mine. So I've got
15 --

16 THE COURT: No. No, no.

17 MR. DiGIACOMO: That's where I got confused, Judge.
18 I submitted four separate verdict forms.

19 THE COURT: Oh. Okay. Hold on. Oh. Okay. I
20 didn't get to yours.

21 MR. DiGIACOMO: And so --

22 THE COURT: Special verdict --

23 MR. DiGIACOMO: -- I'll be happy to type their 27
24 into our verdict form. That's not a problem.

25 THE COURT: Okay. All right. I didn't get to yours.

1 So we need to fix this, "...that the aggravating circumstance
2 --" not "or circumstances" --

3 MR. DiGIACOMO: Yeah, I can fix those, Judge.

4 THE COURT: "-- which has been checked has been
5 established beyond a reasonable doubt." Okay. All right.
6 We've got to have that.

7 MR. DiGIACOMO: Right.

8 THE COURT: And then we don't need this one. We're
9 going to use their form for the special verdict.

10 And then you have -- yours and theirs are the same,
11 one with two, and one with three. Okay. So -- all right.
12 What we have here is two special verdict forms, one that's the
13 defense that's got all the special --

14 MR. DiGIACOMO: The mitigators.

15 THE COURT: -- the mitigation -- the other is the
16 State's special verdict where there's a finding beyond a
17 reasonable doubt that an aggravating -- aggravator exists, and
18 then we have the other two --

19 MR. DiGIACOMO: Two forms for weighing.

20 THE COURT: -- the other two which are one for -- one
21 that has four possibilities, and one that only has three
22 possibilities. Okay. So those will be the verdict forms.

23 MR. PESCI: Judge, I apologize. Is one of them --
24 are you giving the defense's version on one of those?

25 MR. DiGIACOMO: Just the mitigating one.

1 THE COURT: Just on the mitigation. Just on the
2 mitigation.

3 MR. DiGIACOMO: That's fine.

4 THE COURT: Now let's go through the defense pile
5 here and see what additional ones they want given that I
6 haven't given.

7 That's the same. That's the same.

8 All right. Now, the defense has, "In your
9 deliberation you may not discuss or consider the subject of
10 guilt or innocence, as that issue has already been decided."

11 MR. DiGIACOMO: Yeah. That's in ours, too, Judge.

12 THE COURT: Is it?

13 MR. DiGIACOMO: Yes.

14 THE COURT: Did I give you that? Is that one in
15 here?

16 MR. DiGIACOMO: You skipped over. That's what I mean
17 when you -- at some point you skipped out of mine. "The duty
18 is confined to the determination of the punishment to be
19 imposed."

20 THE COURT: All right. Hold on a second. It's
21 because of the order in which you gave them to me. I did all
22 your specials. So let me just see if you got this one.

23 (Pause in the proceedings)

24 THE COURT: All right. It's not in your specials.
25 So it may be in your standards, but it's not in your specials.

1 Your specials were in front.

2 MR. DiGIACOMO: Judge, I don't know. I can tell you
3 that it's page 14 of mine. I haven't found that in theirs
4 yet, so that's what I'm looking for.

5 THE COURT: Well, it's in theirs.

6 MR. DiGIACOMO: It was page 14 of mine.

7 THE COURT: Okay. Yours says, "In your deliberation
8 you may not discuss or consider the subject of guilt or
9 innocence, that issue has been decided. Your duty is confined
10 to determination of the punishment to be imposed."

11 Theirs say, "...consider the defendant's role in the
12 offense and the roles of others who were also involved. In
13 determining appropriate...you may consider the sentence
14 received by others." Oh. No. That one's out. We took that
15 one out. I took that -- we modified that one. That one's
16 been modified. Okay.

17 All right. "...during your deliberation of all
18 exhibits which are admitted in evidence," "must be unanimous,"
19 got that. That one is a duplicate. All exhibits.

20 "The Court has submitted two sets of verdicts to you.
21 One set of verdicts reflects the four possible punishments
22 that may be imposed -- special verdict -- presence or absence
23 and weight to be given to any --" that's not true. That one
24 isn't -- that's a bad instruction.

25 MR. DiGIACOMO: You want me to just take it out?

1 THE COURT: Yeah. It's gone. That one's not right.
2 Well, here's an instruction I've never seen before.
3 "When you retire to deliberate your first task will be to
4 select a foreperson. You're not required to keep the same
5 foreperson throughout the deliberations, and you may select a
6 new foreperson if you believe doing so will aid in your
7 deliberations. The foreperson does not have any more rights
8 or responsibility than that of any other juror," there's a
9 word missing, "but is to be selected only as an aid to your
10 deliberations. When you have agreed upon your verdicts they
11 should be signed and dated by the last person who acts as
12 foreperson."

13 Doesn't that invite --

14 MR. DiGIACOMO: Yes.

15 THE COURT: Doesn't that invite just a terrible
16 dissention in the jury room? Aren't you just inviting --

17 MR. DiGIACOMO: I think that was the point of the
18 instruction, Judge. It's not ours.

19 MR. BUNIN: But it's also not improper. They can do
20 that.

21 THE COURT: And then we're going to have a fight as
22 to who's the foreman. They'll be coming in and saying, I was
23 the last one, no, I was the last one. My God, we're going to
24 have fisticuffs in the jury deliberation room.

25 MR. BUNIN: Or more likely they're going to read the

1 instruction and continue with the same person they had before.
2 But it's not an improper statement of law.

3 MR. DiGIACOMO: I've never seen a court give -- I've
4 never seen that instruction, actually, to be honest with you.

5 MR. BUNIN: But certainly they don't have to keep the
6 same foreperson.

7 MR. DiGIACOMO: But what's the basis for needing to
8 tell them that?

9 MR. PESCI: It's not accurate, either, in that it
10 says they have no more rights. The foreperson signs off, so
11 they in fact do a duty and have a job distinct from the
12 others. It's inappropriate.

13 THE COURT: That's true. So we're not going to give
14 it, because it's a misstatement of the law.

15 MR. BUNIN: We can amend that line, but the rest of
16 it's not, Your Honor.

17 THE COURT: "If one more of the jurors are unclear or
18 confused as to the meaning of any word or phrase used in these
19 instructions, you should submit a question in writing to the
20 marshal. The marshal will then consult with the Judge when
21 counsel present, and further guidance will be provided to
22 you."

23 That's just plain bullshit. The Court never ever
24 defines words and terms. And this is inviting -- this is
25 inviting the jury to just come up with, what does that mean,

1 and, what does substantial mean and what does this and that
2 mean. And you know -- you guys have been practicing law
3 almost as long as I have. You know the only thing the Court
4 can say is that you use your own everyday standard definition
5 of terms. So we're not going to give that one.

6 That's the same thing.

7 Isn't this instruction the Allen charge?

8 MR. DiGIACOMO: I don't know. What does it say?

9 THE COURT: "The penalty must represent the
10 considered judgment of each juror. In order to return a
11 sentence it is necessary that each juror agree thereto. The
12 sentence must be unanimous." But here's the -- here's the
13 Allen charge. "It's your duty as jurors to consult with one
14 another and to deliberate with a view to reaching an agreement
15 if you can do without violence to each juror's individual
16 judgment. Each of you must decide the case for yourself, but
17 do so only after an impartial consideration of the evidence
18 with your fellow jurors. In the course of your deliberations
19 do not hesitate to examine your own views and change your
20 opinion if convinced it is erroneous, but do not [inaudible]
21 your honest conviction as to the weight or effect of evidence
22 solely because of the opinion of your fellow jurors or for the
23 mere purpose of returning a verdict."

24 That's word for word the Allen charge.

25 MR. DiGIACOMO: It is, Judge.

1 THE COURT: And we don't give that as an instruction.

2 MR. ERICSSON: Your Honor, I think that that clearly
3 is an accurate statement of the law and that the jurors need
4 to understand that they have an independent responsibility to
5 analyze and come to a decision. I don't -- I don't think that
6 that --

7 MR. DiGIACOMO: If at some point this jury's hung,
8 they can waive on the record that they would like an Allen
9 charge given. I am nervous to provide them in the original
10 instructions an Allen charge, which is usually something that
11 the State requests, and it is a heavily litigated issue as to
12 whether it was appropriate for the court to give it in a
13 particular case. I don't think it's appropriate. And the
14 first two lines of the non-Allen charge part is covered by the
15 other instructions.

16 THE COURT: All right. Now, they have proposed
17 another instruction. "You're instructed that if you
18 unanimously find that the State has established beyond a
19 reasonable doubt that Mr. Carroll must be executed, you are to
20 select the death penalty as your verdict."

21 Well, that's not the law.

22 MR. DiGIACOMO: Right.

23 MR. BUNIN: Well, the --

24 THE COURT: But I don't mind giving -- I don't mind
25 giving the rest of it. "If one or more of you are not

1 convinced beyond a reasonable doubt that Mr. Carroll should
2 receive the death penalty or if one or more of you wishes to
3 extend mercy to Mr. Carroll, you are to select a verdict of
4 life without the possibility of parole, life with the
5 possibility of parole after 40 years, or a term of a hundred
6 years -- after 40 years. If you are in doubt as to the
7 appropriate sentence, you must give Mr. Carroll the benefit of
8 the doubt and return a verdict other than the death penalty."

9 I don't mind giving the bottom part, but I don't want
10 "Mr. Carroll" in there.

11 MR. DiGIACOMO: Judge, can I -- can I be heard before
12 you -- before you say that?

13 THE COURT: Yes. Yes.

14 MR. DiGIACOMO: This instruction actually has become
15 heavily litigated in this sense, and the Supreme Court's come
16 down and said we're right. That implies that we have some
17 burden other than establishing the --

18 THE COURT: Right. That's why --

19 MR. DiGIACOMO: -- aggravator beyond a reasonable
20 doubt.

21 THE COURT: That's why the first paragraph is an
22 incorrect statement of the law.

23 MR. DiGIACOMO: No. But even the second one. "If
24 you're -- if one of you are not convinced beyond a reasonable
25 doubt that Mr. Carroll should receive the death penalty,"

1 that's a misstatement of the law.

2 THE COURT: That's true. They don't --

3 MR. DiGIACOMO: Once I establish the aggravator, it's
4 just a weighing process and decision. There is no burden
5 after that. And they're trying to imply it by these
6 instructions. There's no burden.

7 THE COURT: That's right.

8 MR. DiGIACOMO: So --

9 THE COURT: It's the jury's discretion. It's
10 discretion with the jury. They don't ever have to -- I don't
11 care how much crushing evidence the State may have, the jury
12 never has to return a death verdict. And it is totally
13 incorrect. That one won't be given for those reasons.

14 Okay. We've given that one. We've given that one.
15 We've given that one. We've given that one. We've gone
16 through the verdict forms.

17 Okay. Now what I would like to do is get these in
18 some semblance of order. So the cover sheet's Number 1,
19 "Members of the jury."

20 "If in these instructions any rule, direction, or
21 idea is stated," is Number 2.

22 "The trial shall fix a punishment -- the trial jury
23 -- for every person convicted of murder of the first degree."
24 That will be 3.

25 And then 4 is the definition of what these are.

1 MR. DiGIACOMO: A prison term --

2 THE COURT: "A prison term of a hundred with
3 eligibility, life imprisonment, life without," blah, blah,
4 blah.

5 "In the penalty hearing evidence may be presented
6 concerning aggravating and mitigating circumstances relative
7 to the offense and any other evidence that bears on the
8 defendant's character.

9 "Hearsay is admissible in a penalty hearing." That's
10 kind of an instruction that I usually give the jury before
11 they start, before we open. You want it in writing?

12 MR. DiGIACOMO: It's up -- it's up to the Court.
13 I've always given it at the end of a penalty -- that's
14 actually one of our stocks, but --

15 THE COURT: All right. That'll be 5.

16 "The jury must find the existence of an aggravating
17 circumstance" is 6. You're going to redo that one?

18 MR. DiGIACOMO: I've already typed it, Judge.

19 THE COURT: Okay. And then I think -- then I think
20 after 6 we should go with, "You're instructed that the
21 following factor is a circumstance by which." So I think that
22 one should be -- we need to tell them what aggravating --
23 aggravator is up front, closer. That would be 7.

24 MR. DiGIACOMO: Okay.

25 THE COURT: And then --

1 MR. DiGIACOMO: You want to tell them with mitigators
2 are?

3 THE COURT: Then we go to -- 8 is, "Mitigating
4 circumstances are those factors which --"

5 MR. DiGIACOMO: The State's mitigating, and then 9 is
6 defense?

7 THE COURT: Yeah. State's mitigating is 8, and then
8 9. And we're going to strike out the sentence on --

9 MR. DiGIACOMO: Correct.

10 THE COURT: -- sentence received by others involved
11 in the offense. And then --

12 MR. DiGIACOMO: Then you want to go back to the
13 evidence --

14 THE COURT: Then we're going to go to the 27 of them.

15 MR. DiGIACOMO: The 27. Okay.

16 THE COURT: And that would be Number 10.

17 MR. DiGIACOMO: Okay.

18 THE COURT: And then, "In determining whether
19 mitigating circumstances exist jurors have an obligation to
20 make an independent," and we changed that to "trial" and
21 "proceeding." That would be 11.

22 And then, "In deciding an appropriate sentence," that
23 would be 12.

24 And, "The law does not require the jury to impose a
25 death penalty" is 13.

1 Then we go back into the stocks.

2 MR. DiGIACOMO: Reasonable doubt?

3 THE COURT: Reasonable doubt would be 14.

4 "Jury is instructed in determining -- may be imposed
5 -- consider -- and the instructions given at both the penalty
6 hearing and these proceedings."

7 So the jurors -- does this court make -- does each of
8 the jurors have their own set of instructions when they go
9 back to the jury?

10 THE CLERK: No. But we can do that if you'd like.

11 THE COURT: I thought that the -- I thought that that
12 was now the rule, that every juror had to have their own set
13 of instructions.

14 MR. DiGIACOMO: I've seen some courts do it and some
15 courts not do it. I just -- I don't know if it's the rule or
16 not.

17 THE CLERK: We usually send three or four extra sets
18 back.

19 THE COURT: Okay. Well --

20 MR. BUNIN: I would like them all to have it during
21 close, if that's possible, just so they can follow along in
22 case we're reading some of the instructions with them.

23 THE COURT: Well, I always give everybody so they can
24 follow along when I read them. I always -- and then they can
25 take them back to the jury room.

1 MR. BUNIN: Right.

2 THE COURT: So these instructions will make -- do you
3 still have 14 jurors?

4 THE CLERK: Yes.

5 THE COURT: Okay. We'll make an original and --

6 MR. DiGIACOMO: We have 15.

7 THE CLERK: We have 15. I'm sorry.

8 MR. DiGIACOMO: We have 15. We have three
9 alternates.

10 THE COURT: All right. "...may not discover --" 16.
11 "You may not...find a determination of punishment."

12 Credibility or believability is 17.

13 "Although you have considered the evidence" is 18.

14 "...all exhibits which were admitted" is 19.

15 "Now you'll listen to arguments of counsel" is 20.

16 Now, I'm not going to sign these, because these will
17 probably not be given until tomorrow.

18 MR. DiGIACOMO: Well, what I'll do, Judge, is I'll
19 make the corrections to the defense's one, put it all in here
20 in order, and send it off to Penny, and she can just --

21 THE COURT: Okay.

22 MR. DiGIACOMO: -- print 20 copies or whatever she
23 needs.

24 THE COURT: Okay. All right. And so you've got the
25 numbers there in order. I'm going to give them to you, or to

1 Penny?

2 MR. DiGIACOMO: I have them in order. You can give
3 those to Penny so she can make sure I'm correct when I email
4 her what I email her back. But I have them.

5 THE COURT: This is -- these are the jury
6 instructions.

7 Now, let's -- before I give them to her, Mr.
8 Ericsson, are you opposed to the Court giving any of the
9 instructions in 1 through 20 inclusive?

10 MR. ERICSSON: Your Honor, without waiving the
11 objections we had to instructions that we wanted included --
12 and I would ask that the instructions of ours that --

13 THE COURT: These all will be filed.

14 MR. ERICSSON: -- you decided not to incorporate or
15 include, that those be made a --

16 THE COURT: Specifically we're not giving Defense
17 Proposed Number 4, and there's a record of that. But those
18 need to be filed as defendant's proposed instructions. Some
19 are duplicates of the ones that are being given, because your
20 instruction and the State's instruction was exactly the same,
21 and some are your proposed, and we've -- the Court's chosen
22 not to give those and is giving 1 through 20.

23 MR. ERICSSON: Correct, Your Honor. So those will be
24 formal objections for the record.

25 THE COURT: Right. Those will be filed, and those

1 will be the ones that you requested that the Court's not
2 giving.

3 Now, on behalf of the State, Mr. DiGiacomo and Mr.
4 Pesci, are there any instructions in 1 through 20 that the
5 State opposes the Court giving?

6 MR. DiGIACOMO: No, Your Honor.

7 THE COURT: Any additional instructions the State
8 wants not included in 1 through 20?

9 MR. DiGIACOMO: No, Judge.

10 THE COURT: Mr. Ericsson, other than the ones that
11 you have filed and made your record on, are there any other
12 instructions that you want given which aren't being given?

13 MR. ERICSSON: No, Your Honor.

14 THE COURT: All right. Well, then jury instructions
15 should be settled. At least we got that done.

16 Let us be in recess until 1:00 o'clock, and --

17 MR. BUNIN: Could we do one quick issue before we go
18 to recess?

19 (Off-record colloquy - Court and Clerk)

20 THE COURT: Yes, Mr. Bunin.

21 MR. BUNIN: You know, I actually want to clarify
22 something, because I don't want to go beyond what we're
23 allowed to argue during the penalty phase. My understanding
24 is that we're going to be able to admit the sentences -- or
25 the convictions, I mean, of the other codefendants. My

1 understanding is Mr. DiGiacomo wants to argue that Deangelo
2 Carroll is worse than them because he had some input in
3 organizing this thing and actually causing it to occur even
4 though he wasn't the shooter.

5 But my problem is this, is that under the State's
6 theory, and nobody denies, this was all conjured up by the
7 owner of the Palomino Club and the people that worked for him,
8 his son and another person named Anabel Espindola. They're
9 the ones that created the plan and then put it into motion.
10 The prosecution made a choice. They chose before the owner of
11 the club's and the owner's son's trial to drop the death
12 penalty and not to pursue it. And then they made other
13 choices. They made deals with everybody else when they
14 dropped the death penalty. And I want to be able to make it
15 clear under a proportionality argument that the prosecution
16 didn't even seek the death penalty against the owner of the
17 club and the owner's son.

18 THE COURT: Well, let me suggest to you that if Judge
19 Adair is back tomorrow she will be making that decision,
20 because you're not going to argue today. Today you're going
21 to cross-examine the State's witnesses. And you don't have
22 any witnesses. Right?

23 MR. BUNIN: Right. But on cross --

24 THE COURT: And you're not putting on any -- you're
25 not putting on any evidence today, you're not putting on the

1 judgments of convictions of the other codefendants; right?

2 You're not putting evidence on today?

3 MR. BUNIN: No, we're not. That's correct.

4 THE COURT: So were you going to put that evidence in
5 by way of cross-examining the police officers?

6 MR. BUNIN: Well, I think the judgment of conviction
7 can just come in by itself. But by cross-examining the police
8 officer we may talk about the fact that the prosecution didn't
9 take the death penalty just to get that out.

10 MR. DiGIACOMO: Well, that's --

11 THE COURT: But, Mr. Bunin --

12 MR. DiGIACOMO: -- completely not true.

13 THE COURT: -- that's not -- first of all, that's not
14 a police function. Are you going to call David Roger as a
15 witness, I mean, and ask him why his office made that
16 decision?

17 MR. BUNIN: No. But --

18 THE COURT: And I don't think that that's relevant
19 why they made that decision, and you can't get it in through a
20 police officer.

21 MR. BUNIN: Well, there's a --

22 MR. DiGIACOMO: Actually, the Court made the
23 decision, to be clear.

24 MR. BUNIN: There's a hypocrisy -- there's a
25 hypocrisy to the argument that this person's an organizer and

1 therefore is worse than others and then we can't say they
2 didn't even pursue death against the people that actually
3 started this entire thing.

4 MR. DiGIACOMO: That's actually not true. The death
5 penalty was originally struck by the Nevada Supreme Court.
6 Anabel Espindola pled guilty while that was still being
7 struck. We tried to refile it. Judge said no.

8 Court eventually allowed us to put the death penalty
9 back in, and then Mr. Gentile argued to the Court, you have to
10 sever my trial from the codefendants because I have a -- I
11 have a conflict if we go forward in a penalty hearing. The
12 Judge says, Mr. DiGiacomo, I'm going to sever you and -- trust
13 me there is a long history as it related to Mr. Gentile and
14 his conflict in this case -- you're going to get severed and
15 you're going to have to try these two defendants separately
16 unless you withdraw your notice of intent to seek the death
17 penalty and they waive penalty hearing and allow me to
18 sentence. And it was a tactical decision on our part.

19 Now, that's not getting in front of this jury --

20 THE COURT: No.

21 MR. DiGIACOMO: -- at all.

22 MR. BUNIN: There's a choice not to seek the death
23 penalty. And then they're going to say --

24 MR. DiGIACOMO: Well, we did seek it. We filed it on
25 everybody.

1 MR. BUNIN: They're going to say --

2 THE COURT: Excuse me. Save that argument for
3 tomorrow.

4 MR. BUNIN: Okay.

5 THE COURT: Now, we're going to be in recess till
6 1:30, because it's 20 after 12:00, they can't get back and
7 whatever, so the jurors will just have to sit out there unless
8 you can tell them till 1:30.

9 We'll be in recess till 1:30. Thank you.

10 MR. BUNIN: 1:30? Thank you.

11 THE COURT: Yes, 1:30.

12 (Court recessed at 12:24 p.m., until 1:36 p.m.)

13 (Outside the presence of the jury.)

14 THE MARSHAL: All rise. The Eighth Judicial District
15 Court, Department 21 is now in session.

16 THE COURT: Thank you.

17 THE MARSHAL: You are to be seated please.

18 Sorry, ma'am, I didn't -- they didn't tell me your
19 name.

20 THE COURT: Loehrer. Loehrer; L-O-E-H-R-E-R,
21 pronounced Loehrer.

22 THE MARSHAL: Yes, ma'am.

23 THE COURT: All right. Are we ready to proceed now
24 with the penalty -- first part of the penalty hearing?

25 MR. DiGIACOMO: Yes, Your Honor.

1 THE COURT: Okay. Then, sir, if you would bring the
2 jury in and seat them, we'll get started.

3 (Jury enters at 1:37 p.m.)

4 THE COURT: Good afternoon, ladies and gentlemen.
5 Welcome back to the State of Nevada versus Deangelo Carroll.

6 The record will reflect the presence of the jury
7 panel and the alternate jurors, all officers of the court, the
8 State represented by Mr. Pesci and Mr. DiGiacomo, the
9 defendant present with counsel, Dan Bunin and Tom Ericsson.

10 I'm sorry for the late start today. Obviously I'm
11 not Judge Adair. She's not available today. We hope she's
12 available tomorrow to rejoin you at that time.

13 You have previously heard the trial in this matter
14 and you've entered a judgment against Mr. Carroll. As the
15 Court instructed you, if you return a verdict of first degree
16 murder, in the State of Nevada the jury is the one that
17 decides the punishment. And at this time you're going to hear
18 evidence from both the State and the defense which will aid
19 you in reaching an appropriate verdict as to what the
20 punishment should be in this case.

21 Does the State wish to open?

22 MR. DiGIACOMO: Yes, Your Honor.

23 THE COURT: You may proceed.

24 MR. DiGIACOMO: Thank you, Judge.

25 STATE'S OPENING STATEMENT

KARR REPORTING, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DiGIACOMO: Two and a half weeks ago, whatever it was, the first things I said to you that half told truths are half [inaudible]. And the last thing I kind of said to you was your job was to search for the truth and to find the truth.

Today your job is somewhat different, today and maybe into tomorrow. Your job is to define what justice is, what justice is for TJ, what justice is for Mr. Carroll, what justice is in this case. And honestly, there's going to be some truth finding function. There's some things that you didn't know before you're going to learn. And there's a lot more additional information you're going to learn, but you're also going to have a different procedure.

In the State of Nevada, like you heard during jury selection, before you can decide what the punishment is, there's certain things you have to go through. One of those things is you have to decide if there's an aggravating circumstance. If there's an aggravating circumstance and it outweighs any mitigating circumstances, and you have four possible punishments.

If there's an aggravating circumstance and it's not -- or it's outweighed by the mitigating, then there's only three possible punishments. If there's no aggravating circumstance, you're left with three possible punishments as

1 well.

2 In this case the State has alleged a single
3 aggravating circumstance, which is the -- it was basically a
4 murder for hire, that the crime occurred over money, that he
5 committed this crime for either himself or another person to
6 receive money, and that's an aggravating circumstance. And
7 it's going to be the State's position at the end of this case
8 that your selection is going to result from four possible
9 punishments.

10 And at the end of this case, hopefully both Mr. Pesci
11 and I will still be here, but at the very least
12 representatives of the State of Nevada is going to request
13 that you assign the appropriate punishment to Deangelo
14 Carroll. So let's talk about how you're going to get there.

15 You're going to learn that, you've probably already
16 figured this out, you're not the first 12 people to hear this
17 case. You are the first 12 people to hear the statement of
18 Deangelo Carroll, but you're not the first 12 people who've
19 heard evidence related to the death of Timothy Hadland.

20 You've learned somewhat that Jason Taoipu was
21 originally arrested for his involvement in the crime. He
22 eventually worked out a negotiation with the State of Nevada.
23 He pled guilty to what's known as voluntary manslaughter with
24 use of a deadly -- deadly weapon. And Judge Adair wound up
25 sentencing him after he testified against Kenneth Counts.

1 At the end of that sentencing Judge Adair actually
2 decided to give him probation. But you're also going to learn
3 that he, being Jason Taoipu, couldn't actually make it on
4 probation and Judge Adair eventually revoked his sentence and
5 he's now serving ten years in prison for the death of Timothy
6 Hadland.

7 You're going to hear that the first jury to hear this
8 case was the case of State of Nevada versus Kenneth Counts.
9 You will hear the evidence against Kenneth Counts was Rontae
10 Zone, Jason Taoipu, and basically those wires. And like every
11 jury that's heard this case, every -- the juries all decided
12 there was a conspiracy to commit murder. What that jury did
13 not decide was that Kenneth Counts was the shooter. That jury
14 found Kenneth Counts guilty of conspiracy to commit murder,
15 and not guilty of all other charges.

16 In addition to that, you will learn that Kenneth
17 Counts had two prior felony convictions for drug related
18 offenses. And based upon that, he was eligible for habitual
19 criminal treatment. Judge Adair found him a habitual criminal
20 and sentenced him to 20 years in prison, with a minimum parole
21 eligibility after eight years.

22 You will hear that during the course of Kenneth
23 Counts' trial Anabel Espindola came to the State and said I'd
24 like to tell you my side of the story. The State listened.
25 At the end of her giving her -- providing the information she

1 provided, she pled guilty to involuntary manslaughter with use
2 of a deadly weapon.

3 And here's the story you're going to hear from
4 Anabel, and you're going to hear it today. Anabel is going to
5 tell you that the version of events which Mr. H and Little Lou
6 started this all on their own and that Deangelo Carroll was
7 the unwitting dupe that Mr. Carroll seemed to suggest in his
8 statement is not what she remembers happens.

9 She's going to tell you, first of all, that a couple
10 of days -- well, she's going to tell you that TJ Hadland was
11 fired from the Palomino Club. She was told about a week
12 before his death that he was stealing money from the front
13 door. And she did what a manager of the Palomino Club should
14 do, which is she ordered him fired and he was fired.

15 And in the ensuing week, she didn't hear anything
16 about him. She will tell you that during that ensuing week
17 she saw Deangelo Carroll at the club, and Mr. Carroll had said
18 to her that Mr. H said it was okay for him to hold a weapon at
19 the club. And she will describe the firearm to you as being a
20 large frame silver revolver, which is very distinctly the same
21 kind of description Mr. Carroll gave of our murder weapon.

22 You will hear that she then says that on the day of
23 the murder, as you saw on the phone calls, she gets a phone
24 call from Mr. Carroll. She's at the Simone's Auto Club. Mr.
25 H is present with her, and Little Lou is in the Simone's Auto

1 Plaza.

2 Mr. Carroll says that Timothy Hadland is saying bad
3 things about the club and that he's saying bad things to cab
4 drivers and is talking about how Mr. Carroll is making all
5 these statements to various people that could affect the
6 business at the Palomino Club. She will tell you that she
7 relayed that information to Mr. H and that Mr. H's initial
8 reaction was basically who cares. But Little Lou's reaction
9 was, dad, you're never going to be like Galardi and Rizzolo.

10 And for those of you who don't know, Galardi and
11 Rizzolo are two club owners here who got themselves into
12 substantial trouble for skirting the law. And he says, you
13 know, Rizzolo had a guy beat for a customer who didn't want to
14 pay. And he says other things to him, and you won't do
15 anything about this guy, dad. And actually there's a fight
16 between Mr. H and Little Lou, and Little Lou leaves the club.

17 And, you know, you had the cell site records, and you
18 probably didn't know what they all meant. But if you watch
19 and look at the cell site records, you'll see that as Little
20 Lou is driving north on I-15 he makes the phone call to
21 Deangelo Carroll's house at 8:00 at night, or 7:42 at night.
22 And it's during that phone call, I would submit to you, that
23 there is a discussion about the baseball bat and garbage bags.

24 You will hear that she, Anabel, when she finishes her
25 work at Simone's Auto Plaza takes Mr. H and she goes to the

1 Palomino Club. You will hear that when she gets to the
2 Palomino Club she was inside the office when Deangelo Carroll
3 came to the office and spoke to Mr. H, that Mr. H and
4 Deangelo, according to her, left the room and she wasn't in
5 the room during the discussion.

6 She says that a short time later Mr. H came back.
7 Mr. H told her to call Deangelo, and Mr. H told her tell
8 Deangelo to go to plan B. And she will tell you that by the
9 time she finishes her phone call with Deangelo Carroll she
10 knows something really bad is about to happen, and she
11 continues to assist Mr. H by providing information to Deangelo
12 Carroll.

13 She will tell you that when it was done she was in
14 the office when Deangelo Carroll came back. And while there
15 has been some discrepancy about Mr. Carroll in the statement,
16 that what Mr. Carroll says it's done, Mr. H says pay him, and
17 Anabel Espindola goes, pay him what? Just like kind of what
18 Deangelo describes in one version of his story.

19 She says Mr. H says go get him five. And she says,
20 five what? And he says 5,000. And she is not going to be
21 moved off this point. She has no idea where the 6,000 figure
22 came from. She says it's five. And I will suggest to you in
23 closing that we may be explaining to you why that's \$6,000
24 versus five.

25 She says that after she pays that Kenneth Counts

1 wasn't upstairs. Kenneth Counts wasn't banging on the door.
2 She didn't know Kenneth Counts' name. She just knew that
3 there was somebody downstairs allegedly who had done the
4 killing. She says she gives him five, Deangelo leaves, and
5 Mr. H's reaction is, oh, my God, what did he do, what did --
6 what did Deangelo do.

7 And then he starts going did he really go through
8 with it, did he really do it, and he makes other statements
9 throughout the night like I can't remember what I told him, I
10 can't remember exactly what I told him to do to TJ. And then
11 she'll say she saw the morning after the murder on the news TJ
12 dead and Mr. H was upset.

13 She will also tell you that the next time she saw
14 Deangelo Carroll was when he entered into the Simone's Auto
15 Plaza, he was wearing the wire, and she'll describe for you
16 her recollection of what happened with the wire. Anabel,
17 after providing that information to the State and pleading
18 guilty, then testified against Mr. H and Little Lou.

19 And like I told you before, the last 12 people found
20 conspiracy to commit murder, although they found Mr. H and
21 Little Lou guilty of second degree murder with use of a deadly
22 weapon. Mr. H and Little Lou are now serving prison sentences
23 of 20 to life for both of them. Now, Little Lou someday may
24 get out of prison, but it's pretty definite that Mr. H is
25 going to die in there.

1 After learning these facts about the crime itself,
2 you're also going to learn a little bit about who Deangelo
3 Carroll is. Deangelo Carroll, you will learn, committed his
4 first armed robbery three days shy of his 16th birthday. On
5 that day he had a .25 caliber Ravens firearm that he robbed
6 two juveniles. And the juvenile wound up not having any
7 money, so he winds up taking his little Leatherman tool. And
8 Mr. Carroll gets caught almost immediately thereafter with two
9 other co-conspirators.

10 He is processed through the juvenile division and
11 he's sent to one of the facilities up north that juvenile
12 offenders get sent to. After spending a year up there, he's
13 released from there to parole. Even in the juvenile system
14 apparently there's parole, and he gets paroled. While he's on
15 parole he commits a series of acts at a school involving
16 sexual harassment of some female students, grabbing their
17 breasts, grabbing their crotches, and making inappropriate
18 statements to them. And a judge decides to revoke his parole
19 and send him back up north.

20 He eventually gets out and turns 18, and eventually
21 21. And during this time period there are some other smaller
22 offenses. He gets caught trying to sell drugs down by the
23 downtown transportation center. He gets caught in an
24 accidental discharge of a firearm he bought off the street.
25 He gets caught driving a stolen vehicle.

1 But in 2002, Mr. Carroll, along with some
2 co-conspirators, decided to rob a man on the street. This
3 individual was homeless. He's going to come in here and
4 testify to you. He will tell you that the individual, one of
5 the individuals was an African American male, and you'll learn
6 through the rest of the evidence of how there's no dispute
7 it's Mr. Carroll, that they beat him, and then while beating
8 him they took his wallet.

9 And then after beating him and taking his wallet, Mr.
10 Carroll beating him and Mr. Carroll actually taking his
11 wallet, Mr. Carroll ran from the scene and some fire
12 department personnel were present and saw him and kind of
13 followed him. And at some point Mr. Carroll kind of comes
14 back to the scene and says, hey, look what I found, a wallet.
15 And Mr. Blodgett is like, well, that's the guy that just beat
16 me, and the fire guys were like, well, yeah, we saw him take
17 the \$300 out of the wallet after he ran away beating him and
18 he came back to the scene.

19 Mr. Carroll now charged as an adult with robbery. He
20 goes into the system. He eventually enters a plea of guilty
21 to conspiracy to commit robbery, a felony, in 2002. A judge
22 in this jurisdiction thought it was best to give him
23 probation. He suspended a sentence under him, under his head
24 for prison, and then placed him on probation.

25 In the course of his probation, once again much like

1 when he was a juvenile, Mr. Carroll couldn't successfully
2 complete his probation. And this time, instead of the judge
3 sending him to prison, the judge decided to give him a little
4 time in jail, 60 days, and letting him back out.

5 Now, his sentence was in September of 2002, and had
6 he served his full term of probation, three years, he would've
7 been on probation still at the time he kills -- or he has TJ
8 killed.

9 At the end of this case, ladies and gentlemen, the
10 State of Nevada is going to ask you to go back to that room.
11 We're going to ask you to first make a determination as to the
12 aggravating circumstance, which I think by this point is
13 probably pretty clear. And then afterwards, we're going to
14 ask you to assess the appropriate punishment for Deangelo
15 Carroll in the death of Timothy Hadland. Thank you.

16 THE COURT: Counsel for the defense, do you wish to
17 make an opening statement?

18 MR. ERICSSON: Yes, Your Honor. Thank you. May I
19 use the lectern?

20 THE COURT: You may.

21 DEFENDENT'S OPENING STATEMENT

22 MR. ERICSSON: Welcome back, ladies and gentlemen. I
23 know you folks have spent a lot of time on this case already,
24 and we appreciate the diligence. It was clear that everyone
25 was paying very close attention in the -- in the first phase

1 of these proceedings. Obviously we're now back at the
2 decision that you will make as to the appropriate sentence for
3 Deangelo.

4 Unlike co-counsel who -- that they -- they were
5 involved in those other trials. They've done -- they've done
6 this case many times now. This is my first time being
7 involved in this case. And I have brought up some notes to
8 make sure I don't miss some of the important things that we
9 believe you're going to be hearing as far as evidence in the
10 next day and a half, two days, so you come to an appropriate
11 sentence for Deangelo.

12 Let me start by making sure it is very clear to each
13 one of you that we do not in any way as Deangelo's attorneys
14 condone his involvement in the -- the death of Timothy
15 Hadland. That was an unbelievably senseless killing of -- of
16 a father, of a man who had done -- had done nothing to -- to
17 justify violence against him.

18 But we're past that issue. You have found Deangelo
19 guilty of first degree murder with use of a deadly weapon.
20 The question now becomes what is the appropriate sentence for
21 him? You have heard from the prosecution a little bit of --
22 of what happened to the other players in this -- this case,
23 and that is something that -- that you will be able to
24 consider in determining an appropriate sentence for Deangelo.

25 And one of the things that wasn't brought out that

1 you're going to hear is Anabel, when she comes in here to
2 testify this afternoon, she is still waiting to see what her
3 sentence is going to be. With an agreement from -- no
4 opposition from the State, she was released on house arrest
5 and she -- she has been out of custody for, I believe, at
6 least a year now. They've been holding off sentencing her
7 until she comes in and testifies against Deangelo. And please
8 pay close attention to her responses on her involvement, her
9 knowledge, and also Deangelo's involvement in setting up this
10 incredibly stupid, stupid murder.

11 It was pointed out that -- that TJ -- excuse me, that
12 JJ, when he was originally sentenced he was given probation.
13 And then it was mentioned that he screwed up his probation and
14 he's now doing ten years in prison. Well, his sentence is
15 four to ten years is what he's doing, and he'll be eligible
16 for parole off of his violation of probation in four years.

17 Kenneth Counts, and it has been the theory of the
18 State in every one of these trials, was the shooter, the
19 trigger man who had an extensive criminal record. He was
20 found not guilty of murder at his trial and was found guilty
21 of only one count of the conspiracy to commit murder. And his
22 -- he's serving an eight to 20 year sentence. So he will be
23 eligible for parole, theoretically, in eight years.

24 It was pointed out Mr. H and Little Louie, Little
25 Lou, his son, the owner of the Palomino, they were found

1 guilty of second degree murder with use of a deadly weapon and
2 conspiracy to commit murder. And they are serving the 20 year
3 to life sentences, so they will be eligible in 20 years for
4 parole.

5 If you remember when we started going through all the
6 questions with the prospective jurors, we talked about the
7 four potential sentences that Deangelo faces at this point.
8 The -- it ranges from death to the very lightest sentence he
9 can receive is 100 years in prison with a minimum parole
10 eligibility at 40 years. That is the very best that he could
11 hope for in -- in his sentence, that at 40 years he could be
12 eligible to go before a parole board and possibly be paroled.

13 One of the important things that you're going to hear
14 from the judge that you are to consider are mitigating
15 factors. And when we were asked -- selecting the jury, you'll
16 remember lots of questions about can you consider an
17 individual's background, his upbringing, other circumstances
18 that should be taken into account to determine the appropriate
19 level of punishment.

20 And some of the things that you will hear from the
21 witnesses in -- in the next two days are about Deangelo's
22 upbringing. You're going to learn that Deangelo never knew
23 his father. That his mother, for whatever problems or issues
24 she was dealing with in her life, basically abandoned Deangelo
25 to his grandmother, that most of Deangelo's upbringing was

1 with his grandmother, Virginia Carroll.

2 And you're going to hear from Virginia and she's
3 going to tell you that from the time Deangelo was a little
4 boy, when African American men would come into their
5 household, he would frequently ask them, are you my father?
6 That he was being raised with his grandmother's other
7 children. She had -- Virginia had eight children and she had
8 several younger children who were being raised along with
9 Deangelo.

10 You will hear that Deangelo was often teased because
11 he was the one who didn't have a daddy, and that his
12 grandmother saw in him repeated times when he would go up to
13 strangers asking them if they were his father.

14 As I go through this please understand, not being
15 raised by a father is no justification for murder. Not being
16 raised by a father is no justification to get involved in the
17 conduct that Deangelo did. But it is something to be
18 considered when you understand how Deangelo gets to the point
19 when he makes the decision to go along with Mr. H in this
20 stupid concocted plan to kill Timothy Hadland.

21 You're going to learn -- you'll learn that when his
22 mother would come in and out of his life, she would come back
23 to her mother's house, his grandmother, that she would have
24 different boyfriends, and that at certain times that the
25 grandmother had to go and retrieve Deangelo because of

1 physical abuse she saw that he was receiving at the hands of
2 these boyfriends.

3 You're going to hear from a psychiatrist, Dr. Norman
4 Roitman. He will likely be testifying tomorrow afternoon.
5 He, along with another psychologist, Dr. David Schmidt, had
6 numerous interviews with Deangelo and conducted testing on
7 Deangelo for his cognitive capabilities.

8 You'll learn that Dr. Schmidt did a number of tests
9 to determine the intellectual capacity of Deangelo. And
10 you're going to find that -- you're going to learn that in
11 those tests they have different types of questioning or
12 mechanisms to determine the effort level that is given by the
13 person receiving the test to try to determine if a person is
14 trying to fake cognitive problems or mental problems or not
15 putting forth full effort.

16 And you're going to learn that Dr. Schmidt in his
17 testing found that Deangelo put forth full effort in trying to
18 answer these different tests and that there was no evidence
19 whatsoever that he was trying to malingering or exaggerate his
20 deficiencies. And from these tests you're going to learn that
21 Dr. Schmidt concluded that Deangelo has an overall IQ level of
22 82 points.

23 You'll learn that the average IQ is 100. That's kind
24 of the baseline. 82 is obviously 18 points below average.
25 You're going to hear that that is equivalent to approximately

1 four out of five people have a higher intelligence level than
2 Deangelo.

3 You're going to learn that Dr. Roitman, after
4 evaluating the upbringing and the different issues that he
5 became aware of through interviewing Deangelo and hearing
6 interviews from the grandmother and Deangelo's wife, that he
7 diagnosed Deangelo with dependent personality disorder. And
8 Dr. Roitman is going to explain that to you in detail what
9 that means.

10 And you're going to come to understand also that
11 Deangelo, because of that dependent personality disorder, that
12 he, more than the average person, has this desire or this need
13 to please people that he sees in authority.

14 And you're going to learn that when Deangelo, he got
15 this -- this job working at the Palomino Club, that that was
16 something that, for the kid who had grown up going to, you
17 know, spending a year up at the juvenile facility when he was
18 16 years old and being made a ward of the state, that this job
19 driving around in the Palomino Club on the side, he had -- one
20 time, you're going to learn, that Mr. H had given Deangelo a
21 coat that Deangelo was wearing and he was really proud to --
22 to have this coat that he was affiliated with this -- this
23 club and that he had found a place that he was accepted.

24 And that Deangelo, to him, keeping -- making Mr. H
25 happy and like him was incredibly important to him. And

1 although no excuse for agreeing to help in the murder of
2 somebody, it explains a little bit of the mental decisions
3 that Deangelo went through when he agreed to be a part of
4 locating the scary guy, Kenneth Counts, who he knew was
5 dangerous to go up and -- and kill Mr. Hadland.

6 Some of the things I'll remind you of is once he was
7 confronted with the police that, hey, buddy, we got your cell
8 records, we know you were up there, you know, you tell us you
9 were at your apartment, you saw the two and a half hour
10 interview. He eventually spills the beans and tells them what
11 had happened, his role in it. And then he, true to the
12 dependent personality disorder, agrees that he will help the
13 authorities. I will wear a wire. I will do what I can to
14 help you. And you all know that he did that.

15 He then obviously cooperates with the police and
16 helps them in this investigation and was a critical piece in
17 the -- the police's -- the police investigation to be able to
18 bring these other individuals to trial. That willingness to
19 want -- risk -- there's definite risks involved in becoming a
20 snitch, which he did, you know, to go against these other
21 folks and provide information to the police. And he was
22 willing to do that to try to, at least in some part, help make
23 some amends for what he had done and his involvement in Mr.
24 Hadland's death.

25 One of the other things you are going to -- you're

1 going to hear from the family members of Mr. Hadland. And
2 that's going to tear at all of our hearts that there is,
3 again, no justification for Mr. Hadland dying. That pain is
4 never going to go away. And we all wish there was something
5 that we could do to bring Mr. Hadland back, but we can't.

6 And it is a hard argument for us as Deangelo's
7 attorneys to make, that one of the -- we can't bring Mr.
8 Hadland back. We cannot erase the incredible pain his
9 children are going through. But you're going to learn that
10 about six months before Mr. Hadland died, Deangelo, and you're
11 going to hear from his wife, had a young son. His name is --
12 is also Deangelo. He goes by Little D. He's now five and a
13 half years old. You're going to see pictures of him. He is
14 -- he's Deangelo's son.

15 You're going to hear that he's been brought down the
16 last five years that Deangelo has been in custody on this case
17 at the Clark County Detention Center. His little son has been
18 brought down to try to talk to his dad through the -- the
19 little phone system with the little video, and that's the
20 interaction that Little Deangelo has had with his dad for the
21 last five years.

22 But there are other factors that you are required and
23 have the responsibility to take into consideration when you
24 decide the appropriate sentence for Deangelo in this -- this
25 terrible case.

1 We believe that after you hear all of the evidence
2 that it will be clear to you that death is not the appropriate
3 sentence for Deangelo, and that one of the other sentences
4 will be more than just and more than appropriate. And we
5 appreciate your attention. Thank you.

6 THE COURT: Thank you, Mr. Ericsson.

7 Counsel for the State, you may call your first
8 witness.

9 MR. DiGIACOMO: Allana Hadland.

10 ALLANA HADLAND, STATE'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated. And
12 please state and spell your name.

13 THE WITNESS: Allana Hadland; A-L-L-A-N-A
14 H-A-D-L-A-N-D.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. DiGIACOMO:

18 Q Did you know Timothy Hadland?

19 A Yes.

20 Q How did you know him?

21 A He was my father.

22 Q How many children did Mr. Hadland have?

23 A Four.

24 Q Can you kind of lay it out for us, kind of the
25 order from oldest to youngest?

KARR REPORTING, INC.

1 A There is Alan who was born in '84, and me who
2 was born in '86, Alex was born in '87, and Jennifer was born
3 in '91.

4 Q You have two brothers, and then your sister, is
5 she a full sister or is she a half sister?

6 A Half sister.

7 Q Describe for me your father.

8 A Happy, fun, loving, affectionate.

9 Q How old were you when he died?

10 A 19.

11 Q Prior to his death what kind of relationship
12 did you have with your father?

13 A We talked every day.

14 Q What would you talk about?

15 A Life. Just -- I was in the military. I just
16 -- I had just become in the military within nine months before
17 he passed.

18 Q And where were you stationed?

19 A Nebraska.

20 Q So how did you communicate with him every day?

21 A Over the phone.

22 Q What would you talk about?

23 A Life.

24 Q How did you find out -- well, let me ask you
25 this. Where were the other siblings living at the time of

1 your dad's death?

2 A Alan was living in Vegas with him. Alex was in
3 Michigan with my mom. And then Jennifer was living in Vegas
4 here with her mom.

5 Q Now, had you ever met Deangelo Carroll before
6 these proceedings?

7 A No.

8 Q Had you ever heard of him before?

9 A Yes.

10 Q Okay. How did you hear of him?

11 A My dad would talk about him.

12 Q And what kind of things would he be saying?

13 A Just how they had fun at work joking around.

14 Q What was your understanding of Timothy's
15 relationship to Mr. Carroll?

16 A That they were friends.

17 Q What about your two brothers? Well, let me ask
18 you this. Where is Alan today?

19 A Army basic training.

20 Q Okay. And Alex, does he live out of state as
21 well?

22 A He lives in Michigan.

23 Q And then is Jennifer here?

24 A Yes.

25 Q Have you talked to your two brothers, Alan and

1 Alex, first of all, about whether or not they knew Deangelo
2 Carroll?

3 A Yes.

4 Q And what did they tell you?

5 A They both have met him previously.

6 Q Because they were here did they have more
7 physical contact with your father than you did at the time of
8 his death?

9 A Alex was living in Michigan.

10 Q Oh, he was already?

11 A Yes. And Alan lived with my dad and they had a
12 side business together doing landscaping.

13 Q How did you hear about the death of your
14 father?

15 A The coroner's office called me.

16 Q The coroner's office called you?

17 A Yes.

18 Q Okay. And what did they say?

19 A They called and I was on my way to lunch. I
20 answered the phone and they said is this Allana? I said yes.
21 And they said, well, do you know Timothy Hadland? And I said
22 yes. Well, how do you know him? I said, well, he's my dad.
23 You know, in my head I'm like, okay, what do you want? And
24 they're like, well, we're sorry to inform you, but we found
25 your dad dead at the lake last night. And I was in denial. I

1 told the man that he was a sick individual for playing a cruel
2 joke on me.

3 And he gave me his phone number and I started
4 realizing that it was true. I went back into my office and
5 they told me to go home. What took me usually 20 minutes to
6 drive home took me half an hour because I was crying. I got
7 home and my roommate at the time, I ran into her room and fell
8 on the bed and screamed and woke her up because she worked the
9 night shift. And then I called my Uncle Gary because I wasn't
10 going to be the one to tell my grandma over the phone.

11 Q And how is Gary?

12 A My brother's -- or my uncle's brother.

13 Q Your father's brother.

14 A Yes. I'm sorry.

15 Q That's all right. How many brothers and
16 sisters did your father have?

17 A Two brothers and one sister.

18 Q And then his mother was still alive?

19 A Yes, and his --

20 Q Is she still alive now?

21 A Yes.

22 MR. ERICSSON: Your Honor, may we approach?

23 THE COURT: You may.

24 (Off-record bench conference)

25 THE COURT: Thank you.

1 BY MR. DiGIACOMO:

2 Q I apologize, Allana. I think I left off on
3 kind of the other family members.

4 THE MARSHAL: Counsel, can you give me one second,
5 please.

6 THE COURT: The bailiff is going to give you your
7 notepads back. I'm sorry we didn't do that when we got
8 started.

9 So if you'll just wait a minute, Mr. DiGiacomo.

10 I hope you can recognize your own notepad.

11 THE JUROR: Our numbers are on them.

12 THE COURT: Oh, your numbers are on them? Okay.

13 Then the bailiff will pass them out and make sure you have a
14 pencil or a pen that writes. And if you run out of paper, be
15 sure you just raise your hand and the bailiff will give you a
16 new pad. Everybody got their -- everybody got their pad and
17 pencil or pen that works? We're short -- we're short a pen.
18 Okay. Thank you.

19 Mr. DiGiacomo, you may proceed.

20 MR. DiGIACOMO: Thank you, Judge.

21 BY MR. DiGIACOMO:

22 Q Allana, I think I left off with kind of
23 describing who the other family members of -- of Timothy were,
24 he had in his family. So you talked about you, your brothers,
25 your sister. He had two brothers, a sister, and then his

1 mother. Was there anybody else in his family?

2 A My grandfather was still alive.

3 Q Your grandfather is alive as well?

4 A Uh-huh.

5 Q How has the death of your father affected you?

6 A I have -- I've been diagnosed with PTSD. I
7 have major depression and anxiety that I take medication for.

8 THE COURT: I don't know if the jury knows what

9 PCS --

10 MR. DiGIACOMO: PTSD.

11 THE WITNESS: Posttraumatic stress disorder.

12 THE COURT: Okay.

13 THE WITNESS: I see mental health providers weekly.

14 As in a mental standpoint, that -- I'm sorry. I'm confused.

15 BY MR. DiGIACOMO:

16 Q That's all right. I'll ask you another
17 question. Do you also have a physical ailment currently?

18 A Yes.

19 Q And without prying too much, can you just
20 generally describe that to the jury?

21 A I have a very rare aggressive bone condition.
22 I have giant cell bone tumors on my right hand and I have a
23 compression glove on. I've had four surgeries since October
24 of 2008 removing five tumors, five inches of my radius, and so
25 I have an allograft which is another person's bone, a foot

1 long metal plate and nine screws, and I am currently under
2 radiation treatments.

3 Q Had you had that condition when your father was
4 alive, would you had been able to talk to him about that, or
5 would you have talked to him about that?

6 A Yes.

7 Q How has the crime affected the other members of
8 your family?

9 A My older brother who was very loving and
10 affectionate, that's Alan, he became very withdrawn. He spent
11 months in my mom's basement punching his punching bag with the
12 articles from the trials and everything taped up on the walls.

13 Alex has, over the last couple of years, gotten back
14 into becoming a member of society. He almost dropped out of
15 high school, but my mom wouldn't let him. He's now -- he just
16 graduated from firefighter school last summer and he calls my
17 mom and says, well, I'm going to call you because I can't call
18 my dad. And every time he's on a fire call he calls my mom
19 even though she was there and pretends that he's talking to my
20 dad.

21 MR. DiGIACOMO: Thank you, Judge. I pass the
22 witness.

23 THE COURT: Cross-examination, Counsel?

24 MR. ERICSSON: No, Your Honor. Thank you.

25 THE COURT: Ms. Hadland, thank you, ma'am, for your

1 testimony here this afternoon. You may be excused. Please
2 don't discuss your testimony with anyone other than the
3 attorneys or the parties.

4 Mr. Pesci, you may call your next witness.

5 MR. PESCI: Thank you, Judge. Jennifer Hadland.

6 Can I approach your clerk?

7 THE COURT: You may.

8 MR. PESCI: Thank you.

9 JENNIFER HADLAND, STATE'S WITNESS, SWORN

10 THE CLERK: Thank you. Please be seated. And
11 please state and spell your name.

12 THE WITNESS: Jennifer Hadland; J-E-N-N-I-F-E-R
13 H-A-D-L-A-N-D.

14 THE CLERK: Thank you.

15 MR. PESCI: May I proceed, Your Honor?

16 THE COURT: You may.

17 MR. PESCI: Thank you.

18 DIRECT EXAMINATION

19 BY MR. PESCI:

20 Q Ma'am, to ask a silly question, who was Mr.
21 Hadland to you?

22 A My father.

23 Q Okay. And who just testified?

24 A My sister.

25 Q How old were you when your father was killed?

1 A I was 14.

2 Q And when that happened, were you living here in
3 Las Vegas?

4 A Yes.

5 Q At the time that your father was killed, were
6 you living with your father?

7 A No.

8 Q Where were you living?

9 A My mother.

10 Q What contact did you have with your father at
11 the time that he was killed?

12 A I called him every day and we say each other at
13 least every other weekend.

14 Q When you saw each other at least every other
15 weekend, what were some events or activities that you would do
16 together?

17 A We'd either go camping at the lake like he was
18 with Linda that night, or we'd go hiking or just hang around
19 his house and have family time.

20 Q Okay. You said camping at the lake?

21 A Uh-huh.

22 Q And I'm sorry. She's recording everything, so
23 it's got to be clear what the answer is.

24 A Okay.

25 Q Is that a yes?

1 A Yes.

2 Q Okay. How -- did you enjoy camping or was it
3 more something your father enjoyed?

4 A Yes.

5 Q You enjoyed it as well?

6 A Yeah.

7 Q Okay. And you talked about hiking. Was there
8 a location that you in particular with your dad liked to go
9 to?

10 A There was a certain spot at Red Rock. I'm not
11 completely sure how to get to it anymore, but we had been
12 going there since I was like seven.

13 Q You said right around Red Rock Canyon here in
14 Las Vegas?

15 A Yes, sir.

16 Q And you said you'd been going there since you
17 were seven?

18 A Yes.

19 Q Was there a time period when you did live with
20 your father?

21 A No.

22 Q Okay. Notwithstanding the fact that you didn't
23 live together, did you still spend time together?

24 A Yes.

25 Q And was it like you just described it around

1 the time of his death?

2 A Yes.

3 Q How do you describe his personality? What was
4 it about your father that made him unique to you?

5 A He could light up any room no matter what it
6 was. He could make everybody smile and everybody laugh.

7 Q How has this affected you?

8 A A week ago -- or a week from today a year ago I
9 graduated. That's his birthday. He wasn't there. I'm sorry.
10 Can I have a minute?

11 Q Absolutely.

12 MR. PESCI: Can I approach the witness?

13 THE COURT: You may.

14 BY MR. PESCI:

15 Q I'm just going to have you focus for a second
16 on something else. There's some tissues right there.

17 A Thank you.

18 Q I'm showing you State's Proposed Exhibits 247,
19 248, and 249, and ask you if you recognize those exhibits.

20 A Yes, I do.

21 Q And how do you recognize those?

22 A Those are pictures of my dad.

23 Q In fact, did you bring these to Mr. DiGiacomo
24 and myself --

25 A Uh-huh.

1 Q -- in preparation for the trial?
2 A Yes.
3 Q Perfect. And are these accurate -- are these
4 copies of those photographs?
5 A Yes.
6 MR. PESCI: Move for the admission of 247, 248, and
7 249.
8 THE COURT: Any objection?
9 MR. ERICSSON: no, Your Honor.
10 THE COURT: Exhibits 247, 248, and 249 are admitted.
11 (State's Exhibit 247, 248, and 249 admitted.)
12 MR. PESCI: Thank you, Your Honor.
13 BY MR. PESCI:
14 Q And specifically looking at 247 --
15 MR. PESCI: May I publish, Your Honor?
16 THE COURT: You may.
17 BY MR. PESCI:
18 Q Ma'am, are there two photographs that are
19 depicted in 247? To your left is a screen.
20 THE COURT: Over here. Here. This way.
21 A Oh, okay.
22 Q What's depicted -- are there two photographs on
23 247?
24 A Yes.
25 Q What we see on the top picture of 247, what is

1 that?

2 A Me, my dad, my brother Alex, and our dog.

3 Q Okay.

4 A Who I still have.

5 Q When was this photograph taken?

6 A About - I think it was February-ish of 2005.

7 Q Okay. And was that here in Las Vegas?

8 A That was in my father's garage, yes.

9 Q And focusing on still Exhibit 247, the bottom
10 portion of 247, is there another photograph?

11 A Yes.

12 Q Who is depicted in those -- in that photograph?

13 A My sister Allana, my father, and myself.

14 Q Was there some event going on when this
15 photograph was taken?

16 A That was my sister's birthday.

17 Q Showing you State's 248. Do you recognize this
18 picture?

19 A Yes.

20 Q And who is depicted in that?

21 A Me and my dad.

22 Q Okay. And lastly, 249, who is depicted in
23 that?

24 A Me and my dad.

25 Q Okay. Now, is this the kind of thing that you

1 would do often with your father as far as --
2 A Yeah.
3 Q -- messing and playing with him?
4 A Yeah.
5 Q Let me ask you this. Before these -- these
6 court proceedings, did you ever hear the name Deangelo
7 Carroll?
8 A Yes.
9 Q What was the context or the situation in which
10 you heard that name?
11 A He was his friend.
12 Q And Deangelo Carroll was your dad's friend?
13 A Yes.
14 Q And how did you know this?
15 A My dad told me he was his friend.
16 Q What were the conversations that your father
17 had with you when he mentioned Deangelo Carroll? What did he
18 say?
19 A Him and his buddy at work or him and his friend
20 from work.
21 Q So your dad and his buddy?
22 A Uh-huh. Yes, sorry.
23 Q And was the buddy Deangelo?
24 A Yes.
25 Q Okay. Did he ever talk about them -- any

1 specifics about them working?

2 A No.

3 Q Did he talk about them working together at the
4 Palomino Club?

5 A Yes.

6 MR. PESCI: We would pass the witness, Your Honor.

7 THE COURT: Cross-examination?

8 MR. ERICSSON: We have no questions, Your Honor.

9 THE COURT: Ms. Hadland, thank you, ma'am, for your
10 testimony.

11 I've neglected to ask the jury if they have any
12 questions. I'm sorry. Ladies and gentlemen of the jury, do
13 you have any questions for Jennifer? If you do, please write
14 the questions down and give them to the bailiff, and he'll
15 give them to me. Any questions?

16 All right. Jennifer, thank you for your testimony.
17 You may be excused. Please don't discuss your testimony with
18 anyone other than the attorneys or the party.

19 Counsel for the State, you may call your next
20 witness.

21 MR. PESCI: The State calls Steven Blodgett. May I
22 check the hall, Your Honor?

23 THE COURT: You may.

24 MR. PESCI: Thanks.

25 MR. BUNIN: Judge, while he's checking, I want the --

1 I'd like the exclusionary rule in effect. I'm not talking
2 family members, but I think there are other witnesses that are
3 going to testify.

4 THE COURT: All right. If you are --

5 MR. DiGIACOMO: Hang on a second. Can we approach,
6 Judge?

7 THE COURT: You may. Other than family members.
8 Family members can always stay.

9 MR. BUNIN: I'm not talking about family members.

10 (Off-record bench conference)

11 THE COURT: All right. Who is your next --

12 MR. PESCI: Steven Blodgett.

13 THE COURT: Steven Blodgett.

14 MR. PESCI: Blodgett.

15 THE COURT: If there are any non-family members who
16 are going to testify here this afternoon on this case in the
17 courtroom at this time, would they please leave the courtroom
18 at this time and remain available in the hallway until the
19 bailiff calls you to testify.

20 Mr. Blodgett, right up here, sir. Please take the
21 witness stand and be sworn.

22 STEVEN BLODGETT, STATE'S WITNESS, SWORN

23 THE CLERK: Thank you. Please be seated. And sir,
24 would you please state and spell your name.

25 THE WITNESS: Steven Blodgett; S-T-E-V-E-N

1 B-L-O-D-G-E-T-T.

2 THE COURT: Thank you, sir.

3 You may proceed, Counsel.

4 MR. PESCI: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Sir, I want to direct your attention to 2002,
8 specifically May 18, 2002. Where were you living back then?

9 A In Las Vegas on Irongate.

10 Q On Irongate? Is that a street?

11 A Yeah. It's off Tropicana.

12 Q Okay. And back at that time on May 18, 2002,
13 were you working in a -- was it a motel?

14 A Yes.

15 Q What was the name of that motel?

16 A Del Mar.

17 Q The Del Mar?

18 A [nods head yes].

19 Q All right. If you could just speak loud
20 because that -- that --

21 A The Del Mar.

22 Q Perfect. And what did you do there?

23 A Cash clerk.

24 Q Did something happen to you on May 18th that
25 you eventually you ended up having contact with the police?

1 A Yes.

2 Q All right. Were you, in fact, on a bus in the
3 area of Charleston and Eastern here in Las Vegas, Clark
4 County, Nevada, on that date, May 18, 2002?

5 A Yes.

6 Q Tell the ladies and gentlemen of the jury what
7 happened to you when you got off that bus.

8 A Well, it was eight years ago.

9 Q But you can remember?

10 A Yeah. I got off the bus and -- and was -- and
11 I don't really recall right off the bat when exactly, I may
12 have walked a little ways. But anyway, this girl asked me for
13 a light. And when I set my bag down, I had a leather
14 briefcase type thing, and I set it down and gave her a light,
15 two guys took -- grabbed it and took off running.

16 Q When the -- the guys took off and grabbed
17 something, was that your bag that they grabbed?

18 A Yeah. They took my leather briefcase and took
19 off running with --

20 Q What did -- what did you do when they took off
21 with your --

22 A I chased them across the street. And I
23 couldn't -- I couldn't catch them because they were, it seemed
24 to me they were younger. They weren't all that big or
25 whatever, as tall as me, but -- but they weren't -- anyway,

1 they seemed young and they seemed quick and they were taunting
2 me.

3 Q And when --

4 A She crossed the street too and then I was
5 talking to her.

6 Q When you were talking to her, did anybody else
7 come up to you?

8 A And then all of the sudden one guy -- and all
9 of the sudden there was two more people there and I was like
10 -- they were like -- I was kind of, whatever, surrounded more
11 or less.

12 Q Well, let me slow you down. You talked about
13 that girl who has asked you for a light. She was near you
14 when this happened?

15 A Uh-huh. She was --

16 Q Is that a yes?

17 A -- she was right there. Yes.

18 Q And then you said that two other guys showed
19 up?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q Okay. And are those separate from the two guys
24 that grabbed your --

25 A Yes.

1 Q -- briefcase? And you said when you were
2 surrounded, were all four of those guys now around you?

3 A Yeah. Yes.

4 Q Did you -- were you generally in the area of
5 Fremont Street here in Las Vegas when this occurred?

6 A I remember I was -- it was -- I was going to
7 the -- to the Castaways.

8 Q Okay.

9 A I had gotten off the bus. I was looking for
10 thrift stores. And then I didn't see the ones I was told that
11 were over on Charleston and I then I decided -- and so I rode
12 the bus to the end there and I saw that big Castaways and I
13 knew you could eat there real cheap, and so that's where I was
14 going, to eat there.

15 Q Okay. And you said that you were going to go
16 to some thrift stores. Did you have some money on you so you
17 could go shopping?

18 A Yeah, well, I had just gotten paid. I had my
19 -- I had like three \$100 bills.

20 Q Where -- where were you keeping your wallet at
21 that time?

22 A Well, I -- you know, on the bus I put it in my
23 boot, my cowboy boot because I just didn't -- the area looked
24 a little shaky. I never been on that side of town, really. I
25 didn't -- I'm on -- I'm -- I'm more towards Henderson or

1 whatever you want to call it. I'm on Tropicana five miles
2 from Las Vegas Boulevard --

3 Q Okay.

4 A -- is where my area is.

5 Q When the four people surrounded you, what
6 happened?

7 A Well, just --

8 Q Were you hit, sir?

9 A Oh, yeah. We just -- it was kind of like I was
10 holding my own pretty good for a minute, and then, bam, then I
11 got knocked down and knocked all the way out. And when I came
12 to, my wallet had been lifted from my boot. And I shook it
13 off, got to my feet, and chased after -- and then got up and
14 they took off running and I chased them.

15 Q Were you able to catch those people that --

16 A No, I -- they were about a half a block ahead
17 of me and Metro police pulled up and stopped me from chasing
18 them. They like pulled in to keep me from running.

19 Q And did Metro eventually catch someone and ask
20 you --

21 A Yeah, and then --

22 Q -- to look at someone?

23 A -- and then I said, hey, don't stop me, blah,
24 blah, blah, and he just stole my wallet. And then another cop
25 car, I believe, came and -- and came back with my wallet and

1 the guy.

2 Q Were you able to get your \$300 back?

3 A Yes, I got my \$300 back. Actually I got -- I
4 think I had like \$320 or something and ended up getting 340 or
5 something. And then I got extra money or whatever, but I
6 never said that before, but that's a true story. And I lost
7 my bus pass.

8 Q Was there an individual brought to you to see
9 if you could identify that as one of the people that beat you
10 and took your wallet?

11 A Yes.

12 Q Were you able to make an identification of that
13 person to the police? Did you tell --

14 A Yes.

15 Q Okay. Later on were you asked to come to court
16 about that particular case?

17 A Yes.

18 Q And after that court -- well, let me ask you
19 this. Did you even have to testify at that --

20 A No.

21 Q -- court proceeding? All right. After that
22 court proceeding, time passed. Did you ever run into the
23 person who was involved in beating you and stealing your
24 wallet?

25 A Yes. I mean, I don't --

1 Q I'm just asking you if you've ever ran into
2 that person.

3 A Well, I was told I was by him, but I -- yes.

4 Q Where were you?

5 A I was at the Four Queens.

6 Q And was there a conversation about what had
7 happened to you?

8 A Someone -- I think it was the Four Queens or
9 Fitzgerald. I was sitting at the poker table drinking a beer
10 and I was talking to somebody. And on the other side of him,
11 the guy leaned up and said, hey, I know you, you testified
12 against me in court. And I was like, what? And he said -- or
13 you -- whatever. Yeah. And I said, what? And then I said --

14 MR. ERICSSON: Your Honor, we would object to this in
15 that he's indicated he never even testified in court and we
16 haven't -- there's no foundation that this even relate --
17 relates to Carroll.

18 THE COURT: Your objection is noted, but overruled.

19 If you would -- if you would clarify.

20 MR. PESCI: Sure.

21 THE COURT: If you can't clarify, we'll strike it.

22 BY MR. PESCI:

23 Q Let me ask you this. Going back, were you
24 brought to court in order to testify?

25 A Yes.

1 Q And was a deal struck so that you didn't have
2 to testify?

3 A Yes.

4 Q Okay. But you physically showed up in the
5 courtroom?

6 A Yes.

7 Q Thank you. So did you have an interaction with
8 the person that was involved at the Four Queens?

9 A Yes.

10 Q All right.

11 MR. PESCI: Pass the witness.

12 THE COURT: Cross-examination

13 MR. ERICSSON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. ERICSSON:

16 Q Good afternoon, Mr. Blodgett.

17 A Good afternoon.

18 Q I just want to make sure that I understand what
19 happened that day. You indicated that you had gotten to this
20 location by bus; is that correct?

21 A Uh-huh. Yes. That's correct.

22 Q Before coming here today, did you have a chance
23 to review any records from this incident that took place eight
24 years ago?

25 A One little piece of paper. Uh-huh.

1 Q So did you read some things that -- that were
2 related to --
3 A That I wrote.
4 Q -- the event?
5 A I read my statement.
6 Q Did you have a chance to read the police
7 report?
8 A No.
9 Q Had you been drinking that day?
10 A Yes.
11 Q Had you been doing any type of illegal drugs
12 that day?
13 A No.
14 Q So if the police report indicates that -- that
15 you had been drinking that day, that would be accurate?
16 A Oh, yes. Yes.
17 Q And you indicated that a girl approached you
18 near the bus stop; is that right?
19 A Yes.
20 Q And do you remember the approximate age of the
21 girl?
22 A I have -- I don't know.
23 Q Okay. And that -- and that they were --
24 A I mean, it would be younger. I'd say anywhere
25 from 22 to less.

1 Q 22 or less.

2 A She was definitely an adult, but she may have
3 been 26, 27. I don't know.

4 Q You indicated that there were two young men who
5 were also with her.

6 A Uh-huh. Well, I don't -- yeah, I assumed they
7 were with her because she followed -- she -- whatever.

8 Q Okay. Well, do you -- you said that they
9 seemed young, these two young men; correct?

10 A Correct.

11 Q And that one or both of the young men grabbed a
12 bag that you had with you?

13 A My leather briefcase like thing. It's like a
14 doctor's bag.

15 Q And then you chased after those two young men
16 and that young woman; correct?

17 A Uh-huh.

18 Q Now, you testified that at some point later you
19 catch up with the young woman across the street; correct?

20 A Yep.

21 Q And you're having a confrontation with her at
22 that point trying to get your bag back; correct?

23 A Right, something like that affect, yeah.

24 Q And then there were two other young men who
25 arrived who were different than the two who had taken your

1 bag; correct?

2 A That's correct.

3 Q And you're having a confrontation with this --
4 this young lady demanding that she help you get your bag back;
5 correct?

6 A [nods head yes].

7 Q Is that right?

8 A Yes.

9 Q Okay. And then one or both of these other
10 individuals who were not there when your bag was taken, they
11 get into a fist fight with you; correct?

12 A Correct.

13 Q And there weren't any weapons used --

14 A No.

15 Q -- in the fist fight; correct?

16 A No.

17 Q There were no weapons used against you; is that
18 right? A That's correct.

19 MR. ERICSSON: Court's indulgence.

20 BY MR. ERICSSON:

21 Q Sir, you don't see anybody -- or do you see
22 anybody in court today that you know was involved in that
23 incident eight years ago?

24 A Not really. I mean, no. I mean, I really, you
25 know -- no would be my answer. I don't -- I don't know. I

1 don't know. I mean --

2 Q And so you don't know what involvement Mr.
3 Carroll had that day; do you?

4 A No, not at all. I don't.

5 Q And did you get into any type of physical
6 confrontation with the -- the two individuals who took your
7 bag?

8 A Oh, they were all four there fighting me. I
9 don't know who all hit me, but I know the two that came from
10 the back were bigger, they seemed to be older, that's the one
11 who hit me. He knocked me out. But there was -- I don't
12 know. It was quite the scuffle going on there for a minute.
13 I guarantee you that. I was holding my own for a minute. I
14 mean, I -- I would like to say that my memory isn't all that
15 well. This did happen eight years ago, and I read the
16 statement that I wrote, and that's -- that's what I can
17 remember. That's all correct. And I'll tell you another
18 thing too. I got knocked out and I was like --

19 Q Okay.

20 A -- you know, I've had a, what do you call
21 them --

22 Q Okay. Sir, let me -- let me ask the questions
23 to keep you focused here.

24 A Okay.

25 Q So you do remember preparing a statement that

1 day; correct?

2 A Yes.

3 Q Okay. And you remember at some point the
4 police asked you to try to identify people involved; is that
5 right?

6 A Yes.

7 Q And do you remember telling the police that it
8 was hard for you because for you --

9 A No. No, because --

10 Q Sir.

11 A -- because -- do you want me to answer?

12 Because he --

13 Q Well, let me finish the question --

14 A Okay.

15 Q -- and then you can answer. Do you remember
16 telling the police that to you all black men look similar?

17 A No, I didn't say that at all. I knew when they
18 brought that guy back, I knew that was the guy who hit me or
19 whatever. I mean, I knew that was -- he was involved in it.
20 I knew that because --

21 Q But the -- the one -- the one that you --

22 A -- his look.

23 Q -- that you ident --

24 A I never got a really good look at his face, but
25 I knew what he was wearing or whatever. He was one of the

1 guys. And even when they brought him back when they asked me
2 is that him, I said, yes, that's him, and he had my money
3 too --

4 Q Okay.

5 A -- as well as that.

6 Q And -- but the individual that you identified
7 was not one of the first two who had taken your bag?

8 A That's correct.

9 Q Okay. Thank you.

10 MR. ERICSSON: No further questions.

11 THE COURT: Redirect, Counsel?

12 MR. PESCI: No.

13 THE COURT: Mr. Blodgett, thank you, sir, for your
14 testimony here today.

15 Ladies and gentlemen of the jury, do you have any
16 questions for Mr. Blodgett? I see there are no juror
17 questions.

18 Mr. Blodgett, thank you, sir, for your testimony.
19 You may be excused. Please don't discuss your testimony with
20 anyone other than the attorneys or the parties.

21 Counsel for the State, you may call your next
22 witness.

23 MR. DiGIACOMO: Anabel Espindola.

24 Judge, may we approach on the other matter?

25 THE COURT: You may.

1 (Off-record bench conference)

2 THE COURT: Would you please raise your right hand
3 and be sworn, ma'am.

4 ANABEL ESPINDOLA, STATE'S WITNESS, SWORN

5 THE CLERK: Please state and spell your name.

6 THE WITNESS: Anabel Espindola, A-n-a-b-e-l,
7 E-s-p-i-n-d-o-l-a.

8 THE COURT: How do you spell your last name again,
9 ma'am?

10 THE WITNESS: E-s-p-i-n-d-o-l-a.

11 THE COURT: Thank you.

12 You may proceed, Counsel.

13 MR. DIGIACOMO: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MR. DIGIACOMO:

16 Q Good afternoon, ma'am.

17 A Good afternoon.

18 Q Did you know -- well, let me ask you this: How
19 did you meet the guy we've been calling Mr. H, Luis Hidalgo,
20 Jr.?

21 A I met him almost 20 years ago at a funeral.

22 Q And there has been a description in this trial
23 up until, well, I guess right now, as you being a manager that
24 worked for Mr. H. Was that your sole relationship to Mr. H?

25 A No.

KARR REPORTING, INC.

110

Volume 10 - 2111

1 Q Would you describe for the ladies and gentlemen
2 of the jury what your relationship to him was.

3 A We had a relationship. I was his mistress for
4 15 years.

5 Q Okay. How old were you when you started that
6 relationship?

7 A 18.

8 Q And how did the relationship -- I'm assuming
9 you're no longer his mistress.

10 A No.

11 Q How did the relationship end?

12 A I went to jail and we hadn't spoken.

13 Q And I'm assuming you went to jail for this
14 case.

15 A Yes.

16 Q I want to talk about a couple of things related
17 to this case. We've heard testimony previously about a place
18 called Simone's. Can you describe for the ladies and
19 gentlemen of the jury what Simone's was.

20 A It was an automobile repair shop.

21 Q And who was the owner of that?

22 A Mr. H.

23 Q And how long had he owned that?

24 A We opened the shop September of '99.

25 Q Prior to September of '99, where did Mr. H

1 live?

2 A California.

3 Q Did he have a business there?

4 A Yes, he did.

5 Q When you meet Mr. H, does he have a business?

6 A Yes.

7 Q What is it?

8 A Hidalgo's AutoPlaza or auto body.

9 Q So after leaving California, he comes here,
10 starts Simone's. At some point, does Mr. H get involved in
11 the Palomino?

12 A Yes.

13 Q How does that come about?

14 A He has a friend, Dr. Stertz, who they were
15 looking for some property here in Las Vegas so they could go
16 ahead and make some additional income. And they found the
17 Palomino.

18 Q And did Mr. H buy the Palomino or did
19 Dr. Stertz?

20 A Dr. Stertz did.

21 Q And did there come a point in time when there
22 was some sort of agreement where Mr. H would take over the
23 Palomino for Dr. Stertz?

24 A Yes.

25 Q And without getting into the specifics of that,

1 did Mr. H buy the Palomino from Dr. Stertzter or was he running
2 it and Dr. Stertzter was the guy who actually owned it?

3 A Mr. H was running it and Dr. Stertzter actually
4 owned it.

5 Q Okay. I want to kind of move forward into
6 2005. Did you know Timothy Hadland?

7 A Yes.

8 Q How did you know him?

9 A He was the doorman. We briefly said hello and
10 good-bye to each other. We didn't have any type of
11 relationship.

12 Q So let me back up. You're a manager at
13 Simone's?

14 A Mm-hmm. Yes.

15 Q Is that a yes?

16 A Yes. Sorry.

17 Q Okay. And your role -- what would you describe
18 your role at Simone's doing as the manager?

19 A Did the hiring and firing, did all the
20 insurance paperwork. I was actually Mr. Hidalgo's business
21 partner.

22 Q Okay. And then at the Palomino, what was your
23 role?

24 A I was the general manager.

25 Q Did there come a point in time about a week

1 before Mr. Hadland's death when somebody comes to you with
2 information related to Mr. Hadland?

3 A Yes.

4 Q And who came to you?

5 A Little Luis.

6 Q Little Luis came to you. What did he tell you
7 that --

8 A That there was -- that Mr. Hadland was stealing
9 from the -- well, not stealing, but he was taking the tips
10 from the club.

11 Q And did he explain to you how that allegedly
12 worked or did you know?

13 A Yes. I knew.

14 Q Okay. How did it work?

15 A Normally, anyone who works at the front door,
16 when the cab drops them off, they write a ticket for the
17 number of general customers that come in, and once that ticket
18 is written, it gets taken to the back cab office. Once that
19 is done, they go ahead and pay the cab out for the admissions
20 of the customers.

21 Q So then how was TJ figuring a way to -- or how
22 were you told that TJ was figuring a way to take money?

23 A He was adding -- supposedly he was adding
24 customers to the tickets. So what would happen is once the
25 cab got paid out, Mr. Hadland would be paid the difference.

1 Q So he was getting a kickback from the cab
2 drivers --
3 A Yes.
4 Q -- for upping the numbers?
5 A Yes.
6 Q When you learned from Little Lou or at least
7 his allegation that this was happening, what did you do?
8 A I said that he needed to be fired.
9 Q Who did you tell to fire him?
10 A Arial.
11 Q Who is Arial?
12 A She's the officer manager at the club.
13 Q Now, we've heard testimony that by this point
14 Deangelo Carroll was an employee of the Palomino Club.
15 A Yes.
16 Q First of all, do you see Deangelo here today?
17 A Yes.
18 Q Can you point him out and describe something
19 he's wearing?
20 A He's wearing a gray tie with a blue shirt.
21 MR. DIGIACOMO: May the record reflect the
22 identification of the defendant.
23 THE COURT: The record will so reflect.
24 MR. DIGIACOMO: Thank you, Judge.
25 BY MR. DIGIACOMO:

1 Q How did you first come to know of Deangelo
2 Carroll?

3 A I knew he was friends with Little Luis, and he
4 was hired at the club. I couldn't tell you for sure, it was
5 so long ago, if he used to come to the shop prior to being
6 hired or not.

7 Q You kind of just said it. What was your
8 understanding of Mr. Carroll's relationship to Little Lou?

9 A Little Luis, they were friends.

10 Q I'm going to fast forward now to kind of a
11 couple of days before Mr. Hadland was killed. Had you ever
12 seen Deangelo Carroll with a firearm?

13 A Yes.

14 Q Can you tell us approximately how long prior to
15 the death of Mr. Hadland you saw him with it?

16 A Maybe a week.

17 Q Okay. And can you describe the firearm for us?

18 A It had a long barrel. It was silver.

19 Q Okay. Do you know the difference between kind
20 of the semiautomatic cop gun versus the kind of the cowboy
21 gun --

22 A Yes.

23 Q -- with the barrel? Okay.

24 So --

25 A It was the old style --

1 Q A revolver?

2 A -- a revolver.

3 Q And where did you see Mr. Carroll with it?

4 A He brought it up to Mr. Hidalgo's office or

5 Mr. H's office.

6 Q And that's upstairs at the Palomino?

7 A Upstairs at the Palomino.

8 Q And what did Mr. Carroll ask you to do with it?

9 A To put it away for him.

10 Q And did he tell you who authorized him to have

11 it put away at the club?

12 A Yes.

13 Q And what did he tell you?

14 A Mr. H.

15 Q And did you put it away?

16 A Yes, I did.

17 Q Did you ever see what happened to it after you

18 put it away?

19 A No.

20 Q Where did you put it?

21 A It was in the desk. There's a curio cabinet in

22 Mr. H's office and I put it in the filing -- well, in the

23 bottom cabinet, bottom drawer.

24 Q There has been -- the jury's heard kind of a

25 description of Mr. H's daughter Rosa. Did you know Rosa?

1 A Yes.

2 Q Did she have a drug problem?

3 A Yes.

4 Q And did there come a point in time when Mr. H
5 blamed Rosa's kind of boyfriend or friend for stringing her
6 out on drugs and those types of things?

7 A Yes.

8 MR. BUNIN: He's leading, Your Honor.

9 THE COURT: Objection sustained to the form of the
10 question.

11 BY MR. DIGIACOMO:

12 Q I just want to direct you to that point. At
13 some point, do you ever give any instruction to Deangelo
14 Carroll related to that situation?

15 A No.

16 Q Did you ever become aware that Deangelo Carroll
17 had ever been given any instruction related to that situation?

18 A I don't remember.

19 Q Had you -- prior to what you learned about the
20 death of TJ, had you ever known Mr. H to order anybody hurt
21 before or anything like that?

22 A No.

23 Q Okay. I'm going to direct you kind of forward
24 to the day of Mr. Hadland's death. In the early afternoon,
25 where are you?

1 A At Hidalgo -- at Simone's AutoPlaza.

2 Q And where in Simone's AutoPlaza would you have

3 been?

4 A My office.

5 Q During that time period, did you receive

6 communication from anybody?

7 A Yes.

8 Q Who was that?

9 A Mr. Carroll called me.

10 Q When Mr. Carroll called you, was there anybody

11 else in your office with you or were you just alone in the

12 office at the time?

13 A No. Mr. H and Little Luis were in the office.

14 Q When Mr. Carroll called you, what did he say?

15 A He called me and told me that Mr. Hadland was

16 badmouthing the club.

17 Q And did he give you any specifics as to

18 badmouthing the club?

19 A Not that I can recall.

20 Q And when you learned this information, what did

21 you do?

22 A I told Mr. H about it.

23 Q And what was Mr. H's initial reaction?

24 A He was upset, but more so Little Luis was.

25 They got into an altercation.

1 Q So Mr. H and Little Luis got into an
2 altercation?

3 A Yes.

4 Q What was -- you said Little Lou was more upset.
5 What was Little Lou saying?

6 A Little Luis was saying that he needed to handle
7 the situation with TJ, that he would never be like Galardi or
8 Mr. Rizzolo or any of the other club owners.

9 Q Did he mention anything that Mr. Rizzolo or any
10 of the other club owners had done?

11 A Yes, he mentioned that Mr. Rizzolo had a
12 customer beat up before.

13 Q What was Mr. H's reaction to his son saying
14 these things to you?

15 A Anger.

16 Q What did he tell Little Luis?

17 A Oh, God. Offhand, I don't remember completely.

18 Q How does the argument end?

19 A Little Luis storms out of the shop and Louie --
20 or Mr. H tells me to pack up my things because he wants to go
21 to the club immediately.

22 Q At that point, had Mr. H told Luis to do
23 anything related to Mr. Hadland?

24 A No.

25 Q Had Luis said anything to Mr. H about anything

1 that was going to happen to Mr. Hadland?

2 A No.

3 Q I'm going to fast forward. Do you actually

4 wind up at the club with Mr. H?

5 A Yes.

6 Q The Palomino Club?

7 A Yes.

8 Q Okay. And where are you in the Palomino Club

9 when -- during the business time at the Palomino?

10 A In Mr. H's office.

11 Q Is that normally where you would be?

12 A Yes.

13 Q Does there come a point in time when you see

14 Deangelo Carroll that night?

15 A Yes.

16 Q Where do you see him?

17 A He comes to Mr. H's office. He knocks on the

18 door and Mr. H opens it. They walk out.

19 Q At some point in time -- well, do you see Mr. H

20 come back?

21 A Yes.

22 Q Do you see Deangelo come back?

23 A Not until later that evening.

24 Q When Mr. H comes back, what's his demeanor

25 like?

1 A Nervous.

2 Q Does he say anything to you?

3 A Not at that time.

4 Q At some point?

5 A When Mr. H comes back into the office, he --

6 not the first time when he leaves, he comes back later and

7 asks me to make a phone call.

8 Q Who does he -- does he tell you where to make

9 the phone call from?

10 A Yes.

11 Q Where does he tell you to make the phone call

12 from?

13 A He tells me to go to the back room where the

14 safes are.

15 Q And at the Palomino, that kind of back area by

16 the safes, is that a normal place where you would be hanging

17 out or is that kind of a secluded area of the --

18 A It's a completely secluded area.

19 Q Okay. He tells you go to that back area. He

20 tells you to make a phone call. Who does he tell you to call?

21 A He asks me to call Mr. Carroll.

22 Q Okay. And does he tell you what it is you're

23 supposed to be telling Mr. Carroll?

24 A He tells me to tell Mr. Carroll to go to plan

25 B.

1 Q Do you question Mr. H, What the hell are you
2 talking about, at that point?

3 A No.

4 Q Why not?

5 A We've been together for years. I work for him.
6 He makes a -- tells me to do something, I normally did it.

7 Q Do you go back and have a phone call with
8 Mr. Carroll?

9 A Yes, I call Mr. Carroll.

10 Q Now, describe the kind of connection you have
11 with Mr. Carroll over the phone line. Was it -- could you
12 clearly him and he clearly hear you or just -- do you
13 remember?

14 A There was a bad connection. I believe I tried
15 to call him back or he tried to call me back. There was a
16 call back. I do recall that.

17 Q And are you able to relay to him or at least
18 you believe you relayed to him, Go to plan B?

19 A Yes.

20 Q Okay. By the time you're done having these
21 conversations with Mr. Carroll, do you know there's something
22 wrong?

23 A Yes.

24 Q Do you do anything about it?

25 A No.

1 Q When's the next time you see Mr. Carroll?
2 A Later that evening.
3 Q And where are you?
4 A I'm still in the office.
5 Q Where's Mr. H?
6 A He's in the office as well.
7 Q And Mr. Carroll, how is it you see him?
8 Describe that for us.
9 A He comes to Mr. H's door. He knocks on the
10 door, comes in, and I'm sitting behind the desk. Mr. H is
11 sitting in front of me to my right. Mr. Carroll comes in and
12 tells Mr. H it's done.
13 Q And when he says to Mr. H it's done, what's
14 Mr. H's response?
15 A God. I know he has a nervous demeanor. I
16 couldn't tell you the exact words.
17 Q Okay. Do you learn about anybody else that's
18 associated with whatever done is in the club?
19 A No.
20 Q At some point, do you -- does Mr. Carroll say
21 anything about the shooter in the case?
22 A Yes.
23 Q What does he say?
24 A He's -- he says he needs the money. So Mr. H
25 instructs me to go to the back safe to get \$5,000.

1 Q Do you ever see the shooter at the Palomino
2 that night?

3 A No.

4 Q Okay. Was there anybody banging on the office
5 door while this conversation --

6 A No.

7 Q -- with Mr. Carroll's going on?

8 A No.

9 Q Okay. And Mr. H tells you to go back to the
10 safe?

11 THE COURT: Counsel, it's 3:00 o'clock. It's about
12 an appropriate time for us to take our afternoon break. Even
13 though you're not finished with this witness, I think it would
14 be appropriate.

15 Ladies and gentlemen of the jury, we're going to
16 take a 15-minute recess. We'll be in recess until 3:15.
17 During the recess, please don't discuss the case with anyone,
18 read, watch, or listen to any report of anything having to do
19 with this trial.

20 We'll be in recess until 3:15. Thank you.

21 (Court recessed at 3:04 p.m. until 3:19 p.m.)

22 (In the presence of the jury.)

23 THE COURT: Good afternoon, ladies and gentlemen.
24 Welcome back to continuation of the penalty hearing in the
25 State of Nevada versus Deangelo Carroll. The record will

1 reflect the presence of the parties and counsel, all officers
2 of the Court and our full jury and alternate jurors.

3 Ms. Espindola, you are still under oath.

4 Mr. DiGiacomo, you may continue with your
5 examination.

6 MR. DIGIACOMO: Thank you.

7 BY MR. DIGIACOMO:

8 Q After you go to the back and you get -- how
9 much money did you get?

10 A \$5,000.

11 Q Okay. Is that the only money you've ever given
12 out in this case?

13 A No.

14 Q Okay. When was the next time you gave out
15 money?

16 A A few days later when I saw Mr. Carroll in the
17 back office at Simone's or Room 6.

18 Q And since you've been charged in this case,
19 you've heard a wire recording of that particular conversation?

20 A Yes.

21 Q Let me back up then. From the date of
22 Mr. Carroll coming back saying it's done up until the point
23 when you're in Simone's on the wire, did you give any other
24 money than the \$5,000 to Mr. Carroll?

25 A No.

1 Q You've heard, I'm assuming, through the course
2 of this trial or course of this proceedings against a number
3 of people a figure of \$6,000. Do you have any idea where that
4 number came from?

5 A No.

6 Q Okay. You get the \$5,000. What do you do with
7 it?

8 A I put it on the desk.

9 Q And what happens to it?

10 A Mr. Carroll takes it.

11 Q And where does -- does he leave or does he
12 stay?

13 A He leaves.

14 Q After he leaves, describe for me Mr. H's
15 demeanor.

16 A Very antsy, nervous. I asked him, What have
17 you done, actually in a more colorful verbiage.

18 Q And what is his reaction to you asking these
19 things like, What have you done?

20 A He doesn't say anything. He just wants to
21 leave. He's -- well, actually he wants to watch the news.

22 Q Okay. At some point does he make some
23 statements to you related to Mr. Carroll and what he's done?

24 A The next day he sees -- he sees it on the news
25 in the morning or he has me look through the TV to see if

1 there's anything about the club on the news.

2 Q And at some point do you see an article -- or a
3 television news program related to the death of Mr. Hadland?

4 A Yes.

5 Q And once you see that, do you and Mr. H have a
6 conversation?

7 A Yes.

8 Q And describe for us that conversation.

9 A Again, I ask him, What have you done? He is
10 very nervous. He says he needs to talk to his attorney.

11 Q Does he ever make any statements about what he
12 told Mr. Carroll or anything related to what he remembers
13 telling Mr. Carroll?

14 A Not at that point. A few days later he lets me
15 know that -- or he actually makes a statement saying, I don't
16 know what I told him to do. I'm -- I want to kill myself. I
17 mean, he's really anxious.

18 Q Okay. I'm going to fast for -- well, just
19 briefly, do you go see an attorney with Mr. H?

20 A Yes, I do.

21 Q And does there come a point of time when Mr. H
22 asks something of you related to Mr. Carroll?

23 A Yes, he asks me to speak to Mr. Carroll.

24 Q And did he tell you why he wasn't going to
25 speak to Mr. Carroll?

1 A Because he could be wired.

2 Q Why do you do it?

3 A Why did --

4 Q Why do you go have a conversation with

5 Mr. Carroll?

6 A As I said earlier, Mr. H and I had been

7 together at that point for 15 years. I was in love with him.

8 We were business partners and partners in every sense of the

9 word, and I've never really questioned anything, and I saw how

10 nervous and stressed he was. And not only that, he was

11 mentioning of killing himself.

12 Q So how do you get a hold of Mr. Carroll?

13 A I call Mark Wade to have Mr. Carroll meet me at

14 the body shop.

15 Q And I'm not going to go through both wires, but

16 that's you on both recordings?

17 A Yes.

18 Q Okay. And you've listened to those recordings

19 on a number of occasions?

20 A Yes.

21 Q There has been some discussion about a

22 statement you make about some dispute -- he wanted him beat or

23 we wanted him beat, but there's -- in the first recording,

24 there's a statement about -- you make about beating. Do you

25 remember that?

1 A Yes.

2 Q Why is it you make that statement to
3 Mr. Carroll?

4 A It's based on events that happen prior to;
5 seeing the fact that Mr. Carroll -- not Mr. Carroll,
6 Mr. Hadland had passed on; the fact that Mr. H and his son
7 were arguing prior to that in the office; Little Luis
8 mentioning the beating, that Mr. Rizzolo had somebody at his
9 own club beaten; and the fact that Louie mentioned that he
10 didn't know what he told him. It was just an accumulation of
11 things --

12 Q So those are your words?

13 A -- that I came to the conclusion -- yeah, those
14 were my words.

15 Q Now, had you been warned when you were at the
16 lawyer's office that Mr. Carroll might be wired?

17 A Yes.

18 Q Okay. So you knew that in the room there that
19 that possibility existed?

20 A Yes.

21 Q Okay. And you knew that on the next day, the
22 second day?

23 A Yes.

24 Q After the second day, describe what happens to
25 you after Mr. Carroll leaves, the recording's over. What

1 happens to you?

2 A I leave the shop and I get pulled over and
3 arrested.

4 Q You go to jail?

5 A Yes.

6 Q And are you in jail for the three years up
7 until you enter your plea?

8 A Almost four.

9 Q Well, up until you enter your plea?

10 A Yes, up to the plea, yes.

11 Q And after you entered your plea, did you remain
12 in jail through your testimony in Mr. H's trial?

13 A Yes.

14 Q Now, prior to you providing your statement to
15 the police, Mr. H, had he been arrested yet?

16 A No.

17 Q Had he been charged with anything?

18 A No.

19 Q Have you been sentenced --

20 A No.

21 Q -- as of today?

22 A No.

23 Q Okay. Do you have an understanding of what
24 your maximum exposure is in your sentence?

25 A Yes.

1 Q What is that?

2 A Eight to 20 years.

3 Q Of which you've already served four?

4 A Correct.

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

6 THE COURT: Cross-examination.

7 MR. BUNIN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BUNIN:

10 Q Now, as you just said, Ms. Espindola, you are a
11 convicted felon.

12 A Yes.

13 Q You pled guilty to manslaughter?

14 A Correct.

15 Q I'm going to get back to the guilty plea and
16 talk about that a little bit later with you, okay.

17 For now let's talk about some of the events on -- in
18 May of 2005. And I'm going to go through a couple of things
19 that Mr. DiGiacomo just went just to make -- through just to
20 make them clear to the jury, okay?

21 A Yes.

22 Q In May of 2005, you managed Simone's auto shop,
23 correct?

24 A Yes.

25 Q And the owner of Simone's auto shop was Mr. H?

1 A Correct. We were business partners, but I only
2 owned 1 percent.

3 Q Okay. So he was the great majority owner of
4 the shop?

5 A Yes.

6 Q And Mr. H is Luis Hidalgo, Jr.; is that
7 correct?

8 A Yes.

9 Q Okay. And at the shop you -- well, you did the
10 books?

11 A Yes.

12 Q You managed employees?

13 A Yes.

14 Q You pretty much did everything except actually
15 work on vehicles, right?

16 A Correct.

17 Q Okay. Now, you also worked at the Palomino
18 Club?

19 A Yes.

20 Q This was also owned by Mr. H?

21 THE COURT: No.

22 THE WITNESS: No, it was by Dr. Stertzner.

23 BY MR. BUNIN:

24 Q Mr. H was buying the club From Dr. Stertzner?

25 A Yes.

1 Q So Dr. Stertzner still owned the club and Mr. H
2 was paying an agreed upon amount each week in order to buy the
3 club from him?

4 A When he was able to. There was times that
5 payments weren't able to be made.

6 Q Prior to May of 2005, Mr. H was attempting to
7 buy the club from the doctor?

8 A Yes.

9 Q And made an agreement to make payments and had
10 made some payments?

11 A Correct.

12 Q Didn't make all the payments he was supposed to
13 make, but he certainly was in the process of attempting to buy
14 the club?

15 A Correct.

16 Q And you worked for Mr. H at the Palomino Club
17 too, correct?

18 A Correct.

19 Q And --

20 A Well --

21 Q -- part of what you did for the club was you --
22 you also worked for the doctor at the club?

23 A Yes.

24 Q Okay. You worked for the Palomino Club,
25 whoever owned it?

1 A Correct.

2 Q Part of what you did was you made deposits?

3 A Yes.

4 Q You did all money transfers; is that correct?

5 A Correct.

6 Q You had keys to all the safes?

7 A I had combinations to one of the safes, two of

8 the safes downstairs and the one upstairs.

9 Q Okay. And in the safes at the Palomino Club

10 there was approximately \$155,000 in cash in the middle of May

11 of 2005?

12 A Correct.

13 Q All right. Now, Little Lou, the guy we keep

14 talking about, is also named Luis Hidalgo; is that correct?

15 A Correct.

16 Q And he is the son of Mr. H?

17 A Correct.

18 Q And he also worked at the Palomino Club?

19 A Correct.

20 Q Now, you were -- based on all these duties that

21 I talked about and your relationship with Mr. H, you were

22 trusted by Mr. H and Little Lou, were you not?

23 A Yes.

24 Q You had serious responsibilities to both of

25 those businesses?

1 A Yes.

2 Q That you -- you had input in business decisions
3 concerning both of the businesses with Mr. H?

4 A Yes.

5 Q Now, you testified just now about a
6 conversation that occurred between Little Lou and Mr. H on
7 May 19 of 2005 at Simone's, right?

8 A Correct.

9 Q May 19th is the day Timothy Hadland was killed,
10 or late that night, early the next morning.

11 A Okay.

12 Q And so the conversation you're talking about
13 occurred that day, May 19th?

14 A Correct.

15 Q Now, what you said is Deangelo called and said
16 that Timothy Hadland had gone to another club and he was
17 badmouthing the Palomino Club, correct?

18 A That he was -- yes.

19 Q And this conversation was one that he had with
20 you, right, on the phone?

21 A That Mr. Carroll called me.

22 Q Yes.

23 A Yes.

24 Q So you were the one speaking to Mr. Carroll on
25 the phone?

1 A Correct.

2 Q And then you relayed this information to H and
3 Little Lou who you were with?

4 A Correct.

5 Q And you were all together at Simone's
6 AutoPlaza?

7 A Yes.

8 Q All right. And then you were present during
9 the conversation that Little Lou and Mr. H had right after you
10 relayed Deangelo's message?

11 A Yes.

12 Q If somebody was hurting the club's business,
13 was that something that you and Little Lou and Mr. H would
14 have wanted to know?

15 A Yes.

16 Q Now, the telephone call that Deangelo made, it
17 was in the afternoon of May 19th?

18 A It was late afternoon, early evening. I
19 couldn't tell you the exact time.

20 Q And I wrote down 4:58 p.m. Does that sound
21 right?

22 A Okay.

23 Q Well, if it doesn't sound right, tell me. If
24 that sounds about right --

25 A That sounds about right.

1 Q Okay. And that was the first time that you
2 talked to Deangelo on May 19th of 2005?

3 A Yes.

4 Q And that was the first time he had ever relayed
5 that information to you?

6 A Yes.

7 Q At 4:58 p.m., May 19th, right, just to be
8 clear?

9 A Right.

10 Q Now, once you relayed that information to
11 Little Lou and Mr. H, that's when this heated conversation
12 occurs that you just testified about?

13 A Correct.

14 Q But during that conversation, according to your
15 testimony, no agreement was ever made to hurt Timothy Hadland,
16 right?

17 A Correct.

18 Q And you never, at any time, according to your
19 testimony, heard any conversation between anybody where there
20 was an agreement made to harm Timothy Hadland?

21 A Correct.

22 Q You never agreed, according to your testimony,
23 for anything ever to happen to Timothy Hadland either. That's
24 your testimony?

25 A Correct.

1 Q Okay. Now, the first time you heard anything
2 happened, according to your testimony just now, was when
3 Deangelo came into the club late on May 19th or early
4 May 20th, right?

5 A Correct.

6 Q And he met with you and Mr. H up in Mr. H's
7 office?

8 A When he came into the office, yes.

9 Q And that's in the Palomino Club?

10 A Yes.

11 Q And the only words that I believe you said that
12 Deangelo said are, It's done, right?

13 A That's what he said when he walked in.

14 Q He didn't say, We just killed somebody. He
15 said, It's done?

16 A He said, It's done.

17 Q Okay. Deangelo didn't explain any of the
18 details at that time as to what, It's done, meant?

19 A Right.

20 Q Neither did Mr. H?

21 A Correct.

22 Q Now, you, at that point, had no idea whether or
23 not any plan was followed because you're not aware of what the
24 plan was?

25 A Correct. An assumption was made on my part at

1 that point.

2 Q And I'm not asking you your assumption. I'm
3 asking you what you said you knew, and you said you never
4 heard any agreement about anything; isn't that correct?

5 A Correct.

6 Q So you don't know what the plan was?

7 A Correct.

8 Q And you don't know if Deangelo or KC or anybody
9 else followed any plan? You have no idea?

10 A Correct.

11 Q All right. And you didn't, at that point, say,
12 What's going on? You didn't ask Deangelo any questions at
13 that point?

14 A No.

15 Q What you did is what you were told to do by
16 Mr. H at that point, correct?

17 A Correct.

18 Q And you testified that Mr. H said to get money
19 from the safe?

20 A Correct.

21 Q And you went to the safe?

22 A Yes.

23 Q And you had the key or the combination of this
24 particular safe?

25 A Yes.

1 Q And you took \$5,000 out of it?

2 A Yes.

3 Q And you brought it back into the office?

4 A Correct.

5 Q And you put it on the desk?

6 A Yes.

7 Q Between Mr. H and Deangelo?

8 A Yes.

9 Q And you have no personal knowledge as to what

10 happened to that money after that point?

11 A Deangelo grabbed the money.

12 Q And you don't know anything beyond that?

13 A I don't know anything beyond that.

14 Q All right. Now, you've testified that you

15 didn't speak to Deangelo again until May 23rd of 2005, right?

16 A The day I was wired, a few days after.

17 Q So between the time you saw Deangelo at the

18 Palomino Club on May 20th and the time Deangelo was wired on

19 May 23rd, you didn't have any conversation with Deangelo

20 Carroll. That's your testimony?

21 A That's my testimony.

22 Q All right. And this next conversation you have

23 on May 23rd is at Simone's?

24 A Correct.

25 Q Now, you've testified today that you had

1 concerns that Deangelo might be wired, right?

2 A Yes.

3 Q But you didn't know whether or not Deangelo was
4 wired?

5 A Correct.

6 Q And, in fact, when you spoke to him, you
7 absolutely did not know whether or not Deangelo was wired?

8 A Correct.

9 Q Now, Deangelo, as it turns out, did record a
10 conversation with you on May 23rd, right?

11 A Correct.

12 Q And Little Lou was also in the room?

13 A Yes.

14 Q And as it turns out, Deangelo did this while
15 corroborating with the police; is that correct? That's what
16 you learned later?

17 A That's what I learned later.

18 Q Had you known Deangelo was recorded at that
19 time, had you known, you wouldn't have spoken to him?

20 A Correct.

21 Q Now, Deangelo came to the office on
22 May 23rd because you actually summoned him there. You had
23 somebody else call him and tell him to come to the office?

24 A Correct.

25 Q In fact, Deangelo recorded you twice without

1 your knowledge on May 23 and May 24?

2 A Yes.

3 Q And again, had you known he was recording, you
4 wouldn't have spoken to him on either of those occasions?

5 A Correct.

6 Q And at some point prior to you changing your
7 plea, you listened to these tapes?

8 A Yes.

9 Q And you spent a lot of time listening to these
10 tapes?

11 A Yes.

12 Q You were -- in fact, when you spoke to
13 Deangelo, you were so concerned, you confronted him and said,
14 You're not -- something along the lines of, You're not wearing
15 a recording, you're not wired; is that correct?

16 A I asked him if he was wired. He said no.

17 Q All right. Now, once you were satisfied he
18 wasn't wearing a wire, you did speak with Deangelo, correct?

19 A Correct.

20 Q You spoke with him honestly?

21 A I -- yes, I actually was relaying
22 information --

23 Q Yes or no.

24 A -- that Mr. --

25 Q You spoke with -- I'm sorry. You spoke with

1 him honestly, is my question.

2 A Yes.

3 Q Okay. In fact, when you were first arrested on
4 May 24th after the second recording, you were speaking to the
5 police, weren't you, initially?

6 A For --

7 Q Do you remember initially giving a statement to
8 the police after you were arrested?

9 A I did speak the hem briefly.

10 Q And during this brief conversation with the
11 police, that's when one of the detectives leaned over and told
12 you Deangelo had recorded you?

13 A Correct.

14 Q That's the first time you learned that you were
15 recorded?

16 A Correct.

17 Q And at that point, well, you invoked your right
18 to an attorney and stopped speaking, right?

19 A Correct.

20 Q Okay. So let's talk about what was said when
21 you spoke to Deangelo in these recordings, okay. Deangelo
22 early on told you something along the lines of the person that
23 shot Timothy wanted more money. Do you remember him saying
24 that?

25 A Yes.

1 Q And then when Deangelo said that, you didn't
2 know if what Deangelo was saying to you were true or if it's
3 what the police wanted him to say. You have no idea?

4 A I have no idea.

5 Q And then Deangelo said to you that Rontae and
6 Jay Jay might go to the cops because they didn't get paid.
7 Remember Deangelo saying that to you on these tapes?

8 A Yes.

9 Q And you don't know if Deangelo said that
10 because it's true or because it's something the police told
11 him to say. You have no idea?

12 A At that point I didn't know he was wired, so I
13 would assume it was true.

14 Q But the truth is, now that you know he was
15 wired, you don't know if Deangelo was saying something that
16 was true or something he was told to say by the police?

17 A Right.

18 Q And Deangelo said to you, Hey, what's done is
19 done. You wanted him fucking taken care of and we took care
20 of him. Do you remember Deangelo saying that to you?

21 A Yes.

22 Q And then you responded and you said, Why are
23 you saying this shit? What we really wanted was him fucking
24 beat up, if anything. We didn't want him fucking dead. That
25 was your response?

1 A Correct.

2 Q And again that was a truthful statement,
3 correct?

4 A Correct.

5 Q Taken care of meant beat up to you?

6 A Correct.

7 Q Then you said basically to Deangelo, How did
8 you let this happen? Do you remember kind of leaning that
9 direction with Deangelo?

10 A Yes.

11 Q And Deangelo said, How are we going to call it
12 quits? Fucking KC got mad and fucking I told you he went
13 fucking stupid and fucking shot the dude, not really nothing
14 we could fucking do about it. Do you remember Deangelo saying
15 that?

16 A Yes.

17 Q So when Deangelo says in here, I told you he
18 went stupid, what he's saying is, I already told you before
19 May 23rd KC went stupid and shot the guy, right?

20 A I never spoke to Mr. Carroll prior to --

21 Q That's your recollection?

22 A -- the tapes until the 19th when Mr. Hadland
23 was killed.

24 Q But you don't say on the tape at this point,
25 Well, you never told me that, Deangelo. You never told me

1 that. That's not something you said?

2 A That's not something I said, but I never spoke
3 to Mr. Carroll --

4 Q My question is, is that something you said? I
5 know you want to say right now -- and if the prosecutors want
6 you to say it, they get to do redirect and they'll get you to
7 say it, okay?

8 A I understand.

9 Q But you --

10 MR. DIGIACOMO: Can she be allowed to answer the
11 question, Judge?

12 MR. BUNIN: She is.

13 MR. DIGIACOMO: I mean, she starts to answer and
14 then he cuts her off for the next one.

15 MR. BUNIN: No, it's a yes or --

16 MR. DIGIACOMO: Can she be allowed to finish her
17 answer?

18 THE COURT: Excuse me. Mr. Bunin, you speak so fast
19 that most old people like myself can't comprehend what you're
20 saying. So if you would slow down just a little bit and then
21 give her a chance to answer the question, we'll all get along
22 better.

23 MR. BUNIN: I will slow down, but just to be clear,
24 I'm asking only yes or no questions, Your Honor. So I am
25 giving her a chance to answer the question.

1 BY MR. BUNIN:

2 Q And my question is, you never said, You never
3 told me that, right?

4 A Correct.

5 Q Okay. Now, during your conversation, you told
6 Deangelo to stick to his story or everybody's going to lose
7 everything, right?

8 A Correct.

9 Q And what you wanted Deangelo to do was to lie
10 to the police if they talked to him, right?

11 A Correct.

12 Q You came up with a story that you wanted
13 Deangelo to stick to when he talked to the police, right?

14 A No.

15 Q Well, you told Deangelo to quit his job at the
16 Palomino Club?

17 A Yes, I told him that, but it was based on
18 what --

19 MR. BUNIN: I'm sorry. It's a yes or no, Your
20 Honor, so I --

21 MR. DIGIACOMO: Judge, can she be allowed to answer
22 the question?

23 THE COURT: Your question was, You told him to quit
24 his job at the Palomino Club. Her answer to that was yes.
25 Your next question is?

1 MR. BUNIN: Thank you, Your Honor.

2 BY MR. BUNIN:

3 Q That you offered to pay him money weekly even
4 though he would no longer be working at the Palomino Club,
5 right?

6 A Yes.

7 Q And you wanted Deangelo to tell people that he
8 quit the club because his son was sick?

9 A Correct.

10 Q And you didn't want Deangelo around the club
11 anymore because you didn't want -- you were trying to prevent
12 him from talking to the police and the police being able to go
13 through with their investigation?

14 A Correct.

15 Q All right. Now --

16 A That was based --

17 MR. BUNIN: I'm sorry, Judge. She's answered the
18 question.

19 THE COURT: Ma'am, when the State asks you
20 questions, you'll be able to explain all these answers.

21 THE WITNESS: Okay.

22 THE COURT: Okay. You may continue, Counsel.

23 MR. BUNIN: Thank you.

24 BY MR. BUNIN:

25 Q In fact, what you said exactly to Deangelo

1 about what to say, and I'm going to read what you said, okay,
2 you said, All -- this is you speaking: All I'm telling you is
3 denial because I ain't fucking singing and I always said I
4 didn't know shit. I don't know shit. Fucking I don't know a
5 mother fucking thing and that's how I got to fucking play it.
6 I don't know a mother fucking thing.

7 That's what you said to Deangelo, correct?

8 A Correct.

9 Q And when you said you're not singing, you meant
10 testifying against others in court?

11 A I couldn't even answer that. I mean, that was
12 five years ago.

13 Q Okay. If you can't answer it, you can't answer
14 it.

15 When you said, I don't know a mother fucking thing
16 and that's how I, quote, got to play it. By got to play it,
17 what you really mean is you do know things that are going on,
18 but you have to lie and play it that way. Isn't that what you
19 meant?

20 A I was speaking based on what I was told to say
21 by Mr. H.

22 Q My question is, when you said, I don't know a
23 mother fucking thing and that's how I got to play it, by play
24 it, you meant you really do know but you now have to lie.
25 Isn't that what you meant by that statement?

1 A I -- honestly -- I'm being completely honest.
2 It was five years ago and without hearing the whole content
3 again, I could not --

4 Q You're being completely honest?

5 A -- give you a yes or no. I'm being completely
6 honest.

7 Q Throughout all of your testimony, right, not
8 just on this question?

9 A Yes.

10 Q Okay. Let's talk about -- that's fine. I
11 appreciate it. It's a long time.

12 Let's talk about your deal that you made with the
13 prosecutors that got you here today. You were arrested on
14 May 24th of 2005.

15 A Correct.

16 Q Just after the second recorded conversation
17 with Deangelo?

18 A Correct.

19 Q You just said, I think, that you were in
20 custody almost four years; is that right?

21 A Correct.

22 Q You've made many court appearances for various
23 reasons during the course of the time you were in custody;
24 isn't that right?

25 A Yes.

1 Q And every time they brought you into court --
2 well, you weren't dressed like you are today. You were
3 dressed in jail clothes?

4 A Correct.

5 Q And you had handcuffs?

6 A Yes.

7 Q And waist chains?

8 A Some of the times, yes.

9 Q Sometimes. And you sat in the box where the
10 jury is now, but with other people at the Clark County
11 Detention Center when you were in court, right?

12 A Yes.

13 Q All right. You were -- initially when you were
14 first arrested, you were denied bail when you first sought it;
15 isn't that right?

16 A Yes.

17 Q And then the judge in the case -- back then it
18 was a different judge, Judge Mosley, right?

19 A Correct.

20 Q He ordered no bail whatsoever when you first
21 applied for bail; is that correct?

22 A Yes.

23 Q So you had to remain in custody?

24 A Right.

25 Q At the time you were arrested, you were still

1 in your relationship with Mr. H?

2 A Correct.

3 Q So that had been going on about 15 years at
4 that point, your relationship?

5 A Yes.

6 Q You were hoping that Mr. H would post bail for
7 you?

8 A Yes.

9 Q On July 6th, 2005, you found out that the State
10 was seeking the death penalty against you?

11 A Correct.

12 Q The same prosecutors that are here today were
13 working on the case at the time; isn't that correct?

14 A Correct.

15 Q And they filed a notice that they were seeking
16 the death penalty against you, correct?

17 A Yes.

18 Q Now, your attorney filed a motion to have the
19 death penalty thrown out at that time?

20 A Yes.

21 Q And the judge denied that motion. Do you
22 remember that?

23 A Yes.

24 Q So you knew it was possible that you could die
25 over this?

1 A Yes.

2 Q Your attorney eventually appealed to the Nevada
3 Supreme Court and tried to have the death penalty dropped;
4 isn't that correct?

5 A Correct.

6 Q Now, the Supreme Court actually did remove the
7 death penalty at one point from your case in December of 2007;
8 right?

9 A Correct.

10 Q So for a year and a half you're facing the
11 death penalty and the Supreme Court removes it in December of
12 2007?

13 A Yes.

14 Q Okay. And at that point you again tried to get
15 bail because you no longer were facing the death penalty so
16 you thought you might be able to get a bail set?

17 A Correct.

18 Q On January 15th of 2008, these same prosecutors
19 filed a new death penalty notice against you. Do you remember
20 that? I don't remember the exact date, but do you remember
21 them filing a second death penalty notice against you?

22 A Yes.

23 Q Okay. So again you were facing the death
24 penalty?

25 A Correct.

1 Q A bail was eventually set for you in late
2 January of 2008, right?

3 A Correct.

4 Q And, of course, at this point you were not
5 happy that you again were facing the death penalty?

6 MR. DIGIACOMO: I object to that, actually, Judge.
7 That is a misstatement of the record.

8 MR. BUNIN: It's not a misstatement.

9 MR. DIGIACOMO: The Court said we could not file
10 that new notice. We filed it. She said it doesn't apply and
11 it nulled the death penalty.

12 THE COURT: Well, I don't think he's gotten to that.
13 I don't think he's gotten to that.

14 MR. DIGIACOMO: Well --

15 THE COURT: What he asked her was, In 2008, you were
16 facing the death penalty again --

17 MR. DIGIACOMO: She was.

18 THE COURT: -- and she wasn't happy about that. I
19 presume that she was for a certain period of time, not one
20 day, not one minute.

21 MR. DIGIACOMO: Not one minute. In December 2005,
22 they struck it. We tried to file it again. The Court said
23 no. She never faced the death penalty after the Court struck
24 it.

25 MR. BUNIN: They didn't strike it the day it was

1 filed. It was refiled in January 2008. She was aware she was
2 facing death.

3 THE COURT: All right. So what day was it struck by
4 the Court?

5 MR. BUNIN: I don't know. But I know in
6 January 2000 --

7 THE COURT: Counsel, all this stuff is on the
8 computer. I mean, if you know the day that they filed it, you
9 know the day the Court struck it, so --

10 MR. BUNIN: No. It's something I should know, and
11 you're correct. But I'm asking her at the time they filed it
12 she was aware that she was facing it again because this is the
13 time that she makes her deal, so that's the entire point I'm
14 trying to make, Your Honor.

15 MR. DIGIACOMO: It was stricken before she ever made
16 a deal.

17 THE COURT: Well, I presume the record is going to
18 speak for itself.

19 MR. BUNIN: I agree.

20 THE COURT: We probably have a huge box of the
21 record, and it is important, and we are going to find it right
22 now.

23 MR. BUNIN: Okay.

24 THE COURT: So look in those computers or look in
25 the boxes and let's find out the day the Court struck the

1 notice of seeking the death penalty.

2 You've got the boxes, the hard copies, the files?

3 MR. DIGIACOMO: If you go to the calendar for the
4 day the judge set bail, I think it was the exact same day she
5 did the exact same thing.

6 THE COURT: The clerk's going to look it up.

7 MR. BUNIN: If that's the case, it would be --

8 MR. DIGIACOMO: January 28th, 2008.

9 MR. BUNIN: -- January 24th.

10 MR. DIGIACOMO: 24th.

11 THE COURT: Of 2008?

12 MR. BUNIN: Yes.

13 THE COURT: Look for the 24th.

14 MR. BUNIN: January 15th it was refiled.

15 January 24 --

16 THE COURT: January 24, '08. See if there's minutes
17 from January 24th, '08 and what those minutes said.

18 MR. DIGIACOMO: Well, January 24th is just a minute
19 order, Judge.

20 THE COURT: And then go to January 28th, Mr. Bunin.

21 MR. BUNIN: I'm sorry. January 28th?

22 THE COURT: Well, I don't know. He said
23 January 24th is just --

24 MR. DIGIACOMO: January 15th, Judge, the -- I
25 believe it's the same day we filed it, but January 15th, if

1 you look at the Court minutes --

2 THE COURT: What happened on January 15th?

3 MR. DIGIACOMO: The Court stated the trial in this
4 matter would go forward on January 28th. The Supreme Court
5 decision in the matter struck the aggravators regarding the
6 death penalty with regard to Espindola and Hidalgos, so this
7 would not be a capital case. The Court goes on and then you
8 can find it in here or we can get the transcript out.

9 THE COURT: So look for January 15th then. Okay.

10 Now, in the minutes of the Court on January 15th,
11 did the Court say this was not going forward as a capital
12 case?

13 MR. BUNIN: I know that's the date the new notice
14 was filed and I don't know beyond it, Judge.

15 THE CLERK: The Court decision in this matter stated
16 [inaudible] the death penalty with regard to Espindola and the
17 Hidalgos. This will not be a capital case and there was no
18 reason not to go forward with what could have been [inaudible]
19 done months ago.

20 THE COURT: All right. So on January 15th, you're
21 representing as an officer of the Court that the State filed
22 or refiled a notice of death penalty.

23 MR. BUNIN: That's correct.

24 THE COURT: On January 15th, according to the
25 official minutes of the Court, the Judge said, It's been

1 stricken by the Supreme Court. It's not going to be a death
2 penalty case.

3 MR. BUNIN: I have no problem with any of that,
4 Judge. Thank you.

5 THE COURT: So -- okay. It all happened on the same
6 day. It all happened on January 15th.

7 MR. BUNIN: Okay.

8 THE COURT: So we're all clear.

9 MR. BUNIN: We're all clear.

10 BY MR. BUNIN:

11 Q On January 15th, you were aware that they tried
12 to file a death penalty notice against you again?

13 A Yes.

14 Q And for the year and a half prior to that,
15 other than from the end of December until January 15, you were
16 facing the death penalty?

17 A Correct.

18 Q And like you said earlier, you believed -- or
19 you certainly knew that it was possible you could have died
20 over this. At least that was your belief all the way until
21 the last moment towards the end of January 2008; isn't that
22 correct?

23 A Correct.

24 Q And even without the death penalty you were
25 facing life without the possibility of parole?

1 A Correct.

2 Q Even after January 15 of 2008, had your trial
3 gone forward two weeks later, you were facing life without the
4 possibility of parole?

5 A Correct.

6 Q Okay. Now, you again -- I believe I may have
7 already said this -- attempted to get bail once the death
8 penalty was struck in your case, right?

9 A Yes.

10 Q And a new bail was set on January 24th of 2008
11 or some bail, at least, was set; isn't that right?

12 A Correct.

13 Q And you couldn't afford to pay the bail on your
14 own?

15 A Correct.

16 Q And on January 30th of 2008, you told Mr. H
17 that he had one week to get you out of custody?

18 A Correct.

19 Q Also, you had learned around this time frame
20 that Mr. H was seeing another woman?

21 A People had made comments.

22 Q Okay. So people made comments to you that he
23 was seeing somebody else?

24 A Yes.

25 Q Okay. And Mr. H never bailed you out?

1 A No.

2 Q And it was right around this same time frame,
3 right near your trial and right near the time that Mr. H did
4 not bail you out after the week was up, that you made your
5 deal with prosecutors?

6 A Yes.

7 Q And at the time you made your deal with
8 prosecutors, you were upset with Mr. H?

9 A We had been -- we were still speaking. There
10 was rumor about him being with someone else since the moment I
11 had gone into jail.

12 Q Okay. My question is, you were upset with
13 Mr. H around the time you signed this agreement?

14 A Not really.

15 Q Okay. You -- as part of the deal, you agreed
16 to testify at Mr. H and Little Lou's trials?

17 A Yes.

18 Q The prosecution called you as a witness at
19 those trials?

20 A Yes.

21 Q You also agreed to testify at Deangelo
22 Carroll's trial?

23 A Correct.

24 Q You certainly, at the time you signed the
25 agreement, were upset with Deangelo Carroll?

1 A Yes.

2 Q You were upset that he wore a wire and taped
3 you for the police?

4 A Yes.

5 Q And you believe without Deangelo doing that,
6 they may never have had enough evidence to file any charges
7 against you?

8 A Correct.

9 Q Now, you met with various people before signing
10 your agreement; isn't that right? I'll go into who. You met
11 with prosecutors?

12 A Correct.

13 Q Mr. DiGiacomo and Mr. Pesci, you met with both
14 of them?

15 A Yes.

16 Q And you -- also, when you met with them, before
17 you signed your agreement, you actually didn't have to meet
18 with them at the jail, did you?

19 THE COURT: I'm sorry. I didn't hear your question.
20 You did what?

21 BY MR. BUNIN:

22 Q You did not have to meet with them at the jail?

23 A No.

24 Q They had you brought over to their office to
25 meet with them?

1 A Correct.

2 Q That was the first time you've been out of a
3 jail in three years at that point?

4 A Correct.

5 Q So at the DA's office you met with the
6 prosecutors as well as investigators from the prosecutor's
7 office; is that right?

8 A Yes.

9 Q And also you met with detectives?

10 A Yes.

11 Q The same detectives that were involved in
12 arresting you?

13 A Yes.

14 Q And you gave them information that you knew
15 about this case?

16 A Correct.

17 Q And you were giving them information in the
18 hopes that you would be able to secure a deal for yourself?

19 A When I -- yes, when I had spoken to my
20 attorney.

21 Q And none of the meetings you had with the
22 prosecutors or any of their investigators or detectives, none
23 of them were recorded; is that correct?

24 A Correct.

25 Q You don't know why they weren't recorded, do

1 you?

2 A I don't recall.

3 Q But you know -- so the only way we would know
4 about what was said in those meetings is based on your word;
5 isn't that right?

6 A Correct.

7 Q Now, you signed the agreement on
8 February 2nd of 2008?

9 A Correct.

10 Q Before you signed the agreement, you were
11 charged with, among other things, first-degree murder with use
12 of a deadly weapon?

13 A Yes.

14 Q And if you had lost at this trial, even without
15 the death penalty, again, at the trial that you were supposed
16 to have, you could have faced life without the possibility of
17 parole?

18 A Yes.

19 Q After you signed your deal, you were facing
20 charges that not only didn't carry the death penalty, but
21 didn't carry even the possibility of life, correct?

22 A Correct.

23 Q In fact, you pled guilty to voluntary
24 manslaughter?

25 A Yes.

1 Q You testified -- and basically how you
2 testified throughout all this is all you really did is assist
3 coconspirators after the fact. That's your testimony, right?

4 A Yes.

5 Q So if that's the case, your plea, I believe,
6 and you've heard it referred -- it was just a fictional plea
7 to manslaughter?

8 A Yes.

9 Q Because you claimed you didn't do anything that
10 would really fit the description of manslaughter. You just
11 assisted the coconspirators after the fact? That's your
12 claim?

13 A I would say yes, because I'm a little confused
14 as to --

15 Q Well, I don't want you to be. You're claiming
16 that you didn't know anything about what was going to happen
17 at Lake Mead before it happened?

18 A Correct.

19 Q So your plea is a fictional plea because you're
20 not agreeing that you did anything to cause the death of
21 Timothy Hadland?

22 A Yes.

23 Q Your testimony is you just assisted
24 coconspirators, but you just made this deal even though it's
25 not really what you did?

1 A Yes.

2 Q All right. I mean, you didn't care what you
3 pled guilty to as long as you had the possibility of being set
4 free, right?

5 A No. I actually had spoken --

6 Q It's a yes or no. You've answered it. Okay.

7 If you lost your trial, had it gone, you could have
8 faced life without. The best you could have hoped for would
9 have been 40 years to life if you were convicted of
10 first-degree murder with a deadly weapon or 40 years to 100
11 years; is that correct?

12 A Yes.

13 Q Okay. You ended up never having to face it
14 because you made this deal?

15 A Yes.

16 Q You knew the deal that you made might even get
17 you probation?

18 A Yes.

19 Q The worst you could get was the possibility of
20 parole after eight years?

21 A It's an eight to 20-year sentence.

22 Q So the worst you could do is having the
23 possibility of parole after eight years. That's the maximum
24 sentence, if that's what they sentence you to?

25 A Correct.

1 Q And you've already got four years of that under
2 your belt, right? You've already got four years credit?

3 A Yes.

4 Q So even if you go back in, you're eligible in
5 another four years, right?

6 A Yes.

7 Q Okay. You also knew at the time you made your
8 deal that Jay Jay had also made a deal?

9 A Who is Jay Jay?

10 Q I'm sorry. Jayson Taoipu.

11 A Yes.

12 Q You were aware he had also made a deal?

13 A Yes.

14 Q And you were aware that he also made a deal for
15 manslaughter?

16 A Yes.

17 Q And I believe he -- you were aware that he
18 was -- he already got probation in his deal?

19 A I don't believe I knew it at that time.

20 Q Okay. But also as part of the deal that you
21 made with prosecutors, they have to make no recommendation at
22 your sentencing, right?

23 A Correct.

24 Q So under your deal, they're not even allowed to
25 argue for prison time, the prosecutors?

1 A Yes.

2 Q And we talked about earlier you've been to
3 court many times since you've been arrested in these cases,
4 right?

5 A Yes.

6 Q And you've seen prosecutors, not just these
7 two, maybe others, argue at different sentencings, haven't
8 you?

9 A Yes.

10 Q And you've seen people go to jail after
11 prosecutors argue that certain defendants should go to jail.
12 You've seen that happen many times in court?

13 A Yes.

14 Q And as part of your deal, you didn't want
15 prosecutors to be able to argue that you should go to jail,
16 right?

17 A It was based on what my attorney had said.

18 Q Well, you certainly are happy that that's part
19 of your deal, aren't you?

20 A I believe it says they don't have --

21 Q My question is, are you glad that it's part of
22 the deal that the prosecution has to make no recommendation at
23 sentencing?

24 A Yes.

25 Q And that's better than having the prosecution

1 be allowed to argue at sentencing?

2 A I was under the assumption that they could
3 argue.

4 Q I'm going to cut you off again. It's a yes or
5 a no. If you don't understand it, I apologize. I'll repeat
6 it.

7 But that's better than having the prosecutors argue
8 for prison time at your sentence?

9 A Yes.

10 Q Good. Now, most people are sentenced, what,
11 within 30 to 90 days of filing a guilty plea agreement?

12 A Correct.

13 Q And that's your understanding, right?

14 A Yes.

15 Q And you haven't been sentenced yet, right?

16 A Correct.

17 Q It's been two years and several months and you
18 still haven't been sentenced?

19 A It has been a year since I got out of county.

20 Q That's not my question. You signed a guilty
21 plea agreement on February -- in February of 2008?

22 A Correct.

23 Q So most people would be sentenced within 30 to
24 90 days of February of 2008?

25 A Correct.

1 Q But over two years later you still haven't been
2 sentenced?

3 A Correct.

4 Q All right. You told -- you were told you
5 needed to testify before you actually were sentenced?

6 A Correct.

7 Q And the sentence -- your sentencing date has
8 been continually postponed and now there's not even a
9 sentencing date scheduled as you sit here today, is there?

10 A I didn't even realize that it had been
11 postponed. As far as I knew, there hasn't been one.

12 Q Okay. Also, as part of your agreement, the
13 district attorney can withdraw your deal if you don't testify
14 in accordance with the agreement?

15 A Correct.

16 Q So these prosecutors here that are putting you
17 on the stand and having you testify, if they don't think
18 you've testified in accordance with this agreement, they can
19 withdraw your deal completely?

20 A Correct.

21 Q And, of course -- well, your deal is to tell
22 the truth, right?

23 A Yes.

24 Q And, you know, the prosecutors, they, of
25 course, weren't present during any of the events or

1 conversations you ever had with Little Lou or Mr. H or
2 Deangelo Carroll, right?

3 A Correct.

4 Q They don't have any personal knowledge of the
5 truth?

6 A Correct.

7 Q Their information's based on many things,
8 including what you told them?

9 A Yes.

10 Q All right. Now, you testified at H's -- Mr. H
11 and Little Lou's trial in February of 2009, one year after you
12 made your agreement?

13 A Yes.

14 Q And shortly after you testified, I think it was
15 February 24th of 2009, you were released to house arrest?

16 A Correct.

17 Q So part of your deal from the prosecutors was
18 once you testify at the first trial, they'll send you home?

19 A Yes.

20 Q And you've been living on house arrest for over
21 a year now?

22 A Correct.

23 Q Which obviously is much better than sitting at
24 the Clark County Detention Center?

25 A Yes.

1 Q And you still haven't been sentenced because
2 you still hadn't testified against Deangelo. That's what
3 you're here doing today?

4 A Yes.

5 Q And after you testify at Deangelo's trial, then
6 you know you're finally going to be sentenced, right?

7 A Yes.

8 Q And you don't want the prosecutors to withdraw
9 your deal?

10 A No.

11 Q And you want to get probation?

12 A That would be nice, yes.

13 Q I'm sorry. You testified earlier about
14 something I've never seen or heard before. You said that
15 Deangelo for a couple of days had a gun. You said at the --
16 or least you saw him once with a gun at the Palomino Club,
17 right?

18 A Yes.

19 Q And then that gun, before Deangelo went
20 anywhere, was put away into a safe?

21 A It wasn't a safe. It's actually a curio
22 cabinet behind Mr. H's desk. It was in the drawer.

23 Q Okay. And you don't know what happened to the
24 gun after that?

25 A I don't remember.

1 Q This information, did you give it to the DA
2 back around January of 2008 when you were giving them
3 information prior to getting your deal?

4 A I don't remember.

5 Q You've spoken with the DA several times?

6 A I believe so.

7 Q I'm sorry?

8 A I believe so.

9 Q You believe you gave them that information back
10 around January 2008 when you were talking to them trying to
11 get a deal?

12 A I don't remember.

13 MR. BUNIN: Court's indulgence.

14 BY MR. BUNIN:

15 Q In the testimony you just gave about the gun,
16 it was Mr. H that told Deangelo to bring the gun upstairs?

17 A Yes.

18 Q Okay. And then Deangelo did what Mr. H told
19 him?

20 A I would assume so, yes. He brought the gun
21 upstairs.

22 Q You were present during that?

23 A I was the only one in the office when
24 Mr. Carroll brought the gun, so --

25 Q And left it in the office?

1 A Left it in the -- he was there when I put it in
2 the drawer.

3 Q And Deangelo then left without the gun?

4 A Yes.

5 Q And again, you have no idea what happened to
6 the gun after that?

7 A No.

8 Q Okay. You have no idea if Deangelo ever
9 carried it again. You just don't know?

10 A I honestly don't remember if he came a few days
11 later and grabbed it. I couldn't tell you for sure.

12 Q You don't know? Okay.

13 And your testimony, as you think about it now, is
14 that you don't recall talking to Deangelo the day after
15 May 19th, May 20th --

16 A No.

17 Q -- at the club?

18 Deangelo was present and you told him -- I'm sorry.
19 Deangelo was present and you talked to him about how to talk
20 to the police on May 20th. Don't you recall that?

21 A No.

22 Q All right.

23 MR. BUNIN: I have no other questions, Your Honor.

24 THE COURT: Redirect, Counsel.

25 MR. DIGIACOMO: Very briefly.

REDIRECT EXAMINATION

BY MR. DIGIACOMO:

Q There's some questions asked -- I just want to ask a couple of questions related to your negotiation. I'm assuming from the point you got arrested up until -- well, even up until today, you have a lawyer, right?

A Yes.

Q Okay. And you've had numerous conversations with that lawyer, I'm guessing.

A Yes.

Q Okay. And it's the same lawyer that came to see you shortly after getting arrested?

A Yes.

Q He still represents you today?

A Yes.

Q Okay. Now, this isn't the first time that somebody has suggested that you recently fabricated your story, correct?

A Correct.

MR. BUNIN: That's leading, your Honor. So I object to the form.

MR. DIGIACOMO: I'm just laying a foundation, Judge.

THE COURT: Your objection is noted.

You may continue, Counsel.

BY MR. DIGIACOMO:

1 Q Last time that there was a suggestion that you
2 had recently made up your story, did you authorize your
3 attorney to do anything?

4 A Yes.

5 Q What did you authorize your attorney to do?

6 A He went ahead and took the stand. I gave up my
7 right to attorney-client privilege.

8 Q And he was allowed to describe every
9 conversation you've ever had with him?

10 A Yes.

11 Q Is the story or the version of events that
12 you've told this jury the same version of events that you told
13 Mr. Oram shortly after your arrest?

14 A Yes.

15 MR. BUNIN: I object. One, it's boltering; and,
16 two, it's her opinion as to whether or not it's the same
17 story, so she can't answer that question.

18 MR. DIGIACOMO: Prior consistent statement, first of
19 all, and --

20 THE COURT: First of all, it assumes facts not in
21 evidence.

22 Who's your attorney?

23 THE WITNESS: Christopher Oram.

24 THE COURT: Now, ask you question.

25 BY MR. DIGIACOMO:

1 Q Okay. Did you tell Mr. Oram the same story
2 shortly after being arrested, the same version of events
3 shortly after being arrested, that you've told this jury?

4 A Yes.

5 Q Let's talk about a few other things.
6 Mr. Bunin, in his questions to you, suggested that somehow I
7 may have or Mr. Pesci may have the ability to decide whether
8 or not you're being truthful. Do you recall what your
9 agreement says about being truthful?

10 A That I need to tell the truth when I come to
11 court.

12 Q And do you recall off the top of your head who
13 makes the decision as to whether or not you're being truthful
14 or not?

15 A The Judge and the jury.

16 Q Okay. And, in fact, you have a written
17 agreement that kind of lays out kind of all your obligations,
18 correct?

19 A Yes.

20 Q I'm going to show you what's been marked for
21 purposes of identification as State's Proposed Exhibit
22 No. 228. Does that appear to be a copy of your guilty plea
23 agreement as well as your agreement to testify, outlining --

24 A Yes.

25 Q -- your obligations?

1 A Yes.

2 MR. DIGIACOMO: Move to admit 228.

3 THE COURT: It will be admitted.

4 (State's Exhibit 228 admitted.)

5 BY MR. DIGIACOMO:

6 Q A couple of other things. Mr. Bunin asked you
7 questions about you didn't do anything but aid some
8 coconspirators after it happened, correct?

9 A Correct.

10 Q I want to back up, first of all. Are you
11 telling this jury you didn't do anything wrong?

12 A No.

13 Q Are you being -- well, let me ask you this: Do
14 you think the punishment that you're potentially facing is
15 fair for what you did?

16 MR. BUNIN: Objection.

17 THE WITNESS: Yes.

18 THE COURT: Overruled -- I mean, objection
19 sustained. Objection sustained.

20 BY MR. DIGIACOMO:

21 Q Well, all right. Let me rephrase the question.

22 Mr. Bunin seemed to suggest that you think you're
23 not guilty of any crime. Do you think you're not guilty of
24 any --

25 MR. BUNIN: No, I object to that too. That

1 misstates it. What I clearly said was -- is that her
2 testimony is that she assisted the coconspirators afterwards,
3 and that is a crime, but her testimony is she did nothing
4 beforehand to assist. That's what she claims on the stand.
5 So that's a misstatement of my questions, Your Honor.

6 THE COURT: All right. So rephrase your question
7 accordingly, Mr. --

8 BY MR. DIGIACOMO:

9 Q Let me put it this way: The phone call you had
10 with Mr. Carroll telling him to go to plan B, is it your
11 understanding that happened before or after Mr. -- or
12 Mr. Hadland got taken --

13 A Before.

14 Q Okay. So when you assisted Mr. H, Mr. Carroll
15 and made that phone call, it was before the death of
16 Mr. Hadland?

17 A Correct.

18 MR. DIGIACOMO: Court's indulgence, Judge.

19 BY MR. DIGIACOMO:

20 Q Mr. Bunin also asked you questions about being
21 arrested and charged with murder facing the death penalty. Do
22 you remember those questions?

23 A Yes.

24 Q Okay. Your -- let me ask you about your
25 understanding about what evidence you faced, what evidence

1 there was against you that caused you to be charged. Okay?

2 A All right.

3 Q Mr. Bunin said the two wires too, correct?

4 A Yes.

5 Q Okay. Those two wires were utilized to arrest
6 and charge you?

7 A Correct.

8 Q The other information that the police had
9 before they arrested -- charged you and filed the notice to
10 intend to seek the death penalty was the statement of Deangelo
11 Carroll, correct?

12 A Correct.

13 Q Okay. Had you ever had a conversation with
14 Jayson Taoipu?

15 A No.

16 Q Had you ever had a conversation with Rontae
17 Zone?

18 A No.

19 Q Did -- as far as you were aware, at the time
20 that you were charged and faced the notice of intent to seek
21 the death penalty, was there any other evidence against you
22 other than the two wires and the taped statement of Deangelo
23 Carroll?

24 A No.

25 MR. DIGIACOMO: Nothing further, Judge.

1 THE COURT: Any cross, Counsel?

2 RECROSS-EXAMINATION

3 BY MR. BUNIN:

4 Q So now your testimony is, just so I'm clear,
5 you did assist somehow prior to the death of Timothy Hadland
6 by calling Deangelo Carroll when Mr. H told you to call him?

7 A Yes.

8 Q Okay. And now you live at home?

9 A I'm not at home, but, yes, I'm on house arrest.

10 Q You're on house arrest. You're not in jail?

11 A Correct.

12 Q After making a deal with these prosecutors?

13 A Yes.

14 Q Based on the fact that you now believe you
15 assisted prior to the killing of Mr. Hadland and then you
16 assisted the coconspirators after the killing of Mr. Hadland,
17 right?

18 A Yes.

19 Q Okay.

20 MR. BUNIN: I have no other questions.

21 THE COURT: Ladies and gentlemen of the jury, do you
22 have any questions for Ms. Espindola?

23 Yes, there are questions.

24 Sir, if you would get them and bring them up to the
25 bench and, Counsel, if you'd approach, we'll look at the

1 questions.

2 (Off-record bench conference)

3 THE COURT: Ma'am, when you told Deangelo to go to
4 plan B, did you know what plan B was?

5 THE WITNESS: No.

6 THE COURT: Did you know what plan A was?

7 THE WITNESS: No.

8 THE COURT: Why would you not speak to Deangelo if
9 you knew he was wired?

10 THE WITNESS: I did not know he was wired.

11 THE COURT: No. One of the questions that Mr. Bunin
12 asked you was, if you had known he was wired, you would not
13 have spoken to him and you said yes.

14 THE WITNESS: Correct.

15 THE COURT: So the question that the jury wants to
16 know is, if you had known that he was wired, why would you not
17 have spoken to him?

18 THE WITNESS: I was advised by another attorney not
19 to speak to him.

20 THE COURT: So it would be on advice of counsel?

21 THE WITNESS: Yes.

22 THE COURT: Can you name everyone who is to face a
23 death penalty on the death of TJ when a deal was made? Either
24 yes or no. Either you know or you don't know.

25 THE WITNESS: No.

1 THE COURT: All right. Based on the jury's
2 questions, does either party have additional questions for
3 this witness?

4 MR. DIGIACOMO: No, Your Honor.

5 MR. BUNIN: May I follow up with one?

6 THE COURT: You may.

7 BY MR. BUNIN:

8 Q The reason you didn't want to talk to Deangelo,
9 if you knew he was wired, was because you didn't want to
10 incriminate yourself?

11 A I was under advice from Mr. Gentile not to --
12 that he could be wired.

13 Q My concern -- but I'm not asking you what
14 Mr. Gentile told you. I'm asking you, you would not have
15 spoken to Deangelo had you known he was wired because you
16 didn't want to incriminate yourself?

17 A Incriminate myself from Mr. H.

18 Q Or Mr. H?

19 MR. BUNIN: Okay. Thank you.

20 THE COURT: Any other questions?

21 MR. DIGIACOMO: No, Judge.

22 THE COURT: Ms. Espindola, thank you, ma'am, for
23 your testimony here this afternoon. You may be excused.
24 Please don't discuss your testimony with anyone other than the
25 attorneys or counsel.

1 Counsel for the State, you may call your next
2 witness.

3 MR. DIGIACOMO: Thank you. The State calls
4 Detective Wildemann.

5 MARTIN WILDEMANN, STATE'S WITNESS, SWORN

6 THE CLERK: Please be seated and please state and
7 spell your name.

8 THE WITNESS: Martin Wildemann, W-i-l-d-e-m-a-n-n.

9 DIRECT EXAMINATION

10 BY MR. DIGIACOMO:

11 Q They've already heard it, so I'm not going to
12 ask you how you're employed.

13 A Yeah.

14 Q But I'm going to ask you, you were one of the
15 detectives that gets assigned in the prosecution,
16 investigation of the death of Mr. Hadland?

17 A Yes.

18 Q Okay. I want to talk about a few other things
19 before we get to the records related to Mr. Carroll.

20 A Okay.

21 Q During the course of your investigation, did
22 you review the criminal history of the various players in this
23 particular case?

24 A Yes, I did.

25 Q Okay. First of all, Jayson Taoipu was a

1 juvenile, so I'm assuming he had no adult criminal history
2 anyways.

3 A No.

4 Q There's Mr. H. Did you determine if he had any
5 criminal history?

6 A I could not find criminal history on him.

7 Q Okay. Anabel Espindola, any criminal history?

8 A None that I could find.

9 Q Little Lou, Luis Hidalgo, III?

10 A None that I could find.

11 Q Kenneth Counts had two prior convictions for
12 marijuana related offenses; is that correct?

13 A Correct.

14 Q Okay. Mr. Carroll, did you do research into
15 his --

16 A Yes.

17 Q We talked a little about some -- before we get
18 to that -- some of the other things that's happened in this
19 case. At some point, Mr. Counts was arrested, correct?

20 A Yes.

21 Q He's charged with open murder as well as
22 conspiracy to commit murder?

23 A Yes.

24 Q And he goes to trial. Do you know what the
25 verdict is?

1 A Yes.

2 Q What was the verdict?

3 A He got convicted of conspiracy to convict

4 murder.

5 Q And acquitted of all charges related to the

6 murder itself?

7 A Yes, sir.

8 Q And do you know what his sentence was?

9 A I'm not sure what his sentence was for the

10 conspiracy. I know that he was also charged with habitual

11 criminal statute and that he got eight to 20 years, I believe.

12 Q The habitual criminal is based on his two prior

13 drug convictions?

14 A Yes.

15 Q Prior to or during the time period of

16 Mr. Counts' trial, he was facing a notice of intent to seek

17 the death penalty, correct?

18 A Correct.

19 Q Obviously after the verdict he's no longer

20 facing it?

21 A Correct.

22 Q At some point, notice of intent to seek the

23 death penalty had been filed against Mr. Counts, Deangelo

24 Carroll, Anabel Espindola and Little Lou initially, correct?

25 A Correct.

1 Q And at some point -- they've kind of heard
2 about it -- there was some legal maneuvering that resulted in
3 the striking of the notice of intent against Anabel and Little
4 Lou?

5 A Correct.

6 Q Prior to the arrest of Mr. H -- well, let me
7 ask you this: Prior to Anabel Espindola coming forward and
8 wanting to speak to us, was there any -- or did you arrest
9 Mr. H?

10 A No.

11 Q After Anabel Espindola provided you
12 information, did you make an arrest of Mr. H?

13 A Yes.

14 Q After Mr. H was arrested, his case got joined
15 with Little Lou?

16 A Correct.

17 Q And there was eventually a trial against Mr. H
18 and Little Lou?

19 A And Little Lou, correct.

20 Q Mr. H and Little Lou were convicted of
21 conspiracy to commit murder?

22 A Correct.

23 Q They're both convicted of second-degree murder
24 with use of a deadly weapon?

25 A Correct.

1 Q And then they were both convicted of
2 solicitation to commit -- well, sorry. Little Lou was
3 convicted of solicitation to commit murder for the victims
4 Rontae and Jayson Taoipu?

5 A Correct.

6 Q And now they're both serving sentences of 20 to
7 life?

8 A Correct.

9 Q Let's talk about the criminal history of
10 Deangelo Carroll. In front of you is State's Exhibit No. 250.
11 Do you recognize this?

12 A Yes, I do.

13 Q Have you reviewed the documents contained
14 therein as various records related to the criminal history of
15 Deangelo?

16 A Yes, I have.

17 MR. DIGIACOMO: Move to admit 250.

18 THE COURT: Have you had a chance to look at it,
19 Counsel?

20 MR. ERICSSON: We have, Your Honor.

21 THE COURT: Exhibit 250 will be admitted.
22 (State's Exhibit 250 admitted.)

23 BY MR. DIGIACOMO:

24 Q Let's start with A, which appears to be a
25 police report, and can you tell me what the date of the

1 incident related on the police report is?

2 A 1/25/1997.

3 Q And what I'm going to ask you to do, Detective,
4 is just read the first two pages here of section A of 250.

5 A Okay.

6 Q Let me rephrase and ask you to read it out
7 loud.

8 A Oh, out loud. I'm sorry.

9 Q I need you to read just from -- you don't have
10 to read all the tops with the details. Tell the ladies and
11 gentlemen of the jury the allegations on January 25th, 2007.

12 A On 1/25/1997 at approximately 10:58 hours
13 Officer T. Ledbetter, P No. 4984, Unit 2 Victor 43, and I,
14 Officer T. D. Ambrosio, P No. 4100, Unit 2 Victor 21, were
15 dispatched to Bannack and Torrey Pines, Las Vegas, Nevada
16 89107, Victor 2, in reference to an armed robbery.

17 The suspects were described as two black male
18 juveniles and one black female juvenile. One of the black
19 male juveniles was wearing a blue bandanna over his face and a
20 green football jersey and jeans and the other black male
21 juvenile was wearing a dark beanie, a black and white jacket
22 and dark pants.

23 The victim identified as Jayson Brandt, DOB 7/2/82,
24 stated the black male juvenile with the blue bandanna, later
25 identified as Deangelo Carroll, pointed a small framed blue

1 automatic handgun and said, Give me your fucking money.
2 Brandt stated, I don't have any money, and the suspect took
3 Brandt's Leatherman tool and was -- that was painted purple on
4 one side.

5 Solomon then got out of the car and told Carroll to
6 get back in the car and then Solomon asked Brandt where there
7 was an auto parts store and Brandt didn't respond. Solomon,
8 Carroll and the female, identified as Nicole Smith, then got
9 back in the vehicle.

10 The vehicle was a cream colored 1984 Ford Tempo
11 bearing Nevada license plate 084 George Robert Tom or GRT.
12 Brandt stated that the hood didn't close down and you could
13 see the battery sticking out.

14 The suspects then fled southbound on Torrey Pines.
15 Due to the victim stating that they asked where an auto parts
16 store was, I attempted to locate the suspects in the area of
17 Rainbow and Charleston because there were two auto parts
18 stores in that area.

19 I then saw a cream colored Tempo in the parking lot
20 at Checker Auto Parts at 16 -- or at 1060 South Rainbow, Las
21 Vegas, Nevada 89107 where a black male juvenile was standing
22 outside the business adjacent to the cream colored vehicle and
23 who fit the description of one of the suspects.

24 Officer Ledbetter and I challenged the suspects and
25 got them into custody. Carroll came out of the back seat of

1 the Tempo and still had the blue bandanna around his neck. I
2 then contacted the -- excuse me. I then conducted a check on
3 the license plate 084 GRT and it was revealed to us that the
4 vehicle was reported stolen and was confirmed outstanding by
5 Diane in WVS.

6 I then checked the back seat of the car and found a
7 Phoenix Arms Raven .25 caliber automatic pistol in the back
8 seat of the stolen suspect vehicle. We then had the victims
9 transported to our location for a one on one and they
10 positively identified all three suspects and stated that
11 Carroll was the one with the gun.

12 At that time, Officer Ledbetter Mirandized all three
13 suspects -- subjects. They were arrested for robbery with a
14 deadly weapon and possession of a stolen vehicle.

15 During the search of the vehicle incident to arrest,
16 Officer Ledbetter found the victim's Leatherman tool with the
17 purple paint on one side in the back seat where Carroll was
18 seated. The Leatherman was returned to the victim and listed
19 on the property report and the gun and bandanna were impounded
20 as evidence.

21 The suspects were transported to the Las Vegas city
22 jail where they were booked accordingly under the charge of
23 robbery with a deadly weapon and possession of stolen vehicle.

24 Q And I'm going to kind of skip through the rest
25 of the police reports related to this incident and then ask

1 you if there appears to be a certification report filed in the
2 8th Judicial District Family Division Juvenile, Clark County,
3 Nevada related to Deangelo Carroll.

4 A Yes.

5 Q Okay. And does it appear to be related to the
6 incident that you just read to this jury?

7 A Yes.

8 THE COURT: And, Officer, what does a certification
9 certificate mean?

10 THE WITNESS: I'm going to assume that it means it's
11 a -- an actual certified copy of the conviction or the Court
12 document.

13 BY MR. DIGIACOMO:

14 Q Well, what I'm going to ask you to do is just
15 ask you to refer to -- this appears to be a report. It's
16 written by Probation Officer Terry Freehill.

17 A Okay.

18 Q And the recommendation on the report is?

19 A In view of the above information, it is the
20 respectful recommendation of this probation officer that the
21 motion to certify Deangelo Carroll be granted.

22 Q Okay.

23 THE COURT: And certification, what we're getting at
24 here is what does certification means? It means that a
25 juvenile will be charged as an adult. That's what the jury

1 doesn't know.

2 MR. DIGIACOMO: I know, but I didn't know he could
3 testify to it.

4 THE COURT: Well, he ought to know what it means.
5 Do you know what that means?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: All right.

8 BY MR. DIGIACOMO:

9 Q The second report is a Nevada State Child and
10 Family Services Division commitment order, correct?

11 A Correct.

12 Q For Deangelo Carroll?

13 A Correct.

14 Q And then behind that is a dispositional hearing
15 report from November 18th of 1998?

16 A Yes.

17 Q Okay. I want you to just read the officer's
18 recommendation from that.

19 A Officer's recommendation: That wardship be
20 continued, the subject minor having been previously committed
21 to the Division of Child and Family Services for correctional
22 care.

23 Number 2, recommitment of the State of Nevada
24 Division of Child and Family Services for correctional care.

25 Number 3, if returned to the Nevada Youth Training

1 Center, child support in the matter of -- in the amount of \$10
2 per month as previously ordered.

3 Q And then it tells you the reason for this
4 hearing is -- what does it say the reason is?

5 A On October 27th, 1998, the subject minor
6 admitted to Petition 2, Count 3, battery; Petition 2, Count 6,
7 battery; Petition 2, Count 9, violation of parole and
8 petition; No. 2, Count 10, open and gross lewdness; Petition
9 No. 2, Count 1, 2, 3, 4 -- well, excuse me. Count 1, 2, 4, 5,
10 7, 8 and 11 were dismissed.

11 Q And then attached to this report, is there, in
12 fact, a -- well, there's probably multiple police reports, but
13 is there a police report that's known as a declaration of
14 arrest?

15 A Yes, there is.

16 Q And this one's titled, For Open and Gross
17 Lewdness Parole Violation?

18 A Yes.

19 Q If you could read, as best you can in the
20 handwriting that's here, read to the ladies and gentlemen of
21 the jury the basis of the violation report.

22 A Okay. This is 1 of 1 and 1 of 4.

23 Q Yes, sir. Start here.

24 A Okay. Charges: Open gross lewdness, three
25 times parole violation; that SM is a ward of the State of

1 Nevada Division of Child and Family Services under the
2 jurisdiction of Nevada Youth Parole. I was called by the
3 principal of Rancho High School, Mr. Durant, about SM Deangelo
4 Carroll, inappropriateness with several youth at the school.

5 SM Michelle Pruitt, date of birth 11/12/1983,
6 statement states that at a football game between Rancho and
7 Western, SM Carroll was harassing SM Pruitt and her friend SM
8 Lisa Page. SM D. Carroll then put SM Lisa Page in a trash can
9 and then pulled her shirt down over her chest area.

10 As she pulled her shirt up, he then grabbed SM Page
11 by the arm and then told SM Pruitt that if she, SM Pruitt, did
12 not come to him, he would not let her, SM page, go.

13 SM Pruitt went to SM Carroll and SM Carroll grabbed
14 SM Pruitt by her arm and told her to do it with him or he
15 would not let her, SM Pruitt, go.

16 SM Pruitt slapped SM Carroll in the face and ran to
17 the soccer field to see if her dad was there. SM Pruitt's dad
18 then took SM -- then took the SM home and he was notified by
19 the SM about the incident.

20 He instructed SM to tell Dean -- I'm sorry. This is
21 a bit confusing -- in the SM Pruitt's fourth hour SM Carroll
22 grabbed her unstopably and told her, If you tell someone, he
23 would beat her up or have someone else beat her up -- or have
24 someone beat her up.

25 Statement by SM Lisa Page, DOB 1/21/1984, statement

1 states that at a football game between Rancho and Western, a
2 boy, SM Deangelo Carroll, had pulled her shirt down. As SM
3 Page and her friend were walking away, SM Carroll grabbed SM
4 Page and told her -- and told her friend Shelly that he would
5 not let SM Page go if SM Shelly did not give him a hug.

6 A couple of days later SM Carroll came up behind SM
7 Page and gave her a hug from behind and wouldn't let go. As
8 SM Page instructed SM Carroll to let her go, he continued
9 until the school bell rang. SM Carroll also bragged to his
10 friends about what he did to SM Page at the football game.

11 SM Violet Dillon, date of birth 4/7/1984, statement
12 is that SM Carroll had been sexually harassing her. He pushed
13 her over and pretended to have sexual intercourse. SM Carroll
14 has told SM Dillon that if she told anyone, he would rape her.
15 He also has said or made sexual innuendos. This isn't -- this
16 incident was at the gym on the Rancho campus and other
17 incidents happened at various times.

18 SM Carroll also has threatened SM Dillon by stating
19 he would hurt her. SM Dillon was scared and did not tell
20 anyone until today, 9/22/1998. SM did not want SM Carroll to
21 know that she issued a statement for fear.

22 SM violated parole conditions by: Condition No. 3.

23 Q Okay. You can skip all the allegations of all
24 the various parole violations.

25 A Okay.

1 Q Needless to say, there's a number of them,
2 witness statements from a variety of people as to the
3 allegations that were contained therein?

4 A Yes.

5 Q Move on to -- Section B here is an event that
6 comes from March 16th of 2000?

7 A Yes.

8 Q And it's an arrest for possession of stolen
9 vehicle for Mr. Carroll?

10 A Yes.

11 Q November 19th of 2000, there's a report here
12 related to Mr. Carroll's accidental discharge of a firearm
13 that he purchased off the street?

14 A Yes.

15 Q Okay. This one is April 24th of 2002. This is
16 related to drugs that were taken off the possession of
17 Mr. Carroll?

18 A Yes.

19 Q Okay. In fact, on this one, he gets charged
20 with two counts of possession of controlled substance and one
21 count of possession of controlled substance with the intent to
22 sell?

23 A Yes.

24 Q And the case number on that was 02 F 07421 X?

25 A Yes.

1 Q Okay. E, just for the record, appears to be a
2 citation for possession of marijuana.

3 A Yes.

4 Q And then F is 5/18/2002.

5 A Yes.

6 Q And it is related to a robbery?

7 A Yes.

8 Q And the details are contained in a two-page
9 report?

10 A Yes.

11 Q Read the details to the jury.

12 A Details: On 5/18/2000, Blodgett, Steven, date
13 of birth 6/3/1957, became the victim of a strong armed robbery
14 when he was drinking in the north alley of Fremont at
15 21st Street when he was approached by an unknown HMA and a
16 BMA. The BMA was later identified as Carroll, Deangelo, ID
17 No. 167-8381.

18 At that time, Deangelo and the unknown HMA began to
19 beat Blodgett with their fists striking him in the head and
20 chest. As the unknown HMA continued beating Blodgett, Carroll
21 removed a black wallet from Blodgett's cowboy boot at which
22 time both Carroll and the unknown HMA fled east on Fremont
23 Street from 21st Street and then south on Eastern in the
24 parking lot of Karl's, Jr. at which time CCFD Unit Rescue 14
25 observed Carroll run west through the parking lot, scale a 4

1 to 6-foot brick wall and then enter the parking lot of the
2 Blue Angel Motel.

3 CCFD employee Cave Christopher and employee Hardman,
4 Richard, both stated that they observed Carroll jump over the
5 wall and land in the parking lot of the Blue Angel Motel at
6 which time they observed him going through a black wallet and
7 then continue to run west through the parking lot of the Blue
8 Angel.

9 Fire department member stated that they then
10 observed victim Blodgett running after suspect Carroll at
11 which time Blodgett stated to firefighters that he was just
12 robbed by Carroll.

13 At that time Carroll then returned to the scene
14 stating that he was attempting to help Blodgett get his wallet
15 back at which time officers arrived on the scene and Blodgett
16 stated that Carroll was, in fact, the suspect that did rob him
17 and Blodgett was attempting to apprehend Carroll when he
18 jumped the wall into the Blue Angel Motel.

19 Blodgett's positive ID of Carroll and with
20 Blodgett's witness statement stating that he had three \$100
21 bills in his wallet, along with other witness statements
22 stating that they had observed Carroll and an unknown HMA
23 beating Blodgett and taking his wallet, Carroll was arrested
24 for robbery.

25 During the pat down after Carroll's arrest, three

1 \$100 bills were located on Carroll in his left front pocket
2 and approximately \$68 was located in his right-hand pocket.
3 At that time the three \$100 bills were impounded and returned
4 to the victim. Blodgett and Carroll was transported to CCDC.

5 Prior to Carroll's transport to CCDC, Carroll stated
6 that he was having difficulty breathing at which time AMR was
7 contacted and Carroll was then transported to UMC ER by AMR
8 Unit 822 at which time I followed.

9 After Carroll's clearance from the doctors at UMC
10 ER, he was then transported to CCDC where he was booked for
11 robbery.

12 Q Now, Detective, that's the felony conviction
13 that Mr. Carroll has. He gets convicted of this eventually;
14 is that correct?

15 A Yes.

16 Q Okay. Now I'm going to flip to those. There's
17 actually an amended judgment of conviction, but let me flip
18 first to the judgment of conviction.

19 A Okay.

20 Q September 9th of 2002, it appears that
21 Mr. Carroll was convicted of conspiracy to commit robbery?

22 A Yes.

23 Q His first adult felony offense?

24 A Yes.

25 Q And he was given probation?

1 A Yes.

2 Q And there was an amended judgment of conviction
3 on April 4th of 2003?

4 A Yes.

5 Q And it appears that his probation was
6 reinstated with the added condition of 60 days flat in the
7 Clark County Detention Center followed by release of parole
8 and probation only on house arrest?

9 A Yes.

10 Q A couple of other things that are in here that
11 I'd like you to look at. There's a guilty plea agreement,
12 correct?

13 A Yes.

14 Q He agreed to plead guilty to conspiracy to
15 commit robbery?

16 A Yes.

17 Q And the State agreed not only to retain the
18 right to argue at sentencing but also did not oppose the
19 dismissal of 02 F 07421 X being that drug case that we
20 previously discussed?

21 A Yes.

22 Q There's a transcript of the plea?

23 A Yes.

24 Q And that happened on July 3rd of 2002?

25 A Yes.

1 Q Deangelo Carroll?

2 A Yes.

3 Q Now I want you to go to page 5, line 14. When
4 the judge asks Mr. Carroll, What'd you do on or about
5 May 18th of this year that caused you to plea guilty to the
6 crime of conspiracy to commit robbery, what did Mr. Carroll
7 say?

8 A We attempted to take a wallet, sir.

9 Q And the Court said, By means of force or fear?
10 And what was the defendant's response?

11 A Yes, sir.

12 Q Then in the back here it appears to be what's
13 known as a probation/violation report.

14 A Yes.

15 Q And there is a recommendation at the bottom of
16 that report?

17 A It is recommended that a bench warrant be
18 issued and the subject's probation be revoked.

19 Q And that was on December 12th of 2000 and --

20 A Correct.

21 Q And then finally, Detective, in Section G, do
22 you recognize what these documents are?

23 A Yes. These are documentation of incidents at
24 the Clark County Detention Center.

25 Q Related to Deangelo Carroll and disciplinary

1 actions?

2 A Yes.

3 MR. DIGIACOMO: Pass the witness, Judge.

4 THE COURT: Cross-examination, Counsel.

5 MR. ERICSSON: Thank you, Your Honor. Your Honor,
6 may we approach on one matter?

7 THE COURT: You may.

8 (Off-record bench conference)

9 CROSS-EXAMINATION

10 BY MR. ERICSSON:

11 Q Good afternoon, Sergeant.

12 A Good afternoon. I'm just a detective.

13 Q Oh, I apologize.

14 A That's all right. I could use the promotion.

15 Q I got yelled at the other day for calling a
16 detective -- or a sergeant a detective. I don't want to make
17 that mistake again.

18 I want us to go through a few of the things that you
19 were asked about, just to clarify for the jury. You obviously
20 went through the arrests and the criminal history of Deangelo.
21 The first one that you talk about, I believe, was
22 January 25th, 1997.

23 A Can I look back?

24 Q Sure.

25 And that was the incident where Deangelo was a

1 juvenile?

2 A Yes.

3 Q And in 1997, on that day, Deangelo was 15 years
4 old?

5 A Yes, sir.

6 Q When he was 15 years old, he was with two other
7 people and they went and he robbed some other juveniles of a
8 Leatherman knife or utility knife?

9 A And their car.

10 Q Is that correct?

11 A Yes.

12 Q And because he was 15 years old, because it was
13 a violent case, it was brought before the Court whether he was
14 going to be treated as an adult for purposes of the criminal
15 justice system; is that right?

16 A Yes.

17 Q And from the record you've reviewed in this
18 case, you know that Deangelo -- he was placed in custody for
19 over a year, sent up to northern Nevada because of that
20 incident; is that right?

21 A Yes.

22 Q And I don't know if you're aware of this from
23 the records there, maybe you've seen this, are you aware that
24 while he was in custody he -- up in Elko, I believe it was,
25 that he completed the schooling process through high school up

1 there?

2 A I was not aware of that.

3 Q Are you aware that he was made a ward of the
4 State when he was 15 years old as a result of this case?

5 A I was not aware of that.

6 Q The only adult conviction that Deangelo has is
7 the conspiracy to commit robbery and that took place in 2002?

8 A I believe that's the only felony conviction.

9 Q Okay. And I apologize -- back up. The only
10 felony that Deangelo has is the conspiracy to commit robbery
11 from 2002?

12 A Yes.

13 Q Were you present this afternoon when
14 Mr. Blodgett testified?

15 A I was in the back room, sir.

16 Q Okay. So you -- I didn't pay attention. You
17 didn't hear what he testified to?

18 A No, sir. I was asked to leave.

19 Q Now, you've read from the officer's statement
20 about that incident here this afternoon, correct?

21 A Correct.

22 Q And in that statement, correct me if I'm wrong,
23 but it indicates that Mr. Blodgett had been drinking in an
24 alley and was approached by Deangelo and a Hispanic male and
25 was beat up and had his wallet taken from him?

1 A That's what this report states, yes, sir.

2 Q Now, prior to coming here in afternoon, did you
3 read Mr. Blodgett's voluntary statement from that incident?

4 A No, sir.

5 MR. ERICSSON: If I may approach the witness, Your
6 Honor.

7 THE COURT: You may.

8 BY MR. ERICSSON:

9 Q This handwriting isn't real clear, but can you
10 do your best to read from Mr. Blodgett's statement from the
11 May 18th, 2002 incident?

12 A Yes, sir.

13 I was at the bus stop at Charleston between
14 Eastern -- I think that's the park --

15 Q Maryland Park.

16 A Oh, Maryland Park.

17 -- when a girl asked me for a light. I reached in
18 my pocket to light her -- no. I reached in my pocket to give
19 her a light and they took off with my leather pack. I chased
20 after them, two guys and the girl.

21 I got about a block at some other people jump out
22 of -- wow -- jump out of nowhere and hit me in the face. I
23 fought back the best I could but I was -- hit the ground
24 before I knew it and I have up and still chase and I got up
25 and still chased to let my wallet know -- to get my wallet --

1 to get my wallet, [inaudible] ran back to Charleston, and the
2 police came to my rescue. Thank Lord. I had 3100 or 310, I'm
3 not sure, 3100 --

4 THE COURT: Three \$100 bills. Is that what it says?

5 THE WITNESS: Well, okay. Three 100...

6 THE COURT: Maybe that's not what it says.

7 THE WITNESS: I had three 100 bills. Then his
8 signature.

9 BY MR. ERICSSON:

10 Q And just to make sure we're correct on the same
11 incident, this voluntary statement from Mr. Blodgett is
12 dated -- or the date of the occurrence is May 18th, 2002?

13 A Yes.

14 Q And that is the same date of that report that
15 you read earlier to the jury, correct?

16 A Yes.

17 Q Are you aware that Mr. Blodgett did testify
18 that there was actually two other individuals other than
19 Deangelo who had initially taken a leather pack that he refers
20 to in the statement?

21 A No.

22 Q Are you -- did you go through all of the
23 write-ups that Deangelo has received while over at the
24 detention center?

25 A Yes.

1 Q Are you aware that he got wrote up for having a
2 pick in his hair?

3 A Yes.

4 Q He got wrote up for a toilet being clogged?

5 A Yes.

6 Q He got wrote up for having some commissary
7 requests that should have been turned in earlier?

8 A Well, there's -- apparently there's a protocol
9 to be followed and I think -- I think that report was actually
10 for lying to the officer, I believe.

11 Q Okay. But it was in reference to some
12 commissary request that Deangelo had --

13 A Yes.

14 Q -- is that right?

15 And just so the jury understands, a commissary
16 request is what?

17 A It's just for requesting things from the
18 commissary, which is a store, mainly.

19 Q So it's a little store that's within the jail?

20 A Yes.

21 Q And if inmates have some money on their books,
22 they can buy food or other --

23 A Yes. Other toiletries, what they need.

24 Q He was written up for, out in the rec yard,
25 slapping somebody with his sandal in the leg?

1 A Yes.

2 Q And he was written up for making a threat that
3 he was going to punch somebody in the mouth?

4 A The person that he slapped in the leg, yes.

5 Q In your review, he never punched the person in
6 the mouth?

7 A I don't see a report for that, no.

8 Q And other than the incident out in the rec yard
9 where he slapped somebody with his sandal, you're not aware of
10 any other physical violence from the report --

11 A No.

12 Q -- related to his five years in custody, are
13 you?

14 A Not that I read, no.

15 Q And it's accurate to say when they're writing
16 you up for having a pick in your hair or clogging a toilet
17 that the guards over there keep detailed notes of what inmates
18 are up to?

19 A Yes.

20 Q And the fact that in five years, other than
21 Deangelo slapping somebody in the leg with a sandal, there are
22 no other indications of any physical violence?

23 A No reports for that, sir, no.

24 MR. ERICSSON: Court's indulgence, please.

25 THE COURT: Ladies and gentlemen of the jury, do you

1 have any questions for Detective Wildemann?

2 MR. ERICSSON: Your Honor, thank you. We have no
3 further questions at this time.

4 THE COURT: Any redirect, Counsel?

5 MR. DIGIACOMO: No, Judge.

6 THE COURT: All right. Detective Wildemann, thank
7 you, sir, for your testimony here today. You may be excused.
8 Please don't discuss your testimony with anyone other than the
9 attorneys in the party.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Does the State have any additional
12 witnesses to call during this penalty proceeding?

13 MR. DIGIACOMO: No. With the understanding that
14 everything we've offered has been admitted, Judge, the State
15 would rest.

16 THE COURT: All right. If everything -- I believe
17 everything you have admitted has been -- everything you've
18 offered has been admitted.

19 Is that correct, Ms. Clerk?

20 THE CLERK: Yes.

21 THE COURT: All right. Ladies and gentlemen, we're
22 going to recess for the evening. Tomorrow you will hear from
23 the defendant's attorneys and then whatever witnesses that he
24 wishes to call.

25 During the evening recess, please do not talk or

1 converse amongst yourselves or with anyone else on any subject
2 connected with the trial, read, watch, or listen to any report
3 of or commentary on the trial or any person connected with the
4 trial by any medium of information, including, without
5 limitation, newspaper, television, radio or Internet or form
6 or express any opinion on any subject connected with the trial
7 until the case is finally submitted to you.

8 We'll be in recess until 11:00 tomorrow morning.
9 And I'm confident that Judge Adair will be back tomorrow at
10 11:00 to finish up the trial with you.

11 Thank you. You may be excused.

12 (Court recessed at 4:54 p.m. until the following
13 day, Thursday, June 3, 2010, at 11:00 a.m.)
14
15
16
17
18
19
20
21
22
23
24
25

-oOo-

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


KIMBERLY LAWSON
TRANSCRIBER