

IN THE SUPREME COURT OF THE STATE OF NEVADA

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LUIS HIDALGO, III ,

CASE NO. 67640

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

APPELLANT'S APPENDIX, VOLUME XI

APPEAL FROM JUDGMENT DENYING
POST-CONVICTION HABEAS CORPUS

Eighth Judicial District
State of Nevada

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1 has to unlock everything for him. Let the woman get out there
2 and do it for him.

3 Anabel and Mr. H discuss what would be said to
4 Deangelo. Mr. H told Anabel to tell Deangelo to resign from
5 the club and not to talk to anyone because if something
6 happened to Mr. H, then he couldn't help anyone. Anabel asks
7 Mark Quaid after that to call Deangelo to set it up and now we
8 get to the recordings.

9 He comes in on May the 23rd, the first time, goes
10 into Little Lou's room and begins.

11 (Playing tape)

12 MR. PESCI: Why the whispering? If you believe the
13 testimony, no crime has occurred, nothing more than just
14 trying to avoid gang retaliation. What's the whispering
15 about?

16 (Playing tape)

17 MR. PESCI: If somebody else now has the advice to
18 not talk to Deangelo because he might have a wire, because
19 Anabel's not in the wire, which is why we played the first
20 clip, Anabel's not in the room when Luis Hidalgo, III -- make
21 sure that there isn't a wire. Someone else now has that
22 information. Mr. H told you on his testimony he doesn't
23 remember the talk to his son the day after the murder, the day
24 after that and the day after that. But Little Lou realizes, I
25 should check for a wire, just magically.

1 (Playing tape)

2 MR. PESCI: If something happens to him, we all
3 lose, every one of us. What's going to happen to him? She
4 didn't say that the gang banging dangerous friend of Deangelo
5 Carroll comes back, he could shoot and kill us all. I'm
6 really concerned just like he is for my well being of the
7 person who did this.

8 (Playing tape)

9 MR. PESCI: If these guys are looking for money,
10 payoff to keep their mouth shut about the crime, nothing about
11 these guys coming back to do harm to me, to do harm to Little
12 Lou, to do harm to Mr. H, nothing about that. It's trying to
13 shut them up from going to see the cops.

14 And what is this history we have? Mr. H has been
15 extorted before.

16 THE COURT: I think we need a break. All right.

17 Ladies and gentlemen, we'll go ahead and take a
18 quick break, and once again, you're reminded of the
19 admonishment which, of course, is still in place not to
20 discuss anything relating to the case or do anything else
21 relating to the case on the break. If everyone will just go
22 through the double doors, notepads in your chairs. We'll see
23 you all back here at the 2:30.

24 (Court recessed at 2:24 p.m. until 2:32 p.m.)

25 (In the presence of the jury.)

1 THE COURT: All right. Court is now back in
2 session.

3 And, Mr. Pesci, you may resume your closing
4 argument.

5 MR. PESCI: Thank you, Your Honor.

6 You heard the testimony almost a year to the day
7 that TJ was killed. Anabel and Mr. H went and made police
8 reports about being extorted, that there was a former employee
9 who was extorting them from money from the club and that went
10 to the attorney and the attorney says, Go make a police
11 report, go to the police when a crime has occurred. He
12 doesn't go to the police and it's not because of fear of gang
13 retaliation. It's because that would be walking right to the
14 police as the defendant.

15 (Playing tape)

16 MR. PESCI: You, Deangelo, and Lou are going to have
17 to stick together. Mr. H takes Deangelo out, gives the order.
18 Mr. H tells her after the fact, Go to plan B, because Mr. H
19 uses Deangelo to get Kenneth Counts to kill TJ. That's why
20 you, Deangelo, and Mr. H are going to have to stick together.

21 And she is not a State's witness on May the 23rd,
22 2005. She's not trying to get out from underneath a death
23 penalty, which, oh, by the way, when the deal went down wasn't
24 on the table. She's not doing any of that. She's whispering.
25 She doesn't set this up way in advance. She's whispering

1 because of the fact that Mr. H is on the hook with Deangelo
2 because he gave the order.

3 (Playing tape)

4 MR. PESCI: Beat up, not dead. Plan B, not plan A,
5 Deangelo, come on. Not, Holy cow, we had nothing to do with
6 this, we're being extorted by you for money, we're threatened
7 by this gang banger outside the door that no one saw on
8 surveillance. If it's plan B, it's second-degree murder.

9 (Playing tape)

10 MR. PESCI: He, Mr. H, is the only one, not that
11 he's going to get killed, that's a terrible thing, because
12 some gang banger's going to come do him in he's so afraid of.
13 He's going to lose the club because he's going to be arrested
14 for the murder. Why is everybody screwed when the heat comes
15 down? What heat? Is the heat Deangelo's friend? If they had
16 nothing to do with it, why would the club be lost? Why would
17 they want to take care of Deangelo's family? Mr. H told you
18 that he didn't like Deangelo, that he thought he should have
19 been fired. If he never gave the order, why would there need
20 to be the need to keep him quiet by taking care of his family?

21 (Playing tape)

22 MR. PESCI: Not a bad deal because you shouldn't
23 kill somebody, bad deal because you've got witnesses, you've
24 got people who can pinpoint you.

25 (Playing tape)

1 MR. PESCI: Have KC kill them too, t-o-o, also, in
2 addition to the killing of TJ. And so there's no confusion,
3 Little Lou tells us, We will put something in their food so
4 they die, rat poison or something. Is that a joke? Is that
5 funny? In the context that that's happening, in hushed tones
6 after Anabel's checked for a wire, after all that, this is a
7 joke, whispering? Under surveillance, keeping your mouth
8 shut, he's really a stand-up comic and this was all just a
9 joke?

10 (Playing tape)

11 MR. PESCI: We, we can take care of KC too. That's
12 Anabel. Big to do about how in the heck did she plead to a
13 crime, that her attorney's so bad for doing that. Do you see
14 in the evidence now stacking up on Anabel, not just Mr. H and
15 Little Lou? But let's focus on Little Lou right now.

16 Little Lou, We get KC last, because he is a part of
17 this event too. I told you to take care of TJ. We can get KC
18 last. Is it a joke now the second time, the joke about
19 killing -- not just Rontae, not just Jayson, but now Kenneth
20 Counts too?

21 (Playing tape)

22 MR. PESCI: Stick to your story. Why is there a
23 need of a story if Deangelo's friend just went crazy and
24 killed the guy for no reason and came in and extorted them?
25 Why would they have to stick to the story? The story is run

1 to the police, tell them what happened, give us help, because
2 it all depends on you, because Little Lou, Anabel, Mr. H know
3 that Deangelo is the conduit that gets to KC, that does the
4 killing on the behest of them.

5 (Playing tape)

6 MR. PESCI: Why would his dad be going into exile?
7 It's not because someone's going to come hurt him because then
8 they wouldn't all be screwed. They've got to get him back on
9 track. We --

10

11 (Playing tape)

12 MR. PESCI: -- do this all the time.

13 (Playing tape)

14 MR. PESCI: We keep our mouth shut. Anabel says
15 that Deangelo's in the room and so is Little Lou. Little Lou
16 doesn't say, you know what, you're crazy, Anabel, I had
17 nothing to do with this. You're crazy. I wasn't a part of
18 any order. I wasn't a part of any conspiracy. He's adopting
19 what she's saying. And doesn't his statement of, We'll get
20 them too, confirm that to you?

21 (Playing tape)

22 MR. PESCI: Any chance that this was just a joke has
23 been left behind because you guys smoke weed, right? After
24 you have given them the money and still start talking, they're
25 not going to expect rat poisoning. Set them up. Pay them the

1 cash. They'll be calmed down. They won't be expecting it
2 when you give them the rat poisoning. This is the clear
3 direct evidence of solicitation to commit murder, to kill
4 Jayson, to kill Rontae. The joke has left a long time ago.
5 Go buy rat poison.

6 (Playing tape)

7 MR. PESCI: Weed's not going to work. Well, let's
8 move on to the next way to do it, the Tanqueray bottle. A big
9 to do about the fact that the Tanqueray bottle doesn't have
10 Little Lou's fingerprints. Well, neither does the cash that
11 the defense and the State both say Anabel paid out. Anabel
12 got the cash, brought it, put it there. Her fingerprints
13 aren't on the cash. Just because her fingerprints aren't on
14 the cash doesn't mean she didn't do it, just like she said,
15 got the money that Mr. H ordered her to get and bring it out
16 and put it on the table and Deangelo took it. Mr. H said the
17 money was paid. How can that be true? There are no prints.
18 Sometimes there aren't prints on things, ladies and gentlemen.
19 And the fact that his fingerprints aren't on the Tanqueray
20 bottle doesn't mean that he didn't say what he just said
21 because you heard it yourself.

22 (Playing tape)

23 MR. PESCI: The last option of rat poison is not
24 going to work. You know what you've got to do. Make no
25 mistake about it, the clear intent is to have them killed

1 because they are the witnesses that implicate them in that
2 conspiracy, each one of them, to kill TJ.

3 (Playing tape)

4 MR. PESCI: There's the evidence of the conspiracy
5 straight from defendant's own mouth. It's not the State
6 creating this up out of nothing. It is straight from the
7 defendant's own mouth. How much time for a conspiracy? The
8 conspiracy that we're telling you here exists is confirmed by
9 Little Lou himself and he's willing to pay Deangelo thousands
10 of dollars so that a conspiracy doesn't blow backwards on him
11 and on his dad and on Anabel.

12 The wire from the 24th.

13 (Playing tape)

14 MR. PESCI: The days passed, Anabel's got some more
15 time to think about what she should or shouldn't be saying
16 when a guy who could be wired is talking to her. She says,
17 Talk to the guy, not kill him. Why would they send them talk
18 to him at all? He's just an insignificant employee that Mr. H
19 doesn't like and has no effect on the business by running his
20 mouth about the club. Why would they send them to talk to him
21 at all? Let's just assume for the sake of argument that
22 that's true, it was only to talk and Deangelo went so crazy
23 and his friend did. Why did they send him to go talk to an
24 insignificant employee who has no effect? Because he's fired.
25 And you heard his testimony, he can't [inaudible] it any way.

1 (Playing tape)

2 MR. PESCI: I said to go to plan B, not -- I didn't
3 say anything. I had nothing to do with it. I said, Go to
4 plan B. There's no plan B without a plan A. And the plan A
5 comes from the guy at the top. Remember the organizational
6 chart? It goes up to him. Use your common sense, ladies and
7 gentlemen. There's an instruction that at the end of the day
8 you can use your common sense, and when you look at this at
9 the end of the day, you've heard this, that Little Lou himself
10 says to take care of him. You've seen this piece of evidence.
11 Does it make any sense at all to remind himself to keep his
12 mouth shut and that he might be under surveillance as he sat
13 like a bump on a log in a meeting with an attorney? Why does
14 he need to worry about being under surveillance if he did
15 nothing wrong? Why does he have to go run to an attorney?
16 Use your common sense, ladies and gentlemen. Use your common
17 sense and the evidence that establishes that the defendants in
18 this case are guilty as charged.

19 Thank you.

20 THE COURT: All right. Thank you, Mr. Pesci.

21 MR. GENTILE: We need a couple of minutes to set up.

22 THE COURT: Okay. Do we need to take a break?

23 MR. GENTILE: We could take maybe five, seven,
24 eight, ten minutes.

25 THE COURT: All right. Ladies and gentlemen, we

1 need to switch over the equipment for the defense's closing
2 argument, so we'll just take a quick break. We'll give you
3 until 2:55.

4 And once again, you're reminded of the admonishment
5 that, of course, is still in place. And if you'd put your
6 notepads in your chairs and follow Jeff through the double
7 doors.

8 (Court recessed at 2:50 p.m. until 3:12 p.m.)

9 (In the presence of the jury.)

10 THE COURT: All right. Court is now back in
11 session.

12 And, Mr. Gentile, are you now ready to proceed?

13 MR. GENTILE: I am, Your Honor, thank you.

14 THE COURT: All right. Thank you.

15 DEFENDANT HIDALGO, JR'S CLOSING ARGUMENT

16 MR. GENTILE: Every time anybody sits through
17 something this long, there's certain high points, certain
18 things that you remember. I'm sure everybody in this jury box
19 is always going to remember Rontae Zone talking about how weed
20 makes him smarter. That's not something that you're ever
21 going to forget. Okay.

22 But I think that from a standpoint of a theme on how
23 to approach this, we have Mike McGrath to thank. Remember
24 when he said that last week? He said, We didn't believe we
25 had enough the first time so we sent him back in again, and

1 he's talking about Deangelo Carroll. And he was talking about
2 the first day that Deangelo Carroll came back and he tried to
3 make it sound like there was a plan for a murder and Anabel
4 Espindola shut him down, so they sent him back in.

5 But do you remember why they sent him in the first
6 time? They sent him in the first time because they wanted him
7 to get Luis Hidalgo, Jr. on tape. And when you get into the
8 jury room, you're going to get the exhibits. I hope you like
9 looking at photographs because that's mostly what it is. It's
10 mostly photographs. And I'm -- you know that Luis Hidalgo
11 Jr., my client, I call him Louie -- I have a hard time calling
12 him Mr. H. It's been very tough the last several weeks --
13 wasn't charged at all until after Anabel Espindola made her
14 deal, which was about a year ago, a year and a few days.

15 And so what I'd like to do over the next however
16 long, and it's time for you to get the case, you don't need to
17 be listening to the lawyers anymore, but what I'd like to do
18 is I'd like to give you a little structure in terms of the law
19 as it relates to how to approach the evaluation of what you
20 have heard, what you have seen over the last couple of weeks.

21 What wasn't enough? Rontae Zone wasn't enough.
22 They had Rontae Zone at that point in time and no tapes. They
23 had Jayson Taoipu who you didn't -- you don't have and they
24 had no tapes. And they had Deangelo Carroll who, of course,
25 was the person that they sent in with the digital recorder on

1 to get the recordings. So at that time after the second day,
2 after the 24th of May, they had these three people, they had
3 two audio tapes and they still didn't have enough.

4 And so you have to say to yourself, okay, that's
5 what they had then. It took 33 months before they charged
6 Mr. Hidalgo. What do they have now? They have Rontae Zone.
7 And you heard him, and you -- you are going to get an
8 instruction that deals with the reasonable doubt, what is a
9 reasonable doubt, and that instruction is going to tell you
10 how to reach within yourself in terms of the things that
11 happened to you in your life, important things, and use that
12 kind of approach to making a determination, if there's
13 something in evidence, if there's enough proof, okay, proof,
14 not evidence, proof, because it isn't evidence beyond a
15 reasonable doubt, it's proof beyond a reasonable doubt.

16 And they have Anabel Espindola. Now, you know
17 what's really interesting, Mr. Pesci got up here and he made a
18 very good presentation. There's no question about it. He is
19 an experienced trial lawyer and he had a great PowerPoint, but
20 I want to take you back a couple of weeks to when the last
21 time the State stood up in front of you and talked to you in
22 their opening statements, because at that time -- you heard
23 Mr. Pesci say today when he was talking about four people
24 driving out in a van, because that was what he said shows that
25 there was an intention to do substantial bodily harm. He just

1 said that a little while ago. At the opening statement a
2 couple of weeks ago, Mr. DiGiacomo said -- well, first he said
3 write it down on your notepads, which we're going to get the
4 note taking and perfect memory without being assisted by notes
5 sooner or later by this presentation, but he said to you, In
6 addition to what you will learn during the course of the time
7 period -- he was talking about a tape recording, what else
8 he's talking about is how do you know this guy KC that the
9 conspirators -- he's saying that the conspirators are upset
10 that he used someone else as opposed to doing it himself. So
11 there's been a lot of movement, a lot of change in the way the
12 State is approaching this from the time it started until now.

13 You'll remember in the opening statement
14 Mr. DiGiacomo said that there was a direct call involving
15 Deangelo Carroll and Luis Hidalgo, my client. You never saw
16 that call because it didn't happen.

17 So what I want you to do, if you will, is pay close
18 attention to the jury instructions. We're going to go through
19 them now. These instructions have developed over almost 1000
20 years. The approach to a trial is not something that started
21 last week. And I don't think -- I'm not sure, I don't
22 remember if any of you have ever sat before on a criminal
23 case, but the concept of reasonable doubt is sacred. A
24 person -- it is so easy, it is so easy for anyone to be in a
25 situation where they're subject to accusation and it is such a

1 wrong thing to jump to a conclusion, to speculate, to say
2 that, well, something must have happened. Clearly no question
3 about it, if Louie Hidalgo did not pay the money to Deangelo
4 Carroll at some time after midnight on the 20th of May, 2005,
5 he wouldn't be here. Okay.

6 He did something that was foolish and he told you
7 that, but he did it motivated by fear. And so what I want to
8 do now is I want to take you through the instructions in terms
9 of what the law is, in terms of what the State needs to prove,
10 and I'm going to demonstrate to you that there is no question
11 that there's a reasonable doubt with respect to whether Louie
12 Hidalgo ever joined any conspiracy to do any harm to TJ
13 Hadland. And we will demonstrate without a doubt that he is
14 not guilty of the charges in this case.

15 We started up with the theme of timing is everything
16 and we've kind of stayed with that theme throughout here. So
17 let's talk about conspiracy. The Judge has instructed you,
18 and you will get those instructions in writing, that you can't
19 join a conspiracy that has already ended. And if you don't,
20 you're not responsible for its results. Here's the
21 instruction. It's Instruction No. 15. I'm going to read it
22 to you and I know that you can read it yourselves, but I'm not
23 sure if that print is big enough for everybody. There is
24 another monitor up there, of course.

25 A conspiracy begins when two or more persons enter

1 into an agreement for an unlawful purpose. A conspiracy to
2 commit a crime does not end upon the completion of the crime.
3 The conspiracy continues until the coconspirators have
4 successfully gotten away and concealed the crime.

5 Now, you just heard that a little while ago. You
6 just saw it up here because Mr. Pesci had it up here. He only
7 had half of it, though. Okay. Now let's talk about the other
8 half.

9 However, a person cannot become a member of a
10 conspiracy after the object of the conspiracy has been
11 accomplished. In this case, what was the object of the
12 conspiracy? We all know. According to the way it was
13 charged, the object of the conspiracy was killing TJ Hadland.
14 The law is that if he did not agree to the death of TJ Hadland
15 and TJ Hadland died and then he learned about it and did
16 something afterwards, he is not a conspirator. If a person
17 was not a member of the conspiracy before its objective was
18 accomplished but assists the conspirators afterwards, he is an
19 accessory after the fact, not a conspirator.

20 Aiding and abetting, that's another theory that the
21 State has here with respect to trying to hook Louie Hidalgo
22 into liability for the death of TJ Hadland, aiding and
23 abetting.

24 What is it? What must you give to aid and what if
25 the crime has already occurred? Instruction No. 21, and you

1 know the Judge read them and it's not -- it's not easy to
2 the -- listen to a narrative and really grasp everything
3 that's being said, but you're going to have these back there
4 on paper and the Judge has instructed you that as a matter of
5 law one cannot aid and abet a murder after it's been
6 accomplished.

7 Instruction No. 26 goes directly to the heart of
8 what this case is about. It says that an accessory after the
9 fact is one who, after the commission of a felony, harbors,
10 conceals, or aids such offender with intent that he may avoid
11 or escape from arrest, trial, conviction or punishment, having
12 knowledge that such offender has committed a felony or is
13 liable to arrest. One cannot be both an accessory after the
14 fact and an aider and abettor or conspirator for the completed
15 offense.

16 The completed offense was the death of Timothy
17 Hadland. He died. He was murdered. There's no doubt about
18 it. That has never been contested here. What else hasn't
19 been contested? Without a doubt not even the State has even
20 suggested that Luis Hidalgo was in the van, at the scene, had
21 a gun, provided a gun, none of that. And that is important
22 because, as I said in the beginning and I'm saying now, in
23 this case, ladies and gentlemen, timing is everything for you
24 to come to the correct decision.

25 Instruction No. 26 says that the defendant is not

1 required to establish that he was an accessory after the fact
2 beyond a reasonable doubt. Well, that makes sense. We don't
3 have the burden of proof. I don't have to come in here and
4 prove to you that he was an accessory after the fact. All
5 right. It's that simple. And please keep that in mind,
6 particularly in a case that -- you know, there's a dynamic
7 that occurs when a defendant testifies. And what that dynamic
8 is is sometimes people -- you know, maybe you don't like the
9 way he looks, maybe you don't like certain affects that he's
10 got. And the key -- the thing to remember, and I'm pleading
11 that you do that, is that it isn't what he gets up there and
12 says. It's what the proof that the State has presented that
13 has to be taken into consideration.

14 But if along with all of the evidence this case it
15 raises in the minds of the jury a reasonable doubt as to
16 whether the defendant was only an accessory after the fact,
17 then in that event it will be your duty, your sworn duty to
18 return a verdict of not guilty. That is what these
19 proceedings are about. A defendant is presumed innocent until
20 the contrary is proved. This presumption places on the State
21 the burden of proving beyond a reasonable doubt every material
22 element of the crime charged and the defendant is the person
23 who committed the offense. And so right now still, this
24 moment, and when you go into that jury room, at that moment,
25 and until you make a determination that it's no longer there,

1 he's presumed innocent.

2 The other thing we talked about, and it's kind of
3 interesting because when I was listening to Mr. Pesci's
4 presentation, it's still all about the tapes and, worse yet,
5 his interpretation of what the things on the tapes mean. He
6 didn't talk much about his witnesses. Let's talk about his
7 witnesses. Rontae Zone, Anabel Espindola. And although he
8 didn't stand up on that stand and let us ask him questions and
9 demonstrate for you what that and only that could do, you
10 still have statements that people are reporting to you that
11 they say, if they're remembering it right, and in this
12 instance, for the most part, that's Rontae Zone and Anabel
13 Espindola, you're still having to consider some things that
14 Deangelo Carroll said without us having an opportunity to
15 confront him and cross-examine him, and so his credibility is
16 on the line as well.

17 Now, all of these people, all three of them are
18 accomplices. You're going to see an instruction in a second
19 and when we get to it, I'll articulate it.

20 Just because Rontae Zone was not prosecuted does not
21 mean he's not an accomplice. There are lots of reasons, lots
22 of reasons why law enforcement or the prosecution might choose
23 to not prosecute somebody. We'll go into those in a second.

24 But an accomplice is defined as one who is liable
25 for the prosecution for the identical offense charged against

1 the defendant on trial in the cause which the testimony of the
2 accomplice is given. In this case you have two accomplices.
3 One has admitted to being an accomplice, that's Anabel
4 Espindola. One has admitted that he's got to perform or he
5 might be charged, and that's Rontae Zone. That was the last
6 series of questions that were asked of him, and maybe you
7 remember them.

8 To be an accomplice, the person must have aided,
9 promoted, encouraged or instigated by act or advice the
10 commission of such offense with knowledge of the unlawful
11 purpose of the person who committed the offense.

12 Well, what did Zone tell you? He doesn't remember
13 when. He thinks it might have been on the 18th of May. He
14 also thinks that it might have been on the 20th of May. If it
15 was on the 20th of May, it was clearly too late. But on the
16 18th of May, he says to you that he hears Deangelo talking
17 about wanting to hurt somebody for snitching. Do you recall
18 that, snitching? He goes with him. He goes out to the lake.
19 Now, Deangelo's either the dumbest guy on the planet to be
20 hauling a bunch of witnesses with him for the purpose of
21 committing a murder or Zone was in on it or it wasn't supposed
22 to happen. Those are the only things that make sense. And
23 we're going to get to each of those.

24 But clearly if he had nothing to do with this
25 situation prior to going out to the lake and poor Mr. Hadland

1 was killed, what is he doing remaining with Deangelo Carroll
2 the next day, changing tires on the van? Does that really
3 sound like somebody's who's not an accomplice?

4 In determining whether an accomplice has been
5 corroborated -- now, you're going to need to have
6 corroboration. You have an instruction that talks about the
7 need, the legal requirement that accomplice testimony be
8 corroborated.

9 In Nevada we have a statute, and the Judge has
10 instructed you what that statute requires, but in Nevada
11 and -- not in every state, but in Nevada, the bottom line is
12 accomplices are simply not trusted. And as a matter of
13 legislative enactment and the instruction of the Court, you
14 have to approach it that way. In determining whether an
15 accomplice has been corroborated, you have to assume the
16 testimony of the accomplice has been removed from the case.
17 All right.

18 Remove Anabel Espindola and Rontae Zone and who said
19 anything? What's left? The tapes. More importantly, at the
20 time that he's on the tape, Deangelo Carroll's an accomplice.
21 So you've got accomplices on the tape. You've got Anabel
22 Espindola and Deangelo Carroll on the tapes. And then you've
23 got Anabel Espindola and Rontae Zone in court. And the law
24 requires you to set that aside --

25 MR. DIGIACOMO: Well, Judge, I'm going to object

1 because the tapes do not have to be set aside by law.

2 THE COURT: It's sustained. It's the testimony of
3 the witness.

4 MR. GENTILE: You must then determine whether there
5 is any remaining evidence which tends to connect the defendant
6 with the commission of the offense. Well, what do we know?
7 State's got tapes, but Luis Hidalgo's not on them. The State
8 has fingerprints, but not Luis Hidalgo's. They can't even
9 place Luis Hidalgo anywhere that comes in contact with this
10 offense.

11 You know, when Deangelo Carroll walked into
12 Simone's -- you're going to take this back there with you --
13 the testimony from Anabel Espindola is that he came through
14 the front door. The testimony is also that this is
15 Mr. Hidalgo's office. This is Anabel Espindola's office.
16 Ironically, you will see that as the exhibits are coded on
17 this exhibit itself, this is Exhibit C, when Simone's was
18 searched, take a look at this exhibit. What do you see taken
19 out of Luis Hidalgo's office? What do you see taken out of
20 Anabel Espindola's office?

21 But anyhow, he walks into this place, Carroll does,
22 he's all wired up. He's in there because he told McGrath and
23 Wildemann that he could get Mr. Hidalgo on tape. You've
24 listened to those tapes and you're going to listen to them a
25 lot more. And you can listen to them until the last breath

1 that you take on this planet, and guess what you're never
2 going to hear? Not only are you not going to hear Luis
3 Hidalgo's voice, you're not going to hear Deangelo Carroll
4 trying to talk to Luis Hidalgo. You're not going to hear him
5 say to Anabel Espindola, Look, I have to talk to Mr. H.
6 You're not going to hear him approach Mr. H and say to him,
7 Mr. H, I need to talk to you, so that at least Mr. H would be
8 heard on the tape saying, No way.

9 Now, what does that tell you? That tells you that
10 Deangelo Carroll, whose credibility has been, I think, dealt
11 with in this case, never intended to try to talk to Mr. H.

12 The police have told you that Luis Hidalgo, Jr. was
13 in Simone's. They had a surveillance set up two days in a
14 row. He was in Simone's. What would it have taken? If
15 Carroll really could do it, what would it have taken for him
16 to at least walk up to Mr. Hidalgo and try to talk to him?

17 And more importantly, why didn't he? He certainly
18 had no -- no concern about talking to Anabel Espindola. When
19 you listen to those tapes, you're going to hear on the first
20 one, just the first tape, the word "I" used by her 57 times.

21 Now, we had -- that thing about pronouns and my
22 cross-examination of her with respect to pronouns tells you
23 everything about her state of mind, tells you everything about
24 her role in this situation. And she is an accomplice. And so
25 what the law requires is that if there is not such independent

1 evidence which tends to connect the defendant with the
2 commission of the offense, the testimony of the accomplice is
3 not corroborated. And the offense we are talking about is the
4 offense of murder because we concede the accessory after the
5 fact.

6 And, you know, think about this for a second. He
7 didn't have to get up there and tell you that. He didn't have
8 to do that. He could have just sat right over there and they
9 wouldn't have been able to prove that he knew anything at all
10 about the payment of the money except through Anabel
11 Espindola. But he did. He got up on that stand.

12 And we're going to get to Jerry DePalma as compared
13 to Mr. Oram at some point in time, but let me ask you this:
14 It looks like every one of you has a notebook. Lots of notes
15 have been taken in this case. Are you saying that none of you
16 are as smart as Mr. Oram, none of you can remember only 13 or
17 14 days later absolutely everything that was said in an
18 important meeting? This is clearly an important meeting. I
19 submit to you that Mr. Oram has notes. I submit to you that
20 if Mr. Oram's notes were produced, it would have impeached
21 Anabel Espindola. And more importantly, it would have made
22 him complicit in the subornation of perjury. Because it makes
23 no sense that somebody would meet with a client 80 or 90 times
24 in a death penalty case, literally life and death, and handle
25 200 or 300 or 400 other cases during that time and be so

1 cavalier and arrogant as to think that they would have
2 independent recollection.

3 You know, you're supposed to approach this case and
4 your decision making process as you would important affairs in
5 your own life. Let's say you were going and you needed a
6 lawyer, and let's say you were smart enough to lawyer shop
7 instead of just going to the first guy and hiring him. All
8 right. And let's say during that first meeting you were in
9 with the lawyer and the lawyer -- you're talking to the lawyer
10 and the lawyer's making notes. You leave that office and
11 think, you know, the guy's pretty good, but maybe his price is
12 a little high.

13 So you go to the next lawyer and the lawyer tells
14 you, Listen, I'd love to have your case. I could do a great
15 job, but I don't take notes, and it might take two or three or
16 four years before this case is decided. Which one would you
17 hire? Don't you think you might want to be comfortable that
18 the guy's going to remember who you are and what it was that
19 you said and when you said it? That was the most ludicrous
20 testimony you will ever hear in a courtroom, no matter how
21 many times you come back.

22 The determination of whether someone is an
23 accomplice is left to the jury. This is the one that I was
24 telling you about a little while ago. It's your decision. Is
25 Rontae Zone an accomplice? And if Rontae Zone is an

1 accomplice, whether he's charged or not, he can be an
2 accomplice. Then you have to set his testimony aside as well.

3 Now, there's lots of other reasons, and we will go
4 through them, as to why Rontae Zone's testimony is not
5 something you'd want to rely upon, but if you make a
6 determination that he had enough time with the rest of that
7 crew to be considered an accomplice, then you have to ignore
8 his testimony too, and at that point in time you really have
9 nothing left.

10 In deciding whether to believe the testimony given
11 by an accomplice, and this applies to both Rontae, but Anabel
12 for sure, you should use greater care and caution than you do
13 when deciding whether to believe the testimony given by an
14 ordinary witness. I don't think he had any ordinary witnesses
15 in this case. Okay. But if you -- you did have other
16 witnesses. Because an accomplice is also subject to
17 prosecution for the same offense, an accomplice's testimony
18 may be strongly influenced by the hope or expectation that the
19 prosecution will reward testimony that supports the
20 prosecutor's case by granting the accomplice leniency.

21 For this reason, you should view with distrust
22 accomplice testimony that supports the prosecution's case.
23 Whether or not the accomplice testimony supports the
24 prosecution's case, you should bear in mind that the
25 accomplice's interest in minimizing the seriousness of the

1 crime and the significance of the accomplice's own role in its
2 commission, Mr. Zone, the fact that the accomplice's
3 participation in the crime may show the accomplice to be an
4 untrustworthy person and an accomplice's particular ability
5 because of inside knowledge about the details of the crime to
6 construct plausible falsehoods. And boy, oh, boy, did you get
7 that from Anabel Espindola.

8 In determining the credibility of any witness, an
9 ordinary witness, you could consider anything which tends in
10 reason to prove or disprove the truthfulness of his or her
11 testimony such as his or her conduct, attitude and manner
12 while testifying, whether the facts testified to by him or her
13 are inherently believable or unbelievable, like not taking
14 notes on a death penalty case, his or her ability to -- an
15 opportunity to hear or see that about which he or she
16 testified, his or her memory, his or her ability to relate
17 such matters, whether or not there was any bias, interest, or
18 other motive for him or her not to tell the truth.

19 Also, any statement previously made by him or her
20 that was consistent with his or her testimony; or, conversely,
21 any statement previously made by him or her that was
22 inconsistent with his or her testimony, any admission by him
23 or her that he or she did not tell the truth and the
24 reasonableness of his or her testimony considered in light of
25 all the evidence in the case.

1 Evidence of good character for truthfulness may be
2 considered in judging the credibility of a witness, and you
3 heard lots of that about Luis Hidalgo.

4 Now, let's -- you've seen the instruction. Let's
5 talk about what the facts in the case were. Rontae Zone. Is
6 there anything that I just read dealing with what to take into
7 consideration about judging somebody's credibility that this
8 guy didn't have? All right. We know that during the time
9 frame involved he admits to smoking dope all day long. Now,
10 he says it makes him smarter. You may want to believe that,
11 but I don't think so. Okay. I don't think you're going to
12 believe that.

13 You saw his demeanor, his mannerisms on the stand
14 when he was becoming confrontational with Paola Armeni. You
15 saw that. That's something you can take into consideration.
16 You know that this man is concerned that if he doesn't
17 perform, something bad might happen to him. He's got another
18 trial to testify in. He's got to testify in Deangelo
19 Carroll's trial.

20 Rontae Zone testified six times. He was
21 cross-examined by Ms. Armeni. He went over all kinds of
22 statements that he made on earlier occasions when he spoke
23 that were different from what he said in court today. Those
24 are called prior inconsistent statements. Now, the truth,
25 generally speaking, even without notes, is something that you

1 can remember. Okay. That's why it's so hard to lie because
2 you can't remember what you said. Okay. And there's nobody
3 in this room that hasn't told a lie in their life. We all
4 know that. So this man is not malignant, he's not inherently
5 evil. He's also not particularly bright even without smoking
6 dope.

7 And so I submit to you that -- you know, you've
8 heard me use the word foundation a lot and I use it in a very
9 technical sense because it really deals with what you have to
10 prove before you can prove the next thing, but foundation has
11 a lot of meanings and in this instance when I use the word
12 foundation this is not the person who you want to use as your
13 foundation in coming to a decision that involves Luis Hidalgo,
14 Jr.'s life. There is no way that you could rely upon it and
15 rest assured with it.

16 Anabel Espindola, well, we've just gone through the
17 accomplice instructions. This lady got on the stand and
18 talked about her involvement in this case, and frankly, if you
19 listen to it carefully, she didn't do anything. What did she
20 do? She contends that she didn't know -- that she got a phone
21 call, that Luis and his son were in the room, that she reports
22 to Luis that she gets this phone call, that there's this
23 blowup, but she has no idea what was discussed after that.

24 The next involvement that she gets with this is
25 she's over at the Palomino and she sees Deangelo Carroll leave

1 the room with Luis Hidalgo, Jr., according to her, so she
2 doesn't know what they talked about then. And then the next
3 thing that happens is she's told to go and make a phone call
4 by saying something like, Go to plan B, all right. And at the
5 time that she goes and makes this phone call, she doesn't know
6 anything about that -- that something bad is supposed to
7 happen to Hadland, but she has this tremendous visceral
8 sensitive response that somehow tells her -- gives her the
9 ability to connect those few things and say that a man 54
10 years old at the time who's never done anything bad to anybody
11 has suddenly become involved in killing a man or harming a man
12 that there's no motive for harming. Why is that important?

13 Well, you saw the accomplice instruction about
14 downplaying your own role and being on the inside so that you
15 can put together a plausible story because you know what
16 really happened and so you're trying to make it fit. This
17 lady lied to you. There's no way that you could take her
18 testimony in this courtroom, compare it with her statements on
19 those tapes, and say that she did not lie to you. There's no
20 way, if you're going to compare what's at risk for somebody
21 like OB Perez to come in here and perhaps incur the wrath of
22 the State of Nevada -- let's face it, she's weak. She told
23 you she's got a case pending. Okay. Now, you're not going to
24 find somebody to get a statement from someone in jail unless
25 they're in jail. All right.

1 So I'm going to say to you, you know that she was
2 not convicted of a felony, ignore the fact that maybe -- well,
3 not ignore it, don't ignore it. Yeah, she wrote some bad
4 checks. She's got to pay 900 bucks back. All right. But she
5 came in here and told you something that was not impeached by
6 the State. She told you that Anabel conceded that she was the
7 one who had Deangelo Carroll in motion to receive it. Anabel
8 was mad, had something wrong -- something that she was mad
9 at -- the guy who got killed, she never even said who he was.
10 She said the guy that got killed, Anabel had something against
11 the guy that got killed, and so did Deangelo Carroll, but she
12 doesn't know what it was.

13 That woman came in here at risk, at great risk to
14 herself, and she told you that. Anabel Espindola is at no
15 risk at all. Anabel Espindola is a puppet, a marionette on
16 the strand. She is looking for leniency. She is looking for
17 probation. She wants to go home. If that was not the case,
18 why did she spend the last year in jail instead of saying to
19 the Judge, Sentence me now? Why? Can you think of any
20 legitimate reason for that? The answer is because is she's
21 got to get help, and if it took another year, it beats the
22 heck out of the death penalty, which was what was hanging over
23 her head.

24 And Deangelo Carroll, you know, nobody believes
25 Deangelo Carroll. Even Rontae Zone doesn't believe Deangelo

1 Carroll. Did you hear anyone come into this courtroom and say
2 anything good about the guy, anything that would make you want
3 to trust the things that he is saying? And let's think about
4 it. You've got Anabel Espindola, an accomplice that you're
5 supposed to ignore, to start with. You've got Rontae Zone, a
6 guy who spends his life high, and an accomplice, and they are
7 saying to you that they heard Deangelo Carroll say a couple of
8 things.

9 Now, if Carroll is himself inherently untrustworthy
10 and if they, repeating what he said, are people who you can't
11 trust, then what do you have? What do you have? You have to
12 reach to believe any of it.

13 Motive. Motive. We've already gone over Rontae
14 Zone's motive. We've already gone over Anabel Espindola's
15 motive. And clearly Deangelo Carroll had a motive at the
16 time, if he said these things, if he said these things, he had
17 a motive at the time he said them. And I said if he said them
18 because you have to rely upon Zone to remember them and
19 accurately report them because he's the only one that you
20 heard from in that regard.

21 Bias, there she is. There is no question that this
22 woman at this point in time not only has a bias in favor of
23 the State but has a bias against Luis Hidalgo. There is no
24 question. She came up here. She said she still loves him.
25 Please save me from someone who loves me as much as she claims

1 to love Mr. Hidalgo. Please don't let that happen to you.
2 All right. This lady doesn't love him. She doesn't care at
3 all. And, you know, part of it -- and you heard the
4 testimony, part of it stems from the fact that she kept
5 sending women to Louie to help and then was jealous of them or
6 thought that he was cheating on her. You know, I don't get
7 it.

8 Prior felony convictions. Well, you know what, in
9 the big pictures of things, that's not such a big deal. If
10 that's the only thing that destroys the credibility of
11 Deangelo Carroll, then we don't have much going. It's just
12 that simple.

13 And prior inconsistent statements, well, you heard
14 lots of them about Zone, you heard lots of them from
15 Espindola. You know, let me ask you something, and this could
16 really be outcome defining in this case. She stood up there
17 and she swore that she spent no time with Jerry DePalma and
18 she swore a second time and a third time, because that's the
19 way I cross-examined her. None, zero time with Jerry DePalma.
20 She walked in. He said, You have to wait outside. She went
21 out in the parking lot and waited there. Okay.

22 Of course, Mr. DePalma came in, Mr. Dibble came in
23 and they told you about the meeting. And Mr. DePalma who's
24 obviously not as smart as Chris Oram, brought his notes and
25 they're in evidence and you're going to have them back there.

1 Now, why is that important? Well, you're going to see when
2 you go through these notes that there's some things but for
3 putting Jerry DePalma on the stand and Louie Hidalgo on the
4 stand would have never come into this case. And some of them
5 corroborate Anabel Espindola, such as she got a phone call
6 from Deangelo Carroll. But if you take a look at the big
7 picture in terms of what's on here, because this was the very
8 first recorded statement -- and it's really not a statement,
9 it's his notes, but it's really the very first, the oldest,
10 the most trustworthy document in this case time line wise
11 because it was created about 36 hours after Mr. Hadland was
12 killed. And I encourage you to take a look at this document.

13 You heard Mr. DePalma and Mr. Dibble corroborate
14 each other in terms of who did the talking. Take what's on
15 here, compare it to what's being said a few days later on that
16 first tape by the woman who is saying "I" 57 times, is it so
17 hard to believe that she spent 90 percent of the time in that
18 meeting talking? And is it really possible that she has
19 forgotten that? Is it really believable that she has
20 forgotten that, to say that it didn't happen at all? You
21 think that maybe she wanted to forget it? Do you think that
22 maybe she was taking a shot that DePalma was like Oram and
23 didn't make notes?

24 It's up to you, but you know what? Common sense.
25 Mr. Pesci encouraged you to use it, so do I, common sense.

1 Treat them like people that you would meet in your life and
2 make a decision as to whether you are willing to trust them
3 because it really does boil down to that when you're
4 fulfilling the role that you're fulfilling in this case. Are
5 you willing to trust them in your own life? If you are, you
6 fulfill your function here. If you're not, you fulfill your
7 function here. Just make sure that you treat them in terms of
8 their credibility the way you would treat them if you met them
9 in your own life knowing what you know about them now.

10 Zone, as I recall when he was talking about Deangelo
11 Carroll, bringing him into the police, I think his words were,
12 I didn't know which truth Deangelo wanted me to tell. Okay.
13 And he talked about the fact that after the event, after
14 Mr. Hadland was killed, the next day before Deangelo went to
15 the police -- because if you recall, Deangelo went to the
16 police on the evening, Friday evening, about 7:00 o'clock,
17 7:30, something like that. I think Detective Wildemann told
18 us that the interview ended pretty close to midnight and it
19 lasted a couple of hours, so it was later in the evening.

20 And Zone told us that that day after the event is
21 when Deangelo started talking to him about Mr. H and things
22 like that. So that didn't even come up until the day after
23 this homicide. He was putting the story in Zone. He saw it
24 coming.

25 Character for truthfulness. All right. Well,

1 again, I don't want to beat a dead horse. It's that simple.
2 Everybody who came in here, whoever met this guy who talked
3 about it, testified about him, said that he's not a
4 trustworthy person.

5 The opinion of others. Who is -- who is Luis
6 Hidalgo, Jr., and why is it important? Well, it's important
7 because we've all heard that a leopard doesn't change its
8 spots. It's a statement that we've all heard about, okay,
9 many of us abuse. People don't tend to change. 54-year-old
10 people don't tend to become murders because somebody talked
11 bad about their club or about their business. I mean, it just
12 doesn't happen, all right. It's going to take something a lot
13 stronger than that. And you sure don't have that in this
14 case. And so it just doesn't factor in. But who is he?

15 He's a family man, you know that. You know that he
16 spent a good deal of time as a younger man in law enforcement.
17 You know that -- you saw him, you heard him testify, you've
18 had enough time with him on the stand both on direct and
19 cross-examination to get a sense about the man. Bottom line
20 to it is that it's unexplainable. It makes no sense that he
21 would become involved in something like this. It makes no
22 sense at all.

23 Motive is important and they do not have any kind of
24 a genuine motive for him to want to do harm to TJ Hadland,
25 certainly not badmouthing the Palomino Club to cab drivers.

1 And you saw the kind of cash that was in the safe. You see
2 the size of the club. I mean, this is not a -- it's not a
3 small club. You know that there's a historic practice of
4 paying cabs and you heard Kevin Kelly come in, and I think
5 he's the next slide, actually, and you heard him say to you
6 that, you know, if you paid a cab driver -- and you heard
7 Louie say it to you, if you pay the cab drivers, it doesn't
8 matter, they're going to bring you the customer.

9 And where is a guy like TJ Hadland, who, again --
10 ladies and gentlemen, there is no reason that man should be
11 dead. It is a disaster. It is an awful thing that happened
12 here. All right. And we're not trying to suggest anything to
13 the contrary, but it would be a more awful thing to convict
14 Louie Hidalgo, Jr. of his murder or of conspiring. That's not
15 going to make Mr. Hadland come back to life and it's not going
16 to make anything better.

17 And the fact of the matter is that Kevin Kelly and
18 Louie Hidalgo, both of whom had been in that business, Kevin
19 has a very successful operation, he's not going to come in
20 here and tell a lie for somebody -- there's no percentage for
21 him. He's doesn't need to do that. And what did he tell you?
22 He said, you know, say anything you want to say, as long as
23 we're paying the cab drivers, they're going to bring us the
24 business. And so under the circumstances of this case, that
25 certainly is not a motive. It certainly is not a motive that

1 he says -- if it's true that TJ Hadland was reported --
2 because let's remember, we don't know that it's true at all
3 that he did actually did badmouth the club to a cab driver or
4 that he actually did say something bad about the club to
5 another club. We don't know that. There's been no proof of
6 that.

7 The only thing that's in this record about that is
8 that Deangelo Carroll said it to Louie Hidalgo and Anabel
9 Espindola claims that she got a phone call from Deangelo
10 Carroll and reported it to Louie Hidalgo. Now, Louie has told
11 you that he learned it from Deangelo. Okay. He did not learn
12 it from Anabel. The notes indicate that there was a phone
13 call to Anabel, DePalma's notes, but be that as it may, it
14 really doesn't matter because it's just simply not enough to
15 get a 54-year-old man who's got a successful business to go
16 out and want to do harm to this guy. There's just no
17 percentage in it.

18 Rontae Zone said it in this trial, said it before,
19 there were lots of cabs there. Mr. McWhorter, when he came in
20 here to testify, said that there was a queue of cabs. They
21 were -- they were in line. They had to wait to get the first
22 pickup. So, you know, it just doesn't make any sense that
23 that's the reason.

24 You know, I'm glad I'm at this slide right now
25 because -- I mean, at this slide. That's a safe full of

1 money. Up and down, it had 150 -- \$155,000. All right. And
2 that's when they searched it. And he testified -- Louie
3 Hidalgo testified it had 160,000 in it, you know, the week
4 before.

5 Look, I'm sure that if he could take back the
6 decision that he made, he might do it. He might want to do
7 it. But he was confronted with a situation and he was afraid.
8 And fear can be a very strong motivator and it was here. Was
9 it right? Well, it depends on how you look at it. It wasn't
10 legal, it wasn't lawful, but that doesn't mean it wasn't
11 right. He's got somebody in his office who just returned from
12 a murder that apparently clearly was not intended by the guy
13 that's in his office at this moment, and that man is telling
14 him -- and that's Deangelo Carroll -- that man is telling him
15 that outside the shooter is in the club outside, that he wants
16 the money or he's going to harm somebody.

17 Now, you could talk about ideal, you could talk
18 about what maybe should be done. We all know what should be
19 done, but that doesn't mean that what was done here amounted
20 to a conspiracy to commit a murder. And it didn't. He paid
21 the money.

22 Now, let's talk about a couple of facts that need to
23 get cleared up. Mr. Pesci showed you this note. It's
24 Exhibit 200-IA. You'll have it back there with you. This is
25 the one about, Keep your mouth shut. And he said to you that

1 it was found by the pool table. We all know that it was found
2 sitting on a magazine that itself was sitting on top of a
3 stool by a pool table. Let's go back to the Simone's diagram.
4 Mr. Pesci says that it must have had some connection with
5 Rontae Zone pulling -- being pulled into the bathroom at
6 Simone's and being told to shut up. But here's the problem
7 with that. If that happened, because we're still having to
8 rely on Rontae Zone's testimony that that happened, if that
9 happened, it happened on the 20th of May. This note was
10 seized on the 24th of May. That's when the search took place.
11 And so there can't be any connection.

12 Mr. Hidalgo stood up here, he testified, and he said
13 to you, Look, I have no idea how that note got where it was
14 found. And do you know what? That's very believable because
15 if there was something sinister about this note, why would he
16 leave it in a public area? Why would he leave it next to a
17 pool table on top of a magazine where anybody walking by could
18 see it? So the timing's off.

19 And there's another little thing that timing is
20 important about. Timing is everything in this case, and
21 that's these statements on the 23rd. If you take a look --
22 you heard Jerry DePalma's testimony that on the 21st Anabel
23 Espindola told him that Deangelo Carroll came in that night,
24 the night after the -- the night of the shooting, but
25 afterwards, and said to her that his home boy shot the guy.

1 All right. You heard Jerry say that. That's in the notes.
2 Just take a look at it.

3 Anabel, of course, denies that the meeting took
4 place, denies that she had any discussions with Deangelo
5 Carroll until the 23rd on tape. But if you listen to this
6 tape and you read it -- well, you won't read it, but you will
7 listen to it, it says -- this is Deangelo -- We were going to
8 call it quits and fucking -- and KC, fucking KC got mad, and I
9 told you, I told you he went fucking stupid and fucking shot
10 the dude.

11 When did he tell her? He told her in the office
12 that night when he came in after the shooting and said, I
13 fucked up, I fucked up. That's when he told her. He told
14 her, We went out there and we were getting high and this guy
15 went off and he shot the dude.

16 And you heard Mr. Hidalgo testify about what Anabel
17 did. She went, Oh, my God, Oh, my God, oh, my God, you
18 stupid, stupid man.

19 You heard Mr. Hidalgo testify as to what he did and
20 you will find that in Mr. DePalma's notes reported to
21 Mr. DePalma on the 21st of May. So clearly Ms. Espindola
22 knows a whole lot more and did a whole lot more with respect
23 to this event than she told you. She lied. And she's lying
24 because she's trying to make herself look like she didn't do
25 anything so that she could get probation, and there was only

1 one way for her to buy that, there was only one way for her to
2 buy that. She had to do something to create a case against
3 Louie Hidalgo because, ladies and gentlemen, she is the only
4 thing that's in this case that wasn't in it 45 months ago, she
5 got arrested.

6 So, you know, I really can't tell you why it
7 happened. And that's the good news for us because we don't
8 have that burden. We don't have to go out and prove that not
9 only is the State's theory wrong with respect to Louie
10 Hidalgo, but this is what did happen. But you have plenty of
11 information, plenty of information to take a look at this and
12 say whatever it was. This wasn't it. And that's really what
13 you're going to be left with here. It is not our burden.

14 Could it be this? Could it be that when Deangelo
15 came back when TJ wasn't there anymore after TJ was fired and
16 Deangelo came back and said to PK Hadley, Don't put me in with
17 TJ? Could it be that? TJ was still alive at that point in
18 time. PK told you and the prosecutor pointed it out to you
19 that PK had caught both of them, both TJ and Deangelo,
20 skimming money from the cab hustle. All right. So you've got
21 that in the record. Could that be it? Could it be that
22 Deangelo wanted to go out there and frighten that man so that
23 he wouldn't blow the whistle on Deangelo?

24 You know, they're making -- they make a -- and
25 here's the critical -- the State has made -- they're trying to

1 say on one hand that Louie Hidalgo, Jr. is a vicious murderer,
2 and on the other hand, they're saying that he needed somehow
3 Carroll to carry this out for him, to shut up these witnesses
4 later on, to try to put him into that too, that somehow that
5 that shows that he knew about the murder and that it was going
6 to take place -- that it was going to take place that night or
7 he knew about some harm coming to TJ Hadland? It doesn't
8 follow.

9 The smart move, if a guy really was a murderer, is
10 to kill Deangelo Carroll. The other guys don't know him. I
11 mean, if a guy's a killer, he's going to figure that out. The
12 only link to him is Deangelo Carroll, if that was a link. So
13 why would he be messing around with any of this other stuff?
14 It makes no sense.

15 There's another possibility. Can we make the
16 transition? I'm going to put a photo up. Okay. How do we
17 get this to work?

18 You know, while we're waiting for that to get
19 working, Paijik Karlson, you may not have caught it, but it's
20 probably in your notes, but Paijik Karlson said that when TJ
21 left her at the lake, he had about 50 or \$60 or 40 or \$50, I
22 forget what she said, but something like that, about 50 bucks
23 in his pocket. When the police found his body, he had \$6.

24 Now, that in and of itself suggests that perhaps
25 robbery, if it wasn't the motive for his killing, might have

1 been involved, but I submit to you --

2 (Pause in proceedings)

3 MR. GENTILE: -- that photograph, obviously when
4 poor Mr. Hadland was shot in the head, there was enough force
5 to knock his glasses not only off of him but at least 10 feet
6 away from him. All right. You will see it. It will be back
7 there, at least 10 feet away from him. Now, if there was that
8 kind of force to knock his glasses 10 feet away from him, what
9 the hell is that hat doing on his chest? Or does that look to
10 you like somebody placed it there? And is that not consistent
11 with a robbery?

12 It's time for you to take this case. When you take
13 this case and you follow the instructions and you set aside
14 the accomplice testimony and now you're looking for something
15 to connect Louie Hidalgo without the accomplice testimony,
16 what you're not going to find is any phone calls, you're not
17 going to find there's any chirps, what you're not going to
18 find is him on any type, what you're not going to find is any
19 effort on the part of Deangelo Carroll to actually get him on
20 tape. The bottom line is you're not going to find him on
21 anything except one thing.

22 What you're going to find is that he paid the \$5000,
23 but who proved that? He did. We brought that in. He got up
24 there. He testified. Jerry DePalma got up there, he
25 testified. I hope we didn't make a mistake doing that, but

1 you got the truth, and so I hope you embrace it. I hope you
2 recognize what the presumption of innocence really is. I hope
3 you recognize that the burden of proof has to be on the State
4 for this system to work. And if you do, you will come back
5 with a not guilty verdict as to the conspiracy and the murder,
6 flat out not guilty.

7 Thank you.

8 THE COURT: All right. Thank you, Mr. Gentile.

9 Do we need a break before we move into your closing?

10 MR. ADAMS: Yes, ma'am.

11 THE COURT: How long, about, to set up?

12 MR. ADAMS: Five minutes.

13 THE COURT: All right. Ladies and gentlemen, while
14 we switch over from Mr. Gentile to Mr. Adams, we're going to
15 take another five-minute break. And once again, the
16 admonition is still in place, so don't talk about the case or
17 do anything relating to the case. Notepads in your chairs and
18 through the double doors. We'll be back at 4:25.

19 (Court recessed at 4:21 p.m. until 4:31 p.m.)

20 (In the presence of the jury.)

21 THE COURT: All right. Court is now back in
22 session.

23 And, Mr. Adams, are you ready to proceed with your
24 closing arguments?

25 MR. ADAMS: Yes, ma'am.

1 DEFENDANT HIDALGO, III CLOSING ARGUMENT

2 MR. ADAMS: May it please the Court --

3 Would you like me to wait on Mr. Pesci?

4 MR. DIGIACOMO: No, you can go right ahead. Go
5 ahead.

6 MR. ADAMS: Sometime right around the night on May
7 the 19th, early morning on May the 20th, Deangelo Carroll
8 pulled up to the club with a van full of people. He got out,
9 sweating, hair -- if you believe PK Hadley, hair ajar like Don
10 King. He came into the club and he said, I fucked up, PK, I
11 fucked up. And PK having no idea, no idea what he was talking
12 about said, Yeah, you did. You didn't get my pickup, yeah,
13 you did. And what happened at that point? What happened at
14 that point?

15 PK told us that Deangelo's next words were not the
16 following, they were not, Where's Little Louie? I fucked up.
17 We've seen Little Louie in the back.

18 Lou, stand up. I'm going to embarrass you.

19 This is Little Louie. And I told him I was going to
20 drag him all the way up there, but he told me he would not
21 come, so this is Little Lou Hidalgo.

22 Stop, please, I know you're nervous. It's okay.

23 In a few minutes, there's not much, if anything,
24 more I can do for him. And you'll decide what happens with
25 him. What we know from the evidence and what has been clear

1 and consistent from the beginning of the case, Little Lou
2 wasn't there, Little Lou didn't pay, and what's clear from the
3 State's witnesses is Little Lou didn't participate. He didn't
4 participate. He didn't plan. He didn't participate.

5 Anabel Espindola, star witness, Ms. Probation
6 Candidate, said there was a disagreement. We've heard the
7 tape. We'll talk more about the tape later. On the tape you
8 hear clearly the words of Deangelo Carroll and they mention --
9 Mr. DiGiacomo mentioned them in the State's opening argument
10 where he said, You had nothing to do with this, why are you
11 saying that. We'll talk more about that later. From the
12 mouth of their evidence, Little Lou had no involvement, no
13 planning, no participation.

14 MR. DIGIACOMO: Objection, Judge.

15 THE COURT: Well, all right for right now.

16 MR. DIGIACOMO: Thank you.

17 MR. ADAMS: I'd like to ask you to do something that
18 may be just about impossible to do at 4:30 in the afternoon
19 and the third week of a trial. And I'm going to ask you after
20 a long opening statement with lots of slides by the State, I'm
21 going to ask you to try to let me start with a clean slate.

22 When I was a little kid, for those of you who aren't
23 the oldest child in your family, you know what it's like to
24 have an oldest child. For those of you who are the oldest
25 child, you have no idea what those of us who are younger dealt

1 with. My sister and I would bicker and argue all the time --

2 MR. DIGIACOMO: Judge, it's --

3 I apologize, Mr. Adams.

4 I object.

5 MR. ADAMS: Judge, I'm making a point.

6 THE COURT: Right, but try to stay away from
7 personal reference.

8 MR. ADAMS: Sure.

9 There are some families with the oldest children who
10 argue with the middle child and a parent, a very fair parent,
11 can come in and say, Wait, wait, wait, let me get to the
12 bottom of this dispute. And they'll start talking to the
13 oldest sibling and the oldest sibling will tell them
14 everything that happened from the oldest sibling's point of
15 view. Then it gets to the younger kid's turn and they say,
16 Yeah, but dad, it went like this. And the dad said -- and
17 they cut you off. And they say, What about this question?
18 What about this question? And even the fairest parents at
19 some point figure out that's not really fair to the younger
20 one. You know, the ones who get to go first get their view
21 out and so many parents learn they'll wait to the end before
22 they start assessing and evaluating everything. It's hard to
23 do that after three works, but I'm going to try to ask you, as
24 best you can, late in the day to let us start with a clean
25 slate.

1 My -- well, I don't want to draw an objection. Some
2 people's grandfather's may have said in the past that the ears
3 can endure what the seat can absorb. Ears can endure what the
4 seat can absorb. And I think that's true in the courtroom.
5 And I know we're late and if you need to stand up some during
6 the argument, that's fine. I suspect more than one of you in
7 the back of your mind are going, how long is this guy going to
8 talk. Are we going to get to start deliberating today. And
9 what I can promise you is I could do this closing argument in
10 one minute, in one minute, and if the verdict came out against
11 me, I would never forget that. If it was one minute and we
12 got an acquittal, I'd be brilliant, I'd love it. But there's
13 so much in play here that I'm going to take my time to get
14 through it. But it could be done in one minute, easily.

15 Anabel Espindola said there was no disagreement.
16 Deangelo Carroll, you hear his words, cops sent him in to get
17 evidence. The woman from the jail, she said there was a
18 confession. The confession from Anabel Espindola did not
19 involve any involvement in the murder by Little Lou Hidalgo.
20 Mr. H, he took the stand. He said there was not even a
21 disagreement. There was no talk at all, no plan. Little Lou
22 had no involvement in anything. Wasn't in management
23 decisions. No evidence that he was involved in a murder or a
24 conspiracy which requires some sort of agreement.

25 As to the solicitation for murder charges, they

1 charged him with two apparently. There's also some comments
2 about doing something with Kenneth Counts on there. They
3 didn't charge with him that, but they charged him with two.
4 There was no evidence that he said anything before Deangelo
5 Carroll showed up and banged on his door, his room. He made
6 the rat poison comments. Anabel Espindola, who's known the
7 guy since he was eight years old, knows him well, said she'd
8 seen him in all sorts of moods, so she knows when he's serious
9 and she knows when he's stupid. And how'd she take those
10 comments? Stupid.

11 What happened after Deangelo Carroll left? Well, he
12 turned over a bottle of tequila he left with -- or gin that he
13 left with, but what else happened? Nothing. The next day he
14 shows back up with a wire. No more conversation. Why didn't
15 you poison those guys? I told you to get this done. That
16 didn't exist. You could acquit with a one-minute closing
17 argument. You have all the evidence you need, but it wouldn't
18 touch on things like Mr. Pesci raised about the wire. It
19 wouldn't touch on the Don Dibble note in the room. And I
20 don't know what all you guys may talk about back in the
21 deliberation room, so I'm going to take a little more time
22 with that.

23 As for the wire, Anabel Espindola said, she
24 testified, When I was in the room, we asked him about a wire.
25 Nobody frisked him. Little Lou didn't pat him down and do a

1 body search. He pulled his shirt up and said, Ms. Anabel, I'm
2 not wired. And right after that part on the tape, within 30
3 seconds of that, Anabel starts talking for the first time.
4 She's in the room. He pulls his shirt up and is wired.
5 Little Lou wasn't the bodyguard frisking anybody down.
6 There's no evidence of that. Mr. Pesci argued something that
7 there's no evidence to support.

8 The note by down Dibble in there, well, he knew --
9 he knew May 23rd and knew like May 24th when the search
10 warrant was done that his father wasn't acting normal. He
11 knew he was seldom withdrawn. He knew Anabel really well.
12 She, in that time -- we'll talk about the time line in a
13 minute -- she lost a day. She thought the meeting with the
14 lawyer occurred a day earlier and her explanation for that is
15 that she just doesn't know what happened to the time. Things
16 were so crazy then.

17 They went to see a lawyer, they got cards and they
18 came back and said, Don't talk to -- don't talk to Deangelo.
19 If anything -- and his father said, If anything happens to us,
20 call these guys. That's not his handwriting on the note.
21 That's not his handwriting with Don Dibble. It was on his
22 desk, big smoking gun, I guess.

23 I need to talk with you for a few minutes about some
24 of the law. And I think that's been done a lot with you
25 already and I'm just going to talk about a few principles that

1 I hope will help you and will guide you when you're back in
2 deliberations.

3 The first is the presumption of innocence. We've
4 all heard that in this country, that you're presumed innocent.
5 What does that mean? What does it really mean? It doesn't
6 mean that a bunch of guilty people should get acquitted
7 because of some principle. What it means is -- and you've
8 taken a oath to presume Little Lou innocent. You could listen
9 to every inference, every little fact and you could spin it,
10 you could twist it, you could turn it in some sinister way
11 that points to guilt. Nothing anyone can do to stop you at
12 this point. Or you can take every fact and look at it through
13 the lens of that presumption of innocence and say, does
14 this -- must this point towards guilt or is there another way
15 that this could point. If there's another way that this could
16 point, then that's what I need to do. I need to look at it as
17 if this man's really innocent. And if there's multiple
18 interpretations of a single piece of evidence, it is
19 consistent with your oath to give the interpretation that lead
20 you to acquittal.

21 The burden of proof in this case, as in every case,
22 is not on us, not on us. We don't have to prove a thing. And
23 maybe we haven't, but we certainly don't have to. The State
24 has to prove everything. They have to fill in all the holes.
25 Now, the Judge told you, and you'll get the instruction, you

1 can use your common sense and you absolutely can and we
2 welcome it. We welcome you especially to use your common
3 sense when you evaluate what the evidence means on that body
4 wire on May the 23rd. Please use your common sense on that.
5 Please use your common sense when you think about the prep
6 session that McGrath had with Deangelo Carroll before he went
7 into that room, what Deangelo Carroll was trying to get on
8 that tape. Please use your common sense for that.

9 But if the government asks you to use your common
10 sense, please think very carefully. Are they asking me really
11 to speculate? Are they asking me to fill in holes where maybe
12 there ought to be real evidence? Because if they're asking me
13 to do that, my common sense is going to say no. Common sense
14 can't be used to create evidence where there's gaps and holes
15 in the government's case.

16 I talked to you a moment ago about you've taken an
17 oath to follow the law as the Judge gives it and the
18 presumption of innocence, and I don't mean that to be -- well,
19 I guess I mean for that to be slightly heavy handed. I don't
20 mean for that to be too heavy handed. We've taken oaths as
21 lawyers, the Judge has taken oaths, and there's something that
22 we really need to search our soul when we think about how we
23 deal with evidence because you've taken an oath to follow the
24 law and all of a sudden they gave you 60 principles of law
25 this afternoon, and I know that's hard to process. You guys

1 have taken your job very seriously. We can all see that. We
2 thank you for it. You've run through a bunch of pens and a
3 bunch of pads and you've worked hard with the evidence and we
4 ask you to continue that for just a few more hours, please.

5 I'd like to talk to you now -- and maybe I'll skip
6 over some stuff as I -- as I can. I'd like to talk to you now
7 about the time line in the case and then I want to talk to you
8 about some things the government promised in their opening
9 statement that didn't get proved up in court. Then I want to
10 talk to you about specific charges. But I think to make the
11 talk about the specific charges to make the most sense and
12 perhaps be the most concise, it's important to go through a
13 little bit of the time line. So I've got time line all over
14 the place.

15 It's starts here with Defense Exhibit CC and it goes
16 to DD. Then I've got some stuff to add in, which is -- I told
17 Mr. DiGiacomo at the break, we do that where I'm from and
18 that's our PowerPoint, so I hope you forgive me. I've got
19 some things to add in to the time line over here and I suspect
20 you might not see everything so I may stop and I'll move it
21 around when we get to that point.

22 Before we get to CC, Defense Exhibit CC, which
23 starts with a call from PK to Anabel at 3:51 p.m. on the 19th,
24 the day Mr. Hadland was killed up by the lake, what happened
25 before then? Well, if we take a step back, we know

1 Mr. Hadland was let go from the club a week or two before.
2 And there apparently were some suspicions and I'm not trying
3 to say anything in front of -- his family had been so nice to
4 us, I'm not saying he was stealing. I don't have -- I don't
5 know -- I haven't heard any evidence in the courtroom that
6 that was true. I've heard suggestions of that. But he was
7 let go. That's clear. He left the club.

8 From the time he left the club up until this day, we
9 didn't hear a single witness who came in court who said TJ
10 Hadland was out badmouthing the club, none. Nobody said he
11 was out at other clubs badmouthing the club, not a single cab
12 driver came in and said, Boy, TJ came up to us in the cab line
13 and was saying, boy, never take anybody to the Palomino.
14 They'll cheat you out of your money you're owed. Nobody was
15 doing that. So in that time period, there's no motive that we
16 know of which was created.

17 At noon, and this is important, at noon on May the
18 19th, what happened? Rontae Zone said -- and you know, I
19 think -- does Rontae Zone wear a watch? I don't know if he
20 wears a watch, but he was pretty clear it was early in the
21 day. He said around noontime. They asked him, Was it
22 noontime? Yeah. What happened? He said, At noontime
23 Deangelo Carroll said to me and Jayson, he said, somebody
24 needs to be dealt with. Needs to be dealt with. Never said
25 somebody needs to be killed, never said Mr. Hadland needs to

1 be killed. He said somebody needs to be dealt with. How
2 come? Well, they're snitching, they're ratting, they're
3 talking. Snitch and rat and talk. It doesn't -- I don't know
4 what that means. It doesn't sound like somebody is griping,
5 bitching, and moaning about their old employer. It sounds
6 like something different, but we don't know.

7 Then he said Deangelo said something about bats and
8 bats, bats and bags. We know from the evidence no bat was
9 ever grabbed, no bag was ever gathered up. There was nothing
10 else about that at all. But they're saying sometime around
11 this time, bats and bags.

12 In cross-examination of Mr. Zone -- because early in
13 direct he said, yeah, and he said Little Louie said that, to
14 bring the bats and bags. In cross-examination, he said
15 Mr. Zone -- and he ended up talking with me, talking with you
16 all and he said -- or I'm sorry, talking with you in the
17 plural sense, he said that Little Lou's name in relation to
18 Mr. Hadland didn't even get mentioned until the 20th, until
19 the 20th, the same day Deangelo was coming up with the story
20 that he was going to work on in case the cops tracked him
21 down. Do you remember that? I mean, he said that pretty
22 clearly.

23 He said bats and bags was said, noontime, noontime
24 on the 19th Little Lou's name wasn't put by Deangelo, put with
25 Little Lou until the next day. That's going to be important,

1 I think, for you in a second.

2 Let's go back over here to some phone records.
3 Deangelo Carroll called Ms. Anabel Espindola at 4:58 p.m. She
4 also -- he also called her again at 7:27 p.m. 70-second call
5 and a 225-second call. Now, we've got a bunch of calls down
6 here, one with Kenneth Counts' phone to her. Her testimony
7 is, the best she remembers it, she talked to Deangelo twice on
8 the 19th, one earlier that had to deal with Mr. Hadland and
9 one later where she said, Go to plan B, get back here, twice.

10 She was pressed on that, I think, by every lawyer in
11 the building and she said, No, I only spoke to him twice.
12 Well, I don't know that it's super important which one of
13 these is supposedly Mr. Hadland's badmouthing the club, but it
14 does make a bit of a difference because there's two and a half
15 hours in between. This one's a longer call which suggests
16 maybe they talked more. This one is -- 70 is shorter. It
17 really looks as if -- because these certainly would be longer
18 than just leaving a message. This certainly looks as if they
19 talked twice early in the night. Maybe Anabel was wrong on
20 that fact.

21 At any rate, the government's theory is that one of
22 these two calls, probably the 4:58 one, was -- Hadland says --
23 Hadland's badmouthing the club, Ms. Anabel, what do you want
24 me to do? Why is that important? It's important because at
25 noontime Deangelo -- according to Rontae, Deangelo was already

1 coming up with a plan. He was already thinking ahead about,
2 got to do something with TJ. Why? Why? Their theory, and
3 they've maintained it, is that this call set it all in motion
4 and Little Lou being a hot-headed puck yapped at his old man,
5 yapped at him, ticked him off, made him so mad that Mr. H
6 would order the death of somebody. That's their theory. And
7 that somehow they got back together later and talked, made up
8 and said, Can you call Deangelo for me and get him over here?
9 Maybe ask him to bring some bats and bags. Of course, there's
10 no evidence of that.

11 Anabel says that there was an argument and then
12 Anabel says, I didn't see -- I was with Mr. H the rest of the
13 night, we were never apart, and Little Lou was nowhere around.
14 So where were they supposed to have this conversation about,
15 Call Deangelo, get him to come over to the club with bats and
16 bags? I think that's a pretty good question, a pretty fair
17 question, and it's a question that has not been answered by
18 any of the evidence presented by the State.

19 So we've got these calls. Little Lou calls at
20 7:42 p.m. There was a suggestion that was a call about bats
21 and bags, but Mr. Zone was really helpful on that point.
22 Mr. Zone testified on cross-examination again that, well,
23 gosh, sometime before we went out that night Deangelo said
24 that Little Lou called from work and said they talked about a
25 pickup and he had to go to work, not about bats and bags.

1 That fits perfectly, perfectly with the 9:00, 9:30 pickup to
2 get PK's McNealis Construction group into the club and the
3 limo. Little Lou was responsible for the pickups and he's got
4 a call to Deangelo's home at 7:42. That's their only call all
5 night.

6 And Rontae says Deangelo said he had to go by the
7 club because he got called by Little Lou to come to work, not
8 bats and bags. And that's it. It's one minute -- or one
9 minute and 18/10ths of another minute, so somewhere around one
10 minute and ten seconds or so, plenty of time to say, Yo,
11 you've got this pickup. Where are you? Are you coming in
12 tonight? Shouldn't you already be at the club? Is the limo
13 clean? You know, PK's going to be really hot tempered if this
14 thing gets screwed up again. Plenty of time for that
15 conversation.

16 And I'm going to -- since Little Lou is not involved
17 in any more of these calls -- and I didn't put every call in
18 the record. You'll have the full records. I didn't put every
19 call, but I put every one that seemed important for these
20 issues, so if there's one missing, please understand that I
21 was trying to do it in a way that would be helpful, the most
22 helpful for you in analyzing the evidence.

23 Anabel tries Deangelo at 8:13. Anabel tries
24 Deangelo at 8:15, 6-second call. Anabel talks to PK at 8:42.
25 You can bet your bottom dollar what that one was about. He's

1 going to screw this up. I've got those guys waiting. This is
2 going to make me look bad.

3 Deangelo chirps Timothy Hadland at 10:39. Now, at
4 this point, the evidence certainly suggests Little Lou wasn't
5 involved in any planning, but there's a lot of communication
6 between Anabel and a lot with Deangelo, and whatever Deangelo
7 was starting at noontime seemed to be coming true, coming to
8 fruition at 10:39 because within about an hour Mr. Hadland lay
9 shot and left for dead up by the lake.

10 There's a bunch more chirps, 25 seconds, 8 seconds,
11 12 seconds, 7.6 seconds to Mr. Hadland. DC chirps him again
12 at 10:54, 21 seconds, very consistent with Paijik Karlson
13 saying he was called about meeting up for some marijuana, very
14 consistent with Rontae saying he said he had a blunt for him.
15 It's very consistent testimony.

16 Let me try this, let me try putting these together
17 and see if this -- and if you really can't see, just sort of
18 waive and I'll bring it over. Then we get to around
19 11:00 o'clock and it really picks up. Anabel chirps Deangelo.
20 She chirps him again for 13 seconds at 11:08.

21 Then we get to Kenneth Counts. Kenneth Counts' cell
22 phone calls Anabel Espindola. Did you hear any evidence about
23 what that was about? I did not and I was listening very
24 closely for that. The suggestion is that somehow Deangelo's
25 little chirper was out of range. He must have turned while

1 driving the van and said, Yo, let me borrow your phone. I
2 need to call Anabel to talk about your envelope in case
3 something happens out here. That's great, but Kenneth Counts
4 didn't testify. Deangelo did not testify. Rontae Zone did
5 testify.

6 Rontae Zone said nothing was passed between Kenneth
7 Counts and anyone else in that van, anyone else except the
8 blunt. That was the only thing that was being passed around.
9 He was sitting right there. There was never a conversation
10 about changing over. What's that about? Well, maybe Deangelo
11 borrowed his cell phone and called Anabel. Maybe Kenneth
12 Counts called Anabel to talk about what the payout would be if
13 he went through with this.

14 She tried him back at 11:12:58. Deangelo chirps
15 Mr. Hadland at 11:13 for 13.6 seconds. Very consistent with
16 what Rontae was saying about, Hey, we're driving around out
17 here, we can't see you, keep having to go back and get more
18 cell service. And then we don't -- we don't hear from
19 Mr. Hadland again after this 11:13 call.

20 Anabel chirps Deangelo at 11:37. Deangelo calls her
21 right back, 21 seconds. Ms. Anabel, it's done. The first
22 gentleman who drove by, Ishmael Madrid, I believe was his
23 name, one of the very first witnesses -- it seemed like so
24 long ago now -- Mr. Madrid called in 9-1-1 around 11:44.
25 Sometime during this time, a sweating, a cocaine ingested --

1 and cocaine doesn't make you kill somebody, but we know
2 Deangelo Carroll told his wife he did cocaine that night. He
3 was driving Anabel's van back to the Palomino to get paid. He
4 wasn't asking for Little Lou Hidalgo, asking for Anabel.

5 5/20, May 20th, there's a chirp at 12:10. Those
6 chirpers are used -- the evidence was they're used so much,
7 you know, it's hard to know if that means they're still coming
8 to the club or already there. I don't know that that helps us
9 tighten down the time line any, but we know that Anabel was
10 gambling about 2:37, I think, was the testimony at the MGM.
11 She chirps Deangelo for 7.4 seconds at 2:53 a.m. right around
12 the time the carwash would have happened, clean that van, try
13 to get rid of whatever evidence might be there.

14 Anabel did testify she never talked to Deangelo
15 again after he left the office until he showed up on the
16 23rd with a wire. I believe that was her testimony. That's
17 my memory of it. She apparently was contradicted by the phone
18 records. Unless somebody else had her phone, running around
19 with her phone, she's chirping Deangelo at these calls which
20 are in the p.m. I think this one was in the a.m. I may have
21 mislabeled that. At any rate, there were these four calls,
22 which combined, aren't really long calls, but they were on the
23 day of the 20th.

24 A couple of things, backing up to the 19th, that
25 apparently I skipped over. We had testimony in here and the

1 time line's not real clear, sometime around 8:00 o'clock at
2 night, 8:00 to 9:00, Mr. Hidalgo was there. He was
3 reprimanding Arial because he had reports about the van being
4 trashed and reeking of smoke. PK was upset about his clients,
5 and that was sometime in that same ballpark, 8:00, 9:00,
6 10:00 o'clock at night. And we learned later from the tape --
7 or the CD from the jail call that sometime Deangelo went home
8 or went somewhere and did some cocaine.

9 Early morning hours, 12:00, 12:30, 1:00 o'clock,
10 Deangelo comes into the club, again, not looking for Little
11 Lou. He gets five grand. He leaves the club. We don't know
12 how he splits it up with Kenneth Counts. There was some
13 testimony about Kenneth Counts needing some money found --
14 when they found him in the attic, they went back and flipped
15 his house pretty good and they got some money back, but it
16 wasn't \$5,000. And I went through my notes and couldn't find
17 it. I think it was 2800, but I'm not positive on that, so
18 please trust your own memory. But there's some unaccounted
19 for money that Kenneth Counts could have had or Deangelo could
20 have taken a cut before he gave the rest out.

21 They go to the carwash and then they go home and go
22 to sleep. The next morning on the 20th they get up and handle
23 the tires. And it's interesting, they don't go to Simone's
24 where Mr. H would see them. They get a hundred-dollar bill
25 and they go somewhere else to cut the tires and try to get rid

1 of the evidence. And they go to the 7-Eleven, they go to the
2 I-Hop where Deangelo's picking up breakfast for everybody.
3 Then he goes to the barbershop where -- I don't know if he
4 looked like Don King before or not. I've seen Don King once.
5 He's a very distinctive looking man, but certainly when
6 Deangelo Carroll left the barbershop, he would not be mistaken
7 for Don King anymore. So we've seen his booking photo. He
8 was pretty cut.

9 Sometime during this late morning, early afternoon
10 of the 20th, Deangelo started coming up with a story, and we
11 heard that from Rontae. Rontae said, Yeah, he was telling me,
12 boy, here's what we tell the cops if the cops come. Here's
13 what we've got. He was scared and he was trying to create
14 some cover so he could not get arrested, wouldn't get put in
15 jail. That, that day, is when Little Lou was mentioned for
16 the first time.

17 Later that night the police come, they get Deangelo.
18 Apparently, there were multiple stories Deangelo told them.
19 They later went at 1:00 a.m. on the 21st and picked up Rontae.
20 Rontae came in and he said very candidly, I lied to them. I
21 told them some lies. Deangelo told me to tell the truth. I
22 didn't know, you know, kind of -- I didn't know which truth he
23 was talking about. So he started off telling some lies and he
24 said the detective scared him pretty good. And I said, They
25 cussed you? You know, I don't want to say it. We've heard

1 enough of that here. He said, Yeah, I mean, they did. They
2 cussed me and they did this, but I told them what I knew, as
3 best he knew it. As he said, he never spoke to Little Lou.
4 He had no firsthand knowledge. Any information linked back to
5 Little Lou, he said, came through Deangelo Carroll.

6 And I said, Rontae, how long have you known him?
7 Five or six -- well, I said, Mr. Zone, how long had you known
8 him? Five or six years. Know him pretty well? Yes. Living
9 with him, he and his -- the mother -- I can't remember her
10 name, Christa, maybe, the woman who was going to give birth to
11 his child, they moved in to Deangelo and his wife's house.
12 They were that close of friends. They were sharing an
13 apartment and they were spending that time together. And they
14 were coming up with a story on where to shift blame.

15 On the 21st Mr. Hidalgo and Anabel go to meet the
16 lawyer, Jerry DePalma. Mr. Don Dibble was there. Little Lou
17 was not there. Mr. Dibble testified he was shocked when he
18 found out a few days later Little Lou had been arrested. Had
19 no idea. It wasn't the subject of anything. The talk was
20 about paying money and how they messed up by paying money in
21 this fearful situation. Anabel did 90 percent of the talking.

22 Well, Anabel doesn't remember it that way. And
23 there's certainly been a suggestion out there that she's lying
24 through her teeth to you. It could be, it could be that she
25 was still -- that it was so confusing, I mean, really

1 confusing for her during this time. I suspect nobody's
2 sleeping very well after they find out a van they own is at a
3 murder scene that they didn't know was going to happen. And
4 there's a panic and there's fear and there's a lot of stuff
5 going on that I've never dealt with in my life. I don't know
6 how I'd react. I'd like to think I'd pick up the phone and
7 call the police. That's what I'd like to think. I don't know
8 what I'd do.

9 But what they did is they went to the lawyer on the
10 21st to try to say, Are we going to have a problem with our
11 license? We could have problems -- this Deangelo went off.
12 These people were in the van. We paid money. What are we
13 going to do? But the important thing for me, the important
14 thing for John and Little Lou is that he was not there. He
15 was not part of the top management circle of the club. You
16 know, he's the son, the young son. He's got a good job at
17 club, but he's not there getting lawyered up or getting the
18 advice on, How do we protect the license, what do we do as
19 damage control. He's just -- he wasn't that -- in that
20 echelon of management.

21 5/22, Mr. Gentile had come back into town.
22 Mr. Hidalgo's lawyer, either opponent or his personal lawyer,
23 depending on which case it was, I guess, and they came and met
24 and again Little Lou wasn't brought to that meeting. And
25 again, nobody knew there was a need to bring him.

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

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

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

1 that will get us some evidence. Go.

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

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

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

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

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

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

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

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

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

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

1 eligible. She was death penalty eligible --

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

3 THE COURT: Overruled.

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

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

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

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

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

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

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

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

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

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

20 THE COURT: Sustained.

21 MR. ADAMS: That's an --

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

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

25 THE COURT: All right.

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

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

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

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

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

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

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

7 The Court, That's sustained. Sustained.

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

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

12 MR. DIGIACOMO: Right.

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

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

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

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

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

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

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

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

20 (Playing tape)

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

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

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

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

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

1 get a laugh and it got nothing. So I'll try it again.
2 Hopefully you're a -- maybe we've spent a little more time
3 together.
4 There's nothing but disagreement, nothing but
5 disagreement, according to Anabel Espindola. She said there
6 was an argument, a fight, not an agreement. I mean, an
7 agreement is, Hey, dad, want to do something about this? Yes,
8 son, what are your ideas? I don't know, let's go through the
9 possibilities. We could do nothing. We could beat him. We
10 could beat him up real bad and try to hospitalize him. We
11 could kill him. What do you think, dad? Oh, son, I think the
12 only way to handle this is to kill him. Good. Let's agree to
13 it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: All right.

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

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

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

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

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

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

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

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

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

25 He wrote her. They introduced into evidence a

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

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

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

1 person. It was stupid.

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

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

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

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

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

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

23 Thank you.

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

25 Mr. DiGiacomo.

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

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

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

5 STATE'S CLOSING ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 same analysis you do of Anabel Espindola? Absolutely.

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

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

7 So go on, Mr. DiGiacomo.

8 MR. DIGIACOMO: Thank you.

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

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

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

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

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

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

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

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

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

25 MR. GENTILE: Objection. Objection. Deangelo

1 Carroll is saying that.

2 MR. DIGIACOMO: Deangelo Carroll --

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

5 MR. DIGIACOMO: Correct, right.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 THE COURT: Overruled.

21 MR. DIGIACOMO: Thank you.

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

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

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

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

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

4 Can you stick this on me, Janie?

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

6 MR. DIGIACOMO: There it is.

7 (Playing tape)

8 MR. DIGIACOMO: That's May 24th, Anabel Espindola.

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

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

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

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

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

20 (Playing tape)

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

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

10 Thank you.

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

13 (Officer sworn)

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

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

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

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

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

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

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

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

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

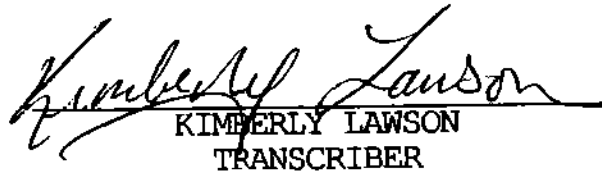
21 THE COURT: Well, leave numbers -- don't -- why
22 don't you do this. Don't leave the courtroom yet because as
23 soon as Jeff gets them in the room, I'm going to find out what
24 they want to do and we can, you know, let you -- so everybody
25 just wait.

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

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


KIMBERLY LAWSON
TRANSCRIBER

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INST

ORIGINAL

FILED IN OPEN COURT
EDWARD A. FRIEDLAND
CLERK OF THE COURT

FEB 17 2009

BY: Denise Husted
DENISE HUSTED, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS HIDALGO, III, and
LUIS HIDALGO, JR,

Defendant.

CASE NO: C212667/C241394

DEPT NO: XXI

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

2609

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

A Fourth Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt and does not create any presumption or permit any inference of guilt.

In this case, it is charged in a Fourth Amended Information that on or between the 19th day and the 24th day of May, 2005, the Defendant, LUIS HIDALGO, III, having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030, 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), and SOLICITATION TO COMMIT MURDER (Felony - NRS 199.500), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT MURDER

Defendant LUIS ALONSO HIDALGO, III, along with co-conspirators KENNETH JAY COUNTS, ANABEL ESPINDOLA, DEANGELO RESHAWN CARROLL and JAYSON TAOIPU did, on or about May 19, 2005, then and there meet with each other and/or Luis Hildago, Jr. and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: the murder of TIMOTHY JAY HADLAND, and in furtherance of said conspiracy, the Defendants and/or their co-conspirators, did commit the act as set forth in Count 2, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

Defendant LUIS ALONSO HIDALGO, III, along with co-conspirators KENNETH JAY COUNTS, ANABEL ESPINDOLA, DEANGELO RESHAWN CARROLL and JAYSON TAOIPU did, on or about May 19, 2005, then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill TIMOTHY JAY HADLAND, a human being, by shooting at and into the body and/or head of said TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a

1 firearm, the Defendant being liable under one or more of the following theories of criminal
2 liability, to-wit: (1) by aiding and abetting the commission of the crime by, directly or
3 indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring
4 each other to commit the crime, to-wit: by DEFENDANT Luis Hidalgo, III and/or Luis
5 Hidalgo, Jr., procuring Defendant DEANGELO CARROLL to beat and/or kill TIMOTHY
6 JAY HADLAND; thereafter, Defendant DEANGELO CARROLL procuring KENNETH
7 COUNTS and/or JAYSON TAOIPU to shoot TIMOTHY HADLAND; thereafter, Defendant
8 DEANGELO CARROLL and KENNETH COUNTS and JAYSON TAOIPU did drive to the
9 location in the same vehicle; thereafter, Defendant DEANGELO CARROLL calling victim
10 TIMOTHY JAY HADLAND to the scene; thereafter, by KENNETH COUNTS shooting
11 TIMOTHY JAY HADLAND; and/or (2) by conspiring to commit the crime of battery
12 and/or battery with use of a deadly weapon and/or battery resulting in substantial bodily
13 harm and/or to kill TIMOTHY JAY HADLAND whereby each and every co-conspirator is
14 responsible for not only the specific crime intended, but also for the natural and foreseeable
15 general intent crimes of each and every co-conspirator during the course and in furtherance
16 of the conspiracy.

17 COUNT 3 - SOLICITATION TO COMMIT MURDER

18 Defendant LUIS ALONSO HIDALGO, III did, on or between May 23, 2005, and
19 May 24, 2005, then and there willfully, unlawfully, and feloniously counsel, hire, command
20 or other solicit another, to-wit: DEANGELO CARROLL, to commit the murder of
21 JAYSON TAOIPU; the defendant being liable under one or more theories of criminal
22 liability, to-wit: (1) by directly or indirectly committing the acts constituting the offense;
23 and/or (2) by aiding and abetting the commission of the crime by, directly or indirectly,
24 counseling, encouraging, hiring, commanding, inducing or otherwise procuring ANABEL
25 ESPINDOLA to commit the crime.

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2 **COUNT 4 – SOLICITATION TO COMMIT MURDER**

3 Defendant LUIS ALONSO HIDALGO, III did, on or between May 23, 2005, and
4 May 24, 2005, then and there willfully, unlawfully, and feloniously counsel, hire, command
5 or other solicit another to-wit: DEANGELO CARROLL, to commit the murder of
6 RONTAE ZONE; the defendant being liable under one or more theories of criminal liability,
7 to-wit: (1) by directly or indirectly committing the acts constituting the offense; and/or (2) by
8 aiding and abetting the commission of the crime by, directly or indirectly, counseling,
9 encouraging, hiring, commanding, inducing or otherwise procuring ANABEL ESPINDOLA
10 to commit the crime.

11 It is the duty of the jury to apply the rules of law contained in these instructions to the
12 facts of the case and determine whether or not the Defendant is guilty of one or more of the
13 offenses charged.

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INSTRUCTION NO. 4

An Amended Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt and does not create any presumption or permit any inference of guilt.

In this case, it is charged in an Amended Indictment that on or about the 19th day of May, 2005, the Defendant, LUIS HIDALGO, JR., having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030, 199.480); and MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), committed at and within the County of Clark, State of Nevada, as follows:

COUNT 1 - CONSPIRACY TO COMMIT MURDER

did, on or about May 19, 2005, then and there, meet with Deangelo Carroll and/or Luis Hidalgo, III and/or Anabel Espindola and/or Kenneth Counts and/or Jayson Taoipu and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendant and/or his co-conspirators, did commit the acts as set forth in Count 2, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

did, on or about May 19, 2005, then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill TIMOTHY JAY HADLAND, a human being, by shooting at and into the body and/or head of said TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a firearm, the Defendant being liable under one or more of the following theories of criminal liability, to-wit: (1) by directly or indirectly committing the acts with premeditation and deliberation and/or lying in wait; and/or (2) by aiding and abetting the commission of the crime by, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring another to commit the crime, to-wit: by defendant along with LUIS HIDALGO, III procuring DEANGELO CARROLL to beat and/or kill TIMOTHY JAY HADLAND; thereafter, DEANGELO CARROLL procuring KENNETH COUNTS and/or JAYSON TAOIPU to

1 shoot TIMOTHY HADLAND; thereafter, DEANGELO CARROLL and KENNETH
2 COUNTS and JAYSON TAOIPU did drive to the location in the same vehicle; thereafter,
3 DEANGELO CARROLL calling victim TIMOTHY JAY HADLAND to the scene;
4 thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; defendant
5 paying \$5000.00 or \$6000.00 to DEANGELO CARROLL for the killing of TIMOTHY JAY
6 HADLAND; and/or (3) by conspiring to commit the crime of battery and/or battery resulting
7 in substantial bodily harm and/or battery with use of a deadly weapon on the person of
8 TIMOTHY JAY HADLAND whereby each and every co-conspirator is responsible for the
9 reasonably foreseeable general intent crimes of each and every co-conspirator during the
10 course and in furtherance of the conspiracy and/or (4) by conspiring to commit the crime of
11 murder of TIMOTHY JAY HADLAND whereby each and every co-conspirator is
12 responsible for the specific intent crime contemplated by the conspiracy.

13 It is the duty of the jury to apply the rules of law contained in these instructions to the
14 facts of the case and determine whether or not the Defendant is guilty of one or more of the
15 offenses charged.
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INSTRUCTION NO. 5

In this case the Defendants are accused in an Information or Indictment alleging an open charge of murder. This charge includes and encompasses murder of the first degree, murder of the second degree and involuntary manslaughter.

INSTRUCTION NO. 6

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. 2

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. 8

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 9

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO. 10

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. 11

Murder which is immediately preceded by lying in wait is murder of the first degree.

The term "lying in wait" is defined as a waiting and watching for an opportune time to act, together with a concealment by ambush or some other secret design to take the other person by surprise. The lying in wait need not continue for any particular period of time provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.

To constitute murder by means of lying in wait there must be, in addition to the aforesaid conduct by the defendant, an intentional infliction upon the person killed of bodily harm involving a high degree of probability that it will result in death and which shows a wanton disregard for human life.

INSTRUCTION NO. 12

Although your verdict must be unanimous as to the charge, you do not have to agree on the principle of guilt or theory of liability. Therefore, even if you cannot agree on whether the facts establish premeditated and deliberate murder, or lying in wait, or liability as a principle, an aider and abettor or as a co-conspirator, so long as all of you agree that the evidence establishes Defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

All murder which is not Murder of the First Degree is Murder of the Second Degree.

Murder of the Second Degree is:

1. Murder with malice aforethought, but without the admixture of premeditation and deliberation, or
2. An involuntary killing which occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being; or
3. An involuntary killing which is committed in the prosecution of a felonious intent.

INSTRUCTION NO. 14

Involuntary Manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act or a lawful act which probably might produce such a consequence in an unlawful manner; but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is Murder.

Battery Resulting In Substantial Bodily Harm and Battery With Use of a Deadly Weapon are felonies. A Battery is a misdemeanor.

INSTRUCTION NO. 15

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy begins when two or more persons enter into agreement for an unlawful purpose. A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime. However, a person cannot become a member of a conspiracy after the object of the conspiracy has been accomplished. If a person was not a member of the conspiracy before its objective was accomplished but assists the conspirators afterwards, he is an accessory after the fact, not a co-conspirator.

INSTRUCTION NO. 11e

Once a person joins a conspiracy, that person remains a member until he withdraws from it. A person can withdraw from a conspiracy by taking some positive action which disavowed or defeated the purpose of the conspiracy. It is not enough if the evidence shows that the defendant merely ceased his own activities in furtherance of the conspiracy.

The state has the burden of proving beyond a reasonable doubt the defendant did not withdraw from the conspiracy.

INSTRUCTION NO. 17

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

INSTRUCTION NO. 198

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Specific intent is the intent to accomplish the precise act which the law prohibits. A general intent crime is one that does not require specific intent.

INSTRUCTION NO. 19

Murder in the First Degree is a specific intent crime. A Defendant can not be liable under conspiracy and/or aiding and abetting theory for First Degree Murder for acts committed by a co-conspirator, unless, Defendant also had a premeditated and deliberate specific intent to kill.

Murder in the Second Degree may be a general intent crime. As such, Defendant may be may liable under conspiracy theory or aiding and abetting theory for Murder of the Second Degree for acts committed by a co-conspirator if the killing is one of the reasonably foreseeable probable and natural consequences of the object of the conspiracy or the aiding and abetting.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 21

As a matter of law, one cannot aid and abet a murder after it has been accomplished.

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INSTRUCTION NO. 22

Where several parties join together in a common design to commit any lawful act, each is criminally responsible for the reasonably foreseeable general intent crimes committed in furtherance of the common design. In contemplation of law, as it relates to general intent crimes, the act of one is the act of all. Battery, Battery Resulting In Substantial Bodily Harm and Battery With A Deadly Weapon are general intent crimes. Second Degree Murder can be a general intent crime.

Additionally, a co-conspirator is guilty of the offenses he specifically intended to be committed. First Degree Murder is a specific intent crime.

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2 You are instructed that if you find that the State has established that the defendant has
3 committed conspiracy to commit murder you shall select conspiracy to commit murder as
4 your verdict. You may find the defendant guilty of conspiracy to commit a Battery With a
5 Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of
7 conspiracy to commit murder, and

8 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty
9 of the crime of conspiracy to commit a Battery With a Deadly Weapon and/or Battery
10 Resulting in Substantial Bodily Harm.

11 If you are convinced beyond a reasonable doubt that the crime of conspiracy has been
12 committed by the defendant, but you have a reasonable doubt whether such conspiracy was
13 to commit murder or battery with a deadly weapon, or battery resulting in substantial bodily
14 harm, you must give the defendant the benefit of that doubt and return a verdict of
15 conspiracy to commit a Battery With a Deadly Weapon and/or Battery Resulting in
16 Substantial Bodily Harm.

INSTRUCTION NO. 24

You are instructed that if you find that the State has established that the defendant has committed conspiracy to commit Battery With a Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm you shall select conspiracy to commit Battery With a Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm as your verdict. You may find the defendant guilty of conspiracy to commit a Battery if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of conspiracy to commit Battery With a Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of conspiracy to commit a Battery.

If you are convinced beyond a reasonable doubt that the crime of conspiracy has been committed by the defendant, but you have a reasonable doubt whether such conspiracy was to commit battery with a deadly weapon, or battery resulting in substantial bodily harm, or battery you must give the defendant the benefit of that doubt and return a verdict of conspiracy to commit a Battery.

INSTRUCTION NO. 25

Battery means any willful and unlawful use of force or violence upon the person of another.

A battery which occurs with a deadly weapon is a felony.

A battery which results in substantial bodily harm is a felony.

"Substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

A battery which occurs without a deadly weapon or does not result in substantial bodily harm is a misdemeanor.

INSTRUCTION NO. 26

An accessory after the fact is one who, after the commission of a felony harbors, conceals or aids such offender with intent that he may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest. One cannot be both an accessory after the fact and an aider and abettor or conspirator for the completed offense.

A defendant is not required to establish that he was an accessory after the fact beyond a reasonable doubt, but if along with all of the evidence in this case it raises in the minds of the jury a reasonable doubt as to whether the defendant was only an accessory after the fact, then, in that event, it would be your duty to return a verdict of not guilty.

INSTRUCTION NO. 27

A person who counsels, hires, commands or otherwise solicits another to commit murder, if no criminal act is committed as a result of the solicitation, is guilty of solicitation to commit murder.

Solicitation to commit murder requires the specific intent to kill.

INSTRUCTION NO. 28

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant is a participant and not merely a knowing spectator. However, the presence of one at the commission of a crime of another is evidence which can be considered in determining whether or not he is guilty of aiding or abetting, as well as the defendant's presence, companionship, and conduct before, during and after the participation in the criminal act.

INSTRUCTION NO. 29

You are instructed that if you find that the State has established that the defendant has committed first degree murder you shall select first degree murder as your verdict. The crime of first degree murder includes the crime of second degree murder. You may find the defendant guilty of second degree murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of the first degree, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

INSTRUCTION NO. 30

You are instructed that if you find that the State has established that the defendant has committed murder you shall select the degree murder as your verdict. The crime of murder includes the crime of involuntary manslaughter. You may find the defendant guilty of involuntary manslaughter if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of involuntary manslaughter.

If you are convinced beyond a reasonable doubt that a crime has been committed by the defendant, but you have a reasonable doubt whether such crime was murder or involuntary manslaughter, you must give the defendant the benefit of that doubt and return a verdict of involuntary manslaughter.

INSTRUCTION NO. 31

You are instructed that if you find a defendant guilty of Murder of the First Degree, or Murder of the Second Degree, you must also determine whether or not a deadly weapon was used in the commission of this crime.

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INSTRUCTION NO. 32

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon.

INSTRUCTION NO. 33

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon even though he did not personally himself use the weapon.

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for the offense, another person liable to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

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To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 35

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

INSTRUCTION NO. 20

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 38

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 38

In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict. Sentencing is a subject left to the discretion of the Court.

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INSTRUCTION NO. 39

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 40

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

This holds true, even if the statement was made by the co-conspirator prior to the time the defendant entered the conspiracy, so long as the co-conspirator was a member of the conspiracy at the time.

The statements of a co-conspirator after he has withdrawn from the conspiracy were not offered, and may not be considered by you, for the truth of the matter asserted. They were only offered to give context to the statements made by the other individuals who are speaking, as or adoptive admissions or other circumstantial evidence in the case.

An adoptive admission is a statement of which a listener has manifested his adoption or belief in its truth.

INSTRUCTION NO. 41

A conviction shall not be had on the testimony of an accomplice unless he or she is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is hereby defined as one who is liable for prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

To be an accomplice, the person must have aided, promoted, encouraged, or instigated by act or advice the commission of such offense with knowledge of the unlawful purpose of the person who committed the offense.

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

INSTRUCTION NO. 43

The fact that a witness was given an inducement in exchange for her cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

INSTRUCTION NO. 44

The determination of whether someone is an accomplice is left to the jury to decide, unless the witness' own statement leaves no doubt that he is subject to prosecution for the charged crime.

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INSTRUCTION NO. 145

In deciding whether to believe testimony given by an accomplice, you should use greater care and caution than you do when deciding whether to believe testimony given by an ordinary witness. Because an accomplice is also subject to prosecution for the same offense, an accomplice's testimony may be strongly influenced by the hope or expectation that the prosecution will reward testimony that supports the prosecution's case by granting the accomplice leniency. For this reason, you should view with distrust accomplice testimony that supports the prosecution's case. Whether or not the accomplice testimony supports the prosecution's case, you should bear in mind the accomplice's interest in minimizing the seriousness of the crime and the significance of the accomplice's own role in its commission, the fact that the accomplice's participation in the crime may show the accomplice to be an untrustworthy person, and an accomplice's particular ability, because of inside knowledge about the details of the crime, to construct plausible falsehoods about it. In giving you this warning about accomplice testimony, I do not mean to suggest that you must or should disbelieve the accomplice testimony that you heard at this trial. Rather, you should give the accomplice testimony whatever weight you decide it deserves after considering all the evidence in the case.

INSTRUCTION NO. 416

The accomplice corroboration rule is a separate and distinct legal requirement from the statements of a co-conspirator made in the course of and in furtherance of a conspiracy. When an accomplice testifies, their testimony must be corroborated. The other evidence in the case, including co-conspirator statements in the course and in furtherance of the conspiracy may be evidence utilized to establish the corroboration.

INSTRUCTION NO. 47

You are the sole judges of the credibility of the witnesses who have testified in this case, which means that you must decide which witnesses are to be believed and how much weight, if any, is to be given to the testimony of each witness.

In determining the credibility of a witness, you may consider anything which tends in reason to prove or disprove the truthfulness of his testimony, such as: his or her conduct, attitude and manner while testifying; whether the facts testified to by him or her are inherently believe able or unbelievable; his or her ability and opportunity to hear or see that about which he or she testified; his or her memory; his or her ability to relate such matters, whether or not there was any bias, interest or other motive for him or her not to tell the truth; any statement previously made by him or her that was consistent with his or her testimony or, conversely, any statement previously made by him or her that was inconsistent with his or her testimony; any admission by him or her that he or she did not tell the truth; and the reasonableness of his or her testimony considered in light of all the evidence in the case.

Also, in considering a discrepancy in a witness's testimony, you should consider whether such discrepancy concerns an important fact or only a trivial detail. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

Evidence of good character for truthfulness may be considered in judging the credibility of a witness.

INSTRUCTION NO. 48

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

INSTRUCTION NO. 49

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 50

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 51

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 52

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

Valerie Adon
DISTRICT JUDGE

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

Plaintiff,

vs.

KENNETH COUNTS,

Defendant.

)
)
) CASE NO. C212667
) DEPT. XXI BY

FEB 05 2008 20
CHARLES J. SHORT
 CLERK OF THE COURT
DEANISE HUSTED
 DEPUTY

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

Monday, February 4, 2008

RECORDER'S TRANSCRIPT OF HEARING RE:
JURY TRIAL - DAY FIVE
Portions of Proceedings
Jayson Taoipu's Testimony

APPEARANCES:

FOR THE STATE:

MARK DIGIACOMO, ESQ.
District Attorney
GIANCARLO PESCI, ESQ.
District Attorney

FOR THE DEFENDANT:

BRET WHIPPLE, ESQ.
KRISTINA WILDEVELD, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARReporting and Transcription Services

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I N D E X

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JAYSON TAOIPU

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1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 4, 2008, 9:10 A.M.

2 (Portion of proceedings started at 10:28 p.m.)

3 JAYSON TAOIPU, STATE'S WITNESS, SWORN

4 THE CLERK: Thank you. Please be seated and please state
5 and spell your name.

6 THE WITNESS: Jayson --

7 MR. WHIPPLE: May we approach? May we approach real quick?

8 THE COURT: Sure.

9 Well, state your name, sir.

10 THE WITNESS: Jayson Taoipu, J-a-y-s-o-n, Taoipu,
11 T-a-o-i-p-u.

12 THE COURT: All right. Thank you.

13 Counsel, approach.

14 (Off-record bench conference)

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

16 THE COURT: Yes, Mr. Pesci.

17 DIRECT EXAMINATION

18 BY MR. PESCI:

19 Q Jayson, this microphone's taking everything down. If
20 you could move in just a little bit closer to it and that way we can
21 hear your answers very clearly.

22 Sir, I want to direct your attention back to May 19th of
23 2005. At that time did you know someone by the name of Deangelo
24 Carroll?

25 A Yes, sir.

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1 Q Did you also know someone by the name of Rontae Zone?
2 A Yes, sir.
3 Q How did you know Rontae?
4 A Met him -- met him at a home girl named Shelley's
5 house.
6 Q Back around May 19th of 2005, were you spending time
7 with or hanging out with Rontae?
8 A (No audible answer.)
9 Q I apologize. Sometimes there's coughing, so just so
10 it's really clear for the audio recording, what was your answer?
11 A Yes, sir.
12 Q And around that time, did Rontae ever talk to you
13 about some employment opportunities that he knew of?
14 A Not at that time, sir.
15 Q Okay. Did he ever talk to you about possibly working
16 where he was working at the Palomino Club?
17 A Yes, sir.
18 Q Taking you to the day of May the 19th, 2005, did you
19 spend that day or a large part of the day with Rontae?
20 A Yes, sir.
21 Q Did you also spend some time with Deangelo Carroll?
22 A Yes, sir.
23 Q And the -- when did you first discuss the concept of
24 possibly promoting?
25 A Excuse me.

1 Q All right. Have you heard the term "promoting" or "to
2 promote"?

3 A Yeah.

4 Q Can you let the ladies and gentlemen of the jury know,
5 what does it mean to promote?

6 A To like hire or to hire for a job.

7 Q Okay. Were you ever approached about possibly
8 promoting for the Palomino Club with Rontae?

9 A Yes, sir.

10 Q And did that involve handing out flyers?

11 A Yes, sir.

12 Q Was there a time in the day -- well, before May 19th,
13 2005, did you ever meet Deangelo Carroll before that day?

14 A Yes, sir.

15 Q Had you spent time with him?

16 MR. WHIPPLE: Judge, objection as to leading at this point.

17 THE WITNESS: Off and on.

18 THE COURT: Well, it's a little bit foundational. I mean,
19 try to be a little less leading.

20 You can answer the question. It's overruled.

21 THE WITNESS: Off and on.

22 BY MR. PESCI:

23 Q On the 19th, tell us about the time you spent with
24 Deangelo and Rontae.

25 A We just -- I don't know. I can't think straight right

1 now. You've got to ask me questions.

2 Q Sure. Let me ask you this: At any point, did
3 Deangelo Carroll, if you know, leave his house and go to the Palomino
4 Club?

5 A Yes, sir.

6 Q When was that? How did that come about?

7 A Like in the morning. He was going to work at the
8 time.

9 Q And were you at Deangelo's house that morning of the
10 19th?

11 A Yes, sir.

12 Q Who else was there?

13 A Rontae Zone and Deangelo's girl.

14 Q And how did you know Deangelo was going to the
15 Palomino Club?

16 A He told me he'd be back.

17 Q Did Deangelo leave?

18 A Yeah.

19 Q Did he ever come back?

20 A Yeah.

21 Q When he came back, was Rontae still there?

22 A Yes, sir.

23 Q Okay. Was there a conversation had between you,
24 Deangelo and Rontae when Deangelo came back?

25 A Yes, sir.

1 Q Tell us about that.

2 A He was just telling us about passing out flyers and

3 we'd get like \$20 for it or whatever.

4 Q When you say "he," are you referring to Deangelo?

5 A Deangelo.

6 Q And when you say "we," are you referring to you and

7 Rontae?

8 A Deangelo -- yeah. Deangelo, me and Rontae.

9 Q Okay. Was there a conversation after the conversation

10 about promoting at some point in this day?

11 A After that, yeah.

12 Q All right. Tell us about that conversation.

13 A He said that his boss put him up on a job and he

14 came -- he came to us and asked if we wanted to do it.

15 Q When you say "he came to us" --

16 A Deangelo. Sorry.

17 Q No, no problem. Deangelo came to who, you?

18 A Me and Rontae.

19 Q And what did he tell you about this job?

20 A He just said that his boss told him that we needed to

21 do a job for somebody and that we needed to go make a hit.

22 Q Okay. Make a hit. Now, what did you understand "make

23 a hit" to mean?

24 A Kill.

25 Q Now, when you had this -- when this conversation

1 occurred, did Rontae, in your presence, indicate whether he was okay
2 with the hit, or not?

3 A From his -- like from his movements, he wasn't into
4 it.

5 Q Describe his movements. What is it that made you come
6 to that conclusion?

7 A He tensed up.

8 Q What did you say when Deangelo talked about doing the
9 hit?

10 A I didn't really say anything.

11 Q Did there come a point in time when you saw a gun
12 later that day?

13 A Yes, sir.

14 Q Tell us about that, how it came about.

15 A Deangelo went into his closet and grabbed a .22
16 revolver and gave it to me.

17 Q What did you do when he gave you the gun?

18 A I put it in my pocket.

19 Q Did you say, Hey, no, I don't want anything to do with
20 this, I'm not down with it?

21 A No, sir.

22 Q Did you indicate whether you were okay with it or not?

23 A Yes, sir.

24 Q What did you say?

25 A I just said -- I just asked him, You want me to hold

1 it? He was like, Yeah. And I just said, Okay.

2 Q Okay. Did you ever see any bullets during this time

3 period?

4 A Yes, sir.

5 Q Tell us about that.

6 A He had a bag of bullets in a grocery bag. He tossed

7 it to Rontae.

8 Q Was that in your presence?

9 A Yes, sir.

10 Q What did you see Rontae do with the bullets?

11 A Threw them on the ground.

12 Q When Rontae threw them on the ground, what did you do?

13 A Picked them up.

14 Q After you picked them up, what did you do with them?

15 A Put them in my pocket.

16 Q Did you ever load that gun?

17 A No, sir.

18 Q Did you then, at that point, have the gun and the

19 bullets on your person?

20 A Yes, sir.

21 Q Was there more conversations or discussions about this

22 hit?

23 A No, sir.

24 Q Was there any promoting that went on or any other

25 driving around that evening or afternoon?

1 A Not really.

2 Q All right. Tell us what happens after you grab the

3 gun and the bullets.

4 A Deangelo went to the back room and made a phone call.

5 Q Were you able to hear that phone call?

6 A No, sir.

7 Q After the phone call, what did Deangelo do?

8 A Just -- he came back into the front and then told me

9 and Rontae to, Come on.

10 Q When he said, Come on, did he say, Come on, we're

11 going to do the hit, or did he just say, Come on?

12 A He just said, Come on.

13 Q And what did you and Rontae do at that point?

14 A We left with him.

15 Q What did you leave in? What were you driving or what

16 was being driven?

17 A In a white van.

18 Q Had you seen that van before?

19 A No, sir.

20 Q Who was driving?

21 A Dean.

22 Q Who?

23 A Deangelo.

24 Q Who else was in the car?

25 A Me and Rontae.

1 Q What did the three of you do when you got into that
2 Astro van?
3 A We drove to the Palomino Club.
4 Q Had you been to the Palomino before?
5 A I had seen it around, but I ain't never been there.
6 Q What happened when you got to the Palomino?
7 A Deangelo put it -- pulled into the parking lot and
8 went inside. Me and Rontae was sitting in the car.
9 Q You stayed in the van?
10 A Yeah.
11 Q How come you didn't go inside?
12 A I don't know.
13 Q Did Deangelo say anything to you?
14 A Naw, he just told us to stay in the car. I'll be
15 back.
16 Q Did Deangelo eventually came back?
17 A Yeah.
18 Q What happened when he came back?
19 A He had flyers in his arm.
20 Q Are those flyers associated with the Palomino?
21 A Yes, sir.
22 Q What did the three of you do after you had got the
23 flyers?
24 A Went back to his -- to Deangelo's house.
25 Q When you went back to Deangelo's house, what happened

1 then?

2 A Just really nothing. Just sit down -- sit around.

3 Q During the course of this day when you're hanging out
4 and sitting around, were any of you smoking marijuana?

5 A Yes, sir.

6 Q And when I say any, which ones of the three, if you
7 know?

8 A It's just me and Deangelo and Rontae.

9 Q When you came back from the Palomino, was there
10 anything else done in regards to bullets or the gun?

11 A No, sir.

12 Q What happened after that? Did you eventually leave
13 the house again?

14 A Yes, sir.

15 Q Tell us where you went and what happened.

16 A We went back to the Palomino Club.

17 Q Is it the same three of you?

18 A Yea.

19 Q And did you get back in the van?

20 A Yes, sir.

21 Q What happened when you got to the club that time?

22 A Nothing. He just told us stay in the car again.

23 Q That's Deangelo that told you that?

24 A Deangelo.

25 Q Did Deangelo come back out after being in there?

1 A Yeah.

2 Q And where did you go after he came out that time?

3 A We went back to his house.

4 Q Was there any more discussion during this time period

5 about the plan to do a hit?

6 A He said -- he made a comment and he said that, like,

7 My boss wants us to do a hit, but I don't want to do it. I'm going

8 to get somebody else.

9 Q This is Deangelo that said that?

10 A Yes.

11 Q Okay. After that comment by Deangelo, did you

12 eventually meet up with somebody else that night?

13 A Yes.

14 Q Tell us how you met that person.

15 A Deangelo -- right when we got back to Deangelo's

16 house, he went in the back and made a phone call and then he came

17 back.

18 Q When that phone call was made, were you able to hear

19 the phone call or was it in a different room?

20 A No, it was in a different room.

21 Q After that phone call, what happened?

22 A We went to go pick up another person.

23 Q Did you drive in the Astro van again?

24 A Yes, sir.

25 Q Had you been to this other person's house before?

1 A No, sir.

2 Q Did you know that area very well?

3 A No, sir.

4 Q When you got to that other person's house, what did
5 you see?

6 A Just really nothing. There was a lot of activity
7 going around.

8 Q Well, let me ask you this: Did anybody get out of the
9 car at that person's house?

10 A Just Deangelo.

11 Q Where did Deangelo go?

12 A He went inside -- into the house.

13 Q Was he in there for some time?

14 A Yeah, like 30 minutes.

15 Q Did he eventually come back out?

16 MR. WHIPPLE: Leading, Judge.

17 THE WITNESS: Yeah.

18 THE COURT: Overruled.

19 BY MR. PESCI:

20 Q Did you see Deangelo again?

21 A Yes, sir.

22 Q Where did you see him?

23 A Coming out, back out of the house.

24 Q When he came out, what happened?

25 A He just got in the van and we drove back to Deangelo's

1 house.

2 Q Did -- were you ever in that area or back at that
3 house again later that evening?

4 A Yes, sir.

5 Q Tell us about that.

6 A After he made a phone call -- I didn't hear it. He
7 was in another room. But after he made a phone call, we went back to
8 the same house.

9 Q Did you see anybody come out of the house then?

10 A Yes, sir.

11 Q Describe that person.

12 A He was wearing all black. I don't know what clothes
13 he had on, but he had a long sleeve and a hoody.

14 Q A long-sleeve hoody?

15 A Yeah.

16 Q What color was that?

17 A All black.

18 Q Was anything else on him? Did you see any other
19 clothes?

20 A Just pant -- black pants and black...

21 Q The clothes were black as well?

22 A Yes, sir.

23 Q What did that person do?

24 A He got inside the car.

25 Q Now, describe this car just a little bit for the

1 ladies and gentlemen of the jury so we understand what kind of car it
2 is and where you were seated.

3 A It was an Astro van, all white, and I was sitting in
4 the passenger side.

5 Q When you say the passenger, is that in the front or
6 the back?

7 A Front.

8 Q So were you in the front right seat --

9 A Yes, sir.

10 Q -- when this person all dressed in black came in?

11 A Yes, sir.

12 Q Where was Deangelo?

13 A On the driver's side.

14 Q And where was Rontae?

15 A Behind the driver's side seat.

16 Q And where did the person all dressed in black go?

17 A Behind me.

18 Q Now, so we understand, are there front doors to this
19 van?

20 A Yes, sir.

21 Q So those doors go right to the front seats?

22 A Yes, sir.

23 Q Is there another door on the side of the van?

24 A Sliding door.

25 Q Which side is the slider on?

1 A On the right.

2 Q Would that be behind where you were seated?

3 A Yes, sir.

4 Q On Rontae's side, he was on the left-hand side behind

5 the driver?

6 A Yes, sir.

7 Q Is there a door on that side?

8 A No, sir.

9 Q Okay. Where did the person in black go inside the

10 van?

11 A He went right -- right -- he seated himself right

12 beside -- right behind me.

13 Q What happened when that person got in?

14 A Nothing. We just acquainted ourselves.

15 Q Did Deangelo acquaint you to this individual?

16 A Yes, sir.

17 Q And what did Deangelo say?

18 A He said, Deangelo -- or JJ, this is KC. KC, this is

19 JJ.

20 Q Was there any introduction of Rontae?

21 A Yes, sir.

22 Q What did he say?

23 A He said the same thing, but Rontae name.

24 Q Okay. Did the person KC introduce himself?

25 A He didn't introduce himself by name.

1 Q Can you describe that person generally?
2 A Generally, not that much, because it was dark.
3 Q Was he black? Was he white? Was he Hispanic?
4 A At night he looked Hispanic or black.
5 Q Okay. After the introductions, what happened?
6 A We just went and started driving towards some guy
7 named TJ or whatever his name is.
8 Q Okay. Where did you hear of the name TJ on this day?
9 A From Deangelo.
10 Q Tell us how you heard about it and what Deangelo told
11 you.
12 A When we were in the car, he was telling us about what
13 person he was supposed to hit and so forth from there.
14 Q And so we're real clear, at this point in the van, do
15 you have the gun?
16 A Yes, sir.
17 Q Was it on your -- in your pocket?
18 A No, sir.
19 Q Where was it?
20 A It was under the seat.
21 Q How did it get there?
22 A I put it under there when we got in -- when all three
23 of us got in the car.
24 Q When was that? What point in time did you put it
25 under the seat?

1 A The last time we left to go pick up KC.
2 Q The second time you went to pick him up?
3 A Yes, sir.
4 Q Okay. And where were the bullets?
5 A They were still in my pocket.
6 Q Did -- to your knowledge, did Rontae have a gun?
7 A No, sir.
8 Q Did he have any bullets?
9 A No, sir.
10 Q All right. What more did you know about this TJ and
11 what was supposed to happen?
12 A The farthest thing he told me was that he was talking
13 too much about the Palomino club and that's about it.
14 Q When you say "he" told you --
15 A Deangelo.
16 Q Deangelo told you about TJ?
17 A Yes, sir.
18 Q Okay. Did you witness any phone calls that Deangelo
19 had after you picked up the individual introduced to you as KC?
20 A No. He just made a phone call to TJ.
21 Q Deangelo did?
22 A Yes, sir.
23 Q Okay. And how do you know he made a call to TJ?
24 A Because he -- that's what he told me and Rontae when
25 he was on the phone.

1 Q Could you hear Deangelo's side of the conversation?
2 A A little bit. I wasn't really paying attention.
3 Q Okay. Could you hear TJ's side of the conversation?
4 A Not at that time.
5 Q After Deangelo had this conversation, where did the
6 four of you go?
7 A We started driving, I assumed, towards TJ's house.
8 Q Okay. When you say you assumed, what were you basing
9 that assumption on? Why did you think you were going to his house?
10 A To kill him.
11 Q Right. And I apologize. Where did you get the idea
12 that you were going to his house?
13 A Because at first Deangelo told me we was supposed
14 to -- if he was at his house and he was alone, then we'd kill him
15 himself -- all by himself but --
16 Q Was there any discussion of what would happen if he
17 was not alone?
18 A No, sir.
19 Q Okay. When you thought you were going to his house,
20 eventually where did you end up going?
21 A He got another call from -- or he called TJ and asked
22 him if he was at his house. TJ said no, he's at --
23 Q He -- we need this really specific for the record.
24 When you say "he" made another call, who was he?
25 A Deangelo.

1 Q And how do you know it was to TJ?
2 A Because he told me he was going to call him.
3 Q And based on that conversation, did you find out a
4 different location?
5 A Yes, sir.
6 Q What did you find out?
7 A That he was at Lake Mead with his wife or with his
8 girlfriend and dog.
9 Q And after that phone conversation, what happened?
10 A We just started driving towards the lake.
11 Q Did you eventually make it out to the lake?
12 A Yeah.
13 Q And kind of walk us through how that worked out. When
14 you got to the lake, what happened?
15 A We just started driving back and forth because TJ told
16 us to meet us -- meet him past the booth that you pass going towards
17 the lake.
18 Q Did you come across a booth out there?
19 A Yes, sir.
20 Q Did you see anybody at the booth?
21 A No, sir.
22 Q All right. After you got to the booth, where did you
23 go?
24 A We went past the stop sign and turned -- turned left
25 and we just kept on driving up and down that street.

1 Q Why were you driving up and down the street?
2 A Because he couldn't find -- or Deangelo couldn't find
3 TJ and on his cell phone the signal was faded.
4 Q Was the signal better towards the booth?
5 A Yes, sir.
6 Q Eventually after going back and forth, was Deangelo
7 able to make contact with TJ?
8 A Yes, sir.
9 Q What did you hear or see?
10 A He just asked him where was he at.
11 Q Deangelo asked?
12 A Yeah.
13 Q Okay. And then did you hear anything?
14 A TJ said that he was making his way to his car.
15 Q All right. Now, let me ask you this: Earlier you
16 talked about some phone conversations where you were not able to hear
17 the person on the phone with Deangelo. Are you saying now that you
18 were able to hear the person on the phone with Deangelo?
19 A Yes, sir.
20 Q Explain how.
21 A When he -- he put him on speaker, on chirp.
22 Q A chirp?
23 A Yeah.
24 Q Okay. When you say "he," Deangelo put --
25 A Yeah, Deangelo put him on the chirp.

1 Q Put who?
2 A TJ.
3 Q Okay. How did you know it was TJ? Did you hear TJ
4 when it was on the chirp?
5 A Yeah. Deangelo said his name.
6 Q Okay. But could you actually hear some of what TJ was
7 saying?
8 A Yes, sir.
9 Q What did you hear TJ say to Deangelo?
10 A He just -- he just said that, I'll meet you halfway
11 because I'm making my way to the car. And Deangelo said, All right.
12 I got -- I got a blunt for you so we could smoke.
13 Q Okay. And that's what I was trying to figure out.
14 Was there some sort of conversation as to why everyone was going to
15 meet?
16 A Yeah.
17 Q And what was that, as far as you understood?
18 A That we -- say that one more time, please.
19 Q Did you know why TJ was coming to meet Deangelo, based
20 on what you heard and what TJ and Deangelo said to each other?
21 A Yes, sir.
22 Q What was that?
23 A To kill him.
24 Q You said something earlier about a blunt.
25 A Yeah, to smoke.

1 Q What is a blunt?
2 A Weed.
3 Q Okay. Who said something about a blunt?
4 A Deangelo.
5 Q Did he say that with TJ?
6 A He was saying that to TJ.
7 Q Did TJ talk at all about where he was and what he was
8 doing at the time?
9 A He was -- he just said he was making his way to the
10 car.
11 Q Did he say -- did you hear whether or not TJ said he
12 was with someone or what he could see around him?
13 A He said that you should see this view. It's willing
14 to die for.
15 Q Who said that?
16 A TJ.
17 Q And what did Deangelo say?
18 A He didn't press the button back to him, but he said, I
19 bet it is.
20 Q So Deangelo said, I bet it is?
21 A Yeah.
22 Q When you say he didn't push the button, does that mean
23 the chirp button?
24 A Yeah.
25 Q So that's not something that could be heard at the

1 other end?

2 A Yes, sir.

3 Q After that, did you make actual contact with this

4 person named TJ?

5 A Yes, sir.

6 Q Tell us about that.

7 A We ran into him going halfway towards the lake and he

8 just -- we honked our horn and flashed our lights so he'd know it was

9 us.

10 Q Did TJ stop?

11 A Yes, sir.

12 Q Tell us how that happened.

13 A He stopped and then he reversed. TJ reversed and

14 stopped next to me and Deangelo and said, How you doing, like saying

15 a little hi, you know.

16 Q Okay. Now, when you say a little hi, is everyone

17 still in their cars?

18 A Yes, sir.

19 Q Do you remember what TJ was driving?

20 A He was driving a Kia.

21 Q So are you -- describe how the cars are facing when

22 this little conversation occurs.

23 A Just like one was facing west, the other one was

24 facing east.

25 Q So you're in opposite directions?

1 A Yes.

2 Q And is everyone still in the same position that you

3 hold us about earlier?

4 A Yes, sir.

5 Q And after this brief exchange, what does TJ do?

6 A He takes off -- he tells us that he was going to turn

7 around and so he takes off and our car stopped him and that's what

8 had made him a little more time to turn around.

9 Q So TJ went -- he went off in a different direction?

10 A Yes, sir.

11 Q Okay. What, if anything, was said in the car after TJ

12 drove off?

13 A He said that -- Deangelo told me that I was going to

14 go -- get out and go toward the back and told KC that he was going to

15 get out and go towards the front.

16 Q Did you say anything back?

17 A No, sir.

18 Q Did KC say anything back?

19 A No, sir.

20 Q After that statement, what happened?

21 A KC got out -- out of -- no. Before he got out,

22 Deangelo said he was going to get out, open the -- open this side

23 door so it would quiet the noise from the sliding door.

24 Q So Deangelo opened up his door?

25 A Yes, sir.

1 Q And to quiet the noise about what?
2 A About the sliding door. When you open the sliding
3 door.
4 Q Was the sliding door open at that point?
5 A Yes, sir.
6 Q Okay. Then what did Deangelo do?
7 A He went past the front of the car to relieve himself.
8 Q To go to the bathroom?
9 A Yes, sir.
10 Q All right. And at this time, had TJ made it up to
11 your car yet?
12 A No.
13 Q What did Deangelo do after he went to the bathroom on
14 the street?
15 A He got back in the car.
16 Q Where in the car?
17 A Back on the driver's side.
18 Q Was the slider still open?
19 A Yeah.
20 Q After Deangelo got back, did Mr. -- TJ get to your
21 van?
22 A Yes, sir.
23 Q Tell us what happened.
24 A He stopped and just said, I'm going to pull up a
25 little ways in front of you. And that's all he said.

1 Q Who said that?
2 A TJ.
3 Q Okay. And then after he did that, did TJ ever come up
4 to your van?
5 A Yes, sir.
6 Q Tell us what happened when he came up to the van.
7 A He came up to the van and asked -- like he just asked
8 us how we were doing.
9 Q Did he approach -- which side of the van did TJ
10 approach?
11 A Driver's side.
12 Q And where, particularly, on the van did he go to?
13 A To Deangelo's door.
14 Q So was TJ outside Deangelo's window?
15 A Yes, sir.
16 Q Was Deangelo's window down?
17 A Yes, sir.
18 Q What happened next?
19 A We were just talking and he said, How you doing, bro?
20 Q Is that TJ that says that?
21 A Yes, sir. And TJ said, How you doing, bro, and then
22 Deangelo didn't even say -- he just said, How you doing, and he
23 didn't say nothing after that.
24 Q Okay. And what, if anything, did KC do?
25 A He went to my driver's side -- or my passenger's side

1 window.

2 Q And what, if anything, did he do at your window?

3 A He just asked me, What's up?

4 Q And what was your response?

5 A I just shook my head.

6 Q After you shook your head, what did KC do?

7 A He just shook his head and went around the front of
8 the car.

9 Q Okay. Now, let's say for the sake of explaining to
10 the jury that this here is the white Astro van. This is the front
11 end, that's the back end. Were you seated on the driver's side?

12 A Passenger side.

13 Q Sorry, passenger side. Deangelo's on this side?

14 A Yes, sir.

15 Q And is TJ on the driver's side?

16 A Yes, sir.

17 Q When you just told us about KC approaching you, was it
18 at the window, your window?

19 A Yes, sir.

20 Q And did KC go around the front of the --

21 A Yes, sir.

22 Q -- van?

23 When he did, what happened?

24 A He stopped midway and he extended his arm.

25 Q And when he extended his arm, what did KC do?

1 A I can't tell you that. I just heard shots.
2 Q Okay. Did you see anything?
3 A No. The only thing I seen from the corner of my eye
4 is just TJ dropped.
5 Q Okay. How many shots did you hear?
6 A Two.
7 Q I'm sorry?
8 A Two.
9 Q And you said that out of the corner of your eye you
10 saw TJ drop?
11 A Yes, sir.
12 Q What happened after those two shots?
13 A KC just went back around the front and got back in the
14 car.
15 Q Back on the slider side?
16 A Yes, sir.
17 Q Okay. And what did KC say or do when he got in?
18 A He just said -- he just told Deangelo, Hurry up and
19 go.
20 Q What did Deangelo do?
21 A He sped off and he had to turn around first.
22 Q When he turned around, did anything happen that made
23 you wonder what was going on?
24 A No. He just ran over TJ's body though.
25 Q Did you feel something that was run over?

1 A Yes, sir.

2 Q Okay. After that, where did you go?

3 A We just went towards -- I think towards Henderson. I

4 don't know where we were at.

5 Q Did KC talk to you after he got back in?

6 A Yes, sir.

7 Q What was said?

8 A He just asked me what happened.

9 Q What'd you say?

10 A I didn't really say nothing. I just said -- nothing.

11 Q Did you get out of the car?

12 A No, sir.

13 Q Eventually did you go back to the Palomino?

14 A Yes, sir.

15 Q What happened at the Palomino?

16 A KC and Deangelo got out of the car.

17 Q What did you and Rontae do?

18 A Stayed in the car.

19 Q Did you see where KC and Deangelo went?

20 A Into the Palomino.

21 Q And then what happened?

22 A After that, we were just -- we were in the car for

23 like 20 minutes.

24 Q When you say "we," you mean --

25 A Me and Rontae. And we were just talking back and

1 forth.

2 Q And eventually did you see either Deangelo or KC
3 again?

4 A I only seen KC come out first.

5 Q What did you see KC do?

6 A He was coming towards the van but changed his mind and
7 went to a taxi.

8 Q Did you see what KC did at the taxi?

9 A No. He probably told the taxi driver --

10 Q Well, not probably, just what you saw or what you
11 could actually hear.

12 A Just get in -- he got in the car and left.

13 Q What -- in the taxi?

14 A Yes.

15 Q Did you see Deangelo again?

16 A Yes, sir.

17 Q Tell us about that.

18 A He came back -- Deangelo came out and he got in the
19 driver's seat and asked us where KC was.

20 Q Did you tell him?

21 A We just told him that he left in a taxi cab.

22 Q Based on your experience with Deangelo, did Deangelo
23 appear upset or angry?

24 A Yeah.

25 Q Describe how he appeared that way to you.

1 A He was mad because he didn't get paid and he only got
2 paid a hundred dollars to go clean the car out.
3 Q Okay. What did you three do after he came back with
4 the hundred dollars?
5 A We just went to some -- some carwash place.
6 Q What happened then? What happened at the carwash?
7 A We washed the car and cleaned -- cleaned the inside.
8 Q You cleaned the inside?
9 A Yeah.
10 Q Well, what happened after you cleaned the inside?
11 A Nothing. We just got back in the car and went to --
12 back to Deangelo's house.
13 Q Now, back at the Palomino when Deangelo talked about
14 getting paid, did he indicate why anybody else got paid or didn't get
15 paid?
16 A No. He didn't indicate that.
17 Q Did he explain whether or not KC was paid?
18 A Yeah.
19 Q What did Deangelo say?
20 A He just said, Yeah. In his words -- excuse my
21 French -- but he said, Yeah, that nigger got paid.
22 Q Okay. Did he ever say an amount?
23 A Just six -- 6,000.
24 Q Was there a discussion about why you and Rontae
25 weren't paid or were paid?

1 A Because we didn't do nothing.
2 Q Were you paid?
3 A No.
4 Q Did you see Rontae get paid?
5 A No.
6 Q After the cleaning -- you said you cleaned the inside
7 of the van?
8 A Yes, sir.
9 Q What about the outside?
10 A Yes, sir.
11 Q Was anything else done to the van?
12 A Just the next day, we went to somebody's -- I forgot
13 whose house he said it was, but he went to go grab a knife and stab
14 all the tires.
15 Q When you say "he," who do you mean?
16 A Deangelo.
17 Q Which tires? Which car?
18 A On the Astro van.
19 Q Did you see Deangelo do this?
20 A Yes, sir.
21 Q And after Deangelo did this, what happened?
22 A He got in his car -- I don't know what kind of car it
23 was -- and he told me to drive the Astro van.
24 Q Was the Astro van driven to a body shop of some point?
25 A To a tire -- tire place.

1 Q Some sort of garage?
2 A Yeah.
3 Q Was something done with the tires?
4 A Yes, sir.
5 Q What was done?
6 A They were changed.
7 Q What happened to the tires that were slashed?
8 A Deangelo told the person that was changing the tires
9 to put them inside the car.
10 Q Okay. And were they put in the car?
11 A Yep.
12 Q And what happened to the tires after that?
13 A We went to go discard them at a 7-11.
14 Q Were the tires thrown away?
15 A Yes, sir.
16 Q Did you help Deangelo with that?
17 A Yes, sir.
18 Q And after the tires were thrown away, where did the
19 three of you go?
20 A We went back to Deangelo's house.
21 Q Do you know -- or did you see any more phone calls or
22 conversations back at Deangelo's?
23 A No, sir.
24 Q Did you and Rontae talk about what had happened?
25 A No. We were just -- he was just telling me, I knew

1 this wasn't right. I knew we should've never went.

2 Q Eventually on that date, did you leave Deangelo's
3 house or did you stay there?

4 A I left.

5 Q Did you make contact with Deangelo again after that?

6 A Yes, sir.

7 Q Did he approach you -- Deangelo approach you about
8 talking to the police?

9 A Yes, sir.

10 Q Tell us what happened and how that came about.

11 A I came back the same night and I seen him leaving in
12 a -- I don't know what kind of car it was. He was leaving and the
13 detectives asked him -- asked Deangelo if I was in the situation.
14 Deangelo said, No. Like two or three hours later, they came back and
15 I just pulled up too in -- on a bike.

16 Q When you say "they," who do you mean?

17 A Deangelo and Rontae.

18 Q Okay. Sorry I interrupted you. When you made contact
19 with Deangelo and Rontae, then what happened?

20 A Then we all went upstairs and they just told me to
21 tell them everything.

22 Q You say, "They told me to tell them."

23 A Yeah.

24 Q Who's "they"?

25 A Deangelo and Rontae.

1 Q And tell "they." Who's they?
2 A The detectives.
3 Q Okay. Did they tell you what to say?
4 A No, sir.
5 Q Did you eventually talk to the police?
6 A Yes, sir.
7 Q Did you give them a statement?
8 A Yes, sir.
9 Q Did you talk about what happened that day?
10 A Yes, sir.
11 Q Okay. When you gave that statement to the police,
12 were you arrested right then?
13 A No, sir.
14 Q Did you go home --
15 A Yes, sir.
16 Q -- or did you leave the police station?
17 A Yes, sir.
18 Q Later on were you, in fact, arrested?
19 A Yes.
20 Q And after being arrested, did you enter into a
21 negotiation with the State?
22 A Yes, sir.
23 Q Did you specifically plea to two charges?
24 A Yes, sir.
25 Q Did you plead to a conspiracy to commit murder?

1 A Yes, sir.

2 Q And to a voluntary manslaughter with use of a deadly
3 weapon?

4 A Yes, sir.

5 Q And as a part of that deal, was there a deal made
6 between you and the State as far as what the State would argue to the
7 judge?

8 A Say that one more time.

9 Q Was there a negotiation as to what the State would
10 argue as far as your sentence based on that deal?

11 A Yes, sir.

12 Q Did the State agree to have the two counts run
13 concurrent?

14 A Yes, sir.

15 Q Okay. Have you seen that guilty plea agreement?

16 A Yes, sir.

17 Q Is that the paperwork that represents that deal?

18 A Yes.

19 Q And that's the deal that you have between the State
20 and yourself?

21 A Yes, sir.

22 Q You've come here today to testify. Are you very
23 comfortable about being here today?

24 A No, sir.

25 Q Could you briefly explain why it is that you're

1 uncomfortable about being here today?

2 A I don't like this position.

3 Q Is it an uncomfortable position?

4 A Yes, sir.

5 Q As you sit here today, you're in CCDC blues. You're

6 in the detention center?

7 A Yes, sir.

8 Q Is that some of the reason why you're concerned?

9 A No, not really.

10 Q Okay. But you will admit that you are uncomfortable?

11 A Yes, sir.

12 Q All right. Going back, just kind of backtracking a

13 little bit, did you ever hear any conversations about baseball bats

14 or garbage bags?

15 A Yes, sir.

16 Q Tell us what you heard, when you heard it, and who you

17 heard it from.

18 A We heard it before we went to go pick up KC. Deangelo

19 told us that he called Anabel and Anabel was talking about baseball

20 bats and trash bags.

21 Q Okay. Was that information passed on to you?

22 A Yes, sir.

23 Q I'm showing you -- I believe it's Defense Proposed

24 Exhibit K. Jayson, do you recognize what that is?

25 A Yes, sir.

1 Q And what is that?
2 A A letter I wrote to a codefendant.
3 Q And who is it that you wrote it to?
4 A KC.
5 Q Do you see KC here in court today?
6 A Yes, sir.
7 Q Could you point to him and describe something he's
8 wearing.
9 A He's wearing -- he's wearing a blue or black -- a
10 suit, glasses.
11 MR. PESCI: Will the record reflect the identification of
12 Mr. Counts, Your Honor.
13 THE COURT: It will.
14 MR. PESCI: Thank you.
15 BY MR. PESCI:
16 Q Now, when you wrote this letter to Mr. Counts, what
17 was the purpose of writing that letter?
18 A Really just -- I didn't want to have problems with
19 him.
20 Q I'm sorry?
21 A Really I just didn't want no problems with him.
22 Q And coming to testify, that can make a problem?
23 A Yes, sir.
24 Q Okay. Now, going back to your statement to the
25 police, you said that you talked to Deangelo and Rontae before you

1 went to talk to the police. Do you remember that?

2 A Yes, sir.

3 Q All right. Now, was each and every single thing you

4 told the police completely accurate?

5 A No, sir.

6 Q All right. Specifically, did the police ask you about

7 the weapon that you had on your person that night?

8 A Yes, sir.

9 Q And what was your response to the police when you gave

10 the statement when you talked to them?

11 A That I bought it off the street.

12 Q Why did you say that?

13 A Because Deangelo told me to.

14 Q And there was a -- or there's something in there about

15 a .357. Do you remember talking to the police about a .357?

16 A Yes, sir.

17 Q Did you see a .357?

18 A No, sir.

19 Q What did you hear about the .357?

20 A Deangelo told me about it.

21 Q Okay. Did he tell you to say it was a .357 or was he

22 talking about it being a .357?

23 A He was talking about it being a .357.

24 Q All right. In your statement to the police, in parts

25 of it, are you telling the police that your intent was only to beat

1 Mr. Hadland?

2 A Yes, sir.

3 Q Okay. But in other parts did you describe what you

4 were going in to do as a hit?

5 A Yes, sir.

6 Q Did you understand the hit meaning more than to beat?

7 A Yes, sir.

8 Q Why were you telling the police at that time -- and I

9 believe that was back on May 21, 2005 -- that it was just a beat?

10 A Just to cover -- to cover that supposedly friends.

11 Q To cover friends?

12 A Yes, sir.

13 Q Were you trying to cover yourself?

14 A Yes, sir.

15 Q Were you concerned about you being arrested?

16 A Yes, sir.

17 Q Were you concerned with what would happen to you if

18 you explained what the hit was?

19 A Yes, sir.

20 Q Did Deangelo Carroll tell you how to testify?

21 A No, sir.

22 Q Did Deangelo Carroll ever tell you, Let's make up a

23 fourth person to save all of our skins?

24 A No, sir.

25 Q Did Deangelo Carroll tell you --

1 MR. WHIPPLE: Judge, leading at this point. Your Honor,
2 leading.

3 THE COURT: Well, it's a little bit leading, but...

4 BY MR. PESCI:

5 Q Were you ever asked to specifically implicate
6 Mr. Counts --

7 MR. WHIPPLE: Judge, again, leading.

8 THE COURT: Well, overruled. I mean, he has to ask it some
9 way.

10 Go on.

11 BY MR. PESCI:

12 Q Did Deangelo tell you to say anything about
13 Mr. Counts?

14 A No, sir.

15 Q Did you guys ever hatch a plan to cover yourselves and
16 implicate Mr. Counts?

17 MR. WHIPPLE: Again, leading, Your Honor. The same.

18 THE COURT: Overruled.

19 You can answer the question.

20 THE WITNESS: No, sir.

21 BY MR. PESCI:

22 Q Now, you talked to the police also a little bit about
23 the people that worked at the Palomino. Do you remember that?

24 A Yes, sir.

25 Q What did you understand as far as who Deangelo's boss

1 was?
2 A He just told me names about his boss.
3 Q What are some of the names that you heard?
4 A Luis and Anabel.
5 Q I'm sorry?
6 A Luis and Anabel.
7 Q Luis and Anabel?
8 A Yes, sir.
9 Q Did you ever meet Luis or Anabel?
10 A No. I only ran into Luis after the -- after this
11 situation.
12 Q Did you have a long conversation with him?
13 A No, sir.
14 Q Was it just a brief interaction?
15 A Yeah. It was just a greeting.
16 MR. PESCI: Pass the witness, Your Honor.
17 THE COURT: All right. Thank you, Mr. Pesci.
18 Mr. Whipple, cross.
19 MR. WHIPPLE: Thank you, Your Honor.
20 CROSS-EXAMINATION
21 BY MR. WHIPPLE:
22 Q Jayson, my name's Bret Whipple.
23 A How you doing?
24 Q I'm going to talk a little bit about your day today.
25 You woke up about 5:00 o'clock this morning?

1 A 4:00.
2 Q I'm sorry?
3 A At 3:34.
4 Q Woke up at 3:30 this morning. You reside at the Clark
5 County Detention Center?
6 A Yes, sir.
7 Q You knew you were going to be testifying today?
8 A Yes, sir.
9 Q You spoke with these individuals?
10 A Yes, sir.
11 Q Spoke with them several times?
12 A Yes, sir.
13 Q Spoke with your attorney here in the back?
14 A Yes, sir.
15 Q Spoke with this investigator?
16 A Yes, sir.
17 Q Spoke with others -- spoke with their investigators?
18 A Who is that?
19 Q How many investigators did you speak with?
20 A Just one.
21 Q So you woke up at 3:30 and knew you were going to
22 testify; is that correct?
23 A Yes, sir.
24 Q And they transported you down here about 8:30,
25 correct?

1 A Yes, sir.

2 Q You've been sitting over there about 8:30 since this

3 morning?

4 A Yes, sir.

5 Q And you chose -- decided not to testify, correct?

6 MR. PESCI: Objection. Assumes facts not in evidence.

7 THE COURT: Overruled.

8 BY MR. WHIPPLE:

9 Q You chose not to testify, didn't you?

10 A I chose not to?

11 Q You chose not to --

12 THE COURT: Rephrase your question, Mr. Whipple. I think

13 it's kind of confusing.

14 BY MR. WHIPPLE:

15 Q Yeah. You were here at 8:30 this morning, correct?

16 A Yes, sir.

17 Q And you said you didn't want to testify?

18 A I made that assumption.

19 Q Correct. You didn't want to lie, right?

20 A What?

21 Q You didn't want to lie?

22 A Yes, sir.

23 Q Okay. And then you had some folks that came and

24 talked to you in there, right?

25 A Yes, sir.

1 Q And, in fact, some of those folks that came and talked
2 to you -- one's your father right here, right?
3 A Yes, sir.
4 Q This gentleman right here.
5 MR. WHIPPLE: Could you stand up for the record. Sir,
6 could you please stand up?
7 MR. PESCI: Judge, I'm going to object to --
8 THE COURT: Yeah. Your father is in the courtroom now and
9 he spoke with you this morning; is that right?
10 THE WITNESS: Yes, ma'am.
11 THE COURT: All right. Go on, Mr. Whipple.
12 Sir, you can sit down.
13 BY MR. WHIPPLE:
14 Q Sure. In fact, you were back here locked in a little
15 room, right?
16 A Yes, sir.
17 Q And they had all these people that came and talked to
18 you, right, about 8:30, 9:00? There was a bunch of them, right?
19 A At 9:00.
20 Q Okay. At 9:00. In fact, there was this person here,
21 right?
22 A Yes.
23 Q There was this person here, right?
24 A Yes, sir.
25 Q And there was this person here, right here, right?

1 A No, sir.

2 Q This person here?

3 A Yes, sir.

4 Q What about this person?

5 A No. No, sir.

6 Q Okay. And then you're sitting there and you still
7 don't want to testify, right?

8

9 A It's possible.

10 Q You still didn't want to testify, so then they brought
11 you out again, right? Do you remember that? They brought you out
12 again, right?

13 A Yes, sir.

14 Q Okay. And it was because your father couldn't go
15 testify -- the officer here wouldn't let your father back there with
16 you, would he?

17 A No, sir.

18 Q And so they made special arrangements for you,
19 Mr. Tacipu, at 9:00 o'clock this morning, didn't they?

20 A Yes, sir.

21 Q Have you ever, in your entire time that you've been
22 here at the Clark County Detention Center, ever seen a father come
23 talk to a person that's been in the Clark County Detention Center?

24 A Not to my knowledge.

25 Q Have you ever heard -- ever heard of the father being

1 drug out of the courtroom and being brought into a special room where
2 he could talk with somebody?

3 A No, sir.

4 Q Never heard of it, right?

5 A No.

6 Q Okay. So then you had a special arrangement -- did
7 you hear the fight between the prosecutor and the guard over here?
8 Did you hear the fight about removing you from their custody?

9 MR. PESCI: Objection. Assumes facts not in evidence.

10 MR. WHIPPLE: We'll, I'm asking, Your Honor.

11 THE COURT: Well, that's sustained anyway.

12 BY MR. WHIPPLE:

13 Q You didn't hear it -- anything out there?

14 A No, sir.

15 Q Okay. So then you went into this back room, right?

16 A Yes, sir.

17 Q Now, who's in the back room with you?

18 A Just my lawyer.

19 Q Your lawyer. Is this your lawyer right here --

20 A Yes, sir.

21 Q This person right here. And how many people was with
22 him?

23 MR. PESCI: Judge, we're going to stipulate for the record
24 that Mr. Jackson's his lawyer. We don't need to do it for the fourth
25 time now.

1 THE COURT: All right.

2 MR. WHIPPLE: I'm not stipulating. I'm asking him to point

3 out who's in the back room --

4 THE COURT: All right. So --

5 MR. WHIPPLE: We know he's in that room. Now we want to

6 find out who's in that room.

7 THE COURT: All right. Go on, Mr. Whipple.

8 MR. WHIPPLE: Thank you, Your Honor.

9 BY MR. WHIPPLE:

10 Q So now I want to find out who's in that back room back

11 there, right?

12 A Yes, sir.

13 Q How many rooms were you in with different people this

14 morning?

15 A Just three.

16 Q Three different rooms. So let's start with -- where's

17 the first room at?

18 A Back there.

19 Q Okay. This is the first room. Where's the second

20 room? And who's in this room back here?

21 A Just me, my lawyer, and the DA.

22 Q Okay. Which DA?

23 A Mr. Pesci.

24 Q Okay. And what did he tell you?

25 A He just asked me about a letter.

1 Q He asked you about a letter. He was surprised about a
2 letter, wasn't he?

3 A Who?

4 Q The DA.

5 A Yes.

6 MR. PESCI: Judge, I'm going to object as to what --

7 THE COURT: Yeah. That calls for --

8 MR. PESCI: He can't testify as to my --

9 THE COURT: -- speculation unless Mr. Pesci said, Oh, I'm
10 surprised.

11 BY MR. WHIPPLE:

12 Q Okay. Then I'll just ask, how was he acting when he
13 showed you that letter?

14 A Surprised.

15 Q Okay. Well, what did he tell you about that letter?

16 A Really nothing. He just asked me.

17 Q Okay. Never seen the letter before, had he?

18 A No, sir.

19 Q Okay. So this gentleman was back there and that
20 gentleman was back there. And was there any other investigators back
21 there?

22 A Just my investigator.

23 Q Okay. And so -- so nobody -- when he left, what was
24 his attitude, sir?

25 A Calm.

1 Q He was calm. He wasn't upset that you weren't going
2 to testify at that point?

3 A No.

4 Q He didn't act upset about this letter?

5 A No.

6 Q So why did you go back in the back room?

7 A To talk with my dad.

8 Q Well, why did you want to talk to your dad?

9 A Do I have to answer that?

10 Q Well, yeah, you have to answer that. You're under
11 oath.

12 A Just talking -- talk to him about the stand.

13 Q You weren't going to take the stand unless you talked
14 to your dad back there, right?

15 A Most likely.

16 Q Most likely?

17 A Yes, sir.

18 Q So you had to talk to your dad ahead of time, right?

19 A Yes, sir.

20 Q In fact, you -- okay. So then you went -- let's talk
21 about the second room you went into. Who was in the second room?

22 A Nobody.

23 Q Nobody. You were all alone in the second room?

24 A Yes, sir.

25 Q Which room was that?

1 A Out there.

2 Q So, oh, wait a minute. So we actually have two rooms;
3 a room back there and then this room back here, huh?

4 A Yes, sir.

5 Q Was the guard, the Clark County Detention Center guard
6 that's with you, did he go back there with you?

7 A No, sir.

8 Q Have you ever seen a person who's in the custody of
9 the Clark --

10 MR. PESCI: Judge, objection. He doesn't --

11 THE COURT: That's sustained.

12 MR. WHIPPLE: He doesn't know what I'm going to ask, Your
13 Honor.

14 THE COURT: Well, I can anticipate --

15 MR. PESCI: Foundation.

16 THE COURT: -- what you're going to ask, whether he would
17 know what normally occurs in other people's trial and I think it's
18 beyond the ambit of what he would know so...

19 MR. WHIPPLE: I can ask what he saw, Your Honor.

20 THE COURT: Well, he can say what he experienced or what he
21 witnessed, but in terms of other cases, it's not -- he doesn't --
22 it's not relevant. He doesn't --

23 MR. WHIPPLE: I'm just going to only ask him what he saw
24 today in this courtroom.

25 THE COURT: All right.

1 BY MR. WHIPPLE:

2 Q Jayson --

3 A Yes, sir.

4 Q -- have you ever seen, in this courtroom or any other
5 courtroom that you were in, the officer release you and walk you out
6 of the back of the courtroom?

7 A No, sir.

8 Q Have you ever seen any other inmate released from the
9 custody of his officer and walked out through the back of the
10 courtroom?

11 MR. PESCI: Judge, I'm going to object --

12 THE COURT: As to foundation.

13 MR. PESCI: -- in terms of release and to the foundation.

14 THE COURT: Right. That's sustained.

15 MR. PESCI: He wasn't in the custody of the Clark County
16 Detention Center. He was in --

17 THE COURT: Mr. Pesci, I sustained your objection.

18 MR. PESCI: Thank you.

19 BY MR. WHIPPLE:

20 Q Well, I'll ask who -- whose custody were you in? Was
21 there an officer from the Clark County Detention Center with you when
22 you came up here today?

23 A No.

24 Q You don't see Officer Council?

25 A No, sir.

1 Q Officer Council wasn't with you when you came up
2 today?
3 A I don't know who that is.
4 Q Okay. He's the gray-haired man that was just here a
5 minute ago.
6 A I didn't see him.
7 Q So you didn't come up with an officer?
8 A No.
9 Q So how did you get from the Clark County Detention
10 Center over here?
11 A With the detective.
12 Q Well, which detective is that?
13 A They're not in the courtroom right now.
14 Q Is that detective -- was he over here on this side?
15 A Was he sitting on this side?
16 Q Yeah.
17 A No.
18 Q Was he sitting over here?
19 A Yes, sir.
20 Q And where was he sitting?
21 A Behind -- behind the lady in the jacket.
22 Q And when did he leave?
23 A I don't know.
24 Q So you had another detective that was over here that
25 walked out that's not here any longer?

1 A Yeah.

2 Q And what about this young lady, is she --

3 A No.

4 Q So how did you get out of your hand -- arms --

5 A Oh, is that what you're asking?

6 Q Yeah.

7 A She uncuffed me.

8 Q Oh, so this young lady did uncuff you. So we're in

9 room two. Now we're going to room three, right?

10 A Yeah.

11 Q Who's in room three with you?

12 A It's me, my lawyer, and the DA, and my dad.

13 Q And which DA is it this time?

14 A Mr. Pesci.

15 Q Mr. Pesci. And how long did you talk back there?

16 A For like -- like 45 minutes.

17 Q About 45 minutes. And how was Mr. Pesci when he

18 walked out?

19 A He was calm.

20 Q Just the same, calm, collective?

21 A Mm-hmm.

22 Q Not upset?

23 A Nope.

24 Q Okay. You're getting quite a deal here today, aren't

25 you, Jayson?

1 A Yes, sir.

2 Q I mean, you were facing the death penalty at one time,
3 weren't you?

4 MR. DIGIACOMO: Objection. That's not --

5 THE COURT: Yeah. Sustained.

6 MR. DIGIACOMO: He was not.

7 BY MR. WHIPPLE:

8 Q Okay. You were facing murder charges?

9 A Yes.

10 Q Were you facing life in prison?

11 A I can't rightly say.

12 Q Well, you don't know how much time a murder charge
13 carries?

14 A Because I know how much a conspiracy to murder charge
15 carry.

16 Q Okay. How about a murder charge?

17 A No. I don't know what it carries.

18 Q Your attorney never informed you that you could get
19 anywhere from 40 years to life in prison?

20 A He indicated that once.

21 Q Let's talk about what it's like living in the Clark
22 County Detention Center, Jayson. This lady, she uncuffed you just
23 before these folks came in this morning, didn't she?

24 A Yes, sir.

25 Q If she wouldn't have uncuffed you, how would you --

1 what if you had an itch on your nose, Jayson, how would you -- how
2 would you itch your nose?
3 A I would itch it with the cuffs on.
4 Q So you can lift that up high enough to itch your nose?
5 A Yes, sir.
6 Q When you wake up in the morning, do you wake up
7 because you want to wake up, or do you wake up because if you don't
8 get up and get out, you don't -- you miss your meal within a few
9 minutes?
10 A I always wake up at 4:00 in the morning.
11 Q You wake up at 4:00. What time's breakfast, sir?
12 A 4:00.
13 Q And do you have a roommate?
14 A Yes, sir.
15 Q What's the size of that cell?
16 A Like --
17 MR. PESCI: Judge, at this point I'm going to object as to
18 relevance.
19 MR. WHIPPLE: It's relevant, 100 percent.
20 THE COURT: I'll see counsel at the bench.
21 (Off-record bench conference)
22 THE COURT: Move along, Mr. Whipple.
23 MR. WHIPPLE: Sure.
24 BY MR. WHIPPLE:
25 Q Jayson, you wake up at 4:00 a.m., right?

1 A Yes, sir.
2 Q There's two of you in a room?
3 A Yes, sir.
4 Q Or is there more?
5 A No, just two.
6 Q That room's about the size of this area right here,
7 isn't it?
8 A No.
9 Q A little bit bigger?
10 A Yeah.
11 Q How much bigger?
12 A It's probably like an 8x10.
13 Q 8x10. How many hours a day do you live in that 8x10?
14 A 24.
15 Q 24 hours a day?
16 A Yes, sir.
17 Q 24 hours a day. Do they let you out of that 8x10?
18 A Yes, sir.
19 Q How often do you get out of the 8x10?
20 A Eight hours a day.
21 Q Eight hours a day out? Do you go out on a tier?
22 A Except on the weekends.
23 Q Do you go out on a tier with some of the other poor
24 folks just like you?
25 A Yes, sir.

1 Q And you have food -- what time's breakfast come?
2 A 4:00.
3 Q 4:00. What time's lunch come?
4 A 10:00.
5 Q 10:00. And what time's supper come?
6 A 4:00.
7 Q And that's the -- and you go down and have something
8 to eat, right?
9 A Yes, sir.
10 Q Other than that, do you have reading material?
11 A Yes, sir.
12 Q You don't have family there, do you?
13 A Do I have family there?
14 Q Correct.
15 A No, sir.
16 Q You don't have any friends in there, do you?
17 A No.
18 Q You don't have any loved ones in there, do you?
19 A No.
20 Q You don't like people telling you what to do, do you?
21 A No.
22 Q People tell you all day long what to do, don't they?
23 A Nope.
24 Q They don't?
25 A Nope.

1 Q You just come and go as you choose?
2 A Yeah.
3 Q You can walk out the front door and say, I just like
4 living here because you like the accommodations?
5 A That's the only thing that'll keep me away from the
6 outs.
7 Q What's that?
8 A That's the only thing that'll keep me away from the
9 outs is the guards.
10 Q You have guards?
11 A Yeah.
12 Q Do they tell you what to do?
13 A Sometimes.
14 Q They tell you where you can go and where you can't go?
15 A Some.
16 Q You don't like that, do you?
17 A No, not that much.
18 Q You'd rather not be there?
19 A Nope.
20 Q In fact, prison's not a pleasant place to live, is it?
21 A I can't tell you that. I ain't never been there.
22 Q How about Clark County Detention Center?
23 A No, it's not a good place to live.
24 Q Okay. Now -- now, you've tried several times to tell
25 the truth in this case, haven't you?

1 A Yes, sir.

2 Q In fact, you know Ms. Wildeveld here, don't you?

3 MR. WHIPPLE: Ms. Wildeveld, will you please stand up.

4 THE WITNESS: How you doing, ma'am?

5 BY MR. WHIPPLE:

6 Q There's been several times when you've been in court,

7 correct?

8 A Yes.

9 Q You saw Ms. Wildeveld?

10 A Yes, sir.

11 Q You asked her to come over to you?

12 A One time. I didn't ask her, though.

13 Q She came over to you?

14 A She didn't come over to me.

15 MR. PESCI: Judge, can we approach for a minute?

16 THE COURT: Sure, please.

17 (Off-record bench conference)

18 BY MR. WHIPPLE:

19 Q Jayson, you know who I am now, right, Bret Whipple?

20 A Yes, sir.

21 Q You've called my office on several occasions?

22 A Once.

23 Q You called my office, asked me to speak to you?

24 A Yes, sir.

25 Q Because you wanted to tell me the truth?

1 A Yes, sir.
2 Q You talked to Ms. Wildeveld?
3 A Yes, sir.
4 Q You asked her to go speak with your father?
5 A Yes, sir.
6 Q Because you wanted to tell her the truth?
7 A Yes, sir.
8 Q And you knew, didn't you, that -- well, I'll just ask.
9 You know that we represent Mr. Counts?
10 A Yes, sir.
11 Q You know that we're here to help Mr. Counts?
12 A Yes, sir.
13 Q And you wanted us to help Mr. Counts?
14 A Yes, sir.
15 Q Unfortunately, you've asked your attorney if we could
16 speak with you?
17 A No, I didn't ask.
18 Q We've never spoke with you personally, have we?
19 A No, sir, except right now.
20 Q Do you know why we've never spoke with you personally?
21 MR. PESCI: Objection. Relevance.
22 THE COURT: Overruled.
23 BY MR. WHIPPLE:
24 Q Sir?
25 A Because my attorney kept me away from you,

1 confidential.

2 Q I'm sorry. I don't think they can hear you, sir.

3 A My attorney kept me away. It's confidential.

4 Q You would have spoken with us if you could have?

5 A Only if my attorney said yes.

6 Q You wanted us to help Mr. Counts?

7 A Yes, sir.

8 Q You wanted to tell us the truth?

9 A Yes, sir.

10 Q You don't want other people who are innocent to be

11 stuck in the same situation you are, do you?

12 A No, sir.

13 Q So is it fair to have people who are innocent to be

14 stuck in jail?

15 A Unless they did something wrong.

16 Q Sorry?

17 A Unless they did something wrong.

18 Q In fact, you wrote a letter, right?

19 A Yes, sir.

20 Q You wrote a letter because you were trying to help?

21 A Yes, sir.

22 Q I'm sorry, I have a hard time reading it.

23 A Yeah, and I write too light.

24 Q You write light.

25 MR. WHIPPLE: Can I approach, Your Honor?

1 THE COURT: That's fine.

2 BY MR. WHIPPLE:

3 Q First of all, sir, this is Public Defense Exhibit K.

4 I believe Mr. Pesci asked you if you wrote that letter. Did you

5 write that letter?

6 A Yes, sir.

7 MR. WHIPPLE: I'll move to admit Defense Exhibit K.

8 THE COURT: Any objection?

9 MR. PESCI: No objection.

10 THE COURT: All right. K's admitted.

11 (Defendant's Exhibit K admitted.)

12 BY MR. WHIPPLE:

13 Q Sir, I'm going to climb up here so --

14 A Go ahead.

15 Q Can you read that first paragraph, that first part of

16 it for me, sir. I can't read it. Go ahead and reach for it.

17 A Where do you want me to stop?

18 Q Just start right at the top, please.

19 A "What's with it" --

20 Q Sir, speak up if you can. I don't think anybody can

21 hear you.

22 A "What's with it, man? Me, same old shit. Let me get

23 straight to the point. I know I went back on what I said, but right

24 now I just -- I'm just saying fuck it and ride till the wheels fall

25 off. Hey, believe me when I say this, it was hell or hard taking

1 that damn deal and now I see that was a death sentence" -- now I
2 can't even read my own thing -- "death sentence. Man, I wish he
3 would have just offed me."
4 Q Stop right there. "Man, I wish he would have just
5 offed me."
6 A Yeah.
7 Q You meant Deangelo Carroll, right?
8 A Yes, sir.
9 Q Jayson, you remember speaking to the detectives?
10 A Yep.
11 Q You told us today that you lied to the detectives.
12 A In some parts.
13 Q You lied on several things to the detectives?
14 A Yes, sir.
15 Q And Jayson, did you ever -- did they ever do any
16 testing of your hands to see if you'd fired a handgun?
17 A No, sir.
18 Q You told them information --
19 A Yes, sir.
20 Q -- and then you fled to California?
21 A Just to help a friend out.
22 Q You spoke to detectives and then you traveled to
23 California?
24 A Yes, sir.
25 Q Did you tell anybody you went to California?

1 A No, sir.
2 Q And you didn't tell either of these individuals?
3 A Nope.
4 Q You didn't tell any of the investigators?
5 A Nope.
6 Q Did you tell your own attorney?
7 A He wasn't my attorney at the time.
8 Q Where did you go in California?
9 A I don't know. We got lost.
10 Q Who did you go with?
11 A A friend.
12 Q Do you know where you ended up in California?
13 A Probably in LA.
14 Q Probably?
15 A Yeah.
16 Q Or you don't know?
17 A We were going that route so I assume it was LA.
18 Q So what friend were you going to go help?
19 A A friend since -- I knew since elementary school.
20 Q Where did that friend live?
21 A I don't know.
22 Q Did you ever make it to your friend's house?
23 A Nope.
24 Q What did he need help with?
25 A She was going to get raped by somebody.

1 Q She was going to get raped by somebody?
2 A Yeah. She was just coming from a party.
3 Q How long were you in California?
4 A To say free, I was only there for a couple of hours.
5 Q California?
6 A Yeah.
7 Q Weren't you gone for six months?
8 A I was in juvenile.
9 Q Where's that?
10 A Sent to --
11 Q I'm sorry?
12 A Sent to juvenile hall.
13 Q Where at?
14 A In Cali.
15 Q California?
16 A Yeah.
17 Q So you went to California to help somebody that was
18 going to be raped?
19 A Yes, sir.
20 Q You went with a friend?
21 A No. She was out here.
22 Q You went to California with a friend?
23 A Yes, sir.
24 Q To go help a friend who was going to be raped in
25 California?

1 A No. She was the one.
2 Q Oh, she was the person that was going to be raped here
3 in --
4 A I was trying to take her to her aunty's house.
5 Q Well, you never made it to her house, did you?
6 A Nope.
7 Q Where did your friend do?
8 A She went to the same place I went, juvenile.
9 Q So how long were you in California before you went to
10 juvenile?
11 A I told you, a couple of hours.
12 Q You got picked up within a couple of hours of being in
13 California?
14 A Yes, sir.
15 Q You know there was a warrant out for your arrest here?
16 A No, I didn't know.
17 Q Do you remember you told the detectives a description
18 of the person that -- that alleged fourth person who got in the car
19 with you?
20 A I only told them that he was dressed in all black.
21 Q Do you remember the size of that person you gave to
22 them?
23 A I said 6'3", 6'4".
24 Q 6'3" or 6'4"?
25 A Yeah.

1 Q How tall are you?
2 A Like 5'11", 6-foot.
3 Q 6'3", 6'4". Did you give his height, his weight?
4 A Huh?
5 Q Did you give his weight?
6 A Do I give his what?
7 Q Did you give the weight? You said 6'3", 6'4".
8 A No, I didn't give a weight. I don't think so.
9 Q Did you go pick up some marijuana that day?
10 A Yes, sir.
11 Q Where was that at?
12 A It was on the west side.
13 Q Which house was that at?
14 A I don't rightly know.
15 Q Can you give us an idea?
16 A No. Just Deangelo went and picked it up and me and
17 Rontae were in the car.
18 Q How many trips did you make to the west side?
19 A Just one to pick up some weed. Just one.
20 Q That was it? No other trips to the west side?
21 A Later on that day, two more.
22 Q Two more. Jayson, what time did you start promoting
23 that day?
24 A Like 12:00, 1:00.
25 Q You started promoting at noon?

1 A Yeah.

2 Q Where did you go promoting?

3 A We didn't even go.

4 Q Sorry?

5 A We didn't even go. We just went to the Palomino Club.

6 Q So you didn't go promoting?

7 A No.

8 Q You went to the Palomino Club?

9 A Yeah.

10 Q Then you went back to Deangelo Carroll's house?

11 A Yes, sir.

12 Q Mr. Pesci asked you who was in Deangelo's house. Do

13 you remember that?

14 A Yes, sir.

15 Q Do you remember what you told him?

16 A Yeah.

17 Q What did you tell him?

18 A It was me, Deangelo, Rontae, and his girl.

19 Q I'm sorry?

20 A Me, Deangelo, Rontae, and his girl.

21 Q And a couple of children as well, right?

22 A No. She -- she let her mom have them.

23 Q I'm sorry?

24 A She let her mom hold them.

25 Q Her mom hold the child?

1 A Yeah.

2 Q So there was no child there?

3 A No.

4 Q You saw the mother come over and pick the child up?

5 A No. She told me that her mom hold her --

6 Q I can't hear you.

7 A -- she told me that her mom is hold -- watching the

8 kids.

9 Q So there was no child?

10 A No.

11 Q So you wake up that morning. You're living over there

12 with Deangelo and with Rontae, right?

13 A No. I don't live over there with them.

14 Q Okay. Rontae's your friend?

15 A Yeah.

16 Q In fact, Rontae testified at your preliminary hearing,

17 didn't he?

18 A Yes, sir.

19 Q And he tried to protect you?

20 A Yes, sir.

21 Q Did you try to protect him?

22 A Yes, sir.

23 Q Because you're friends?

24 A Yeah.

25 Q He tried to protect you by -- he tried to cover for

1 you, right?

2 A Yep.

3 Q Tried to cover by saying lies?

4 A Nope.

5 Q Well, by saying information that would help you,
6 right?

7 A Tell the truth.

8 Q Correct. Tried to protect you, right?

9 A Yes, sir.

10 Q In fact, he tried to protect you by -- he kept saying,
11 Well, he just did the same thing I did, right?

12 A Yes, sir.

13 Q Because you know Rontae's never even been arrested,
14 never been charged, right?

15 A Yes, sir.

16 Q And he didn't say it just once?

17 A He didn't say it just once?

18 Q He didn't say it just once. He said it a number of
19 times. Oh, he just did the same thing I did, right?

20 A Yes, sir.

21 Q He said that under oath?

22 A Yeah.

23 Q Because he knew he was out of custody, right?

24 A Yes.

25 MR. PESCI: Judge, I'm going to object as to what it is

1 that Rontae knew. He can't possibly testify --

2 THE COURT: It's sustained.

3 BY MR. WHIPPLE:

4 Q Well, you knew Rontae was out of custody, right?

5 A Yes, sir.

6 Q Rontae did the same thing you did, right?

7 A Yes, sir.

8 MR. PESCI: Judge, I'm going to object and ask for
9 foundation as to when he's talking about and what specifically he's
10 talking about, them doing the same thing.

11 THE COURT: All right.

12 MR. WHIPPLE: It was the same thing.

13 BY MR. WHIPPLE:

14 Q Jayson, I'm going to take you back on May 19th.

15 A Yes, sir.

16 Q You were with Rontae?

17 A Yes, sir.

18 Q You went out promoting and you went out in his car a
19 couple of times?

20 A Yes, sir.

21 Q You knew that Deangelo wanted somebody killed?

22 A Yes, sir.

23 Q You knew that when you were with him in the car the
24 first time?

25 A No, sir.

1 Q You knew that -- well, when did you know?
2 A When we came -- when we came back from picking up
3 flyers.
4 Q So you were in your apartment and you knew that he
5 wanted a person killed, right?
6 A Yes, sir.
7 Q Did you call the police?
8 A No, sir.
9 Q Did Rontae call the police?
10 A No, sir.
11 Q In fact, you saw Deangelo call the person that he
12 wanted to kill?
13 A No, I didn't. I seen him in the car phone.
14 Q A phone, right?
15 A I don't know if he called him at the house, though.
16 Q But you knew he was on the phone?
17 A Yes, sir.
18 Q You just testified to that, about what you knew,
19 right?
20 A Yes, sir.
21 Q And that was you and Jayson together?
22 A Rontae.
23 Q You and Rontae together?
24 A Yes, sir.
25 Q And then you went back to the Palomino Club a second

1 time?

2 A Say it again.

3 Q You went to the Palomino Club a second time?

4 A Yes, sir.

5 Q Did you know where you were going?

6 A Did I know where I was going?

7 Q Sure.

8 A No.

9 Q Once you got to the Palomino Club -- right there on

10 Las Vegas Boulevard, correct?

11 A Yeah.

12 Q And there's a taxi cab -- or a taxi place just a few

13 feet away?

14 A Yes, sir.

15 Q You could've walked over to main street boulevard --

16 or you could have walked over to Las Vegas Boulevard and hitched a

17 ride or walked away?

18 A No. He was in the same parking lot with us.

19 Q But you didn't do that, right?

20 A No, sir.

21 Q Rontae, he didn't do that?

22 A No, sir.

23 Q So then you went back to your house another time?

24 A Yes, sir.

25 Q And you knew what you were going to do that day,

1 right?
2 A Yeah.
3 Q What was that?
4 A Kill Timmy Hadland.
5 Q And Deangelo made that very clear?
6 A Yeah.
7 Q Made it very clear to you?
8 A Yes, sir.
9 Q Made it very clear to Rontae?
10 A Yes, sir.
11 Q And what happened next?
12 A We just got back in the car.
13 Q Where did you think you were going?
14 A Going to go pick up another person.
15 Q So you knew the same thing that Rontae knew?
16 A Yes, sir.
17 Q Now, out there on North Shore Road, out at Lake Mead,
18 was it dark?
19 A Yes, sir.
20 Q Very dark?
21 A Yes, sir.
22 Q You saw TJ coming at you?
23 A Yes, sir.
24 Q TJ, in fact, pulled up right next to you?
25 A For a sec.

1 Q He had a conversation with Deangelo?
2 A Yes, sir.
3 Q He said, Hey, what's going on?
4 A Yeah.
5 Q What's up? They spoke.
6 A Yes, sir.
7 Q He called you his little brother?
8 A Yes, sir.
9 Q You're the little brother of Deangelo?
10 A Yes, sir.
11 Q You said, Hi?
12 A Yes, sir.
13 Q Rontae hid?
14 A Yes, sir.
15 Q He hid by getting on the floor?
16 A Yes, sir.
17 Q Because you knew TJ would be worried if he saw more
18 than two?
19 A I don't know if he was going to be worried or not.
20 Q You came back, washed the car, right?
21 A Yes, sir.
22 Q Did Rontae wash the car with you?
23 A Yes, sir.
24 Q You washed the car?
25 A Yes, sir.

1 Q You did that because you didn't want to get caught --
2 A Yes, sir.
3 Q -- covering for Rontae --
4 A Yes, sir.
5 Q -- covering for Deangelo?
6 A Yes, sir.
7 Q And you devised another plan to pop the tires, right?
8 A Yes, sir.
9 Q Another plan. You helped pop the tires?
10 A Nope.
11 Q Did Rontae help pop the tires?
12 A No, sir.
13 Q Deangelo popped the tires?
14 A Yes, sir.
15 Q You stood there and watched him?
16 A Yeah.
17 Q You didn't go call the cops, Hey, somebody just got
18 shot at Lake Mead?
19 A No, sir.
20 Q Rontae, he didn't call the cops, Hey, somebody just
21 got shot at Lake Mead?
22 A No, sir.
23 Q In fact, what you did is you went out to breakfast?
24 A No, sir.
25 Q You didn't go to I-Hop?

1 A No, sir.

2 Q When did you go to I-Hop?

3 A Never.

4 Q Huh?

5 A I ain't never been there in my whole life.

6 Q So if we had a person come in here and testify that

7 you went to I-Hop after you flattened the tires, they would be lying?

8 A Yes, sir.

9 Q If a person came in here and said that when those two

10 cars passed no words were spoken, would they be lying?

11 A I don't know.

12 Q Well, you were there. Were words spoken?

13 A Yes, sir.

14 Q They said no words were spoken. Would they be lying?

15 MR. PESCI: Judge, at this point I'm going to object,

16 Dorian Dane (phonetic) is on point with this issue.

17 THE COURT: Yeah, sustained.

18 BY MR. WHIPPLE:

19 Q So you washed the car, watched Deangelo pop the tires,

20 right?

21 A Yes, sir.

22 Q You were right there?

23 A Yes, sir.

24 Q Tell me, why was he popping those tires?

25 MR. PESCI: Judge, objection as to him testifying as to why

1 Deangelo was doing something.

2 THE COURT: Well, unless they discussed it.

3 BY MR. WHIPPLE:

4 Q Yeah. You tell me. Why do you think he was popping
5 the tires?

6 A To change them.

7 Q For what?

8 A Because he ran over the body.

9 Q Oh, it wasn't because he had bad tread, right?

10 A No, sir.

11 Q Because you don't want to get caught?

12 A Yes, sir.

13 Q Because Deangelo was covering for you?

14 A No, he wasn't really covering for me.

15 Q Covering for Rontae?

16 MR. PESCI: Judge, I'd ask for him to be able to answer the
17 question.

18 THE COURT: All right.

19 BY MR. WHIPPLE:

20 Q You didn't want to get caught?

21 A No, sir.

22 Q You never called the cops, right?

23 A No, sir.

24 Q Never called as a secret witness?

25 A No, sir.

1 Q Saw a man killed?
2 A Yes, sir.
3 Q Helped him get away?
4 A Yes, sir.
5 Q You're not charged with accessory after the fact?
6 A No, sir.
7 Q Rontae, he was never charged with accessory after the
8 fact, was he?
9 MR. PESCI: Judge, I'm going to object as to his knowledge
10 to what Rontae was or was not --
11 MR. WHIPPLE: I'll ask him.
12 MR. PESCI: -- charged with.
13 BY MR. WHIPPLE:
14 Q Okay. Was Rontae charged with anything?
15 A No, sir.
16 Q Jayson, did you ever meet this man?
17 A Just in here.
18 Q You still have a sentencing hanging over your head,
19 don't you?
20 A Yes, sir.
21 Q You pled way back last Summer, didn't you?
22 A I don't know. Not to my knowledge.
23 Q When did you walk in and plead guilty? Do you
24 remember?
25 A No, not that much.

1 MR. WHIPPLE: If I may approach, Your Honor.
2 THE COURT: Yes, that's fine.
3 BY MR. WHIPPLE:
4 Q Do you see that date?
5 A Yes, sir.
6 Q What's that say?
7 A June '06.
8 Q What year?
9 A June '06, '07.
10 Q Do you remember being in front of a judge back on that
11 date?
12 A Yes, sir.
13 Q You pled guilty?
14 A Yes, sir.
15 Q You pled guilty to manslaughter, right?
16 A Yes, sir.
17 Q You pled guilty to taking the life of TJ Hadland?
18 A Yes, sir.
19 Q Without intent, without deliberation?
20 A Could you rephrase that?
21 Q This is page 2, line 11. Read that to yourself.
22 A (Complying.)
23 Q You pled guilty to taking the life of a man?
24 A Yes, sir.
25 Q 'Not intending to do it?

1 A Yes, sir.

2 Q Tell me, Jayson, what were you driving to Lake Mead

3 for?

4 A To kill Timothy Hadland.

5 Q How did you plead guilty to that? That's lying.

6 MR. PESCI: Judge, objection. It misstates the law.

7 THE COURT: Yeah. Sustained.

8 BY MR. WHIPPLE:

9 Q (Indiscernible)

10 MR. WHIPPLE: If I may approach.

11 MR. PESCI: Judge, for the record, can we have that marked

12 as an exhibit so the record is clear as to what's being referred to?

13 THE COURT: I'm assuming no objection to that.

14 MR. WHIPPLE: No, Judge. No reason to bring it into

15 evidence at this point. I'm going to refer to it, Your Honor.

16 MR. PESCI: Well, it's been referred to numerous times so

17 we need a record as to what's being referred to.

18 THE COURT: All right. For the record, what are you

19 showing him? Is it the guilty plea agreement --

20 MR. WHIPPLE: Sure.

21 THE COURT: -- or the amended that he actually pled to?

22 MR. WHIPPLE: Actually, Your Honor -- it's actually the

23 information attached to it.

24 THE COURT: All right.

25 MR. PESCI: I believe, though, the testimony earlier was

1 referring to the actual guilty plea agreement, so it's not just the
2 information. So --

3 THE COURT: Right. He's referring to both.

4 MR. PESCI: -- he has to have it marked as an exhibit.

5 THE COURT: I don't see a problem with it being admitted as
6 an exhibit.

7 MR. WHIPPLE: Well, I'm just at this point, for the
8 record --

9 THE COURT: That's fine. You can ask him about it.

10 MR. WHIPPLE: Sure. Sure.

11 BY MR. WHIPPLE:

12 Q Jayson, can you read that?

13 A Which one?

14 Q Right here, lines 10 and 11.

15 A "Defendant Jayson Taoipu" --

16 Q No, no. Just read it to yourself?

17 THE COURT: While Mr. Taoipu reads that, I'll see counsel
18 up here at the bench.

19 (Off-record bench conference)

20 THE COURT: Mr. Whipple, I'll let you go a little bit
21 longer and then we'll take our lunch break.

22 Mr. Taoipu, did you have an opportunity to read that or did
23 Mr. Whipple, anticipating a break, take it away from you?

24 BY MR. WHIPPLE:

25 Q Read it to yourself, please.

1 A Yes, sir.

2 Q All right. Mr. Jayson, so how long did it take for

3 you to drive from here in Las Vegas over to Lake Mead?

4 A Probably like 45 minutes, an hour.

5 Q And --

6 A Maybe longer.

7 Q And you already had discussions with Rontae?

8 A Before this happened, yes.

9 Q Right. You knew why you were going there?

10 A Yes, sir.

11 Q You had discussions with Deangelo?

12 A Yes, sir.

13 Q You went over there, a 45-minute ride, with the intent

14 to take somebody's life?

15 A Yes, sir.

16 Q Now, we have this guilty plea agreement, right?

17 A Yes, sir.

18 Q Do you remember when you pled guilty?

19 A The same day it says on there, sir.

20 Q Okay. And it talks about pleading guilty to

21 conspiracy to commit murder, right?

22 A Yes, sir.

23 Q Voluntary manslaughter?

24 A Yes, sir.

25 Q And the elements of the voluntary manslaughter, that's

1 what you were reading just now?

2 A Yes, sir.

3 Q And, in fact, it says --

4 MR. PESCI: Judge, if he's going to read from it, it should
5 be admitted.

6 THE COURT: Well, Mr. Pesci, the State can admit it in
7 their redirect. It will be admitted one way or the other. But since
8 the State wants to admit it, I'll let you guys mark it and do it.

9 MR. WHIPPLE: Thank you, Your Honor.

10 BY MR. WHIPPLE:

11 Q "Defendant Jayson Taoipu did then and there, without
12 lawful -- without the authority of law, wilfully and lawfully and
13 feloniously, without malice and without deliberation, kill Timothy J.
14 Hadland."

15 Is that what it said?

16 A Yes, sir.

17 Q And that's what you pled guilty to?

18 A Yes, sir.

19 Q You just told me that you deliberated for 45 minutes
20 on the way over to Lake Mead to take a life of another man?

21 A Yeah.

22 Q So when the judge asked you if, in fact, you did those
23 things, what did you tell him?

24 A I was there for help.

25 Q But what did you tell him? He asked you of these