

IN THE SUPREME COURT FOR THE STATE OF NEVADA

DEANGELO R. CARROLL,  
Appellant,  
v.

THE STATE OF NEVADA,  
Respondent.

No. 64757

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Tracie K. Lindeman  
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Appeal

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

APPELLANT'S APPENDIX  
(Volume 11)

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**ORIGINAL**

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

**JUN 04 2010**

BY: *Denise Husted*  
DENISE HUSTED, DEPUTY

THE STATE OF NEVADA, )

Plaintiff, )

vs. )

DEANGELO RESHAWN CARROLL )

Defendant. )

CASE NO: C212667

DEPT NO: XXI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

**PENALTY PHASE - DAY 2**

THURSDAY, JUNE, 3, 2010

**APPEARANCES:**

FOR THE STATE:

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.

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**Volume 11 - 2214**

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1 LAS VEGAS, NEVADA, THURSDAY, JUNE 3, 2010, 11:05 A.M.

2 (Court was called to order.)

3 (Outside the presence of the jury.)

4 THE COURT: Can we discuss the -- did we lose  
5 Mr. DiGiacomo for today?

6 MR. PESCI: Yes, Your Honor.

7 THE COURT: Yeah. Shall we discuss -- I read --  
8 Judge Loerher wrote me a little note about the stipulation or  
9 nonstipulation, but what we're going to inform the jury and my  
10 understanding was you guys were going to get together and see  
11 if you could come up with something.

12 MR. PESCI: I think she gave us options, which was  
13 one, to come together; or, two, the Court was going to do  
14 something. Neither of us, I think -- neither side agrees,  
15 so -- I think we'll make our arguments to you.

16 THE COURT: Okay. Do either of you have a proposal  
17 of what you would like the Court to give? And then maybe I  
18 can combine those or make a decision.

19 MR. BUNIN: Can I run through the issue with you a  
20 little? Because I really think that maybe you'll make a  
21 ruling that prevents us from even having to do this, but I  
22 don't know.

23 THE COURT: Okay. And just so you know, I'm  
24 inclined to stay -- I mean, to me what Judge Loerher ruled is  
25 the law of the case, so I'm inclined to stay with that, but to

1 the extent that that's not clear, then I certainly obviously  
2 have to make my own decisions.

3 MR. BUNIN: Well, let me tell you too because, you  
4 know, there was no ruling made on the --

5 THE COURT: Mr. Bunin.

6 MR. BUNIN: Who called me Bunin?

7 MR. PESCI: All day yesterday she did.

8 MR. BUNIN: She called me Bunin, Bunin.

9 THE COURT: Oh.

10 MR. BUNIN: She always calls me Bunin. I think she  
11 might be technically correct if you're in Russia, but we're  
12 here, by the way.

13 I don't think she made a ruling on the record and  
14 actually she specifically left part of it to you. This is  
15 what occurred.

16 THE COURT: All right.

17 MR. BUNIN: I said that it is -- that the  
18 prosecution made a choice at some point to not pursue the  
19 death penalty again Mr. H.

20 THE COURT: Right.

21 MR. BUNIN: Now, even though I know that they were  
22 put in a terrible spot where they could still pursue it, but  
23 they had to agree to sever, they made the choice not to sever.  
24 They still made the choice to not pursue the death penalty  
25 that they could have. And I started making this argument.



1 She cut me off and said argue that to Judge Adair tomorrow.

2 Then what happened was Mr. DiGiacomo got up on --  
3 because I wanted to bring that out on during the  
4 cross-examination of Detective Wildemann. On the direct  
5 examination of Detective Wildemann, one of the very first  
6 questions Mr. DiGiacomo asked was, You were present at the  
7 trial of Kenneth Counts and the State sought the death penalty  
8 against Kenneth Counts. And Detective Wildemann said yes.

9 So I went back up to the bench and said, They just  
10 opened the door. They cannot have it both ways.

11 THE COURT: Right.

12 MR. BUNIN: She didn't make any ruling. She just  
13 said, Fashion an agreement before tomorrow or the Court's  
14 going to do it for you. But she never made any ruling. She  
15 specifically left the ruling as to whether or not we got to  
16 bring out the fact that the prosecution did not seek the death  
17 penalty against Mr. H. I think he absolutely opened the door  
18 and it's just unfair to us at this point other than to --

19 THE COURT: Yeah. My understanding of Judge  
20 Loerher's ruling was that you got to bring out that they  
21 didn't seek the death penalty against Mr. H, but, of course, I  
22 remember the whole thing, and the reason was -- I mean, I  
23 think, yes, I think that opened the door that they did seek  
24 the death penalty against Kenneth Counts, that they didn't  
25 seek it against Mr. H. However, there's a whole history

1 there. And I think then they're entitled to say, We  
2 originally sought the death penalty against Mr. H; however, in  
3 order to proceed to trial on both, we withdrew the death  
4 penalty, or something like that. Because otherwise, you don't  
5 really get a complete picture of what happened.

6 And, you know, having tried death cases and nondeath  
7 cases together, it was -- and there are a number of other  
8 issues, not just that issue with the Hidalgos and keeping them  
9 together, it was my decision that they should be severed if  
10 they proceeded to death, and again, to obviate the need for  
11 two trials.

12 And there were also a lot of other issues that maybe  
13 could have created some error in terms of appellate issues on  
14 the defense side because of all the preparation that had gone  
15 in with Mr. Gentile initially handling both defendants and  
16 they kind of tag teamed their defense. So I think that that  
17 could have also created an appellate issue that the defense  
18 could have raised in terms of, Well, now we're going to trial  
19 separately and, you know, whatnot. So it was a tactical  
20 decision, for whoever reason the State made it, and they  
21 obviously don't have to disclose that to me and they didn't.

22 MR. BUNIN: I agree. And I understand there were  
23 complexities, but it's not an untrue statement to state that  
24 in the end they could have still pursued the death penalty  
25 against Mr. H and they didn't.

1 THE COURT: Well, I think --

2 MR. BUNIN: And what they're going to do is they're  
3 going to argue that Deangelo's worse than everybody, worse  
4 than the guy that pulled the trigger because he put it all  
5 together. But Mr. H is the guy that put it all together.  
6 Mr. DiGiacomo implied that's basically what they're going to  
7 try to argue, that Deangelo's even worse than the guy who  
8 pulled the trigger. Well, then what does that make Mr. H?

9 And, you know, he got second degree. You know,  
10 that's not the prosecution giving a deal. He got  
11 second degree. But they made the choice not to pursue against  
12 him for whatever reason.

13 I understand their side of the argument until  
14 Mr. DiGiacomo gets up and immediately makes it clear they  
15 pursue death against KC, and then --

16 MR. PESCI: Can I respond?

17 MR. BUNIN: -- the door is so open for us to have a  
18 proper -- to properly inform the jury they chose not to do it,  
19 even if there were complex legal reasons for them to do it,  
20 they still made the choice not to do it. They could have  
21 pursued that however they wanted to.

22 THE COURT: So what are you asking, just for an  
23 instruction or something or informing the jury that they did  
24 not seek death against Mr. H?

25 MR. BUNIN: I think that I should be able to talk

1 about in my closing argument they didn't seek death, and they  
2 certainly can get up and say there was complex legal reasons  
3 why not. If there's going to be an instruction, it should  
4 state that the choice -- that the State could have pursued the  
5 death penalty against Mr. H and chose not to, but there were  
6 other factors that the DA had to take into consideration, such  
7 as they could not pursue the death penalty unless he was tried  
8 separate from Little Lou and the prosecution felt that they  
9 would rather try him with Little Lou, something along those  
10 lines. That's, I guess, a fair statement.

11 THE COURT: Yeah, my only issue following Judge  
12 Loerher's ruling or how I understand it is that then I think  
13 the State is entitled to sort of put in the totality that they  
14 sought the death penalty, then withdrew the death penalty  
15 because of various legal issues or something like that or to  
16 promote judicial economy or, I don't know, whatever.

17 MR. BUNIN: But certainly in the end, it's not an  
18 unfair argument for me to say that for whatever reason they  
19 made this choice, if I'm arguing to the jury --

20 THE COURT: Yeah, I mean -- excuse me.

21 MR. BUNIN: -- they chose not to pursue that.

22 THE COURT: Anything that comes out during this  
23 phase in terms of an instruction or in terms of testimony is  
24 obviously the subject of fair comment in your closing remarks.  
25 So if that was Judge Loerher's ruling that they get to know

1 that, then clearly it's the subject of fair comment.

2 MR. BUNIN: Okay.

3 THE COURT: Again, anything that comes out you can  
4 comment on.

5 Now, conversely, Mr. Pesci can comment, Well, you  
6 know, this is a different situation and this was already  
7 separate or whatever.

8 MR. BUNIN: Okay.

9 MR. PESCI: There's kind of a few things. First and  
10 foremost, what it all hinges on is this concept that we opened  
11 the door, and I respectfully disagree. If you look at the  
12 transcripts to the cross-examination of Anabel Espindola who  
13 preceded the testimony of Detective Wildemann, defense counsel  
14 specifically went through each and every defendant and who, in  
15 fact, was facing the death penalty and specifically with  
16 Anabel asked about, this is my recollection, about Deangelo --  
17 Kenneth Counts facing the death penalty.

18 So it's, to me, somewhat inconsistent to argue that  
19 we opened the door that they brought up. So I think  
20 Mr. DiGiacomo was responding, in essence, with the next  
21 witness to go through that. And so that's my recollection.

22 THE COURT: But aren't you asking me to revisit  
23 Judge Loerher's ruling that it did open the door?

24 MR. PESCI: I don't believe that she made a ruling,  
25 Judge.

1 THE COURT: Okay. I'm going by the memorandum I  
2 received from Judge Loerher --

3 MR. PESCI: I apologize.

4 THE COURT: -- and Judge Loerher's understanding of  
5 what her ruling was.

6 MR. PESCI: Because we were arguing back and forth  
7 about whether we had, in fact, even opened the door, and so my  
8 position is that we didn't even open the door, and even if you  
9 think it's open, it's opened as to Kenneth Counts, not  
10 Mr. Hidalgo.

11 THE COURT: No. Again, I'm going off Judge  
12 Loerher's understanding of her ruling. And Judge Loerher's  
13 understanding of her ruling -- and like I said, Judge Loerher  
14 was nice enough to fill in yesterday. It was a God send for  
15 me, frankly, and --

16 MR. BUNIN: I argued against it but --

17 THE COURT: Well, it's the law of the case, and, you  
18 know, I don't revisit it. If a judge sits in, I try to stay  
19 with what their ruling has been.

20 My understanding is that the ruling was the door was  
21 opened as to Mr. H, that you didn't seek the death penalty  
22 against him. And again, I agree, you know, that it's unfair  
23 to just say you didn't seek the death penalty as if that was  
24 your decision from the beginning when you did seek the death  
25 penalty. And I don't remember, was Mr. H litigated in the

1 Supreme Court or not?

2 MR. PESCI: Yes.

3 THE COURT: Okay. So --

4 MR. PESCI: I --

5 THE COURT: You know, if they are entitled to  
6 something, they're entitled to -- meaning the jury, the jury's  
7 entitled to the complete picture of what happened --

8 MR. PESCI: And I --

9 THE COURT: -- without getting too complex, and, you  
10 know --

11 MR. PESCI: And the State's second argument, Judge,  
12 the only way to do that is to call me or Marc DiGiacomo to the  
13 stand to explain why it is we didn't do it. We don't have a  
14 witness that can establish the evidence --

15 THE COURT: Well, what about Chris Owens or Pam  
16 Weckerly or David Roger?

17 MR. PESCI: Well, we were the deputies that did the  
18 decision.

19 THE COURT: I know, but did you communicate that  
20 with your supervisor or with --

21 MR. PESCI: We talked with them, sure.

22 MR. BUNIN: We don't need that if we just have an  
23 instruction. And the problem with yesterday was we were told  
24 not to ask that of Detective Wildemann, so we didn't.  
25 Otherwise, we could have just brought it out then. But if we

1 have an instruction, we don't need anybody to testify.

2 MR. PESCI: Right. And that's where I think it's  
3 the law of the case is that she precluded them from asking  
4 that and then she said if we didn't come up with some sort of  
5 a stipulation, then it was up to Your Honor. And that's  
6 why -- I'm not trying to go around her, but I'm trying to make  
7 my arguments to you. And with all due respect, she wasn't  
8 there. She doesn't know what happened. You did. You were  
9 here for this entire torturous --

10 THE COURT: Yeah, she does know what happened  
11 because she indicated -- I mean, she understood that it was a  
12 tactical decision based on the fact that I had ordered that  
13 the trial would be bifurcated --

14 MR. PESCI: Correct.

15 THE COURT: -- if you sought death on one and not  
16 the other.

17 MR. PESCI: And this is all from Mr. Gentile  
18 standing up and saying, I have a conflict if it's death; I  
19 don't if it isn't. That's how this all started.

20 MR. BUNIN: What?

21 THE COURT: No, he conflicted off regardless.  
22 Remember, first he said there was a -- well, you know the case  
23 better than I do. But my recollection is he maintained there  
24 was no conflict. Then he said if there's death, there's a  
25 conflict.



1 MR. PESCI: Yes.

2 THE COURT: But then he later said no, based on his  
3 pretrialing or something to that nature, something -- his  
4 preparation, he then discovered that there was a conflict. So  
5 my understanding was -- but again, you -- you know, you've  
6 lived and breathed this more than I have, but I could be  
7 wrong.

8 MR. PESCI: You've lived and breathed it with us the  
9 whole time. My recollection was that he said, If it's death,  
10 I have a conflict; if it's not death, then I don't, which is  
11 why if we went together without death, there was no conflict  
12 based on his representation. That's my recollection.

13 THE COURT: Now, my recollection is he said there  
14 was a conflict either way and that's why he brought in  
15 Arrascola, if that -- I think that's --

16 MR. BUNIN: Arrascada.

17 THE COURT: Arrascada, thank you, and Adams, but  
18 that there was a conflict in trying the two together if there  
19 was death, but not a conflict if there wasn't death.

20 And the conflict as that basically in the penalty  
21 phase as against Little Lou, Little Lou would try to portray  
22 his father as tyrannical and someone who kind of never really  
23 gave him enough affection or enough love, and Little Lou's  
24 involvement, and I think this is kind of true, was to please  
25 his father and to win his father's approval, which would make

1 his father appear like more of an ogre whereas the father  
2 would want to put on that he was a loving father and that  
3 he -- you know, his son was important to him and those things.

4 And so the conflict was in the penalty phase and the  
5 role that each had in one another's life and that he couldn't  
6 effectively represent the father nor should that testimony  
7 come in the penalty phase of the father because Little Lou  
8 wouldn't be testifying in the penalty phase of the father to  
9 talk about -- or allocuting -- to talk about, you know, what a  
10 horrible father he was nor would these other witnesses come  
11 in, you know, to say, you know, Mr. H was a horrible father.  
12 He never loved the kid. He made him live in a gas station,  
13 you know, room or -- and that was Little Lou's motivation.  
14 That would come in, and so that was the reason for the  
15 conflict, as I recollect.

16 MR. PESCI: And I think --

17 THE COURT: And again, that -- you know, the  
18 damaging stuff against Mr. H wouldn't even be introduced if  
19 Mr. H had a penalty phase alone and that Little Lou was  
20 entitled to get into, you know what, his whole motivation in  
21 this whole thing was his horrible father in wanting the  
22 father's approval, which the father had withheld basically the  
23 kid's whole life. So that was, I think, the essence of the  
24 conflict. At least that was the conflict that I appreciated.  
25 There may have been other purported conflicts, but that was

1 the one I thought was the best.

2 MR. PESCI: I agree. And I think in addition that  
3 Mr. H was going to have the opportunity to say, My son  
4 browbeat me to an extent --

5 THE COURT: Right.

6 MR. PESCI: -- into the idea of doing it.

7 THE COURT: Right.

8 MR. PESCI: So --

9 THE COURT: It was pointing the finger at each  
10 other.

11 MR. PESCI: Exactly. So I take issue with the  
12 defense when they say that our theory all along has always  
13 been that Mr. H is the one who's responsible for everything.  
14 No, that's not been our situation because we presented  
15 evidence that Little Lou, in essence, street terms,  
16 embarrasses his father into going forward with this. You're  
17 never going to be like Rizzolo. You're never going to be like  
18 Galardi.

19 THE COURT: That's true.

20 MR. PESCI: So this plan didn't start with Mr. H.  
21 So us getting up and saying Deangelo's a part of that plan --  
22 because if you remember the testimony, it's Deangelo who talks  
23 with Little Lou. It's Little Lou who says, Get the baseball  
24 bats and the garbage bags, and then Little Lou that goes to  
25 his dad and gets his dad to sign off on the order, so to

1 speak. So we haven't assigned ourself to the concept that  
2 Mr. H is the impetus and the catalyst to this entire thing.

3 THE COURT: What if I tell them this: The jury is  
4 instructed that the State sought the death penalty against  
5 Kenneth Counts. The jury is instructed that the State  
6 initially sought the death penalty against Mr. H; however,  
7 withdrew the death penalty based on various tactical and legal  
8 decisions as a result of rulings made by this Court and the  
9 State did not, you know, enter into plea negotiations -- I  
10 mean, then you have to get into everything, I think --

11 MR. BUNIN: I think that's fair.

12 THE COURT: -- because nobody wants to get into  
13 anything. The State entered into plea negotiations with  
14 Angela Espindola and Jayson Taoipu and the State sought life  
15 without the possibility of parole against Little Lou or  
16 something like that.

17 MR. PESCI: Yeah, we sought the first-degree murder  
18 conviction --

19 THE COURT: Right.

20 MR. PESCI: -- on both the dad and the son so --

21 MR. BUNIN: You sought death against Little Lou at  
22 one point, but the Supreme Court said -- dropped that, right?  
23 Okay.

24 THE COURT: Oh, and as a result, then I think you  
25 can say the State sought death against Little Lou, but as a

1 result of a legal ruling was forced to proceed without the  
2 death penalty against Little Lou. I mean, I think the jury  
3 then is entitled to everything.

4 MR. PESCI: Right. And our official position is we  
5 oppose it, obviously. But if you're going to go with it, you  
6 go with that. I like the last part especially, Judge, because  
7 it was -- it was -- the way I recall it is one was and one  
8 wasn't. You didn't want us going forward like that.

9 THE COURT: Right. And it was -- and now that I'm  
10 talking about it, I remember exactly. Part of it was just  
11 general considerations, but a lot of it was the specific  
12 consideration, particularly as against Mr. H, because I found  
13 that argument -- watching them in the courtroom numerous  
14 times, I found the argument of Little Lou that Mr. H was  
15 domineering and maybe didn't give Little Lou the love he  
16 needed.

17 MR. PESCI: How about when he was in custody?  
18 That's just, on its face, evidence of that.

19 THE COURT: Right.

20 MR. PESCI: He never bailed his son out.

21 THE COURT: Right. As well as their interactions  
22 here in court, which I witnessed. We had a very, very long  
23 conflict hearing and that was hours and hours and I was able  
24 to watch the two of them interacting as was my staff and that,  
25 I think, with Mr. H facing the death penalty, obviously the

1 Court has to be especially mindful of making sure that  
2 everything is fair towards Mr. H. And I thought that some of  
3 that evidence could, in fact, be quite probative based just on  
4 what I was able to ascertain by watching -- right, and the  
5 fact that Little Lou sat in jail for --

6 MR. PESCI: The whole time.

7 THE COURT: -- the whole time while Mr. H, you  
8 know -- I think that that -- I think as parents, you folks  
9 could probably realize how unique that was.

10 MR. PESCI: That should be its own aggravator.

11 THE COURT: Huh?

12 MR. PESCI: That should be its own aggravator.

13 THE COURT: In any event, so why don't I instruct  
14 the jury -- and I think this is consistent with Judge  
15 Loerher's ruling, and as I said, I want to be consistent with  
16 Judge Loerher's ruling. As I said I want to be consistent. I  
17 don't believe in going back over things that happened.

18 So jury instructed State sought the death penalty  
19 against Kenneth Counts, sought against Mr. --

20 MR. BUNIN: I don't know why -- I mean, I guess what  
21 you want to mention of Kenneth Counts is true, but that was  
22 already brought out in the testimony, so we don't need to  
23 reiterate that in the instruction. What was never brought out  
24 is that it was dropped against Mr. H.

25 THE COURT: Well, if they already know it, number

1 one, it's not prejudicial because they already know it. And,  
2 number two, I think -- I think if you're going to tell them  
3 about everyone, you have to tell them about everyone in a  
4 single instruction; otherwise, it sort of highlights or  
5 dishighlights one or the other so --

6 MR. BUNIN: But they already did bring out  
7 everything except Mr. H, which is why -- the only reason I  
8 mention it. It seems like --

9 THE COURT: State, what's your position on Kenneth  
10 Counts?

11 MR. PESCI: Well, actually it was brought out by  
12 defense counsel with cross-examination of Anabel Espindola.  
13 And so if they're going to now want this instruction --

14 MR. BUNIN: No, not on Mr. H, it wasn't. I'm sorry.  
15 The only thing that was brought out against Anabel on cross  
16 was -- I'm sorry to interrupt you, but I think you said  
17 something earlier that wasn't accurate. The only thing that  
18 was brought out was that she was aware that Jay Jay had a deal  
19 for manslaughter at the time she signed her agreement. I  
20 never asked her about death penalty regarding anybody else,  
21 only herself, and if she knew Jay Jay had a deal. I don't  
22 think I asked any other questions.

23 MR. PESCI: Even accepting that, he still asked  
24 about her. So there's been information about her facing the  
25 death penalty --

1 MR. BUNIN: That's true.

2 MR. PESCI: -- and how it's no longer facing the  
3 death penalty and it was back and forth. So our position is  
4 just like Your Honor said, if you're going to bring this up  
5 about Mr. H, it should be brought out about everyone.

6 MR. BUNIN: And all we discussed with Judge Loerher  
7 was how they opened the door to Mr. H by mentioning KC.  
8 Anabel obviously I am allowed to bring out because they put  
9 her on the stand.

10 MR. PESCI: See, that's where I think this open the  
11 door is so crazy. You know what I mean? Respectfully, in the  
12 sense that if it came out with Anabel and then Mr. DiGiacomo  
13 brings it up about the other witness, how is the door already  
14 now opened by Anabel? I mean, what door's open if it's  
15 already been talked about with Anabel prior to any questioning  
16 by Mr. DiGiacomo? How's the door opened?

17 MR. BUNIN: They put Anabel on the stand and part of  
18 my attack on her credibility --

19 THE COURT: Well, wait a minute.

20 MR. PESCI: They're the one's that --

21 THE COURT: Just because you put somebody on the  
22 stand and then you choose to ask them a question and they  
23 answer it truthfully doesn't open the door. I mean --

24 MR. BUNIN: I'm not arguing that my questions to  
25 Anabel opened the door. They are. I think the only question



1 that opened any door was Mr. DiGiacomo's question to Detective  
2 Wildemann about --

3 THE COURT: I'm sorry. I misspoke. I meant doesn't  
4 open the door because they elected to call the witness. That  
5 doesn't mean they open the door to every single potential  
6 answer and potential question --

7 MR. BUNIN: Again, that was never our position.

8 THE COURT: -- that can be asked.

9 MR. BUNIN: I was asking her directly about -- I was  
10 trying to impeach her credibility as to why she would testify  
11 and how she's testifying based on the fact that at some point  
12 she was facing the death penalty, and even after she was  
13 facing the death penalty, she was still facing life without.  
14 It's about her own credibility. Anabel has nothing to do with  
15 this. That's the State's position.

16 The reason they opened the door to Mr. H is because  
17 they asked Detective Wildemann if the State sought the death  
18 penalty against KC. Now the door is opened.

19 And I also think it does relate to my other  
20 argument. If they're going to claim that Deangelo is somehow  
21 the worst of the worst because he was involved in setting this  
22 up, well, then, certainly Mr. H would be among the worst of  
23 the worst for setting this up.

24 THE COURT: Well, you're free to argue that. I'm  
25 not saying you can't argue that. You're certainly free to

1 argue that and you're certainly free to say, Look, you know,  
2 basically, you know, they could have proceeded on death with  
3 Mr. H and they made the decision not to do that. They weren't  
4 precluded by the Court --

5 MR. BUNIN: That's all I want to be clear on.

6 THE COURT: -- from doing that like they were on  
7 Little Lou. They could have proceeded to death on him, and  
8 they chose not to, for whatever -- you know, because they made  
9 a tactical decision. Well, if it's that important, they could  
10 have done two trials and they didn't.

11 MR. BUNIN: I'll get the transcript. You just made  
12 a good argument for me, so I want the transcript.

13 THE COURT: All right. Here's my proposed  
14 instruction, and then I have a question that I'm going to ask  
15 before either responds. Based on Judge Loerher's ruling,  
16 based on the fact that Mr. Bunin wants to have --

17 MR. BUNIN: You're not going to do that in front of  
18 the jury, are you?

19 THE COURT: Of course not.

20 THE CLERK: Could you let me write down what the  
21 judge is saying? I'm trying to write down what you're saying  
22 and I can't do it if you talk.

23 THE COURT: All right. Based on that, Mr. Bunin's  
24 request that there be an instruction that they did not seek  
25 death against Mr. Hidalgo, based on, I think, concerns of the

1 State that it be complete, here is my proposed instruction.

2 The jury's instructed the State sought the death  
3 penalty against Kenneth Counts. The State sought the death  
4 penalty against Mr. Hidalgo, Jr., Mr. H, but withdrew it as a  
5 result of tactical and legal decisions based on legal rulings  
6 made by this Court. The State sought the death penalty  
7 against Little Lou, Mr. Hidalgo, III, but was unable to seek  
8 death based on legal rulings by the Court and the State  
9 entered into plea negotiations with Anabel Espindola and  
10 Jayson Taoipu.

11 My question is, State, rather than just say, The  
12 State sought the death penalty against Mr. Hidalgo, Jr. but  
13 withdrew it, do you prefer the blanket instruction, this --  
14 what I proposed?

15 MR. PESCI: I like what you just read.

16 THE COURT: Okay. Mr. Bunin, given the fact that  
17 the Court is not inclined to just instruct them as to Mr. H  
18 alone, would you prefer this longer instruction as opposed to  
19 no instruction?

20 MR. BUNIN: Yes.

21 THE COURT: All right. All right. Everybody good,  
22 or is everybody not good but resigned to that?

23 MR. PESCI: Let's go.

24 MR. BUNIN: My client says he needs a minute to  
25 speak to us. He didn't have a chance because they just

1 brought him up.

2 THE COURT: All right.

3 MR. PESCI: Do you want me to step out back?

4 THE COURT: Do you want to bring him in there?

5 That's fine.

6 MR. BUNIN: I'll probably go in the back, if we  
7 could.

8 (Court recessed at 11:28 a.m. until 11:34 a.m.)

9 (Outside the presence of the jury.)

10 THE COURT: Do you want me to just give this  
11 proposed instruction as part of the instructions, or do you  
12 want me to read this just to the jury like now?

13 MR. BUNIN: I think it should be in the instruction  
14 packet.

15 THE COURT: Okay.

16 MR. PESCI: Well, I would request that you read it  
17 now because we settled instructions yesterday. That was done.

18 THE COURT: Oh, it was?

19 MR. PESCI: Yes.

20 MR. BUNIN: We settled them, except not this one,  
21 because she said that we needed to put together another  
22 instruction with the Court.

23 THE COURT: I'm just going to instruct them  
24 verbally -- orally, actually. Everything's verbal. I make  
25 that mistake all the time.

1           Shall we bring them in? Go ahead.

2                   (Jury reconvened at 11:35 a.m.)

3           THE COURT: All right. Court is now back in  
4 session. The record will reflect the presence of the State  
5 through Mr. Pesci, the presence of the defendant, along with  
6 his counsel, the officers of the Court and the members of the  
7 jury.

8                   Ladies and gentlemen, before the State calls their  
9 next witness, I do have an instruction to give you.

10           The jury is instructed that the State sought the  
11 death penalty against Kenneth Counts. The State sought the  
12 death penalty against Mr. Hidalgo, Jr., otherwise known as  
13 Mr. H, but withdrew the death penalty as a result of tactical  
14 and legal decisions made by the State based on legal rulings  
15 made by the Court.

16           The State sought the death penalty against  
17 Mr. Hidalgo, III, otherwise known as Little Lou, but was then  
18 unable to seek death, was precluded from seeking death based  
19 on legal rulings that had been made by the Court, this and  
20 other courts.

21           And the State entered into plea negotiations with  
22 Anabel Espindola and Jayson Taoipu.

23           Mr. Pesci, are you ready to proceed with your next  
24 witness?

25           MR. PESCI: We've actually rested, Your Honor.

1 THE COURT: Oh, I'm sorry. Thank you.

2 Defense.

3 MR. BUNIN: We'd like to call Violet Dillon.

4 THE COURT: All right.

5 Ma'am, just come on up here, please, just up those  
6 stairs. I'm sorry. And just remain standing, facing this  
7 lady right there who's going to administer the oath to you.

8 VIOLET DILLON, DEFENDANT'S WITNESS, SWORN

9 THE CLERK: Please be seated, and please state and  
10 spell your name.

11 THE WITNESS: Violet Dillon, V-i-o-l-e-t,  
12 D-i-l-l-o-n.

13 THE CLERK: Thank you.

14 THE COURT: All right. Thank you. Let's just be at  
15 ease for a moment while the marshal hands out the jury  
16 notepads.

17 MR. BUNIN: Thank you.

18 THE COURT: All right. Thank you.

19 Mr. Bunin, you may proceed.

20 MR. BUNIN: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. BUNIN:

23 Q Do you live here in Clark County, Nevada?

24 A Yes, I do.

25 Q How long have you lived in Clark County?

1 A 23 years.

2 Q What is your occupation?

3 A A drug tester.

4 Q A drug tester?

5 A Yes, it is.

6 Q Okay. Did you go to high school here in Las

7 Vegas?

8 A Yes, sir, I did.

9 Q At some point did you go to Rancho High School?

10 A Yes, I did.

11 Q Do you remember what year approximately you

12 when to Rancho?

13 A '98, '99, around --

14 Q 1998, 1999. About how old were you when you

15 were at Rancho?

16 A I was 14 years old.

17 Q 14. When you were at Rancho High School, did

18 you know a person by the name of Deangelo Carroll?

19 A Yes, I did.

20 Q Were you friendly with Deangelo?

21 A [Inaudible].

22 Q Do you recall an incident that occurred between

23 you and Deangelo where something inappropriate happened?

24 A Yes, I do.

25 Q Can you do your best to speak up because --

1 THE MARSHAL: Just give me one minute. I'm sorry.  
2 MR. BUNIN: Sure.  
3 THE MARSHAL: The microphone, somebody moved it.  
4 THE WITNESS: Thanks.  
5 THE COURT: Thank you.  
6 MR. BUNIN: Thank you.  
7 BY MR. BUNIN:  
8 Q Do your best to speak up so we can all hear  
9 you.  
10 A Okay.  
11 Q I've been having the same trouble all trial, so  
12 I'm trying to do better.  
13 A Okay.  
14 Q Do you recall an incident where something  
15 inappropriate happened between you and Deangelo?  
16 A Yes.  
17 Q Will you describe that incident for the jury,  
18 please.  
19 A He just touched my breast.  
20 Q Was it over your clothing?  
21 A Over clothing, yes.  
22 Q Was that at Rancho High School?  
23 A Yes.  
24 Q How many times did that occur?  
25 A One time.



1 Q What did you say to Deangelo when that  
2 occurred?

3 A Please do not do that again, and that was it.

4 Q Did Deangelo ever do it again?

5 A No, sir.

6 Q Now, do you remember giving a statement to the  
7 police?

8 A Yes, I do.

9 Q And you're aware that a police report was made  
10 eventually based on the statement you gave?

11 A Yes.

12 Q And, you know, at some point we met earlier and  
13 I showed you a copy of the statement you wrote back in 1998.  
14 Do you remember that?

15 A Yes, I do.

16 Q And did that help remind you of everything you  
17 said to the police?

18 A I do, and being 14, being a drama queen, it's  
19 not true. I mean, if I could see myself, I would slap myself  
20 upside the head for -- it was just stupid.

21 Q Let's go through what you said, okay?

22 A Okay.

23 Q Now, in this statement to the police, did you  
24 tell the police that Deangelo took you behind the bleachers in  
25 the gym and simulated having sex with you?

1 MR. PESCI: Objection. Leading.  
2 THE COURT: Well, it is a little leading.  
3 MR. BUNIN: It was directly read into the record  
4 that way --  
5 THE COURT: Oh, all right.  
6 MR. BUNIN: -- by their witness.  
7 THE COURT: Overruled.  
8 MR. BUNIN: Thank you.  
9 BY MR. BUNIN:  
10 Q Did you tell the police that Deangelo took you  
11 behind the bleachers and forced you down and simulated having  
12 sex with you?  
13 A Yes.  
14 Q Was that statement true?  
15 A No.  
16 Q Did you tell the police that Deangelo  
17 threatened that if you ever told anybody what happened, he  
18 would rape you?  
19 A Yes.  
20 Q Is that statement true?  
21 A No, sir.  
22 Q Did you tell the police that friends of  
23 Deangelo's beat you up over all this?  
24 A Yes.  
25 Q Is that statement true?

1           A     No.

2           Q     It was never true?

3           A     No, sir.

4           Q     Okay. Now, another friend of yours back  
5 then -- did you have a friend named Michele Pruitt?

6           A     Yes, I did.

7           Q     And were you aware as to whether or not she  
8 knew Deangelo Carroll?

9           A     Yes, I did.

10          Q     Did she make her feelings aware to you about  
11 Deangelo Carroll?

12          A     Yes, she had a crush on him. Yes.

13          Q     A crush on him?

14          A     Yes.

15          Q     Do you know, through Deangelo, speaking to him,  
16 how he felt about Michele?

17          A     I had a feeling, I'm not very positive, that he  
18 wasn't just interested, maybe just as friends, nothing more.

19          Q     Okay. All right. Now, are you aware that  
20 Michele Pruitt also made some allegations back in 1998?

21          A     Yes.

22          Q     Now, did you spend a lot of time with Michele  
23 Pruitt back then?

24          A     Yes.

25          Q     Did you know her -- think you knew her pretty

1 well?

2 A Thought I did.

3 Q Would you be able to give your opinion as to  
4 her truthfulness as a person?

5 MR. PESCI: Objection, Your Honor.

6 THE COURT: I'll see counsel up here.

7 (Off-record bench conference)

8 THE COURT: All right. Overruled.

9 BY MR. BUNIN:

10 Q So based on your knowledge of Michele Pruitt,  
11 do you have an opinion as to her reputation for truth and  
12 veracity?

13 A She likes to stretch the truth. She's a very  
14 good manipulator.

15 MR. PESCI: Judge, objection. That's a yes or no  
16 answer.

17 THE COURT: All right. Well, she --

18 THE WITNESS: I'm sorry.

19 THE COURT: She's responded.

20 Go on.

21 BY MR. BUNIN:

22 Q I'm sorry. I didn't hear your entire response.  
23 She likes to stretch the truth, and what else was your  
24 response?

25 A She's a very good manipulator.

1 Q Okay. Now, did the -- anybody from the  
2 prosecution office, that you're aware of, ever contact you  
3 about this case?

4 A No, sir.

5 Q Did anybody ever contact you from the  
6 prosecution and ask you if the statements you made to the  
7 police in 1998 were true statements?

8 A No.

9 Q Had somebody from the prosecution's office  
10 contacted you, what would you have told them?

11 A It's not true. We were just kids.

12 Q Is there ever a time that you felt intimidated  
13 by Deangelo Carroll?

14 A No.

15 Q Was there ever a time that you were scared of  
16 Deangelo Carroll?

17 A No.

18 MR. BUNIN: I have no other questions, Your Honor.

19 THE COURT: All right. Thank you. Mr. Pesci.

20 CROSS-EXAMINATION

21 BY MR. PESCI:

22 Q Ma'am, if I've understood your testimony  
23 correctly, you are here telling the jury that, in fact,  
24 Deangelo Carroll touched your breasts without your permission?

25 A Yes.

1 Q Okay. So as you sit here today, is that  
2 something that, when you said it back then, that was truthful?

3 A No -- well, I'm sorry. Could you re --

4 Q When you told the police back -- was it '98,  
5 '99?

6 A '98.

7 Q I can't remember.

8 A '98.

9 Q All right. So in '98 when you told the police  
10 that Deangelo Carroll had inappropriately touched you, was  
11 that true?

12 A Yes.

13 Q Okay. What led up to Deangelo inappropriately  
14 touching your breasts?

15 A I do not remember the exact details of that.  
16 That was 12 years ago. I'm sorry.

17 Q Okay. So you can sit here today and say you  
18 know definitively that he touched you that way and you know  
19 definitively that you embellished about the other facts?

20 A Yes, sir.

21 Q But you can't tell me the facts that preceded  
22 him touching you?

23 A It was so long ago.

24 Q Okay. You didn't invite him to touch your  
25 breasts, did you?

1           A     No.

2           Q     I'm sorry. She's recording everything, so  
3 whatever your answer is, you have to --

4           THE COURT: Yeah, you need to speak into the  
5 microphone.

6           THE WITNESS: Oh, I'm nervous. I'm sorry.

7           THE COURT: No, it's okay.

8           THE WITNESS: No.

9           THE COURT: Yeah, just if you lean forward a little  
10 bit, that microphone will pick your voice up better.

11          THE WITNESS: Okay.

12 BY MR. PESCI:

13          Q     Sorry. I apologize. It's just that it's got  
14 to be out loud.

15          A     I'm sorry.

16          Q     No, no worries.

17          And then you were asked some questions about your  
18 meeting with the prosecution. Do you remember those  
19 questions?

20          A     Mm-hmm.

21          Q     Is that yes?

22          A     Yes.

23          Q     So if I understood you correctly, you, in fact,  
24 met with defense counsel prior to coming to court and  
25 testifying?

1 A As in like today or before?

2 Q Anytime. Have you met with these two  
3 individuals, defense counsel, prior to you coming to court  
4 today and did you talk with them prior to your testimony?

5 A I met the gentleman. I just said hello because  
6 I didn't know exactly where I was supposed to go or anything  
7 like that.

8 Q Met what gentleman?

9 A The lawyer.

10 Q Okay. Was it the gentleman that just asked you  
11 questions?

12 A Yes.

13 Q Mr. Bunin?

14 A Yes.

15 Q Okay. When did you meet him?

16 A Earlier today he came up to me, asked who I  
17 was. I let him know who I was. And he just informed me  
18 that -- because I was told court was supposed to start at 8:30  
19 and he said it doesn't start until 11:00, to go ahead and  
20 leave or do what I had to do and just come back and be back  
21 before court.

22 Q All right. Prior to that, did you ever talk to  
23 him?

24 A No, sir.

25 Q So you didn't even talk with them like you



1 didn't talk with us?

2 A Exactly.

3 MR. PESCI: Thank you. Nothing further.

4 THE COURT: Redirect, Mr. Bunin.

5 MR. BUNIN: Just briefly.

6 REDIRECT EXAMINATION

7 BY MR. BUNIN:

8 Q A couple of years ago you were contacted by a  
9 person named Richard Frankie or Lisa Grippentraub? These are  
10 private investigators.

11 MR. PESCI: Objection. Leading.

12 THE COURT: Well, overruled.

13 MR. BUNIN: Thank you.

14 BY MR. BUNIN:

15 Q Do you recall investigators that work for me  
16 contacting you?

17 A Vaguely, yes.

18 Q Okay. And you spoke to them one time a couple  
19 of years ago; is that your recollection?

20 A That I remember, just one time, yes.

21 Q And then after that, did you speak to them  
22 again today about where you were supposed to go and what time?

23 A They let me know -- they called me yesterday,  
24 let me know to be here at 8:30 and that was it.

25 Q Okay. And then you and I met earlier today; is

1 that right?

2 A Yes.

3 Q And we spoke for a few minutes?

4 A Yes.

5 Q Okay. Just to be clear, if the prosecution had  
6 a police officer, a detective, read a police report to the  
7 jury about detailing the statement you gave in 1998, you would  
8 say that that statement is absolutely not true; isn't that  
9 correct?

10 A Yes, sir.

11 MR. BUNIN: Okay. I have no other questions, Your  
12 Honor.

13 RECROSS-EXAMINATION

14 BY MR. PESCI:

15 Q Ma'am, I'm sorry. You just said the police  
16 report was absolutely not true?

17 A Yes.

18 Q I thought you told us that Deangelo did, in  
19 fact, touch your breasts without your permission.

20 A He touched my breasts, but everything that I  
21 wrote in there when I was 14, as in threatening to rape me and  
22 all that --

23 Q Sure.

24 A -- is not true. And I did not, that I can  
25 remember, put that part in, the touching the breast.

1 Q Touching you inappropriately?  
2 A The breast part, that part I do not remember.  
3 Q That happened?  
4 A He did touch it, like, you know, any other 14  
5 year old guy does.  
6 Q Did you have a lot of 14-year-old guys groping  
7 you?  
8 A Along the years, yes.  
9 Q Did you talk to the police about those?  
10 A No. Because when I look at it now --  
11 Q Why did you talk to the police about this one?  
12 A As again, my friend Michele who had the crush  
13 on him, wanted revenge and that's what we did.  
14 Q Michele put you up to it?  
15 A (The witness nodded.)  
16 Q So you made a police report because your friend  
17 told you to?  
18 A Not -- I don't know how to explain it. I'm  
19 sorry.  
20 Q Okay. No worries. Thank you.  
21 THE COURT: Mr. Bunin, any other questions?  
22 MR. BUNIN: No, Your Honor.  
23 THE COURT: All right. Thank you for your  
24 testimony. You are excused at this time. Please don't  
25 discuss your testimony with anyone else who may be called as a

1 witness.

2 All right. Mr. Bunin or Mr. Ericsson, you may call  
3 your next witness.

4 MR. ERICSSON: Thank you, Your Honor. We call  
5 Virginia Carroll.

6 THE COURT: Ma'am, just come on up here, please.  
7 It's just up those couple of stairs right there.

8 VIRGINIA CARROLL, DEFENDANT'S WITNESS, SWORN

9 THE CLERK: Please be seated, and, ma'am, would you  
10 please state and spell your name.

11 THE WITNESS: My name is Virginia Carroll,  
12 C-a-r-r-o-l-l.

13 THE CLERK: Thank you.

14 THE COURT: All right. Mr. Ericsson, you may  
15 proceed.

16 MR. ERICSSON: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. ERICSSON:

19 Q Good morning, Virginia.

20 A Good morning.

21 Q Are you able to scoot a little bit closer?

22 There's a microphone there in front of you that you're going  
23 to need to speak into.

24 Virginia, do you know Deangelo?

25 A Yes.

1 Q And how do you know Deangelo?  
2 A He's my grandson.  
3 Q And where do you currently live?  
4 A I live at 3024 Alma Drive, A-l-m-a, down in  
5 North Las Vegas.  
6 Q And how many years have you lived at that  
7 house?  
8 A 35 years.  
9 Q Okay. How many children do you have?  
10 A I have six living and two passed away.  
11 Q Okay. And is one of your children Deangelo's  
12 mother?  
13 A Yes, my oldest daughter.  
14 Q And what is her name?  
15 A Thelma Jean Johnson.  
16 Q Did Deangelo ever live at your house?  
17 A Yes, from day one when he was born, from a  
18 baby.  
19 Q Okay. So from the time he was born, he resided  
20 with you?  
21 A Yes.  
22 Q And explain to the jury why it was that  
23 Deangelo lived with you.  
24 A Deangelo lived with me because his mother  
25 didn't have time for him.

1 Q And explain to us what you mean by she didn't  
2 have time for him.

3 A Well, first of all, he never had a father, and  
4 she was too busy running down the street with her friends, so  
5 that's the reason I kept him because she didn't have no time  
6 to spend with him.

7 Q And during most of the time -- did Thelma live  
8 at your house during most of Deangelo's childhood?

9 A Yes, she did.

10 Q Were there times where she lived at other  
11 locations?

12 A Yes.

13 Q And when she lived at other places, did  
14 Deangelo remain at your house?

15 A Yes, for a time, off and on.

16 Q You indicated that Deangelo did not have a  
17 father. Did you ever meet Deangelo's father?

18 A No.

19 Q Did Deangelo ever indicate to you how he felt  
20 about not knowing his father? You can take a moment.

21 THE COURT: Just take your time.

22 BY MR. ERICSSON:

23 Q Would you like some water? Would that help?

24 A What was the question?

25 Q Let me ask you this question: Virginia, are

1 you feeling okay? Are you ready to proceed again?

2 A I guess so.

3 Q Did you notice Deangelo having any problems  
4 related to him not knowing his dad?

5 A Yes.

6 Q What types of things when he was young did you  
7 observe in relationship to Deangelo not having a father?

8 A Everybody come -- every man come there, he  
9 claimed them to be his dad. He wanted them to be his dad.

10 Q And were these men that had come to your house  
11 for visits or something along those lines?

12 A Yeah, visit with my older kids, some of their  
13 friends. He wanted a daddy so bad so he was claiming anybody.

14 Q Did -- how well did Deangelo do in his school  
15 work?

16 A Well, he didn't do too good in his school work.  
17 He was always running his mouth all the time and never did pay  
18 attention to his work. He wanted a father, you know.

19 Q Since Deangelo has been in jail these last five  
20 years, have you had the opportunity to go down and visit him  
21 at the jail?

22 A All the time.

23 Q About how often do you go down and try to see  
24 him?

25 A Sometimes twice a month. Maybe at least once a

1 month.

2 Q And do you sometimes speak to him on the  
3 telephone?

4 A All the time. He always want me to bring his  
5 son down there so he can see his son.

6 Q And this may be an obvious question, but,  
7 Virginia, do you still love Deangelo?

8 A Yeah. I'm the only one he had to live with.  
9 Nobody else cared about him, so I have to love him, you know.

10 MR. ERICSSON: Thank you, Virginia. I have no  
11 further questions.

12 THE COURT: All right. Thank you, Mr. Ericsson.  
13 Mr. Pesci.

14 MR. PESCI: No, Your Honor.

15 THE COURT: Ma'am, thank you for your testimony.  
16 You are excused at this time.

17 Defense may call its next witness.

18 MR. ERICSSON: May we approach just to talk about  
19 scheduling?

20 THE COURT: Sure.

21 (Off-record bench conference)

22 THE COURT: Ma'am, just come on right up here next  
23 to me on the witness stand and then just up those couple of  
24 stairs and please remain standing, facing that lady right  
25 there.



1 JEANIQUE CARROLL, DEFENDANT'S WITNESS, SWORN

2 THE CLERK: Please be seated and will you please  
3 state and spell your name.

4 THE WITNESS: My name is Jeanique Carroll. It's  
5 J-e-a-n-i-q-u-e, Carroll, C-a-r-r-o-l-l.

6 THE COURT: Okay. Thank you.

7 Mr. Ericsson.

8 MR. ERICSSON: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. ERICSSON:

11 Q Jeanique, how are you related to Deangelo?

12 A I'm married to Deangelo.

13 Q And how long have you two been married?

14 A Well, we've been married about five, six years  
15 now.

16 Q But where do you currently live?

17 A You want the address?

18 Q No, just the town.

19 A North Las Vegas.

20 Q And are you currently employed?

21 A Yes.

22 Q What kind of work do you do?

23 A I'm a nanny.

24 Q Do you have any children?

25 A Yes, we do.

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1 Q And tell me the name of your child.  
2 A My child's name is Deangelo Gicardi Carroll.  
3 Q How old is Deangelo?  
4 A He's five.  
5 Q And he is Deangelo, my client's, son, correct?  
6 A Yes.  
7 MR. ERICSSON: Your Honor, may I approach?  
8 BY MR. ERICSSON:  
9 Q Jeanique, can you just look at these four  
10 photographs and see if you recognize them.  
11 A Yeah.  
12 Q Are those -- and they are Defendant's Proposed  
13 Exhibits A through D. Are those photographs that you  
14 recognize?  
15 A Yes, I do.  
16 Q In fact, are those photographs that you have  
17 provided to us?  
18 A Yes.  
19 MR. ERICSSON: Your Honor, we would move for the  
20 admission of Defendant's Exhibits A through D.  
21 MR. PESCI: No objection.  
22 THE COURT: All right. A through D are admitted.  
23 (Defendant's Exhibits A through D admitted.)  
24 MR. ERICSSON: And may I publish, Your Honor?  
25 THE COURT: You may.

1 BY MR. ERICSSON:

2 Q Jeanique, we're just going to briefly go  
3 through these photographs for the jury. This is Exhibit A.  
4 What -- who's in this photograph?

5 A That's me and Deangelo.

6 Q And who's in this photograph?

7 A That's Deangelo and our son, little Deangelo.

8 Q When was little Deangelo born?

9 A He was born November 10, 2004.

10 Q And the last two photographs, who's in that  
11 picture?

12 A That's Deangelo -- little Deangelo.

13 Q Approximately how long ago was that?

14 A That was three months ago.

15 Q Exhibit D, is this another photograph of little  
16 Deangelo?

17 A Yes.

18 Q How old were you when you first met Deangelo?

19 A I was 18.

20 Q Tell the jury what the qualities were that you  
21 saw in Deangelo when you decided to marry.

22 A He was just a sweet, caring person. He would  
23 do anything for anyone, no matter who you were, even if he saw  
24 you on the street, you needed a dollar or a dime. He was just  
25 always there for us, always tried to provide.

1 Q Did he -- when he was arrested in this case,  
2 was he employed?

3 A Yes. He actually had two jobs.

4 Q What kind of work did he do?

5 A He was first working for 7-Eleven at nights and  
6 he was kind of working for Palomino, but it wasn't nothing  
7 big. It was just, you know, just little jobs here and there  
8 to try to pay the bills.

9 Q Did you ever meet Mr. H?

10 A No.

11 Q Did Deangelo ever talk to you about Mr. H?

12 A Yeah.

13 Q And who do you understand Mr. H to be?

14 A He's just -- I would say like -- you could just  
15 tell by -- I mean, he would say like he was kind of like a  
16 father to him, but you could just tell that -- like Mr. H was  
17 just there for him, something he never had, so he just thought  
18 he could trust him.

19 Q And so we're clear, what was your understanding  
20 of how Deangelo knew Mr. H?

21 A Like a father figure.

22 Q Where was it that Deangelo interacted with  
23 Mr. H?

24 A Well, I wasn't around, but I would just -- I'll  
25 be there to hear the phone calls and like I would know that --

1 because he was always with him.

2 Q Did Deangelo have a type of walkie-talkie  
3 phone?

4 A Yeah.

5 Q So were you able to hear conversations between  
6 Deangelo and who you thought was Mr. H?

7 A Yeah, sometimes. I would know who they are.  
8 Sometimes they were Anabel or Little Louie.

9 Q I want to ask you what you remember about the  
10 morning when Deangelo came back after Mr. Hadland had been  
11 killed. Do you remember that morning?

12 A Yeah.

13 Q Where were you at when you first saw Deangelo  
14 that day?

15 A I was in the living room and he walked in. He  
16 seemed terrified and kind of hurt about the situation. And he  
17 just said that he had to talk to me.

18 Q And what -- what did he tell you when he talked  
19 to you?

20 MR. PESCI: Judge, can we approach?

21 (Off-record bench conference)

22 BY MR. ERICSSON:

23 Q Jeanique, you can't talk about -- you can't say  
24 what Deangelo said to you, but you can answer this question:  
25 When Deangelo came home that morning, was he emotional?

1           A     Yes.

2           Q     Was there a time when you two were together  
3 when he just cried?

4           A     He didn't really cry, but I could tell that he  
5 just felt sorry for what happened.

6           Q     During these last five years that Deangelo has  
7 been incarcerated, have you had contact with him?

8           A     Yes.

9           Q     And you talk to him on the phone?

10          A     Yes.

11          Q     Approximately how many times a week do you talk  
12 to him?

13          A     Before we used to talk like three, four times a  
14 day, more than that.

15          Q     You say before. Has --

16          A     Because of like money means now, it's kind of  
17 like probably twice a week or so.

18          Q     Has your son, little Deangelo, been able to go  
19 down and see his father at the jail?

20          A     Yes.

21          Q     Do you still love Deangelo?

22          A     Yes, I do.

23          Q     Does little D ask about Deangelo?

24          A     He asks about him all the time.

25          MR. ERICSSON: Okay. I have no further question.

1 THE COURT: Okay. Mr. Pesci.

2 MR. PESCI: No, Your Honor.

3 THE COURT: Thank you for your testimony. You are  
4 excused at this time.

5 THE WITNESS: Thank you.

6 THE COURT: All right. That's your last witness  
7 scheduled for this morning?

8 MR. ERICSSON: Yes, Your Honor. We have witnesses  
9 scheduled at 1:00.

10 THE COURT: All right. Ladies and gentlemen, we'll  
11 go ahead then and take our lunch break. We'll give you an  
12 hour, so we'll be in recess until 1:10 when we'll resume  
13 testimony.

14 Once again, you're admonished that during this lunch  
15 recess you're not to discuss the case or anything relating to  
16 the case with each other or anyone else. Do not read, watch,  
17 listen to reports or commentaries on the subject matter  
18 connected to the trial. Don't do any independent research.  
19 Please don't form or express an opinion on this phase of the  
20 trial until you begin deliberating with one another.

21 Once again, notepads in your chairs and follow our  
22 marshal through the double doors. We'll see you all back here  
23 at 1:10.

24 (Jury recessed at 12:13 p.m.)

25 THE COURT: All right. Just some scheduling. How

1 long do we anticipate for the doctor?

2 MR. ERICSSON: I would think maybe -- probably for  
3 us, a half hour to 45 minutes.

4 THE COURT: Okay. Then we'll take another break  
5 because I need to read the allocution admonishment to  
6 Mr. Carroll, so I'm just wondering if I should do that now.

7 I actually -- I can never remember the name of the  
8 case that's in there about what they can talk about. Normally  
9 I read them sort of that paragraph about, you know, this is  
10 what you can allocute about, this is what you can't allocute  
11 about. Does anybody know that case off the top of their head?

12 MR. BUNIN: We were just looking at it, yes.

13 THE COURT: Mr. Pesci, you should know that like the  
14 back of your hand.

15 MR. BUNIN: Your Honor --

16 THE COURT: I've got to do all sorts of stuff.

17 MR. ERICSSON: Here's the case.

18 THE COURT: I've got to know everything. Thank you.  
19 Can I just keep your copy, or do you want me to pull a copy?

20 MR. ERICSSON: You can use that. Can I get it back  
21 when we're --

22 THE COURT: Sure, if you don't mind. Otherwise, I  
23 can just have my law clerk pull it.

24 MR. ERICSSON: It's the Homick case is what --

25 THE COURT: Thank you. I can never remember this.



1 I'll just go ahead and have my law clerk pull it.

2 MR. PESCI: I think there's more than one Homick,  
3 isn't there?

4 THE COURT: There is more than -- it's the one that  
5 has the language about what they can talk about, what they  
6 can't talk about. If they talk about what they can't talk  
7 about, how that opens the door, and I just normally advise  
8 them of that on the record.

9 So you can take this back. I'm just going to have  
10 my law clerk pull one.

11 All right. So -- unless you want me to give him  
12 the -- do you want me to give him the admonition now, that  
13 way, if he wants -- has any questions, we have some time that  
14 he can discuss it with you?

15 MR. BUNIN: Sure.

16 THE COURT: Okay.

17 All right. And if everyone will please listen to  
18 make sure I cover everything to the satisfaction of both  
19 sides.

20 MR. ERICSSON: Your Honor, there is a section where  
21 it talks about --

22 THE COURT: Right. That's what I'm looking for.  
23 Thank you.

24 All right. Mr. Carroll, I need to advise you of  
25 your right of allocution. You have the right to allocute.

1 And what that means is you have the right to take the stand  
2 and make an unsworn declaration in front of the jury. This  
3 right is somewhat limited in scope.

4 I'm looking for the part that says it's limited to  
5 expressions of remorse, pleas for leniency.

6 (Off-record colloquy)

7 THE COURT: You know, there's another case that says  
8 it better. I'm going to do this from memory and then I'm  
9 going to go over the case again to make sure I covered it  
10 adequately.

11 Basically, Mr. Carroll, in your right of allocution,  
12 it's limited -- your unsworn statement is limited to  
13 expressions of remorse, pleas for leniency, plans for your  
14 future, what you would do, what you hope to do if you were  
15 granted life with or without the possibility of parole, things  
16 relating to how you might want to maintain your relationship  
17 with family members, the ways that you hope to possibly  
18 improve yourself during your imprisonment, things of that  
19 nature.

20 Anyone -- can either side think of anything I should  
21 cover into what Mr. Carroll can properly say as a subject of  
22 his allocution?

23 Mr. Ericsson, nothing else?

24 MR. ERICSSON: No. I think that covers --

25 THE COURT: Mr. Pesci, anything else?

1 MR. PESCI: No, Your Honor.

2 THE COURT: You can't get into commentary on your  
3 innocence because that matter has already been decided from  
4 the jury or comments on the crime itself. You can't discuss  
5 or testify -- or comment in a way to sort of minimize your  
6 involvement. You certainly, again, can express remorse to  
7 Mr. -- for what happened to Mr. Hadland, remorse for his  
8 family, but, you know, feelings of -- relating to that.

9 Now, if you do somehow get into the crime itself,  
10 that would subject you to being placed under oath and being  
11 cross-examined on that matter by the deputy district attorney.

12 Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Mr. Pesci, did I adequately  
15 cover what he can't do?

16 MR. PESCI: I believe so, Judge.

17 THE COURT: All right. And Mr. Bunin and  
18 Mr. Ericsson, did I adequately cover with Mr. Carroll what he  
19 can't do on allocution?

20 MR. ERICSSON: Yes, Your Honor. Yes.

21 THE COURT: All right. Anything either side would  
22 like me to add on advising Mr. Carroll regarding his right to  
23 allocute and its limitations?

24 MR. PESCI: Not at this time, Your Honor.

25 MR. ERICSSON: Not from the defense.

1 THE COURT: All right. Very good.

2 So, Mr. Carroll, if you have any questions, you can  
3 ask them in the back with your lawyers. If you want to  
4 prepare a written statement, you're able to read that written  
5 statement to the jury; otherwise, you can just speak, whatever  
6 you want to do.

7 All right. Any questions for me?

8 THE DEFENDANT: [Inaudible].

9 THE COURT: I'm sorry. I can't hear you.

10 MR. BUNIN: He wants to know if his grandmother is  
11 okay. He wants to know if she can come in and they can talk  
12 for a second.

13 COURT OFFICER: She's fine. I checked on her.  
14 She's fine.

15 THE DEFENDANT: Is there any way I can talk to her  
16 for a second?

17 THE COURT: Okay. Again, that's up to the COs.

18 If you want to bring the grandmother in, he can talk  
19 from that position to the grandmother. I don't have a problem  
20 as long as it's okay with the COs. Obviously you have to  
21 have --

22 COURT OFFICER: It has to be ordered by you.

23 THE COURT: Okay. Bring her in.

24 MR. BUNIN: Is the wife okay too? Can they both  
25 just come in? I'm sorry.

1 THE COURT: Yeah, they need to stand at a distance  
2 for security, and the COs need to eat lunch and they need to  
3 feed Mr. Carroll as well before we go. So I don't want this  
4 to be a long, drawn out thing. For a couple of minutes to  
5 make sure they're okay is fine, but then the COs also, like I  
6 said, they have things they have to do on their break, so I  
7 don't want to take too much time.

8 MR. BUNIN: Thank you.

9 THE COURT: Okay.

10 MR. PESCI: Is it okay if I step out then, Judge?

11 THE COURT: Yes.

12 (Court recessed at 12:21 p.m. until 1:17 p.m.)

13 (Outside the presence of the jury.)

14 THE COURT: All right. Bring them in. Oh, wait,  
15 where's Denise?

16 THE MARSHAL: She just walked out to grab something.

17 MR. PESCI: Judge, did you want the other case other  
18 than Homick? Because the one I was thinking of was  
19 Hechavarria (phonetic).

20 THE COURT: Do you think I covered it? I think I  
21 covered everything.

22 Mr. Bunin, Mr. Ericsson, satisfied?

23 MR. BUNIN: Yes, Your Honor.

24 MR. ERICSSON: Yes.

25 THE COURT: All right.

1 All right. Go ahead and bring them in.

2 THE MARSHAL: Yes, ma'am.

3 THE COURT: Actually, this is what I was thinking of.  
4 It's on page 134. It's remarks, expressions of remorse, pleas  
5 for leniency, and plans or hopes for the future, which is what  
6 I covered. I just didn't see it on that page.

7 Mr. Ericsson, if you want this back.

8 (Jury enters at 1:19 p.m.)

9 THE COURT: All right. Court is now back in  
10 session. The record will reflect the presence of the State,  
11 the defendant and his counsel, the officers of the court, and  
12 the members of the jury.

13 And the defense may call its next witness.

14 MR. ERICSSON: Your Honor, the defense would call Dr.  
15 Norton Roitman.

16 THE COURT: All right.

17 NORTON ROITMAN, DEFENDANT'S WITNESS, SWORN

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

20 THE WITNESS: Norton A. Roitman, MD; N-O-R-T-O-N  
21 R-O-I-T-M-A-N.

22 THE COURT: All right. Thank you.

23 Mr. Ericsson.

24 MR. ERICSSON: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. ERICSSON:

2 Q Good afternoon, Dr. Roitman. I'd like to start  
3 by asking you some questions about your background. Please  
4 explain to the jury what type of education you have.

5 A I went to the University of Wisconsin and got a  
6 bachelor's in experimental psychology. And then I went to  
7 medical school at the University of Illinois, and then into  
8 school at San Diego for my residency in medication psychiatry,  
9 biochemical brain based science psychiatry. And then I did a  
10 fellowship in child psychiatry in the Los Angeles area which  
11 was all psychotherapeutic training. I received qualifications  
12 in forensic psychiatry as well as geriatric and administrative  
13 psychiatry.

14 Q Doctor, when did you receive your medical  
15 degree?

16 A '76.

17 Q And how long have you been practicing as a  
18 psychiatrist?

19 A Since then.

20 Q Are you a member of any professional  
21 associations?

22 A I'm the chairman of the ethics committee for  
23 the Nevada Psychiatric Association and the representative to  
24 the American Psychiatric Association, the deputy rep. As well  
25 as Clark County Medical Society, I was on the board of

1 trustees, and the Nevada State Medical Association, I was a  
2 delegate to that.

3 Q Thank you. And do you have any board  
4 certifications?

5 A Yes, in general psychiatry and child and  
6 adolescent psychiatry.

7 Q And if you can explain to the jurors what board  
8 certification means.

9 A Well, it's a body of -- of practitioners and  
10 researchers who test doctors who come out of their training  
11 programs. So it's just not enough to be a graduate from the  
12 University of California San Diego. They just -- you can  
13 apply for this certification. You have to study for it. It's  
14 several days, oral examinations involved with it, and if you  
15 meet their standards you get a certification which  
16 distinguishes you from other doctors who don't.

17 Q Thank you. If you can describe for the jurors  
18 in general what your practice has entailed since you --

19 A Yes.

20 Q -- graduated in 1976.

21 A Well, I came to Las -- I came to Nevada in 1985  
22 when my training was finished, and I was -- because I was  
23 administratively qualified, I was asked to run the state  
24 hospital up in Sparks, Nevada. So for three years I had  
25 clinical supervision over all of the psychiatrists and



1 psychologists and social workers there. And we treated the  
2 most severely mentally ill there. Next door was Lakes  
3 Crossing where the -- it's a forensic facility, a hospital for  
4 patients who have criminal charges against them.

5 And then in the '80s, '88, I came down to Las Vegas  
6 and I established a managed care company, Harmony Counseling,  
7 and sold it in '95. And since that time I've pretty much  
8 devoted myself to evaluations and direct treatment of patients  
9 separate and apart from insurance. I participate in  
10 activities like this, forensic psychiatry about 40 percent of  
11 the time, criminal and personal injury, family court, and  
12 juvenile justice.

13 The rest of the time I pretty much see kids or  
14 patients or work with agencies like Boys Town and Maple Star.  
15 And I've always had a steady flow of questions from the  
16 department of family services, child protective services. I  
17 go up to Caliente once a month and see those kids that are  
18 detained up there.

19 Q In your career have you been asked to form  
20 evaluations on individuals by the Clark County justice system?

21 A Yes. Uh-huh.

22 Q And do some of those requests come from the  
23 judges in the juvenile justice system?

24 A Yes. Yeah.

25 Q Approximately how many times have you performed

1 evaluations --

2 A Well --

3 Q -- for the court system?

4 A A lot, actually, because in juvenile justice  
5 sometimes they don't have an expert on one side and an expert  
6 on the other. The court just has both parties agree on a  
7 single expert. And I'm fortunate enough to have been called  
8 on a lot of those cases. I'll write a report; I won't  
9 necessarily testify. It's kind of a short cut in juvenile  
10 cases. And, you know, the judge has my cell phone number.  
11 Judge Voy calls me.

12 Q Were you asked to form an evaluation on  
13 Deangelo Carroll?

14 A Yes, I was.

15 Q And approximately what time period did you  
16 personally become involved in Deangelo's case?

17 A I have some notes I'd like to refer to.

18 MR. ERICSSON: Your Honor, may he refer to his --

19 THE COURT: That's fine. Yes.

20 BY MR. ERICSSON:

21 A The first time I evaluated him was in November  
22 of 2007, and I've seen him three times since then. I've spent  
23 about six and a half hours of evaluation time with him, plus  
24 the review of records and the review and discussions with the  
25 psychologists who tested him.

1           Q     When you had your evaluations with Deangelo,  
2 was that over at the Clark County Detention Center?

3           A     Yes.

4           Q     I'd like for you to describe for the jury in a  
5 little more detail the different inputs or things that you  
6 considered --

7           A     Yes.

8           Q     -- in evaluating Deangelo.

9           A     You know, I come from a medical tradition and I  
10 do what doctors do. It's a combination of talking to the  
11 patient, whoever comes in, about what's bothering them. You  
12 really need to establish that rapport and the relationship  
13 with the subject of the evaluation. You gather information  
14 and you sort it out. Maybe this is the problem, maybe that's  
15 the problem.

16                Then you go to the other sources of information and  
17 try to validate certain things or rule out certain things.  
18 Certain things don't fit. You run a lab test, for instance,  
19 and the blood sugar is fine, it's not diabetes. Similarly in  
20 my field we might order psychological tests to see whether  
21 that validates the diagnosis that you think that's there or  
22 not. Certainly in psychiatry the psychosocial history is  
23 extremely important because people become a large degree an  
24 outcome of what they've gone through earlier in life.

25                So when all the sources of information, the

1 examination, the information, the testing, they all come  
2 together, you get a confidence level in the diagnosis. So  
3 it's not exactly scattershot or because they can't pay  
4 attention they're ADHD. This is really more of a methodology  
5 using a diagnostic manual and -- and professional standards in  
6 order to reach a diagnosis.

7 Q In your work with Deangelo, did you -- did you  
8 come to a point where you wanted additional testing to be done  
9 by somebody other than yourself?

10 A Yes.

11 Q And describe for the jury what you did.

12 A Well, you know, I could tell -- I mean,  
13 Deangelo has good language, but when you -- when I try to get  
14 more information from him, more explanation, it -- it was kind  
15 of brief. There was a lack of depth in regards to his ability  
16 to think and communicate and understand. And so I thought  
17 that that should be measured. And looking at the records from  
18 Clark County, he was -- has been labeled learning disabled for  
19 a long time. That could be an explanation, but it didn't give  
20 enough detail to explain what the limitation there is.

21 So Dr. Schmidt, who is very well established in the  
22 community, does both clinical forensic work and teaches in the  
23 University, I called him up and he said, sure, you know, I'll  
24 take a look. He ran an IQ test and some other measures, and  
25 he found that, you know, Deangelo is functional, but four out

1 of five people have higher IQs than he has.

2 Q What -- did Dr. Schmidt come up with a numeric  
3 IQ?

4 A It was 82, and it would've been lower if he  
5 didn't have such good verbal skills.

6 Q Explain for the jury what -- when you first  
7 started this last explanation you indicated that when talking  
8 to him that he had good verbal abilities. Explain for the  
9 jury what the difference between verbal ability versus overall  
10 IQ is.

11 A Well, you know, a lot of mental ability comes  
12 from problem solving, to be able to think about big things,  
13 more than two or three things at once, synthesize, bring them  
14 together, test the idea in your mind and then enact it. You  
15 see whether it worked or not, you reevaluate, you make an  
16 adjustment.

17 So that type of intelligence doesn't necessarily come  
18 out in words. You know, just like somebody can learn the  
19 words to a song and sing it pretty good, they still might not  
20 have any understanding of what it actually means or be able to  
21 -- the words don't necessarily represent thoughts. So I think  
22 he had a good cadence, a good style, a pretty good  
23 personality, you know, all that was clear, but that's just the  
24 surface there. Then you got to ask more questions and see how  
25 the person thinks.

1           So the testing really pretty much confirmed my  
2 thoughts about his, you know, mental abilities, problem  
3 solving, how complex he was. And Dr. Schmidt specifically  
4 said that he doesn't understand some subtleties and  
5 abstractions, nuances, you know, the secondary meaning of  
6 things, the wink, and what the wink means. He might take what  
7 is said more literally than what is intended.

8           Q       In the -- in the testing that was done on  
9 Deangelo to determine intelligence levels, did they include  
10 mechanisms for determining whether the person was putting  
11 forth a good and faithful effort on the test?

12          A       Yes. There are some kind of tricky questions  
13 that almost everybody can answer. And so if -- if somebody  
14 answers them poorly or gets a lot wrong, you know, it's clear  
15 that the person is trying to fake like they're bad. In all  
16 those measures, including the personality tests that have  
17 similar types of questions, they repeat questions in different  
18 ways, he showed a maximal effort, high effort to try to please  
19 the examiner pretty much. He didn't try to trick or game the  
20 tests.

21          Q       What, if any, significance were the results of  
22 Dr. Schmidt's testing that you had requested in your  
23 evaluation?

24          A       Well, it was cross validating. You know, if my  
25 psychologist and I, we agree, that's a lot of -- that's a lot

1 of education and experience that goes into the opinion as well  
2 as the, you know, the intelligence testing is not really  
3 specific -- you can't really get that from just an interview.  
4 You can get a feeling, but that's something that requires a  
5 test to measures. And so I got validation from that. A good  
6 test with a result that fit the clinical interview and then  
7 personality testing and -- and neuropsychological testing to  
8 see how the brain is functioning.

9 Q Did you reach any diagnosis regarding Deangelo  
10 after you had evaluated all the information?

11 A Yes, I did.

12 Q And what diagnosis have you come up with on  
13 Deangelo?

14 A Well, the consistent across the board was a  
15 probably post dramatic stress disorder, number one. It looks  
16 like bad things happened, it's had an effect on him, an  
17 imprint on his psyche, and that type of thing is like living  
18 in a little -- a little piece of your life is like a horror  
19 film.

20 But probably more significant is the axis to  
21 diagnosis, the personality diagnosis. You know, axis one is  
22 you come into an office and you say, Doc, this is bothering  
23 me, I feel so bad or so nervous, I'm panicking, can't you help  
24 me. The axis two are the personalities like the background  
25 condition.

1           So, you know, I guess the ideal is we all have great  
2 personalities, but the fact of the matter, we all have  
3 characteristics, tendencies, some people are overly careful,  
4 some people are overly sloppy, some people are dramatic. But  
5 these traits are not diagnoses.

6           In order to really make a diagnosis the personality  
7 has to be pretty distorted given into a direction. Now, like  
8 one way to explain it is like, you know, that typical  
9 Hollywood icon is a narcissist, it's all about them, multiple  
10 relationships, unstable, need attention. That's a  
11 narcissistic personality disorder. It gets to be a disorder  
12 when it interferes with function, otherwise it's just a  
13 characteristic.

14           In Deangelo's case, he had a dependent personality  
15 disorder. This is a longstanding set of characteristics that  
16 you can trace back from childhood that make their appearance  
17 in adult function. And dependent -- in particular it means  
18 what it says, you know. These are not like highly charismatic  
19 people who take the lead, are innovative, have -- are  
20 entrepreneurs, can operate on their own.

21           They're people who like to be tucked under more like  
22 in a submissive role and so have a hard time making decisions,  
23 difficulty dealing with rejection came out in all the  
24 measures. They feel insecure a lot of the time, tend to  
25 isolate unless they are given a specific set of rules to



1 follow, and really are susceptible to a lot of misery because  
2 in the dependent role, you're not in control. Your life is --  
3 depends on who you wind up depending on.

4 And so this was -- this made its evidence in early  
5 history and kind of like a set up, the type of stuff that he  
6 underwent without the father and trying to cling -- cling to  
7 his grandmother, I talked to her extensively, that -- that he  
8 was looking for a father figure all the time, someone to  
9 depend on. And so this just carried on into the present  
10 history.

11 Q If you would, and certainly don't go through  
12 all of the -- his life history, but for your evaluation and  
13 diagnosis, what are some of the -- the key historical events  
14 in his life that you found significant in coming to your  
15 conclusion?

16 A Well, you know, he never really bonded with his  
17 mom and his mom really never bonded with him. And that's not  
18 to give any blame or anything like that, but, you know, kids  
19 need to have a, ideally, a healthy family with a mother and a  
20 father who love them and guide them and help grow them up and  
21 give them confidence. That's not what he had.

22 He had to go to his grandmother who had eight kids of  
23 her own and a daycare center. And he got a little piece of  
24 the pie over there. Longing for his mother all the time, and  
25 every time they try to get back together she wouldn't treat

1 him well. She had boyfriends and they didn't treat him well  
2 all the time.

3 And then later on in school he wasn't a success there  
4 either and became kind of a follower and picked on a lot. And  
5 he made an adaptation. He developed this tough exterior to  
6 cover over the, you know, the tender part on the inside. And  
7 he never really got that need fulfilled and in some ways never  
8 moved out of that -- that stage of development. He's  
9 continued to be depended like a child.

10 Q How would a dependent personality disorder and  
11 -- and low IQ affect him?

12 A Well, IQ or intelligence is a tool, and that  
13 can help you problem solve, figure things out, become and stay  
14 independent, be able to depend on yourself. But if things are  
15 flashing past you at a high rate of speed along with the  
16 learning disability, you're not part of the group when they  
17 start to insult or sweat or tell stories. And when you can't  
18 quite figure it out, you become -- can become a target for  
19 ridicule and, you know, picked on.

20 So the dependent tendency, somebody who feels needy  
21 all the time, they might, with insight, work around it one way  
22 or another. But without intelligence, a high level  
23 intelligence, you can't reflect on yourself, get a sense of  
24 who you are, compensate for those tendencies. And so the IQ  
25 is another weakness that -- that produced, you know, Deangelo

1 in a -- in a vulnerable state.

2 Q Now, you had prepared a report in early May of  
3 this year --

4 A Yes.

5 Q -- on this case.

6 A Yes.

7 Q And then you later prepared an addendum --

8 A Yes.

9 Q -- correcting or adjusting a conclusion you had  
10 come to in your first report --

11 A Yes.

12 Q -- is that right?

13 A Yes.

14 Q Okay. Explain why it was you had to adjust or  
15 modify your initial -- or your evaluation from early May of  
16 this year.

17 A Well, I didn't review the voluntary statement  
18 for one reason or another, and in that voluntary statement  
19 there were admissions. When I examined Deangelo, and the  
20 records that I did read didn't have those types of admissions  
21 in them. And so I adjusted my conclusion based on the new  
22 information.

23 Q And when you're talking about the admissions,  
24 you're talking about admissions to information that he had  
25 related to the -- the murder of Mr. Hadland?

1           A       Yes.

2           Q       Now, as far as your -- your recent review of  
3 this, and when you're talking about his statement, you're  
4 talking about the statement that he -- that was recorded that  
5 he had given to the police shortly after being arrested?

6           A       Yes.

7           Q       In reviewing that, does that affect your  
8 diagnosis of the dependent personality disorder?

9           A       No, it supports the diagnosis.

10          Q       And why is that?

11          A       Well, Deangelo was really looking for a  
12 solution that he couldn't think of on his own. And my reading  
13 of it was that he was looking for the officers to help him out  
14 of this bind and he's willing to submit to anything they  
15 wanted him to do and he offers to do this, do this, please  
16 help me solve this problem I'm in the middle of. It's almost  
17 kind of confusing contradictory information in there, not  
18 really a con artist, you know, type of slick expert type  
19 criminal thinking, just kind of all over the place in a way.  
20 Somewhat easily led and -- and he seemed to be pretty  
21 demoralized and very panicky.

22          Q       Doctor, I may have asked this in a different  
23 way, but I just want to make sure this is clear for the jury.  
24 What are the main characteristics of a dependent personality  
25 disorder?

1           A       I have an excerpt in my report. I -- I can  
2 talk off the top of my head, but I'm not sure I'll hit all of  
3 the points.

4           MR. ERICSSON: Your Honor, may he refer to his  
5 report?

6           THE COURT: That's fine.

7 BY MR. ERICSSON:

8           A       The dependent personality is pervasive and -- a  
9 pervasive and excessive need to be taken care of and leads to  
10 submissive and clinging behavior and fears of separation. Any  
11 personality disorder needs to show this pattern like that  
12 representative for the person throughout their life, and it  
13 needs to lead to a dysfunction.

14           They have great difficulty making everyday decisions  
15 without an excessive amount of support and advice. They fear  
16 losing the support because they depend on it. They feel like  
17 nothing. Their esteem is low. They're willing to make deals  
18 in a way. If -- I'll -- I'll take a submissive position if  
19 you take care of me. They have difficulty initiating projects  
20 or doing things independently. They lack self confidence.  
21 And they don't complete things without prompting and supports.

22           They can go to excessive lengths to obtain nurturance  
23 and support of others, even to the point of volunteering for  
24 unpleasant tasks if such behavior will bring them the care  
25 that they need. This need distorts their relationships. They

1 can make great sacrifices or tolerate verbal, physical, or  
2 sexual abuse to maintain their positions. They are often  
3 doubtful, pessimistic, they belittle themselves. They may  
4 avoid positions of responsibility and become anxious when  
5 faced with decisions.

6 Q In your evaluation and from your interviews  
7 with Deangelo and others, did you think of your -- your  
8 conclusions related to Deangelo's relationship to Mr. H, the  
9 owner/manager of the Palomino?

10 A Yes. You know, based on statements that I read  
11 from his wife and the characterization of him from his  
12 grandmother and my six and half hours of interview with him  
13 and then reading the -- the material on the case, the charges,  
14 the arrest record, I'm reasonably certain that he had a  
15 dependent relationship on the Hidalgos. Yeah. Yeah, he  
16 derived his identity from the Palomino Club. He -- he was --  
17 felt secure as long as he was -- as long as he was tucked  
18 under and willing to take any job that they had to offer.

19 MR. ERICSSON: Your Honor, can I have your indulgence  
20 for a moment?

21 THE COURT: Sure.

22 MR. ERICSSON: Your Honor, that would conclude our  
23 questioning of Dr. Roitman. Thank you.

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

25 Mr. Pesci.

1 MR. PESCI: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. PESCI:

4 Q Sir, what were the tests that Dr. Schmidt  
5 performed? I'm sorry, was he a doctor?

6 A Yes, he's a neuropsychologist. He did the  
7 WIAT, I believe, test of intelligence. He did some  
8 neuropsychological batteries from the Halstead-Reitan. He did  
9 this, I think it's called a Ray malingering -- test of  
10 malingering. He --

11 Q Let me stop you for a second. What is  
12 malingering for the ladies and gentlemen of the jury?

13 A Malingering is conscious fraud from a person.

14 Q Okay. Sorry to interrupt. Go ahead.

15 A No problem. He did the personality assessment  
16 inventory. That's all that I recall.

17 Q Okay. How does one take those tests? If I  
18 were to take those tests, what would happen? How do I do it?

19 A Well, the psychologist would meet and greet,  
20 introduce the task, get a feeling for your skills, introduce  
21 the test, and give you the instruction based on -- it's  
22 prewritten, so each instruction has to be given the same exact  
23 way. If there was any indication that there was an inability  
24 to read, the material would be read to the subject.

25 Q Do you know if that happened in this situation?

1           A       I don't know. I don't know if it was read to  
2 him or not.

3           Q       Okay.

4           A       Many of the tests look for validation to see  
5 whether the subject is understanding the instruction and the  
6 feedback is accurate. And some of the elements of the test  
7 are like mazes. They're not verbal. A lot of non-verbal  
8 things such as drawing diagrams to see if it's skewed to one  
9 side that could indicate a brain problem.

10          Q       So is it safe to say that they're, you know, in  
11 written form and that the person taking the test reads or if  
12 they can't read it's read to them to perform the test?

13          A       Some are written, some are demonstrated, and if  
14 the psychologist sees that reading or writing is a particular  
15 problem, he might go to the lighter and other tests that --  
16 that's actually used on people.

17          Q       And you don't have any evidence that that was  
18 the case with Deangelo, that he needed to have it read to him?  
19 You don't know that; do you?

20          A       No, I don't know that.

21          Q       Okay. So the -- the source for the answers to  
22 these tests is Mr. Carroll?

23          A       Yeah.

24          Q       All right. You talked about your medical  
25 background. You gave an example about how tests are done.



1 Specifically you talked about a test for diabetes. With your  
2 medical background, how is a test for diabetes done?

3 A The subject submits to the lab. The needle is  
4 injected in the arm, they're given a cup to pee in the  
5 bathroom.

6 Q Is it blood or urine?

7 A Both.

8 Q Both?

9 A Yeah.

10 Q Okay. Is it safe to say that the blood or the  
11 urine doesn't have a motive to influence the test or the test  
12 taker?

13 A That's right.

14 Q All right. Is it safe to say that a defendant  
15 facing capital punishment could have a motive to cheat?

16 A Yes.

17 Q Not saying whether he did or didn't, but you  
18 can -- and this is kind of a distinguishment between this kind  
19 of a test and a medical test like taking a test for diabetes?

20 A That's right.

21 Q And the absolute and only source for the  
22 decisions or the determinations of Dr. Schmidt was Deangelo  
23 Carroll?

24 A Yes.

25 Q Okay. Now, let's go to your interaction with

1 him. Well, let me ask, why didn't you do those tests?

2 A I don't do the diabetes tests either or the  
3 x-rays.

4 Q Okay. I meant the tests on Mr. Carroll for --

5 A No, what I mean is my area of expertise is the  
6 diagnostic interview and the collection of other people's  
7 information. My expertise is not like an x-ray tech who does  
8 the x-ray or the neuropsychologist who administers those  
9 tests.

10 Q So in essence you're relying on what Dr.  
11 Schmidt says based on what Deangelo told Dr. Schmidt?

12 A Yes.

13 Q Okay.

14 A I do have kind of a broad knowledge of the  
15 function of testing and their -- the problems that could  
16 occur, including malingering which you're talking about.

17 Q Sure. I'm just saying that you weren't -- you  
18 weren't present for that; were you?

19 A No. No, sir.

20 Q And you're taking what Dr. Schmidt reported to  
21 you?

22 A Yes.

23 Q And then, of course, you did your own analysis.  
24 I'm not saying that. I'm just saying as far as that data that  
25 Dr. Schmidt did, you're relying on him --

1           A       Yes.

2           Q       -- Dr. Schmidt? And he's relying on Deangelo?

3           A       The tests. He's relying on the tests.

4           Q       Yeah, Deangelo's responses to the tests or

5 answers to the tests.

6           A       Well, the tests have these safety -- I mean,

7 what you're talking about is not new to us. We all consider

8 that somebody might have a vested interest in the outcome, so

9 these tests would be useless if they were that vulnerable.

10          Q       Okay. Well, let me tell you this, then or let

11 me ask you this. Let's go to your report. When you did a

12 report, my understanding is your first report was offered May

13 10, 2010?

14          A       It could -- yeah, that sounds --

15          Q       And I apologize, sir. Do you have it there

16 with you?

17          A       Not -- I have this -- mine is dated May 10th.

18 Yes.

19          Q       Okay. And then you did an addendum?

20          A       Yes.

21          Q       All right. Now, in your May 10th report, you

22 relied on your personal interaction with Deangelo Carroll?

23          A       Yes.

24          Q       In part, I should say.

25          A       Along with the collateral information.

1           Q     The collateral information, that would be from  
2 his wife, from his grandmother --

3           A     Yes.

4           Q     -- from, I think you got some school records?

5           A     Yes.

6           Q     Okay. And then you also relied on Dr.  
7 Schmidt's information?

8           A     Yes.

9           Q     And based on that your original conclusion is  
10 reflected in your report from May 10, 2010; is that correct?

11          A     Yes.

12          Q     And if I could read this to you, please tell me  
13 if I'm wrong in the fact that this is what you wrote. Your  
14 conclusion on May 10th was to a reasonable degree of medical  
15 certainty I find that Mr. Deangelo Carroll to be manifesting  
16 signs and symptoms of dependent personality disorder which, in  
17 conjunction with his cognitive problems, are insurmountable  
18 obstacles to the strategic forethought and planning claimed by  
19 the State.

20                The State's theory that Mr. Carroll sought out  
21 someone to kill the victim, contracted with him for hire,  
22 organized and executed it is highly improbable given Mr.  
23 Carroll's well documented, long standing mental and emotional  
24 disabilities. Mr. Carroll's rendition of events is most  
25 compatible with his personality disorder diagnosis. Is that

1 an accurate statement of your conclusion in the first report?

2 A Yes.

3 Q Okay. And then you've changed that conclusion;  
4 is that correct?

5 A Yes.

6 Q At least parts of it.

7 A Parts of it.

8 Q If I've understood your testimony today, you  
9 still agree with the fact that he suffers or he -- is suffer  
10 the right term, that he possesses or he has attributes of?

11 A It's how dramatic you want to be.

12 Q Okay. Well, you think he has dependent  
13 personality disorder.

14 A Yes.

15 Q You stand by that?

16 A Yes.

17 Q You're not correcting that portion?

18 A That's correct.

19 Q Okay. Now, if I've understood this correctly,  
20 one of the things that you specifically relied on to make this  
21 determination is that very last sentence, Mr. Carroll's  
22 rendition of events is most compatible with his personality  
23 disorder diagnosis. Now, when you speak of his version, at  
24 that time in that report you're talking about what Deangelo  
25 told you?

1 A Yes.

2 Q Not the voluntary statement?

3 A Well, actually, the voluntary statement  
4 contained this rendition as well as other things.

5 Q Well, if I've understood your direct testimony,  
6 it was that for -- I believe I quoted it -- for one reason or  
7 another you did not read the voluntary statement prior to this  
8 conclusion?

9 A That's right.

10 Q All right. So we'll just, if we can for now,  
11 accept the fact that you did not read it --

12 A Yes.

13 Q -- when you came to this conclusion.

14 A Yes.

15 Q Okay. We can go over back and forth whether or  
16 not there is some similarities between his version to you and  
17 to the police. But it's safe to say that when you made this  
18 conclusion it's based on what Deangelo told you in personal  
19 interactions and not from the voluntary statement?

20 A That's right, as well as the other material  
21 that I did review.

22 Q Sure. Sure. Is it -- is it accurate, then, to  
23 say that you made a summary of what it is that Mr. Carroll  
24 told you in your first report?

25 A Yes.

1           Q     Okay. And then, Doctor, if we could direct you  
2 to page three of 13. I believe it's a 13 page report; is that  
3 accurate?

4           A     Yes, it is.

5           Q     Because I received a packet which was the  
6 packet, I believe, you gave to the defense and they gave to  
7 me. Is that accurate as far as you had data that you relied  
8 upon and you had a report that you wrote?

9           A     I think it's probably true, although I haven't  
10 seen your packet.

11          Q     Okay. Would you like to?

12          A     It's up to you.

13          Q     Okay. Well, maybe I'll ask you about the  
14 packet in a minute. But if we could turn to page three of 13,  
15 one, two, three, fourth paragraph down; do you see that one,  
16 Doctor?

17          A     Yes.

18          Q     All right. There is an explanation as to what  
19 Mr. Carroll told you. Is that an accurate assessment of what  
20 I'm reading here?

21          A     Yes.

22          Q     And then you state Mr. Carroll -- and I'm not  
23 sure what the context is. Mr. -- Mr. Hidalgo told Mr. Carroll  
24 that he had some money, unspecified, for anyone who would take  
25 care of TJ. Mr. Carroll took this as meaning beat him up. It

1 didn't cross his mind that -- that he this was meant as an  
2 order to kill him. Is that an accurate --

3 A Yeah, he is not necessary in that sentence.

4 Q All right. So it didn't cross his mind that  
5 this was meant as an order to kill. I can cross off that he?

6 A Yes, please.

7 Q Okay. So Deangelo Carroll told you it never  
8 crossed his mind that take care of meant kill?

9 A That's -- that's right.

10 Q At this point?

11 A That's right.

12 Q I apologize. At this point.

13 A That's right.

14 Q All right. And then to go on, the next  
15 paragraph down, the very last sentence, it starts on the  
16 second to the last line, he said that he thought he was being  
17 told to kill. He wouldn't quit -- he would've quit his  
18 position.

19 A Yes.

20 Q Should that read something to the effect of if  
21 he was -- I'm trying to understand the context.

22 A He said that he thought -- he said he thought  
23 he was being told to kill -- if he was being told to kill.

24 Q Right. If.

25 A Yeah.



1 Q Okay. So we should have an if in there?

2 A Yes.

3 Q All right. Now, so you're saying that Mr.  
4 Carroll told you that if he, Mr. Carroll, thought that this  
5 was really a hit to kill he would've quit his position?

6 A That's right.

7 Q Is that consistent with dependent personality  
8 disorder, someone who has the ability in the face of some  
9 order from the person they're dependent upon to just walk  
10 away?

11 A No, it isn't.

12 Q So that would be inconsistent with your  
13 determination of his personality?

14 A Yes.

15 Q Okay. Then on the next paragraph down it says  
16 here towards the end, and I think it's like the second to the  
17 last line, it starts off with Mr. Carroll. Do you see that  
18 one, Doctor?

19 A Tell me again what page.

20 Q I apologize. Page three of 13.

21 A Okay.

22 Q The last full paragraph.

23 A Yeah.

24 Q Three lines up from the bottom and all the way  
25 to the end it starts off with Mr.

1 A Yes, Carroll.

2 Q Okay.

3 A Yeah.

4 Q Mr. Carroll said it never crossed his mind that  
5 KC would kill anyone. He thought of KC as a tough guy, not a  
6 killer.

7 A That's what it reads.

8 Q Okay. That's what Mr. Carroll told you when  
9 you interviewed him?

10 A No typos in that one either.

11 Q Right. So he told you that he had no idea, in  
12 essence he never thought that KC would kill anybody?

13 A That's right.

14 Q Okay. And if we could go to the next page.  
15 Well, we'll leave that. Doctor, you would agree with me that  
16 those three statements are inconsistent with what Deangelo  
17 Carroll told the police?

18 A Well, he told those types of things to the  
19 police and he told contradictory things to the police.

20 Q Sure. And I apologize. I agree with you in  
21 the sense that there are many things that cross over that are  
22 consistent between the statement to you and the statement to  
23 the police.

24 A Yes.

25 Q Would you agree with me on that?

1           A     Yes.

2           Q     All right. Would you agree with me, though,  
3 that in the statement to the police, specifically Mr. Carroll  
4 indicated that, quote, this was a hit.

5           A     Yes.

6           Q     And would you agree with me that in the  
7 statement to the police he specifically said that he knew that  
8 Mr. Kenneth Counts was a serious dude?

9           A     Yes.

10          Q     That's not verbatim.

11          A     I'm with you, though. Yeah.

12          Q     But specifically he said that he would pop  
13 someone's noodle.

14          A     Yes.

15          Q     Okay. And that kind of goes beyond just a  
16 beating, or would you think it goes beyond this idea that KC,  
17 this last one, that it never crossed his mind that he would  
18 kill him?

19          A     That's right. That contradicted that  
20 statement.

21          Q     And is it safe to say, Doctor, that these  
22 contradictions are what led you to your second conclusions,  
23 your addendum?

24          A     Yes.

25          Q     Okay. And if we could -- do you have your

1 addendum with you?

2 A No. No, I don't.

3 MR. PESCI: All right. Can I approach the witness,  
4 Judge?

5 THE COURT: You may.

6 BY MR. PESCI:

7 Q Doctor, do you recognize this?

8 A Yes, this is my addendum.

9 Q All right. And what's the date on that  
10 addendum?

11 A May 28th.

12 Q All right. And I've got a copy here I'm going  
13 to kind of look at so you can look at that one. On May 28th,  
14 if I've understood correctly, the thing that led to this  
15 addendum was the fact that you read the voluntary statement?

16 A Yes.

17 Q Okay. And after reading the voluntary  
18 statement your determination now is, and I'm going to read and  
19 tell me if this is accurate, while preparing for testimony I  
20 became aware that I didn't receive the transcript of Mr.  
21 Carroll's statement to the police before I prepared my report  
22 on May 10, 2010. Because the voluntary statement contradicts  
23 my conclusion regarding Mr. Carroll's capacity to think  
24 through the criminal act, I cannot stand by this conclusion.  
25 However, the foundation for Mr. Carroll's psychiatric

1 diagnosis and cognitive capabilities as measured by Dr.  
2 Schmidt's testing remains firm. Is that accurate?

3 A Yes.

4 Q All right. Correct me if I'm wrong. Does that  
5 mean in essence that you still believe Deangelo Carroll  
6 suffers from dependent personality disorder?

7 A Yes.

8 Q Does that mean that you still believe that he  
9 has an 82 IQ and four out of five people are smarter than he  
10 is?

11 A Yes.

12 Q All right. But does that mean now that he has  
13 the capacity to commit this criminal act?

14 A No. I just have to subtract the affirmative  
15 statements I made like insurmountable obstacle.

16 Q Well, I thought I just read --

17 A It doesn't mean the reverse. It just means I  
18 can't reach the conclusion.

19 Q Okay. Because you said here because the  
20 voluntary statement contradicts my conclusions regarding Mr.  
21 Carroll's capacity to think through the criminal act, I cannot  
22 stand by this conclusion. What does that mean?

23 A It doesn't mean that I'm affirming that he has  
24 the capacity. I just find my statement to be completely  
25 reversed by the admissions he made in the voluntary statement.

1 I would never make that statement again now that I read the  
2 voluntary statement.

3 Q Okay. You would never make the statement that  
4 you made in your first one?

5 A I would just conclude that he had a personality  
6 disorder and cognitive deficits.

7 Q Okay. So then you've in essence backed off  
8 your first where -- because you said you would never say it  
9 again, the insurmountable obstacles. You don't think that  
10 there are insurmountable obstacles anymore?

11 A That's right.

12 Q Okay.

13 A Because the voluntary statement proved that he  
14 was alert about the hit message.

15 Q Okay. And let's go to that. Let's go to the  
16 voluntary statement and he was alert about the hit message.  
17 You talked about people that suffer from dependent personality  
18 disorder, you said that they don't complete things without  
19 prompting, they're doubtful, and that they are difficult in  
20 initiating projects. Is that -- that's what you read from --  
21 I think that's DSM-IV?

22 A Yes.

23 Q Okay. So did you -- did you read the statement  
24 or did you watch the statement? Did you get a video of it?

25 A I read the statement.

1           Q     Okay. Well, from reading it do you recall that  
2 it was, in fact, Mr. Carroll who volunteered, who brought up  
3 the idea of wearing a wire?

4           A     Yes, many times.

5           Q     Would that be an initiating act?

6           A     Yes. Yes.

7           Q     Okay. And do you know -- well, let me ask you  
8 this. Did you review the wires? What we've referred to are  
9 wires, they're recordings of the actual initiation that he  
10 took to wear a wire, wear a recording device.

11          A     I didn't review the wires.

12          Q     Do you -- do you think that could affect your  
13 opinion?

14          A     I think the preponderance of evidence to  
15 support the diagnosis is already there, and any particular  
16 conversation or word use doesn't match the volume of  
17 information that supports the diagnosis.

18          Q     Well, let me put it to you this way. Reading  
19 the voluntary statement led you to change your opinion; is  
20 that correct?

21          A     Right.

22          Q     Are you really open to the idea that actually  
23 listening to what Deangelo did on his own in a closed room  
24 with co-defendants could change your assessment of his  
25 dependency or his IQ?

1           A       No. No. I think that would describe the  
2 interaction that he had with the authority and his  
3 supplication before them. But I didn't listen to the wire, so  
4 --

5           Q       Right. And I know you didn't.

6           A       Yeah.

7           Q       What I'm asking is do you think it's possible  
8 that it could change your opinion if you heard, for example,  
9 that on two separate occasions Mr. Carroll put a recording  
10 device on himself, went into the location of the  
11 co-conspirators, and solicited incriminating information from  
12 them?

13          A       That doesn't contradict the diagnosis.

14          Q       It does not?

15          A       No.

16          Q       Okay.

17          A       Because the diagnosis said that people are  
18 willing to submit and perform acts that they would find  
19 unfavorable.

20          Q       Okay. And if I'm understanding you correctly,  
21 the way you're analyzing that is at that point he submits it  
22 to the police?

23          A       Yes.

24          Q       Okay. But when he's in the room, just so you  
25 know, he doesn't have any contact with the police on at least



1 two separate occasions. They're not in his ear talking. He's  
2 on his own. Does that affect your opinion?

3 A No. I mean, that's completely consistent. He  
4 was -- he was serving another authority at that point, a  
5 different boss.

6 Q Okay. Would it be difficult for someone with  
7 dependency personality to be able to go in undercover from  
8 your bosses, the people that you've been dependent upon, and  
9 solicit this kind of information? Would that be difficult?

10 A I don't think so. I don't know exactly where  
11 -- where you're headed with this, though.

12 Q Well, if I understand your and our  
13 conversation, he, in your mind, is dependent upon the police.  
14 He's trying to please the police --

15 A Yeah.

16 Q -- because he's putting the wire on.

17 A Yeah.

18 Q Even though we both agree he's the one who came  
19 up with the idea.

20 A Yeah.

21 Q But you feel still that he's submissive to the  
22 police?

23 A Yes.

24 Q All right. And your testimony was based, I  
25 believe, in part on what Mrs. Carroll told you and what -- his

1 wife, I should say --

2 A Yes. Uh-huh.

3 Q -- Deangelo's wife, and specifically also what

4 his grandmother said --

5 A Yes.

6 Q -- about his father figure type relationship

7 with Mr. H.

8 A Yes.

9 Q Now, you believe in essence that your

10 conclusion is based on him having this father figure

11 relationship?

12 A Yes.

13 Q All right. Do you think, let's say for me, I'm

14 beholding to a boss just like Deangelo Carroll was?

15 A Yeah.

16 Q Is that -- is that an accurate statement?

17 A Well, I don't know you well enough.

18 Q Well, I can tell you, I have the District

19 Attorney, he's the boss, I respond to him.

20 A Right.

21 Q I think you're somewhat of an independent

22 person. You don't have a boss.

23 A Yes.

24 Q All right. Would you agree with me that most

25 people that have a boss are dependent upon that boss?

1 A Yes.

2 Q All right. If I have a dependent personality  
3 disorder, would it be challenging for me to wear a wire, go up  
4 to my boss's office, and try to get incriminating evidence out  
5 of him?

6 A Not really. I mean, like somebody who is  
7 arrested now is attending to the next authority looking for  
8 protection from their wrath, maybe culling favors. It's any  
9 port in the storm.

10 Q So kind of shifting a dependency?

11 A Yeah. They -- they remain dependent, but the  
12 object of their dependency can definitely change.

13 Q Okay.

14 A Somebody is frustrated and rejected by a  
15 girlfriend, they go depend on another girlfriend.

16 Q Okay. Well, would you agree that sometimes it  
17 takes a little while to get on to that next girlfriend?

18 A No, not if it's like in your face the way it  
19 was in his face. He was -- he was, you know, the threat to  
20 his freedom and his family. Everything was very -- very --  
21 the change happened.

22 Q But now you have read the voluntary statement.  
23 Don't you recall that Deangelo said that the threat to his  
24 family was not, from his perception, from the police, but from  
25 Mr. H?

1           A       That's right. And the -- and the officers  
2 offered him -- alluded to protection.

3           Q       Right. He wouldn't --

4           A       Gave him assurances.

5           Q       He wouldn't be protected when he went in trying  
6 to get information from Mr. H.

7           A       I don't think the officers did anything to  
8 dissipate the idea that they were in charge, they were number  
9 one, and they would be the protectors.

10          Q       Okay. I think you described people with this  
11 disorder as being doubtful and pessimistic. Do you recall  
12 that?

13          A       Yes.

14          Q       All right. Do you recall in the voluntary  
15 statement when he in essence guaranteed to Detectives Vaccaro  
16 and Wildemann that he would get Mr. H on a recording?

17          A       Yes.

18          Q       Does that seem pessimistic?

19          A       You're right. I mean, that doesn't seem  
20 pessimistic, but that wouldn't undo the diagnosis.

21          Q       And I'm not arguing with you on that.

22          A       Yeah.

23          Q       I'm just saying does that seem pessimistic?

24          A       No, it doesn't.

25          Q       Okay. Did he seem doubtful in his capabilities

1 at that point?

2 A No, he was promoting himself.

3 Q And speaking of his capabilities, and I mean no  
4 disrespect to Mr. Carroll, it's safe to say he was not an  
5 honor student.

6 A Yes.

7 Q Okay. But isn't it also safe to say that he,  
8 in fact, got good grades in some classes at some points in his  
9 scholastic history?

10 A I think earlier on, yes.

11 Q In fact, didn't you rely upon some of those  
12 school reports?

13 A Yes.

14 Q Did you bring them with you?

15 A Yes.

16 Q Would you mind referring to them for a minute?

17 A I have them here.

18 MR. PESCI: Can I approach the witness?

19 THE COURT: Yes.

20 MR. PESCI: Thank you.

21 BY MR. PESCI:

22 Q And again, I mean no disrespect. What I'm  
23 saying is he -- is it safe to say that he failed a good number  
24 of classes?

25 A Yes.

1 Q From this report?

2 A Yes.

3 Q And you relied upon this report?

4 A Yes.

5 Q Okay. He got some Ds.

6 A Yes.

7 Q Some Cs.

8 A Yes. And Fs.

9 Q Did he gets some -- yeah, that's what I meant

10 by failed.

11 A Yeah.

12 Q Did he get some Bs?

13 A Yeah, in Science 1.

14 Q English?

15 A Personality development.

16 Q Personality development. He got a B in

17 personality development?

18 A Yes, that's what it says.

19 Q Okay. Did he get one in math?

20 A Yes, he did.

21 Q Did he get one in science?

22 A Yes.

23 Q Okay. So would you, and you don't have you,

24 but would you agree with me that at times Mr. Carroll was

25 capable of getting good grades?

1           A       Well, he was in special ed. These were  
2 accommodated classes.

3           Q       But would you agree with me that at times Mr.  
4 Carroll was able to get good grades?

5           A       In special ed, yes.

6           Q       Okay. Well, can we agree on this, a B is a  
7 good grade?

8           A       Yes.

9           Q       All right. It's not going to necessarily get  
10 you into Harvard, but it's a good grade.

11          A       Well, I don't know if I'd go that far.

12          Q       Okay.

13          A       I mean, people are accommodated on levels of  
14 education, but I think that's the point you're trying to ask  
15 me to make.

16          Q       No. I'm just trying to see if you agree that a  
17 B is a good grade.

18          A       Yes.

19          Q       Okay. Thanks. You talked about how you didn't  
20 think that he came across as a con artist or slick. Do you  
21 remember saying that?

22          A       Yes.

23          Q       All right. And you recall reviewing the  
24 voluntary statement for the second decision, your second  
25 opinion. Did you think that there was any con artist or slick

1 aspects to that voluntary statement?

2 A Well --

3 Q Is that your testimony?

4 A -- I think he was trying to cull a favor and  
5 he's willing to shift his loyalty.

6 Q Well, didn't he in the first version say he had  
7 nothing to do with it?

8 A Yes.

9 Q And his second version when he's confronted  
10 with facts did he say he got out to the lake but never saw Mr.  
11 Hadland?

12 A Well, he fell apart like wet tissue paper. I  
13 mean, he didn't have the type of preplanned sophisticated rap  
14 that a lot of con artists could have.

15 Q Okay.

16 A But I think he made -- he made an effort.

17 Q So your testimony is that he wasn't a very good  
18 con artist?

19 A Yes.

20 Q Okay. But he was a -- you would admit that at  
21 least in his voluntary statement he didn't come right out and  
22 tell the police?

23 A No, no.

24 Q And he tried to give versions to minimize his  
25 responsibility.



1           A     Yes.

2           Q     Okay. And that voluntary statement, if I've

3 understood correctly, is really the crux of your entire change

4 of your -- of your opinion?

5           A     Yes, I couldn't stand by that insurmountable

6 obstacle phrase.

7           Q     Okay.

8           A     Yeah.

9           Q     And in the packet of information that we

10 received, I had some notes. And my question to you is whose

11 notes are these?

12          A     These are my notes.

13          Q     And do you know when those were written?

14          A     When I received a phone call to -- to adopt the

15 case.

16          Q     Okay. And do you know when that was?

17          A     November 2007, maybe the month before.

18          Q     All right. So can you hold onto those?

19          A     Yes.

20          Q     November -- I'm sorry. The date again is the

21 7th you said?

22          A     2007.

23          Q     Okay. So in November of 2007 you took down

24 these notes; is that correct?

25          A     Yes.

1 Q All right. And in this -- that -- that's your  
2 handwriting?

3 A Yes.

4 Q Okay. And when you went over those notes, did  
5 you specifically focus in on the voluntary statement of Mr.  
6 Deangelo Carroll?

7 A Can you point -- explain his voluntary  
8 statement at the bottom.

9 Q I'd love to.

10 A Yeah.

11 Q Look at the top right corner. You have some  
12 lines kind of crossing things --

13 A Yeah.

14 Q -- and kind of compartmentalizing. The top  
15 right corner, what does your handwriting say?

16 A Plan to kill in voluntary statement is the  
17 problem.

18 Q All right. So in '07 you realized that the  
19 plan to kill that's in the voluntary statement was a problem?

20 A Yes.

21 Q All right. Could you go down to that next  
22 compartment that you have there. And is it accurate that it  
23 says voluntary statement needs to be mitigated based on a  
24 mental disorder -- and I apologize. I can't read that.

25 A Cognitive, slash, cognitive deficiency.

1           Q     Okay. And then all the way at the bottom under  
2 the last line, do you have your handwriting, explain his  
3 voluntary statement?

4           A     Yes.

5           Q     Now, how would you know that it was a problem  
6 and you needed to explain it if you hadn't read it?

7           A     You know, when a referral is made the attorney  
8 gives a wish list, basically. And so that -- I took these  
9 notes to give me a direction to see whether these things could  
10 be -- a foundation could be generated.

11          Q     Okay. So in '07 when you wrote these notes you  
12 had not read the voluntary statement, but you at least had  
13 been given a wish list as to the things to focus on?

14          A     Yes.

15          Q     And three times on this page you are told to  
16 focus on this wish list on the voluntary statement?

17          A     Yes.

18          Q     But you didn't?

19          A     That's right.

20          MR. PESCI: Nothing further.

21          THE COURT: All right.

22          MR. ERICSSON: Just a couple of follow up questions,  
23 Your Honor.

24                         REDIRECT EXAMINATION

25          BY MR. ERICSSON:

1           Q     Doctor, I just want to clarify a few things.  
2     You were asked some questions early on by Mr. Pesci about Dr.  
3     Schmidt and that he did testing that you were not -- that you  
4     do not do --

5           A     Yes.

6           Q     -- is that right? Is it common in your  
7     profession to -- to rely on other experts in areas that you do  
8     not have expertise in?

9           A     It's required, yes.

10          Q     And so the fact that once you got into this  
11     case you felt that there were intelligence testing that --  
12     tests that needed to be conducted and you asked that Dr.  
13     Schmidt who is an expert in that area do those tests. Is that  
14     common in -- in your field?

15          A     Yes.

16          Q     And your reliance on his testing, is that  
17     common in -- in your profession?

18          A     Yes.

19          Q     And I just wanted to make sure that that -- the  
20     point on the grades is clear to the jury. Mr. Pesci showed  
21     you a report card from Deangelo.

22          A     Yes.

23          Q     And that report card was from special education  
24     classes?

25          A     Yes.

1           Q       And you were asked about the initial statements  
2 that Deangelo made to the police where he was denying being at  
3 the scene or having any involvement in the -- in the murder.

4           A       Yes.

5           Q       If -- if he had had contact with Anabel and  
6 been told what his story was supposed to be when he was  
7 contacted by the police, would it be consistent with the  
8 dependent personality disorder for him to try to follow with  
9 that story that he had been told by Anabel and Mr. H?

10          A       Yes.

11          Q       Thank you.

12          MR. ERICSSON: I have no further questions.

13          THE COURT: Mr. Pesci, any other questions?

14          MR. PESCI: No, Your Honor.

15          THE COURT: All right. Thank you.

16          Dr. Roitman, thank you. You are excused at this  
17 time.

18                 Perhaps we should just take a brief recess. Ladies  
19 and gentlemen, we're just going to take a ten minute recess  
20 until 2:25. Once again you're reminded of the admonition.  
21 Notepads in your chairs and through the double doors. We'll  
22 see you back here at 2:25.

23                         (Jury recessed at 2:15 p.m.)

24          THE COURT: Is he going to allocute?

25          MR. BUNIN: Yes.

1 MR. ERICSSON: Yes, Your Honor.  
2 THE COURT: And that's all we have left; right?  
3 MR. ERICSSON: I believe so.  
4 MR. BUNIN: Yes.  
5 THE COURT: And then you said you've already settled  
6 the jury instructions?  
7 MR. PESCI: Yes, Your Honor.  
8 THE COURT: Do you have a copy for me?  
9 MR. PESCI: I apologize. I do not. Penny --  
10 THE COURT: Penny has them? Okay. And you also have  
11 the verdict forms ready and everything?  
12 MR. PESCI: Yes. What happened is Mr. DiGiacomo  
13 changed them as the Court said so, and then emailed them to  
14 Penny and defense counsel.  
15 THE COURT: Okay. And that record was all made  
16 yesterday?  
17 MR. PESCI: Yes, Your Honor.  
18 THE COURT: Okay. So I'll go ahead and get those  
19 then. And then when we come back you can call your client and  
20 I'll just -- basically I just, if this is fine with everyone,  
21 tell the jury that the defendant has a right of allocution  
22 which is just a sworn statement, and then he can make his  
23 statement. And then we'll go into jury instructions.  
24 MR. ERICSSON: Okay.  
25 THE COURT: Okay.

1 MR. BUNIN: Can we get a copy of the instructions  
2 too? I just don't -- I don't have a --

3 THE COURT: Yeah. Sure.

4 MR. BUNIN: -- final version. Thank you.

5 THE COURT: Yeah. And we make a bunch for the jury  
6 too, so --

7 MR. BUNIN: I appreciate it.

8 MR. ERICSSON: And, Your Honor, is there a large kind  
9 of easel pad?

10 THE COURT: You know what, we have an easel pad. I  
11 bet you it's in the jury -- well, I know they used it in the  
12 deliberations on the guilt phase.

13 THE MARSHAL: I'll check, Your Honor.

14 THE COURT: So it's possibly still in the jury room.  
15 But, yeah, we did have a big pad that we use on that easel.

16 MR. ERICSSON: Okay.

17 THE COURT: So if not, we may have to get one from  
18 another department.

19 MR. ERICSSON: Thank you.

20 (Court recessed at 2:17 p.m. until 2:36 p.m.)

21 (Outside the presence of the jury.)

22 THE COURT: Do you guys want to come down? I'll  
23 give you the -- who all needs a copy? All three of you?

24 MR. PESCI: Please.

25 THE MARSHAL: Do you want me to lay theirs on their

1 chairs?

2 THE COURT: Did you want me to give copies to the

3 jury?

4 MR. BUNIN: If you could, yeah.

5 THE COURT: Well, then, you have to give those back.

6 THE RECORDER: Well, I think she made enough.

7 THE COURT: Penny is so great. I love Penny.

8 THE MARSHAL: You got 15 here.

9 THE COURT: Oh, yeah, many more. Thank you. Yeah,

10 put them in their chairs.

11 And for the record, we're all good with the verdict

12 forms? So there's a total of four forms; right?

13 MR. PESCI: Yes, Your Honor.

14 THE COURT: All right. We need four -- all of these

15 blue-backed when you have a chance.

16 All right. Is everybody ready to bring the jury in?

17 MR. PESCI: One -- one second, Judge.

18 (Off-record colloquy)

19 THE COURT: What's the problem?

20 MR. PESCI: Judge, on the last two verdict forms --

21 THE COURT: Oh, Denise, hand me the verdict forms.

22 Yes?

23 MR. PESCI: The second from the top speaks about

24 there being prison with the possibility of parole, but it does

25 not have the 40 to life. Both that and the next one. I



1 brought that up to defense counsel, and I think they would  
2 like that to be there. We've said it to the jury many, many  
3 times.

4 THE COURT: Okay. Wait, I have one that says a  
5 definite term of 40 years. Oh, life with the possibility of  
6 parole after a minimum of 40 years has been served?

7 MR. BUNIN: Yes.

8 MR. PESCI: Correct.

9 THE COURT: You want that on both -- obviously both  
10 of them?

11 MR. BUNIN: Yeah.

12 MR. PESCI: Yes. I apologize. Of course, I blame  
13 Marc.

14 THE COURT: I think we can -- we can all agree on  
15 that.

16 So after a minimum of 40 years -- do you like has  
17 served or it should be has been served; right?

18 MR. PESCI: It doesn't matter to me.

19 MR. BUNIN: It should be has been.

20 THE COURT: This says has served on the first one,  
21 the term of years. Shouldn't that be has been served?

22 MR. BUNIN: Yes, I think so. So both should say  
23 that.

24 THE COURT: What's that?

25 MR. BUNIN: So both should say that then.

1 THE COURT: Right. Both should say has been served.  
2 We can blame him for that one too.

3 MR. PESCI: Sounds good.

4 THE COURT: All right. Let me go down.

5 MR. PESCI: Want me to retrieve the ones that are  
6 passed out?

7 THE COURT: Oh, yeah, those shouldn't even have the  
8 verdict forms on them.

9 MR. PESCI: Oh, then maybe they don't.

10 THE COURT: No, they -- I mean, they do, but I don't  
11 think they should. I think it should just be the jury  
12 instructions.

13 MR. PESCI: That would solve this. We could just rip  
14 it off.

15 THE COURT: Yeah, let's just rip it.

16 Don't you guys agree they shouldn't have the verdict  
17 forms on them? We'll just rip it off if they do. Do they  
18 have the verdict forms?

19 THE MARSHAL: Yes, ma'am, they do.

20 THE COURT: Okay. You know what, why don't you just  
21 divide them up and all rip them off and that way it'll be  
22 faster. If you want to just collect them and then just all of  
23 us will just rip off the back and that way we can do it  
24 faster. You guys start while I go in the back with the  
25 changes. Do you guys need copies, then, of the changed ones?

1 MR. ERICSSON: Please. Yeah.

2 (Off-record colloquy)

3 THE COURT: All right, you guys. Here is how it  
4 reads. Life in Nevada State Prison with the possibility of  
5 parole with eligibility for parole beginning when a minimum of  
6 40 years has been served. Are we fine with that? Okay.

7 MR. PESCI: Yes.

8 THE COURT: All right. We can start and then Penny  
9 will bring those out when they're ready.

10 (Jury reconvened at 2:54 p.m.)

11 THE COURT: All right. Court is now back in  
12 session. The record will reflect the presence of the State,  
13 the defendant and his counsel, the officers of the court, and  
14 the members of the jury.

15 Defense?

16 MR. BUNIN: We have no other witnesses other than  
17 we're going to have an allocution with Deangelo Carroll.

18 THE COURT: All right.

19 All right, Mr. Carroll. I need you to just come on  
20 up here to the witness stand, please, sir, and just have a  
21 seat.

22 Ladies and gentlemen, Mr. Carroll is going to  
23 exercise his right of allocution, which means he has a right  
24 to make an unsworn statement to the jury.

25 Mr. Carroll, are you ready to proceed?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. Thank you.

3 THE DEFENDANT: I'd like to apologize for what I've  
4 done. I wish it never had happened. I've had bad dreams ever  
5 since this happened. I haven't been able to sleep. I'd like  
6 to take this time to look at TJ's family and let them know  
7 that I'm truly sorry for what I've done and I take full  
8 responsibility for my actions.

9 Thank you for letting me speak.

10 THE COURT: All right. Thank you.

11 Defense rests?

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

13 THE COURT: All right. Thank you, Mr. Ericsson.

14 All right, ladies and gentlemen. That concludes the  
15 presentation of testimony in this matter. It's now, once  
16 again, followed by instructions to the jury for this penalty  
17 phase, and that will be followed by the closing statements  
18 from the lawyers. Once again, the State having the burden  
19 will have the opportunity to address you twice.

20 (Jury instructions read)

21 THE COURT: Ladies and gentlemen, that concludes the  
22 instructions.

23 Mr. Pesci, are you ready to proceed?

24 MR. PESCI: Yes, Judge.

25 THE COURT: All right.

1 MR. PESCI: Can we switch over?

2 We're going to start here where we started in the  
3 first phase.

4 STATE'S CLOSING ARGUMENT

5 (Recording played)

6 Now, we talked about the hit in the first part of  
7 this trial, focusing on what the real intent was. But the  
8 latter part here, he paid him \$6,000 to shoot this guy. Let's  
9 go back. Listen again to exactly what he says when it comes  
10 to the \$1,000 amount.

11 (Recording played)

12 \$6,000. That's the price of TJ Hadland's life. The  
13 aggravator in this case, ladies and gentlemen, deals with the  
14 murder was committed by a person for himself or another to  
15 receive money or any other thing of monetary value. That's  
16 the aggravator and it's been established from the mouth of the  
17 defendant himself. Don't get hung up in this concept that it  
18 was actually KC that was the shooter, that KC got the \$5,000,  
19 because it was -- this was committed for himself or another to  
20 receive money.

21 What did Deangelo say about the money he got? Now,  
22 he says that KC got the money. He tells the police \$6,000,  
23 and Anabel testified about \$5,000. And she wouldn't come off  
24 that \$5,000. Where is the thousand? And even if you don't  
25 think that the thousand went to Deangelo, even if you think

1 that, undoubtedly from Deangelo himself he's told you that he  
2 got paid \$100 from Mr. H after this happened.

3 And then he actually tells the police, well, there  
4 was another \$100. Because, remember, there was shopping,  
5 haircut, breakfast, tires changed. That all took money, and  
6 Deangelo was the one who was doing it. So the aggravator has  
7 been established beyond a reasonable doubt in essence from the  
8 guilt, or the first phase of this case, and from the  
9 defendant's own mouth.

10 Now, you can consider in this penalty portion the  
11 evidence that's introduced and instructions given at both the  
12 penalty hearing phase and these proceedings at the trial on  
13 this matter. So all of the evidence that you got in the first  
14 phase is evidence still in front of you. You can rely upon  
15 that evidence. The testimony that you heard, the exhibits,  
16 all of that's here just as if we had reintroduced it again.  
17 And that's what we're asking you to do is to look to that  
18 information and that evidence.

19 And what is that evidence? TJ's body was found. You  
20 follow the trail starting with the cell phone that's found out  
21 there that leads back to, in fact, the Palomino. The cards  
22 that were left there. And you remember the Palomino, the  
23 structure of the Palomino? You have Mr. H who is the owner.  
24 You have Anabel Espindola, his mistress. You have Little Lou,  
25 his son. Anabel and Little Lou being the managers. And that

1 these individuals come to Deangelo Carroll, that Deangelo  
2 Carroll is the conduit, he's the means, he's the facilitator.  
3 He's the one that makes it possible because he's the one who  
4 actually, along with originally Jason Taoipu, JJ, and Rontae  
5 Zone, go and get Kenneth Counts.

6 But let's go back for just one second. Go back to  
7 the slide where we have these pictures. Tell me, in the  
8 relationship between Deangelo Carroll and Rontae Zone and JJ  
9 Taoipu, who is dependent on whom?

10 If Deangelo Carroll has the dependent personality  
11 disorder that the good doctor, Dr. Roitman said, how is it  
12 that he, Deangelo, the defendant, is telling JJ and Rontae  
13 when they're going, where they're going, what they're going to  
14 do? How is it that Deangelo is the one giving the gun to  
15 Jason? This individual who because of allegedly such a low IQ  
16 and his personality disorder doesn't have initiative?

17 Now, again, I don't -- I mean no disrespect. He  
18 doesn't have the best grades. And I'm not saying that his IQ  
19 is a genius. By the same token, this is not an individual who  
20 is drooling because he has so low of an IQ that he can't  
21 function.

22 And he's certainly somebody who has an ability to  
23 initiate and is not constantly in a dependent role, submissive  
24 role. And you heard that from the evidence from Rontae. You  
25 heard it from the defendant himself when he was talking to the

1 police and he told the police about the interaction with these  
2 individuals.

3 Kenneth Counts, he's the shooter. We haven't backed  
4 off of that statement. That's the position. We understand  
5 that. There is no Kenneth Counts without Deangelo Carroll.  
6 TJ Hadland walks the earth today but for Deangelo Carroll  
7 because he's the one who knew Kenneth Counts. He's the one  
8 who got Kenneth Counts. He's the one who drove Kenneth out to  
9 the victim. Deangelo's the one who lured the victim to the  
10 killer.

11 That dependent personality who cannot initiate things  
12 and his IQ is such that he can't see tasks through is able to  
13 find the friend, the focus of this hit, lure him to the  
14 location in which he won't have witnesses, his girlfriend, and  
15 deliver the shooter. He didn't pull the trigger, ladies and  
16 gentlemen, but he's just as guilty, which your verdict has  
17 already said. And in the context of this penalty, it's the  
18 same thing. We've talked about this already. It's the other  
19 matter evidence.

20 Now, there's different types of evidence. There's  
21 aggravation. That aggravator has to be found by you  
22 unanimously beyond a reasonable doubt. Then there's  
23 mitigation. You've heard some mitigation from Mr. Carroll's  
24 grandmother. You've heard some mitigation from Mr. Carroll's  
25 wife. You even heard some mitigation from Dr. Roitman. We'll



1 get back to that a little later.

2 But you, individually, can determine that you find a  
3 mitigator. That's the terminology that we say. You can find  
4 that there is mitigation. Each of you individually has that  
5 right. You don't have to all agree on it. That's your  
6 opportunity.

7 Now, you also will have other evidence, the other  
8 matter evidence. We've talked about that. That was the  
9 evidence of his arrests for the possession of controlled  
10 substance, possession of controlled substance with intent to  
11 sell, the robbery in '97, the first one when he was a  
12 juvenile, the later robbery of Mr. Blodgett. All of the other  
13 evidence.

14 Now, that evidence is considered after, after you  
15 have determined unanimously and beyond a reasonable doubt that  
16 the aggravator exists and after you determine that the  
17 mitigation does not outweigh the aggravation. That's the  
18 process that you go through. And these are the three types of  
19 evidence that we just talked about.

20 Now, the other matter evidence, let's go through that  
21 because we've established the aggravator. I'm going to go  
22 back into the mitigators for a second and make the argument  
23 that the mitigators do not outweigh the aggravators. But the  
24 other matter evidence that you consider -- you can consider  
25 after you've done that is this robbery, first and foremost.

1 This January 25, 1997, of this individual, Jason Brandt, his  
2 Leatherman tool.

3 Interesting. He's with other co-conspirators, other  
4 individuals. Well, I'm sure his spin will be he's the person  
5 who was in a submissive role. Really? Who had the gun?  
6 Where was the Leatherman found? It was the defendant? He was  
7 the one that pointed the gun at the victim. Now he's put on  
8 juvenile probation.

9 And you heard about the certification, you heard  
10 about violations. And, you know, there was this one young  
11 lady who came in and talked about how she made things up.  
12 Well, apparently she feels pressure from a friend to make up a  
13 story to get him in trouble, to get back at Deangelo for the  
14 friend's crush. I don't quite grasp all that, but let's take  
15 that on its face just for the sake of argument.

16 She did not back away from the fact that the  
17 defendant inappropriately and without invitation touched her  
18 chest. She didn't change that testimony. And, ladies and  
19 gentlemen, you can look through the paperwork. That's not the  
20 only reason that he was violated from his parole. And it in  
21 no way, shape, or form changes the fact that the defendant was  
22 the individual who had the gun who robbed Jason Brandt. And  
23 this is back in 1997.

24 Next you heard about a March 16, 2000, incident where  
25 he was pulled over, the defendant, driving a stolen a truck

1 and he was arrested for possession of stolen vehicle. So he's  
2 had his interaction with the criminal justice system, the  
3 juvenile criminal justice system in '97 for a robbery. And  
4 instead of changing his life, he continues with his criminal  
5 behavior.

6           You heard about discharging of a firearm. Not the  
7 most egregious thing in the world. We understand that. But  
8 you still have to take it into consideration. He fired his  
9 gun at the Boulder Manner Apartments because he got scared by  
10 fireworks that had gone off. He had purchased the gun off the  
11 street just days before. And he was cited for failure to  
12 register that firearm.

13           This is a guy who is robbing people with a gun in  
14 stolen cars, and now he's got a gun that he's shooting off  
15 because some fireworks went off. But he didn't -- he didn't  
16 end there. You go forward and there's drug charges.

17           April 24, 2002, they respond to downtown  
18 transportation center, the bus station, and based on the  
19 reports the defendant was allegedly selling drugs. They talk  
20 to him, they arrest him, and they find a bag of marijuana.  
21 Remember it was marijuana that was the whole source of getting  
22 TJ to come out?

23           In his pants eight individual packaged bags of  
24 marijuana as well as a bag with 24 ecstasy pills. That's the  
25 intent to sell. This is beyond the personal use. And he was

1 arrested for that. And you remember the case number  
2 associated with that was the 02507421X. I mention that  
3 because that's the case that was dismissed as a part of the  
4 negotiation in the conspiracy to commit robbery of Mr.  
5 Blodgett. So, again, there's another break for him in the  
6 sense that a case is thrown out in exchange for him taking a  
7 deal in the Blodgett case.

8 Now, you have in evidence the underlying paperwork  
9 associated with this event, particularly this possession of  
10 controlled substance. And look specifically at April 25,  
11 2002. That's the day after the arrest. OR release per Judge  
12 Zimmerman. So he's arrested for those drug charges and  
13 released the very next day.

14 Now, here's why I bring this up. Because just a mere  
15 three weeks later, what does the defendant do on May 16, 2002?  
16 He's stopped and cited for possession of marijuana. Some  
17 people say it's a gateway drug. A gateway to these other  
18 crimes. This marijuana that he's stopped for speeding and  
19 they found that on him, and he was cited for that.

20 There's the citation that he was given. Focus here  
21 at the bottom. Three weeks after being released on an OR for  
22 a PCS with intent and PCS, how did he sign his name? Because  
23 he's out on an OR for other drug charges and he's stopped for  
24 drug charges, and he writes Deangelo -- I think that's  
25 Johnson. If you look really close you can almost see the C

1 and the L of Carroll crossed out.

2           If you have any doubt as to it's him, well, look what  
3 he puts as the date of birth and his social security number.  
4 His date of birth, his social security number. So he tells  
5 the cop who cites him he's got a different last name because  
6 he's out on an OR for his drug charges. But this is the  
7 individual who is not slick as Dr. Roitman talked about, who  
8 is not a con artist as Dr. Roitman talked about.

9           Now, I'll give you the fact that there are slicker  
10 and better con artists. I'll give you that. But to determine  
11 that because of allegedly his extremely low IQ and his  
12 dependent personality disorder he can't initiate things and he  
13 can't see through projects is just not supported by the  
14 evidence.

15           Now, after that citation for the possession, the  
16 misdemeanor charge, three months later it's the robbery of  
17 Steven Blodgett. Now, you know, Steven Blodgett, I mean this  
18 respectfully, was somewhat of an interesting character. I  
19 think it's safe to say that. And this -- this sounds bad, but  
20 I think it's safe to say he's somewhat of a pathetic  
21 individual. He came across that way.

22           So ask yourself, is that because he really didn't  
23 know who he was picking out? Is that because he was drinking  
24 in the alley? Is he such a terrible witness? Think of it  
25 this way, or is he an absolutely outstanding mark for someone

1 who wants to roll somebody and rob them? What better  
2 individual to pick than the guy who has had too much to drink,  
3 was by himself, and is not necessarily the sharpest  
4 individual?

5           So he was cross-examined about whether or not he  
6 could identify Mr. Carroll. I didn't even ask him if he could  
7 identify him. It was eight years ago. Okay? And here's the  
8 thing. And I just don't understand. What does it matter if  
9 he couldn't identify when that man pled guilty to robbing  
10 Steven Blodgett? Because this is the information, the  
11 pleading that he pled guilty to conspiracy to commit robbery.  
12 He conspired with other people to take Mr. Blodgett's wallet.  
13 There it is. Steven Blodgett. That's in your packet of  
14 evidence.

15           Why cross-examine Mr. Blodgett about his ability to  
16 identify eight years later? I mean, if he's not really taking  
17 responsibility for this, what's the purpose of that  
18 cross-examination? The defendant admitted it himself that he  
19 committed this crime. That's what happens when you plead  
20 guilty.

21           You have been given a lot of information about  
22 mitigation. And here's what I'd like you to focus on as  
23 you're looking through the mitigation. Kind of focus or look  
24 through the prism of Dr. Roitman's analysis and his opinion.  
25 See the mitigation through Dr. Roitman because in essence

1 that's really where the mitigation is coming from.

2 And you heard about his wife and his grandmother.

3 But boiling it all down, it's the test data from Dr. Schmidt,  
4 it's the interaction with Dr. Roitman, and putting all of  
5 those things together, including the information from the  
6 family members, he comes to this first conclusion. Ladies and  
7 gentlemen, could someone please explain to me what on earth it  
8 means to come to a reasonable degree of medical certainty?

9 His first conclusion is that to a reasonable degree  
10 of medical certainty [inaudible]. That's not a test for  
11 diabetes where the blood is drawn and it's positive or it's  
12 negative. This is the defendant giving the information that  
13 leads to this diagnosis. And his diagnosis, his  
14 determinations and conclusion was to a reasonable degree of  
15 medical certainty it was -- it was insurmountable for Deangelo  
16 Carroll to do the State's theory. Insurmountable. Well,  
17 let's just read the whole thing here.

18 In conjunction with his cognitive problems are  
19 insurmountable obstacles to the strategic forethought and  
20 planning claimed by the State. The State's theory that Mr.  
21 Carroll sought out someone to kill the victim, contracted with  
22 him for hire, organized and executed is highly improbably to a  
23 reasonable degree of medical certainty given Mr. Carroll's  
24 well documented and long standing mental and emotional  
25 disabilities, so based on those, and in addition Mr. Carroll's

1 rendition of events.

2           See, his rendition of events to the doctor, not the  
3 voluntary statement , to the doctor, which is what led to this  
4 conclusion, he didn't tell the doctor. He hedged. He tried  
5 to minimize. And I read those portions to you. That's why  
6 this whole basis of the mitigation is undermined because  
7 there's an addendum. It had to change. He could no longer,  
8 to a reasonable degree of medical certainty -- because, ladies  
9 and gentlemen, in the addendum, that doesn't even show up --  
10 take the stance that he previously did.

11           Now, mind you, he does say that he has the disorder  
12 and he has a low IQ, but he backs off of his conclusion  
13 because the voluntary statement contradicts my conclusion in  
14 Mr. Carroll's capacity to think through the criminal act. He  
15 seemed to want to back off from that, but he stuck with this  
16 conclusion. He cannot stand by this conclusion.

17           Well, you've got to really ask yourself about the  
18 mitigation now when you see that the person who brought it in  
19 a package has changed that from the voluntary statement. The  
20 voluntary statement that the defendant told the police right  
21 after it happened.

22           And remember the notes from the doctor. He  
23 acknowledged that he wrote these notes in 2007. He says that  
24 he did not read the voluntary statement in 2007, but he says  
25 plan to kill in voluntary statement is the problem. How does



1 somebody who just doesn't have an IQ have a plan to kill?

2 It's certainly a problem because the doctor said so.

3           The voluntary statement needs to be mitigated based  
4 on a mental disorder or dysfunction, so we got to work on that  
5 voluntary. We got to do something to work on it to make it  
6 better for him. Explain the voluntary statement. He didn't  
7 even do it. He didn't even read it until after his first  
8 conclusion that was to a reasonable degree of medical  
9 certainty.

10           Now, ladies and gentlemen, the mitigation does not  
11 outweigh the aggravation in this case. And, specifically,  
12 you've been given a laundry list in instructions, and this is  
13 instruction 10, if you would please turn to that for a moment.  
14 Just so you understand it reads as follows.

15           Mitigating circumstances asserted to exist by Mr.  
16 Carroll include the following. Okay. That is not a reading  
17 to you that these are mitigators. That's not what that  
18 instruction says. What that instruction says is these are  
19 asserted by the defendant as mitigators. You determine if  
20 they are. And you determine if they are, what weight to give  
21 to them. So you are not bound by the fact that they show up  
22 here that you have to check them off. And, again,  
23 individually, you all can.

24           So let's look through a couple, specifically number  
25 one. Deangelo did not come up with the idea to kill Timothy

1 Hadland. Now, what was the evidence that you heard? You  
2 heard some evidence that Little Lou called his father out, Mr.  
3 H, for not being like Galardi and Rizzolo and not being  
4 willing to take care of somebody like they did.

5 And, remember, the defendant's statement to the  
6 police is that it was Little Lou that called him and told him  
7 come to the club and bring baseball bats -- baseball bats and  
8 garbage bags. So, really, where -- where is this all  
9 starting? Little Lou and Deangelo are talking. Little Lou  
10 calls his father out in his inability to be like the other  
11 strip club owners, and then is Mr. H giving his blessing, so  
12 to speak.

13 So factor that into your mind. We understand and we  
14 accept the fact that at the end of the day Kenneth Counts is  
15 the shooter, but that doesn't change the defendant's  
16 responsibility. That's not a mitigator. It talks about how,  
17 in number two, he was not the shooter. He's the one who  
18 delivers him, finds him.

19 Now, I like this. Deangelo cooperated with the  
20 police after the shooting. Did he really? Sure he wore a  
21 wire. But you read that statement and you almost think that  
22 he's saying, well, he just walked into that room, he dumped it  
23 all out, and he did everything that he could to help the  
24 police. That isn't close to what happened. He took two,  
25 three tries and was confronted with evidence that made him

1 change it and finally say this is what happened. So when  
2 you're assessing what weight, if any, to apply to this  
3 mitigator if you find it, keep that in mind.

4 And let's just jump down and do a few more. 18,  
5 Deangelo suffers from dependent personality disorder. Now,  
6 we've kind of already gone over that about how it is that he's  
7 the person who volunteers to the police officers, I'll wear a  
8 wire. He smacks that table, test my hands, I'll wear a wire,  
9 and he says he guarantees that he'll get Mr. H on the wire.  
10 Is that someone that lacks initiative? Someone who is not --  
11 who is pessimistic and doesn't have confidence in himself?

12 And this last one before we move on. 19, Deangelo  
13 was remorseful after Timothy Hadland was killed. Now,  
14 remember these are what's asserted by the defendant. He was  
15 remorseful after. Ladies and gentlemen, I ask you, when you  
16 watch that video, did you see remorse?

17 Now, you heard from Mr. Carroll today an unsworn  
18 statement that he is remorseful. It's five years later. That  
19 reads after. When he was brought to the police, that's after  
20 it happened, close in time. Was there any remorse, ladies and  
21 gentlemen? Keep that in mind when you're assessing this  
22 evidence. And at the end of the day, ladies and gentlemen,  
23 you'll find that the aggravator has been established beyond a  
24 reasonable doubt this was a murder for hire and that the  
25 mitigators do not outweigh the aggravators; therefore, he is

1 eligible for the death penalty.

2           And you've been told by Her Honor that even if you  
3 find that, you don't have to give the death penalty. And  
4 we're not here saying that to you. What we're telling you is  
5 he is eligible based on the finding of that aggravator and the  
6 fact that the mitigators do not outweigh the aggravators. And  
7 you think to yourself what the appropriate sentence is for a  
8 man who sets up his friend, not in the moment of passion, not  
9 in response to some offense, but in a cold, calculated  
10 fashion, sets up and executes a plan to kill his friend.  
11 Thank you.

12           THE COURT: All right. Thank you, Mr. Pesci.

13           Is the defense ready to proceed?

14           MR. ERICSSON: Yes, Your Honor.

15           THE COURT: All right, Mr. Ericsson.

16           MR. ERICSSON: Your Honor, may I use the easel?

17           THE COURT: Yes, that's fine.

18                       DEFENDANT'S CLOSING ARGUMENT

19           MR. ERICSSON: Ladies and gentlemen, this part of our  
20 closing argument both I and Mr. Bunin are going to be able to  
21 address you. And I am going to go through some of the legal  
22 issues that need to be analyzed, and Mr. Bunin is going to  
23 focus more on the facts of the aggravator as well as the facts  
24 of the mitigators that you've heard in the last two days.

25           We, from the outset of this hearing, we had

1 acknowledged that the senseless killing of Timothy Hadland  
2 will never be justified and there is no excuse for that. But  
3 that is not the inquiry that the 12 of you who are going to be  
4 deciding this are making at this point. Obviously the  
5 decision that has to be made right now is what is the  
6 appropriate sentence for what Deangelo did in the death of  
7 Timothy Hadland.

8           The -- the ability to -- to erase any of the pain  
9 that -- that Timothy's family has experienced because of this  
10 will never be here, and of course we cannot do that. And it  
11 is hard as the attorneys for Deangelo where we are coming to  
12 you and speaking on his behalf, in a way asking for mercy, and  
13 that is a word that you have seen in those instructions that  
14 mercy is an appropriate consideration in determining a  
15 sentence.

16           It is very difficult as we're outlining reasons for  
17 mercy without acknowledging and understanding that there is  
18 incredible loss on -- on behalf of the Hadland family. And we  
19 -- we acknowledge that and we are not in any way trying to  
20 minimize that. But we ask you as you go through this analysis  
21 that you do so with open eyes and as you've been instructed.

22           One of the things that each of you swore you would do  
23 when you agreed to take on the incredible responsibility of  
24 being a peer sitting in judgment of Deangelo is that you would  
25 follow the law as it is outlined in the State of Nevada and

1 that you -- one of those -- one of the legal instructions is  
2 that you are to consider any mitigating factor that you find  
3 relevant in determining the appropriate sentence.

4 One of the important facts that the State knows has  
5 gone on in these other trials is the relationship that  
6 Deangelo has to this murder, and the relationship of the other  
7 defendants and the punishments that they received with their  
8 roles in the death. And I want to go through that just to  
9 remind you because that is a factor that you can consider in  
10 determining the appropriate sentence for Deangelo.

11 And I won't -- there are lots of instructions. They  
12 all are very critical. Number three -- and you don't need to  
13 look at it. I'll just tell you the highlights. Every one of  
14 you knows that there is no light sentence available to  
15 Deangelo. The least of the sentences is 100 years in prison  
16 with the earliest possible parole eligibility at 40 years.  
17 That is the most generous sentence that he is eligible for.

18 Now, what were the sentences that the co-defendants  
19 received? We know that Kenneth Counts, the shooter, he is  
20 serving eight to twenty years in prison. So in eight years he  
21 will be eligible to go before a board and ask for release.

22 Mr. H and his son, Little Louie or Little Lou.  
23 Prosecution just made some arguments to the effect that it  
24 wasn't Mr. H who had made this plan. It was really Little Lou  
25 who was egging his father on, who was making him feel like he

1 wasn't a tough strip club owner and he would never live up to  
2 that reputation if he didn't do something about the things  
3 that -- that Mr. Hadland had done to the club. Those two,  
4 they are -- they were sentenced to 20 to life in -- in prison.

5           The Judge read -- and believe me, I know so much  
6 information comes in in these cases. And that's one of the  
7 reasons we get to do closing arguments is to kind of highlight  
8 some of the significant evidence as it comes in. The Judge  
9 read to you, I believe it was when we came back from lunch  
10 today, a statement concerning the death penalty, and the  
11 State's seeking of the death penalty in this case.

12           They sought the death penalty against Kenneth Counts,  
13 he's doing eight to twenty. They initially sought it against  
14 Mr. H, Little Lou, and Anabel. The courts ruled that it  
15 couldn't be sought against Little Lou and Anabel, but it --  
16 the courts indicated that it could still be brought against  
17 Mr. H.

18           And that -- that information that the Judge read to  
19 you was that the prosecution decided for strategical reasons,  
20 based on rulings of the Court, that they were going to  
21 withdraw the death eligibility, they would not seek death  
22 against Mr. H when they took him to trial. And when he went  
23 to trial, death was not even an option of where he could have  
24 been found guilty of first degree murder.

25           You finally got to see the real live Anabel

1 yesterday. You heard all those wires over and over again of  
2 her. You saw her yesterday. Anabel, she struck a deal with  
3 the prosecutors. She helped them by agreeing to testify in  
4 Mr. H and Little Lou's trial. She agreed that she would  
5 testify against Deangelo. And because of that, or in large  
6 part of her agreement to do that, she was given a plea  
7 agreement.

8           And you heard that that plea agreement, she would no  
9 longer be facing the death penalty, she would no longer be  
10 facing murder, she -- she pled to voluntary manslaughter. The  
11 State, prosecution agreed that at her sentencing they would  
12 make no recommendation as to whether she should go to prison  
13 or not. And her sentence -- her possible sentence range --  
14 and one of the other things that she acknowledged as hanging  
15 over her head is she has not been sentenced yet on this case  
16 that is five years old where she acknowledged she sat in many  
17 courts during the last five years.

18           And typically somewhere between 60 to 90 days after  
19 someone enters their plea is when they are sentenced. It has  
20 been several years since she entered her plea. They're  
21 holding that out over her head. And her potential sentence  
22 range is anywhere from a two to five year sentence. The  
23 maximum sentence range could be an eight to twenty year  
24 sentence, and it is probationable. So it -- she could be  
25 placed directly on probation. You heard her acknowledge that



1 the State agreed to have her released on house arrest and that  
2 she is no longer in custody.

3 The last one that the State entered into an agreement  
4 with was with JJ. And he was initially, after entering his  
5 plea, he's the one that had a gun in the car and he's -- he  
6 was given probation after he entered his plea. But he got in  
7 trouble again, screwed up his probation, and then resultantly  
8 sent to prison on -- on his plea. But because of other  
9 conduct he is serving a four to ten year sentence. And last  
10 we have Rontae Zone. We heard from him a couple weeks ago.  
11 Rontae, no charges were ever brought against him.

12 Now, just one -- one reminder of the proportionality  
13 and what the State is seeking here against Deangelo. You  
14 heard those tapes with Anabel where she now comes in yesterday  
15 and says that the only thing that she did was just to pass on  
16 information, she didn't know what it meant, go to plan B. And  
17 then afterwards, she found out, she tried to cover things up.

18 Under -- on the wire you heard her voice. You heard  
19 the f-ing this, how can you be so f-ing stupid. We have got  
20 -- and I am paraphrasing -- we have got to stick together. I  
21 ain't going to f-ing sing. We have got to keep our stories  
22 straight or we're all going down. And I'm paraphrasing, but  
23 she was not going to sing. She was going to keep her story  
24 straight or they're all going down. And that -- she's getting  
25 a voluntary manslaughter in this case.

1 Ladies and gentlemen, she knew what plan A and plan B  
2 was. She knew what Mr. H and Little Lou had put Deangelo, the  
3 flunky out there with the stupid Palomino cards he would go  
4 around and give the cabbies and put them -- trying to get  
5 people to come to the club. The State argues that but for  
6 Deangelo Mr. Hadland would not have died. Ladies and  
7 gentlemen, that is probably true. But but for that entire  
8 list of characters, except maybe JJ and Rontae, Mr. Hadland  
9 would not have died.

10 And they can -- they can make their arguments against  
11 Dr. Roitman. Is Dr. Roitman flawless? No. Did he -- you  
12 know, his initial review he had not read, although I guess  
13 when the attorneys had talked to him a couple of years ago  
14 they said, you know, the statement is something you've got to  
15 deal with. He didn't read it until -- he probably didn't even  
16 have it.

17 When he read it he realized that his initial opinion  
18 overstated the facts and he made an adjustment. It did not  
19 change the diagnosis, the testing results of Dr. Schmidt who  
20 is a licensed psychologist and who did the battery of tests  
21 that are designed to determine if somebody is malingering or  
22 faking or trying to come across less intelligent than they  
23 are. Deangelo does have a certifiable IQ of 82.

24 And remember what we're not saying. We're not coming  
25 in here and saying that he's retarded. An IQ of 82 is not

1 retarded, but it is a four out of five individuals have a  
2 higher intelligence level than -- than does Deangelo.

3 Is that an excuse to being part of a murder? Of  
4 course it is not. We're not saying that. But it is a factor  
5 that needs to be considered in determining the degree of  
6 punishment that the flunky handing out the cards at the strip  
7 club deserves in this case. And you have got to take into  
8 consideration how the State, how other juries treated these  
9 other individuals.

10 The initial analysis that you're making is just  
11 looking at the one aggravating factor that the State has  
12 claimed and that that -- that it was a killing done for  
13 profit. Weighing that one aggravator -- and when you're  
14 weighing that, I think you need to take into consideration was  
15 this something that Deangelo was doing to try to make money  
16 for himself or try -- is it -- typically, that aggravator, if  
17 you've got somebody who is out trying to profit being a hit  
18 man, I think that that aggravator weighs more in that  
19 situation than -- than Deangelo who is not, he wasn't trying  
20 to make money off this. He didn't come in and demand that he  
21 get paid too or anything like that.

22 But look at that one aggravator and then you weigh it  
23 against the mitigators. And Mr. Bunin is going to go through  
24 in more detail the mitigators. But that is the initial  
25 analysis. You do not look at the claim that when he was at

1 Rancho High School that he grabbed a young lady's breast, it's  
2 certainly inappropriately, and that he had some problems with  
3 some girls. You don't weigh the when he was 15 years old and  
4 pulling a gun on somebody and taking a Leatherman.

5 You don't weigh any of that evidence at all when  
6 you're doing your initial analysis. And that is very clear in  
7 the instructions. You weigh it was a murder done for hire  
8 against all of the mitigators.

9 If you, after weighing that, come to the conclusion  
10 that the mitigators outweigh that one aggravator, then the --  
11 the decision as to whether he's death eligible is over. He  
12 cannot be found death eligible at that point.

13 If after the analysis you determine that that one  
14 aggravator is -- outweighs all of the mitigators, then you go  
15 down to the next decisions regarding whether what the  
16 appropriate sentence would be of the four. It certainly is  
17 not then, well, automatically we're going to give him death.  
18 It's just at that point that you can consider that if you find  
19 the weighing of the one aggravator against all of the  
20 mitigators.

21 I -- I hope you won't be insulted by us bringing in  
22 the family members because, again, I know there are other  
23 family members in this courtroom who will be hurting for the  
24 rest of their lives because their dad is gone. But I think  
25 that it's important for you to know that the decision doesn't

1 just affect Deangelo.

2 Deangelo, at a minimum, is going to spend 40 years in  
3 a Nevada State Prison. But he has a wife, he has a  
4 grandmother, and he has a five year old son who are tragically  
5 affected by his stupid decision. And that is something that  
6 you can take into consideration, the ability that he has to  
7 continue at least some type of relationship with -- with his  
8 family members and provide some type of relationship to his  
9 son. And that is something that has incredible value.

10 So I hope you're not insulted that -- that we -- and  
11 we understand weighing the family loss, but it is very  
12 critical that you look at this entire picture. And my  
13 suggestion to you that after you go through all of this  
14 analysis and compare what the State has done in these other  
15 cases, his role in this terribly stupid murder, that you will  
16 conclude at the appropriate and fully sufficient sentence is a  
17 40 year to life sentence, so that 40 years from now, if he has  
18 done what he can while in prison, he can go before a board and  
19 ask to spend a few more years of his life out of custody.

20 Ladies and gentlemen, I sincerely thank you for the  
21 diligence and the concentration you have all shown on this  
22 case. We ask you to take your responsibility very seriously,  
23 and I'm sure that you will do that. Thank you.

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

25 Mr. Bunin.

1 MR. BUNIN: Thank you, Your Honor.

2 DEFENDANT'S CLOSING ARGUMENT

3 MR. BUNIN: I know Tom just went through a lot of  
4 material with you. He covered a lot of aspects of the law.  
5 And because he's done that, I'm not going to go through a lot  
6 of details of the instructions and read them off to you a lot  
7 like I did in my closing argument during the trial phase.

8 I'm going to -- you know, I know it's been a long  
9 trial, and I'm going to try not to repeat a lot of areas that  
10 Tom has gone through, although there's a few I'm going to  
11 reemphasize a little bit different of a way, and then I want  
12 to talk about a lot of the facts and as they apply to these  
13 mitigators and the aggravators.

14 But I do want to start by saying that first and  
15 foremost we recognize and we respect the fact that you jurors  
16 have found Deangelo guilty of first degree murder. I am not  
17 here to dispute that. That's your decision. It's the law  
18 now. It's where we're at. So now I'm here for one reason and  
19 only one reason, and that's to ask you to spare Deangelo  
20 Carroll's life. That's why we're here today.

21 So as Tom explained in the instructions what the  
22 prosecution must prove in order for you to even consider death  
23 as an option is that beyond a reasonable doubt they must prove  
24 that at least one aggravator exists. Now, they're only  
25 attempting to prove one aggravator, so that's all you can

1 consider. When you are still considering the possibility of  
2 death, you are not allowed to consider any of the evidence  
3 that they presented to you, which I'm going to talk about  
4 briefly because it was terribly weak evidence.

5 But when the police officer sat on the stand reading  
6 a bunch of police reports presenting no evidence to you, of  
7 the police officer reading police reports which you now know  
8 are false, those have nothing to do with the aggravator.  
9 Nothing. You are only allowed to consider the aggravator when  
10 first determining whether or not death is even on the table.

11 All 12 of you must agree beyond a reasonable doubt  
12 that there is an aggravator. And if one of you says, you know  
13 what, I don't even think they proved the aggravator beyond a  
14 reasonable doubt, death is no longer something you consider.  
15 Now you consider all the evidence you've heard and see if you  
16 can come to a consensus on which of the other three choices  
17 are available to you.

18 MR. PESCI: Judge, can we approach?

19 THE COURT: Sure.

20 (Off-record bench conference)

21 THE COURT: Need a break?

22 THE MARSHAL: Yes, ma'am.

23 THE COURT: Jury, take a break. Ten minutes; is that  
24 sufficient for everyone? Once again, the admonition is in  
25 place. Don't talk about the case or anything. Notepads in

1 your chair.

2 (Jury recessed at 4:03 p.m.)

3 MR. PESCI: You made your ruling. That's fine. I  
4 just want to make a record.

5 THE COURT: I think you're wrong, though.

6 MR. PESCI: It's something that I want to get up in  
7 front of the Supreme Court.

8 THE COURT: The way you want to do it is you would  
9 have to have -- okay. The way you want to do it, you would  
10 have to have every single jury either unanimously on the  
11 aggravator one way or the other, and then unanimously on the  
12 aggravator versus the mitigator. So, theoretically, the State  
13 -- the State could have 25 juries.

14 MR. BUNIN: We would never get --

15 THE COURT: You'd never get --

16 MR. BUNIN: You would eventually get something or it  
17 would go on forever.

18 THE COURT: It could -- it could, by definition, go  
19 on infinitum. I mean, I'll ask what Barker and Wall think,  
20 but I -- I think I'm totally right. I mean, I'm pretty  
21 confident, but you can make your record.

22 MR. PESCI: Can I ask --

23 THE COURT: I mean, if either one of them knows of  
24 any single case that's hung on the aggravator. But I don't  
25 believe every single case that is hung has been unanimous on



1 an aggravator, unanimous on aggravator outweighing the  
2 mitigator, and then it hangs because some of them want death  
3 and some people say no. Like the instruction says, even  
4 though the aggravators outweigh the mitigators, I just don't  
5 believe in death.

6 MR. BUNIN: They all 12 can say they aggravator  
7 outweighs the mitigator and then they can hang saying because  
8 a couple of them say I just choose life for mercy reasons or  
9 whatever.

10 THE COURT: I just choose life or whatever.

11 MR. BUNIN: Then we have a hung jury.

12 THE COURT: Right. Then you have a hung jury and  
13 only then.

14 MR. PESCI: Okay.

15 THE COURT: So -- but they don't -- then at that  
16 point you can say if you believe, if you get to the third  
17 step, if you believe unanimously the aggravators outweigh the  
18 mitigators and you find beyond a reasonable doubt that there  
19 is an aggravator but you believe that death is the option, you  
20 can stay with that. You can stay with that death. You don't  
21 have to compromise. And then they can say even if the  
22 aggravators outweigh the mitigators but you believe that life  
23 is you never have to give death and you can stay with that  
24 option.

25 So you can say once they all agree on that if they

1 really believe that death is the appropriate, then they can  
2 stay with that after discussion and deliberation. But they  
3 never at that point have to give up death.

4 MR. PESCI: Okay.

5 THE COURT: And that's true. I mean, you're  
6 absolutely right on that.

7 MR. PESCI: Just for the record, the State's  
8 position, because we've done it up here and I don't think it  
9 was on the record --

10 THE COURT: Right.

11 MR. PESCI: -- is that prior to even getting to the  
12 portion that you're indicating that in order for the jury to  
13 unanimously make a determination as to the existence of the  
14 aggravator, it's the State's position that one person saying  
15 that they don't think it's been found -- I know it's -- I'm  
16 making my record.

17 THE COURT: I know.

18 MR. PESCI: One person finding that takes away the  
19 right of the remainder of the jurors if they believe that it  
20 has been proved beyond a reasonable doubt. I think that this  
21 argument in essence steals away from the remainder their  
22 verdict. And I understand that you disagree with that on the  
23 record, but --

24 THE COURT: Yeah. I mean, Mr. Pesci, if there's one  
25 case in the Nevada Supreme Court or in the Ninth Circuit where

1 a jury has hung on step one or step two, then tell me the case  
2 and I'll look at it. And then I'll ask in the back if anybody  
3 on the floor knows of a case because, as you know, David Wall  
4 did a bunch of death penalty cases on both sides. I don't  
5 know of one personally.

6 Every -- I mean, this was briefed on the case I told  
7 you about at the bench, the Harrison case. And everything  
8 that I read for that, juries, they had hung on the issue of  
9 the penalty, not on the issue of aggravating or mitigating.  
10 And that was one they hung on the penalty, and I don't  
11 remember what it was if they had beyond on the aggravators.  
12 But I said, no, they could go back and have a new trial on  
13 death, and the Ninth Circuit says, no, you're wrong.

14 MR. BUNIN: You know, that seems -- honestly, I've  
15 read so many closing arguments where they constantly talk  
16 about the three room analogy that I'm not --

17 THE COURT: Right.

18 MR. BUNIN: -- going to do, but --

19 THE COURT: The room one, room two.

20 MR. BUNIN: If one person doesn't leave out of the --  
21 right, you'd never get to room two. And then room two, if one  
22 person --

23 THE COURT: Right. Right.

24 MR. BUNIN: -- leaves, that way you don't get to room  
25 three. And I think that's all I'm saying without using the

1 analogy.

2 THE COURT: Yeah. And I think Mr. -- just to respond  
3 to your objection -- Mr. Bunin, I think, was just saying that.  
4 But again, you can say if you get to room three and you  
5 believe that death is the appropriate option, you don't have  
6 to compromise.

7 MR. PESCI: And for the record, defense counsel  
8 agreed with what you just said while we were at the bench; is  
9 that correct?

10 THE COURT: Yeah.

11 MR. BUNIN: Yeah.

12 MR. PESCI: Okay.

13 THE COURT: Okay. And so you can argue that that  
14 once they get to room three they can stand -- you know, they  
15 can -- they have to discuss it, but they don't have to change  
16 their minds.

17 MR. PESCI: The only thing I would ask now just so we  
18 don't have to do this all over again before I get up, it was  
19 mentioned about the State not getting to go on both Little Lou  
20 and Mr. H. And I want to ask permission before I do it that I  
21 want to be able to tell this jury we had to make a  
22 determination based on severance, that for us to go forward  
23 they had to be severed. Because that explains the rationale.  
24 Because it's getting into our process of making that  
25 determination, and I want to be able to say that. I'm asking

1 in advance instead of just making the argument and then  
2 dealing with objections.

3 THE COURT: Yeah. I think that's fine. I mean, I  
4 don't --

5 MR. PESCI: Thank you.

6 THE COURT: Like I said, Mr. Pesci, you're not aware  
7 of any cases.

8 MR. PESCI: No, I -- I point to Dante Johnson. I --  
9 I'm candid with the Court. I don't know if it was in the  
10 existence of the aggravators or in the penalty as far as --

11 THE COURT: I think it was in the penalty.

12 MR. PESCI: I don't know.

13 THE COURT: And I -- that's all I've ever seen. But  
14 let me see if anyone else -- I mean, if you want to do some  
15 quick research if there is one.

16 MR. PESCI: I wish. I can't get online. That was  
17 the other thing.

18 THE COURT: I really don't think you're going to find  
19 anything because, like I said, this was kind of briefed in an  
20 analogous issue, and I didn't see anything. But I'll -- I'll  
21 see if anyone else has ever head of that.

22 MR. PESCI: Thank you.

23 (Court recessed at 4:09 p.m. until 4:23 p.m.)

24 (In the presence of the jury.)

25 THE COURT: All right. Court is now back in

1 session.

2 Mr. Bunin, you may proceed.

3 MR. BUNIN: Thank you, Your Honor.

4 So let me start exactly where I left off and repeat  
5 what I said.

6 If any one of you, just one of you, do not believe  
7 the prosecution has proven their one aggravator beyond a  
8 reasonable doubt, death is not an option. Then you'll  
9 consider the other three areas and consider what the  
10 appropriate sentence is, just one of you.

11 Now, the prosecution, as I said, has only presented  
12 one aggravator. They only had one, so that's the only one  
13 that they presented. And like I said a moment ago, you cannot  
14 consider any of the other evidence they presented until: One,  
15 all 12 of you believe it was an aggravator; and then, two, all  
16 12 of you believe that the aggravator outweighs the mitigator,  
17 then you can consider the other evidence; or if you -- one of  
18 you determines that death is not on the table and death is not  
19 going to be an option, well, you can consider all of the  
20 evidence presented in determining what the sentence will be,  
21 which life sentence you're going to choose.

22 But when you're determining what the aggravator is  
23 and you're weighing the aggravator against the mitigators, you  
24 are not allowed to consider any evidence presented by the  
25 prosecution other than the aggravator until you're done with

1 weighing the aggravator against the mitigators.

2           So that's what you need to keep in mind. It might  
3 seem confusing, but this is exactly what the law says. This  
4 is exactly what your instructions say and you're going to have  
5 plenty of time to sit and read them and make sure that you  
6 understand. You do not consider anything the prosecution  
7 presented until you've weighed their one aggravator, and one  
8 aggravator only, versus any mitigators that you believe are  
9 appropriate to weigh. Then you can get to the other evidence.

10           Now, the prosecution claims that although they've  
11 only presented one aggravator, well, it's simple and easy.  
12 They cut it off so -- of course, because an aggravator exists  
13 beyond a reasonable doubt, you should all assume this  
14 aggravator exists beyond a reasonable doubt and then go into  
15 the rest of your analysis. But I don't think the analysis as  
16 to whether or not there's the one aggravator in this case is  
17 as simple as Mr. Pesci made it seem during his closing  
18 argument.

19           Here's what I mean. The question for you is this:  
20 Did Deangelo Carroll do this for money? In other words, I'm  
21 not asking you to ask the question, did Deangelo Carroll or  
22 somebody else receive money? That's not the question. The  
23 question is: Did Deangelo Carroll do this so that he would  
24 receive money or that somebody else would receive money or did  
25 he do it for some other reason? That's what you need to think

1 about when you think about this aggravator, because when you  
2 do, I think you're going to see that they didn't even prove  
3 their one aggravator beyond a reasonable doubt.

4 Here's some evidence that you heard. Take it for  
5 what you think its weight is worth. Deangelo has some  
6 dependency issues. You heard that from his grandmother. You  
7 heard that from his wife. You heard that from the doctor.  
8 Deangelo had no real family structure. Deangelo had no real  
9 family guidance. Deangelo not only didn't have a father but  
10 was obsessed with knowing who his father was.

11 His grandmother said anytime a man would come into  
12 the house, he would ask, Is that my father. Deangelo thought  
13 his entire childhood was defined by this lack of any parental  
14 guidance, any male guidance. Dr. Royd talked about it --  
15 Roitman talked about his dependency issues, but who were the  
16 authority figures in Deangelo Carroll's life? Who did  
17 Deangelo Carroll finally find and consider his father? And  
18 you heard it from Deangelo's wife Jeanique, and that's the new  
19 family that he made at the Palomino Club.

20 This is Mr. H, Little Lou, and Anabel who, by the  
21 way, he didn't call Anabel. He called Ms. Anabel, a form of  
22 respect. Deangelo Carroll saw these figures, as warped as  
23 these authority figures are, he saw these figures as authority  
24 figures. That's how Deangelo Carroll viewed these people.  
25 All of them became his new family. Mr. H was his father. I'm



1 now his son. This is what it was. And for the first time in  
2 his entire life, Deangelo Carroll belonged somewhere.

3 That's a sad life that for the first time he belongs  
4 with Mr. H, Little Lou, and Anabel, people who ran the  
5 Palomino Club. But this is the truth of Deangelo Carroll's  
6 sad life. This is where he finally belonged.

7 So what's my point? Did Deangelo Carroll involve  
8 himself in a plot to kill Timothy Hadland for 100 bucks or for  
9 somebody else to make money? Or did he do it because his new  
10 family told him to do it? Did he do it to please the only  
11 authority figures in his life? Was that Deangelo Carroll's  
12 motive? And I submit to you this is easy. This is an easy  
13 question for you to answer, and they have not proven their one  
14 aggravator they have to prove for you to even consider death  
15 as an option.

16 What do I mean? How is this easy? Deangelo  
17 Carroll, without being ordered to do this by those above him,  
18 would never have killed Timothy Hadland. Nobody in this room  
19 has ever suggested Deangelo would have done this without being  
20 told to do it by others. Nobody. That's one.

21 If somebody other than these people, if some random  
22 person on the streets went to Deangelo Carroll and said, Hey,  
23 I'll give you 100 bucks, go kill Timothy Hadland, what would  
24 Deangelo Carroll have said? Of course, he wouldn't have done  
25 it. Money is not why Timothy Hadland is dead. From

1 Deangelo's perspective, Deangelo did what his new family told  
2 him to do.

3 If you don't believe beyond a reasonable doubt any  
4 one of these, that Deangelo did this for money, if you have a  
5 reasonable doubt that it's possible, that it's just simply  
6 reasonably possible that Deangelo involved himself in this  
7 scheme because H told him to or Little Lou told him to or  
8 Ms. Anabel told him to, if you have any reasonable doubt that  
9 that is a possibility, they have not proven their one and one  
10 only aggravator. They have not proven it. Any one of them.  
11 You say, you know what? Maybe that is why Deangelo did this.

12 It doesn't matter if Deangelo received \$100 or a  
13 thousand dollars. It doesn't matter if KC received 5,000,  
14 6,000 or zero. It just doesn't matter. What matters is why  
15 was this done. And if you believe Deangelo's motive was to  
16 please his authority figures, or at least it's reasonable,  
17 that it is a reasonable possibility, then you have reasonable  
18 doubt, any one of you. And then what happens?

19 You now go into your analysis of all the evidence  
20 you've heard and determine which sentence Deangelo would get  
21 that is not death because they have not, beyond a reasonable  
22 doubt, proven this aggravator. Don't let them gloss over  
23 this. They went through it quickly like, of course, there was  
24 money involved, so beyond a reasonable doubt he must have done  
25 it for money. That's the question you ask: Why did this

1 occur?

2 Well, according to their own evidence, it occurred  
3 because somebody's supposedly badmouthing the club. And the  
4 authority figure, the people that Deangelo worked for involved  
5 Deangelo in this scheme which ended up in the death of Timothy  
6 Hadland and you now have convicted him of murder of this  
7 scheme, but Deangelo's motive in getting involved, to please  
8 his authority figures, not to put \$100 in his pocket.

9 Now, if any one of you thinks that's a reasonable  
10 scenario, that maybe that really was Deangelo's motive, not  
11 the hundred bucks, but maybe it really was to pleasure these  
12 people, that's not on the table. This is a case for life and  
13 then you decide between the three options which one you think  
14 is appropriate, weighing all the evidence you heard during  
15 both phases of the trial.

16 Now, I'm going to talk a little bit about some of  
17 the mitigators that we've listed and maybe some of the ones we  
18 didn't list too. And I'm going to try not to repeat too many  
19 things that Tom talked about, but he hit a couple of areas  
20 that are so important that I think we both have to cover it.  
21 But remember, you're weighing any mitigator -- let's pretend  
22 that the 12 of you decide that the aggravator was proven  
23 beyond a reasonable doubt. I don't believe you're ever going  
24 to get there. That was not proven. But when I talk about  
25 mitigators, your instructions tell you to weigh it against the

1     aggravator if all 12 of you think the aggravator exists.

2             So if we are in a scenario where all 12 of you say,  
3     okay, I believe beyond a reasonable doubt Deangelo's motive  
4     was money for himself or somebody else, if you really think  
5     they proved that, fine. Now you weigh out that one and that  
6     one only and no other evidence they presented to you, that one  
7     aggravator, versus anything in the end you determine has got  
8     to be a mitigator.

9             If you believe -- so now what we're going to do is  
10    reduce on the mitigators and realize you've got to weigh those  
11    against the one aggravator only. Now, first remember, when  
12    we're looking at the mitigators, what we're really doing is  
13    weighing the life of a person versus aggravators of a person  
14    who has committed first-degree murder. That's what you found.  
15    What you're saying is, is death appropriate for Deangelo  
16    Carroll? Is Deangelo Carroll, among other people who've  
17    committed first-degree murder, the worst of the worst?

18            When you balance the mitigators and aggravators,  
19    does Deangelo fall into that narrow category as defined by  
20    your instructions as people that must die? Is Deangelo  
21    Carroll the worst of the worst? The death penalty is reserved  
22    for them, the worst of the worst.

23            The prosecution has, at some point or another,  
24    downplayed the mitigators as they relate to Deangelo's family  
25    and how he was raised and his background. I heard somebody

1 somewhere say, you know, lots of people were raised in poverty  
2 and lots of people have bad lives, and, well, they didn't kill  
3 anybody. That's true. But that is illogical and that is an  
4 argument that is an unfair statement when you look at what  
5 your duty is in determining where Deangelo Carroll falls in  
6 these different ranges. What do I mean by that?

7           We're not comparing Deangelo Carroll to people that  
8 didn't commit crimes. Well, if we do that, anytime you commit  
9 first-degree murder, you're worse than somebody that didn't.  
10 I'd agree. But when the prosecution says, well, all these  
11 other people just like Deangelo didn't commit a crime, it's  
12 misleading and they're trying not to get you to focus. What  
13 you're supposed to focus on is, among other people that have  
14 committed first-degree murder, is Deangelo's background  
15 relevant. When you compare him to others that have done what  
16 he did, which is terrible grammar and I'm not going to try to  
17 fix that, when you compare him to others, is Deangelo the  
18 worst of the worst?

19           So don't get caught up in this. Other people have  
20 been raised in poverty, so it's not relevant, they didn't do  
21 it. You're comparing Deangelo to others in a similar  
22 situation as Deangelo Carroll. Certainly family background is  
23 relevant to let you know who Deangelo Carroll is. Deangelo's  
24 background does not justify the murder of Timothy Hadland.  
25 And Deangelo's background does not excuse his conduct in the

1 eventual murder of Timothy Hadland, at all. That's not what  
2 the defense is saying. That's not why we're bringing it up.  
3 It helps you know who Deangelo Carroll is and it helps you  
4 weigh his life versus the one aggravator they arguably  
5 present.

6 Now, a lot of mitigators really went without being  
7 in dispute, some maybe they disputed. Here's some that  
8 weren't really disputed. Deangelo was abandoned by his father  
9 when he was very young. Deangelo grew up without knowing who  
10 his father was, and for whatever reason, the way he was raised  
11 seemed to affect him in a way that was very profound maybe  
12 compared to the way other people were affected.

13 Every time, they testified, a black man would come  
14 into his grandmother's house, his first words were, Are you my  
15 father? He asked many different men that he met when he was a  
16 child, Are you my father? Deangelo Carroll was very affected  
17 by this in his life. Deangelo Carroll was abandoned by his  
18 mother when he was very young, also not in dispute, and this  
19 also very profoundly affected Deangelo who constantly asked to  
20 spend time with his mother, who wanted to go live with his  
21 mother, but she didn't care. She had other choices to make in  
22 life, have fun, party, hang out with whoever. But my son,  
23 well, that's responsibility. That's not something I'm going  
24 to take. That's Deangelo Carroll's mother.

25 I don't know which is worse, a father being gone and

1 never contacting him or the mother being around and never  
2 caring for him, but they both affected Deangelo terribly,  
3 terribly. These are mitigators. These are things to consider  
4 when you look at Deangelo Carroll. No excuse will justify  
5 murder, but there are things to take into consideration when  
6 you think about who Deangelo is and what does he deserve in  
7 the end.

8           What else? Well, Deangelo -- I've hit this, but  
9 he's made -- he had no significant male role model ever, not  
10 until he met Mr. H. I think that's an important thing to keep  
11 in mind. He never really had any family structure. And the  
12 efforts to bounce him between his mom and his grandmother and  
13 his grandmother trying to raise eight other people and a slew  
14 of other people in the house, he never had any structure.

15           He had a learning disability when he was young and  
16 it's undisputed that Deangelo had to take special education  
17 classes. It seems pretty much undisputed that he had a low  
18 IQ, 82. Deangelo even struggled through high school. His  
19 conduct was a bit iffy, but it certainly wasn't nearly as bad  
20 as what the prosecution read to you in a police report when  
21 they made these terrible allegations about supposed threatened  
22 rape and a beat up that never occurred because the  
23 prosecution, rather than actually find the person making the  
24 allegation and come and present testimony to you, instead had  
25 an officer read a report and we have no idea if the report's

1 accurate. Well, now we do because the defense showed you.

2 But this is how Deangelo grew up, in a high school  
3 teased by other kids, and other kids conspired against him and  
4 he had kind of a tough time as a kid. He probably had  
5 behavior issues related to all the other things that I've  
6 already talked about.

7 In the end, he had a very unstructured,  
8 undisciplined environment, grew up in a very poor  
9 neighborhood. It's relevant. Take it into consideration.  
10 Those are all individual mitigators to be taken into  
11 consideration and to weigh against the one aggravator, if you  
12 believe they even presented it.

13 He didn't start where most of us start. It doesn't  
14 justify anything. It doesn't excuse it. But Deangelo  
15 started -- he was dealt cards that most people weren't dealt.  
16 He started in a difficult situation and obviously he didn't  
17 come through it as well as he should. It's an understatement.

18 When you weigh all of these -- I think before we get  
19 to other mitigators, which I think are huge mitigators that  
20 the prosecution's pretty much ignoring or glossing over, but  
21 before we get to those, I think that alone, the way Deangelo  
22 was raised, all these issues with his life, we're not weighing  
23 it against ten aggravators. We're weighing it against one  
24 where they're trying to claim that, well, he got paid a  
25 hundred bucks, or he got somebody else's money for doing this



1 and somehow they want you to think that that was his motive.  
2 You're weighing the mitigators against the one aggravator and  
3 the one aggravator only. I already think you have some  
4 explanation for who Deangelo Carroll is and how he got to  
5 where he is, and it's mitigation and it's very important to  
6 take into account and it certainly doesn't demand anything  
7 less than a life sentence. We're not asking you to cut him a  
8 break. We're just asking you to give him his life based on  
9 these mitigators.

10 Let's talk about some other mitigators. And  
11 remember, if one of you, when weighing these mitigators, just  
12 one of you says the mitigators outweigh the aggravator --  
13 let's suppose all 12 of you think that there's an aggravator  
14 beyond a reasonable doubt. The mitigators, we have no burden.  
15 We don't have to prove them beyond a reasonable doubt. If you  
16 think something's a mitigator for any reason, it's a  
17 mitigator. If I don't suggest a particular mitigator, I don't  
18 mention one at all, but you think there's a mitigator that I  
19 didn't bring up and you think it's a mitigator even though no  
20 evidence was presented, it's a mitigator.

21 And if any one of you says, hey, this mitigator  
22 outweighs the one aggravator, any one of you, we're done.  
23 Death's not on the table. Deangelo lives. The only issue at  
24 this point is, can you come to a consensus on which life  
25 sentence he has? One of you, just one of you when you're

1 weighing mitigation versus aggravation can say, Stop, we're  
2 done talking about death. I think that the mitigators -- I  
3 don't care if Mr. Bunin or Mr. Ericsson presented one.  
4 There's one in my mind that outweighs the aggravator. I'm not  
5 going to kill Deangelo Carroll today. I just don't want to do  
6 it. I think this one mitigator outweighs the aggravator. If  
7 one of you says that, and you have every right to do it and  
8 you don't have to justify your opinion to anybody, anybody, if  
9 one of you does this, Deangelo lives. And then you go --

10 MR. PESCI: May we approach, Judge?

11 MR. BUNIN: -- on with your analysis.

12 (Off-record bench conference)

13 MR. BUNIN: May I continue, Your Honor?

14 THE COURT: Yes.

15 MR. BUNIN: I'm going to try to start exactly where  
16 I left off, exactly what I was saying. If any one of you  
17 feels any mitigator, whether I said it or not, outweighs the  
18 aggravator, it's over. Death's not on the table. One of you.  
19 Just one of you has to say the mitigators outweigh the  
20 aggravator. Today, that's it. We're done. Now we're just  
21 talking about life. You can sentence him to life in prison  
22 for 100 years, whatever you want to do, but only one of you  
23 have to say that. That's absolutely the law. Those are the  
24 instructions that you have.

25 Now, let's talk about some mitigators. One of the

1 prosecutors talked about -- this is a mitigator because what  
2 you're doing, again, is remember, you're determining the worst  
3 of the worst. You're comparing, well, this person convicted  
4 of first-degree murder to what other people did who were  
5 convicted of first-degree murder. That's what you're  
6 necessarily doing.

7           Here, there's one person who died and it's tragic.  
8 It's Timothy Hadland, just one person. You have an  
9 instruction that talks about using your common sense. You can  
10 use your common sense to say, Well, I know there are other  
11 murders out there that are worse to the extent that there are  
12 multiple deaths. Just one victim distinguishes this case from  
13 the worst of the worst.

14           Another example, as horrible as it sounds, is that  
15 this took place in an area where nobody else was in danger.  
16 In other words, use your common sense. You've heard many  
17 times about killings at school or in a neighborhood where  
18 children are present or in a mall or in a work place. And  
19 when those occur, the intended targets die and other innocent  
20 people besides the intended target, Timothy Hadland was  
21 innocent, but other intended people who are innocent die.

22           Your determination is, is this the worst of the  
23 worst? This occurred out in an area where nobody else was  
24 going to get hurt except the intended target and he died. But  
25 nobody else was hurt.

1           When you compare this to other cases, when you're  
2 saying is this the worst of the worst, well, nobody was raped,  
3 no child was killed, no police officer was killed in the line  
4 of duty. And I'll submit to you those are all worse. You're  
5 in this terrible situation of being 12 people who have to say,  
6 well, I'm comparing first-degree murder to first-degree  
7 murder, so there's no good. They're all bad. But you're  
8 saying, what's the worst of the worst.

9           A police officer killed in the line of duty, well,  
10 that falls near the worst of the worst. Children being  
11 killed, certainly that falls under the worst of the worst.  
12 This is not the case that's in front of you today. Deangelo  
13 Carol is not the worst of the worst.

14           In fact, Mr. Ericsson talked briefly about  
15 proportionality. I'm going to get back to that. But  
16 proportionality is something to take into consideration.  
17 Proportionality is a mitigator. Tom talked about it in the  
18 context of everybody else in this case, well, they got lesser  
19 sentences. It's disproportionate to sentence Deangelo to  
20 death.

21           You also look at proportionality in terms of  
22 comparing these facts to what common sense tells you, what you  
23 know are other types of murders, and you know that those are  
24 worse than this one when you have to compare and say what's  
25 the worst of the worst. When you look at those other types of

1 cases, they're certainly worse than this one. Deangelo's not  
2 the worst of the worst.

3 Now, these are still -- everything I'm stating to  
4 you, these are all individual mitigators, every one of them,  
5 to balance with the one aggravator, if you believe there's  
6 aggravators. It's not only the things about the family and  
7 his educational background, his structure, but now you're  
8 looking at the facts of this specific case aren't as bad as  
9 other murders. There aren't multiple killings. There aren't  
10 the types of people killed, and we talked about children and  
11 officers. You now factor that in when you're considering the  
12 balance between mitigators and the only aggravator presented,  
13 if you believe that aggravator was proved.

14 Another one that they've argued, and I certainly  
15 know this to be a mitigator, believe this to be a mitigator,  
16 is that Deangelo didn't himself kill anyone. That's something  
17 that everybody in this room agrees on. In fact, I think  
18 everybody agrees there's no evidence that Deangelo carried a  
19 gun that night. None. The only evidence, the only thing the  
20 prosecution's ever argued is that Kenneth Counts carried a gun  
21 and Kenneth Counts shot.

22 They're going to make this argument that, well,  
23 Deangelo planned it so he must be worse. He's the worst. He  
24 planned it. First and foremost, if you believe that to be the  
25 case, then how is it -- is it fair that everybody else in on

1 the planning either got deals or didn't even get convicted of  
2 first-degree murder? Can the prosecution stand here and tell  
3 you Deangelo is worse? He's worse because he planned this and  
4 didn't have the guts to do it himself when H either came up  
5 with it or Little Lou came up with it or Anabel came up with  
6 it or really all three of them came up with it? Yet, they're  
7 sending Anabel home to live comfortably while she testifies  
8 and H and Little Lou didn't even get convicted of first-degree  
9 murder.

10 So when they stand here and say, yeah, he wasn't the  
11 shooter, but he came up with it; therefore, he's the worst of  
12 the worst, hold them to their conduct in this case, letting  
13 Anabel off the hook. Hold them to that.

14 Also, I would submit to you it's a very different  
15 thing to say, I want somebody dead, and actually hold the gun  
16 in your hand, point it at somebody and at the moment decide  
17 what to do. People who do that do fall in the worst of the  
18 worst. Kenneth Counts, he certainly falls in the worst of the  
19 worst. He pulled the trigger. That's a different thing.

20 The fact that Deangelo is not the shooter and did  
21 not carry a weapon, no evidence was presented whatsoever about  
22 that, is a mitigator and it's something to weigh against the  
23 aggravators -- aggravator.

24 And this, I think, is one of the biggest mitigators  
25 that there is and it's been demeaned by the prosecution and

1 almost laughed off by prosecution witnesses but I cannot  
2 believe that Deangelo Carroll did the next thing I'm going to  
3 say to you and he's sitting here facing the death penalty,  
4 that the prosecution chose to make this a death penalty case,  
5 and they're going to tell you this guy's the worst of the  
6 worst. You've heard it before. I think you know what I'm  
7 about to say.

8 Deangelo cooperated with police. Nobody disputes  
9 this. He cooperated with police. He wears a wire. By the  
10 way, the prosecution, I anticipate, is going to say, oh, well,  
11 maybe he wore a wire, but what was his motive? His motive was  
12 to get out of it. Deangelo, he always minimizes his role.  
13 That's why he wore it, so ignore it. Of course, Anabel  
14 Espindola didn't minimize her role, did she, when the  
15 prosecution put her on the stand? Did she minimize her role?  
16 Did Rontae Zone minimize his role when they put him on the  
17 stand last week? The kid that said, Yeah, why wouldn't I say  
18 anything in court as long as they don't charge me with murder.  
19 The kid that said, They never even made a deal with me to tell  
20 me -- to tell the truth when I came to court. The kid that  
21 said -- the kid that said, They just told me to do the right  
22 thing and they won't charge me with murder.

23 Are these people minimizing their roles? When these  
24 people cooperated, what did they get from the prosecution? A  
25 warning, a warning.

1           Rontae Zone who helped cover up evidence afterwards,  
2 went out with everybody to breakfast the next day, hung out  
3 that night, stayed at Deangelo's place, never said anything to  
4 anybody even when the police were around, starts speaking when  
5 he realizes he's in trouble. He minimizes his role. They  
6 reward him by never charging him with a crime.

7           Anabel Espindola was facing the death penalty for a  
8 year and a half, for a year and a half, the death penalty.  
9 Right at the very end, she's facing first-degree murder and is  
10 facing life without the possibility of parole, without. What  
11 does she do? Well, she cooperates. And what does the  
12 prosecution do? Well, they send her home. She might get  
13 parole.

14           Deangelo, he cooperates, and all the witnesses laugh  
15 at him. Yeah, Deangelo cooperated. Yeah, right, Deangelo  
16 cooperated. If Deangelo minimized his role and his  
17 cooperation was self-motivation to protect himself, so what?  
18 So were their witnesses. He cooperated with the police. And  
19 what was the result of his cooperation? What was the result?  
20 Little Lou got charged with two extra crimes that he never  
21 would have been charged with. He got charged with  
22 solicitation to commit murder. In other words, they charged  
23 him with trying to suggest that Deangelo put rat poison in gin  
24 to kill Jay Jay and Rontae Zone. That came out on the tapes.  
25 Little Lou was convicted of this. New charges against Little



1 Lou.

2           What did Anabel, Ms. Anabel, tell you? She said, I  
3 believe if Deangelo had never worn a wire, they never would  
4 have charged me with anything. The prosecution will tell you,  
5 oh, yeah, we had evidence against Anabel, but Anabel  
6 believes -- she believes she never could have possibly been  
7 charged without Deangelo cooperating with police.

8           The detective testified that Deangelo gave us  
9 information that helped our investigation, that helped. And I  
10 guess, therefore, Deangelo Carroll's the worst of the worst  
11 and you should kill him. That's the argument of the  
12 prosecution. A man cooperates which results in charges and  
13 convictions and the prosecution says this man is the worst of  
14 the worst. Do not let them shift around and downplay the  
15 importance of Deangelo's cooperation.

16           In fact, I've already kind of argued it, but how can  
17 the prosecution even take the position that he is the worst of  
18 the worst when they rewarded other people who cooperated,  
19 whether or not it was self-motivation? So keep that in mind,  
20 please, when they make their arguments.

21           In fact, there was some other people they gave deals  
22 to we haven't talked about. Jay Jay, Jayson Taoipu, was given  
23 a deal by the prosecution. What was he initially charged  
24 with? First-degree murder with use of a deadly weapon. He  
25 was facing life in prison without the possibility of parole.

1 He really wasn't facing the death penalty because he was not  
2 18 years old when this occurred and you cannot use the death  
3 penalty against somebody who's not 18 years old. But he  
4 certainly was charged as an adult and he was facing life  
5 without the possibility of parole.

6 So when a person cooperates, and I'm sure Jay Jay  
7 cooperated not for self-motivation, but because he's a nice  
8 righteous guy. It's not like Jay Jay cooperated. He  
9 cooperated for the same reason everybody else did, to protect  
10 himself. What does the prosecution do? They reward him. How  
11 do they reward him? They give him probation. You're facing  
12 life without the possibility of parole, thank you for  
13 testifying, go home.

14 Another person they gave probation to got in trouble  
15 on something else, got his probation revoked and he's doing  
16 four to ten years in prison now. But can the prosecution  
17 maintain the integrity of their decision to go after the death  
18 penalty, continue to maintain a legitimate position that  
19 Deangelo's the worst of the worst and continue to ignore the  
20 fact that he cooperated when they rewarded everybody else for  
21 cooperating, and Deangelo cooperated for the same reason as  
22 all of their witnesses? And they want you to think Deangelo's  
23 the worst of the worst.

24 Jay Jay, well, I guess he doesn't deserve first  
25 degree. He cooperated. Deangelo cooperated, kill him.

1 Anabel, we wanted to kill her for a year and a half, the  
2 prosecution, but they couldn't in the very end because of a  
3 ruling, still facing first-degree murder. You know what,  
4 Anabel? Thank you, all you've got to do is cooperate. You  
5 can go home.

6 Deangelo cooperated. Here we are still facing the  
7 death penalty. It's a hypocritical position to take. This  
8 mitigator alone, over everything else, outweighs the  
9 aggravator, if there is an aggravator. I know I keep saying  
10 that, but I don't believe you're going to find beyond a  
11 reasonable doubt that they even proved their aggravator. That  
12 wasn't Deangelo's motive to do any of these things.

13 And lastly, when you look at -- talking about  
14 proportionalities as to the mitigator, when you look at Mr. H  
15 and Little Lou, and Anabel has to fall into this category too,  
16 I think you can certainly make an argument about what deals  
17 they got or no matter what their conviction was in the end, if  
18 they were involved in setting this up, they are the cause, the  
19 direct cause of Timothy Hadland's death. And what do I mean  
20 by this?

21 The prosecution said without Deangelo Carroll's  
22 conduct, Timothy Hadland would be alive today. I disagree. I  
23 disagree. Deangelo Carroll is nobody. He's nobody. He's a  
24 puppet at the bottom of a string being pulled by people who  
25 run the Palomino Club, people with a lot of money and

1 influence. Timothy Hadland was going to die when one of those  
2 three people, or all of them, H, Little Lou or Anabel, made  
3 the decision that Timothy Hadland was going to die. If they  
4 went to Deangelo and said, Go kill him, and Deangelo said, No,  
5 well, they can do it anyway. They can do it anyway.

6 Timothy Hadland's fate was decided when the people  
7 with power made the decision to kill him. Deangelo Carroll  
8 stayed involved in this and was convicted by you, absolutely  
9 true. But if they never ordered it, would Timothy be alive?  
10 If they never ordered it, would Deangelo have killed Timothy  
11 Hadland? If they didn't say whatever it is that they said to  
12 him, because I guess we never found out the exact words, but  
13 if they didn't go to Deangelo and say, You are involved in  
14 this, take care of this for me, if they didn't do that, has  
15 any evidence ever been presented to you that Deangelo would  
16 have done anything ever to do with Timothy Hadland except what  
17 he had always done with Timothy, hang out, smoke pot, be  
18 friends? There's no evidence, period, that Deangelo had  
19 anything against Timothy.

20 He was told to do it by these other people. They --  
21 they are worse than Deangelo Carroll. If they didn't give  
22 that order, Deangelo never kills him.

23 Yet, Mr. H they were seeking the death penalty  
24 against, but before trial, they made a strategic decision to  
25 no longer seek the death penalty against Mr. H. Essentially,

1 Mr. H and Little Lou were being tried together. There was a  
2 ruling the trials had to be -- were going to be separate  
3 unless the prosecution dropped the death penalty. The  
4 prosecution could have said, Fine, we're going to try them  
5 separately because Mr. H is the man on top. Mr. H is the one  
6 who makes the decisions. Without Mr. H saying Timothy Hadland  
7 dies, he doesn't die. And since he's the worst of the worst,  
8 we're going to go after him and keep the death penalty against  
9 him. But instead, they decide to drop the death penalty, try  
10 them both together.

11 And then they were convicted of what? Second-degree  
12 murder, not first degree, for whatever reason, in a nondeath  
13 penalty trial, they were convicted of second-degree murder.  
14 These people are the reason Timothy Hadland died.

15 Deangelo, he's actually culpable. You've made your  
16 decision and absolutely he was involved in the scheme and so  
17 forth. Nobody's rearguing that. I promise you. But at the  
18 top without the initial order, Deangelo never gets involved.  
19 Deangelo never causes it. It's these guys that are the worst  
20 of the worst, yet none of them got death.

21 Proportionality is a mitigator. Nobody else in this  
22 case got death, didn't even get pursued as death when it comes  
23 to Mr. H. I don't care if it was a strategic decision. Be  
24 consistent when you're talking about life and death. Life and  
25 death, be consistent. But they didn't. And they chose not to

1 pursue it. These people, the decision-makers, the ones  
2 pulling the strings, they're the worst of the worst, not  
3 Deangelo Carroll.

4           Now, I want to talk about one or two other little  
5 things, but before I end my discussion as to mitigators,  
6 there's a whole bunch more we listed and I'm sure a whole  
7 bunch more we didn't think of and maybe we should have, and if  
8 you think of them, please take them into consideration. Other  
9 evidence was presented by the prosecution that had nothing to  
10 do with their aggravator. It was presented. And as I said  
11 before, you cannot take any of that into consideration until:  
12 One, you determine if there is an aggravator, all 12 of you.  
13 If one of you says no aggravator, there's no death. Then you  
14 consider all the evidence they presented. If all of 12 of you  
15 say there is an aggravator beyond a reasonable doubt, you  
16 cannot take the other evidence they presented to you into  
17 consideration when it comes to death. That's the rule.  
18 That's what your instructions say.

19           You now weigh the one aggravator with the mitigator,  
20 all the ones I just discussed and maybe more. If any one of  
21 you, just one of you, says the mitigators outweigh the  
22 aggravator, death is no longer on the table. You're now  
23 talking about a life sentence or whatever your options are,  
24 but they're all nondeath options.

25           Then, when you get to that point, consider

1 everything the prosecution presented to you. And I don't want  
2 to waste time talking about what the prosecution presented to  
3 you because it was ridiculous. What they do is they put a  
4 detective on the stand and he reads police reports and reports  
5 from CCDC and says, Believe these things are true and because  
6 you believe they're true, kill Deangelo Carroll. That's  
7 essentially what they're saying to you. But they recklessly  
8 read you reports that are absolutely patently false.

9           The prosecutors didn't bother to attempt to talk to  
10 the people that made these statements. They read police  
11 reports that are not evidence. They're simply somebody's  
12 allegation. That's what a police report is. Evidence comes  
13 from people that are actually victims of crime.

14           So what happens? You heard from two. One we had to  
15 call because the prosecution didn't call her, and she said,  
16 Everything I said was a lie. I was 14. It was stupid. I  
17 haven't seen or talked to Deangelo for 12 years. She has no  
18 reason to come here and say anything but the truth to you, but  
19 everything was a lie. It was a dumb girl prank and the other  
20 girl that I did it with, well, she's a liar. This is a girl  
21 that has a reputation for lying. She's not a truthful person.

22           Yet, they read to you horrifyingly shocking  
23 prejudicial things. He held me down. He simulated sex. He  
24 said, If you tell anybody, I'm going to come back and rape  
25 you. He had his friends beat me up and he physically

1 threatened me. The prosecution presents this to you when they  
2 could have called the person that made that allegation and she  
3 would have said, never happened, never happened.

4 When you know that's the case on one of those police  
5 reports, how can you take any of them seriously, any of them?  
6 You know that one of them's absolutely false, the most  
7 egregious one they read to you, you know it's false. How can  
8 you take any of them seriously?

9 In fact, they put a witness on the stand whose name  
10 I'm blanking out completely.

11 MR. ERICSSON: Blodgett.

12 MR. BUNIN: Blodgett. Tag team closing argument.

13 Who is more evidence of what I'm saying, and here's  
14 what I mean. They read the police report to you, and the  
15 police report didn't say anything similar to what Mr. Blodgett  
16 said and didn't say anything similar to what he wrote down in  
17 his voluntary statement the night of the incident. They read  
18 a police report to you, but when you listen to what he said,  
19 it's very, very different than what the police report says.  
20 They're not even similar about how that event occurred.

21 But the bottom line is what they showed you is  
22 Deangelo Carroll has one felony conviction in 2002 when he was  
23 20 years old for conspiracy to commit robbery. None of those  
24 other things they talked about resulted in felony convictions  
25 and some of them were from when Deangelo was 14, 15 years old.



1 And I submit to you that none of it should be taken seriously,  
2 none of it, especially in light of the fact that you know how  
3 they simply could've called these people that still live in  
4 town. They would have known that those allegations simply  
5 weren't true.

6           There's another thing they presented to you that has  
7 to do with Deangelo's custody status and I'll show you that  
8 over five years he has very, very minimal problems. They talk  
9 about one fight he got into in five years where he slapped  
10 somebody with a sandal in defense of himself, and that's it.  
11 Everything's minor in there. Deangelo's not a threat to  
12 anybody in custody if you give him the opportunity to live in  
13 custody for at least the next 40 years. He's not a threat to  
14 anybody.

15           These essentially were all the mitigators. Maybe  
16 there's more, but I'm not going to talk about them if there  
17 are. All of these things to weigh against the one aggravator  
18 is not a close call. This is not a case for death. It should  
19 never have been brought for death in light of how all the  
20 other defendants were treated and all these mitigators I  
21 talked about. It never should have gotten to this phase.  
22 This was first stage trial. This was a murder trial. This  
23 never should have been a death penalty trial.

24           Again, like I said earlier, if you think there's no  
25 mitigators at all, none, let's pretend we're in a situation

1 that I don't think is possible here, but all 12 of you decide  
2 there's one aggravator and all 12 of you decide there's zero  
3 mitigators, absolutely none whatsoever, any one of you can  
4 still say not today. Deangelo lives today. You're still  
5 allowed to do that. When you read all of these instructions,  
6 every one of them, nobody in this room is going to dispute it,  
7 they all agree on one big thing, life is never ever an  
8 improper choice. It is never an illegal choice. You can  
9 always choose life for any reason. That's what these tell  
10 you. You can always choose life, always. You never have to  
11 justify it to anybody.

12           You can say there's one aggravator, there were zero  
13 mitigators, but not today. Somebody else isn't going to die  
14 today. You're allowed to do that. One of you. And if you  
15 do, Deangelo lives and you consider the other sentences.  
16 That's exactly what these instructions tell you. There's a  
17 reason why death is a difficult thing for a jury to get to.  
18 It's supposed to be under very narrow circumstances. It's the  
19 worst of the worst.

20           There's another reason you can give life that Tom  
21 glossed over and I want to talk about briefly, but it's in  
22 your instructions. You can choose life due to mercy. That's  
23 it. You don't have to consider the aggravators. You don't  
24 have to consider anything. You can simply say mercy justifies  
25 life. You have an instruction that talks about you can use

1 mercy to give life. If you believe the aggravators outweigh  
2 the mitigators, you can say, other than for the reason that I  
3 just said, for no reason, you can say mercy's my reason.  
4 Mercy's a reason to give life, mercy.

5           And the prosecution, I don't know what they're going  
6 to argue, but I presume you're going to hear something like  
7 this: Well, Deangelo didn't show mercy, so why should you  
8 show mercy on him? Is that a proper argument? Maybe they  
9 won't argue it, but I'll suggest it anyway just so you think  
10 about this for a second. Is that a proper argument? It is  
11 not.

12           That argument's illogical. It's misleading. It's  
13 designed to cause an emotional response that's not appropriate  
14 under the instructions. Mercy, mercy is never something that  
15 occurs during a first-degree murder, ever. Anybody convicted  
16 of first-degree murder didn't show mercy to their victim. It  
17 never happens, never. But your instruction says when you  
18 consider the sentence of a person convicted of first-degree  
19 murder, you cannot only consider mercy, but you can use mercy  
20 and mercy alone to say, You live. I'm going to be merciful to  
21 you today.

22           So it's not about whether Deangelo shows mercy. No  
23 first-degree murderer ever showed mercy in a murder. That's  
24 not what it's about. It's about does a first-degree murderer  
25 deserve mercy, and your instruction says you're allowed to use

1 it. You can do it.

2 Life is never an improper choice in these  
3 instructions, ever. Mercy is not for the righteous. Mercy is  
4 for those who have committed crimes. Righteous people, they  
5 don't need your mercy. Righteous people don't need mercy.  
6 This instruction says consider mercy on Deangelo, on  
7 somebody's whose been convicted of first-degree murder. You  
8 can consider it. And responsible, reasonable and  
9 understanding people can look at Deangelo Carroll and say,  
10 Deangelo Carroll's a human being. He's human. His human life  
11 has value and mercy has value when talking about a human life.

12 Deangelo Carroll, does his life have value? This  
13 human life doesn't have value as he sits here today with all  
14 the things that -- all the trouble he's caused, all the people  
15 you've seen testify? I submit to you Deangelo's life does  
16 have value. It absolutely has value. Deangelo has feelings.  
17 He lives and he loves just like all the rest of us. He has  
18 all the wants that every human being wants. Deangelo wants to  
19 be loved. I don't think you have to believe Dr. Roitman when  
20 you heard all the evidence to believe Deangelo's a man that  
21 wants to be cared about, that wants to be loved.

22 Deangelo's grandmother, who you heard testify, she  
23 loves him. She did the best she could to raise him. It was  
24 not a good situation. And she sits here today and looks at  
25 Deangelo Carroll and says she loves her grandson.

1           Deangelo's wife, she loves him. She came to this  
2 room. She sat on this stand. It was very difficult for her.  
3 I'm certain she had to go through a very difficult process of  
4 forgiving her husband in order to continue to love him, but  
5 she told you the reasons why, the type of person Deangelo is,  
6 caring, generous, the things he was, the things that made her  
7 love him in the first place. As she sits here today, she  
8 still loves him.

9           Deangelo has a son, little Deangelo. They call him  
10 little D. He loves his father. Today, as Deangelo sits here  
11 right now, he's loved and his life matters. It matters, no  
12 matter what he did. It's terrible, but Deangelo's life  
13 matters. He can still mean something to his child. He might  
14 be sitting in prison for 40 years or forever, but his life can  
15 mean something to a child who loves him. His life can mean  
16 something to a wife and grandmother who loves him.

17           Today, right now, Deangelo Carroll's life has  
18 meaning and Deangelo Carroll is loved. Death is irreversible.  
19 There are no do overs. If somehow, someday maybe somebody  
20 like an Anabel who I submit to you minimized her role, and  
21 they used that word quite a bit with Deangelo, says, You know  
22 what, you are right, if you knew the entire truth about  
23 Deangelo, maybe he really shouldn't have been convicted of  
24 murder, if someday, somehow that evidence comes out and people  
25 might hear that evidence and says, you know what, you're

1 right, maybe it really wasn't --

2 MR. PESCI: Judge, I apologize. This is complete  
3 conjecture --

4 THE COURT: Yeah, I'm going to sustain that.

5 MR. PESCI: Move to strike it.

6 THE COURT: All right. The last comment will be  
7 stricken as to the guilt of the defendant.

8 MR. BUNIN: And I'm not implying that your decision  
9 based on what you heard is -- I'm not arguing that at all.  
10 What I'm saying is if Deangelo's alive, well, then, if  
11 something ever changed down the road, at least he's alive to  
12 get the benefit of it.

13 THE COURT: All right. That's still sustained.

14 MR. BUNIN: Okay.

15 THE COURT: Move to a new area.

16 MR. BUNIN: Deangelo -- as a lawyer, you say to  
17 yourself, what can I say to jurors who just convicted my  
18 client of first-degree murder? What can I say to you to get  
19 you to spare his life? I don't know. I write notes down, but  
20 in the end, I have no idea if I'm saying the right things or  
21 not. This is the most difficult thing that an attorney has to  
22 do, but I wonder what can I say to you.

23 I think I hopefully have said it already. I hope I  
24 said it all. There's mitigators and aggravators that aren't  
25 just a joke in this case. Mercy is not a joke in this case.

1 It's just not. And if I -- if I need -- as an attorney, if I  
2 need to beg you to save Deangelo's life, well, I sure don't  
3 want to do it, but I will. So I'm asking you please show  
4 mercy on Deangelo Carroll and please spare Deangelo Carroll's  
5 life. Thank you.

6 THE COURT: All right. Thank you, Mr. Bunin.  
7 Mr. Pesci.

8 STATE'S CLOSING REBUTTAL

9 MR. PESCI: You were just told that the other matter  
10 of evidence was ridiculous. Jason Brandt having a gun stuck  
11 in his face was ridiculous? Steven Blodgett being beaten and  
12 his wallet taken from him, that was ridiculous? Do you think  
13 that Jason Brandt thinks that the gun stuck in his face was  
14 ridiculous? That's incredible, literally incredible.

15 Ladies and gentlemen, you have, I believe, 20  
16 instructions in front of you. I'd ask you to turn to the page  
17 where it says that you must find that Deangelo Carroll is,  
18 quote, the worst of the worst. Now, I ask you to look for the  
19 place in the instructions where it says that you are supposed  
20 to compare him to other murderers. You're not going to find  
21 it.

22 And you've been told that these analogies that, for  
23 example, a police officer being killed in the line of duty,  
24 now that's the worst of the worst. Really? Do you think the  
25 defense attorney for that particular defendant is going to

1 concede, hey, that was the worst of the worst, sign him up for  
2 the death penalty?

3           And while we're talking about that, you know, you  
4 heard about the decision by the jury in Kenneth Counts' case.  
5 You heard that the State of Nevada sought the death penalty,  
6 sought a conviction of first-degree murder from that jury.  
7 That jury, not the State, found him guilty only of the  
8 conspiracy to commit murder. It almost sounds as if we told  
9 them, hey, wink, wink and nod, find him something less. The  
10 State of Nevada sought a first-degree murder conviction and  
11 his attorneys fought hard for him and this is what occurred.  
12 He was the first trial.

13           Fast forward and you get to the second trial. It's  
14 Mr. H and Little Lou. And you just heard about the severance.  
15 The defense counsel told you how there was a decision, a  
16 strategic decision, to separate them. Mind you, at that  
17 moment Little Lou wasn't even facing the death penalty because  
18 of court decisions. And then the State had to make a  
19 determination as to whether to sever, which means try  
20 separately, these two individuals.

21           Well, based on the experience of Kenneth Counts, did  
22 it seem like a good idea to sever, to go separately? And in  
23 that case, ladies and gentlemen, that's true, at the time  
24 Mr. H was not facing the death penalty, the State was still  
25 arguing for a first-degree murder conviction. Don't



1 misunderstand that somehow we told him, hey, it's a second.  
2 We argued for the first. That particular jury came back with  
3 the second.

4           So this whole analysis here about who got what,  
5 don't be confused as if somehow we stamped with approval the  
6 conspiracy to commit murder trial for Kenneth Counts at that  
7 verdict and the second-degree murder verdict. That was their  
8 verdict. We accept it. But it's not as if we told them, come  
9 back with something less than first-degree murder.

10           You were told or you were talked to about these  
11 multiple, multiple mitigators and how it's compared to just  
12 this one and only one aggravator. Well, ladies and gentlemen,  
13 Instruction No. 8, lines 9 through 10, In balancing  
14 aggravating and mitigating circumstances, it's not the mere  
15 number of aggravating circumstances or mitigating  
16 circumstances. This is not a number -- numbers game.

17           You determine the weight to be attached to that  
18 aggravating circumstance and the balancing against the  
19 mitigating circumstances, if you find them.

20           And there's been all this talk about mercy and find  
21 mercy or show mercy. You need to understand something. Mercy  
22 in a death sentence are not mutually exclusive. Mercy and  
23 life without the possibility of parole are not mutually  
24 exclusive. You can have mercy in your heart. You can have  
25 mercy for Deangelo, for his wife, for his son, for his

1 grandmother and still return a verdict that's appropriate.  
2 They are not mutually exclusive because mercy cannot rob  
3 justice. You can feel mercy for them. You can even assign it  
4 by checking off those mitigators. The fact that you even  
5 check off each and every one of them and come up with more  
6 does not equate to automatically it outweighs the aggravator.  
7 You decide how that's all added up.

8 I think I heard specifically that if it wasn't  
9 for -- well, in response to our argument that but for Deangelo  
10 Carroll Timothy Hadland's alive, and then the responsive  
11 argument was that if, in fact, Deangelo Carroll didn't get the  
12 order that it still would have happened. And I specifically  
13 wrote in quotes, They can do it anyway. They, meaning Mr. H,  
14 Little Lou, Anabel, they can do it anyway. Really? Then  
15 why'd they use him?

16 The flunky, as his own counsel has referred to him,  
17 why'd they use the flunky? I mean, if they're the kind of  
18 people who are going to get their hands dirty and do it  
19 themselves, they would have done it. They're not the kind of  
20 people who are going to get their hands dirty. It's not going  
21 to happen without Deangelo Carroll. Because they don't know,  
22 they being, Anabel, Little Lou, Mr. H, they don't know Kenneth  
23 Counts. And if they did, they would have gone right to  
24 Kenneth Counts, the kind of person who will pop someone's  
25 noodle for the right money.

1           And let's talk about money. You were just told that  
2 the aggravator doesn't even exist because Deangelo didn't do  
3 this for money. Instruction No. 7, lines 4 and 5. The murder  
4 was committed by a person for himself or another to receive  
5 money or any other thing of monetary value. Not only did KC  
6 and others get paid, and you know that directly from the  
7 defendant's mouth, Deangelo got paid. Now, if you subscribe  
8 to this dependent personality disorder and you believe that he  
9 was, in part, doing this in part to stay in good graces with  
10 the club, that again is not mutually exclusive with the fact  
11 that he also got paid, that he did this in order to get money  
12 and he got money, and he said so himself. And I tell you  
13 again, where's the other thousand dollars? Six grand, he  
14 said. Anabel said five. Where's the other thousand dollars?  
15 Well, he accounted for 200. Where's the other 800? And  
16 nonetheless, Kenneth Counts was paid.

17           Now, you were talked about -- or the discussion was  
18 had about the possibility -- the possibility that he did this  
19 for something other than money. There was some other possible  
20 scenario. Now, ladies and gentlemen, Instruction No. 14 talks  
21 about reasonable doubt. Lines 6, last full sentence. Doubt  
22 to be reasonable must be actual, not mere possibility or  
23 speculation, kind of like the speculation about what could  
24 happen years down the road if you were to give him death and  
25 Anabel was going to come and say something different. That's

1 speculation. That's why it was stricken. The mere  
2 possibility that he could have done it additionally for the  
3 benefit of staying in the good graces with them doesn't equate  
4 reasonable doubt.

5           And ask yourself this: Why did he need to stay in  
6 good graces? Set aside dependent personality disorder. Do  
7 you remember in his statements to the police when he talked  
8 about how everybody else, talking about people in the club,  
9 were talking badly about him? After TJ's gone -- and you  
10 remember Anabel says that he was fired, TJ, for having his  
11 hand in the till, for skimming. Who worked the doorway? TJ.  
12 Wouldn't it be a great way to stay in good graces to have  
13 someone else be the scapegoat for the bad things that were  
14 happening and have TJ take the fall and make money in the  
15 process?

16           At the end of the day, ladies and gentlemen, you're  
17 told about this one's the worst of the worst, that one's the  
18 worst of the worst. You're here to determine the appropriate  
19 sentence for Deangelo Carroll, not other murderers who killed  
20 a cop. And today, not even the other defense. These other  
21 juries have already done that. This defendant.

22           And do you want to know what makes him worst than  
23 the others in this case? It was his friend. He did it to his  
24 friend. That's what makes him deserving.

25           Go back into that room, make your determination,

1 ladies and gentlemen. There's verdict forms and the verdict  
2 forms talk about whether you find that the aggravator existed  
3 beyond a reasonable doubt. That's your first form. To make  
4 that determination, you check that box. If you unanimously,  
5 beyond a reasonable doubt, determine that that aggravator  
6 was -- existed, then you go to the next one. That would be  
7 the list of mitigators. Check off the mitigators if you find  
8 them. Each one of you individually can find one, you can add  
9 them.

10 Then the next verdict form, you have two options.  
11 One of them is you make the determination unanimously that, if  
12 you do, the aggravator outweighs the mitigators. If that's  
13 the case, then all four options are there. If you find that  
14 the mitigators outweigh the aggravators, that's the fourth  
15 one, and death's no longer an option, the three remaining  
16 options are there.

17 The State has proven to you this aggravator beyond a  
18 reasonable doubt. They have shown you the character of  
19 Deangelo Carroll. Go tell him what you think an appropriate  
20 sentence is.

21 Thank you.

22 THE COURT: All right. Thank you.

23 Ladies and gentlemen, in a moment I'm going to have  
24 all 15 of you exit, following the marshal -- following the  
25 marshal and bringing with you your notepads, your personal

1 belongings as well as the copies of the jury instructions that  
2 you've all been given, and you will have those copies of the  
3 jury instructions as well as the jury instructions and all of  
4 the evidence back in the jury room with you.

5 And before we do that, the clerk will administer the  
6 oath to the marshal.

7 (Officer sworn)

8 THE COURT: And I don't remember if I already said  
9 this. Once again, I need the alternates to provide phone  
10 numbers to the marshal of where you could be reached if one or  
11 more of the jurors becomes ill prior to the time a verdict in  
12 this matter is reached. Leave your numbers where you can be  
13 reached tomorrow and the following day and whatnot with our  
14 marshal before you're excused for the evening.

15 Having said that, I'd like all 15 of you to collect  
16 all of your belongings, your notepads, and your jury  
17 instructions and follow the marshal through the back door.

18 The alternates are chairs 13, 14, and 15,  
19 Ms. Sorto-de-McGough, Ms. Rettinger and Ms. Rinaldi.

20 All right. Thank you.

21 (Jury recessed for deliberation at 5:24 p.m.)

22 THE COURT: We're going to send them home tonight  
23 and find out when they want to start, whether they want to  
24 start at 8:00 or 9:00 or whatever tomorrow, so leave numbers  
25 where we can get a hold of you tomorrow, but they won't be

1 reaching a verdict today unless --

2 MR. BUNIN: We can leave for the day?

3 THE COURT: Right.

4 MR. BUNIN: Okay.

5 (Court recessed at 5:24 p.m.)

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

  
KIMBERLY LAWSON  
TRANSCRIBER



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3 ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

*[Signature]*  
CLERK OF COURT

4  
5  
6 THE STATE OF NEVADA, )

7 Plaintiff, )

8 vs. )

CASE NO. C212667

DEPT. XXI

9 DEANGELO RESHAWN CARROLL, )

10 Defendant. )

11  
12  
13 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

14 FRIDAY, JUNE 4, 2010

15 RECORDER'S TRANSCRIPT OF HEARING RE:  
16 PENALTY PHASE - VERDICT

17  
18 APPEARANCES:

19 FOR THE STATE:

GIANCARLO PESCI, ESQ.  
Chief Deputy District Attorney

20  
21 FOR THE DEFENDANT:

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

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25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

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JUN 08 2010

CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., FRI., JUNE 4, 2010

2  
3 (Jury entering 2:07 p.m.)

4 THE COURT: Stipulate to the presence of the jury?

5 MR. BUNIN: Yes, Your Honor.

6 MR. PESCI: Yes.

7 THE COURT: Ladies and gentlemen, I'm Judge Doug Smith; I've been asked  
8 to take the verdict today.

9 Have you chosen a foreperson?

10 JUROR NO. 3: Yes, we have.

11 THE COURT: And if so who is that?

12 JUROR NO. 3: (Raised hand.)

13 THE COURT: Have 12 members of the jury reached a unanimous verdict as  
14 to the charge?

15 JUROR NO. 3: Yes, we have.

16 THE COURT: Would you hand that to the marshal and the marshal will hand  
17 it to me.

18 The clerk will now read the verdict into the record.

19 THE CLERK: Yes, Your Honor.

20 District Court, Clark County, Nevada, the State of Nevada, plaintiff,  
21 versus Deangelo Reshawn Carroll, defendant. Case No. C212667, Department 21.  
22 Verdict: We the jury in the above-entitled case having found the defendant  
23 Deangelo Reshawn Carroll guilty of Count 2, Murder of the first degree and having  
24 found that the mitigating circumstances outweigh any aggravating circumstance  
25 impose a sentence of Life in Nevada State Prison with the possibility of parole

1 beginning when the minimum of 40 years has been served.

2 Dated at Las Vegas, Nevada, this 4<sup>th</sup> day of June, Jury Foreperson.

3 Special Verdict: We the jury in the above-entitled case designate that  
4 one or more of the jurors have found the mitigating circumstance or circumstances  
5 which have been checked below.

6 Deangelo Carroll did not come up with the idea to kill Timothy Hadland.

7 Deangelo Carroll was not the shooter.

8 Deangelo's cooperation led to charges being filed against other  
9 defendants.

10 Deangelo has a low IQ.

11 Deangelo suffers from dependant personality disorder.

12 Deangelo can still be a significant part of his grandmother's life.

13 Deangelo can still be a significant part of his son's life.

14 The killing did not involve torture or mutilation of the victim.

15 The killing was not a case of multiple homicides.

16 Other persons involved in the offense received punishments  
17 significantly lower than the punishment Deangelo is facing.

18 Dated at Las Vegas, Nevada this 4<sup>th</sup> day of June 2010 by the jury  
19 foreperson.

20 Special verdict: We the jury in the above-entitled case have found the  
21 defendant Deangelo Carroll -- Deangelo Reshawn Carroll guilty of Count 2, Murder  
22 of the first degree, designate that the aggravating circumstance which has been  
23 checked below has been established beyond a reasonable doubt.

24 The murder was committed by a person for himself and another to  
25 receive money or any other thing of monetary value.

1 Dated at Las Vegas, Nevada, this 4<sup>th</sup> day of June 2010 by the jury  
2 foreperson.

3 Ladies and gentlemen of the jury, are these your verdicts as read so  
4 say you one so say you all?

5 JURORS: Yes.

6 THE COURT: Does either party wish to have the jury individually polled?

7 MR. PESCI: Not from the State.

8 MR. BUNIN: No, Your Honor.

9 THE COURT: The verdict of the jury shall now be recorded in the minutes of  
10 the court.

11 Ladies and gentlemen, on behalf of the Court and Judge Adair and the  
12 parties and fellow citizens here in Clark County, I'd like to thank you for your service  
13 in this case. I hope that if it was your first time as a juror that you look forward to  
14 serving again as a juror.

15 I think that unless you have actually been involved in that as a juror on  
16 a trial you can't appreciate through books or television or movies the role that the  
17 jury truly plays. It is one of the most important functions in government involving the  
18 third branch of government.

19 We may all elect a president, a governor, a state representative, the  
20 county or city councilmen, however, unless you are one of those elected officials  
21 making decisions on a daily basis, service as a juror is the only opportunity that we  
22 have as citizens to directly affect a decision. For that service I'd like to thank you.

23 You can kind of see what a Judge has to do on a daily basis, actually a  
24 minute-by-minute basis when we're in trial. We have to make these decisions  
25 quickly.

1           You are now excused. You'll go with the marshal, and he'll get your  
2 vouchers for you. You are now free to speak to anyone you'd like or say anything at  
3 all that you would like about the case. Attorneys frequently like to talk to jurors  
4 because that's how they learn what the jury thought was important to them during  
5 the trial, and that is how they improve their trial skills.

6           So if the attorneys want to talk to you, they'll come down to the third  
7 floor. You are free to talk to them if you wish to. If you do not want to talk to them,  
8 you do not have to. We do not allow anyone to pester or harass a juror. So if that  
9 should happen, please call Judge Adair's office who will call -- she'll call me, and I'll  
10 take care of it I can guarantee it.

11           Again, thank you for your service, and you may be excused. The  
12 marshal will collect your badges and other materials.

13                               (Jury recessed 2:14 p.m.)

14           THE COURT: This matter is referred to the Department of Parole and  
15 Probation for a presentence report, set over for entry of judgment, imposition of  
16 sentence on --

17           THE CLERK: August 5<sup>th</sup> at 9:30.

18           MR. ERICSSON: I know I'm going to be at a seminar that week. Can we do  
19 it the following?

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1 THE COURT: Do it the next week.

2 THE CLERK: Yes, Your Honor. August 12<sup>th</sup> at 9:30.

3 (Proceedings adjourned 2:15 p.m.)

4 -oOo-

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

7   
8 JANIE L. OLSEN  
9 Recorder/Transcriber  
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1 VER

2 ORIGINAL

3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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

JUN 04 2010

5  
6 BY, Denise Husted  
DENISE HUSTED, DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 DEANGELO RESHAWN CARROLL,

11  
12 Defendant.

Case No. C212667

Dept No. XXI

13 SPECIAL VERDICT

14 We, the Jury in the above entitled case, designate that one or more of the jurors have  
15 found the mitigating circumstance or circumstances which have been checked below:

- 16 ☒ Deangelo did not come up with the idea to kill Timothy Hadland.
- 17 ☒ Deangelo was not the shooter.
- 18 ☐ Deangelo cooperated with the police after the shooting.
- 19 ☐ Deangelo's cooperation helped the police in their investigation.
- 20 ☒ Deangelo's cooperation led to charges being filed against other defendants.
- 21 ☐ Deangelo is the product of a broken/dysfunctional home.
- 22 ☐ Deangelo was the victim of child neglect.
- 23 ☐ Deangelo was abandoned by his father.
- 24 ☐ Deangelo was abandoned by his mother.
- 25 ☐ Deangelo grew up without a significant male role model.
- 26 ☐ Deangelo was abused by one or more of his mother's boyfriends.
- 27
- 28

☐ Deangelo was required to live with his grandmother because his biological parents did not want him.

☐ Deangelo had a difficult time in his childhood in part because he did not have a father figure.

☐ Deangelo worked to support his wife and son.

☐ Deangelo has learning difficulties.

☐ Deangelo was in Special Education as a child.

☒ Deangelo has a low IQ.

☒ Deangelo suffers from dependent personality disorder.

☐ Deangelo was remorseful after Timothy Hadland was killed.

☒ Deangelo can still be a significant part of his grandmother's life.

☐ Deangelo can still be a significant part of his wife's life.

☒ Deangelo can still be a significant part of his son's life.

☐ It does not appear that Deangelo will be a threat to others during his future incarceration.

☒ The killing did not involve torture or mutilation of the victim.

☒ The killing was not a case of multiple homicides.

☒ Other persons involved in the offense received punishments significantly lower than the punishments Deangelo is facing.

Any other mitigating circumstances found to exist by one or more of the jurors, namely (please write in any other mitigating circumstance found by one or more jurors):

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DATED at Las Vegas, Nevada, this 4 day of June, 2010

*Faith Lued*  
FOREPERSON

1 VER

2 ORIGINAL

3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

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

JUN 04 2010

6  
7 BY, Denise Husted  
DENISE HUSTED, DEPUTY

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DEANGELO RESHAWN CARROLL,

12 Defendant.

Case No. C212667

Dept No. XXI

13  
14 SPECIAL VERDICT

15 We, the Jury in the above entitled case, having found the Defendant, DEANGELO  
16 RESHAWN CARROLL, Guilty of COUNT 2 – MURDER OF THE FIRST DEGREE,  
17 designate that the aggravating circumstance which has been checked below has been  
18 established beyond a reasonable doubt:

19 ☒ The murder was committed by a person, for himself or another, to receive  
20 money or any other thing of monetary value.

21  
22 DATED at Las Vegas, Nevada, this 4 day of June, 2010.

23 Ferty Fred

24 FOREPERSON

1 VER

2 ORIGINAL

3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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

JUN 04 2010

6 BY, Denise Husted  
7 DENISE HUSTED, DEPUTY 

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DEANGELO RESHAWN CARROLL,

12 Defendant.  
13  
14

Case No. C212667

Dept No. XXI

15 VERDICT

16 We, the Jury in the above entitled case, having found the Defendant, DEANGELO  
17 RESHAWN CARROLL, Guilty of COUNT 2 – MURDER OF THE FIRST DEGREE, and  
18 having found that the mitigating circumstances outweigh any aggravating circumstance  
19 impose a sentence of,

- 20 ☐ A definite term of 100 years imprisonment, with eligibility for parole beginning  
21 when a minimum of 40 years has been served.  
22 ☒ Life in Nevada State Prison with the possibility of Parole, beginning when a  
23 minimum of 40 years has been served.  
24 ☐ Life in Nevada State Prison Without the Possibility of Parole.

25 DATED at Las Vegas, Nevada, this 4 day of June, 2010.

26 Felix Fend  
27 FOREPERSON  
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**FILED**

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2  
3 **ORIGINAL**

DISTRICT COURT  
CLARK COUNTY, NEVADA  
*John L. Adams*  
CLERK OF THE COURT

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5  
6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

CASE NO. C212667

DEPT. XXI

9 DEANGELO RESHAWN CARROLL,

10 Defendant.

11  
12  
13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 THURSDAY, AUGUST 12, 2010

15 RECORDER'S TRANSCRIPT OF HEARING RE:  
16 SENTENCING

17  
18 APPEARANCES:


19 FOR THE STATE:

MARC DIGIACOMO, ESQ.  
Deputy District Attorney  
GIANCARLO PESCI, ESQ.  
Deputy District Attorney

20  
21  
22 FOR THE DEFENDANT:

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

23  
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25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

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FEB 25 2011  
CLERK OF THE COURT

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1 LAS VEGAS, CLARK COUNTY, NV., THURS., AUG. 12, 2010

2  
3 THE COURT: State versus Deangelo Carroll. He is present in custody with  
4 Mr. Ericsson and Mr. Bunin. We've got Mr. DiGiacomo and Mr. Pesci for the State.  
5 This is the time set for the rendition of sentence.

6 Is everyone prepared to go forward?

7 MR. DI GIACOMO: Yes, Your Honor.

8 THE COURT: All right. This being a jury verdict, State.

9 MR. DI GIACOMO: Judge, just very briefly considering the years that this  
10 case has been going on. There's a couple of corrections to the PSI; I think these  
11 should be noted for the record.

12 The Department of Parole and Probation failed to note that he was also  
13 convicted of conspiracy to commit murder and failed to make a recommendation on  
14 that count.

15 They also failed to indicate that he was convicted of First Degree  
16 Murder with use of a deadly weapon and failed to make a recommendation on the  
17 deadly weapon enhancement; however, that being the case, I would note that their  
18 final line in their conclusion is particularly apt in this case.

19 Therefore in view of the cruelty of the defendant's behavior and his  
20 obvious lack of appreciation for human life, the Division concurs that the only  
21 lengthiest term of confinement as allowed by statute appears to be suitable  
22 punishment for Mr. Carroll's criminal activities.

23 I would note for the Court that in the five years that this case has been  
24 going on, Mr. Carroll's the only person who was there prior to the Palomino. He's  
25 the only person there in the Palomino. He's the only person in the van. He's the

1 only person in Mr. Counts' house. He's the only person who gets -- drives out to the  
2 lake. He's the only person at the killing, and he's the only person who's part of the  
3 cover-up. He is the central figure in this particular case and certainly deserves more  
4 than the minimum sentence allowed by law.

5 And so while I recognize the jury's verdict was life, minimum 40, I would  
6 request the Court whatever your sentence is on the conspiracy to run that  
7 consecutive, and I'll submit it.

8 THE COURT: All right. Thank you.

9 Mr. Carroll, would you like to say something to the Court before I  
10 pronounce sentence against you?

11 THE DEFENDANT: Nope.

12 THE COURT: And of course we realize that the PSI doesn't address the  
13 conspiracy.

14 MR. DI GIACOMO: Correct.

15 THE COURT: Mr. Bunin --

16 And what is the State -- is the State making a recommendation on what  
17 you would like to see on the conspiracy?

18 MR. DI GIACOMO: Yeah. My recommendation would be a maximum  
19 sentence of 48 to 120 consecutive.

20 THE COURT: All right. Thank you.

21 Mr. Carroll, you don't wish to address the Court; you'd just like to rely  
22 on your attorneys; is that correct?

23 THE DEFENDANT: They're not going to speak either. I'm just waiting on you  
24 to give me my sentence.

25 MR. BUNIN: I'm going to make a brief argument, Judge.

1 THE COURT: All right. Well, Mr. Bunin, I would defer to his suggestion.  
2 Thank you.

3 MR. BUNIN: And our recommendation he's not going to make any statement  
4 obviously today, Your Honor, but just briefly to respond to what counsel just said.

5 To state that Mr. Carroll somehow is the worst of this group ignores a  
6 lot of the facts. What it ignores is that the owner of the Palomino Club and the  
7 manager and his son set this up and were involved with Deangelo Carroll, but  
8 without their decision to do this, this never would have happened. And they all  
9 received second-degree murder sentences and 20 years to life.

10 The jury in this case made it clear they wanted to give Mr. Carroll the  
11 possibility of parole, and I just think in light of -- without going through the entire  
12 sentencing phase again, I mean, I know we had all the witnesses testify, but in light  
13 of the jury decision and in light of Deangelo's background and all the facts and  
14 circumstances, concurrent time is appropriate in this case and a sentence of 40 to  
15 life is what the jury asked for, and that's what I would ask you to impose today.

16 THE COURT: All right. Obviously I presided over all of the trials and heard  
17 the different relevant evidence.

18 You know, I think the Counts verdict was clearly an aberration. Beyond  
19 that I can see the difference between the Hidalgos and Mr. Counts and Mr. Counts  
20 kind of -- whether they started the ball, which I think they did, Mr. Counts was the  
21 one that saw to it -- I'm sorry, not Mr. Counts, Mr. Carroll; I misspoke -- is the one  
22 that really made this whole thing happen the way it happened for the victim, and so I  
23 think that the State's argument regarding consecutive time is appropriate.

24 Mr. Carroll, by virtue of the jury's verdict, you're hereby adjudged guilty  
25 of the felony crimes of Conspiracy to commit murder and murder with use of a

1 deadly weapon.

2 In addition to the \$25 administrative assessment, the \$150 DNA  
3 analysis fee and the fact that you must submit to a test for genetic markers, on  
4 Count No. 1, Conspiracy to commit murder, you're sentenced to a minimum term of  
5 36 months in the Nevada Department of Corrections and a maximum term of 120  
6 months in the Nevada Department of Corrections.

7 On Count No. 2, Murder with use of a deadly weapon, pursuant to the  
8 jury's verdict, you are sentenced to life in prison with your eligibility for a parole  
9 beginning after 40 years has been imposed. That is imposed consecutively with the  
10 time I gave you on Count No. 1.

11 You are entitled to 1,904 days credit for time served.

12 MR. DI GIACOMO: And just for the JOC's purposes for the clerk, it's going to  
13 read, Life minimum 20 with a consecutive life minimum 20.

14 THE COURT: Right, exactly. Thank you, Mr. DiGiacomo.

15 THE CLERK: I'm sorry.

16 MR. DI GIACOMO: The JOC should read on Count 2, Life in the Nevada  
17 Department of Corrections with a minimum parole of -- it will be after 20 years with  
18 an equal and consecutive --

19 THE COURT: Consecutive life with a minimum parole eligibility beginning  
20 after 20 years so that it's 20, 20 and then 36 months.

21 / / /

22 / / /

23 / / /

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25 / / /



1 MR. DI GIACOMO: Consecutive to Count 1.

2 THE COURT: Right, Mr. DiGiacomo.

3 -oOo-

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

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7 JANIE L. OLSEN  
8 Recorder/Transcriber  
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*John D. Lamm*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

05C212667-4  
JOC  
Judgment of Conviction  
926784



THE STATE OF NEVADA,

Plaintiff,

-vs-

DEANGELO RESHAWN CARROLL  
#1678381

Defendant.

CASE NO. C212667-4

DEPT. NO. XXI

JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Felony), in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Felony), in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 12<sup>th</sup> day of August, 2010, the Defendant was

09-07-10P02:58 RCVD



Volume 11 – 2419

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1 present in court for sentencing with his counsels, DAN BUNIN, ESQ. and THOMAS  
2 ERICSSON, ESQ., and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in  
4 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee  
5 including testing to determine genetic markers, the Defendant is SENTENCED to the  
6 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 – LIFE with the  
7 possibility of Parole after serving a MINIMUM of FORTY (40) YEARS; and AS TO  
8 COUNT 2 - LIFE with a possibility of parole after serving a MINIMUM of TWENTY (20)  
9 YEARS, plus an EQUAL and CONSECUTIVE term of LIFE with a possibility of parole  
10 after TWENTY (20) YEARS for Use of a Deadly Weapon; with ONE THOUSAND NINE  
11 HUNDRED FOUR (1,904) DAYS Credit for Time Served.  
12  
13  
14

15 DATED this 7<sup>th</sup> September day of August, 2010  
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17   
18 \_\_\_\_\_  
19 VALERIE ADAIR  
20 DISTRICT JUDGE   
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COPY

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Alvin L. Johnson*  
CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff,

vs.

ANABEL ESPINDOLA,

Defendant.

CASE NO. C212667-3  
DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 10, 2011

RECORDER'S TRANSCRIPT OF HEARING RE:  
SENTENCING

APPEARANCES:

FOR THE STATE:

MARC DI GIACOMO, ESQ.

Deputy District Attorney

GIANCARLO PESCI, ESQ.

Deputy District Attorney

FOR THE DEFENDANT:

CHRISTOPHER R. ORAM, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., THURS., FEB. 10, 2011

2  
3 THE COURT: State versus Anabel Espindola. Ms. Espindola is present out  
4 of custody with Mr. Oram. This is the time set for the rendition of sentence.

5 Are both sides prepared to go forward at this time? Is there any reason  
6 we cannot proceed with sentencing today?

7 MR. ORAM. No, Your Honor.

8 THE COURT: All right. And we did receive notice of a speaker, I believe the  
9 sister of the victim.

10 MR. PESCI: Actually, she's the daughter. She's present, Judge, but she's  
11 electing not to speak.

12 THE COURT: Okay. Just so you know, the notice said sister of the victim.  
13 She's elected not to speak.

14 And we did receive a number of letters in support of Ms. Espindola, and  
15 I have reviewed all of those.

16 State, you'd agreed to --

17 MR. PESCI: Pursuant to negotiations, we're making no recommendation.

18 THE COURT: Right. Ms. Espindola, what if anything would you like to state  
19 to the Court before I pronounce sentence against you?

20 THE DEFENDANT: I am just so very sorry, Judge. I'm remorseful. I still cry  
21 at night when I'm alone. The only thing I can say is I'm very, very apologetic, and  
22 I'm sorry for what happened.

23 THE COURT: All right. Mr. Oram.

24 MR. ORAM. Your Honor, Ms. Espindola also drafted a letter to the Court --

25 THE COURT: I read that as well.

1 MR. ORAM. In this particular case, I recognize that the Court sat through a  
2 couple of trials. I'm not sure if you sat through Mr. Deangelo Carroll's trial --

3 THE COURT: I sat through, to term your words --

4 MR. ORAM. Three, I guess.

5 THE COURT: I would have said presided, but we'll use sat through. Yes, I  
6 was here for all of the trials so I'm very familiar with everybody's role in this. I'm  
7 very familiar with what all of the evidence was and the role Ms. Espindola played,  
8 which --her role in terms of the crime -- and that was consistent throughout all of the  
9 trials.

10 MR. ORAM. Yes, Your Honor.

11 Now, what I'd point out to the Court is after Ms. Espindola -- after her --  
12 she appeared before this Court, there was a hearing before this Court, and the  
13 Court I remember struggled with a decision whether to let Ms. Espindola out. I  
14 remember it was a difficult decision for the Court, and the Court in fact let her out on  
15 house arrest. It was part of the agreement with the State of Nevada, and again, I  
16 want to reiterate that I know it was very difficult at the time.

17 So what has Ms. Espindola done over the last two years? Ms.  
18 Espindola has been as Parole and Probation points out, gainfully employed for the  
19 last 12 months. They can verify that. She managed in this miserable economy to  
20 keep a house. I guess it's a relatively modest house, but she has attempted to pay  
21 for it. She's kept it so it's current.

22 We have a number of letters of recommendation. She apparently --  
23 there are many people in the courtroom who are in favor of Ms. Espindola who have  
24 come today. I notice House Arrest even wrote a letter saying that Ms. Espindola  
25 was in perfect compliance -- that's not what it says -- it says that she's been in

1 compliance with the rules and regulations, random urinalysis, breathalyzer tests,  
2 that she has done all of that, that she has attempted to pay her fees.

3 Her sister has written a letter, family members have written letters in  
4 support. There was also a letter from a lady that she assists, I guess, for additional  
5 income in helping raise three children. She babysits, and she earns a modest fee  
6 from it.

7 But what it shows is that Ms. Espindola is trying. She's trying in a very  
8 bad economy. She put herself in a very bad situation, but what I would like to inform  
9 the Court and have the Court consider is that when she was permitted release, that  
10 what she did was she tried everything she possibly could to show the Court to give  
11 her this opportunity.

12 She'd done four years in the penit -- well, in jail, almost four years. I  
13 believe it's 45 months, and the recommendation of Parole and Probation is 46  
14 months at the minimum parole eligibility.

15 I think under the circumstances the Court could again take a chance  
16 with Ms. Espindola. I recognize that it's not an easy decision. I recognized that  
17 before, Your Honor.

18 I thought you wanted to say something?

19 THE COURT: No, I'm just listening and thinking, I mean, because here's --  
20 well, here's the thing, Mr. Oram, and I think I probably have articulated this already.  
21 You know, I think from having heard everything, you know, clearly Mr. H was sort of  
22 the one pulling all the strings. You know, it never was clear exactly what was  
23 intended in my view to happen to Timothy Hadland, whether or not Deangelo Carroll  
24 and Kenneth Counts sort of went off on their own, but clearly as I -- and I think I said  
25 this at his sentencing, maybe I didn't -- he clearly was the one, you know, he was in

control. Nobody did anything in this group without thinking they were doing it at the behest of Mr. H. So I appreciate that.

Having said that, and, you know, Kenneth Counts, his record and his life and everything like that I think speaks for itself and what ultimately happened here, but at the end of the day, Ms. Espindola was as part and parcel of this whole thing that resulted in Mr. Hadland's death as anything -- and if I said Mr. Hadland meaning Mr. Hidalgo, I may have said that by mistake, obviously I'm talking about Mr. Hidalgo -- she was as much a part of this whole thing in my view as anybody else.

And, you know, we've got four of the people are sitting in prison right now as a result of this, and, you know, some I think could be argued are worse than others, and I accept that, and I think on that spectrum Ms. Espindola is not as bad as some of the other people in terms of her life history, her overall character, other things like that, but she was a, you know, a part of this whole thing.

And had she not played the integral role she played, none of this would have happened in my view. So that's what I was thinking since you sort of asked.

MR. ORAM. Your Honor, and I don't disagree until the last part that -- I would contend from what I know of this case, and although I didn't preside over all of it, I surely have read all the discovery and handled this case for years before it ever went to trial, it would strike me that even if she was not in the picture that this was a something -- a ball was rolling and was going to happen.

I think what you had is you had a situation with a man old enough to be her grandfather in an affair, and unfortunately I think there are some people in society that are followers. I think Ms. Espindola was a good bookkeeper. I heard you mention that to another individual. She was a good bookkeeper, and what



1 would ever have been her motive? There was no motive. Mr. H had motive.

2 THE COURT: No. No, I agree. Mr. H maybe at the instigation of his son, but  
3 I don't think he paid any attention to that son frankly -- that's my impression -- put  
4 this whole thing in motion. I think the State would agree with that.

5 MR. ORAM. And the other big difference, Your Honor, is as you know, Ms.  
6 Espindola gave everything she could to assist or assist the Court, show the Court  
7 that she could be good, and that should count for something if the Court  
8 understands what I'm saying.

9 THE COURT: No, I do, and it does.

10 MR. ORAM. It should count for a lot because at least I think Mr. Hidalgo was  
11 not indicted. In fact, I know he was not indicted.

12 THE COURT: And I recognize that, and I know what the State's position was,  
13 that he was a gun, and I think that they're correct in this, that he was the one that  
14 really controlled everybody at that club and set this whole thing in motion and had,  
15 you know, I think that's pretty obvious.

16 And had he not wanted a bad outcome, and I think I said it at his  
17 sentencing, I wasn't sure. Did he want him dead? Did he want him seriously beaten  
18 up? I didn't know, but clearly had he not wanted a bad outcome for Mr. Hadland,  
19 none of this would have happened. You know, I agree.

20 MR. ORAM. And so, Your Honor, I mean, she's done everything, everything  
21 she could possibly do since she's been out for two years. Two years she's been  
22 out.

23 All the letters of support are sort of rare, at least they are when I'm  
24 standing here. A lot of times I don't have clients who have anybody who would say  
25 something good about them. But in this particular case you have lots of people who

DONE

1 are saying that Ms. Espindola's really put forth effort.

2 And she is remorseful; at least that's what the people say, and it's what  
3 she has said, and I think the State would recognize that.

4 I think, Your Honor, you could continue to keep her on house arrest, but  
5 to take her and make her pay now with more prison time having been used to being  
6 out, being in a very regulated society in terms of trying to keep a job, trying to pay  
7 for the house, trying to do good things, trying to show that she can be a good  
8 person.

9 And, Your Honor, I will point out to the Court absolutely no criminal  
10 history, not a misdemeanor in her past and not a misdemeanor in the last two years.  
11 We'd have heard of it. And, again, I know it was a difficult decision two years ago,  
12 but the Court took that chance and the Court had the discretion.

13 And so what I would ask the Court, I'd urge this Court to take one  
14 chance on Ms. Espindola. The Court can give her a maximum sentence  
15 suspended. And if Ms. Espindola does not walk the straight and narrow, she does  
16 something wrong, you can put her in prison for a very long time. And I would just  
17 think that it would be a harsh reality for somebody to be in a situation where they  
18 were given a generous opportunity to get out and show what they could do and then  
19 try to do absolutely every single possible thing to go right, to try to do the right thing,  
20 to keep a job.

21 And I know I'm repeating myself, but it just seems imperative in this  
22 case, and I would ask the Court in this particular case to consider the fact that also  
23 Mr. Taoipu received probation. I know his role was different, and I know the Court  
24 sees the differences in the role. I could see how the Court could have an argument  
25 with me that Mr. Taoipu was --

THE COURT: Yeah, I don't want to -- you know, I did that reluctantly as well.

MR. ORAM. I'm sure you did, but Mr. Taoipu I think is a much more dangerous bet for a Court than Ms. Espindola. Ms. Espindola has already proved to the Court for the last two years that she -- she is doing well. Like I said, she has a lot of people back here who will support her, and if she continues on doing this, Judge, then she'll be a valuable member of society, and maybe she'll never ever make the mistake of getting locked up with another male, you know, that will go the wrong way.

So I'd urge the Court even though I recognize how close a case this is, how difficult a decision it is, to just err in this case, err in this case on a maximum sentence and suspend it and give her that opportunity.

With that, Your Honor, I'd submit it.

THE COURT: All right. Thank you, Mr. Oram.

This is a difficult decision because this case is somewhat unusual, and you don't have with the exception of Mr. Counts and to a lesser extent Mr. Carroll, the other -- well, actually, Ms. Espindola is unique in this situation. And it's an unusual case because most of the time in something like this you would see, you know, everybody who had long criminal histories.

Again, you have some people in this case who had quite a storied past, but by the same token, you know, like I said, she got involved in this whole thing, and, you know, a critical difference between her and I would say Mr. Taoipu was, you know, she's obviously a pretty intelligent person.

She's somebody who knew what she was doing and again, was an integral part of this whole thing going down as evidenced by the phone records and other things in this case.

1 So, you know, I just can't see my way, and this is -- you know, you  
2 made a great argument, Mr. Oram, candidly, but I just can't see my way to a straight  
3 grant of probation. I'm considering, you know, everything she did because at the  
4 end of the day her culpability is not that much less. I mean, their culpabilities are all  
5 relative.

6 All right. Ms. Espindola, by virtue of your plea of guilty, you're hereby  
7 adjudged guilty of the felony crime of voluntary manslaughter with the use of a  
8 deadly weapon.

9 In addition to the \$25 administrative assessment, the \$150 DNA  
10 analysis fee, and the fact that you must submit to a test for genetic markers, you are  
11 sentenced to a minimum term of 24 months in the Nevada Department of  
12 Corrections and a maximum term of 72 months in the Nevada Department of  
13 Corrections, plus a consecutive enhancement for the deadly weapon of 24 to 72  
14 months. You are entitled to --

15 MR. ORAM. 1379 days.

16 MR. PESCI: 1,379, Your Honor.


17 THE COURT: How many?

18 MR. PESCI: 1,379 days.

19 THE COURT: -- days credit for time served.

20 -oOo-

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

23   
24 JANIE L. OLSEN  
25 Recorder/Transcriber

FILED

FEB 17 2011

*Alfred J. Blum*  
CLERK OF COURT

JOCP

ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

CASE NO. C212667-3

DEPT. NO. XXI

ANABEL ESPINDOLA  
#1849750

Defendant.



JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

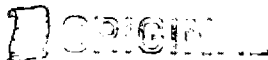
The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS 200.040, 200.050, 200.080, 193.165; thereafter, on the 10<sup>TH</sup> day of February, 2011, the Defendant was present in court for sentencing with her counsel, CHRISTOPHER ORAM, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee, and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the

1 Nevada Department of Corrections (NDC) as follows: TO A MAXIMUM of  
2 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of  
3 TWENTY-FOUR (24) MONTHS plus an EQUAL and CONSECUTIVE term of  
4 SEVENTY-TWO (72) MONTHS MAXIMUM and TWENTY-FOUR (24) MONTHS  
5 MINIMUM for Use of a Deadly Weapon; with ONE THOUSAND THREE HUNDRED  
6 SEVENTY-NINE (1,379) days Credit for Time Served.  
7

8  
9 DATED this 16<sup>th</sup> day of February, 2011  
10

11   
12 \_\_\_\_\_  
13 VALERIE ADAIR  
14 DISTRICT JUDGE   
15  
16  
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18  
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20   
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25  
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27  
28

ORIGINAL

FILED

MAR 23 2011

*John T. Johnson*  
CLERK OF COURT

1 AJOC

2  
3  
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

06C212667-4  
AJOC  
Amended Judgment of Conviction  
1308499



7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO. C212667-4

9 -vs-

DEPT. NO. XXI

10 DEANGELO RESHAWN CARROLL  
11 #1678381

12 Defendant.

13  
14 AMENDED JUDGMENT OF CONVICTION  
15 (JURY TRIAL)


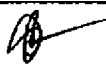
16  
17 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
18 - CONSPIRACY TO COMMIT MURDER (Felony), in violation of NRS 200.010,  
19 200.030, 193.165, and COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON  
20 (Category A Felony), in violation of NRS 200.010, 200.030, 193.165; and the matter  
21 having been tried before a jury and the Defendant having been found guilty of the  
22 crimes of COUNT 1 - CONSPIRACY TO COMMIT MURDER (Felony), in violation of  
23 NRS 200.010, 200.030, 193.165, and COUNT 2 - FIRST DEGREE MURDER WITH  
24 USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010,  
25 200.030, 193.165; thereafter, on the 12<sup>th</sup> day of August, 2010, the Defendant was  
26 present in court for sentencing with counsels, and good cause appearing,  
27  
28

1 THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offenses and, in  
2 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee  
3 including testing to determine genetic markers, the Defendant was SENTENCED to the  
4 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 – LIFE with the  
5 possibility of Parole after serving a MINIMUM of FORTY (40) YEARS; and AS TO  
6 COUNT 2 - LIFE with a possibility of parole after serving a MINIMUM of TWENTY (20)  
7 YEARS, plus an EQUAL and CONSECUTIVE term of LIFE with a possibility of parole  
8 after TWENTY (20) YEARS for Use of a Deadly Weapon; with ONE THOUSAND NINE  
9 HUNDRED FOUR (1,904) DAYS Credit for Time Served.  
10  
11

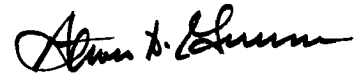
12 THEREAFTER, on the 15<sup>th</sup> day of March, 2011, the Defendant was not present  
13 in court but represented by his counsel, PATRICK MCDONALD, ESQ., pursuant to  
14 Defendant's Motion to Amend Judgment of Conviction, and good cause appearing to  
15 amend the Judgment of Conviction; now therefore,  
16

17 IT IS HEREBY ORDERED the Defendant's sentence to be amended to reflect  
18 COUNT 1 MODIFIED to ONE HUNDRED TWENTY (120) MAXIMUM with a MINIMUM  
19 Parole Eligibility of THIRTY-SIX (36) MONTHS.  
20

21 DATED this 21<sup>st</sup> day of March, 2011  
22

23   
24  
25 VALERIE ADAIR  
26 DISTRICT JUDGE   
27  
28





CLERK OF THE COURT

1 **ORDR**  
2 **MARIO D. VALENCIA**  
3 Nevada Bar No. 6154  
4 1055 Whitney Ranch Dr., Ste. 220  
5 Henderson, NV 89014  
6 T. (702) 940-2222  
7 F. (702) 940-2220  
8 valencia.mario@gmail.com  
9 Counsel for Mr. Carroll

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 DEANGELO R. CARROLL

14 Defendant.

CASE NO. 05-C212667-4

DEPT. NO. XXI

17 FINDINGS OF FACTS, CONCLUSIONS OF  
18 LAW AND ORDER

19 Date of Hearing: October 21, 2012  
20 Time of Hearing: 9:30 a.m.

21 This Cause is again before this Court, the Honorable Valerie Adair presiding,  
22 on remand from the Nevada Supreme Court. The State is represented by Giancarlo  
23 Pesci, Chief Deputy District Attorney for Clark County. The petitioner-defendant,  
24 DeAngelo R. Carroll, is present and represented by Mario Valencia.

25 In a prior proceeding, this Court determined that Carroll was deprived of his  
26 right to a direct appeal due to ineffective assistance of counsel and so granted  
27 Carroll's post-conviction petition seeking to restore his right to a direct appeal. The  
28 State challenged this decision before the Supreme Court. After considering the

1 challenge, the Supreme Court determined that further factual findings were  
2 necessary to support this Court's decision. Specifically, the Supreme Court  
3 requested further findings to make clear whether Carroll had good cause for  
4 submitting his petition more than one year after the entry of the judgment of  
5 conviction.

6 To satisfy the Supreme Court's request, this Court has conducted an  
7 additional evidentiary hearing. After considering briefs, the testimony of witnesses,  
8 the arguments of counsel, and other evidence available, this Court makes the  
9 following findings of fact and conclusions of law.

#### 10 11 Findings of Facts and Conclusions of Law

12 1. At the time he was convicted and sentenced, Carroll was represented by Dan  
13 Bunin and Thomas Ericsson.

14 2. Carroll requested that Bunin and Ericsson appeal his conviction, and the  
15 latter said that they would.

16 3. On September 8, 2010, the judgment of conviction was entered.

17 4. Because of a misunderstanding between the two attorneys, both Bunin and  
18 Ericsson assumed the other would file the notice of appeal within the  
19 necessary time.

20 5. After the period to file a timely notice of appeal had passed, Bunin and  
21 Ericsson realized no notice had been filed. They contacted the Court to let it  
22 know of the lapse, and to suggest that different counsel be appointed to  
23 determine whether there could be an appeal under *Lozada*.

24 6. In a hearing on December 16, 2010, Bunin and Ericsson were released as  
25 counsel, and Patrick McDonald was appointed to investigate and pursue any  
26 appeal deprivation claim, as well as any and all other post-conviction claims,  
27  
28

1 that Carroll may have. The written order appointing McDonald was entered  
2 on December 17, 2010.

3 7. Despite his repeated attempts to contact them, Carroll was unable to reach  
4 Bunin or Ericsson, and neither attorney contacted Carroll to inform him that  
5 no appeal had been taken.

6 8. Carroll first learned that Bunin and Ericsson were no longer his attorneys,  
7 and that McDonald had been appointed in their place, in a letter he received  
8 around January 20, 2011.

9 9. Because of restrictions on telephone access in prison, Carroll's first  
10 opportunity to contact McDonald was not until the third week of February  
11 2011. When Carroll did contact McDonald, McDonald informed him that no  
12 notice of appeal had been filed. During that phone call, Carroll informed  
13 McDonald that he wanted to pursue an appeal, and he had discussed this  
14 with Bunin and Ericsson.

15 10. McDonald had extraordinary difficulty obtaining Carroll's file from Bunin and  
16 Ericsson. The criminal case against Carroll began in June 2005, so his file  
17 consisted of several file-boxes. Furthermore, Bunin and Ericsson never  
18 discussed the appeal deprivation claim with McDonald, as shown by their  
19 testimony at the June 4, 2012 evidentiary hearing.

20 11. McDonald needed the complete file to fully evaluate Carroll's appeal  
21 deprivation claim and investigate why Bunin and Ericsson did not file a  
22 notice of appeal, as well as to investigate and present any other claims  
23 Carroll might have. Failing to pursue all valid post-conviction claims would  
24 be a violation of McDonald's duty to Carroll, as any claims McDonald failed  
25 to pursue could potentially face procedural bars.

26 12. While McDonald was seeking Carroll's complete file, he repeatedly informed  
27  
28

1 this Court of his progress and requested filing extensions, which were  
2 granted. This included a request that was submitted on August 26, 2011.  
3 This Court held a hearing on that request on August 30, 2011, shortly before  
4 the one year mark from the entry of the judgment of conviction. At the  
5 hearing, this Court instructed McDonald to continue his efforts to collect the  
6 complete case file and set the matter for status check two weeks after. On  
7 September 13, 2011, after more than a year had passed since the entry of the  
8 judgment of conviction, McDonald still had not received the complete file.  
9 This Court then granted McDonald another extension of time to file Carroll's  
10 petition.

11 13. On November 1, 2011, this Court set the final due date for Carroll's petition:  
12 January 3, 2012.

13 14. On December 29, 2011, McDonald filed Carroll's post-conviction petition,  
14 which included the appeal-deprivation claim.

15 15. Throughout his time as counsel to Carroll, McDonald's professional  
16 performance was hindered by personal problems. Not long after filing  
17 Carroll's petition, McDonald was suspended from practicing law in the state  
18 of Nevada.

19 16. Carroll has good cause to excuse the delay if he believed his counsel was  
20 pursuing his direct appeal, if his belief was objectively reasonable, and if he  
21 filed his post-conviction petition within a reasonable time after he should  
22 have known that his counsel was not pursuing his direct appeal. *See*  
23 *Hathaway v. State*, 119 Nev. 248, 252, 253–54, 71 P.3d 503, 507–08 (2003)

24 17. On the first point, did Carroll believe that his then-counsel, Bunin and  
25 Ericsson, were pursuing a direct appeal on his behalf? This Court finds that  
26 he did.

1 18. Carroll testified convincingly that he believed Bunin and Ericsson were  
2 pursuing his appeal after he was sentenced.

3 19. On the second point, was Carroll's belief that Bunin and Ericsson were  
4 pursuing an appeal on his behalf objectively reasonable? This Court finds  
5 that it was.

6 20. Carroll's belief is confirmed as objective by his former counsel, who both  
7 testified that they told him they would pursue an appeal on his behalf.  
8 Furthermore, Bunin testified that he did not notify Carroll when he  
9 discovered no notice of appeal had been filed. Ericsson testified that he had  
10 no memory either way. While Carroll did attempt to contact Bunin and  
11 Ericsson to find out the status of his appeal, he never succeeded due to the  
12 inherent restrictions of incarceration. Finally, given the nature of Carroll's  
13 conviction for first-degree murder and sentence, any reasonable person would  
14 expect an appeal to be forthcoming.

15 21. On the third point, was Carroll's post-conviction petition filed within a  
16 reasonable time after he should have known his counsel was not pursuing his  
17 direct appeal? This Court finds that it was.

18 22. The earliest Carroll should have known his counsel was not pursuing his  
19 direct appeal was when he was notified of that fact by McDonald. There is  
20 some uncertainty whether the initial letter from McDonald was sufficient to  
21 put Carroll on notice, or if Carroll only knew that a post-conviction petition  
22 was necessary after he talked with McDonald via telephone. Either way,  
23 Carroll should have known that a petition was necessary by late January  
24 2011 to late February of 2011.

25 23. Under either date, the petition, submitted to this Court on December 29,  
26 2011, was filed within a reasonable time. This Court finds that the petition  
27

1 was filed in a reasonable time on several, separate grounds.

2 24. First, the 10-to-11 month period, standing alone, is reasonable. *See Wilson v.*  
3 *State*, 127 Nev. Adv. Op 68, 267 P.3d 58 (2011) (a petition filed November 21,  
4 2005 is timely when claim became available to petitioner on December 29,  
5 2004).

6 25. Second, this Court finds the petition was filed in a reasonable time in light of  
7 the circumstances attending the petition's preparation. Specifically, the time  
8 is reasonable in light of the difficulty McDonald had gathering Carroll's  
9 complete file, the necessity of preparing a petition with more than one issue,  
10 the professional difficulties suffered by McDonald, and the blamelessness of  
11 Carroll.

12 26. Finally, the Court finds the petition was filed in a reasonable time because  
13 this Court approved McDonald's request to file Carroll's petition by January  
14 3, 2012. If the briefing schedule established by this Court allowed the  
15 petition beyond a reasonable time period, it would mean this Court  
16 affirmatively misled the petitioner. *See, e.g., Sossa v. Diaz*, No. 10-56104,  
17 2013 WL 4792941 (9th Cir. Sept. 10, 2013); *Prieto v. Quarterman*, 456 F.3d  
18 511, 513–15 (5th Cir. 2006). To avoid that result, the briefing schedule and  
19 due date established by this Court must establish a reasonable time for filing  
20 the petition.



Order

This Court has found that Carroll has good cause to excuse the delay in filing his petition, and has expressed the basis for that finding in this order. This Court has previously determined, and the Supreme Court has affirmed, that Carroll has a valid appeal-deprivation claim. Therefore, consistent with the Supreme Court's order, this Court enters the following orders.

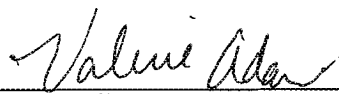
It is ORDERED that Carroll's petition be granted.

It is ORDERED that DeAngelo Carroll be given a right to pursue an appeal.

It is ORDERED that the district court clerk prepare and file within 5 days of the entry of this order a notice of appeal from the judgment of conviction and sentence consistent with NRAP 4(c)(1)(B)(iii).

It is ORDERED that Mario D. Valencia remain Carroll's counsel on appeal.

DATED this 20 day of <sup>December</sup>~~November~~, 2013.

  
District Court Judge JC

Submitted by:

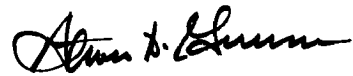
/s/ Mario D. Valencia  
MARIO D. VALENCIA  
Nevada Bar No. 6154  
1055 Whitney Ranch Dr., Ste. 220  
Henderson, NV 89014  
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Reviewed and Approved by:

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CLERK OF THE COURT

NOASC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

Case No: 05C212667-4  
Dept No: XXI

vs.

DEANGELO R. CARROLL,

Defendant,

**NOTICE OF APPEAL**

Notice is hereby given that the Defendant above named, hereby appeals to the Supreme Court of Nevada from the Amended Judgment of Conviction (Jury Trial) entered in this action on March 23, 2011.

STEVEN D. GRIERSON, CLERK OF THE COURT



Heather Ungermann, Deputy Clerk

**CERTIFICATE OF MAILING**

I hereby certify that on this 6 day of January 2014, I placed a copy of this Notice of Appeal in:

The bin(s) located in the Regional Justice Center of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division

- ☒ The United States mail addressed as follows:  
Deangelo R. Carroll # 1056956      Mario D. Valencia  
P.O. Box 650      1055 Whitney Ranch Dr., Ste. 220  
Indian Springs, NV 89070      Henderson, NV 89014
- ☒ This appeal was electronically submitted to the Clerk of the Supreme Court.



Heather Ungermann, Deputy Clerk