

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.

Case No. 71458

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7                   **APPELLANT’S APPENDIX VOLUME VIII**

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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18           MCLETCHIE SHELL LLC  
19           Margaret A. McLetchie (Bar No. 10931)  
20           701 East Bridger Ave., Suite 520  
21           Las Vegas, Nevada 89101  
22           *Counsel for Appellant, Luis Hidalgo, Jr.*

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**CERTIFICATE OF SERVICE**

1  
2 I certify that I am an employee of McLetchie Shell LLC and that on this  
3 24th day of July, 2017 the APPELLANT’S APPENDIX VOLUME VIII was  
4  
5 filed electronically with the Clerk of the Nevada Supreme Court, and  
6 therefore electronic service was made in accordance with the Master Service

7  
8 List as follows:

9 STEVEN OWENS  
10 Office of the District Attorney  
11 200 Lewis Avenue, Third Floor  
12 Las Vegas, NV 89155

13 ADAM P. LAXALT  
14 Office of the Attorney General  
15 100 North Carson Street  
16 Carson City, NV 89701

17 I hereby further certify that the foregoing APPELLANT’S APPENDIX  
18 VOLUME VIII was served by first class U.S. mail on July 24, 2017 to the  
19 following:

20 LUIS HIDALGO, JR., ID # 1038134  
21 NORTHERN NEVADA CORRECTIONAL CENTER  
22 1721 E. SNYDER AVE  
23 CARSON CITY, NV 89701  
24 *Appellant*

25 */s/ Pharan Burchfield*  
26 Employee, McLetchie Shell LLC  
27  
28

1 you parked your vehicle, but you didn't actually see  
2 Mr. Carroll and Mr. Taoipu when you arrived, correct?

3 A That's correct.

4 Q At some point later in time detectives arrived?

5 A Yes.

6 Q And then it is those detectives that notified  
7 you of the presence of these individuals?

8 A Yes.

9 Q And then sometime after that there was an  
10 interview conducted?

11 A Yes.

12 Q Okay. After the conclusion of Mr. Taoipu's  
13 interview, did you execute a search warrant anywhere?

14 A Yes.

15 Q Okay. And how was this particular search  
16 warrant executed?

17 A We utilized the LVMPD SWAT team.

18 Q And why SWAT?

19 A Under the guidelines of the policies of Las  
20 Vegas Metropolitan Police Department, this was a search  
21 warrant being executed on an extremely violent person.

22 Q Okay. And where was the -- if you don't  
23 remember the exact address, but the general area where the  
24 search warrant was going to be executed?

25 A I believe it was 1676, 1677.

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Q What street?  
A E Street.  
Q Okay.  
A I'm sorry.  
Q Showing you what's been marked as State's

Proposed Exhibit No. 158 --

A Yes.  
Q -- do you recognize that?

A Yes.

Q And does that appear to be a true, fair and accurate aerial view of both E Street, Wyatt and Burns Avenue?

A Yes.

MR. DIGIACOMO: Move to admit 158.

THE COURT: Any objection?

MR. ARRASCADA: Let me see it.

THE COURT: Oh, would you please show that to Mr. Arrascada, Mr. DiGiacomo.

MR. ARRASCADA: No objection, Your Honor, from us.

MR. GENTILE: Fine.

THE COURT: All right. That will be admitted.

(State's Exhibit 158 admitted.)

BY MR. DIGIACOMO:

Q Showing you -- is that a little too small for you?

A No, that's good. I can get my readers on for

1 this.

2 Q And each one of them's pretty much identified,  
3 but there are four locations that were identified on this  
4 particular map, one of which is 1676 E Street. Can you kind  
5 of circle that for the ladies and gentlemen of the jury.

6 A Right here.

7 Q During that time period -- well, let me ask you  
8 this: When SWAT executes a warrant, are you right up with  
9 SWAT, or do they go up first and you follow behind?

10 A We follow behind.

11 Q Okay. After SWAT hit the house, did there come  
12 a point in time when there was another location that became  
13 important to you?

14 A Yes.

15 Q And where's that?

16 A 1677. Would you like me to circle it?

17 Q Yes, sir.

18 A Right there.

19 Q Okay. And eventually did you have SWAT -- or  
20 did SWAT surround 1677?

21 A Yes.

22 Q And after SWAT surrounded 1677, what did you  
23 guys do?

24 A We located and arrested Mr. Counts.

25 Q Okay. Let's back up to how you located him.

1 A Okay.

2 Q Eventually SWAT surrounds there. Does there  
3 have to be some sort of -- how do you get in to 1677 E Street  
4 legally?

5 A We had to do what we call a piggyback search  
6 warrant from our original search warrant because there was  
7 information that our suspect had run from the 1676 across the  
8 street and was inside the residence at 1677.

9 Q And eventually does SWAT execute the second  
10 warrant?

11 A Yes.

12 Q And during the course of that warrant, was  
13 Mr. Counts located in any area of 1677 E Street?

14 A Yes.

15 Q Where was he located?

16 A He was located in the attic of the residence.

17 Q And did he have to be extracted from that  
18 attic?

19 A Yes.

20 Q And eventually he's taken into custody?

21 A Yes.

22 Q And what happens to Mr. Counts when he's taken  
23 into custody?

24 A Mr. Counts is escorted out of the house into  
25 the driveway, into the street where he is placed in Detective

1 Vaccaro's car with Detective Wildemann and they are  
2 transported back to -- and they transported him back to the  
3 homicide office.

4 Q What is your responsibility?

5 A My responsibility here is to do the crime  
6 scenes, you know, or continue with the crime scene  
7 investigation, which is to document any type of evidence that  
8 is recovered at the first address as well as any evidence  
9 recovered at the second address where Mr. Counts ran to.

10 Q And when your responsibility is to document  
11 evidence like that, particularly in a homicide investigation,  
12 is there anybody from another unit that is also assigned to do  
13 so?

14 A Yes. A crime scene analyst is with me and  
15 there are other detectives that aid in the searching of the  
16 residence.

17 Q Okay. During the course of the search, are  
18 photographs taken by the crime scene analyst to document not  
19 only the condition of the area which is being searched but any  
20 items that might have been recovered?

21 A Yes.

22 Q And was that for both 1676 E and 1677?

23 A Yes.

24 Q All right. In addition, does the crime scene  
25 analyst, in your presence, collect the various items of

1 evidentiary value?

2 A Yes.

3 Q And eventually after those items are collected,  
4 is there a request made by you as to what should be  
5 fingerprinted or other sort of processing to be conducted on  
6 them?

7 A Yes.

8 Q Showing you what's been marked for purposes of  
9 identification as State's Proposed Exhibits 60 through 80 --

10 THE CLERK: 60 through what?

11 MR. DIGIACOMO: 80.

12 THE CLERK: These are proposed Exhibits 60 through  
13 80?

14 MR. DIGIACOMO: Yes, ma'am.

15 THE WITNESS: We're going to go one by one, or do  
16 you want me to just look at them and --

17 BY MR. DIGIACOMO:

18 Q Right now if you'll just look through all of  
19 them because I'm going to ask you a general question about the  
20 whole set.

21 A Okay.

22 Okay. I reviewed these.

23 Q Okay. Now, let me ask you, 60 through 80, do  
24 they appear to be true, fair, and accurate depictions of not  
25 only the residence of 1676 but the items of evidence or some

1 of the evidence that was recovered from 1676?

2 A Yes.

3 MR. DIGIACOMO: Move to admit 60 through 80.

4 THE COURT: Any objection to 60 through 80?

5 MR. GENTILE: No.

6 MR. ARRASCADA: No, Your Honor.

7 THE COURT: All right. 60 through 80 will be  
8 admitted.

9 (State's Exhibits 60 through 80 admitted.)

10 BY MR. DIGIACOMO:

11 Q I'm not going to go through all of these but  
12 let's start with State's Exhibit No. 60. Tell us what we're  
13 looking at.

14 A We're looking at the front of 1676. You can  
15 see the front door of the residence has been pulled off or  
16 blown off by the SWAT team. You could see the black Suburban  
17 in the driveway, and that was registered to Mr. Counts. And  
18 on the side of his residence, which would be in this general  
19 area, was a little attached shed over here. There was some  
20 more vehicles in the back and other items that were in the  
21 photographs.

22 Q Okay. In that back area of State's  
23 Exhibit No. 66, did you find some firearms related areas?

24 A Yes, there were bullets that were located.  
25 They were located in the shed.

1 Q And obviously you collected some items to  
2 establish the fact that this is Mr. Counts' house, State's  
3 Exhibit No. 70?

4 A Yes. That's a checkbook which Kenneth Counts  
5 and -- I believe as I looked at the picture there, it said  
6 Irene Counts.

7 Q Did you find some dark clothing, State's  
8 Exhibit No. 73?

9 A Yes. From the interviews, it was determined  
10 that there was black clothing, which was worn, so I was  
11 particularly interested in the black clothing inside the  
12 house.

13 Q State's Exhibit No. 74, now, near where that  
14 black clothing is, can you tell me what that item is?

15 A That is one of those ziplock gun pouches.

16 Q Soft gun pouch?

17 A Soft gun pouch.

18 Q Showing you State's Exhibit No. 163, do you  
19 recognize that?

20 A Yes.

21 Q Does that appear to be -- well, it's obviously  
22 been opened already, but that appears to be a package created  
23 by Louise Rhinehart, the crime scene analyst out there,  
24 correct?

25 A Yes. Yes.

1 Q And then inside of that, 163 appears to be the  
2 soft gun case that was in Mr. Counts' home?

3 A Yes.

4 MR. DIGIACOMO: Move to admit 163 and 163 A.

5 THE COURT: Any objection?

6 MR. GENTILE: No.

7 MR. ARRASCADA: No, Your Honor.

8 THE COURT: All right. That will be admitted.

9 (State's Exhibits 163 and 163A admitted.)

10 BY MR. DIGIACOMO:

11 Q Despite the location of a gun case as well as  
12 some firearms related evidence in the garage area in his house  
13 at 1676, any firearms?

14 A There was a firearm in a file cabinet.

15 Q Okay. Is that 1676 or 1677, or do you need to  
16 look at something?

17 A I'll have to look.

18 Q Okay.

19 A It was in a file cabinet in one -- in the back  
20 of one of the houses.

21 Q Okay. What is it that I can show you that  
22 would refresh your recollection as to where that item of  
23 evidence was recovered from?

24 A If you show me the impound, I will tell you  
25 exactly where it was recovered.

1 Q I'm looking at your stuff here and I don't have  
2 the impound right here. Let me pull it out.

3 I'm showing you Louise Rhinehart's impound from that  
4 particular event, correct?

5 A Okay. I got it right here.

6 Q Okay. Item 20 is one Smith and Wesson  
7 .38 caliber --

8 MR. GENTILE: Objection to reading from it. That's  
9 not in evidence. It can refresh his memory.

10 THE COURT: All right.

11 BY MR. DIGIACOMO:

12 Q Looking at that, did you find a .38 caliber  
13 revolver?

14 A Yes.

15 Q Okay. And looking at that, does it refresh  
16 your recollection from where that item came from?

17 A Okay. 1677.

18 Q Okay.

19 A 1677 E Street.

20 Q So let me back up. Now, in 1676, there's no  
21 firearm that's located inside the home, correct?

22 A That's correct.

23 Q All right. We talked about the firearm --  
24 showing you State's Proposed Exhibit No. 164, does that appear  
25 to be the live cartridges that were collected at 1676 E

1 Street?

2 A Yes.

3 MR. DIGIACOMO: I move to admit 164.

4 THE COURT: Any objection to 1 --

5 MR. GENTILE: I have a relevance objection, really,  
6 unless they're going to tie it into the homicide.

7 MR. DIGIACOMO: I very well may.

8 THE COURT: Well --

9 MR. GENTILE: Well, if you can, fine, but my  
10 objection is relevance.

11 THE COURT: You're not going to show it now, are  
12 you? All right. I'll withhold ruling on its admissibility.

13 This was found and impounded by you or by the CSA?

14 THE WITNESS: By the crime scene analyst.

15 THE COURT: Okay.

16 BY MR. DIGIACOMO:

17 Q Looking at the package, though, it shows Louise  
18 Rhinehart impounded that from 1676 E Street?

19 A Yes.

20 Q And she impounded that in your presence,  
21 correct?

22 A Yes.

23 Q And it listed out -- it lists out the items of  
24 firearms related evidence, correct?

25 A Yes.

1 Q Okay. And all the items of firearms related  
2 evidence were actually -- other than the soft case were live  
3 rounds, correct?

4 A Yes.

5 Q Okay. Can you tell me the caliber of the  
6 rounds that were found inside the home?

7 A .9 millimeter, and I don't know what those --  
8 .42 Remington hollow points.

9 Q Okay. So at least on the impound itself, the  
10 only caliber referenced is .9 millimeter?

11 A Yes. If I open them up, I could tell you what  
12 caliber they are.

13 Q Don't worry. We may get to that. That's fine.  
14 Let's move on to 1677. After the search warrant at  
15 1676, you then go over and conduct a search warrant at 1677?

16 A Yes.

17 Q Now, I'm guessing that after the SWAT team goes  
18 in and does their thing and drags Mr. Counts out that the  
19 house remains secure until such time you're able to go in and  
20 do your search?

21 A Yes.

22 Q I'm showing you what's been marked as State's  
23 Proposed Exhibits 81 through 96 and I'd ask you to flip  
24 through those.

25 A (Complying.)

1 Q Did you have a chance to look at those?

2 A Yes.

3 Q Do those appear to be true, fair, and accurate  
4 depictions of both 1677 as well as the evidence that was  
5 collected from 1677?

6 A Yes.

7 MR. DIGIACOMO: Move to admit 81 through 96.

8 MR. GENTILE: Let me see them just for a second. I  
9 know I've looked at them.

10 No objection.

11 THE COURT: No objection, Mr. Arrascada?

12 MR. ARRASCADA: No, Your Honor.

13 THE COURT: All right. That will all be admitted.

14 (State's Exhibits 81 through 96 admitted.)

15 BY MR. DIGIACOMO:

16 Q Showing you 82, that's the house across the  
17 street, 1677?

18 A Yes.

19 Q And then there's a bunch of damage to this  
20 home. Were you present when the damage was -- let me rephrase  
21 that. Were you within earshot when the damage was done to  
22 this particular house?

23 A Yes, I was.

24 Q Okay. Going to State's proposed -- or State's  
25 Exhibit No. 88, describe for us what we're looking at.

1           A     Right there we're looking at a back portion of  
2 the residence that has -- is basically a TV room where you  
3 would have a couch and a love seat. You could tell that the  
4 couch has been pulled away from the wall as well as the love  
5 seat. As basically SWAT went through the house, they tipped  
6 over some of those items to make sure that Mr. Counts wasn't  
7 hiding behind them or any other persons inside the house.

8           Q     On the table there, do you see an item of  
9 evidentiary value?

10          A     Yes.

11          Q     And what is that?

12          A     That's a small black purse.

13          Q     It's actually opened, and inside the black  
14 purse is the identification of who?

15          A     Kenneth Counts.

16          Q     Now, that couch that we just saw that's  
17 upended -- showing you State's Exhibit No. 90 -- was there  
18 something underneath that couch?

19          A     Yes.

20          Q     What is it?

21          A     There are fliers to the Palomino Club. They're  
22 actually VIP cards. There's a Swisher Sweet cigar -- little  
23 package, and there's some money that's strewn on the floor  
24 there.

25          Q     State's Exhibit No. 91 is a closeup of those?

1 A Yes.

2 Q Eventually those items are recovered and then  
3 processed back at the lab, correct?

4 A Yes.

5 Q Showing you State's Exhibit No. 93, what are  
6 you trying -- well, let me ask you this: Who's the person in  
7 the photograph?

8 A There are certain attributes of me there, one  
9 of them being my watch, and that's me holding open the purse  
10 showing the money that was inside the purse.

11 Q Okay. And eventually that's counted down as  
12 well?

13 A Yes.

14 Q Okay. And then showing you State's Proposed  
15 Exhibit No. 95 -- oh, sorry, State's Exhibit No. 95, what's  
16 depicted in that photograph?

17 A Those are what the evidence vault, as well as  
18 us, describe as lifts, where fingerprints are possibly  
19 located. They would put the tape on there and then they would  
20 take the tape off and remove them onto the cards to be tested  
21 at a later time.

22 Q Showing you what's marked as State's Proposed  
23 Exhibits No. 72 and 73, do they appear to be latent lift  
24 cards?

25 A Yes.

1 Q And do they appear to be the latent lift cards  
2 that were recovered off of the VIP cards that were found in  
3 1676 -- 1677 E Street?

4 MR. GENTILE: Foundation, please. Objection.  
5 Foundation.

6 THE COURT: Foundation?

7 MR. ARRASCADA: Your Honor --

8 MR. DIGIACOMO: I'll rephrase.

9 THE WITNESS: Do you want me to go through one at a  
10 time?

11 MR. ARRASCADA: Can we approach?

12 MR. GENTILE: There's no question pending.

13 THE COURT: If you want to approach and look at  
14 them, that's fine.

15 MR. GENTILE: Yeah, but right now I don't think  
16 there's a question pending. I imposed --

17 THE COURT: No, I know. And I asked Mr. DiGiacomo  
18 to lay a foundation, and I believe that's --

19 MR. GENTILE: Okay.

20 THE COURT: -- what he's going to do.

21 And Mr. Arrascada may also approach if he'd like to  
22 look at the exhibit up close.

23 MR. ARRASCADA: May Mr. Gentile come with me?

24 THE COURT: I suppose.

25 MR. ARRASCADA: Thank you.

1 THE WITNESS: Do you want to look at them first?  
2 THE CLERK: I'm sorry, can I just clarify something?  
3 THE COURT: Sure.  
4 THE CLERK: He's looking at 72 and 73.  
5 THE COURT: Are those proposed 72 and 73 --  
6 THE CLERK: No, they were admitted because he  
7 admitted a whole bunch together, but he didn't give them to  
8 me.  
9 MR. DIGIACOMO: 172.  
10 THE COURT: No. No.  
11 MR. DIGIACOMO: 172 and 173.  
12 THE COURT: Okay. Those are proposed 172 and 173.  
13 THE CLERK: Thank you.  
14 MR. DIGIACOMO: May I resume my questioning?  
15 MR. GENTILE: I don't think there's a question  
16 pending.  
17 MR. DIGIACOMO: That's what I'm asking the Court,  
18 may I resume.  
19 THE COURT: Oh, I'm sorry. I thought you were  
20 talking to him -- the witness. Please ask a question,  
21 Mr. DiGiacomo.  
22 MR. DIGIACOMO: Thank you, Judge.  
23 BY MR. DIGIACOMO:  
24 Q Detective, when -- well, let me ask you this:  
25 The jury's already heard what a crime scene analyst does when

1 they do a latent lift, but just briefly --

2 THE COURT: No, he's laying a foundation.

3 BY MR. DIGIACOMO:

4 Q -- when a crime scene analyst lifts that tape,  
5 what do they do with the tape that you just saw on State's  
6 Exhibit No. 95?

7 A They place on a cardboard card the tape as well  
8 as the powder that they put on the original item that they  
9 were processing. They put the tape over that, they remove the  
10 tape, and then they put the tape onto the card.

11 Q Okay. And then do they also label the card  
12 with certain unique identifying information so that you can  
13 make sure that the lift that they just did corresponds to --  
14 or you know later on when you get to court what it is?

15 A Yes.

16 Q Okay. And that information is then laid out on  
17 the top of the card, correct?

18 A That's correct.

19 Q . All right. Let's start with some of that  
20 unique identifying information. As -- in the Palomino murder  
21 for hire case, does it have a unique identifying number at the  
22 Las Vegas Metropolitan Police Department?

23 A Yes.

24 Q And what number is that?

25 A It's an event number, which is -- anytime

1 someone calls into Metro, an event is made up, and it's a  
2 computer generated event and it starts with the year, the  
3 month, the date and then whatever call came into Metro. So on  
4 this card, you would see 050519. That would mean, you know,  
5 2005, May the 19th, and the event was the 3,516th call into  
6 Metro. That's what the event number is on these cards.

7 Q So each and every item of evidence which is  
8 impounded at least under that event number is associated with  
9 this case?

10 A Yes.

11 Q Okay. Does the person who took the lift also  
12 place on there the -- their identifier, their name or P number  
13 or something like that?

14 A Yes.

15 Q And how is it that they identify it?

16 A They put their last name and their badge number  
17 or the P number.

18 Q That's what I was going to ask you. Is a P  
19 number unique to an individual who works for the Las Vegas  
20 Metropolitan Police Department?

21 A Yes.

22 Q Okay. Do they also describe the victim in the  
23 particular case?

24 A Yes.

25 Q And do they describe the location where the

1 print was lifted?

2 A Yes.

3 Q As well as the actual physical address where it  
4 was lifted?

5 A Yes.

6 Q And do they list the item from which it was  
7 lifted from?

8 A Yes.

9 Q And all of that information is contained there  
10 on this card?

11 A Yes.

12 Q And all of those -- all that information  
13 reflects that Louise Rhinehart lifted those prints off of the  
14 items which were depicted in State's Exhibit No. 95?

15 A Yes.

16 MR. GENTILE: I have an objection --

17 THE COURT: Are those cards made at the time that  
18 the print is lifted? Is the print transferred from whatever  
19 it's lifted off of and put on the card contemporaneously?

20 THE WITNESS: They would take and put it on a card,  
21 all right --

22 THE COURT: Right.

23 THE WITNESS: -- then it would be brought back to  
24 the lab, then the sticker would be placed on it, which is the  
25 sticker here, so then it gets sent over to latent prints and

1 they do the physical examination comparison after I request --

2 THE COURT: Okay.

3 THE WITNESS: -- a comparison.

4 MR. DIGIACOMO: I haven't offered them yet  
5 because -- well, I won't say why. But I won't offer them at  
6 this time. We have another witness who will actually -- I'll  
7 offer it through.

8 MR. GENTILE: You'll offer it then?

9 MR. DIGIACOMO: I'll offer it --

10 THE COURT: He hasn't moved to --

11 MR. DIGIACOMO: -- through the actual print --

12 MR. GENTILE: That's what I'm waiting for. Thank  
13 you.

14 THE COURT: He hasn't moved to admit them.

15 MR. DIGIACOMO: You don't have any objection to the  
16 Louise --

17 MR. GENTILE: I don't want to be a stickler. I'm  
18 fine. We'll wait for the right witness.

19 BY MR. DIGIACOMO:

20 Q Once last thing. In addition to all this stuff  
21 that Louise Rhinehart would have put on here, looking at these  
22 cards, you can actually see information put on there by a  
23 fingerprint examiner, someone who actually tells whose  
24 fingerprint that is?

25 A Yes.

1 Q And that information draws certain conclusions  
2 from their expertise, correct?

3 A Yes.

4 Q We'd ask them what that answer is?

5 A Yes.

6 Q All right. Let's quickly go through the rest  
7 of the items which were collected out of 1677. State's  
8 Exhibit No. 165, proposed 165, do you recognize that?

9 A Yes. This is the black --

10 MR. ARRASCADA: Yes, Your Honor. His answer, Yes.  
11 Do you recognize it? Yes.

12 THE COURT: Yes.

13 MR. DIGIACOMO: Okay.

14 BY MR. DIGIACOMO:

15 Q What is it?

16 A It's the black pouch which we saw in the photo,  
17 in one of the photos.

18 Q Okay. The black pouch that had Kenneth Counts'  
19 ID in it?

20 A Yes.

21 Q Okay. And then State's Exhibit No. 161, does  
22 that appear to be the package that contains the five \$100  
23 bills out of that purse?

24 A Yes.

25 MR. DIGIACOMO: I guess I should move to admit 165

1 and 161.

2 THE COURT: Any objection to 161 and 165?

3 MR. GENTILE: No, Your Honor.

4 MR. ARRASCADA: No, Your Honor.

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

6 (State's Exhibits 161 and 165 admitted.)

7 BY MR. DIGIACOMO:

8 Q State's Proposed Exhibit No. 162, does that  
9 appear to be a package that contains the chemically processed  
10 \$95 that was found under the couch by the VIP cards?

11 A Yes.

12 MR. DIGIACOMO: Move to admit 162.

13 THE COURT: Any objection to 162?

14 MR. GENTILE: Let me see that, please.

15 MR. ARRASCADA: May I also, Your Honor?

16 THE COURT: I'm sorry?

17 MR. ARRASCADA: May I also?

18 THE COURT: Yes.

19 MR. GENTILE: No objection.

20 MR. ARRASCADA: No objection.

21 THE COURT: And that was 162?

22 MR. DIGIACOMO: 162.

23 THE COURT: All right.

24 (State's Exhibit 162 admitted.)

25 BY MR. DIGIACOMO:

1 Q State's Proposed 168, is that the package  
2 containing the Optimal Beach cigarillo for five with two  
3 cigars in it?

4 A Yes.

5 MR. DIGIACOMO: Move to admit 168.

6 MR. GENTILE: No objection.

7 THE COURT: All right.

8 MR. ARRASCADA: No, Your Honor.

9 THE COURT: All right. 168 is admitted.

10 (State's Exhibit 168 admitted.)

11 BY MR. DIGIACOMO:

12 Q And lastly, State's Proposed Exhibit 160, is  
13 that the package that contains not only that business card we  
14 saw but the various VIP Palomino cards that we saw in the  
15 picture?

16 A Yes.

17 MR. DIGIACOMO: Move to admit 160.

18 THE COURT: Any objection to 160?

19 MR. GENTILE: No, Your Honor.

20 MR. ARRASCADA: No.

21 THE COURT: All right. 160 is admitted.

22 (State's Exhibit 160 admitted.)

23 BY MR. DIGIACOMO:

24 Q After completing the investigation at  
25 Mr. Counts' house, you eventually go back to the homicide

1 offices?

2 A Yes.

3 Q Okay. And tell me approximately what time it  
4 is. Are we now in the early morning hours of Sunday?

5 A Yeah, late in the evening or early morning.

6 Q Okay. And then let me ask you this: Were you  
7 off on Sunday?

8 A Yeah.

9 Q Okay. So you finally got some sleep on Sunday.  
10 Does there come a point in time when, on Monday, you decide to  
11 do anything to further the investigation?

12 A Yes, that would be the 23rd.

13 Q And on the morning of May 23rd, did you seek  
14 the assistance of any individual?

15 A Yes.

16 Q Who did you seek assistance from?

17 A Deangelo Carroll.

18 Q Did you have to check -- or did you utilize  
19 another agency in dealing with Mr. Carroll at that point?

20 A Yes.

21 Q And who was that?

22 A Special Agent Bret Shields of the FBI.

23 Q And why was the FBI contacted?

24 A Because I could not get ahold of the LVMPD  
25 technical/analytical section.

1 Q What did you want from them?

2 A To see if they could provide some sort of  
3 recording device similar to what the FBI -- I knew that they  
4 had readily available to me.

5 Q And did the FBI agree to help?

6 A Yes.

7 Q And does Bret shields, in fact, provide a  
8 recording device?

9 A Yes.

10 Q And at some point do you meet, along with Bret  
11 Shields, Deangelo Carroll?

12 A Yes.

13 Q And do you place the recording device on him?

14 A Yes.

15 Q Where do you meet with him?

16 A Jerry's Nugget.

17 Q Right across the street from the Palomino?

18 A Yeah, in the back, though.

19 Q Okay. At that time do you have a discussion  
20 with Mr. Carroll as to what it is -- or do you provide him any  
21 information to prompt the conversation?

22 MR. GENTILE: Can we get a time predicate, please,  
23 foundation?

24 MR. DIGIACOMO: We're on Monday morning, but okay.

25 THE COURT: All right. About what time of day was

1 this that the meeting occurred?

2 THE WITNESS: I believe it was in the afternoon. We  
3 can look at the exact time because it's recorded when the  
4 equipment is placed on him.

5 BY MR. DIGIACOMO:

6 Q And we will get to that transcript, but if I  
7 showed you that transcript, will it refresh your recollection?

8 A Yes.

9 Q Okay. Approximately what time did you --

10 A 2:35 the equipment was placed on Mr. Carroll.

11 MR. GENTILE: 2:35?

12 THE WITNESS: 2:35 in the afternoon.

13 MR. DIGIACOMO: P.m.?

14 THE WITNESS: P.m, yes.

15 BY MR. DIGIACOMO:

16 Q Prior to placing the recording device on him,  
17 did you have discussions with Mr. Carroll as to what it is you  
18 wanted him to do?

19 A Yes.

20 Q And what is it that you wanted Mr. Carroll to  
21 do?

22 A To verify some of the information and to get  
23 information on Mr. Hidalgo.

24 Q When you say Mr. Hidalgo, who are you referring  
25 to? There's two in the room.

1 A Mr. H.

2 Q And what's he wearing?

3 A He's wearing a suit and tie and seated in the  
4 front row here.

5 MR. DIGIACOMO: May the record reflect the  
6 identification of Mr. Hidalgo, Jr.

7 THE COURT: Yes, the record will reflect ID of  
8 Mr. Hidalgo, Jr.

9 MR. DIGIACOMO: Thank you.

10 BY MR. DIGIACOMO:

11 Q And let me ask you this question: When you  
12 were sending Mr. Carroll into the room -- well, when you put  
13 the recording device on him, did you specifically tell him who  
14 you wanted to hear on the recording device?

15 A Yes.

16 Q Who did you tell him you wanted to hear?

17 A Mr. H.

18 Q Okay. So at this point once the recording  
19 device is placed on him, how does it work from there? What  
20 happens?

21 A He's surveilled from that location down to  
22 Simone's Auto body, which is down off Meter and Sunset. We  
23 have the criminal apprehension team as well as the homicide  
24 guys all following him the entire way.

25 Q Do you have surveillance set up also at

1 Simone's to identify who's present, not present, those types  
2 of things?

3 A Yes.

4 Q Okay. And was Mr. Carroll surveilled down to  
5 Simone's Auto Plaza?

6 A Yes.

7 Q Okay. And did you actually witness him or did  
8 members of the team witness him enter Simone's?

9 A Yes.

10 Q At some point in time does members of the team  
11 see him exit Simone's?

12 A Yes.

13 Q And then do you and FBI Agent Bret Shields  
14 contact Deangelo Carroll?

15 A Yes.

16 Q And when you do so, do you recover the  
17 recording device?

18 A Yes.

19 Q Okay. When you contact Deangelo Carroll, does  
20 he provide you any physical items?

21 A Yes.

22 Q Tell us what he provides you.

23 A \$1,400 of U.S. currency and a bottle of  
24 Tanqueray 10, which is gin.

25 Q Showing you -- showing you now State's Proposed

1 Exhibit 202 -- now, let me back up just a little bit. Once  
2 you received the money and the Tanqueray bottle, you have to  
3 pass the money and the Tanqueray bottle off because you're  
4 going to go do something?

5 A Yes.

6 Q What's that?

7 A I'm going to go with Special Agent Shields and  
8 download the recording device and -- to get the actual  
9 conversations that happened inside Simone's to determine who's  
10 actually on the recording device.

11 Q And eventually after you turned it over, it  
12 gets turned over to Louise Rhinehart, the items, the Tanqueray  
13 and the \$1,400?

14 A Yeah. Detective Vaccaro, the acting sergeant,  
15 also meets me and Special Agent Kias. He takes the bottle of  
16 Tanqueray and the money and brings it to the lab, the forensic  
17 lab.

18 Q Showing you now State's Proposed Exhibit  
19 No. 203, does that appear to be the packaging for the bottle  
20 of Tanqueray impounded by Louise Rhinehart under this event  
21 number?

22 A Yes.

23 MR. DIGIACOMO: Move to admit 203.

24 THE COURT: Any objection to 203?

25 MR. GENTILE: Just a moment. No objection.

1 THE COURT: Mr. Arrascada?

2 MR. ARRASCADA: Court's indulgence.

3 MR. GENTILE: Wait. The Tanqueray bottle?

4 THE COURT: Right.

5 MR. GENTILE: Relevance as to Mr. Hidalgo, Jr.

6 MR. ARRASCADA: We don't object, Your Honor.

7 THE COURT: All right. That will be admitted.

8 MR. DIGIACOMO: It's never been opened, so when we  
9 do open it -- it's been chemically processed -- it will be 203  
10 A.

11 THE COURT: Okay. But we won't be opening it with  
12 this witness; is that right?

13 MR. DIGIACOMO: I don't want to. I heard the  
14 defense may want to see -- open the package, but it's been  
15 chemically processed. I don't have gloves and --

16 THE COURT: Okay. We have gloves.

17 MR. DIGIACOMO: Okay.

18 THE COURT: If we get to that, we do have gloves.

19 BY MR. DIGIACOMO:

20 Q Okay. So there's a bottle of Tanqueray 10 in  
21 here, correct?

22 A Yes.

23 Q What does Tanqueray 10 look like? Do you  
24 remember?

25 A Yeah. Tanqueray 10 is -- it's a bottle about

1 this big (indicating). It's thin and it's green and it's top  
2 shelf gin.

3 Q Okay. Showing you State's Proposed Exhibit  
4 No. 202, is this the \$1,400 that's received from Deangelo  
5 Carroll and eventually passed on to Luis Rhinehart for  
6 impound?

7 A Yes.

8 MR. DIGIACOMO: Move to admit 202.

9 THE COURT: Any objection to 202?

10 MR. GENTILE: Same objection as to Mr. Hidalgo, Jr.

11 THE COURT: All right.

12 MR. ARRASCADA: No objection.

13 THE COURT: 202 will be admitted.

14 (State's Exhibit 202 admitted.)

15 BY MR. DIGIACOMO:

16 Q After you pass off this information, is  
17 Deangelo Carroll's surveillance going anywhere, or what  
18 happens with Deangelo Carroll?

19 A . I do a debrief in the presence of Detective  
20 Shields to determine -- you know, at Sunset and the Boulevard,  
21 we actually pull into the Callaway Golf parking lot and that's  
22 where we meet Deangelo and I say, What happened? Tell me what  
23 happened.

24 Q Okay. Without telling us what his response  
25 was --

1           A     Okay.

2           Q     -- after he talks to you, do you let him go on  
3 his way?

4           A     Yes.

5           Q     And then do you go anywhere?

6           A     Yes.

7           Q     Where do you go?

8           A     I go with Special Agent Shields to the FBI  
9 office, which was, in 2005, located on Charleston and 8th or  
10 9th over here.

11          Q     And do you download the recording from this  
12 device?

13          A     Yeah. We go into the building, up into the  
14 machine. I'm standing next to Special Agent Shields and he  
15 downloads the recording onto a disk and the disk is given to  
16 me.

17          Q     Now, when you listen to that recording, can you  
18 describe the quality of the recording?

19          A     The quality was poor. Some things you could  
20 hear and some things there was a lot of static.

21          Q     At some point in time, did you take that  
22 recording and the second one we'll talk about in a minute and  
23 send it anywhere?

24          A     I sent it -- I tried to bring it to one place  
25 and eventually your office sent it to a place in Ohio.

1 Q Okay. Let me back up. You'd sent one to the  
2 FBI, correct?

3 A Yes.

4 Q All right. And they sent us back one, correct?

5 A Yes.

6 Q And then you learned that our office sent one  
7 to Toledo, Ohio, correct?

8 A Yes.

9 Q And they sent us back one?

10 A Yes.

11 Q All right. After listening to the recording,  
12 did you decide that you wanted to send Deangelo Carroll back  
13 into Simone's?

14 A Yes.

15 Q And was he recontacted?

16 A Yes.

17 Q And did you, in fact, once again, meet with him  
18 again, put a wire on him, a body recording device on him, and  
19 send him back into Simone's?

20 A Yes.

21 Q And eventually did he come back out?

22 A Yes.

23 Q And when he came back out, did you once again  
24 recover from him some money?

25 A Yes.

1 Q Approximately how much money?

2 A \$800.

3 MR. GENTILE: Can we have a foundation at least with  
4 respect to the time predicate?

5 THE COURT: The time that he --

6 MR. GENTILE: Well, a day would be nice.

7 THE WITNESS: Okay.

8 MR. DIGIACOMO: Well, I said the next day. That  
9 would be the 24th, but okay.

10 THE COURT: Well, what time about did Deangelo  
11 Carroll go back in?

12 MR. DIGIACOMO: Do you need to look at the  
13 transcript?

14 THE COURT: Will that refresh your memory?

15 THE WITNESS: Yes, it will, Your Honor.

16 THE COURT: All right.

17 MR. DIGIACOMO: Go ahead.

18 THE WITNESS: Okay. 12:00 o'clock noon.

19 THE COURT: And at what time did you then make  
20 contact with Deangelo Carroll again?

21 THE WITNESS: I'd have to look at the -- there are  
22 28 minutes on the second time that there was a big break, so  
23 he surveilled down there for a period of time. He goes in for  
24 a period of time and then he exits and then he meets with me  
25 again. So it would have -- we'd have to look at that again

1 from the end time on the final page.

2 BY MR. DIGIACOMO:

3 Q The talking ends at 5:36 and then there's a  
4 28-minute blank spot and then he walks back out approximately  
5 a half hour later?

6 A Yes.

7 Q Okay. After he walks back out of the club once  
8 again and you meet up with him, he has \$800?

9 MR. GENTILE: Well, I don't want to object, but he  
10 wasn't in the club. He was in a body shop.

11 MR. DIGIACOMO: My mistake.

12 BY MR. DIGIACOMO:

13 Q He walked out of the building?

14 A Yes, Simone's building.

15 Q Okay. And you met up with him?

16 A Yes.

17 Q He had \$800?

18 A Yes.

19 Q You impounded the \$800?

20 A Yes.

21 Q And then did you also take the recording device  
22 from Mr. Carroll?

23 A Yes.

24 Q And did you once again go back and download it?

25 A Yes.

1 Q And was the quality of this one different than  
2 the first one?

3 A Yes.

4 Q Okay.

5 A There was approximately 28 minutes where  
6 nothing was recorded at all.

7 Q And then it starts recording again, correct?

8 A Yes.

9 Q At some point did you also have that one sent  
10 to the FBI?

11 A Yes.

12 Q And you learned my office sent it to Toledo?

13 A Yes.

14 Q Showing you what's been marked as State's  
15 Proposed Exhibits 191, 192 A and 192 B -- let's start with  
16 191 -- does that appear to be the copy gotten back from  
17 Toledo, Ohio?

18 A Yes.

19 MR. DIGIACOMO: Move to admit 191.

20 THE COURT: Which -- 191 is the first recording or  
21 the second recording?

22 MR. DIGIACOMO: It's actually both recordings on --

23 MR. GENTILE: Objection, relevance. I made the  
24 objection pretrial.

25 THE COURT: Right.

1 MR. GENTILE: And hearsay.  
2 THE COURT: Right.  
3 MR. ARRASCADA: If I may see it.  
4 THE COURT: Okay.  
5 THE WITNESS: Ohio FBI.  
6 MR. ARRASCADA: We object on hearsay.  
7 THE COURT: All right. Subject to the record that's  
8 already been made, that will be admitted.  
9 MR. DIGIACOMO: Thank you.  
10 (State's Exhibit 191 admitted.)  
11 BY MR. DIGIACOMO:  
12 Q And so the jury knows, State's Exhibit 191, the  
13 Toledo, Ohio one is tracks one and two, correct?  
14 A Yes, this is the 23rd and the 24th.  
15 Q Okay. And track -- well, one track -- well,  
16 I'll stop and ask questions the second way.  
17 Now, 192 A -- 192 A is one track, correct?  
18 A Yes.  
19 Q And 192 B is the second track, correct?  
20 A Yes.  
21 Q From the FBI?  
22 A Yes.  
23 MR. DIGIACOMO: I move to admit 192 A and B.  
24 THE COURT: All right. Same objections?  
25 MR. ARRASCADA: Same objection, Your Honor.

1 MR. GENTILE: Same objection.

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

3 (State's Exhibits 192A and B admitted.)

4 MR. DIGIACOMO: May I publish?

5 THE COURT: You may.

6 I'll see counsel up here at the bench.

7 Mr. DiGiacomo, were you intending to play the tape  
8 now?

9 MR. DIGIACOMO: Yes.

10 THE COURT: Okay. You know what, ladies and  
11 gentlemen, we're moving into the playing of the tape which may  
12 take a while, so let's go ahead and take a quick break until  
13 3:50.

14 Once again you're reminded of the admonishment that  
15 is in effect. Of course, during the break you're not to  
16 discuss the case or read or watch, listen to anything relating  
17 to the case. Notepads in your chairs. We'll see you back  
18 here at 3:50.

19 Those jurors I saw -- maybe one or more had  
20 questions, just go ahead and hand them to Jeff on your way out  
21 of the courtroom.

22 (Jury recessed at 3:43 p.m.)

23 THE WITNESS: Do you want me to do --

24 THE COURT: Do we need him to --

25 MR. DIGIACOMO: I don't care.

1 THE COURT: All right. You can stay or go. It's up  
2 to you.

3 (Off-record colloquy)

4 THE COURT: Is this on the record or just a bench  
5 conference?

6 MR. DIGIACOMO: Well --

7 MR. GENTILE: You called us.

8 THE COURT: Oh, I called you. Well, that's --

9 MR. GENTILE: How would we know?

10 THE COURT: No, that was before we were going to  
11 take a break. And the reason I called you up here, which I  
12 can now ask you on the record, was before we were going to  
13 take the break, you had earlier asked me to instruct the jury  
14 any discussion with respect to rat poisoning and a plan to  
15 cause death or harm to Mr. Zone, Mr. Taoipu and/or Mr. Counts  
16 is not to be considered against Mr. Hidalgo, Jr. I think the  
17 appropriate time to give that instruction --

18 MR. GENTILE: Would be now, yes.

19 THE COURT: -- would be now. And I just wanted to  
20 verify with Mr. Gentile that it is your desire that I give  
21 this instruction --

22 MR. GENTILE: It is.

23 THE COURT: -- now before we play the tape.

24 MR. GENTILE: It is my desire.

25 THE COURT: And then before we play any type, I'm

1 going to tell the jury, Ladies and gentlemen, as you've heard,  
2 you heard blah, blah, blah, difficult to hear. You're going  
3 to listen to it once without the transcript and then we have  
4 two different transcripts. The Courts not attesting to the  
5 accuracy of either one in my instruction.

6 MR. GENTILE: Right.

7 THE COURT: Okay. Now, logistics.

8 MR. DIGIACOMO: Well, they want to play it three  
9 times. It can't be done by 5:00. It can be played twice by  
10 5:00, but not three times.

11 THE COURT: Right. Well, you know, it is what it  
12 is.

13 MR. GENTILE: So we do it twice by 5:00 and we do it  
14 once tomorrow morning or -- you're going to go past 5:00 --

15 MR. DIGIACOMO: But the first time they're going to  
16 hear it without transcript, the second time they're going to  
17 hear it with my transcript, so --

18 THE COURT: Right.

19 MR. DIGIACOMO: -- and then you're going to go  
20 overnight, which is the problem that they had.

21 MR. ARRASCADA: Aren't we staying until 6:00?

22 THE COURT: I had wanted to stay until 6:00, but  
23 then Mr. Gentile had a conflict. My bailiff's going to ask --  
24 okay.

25 MR. PESCI: Judge, if I could, I have a concern.

1 The juror seated in seat 13 I've seen doze off at least three  
2 times.

3 MR. GENTILE: Which one is that?

4 MR. PESCI: He is the one from Hawaii.

5 THE COURT: Okay. I haven't seen her zone off. The  
6 juror seated in Chair No. 5 is sick with a cold. She is here  
7 today. I saw her shutting her eyes. I had my bailiff come  
8 over. She appeared just to be closing her eyes and resting  
9 because then she moved and --

10 MR. GENTILE: Right. She --

11 THE COURT: So I've been watching her. I did not  
12 notice Juror No. 13 shutting her eyes.

13 MR. DIGIACOMO: She was sleeping yesterday.

14 THE COURT: Are you sure she was sleeping?

15 MR. DIGIACOMO: Yesterday there was no doubt.

16 MR. PESCI: Yeah.

17 MR. DIGIACOMO: I'd just ask that you keep  
18 monitoring her.

19 THE COURT: Yeah, I mean, basically, Jeff, you need  
20 to watch the jurors and if a juror looks like they're falling  
21 asleep, you either need to get the juror next to them to wake  
22 them up or you need to go over yourself to wake them up.  
23 Okay.

24 THE MARSHAL: Okay.

25 THE COURT: Because I did not catch 13. I was so

1 fixated on watching five that I did not see that. So we'll  
2 just be mindful of it. And then if anyone feels concern that  
3 Juror No. 13 is not effectually participating, we'll raise  
4 that issue another time.

5 MR. ARRASCADA: Judge, I have one issue on the  
6 limiting instruction that you're giving. Can you insert  
7 "allegation" where appropriate?

8 THE COURT: Okay. Where would that be?

9 MR. ARRASCADA: Can you provide it to me again?

10 THE COURT: All right. Here's what I was going to  
11 say: You're instructed that any discussion with respect to  
12 rat poisoning and/or a plan to cause death or harm to  
13 Mr. Zone, Mr. Taoipu, and/or Mr. Counts is not being offered  
14 as evidence against Mr. Hidalgo, Jr.

15 I mean, I could say "any alleged discussion," if you  
16 want. I don't know where else --

17 MR. DIGIACOMO: Put "alleged plan."

18 THE COURT: Oh, that's good. Thank you.

19 MR. GENTILE: Well, it's --

20 MR. DIGIACOMO: Discussion of rat poisoning, we all  
21 agree it says rat poisoning but --

22 MR. ARRASCADA: Any alleged --

23 THE COURT: That's better. Any alleged plan to  
24 cause -- that's better.

25 MR. ARRASCADA: Yeah, I appreciate that. Thank you,

1 Counsel.

2 THE COURT: You're right. Thank you. That's good.

3 All right. Here are some juror questions.

4 This one -- I think there's one question we could  
5 probably ask, one or two on the bottom; the top two, we  
6 cannot.

7 Did you see these?

8 MR. PESCI: Judge, while we're looking at that, as  
9 far as scheduling tomorrow, what should I tell my witnesses  
10 what time we're starting?

11 THE COURT: 10:40.

12 MR. PESCI: Okay.

13 (Court recessed at 3:48 p.m. until 3:59 p.m.)

14 (Outside the presence of the jury.)

15 MR. GENTILE: Your Honor, you were going to ask  
16 those questions before the tapes are played?

17 THE COURT: You mean the advisement?

18 MR. ARRASCADA: The admonishment.

19 MR. GENTILE: No, no. The questions that the jury  
20 submitted.

21 THE COURT: Oh, I can ask those now. That's fine.

22 MR. GENTILE: Yeah, they might want to know.

23 THE COURT: All right.

24 (Off-record colloquy)

25 (Jury reconvened at 4:01 p.m.)

1 THE COURT: All right. Everyone may be seated. The  
2 record will reflect that court is now back in session.

3 And right before our break, Mr. DiGiacomo had asked  
4 to play the tape, but before we do that, we have a few juror  
5 questions and I'm going to just ask those of you at this time.

6 THE WITNESS: Oh, wow.

7 THE COURT: All right. What was the time difference  
8 between the execution of the two search warrants on the  
9 houses? Was it within hours or minutes?

10 THE WITNESS: Probably close to an hour.

11 THE COURT: Close to an hour. Okay.

12 THE WITNESS: Yes, because -- do you want me to  
13 explain that?

14 THE COURT: Sure.

15 THE WITNESS: Once you have a warrant for one house,  
16 you can't just -- we can surround the house, but we can't make  
17 entry into the house until we actually get on the phone and  
18 get another warrant. So we had to get a judge, explain the  
19 whole details, and then before they can execute the search  
20 warrant, a minimum of an hour had gone by. But they had  
21 encircled the house and made sure everybody was out of the  
22 house.

23 THE COURT: Right. And nobody went in the house?

24 THE WITNESS: That's correct.

25 THE COURT: And then a juror wants to know why was

1 Carroll sent in for a second interview, a second -- wearing a  
2 wire. Why was he sent in a second time?

3 THE WITNESS: Because the object of the whole case  
4 was that we were looking for Mr. H on the wire, so on the  
5 second case, he was -- ran in cold, basically, meaning that he  
6 met with us, he put the equipment on, we said, Go there. So  
7 there was no way that they knew that he was coming down to  
8 Simone's so he just showed up there.

9 So we said, yeah, maybe we'll just catch him on the  
10 second time. We didn't believe that we had enough on the  
11 first conversation so we put it on him a second time the next  
12 day.

13 THE COURT: All right. In conducting your interview  
14 with the various people in this case, did you ask anyone about  
15 the placement of the hat on the body of Timothy Hadland?

16 THE WITNESS: There was -- there was some  
17 interviewing done about questions -- questions about the hat,  
18 was he wearing a hat, was the hat around his neck. Those type  
19 of questions were asked. However, I don't think we -- anyone  
20 came up with -- specifically that he was wearing the hat when  
21 he got out of the car.

22 THE COURT: And then don't tell us what anyone may  
23 have said, but who did you ask about the hat, if you remember?

24 THE WITNESS: The only statements they reviewed  
25 prior to this were Deangelo's and Mr. Zone's. I believe that

1 Mr. Zone was asked something about the hat.

2 THE COURT: Okay. And do you remember if you asked  
3 anybody else, or you just don't remember?

4 THE WITNESS: I don't remember specifically about  
5 the hat portion.

6 THE COURT: Okay.

7 THE WITNESS: Okay.

8 THE COURT: All right. And we'll just be at ease  
9 for a moment.

10 Counsel, approach.

11 (Off-record bench conference)

12 THE COURT: All right. I have some questions --  
13 more juror questions.

14 THE WITNESS: Okay.

15 THE COURT: Now, if any of these call for an answer  
16 and you're not sure of an answer, obviously don't speculate or  
17 guess.

18 THE WITNESS: Okay.

19 THE COURT: Why are the tapes not clear recordings?

20 THE WITNESS: I can answer that question.

21 THE COURT: All right. Please do.

22 THE WITNESS: Okay. A lot of times with recording  
23 equipment, where they're placed on the body are important and  
24 the type of recording device that it is. When someone's  
25 walking, you can hear the people walking because their

1 clothes, you know, actually move and that creates some noise.  
2 So as the person moves their body, there's some static  
3 electricity and the clothing might hit the recording device or  
4 just movement, you know, just might interrupt the recording.

5 THE COURT: All right. And the recording device,  
6 meaning the microphone that picks up the sound, where was that  
7 on Mr. Carroll's body, if you remember?

8 THE WITNESS: It was on his waistband.

9 THE COURT: Okay. And who makes the determination  
10 of where to place it? Was that you or was that the FBI agent?

11 THE WITNESS: It's placed on the normal place. We  
12 always place it on the same place.

13 THE COURT: Okay. And now if you know the answer to  
14 this, the 28 minutes of blank tape at the end, can you explain  
15 that? Do you know why it was blank at the end?

16 THE WITNESS: I would be only speculating as to what  
17 I was told by --

18 THE COURT: Okay. Then don't speculate.

19 Do you know why so much time transpired when  
20 Deangelo came out of Simone's after the second recording?

21 THE WITNESS: After like -- I don't understand the  
22 question. Why the lapse was 28 minutes, is that what the  
23 question's about?

24 MR. DIGIACOMO: Maybe I can ask the question --

25 THE COURT: Yeah, maybe you can clarify the

1 question, Mr. DiGiacomo.

2 BY MR. DIGIACOMO:

3 Q You've actually listened to the original from  
4 5/24, correct?

5 A Yes.

6 Q Okay. And the original recording itself has a  
7 lead in by the FBI Agent Bret Shields, basically what they're  
8 doing?

9 A Yes.

10 Q And then it's placed on him activated and you  
11 can actually hear him walk into Simone's, correct?

12 A Yes.

13 Q And then the conversation starts?

14 A Yes.

15 Q And then at some point during the conversation  
16 the recording device no longer captures any more conversation,  
17 correct?

18 A That's correct.

19 THE COURT: Now, can you tell if the device is  
20 turned off or if it's just not capturing sound?

21 MR. DIGIACOMO: That was my next question.

22 BY MR. DIGIACOMO:

23 Q It's kept active during that 28-minute time  
24 period, correct?

25 A Yes. We just cant hear any conversation.

1 Q You can't hear anything for 28 minutes and then  
2 after 28 minutes you can hear Mr. Carroll walking out of  
3 Simone's Auto Plaza?

4 A Yes.

5 Q And based upon that, do you have a belief in  
6 your experience as to whether or not --

7 MR. ARRASCADA: Objection, Your Honor.

8 MR. DIGIACOMO: I haven't --

9 THE COURT: Well, let ask the question.

10 MR. DIGIACOMO: -- finished the question.

11 BY MR. DIGIACOMO:

12 Q -- whether or not the device was removed from  
13 Mr. Carroll because can you -- let me rephrase that. Can you  
14 hear anything during that 28 minutes related to talking  
15 between two individuals?

16 A I could hear no talking.

17 Q During that 28 --

18 A During that 28 minutes.

19 Q And I think another witness will clear it up.

20 THE COURT: All right.

21 MR. DIGIACOMO: I have a couple of other questions.

22 Can I ask those before we play the --

23 THE COURT: All right. You can follow up. That's  
24 fine.

25 BY MR. DIGIACOMO:

1 Q You had indicated that after listening to the  
2 first recording, you decided that you wanted to gather more  
3 evidence, and you sent Mr. Carroll in cold, is what you said?

4 A Yes.

5 Q The first recording that you did, was he being  
6 sent in cold?

7 A No.

8 Q Okay. Had he received -- well, let me rephrase  
9 this. Did he receive a call calling him to Simone's?

10 A Yeah.

11 MR. GENTILE: Objection. Hearsay.

12 THE COURT: Don't testify. If he witnessed it, then  
13 he can answer. Other than that, he can't answer.

14 BY MR. DIGIACOMO:

15 Q Let me rephrase. When Deangelo Carroll went in  
16 to the Palomino -- I'm sorry, into Simone's on the first day,  
17 May 23rd, that Monday, did he have a particular vehicle that  
18 he was driving?

19 A Yes.

20 Q What kind of vehicle was it?

21 A The Palomino.

22 Q The shuttle bus --

23 A The shuttle bus.

24 Q -- or the white Chevy Astro van? Do you  
25 recall?

1 A I don't recall which one.

2 Q Well, let's try and explain the two for the  
3 ladies and gentlemen of the jury.

4 A Okay.

5 Q There's a white Chevy Astro van, correct?

6 A Yes.

7 Q That's just a plain white vehicle?

8 A Yes.

9 Q And that's the vehicle that, based on your  
10 investigation, was used in the homicide?

11 A Yes.

12 Q There's a second vehicle known as the shuttle  
13 bus. Can you describe the shuttle bus to the ladies and  
14 gentlemen of the jury?

15 A The shuttle bus is a large bus that you would  
16 see similar to like a trolley type bus that multiple people  
17 can get on the bus and be transported to wherever they need to  
18 be transported. It's a big bus.

19 Q When Mr. Carroll leaves Simone's on that first  
20 occasion and you guys meet and go over towards where Callaway  
21 is over there and do the initial debrief, what kind of vehicle  
22 is he driving now? Do you recall?

23 A I didn't --

24 Q Or is that one heck of a question? All right.

25 I'll leave that for another witness.

1           Getting back to the hat, when you were initially on  
2 the scene before you found anybody who could tell you anything  
3 about the crime, you find the hat placed on the chest or lying  
4 on the chest of Mr. Hadland, correct?

5           A     Yes.

6           Q     During the course of your investigation, have  
7 you ever been able to determine -- well, let me rephrase that.

8                     Did you know at that time whether or not that's  
9 where the hat fell or whether or not it was placed there? Do  
10 you have any way of determining that solely from looking at  
11 the scene itself?

12          A     The only thing I can determine from looking at  
13 the hat was that there was no defects in the hat, meaning that  
14 the hat wasn't consistent with the wound on the head.

15          Q     Okay. So there's a wound on the top of  
16 Mr. Hadland's head and there's no corresponding blood or  
17 anything on the top of the hat, correct?

18          A     That's correct.

19          Q     Okay. But other than that, from the scene  
20 itself, you were not able to determine whether or not that hat  
21 was -- fell on his body when he fell or if it was later placed  
22 on his body, correct?

23          A     That's correct.

24          Q     During the course of the interviews that you've  
25 conducted, have you, at this point, ever found anybody who

1 said the hat was placed on the body of Mr. Hadland?

2 A No, I have not.

3 Q So based upon your investigation, you can't  
4 tell us -- well, let me rephrase that.

5 All of the information that you have is that's where  
6 the hat fell?

7 A Yes.

8 Q Okay.

9 MR. DIGIACOMO: I guess we could play the recording.  
10 Do we want to --

11 THE COURT: Right.

12 Ladies and gentlemen, in a moment Mr. DiGiacomo is  
13 going to play the recording. The recording will be played.  
14 As you've already heard -- you've heard some of the  
15 recording -- you've heard testimony the recording is somewhat  
16 difficult to understand. That's why it's going to be played  
17 three times.

18 The first time you hear the recording you will not  
19 be given a transcript to aid you. You'll just hear the  
20 recording, and we're going to do that in a minute. After  
21 that, the State is going to hand you a transcript that they've  
22 prepared and play the recording and then the defense has  
23 prepared a transcript of the recording.

24 There is dispute as to the contents of the tape and  
25 therefore the contents of the transcript. The Court has made

1 no determination as to which transcript is accurate or which  
2 transcript is more accurate.

3           The purpose in giving you the transcripts is to aid  
4 you in listening to the tape and trying to understand what is  
5 on the tape. The transcripts are not evidence. They will not  
6 be back in the jury room with you. In fact, once you've  
7 listened to the tape with the transcript, the transcript will  
8 be collected and will not be given back to you.

9           Also, you will not have copies of either transcript  
10 back in the jury deliberation room with you when you go back  
11 there to decide the case.

12           Now, your collective hearing of the tape is what  
13 should control in your deliberations. So if you have -- when  
14 you listen to it with the transcript, if there's something on  
15 the transcript that you do not hear, it is what you hear that  
16 is important. Similarly, if you hear something and it's not  
17 on the transcript, it is your hearing of what -- of what is in  
18 the tape that should control in your deliberations.

19           The tape is evidence and you will have the tape back  
20 in the jury deliberation room with you so that you can all  
21 review it together when you begin your deliberations in this  
22 case. Also, obviously, a device so that you can play the tape  
23 will be provided for everyone. And I believe the earphones  
24 have been passed out.

25           MR. DIGIACOMO: Correct. Can I tell a little bit

1 about the earphones or do you want --

2 THE COURT: I was going to, but if I miss something,  
3 Mr. DiGiacomo, you can pick it up.

4 MR. DIGIACOMO: Thank you.

5 THE COURT: All right. Ladies and gentlemen,  
6 earphones have been provided to assist you in hearing the  
7 tape. Personally I find it easier to hear the tape without  
8 the earphones. Some people find it easier to hear the tape  
9 with the earphones. It's up to you. If you can benefit from  
10 the earphones, great, but if not, feel free not to use the  
11 earphones.

12 Additionally, on the tape, any discussion with  
13 respect to rat poison and/or any alleged plan to cause harm or  
14 death to Mr. Zone, Mr. Taoipu, and/or Mr. Counts is not being  
15 admitted as evidence against Mr. Hidalgo, Jr.

16 Does the State wish the Court to add anything?

17 MR. DIGIACOMO: No, only that there's an on/off  
18 switch on the headsets. There's a volume for each --

19 THE COURT: Right.

20 On one side of the headsets you'll see an on/off  
21 switch and on the other side of the headsets you will see a  
22 volume bottom. All of us are going to be very careful not to  
23 speak while the tape is being played because it's picked up  
24 from these microphones and can be very loud and jarring. So  
25 be mindful of the volume because it can come in quite -- quite

1 loudly. So one switch is on one side and the volume's on the  
2 other side.

3 Anything else, Mr. DiGiacomo?

4 MR. DIGIACOMO: I guess we'll have a break between  
5 the first and the second playing; so, no. I have a couple of  
6 questions for the detective I forgot, but then we can play the  
7 tape.

8 THE COURT: Okay. You can follow back up after the  
9 tape.

10 MR. DIGIACOMO: Well, there's a couple of things I  
11 need --

12 THE COURT: Okay. Well, let me just ask, anything  
13 else the defense would like me to cover recording the tape and  
14 the transcripts?

15 MR. ARRASCADA: No, Your Honor.

16 MR. ARMENI: No, Your Honor.

17 MR. GENTILE: No, Your Honor.

18 THE COURT: All right. Mr. DiGiacomo, ask the next  
19 couple of questions and then you may play the tape.

20 MR. DIGIACOMO: Okay.

21 BY MR. DIGIACOMO:

22 Q One of the things you said is the clothing made  
23 it really hard to hear some of the information that's on the  
24 tape, correct?

25 A Yes.

1 Q Does the volume of the speakers have anything  
2 to do with the quality of the tape?

3 A Yes.

4 Q Can you explain that.

5 A Well, if someone's whispering versus if  
6 someone's talking loud like I talk, you could hear my voice,  
7 but you wouldn't hear it if someone was whispering. It  
8 wouldn't capture that on the recording device. So the louder  
9 the speaker, the easier it is to understand.

10 Q The recording device are created for capturing  
11 everyday conversation between two individuals. Is that  
12 basically what the device is --

13 A Yes.

14 Q All right. And if two people are not speaking  
15 in that type of voice, the recording device is not as  
16 effective?

17 A That's correct.

18 Q You also -- because I guess I should lay a  
19 foundation for this, there's three voices on this tape,  
20 correct?

21 A Yes.

22 Q All right. Deangelo Carroll's on there?

23 A Yes.

24 Q And Anabel Espindola is the female voice on  
25 there, correct?

1 A Yes.

2 Q And the last person on there is Luis Hidalgo,  
3 III, correct?

4 A Yes.

5 MR. ARRASCADA: Judge, that's an improper  
6 foundation.

7 THE COURT: Yeah. Sustained.

8 MR. DIGIACOMO: Okay. I'll rephrase.

9 BY MR. DIGIACOMO:

10 Q Have you ever heard the voice of Luis Hidalgo,  
11 III?

12 A Yes.

13 Q Do you see Luis Hidalgo, III here in court  
14 today?

15 A Yes, he's here.

16 Q Can you point him out and describe something  
17 he's wearing?

18 A He's wearing a white shirt. He's on the second  
19 table here. He's seated in the middle.

20 MR. DIGIACOMO: May the record reflect the  
21 identification of Luis Hidalgo, III.

22 THE COURT: It will.

23 BY MR. DIGIACOMO:

24 Q After listening to the tape, were you able to  
25 identify the third voice as Luis Hidalgo, III?

1 A Yes.

2 MR. DIGIACOMO: Thank you very much.

3 THE COURT: All right. Go ahead and play the tape.

4 MR. DIGIACOMO: And this is May 23rd, 2005.

5 THE COURT: First tape.

6 (Playing tape)

7 MR. DIGIACOMO: Judge, I saw a juror pointing --

8 JUROR NO. 15: I don't have anything --

9 THE COURT: Okay. Then your speakers may not be on.  
10 Make sure the on switch -- make sure -- I did the same thing.  
11 And then again the volume. It's pretty loud so regardless of  
12 where your volume setting is, you should be able to hear  
13 something, but if you're not hearing anything, then they're  
14 probably not on.

15 MR. DIGIACOMO: Should we do a testing?

16 Testing. Testing. Testing.

17 THE MARSHAL: Is everyone on? Turn it on here.

18 THE COURT: Basically if your speakers are on, my  
19 voice should right now be coming out very, very loudly through  
20 the earphones. Is there anybody who has the earphones on that  
21 is not hearing my voice very, very loudly? Can you hear me?  
22 Okay. Yeah, then --

23 (Off-record colloquy)

24 THE COURT: Is that better? Okay.

25 And Juror No. 2, can you hear now through the

1 speakers?

2 All right. Mr. DiGiacomo.

3 MR. DIGIACOMO: Thank you.

4 (Playing tape)

5 MR. DIGIACOMO: Judge, I think we can all -- not  
6 listen to Deangelo Carroll walk out.

7 THE COURT: I think that's fine.

8 And, Mr. DiGiacomo, just for the record, you've  
9 passed out the transcript that was prepared by the State; is  
10 that right?

11 MR. DIGIACOMO: That's correct.

12 MR. ARRASCADA: Your Honor, may we approach?

13 THE COURT: You may.

14 (Off-record bench conference)

15 THE COURT: Ladies and gentlemen, we're going to  
16 take a restroom break for about ten minutes.

17 And once again you're reminded about the admonition  
18 not to discuss this case or anything relating to the case with  
19 each other or anyone else. Don't read, watch, listen to any  
20 reports of or commentaries on any subject matter relating to  
21 the case. And please don't form or express an opinion on the  
22 trial.

23 And ladies and gentlemen, notepads in your chairs.  
24 If anyone has a question, they can give those to Jeff on their  
25 way out the door and we'll just take a ten-minute recess.

1           And also, ladies and gentlemen, notepads and  
2 transcripts in your chairs.

3                           (Jury recessed at 4:57 p.m.)

4           MR. GENTILE: Mr. Hidalgo, I take it, can go to the  
5 bathroom?

6           THE COURT: Yes, that's fine.

7                           Basically here's the deal --

8                           And can you make sure that outer door is closed.

9                           Here's the deal. Even though the stuff on the  
10 monitor is the same stuff that's in the transcript, the whole  
11 point of passing out two transcripts is to not highlight one  
12 transcript over the other and to make the jury sort of favor  
13 one transcript over the other. So there's two ways we can do  
14 this.

15                           Number one, nobody gets to play the highlighted  
16 fancy monitor transcript; or, number two, if you have the  
17 defense's transcript on your computer already, then we can  
18 play the defense's transcript when their transcript is passed  
19 out.

20           MR. DIGIACOMO: I have absolutely no problem with  
21 that. As soon as they send it to me in Word, I can put it in  
22 there tonight, Judge.

23           THE COURT: Okay.

24           MR. DIGIACOMO: I don't have a problem with that.

25 It just seems to be ridiculous that the defense can stand up

1 here and suddenly say, Oh, well, now you're going to tell them  
2 where in the transcript to follow. Well, of course, we're  
3 going to tell them where in the transcript to follow, Judge.

4 THE COURT: Well, that's all fine and good, but the  
5 reason, you know -- and I'll overlook that you're calling my  
6 ruling ridiculous --

7 MR. DIGIACOMO: I didn't say your ruling was -- I  
8 said the objection was.

9 THE COURT: Well, the reason I'm doing this is  
10 because, again, the whole point of this is not to favor or  
11 highlight, if you will, any particular transcript. So to me  
12 the remedy is not to say they can't do it, but to give you the  
13 opportunity to do the very same thing and put your transcript  
14 up there and let your transcript play on the screen. That way  
15 it's totally fair, everybody presents their transcript in the  
16 same way.

17 And Mr. DiGiacomo has been kind enough to say he  
18 will even put it on his computer. So I don't see any  
19 prejudice if everybody's transcript is played. I just want an  
20 even playing field and that makes it even and so everybody's  
21 gets to be played that way.

22 MR. ARRASCADA: And, Judge, just so I'm clear, as  
23 the Court has ruled, there's nothing ridiculous in our  
24 objection. It wasn't that their toys are cool and we don't  
25 have the toys. It was the overly suggestive -- or putting

1 emphasis on one transcript and --

2 THE COURT: Right. And if everybody does it on the  
3 screen, then it's fair. Everybody does it on the screen. And  
4 that will be the order. If you want to avail yourself of  
5 either your own technology or their technology to play it on  
6 the screen, then you can do that.

7 I'm going to put this juror question right here for  
8 anyone who would like -- for anybody -- it's just right  
9 there -- who would like to look at it.

10 (Court recessed at 5:00 p.m. until 5:06 p.m)

11 (In the presence of the jury.)

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

16 And now, Mr. DiGiacomo, you've passed out the  
17 State's transcripts and we're going to play it on the monitor.  
18 And if the noise from the monitor interferes with anybody's  
19 headphones or bothers them, then just raise your hand and  
20 we'll address it.

21 All right.

22 MR. DIGIACOMO: I also understand that at least one  
23 juror on the break asked to have the speaker turned up. I  
24 turned it up, but if it's too loud now, if someone raises  
25 their hand, I'll turn it down.

1 THE COURT: All right.

2 MR. DIGIACOMO: The other thing, Judge, is  
3 apparently I offered 160. I didn't offer A through D, and  
4 just for your clerk's sake, I'd offer 160 A through D, which  
5 are actually the cards which were inside the package.

6 THE COURT: All right.

7 MR. ADAMS: I'm sorry. What were the numbers of  
8 those, Your Honor?

9 THE CLERK: 160 A through D.

10 MR. ADAMS: Thank you.

11 (State's Exhibits 160 A through D admitted.)

12 THE COURT: All right.

13 BY MR. DIGIACOMO:

14 Q Lastly, before I hit return right here,  
15 Detective, you have a copy of the transcript in front of  
16 you --

17 A Yes.

18 Q -- from 5/23.

19 A Yes.

20 Q And the time actually starts 001 where it says,  
21 Female, what's up, dude, correct?

22 A Yes.

23 Q Now, prior to that -- and on the FBI recording,  
24 because the whole thing is on there, there's an intro from the  
25 agent, correct?

1 A Yes.

2 Q And that is correctly transcribed because we're  
3 not going to be playing that in here today, right?

4 A Right.

5 Q And then there's approximately 24 minutes where  
6 they're driving to the location --

7 A Yes.

8 Q -- or Deangelo's driving to the location?

9 A Yes.

10 Q And then the first voice on the tape is a  
11 female one, correct?

12 A Yes.

13 Q And you didn't recognize the female one?

14 A No.

15 Q Okay. Now, there was a question asked, and I  
16 don't remember if the Judge has asked it, were you able to  
17 identify Anabel's voice on the tape as well, you personally?  
18 When you listen to the tape --

19 A Yeah. When I listen to the tape, I know it's.  
20 Anabel's voice.

21 Q And you've talked to Anabel in the past?

22 A Yes.

23 Q Okay. And you've talked to Little Lou in the  
24 past, so when you heard Little Lou's voice, you're able to say  
25 that was Little Lou, correct?

1 A Yes.

2 Q And when you've talked to Deangelo in the past,  
3 obviously you can tell that's Deangelo?

4 A That's correct.

5 Q So the information as to whose voices are on  
6 the tape is not supplied by Deangelo, but from your own  
7 personal knowledge?

8 A That's correct.

9 (Tape being played)

10 THE COURT: All right. Can you pause that?

11 Do you need to approach?

12 MR. ARRASCADA: May we approach?

13 THE COURT: Yes.

14 (Off-record bench conference)

15 THE COURT: Ladies and gentlemen, you'll notice that  
16 the numbers on the transcripts that you have in your hand on  
17 the side here are different than the numbers that you see up  
18 on the screen on the side. Disregard the numbers on the  
19 screen that you see, the 117, the 118. Those numbers are  
20 irrelevant, so just disregard those.

21 MR. DIGIACOMO: Correct. And so they know, like, on  
22 this white line jumped to Rico, that --

23 MR. ADAMS: Objection to that, Your Honor --

24 THE COURT: Yeah.

25 MR. ADAMS: -- I thought you explained it very

1 adequately.

2 MR. DIGIACOMO: I want to explain to them now when  
3 it says the left side of the transcript that when this white  
4 line jumped to Rico, it was 35 seconds, and at one minute and  
5 18 seconds it will jump to male one. So if they want to make  
6 notes about times, they now know that they can make the note  
7 about that section from that --

8 THE COURT: Okay. And that will also be reflected  
9 on the defense transcripts, and there's no commentary as to  
10 the accuracy of those times or inaccuracy of the time.

11 But just everybody disregard what's on the big  
12 screen in terms of the times. And once again, you won't have  
13 the transcripts so any notes you want to make, you need to  
14 make them in your notepads because we're going to take your  
15 transcripts as soon as we're done playing the tape.

16 All right. Go ahead.

17 (Playing tape)

18 THE COURT: Mr. DiGiacomo, could you pause that for  
19 a second.

20 I'll see counsel up at the bench, please.

21 (Off-record bench conference)

22 THE COURT: All right. Ladies and gentlemen, we're  
23 going to go ahead and take our evening recess at this point.  
24 We'll finish up listening to the tape with the State's  
25 transcript tomorrow when we reconvene. We'll be reconvening

1 tomorrow at 10:30 a.m.

2           Once again you're reminded that during our evening  
3 recess you're not to discuss this case, any person or subject  
4 matter relating to the case with each other or anyone else.  
5 Do not read, watch, listen to any reports of or commentaries  
6 on any subject relating to the case. Don't do any independent  
7 research on any subject connected with the trial. Don't visit  
8 any of the locations at issue and please do not form or  
9 express an opinion on the case.

10           If everyone could please leave their transcripts and  
11 their notepads in their chairs. Anyone who's already written  
12 a question can hand that to Jeff on your way out the door and  
13 we'll see you all back here at 10:30 tomorrow. Remember,  
14 notepads and transcripts are to remain in your chairs.

15           Detective, don't talk about your testimony during  
16 the evening recess.

17           (Court recessed at 5:36 p.m. until the following  
18 day, Thursday, February 5, 2009, at 10:57 a.m.)

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

  
KIMBERLY LAWSON  
TRANSCRIBER