

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LUIS HIDALGO, JR.,

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,
6 Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court
Case No. 71458

7 **APPELLANT'S APPENDIX VOLUME VI**

8 Appeal from Eighth Judicial District Court, Clark County

9 The Honorable Valerie Adair, District Judge

10 District Court Case No. 08C241394

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-5-

ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
NOV 24 2009

Alvin L. Johnson
CLERK OF COURT

STATE OF NEVADA,

Plaintiff,

vs.

LUIS ALONSO HIDALGO, aka
LUIS ALONSO HIDALGO, III, and
LUIS ALONSO HIDALGO, JR.,

Defendants.

CASE NO: C212667/C241394
DEPT NO: XXI

**Transcript of
Proceedings**

C 241394

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 6

TUESDAY, FEBRUARY 3, 2009

APPEARANCES:

FOR THE STATE:

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Deputy District Attorney

FOR LUIS ALONSO HIDALGO, JR.:

DOMINIC P. GENTILE, ESQ.
PAOLA M. ARMENI, ESQ.

FOR LUIS ALONSO HIDALGO, III:

JOHN L. ARRASCADA, ESQ.
CHRISTOPHER ADAMS, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

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CLERK OF THE COURT PA0840
HID PA00765

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1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 3, 2009, 12:30 p.m.

2 P R O C E E D I N G S

3 (Outside the presence of the jury.)

4 MR. GENTILE: Your Honor, there are two issues that
5 we're going to need to address at some point. We don't need
6 to do them now, but if you --

7 THE COURT: Okay. Well, if we can -- I mean, if we
8 don't need to do them now, let's do them at the end of the
9 day.

10 MR. GENTILE: That's fine.

11 (Off-record colloquy)

12 MR. GENTILE: I have not done the research on it. I
13 have people doing it now, but there may be a need, depending
14 upon Ms. Espindola's testimony, there may be a need for the
15 jury to view the premise. There may be a need. We can make
16 arrangements for that when the place is closed so there'll be
17 no issues.

18 (Off-record colloquy)

19 THE COURT: All right. We'll go on the record.
20 Let's start with the argument and when she gets here, we'll
21 just interrupt where we are.

22 MR. GENTILE: All right. There are three issues.

23 THE COURT: Okay.

24 MR. GENTILE: All right. One deals with last
25 night -- or actually this morning I learned, but apparently

1 yesterday, shortly after noon, after my opening statements,
2 the State amended its witness list to include Christopher
3 Oram. I anticipated, and then it was confirmed this morning,
4 that the reason that they did this was because I raised the
5 issue in opening statement that Anabel Espindola never
6 disclosed what she's saying now --

7 THE COURT: Any of this prior to --

8 MR. GENTILE: -- until right --

9 THE COURT: 33 months later.

10 MR. GENTILE: And so I'm sure the State anticipated
11 that I was going to argue or examine her and argue recent
12 fabrication.

13 THE COURT: Mm-hmm.

14 MR. GENTILE: If Mr. Oram testifies to rebut recent
15 fabrication, clearly she has to waive her attorney-client
16 privilege, and if that happens, I want to file. And so we
17 will submit a brief to you on that issue. And I think that --

18 THE COURT: Yeah, I mean, I'm happy to read -- I
19 mean, without -- just off the top of my head, my visceral
20 impression would be it would be waived just for part of their
21 communications. Again, this is just my visceral impression,
22 and not for all communications between her and Mr. Oram. So
23 anything relating to that one area would be waived. But if
24 you have authority otherwise, I'm happy to consider it.

25 MR. GENTILE: We'll submit it.

1 THE COURT: I'm just saying off the top of my head,
2 I don't know. That, to me, is common sense what the waiver
3 would be, but I'll read the law and figure it out.

4 MR. GENTILE: And candidly, I haven't done the
5 research. I just --

6 THE COURT: Obviously, like I said, his portion of
7 the file relating to disclosures that she testifies about
8 might be fair game, but there may be other things in the file
9 and so I think certainly at the very least it would be a Court
10 review of the file in camera.

11 MR. GENTILE: And because that's going to take some
12 time, it would seem to me that probably the most efficient way
13 to do that would be for that to be produced for you as soon
14 as --

15 THE COURT: Right. And actually because she hasn't
16 been sentenced yet, if it's a waiver for a Court review, it
17 may not even be me. He may request that another judge do it
18 so we may send it to the presiding criminal -- because there
19 may be things in there that he doesn't want me to know before
20 I sentence her.

21 MR. GENTILE: Second issue is a jury view of the
22 scene, and we're not ready to submit that yet, but we
23 probably -- we may. Let me put it to you that way, we may.
24 Because there's an issue that I don't think can be understood
25 by the jury without them actually being there, which is the --

1 THE COURT: Palomino Club.

2 MR. GENTILE: -- the private office that Luis
3 Hidalgo, Jr. and Anabel Espindola occupied where she says
4 certain events take place where she --

5 THE COURT: At the Palomino or at the auto body?

6 MR. GENTILE: At the Palomino.

7 THE COURT: Okay.

8 MR. GENTILE: Where she contends that by being in a
9 certain area you can't hear if you're in another area and you
10 can. We've run a dozen different type of testing on that and
11 you can. So we want the jury to hear that.

12 The third thing is we have a jail recording that was
13 provided to us by the State of Deangelo Carroll speaking --
14 well, let me say it the way it really is. Okay. He's having
15 phone sex with his wife. Okay. And there's some real hot
16 groaning going on. And then as soon as that's temporarily
17 interrupted, she asks him why he went out to the scene and if
18 he would have known what was going to happen, would he have
19 gone.

20 And actually Mr. Dibble's in a better position to
21 advise the Court, but he responds that on that day at that
22 time he was high on coke and had been all day. Clearly, if he
23 were a live witness on the stand, we would --

24 THE COURT: That goes to his perception and ability
25 to remember and --

1 MR. GENTILE: Absolutely. Absolutely.

2 THE COURT: -- and all that stuff.

3 MR. GENTILE: Since he isn't, this is the closest
4 that we have, but it is an admission of his, so it would be
5 something that where he'd have felt betrayed --

6 THE COURT: Right.

7 MR. GENTILE: -- he would have said had he been
8 cross-examined. I don't have any particular joy in playing
9 the sexual part of it, but it's in context, all right, and so
10 I'm offering the State an opportunity to stipulate to that
11 fact if they want to avoid that part. But it's up to the
12 State.

13 THE COURT: Yeah. We could do a stipulation in a
14 conversation from the detention center with his wife Deangelo
15 Carroll admits to having been high on cocaine and whatever
16 else that day.

17 MR. DIGIACOMO: Well, one, I mean, we've turned over
18 hundreds and hundreds of hours. He -- apparently they have
19 the one recording on a disk. If they could just give me the
20 one recording on a disk, I'll certainly listen to it to see if
21 my interpretation of what he says is exactly what he said. I
22 haven't heard the recording, nor do I know what he said, as it
23 relates to that.

24 Two, and at some point I guess some record has to be
25 made about the way hearsay's being done in this courtroom. I

1 think the Court understands where we're going, but I think the
2 record may not be very clear related to the record. I can
3 offer Deangelo Carroll's coconspirator's statement.

4 THE COURT: Right.

5 MR. DIGIACOMO: And under the statute that is
6 defined -- is excluded from the definition of hearsay.
7 They're not hearsay.

8 THE COURT: Right.

9 MR. DIGIACOMO: The defense in the wire -- body
10 wires have offered and as defense for Little Lou have offered
11 for the truth of the matter asserted something I cannot, and
12 as such, that is hearsay. And under 51.069 we can impeach it.

13 What Mr. Gentile is talking about is using
14 impeachment, 51.069, to attack the credibility of a
15 coconspirator's statement and I'm -- one, I'm not sure that
16 that's true; but, two, when they offer that, are they offering
17 it solely as impeachment evidence or are they offering it as
18 substantive evidence that Deangelo Carroll was on drugs on the
19 day in question?

20 Because if they are, now they're offering another
21 hearsay statement of Deangelo Carroll that was related to --

22 THE COURT: Well, my understanding, and Mr. Gentile,
23 I know, will interrupt me if it's not his position, but my
24 understanding is this: You're going to have coconspirators
25 come in, possibly Jayson Taoipu, definitely Rontae Zone, who

1 are going to come in here and say, Deangelo Carroll told me
2 that Mr. H wanted this done or whatever. And so what
3 Mr. Gentile is saying, okay, that's a statement of Deangelo
4 Carroll. And now Deangelo Carroll's credibility as -- is at
5 issue because was he being truthful, was he being accurate,
6 did he have the ability to accurately perceive, was he under
7 the influence of drugs so that he would exaggerate or
8 misapprehend the situation.

9 And I think what Mr. Gentile is saying, all right,
10 then we get to show he was under the influence of drugs so
11 that that would impact his credibility and his perception and
12 his ability to accurately relay events.

13 Is that essentially what you're saying?

14 MR. GENTILE: Absolutely.

15 MR. DIGIACOMO: And I don't -- I do not --

16 THE COURT: And I think that --

17 MR. DIGIACOMO: I don't disagree with that
18 completely.

19 THE COURT: And I agree with that.

20 MR. DIGIACOMO: It's the manner and method of which
21 they're offering it. Just so that I'm safe on the record, I'm
22 not offering anything Deangelo Carroll says with the exception
23 of his coconspiracy statement for the truth of the matter
24 asserted. Once they --

25 THE COURT: But you are --

1 MR. DIGIACOMO: -- do so --

2 THE COURT: -- his coconspirator statement, and what
3 Mr. Gentile is saying, since you're offering that as a
4 truthful assertion, he has the right to then attack
5 Mr. Carroll's credibility and say even if he said this, then
6 his ability to perceive, to accurately relay events, to
7 accurately give his impressions may have been impaired by
8 virtue of the fact that he had been using cocaine and
9 marijuana or whatever else all day long.

10 MR. DIGIACOMO: And I'm --

11 THE COURT: And I think it comes in for that.

12 MR. DIGIACOMO: And I -- what I'm saying is I'm not
13 disagreeing with the Court; although, I think they have to
14 waive some confrontation rights when they're going to offer a
15 statement of Deangelo Carroll for the truth of the matter
16 asserted because they could prove by putting other witnesses
17 on to say he had dope. But what they're offering is a hearsay
18 statement of Deangelo Carroll for the truth of the matter
19 asserted. They want to do it. The Court's going to allow
20 them to do it. I just want to make sure it's clear that the
21 State's not offering Deangelo Carroll, but we will under
22 51.069, offer other statements of Deangelo Carroll to
23 contradict anything being offered by the defense for the truth
24 of the matter asserted.

25 THE COURT: Well, then the only statement they're

1 offering at this point that we're talking -- there's other
2 issues with respect to Deangelo Carol's statement to the
3 police that we're going to have to get into further, but at
4 this point in time, the only thing they're offering is that he
5 was under the influence of cocaine and marijuana, right?

6 MR. GENTILE: That's right.

7 THE COURT: And so that would be at this point the
8 only fact or assertion that the State would be able to try
9 to --

10 MR. DIGIACOMO: But the Court would agree with me
11 that I could ask the detective, When you interviewed him on
12 the 19th, did you talk to him about his drug use that day?

13 Yes.

14 And did he tell you what drugs he was using?

15 He told me he was smoking marijuana.

16 You agree with me --

17 THE COURT: Right.

18 MR. DIGIACOMO: -- that because that is not
19 consistent with the hearsay statement they offer --

20 THE COURT: Right.

21 MR. DIGIACOMO: -- that I could go into that area --

22 THE COURT: I think then you open the door just on
23 that area on the drug use, but not as to other things.

24 Now, obviously if he brings another statement that's
25 inconsistent with the hearsay statements, you know, let's just

1 say the out of court -- I'm just going to throw anything up
2 there -- that Little Lou didn't know anything about it --

3 MR. DIGIACOMO: Correct. That's where I'm going.

4 THE COURT: -- then you can then go into other -- I
5 mean, just on that topic, not on to other topics.

6 MR. DIGIACOMO: Something that implicates Little Lou
7 in the crimes previously --

8 THE COURT: Not on to other topics, right?

9 MR. GENTILE: No.

10 THE COURT: Okay. We'll get into that later. Right
11 now we're just on the drugs.

12 MR. GENTILE: That's different.

13 THE COURT: Okay. Well, and we can argue that.

14 MR. GENTILE: Okay.

15 THE COURT: On the drug issue, if he introduces his
16 statement that he was on drugs and you've got something else,
17 he wasn't on drugs, then that you can offer. I mean, we don't
18 want to make a whole mini trial about whether or not he was on
19 drugs, but, yes, you can ask the detective. It's not a big
20 issue.

21 MR. DIGIACOMO: But it highlights my concern, which
22 is --

23 THE COURT: Well, we're going to get into the other
24 issue more fuller.

25 MR. DIGIACOMO: -- which is that you may be

1 instructing the jury that Deangelo Carroll -- or the Little
2 Lou didn't do it statement by Deangelo Carroll is asserted by
3 the truth of the matter asserted by Mr. H and as such may not
4 be considered for the truth of the matter asserted, but is
5 being asserted by the truth of the matter for Little Lou and
6 as such you can consider the other statements he made related
7 to that subject matter to --

8 THE COURT: Okay. Well, we're going to have to have
9 further discussion.

10 MR. GENTILE: Without a doubt.

11 THE COURT: I think what we're going to have to do
12 then is on each specific statement or assertion have a
13 discussion, unfortunately, about that and then this goes to
14 this one, this doesn't go to this one, the State can refute
15 this one, the State can't so that we're real clear. But on
16 the drug issue -- yes. What did he say?

17 MR. DIGIACOMO: Okay. And this is the last issue.
18 I think that Mr. Oram is the person to discuss this with, but
19 I would agree with the Court that if I ask Mr. Oram about a
20 single conversation he had with Ms. Espindola that potentially
21 if there's any record related to that conversation, that could
22 be something discoverable for the Court. Certainly not
23 everything he's ever done on the entire case will be
24 discoverable by the Court.

25 THE COURT: Right.

1 MR. GENTILE: And I don't pretend to know the law,
2 but we will.

3 THE COURT: Yeah. I mean, that would just be my
4 impression of what makes sense to me.

5 MR. GENTILE: Well, let's not anybody make up our
6 mind yet, please.

7 THE COURT: My mind's never made up.

8 MR. GENTILE: All right. Thank you.

9 THE COURT: What?

10 MR. ADAMS: Do I have a moment to walk out now?

11 THE COURT: I'm assuming he's bringing them right
12 in. I don't know. I wish I had a walkie-talkie.

13 MR. GENTILE: Who's the first witness?

14 THE COURT: Are they ready?

15 THE MARSHAL: She's on her way.

16 THE COURT: Where is she?

17 THE MARSHAL: Downstairs.

18 THE COURT: Is there anything else we can get done?

19 MR. ARRASCADA: I guess just for the record, we join
20 in Mr. Gentile's three points. And then regarding the Carroll
21 issues, as you said, we agree that they should be taken up
22 piece by piece.

23 THE COURT: Okay.

24 MR. DIGIACOMO: May I suggest at the end of the day
25 that we take up -- because Detective McGrath and the wires is

1 going to be on tomorrow, I imagine --

2 THE COURT: What I would like is if we would go -- I
3 mean, because you both -- the lawyers obviously are much more
4 intimately familiar with all of this than I am, although I'm
5 pretty familiar with it, if we go through each thing where it
6 comes from and, you know, what you want to offer it for and
7 then what you want to use to impeach it so it's very clear.

8 MR. DIGIACOMO: Yeah. If they could tell us which
9 statements that they want --

10 THE COURT: That's what I mean, which statements,
11 where they come from, and that way we could go one by one and
12 it will be clear.

13 (Pause in proceedings)

14 MR. ADAMS: Judge, I have one issue to place on the
15 record.

16 THE COURT: Right now?

17 MR. ADAMS: Yes.

18 THE COURT: Because the juror is here.

19 MR. ADAMS: Right now.

20 THE COURT: Okay. Wait a minute, Jeff.

21 MR. ADAMS: Prior to the first witness.

22 Apparently, the first witness is coming in with the
23 cell site records and that type of information. I was -- did
24 not, I guess, grasp that there was going to be all this cell
25 phone or cell tower --

1 THE COURT: Right.

2 MR. ADAMS: -- evidence introduced in the case. My
3 understanding is that there's not an expectation of privacy
4 into the numbers that you dial out of your phone, but there is
5 an expectation of privacy in the actual cell tower that you
6 use that reveals your location when you call.

7 And I just raised that issue almost with
8 Mr. DiGiacomo. Before that evidence comes in, I'd like to
9 tender, I guess, a notice to the Court that -- or an objection
10 that we want to make sure that proper -- appropriate probable
11 cause determination was made in the application for a Court
12 order warrant for the cell tower information.

13 THE COURT: I don't know if they got it through a
14 warrant or through --

15 MR. ADAMS: I don't know if that's been done.

16 THE COURT: -- a subpoena.

17 MR. ADAMS: Well, it would --

18 THE COURT: Did you get it through grand jury
19 subpoena?

20 MR. DIGIACOMO: It could be by grand jury subpoena.
21 It could be by court order. We actually have multiple copies
22 of the same records, but what Mr. Adams is somewhat -- I
23 wouldn't say confusing, but there's the difference between
24 live time figuring out what cell tower somebody is pinging off
25 of and getting records that have been retained by a business

1 as part of their business records. What he is discussing is
2 the potential right to privacy you have of the police calling
3 up a company and saying, Tell me where this person's phone --

4 THE COURT: Where's this guy right now.

5 MR. DIGIACOMO: -- is right now. That didn't happen
6 in this case. There was a request for historical records of
7 the company, in the possession of the company. They didn't
8 object to providing them to us. And he can't possibly have a
9 right to privacy in some of the records of some other
10 companies, and so I'll submit it on that, Judge.

11 MR. ADAMS: Well, I would sure think I could have a
12 right to privacy in my e-mail account that is managed through,
13 for me, Comcast.net or through other people, Google or
14 whatever. I believe I have -- I've not -- just because it's a
15 business record of someone else doesn't mean I've waived my --

16 THE COURT: Well, let me ask you --

17 MR. ADAMS: -- right to privacy.

18 THE COURT: Let me ask this first, because it may
19 not be your client's right to privacy anyway. These are
20 the -- are these the same records that were introduced in the
21 Kenneth Counts' trial that are coming from Deangelo Carroll
22 and Anabel Espindola and --

23 MR. DIGIACOMO: Both defendants -- well, all the
24 phones are actually owned by Hidalgo body shop, attention
25 Anabel Espindola.

1 THE COURT: Because I'm assuming the point of the
2 records is to show the vicinity to Lake Mead; is that right?

3 MR. DIGIACOMO: Not necessarily.

4 THE COURT: Okay. All right.

5 MR. DIGIACOMO: There is a number of pertinent
6 issues that can be raised from the location of where --

7 THE COURT: Okay. Because that's why they came in
8 in the Kenneth Counts --

9 MR. DIGIACOMO: Yes. The cell sites were irrelevant
10 during the Kenneth Counts trial. The records came in, but we
11 didn't do a lot of discussion to the cell sites and their
12 location.

13 THE COURT: All right. I think you've made your
14 opposition -- position on the record. I think they're
15 entitled to introduce it. Certainly if there are any
16 warrants, they need to give you the applications.

17 MR. ADAMS: And he may have given those in the past.
18 We'd just like to see those so that we can help the Court make
19 an appropriate ruling on the issue.

20 THE COURT: I appreciate your --

21 MR. ADAMS: So can we have this objection to go
22 along with the testimony?

23 THE COURT: Okay. Here's the deal. The objection
24 is noted on the record. You don't need to make a
25 contemporaneous objection. The objection is to the testimony

1 that's about to come in as to the business records of the cell
2 phone site that you're saying your client has an interest in
3 privacy and therefore they're required to get a warrant for
4 the records, not just simply go through either a grand jury,
5 subpoena or even a district court subpoena for the records.

6 I don't think that's true. I think they're entitled
7 to -- just like a bank record. They can just subpoena the
8 custodian of records and get the bank records without going
9 through a search warrant if that's what they want to present
10 at trial. So I certainly think someone has more of a privacy
11 interest in that type of a business record than the cell site
12 records, but that's my initial impression without, you know,
13 having the law right in front of me, and so your continuing
14 objection to this line of questioning and the admission of the
15 records is noted on the record.

16 MR. ADAMS: And subject to revisit it. Perhaps
17 Mr. DiGiacomo and I can get together and pull his paperwork
18 and --

19 THE COURT: Right. And like I said, there may not
20 be a warrant. I don't know. A lot of times business records
21 can come from a grand jury subpoena or other type of court
22 order. So which --

23 MR. DIGIACOMO: I know that Judge Mosley signed an
24 order at one point for us to get a duplicate copy, but there's
25 an original copy in the discovery that appears to have been

1 provided by subpoena.

2 THE COURT: Okay.

3 MR. DIGIACOMO: And I know I turned over at least
4 the subpoena if they don't have the Court order.

5 THE COURT: So it would have been a grand jury
6 subpoena?

7 MR. DIGIACOMO: I don't know -- you know, it doesn't
8 say what -- it's the record from them just saying --

9 THE COURT: It could have been from Metro, an
10 administrative subpoena.

11 MR. DIGIACOMO: It might have been an administrative
12 subpoena. It's their response back saying, We've received
13 your subpoena.

14 MR. PESCI: There was no administrative subpoena
15 [inaudible].

16 MR. ADAMS: We'll revisit it once we're able to --
17 at the appropriate time to see --

18 THE COURT: Right. Like I said, my opinion is that
19 they're entitled to get it by way of subpoena to get these
20 business records just like they do many, many other types of
21 business records.

22 All right. Jeff, bring them in.

23 (Jury reconvened at 1:04 p.m.)

24 THE COURT: All right. Court is now back in
25 session. The record will reflect the presence of the State

1 through the deputy district attorneys, the presence of the
2 defendants and their counsel, the officers of the Court and
3 the members of the jury.

4 Good afternoon, everyone.

5 Mr. DiGiacomo, are you ready to call your next
6 witness?

7 MR. DIGIACOMO: Yes, Your Honor.

8 THE COURT: All right.

9 MR. DIGIACOMO: The custodian of records for Sprint
10 Nextel whose name, I believe, is Jennifer Scheid.

11 THE COURT: All right. Jennifer Scheid.

12 Ma'am, just come on up here, please, to the witness
13 stand, just up those couple of steps and then just remain
14 standing facing our court clerk who will administer the oath
15 to you.

16 JENNIFER SCHEID, STATE'S WITNESS, SWORN

17 THE CLERK: Please be seated and please state and
18 spell your name.

19 THE WITNESS: Jennifer Scheid, J-e-n-n-i-f-e-r,
20 S-c-h-e-i-d.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. DIGIACOMO:

24 Q Good afternoon, ma'am.

25 A Good afternoon.

1 Q How are you employed?

2 A I work for Sprint Nextel.

3 Q In what capacity?

4 A I'm a custodian of records.

5 Q Did you receive a subpoena to come testify to
6 some records that were previously provided to the State of
7 Nevada and the Las Vegas Metropolitan Police Department?

8 A Yes.

9 Q And are you the person they sent out here to
10 identify the records and maybe explain some of the information
11 on it?

12 A Yes.

13 MR. DIGIACOMO: May I approach, Judge?

14 THE COURT: Yes.

15 BY MR. DIGIACOMO:

16 Q Let's start with State's Proposed Exhibit
17 No. 188. Does that appear to be a record of the Sprint Nextel
18 company?

19 A Yes.

20 Q And these business records are records
21 generated in the ordinary course of business?

22 A Yes.

23 Q And I'm assuming that they're generated by
24 people who have knowledge of what information they're putting
25 into the computer that eventually allows you to download this

1 information?

2 A Yes.

3 Q And those appear to be true, fair and accurate
4 copies of the records?

5 A Yes.

6 MR. DIGIACOMO: I'm going to move to admit 188.

7 THE COURT: Any objection subject to the record?

8 MR. GENTILE: No.

9 MR. ADAMS: Admit.

10 THE COURT: All right. Those will be admitted.

11 (State's Exhibit 188 admitted.)

12 BY MR. DIGIACOMO:

13 Q Let's talk first about what 188 is. What
14 information can you tell us from 188?

15 A This is a packet containing subscriber
16 information for several different telephone numbers.

17 Q Okay. And from this information -- well, I
18 guess what I'm going to do is I'm going to throw it on this
19 machine up here and you can look at that screen right there
20 and you'll be able to read it and so will the jury.

21 So if I go to page 3 of this document and give you a
22 little bit -- this may not work as well as I thought it was
23 going to -- it has the account billing name, correct?

24 A Yes.

25 Q And then the account billing address?

1 A Yes.

2 Q And then the contact phone number down here,
3 but that's not the phone number of the phone, correct?

4 A Correct.

5 Q And if you go down here, there's something
6 called PTN. What does that mean?

7 A It stands for personal telephone number. It's
8 the number that was subscribed to that person.

9 Q So in this case it's (702)604-4410?

10 A Yes.

11 Q And then there's a UFMI. What is that?

12 A UFMI stands for universal fleet mobile
13 identifier, and it's the number that's assigned to our Nextel
14 phones that have the walkie-talkie capability.

15 Q Okay. Let's talk about that. Your Nextel
16 phone can be a regular phone, right?

17 A Yes.

18 Q And you can call somebody, they can call you
19 back, and you can just talk to them like a regular phone?

20 A Yes.

21 Q Now, some Nextel phones -- and is it unique to
22 mostly be a Nextel --

23 A Yes.

24 Q -- have what's called the walkie-talkie
25 function?

1 A Yes.

2 Q Explain how the walkie-talkie function works.

3 A It's just like a walkie-talkie. There's a
4 button on the side of the phone. You can use it to
5 communicate, and all of our customers who have that capability
6 will have a UFMI number. That's the number that they're using
7 to communicate when they're using the walkie-talkie feature.

8 Q And then that UFMI number, is that unique to
9 the individual phone?

10 A Yes.

11 Q So the PTN -- or the phone number ending in
12 4410 would have the UFMI that ends in 86 star 1?

13 A Yes.

14 Q Okay. Now, when you use your walkie-talkie
15 feature, do you have different people that you can use the
16 walkie-talkie feature to, or does everybody who -- when you
17 put it into the walkie-talkie, do you talk to everybody who's
18 in your phone? Do you understand my question?

19 A No.

20 Q All right. Let me try that a different way.

21 When you go to use your walkie-talkie function, do
22 you identify the person that you want to call before using the
23 function?

24 A Yes.

25 Q How do you do that?

1 A Just like making a regular phone call, you
2 would scroll down and select that person from your contacts
3 list and then use the walkie-talkie.

4 Q Okay. So I scroll down or someone scrolls down
5 and selects the person they want to talk to, they then push
6 the button in an effort to contact that other person. What
7 happens on that other person's phone?

8 A It makes a beeping sound.

9 Q Called chirping?

10 A Chirping.

11 Q Okay. And when the chirping sound happens, how
12 long does the person on the other end have to respond to the
13 chirp?

14 A Three to five-second window of time.

15 Q And when connection occurs now between the
16 person calling and the person answering, is there some record
17 made of that chirp?

18 A Yes.

19 Q And we'll get back to that in just a minute,
20 but are those records then kept by each individual phone?

21 A Yes.

22 Q The second number, once again, it's still
23 Hidalgo Auto body, correct?

24 A Yes.

25 Q The PTN on this phone is (702)604-6348?

1 A Yes.

2 Q And its unique UFMI is 886 star 13?

3 A Yes.

4 Q The next one is also, again, Hidalgo Auto body
5 Works?

6 A Yes.

7 Q This one is (702)604-9646, correct?

8 A Yes.

9 Q And it's unique UFMI ends in 886 star 4?

10 A Yes.

11 Q This one is Hidalgo Auto body Works, once
12 again?

13 A Yes.

14 Q It's 53 -- (702)604-5322?

15 A Yes.

16 Q It's unique UFMI is 886 star 34?

17 A Yes.

18 Q Now, can you tell from this record whether or
19 not this phone had the ability to actually make regular phone
20 calls or if it's just a chirping device? Is there any way to
21 make that determination?

22 A It could make both, regular phone calls and
23 direct connect phone calls.

24 Q And then the last one shows a record for
25 Timothy Hadland and the PTN is (702)234-8019.

1 A Yes.

2 Q And it's unique UMFI ends in 427 star 13?

3 A Yes.

4 Q Okay. And then at the top there -- I may have
5 made a mistake earlier. Can you tell me -- does that say
6 count establish date -- actually, the date the account was
7 established is 4/20/05?

8 A Yes.

9 Q So this appears to be, as at least of
10 May 19th of 2005, a somewhat new phone for Timothy Hadland?

11 A Yes.

12 Q I'll show you what's been marked as State's
13 Proposed Exhibit No. 189. Do you recognize that?

14 A Yes.

15 Q What is it?

16 A Call detail records.

17 Q And those are for regular phone calls or for
18 direct connects?

19 A Regular phone calls.

20 Q So those reflect all the regular phone calls by
21 a particular -- for some phones --

22 A Yes.

23 Q -- that are part of Nextel records?

24 A Yes.

25 Q And they are kept in the ordinary course of

1 business?

2 A Yes.

3 Q And I'm assuming they're computer generated by
4 the phone themselves?

5 A Yes.

6 Q And they appear to be true, fair and accurate
7 copies of those records?

8 A Yes.

9 MR. DIGIACOMO: Move to admit 189.

10 MR. GENTILE: I just need to see them.

11 THE COURT: All right. Would you show that to
12 Mr. Gentile, please, Mr. DiGiacomo.

13 (Pause in proceedings)

14 MR. DIGIACOMO: I believe there's no objection from
15 the defense.

16 THE COURT: Oh, I'm sorry.

17 MR. ADAMS: No objection.

18 MR. GENTILE: No objection. I'm sorry. I just
19 didn't -- you know, unless I see what --

20 THE COURT: I thought Mr. -- I just thought. Okay.
21 No objection. Those will be admitted. Thank you.

22 THE CLERK: 189.

23 MR. DIGIACOMO: 189, yeah.

24 (State's Exhibit 189 admitted.)

25 BY MR. DIGIACOMO:

1 Q Now, 197, do you recognize that?

2 A Yes.

3 Q And once again, is it a business record kept in
4 the ordinary course of business?

5 A Yes.

6 Q And that very front page, what kind of
7 information is contained on that front page?

8 A This is a diagram of a three-sector cell tower.

9 Q Okay. And then the pages underneath, what
10 information is on those pages?

11 A It's the physical latitude and longitude
12 address of all of our cell towers -- or a portion of our cell
13 towers in the southern California switch.

14 Q Okay. So that record identifies not only how a
15 cell tower looks or -- works sort of but also provides the
16 physical location of each and every cell tower or at least the
17 section of cell towers in the southern California switch area?

18 A Yes.

19 MR. DIGIACOMO: Move to admit 197.

20 THE COURT: Any objection subject to the record?

21 MR. ADAMS: No, ma'am.

22 MR. GENTILE: No.

23 THE COURT: All right. Those will be admitted. And
24 I'm sorry, what number was that?

25 MR. DIGIACOMO: That's 197.

1 THE COURT: All right. 197 is admitted.

2 (State's Exhibit 197 admitted.)

3 BY MR. DIGIACOMO:

4 Q I'm going to put 197 up here and then I'm going
5 to ask you first to explain a little bit about cell towers for
6 the ladies and gentlemen of the jury.

7 If you actually touch that screen in front of you,
8 it will make a mark if you need to touch it.

9 Generally, how do cell towers work?

10 A Typically when a customer makes a phone call,
11 that call would be routed to the tower providing the strongest
12 signal. In most cases, it would be physically the closest
13 tower to the handset.

14 Q All right. And what kind of distance can you
15 make to a cell tower?

16 MR. ADAMS: Your Honor, I object to this being
17 beyond the scope of a business record.

18 THE COURT: It may be.

19 MR. DIGIACOMO: She has some knowledge as to it.

20 THE COURT: Well, does she?

21 MR. DIGIACOMO: Okay. Let me rephrase.

22 THE COURT: Yeah. I mean, lay a little bit of a
23 foundation.

24 MR. DIGIACOMO: I'll lay a little foundation.

25 BY MR. DIGIACOMO:

1 Q Now, let me back up. Almost anyone from Nextel
2 can come down here and identify --

3 MR. ADAMS: Objection. Leading, Your Honor.

4 MR. GENTILE: Yeah.

5 THE COURT: All right. Sustained. It's kind of
6 foundational, though, but go on.

7 MR. DIGIACOMO: It's very foundational.

8 BY MR. DIGIACOMO:

9 Q When I made the request to Nextel, did I
10 request somebody who could specifically describe the way the
11 cell towers work?

12 A Yes.

13 MR. ADAMS: Objection as to relevance on that, Your
14 Honor.

15 MR. DIGIACOMO: I'm --

16 MR. ADAMS: I mean, what he did and his state of
17 mind is irrelevant.

18 THE COURT: Well, he's trying to lay -- Mr. Adams,
19 he's trying to lay a foundation, which is what the Court asked
20 him to do so that he can -- because she's not just here as a
21 custodian of records anymore. She's not testifying about the
22 records so he needs to establish what she does do for Nextel
23 and how she would know this.

24 MR. ADAMS: Your Honor, she's not been qualified as
25 an expert in cell towers.

1 THE COURT: All right. Go on.

2 MR. DIGIACOMO: Thank you, Judge.

3 BY MR. DIGIACOMO:

4 Q Now, when I -- why is it when a person makes a
5 request of Nextel to send somebody that has Nextel information
6 or somebody like you say a person, any employee of Nextel that
7 can identify the records, why do they send you?

8 A I can explain what the columns and what the
9 records mean, basically how to interpret the records.

10 Q How do you know that?

11 A I've worked there for five years.

12 Q Okay. You receive training and receive
13 information from the -- from Nextel about how these towers
14 work and the manner and method in which they work?

15 A Yes.

16 MR. GENTILE: Can I take the witness on voir dire?
17 This is really a foundation issue.

18 THE COURT: It is. Go ahead. Well, yeah,
19 Mr. DiGiacomo has a right to finish laying his foundation and
20 then --

21 MR. GENTILE: Okay. I'm sorry.

22 THE COURT: -- then you may take her on voir dire if
23 you're still not satisfied, Mr. Gentile.

24 So, Mr. DiGiacomo, did you have any additional
25 questions relating to this issue?

1 MR. DIGIACOMO: I can ask her that question.

2 THE COURT: All right.

3 BY MR. DIGIACOMO:

4 Q How is it that you -- how is it that this
5 information -- well, let me back up just a little bit.

6 On a day-to-day basis, what do you do with Nex --
7 Sprint Nextel?

8 A Pull phone records for legal demands.

9 Q Okay. And during the course of pulling records
10 as far as -- for legal demands, has there come an opportunity
11 when there's been -- let me rephrase the word -- at some point
12 in time, do you get educated about the way the information is
13 collected and why the records say what they say?

14 A Yes.

15 Q Okay. How is it that that information was
16 provided to you? Was it -- I mean, was it some formal
17 educational training or was it something that was done
18 through -- did you go to a seminar or was there a class? How
19 did that work?

20 A No, just mentoring with coworkers.

21 Q So during the course of working for Nextel,
22 other coworkers have explained to you how Nextel stuff works?

23 A Yes.

24 Q And based upon that, eventually when a request
25 was made for somebody who has knowledge about how Nextel

1 works, they sent you?

2 A Yes.

3 THE COURT: Are there other people at Nextel that
4 also go out and testify and compile the records or are you
5 pretty much the one?

6 THE WITNESS: No, there are other people that do the
7 same thing.

8 THE COURT: How many? I'm just curious.

9 THE WITNESS: We have three people that do it full
10 time, and we have supervisors and managers who also do it when
11 there are too many trials for us to accommodate.

12 THE COURT: All right. Thank you.

13 I'll see counsel at the bench, please.

14 (Off-record bench conference)

15 THE COURT: All right. Mr. DiGiacomo, you may
16 continue.

17 MR. DIGIACOMO: Thank you. Just a couple of more
18 questions.

19 BY MR. DIGIACOMO:

20 Q How many times did you have to testify as the
21 custodian of records?

22 A About 45.

23 Q About 45 times. And how many times have you
24 been asked questions about cell towers?

25 A A lot.

1 Q A lot. Right. A lot of times people ask you
2 these questions, right?

3 A Yes.

4 Q Okay. Let's go to -- let's just back up
5 because the record is in. You indicated during your testimony
6 that one of this things it shows is three-sector layout -- or
7 the three-sector layout of the cell towers.

8 A Yes.

9 Q And then the records themselves will show a
10 sector layout; is that correct?

11 A Yes.

12 Q Okay. When the record shows that -- let me
13 grab the record themselves.

14 THE COURT: They're up there.

15 BY MR. DIGIACOMO:

16 Q I don't know actually if 189 actually has the
17 cell phone -- let's go to 189 here. When you look at 189 --
18 no -- we've got all start date?

19 A Yes.

20 Q One column. That's the time that the call
21 started, correct?

22 A Yes.

23 Q Outbound call?

24 A Correct.

25 Q And the customer number is 4410. So this is an

1 outbound call by 4410?

2 A Correct.

3 Q The person being called is the other party?

4 A Yes.

5 Q So 4410 called 9646?

6 A Yes.

7 Q The duration is .18 minutes?

8 A Yes.

9 Q And then the originating cell site is -- what
10 information is contained in the originating cell site?

11 A In the originating and terminating cell site
12 columns there are a series of two numbers. The first one we
13 refer to as a LAC and the second is a CID. LAC stands for
14 location area code and CID stands for cell ID.

15 On the master cell site address list, those two
16 numbers will give you the physical latitude and longitudinal
17 coordinates for each tower and it will also specify which
18 sector the call hit off of.

19 Q So it will say which sector -- which side of
20 the cell tower the phone call came into?

21 A Yes.

22 Q And what's the difference on this between an
23 originating cell site versus a terminating cell site?

24 A Originating is from the time the customer
25 answers or hits send on their cell phone and terminating is

1 the last cell tower that handled that call.

2 Q So during the time of a call, if you're
3 moving -- or if you're not, the call may jump from one tower
4 to the next?

5 A Yes.

6 Q So you can tell not only where the call started
7 but where the call ended, correct?

8 MR. ADAMS: Objection, Your Honor. Again, that's
9 beyond -- she's not an expert. She doesn't have an engineer
10 background, and she doesn't work in the field on this matter.

11 THE COURT: All right. Let me ask the question a
12 different --

13 According to this, then, the originating cell site
14 is the cell site that's in the computer in your records from
15 when the call was first made; is that right?

16 THE WITNESS: Yes.

17 THE COURT: And then the other one is whenever the
18 call was ended?

19 THE WITNESS: Yes.

20 THE COURT: And according to the records, sometimes
21 that's the same cell site and sometimes it's different?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Go on.

24 BY MR. DIGIACOMO:

25 Q Now, as opposed to cell site information, I'm

1 showing you what's been marked as State's Proposed Exhibit
2 190, that's different information than actual phone calls?

3 A Yes.

4 Q And those don't actually have cell site
5 information, do they?

6 A No.

7 Q Okay. What kind of records are those?

8 A These are direct connect records.

9 Q Okay. Now, are those records kept in the
10 ordinary course of business of Sprint Nextel?

11 A Yes.

12 Q And with the exception of highlighting and the
13 little handwriting that's on there, do they appear to be fair
14 and accurate records of Sprint Nextel?

15 A Yes.

16 MR. DIGIACOMO: Move to admit 190.

17 THE COURT: Any objection to 190? Do you need --

18 MR. ADAMS: Just a moment, Your Honor. There's a
19 number -- about half those records at this point have
20 handwriting and color coding and she has no basis for
21 foundational knowledge of that.

22 THE COURT: Let me see.

23 MR. GENTILE: I just need to see that document for
24 just a second.

25 THE COURT: All right. Counsel, since counsel needs

1 to see it and the Court wants to look at it, if everyone can
2 approach and view the record.

3 (Off-record bench conference)

4 THE COURT: All right. Ma'am, for the record, on
5 this the handwritten annotations you didn't make, you didn't
6 know anything about those; is that right?

7 THE WITNESS: Yes.

8 THE COURT: And then the highlighted portion, you
9 don't know anything about that either?

10 THE WITNESS: No.

11 THE COURT: All right. The record at this point
12 will come in just as to the printed-out record, not as to any
13 annotations in handwriting or any highlighting, but for
14 purposes of putting it up on the screen, Mr. DiGiacomo, that
15 was highlighting that was done at the request of the district
16 attorney's office in anticipation of this litigation; is that
17 right?

18 MR. DIGIACOMO: Actually I think the detective did
19 it long before the district attorney's office got involved.

20 THE COURT: All right.

21 BY MR. DIGIACOMO:

22 Q What we're going to do is just show you a
23 couple of things and --

24 THE COURT: Mr. DiGiacomo.

25 MR. DIGIACOMO: I'm trying, Judge.

1 BY MR. DIGIACOMO:
2 Q There we go.
3 Now, when we look at this record right here, I want
4 you to actually look at the PTN. It shows what the PTN is of
5 the phone number, right, (702)604-5322?
6 A Yes.
7 Q Okay. And then it shows the destination UMFI,
8 which is the direct connect, correct?
9 A Yes.
10 Q Now, when you look at 5322 and you see the
11 UFMI, are these outgoing or incoming calls from 5322?
12 A These are all outgoing calls.
13 Q So this reflects that the call was outgoing by
14 Deangelo -- oh, I'm sorry, by 5322?
15 A Yes.
16 Q Okay. And then if you look at each one of the
17 highlighted ones, it shows one, two, three, four, five, six,
18 seven that appear to be star 4?
19 A Yes.
20 Q 886 -- I want to change and flip to 9646.
21 There we go, 9646, that's the PTN?
22 MR. ADAMS: Your Honor, is he going to cover up all
23 the writing on the document or just the selected writings?
24 THE COURT: Oh, yeah, all the writing was supposed
25 to be covered, Mr. DiGiacomo.

1 MR. DIGIACOMO: Well, I'm sure she'll identify her
2 phone number, but okay.

3 THE COURT: Mr. DiGiacomo, you don't need to make
4 commentary.

5 MR. DIGIACOMO: Thank you, Judge.

6 BY MR. DIGIACOMO:

7 Q 9646, correct?

8 A Yes.

9 Q Okay. And then you can see one, two, three,
10 that have star 34, correct?

11 A Yes.

12 Q All right. Now, what I want to do is now go
13 back to the subscriber information. From the subscriber
14 information, can you tell me that star 34 is actually 5322?

15 A Yes. The UMPI 122 star 109886 star 34
16 corresponds with the PTN (702)604-5322.

17 Q Now, I want to back up. Does 886 star 4
18 correspond to 9646?

19 A Yes.

20 Q Okay. We just went over the records and it
21 shows that there are seven on 9646 -- or seven on 5322, but
22 only three on 9646. Is there an explanation for that?

23 A This record will only reflect outgoing calls.

24 Q So the only information you know is that
25 someone is outgoing to the person -- is there any way to

1 determine whether or not the person did or did not answer the
2 outgoing call?

3 A No.

4 MR. DIGIACOMO: Thank you very much.

5 All these are in, Judge, aren't they? 190 was
6 admitted subject to the ruling of the Court.

7 THE COURT: Right.

8 MR. DIGIACOMO: I then pass the witness, Judge.

9 THE COURT: All right. Thank you.

10 Cross.

11 CROSS-EXAMINATION

12 BY MR. GENTILE:

13 Q I just have some -- a few questions.

14 A Okay.

15 Q I'm looking at Exhibit 197.

16 A Yes.

17 Q All right. I'm going to put it up here. You
18 identified it as [inaudible]. Now, here's my question: My
19 cell phone doesn't work a lot on some things. Do these towers
20 overlap?

21 A It's possible.

22 Q Okay. And if there's something wrong with one
23 tower, will the other one pick up for it?

24 A Yes. The call would then go to the tower
25 providing the next strongest signal.

1 Q Okay. And were you asked to provide records
2 with respect to whether all of these towers were all
3 functioning that day?

4 A No.

5 Q So we don't know?

6 A No.

7 Q Am I correct?

8 A Yes.

9 Q And so then when we see on these records the
10 tower that the record reflects as being the tower that was
11 handling this call, we know that that's the tower that was
12 handling the call?

13 A Correct.

14 Q But we don't know if that's the tower that
15 would ordinary handle the call if all the towers were working?

16 A Correct.

17 Q It might have been another tower that wasn't
18 working?

19 A It's possible.

20 Q And you're not an engineer?

21 A No.

22 Q You don't design the towers?

23 A No.

24 Q You don't repair the towers?

25 A No.

1 Q You don't even communicate with those guys, do
2 you?

3 A No.

4 Q Now, you know, these records confuse me, so I'm
5 going to ask you to tell me -- one of these, I understand,
6 tells us phone calls, cellular phone calls that are made, and
7 one of them tells us chirps that are done, the records --

8 A Yes.

9 Q -- and there's basically two different records
10 but for the same call, one recording phone calls that are
11 made, one recording chirps that are made?

12 A Yes.

13 Q Okay. I'm only interested in the phone number
14 644-4410. That's the only one that I care about, okay?

15 A Okay.

16 Q Maybe you can -- I'm going to approach you, if
17 you don't mind.

18 A Okay.

19 THE COURT: That's fine.

20 BY MR. GENTILE:

21 Q Which one of these tells us the phone calls,
22 just cellular phone calls, that are sent and received by
23 604-4410?

24 A This one.

25 Q All right. Let the record reflect that the

1 witness said "this one," but she means...

2 A Page --

3 Q No. Exhibit.

4 A State's Exhibit 189, page 1, 2, and 3.

5 Q Okay. May I see that for a second? Well, look

6 through it because I want to make sure that you've got all of

7 the pages there that relate to this 4410.

8 Just the first three pages?

9 A Yes.

10 Q Okay. Great.

11 Now, I couldn't probably look through this myself,

12 but I'm going to ask you because -- can you tell me how many

13 times this document, Exhibit 189, reflects a cellular phone

14 call made from 604-4410 to 604-5322?

15 A 5322. I don't see any calls on these pages.

16 Q None?

17 A No.

18 Q Okay. Can you tell me whose number 604-4410

19 was, maybe not from that document but from one of the others?

20 A 4410?

21 Q Why don't you look at that one over there. It

22 might help you.

23 A Hidalgo's Auto body Works.

24 Q Okay. But can you tell precisely who that

25 line -- that 4410 number was associated with?

1 A The account billing name is Hidalgo's Auto
2 body.
3 Q Okay. So I see this record over here, this
4 Nextel record -- oh, I see. Somebody wrote that in.
5 All right. Let's look at something else.
6 Would you tell -- which one of these documents
7 reflects the chirping that was done by 604-4410?
8 A This one.
9 Q Okay. And let me see that for just a second,
10 please. Okay. And -- but this doesn't tell you what the
11 phone number was that's being chirped. It only tells you what
12 the -- what --
13 A UFMI.
14 Q All right. What UFMI is associated with
15 604-5322?
16 A 122 star 109886 star 34.
17 Q Okay. Could you take a look, then -- if I
18 understand correctly, it's -- Exhibit 190 has all of the
19 chirping that was done by 604-4410 from the 19th. of May
20 through the 24th of May?
21 A Yes.
22 Q All right. Then take a look at 190 and
23 please -- what was that star? What -- just give me the last
24 couple of things that follow the star on 5322.
25 A 5322, UFMI ending in 886 star 34.

1 Q Star 34.

2 How many times does this document show that the

3 phone number (702)604-4410 chirped that star 34 number in

4 those five days?

5 A None.

6 Q Okay. So then (702)604-4410 didn't call the

7 5322 number and didn't chirp the 5322 number during that

8 five-day period, according to these records?

9 A Correct.

10 Q Okay. May I have that for the second.

11 Now, let's do it the opposite way. Let me see this

12 for just a second, if I may.

13 If I understand correctly, this (702)604-4410

14 number, it's UFMI -- in other words, if somebody is chirping

15 from another phone to that number, it's going to end in a star

16 1?

17 A Yes.

18 Q Okay. And it's Exhibit 188 that tells you

19 that?

20 A Yes.

21 Q Okay. Let's take a look then again at

22 Exhibit 190. This is the exhibit that tells you when a phone

23 number chirps another number?

24 A Yes.

25 Q Okay. Take a look at the records here for

1 (702)604-5322. Okay. That's the number that 4410 never
2 called in five days, right?

3 A Okay.

4 Q Okay. Tell me how many times -- tell the
5 ladies and gentlemen of the jury how many times -- don't tell
6 me because I know, okay -- tell them how many times
7 (702)604-5322 chirped star 1 between May the 19th and May the
8 20th.

9 A 5322, none.

10 Q All right. Let's go back through those phone
11 records, please. I can't find 5322. Can you find it for me?

12 A Right here.

13 Q 5322?

14 A Mm-hmm.

15 Q Okay. And what is that? That's page -- what
16 page is that of that exhibit?

17 A It's the fourth page.

18 Q The fourth page of what exhibit number?

19 A 189.

20 Q Okay. Now, would you tell the ladies and
21 gentlemen of the jury how many times 5322 called 4410.

22 A None.

23 MR. GENTILE: Excuse me. Just a moment.

24 Thank you.

25 THE COURT: All right. Mr. Adams.

1 CROSS-EXAMINATION

2 BY MR. ADAMS:

3 Q On number 234-8019, can you find that?

4 A Mm-hmm. 019 of the phone records?

5 Q Yes.

6 A The regular call records?

7 Q The regular call records that show who has the
8 account.

9 A Oh, the subscriber?

10 Q Subscriber.

11 A Yes.

12 Q This is Exhibit No. 188. And what is that
13 number, the telephone number?

14 A (702) 234-8019.

15 Q And who is that number registered to?

16 A Timothy Hadland.

17 Q Is that billing address at Simone's Auto body
18 Shop?

19 A No.

20 Q Were the rest of the records that you talked
21 about at Simone's Body Shop?

22 A The other numbers were in an account billing
23 named Hidalgo's Auto body Works.

24 Q And what number's that?

25 A Number ending in 4410 and --

1 Q How about a number ending in 6348?

2 A Yes.

3 Q How about for the number ending in 9646?

4 A Yes.

5 Q How about for the number ending in 5322?

6 A Yes.

7 Q So all those are paid by the same customer

8 except for that first number which is paid by Mr. Hadland?

9 A Yes.

10 Q And what was the originating date of the

11 records for Mr. Hadland, his account?

12 A 8019, May 19, 2005.

13 Q If someone has a Nextel phone, Mr. Hadland, for

14 instance, and I'm a Nextel subscriber, could I put my

15 walkie-talkie number -- could I call him on his walkie-talkie

16 even though they're paid by different employers? Does that

17 make sense?

18 Let's say you, if you have a Nextel phone that is

19 paid for by Nextel, and I have a Nextel phone paid for by my

20 law office, could I get your code and enter that and chirp

21 you?

22 A Yes.

23 Q Mr. Gentile asked you about the cells and

24 whether the cells -- if one wasn't working, it might go to

25 another cell?

1 A Yes.

2 Q If a certain cell site is busy, it would then
3 overflow then and go to another cell site?

4 A Possibly, yes.

5 Q So even if it's not broken, it could send the
6 cell signal to a site that's further away than where the call
7 is?

8 A It's possible, yes.

9 Q I'd like to talk to you about two numbers in
10 particular, and that's number 96 -- a number that ends
11 604-9646 and a number 604-5322.

12 A Okay.

13 Q And I'd also like for you to look up the number
14 634-0842.

15 A Okay.

16 Q All right. And do your records indicate who
17 634-0842 is registered to?

18 A 0842?

19 Q Yes, ma'am.

20 A I don't have information on that number.

21 Q All right. Let's then talk about the number
22 604-9646. We'll talk about that one first.

23 A Okay.

24 Q Do you know how many calls were made by that
25 number 9646 to the number 604-5322 on May the 19th?

1 A So the number ending in 5322?
2 Q Yes, ma'am.
3 A None.
4 Q All right. How about from that number 604-9646
5 to the number that you don't have records on, 643-0842.
6 A 9646 to...
7 Q Yes, ma'am. 9646 either calling out or
8 receiving a call from 643-0842.
9 A 0842. Four calls.
10 Q All right. And what time were those calls?
11 A The first is an inbound call at 4:58 and 56
12 seconds, p.m.
13 Q And for which of those two numbers?
14 A From (702)604-9646 --
15 Q All right.
16 A -- received a call from (702)643-0842.
17 Q All right. And what was the duration of that
18 call at 4:58 p.m. on May the 19th?
19 A 1.17 minutes.
20 Q All right. And is that one minute and 17
21 seconds or is that 17/100ths of a minute?
22 A 17/100ths of a minute.
23 Q All right. And we'll get the calculators out
24 later on that.
25 And how about the other call?

1 A There is another inbound call at 7:27 and 05
2 seconds, p.m.
3 Q 7:27 p.m.?
4 A Yes.
5 Q And what was the duration of that incoming
6 call?
7 A 3.75.
8 Q So 3 minutes and 75 percent of another minute?
9 A Yes.
10 Q So 3 minutes and -- I think I can do that
11 one -- 45 seconds?
12 A Yeah.
13 Q Okay. Were there any others?
14 A Yes. There was an outbound call from
15 (702)604-9646 to (702)643-0842 at 8:13 and 18 seconds, p.m.,
16 and --
17 Q And how long was that call?
18 A Zero.
19 Q All right.
20 A And --
21 Q And can you tell if that number is a landline
22 or a cell phone?
23 A No.
24 Q And what is the other one?
25 A 8:15 and 16 seconds, an outbound call from

1 (702)604-9646 to (702)643-0842.

2 Q And what was the duration of that?

3 A .1.

4 Q Okay. On -- let's talk about this 604-9646.

5 Is there a UFMI or the walkie-talkie number associated with

6 that phone number?

7 A Yes.

8 Q All right. And it's 886 asterisk 4 or star 4?

9 A Those are the last digits, yes.

10 Q Okay. Could you please check on those records

11 related to the walkie-talkie function, the star 4.

12 A Okay.

13 Q Was there -- were there any calls from that

14 incoming or outgoing walkie-talkie connection with a star 34,

15 886 star 34?

16 A For the number ending in 9646?

17 Q Yes.

18 A Calls -- outgoing calls to 886 star 34?

19 Q Yes.

20 A Yes.

21 Q And how many?

22 A Three.

23 Q What times?

24 A These are military times, so the first one is

25 23:37:35 seconds.

1 Q So 11:37 p.m.?
2 A Yes.
3 Q On May the 19th --
4 A Yes.
5 Q -- 2005?
6 A Yes.
7 Q All right. And how long was that call?
8 A Zero.
9 Q And does a zero mean that someone is trying to
10 ping someone to let them know that they're available?
11 A It means that they're either alerting that
12 person or they attempted to call out.
13 Q Okay. So at 11:37 p.m.
14 What are the others?
15 A Another one at 23:08:06, duration --
16 Q 11:08:06 p.m.?
17 A Correct.
18 Q All right. And what was the duration of that
19 one?
20 A Zero.
21 Q Okay. And what else?
22 A 22:45:35. That one was 12.6 seconds.
23 Q Okay. So at 10:45 p.m., for 12.6 seconds,
24 there was an open channel between these two phone lines?
25 A Yes.

1 Q Were there incoming calls to that number, to
2 the 886 asterisk 4, on the 19th?

3 A This record will only reflect outgoing calls.

4 Q All right. Will you please check the record
5 for 886 asterisk 34. All right. You ready?

6 On the 19th of May, were there walkie-talkie
7 functions used from that number 886 asterisk 34 in an attempt
8 to contact 886 asterisk 4?

9 A Yes.

10 Q How many times?

11 A Four times.

12 Q And what times were those?

13 A 23:37:41 seconds.

14 Q I'm sorry, 23 --

15 A 37.

16 Q 37.

17 A For 21.2 seconds.

18 Q All right.

19 A .23:08, 13 seconds.

20 Q So at 11:08 for 13 seconds?

21 A Yes.

22 Q All right.

23 A 22:45, 8.3 seconds; 22:42, 25.7 seconds.

24 Q On this record with the 886 asterisk 34, can
25 you please find, if you can, Mr. Hadland's phone records, the

1 records registered to a Mr. Hadland that we've talked about
2 earlier.

3 A Number ending in 8019?

4 Q Correct.

5 And what was his walk -- what's the walkie-talkie
6 function number?

7 A It's 125 star 141427 star 13.

8 Q All right. Are there any connections between
9 the number ending in 427 asterisk 13 and this earlier number
10 we were talking about 886 star 34? Since the records only
11 show one at a time, let me first ask you, I guess, from
12 Mr. Hadland's record, the 427 star 13, are there outgoing
13 contacts to 886 star 34 on May the 19th, 2005?

14 A I don't have the direct connect records for the
15 number ending in 8019.

16 Q Why not?

17 A No information was found on that number --

18 Q All right.

19 A -- at the time it was requested.

20 Q Well, let's look at it the other way, from the
21 number 886 asterisk 34, outgoing calls to the UFMI number
22 related to Mr. Hadland, 427 asterisk 13.

23 A Four calls on the 19th of May.

24 Q What time were those four calls and the
25 duration?

1 A One at 23:13, which was 13.6 seconds.
2 Q So at 11:13 p.m., 13.6 seconds or 16 seconds?
3 A 6.
4 Q .6 seconds on May the 19th, 2005?
5 A Yes.
6 Q All right. How about the second one?
7 A 22:54 for 20.7 seconds.
8 Q How about the --
9 A 22:53, 7.6 seconds.
10 Q And how about the first call to him?
11 A 22:39, zero seconds.
12 Q So according to the records that you have, this
13 number 886 asterisk 34, the first contact with the UFMI
14 registered to Mr. Hadland was a ping or an attempt to contact
15 at 10:39 p.m. on May the 19th, 2005?
16 A According to this record, yes.
17 Q And according to those records, the last
18 contact from those two numbers, the number we were talking
19 about, 886 asterisk 34, to the number under Mr. Hadland's name
20 was at 11:13 p.m. for 13.6 seconds?
21 A Yes.
22 Q Thank you.
23 MR. ADAMS: May I have the Court's indulgence?
24 THE COURT: That's fine.
25 BY MR. ADAMS:

1 Q One more, if I may. From the phone number
2 604-5322 --
3 A Regular phone calls or direct connect?
4 Q Regular phone calls.
5 A Okay. Yes.
6 Q How many phone calls were there to 604-9646?
7 A None.
8 Q All right. Thank you.
9 MR. ADAMS: Thank you, Your Honor.
10 THE COURT: All right. I have a question from a
11 juror.
12 All right. Looking at -- going off the records, the
13 dates in question for the phone calls and chirps from 604-4410
14 to 604-5322 covered what period of time, what dates?
15 THE WITNESS: From 4410, starting May 19th, ending
16 May 24th of 2005.
17 THE COURT: Okay. And what was the last call from
18 604 to 44 -- I'm sorry -- from 604-4410 to 604-5322 reflected
19 in your records, call or chirp?
20 THE WITNESS: Call or chirp. Okay. I don't show
21 any calls to that number.
22 THE COURT: From the one number to the other number?
23 THE WITNESS: From -- right -- (702)604-4410.
24 THE COURT: Okay.
25 All right. Mr. Adams, any follow-up based on those

1 juror questions?

2 MR. ADAMS: No, ma'am.

3 THE COURT: Mr. Gentile, any follow-up based on
4 those juror questions?

5 MR. GENTILE: No, thank you.

6 THE COURT: All right. Mr. DiGiacomo, redirect.

7 MR. DIGIACOMO: Thank you. Just very briefly.

8 REDIRECT EXAMINATION

9 BY MR. DIGIACOMO:

10 Q So I get this right, there's no calls between
11 4410 and 5322, right? That's what you just checked out?

12 A Yes.

13 Q Okay. Now I want to back up and just check
14 out -- we have the cell phone records for 5322, so let's flip
15 to those. Let's back up and make sure that 5322 is in here.
16 There we go.

17 The fourth page of State's Exhibit No. 189 shows all
18 the cell phone -- actual phone calls from 5322, right, not
19 chirping, just phone calls?

20 A Yes.

21 Q And the sum total of those are one, two, three,
22 four, five calls, correct?

23 A Yes.

24 Q They're all outbound attempts?

25 A Yes.

1 Q And all of them have a duration of zero,
2 correct?
3 A Yes.
4 Q And the other party called comes up blank?
5 A Yes.
6 Q Any idea why that would be on the record?
7 A It was possibly an attempted call that never
8 connected. We don't have that information.
9 Q So no idea what party was dialed?
10 A No.
11 Q But other than that, there's no actual phone
12 calls from 5322, correct?
13 A Correct.
14 Q You were asked about a particular number from
15 9646, and I actually want to go to that same number for 6348.
16 There's a number that's (702)643-0842, I believe, and let's
17 see if we can find it on here, 6348. Let's go back to the
18 19th.
19 And that phone call right there at 7:42 p.m. is an
20 outbound call, correct?
21 A Yes.
22 Q And the cell tower says West Flamingo on it,
23 correct?
24 A Yes.
25 Q And --

1 MR. ADAMS: Object to leading, Your Honor. It's a
2 direct witness.

3 THE COURT: All right.

4 MR. DIGIACOMO: She's reading a record.

5 BY MR. DIGIACOMO:

6 Q What does it say where my finger is?

7 THE COURT: What does the record say?

8 BY MR. DIGIACOMO:

9 Q Yeah. What does it say where any finger is?
10 What does that say? Can you read that right there?

11 A ISTH Strip.

12 Q ISTH Strip, correct?

13 A Yes.

14 Q And the duration of the call?

15 A 1.18 minutes.

16 Q And it's from 6348?

17 A Yes.

18 Q To?

19 A (702) 643-0842.

20 MR. DIGIACOMO: I'm done.

21 THE COURT: Any other recross?

22 Ma'am, thank you for your testimony. I'm about to
23 excuse you, but before I do, I must advise you not to discuss
24 your testimony with anyone else who may be called as a witness
25 in this case. Thank you, and you are excused.

1 THE WITNESS: Thank you.

2 THE COURT: All right. Ladies and gentlemen, let's
3 take a break. We'll be in recess until 2:25.

4 And once again, you're reminded of the admonishment
5 that you're not to discuss anything relating to the case with
6 each other or with anyone else. Don't read, watch, listen to
7 any reports or commentaries on any subject matter relating to
8 the case. Don't form or express an opinion on the trial.

9 Notepads in your chairs. Follow Jeff through the
10 double doors. We'll see you all back here at 2:25.

11 (Court recessed at 2:15 p.m. until 2:34 p.m.)

12 (In the presence of the jury.)

13 THE COURT: All right. Court is now back in
14 session. The record will reflect the presence of the State,
15 defendants, their counsel, officers of the Court, members of
16 the jury.

17 And the State's next witness?

18 MR. DIGIACOMO: Dr. Gary Telgenhoff.

19 THE COURT: All right. Dr. Telgenhoff.

20 Doctor, please come on up to the witness stand,
21 please, sir, and remain standing facing our court clerk who
22 will administer the oath to you.

23 GARY TELGENHOFF, STATE'S WITNESS, SWORN

24 THE CLERK: Please be seated and please state and
25 spell your name.

1 THE WITNESS: My name is Dr. Gary Telgenhoff. First
2 name is G-a-r-y, last name is T-e-l-g-e-n-h-o-f-f.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. DIGIACOMO:

6 Q Good afternoon, Doctor.

7 A Afternoon.

8 Q How are you employed?

9 A By the Clark County Coroner's Office.

10 Q In what capacity?

11 A I'm a forensic pathologist.

12 Q What does a forensic pathologist do?

13 A We determine cause and manner of death on cases
14 assigned to us.

15 Q Okay. Are you a licensed physician?

16 A Yes.

17 Q Okay. Now, I imagine in order to be a licensed
18 physician, you must have some training and experience, but do
19 you also have training and experience and education for the
20 job that you specifically handle as a forensic pathologist?

21 A Yes.

22 Q Could you briefly describe that to the ladies
23 and gentlemen of the jury.

24 A Briefly, I have four years of undergraduate
25 college, which I got at Spring Harbor College in Michigan. I

1 then got a master's degree at Eastern Michigan University.
2 That was in physiology, biology. I went to medical school for
3 four years.

4 I have a rotating internship here at East Lansing,
5 Michigan where I took care of patients as part of the
6 training. I then went to Cleveland Clinic for two years and
7 Medical College of Ohio. That's at Toledo for two years. And
8 then a final year in forensic pathology in Dayton, Ohio at the
9 crime lab there. It's a total of 16 years.

10 Q After the education and training, I guess, did
11 you go into the field of forensic pathology, and what's your
12 experience now as you sit here today in the field of forensic
13 pathology?

14 A I'm not sure I understand the question.

15 Q I'll rephrase it if for you. How long have you
16 been with the Clark County Medical --

17 A Oh, ten and a half years.

18 Q Okay. And during that time, you said that you
19 made determinations as to cause and manner of death. How is
20 it that you go about making that type of determination?

21 A Well, sometimes we have to do a complete
22 autopsy and sometimes we can simply look at the outside of the
23 body to determine cause of death. It depends on the type of
24 case we have. Each are individual and unique cases.

25 Q In the case of violent, sudden death by

1 apparent gunshot wounds, do you usually conduct an autopsy?

2 A Yes.

3 Q And did you, in fact, conduct an autopsy on the
4 person of Timothy J. Hadland?

5 A Yes.

6 Q May I direct your attention to May 20th of
7 2005. If you could, briefly -- before we go specifically into
8 Mr. Hadland's, would you just briefly explain to the ladies
9 and gentlemen of the jury the course and manner of a regular
10 autopsy. How does one work?

11 A In general, we collect the small amount of data
12 that may be present at the time. Our investigators go out to
13 the scene and they usually go out after the police have gotten
14 to the scene and so they get their own information and then
15 bring the body back to us at the facility we have.

16 So I look at the information that they have at the
17 time. I make a summary of it sometimes, sometimes I don't.
18 They just give me an idea of what case I might be looking at,
19 what type of case I might be looking at, if it was a gunshot
20 wound or stab wound or whatever.

21 After that, I look at the body starting from the
22 head moving to the feet. I look for anything that's abnormal
23 and I look for a lot of things that would be common like
24 tattoos, blemishes, things that may help identify the body.
25 But primarily we're looking for any injuries or things that

1 might contribute to cause of death.

2 After that, with our assistants there helping us, we
3 remove organs from the body and I inspect them individually at
4 my table, once again, looking for anything abnormal.

5 While we're in there, we take fluids usually from
6 the eye, also blood and some others and test them for common
7 drugs of abuse. And when I get all that information together,
8 then I determine the cause and manner of death.

9 Q In the case of Mr. Hadland, when you reviewed
10 his body during your external examination, did you see
11 evidence of recent injury to him?

12 A Yes.

13 Q And specifically, did you find gunshot wounds?

14 A Yes.

15 Q Can you tell the ladies and gentlemen of the
16 jury how many gunshot wounds you were able to locate on the
17 body of Mr. Hadland?

18 A There were two.

19 Q Okay. And when we talk about the two separate
20 gunshot wounds, are you capable of telling us the order in
21 which those wounds occurred to the body?

22 A No.

23 Q Why not?

24 A One of these wounds may be instantly injurious
25 to the point that a person may be instantly dead. The other

1 one would have been fatal within minutes, so it's hard to
2 tell. There's no tell-tail sign in the body or from the
3 wounds as to which came first.

4 Q And during the course of the autopsy, is there
5 photographs taken of the victim?

6 A Yes.

7 Q Showing you what's been previously been
8 admitted as -- I'll put it up on the screen for you, Doc --
9 State's Exhibit 1, can you see in State's Exhibit No. 1 one of
10 the -- or both of the gunshot wounds to Mr. Hadland?

11 A Yes. One is somewhat difficult to see in this
12 particular view, but it's there.

13 Q Why don't you circle the areas where you see
14 gunshot wounds on Mr. Hadland.

15 A The more obvious is the one on the left cheek
16 of the face. There's one involving the left ear.

17 Q Now, during the course of your examination, do
18 you also create some sort of record contemporaneous with the
19 examination?

20 A Yes.

21 Q And how do you go about doing that?

22 A I have a hand-held Dictaphone that I use at the
23 time that I'm looking and touching the body, so the
24 information goes directly into the recorder at the time I'm
25 seeing the case. So that information is fresh. Of course,

1 then I go over my report at another time simply for
2 grammatical errors or typographical errors.

3 Q Now, looking at your report, you describe the
4 wounds to the ear as wound No. A; is that correct?

5 A Yes, I believe I do.

6 Q I'm showing you now what's been admitted as
7 State's Exhibit No. 4. Does that appear to be a photograph of
8 the external injury to the ear?

9 A Yes, it does. The orientation of this is very
10 hard to get a handle on here.

11 Q Let me back it up a little. State's
12 Exhibit No. 3, is that better for you?

13 A Yes, it is.

14 Q Can you describe for the ladies and gentlemen
15 of the jury first the nature of the wound, is that an entrance
16 or exit, and then the path of the projectile through the head?

17 A This is the left ear, the decedent's left ear,
18 and right where the attachment occurs on the front, right in
19 here, you can see that there is a disruption there in the
20 photograph. An entrance into the ear is sometimes hard to
21 call because of all the folds and all the little -- you know,
22 the topography, if you will, of the ear. So it has to pass
23 through a bunch of these folds and doesn't come out completely
24 round like some gunshot wounds do.

25 It does have marginal abrasion on it which is a

1 collar around the entrance wound where the skin has been
2 rubbed being entered. That's there. Also, this wound was
3 tracked in through the skull, into the brain and the
4 projectile is retrieved from the top of the head on the inside
5 of the skull. So that's another reason I know there's an
6 entrance wound is because it links with the bullet that we
7 recovered.

8 Q Okay. You said that it entered the ear and it
9 passed through the brain. What portions of the brain did it
10 pass through?

11 A Can I refer to my notes?

12 Q Sure. Will that refresh your recollection?

13 A It's actually in my report. And I'm on page 3.

14 The path was the skin, of course; and then the fatty
15 tissue under it and the left temporal bone, that's part of the
16 skull on the side; the left cerebrum, which is the left half
17 of the brain, the big part of the brain; a little strip of
18 brain tissue that connects these two sides of brain called the
19 corpus callosum; and then into the right cerebrum and the one
20 on the right side past the midline.

21 Q And then you indicate on your report also that
22 the bullet wound up in a partial exit. What does that mean?

23 A What I mean by that is that the bullet was
24 retrieved from just below the skull, but the skull was
25 actually punched out. The only thing keeping it there was the

1 scalp. This can happen sometimes.

2 Q Can you demonstrate on maybe your head or mine,
3 if you need to, kind of the path between entrance in the ear
4 and where you found the exit wound on the head?

5 A Using my left hand on my left ear, I'm pointing
6 it diagonally up slightly, front to back. My right hand is
7 pointing towards the top of my head in the midline. It would
8 be something like this direction.

9 Q Now, you indicated previously that one of the
10 bullet wounds would have been immediately fatal, the other one
11 would have caused death within moments or minutes. Which one
12 is this? Is this the immediately fatal one, or is this the
13 one that may take moments or minutes to cause death?

14 A This one may take moments.

15 Q Would you anticipate that somebody who received
16 a wound like this would have been immediately unconscious?

17 A Yeah -- no. I'm sorry, yes. I spoke before I
18 heard the question.

19 Q He would have been immediately unconscious, but
20 not immediately dead, correct?

21 A Yes, correct.

22 Q Let's move on to wound No. 2. You indicated
23 the second wound is that wound you see on the face?

24 A Yes.

25 Q Okay. Can you tell us -- first of all, that

1 wound on the face, is that a wound of entrance?

2 A Yes.

3 Q Okay. And can you tell us the path of that
4 bullet?

5 A This wound shows a little bit of drying blood.
6 There's also some little -- fine little tears in the skin.
7 This happens when a bullet, if you imagine it going in slow
8 motion, goes into the skin and pushes it in, keeps going and
9 kind of rubs it raw on the side and splits the skin also, then
10 the skin comes back out. This is an entrance wound. There's
11 both components there.

12 As far as a path, of course, it's going to go
13 through the skin on the side of the face. There's not much
14 tissue here on the side of the face so there's not much to
15 slow it down. It did enter the base of the skull going from
16 the left to the center by the cervical spine, in other words,
17 the neck area, very high up in the neck.

18 It landed in that area where the skull connects to
19 the spine and within that area is a structure called the brain
20 stem which allows you to be conscious, allows you to breathe,
21 and it regulates your heart rhythm, so it's a very important
22 area. That area was destroyed by this bullet and that person
23 would have been immediately dead with that bullet strike.

24 Q Now, if you get to the last one, maybe you can
25 kind of show us the path of the bullet on you if you used your

1 left hand and pointed to your cheek and kind of tell us where
2 that bullet wound up.

3 A This is the same basic direction. It didn't go
4 acutely upward. It went more level, somewhat upward. It goes
5 through the face. My left finger is pointing to my cheek on
6 my left side of the face and the trajectory goes slightly
7 upwards and slightly to the back.

8 Q So one was acutely up and then one was kind of
9 a little more level but slightly upward?

10 A Yes. Yes, comparing one to another, yes.

11 Q Now, whenever you have a body that you find
12 that has gunshot wounds, is there ever a time when you can
13 make some determinations generally about the distance the gun
14 was from the body when the gun was fired?

15 A Sometimes you can tell if you're fortunate and
16 get clues left like that and sometimes you can't tell anyway.

17 Q Okay. What kind of clues could be left if the
18 firearm was one of close range firing as opposed to from a
19 distance?

20 A I feel like I need to give a short course on
21 bullet wounds first.

22 Q Why don't you give us a short course on bullet
23 wounds first.

24 A When -- we're talking about a handgun now.
25 This information does not necessarily apply to a rifle and

1 definitely not a shotgun. If a person's using a handgun, what
2 comes out of a gun when it's fired is a little bit of flame at
3 the end, the bullet, of course, a big cloud of soot or burnt
4 gunpowder, big puff of smoke, and then beyond that is still
5 projectile fragments coming out. What they are are very small
6 gunpowder particles that have not burned, so not all the
7 powder's burnt.

8 With this information in line, it helps us to know
9 where the range might be, in other words, the barrel from the
10 skin. If the barrel was right on the skin, you would see
11 possibly only a very tight little ring of soot right there.
12 If you dig inside the tissue, you can see it inside.

13 If a gun is pulled back to about within 2 feet or so
14 for handguns, this unburned gunpowder comes out of the gun and
15 most likely will strike the skin surrounding this wound and
16 it's called a stippling. Sometimes people call it powder
17 burns even though that's not what it is. It's simply
18 scratching of the skin by these particles.

19 This gunpowder tends to fall off at about .2 feet, so
20 real close it will be a tight ring and as you get farther away
21 it will get to be a larger ring and eventually just fall off
22 due to gravity.

23 After the 2-foot mark, it's just a plain simple hole
24 in the skin so you can't -- you get to the point where you
25 can't tell if there were clothing around that neck or around

1 that face, for example. You may not see all of that deposit
2 anyway because something blocked it. So all I can tell you is
3 that there's -- providing there's no clothing over the -- or
4 any other articles over the face, this wound had to have been
5 made over 2 feet away.

6 Q And does that go the same for the one in the
7 ear as well? Is there any evidence of close range firing for
8 the wound in the ear?

9 A Yes.

10 Q So no evidence of close range firing of either
11 the face or the ear of Mr. Hadland?

12 A Correct.

13 Q Let's talk about a few other things. When you
14 do an autopsy, do you also check to see if there's any
15 evidence of, you know, blunt-force trauma or any other sort of
16 injury to the body?

17 A Yes, we look for everything even if it's an
18 obvious cause, we're still going to look for what's on the
19 body. It may help put the picture totally together.

20 I have, on page 4 -- I'm sorry, it would be on
21 page 3, some small abrasions that I listed. Abrasions are
22 scrapes on the skin. There's -- on both legs there were these
23 small scrapes. Some of them are linear or like -- in a line,
24 like, and some have right angles to that line. The longest
25 that I measured was 2-inches. Some --

1 Q Do -- I'm sorry. Go ahead.

2 A I'm sorry. Some might call that a pattern, a
3 patterned abrasion because not too many things in the natural
4 world leave you with a right angle. What it's from, I don't
5 know, but I just noticed that it was there.

6 Q Did you also note that those injuries were in
7 various stages of healing?

8 A Yes.

9 Q So what does that tell you about the age of the
10 injury?

11 A That it most likely was not at the time of the
12 gunshot wound.

13 Q Other than that pattern abrasion or potential
14 pattern abrasion which was in various states of healing, any
15 other evidence of injury to the body of Timothy Hadland?

16 A No, there was not.

17 Q Now, you talked about a little bit earlier that
18 you also do some blood tox -- toxicology from blood and other
19 body fluids. Was that sent out in this particular case?

20 A Yes.

21 Q And did you eventually get a report back?

22 A Yes.

23 Q Let's flip to that.

24 A At the time of this case, I believe we were
25 using Quest Diagnostics in town here. That was in -- Bin 05

1 would be -- that's who was doing them. And I have a result
2 from them.

3 We send in blood, and the result was .07 grams
4 percent for alcohol and marijuana metabolite was present.

5 Q So there was .07 grams, so slightly below the
6 legal limit of alcohol, correct?

7 A Correct.

8 Q And then there were cannabinoids meaning
9 marijuana metabolites. What does that mean?

10 A All that means is that the person was exposed
11 to marijuana within the last month. It doesn't mean they were
12 high. It means that they may have smoked it weeks, weeks ago.

13 Q Any other drugs, street level drugs, that were
14 tested for or located in his body?

15 A Not that they detected or reported on.

16 Q Now, in addition when the body first is brought
17 into the coroner's office, does somebody at the coroner's
18 office determine the height, the weight, and the age of the
19 individual?

20 A Yes.

21 Q Can you tell us from your records the height,
22 weights and the age of Mr. Hadland?

23 A The height was 72-inches, the weight is
24 188 pounds. He appeared to be the age stated of 44 years.

25 Q At the conclusion of your autopsy and after you

1 got back all the results from the tests that you had ran, did
2 you form a conclusion as to the cause and manner of Timothy
3 Hadland?

4 A Yes.

5 Q What was that conclusion?

6 A Multiple gunshot wounds of head.

7 Q And did you also form an opinion as to the
8 manner of death for Timothy Hadland?

9 A Yes.

10 Q What is that?

11 A Homicide.

12 Q When you use the term homicide as a forensic
13 pathologist, what do you mean by that?

14 A It simply means that the death was due to the
15 hands of another. In other words, a person brought another
16 person's death. It doesn't address the categories that's
17 usually used in the legal system like murder one, murder two
18 or any of that type thing. It's just simply death at the
19 hands of another.

20 MR. DIGIACOMO: Thank you, Doctor.

21 Judge, I pass the witness.

22 THE COURT: All right. Who would like to go next?

23 MS. ARMENI: Court's indulgence.

24 CROSS-EXAMINATION

25 BY MS. ARMENI:

1 Q Doctor, can you tell by your examination the
2 position of the body when the decedent was shot?
3 A No.
4 Q No. So you can't tell if he was standing when
5 he was shot?
6 A No.
7 Q Or laying down?
8 A No.
9 Q Or crawling?
10 A No.
11 Q And the DAs asked you -- Mr. DiGiacomo asked
12 you a question about the cannabinoids that were in the
13 decedent's body.
14 A Yes.
15 Q Is there an amount -- do you know how much
16 cannabinoids were found in the decedent's body?
17 A I can read the report to you.
18 Q You can refresh if it will help you.
19 A It doesn't state the amount. It just says
20 detected by [inaudible], and this -- I must say this
21 laboratory's undergoing changes over the last years, so what
22 they reported then or the verbiage they use is somewhat
23 different now.
24 Q Certainly, sir. There is no -- we don't know
25 how many cannabinoids were found in his system?

1 A Correct.

2 Q So there could be a lot or there could be a
3 little amount, correct?

4 A Correct.

5 Q And that would determine -- you mentioned on
6 direct that his last use could have been up to a month ago,
7 right?

8 A Yes.

9 Q But it could have been less than a month ago?

10 A Sure.

11 Q And if we knew the amount of cannabinoids that
12 were in his system, that could help us determine when his last
13 use was?

14 A I don't know if that's possible. If it is, a
15 toxicologist would have to do it.

16 MS. ARMENI: Okay.

17 Court's indulgence.

18 THE COURT: That's fine.

19 MR. ARMENI: Thank you.

20 THE COURT: All right. Mr. Arrascada.

21 CROSS-EXAMINATION

22 BY MR. ARRASCADA:

23 Q It's Dr. Telgenhoff; is that correct?

24 A Yes.

25 Q On direct examination, you said that you send

1 out blood work regarding common drugs of abuse, correct?

2 A Yes.

3 Q And the common drugs of abuse that you found in
4 Mr. Hadland was alcohol, correct?

5 A Yes.

6 Q And also the marijuana?

7 A Correct.

8 Q Now, when you did the autopsy, you examined
9 this body, in essence, from head to toe, correct?

10 A Yes.

11 Q And what you were looking for -- obviously, you
12 found significant trauma to Mr. Hadland, the gunshot wounds?

13 A Yes.

14 Q Then you also examined the rest of his body.
15 You spoke about these slight or mild healing abrasions, right?

16 A Yes.

17 Q And you also testified that those scrapes or
18 abrasions, because of their healing, were not caused at the
19 time of the gunshots, correct?

20 A That's my opinion, yes.

21 Q That's your opinion, so you testified to that
22 to these folks?

23 A Yes.

24 Q And when you did your examination, you found
25 that there were, other than -- and I want to focus away from

1 the head area, the skull, okay. The rest of the body from the
2 neck down, there was no broken bones, were there?

3 A No.

4 Q Okay. The rest of the body from the neck down,
5 there were no signs of significant trauma?

6 A Correct.

7 Q There were no signs of significant trauma that
8 could be related to the time frame of the gunshot wounds to
9 the rest of the body?

10 A Correct, because there was no others.

11 Q Okay. And there was no sign of significant
12 trauma as if he had been run over by a car, was there?

13 A I had no basis upon which to say something like
14 that.

15 Q Well, when you looked -- which means there
16 wasn't any trauma, correct?

17 A That's not exactly true. I mentioned the
18 scrapes, but I don't know when they happened.

19 Q But you did tell these folks that it did not
20 happen -- or you believed -- your opinion, your expert
21 opinion, is that it did not happen at the time of the gunshot
22 wounds, correct?

23 A That's my opinion, yes.

24 Q Okay. So we talked about these mild abrasions
25 that you called them, correct?

1 A Yes.

2 Q There was -- other than the mild abrasions that
3 did not occur at the time of the gunshots, according to you,
4 there is no other sign of trauma on the body, correct?

5 A Correct.

6 Q No sign of clubbing, as you called it?

7 A How are you using that word?

8 Q I didn't use it. You used it. Let's get to
9 it. Okay. Do you have your report with you?

10 A No, I know I said it.

11 Q In your report you report the extremities are
12 well developed and symmetrical with no evidence of clubbing,
13 correct?

14 A Yes. It doesn't refer to someone striking
15 someone with a club.

16 Q What's -- oh, clubbing of the feet is what
17 you're talking about or --

18 A No.

19 Q What are you talking about?

20 A I'm talking about clubbing of the nails. It's
21 a medical term.

22 Q Okay. Thank you. I appreciate you correcting
23 that.

24 Now, though, because there's no significant trauma,
25 there's no sign on any of the extremities of the body of being

1 clubbed with, say, a bat or a club, is there?

2 A No.

3 Q Okay. And that would -- you would notice that

4 from bruising or actually welling up of blood under the body

5 even after it's deceased, correct?

6 A Yes.

7 Q Okay. And we find none of that on the entire

8 body from the neck down?

9 A That's correct.

10 Q And so because of that, there -- would you

11 agree that there is no significant trauma to Mr. Hadland's

12 body, the extremities from his neck down?

13 A Yes.

14 Q And you would agree that there's no significant

15 trauma that would reflect him being run over by a car?

16 A Not that I saw, not that would lead me to that

17 conclusion.

18 Q So you would agree?

19 A. If you repeat the question again, I'll consider

20 it and agree.

21 Q There's no sign of any trauma that he was run

22 over by a car, correct?

23 A Correct.

24 Q And then because of a car -- a minivan is

25 bigger than a car, correct?

1 A Yes.

2 Q And a minivan with four people would be heavier
3 than a car with one person, right?

4 A I assume so.

5 Q So there would be no sign of significant trauma
6 that he was run over by a minivan with four people in it,
7 correct?

8 A Correct.

9 MR. ARRASCADA: Court's indulgence.

10 THE COURT: That's fine.

11 MR. ARRASCADA: Thank you.

12 THE COURT: Any redirect?

13 MR. DIGIACOMO: No, Your Honor.

14 THE COURT: Do we have any juror questions?

15 All right. Doctor, thank you for your testimony.

16 You're excused at this time.

17 And, State, call your next witness.

18 MR. PESCI: State calls Rontae Zone.

19 THE COURT: All right. Rontae Zone.

20 Come on up here, sir, to the witness stand, right up
21 those stairs, just right up there. And then just remain
22 standing, facing our court clerk who will be administering the
23 oath to you.

24 THE CLERK: Sir, please stand.

25 THE COURT: Sir, I need you to stand up and I need

1 you to face this lady right here.

2 RONTAE ZONE, STATE'S WITNESS, SWORN

3 THE CLERK: Please be seated. And, sir, please
4 state and spell your name.

5 THE WITNESS: My name is Rontae -- my name is Rontae
6 Zone.

7 THE CLERK: Would you spell it, please.

8 THE WITNESS: R-o-n-t-a-e, last name, Z-o-n-e.

9 THE CLERK: Thank you.

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

11 THE COURT: Yes, you may. Thank you.

12 MR. PESCI: Thank you.

13 DIRECT EXAMINATION

14 BY MR. PESCI:

15 Q Sir, I want to direct your attention to May of
16 2005. At that time, did you know someone by the name of
17 Deangelo Carroll?

18 A Yes, I did.

19 Q And how did you know him?

20 A He was a friend of mine.

21 Q When had you met Deangelo? Was it prior to May
22 of 2005?

23 A It was -- I've known him for a while, but I
24 didn't really get to hanging out with him until around 2005 of
25 May.

1 Q All right. And let's focus specifically around
2 the time period of May 19th of 2005. Where were you living at
3 that point?

4 A I was living with Deangelo.

5 Q And who -- was anybody else living with you
6 with Deangelo?

7 A My baby's mother and his wife -- his --

8 Q When you say his wife, who do you mean?

9 A Deangelo's wife.

10 Q And at that time period on May the 19th or
11 around that time period, were you working with Deangelo?

12 A Yes, I was.

13 Q And what were you doing for work?

14 A I was a flyer boy. I passed out flyers --

15 Q Okay.

16 A -- to the cab stops, cab stations.

17 Q And who was that for?

18 A That was for the Palomino Club.

19 Q At that time period, had you ever been to the
20 Palomino Club? What I mean is to the actual location.

21 A Yes.

22 Q How did you first get that job?

23 A I got the job from Deangelo because he needed
24 side men -- he needed side men to do little jobs that he
25 wasn't trying to do.

1 Q Okay. And when you say pass out flyers, what
2 kind of flyers are you talking about?

3 A Flyers that represent the club.

4 Q And when you did that, who did you do it with?

5 A I did it with Deangelo.

6 Q Was there anybody else that you ever did this
7 with?

8 A Jayson, JJ.

9 Q You just said JJ?

10 A Yes.

11 Q And that's referring to someone named Jayson?

12 A Yes.

13 Q Do you know Jayson's last name?

14 A Taoipu, Taoipu.

15 Q And had you known Jayson before this time
16 period when you were working as -- passing out flyers?

17 A Yes.

18 Q How did you know him?

19 A He's been a friend of mine for like three years
20 prior before.

21 Q Did you know Jayson longer than you knew
22 Deangelo?

23 A No.

24 Q Okay. So which one did you know longer?

25 A I knew Deangelo longer.

1 MR. PESCI: May I approach the witness, Your Honor?

2 THE COURT: Yes, you may.

3 BY MR. PESCI:

4 Q Showing you State's Proposed -- well, let's
5 see, they're marked now as Proposed Exhibits A and C,
6 specifically A, do you recognize the person depicted in A?

7 A Yes.

8 Q And who do you recognize that to be?

9 A That's Deangelo.

10 Q Is that an accurate depiction or photograph of
11 Deangelo?

12 A Yes.

13 MR. PESCI: Move for the admission of A, Your Honor.

14 THE COURT: Well -- may I see counsel up here.

15 (Off-record bench conference)

16 THE COURT: Have that remarked as a number, so if
17 you would give that to Ms. Husted.

18 And, Ms. Husted, if you would mark those next in
19 order.

20 BY MR. PESCI:

21 Q All right. While she's marking that, the
22 individual that you've seen -- I'm going to show you again a
23 number. Who was that?

24 A Deangelo.

25 Q And did you get a chance to look at the other

1 photograph we just brought to you?

2 A Yes.

3 Q And who was that a depiction of?

4 A Jayson.

5 Q And do you call him JJ?

6 A Yes.

7 Q Is that an accurate depiction of the person you
8 knew as Jayson?

9 A Yes.

10 Q And what was the last name again?

11 A Taoipu, Taoipu.

12 MR. PESCI: May I retrieve those, Your Honor?

13 THE COURT: Yes.

14 MR. PESCI: All right.

15 BY MR. PESCI:

16 Q And for the record, I'm now showing you State's
17 198. Is that the one of Deangelo Carroll?

18 A Yes.

19 Q And 199, is that the one of Jayson?

20 A Yes.

21 Q Are they fair and accurate depictions of these
22 people?

23 A Yes.

24 MR. PESCI: Move for the admission of State's 198
25 and 199.

1 THE COURT: Any objection to 198 and 199?

2 MS. ARMENI: No, Your Honor.

3 MR. ADAMS: No, ma'am.

4 THE COURT: All right. Those will both be admitted.

5 MR. PESCI: Thank you, Judge.

6 (State's Exhibit 198 and 199 admitted.)

7 BY MR. PESCI:

8 Q Now, sir, how did you come to be paid when you
9 would hand out flyers for the Palomino?

10 A I was paid under the table.

11 Q And who was it that paid you?

12 A Deangelo.

13 Q How much did you normally get paid?

14 A About 20 bucks, 25 bucks.

15 Q Would it be in a cash form?

16 A Yes.

17 Q I want to focus your attention specifically to
18 May the 19th of 2005 and about the noon hour of that time
19 period. Do you remember who you were with at that time?

20 A I was with Deangelo and JJ.

21 Q When you were with Deangelo and JJ, did there
22 ever come to have a time when there was conversation about
23 someone being hurt?

24 A Yes.

25 Q Could you tell the ladies and gentlemen of the

1 jury about that.

2 MS. ARMENI: Objection, hearsay.

3 MR. ADAMS: Also the confrontation calls, Your
4 Honor.

5 MR. PESCI: Judge, I think -- would you like us to
6 come up?

7 THE COURT: Yeah.

8 (Off-record bench conference)

9 THE COURT: Mr. Adams.

10 MR. ADAMS: Thank you, Your Honor. We tender two
11 objections to this hearsay testimony under both confrontation
12 clause and under the lack of a foundation with a coconspirator
13 exception and we would ask that those two objections be
14 ongoing throughout the trial.

15 THE COURT: All right. Those will be ongoing as to
16 at least the testimony of this witness at this point and
17 Mr. Gentile.

18 MR. GENTILE: We make the same objection, join in
19 the objection.

20 THE COURT: All right. The testimony will be
21 conditionally admitted at this point.

22 All right. Mr. Pesci, go on.

23 MR. PESCI: Thank you, Judge.

24 BY MR. PESCI:

25 Q Was there a conversation about someone being

1 hurt?

2 A Yes.

3 Q Okay. Could you tell us what that conversation

4 was and who was there when the conversation was had?

5 A Me, Deangelo and JJ. Deangelo said that --

6 MR. GENTILE: Objection. No question pending.

7 MR. PESCI: I asked what was conversation was.

8 MR. GENTILE: That was a compound question.

9 MR. PESCI: I asked what the conversation was that

10 was had.

11 THE COURT: All right.

12 MR. PESCI: Who was there and what was said.

13 THE WITNESS: Deangelo said --

14 MR. ADAMS: One objection. Compound question.

15 THE COURT: Who was there -- first of all, the first

16 question was who was there when this conversation occurred.

17 Who were the people that were present?

18 THE WITNESS: JJ and Deangelo.

19 THE COURT: All right. The next question Mr. Pesci

20 has is, What was said?

21 BY MR. PESCI:

22 Q Well, just before I get there --

23 THE COURT: All right.

24 BY MR. ADAMS:

25 Q -- you just said Deangelo and JJ. Were you

1 present?

2 A Yes, I was.

3 Q All right. Now, what was said?

4 A Deangelo said that Little Louie was -- said

5 that Mr. H wanted someone killed.

6 Q Now, what was the conversation as far as any

7 possible involvement by the three of you that you just spoke

8 of, you, Deangelo and JJ?

9 A What was the possible -- excuse me?

10 Q What -- did Deangelo ask you specifically if

11 you would do something in regards to hurting somebody?

12 A Yes, he did.

13 Q What did Deangelo ask you?

14 A He asked me -- he asked me was -- was I into

15 doing it.

16 Q All right. When you say, Was I into doing it,

17 what does that mean? Let the ladies and gentlemen of the jury

18 understand what that means.

19 A Did I want to be a part of it.

20 Q What was your answer?

21 A No.

22 Q Was that question also asked of JJ when you

23 were present?

24 A Yes.

25 Q What was JJ's answer?

1 A Yes.

2 Q And what did JJ say?

3 A He said he was down.

4 Q And down meaning?

5 A He was interested.

6 Q Okay. Was there any discussion -- was there

7 any discussion as to how this would happen?

8 A There was discussion of baseball bats and there

9 was a discussion of trash bags and then that was about it.

10 Q Who spoke of baseball bats and trash bags?

11 A Little Louie.

12 Q Well, we've got to be clear now. At the time

13 this conversation's happening, who's there? Just the three of

14 you?

15 A Just the three of us, me, JJ, and Deangelo.

16 Q So when you say Little Lou, how did you get the

17 information about Little Lou wanting bats and bags?

18 A I got the information from Deangelo.

19 Q After that conversation, did you leave that

20 area? Where were you when that conversation happened?

21 A We were in the van.

22 Q What van?

23 A The white Astro van.

24 Q Is that a van -- had you ever been in that van

25 before?

1 A No, not before working with the club, no.

2 Q All right. And then let's get specific as

3 to -- this was the 19th I was asking you about. Before

4 May 19th of 2005, had you ever been in that van before?

5 A No.

6 Q When you would go out promoting, how did you

7 normally go out promoting?

8 A We would -- we would go out and -- like the

9 van -- like he would drive the van but we would always get

10 dropped off. So it's like he would drop us off at a cab stop

11 and --

12 Q Who would drive the van?

13 A Deangelo.

14 Q Okay. And what van was this?

15 A The white Astro van.

16 Q After this conversation in the van, did some

17 time pass and then there was another conversation?

18 A Yes.

19 Q Okay. After a few hours on the next

20 conversation, what was the discussion about?

21 A This discussion was about having him killed,

22 once again.

23 Q Okay. What -- do you know who the person was

24 that was supposed to be killed?

25 A No.

1 Q Okay. Do you remember the words that were used
2 to mean to kill someone?

3 A Yes.

4 Q What were those words?

5 A He wanted to have him dealt with.

6 Q Okay. And how did you understand that "dealt
7 with" meant kill?

8 A I mean, it's obviously. I mean, there's no
9 other word for it or no other explanation for it.

10 Q When you heard information about having someone
11 dealt with, who was the person who said someone needs to be
12 dealt with?

13 A Deangelo.

14 Q Okay. And Deangelo had given this information
15 to you based on what, as far as he knew?

16 A As far as he was told.

17 Q Okay. Was there ever a point in which a weapon
18 was shown to you or taken out when it was just the three of
19 you. We're just talking right now you, Deangelo, and JJ.

20 A Yes.

21 Q Tell us about that.

22 A It was a .22 revolver with a green pearl
23 handle.

24 Q Who pulled the gun out or showed the gun?

25 A Deangelo.

1 Q And what happened when Deangelo got the gun
2 out?
3 A Deangelo pulled the gun out and he showed it to
4 us and I guess like -- he made it seem like that would have
5 been the murder weapon or whatever, but it's like he just
6 gave -- he gave -- he tried to give it to me or JJ. I didn't
7 take it.
8 Q What did JJ do with the .22?
9 A JJ took it.
10 Q Was there anything else in relation to the gun
11 that Deangelo tried to give to you or JJ?
12 A There were bullets.
13 Q And tell us what happened with those bullets.
14 A He -- he put them in my lap.
15 Q When you say "he," just so we're clear, between
16 JJ and --
17 A Yes. Deangelo put them in my lap.
18 Q What did you do with those bullets?
19 A I dumped them out in the van.
20 Q And did you see what happened after you dumped
21 them out?
22 A Yes.
23 Q What happened?
24 A JJ picked them up.
25 Q Did you see what JJ did with them?

1 A He put them in his lap.

2 Q And now this was, you say, in the van?

3 A Yes.

4 Q All right. After that, what did the three of
5 you do?

6 A The three of us went back to Deangelo's house.

7 Q And when you got back to Deangelo's house,
8 what, if anything, did you do?

9 A We got ready for work.

10 Q Now, when you say get ready for work, what do
11 you mean by that?

12 A Well, I was told to get ready for work, get
13 dressed, get in uniform. We were working --

14 Q Let me stop you. Who told you that?

15 A Deangelo.

16 Q When you get dressed for work, what did that
17 mean? Did you have a Palomino uniform or --

18 A No. I -- he said dress in all black. He said
19 dress in all black, black shirt or -- you know, a dress shirt
20 or pants or whatever, as long as it was black.

21 Q Did you do that?

22 A Yes.

23 Q Okay. And after you got dressed, eventually
24 did you go promoting or go to work?

25 A We went promoting for a little bit of time, but

1 then we made another trip back to the house -- we made another
2 trip back to his house.

3 Q All right. Before we get there, when you say
4 we went promoting, who was it that was promoting and how did
5 you promote?

6 A Me, JJ, and Deangelo. He took us to a cab stop
7 and we were putting flyers and pamphlets in the cab drivers'
8 windows.

9 Q How were you getting around to the cab drivers?

10 A We were getting around in the van.

11 Q Is that the white Astro van?

12 A Yes.

13 Q Is that the one you talked about earlier?

14 A Yes.

15 Q When you went back to Deangelo, what happened
16 when you went back to Deangelo's after promoting for some
17 time?

18 A We went back to Deangelo's and then he -- we
19 were getting ready to leave out again. He said that we were
20 going to go promote some more.

21 Q To do some more what?

22 A To do some more promoting --

23 Q Okay.

24 A -- for the club.

25 Q Was there any more discussions about this

1 person having to be dealt with?

2 A There was, but there was like -- this time it
3 was a slight conversation.

4 Q All right. What was that slight conversation?

5 A It was like I barely heard anything, like I
6 barely even really heard anything about it. It's just
7 whatever Deangelo was told, but he never really said nothing
8 afterwards. He just said, Get ready, get ready to go back to
9 work and --

10 Q Okay. Was there ever a conversation about
11 money for dealing with the person?

12 A Yes.

13 Q What do you remember about that?

14 A That was afterwards.

15 Q Okay. Well, what do you remember about that,
16 though?

17 A Deangelo said that Mr. H was going to pay
18 \$6,000 to the man who killed him.

19 Q Now, when Deangelo had given you this
20 information, was this information that you got at the very
21 beginning of this incident at like noon or was that later in
22 the day?

23 A That was after.

24 Q After the first conversation at noon?

25 A Yes.

1 Q Okay. Did you ever see or hear Deangelo on the
2 phone after noon and before you just told us about being told
3 that Mr. H would pay for this?

4 A It's like I said, I heard slight. It was kind
5 of slight.

6 Q The question, though, is did you ever see him
7 on the phone or hear him on the phone?

8 A No. I seen him on the phone, but I didn't hear
9 him on the phone.

10 Q Okay. Do you know, was that phone call before
11 you heard about the money amount that Mr. H was willing to
12 pay?

13 A That was before, yes.

14 Q The phone call was before?

15 A Yes.

16 Q All right. Did you ever actually get ahold of
17 any bats or trash bags?

18 A No.

19 Q Did you ever see JJ or Deangelo get ahold of
20 any?

21 A No.

22 Q At some point, did you go back out to promote
23 or where did you go next?

24 A Went -- we went out to Lake Mead.

25 Q Okay. Before you went to Lake Mead, did you

1 ever go anywhere on the west side?

2 A Yes.

3 Q Tell us about that.

4 A We went to F Street, I think it's either F or D

5 Street, that we went to pick up KC.

6 Q All right. Do you know who KC was before this

7 incident?

8 A No.

9 Q Did you know you were going to get KC?

10 A No.

11 Q Do you even -- are you familiar with the west

12 side where KC lives?

13 A Yes.

14 Q Were you -- at that time, were you familiar

15 with that area?

16 A Outside KC's house.

17 Q You were or were not?

18 A We were.

19 Q Okay. What happened -- who went to get KC?

20 How did you get there?

21 A We drove -- Deangelo drove the Astro van with

22 me and JJ in the van to go pick him --

23 Q Okay.

24 A -- which is KC.

25 Q When you got to that location, what did

1 Deangelo do?

2 A He got out of the car and walked in KC's house.

3 Q Did Deangelo ever come back out?

4 A Deangelo came back out about prior of seven --

5 like ten minutes later.

6 Q Did anybody come out with him?

7 A KC came out with him.

8 Q When Deangelo went in, where were you and JJ?

9 A We were sitting in the van.

10 Q What did KC look like when he came out and got

11 into the van?

12 A He was in all black with a black hoody and

13 black gloves.

14 Q Was that a black hoody, you said?

15 A Yes.

16 Q Where were you seated in this van?

17 A I was seated on the left side of the driver in

18 the backseat.

19 Q On the left-hand side of the car?

20 A On the driver's seat.

21 Q Were you behind --

22 A I'm right behind the driver's seat.

23 Q And so that the ladies and gentlemen of the

24 jury understand, is there a door on that left side where you

25 were?

1 A No. There's a sliding door on the right side.
2 It's not the left. It's the right side.

3 Q So the sliding door's on the right side?

4 A Yes.

5 Q Where was Deangelo seated?

6 A Deangelo was seated in the driver's seat.

7 Q Where was Jayson or JJ seated?

8 A He was sitting in the passenger seat.

9 Q In the front or the back?

10 A He was sitting in the front, the front
11 passenger seat.

12 Q Where did KC go inside the van?

13 A He sat in the back passenger seat.

14 Q And in relation to you, where was he?

15 A I don't know him, like --

16 Q Well, no. That was a badly stated question. I
17 apologize.

18 When you say in the backseat, was KC seated near
19 you?

20 A Yes, he was.

21 Q Did KC say anything when he got in the car?

22 A He -- not really. Not really. He didn't
23 really -- he wasn't really a spoketive [sic] person.

24 Q He didn't speak a lot out there?

25 A No, he didn't.

1 Q Okay. After KC got in the car, where did you
2 go?

3 A We went out to Lake Mead.

4 Q All right. Do you remember how you got out
5 towards Lake Mead?

6 A We just drove up -- Lake Mead is like -- I
7 never really like -- see, I'm not from Vegas like -- I'm from
8 California, so I really don't know much about Vegas or size of
9 towns or whatever. I'm not too familiar with it, but --

10 Q All right. So you don't know the exact street?

11 A It was Lake Mead. It was Lake Mead, Lake Mead
12 Boulevard.

13 Q All right. As you were driving out -- as you
14 left KC's house, where did you think you were going?

15 A I thought we were going out to promote again.

16 Q Was there a point when you realized or thought
17 that you were not going out to promote?

18 A Yes.

19 Q When was that?

20 A When we got to the point when we were entering
21 Lake Mead, like the Lake Mead.

22 Q And what made you think you were no longer
23 promoting?

24 A Because there's no cab -- there's no cab stops
25 out there. There's nothing out there.

1 Q Was there any conversation on the way out to
2 Lake Mead between the four of you that you've just spoken of,
3 KC, JJ, Deangelo and yourself?

4 A There was -- there wasn't really no
5 conversation. Deangelo was talking on the phone and that's
6 about it. Like it didn't really occur until we seen Timothy.

7 Q Okay. And before we get to Timothy, you just
8 said Deangelo was on the phone. Was that when Deangelo was
9 driving the van seated in front of you?

10 A Yes.

11 Q Okay. Now, these phone conversations, could
12 you hear the person on the other side of the phone or could
13 you just hear Deangelo?

14 A I could just hear Deangelo.

15 Q Could you hear what Deangelo was saying?

16 A Yes.

17 Q When you talked about Timothy, was there any
18 conversation, as you understood it, between Deangelo and
19 Timothy?

20 A Not at all.

21 Q Was there any discussion about meeting anybody?

22 A Yes. We were told that we were going to meet
23 up with him and we -- like he thought, I guess, that we were
24 going to smoke and chill and --

25 Q Wait. Let's stop for a second. When you said,

1 We were told we were going to meet up with him, who said
2 something about Act meeting someone?

3 A Deangelo.

4 Q Okay. And who did Deangelo say you were going
5 to meet?

6 A That we were going to meet Timothy.

7 Q Had you ever met Timothy before this?

8 A No.

9 Q Was there any conversation between Deangelo,
10 yourself, JJ and KC about what was to happen when you met
11 Timothy?

12 A Yes.

13 Q What was that conversation?

14 A That he was going to be killed.

15 Q And when -- do you recall when that
16 conversation happened?

17 A It happened around the time -- like just not
18 too long before -- like not too long after entering Lake Mead.

19 Q Was there any discussion with Deangelo on the
20 phone about marijuana?

21 A Yes.

22 Q What was the discussion that you recall?

23 MS. ARMENI: Objection. Hearsay.

24 MR. PESCI: Judge, I think it's for future intent.

25 THE WITNESS: He told --

1 MR. PESCI: Hold on. Hold on.

2 THE COURT: You can answer.

3 THE WITNESS: He told Timothy that we were coming to
4 smoke with him.

5 BY MR. PESCI:

6 Q Speaking of smoking, did you smoke any
7 marijuana that day?

8 A Yes, I did.

9 Q And when did you smoke marijuana that day?

10 A On the way up there.

11 Q When you say --

12 A -- to Lake Mead.

13 Q -- on the way up there, is this in the drive
14 after picking up KC and going out to the lake?

15 A Yes.

16 Q Was there -- did you smoke any weed prior to
17 that time period that day?

18 A Yes, I did.

19 Q Okay. Here's the question, Rontae: How much
20 weed do you think you smoked that day?

21 A I would say about a blunt.

22 Q What is a blunt, for everybody that doesn't
23 know what it is?

24 A A cigar.

25 Q And what's in the cigar?

1 A Marijuana.

2 Q Have you been high on other occasions in your

3 life by way of marijuana?

4 A Yes.

5 Q Was there any sort of lacing of other drugs

6 inside the marijuana?

7 A No.

8 Q PCP, anything of that nature?

9 A No. I rolled it myself.

10 Q And for you and your usage of marijuana, was

11 one blunt a lot of marijuana for you?

12 A It's not a lot. It's enough. I mean --

13 Q Was that blunt shared?

14 A Yes, it was.

15 Q Who was it shared with?

16 A The four of us.

17 Q And again, just for the record --

18 A Deangelo, JJ and KC.

19 Q Was that blunt passed around?

20 A Yes, it was.

21 Q So you didn't consume the entire blunt

22 yourself?

23 A No.

24 Q Were you still able to see what was going on

25 even though you had smoked some marijuana?

1 A Yes.

2 Q Were you still able to hear what was going on
3 even though you had smoked some marijuana?

4 A Yes.

5 Q Were you able to understand where you were
6 going and what was supposed to happen even though you had had
7 some marijuana?

8 A Yes, definitely.

9 Q You spoke about Deangelo being on the phone
10 during the ride from KC's out to the lake. Do you recall
11 there being any problems with Deangelo and his cell service?

12 A Yes.

13 Q What do you recall?

14 A We went to make a left turn and as we made that
15 left turn, his signal on his phone died.

16 Q When you say a left turn, is this out at the
17 lake or near the lake?

18 A This is out at the lake.

19 Q As you left the city of Las Vegas behind as far
20 as all the lights and the streets?

21 A Yes. It's all -- it's pitch black.

22 Q No street lights that you recall?

23 A Except for the lights, the little lights that
24 you get when you turn on and --

25 Q When Deangelo made this left turn, what

1 happened?

2 A The signal faded.

3 Q And how do you know that, because you weren't
4 on the phone?

5 A Because he has a chirp.

6 Q What was a chirp?

7 A It's a boost mobile walkie-talkie.

8 Q Had you seen Deangelo with that before?

9 A Yes.

10 Q Had you seen that with Deangelo when you had
11 promoted before?

12 A Yes.

13 Q Did you know where that boost mobile came from?

14 A No.

15 Q All right. Did Deangelo do anything because of
16 him having difficulties with his chirping?

17 A Yes, he turned around.

18 Q And where did he go?

19 A He turned around and he went in reverse in the
20 direction that we came.

21 Q Did you ever go by, when you were out there,
22 this area, taking turns and going back and forth, some sort of
23 a building, something like a guard shack or some sort of
24 little building out there?

25 A No.

1 Q You don't recall driving by one?
2 A No.
3 Q Okay.
4 A I recall going by -- it's a -- it's like a
5 street where you can only make a left and you can only make a
6 right. You can't do anything further.
7 Q So when the left was made, did he turn back
8 around?
9 A He turned back around and he went reverse in
10 the way we came.
11 Q Okay. And when he turned around, was he still
12 on the phone?
13 A No, he wasn't. His signal faded, so he had to
14 go back in reverse with the way we came to get back that
15 signal.
16 Q Did he get the signal back as far as you could
17 tell?
18 A Yes.
19 Q And how could you tell that?
20 A Because it's a walkie-talkie. You pretty much
21 hear everything with it.
22 Q So you were able to hear the conversation?
23 A Yes, I was able to hear it.
24 Q At any point did Deangelo change direction and
25 go back to that left direction?

1 A Yes, he did.

2 Q What happened when that -- when he went to the
3 left direction?

4 A He made another U-turn -- well, he made another
5 U-turn and he went back the prior way that we were heading in
6 the first place.

7 Q And did anything happen as you were going in
8 that original direction?

9 A We made the left and we met up with Timothy.

10 Q How did that happen, meeting up with Timothy?
11 Describe that for the ladies and gentlemen of the jury.

12 A We made a left turn and after we made a left
13 turn, he had -- had Timothy on the phone and I guess he told
14 Timothy that he was going to be in this area, in this
15 particular area where we were at, and Timothy came and met up
16 with us.

17 Q Did you eventually see someone drive towards
18 you?

19 A Yes.

20 Q And what did you see that -- was that person
21 walking, driving?

22 A He was driving.

23 Q Do you recall what the person was driving?

24 A Like I say, an SUV, a Sportage, a Kia.

25 Q Okay. Did you see what that Kia Sportage did?

1 A He -- he made a U-turn.

2 Q He being?

3 A Timothy made a U-turn and he parked on the side

4 of the road.

5 Q As Timothy parked the Sportage on the side of

6 the road, what did anybody in the car do -- in your van do?

7 A Deangelo got out of the car and went and used

8 the restroom.

9 Q All right. Let's just really be clear. Was

10 there a restroom out there?

11 A No.

12 Q Was there a little port-a-potty?

13 A No. He just -- he was using the restroom on

14 the side, to the side of the road.

15 Q He went out of the car to go to the bathroom?

16 A Yes.

17 Q Did you see that as far as him going out and

18 doing that?

19 A Yes.

20 Q Did he get back in?

21 A Yes, he did.

22 Q Did TJ or Timothy do anything after parking the

23 car?

24 A He got out the car.

25 Q Did you see where Timothy went?

1 A He walked up to the van.

2 Q And so the ladies and gentlemen remember, were
3 you seated on the side still where Deangelo was?

4 A I was -- yes, I was still seated.

5 Q Could you see as he walked up?

6 A Yes.

7 Q All right. What happened as Timothy walked up
8 to the van?

9 A He walked up -- he walked up to the van on the
10 side which Deangelo was on and they were conversating about,
11 about whatever. I have no clue, and --

12 Q What did you do as Timothy approached?

13 A I was still sitting in the backseat.

14 Q What did Jayson do?

15 A He was still sitting in the passenger seat
16 where he was.

17 Q What did KC do?

18 A KC got out the van.

19 Q Where did he go?

20 A He -- first he went to the front of the van and
21 then he thought Timothy might see him, so he went, like, and
22 kind of hid to the back of the van, but then he went back
23 again to the front of the van and around the van.

24 Q Now, how did he get out of the van?

25 A He just -- he slid open -- he slid the sliding

1 door and he hopped out of the van.

2 Q Okay. You say eventually he went to the front
3 of the van?

4 A Yes.

5 Q Where did he go after he went to the front of
6 the van, he being KC?

7 A He, KC, walked around the van and snuck up on
8 him unapproachingly and shot him in his head.

9 Q What did you see happen with the shooting?

10 A I didn't really -- I didn't really see -- I
11 didn't really see nothing. It was like -- all I seen was like
12 a spark. That's all I seen, a spark of flame, a gunshot
13 heard, and him fall on the ground.

14 Q Who's him?

15 A Timothy.

16 Q How many shots did you hear?

17 A I seen and heard two shots.

18 Q All right. You just told us about the first
19 one. What happened on the second one?

20 A He was shot in the head after he hit the --
21 after he hit the ground.

22 Q All right. Let me ask you this: When you saw
23 and heard these shots, were you still in the van?

24 A Yes, I was.

25 Q Was Deangelo still in the van?

1 A Yes, he was.

2 Q Was JJ still in the van?

3 A Yes, he was.

4 Q After those shots were fired, what happened

5 next?

6 A After the shots were fired, KC quickly hurried

7 up and hopped back in the van.

8 Q And after he got in the van, what happened?

9 A Deangelo pulled off.

10 Q Did you leave that area where the body was?

11 A Yes.

12 Q And let me ask you this: As you were leaving

13 the area or anytime after KC got back into the van, did KC say

14 anything to you or to anyone else inside the van?

15 A Yes.

16 Q What did KC say?

17 A He asked me did I have a gun.

18 Q And when he asked you that, is this -- so it's

19 very clear for the jury, was that after Timothy had been shot?

20 A Yes.

21 Q Is that the term that he used, did you have a

22 gun?

23 A He said -- no. He said, Do you have a burner?

24 Q A burner?

25 A Yeah.

1 Q And what did you understand that to mean?

2 A A weapon, a firearm.

3 Q What was your response to KC when he asked you?

4 A No, I don't.

5 Q Did KC ask anybody else about a burner?

6 A He asked JJ.

7 Q And what did JJ say?

8 A JJ said yeah, he do, but, you know, he didn't

9 want to hit Deangelo so he didn't do anything.

10 Q Well, did KC ask why anybody else didn't get

11 out and do anything?

12 A Yes, he did.

13 Q And what was the response?

14 A My response was that I had nothing to do with

15 it.

16 Q What was -- and JJ's response was what?

17 A Was that he didn't want to hit Deangelo, you

18 know, causing -- trying to do anything.

19 Q Okay. At the time that Timothy was shot, was

20 JJ sitting on the side of Deangelo?

21 A Yes.

22 Q Did Timothy come up to Deangelo's window?

23 A Yes.

24 Q Okay.

25 A Deangelo was the only person he knew.

1 Q After those questions were asked, where did you
2 go?

3 A We -- we were off in the mountains, wondering
4 in the mountains, and the next thing I know we're coming out
5 of Boulder City.

6 Q When you came out of Boulder City, eventually
7 did you head to the Palomino Club?

8 A Yes, we had a ride back to the Palomino.

9 Q What happened when you got there?

10 A When we got there, Deangelo parked the van,
11 didn't say much, and went in the club.

12 Q Was there any conversation, other than we just
13 talked about, while you were driving back to the Palomino
14 between the four of you?

15 A No.

16 Q When you got to the club you said Deangelo did
17 what?

18 A Deangelo got out the van quietly, didn't really
19 say much, and he went in the club.

20 Q Where was Jayson?

21 A Jayson was sitting in the van, KC was sitting
22 in the van and myself was sitting in the van waiting.

23 Q Did Deangelo come back out?

24 A He came out about -- he came out about ten
25 minutes later to get KC and then they both went in the club.

1 Q All right. When Deangelo went back in the club
2 with KC, at some point did you and JJ get out of the van?
3 A Yes, we did.
4 Q Where'd you go?
5 A We sat on the bleachers that's like right out
6 front by the driveway of the club.
7 Q Did you go into the club --
8 A No.
9 Q -- and follow?
10 A No, we weren't allowed to.
11 Q After you and JJ got out and sat down,
12 eventually did you see KC again?
13 A Yes.
14 Q What did you see KC do?
15 A I seen KC get in a cab.
16 Q And was that -- where was that in relation to
17 the Palomino?
18 A It was right -- it was right in front of the
19 club.
20 Q Did you see what happened after KC got into the
21 van?
22 A He got in the van -- got in a yellow cab van
23 and he pulled off. He left.
24 Q And after KC left, did you see Deangelo again?
25 A About 30 minutes later, yes.

1 Q Okay. Where did you see him and what happened?
2 A He -- well, after -- we got tired of sitting
3 outside, so we got back in the van. And then we got back in
4 the van waiting for him, then he came like 20 minutes later.
5 Q He being Deangelo?
6 A Yes.
7 Q And what happened when he came?
8 A We went -- we went to the house, to his house.
9 Q To whose house?
10 A Deangelo's house.
11 Q Okay. And when you say "we," who is it you're
12 talking about?
13 A Me, Jayson and Deangelo.
14 Q How did you get there? What were you --
15 A We were in the white Astro van.
16 Q The same van from out at the lake?
17 A Yes.
18 Q When you got back to Deangelo's, what did you
19 do?
20 A I was kind of really like shaken up about it
21 so like I really didn't, you know -- I was real kind of quiet
22 mostly the whole time, you know, after the fact. I really
23 didn't have much to say because there really wasn't nothing
24 for me to say so --
25 Q Did the three of you ever get back in the van

1 and do anything with the van after that?

2 A The next day -- the next day he had the tires
3 removed.

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

5 A Deangelo, Mr. Carroll.

6 Q How did that come about? Explain that to the
7 jury.

8 A We drove to a rim, a rim or a tire shop, maybe
9 both, but we drove to a tire or rim shop. He had slashed all
10 four tires before we got there.

11 Q Who's he?

12 A Deangelo.

13 Q Did you see him slash the tires?

14 A Yes.

15 Q And do you know how he did that?

16 A He did it with a knife.

17 Q What happened after the tires are slashed?

18 A After he slashes the tires, we're like -- it's
19 right around the corner from the tire shop, we drove to the
20 tire shop and he had -- Deangelo had all the new tires put on.
21 He had all new tires put on the van.

22 Q Did you see how those tires were paid for?

23 A I seen him give -- I seen him give the guy a
24 hundred dollars.

25 Q Do you know where that hundred came from?

1 A No.

2 Q Was anything else done to the van other than

3 the tires being slashed and changed?

4 A Yes.

5 Q What was that?

6 A They -- he had -- Deangelo had cleaned up the

7 interior and he had washed the van.

8 Q All right. Were you there for that?

9 A Yes, I was.

10 Q Who else was there?

11 A Jayson was there.

12 Q Were you a part of the cleaning?

13 A No, I was not.

14 Q Who was doing the cleaning?

15 A Deangelo.

16 Q So after the car -- the van is cleaned and the

17 tires are slashed and changed, did you ever go back to

18 Deangelo's?

19 A Yes.

20 Q All right. Did there ever come a time when you

21 guys stopped at a store?

22 A Yes.

23 Q Tell us about that.

24 A We stopped at a 7-11 and Jayson got pulled over

25 in the van and -- he got pulled over in the van so I -- after

1 he got pulled over in the van, I walked in the store to buy a
2 beverage and when I came back out, Deangelo was talking to
3 trooper.

4 Q Okay. Was there ever a time that you stopped
5 at a different store?

6 A Yes.

7 Q Tell us about that.

8 A We stopped at a store -- that's like prior
9 though before -- it's prior before the I-Hop situation.

10 Q All right. We haven't quite gotten there yet.

11 A Well, that's the only store we stopped at after
12 the 7-11.

13 Q All right. What store was that?

14 A It was like a Big Lots, like a Big Lots.

15 Q Did you go into this store?

16 A No.

17 Q Who went into the store?

18 A Deangelo.

19 Q Did you see Deangelo come back from the store?

20 A Yes.

21 Q Did you see if Deangelo had purchased anything
22 at the store?

23 A Yes, he did.

24 Q What do you recall those things were?

25 A He purchased like a mop, a broom, cleaning

1 material, stuff for his house.

2 Q Okay. When was that in relation to the tires
3 being slashed, if you remember, before or after?

4 A That's after.

5 Q Okay. You just said something about I-Hop.
6 Tell us about I-Hop.

7 A We went to I-Hop to eat breakfast. We were
8 there. Me and my baby's mother was there, his wife, his kids,
9 Deangelo's wife and kid was there and a friend of the family
10 and what not.

11 Q Was Jayson there?

12 A Yes, he was.

13 Q Was KC there?

14 A No, he wasn't.

15 Q Do you know who paid for breakfast?

16 A I have no clue.

17 Q When breakfast was over, where did you go?

18 A We went back to Deangelo's house.

19 Q After I-Hop, did there ever come a time when
20 you went to Simone's Auto Plaza?

21 A Yes.

22 Q Had you ever been to Simone's Auto Plaza before
23 that day?

24 A No.

25 Q How did it come about that you went to Simone's

1 Auto Plaza?

2 A Deangelo took us -- drove us out there.

3 Q And when you say "we" or "us," who do you mean?

4 A He drove me and Jayson out there.

5 Q And how did you get out there, what car?

6 A In the white Astro van.

7 Q When you got to Simone's, what happened?

8 A We got to Simone's, he had us wait in the car

9 continually again.

10 Q Deangelo?

11 A Yes.

12 And about another -- about another half an hour he

13 comes out and I guess we still had to wait so he made us come

14 in.

15 Q That was Deangelo that made you come in?

16 A Yes. Deangelo made me and Jayson come in.

17 Q When you went in, where did you go? Do you

18 remember?

19 A He made us have a seat on the couch that was

20 like in the center of the place.

21 Q Of the -- Simone's Auto Plaza?

22 A Yes.

23 Q Was this kind of an office area?

24 A Yes.

25 Q I mean, it wasn't inside where the cars were?

1 A No.

2 Q Okay. What, if anything, did you see Deangelo
3 do when you were inside Simone's?

4 A I seen him go in a back room.

5 Q Did you ever see him talking with anybody
6 specifically in Simone's?

7 A No.

8 Q Did -- at that time at Simone's, did you talk
9 to anybody there?

10 A No.

11 Q Was it just you and Jayson?

12 A Yes.

13 Q Okay. Eventually did Deangelo come out of that
14 back room?

15 A Yes, he did.

16 Q And what happened?

17 A We went and used the restroom and then we left.

18 Q What happened when you went to the restroom?

19 A He was telling us more about -- you know, about
20 we should have -- we should have went through with the plan
21 and that, you know, we should have -- we should have followed
22 through and that he was like disappointed about it.

23 Q Who was that?

24 A Deangelo.

25 Q And what did he say he was disappointed about?

1 Why was he disappointed?

2 A That we didn't -- that we wasn't -- that we
3 weren't involved, because I guess he felt that we were
4 supposed to be involved with him or, you know, involved with
5 whatever they had --

6 Q Was there any --

7 A -- accomplished.

8 Q Was there any discussion about your involvement
9 and payment?

10 A Yes.

11 Q What was that?

12 A That we would be paid \$6,000 in -- or see, he
13 quoted -- he exactly quoted and stated that, Oh, well, see --
14 he said, Well, see, this is how much money you would have got
15 paid if you would have did this.

16 Q And is that Deangelo speaking to you?

17 A Yes.

18 Q Okay. Did he ever discuss who did get paid and
19 how much he got paid?

20 A Yes, he did.

21 Q Who did Deangelo say got paid?

22 A KC.

23 Q Did he say how much he got paid?

24 A He said he got paid six grand.

25 Q All right. Do you know -- did Deangelo say

1 whether Deangelo got paid?

2 A No, he didn't.

3 Q He didn't say it or he said he did not get

4 paid?

5 A He didn't mention it at all.

6 Q All right. And as far as you know, did you

7 ever see JJ get paid?

8 A No.

9 Q When you were at Mr. -- or at Simone's, did you

10 ever see Deangelo talking with an older man?

11 A Yes, I did.

12 Q Can you describe that?

13 A He was talking to Mr. H.

14 Q And where did you see that conversation?

15 A It was after he came to -- it was after he came

16 out the back room to talk to us and then he went back to the

17 back room --

18 Q Okay.

19 A -- for a second time.

20 Q All right. Eventually did you leave Simone's?

21 A Yes, we did.

22 Q And at this point were you still living at

23 Deangelo's?

24 A Yes, I was.

25 Q Did Deangelo ever go back to work, back to the

1 Palomino?

2 A Yes, he did.

3 Q Did you go with him?

4 A No, I didn't.

5 Q At some point did the police come and speak

6 with you?

7 A Yes, they did.

8 Q Where were they when they first came to speak

9 with you?

10 A I was at Deangelo -- I was at Deangelo's house.

11 Q And do you know how it came about that you

12 spoke with him? Describe how you first came in contact with

13 the police.

14 A Well, I came in contact with the police because

15 Deangelo brought them there.

16 Q Did you see the police come with Deangelo?

17 A Yes, they did.

18 Q Did they come into the house?

19 A Yes, they did.

20 Q Okay. Did you go with the police --

21 A Yes, I did.

22 Q -- to their office?

23 A Yes, I did.

24 Q Did Deangelo stay at the house?

25 A No, he didn't.

1 Q Where did he go?
2 A He was -- he went where I went exactly, to the
3 interrogation room.
4 Q Okay. So did you and Deangelo go back to the
5 police office?
6 A After the interrogation or before?
7 Q No, when the police first come to Deangelo's,
8 the first time you ever see the police, do you leave with the
9 police?
10 A Yes, I do.
11 Q Does Deangelo also go with the police?
12 A Yes.
13 Q How did the two of you get to the police
14 office?
15 A The officers, they escorted us there.
16 Q Did you go in the same car? Do you recall?
17 A No.
18 Q You were in separate cars?
19 A Yes.
20 Q All right. Did you have time to talk with
21 Deangelo from when the police got to you and when you went and
22 talked to the police?
23 A No.
24 Q Did Deangelo tell you what you needed to say to
25 the --

1 A He said one -- he said just -- he said -- his
2 last words were to me --

3 MR. GENTILE: Objection. Hearsay. This is not in
4 furtherance.

5 THE WITNESS: Well, quote/unquote, his last words to
6 me that he said --

7 MS. ARMENI: Objection.

8 MR. GENTILE: Objection. Hearsay, Your Honor.

9 THE COURT: Overruled.

10 MR. PESCI: I'm sorry, Your Honor.

11 THE COURT: I said overruled. Go ahead.

12 BY MR. PESCI:

13 Q Okay. She's saying you can answer the
14 question.

15 A Okay. What came out of his mouth, not what I
16 heard, but what came out of his mouth was, If you don't tell
17 the truth, we're going to jail.

18 Q Okay.

19 A And I heard that out of his mouth.

20 Q Okay. Did you then go to the police station
21 with them?

22 A Yes.

23 Q Did the police take a statement from you?

24 A Yes, they did.

25 Q Okay. And eventually did you leave the police

1 station?

2 A Yes, I did.

3 Q Okay.

4 MR. PESCI: Court's indulgence.

5 BY MR. PESCI:

6 Q After the police station, did there come a time
7 eventually where you came to a courtroom and testified?

8 A Yes.

9 Q When you testified, was there a female
10 defendant at that proceeding?

11 A Yes.

12 Q Prior to that proceeding, had you seen that
13 female before?

14 A One time.

15 Q Where and how did you see that person?

16 A I seen her at Simone's Auto Plaza.

17 Q And when was that?

18 A That was the time that Deangelo brought -- the
19 first time I'd ever been up there.

20 Q Is that the time that you saw Deangelo speaking
21 with Mr. H?

22 A Yes.

23 Q All right. Did you speak with Anabel?

24 A No.

25 Q Did you see JJ speak with Ana -- with this

1 female? I'm sorry.
2 A No.
3 Q Did you ever learn the name Anabel?
4 A Yes.
5 Q Okay. Is that the name that you came to learn
6 associated with that female?
7 A Yes.
8 Q All right.
9 MR. PESCI: Pass the witness.
10 THE COURT: All right.
11 MS. ARMENI: Your Honor, can I move that podium?
12 THE COURT: Sure. Absolutely.
13 CROSS-EXAMINATION
14 BY MS. ARMENI:
15 Q Mr. Zone, this is your sixth statement that
16 you've made in this case?
17 A Yes.
18 Q You made a state -- you made a voluntary
19 statement?
20 A Yes.
21 Q You testified at a preliminary hearing?
22 A Yes.
23 Q You testified at Jayson Taoipu's preliminary
24 hearing?
25 A Yes.

1 Q You testified at Kenneth Counts' trial?
2 A Yes.
3 Q And you testified at Mr. Hidalgo, Jr.'s grand
4 jury?
5 A Yes.
6 Q The voluntary statement you made to the police,
7 that was on May 21st?
8 A Yes.
9 Q And you met with Detective Wildemann?
10 A Yes.
11 Q And Detective McGrath?
12 A Yes.
13 Q And you were aware that that statement was
14 recorded?
15 A Yes.
16 Q And they told you to tell the truth?
17 A Yes.
18 Q And before that statement on May 21st, you
19 spoke to Deangelo about what happened on the night of the
20 19th?
21 A Yes.
22 Q And you talked about -- you talked about all
23 the events?
24 A Yes.
25 Q On July -- or excuse me, on June 13th you

1 testified at Anabel Espindola's preliminary hearing, correct?
2 A Yes.
3 Q And you were under oath just like you are
4 today?
5 A Yes.
6 Q And you swore to tell the truth?
7 A Yes.
8 Q And before that preliminary hearing, Mr. Zone,
9 you met with the DAs?
10 A Yes.
11 Q Did you meet with Mr. DiGiacomo?
12 A Yes, I did.
13 Q Did you also meet with Mr. Pesci?
14 A Yes, I did.
15 Q And did you meet with any of the detectives?
16 A Yes, I did.
17 Q Who did you meet with?
18 A Both detectives that were there when they
19 investigated me.
20 Q Okay. You don't remember their names?
21 A Not really.
22 Q Were they the same two detectives that --
23 A Yes, they were.
24 Q So Detective Wildemann and Detective McGrath
25 were also in on that conference before the preliminary

1 hearing?

2 A Yes.

3 Q And you reviewed -- did you review your

4 voluntary statement --

5 A Yes.

6 Q -- that you had done?

7 What else did you review?

8 A I reviewed everything else that I was told. I

9 was told to tell the truth and that's what I came here to do.

10 Q Okay. Mr. Zone, that's not the question I'm

11 asking you.

12 A Okay.

13 Q Okay. The question I'm asking you is: At that

14 meeting before the preliminary hearing, the first preliminary

15 hearing, you met with Mr. DiGiacomo, Mr. Pesci, right?

16 A Correct.

17 Q You met with Detective Wildemann and Detective

18 McGrath, right?

19 A Correct.

20 Q And you reviewed your voluntary statement that

21 you gave the police --

22 A Correct.

23 Q -- right?

24 What else did you review?

25 A That's about it.

1 Q That's about it?

2 A Yes.

3 Q And you -- in that meeting with Mr. DiGiacomo

4 and Mr. Pesci, you discussed your testimony for the

5 preliminary hearing --

6 A Yes.

7 Q -- correct?

8 The first preliminary hearing, which was on

9 June 13th, 2005?

10 A Yes.

11 Q The third time you made a statement was at

12 Jayson Taoipu's preliminary hearing, correct?

13 A Correct.

14 Q And you were also under oath as you are today?

15 A Yes.

16 Q And you swore to tell the truth?

17 A Correct.

18 Q The fourth time was Kenneth Counts' trial,

19 right?

20 A Yes.

21 Q About a year ago from today?

22 A Yes.

23 Q Back in February of '08. You were under oath

24 again?

25 A Yes.

1 Q Swore to tell the truth?
2 A Yes.
3 Q And before Kenneth Counts' trial, you met with
4 Mr. DiGiacomo?
5 A Yes.
6 Q And you met with Mr. Pesci?
7 A Yes.
8 Q Did you meet with the detectives again?
9 A No.
10 Q Okay. And at that time you reviewed your
11 voluntary statement?
12 A Yes.
13 Q You reviewed your preliminary hearing testimony
14 from Anabel Espindola's preliminary hearing?
15 A Yes.
16 Q You reviewed your preliminary hearing
17 transcript from Jayson Taoipu's preliminary hearing?
18 A Correct.
19 Q And again, you discussed your testimony,
20 correct?
21 A Correct.
22 Q On -- a couple of days later, February 12th,
23 2008, you testified before the grand jury --
24 A Correct.
25 Q -- for Mr. H's case, correct?

1 A Correct.

2 Q And again, you swore to tell the truth?

3 A Correct.

4 Q Just like you are today?

5 A Correct.

6 Q And before that February 12th, 2008 grand jury
7 testimony, you met with Mr. DiGiacomo?

8 A Correct.

9 Q And you met with Mr. Pesci?

10 A Correct.

11 Q And did you meet with any of the detectives?

12 A No.

13 Q Okay. And once again you reviewed your
14 voluntary statement --

15 A Correct.

16 Q -- that you made to the police, right?

17 A Correct.

18 Q You reviewed your testimony from the
19 preliminary hearing of Anabel Espindola? .

20 A Correct.

21 Q You reviewed your testimony from the
22 preliminary hearing of Jayson Taoipu?

23 A Correct.

24 Q You reviewed your testimony from the -- from
25 the trial of Kenneth Counts?

1 A Correct.

2 Q And you discussed your testimony before you --

3 before the grand jury --

4 A Correct.

5 Q -- correct?

6 Today you testified before all of us, this is your

7 sixth time, right, making a statement?

8 A Correct.

9 Q And again, you're under oath, right?

10 A Correct.

11 Q And before today, you met with Mr. DiGiacomo?

12 A Before today, no, I did not.

13 Q You have not met with them since before -- a

14 year ago?

15 A No. I have not met with them today before --

16 Q Okay.

17 A -- prior to today, no.

18 Q You've never -- so the last time you met with

19 them was before Counts' trial?

20 A Yes.

21 Q Okay. So you have not met with them in the

22 last year ever?

23 A No. No.

24 Q Now I want to talk to you about this "dealt

25 with," okay. Deangelo told you that you wanted TJ dealt with,

1 right?

2 A No, that he wanted -- that they wanted TJ dealt
3 with. It had nothing to do with me.

4 Q Okay. But Deangelo Carroll told you that
5 somebody wanted TJ dealt with?

6 A Right.

7 Q And "dealt with" to you meant murder, right?

8 A Right.

9 Q And that was not the word -- Deangelo never
10 used "murder"?

11 A No.

12 Q Okay. That was your definition of what "dealt
13 with" meant, correct?

14 A That was the definition of what came out of his
15 mouth.

16 Q Okay. But he never said, I want to do a
17 murder, right?

18 A No.

19 Q He said "dealt with," right?

20 A Right.

21 Q And your definition of "dealt with" was murder?

22 A Right.

23 Q Now, this time frame of when the first
24 conversation occurred between you, Deangelo and Jayson about
25 "dealt with" --

1 A Yeah.

2 Q -- you had previously testified that that

3 conversation took place the day before the killing, the

4 18th of May.

5 A No.

6 Q You haven't?

7 A No, it didn't take -- it took prior -- it

8 took -- when he talked about it was the day it happened.

9 Q Okay.

10 A If you look in -- if you look in every single

11 one of those papers, it will state --

12 Q Let's do that.

13 A -- it will state that it was said the day --

14 Q Okay.

15 A -- of the murder.

16 Q Well, let's see, Mr. Zone.

17 MR. DIGIACOMO: If you could just tell us which

18 one --

19 MS. ARMENI: As soon as I find it, I will give it to

20 you.

21 MR. DIGIACOMO: Okay.

22 MS. ARMENI: It should be --

23 THE COURT: Are you looking at the voluntary

24 statement?

25 MS. ARMENI: The voluntary statement of 5/21/05 and

1 it will be page 7 -- or I'm sorry, page 27. You know what, I
2 apologize. It's not the voluntary statement. So many papers.
3 It's the preliminary hearing transcript.

4 MR. PESCI: Which one?

5 MS. ARMENI: The first one on 6/13/05.

6 MR. PESCI: Thank you.

7 MS. ARMENI: And that would be page 27, lines 18
8 through 25.

9 BY MS. ARMENI:

10 Q How -- Mr. Zone, do you remember this? You
11 were sworn under oath on January 13, 2005 --

12 A Right.

13 Q -- right?

14 You appeared at that preliminary hearing?

15 A Right.

16 Q You testified at that preliminary hearing?

17 A Yes, I did.

18 Q You were sworn under oath?

19 A Yes.

20 Q To tell the truth, correct?

21 A Yes.

22 MR. GENTILE: Counsel, let's -- I think it was '06.

23 MS. ARMENI: '05.

24 MR. GENTILE: January?

25 MS. ARMENI: No, June 13th of '05.

1 BY MS. ARMENI:

2 Q Question: How long before -- you were asked
3 the question: How long before the events of May 19th did this
4 first conversation between you and Mr. Carroll occur?

5 Answer: Well, earlier that day.

6 Earlier in the day that Mr. Hadland died --

7 MR. PESCI: I apologize. Sorry to interrupt. I
8 would ask that the witness be able to see that testimony he's
9 being asked about.

10 MS. ARMENI: It's impeachment, Your Honor.

11 THE COURT: She doesn't have to show it to him, but
12 you're welcome --

13 MR. PESCI: Well, she's asking him if that's what he
14 said. Without seeing the transcript, he --

15 MR. GENTILE: That's not the procedure and he knows
16 it.

17 MR. PESCI: Without a commentary as far as what we
18 know or don't know, this witness is being asked questions
19 about four different statements from different time periods.
20 I'd ask him to at least have the opportunity to review the
21 parts that he's being asked about.

22 THE COURT: All right. Well, she can say this was
23 the question and this was the answer and that's what you said,
24 and then --

25 MS. ARMENI: Okay.

1 THE COURT: So I guess just -- is there another copy
2 that he can look at?

3 MR. PESCI: Yes.

4 MR. GENTILE: Can we approach?

5 MS. ARMENI: Yeah, Your Honor --

6 THE COURT: Yeah.

7 (Off-record bench conference)

8 THE COURT: Let's take a quick break. We're just
9 going to take ten minutes.

10 Once again, you're reminded of the admonition not to
11 discuss anything or do anything relating to the case on our
12 brief recess. Notepads in your chairs, follow Jeff through
13 the double doors, just a quick ten minutes.

14 And, Mr. Zone, during the break, don't discuss your
15 testimony with anyone else who may be a witness. Just wait
16 until the jury exits.

17 (Jury recessed at 4:04 p.m.)

18 THE COURT: All right. Ms. Armeni.

19 MR. ARMENI: Yes, Your Honor.

20 THE COURT: We need to have the door shut, please.

21 Basically she can ask, Was this the question, was
22 this the answer. Without showing him the transcript, he
23 doesn't know. So if he doesn't know, he doesn't know. That's
24 the risk you run without giving him the transcript because you
25 can't expect him necessarily to remember --

1 Oh, I'm going to have you go ahead and take the
2 break. Don't talk to the witnesses. Don't talk to anybody
3 out in the hallway.

4 Okay. You're not required to refresh your memory
5 with it, but the problem is, like I said, if he doesn't have
6 it in front of him, he's not going to be able to answer your
7 questions. So I don't know what you accomplish that way. But
8 under the rule she's allowed to do it that way.

9 MR. DIGIACOMO: She's -- three questions in one
10 without an answer and she just kept --

11 THE COURT: Right. And then if he doesn't remember,
12 again, say he doesn't remember.

13 MR. DIGIACOMO: Judge, there's one thing. I just
14 spoke with Mr. Adams, and I didn't get a chance to talk to
15 Mr. Gentile. We have a very handicapped individual outside
16 that we are anticipating putting on. It's short.
17 Mr. McWhorter. You remember him. He's the cab driver from
18 the last trial.

19 THE COURT: Oh, right. He has serious MS or
20 something.

21 MR. DIGIACOMO: He has serious MS.

22 THE COURT: Okay.

23 MR. DIGIACOMO: Do you think maybe we could do
24 McWhorter, then get him out and then go back to the cross?

25 MR. GENTILE: No problem.

1 THE COURT: I'll just explain to the jury that we
2 need to take a witness out of order. It doesn't matter what
3 order they come in.

4 MR. GENTILE: That's fine. We can do it now.

5 MR. ARRASCADA: I'm okay with that.

6 THE COURT: Okay.

7 MR. DIGIACOMO: I appreciate it.

8 (Court recessed at 4:04 p.m. until 4:13 p.m.)

9 (In the presence of the jury.)

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

12 Ladies and gentlemen, we're going to call a witness
13 out of order. And then once that witness is finished, we'll
14 go back to Mr. Zone and the defense will resume its
15 cross-examination of Mr. Zone. Because of a witness' physical
16 condition, we are going to call him out of order since he is
17 here now.

18 And, State, call that witness that will be taken out
19 of order.

20 MR. GENTILE: Gary McWhorter.

21 THE COURT: And is he in a wheelchair?

22 MR. DIGIACOMO: He is, Judge.

23 THE COURT: Okay. We'll put him down there and
24 there is a microphone.

25 MR. DIGIACOMO: Can I shut this down?

1 THE COURT: Yeah, that's fine.

2 If you could position the witness to face the clerk,
3 please. Thank you.

4 GARY MCWHORTER, STATE'S WITNESS, SWORN

5 THE CLERK: Please state and spell your name for the
6 record.

7 THE WITNESS: Gary McWhorter, G-a-r-y,
8 M-c-W-h-o-r-t-e-r.

9 THE COURT: All right. Thank you.
10 All right. Mr. DiGiacomo, you may proceed.

11 MR. DIGIACOMO: Thank you, Judge.

12 DIRECT EXAMINATION

13 BY MR. DIGIACOMO:

14 Q Good afternoon, Mr. McWhorter.

15 A Yes, sir.

16 Q I'm going to direct your attention back to May
17 of 2005. How were you employed way back when?

18 A I worked for Yellow Cab Company.

19 Q As what?

20 A Taxi driver.

21 Q You're a taxi driver. May I direct your
22 attention to the late evening hours of May 19th and the early
23 morning hours of May 20th. Were you working at that time?

24 A Yes, sir.

25 Q Did you normally work a particular shift as a

1 cab driver?

2 A Yes, sir.

3 Q Can you tell us what that shift was?

4 A It started around 3:00 in the afternoon

5 until -- between -- it was up to 12 hours.

6 Q Up to 12 hours. So it started at 3:00 and then

7 sometime before 3:00 a.m. it would end?

8 A Right.

9 Q Now, as a cab driver, did you have an occasion

10 to take people to the Palomino Club?

11 A Yes, sir.

12 Q And can you tell us generally where in the

13 valley the Palomino Club's located?

14 A Las Vegas Boulevard just south of Lake Mead.

15 Q And what was the purpose or why is it that you

16 would take people to the Palomino Club?

17 A Because it's an adult club and we would take

18 people there for entertainment purposes.

19 Q Okay. I guess the question is, was there a

20 reason why -- is there a reason why you would take someone to

21 the Palomino Club as opposed to some other club in the valley?

22 A Well, all the adult clubs pay taxi drivers to

23 bring them customers.

24 Q Okay.

25 A And I believe at that particular time the

1 Palomino was the only one that was paying. Because of a
2 lawsuit, the other ones weren't paying.

3 Q So there was a period of time when the Palomino
4 was the only one paying and there were other times when
5 everybody paid?

6 A Right.

7 Q When you would get paid at the Palomino, how
8 would it work? You rolled up with the customer -- tell the
9 ladies and gentlemen of the jury how that works.

10 A They would get out and there was a gentleman
11 outside that would count the heads that got out and he'd give
12 us a slip and then we'd go inside and they'd pay us.

13 Q Did you always go in the front or was there a
14 time period when you had to go somewhere else?

15 A Well, after the new owners took over, we had to
16 go in the back, after a certain time. I think it was after
17 8:00 o'clock or something we'd go in the back. Before then,
18 we'd go in the front.

19 Q Okay. So when the new owners took over, you'd
20 get your piece of paper in front, you'd go around back and
21 you'd get cashed out around back?

22 A Yes, sir.

23 Q And on May 19th, the early morning hours, I
24 guess it's shortly after midnight on May 20th, were you at the
25 Palomino?

1 A Yes, sir.

2 Q And were you dropping off or were you doing
3 something else when you were there?

4 A I was picking up.

5 Q Just picking up. Describe for us how it is
6 that a cab driver who's going to the Palomino does pickups.
7 Is there a line or something?

8 A There's a line. It would hold up to three cabs
9 in the front and then if there were a longer line, it would be
10 extended back in the rear parking lot.

11 Q Does there come a point in time when you wind
12 up in the three cabs in front?

13 A Yes, sir.

14 Q And were you ever in that longer line or was it
15 just the three cab line?

16 A I think it was just three cabs right then.

17 Q Okay. At this point then it was just three
18 cabs there?

19 A Yeah -- well, I'm not sure. I was the first
20 cab.

21 Q You were the first cab?

22 A Yeah.

23 Q All right. And can you describe for the ladies
24 and gentlemen of the jury the first contact you had with the
25 fare that came up to you?

1 A He came up -- he got out of a van. He came and
2 asked me to take him someplace and I refused because we won't
3 transport you if you get out of another vehicle because
4 people -- robbers, they'll follow us down the street and rob
5 us, so we won't do that. So I refused.

6 And then he said he would give me -- I believe it
7 was \$30 if I would take him. And I asked for it in advance
8 and he went -- I said -- he gave me a hundred and I said, I
9 don't have change. You'll have to go inside and get change.
10 And then he came back and he gave me 30 and he gave me the
11 address.

12 Q Let me stop you for just a second. This
13 individual that you first wanted to refuse, you saw him
14 earlier in the van, correct?

15 A Yes, sir.

16 Q All right. Can you describe for us the van at
17 all?

18 A It's -- it was a -- I really don't remember. I
19 would say probably a Ford with maybe like a -- I couldn't --
20 about the size of like the ones that might carry 12
21 passengers, but I'm not really sure.

22 Q Okay. Was there anybody else in the van with
23 this individual that you recall?

24 A I believe there was three people in the van.
25 I'm not sure. That was a long time ago, but I believe there

1 were three.

2 Q But you believe there was more than just the
3 individual that got out of the van and came to your car and
4 wanted a ride?

5 A Yes.

6 Q Okay. And during this -- well, first of all,
7 can you tell us anything about this person that's talking to
8 you? Is he white? Is he black? Is he Hispanic?

9 A He's black.

10 Q He's black. And during this time period, he
11 tells you he only has hundreds and so you sent him in the
12 club?

13 A He said he had a hundred and I sent him in the
14 club, and -- to get the change.

15 Q Does he eventually come out of the club with
16 change?

17 A Yes, sir.

18 Q And does he pay you the money?

19 A He gave me \$30.

20 Q And does he provide you an address?

21 A Yes, sir.

22 Q Okay. What did you do once he provides you the
23 address? Did you take him somewhere?

24 A I transport him to that address -- well, to the
25 corner.

1 Q So when you have -- when you have a call or a
2 cab and someone's going to get in and give a fare, do you
3 require them to give you a specific address that they're going
4 to?
5 A Yes, sir.
6 Q Okay. And on this occasion, this individual
7 did so?
8 A Yes, sir.
9 Q As you were driving to this location, did there
10 come a point in time when the fare asked you to do something
11 different?
12 A No, sir.
13 Q Okay. Well, did you drop him off at the
14 address he gave you?
15 A He gave me one address and he told me where to
16 stop. And when he got out, I saw that the address was
17 different so I wrote down at the top of the sheet the one
18 where he actually got out on.
19 Q And when he actually got out, did you watch him
20 go in the residence that was at that address or do something
21 else?
22 A He walked to the rear of the house.
23 Q He walked to the rear of the house.
24 Now, you just talked about the -- writing down on
25 the sheet. When you're on duty as a cab driver, is there some

1 sort of record that's created by you related to your various
2 fares?

3 A They're called trip sheets. We have to -- we
4 have to mark all our trips.

5 Q I'm going to show you, sir, what's been marked
6 as State's Proposed Exhibit No. 170. I know you've seen this
7 before, but does that appear to be a copy of your trip sheet
8 from May 19th in the middle of the day until you got off shift
9 on the early morning hours of the 20th?

10 A Yes, sir.

11 Q Okay. And I'm going to ask you to flip over to
12 the back here and ask you if you see the fare on the second
13 page there that we've been talking to from the Palomino.

14 A Yes, sir.

15 Q Okay.

16 MR. DIGIACOMO: I move to admit 170, Judge.

17 THE COURT: Any objection?

18 MR. GENTILE: No.

19 May I see that just for a second, please, before --

20 (Pause in proceedings)

21 MR. ARRASCADA: No objection, Your Honor.

22 THE COURT: All right. That will be admitted.

23 (State's Exhibit 170 admitted.)

24 BY MR. DIGIACOMO:

25 Q I'm going to give that back to you for just a

1 second. On the second page there appears to be two separate
2 fares; is that correct?

3 A That's correct.

4 Q Okay. And the fare we're talking about, is
5 that top fare?

6 A Yes, sir.

7 Q All right. Can you tell me what time you
8 picked up the fare?

9 A It looks like 12:16.

10 Q Okay. And then you have --

11 A Actually, it's 26.

12 Q 12:26?

13 A Yeah.

14 Q Okay. And you have a space there that says
15 Palomino. Is that where you picked the person up from?

16 A Yes.

17 Q And then there's a space there that has 12:31.
18 What does that time represent?

19 A That's the time I dropped him off.

20 Q Okay. And then it says 513 Wyatt. What does
21 that represent?

22 A That was the address that he gave me, the
23 destination.

24 Q And then there's a 508 above the 513. What
25 does that represent?

1 A 508 is where he walked -- he got out of the
2 vehicle and walked around the house.

3 Q And the last number says 5.70. What does that
4 represent?

5 A That was the fare, \$5 and 70 cents.

6 Q So he was willing to provide you \$30 for a \$5
7 and 70-cent fare?

8 A Yes, sir.

9 Q All right.

10 MR. DIGIACOMO: I pass the witness, Judge.

11 Thank you, Mr. McWhorter.

12 THE COURT: All right. Cross.

13 MR. GENTILE: May I see that, please? Thank you.

14 CROSS-EXAMINATION

15 BY MR. GENTILE:

16 Q Good afternoon, Mr. McWhorter.

17 A Good afternoon.

18 Q Mr. McWhorter --

19 MR. GENTILE: Your Honor, he's also under subpoena
20 on behalf of the defense in this case. Rather than call him
21 back, can I just examine him now?

22 THE COURT: That's fine.

23 MR. GENTILE: Thank you.

24 BY MR. GENTILE:

25 Q I'm taking a look at the trip sheet, and I see

1 that you dropped the fare off a little bit earlier, like 4416
2 South Paradise Road. Now, I could be wrong, but that seems
3 like Club Paradise to me.

4 A It's possible, but I have no memory.

5 Q All right. And then I see that you picked up
6 somebody. You must have staged --

7 MR. GENTILE: Can I just stand next to the witness
8 while I --

9 THE COURT: Yeah, that's fine. That's fine.

10 MR. GENTILE: You know, because he doesn't have --
11 I'd like the jury to see this, but he doesn't have a monitor.
12 So I have to do one or the other. So I'm going to do this.

13 BY MR. GENTILE:

14 Q You dropped off at 4416 South Paradise and then
15 you must have staged because you picked up your next fare at
16 4416 South Paradise. Am I right?

17 A Yes, sir.

18 Q Okay. And for the ladies and gentlemen of the
19 jury who don't drive a cab, what does staging mean?

20 A That means waiting in line, waiting for the
21 next fare.

22 Q Okay. And when you -- and so when you were
23 talking about -- when you were at the Palomino Club later on
24 that night, when you said that there were three cabs in line
25 and then you ultimately wound up number one, that's staging;

1 am I right?

2 A Yes, sir.

3 Q All right. So you also wound up staging at the

4 Palomino?

5 A Right.

6 Q Now, I see that you went from 4416 South

7 Paradise to something that you call destination 34.

8 A That would be the Rio Hotel.

9 Q The --

10 A Rio.

11 Q Rio Hotel. And it looks like you dropped

12 somebody off at 11:57.

13 A Yes.

14 Q Now, you then head to the Palomino or did

15 you --

16 A Yes, sir.

17 Q You then headed to the Palomino?

18 A Yes.

19 Q For no purpose or were you --

20 A No, no. I go there because we get good rides

21 out there. The average ride that comes out here --

22 Q So you deadheaded to the Palomino because you

23 knew that you could make some money taking somebody from the

24 Palomino somewhere because usually it's a pretty long trip?

25 A Yes, a good ride.

1 Q As a matter of fact, you'd sometimes actually
2 bring people to the Palomino, maybe even recommend the
3 Palomino, because it's a higher meter?

4 A Correct.

5 Q Am I right?

6 A Yes.

7 Q Okay. And for how many years by that time were
8 you driving a cab back in '05?

9 A 13.

10 Q I take it that wasn't the first time you
11 brought someone from the Palomino?

12 A No, sir.

13 Q In your experience over the years with respect
14 to the Palomino Club, did it always pay cab drivers to drop
15 off customers?

16 A Yes, sir.

17 Q Even when other clubs didn't pay cab drivers,
18 the Palomino did?

19 A Well, originally when I started driving a cab,
20 no club paid except for the Palomino. Back then they only
21 paid \$3.

22 Q Do you know what they're paying now?

23 A 50.

24 Q Every club's paying 50?

25 A That's what they tell me. I don't work for --

1 Q Palomino pays \$5 more? Okay.

2 Did you ever have anybody say anything bad to you
3 about any of the clubs, any of the gentlemen's clubs?

4 A What could be bad about a gentlemen's club,
5 sir?

6 Q Well -- so for a cab driver, there can't be
7 anything bad, you get paid to take somebody there; am I right?

8 A Yeah.

9 MR. GENTILE: Nothing further.

10 THE COURT: All right. Mr. Arrascada.

11 MR. ARRASCADA: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ARRASCADA:

14 Q Sir, the term -- I just need to be educated.
15 The term deadhead --

16 A Yes, sir.

17 Q -- to me that's a fan of a rock band. I
18 apologize. What does that mean to you?

19 A It means we go from point A specifically to
20 point B.

21 Q Without a fare?

22 A Yes, sir.

23 Q Okay. So deadheading is driving without a fare
24 in the cab; is that correct?

25 A Right.

1 Q Okay. How many times -- you testified in the
2 Counts' trial; is that correct?

3 A Yes.

4 Q And in a preliminary hearing also?

5 A I've only testified one time.

6 Q You testified one time?

7 A Yes.

8 Q And did you meet with the prosecutors before
9 you testified?

10 A Just this time.

11 Q This time only. Okay.

12 And when you testified, you'd come in and you told
13 the truth; is that correct?

14 A Yes, sir.

15 Q And I would assume that this is a cab fare, now
16 that you've had to come down here two times, that you wish you
17 didn't pick up?

18 MR. ARRASCADA: Okay. Nothing further. Thank you.

19 THE COURT: All right. Redirect?

20 MR. DIGIACOMO: No, Your Honor.

21 THE COURT: All right. No juror questions.

22 All right. Sir, thank you for your testimony.

23 Please don't discuss your testimony with anybody else who may
24 be a witness in this case and you are excused at this time.

25 All right. Counsel may approach.

1 And then, Jeff, if you would then bring in Rontae
2 Zone.

3 THE MARSHAL: Yes, Your Honor.

4 (Off-record bench conference)

5 THE COURT: All right. Yes, if you would please
6 bring in Mr. Zone.

7 All right. Mr. Zone, come on up back to the witness
8 stand and have a seat and you are still under oath. Do you
9 understand that?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Ms. Armeni, you may proceed
12 with your cross-examination.

13 MS. ARMENI: Okay.

14 CROSS-EXAMINATION (Continued)

15 BY MS. ARMENI:

16 Q Mr. Zone, you probably don't remember what my
17 question was when we walked out, right -- when you walked out?

18 A Yes.

19 Q I'll ask it again. You testified previously
20 about this conversation, the first conversation with Deangelo
21 and Jayson being the day before on the 18th.

22 A Right.

23 Q Do you remember that now?

24 A No.

25 Q Okay. You did testify at a prior proceeding,

1 correct?

2 A Correct.

3 Q Back in June -- on June 13, 2005?

4 A Yes.

5 Q And at that time you were sworn?

6 A Yes.

7 Q And you swore to tell the truth?

8 A Yes.

9 Q And you were asked the question -- and there's

10 a series of questions, Mr. Zone, because there's about --

11 there's a couple of them to get to the answer that I was

12 talking about earlier.

13 Question: How long before the events of May 19th

14 did this first conversation between you and

15 Mr. Carroll occur?

16 Answer: Well, earlier that day.

17 Question: Earlier in that day that Mr. Hadland

18 died?

19 Answer: No, earlier the day before.

20 Question: Before Mr. Hadland was killed?

21 Answer: Yes.

22 Do you remember saying, Yes?

23 A Yes, but I was also nervous --

24 Q Sir --

25 A -- when I made those statements.

1 Q Sir --

2 THE COURT: Sir. Sir, there's no question in front
3 of you right now. The deputy district attorneys will have the
4 opportunity to conduct redirect examination if they want to
5 clarify any of your answers. So try to just -- I know it's
6 hard --

7 THE WITNESS: Okay.

8 THE COURT: -- but just focus on just the question
9 that's in front of you.

10 BY MS. ARMENI:

11 Q Okay. Mr. Zone, on February 1, 2008, you also
12 testified at -- oh, on December 6, 2005, you also testified at
13 a prior proceeding, correct?

14 A Correct.

15 MS. ARMENI: I'm looking at page 100, line 15,
16 through 19, Counsel.

17 MR. PESCI: Thank you.

18 BY MS. ARMENI:

19 Q And, sir, on that day you were asked the
20 question by Mr. DiGiacomo: Back up. Before the shooting
21 occurs --

22 Okay.

23 -- the day of the shooting or the day before, you
24 said Deangelo told you that Mr. H wanted someone
25 dead,

1 correct?
2 Correct.
3 A Correct.
4 Q So also on that day you said that that
5 conversation happened the day before Hadland was killed?
6 A Right.
7 Q Now, when Deangelo told you that he wanted
8 somebody dealt with, he said it was because somebody was
9 talking, right?
10 A He didn't -- he said someone was talking about
11 the club.
12 Q Okay. Talking, ratting, would you say?
13 A Yes.
14 Q Running off at the mouth?
15 A Yes.
16 Q Snitching?
17 A Yes.
18 Q And, sir, would you agree with me that
19 snitching means telling on somebody?.
20 A Yes, it does.
21 Q Now, let's talk about Mr. H. You mentioned on
22 direct examination that you saw him, correct, at Simone's?
23 A Yes.
24 Q But you didn't see him at Simone's?
25 A I did see him at Simone's.

1 Q Really?

2 A I didn't see -- I didn't see him like, you

3 know, meet him, Hi, how are you doing, my name's this. No, I

4 didn't.

5 Q Okay.

6 A But I seen him.

7 Q Deangelo Carroll's not the one that told you

8 that he was speaking to Mr. H?

9 A He told me, but I also -- my eyes don't deceive

10 me. I seen what I seen, so --

11 Q Okay.

12 A My eyes don't lie to me.

13 Q So you're telling me now that you never --

14 you've never spoken to him?

15 A No.

16 Q You've never heard his voice?

17 A I don't even know him.

18 Q You've never met him?

19 A No.

20 Q But you're saying -- but you saw him?

21 A I've seen him. That's the point. I've seen --

22 there's a difference between seeing and then knowing somebody

23 and meeting them. I've seen him.

24 Q Okay.

25 A I've never met him. I don't know him.

1 MS. ARMENI: Court's indulgence.

2 BY MS. ARMENI:

3 Q Sir, you testified in a prior proceeding on
4 February 1, 2008, correct?

5 A Right.

6 Q You swore to tell the truth at that time?

7 A Right.

8 Q Just like you're swearing to tell the truth
9 right now?

10 A And every other statement, yes, correct.

11 Q Great.

12 MS. ARMENI: Counsel, I'm looking at the transcript
13 on February 1, 2008, page 7, line 19.

14 MR. PESCI: Page 7?

15 MS. ARMENI: February 1st.

16 MR. DIGIACOMO: Do you have a different
17 transcript --

18 MS. ARMENI: And the date -- page 7, line 19.

19 MR. PESCI: Court's indulgence.

20 MS. ARMENI: Court's indulgence.

21 THE COURT: That's fine.

22 (Pause in proceedings)

23 MR. DIGIACOMO: We have a little discrepancy, Judge.

24 THE COURT: Take your time.

25 (Pause in proceedings)

1 MR. ADAMS: I've got your numbers so...

2 MS. ARMENI: My numbers are right for my transcript.

3 MR. ADAMS: I've got the same numbers as you.

4 MS. ARMENI: Okay.

5 MR. ADAMS: So I hope we don't -- I hope you don't
6 give those up.

7 MR. PESCI: Can we approach for a minute?

8 THE COURT: Sure.

9 (Off-record bench conference)

10 THE COURT: All right. Ladies and gentlemen, we're
11 going to take our evening recess a little bit earlier because
12 of the discrepancies in the page numbers, and rather than have
13 to find everything, we're going to get one uniform copy so
14 we're all literally on the same page.

15 So we're going to take our evening recess. We'll
16 reconvene tomorrow morning at 10:45. We'll reconvene tomorrow
17 morning at 10:45. Just so you know in terms of scheduling,
18 Thursday, probably 10:45, somewhere between 10:45 and 12:30,
19 I'm not really sure yet about how long the Court's morning
20 calendar -- Friday the Court does not have a morning calendar
21 so we're going to start early; however, I have an obligation
22 in the afternoon so we're going to go from about 9:00 o'clock
23 until 1:00 or 1:30 without a lunch break and then we'll just
24 recess then for the weekend.

25 Unfortunately, it looks like we'll be coming back

1 next week. If anyone has any concerns about those hours, you
2 need to bring them up with Officer Wooten in the hallway.
3 Like I said, we'll reconvene tomorrow morning at 10:45.

4 I must remind you that during this afternoon recess
5 you're not to discuss this case or anything relating to the
6 case with each other or anyone else. You're not to read,
7 watch, or listen to any reports of or commentaries on this
8 case or any subject matter relating to the case. Don't do any
9 independent research on any subject connected with the trial.
10 Do not visit any of the locations at issues -- at issue,
11 excuse me, and please do not form or express an opinion on the
12 case.

13 If everyone will please leave their notepads in
14 their chairs and follow Officer Wooten through the double
15 doors, we'll see you back here tomorrow at 10:45.

16 (Jury recessed at 4:43 p.m.)

17 THE COURT: Mr. Zone, you need to be back here
18 whatever time the DAs tell you, but no longer than 10:30.

19 THE WITNESS: No later than 10:30?

20 THE COURT: Right.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Thank you. Don't talk about your
23 testimony with anybody else who may be called as a witness in
24 this case.

25 THE WITNESS: No problem, Your Honor.

1 THE COURT: All right. And if the DAs want you to
2 report to their office early or something like that, that's up
3 to them.

4 Mr. Pesci, before I excuse Mr. Zone, do you need him
5 to call you or report to your office or can he come directly
6 to the court?

7 MR. PESCI: If he could just give me a moment in
8 the --

9 THE COURT: Vestibule?

10 MR. PESCI: -- just stay in that vestibule, I'll be
11 there in a second to talk to him out there. Okay?

12 THE COURT: All right. Go ahead and just wait in
13 the vestibule, please.

14 Why don't we go through some of the legal issues.
15 All right. Let's go over the remaining legal issues on the --
16 what, hearsay, the Deangelo Carroll -- were you prepared to do
17 that now?

18 MR. DIGIACOMO: I'm prepared to do it. The only
19 issue is I don't know that Mr. Adams or Mr. Arrascada have
20 identified specifically what items they're offering for the
21 truth of the matter asserted. It would be my position that as
22 it relates to Mr. Gentile and his client, unless he disagrees
23 with this, that we instruct him as it relates to those two
24 recordings, those wires, nothing Deangelo Carroll says is
25 offered for the truth of the matter asserted and may not be

1 considered for the truth of the matter asserted against Luis
2 Hidalgo, Jr. unless he's saying he wants it in for the truth
3 of the matter asserted. If he wants to say that, that's fine.
4 But otherwise --

5 THE COURT: All right. Let's -- why don't we do
6 this? Let's let Mr. Gentile state his position and then we
7 can argue about it.

8 MR. GENTILE: I have stated it before. I will state
9 it again.

10 THE COURT: You need to state it again.

11 MR. GENTILE: The -- there are -- the tape recording
12 made on the 23rd of May and the 24th of May by Deangelo
13 Carroll while operating as a state operative is -- should not
14 be admissible against my client at all because it is post
15 conspiratorial. The conspiracy is over with and nothing
16 that's being said by the other two people who the Court and
17 the State is contending are still conspirators with each other
18 is applicable to my client. Conspiracy is over.

19 THE COURT: Right. And we argued this before
20 because your position is the purpose of the conspiracy was
21 accomplished and the State's position is, well, they're still
22 cleaning up and covering up and so, therefore, for at least
23 some period of time the conspiracy is still ongoing.

24 MR. GENTILE: All right. Now, that having been
25 said, since it's not admissible at all, clearly what they are

1 saying is not admissible for the truth of the matter asserted,
2 period. That's my position.

3 THE COURT: Right. Well, I think you're on the same
4 page.

5 MR. DIGIACOMO: We are, but what he's saying is he
6 doesn't want a limiting instruction to the jury that says as
7 it relates to Mr. H the statements of Deangelo Carroll on that
8 recording may not be considered by you for the truth --

9 THE COURT: He's saying the statements of everybody
10 are not --

11 MR. DIGIACOMO: Yeah, but we've already litigated
12 that.

13 THE COURT: Yeah, we already litigated it.

14 MR. DIGIACOMO: The statements of threatening to
15 kill are.

16 THE COURT: Right.

17 MR. GENTILE: Then if they are admissible as to my
18 client, then they -- they have to be -- see, again, we get
19 into the adopted admission situation. All right. If Carroll
20 is saying something that is -- this is what Professor Fridlin
21 [phonetic] was going to be called for, okay?

22 Clearly, if Carroll is saying something that is
23 engendering discourse as between them, then you cannot remove
24 what Carroll is saying from what the responses are. And so it
25 either all goes in for the truth or none of it goes in for the

1 truth.

2 My position is it's not admissible at all. If you
3 disagree with my position and you admit it, then it has to go
4 in for the substance of it.

5 MR. DIGIACOMO: If that's his position, then we'll
6 attack it as if it's substantive evidence, but --

7 MR. GENTILE: They want it both ways. They want to
8 have what Anabel and Louie, III are saying as substantive, but
9 they don't want what Deangelo Carroll is saying as
10 substantive.

11 MR. DIGIACOMO: I'm not saying that. I'm saying
12 it's their choice. If they want --

13 MR. GENTILE: My choice is it's not admissible at
14 all.

15 THE COURT: Choice A is it's not admissible at all.

16 MR. DIGIACOMO: Right.

17 THE COURT: Choice B -- as against Mr. Hidalgo, Jr.
18 Choice B is if it is admissible, then the whole thing is
19 admissible because Deangelo Carroll's, if I'm saying this
20 correctly, comments give context to the comments of other
21 people and you can't view the comments of Little Lou and
22 Anabel in a vacuum; is that --

23 MR. GENTILE: And counsel is giving me --

24 THE COURT: Is that what you're saying?

25 MR. GENTILE: Yeah. Unfortunately, I'm approaching

1 it based on the rules of evidence as opposed to what -- I
2 don't know what he's doing, but I tell you what, I'm more than
3 happy -- if the Court will give the instruction that nothing
4 that Deangelo Carroll says is admissible for the truth as to
5 my client, and if counsel is offering that, then I will accept
6 that instruction.

7 MR. DIGIACOMO: Correct. It's only offered to give
8 context to the statements of the other individuals.

9 THE COURT: So then you're in agreement on the
10 instruction?

11 MR. GENTILE: Let me think about it overnight. And
12 I don't need to tell you -- I don't think I need to tell you
13 now, do I?

14 THE COURT: No. You guys wanted a ruling.

15 MR. GENTILE: It would seem to me that that's
16 something that you could do at the end of the case when it
17 comes time to give the case to the jury.

18 MR. DIGIACOMO: I just didn't know if they wanted a
19 limiting instruction at the time --

20 THE COURT: Well, before you've been saying you
21 wanted contemporaneous limiting instructions and everybody
22 told me I have to rule on it now because the detective's going
23 to be testifying.

24 MR. GENTILE: Let me think about it overnight,
25 Judge.

1 THE COURT: So I'm trying to rule on it now so we
2 can give a contemporaneous statement.

3 MR. GENTILE: I appreciate that. You know,
4 candidly, what I want to do is I want to go home, I want to
5 read the transcript, I want to see if there's anything in
6 there that would be good for me for the truth. If there is,
7 I'm going to come in here and say I want the truth.

8 THE COURT: All right.

9 MR. GENTILE: Okay?

10 THE COURT: Mr. Arrascada -- thank you.

11 MR. GENTILE: If there isn't, then I don't want it.

12 THE COURT: Mr. Arrascada, what's your position?
13 Anything else we need to hear from you?

14 MR. ARRASCADA: Judge, I'd like to speak with you
15 tomorrow. There's a lot that I need to say and have to say.

16 THE COURT: Because you and Mr. Gentile are going to
17 sit around the dining room table tonight and figure out what
18 your collective positions are; is that fair?

19 MR. ARRASCADA: Judge, I've already -- there's
20 already been some extensive work done on this.

21 MR. DIGIACOMO: Yeah. I mean, obviously there's one
22 statement they want for the truth of the matter asserted which
23 will --

24 THE COURT: Which is the Little Lou, you didn't have
25 nothing to do with it, right.

1 MR. DIGIACOMO: You didn't have nothing to do with
2 it, right.

3 THE COURT: Right.

4 MR. DIGIACOMO: Correct. But there's some other
5 ones on there that they may or may not want, and if they want
6 to just pick one they're going to argue, that's fine, but then
7 we've got to know which --

8 THE COURT: It's either one way or the other way.

9 MR. ARRASCADA: Judge, I think more significantly,
10 and I'll address this tomorrow, but just to plant it out there
11 for you is what they're trying to do now is they want to
12 impeach the statement made by Deangelo Carroll with, again,
13 out-of-court statements and so, in essence, Judge, it's like a
14 reverse Sixth Amendment issue that they're trying to do, and
15 they can't bring in hearsay from Deangelo Carroll when they
16 control his availability. They can grant him immunity.

17 And, Judge, actually you can grant him immunity
18 under a Ninth Circuit case called, Straub, S-t-r-a-u-b. So
19 when they control his accessibility and his availability to
20 testify, they can't then come in and say, We're bringing in
21 his other out-of-court statements because he can't testify
22 when they're the people that are precluding it.

23 THE COURT: Well, my understanding is that the
24 State's position is they don't want any of it to come in for
25 the truth of the matter asserted and the issue is, well, then

1 if one statement comes in, then the State's position is, well,
2 you can't -- you know, you can't pick and choose. It either
3 all comes in or none of it comes in for the truth.

4 Is that essentially the State's position?

5 MR. DIGIACOMO: Well, my position is if they choose
6 that one statement, then we shall be able to attack it because
7 we can't offer it for the truth of the matter asserted.

8 THE COURT: Right.

9 MR. DIGIACOMO: The jury should be instructed, in my
10 opinion, that they can't consider it for the truth of the
11 matter asserted. My understanding is that the defense wants
12 to argue it for the truth of the matter asserted. If that is
13 true, then the State under the rules of evidence --

14 THE COURT: Well, I think what Mr. Gentile is also
15 saying is it may be an adoptive admission as to one of the
16 coconspirators. When they say it, they don't refute the
17 statement like, Oh, you're wrong, or whatever, which then
18 makes it a statement of a coconspirator in furtherance of the
19 conspiracy or as part of the discussion of the conspiracy
20 because it's an adoptive admission and, therefore, it's not
21 Deangelo Carroll's statement anymore. It's now Anabel's
22 Espindola adopted admission.

23 Is that what you're saying, Mr. Gentile?

24 MR. GENTILE: You said it much better than I did,
25 yes.

1 THE COURT: All right. Mr. Gentile is going to go
2 home now.

3 (Off-record colloquy)

4 THE COURT: All right. And as long as there is not
5 an issue with a contemporaneous instruction on the tape and
6 what they can consider what for, we can decide this later. My
7 fear is you're going to want some kind of instruction as they
8 hear it because it's hard to unring that bell.

9 MR. GENTILE: Well, I cannot envision a jury
10 understanding an instruction that tells them that what Counts
11 is saying is not admissible for the truth of the assertion and
12 them still understanding all the other things on there in
13 context. You know what I'm trying to say? I don't think --
14 yeah, I meant Carroll.

15 THE COURT: Well, I was going to say like in the
16 grand jury, you have a lot of that where you're having to say,
17 You can consider it for this and not for that and --

18 MR. GENTILE: But you don't know if they do, that's
19 the problem. Okay. And I don't think it's the kind of an
20 exercise that --

21 THE COURT: You want to do in this --

22 MR. GENTILE: -- a person on a jury -- I can't do it
23 myself, candidly. I mean --

24 THE COURT: Of course you can.

25 MR. GENTILE: No. I think that would be the same as

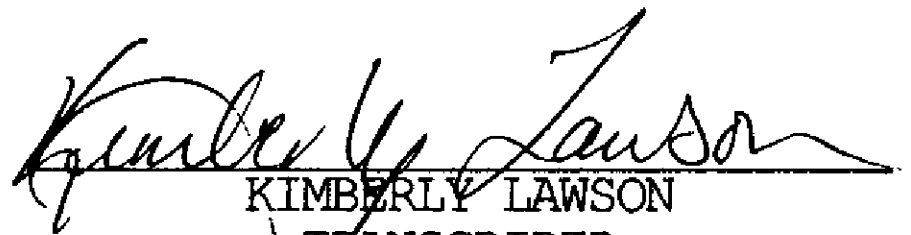
1 saying take everything out of the transcript and the tape that
2 Carroll's talking about and just listen to the other two, and
3 it just wouldn't make any sense. It doesn't really give
4 meaning to the rest of it. It eliminates it.

5 THE COURT: All right. Then we'll see you tomorrow.

6 (Court recessed at 4:55 p.m. until the following day,
7 Wednesday, February 4, 2009, at 10:30 a.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