

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

2 LUIS HIDALGO, JR.,

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,
6 Respondent.

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

7 **APPELLANT'S APPENDIX VOLUME XII**

8 Appeal from Eighth Judicial District Court, Clark County

9 The Honorable Valerie Adair, District Judge

10 District Court Case No. 08C241394

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-5-

1 crime somewhat higher than voluntary manslaughter?

2 MR. GENTILE: Objection. It's voluntary --

3 THE WITNESS: Higher.

4 MR. GENTILE: -- manslaughter. It says so in the
5 pleading.

6 MR. DIGIACOMO: That's the definition of fictional,
7 Judge. That's my point.

8 MR. ADAMS: Judge, he can't editorialize in front of
9 the jury --

10 THE COURT: Right. Well, also, her opinion as to
11 what the elements of different crimes are is not relevant, so
12 that's sustained.

13 MR. GENTILE: Objections -- did the Court rule on
14 the objection?

15 THE COURT: It's sustained.

16 MR. GENTILE: Thank you.

17 THE COURT: I'm sorry. I said "sustained," but I
18 may have said --

19 MR. ARRASCADA: And I'd ask it to be stricken and
20 ask that Mr. DiGiacomo's editorializing be stricken.

21 THE COURT: Well, there was no answer to strike.

22 MR. ARRASCADA: How about his editorialization that
23 he's done now four times that we've had to object?

24 THE COURT: All right. Go on, Mr. DiGiacomo.
25 Please don't engage in commentary.

1 MR. DIGIACOMO: Thank you, Judge.

2 BY MR. DIGIACOMO:

3 Q You indicated that you talked to your attorney
4 about what crime you'd likely be convicted if you had
5 testified to this information, correct?

6 A Yes.

7 Q And what is it that you told this jury your
8 lawyer told you you'd have been convicted of?

9 MR. GENTILE: Objection. Hearsay.

10 MR. DIGIACOMO: They brought it out on
11 cross-examination.

12 THE COURT: Wait. Say your question again.

13 MR. DIGIACOMO: I asked her what her lawyer told her
14 she'd been convicted of had she testified to this information
15 in her own trial.

16 MR. GENTILE: Objection. Hearsay.

17 THE COURT: It already came out on
18 cross-examination.

19 MR. DIGIACOMO: Thank you. So may she answer?

20 THE COURT: Yeah. I mean -- oh, I think it's asked
21 and answered. She already answered it on cross.

22 MR. DIGIACOMO: She didn't answer it for me, so...

23 MR. GENTILE: That's cumulative. It's been
24 answered.

25 THE COURT: Right. She's already answered that

1 question.

2 MR. DIGIACOMO: Okay.

3 THE COURT: It came out on cross-examination.

4 BY MR. DIGIACOMO:

5 Q Let me ask you this: What is your
6 understanding of the difference between second degree murder
7 and voluntary manslaughter with use of a deadly weapon? Do
8 you know?

9 MR. ARRASCADA: Objection.

10 MR. GENTILE: Objection.

11 THE COURT: Yeah. Sustained. I think the
12 relevancy, what you can get into is the punishment that she
13 may have been facing as opposed to the punishment that she's
14 facing based on her plea which Mr. Gentile covered in great
15 detail, but we did not get into what she could be looking at
16 with the second degree.

17 BY MR. DIGIACOMO:

18 Q Do you remember Mr. Gentile asking you a whole
19 lot of questions about the death penalty?

20 A Yes.

21 Q And your concerns about the death penalty?

22 A Yes.

23 Q Had you ever discussed that fact with your
24 lawyer?

25 A No.

1 Q Okay. You never discussed with your lawyer the
2 likelihood of you ever getting the death penalty in this case?

3 A At the beginning, yes.

4 Q Okay. And did you have a real concern that you
5 were someday going to get executed?

6 A No.

7 Q Okay. Mr. Gentile asked you a number of
8 questions about your obligation to be truthful in the
9 beginning, correct?

10 A Yes.

11 Q Okay. And that's your understanding, correct?

12 A Yes.

13 Q And he suggested to you that you should have
14 done sentencing before now, correct?

15 MR. GENTILE: Objection.

16 A Yes.

17 MR. GENTILE: I didn't say suggest anything. I
18 asked questions and she made answers.

19 MR. DIGIACOMO: I'll rephrase.

20 THE COURT: All right.

21 MR. ARRASCADA: And he's leading, Your Honor.

22 THE COURT: He's going to rephrase --

23 MR. ARRASCADA: It's redirect.

24 THE COURT: -- and he's going to ask it in a less
25 leading way.

1 BY MR. DIGIACOMO:

2 Q Could you have asked for sentencing prior to
3 today?

4 A Yes.

5 Q Okay. Why didn't you?

6 A I elected to wait.

7 Q Okay. Who makes the determination as to
8 whether or not you're being truthful?

9 MR. GENTILE: Objection. May we approach?

10 THE COURT: Yeah.

11 (Off-record bench conference)

12 BY MR. DIGIACOMO:

13 Q Mr. Gentile --

14 MR. GENTILE: Yes.

15 BY MR. DIGIACOMO:

16 Q Mr. Gentile asked you a number of questions
17 regarding the proffer and how -- I shouldn't use the term
18 proffer because -- after 33 months or something like that, you
19 and I finally got to talk, right?

20 A Yes.

21 Q Prior to that time period, had you and I ever
22 met before?

23 A No.

24 Q Prior to that time period, how many times had
25 you met with Mr. Gentile?

1 A A few.

2 Q Okay. When you say a few, are we talking

3 three, five, ten, 20?

4 A He came to the jail between three and five

5 times. I don't remember how many exactly.

6 Q How many times did you talk to Ms. Armeni?

7 A I remember her coming two or three.

8 Q And how many times did you talk to Mr. Oram?

9 A Several over --

10 Q Lots?

11 A Several over the last few years.

12 Q And how many of those meetings were recorded?

13 A None as far as I can recall.

14 Q Now, when you first met me on February 2nd, I

15 guess is the date that everyone's been talking about, does

16 that sound about right to you?

17 A Yes.

18 Q 2008?

19 A Yes..

20 Q You were a charged defendant, correct?

21 A Yes.

22 Q You had your lawyer with you?

23 A Yes.

24 Q And there was some legal discussions unrelated

25 to you, right?

1 A Yes.

2 Q And then eventually you talked to us?

3 A Yes.

4 Q And then based upon what you told us, your
5 lawyer and I talked some more?

6 A Yes.

7 Q After you signed the plea agreement and you
8 entered a plea of guilty, you went to the grand jury?

9 A Yes.

10 Q And you told your story in front of the grand
11 jury, correct?

12 A Yes.

13 Q And after that time, you became aware the State
14 made a motion for taped deposition?

15 A Yes.

16 Q That deposition never took place?

17 A No.

18 Q But had that deposition taken place, your
19 understanding would have been these people get to
20 cross-examine you?

21 A Yes.

22 Q Okay. And --

23 MR. ARRASCADA: Judge, we're going to have to object
24 again to the leading. It's redirect.

25 MR. DIGIACOMO: It's just foundation.

1 THE COURT: Yeah. I mean, try not to lead.
2 MR. ARRASCADA: It's getting beyond foundation.
3 THE COURT: Well, I know --
4 MR. ARRASCADA: I sat here for a long time.
5 THE COURT: -- I mean, this is kind of basic, but
6 when you get to --
7 MR. DIGIACOMO: Thank you.
8 THE COURT: Try to be open ended, Mr. DiGiacomo.
9 MR. DIGIACOMO: Thank you.
10 BY MR. DIGIACOMO:
11 Q What is your understanding as to why that
12 didn't happen?
13 MR. GENTILE: Objection. Hearsay.
14 MR. DIGIACOMO: What was her state of mind?
15 MR. GENTILE: Her state of mind is not relevant on
16 this.
17 THE COURT: That's sustained.
18 BY MR. DIGIACOMO:
19 Q There was a number of questions asked to you
20 about making statements to Mr. Hidalgo about Mr. H having a
21 week or something to post your bail, correct?
22 A Yes.
23 Q At the time you entered a plea, your case was
24 set to start when? Do you recall?
25 A Immediate.

1 Q Right?

2 A Yes.

3 Q Right before your trial date?

4 A Yes.

5 Q Less than a week --

6 A Yes.

7 Q -- that you're talking to Mr. H about?

8 A Yes.

9 Q After you gave your proffer and you said you

10 met with Mr. H and at that point he offered to bail you out

11 and you told him not to, why didn't you let him?

12 A When we had been on the phone he had told me

13 that he was struggling financially. He also told me that that

14 same evening, and I could have allowed him to bail me out, but

15 I thought that the money could be best used to pay the bills.

16 Q And you had already signed the plea agreement?

17 A Yes.

18 Q So you decided not to let him bail you out and

19 then turn around and testify -- and then testify against him?

20 A Yes.

21 Q Do you remember on cross-examination

22 Mr. Gentile asked you questions about Mr. H only carried two

23 keys?

24 A Correct.

25 Q Do you remember those questions?

1 A Yes.

2 Q And you tried to answer a little bit farther
3 and he cut you off. Do you remember what you wanted to say?

4 A Yes.

5 Q What is it that you wanted to say about those
6 two keys?

7 A There -- Louie had a key to enter the club. He
8 also had a key for his office. Inside his office is a cigar
9 box that had keys to everything in the club.

10 Q And from your interactions with Mr. H, did he
11 know how to use those keys on a variety of things?

12 A Yes, the keys were numbered and there was a
13 sheet with the number and the stipulation of what the key
14 belonged to.

15 Q And there's been a number of questions asked to
16 you as well about plan B and Mr. H's statement to you of plan
17 B and what the meaning of plan B was. Do you remember that?

18 A Yes.

19 Q Did there ever come a point in time when you
20 had a conversation with Mr. H about the meaning of plan B?

21 A No.

22 Q Okay. Did there ever come a point in time when
23 you were in the Palomino Club when Mr. H did anything really
24 about the plan B?

25 A Yes.

1 Q Describe that for the ladies and gentlemen of
2 the jury.

3 A It was --

4 MR. GENTILE: Can we have a foundation?

5 THE COURT: I was waiting.

6 MR. GENTILE: You were waiting. I know.

7 THE COURT: I almost said it myself.

8 BY MR. DIGIACOMO:

9 Q Let me ask this --

10 MR. GENTILE: I should be a -- when did this --

11 BY MR. DIGIACOMO:

12 Q Was it before or after May 19th?

13 A It was after.

14 Q Okay. And obviously it must have been before
15 you were arrested on May 24th?

16 A Yes.

17 Q How many times do you remember being back at
18 the Palomino Club after May 19th?

19 A Once.

20 Q Okay. And can you tell us whether or not that
21 was Friday night, Saturday night, Sunday night?

22 A Friday night.

23 Q Okay. And this conversation that you're
24 referencing, that occurred on Friday night?

25 A Yes.

1 Q Okay. Can you recall where in the Palomino
2 Club this conversation occurred?

3 A Rudy's office.

4 Q And that's -- we've seen on the diagram, Rudy
5 Viarta?

6 A Yes.

7 Q Okay. And what is it -- or what happened as it
8 relates to plan B at that point in time at the Palomino Club?

9 A I am sitting behind Rudy's desk. Louie has a
10 piece of paper and he is writing something to the effect of
11 what plan B means and it has something to do with taxi cabs.

12 Q Okay.

13 A He asked me to place the paper inside the desk
14 drawer.

15 Q Which desk drawer?

16 A Rudy's desk drawer. It would be the bottom
17 drawer.

18 Q So plan B had something to do with taxi cabs at
19 that point?

20 A That's what he said.

21 Q Was it usual for Mr. H to write memos in this
22 fashion?

23 A No.

24 Q And then what was supposed to happen to this
25 memo?

1 A He just wanted it placed in the drawer in case
2 he got questioned later.

3 Q There was questions asked to you about you
4 saying, I lied on January 15th of 2008. Do you remember those
5 questions? Do you remember after the bail hearing they asked
6 you questions --

7 THE COURT: The prosecutor lied.

8 BY MR. DIGIACOMO:

9 Q -- talking to Mr. H and telling Mr. H that,
10 I -- everything I said was a lie?

11 A Yes.

12 Q Do you remember those questions?

13 A Yes.

14 Q Now, prior to January 15th, you and I never
15 talked before, correct?

16 A Correct.

17 Q And on January 15th there was a bail argument,
18 correct?

19 A Yes.

20 Q During the course of that bail argument, I
21 argued certain inferences from the evidence, correct?

22 A Correct.

23 MR. GENTILE: Objection to the leading.

24 BY MR. DIGIACOMO:

25 Q Did you --

1 MR. ARRASCADA: And he is testifying.

2 THE COURT: That's sustained.

3 MR. DIGIACOMO: All right. Let me rephrase that.

4 BY MR. DIGIACOMO:

5 Q Did you agree with what I argued to the Court
6 on January 15th of 2008?

7 A To certain things, I would have said no.

8 MR. ARRASCADA: Objection. Irrelevance, Your Honor.

9 MR. DIGIACOMO: Well, it was --

10 THE COURT: Well, overruled. She can answer that.

11 BY MR. DIGIACOMO:

12 Q What?

13 A To certain things I would have said no.

14 Q And as you sit here today, do you still dispute
15 the certain things that I said on January 15th?

16 A Yes.

17 Q Okay. Lastly, I think Mr. -- it was
18 Mr. Gentile that asked you questions about Gilardi and Rizzolo
19 and Mr. H isn't like Gilardi and Rizzolo. Do you remember
20 those questions?

21 A Yes.

22 Q Okay. And then there's a lot of questions
23 about what Gilardi and Rizzolo were in trouble for. Do you
24 remember those questions?

25 A Yes.

1 Q Gilardi, do you remember what he got in trouble
2 for?
3 A Yes.
4 Q What did he get in trouble for?
5 A He was paying -- it had to do with city council
6 to go ahead and I believe -- trying to pay somebody in the
7 city council so they could pass like a licensing, something to
8 that effect.
9 Q Something related to him giving
10 inappropriate --
11 A Funds.
12 Q -- funds to somebody who had the ability to
13 pass certain ordinances affecting --
14 MR. ARRASCADA: Judge, objection. He's leading --
15 THE WITNESS: Yes.
16 MR. ARRASCADA: -- and testifying.
17 THE WITNESS: Yes.
18 MR. DIGIACOMO: I'm just clarifying what she said
19 just.
20 THE COURT: All right.
21 MR. GENTILE: He's supposed to take on oath to do
22 that, Your Honor.
23 THE COURT: Mr. Gentile.
24 Mr. DiGiacomo, ask your next question.
25 BY MR. DIGIACOMO:

1 Q Now, you were also asked questions about Tony
2 Moore Leavitt, correct?

3 A Yes.

4 Q And the nature of the fact that he was
5 extorting Mr. H?

6 A Yes.

7 Q Do you know what the basis of his extortion
8 was?

9 A Yes.

10 Q What was it?

11 MR. GENTILE: Objection. Hearsay.

12 MR. DIGIACOMO: Let me rephrase.

13 THE COURT: All right. Thank you.

14 BY MR. DIGIACOMO:

15 Q Did you become aware -- or let me rephrase
16 this. Without telling us what Tony Moore's assertion was,
17 were you aware of certain conduct which was the basis of that
18 extortion?

19 MR. GENTILE: Objection. Can we approach?

20 THE COURT: Yes. Do you know what? Ladies and
21 gentlemen, let's go take another -- let's take a 12-minute
22 break this time because we're also going to let everyone look
23 at the jury questions and then once Mr. DiGiacomo finishes
24 redirect, I'll be asking the jury questions of the witness.

25 So remember the admonishment is still in place.

1 Note pads in your chairs. Jeff is in the rear, so I'm sure by
2 now you've memorized the location of the double doors. And
3 we'll see you all back here in 12 minutes.

4 (Jury recessed at 4:29 p.m.)

5 MR. GENTILE: Can we have the witness off the stand
6 for this?

7 THE COURT: And I'll go ahead and let the
8 investigator take Ms. Espindola into the back. Can you guys
9 give me two minutes. Here are -- all right. Just so -- while
10 I'm -- these are the questions that I basically thought were
11 okay. I'm not sure if she can answer all of them. These are
12 the questions that -- actually, I mixed them up. There's one
13 or two in there that I think those were the legal questions
14 that she can't answer. So I'll be right back.

15 (Court recessed at 4:30 p.m. until 4:34 p.m.)

16 (Outside the presence of the jury.)

17 THE COURT: [Inaudible].

18 MR. GENTILE: Well, only in a foundational sense.
19 Let me -- let me have these, if I may.

20 (Pause in the proceedings)

21 MR. GENTILE: These two call for speculation. These
22 two call for -- both of them. They're both from the same
23 person, but they're both going to ask for a speculative
24 answer.

25 THE COURT: Right. This is speculation.

1 MR. GENTILE: Yeah.

2 THE COURT: And this would be speculation, too, the
3 one -- unless she knows. But she already said he didn't say
4 anything else.

5 These are fine. Does anyone care if I ask about the
6 video deposition?

7 MR. PESCI: Huh-uh.

8 MR. GENTILE: The Court ruled that it wasn't
9 permitted under the state of the law.

10 MR. PESCI: The State's position on these two is that
11 they don't necessarily call for speculation. She could
12 possibly answer it.

13 MR. GENTILE: It's opinion.

14 MR. PESCI: So they should ask her -- well, her
15 opinion is extremely relevant in this case.

16 THE COURT: Well, she can say, was she aware of any
17 -- did she personally witness any --

18 MR. PESCI: Did she have direct knowledge.

19 THE COURT: -- direct -- any problems between
20 Deangelo and T.J.

21 MR. PESCI: Okay.

22 THE COURT: And then she can say, did Mr. H explain
23 to her why she was the one -- or did she -- you know, not to
24 speculate. So I'll ask them and give her a don't guess or
25 speculate instruction.

1 MR. GENTILE: Yeah. If you ask them, I think--

2 THE COURT: Okay. I mean, I'll just tell her--

3 MR. GENTILE: -- more likely to --

4 THE COURT: -- don't guess or don't --

5 MR. ARRASCADA: This one goes into our motion for a
6 mistrial, Your Honor, the whole issue on -- we didn't go into
7 that area on the plea bargain -- ask her about that.

8 MR. ADAMS: John, the court recorder doesn't --

9 THE COURT: You need to step back, because --

10 MR. ARRASCADA: I'm sorry. Judge, we did not ask
11 about that, and now it's going into --

12 MR. GENTILE: We'd better identify the question on
13 the record.

14 THE COURT: All right. The question is -- a juror
15 wanted to know from Ms. Espindola -- Ms. -- it's a long day --
16 Espindola, "You testified," quote, "'I assisted all the
17 coconspirators,'" end quote. The juror wants to know, "How
18 did you assist Deangelo Carroll, Rontae Zone, Kenneth Counts,
19 Jayson Taoipu, and Luis Hidalgo, III?"

20 And that was opened by Mr. Gentile on his
21 cross-examination which preceded the cross-examination from
22 Mr. Arrascada when he said, "And all you said was five words,
23 'I assisted all the coconspirators.'"

24 So that does not go to your ground for mistrial,
25 because this came --

1 MR. ARRASCADA: Yes, it does.

2 THE COURT: Well, wait a minute. This came out from
3 Mr. Gentile's questioning, not from Mr. DiGiacomo's
4 questioning. This is directly based on Mr. Gentile's
5 question.

6 MR. ADAMS: No, no. Because Mr. Gentile did not list
7 the name of all these people. Mr. DiGiacomo read the laundry
8 list of those names in his question.

9 And, Judge, I've been dying to make my record all
10 day.

11 THE COURT: And you can. And one other thing I would
12 just add is, although Mr. Gentile did not list the laundry
13 list of coconspirators, he spent quite some time saying, and
14 this person was at the prelim and this person was at the
15 prelim, to point out that Mr. Hidalgo, Jr., was the only
16 person that had not been charged in connection with this case.
17 So whether or not -- yes, I agree you're saying it came out
18 contemporaneous with that with Mr. DiGiacomo. It was
19 abundantly clear, and as I just said, Mr. Gentile spent a lot
20 of time pointing out that all of these other people had been
21 charged in this case, not Rontae Zone, but everybody else, and
22 that his client was the only one who hadn't been charged. The
23 obvious import of that is that she had to rat out Mr. Hidalgo,
24 Jr., because that's the only person left that the State
25 wanted. And that was where I think Mr. Gentile was going with

1 his questioning.

2 So you may say, yes, it's based on Mr. DiGiacomo's
3 questioning. I think there's plenty in the record based just
4 on Mr. Gentile's questioning to justify -- or why a juror
5 would want to know this.

6 MR. GENTILE: And to make it -- excuse me, gentlemen.
7 To make the record clear, Mr. Gentile does not object to the
8 Court asking, as quite candidly, with all due respect,
9 probably should have been done at the canvassing instead of
10 just a summary, did you do this, but, in any case, I have no
11 objection to your asking her that question.

12 MR. ADAMS: Judge, here's the -- here's the problem.
13 We -- and I need to give a little background, because we've
14 come up to the bench a lot and it's not all been on the
15 record. There was a question by Mr. DiGiacomo on redirect
16 where he listed all the people that Ms. Espindola conspired
17 with. And she said she conspired within her plea agreement,
18 and he listed Louie Hidalgo, III. We all scampered up to the
19 bench and objected. I believe that it's saying -- pointing out
20 and telling that the Court has approved and agrees that she
21 conspired with Louie Hidalgo, III.

22 The Court offered and did ultimately issue a curative
23 instruction. We indicated that we believe that curative
24 instruction was inadequate and that we have been prejudiced
25 and intentionally prejudiced now for the second time. And I

1 do need to go back and make the record on Friday. The second
2 time intentionally, calculatedly -- or with calculation trying
3 to sabotage us and trying to goad us into a mistrial. They
4 did it the second time. The Court tried to cure it, and now,
5 when we were up there after we argued, we've gotten notes from
6 the jurors, and this juror, after the Court said, disregard
7 all this, we've got a note from the juror going right to the
8 instruction and -- that the Court said to disregard. Our
9 position is --

10 THE COURT: Well, no, I didn't say to disregard. I
11 mean, the instruction is what's on the record, number one.

12 MR. GENTILE: Correct.

13 THE COURT: Number two, okay, you objected to the
14 whole thing but didn't add anything to the curative
15 instruction, because everyone --

16 MR. ADAMS: No. Because our position is it's
17 inadequate to cure the prejudice --

18 THE COURT: With any instruction.

19 MR. ADAMS: -- that was elicited by the prosecution.

20 THE COURT: I just want it clear on the record that
21 both sides -- Mr. Gentile agreed with the Court's curative
22 instruction and both defendants' attorneys were able to add to
23 the instruction, and you didn't offer any addition to that.

24 MR. ADAMS: Correct, Judge. But I did say at the
25 bench in no way to waive our mistrial motion that we are--

1 THE COURT: No. And you didn't. I'm just saying
2 there was nothing else you wanted me to say that I did not
3 say.

4 MR. ADAMS: That's right. Because we don't believe
5 that it can be cured.

6 THE COURT: Right. Okay.

7 MR. ADAMS: And I believe this note suggests it was
8 not cured.

9 THE COURT: Okay. I just want to add something. In
10 the questioning of, well, you agreed you conspired with this
11 person and that person, Rontae Zone was not one of those
12 people. So the fact that the juror put "Rontae Zone" in
13 harkens back to what Mr. Gentile asked where he was bringing
14 up Rontae Zone. Because the State never brought up Rontae
15 Zone. So I don't think you can say, well, this is based
16 solely on the State's questioning when, you know, the State
17 doesn't want to bring Rontae Zone in as a coconspirator
18 because that weakens their position. That's just --

19 MR. GENTILE: Plus the Court is going to be asked to
20 give an instruction to the jury that Mr. Zone can be
21 considered by them as an accomplice, because that is a jury
22 question. Which would mean that he would be a conspirator.

23 THE COURT: Right.

24 MR. GENTILE: So I have no objection to this
25 question.

1 THE COURT: My only point is Rontae Zone's name was
2 not mentioned by the State as a coconspirator. So the fact
3 that they're suggesting that he's a coconspirator I think is
4 more indicative of them listening to Mr. Gentile's
5 cross-examination when he went through that whole thing about
6 Rontae Zone was in the car or something. I don't remember
7 exactly. It's been a long day.

8 MR. DIGIACOMO: For the record, I never referenced
9 Luis Hidalgo, III. I was never allowed to get that far,
10 because I wasn't allowed to ask my next question, which is the
11 III and Junior, which is what we made clear -- what you
12 canvassed her about. We never got that far. I just said,
13 Luis Hidalgo. Then I got the objection. You told me to ask
14 general questions and not ask specifics, so I never clarified
15 which coconspirators she was talking about.

16 MR. ADAMS: Certainly at that point one Luis Hidalgo
17 was under arrest and one was not. And that record's clear.

18 Judge, on Friday they asked in their direct
19 examination about Anabel Espindola facing the death penalty,
20 and they asked her, so were the other defendants there that
21 day, Mr. Counts, Mr. Hidalgo -- we -- III. We approached and
22 at that point did not move for a mistrial, but indicated at
23 the bench that they are trying, it appears -- because they're
24 seasoned prosecutors, that's not accidental, they're
25 experienced prosecutors, it's not neglectful, it's intentional

1 action to get improper evidence, improper suggestion in front
2 of this jury. I can only suspect they're doing that to goad
3 us into moving for a mistrial.

4 We placed them on notice Friday at the bench that
5 we're at that point that they keep trying to inject improper
6 material in front of this jury. We think Rontae Zone would
7 hit a home run for us, quite candidly. I guess the jury will
8 ultimately decide that. We think they don't like Rontae
9 Zone's testimony and would like another crack at us. I think
10 they're intentionally putting improper material in front of
11 the jury. And we wanted to place them on notice first thing
12 this morning. Now it's been compounded with this redirect
13 examination. We're in a real position where we've been
14 prejudiced now twice in two days with their direct questions
15 and redirect questions of Anabel Espindola. And I think it
16 strikes to the heart of our right to have a fair trial.

17 THE COURT: So you're suggesting that I --

18 MR. ADAMS: I'm suggesting that it's appropriate for
19 the Court to consider --

20 THE COURT: Well, wait.

21 MR. ADAMS: -- a mistrial based on this redirect
22 examination question, with prejudice. I'm not requesting a
23 mistrial without prejudice, but with prejudice a mistrial.

24 MR. DIGIACOMO: And the basis, the legal basis, I
25 heard absolutely none.

1 MR. ADAMS: The legal basis is they --
2 MR. DIGIACOMO: Excuse me. You made your record.
3 Now it's my turn to make mine, Mr. Adams.
4 There is not a --
5 MR. ADAMS: Judge, is he allowed to address me --
6 THE COURT: All right.
7 MR. ADAMS: -- like that, in a haunting way? I feel
8 threatened.
9 THE COURT: Okay. Okay. Do I need to put your
10 relative sizes on the record since this isn't going to be a
11 visual record?
12 MR. DIGIACOMO: That might --
13 THE COURT: If it were -- if it were being recorded,
14 I wouldn't need to state the obvious. But since the Supreme
15 Court may be ----
16 MR. ADAMS: I do not request that, Your Honor.
17 THE COURT: -- may be relying on the written
18 transcript. Something suggests to me that you don't feel
19 threatened. Is that it, Mr. Adams?
20 MR. ADAMS: Very threatened. So threatened, in fact,
21 that I had to do kickboxing this morning on him with a DVD.
22 THE COURT: All right.
23 MR. GENTILE: Having lived with him for three weeks,
24 he's quite a meek individual, I must say.
25 MR. DIGIACOMO: Can I make a record here?

1 THE COURT: You may.

2 MR. DIGIACOMO: Let's talk about two things. One,
3 the redirect examination of Anabel Espindola is 100 percent
4 appropriate. They can't find a single case whatsoever to say
5 -- particularly when they said, the only thing you're going to
6 do is assisting the coconspirators. Well, she keeps
7 admitting, I counselled, I encouraged, I procured, I
8 conspired, and she lists out all the coconspirators,
9 everything that she says she did is admissible. Heck, it
10 probably would have been admissible on direct testimony, but
11 certainly after the cross-examination when they said, the only
12 thing you did was that you assisted, no, that's not true. The
13 fact that there may have been some legal conclusions in there
14 does not somehow preclude her from testifying to the
15 underlying facts that she admitted that she committed in order
16 for her to be guilty of the crime which was charged and then
17 the fictional plea, which I've heard it been used a lot. The
18 Court's the one who used it, Mr. Oram used it, which means
19 there's no basis for provocation in this case. If she was
20 guilty, she's guilty of murder, she got a reduced charge, one.

21 Two, as it relates to the death penalty, one, first
22 of all, after today's cross-examination where Mr. Gentile told
23 this jury that the Supreme Court reinstituted the death
24 penalty during his cross-examination of Anabel Espindola, he
25 specifically did that. And at some point the Court needs to

1 give some sort of instruction to this jury that neither
2 defendant is currently facing the death penalty, because you
3 don't want some juror back there -- the State certainly
4 doesn't want some juror back there thinking, oh, my God, if I
5 convict this person of first I may have to deal with death,
6 because they're not a death-qualified jury. So that's one I'd
7 make that request.

8 Two, we were fully aware from discussions --

9 THE COURT: You'll get the blanket instruction the
10 matter of sentencing is strictly up to the Court.

11 MR. DIGIACOMO: I understand that. But I don't want
12 them thinking that you may give them the death penalty.
13 Because no -- this jury has no idea, one.

14 Two, the State is more than willing to say neither
15 Mr. Hidalgo or Mr. Hidalgo, III, Junior or III are currently
16 facing a notice of intent to seek the death penalty. I'm
17 certainly going to bring that out from Anabel at the end of
18 this case, that Mr. H currently isn't facing one. We can
19 raise that issue.

20 MR. ARRASCADA: Hearsay.

21 MR. GENTILE: It's hearsay.

22 MR. ADAMS: Objection.

23 MR. DIGIACOMO: Fine. I'll have the Court take
24 notice that neither one of them are facing it.

25 MR. ADAMS: Objection. Relevance.

1 MR. GENTILE: I think you could -- well --

2 MR. DIGIACOMO: They went into --

3 THE COURT: I mean, the problem is Mr. Adams and Mr.
4 Gentile have totally different opinions about whether the
5 death penalty issue should come in. Mr. Gentile wants it to
6 come in. Mr. Adams doesn't want it to come in.

7 MR. ADAMS: Here's why, Judge.

8 THE COURT: I mean, yeah, I mean --

9 MR. ADAMS: I think we're prejudiced by their
10 reference to it Friday. We didn't move for a mistrial at that
11 time. We asked for a curative instruction, which the Court
12 granted.

13 THE COURT: All right.

14 MR. ADAMS: Here's why. They're saying they viewed
15 Louie Hidalgo, III, as being among the worst of the worst when
16 they bring that in in front of the jury. It's not
17 appropriate.

18 THE COURT: Yeah. I mean, I thought of that, too,
19 and I recognized that. But then I also thought, you know
20 what, they file the notice of death and death qualify juries
21 all the time in obviously death cases where you're still
22 dealing with the guilt phase. And we don't have any caselaw
23 at all saying that just the fact that they filed a notice of
24 death is so prejudicial that it prejudices the jury at the
25 guilt phase. And that's essentially what you're saying. And

1 I thought of that initially, and I thought, yeah, it's so
2 prejudicial because they're saying he's the worst of the
3 worst, but I don't know of any caselaw that -- I mean, they
4 could have gone forward with this as a death case.

5 MR. ADAMS: Then we would have a death -- then we
6 would have a different jury --

7 THE COURT: We would have a --

8 MR. ADAMS: -- and we'd be in a different posture.

9 THE COURT: Well, no. We would have a different
10 jury. But all I'm saying is for the guilt phase I don't know
11 that there's any additional prejudice, because that is what
12 you're saying in the guilt phase on a capital case, which this
13 could have been. So --

14 MR. ADAMS: Judge, really what it equates to is that
15 we have been tried with Ms. Espindola previously and it was a
16 hung jury. And we're back for retrial and she got a deal.
17 They're commenting -- they're commenting on something that was
18 inappropriate as it relates to Mr. Hidalgo, III. If he
19 testifies, maybe they can go into that for his bias. But it's
20 completely appropriate to cross her on that. It has no
21 relevance for them to sleaze in this stuff in their direct
22 examination as it relates to Mr. Hidalgo.

23 THE COURT: Well, how does that not cure it if the
24 Court says, the State voluntarily withdrew their notice of
25 death penalty against both of these defendants and is

1 currently not seeking the death penalty against either one of
2 them and that was a voluntary action taken by the State?

3 MR. ADAMS: I believe --

4 THE COURT: Which to me gives it more import.

5 MR. ADAMS: I object to that. I believe --

6 THE COURT: Okay. You don't want that. I'm just --

7 MR. ADAMS: It points a finger at Luis Hidalgo, III,
8 as being someone who they deemed as among the worst of the
9 worst at some point.

10 THE COURT: Well, I mean, here's the -- no, but
11 here's the thing, is you say it looks like he's the worst of
12 the worst, and they've already brought out Anabel Espindola
13 had a notice of death but now she's got a -- but now, my God,
14 she's so horrible they filed a death penalty against her and
15 now they're going to stand silent while the Court can give her
16 probation if it wants to do that. So to say that she -- that
17 by filing it it's the worst of the worst to me -- I mean, to
18 me the way to cure it is to say they voluntarily withdrew it.
19 That means they don't think they're the worst of the worst.
20 If you don't want me to do that, I won't. But, I mean, it
21 cuts both ways. Just --

22 MR. ADAMS: I agree, and I'm afraid of the way it
23 cuts toward us.

24 THE COURT: I mean, obviously -- I mean, to me,
25 though -- to me, if anything, it makes it look like they're

1 filing this frivolously --

2 MR. ADAMS: Well --

3 THE COURT: -- when they want to seek the death
4 penalty against someone but, wow, when she flips, which to me,
5 you know, a lot of people might say that makes her a worse
6 person. When she flips, now they're saying, well, we're going
7 to -- the State isn't going to take a posture as to whether or
8 not this woman gets probation or not.

9 MR. ADAMS: They also said in --

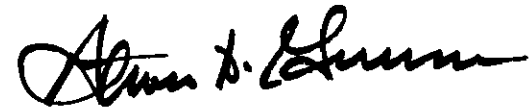
10 THE COURT: Now, they may have a sense of what I
11 might do, but also they may have no sense of what I might do.

12 MR. ADAMS: Right.

13 THE COURT: And they're not taking a position. So
14 that's my view, that --

15 MR. DIGIACOMO: And if this jury heard the question
16 of Mr. Gentile, obviously it wasn't a death case back on Mr.
17 H. He's going to [inaudible] as it became -- the death
18 penalty came back, clearly implying that there's now a current
19 notice of intent to seek death against Little Lou, and that is
20 not a proper inference for this jury to make. So there has to
21 be some instruction. I can either do it through a witness, or
22 the Court can give the instruction, but there has to be some
23 instruction to this jury that neither one of these defendants
24 faces the death penalty.

25 MR. ADAMS: Actually, Mr. Gentile said, Your Honor,



CLERK OF THE COURT

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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**

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

<u>VOLUME</u>	<u>DATE</u>	<u>DOCUMENT</u>	<u>BATES</u>
I	06/20/2005	Information	HID PA00001 - HID PA00004
I	07/06/2005	Notice Of Intent To Seek Death Penalty	HID PA00005 - HID PA00009
I	07/06/2005	Notice Of Intent To Seek Death Penalty	HID PA00010 - HID PA00014
I	11/14/2006	Answer To Petition For Writ of Mandamus Or, In the Alternative, Writ of Prohibition	HID PA00015 - HID PA00062
I	12/20/2006	Reply to State's Answer To Petition For Writ of Mandamus Or, In The Alternative, Writ of Prohibition	HID PA00063 - HID PA00079
I	02/04/2008	Guilty Plea Agreement	HID PA00080 - HID PA00091
I	05/29/2008	Advance Opinion 33, (No. 48233)	HID PA00092 - HID PA00113

<u>VOLUME</u>	<u>DATE</u>	<u>DOCUMENT</u>	<u>BATES</u>
I	02/11/2008-01/13/2016	Docket	HID PA00114 - HID PA00131
I	02/11/2008-11/10/2015	Minutes	HID PA00132 - HID PA00200
II	02/13/2008	Indictment	HID PA00201 - HID PA00204
II	02/20/2008	Transcript of Proceedings: Hearing re Arraignment	HID PA00205 - HID PA00209
II	03/07/2008	Notice of Intent to Seek Death Penalty	HID PA00210 - HID PA00212
II	04/01/2008	Transcript of Proceedings: Hearing re Motions	HID PA00213 - HID PA00238
II	05/01/2008	Amended Indictment	HID PA00239 - HID PA00241
II	06/18/2008	Amended Notice of Intent To Seek Death Penalty	HID PA00242 - HID PA00245
II	06/25/2008	Notice of Motion And Motion To Consolidate Case No. C241394 Into C212667	HID PA00246 - HID PA00258
II	12/08/2008	Defendant Luis Hidalgo Jr. And Luis Hidalgo III's Opposition To The Motion To Consolidate Case No. C241394 Into C212667 + Exhibits A- G	HID PA00259 - HID PA00440
III	12/08/2008	Defendant Luis Hidalgo Jr. And Luis Hidalgo III's Opposition To The Motion To Consolidate Case No. C241394 Into C212667, Exhibits H-K	HID PA00441 - HID PA00469
III	12/15/2008	Response To Defendant Luis Hidalgo, Jr. and Luis Hidalgo, III's Opposition To Consolidate Case No. C241394 Into C212667	HID PA00470 - HID PA00478
III	01/07/2009	State's Motion To Remove Mr. Gentile As Attorney For Defendant Hidalgo, Jr., Or In The Alternative, To Require Waivers After Defendants Have Had True Independent Counsel To Advise Him	HID PA00479 - HID PA00499
III	01/16/2009	Order Granting The State's Motion To Consolidate C241394 Into C212667	HID PA00500 - HID PA00501
III	01/16/2009	Waiver of Rights To A Determination Of Penalty By The Trial Jury	HID PA00502
III	01/29/2009	Transcript of Proceedings: Jury Trial - Day 3	HID PA00503 - HID PA00522

<u>VOLUME</u>	<u>DATE</u>	<u>DOCUMENT</u>	<u>BATES</u>
III	01/30/2009	Transcript of Proceedings: Jury Trial - Day 4	HID PA00523 - HID PA00538
III	02/02/2009	Transcript of Proceedings: Jury Trial - Day 5 (Pg. 1-152)	HID PA00539 - HID PA00690
IV	02/02/2009	Transcript of Proceedings: Jury Trial - Day 5 (Pg. 153-225)	HID PA00691 - HID PA00763
IV	02/06/2009	Transcript of Proceedings: Jury Trial - Day 6	HID PA00764 - HID PA00948
V	02/04/2009	Transcript of Proceedings: Jury Trial - Day 7	HID PA00949 - HID PA01208
VI	02/05/2009	Transcript of Proceedings: Jury Trial - Day 8	HID PA01209 - HID PA01368
VII	02/06/2009	Transcript of Proceedings: Jury Trial - Day 9	HID PA01369 - HID PA01553
VIII	02/09/2009	Transcript of Proceedings: Jury Trial - Day 10 (Pg. 1-250)	HID PA01554 - HID PA01803
IX	02/09/2009	Transcript of Proceedings: Jury Trial - Day 10 (Pg. 250-340)	HID PA01804 - HID PA01894
X	02/10/2009	Transcript of Proceedings: Jury Trial - Day 11 (Pg. 1-250)	HID PA01895 - HID PA02144
XI	02/10/2009	Transcript of Proceedings: Jury Trial - Day 11 (Pg. 1-251)	HID PA02145 - HID PA02212
XII	02/11/2009	Transcript of Proceedings: Jury Trial - Day 12 (Pg. 1-250)	HID PA02213 - HID PA02464
XIII	02/11/2009	Transcript of Proceedings: Jury Trial - Day 12 (Pg. 251-330)	HID PA02465 - HID PA02545
XIV	02/12/2009	Transcript of Proceedings: Jury Trial - Day 13	HID PA02546 - HID PA02788
XV	02/17/2009	Transcript of Proceedings: Jury Trial - Day 14	HID PA02789 - HID PA02796
XVI	02/05/2009	Court Exhibit: 2 (C212667), Transcript of Audio Recording (5/23/05)	HID PA02797 - HID PA02814
XVI	02/05/2009	Court Exhibit: 3 (C212667), Transcript of Audio Recording (5/24/05)	HID PA02815 - HID PA02818
XVI	No Date On Document	Court Exhibit: 4 (C212667), Transcript of Audio Recording (Disc Marked As Audio Enhancement)	HID PA02819 - HID PA02823
XVI	02/05/2009	Court Exhibit: 5 (C212667), Transcript of Audio Recording (Disc Marked As Audio Enhancement)	HID PA02824 - HID PA02853
XVI	05/20/2010	Court Exhibit: 229 (C212667) Note	HID PA02854

<u>VOLUME</u>	<u>DATE</u>	<u>DOCUMENT</u>	<u>BATES</u>
XVI	02/10/2009	Court Exhibit: 238 (C212667) Phone Record	HID PA02855 - HID PA02875
XVI	02/17/2009	Jury Instructions	HID PA02876 - HID PA02930
XVII	03/10/2009	Defendant Luis Hidalgo, Jr.'s Motion For Judgment Of Acquittal Or, In The Alternative, A New Trial	HID PA02931 - HID PA02948
XVII	03/17/2009	State's Opposition To Defendant Luis Hidalgo Jr.'s Motion For Judgment of Acquittal Or, In the Alternative, A New Trial	HID PA02949 - HID PA02961
XVII	04/17/2009	Reply To State's Opposition To Defendant Luis Hidalgo Jr.'s Motion For Judgment of Acquittal Or, In the Alternative, A New Trial	HID PA02962 - HID PA02982
XVII	04/27/2009	Supplemental Points And Authorities To Defendant Luis A. Hidalgo, Jr.'s Motion For Judgment Of Acquittal Or, In The Alternative, A New Trial	HID PA02983 - HID PA02991
XVII	06/19/2009	Luis A. Hidalgo Jr.'s Sentencing Memorandum	HID PA02992 - HID PA03030
XVII	06/23/2009	Transcript of Proceedings: Sentencing	HID PA03031 - HID PA03058
XVII	07/06/2009	Ex-Parte Application Requesting That Defendant Luis A. Hidalgo Jr.'s Ex- Parte Application Requesting An Order Declaring Him Indigent For Purposes Of Appointing Appellate Counsel Be Sealed	HID PA03059 - HID PA03060
XVII	07/10/2009	Judgment Of Conviction	HID PA03061 - HID PA03062
XVII	07/16/2009	Luis Hidalgo, Jr.'s Notice Of Appeal	HID PA03063- HID PA03064
XVII	08/18/2009	Amended Judgment Of Conviction	HID PA03065 - HID PA03066
XVIII	02/09/2011	Appellant Luis A. Hidalgo, Jr.'s Opening Brief	HID PA03067 - HID PA03134
XVIII	06/10/2011	Respondent's Answering Brief	HID PA03135 - HID PA03196
XVIII	09/30/2011	Appellant Luis A. Hidalgo, Jr.'s Reply Brief	HID PA03197 - HID PA03238
XVIII	03/09/2012	Order Submitting Appeal For Decision Without Oral Argument	HID PA03239

<u>VOLUME</u>	<u>DATE</u>	<u>DOCUMENT</u>	<u>BATES</u>
XVIII	03/30/2012	Appellant's Motion To Reconsider Submission For Decision Without Oral Argument	HID PA03240 - HID PA03251
XVIII	04/17/2012	Appellant's Emergency Supplemental Motion To Reconsider Submission For Decision Without Oral Argument + Exhibits A-C	HID PA03252 - HID PA03289
XIX	04/17/2012	Appellant's Emergency Supplemental Motion To Reconsider Submission For Decision Without Oral Argument, Exhibit D	HID PA03290 - HID PA03329
XIX	04/26/2012	Notice Of Oral Argument Setting	HID PA03330
XIX	06/05/2012	Appellant's Notice of Supplemental Authorities [NRAP31(e)]	HID PA03331 - HID PA03333
XIX	06/21/2012	Order Of Affirmance	HID PA03334 - HID PA03344
XIX	07/09/2012	Petition For Rehearing Pursuant To Nevada Rule Of Appellate Procedure 40	HID PA03345 - HID PA03351
XIX	07/27/2012	Order Denying Rehearing	HID PA03352
XIX	08/10/2012	Petition For En Banc Reconsideration Pursuant To NRAP 40A	HID PA03353 - HID PA03365
XIX	09/18/2012	Order Directing Answer To Petition For En Banc Reconsideration	HID PA03366
XIX	10/02/2012	Answer To Petition For En Banc Reconsideration	HID PA03367 - HID PA03379
XIX	10/09/2012	Luis A. Hidalgo, Jr.'s Motion For Permission To File A Reply To Answer To Petition For En Banc Reconsideration	HID PA03380 - HID PA03383
XIX	10/12/2012	Instruction #40 Was Structural Error And Therefore Reversible Per Se Under Post-Bolden Nevada Conspiracy Jurisprudence	HID PA03384 - HID PA03399
XIX	11/13/2012	Order Denying En Banc Reconsideration	HID PA03400 - HID PA03401
XIX	05/15/2013	Letter to Clerk of Court: Petition For USSC Writ Of Certiorari Denied	HID PA03402
XX	12/31/2013	Petition For Writ Of Habeas Corpus (Post Conviction)	HID PA03403 - HID PA03483
XX	12/31/2013	Motion For Appointment Of Counsel	HID PA03484 - HID PA03488

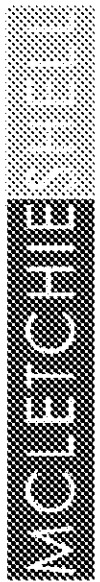
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<u>VOLUME</u>	<u>DATE</u>	<u>DOCUMENT</u>	<u>BATES</u>
XX	01/08/2014	Order For Petition For Writ Of Habeas Corpus	HID PA03489
XX	01/13/2014	State's Response To Defendant's Pro Per Motion For Appointment of Counsel	HID PA03490 - HID PA03494
XX	01/13/2016	Documents received from the Nevada Secretary of State	HID PA03495 – HID PA03516

DATED this 29th day of February, 2016.

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CERTIFICATE OF SERVICE

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

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

1 as it relates to Ms. Espindola the death penalty came back.
2 He didn't lump in -- like the State had done in direct exam,
3 he didn't lump in Louie Hidalgo, III, into that.

4 MR. DIGIACOMO: He --

5 MR. ADAMS: -- confusion on that point.

6 MR. PESCI: He said, the State refiled -- are you
7 aware that the State refiled the notice of intent and it was
8 not qualified to any specific defendant.

9 THE COURT: Yeah. But I think the inference was it's
10 a separate notice of intent as to each person, and he was
11 going to her motivation that she was afraid she would be
12 executed. She doesn't care whether anybody else gets
13 executed, according to the inferences he's creating. So I
14 took that as a notice of intent as to her.

15 MR. DIGIACOMO: But what he said then is, and if you
16 hadn't pled it like the Supreme Court did and reinstituted the
17 death penalty in this case, you'd be facing the death penalty.
18 That's exactly what he said.

19 THE COURT: Yeah, but they don't know that that --
20 they don't know that that means the death penalty, because
21 obviously the issues are different as to each defendant.

22 So, Mr. Gentile, do you want an -- I think it's
23 appropriate to give an instruction, the State has voluntarily
24 withdrawn seeking the death penalty. But you guys can think
25 about it. You don't have to decide today --

1 MR. GENTILE: Okay. Thank you.

2 THE COURT: -- what you guys want to do.

3 MR. PESCI: Judge, while they're thinking of that,

4 we've talked to you about Sessions up at the bench. Sessions

5 is 111

6 Nev. --

7 THE COURT: I've got it right in front of me here,

8 and I was trying to read it, but you guys all kept objecting

9 so much I

10 couldn't --

11 MR. PESCI: Okay. When you do read it, we'd ask you

12 to look at the end of Headnote 4.

13 THE COURT: All right. Can we bring the jury in?

14 MR. DIGIACOMO: Well, they wanted to object to me

15 getting into instances of bad character when they put a good

16 character into evidence.

17 MR. GENTILE: Well, but, see --

18 THE COURT: That was why you approached the bench,

19 which we've forgotten about in our --

20 MR. GENTILE: That's why I approached the bench. So

21 don't bring them in yet, please. No, no. Please don't.

22 Yes?

23 THE COURT: No. Don't, because we --

24 MR. GENTILE: Don't, yeah.

25 THE COURT: -- this is why you approached.

1 MR. GENTILE: Under 50.085(3) specific instances of
2 the conduct of a witness for the purpose of attacking or
3 supporting the witness's character for truthfulness you can go
4 into it. Here what they're trying to do is they're trying to
5 go into specific instances of misconduct of Luis Hidalgo, Jr.
6 I don't know how you do that.

7 MR. DIGIACOMO: This is the question. "You've known
8 Mr. H for many years and Mr. H did nothing to behave like Mr.
9 Gillardi or Mr. Rizzolo." The statute says once the defense
10 puts his good character in, we have an opportunity to rebut it
11 with specific acts. He's talking about credibility. He's not
12 talking about pure character evidence. And this is pure
13 character evidence.

14 MR. GENTILE: We were talking about two specific
15 people and his conduct was not like theirs.

16 MR. DIGIACOMO: Right.

17 MR. GENTILE: Now, if they've got something where he
18 bribed a County commissioner --

19 THE COURT: Well, this isn't credibility evidence.

20 MR. DIGIACOMO: Wasn't quite a County commissioner.

21 THE COURT: This is character evidence, because he's
22 -- without him testifying we're not interested in his
23 credibility.

24 MR. DIGIACOMO: -- his credibility. This is
25 character.

1 THE COURT: So it's not 50.085 evidence, which is --

2 MR. GENTILE: No. He's not a witness.

3 THE COURT: Right.

4 MR. GENTILE: Right.

5 THE COURT: It's not credibility. I thought that's
6 what you said.

7 MR. GENTILE: No. I -- I did say that. But he's not
8 a witness, and his character is not in issue in this case.
9 The only thing that I asked about was Gillardi or Rizzolo and
10 that in her experience he's done nothing like either one of
11 those two people. Now, if they've got something that says
12 that he has, I suppose she could give testimony to that, okay.
13 But unless it fits Gillardi and Rizzolo -- I didn't open up
14 the door wide open. We only talked about two people. I
15 didn't say, you've never heard of this man doing anything
16 wrong in his life.

17 MR. DIGIACOMO: You said he never did anything like
18 Mr. Gillardi --

19 MR. GENTILE: Or Mr. Rizzolo.

20 MR. DIGIACOMO: -- or Mr. Rizzolo. And that's good
21 character evidence.

22 THE COURT: So bribing County -- I mean, there's a --
23 see --

24 MR. DIGIACOMO: Bribing County commissioners, having
25 people beat up, all of that is fair game. All of it.

1 THE COURT: Okay. Well, what is it that you're going
2 to ask her?

3 MR. DIGIACOMO: I'm going to say, are you aware of a
4 situation similar to Mr. Gillardi. And I'm anticipating her
5 answer is going to be yes, that Mr. Hidalgo gave inappropriate
6 gifts to a City councilman to get his permits and that's what
7 Tony Moore Leavitt's extortion basis was about.

8 MR. GENTILE: Well, then you've go to lay a --

9 MR. DIGIACOMO: I'm going to ask her, as well -- I'll
10 -- I'll lay a foundation.

11 THE COURT: Well, that would be -- I mean, bribing
12 City Council people and County commissioners is what Gillardi
13 and Rizzolo did.

14 MR. DIGIACOMO: Well, that's not just it. Rizzolo
15 also had somebody -- and it was said by Luis, had a customer
16 beat up. And one of the things I was going to ask her is,
17 were you aware of a situation involving Deangelo Carroll
18 previously and Deangelo Carroll being requested by Mr. H to do
19 anything and then who stopped it. Because she did. And it
20 was not only Deangelo Carroll's statement, but it's as well is
21 information that she has directly from Mr. H related to
22 beating people. That's specifically what they went to as to
23 Mr. Gillardi and Mr. Rizzolo. That's specifically what those
24 questions --

25 THE COURT: Okay. Those two things might have opened

1 the door.

2 MR. GENTILE: Let me -- let me address those. First
3 of all, there is a police report relating to this Moore --
4 Tony Moore Leavitt situation.

5 THE COURT: Right.

6 MR. GENTILE: And I'd recommend to the Court that the
7 Court at least read that report prior to making a decision.
8 It's very short. We have it here, okay.

9 THE COURT: I'll read it if somebody gives it to me.

10 MR. GENTILE: I'll give it to you.

11 THE COURT: Well, maybe you can argue. Ms. Armeni
12 can give it to me.

13 MR. GENTILE: And my concern here -- my concern here
14 is that we are talking about multiple levels of hearsay.

15 THE COURT: Well, if it's hearsay, then -- how does
16 she know about the Tony Moore Leavitt thing?

17 MR. DIGIACOMO: Mr. H.

18 THE COURT: If it's from Mr. H, then it's his
19 admission. So she can -- it's not -- she can testify. Now,
20 if it's based on some other scuttlebutt at the club or things
21 like that, then clearly it's hearsay. But -- so you're going
22 to have to lay a foundation at the outset, did Mr. H ever
23 discuss with you something that was similar to -- or, you
24 know, something --

25 MR. GENTILE: Well, I think the Court needs to make a

1 determination on the similarity before he should go into it at
2 all.

3 THE COURT: Well, if it's gifts, were they illegal
4 gifts to a City Council person, or was it like a -- you--

5 MR. DIGIACOMO: Inappropriate gifts.

6 THE COURT: Well, what does inappropriate mean? I
7 mean, is that like --

8 MR. DIGIACOMO: She said that he'd come to the --
9 comes to the business, he'd get like a \$500 loan with a wink,
10 wink, you never have to pay it back. Tony Moore was
11 threatening to expose Mr. H about that. They were advised by
12 Mr. Gentile to go down and make a police report. But if you
13 read that police report, what the basis of the extortion is,
14 what information they were going to -- is nowhere in that
15 report, because they never reported it, because they weren't
16 supposed to tell them that part of the --

17 THE COURT: Who is the City Council person?

18 MR. DIGIACOMO: I believe the last name is Robinson.
19 I don't know what the --

20 THE COURT: Oh. Willie Robinson?

21 MR. DIGIACOMO: Okay. I don't know.

22 MR. GENTILE: Then the --

23 THE COURT: I'm just aware that that's a North Las
24 Vegas City Council person.

25 MR. GENTILE: Right.

1 THE COURT: I certainly wouldn't suspect or believe
2 that he would be involved in that. I just -- I just know him
3 to be a City Council person.

4 MR. GENTILE: All right. I'll just finish that
5 first, and then we'll go to the second issue.

6 (Pause in the proceedings)

7 MR. GENTILE: And again I would suggest to the Court
8 that 48.035 should be taken into consideration.

9 MR. DIGIACOMO: If he had never asked the question,
10 it never comes in. But once he asks the question, how can
11 48.035 say, oh, you can't follow up on that?

12 THE COURT: I mean, I think, you know -- I mean, you
13 went into a lot of questioning about they were under federal
14 indictment and their clubs are subject to forfeiture, or maybe
15 Arrascada asked the forfeiture question --

16 MR. GENTILE: No. I did.

17 THE COURT: Somebody -- okay. Somebody --

18 MR. GENTILE: I asked that question.

19 THE COURT: -- talked about that. So, I mean, I
20 think the things that form the basis for the criminal case
21 against them certainly are the subject for redirect.

22 MR. GENTILE: Right. But the --

23 THE COURT: Now, anything beyond that I --

24 MR. GENTILE: But the prosecutor should be at least
25 made to give a proffer to the Court as to what the testimony's

1 going to be.

2 THE COURT: I think he just did.

3 MR. GENTILE: I don't think that he did. I --

4 MR. DIGIACOMO: Didn't I just do that?

5 THE COURT: Well, I mean, he said that Mr. H told --

6 MR. GENTILE: Told Anabel that he made loans to
7 Councilman Robinson not to be paid back? Is that what her
8 testimony's going to be, that he told her that he made loans
9 to Councilman Robinson not to be paid back?

10 MR. DIGIACOMO: I don't have the ability to --

11 MR. GENTILE: Because I'll tell you where we're
12 going. Councilman Robinson will be in here as a witness.

13 MR. DIGIACOMO: That's fine. He can bring him in.

14 MR. GENTILE: This is exactly the issue that we ran
15 into in San Diego in Gillardi --

16 THE COURT: Because -- and also --

17 MR. GENTILE: -- where there were a few local
18 officials, some of whom were in this building, who were
19 accused by Mr. Gillardi of having taken money from them, all
20 right, and who were prepared to come in and rebut that, but
21 the judge in his good sense decided that that was too far
22 afield.

23 MR. DIGIACOMO: Well, then he probably shouldn't have
24 asked the question.

25 MR. GENTILE: The question was asked there, as well.

1 But I can tell you that separate and apart from that you have
2 this other issue, which is the beating up issue. All right.
3 Now --

4 THE COURT: I mean, the beating up issue is more
5 germane, because --

6 MR. GENTILE: It has nothing to do with a customer,
7 though. It was the drug dealer that got his daughter hooked
8 on meth. You want to go there?

9 MR. DIGIACOMO: Look, he requested from Deangelo
10 Carroll what Deangelo Carroll --

11 MR. GENTILE: That might get a man a hero button.

12 MR. DIGIACOMO: -- Deangelo Carroll get the person
13 who allegedly had his daughter strung out on drugs and beat
14 him, and then Anabel Espindola called it off. Deangelo
15 Carroll said it in his statement to the police. And not only
16 that, but Anabel Espindola knows about it, and they kept
17 asking the question about Rizzolo and the statement about
18 Rizzolo even beating up a customer came in. How could that
19 not be something we should deal with on redirect?

20 THE COURT: I mean, to me the beating up issue is
21 more germane, because we're talking about whether or not she
22 believed he was really going to beat up Timothy Hadland or do
23 something, as opposed to maybe making gifts to the City
24 Council, which is more just going to what Rizzolo and Gillardi
25 were on trial for.

1 MR. ADAMS: Judge, we have a concern. I suspect the
2 Court would give a limiting instruction --

3 THE COURT: Right.

4 MR. ADAMS: -- if they allowed either of that stuff
5 in. We have a concern that the limiting instruction would not
6 cure the prejudice that a son would have if such evidence is
7 brought in against the father. So we don't know if a curative
8 instruction would work if they start to bring in several
9 witnesses who start talking about this type stuff. And that
10 -- that is a concern that we have about that type of proffer
11 that the government's making.

12 THE COURT: Well, I -- I don't see much risk of that,
13 that somehow the jury is going to be prejudiced against the
14 son if the father had somebody beat up and the son wasn't even
15 aware of it or involved in it. I don't see a lot of prejudice
16 with a limiting instruction going. I don't see much risk of
17 that, quite candidly.

18 MR. GENTILE: All right. But let's -- let's remember
19 that Rizzolo, according to the testimony in this record, did
20 have someone beat up. The testimony here is going to be that
21 it did not happen, that he got angry because somebody got his
22 daughter hooked on drugs.

23 MR. DIGIACOMO: And he made the request, and Anabel
24 called it off.

25 MR. PESCI: And it was to Deangelo.

1 MR. DIGIACOMO: And the request was made to Deangelo.

2 MR. ADAMS: And again, we're not in a position of
3 being able to put Deangelo up. They have the access to
4 Deangelo, and we're deprived of the opportunity to clarify the
5 record and to show that this didn't happen.

6 THE COURT: All right. Well, and if it's not coming
7 in as to your client, then I don't think that the concern
8 about cross-examining Deangelo Carroll is really germane to
9 your client, because it's not being offered as against your
10 client.

11 And how does she -- how does Ms. Espindola know about
12 this beating up incident?

13 MR. DIGIACOMO: I'm going to particularly ask her
14 that, but she did tell me that she's the one who called
15 Deangelo and told him not to do it. So -- I haven't asked her
16 how she knew about the plan in the first place, but if I can't
17 lay a foundation that Mr. H told him, then -- I can't lay a
18 foundation with Mr. H, so --

19 THE COURT: All right. Well, here's my concern. I
20 don't want you putting it out there in front of the jury in an
21 attempt to lay a foundation and then being left with the
22 impression, oh, there was something, he did have somebody beat
23 up, if she can't testify about it.

24 MR. DIGIACOMO: That's fine. I'm going to lay the
25 foundation without --

1 THE COURT: Okay. Well, don't -- what I'm saying is
2 don't put it out there --

3 MR. DIGIACOMO: I won't blurt it out -- I won't blurt
4 it out without foundation.

5 THE COURT: -- were you aware of a plan that Mr.
6 Hidalgo, Jr., hatched to have somebody beat up; well, yes.
7 Well, how did you know; well, you know, Joey told me. It's
8 out there. So don't do it that way, all I'm telling you.

9 MR. DIGIACOMO: I won't.

10 MR. ARRASCADA: You're ordering him, correct, Your
11 Honor, not to --

12 THE COURT: What?

13 MR. ARRASCADA: You're making that your order?

14 THE COURT: Yeah, it's an order. I mean, I don't
15 want him to put it out there. All right.

16 MR. GENTILE: If this is something that Deangelo told
17 her, you know --

18 THE COURT: That's what I'm saying. But I don't want
19 him to put it out there that there was this plan afoot before
20 he lays a foundation. Because then we can't unring that bell
21 even if I give them an instruction. So be very careful about
22 that.

23 MR. GENTILE: Can we do this outside the presence of
24 the jury so that we at least don't run that risk?

25 THE COURT: All right. Bring her in. And then I

1 think I'll go along with not allowing the questioning on the
2 Willie Robinson gifts.

3 MR. DIGIACOMO: So I can't ask her if he really did
4 behave like Gillardi?

5 THE COURT: Not on the issue of gifts to Willie
6 Robinson. It's not just how --

7 Don't write this, Mr. Garriman.

8 But isn't that just how --

9 (Off-record colloquy)

10 THE COURT: Ms. Espindola, come on back up here to
11 the witness stand, please, ma'am. And Mr. DiGiacomo has some
12 questions for you out of the presence of the jury. All right.
13 And when you come back in to testify in front of the jury,
14 don't reference this hearing that we've had out of their
15 presence, okay?

16 THE WITNESS: Yes.

17 THE COURT: All right. Go ahead.

18 VOIR DIRE EXAMINATION

19 BY MR. DIGIACOMO:

20 Q Do you remember Mr. Gentile asking you
21 questions about you knew Mr. H for many years and Mr. H did
22 nothing to behave like Mr. Gillardi and Mr. Rizzolo; correct?

23 A Correct.

24 Q Remember answering those questions?

25 A Yes.

1 Q Now, let's start with --

2 MR. DIGIACOMO: Well, two things. Are we doing both
3 outside the presence, Judge, or are you going to limit --

4 THE COURT: Just I'm going to -- you're limited to
5 questioning according to what I just ruled on may be
6 admissible in front of the jury. Anything that I ruled that
7 wasn't admissible, there's no point in questioning her as to
8 lay a foundation.

9 BY MR. DIGIACOMO:

10 Q Okay. Who's Rosa?

11 A Louie's daughter. Mr. H's daughter.

12 Q And did there come a point in time that you
13 became aware that she had a problem?

14 A Yes.

15 Q What problem --

16 A She was addicted to drugs.

17 Q And was there somebody else associated with
18 Rosa that [inaudible]?

19 MR. GENTILE: I didn't hear the last several --

20 THE COURT: Was there someone else associated with
21 Rosa that the family didn't like.

22 MR. GENTILE: Well, that's a hearsay -- unless he can
23 lay the foundation that --

24 MR. DIGIACOMO: Well, I'll --

25 BY MR. DIGIACOMO:

1 Q Did you ever talk to Mr. H about Rosa and
2 Rosa's problem?

3 A Yes.

4 Q And did you ever talk to him about Rosa's
5 boyfriend?

6 A Yes.

7 Q All right. And what was -- what did Mr. H tell
8 you about Rosa's boyfriend?

9 A That he wanted him dealt with because he was
10 hurting his daughter.

11 Q Okay. And did he tell you who he specifically
12 had requested to deal with him?

13 A He mentioned Deangelo.

14 Q When you found out that Mr. H had requested
15 Deangelo to deal with this boyfriend what did you do?

16 THE COURT: Well, wait a minute. How did you find
17 out that Mr. H had requested Deangelo deal with Rosa's
18 boyfriend?

19 THE WITNESS: Deangelo came to the shop and told me.
20 BY MR. DIGIACOMO:

21 Q Let me back up. You just told me that Mr. H
22 mentioned Deangelo; correct?

23 A Mr. H mentioned Deangelo, yes.

24 Q When he was talking about dealing with it?

25 A Yes.

1 Q And then in a subsequent --
2 THE COURT: Well, wait a minute.
3 MR. DIGIACOMO: That's what she said.
4 THE COURT: No. Mr. DiGiacomo, I'm interrupting you
5 because I want to -- this is for my edification, as well as
6 the record.
7 All right. What did Mr. H say to you?
8 THE WITNESS: He said that Rosa is getting worse, she
9 was addicted to meth, and that he wanted her -- he was going
10 to talk to Deangelo because he wanted her boyfriend dealt
11 with, he wanted him scared.
12 THE COURT: He wanted him scared?
13 THE WITNESS: Yes.
14 THE COURT: Did he use the word "I want him scared"?
15 Or are you just conjecturing, or what?
16 THE WITNESS: I -- he said he wanted him dealt with.
17 THE COURT: Okay. And then you talked to Deangelo?
18 THE WITNESS: Deangelo came to the shop maybe a day
19 or two later and told me that he had spoken to Mr. H.
20 THE COURT: And then what did you do?
21 THE WITNESS: And I told Deangelo not to do anything.
22 THE COURT: And did you ever hear any more talk about
23 this boy -- Rosa and this boyfriend from Mr. H?
24 THE WITNESS: No. Rosa ended up spending more time
25 at the club.

1 THE COURT: Okay. And did Deangelo ever indicate to
2 you whether or not he had taken care of or dealt with this
3 boyfriend?

4 THE WITNESS: No.

5 THE COURT: And when you told Deangelo not to do
6 anything or whatever it is you said, what was Deangelo's
7 response?

8 THE WITNESS: He said, fine. When I told him no, not
9 to do anything, he said, fine. And that was the end of the
10 conversation.

11 THE COURT: And you never talked to Mr. -- I mean,
12 there was never anything between you and Mr. H about this
13 happened, it didn't happen, with respect to the boyfriend?

14 THE WITNESS: I never got back into it with Louie,
15 no. Or with Mr. H.

16 THE COURT: Any more questions?

17 MR. GENTILE: No.

18 THE COURT: Questions?

19 MR. DIGIACOMO: No.

20 THE COURT: All right. Ms. Espindola, thank you.
21 I'm going to let you get escorted back out by the
22 investigator.

23 MR. GENTILE: Submit it on the objection.

24 THE COURT: All right. You can ask just basically
25 what Mr. H said and that she told Deangelo not to do it and

1 Deangelo's statements, Mr. H told me to do it, don't --
2 MR. GENTILE: That's not admissible.
3 THE COURT: No. I was just going to say --
4 MR. GENTILE: Okay.
5 THE COURT: -- it's not going to be admissible.
6 MR. GENTILE: Sorry.
7 THE COURT: All right. I guess we can bring her back
8 in. I didn't know if there was going to be more argument.
9 MR. DIGIACOMO: No, there's no more argument.
10 THE COURT: Does anyone care on this, on the video
11 deposition if the Court just says, the Court ruled that Ms.
12 Espindola had to testify at trial and for that reason a video
13 deposition was not arranged?
14 MR. GENTILE: Right. That's what the Court ruled.
15 THE COURT: Does the State have any problem? State?
16 MR. DIGIACOMO: No. I mean, it's pretty well in
17 front of the jury that we wanted it to happen.
18 THE COURT: Well, I was just going to say the reason
19 there wasn't -- to respond to a jury question, the Court ruled
20 that Ms. Espindola had to testify in trial in front of the
21 jury and for that reason did not order a videotaped deposition
22 and that's why one was never held. Is everybody fine with
23 that?
24 MR. GENTILE: I'm fine with it.
25 THE COURT: All right. For the record, Mr. Adams is

1 nodding, Mr. Arrascada's kind of nodding.

2 MR. ADAMS: For the record, the little back table was
3 asked. We are nodding in agreement with the Court.

4 MR. ARRASCADA: That was a nod in agreement, Your
5 Honor, not a nodding off.

6 THE COURT: And Mr. Gentile was agreeing. All right.
7 All right, Jeff. Bring them in.

8 (Jury entering at 5:12 p.m.)

9 THE COURT: All right. Court is now back in session.
10 Record will reflect presence of the State, the defendants,
11 their counsel, the officers of the court, and the members of
12 the jury.

13 And before Mr. DiGiacomo resumes his redirect
14 examination, we had a question from a juror that I can
15 clarify. A juror wanted to know why a video deposition was
16 never provided. And the Court can answer that. The Court had
17 ruled that Ms. Espindola was required to testify in person in
18 front of the jury, and for that reason a video deposition was
19 not ordered. All right.

20 MR. DIGIACOMO: Thank you, Judge.

21 REDIRECT EXAMINATION (Resumed)

22 BY MR. DIGIACOMO:

23 Q Let's move past Gillardi on to Mr. Rizzolo for
24 a second, okay?

25 A Yes.

1 Q You testified that you didn't know Mr. H to
2 ever do anything like Mr. Rizzolo; correct?
3 A Correct.
4 Q Who's Rosa?
5 A His daughter.
6 Q Whose daughter?
7 A Mr. H's daughter.
8 Q And at some point in time did you become aware
9 of a problem that Rosa had?
10 A Yes.
11 Q And what was that?
12 A She was addicted to drugs.
13 Q Do you remember what kind of drugs?
14 A Methamphetamines.
15 Q And did you ever have a conversation with Mr. H
16 regarding Rosa's addiction to methamphetamine?
17 A Yes.
18 Q And was there a particular person, other than
19 Rosa, that was being discussed during this conversation?
20 A Deangelo Carroll came up.
21 Q In relationship to who?
22 A Mr. Hidalgo said he wanted to have Deangelo
23 deal with Rosa's boyfriend.
24 Q So Rosa's boyfriend came up?
25 A Yes, Rosa's boyfriend came up.

1 Q And what was the problem with Rosa's boyfriend
2 as it relates to Rosa?

3 A He was the one giving her drugs.

4 Q And Mr. H had a conversation with you about --
5 what did he -- what did he want Deangelo Carroll to do?

6 A To deal with Rosa's boyfriend.

7 Q Did he define for you what "dealt with" meant?

8 A No.

9 Q After this conversation did you have a
10 conversation with Deangelo Carroll, without telling us what
11 was said?

12 A Yes.

13 Q Okay. Without telling us what Deangelo told
14 you, what did you tell Deangelo?

15 A Not to do anything.

16 Q After you told Deangelo not to do anything did
17 you hear anything more about -- from Mr. H -- let me rephrase
18 -- did you hear anything more from Mr. H about the Rosa and
19 her boyfriend situation?

20 A No.

21 MR. ADAMS: Your Honor, we would ask for a limiting
22 instruction.

23 THE COURT: Oh. Ladies and gentlemen, the testimony
24 that Mr. DiGiacomo just elicited regarding Rosa and the
25 boyfriend situation is not being admitted as evidence against

1 Mr. Hidalgo, III.

2 BY MR. DIGIACOMO:

3 Q Now, there's been a lot of questions asked you
4 about your motivations for being here today.

5 A Yes.

6 Q So I'm just going to come out and ask you why
7 did you take the deal.

8 A As I had said earlier, I had spoken with my
9 attorney for several days. It was prior to trial. We were
10 preparing for trial, and he said that I would probably get hit
11 with second degree. The moment that -- what he told me is the
12 moment that I made the call that Louie requested of me I
13 became an accessory. And so during our conversations he went
14 ahead and said to me that I needed to testify in my regular
15 trial.

16 Q Okay. And was the information that you
17 provided to Mr. Oram over this 33 months similar to the
18 information that's been given to the jury?

19 A Yes.

20 Q And that was what you were going to testify in
21 your own trial?

22 A Yes.

23 Q So why take the deal with the State and
24 potentially subject Mr. H to being arrested, charged, and then
25 tried?

1 A As Mr. Oram has stipulated, that if I was going
2 --

3 MR. GENTILE: Objection. Hearsay.

4 THE COURT: All right. Sustained.

5 MR. DIGIACOMO: It goes to her state of mind. Why is
6 it that she's doing what she's doing is the question.

7 THE COURT: Well, what Mr. --

8 MR. GENTILE: It doesn't matter who -- I mean, her
9 state of mind doesn't require the hearsay.

10 THE COURT: Right. Ask the question in a different
11 way.

12 BY MR. DIGIACOMO:

13 Q Why not just go to trial and testify, as
14 opposed to entering a plea --

15 THE COURT: All right. That's fine.

16 BY MR. DIGIACOMO:

17 Q -- and subject Mr. H to being arrested and
18 prosecuted?

19 A At that point I could go ahead and take a
20 lesser charge, which would be manslaughter with use, if was
21 going to go ahead and be testifying the same thing.

22 Q So for you it was better for you to enter the
23 plea and do the same thing you were going to get on the stand
24 and do anyways?

25 A Yes.

1 MR. DIGIACOMO: Thank you very much.

2 Pass the witness, Judge.

3 THE COURT: All right. Before we go to Mr. Gentile,
4 any objection to covering these jury questions?

5 MR. GENTILE: I'd really like to just ask --

6 THE COURT: Okay.

7 MR. GENTILE: I only have a couple questions, please.
8 I apologize.

9 THE COURT: No, it's fine. It's fine.

10 RECROSS-EXAMINATION

11 RECROSS EXAMINATION

12 BY MR. GENTILE:

13 Q Let me get this straight. Your lawyer told you
14 that by making a telephone call to Deangelo Carroll without
15 having any idea that that telephone call was part of a plan to
16 harm Hadland, without having any idea of that, that that phone
17 call made you complicit in a crime?

18 A Yes.

19 Q He told you that?

20 A What --

21 Q Have you ever seen the jury instructions with
22 respect to complicity, aiding and abetting?

23 A No.

24 Q Have you ever seen the jury instructions with
25 respect to conspiracy?

1 A No.

2 Q So you just believed your lawyer --

3 A Yes.

4 Q -- and you took the deal?

5 A We spoke --

6 Q Excuse me.

7 A Yes.

8 MR. GENTILE: Nothing further.

9 THE COURT: All right. Well, I'm going to let Mr.

10 Arrascada go, then, too.

11 MR. ARRASCADA: Nothing, Your Honor. No questions.

12 THE COURT: All right. I have a few jury questions

13 up here. Before I ask you this question I must caution you

14 that you're not to speculate or guess or testify as to

15 anything somebody may have told you. But do you have personal

16 knowledge of any problem between Deangelo and T.J.?

17 THE WITNESS: No.

18 THE COURT: Okay. And again, don't speculate or

19 guess, only if Mr. Hidalgo, Jr., told you or you know. Do you

20 know, do you have personal knowledge of why Mr. H did not call

21 Deangelo himself to tell him to come back or to move to

22 Plan B?

23 THE WITNESS: No.

24 THE COURT: Okay. Who told T.J. he was fired?

25 THE WITNESS: Ariel.

1 THE COURT: Okay. Were you present at that time?
2 THE WITNESS: No.
3 THE COURT: All right. So you did not witness--
4 THE WITNESS: No.
5 THE COURT: -- occurring? Okay.
6 Who was told to watch T.J. during the taxi scam? I
7 mean, who was told to sort of monitor T.J. to see if he was
8 doing anything inappropriate?
9 THE WITNESS: That was based on the conversation that
10 Mr. H and Little Luis had upstairs in the office.
11 THE COURT: Okay. Did you direct anybody to do that?
12 THE WITNESS: No.
13 THE COURT: Okay. You testified -- or Mr. Gentile
14 went over the statement that you had made during your plea,
15 the five-word statement, "I assisted all the coconspirators."
16 Do you remember that?
17 THE WITNESS: Yes.
18 THE COURT: Okay. And a juror wants to know how did
19 you assist Deangelo Carroll.
20 THE WITNESS: By getting the money that Louie asked
21 me to get out of the safe --
22 THE COURT: All right. And --
23 THE WITNESS: -- and place it on the desk.
24 THE COURT: How did you assist Rontae Zone?
25 THE WITNESS: By issuing money to Deangelo Carroll,

1 the \$600 to go ahead and have him leave town.

2 THE COURT: Okay. How did you assist Kenneth Counts?

3 THE WITNESS: Again by bringing the money out of the
4 safe and placing it on the desk.

5 THE COURT: How did you assist Jayson Taoipu?

6 THE WITNESS: When I gave Mr. Carroll the \$600 to go
7 ahead and have him leave town.

8 THE COURT: Okay. Meaning Mr. Carroll or Jayson
9 leave town?

10 THE WITNESS: Both. It was Mr. Taoipu and Mr. Zone,
11 I think you had asked.

12 THE COURT: Okay. And then how did you assist Luis
13 Hidalgo, III?

14 THE WITNESS: I was in the room with him when all the
15 taping was going on or the wire was -- was on.

16 THE COURT: All right. Mr. Gentile, would you like
17 to follow up on that last --

18 MR. GENTILE: I'd like that last question, please.

19 THE COURT: -- that last line of jury questions?

20 MR. GENTILE: No, just that -- yeah. Just that last
21 question.

22 THE COURT: All right. No, no. The one I just
23 asked.

24 FURTHER RECROSS EXAMINATION

25 BY MR. GENTILE:

1 Q Are you aware of why you have to join a
2 conspiracy as compared to when its objective is completed?

3 MR. DIGIACOMO: Objection. Calls for a legal
4 conclusion.

5 MR. GENTILE: I think it's fair game at this point.

6 THE COURT: Well, if she's aware. Don't guess or
7 speculate or testify as to anything you may have heard or --
8 BY MR. GENTILE:

9 Q Are you aware?

10 A No.

11 Q Is it your understanding that in order to
12 become a conspirator in a murder you have to join the
13 conspiracy before the murder?

14 MR. DIGIACOMO: Objection. Calls for a legal
15 conclusion.

16 THE COURT: All right. It's sustained.

17 BY MR. GENTILE:

18 Q Let me see if I've got it right. You assisted
19 Deangelo Carroll by paying him money after the murder
20 occurred?

21 A I put the money on the desk, yes.

22 Q After the murder occurred?

23 A Yes.

24 Q And you didn't know that the murder was going
25 to occur, according to your testimony?

1 A Correct.

2 Q Okay. You didn't know that there was any harm
3 that was going to be done to Mr. Hadland, according to your
4 testimony?

5 A Correct.

6 Q And you -- after Mr. Hadland was dead, on the
7 23rd of May you gave money to Deangelo Carroll to give to Mr.
8 Zone; am I correct?

9 A Yes.

10 Q All right. But it's your understanding that
11 that somehow made you a conspirator in the murder?

12 A Yes.

13 Q And you based that on what your lawyer told
14 you?

15 A I -- my attorney told me that I would go ahead
16 -- the moment I made the call that Louie asked me to make
17 regarding Plan B that I became an accessory.

18 Q All right.

19 A That was what we discussed.

20 Q But with respect to this payment of money to
21 Mr. Carroll to give to Mr. Zone --

22 A I never discussed that payment of money with my
23 attorney.

24 Q Okay. So you just think that that's what
25 made---

1 A Yes.

2 Q -- guilty?

3 A Yes.

4 Q Okay. You never discussed that with your
5 lawyer, so he didn't tell you, well, no, it doesn't, did he?

6 A No.

7 Q Okay. And with respect to Mr. Counts, if I
8 understand you correctly, you never even heard of Mr. Counts
9 until substantially after Mr. Hadland was killed. Am I
10 correct?

11 A Correct.

12 Q You certainly didn't know that anybody was
13 going to do what Mr. Counts has -- was accused of doing prior
14 to him doing it, did you?

15 A Correct. I --

16 Q And so it's your -- you're telling us that you
17 think you're a conspirator because after Mr. Hadland was dead
18 you paid money to Mr. Carroll thinking that he was going to
19 give it to Mr. Counts?

20 A Yes.

21 Q And you knew nothing about any of that
22 beforehand?

23 A Correct.

24 Q And Mr. Taoipu I suppose is in the same
25 situation as Mr. Zone. You're telling us that somehow you're

1 -- you are guilty here of the death of Mr. Hadland because on
2 the 23rd of May, four days after the man was dead, you gave
3 money to Mr. Carroll to get Mr. Taoipu out of town?

4 A Yes.

5 Q Okay. And then with respect -- I'm not going
6 to ask with respect to Luis -- well, I will.

7 MR. GENTILE: May I have a moment?

8 THE COURT: Sure.

9 BY MR. GENTILE:

10 Q And because you were in the room with Luis
11 Hidalgo, III, four days after Mr. Hadland died, which death
12 you knew nothing about until after it happened --

13 A Correct.

14 Q -- it's your belief that somehow by being in
15 the room and doing nothing more, that made you a conspirator
16 in the death of Mr. Hadland?

17 A Yes.

18 MR. GENTILE: Okay.

19 THE COURT: All right. Thank you. Is that it, Mr.
20 Gentile?

21 MR. GENTILE: That's it.

22 THE COURT: Mr. Arrascada, do you have any followup
23 based on the juror questions?

24 MR. ARRASCADA: No, Your Honor.

25 THE COURT: All right. Mr. DiGiacomo?

1 MR. DIGIACOMO: I'm done.

2 THE COURT: No further questions for Ms. Espindola?

3 MR. DIGIACOMO: No.

4 THE COURT: Any other juror questions for Ms.
5 Espindola?

6 All right. Ms. Espindola, thank you for your
7 testimony. Please don't discuss your testimony with anyone
8 else who may be called as a witness in this case. You are
9 excused at this time.

10 All right. State, call your next witness.

11 MR. PESCI: State calls Zane Simpson.

12 THE COURT: Law Officer Simpson, just come up here
13 to the witness stand, please, sir, and remain standing facing
14 our court clerk.

15 KENNETH ZANE SIMPSON, STATE'S WITNESS, SWORN

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

18 THE WITNESS: Kenneth Zane Simpson, first name,
19 K-e-n-n-e-t-h; middle name, Z-a-n-e; last name, S-i-m-p-s-o-n.

20 THE COURT: All right. Thank you.

21 Mr. Pesci.

22 MR. PESCI: Thank you, Judge.

23 DIRECT EXAMINATION

24 BY MR. PESCI:

25 Q Sir, based on how you dress, what do you do for

1 a living?

2 A I'm a police officer for the City of Henderson
3 Police Department.

4 Q How long have you been a police officer?

5 A 14 years.

6 Q Back in May of 2005, where were you assigned
7 within the Henderson Police Department?

8 A I was on a fugitive task force out of the FBI
9 office.

10 Q What does that mean?

11 A Specifically, I was on -- I worked out of the
12 FBI office. I reported to a Metro sergeant who was kind of
13 the supervisor in charge of our unit. Our office was
14 physically at the FBI office. All the violent felony warrants
15 that came out of county, came from other states, federal
16 warrants came to our office. We distributed them and went
17 looking for people with violent warrants.

18 Q Were there other people from other agencies
19 from that group?

20 A Yes. FBI had three agents; Metro had three
21 officers and a sergeant; and I was the Henderson guy.

22 Q Metro would be the Las Vegas Metropolitan
23 Police Department?

24 A Yes.

25 Q And what was your duty in that position? What

1 would you do?

2 A We were assigned various violent felony
3 warrants and they were distributed amongst us and then we --
4 if we thought we found somebody where they were hiding, we all
5 got together and went and took them into custody.

6 Q All right. That's what I was trying to get at.
7 You're assigned warrants, but what do you do with those
8 warrants. Okay.

9 I want to direct your attention to May the 23rd of
10 2005. Were you asked to assist the homicide division of the
11 Metropolitan Police Department?

12 A Yes.

13 Q And specifically what were you asked to assist
14 with?

15 A They wanted some surveillance on possible
16 homicide suspects prior to either a warrant being issued or
17 them taking them into custody.

18 Q And how would that work? Would you be dressed
19 the way you are now?

20 A No.

21 Q Would you be in plain clothes?

22 A Plain clothes, shorts, T-shirt, all undercover
23 cars. My vehicle at the time was a Dodge king cab pickup
24 truck.

25 Q Was there some sort of a briefing or discussion

1 specific to this case that you received before working on this
2 case?

3 A Yes.

4 Q And what was that, generally speaking?

5 A How we put our packets together is whoever we
6 were going to follow or look for, we would get either a
7 booking photo or a driver's license photo, their information,
8 where we thought they lived, the type of vehicles that
9 possibly they could be driving and, you know, depending on how
10 many people you would get a packet of, you know, X number of
11 people, this is what we're doing, this is who we're looking
12 for, this is what they could possibly be driving.

13 Q And in this particular case, were you
14 specifically tasked with trying to look for an individual by
15 the name of Anabel Espindola --

16 A Yes.

17 Q -- or Luis Hidalgo, II?

18 A Yes.

19 Q You've spoken of photos. Did you look at some
20 photos of these two individuals in this packet that you're
21 referring to?

22 A Yes.

23 Q Okay. Now, on May the 23rd, were you a part of
24 some surveillance at Simone's Auto Plaza?

25 A Yes.

1 Q And is Simone's located at 6770 South Bermuda
2 here in Las Vegas?

3 A I'll assume that that is the correct address.
4 It's down off of Sunset and Bermuda and I couldn't tell you
5 if -- right now if that's the exact address.

6 Q Does it sound about right, in that area?

7 A It sounds about the right hundred block.

8 Q Were there other people working with you or
9 were you all by yourself?

10 A No, the -- our whole team, plus some of the FBI
11 agents from the gang task force were also out there with us.

12 Q Was there a division of labor as far as where
13 certain people were supposed to set up in relation to the
14 Simone's plaza?

15 A You know, I -- it was kind of random. As you
16 arrived in the area, you picked a spot where you could see the
17 side door, the front door, the -- and if somebody was already
18 on one side, it wasn't -- I don't think anyone was
19 particularly -- You go here, you go there. We just kind of
20 flooded the area and started watching.

21 Q Okay. And when you started watching on May the
22 23rd, 2005, did you see individuals that you recognized as
23 possibly being the people you were supposed to look for?

24 A Yes.

25 Q Did you make note of that?

1 A Over the air, because another agent or
2 officer -- I don't know who was keeping the log -- so I just
3 said it on the radio and then it was logged in the time that I
4 saw them coming out of the business.

5 Q When you say over the air, is that what you're
6 talking about as far as the radio?

7 A Exactly, because we had our own separate
8 channel.

9 Q When you talk about something else writing
10 something down, you personally did not write down a log?

11 A I did not.

12 Q Have you reviewed that log?

13 A Yes, I have.

14 Q Did you do that prior to coming to testify?

15 A Yes, I did.

16 Q Okay. Can you recall about what time it was
17 when you called over the radio having seen someone from the
18 incident?

19 A Right around 4:30. It was towards the end of
20 our day and I was the last -- actually, I think, the last
21 person left in that area.

22 Q And do you recall who you indicated that you
23 saw over the radio?

24 A Luis Hidalgo and Anabel -- whatever the last
25 name is. I apologize. It's slipping my mind right now.

1 Q That's okay. Is Espindola a name that's
2 familiar to you?

3 A Espindola.

4 Q Okay. When you relayed this information, did
5 you maintain your position?

6 A Until they started to leave, and then I
7 followed them.

8 Q When they left, where'd they go?

9 A I followed them down to Warm Springs and 215
10 area, which there's a U.S. Bank and a Starbucks Coffee right
11 in that same little shopping area.

12 Q What did you see happening in that shopping
13 area?

14 A She went into Starbucks. He went into the
15 bank. And it was decided, because I was the last one there --
16 you know, you can't follow somebody really with one car with
17 any success. There was no sense in me following them.
18 Everybody else had gone to do whatever else they needed to do.

19 Q Was surveillance terminated at that point?

20 A Yes, it was.

21 Q And that's on the evening of May the 23rd,
22 2005?

23 A Correct.

24 Q Were you a part of surveillance also on May the
25 24th, 2005?

1 A Yes.

2 Q Could you tell the ladies and gentlemen of the
3 jury about that.

4 A I mean, it was the same thing. We showed up in
5 that area, we set up surveillance, ultimately ended up
6 following the same two people, Luis Hidalgo and Anabela --

7 Q Espindola.

8 A -- Espindola, I'm sorry.

9 Q That's okay.

10 A -- out of there until they were stopped down
11 off of Carson and 6th Street.

12 Q All right. We'll go through that in just a
13 second. But when you're talking about Luis Hidalgo, did you
14 have information of more than one Luis Hidalgo?

15 A Yes, there was his dad, there was him and then
16 his son.

17 Q All right. And the individual that you said
18 you just saw on the 23rd, which of the three were you speaking
19 of?

20 A I kind of talk to him as grandpa, dad, and son,
21 so I would consider him dad. He would be the middle person.

22 Q All right. So now going back to the 24th when
23 you said there was a stop, where was the stop made?

24 A Carson and 6th, I believe.

25 Q All right. Were you a part of that stop?

1 A I was in the area, but because we were in
2 undercover cars, we -- I didn't physically go out there on the
3 stop, but I had followed them down to that area, but I did not
4 partake in the stop.

5 Q All right. So you weren't a part of that stop?

6 A I was not.

7 Q Okay. However, on that date, leading up to the
8 stop, did you see individuals that you thought were Anabel
9 Espindola and Luis Hidalgo, Jr. being, as you described him,
10 dad?

11 A Yes.

12 Q Could you tell us when that picked up and where
13 it went?

14 A They had come out of the auto place, Simone's,
15 and got into that silver Hummer and went down and got on the
16 freeway and we were, you know, following them from there.

17 Q Okay. Was that -- you said a silver Hummer?

18 A (No audible answer).

19 Q I'm sorry?

20 A Pewter is what the report says, but I didn't
21 write that.

22 Q Okay. What do you understand pewter to be?

23 A Silver.

24 Q Okay. I just wanted to get that clear.

25 Now, do you recall who's driving of these two

1 individuals?

2 A I do not. I do not recall.

3 Q Were you right behind this silver Hummer or
4 back a ways? How did that work?

5 A No, I was several cars back.

6 Q Did you see either of these individuals do
7 anything else as you followed along?

8 A I did not. I wasn't close enough.

9 Q Were you relaying the information that you had
10 received? The information that you saw, did you relay it over
11 the radio?

12 A Oh, yes, exactly.

13 Q Like you told us about yesterday, it's the --

14 A Or somebody else, I mean, because how we kind
15 of were positioned is, you know, somebody might have been just
16 ten car lengths from where I was at, so if he said, Hey, so
17 and so came out, yeah, I'd verify that, yeah, I saw them come
18 out, but it may not have been specifically me saying it, but
19 as we go through the log, we all initial the things that we
20 saw and went through it.

21 Q Okay. And at some point were those two
22 individuals in the silver Hummer taken into custody?

23 A Yes.

24 MR. PESCI: Pass the witness.

25 THE COURT: All right. Thank you. Cross.

1 MR. GENTILE: Just one area.

2 CROSS-EXAMINATION

3 BY MR. GENTILE:

4 Q You say two individuals in the silver Hummer
5 were taken into custody?

6 A They were stopped. There was two people in the
7 car when it was stopped.

8 Q Okay. But how many were actually taken into
9 custody?

10 A You know, I'm not 100 percent sure. My portion
11 of that ended when the surveillance ended. I'm not sure who
12 was taken where or where everybody was taken.

13 Q All right. So you don't know that two were
14 taken into custody?

15 A No.

16 Q You only know that the vehicle was stopped?

17 A Two were in the car when it got stopped.

18 Q All right. And that's not taking somebody into
19 custody?

20 A No.

21 Q It's stopping the vehicle, correct?

22 A I would agree. Correct.

23 Q Now, you said that there were FBI agents from
24 the gang task force involved in this operation.

25 A Just for manpower purposes.

1 Q Right. No, I understand that. Was Bret
2 Shields one of those people, or do you recall?

3 A I don't recall that he was -- that he was out
4 there.

5 Q All right. You know who he is?

6 A I do know who he is.

7 Q And he was a member of the FBI gang task force?

8 A I don't know if he was in 2005, but -- when I
9 first met him, he was working -- he was a special agent with
10 robbery, so I'm not -- I know who he is, but I don't know --

11 Q You don't know if he was in the gang task
12 force?

13 A He was for a while, but I don't know if he was
14 in 2005.

15 Q All right. But he was gang task force. You're
16 just not sure that he was in 2005?

17 A And again, I'm not sure if he was out there at
18 that time.

19 MR. GENTILE: All right. Nothing further.

20 THE COURT: All right. Mr. Adams.

21 MR. ADAMS: Thank you.

22 CROSS-EXAMINATION

23 BY MR. ADAMS:

24 Q Hello, Officer Simpson. On May the 24th of
25 2005, you were aware that there were three generations of

1 Mr. Hidalgos there?

2 A Yes.

3 Q My client in the very back is the son. You
4 knew that there was a father and then a grandfather?

5 A Right.

6 Q And you became aware of that on the 24th?

7 A No, when we got briefed when all this started
8 for us on the 23rd.

9 Q All right. And you had a packet with two
10 people?

11 A You know, I can't recall. I know the two
12 people that we specifically had and I can't remember if we had
13 the son's photo, but I remember they had talked -- there was
14 a -- that convertible Chevy pickup truck that could possibly
15 have been one of the vehicles, but I don't remember if we had
16 his photo.

17 Q But you do know that on the 24th there was a
18 team that followed Luis Hidalgo, III, Little Lou, when he left
19 Simone's that day to drive north? You don't recall that?

20 A I don't recall.

21 Q On the 23rd, do you recall there being two
22 packets, one for Anabel Espindola and one for Mr. Hidalgo,
23 Jr., the father?

24 A I mean, it was all -- part of all our same
25 paperwork.

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Q That's right.

A I don't know --

Q You don't remember seeing any photo at that point in time of Little Lou?

A I do not.

MR. ADAMS: Thank you.

THE COURT: Redirect.

MR. PESCI: No, Your Honor.

THE COURT: Any juror questions?

All right. Officer, thank you for your testimony. Please don't discuss your testimony with anyone else who may be a witness in this case. You are excused.

THE WITNESS: Thank you, Judge.

THE COURT: State, call your next witness.

MR. DIGIACOMO: Jeff Smink.

THE COURT: Sir, just please come on up here to the stand and then just remain standing, facing our court clerk, just up those couple of stairs.

JEFFREY SMINK,. STATE'S WITNESS, SWORN

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

THE WITNESS: Jeffrey Smink, J-e-f-f-r-e-y, S-m-i-n-k.

THE COURT: All right. Thank you.

BY MR. DIGIACOMO:

1 Q Sir, how are you employed?

2 A As a crime scene analyst supervisor with the
3 Las Vegas Metropolitan Police Department.

4 Q How long have you been employed with the Las
5 Vegas Metropolitan Police Department?

6 A A little over nine years.

7 Q And how long have you been a supervisor?

8 A For about a year.

9 Q Directing your attention back to May 24th of
10 2005, were you the crime scene analyst assigned to the search
11 warrant that was conducted at Simone's Auto Plaza?

12 A Yes.

13 Q And during the course of that, could you tell
14 the ladies and gentlemen of the jury what your duties were.

15 A Basically to photograph the -- certain areas of
16 the auto repair place, search for items of evidence and
17 collect evidence.

18 Q While she's doing that, I'll show you first the
19 ones that are admitted, which is 97 through -- 97 through 111.
20 If you could, briefly flip through those.

21 A (Complying.)

22 Q Are those photographs that you took?

23 A Yes.

24 Q Okay. And then I'm going to show you Exhibits
25 112 through 133 and ask you to briefly flip through those.

1 A (Complying.)

2 MR. GENTILE: Counsel, when he's finished, may I see
3 those, please?

4 MR. ARRASCADA: Your Honor, I'm sorry, which numbers
5 are --

6 MR. GENTILE: 112 through 133.

7 MR. DIGIACOMO: 112 to 133.

8 BY MR. DIGIACOMO:

9 Q Are those all photographs you took during the
10 execution of the search warrant at Simone's Auto Plaza?

11 A Yes.

12 Q Now, every time a crime scene analyst goes
13 anywhere, is there a crime scene diagram that's created?

14 A No.

15 Q Okay. When is it that you create a crime scene
16 diagram?

17 A At the scene of a homicide, an officer involved
18 shooting or at an attempted homicide where the suspect or
19 victim may die.

20 Q Why the limitation on when you do crime scene
21 diagrams?

22 A That's the policy of the section based on
23 manpower and our resources.

24 Q So I'm going to guess, based on that answer,
25 you didn't do a diagram of Simone's Auto Plaza, correct?

1 A Correct.

2 Q Lucky for us the defense brought one. So
3 Defense Exhibit C, does that appear to be a fairly true and
4 accurate depiction of Simone's Auto Plaza?

5 A Yes.

6 Q Now, you created a report in this case,
7 correct?

8 A Yes.

9 Q Now, when you create a report, what's the
10 purpose of documenting it?

11 A What time I arrived, the VIN number, the
12 victim, the location, who I made contact with, any vehicle
13 information, the general layout of the location I went to,
14 items of evidence that were collected, and any work that I
15 performed such as photography or latent print processing.

16 Q Now, in preparation of your testimony, did you
17 read your report and look at some of the photographs?

18 A Yes.

19 Q And did you notice anything about your report
20 that caused you some concern?

21 A Yes.

22 Q What was that?

23 A I lost my directionality while doing my report.
24 I was in the hallway reviewing my report, preparing to
25 testify, and I realized that in some areas in my report I lost

1 the directionality north, so some of my directions were -- as
2 north are incorrect.

3 Q Okay. And you were able to determine that when
4 you were looking at the photographs?

5 A Yes.

6 Q Okay. I'm also going to show you State's
7 Proposed Exhibits 231, 232, and 233 and ask you -- I know
8 they're printed not nearly as nicely -- do those appear to be
9 photographs you took at Simone's?

10 A Yes.

11 MR. DIGIACOMO: I offer 112 to 133 and then 231
12 through 233.

13 THE COURT: Any objection?

14 MR. ADAMS: We do, Your Honor.

15 MR. ARRASCADA: Yes, ma'am.

16 MR. ADAMS: The same objection to 117 to 123 that
17 the Court ruled on last week.

18 May we approach?

19 THE COURT: Yeah, because --

20 (Off-record bench conference)

21 THE COURT: Exhibit 120, 118, and 119 are all
22 admitted.

23 (State's Exhibits 118, 119, and 120 admitted.)

24 THE COURT: These are not admitted. I'll give these
25 back to Denise.

1 (Pause in proceedings)

2 MR. DIGIACOMO: So you ruled on those three, Judge,
3 but what about --

4 THE COURT: Well, you took the other ones away.

5 MR. DIGIACOMO: I didn't take them away.

6 THE COURT: All right. Counsel, approach again.

7 (Off-record bench conference)

8 THE COURT: Deniece.

9 THE CLERK: Yes, Your Honor.

10 THE COURT: These are a little bit -- 115, 129, 130,
11 131, 132, 133 will all be admitted. 128 is admitted, 127, 126
12 and 116.

13 (Off-record bench conference)

14 THE COURT: 114, 113 --

15 THE CLERK: 113 --

16 THE COURT: -- all right, and 112 are in.

17 THE CLERK: 113 and 112.

18 THE COURT: Okay.

19 (State's Exhibits 112 through 116, and 126 through
20 133 admitted.)

21 BY MR. DIGIACOMO:

22 Q Okay. We've already heard testimony from
23 another witness about kind of a -- the front area of Simone's,
24 so I'm going to start basically where the pool table is.

25 MR. DIGIACOMO: Do you have my admitted --

1 THE COURT: I think I gave them all to you -- oh,
2 the ones that were previously admitted.

3 MR. DIGIACOMO: Previously admitted.

4 BY MR. DIGIACOMO:

5 Q So let's back up a little bit here. Let's
6 start with -- back up a little bit and start with State's
7 Exhibit No. 106. What are we looking at?

8 A A ballistic vest laying on top of a pool table.

9 Q Is that a standard ballistic vest in the sense
10 it's a bulletproof vest?

11 A Yes.

12 Q Okay. And then the next item in 109 -- well,
13 first of all, is that a chair with a magazine on it that my
14 finger's on?

15 A Yes, it is.

16 Q And then 109, is that a closeup of it?

17 A Yes, with a paper note on top of the magazine.

18 Q And you eventually collected those papers?

19 A Yes.

20 Q Did you go past the pool tables? State's
21 Exhibit No. 111, what are we looking at?

22 A A hallway area which lead to a bedroom type
23 room and some offices.

24 Q And Room No. 6 would have been the last one?

25 A Yes.

1 Q I know the jury can't see it, but is there a
2 door number on there?

3 A Yes.

4 Q What door number is it?

5 A 6.

6 Q And as you come through the front door, State's
7 Exhibit No. 114, what are we looking at?

8 A This is a photograph taken from the entryway
9 into that Room No. 6 and the carpet area is the entryway and
10 the doorway to the left on the left side of the photograph is
11 a doorway leading to a bathroom. And on the right side of the
12 photograph, which is difficult to see, would be a closet and
13 straight ahead towards the top of the photograph would be a
14 bedroom area.

15 Q You mentioned the bathroom. State's
16 Exhibit No. 129, is that a photograph of the bathroom?

17 A Yes.

18 Q And in that particular bathroom, did you
19 collect anything?

20 A Yes.

21 Q What'd you collect?

22 A A burnt match, some burnt ashes and I believe a
23 lighter.

24 Q Why'd you collect some burnt ashes?

25 A I believed it was from burned-up paper or some

1 sort of paper product.

2 Q Now, how many crime scenes have you been to in
3 the course of your career?

4 A Thousands.

5 Q Okay. And what kind of training and experience
6 do you have?

7 A Roughly 3,500 hours of training from the
8 Federal Bureau of Investigation, the Las Vegas Metropolitan
9 Police Department, the San Bernardino County Sheriff's
10 Department, the Long Beach State University, the San
11 Bernardino Fire and Sheriff's Academy, and other training
12 institutes in areas of crime scene photography, crime scene
13 investigation, crime scene reconstruction, bloodstain pattern
14 interpretation, latent print processing, arson investigation,
15 and related investigative techniques.

16 I am also -- was a training officer while I was
17 employed for San Bernardino County Sheriff's and currently a
18 training officer with Las Vegas Metro. I'm a certified senior
19 crime scene analyst with the International Association of
20 Identification and I'm -- I was a Nevada -- or a California
21 post certified instructor and I'm currently a Nevada post
22 certified instructor.

23 Q That was a longer answer than I was looking
24 for. My basic question was how many cigarette ash and cigar
25 butt ash have you seen in your career?

1 A Lots.

2 Q Okay. And did this appear to be consistent
3 with that or some other substance?

4 A Some other substance.

5 Q State's Exhibit No. 116, what have we got?

6 A That's a photograph looking into the bedroom in
7 Room No. 6, simply a desk area located within that bedroom
8 area.

9 Q Within the search of 116, were there certain
10 items of identification that helped you identify who the
11 resident of 116 was?

12 A Yes.

13 Q 118, what are we looking at?

14 A A birth certificate from the county of Alameda
15 and a Social Security card which beared the name of Luis
16 Hidalgo, III.

17 Q Okay. And then is there a checkbook down there
18 in the name of Luis Hidalgo, III?

19 A Yes.

20 Q And interestingly --

21 MR. GENTILE: Objection to the commentary.

22 THE COURT: Yeah, that's sustained.

23 BY MR. DIGIACOMO:

24 Q Read that.

25 A Yes.

1 Q What does it say?

2 A Don Dible -- or D-i-b-l-e and then a phone
3 number.

4 Q Then State's Exhibit No. 119, were these found
5 in the room?

6 A I don't recall specifically if they were found
7 in that room or in an office.

8 Q Okay. Do you know what they are, at least?

9 A I believe they are savings bond applications.

10 Q Order forms for saving bonds?

11 A Yes.

12 Q State's Exhibit No. 126, do you see what the
13 person in that photograph is holding?

14 A It's a notebook and in his left hand an
15 envelope with saving bonds.

16 Q A closeup of 127, what have we got?

17 A It's a closer up view of the envelope held in
18 the detective's hand. It's a \$500 savings bond that had the
19 name Luis Hidalgo, III printed on it.

20 Q I'm going to show you a couple of other ones.
21 This is State's Exhibit No. 231. It's a photograph of one of
22 the other offices, correct?

23 A Yes. It's an office located in the back of the
24 auto repair place.

25 Q So when you say generally the back area, where

1 are we talking about on Defense Exhibit No. C, generally?

2 A Where it says the word "office," next to

3 No. 111.

4 Q 232, what's that?

5 A It's a photograph of a desk with a computer

6 keyboard and telephone on top.

7 Q Can you tell us which office that one's in?

8 A I believe in the same general area of that

9 office. There was also an office next to that one, but I

10 believe that's from the area I just described.

11 Q 233?

12 A That's a computer. I'm not sure of that

13 location.

14 Q How many offices were there in this building?

15 A Quite a few.

16 Q And you took photographs of all of them?

17 A Yes.

18 Q And this is another photograph of another one

19 of the offices?

20 A Yes.

21 Q You also said you collected some items of

22 evidence; is that correct?

23 A Yes.

24 Q One of the items you collected, was it a check

25 out of one of the offices or did Detective Wildemann take

1 that? Do you recall?

2 A I don't recall.

3 Q This has already been admitted, but for
4 purposes of the record, 200 I, is that an item you collected?

5 A Yes, it is.

6 Q Okay. And then if you were to open that, what
7 would you expect to find in there?

8 A A torn white note with handwriting, from the
9 chair by the pool table.

10 Q Okay. That note that we just saw, Maybe we're
11 under surveils, keep your mouth shut?

12 A Yes.

13 Q I'm showing you what's been previously opened
14 by stipulation of counsel as State's Proposed Exhibit No. 200.
15 Do you recognize that?

16 A Yes, I do.

17 Q And what is it?

18 A It's a paper bag which contained a -- certain
19 items of evidence.

20 Q I want to show you State's Exhibit No. 19. Can
21 you tell us -- I'm sorry, State's Proposed Exhibit 200 K.
22 It's your item 19; is that correct?

23 A Yes.

24 Q And based upon your impound there, what items
25 should be in there?

1 A Numerous savings bond forms.

2 Q Now, is there some document that you create to

3 tell us where Item 19 was located?

4 A Yes.

5 Q Do you have that with you?

6 A Yes.

7 Q Can you look at it and tell us where Item 19

8 was specifically located.

9 Counsel, for the record, he's looking at his

10 impound --

11 A My report says the southeast floor adjacent to

12 the desk in the bedroom of Room No. 6.

13 Q Okay. So that's found in Room No. 6 as well?

14 A Yes.

15 MR. DIGIACOMO: Move to admit 200 K.

16 MR. ADAMS: I'd like to see it.

17 MR. GENTILE: May I approach after he examines it?

18 MR. ADAMS: No objection.

19 MR. GENTILE: May we approach?

20 THE COURT: All right. Yes.

21 (Off-record bench conference)

22 THE CLERK: Is K admitted, Judge?

23 THE COURT: Yes.

24 THE CLERK: Thank you.

25 (State's Exhibit 200K admitted.)

1 BY MR. DIGIACOMO:

2 Q Showing you what's been marked as State's
3 Proposed Exhibit -- you're right, 201, do you recognize that?

4 A Yes, I do.

5 Q What is it?

6 A It is a paper bag which contains a notebook
7 with receipts and numerous U.S. savings bonds.

8 Q And where was that located?

9 A I'll need to review from my report.

10 Q Okay. Go ahead.

11 A On top of the northeast table in the bedroom in
12 Room No. 6.

13 Q Let me ask you this, sir: Are all the seals on
14 here yours?

15 A Yes, it appears to be.

16 Q That one down there too?

17 A No, that one is not mine.

18 Q Okay. So other than that seal, does it appear
19 to be in substantially the same or similar condition as when
20 you impounded it?

21 A Yes.

22 MR. DIGIACOMO: Move to admit 201.

23 THE COURT: Any objection other than -- any other
24 objection to 201?

25 MR. ADAMS: We'd like to see it.

1 MR. GENTILE: Same objection as I interposed as to
2 200 --

3 THE COURT: All right.

4 MR. GENTILE: -- which I don't think is actually on
5 the record at this point.

6 THE COURT: It's not. So you would object on behalf
7 of Mr. Hidalgo, Jr. to the admission of the exhibit against
8 him; is that correct?

9 MR. GENTILE: That is correct, as was 200.

10 THE COURT: All right.

11 MR. GENTILE: Actually 200 K.

12 THE COURT: All right. At this point that's
13 overruled.

14 While they look at that exhibit, let's take another
15 quick five-minute break, just five minutes.

16 And ladies and gentlemen, once again, of course, the
17 admonition is in place not to discuss the case or do anything
18 relating to the case. Notepads in your chairs. Please exit
19 through the double doors, just a quick five-minute break.

20 (Court recessed at 6:06 p.m. until 6:12 p.m.)

21 (Outside the presence of the jury.)

22 (Off-record colloquy)

23 THE MARSHAL: Judge, are you ready for the jury?

24 THE COURT: Yes, bring them in.

25 (Jury reconvened at 6:14 p.m.)

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

3 And Mr. DiGiacomo -- I believe it was
4 Mr. DiGiacomo -- was conducting direct examination.

5 MR. DIGIACOMO: I think I offered 200 and then on
6 the break I think we broke it open and now it's 201 --

7 THE CLERK: A and B.

8 MR. DIGIACOMO: -- A and B.

9 THE COURT: All right.

10 MR. DIGIACOMO: Move to admit.

11 THE COURT: Any objection to 200 A and B other than
12 what's already been stated?

13 MR. ADAMS: Same objection.

14 THE COURT: I'm sorry. 200 A and B will be
15 admitted.

16 MR. ADAMS: Relevance, Your Honor.

17 THE COURT: Overruled.

18 MR. GENTILE: Same objection as earlier stated, Your
19 Honor.

20 THE COURT: All right.

21 MR. GENTILE: Request for a limine instruction.

22 THE COURT: All right. That will be denied at this
23 point.

24 (State's Exhibits 200 A and B admitted.)

25 MR. DIGIACOMO: Pass the witness, Judge.

1 THE COURT: All right. Cross.
2 Mr. Gentile, any cross?
3 MR. GENTILE: Court's indulgence.
4 THE COURT: All right. Mr. Arrascada, any cross?
5 MR. ARRASCADA: It will be Mr. Adams.
6 THE COURT: All right.
7 MR. ADAMS: A lengthy and zealous cross, Your Honor.
8 MR. GENTILE: May I approach the witness?
9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. GENTILE:

12 Q I'm handing you Exhibit 200. I -- actually,
13 you know, let me put it up here. If I understand you
14 correctly, you're the person who recovered this exhibit?

15 A Yes.

16 Q And if I understand you correctly, it was near
17 a pool table?

18 A Yes.

19 Q Okay. And was it this side up or was it this
20 side up?

21 A I didn't originally find it so I don't recall.
22 Actually, let me rephrase that. It was photographed as
23 depicted as it was found. So it was face side up.

24 Q Face side up?

25 A Yes.

1 Q You took the photograph?

2 A Yes.

3 Q All right. And this area that this was

4 recovered in, if I understand you correctly, what photograph

5 number was it? Do you remember?

6 A Do I remember? No.

7 MS. ARMENI: It was 109.

8 MR. GENTILE: Let me see if I can find it.

9 MS. ARMENI: 109.

10 MR. GENTILE: 109.

11 THE CLERK: Could I have that manila envelope,

12 please.

13 BY MR. GENTILE:

14 Q All right. So this photograph represents where

15 the note was when you took the photograph of it?

16 A Yes.

17 Q So it was sitting on top of a magazine, right?

18 A Correct.

19 Q And the magazine was sitting on top of a stool?

20 A Correct.

21 Q Okay. And the stool was where?

22 A Along the wall adjacent to the pool table.

23 Q All right. We don't have an easel, but I just

24 need you to come down here for a second. I won't have you

25 down here for long.

1 THE MARSHAL: Did you need the easel?

2 MR. GENTILE: No, it's not worth it.

3 BY MR. GENTILE:

4 Q I'm going to set this up on this desk over here
5 and ask you to take this marker. Are you oriented to this
6 chart yet?

7 A Yes.

8 Q Okay.

9 THE COURT: You're blocking the jurors.

10 MR. ADAMS: Some of the jurors would like to
11 participate.

12 BY MR. GENTILE:

13 Q Could you please take this marker and write
14 your initials where you took this photograph.

15 A Where I took the photograph or the --

16 THE COURT: I think the photograph on the monitor is
17 what he's talking about.

18 MR. GENTILE: The one -- yeah, 109.

19 BY MR. GENTILE:

20 Q So where the initials JS appear, there appears
21 to be a wall?

22 A Yes.

23 Q And the stool that this magazine was on and the
24 magazine that this document was on was on top of that stool
25 against that wall?

1 A Yes.

2 Q Now, did this appear to you -- of course, when
3 you took the photographs, this place was -- had basically been
4 cordoned off, it had been secured?

5 A Yes.

6 Q All right. So there wasn't any business being
7 conducted by the auto body shop while you were?

8 A Right.

9 Q But did it appear to you that where this pool
10 table -- where this stool was, excuse me, was a public area?

11 A No.

12 Q It did not?

13 A No.

14 Q All right. And when you say -- so when I say
15 public area, I mean, was it accessible to at least the
16 employees of Simone's?

17 A That would be my opinion, yes.

18 Q So it would be accessible to the employees but
19 perhaps not the public at large?

20 A The public would have to enter some doors and,
21 to me, it was in an area for the employees.

22 Q All right. But you don't know whether the
23 public, while waiting to pick up a car, was invited to play
24 pool in that area?

25 A I would not know that.

1 Q Okay.

2 MR. GENTILE: Nothing further.

3 THE COURT: Mr. Adams?

4 MR. ADAMS: Yes, ma'am.

5 THE COURT: Any questions?

6 MR. ADAMS: Yes, ma'am.

7 MR. GENTILE: It might be here.

8 THE COURT: It might be in this stack. No.

9 THE CLERK: Was it admitted?

10 THE COURT: It was admitted just in this last go

11 round.

12 CROSS-EXAMINATION

13 BY MR. ADAMS:

14 Q Mr. Smink, let me ask you this -- pardon me,

15 Judge.

16 THE COURT: No, that's all right.

17 BY MR. ADAMS:

18 Q Where is the front entrance to Simone's Auto

19 Plaza?

20 A It would be in the lower left corner.

21 Q Do you mind coming down with me because I think

22 this is very hard to read from that far away.

23 Where's the front entrance?

24 A In the lower left corner.

25 Q And where is Room 6?

1 A In the far back corner.

2 Q All right. Come down here so everyone can see.

3 Please point out the front entrance.

4 A Lower left.

5 Q And where's Room 6?

6 A Top left.

7 Q All right. And what is here? What's in this

8 area in the lower left-hand area?

9 A There's a reception area. There's a series of

10 sofas, tables. When you enter the front door, there's an

11 office to the right, a storage area in between, then another

12 office. Then there's a series of doors that were on a type of

13 spring that kept them closed, and then as you went through

14 those doors [inaudible], on the right side of the entryway, to

15 the left of this gaming area, there was a hallway that lead to

16 Room 6.

17 Q All right. Let's go down and share this on the

18 other end. You come in here and what is this area that you

19 just described in the lower left-hand corner of diagram C?

20 A To me, it would be what I would call a

21 reception area. There was a series of sofas, chairs, tables,

22 magazines and such. As you walk in, to the right there was

23 two offices with a storage area in between. When you walk

24 into the left, there was a series -- or there were two doors

25 that were closed by -- by design with springs, and if you were

1 to enter through those doors, they'll close behind you and
2 there would be a pool table area. And then towards the end of
3 the hallway was Room No. 6.

4 Q Okay. Thank you very much.

5 Let me put two or three of the photos up on this
6 contraption. Let's see if it works.

7 Do you remember -- this is State's 233. Do you
8 remember this photograph?

9 A Yes, I remember the photograph.

10 Q All right. Let me show you State's 232. Did
11 you also take this photograph of --

12 A Yes, I did.

13 Q -- of this desk with the computer monitor?

14 A And a keyboard and a telephone, yes.

15 Q And do you remember what room that was?

16 A No. I would need to see the series of
17 photographs prior to that to give you an accurate location.

18 Q Did you testify on your direct examination that
19 that was in Room 5, the room directly next to Room 6?

20 A I do not believe I did.

21 Q All right. What was in Room 5?

22 A I need to refer to my report.

23 Q All right. Go ahead.

24 A Room No. 5 was designed with an office, a desk
25 and a computer.

1 Q All right. And how about Room 4?
2 A Room 4 was set up as a storage room.
3 Q All right. And do you have photographs of Room
4 4?
5 A Not with me, but they were taken, yes.
6 Q Was that door locked?
7 A No.
8 Q What room was this in?
9 MR. GENTILE: Counsel, can we have an exhibit
10 number?
11 MR. ADAMS: 231.
12 THE WITNESS: This desk and computer was located in
13 the office area in the back of the store.
14 BY MR. ADAMS:
15 Q Okay. Where would that be?
16 A Where it says office.
17 Q Office across -- directly across the hall from
18 Room No. 6?
19 A Correct.
20 Q So there's a wide hallway back there and then
21 directly across is another office area?
22 A Yes.
23 Q Let me put up State's Exhibit 118. And this
24 was off the desk of Room 6?
25 A On top of, yes.

1 Q And Mr. DiGiacomo asked you about the name on
2 there being some version of the name Don Dible?
3 A He asked me to pronounce it, but --
4 Q Right.
5 A Yes.
6 Q And you know Mr. Dible?
7 A No, I do not.
8 Q Did you take and seize that writing with the
9 name Dible on it?
10 A I don't recall.
11 Q Was that ever submitted to Ms. Janseng Kelly to
12 do a handwriting analysis?
13 A I have no idea.
14 Q So you don't know whether that was Mr. Hidalgo,
15 III's handwriting, Anabel Espindola or someone else?
16 A I have no idea, no.
17 Q All right. But you were in the room and had
18 access to the room?
19 A To the bedroom, yes.
20 Q And you could have taken that into custody?
21 A I could have, yes.
22 Q And you did not, as far as you know?
23 A As far as I know right now, correct.
24 MR. ADAMS: Thank you.
25 THE COURT: All right. Any redirect?

1 MR. DIGIACOMO: No, Judge.
2 THE COURT: All right. Any juror questions?
3 All right. Thank you for your testimony.
4 THE WITNESS: Thank you.
5 THE COURT: Please don't discuss your testimony with
6 anyone else and you are excused at this time.
7 State, who's your next witness?
8 MR. PESCI: James Krylo.
9 May I approach your clerk?
10 THE COURT: All right. Sure.
11 James Krylo, Jeff.
12 Mr. Krylo, come on down to the witness stand,
13 please, sir. Step those couple of steps and remain standing,
14 facing our court clerk who's going to be administering the
15 oath to you in just one moment here.
16 JAMES KRYLO, STATE'S WITNESS, SWORN
17 THE CLERK: Please be seated and -- and please state
18 and spell your name.
19 THE WITNESS: James Krylo, K-r-y-l-o.
20 THE CLERK: Thank you.
21 MR. PESCI: May I proceed, Judge?
22 THE COURT: Yeah.
23 MR. PESCI: Thanks.
24 DIRECT EXAMINATION
25 BY MR. PESCI:

1 Q Sir, what do you do for a living?

2 A I'm a forensic scientist working in the
3 firearms unit of the Las Vegas Metropolitan Police Department
4 forensic lab.

5 Q What do you do in the firearms unit?

6 A Basically we look at firearms and tool mark
7 related evidence, so we examine firearms, test fire firearms.
8 We look at fire components of ammunition, bullets and
9 cartridge cases. We do tool mark comparisons in screwdrivers,
10 pliers, back to marks that they leave. We do serial number
11 restorations on guns. We also do distance determinations
12 based on gunshot residue patterns.

13 Q How long have you been doing that?

14 A A total, about 19 years now.

15 Q When you say total, was some of it before you
16 were with Metro?

17 A Correct. I've been doing it for the -- for Las
18 Vegas Metropolitan Police Department for a little over ten and
19 a half years now.

20 Q Do you have any specialized training and
21 experience in this area?

22 A Yes, I do.

23 Q And could you briefly tell the ladies and
24 gentlemen of the jury about that.

25 A Well, to begin with, I have a bachelor of

1 science degree in criminalistics, which is a degree basically
2 in half criminal justice, half, you know, science type course
3 work. I received my initial training in firearms
4 identification with the sheriff's department in Orange County,
5 California.

6 Since that initial training, I've attended about
7 another 600 hours of training on this matter from different
8 law enforcement agencies, forensic associations and firearm
9 manufacturers.

10 Q Have you testified in this field regarding this
11 evidence here in Clark County?

12 A Yes, I have.

13 Q If you were to guesstimate, how many times have
14 you given firearm testimony before?

15 A If you include my testimonies in the state of
16 California and the State of Washington and then here in
17 Nevada, it's over 250 times now.

18 Q Directing your attention to the specific case
19 that you're here to testify on, did you receive some evidence
20 and did you perform some examination on that evidence?

21 A Yes, I did.

22 Q Showing you State's -- which has been
23 previously admitted as State's Exhibit 134 and its contents,
24 I'd ask you if you recognize what that is.

25 A Open it?

1 Q Yes, please.

2 A Yes, I do.

3 Q Okay. Now, do you recognize 134 being the

4 envelope?

5 A Yes.

6 Q All right. And at the bottom is there a blue

7 seal?

8 A Yes. If you look at the bottom of the

9 envelope, you see a blue and white seal. That's the tape, the

10 evidence tape, that I seal the package with. If you look at

11 that tape, you'll see my initials, personnel number and the

12 date that I sealed it.

13 Then also on the chain of custody line on the front

14 of the label, you'll see my signature, personnel number, the

15 date and time that I sealed that package.

16 And then if you look at the individual vials inside,

17 again, you'll see the event number and my initials and

18 personnel number and the package -- package and item number

19 there.

20 Q And I think we have these as 134 A, B, and C;

21 is that correct, sir?

22 A Yes.

23 Q All right. What analysis -- well, what are we

24 looking at, 134 A, B, and C?

25 A These are bullet fragments.

1 Q Okay. For the ladies and gentlemen of the
2 jury, some of them might know firearms very well, but those
3 that don't, can you give us the anatomy of a cartridge which
4 is also commonly referred to as a bullet?

5 A A cartridge is one single unfired round of
6 ammunition and the cartridge has four basic parts. It has the
7 cartridge case, which is kind of the container, and at one end
8 of the cartridge case you have the primer. Inside the
9 cartridge case, you have gunpowder, and then seated in the
10 mouth of the cartridge case, the open end, is the bullet. And
11 the bullet is the projectile that comes out of the gun.

12 Q So when you say A, B and C are fragments,
13 fragments of what?

14 A Fragments of fired bullets.

15 Q Okay. Did you perform any analysis or any
16 testing on 134 A, B, and C?

17 A Yes, I did.

18 Q What did you do?

19 A Basically I looked at them and examined them to
20 determine caliber and then I also looked at them and compared
21 them to each other to see if they've been fired from the same
22 gun.

23 Q All right. When you looked at these three --
24 first you spoke of caliber. What did you do to determine
25 caliber and what was your conclusions as far as caliber of

1 these fragments?

2 A It's a fairly simple exam. It's just a visual
3 exam. What do they look like? What are they made of? What
4 are kind of the design characteristics of them? And then I
5 can measure their diameters and measure their weights.

6 Q And when you did that in this case, did you
7 come to a conclusion as far as the caliber of these fragments?

8 A Yes, I did.

9 Q What was that?

10 A I called these nominal .38 caliber.

11 Q Okay. What does that mean?

12 A Well, within this size of bullet there are
13 several different actual calibers. The common ones that
14 you've probably heard of would be the .38 special, the .357
15 magnum, the .9 millimeter Luger. Those -- the bullets in
16 those cartridges or those calibers are all very similar. So
17 with a damaged bullet like this, you can't actually
18 distinguish one from the other. So this would be in that
19 family, that .38 caliber family, of bullets.

20 Q Okay. And within that .38 caliber family, what
21 calibers are present in that family?

22 A Again, any -- the common ones are the .38
23 Special, the .357 magnum, the .9 millimeter Luger, and then
24 there are others, but those are the most common ones we see.

25 Q Okay. Give us a general definition of a

1 firearm.

2 A A firearm basically is some type of action in a
3 barrel by which you propel a bullet through the combustion of
4 gunpowder.

5 Q Can you explain the difference between a
6 semiautomatic and a revolver as far as firearms go?

7 A The basic difference is with a revolver you
8 have a multichambered cylinder and the ammunition is loaded
9 into that cylinder. As the gun is fired, that cylinder
10 rotates so that the cylinder lines up with the barrel and then
11 the bullet is fired out the gun.

12 So during firing with the revolver, the cartridge
13 cases -- that's the fired cartridge cases -- stay in the gun.
14 With a semiautomatic pistol, the cartridges are loaded in the
15 gun, and as the gun is fired, those cartridge cases are
16 automatically extracted and ejected from the gun.

17 Q In this particular case, did you have any
18 casings -- I'm sorry, casings submitted to you?

19 A No.

20 Q In looking at these particular fragments, and
21 let's start with 134 A, as far as the condition of that
22 particular fragment, was it conducive to you making a lot of
23 analysis?

24 A Not on 134 A. 134 A is just a small fragment
25 of a bullet jacket.

1 Bullets are -- a lot of times are -- have two basic
2 parts. There's an outer part called the jacket, and then
3 inside the jacket is called the core. And it's not uncommon
4 for when a bullet impacts something for the core and the
5 jacket to separate or to fragment. So 134 A is just a
6 fragment, a small piece of a bullet jacket.

7 Q How about 134 B and C, were they in a different
8 condition such that you could analyze them better?

9 A 134 B and 134 C contain fragments of bullet
10 cores, the inner part, and also the outer part, the bullet
11 jacket. So there's enough material there for me to actually
12 do an analysis on.

13 Q And did you do an analysis in this case?

14 A Yes, I did.

15 Q And looking at those two fragments, 134 B and
16 C, what conclusions did you come to after the analysis?

17 A Well, again, after determining caliber, then I
18 used a comparison microscope to actually look at these two
19 objects, the two jackets, side by side. And what I looked for
20 were the rifling impressions that are on those bullets, that
21 are imparted on that bullet as it passed down the barrel of
22 the firearm.

23 So I compared the rifling impressions on 134 B to
24 the rifling impressions on 134 C, and by doing that, I was
25 able to identify both of them as having been fired from the

1 same gun.

2 Q Can you do that without even having the
3 specific firearm that fired those fragments that you had?

4 A Yes, I can.

5 Q And how is it that you can do that?

6 A Again, I'm looking for the marks that are left
7 on that bullet jacket as it went down the barrel. So I look
8 at one bullet jacket, compare it to the other, look for the
9 agreement of the microscopic marks that were left on those two
10 bullet jackets as they went down the barrel.

11 Q And these characteristics that you're speaking
12 of, are they more indicative of a revolver or a semiautomatic?

13 A Well, the rifling characteristics are not
14 really indicative of either. It's actually the design
15 characteristics of these two bullet jackets that would tend to
16 lead more towards a revolver than a semiautomatic.

17 Q All right. So the design characteristics of
18 these fragments then lead you to that?

19 A Correct.

20 Q Okay. So is it your opinion, then, that these
21 seem to be more aligned with something that would have been
22 shot by a revolver?

23 A Correct.

24 Q And I think you testified earlier that when a
25 revolver is shot, a cartridge case is not expended.

1 A Correct.

2 Q And you had no casings in this particular case?

3 A None were submitted to me, right.

4 Q Now, did you also do some analysis of some
5 firearms that were submitted to you in this case?

6 A Yes, I did.

7 Q Did you prepare a report in anticipation of
8 testifying in this case?

9 A Well, I prepared a report. Basically, we
10 always prepare a report whether we testify or not.

11 Q Okay. Sorry. That was poorly stated.

12 And in that report, did you summarize the testing
13 that you did of a couple of firearms?

14 A Yes, I did.

15 Q And could you tell the ladies and gentlemen of
16 the jury the firearms that you analyzed.

17 A I examined two Smith and Wesson revolvers. One
18 was a -- the caliber's 38 S and W, the serial number was
19 638751. The other Smith and Wesson revolver was a .38 Special
20 with serial number J609592.

21 Q Okay. And is it safe to say that you don't
22 respond to scenes?

23 A Very seldom.

24 Q Okay. However, when an document or an item
25 comes to you, will it be labeled as far as where it came from

1 at a specific scene?

2 A Yes.

3 Q All right. And one of the firearms, did it
4 come to you from 1677 E Street?

5 A Yes.

6 Q And another one, did it come from 6770 South
7 Bermuda?

8 A Yes.

9 Q All right. And going back, the fragments that
10 you received, had they come from the Clark County Coroner's
11 office?

12 A Yes.

13 Q All right. Now, let's go to the first revolver
14 that you just spoke of. Which one did that come from?

15 A The first one was from the 1677 E Street.

16 Q What did you find out about that revolver?

17 A It was functional, but I eliminated it as
18 having fired these bullet fragments.

19 Q What do you mean by that?

20 A These bullet fragments were not fired from that
21 revolver.

22 Q All right. And how did you do that?

23 A Pretty simple in this particular case. We look
24 at the rifling that's in the barrel. It's made up of what we
25 call lands and grooves. And actually it looks like a spiral.

1 It's got these spiraling grooves in the barrel and the groove
2 is just that. It's a cut-out portion. The land is the raised
3 area between two grooves.

4 Different manufacturers put different numbers of
5 lands and grooves in a barrel. Sometimes they twist to the
6 right, sometimes they twist to the left.

7 The bullet fragments 134 A, 134 -- I mean, 134 B and
8 134 C were fired from a gun that had six lands and grooves
9 right twist. The Smith and Wesson revolver was five lands and
10 grooves right twist. So on that -- those characteristics, you
11 would eliminate that revolver.

12 Q Okay. The Smith and Wesson .38 Special
13 revolver you got from 6770 Bermuda, did you do the same
14 analysis?

15 A Yes.

16 Q What was your conclusion?

17 A Again, that -- these fragments were not fired
18 from that revolver for the same reason, the different rifling
19 characteristics.

20 Q Okay. What can you tell us about NIBIN? What
21 is NIBIN?

22 A NIBIN or NIBIN is an acronym for the National
23 Integrated Ballistic Information Network.

24 Q And what is that?

25 A It's basically a computerized database of

1 firearm evidence and it's administered by the Bureau of
2 Alcohol, Tobacco and Firearms.

3 Q And what gets put into this database?

4 A We currently enter cartridge cases into -- our
5 NIBIN database.

6 Q When you say that, you're saying -- how do you
7 put a cartridge into it? How does that work?

8 A It has a microscope and a camera built into the
9 microscope and we take an image of the markings that are left
10 on the cartridge case during the firing process, and
11 specifically, we're looking at the breach face marks and the
12 firing pin impression. We take a photo of those marks and
13 enter those into the database.

14 Q In this particular case, did you have any
15 cartridge to put into that database?

16 A No.

17 MR. PESCI: Court's indulgence.

18 BY MR. PESCI:

19 Q In the context of comparing bullets, or let's
20 call it the fragments or cartridges, what is -- what are the
21 difficulties that you run into as far as comparing bullets or
22 fragments?

23 A The main issues that come up with comparing
24 bullets is the damage. You know, the bullets are coming out
25 of the gun probably in the neighborhood of, depending on the

1 caliber and cartridge, you know, handgun bullets like these,
2 800 to 1200 feet per second, which is right around the speed
3 of sound. So they're traveling really fast. And when they
4 hit just about anything, that impact is going to cause damage
5 and fragmentation to the bullet.

6 Q When you test fire a bullet, does it have
7 damage and fragmentation that you're speaking of?

8 A The test firing that we do, we test fire into a
9 large water tank. Water works really good to stop the bullets
10 in basically an undamaged condition.

11 Q Okay. And in comparison to bullets, bullet
12 fragments, how about comparing cartridge casings? Which one
13 of the two is easier to make a comparison?

14 A Well, the comparison actually is -- one is not
15 actually easier or harder than the other, because, again, I'm
16 just using a microscope and comparing them side by side. What
17 you find with a cartridge case is, first of all, you don't
18 typically get as much damage to the cartridge case because
19 even if it's ejected from the gun, it's not ejected anywhere
20 near as fast as the bullet came out of the gun. And there are
21 more parts of the gun that will leave marks on the cartridge
22 case than on the bullet. So there's more to look at
23 typically.

24 MR. PESCI: Pass the witness. Thanks.

25 THE COURT: All right. Cross.

1 MR. GENTILE: Just a moment.

2 CROSS-EXAMINATION

3 BY MR. GENTILE:

4 Q You referred to design characteristics but you
5 didn't explain that term, so I'm going to ask you to do that.

6 A The characteristics that I'm looking at on a
7 bullet that -- again, that would be more indicative of a
8 revolver than a pistol bullet would be what's called a
9 neurocan loop. It's a ring around the bullet that's got like
10 a set of rings -- of striations on it.

11 If you look -- kind of like a -- when you have a
12 cigarette lighter and the little wheel, it's got those little
13 lines on it, the revolver bullets have a ring like that on
14 them. Now, you typically don't see that on pistol bullets.

15 The other characteristic that I saw on these bullet
16 jackets was that the top edge of the -- remember, the jacket
17 is the outer part of the bullet -- the top edge of that is
18 scalloped, and that's fairly characteristic of Remington's
19 revolver bullets.

20 Q Mr. Krylo, is there a database, whether it be
21 national or just kept by Metro or anything in between, by
22 which you can compare bullets that you recover in one shooting
23 with perhaps bullets that were recovered from another shooting
24 to see if the same weapon fired them?

25 A The NIBIN database that we talked about earlier

1 has that capability.

2 Q All right. Well, right now you're only using
3 it for cartridges, though?

4 A Correct, cartridge cases. Correct.

5 Q That's what you're entering?

6 A Yes.

7 Q Okay. But you can retrieve from that, if I
8 understand you correctly, information about bullets as well?

9 A Yes.

10 Q All right. Only Metro is not, at this point in
11 time, entering bullets information?

12 A Correct.

13 Q And when you enter the information with respect
14 to bullets, and I don't mean you because you're not, is that
15 also done photographically?

16 A Yes.

17 Q All right. Did you make any effort to retrieve
18 from the NIBIN database any information with respect to
19 whether the bullets that are represented as 134 A, B, and C
20 matched up with bullets from another separate shooting to
21 determine whether the gun that fired 134 A, B and C might have
22 also fired bullets from another shooting?

23 A No, I did not. And you'd have to actually
24 enter the images of these bullets to do that, and we didn't do
25 that.

1 Q All right. Is it that Metro doesn't have the
2 capability of doing that?

3 A It's -- we have the capability because we have
4 the database. It's a time/staffing type deal -- factor, you
5 know, really.

6 Q Okay. Were you informed by anyone with respect
7 to the work that you did in this case that there was
8 information in possession of the Las Vegas Metropolitan Police
9 Department that the bullets that you have before you, 134 A,
10 B, and C, may have been fired from a gun that was also used in
11 another separate shooting?

12 A No. And if we had that gun, the easiest way to
13 do that type of analysis would just be to compare it.

14 Q I understand that. That's not what I asked
15 you.

16 A No, I don't have any knowledge of that.

17 Q Okay. So, in other words, Detective Wildemann
18 or Detective Vaccaro or Detective McGrath did not tell you
19 that someone told them that the gun that was used to kill
20 Mr. Hadland had also been used in a separate shooting?

21 A No.

22 Q Okay. Had you known that, what would you have
23 done?

24 A Well, the easy thing to do is even if you don't
25 have the gun itself but if you have bullets from the other

1 shooting, you could just do a direct comparison.

2 Q Okay. And if they told you the information
3 with respect to the specific case, that this other separate
4 shooting allegedly used this same gun, would you -- and if
5 that case took place here in Clark County, you would probably
6 still have those bullets then, wouldn't you?

7 A I would expect so.

8 Q Okay. But you were never requested to do that?

9 A No. I don't have any notes to that effect, no.

10 Q Okay. Had you -- had you been made aware of
11 that, that even without the gun, even if you still didn't have
12 the gun, you didn't have it from the first shooting, you
13 didn't have it from the second, you could have basically done
14 a microscopic examination of all of them to make a
15 determination as to whether it appeared that the lands and
16 grooves on the gun matched on all of these bullets --

17 A Yes.

18 Q -- the markings?

19 A . Yes.

20 MR. GENTILE: Nothing further.

21 THE COURT: Mr. Adams.

22 MR. ADAMS: I have no questions. Thank you.

23 THE COURT: Any redirect?

24 MR. DIGIACOMO: No, Judge.

25 THE COURT: Mr. Krylo, thank you for your testimony.

1 Please don't discuss your testimony with anyone else who may
2 be a witness and you're excused, sir.

3 All right. Ladies and gentlemen, we're going to
4 take our evening recess. We'll reconvene tomorrow morning at
5 9:00 a.m. and we'll work until 7:00. I'm assuming that's not
6 a problem for anyone. We're going to really try to get this
7 done.

8 Once again, you're reminded that during the evening
9 recess, you're not to discuss this case or any subject matter
10 relating to the case with each other or anyone else. Do not
11 read, watch, listen to reports or commentaries related to the
12 trial. Do not do any independent research connected with the
13 case. Please don't visit any of locations at issue. Also,
14 please do not form or express an opinion on the trial until
15 you begin deliberating with one another in the jury room.

16 Notepads in your chairs. Follow Jeff through the
17 double doors. We'll see you all back here at 9:00 tomorrow
18 morning.

19 (Court recessed at 6:52 p.m. until the following
20 day, Tuesday, February 10, 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