

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 08:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 71458

7 **APPELLANT'S APPENDIX VOLUME IX**

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 MCLETHIE 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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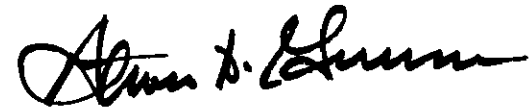
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List as follows:

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

LUIS HIDALGO, JR., ID # 1038134
NORTHERN NEVADA CORRECTIONAL CENTER
1721 E. SNYDER AVE
CARSON CITY, NV 89701
Appellant

-5-



CLERK OF THE COURT

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
MCLEATCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Facsimile: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Petitioner, Luis Hidalgo Jr.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LUIS HIDALGO, JR.,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: 08C241394

Dept. No.: XXI

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

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ATTORNEYS AT LAW
701 EAST BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
WWW.NVLITIGATION.COM

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 VI: 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:

STEVEN B. WOLFSON, District Attorney
RYAN MACDONALD, Deputy District Attorney
200 Lewis Avenue
P.O. Box 552212
Las Vegas, Nevada 89155

MARC DIGIACOMO, Deputy District Attorney
Office of the District Attorney
301 E. Clark Avenue # 100
Las Vegas, NV 89155

Attorneys for Respondent

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

ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

NOV 24 2009

Alison L. Johnson
CLERK OF COURT

STATE OF NEVADA,

Plaintiff,

vs.

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

Defendants.

CASE NO: C212667/C241394
DEPT NO: XXI

Transcript of
Proceedings

241 394

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 8

THURSDAY, FEBRUARY 5, 2009

APPEARANCES:

FOR THE STATE:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
GIANCARLO PESCI, ESQ.
Deputy District Attorney

FOR LUIS ALONSO HIDALGO, JR.:

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

FOR LUIS ALONSO HIDALGO, III:

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

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

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CLERK OF THE COURT

PA1298

HID PA01209

I N D E X

WITNESSES FOR THE STATE:

MICHAEL SEAN McGRATH

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1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 5, 2009, 10:57 A.M.

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

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now back in
5 session. The record will reflect the presence of the State
6 through the deputy district attorneys, the presence of the
7 defendants and their counsel, the officers of the Court and
8 the members of the jury.

9 And Ms. Husted, will you please give Sergeant
10 McGrath the oath again.

11 THE CLERK: Yes, Your Honor.

12 MICHAEL SEAN MCGRATH, STATE'S WITNESS, SWORN

13 THE CLERK: Please be seated, and please state and
14 spell your name.

15 THE WITNESS: Michael S. McGrath. The last name,
16 M-c-G-r-a-t-h.

17 THE COURT: All right. Thank you.

18 Mr. DiGiacomo.

19 MR. DIGIACOMO: Thank you, Judge.

20 DIRECT EXAMINATION (Resumed)

21 BY MR. DIGIACOMO:

22 Q I just backed it up to 20:04 where Anabel
23 starts speaking again.

24 (Playing tape)

25 THE COURT: Thank you. Shall we play the tape

1 again -- was that the entire tape, or do you have a second?

2 MR. DIGIACOMO: That's -- no, I was just going to
3 play the 23rd the first time.

4 THE COURT: Okay. All right.

5 Ladies and gentlemen, what we're going to do is
6 we're going to have Mr. DiGiacomo collect the transcripts that
7 have been passed down. If everyone would just pass the
8 transcripts down to -- we'll go with the far end towards
9 counsel table.

10 And then, ladies and gentlemen, as I told you
11 yesterday, we're now going to listen to the tape again and
12 this time we will hand the transcript that was prepared by the
13 defense.

14 MR. GENTILE: Your Honor --

15 THE COURT: Yes.

16 MR. GENTILE: -- it was prepared by Mr. Hidalgo,
17 III.

18 THE COURT: Oh, by Mr. Hidalgo, III, and allow you
19 to listen to the tape with that transcript.

20 And do we have the transcripts ready to be
21 disseminated by Jeff to the jury?

22 All right. Mr. DiGiacomo, if you would please play
23 the tape again. And the jurors have all received copies of
24 the transcript prepared by the defense for Mr. Hidalgo, III.

25 MR. DIGIACOMO: Yes, Judge. And from the very

1 beginning, I'll leave it down. They're just talking in
2 [inaudible].

3 THE COURT: All right. Thank you.

4 (Playing tape)

5 THE COURT: All right.

6 MR. DIGIACOMO: Do you want to collect those now?

7 THE COURT: Yes.

8 If everyone would pass those down, Jeff will collect
9 them.

10 And, Mr. DiGiacomo, you may continue with your
11 direct examination of Sergeant McGrath.

12 MR. DIGIACOMO: Thank you.

13 BY MR. DIGIACOMO:

14 Q Sergeant, on there when Little Lou's voice is
15 identified during the course of the transcript that -- you had
16 chance to review the transcript when --

17 THE COURT: Do we need a break?

18 THE MARSHAL: Yes, a juror needs --

19 THE COURT: All right.

20 Ladies and gentlemen, let's go ahead and take a
21 ten-minute break and then we'll go maybe another 20 or 30
22 minutes and then we'll take our lunch break.

23 And once again, you're reminded of the admonition
24 that is still in place during our brief break. Notepads in
25 your chairs, please, and follow Jeff through the double doors.

1 We'll see you back here in -- let's make it seven minutes.

2 (Jury recessed at 11:49 a.m.)

3 THE COURT: We've got some jury questions if you
4 guys want to look at them. I put check marks by the ones that
5 I don't think we can ask. And the top three on this one, I
6 think, are okay. These are some good ones. I wanted to ask
7 that first one.

8 MS. ARMENI: Those were asked yesterday, right?

9 THE COURT: Which ones?

10 MS. ARMENI: The first one on top right there.

11 THE COURT: Yeah, this one was covered.

12 MS. ARMENI: Yeah.

13 THE COURT: So that's why I put a mark by it.

14 MR. GENTILE: Okay.

15 THE COURT: But what was not asked: Was live
16 bullets found at KC's house? What do you mean by live
17 bullets? So I'll ask -- I can ask that one.

18 MR. ADAMS: You've already instructed on that one.

19 THE COURT: Right. This one I can't ask.

20 (Court recessed at 11:51 a.m. until 12:04 p.m.)

21 (In the presence of the jury.)

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

24 And, Sergeant, before I turn it back over to
25 Mr. DiGiacomo, I've got a couple of juror questions stacked up

1 here and I'm going to ask them of you at this time.

2 THE WITNESS: Okay.

3 THE COURT: You testified that live bullets were
4 found at KC's house. What does the term "live bullets" mean?

5 THE WITNESS: Okay. A bullet means that -- a live
6 bullet is a shell casing, then the primer's inside, then the
7 bullet's at the end. When someone says live bullet, it means
8 that the entire thing is together with the bullet, with the
9 casing, with the primer inside. So it's basically like you
10 would just purchase it and that would be considered a live
11 bullet.

12 THE COURT: So, in other words, it's a bullet that
13 has not been fired?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Let me ask you this: Is there
16 any -- were these bullets that would go in a semiautomatic or
17 in a revolver type gun?

18 THE WITNESS: Semiautomatic.

19 THE COURT: Okay. And was -- did anyone examine
20 them to see whether or not fingerprints could be recovered?

21 THE WITNESS: I don't know what processing was done
22 on those.

23 THE COURT: Okay. Maybe there's another witness on
24 that one.

25 All right. And then, Was Deangelo Carroll searched

1 prior to each recorded session?

2 THE WITNESS: Yes.

3 THE COURT: Okay. And when you searched him, did
4 you make sure -- or look to see whether he had any money in
5 his possession?

6 THE WITNESS: No.

7 THE COURT: After the recorded sessions, did you
8 collect money from him, from Deangelo?

9 THE WITNESS: Yes. Personally, I did.

10 THE COURT: Okay. And how much each time?

11 THE WITNESS: 14 -- on the first one, on the 23rd,
12 1400, and the second one was 800.

13 THE COURT: Okay. Now, but you didn't examine him
14 beforehand or search him beforehand to see whether he had --
15 the 1400 or the 800?

16 THE WITNESS: No. I searched him but I didn't
17 search him for money.

18 THE COURT: Okay. I guess the question is, if he
19 had money, would you have found it in a search or was the
20 search not that thorough of his pockets and wallet and stuff?

21 THE WITNESS: I mean, the search primarily was to
22 make sure he didn't have a firearm on him. So I could feel
23 that he had a wallet and some other keys and such in his
24 pocket, but I didn't go take his wallet out and see what was
25 in the wallet, but the large amount of money would have made

1 his wallet much bigger, which it didn't.

2 THE COURT: All right. Thank you.

3 I'm going to turn it back over to Mr. DiGiacomo to
4 resume his direct examination.

5 MR. DIGIACOMO: Thank you. I'll follow up on a
6 couple of those things.

7 BY MR. DIGIACOMO:

8 Q You said you searched the person of
9 Mr. Carroll. Did you search anything else of Mr. Carroll for
10 a firearm to make sure that he didn't have a firearm on the
11 23rd?

12 A Yes. This was the first time that we were
13 going to do something with Mr. Carroll, so we were going to
14 put the recording device on him, so common sense would say
15 make sure he doesn't have a firearm on him or in his vehicle
16 when we roll up and get out of the car and meet with him.

17 Q At this point in time, based on the information
18 you had, he's a suspect in a homicide, correct?

19 A Yes.

20 Q Who -- who is willing to wear a wire, so you
21 took advantage of that situation and put a wire on him,
22 correct?

23 A Yes.

24 Q Okay. Now, you said you patted him down and
25 you didn't see any obvious sign that he had a big wad of money

1 left there, correct?

2 A That's correct.

3 Q Okay. Now, when he comes back out of Simone's
4 Auto Plaza on the 23rd, you say he's got a bottle of
5 Tanqueray, correct?

6 A Yes.

7 Q You found no evidence that he had a bottle of
8 Tanqueray before he went in?

9 A No.

10 Q And then describe for the ladies and gentlemen
11 of the jury where the money that he hands you comes from. How
12 did that work?

13 A The money was in his pocket, in his front
14 pocket. And he just reached in his pocket and says, Here's
15 what they gave me.

16 Q And he pulls out a big wad of \$1,400?

17 A Yes.

18 Q Okay. Now, the second day, I guess you
19 listened to the recording and you make a determination that
20 you're going to go in the second day. Let me back up to the
21 first day. Have you reviewed reports to determine what
22 vehicle Mr. Carroll drove to the club and what vehicle he
23 drove away from the club -- sorry, to Simone's Auto Plaza and
24 away from Simone's Auto Plaza on May 23rd?

25 A Yes.

1 Q Okay. Tell the ladies and gentlemen of the
2 jury when you first meet Deangelo Carroll behind Jerry's
3 Nugget, what vehicle did he have?

4 A He's in his white Kia.

5 Q He has a little white Kia?

6 A Yeah, he has a little white Kia.

7 Q Okay. And then after you do the search of him,
8 put the recording device on him, what do you see him do?

9 A He's surveilled to the Palomino Club.

10 Q Once he gets to the Palomino Club, does he get
11 a different vehicle?

12 A Yeah, he gets the big shuttle bus.

13 Q And then he takes the shuttle bus to Simone's?

14 A Yes.

15 Q And then when he leaves Simone's, what's he
16 driving?

17 A He's driving the white Astro van.

18 Q The Chevy Astro van that we talked about?

19 A Yes.

20 Q Okay. Now, after you listened to the
21 recording, you wanted to see if you'd get more information and
22 so you take Mr. Carroll up on his offer or you ask him to do
23 it a second time?

24 A Yes.

25 Q And he agrees to do so?

1 A Yes.

2 Q And it works just like the last time, he goes
3 in and he comes back out?

4 A Yes.

5 MR. DIGIACOMO: Judge, I'd like to play the second
6 recording.

7 THE COURT: All right.

8 MR. DIGIACOMO: I believe we're doing this twice.

9 THE COURT: I'm sorry.

10 MR. DIGIACOMO: Can we approach?

11 THE COURT: Sure.

12 (Off-record bench conference)

13 THE COURT: Ladies and gentlemen, we're going to do
14 this the same way we did the last tape. We're going to listen
15 to it without a transcript and then we'll listen to it two
16 more times with the transcript prepared by the State, followed
17 by the transcript prepared by the defense. This tape is
18 substantially shorter than the last tape.

19 Is that right, Mr. DiGiacomo?

20 MR. DIGIACOMO: The speaking portion of it is.

21 THE COURT: Okay.

22 MR. DIGIACOMO: I wasn't planning on playing the
23 blank tape for 28 minutes.

24 THE COURT: Right. We don't need to play the blank
25 tape and we can cut right to the speaking portion.

1 MR. DIGIACOMO: Thank you.

2 THE COURT: Thank you.

3 (Playing second tape)

4 THE COURT: All right. Mr. DiGiacomo is now going
5 to play the tape again having distributed the State's version
6 of the transcript.

7 (Playing second tape)

8 THE COURT: All right. As soon as Jeff collects
9 those transcripts, we'll distribute defenses' transcripts.
10 All right.

11 (Playing second tape)

12 THE COURT: All right. Thank you, Mr. DiGiacomo.
13 This is probably an excellent time to take our lunch break.
14 If everyone would pass the transcripts down to the end there,
15 we'll pick those up.

16 Ladies and gentlemen, we're going to go ahead and
17 take a lunch recess until 1:35.

18 Once again you're reminded that the admonition is in
19 place during the lunch recess. You're not to discuss this
20 case or any subject matter relating to the case with each
21 other or with anyone else. You're not to read, watch, listen
22 to any reports of or commentaries on any subject relating to
23 the case. Don't do any independent research on any subject
24 connected with the trial. Don't visit any of the locations at
25 issue and please do not form or express an opinion on the

1 case.

2 If everyone will please leave their notepads in
3 their chairs and through the double doors there by our marshal
4 and we'll see you all back here at 1:35.

5 (Jury recessed at 12:34 p.m.)

6 THE COURT: All right. And everyone else other than
7 the parties, the lawyers, the police officers, and the DA
8 investigator needs to exit the courtroom for the lunch recess.

9 (Court recessed at 12:35 p.m. until 1:49 p.m.)

10 (In the presence of the jury.)

11 (Off-record bench conference)

12 THE COURT: All right. Court is now back in
13 session.

14 You may sit down.

15 The record will reflect the presence of the State
16 through the deputy district attorneys, the presence of the
17 defendants and their counsel, the officers of the Court and
18 the members of the jury.

19 And, Mr. DiGiacomo, you may resume your direct
20 examination of Sergeant McGrath.

21 MR. DIGIACOMO: Thank you.

22 BY MR. DIGIACOMO:

23 Q Sergeant, after the second recording on
24 May 24th -- I guess that makes it -- I guess it's a Tuesday,
25 May 24th -- was -- Deangelo Carroll, once again, the same

1 thing happened, he gives you money and everything else like
2 that, correct?

3 A Yes.

4 Q At some point later in that day, is there a
5 determination to make any arrests in the case?

6 A Yes.

7 Q Okay. Can you tell us who the first person who
8 is taken into custody is?

9 A Mr. Luis Hidalgo, III.

10 Q When you had contact with lose Hidalgo, III,
11 did he appear to have any -- did he have a cold?

12 A Yes.

13 Q And the coughing that we heard on the tape, was
14 it consistent with the contact you had with Luis Hidalgo, III?

15 A Yes.

16 Q After he was taken into custody, did there come
17 a point in time when a second individual was taken into
18 custody?

19 A Yes.

20 Q Who was that?

21 A Anabel Espindola.

22 Q After the two of them were taken into custody,
23 was there an execution, a simultaneous execution of search
24 warrants at the two locations?

25 A Yes.

1 Q What were the two locations?
2 A Simone's Auto Plaza and the Palomino Club.
3 Q And you eventually wind up at one of these
4 locations, correct?
5 A Yes. I ended up at the Palomino Club.
6 Q Let me back up just a second. I'm going to
7 show you what's been marked as State's Proposed Exhibit
8 No. 204. Do you recognize that?
9 A Yes.
10 Q What is it?
11 A This is the black purse, miscellaneous credit
12 cards, which was recovered from Anabel Espindola at the
13 homicide office when the homicide office was on west
14 Charleston.
15 Q Okay. So when she was taken into custody, her
16 purse was retained?
17 A Yes.
18 Q And then eventually you booked it into
19 evidence?
20 A Yes.
21 MR. DIGIACOMO: Move to admit 204.
22 THE COURT: Any objection?
23 MR. GENTILE: No objection.
24 MR. ARRASCADA: No objection.
25 THE COURT: All right. That will be admitted.

1 (State's Exhibit 204 admitted.)

2 BY MR. DIGIACOMO:

3 Q You said eventually you made it to the search
4 warrant that was executed at the Palomino Club, correct?

5 A Yes.

6 Q During the course of the execution of the
7 search warrant, were there also crime scene analysts and other
8 detectives present at the club?

9 A Yes.

10 Q And photographs taken by the crime scene
11 analysts?

12 A Yes.

13 Q I'm going to show you what's been marked as
14 State's Proposed Exhibits 135 through 144 as well as 205
15 through 219. Just briefly flip through those --

16 MR. GENTILE: Could you repeat those numbers. They
17 just went too fast for me, please.

18 MR. DIGIACOMO: 135 to 144 and 205 to 219.

19 BY MR. DIGIACOMO:

20 Q If you could, flip through those and tell me if
21 they all appear to be photographs that were taken at the
22 Palomino Club on the night of the 24th.

23 A (Complying.)

24 Q Are they all photographs taken of the Palomino
25 Club?

1 A Yes, they are.

2 MR. DIGIACOMO: Move to admit -- I can't remember
3 the numbers now anymore, but 135 through --

4 THE CLERK: 134 and 135.

5 MR. DIGIACOMO: 135 through 144 and 205 through 219.

6 THE COURT: Any objection to those?

7 MR. GENTILE: I haven't seen them, so I don't know.

8 (Pause in proceedings)

9 MR. GENTILE: No objection.

10 THE COURT: No objection?

11 MR. ARRASCADA: No objection.

12 THE COURT: All right. Those will all be admitted.

13 (State's Exhibits 135 to 144 and 205 to 219
14 admitted.)

15 BY MR. DIGIACOMO:

16 Q Detective, some of these might be somewhat
17 self-explanatory, but 135 is the external view of the Palomino
18 Club, for the record.

19 A Yes.

20 Q Now, in the Palomino Club, did there come -- is
21 there an area that you were able to identify as kind of
22 Mr. H's office?

23 A Yes.

24 Q Showing you State's Exhibit No. 207, does that
25 appear to be a portion of that office?

1 A Yes.

2 Q And then this is as you kind of pan around?

3 A Yes.

4 Q And then over in this area here, do you see

5 where my finger is, Detective?

6 A Yes.

7 Q Is 209 a close up of that general area?

8 A Yes.

9 Q And then is 210 a closeup of some paperwork

10 that's now even closer?

11 A Yes.

12 Q Okay. 243 is another office in the Palomino?

13 A Yes.

14 Q And can you tell me if that card meant anything

15 to you, where my finger is?

16 A Yes, it did.

17 Q And what was that?

18 MR. GENTILE: Can we have a foundation in terms of

19 what room it is?

20 THE COURT: Is this in the office?

21 THE WITNESS: This is downstairs.

22 THE COURT: Okay.

23 BY MR. DIGIACOMO:

24 Q There are many rooms in the Palomino?

25 A Yes, there are many rooms there.

1 Q This is a room downstairs?
2 A Yes.
3 Q Okay. And does that card -- well, let me ask
4 you this: Is Mr. H's office downstairs or upstairs?
5 A It's upstairs.
6 Q Okay. So his is upstairs. This one's
7 downstairs, correct?
8 A Yes.
9 Q And that card, what relevance did that card
10 have to you?
11 MR. GENTILE: Objection. Whoa. I have to object to
12 that question.
13 MR. DIGIACOMO: All right. I'll rephrase it.
14 THE COURT: All right. Mr. DiGiacomo's going to
15 rephrase.
16 BY MR. DIGIACOMO:
17 Q Does that card look familiar to you?
18 A Yes.
19 Q How does it look familiar to you?
20 A That's the card that was similar that was at
21 the crime scene.
22 Q Okay. Now, 144, what's depicted in that
23 photograph?
24 A Those are the VIP cards for the Palomino Club.
25 Q And those VIP cards, are they the same or

1 similar -- I guess same wouldn't be the same cards, but
2 similar to -- they're the same design as any -- other cards in
3 the case that were recovered?

4 A Yes.

5 Q What cards are those?

6 A The cards that were found at 1677 E Street.

7 Q In fact, Mr. H's office is 216. Another view
8 from Mr. H's office but the opposite direction?

9 A Yes.

10 Q And then do you see -- not that one. Let's go
11 back a little bit. 206, this doorway right here --

12 A Yes.

13 Q -- can you tell me what that doorway is?

14 A That doorway leads to a back area where there
15 was a safe located, but there's a little mini bar in there.

16 Q Okay. There's a little mini bar area and then
17 how far do you have to go around to get to the safe?

18 A Just through that and around the corner.

19 Q . Okay. So which wall is the safe behind? Do
20 you know? Do you know if it's behind that wall, if it's
21 behind this wall?

22 A I believe it's behind the main wall. You go
23 down and around the corner.

24 Q So you go down through that little passageway,
25 you hang a left and it's back there?

1 A Yes.

2 Q Okay. And then -- I'm assume -- let me ask you
3 this: Was there more than one safe in the Palomino?

4 A Yes.

5 Q And the safe that we're talking about right now
6 that's behind that wall, State's Exhibit No. 217, is that that
7 safe?

8 A Yes, it is.

9 Q Once that safe was opened, what are we looking
10 at here?

11 A That's money. And then below that there's
12 another safe that's located down at the bottom.

13 Q Showing you 137.

14 A That's the bottom portion of the same safe.

15 Q And it has money as well?

16 A Yes, it does.

17 Q There's other safes in the Palomino as well,
18 correct?

19 A Downstairs, yes.

20 Q And eventually was the amount of money -- cash
21 money in the Palomino calculated?

22 A Yes.

23 Q How much did the -- were the police able to
24 count up?

25 A Just more than \$155,000.

1 Q Now, I showed you previously a photograph, and
2 I'm going to -- there were some items recovered out of the
3 Palomino, correct?

4 A Yes.

5 Q Okay. Do you remember specifically what was
6 taken?

7 A Paperwork. There was a firearm which was
8 taken. The cards were collected.

9 Q Okay. Let's talk about the firearm. Describe
10 for me the firearm that -- well, first of all, where was it
11 found?

12 A I believe in Mr. -- well, Mr. Hidalgo's office.

13 Q The upstairs office?

14 A Yes.

15 Q Can you describe that firearm for me?

16 A It was a black semiautomatic handgun, a handgun
17 that I had never seen. Through my experience of 16 years
18 working with Metro, I'd never seen that particular make or
19 model of a firearm.

20 Q What kind of rounds did it fire?

21 A It fired basically rounds that were consistent
22 with an AR15 ammunition, basically, or a rifle ammunition.

23 Q When you use the term AR15 --

24 A That's a --

25 Q -- in common parlance, what kind of weapon is

1 it?

2 A It's a rifle.

3 Q What type of rifle?

4 A A rifle that's used in the military or used in
5 SWAT teams and things like that.

6 Q So an assault rifle?

7 A Yeah, an assault rifle.

8 Q Okay. So there's a firearm that's capable of
9 firing a 223 round?

10 A It's close. It's close to a 223 round. I'm
11 not an expert at that. That was the first time I saw that
12 firearm.

13 Q And it was located upstairs in Mr. Hidalgo's --
14 or Mr. H's office?

15 A Yes.

16 Q Did you collect any computers?

17 A Yes.

18 Q All right. The computers were collected. And
19 were there some paperwork, as well, collected?

20 A Yes.

21 Q In addition to that, did you look for
22 videotapes so you could see if there was a video of who was
23 leaving and exiting the club at various times?

24 A Yes.

25 Q Can you explain to the ladies and gentlemen of

1 the jury whether or not you were able to find any video?

2 A We weren't able to recover any video inside the
3 Palomino Club.

4 Q Can you -- did you look at the video system
5 that was in there?

6 A Yes.

7 Q Can you describe that for the ladies and
8 gentlemen of the jury?

9 A There were video -- there was a video monitor
10 that was in Mr. Hidalgo's office and there were several video
11 monitors downstairs that basically could view different parts
12 of the club at one time or another, ie: the front door -- as
13 you make your way into the front door, as well as other parts
14 of the club.

15 Q Did you look to see where all those video
16 monitors all ran back to? Like, you know, an -- have you been
17 to scenes where it's recorded in some manner before?

18 A I've been to scenes where there's a tape or DVD
19 or something there where it can be recorded. However, there
20 was nothing there in the tape machines or any type of digital
21 tape recording device that I saw.

22 Q Okay. And did you also request -- or did you
23 request technicians to come out to check to see if there's any
24 way to find some sort of digital recording of what was going
25 on with the videotape at the Palomino?

1 A Yes.

2 Q And was there ever any videotape or any -- any
3 video that was able to be recovered?

4 A No.

5 Q Showing you what's been marked as State's
6 Proposed Exhibit 93 -- 193, excuse me, do you recognize that?

7 A Yes. This is two pieces of paper stapled
8 together. It's a phone list that was recovered at the
9 Palomino Club and the address is here with a corresponding
10 event number on top.

11 Q Okay. And have you previously looked inside
12 here and seen the list?

13 A Yes.

14 MR. DIGIACOMO: Move to admit 193.

15 MR. GENTILE: No objection.

16 MR. ARRASCADA: No objection.

17 THE COURT: All right. 193 is admitted.

18 (State's Exhibit 193 admitted.)

19 BY MR. DIGIACOMO:

20 Q Showing you 193A, does that appear to be the
21 phone list that was recovered out of Mr. H's office?

22 A Yes. This is the one that you showed me that
23 was on the wall. You can see where the tack mark right
24 here -- where it was actually on the board.

25 Q Okay. Now, on that particular phone list, it

1 has owner Luis Hidalgo, correct?

2 A Yes.

3 Q And it has a cell phone number?

4 A Yes.

5 Q Can you read that out --

6 MR. GENTILE: Can we get it into evidence before he

7 does that.

8 MR. DIGIACOMO: Oh, I'm sorry. Move to admit 193A.

9 THE COURT: Oh, any objection to 193A?

10 MR. GENTILE: No.

11 MR. ARRASCADA: No, Your Honor.

12 THE COURT: All right.

13 (State's Exhibit 193A admitted.)

14 BY MR. DIGIACOMO:

15 Q Can you tell us what the phone list says Luis

16 Hidalgo -- owner Luis Hidalgo cell says?

17 A Yeah. It says, owner Luis Hidalgo, cell number

18 is 604-4410.

19 Q Okay. And then it says general manager?

20 A General manager, Ms. Anabel, cell, 604-9646.

21 Q It says assistant general manager?

22 A Assistant general manager, Luis Hidalgo, III,

23 cell 604-6348.

24 Q Okay. And then if you go down there and it

25 says floor and it has Deangelo Carroll?

1 A Yes.

2 Q And it has a cell number, correct?

3 A Yes.

4 Q Okay. And what's that cell phone number?

5 A It's 266-2018.

6 Q Now, when Mr. Carroll was first interviewed,

7 did you take his Nextel that he had on him, his chirping

8 device?

9 A Yes.

10 Q Okay. And eventually did you request records

11 related to that Nextel device?

12 A Yes.

13 Q Okay. And was that device that you recovered

14 from him different than the 266 number that -- that's listed

15 there?

16 A Yes.

17 Q Okay. Can you tell us -- and I'm showing you

18 State's Exhibit 190. Can you tell us Deangelo Carroll's cell

19 number?

20 A 604-5322.

21 Q Okay. And, in fact, is this -- the

22 highlighting that's on 190, who put that highlighting there?

23 A I put the highlighting there.

24 Q Okay. And then there's some handwriting on

25 there. Who put the handwriting on there?

1 A Detective Wildemann.

2 Q Okay. Have you gone through -- Detective
3 Wildemann, who is he?

4 A He's another detective that responded to the
5 crime scene with me and he works in homicide, still works in
6 homicide.

7 Q And then have you gone through 190 and checked
8 the highlights against the handwritten notations to determine
9 that they appear to be correct annotations of the various
10 pieces of information that's on here?

11 A Yes.

12 MR. DIGIACOMO: All right. Judge, I reoffer 190 in
13 its entirety.

14 MR. GENTILE: Can I see it again?

15 THE COURT: Would you show that to Mr. --

16 MR. GENTILE: I'll come up there.

17 THE COURT: All right.

18 MR. ARRASCADA: So will I and so will Mr. Adams.

19 MR. GENTILE: Can I take Sergeant McGrath on voir
20 dire for just one question?

21 THE COURT: Sure.

22 MR. GENTILE: Or maybe Mr. -- [inaudible] --

23 MR. ARRASCADA: May I look at it before --

24 MR. DIGIACOMO: Oh, I'm sorry.

25 (Pause in proceedings)

1 MR. DIGIACOMO: I'm going to ask him one question
2 and then I'll reoffer them, Judge.

3 THE COURT: All right.

4 BY MR. DIGIACOMO:

5 Q Detective McGrath, on page 1 where you see --
6 in the blue, it says Hidalgo, Jr., correct?

7 A Yes.

8 Q And then later in here on the blue it says big?

9 A Yes.

10 Q Okay. Who is big referring to?

11 A Mr. Hidalgo, Jr.

12 Q Mr. H?

13 A Mr. H.

14 Q So where it references big instead of Mr. H,
15 that's who the document's talking about?

16 A Right. Basically the penciled in here is my
17 handwriting.

18 Q Oh, that there is your handwriting?

19 A This is all my handwriting. I highlighted this
20 and then Detective Wildemann went back and wrote the names
21 next to the numbers.

22 Q Okay. So he wrote Hidalgo, Jr. and you wrote
23 big?

24 A Yes. I went through it first and highlighted
25 all the particular ones that I was interested in looking at

1 and then once it was completed he wrote those names in there.

2 MR. DIGIACOMO: Okay. I reoffer 190 again.

3 MR. ARRASCADA: No objection.

4 MR. GENTILE: I'm not going to object to it. We'll
5 take it at cross.

6 THE COURT: Okay. It will be admitted then in its
7 entirety.

8 (State's Exhibit 190 admitted.)

9 BY MR. DIGIACOMO:

10 Q Now, Detective, Mr. Counts was arrested --
11 Saturday night is what you testified to, right?

12 A Yes.

13 Q Now, once a person gets arrested and booked
14 into the Clark County Detention Center, how much time is it
15 before it becomes public knowledge that somebody's been
16 arrested for murder?

17 A Less than 72 hours, I would think, but I'm not
18 100 percent.

19 MR. ARRASCADA: Objection, Your Honor. Speculation.

20 MR. GENTILE: I think it is. I object on the same
21 grounds.

22 THE COURT: Yeah, I mean, you can ask another
23 question as to what the policy is, if it's accessible or --

24 MR. DIGIACOMO: I'll rephrase.

25 THE COURT: Well, just --

1 MR. DIGIACOMO: Can I -- I'll rephrase the question.
2 THE COURT: Okay.
3 MR. DIGIACOMO: I'll rephrase the question.
4 BY MR. DIGIACOMO:
5 Q When you've booked suspects before in the --
6 well, how many homicide suspects do you think you've arrested
7 in your time?
8 A 75.
9 Q Okay.
10 MR. ARRASCADA: I'm going to object to the
11 relevance.
12 THE COURT: Well, I think -- go ahead.
13 MR. DIGIACOMO: Thank you, Your Honor.
14 BY MR. DIGIACOMO:
15 Q Once -- in your experience or in the time that
16 you've booked those 75 people, how long typically has it taken
17 for that information to get released to the public?
18 MR. GENTILE: My concern -- objection.
19 THE COURT: Yeah, I'll see everybody up here.
20 (Off-record bench conference)
21 BY MR. DIGIACOMO:
22 Q Detective, when you arrest somebody, do you
23 have to file --
24 MR. GENTILE: Mr. DiGiacomo, can I get --
25 [inaudible].

1 BY MR. DIGIACOMO:

2 Q Detective, when you arrest somebody for murder,
3 do you have to fill out a declaration of the information that
4 you have that gives you probable cause to believe that the
5 person has committed the crime that you arrested him for?

6 A Yes.

7 Q In your experience, is that a public document?

8 A Yes.

9 Q Sometimes when you arrest an individual, does
10 the Las Vegas Metropolitan Police Department issue a media
11 release?

12 A Yes.

13 Q And then lastly, when somebody is actually
14 booked into the Clark County Detention Center, at some point
15 the DA's office has to make a charging decision, correct?

16 A Yes.

17 Q And the charging decision has to be made within
18 72 hours, correct?

19 A Yes.

20 Q And that is filed by a criminal --

21 MR. ARRASCADA: Judge, I'm going to object. May we
22 approach?

23 THE COURT: Sure.

24 MR. ARRASCADA: Well, it's leading and it's --

25 MR. GENTILE: My objection is just general leading.

1 MR. ARRASCADA: -- a misstatement of the law.
2 THE COURT: It is leading. Well --
3 MR. ARRASCADA: It is.
4 THE COURT: You can ask him what the practice is
5 here.
6 BY MR. DIGIACOMO:
7 Q Generally three days, correct, to file a
8 criminal complaint?
9 A Yes.
10 Q And that criminal complaint is a public record?
11 MR. GENTILE: I still have an objection on leading.
12 THE COURT: You are --
13 MR. GENTILE: If Mr. DiGiacomo wants to clarify --
14 THE COURT: Mr. -- and I -- okay, you are leading.
15 BY MR. DIGIACOMO:
16 Q And is that a public proceeding?
17 A Yes.
18 Q Thank you.
19 That 72-hour time period that we're talking about,
20 did that cause you any concerns in this particular case once
21 Mr. Counts was arrested?
22 A Yes.
23 Q And what was that?
24 A It might have thrown a big wrench on the whole
25 putting the wire on Deangelo Carroll and send him in to

1 attempt to get the statements that he said that he could get.

2 Q So now Mr. Counts is in jail or has been
3 arrested, Ms. Espindola's been arrested, Little Lou's been
4 arrested. At that point, was there determination as to
5 whether or not to arrest any other people?

6 A Yes.

7 Q Who was that?

8 A Jayson Taoipu and Deangelo Carroll.

9 Q Now, were you able to locate Deangelo Carroll
10 immediately and arrest him?

11 A Yes.

12 Q And were you able to do so with Mr. Taoipu?

13 A No.

14 Q Okay. What did you have to do with Mr. Taoipu?

15 A We had to put a warrant of arrest together for
16 him. He was later located and arrested in California.

17 Q Mr. Pesci has a question, which is, the firearm
18 that was found in Mr. H's office, was it a handgun or was it a
19 rifle?

20 A A handgun.

21 Q A handgun that fired ammunition similar to a
22 rifle?

23 A Yes.

24 Q Okay. And was that handgun -- have you ever
25 heard of a Glock before?

1 A Yes.

2 Q Was that handgun a Glock?

3 A No.

4 Q Okay.

5 MR. DIGIACOMO: Judge, I pass the witness.

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

7 Mr. Gentile.

8 MR. GENTILE: I can't wait.

9 CROSS-EXAMINATION

10 BY MR. GENTILE:

11 Q Sergeant, let's start with the gun and then

12 we're going to go to the beginning.

13 A Okay.

14 Q Okay. Do you remember the manufacturer of the

15 handgun?

16 A I have the paperwork here somewhere. I don't

17 know -- I had seen one of those firearms later.

18 Q Right.

19 A I don't know the manufacturer of the firearm.

20 It was released to Mr. Hidalgo.

21 Q Right. And it was released to Mr. Hidalgo

22 because it was lawfully possessed by him, correct?

23 A It was not registered. All right.

24 Q He had a boot card for that gun, didn't he?

25 A Not to my knowledge, not that we could

1 determine at that time. So that's why that firearm was
2 impounded.

3 Q But ultimately it was released to him?

4 A Yes.

5 Q And it wouldn't be released to him if it hadn't
6 been registered, would it?

7 A I would assume so. It was released by firearms
8 detail.

9 Q And also you learned in the course of -- let me
10 take a step back. Obviously, seeing a handgun like that, one
11 that you had never seen before, if nothing else, it peaked
12 your interest in the gun; fair to say?

13 A Fair to say, yes.

14 Q Right. It's like finding a 454 Casull, all
15 right, not a gun that you see very often, right?

16 A I'm not familiar with that gun.

17 Q Okay. The -- it's a bit of an exotic handgun;
18 fair to say?

19 A Yes. I looked at one later on.

20 Q If you can get one for under 1100 bucks, you're
21 doing a pretty good job --

22 A You're doing a very good job.

23 Q -- right? How much is the gun worth?

24 A Over 1100.

25 Q Okay. See, we agree?

1 A We agree.

2 Q And clearly you wanted to know if that gun was
3 associated with the homicide. There's no way you wouldn't
4 want to know that?

5 A Well, clearly I didn't want a firearm to be in
6 possession of somebody that I might believe was involved in
7 this.

8 Q Right. But at that time when you seized that
9 gun, you did not arrest Luis Hidalgo, Jr.; am I right?

10 A That's right.

11 Q Okay. So you seized the weapon pursuant to the
12 warrant, correct?

13 A Correct.

14 Q Booked it into evidence?

15 A Yes.

16 Q Okay. Inquired as to whether -- well, I
17 shouldn't say inquired -- certainly held it until you found
18 out that that was not the size of the round that killed
19 Mr. Hadland?

20 A Yes.

21 Q You did find out that that was not the size of
22 the round that killed Mr. Hadland?

23 A Yes.

24 Q And then at that point in time because the gun
25 was ultimately lawfully possessed, you returned it to

1 Mr. Hidalgo, Jr.?

2 A I didn't return it. I released it to the

3 firearms detail.

4 Q For it to be returned?

5 A Yes.

6 Q Okay. And it was?

7 A Yes.

8 Q Okay. Now, let's start at the -- at your first

9 contact with this matter.

10 A Okay.

11 Q That would have been sometime after midnight on

12 the 20th of May --

13 A Yes.

14 Q -- of 2005, if I heard you right.

15 A Yes.

16 Q Okay. And you went to the scene?

17 A Yes.

18 Q And as you said, when you got to the scene, it

19 was very dark there. It was pitch black. There are no lights

20 that you didn't bring with you?

21 A 100 percent correct.

22 Q Okay. And so there was limitations in terms of

23 what you could do at that point in time?

24 A Yes.

25 Q But among the things that you could do at that

1 point in time was take photographs of the scene?

2 A Yes.

3 Q And when I say you at this point in time, I'm
4 using the second person plural, the collective you.

5 A Yes.

6 Q I'm not saying that you as an individual
7 took --

8 A That's correct.

9 Q Okay. We understand each other?

10 A Yes, we do.

11 Q If I get down to the singular you, I'll tell
12 you.

13 A Okay.

14 Q Okay?

15 Now, among the photographs that you had taken, some
16 of them had been admitted into evidence already, but you took
17 photographs of Mr. Hadland, his body and the scene as it
18 related to that; am I correct?

19 A Yes.

20 Q Okay. And I think one of those photographs --

21 MR. GENTILE: Did you say it was Exhibit 15, the
22 glasses?

23 THE CLERK: 13.

24 MR. GENTILE: 13. Let the record reflect that I was
25 addressing the clerk when I said that, did you see --

1 THE COURT: Which exhibit number?
2 MR. GENTILE: Right.
3 THE COURT: Right.
4 MR. GENTILE: I inquired of the clerk. Thank you
5 very much.
6 BY MR. GENTILE:
7 Q Okay. I want to show you State's Exhibit 13.
8 A Yes.
9 Q All right. Let me have it back because I don't
10 want --
11 A Okay.
12 Q State's Exhibit 13 is a pair of glasses; am I
13 correct?
14 A Yes.
15 Q And you saw these glasses at the scene?
16 A Yes.
17 Q All right. And I noticed that we don't have
18 the glasses here, I don't believe. Do we? No, okay.
19 It looks like, from looking at this photograph, that
20 the lenses are in the glass.
21 A I believe that, which would have been the right
22 eye, might have been missing part of the lens.
23 Q Oh, you see a bit of a reflection there? No,
24 I'm not saying that that's not a reflection from the ground,
25 but does it -- do you recall if both lenses were in the

1 glasses?

2 A I seem to recall -- I mean, this is a long time
3 ago and I haven't looked at this photograph -- that that glass
4 was broken.

5 Q All right. But then the left eye appears to
6 have a bloodstain on it; is that fair to say?

7 A Yeah, that would be fair to say.

8 Q Okay.

9 MR. GENTILE: Now, could I have this marked? I
10 guess it would be Defendant's 1, Defendant Luis Hidalgo Jr.'s
11 A. Do I have an A yet?

12 THE CLERK: No.

13 MR. GENTILE: Okay. You have to start somewhere.

14 BY MR. GENTILE:

15 Q I want to show you proposed Exhibit A --

16 MR. PESCI: Counsel, can we see that, please?

17 MR. DIGIACOMO: I'm assuming I know which one
18 that --

19 MR. ARRASCADA: Thank you.

20 BY MR. GENTILE:

21 Q Mr. Hidalgo Jr.'s exhibit, Proposed Exhibit A,
22 would you take a look at that?

23 A Yes.

24 Q Having looked at that photograph, can you say
25 that it was taken that night at the scene?

1 A Yes.

2 Q Okay. Because you saw what the image on this

3 is, you've seen it yourself firsthand?

4 A Yes.

5 Q Okay. Thank you.

6 MR. GENTILE: I would move it into evidence at this

7 time.

8 THE COURT: Any objection?

9 MR. DIGIACOMO: No, Judge.

10 THE COURT: And that's defense -- which letter?

11 MR. GENTILE: A.

12 THE COURT: Thank you.

13 MR. ARRASCADA: Objection, Your Honor, on behalf of

14 Luis Hidalgo, III.

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

16 BY MR. GENTILE:

17 Q Now, ultimately you learned the caliber of the

18 weapon that caused Mr. Hadland's death; am I correct?

19 A I don't believe that the actual caliber was

20 100 percent determined. The type of firearm, I believe, was

21 determined.

22 Q And that would be a revolver?

23 A Yes.

24 Q Okay. And one of the things that you mentioned

25 when the sun came up and you went back out there was that

1 there weren't any expended casings.

2 A That's correct.

3 Q That would be indicative of one of two things:
4 Either a revolver was used or somebody was meticulous in
5 picking up the casings.

6 MR. DIGIACOMO: Objection; speculation. Or the
7 casing wound up in the tire tread or something. Who knows?
8 Objection; speculation.

9 THE COURT: Well, what would that indicate to you?

10 THE WITNESS: That would indicate that it was --
11 that it was a revolver, someone picked them up, they might
12 have got in a patrol car's tires or a passerby that -- in a
13 tire like that or we just didn't find them.

14 THE COURT: Go on.

15 BY MR. GENTILE:

16 Q Right. But you did cordon off that scene, so
17 it wasn't likely that once you got to the scene that could
18 have got in somebody's tires; fair to say?

19 A Yeah, fair to say.

20 Q Okay. Now, I want to show you this photograph.
21 This weapon, we know -- we know that the -- according to the
22 coroner, the medical examiner, the bullet entered the left
23 side of Mr. Hadland's head?

24 A Yes.

25 Q Okay. And we know that the left lens -- I'm

1 going to put 113 back up here. The left lens of the glasses
2 had blood on them?

3 A Yes.

4 Q Fair to say that that would indicate that he
5 had the glasses on when he was shot?

6 A I don't know if those glasses have been
7 identified by -- to my knowledge, as his glasses, per any
8 statements from his girlfriend or his family.

9 Q So you don't know if these were his glasses?

10 A I don't know if those were on him at the time
11 or they were in the roadway, you know, or anything like that.
12 There were glasses that were in the road that have apparent
13 blood on them.

14 Q Okay. And they were found near Mr. Hadland?

15 A Yes.

16 Q Almost in a straight line from his head?

17 A Yes.

18 Q And about how far away would you say they were?

19 A I would have to refer to the diagram as to
20 where exactly --

21 Q Do you have the crime scene diagram with you?

22 A I do not. The crime scene analysts would say
23 number one and what they used as their point of interest or
24 how far that item was from whatever they used as a reference
25 point. I would say it wasn't more than 10 feet.

1 Q All right. You wouldn't be surprised to learn
2 that these glasses were on Mr. Hadland?

3 A I wouldn't be surprised.

4 Q Okay. And you know that the entry of a bullet
5 at the type of range it appears to be more than 10 feet here
6 would be what's -- the kind of force that certainly could
7 knock glasses off of somebody. You've seen that before from
8 other homicide scenes; is that right?

9 A Yes. Yes.

10 Q All right. And it wouldn't be unusual for it
11 to knock those glasses 10 feet away?

12 A That's fair to say.

13 Q Okay. Now, there's a hat on Mr. Hadland's
14 chest?

15 A Yes.

16 Q Do you know how that hat got there?

17 A No.

18 Q When you were at the scene and you searched
19 Mr. Hadland's vehicle, did you search the vehicle yourself?

20 A Yes.

21 Q Okay. And you were sort of -- I don't want to
22 use the wrong words, but would it be fair to say that you were
23 in a supervisory capacity that night over what was going on as
24 far as the scene being searched?

25 A Typically the homicide controls the scene --

1 Q Right.

2 A -- the homicide detectives.

3 Q All right. And you were a homicide detective?

4 A Yes.

5 Q All right. Did you learn that Mr. Hadland --

6 well, how much money did you recover from the search of

7 Mr. Hadland's clothing and Mr. Hadland's vehicle that night?

8 A Right now I have no idea.

9 Q All right. Prior to your testifying, did you
10 have an opportunity to review certain documents? I mean, this
11 is -- like you say, it's almost four years ago.

12 A I didn't review what was taken out of his car,
13 in particular, the clothing or the wallet or what was in the
14 wallet or anything like that. I saw the ID with his name on
15 it and left it at that. So I didn't do any of the actual
16 impounding of those actual items.

17 Q So you'd have to rely on testimony -- I mean,
18 you can't rely on anything. The bottom line is if we had
19 testimony in this record as to how much was recovered and how
20 much Mr. Hadland had when he left the beech, then that's what
21 the record is?

22 A Yeah, whatever -- whoever went through the
23 wallet and did the impound of the wallet, it would have been
24 documented what was in the wallet and how much money was in
25 the wallet.

1 Q All right. Now, it sounds to me like you keep
2 your money in your wallet because you keep talking about
3 wallets and sizes of wallets based on how much is in the
4 wallet.

5 A I keep my money in my wallet.

6 Q Okay. I know it wouldn't come as a shock to
7 you to find that everybody doesn't and some people keep it in
8 their pants pocket?

9 A Some people might have a money clip and keep it
10 in their pants pocket --

11 Q Right.

12 A -- that's correct.

13 Q Okay. But in any case, you're satisfied that
14 the scene was thoroughly searched in terms of finding things
15 such as money if there was any money there?

16 A Yes. If there was money in that car or in
17 Mr. Hadland's wallet --

18 Q Or in his pant's pocket?

19 A His pant's pocket, he would have gone directly
20 like this to the coroner's office --

21 Q Right.

22 A -- and he'd be in the bag. The bag was sealed.
23 The seal would be opened at autopsy in mine and Detective
24 Vaccaro's presence and then the -- another crime scene analyst
25 would document exactly what was there, those items that were

1 on his person, ie: the bathing suit and any other items.

2 Q Okay. So if the coroner -- if the coroner's
3 office had it upon arrival, then it would have been their
4 responsibility to inventory it and report it?

5 A Right. Be --

6 Q That's all we need.

7 A That's correct.

8 Q Now, after -- how long were you with the
9 homicide bureau at the time that this event occurred?

10 A I believe three and a half years.

11 Q And you've said that in your career, up until
12 now, at least, you've arrested about 75 homicide -- people on
13 homicides?

14 A That's a fair statement.

15 Q That's an estimate you're making?

16 A Yes.

17 Q Now, it's also true that you don't make an
18 arrest in every homicide case?

19 A That's correct.

20 Q And there are some that go unsolved?

21 A Yes.

22 Q At least day-to-day, maybe someday they will
23 be?

24 A There is a percentile that's accurate year to
25 year and so the documents are kept as to how many are solved

1 and how many are unsolved.

2 Q Right. And, of course, there is no statute of
3 limitations with respect to murder --

4 A Yes.

5 Q -- am I correct?

6 A That's correct.

7 Q So if it takes 50 years, if it takes 100 years
8 and everybody's dead but they could put it together, then
9 they're going to put it together?

10 A I haven't had that in my career happen, so I
11 don't know if the DA's office would file charges on someone
12 that a suspect was -- had passed.

13 Q Well, no, I don't mean that and maybe I just
14 asked it the wrong way.

15 A Okay.

16 Q But the point is that there is such a thing as
17 a cold case file?

18 A Yes.

19 Q And a cold case file, for the most part, is a
20 homicide case?

21 A Yes.

22 Q Okay. Now, we have heard testimony here about
23 CSAs and forensics in general. We've actually had some people
24 testify before you came here.

25 A Okay.

1 Q Okay. And you've certainly, not just as a
2 homicide detective, but as a law enforcement officer, in
3 general, are well aware of various areas of forensics; fair to
4 say?

5 A Yes, fair to say.

6 Q Maybe you couldn't be a forensic assist
7 yourself, but you know what the areas are?

8 A Yes.

9 Q Okay. And one of the things that happens is in
10 a case such as this one, should -- should there have been no
11 arrests made, certainly the bullets that were recovered are
12 maintained; am I right?

13 A Yes.

14 Q Okay. And from time to time -- let me state
15 that a little differently. If I fire a handgun today and I
16 fire the same handgun five years from now and both of the
17 bullets are recovered, chances are a match can be made that --
18 not necessarily to the gun because they may not recover the
19 gun but that the two bullets were fired from the same gun;
20 fair to say?

21 A That's not fair to say and I can explain if you
22 want.

23 Q Sure.

24 A The type of barrel on the firearm would
25 determine, you know, the --

1 Q The lands and grooves?

2 A -- the lands and grooves on it, Ie: a Glock,
3 they can't determine a Glock .40 from -- with one serial
4 number from another Glock .40 with the same -- with a
5 different serial number unless it has the compensated barrel.
6 Then they can determine that this one is compensated, that one
7 is compensated. So with a Glock, we see very often that
8 nobody can determine which person fired and which person
9 didn't fire.

10 Q Okay. But it was your understanding in this
11 particular case, certainly your instincts told you that this
12 most likely was a revolver in this case?

13 A Yes.

14 Q And a Glock is a semiautomatic weapon?

15 A Yes.

16 Q Okay. And so let me change my hypothetical.

17 A Okay.

18 Q Let me take the hypothetical that you're
19 talking perhaps about a Ruger or a Smith & Wesson, okay, and
20 it's a revolver and maybe it's even a .357.

21 A Yes.

22 Q Okay. The likelihood is that if two rounds
23 were fired from that single gun and both were recovered so
24 that the testing could be done at all, in other words, one is
25 mangled, you could make a determination that they were both

1 fired by the same weapon, in a high percentage of cases?

2 A In a high percentage of cases, but...

3 Q So the answer's yes?

4 A Krylo, James Krylo will probably --

5 Q Don't tell me. That's hearsay. He's going to
6 come in here and we'll deal with him.

7 A Okay. He'd probably answer it better than I.

8 Q I'm sure he will. I'm just going through this
9 with you.

10 Now, you know that there's a reason I'm asking this,
11 don't you?

12 A Yes. Yes.

13 Q Okay. And the reason that I'm asking you this
14 is because after you left the scene you went back to your
15 office and you started typing up your report?

16 A Yes.

17 Q And reports are important?

18 A Yes.

19 Q Because, among other things, sometimes it may
20 take four years for a case to come to trial?

21 A Yes.

22 Q And as you say, this was a long time ago, and
23 so one of the things that you rely upon reports for is to
24 refresh your memory?

25 A That's correct.

1 Q It's not the only case you worked in the last
2 four years --

3 A No.

4 Q -- and you're not even working in the same
5 department right now -- I mean, you're in the same police
6 department, but you're not in the same division. You don't
7 have the same assignment?

8 A Yes.

9 Q Okay. And so you went back and you started
10 creating a narrative summary of what you had learned to that
11 point?

12 A By the time we left there at the scene, it was
13 more of me making sure I had what I needed to attend the
14 autopsy, which was going to be done the next morning.

15 Q Okay. But -- so you went to the autopsy?

16 A Yes.

17 Q And prior to you going to the autopsy, you
18 interviewed no one?

19 A No one.

20 Q Okay. Then after the autopsy, you returned to
21 your office and you started to create -- you started to
22 memorialize information?

23 A There were different detectives doing different
24 things, getting phone calls, running the scopes, calling
25 people. I was at the computer trying to do this.

1 Q So the answer's yes?
2 A Yes.
3 Q You can say yes.
4 A But there was other things I was doing.
5 Q I understand.
6 A I'm just trying to explain.
7 Q This time I'm using the singular you.
8 A Okay. The singular me?
9 Q The singular you.
10 A I was memorializing some and I was talking on
11 the phone quite.
12 Q All right. But there did come a point in time
13 when the plural you --
14 A Okay.
15 Q -- which I guess would be yourself and
16 Detective Vaccaro and Detective Wildemann, pretty much that
17 first early part, right, and Detective Kyger --
18 A Kyger, yes.
19 Q Okay.
20 -- the four of you were pretty much -- when I say
21 you, that's the four I'm talking about.
22 A Okay. Now we're talking a different you.
23 Q We're talking a -- well, we have to because
24 "you" is a funny word, you never know --
25 A Okay. I understand.

1 Q So -- plus, there's sort of a team mentality,
2 so sometimes when you use the word -- when you're talking
3 about you, you're talking about we. I'll rephrase that.

4 You were working as a team?

5 A Yes, we were working as a team.

6 Q All right. Now, there came a point in time
7 when you started to conduct interviews; am I correct?

8 A Yes.

9 Q Was your first interview Deangelo Carroll?

10 A No.

11 Q Who was your first interview?

12 A Arial.

13 Q Arial. Okay.

14 And when you interviewed Arial, you recorded on tape
15 your interview of her; am I correct?

16 A That's correct.

17 Q Okay. And then you -- as you were conducting
18 that very interview, Mr. Carroll came walking in, if I
19 understand correctly.

20 A Yeah, he came down the stairs to the basement.

21 Q Okay. The basement?

22 A Or the bottom floor.

23 Q I tell you what --

24 MR. GENTILE: Where's our -- can I have our blowup,
25 please?

1 Your Honor, do we have an easel or something?

2 THE COURT: Yeah. Jeff will get it.

3 MR. GENTILE: I need it placed where the jury can
4 see it and the Court can and Sergeant McGrath can.

5 THE WITNESS: I can move over here, if you'd like.

6 THE COURT: The only -- we're going to have Sergeant
7 McGrath step down or -- we can do that.

8 MR. GENTILE: Well, we may be referring to this from
9 time to time, but we might be able to do it seated. I'll be
10 happy to be his pointer if he wants to tell me where to move.

11 THE COURT: All right. If you can't see it,
12 Sergeant, you're free to step down.

13 THE WITNESS: Thank you.

14 BY MR. GENTILE:

15 Q First, let me ask you -- you've been on both
16 floors of the Palomino?

17 A I've been in the Palomino one time.

18 Q Yes, of course. And it was only on this
19 occasion?

20 A Yes.

21 Q Okay. We understand. You remember the layout
22 of the Palomino?

23 A I mean, pretty much. It would be hard for me
24 to look at that unless you said this is this office, this is
25 this office, this is where this safe is that corresponds with

1 the photographs that were taken at the scene. What we were
2 talking about before is where the offices are downstairs where
3 the two big safes were in that office --

4 Q You're answering a question I didn't ask.

5 A Okay. You asked me about -- I said downstairs
6 and you brought out the diagram.

7 Q I brought out the diagrams. Do you think if
8 you saw a diagram of the downstairs you might be able to
9 recognize it?

10 A No.

11 Q Oh, then there's no need to use it because I
12 can't testify.

13 A Okay.

14 Q Okay. Now, you were in a downstairs office,
15 not a basement, a main floor; fair to say?

16 A Fair to say. If there's two floors, then I was
17 in an office where the two big safes were where Arial's office
18 was.

19 Q Is your memory that that office had wood
20 paneling in it?

21 A I don't have.

22 Q You don't remember?

23 A I don't remember. I was seated at a desk. She
24 was behind the desk. I was at the corner of the desk.

25 Q Okay. But in any case, it was -- you were

1 taking her recorded statement when Deangelo came into your
2 life?

3 A Yes. We received a phone call that he was
4 entering the building.

5 Q Okay. From Detective Vaccaro?

6 A Yes.

7 Q Who was outside?

8 A Yes.

9 Q And so is it fair to say then that your second
10 interview was Deangelo Carroll?

11 A Yes.

12 Q And you video recorded that interview, did you
13 not?

14 A Yes, at the homicide office.

15 Q And then you did additional interviews in this
16 matter --

17 A Yes.

18 Q -- am I correct?

19 A Yes.

20 Q You interviewed how many people? Don't tell us
21 who they are, but how many people did you, yourself, interview
22 prior to -- let me give you a cutoff date because it could
23 have gone on forever.

24 Prior to making -- you interviewed Anabel Espindola
25 after you arrested her; am I right?

1 A At some time, yes.

2 Q All right. And you recorded that interview.

3 It was on videotape. Do you remember that?

4 A Yes, I remember.

5 Q All right. Because it was at the homicide

6 office?

7 A Yes.

8 Q And that was on the 24th of May, the day that

9 you arrested her?

10 A Yes.

11 Q As a manner of practice and procedure, when you

12 interviewed somebody at the homicide office, you recorded the

13 interview; am I right?

14 A You're right. That's correct.

15 Q And the reason for that is essentially the same

16 reason as you make reports, peoples' memories fade; am I

17 right?

18 A Yes.

19 Q Okay. And so if you want to have an accurate

20 record of what somebody said, the best thing to do is to

21 record it?

22 A Yes.

23 Q Okay. Now, during your recording of -- well,

24 the recording part's irrelevant. During your interview of

25 Mr. Carroll --

1 A Yes.

2 Q -- this is the one that took place on the --

3 late in the evening about 9:00 p.m. on the 20th of May, about

4 right there --

5 A Yes.

6 Q -- am I correct?

7 A That's correct.

8 Q Close enough?

9 A Close enough.

10 Q All right. And it lasted almost until

11 midnight?

12 A Yes.

13 Q During that recording -- excuse me. During

14 that interview, you learned some things from Mr. Carroll --

15 A Yes.

16 Q -- that were verifiable or capable of being

17 contradicted depending upon additional investigation?

18 A Yes.

19 Q Okay. And Mr. Carroll told you, did he not,

20 that the weapon that was used to kill Hadland was also used to

21 shoot another person?

22 A Yes.

23 Q And he told you the name of the person that

24 used the weapon to shoot another person?

25 A Yes.

1 Q And he told you that that person was in custody
2 at that time?

3 A Yes.

4 Q Did you order -- strike that. What did you do
5 to follow up on that?

6 A Me, particular, I didn't follow up on it. I
7 know what the followup was.

8 Q Well, was a -- was it verifiable?

9 MR. DIGIACOMO: Judge --

10 THE WITNESS: Yeah.

11 MR. DIGIACOMO: -- I'm going to object because it's
12 another witness who does the investigation. He'll be here and
13 Mr. Gentile is free to ask him questions, but unless he has
14 personal knowledge as to the investigation --

15 THE COURT: Okay.

16 MR. GENTILE: Well, let me ask him --

17 THE COURT: Ask it another way.

18 BY MR. GENTILE:

19 Q Let me ask it a different way. Who was it that
20 followed up on --

21 A Detective Wildemann, I believe.

22 Q Detective Wildemann?

23 A Yes.

24 Q Okay. And while you know what happened, you
25 can't testify about it; am I right?

1 A That's up to you guys.

2 Q That's something you heard from Wildemann.

3 Whatever you know you learned from Wildemann?

4 A Yes, and I was the primary case agent, so I
5 know.

6 Q Okay.

7 A Okay.

8 MR. GENTILE: Well, I'm certainly willing to ask
9 him.

10 MR. DIGIACOMO: I think Detective Wildemann can get
11 to the specifics of it.

12 THE COURT: All right. I'll sustain that objection.

13 MR. GENTILE: Okay. All right.

14 THE COURT: I'm sure Mr. Gentile will be asking
15 Mr. Wildemann -- or Detective Wildemann those questions.

16 BY MR. GENTILE:

17 Q Another thing you learned from Mr. Carroll was
18 where Mr. Counts lived in general?

19 A Yes.

20 Q And he also advised you about certain other
21 illegal activities that Mr. Counts was involved in; namely,
22 something you might be interested in today, narcotics?

23 A Yes.

24 Q Okay. And he told you where Mr. Counts kept
25 his drugs; am I right, or do you not recall?

1 A I don't recall that specific on --
2 Q He told you that there was a Suburban parked on
3 his driveway?
4 A Oh, yes.
5 Q And an old Chevy?
6 A Yes.
7 Q And he had like a little shed right there?
8 A Yes.
9 Q And that in that shed he kept a popcorn can.
10 It's coming back to you now?
11 A Yeah, now it is.
12 Q And you searched Mr. Counts' premises, did you
13 not?
14 A Yes.
15 Q And you searched that room?
16 A Yes. The shed, yes.
17 Q And did you find a popcorn can?
18 A No.
19 Q And Mr. Counts -- excuse me. I get them
20 confused. Mr. Carroll -- Mr. Carroll also advised you that
21 Mr. Counts was a gang member; am I right?
22 A He stated a gang that --
23 Q He stated the Keystone -- whatever?
24 A Yes.
25 Q Bloods?

1 MR. DIGIACOMO: Judge, at some point -- I understand
2 him asking certain questions that go to the investigation, but
3 at some point -- can we approach?

4 THE COURT: Sure.

5 (Off-record bench conference)

6 THE COURT: All right. Mr. Gentile is going to
7 rephrase his question.

8 BY MR. GENTILE:

9 Q Yesterday you testified that prior to your
10 going to execute the search warrant at Mr. Counts' home you
11 did some background. Do you remember that?

12 A Yes.

13 Q Because you were provided certain information
14 by Mr. Carroll?

15 A Yes.

16 Q And you needed to tie the initials KC into this
17 man at this specific address?

18 A Yes.

19 Q Okay. And in backgrounding that person, you
20 checked out the information that Mr. Carroll gave you; am I
21 correct?

22 A Yes.

23 Q Now, Mr. Shields, the FBI agent that worked
24 this case with you --

25 A He didn't work this part.

1 Q He helped you?

2 A No, not here.

3 Q Not Counts. I'm not talking --

4 A Oh, Mr. Shields in the recording?

5 Q Mr. Shields, yeah.

6 A Okay.

7 Q He's with the FBI gang unit; am I right, at

8 that time?

9 A I don't know where he -- he moved around from

10 place to place.

11 Q I'm talking about at that time. This was a

12 friend of yours, wasn't it?

13 A This was a friend of mine that worked with me

14 when I was in narcotics on a task force.

15 Q Okay. Were you aware that on May the 19th and

16 later in the month of May of the year 2005 he was assigned to

17 the FBI gang unit?

18 A I'm not -- I can't say with 100 percent

19 certainty that he was assigned to the gang unit.

20 Q You knew he was working west side at north

21 town, gangs?

22 A I knew that he had a lot of information on the

23 gang members in those particular areas.

24 Q All right. Thank you. That's -- and you

25 certainly wanted to be prepared for whatever contingency might

1 occur in executing the search warrant of Mr. Counts', what you
2 thought might be Mr. Counts' house and then ultimately made a
3 determination where it was; am I right?

4 A You lost me in that towards the end.

5 Q Okay. You wound up -- you didn't just walk in
6 there willy-nilly. You checked out Mr. Counts prior to going
7 there?

8 A Yes. I had his photograph, his prior arrest
9 record, many things of Mr. Counts'.

10 Q Including the information that Mr. Carroll
11 provided you, you sought to verify that?

12 A Yes.

13 Q And you did?

14 A Yes.

15 MR. GENTILE: Your Honor, I have my notes all over
16 the place so I'm taking a little longer than I usually would.

17 THE COURT: That's fine.

18 BY MR. GENTILE:

19 Q Now, when you actually made execution of the
20 search warrant at Mr. Counts' house and the house across the
21 street, Mr. Counts was not the easiest to capture you've ever
22 encountered, was he?

23 A No.

24 Q The truth of the matter was -- is that he was
25 hiding in the ceiling of this house, correct?

1 A Yes, that's correct.

2 Q The truth of the matter is that you sent the
3 dog up after him. Do you remember that?

4 A The dogs were placed many times into the attic.

5 Q And he actually fought off the dogs?

6 A I don't believe that he fought off the dogs. I
7 believe that once they located him, he was hit with a taser.

8 Q Well, but prior to that, did you not use -- I'm
9 going to call them explosive devices, but you know what I'm
10 talking about -- to get him out of that attic?

11 A There were many, many explosions that occurred
12 at that residence.

13 Q Tell us what it took to get him out of there.

14 A Every window was broken. There were multiple
15 holes in the ceiling where there were ladders going up in the
16 attic where different K-9 officers can pop their dog up there,
17 see if they can locate him, see if they can find out what
18 corner of the attic he was in. And eventually they located
19 him in a section of the attic.

20 Q All right. And we see photographs of the
21 condition of that house after he was captured; am I correct?

22 A Yes.

23 Q It's fair to say that it didn't look like that
24 when you first entered the house?

25 A That's fair to say.

1 Q Okay. And so your statement yesterday that you
2 were anticipating that Mr. Counts was an extremely violent
3 individual -- I wrote that down when you said it -- turned out
4 to be pretty true?

5 A Yes.

6 Q And you had to -- I think your words were, He
7 was extracted from the attic?

8 A Yes.

9 Q Now, after you interviewed Mr. Carroll, you
10 then interviewed Mr. Zone; am I correct?

11 A Yes.

12 Q And where was Mr. Carroll when you interviewed
13 Mr. Zone?

14 A At his residence.

15 Q All right. And when you dropped off
16 Mr. Carroll at his residence, did you instruct him at that
17 time -- well, let me take a step back. Let's kind of simplify
18 it.

19 You never promised Mr. Carroll anything?

20 A Never anything.

21 Q Other than that you would take him home?

22 A Yes.

23 Q Okay. And you did. You took him home?

24 A Yes.

25 Q All right. When you took him home, you were

1 concerned about his availability to you in the future, were
2 you not?

3 A Yes.

4 Q Okay. This was a man that told you that he
5 drove someone to the scene of a homicide and engineered it?

6 A Yes.

7 Q Okay. In your mind, you knew you were going to
8 go back and find him again?

9 A Yes.

10 Q You certainly wanted to?

11 A Yes.

12 Q And you knew that you wanted to have him go in
13 to interview whoever he could wearing -- I shouldn't say
14 whoever he could -- specifically three people, but most likely
15 one person, Mr. H, Mr. Luis Hidalgo, Jr.; am I right?

16 A Yes, that's correct.

17 Q And Anabel Espindola?

18 A Yes.

19 Q Okay. And you were concerned that he might
20 speak with them before you sent him in with a wire, were you
21 not?

22 A Yes.

23 Q And you directed him not to do that; am I
24 right? If the word "directed" is too strong a word for you --

25 A That's too strong a word.

1 Q Okay. You suggested to him that he not do it;
2 am I right?

3 A I suggested -- or Detective Wildemann, who was
4 doing more of the contact with --

5 MR. DIGIACOMO: Hold on. I'm going to object.
6 Let's let Detective Wildemann say exactly what he told
7 Mr. Carroll.

8 THE COURT: Unless this witness overheard it.
9 BY MR. GENTILE:

10 Q Were you present?

11 A I wasn't present.

12 Q Did you have discussions with Detective
13 Wildemann developing the strategy?

14 A Yes.

15 Q Okay. And during those discussions that you
16 had with Detective Wildemann, was the strategy to advise
17 Mr. Carroll that it would be best for him not to speak to
18 those people?

19 A That wasn't the direction that was given. The
20 direction was it would be better for him to stay away from
21 that club.

22 Q Right. And stay away from that club meant stay
23 away from Mr. Hidalgo and Anabel Espindola?

24 A Yes.

25 Q And Mr. Hidalgo, III?

1 A Yes.

2 Q Okay.

3 MR. GENTILE: Your Honor, I don't know if this would
4 be a good time -- if you're going to take a break this
5 afternoon -- I don't know if you are.

6 THE COURT: Well, we were. Is everybody okay?
7 Do you need to set something up or --

8 MR. GENTILE: No, I could keep going.

9 THE COURT: Okay.

10 MR. ADAMS: Judge, we have a request from the little
11 back table for a break.

12 THE COURT: Okay. Let's take our afternoon break.
13 We'll just take ten minutes, ladies and gentlemen.

14 And once again you're reminded of the admonition
15 that's in place not to discuss the case or do anything else
16 relating to the case on our brief break.

17 Notepads in your chairs and follow Jeff through the
18 double doors and we'll see you all back here in ten minutes.

19 (Jury recessed at 3:06 p.m.)

20 THE COURT: We have a number of juror questions.
21 Was there any other video nearby from another building that
22 night that could have picked up any outdoor activity? That
23 one's fine.

24 Were there any video cameras on the outside of the
25 Palomino --

1 (Audio off)

2 (Court recessed at 3:07 p.m. until 3:26 p.m.)

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now back in
5 session. Everyone may be seated.

6 And, Mr. Gentile, you may resume your
7 cross-examination of Sergeant McGrath.

8 MR. GENTILE: Thank you.

9 BY MR. GENTILE:

10 Q Sergeant, by May of the year 2005, how long had
11 you been in law enforcement?

12 A In May, I want to say 12 or 13.

13 Q Okay. And you'd been in homicide about three
14 and a half years by that time?

15 A Yes.

16 Q Prior to that, what were you doing?

17 A I was --

18 Q Not prior to law enforcement. Prior to
19 homicide.

20 A Okay. Prior to homicide, I was a detective in
21 narcotics.

22 Q Okay. So it's fair to say, then, that on the
23 23rd of May of 2005 you had been involved in single party
24 consent recordings in the past?

25 A Yes.

1 Q Okay. Sometimes we call it a surreptitious
2 recording, a fancy word that lawyers and policemen use, right?

3 A Yes.

4 Q And what it means is a secret, more or less?

5 A Yes.

6 Q Okay. It means that somebody is going to be
7 wearing a device that either records or transmits to a remote
8 location --

9 A Yes.

10 Q -- right?

11 And that device is not going to be detectable or you
12 hope that it's not detectable?

13 A That's correct.

14 Q All right. And one of the reasons that you
15 hope that it's not detectable is because there is a safety
16 factor involved with respect to the person who's wearing the
17 device?

18 A Yes.

19 Q If he's -- or she is discovered as recording,
20 it could become problematic?

21 A Yes.

22 Q All right. And undercover police officers
23 sometimes wear such devices?

24 A Yes.

25 Q Okay. And clearly in those situations you have

1 a double problem because if they're discovered recording and
2 discovered to be a police officer, it could endanger the
3 policeman's life?

4 A Yes.

5 Q And so there are procedures that are employed
6 when a law enforcement officer is going to send somebody in
7 wearing a secret recording device?

8 A Yes.

9 Q And the procedures differ depending upon
10 whether the device is going to record locally, in other words,
11 in the device itself, or if the device is going to transmit to
12 a remote location; fair to say?

13 A Fair to say.

14 Q Because in a remote location when you've got a
15 transmitter on somebody, there's -- you can monitor what's
16 going on and in case something bad is developing you can send
17 as many people as you've got with you to help that guy out?

18 A That's correct.

19 Q But when you're dealing with a device that does
20 not transmit, that merely records locally, that is not
21 available to you; fair to say?

22 A That transmits so we can hear it?

23 Q No.

24 A Say it again.

25 Q Just the opposite. Just the opposite. A

1 device that is recording and isn't transmitting at the same
2 time.

3 A That was the type of device.

4 Q I understand that.

5 A Okay.

6 Q I'm getting there.

7 A Okay.

8 Q All right.

9 A I don't --

10 Q I'm getting there. If -- and this particular
11 device that Mr. Carroll had on was a digital recording device,
12 it did not transmit; am I correct?

13 A That's one -- correct.

14 Q All right. And so when Mr. Carroll went into
15 Simone's, you weren't able to monitor what was going on while
16 he was in there; is that fair to say?

17 A That's fair to say.

18 Q Okay. But that's not the same as saying you
19 didn't care if the guy got hurt. You definitely did care?

20 A Yes.

21 Q Okay. Also, when you are -- there's a question
22 that I have to ask you that I forgot. There's actually two.

23 A Okay.

24 Q Number one, I'm told by certain people here
25 that I did not have you say that the gun that you recovered

1 from Luis Hidalgo, Jr. that was ultimately returned to him was
2 not the murder weapon. It was not the murder weapon?

3 A That was not the murder weapon.

4 Q Okay. Good. The fact that you returned it to
5 him was enough for me.

6 In any case, by the time that you sent Deangelo
7 Carroll in wearing a recording device, your best estimate --
8 just give me your best estimate in terms of how many times you
9 had been involved, either yourself wearing a device or
10 monitoring somebody else wearing a device, in your law
11 enforcement career by that time.

12 A Hundreds.

13 Q Okay. And so -- and you did wear it yourself
14 from time to time, haven't you?

15 A Yes, I have.

16 Q Okay. Usually if a law enforcement officer's
17 walking in there, it's preferential to have a transmitter,
18 isn't it?

19 A Yes.

20 Q In this instance, that's not what was used? I
21 think we've established that.

22 A Yes.

23 Q Okay. Now, you can't just send somebody
24 wearing a device into a situation without knowing something
25 about the history of the -- of what has taken place before you

1 do that; am I right?

2 A Yes.

3 Q A history -- in other words, if you've got
4 somebody that's going to wear a device and they have had prior
5 contact with the person that they're going to go in to record,
6 you need to know what that prior contact was?

7 A Yes.

8 Q Because if they walk in there and they say
9 something that is totally contrary to anything that had
10 happened before, it might provoke a response that you don't
11 want in a sense of danger? Shall I clear that up?

12 A Clear that up.

13 Q All right.

14 A Yeah, because I was listening from the
15 beginning. You lost me at the end.

16 Q All right. Let's take a situation where you
17 yourself have worn a recording device.

18 A Yes.

19 Q Just use that for a general background. When
20 you walk in and you're wearing a recording device, you know
21 what has transpired in the past between you and the person
22 that you're talking to?

23 A It could be and it could not be.

24 Q Well, it might be that you never had any
25 contact with them at all before?

1 A Yes.

2 Q But if you had had contact with them before,
3 then you know what has transpired?

4 A Yes.

5 Q If you did not have any contact with them
6 before, you at least have some kind of information that caused
7 you to go in there wired in the first place?

8 A Yes.

9 Q Okay. And so you know what the person that
10 you're going to be talking to and recording is expecting to
11 hear; fair to say?

12 A Yes.

13 Q Because if you say something that the person is
14 not expecting to hear, they're going to become puzzled as to
15 why you're saying that and might respond violently?

16 A That's a fair statement.

17 Q Okay. And so in this instance you had spoken
18 with Mr. Carroll?

19 A Yes.

20 Q And he had given you -- true or false, it
21 doesn't matter, he at least gave you some historic information
22 about his relationship with the people that he was going in to
23 record?

24 A Yes.

25 Q And you definitely did not want him to walk in

1 there and say something that was contrary to anything that had
2 happened in the past between them?

3 A No. My object was to have him basically go in
4 there and verify what he had already told us.

5 Q What he had told you. Exactly.

6 And you had told him when he left you on the 20th of
7 May -- I guess he might have left you on the 21st of May.
8 Yeah, 21st. You've already said that it was suggested to him
9 that he not have any contact with the Palomino Club and the
10 people there until you got in touch with him again. I think
11 you've already testified about that.

12 A Yes.

13 Q Okay. And it was your understanding on the
14 23rd that he had not had any contact except that he had
15 received a phone call?

16 A That's not correct.

17 Q That's not correct?

18 A That's not correct.

19 Q Okay. It was your understanding that he had
20 had contact?

21 A Yes.

22 Q And he told you the nature of the discussions
23 that had taken place?

24 A That was told to Detective Wildemann and
25 relayed to me.

1 Q All right. And so when you were sending him in
2 to speak with whoever it was that he could speak with, it was
3 certainly your contention that it be Luis Hidalgo, Jr., right?
4 A Yes.
5 Q And -- because he told you that he could do
6 that?
7 A Yes.
8 Q And Luis Hidalgo, III?
9 A Yes.
10 Q And Anabel Espindola?
11 A Yes.
12 Q Now, you gave him certain instructions in terms
13 of what it was that you wanted him to say -- something?
14 A What we wanted to hear.
15 Q What you wanted to hear, but you also gave him
16 some assistance in terms of setting up a scenario that would
17 be an introduction to the discussion?
18 A I don't believe that that was discussed. What
19 was discussed primarily was length of time, you know, distress
20 signals, things of that nature, something's going wrong, those
21 type of things.
22 Q Let's talk about distress signals.
23 A Yes.
24 Q You're on the outside of this place?
25 A Yes.

1 Q You can't see in through the place?

2 A Yes.

3 Q Was he wearing some sort of device that if he

4 set it off would let you know that there was a problem?

5 A No.

6 Q Okay. There was a way for him to communicate

7 to you that there was a problem?

8 A There was a way that we instructed him to

9 communicate with us that --

10 Q If there was a problem?

11 A -- if there was a distress that we would --

12 Q Was he supposed to yell out help real loud?

13 A He was supposed to scream and try to get to the

14 nearest exit and waive his arms straight up in the air so that

15 we can come and rescue him.

16 Q All right. But that never happened?

17 A That never happened.

18 Q All right. And I wanted -- one of the reasons

19 that you sent him in there was to determine if these things

20 that he had told you in the past were true or not true?

21 A Yes.

22 Q All right. Because it's fair to say that

23 everything he told you did not turn out to be true. That's

24 fair to say?

25 A That's fair to say.

1 Q Okay. And you had some doubts about this man's
2 truthfulness in general?

3 A Yes.

4 Q Now, he walked into -- I'm listening to the
5 first recording.

6 A Okay.

7 Q And if you want to use just as an aid for the
8 examination because the transcript, of course, is not evidence
9 in this case, the jury can't use it, but if you want to use it
10 for our question and answer, if it would be helpful to you --

11 A Well, let's go.

12 Q I don't know what the number is. Okay. There
13 is a -- at the very beginning there is some discussion about
14 Mr. Carroll being told by Anabel to go to Room 6. Do you
15 remember that?

16 A Yes, I remember that.

17 Q But you can't hear that on the tape?

18 A No, I can hear the knocking on the door.

19 Q You can hear the knocking on the door. So you
20 don't hear Mr. Carroll talking to Anabel Espindola and her
21 saying go to Room 6?

22 A Not that I can recall.

23 Q You do hear Mr. Carroll asking somebody, Where
24 is your brother?

25 A Yes.

1 Q And we can agree, can't we, that at least as
2 far as any of us know Anabel Espindola and Luis Hidalgo, III
3 are not brother and sister?

4 A That's correct.

5 Q And Anabel Espindola and Luis Hidalgo, Jr. are
6 not brother and sister?

7 A That's correct.

8 Q Okay.

9 (Off-record colloquy)

10 BY MR. GENTILE:

11 Q Now, Mr. Carroll is saying that -- well, never
12 mind. It appears from the tape that Mr. Carroll has not been
13 back to work at the Palomino like you told him he shouldn't
14 do. Is that accurate?

15 MR. DIGIACOMO: Objection.

16 MR. GENTILE: I don't --

17 THE COURT: Well, overruled. The tape speaks for
18 itself and --

19 MR. DIGIACOMO: Except for I thought that the Court
20 had ruled that the statements of Deangelo Carroll can't be
21 offered for the truth of the matter asserted.

22 MR. GENTILE: I'm not offering it for that. I'm
23 asking him if it is true. I'm asking him to tell the truth,
24 not Mr. Carroll.

25 THE COURT: All right. Well, it's not being offered

1 for that.

2 You had directed Mr. Carroll not -- or suggested
3 that he not return; is that right?

4 THE WITNESS: That's right.

5 THE COURT: And there's nothing on the tape to
6 suggest that, in fact, he had returned to work?

7 THE WITNESS: Nothing on the tape.

8 THE COURT: All right.

9 BY MR. GENTILE:

10 Q Among the things that you ask Mr. Carroll to do
11 was to verify that he was -- I'm going to use the word
12 "ordered," but there was an agreement that he was supposed to
13 go out and murder Mr. Hadland. Am I right?

14 A That he was to go out? That's what you said.

15 Q Well, let me rephrase -- let me just say this,
16 that he -- that there had been an agreement that he was a part
17 of and that the object of the agreement was the murder of
18 Mr. Hadland?

19 A Correct.

20 Q Okay. And Mr. Carroll knew that that's what he
21 was supposed to do. Am I right?

22 A Yes.

23 Q And as a matter of fact, in this initial
24 recording, Mr. Carroll says the words, What's done is done.
25 He wanted him fucking taken care of and we took care of him.

1 He says those words?

2 A Yes.

3 Q Which was a prompt to get the response that
4 would be to the effect of, Yeah, that's right. Fair to say?

5 A Fair to say.

6 Q All right. But that's not what happened.
7 That's not what the response was, was it?

8 A No.

9 Q And so when you said yesterday -- and I wrote
10 it down word for word --

11 A Okay.

12 Q -- We didn't believe we had enough the first
13 time so we sent him back in again, that's kind of what you're
14 talking about?

15 A Yes.

16 Q Now, what's your memory as to when it became
17 public knowledge that Palomino flyers were discovered at the
18 site of Mr. Hadland's death?

19 A When the crime scene analysts and myself
20 arrived.

21 Q Do you recall any media dissemination of that
22 information?

23 A I recall all of the media being there, but I
24 don't believe that that was disseminated.

25 Q It hadn't been disseminated until after the

1 arrest of Anabel Espindola; am I correct?

2 A Yeah. The press release was put up after that.

3 Q All right. And she was arrested on the 24th of

4 May?

5 A Yes.

6 Q Now, at some point in time, Mr. Carroll -- for

7 about 14 minutes or so, Mr. Carroll speaks, and he says, We

8 were going to call it quits and fucking KC fucking got mad and

9 I told you he went fucking stupid and fucking shot the dude,

10 nothing we could fucking do about it. Do you remember him

11 saying that?

12 A That's in there. That's in the recording.

13 Q Did you tell him to say that?

14 A No.

15 Q Did he tell you that he told somebody that this

16 guy went goofy and shot the dude?

17 A No.

18 Q So this was the first time that you're hearing

19 this on this tape recording?

20 A Yes.

21 Q Which is another reason why you didn't believe

22 you had enough the first time so you sent him back in again?

23 A Yes, which is one of the reasons.

24 Q I said another.

25 A Another.

1 Q We'll try to hit a few.

2 A Okay.

3 Q Now, Mr. Carroll says that after he spoke with
4 the homicide detectives he walked outside of the homicide
5 offices --

6 A Yes.

7 Q -- at about 1:30 and he says -- and he goes,
8 You can go home. When I walked outside the building, there
9 were two Metro cops. They fucking booked me on some fucking
10 misdemeanor tickets and I got in the van. Remember the
11 tickets we got that night? You had to come and get the van.
12 Did you tell him to say that?

13 A Yes.

14 Q And that was to explain why he hadn't been in
15 contact with them for so long?

16 A Yes.

17 Q Am I right?

18 A That's correct.

19 Q It was sort of a cover?

20 A Yes.

21 Q And so after hearing this recording, after you
22 went back, loaded it onto a computer and listened to it, it
23 became apparent to you that Mr. Carroll had had more
24 communication with Anabel Espindola than he admitted?

25 MR. DIGIACOMO: Objection.

1 THE COURT: State your question again. What was the
2 question?

3 BY MR. GENTILE:

4 Q After you listened to this recording the first
5 day, the first day, you could hear that there had been
6 communication between Mr. Carroll and Ms. Espindola?

7 MR. DIGIACOMO: Objection.

8 THE COURT: Overruled.

9 THE WITNESS: I mean, when I heard it, I heard the
10 female voice and his voice on there --

11 BY MR. GENTILE:

12 Q And you heard --

13 A -- and it was very --

14 Q -- what they were saying?

15 A But the tape was extremely --

16 Q I don't think you don't understand my question.

17 A I don't understand your question.

18 Q When you heard what you got on the 23rd, there
19 were certain things that Mr. Carroll was talking about that
20 you didn't know he had discussed before with these people. Am
21 I right?

22 A There were certain things I couldn't hear on
23 the tape.

24 Q By the way, when you arrested Anabel Espindola,
25 did you -- do you remember how much money you recovered from

1 her possession?

2 A I took custody of her purse, but not arrested

3 her.

4 Q I'm sorry, sir. You arrested her purse?

5 A I arrested her purse.

6 Q When you arrested her purse, how much was in

7 it? Do you remember?

8 A More than \$2000.

9 Q More than \$2300, right?

10 A Approximately 2300, I believe.

11 Q Okay. And then in addition to that, she also

12 gave \$800 to Mr. Carroll that day, as far as you know?

13 A Yes.

14 Q Now, this concluded, this first recording

15 concluded and you sent him back in a second time, right?

16 A Unexpected.

17 Q You sent him back in a second time because, A,

18 he had not spoken to Mr. Luis Hidalgo, Jr.?

19 A Correct.

20 Q Okay. And he said that he would --

21 A That's correct.

22 Q -- right?

23 And he did not obtain a statement. In fact, it was

24 to the contrary, the statement that he obtained was to the

25 contrary in terms of there being an intention for Mr. Hadland

1 to die?

2 MR. DIGIACOMO: Objection. One, that assumes a fact
3 not in evidence. Two, it's not true.

4 THE COURT: Well, no, that's overruled. First of
5 all, the tape speaks for itself and what's on the tape and
6 that's up to the jury to interpret the meaning on the tape.

7 Mr. Gentile, ask your question another way. I
8 understand what you're asking --

9 MR. GENTILE: I'll go back --

10 THE COURT: Ask it another way.

11 MR. GENTILE: I'll go back to this one and we'll do
12 it backward.

13 BY MR. GENTILE:

14 Q You already said that one of the reasons that
15 you sent him back in the second day was because when he said,
16 What's done is done, you wanted him fucking taken care of and
17 we took care of him, the response that he got was to the
18 contrary of that statement that he said, right?

19 A That was one of the responses that was on the
20 tape.

21 Q Right. Right. And so you sent him back in the
22 second day?

23 A Yes.

24 Q The second day, would it be fair to say that
25 you told him to stay his ground a little bit more if he was

1 contradicted?

2 A That's not accurate.

3 Q No?

4 A No.

5 Q Did you -- would you agree that Mr. Carroll is
6 more forceful and argumentative when he is contradicted about
7 what the reason was for his being with Mr. Hadland? Would you
8 agree with that?

9 A On this time?

10 Q On the second one.

11 A On the second one, he's more forceful, yes.

12 Q Forceful. But that wasn't because you told
13 him?

14 A No.

15 Q That was because he wanted to stay out of jail
16 and he needed to get this recording?

17 A That's not true.

18 Q I'm not saying that you told him he would stay
19 out of jail. You never made him that promise?

20 A Never made him that promise.

21 Q I understand that. Nobody's suggesting that.
22 I don't want that suggestion to be taken from my question to
23 you. That's not what I mean.

24 A I know what -- I know what we're talking about,
25 but that's not correct.

1 Q On the second day, he says, You know what I'm
2 saying? I did everything you guys asked me to do. You told
3 me to take care of the guy and I took care of him.

4 And then Anabel says to him, Talk to the guy, not
5 fucking take care of him.

6 Do you remember that?

7 A That's one of her lines.

8 Q That's one of her lines. And then he says, If
9 he's with somebody -- you said if he's with somebody, then
10 just beat him up.

11 And she said, I said to go to plan B, fucking,
12 Deangelo. And Deangelo, you're just minutes away. I told you
13 no. I fucking told you no.

14 That's what she's saying to him?

15 A That's what she's saying.

16 Q Now, he says at some point in time -- and I'm
17 only using this language because the courtroom is one place
18 you can say -- you have to say whatever's in there. Deangelo
19 says, Fucking KC is threatening to kill my wife and kid.

20 Did you tell him to say that to them?

21 A No.

22 Q On the first day, you met at Jerry's Nugget?
23 You met Deangelo at Jerry's Nugget?

24 A Yes.

25 Q Because the vehicle that he had to drive was

1 across the street?

2 A Across the street, down the road and around the
3 corner, Yale Street. Do you know where Yale Street is?

4 Q I do know where Yale Street is.

5 A So when you go behind Jerry's Nugget and you go
6 up one street, then you go northbound on Yale and there was
7 his -- there was his place, so it's not --

8 Q No, I didn't say his place.

9 A Oh, his house. You said --

10 Q No. You -- no, I didn't speak right.

11 A Okay.

12 Q I must have not done well trying to
13 communicate --

14 A Okay.

15 Q -- so let me try again.

16 If I understand you correctly, Deangelo's -- when he
17 called you, his orders, so to speak, were to pick up the van,
18 the Palomino Club van, and drive it to Simone's. Am I
19 correct?

20 A The shuttle bus.

21 Q Shuttle bus.

22 A That was a pre-arranged situation that was
23 discussed on the telephone.

24 Q Right. I understand that.

25 A Okay.

1 Q That was his -- that's what he told you he was
2 supposed to do?

3 A Yes.

4 Q Okay. And the shuttle bus was, of all places,
5 in the Palomino parking lot?

6 A Yes.

7 Q And the Palomino's across the street from
8 Jerry's Nugget?

9 A Yes.

10 Q And so the reason you met at Jerry's Nugget was
11 because it was close to where he was supposed to pick up the
12 shuttle bus?

13 A Yes.

14 Q Otherwise, you'd have this recorder on for even
15 longer than it was, right, wasting digital capacity?

16 A I mean, that's not the only reason, but that --
17 you know, that wasn't a consideration at the time.

18 Q Nevertheless, it was across the street from
19 Jerry's Nugget?

20 A Yes.

21 Q Okay. So he picked it up. Now, from the time
22 that you put this recording device on him, it was activated?

23 A Yes.

24 Q And he had no way to deactivate it?

25 A Yes. There is an on/off switch on the device.

1 Q Okay. But insofar as you can tell from having
2 downloaded it, that on/off switch was not used?

3 A That's correct.

4 Q And then it remained on until you collected it
5 back from him that day?

6 A Yes.

7 Q And the same is also true from the 24th of May?

8 A Yes.

9 Q Okay.

10 MR. GENTILE: I have nothing further.

11 Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Mr. Arrascada.

14 MR. ARRASCADA: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ARRASCADA:

17 Q Detective, I want to talk to you first about
18 the May 23rd wire, okay?

19 A Okay.

20 Q And when you testified yesterday on direct
21 examination, you said to these folks -- and I wrote it down
22 here -- the purpose of the wire, I believe you said, was to
23 get info on Mr. H. That's how you said it, correct?

24 A Yes.

25 Q Raised up to say Mr. H, right?

1 A Yes.

2 Q Okay. And it's because that day you wanted to
3 hear and verify Deangelo Carroll's story regarding Mr. H?

4 A Yes.

5 Q Okay. Now, before he goes in -- you spoke
6 about this with Mr. Gentile. I want to talk about a few other
7 points, okay?

8 A Okay.

9 Q Before he goes in, Deangelo Carroll, to do the
10 wire to get Mr. H, you brief him, correct, or you talk to him?

11 A Yes.

12 Q And some of the things that -- and you told
13 them all -- the folks here in the jury already that you told
14 him some prompts or things you would want him to say to gain
15 information and reactions, correct?

16 A Some things.

17 Q And some of those things were to tell them
18 untruths, right?

19 A Yes.

20 Q Or lies?

21 A Yes.

22 Q And those lies were, one, that Kenneth Counts
23 wanted more money, right? That was a lie at the time?

24 A That was a lie during the conversation, yes.

25 Q Because you knew that Kenneth Counts was in

1 jail?

2 A Yes.

3 Q And then the other was that Rontae Zone and
4 Jayson Taoipu were saying they were going to snitch or tell,
5 right?

6 A That's one of the things that's on the tape.

7 Q Okay. So that was something you told him as
8 lies to get reactions because Jayson and Rontae, at that
9 point, had already given statements, recorded statements, to
10 you and/or one of the other detectives, right?

11 A That wasn't a prompt to. That wasn't something
12 under my direction I told him to use.

13 Q I'm sorry. You're testifying now that you did
14 not prompt him or tell him to say that Jayson and -- Jayson
15 Taoipu and Rontae Zone were going to snitch or were going to
16 say they were going to snitch?

17 A I don't believe that those were the words that
18 I said.

19 MR. ARRASCADA: Court's indulgence.

20 BY MR. ARRASCADA:

21 Q Do you recall testifying in the Counts' trial,
22 correct?

23 A Yes.

24 Q And you testified as, you are here, under oath,
25 correct?

1 A Yes.

2 Q You were asked questions and you gave answers
3 under oath?

4 A Yes.

5 Q Okay. And it's your testimony today that you
6 did not tell Jayson -- that part of your ruse or part of the
7 lies that you prompted or gave to Deangelo Carroll, you did
8 not tell him to let the people he went to talk to on the
9 wire -- you did not tell him to tell lie about the fact that
10 Jayson and Rontae were going to be snitching on people; is
11 that right?

12 A I don't know if those were the words exactly
13 that I used. I mean, if you -- I haven't reviewed Kenneth
14 Counts' -- my testimony and his. Would you like to show it to
15 me?

16 MR. ARRASCADA: May I approach?

17 THE WITNESS: That sounds wonderful.

18 BY MR. ARRASCADA:

19 Q Okay. We're at page 97. I'm going to come up
20 around here. Is that all right?

21 A Okay. That sounds great. Don't hurt yourself.

22 Q I'll try not to.

23 Just so we're clear, here it is, testimony, State V
24 Kenneth Counts, correct?

25 A Okay. Yeah.

1 Q And you'll agree with me that Michael Shawn
2 McGrath, that is you?

3 A Yes, that's me.

4 Q And you are at page 79 through 116.

5 A Yep.

6 Q We're at page 97, correct?

7 A Okay.

8 Q And here it is. You were asked by the
9 prosecutor: Can I ask you a couple of questions --

10 A Okay.

11 Q -- about Deangelo -- about what Deangelo says
12 on here? In fact, you provided some information for Deangelo
13 to tell that wasn't true, correct?

14 And you said --

15 A Yes.

16 Q -- yes.

17 The next question was: I mean, for Mr. DiGiacomo.
18 I mean, KC wasn't looking for money because KC is already in
19 jail, right?

20 Answer: That is correct.

21 A That's what I testified to.

22 Q Next question: The kids, referring -- and the
23 kids in this case are Rontae and Jayson, correct? Is that
24 right?

25 A Yes.

1 Q The kids aren't talking or the two kids that
2 are in the car aren't talking about snitching. They've
3 already provided statements to the police about the crime.

4 Your answer: That's correct --

5 A Okay.

6 Q -- right?

7 A Yeah, let me just continue reading.

8 Q Are those -- those are my questions. I'm sure
9 they can clean it up. Okay?

10 A That's correct.

11 Q Okay. So it is correct and truthful?

12 A Yeah. As -- I mean, we're talking 2005. Okay.

13 So when --

14 Q The Counts trial was 2000 --

15 A No, I'm just saying where you --

16 Q Sir, let me ask questions. You give answers.

17 A Okay.

18 Q Is that all right?

19 A That sounds wonderful.

20 Q Okay. The Counts trial was February 6, 2008,
21 correct?

22 A Yes.

23 Q Okay. Last year?

24 A But you asked me on my questions that we were
25 discussing earlier today here when he asked me the question

1 that he asked me about being handcuffed and those types of
2 things. Were they -- was he arrested? That's what
3 Mr. Gentile asked me.

4 Q My questions are different.

5 A Okay.

6 Q My questions are regarding Deangelo Carroll
7 before he went in to get his information on the wire on
8 May 23rd. You spoke to him, correct?

9 A Yes.

10 Q And when you spoke to him, you told him to say
11 some things which were not true or lies, correct?

12 A Yes.

13 Q And one of those things was that Kenneth Counts
14 wanted more money, correct?

15 A I mean, I said a lot of things, but I don't
16 know if that's exactly how I worded it, how it was worded.

17 Q That was your prior testimony?

18 A That was my prior testimony.

19 Q And that was under oath?

20 A Yes.

21 Q Where you swore to tell the truth, correct?

22 A Yes.

23 Q And then the other statement under oath that
24 you told Deangelo Carroll to lie about was that Rontae and
25 Jayson were going to snitch, right?

1 A Right.

2 Q So those were some of the prompts, more of them

3 that were told to Deangelo Carroll before he went in to speak

4 to the people on the wire, correct?

5 A I don't recall exactly if those were the words.

6 I mean, we had a discussion. I searched his car, I searched

7 his person.

8 Q You didn't lie when you testified, right?

9 A No, I didn't lie when I testified.

10 Q Okay. Then can you agree that's what you said?

11 A Yes, that's what I said.

12 Q Okay. So there are things that you had yet --

13 that you gave information to Deangelo Carroll --

14 A Yes.

15 Q -- to bring up during the conversation in

16 Simone's which were lies, correct?

17 A On the first time?

18 Q May 23rd.

19 A Yes.

20 Q Okay. You did not tell him, as a lie, to tell

21 Little Lou you had nothing to do with it, did you?

22 A No.

23 Q That would not be a lie, would it?

24 A I don't know if it was a lie.

25 MR. DIGIACOMO: Object -- that's fine.

1 MR. ARRASCADA: Let me rephrase that.

2 THE COURT: Okay. He's rephrasing.

3 BY MR. ARRASCADA:

4 Q That would not be a lie that you provided to
5 Deangelo Carroll to tell -- provide or state at the wire
6 transfer, at the wire discussions, right?

7 A Yes.

8 Q Okay.

9 (Off-record colloquy)

10 BY MR. ARRASCADA:

11 Q You were the primary case agent; am I correct
12 on that?

13 A I was a crime scene -- in charge of the crime
14 scene, myself and Detective Kyger. We were co-case,
15 co-case --

16 Q Primary agents?

17 A Yeah.

18 Q Okay.

19 A Detectives.

20 Q Detectives. But you also executed the warrant,
21 and you previously testified to this, the warrant at the
22 Palomino, correct?

23 A Yes.

24 Q And part of that warrant included wanting to
25 get their payroll records, correct?

1 A Yeah, paperwork, payroll.

2 Q And you actually did obtain the payroll

3 records, correct?

4 A Yes.

5 Q And on those payroll records, let's talk about

6 what wasn't on those. When you reviewed those --

7 MR. ARRASCADA: Court's indulgence.

8 THE COURT: That's fine.

9 MR. ARRASCADA: I'm sorry.

10 THE COURT: That's all right. Take your time.

11 BY MR. ARRASCADA:

12 Q On those payroll records, you were able to

13 confirm that Deangelo Carroll was an employee?

14 A Yes.

15 Q Timothy Hadland was a former employee, correct?

16 A Yeah. I don't know if it said former. His

17 name was in there.

18 Q He was on the payroll?

19 A Yes.

20 Q Who was not on the payroll records for the

21 Palomino, Rontae Zone was not there, was he?

22 A No.

23 Q And Jayson Taoipu was not there, correct?

24 A That's correct.

25 Q So they were not employees on the records of

1 the Palomino Club?

2 A That's correct.

3 THE CLERK: 192 is the CD.

4 MR. ARRASCADA: We don't need it. We agree. I
5 apologize. I wrote down the wrong exhibit number.

6 THE COURT: He doesn't need it anymore.

7 BY MR. ARRASCADA:

8 Q Just to reconfirm for the clerk, Jayson Taoipu
9 was not on the payroll records of the Palomino Club, correct?

10 A That's correct.

11 Q Neither was Rontae Zone, right?

12 A That's correct.

13 Q Part of your investigation -- you spoke about
14 the involvement you had with the arrest of Kenneth Counts,
15 correct?

16 A Yes.

17 Q And one of the things you learned was that
18 Kenneth Counts was extremely violent, correct?

19 A Yes.

20 Q And the way that you learned that is that one
21 of the things you do is you can punch in on a computer that
22 will provide peoples' criminal histories, correct?

23 A Correct.

24 Q And so you can punch in Kenneth Counts with as
25 much identifying information and out comes -- spits out his

1 criminal history, correct?

2 A That's correct.

3 Q And he had been previously convicted of violent
4 felonies?

5 A Yes.

6 MR. DIGIACOMO: Objection. He had -- he was
7 never --

8 THE COURT: Hearsay.

9 MR. DIGIACOMO: Judge, can we approach?

10 THE COURT: All right.

11 (Off-record bench conference)

12 THE COURT: Just to clarify, when you ran Kenneth
13 Counts through the computer to see if he was dangerous and all
14 of that, the two priors, were those both drug related prior
15 convictions?

16 THE WITNESS: Yes.

17 THE COURT: All right. Thank you.

18 BY MR. ARRASCADA:

19 Q They were drug convictions. You also learned,
20 though, through your investigation that he was an extremely
21 violent person?

22 A Yes.

23 Q And Deangelo Carroll, you ran him on the
24 computer too, correct?

25 A Yes.

1 Q And you saw it come up that he had a prior
2 felony conviction, right?

3 A Yes.

4 Q And that was for robbery, wasn't it?

5 A Conspiracy --

6 Q Do you need to get the answer from someone
7 else?

8 A -- to commit or it might be --

9 MR. DIGIACOMO: Objection, Judge.

10 THE WITNESS: It was robbery.

11 THE COURT: All right. Sustained.

12 BY MR. ARRASCADA:

13 Q All right. Robbery's a violent crime, correct?

14 A Yes.

15 Q It's the taking of force or violent from
16 another person, right?

17 A Yes.

18 Q Now, when you ran Luis Hidalgo, III, he had no
19 record, did he?

20 A That's correct.

21 (Pause in proceedings)

22 BY MR. ARRASCADA:

23 Q You previously identified documents that were
24 taken from Kenneth Counts' house, correct?

25 A Yes.

1 Q And there were also photographs that were
2 taken, correct?

3 A Yes.

4 Q And when I mean photographs taken, that's --
5 I'm sorry. It's late in the day. They were photographs that
6 were seen at the scene --

7 A Yes.

8 Q -- that a crime scene analyst then took
9 photographs of?

10 A Yes.

11 Q And I'm showing you Exhibit 71. These are some
12 of those, correct, or two of those?

13 A Yes.

14 Q And you've been involved in narcotics, not
15 yourself personally, but as a detective?

16 A Yes.

17 Q And you head up the unit as a sergeant?

18 A Yes.

19 Q And one of the things that you became aware of
20 is gangs, correct?

21 A I have some knowledge of gangs.

22 Q You had a chance to look at the two gentlemen
23 in these pictures, correct?

24 A Yes.

25 Q And you know that gang members commonly will

1 show signs or gang signs with their hands, correct?

2 A I know that.

3 Q Okay. And did you look at the signs or the

4 hand signals that these two folks are giving in these

5 pictures?

6 A I didn't just look at those.

7 Q Those are gang signs, correct?

8 A I'm not an expert in actual signs. I mean, I

9 can say that they appear to be.

10 Q That's fine. They appear to be gang signs,

11 correct?

12 A Yes.

13 Q Those are photos that were taken from Kenneth

14 Counts' home, correct?

15 A Yes.

16 Q And they appear to be gang signs, correct?

17 A The one up top and the one on the bottom photo.

18 Q Yes?

19 A Yes.

20 Q Okay. And what we mean by that -- and I think

21 it was in the '60s during Vietnam where people would show two

22 fingers spread as a peace sign, correct?

23 A Yes, I've seen that.

24 Q Okay. That's not a gang sign, right, to your

25 knowledge?

1 A To my knowledge, no.

2 Q And we don't have peace signs here, right?

3 A Right.

4 Q They appear to be gang signs?

5 A Yes.

6 Q From Kenneth Counts' house?

7 A From Kenneth Counts' house.

8 Q You spoke to these folks about Exhibit 190

9 which are a series of Nextel phone records. Do you remember

10 that?

11 A Yes.

12 Q And you discussed the color coding, correct?

13 A Yes.

14 Q And that you are familiar with that color

15 coding, correct?

16 A Yes.

17 Q And what you've done with that is you've set up

18 color coding for Deangelo Carroll's phone number, correct?

19 A Yes.

20 Q And also his Nextel chirp number?

21 A Yes.

22 Q And Deangelo Carroll, in your records, is

23 yellow, right?

24 A Sure.

25 MR. ARRASCADA: May I approach?

1 THE WITNESS: Yes.

2 MR. ARRASCADA: Your Honor, may I ---

3 THE COURT: Oh, yeah, you can move freely.

4 BY MR. ARRASCADA:

5 Q Deangelo Carroll is yellow?

6 A Yes.

7 Q Anabel Espindola is orange?

8 A Yes.

9 Q And then you also have Lou Hidalgo, III as
10 green?

11 A Yes.

12 Q And Luis Hidalgo, Jr. as blue, correct?

13 A Yeah.

14 Q I just want to talk to you right now about
15 orange, Anabel Espindola, okay?

16 A Okay.

17 Q And also the yellow, Deangelo Carroll, okay?

18 A Okay.

19 Q Now, what you did in color coding these, and
20 we'll put it up there in a second, we can go over it together;
21 is that all right?

22 A Yes.

23 Q Up here you have a yellow color code that
24 that's Deangelo Carroll's phone number, correct?

25 A Yes.

1 Q And all down this row they're all the same,
2 right?
3 A Yes.
4 Q Then over here we have these star 4 or star 13s
5 which are the chirps, correct?
6 A Yes.
7 Q Nextel, direct connect?
8 A Yes.
9 Q Okay. And here between Deangelo Carroll
10 attempting to connect to star 4, that's Anabel, right --
11 A Yes.
12 Q -- on May 19th, he attempted to connect to her
13 on one, two, three, four, five, six, seven, eight times,
14 correct?
15 A Yes.
16 Q And that is from -- I'm sorry. I missed -- I
17 counted wrong. One -- from the 19th, it's just one, two,
18 three, four times he attempted to chirp her correct, the 19th?
19 A Yes.
20 Q Okay. And that's reflected here at the top
21 where you have Deangelo Carroll as the yellow number, the
22 604-5322; is that right?
23 A Yeah, and I put -- that's my writing above
24 that.
25 Q Okay. And starting from the bottom, May 19th,

1 you know that the chirp that ends star 4 is Anabel Espindola,
2 correct?

3 A Yes.

4 Q And so on May 19th, Deangelo Carroll attempts
5 to chirp Anabel Espindola -- let me count it up -- one, two,
6 three, four times, correct?

7 A On the 19th, yes.

8 Q Okay. Now, here we have Anabel in orange,
9 correct?

10 A Yes.

11 Q And these are her chirps, correct?

12 A Yes.

13 Q And yellow's Deangelo Carroll, right?

14 A Yeah, DE.

15 Q Okay. On May 19th, Anabel attempts to direct
16 connect or chirp Deangelo and/or speaks to him on three times,
17 correct?

18 A Yes.

19 Q So, so far what we have --

20 MR. ARRASCADA: Judge, could we use the easel?

21 THE COURT: Of course. Do you need Jeff to assist
22 you?

23 MR. ARRASCADA: You know, it would probably be best.
24 I'd drop it on myself.

25 THE COURT: All right.

1 (Pause in proceedings)

2 BY MR. ARRASCADA:

3 Q Sergeant, one of the things on these records
4 that you have starting on May 19th, 22:42, that's military
5 time, correct?

6 A Yes.

7 Q And that is 10:42 in the evening; is that
8 right?

9 A 10:42 and seven seconds.

10 Q Okay. And you do not have the records from
11 10:42 at night backwards through the day of the 19th here, do
12 you?

13 A Not on this.

14 Q Not on this, your color coded chart, right?

15 A Yes.

16 Q Okay. And that's the same that holds true
17 regarding the Anabel chirp records, correct?

18 A Yes.

19 Q Okay. So these are actually incomplete records
20 that you have color coded for the entire day of the 19th; is
21 that right?

22 A Right. When -- when I got the records, my main
23 concern for that was who's doing what at what time that this
24 incident occurred.

25 Q Okay. When you say this incident, you are not

1 looking at cell phone records from prior in the day; is that
2 right?

3 A I was looking for on the 19th -- in and around
4 the 19th.

5 Q Okay. But you do not have, in and around --
6 you'd agree with me that 10:00 in the evening's almost the end
7 of the 19th, correct?

8 A Yes, this is -- yes.

9 Q Okay. So in and around the 19th, we're missing
10 from 12:01 a.m. all the way up to 10:39:00 p.m; is that right?

11 MR. DIGIACOMO: Objection. Assuming they exist.

12 THE COURT: Well, he can ask -- I mean --

13 BY MR. ARRASCADA:

14 Q We don't have that here, do we?

15 A We don't have -- we have -- on this particular
16 page that you show me, it's the 20th -- I mean, it's
17 May 20th at 20:18, which is 8:18, 29, to May 19th at the
18 bottom, 22:39.

19 Q Which is 10:39?

20 A 20 -- yeah, 10:39.

21 Q At night?

22 A Yes.

23 Q So we don't have records from 12:01 a.m. on the
24 19th up to -- through the day up to 10:39 at night, correct,
25 in what you have, your color codes?

1 A The color codes. This -- I haven't reviewed
2 this before today, just so you know.

3 Q Here we go again on the number that ends 9646,
4 10:41 is the early --

5 A Yes.

6 Q -- 10:41 at night is the earliest date -- time
7 call you have?

8 A For Anabel?

9 Q Correct.

10 A Yes.

11 Q And the same can be said -- blue is
12 Mr. Hidalgo, Jr., correct?

13 A Yes.

14 Q Mr. H?

15 A Yes.

16 Q And your records on Mr. H begin on the 19th at
17 10:48 p.m, correct?

18 A Yes.

19 Q So again, we're missing almost -- we're missing
20 from --

21 MR. DIGIACOMO: I'm sorry, Counsel. Did you say
22 10:48?

23 BY MR. ARRASCADA:

24 Q I'm sorry, 8:48. 20:48 military's 8:48,
25 correct?

1 A Yes.

2 Q So from 8:48 p.m. all the way backwards to
3 12:01 a.m, the balance of the entire day, we don't have that
4 here, correct?

5 A That's correct.

6 Q Now, on this one, the green, which is Luis
7 Hidalgo, III --

8 A Yes.

9 Q -- this one you actually have the chirps that
10 go back to 3:25 in the afternoon on the 19th; is that right?

11 A Yes.

12 Q Okay. And they go forward, correct?

13 A Yes.

14 Q Again, on the green, on Luis Hidalgo, III, you
15 have all the way back to 3:23 in the afternoon, correct, on
16 the 19th? I'm sorry. Let's go over here. We don't have any
17 on the 19th on this one, correct?

18 A That page is the 20th through the 23rd.

19 Q Okay. And then for Anabel again this is a
20 page, the 20th through the 24th, correct?

21 A Yes.

22 Q So this document that the State has provided as
23 Exhibit 190 fails to provide phone records that existed prior
24 to 8:00 o'clock in the evening of the 19th; is that right?

25 MR. DIGIACOMO: Objection. Assumes that there are

1 any.

2 THE COURT: Well, that document --

3 MR. ARRASCADA: This document is what we're
4 discussing.

5 THE COURT: -- only has records from whatever the
6 time was on the 19th.

7 MR. DIGIACOMO: Right, but he suggested there aren't
8 any and --

9 THE COURT: Well, Mr. --

10 MR. ARRASCADA: That's not what I suggested.

11 THE COURT: That's why he rephrased -- or I phrased
12 the question for him.

13 BY MR. ARRASCADA:

14 Q You understand the question, correct?

15 A Yes.

16 Q And the answer is?

17 A They don't have the time before the 19th.

18 Q They don't have from 12:01 a.m. on the 19th all
19 the way up to --

20 A The 20th.

21 Q -- basically the 20th, right?

22 A Yes.

23 Q And this is the records that the State showed
24 you as their Exhibit 190 that you color coded, right?

25 A Yes.

1 MR. ARRASCADA: Court's indulgence.
2 THE COURT: That's fine.
3 MR. ARRASCADA: Thank you. Nothing further.
4 THE COURT: All right. I'm going to have some
5 juror -- I'm going to ask a few juror questions.
6 THE WITNESS: Sounds wonderful.
7 THE COURT: Okay. A juror wants to know, did you
8 find any records indicating that KC was ever on the payroll of
9 the Palomino Club?
10 THE WITNESS: He was not on the payroll.
11 THE COURT: All right. Was there any other video
12 near or from another building that might have picked up any
13 outdoor activity at the Palomino Club?
14 THE WITNESS: Video, no.
15 THE COURT: Okay. Were there any video cameras on
16 the outside of the Palomino Club? Did you look to see?
17 THE WITNESS: We looked, but I can't recall any.
18 THE COURT: Okay. Now, during the first recording,
19 was there a fourth person in the room?
20 THE WITNESS: Yes.
21 MR. ADAMS: Your Honor, may the record reflect if he
22 has personal knowledge.
23 THE COURT: Right. I was getting to that. Thank
24 you.
25 MR. ADAMS: Thank you, Judge.

1 THE COURT: All right. Now, do you have personal
2 knowledge of who that person was?

3 THE WITNESS: No.

4 THE COURT: And again, only if you know this, don't
5 guess, about 5:36 on one of the transcripts --

6 And if we need to show him that, Counsel can assist.

7 -- it says that the recording device was removed and
8 then retrieved. How was that -- how do you know that
9 information, if you know?

10 THE WITNESS: Because that was provided by --

11 THE COURT: It was somebody else, so you don't have
12 personal knowledge?

13 THE WITNESS: I wasn't inside the room. I was told
14 what happened.

15 THE COURT: All right. Any followup based on those
16 last -- and just so the jury knows, there's a number of
17 questions that have not been asked. Some of these questions
18 I'm stacking up here may be asked of other witnesses who may
19 have more information, so -- just so you know.

20 All right. Mr. Gentile.

21 FURTHER CROSS-EXAMINATION

22 BY MR. GENTILE:

23 Q Sergeant, this video issue, there were clearly
24 video cameras inside the Palomino Club?

25 A Yes.

1 Q And there were video monitors inside the --
2 actually in several locations in the Palomino Club. There
3 were some video monitors in the office that Anabel Espindola
4 and Mr. Hidalgo, Jr. occupied?

5 A Yes.

6 Q That's the executive office?

7 A Okay.

8 Q That's a split screen.

9 A Okay.

10 Q I don't know if you noticed it.

11 A I know we called a tech person out that --

12 Q All right.

13 A -- we were trying to determine -- so --

14 Q And then downstairs in that paneled room where
15 you interviewed Arial, there were also monitors?

16 A Yes.

17 Q All right. But there is not a recording
18 system? In other words, these are surveillance cameras, but
19 they don't -- they don't have a system for recording; am I
20 correct?

21 A We -- we didn't determine whether there was
22 some exterior web link where you could link into, so that
23 wasn't determined at the time. We did not discover any VHS
24 tape or any DVDs or anything like that at the --

25 Q Here's what I'm trying to get at, and I'll be

1 point blank at it.

2 A Okay.

3 Q There's nothing to indicate that any video
4 recordings were destroyed; am I correct?

5 A That's correct.

6 Q Okay.

7 THE COURT: All right. Mr. Arrascada, any questions
8 just based on those last juror questions?

9 MR. ARRASCADA: No, Your Honor.

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

11 REDIRECT EXAMINATION

12 BY MR. DIGIACOMO:

13 Q Detective, briefly going back to this issue of
14 the phone records, you sent a request for phone records,
15 correct?

16 A Yes.

17 Q These are the phone records you got back,
18 correct?

19 A Yes. .

20 Q And do you have any other phone records that
21 have direct connect information in your case file that you're
22 aware of?

23 A No.

24 Q Okay. So the suggestion that somehow we --
25 this is all we got, right?

1 A That's what we got.

2 Q All right. Now, I also noticed that there's

3 some questions asked, and I want you to actually read the

4 record because -- tell me if I'm reading this right, and I'll

5 get it really close for you. All right.

6 6348, correct, at the very bottom there, the first

7 record shows May 19th of '05, correct?

8 A Yes.

9 Q At 3:25:14, that's not 3:00 o'clock in the

10 afternoon in military time, is it?

11 A No, that's 03.

12 Q So that's 3:00 o'clock in the morning?

13 A Yes.

14 Q And thereafter, the next one that's shown is

15 20:22:49, correct?

16 A That's correct.

17 Q There were a number of questions asked about

18 criminal history so let me see if you can identify that. Do

19 you know what that is?

20 A Yes.

21 Q What is it?

22 A It's what we call a scope. When you punch

23 someone in the scope, it gives them a local history as to what

24 they have been arrested in Clark County for.

25 MR. DIGIACOMO: I probably should have this marked.

1 BY MR. DIGIACOMO:

2 Q And who is that criminal history for?

3 A Kenneth Counts.

4 Q And so that could have been the document that
5 you used to determine kind of the criminal history of Kenneth
6 Counts?

7 A Yes.

8 Q Okay. And you also said something to the
9 effect of, I knew that Kenneth Counts was extremely violent,
10 or something to that effect, correct?

11 A Yes.

12 Q Some of that information was based upon your
13 knowledge of the crime itself?

14 A Yes.

15 Q Gathered from more than one witness?

16 A Yes.

17 Q And then the criminal history, and you put two
18 and two together, correct?

19 A Yes.

20 MR. ARRASCADA: Yeah, we're going to object to the
21 leading. It is redirect.

22 MR. DIGIACOMO: That's fine.

23 THE COURT: All right.

24 BY MR. DIGIACOMO:

25 Q Do you recall questions by Mr. Gentile about

1 Deangelo Carroll told you information about drug sales by
2 Kenneth Counts?

3 A Yes.

4 Q Was that information confirmed or disputed by
5 the criminal history of Kenneth Counts?

6 A It was confirmed.

7 Q Mr. Carroll -- sorry. Mr. Gentile asked you
8 questions about information about a gun that you could
9 possibly confirm or not confirm, correct?

10 A Yes.

11 Q And you're aware that Detective Wildemann did
12 that portion of the investigation?

13 A Yes.

14 Q You've learned -- or you heard questions about
15 what other verifiable facts you had in the interview of
16 Deangelo Carroll, correct?

17 A Yes.

18 Q And --

19 MR. GENTILE: There were -- objection. There were
20 specific -- I addressed specific facts, not in general, just
21 specific.

22 THE COURT: All right.

23 BY MR. DIGIACOMO:

24 Q Mr. Gentile was asking you questions about
25 whether -- what you could and could not confirm from that

1 particular interview, correct?

2 A Yes.

3 Q And then he went on, if you recall -- do -- you
4 recall the questionings you had about the wire and the
5 information that you were trying to confirm on the wire,
6 correct?

7 A Yes.

8 Q All right. And then there was the first one,
9 and he read you certain portions of the first one that you --
10 do you remember questions he read to you from the May
11 23rd wire itself, transcript?

12 A Yeah, most of them. If we could just --

13 Q And I'm going to go to them specifically. He
14 read you a portion where Anabel makes a statement, We want him
15 beat, not mother fucking dead. Do you remember that portion
16 he read?

17 A Yes.

18 Q Okay.

19 MR. GENTILE: I think he's misquoting the portion,
20 Your Honor, and I do have to object to that.

21 THE COURT: I think he read a different portion.

22 MR. GENTILE: I read -- well, at least it was
23 verbatim and that's my concern.

24 THE COURT: Right. Yeah, Mr. -- if you would read
25 it verbatim.

1 BY MR. DIGIACOMO:

2 Q Deangelo, Hey, what's done is done. You wanted
3 him fucking taken care of. We took care of him.

4 Anabel says: Listen.

5 Deangelo says: Don't worry.

6 And then Anabel says -- or Deangelo says: Don't
7 worry.

8 Anabel says: Why are you saying that shit? What --
9 we really wanted for him to be beat up -- and anything else
10 mother fucking dead.

11 Correct?

12 A Yes.

13 Q You heard that and that caused you concerns,
14 correct?

15 A Yes.

16 Q And based upon those concerns, you sent -- you
17 questioned Mr. Carroll about those, correct?

18 A Yes.

19 Q And then you sent him back in to see if you
20 could confirm what he told you -- the answer that he provided
21 you about that, correct?

22 A Right.

23 Q And he had actually talked to you about what
24 that -- the specific order was prior to this
25 May 23rd recording, correct?

1 A Yes.

2 Q And he specifically told you what the order
3 was, correct?

4 A Yes.

5 Q And then you told him, Confront them with the
6 actual order?

7 A Yes.

8 Q So on May 24th he goes back in, and you
9 remember questions about Deangelo that says, You know what I'm
10 saying? I did everything you guys asked me to do. You told
11 me to take care of a guy and I took care of him.

12 And then Anabel says: Okay. Listen, listen,
13 Deangelo. I'm not -- Anabel, talk to the guy, not fucking
14 take care of him. Goddamnit, I fucking called you.

15 And Deangelo's response was: Yeah, and when I
16 talked to you on the phone, Ms. Anabel, I said -- I
17 specifically said -- I said if he's by himself, do you still
18 want me to do him in? You said yeah.

19 And Anabel objects: I did not say yeah.

20 And then Deangelo says: If he is with somebody --
21 you said if he is with somebody else, then just beat him up.

22 A Yes.

23 Q And do you remember Anabel's response initially
24 is, I said to go to plan B, fucking Deangelo?

25 A Yes.

1 Q Right?

2 A Yes.

3 Q Okay. Now, the statement that he makes on
4 there, if he's alone, kill him, if he's with somebody else,
5 beat him up, that's consistent with the information he had
6 provided you earlier?

7 MR. GENTILE: Objection.

8 THE COURT: Sustained.

9 MR. GENTILE: Hearsay.

10 MR. DIGIACOMO: Judge, they're specifically
11 attacking his credibility.

12 MR. ADAMS: Your Honor, I'd ask it be stricken.

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

14 (Off-record bench conference)

15 THE COURT: All right. Let's take a break. Let's
16 just do five -- well, a little over five minutes, until 4:45.

17 Notepads in your chairs. You're reminded of the
18 admonition and follow Jeff through the double doors.

19 (Jury recessed at 4:39 p.m.)

20 MR. DIGIACOMO: Mr. Gentile said, quote --

21 MR. GENTILE: Are we on the record?

22 THE COURT: Yes.

23 MR. DIGIACOMO: He said, quote, The information
24 received from Deangelo Carroll is that he engineered the
25 murder. That was a direct quote from Mr. Gentile, he

1 engineered it. You had some doubts about what he was telling
2 you, so you had him go in there and the information getting
3 back didn't confirm what he was telling you. He asked
4 those -- Mr. Gentile asked --

5 THE COURT: Right. The point of it wasn't to say
6 that Deangelo Carroll was a liar. The point I got out of
7 it -- the reason I overruled your objection is, to me, the
8 point was you -- that they had an agenda based on what
9 Deangelo Carroll said, that they wanted to get Mr. Hidalgo,
10 they wanted something incriminating against Mr. Hidalgo, and
11 they didn't get it the first time and that's why he sent him
12 back in a second time.

13 MR. GENTILE: You're speaking of Mr. Hidalgo, Jr.

14 THE COURT: Right. Not that Deangelo -- right.

15 MR. GENTILE: Yes.

16 THE COURT: Not that Deangelo Carroll was a liar,
17 but that the information that they were looking for, it didn't
18 pan out in the first tape.

19 MR. DIGIACOMO: The information he didn't tell him
20 was not true, that was the --

21 THE COURT: No, not that it wasn't true --

22 MR. DIGIACOMO: -- implication of the cross.

23 THE COURT: No, no, no, not that it wasn't true. I
24 got the implication of the cross -- well, I don't know.

25 Mr. Gentile, what was the implication of the cross?

1 MR. PESCI: It's not what the attorney's implication
2 is. It's what the jury can infer from the question.

3 THE COURT: I know, but if that's not the intention
4 and that that's one possible interpretation --

5 MR. GENTILE: It's certainly not --

6 THE COURT: -- then it doesn't open the door to you
7 guys. And the way I interpreted it at cross was basically
8 Deangelo Carroll gave them this information and they sent him
9 in and it didn't pan out the first time so they sent him back
10 in the second time and that they had him coached to elicit
11 certain information and that that was his -- that was
12 basically his function and when he didn't elicit the
13 information the first time, they encouraged him to be more, I
14 guess, demanding or what have you to get that information out.
15 That's what I took out of it.

16 MR. GENTILE: Your Honor, I specifically predicated
17 on, I think, three occasions, but at least two, by reading the
18 verbatim quote of Sergeant McGrath's direct examination
19 testimony, which I'm searching for right now. It was
20 basically to give color to that quote, which was that they
21 didn't get what they wanted the first time and --

22 THE COURT: That's what I got out of it.

23 MR. GENTILE: -- I'm paraphrasing it right now
24 because I don't have it in front of me, but that -- you know,
25 basically why they sent him back in the second time.

1 MR. DIGIACOMO: Judge --

2 THE COURT: That's what I took from it.

3 Yeah.

4 MR. DIGIACOMO: He started off with, Deangelo told
5 you that there was dope in Mr. Counts' house. You didn't find
6 dope. Lie.

7 MR. GENTILE: I didn't say lie.

8 MR. DIGIACOMO: Well, he didn't say lie, but that's
9 the implication, that that was a lie. Deangelo Carroll told
10 you that this gun was used -- and we didn't get to the answer
11 of that, but essentially that's not true. This is not true.
12 This is not true.

13 Now, you received information that he engineered
14 this crime, correct? And I certainly should be able to follow
15 up with he was ordered to do it, not that he engineered it,
16 because that was what the question was. And then he says to
17 him, okay, so when -- you want him to go in there and confirm
18 the information that he provided you --

19 THE COURT: Right.

20 MR. DIGIACOMO: -- and he didn't -- and he didn't.

21 THE COURT: Not to confirm it, but to get evidence
22 to support bringing in these other coconspirators on the tape.

23 MR. DIGIACOMO: And the evidence did not support the
24 information he provided you. I should be able to cross the
25 detective on the information that he provided you was

1 supported by, or I should be able to redirect the detective
2 that the information that he provided you on the 19th was
3 consistent with the information you provided on those
4 particular wires. How can I not be able to cross on -- how
5 can I not be able to do redirect on that?

6 THE COURT: Well, I mean, you can ask him some of
7 the -- what Mr. Gentile went through and some of the
8 information didn't pan out but other information did pan out,
9 and --

10 MR. DIGIACOMO: And we can't talk about what
11 information did, but they can talk about what didn't?

12 MR. GENTILE: I didn't bring up what did. I stayed
13 away from what did. That's the whole point.

14 MR. DIGIACOMO: But that's the whole point --

15 THE COURT: Well, they want to bring in --

16 MR. GENTILE: Can I, please -- please --

17 THE COURT: Go. Speak.

18 MR. GENTILE: I was really particular in terms of
19 the specific areas that I went into because I had a hunch that
20 they did not -- they where not verified. On one of them, I
21 believe, I ran into a blind alley because you said something
22 about -- I don't remember which one it was, but there was one
23 of them that the witness said was verified, okay. I'm
24 thinking it had something to do with the Keystone Rangers, the
25 gang thing, okay. That was verified. But the other two

1 things that I wanted answered were not.

2 THE COURT: Which was?

3 MR. GENTILE: The drugs in the popcorn can in the --

4 THE COURT: House.

5 MR. GENTILE: -- in the house of Counts, and let me
6 see what the other one is. I have it --

7 THE COURT: Well, what was the point of the drugs in
8 the popcorn can? I mean, I see the point of the other stuff.
9 You're targeting Mr. Hidalgo, Jr., it's not panning out, they
10 have enough to believe that, hey, if we send them back in
11 there, it's going to pan out. I see where you're going with
12 that.

13 But the drugs in the popcorn can, that's Kenneth
14 Counts, he's not on trial, so who cares if he had drugs --

15 MR. GENTILE: Well, no --

16 THE COURT: What was the point of that?

17 MR. GENTILE: Carroll told them -- if you see the
18 video, Carroll tells them --

19 THE COURT: Right. But, no, my question is --

20 MR. GENTILE: And the point was --

21 THE COURT: -- what's the point of that evidence
22 that he told him there was drugs in the popcorn can?

23 MR. GENTILE: The point of the line of
24 questioning -- it has two points to it. One is to
25 establish -- the primary one is to establish why they sent him

1 back in the second time.

2 THE COURT: Well, that was on the Hidalgos. I get
3 that, but on -- if Kenneth Counts had drugs in the popcorn can
4 in a search -- a search warrant, what's that got to do with
5 the Hidalgos?

6 MR. GENTILE: If you remember -- if you remember,
7 Sergeant McGrath conceded that he had problems himself with
8 the credibility of Carroll, all right. That was the -- and he
9 said that. He did say that. And so, you know, they can bring
10 up whatever they're -- might be bringing up, but the bottom
11 line to it is that it doesn't change the fact that he had
12 problems with Carroll's credibility. And I stayed away from
13 specific areas deliberately.

14 THE COURT: You did the drugs and the popcorn can.
15 What is the other one?

16 MR. GENTILE: I also did -- wait, I'll tell you what
17 I have.

18 MR. DIGIACOMO: The gun being used and --

19 MR. GENTILE: Yeah, right. The ability to match the
20 bullets from two different firings of the same weapon and
21 that's the blind alley. I guess Wildemann's going to come in
22 here and say that either there was no Javon Gay or --
23 whatever. Okay? Something like that.

24 MR. DIGIACOMO: But, I mean, what they --

25 THE COURT: No, I get it. Right. All right. Then

1 you can ask him -- I mean, I think then he did open the door
2 because the drugs and the popcorn can have nothing to do with
3 the Hidalgos. I mean, I see that you want to portray that
4 they were targeted and that's why they, you know, did these
5 things and he sent him back in and they're trying to elicit
6 information and everything like that, but then once you get
7 beyond that into what was consistent in the Counts' search,
8 who cares, other than that Deangelo Carroll's telling them
9 stuff --

10 MR. GENTILE: Well, it definitely goes to the
11 credibility of Carroll.

12 THE COURT: Right.

13 MR. GENTILE: You can't deny it.

14 THE COURT: There you go.

15 Mr. Arrascada.

16 MR. ARRASCADA: Judge, we'd ask for a limiting
17 instruction that it's not opening the door regarding Luis
18 Hidalgo, III. We didn't go that direction.

19 MR. DIGIACOMO: Well, you said -- this is the
20 questions: You provided them certain lies, and those lies
21 were this, this, this, and this. One of the lies you didn't
22 provide them was this statement. That question only has
23 relevance and I objected and you overruled it. That statement
24 only has relevance unless they're suggesting that that
25 statement is true.

1 MR. ARRASCADA: Judge --

2 MR. DIGIACOMO: That is the only basis for that
3 question. I objected to prevent it from happening. And the
4 first time he did it, he didn't even say, that's not a lie you
5 didn't provide them. He said -- he said, quote, And you know
6 that that statement is true. That's what he said.

7 And then I objected and you made him rephrase it.
8 Go back and play the tape again because I was sitting here
9 going, how do we have this -- how do we have this whole
10 discussion beforehand? How can he even be allowed to ask that
11 question if it's not for the truth of the matter asserted?

12 MR. ARRASCADA: Judge, I am permitted to go into
13 what he did, the sergeant --

14 THE COURT: Right. Sure.

15 MR. ARRASCADA: -- and some of the things he did --
16 and he testified to it on Mr. DiGiacomo's questioning at the
17 grand jury for Mr. H and at the Counts trial, that he sent
18 Deangelo Carroll in with lies.

19 THE COURT: Right. And that's fine.

20 MR. ARRASCADA: And I asked the lies --

21 MR. DIGIACOMO: Right, but --

22 MR. ARRASCADA: -- and I can ask, was one of the
23 lies --

24 THE COURT: You can ask --

25 MR. ARRASCADA: -- just tell Little Lou he wasn't

1 involved. That was my question.

2 MR. DIGIACOMO: That was the second question. The
3 first question was, You know that's not a lie. That's what --
4 he made a direct statement --

5 MR. ARRASCADA: Judge, you sustained --

6 MR. DIGIACOMO: -- it wasn't even a question. He
7 just said it to the jury.

8 THE COURT: And I sustained it.

9 MR. ARRASCADA: And I rephrased it.

10 MR. PESCI: Its impact is already there.

11 MR. DIGIACOMO: Are you going to instruct this jury
12 that that is actually not true?

13 THE COURT: No. Mr. DiGiacomo, I'm not going to
14 instruct this jury that that's not true. I sustained the
15 objection, and he rephrased it. And he's allowed to ask the
16 detective what -- I mean, what information did he tell
17 Deangelo Carroll to go in there with. I mean, that would be a
18 fair question. He didn't have to ask it that way because it's
19 cross-examination. That would have been the better question,
20 what did you tell him to say, then we wouldn't be in this
21 mess, but --

22 MR. DIGIACOMO: But the implication of that question
23 is only relevant if -- to whether or not that statement is
24 true or untrue. It's the only words that it's relevant and
25 you said that that statement's truth or the relevancy of the

1 truth or untruth of that statement is not in this case. The
2 only reason to ask the question is to establish the truth. I
3 should at least be able to ask the detective, based on your
4 prior interviews with Deangelo Carroll, is that statement
5 consistent with the prior interviews.

6 MR. ARRASCADA: No way.

7 THE COURT: No.

8 MR. DIGIACOMO: Because they've opened up the door
9 as to --

10 MR. ADAMS: Hasn't the Court ruled, Your Honor?
11 Hasn't there been a ruling on this issue?

12 THE COURT: Well --

13 MR. DIGIACOMO: There hasn't been --

14 THE COURT: All right.

15 MR. ARRASCADA: Judge, he can ask him and say, are
16 one of the lies that you told Deangelo Carroll to say Little
17 Lou you weren't involved. That's what I'm finding out, did he
18 tell him to say that, because he told him to say other lies.
19 That's permissible cross-examination.

20 THE COURT: All right. Here's what you can ask.
21 You can say -- okay. Going into the search warrant and what
22 was with Kenneth Counts, you can ask him, did you find
23 Mr. Gentile pointed out that you were lead to believe there
24 were drugs and you didn't find drugs. Did you find other
25 things that were consistent with what Deangelo Carroll told

1 you? Yes. What things did you find that were consistent with
2 what Deangelo Carroll told you in respect to the Kenneth
3 Counts' search?

4 Was there anything?

5 MR. DIGIACOMO: No, what was my point. It had to do
6 with the statement. Did you find other things in that
7 statement consistent with the other evidence in the case?
8 That's the question I want to ask.

9 THE COURT: Well, and what -- and then what's the
10 answer you're looking for?

11 Maybe you need to leave the room.

12 THE WITNESS: Okay.

13 MR. DIGIACOMO: Well, there's a number of --

14 MR. PESCI: Hold on a second.

15 MR. DIGIACOMO: That's all right. There's nothing
16 I'm going to tell him that he doesn't already know.

17 THE COURT: Well, I don't care.

18 MR. ARRASCADA: She's asked that he leave the room.

19 MR. PESCI: I'm telling him to hold on a second.

20 THE COURT: Or he can go in the back. I don't care
21 where he goes.

22 MR. DIGIACOMO: I --

23 THE COURT: Okay. You're going to say --

24 MR. DIGIACOMO: -- certainly wasn't going to get
25 into specifics, but I certainly was going to --

1 THE COURT: Okay. What is it that you want to ask
2 him?

3 MR. DIGIACOMO: I want to say to him, Detective, is
4 there -- in the interview with Deangelo Carroll, did you
5 recover other information which is consistent with the
6 interview that you conducted with Deangelo Carroll? Yes.

7 And then I'm going to go through some of the
8 specifics of what it is. And I can do it either generally. I
9 could say, look, in the interviewing of Rontae Zone, did you
10 receive information that was consistent with what -- Deangelo
11 Carroll? In listening to these recordings, was there
12 information that is consistent with some --

13 THE COURT: And then not have him say specifics?

14 MR. DIGIACOMO: I won't have him do specifics, but
15 I --

16 THE COURT: That's fine.

17 MR. DIGIACOMO: -- certainly should be entitled to
18 talk about --

19 THE COURT: If you do it that way, I'm fine with
20 that. If you do it what --

21 MR. GENTILE: I don't even have an objection to
22 that.

23 THE COURT: Mr. DiGiacomo, if you do it that way,
24 I'm totally fine with that, you know, in the search of the
25 Kenneth Counts' residence, did you find things that were

1 consistent with what Deangelo Carroll told you? Yes. That's
2 totally fine if you don't go into specifics. I'm fine with
3 that if you can do it that way.

4 MR. DIGIACOMO: That's with Mr. Gentile, but what do
5 I do about Mr. Arrascada? Can I at least ask the detective,
6 look, Mr. Arrascada asked you questions about, did you tell
7 Deangelo Carroll to tell lies? Yes. Are some of the lies you
8 told on the tape things you told him to say?

9 THE COURT: Well, no, because the other import of
10 that is that he didn't tell him to say it. That doesn't say
11 whether it's true or not --

12 MR. ARRASCADA: Exactly.

13 THE COURT: -- true or a lie or not a lie.

14 MR. ARRASCADA: Judge, he can --

15 MR. DIGIACOMO: Well --

16 MR. ARRASCADA: Judge, he can -- if you'll allow
17 me -- he can go all day --

18 MR. DIGIACOMO: I was in the middle of --

19 MR. ARRASCADA: -- saying what are the lies that you
20 told Deangelo Carroll to say in that briefing, what are the
21 statements you told Deangelo Carroll to say in that briefing.
22 He can't -- and that's what the contents -- and what I was
23 asking, Judge.

24 And one of the things he did not tell him to say was
25 that, and that's -- I can bring that up because it's not one

1 of the lies he told him to say and it doesn't open the door,
2 Judge. It's regarding what Detective McGrath has said, not
3 what Deangelo Carroll says.

4 MR. DIGIACOMO: What is relevant about that question
5 other than the truth of the assertion? What is the relevancy
6 of that question other than that that statement is true --

7 MR. PESCI: No reason to ask that.

8 MR. DIGIACOMO: -- particularly in the manner in
9 which he asked it? What other relevancy is there to that
10 question?

11 MR. ARRASCADA: Judge, the relevancy's been brought
12 out.

13 MR. PESCI: What is it?

14 MR. ARRASCADA: It's probing Detective -- Sergeant
15 McGrath regarding what he briefed Deangelo Carroll to say and
16 do when he went into the wire. That's what the questions are.

17 MR. PESCI: How's that relevant?

18 MR. DIGIACOMO: Yeah, but that's what relevant to?

19 MR. PESCI: Right.

20 MR. DIGIACOMO: What is that question relevant to
21 other than to establish the truth or the veracity of that?

22 THE COURT: I get it. What's it relevant to? I
23 mean, I think fair game is one of the lies you told Deangelo
24 Carroll to say. That's fair game.

25 MR. ARRASCADA: That's -- and that's what I did,

1 Your Honor.

2 MR. DIGIACOMO: But why can't I say there's other
3 information on there that appears to be untrue, correct, you
4 know, that he's intentionally telling lies to spark the
5 conversation?

6 MR. ARRASCADA: Judge, now he's asking for --

7 MR. DIGIACOMO: Because some of the stuff he didn't
8 specifically say. He just gives him a generalized statement.

9 And then certainly I should be able to -- because
10 the impression that was left with the jury -- I should be --
11 at least ask something to the effect, and you can make it
12 whatever wording you want, but I should be at least allowed to
13 ask that you're not suggesting by the answer that you gave
14 Mr. Arrascada that that statement is either true or untrue.

15 MR. ARRASCADA: Judge, he can't. He doesn't know.

16 MR. DIGIACOMO: I should be able to at least say,
17 look, you're not making a suggestion to this jury as to the
18 truth or the veracity of that statement. I can at least ask
19 that question, can't I?

20 MR. ARRASCADA: Judge, you've already ruled that
21 that wasn't the purpose and it wasn't how you interpreted the
22 cross-examination.

23 THE COURT: Well, I was talking about Mr. -- I was
24 talking about Mr. Gentile's cross-examination.

25 MR. DIGIACOMO: I should at least be able to ask

1 that question, that you're not implying by whatever answer you
2 gave Mr. Arrascada about the truth or the veracity --

3 THE COURT: Okay. Why don't you do this: Why don't
4 you say, you were asked other specific statements by
5 Mr. Arrascada as to whether or not you told Mr. Counts -- I'm
6 sorry, Mr. Carroll to lie about those. You're not here to
7 give an opinion as to whether or not those statements are
8 truthful.

9 MR. ARRASCADA: Judge, I think you should do the
10 question.

11 THE COURT: End of question.

12 MR. DIGIACOMO: That's fine.

13 THE COURT: All right. So then -- so phrase it that
14 way.

15 And then on the other things, you can go through
16 and, did Deangelo Carroll tell you things that were consistent
17 with what Rontae Zone told you? Yes. Did he tell you things
18 that were consistent as a result of the search?

19 MR. ADAMS: Judge, I have a point of clarification.

20 THE COURT: What?

21 MR. ADAMS: You had asked us when we objected to do
22 one word objections and to approach if there's anything else.
23 I believe this side of the room has been doing that. Over the
24 last day, day and a half, I have become concerned that the
25 responses to objections are not one word responses, but

1 they're growing increasingly longer. And I just wanted to
2 know if that is permitted when they object to me, or are you
3 asking us to approach rather than educating, speaking out to
4 the jury in a fashion that has been going on?

5 THE COURT: As a rule -- I mean, you know, if
6 they've done it -- as a rule, I would -- you know, unless it's
7 just something really brief and I may ask him -- obviously, if
8 I ask your side or their side something, they're free to
9 respond. If I catch it, I try to have everybody approach.
10 There have been a few side comments made both ways, not by
11 you, about -- editorial comments about the lawyers back and
12 forth. I've tried to reign that in when it's happened and
13 it's not you. I mean, Mr. Gentile's made comments about what
14 Mr. Pesci knows and doesn't know and then Mr. Pesci has
15 made --

16 MR. GENTILE: I've done that twice and --

17 MR. PESCI: Only twice?

18 MR. ADAMS: Well, I have no objection to that, just
19 when it's the other way.

20 MR. GENTILE: But he had it coming.

21 (Court recessed at 4:57 p.m. until 5:01 p.m.)

22 (In the presence of the jury.)

23 THE COURT: All right. Court is now back in
24 session. And, Mr. DiGiacomo, you may resume your redirect
25 examination.

1 MR. DIGIACOMO: Thank you.

2 BY MR. DIGIACOMO:

3 Q Detective, Mr. Gentile asked you a number of
4 questions about what you did or did not confirm from the
5 statement of Deangelo Carroll, correct?

6 A Yes.

7 Q Okay. Now, some of the information that
8 Deangelo Carroll gave you you were able to confirm, correct?

9 A Yes.

10 Q And you confirmed that through the statement of
11 Rontae Zone?

12 A Yes.

13 Q You confirmed it through the two separate
14 recordings?

15 A Yes.

16 Q And you confirmed it from some of the other
17 evidence in the case?

18 A Yes.

19 Q . All right. Now, Mr. Arrascada asked you a
20 number of questions about what lies you told Deangelo Carroll
21 to tell when he's inside the room versus, I guess, what's
22 truthful, but do you have a specific recollection of exactly
23 what you told Deangelo Carroll to say in the room which you
24 knew not to be true?

25 A No.

1 Q Mr. Arrascada referenced a particular statement
2 by Deangelo Carroll.

3 A Yes.

4 Q Do you remember that?

5 A Yes.

6 Q Your answer -- let me rephrase -- let me phrase
7 it this way: Does your answer in any way suggest whether or
8 not that statement is true or untrue?

9 A No.

10 Q So it doesn't suggest -- you don't -- you --

11 MR. GENTILE: Asked and answered. Objection; asked
12 and answered.

13 THE COURT: Well, wait. So you're not making an
14 opinion one way or the other of the statements that you didn't
15 explicitly provide to Mr. Carroll?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 BY MR. DIGIACOMO:

19 Q Okay. I showed you this before, State's
20 Proposed Exhibit No. 225. That's the criminal history of
21 Kenneth Counts, for lack of a better term, correct?

22 A Yes.

23 Q Okay. And based upon that criminal history,
24 can you tell what his felony prior is for?

25 A Yes, it's out of California for transport/sale

1 of narcotics, controlled substance, in 1996.

2 Q Okay. And then I'm going to show you 224. Is
3 that the criminal history of Deangelo Carroll?

4 A Yes.

5 Q Looking at the top there, can you tell me what
6 his felony priors were?

7 A Conspiracy to commit robbery.

8 Q Conspiracy to commit robbery, correct?

9 A Yes.

10 Q Okay. And then also in your criminal history,
11 does it also acknowledge what kind of work cards you have?

12 A Yes.

13 Q And does it indicate on there what kind of work
14 card that Deangelo Carroll -- or that he had a work card for a
15 particular company?

16 A Yes.

17 Q And is the Palomino Club one of the people who
18 had the work card?

19 A Yes.

20 Q Now, when you apply for a job where you're
21 required to have a work card, is the information concerning
22 your criminal history --

23 MR. ARRASCADA: Objection --

24 BY MR. DIGIACOMO:

25 Q -- provided to the club?

1 MR. GENTILE: Objection. Foundation.

2 THE COURT: All right. Ask him if he would know
3 that and then you can ask the follow-up question.

4 MR. DIGIACOMO: Well, it's not if, but how.

5 MR. ARRASCADA: And it's beyond the scope, Your
6 Honor.

7 MR. DIGIACOMO: Well, no, they specifically went
8 into --

9 THE COURT: Well, no, that's --

10 MR. DIGIACOMO: -- his priors. I --

11 THE COURT: No, it's overruled on that.

12 MR. DIGIACOMO: Thank you.

13 THE COURT: You just need to establish whether or
14 not this officer would have that information or know about
15 that.

16 BY MR. DIGIACOMO:

17 Q In your capacity as a police officer over a
18 prior time period, have you ever learned whether or not the
19 club -- an individual seeking a work card for a particular
20 club has to disclose his prior criminal history or whether or
21 not the club is informed of the prior criminal history before
22 issuance of a card?

23 MR. GENTILE: Objection. It is a compound question.

24 THE COURT: Overruled.

25 MR. GENTILE: And the foundation is dependent on

1 one, but not the other.

2 THE COURT: Can --

3 THE WITNESS: I've seen these. I've seen these
4 many, many times over the course of my almost 16 years. I can
5 take this and I can tell you exactly what it says on this and
6 what it wouldn't say, once you get a work card for a certain
7 place and what the dates are, once they were evaluated by the
8 people that issue the work cards, and I can tell you the date
9 the work card was issued and the date of the expiration of the
10 work card specifically for the Palomino Club.

11 BY MR. DIGIACOMO:

12 Q Okay. My question is --

13 MR. GENTILE: Objection. It was not responsive.
14 The question was, do they notify the club.

15 MR. DIGIACOMO: That's what I'm saying.

16 THE COURT: Okay. Well -- and then he's trying to
17 lay a foundation so he's asking broader questions as to what
18 the detective -- Sergeant's involvement would be with this
19 area.

20 MR. GENTILE: Oh, okay.

21 BY MR. DIGIACOMO:

22 Q My question for you is that during the course
23 of somebody seeking a work card for a particular club and an
24 investigation is conducted as to whether or not a person
25 qualifies for the work card, is there an exchange of

1 information between the club and the Las Vegas Metropolitan
2 Police Department related to that work card?

3 MR. GENTILE: Objection. Relevance. It's a
4 question of whether the club is notified of the felony
5 conviction.

6 THE COURT: Right.

7 MR. GENTILE: An exchange of information is
8 irrelevant.

9 MR. DIGIACOMO: That's the first question.

10 MR. GENTILE: The only information that's important
11 is if the club's notified of the felony conviction.

12 THE COURT: All right. So any objection to
13 Mr. DiGiacomo asking --

14 MR. GENTILE: No, if he knows.

15 THE COURT: -- that?

16 MR. GENTILE: If he can lay the foundation that this
17 officer worked in that division.

18 THE COURT: What familiarity, as a police officer
19 with Metro, do you have, if any, with the procedure for
20 granting of work cards in this community?

21 THE WITNESS: Well, I can tell you this, Your Honor:
22 This is North Las Vegas. North Las Vegas is different than
23 Metro, so I wouldn't have an expertise as to what North Las
24 Vegas -- how they do their system versus Metro does their
25 system.

1 THE COURT: Okay. And just to be clear, your
2 talking about that would be within the province or the ambit
3 of the North Las Vegas Police Department as opposed to the Las
4 Vegas Metropolitan Police Department?

5 THE WITNESS: Yes.

6 THE COURT: And it would be Las Vegas Metro that
7 would do a work card in the unincorporated county in the city
8 of Las Vegas, right?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 BY MR. DIGIACOMO:

12 Q Detective, the last area I want to go to has to
13 do with questions that Mr. Gentile asked concerning -- from
14 listening to the two recordings, it appeared that there had
15 been contact between Anabel and Deangelo prior to the
16 recordings. Do you remember those questions?

17 A Yes.

18 Q If you don't, that's fine too. Do you or do
19 you not recall this?

20 A I recall there was that --

21 Q Okay. Now, the questions being posed to you
22 related -- do -- you recall the questions being posed to you
23 related to establishing that Anabel and Deangelo might have
24 had prior contact, correct?

25 A Yes.

1 Q And from reviewing that transcript, you
2 don't -- can you say whether or not Deangelo and Anabel had
3 contact or if Deangelo had contact with somebody else who had
4 contact with Anabel and therefore they all kind of know what
5 everybody said? Can you make that determination from the
6 transcript?

7 A I can't make that determination.

8 Q You'd have to ask Anabel?

9 A Yes.

10 Q Thank you very much.

11 Oh, one last question. You talked about -- a little
12 bit about -- you talked a little bit about the safety factors
13 that related to Deangelo Carroll, correct?

14 A Yes.

15 Q Okay. And you also talked about -- with
16 Mr. Gentile about warning Deangelo Carroll about going back to
17 either the club or having contact with the people that he's
18 now provided you information on, correct?

19 A Yes.

20 Q Okay. Specifically, what were your concerns?
21 Why would you tell Deangelo not to have contact with these
22 people?

23 A Because I didn't want to see Deangelo Carroll
24 get killed and not provide us with the information that we
25 were looking for to develop the entire case.

1 Q So the reason you tell Deangelo Carroll not to
2 go back to the club is a safety concern for him?

3 A Yes.

4 Q Okay. And did you tell him specifically who he
5 shouldn't have contact with?

6 A I -- that'd be a better question for Detective
7 Wildemann because he was the contact person that Deangelo was
8 calling all the time on the phone.

9 MR. DIGIACOMO: Pass the witness, Judge.

10 THE COURT: All right. Any recross?

11 MR. GENTILE: Just one area, brief.

12 THE COURT: Okay.

13 RECROSS-EXAMINATION

14 BY MR. GENTILE:

15 Q These phone records, and I'm not sure what
16 exhibit that is. I think you still have it in front of you,
17 don't you?

18 A I don't. It's the color coding one.

19 Q Yeah, that one. Here's what I'm trying to get
20 to.

21 A Okay.

22 Q Were you the person who sought those records
23 from Nextel?

24 A No.

25 Q Do you know what was requested? If you don't,

1 you don't.

2 A Well, I mean, there were different requests.
3 There were a couple of different requests that were made at
4 different times.

5 Q What -- was the requested time frame from the
6 19th of May to the 24th May?

7 A Yes.

8 Q So nothing was done to study the ordinary
9 non-homicide time frame in terms of how often these people
10 communicated with each other every day?

11 A No.

12 MR. GENTILE: Nothing further.

13 THE COURT: Mr. Arrascada.

14 MR. ARRASCADA: No questions, Your Honor.

15 THE COURT: Any juror questions? All right.

16 Did the State have any other questions?

17 MR. DIGIACOMO: Based on Mr. Gentile's recross, no.

18 THE COURT: You folks can come up to the bench.

19 (Off-record bench conference).

20 THE COURT: All right. Any other questions from the
21 State or the defense? All right.

22 Sergeant, thank you for your testimony.

23 THE WITNESS: Thank you very much.

24 THE COURT: Please don't discuss your testimony with
25 anyone else who may be a witness in this case. Thank you and

1 you are excused.

2 THE WITNESS: Thank you.

3 THE COURT: Ladies and gentlemen, we'll be taking
4 our evening recess. As I told you yesterday, we'll be
5 reconvening at 9:00 a.m. tomorrow morning and we'll finish up
6 around 1:00 or 1:30. We will not be taking a lunch break.
7 We'll just have a couple of restroom breaks or whatever and
8 then we'll send you on your way for lunch. That will be it
9 for the day.

10 So once again, I must remind you that during the
11 evening recess you're not to discuss this case or any subject
12 matter relating to the case with each other or anyone else.
13 You're not to read, watch, listen to any reports of or
14 commentaries on any subject connected with the case. Don't do
15 any independent research. Don't visit the locations at issue,
16 and please do not form or express an opinion on the trial.

17 Once again, if everyone will please leave their
18 notepads in their chairs. We will see you all back here
19 tomorrow morning at 9:00 a.m. Follow Jeff through the double
20 doors.

21 (Jury recessed at 5:13 p.m.)

22 THE COURT: Anything else for me?

23 MR. ARRASCADA: No, Your Honor. Have a good
24 evening.

25 MR. DIGIACOMO: Just a record from yesterday, just

1 that at no point did they ever provide me a Word document to
2 put in sanction to -- so that didn't get done.

3 THE COURT: All right.

4 MR. GENTILE: That is --

5 MR. ARRASCADA: That's accurate, Judge.

6 THE COURT: And I assumed when it wasn't up on the
7 screen that they had decided that they -- that it wasn't that
8 important to them after all?

9 MR. ARRASCADA: Judge, as I watched the jurors when
10 they had their TV screens --

11 THE COURT: Yeah, they were all looking at --

12 MR. ARRASCADA: -- they're all reading their
13 transcripts.

14 THE COURT: They were all reading their transcripts.

15 MR. ARRASCADA: Yeah, exactly.

16 THE COURT: The only person who got to enjoy the
17 thing on the monitor was me.

18 (Court recessed at 5:15 p.m. until the following
19 day, Friday, February 6, 2009, at 9:00 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