

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.

Electronically Filed
Jul 25 2017 08:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 71458

7 **APPELLANT'S APPENDIX VOLUME VII**

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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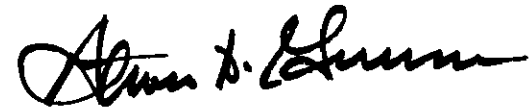
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LUIS HIDALGO, JR.,

Case No.: 08C241394

Petitioner,

Dept. No.: XXI

vs.

**PETITIONER'S APPENDIX FOR
SUPPLEMENTAL PETITION
FOR WRIT OF HABEAS CORPUS**

THE STATE OF NEVADA,

Respondent.

VOLUME V:

**PETITIONER'S APPENDIX FOR SUPPLEMENTAL PETITION FOR WRIT OF
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DATED this 29th day of February, 2016.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b)(2)(B) I hereby certify that on the 29th day of February, 2016, I mailed a true and correct copy of the foregoing VOLUME V: PETITIONER'S APPENDIX FOR SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS by depositing the same in the United States mail, first-class postage pre-paid, to the following address:

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Attorneys for Respondent

Certified by: /s/ Mia Ji
An Employee of McLetchie Shell LLC

ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
NOV 24 2009
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

C241394

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 7

WEDNESDAY, FEBRUARY 4, 2009

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Deputy District Attorney

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PAOLA M. ARMENI, ESQ.

FOR LUIS ALONSO HIDALGO, III:

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

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

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NOV 24 2009

CLERK OF THE COURT

PA1032

PA00950

I N D E X

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RONTAE ZONE

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MICHAEL SEAN MCGRATH

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1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 4, 2009, 10:48 A.M.

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

3 (Outside the presence of the jury.)

4 THE COURT: Can we deal with some legal issues,
5 please, while we're sitting around waiting for the witness and
6 waiting on a juror?

7 Well, where we ended yesterday, Mr. Gentile and
8 Mr. Arrascada were going to consider their positions on the
9 tape and whether or not they wanted a limiting instruction.

10 MR. GENTILE: We can address that now.

11 THE COURT: That's what I'm asking for. You know,
12 I've been waiting for you while you mill around in the back,
13 turn your back to me --

14 MR. GENTILE: I apologize.

15 THE COURT: -- move your briefcase around. I mean,
16 it's like -- you know, let's at least get something done while
17 we're sitting here waiting on a witness so that we don't have
18 to, you know, keep the jury out in the hall unnecessarily.

19 Mr. Gentile, the whole point of the mild diatribe
20 that you just heard was that I've been sitting here waiting
21 for at least ten minutes.

22 MR. GENTILE: I'm ready.

23 THE COURT: Okay. Go ahead.

24 MR. GENTILE: May I proceed?

25 THE COURT: You may, please.

1 MR. GENTILE: Thank you.

2 Thinking this through, here's my analysis of it.

3 The State could not get Deangelo Carroll's statement on the
4 tape in for the truth of the matter asserted. And clearly
5 they want to deny that those things are true. However, once
6 the State puts it into evidence, the concept of the discourse
7 that's going on, the common ground, the historical facts that
8 are contained, albeit assumed by the speaker, becomes
9 circumstantial evidence of the truth of those facts that are
10 not spoken about. And so the other side is able to argue --

11 THE COURT: Can I cut to the chase here? I don't
12 mean to interrupt you. Is what you're going to say is that
13 you just want the whole tape to come in without a limiting
14 instruction one way or the other?

15 MR. GENTILE: What I am focusing on is the State's
16 position that if it comes in for the truth at all that they
17 get to impeach him. They don't. That's what I'm focusing on.

18 THE COURT: Okay.

19 MR. GENTILE: Okay.

20 THE COURT: Because my inclination, I'll just tell
21 you right now, on the tape, is to let the whole tape in and
22 Mr. Arrascada can argue the statement you had nothing to do
23 with it or whatever and they can argue what they said already,
24 he doesn't know anything about the law of conspiracy, that's
25 what -- you know, and that's just the subject for argument for

1 both sides without -- without giving an instruction one way or
2 the other and everybody argues about what it means. That's my
3 inclination at this point.

4 Now, you're to step two or issue number two, which
5 is, all right, if it all comes in, then what right does the
6 State have to try to impeach Deangelo Carroll.

7 MR. GENTILE: The State doesn't have any right to
8 try to impeach Deangelo Carroll because the State is not
9 offering it for the truth. Okay. Clearly you can't call a
10 witness to the stand solely for the purpose of impeaching him.

11 THE COURT: Right.

12 MR. GENTILE: You know the witness is going to lie.

13 THE COURT: Right.

14 MR. GENTILE: So anything that the State would put
15 into evidence for consideration to contradict the truth --
16 we're not talking about impeachment now. We're talking about
17 contradiction -- would have to be independently admissible.
18 In other words, it's not --

19 THE COURT: No, I get it.

20 MR. GENTILE: Okay. Then I don't need to say
21 anything further.

22 And my position is that it doesn't come in at all.
23 I don't want to -- I don't want -- for the purposes of this
24 record, and God forbid, an appeal, I don't want to agree to
25 anything. So my position, the position of Luis Hidalgo, Jr.

1 is that the instruction ought to be -- that it is not
2 admissible at all. And that's my position.

3 THE COURT: Right. And so you don't want to take a
4 position, then, because as I ruled earlier, I think parts of
5 the tape are admissible as to him. The parts talking about
6 the sort of coverup generally when you get into what I
7 consider to be a possible second conspiracy about the rat
8 poisoning and all of that, clearly that's not admissible as to
9 Mr. Hidalgo, Jr., but I don't know that just as a matter of
10 interpreting it anybody was going to consider it against him
11 anyway because clearly it was a spur of the moment thing and
12 he's not involved in that. So I don't really see a lot of
13 danger of any prejudice against Mr. Hidalgo, Jr. without some
14 kind of a limiting instruction on that issue. Because it's
15 clearly -- he wasn't involved in it so I don't see where the
16 jurors would consider that against him. That's just my sense.

17 MR. GENTILE: I think he's entitled to an
18 instruction that the discussions with respect to the rat
19 poisoning and all of that are not admissible as to him. I
20 think he's entitled to that instruction.

21 THE COURT: Okay. If that's what you want.

22 MR. GENTILE: Yes. Basically the discussions with
23 respect to causing harm or having harm occur to Zone, Taoipu
24 and/or Counts are not admissible as to -- that was the Court's
25 ruling and I think we need to --

1 THE COURT: All right. All I'm asking is if you
2 want it.

3 Yes, Mr. Arrascada.

4 MR. ARRASCADA: Your Honor, if you're inclined to
5 follow your inclination regarding the wire, then I'll adopt
6 Mr. Gentile's position. There are other valid reasons why it
7 would be admissible that Mr. Hidalgo, III, was not involved
8 under the hearsay exceptions, but we'll adopt what he's
9 presented to you.

10 The next issue, though, is can the State impeach
11 Deangelo Carroll through, in essence, inadmissible or
12 extraneous statements he may have made on a previous
13 videotape. And I also would adopt Mr. Gentile's position
14 regarding that. It's not admissible.

15 And that comes in to what I was mentioning last
16 night is that they control that witness. They control
17 Deangelo Carroll. And they can put Deangelo Carroll on the
18 witness stand if he has proper impeachment and then we can
19 cross-examine him and confront him regarding that. But the
20 impeachment issue -- they cannot put on the videotape to try
21 to impeach -- Little Lou was not involved, and candidly, Your
22 Honor, there's -- I don't believe there's anything on that
23 videotape that precisely says by Deangelo Carroll Little Lou
24 was involved, which would be the impeachment of the statement.
25 And so --

1 THE COURT: Well, I don't know that they would be
2 limited to a direct statement directly contradicting it. I
3 mean, a factual statement such as, Little Lou told me to do
4 this, is impeachment that he wasn't involved.

5 Mr. DiGiacomo, do you want to be heard?

6 MR. DIGIACOMO: I do, Judge.

7 Judge, you know, the -- maybe partly this was my
8 fault by giving them the option, but here's the -- I mean, the
9 rules of evidence are the darn rules of evidence. And we
10 briefed this on the writ in this particular case because of
11 the whole argument as to whether or not Deangelo Carroll's
12 statements could be utilized. And the position of the
13 Court -- I know it wasn't this Court at the time, but the
14 position of the Court was under Tanenbaum and all the other
15 U.S. cases about informants on tape, if they're unavailable,
16 the jury's to be instructed that you cannot take their
17 statements for the truth of the matter asserted for very good
18 reason.

19 And you're going to hear from the detectives in this
20 case they told them certain lies to tell, some of which you
21 know for a fact are not true.

22 Now, during their opening statement, the defense has
23 now proffered one of those statements that Little Lou didn't
24 do it for the truth of the matter asserted. If you instruct
25 this jury nothing Deangelo Carroll said could be considered

1 for the truth of the matter --

2 THE COURT: I don't think they're saying it -- I
3 mean, here's the deal. They're not saying that Deangelo
4 Carroll's statement is truthful. They're saying, I think,
5 that the acquiescence in this statement was a statement by a
6 coconspirator, that the fact that they didn't contradict it,
7 that it was adopted by failure to contradict. I mean, that's
8 essentially what they're saying, that it's not Deangelo
9 Carroll's statement per se that's being offered, that it's
10 really an adoptive admission made by either Anabel Espindola
11 or Little Lou. That's what they're saying.

12 MR. DIGIACOMO: Well, if that's what they're saying,
13 then there's simply no ability to claim that that is off --
14 that that can be stated because Deangelo Carroll makes the
15 statement and the statement -- in order for it to be adoptive
16 admission is a statement which someone normally would object
17 to, one; but, two, as he's making the statement, Little Lou
18 starts coughing and the conversation goes on before he
19 finishes coughing. He never acknowledges the statement one
20 way or the other on the tape. There is no acknowledgment by
21 Little Lou as to what that statement is in any manner and
22 meaning.

23 And later on in the tape, you can literally hear him
24 making a statement contradictory to what Deangelo Carroll
25 said.

1 Now, last night what I did was I went through
2 Deangelo Carroll's statement and I found the five areas where
3 he makes statements which are inconsistent with, You didn't
4 have anything to do with it.

5 Now, it is my position, because some of those
6 statements reference Mr. H, that we should not be playing the
7 video in front of the jury because I don't believe that that
8 statement of Deangelo Carroll should be in front of this jury
9 where he's referencing Mr. H. I think that's inappropriate.
10 But I certainly am going to ask -- I believe I'm allowed to
11 ask the detective, Detective, Deangelo Carroll made this
12 particular statement on the tape, correct? Yes. You were
13 present during the interview of Deangelo Carroll four days
14 before, correct? Yes. During that interview, did he make
15 statements --

16 THE COURT: Right.

17 MR. DIGIACOMO: -- inconsistent with that? Yes.

18 THE COURT: What were those statements, blah, blah,
19 blah.

20 MR. DIGIACOMO: What were those statements and those
21 statements, as recited by the detective, will not mention
22 Mr. H's name. The statements are, one, he says, Little Lou
23 called me and told me to come to the club and supposedly bring
24 baseball bats and garbage bags. When I got to the club that
25 night and I was in the office getting the order that I got, I

1 got -- I got told that the other defendants -- Mr. H and
2 Anabel is actually what he says --

3 THE MARSHAL: The jury's all here now.

4 THE COURT: Is Rontae Zone here?

5 THE MARSHAL: Yes, he is, Your Honor.

6 THE COURT: All right. Let's start. We'll resume
7 this argument at the lunch break.

8 MR. DIGIACOMO: Okay.

9 THE COURT: And, Mr. Gentile, just real quick while
10 I think of it, there were no favorable statements that
11 Deangelo Carroll made for your client Mr. Hidalgo, Jr. that
12 you want in, right, or were there, in the tapes?

13 MR. GENTILE: In the videotape?

14 THE COURT: No, no. In the audio tape.

15 MR. GENTILE: No, nothing.

16 THE COURT: Okay. So the only real issue is Little
17 Lou didn't have anything to do with it. That's really the
18 only favorable statement that Hidalgo, III, would care about.
19 Okay.

20 THE MARSHAL: You ready, Your Honor?

21 THE COURT: Yes.

22 (Jury reconvened at 10:59 a.m.)

23 THE COURT: All right. Court is now back in
24 session. The record will reflect the presence of the State,
25 the deputy district attorneys, the presence of the defendants

1 and their counsel, the officers of the Court and the members
2 of the jury.

3 And we will recall Mr. Zone so that Ms. Armeni can
4 resume her cross-examination.

5 Mr. Zone, come on back up here to the witness stand,
6 please, sir, and just remain standing and our court clerk will
7 administer the oath to you again.

8 RONTAE ZONE, STATE'S WITNESS, SWORN

9 THE CLERK: Please have a seat and just state and
10 spell your name for the record.

11 THE WITNESS: My name is Rontae Zone, R-o-n-t-a-e,
12 last name Zone, Z-o-n-e.

13 THE COURT: All right. Thank you.

14 Ms. Armeni, you may proceed.

15 CROSS-EXAMINATION (Continued)

16 BY MS. ARMENI:

17 Q Good afternoon, Mr. Zone. When we left
18 yesterday we were talking about Mr. H. You've never heard
19 Mr. H's voice, correct?

20 A Correct.

21 Q You've never spoken to him?

22 A Correct.

23 Q You've never met him?

24 A Correct.

25 Q And you don't know what he looks like, do you?

1 A Yes, I do.

2 Q Okay. You're telling us, as you sit here

3 today, your testimony is that you have seen Mr. H before,

4 correct?

5 A I've seen him, yes.

6 Q Correct. Okay. So that's a yes, sir?

7 A Yes.

8 Q All right. You testified in a prior proceeding

9 on February 1, 2008. Do you remember that?

10 A Yes.

11 Q And you were under oath?

12 A Right.

13 Q You promised to tell the truth?

14 A Right.

15 Q Just like today, correct?

16 A Correct.

17 MS. ARMENI: Page 7, Counsel.

18 MR. PESCI: Thank you.

19 MS. ARMENI: Lines 15 through 20.

20 BY MS. ARMENI:

21 Q And, Mr. Zone, on February 1, 2008, you were

22 asked the question: Let's talk about some of the people at

23 the club. Did you ever meet a guy by the name of Mr. H?

24 Answer: No.

25 A Right. And I also -- I just told you that just

1 now, right.

2 Q Right. That's your testimony now. Your
3 testimony now, sir, you told us all yesterday that you've seen
4 Mr. H before, correct?

5 A Right.

6 Q And you were under oath yesterday, correct?

7 A Yes, I was.

8 Q Okay. And when you testified on February 1,
9 2008, you were also under oath, correct?

10 A Yes.

11 Q And at that time you told that Court that you
12 did not know who -- you had never seen Mr. H, right?

13 A Right.

14 Q Now, any information that you did know about
15 Mr. H you learned from Deangelo Carroll?

16 A Right.

17 Q So anything that Mr. H supposedly said you
18 learned from Deangelo Carroll?

19 A Right.

20 Q You never heard it yourself?

21 A No.

22 Q You never heard it -- let me rephrase it. You
23 never heard it directly from Mr. H --

24 A Never.

25 Q -- right?

1 And you had to rely on what Deangelo Carroll said to
2 you?

3 A Yes.

4 Q You don't know if it was true?

5 A It had to be true enough.

6 Q Well, sir, you don't know -- he's the -- your
7 source of information is Deangelo Carroll, right?

8 A Correct.

9 Q And Deangelo Carroll is your only source?

10 A Correct.

11 Q So when you made your statement, your first
12 statement, your voluntary statement to the homicide
13 detectives, you were relying on what Deangelo Carroll told
14 you?

15 A Correct.

16 Q And when you testified at the first preliminary
17 hearing, you were relying on what Deangelo Carroll told you?

18 A Correct.

19 Q And when you testified at Jayson Taoipu's
20 preliminary hearing, you were relying on what Deangelo Carroll
21 told you?

22 A Correct.

23 Q And when you testified at the prior -- at the
24 prior -- excuse me -- at the prior proceeding on December 1,
25 2008, you were relying on what Deangelo Carroll told you?

1 A Correct.

2 Q And when you testified at the grand jury of

3 Mr. H, you also were relying on what Deangelo Carroll had told

4 you?

5 A Correct.

6 Q And as you testified before us today as well as

7 yesterday, you were relying on what Deangelo Carroll told you?

8 A Correct.

9 Q Now, let's talk about Deangelo Carroll a little

10 bit. He's a friend of yours, right?

11 A Was a friend of mine.

12 Q Was -- okay. Well, he was a friend of yours on

13 May 19, 2005?

14 A Correct.

15 Q And you knew him well?

16 A Correct.

17 Q And Deangelo worked at the Palomino?

18 A Correct.

19 Q And actually let me clear something up with you

20 right now. You weren't actually an employee of the Palomino,

21 right?

22 A No.

23 Q You didn't fill out a job application?

24 A No.

25 Q You weren't collecting a paycheck?

1 A No.

2 Q Deangelo Carroll was the one giving you money?

3 A Correct.

4 Q We'll come back to that a little bit later.

5 And as far as you know, Deangelo Carroll was a big

6 representative of the Palomino?

7 A Correct.

8 Q And that's because he told you that?

9 A Correct.

10 Q And you also know that -- you don't know if

11 that was true, that he was a big representative of the

12 Palomino?

13 A Yes, I do.

14 Q You do?

15 A Yes.

16 Q And he told you that?

17 A He's also family. He talks about what he does.

18 Q Okay. I understand that, but you know that

19 Deangelo Carroll is a big representative of the Palomino

20 because that is what Deangelo Carroll told you, right?

21 A And not only that, that's what I see when I see

22 him.

23 Q Okay. So it's your perception that he's a --

24 A I mean, it's all there. I mean, when he's

25 working there, he's driving limos, he's driving big top to

1 whips. I mean, he don't got none of that, so where --

2 Q Okay. So --

3 A -- is he going to get it from?

4 Q So he's a big representative of the Palomino?

5 A Yes.

6 Q And from your friendship with Deangelo you know

7 Deangelo talks a lot, right?

8 A Right.

9 Q He's a big talker?

10 A Right.

11 Q And sometimes when big people -- when people

12 are big talkers, they don't necessarily always tell the truth,

13 right?

14 A Right.

15 Q Because they boast?

16 A Right.

17 Q They make up stuff?

18 A Right.

19 Q They make things look bigger than what they

20 are?

21 A Right.

22 Q And you knew that about him?

23 A Right.

24 Q Now, let me change it a little bit, staying on

25 Deangelo. You're not afraid of Deangelo, are you?

1 A No.

2 Q Not fearful of him?

3 A No.

4 Q He's not a scary guy?

5 A No.

6 Q And you've never been -- in the time that

7 you've been friends with Deangelo you've never seen him beat

8 up anybody, have you?

9 A No.

10 Q You've never seen him kill anybody, have you?

11 A No.

12 Q Now, Mr. Zone, I'm going to follow up with some

13 of the things that we had talked about yesterday a little bit.

14 I had asked you before yesterday -- before you testified

15 yesterday if you had ever spoken to the district attorney's

16 office.

17 A Right.

18 Q Do you remember those questions I asked you?

19 A Correct.

20 Q And your testimony yesterday, was that -- your

21 testimony yesterday was that before you came to testify

22 yesterday --

23 A Right.

24 Q -- you'd never spoken to Mr. DiGiacomo?

25 A I did not.

1 Q Okay.

2 MR. PESCI: I apologize. I'm going to ask for a
3 little foundation. He was asked specifically as to each and
4 every time he testified. So if she can be specific as to
5 which time she's referring to.

6 THE COURT: All right. I understood it to mean
7 before you came into court yesterday you had not spoken prior
8 to that immediate time with Mr. DiGiacomo or Mr. Pesci; is
9 that right?

10 THE WITNESS: Correct, Your Honor.

11 MS. ARMENI: Thank you, Your Honor. That's how I
12 meant it.

13 BY MS. ARMENI:

14 Q Mr. Zone, when was the last time you talked to
15 Mr. DiGiacomo?

16 A Last Monday.

17 Q Last Monday?

18 A Right. Like last Monday, not the following
19 Monday that just passed but last Monday.

20 Q Okay. So not this Monday that just -- that --

21 A That just passed.

22 Q The Monday that started off this week --

23 A Yeah.

24 Q -- not that Monday?

25 A No, ma'am.

1 Q The week before?

2 A Yes.

3 Q Okay. So you did -- even though yesterday you
4 told us you did not talk to -- you told us --

5 A But you asked me -- you asked me before the
6 Court date yesterday.

7 Q Okay.

8 A So you -- you're changing your question,
9 because exactly what you asked me yesterday was did I meet
10 with them before I came to court yesterday and I told you no.

11 Q Okay. Well, there's a misinterpretation of
12 what I was talking about apparently. So your answer to my
13 question that I asked you yesterday was have you ever met with
14 Mr. DiGiacomo before you testified here for this --

15 A Yesterday.

16 Q -- proceeding, for this proceeding.

17 A No, ma'am.

18 Q Okay. You just told us that you talked to
19 Mr. DiGiacomo two Mondays ago, right?

20 A Are you talking about before I came to court or
21 are you talking about that following Monday?

22 Q Okay. We're --

23 A Because I just answered your question and then
24 you just asked me the same question again.

25 Q Okay. Follow me, all right. I'll make it

1 simple. How about that. You're testifying in this case right
2 now --

3 A Right.

4 Q -- correct?

5 A Correct.

6 Q Before you testified yesterday --

7 A Right.

8 Q -- we're on the same page?

9 A Correct.

10 Q Okay. You met with Mr. DiGiacomo the Monday
11 before --

12 A Yes.

13 Q -- right?

14 A Yes, I did, the Monday before.

15 Q Okay. Great. You said right, we're on the
16 same page. Before you testified yesterday, you spoke to
17 Mr. Pesci, correct?

18 A Correct.

19 Q Did you also speak to Mr. Falkner?

20 A No.

21 Q No. Was it only -- did you speak to any of the
22 homicide detectives?

23 A No.

24 Q Did you speak to anybody else beside
25 Mr. DiGiacomo and Mr. Pesci?

1 A No.

2 Q Okay. And when you spoke to Mr. DiGiacomo and

3 Mr. Pesci about your testimony here now --

4 A Correct.

5 Q Okay -- you went over your voluntary statement,

6 correct?

7 A Correct.

8 Q You went over your preliminary hearing

9 transcript, correct?

10 A Correct.

11 Q You went over the prior proceeding transcript,

12 correct?

13 A Correct.

14 Q And you went over the grand jury transcript,

15 correct?

16 A Correct.

17 Q And you discussed your testimony for this

18 proceeding right now, right?

19 A Correct.

20 Q Now, we heard a lot of talk about baby's momma

21 on direct examination. Is that -- is that her name?

22 A It doesn't matter what her name is.

23 Q Well --

24 THE COURT: Sir, Mr. Zone, she's allowed to ask you

25 the questions, and if the State doesn't think it's

1 appropriate, they'll make an objection, okay? Unless you hear
2 an objection or I say, Don't answer that, you need to answer
3 the questions.

4 What is your girlfriend's name?

5 MR. PESCI: Judge, we will object to relevance on
6 that issue.

7 MR. GENTILE: Let's approach.

8 MS. ARMENI: Your Honor, may we approach?

9 THE COURT: All right.

10 (Off-record bench conference)

11 THE COURT: All right. They're going to rephrase
12 the question.

13 THE WITNESS: Okay.

14 BY MS. ARMENI:

15 Q So, Mr. Zone, on May 19, 2005, who were you
16 living him?

17 A Deangelo.

18 Q And who else?

19 A His wife.

20 Q And who else?

21 A My baby's mother.

22 Q Right. Your baby's momma. And what is your
23 baby's momma's name?

24 A Crystal.

25 Q I'm sorry?

1 A Crystal.

2 Q Crystal?

3 A Yes.

4 Q And does crystal have a last name?

5 A Payne. Payne.

6 Q Payne?

7 A Yes.

8 Q Crystal Payne?

9 A Yes.

10 Q So Crystal Payne was your baby's momma?

11 A Yes.

12 Q And at the time she was pregnant, right?

13 A Yes.

14 MS. ARMENI: Court's indulgence.

15 BY MS. ARMENI:

16 Q And, Mr. Zone, how do you spell Payne?

17 A P-a-y-n-e.

18 Q Thank you. And she was pregnant at the time?

19 A Yes.

20 Q About seven months pregnant?

21 A Yes.

22 Q So since then I assume she's had her baby?

23 MR. PESCI: Objection. Relevance.

24 THE COURT: Yeah. I don't know what the relevance

25 of whether --

1 THE WITNESS: Yeah. What does this have to do with
2 my baby?

3 THE COURT: Okay. Mr. Zone, I told you already that
4 it's up to -- you can see they objected relevance. You don't
5 get to argue. These two over here are more than capable of
6 arguing objections.

7 I don't know what the relevance of the delivery of
8 the baby is.

9 MS. ARMENI: There is relevance, Your Honor. If I
10 could have a little --

11 THE COURT: Then maybe you need to approach and
12 explain it to me.

13 BY MS. ARMENI:

14 Q Okay. And, Mr. Zone, you are no longer with
15 baby's momma, correct?

16 MR. PESCI: Objection. Relevance.

17 THE COURT: Overruled.

18 You can answer that.

19 THE WITNESS: No, I'm not.

20 BY MS. ARMENI:

21 Q Okay. So the lady you've been in court with
22 the last couple of days --

23 MR. PESCI: Objection. Relevance.

24 THE COURT: All right. That's sustained. That's
25 sustained, Mr. Pesci.

1 MR. PESCI: Thank you.

2 BY MS. ARMENI:

3 Q Let's talk about -- you're a flyer boy or you
4 were a flyer boy on May 19, 2005?

5 A Yes.

6 Q And you made about \$20, you said, each time?

7 A Yes.

8 Q And how many times did you do this flyer boy
9 stuff?

10 A We promoted a couple -- we promoted a couple of
11 times within the day. So I would say about a good three or
12 four times a day.

13 Q Okay. And how -- three or four times a day.
14 How many days would you say you promoted?

15 A Like only three days. It wasn't really that
16 long at all.

17 Q Okay. So three days before -- about --
18 including the 19th, would you say you promoted about three
19 days? Does that sound about right?

20 A No, not including the 19th because -- the 19th,
21 yeah, include it, but after the 19th, no.

22 Q Okay. So that -- I'm not trying to trick you.
23 That's not my question. My question is you promoted on the
24 19th, right?

25 A Yes, I did.

1 Q And before the 19th you promoted three other
2 times; is that accurate?

3 A Yeah. Yes, ma'am.

4 Q Okay. And for each time you promoted, that was
5 \$20 a day?

6 A It was \$20 after each job.

7 Q Okay. At the end of the day you would get \$20?

8 A No. It was like we'll go to cab stops and
9 we'll go do our work at the certain cab stop --

10 Q Okay.

11 A -- and after we finished at that cab stop, we'd
12 get paid and then we'd go to another cab stop and then we'd do
13 the same routine again and then we'd get paid.

14 Q Okay. You're saying if you made four cab stops
15 on the 19th, you would get paid \$20 after each cab stop?

16 A Correct.

17 Q Okay. So any given day, how much would you
18 say -- how much would you have made on the 19th?

19 A I would say -- we only -- we only -- we only --
20 we only promoted like at least twice that night.

21 Q Okay. So --

22 A About --

23 Q -- 40 bucks?

24 A -- \$40.

25 Q Okay. So 40 bucks and maybe the next -- the

1 last time you promoted, maybe another 60 bucks?

2 A Yes.

3 Q It's not that much money, is it, sir?

4 A No.

5 Q Not to provide for yourself --

6 A No, ma'am.

7 Q -- or your baby's monma at that time, right?

8 A No, ma'am.

9 Q And so what else were you doing?

10 A That was about it.

11 Q So you were providing for yourself on this --

12 A I had no job. It was the quickest way for me

13 to make money so I took it.

14 Q Okay. So that was the only thing you were

15 doing at this time for money?

16 A Correct.

17 Q You weren't doing anything else for money?

18 A No.

19 Q And before you were promoting these couple of

20 days, what were you doing before that as far as jobs?

21 A Working construction, labor, staffing agencies,

22 pretty much whatever I can get.

23 Q Now, Mr. Pesci asked you yesterday about a

24 discussion about \$6,000. Do you remember that?

25 A Yes.

1 Q You remember his questions?
2 And you had -- when he asked you those questions,
3 you had answered afterwards?
4 A Correct.
5 Q And you kept saying "afterwards," right?
6 A Correct.
7 Q And when you said afterwards, you meant after
8 the killing --
9 A Correct.
10 Q -- right?
11 When they came out of the van -- when Deangelo came
12 back out of the Palomino, that was the first time you had
13 heard about the \$6,000?
14 A Correct.
15 Q Now, Mr. Zone, you smoke weed, right?
16 A Correct.
17 Q And Deangelo Carroll smoked weed?
18 A Correct.
19 Q And you and Deangelo smoked weed together?
20 A Correct.
21 Q And May 19th was an ordinary day as far as the
22 start of the day, correct?
23 A Correct.
24 Q And so you smoked weed on the 19th?
25 A Correct.

1 Q You actually drove to the west side to go pick
2 up some weed?
3 A No.
4 Q You didn't go --
5 A No.
6 Q -- to the west side?
7 A No, not to pick up weed.
8 Q You didn't?
9 A No.
10 Q You didn't go pick up weed at all?
11 A We didn't go pick up weed on the west side. I
12 had my own weed on me at the time.
13 Q Okay. Did you make a stop on the 19th to pick
14 up weed?
15 A Did I make a stop on the 19th to pick up weed,
16 yeah, but not the west side.
17 Q Okay. I apologize. I got the location wrong?
18 A That's north town. West side and north town
19 are --
20 Q Okay. So -- so I guess I should rephrase my
21 question then. So on the 19th you went to north town to pick
22 up weed?
23 A Right.
24 Q Okay. So you smoked the weed, right?
25 A Correct.

1 Q You're not going to let good weed go without
2 smoking?
3 A I mean --
4 Q If it's there, you're going to smoke it, right?
5 A If that's the way you want to play it. I
6 mean --
7 Q Well, sir, you smoke weed on a daily basis,
8 right?
9 A Correct.
10 Q Okay. Thank you.
11 And that day you were smoking weed, normal day?
12 A Correct again.
13 Q Okay. And you smoked weed all day?
14 A Correct.
15 Q Smoked weed in the van?
16 A Correct.
17 Q And you were high, right?
18 A Correct.
19 Q And I can't remember the exact question
20 Mr. Pesci asked you yesterday, but he asked you about, does it
21 affect your perception?
22 A I may get high, but I'm not stupid.
23 Q Okay. Well, let me ask you a question. You're
24 not stupid, but does weed make you smarter?
25 A Makes me smarter.

1 Q Really?

2 A Do you smoke it?

3 THE COURT: All right.

4 BY MS. ARMENI:

5 Q I'm not going to answer that question.

6 THE COURT: Mr. --

7 BY MS. ARMENI:

8 Q So your question is -- you're telling all of us

9 here that weed makes you smarter?

10 A Weed don't make me dumb, I can tell you that.

11 Q But I think your answer to my question was,

12 Weed makes me smarter.

13 A It makes me smarter.

14 Q Okay. Now, yesterday when you testified you

15 said that there was a yellow cabby outside of the Palomino.

16 A Correct.

17 Q And that's the yellow cabby that Mr. Counts got

18 into --

19 A Correct.

20 Q -- right?

21 And do you remember when you made a statement to the

22 cops on May 21, 2005? You made a statement to them, right?

23 A Correct.

24 Q And Detective Wildemann was present, right?

25 A Correct.

1 Q And Detective McGrath was present?
2 A Correct.
3 Q And they told you to tell the truth?
4 A Correct.
5 Q And you were asked --
6 MS. ARMENI: Page 36. Court's indulgence. Your
7 Honor, Court's indulgence for a minute.
8 THE COURT: That's fine.
9 BY MS. ARMENI:
10 Q Mr. Zone, we're going to come back to that.
11 Now, I want to talk about kind of the steps that you
12 took on the 19th. You testified yesterday that on -- noonish
13 on the 19th you had the first conversation with Deangelo about
14 "dealt with."
15 A Yes.
16 Q Was somebody being dealt with?
17 A Correct.
18 Q And at that time you knew somebody could be
19 potentially harmed, right?
20 A Correct.
21 Q On the same day, the 19th, you had a second
22 conversation with Deangelo Carroll?
23 A Correct.
24 Q And it was regarding the same thing, that
25 somebody was going to be harmed?

1 A Correct.

2 Q And at that time Jayson was given a gun?

3 A Correct.

4 Q By Deangelo?

5 A Correct.

6 Q And it was unloaded at that time?

7 A Correct.

8 Q And you were given bullets?

9 A Correct.

10 Q Yesterday you also testified that there was

11 actually a third conversation on the 19th about being --

12 somebody being harmed, right?

13 A Correct.

14 Q So at this point there's three conversations,

15 right?

16 A The third -- the difference between the

17 second -- the first and the second conversation was with us.

18 The third conversation was with him and somebody else.

19 Q Who's him?

20 A Deangelo.

21 Q Okay. So you're telling me --

22 A He was talking on the phone and we were at --

23 we were in front of him. We really didn't hear what he said

24 or what he was saying or whoever was on the phone. We heard

25 what he said, but we didn't hear what --

1 Q Okay.

2 A -- whoever he was talking to was saying.

3 Q Okay. I think I understand what you're saying.

4 So the first two conversations, Deangelo Carroll was directly

5 telling you about somebody wanting --

6 A Yes.

7 Q -- somebody being dealt with, somebody being

8 harmed, right?

9 A Yes. He was directly telling us.

10 Q But fair to say the third conversation,

11 although you weren't the one talking or on the phone, you got

12 the idea that that also had to do with the same thing, right?

13 A Correct.

14 Q Someone being harmed?

15 A Correct.

16 Q So at that point there's been three

17 conversations that you've either been a part of or you've

18 heard that dealt with somebody being hurt?

19 A Correct.

20 Q Later on in the day you get in the van?

21 A Correct.

22 Q Okay. You drive to KC's house?

23 A Correct.

24 Q West side, right?

25 A Correct.

1 Q You pick up KC?
2 A Correct.
3 Q KC gets in the van?
4 A Correct.
5 Q You drive to the lake?
6 A Correct.
7 Q You hear Deangelo on his walkie-talkie?
8 A Correct.
9 Q And at that point he's talking to T.J.?
10 A Correct.
11 Q And at that point do you yell to T.J., Don't
12 come, don't come?
13 A No.
14 Q And then T.J. shows up, right?
15 A Correct.
16 Q Shows up to -- shows up to where you guys are
17 at?
18 A Correct.
19 Q He walks up to the van?
20 A Correct.
21 Q And at that point do you say, T.J., back off,
22 back off, you're going to get shot?
23 A No.
24 Q So no warning, right, Mr. Zone?
25 A No.

1 Q The van drives away?
2 A Correct.
3 Q Goes to the Palomino Club?
4 A Correct.
5 Q Fair to say you're probably a little bit scared
6 of KC at this point?
7 A The whole situation, basically.
8 Q Right. Pretty scary, right?
9 A Correct.
10 Q Counts gets out of the van, right?
11 A Correct.
12 Q Counts eventually leaves?
13 A Correct.
14 Q You were in that parking lot for about an hour?
15 A Correct.
16 Q You actually get out of the van, right?
17 A Correct.
18 Q And you sit where the cabbies are?
19 A Correct.
20 Q And at that point, do you tell any of the
21 cabbies, Oh, my gosh, oh, my gosh, he -- this guy just shot
22 somebody, there's a dead guy at Lake Mead?
23 A No.
24 Q Do you say that to anybody?
25 A No.

1 Q So you don't tell any of the cabbies?
2 A No.
3 Q Do you get in a cab?
4 A No.
5 Q Do you walk back to Deangelo's house?
6 A No.
7 Q Deangelo's house was about a five-minute walk
8 from the Palomino, right?
9 A Correct.
10 Q Do you go next to the pawnshop next door?
11 A No.
12 Q You don't go in there and say, Oh, my gosh,
13 somebody's been shot, he needs help?
14 A No.
15 Q Jerry's Nugget is across the street, right?
16 A Correct.
17 Q Do you run over to Jerry's Nugget and try to
18 find the closest security guard?
19 A My baby's mother of seven months was at that
20 house.
21 Q Okay.
22 A There was no way I'm going to jeopardize my son
23 or my baby's mother's life for anybody, for anyone.
24 Q I understand. But Counts is long gone at this
25 point, right?

1 A It doesn't matter. Deangelo --

2 Q Counts was long gone, sir, right?

3 A Yeah. But this is Deangelo's people. These

4 are his people. He knows these people.

5 Q Okay. So these are Deangelo's people, so

6 you're hanging around with a bad crowd. Is that what you're

7 saying at this point?

8 A Correct.

9 Q All right. So that's the 19th, you don't leave

10 Deangelo. In fact, you get back in the van with Deangelo --

11 A Correct.

12 Q -- right?

13 A Correct.

14 Q So you're out of the van. You make a choice to

15 go back in the van, right?

16 A Correct.

17 Q And you make a decision to go with Deangelo

18 wherever he goes?

19 A Correct.

20 Q And you go to the car wash, right?

21 A Correct.

22 Q I think you testified yesterday that you went

23 home first, but that's incorrect, right?

24 A We did go home first.

25 Q You went directly to the car wash, sir, didn't

1 you?

2 A We did not go directly to the car wash.

3 Q Okay. Your testimony today, right now as you
4 sit here, is that you did not go to the car wash first?

5 A First of all --

6 Q Just answer my question.

7 A -- I'm going to put it to you this way.

8 Q It's yes or no.

9 A We went there first. We went to the house
10 first, then he went to the car wash.

11 Q Okay. As I said, your testimony to us right
12 now is that you went home before you went to the car wash --

13 A Correct.

14 Q -- right?

15 A Yes.

16 MS. ARMENI: Page 36, grand jury.

17 BY MS. ARMENI:

18 Q Sir, you testified before the grand jury in
19 this matter.

20 A (No audible answer).

21 Q Is that a yes?

22 A Correct.

23 Q And you testified on February 12, 2008?

24 A Correct.

25 Q And you swore to tell the truth?

1 A Correct.

2 Q And you did tell the truth that day, right?

3 A Correct.

4 Q And you're telling the truth today?

5 A Correct.

6 Q Okay.

7 Question: Before you went home, did you go

8 anywhere?

9 Witness: He went and washed the van and tried to

10 clean up.

11 the evidence off the van at a self car wash that you

12 do for

13 yourself.

14 A Correct.

15 Q Okay. So the answer to my question was you

16 went to the car wash directly from the Palomino, right?

17 A Listen, when you're --

18 Q No, I'm not listening. You're to --

19 A -- when you asked -- when you asked -- when you

20 asked --

21 Q -- answer the question first.

22 A -- me the same question --

23 MR. PESCI: I ask that he be able to answer the

24 question.

25 A -- over and over and over and over --

1 THE COURT: All right. Mr. Zone --

2 THE WITNESS: I mean, Your Honor --

3 THE COURT: Well, if you can't answer the question,
4 just say, I can't answer the question, or, I don't understand
5 the question. Otherwise, answer the question if it's a yes or
6 no question, and then if the State wants you to explain your
7 answer, they'll come back around and have you explain your
8 answer. Okay? If you can't answer the question, just say, I
9 can't answer that. Don't fight with Ms. Armeni, all right?

10 THE WITNESS: Yes, Your Honor.

11 BY MS. ARMENI:

12 Q So, sir, what -- I read that you washed the van
13 after the Palomino, that's what I read --

14 A I can't answer that.

15 Q -- right?

16 A I can't answer that.

17 Q Okay. Well, do you want me to show you the
18 transcript?

19 MS. ARMENI: Your Honor, may I approach?

20 THE COURT: That's fine.

21 BY MS. ARMENI:

22 Q Mr. Zone, I'm showing you page 36 of the grand
23 jury testimony. Can you please read to yourself, okay, lines
24 8 through 11. Tell me when you're done reading it.

25 A (Complying.)

1 Q Are you done? Are you done?
2 A Correct.
3 Q Is that a correct to my answer that you washed
4 the car -- you went to the car wash after you left the
5 Palomino?
6 A To be honest --
7 Q Well --
8 A -- I was asked so many questions of the same
9 questions to where --
10 THE COURT: Okay.
11 A -- I was so nervous to where --
12 THE COURT: Mr. Zone --
13 A -- it's like --
14 THE COURT: -- the question is, is that what the
15 transcript says.
16 THE WITNESS: Yes, that's what the transcript says,
17 correct.
18 BY MS. ARMENI:
19 Q Okay. Thank you.
20 I'm going to skip for just a second back to the
21 cabbies. Do you remember my question about the cabbies?
22 Yesterday you testified that it was a yellow cabby.
23 A Correct.
24 Q And when you met with the detectives, you told
25 them there were so many cabbies, you didn't know what it

1 looked like.

2 A Correct.

3 Q Because there were so many cabs outside of

4 Palomino when you were there?

5 A Correct.

6 Q Okay. So after you -- after you're there,

7 Deangelo's washing the car. Mr. Zone, he was washing the car

8 to take care of evidence, right?

9 A Correct.

10 Q And at that point did you say, Hey, Deangelo,

11 what are you doing? We can't do this?

12 A No.

13 Q And after -- later that day you go back to the

14 house, right?

15 A Correct.

16 Q At that point you don't leave the house?

17 A Correct.

18 Q Or you leave with Deangelo, I guess I should

19 say?

20 A Correct.

21 Q So now you're going out. You're making a

22 decision once more to leave the house with Deangelo --

23 A Correct.

24 Q -- these bad people, right?

25 A Correct.

1 Q And now this time you go and get rid of tires?
2 A Correct.
3 Q So you go, Deangelo slashes the tires?
4 A Correct.
5 Q You don't tell him at that point, Deangelo,
6 what are you doing?
7 A No, I don't.
8 Q Do you tell him, Deangelo, we should call the
9 police?
10 A No.
11 Q Okay. You take the slashed tires -- now you
12 take the van to the auto body shop, right?
13 A Correct.
14 Q New tires get put on the van?
15 A Correct.
16 Q You guys take the old tires, right?
17 A Correct.
18 Q They come with you at that point. You don't
19 leave them for the auto body shop, do you?
20 A Correct.
21 Q Because you don't want those left as evidence
22 either?
23 A No, Deangelo does, not me.
24 Q Okay. But you don't tell Deangelo, Hey, you're
25 taking evidence. We should probably call the cops at this

1 point. Do you say that, Mr. Zone? It's a yes or no question.
2 Do you say that?

3 A I can't answer that.

4 Q You can't -- okay. You're telling me that you
5 don't know if you told him to call the cops?

6 A No, I did not.

7 Q Right. You didn't tell Deangelo at that point
8 to call the cops, did you?

9 A No.

10 Q And, Mr. Zone, you didn't call the cops at that
11 point, did you?

12 A No, I did not.

13 Q So now you have the tires in your car and you
14 decide to dump them in dumpsters, right?

15 A Deangelo did, yes, correct.

16 Q Okay. But you were there, right?

17 A Correct.

18 Q You saw this happening?

19 A Correct.

20 Q You didn't tell him, Hey, this is a bad idea,
21 did you?

22 A No.

23 Q You didn't say, I'm going to call the cops, did
24 you?

25 A No, I did not.

1 Q And that's getting rid of evidence once again,
2 right?
3 A Correct.
4 Q Now, you go to 7-11, right?
5 A Correct.
6 Q Your father-in-law, I believe, worked there?
7 A Correct.
8 Q Was he working that day, Rontae?
9 A No, he wasn't.
10 Q So you go in the 7-11. Do you tell the clerk,
11 There's been a shooting at Lake Mead, call the cops?
12 A No, ma'am.
13 Q You walk out of 7-11, right?
14 A Yes.
15 Q And you see a police officer, right?
16 A Correct.
17 Q And this is your perfect opportunity, right?
18 A Correct.
19 Q And this is your perfect opportunity, right?
20 A Correct.
21 Q You could walk over to the cops and say, You
22 know what, something terrible's happened, there's a poor man
23 laying at Lake Mead. Did you tell them?
24 A No.
25 Q You didn't walk over to that cop, did you?

1 A No.

2 Q What did you do? You walked back into 7-11?

3 A Correct.

4 Q Away from the cop?

5 A Correct.

6 Q Now, after this -- I think you used the word --

7 so now you're in 7-11. You haven't spoken to the cop and now

8 you decide it's a good idea to go to breakfast, right?

9 A Correct.

10 Q So even though you don't think Deangelo's that

11 great of a person anymore, you go to breakfast, right?

12 A Correct.

13 Q It's a nice family breakfast, everybody's

14 present?

15 A Correct.

16 Q And you don't sneak away and go tell somebody,

17 Hey, there's a body laying at Lake Mead, do you?

18 A No.

19 Q You don't try and use a phone there?

20 A No.

21 Q And then you leave there and you go to a

22 barbershop, right?

23 A Correct.

24 Q And I believe Mr. Pesci showed you what's

25 State's Exhibit 198.

1 MS. ARMENI: May I approach?

2 THE COURT: Yes, that's fine.

3 BY MS. ARMENI:

4 Q And you testified that was Deangelo Carroll?

5 A Correct.

6 Q Now --

7 MS. ARMENI: Permission to publish, Your Honor.

8 THE COURT: Yes, that's fine.

9 BY MS. ARMENI:

10 Q Now, is that what Mr. Carroll looked like on
11 May 19th?

12 A Correct.

13 Q It is?

14 A Yes.

15 Q So he didn't have dreads on May 19?

16 A No.

17 Q So he went and got a haircut?

18 A Correct.

19 Q And that's what he looked like after the
20 haircut?

21 A Correct.

22 Q He didn't have longer hair than that?

23 A No. It was like -- not too much longer. I
24 mean, like short, but not -- it was longer than that.

25 Q It was longer than that?

1 A Yes.

2 Q And so a man's dead at Lake Mead and it was a
3 good idea to go get a haircut, right?

4 MR. PESCI: Objection. It calls for speculation as
5 to why Deangelo Carroll cut his hair.

6 THE COURT: Did you go with him?

7 THE WITNESS: Yes, I did.

8 THE COURT: All right. You can ask it as to him.

9 BY MS. ARMENI:

10 Q Okay. So, Mr. Zone, a man's dead at Lake Mead
11 and you guys are going to the barbershop?

12 A Correct.

13 Q And at the barbershop you don't say, Hey, I
14 need to talk to you? You don't stop anybody at the
15 barbershop, do you?

16 A No, ma'am.

17 Q You don't pull anybody aside and say, There's a
18 man dead, call the police?

19 A No.

20 Q And then you go to the Family Dollar store,
21 right?

22 A Correct.

23 Q Pick up a few items that you may need?

24 A Correct.

25 Q And at that point you don't run to the clerk

1 and say, Hey, there's a man dead, call 911, do you?
2 A No.
3 Q Call the police?
4 A No.
5 Q And at no time during this do you ever say,
6 Call the police?
7 A No.
8 Q And you don't call the police?
9 A No.
10 Q And, Mr. Zone, you have not been charged in
11 this case as an accomplice to murder, right?
12 A Correct.
13 MS. ARMENI: Court's indulgence.
14 Thank you, Your Honor. I pass the witness.
15 THE COURT: All right. Thank you, Ms. Armeni.
16 Mr. Arrascada or Mr. Adams.
17 MR. ARRASCADA: It will be Mr. Adams, Your Honor.
18 THE COURT: All right. Thank you.
19 CROSS-EXAMINATION
20 BY MR. ADAMS:
21 Q On May the 19th you were in a van?
22 A Correct.
23 Q The van that drove up towards Lake Mead?
24 A Correct.
25 Q You were seated immediately behind the driver?

1 A Correct.

2 Q The driver was your buddy, your friend, the guy
3 you spent the day with, Deangelo Carroll?

4 A Correct.

5 Q You stopped in the van?

6 A Correct.

7 Q And when that van stopped, you had no idea that
8 the man to your right had a gun on him?

9 A Correct.

10 Q But when that van stopped, you saw him pull a
11 gun out?

12 A Correct.

13 Q Deangelo Carroll got back into the van and his
14 window was down?

15 A Correct.

16 Q That man who got out of that sliding door was
17 sneaking around?

18 A Correct.

19 Q He snuck to the front. You saw that?

20 A Correct.

21 Q He snuck to the back?

22 A Correct.

23 Q Then he snuck back to the front?

24 A Correct.

25 Q All this time T.J. Hadland --

1 A Correct.

2 Q -- is walking up to his friend and your friend

3 Deangelo Carroll?

4 A Correct.

5 Q And you were feet away from Mr. Hadland?

6 A Correct.

7 Q When that man, who had ridden up to the lake

8 with you, rose up and fired two shots in his head and killed

9 Mr. Hadland dead up by Lake Mead?

10 A Correct.

11 Q And you didn't say a word?

12 A Correct.

13 Q Not a word of warning?

14 A Correct.

15 Q Not a word of alarm?

16 A Correct.

17 Q Not a word of caution?

18 A Correct.

19 Q You made a choice to stay silent that night by

20 Lake Mead?

21 A Correct.

22 Q Because you were scared?

23 A Correct.

24 Q You were scared because there was a man with a

25 gun that you didn't know?

1 A Correct.

2 Q You were scared because you were out of your
3 element?

4 A Correct.

5 Q And by that I'm not casting any dispersion on
6 you, but you were a long way from where you lived?

7 A Correct.

8 Q You didn't know how you might get home?

9 A Correct.

10 Q You didn't know if you'd be safe?

11 A Correct.

12 Q So you sat there scared and didn't say a word?

13 A Correct.

14 Q You rode back down with this man with the gun?

15 A Correct.

16 Q And at one point he asked you where you lived?

17 A Correct.

18 Q That scared you some more?

19 A Correct.

20 Q Because you thought he might come for you,
21 didn't you, Mr. Zone?

22 A Correct.

23 Q You didn't lie to him, though, did you?

24 A Correct.

25 Q You told him you were staying with Deangelo

1 Carroll?

2 A Correct.

3 Q You got to the Palomino Club and this man with

4 the gun and your friend Deangelo Carroll got out and went

5 inside the business?

6 A Correct.

7 Q This was 30 minutes after you saw Mr. Hadland

8 innocently shot twice in the head and left for dead up by Lake

9 Mead?

10 A Correct, sir.

11 Q And you made another choice at that moment,

12 didn't you?

13 A Correct.

14 Q You made the choice to stay in that van?

15 A Correct.

16 Q Five minute's walk from the woman who was

17 pregnant carrying your child?

18 A Correct.

19 Q Five-minute walk from shelter, your house?

20 A Correct.

21 Q You stayed right there by the Palomino Club and

22 waited?

23 A Correct.

24 Q That's because you were still scared?

25 A Correct.

1 Q You'd never seen anything like that?
2 A Correct.
3 Q Were your ears ringing from the bullet?
4 A Yes, sir.
5 Q You didn't know how to react or what to do, did
6 you?
7 A Correct.
8 Q But you went home. And we're going to talk
9 later about some of the things you did, but finally you got
10 home and you did get some sleep?
11 A Correct.
12 Q You didn't sleep well?
13 A No.
14 Q But you got some shut eye before going out the
15 next morning to deal with the tires?
16 A Correct.
17 Q And then you made your way to the 7-11 where
18 your father-in-law worked?
19 A Correct.
20 Q And Deangelo Carroll, your friend, went inside
21 to buy cigars?
22 A Correct.
23 Q Swisher Sweets?
24 A Correct.
25 Q Swisher Sweets so he could make more blunts --

1 A Correct.

2 Q -- so you could spend the day, the day after

3 Timothy Hadland was killed and left for dead, you could spend

4 the day smoking pot?

5 A No.

6 Q All out of pot at that point?

7 A No, sir.

8 Q Just didn't seem like a good day to smoke

9 reefer, did it?

10 A No, sir.

11 Q All right. Because you were concerned about

12 what you'd just seen?

13 A Correct.

14 Q You were concerned and worried for your own

15 safety?

16 A Correct.

17 Q And you wanted to be clear headed?

18 A Correct.

19 Q In case -- in case Mr. Counts showed up, you

20 wanted to have all your wits about you?

21 A Correct.

22 Q So you didn't smoke pot yet that day on the

23 20th?

24 A No.

25 Q All right.

1 A Actually, because it was real shaken up for
2 me, so, no, sir, I did not.

3 Q So you were in the 7-11 shopping and you were
4 walking out that front door of the 7-11 and the police officer
5 pulled up and pulled over your buddy Jayson Taoipu in the
6 van?

7 A Correct, sir.

8 Q And at this point Mr. Counts was nowhere
9 around?

10 A No, sir.

11 Q The gun, as far as you know, was nowhere
12 around?

13 A No, sir.

14 Q And the law was there?

15 A Correct.

16 Q You didn't walk up to that officer and say,
17 I've got to tell you something?

18 A No, sir.

19 Q I've got something big to get off my chest?

20 A No, sir.

21 Q I need protection from you because I witnessed
22 a murder last night?

23 A No, sir.

24 Q I need protection from you because the woman
25 who's carrying my child might be at danger from a gunman?

1 A No, sir.

2 Q You made a choice to turn around and go back in
3 and buy a beverage?

4 A Correct.

5 Q An ice cold beverage?

6 A Correct.

7 Q I'd like to turn your attention now to Deangelo
8 Carroll, if I may. Deangelo Carroll asked you if you'd like
9 to be involved in something?

10 A Correct.

11 Q He asked Jayson Taoipu if Mr. Taoipu would like
12 to be involved in something?

13 A Correct.

14 Q He gave you bullets?

15 A Correct.

16 Q He gave Taoipu a gun?

17 A Correct.

18 Q He drove the van with the two of you in it?

19 A Correct.

20 Q He drove to Kenneth Counts' house?

21 A Correct.

22 Q He got out of the car, went and got Counts and
23 brought him back to the van?

24 A Correct.

25 Q All four of you were in the van together and he

1 started making calls --

2 A Correct.

3 Q -- to Anabel Espindola?

4 A Correct.

5 Q And to T.J. Hadland?

6 A Correct.

7 Q And you drove off into the hills outside of

8 town?

9 A Correct.

10 Q Deangelo Carroll is the person at the very

11 center of this, based on your own personal knowledge?

12 A Correct.

13 Q And you're here to testify some about what you

14 saw and also about what you've heard --

15 A Correct.

16 Q -- right?

17 Now, everything you saw is the stuff that happened

18 on the 19th and happened on the 20th, right?

19 A Correct.

20 Q And everything you heard is stuff that was in

21 your presence?

22 A Correct.

23 Q And stuff from the mouth of Deangelo Carroll?

24 A Yes, sir.

25 Q And certainly everything you've heard about

1 Little Lou Hidalgo sitting in the very back row came from the
2 mouth of Deangelo?

3 A Correct.

4 Q You never spoke with Luis Hidalgo, III?

5 A No.

6 Q You never called him on the telephone?

7 A No.

8 Q He never called you?

9 A No.

10 Q You never spoke to him in person?

11 A No.

12 Q He never spoke to you?

13 A No.

14 Q You had no communication with him whatsoever?

15 A No.

16 Q It all came from Deangelo?

17 A Correct.

18 Q Deangelo Carroll stole, in your presence, a
19 canister from the Walgreen's drive through?

20 A Correct.

21 Q You know him to be full of hot air?

22 A Correct.

23 Q You know he tells lies?

24 A Correct.

25 Q You know you don't always believe what he says?

1 A Correct.

2 Q And the only information you have about Little

3 Lou Hidalgo is from that man, Deangelo Carroll?

4 A Correct.

5 Q You know Deangelo's a convicted felon?

6 A Correct.

7 Q You know where he's living right now?

8 A Correct.

9 Q You know he's in jail?

10 A Correct.

11 Q You've known him not just this night, but

12 you've known him for five or six years?

13 A Correct.

14 Q You were good friends?

15 A Correct.

16 Q You'd spent a lot of time together?

17 A Correct.

18 Q And you knew him to be somebody who, at the end

19 of the day, wasn't trustworthy?

20 A Correct.

21 Q You'd known Jayson Taoipu a number of years

22 also, didn't you?

23 A Correct.

24 Q And Mr. Taoipu is also a very close friend?

25 A Correct.

1 Q At this time he was your best friend?
2 A Correct.
3 Q And you know at this point he's now a felon?
4 A Correct.
5 Q But he's out of jail?
6 A Correct.
7 Q Have you seen him?
8 A No.
9 Q You've not seen him on the street?
10 A No.
11 Q You've not been in contact with him since he's
12 been released?
13 A No.
14 Q Have you talked to him since you testified
15 against him in December of 2005?
16 A No, sir.
17 MR. ADAMS: Can I have the Court's indulgence?
18 THE COURT: That's fine.
19 BY MR. ADAMS:
20 Q You told the prosecutor and you told Ms. Armeni
21 that what Deangelo had asked you on the 19th was if you were
22 down with dealing with somebody.
23 A Correct.
24 Q And you told him, I'm not down with that?
25 A Yes, sir.

1 Q And you didn't take that to be a serious
2 request from him at that time, did you?

3 A No, sir.

4 Q And that request was made at noontime?

5 A Correct.

6 Q And at that same time at noontime he mentioned
7 the bats and bags?

8 A Correct.

9 Q And at noontime on May the 19th he told you
10 Little Lou said something about bats and bags?

11 A Correct.

12 Q You never heard that from Little Lou?

13 A No, sir.

14 Q You didn't know that Little Lou worked at the
15 Palomino Club?

16 A No, sir.

17 Q Mr. Carroll told you he needed help in dealing
18 with somebody because that person was snitching?

19 A Correct.

20 Q And when you hear the term "snitching", you
21 think somebody's going to the police and saying something,
22 don't you?

23 A Correct.

24 Q But you don't really know what Deangelo meant
25 by that?

1 A Correct.

2 Q You only know what he said?

3 A Yes.

4 Q Now, you made some comments yesterday about

5 Deangelo Carroll said that Little Lou said that Mr. H said.

6 Do you remember that?

7 A Correct.

8 Q Now, you've told police something differently

9 before, didn't you?

10 A Correct.

11 Q You told them you had no idea who Deangelo had

12 talked to, if anyone?

13 A Correct.

14 Q And that was the day they first picked you up?

15 A Correct.

16 Q 1:00 a.m. in the morning on May the 21, 2005?

17 A Correct.

18 Q A day you've not been smoking pot?

19 A Correct.

20 Q A day you were clear headed?

21 A Correct.

22 Q And a day that was just -- a time that was just

23 26 hours after you witnessed someone die?

24 A Yes, sir.

25 Q You've also testified previously, though,

1 haven't you, about Deangelo said that he heard things from the
2 Hidalgos?

3 A Correct.

4 Q And in previous testimony he -- you said that
5 Deangelo said Mr. H told you some things or told him some
6 things.

7 A Correct.

8 Q And you did not say that Deangelo said Little
9 Lou said that Mr. H said.

10 A Correct.

11 Q Fair enough?

12 A Correct.

13 Q And you've testified a bunch of times now?

14 A Correct.

15 Q And the details like that aren't the same in
16 any of those, right?

17 A Correct.

18 Q Because you've done the best you can to try to
19 remember, but you were high that day? .

20 A Correct.

21 Q And smoking pot may help you think a little
22 more clearly, but it doesn't help your memory get any better,
23 does it?

24 A If you smoke enough of it, no, sir.

25 Q All right. And back in this time, back in May

1 of 2005, you were smoking a lot of it?

2 A Correct.

3 Q When you spoke with the police, they asked you

4 a number of questions about the bats and bags, didn't they?

5 A Correct.

6 Q And they asked you if you heard a Nextel, a

7 chirp, a walkie-talkie conversation --

8 A Correct.

9 Q -- about bats and bags?

10 A Correct.

11 Q And you told them no, you hadn't?

12 A Correct.

13 Q And they followed up and they looked at you and

14 said, Are you sure you didn't hear anything on the

15 walkie-talkie, nothing out loud?

16 A Correct.

17 Q And you said, No, I did not?

18 A Correct.

19 Q And you never heard anything over a .

20 walkie-talkie about bats and bags?

21 A No.

22 Q I want to talk to you for a few minutes about

23 some of the things you testified to yesterday that have been

24 different from some of the earlier transcripts. Is that all

25 right?

1 A Yes, sir.

2 Q And I know it's not fun to be up here and

3 answer questions --

4 A Correct, sir.

5 Q -- so if we could just work through it. If my

6 question's unclear, let me know and I'll try to clarify for

7 you. Okay.

8 A Yes, sir.

9 Q You indicated yesterday that you dumped the

10 bullets out in the van --

11 A Correct.

12 Q -- and that Deangelo gave you the bullets in

13 the van?

14 A Correct.

15 Q You have testified previously about him giving

16 you the bullets in the apartment.

17 A That's the second time, sir.

18 Q So you first got them in the van?

19 A Yes, sir.

20 Q And then you got them in the apartment?

21 A Yes, sir.

22 Q So you didn't testify about getting the bullets

23 in the apartment yesterday?

24 A No, sir.

25 Q Were you not asked that question?

1 A No, I was not, sir.

2 Q All right. So you got them twice?

3 A Yes, sir.

4 Q And I believe you said the first time you got

5 the bullets -- or yesterday you got the bullets in the van and

6 you dumped them on the floor.

7 A Yes, sir.

8 Q And your friend Jayson Taoipu who had the gun

9 picked them up?

10 A Correct, sir.

11 Q And held onto them?

12 A Correct.

13 Q And so now you're back in the apartment and

14 Deangelo Carroll gave you the bullets again?

15 A Correct, sir.

16 Q And you testified yesterday that Jayson Taoipu

17 had a gun?

18 A Correct.

19 Q A .22 revolver?

20 A Correct.

21 Q You've testified a number of times or told

22 stories related to that very different over time, haven't you?

23 A Correct, sir.

24 Q Initially you told the police that your friend,

25 your good friend, your dear friend Jayson Taoipu didn't have a

1 weapon at all?

2 A Correct.

3 Q And then you told them he had a .22 caliber?

4 A Correct.

5 Q But you didn't tell them that he'd gotten it

6 from your friend Deangelo Carroll.

7 A Yes, I did.

8 Q All right. Well, at first you said Jayson

9 Taoipu had a .22 caliber. Your answer was yes, without any

10 reference to Deangelo.

11 A Correct.

12 Q Then later you told them, Well, he actually got

13 the gun from Deangelo?

14 A Correct, sir.

15 Q And they asked you if you knew what type of gun

16 and you said, I don't really know guns.

17 A Correct.

18 Q And later, last year, February of last year,

19 you actually said, Well, I know enough about guns to know it

20 was a (indecipherable) revolver.

21 A Correct.

22 Q And that was your language, the

23 (indecipherable) revolver?

24 A Yes.

25 Q And by that you meant a .22 caliber?

1 A Correct, sir.

2 Q And you meant Deangelo Carroll's .22 caliber?

3 A Correct.

4 Q And as far as you know, when you guys drove up

5 to that lake, you've never seen Jayson Taoipu take those

6 bullets you put down and put them into the gun?

7 A No, sir.

8 Q And as far as you know, that gun was unloaded?

9 A Yes, sir.

10 Q And as far as you know, that gun was not in his

11 hand?

12 A Correct, sir.

13 Q You talked a little bit with Ms. Armeni about

14 the car wash.

15 A Correct.

16 Q You did go to the car wash after leaving the

17 Palomino Club?

18 A Correct.

19 Q And did you go to the car wash after leaving

20 the Palomino Club before you went back to Deangelo's house?

21 A It was -- it was after we went to Deangelo's

22 house.

23 Q You stopped by Deangelo's?

24 A Yes, sir.

25 Q And then you went to the car wash?

1 A Yes, sir.

2 Q And then you went back to Deangelo's and went
3 to sleep?

4 A Yes, sir.

5 Q And got up the next day and dealt with the
6 tires?

7 A Yes, sir.

8 Q Now, the first time you talked to the police on
9 May 21st you never mentioned a car wash.

10 A Correct, sir.

11 Q Because that could be viewed as trying to get
12 rid of evidence.

13 A Correct, sir.

14 Q And you didn't want to volunteer that
15 information to police.

16 A Correct, sir -- well, not -- it just wasn't
17 really asked to me. I would have answered it if they would
18 have asked me, so...

19 Q If you were asked directly, you might have --
20 you were going to answer it?

21 A Yes. Yes, sir.

22 Q But since they didn't ask --

23 A Yes, sir.

24 Q No ask, no tell?

25 A Yes, sir.

1 Q At a testimony in court under oath on June 13,
2 2005, you also never mention a car wash.

3 A Correct.

4 Q In testimony, the Taoipu testimony on December
5 the 6th of 2005, you never mention a car wash.

6 A Correct.

7 Q It was only last year that you talked about the
8 car wash --

9 A Correct.

10 Q -- at the Counts' proceeding on February the
11 1st.

12 A Correct. Because the question came about, sir,
13 around to that particular moment.

14 Q Okay.

15 A So I had really no choice but to answer
16 truthfully.

17 Q All right. And then at the grand jury for
18 Mr. Hidalgo, Jr., you were asked if you washed the van?

19 A Correct.

20 Q And that was February the 12th 2008?

21 A Correct.

22 Q And you said, Yes, you did, between 2:00 and
23 3:00 a.m.?

24 A I said, No, I didn't wash -- I didn't wash the
25 car.

1 Q Was the van washed --
2 A Yes, it was.
3 Q -- that you saw?
4 A Yes, sir, it was.
5 Q And you've always said you didn't do anything.
6 A No, sir, I did not.
7 Q You saw Deangelo doing all these things?
8 A Yes, sir.
9 Q And you were with Deangelo?
10 A Yes, sir.
11 Q Yesterday you also said -- turning your
12 attention now to Anabel Espindola. You also said yesterday
13 that you've never spoken to her.
14 A Correct, sir.
15 Q I think you said you saw her, but you didn't
16 speak to her.
17 A Correct, sir.
18 Q Are you aware that -- have you testified
19 differently to that in the past?
20 A I'm not sure, sir.
21 Q All right. On -- during the Counts' proceeding
22 on February the 1st, 2008, were you --
23 Page 8, lines 6 through 9.
24 -- were you asked -- do you remember whether you
25 said you met her for five to ten minutes?

1 A It's like I met her, but it was just like a
2 see. I didn't like -- really like, Hi, my name is Rontae, hi,
3 my name's Anabel. I just -- I seen her --
4 Q All right.
5 A -- you know.
6 Q You saw her --
7 A And I was told from Deangelo that that was
8 Anabel.
9 Q All right. And you were sitting there around
10 Anabel for five to ten minutes?
11 A Correct.
12 Q And if there was anything more, it was just
13 chitchat?
14 A Correct, sir.
15 Q Nice politeness?
16 A Correct, sir. But I didn't even really even
17 say hi or bye to her or nothing, sir. Like, I've never spoke
18 a word to her, period, sir.
19 Q Okay. Other than -- other than hello?
20 A Not even that, sir.
21 Q All right. So you just sat there quiet around
22 her for five to ten minutes?
23 A Yes, I did.
24 Q All right. Yesterday you indicated that you'd
25 been to the International House of Pancakes, I-Hop --

1 A Correct.

2 Q -- after the van was washed, after the tires
3 were destroyed --

4 A Correct.

5 Q -- you went and had breakfast with Deangelo
6 Carroll?

7 A Correct, sir.

8 Q And you indicated you didn't know who paid.

9 A Correct, sir.

10 Q You testified previous Deangelo paid because he
11 had a fresh crisp hundred dollar bill on him?

12 A Correct.

13 Q And are you saying now that that was untrue or
14 you just don't really remember?

15 A Like I didn't -- I didn't see him pay anybody,
16 so, I don't know, like I seen him when he paid for the tires
17 that -- yeah, he had a hundred dollar bill on him, but when --
18 when it comes to I-Hop, I never seen him pay a bill. Like, we
19 were all sitting at the table when he paid the bill.

20 Q So he left the table to go handle the bill?

21 A Sorry. And usually -- usually you pay
22 afterwards. He paid before. So it was like usually you
23 pay -- you wait -- you eat, you wait for the bill, the bill
24 comes and then you pay for it. He paid for the bill first.

25 Q There's no question in your mind Deangelo

1 Carroll paid for your breakfast the day after Mr. Hadland was
2 left for dead at the lake?

3 A Correct.

4 Q And yesterday when you said, I have no idea who
5 paid, that was wrong?

6 A No. It was right, sir, because I don't have no
7 idea who paid.

8 Q Well, you know -- well, who all was there?

9 A Deangelo, me, Jayson, family, my baby's mother,
10 his people. Like, the only person I really knew was my baby's
11 mother and Jayson --

12 Q Okay.

13 A -- and Deangelo. I really didn't know none of
14 his people that -- on his side.

15 Q Well, you said you had no idea who paid, so
16 let's go through this, I guess, the longer way. You know you
17 didn't pay.

18 A Correct, sir.

19 Q And you know Crystal, your baby's mother did
20 not pay.

21 A Correct, sir.

22 Q You know Jayson Taoipu, your dear friend, did
23 not pay.

24 A Correct, sir.

25 Q You know none of these other people who you

1 didn't know paid for your breakfast.

2 A Correct.

3 Q You know Deangelo Carroll paid for your
4 breakfast.

5 A Yes, sir, it's obvious.

6 Q You also said yesterday that you went into
7 Simone's auto body shop.

8 A Correct, sir.

9 Q Okay. And you said you went in because
10 Deangelo Carroll came out to the van after you've been sitting
11 there about a half hour and said, Come on in and sit on the
12 sofa.

13 A Correct.

14 Q You've testified previously that you guys got
15 tired of waiting outside and just went in on your own.

16 A Correct.

17 MR. ADAMS: Judge, may we approach?

18 THE COURT: You may.

19 (Off-record bench conference)

20 THE COURT: All right. Mr. Adams, go on.

21 MR. ADAMS: Thank you.

22 BY MR. ADAMS:

23 Q On the 19th of May, 2005, Deangelo Carroll was
24 planning on going to work as far as you knew?

25 A Correct.

1 Q He had talked to you about going promoting that
2 night?
3 A Correct.
4 Q And he talked to you about he had to go make a
5 pickup?
6 A Correct.
7 Q And that was part of his job description as far
8 as you knew?
9 A Correct.
10 Q Because you were paid directly by Deangelo in
11 cash?
12 A Correct.
13 Q You never received a check from the Palomino
14 Club?
15 A No, sir.
16 Q And you never filled out work records?
17 A No, sir, I was too young.
18 Q All right. You never had a job interview with
19 anybody down at the club?
20 A No, sir.
21 Q Deangelo was your guy?
22 A Correct.
23 Q At some point in time Deangelo Carroll
24 mentioned to you on the 19th that Little Louie had called?
25 A Correct.

1 Q And that Little Louie had said, Come back to
2 the club. When are you coming back to work?
3 A Correct.
4 Q And that was sometime when you all were riding
5 around in the van?
6 A Correct.
7 Q And you're not exactly sure about the time, but
8 it was sometime before you'd gone up to the lake?
9 A Correct.
10 Q When you left -- at some point, Deangelo came
11 back to the house and you were there?
12 A Correct.
13 Q Because he'd run down to the club for a few
14 minutes to grab the flyers for you guys to take out and hand
15 out to the cabs?
16 A He does.
17 Q And he came back to get you?
18 A Correct.
19 Q And he said, Come on? .
20 A Correct.
21 Q And Crystal, the woman who's carrying your
22 child, said, Where are you all going?
23 A Correct.
24 Q And Deangelo, in front of you, said, Promoting?
25 A Correct.

1 Q And that's what you thought you were doing?
2 A Correct.
3 Q Now, you've been smoking pot with him that
4 day --
5 A Correct.
6 Q -- but you remember that? He didn't say, We're
7 going out to deal with somebody?
8 A No, sir, he didn't. I wouldn't have gone.
9 Q You wouldn't have gone because you'd already
10 put the bullets away twice?
11 A Correct, sir.
12 Q And then instead of driving down to the cab
13 stand, he did something that you weren't expecting?
14 A Yes, sir. He pulled a detour.
15 Q He pulled a detour over to Kenneth Counts'
16 house?
17 A Correct.
18 Q And this is a house you've never been to
19 before?
20 A Correct.
21 Q To a person you did not know?
22 A Correct.
23 Q And at some point Deangelo Carroll stopped that
24 car and went inside?
25 A Yes, sir.

1 Q And you and Jayson were in the van talking?
2 A Correct.
3 Q And you said, What's going on? I thought we
4 were promoting?
5 A Correct.
6 Q We got a new guy on the crew?
7 A Correct.
8 Q And Jayson didn't know either?
9 A Correct.
10 Q And after about 15 minutes Deangelo came out
11 with Mr. Counts?
12 A Yes, he did.
13 Q And you saw Mr. Counts leave the house?
14 A Yes, sir.
15 Q You saw him walk toward the van?
16 A Yes, sir.
17 Q And you got a good look at him?
18 A Yes, sir.
19 Q But you weren't trying to get a good look for
20 later court purposes because you had no idea he was going to
21 go shoot somebody?
22 A Correct.
23 Q But you did see him as he walked towards the
24 van and opened the door and got in next to you?
25 A Yes, sir.

1 Q And of course you said, Hello --
2 A Yes, sir.
3 Q -- but that was it? There wasn't
4 conversation --
5 A No, sir.
6 Q -- as you were driving up to the lake?
7 A No, there was not, sir.
8 Q You weren't saying, Man, how are you going to
9 get up close and blow this guy's brains out?
10 A No, sir.
11 Q You were just riding along together, radio was
12 on?
13 A Correct, sir.
14 Q Deangelo was on the telephone?
15 A Yes, sir.
16 Q Kenneth Counts was on the telephone?
17 A No, he -- no, he wasn't.
18 Q Well, he had his phone?
19 A Well, he wasn't -- if he had his phone, I
20 didn't -- I didn't see him on it, sir.
21 Q All right. But you weren't really eyeballing
22 him, right?
23 A Correct. Correct.
24 Q I mean, you were right next to him, but you
25 weren't just staring at him trying to memorize all his

1 features and movements?
2 A No, sir.
3 Q You were minding your own business?
4 A Correct, sir.
5 Q You were passing the blunt around?
6 A Correct, sir.
7 Q Everybody was smoking it?
8 A Yes, sir.
9 Q Everybody was feeling pretty good as far as you
10 knew?
11 A Yes, sir.
12 Q And certainly other than the blunt being passed
13 around, nothing else was being passed around today?
14 A Not at all, sir.
15 Q Deangelo wasn't passing bullets over to Jayson?
16 A No, sir.
17 Q Jayson wasn't passing his phone over to
18 Deangelo?
19 A No, sir.
20 Q Kenneth Counts wasn't passing anything to
21 anybody?
22 A No, sir.
23 Q Everybody was just sort of minding their own
24 business --
25 A Yes, sir.

1 Q -- as Deangelo was working the phones?
2 A Yes, sir.
3 Q And you could hear him on his chirp talking to
4 people?
5 A Correct.
6 Q And you heard what you later found out was T.J.
7 Hadland's voice?
8 A Yes, sir.
9 Q Because you heard him say to Mr. Hadland, Let's
10 hook up, I've got some pot for you?
11 A Yes, sir.
12 Q And you heard him chatting with Anabel
13 Espindola on the phone?
14 A Yes, sir.
15 Q And you heard her say, Go to plan B?
16 A Yes, sir.
17 Q And you heard him say, We're too far along,
18 Ms. Anabel. I'll talk to you later and off the phone?
19 A Correct.
20 Q And you didn't ask him, What is plan B?
21 A No, sir.
22 Q And nobody else did?
23 A No, sir.
24 Q Well --
25 A I didn't expect it, sir.

1 Q Right. And if Deangelo knew these things, he
2 kept them to himself?

3 A And also that if -- he knew if he would have
4 told us that we wouldn't -- we wouldn't have gone.

5 Q Right. Right. As far as you knew, at that
6 point he's the only man in there with a plan?

7 A Correct.

8 Q And whether he -- anybody else had the plan or
9 not, you don't know because he wasn't telling?

10 A No, sir, he wasn't.

11 Q It was only the next day that he started
12 saying, Hey, man, I was put up to this by other people?

13 A Correct.

14 Q I'd like to talk to you -- and I know a lot of
15 people have talked to you about the marijuana use. I need to
16 talk to you a little more about it. Okay?

17 A Correct, sir.

18 Q You'd been smoking that day?

19 A Correct, sir.

20 Q You'd gone out with them to buy more pot?

21 A Correct, sir.

22 Q And you went to Cheyenne --

23 A Correct.

24 Q -- the Cheyenne area?

25 And I'm not sure if that's on the north side or the

1 west side.

2 A It's the north side, sir.

3 Q All right. You went to the north side and you

4 bought some weed earlier and you all were smoking it?

5 A Correct.

6 Q And you loaded up the blunt and you were

7 smoking it in the minivan driving out of town?

8 A Correct.

9 Q Later on after Mr. Hadland was shot, the van

10 pulled away kind of fast?

11 A Correct.

12 Q And you actually thought the body had been run

13 over?

14 A Correct.

15 Q You felt a bump?

16 A Correct.

17 Q And you thought that two tires at least had

18 rolled over Mr. Hadland?

19 A Correct. I felt it.

20 Q You felt it. And you found out later in your

21 interviews with the detectives and the prosecutors that there

22 was no evidence of that?

23 A Correct.

24 MR. PESCI: Judge, objection as to what he found out

25 from talking to us or other prosecutors.

1 MR. ADAMS: He's prepared as a witness, Your Honor.

2 THE COURT: Did you later learn that the body hadn't
3 been run over or did you ever learn that?

4 THE WITNESS: It's like, I didn't like really hear.
5 It's like -- I assumed it.

6 THE COURT: Okay.

7 THE WITNESS: You know, I felt it. So I kind of
8 assume.

9 THE COURT: Okay.

10 Go on, Mr. Adams.

11 BY MR. ADAMS:

12 Q Let me talk to you a minute about your ability
13 to identify Mr. Counts. Okay.

14 A Correct.

15 Q He came out to the van. He sat next to you in
16 the van for this ride up into the mountains?

17 A Correct.

18 Q You saw him and it was pitch black out there?

19 A Yes, sir.

20 Q And you saw him rise up in front of the van and
21 shoot two times?

22 A Correct.

23 Q And he got back in the van next to you?

24 A Correct.

25 Q The last thing in the world you remember doing

1 at that point was turning and giving him the eyeball, right?

2 A Correct.

3 Q You were minding your own business, not saying
4 a word, looking away --

5 A Correct.

6 Q -- to avoid any eye contact at all?

7 A Correct.

8 Q You got down to the Palomino and he got out of
9 the van?

10 A Correct.

11 Q You saw him walk away in the Palomino?

12 A Yes, sir.

13 Q And you were still there when he walked back?

14 A Correct.

15 Q And he didn't go directly to the taxi cab?

16 A Correct.

17 Q He came over toward the van first?

18 A Correct.

19 Q And you were looking at him because you were
20 scared?

21 A Correct.

22 Q And you got a pretty good look at him then?

23 A Yes.

24 Q And despite that -- and you never saw him again
25 after that except court?

1 A No, sir.

2 Q Despite that opportunity to see him, you were
3 not able to identify him in court last year, were you?

4 A Correct.

5 Q And it's not that you were lying or you were
6 scared, it's that you just really couldn't remember from that
7 night?

8 A I just -- I really didn't want to remember,
9 sir, honestly.

10 Q Yeah.

11 A I really didn't want to.

12 Q Yeah. And you knew -- in that courtroom, you
13 knew who the prosecutors were because you've been meeting with
14 them over the years?

15 A Correct.

16 Q And you knew the other people were the defense
17 table?

18 A Correct.

19 Q And you knew that there was an African man at
20 the defense table?

21 A Correct.

22 Q But looking at him, you just couldn't be
23 positive that was the same guy?

24 A Correct.

25 Q And that's why you couldn't identify him in

1 court?

2 A Correct.

3 Q And that's in part because of your fear that
4 night?

5 A Correct.

6 Q And partly because you were high that night?

7 A No. No, sir.

8 Q All right.

9 A Not from me being high, more fear than
10 anything. I mean, getting -- I mean, smoking really didn't
11 have much to do with it. I mean -- you know.

12 Q All right. When Mr. Counts came out of the
13 Palomino Club and came back toward the van, he didn't come
14 over and say, Good job, guys, it was nice to meet you, you
15 know, I'll see you around?

16 A No, sir. He said nothing.

17 Q And he gave you a look?

18 A Yes, sir.

19 Q And it was a look that you took to be
20 intimidating?

21 A Yes, sir.

22 Q And, in fact, it did intimidate you?

23 A Yes.

24 Q Because you knew he had a gun?

25 A Correct.

1 Q And you knew he used the gun?
2 A Correct.
3 Q And at that point in time had you ever been
4 more scared in your life?
5 A No, sir.
6 Q I've just got a few more questions for you and
7 I think we'll be done.
8 A Yes, sir.
9 Q I appreciate you answering my questions. On
10 May the 20th, the morning after, you got some sleep. We
11 talked about earlier.
12 A Correct, sir.
13 Q And then you got up and saw Deangelo?
14 A Correct, sir.
15 Q And you left the house with Deangelo --
16 A Correct, sir.
17 Q -- to get back in the van?
18 A Correct, sir.
19 Q The white van that had been up to Lake Mead?
20 A Correct, sir.
21 Q You got back in it and you guys went to the car
22 wash?
23 A Correct, sir.
24 Q Actually at that point in time there was a
25 second car being used to follow the van?

1 A Correct, sir. It was his in-laws' car.
2 Q As far as you know, it was the father-in-law's
3 car?
4 A It's his wife's dad's car.
5 Q And you were riding in that car with Deangelo
6 Carroll?
7 A Correct.
8 Q And Jayson Taoipu was driving the van?
9 A Correct.
10 Q And at some point around the corner from the
11 tire store the van stopped?
12 A Correct.
13 Q Mr. Carroll got out and stabbed the tires, cut
14 the stem or did something to make the tires go flat?
15 A Yes, sir, he did.
16 Q And Jayson Taoipu drove on into the tire store
17 on the rims?
18 A Correct.
19 Q You were still there with Deangelo Carroll?
20 A Correct.
21 Q And you spent the rest of the day with him, as
22 we were talking about, at the 7-11, at the barbershop, at the
23 I-Hop and back at his house?
24 A Correct. Until I got -- until the officers had
25 came and got me, then that's when I left completely.

1 Q So you ended up back at Deangelo Carroll's
2 house on the 20th?

3 A Correct.

4 Q And at some point in the evening Deangelo
5 Carroll left, as far as you knew, to go to work?

6 A Yes, sir.

7 Q And then you didn't see or hear from him again
8 until about five hours later?

9 A Correct.

10 Q When the police showed up back at Deangelo's
11 house with Deangelo?

12 A Yes, sir.

13 MR. ADAMS: Beg the Court's indulgence.

14 THE COURT: Mm-hmm.

15 BY MR. ADAMS:

16 Q Before I talk to you about the police, let me
17 back up for a second. After -- during this day on the
18 20th that you were with Deangelo, he talked to you?

19 A Correct.

20 Q That's when he first mentioned anything about
21 Little Lou Hidalgo?

22 A Correct.

23 Q And he also talked to you about Kenneth Counts?

24 A Correct.

25 Q And he said you've got to watch out for that

1 guy?

2 A Um, no.

3 Q You said he was a gang banger from LA?

4 A Correct.

5 Q And did he tell you what gang?

6 A No, sir, he didn't. I didn't find out until
7 afterwards.

8 Q That he was a Peace Stone Blood?

9 A Yes.

10 Q And did that name mean anything to you?

11 A Yes, it does.

12 Q You've heard of that name of that gang before?

13 A Yes, sir.

14 Q And I guess there's lots of gangs and lots of
15 gang names out there?

16 A Correct.

17 Q Did that one make you feel easier and more
18 secure, more comfortable, or did it send a shiver up your
19 spine?

20 A It made me feel less un -- it made me feel less
21 comfortable because I'm from Los Angeles and like my people
22 live in Los Angeles, so that's where the gang is at, in Los
23 Angeles.

24 Q And you know them to be about as hard core gang
25 as there is, right?

1 A Correct.

2 Q When Deangelo showed up with the officers at
3 1:00 a.m. on May the 21st, you weren't expecting to see the
4 police?

5 A Correct.

6 Q And Deangelo looked at you and said, Just tell
7 the truth, Rontae?

8 A Yes, sir, or we're all going to jail.

9 Q Just tell the truth or we're going to jail?

10 A Correct.

11 Q And you took that to mean you and me and Jayson
12 are going to jail?

13 A Correct.

14 Q And your thought at that time is why would I be
15 going to jail, I was nothing but a witness?

16 A Right.

17 Q When you went down to the police, you didn't
18 tell them the truth, did you?

19 A Not -- not at first, sir, I did not.

20 Q You told them several lies?

21 A Yes, sir, I did.

22 Q Even though Deangelo had asked you to tell the
23 truth, you didn't?

24 A No, I did not, sir, because I did not know --
25 at first, to be honest, I really didn't know whose truth he's

1 talking about.

2 Q Because he talked to you about trying to put a
3 truth out there?

4 A Yes, sir.

5 Q He talked to you about putting a story out
6 there that would help him out?

7 A Yes, sir.

8 Q And would help Jayson out?

9 A Yes, sir.

10 Q And so you were a little confused as to what he
11 meant?

12 A Correct.

13 Q Because during that day on the 20th he was
14 coming up with different ways to try to save himself?

15 A Correct.

16 Q He was trying to get you to lie?

17 A For him, yes, sir.

18 Q And that's no big surprise because you know him
19 to be a liar?

20 A Correct, sir.

21 Q The police were pretty tough with you?

22 A Yes, they were.

23 Q They cuffed you?

24 A Yes, they did.

25 Q They raised their voice at you?

1 A Correct.

2 Q It was a little like watching one of those NYPD
3 Blue episodes, wasn't it?

4 A Correct.

5 Q They were really trying their hardest to rattle
6 your cage?

7 A Correct.

8 Q And as a result of that, you did give more
9 information?

10 A Yes, I did.

11 Q But the one thing -- and I won't go through the
12 profanities with you, but the one thing that was clear is that
13 you knew, you knew that if you did not say more information
14 that Deangelo had given you on the 20th to them and put those
15 cards on the table that you were going to get arrested and
16 charged?

17 A Yes, sir.

18 Q And you've known over the course of the last
19 four years that if you didn't come to court you were going to
20 get arrested and charged?

21 A Yes, sir.

22 Q You'd be charged with conspiracy to commit
23 murder of Mr. Hadland?

24 A Yes, sir.

25 Q Just a couple of more questions.

1 Your testimony is based on what you saw and what you
2 heard?

3 A Yes, sir.

4 Q And you never heard Little Lou Hidalgo?

5 A No, sir.

6 MR. ADAMS: Thank you.

7 THE COURT: All right. Redirect.

8 REDIRECT EXAMINATION

9 BY MR. PESCI:

10 Q Let's start off on the identification of KC
11 Counts. Do you remember defense counsel, Mr. Adams, just
12 asked you some questions about not being able to identify
13 Kenneth Counts? Do you remember that?

14 A Yes.

15 Q Okay. However, in another proceeding you did
16 identify Kenneth Counts, didn't you?

17 A Yes, I did.

18 Q In fact, last time at the Counts' proceeding
19 Her Honor took judicial notice of the fact --

20 MR. ADAMS: Objection. Objection, Your Honor. May
21 we approach?

22 THE COURT: Sure. You're already here.

23 MR. ADAMS: Thank you.

24 (Off-record bench conference)

25 THE COURT: Is everybody still okay? We're going

1 until we finish with this witness. No one's blood sugar is
2 collapsing? Everybody good? All right.

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

4 THE COURT: Yes.

5 MR. PESCI: Thank you.

6 BY MR. PESCI:

7 Q Mr. Zone, on June the 13th of 2005, did you go
8 out to Boulder City and attend a preliminary hearing?

9 A Yes, sir.

10 Q And at that preliminary hearing were you able
11 to identify Kenneth Counts?

12 A Yes, I did.

13 Q Just so it's really clear, was Kenneth Counts
14 the only African American in the courtroom?

15 A No, he wasn't.

16 MR. ARRASCADA: Objection. Leading, Judge.

17 THE COURT: Well, that doesn't suggest an answer.

18 MR. PESCI: Thank you.

19 THE COURT: Overruled.

20 BY MR. PESCI:

21 Q So they're clear, at a prior proceeding were
22 you able to identify Kenneth Counts?

23 A Yes, I was.

24 Q Now, you were asked a whole lot of questions
25 about Deangelo being the focal point -- Deangelo Carroll, the

1 focal point of all the information that you got. Do you
2 remember those questions?

3 A Yes.

4 Q And you were specifically asked whether or not
5 you heard about Little Lou, his involvement in this incident.
6 Do you remember those questions?

7 A Yes.

8 Q Okay. Now, on that same day -- we're talking
9 about June 13, 2005 -- let's see, page 34 for counsels'
10 sake -- were you asked: What did Deangelo tell you about
11 Mr. H's son?

12 And you answered: Well, that he wanted him dead
13 also.

14 A Correct.

15 Q So you have, in fact, testified before that you
16 had information, although it was from Deangelo, that you had
17 information that Little Lou wanted T.J. dead as well?

18 A Correct. Correct.

19 Q It wasn't just Mr. H?

20 A Correct.

21 MR. ADAMS: Objection to improper impeachment of
22 their own witness, Your Honor.

23 MR. PESCI: Well, Judge, under 51.035 I move for the
24 admission of the prelim transcripts, the grand jury
25 transcripts.

1 THE COURT: Mr. Pesci, no. Basically they're not
2 impeaching him. They're -- so it's overruled.

3 MR. PESCI: Okay. Well, we're making a motion for
4 the admission of them, Judge, under the statute --

5 Can we approach?

6 THE COURT: Yeah.

7 (Off-record bench conference)

8 THE COURT: We're going to take a break. And I'm
9 sure we're all getting kind of hungry, and so let's go ahead
10 and take our hour-long lunch break at this point in time.
11 We'll be in recess until 1:25 for the lunch break.

12 And once again you're reminded of the admonishment
13 that you're not discuss this case or anything related to the
14 case with each other or anyone else. Don't read, watch,
15 listen to any reports of or commentaries on any subject
16 relating to the case. Please don't form or express an opinion
17 on the trial. Notepads in your chairs, follow Jeff through
18 the double doors, and we'll see you all back here at 1:25 p.m.

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

20 MR. PESCI: Judge, would you like the witnesses to
21 step into the --

22 THE COURT: I was just about to -- thank you,
23 Mr. Pesci. I was going to do that without the reminder, but I
24 appreciate the reminder, notwithstanding that.

25 Mr. Zone, you're free, depending on what the DA

1 investigator and the DAs need with you, to be on the break for
2 the hour. And I must remind you you'll probably be with the
3 investigator, but if you're not, you're not to discuss your
4 testimony with anybody else who may be a witness in this case,
5 and that means telephonically and other. All right? Okay.
6 And you can just go back to wherever the DAs direct you.

7 Yes.

8 MS. ARMENI: Your Honor, may Mr. Hidalgo be excused
9 to use the rest room really quick?

10 THE COURT: He may.

11 (Off-record colloquy)

12 THE COURT: All right. 51.035, a transcript of
13 testimony given under oath at trial or hearing or before a
14 grand jury.

15 MR. GENTILE: 51.035?

16 THE COURT: Mm-hmm. 2(d).

17 MR. PESCI: 51.035, The declarant testifies, which
18 Mr. Zone has, at the trial or hearing and he's subject to
19 cross-examination. So not only does the preliminary hearing
20 come in, but also the grand jury testimony which wasn't
21 subject to cross-examination and which has been asked
22 extensively by everyone, so it is clear under statute --

23 THE COURT: Well, it still says, The declarant
24 testifies at trial or hearing and is subject to
25 cross-examination concerning the statement, which means then

1 he's subject to cross-examination concerning the entire grand
2 jury transcript.

3 MR. PESCI: Well, no, Judge --

4 MR. DIGIACOMO: Correct. Correct. He has -- he's
5 been confronted with the transcript. At this point he's now
6 subject to cross-examination. They had an opportunity to ask
7 every single question in that grand jury transcript and it is
8 a transcript of a hearing. It now comes in. It doesn't have
9 to be consistent. It doesn't have to be inconsistent. It is
10 just a transcript.

11 MR. GENTILE: Wait a minute. Whoa. This is a
12 definition of what is and what isn't hearsay. Merely because
13 something isn't hearsay does not mean that it automatically
14 comes into evidence.

15 THE COURT: Right. I still get to rule on whether
16 it's admitted or not admitted.

17 MR. GENTILE: And I'm trying to figure out on what
18 theory it becomes admissible.

19 MR. PESCI: Then on the issue of probative versus
20 prejudicial, it's extremely probative because he's been
21 cross-examined about what's consistent or inconsistent here,
22 and so this will help to show this jury on the numerous
23 occasions.

24 Ms. Armeni went through a painstaking -- day by day
25 as to what he said or didn't say and that he was under oath

1 when he went through these things. Now they can see exactly
2 what he said under oath --

3 MR. GENTILE: No.

4 MR. PESCI: -- at those times. I don't understand
5 when they were asking how it was probative then, but now it's
6 not.

7 MR. GENTILE: Ms. Armeni dealt with prior
8 inconsistent statements. To the extent that there is a
9 statement that is consistent, that would be admissible, but
10 the entire transcript is not admissible. The only thing
11 that's admissible is anything that would be consistent.

12 MR. PESCI: No. That's such a -- that's a
13 separate --

14 THE COURT: Well, here's the thing. Well, it does
15 say that entire transcript -- I've never actually had it asked
16 for nor have I ever admitted a prior transcript.

17 MR. GENTILE: Where does it say entire?

18 THE COURT: It says a transcript of testimony given
19 under oath..

20 MR. GENTILE: It doesn't say entire transcript.
21 That's my point. All this --

22 THE COURT: It doesn't say a partial transcript
23 either.

24 MR. GENTILE: I don't want to talk over the Court.
25 When you're finished, I'll --

1 THE COURT: I'm done.

2 MR. GENTILE: Okay.

3 This is the definition of hearsay.

4 THE COURT: Right.

5 MR. GENTILE: It is saying that if something was
6 sworn and it was a prior -- and somebody was subject --
7 they're subject to cross-examination now --

8 THE COURT: Right.

9 MR. GENTILE: -- okay, and it is otherwise
10 admissible, it's not objectionable as being hearsay. This
11 does not use the term "entire," and there's a reason that it
12 doesn't use the word entire.

13 If we do something on cross-examination of a witness
14 and we bring up that the witness has made an inconsistent
15 statement before his testimony, then the State, if it has such
16 a transcript, could use that transcript to put before the
17 Court the consistent aspect of that proceeding, not the entire
18 proceeding. Because the entire proceeding is not relevant.
19 What's relevant is what is consistent with what the testimony
20 in court has been.

21 The only reason that she was able to go into what
22 she went into is because it was inconsistent with what the
23 testimony in court is. And so while this is a legitimate
24 definition of it not being hearsay, it does not mean that the
25 whole thing comes in.

1 THE COURT: Well, here's -- I mean, first of all, in
2 terms of consistent statements, I thought the last one was a
3 prior consistent statement based on the suggestion, which I
4 thought was -- but it may have been tacit suggestion -- I got
5 the point from the cross that this was all new, what he was
6 saying about the whole Little Lou thing was all new. So to
7 that extent, I think you're allowed to get into the prior
8 times he testified about what Little Lou said or about what
9 Mr. H said because they certainly suggested from that side of
10 the room that now he's just coming up with this much later.
11 So you can get into that.

12 My concern about admitting --

13 MR. PESCI: Judge, that --

14 THE COURT: Well, wait. Excuse me.

15 The whole transcripts, though, goes beyond whether
16 it's hearsay or not. These weren't the lawyers at the prior
17 proceedings, number one. So maybe there was objectionable
18 questions that these two would have objected to that whoever
19 was representing the other people didn't object to maybe
20 because either they didn't do it, for whatever reason, they
21 either didn't know or they didn't catch it, or it wasn't -- it
22 wasn't prejudicial to their clients so they didn't make
23 objections. But it may well have been objectionable testimony
24 as to these two people.

25 So I don't want to introduce a whole transcript just

1 willy-nilly that could have comments in there that weren't
2 subject to cross-examination and could have prejudicial and
3 improper evidence in it, number one.

4 Number two, as we all know, in front of the grand.
5 jury there is no defense attorney. There hasn't necessarily
6 been a review that all of the questions were appropriate in
7 front of the grand jury. So you may be getting questions and
8 answers in both forums that really aren't appropriate in front
9 of these -- in the trial of these two people. So that's my
10 concern about admitting the whole transcripts.

11 And I think -- like I said, I think you're entitled
12 to get into prior consistent statements because certainly on
13 cross the suggestion is, oh, this is all a new thing about
14 the -- I mean, look, the clear suggestion was that when Rontae
15 Zone was interviewed by the police, he appreciated somehow
16 that he needed to come up with more or he was going to be
17 charged, and that's why he came up. So I think, yes, you can
18 get into those.

19 But for the reasons I've just said, I'm totally
20 uncomfortable with introducing all of these prior transcripts
21 for the reasons -- I don't need to go over the reasons
22 again -- the reasons that I've just stated. Because then we
23 have to have a review on the transcripts and redact
24 information that maybe shouldn't be coming in against these
25 individuals and other things.

1 So I think that's an exercise that we don't need to
2 do because the value of the transcripts, I don't think --
3 again, portions of the transcripts that are consistent, we can
4 deal with those, but the whole transcripts, seven transcripts
5 or six transcripts or whatever it is, no.

6 You can be heard. I don't see myself changing my
7 mind, quite candidly, but --

8 MR. PESCI: That's fine. I'd like to make a record.

9 You just heard from defense counsel that it
10 doesn't -- it says otherwise. I'd ask you to read that
11 statute and see where it says otherwise it's admissible, first
12 off, that's what it says because it's not in there.

13 Secondly, the legislature saw fit to specifically
14 put in grand jury. If the concern of our cross-examination
15 was there, that wouldn't have been put there --

16 THE COURT: I wasn't -- I didn't say
17 cross-examination. I said that there's no one there to object
18 to objectionable questions. As you well know, the grand
19 jury -- the prosecutor has the total obligation of making sure
20 the questions are appropriate. And I'm confident you didn't
21 do anything inappropriate. All I'm saying is it says it's not
22 hearsay.

23 Now, the second thing is do we admit them. And the
24 Court has -- it says it's not hearsay. I agree. It doesn't
25 have to be inconsistent or consistent to make it nonhearsay.

1 It's not hearsay. But there are other reasons that the
2 defense can object to the admission of the transcripts beyond
3 objecting as hearsay.

4 And I've expressed two concerns and I don't know how
5 you can -- okay, yes, the legislature said the grand jury
6 transcript.

7 The other thing, since this is a little bit of a
8 unique case and -- in that we have all of these proceedings,
9 we have all of these different defendants, we have all of
10 these different defense attorneys, now, maybe that was
11 contemplated by the legislature. I don't know how much
12 experience you have with these legislative committees, but
13 it's just as likely that the legislature was envisioning one
14 defendant at a prelim or two defendants and the same trial,
15 not totally unrelated proceedings with respect to the presence
16 or absence of these defendants.

17 So make your record, but I don't see myself, quite
18 frankly, being swayed because I'm pretty -- I'm pretty firm in
19 my feeling on this.

20 MR. DIGIACOMO: I don't want to argue the point. I
21 just want to ask the Court a question. Is your ruling that
22 any relevant question asked of Rontae which is not
23 objectionable is fair subject of questioning of this
24 particular witness because it's not hearsay?

25 THE COURT: Sure. I just don't want those whole

1 transcripts coming in.

2 MR. GENTILE: Wait a minute. Wait a minute. I
3 don't understand --

4 THE COURT: No. No. I mean, I think --

5 MR. GENTILE: This is redirect.

6 THE COURT: It is redirect, but I've already said
7 that I feel that the import of the cross-examination was to
8 suggest recent fabrication with respect to the involvement of
9 your clients and that was -- that's the impact I got out of
10 it.

11 MR. GENTILE: Well, that's certainly not what we're
12 going to argue, but that's all right.

13 MR. ADAMS: The intended point, Your Honor, if I
14 might try to clarify that, the intended point was that he has
15 testified six times, never the same way twice. Three of those
16 times he said, Deangelo said Little Lou. The other three
17 times he said, Deangelo said Mr. H. That was the point and I
18 asked him that and --

19 THE COURT: Well, that was one point.

20 MR. ADAMS: -- and I said, Mr. Carroll, at other
21 times you said Little Lou, but there's been times when you
22 didn't, where you never said that. And he said, Yes, yes.

23 THE COURT: Right. Well, that was one point and
24 then there's also the point that he was all high on marijuana
25 so he didn't really quite know what was going on and that's

1 the reason --

2 MR. GENTILE: The earlier transcripts aren't going
3 to help on that because --

4 THE COURT: Well, I'm just saying -- but also you
5 asked, You were in the police station and you knew you could
6 get arrested unless you came up with a greater involvement of
7 other people here, didn't you? So to me, that line of
8 questioning suggests that he made a recent fabrication or
9 remembered things for the sole purpose of getting himself off
10 the hook.

11 MR. GENTILE: I read the record at this point
12 entirely differently. But let me just call one thing to the
13 Court's attention and hopefully the prosecutor will pay
14 attention to this.

15 That statute does nothing but define what is and
16 isn't hearsay, and if it were to be interpreted as the
17 prosecutor is seeking it to be interpreted --

18 THE COURT: Every single witness in every trial that
19 testified at the preliminary hearing or grand jury, you'd be
20 allowed to admit their transcripts.

21 MR. GENTILE: And 51.325 makes it expressly clear
22 that you may not unless the witness is first determined to be
23 unavailable and that the parties to the proceedings are the
24 same parties so that there was the same motive for
25 cross-examination.

1 THE COURT: Well, that's when you have an
2 unavailable witness. In this case --

3 MR. GENTILE: Such as Deangelo Carroll's videotape.

4 THE COURT: Well, that's a different --

5 MR. GENTILE: That's why we could get it in but they
6 can't.

7 THE COURT: Okay. Well, wait, Mr. Gentile. That's
8 apples and oranges.

9 Rontae Zone was a witness and everybody got to
10 cross-examine him, so the second statute that you cited,
11 52-point whatever, doesn't apply. The reason obviously for
12 the more stringent requirements is because then you don't have
13 an opportunity to cross-examine them or get them to explain
14 the inconsistencies --

15 MR. GENTILE: Like in a grand jury.

16 THE COURT: -- whereas here Mr. Zone has that -- you
17 have that opportunity. He's here.

18 I'm not admitting the transcript for other reasons,
19 but you can certainly cover any inconsistent -- and if you
20 want portions of the transcript later admitted, we'll consider
21 that, but to admit those whole unredacted transcripts --
22 because then it would require in the middle of trial all the
23 defense attorneys to re -- go through those, see what might be
24 objectionable and the Court -- more importantly, the Court to
25 go through them.

1 So -- and of course I said that facetiously, for the
2 record, but that's my ruling and I'm not going to -- I'm not
3 going to debate it.

4 Now, on the other issue, I'm ready to rule.

5 MR. ADAMS: Judge, may I inquire as to the redirect?

6 THE COURT: I'm not doing it. I don't know what the
7 redirect is.

8 MR. ADAMS: Well, it seems that we will be dealing a
9 lot with transcripts and have a lot of issues and I wonder if
10 it would be helpful if over the lunch hour they identify which
11 portions of which transcripts and we can deal with that at one
12 time.

13 THE COURT: Well, that would be -- if they want to
14 do that, that's fine. I'm not going to order them that they
15 have to do it. You can deal with the objections as they ask
16 the questions --

17 MR. ADAMS: Sure.

18 THE COURT: -- and you can say that's not -- that
19 wasn't -- you know, that's not a prior consistent statement or
20 we didn't challenge that previous statement or whatever
21 objection you want to make.

22 Okay. On the other ruling, I think maybe we're
23 making too much of this other issue and I think we can sort of
24 address it like this, which is going to make everyone either
25 happy or unhappy, probably the latter.

1 All right. The statements made -- I am inclined to
2 give an instruction to the jury. The statements made by
3 Deangelo Carroll in the tape when he was acting as a police
4 informant or agent or whatever we want to call him cannot be
5 considered for the truth of the matter asserted. Okay.
6 Therefore, the door is not opened to any impeachment of prior
7 inconsistent statements by Deangelo Carroll in his interview
8 with police.

9 But Mr. Arrascada or Mr. Gentile -- well, it would
10 be you, Mr. Arrascada, are free to argue, well, when he said
11 this, my client didn't say no, that's not true, or
12 Ms. Espindola didn't say no, that's not true, but you can't
13 argue even Deangelo Carroll didn't believe that he was
14 involved because that would be commenting on the truth. So in
15 terms of any verbal sort of -- or nonverbal acknowledgment of
16 the statement, you can comment on that in your argument, but
17 again, you can't comment on the veracity of Deangelo Carroll's
18 statement. You can't say even he didn't believe it because
19 then you do open the door. So that's --

20 MR. ARRASCADA: Open the door to what, though, Your
21 Honor?

22 THE COURT: Open the door to -- well, first of all,
23 you -- forget opening the door. I just said that I'm
24 instructing them it's not to be considered for the truth of
25 the matter. So if it's not to be considered for the truth of

1 the matter, you can't argue, well, even Deangelo Carroll
2 didn't believe it.

3 MR. ARRASCADA: Judge, this is admissible for the
4 truth on several grounds and I told you originally that -- I
5 mean, if you're inclined to follow your inclination, which is
6 different than what you're doing now --

7 THE COURT: Yes.

8 MR. ARRASCADA: -- Judge, I told you there was other
9 grounds on why this is admissible for the truth of the matter.
10 And that statement is -- one, it's admissible under Buffy
11 State 114 Nevada 1237 because Deangelo Carroll made a
12 statement against his interest. Now, read Buff, Judge, very
13 closely and also you need to --

14 THE COURT: Okay. I have one critical question on
15 Buff. At the time the statement was made in the Buff case,
16 was the speaker who made the statement against interest -- was
17 that person working as a police agent?

18 MR. ARRASCADA: He was being interviewed at the
19 time, so no.

20 THE COURT: Okay. So no. So to me, that would be
21 the critical -- I'm happy to read it, but that would be the
22 critical difference in terms of whether it's a statement
23 against interest or not a statement against interest.

24 MR. ARRASCADA: Judge, also to help you in your
25 analysis, there's another case Chia, like --

1 THE COURT: Like the Chia pet?

2 MR. ARRASCADA: Like the pet, v Cambra, 360 F
3 3d 997.

4 THE COURT: What's that one say?

5 MR. ARRASCADA: In that one, Your Honor, it was --
6 it probably was not an informant also. I can't recall at this
7 time, but again, it looks at these statements, this
8 exculpatory statement for Mr. Hidalgo and it says these are
9 admitted two ways.

10 One is a statement against interest. Deangelo
11 Carroll is making a statement against interest at this time,
12 Your Honor, because he knows that he's under the gun. He is
13 going to be prosecuted and he is being given an opportunity,
14 if he gets other people, other suspects, to receive benefits.
15 And so it's against his direct interest to go in and tell
16 someone they were not involved. It's against their penal
17 interest.

18 And when you couple that, Your Honor, with Chambers
19 versus Mississippi 410 U.S. 284, Chambers says that where a
20 constitutional right directly affecting the ascertainment of
21 guilt are implicated, the hearsay rule may not be applied
22 mechanistically to defeat the ends of justice. So this is
23 admissible, Your Honor, this statement.

24 And this is what the Nevada Supreme Court was doing
25 in Buff. This statement is admissible as a statement against

1 interest and also under the catch-all provision regarding it
2 having circumstantial guarantees of trustworthiness equivalent
3 to --

4 THE COURT: Okay.

5 MR. ARRASCADA: -- list -- Judge, it's a statement
6 against interest. He's --

7 THE COURT: All right. First of all --

8 MR. ARRASCADA: -- going in there --

9 THE COURT: -- I don't see it as a statement
10 against -- I'm happy to look at the cases on my lunch break.
11 I'm eating lunch in my office so I'll have nothing to do but
12 read these cases, and I'm happy to do it.

13 But number one, I don't see it as a statement
14 against interest. First of all, he's working with the police.
15 They've briefed him. But setting that aside, the fact that
16 Little -- whether it was Mr. H or Mr. H and Little Lou who got
17 Deangelo Carroll to spearhead this whole thing does not
18 minimize Mr. Carroll's culpability in the whole thing. So
19 whether he's just trying to blame Anabel and Mr. H or he's
20 trying to blame Anabel, Mr. H and Little Lou, to me, his
21 culpability is his culpability. And obviously he's trying to
22 work off the case by going in there wearing the wire. So I
23 don't see that as a statement against his interest.

24 I mean, you know, you've made your record. Maybe if
25 it ever gets there an appellate court will see it differently.

1 I don't, number one, see it as a statement against interest.

2 Number two, on the other issue, the catch-all
3 phrase -- the catch-all provision, I think there's no indicia
4 of reliability in this. I mean --

5 MR. ARRASCADA: Judge, the indicia reliability comes
6 when you look at the phone records of Anabel Espindola --

7 THE COURT: Well, doesn't the indicia of reliability
8 have to be with -- manifest in the statement itself and the
9 circumstances in which the statement's been made, not in
10 corroborating information? So --

11 MR. ARRASCADA: Your Honor, if you look at Chia
12 versus Cambra, the corroboration -- you have to look at
13 corroboration weighing in favor of its reliability and you
14 look at the external factors which are the phone records.

15 Also, Anabel Espindola's statement to the grand jury
16 that Little Lou and his dad had an argument, significant
17 there, Your Honor. Nothing occurred after that. Little Lou
18 didn't say, Go kill someone. They didn't reach any agreement.

19 And the areas -- he said there's five areas
20 mentioning Little Lou that are incriminating in the Deangelo
21 Carroll video. That's actually not true, Your Honor. There's
22 three different areas where Deangelo Carroll gives the
23 consistent statement that Little Lou wasn't involved saying
24 they didn't want Little Lou involved. They intentionally kept
25 Little Lou out of it. That's all in the Deangelo Carroll

1 statement that they're not going to hear.

2 MR. DIGIACOMO: If the Court -- I have the five
3 segments. The segments are, He gave me a phone call, told me
4 to bring baseball bats and garbage bags, arguing because he
5 had a prior conversation about hurting people. I went down to
6 the club. When I got there, I asked Mr. H and said, Where you
7 at, and they said they didn't want him involved because he's
8 too emotionally involved. Little Lou wanted to do this
9 himself. He showed up in black clothing to do it and Mr. H
10 said, No, you do it, not Little Lou.

11 And then later on during the later evening when the
12 payoff was occurring, Little Lou was coming in and out of the
13 room and we were whispering because, quote, They didn't want
14 Little Lou to fuck something up, so we didn't want him to know
15 exactly what had happened. So that all corroborates the --

16 THE COURT: Okay. Where is that in the statement?

17 MR. GENTILE: But that's not even Rontae Zone's
18 statement. No, that's --

19 MR. DIGIACOMO: It's Carroll's statement.

20 THE COURT: It's Deangelo Carroll's statement.

21 MR. GENTILE: Carroll? How does that come in?

22 MR. ARRASCADA: It can't come in, Your Honor.

23 MR. DIGIACOMO: If you let in that statement for the
24 truth of the matter inserted, those other statements will come
25 in.

1 THE COURT: Well, it's not even whether it comes in
2 or not. He's saying that his statement to police bolsters the
3 credibility --

4 MR. GENTILE: Oh, I see.

5 THE COURT: -- of his statement on the wire. And
6 Mr. DiGiacomo is saying, well, wait a minute, it doesn't
7 bolster it under this sort of catch-all provision because, if
8 anything, if you read the totality of the statement in its
9 entirety, he's implicating Little Lou way more than not
10 implicating Little Lou.

11 MR. ARRASCADA: Which goes to the issue, Your Honor,
12 of we are entitled to -- one, the statement he makes on the
13 wire comes in for the truth, and now -- though here's the
14 problem we have, Your Honor, and we're going right to it. We
15 don't get the chance to cross Deangelo Carroll who they
16 control to probe and test these questions that are just being
17 raised here. We interpret it exactly differently than they
18 do. And he can't be cross-examined.

19 THE COURT: Okay. First of all, his credibility
20 isn't at issue if the statement doesn't come in. If the
21 statement doesn't come in for the truth of the matter
22 asserted, Deangelo Carroll's credibility is not at issue
23 because we're not saying it's true. We're not saying it isn't
24 true. So therefore cross-examining him on the veracity of the
25 statement is irrelevant on that -- if it doesn't come in,

1 number one.

2 Number two, I mean, to me, I'm -- on the adoptive
3 admission idea, I'm buying into that. I'm saying great. You
4 can argue it was an adoptive admission that Anabel Espindola,
5 the lead conspirator under your theory, never said, Well, wait
6 a minute, Little Lou's hands are as dirty as my hands, or,
7 Little Lou never said, well, I'm really afraid because I
8 planned this whole thing. You can argue all of the absence of
9 that and you can argue it as an adoptive admission in your
10 argument. I'm saying you can do that. But I'm not going
11 to -- I think, to me, it clearly falls under hearsay in terms
12 of Deangelo Carroll and I'm not going to let you argue that
13 Deangelo Carroll was being truthful.

14 Now, the listener's response to the statement was
15 fair game and properly can be argued. What your client did to
16 respond to that, like I said, fair game and you can argue
17 however you want.

18 MR. ARRASCADA: Now, Judge, we have another problem,
19 though, and that's this: Before we begun the trial, you asked
20 us -- you said, are you -- he -- the prosecutor inquired on
21 the record of us to you are we moving this for the -- for the
22 truth of the matter, the wire statement, Little Lou, you
23 weren't involved. We told you we're doing it for the truth of
24 the matter. You said okay.

25 Then in opening statements we relied on that ruling

1 and it was presented to the jury that way in our opening
2 statements. This is now going directly to our credibility and
3 what we're presenting in an opening statement based on this
4 Court's ruling pretrial, and now our credibility is shot with
5 this jury when it comes time for argument based on the opening
6 statement.

7 MR. DIGIACOMO: Well, two points as to that. One,
8 we talked about that we were going to have to have some
9 evidentiary ruling for the statement. I said if the defense
10 is going to get up in their opening and argue it was
11 admissible for the truth of the matter asserted, I wanted the
12 ability to make some comment about that there'd be other
13 evidence related to that, but there would be a lengthy
14 discussion about what the actual admissibility is, one.

15 Two, they can't be prejudiced by it. They've
16 already told the jury even Deangelo Carroll didn't do it.

17 THE COURT: Well, the -- I mean, Mr. DiGiacomo, in
18 his opening, said, Well, you're going hear that Deangelo
19 Carroll said this, and he was -- all that means is he doesn't
20 know what conspiracy law is, and you objected to him doing
21 that. I don't see how you can suggest that you admit the
22 statement for its veracity and that the State not be allowed
23 to respond to that.

24 MR. ARRASCADA: They created their own evidentiary
25 thoughts, Your Honor. Deangelo Carroll is available if they

1 make him available. Judge, he is. They control him.

2 THE COURT: Okay. What? They make him available by
3 saying, okay, the guy that hired Kenneth Counts and lured
4 Timothy Hadland in the middle of the night and is the direct
5 cause of his murder, what, they give him immunity to testify
6 against what clearly at this point are -- may have been the
7 master mind, if you want to use that term, but people who
8 clearly were not as directly involved in the actual
9 assassination itself? So that's what you're suggesting?

10 MR. ARRASCADA: Judge, based on what they've been
11 doing with witnesses, yes. Anabel Espindola, who the State --
12 this prosecutor told you in a bail hearing was more culpable
13 than Luis Hidalgo, III, who was facing a death sentence is
14 pleading to a voluntary -- has pled to a voluntary
15 manslaughter and they'll remain silent.

16 This witness, Rontae Zone, is not prosecuted.
17 Jayson Taoipu, again, given probation. All the players -- and
18 given a plea deal by that prosecutor. So they have bent over
19 backwards, Your Honor, to give deals to their witnesses that
20 they choose to have, and they cannot selectively then say,
21 Here's one that could be good for the defense so we choose not
22 to do it. I implore the Court to look at Straub, United
23 States -- I believe it's Straub versus United States, S-t-r --

24 THE COURT: Have you got a cite for me?

25 MR. ARRASCADA: I don't have the cite.

1 MR. GENTILE: I'll get it for you.

2 MR. ARRASCADA: S-t-r-a-u-b. It was decided in
3 August by the Ninth Circuit addressing this very issue and it
4 said that the Court can grant immunity on the defense's motion
5 in these circumstances and situations.

6 It's -- if you recall, we made the motion earlier
7 and we said like the Gage case. It's very similar, but it's
8 actually the Ninth Circuit that has come out with an opinion.
9 And it dealt with an informant that -- a codefendant who was
10 not given immunity that the defendant wanted -- asked the
11 Court to grant immunity. And part of the analysis was look at
12 what the government did for everybody else except for the guy
13 who could help out the defense. That's the situation we're
14 now in.

15 So they control him, Your Honor. So how can they
16 then put up statements from his videotaped confession that the
17 police themselves say he fabricated many, many, many times to
18 show that -- to impeach what we say is a truthful statement on
19 the wire that you've already ruled as coming in --

20 THE COURT: Have I ruled --

21 MR. ARRASCADA: -- without us having an opportunity
22 to cross-examine?

23 THE COURT: If I ruled that it was coming in, then,
24 you know, it could be prejudicial to the State. If I ruled in
25 that way, then we're just not going to give an instruction one

1 way or the other. But you're not going to argue that it's
2 truthful and we just won't tell them truthful or not truthful.
3 If I -- I said it's prejudicial to the State if I ruled that
4 way.

5 I don't recall -- actually, I said my inclination
6 is, and then we said we'd have to have some evidentiary
7 rulings, and then you objected to Mr. Pesci's argument and
8 they approached and he was like, Well, will I have a chance to
9 refute this? And there was some discussion as to whether it
10 was even going to come in or not, as I remember, but I could
11 be wrong. That was my recollection. I said I could be wrong.

12 MR. GENTILE: Give her the citation. It's right
13 here.

14 MR. ADAMS: Your Honor, Straub's citation is 538 F
15 3d 1147.

16 MR. DIGIACOMO: I'm going to be very brief on
17 immunity because, one, I don't believe that any of the rules
18 in the State of Nevada allows the Court to grant immunity, but
19 the second problem is --

20 THE COURT: Well, then the remedy then is dismissal.

21 MR. DIGIACOMO: No -- well --

22 THE COURT: Well, if you look at the Gage case, I
23 don't have -- I don't have to say --

24 MR. DIGIACOMO: Correct.

25 THE COURT: -- force you not to prosecute

1 Mr. Carroll, but going by the Gage case, then the remedy is
2 dismissal against the defendants who are requesting the
3 witnesses.

4 MR. DIGIACOMO: Correct, under the federal analysis.
5 But unfortunately, Nevada has its own law in this matter, and
6 the biggest problem with Nevada's law, and the prosecutors
7 have complained about it for many, many years and some of the
8 defense attorneys in this room, I believe, that may have even
9 argued against it in the legislature, we want use immunity.
10 And if we had the ability to get use ability, we would
11 certainly put Deangelo Carroll up with a wall and get the use
12 immunity. There isn't one in Nevada. It has to be whole
13 immunity.

14 And you hit the nail on the head. Well, I can't
15 force him to plead guilty, so do I let a murder go? And
16 that's the question. And that's the question they're asking
17 the Court is, Hey, let's let a murder go. And if you can
18 recall, because they want to talk about our position and what
19 we've done in this case, I have argued from the very beginning
20 that the first defendant that should go to trial is Deangelo
21 Carroll, that it would solve a lot of problems. I've argued
22 it repeatedly, repeatedly, repeatedly and Deangelo Carroll's
23 lawyer has repeatedly put up roadblocks to that and it's been
24 continued by the Court, not by the State.

25 The record is over abundant in this case that I

1 thought we should try Deangelo Carroll first because it solves
2 a substantial number of problems, and I've been precluded from
3 doing so, so to argue that somehow I have been the one that
4 somehow --

5 THE COURT: No --

6 MR. DIGIACOMO: -- has prevented Deangelo Carroll --

7 THE COURT: And I don't think the Court made a
8 determination in terms of this one should go to trial first
9 and that one. Certainly that's not the rule of the Court and
10 I did not make that determination.

11 MR. DIGIACOMO: No, it was before you were --

12 THE COURT: No, no. I'm just going to say, just so
13 it's clear, because I think that would be completely
14 inappropriate for this or any other court to be making a
15 determination that we want A to go first or B to go first, I
16 mean, obviously capital has to go first before noncapital.
17 Other than that -- and longest in custody goes first. Beyond
18 that, I think we stuck with the order that had been set by
19 Judge Mosley who previously had the case, and then it's an
20 issue of scheduling with the lawyers. So I just want it to be
21 clear on the record that this --

22 MR. DIGIACOMO: No. And there was --

23 THE COURT: -- Court never --

24 MR. DIGIACOMO: -- stays from the Nevada Supreme
25 Court as well that caused --

1 THE COURT: Right.

2 -- that we didn't somehow say -- that this Court
3 didn't somehow say Deangelo Carroll gets to go last. I just
4 didn't want that to be suggested.

5 MR. DIGIACOMO: No, no, it wasn't. But, I mean, the
6 State's position has always been, let's try Deangelo Carroll
7 first. And the suggestion that somehow we have any affect on
8 that -- the ability to --

9 THE COURT: And wasn't there a setting on Deangelo
10 Carroll that Mr. Figler came in and said that he wasn't ready
11 or something like that?

12 MR. DIGIACOMO: He came in and said he's ready and
13 then a second time he said I promise to be ready. He came in
14 again and said, I didn't do anything for mitigation, and then
15 there was another --

16 THE COURT: Right.

17 MR. DIGIACOMO: -- a whole bunch of -- and then
18 eventually we finally got him to the point where --

19 THE COURT: He said the defendant was retarded.

20 MR. DIGIACOMO: -- we thought we could go, he gets
21 stayed and was -- remained stayed through the setting of this
22 trial date.

23 And it was my position when he got unstayed that we
24 still this trial date due to Deangelo Carroll because --
25 because of the situation and -- you know, that wasn't agreed

1 upon by the Court. I'm not saying it had anything to do --
2 but the fact -- or the suggestion that I --

3 THE COURT: Again, because the Court's opinion is
4 that it should not be making decisions based on tactical
5 advantages to one side or the other so --

6 MR. DIGIACOMO: I don't agree, but to suggest that
7 we somehow precluded Deangelo Carroll from them, I've been
8 trying to get them Deangelo Carroll for a very long time.

9 THE COURT: Right.

10 Anything else?

11 MR. GENTILE: I don't think anybody's suggesting
12 you're precluding it. What they're suggesting is that you
13 have better access to the ability of having him testify. We
14 cannot grant immunity.

15 THE COURT: Right. Of course not.

16 MR. GENTILE: We will be seeking a missing witness
17 instruction at the end of the day as well.

18 THE COURT: And that may well be appropriate.

19 We've already seen from a juror that there's an
20 issue as to why aren't we hearing from Deangelo Carroll. So,
21 I mean, it's the elephant in the room, where's Deangelo
22 Carroll?

23 MR. DIGIACOMO: Well, if it's relevant, then I want
24 them to know that he's still pending trial.

25 MR. PESCI: Right. He's pending trial. They

1 objected to that. And they objected when we were going to say
2 he's still awaiting trial. They made an objection.

3 MR. GENTILE: I don't have a problem with that going
4 up.

5 MR. DIGIACOMO: I didn't object to that.

6 THE COURT: Well, all I'm saying -- I have no
7 problem with giving them an instruction as to why Deangelo
8 Carroll's not testifying because they obviously want to know,
9 and as I just said, that's the elephant in the room and
10 they're all going to be talking about it. So to the extent we
11 can address it truthfully with the jury, I'm all for doing
12 that.

13 MR. GENTILE: It's better than them thinking he's
14 dead at the hands of a defendant in the courtroom, so I would
15 much prefer to have --

16 THE COURT: Right. And I think, you know, the more
17 questions, mind you, is -- the more questions we can answer
18 for the jury, the better. You get a better verdict.

19 MR. ADAMS: Mr. Arrascada's done an outstanding job
20 of arguing. Is my understanding correct that you're going to
21 review that and before we can talk about how we can argue or
22 not argue you'll think about that as well as think about the
23 fact that the State told us we could do this as substantive
24 evidence? And I put my credibility on the line in opening and
25 we need to address that sometime before closing as well.

1 THE COURT: Yeah, I mean, we can play the tape
2 without giving them an instruction as to you can consider this
3 or that or whatever. We can go through with the evidence and
4 then later say, You are instructed that the statements made by
5 Deangelo Carroll on the tape of blah, blah, blah, and blah,
6 blah, blah are not considered for the truth of the matter
7 asserted. We can do that later. We don't have to do it
8 contemporaneously.

9 MR. ADAMS: No, but that -- well, what --
10 Mr. Arrascada did a wonderful job. I don't want to undo it.
11 Before we talk about the lawyer credibility issue, that will
12 be a later issue to address, correct, not all at a same time?

13 THE COURT: Well, all I'm saying is I don't think we
14 need a ruling from the Court definitively before -- oh, let's
15 just go forward with the evidence and then hash out our
16 differences, some of which may be settled -- do you see what I
17 mean, because it doesn't have to be contemporaneous, in my
18 view.

19 MR. DIGIACOMO: Just before the close of evidence
20 before our last witness testifies, if somehow some way that
21 that statement's coming in for the truth of the matter --

22 THE COURT: Yeah. I'm going to look at the --

23 MR. DIGIACOMO: -- we need to know so that we can --

24 THE COURT: On the lawyer credibility issue, I need
25 to look at the transcripts again to see what was said on that.

1 So I have to do that.

2 All right. Anything else from me?

3 MR. GENTILE: What time are we coming back?

4 THE MARSHAL: 1:25.

5 (Court recessed at 1:01 p.m. until 1:35 p.m.)

6 (Outside the presence of the jury.)

7 THE COURT: All right. It's on the record.

8 Mr. Arrascada is speaking.

9 MR. ARRASCADA: Judge, it's my understanding one of
10 their witnesses this afternoon is going to be Detective
11 McGrath and the intention of the State is to use a
12 transcript -- is to play the wire and also to use a
13 transcript. I believe the transcript they intend to use is
14 the one that's in dispute and I guess we're looking for some
15 guidance.

16 THE COURT: Is it -- does it have the TJ that --

17 MR. DIGIACOMO: It has the TJ, but I made the
18 agreement that for purposes of opening I wouldn't do it. You
19 heard it in opening. I'll play a little section for you now.
20 If you don't hear it, then --

21 THE COURT: Yeah, let's finish. Can we finish with
22 Rontae Zone and then take a break, or is he only like 20 or 25
23 minutes before Detective --

24 MR. DIGIACOMO: You know, our redirect won't be more
25 than just a few minutes, and then I don't know how much

1 recross they can do considering our redirect is so short,
2 but --

3 THE COURT: Okay. And then the other thing I just
4 need to let everybody know is Juror No. 12 --

5 Right, Jeff, Juror No. 12?

6 Juror No. 12, I believe, indicated that he
7 recognized the victim's wife who's been in the courtroom, but
8 he didn't know her name or her relationship to the case. He
9 just recognized her as a friend of a friend. But he didn't
10 know -- like I said, he didn't know why she was here or
11 anything like that. So --

12 MR. ADAMS: Who is 12, Your Honor?

13 THE COURT: In Chair 12.

14 MR. ADAMS: I know they're all in the back row and
15 it's apparently a male.

16 MR. GENTILE: Mr. Keegan I think, isn't it?

17 THE COURT: I don't remember. The older guy with
18 the golf ball.

19 MR. GENTILE: Mr. Keegan, yeah.

20 THE COURT: Anyway, so I don't think that's a big
21 deal because she's not going to be testifying, right? And he
22 doesn't know her even well enough to know why she would be
23 here. I'm just disclosing that.

24 All right. Let me hear the tape. You guys need to
25 kind of be quiet so I can -- all right. Let me hear the

1 disputed part of the tape on just the TJ issue.

2 MR. DIGIACOMO: I don't know how well you can
3 hear --

4 THE COURT: Are they clean? Is this --

5 MR. DIGIACOMO: Apparently they were just cleaned
6 and just put fresh batteries in. And I had them give them out
7 to all 15 jurors from Jeff's --

8 THE COURT: So these are sanitary?

9 MR. DIGIACOMO: I hope we're not giving germs. You
10 might be able to hear just from here. I gave you that in case
11 you want -- we only had 15 of them, Judge, so --

12 THE COURT: That's fine.

13 MR. DIGIACOMO: Is it on?

14 THE COURT: I don't hear anything.

15 (Off-record colloquy)

16 (Playing tape)

17 MR. DIGIACOMO: Hear it? This does not have the
18 butt in it. Listen to it again.

19 MR. ARRASCADA: May the record reflect the Judge
20 nodded her head no, she did not hear it.

21 (Playing tape)

22 THE COURT: It's actually easier to hear it without
23 the earphones, in my view. I'm sorry.

24 MR. DIGIACOMO: Right -- no, that's what I was going
25 to tell the jury is, look, some people like these, some people

1 don't.

2 THE COURT: Yeah, I can't hear anything on the
3 earphones. So let me listen to it and if I hear it, it can
4 go. If I don't hear it, then it's not in.

5 (Playing tape)

6 THE COURT: I didn't hear it.

7 MR. DIGIACOMO: Did you hear at least what's
8 transcribed?

9 THE COURT: No, I heard it, but I couldn't hear the
10 TJ.

11 MR. ARRASCADA: You see, Judge, he now wants you to
12 hear it with the transcript. That gets into our
13 suggestibility on this issue.

14 MR. DIGIACOMO: No, there's no TJ on this
15 transcript. This is the non TJ transcript.

16 THE COURT: Okay.

17 (Playing tape)

18 THE COURT: Honestly, I can't tell what it is. So
19 use -- just use the revised -- the second transcript, but
20 take -- I mean, to the extent that this is an audibility
21 hearing, take out the TJ, but use all the rest of it -- of the
22 second one because the rest of the changes aren't really
23 disputed and mimic some of their changes, so that part's fine.

24 MR. DIGIACOMO: Okay.

25 THE COURT: Now, is there an issue --

1 MR. DIGIACOMO: We may use a break because I've got
2 25 copies of the transcript that says TJ. I'm not precluded
3 from telling the jury --

4 THE COURT: No, you can say --

5 MR. DIGIACOMO: -- when you listen to that, you're
6 going to hear TJ, because I got that objection in opening and
7 they still haven't said, When you listen to this, you're going
8 to hear --

9 THE COURT: Yeah, I mean, you can --

10 MR. DIGIACOMO: Much like the custodian of records.

11 THE COURT: -- even say -- I don't like to say, I
12 submit to you, but, you know, you can --

13 MR. PESCI: We ask that the defense's version also
14 at that location be left blank instead of --

15 MR. DIGIACOMO: Not have this in their version, they
16 have to have that out.

17 MR. PESCI: If it's blank for us, it's blank for
18 them.

19 THE COURT: All right.

20 MR. ARRASCADA: No. No. We have our own
21 transcript.

22 MR. GENTILE: We have our version --

23 MR. ARRASCADA: -- four years ago in the audibility
24 hearing.

25 THE COURT: Well, we actually never had an

1 audibility hearing.

2 MR. DIGIACOMO: An audibility hearing -- you
3 withdrew it.

4 THE COURT: Because then everybody said, Well, we'll
5 just all agree to -- that we'll agree to disagree, in other
6 words, and use these transcripts.

7 MR. GENTILE: We also agreed to play it twice
8 consecutively --

9 THE COURT: Right. We're going to do that and I'm
10 going to give them the instruction.

11 MR. GENTILE: We're going to have our transcripts
12 brought here.

13 THE COURT: And if anybody doesn't like what I say,
14 then you can ask me to add something.

15 MR. ADAMS: Judge, are you going to play it first
16 without a transcript?

17 THE COURT: I was going -- basically what I'm going
18 to say is -- okay. The State can say, Your Honor, can we pass
19 out a transcript? And I'll say, Ladies and gentlemen, two --
20 there's a dispute about what the tape is. Each side has
21 prepared a transcript. We're going to allow you to pass them
22 out. We're going to listen to the tape with each transcript.
23 That may aid you, it may not. Basically the transcript is not
24 evidence. It will not be retained. It will not go back to
25 the jury room. The tape is the only piece of evidence and

1 it's your hearing of the tape that controls and if you hear
2 something that's not on the transcript, that's what you're to
3 consider. If the transcript, one or both or either
4 transcript, has something on it that you don't hear, you're to
5 disregard what's in the transcript.

6 Is that fair with everybody?

7 MR. GENTILE: Yeah. Absolutely.

8 MR. DIGIACOMO: We would ask for the order, though,
9 that they don't have the word "this" where you now said, You
10 can't hear what it says, because if that's the ruling of the
11 Court, that's fine, but they shouldn't be able to imply to the
12 jury what it says if we can't.

13 THE COURT: Well, except both times everybody said
14 that it was this.

15 MR. PESCI: Everybody didn't say it was this. We're
16 taking a position that it says TJ, not this.

17 THE COURT: No, no, no, but last time you said it
18 said this.

19 MR. DIGIACOMO: In an audibility hearing where they
20 said, You can offer whatever transcript you want, we'll offer
21 our transcript, we'll withdraw the hearing. Now they're
22 saying, No, we get to suggest the answer, but the State,
23 You're to prejudicial to suggest the answer.

24 THE COURT: All right.

25 MR. DIGIACOMO: That's their argument.

1 THE COURT: I get it. Well, have you guys made
2 copies of your transcript?

3 MR. GENTILE: They're on their way.

4 MR. DIGIACOMO: Well, mine have to be all redone
5 too. I mean, there has to be new copies made as to all of our
6 transcripts.

7 THE COURT: All right. Well, can we at least get
8 started? Okay. Here's what we're going to do. They're going
9 to take "this" out. You're going to take "TJ" out. Can we at
10 least get started with Detective McGrath and --

11 MR. GENTILE: Are we taking "this" out?

12 THE COURT: -- can you have someone from your office
13 make the revised transcripts? And they'll have to have the
14 revised transcripts made.

15 Here's the deal. We didn't have an audibility
16 hearing before because everybody was in agreement. To the
17 extent that we've now had an audibility hearing on just that
18 one portion of the transcript, you know, that's one of the
19 things the Court can do is have an audibility hearing and say,
20 This is the right transcript. I don't know what it says. So
21 to the extent that we've had an audibility hearing on that
22 portion, I can say, I don't know if either transcript -- I
23 don't know what it says. It's not discernible to me and so,
24 therefore, I think it's fair to redact it from both.

25 MR. GENTILE: That's fine. I have to communicate

1 with my office to do that.

2 THE COURT: I understand. I just would like us to
3 get started and then your people can all work.

4 MR. ARRASCADA: Judge, may I, just real quick?

5 THE COURT: Sure.

6 MR. ARRASCADA: We would suggest that it's our
7 position on behalf of Luis Hidalgo, III, that when we do the
8 wire itself, that it be heard originally without transcripts
9 and then the transcripts be provided for two more listens.
10 We're not doing this to make it a longer trial. We're doing
11 it so that they don't get any undue --

12 THE COURT: That's fine.

13 MR. ARRASCADA: -- influence to the first one they
14 read or get or the second one.

15 THE COURT: That's fine.

16 Any objection from the State? They've already heard
17 it once without transcripts in the opening.

18 MR. DIGIACOMO: I know. They already heard it once
19 without the transcript. It was played -- the transcript was
20 played during the opening.

21 THE COURT: That's right. You're right.

22 MR. DIGIACOMO: It seems like to me that it's a
23 colossal waste of time because we're probably going to be
24 playing this a whole ton of times in front of the jury. But
25 it's the Court -- I don't know why it is that they get to

1 control how I admit my evidence, but I understand if the Court
2 wants to do it that way, you can make any decision you want.

3 MR. ARRASCADA: You control the demonstrative
4 evidence.

5 THE COURT: All right. Here's the deal.

6 MR. ARRASCADA: We have an issue that the evidence
7 is the tape.

8 THE COURT: Here's the deal. What's another 35
9 minutes? We'll listen to it first. We'll say, We're passing
10 out the transcripts, just exactly what I said I would say,
11 which I didn't write down so it won't be exact, and then
12 you'll pass them out and then they'll pass them out and we'll
13 all sit here for two hours listening to the same thing over
14 and over again.

15 MR. ARRASCADA: Thank you, Your Honor.

16 MR. DIGIACOMO: So we're playing it three times?

17 THE COURT: Yep.

18 MR. DIGIACOMO: Okay.

19 THE COURT: All right. Can we start?

20 Go get Rontae Zone and then once he's up here,
21 bring --

22 MR. GENTILE: We need to modify the transcripts.

23 THE COURT: Actually, I think playing it first
24 without a transcript might be good because then they'll make
25 notes as they hear it, and then that might really be their

1 first impression, which is what we want. So I agree with you.

2 MR. ARRASCADA: Which was our argument. Thank you,
3 Judge.

4 THE COURT: Mr. Zone, have a seat.

5 And, Jeff, bring the jury in.

6 (Jury reconvened at 1:47 p.m.)

7 THE COURT: All right. Court is now back in
8 session. The record will reflect the presence of the State
9 through the deputy district attorneys, the presence of the
10 defendants and their counsel, the officers of the Court and
11 the members of the jury.

12 Mr. Zone, you are still under oath. Do you
13 understand that?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: And where were we on Mr. Zone? Was it
16 redirect?

17 MR. PESCI: I believe so.

18 THE COURT: All right. Thank you.

19 MR. PESCI: Thank you, Judge.

20 BY MR. PESCI:

21 Q Rontae, you were asked some questions during
22 the cross-examination about seeing Mr. H or meeting Mr. H. Do
23 you remember those questions?

24 A Yes.

25 Q Okay. The gentleman seated over your left

1 shoulder, do you see that person seated over your left
2 shoulder right now?

3 A Yes.

4 Q Can you physically see him?

5 A Yes.

6 Q Have you ever met him?

7 A No.

8 Q Is he someone you've sat down and talked with?

9 A No.

10 Q Okay. So if we were to ask you if you met that
11 individual, what would your answer be?

12 A No.

13 Q Okay.

14 THE COURT: And just so it's clear in the record,
15 Mr. Pesci is referring to the Court's intern/extern from the
16 Boyd Law School who's seated to the right of me.

17 MR. PESCI: Thank you, Judge.

18 BY MR. PESCI:

19 Q Now, on that issue of seeing Mr. H specifically
20 at Simone's, do you recall testifying in, let's see, June of
21 2005 at a hearing? Do you remember doing that out at Boulder
22 City?

23 A Yes.

24 Q Now, at that time -- did you give testimony
25 about Mr. H at that time?

1 A Yes.

2 Q And specifically, were you asked: What made
3 you believe it was Mr. H?

4 A Yes.

5 Q And was your answer: Because it was just like
6 I was told to stop and go in and look for a man. There he
7 was, a Salvadorian looking man and he looked like a
8 Salvadorian looking man to me?

9 A Yes.

10 MR. ADAMS: Objection to leading, Your Honor. He's
11 on direct examination.

12 THE COURT: Overruled.

13 BY MR. PESCI:

14 Q Was that your answer?

15 A Yes, it was.

16 Q So as early as June 13th of 2005, was your
17 testimony that you saw Mr. H at Simone's after the murder?

18 A Yes.

19 Q Okay. And now fast forwarding to February of
20 2008, did you testify about seeing Mr. H at Simone's at that
21 proceeding?

22 A Yes.

23 Q Specifically, page 56, were you asked: And
24 while you were inside, did you -- was there any conversation
25 with Deangelo while you were inside?

1 And was your answer: No, because Deangelo had went
2 in first and we were left in the van and after about 15
3 minutes he came out to the van and told us to come in, so I --
4 and he was talking with Mr. H at the time, so I didn't speak?
5 Was that your answer?

6 A Yes.

7 Q Okay. So from February -- no, June of '05 to
8 February of '08, that's the same -- your testimony's the same
9 on the issue of seeing Mr. H at Simone's?

10 A Yes, sir.

11 Q Okay. And then also you were asked some
12 questions about communications that Deangelo had with Little
13 Lou. Do you remember that, being asked about that?

14 A Yes.

15 Q And as far as when the conversations or
16 communications had occurred?

17 A Yes.

18 Q Okay. Now, you were asked specifically about
19 the voluntary statement that you gave to the police. Do you
20 remember that voluntary statement?

21 A Yes.

22 Q Okay. And in the voluntary statement did you,
23 in fact, in response to an officer's question -- page 45 --
24 answer: I think Mr. H -- Mr. H, I think -- no, matter of
25 fact, Lou, Louie had chirped him and then after that? Was

1 that your statement?

2 A Yes.

3 Q Okay. Was that -- who was Louie chirping?

4 A Deangelo.

5 Q That -- just so everyone knows, that was on
6 May 21, 2005 when you spoke to the police?

7 A Yes, sir.

8 Q Okay. And then when you testified at a
9 proceeding on February 12th of 2008, did you also talk about
10 Louie contacting or communicating with Deangelo?

11 A Yes, I did.

12 Q All right. And specifically, did you give an
13 answer on page 25: After he got off the phone with T.J., then
14 Louie called. After he got off the phone with Louie, Anabel
15 called?

16 A Yes.

17 Q Okay. And so the ladies and gentlemen of the
18 jury know the context, was that before or after the murder of
19 Mr. Hadland that Little Lou had that communication?

20 A It was before.

21 Q Was that on the drive out to the lake?

22 A That was on the drive out to the lake.

23 Q Okay. And you were also asked about Deangelo
24 being the focal point and -- as far as who wanted Timothy
25 dead. Do you remember those questions?

1 A Yes.

2 Q And was it your testimony that you had heard
3 from Deangelo that Mr. H wanted Deangelo dead?

4 A Yes.

5 Q Okay. Did you also testify on June 13, 2005,
6 page 34, that you were also told that Mr. H's son wanted
7 Lou -- Timothy dead?

8 A Yes.

9 Q Okay. Now, you were asked a lot of questions
10 about being high. Do you remember those questions?

11 A Yes.

12 Q First by Ms. Armeni and then by Mr. Adams?

13 A Yes.

14 Q Okay. There was kind of a back and forth about
15 how smart you are when you're high?

16 A Yes.

17 Q Okay. Let me ask you this: Did you tell this
18 jury earlier that you thought that T.J. Hadland was driving a
19 Kia Sportage?

20 A Yes.

21 Q Okay. And did you tell the jury earlier that
22 you saw Timothy Hadland shot twice?

23 A Yes.

24 Q Did you tell the jury that he was shot twice in
25 the head?

1 A Yes.

2 Q Okay. Did you also tell this jury about
3 Kenneth Counts being picked up by a cab --

4 A Yes.

5 Q -- at the -- I'm sorry, just for a second -- at
6 the Palomino?

7 A Yes.

8 MR. ADAMS: Objection to that, Your Honor. It's
9 both leading and beyond the scope of any cross-examination. I
10 didn't cross-examine about what type of cab or anything in
11 relation to the cab.

12 THE COURT: Overruled. I mean, it's --

13 MR. ADAMS: It's direct examination.

14 THE COURT: Well, Mr. Adams, I think it was covered
15 possibly by Ms. Armeni in her cross-examination. As you know,
16 Mr. Pesci is entitled to respond to both.

17 MR. PESCI: Thank you, Judge.

18 BY MR. PESCI:

19 Q Do you remember being asked about that, about
20 getting in a cab?

21 A Yes.

22 Q And specifically asked whether or not you ran
23 up and talked to a cab driver and said, Hey, there's a dead
24 body out there?

25 A Yes.

1 Q Okay. So even though you were high, you were
2 able to say it was a Kia Sportage?

3 A Yes.

4 Q Even though you were high, were you able to say
5 that Timothy was shot twice in the head?

6 A Yes.

7 MR. ADAMS: Objection. Leading.

8 THE COURT: Well, overruled.

9 THE WITNESS: Yes.

10 BY MR. PESCI:

11 Q Okay. While high, did you testify, as far as
12 when you saw these things happen, that Mr. Hadland was taken
13 care of?

14 A Yes.

15 Q And what was your explanation and
16 interpretation of taken care of?

17 A It would be dealt with.

18 Q Okay. And what did you say dealt with meant?

19 A Murder.

20 Q And was Mr. Hadland murdered?

21 A Yes.

22 Q Okay. Now, I think we'll ask you this last
23 one. You were specifically --

24 MR. PESCI: Court's indulgence.

25 BY MR. PESCI:

1 Q You were asked specifically about the payment
2 at I-Hop. Do you remember those questions?

3 A Yes.

4 Q You, in fact, were cross-examined very
5 specifically about whether or not you physically saw Deangelo
6 pay for that, correct? Do you remember those questions?

7 A Correct.

8 Q And what was your answer as far as whether or
9 not Deangelo had paid for it?

10 A I wasn't sure if he paid for it or not because
11 I didn't see him.

12 Q Okay. Did you testify earlier that it's
13 obvious that he had paid for it?

14 A Yes, sir.

15 Q So were you able to make that conclusion
16 without actually seeing it happen?

17 A Yes.

18 Q Okay. Thanks.

19 MR. PESCI: Nothing further.

20 THE COURT: All right. Ms. Armeni.

21 MS. ARMENI: Court's indulgence.

22 RECROSS-EXAMINATION

23 BY MS. ARMENI:

24 Q Mr. Zone, I'll try and be quick. Just a couple
25 of follow-up questions.

1 Mr. Pesci asked you about when -- different times
2 you've testified as to seeing Mr. H --

3 A Yes.

4 Q -- so I'm going to go through those with you.
5 The first statement you made was on May 21, '05, right?

6 A Correct.

7 Q That was your voluntary statement?

8 A Yes.

9 Q And the -- Detective Wildemann and Detective
10 McGrath were there?

11 A Yes.

12 Q And, Mr. Zone, at that time you weren't asked
13 anything about Simone's body -- auto body shop?

14 A No, I wasn't.

15 Q So you -- you didn't say anything about seeing
16 Mr. H during that statement, right?

17 A No, I didn't.

18 Q And then your next statement was the
19 preliminary hearing, which was on June 13, 2005? Is that the
20 next one you --

21 A Correct. Correct.

22 Q And Mr. Pesci read over this and I just want to
23 give you the whole statement. On this -- at the preliminary
24 hearing you were asked: What made you believe that it was
25 Mr. H?

1 Answer: Because it was just like I was told to
2 stop, go in and look for a man, that he was a Salvadorian
3 looking man and he looked like a Salvadorian looking man to
4 me.

5 And then there's some objections.

6 MS. ARMENI: And if it's okay with the Court, I'll
7 skip through that part and -- just so I can go through --

8 THE COURT: That's fine.

9 BY MS. ARMENI:

10 Q And then witness: He was a man talking to
11 Deangelo so I figured it was him.

12 Question: He was a man talking to Deangelo? How
13 old was this individual?

14 Your answer was: He looked elderly.

15 Question: When you say elderly, not old, but old?

16 Question: I mean, we're talking 30, 40, 50, 60, 70?

17 Answer: Like in his 40s or 50s.

18 And then Mr. DiGiacomo comments on the -- him being
19 young. And then Mr. DiGiacomo asks you: What kind of hair?
20 Do you remember his hair color?

21 And you answer: I think it was gray.

22 And then you were asked how tall he was and you said
23 he was short, right?

24 A Correct.

25 Q So, Mr. Zone, you don't know for sure it was

1 Mr. H?

2 A Well, Deangelo told me so much about him to
3 where it's obviously for me to know.

4 Q Okay. But it's Deangelo that actually told you
5 that he was going to speak to Mr. H, right?

6 A Correct.

7 Q And then you testified -- after the preliminary
8 hearing you testified at a prior proceeding and that was on
9 February 1, 2008, and at that time you were asked the
10 question --

11 MR. DIGIACOMO: Page, Counsel?

12 MS. ARMENI: 47, lines 19 through 25, and then the
13 next page.

14 BY MS. ARMENI:

15 Q You were asked the question: And while you
16 were inside, did you -- was there any conversation with
17 Deangelo while you were inside the -- and then it was cut off.

18 And you answered: No, because Deangelo had went in
19 first and we were left in the van and after 15 minutes he came
20 out to the van and told us to come in, so I -- and he was --
21 and he was talking with Mr. H at the time so I didn't -- I
22 didn't speak.

23 Question: Did you know that -- what Mr. H looks
24 like?

25 Answer: No.

1 Question: So then he's speaking to -- so then he's
2 speaking to Mr. H.

3 That was Deangelo telling you that he.
4 was going to speak -- that he was going to speak to Mr. H?

5 Answer: Yes.

6 A Yes.

7 Q That was your testimony at Mr. Counts' trial,
8 right?

9 And then at the grand jury -- grand jury hearing,
10 that was specific to Mr. Hidalgo, Jr., right, Mr. H?

11 A Correct.

12 Q That grand jury proceeding, that was all about
13 charges against him solely, right?

14 A Correct.

15 Q And during that time, during that proceeding,
16 you were never asked about seeing Mr. H at Simone's, right?

17 A Correct.

18 MS. ARMENI: Court's indulgence.

19 THE COURT: That's fine.

20 MS. ARMENI: Thank you, Mr. Zone.

21 Pass the witness, Your Honor.

22 THE COURT: All right. Mr. Adams.

23 RECROSS-EXAMINATION

24 BY MR. ADAMS:

25 Q Mr. Zone, when we were talking this morning,

1 did you tell us the hundred percent truth?

2 A Yes.

3 Q You told these jurors the complete truth?

4 A Yes.

5 Q All right. Mr. Pesci asked you a couple of
6 questions about making an earlier reference back in May the
7 21st of 2005 about a phone call between Little Louie on May
8 the 19th to Deangelo.

9 A Correct.

10 Q Okay. And you told us earlier on direct that
11 you didn't hear any direct phone call but Deangelo told you
12 Little Lou had called and said return to work?

13 A Right.

14 Q Do you remember that?

15 And he asked you, did you say something on page 45
16 of your interview about an earlier call.

17 A Right.

18 Q And I'd like to read you all the lines about
19 that, okay?

20 A Okay.

21 Q Page 45, lines 8 through 12. Your answer to
22 the detective's question is, I think Mr. H -- Mr. H -- no,
23 matter of fact Louie -- Louie had chirped him and then after
24 that -- and then the detective takes over and asks you a
25 question.

1 He said, Because it's the radio, right? Because you
2 hear what they say? Did you hear what he asked him?

3 And what you told the detective was, He asked him to
4 come back to work and that he'll like be there in a minute.

5 A Correct.

6 Q All right. And that's what you told the
7 detective.

8 A Correct.

9 Q But you said you think Louie chirped, but if
10 they're going to chirp, the phone records would show that?

11 A Right.

12 Q What you know is that you had information that
13 Little Louie talked on the 19th of May before Mr. Hadland was
14 dead with Deangelo Carroll?

15 A Correct.

16 Q And your information of that was the call was
17 about, Come back to work, where are you, come to work?

18 A Correct.

19 MR. ADAMS: Thank you.

20 THE COURT: All right. Mr. Pesci.

21 MR. PESCI: No, Your Honor.

22 THE COURT: We're waiting on a jury -- I'll see
23 counsel at the bench, please.

24 (Off-record bench conference)

25 THE COURT: All right. Mr. Zone, we've got some

1 questions here from the jury.

2 Is the man that Deangelo was talking -- that
3 Deangelo -- you saw Deangelo talking to, is that man in the
4 courtroom today?

5 THE WITNESS: Which one, like -- yes, he is.

6 THE COURT: Okay. Can you indicate who it is.

7 THE WITNESS: Him right there, Mr. H.

8 THE COURT: Okay. And where is he seated in the
9 courtroom?

10 THE WITNESS: In the front.

11 THE COURT: And what's he wearing?

12 THE WITNESS: Wearing a blue suit.

13 THE COURT: All right. And does he have a tie on?

14 THE WITNESS: Yes, he does.

15 THE COURT: What color is it?

16 THE WITNESS: Blue.

17 THE COURT: Okay. When you saw Deangelo and Mr. H
18 talking at Simone's, did you overhear their conversation?

19 THE WITNESS: No, I did not.

20 THE COURT: All right. Did Deangelo later tell you
21 what was said or what was talked about between him and Mr. H?

22 THE WITNESS: Yes, he did, Your Honor.

23 THE COURT: When did he tell you that?

24 THE WITNESS: He told me after we left from Simcne's
25 Autoplaza.

1 THE COURT: Okay. Shortly after or a long time
2 after or what?

3 THE WITNESS: Shortly after.

4 THE COURT: Okay. And where were you when
5 Deangelo -- when Deangelo told you what was discussed?

6 THE WITNESS: We were in the van.

7 THE COURT: Okay. And what did Deangelo tell you?

8 THE MARSHAL: Your Honor, the jury can't hear his
9 response.

10 THE COURT: Oh, I'm sorry. You need -- even though
11 you're talking to me, you need to face the jury.

12 THE WITNESS: Okay. What was the question?

13 THE COURT: What did Deangelo tell you?

14 THE WITNESS: He told me that -- that the job was
15 done, the job was finished and that we were just to go home.

16 THE COURT: All right. Ms. Armeni, would you like
17 to follow up on any of those questions?

18 MS. ARMENI: No, Your Honor.

19 THE COURT: Mr. Adams, would you like to follow up
20 on any of those questions?

21 MR. ADAMS: No, ma'am. Thank you.

22 THE COURT: Does the State wish to follow up on any
23 of those questions?

24 MR. PESCI: Yes. Would the record reflect the
25 defendant has identified -- the witness has identified the

1 defendant Mr. Hidalgo, II.

2 THE COURT: It will so reflect.

3 MR. PESCI: Thank you.

4 MR. GENTILE: Would the record also reflect that he
5 was the only nonlawyer at the defense table. He's been
6 questioned by both of us. He knows that we're both attorneys.

7 THE COURT: All right. That will also reflect that
8 he is the only nonlawyer at the first defense table.

9 All right. Any other juror questions for Mr. Zone?

10 All right. Mr. Zone, thank you for your testimony.
11 Please do not discuss your testimony with anyone else who may
12 be a witness in this case and you are excused at this time.

13 THE WITNESS: I won't, Your Honor. Thank you.

14 THE COURT: All right. Thank you.

15 And State, call your next witness.

16 MR. DIGIACOMO: Detective Mike McGrath, Sergeant
17 Mike McGrath.

18 Judge, while he's coming in, may we approach?

19 THE COURT: You may.

20 (Off-record bench conference)

21 THE COURT: Sergeant, please remain standing, facing
22 our court clerk who is going to administer the oath to you.

23 MICHAEL SEAN MCGRATH, STATE'S WITNESS, SWORN

24 THE CLERK: Please have a seat, state and spell your
25 name for the record.

1 THE WITNESS: Michael Shawn McGrath, M-i-c-h-a-e-l,
2 S-e-a-n, M-c-G-r-a-t-h.

3 THE COURT: All right. Thank you.

4 DIRECT EXAMINATION

5 BY MR. DIGIACOMO:

6 Q Good afternoon, Sergeant. How are you
7 employed?

8 A I'm currently a sergeant assigned to the
9 narcotics section with the Las Vegas Metropolitan Police
10 Department.

11 Q How long have you been a sergeant?

12 A I've been a sergeant for just one -- I'm one
13 month short of two years.

14 Q Prior to being a sergeant, what did you do for
15 a living?

16 A I was assigned as a detective in homicide.

17 MR. DIGIACOMO: And the Court's indulgence for a
18 moment.

19 THE COURT: That's fine.

20 MR. DIGIACOMO: Okay. I can ask questions while I'm
21 back here pulling some exhibits, Judge.

22 THE COURT: All right.

23 BY MR. DIGIACOMO:

24 Q How long were you with homicide?

25 A I was with homicide for five years and one

1 month.

2 Q And prior to -- well, let me ask you this: How
3 long have you been a police officer?

4 A 16 years.

5 Q Now, as a police officer -- well, let me ask
6 you, as a homicide detective, did you respond out to North
7 Shore Road on May 19th and into the early morning hours of
8 May 20th of 2005?

9 A Yes, I did.

10 Q And when you got there, can you describe for
11 the ladies and gentlemen of the jury what you saw?

12 A When I got there, the crime scene people were
13 there staged and waiting for us, the homicide detectives, to
14 arrive. There were other detectives that were there that were
15 present that -- basically the way -- the call comes out to
16 9-1-1 and then patrol officers respond there. They -- they
17 section off the witnesses or whoever's there, the 9-1-1 call
18 from any other people that are out there.

19 They close down the road. They notify the on duty
20 detectives that work during that time of night, which is
21 graveyard hours, 10:00 at night until 8:00 in the morning.
22 They initially respond.

23 And then once their sergeant gets there with the two
24 detectives, they would make the call to the homicide
25 lieutenant who, in turn, would call our acting sergeant and

1 the detectives that were on the homicide up team, that being
2 myself.

3 Q Okay. You said you had an acting sergeant.
4 Who was that?

5 A Jimmy Vaccaro.

6 Q And you also indicated that there are members
7 of the team that respond out there from the homicide unit?

8 A Yes.

9 Q And can you tell us who else responded out?

10 A My partner Theresa Kyger. She was my partner
11 in homicide. And Detective Martin or Marty Wildemann, he also
12 responded there.

13 Q Now, once homicide gets out to a crime scene
14 such as this, is there first a discussion and then an
15 assignment of duties?

16 A Basically, the -- the up team is the team
17 that's assigned the case, so once you get the call, you and
18 your partner, myself and Detective Kyger, would know who's
19 responsible for doing the scene, crime scene investigation,
20 and who would be in charge of interviewing witnesses. Okay.

21 Detective Wildemann responded also. If we ran into
22 a situation where there was more work to be done, I need more
23 witnesses to be interviewed, he may have another role to
24 assist Detective Kyger in interviewing witnesses. My job was
25 to conduct a crime scene investigation and to assist with the

1 crime scene analysts that were -- arrived already.

2 Q When you first arrive on scene, is there
3 something -- does everybody do something together before you
4 start dividing up into your duties?

5 A Yes. I mean, one of the things that -- that
6 once you respond to a homicide scene, everybody basically
7 wants to know what kind of scene we have. So when you
8 interview your witnesses, you turn around and you have stuff
9 that you can ask them because you've seen the vehicle that was
10 out there, you've seen the body, you've seen the position of
11 the body, you know. So the crime scene analysts, along with
12 the detectives, would devise a way to get into the scene, to
13 walk into a scene so not to disturb anything at the scene and
14 all view, you know, what was out there on North Shore Road.

15 Q And you also received kind of an initial brief
16 from the responding officers, kind of like -- what the
17 situation is that they know when you arrive?

18 A Yeah. So it was -- like when I would get the
19 call, it would be the middle of the night, because the
20 homicide detectives work 7:00 to 5:00 or 7:00 to 4:00 or 8:00
21 to 5:00. So this call comes out in the middle of the night,
22 which, I believe, was 11:43 or something.

23 The 9-1-1 tape, they would get the information on
24 their computers from a computer assisted dispatch, which is
25 someone calls 9-1-1, the 9-1-1 transfers the information to

1 northeast area command. Northeast area command sends the
2 police officers out from northeast over the saddle into Lake
3 Mead and they're the first to arrive.

4 So when you get out there, you want to say, Who was
5 the first to arrive? Did anything change? Where were the
6 cars positioned? Has the scene been altered in any way? So
7 those are the type of questions that need to be discussed
8 amongst everybody that's already there with us.

9 Q Once that happened, did you already indicate
10 you were the detective assigned to the scene?

11 A Yeah, crime scene investigation.

12 Q Describe for the ladies and gentlemen of the
13 jury the basic overall scene that you saw and -- well, start
14 with that and I'll follow up.

15 A Okay. I'm not sure if everyone knows the
16 layout of Lake Mead. When you come eastbound on Lake Mead and
17 you go over Sunrise Mountain and then you come down and you're
18 approaching Lake Mead, okay.

19 Q For the record, I'm going to put on here --
20 State's Exhibit No. 159 up there.

21 A Okay.

22 Q Does that kind of generally show the outlay?

23 A Yeah. So here's east Lake Mead.

24 Q If you touch the screen there, Detective,
25 you'll --

1 A Here's Lake Mead right there, okay.

2 Q All right.

3 A That would come over Sunrise Mountain, that
4 would come down to what this says, SR 41, which is basically
5 what we call the saddle, because once you go over the
6 mountain, there's a little dip in the road and then you
7 continue to go down and it ends up at a stop sign right here,
8 right there. Okay.

9 Then you can go left or you can go right. If you go
10 right, you end up going towards Henderson. If you go left,
11 you go towards Callville Bay. Okay. This scene was located
12 .3 miles to the left of the stop sign. That's where the scene
13 was.

14 Mr. Hadland was laying in the roadway. He was flat
15 on his back, all right. He had on blue -- a blue bathing
16 suit, sandals, and he had on a white hat, which was across his
17 chest. It was just sitting on his chest. It's like one of
18 the hats -- one of those big rimmed hats so you don't get sun
19 on your face. Bib Wac or -- I don't know what they're called.
20 So -- and then there's a pair of glasses there.

21 There's a large amount of blood underneath his head
22 and there's a visible gunshot wound that I could see to the
23 top of his head.

24 Q When you saw that there was a body laying in
25 the street -- well, let me ask you this: When you first

1 arrived on scene, as a policy of the Las Vegas Metropolitan
2 Police Department, do you do anything with the body itself?

3 A No.

4 Q Why not?

5 A Under the guidelines of our department as well
6 as in conjunction with the Clark County Coroner's Office, the
7 body is not to be removed, you know, from its original
8 position until the Clark County Coroner's Office sends an
9 investigator out there. So no one touches the body. The body
10 stays in its exact position.

11 An investigator from the coroner's office responds
12 and basically takes some photographs himself. Usually they're
13 Polaroids. All right.

14 We attempt to ascertain who the victim is during the
15 time frame of him coming out and things are going on and --
16 because he's responsible for notifying the next of kin of
17 Mr. Hadland.

18 So then Mr. Hadland is then transported by the Clark
19 County Coroner's Office using one of the on duty mortuaries
20 back to the coroner's office for an autopsy which is done at
21 9:00 o'clock the next day -- morning.

22 Q Considering that you don't touch the body, do
23 you do other activity at the scene? Let me ask you this,
24 first of all: Other than the people who rolled up on the body
25 of Mr. Hadland, did you have any witnesses at the scene to

1 interview related to the actual facts of what happened in the
2 case?

3 A No.

4 Q Okay. Did you have anything other than the
5 body of Mr. Hadland at the scene that you had to do some
6 investigation with before you could, you know, get to the
7 body?

8 A Yes. There was -- there was -- Mr. Hadland's
9 vehicle was out there. Okay. We hadn't determined it was his
10 vehicle, but there was a vehicle parked in front of his body.
11 It was a gray Kia Sportage and it was still running and the
12 driver's side window was rolled down as well as the passenger
13 side window down with the car still running.

14 On the side, approximately 5 to 6 feet from where
15 Mr. Hadland's body was, was a group of Palomino fliers, all
16 right, that were basically fliers that you would hand out in a
17 VIP capacity like -- if you've been on the Strip and people
18 hand fliers out to you about nightclubs and things like that,
19 those are the type fliers that were on the pavement in close
20 proximity to Mr. Hadland's body.

21 The other thing that was out there was --

22 MR. ARRASCADA: Judge, this is getting a bit
23 narrative, I think.

24 THE WITNESS: Okay.

25 THE COURT: You can go on.

1 THE WITNESS: Thank you.

2 The other thing out there was what we called a
3 pneumatic tube which was -- when you go to CVS or Walgreens,
4 that little plastic tube when you put your prescription in it,
5 it goes up the vacuum and over and down, one of those was out
6 there, which was in close proximity to the Palomino fliers.

7 There was a few other things that we collected out
8 there that we didn't know if they were going to be related to
9 this case. It was -- as we walked through later on, there was
10 a Budweiser can, there was a cigarette butt, which was
11 collected, but the majority of focus was on, at this time, the
12 car. Whose car is it?

13 BY MR. DIGIACOMO:

14 Q Did you, in fact, attempt to ascertain whose
15 car it was?

16 A Yes.

17 Q Were you able to do so?

18 A Yes.

19 Q Whose car was it?

20 A Timothy Hadland's girlfriend's car.

21 Q Okay. Did you also look in the car to see
22 if -- well, how did the interior of the car appear to you?

23 A The interior of the car appeared to be normal.
24 In the back I could see through the window there was camping
25 gear in the back seat. There was a cooler and in the far back

1 there was actually what I believe was camping gear.

2 Q Okay. Now, have you, as both a patrol, an
3 officer, a detective, a sergeant, come upon cars that look
4 like they've been rifled through and searched and stuff like
5 that?

6 A Yes.

7 Q And in your review of the Kia that night, did
8 it look like anyone had rifled through or searched through the
9 vehicle?

10 A No.

11 Q Eventually did -- I'm assuming at some point
12 that the police rifled through it and searched through the
13 vehicle?

14 A Yes.

15 Q And during the course of that time, did you
16 come across a cell phone?

17 A Yes.

18 Q And eventually during the course of your
19 investigation, you learned that to be TJ Hadland's cell phone?

20 A Yes.

21 Q Did you -- what did you do with the phone?

22 A The phone was located -- I could see the phone
23 on the floorboard of the driver's seat, so -- without even
24 entering the car. So as the crime scene analysts -- their job
25 is to take photographs. So they take the photographs and they

1 collect the evidence.

2 So I took the phone from the crime scene analyst out
3 there. It was -- she picked the phone up and gave the phone
4 to me. I opened the phone up and observed that there was a
5 recent call displayed on the phone.

6 Q Okay. And did the -- on this particular phone,
7 the recent call that was displayed on the phone, did it have a
8 phone number? Did it have a name? What -- what information
9 was on there?

10 A The name on the phone said Deangelo and there
11 was a corresponding code which is basically a Nextel direct
12 connect number.

13 Q As opposed to a regular phone number, it's what
14 the custodian of records called the UFMI or the direct connect
15 number?

16 A Yes.

17 Q Okay. At the point in time that you're out at
18 this crime scene in the late night of the 19th, early morning
19 hours of the 20th, at this point in time do you know where TJ
20 had been prior to his death?

21 A No.

22 Q Okay. Once the processing of the scene is
23 completed, what happens with you? How do you further the
24 investigation?

25 A Basically because it was so early in the

1 morning, and if anyone's been out to the lake, they know how
2 dark it is out there at the lake. There are no lights
3 anywhere. We decided to have the helicopter fly through to
4 make sure we didn't miss any other persons that might be
5 victims, but we waited for the sun to come up so we can do an
6 overall walk through of the crime scene to make sure that we
7 didn't miss any cartridge casings or anything like that. So
8 we waited for the sun to come up.

9 So in the morning hours, okay, after Mr. Hadland was
10 picked up, the car was towed. I went back to the homicide
11 office and I went down and attended the autopsy of Mr. Hadland
12 with Detective -- with acting Sergeant Vaccaro.

13 Q When there is a search conducted in the
14 daylight hours for any sort of shell casings or firearms
15 related evidence, was there any found out there at that area?

16 A There was not.

17 Q You talked about the autopsy. We heard people
18 testify to the autopsy. While you're at the autopsy, what are
19 the other members of the team doing?

20 A Contact was made with -- in the back of the car
21 we found Mr. Hadland's wallet, so we knew it was -- Timothy
22 Hadland was the name of our victim. The Clark County
23 Coroner's Office had identified a family member of
24 Mr. Hadland's and had made physical contact either on the
25 phone or in person.

1 Q Without telling us what was said either to the
2 Clark County Coroner's Office or what was relayed to you,
3 based on the information you got from the family of
4 Mr. Hadland, did you learn about -- or did you eventually send
5 detectives down to the lake area?

6 A Yes.

7 Q And when you -- did you go or did somebody else
8 go?

9 A Detective Wildemann and Detective Kyger went
10 out to the lake to interview Mr. Hadland's girlfriend.

11 Q After Ms. Karlson provided her information to
12 the police and the autopsy was completed on that Friday, where
13 do you go?

14 A I go back to the homicide office.

15 Q And what is your intention when you're back at
16 the homicide office? What are you trying to do?

17 A I'm trying to identify this Deangelo and the
18 direct connect number to a particular person.

19 Q And were you able to eventually, and with the
20 information provided by Ms. Karlson as well, identify this
21 Deangelo person?

22 A Yes.

23 Q And who was he identified as?

24 A Deangelo Carroll.

25 Q Showing you what's been previously admitted as

1 State's Exhibit No. 198, is that Mr. Carroll?

2 A Yes, it is.

3 Q Okay. And during the course of this

4 investigation, you learned that he worked at the Palomino

5 Club?

6 A Yes.

7 Q Based upon that information, did you do

8 anything to see if you guys could either -- locate

9 Mr. Carroll? Did you do anything?

10 A Yes.

11 Q What did you do?

12 A I contacted someone that worked for the North

13 Las Vegas Police Department in an attempt to get the phone

14 number to the owner of the Palomino Club.

15 Q Eventually were you provided a number?

16 A Yes.

17 Q And was that number then provided to another

18 member of your team?

19 A Yes.

20 Q Okay. I'm going to -- somebody else will

21 testify to that, so let me jump to -- after -- or as Detective

22 Wildemann is doing that with the phone number, what is your

23 responsibility? What's your part in the investigation while

24 he's doing -- making the -- or utilizing the number that you

25 received from North Las Vegas?

1 A My basic responsibility is to start putting
2 some of this investigation on paper. I mean, you don't want
3 to be caught typing at the last minute. So my responsibility
4 is to sit down at my computer and start typing some of this
5 stuff into a report fashion so if things start jumping off
6 quickly, I already have the scene described, I already have
7 the time, I have the log of the officers that were out at the
8 scene as well as the detectives. I'm entering all of that
9 into a report. So if something jumps off immediately, we're
10 ready with some sort of paperwork to possibly make an arrest.

11 Q Okay. So if I get this straight, you haven't
12 gone to bed, then, from rolling out at 11:00 some odd --
13 12:00 o'clock at night? You haven't gone to bed yet?

14 A No, we have not.

15 Q All right. Eventually -- I'm going to direct
16 your attention forward to about 7:00, 7:30, somewhere in that
17 range. Do you go with anybody to the Palomino Club?

18 A Yes.

19 Q And who do you go with?

20 A Detective Wildemann.

21 Q When you get there, do you conduct an
22 interview?

23 A Yes.

24 Q And who are you interviewing?

25 A Arial.

1 Q And what was her -- your understanding of her
2 position at the club?

3 A She was going to provide me with an address and
4 phone number of Deangelo Carroll.

5 Q Your understanding was she was an employee of
6 the club?

7 A Yeah. She was an employee of the club.

8 Q During the course of the interview that you
9 were having with Arial, does there come a point in time when
10 you become aware that somebody's in the club that you have
11 interest in?

12 A Yes.

13 Q And who was the person?

14 A Mr. Carroll arrives.

15 Q Okay. And how is it that you know that
16 Mr. Carroll's there?

17 A Detective Vaccaro calls and says, Hey, guys, we
18 believe that this Deangelo Carroll is walking into the
19 Palomino while you guys are doing your interview.

20 Q Where is Detective Vaccaro?

21 A Detective Vaccaro is outside doing exterior
22 surveillance on the Palomino with Detective Kyger.

23 Q And what kind of vehicle are they in?

24 A They are in a white Expedition.

25 Q When you learned that Deangelo Carroll may be

1 inside the Palomino, what do you do?

2 A I instructed Detective Wildemann to leave the
3 interview with Arial and to make direct contact with Deangelo
4 Carroll. When I was finished with the interview with Arial,
5 I, in turn, met with Detective Wildemann.

6 Q When you met with Detective Wildemann, did he
7 have Deangelo Carroll with him?

8 A Yes.

9 Q And did you request anything of Mr. Carroll?

10 A Yes. That he come back to the homicide office
11 to be interviewed.

12 Q And did he go with you?

13 A Yes.

14 Q And did -- well, let me ask you this: Did you
15 force him to go with you or did he voluntarily go with you?

16 A He voluntarily came with us.

17 Q Okay. And thereafter, did you conduct a taped
18 interview or videotaped interview of Deangelo Carroll?

19 A Yes.

20 Q And at some point in time do you leave the
21 interview room -- well, let me ask you this: At some point in
22 time do you leave the interview room and is the interview
23 completed by somebody else?

24 A Yes.

25 Q Okay. Who is the person -- who switches places

1 with you?

2 A Detective Vaccaro.

3 Q Okay. Is there someone else who remains in the
4 interview through the whole thing?

5 A Yeah. Detective Wildemann.

6 Q Okay. At the completion of the interview of
7 Deangelo Carroll, do you, Detective Vaccaro, and Detective
8 Wildemann, as well as the other detectives, I guess, have a
9 conference about where the investigation should go forward at
10 this point?

11 A Yes.

12 Q And what do you do with Mr. Carroll?

13 A Mr. Carroll is brought back to his house;
14 however, on the way, he tells us that he could --

15 Q Without telling us what he told you, on the
16 way, did he point some areas out?

17 A Yes.

18 Q And eventually do other detectives go to that
19 area and recover something? .

20 A Yes.

21 Q What do they recover?

22 A Four tires.

23 Q Okay. As -- on the way to taking him -- after
24 he points these areas out to you, you take him where?

25 A To his house on Yale Street.

1 Q And who are you with?
2 A Detective Long.
3 Q And when you get to Yale Street, do you go up
4 the stairs with Mr. Carroll?
5 A Yes.
6 Q And do you enter the apartment with
7 Mr. Carroll?
8 A Yes.
9 Q Okay. What happens when you enter the
10 apartment?
11 A Mr. Rontae Zone is there.
12 Q Okay. When you see Mr. Zone, do you have
13 communication with Mr. Zone?
14 A My -- yes.
15 Q Okay. And do -- what do you say to Mr. Zone?
16 A We need to talk to you also.
17 Q All right. Does he agree to come with you?
18 A Yes.
19 Q And does he then leave with you?
20 A Yes.
21 Q During the time that he's leaving with you, do
22 you hear Deangelo Carroll make any statement to Rontae?
23 A Yes.
24 Q What statement does he make?
25 A He says, Tell them the truth, tell them the

1 truth. I told them the truth.

2 Q Okay. Other than that statement from Deangelo
3 Carroll, was there any communications between Rontae and
4 Deangelo while -- once you get back to that apartment?

5 A No.

6 Q Okay. You take Deangelo -- I'm sorry. You
7 take Rontae Zone. Where do you take him?

8 A To the homicide office.

9 Q And when you get to the homicide office, let me
10 ask you this: Where -- does Deangelo Carroll remain at home
11 or does he also go back to the homicide office?

12 A He remains at home.

13 Q Okay. So then you get back to the homicide
14 office. What do you do with Mr. Zone?

15 A We interview him.

16 Q Okay. And during the course of the interview,
17 some of which we've heard, does he provide you certain
18 information?

19 A Yes.

20 Q Okay. Approximately what time do you start the
21 interview with Mr. Zone?

22 A I believe it was somewhere in the vicinity of
23 1:00 o'clock in the morning.

24 Q Okay. And during the course of this
25 interview -- let me ask you this: Was this interview as

1 detailed as the initial interview of Deangelo Carroll?

2 A No.

3 Q Okay. And without referencing anything that
4 Deangelo Carroll told you, was there specific areas that you
5 were concerned with making sure that Rontae Zone got really
6 specific in describing?

7 A Yes.

8 Q And what was that?

9 A Areas that I thought were of concern were who
10 was in the car -- who was in the van, I should say, what
11 position they were in inside the van, and who had what
12 firearm, you know, and who basically committed the act.

13 Q Okay. Now, during the course of your interview
14 with Mr. Zone, does he also provide you information about
15 stuff that Deangelo Carroll had told him about who wanted the
16 murder committed?

17 A Yes.

18 Q Okay. Did you get detailed in your questioning
19 of him about that particular fact, those particular facts?

20 A No.

21 Q Okay. Did you have a plan of action to
22 confirm -- or to determine who was actually responsible for
23 ordering the killing?

24 A Yes.

25 Q What was that plan?

1 A The plan was to attempt to have Mr. Carroll
2 meet with the people that owned the Palomino Club and record a
3 conversation with those people to determine the accuracy as to
4 what had happened that night.

5 Q So before you interviewed -- well, let me ask
6 you this: Before you even interviewed Rontae, was that your
7 plan?

8 A Yes.

9 Q Okay. After your interview of Mr. Zone, can
10 you tell us approximately what time it was?

11 A If I look at the statement, there's an end time
12 of the interview, but I would say that it had to be at least
13 an hour to an hour and a half long, so now it's 2:00 to 3:00
14 in the morning.

15 Q On the -- so now we're talking more than 24
16 hours after the killing. Now we're talking 27 some-odd hours
17 after the killing, 28, 29, 30?

18 A Yes.

19 Q Okay. Are you still awake? Are you still up?

20 A Yes.

21 Q Okay. What do you do at that point?

22 A We were ordered home.

23 Q By who?

24 A Lieutenant Monahan.

25 Q Okay. When do you come back to work?

1 A I come back at noon the next day. Other
2 detectives come -- straggle back in sometime between 1:00,
3 2:00, and 3:00.

4 Q Okay. What do you --

5 MR. GENTILE: Can we get a date because I'm losing
6 days now? You went from night to morning.

7 THE COURT: What day was that?

8 THE WITNESS: This would be on the 20 -- we come
9 back on the 20 -- 19, 20 -- 21st.

10 BY MR. DIGIACOMO:

11 Q Okay. So now we're talking noon on the
12 21st we're up to at this point, correct?

13 A Yes.

14 Q And when you get back to noon on the 21st and
15 you're there at noon, what are you doing at this point?
16 What's your -- let me ask you this: What's your initial
17 priority when you get back to work at noon on the 21st?

18 A To try to recover the weapon that was used in
19 the murder.

20 Q Okay. And without telling -- well, let me ask
21 you this: Was there a particular individual that you were
22 looking to identify and execute a search warrant on?

23 A Yes.

24 Q And who was that?

25 A Kenneth Counts.

1 Q And when you have to go looking for a search
2 warrant -- I'm sorry. When you have to go looking for an item
3 of evidence and it may be in an area where you need a search
4 warrant, tell us the steps you have to go through to do that.

5 A Certainly you have to know the layout of the
6 house because that's describing the premise. You have to put
7 the probable cause of why you believe that to be where that
8 item is going to be as well as possible other items that might
9 link Mr. Counts to the other people as well as incriminating
10 evidence from himself, ie: the clothes that he might have worn
11 and things like that.

12 So we had to have someone drive by the house to get
13 us a legal description of what the house looked like as well
14 as to verify cars that were there, other things that were in
15 his driveway to determine this is his house.

16 Q You mentioned the word Counts. Now, did you
17 have that name Counts, or did you have to generate that name
18 from a lead?

19 A That was from a lead.

20 Q Okay. How did you know him when you first
21 tried to identify who KC was?

22 A There was information as to where the address
23 was on E Street as well as the moniker of KC, so once we knew
24 the address, we were able to get license plates and other
25 computer -- you know, searches that we did to determine that

1 Kenneth Counts was, in fact, KC.

2 Q Now, when you're working on all this in order
3 to get a search warrant, see if you can execute a search
4 warrant on Mr. Counts' home, do you become aware of a
5 potential witness at the homicide office?

6 A Yes.

7 Q Can you tell the ladies and gentlemen of the
8 jury how that comes about?

9 A While I'm typing the search warrant and another
10 detective is driving by Mr. Counts' house, another detective
11 is impounding the tires that we took from the night before,
12 all that stuff is going on, you know, at the same time -- and
13 I just had a brain fart. Tell me again. I'm sorry.

14 THE COURT: That's actually a great segue for our
15 break.

16 Ladies and gentlemen, let's just take a ten-minute
17 break until 2:50, and once again, you're reminded that the
18 admonition is still in place. During the break you're not to
19 discuss the case or anything relating to the case with each
20 other or with anyone else. You're not to read, watch, or
21 listen to any reports of or commentaries on any subject matter
22 relating to the case. Please don't form or express an opinion
23 on the trial.

24 If you would please leave your notes in your chairs,
25 your notepads in your chairs, and follow Jeff through the

1 double doors. We'll see you back here at 2:50.

2 (Court recessed at 2:40 p.m. until 2:53 p.m.)

3 (Outside the presence of the jury.)

4 THE COURT: Basically the defendant and his
5 counsel -- when I say the break's over at 2:50 or 2:45, I
6 expect you back in the courtroom at counsel table at 2:50 or
7 2:45 or whatever I say. That doesn't mean that my bailiff has
8 to go out in the hallway and drag everybody in here when this
9 break is over. Even if everybody's not ready, that's the time
10 the break's over. Okay.

11 MR. GENTILE: I'm sorry.

12 THE COURT: It's happened over and over again.
13 Mr. Hidalgo, I expect you -- everyone needs to be on time.

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

15 THE COURT: All right. Court is now back in
16 session. Everyone may be seated.

17 And, Mr. DiGiacomo, you may resume your direct
18 examination of Sergeant McGrath.

19 MR. DIGIACOMO: Thank you.

20 BY MR. DIGIACOMO:

21 Q Detective, I think where I left off was during
22 the course of time that you guys are creating this search
23 warrant application for Kenneth Counts' home, did you become
24 aware of the presence of another witness at the homicide
25 office?

1 A Yes.

2 Q How did you become aware of it?

3 A Mr. Carroll had brought Mr. Jayson Taoipu to
4 the homicide office to be interviewed.

5 Q And did you bring him into an interview room
6 eventually and was an interview conducted of Mr. Taoipu?

7 A An interview was conducted.

8 Q Okay.

9 MR. GENTILE: Can we have a foundation as to time,
10 please?

11 THE COURT: All right.

12 MR. DIGIACOMO: Let me --

13 THE COURT: Go ahead, you can lay it.

14 BY MR. DIGIACOMO:

15 Q Let me back up for a second. Did you actually
16 conduct the interview?

17 A No.

18 Q Okay. Other detectives conducted the
19 interview, correct?

20 A Yes.

21 Q How long after you learned that Mr. Taoipu was
22 present at the homicide office did the actual interview begin?

23 A A few hours.

24 Q Okay. And well, since you didn't conduct the
25 interview, do you have any idea approximately what time his

1 interview began?

2 A No. If I looked at -- if I looked at the
3 statement, I'd be able to tell you what time it was.

4 Q Okay. We'll get back to that.

5 MR. GENTILE: He can still lay a foundation in terms
6 of when he learned that he was present at the office.

7 THE COURT: Okay. When -- what time did you get
8 back to the office about?

9 THE WITNESS: I personally came in around -- between
10 noon and 1:00 --

11 THE COURT: Okay.

12 THE WITNESS: -- because --

13 THE COURT: And then at what time did you learn that
14 Jayson --

15 THE WITNESS: I believe that --

16 THE COURT: -- Taoipu was there?

17 THE WITNESS: When I drove into the lot, their
18 vehicle was already there; however, I came in the back door
19 and it was on the weekend, so there was no one to let him in.
20 So until other detectives came into the building, he wasn't
21 allowed to come inside the foyer which separates the entryway
22 into the homicide office.

23 BY MR. DIGIACOMO:

24 Q Okay. Let me back this up. So you believe you
25 saw Mr. Carroll -- or whatever vehicle they arrived in when