

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

LUIS HIDALGO, JR.,

Appellant,

VS.

THE STATE OF NEVADA,  
Respondent.

Case No. 71458

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**APPELLANT’S APPENDIX VOLUME XVI**

Appeal from Eighth Judicial District Court, Clark County

The Honorable Valerie Adair, District Judge

District Court Case No. 08C241394

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-5-

1 surveillance?

2 A Throughout the conversation.

3 Q Throughout the conversation he said there was something about  
4 being surveilled?

5 A He said be careful about surveillance and so on and so forth.

6 Q Did you see that in those notes that we saw the other day?

7 A What notes?

8 Q Mr. DePalma's notes. Did you see something about surveillance in  
9 there?

10 A The only notes I've seen are the ones that everybody else has seen  
11 on the TV.

12 Q Right. And that's what I'm asking you is if you remember anything  
13 about surveillance in there.

14 MR. GENTILE: Your Honor, Mr. DePalma wasn't writing down what  
15 he was saying. He was writing down what the people who he was interviewing  
16 were saying.

17 THE COURT: All right. That's sustained.

18 BY MR. PESCI:

19 Q And you were one of those people; right? I'm sorry, was that an  
20 answer?

21 A That was a yes.

22 Q All right. Showing you defense D, I think, maybe it was B.

23 MR. GENTILE: It's a G.

24 MR. PESCI: G, thank you.

25 /////

1 BY MR. PESCI:

2 Q G. You've seen this quite a bit; haven't you?

3 A Yes.

4 Q And this is not the way it looked when you were there; right?

5 THE COURT: Can you move it closer, please, Mr. Pesci.

6 A With the exception of the white hat and that white little jar right there.

7 Q So you're saying --

8 A And that helmet.

9 Q You're saying that back on May 19, 2005, this is how it looked?

10 A Yes.

11 Q Okay.

12 A Overall.

13 Q Generally -- right. Generally speaking; is that accurate?

14 A Yes.

15 Q Okay. Now, let's look at State's 208. This was actually taken in your  
16 testimony when the police, after the murder, went into the Palomino Club. Do  
17 you remember that?

18 A Correct.

19 Q Okay. So that's closer in time than the photograph in defense G;  
20 correct?

21 A Correct.

22 Q Do you need some glasses, Mr. Hidalgo?

23 A I really do, to be honest with you.

24 MR. GENTILE: Here, you can use mine. I don't need them.

25 Q Sir, your testimony just a few minutes ago was that the -- well, let's

1 look at State's 210.

2 THE COURT: Can you -- otherwise you can show him the exhibit  
3 and then put it up on the monitor so he can hold it in his face.

4 MR. PESCI: I thought blowing it up would be better.

5 BY MR. PESCI:

6 Q Would it be --

7 THE COURT: Okay. Whichever.

8 Q -- better if it's up close to you?

9 A That's good. That's good.

10 THE COURT: Okay.

11 Q State's 210.

12 THE COURT: Speed it up.

13 Q Is this the memo you were referring to, the memo board?

14 A Yes.

15 Q Okay. And this is specifically, what we're looking at, is the list of the  
16 breakdown of who has what position and their phone numbers; correct?

17 A That is correct.

18 Q And you're saying that generally speaking that board was just a  
19 memo board?

20 A That's what I call it.

21 Q Okay. 209. What -- what are these other memos? What are they?  
22 Are they memos?

23 A Mr. Pesci, I can't make out what they are.

24 Q All right. Let me try bringing it up to you.

25 A I still can't make out what they are.



1 Q Okay. And your testimony was that on the date that Detective  
2 Wildemann came and met you in the parking lot of the Palomino and he asked  
3 you for a way to get a hold of Deangelo you didn't tell him about this because you  
4 didn't know about it, or because you couldn't get to it?

5 A He didn't meet me in the parking lot, Mr. Pesci.

6 Q Where did he meet you?

7 A He met me in the hallway downstairs in the back.

8 Q In the hallway of?

9 A The Palomino downstairs.

10 Q Actually inside?

11 A Downstairs.

12 Q But inside?

13 A On the outside.

14 Q Okay. Outside of the Palomino?

15 A Yes.

16 Q Because you didn't have a key to get in; right?

17 A No. He met me on the, what we call landing.

18 THE COURT: So is it by the door?

19 THE WITNESS: Yes, ma'am.

20 BY MR. PESCI:

21 Q Now, did you not go retrieve this because you couldn't get to it?

22 A I didn't retrieve it because I didn't --

23 MR. GENTILE: Can the record reflect what this is?

24 THE COURT: What exhibit number is --

25 MR. PESCI: 210. 210. I think we're pretty clear it's the phone

1 number list.

2 BY MR. PESCI:

3 Q Why didn't you go get the phone list for the detective?

4 A I can't answer that question to you right now why I didn't do it then.

5 Maybe I didn't know that I had one or maybe I completely forgot about it.

6 Q Okay. This is the office that you testified that every day you and  
7 Anabel would sit at, sit in, and do your business; correct?

8 A That is correct.

9 Q Every single day at that desk with Anabel behind it and you seated  
10 at the -- this chair right here; correct?

11 A That is correct.

12 Q The chair that actually faces towards this very bulletin board.

13 A Okay.

14 Q Every single day you sat there and looked at that board.

15 A Okay.

16 Q Well, is that true?

17 A Yes.

18 Q And you didn't know that the phone list was there?

19 A Possibly no.

20 Q Possibly --

21 A Yeah.

22 Q -- or possibly you did know?

23 A I possibly, yeah, could've known too.

24 Q But you -- you didn't give that to the detective?

25 A No.

1 Q Okay. At that point were you still in fear of Deangelo or the people  
2 associated with Deangelo?

3 A Yes.

4 MR. GENTILE: Objection to the form of the question. It's  
5 compound.

6 THE COURT: All right. Sustained.

7 BY MR. PESCI:

8 Q Well, let's do it this way.

9 THE COURT: You were in fear of someone.

10 Q Were you still in fear of Deangelo at that point?

11 A I was in fear of something.

12 Q I'm sorry?

13 A I was in fear of somebody.

14 Q All right. Who?

15 A I did not know.

16 Q If you didn't know who you were afraid of, why couldn't you ask  
17 Detective Wildemann for help?

18 A Like I said, I was still in fear.

19 Q Of who?

20 A Of somebody else. I don't know who was part of the gang. I didn't  
21 know what members, I didn't know how many.

22 Q And how would talking to Detective Wildemann make you more  
23 fearful?

24 A What can I say at this point?

25 Q Well, let's see. A year before this you got extorted by an employee,

1 you went to your attorney, and he told you to go to the police and make a report;  
2 didn't he?

3 A That's correct.

4 Q You followed that advice; didn't you?

5 A That is correct.

6 Q You had an example already of what to do when you're being  
7 extorted.

8 A He wasn't threatening me in so to -- in that same manner.

9 Q He wasn't threatening you in the same manner?

10 A No. He wasn't telling me that there was somebody else, that  
11 somebody else wanted to get paid and he was part of the Crips and a gang.

12 Q Okay.

13 A There's a big difference.

14 Q But he -- he was extorting you for money?

15 A He tried. Yes.

16 Q And you made a police report?

17 A That is correct.

18 Q So in your time working with the police didn't the police ever do  
19 anything to try to fight gangs in California?

20 A Yes, I believe so.

21 Q Were -- were there people who were victims of crime from gangs  
22 where the police worked on their cases and arrested people?

23 A Yes.

24 Q Put people in jail and in prison?

25 A Yes.

1 Q And you know that from you working there; right?

2 A That is correct.

3 Q So why didn't that experience tell you, hey, Detective Wildemann  
4 can help me out, he's with the police?

5 A I didn't want to go there. Like I said, I was in fear. I didn't know who,  
6 what, whatever.

7 Q Okay. And I think you said that there were very specific people you  
8 were fearful for beyond yourself; right?

9 A That is correct.

10 Q Okay. And specifically looking at defense H, Mr. Gentile asked you  
11 if these were the people you were afraid of?

12 MR. GENTILE: No, I did not. I said afraid for.

13 THE COURT: Yeah, he did. He said afraid for.

14 MR. PESCI: Afraid for.

15 BY MR. PESCI:

16 Q These are the people you were afraid for?

17 A Uh-huh.

18 Q Is that a yes?

19 A Yes.

20 Q Okay. And looking at these individuals, they all, of course -- well,  
21 why were you afraid for them?

22 A Why?

23 Q Yes.

24 A My son, my father, myself.

25 Q What did you think could happen to them?

1 A They could be hurt. They --  
2 Q How?  
3 A -- could get killed.  
4 Q How?  
5 A How?  
6 Q Yes.  
7 A They could get hurt.  
8 Q Okay.  
9 A What do you mean? How do you explain how? If you're in fear of  
10 your family being retaliated or getting hurt, what do you mean how?  
11 Q Okay. Well, sir, I think you also testified that you were concerned for  
12 the well being of not just these people, but also Anabel Espindola.  
13 A That is correct.  
14 Q All right. And as a part of that fear, you didn't go back to the club?  
15 A I didn't go back to the club? What do you mean?  
16 Q Well, after this event you left the Palomino; correct? After Deangelo  
17 comes back and says you don't want to mess with the guy outside, you left the  
18 Palomino; didn't you?  
19 A Yes.  
20 Q And where did you go?  
21 A I do believe that we drove. Anabel was shaken up terribly. She  
22 didn't want to go home, so we went to another location.  
23 Q And where was that location?  
24 A That was the MGM.  
25 Q And then after -- so she's right about that?

1 A Yes.

2 Q And then after the MGM where did you go?

3 A I don't recall exactly where it was that we went.

4 Q You don't recall?

5 A No, I don't.

6 Q Do you know where you stayed the night?

7 A I believe at -- at her house.

8 Q Why didn't you go to her house?

9 A My house was a condo. I was living, I believe, I'm not 100 percent  
10 sure, it was with my father that was there.

11 Q The next day did you go back to the club?

12 A I believe so.

13 Q You did.

14 A I believe so.

15 Q When did you go to the Silverton?

16 A I don't recall exactly the day or the time that we went to the Silverton.

17 Q Well, didn't you go to the Silverton because you were still concerned  
18 about this threat that was out there via Deangelo or the people with Deangelo?

19 A Anabel wanted to go someplace else other than. She wanted to go  
20 to the Silverton because the majority of the time, and there has been other  
21 occasions prior to that that we got together with my father there and other family  
22 members or other friends and we would use it as like a getaway thing.

23 Q A getaway.

24 A Well, getaway in the sense that she didn't want to go be at the  
25 house anymore or otherwise.

1 Q Why didn't she want to be at the house?

2 A Who?

3 Q Anabel. You just said you went to the Silverton because of Anabel;  
4 right?

5 A Yes.

6 Q Why didn't she want to go to the house?

7 A She didn't want to. She was freaking out. She was nervous.

8 Q And did she want to go back to the Palomino?

9 A Not that I recall, no.

10 Q All right. What about you? Did you not want to go back to the  
11 Palomino?

12 A It was mixed emotions about whether or not I should go back  
13 immediately or otherwise, but at that time I was contemplating her.

14 Q Were some of those mixed emotions because you were afraid of  
15 what Deangelo and his friend represented to you?

16 A Some.

17 Q And that that's a known location where you would be, back at the  
18 Palomino?

19 A Some.

20 Q Okay. So when Anabel testifies that the two of you went to the  
21 Silverton because the two of you were afraid of going back to the club, is that  
22 accurate or not?

23 A I would say mostly.

24 Q Okay. And was it also accurate when she indicated that your son,  
25 Luis Hidalgo III, came to the Silverton while you and Anabel were staying there?



1 A Yes.

2 Q Was it also accurate when she indicated that your son, Luis Hidalgo  
3 III, told you and Anabel don't worry about going back to the club, I'll bring all the  
4 paperwork to you so you can fill it out here?

5 A I don't recall my son every telling me that.

6 Q You don't recall him saying that?

7 A No, I don't.

8 Q Okay. Now, speaking of your son, on the 20<sup>th</sup>, when you left -- or the  
9 19<sup>th</sup> -- I think you mean -- who knows. Do you know what time you left the  
10 Palomino?

11 A No.

12 Q Do you think it was still the 19<sup>th</sup>, or you think you had gotten into the  
13 20<sup>th</sup>?

14 A I said I don't know, Mr. Pesci. I don't remember.

15 Q And when was the next time you talked to your son?

16 A I don't recall that either.

17 Q Okay. Well, let's just put it this way. The day after Deangelo comes  
18 and tells you this, did you talk to your son?

19 A Deangelo tells me what?

20 Q That his friend killed somebody --

21 A Okay.

22 Q -- and you better pay the money, you don't want to mess with this  
23 guy.

24 A Okay.

25 Q Okay. So the day after that incident did you talk to your son, Luis

1 Hidalgo III?

2 A I don't recall.

3 Q Okay. So that would be the 20<sup>th</sup>. How about the 21<sup>st</sup>? Did you talk  
4 to your son that day?

5 A I don't recall, Mr. Pesci. I'd be lying to you if I told you.

6 Q Okay. How about the 22<sup>nd</sup>, do you recall speaking to your son?

7 A No, I don't.

8 Q All right. Let's put it to you this way. Do you recall telling your son  
9 anything about what had transpired with Deangelo and the payment of money?

10 A I never talked to my son regarding that.

11 Q You never talked to him about it?

12 A No.

13 Q But on the wire that we heard, your son specifically says that you,  
14 Louie, are about to go in exile, close the place up, and just leave.

15 A No.

16 Q No your son didn't say that?

17 A No, I don't know if he said it or not.

18 Q Did you hear that voice?

19 A No, I don't remember hearing that.

20 Q On the recordings as we --

21 A I said --

22 Q -- listened to it?

23 A -- I don't remember hearing what he said. I didn't go into exile. I  
24 wasn't ready to close the shop. I wasn't ready to close the Palomino.

25 Q So you -- your son --

1 A I'm still here.

2 Q -- was just wrong? If your son is on the recording saying that, he's  
3 just wrong?

4 A If he's on it, I have no idea why he said it.

5 MR. ADAMS: I object to that, Your Honor. He could've heard it from  
6 another source like Ms. Espindola. It's inappropriate form of the question.

7 MR. PESCI: We'll object to the form of the objection.

8 THE COURT: I think the question was that he had attributed it to his  
9 father on the tape.

10 The tape, again, ladies and gentlemen, speaks for itself in  
11 terms of what was actually said and you'll probably need to replay it when you go  
12 in to deliberate. But it's what you hear on the tape. If anyone misquotes the  
13 tape, just disregard it.

14 BY MR. PESCI:

15 Q Sir, why did you ask Anabel to tape record her meeting with  
16 Deangelo Carroll?

17 A Why did I tell her to record it?

18 Q Yes.

19 A I believe it was a discussion that we had with the attorney.

20 Q Was that advice that your attorney gave you?

21 A If you want to call it that, yes.

22 Q Was that Mr. Gentile, or was it Mr. DePalma?

23 A I want to say it was Mr. Gentile.

24 Q So would that have been after the 21<sup>st</sup>?

25 A I don't recall exactly what date it was.

1 Q You don't recall exactly what day you met with Mr. Gentile?

2 A No.

3 Q Now, plan A and plan B. I believe your testimony was that plan B  
4 was something to do with how to pay the cabbies?

5 A Correct.

6 Q And I believe your testimony was is that you were the one who made  
7 this plan?

8 A I said that we had discussed it previously and there was always an  
9 A or a B, and in some, most cases there was more than just A and B, sometimes  
10 a C.

11 Q Who did you discuss it with?

12 A Office staff.

13 Q Did you discuss it with Ariel?

14 A Sometimes.

15 Q Did you discuss it with PK?

16 A Sometimes.

17 Q Anabel?

18 A Yes.

19 Q So she, Anabel, would know from you telling her what plan B was?

20 A I would say so.

21 THE COURT: Your objection is belatedly sustained. The tran -- I  
22 had to refresh my memory. According to the transcripts, both of them, it doesn't  
23 say who told Little Lou. So it's sustained as just to that part.

24 MR. ADAMS: Thank you.

25 /////

1 BY MR. PESCI:

2 Q Sir, you heard those wire in court; didn't you?

3 A Yes.

4 Q Do you take any issue with the fact that it's your son on that  
5 recording?

6 A I don't understand what you're asking.

7 Q Are you saying as you listen to the wire that that's not your son  
8 talking? Well, set aside what he actually says, but are you saying that that's not  
9 your son on the recording?

10 A I never said that.

11 Q Okay. So is it your son on the recording --

12 A I believe it is.

13 Q -- on the 23<sup>rd</sup> and the 24<sup>th</sup>?

14 A I believe it is.

15 MR. PESCI: Court's indulgence.

16 THE COURT: Do we have any jury questions?

17 JUROR: Yes.

18 THE COURT: Jeff, why don't you go retrieve those while Mr. Di --  
19 I'm sorry, Mr. Pesci --

20 MR. PESCI: Yes.

21 THE COURT: -- is reviewing his notes.

22 MR. PESCI: I just have a couple more, Judge.

23 THE COURT: That's -- oh, that's fine. Take your time.

24 MR. PESCI: Do you want me to ask those now?

25 THE COURT: No, no. I'm going to look at them while you're

1 continuing your cross.

2 MR. PESCI: That's what I meant. I apologize.

3 BY MR. PESCI:

4 Q Sir, on Friday, was Anabel with you at Simone's?

5 A I -- what Friday?

6 Q The day after the 19<sup>th</sup>. You know that big day --

7 A Okay.

8 Q -- when Deangelo --

9 A Okay.

10 Q -- came?

11 A Yes.

12 Q The next day was Anabel with you at Simone's?

13 A She wasn't with me. I was, you know, there. She was there  
14 somewhere.

15 Q So was Anabel at Simone's when you were at Simone's on --

16 A I would probably assume so.

17 Q What about at the Palomino that same day later?

18 A I don't recall.

19 Q Do you recall what car you drove to the meeting with Mr. DePalma?

20 A No, I don't.

21 Q Thank you.

22 MR. PESCI: Nothing further.

23 THE COURT: Mr. Gentile, do you want to start on your redirect?

24 MR. GENTILE: I don't have a lot. Let me take a look at what I do  
25 have.

1 REDIRECT EXAMINATION

2 BY MR. GENTILE:

3 Q Mr. Pesci makes a point of referring you to somebody else's notes.  
4 But let's get them.

5 MR. GENTILE: Where is DePalma's notes? Do you have that?  
6 Do you have them?

7 MR. PESCI: No, I just have a copy of them, but you can use the  
8 copy.

9 MS. ARMENI: It's right here.

10 MR. GENTILE: It's here.

11 MS. ARMENI: Yeah.

12 BY MR. GENTILE:

13 Q First of all, you already, both you and Mr. DePalma, testified that  
14 most of what was said was said by Anabel?

15 A Correct.

16 Q Did you report to Mr. DePalma the statements of Deangelo that  
17 Deangelo made when he came in looking like Don King? Did you report those  
18 statements or did Anabel report those statements to Mr. DePalma?

19 A I believe it was Anabel.

20 Q All right. In any case, were those statements reported to him?

21 A Yes.

22 Q So there was more than one statement; right?

23 A I believe it is.

24 Q Okay. And among the statements was that there was a shooter  
25 outside that was a Crip.

1 A That is correct.

2 Q Do you know when Mr. DePalma said LH took DC's statements as a  
3 threat, do you know what statement he's talking about?

4 A Yes.

5 Q You do?

6 A Well --

7 Q What is it?

8 A I believe that we said that the guy was, like I said, a gang member,  
9 and that he was from the Crips, and he's demanding money, and he also said  
10 you don't want to fuck with my boy.

11 Q And you didn't know that person's name at that time; did you?

12 A Not at all.

13 Q You didn't know what he looked like?

14 A No.

15 Q You didn't know who -- how many other members there were in the  
16 Crips?

17 A No.

18 MR. GENTILE: These are community eyeglasses.

19 Q And he talked to you about the extortion attempt that you reported  
20 the year before, the one you came to me about.

21 A Correct.

22 Q And that man's name was who?

23 A It was 20 more letters.

24 Q Okay.

25 A It was Tony Moore Leavitt.



1 Q Okay. Was Tony Moore Leavitt a member of the Crips as far as you  
2 know?

3 A No.

4 Q Any other gang?

5 A No.

6 Q Had he killed anybody that you knew of?

7 A Not that I knew of.

8 Q Did you know what he looked like?

9 A Yes.

10 Q Pretty well?

11 A Yes.

12 Q As far as you knew was he operating pretty much alone in this  
13 extortion?

14 A I had my suspicions, but, yes.

15 Q Mr. Pesci asked you about your experience with gangs when you  
16 were in the Bay area and your experience with the police and enforcement in  
17 gang cases. Remember him asking you that?

18 A Yes.

19 Q Did the police in the Bay area eliminate retaliation murders from  
20 gang members while you were up there? You know what I'm saying, do you?

21 A No.

22 Q Okay. While you were up in the Bay area, when the police got  
23 involved in gang enforcement, did gang murders stop?

24 A No.

25 MR. GENTILE: I don't have anything further.

1 THE COURT: Anything, Mr. Adams?

2 MR. ADAMS: No, ma'am.

3 THE COURT: Counsel approach.

4 (Conference at the bench)

5 THE COURT: I have a number of juror questions here and I'm not  
6 going to -- they got all mixed up, so I'm not asking them in any particular order.

7 A juror wants to know, did you ever wear your bulletproof vest  
8 once you became afraid Deangelo Carroll -- well, of Deangelo Carroll's gang  
9 member associates?

10 THE WITNESS: I would say more so than, yes, than before.

11 THE COURT: Okay. I guess when did you -- after May 19<sup>th</sup> did you  
12 wear your bulletproof vest?

13 THE WITNESS: I don't recall, Your Honor. I'd be lying to you if I  
14 told you.

15 THE COURT: Okay. If -- did Anabel -- did you testify that Anabel  
16 always favored TJ?

17 THE WITNESS: No.

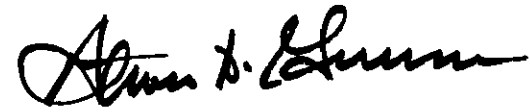
18 THE COURT: Okay. Did you testify that Anabel always favored  
19 Deangelo?

20 THE WITNESS: Yes, I did.

21 THE COURT: Okay. And how often would you have business  
22 meetings with Anabel regarding the Palomino Club?

23 THE WITNESS: I'd like to answer that question in two parts, Your  
24 Honor.

25 THE COURT: Okay.



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 XIII:**  
**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><b>VOLUME</b></u>	<u><b>DATE</b></u>	<u><b>DOCUMENT</b></u>	<u><b>BATES</b></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

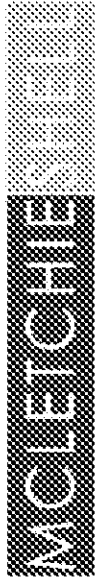
<u><b>VOLUME</b></u>	<u><b>DATE</b></u>	<u><b>DOCUMENT</b></u>	<u><b>BATES</b></u>
III	01/30/2009	Transcript of Proceedings: Jury Trial - Day 4	HID PA00523 - HID PA00538
III	02/02/2009	Transcript of Proceedings: Jury Trial - Day 5 (Pg. 1-152)	HID PA00539 - HID PA00690
IV	02/02/2009	Transcript of Proceedings: 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

<u><b>VOLUME</b></u>	<u><b>DATE</b></u>	<u><b>DOCUMENT</b></u>	<u><b>BATES</b></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





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**CERTIFICATE OF SERVICE**

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

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

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

Attorneys for Respondent

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

1 THE WITNESS: Small little meetings every day, a little every day  
2 event type of thing.

3 THE COURT: Okay. And were those like sit down in the office  
4 meetings, or was that just more you run into each other at the club and discuss  
5 business?

6 THE WITNESS: No, it was just more like in the office type of thing,  
7 you know. But at least two or three times a week we would have something a  
8 little bit more major, you know. Little small, knickknack type of conversations,  
9 you know, yeah, on a daily basis, you know, I'm going to make my rounds, we  
10 got to get to this, you know, the popcorn didn't get made, the coffee is not ready.  
11 That type of meeting. That's what I call petty.

12 THE COURT: Okay. And then the major meetings about the -- or  
13 more significant meetings about the club, how often?

14 THE WITNESS: Correct. About two or three times, maybe, a week,  
15 ma'am.

16 THE COURT: Two or three times a week. And would those also  
17 occur in your office or her office or where?

18 THE WITNESS: It would've occurred in my office because I want to  
19 say that it was more private. You know, everybody, you know, because not only  
20 those two chairs were there, Your Honor, but there was also another couch that  
21 was like eight feet long, you know, on the side of the wall before you -- when you  
22 come in. It was -- like I said, it's an eight foot couch. I still have that couch. And  
23 then plus the two chairs. So we can actually hold, three, four, five, you know, six,  
24 seven individuals.

25 THE COURT: Okay. Now, I'm assuming -- you testified you were

1 not told of TJ's firing.

2 THE WITNESS: Correct.

3 THE COURT: I'm assuming other employees during the time that  
4 you and Anabel were running the Palomino Club were fired; is that fair to say?

5 THE WITNESS: Put it to me again, Judge.

6 THE COURT: Well, do you -- and I'm going to ask it the way it was  
7 written. Do you know, and don't speculate, do you know why you were not told  
8 of TJ's firing right after he was fired?

9 THE WITNESS: No, I don't know why I was never told.

10 THE COURT: Okay. What about when other employees were --  
11 were fired? Were you told?

12 THE WITNESS: Some, Your Honor. I guess it depends on the  
13 significance of the person at that particular post, I would say, you know, and a  
14 backup payout type of person who you're used to making sure, you know what I  
15 mean, that got the money, some people, you know -- Ariel had firing authority,  
16 she had hiring authority. Anabel had the same thing, you know, that type of  
17 thing. The only thing I requested that there would be two people there, two  
18 supervisors or two managers when they did that.

19 THE COURT: Okay. And then during this period of May 2005, who  
20 owned the Palomino?

21 THE WITNESS: May of 2005? I did, Your Honor.

22 THE COURT: Okay. Did you own it by yourself or did anyone else  
23 own it with you?

24 THE WITNESS: No, I owned it by myself.

25 THE COURT: Up until May 24, 2005 -- this is a two part question.

1 What was Anabel Espindola to you first in regards to your business life, and  
2 second in regards to your personal life?

3 THE WITNESS: As far as business life, she was a percent owner of  
4 Simone's Auto Plaza. Is that what you're asking?

5 THE COURT: Well, it's a juror's question.

6 THE WITNESS: Is that the question?

7 THE COURT: So just try to explain what your business relationship  
8 was to them.

9 THE WITNESS: Okay. She obviously still had the title. She was a  
10 business owner at Simone's Auto Plaza. And she was the GM and the key  
11 employee of the Palomino Club.

12 THE COURT: All right. And did you rely on her for business  
13 decisions and business operations, would you say?

14 THE WITNESS: I would say so, Your Honor, yes.

15 THE COURT: Okay.

16 THE WITNESS: Yes.

17 THE COURT: And then the juror now wants to know what was  
18 Anabel Espindola to you in -- up until May of 2 -- May 24, 2005, with respect to  
19 your personal life.

20 THE WITNESS: She was my girlfriend.

21 THE COURT: Okay.

22 THE WITNESS: She was my girlfriend.

23 THE COURT: If Anabel set up TJ or was part of a plan to set up TJ  
24 to be beaten up to deal with him, would you be surprised by -- by that? Would  
25 that surprise you if Anabel was involved in a plan, a scheme, to have TJ beat up,

1 beaten up?

2 THE WITNESS: Would I be surprised? I don't know how to answer  
3 that question, Judge. You know, I -- I know if I had known that, you know what I  
4 mean, I would have stopped it immediately because I don't -- I don't go there.  
5 Okay? Now, her -- yeah, I would have to say I would be surprised. I would be  
6 kind of shocked, you know. Yeah.

7 THE COURT: All right. And has Anabel ever in your experience or  
8 during the length of time that you have known her, has she been a mean or  
9 hateful person to anyone?

10 THE WITNESS: I would say there were a few occasions, Your  
11 Honor, that I cannot say what it is because that's not part of the proceeding here  
12 in this court. But has she done something? Yes.

13 THE COURT: Okay. And how long ago -- well, let me ask you that.  
14 I'll let that -- has she ever been revengeful to someone in any way? Has she  
15 shown any characteristics of being revengeful?

16 THE WITNESS: Somewhat, yes.

17 THE COURT: Okay.

18 THE WITNESS: Yes.

19 THE COURT: And have you ever known her to physically hurt  
20 anybody?

21 THE WITNESS: Physically hurt anybody? No.

22 THE COURT: All right. If you are not guilty, why are you worried  
23 about or why were you worried about being under surveillance?

24 THE WITNESS: It was more of a note taking part, I guess, to remind  
25 me and mostly probably also to remind her, you know. That's what was

1 discussed in the meeting, you know, that's what I wrote.

2 THE COURT: Okay.

3 THE WITNESS: It was not I did it for anything else other than, hey,  
4 Anabel, you know, or, you know, that kind of thing. To me, that's -- I mean, I  
5 could get into other things, but it's not --

6 THE COURT: And then if you -- if you -- I guess the question is why  
7 did you run to a lawyer kind of immediately or contact a lawyer -- run was the  
8 word used by the juror -- contact a lawyer immediately if you weren't involved?

9 THE WITNESS: Well, I don't think it was so much my worrying  
10 about the person involvement, but I knew that I already had a problem. The  
11 moment that -- that the gesture that came from me to Anabel, okay, fine, you  
12 know, this man is demanding this money, my license was at stake. I mean, it  
13 took me 11 months to get it. It was three licenses. You're talking about millions  
14 of dollars in the license. I knew that -- I knew that I had screwed up by doing it.  
15 And, you know, I was looking for help and obviously someone else said call the  
16 lawyer, you better talk to your attorney. And at that point I decided to go ahead  
17 and do that.

18 THE COURT: Okay. Were you a part of any plan to harm TJ?

19 THE WITNESS: No.

20 THE COURT: Were you a part of any plan to help cover up what  
21 happened to TJ?

22 THE WITNESS: I don't think that I was in any plans to cover what  
23 had happened. I was, like I said, in shock and in fear. And when I reach a  
24 level -- I don't want to misuse the word satisfaction or satisfied that, maybe that I  
25 was safe or something like that, that's when I talked to Mr. -- Mr. Gentile and I

1 said I need to step to the plate now that, you know, I feel more comfortable about  
2 the situation. I offered and I went ahead and offered to talk to Mr. DiGiacomo  
3 and Mr. Pesci and also another DA, and they wouldn't do it.

4 THE COURT: Okay. Were you part of any plan to harm the flier  
5 boys or promoters known as Rontae Zone and Jason Taoipu?

6 THE WITNESS: No. I -- I never had no contact with -- with them at  
7 all. I didn't know them. I -- I was not privy to that type of information. It was part  
8 of a conversation that was going to take place and it didn't about him having  
9 other people in the van. I know that I've heard that it was under -- supposedly  
10 that was something under my division, but in reality it wasn't under my division,  
11 you know.

12 All I ever said to everybody else and the staff was, hey, I think  
13 tonight we should go to the limo stands, hey I think that we should go to the  
14 taxicab stands, I think that we should go someplace else. That was pretty much  
15 the direction that I gave them, you know.

16 But I never specifically mentioned, you know, directly do this,  
17 do this, do that. No. Because I guess it would depend how the business was at  
18 the time, what needed to be done. You know, if more taxicabs needed to be  
19 contacted, we had to do that.

20 THE COURT: Now, do you know if Anabel and Deangelo had a  
21 social relationship outside the Palomino Club, outside their work relationship?

22 THE WITNESS: You said not to speculate?

23 THE COURT: Right. If -- only if you know.

24 THE WITNESS: I would say yes.

25 THE COURT: Yes, a little relation -- what is --

1 THE WITNESS: I would say they did have some type of a  
2 relationship outside of the Palomino Club.

3 THE COURT: Okay. And do you know if they ever smoked pot  
4 together?

5 THE WITNESS: No, I don't. That I do not know.

6 THE COURT: Okay. In the interview with Mr. DePalma, was Anabel  
7 in the room?

8 THE WITNESS: Yes.

9 THE COURT: What was the seat -- what were the seating  
10 arrangements in the interview with Mr. DePalma?

11 THE WITNESS: I don't think that that would be an honest answer  
12 on my part because I've heard it already four times in here.

13 THE COURT: Okay. Do you independently remember, as you sit  
14 here today, have any independent memory of the seating arrangements?

15 THE WITNESS: Well, I know that the detective, Mr. Dibble, he was  
16 further away from us, Mr. DePalma was in front, and I want to say that she was  
17 here and I was there.

18 THE COURT: Okay. And were you sitting -- excuse me. Were you  
19 sitting in front of the desk or in front of a table?

20 THE WITNESS: It was kind of a funny looking desk, you know, not  
21 the kind I'm used to, you know what I mean, but I would -- I would call it a desk, a  
22 table.

23 THE COURT: Okay. All right. Thank you.

24 Mr. Gentile.

25 /////



1 BY MR. GENTILE:

2 Q Mr. Hidalgo, I'm thinking maybe you misunderstood a question. I  
3 think one of the jurors asked you if you were ever a part of a plan to harm any of  
4 the flier boys, Rontae Zone or Jason Taoipu.

5 A No, I thought I answered that. I said no.

6 Q Okay.

7 A I didn't even know them.

8 MR. GENTILE: I don't have anything else.

9 THE COURT: All right.

10 Mr. Adams, anything?

11 MR. ADAMS: Yes, ma'am.

12 RECROSS-EXAMINATION

13 BY MR. ADAMS:

14 Q You indicated something about some vindictiveness or -- or  
15 problems Ms. Espindola had had with some other people in the past?

16 A Yes.

17 Q Where -- where she and somebody else had a disagreement?

18 A Yes.

19 Q All right. Is it -- is it fair to say that your ex-wife and Ms. Espindola  
20 were not on the best of terms?

21 A Correct.

22 Q Thank you.

23 THE COURT: Mr. Pesci --

24 MR. PESCI: Thank you.

25 THE COURT: -- anything else?

1 RECROSS-EXAMINATION

2 BY MR. PESCI:

3 Q Sir, who told you that we wouldn't meet with you?

4 A I believe that I asked that question to Mr. Gentile. I waited --

5 Q No, no. Who told you that we wouldn't meet with you?

6 MR. GENTILE: He didn't say that. He said --

7 A I didn't say that you --

8 MR. GENTILE: -- you wouldn't meet with him unless he pled guilty  
9 to murder.

10 MR. DIGIACOMO: That's what --

11 MR. GENTILE: That's what he said.

12 BY MR. PESCI:

13 Q Who told you --

14 MR. DIGIACOMO: Who told you that?

15 Q That was the question. Who told you --

16 THE COURT: Well, it was a part of the question.

17 So who told you that the DA's wouldn't meet with you unless  
18 you pled guilty to murder, I think, was --

19 A Mr. Gentile.

20 Q Who is Mr. Gamage?

21 A Bill Gamage?

22 Q Yeah.

23 A He's an attorney.

24 Q Is -- was he working with Mr. Gentile back at this time?

25 A I believe so, yes.

1 Q Did you ever talk to Mr. Gamage about the possibility of giving a  
2 statement and speaking with the prosecutors?

3 A I don't recall, Mr. Pesci.

4 Q You don't have any recollection of --

5 A No.

6 Q -- discussions about ground rules, about you talking with us with Mr.  
7 Gamage?

8 A No, Mr. Pesci, I don't remember.

9 Q Thanks.

10 THE COURT: Mr. -- any other juror questions? All right. Okay.  
11 I'll see counsel up here please.

12 (Conference at the bench)

13 THE COURT: All right. A couple of juror questions here. At the --  
14 there was testimony about the association of night club owners or strip club  
15 owners. At the club owner's monthly meetings, did you participate in the  
16 meetings?

17 THE WITNESS: Yes, I did.

18 THE COURT: And how did you participate in the meetings?

19 THE WITNESS: Offered ideas, offer what I felt, you know, should be  
20 done in the industry. A couple times I offered the idea of how to handle the tip  
21 money that was left behind for the -- let me see if I could put it in a better term. A  
22 cashier cage would get tips sometimes. We -- people that escorted people would  
23 get tipped sometimes. And basically some of the other clubs, what they were  
24 offering was to go ahead and put it in a pool jar and somebody at night would  
25 take out the money and distribute it.

1                   And the attorney firm that I had at that time said that we were  
2 getting into a grey area of liability issues, and I don't want to say, but I know that  
3 one of the clubs was doing that and that's what got them into trouble with the  
4 IRS.

5                   THE COURT: Okay. And who got the Palomino to be able to pay  
6 more to the cab drivers than the other clubs were able to pay to the cab drivers?  
7 Who got that through at the meeting?

8                   THE WITNESS: I think it was a joint conversation, Your Honor. I  
9 can't recall exactly who was the one who originally said it, but obviously I  
10 motioned it. But it was said that prior to me that they had considered that the  
11 Palomino, since it was the furthest on the strip, that we should be allowed to pay  
12 a little bit more. So that's how the introduction came, and when they came down  
13 for the voting, they said, okay, we'll go.

14                  THE COURT: Okay. How involved was Little Lou in running the  
15 Palomino?

16                  THE WITNESS: Little Lou -- Little Lou assisted a lot with the  
17 dancers, the liquor, taking the liquor orders, taking sometimes money, where it  
18 was short in one of the cages, over to the bars, collected money from the bars,  
19 brought it in the office to Anabel.

20                  He basically did also some type of scheduling for pickups. He would  
21 talk to the front cage person who would obviously get the call, he would schedule  
22 that. Sometimes went into the cab office in the back section, you know, where  
23 we had the coffee and donuts, he would take care of that. So, yeah, I want to  
24 say that he was pretty much involved.

25                  THE COURT: Okay. And then when you say he assisted with the

1 dancers, what did that entail?

2 THE WITNESS: Making sure that the little bank had sufficient  
3 money for the girls to cash in their chips at night. And sometimes, I can't say  
4 often, but a few times he paid out, you know, we were shorthanded or something  
5 like that and so he would take the chips.

6 THE COURT: You mean, when the dancers would take the chips  
7 and he would actually convert the chips to cash for them?

8 THE WITNESS: That is correct. Yes.

9 THE COURT: Okay. And when you say he was involved in -- in the  
10 liquor orders, do you mean he would decide, okay, we need a case of scotch or a  
11 case of merlot or whatever?

12 THE WITNESS: Yes, and -- excuse me. Yes, he would basically  
13 take the inventory and find out what we had and what we needed, you know.  
14 Everything had to be done by Monday or Tuesday so the liquor order would  
15 come in on Thursday or Friday at the very latest in case of an emergency  
16 because we knew that we had the weekend coming.

17 But you got to understand also that we also had two other  
18 clubs that we were considering. You know, Satin Saddle which is a whole  
19 complete place, so we had to take beer back and forth so he would do that, and  
20 so he was -- he did assist in a lot of things.

21 THE COURT: Okay. Did Little Lou attend business meetings for the  
22 Palomino Club?

23 THE WITNESS: Your Honor, I don't remember, but I want to say  
24 maybe once, maybe. And that's -- that's a stretch, maybe.

25 THE COURT: Okay. Other than what you've already testified to, did

1 Little Lou make any decisions in -- regarding any business decisions for the  
2 Palomino Club?

3 THE WITNESS: I would say some, Your Honor, but very minimum.

4 THE COURT: Okay. And did he have -- this is related. Did he have  
5 any input into the operation of the Palomino Club, other than what you've already  
6 told us about?

7 THE WITNESS: Just suggestions, Your Honor. I mean, you know,  
8 there was nothing specific, you know what I mean, where he actually had a voice  
9 to say, no, this is the way I want it done period. No, it was not like that.

10 THE COURT: Okay. And a juror asks didn't you have security  
11 downstairs at the club the night Deangelo requested the \$5,000 to tackle, I  
12 guess, Deangelo while you could've waited for police to come?

13 THE WITNESS: I don't recall how many people on the staff were  
14 there. I don't, Your Honor. I don't recall.

15 THE COURT: Okay.

16 THE WITNESS: It could've been maybe one person and one  
17 outside, and then the person in the back office. And one time, so you know, yes,  
18 we did have security, but that was a long time ago.

19 THE COURT: Okay. As of May 2005, did you have security at the  
20 Palomino?

21 THE WITNESS: No, ma'am.

22 THE COURT: Okay. So you definitely didn't have armed security --

23 THE WITNESS: No.

24 THE COURT: -- security with sidearms --

25 THE WITNESS: No.

1 THE COURT: -- or anything like that?  
2 THE WITNESS: No. No, we did not.  
3 THE COURT: Okay.  
4 THE WITNESS: No.  
5 THE COURT: All right. Mr. Gentile, any follow up?  
6 MR. GENTILE: No, Your Honor.  
7 THE COURT: Mr. Adams, anything else?  
8 MR. ADAMS: No, Your Honor.  
9 THE COURT: Mr. Pesci, anything else?  
10 MR. PESCI: No, Your Honor. Thank you.  
11 THE COURT: Any other juror questions?  
12 All right. Mr. Hidalgo, thank you. You may return to counsel  
13 table next to Ms. Armeni.  
14 MS. ARMENI: Excuse me, Your Honor?  
15 THE COURT: I didn't -- I don't --  
16 MS. ARMENI: Oh.  
17 THE COURT: -- believe there were any other questions, so I told  
18 him to go sit down back next to you.  
19 All right. Mr. Gentile.  
20 MR. GENTILE: Your Honor, I believe that we have moved  
21 everything that we've submitted into evidence. I'd like the clerk to confirm that.  
22 Have we done that? I think we don't have that many exhibits,  
23 but I think we've moved them all in.  
24 THE COURT: Anything outstanding on behalf of --  
25 THE CLERK: They're all in.

1 THE COURT: All right.

2 MR. GENTILE: Okay.

3 THE COURT: They're all admitted.

4 MR. GENTILE: Then Luis Hidalgo, Jr. rests.

5 THE COURT: All right.

6 Mr. Arrascada.

7 MR. ARRASCADA: Your Honor, we rest subject to a ruling by the  
8 Court tomorrow.

9 THE COURT: All right. Thank you.

10 All right. Ladies and gentlemen, let's go ahead and take a  
11 quick five minute break and leave your notepads in your chairs. And you're  
12 reminded of the admonition not to discuss anything or do anything relating to the  
13 case on the break.

14 Follow Jeff through the double doors. Actually, it's probably  
15 going to be closer to ten minutes.

16 (Jury recessed at 6:07 p.m.)

17 THE COURT: Okay. Where is Mr. Hidalgo?

18 Sir, go ahead and have a seat there at counsel table.

19 And Mr. Gentile --

20 Now we're on the record.

21 Mr. Gentile, had indicated that he may have an objection to  
22 the rebuttal evidence because he doesn't know what it's rebutting.

23 MR. GENTILE: Well, that's the point. For a rebuttal case there has  
24 to be something specific in the defense --

25 THE COURT: It's rebutting.



1 MR. GENTILE: -- case in chief that it contradicts.

2 THE COURT: Okay. So what's Mr. Oram going to rebut?

3 MR. DIGIACOMO: The claim during the defense case of recent  
4 fabrication by Anabel Espindola. They asked her questions on cross-  
5 examination, but there was no inconsistent statement of her that was admitted.  
6 During their case in chief they played --

7 THE COURT: Yeah, they did.

8 MR. DIGIACOMO: -- different --

9 THE COURT: When did you first --

10 MR. DIGIACOMO: -- inconsistent statements.

11 THE COURT: -- tell this. Okay. Then Ms. Espindola, what's she  
12 going to say?

13 MR. DIGIACOMO: What? I'm not calling Ms. Espindola. I had her  
14 brought up so she could waive the privilege so that --

15 THE COURT: Oh.

16 MR. DIGIACOMO: -- Mr. Oram --

17 THE COURT: Right, right, right.

18 MR. DIGIACOMO: -- could testify to it.

19 THE COURT: Okay. And then who's your next rebuttal witness?

20 MR. DIGIACOMO: We have Bill Faulkner to put in certain  
21 statements of PK Handley that he either would not admit or then later backed off  
22 and says I don't remember it that way when he was very specific in his  
23 statement.

24 THE COURT: Okay.

25 MR. DIGIACOMO: Faulkner was also going to do potentially some

1 impeachment of -- I'm getting tired.

2 THE COURT: Is Ms. Espindola up here?

3 MR. DIGIACOMO: She is. She's in the back room. She's prepared  
4 to come out here.

5 THE COURT: All right.

6 MR. DIGIACOMO: I intend to give the way.

7 MR. PESCI: Ms. Perez, Obi Perez.

8 MR. DIGIACOMO: Obi Perez. I don't think we're actually going to  
9 ask him questions relating to Obi Perez. And then we have Martin Wildemann  
10 here, but that depends on what your ruling is as to the thing that they -- I mean,  
11 he was a basis of rebuttal for what they were going to offer from the statement.

12 THE COURT: And basically --

13 MR. DIGIACOMO: Because if they offer it --

14 THE COURT: -- all Wildemann was going to say that would be  
15 relevant is when I interviewed Jason Taoipu, he referred to the boss as Little Lou.

16 MR. DIGIACOMO: No, that's not what he'll say. He'll say when I  
17 interviewed Jason Taoipu he informed me of two phone calls prior to getting the  
18 order. The first phone call was Anabel, and Anabel said come get fliers for  
19 promoting. The second phone call was from a person named Lou who I thought  
20 was the boss and we went to the Palomino Club.

21 And the third phone call, the only thing he overheard about  
22 that phone call was Deangelo telling Anabel basically we're out at the lake. And  
23 then he never once said anything about baseball bats and garbage bags coming  
24 out of Anabel or that Deangelo told Anabel or anything like that during his  
25 statement to Detective Wildemann.

1 MR. GENTILE: Well, you know, that --

2 MR. ADAMS: That's the key --

3 MR. GENTILE: We are on --

4 MR. ADAMS: -- point, Judge. They've asked it one time of Jason  
5 Taoipu directly, and it was a crystal clear question under oath, and he gave an  
6 answer that they don't like. They didn't stop the tribunal and say, whoa, we think  
7 they've injected improper evidence into the Counts trial. They didn't do that.  
8 Now, a year later, they're coming in and complaining any answer that they  
9 elicited.

10 THE COURT: All right.

11 MR. GENTILE: And -- and there's a serious --

12 MR. DIGIACOMO: But we're allowed to.

13 MR. GENTILE: Under Moore versus Illinois, a United State  
14 Supreme Court case, and I -- I do not cast aspersions in the sense of  
15 intentionally, but under Moore versus Illinois, a prosecutor, and really only a  
16 prosecutor, when a witness testifies, especially their own witness testifies in a  
17 way that the prosecutor deems to be perjurious, the prosecutor has a duty to  
18 correct it.

19 MR. DIGIACOMO: [inaudible].

20 MR. GENTILE: He lied. You're saying he lied.

21 MR. DIGIACOMO: I'm not saying he lied. How much credibility do  
22 you deal with when it relates to a witness? Witnesses --

23 THE COURT: Okay. Wait a minute.

24 MR. DIGIACOMO: -- don't usually lie.

25 MR. GENTILE: What -- so what was it you gave him, probation?

1 THE COURT: Jeff, bring Anabel Espindola in.  
2 THE MARSHAL: Yes, Judge.  
3 MR. GENTILE: What is it you gave, probation to him?  
4 MR. DIGIACOMO: I didn't give it to him.  
5 MR. GENTILE: Oh, the Judge did. Okay.  
6 THE COURT: After they stood silent and came into chambers  
7 asking me to give them --  
8 MS. ARMENI: It's all you, Judge.  
9 THE COURT: -- probation.  
10 And, by the way, I was hoping someone would point out that  
11 Mr. Hidalgo was on \$650,000 bond --  
12 MR. PESCI: We were going to ask for a jury instruction based on --  
13 THE COURT: -- so that I didn't look like a big schmuck putting him  
14 on house arrest.  
15 MR. DIGIACOMO: Well, we actually wanted a jury instruction. We  
16 were going to address that with the Court --  
17 MR. PESCI: Right.  
18 MR. DIGIACOMO: -- related to the inappropriateness of -- of that.  
19 THE COURT: Well, there was a juror question, but that left it out  
20 there that he just got house arrest --  
21 MR. GENTILE: You said that you were going to address it, which is  
22 the only reason I didn't.  
23 THE COURT: -- and on OR. But I think there needs to be  
24 something both to benefit Little Lou --  
25 THE DEFENDANT HIDALGO III: Yeah, I got screwed.

1 THE COURT: -- and to clear the record that he was actually on  
2 bond. Because otherwise it looks like, oh, Mr. H gets out on house arrest, and  
3 this other guy is still sitting in jail and it's not an issue of money, which is really  
4 what the issue is.

5 Ms. Espindola, come on up here, please, to the witness stand.

6 MR. DIGIACOMO: We should have Oram here when this happens.

7 THE COURT: Yeah.

8 MR. DIGIACOMO: Let me grab him.

9 THE COURT: Go ahead and have a seat.

10 All right. Mr. DiGiacomo, why don't you just state again on the  
11 record the area of conversation you're going to be asking Mr. Oram about.

12 MR. DIGIACOMO: I am planning on asking Mr. Oram questions  
13 related to a defense claim of recent fabrication. Based upon that, it is my  
14 understanding that Mr. Espindola is willing to waive the privilege that she had as  
15 to communications she had with Mr. Oram related to this case.

16 THE COURT: All right.

17 MR. DIGIACOMO: And I think that the Court needs to canvass her  
18 on the record. She needs to be able to say it on the record.

19 THE COURT: Okay. Basically, Mr. Espindola, do you understand  
20 what Mr. DiGiacomo intends to do?

21 MS. ESPINDOLA: Yes.

22 THE COURT: Okay. And you understand that any communications  
23 that you had with your attorney, Mr. Oram, would be, as long as there weren't  
24 third persons there, would be subject to the attorney/client privilege?

25 MS. ESPINDOLA: Yes.

1 THE COURT: And as a result of that, if -- unless the privilege is  
2 waived, Mr. Oram would be prevented from testifying or even telling other people  
3 about things that you may have told him within the scope of your attorney/client  
4 privilege. Do you understand that?

5 MS. ESPINDOLA: Yes.

6 THE COURT: Okay. And now you've heard Mr. DiGiacomo indicate  
7 the areas he wants to inquire about in order to refute what he perceives to be the  
8 defense's sort of claim that you have recent -- and based on some of their  
9 questions, that you have recently fabricated or told a version of events for the  
10 first time. Do you understand that?

11 MS. ESPINDOLA: Yes.

12 THE COURT: Okay. Now, do you wish to waive and give up your  
13 privilege, your attorney/client privilege so that Mr. Oram can be questioned about  
14 just those communications?

15 MS. ESPINDOLA: Yes.

16 THE COURT: And do you wish to waive that privilege so that Mr.  
17 Oram will be allowed to answer Mr. DiGiacomo's questions about those  
18 communications, as well as any questions relating to those that the defense may  
19 have?

20 MS. ESPINDOLA: Yes.

21 THE COURT: Okay. Other communications not relating to that I  
22 think would still be covered.

23 MR. GENTILE: Your Honor, here's the problem. The -- the State  
24 has not identified the specific area.

25 THE COURT: The questions, right.

1 MR. GENTILE: And I don't think you can canvass her adequately  
2 until the State discloses what it is --

3 THE COURT: What -- what are --

4 MR. DIGIACOMO: I don't --

5 THE COURT: -- the questions --

6 MR. DIGIACOMO: Well --

7 THE COURT: -- you're going to ask?

8 MR. DIGIACOMO: Wait a second, Judge. I don't think Mr. Gentile  
9 has the real interest in the legal rights of Anabel Espindola. Maybe we should  
10 ask Mr. Oram if he feels that the canvass is appropriate.

11 MR. ORAM: The privilege is hers. It's no one else's. She's waived  
12 it. And it seems like --

13 THE COURT: All right. But, Mr. Oram, do you feel comfortable with  
14 your client's knowing and intelligent waiver of the privilege?

15 MR. ORAM: Yeah. I did explain it to her.

16 THE COURT: Okay.

17 MR. ORAM: And she understands.

18 THE COURT: And you have had an opportunity to privately discuss  
19 the privilege with her and explain what she's waiving and giving up; is that right?

20 MR. ORAM: Yes, and we've had time in the back of the court, Your  
21 Honor, for some time and I've talked to her about it.

22 THE COURT: Okay. And so, just to reiterate, you are comfortable  
23 with your client's knowing waiver of the privilege at this time?

24 MR. ORAM: Yes, Your Honor.

25 THE COURT: Anything else the State wants me to cover?

1 MR. DIGIACOMO: No, Judge.

2 MR. ORAM: I have one question.

3 THE COURT: Yes.

4 MR. ORAM: With regard to any -- they're just going to question me  
5 regarding communication in the jail, or are they going to question me regarding  
6 communication, joint defense communication?

7 THE COURT: I think it's just communication --

8 MR. DIGIACOMO: I can only question him, on my understanding of  
9 the law --

10 THE COURT: Communication at the --

11 MR. DIGIACOMO: -- is that when it's a joint defense  
12 communication, I can only question Mr. Oram about communications with his  
13 client --

14 THE COURT: Right.

15 MR. DIGIACOMO: -- during the course of his representation. I  
16 cannot question him about communications he had with --

17 THE COURT: The whole group.

18 MR. DIGIACOMO: -- Mr. H --

19 THE COURT: Right.

20 MR. DIGIACOMO: -- or Little Lou. But it's also my understanding  
21 that -- that -- I don't know when that agreement went into effect or not. I've never  
22 seen a copy of the agreement and don't know what the agreement says.

23 MR. ORAM: Well, Judge, my concern is that she talked to an  
24 attorney and it -- he was part of Mr. Gentile's, or beginning to be a part of Mr.  
25 Gentile's law firm. If he was able to say what Anabel Espindola supposedly said,



1 it seems like they, to me, just from a reading of it, that they breached the  
2 agreement. See, I thought that would've been privileged based on the  
3 agreement that I -- the way I had read the joint defense agreement.

4 THE COURT: But I guess just with respect to communications just  
5 between the two of you --

6 MR. ORAM: Yes, okay.

7 THE COURT: -- you have no problem answering those questions.

8 MR. ORAM: No, I do not.

9 THE COURT: And my understanding is that's all Mr. DiGiacomo is  
10 going to ask you about, communications just involving the two of you privately.

11 Is that right, Mr. DiGiacomo?

12 MR. DIGIACOMO: As it relates to her privilege, yes, Judge.

13 THE COURT: Okay.

14 And, Ms. Espindola, that -- you understand that's what you're  
15 sort of giving up, your --

16 MS. ESPINDOLA: Yes.

17 THE COURT: -- your privilege with respect to that?

18 MS. ESPINDOLA: Yes.

19 THE COURT: Anything else I need to cover?

20 MR. DIGIACOMO: If I can ask Mr. Oram to make sure that -- are  
21 you comfortable with everything that --

22 MR. ORAM: Am I comfortable with what's been said? Yes.

23 MR. DIGIACOMO: Yeah.

24 MR. ORAM: Yeah.

25 MR. DIGIACOMO: Okay.

1 THE COURT: Any other -- you know, I'm just doing this --

2 MR. DIGIACOMO: As long as he's fine.

3 THE COURT: -- off the top of my head.

4 MR. DIGIACOMO: I mean, I'm -- I'm more concerned about the  
5 legal rights of Ms. Espindola than anything else, so --

6 THE COURT: All right.

7 Anything else the defense, other than what Mr. Gentile has  
8 just said, I need to cover?

9 MR. ADAMS: I'm interested in finding out the scope of this so we  
10 can know how broad of the records we should be asking the Court to have  
11 produced to us now so that we can cross-examine Mr. Oram. So I think this is --  
12 this is a bit of a --

13 THE COURT: You mean --

14 MR. ADAMS: -- sticky area.

15 THE COURT: -- Mr. Oram's notes?

16 MR. GENTILE: Well, Mr. Oram is going to refresh his memory with  
17 his notes, and we're entitled to those notes once --

18 THE COURT: And I think --

19 MR. GENTILE: -- he refreshes them.

20 THE COURT: -- Mr. Oram has indicated earlier that he has no  
21 problem providing all of his notes to the defense.

22 And, Ms. Espindola, you understand that Mr. Oram has  
23 agreed to provide his notes to the defense?

24 MS. ESPINDOLA: Yes.

25 THE COURT: All right. Have you looked at those notes and seen

1 what's in them?

2 MS. ESPINDOLA: Mr. Oram, when he came to visit me did not take  
3 notes. He, in the room, showed me what exhibit was. But --

4 THE COURT: And, Mr. Oram, for the record, are you now showing  
5 those notes to Ms. Espindola?

6 MR. ORAM: I am. And I'll show that to the defense. The reason I  
7 did that is because I see my handwriting on there, and it apparently is  
8 handwriting from someone else.

9 MS. ESPINDOLA: It's my handwriting. I went ahead and gave this  
10 to Mr. Oram. He asked me for --

11 MR. ORAM: Mitigation or character witnesses.

12 MS. ESPINDOLA: -- character references.

13 MR. ORAM: I've circled them.

14 THE COURT: Okay.

15 MS. ESPINDOLA: So --

16 MR. ORAM: I've circled them and I've written years, how -- how  
17 long she knew these people.

18 THE COURT: Okay. And do you have any problem with giving  
19 those notes --

20 MS. ESPINDOLA: No.

21 THE COURT: -- to the defense?

22 MS. ESPINDOLA: No.

23 THE COURT: And, Mr. Oram, based on your review of the file as  
24 well as your independent recollection, are those the only notes that you have?

25 MR. ORAM: The -- the only --

1 THE COURT: Germane to this.

2 MR. ORAM: To me discussing with her?

3 THE COURT: Right.

4 MR. ORAM: There are some minor things, very, very minor. There  
5 was one where Mr. Gentile had asked me to ask her about a particular individual.  
6 I think it was a pretty innocuous situation. I remember writing it on the back of  
7 my calendar, and it's just the name of a witness or somebody potentially that Mr.  
8 Gentile wanted to know about. But other than that, I don't recall anything.

9 THE COURT: Okay. Can -- do you care if we have a photocopy  
10 made so they can look at it?

11 MR. ORAM: No.

12 THE COURT: All right. Jeff, go in the -- well, in a minute. Well, I  
13 guess you have to do it now.

14 MR. DIGIACOMO: Well, we have to take Ms. Espindola out.

15 THE COURT: Martin, make yourself useful. Go in the back and  
16 make two photocopies, or three photocopies. We'll give you one.

17 MR. DIGIACOMO: Thanks.

18 (Off-record colloquy)

19 THE COURT: All right. I think we're done with Ms. Espindola. I  
20 don't know that there's anything else.

21 You can go ahead and take Ms. Espindola.

22 MR. DIGIACOMO: And then you can just get up there, Chris.

23 THE COURT: And you can just get -- get up there.

24 MR. GENTILE: I don't remember raising it, but let's take a shot.

25 THE COURT: What? Okay. Go ahead. Take a shot.

1 MR. GENTILE: Oh, no.

2 THE COURT: Oh.

3 MR. GENTILE: I don't really recall recent fabrication. My -- my --  
4 my examination went to --

5 THE COURT: Somebody -- because I remember it. Somebody  
6 said, well, you waited all this time and the first time you ever said this was --

7 MR. GENTILE: For the State.

8 THE COURT: -- was basically --

9 MR. DIGIACOMO: You were afraid of the death penalty so you  
10 made --

11 THE COURT: You were afraid --

12 MR. DIGIACOMO: -- this story up --

13 THE COURT: Right.

14 MR. DIGIACOMO: -- because they filed --

15 THE COURT: I got --

16 MR. DIGIACOMO: -- the death penalty --

17 THE COURT: I got --

18 MR. DIGIACOMO: -- on you.

19 THE COURT: -- a sense of recent fabrication. I mean, I think a  
20 reasonable jury, juror, certainly could've believed that that's where you were  
21 going with that.

22 All right. Let's bring them back.

23 MR. ADAMS: Judge, are we not going to deal with the scope of this  
24 outside the presence of the jury?

25 THE COURT: Scope of what?

1 MR. ADAMS: Well --

2 THE COURT: I mean, you can --

3 MR. ADAMS: -- of an attorney testifying about his communications  
4 with a client.

5 THE COURT: What else do you want me -- what else do you want  
6 to deal with?

7 MR. ADAMS: I'd like to find out what it is because I think --

8 MR. DIGIACOMO: He's not entitled to that.

9 MR. ADAMS: Well --

10 THE COURT: I mean, if --

11 MR. ADAMS: -- rebuttal is very limited.

12 THE COURT: Well, okay. If you think --

13 MR. ADAMS: I mean, I --

14 THE COURT: -- it exceeds --

15 MR. ADAMS: -- want to make sure it's --

16 THE COURT: -- the scope --

17 MR. ADAMS: -- proper rebuttal.

18 THE COURT: -- of direct, then just object, exceeds the scope of  
19 direct. And I'll try to -- I mean of -- right, of your case in chief, and I'll try to make  
20 a ruling based on what I remember.

21 MR. GENTILE: Excuse me. Before we go any further, I just want to  
22 make sure I got [inaudible]. There's a date, there's a date on here and the date  
23 is 2008, but I can't see the month or the day.

24 MR. ORAM: Do you want the day that --

25 MR. GENTILE: No, here, this part Chris.

1 MR. ORAM: Okay. Yeah, I can tell you that right now.  
2 MR. GENTILE: Well, I'd like to get the copy --  
3 MR. ORAM: Sure.  
4 MR. GENTILE: -- is what I'm saying.  
5 MR. ORAM: Okay. It just didn't come out?  
6 MR. GENTILE: This copy is not good enough, Judge.  
7 MR. ORAM: Okay. Here you go.  
8 MR. GENTILE: There needs to be a date on it.  
9 THE COURT: Who made the copy?  
10 MR. GENTILE: I am not calling anybody.  
11 MR. ORAM: It's January 23<sup>rd</sup>.  
12 MR. GENTILE: Okay. But I do need the copy.  
13 MR. ORAM: Yeah. Sure thing.  
14 MR. GENTILE: We might want to do that again.  
15 THE COURT: You want to make it a Court's exhibit?  
16 MR. GENTILE: No, I might want to do what the State did. The State  
17 used Jerry DePalma's notes as their exhibit, so I might want to do it.  
18 THE COURT: Okay.  
19 MR. DIGIACOMO: Okay.  
20 MR. ADAMS: Your Honor, Judge, we'd also like to point out that it's  
21 not rebuttal against Luis Hidalgo III if we did not call Obi Perez or question Obi  
22 Perez about the content of her statement. We'd request a limiting instruction.  
23 MR. ARRASCADA: To the jury.  
24 MR. DIGIACOMO: It's still going to be admissible.  
25 MR. ADAMS: Not as to us. Not as to us.

1 MR. DIGIACOMO: It's testimony now admissible as --

2 THE COURT: No, because they didn't call, they didn't present a  
3 case, and so you wouldn't be able to do this. If you had just rested, they haven't  
4 presented anything --

5 MR. DIGIACOMO: So you're --

6 THE COURT: -- so we would just go to argument because they  
7 haven't --

8 MR. DIGIACOMO: So you're going to instruct that Obi Perez's  
9 testimony is not admissible against Luis Hidalgo III?

10 MR. ARRASCADA: No.

11 MR. DIGIACOMO: I wouldn't be -- if -- I mean --

12 THE COURT: Oh, I see what you're saying.

13 MR. DIGIACOMO: So that's the rule because they told her now it's  
14 not admissible against the Third, and since it's not admissible against the Third, I  
15 don't have a rebuttal.

16 THE COURT: Well, they didn't -- I mean --

17 MR. DIGIACOMO: Right. But, I mean, in a joint trial the rule is --

18 THE COURT: Right.

19 MR. DIGIACOMO: -- that suddenly it's not admissible.

20 THE COURT: No, no, no. I mean, I'm just saying, you know, in a  
21 joint trial they may have made decisions not to call people and just then you've  
22 rested and that's all there is, whereas Mr. Gentile made decisions to call people,  
23 and so does that really then --

24 MR. DIGIACOMO: Right. But, I mean --

25 THE COURT: But if it's --



1 MR. DIGIACOMO: -- this would impeach --

2 THE COURT: -- rebutting --

3 MR. DIGIACOMO: -- Obi Perez.

4 THE COURT: If it's just rebutting her and it's not evidence involved  
5 with you anyway, what do you care?

6 MR. ADAMS: We would not care. The problem is --

7 THE COURT: You know what I'm saying? You can't have your  
8 cake and eat it too. You can't benefit from her testimony and then allow it to go  
9 unrefuted.

10 MR. ARRASCADA: Judge, I guess it's they're having their cake and  
11 eating it because they're the ones that pushed for the joint trial.

12 MR. DIGIACOMO: Are they literally telling the Court that they  
13 wouldn't have called Obi Perez in a second trial, a separate trial to impeach --

14 THE COURT: Where did my bailiff go?

15 MR. DIGIACOMO: -- Anabel Espindola.

16 MR. ADAMS: We weren't forced to make that decision.

17 MR. ARRASCADA: Yeah.

18 THE COURT: Where is he?

19 MS. ARMENI: Didn't he go back to try and make a --

20 MR. ARRASCADA: Judge, do you still need this transcript for  
21 tomorrow?

22 THE COURT: Yes.

23 While we're looking -- while we're look --

24 MR. ARRASCADA: I'm handing her the certified transcript --

25 MR. DIGIACOMO: Oh, okay.

1 MR. ARRASCADA: -- of Jason Taoipu.

2 THE COURT: It's part of the record anyway. I mean, I just don't feel  
3 like digging it out.

4 MR. ARRASCADA: It's certified. It has the magic stamp on it.

5 THE COURT: It's just the first 35 pages?

6 MR. ARRASCADA: Oh, no, that's the -- that's the direct of Mr.  
7 Pesci.

8 THE COURT: Well, you said that most of it was just fighting back  
9 and forth.

10 MR. ARRASCADA: Well, it was fabrication type stuff. There was no  
11 real -- it's -- it's a quick read after --

12 THE COURT: Okay.

13 MR. ARRASCADA: -- 43 pages, Judge.

14 THE COURT: Okay.

15 All right. Let's bring them in.

16 THE MARSHAL: Jury is coming in.

17 (Jury enters at 6:31 p.m.)

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

19 The defense having rested, does the State wish to call any  
20 rebuttal witnesses?

21 MR. DIGIACOMO: Yes, Judge. The State calls Christopher Oram.

22 THE COURT: Mr. Oram.

23 MR. ORAM: Hello, Judge.

24 THE COURT: Ms. Husted is going to administer the oath to you.

25 /////

CHRISTOPHER ORAM

Having been called as a witness and being first duly sworn testified as follows:

**THE CLERK:** Thank you. And please state and spell your name.

THE WITNESS: My name is Christopher Oram. My last name is spelled O-R-A-M, M as in Mary.

## DIRECT EXAMINATION

BY MR. DIGIACOMO:

**Q Sir, how are you employed?**

A I'm an attorney.

**Q** How long have you been an attorney?

**A** Since 1991, about 17 years.

**Q** And what is your main area of practice?

**A Exclusively criminal law.**

**Q Exclusively criminal law?**

**A Yes.**

Q Is there a particular type of criminal law that you have recently been -- well, not recently, that you specialize in?

A Right. I don't specialize. I handle a tremendous amount of murder cases.

**Q** Okay. You've had a lot of them.

A I've had many, many.

Q Okay. And I'm sorry, how long have you been an attorney? You said 17 years? Since '91 you said?

A Yes, 1991.

MR. GENTILE: May we approach?

1 THE COURT: Of course.

2 (Conference at the bench)

3 BY MR. DIGIACOMO:

4 Q Did there come a point in time when you represented, or I guess still  
5 do, an individual by the name of Anabel Espindola?

6 A Yes. Shortly after her arrest I was retained on this case, and I have  
7 represented her until today.

8 Q And how is it that you came to know Anabel Espindola? How did  
9 that work?

10 A I was contacted by Dominic Gentile who asked me if I would be  
11 willing to take the case. I had --

12 MR. ADAMS: Objection. Relevance, Your Honor.

13 THE COURT: That's sustained.

14 BY MR. DIGIACOMO:

15 Q Well, after whatever conversation you had, did you eventually meet  
16 Ms. Espindola?

17 A I did.

18 Q And where did you meet her at?

19 A The Clark County Detention Center.

20 Q And do you recall of the top of your head the day you met her?

21 A No, I -- I don't. I've had a chance to review my visitation records,  
22 and I believe somewhere approximately May 24<sup>th</sup>, I believe.

23 Q Okay. And how many times do you -- did you count off how many  
24 times you visited her between then and the end of the records that were provided  
25 to you?

1           A    I did. I don't know if I did it accurately. I would say -- I counted  
2 approximately 85. It could be between 80 and 90 times I saw her.

3           Q    Specifically did you go back and look to see how many times you  
4 met her in the first couple of days she was in the Clark County Detention Center?

5           A    I believe I meet her the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, I believe.

6           Q    And during that time period do you have any conversations with Ms.  
7 Espindola?

8           A    Yes, and the conversations are lengthy.

9           Q    And do those conversations ever entail her describing to you the  
10 circumstances of why she wound up in jail?

11          A    Yes, of course. I mean, that's going to be the first thing I do, pretty  
12 close to the first thing I do when I go in and I speak to somebody.

13          Q    Okay. So you want to know what it is that's going on; correct?

14          A    Yes, and we talk about the case, you know, different techniques on  
15 talking about a case, but, yes, you address the case pretty much right away.

16          Q    And during this initial time period did you get a story as to -- or her  
17 version of events as to what happened to cause her to wind up in jail?

18          A    Yes.

19          Q    And I don't want to go too specific in this, but you're her lawyer. You  
20 were here in court when she testified; correct?

21          A    Yes, I was.

22          Q    Okay. And let me ask the question this way. Was the story she told  
23 in court on direct examination consistent with the story she told you in the first  
24 couple days you met with her?

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

1 THE COURT: Okay.

2 (Conference at the bench)

3 BY MR. DIGIACOMO:

4 Q During the course of your early representation of Ms. Espindola, did  
5 she describe for you a phone call between Mr. Carroll and herself?

6 A Yes.

7 Q On May 19<sup>th</sup>?

8 A I -- I don't recall the date of the phone call right off -- right off hand,  
9 but I remember. Is this the one where -- plan B?

10 Q No, I want to talk about Deangelo Carroll's phone call.

11 A Okay.

12 Q All right? Do you remember Ms. Espindola testifying to Deangelo  
13 Carroll calling her while she's at Simone's Auto Plaza --

14 A Correct.

15 Q -- early in the day that TJ's is --

16 A Correct.

17 MR. GENTILE: I object.

18 MR. ADAMS: Your Honor, I object.

19 MR. GENTILE: This is not rebuttal. We're -- we're saying that that  
20 call did happen.

21 THE COURT: Right. That's sustained.

22 MR. DIGIACOMO: Well, I'm -- I got to -- that's my foundational  
23 question for the next question.

24 THE COURT: Well, just ask the next question. I mean --

25 MR. DIGIACOMO: Okay. Well, I'll ask the next question.

1 BY MR. DIGIACOMO:

2 Q Did she tell you during the course of this that she relayed the  
3 information she got from Deangelo Carroll to Mr. H and Little Lou at Simone's?

4 A Yes.

5 Q Okay. During the course of your representation of her early on, did  
6 she tell you that her relaying that information to Mr. H and Little Lou caused an  
7 argument between the two of them?

8 A She said that there was an argument, sort of what she described  
9 here where they're talking about Rick Rizzolo. Is that the one you're talking  
10 about? Yes, that -- that occurred.

11 Q Okay. Did she -- and I don't want to go through every single thing  
12 that she testified to, so I'm going to cut to some of the, kind of the points. Later in  
13 the evening on the 19<sup>th</sup>, did she describe for you a conversation with Mr. H  
14 involving plan B?

15 MR. GENTILE: Your Honor, I have to have an objection with respect  
16 to time predicate. I mean, this whole thing is about a time predicate. If he has  
17 notes that he's reflected on from a specific day, we're entitled to those notes. But  
18 he has to establish a time predicate.

19 THE COURT: Meaning when the conversation between Ms.  
20 Espindola and Mr. Oram occurred?

21 MR. GENTILE: That's correct.

22 THE COURT: All right.

23 MR. GENTILE: If it's un-refreshed recollection, then, you know, it's  
24 almost four years old. So if there's -- if there's notes, we should have them.

25 THE COURT: All right.

1 BY MR. DIGIACOMO:

2 Q Let me back you up. Prior to -- well, let me ask you this first of all.  
3 Are there notes to this?

4 A The notes that I was -- that I had in this case from any discussion I  
5 had with Ms. Espindola I have provided to the Court and to the defense.

6 Q Okay. So they have everything, all the notes that you took in this  
7 case?

8 A Yes.

9 THE COURT: And -- and those don't reflect the early meetings that  
10 you're testifying about now?

11 THE WITNESS: There -- there would be no notes from any single  
12 meetings.

13 THE COURT: Okay.

14 MR. DIGIACOMO:

15 Q Why not?

16 THE COURT: Now, let me ask you this. Mr. DiGiacomo referenced  
17 a time period of early May when you first met with Ms. Espindola --

18 THE WITNESS: Yes.

19 THE COURT: -- at the jail.

20 THE WITNESS: Yes.

21 MR. DIGIACOMO: Late May.

22 THE COURT: I'm sorry, late May of 2005. I want you at this point in  
23 time, if he asks you about a statement, to reference just that timeframe of late  
24 May 2005. Any conversations that may have occurred later than that, if she  
25 didn't tell you in early May, then just indicate that wasn't something in early May.



1 THE WITNESS: Or late May?

2 THE COURT: Or, sorry, late May.

3 THE WITNESS: Okay.

4 THE COURT: It's been a long day.

5 THE WITNESS: No, I understand.

6 THE COURT: It's been a long three weeks, frankly.

7 THE WITNESS: I can see that.

8 BY MR. DIGIACOMO:

9 Q And I think I was at the -- plan B conversation. You know what  
10 conversation I'm talking about?

11 A I do.

12 Q Okay. And does Ms. Espindola describe for you in late May of 2005  
13 a conversation between herself and Mr. H where the subject of plan B came up?

14 A Yes.

15 Q And did she tell you what it is that Mr. H told her to do related to plan  
16 B?

17 A To go and make a phone call and say to go to plan B, and then to  
18 return to where he was.

19 THE COURT: When did she tell you this?

20 MR. ORAM: She told me that in the very first meetings.

21 THE COURT: The late May meetings?

22 MR. ORAM: Yes, the late May meetings --

23 THE COURT: Okay.

24 MR. ORAM: -- and she would have told me numerous times after  
25 that point.

1 THE COURT: Okay.

2 BY MR. DIGIACOMO:

3 Q And I was going to get to that. Right now I'm going to focus on you  
4 she tells you a story, basically, or she gives you a version of events in late May  
5 and we'll talk about the progression thereafter. Does she describe for you a  
6 situation where Deangelo Carroll comes back to the office with Mr. H present  
7 saying it's done. Did she describe that for you?

8 A Yes.

9 Q And did she describe for you the discussion that she just testified to  
10 related to the money that was paid?

11 A Putting \$5,000 down?

12 Q Yes.

13 A Yes.

14 Q Did she at any point during this five day or the late May period ever  
15 tell you that Mr. H paid the money because he was scared of Deangelo or any  
16 other person?

17 A No.

18 Q Okay. Did she thereafter describe for you kind of the events of  
19 Friday, Saturday, Sunday, leading into the Monday wire?

20 A Yes, she described that in detail.

21 Q Okay. Specifically in this first five day period, did you learn that she  
22 wound up at Jerome DePalma's law office?

23 A I learned that she had been at Dominic Gentile's office on two  
24 occasions.

25 Q Okay.

1 A Okay.

2 Q So you knew that she had been to Dominic's office on two  
3 occasions. Did you know that she had met with Jerome DePalma on one of  
4 those occasion?

5 A I knew that she had met just briefly and there was no discussion, but  
6 that there had been something that had occurred with Dominic which had -- there  
7 was quite a bit of discussion about.

8 Q Okay.

9 A But almost nothing with Mr. DePalma.

10 Q So in her discussions with you, this is in late May, she's telling you  
11 she didn't talk substantively to Jerome DePalma?

12 A She doesn't say it that way. She talks about how she met with an  
13 attorney, and that she went into the attorney's office and she talked all about this  
14 statute, this funny statute. Well, I knew what she was talking about because I  
15 had seen this statute. Okay? And she said that there was the discussion, which  
16 she has described, with Mr. Gentile where she plays with the TV or breaks the  
17 TV, and I'd heard that story numerous times.

18 Q Okay. What about the day before? Had you ever heard the story  
19 about Jerome DePalma's office?

20 A Yes, I had heard what she had said. But when I sat in the back of  
21 the courtroom and heard was there a lengthy discussion with Jerry DePalma, I  
22 had never heard such a thing.

23 Q You never had heard any of that?

24 A Never.

25 Q At some point -- I'm showing you, and this is a copy.

1 MR. DIGIACOMO: If I can have State's proposed exhibit -- or  
2 State's Exhibit 241.

3 Q Did you receive a copy of that, I guess it was today?

4 A Yes.

5 Q Had you ever seen that before?

6 A No.

7 Q Okay. Have you had a chance to read through it?

8 A I have.

9 Q Have you ever -- well, I guess we can go by line by line, but is that  
10 information consistent whatsoever with the information that Anabel Espindola  
11 provided you in the first couple -- the first -- the last days of May?

12 A This is --

13 Q Or is that too broad of a question?

14 A Yeah, I couldn't -- I looked over the six pages. There were certain  
15 things I was looking for, but there was some stuff that I saw in there that -- in  
16 other words where she counted out money. There's something in there about  
17 how she counted out money. And I had never heard that that she counted out  
18 money, just simply got it. And she was always very accurate, I placed it on the  
19 table.

20 Q I'm going to show you a couple of things, Counsel. It appears to be  
21 a -- see the star there in front of you? It says Luis said to Deangelo Carroll to tell  
22 TJ to stop spreading shit.

23 A Okay.

24 Q Did Ms. Espindola ever explain that to you?

25 MR. GENTILE: Your Honor --

1 MR. ARRASCADA: We object.  
2 MR. ADAMS: Objection.  
3 MR. GENTILE: How is this rebuttal?  
4 THE COURT: Yeah, that's sustained.  
5 MR. DIGIACOMO: Well, what do you mean how is it not rebuttal?  
6 This is their witness, Jerome DePalma. I am entitled to ask --  
7 THE COURT: Well, and Mr. Oram was not Jerome DePalma's  
8 attorney, nor did he have any conversations with Jerome DePalma, nor --  
9 MR. GENTILE: This happened five days before he got involved in  
10 the case. This was the first statement she ever made.  
11 MR. DIGIACOMO: My question is what she never told her lawyer.  
12 THE COURT: Well, how does he know?  
13 MR. ARRASCADA: Well, how --  
14 MR. ADAMS: That should be --  
15 MR. ARRASCADA: -- would he know?  
16 MR. ADAMS: That's a question for her, Your Honor.  
17 THE COURT: I mean, he can't speculate as to why she didn't tell  
18 him unless she said I'm not telling you what I told Jerome DePalma, but  
19 according to him, she didn't tell Jerome DePalma anything. So --  
20 MR. GENTILE: No.  
21 MR. DIGIACOMO: That's --  
22 MR. GENTILE: No, no, no. He didn't say that.  
23 THE COURT: Oh, okay, you're right.  
24 MR. GENTILE: He said that she didn't tell him that she told Jerome  
25 DePalma. She said she didn't tell Jerome DePalma anything.

1 THE COURT: Thank you, Mr. Gentile. You're correct.  
2 MR. GENTILE: Thank you. I just want the record to be clear.  
3 THE COURT: You're correct. I misspoke.  
4 MR. GENTILE: Thank you.  
5 THE COURT: The Court misspoke. Not the first time, not the last  
6 time.  
7 BY MR. DIGIACOMO:  
8 Q I'm going to ask it a different way. Would having this information  
9 have been helpful to you in your defense early on in this case?  
10 A I did a bail hearing in Boulder City where I had to argue --  
11 THE COURT: I think that was just a --  
12 MR. ARRASCADA: Objection.  
13 MR. ADAMS: Objection to --  
14 THE COURT: -- yes or a no question.  
15 MR. ADAMS: -- improper.  
16 THE WITNESS: Yes.  
17 MR. GENTILE: Yeah, I mean --  
18 THE WITNESS: Yes, it would have been helpful.  
19 MR. ADAMS: What is it rebutting, Your Honor? I don't -- I'm  
20 confused.  
21 THE COURT: That's sustained.  
22 MR. DIGIACOMO: So I can't rebut --  
23 THE COURT: Well, I mean, what --  
24 MR. DIGIACOMO: The fact that --  
25 THE COURT: -- would've been help --

1 MR. DIGIACOMO: -- they're claiming she --

2 THE COURT: No, no, no. What would've been helpful to Mr. Oram  
3 and what he could've utilized in Boulder City or in this Court or in Judge Mosley's  
4 department or anywhere else isn't really relevant to what Ms. Espindola told him  
5 or didn't tell him. The only thing you're allowed to rebut is what Ms. Espindola  
6 told him. What he would've liked to know, what he would've done with it, how  
7 could it could've benefited his case, you know, that's -- if we were -- Mr. Oram,  
8 you know --

9 MR. DIGIACOMO: Let me rephrase the question.

10 THE COURT: Okay.

11 BY MR. DIGIACOMO:

12 Q During the time period that you were representing Ms. Espindola,  
13 this is before the preliminary hearing or leading up to the preliminary hearing, you  
14 had discussions with her; correct?

15 A Yes.

16 Q And some of those discussions -- well, do any of those discussions  
17 relate to give me evidence that helpful to you?

18 A Do I ask her that?

19 Q Yes.

20 A Yes, if there's helpful evidence, obviously that the most important  
21 thing that, as a defense attorney, we need.

22 MR. ADAMS: And objection --

23 MR. ARRASCADA: And, again --

24 MR. ADAMS: -- as to relevance, Your Honor.

25 MR. ARRASCADA: Judge, again, this is improper rebuttal.

1 MR. DIGIACOMO: This is not improper rebuttal.

2 THE COURT: Well, okay, Mr. DiGiacomo, once again, you know, if  
3 she made statements to him prior to the preliminary hearing that have been  
4 called into question by the defense, you may ask Mr. Oram about those  
5 statements.

6 MR. DIGIACOMO: Well, how about the lack of her making those  
7 statements when she has a really good motive to?

8 MR. ARRASCADA: Judge, he's not --

9 THE COURT: That's not what I was allowing, so that is sustained as  
10 to that.

11 MR. DIGIACOMO: May we approach?

12 THE COURT: You may, but --

13 (Conference at the bench)

14 THE COURT: Mr. Oram, I have a couple of juror questions here.  
15 You testified that up until today you were Anabel Espindola's attorney.

16 We're -- we're in session guys. Oh, I'm sorry. My fault. My  
17 bad. Mr. DiGiacomo --

18 (Conference at the bench)

19 THE COURT: All right. Mr. Oram, a juror wants to know when  
20 you -- initially when Mr. DiGiacomo was questioning you stated that you are  
21 Anabel's attorney up until today. Do you anticipate being Ms. Espindola's  
22 attorney through her sentencing?

23 THE WITNESS: Oh, yes. And I'm sorry, when I said that I meant  
24 that I have represented her continuously from late May when this occurred until  
25 this very day, and I will continue on representing her until the case is finished.



1 THE COURT: All right. Thank you. That was it.

2 Go ahead.

3 MR. DIGIACOMO: Now, am I allowed to continue?

4 THE COURT: Subject to what I already -- what I already told you.

5 MR. DIGIACOMO: Thank you.

6 BY MR. DIGIACOMO:

7 Q Would exculpatory information be helpful to you in preparation to  
8 that bail hearing?

9 MR. GENTILE: I have the same objection.

10 THE COURT: All right. I'll let him just answer that one question and  
11 then that's it.

12 MR. ADAMS: For the record, Judge, joined --

13 THE COURT: All right.

14 MR. ADAMS: -- objection joined by the Third.

15 BY MR. DIGIACOMO:

16 A Could you repeat it?

17 Q Would exculpatory information be helpful to you for the bail hearing  
18 in Boulder City?

19 A Yes.

20 Q And did Ms. Espindola provide you any of the exculpatory  
21 information that is contained in State's proposed Exhibit --

22 MR. GENTILE: Objection.

23 MR. ADAMS: Objection.

24 THE COURT: Sustained.

25 MR. DIGIACOMO: [inaudible].

1 THE COURT: Mr. DiGiacomo, move on.

2 MR. DIGIACOMO: Okay.

3 BY MR. DIGIACOMO:

4 Q Did she provide you -- all right. Without referencing 241, did she -- I  
5 guess -- I guess --

6 MR. GENTILE: I fail to see the humor here. This is supposed to be  
7 rebuttal.

8 MR. DIGIACOMO: And I'm -- we're rebutting Jerome DePalma.

9 THE COURT: Right. But Mr. Oram was permitted to be called to  
10 rebut --

11 MR. GENTILE: How could he rebut Jerome DePalma --

12 THE COURT: -- Anabel --

13 MR. GENTILE: -- when he wasn't there?

14 THE COURT: -- Anabel Espindola's -- the charge by the defense of  
15 Anabel Espindola's recent fabrications. And so as to those statements, he  
16 certainly can -- can testify.

17 And we have more juror questions, Jeff.

18 MR. GENTILE: And, Your Honor, for the record, he's rebutting Mr.  
19 DePalma and Mr. Dibble who corroborated Mr. DePalma at this trial.

20 MR. DIGIACOMO: And he -- he can give that closing argument  
21 later, but I appreciate that.

22 THE COURT: All right. A juror wants to know what is it -- well, you  
23 know what, I'll -- we'll explain that later.

24 Go on, Mr. DiGiacomo.

25 /////

1 BY MR. DIGIACOMO:

2 Q Why would exculpatory information be helpful to you?

3 A Because exculpatory information is something I could try to present  
4 to a judge to say, listen, this is the bail that you've got it set at, please lower the  
5 bail, we have this information, in the end we'll prevail on this case, and judge's  
6 will listen to something like that.

7 Q And during the time of your representation of Ms. Espindola, did you  
8 ever receive a copy of 241, other than what I gave you?

9 A No.

10 Q Let's talk about a few other things that Ms. Espindola told you in that  
11 early May period -- I'm sorry, late May period. During the course of her  
12 conversations with you did she describe for you what Mr. H said to her to that  
13 caused her to go into the room on -- on -- or caused her to call Deangelo Carroll  
14 to Simone's Auto Plaza on -- on May 23<sup>rd</sup>, that Monday?

15 A I -- I -- yes, she did. She described -- she described what she  
16 testified in here over and over again.

17 Q Early on in the case?

18 A Early on.

19 Q Now, the jury has heard some testimony that sometime in July the  
20 State of Nevada filed what's known as a notice of intent to seek the death  
21 penalty.

22 A Okay.

23 Q Correct?

24 A I don't know if it was July, but I'll take your word for it.

25 MR. GENTILE: Can we have a year?

1 MR. DIGIACOMO: 2006.

2 MR. GENTILE: 2005 maybe?

3 BY MR. DIGIACOMO:

4 Q July of 2005; correct?

5 A I know that you filed your notice of intent to seek the death penalty. I  
6 do not know what month.

7 Q And that's -- that notice cannot be filed prior to the preliminary  
8 hearing; correct?

9 A Right.

10 Q Okay. And --

11 MR. GENTILE: How is this rebuttal?

12 THE COURT: Sustained.

13 MR. ADAMS: How is it --

14 THE COURT: Sustained.

15 MR. ADAMS: -- rebuttal?

16 THE COURT: Sustained. Thank you.

17 MR. DIGIACOMO: Well, isn't that the basis of the fabrication? Don't  
18 I have to establish the timing?

19 THE COURT: Well, please approach.

20 (Conference at the bench)

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

22 THE COURT: Cross.

23 MR. GENTILE: Can I have this marked please.

24 THE CLERK: It's J.

25 MR. GENTILE: Thank you.

1 CROSS-EXAMINATION

2 BY MR. GENTILE:

3 Q Mr. Oram, you have been given a copy of -- is that 281 that you have  
4 there? Is that the number of Mr. DePalma's notes?

5 A No.

6 Q Okay.

7 A I don't have that.

8 Q Let me give you 281.

9 MS. ARMENI: 241.

10 Q 241.

11 THE COURT: Is that 241? You don't have --

12 THE WITNESS: No, I don't.

13 THE COURT: -- a copy of Mr. DePalma's --

14 THE WITNESS: No.

15 THE COURT: -- notes all?

16 THE WITNESS: Oh. You know what, I'm sorry. I do. It's a copy. I  
17 have that.

18 BY MR. GENTILE:

19 Q All right. Well, I'm going to put it up here anyway.

20 A Okay. Do you want me to look at the --

21 Q Okay. Can you see up at the top here where he has the date,  
22 5/231/05?

23 A Yes.

24 Q Okay. His testimony in this case was that this being --

25 MR. DIGIACOMO: Well, objection as to what his testimony was and

1 telling --

2 MR. GENTILE: Okay.

3 MR. DIGIACOMO: -- the witness it.

4 MR. GENTILE: That's okay.

5 THE COURT: Okay.

6 BY MR. GENTILE:

7 Q However long this meeting took, Mr. DePalma made one, two, three,  
8 four, five, six pages of notes. Do you see that?

9 A Yes.

10 Q Okay. And you've been given a copy of this?

11 A I have.

12 Q Okay. Now, if I understand you correctly, and I'm just looking at the  
13 jail records here, you -- you've seen a copy of the jail records.

14 A I have. Today, Mr. Gentile.

15 Q Just today only?

16 A Today. I may have seen them a long time ago, but in terms of --

17 Q All right.

18 A -- a total one today.

19 Q I'm going to -- I'm going to see if you recall these visits. Okay?

20 A Sure.

21 Q According to these records you met with Anabel on the 25<sup>th</sup> of May  
22 at 6:18 -- of 2005, at 6:18 p.m. Now, that's pretty close to 45 months ago by the  
23 way I'm counting.

24 A It's a long time. It's a long time ago.

25 Q And then you met the next day at 8:37 a.m. That would be the 26<sup>th</sup>.

1 A Okay.

2 Q And then the 27<sup>th</sup> at 1:09 p.m.

3 A Yes.

4 Q And then the 28<sup>th</sup> --

5 A Isn't that in the late evening?

6 Q Wait a minute, wait a minute.

7 A It's in the evening. 6:57?

8 Q 6:57 p.m. on the 28<sup>th</sup>.

9 A Right.

10 Q And then on the 31<sup>st</sup> at 6:22.

11 A Okay.

12 Q All right. And you're saying that those were lengthy meetings?

13 A They were. Most of --

14 Q Most of them. Okay.

15 A Yes, I can --

16 Q That's just May. We just finished May. Okay? Now, do you have

17 notes from those meetings?

18 A I -- I never take notes from a meeting at the Clark County Detention

19 Center.

20 Q Okay. Well, now, let me ask you something. In the year 2005, May,

21 was this the only the case that you had?

22 A No, no, no. I have many, many, many cases, many murders.

23 Q Many, many?

24 A Many murder cases.

25 Q Tell me. Just in the year 2005 how many?

1 A Closed, convictions, appeals, everything?

2 Q Well, no, I don't even want to go there. Okay. How many clients did  
3 you have between -- in the last 45 months?

4 A Mr. Gentile, if I -- if I estimate, I just know it's not --

5 Q Hundreds?

6 A In the last 45 months, I would think so.

7 Q You probably couldn't make a living if you didn't have at least a  
8 couple hundred clients; right?

9 A Yes, but I couldn't tell you with any degree --

10 Q Right.

11 A -- of certainty.

12 Q No, I understand. I understand. And I don't want you to -- I'm not  
13 looking for one.

14 A Okay.

15 Q Okay?

16 A This was one of the big ones, though. One of the --

17 Q I understand. And because it was a big one it was important to you;  
18 right?

19 A Very.

20 Q Right. And you certainly didn't want to get one case mixed up with  
21 another --

22 A I don't.

23 Q -- am I right?

24 A I don't let that happen.

25 Q Right?



1 A Not murder cases.

2 Q And if I understand you correctly then, you're giving us testimony  
3 that you don't make notes whenever you're interviewing any client at any time?

4 A No, that's not true.

5 Q That's not true?

6 A That's inaccurate.

7 Q All right.

8 A Okay.

9 Q Then thank you. Is it just this case that you did not make any notes  
10 on?

11 A No. No, that's an -- that's an inaccurate statement. I take notes --

12 Q I didn't ask you anything else.

13 A Okay.

14 Q Okay? But on these dates --

15 A Yes, sir.

16 Q -- you didn't take any notes?

17 A No.

18 Q All right. I'm correct?

19 A You're correct.

20 Q Okay. Now, let's talk about June. You saw her --

21 MR. GENTILE: And will the Court take judicial notice that the notice  
22 of death in this case was filed on July 6, 2005.

23 THE COURT: As against Anabel Espindola?

24 MR. GENTILE: As against Anabel Espindola.

25 MR. DIGIACOMO: I haven't checked, but it's probably close.

1 THE COURT: Okay. You know, I don't have it in front of me in my  
2 file, but the Court certainly can take judicial notice of the date in which the notice  
3 of death was filed.

4 BY MR. GENTILE:

5 Q Okay. Then July -- June 10, 2005, you met with Anabel at 8:32 in  
6 the morning. June 15<sup>th</sup> -- am I correct?

7 A If it says that, I would presume so.

8 Q Okay. June the 15<sup>th</sup> you met with her at 1:48 in the afternoon.

9 A If that's what the records reflect.

10 Q On June the 18<sup>th</sup> you and I both met with her at 2:28 in the  
11 afternoon.

12 A Very possible.

13 Q You know, I -- never mind. On June the 22<sup>nd</sup> you met with her at  
14 2:00 in the afternoon.

15 A Yes.

16 Q On June the 24<sup>th</sup> you met with her at 8:30 in the morning.

17 A Mr. Gentile, I presume the times and stuff. I'm saying that because  
18 that's what it says. I know I saw her many times, so I'm -- I'm saying that's  
19 accurate because that's what the record says.

20 Q You don't --

21 THE COURT: But you don't independently --

22 THE WITNESS: No.

23 THE COURT: -- remember --

24 THE WITNESS: When he's --

25 THE COURT: -- these dates?

1 THE WITNESS: -- saying these things, I couldn't tell you, Mr.

2 Gentile.

3 BY MR. GENTILE:

4 Q No, I understand that.

5 A Okay.

6 Q But you don't have any particular reason to doubt that these were  
7 logged in. Now, when it says you -- you met with her at 8:30 in the morning,  
8 clearly it took you some time to get processed at the jail, to go over to where her  
9 unit was, go upstairs, wait for her, then bring her -- then bring her to you?

10 A Right.

11 Q So, I mean, you might not have actually seen her until maybe as late  
12 as 9:00?

13 A And -- and visiting ends at 10:00.

14 Q Correct.

15 A Right.

16 Q All right. But the point is that that's when you go to the jail.

17 A Correct, sir.

18 Q And that's when you logged in.

19 A Yeah, when they -- when they do the sign in and stuff.

20 Q Right. And then that's the only times you saw her in jail. So you  
21 only saw her one, two, three, four -- four times in jail; right?

22 A Yes.

23 Q Okay. And so you don't have any notes of those either?

24 A I don't have any notes of any.

25 Q All right. And now July. Actually, you didn't see her in July until after

1 the notice of death. So you saw her one, two, three, four, five, six, seven, eight,  
2 nine, ten, eleven times prior to the notice of intention to seek death.

3 A If that's when it was filed, yes.

4 Q Well -- yeah, well --

5 A I have no dispute that that -- that's when it was filed.

6 Q Now -- and you said, I think, that you saw her maybe 85 or 90 times  
7 overall.

8 A Between 80 and 90. I think I counted 85.

9 Q Okay. Between 80 and 90. Let's say it's 80. Let's say it's just 80.

10 A Sure.

11 Q And in all of those 80 times that you saw her --

12 A Yes, sir.

13 Q -- you only have two pages of notes?

14 A I don't even have two pages of notes. They're notes she took and I  
15 circled them.

16 Q I see. And this has been marked proposed Exhibit J.

17 A Yes, sir.

18 Q Is that -- do you recognize that document?

19 A Yes.

20 Q Okay. And what is that document?

21 A It appears that it's Anabel Espindola's writing about in preparation  
22 for trial, perhaps character witnesses or mitigation witnesses. And it appears that  
23 she's written names and addresses, phone numbers. And then what I have done  
24 in several areas is I have circled the name and said known 15 years, four or five  
25 years.

1 Q All right. So essentially those markings on those -- on those two  
2 pages are the only markings that you have made on paper of your  
3 communications with Anabel Espindola?

4 A Correct.

5 Q In a minimum of 80 visits?

6 A Correct.

7 Q In preparation for a case, a murder case --

8 A Yes, sir.

9 Q -- that once carried the death penalty for her?

10 A Yes, sir.

11 MR. GENTILE: I move these into evidence at this time.

12 MR. DIGIACOMO: No objection.

13 THE COURT: All right.

14 (Defense Exhibit J is admitted)

15 BY MR. GENTILE:

16 Q Now, you've had hundreds of cases in that period?

17 A Yes, sir.

18 Q And are you telling us that you have independent recollection of  
19 everything that was said to you by your hundreds of clients in the last 45 months  
20 so that you don't need to refresh your recollection?

21 A No, I don't have independent recollection of everything my clients  
22 have said to me. My -- no, not a chance.

23 MR. GENTILE: Nothing further.

24 THE COURT: Anything, Mr. Adams?

25 /////

1 CROSS-EXAMINATION

2 BY MR. ADAMS:

3 Q Let me show you what's been marked as Defendant's J for  
4 identification purposes.

5 A Yes, sir.

6 Q Jerry DePalma's name is not on there anywhere; is it?

7 A You know, I didn't -- I didn't look at it.

8 Q Sure. Look away.

9 A There's so many names. I'll take your word for it. Have you looked  
10 at it?

11 Q I -- well, I did very briefly because we just got it. But they're your full  
12 notes in the case, so don't let me put words in your mouth.

13 A No, they're not my full notes from the case.

14 Q Well, they're your full notes related to anything from the client.

15 A Yes, that's correct.

16 Q All right. Because you have all these other notes.

17 A And I have a lot back in my office too.

18 Q All right. But related to anything she said to you, and you wrote  
19 down contemporaneously or at the same time, that's it.

20 A Yes, with the exception of -- the -- there was some other little  
21 witness that was written that I talked about previously.

22 Q Right. So, on there is Jerry DePalma's name mentioned? And I'll  
23 tell you if you find it, I'll be surprised.

24 A Okay, then, no.

25 Q Take your time.

1 A No, no, no. I'll take your word for it.

2 Q How about Don Dibble?

3 A No. Don Dibble was the investigator for the two gentlemen.

4 Q Right. And just so we're clear, because apparently you're here  
5 testifying about Anabel Espindola, on May the 19<sup>th</sup> you weren't at the -- 2005,  
6 were you at the Palomino Club?

7 A No, sir.

8 Q Were you back in the office?

9 A No, and if I was, I wouldn't admit it.

10 Q All right. You might've been downstairs where the nice people have  
11 pole; is that what you're saying?

12 A No.

13 Q All right. Well, on the 21<sup>st</sup> --

14 THE COURT: Are you taking the Fifth on that?

15 THE WITNESS: I'm taking the Fifth on that. Can I leave?

16 BY MR. ADAMS:

17 Q On the 21<sup>st</sup> of May, 2005, you weren't at Mr. DePalma's office; were  
18 you?

19 A Was I at Mr. DePalma's office? No, sir.

20 Q And do you know Don Dibble?

21 A I do. I know Don Dibble.

22 Q Have you worked with him?

23 A I -- yes.

24 Q Do you know him to be an honest person or do you have an opinion  
25 on him?

1 A You know what, with regard to -- do you want to know my history  
2 with him?

3 Q I want to know if you --

4 A I haven't -- I haven't --

5 Q -- know him well enough to know if the man is honest.

6 A I have not really had -- he did the Sapphires case with me a couple  
7 of years ago with Mr. Gentile and Ms. Armeni, but I have not had many dealings  
8 with Mr. Dibble over the last ten years.

9 Q Is Mr. Dibble dishonest?

10 A I -- sir, I just haven't had enough dealings to make --

11 THE COURT: So you don't have an opinion --

12 THE WITNESS: Yes, I don't --

13 THE COURT: -- one way or the other?

14 THE WITNESS: -- have an opinion is what I'm saying.

15 THE COURT: All right. Thank you.

16 Move on.

17 BY MR. ADAMS:

18 Q Were you at Mr. Gentile's office on the 22<sup>nd</sup>?

19 A No.

20 Q Were you at Simone's on the 23<sup>rd</sup> when I a body wire was done that  
21 I suspect you've listened to on more than one occasion.

22 A Ad nauseam, yes, and I was not there.

23 Q You were not there.

24 A No.

25 Q Your first meeting was several days after this meeting at Jerry



1 DePalma's office?

2 A Yes, sir.

3 Q Now, you said you have had 80 meetings with Anabel Espindola and  
4 you have these notes?

5 A Correct. And I'm relying upon the printout from the jail for the --

6 Q But you said you do write down notes in other people's cases, other  
7 client's cases.

8 A And in this one.

9 Q Well, notes from the client.

10 A Just --

11 Q Do you have clients that you take notes when you meet with them?

12 A Yes, but it's very, very brief. Name, address, social security number,  
13 prior record.

14 Q You wouldn't have something as comprehensive and thorough as  
15 six pages of notes from a single meeting?

16 A I think it would be absolutely foolish to do that.

17 Q All right. And that's -- that's -- but when you're taking down notes,  
18 do you intentionally put the wrong information in the notes?

19 A Do I put misinformation in the notes?

20 Q Yeah. Do you write in some sort of code that no one else would  
21 understand if they say your notes?

22 A I -- I suppose if I was trying to hide something.

23 Q Right. But you don't try to hide something when the notes are made  
24 for yourself; right?

25 A Yeah, I don't try to hide things.

1 Q Right. And if you were meeting with a client and writing down notes,  
2 you would want them to be accurate notes; right?

3 A Yes, sir.

4 Q So if you picked up a file 18 months later the notes would help you  
5 remember the case and the person and the circumstance; right?

6 A You would want notes to be accurate yes.

7 Q Right. So you could provide the best representation for the client.

8 A Not on notes with dis -- you mean notes with discussions with the  
9 client?

10 Q Yeah.

11 A No. No, you wouldn't do that.

12 Q So you wouldn't put down accurate information?

13 A I just wouldn't put it down ever.

14 Q All right.

15 A Ever.

16 Q All right. You don't know 00 you have no firsthand knowledge what  
17 was said in Mr. DePalma's office on May the 21<sup>st</sup>?

18 A I wasn't there.

19 Q All right. Thank you.

20 THE COURT: Redirect.

21 MR. DIGIACOMO: Just very, very briefly.

22 REDIRECT EXAMINATION

23 BY MR. DIGIACOMO:

24 Q You -- there was a bunch of questions about Don Dibble; correct?

25 A Yes, sir.



1 Q Okay. You said you worked with him on a Sapphires case; correct?

2 A Yes.

3 Q Okay.

4 A I didn't really work with him. He had had the co-defendant. I -- I

5 didn't -- he was there like he is here today, but he was not my client's

6 investigator. He did some work.

7 Q Okay. During the 33 months that you represented Anabel Espindola  
8 prior to the entry of her plea, did you have contact with Don Dibble that related to  
9 this case?

10 A Yes.

11 Q You didn't know anything about the DePalma meeting?

12 A No.

13 MR. DIGIACOMO: Nothing further.

14 THE COURT: Mr. Gentile, anything else?

15 RECROSS-EXAMINATION

16 BY MR. GENTILE:

17 Q Did you ever ask?

18 A Yes, as a matter of fact, I asked all the meetings and attorneys that  
19 she had met with in --

20 Q No, no, no. I didn't mean did you ask your client.

21 A Oh, I'm sorry.

22 Q I didn't mean that.

23 A I'm sorry.

24 Q Did you ever ask Mr. Dibble?

25 A I -- I talked to Mr. Dibble about --

1 Q No, did you ever ask Mr. Dibble if he had had any meetings with  
2 Anabel Espindola prior to your getting into the case?

3 A Yes, sir.

4 Q And he told you, no, he did not?

5 A No, he didn't say it that way. He just told me that there had been  
6 brief -- there had been brief things, but that he didn't have -- he didn't tell me  
7 anything substantive whatsoever.

8 Q So he --

9 A Nothing.

10 Q -- didn't discuss what was revealed at those things, at those  
11 meetings?

12 A No, Mr. Gentile, that's not accurate. I was given briefings of what my  
13 client had said, what my client had told people, including you, and I was never  
14 told of this.

15 Q You were given briefings by Mr. Dibble?

16 A I was told by Mr. Dibble, Ms. Armeni, you. What had happened  
17 when I came into the case, I had to know something about the case and I was  
18 sort of briefed on what had happened, and I remember specifically some things  
19 that Mr. Dibble told me.

20 Q Okay. But he did not tell you about the meeting at DePalma's  
21 office?

22 A No, sir.

23 Q Now, you're not -- you're not saying that that meeting did not  
24 happen?

25 A I wasn't -- I wasn't there. I couldn't --

1 Q You wouldn't call Mr. Dibble a liar in this courtroom; would you, sir?

2 A Sir, I wasn't there. And unless I could have proof of what happened,  
3 I couldn't say whether anybody was a liar.

4 Q You know Mr. Dibble's reputation in this community. That you do  
5 know. You may not have worked with him, but you do know his reputation.

6 A Well, I -- I don't mean to -- I worked with Don a lot when I was a  
7 baby lawyer.

8 Q Right.

9 A For a few years, yeah.

10 Q For a few years.

11 A Yes.

12 Q You formed an opinion at that point in time as to his truthfulness; did  
13 you not? As a matter of fact, Mr. Oram --

14 MR. DIGIACOMO: Hold on, Judge. I'd ask -- I -- let him answer the  
15 question.

16 THE COURT: Are you talking about when Don Dibble was a  
17 homicide detective and you were a new --

18 THE WITNESS: No.

19 THE COURT: -- criminal defense attorney?

20 THE WITNESS: No. That --

21 THE COURT: Okay. That was just a yes or a no question.

22 Mr. Gentile or -- I don't know if there is a question.

23 MR. DIGIACOMO: Can he answer the question as to whether or not  
24 he has an opinion?

25 /////

1 BY MR. GENTILE:

2 Q Do you have an opinion as to Don Dibble's character for  
3 truthfulness?

4 A No.

5 MR. GENTILE: Nothing further.

6 THE COURT: Mr. Adams, anything else?

7 MR. ADAMS: We request a limiting instruction as to Luis Hidalgo III.

8 THE COURT: All right. That's overruled.

9 Mr. DiGiacomo, anything else?

10 MR. DIGIACOMO: No, Judge.

11 THE COURT: Any juror questions?

12 All right. Mr. Oram, thank you for your testimony.

13 THE WITNESS: Thank you very much.

14 THE COURT: Please don't discuss your testimony with anyone else  
15 who may be a witness in this case. You are excused at this time.

16 Ladies and gentlemen, we are going to go ahead and take our  
17 evening recess. But before I tell you what time to come back I need to see  
18 counsel at the bench.

19 (Conference at the bench)

20 THE COURT: State?

21 MR. DIGIACOMO: The State rests, Judge.

22 THE COURT: Any surrebuttal?

23 MS. ARMENI: No, Your Honor.

24 MR. ADAMS: We just have an issue --

25 MR. GENTILE: There was no rebuttal.

1 MR. ADAMS: We just have an issue for the record --

2 THE COURT: All right.

3 MR. ADAMS: -- at the appropriate time.

4 THE COURT: All right. Thank you.

5 Ladies and gentlemen, that concludes the presentation of  
6 evidence in this case. As I told you, if you can even remember that far back in  
7 the beginning, the next step is the instructions on the law which will be followed  
8 by the closing arguments from the attorneys. Because the State has the burden  
9 of proof in this case, they will have the opportunity to address you twice in the  
10 arguments.

11 So tomorrow when we begin I will read to you the instructions  
12 on the law. Then the State will open the closing arguments, the defense may at  
13 that time, if they choose to, make their closing arguments, which can be followed  
14 by the rebuttal argument from the State. And at that time, once the arguments  
15 are over, the case will be submitted to you for your deliberations which will  
16 happen tomorrow.

17 I want to make sure that you -- there are very legal issues that  
18 still need to be resolved and so we're going to have you come back at 11:00  
19 tomorrow. The Court will read the instructions at 11:00. That normally takes  
20 about 20 minutes which will be followed by the State's first closing argument.

21 We'll order in lunch for you folks. We'll take our lunch break,  
22 and then finish up with the closing statements, and then you'll get the case to  
23 begin your deliberations in the jury deliberation room where you'll have written  
24 copies of the instructions on the law and all of the many exhibits that have been  
25 admitted during this trial.



1                   So let's go ahead and take our evening recess. We'll see you  
2 back here tomorrow morning at 11:00. Once again, I must remind you that  
3 during the evening recess you're not to discuss this case, any person or subject  
4 matter relating to the case with each other or with anyone else. Do not read,  
5 watch, or listen to any reports of or commentaries on any subject matter relating  
6 to the case. Do not do any independent research on any subject connected with  
7 the trial. Don't form or express an opinion. Don't visit any of the locations at  
8 issue. That's all I can think of.

9                   And right before you leave, I'm going to see Officer Wooten at  
10 the bench, please.

11                               (Conference at the bench)

12                   THE COURT: Any questions that any of you may have, I was going  
13 to say take them in the hall with Jeff. Is it anything that you need from the Court  
14 or is it scheduling and other issues that Jeff can address?

15                   Okay. I -- Jeff should know, and if not, he'll leave you out in  
16 the hallway and come find out from me. So any questions you may have, just go  
17 ahead and ask Jeff. Notepads in your chairs, and we'll see you all back here at  
18 11:00 a.m. tomorrow.

19                               (Jury recessed at 7:27 p.m.)

20                   THE COURT: All right. Here's what I ask. I'm speaking.

21                   Mr. DiGiacomo probably knows the drill. We ask that you  
22 provide written copies of the instructions like on a disc or by email or whatever to  
23 my JEA, Penny. It's probably easier for the defense just to bring in a disc. We're  
24 on the Word system. Are you guys on the Word system?

25                   MS. ARMENI: Yes.

1 THE COURT: Okay. So that way if she -- if we modify any, she can  
2 quickly do it and make a change in a word or two, she doesn't have to retype  
3 everything. And of the ones that the -- we like them all to be -- obviously look the  
4 same, so make sure the defense brings in copies that are not annotated, that  
5 aren't on letterhead, things like that, so that if we use any -- believe it or not  
6 sometimes people don't do this.

7 MR. DIGIACOMO: Theirs are pretty clean that they gave us.

8 MR. GENTILE: She wants unlined paper, plain paper, unlined?

9 THE COURT: No.

10 MR. DIGIACOMO: Pleading paper.

11 THE COURT: Pleading paper.

12 MR. GENTILE: Pleading paper. Okay.

13 THE COURT: Pleading paper, and it should say instruction number  
14 and then a blank so that when we, you know --

15 MR. ADAMS: Does it matter what era of Word?

16 MR. GENTILE: What font also?

17 THE COURT: Oh, please, I don't know.

18 MR. GENTILE: No, seriously, what font?

19 THE COURT: What do you use? Times New Roman?

20 MR. DIGIACOMO: Or Arial. I can't remember.

21 MR. GENTILE: I use Arial.

22 MR. DIGIACOMO: There's a big fight in our office, but it's real easy  
23 to select all and select a new font, so --

24 MR. ARRASCADA: Judge, they're using 13 point, Times New  
25 Roman.

1 MR. GENTILE: They are?

2 MR. ARRASCADA: Yes.

3 MR. DIGIACOMO: Wow.

4 THE COURT: What do you use, 12?

5 MR. DIGIACOMO: Nobody made fun of you in high school.

6 THE COURT: 12 point. Most people use 12 point Times New

7 Roman.

8 MR. DIGIACOMO: I don't know how you read 12 point. That's why I  
9 go to 13 or 14 or --

10 THE COURT: You know, although --

11 MR. DIGIACOMO: -- I can't possibly read it.

12 THE COURT: -- I recently needed distance glasses, I still have  
13 perfect, let me just tell you, close up vision.

14 MR. DIGIACOMO: Judge, I guess my only request is if they have  
15 anything that they want to identify of ours that they object to, obviously we both  
16 know the conspiracy one. We've got Crue (phonetic), they've got some Federal  
17 law, but if there's anything specifically that they object in ours that they want cites  
18 to -- because, you know, most of these were -- are stock from like Counts and  
19 stuff like that.

20 THE COURT: And can you guys help me out here on anything that  
21 you think is going to be contested and you cited case law, if you can, you know,  
22 in the many hours you'll have tonight, if you can have a copy of the case,  
23 particularly Federal cases, for me to look at when I'm deciding the instructions.  
24 Because, otherwise, there'll be a delay with my law clerk having to print it out.  
25 Not a big delay, but if you can do that, that would be great. If you don't do it,

1 that's fine. I'll just have my law clerk pull up cases as it becomes an issue.

2 MS. ARMENI: Okay.

3 MR. DIGIACOMO: And if they could just identify for me sometime  
4 before we get here at 9 a.m. which ones they want to object to so we can find the  
5 case law that we need for them.

6 MR. GENTILE: The ones that have ink on the page.

7 MR. DIGIACOMO: The ones that have what?

8 THE CLERK: Ink on the page.

9 THE COURT: Well, maybe we should start at 8:30.

10 MR. GENTILE: No, no, no. 9:00.

11 MR. DIGIACOMO: Judge, we're out of bed before 8:00. I don't want  
12 to do that to you though.

13 THE COURT: I can -- I have been to work -- let me just tell you. I  
14 have been here many days at 8:00 a.m.

15 MR. ARRASCADA: May we make a record?

16 THE COURT: Yes.

17 MR. ARRASCADA: Your Honor, you asked -- asked if we would be  
18 putting on a case in chief defense on behalf of Luis Hidalgo III. We advised the  
19 Court that we were and that it would be transcript testimony from Jason Taoipu.  
20 We've provided to the Court an affidavit of Don Dibble outlining the efforts made  
21 to locate Mr. Taoipu.

22 THE COURT: Do you want me to make this a Court's exhibit?

23 MR. ARRASCADA: I'd ask that it be made a Court exhibit.

24 THE COURT: Court exhibit.

25 MR. ARRASCADA: I'd also supplement that with the fact that we

1 have called the Clark County Detention Center and/or the division of parole and  
2 probation on a daily basis since this trial, before this trial has begun to see if Mr.  
3 Taoipu was in custody.

4 I've also been informed by the Court that the Court signed a  
5 warrant for his arrest for violating his probation. With that we -- the basis for  
6 bringing in the transcript is that Mr. Taoipu is an unavailable witness. I believe  
7 the Court's already made that ruling and that finding.

8 THE COURT: That's true.

9 MR. ARRASCADA: We move to have admitted through his  
10 transcript testimony from page 39 regarding what he heard, what Jason Taoipu  
11 heard regarding a conversation about baseball bats and garbage bags.

12 And the specific question from Mr. Pesci is tell us what you  
13 heard, when you heard it, and who you heard it from. Mr. Taoipu stated that he  
14 heard it from when we he went to pick up KC, Deangelo told us that he, Anabel --  
15 and Anabel was talking about baseball bats and trash bags. This is exculpatory  
16 evidence for our client, Luis Hidalgo III.

17 Your Honor, it's my understanding you are not going to be  
18 permitting us to put on this information and we would make in our record that we  
19 do believe it needs to be placed on. There is an entire transcript, but the parts of  
20 the transcript that are relevant under 47.120 would be nominal as related to Little  
21 Luis Hidalgo or Luis Hidalgo III, and we believe that it's proper to have this  
22 admitted and read to the jury and placed into evidence.

23 MR. DIGIACOMO: Somewhat briefly, first of all, there's a recent  
24 Nevada Supreme Court case, and while I don't remember the name of the case, I  
25 remember the judge because it was Justice Hardesty who wrote it. He said in

1 order for that to be fulfilled the motion must be filed 15 days prior to trial. And if  
2 it's filed later than that, and as of yet it has never been filed in this case, they  
3 have to establish what good cause that they -- what they did to find Jason Taoipu  
4 prior to the 15 day time period that they were required to do so. That never  
5 happened in this case.

6           The next thing that is required under this statute is that the --  
7 that the -- the -- not only are the parties the same, and I will agree that the parties  
8 are the same, but the issue in the trial has to be the same, and that's it. There  
9 was no issue in that -- in counsel's trial as to who cares who said it. It is the fact  
10 that it was said. And Mr. Pesci and I certainly didn't attempt to impeach Mr.  
11 Taoipu on an issue that was clearly --

12           THE COURT: I was thinking --

13           MR. DIGIACOMO: -- unrelated to Counts.

14           THE COURT: -- I wish this was like the senate. You know, I could  
15 just leave and you could just talk and then you guys could just talk because we're  
16 just making a record. And I say that somewhat facetiously, but we all know how  
17 senators stand up to an empty room for their face time.

18           MR. DIGIACOMO: Correct. And I -- and I do know that. But I also  
19 recognize that this will be an issue.

20           THE COURT: Right. You need to make a record and they need to  
21 make a record.

22           MR. DIGIACOMO: Make sure that the record completely reflects  
23 that the statute does not allow for this to be admitted. And then on top of that,  
24 the request isn't to admit the entire preliminary hearing transcript as through the  
25 admission of a portion of it.

1                   And under the statute for prior testimony, the -- the -- it says  
2 the testimony becomes admissible. And there's a line of cases, and I won't cite  
3 them for the Court, that says once the defendant waives his confrontation rights,  
4 everything that that person -- all the confrontation rights are waived and at that  
5 point it's the testimony of the witness will be admissible. They don't want that.  
6 They want just a portion of it.

7                   There's a third problem as well, which because the portions  
8 which would be used to impeach that are twofold, both of which are open to  
9 interpretation as to who he's speaking to whether -- whether he's talking about  
10 Mr. H or Little Lou and Mr. H has his own confrontation rights. And I believe that  
11 that will make Mr. Gentile --

12                   THE COURT: Mr. Gentile invoked those.

13                   MR. DIGIACOMO: -- on behalf of Mr. H, object to the admissibility of  
14 the entire transcript, Judge. So I think -- not -- you have the absolute right to  
15 exclude it on that basis, but also when you look at what Mr. Gentile has been  
16 repeatedly saying, which is a 48.035 analysis as to whether or not it confuses the  
17 issues and is more prejudicial than probative. I would submit to the Court that  
18 you would have that basis as well to exclude it. And I'll submit it.

19                   MR. GENTILE: As long as my name is going to be sullied, I would  
20 like to at least say that my objection does not go to the use of the inconsistent --  
21 actually, it's not even an inconsistent statement, it's contradiction. It's being used  
22 as contradiction.

23                   THE COURT: It's a contradiction to --

24                   MR. ARRASCADA: Rontae Zone.

25                   THE COURT: -- to Rontae Zone's testimony.

1 MR. GENTILE: Right. It's -- it's -- it's affirmative --

2 THE COURT: It's not an inconsistent --

3 MR. GENTILE: -- contradiction. And -- and that affirmative  
4 contradiction, of course, is -- does not damage in any way Luis Hidalgo, Jr., and  
5 so I would not object to that.

6 What I do object to is this -- is the Crawford violation that  
7 comes into this situation for Luis Hidalgo, Jr. because he is not seeking the  
8 introduction of the contradiction. And if the Court were -- were to rule that more  
9 than the contradiction, and in fact the entire transcript, much of which is definitely  
10 cumulative and not subject to cross-examination by Luis Hidalgo, Jr.'s attorney  
11 and not beneficial to him. And that would be a constitutional violation.

12 And so were you to allow in only the limited contradictory  
13 evidence, I would not have an objection. But if the Court's inclination is to let the  
14 rest of it in, then I do, and it's constitutionally based and I would move for a  
15 mistrial if you were to allow that to come in.

16 THE COURT: Anything else?

17 MR. ARRASCADA: Yes, Your Honor. My -- the statute is clear that  
18 they -- testimony into rule of completeness of 47.120 says you can allow in  
19 relevant evidence. We provided the Court with citations to what would, in our  
20 perception, be relevant evidence regarding the statement that Anabel called for  
21 the bats and bags.

22 I'm somewhat dumbfounded that the State is now saying a  
23 witness that they put on in the case they're going to impeach. I guess the State's  
24 taking the position that their witness that they put had perjured testimony.

25 THE COURT: Well, or mistaken testimony.



1 MR. ARRASCADA: Which they have an obligation to have cured  
2 during that trial, Your Honor.

3 THE COURT: Well, here's the Court's analysis. Basically there's  
4 other very damning evidence against, if you take it in the context of other  
5 statements, against Luis Hidalgo III, which isn't now going to be subject to cross-  
6 examination by you or questioning by you.

7 So if you let in the statement that's inconsistent with what  
8 Rontae Zone testified to, or contradictory, then, to me, that opens the door to  
9 other statements that Jason Taoipu made in his trial testimony that indicate that  
10 Little Lou was involved and gave the order. So, to me, you can't just take the  
11 one exculpatory statement without looking and at least having part of the  
12 transcript in that pertains to Little Lou's involvement. And so, to me, it opened  
13 the door to at least that, even if you didn't go through the whole -- the whole  
14 transcript.

15 And even if you put on Detective Wildemann, even if I were to  
16 allow that, to say, no, that's Little Lou, if they don't believe that, then it's still  
17 prejudicial as to Mr. Hidalgo, Jr. But I don't think you can just say, well, this is not  
18 consistent with what Rontae Zone testified and not open the door to his  
19 testimony that says Little Lou was involved, Deangelo told me Little Lou, or the  
20 boss --

21 MR. ARRASCADA: Judge --

22 THE COURT: -- put the thing out. So I'm going to let you say  
23 whatever else you want, and then that's it.

24 MR. ARRASCADA: I appreciate your ruling. With all due respect I  
25 disagree with your analysis --

1 THE COURT: Of course you do.

2 MR. ARRASCADA: -- of the transcript. I'd ask that it be made a  
3 Court exhibit also.

4 THE COURT: Well, actually, the -- oh.

5 MR. ARRASCADA: It's a certified copy of the transcript.

6 THE COURT: Okay. Well, it can be. I mean, it's part of the official  
7 record in this case anyway because it's --

8 MR. ARRASCADA: No, it's part --

9 THE COURT: -- the trial transcript.

10 MR. ARRASCADA: -- of the Counts trial transcript.

11 THE COURT: I know, but it's all part of the --

12 MR. ARRASCADA: Well, I would just --

13 THE COURT: It's all part of --

14 MR. ARRASCADA: -- ask that that --

15 THE COURT: That's fine. I don't care. That's -- I mean, all I'm  
16 saying is it's all part of the overall record in the --

17 MR. ARRASCADA: Judge, also, this file is our client's due process  
18 and rights of a right to a fair trial.

19 (Proceedings adjourned at 7:40 p.m.)

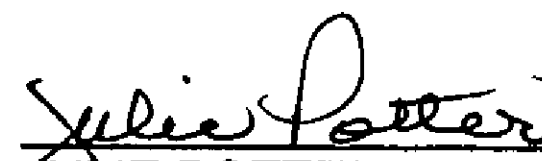
20 -oOo-

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

23

24

25

  
\_\_\_\_\_  
JULIE POTTER  
TRANSCRIBER

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